

MEETING:	PLANNING AND REGULATORY COMMITTEE
DATE:	30 SEPTEMBER 2020
TITLE OF REPORT:	194052 - SITE FOR THE ERECTION OF ONE DETACHED DWELLING AND TWO BUNGALOWS AT LEMS FORD, BROAD OAK, HEREFORDSHIRE, HR2 8DZ For: Messrs Partridge per Mrs Julie Joseph, Trecorras Farm, Llangarron, Ross-On-Wye, Herefordshire HR9 6PG
WEBSITE LINK:	https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=194052&search-term=194052
Reason Application submitted to Committee - Redirection	

Date Received: 21 November 2019 **Ward: Birch**
Expiry Date: 16 January 2020
 Local Member: Councillor Toni Fagan

Grid Ref: 348093,221128

UPDATED

Members will recall that this application was deferred at the Planning and Regulatory Committee on 24 June 2020 in order for a site visit to be undertaken by members of the Committee.

Since the deferral of the application the following information has been submitted

- Applicant submitted a Tree Survey and Arboricultural Assessment plus accompanying tree protection plan;
- Applicant submitted a revised layout plan;
- Amended comments from the Senior Landscape Officer;
- Consultation with the Arboriculture (Tree) Officer;
- Amended comments from the Parish Council;
- 3 additional letters of objection;
- The Garway Neighbourhood Development Plan passed through independent examination.

The additional and amended details submitted by the applicant pro-actively sought to address matters of concern that arose during the debate at the Planning and Regulatory Committee. The Tree Survey and Arboricultural Assessment has been assessed by the Council's specialist Arboriculture Officer who confirmed the details of the assessment, which concluded that the development, as revised, would not impact on the longevity of the oak tree.

The above assessment identified that the dwelling proposed on Plot 2 would marginally incur upon the root protection area of the oak tree and so the layout has been amended. The change shifts the dwelling on Plot 2 further East beyond the root protection area.

The tree protection plan was accompanied by a proposed planting scheme along the site's southern boundaries, either side of the C1239.

The Senior Landscape Officer has reviewed the changes and welcomed the additional planting which will filter views of the development when travelling north, into Broad Oak. Furthermore the tree protection plan and adjusted positioning of Plot 2 was noted to help support the longevity of the existing oak tree, which was previously noted as being important to local amenity values. However, there remains an in principle objection to the proposal and the effect upon the character of the settlement, as it creates a suburban linear character, eroding the rural gap between Broad Oak and Caldicott Farm.

The Parish Council maintain the original grounds of objection that the application site lies beyond the identified settlement boundary and in close proximity to a slurry lagoon. However, it is of note that the Council's Environmental Health Officer has reviewed the proposal and confirmed that they hold no objection on the grounds of proximity to the slurry lagoon.

Since 24 June the Garway Neighbourhood Development Plan has passed through independent examination. The examiner's report details a number of changes to the Neighbourhood Plan which have been accepted by the Parish and Herefordshire Council and confirmed in the Decision Document. As set out in Paragraph 48 of the NPPF the policies contained within the NDP should now be attributed significant weight until such time as the NDP undergoes a referendum to become part of the Development Plan.

As previously assessed the current application site lies beyond, but adjacent to, the settlement boundary identified in Policies Map 2 and as such there is an identified conflict with policy GAR1 of the NDP. This policy now receives significant weight in the planning balance and materially alters the assessment of the proposal.

Given the above change in weight that is to be attributed to the Garway Neighbourhood Development Plan the identified conflict with GAR1 combined with the already identified adverse landscape character impact of the proposal, contrary to CS LD1 and NDP GAR4 it is Officers recommendation that planning permission be refused.

1. Site Description and Proposal

- 1.1 The application site lies either side of the C1239, approximately 180 metres south of its junction with the B4521, which forms the central cross roads of Broad Oak. Currently both portions of the application site comprise agricultural fields with no access within the constraints of the existing site. Immediately to the north of the application site, to the west side of the C1239 lies a development of 4 residential dwellings (ref: 180061, later amended by 191721 and 192709).
- 1.2 The application seeks outline permission, with only access and layout for consideration, for the erection of three dwellings. The proposed layout is for a single detached dwelling on the portion of the site located to the west of the C1239 with a private access proposed. Then, on the portion of the site that lies to the east of C1239, two detached bungalows are proposed utilising a shared access. Scale, appearance and landscaping are reserved for later consideration. The application site is indicated on the below location plan, in relation to the junction of the C1239 and B4521 that form the central cross roads of Broad Oak. The red star indicates the application site with a blue star denoting the site of the four dwellings currently under construction (180061):



2. Policies

2.1 Herefordshire Local Plan - Core Strategy

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
SS7	-	Addressing climate change
RA1	-	Rural housing distribution
RA2	-	Housing in settlements outside Hereford and the market towns
RA3	-	Herefordshire's countryside
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	-	Waste water treatment and river water quality

The Core Strategy policies together with any relevant supplementary planning documentation can be viewed on the Council's website by using the following link:-

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

2.2 Garway Neighbourhood Development Plan (awaiting referendum)

GAR1	-	New Housing Development in Garway Village and Broad Oak
GAR2	-	Design in Garway Parish
GAR3	-	Flooding and Drainage
GAR4	-	Protecting Local Landscape Character
GAR6	-	Rural Environment and Tranquility
GAR10	-	Highways and Transport

The Plan can be afforded significant weight.

2.3 National Planning Policy Framework 2019 (NPPF)

Chapter 2	-	Achieving sustainable development
Chapter 4	-	Decision making
Chapter 5	-	Delivering a sufficient supply of homes
Chapter 9	-	Promoting sustainable transport
Chapter 11	-	Making effective use of land
Chapter 12	-	Achieving well-designed places
Chapter 14	-	Meeting the challenge of climate change, flooding and coastal change
Chapter 15	-	Conserving and enhancing the natural environment

3. **Planning History**

- 3.1 **P193265/F** - Application for permission in principle for the erection of two bungalows and one two storey dwelling – Withdrawn - 14-Nov-2019
- 3.2 **P192729/EN** - Proposed installation of a new three phase overhead electricity line - No objection - 19-Sep-2019
- 3.3 **SW2002/1397/F** - Secure touring caravan storage area surrounded by ditch and mound. Includes collection area, electronic perimeter beam system, fencing and gates, anti ram posts and 3 lights. Formation of vehicle passing place on road – Refused - 03-Jul-2002

4. **Consultation Summary**

Statutory Consultations

4.1 **Welsh Water – No objection**

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**

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 Coöperatie Mobilisation (AKA the Dutch Case) (Joined Cases C-293/17 and C-294/17).

The Coöperatie 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.

Natural England's advice on other natural environment issues is set out below.

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 Wye 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 have¹. 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 - No objection

Natural England notes that your authority, as competent authority under the provisions of the Habitats Regulations, has undertaken an Appropriate Assessment of the proposal, in accordance with Regulation 63 of the Regulations. Natural England is a statutory consultee on the Appropriate Assessment stage of the Habitats Regulations Assessment process.

Your appropriate assessment concludes that your authority is 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 all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that we concur with the assessment conclusions, providing that all mitigation measures are appropriately secured in any permission given.

River Wye SSSI – No objection

Based on the plans submitted, Natural England considers that the proposed development will not damage or destroy the interest features for which the site has been notified and has no objection.

4.2 Internal Council Consultations

4.3 **Environmental Health Officer – No objection**

My comments are with regard to potential noise and nuisance issues that might arise from development.

It is noted that 2 of the proposed dwellings are just over 100m away from a slurry lagoon and that there are other dwellings also in reasonably close proximity.

I have not witnessed any smells coming from this lagoon and we have no general history of complaints or problems being reported to our department with regard to slurry storage issues.

In the event of failure to manage the slurry lagoon site appropriately, our department has powers to investigate and take action against alleged Statutory Nuisances under the Environmental Protection Act 1990.

Our department therefore has no objections to this proposal.

4.4 **Area Engineer (Highways) – No objection**

No objections to the proposed. Please condition as follows
CAB - Visibility Splays 54 x 2.4m

CAD - Access gates 5m
CAE - Vehicular access construction
CAH - Driveway gradient
CAI - Parking – single/shared private drives
CAT - Construction Management Plan
CB2 - Secure covered cycle parking provision

I11 – Mud on highway
I09 – Private apparatus within the highway
I45 – Works within the highway
I05 – No drainage to discharge to highway
I47 – Drainage other than via highway system
I35 – Highways Design Guide and Specification

4.5 Ecology – No objection

The site location in the River Wye SAC triggers the requirement for a Habitat Regulation Assessment process. The appropriate assessment completed by the LPA is subject to consultation with Natural England prior to any planning consent being granted.

It is noted that the foul water management system for the adjacent, previously approved housing development (180061) has been subject to consultation with the Environment Agency who are satisfied that it is compliant with General Binding Rules and includes the use of individual PTP systems and a reed-bed pond system prior to final outfall in to a local watercourse. This additional development by the same owner/applicant proposes additional connection to this existing agreed system. The LPA ecology team have no reason not to believe that this ‘combined’ system will not be achievable and with the maximum flow rates still fall within General Binding Rules. The River Wye SAC at this catchment area is not currently failing its conservation status water quality levels and any phosphates finally released are a significant distance from the River Wye SAC and can be managed with the existing ‘phosphate allowance’ as agreed with Natural England.

Surface water can be managed through an appropriate SuDS scheme.
A condition is requested to secure the relevant mitigation:

Habitat Regulations (River Wye SAC) – Foul and Surface Water Management

All foul water shall discharge through connection to new private foul water treatment system with final outfall to existing Environment Agency compliant outfall on land under the applicant’s control; and all surface water shall discharge to appropriate SuDS; 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, SD3 and SD4

It is noted that NO ecological report has been submitted with this application however the ecology report submitted with approved application 180061 did cover this area of land and based on the findings can still be considered relevant and appropriate. This existing ecology report by Janet Lomas should be formally appended to this current application. It is noted that the previously approved Biodiversity Net gain (Enhancement Plan) does not refer to this current application and a scheme specific to this current application should be secured by a relevant condition.

Nature Conservation – Ecology Protection, Mitigation.

The ecological protection, mitigation, compensation and working methods scheme, as recommended in the ecology report by Janet Lomas dated June 2018 shall be implemented in full as stated unless otherwise approved in writing by the local planning authority. No external

lighting should illuminate any boundary feature, highway corridor, adjacent habitat or area around the approved mitigation.

Reason: To ensure that all species are protected and habitats enhanced having regard to the Wildlife and Countryside Act 1981 (as amended), the Habitats & Species Regulations 2017 (as amended), Policy SS6 and LD2 of the Herefordshire Core Strategy, National Planning Policy Framework (2019) and NERC Act 2006

As identified in the NPPF, NERC Act, Core Strategy LD2 and draft Environment Bill all developments should clearly identify how they are going to achieve enhancement of the local biodiversity values. To secure this a condition is requested:

Nature Conservation – Biodiversity and Habitat Enhancement

Prior to any construction above damp proof course levels, a detailed scheme and annotated location plan for proposed biodiversity net gain enhancement features including significant provision for bat roosting, bird nesting, hedgehog homes and movement corridors across the site, amphibian and reptile hibernacula and pollinating insect 'nesting' should be supplied to and acknowledged by the local authority and then implemented in full. The approved scheme shall be maintained hereafter as approved unless otherwise agreed in writing by the local planning authority. No external lighting should illuminate any biodiversity net gain 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 SS6, LD2, National Planning Policy Framework (2019), NERC Act 2006 and Dark Skies Guidance Defra/NPPF 2013/2019.

4.6 Land Drainage Consultant – No objection

19th December 2019

I have reviewed the proposed drainage strategy for the three houses.

The proposals involves discharging treated effluent to a dry ditch. This will not be compliant with the Binding Rules as discharges require a constant flow of water.

On this basis I recommend refusal of the outline planning submission

16th January 2020

I note recent correspondence between the applicants designer and the EA regarding compliance with the Binding Rules

Separate to this particular issue, I have some reservations regarding the proposed drainage layout. There will be practical difficulties associated with identifying when a Package Treatment Plant is not functioning, if a further 3 additional dwellings discharge into the pipe that has already been approved to receive flow from 4 properties (7 in total)

The law has evolved to include the term 'knowingly pollute'. So in a hypothetical scenario, if a package treatment plant was found to be defective the owner would only be breaking the law if he or she allowed the PTP to continue to cause pollution.

With the drainage system that has been approved to date, there are two properties draining from the north to one headwall. In the event of pollution of the watercourse, the pond would be inspected. The headwalls are close together, but presumably the grass adjacent to the headwall where pollution was occurring would be discoloured, with a black sewage fungus. If the inspector

had a plan showing the drainage network then it would be possible to approach the two home owners to the north to check which PTP was not working.

Likewise with the drainage system that has been approved to date, there are four properties draining from the east to one headwall. In the event of pollution of the watercourse, the pond would be inspected. Presumably the grass adjacent to the headwall where pollution was occurring would be discoloured, with a black sewage fungus. If the inspector had a plan showing the drainage network then it would be possible to approach the four home owners to the north to check which PTP was not working.

If the application is approved, the likelihood of identifying the source of pollution will reduce as there will be 7 properties connected on the eastern side.

Note that providing sampling chambers on the site is not an easy remedy to this problem, because organic pollution is released in batches. This is because domestic properties release bath water, dish water etc in between batches of foul water from WCs etc. Accordingly identifying pollution by means of lifting an inspection chamber is difficult

The proposals do not offer assurance regarding pollution mitigation

21st May 2020

I was aware that the planning system is geared this way

On this basis we do not object

Yes I suggest that we condition to ensure that the alarm system referred to in earlier emails is utilised.

4.7 Senior Landscape Officer – Objection

22nd May 2020

This is a desk based response, however the site setting was visited 16th December 2019. The landscape character type is Sandstone Farmlands. The site is located on the southern edge of the small village of Broad Oak. The village includes a Grade II listed building, an ancient tree and a small triangle of Common land at the village centre. Construction work is underway on the adjacent residential development to the site.

The site is outside of the settlement boundary (Broad Oak Village Policies Map) and is contrary to the ambitions of the local community as set out in the Garway Neighbourhood Development Plan (Submission Version Nov 2019). The Objectives of the NDP include to ensure that “All development will be designed to ensure it has minimal impact on the area’s distinctive character and environment” (no. 4). It is considered that in landscape terms the location for new development proposed in this application does not conserve or enhance the rural character of Broad Oak (Objective 2), nor will it integrate well into its setting (Objective 3). This is due to the incremental effect of developments collectively that encroaches on and erodes the rural landscape features of the setting of the settlement. The cumulative impact of 7 new buildings, rather than just 4 permitted, will create a ‘creeping’ change to stretch out the village further south in a more suburban character which is not locally distinctive. Continuing development further south along this road reduces the rural gap between the village and the farm buildings at Caldicott Farm, an important separation that should be retained so that the cumulative impact of built development does not dominate views and character of the area.

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.

The application is contrary to Core Strategy Policy LD1 and LD3.

20th July 2020 (Latest Comments):

I welcome the addition of the 'Tree Survey and Arboricultural Assessment' and the additional proposed planting. Together this demonstrates consideration for the existing landscape and green infrastructure. The tree survey and slight movement of plot 2 will help support longevity of the existing oak tree (T1).

The proposed planting will help filter views of the development when travelling north into the village and helps to create an 'end' to the village. There may be some complications around ownership and maintenance responsibility for these trees as they are outside of the application 'red line'.

This does not, however, overcome the 'in-principle' objection in relation to the form of the village stretching out to a more suburban linear character or encroachment on the rural gap between the village and nearest farm.

If the application were to be approved then a condition should be added to address temporary tree protection fencing during construction, full specification for the planting (sizes, density, hedgerow species), planting implementation and long term management and maintenance of the 'additional tree and hedgerow planting'.

4.8 Arboriculture (Tree) Specialist – No Objection

The addition of the tree report, produced by Jerry Ross Arboricultural Consultancy, provides adequate information to demonstrate that the proposed erection of 3 dwellings will not have a negative impact on the retained trees.

Accordingly I am of the opinion that the proposals are compliant with policies LD1 & LD3 of the core strategy and have no objections.

The details of the tree report and recommended protective measures shall be secured via a condition.

Conditions

Trees In accordance with plans

Except where otherwise stipulated by condition, the development shall be carried out strictly in accordance with the following documents and plan:

Tree Survey and Arboricultural Assessment – Jerry Ross Arboricultural Consultancy

Tree Protection Plan 16/9/19- Jerry Ross Arboricultural Consultancy

Reason: To ensure that the development is carried out only as approved by the Local Planning Authority and to conform with Policies LD1 and LD3 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

CKA - Retention of existing trees (5yrs)

5. Representations

5.1 Garway Parish Council – Object

31st January 2020:

Garway Parish Council considered the proposals set out in planning application 194052 and are not prepared to support the application on the following grounds:

- The proposed development is too close to a slurry lagoon.
- The proposed development falls outside the village settlement boundary.

31st July 2020 (Latest comments):

Garway Parish Council considered planning re-consultation 194052 and saw no justification for deviating from their original response which objected to the proposals on the following grounds.

The proposed development is too close to a slurry lagoon.

The proposed development falls outside the village settlement boundary.

5.2 **Third Party Representations** – to date a total of 12 representations have been received, comprising of 14 letters of objection from 11 individuals and 1 letter of support.

The contents of the objecting representations are summarised below:

- Overdevelopment of the hamlet that goes beyond proportional growth
- Contrary to the emerging Neighbourhood Plan, outside the settlement boundary
- Increase in traffic without sustainable transport options and lack of local services
- Lack of parking
- Loss of light, privacy and general amenity
- Loss of green space and habitats
- No details regarding design
- Concerns the drainage would impact the River Wye SAC
- Set a precedent for further development

The contents of the supporting representation is summarised below:

- Development of three further dwellings would help support local businesses, services and hamlet as a whole
- Scale of development proportionate to Broad Oak
- Bungalows always sought after and provide for a wide demographic

5.3 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=194052&search-term=194052

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). It is also noted that the site falls within the Garway Neighbourhood Area and it is of note that, since the application was last heard at Planning and Regulatory Committee the NDP has undergone independent examination and is now awaiting a referendum to be formally included within the development plan.

At this juncture, to evaluate the weight that can be afforded to the NDP in the determination of this application, it is necessary to apply the criteria set out in paragraph 48 of the NPPF. These criteria are:

- a) The stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
- b) The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- c) The degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)

Taking the criteria in turn:

- a) An independent examination has taken place and the Examiner's report has been received for the Garway NDP.
- b) All the representations have been subject to the examination
- c) The plan has been considered to meet the Basic Conditions and therefore in general conformity with the Herefordshire Core Strategy and the National Planning Policy Framework

The Decision Document, following the examination report, confirms the Council's acceptance of the recommended modifications set out within the Examiner's Report to the Garway NDP and it is currently awaiting referendum on this basis. At this stage, with regards to paragraph 48 of the NPPF, significant weight can be attributed to the neighbourhood plan.

6.3 It is a matter of fact that currently the Council is unable to demonstrate a 5-year housing land supply, with the latest Annual Position Statement for 2020 confirming a supply of 3.69 years. This leads to the policies for housing supply being considered out of date. As set out in paragraph 11 of the NPPF, in such circumstances that the policies most important for determining an application are considered to be out of date permission should be granted unless the adverse impact of doing so would significantly and demonstrably outweigh the benefits, when assessed against the NPPF as a whole. As such this tilted balance in favour of development is adopted as directed by paragraph 11(d)(ii) of the NPPF.

6.4 The spatial strategy relating to housing distribution within the county is set out in the CS at Policy SS2. Hereford, as the largest settlement and service centre is the recipient of up to 6,500 of the required 16,500 homes, with the market towns identified in the second tier as recipients of approximately 4,700 dwellings. Housing in the rural parts of the County is delivered across the settlements identified at figures 4.14 and 4.15 of the Core Strategy (p. 109 -110). Here the

identified settlements are arranged according to the seven identified housing market areas. Figure 4.14 identifies the settlements which will be the main focus of proportionate housing development. Figure 4.15 classifies the 'other' typically smaller settlements where proportionate housing will be appropriate. There are 119 'main' villages (figure 4.14) and 98 'other settlements' (figure 4.15), giving 217 rural settlements where proportionate growth will be acceptable in principle, Broad Oak is a settlement so defined by figure 4.15.

6.5 It is of note that the spatial strategy for the location of housing contained within the CS is considered to be sound and consistent with the Framework; which itself seeks to avoid the development of isolated homes in the countryside through paragraph 79. It is therefore considered that Policies RA1 and RA2 of the CS continue to attract significant weight in the decision making process despite being considered out of date.

6.6 As set out in the CS at paragraph 4.8.23 until such time as either the NDP or the Rural Areas Sites Allocation DPD defines settlement boundaries (or a reasonable alternative) any proposal has to be assessed against its relationship to the main built up form of the settlement. The NDP is not yet made, so is not part of the development plan, however it can be afforded significant weight in decision making, as set out in paragraph 48 of the NPPF and evaluated above. The NDP defines a single settlement boundary for Broad Oak, as per the extract of the NDP Policies Map below. The application site is mostly outside of the identified settlement boundary, although some of the western element of the site overlaps the housing commitment to the north (180061) as shown in paragraph 1.2 of this report.



6.7 At the present time, as the NDP does not form part of the development plan, CS policy RA2 is still considered to apply, because the site complies with the requirement to be either in or adjacent to the main built up part of the settlement. The policy then requires that design and layout should

reflect the size, role and function of each settlement. Design (appearance), landscaping and scale are reserved matters.

- 6.8 In terms of layout of the site relative to the main built up form of Broad Oak; the application site lies adjacent to the southernmost extremity of the settlement. The centre of Broad Oak is, arguably, the cross roads formed between the C1239 and the B4125 which is located 180m north of the application site. A further 80m east of the cross roads lies the only services in Broad Oak, a shop and garage. As such it is considered that the application site does not form part of the main built-up part of Broad Oak but that it does lie adjacent to it and would form a natural extension of it. However, the location of the site is such that it extends a linear development pattern that has been identified as harmful to the character of the settlement by the Senior Landscape Officer. The other requirements of RA2, including high quality, sustainable schemes that are appropriate to their context are aspects that could be dealt with at reserved matters stage should outline planning permission be granted.
- 6.9 The degree to which the site is considered to be sustainable is derived, in part, from the access to alternative modes of transport beyond that of a private motor vehicle. The lack of a pedestrian footpath into the centre of Broad Oak may discourage some walking, however, it is such a short distance over which driving would be impractical. While there was historically a bus stop located in Broad Oak, outside the garage, there does not appear to currently be a service running and prior to the COVID-19 travel restrictions it was unclear how regular this service was. In either event there would likely be a heavy reliance upon the private motor vehicle to access employment and basic services such as doctors, pharmacies and groceries.
- 6.10 Through examination GAR1 was amended to include the statements that “everywhere outside the two settlements is considered to be countryside where proposals for new housing development will have to demonstrate that they satisfy the exceptional circumstances set out in the NPPF paragraph 79” and goes to referendum as such.
- 6.11 In terms of the principle of residential development on the site, Officer’s consider that the proposal accords with main tenant of CS policy RA2 given its location adjacent to the main built form of the settlement although it is noted that there is some tension with the expectation of proposals in settlements identified in figure 4.15 to pay particular attention to the form, layout and character of the settlement. Additionally there is clear conflict with GAR1 of the NDP, because the site is located outside of the settlement boundary and the development does not meet any of the exceptions set out in paragraph 79 of the NPPF.

Landscape Impact

- 6.12 The impact of the proposed development and layout upon the landscape character is to be primarily assessed against CS policy LD1, which seeks to ensure development proposals demonstrate how the character of the landscape and townscape has positively influenced the nature and site selection of the proposal. Furthermore LD1 seeks to maintain and extend tree cover where important to amenity. These aims are broadly reflected in NDP policy GAR4. Paragraph 127 of the NPPF reinforces this further by stating that development should be sympathetic to local character including the landscape setting.
- 6.13 The Senior Landscape Officer has reviewed the changes and welcomed the additional planting which will filter views of the development when travelling north, into Broad Oak. Furthermore the tree protection plan and adjusted positioning of Plot 2 was noted to help support the longevity of the existing oak tree, which was previously noted as being important to local amenity values. However, there remains an in principle objection to the proposal and the effect upon the character of the settlement, as it creates a suburban linear character, eroding the rural gap between Broad Oak and Caldicott Farm.

- 6.14 The southern boundary of the dwelling known as Lemsford, which lies immediately to the north of the application site, is laid to hedge. This boundary forms a clear distinguishing feature between the residential extent of Broad Oak and the agricultural fields beyond. This boundary hedge extends north-east to the corner of the field. The revised layout seeks to address this tension and includes a proposed planting scheme along the sites southern boundaries, either side of the C1239. As stated by the Senior Landscape Officer this will help to define the newly proposed southern edge of Broad Oak while filtering views of the site as one approaches the village. Furthermore it is noted that the application is made in outline form with landscaping reserved for later consideration, as such it is accepted that boundary treatments could further mitigate this point. The amended plans indicate the character of the landscape has positively influenced the proposal.
- 6.15 Nevertheless the scheme creates an incursion into the agricultural land that forms the rural gap between Broad Oak and Caldicott Farm. Development in this location would cause harm to the character of the settlement as it would continue a linear pattern of development more akin to a suburban environment. Broad Oak is a settlement identified by figure 4.15 and as such, according to CS RA2, proposals are expected to demonstrate particular attention to the form, layout and character of the settlement. As I concur with the assessment of the Senior Landscape Officer and consider that there is clear tension in relation to this proposal and the requirements of both CS policy LD1 and the emerging NDP policy GAR4 despite the additional planting proposed.
- 6.16 The location and design of the access to the eastern element of the site is such that it would require the removal of approximately 6.5m of hedgerow to enable access to be gained to the site. This would result in further localised harm to the character of the area.
- 6.17 The extent of the resulting harm of the above noted conflicts is, however, mitigated somewhat by the characteristics of the site. The site does not hold any notable topographical landscape features and has little value beyond that of a visual and physical separation between the settlement and the adjacent farm complex. This will feed into the overall planning balance below.

Amenity

- 6.18 CS policy SD1 states that development should safeguard amenity of existing and proposed residents and ensure new development does not contribute to, or suffer from, adverse impacts arising from noise, light or air contamination and therefore scale, height and proportion needs consideration. Furthermore policy GAR2 of the emerging NDP states that proposal should not adversely impact on the residential amenity of existing and future residents. Given appearance and scale are both reserved matters the assessment is whether the principle of residential development through the layout proposed is considered to adversely affect the privacy of the adjacent dwellings: Lemsford to the east of the C1239 and the southernmost dwelling of the approved 180061 to the west of the C1239.
- 6.19 In relation to the effect on Lemsford the two dwellings proposed directly to the south of this property are both to be bungalows. This will inevitably reduce the likelihood of privacy and overshadowing concerns as they are single storey. The single detached dwelling to the west is suitably separated from Lemsford and views from the application site would be of the front of the dwelling, an inherently less private area. In Officer's opinion a scheme could be designed to suitably take account of privacy of Lemsford in compliance with CS SD1 and NDP GAR2.
- 6.20 In relation to the southernmost dwelling of the approved 180061 the current application site could essentially form a fifth dwelling in the approved row of 4. In this regard there is no concern that a suitable design could not adequately make provisions for the privacy of futures residents of both the current proposal and the approved 180061 in accordance with both CS SD1 and NDP GAR2.

Access and Parking

- 6.21 Policy MT1 of the CS and NPPF policies require development proposals to give genuine choice as regards to movement. NPPF paragraph 103 requires local planning authorities to facilitate the use of sustainable modes of transport and paragraph 108 refers to the need to ensure developments generating significant amounts of movement should take account of whether safe and suitable access to the site can be achieved for all people and whether improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where 'the residual cumulative impacts of development are severe.'(NPPF para. 109). Policy GAR10 of the NDP requires new development to include any necessary and appropriate traffic management measures and avoid the use of large areas of hardstanding by adequately landscaping and screening them.
- 6.22 The application proposes two new accesses on the C1239, one to serve the west element of the site and proposed detached dwelling and the other to serve the east element of the site and proposed two bungalows. Both of the proposed accesses lie within the extent of the 30mph for Broad Oak. The plans indicate an achievable visibility splay of 54m in both directions for the access proposed to serve the bungalows with 50m north and 54m south achievable for the access proposed for the single detached dwelling.
- 6.23 Given the levels of accommodation proposed as part of the scheme, a minimum of two car parking spaces is required for the bungalows which the application form indicates would be three bedroom properties. A minimum of three spaces for the detached dwelling which the application form indicates would be a four bedroom dwelling. Noting the area of hardstanding in front of the dwellings and the inclusion of garages for each dwelling I consider this level of parking and turning to be achievable.
- 6.24 As touched on above in paragraph 6.10, the sustainability of the site is in large part derived from the ability to access a range of sustainable transport methods. The Department for Transport 'Manual for Streets', NPPF, CS MT1 and NDP GAR10 recognise the importance of walking and cycling as modes of transport which offer a more sustainable alternative to car travel and can make a positive contribution towards the overall character of a place, improved public health and in helping to tackle climate change. The site is within walking distance of the basic services provided by Broad Oak and the Area Engineer has recommended a condition ensuring secure cycle storage is provided on the application site. While access to employment and a wider range of services will be reliant on the private motor vehicle this is typical of rural settlements across Herefordshire. The NPPF clearly highlights that the opportunities to maximise sustainable transport solutions will vary from urban to rural areas and encourages decision makers to take this into account.
- 6.25 The comments received from the Area Engineer endorse the view that both access and parking/turning for the proposed dwellings are acceptable and raise no objection to the scheme. On this basis the proposal accords with CS MT1 and NDP GAR10.

Ecology

- 6.26 Noting the nature of the site, policies LD2 and LD3 of the Core Strategy are applicable. Policy LD2 states that development proposals should conserve, restore and enhance the biodiversity and geodiversity assets of Herefordshire through the retention and protection of nature conservation sites and habitats and important species, restoration and enhancement of existing biodiversity and geodiversity features on site and connectivity to wider ecological networks and creation of new biodiversity features and wildlife habitats. Policy LD3 states that development proposals should protect, manage and plan for preservation of existing and delivery of new infrastructure.

- 6.27 While no specific Ecology report was undertaken with this application the Ecologist was happy to receive the report submitted with 180061 (produced by Janet Lomas dated January 2018) as it covered the current application site as well. The Council's Ecologist was satisfied with the details contained within the report and that subject to the recommended conditions the proposal would comply with current policy.
- 6.28 The application site is within the Garren Brook subcatchment of the wider River Wye Special Area of Conservation (SAC) and as such the proposal triggers the need for a Habitat Regulation Assessment. The completed Appropriate Assessment concluded that there would be no likely effects upon the integrity of the SAC subject to appropriate mitigation conditions being attached to any approval. This was reviewed by Natural England who confirmed there was no objection to the proposal.

Drainage

- 6.29 CS Policy SD3 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 to provide opportunities to enhance biodiversity, health and recreation and 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).
- 6.30 The application proposes individual package treatment plants (PTP) with discharge to an attenuation pond to the west of the application site on land owned by the applicant. The attenuation pond forms the approved discharge point for 6 dwellings in total, four approved under 180061 and two on a site further north fronting the B4125. The proposal is considered to be able to meet the general binding rules and so an Environment Agency permit was not deemed to be required. If the general binding rules are not met an Environment Agency permit would be required under obligations outside of the planning process.
- 6.31 The drainage consultant had initially raised concerns that inclusion of 3 additional dwellings to the accepted system would mean that identifying any faults in the system would be increasingly difficult and that this may lead to pollution entering the watercourse. However, the applicant has agreed to the imposition of a condition requiring a flashing beacon alarm system be installed to the PTPs to ensure any failure is identified by the owner or a contracted maintenance company.
- 6.32 The NPPF, at paragraph 183, states the following:

The focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively. Equally, where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities.

- 6.33 The proposed foul and surface water drainage strategies provide a policy compliant arrangement and the final comments from the Drainage Consultant confirm their satisfaction with this providing the recommended conditions are adopted.

Conclusion and Planning Balance

- 6.34 In accordance with the statutory requirement, determination must be made in accordance with the Development Plan, unless material considerations indicate otherwise. The NPPF affirms at paragraph 12 that the presumption in favour of sustainable development does not change the statutory status of the Development Plan as the starting point for decision making.
- 6.35 At this time the Development Plan comprises the CS. As set out in the foregoing paragraphs the development proposed is considered to accord with the CS. This is because the site lies adjacent to a main built up part of the settlement, in accordance with policy RA2, although some conflict has been identified with the impact upon the character of the settlement.
- 6.36 Next it is necessary to turn to the material considerations, to ascertain if these indicate if a decision should be made other than in accordance with the Development Plan. The NDP is an important material consideration, and as set out before it can be afforded significant weight.
- 6.37 As identified, there is conflict with NDP policy GAR1, because the site lies outside of the defined settlement boundary and does not accord with any of the exceptions set out in paragraph 79 of the NPPF. On this basis, under the NDP permission should be refused.
- 6.38 The other key material consideration is the NPPF. As the application is for the supply of housing, specifically three dwellings, the current implications of the Local Planning Authority not being able to demonstrate a 5 year housing land supply, plus requisite buffer, as set out in the NPPF (footnote 7), must be considered. The current published position is a 3.69 years supply (April 2020). At paragraph 11d the NPPF states that where policies which are most important for decision making are out-of-date, 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.
- 6.39 This application is for housing, so the policies most important for determination of the application relate to housing. As per paragraph 11d, footnote 7, of the NPPF they must be considered as out of date by reason of the current housing land supply deficit. This does not mean that they attract no weight, but rather reduced weight that is determined by the decision maker. There is a requirement, over the plan period (2011-2031) to provide a minimum of 25 new dwellings in the Parish of Garway, equating to 14% growth. Those built and existing commitments, as set out in the NDP, amount to 42 dwellings. This application is for a further 3 dwellings, which would result in a total of 45 dwellings, far in excess of the minimum growth target set for the Parish. Across the wider Ross HMA there is a documented oversupply of housing, when compared against the minimum growth target of 1,150. As of April 1st 2020 there are completions and commitments totalling 213 dwellings in excess of the minimum growth target. These figures demonstrate that the CS and the NDP housing policies have achieved substantial growth in the first ten year period of the plan and significantly boosted the supply of housing in this part of the County.
- 6.40 Firstly, paragraph 11di states that permission should be granted unless policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusal; this is not applicable to the current application site. Following on from the above, it's necessary to apply the commonly referred to 'tilted' planning balance set out in paragraph 11d)ii. The tilted planning balance, is generally assessed under the three overarching objectives of the planning system, namely the economic, social and environmental objectives. The proposal would positively contribute to the supply of housing at a time when at the county level the supply is not meeting targets and this would bring forward economic and social benefits. At the local level the minimum growth target has been well exceeded and there is local concern that such expansion would have

a harmful impact on the community. There would be economic benefits during the construction phase to suppliers and trades and after occupation through increased expenditure of disposable incomes. The payment of the New Homes Bonus is also another benefit to take into account. Furthermore the introduction of three additional dwellings in Broad Oak would help to support local businesses. Finally the proposed inclusion of 2 bungalows would provide dwellings that are more widely accessible to all members of the community, which is noted as a benefit when viewed through the social lens. Officers consider that these benefits of the scheme for up to 3 dwellings would be moderate.

- 6.41 In terms of identified harm, the proposal is considered to have an adverse landscape character impact in that residential development in this location would be an incremental encroachment that erodes the rural landscape features and reduces the important separation between Broad Oak and farm buildings at Caldicott Farm, to the south. The harm attributed to this erosion is, however, somewhat mitigated by the inclusion of tree planting as well as the general characteristics of the site, which does not hold any notable topographical landscape features and has little value beyond that of a visual and physical separation between the settlement and the adjacent farm complex. Conflict with CS LD1 and GAR4 of the emerging NDP, which should be attributed significant weight, is therefore identified.
- 6.42 The scheme provides an opportunity to enhance biodiversity, so this does not weigh against the scheme in environmental terms. Furthermore, whilst recognising that paragraph 14 of the NPPF does not yet apply given the status of the NDP, the LPA maintains that there would be social dis-benefits through undermining the strategy identified in the document at a stage where it can be afforded significant weight.
- 6.43 Bringing all of the above together, clear conflict with the NDP has been identified, in terms of the principle of development. In addition further landscape harm has been identified, despite the mitigating factors and amendments, in conflict with both CS LD1 and NDP GAR4. The NDP can be afforded significant weight at this time and provides for planned growth that exceeds the indicative target requirement. The Government promotes 'localism' and the NDP demonstrates a proactive approach taken by the Parish Council in responding to local circumstances and supporting housing developments, in accordance with paragraph 77 of the NPPF. Furthermore, paragraph 13 of the NPPF states that 'Neighbourhood plans should support the delivery of strategic policies contained in local plans or spatial development strategies; and should shape and direct development that is outside of these strategic policies.' The NDP does just that, as confirmed by the Examiner's Report, and accords with the NPPF's promotion of a genuinely planned planning system, being part of the framework for addressing housing needs (paragraph 15). While it does not yet form part of the Development Plan, it is a material consideration that carries significant weight, supplemented due to the growth it achieves and the growth achieved across the Ross HMA.
- 6.44 To conclude, it is Officers view, that the adverse impact of the development's conflict with policy GA1 of the NDP (post Examination stage), together with the identified adverse landscape character impact, contrary to both CS LD1 and NDP GAR4, within a Parish which well exceeds the minimum 'proportionate' growth such that this adverse impact is not justified, would significantly and demonstrably outweigh the benefits. On this basis the NPPF presumption to grant permission for sustainable development is not considered to be engaged and it is the Officer's recommendation that planning permission be refused.

RECOMMENDATION

That planning permission be refused for the following reason:

- 1. The application seeks approval for the erection of 3 dwellings in a location that is outside of the settlement boundary for Broad Oak, as defined in the Garway Neighbourhood Development Plan. Given the weight to be afforded to the Garway**

Neighbourhood Development Plan, the site is considered to be in the countryside and does not accord with the exceptions set out in paragraph 79 of the National Planning Policy Framework as required by policy GAR1 of the Garway Neighbourhood Development Plan. In undertaking the test set out in paragraph 11d)ii of the National Planning Policy Framework, in light of the Council's current housing land supply position, the following identified adverse impacts:

- Conflict with policy GAR1 of the Garway Neighbourhood Development Plan (post examination stage), which can be afforded significant weight.
- Landscape character harm arising from the erosion of the important rural gap between Broad Oak and the farm buildings at Caldicott Farm and the establishment of a harmful suburban linear development pattern, contrary to policies SS6, LD1 and RA2 of the Herefordshire Local Plan – Core Strategy and policy GAR4 of the Garway Neighbourhood Development Plan.

Which would significantly and demonstrably outweigh the benefits at a time when the supply of housing, in both the Parish of Garway and the wider Ross Housing Market Area, has exceeded the minimum growth targets. halfway through the plan period.

INFORMATIVES:

1. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against local and national planning policy, including updating the applicant on the progress of the Brampton Abbots and Foy Group Neighbourhood Development Plan (BA&FGNDP) and the implications of this, and any other material considerations. The applicant was advised of the implications of any conflict with the Development Plan and BA&FGNDP at both pre-application stage and during the consideration of this application. This is an issue of principle, such that it is not possible to negotiate a positive way forward.

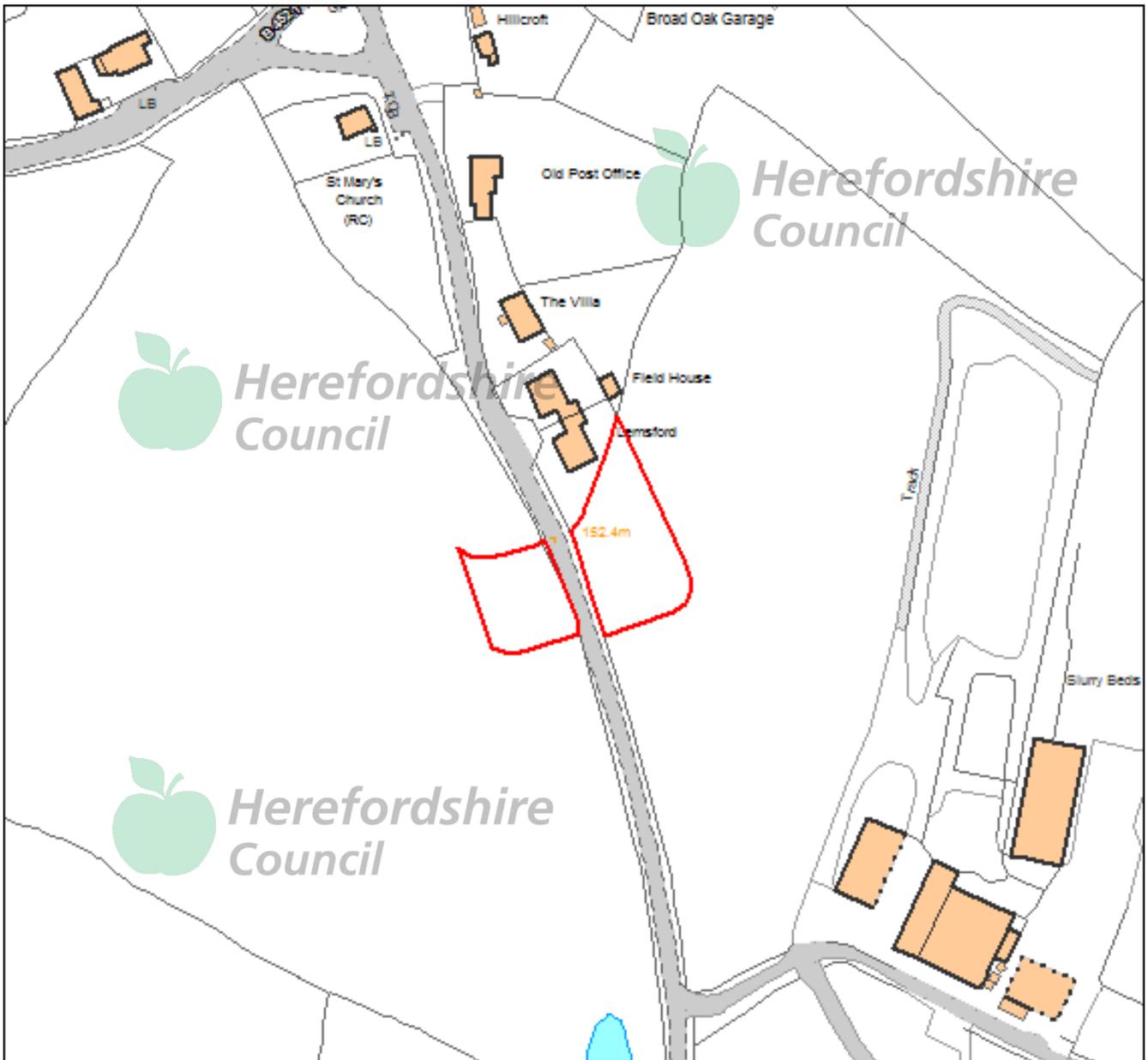
Decision:

Notes:

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Background Papers

Internal departmental consultation replies.



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APPLICATION NO: 194052

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