

MEETING:	PLANNING AND REGULATORY COMMITTEE
DATE:	3 MARCH 2021
TITLE OF REPORT:	204274 - PROPOSED IMPROVEMENTS TO EXISTING FIELD ACCESS AND CONSTRUCTION OF FARM TRACK AT LAND ADJOINING DUKE STREET, WITHINGTON, HEREFORDSHIRE For: Ms Leake per Mr Paul Smith, 1 Whitby House, Commercial Street, Hereford, Herefordshire, HR1 2EH
WEBSITE LINK:	https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=204274&search-term=204274
Reason Application submitted to Committee – Redirection	

Date Received: 3 December 2020

Ward: Hagley

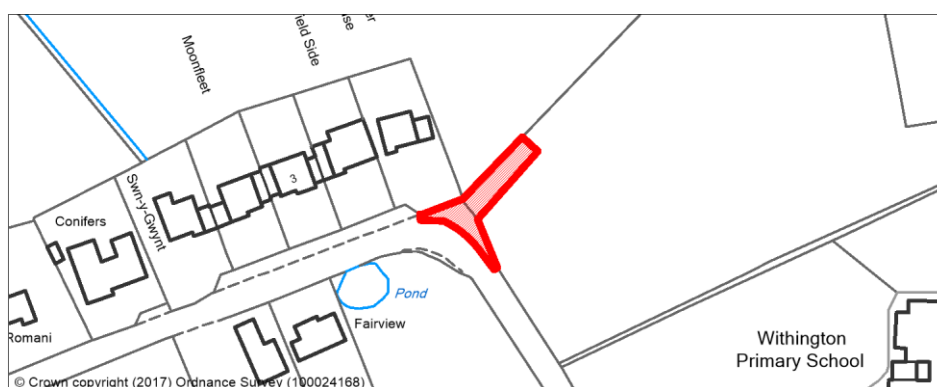
Grid Ref: 356395,243620

Expiry Date: 28 January 2021

Local Member: Councillor Paul Andrews

1. Site Description and Proposal

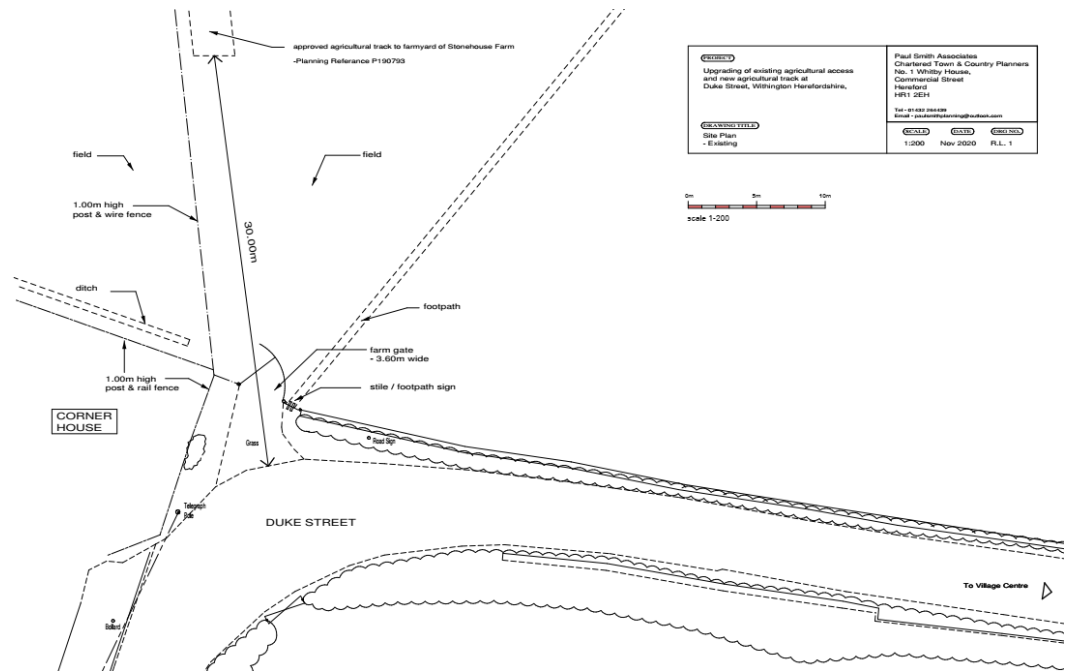
- 1.1 The application relates to land adjoining Duke Street, Withington. The site is presently occupied by a field gate which allows for access from the agricultural field onto the classified public highway (C1129). The site is within the Withington Conservation Area, is identified as local green space in the Withington Neighbourhood Development Plan and is crossed by a Public Right of Way (WT16).



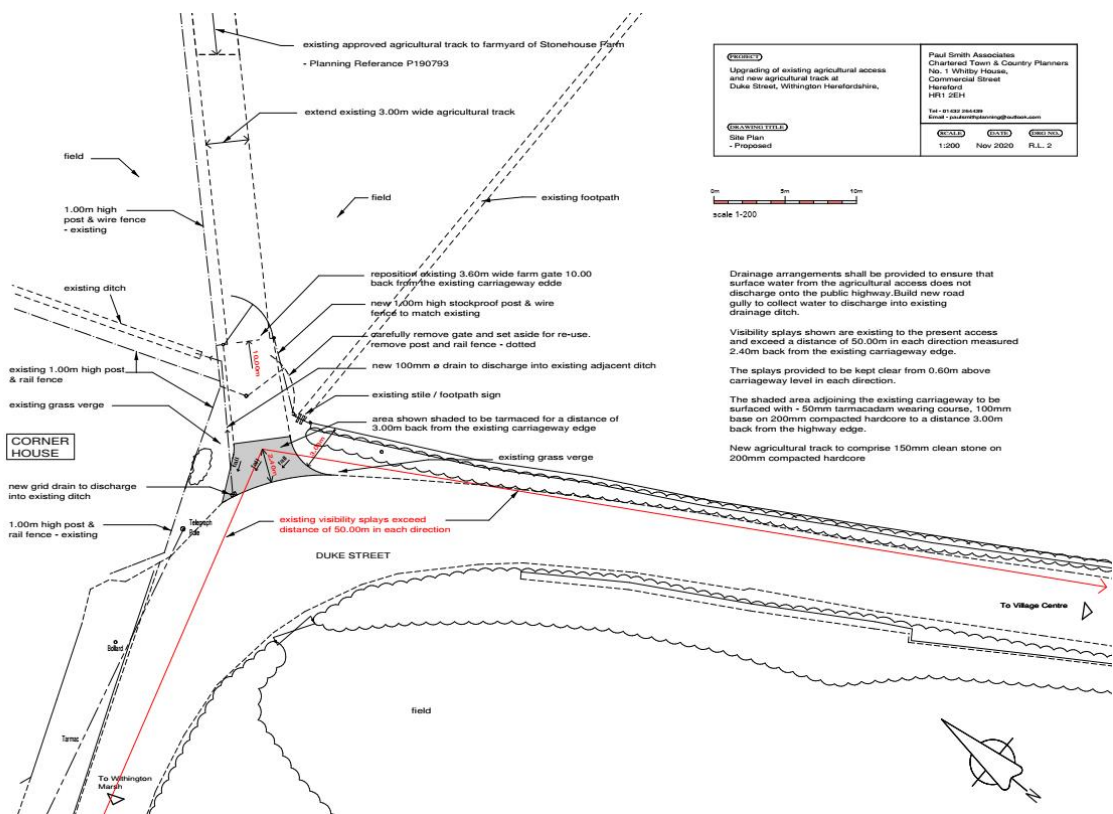
Application site edged in red

- 1.2 The application is for only operational development for proposed improvements to existing field access and construction of farm track. These works include the resiting of the field gate back ten metres from the carriageway edged and the formation of a track for approximately 30 metres, along with the provisions of highway visibility splays for 50 metres in either direction. No changes are proposed to the footpath nor its stile. Rather than describe the proposal in extensive detail,

Officers refer one to the plans under consideration, with excerpts of the existing and proposed block plans being included below, along with two site photos.



Existing Block Plan



Proposed Block Plan



Site Photo of existing field gate



Site photo looking across application site towards Duke Street

Further information on the subject of this report is available from Mr Alastair Wager on 01432 383882

2. Policies

Herefordshire Local Plan – Core Strategy

2.1 The following policies are considered to be relevant to this application:

- SS1 - Presumption in Favour of Sustainable Development
- SS4 - Movement and Transportation
- SS6 - Environmental Quality and Local Distinctiveness
- RA6 - Rural Economy
- MT1 - Traffic Management, Highway Safety and Promoting Active Travel
- LD1 - Landscape and Townscape
- LD2 - Biodiversity and Geodiversity
- LD4 - Historic Environment and Heritage Assets
- SD1 - Sustainable Design and Energy Efficiency
- SD3 - Sustainable Water Management and Water Resources

2.2 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/downloads/download/123/adopted_core_strategy

Withington Group Parish Neighbourhood Development Plan (made on 11 October 2019)

https://www.herefordshire.gov.uk/downloads/file/18550/withington_group_neighbourhood_development_plan_july_2019.pdf

2.3 The following policies are considered to be relevant to this application:

- Policy P5 - Local Green Spaces
- Policy P7 - Conserving Historic Character

National Planning Policy Framework (2019)

2.4 The following chapters of the framework are considered to be pertinent to this application:

- 1. Introduction
- 2. Achieving Sustainable Development
- 4. Decision-making
- 9. Promoting sustainable transport
- 12. Achieving well designed places
- 15. Conserving and enhancing the natural environment

2.5 The Planning Practice Guidance published by the Government at the following link is considered to be a material consideration.

<https://www.gov.uk/government/collections/planning-practice-guidance>

3. Planning History

3.1 The following planning history on the site and immediately adjoining is pertinent for the present considerations:

190884 – Planning Application - Erection of Holiday Cottage and Construction of Vehicular Access and Drive – Refused – Appeal dismissed (appeal reference: 3244488)

190793 (adjoining land) – Agricultural Prior Approval – Prior notification of agricultural or forestry development - proposed road– Prior Approval Not Required. This agricultural track links from Stone House Farm to the current application site.

4. Consultation Summary

Statutory Consultations

4.1 None

Internal Council Consultations

4.2 Highways Engineer – No Objection

“The proposal to enhance the existing highway access is considered acceptable. The proposal includes a setback of circa 10m for the gates and this is considered appropriate for the nature of the access to create an off highway waiting area whilst the gates are opened.

The geometry of the highway network at this point allows for appropriate visibility in this type of road environment.

The construction of the access is proposed to be bound for around 3m from the carriageway edge. This construction should extend back to the limit of the extent of the highway and this is set out below for the avoidance of doubt. This can be secured by applying condition CAE in the event that permission is granted.



There are no highways objections to the proposal subject to the recommended condition being applied.”

4.3 Public Rights of Way – No objection

“Public footpath WT16 crosses the access point. If work is likely to endanger footpath users a temporary closure must be applied for.”

5. Representations

5.1 Withington Group Parish Council – Objection

“The WGPC would like to object to the application on the following grounds:-

The increased use of the field access would endanger vehicular and pedestrian safety on this residential section of Duke Street at a sharp bend, where there is no pavement and the pedestrian entrance to Withington Primary School is just to the south.

Please see initial Highways objection to application for holiday house, 190884 which used the same access point.”

5.2 Hereford Ramblers Association – No objection

“No objection. However, I wonder if it would be prudent at this time to inspect the stile and if found to be in poor condition to have it replaced with a metal pedestrian gate.”

5.3 Third Party Representations

The application has received 20 representations to date objecting to the development, the main points raised are summarised below:

- Highway safety implications from the increased use of the access by agricultural vehicles
- Duke Street is a busy rat run in a parlous state which already accommodates school traffic, commuter traffic and heavy goods vehicles
- There is no justification for an additional access onto Duke Street, it is not in the public interest
- Vehicles turning right into the access across the ninety degree bend would have limited forward visibility of oncoming traffic

5.4 All consultation responses may 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=204274&search-term=204274

6. Officer’s Appraisal

6.1. The proposal is considered in line with the statutory requirements of Section 70 (2) of the Town and Country Planning Act 1990 (as amended) which requires that when determining planning applications, the local planning authority shall have regard to the provisions of the development plan, local finance considerations (so far as material to the application) and any other material considerations. Following this requirement, Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states the following:

“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 (taken as a whole) is the Herefordshire Local Plan – Core Strategy (CS) and the Withington Neighbourhood Development Plan. The National Planning Policy Framework (‘NPPF’ or ‘the framework’ henceforth) is also a significant material consideration, but does not constitute a statutory presumption, unlike the development plan which carries the statutory presumption as set out above.

6.3. The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) (the 2012 Regulations) and paragraph 33 of the framework require a review of local plans be undertaken at least every five years in order to determine whether the plan policies and spatial development strategy are in need of updating, and should then be updated as necessary. The Herefordshire Local Plan Core Strategy was adopted on 15 October 2015 and a review was required to be completed before 15 October 2020. The decision to review the Core Strategy was been made on 9th November 2020. The level of consistency of the policies in the local plan with the NPPF will be taken into account by the Council in deciding any application. In this case, the policies relevant to the determination of this application have been reviewed and are considered to remain consistent with the NPPF and as such can be afforded significant weight.

- 6.4. As is set out at paragraph 30 of the framework and stipulated at Section 38 (5) of the Planning and Compulsory Purchase Act 2004 (as amended), “if to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document”. In this way should a conflict between the NDP and the Core Strategy arise, the NDP will take precedence over the Core Strategy.

Principle of Development

- 6.5. As a starting point for consideration, Officers note that the site is presently occupied by a field gate for agricultural access into the field and the proposal is for the resiting of this existing gate back from the highway, along with the formation of an agricultural track. In broad policy terms proposals which support the retention of existing agricultural businesses are supported under policy RA6 of the Core Strategy, with the Withington NDP being silent on this matter.
- 6.6. The framework sets out (at paragraph 108) applications for development should ensure opportunities to promote sustainable transport have been taken, safe and suitable access to the site can be achieved for all users and any significant impacts from the development on the transport network or highway safety can be mitigated. Policy MT1 of the Core Strategy is reflective of this approach, as it seeks to promote active travel and development without adversely affecting the safe and effective flow of traffic on the highway network. Further at paragraph 109 the framework sets out that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impact on the road network would be severe. In this instance the Highways Engineer considers that the proposed development would be acceptable, given the provision of highway visibility splays and the agricultural use of the access with the proposal being to enhance the existing access. Having regard to the representations received, officers consider the proposed development to be acceptable in highway terms and it accords with the provisions of the development plan and the framework in this regard.
- 6.7. Policy SD1 of the Core Strategy requires that development proposals take into account the local context and site characteristics. Moreover, new building should be designed to maintain local distinctiveness through incorporating local architectural detailing and materials and respecting scale, height, proportions and massing of surrounding development, while making a positive contribution to the architectural diversity and character of the area. Policy SS6 states that development proposals should be shaped through an integrated approach to planning a range of environmental components from the outset, including the historic environment and heritage assets. Moreover, Policy LD4 states that development proposals affecting heritage assets and the wider historic environment should protect, conserve, and where possible enhance heritage assets and their settings in a manner appropriate to their significance through appropriate management, uses and design. The Withington NDP Policy P7 relates to conserving historic character, it requires that all applications consider the significance of any heritage assets affected including the contribution made by their setting; the policy sets out that significant weight will be given to the conservation of a heritage asset and any harm will require clear and convincing justification in line with the national policy (which is set out the framework); further within the conservation area, new development must preserve or enhance the character or appearance of the area (thus reflecting the statutory requirements for conservation areas); development adjacent to any heritage asset should be carefully considered to ensure that no harmful effects arise.
- 6.8. The application site is within the Withington Conservation Area, thus the Local Planning Authority has a duty as respects conservation areas in exercise of planning functions and must pay special attention to the desirability of preserving or enhancing the character or appearance of that area, when it is determining this application, as per Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990. The House of Lords in the South Lakeland case (4) decided that the “statutorily desirable object of preserving the character of appearance of an area is achieved either by a positive contribution to preservation or by development which leaves character or

appearance unharmed, that is to say preserved.” However it goes on to acknowledge that change per se isn’t unacceptable, as all development must involve a form of change and if the purpose of the legislation was to prevent development it would have done so in very different language. In that way where a particular development is not considered to have any adverse effect on the character or appearance of the area and is otherwise unobjectionable on planning grounds, that would not be a sound planning reason for refusing it.

- 6.9. The application site has previously been the subject of an appeal decision where a Planning Inspector appointed by the Secretary of State dismissed an appeal for development including improvements to this vehicular access; it is well held in case law that previous appeal decisions can be material considerations for subsequent applications. In this case, Inspector Gibson identified at paragraph 14 of the decision letter (appeal reference: 3244488):

“14. ...The proposed access driveway would also serve to visually erode the physical extent of the Conservation Area, by encroaching within the Conservation Area and constructing a new post and wire fence and field gate to enclose the driveway area.

15. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention be given to the desirability of preserving or enhancing the character or appearance of conservation areas. The proposed access driveway and associated structures enclosing it would directly harm the CA by eroding the visual and physical extent of the CA, which attracts great weight.”

- 6.10. However equally the inspector noted at paragraph 19 that “...the access track subject of the prior approval determination stopped short of the access driveway proposed and does not appear to be accompanied by enclosing structures such as fences and gates as is proposed under this appeal. As such, I do not consider the cases and their effects to be comparable in this regard.” In this manner the Inspector found the encroachment of built form and the enclosure of the driveway to be harmful but the agricultural track alone to not be of harm (though this was not the primary subject of consideration). In this manner officers note that the proposed location of the field gate broadly adjoins the existing boundary line and does not project wildly into the open field.
- 6.11. Further to being designated as a Conservation Area, the application site is identified in the Withington NDP as being a Local Green Space on the ‘Withington Policies Map’ and at NDP Policy P5, which seeks to protect identified areas from development which would detract from the character, appearance and function of the locale.
- 6.12. Turning to consider the matters of the character and appearance of the development in the context of the locale and the statutorily desirable objective of preserving the character of appearance of an area, Officers consider that the character of the area would remain unchanged due to the continuance of the agricultural use and whilst there is an element of change to the appearance of the area, this would not be harmful. Further the function would remain unchanged. Thus the development is acceptable from both a heritage standpoint with no harm identified and in terms of the local green open space where equally no harm is identified.
- 6.13. The proposed development is not considered to give rise to the possibility of a ‘likely significant effect’ to the River Wye Special Area of Conservation as it is not a form of phosphate generating development and so there is no possibility of additional phosphates reaching the River Lugg as a result of this proposal; accordingly it is screened out of the Habitat Regulations Assessment and is considered to conform with policy LD2 of the Core Strategy.
- 6.14. The application is not considered to give rise to conflict with the Public Right of Way nor harm its amenity, nevertheless an informative is included as part of the recommendation for clarity.

Conclusion

- 6.15. To conclude, the development plan carries a statutory presumption in its favour and the proposal is considered to accord with the policies of the development plan when taken as a whole, with there not being any material considerations to the contrary. Accordingly officers recommend the application for approval subject to conditions.

RECOMMENDATION

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. CAE - Vehicular access construction**

The construction of the vehicular access shall be carried out in accordance with a specification to be submitted to and approved in writing by the local planning authority, at a gradient not steeper than 1 in 12.

Reason: In the interests of highway safety and to conform to the requirements of Policy MT1 of Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

- 4. Before any other works hereby approved are commenced, visibility splays, and any associated set back splays shall be provided from a point 0.6 metres above ground level at the centre of the access to the application site and 2.4 metres back from the nearside edge of the adjoining carriageway (measured perpendicularly) for a distance of 50 metres in each direction along the nearside edge of the adjoining carriageway. Nothing shall be planted, erected and/or allowed to grow on the triangular area of land so formed which would obstruct the visibility described above.**

Reason: In the interests of highway safety and to conform to the requirements of Policy MT1 of Herefordshire Local Plan – Core Strategy and 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, including any representations that have been received. It has subsequently determined to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework. P1 Positive and proactive.**
- 2. A public right of way crosses the site of this permission. The permission does not authorise the stopping up or diversion of the right of way. The right of way may be stopped up or diverted by Order under Section 257 of the Town and Country Planning Act 1990 provided that the Order is made before the development is carried out. If the right of way is obstructed before the Order is made, the Order cannot proceed until the obstruction is removed.**

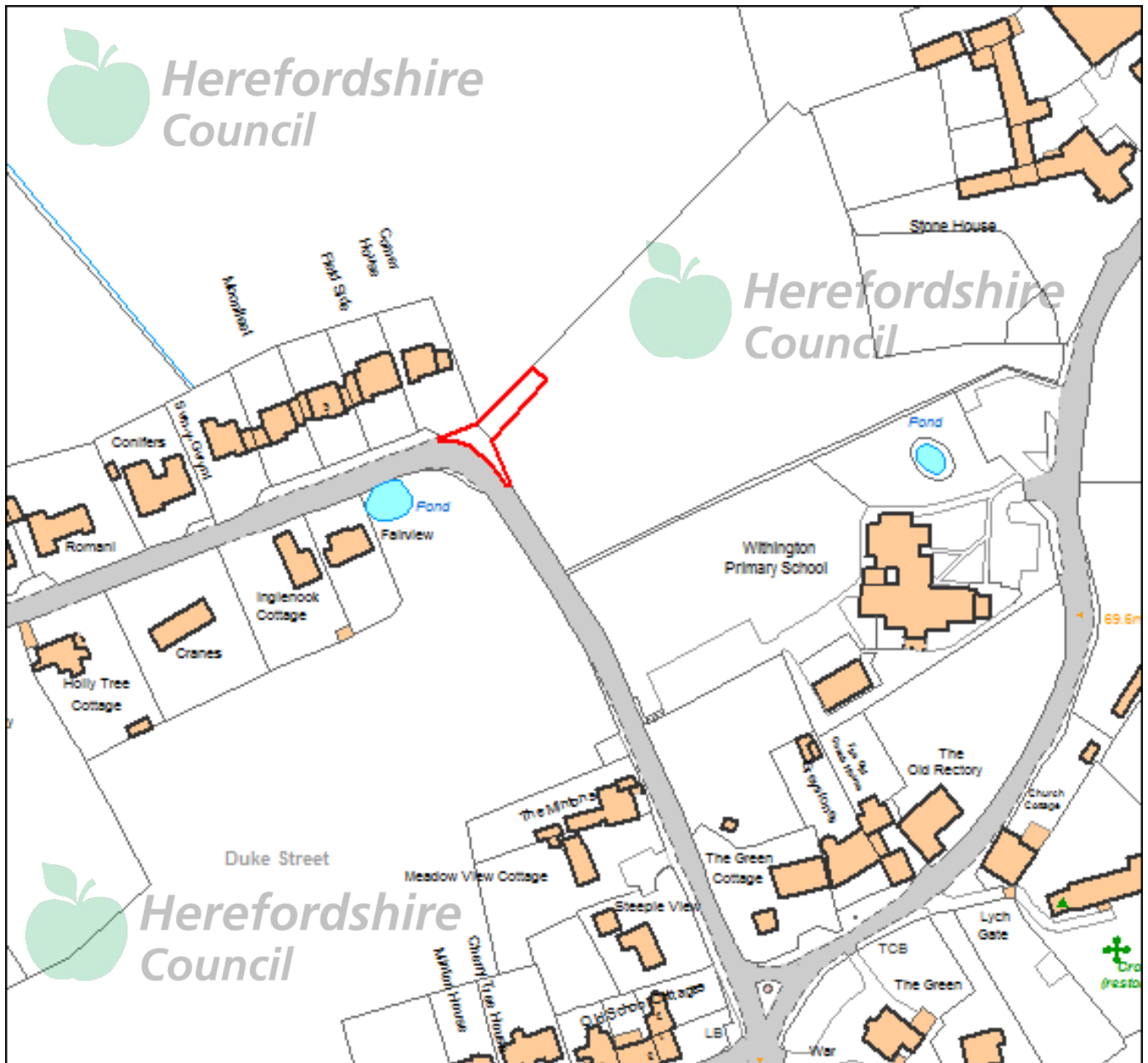
Decision:

Notes:

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Background Papers

Internal departmental consultation replies.



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APPLICATION NO: 204274

SITE ADDRESS : LAND ADJOINING DUKE STREET, WITHINGTON, HEREFORDSHIRE

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