Herefordshire Council

Minutes of the meeting of Planning and regulatory committee held as an online only meeting on Wednesday 24 June 2020 at 10.30 am

Present: **Councillor John Hardwick (chairperson)**
Councillor Alan Seldon (vice-chairperson)

Councillors: Graham Andrews, Paul Andrews, Polly Andrews, Toni Fagan, Elizabeth Foxton, Kema Guthrie, Bernard Hunt, Terry James, Tony Johnson, Mark Millmore, Jeremy Milln, Paul Rone and Yolande Watson

120. APOLOGIES FOR ABSENCE

Apologies were received from Councillor Stone.

121. NAMED SUBSTITUTES

Councillor Guthrie substituted for Councillor Stone.

122. DECLARATIONS OF INTEREST

None.

123. MINUTES

The accuracy of the minutes in relation to application 192711 was questioned with regard to the reference to the impact of the proposal on the line of the former Golden Valley Railway. (Minute no 118 refers). Whilst it had been stated that the impact on the line of the former Golden Valley Railway had not been considered because it was not a designated heritage asset, it should also have been reported that it was a non-designated heritage asset and therefore was a material planning consideration.

RESOLVED: That the minutes of the meeting held on 3 June 2020 be approved as a correct record and signed by the Chairperson.

124. CHAIRPERSON'S ANNOUNCEMENTS

None.

125. 191958 - LAND AT BROAD OAK, HEREFORD

(Erection of two residential dwellings (C3) with associated access and infrastructure.)

(Councillor Fagan fulfilled the role of local ward member and accordingly had no vote on this application.)

The Senior Planning Officer gave a presentation on the application, and updates/additional representations received following the publication of the agenda were provided in the update sheet, as appended to these minutes.

In accordance with the criteria for public speaking for virtual meetings, Mr A Hall, a local resident submitted a written submission in opposition to the scheme that was read to the meeting by the legal adviser to the Committee. Mr S Leaver, the applicant's agent, spoke in support of the scheme, as a virtual attendee.

In accordance with the Council's Constitution, the local ward member, Councillor Fagan, spoke on the application. In summary, she commented that, whilst very concerned by aspects of the application, in the absence of objections from statutory and internal consultees she could not advance policy grounds for refusal. She requested that there should be strengthened informatives/conditions in relation to controlling drainage.

The Committee discussed the application.

The Lead Development Manager summed up the principal considerations. He commented that informative 9 as set out in the recommendation addressed the point raised by Councillor Fagan about controlling drainage.

The local ward member was given the opportunity to close the debate. She reiterated her concern to ensure that drainage was effectively controlled by conditions with appropriate informative.

RESOLVED: That planning permission be granted subject to the following conditions and any further conditions considered necessary by officers named in the scheme of delegation to officers:

1. **C01 Time limit for commencement (full permission)**

2. **C07 Development in accordance with approved plans and materials**

3. **C13 Samples of external materials**

4. **CBK – Hours of construction**

5. **C58 - Domestic use only of garage**

6. **CAB - Visibility Splays**

7. **CAD - Access gates – 5m**

8. **CAE - Vehicular access construction**

9. **CAH - Driveway gradient**

10. **CAI - Parking – single/shared private drives**

11. **CAT - Construction Management Plan**

12. **CB2 - Secure covered cycle parking provision**

13. **CK3 – Landscape scheme**

14. **CK4 – Landscape maintenance plan**

15. **CE6 – Efficient use of water**

16. **CDA – Clear area adjacent to watercourse**

17. **CBM – Scheme of foul and surface water drainage strategy**

18. **All foul water shall discharge through connection to new private foul water treatment systems with final outfall to suitable soakaway mound drainage field on land under the applicant's control as approved through Environment Agency Discharge Permits (EPR/QB3294WC and EPR/PB3792AR or any subsequent permits so issued) unless otherwise agreed in writing by the Local Planning Authority.**

    Reason: In order to comply with Conservation of Habitats and Species Regulations (2017), National Planning Policy Framework (2019), NERC Act (2006), and Herefordshire Core Strategy (2015) policies SS6, LD2 and SD4

19. **All surface water shall discharge to appropriately sized attenuated Sustainable Drainage Systems unless otherwise agreed in writing by the Local Planning Authority.**

    Reason: In order to comply with Conservation of Habitats and Species Regulations (2017), National Planning Policy Framework (2019), NERC Act (2006), and Herefordshire Core Strategy (2015) policies SS6, LD2 and SD3

20. **Within 3 months of completion of the works approved under this planning decision notice evidence (such as photos/signed Ecological Clerk of Works completion statement) of the suitably placed installation within the site boundary of at least TWO Bat roosting enhancements, FOUR bird nesting boxes and TWO Hedgehog habitat homes should be supplied to and acknowledged by the local authority; and shall be maintained hereafter as approved unless otherwise agreed in writing by the local planning authority. No external lighting should illuminate any habitat enhancement or boundary feature.**

    Reason: To ensure that all species are protected and habitats enhanced having regard to the Wildlife and Countryside Act 1981 (as amended), Habitat Regulations 2017, Core Strategy LD2, National Planning Policy Framework (2019), NERC Act 2006 and Dark Skies Guidance Defra/NPPF 2013/2019.

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. Negotiations in respect of matters of concern with the application (as originally submitted) have resulted in amendments to the proposal. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.**

2. **I11 – Mud on highway**

3. **I09 – Private apparatus within the highway**

4. **I45 – Works within the highway**

5. **I05 – No drainage to discharge to highway**

6. **I47 – Drainage other than via highway system**

7. **I35 – Highways Design Guide and Specification**

8. **Wildlife Protection and Biodiversity 'net gain' Informative**

9. **Well maintained watercourses, (which include drainage ditches), are a major means of protecting against flooding. The provisions of the Land Drainage Act 1991 as amended, and the common law, requires landowners, with a watercourse (or ditch) running through or adjacent to their land, to ensure that the watercourse is in such a condition that the proper flow is not impeded. Balfour Beatty Living Places working on behalf of Herefordshire Council are responsible for ensuring that most ordinary watercourses in Herefordshire, (i.e. those that exclude main rivers), are maintained to allow for this free flow of water. The proposed development includes an open ditch running through land owned solely by plot 2. The homeowner must be aware that this ditch must not be culverted without consent granted by Herefordshire Council under Section 23 of the Land Drainage Act 1991 (as amended by the Flood and Water Management Act 2010).**

126. 194052 - LEMSFORD, BROAD OAK, HEREFORDSHIRE, HR2 8DZ

(Site for the erection of one detached dwelling and two bungalows.)

(Councillor Fagan fulfilled the role of local ward member and accordingly had no vote on this application.)

The Senior Planning Officer gave a presentation on the application, and updates/additional representations received following the publication of the agenda were provided in the update sheet, as appended to these minutes.

In accordance with the criteria for public speaking for virtual meetings, Mr K Wise, a local resident submitted a written submission in opposition to the scheme that was read to the meeting by the legal adviser to the Committee. Mrs J Joseph, the applicant's agent, spoke in support of the scheme as a virtual attendee.

In accordance with the Council's Constitution, the local ward member, Councillor Fagan, spoke on the application. In summary, she outlined a number of policy grounds for refusing the application. She considered the substantial harm outweighed any benefits. She highlighted the objection of the Council's Senior Landscape Officer. She also noted the grounds for refusal of a nearby application for housing development. If the Committee were not minded to refuse the application she requested that consideration of the application be deferred to allow a site visit to be held to assess the landscape impact.

The Committee discussed the application.

The Lead Development Manager summed up the principal considerations.

The local ward member was given the opportunity to close the debate. She reiterated her concern about the substantial impact of the proposal. She supported a site visit.

A motion that the application be approved was lost.

RESOLVED: That consideration of the application be deferred pending a site visit.

127. 201103 - 16 CORNEWALL STREET, HEREFORD, HEREFORDSHIRE, HR4 0HF

(Proposed variation of conditions 2 & 3 of planning permission 153764 (proposed extension, dormer loft conversion and replacement of conservatory/lean to with glazed extension) to construct a single roof over the proposed first floor and existing bathroom, and to alter the cladding materials.)

The Planning Officer gave a presentation on the application.

In accordance with the Council's Constitution, the local ward member, Councillor Toynbee had written stating her support for the officer recommendation to approve the application.

RESOLVED: That planning permission be granted subject to the following conditions and any further conditions considered necessary by officers named in the scheme of delegation to officers:

1. Time limit for commencement (full permission)

2. C07 (002/1/15, 005A/1/15 006A/1/15 and 007A/1/15)

3. CBK

INFORMATIVES:

1. IP1

128. DATE OF NEXT MEETING

Noted.

Appendix - Schedule of Updates

The meeting ended at 1.30 pm **Chairperson**

PLANNING AND REGULATORY COMMITTEE

Date: 24 June 2020

Schedule of Committee Updates/Additional Representations

Note: The following schedule represents a summary of the additional representations received following the publication of the agenda and received up to midday on the day before the Committee meeting where they raise new and relevant material planning considerations.

SCHEDULE OF COMMITTEE UPDATES

191958 - ERECTION OF TWO RESIDENTIAL DWELLINGS (C3) WITH ASSOCIATED ACCESS AND INFRASTRUCTURE AT LAND AT BROAD OAK, HEREFORD,

For: Mrs Chambers per Mr Stuart Leaver, Singleton Court Business Park, Wonastow Road, Monmouth, NP25 5JA

ADDITIONAL REPRESENTATIONS

On 18 June the following general comment/query was submitted by a neighbouring resident, who has already made representations on the application.

I am confused as to how you can recommend a planning condition requiring development in complete accordance with the approved plans when those plans still detail a drainage scheme that your Drainage Consultant finds unsatisfactory. Of course in condition 17 you then ask for further drainage details. It appears flawed in that any developer could never comply with both conditions (as we know that the Drainage Engineer will require details that depart from the "approved drawings").

In response to concerns raised by the validity of the Habitat Regulations Assessment (HRA) undertaken prior to the further objection made by the Land Drainage Engineer, the Planning Ecologist has made the following further comments;

The exact distances from buildings is not a constraint in regards of HRA process, in particular as the scheme has already demonstrated the required level of scientific (and legal) compliance:

- *The River Wye is not failing its conservation status.*
- *Broad Oak is on the edge of the SAC catchment an in an area identified as low risk from all information available to the LPA*
- *The Environment Agency have confirmed through their licensing process that a mound system is appropriate and achievable*
- *A mound soakaway system is compliant with relevant national water regulations and local Core Strategy policies SD4-LD2 hierarchy of drainage systems*
- *Foul water soakaways from individual or very small developments only manage a steady and very small flow of previously treated water*
- *In different circumstances it would be acceptable on all accounts (general binding rules and HRA/Core Strategy compliance) for this outfall from a package treatment plant to be discharged directly in to the adjacent watercourse. (it is only the lack of a normal flow of water that makes this unacceptable)*
- *The LPA has no planning reason to consider that the proposed foul water drainage scheme cannot be achieved.*
- *No revised HRA process is triggered based on the additional comments from drainage on 8th June.*

Following the above, an amended site plan accompanied by a covering letter was received on Monday 22 June. This seeks to address the comments made by the Land Drainage Engineer and sets the garages 7 metres from the proposed drainage mound. The Council's Land Drainage Engineer has commented on the submission as follows;

We note the proposal to move the garages to achieve 7m clearance to the mound and remove our objection

The proposal involves using pumps to deliver water into the mound. It is more common to install a drainage mound on low lying land and to rely on gravity to deliver the water. There is no guidance in the respective design guidance relating to how this may be achieved.

The design delivered on site will need to ensure that infiltration into the ground occurs "at a controlled rate" (as referenced in British Water documentation). The applicant needs to be aware that if the drainage system is not designed correctly then there may be practical difficulties with water leaking and ponding when the drainage mound cannot cope with the water that is being delivered by the pumps.

We would suggest that the applicant considers oversizing the perforated pipes in the drainage mound to create additional storage capacity in the drainage mound. This would involve deviating from the standard detail in the building regulations.

There will also be difficulties in delivering a small amount of water into the pond on a frequent basis, if a conventional pump is used it will stop and start multiple times each day and so will wear out more quickly than if the pumps only ran occasionally. The applicant would need to consider a suitable pump specification, an alternative to a conventional pump may be a Low Volume Pump (supplied from a manufacturer such as Mono) that is less efficient but more durable.

The detail above (promoted to reduce the likelihood of sewage pollution) could be requested via condition.

Following the above, an additional further query has been raised by a neighbouring resident as follows;

I understand that an amended site plan was received early this morning which re-sites the garages for the above application and that this amended plan is currently with BBLP for your Drainage Engineer's urgent comments.

Please could I request that you forward me a copy of the amended plan (including details of how far the garages have moved) and also any response you receive from Joel Hockenhull?

OFFICER COMMENTS

Firstly, noting the query raised by the neighbouring resident, it is commented that the submitted drainage drawing is indicative in nature, purely illustrating the ability to achieve the proposed drainage strategy within the extent of the application site. As such, this would not be included as an 'approved drawing' at Condition 2. The applicant would be required to submit full foul and surface water drainage details which would be subject to approval by the Local Planning Authority, before commencing any development on the site. This is set out at Condition 17 of the officer's report.

The amended site plan re-positions the proposed garages slightly to the east and this amendment to the layout of the site is considered to be non-material, raising no new planning considerations which have not already been subject to assessment. The further comments made by the Land Drainage Engineer confirm the acceptability of the proposed drainage strategy, subject to details which would be secured by way of condition. Furthermore and referring to the comments of the Planning Ecologist, the Habitat Regulation Assessment (HRA) undertaken can be confirmed as valid and need not be reviewed.

Finally, it is confirmed that the submitted amended plan and the Land Drainage response has been forwarded to the concerned neighbouring resident and these details are available to view on the relevant planning page of the Council's website.

NO CHANGE TO RECOMMENDATION

194052 - SITE FOR THE ERECTION OF ONE DETACHED DWELLING AND TWO BUNGALOWS AT LEMSFORD, BROAD OAK, HEREFORDSHIRE, HR2 8DZ

For: Messrs Partridge per Mrs Julie Joseph, Trecorras Farm, Llangarron, Ross-On-Wye, Herefordshire HR9 6PG

ADDITIONAL REPRESENTATIONS

On 22 June the following general comment/query was submitted by a neighbouring resident, who has already made representations on the application.

I refer to the above planning application scheduled to be reported to Planning Committee on Wednesday.

I am obviously disappointed by the recommendation because I fail to understand the rational behind your exercise of "the planning balance". In my opinion, the harm to the character and appearance of the landscape is substantial and any benefits from the provision of housing at Broad Oak are at best marginal. In that respect I make the following points:

A. *Your own report (para. 6.38) clearly says that " there may not be an acute shortage of housing in the Parish". I have to say that I am slightly confused as to why you use the words "may not be" as opposed to "is not";*
B. *You state in para 6.37 that:- "The Parish of Garway has fared reasonably well in regards to housing provision of the Core Strategy plan period". I fail to understand why you use the words " fared reasonably well" as opposed to "very well already exceeding the proportional growth target until 2031". There is very clearly a contradictory approach to the report written in relation to refused application P191775/PIP.*
C. *Clearly there is not a need for further housing within the Parish of Garway and Broad Oak specifically. There may be a further need in Herefordshire as a whole but that further growth should be directed to those Parishes and Towns where the proportional growth target has not been met; and*
D. *Notwithstanding, a) b) and c) above, this development would make little contribution to addressing any shortfall in Herefordshire as a whole.*

Failure to address Tree issue

Notwithstanding the above, any report to a Planning Committee must address all the material planning considerations. If material planning matters are not addressed then third parties may mount a legal challenge via a judicial review to the High Court.

Within the views of the Senior Landscape Officer, a matter other than the character and appearance of the landscape is raised. That matter relates to trees. The Senior Landscape Officer states:-

"In terms of the indicative layout proposed the driveways would require gaps and widening in the important roadside hedgerow, which is a key landscape feature as well as an important biodiversity corridor. The large mature tree is shown for retention within Plot 2 but it's long term viability could be put at risk as it is not an ideal size and species for a garden tree, as well as potential root damage due to hedgerow works to create a visibility splay.

The application lacks any demonstration that the character of the landscape has positively influenced the site selection for residential development. It does not conserve or enhance the natural environment or protect the area's character. The indicative location of new hedgerows would need to be fully specified, but does not off-set the intrusive increase in built infrastructure. A tree and hedgerow survey in accordance with BS5837:2012 would be required."

Of course the layout is not indicative, as layout is not a reserved matter. The Officer Appraisal does not address the tree issue at all. I therefore ask you:-

a. *Was the agent for the applicant requested to provide a BS5837:2012?*
b. *Was your Tree Officer (Oliver Kaye) consulted?*

If not, I respectfully suggest that this application must be withdrawn from the agenda on Wednesday to allow for:

a. *A BS5837:2012 Assessment to be submitted; and*
b. *Your Tree Officer (Oliver Kaye) be consulted.*

Clearly in the absence of a BS5837:2012 your Tree Officer could not undertake a "desk top" assessment as he would need to visit the site and inspect the tree to ascertain its species, height, girth etc to establish the root protection area required.

On 23 June the following general comment/query was submitted by a neighbouring resident, who has already made representations on the application.

Firstly, with regard both applications I would point Members to a recent (29th October 2019) previous refusal of a planning application (P191775/PIP) at Broad Oak for two further dwellings where a ground of refusal was:-

" The amount of development when assessed in combination with the existing approved residential development allowed in Broad Oak is not considered to represent proportionate growth relative to the size off settlement and the limited facilities available. The proposal is therefore contrary to policy RA2 of the Herefordshire Local Plan Core strategy, Policy GA2 of the emerging Garway Neighbourhood Development Plan and the National Planning policy framework."

That refusal was clearly stating that a further two dwellings at Broad Oak would represent disproportionate growth.

It therefore must be the case that the same applies to the two applications under consideration on Wednesday.

With due respect your Officers appear to be inconsistent.

What is even more worrying is that the refusal I refer to is currently at appeal and clearly granting permission of one or both of the applications under consideration on Wednesday may prejudice the Council's case at appeal.

The only matter that has changed since 29th October 2019 is the fact that the emerging Garway NDP has advanced further and is now at Examination.

I would point out that:-

a. *No objections were raised to Policy GAR1 of the Regulation 16 Garway NDP as a result of the consultation that ran from the 14th February 2020 to March 2029; and*
b. *No objections were raised to Map 2 (Broad Oak Village Proposals Map) of the Regulation 16 Garway NDP as a result of the consultation that ran from the 14th February to 27th March 2020. In fact there was one representation of support.*

As such, considerable weight should be afforded to the Regulation 16 Garway NDP as far as it relates to Broad Oak and specifically these applications.

PLANNING APPLICATION 194052 – Lemsford, Broad Oak
With regard the above application I urge Members to read with care the objection from your own experienced Senior Landscape Officer (Amanda Neil) at paragraph 4.7. This is a very strong landscape objection. The proposal is clearly creeping ribbon development. And the gaps in the roadside hedge would negatively impact upon landscape character. Significantly the Senior Landscape Officer states that a tree and hedgerow survey in accordance with BS5837:2012 is required and expresses concerns as to whether a large mature tree in Plot 2 shown to be retained could viably be retained. No such BS5837;2012 Assessment has been submitted and incredibly it appears that the Council's own Tree Officer (Oliver Kaye) has not even be consulted.

The application should clearly be refused on the basis of on the same disproportionate ground as P191775/PIP and refused on the basis of its impact upon the character and appearance of the landscape contrary to policies LD1 and LD3 of the Core Strategy. If the application is not refused it should be deferred requiring the submission of a BS5837:2012 tree and hedgerow assessment and for the Tree Officer (Oliver Kaye) to be consulted.

Planning application P191775/PIP, currently at appeal, had a landscape ground of refusal. To permit this scheme where there is a strong landscape objection from your own professional landscape officer could clearly undermine the Council's case on the appeal relating to P191775/PIP.

Finally, I have noticed an increasing trend that Officers at Herefordshire Council appear to recommend almost all housing applications for approval whatever the environmental cost. These are both cases where there are strong objections from professional internal consultees but once again the need for housing trumps the environmental objections.

However, it is worth noting that even in paragraph 6.38 of the report in relation to 194052 the Officer acknowledges that there is not an acute shortage of housing in the Parish. Indeed I would contend that there is not a further need in Garway Parish (although there maybe elsewhere in Herefordshire). The indicative housing growth figure of 14% until 2031 (not 2020!) has already been exceeded in the Parish of Garway and the hamlet of Broad Oak specifically. These are both cases where I respectfully consider that the Officers have the "planning balance" wrong.

In the light of the above, I sincerely hope that you feel able to oppose the above two planning applications at Planning Committee next Wednesday.

OFFICER COMMENTS

Firstly in response to the points made regarding the planning balance and delivery of housing in the Parish of Garway. While the Core Strategy sets out the Rural Housing Distribution via Policy RA1 it is clear that the figures are indicative targets and do not form the upper limit in terms of housing numbers. Rather the Development Plan seeks to ensure development is proportionate and led locally via the Neighbourhood Plan process, in line with the guidance of the National Planning Policy Framework (NPPF). The Neighbourhood

Plan is given moderate weight in the recommendation in line with Paragraph 48 of the NPPF, as it has not undergone independent examination, as such conflict with it does not engage paragraph 14. As such the tilted balance at 11(d)(ii) remains engaged in earnest which is how the application has been assessed. The application site lies adjacent to the main built form of the settlement and has a clear relationship to it, there are material differences in this vein to the refused P191775/PIP (subject of an undetermined appeal)

Secondly in regards to the Oak Tree and the Senior Landscape Officer's comments, if this was not made explicitly clear in the Officer's Report, the comments were certainly taken into account in formulating the recommendation and formulation of conditions. This is an outline application and so a reserved matters application will be required prior to the commencement of works. This is controlled via recommended condition 3 which requires the submission of, among other things, landscape details. Condition 15 specifies the details required which includes:

a) Trees and hedgerow to be retained, setting out measures for their protection during construction, in accordance with BS5837:2012.

This is as a result of the Landscape Officer's comments and any submission under this condition would be reviewed and assessed by the Council's arboriculture specialist.

NO CHANGE TO RECOMMENDATION