

MEETING:	PLANNING AND REGULATORY COMMITTEE
DATE:	1 SEPTEMBER 2021
TITLE OF REPORT:	<p>210640 - APPLICATION FOR REMOVAL OF CONDITION 5 AND THE VARIATION OF CONDITION 16 FOLLOWING APPLICATION NO: 163902/F (DEMOLITION OF 5NO. EXISTING REDUNDANT AGRICULTURAL OUTBUILDINGS TO FACILITATE EXPANSION OF EXISTING RESTAURANT AND FOLLOWING EVENTS FACILITIES: FUNCTION SUITE, FINE DINING RESTAURANT AND LOUNGE, CONFERENCE SPACE AND 16NO. AT CRUMPLEBURY FARM, WHITBOURNE, WORCESTER, WR6 5SG</p> <p>For: Mr E Evans per Mr Ben Greenaway, PO Box 937, Worcester, WR4 4GS</p>
WEBSITE LINK:	https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=210640&search-term=210640
Reason Application submitted to Committee – Re-direction	

Date Received: 17 February 2021

**Ward: Bromyard
Bringsty**

Grid Ref: 369989,256913

Expiry Date: 19 May 2021

Local Member: Cllr Shaw

1. Site Description and Proposal

- 1.1 The site comprises a moderately sized complex of modern buildings with associated host farmhouse, located approximately 1.25 miles (as the crow flies) west of Whitbourne. The site houses 'Green Cow Kitchens' restaurant, with associated buildings surrounding the restaurant, which were granted permission in 2017 (LPA reference: P163902/F). The majority of surrounding buildings are agricultural form with a mixture of Victorian brick alongside contemporary steel and timber framed structures, and presence of stone and extensive glazing.
- 1.2 The site is set within estate farmland, defined by grazing fields and woodland beyond the northern boundary, leading up to Badley Wood Common. Boundary treatments post-and-rail and wire fencing and recently planted hedgerow to the western boundary adjacent to the main tarmacked car parking area. The topography of the land is that the buildings appear slightly elevated when viewed from the south of site at the point of the private access road, looking west towards the main parking area and site access (when viewed from the south elevation), before flattening off across the remainder of the application site. The topography to the south-east gradually rises as you head towards Whitbourne Hall Unregistered Park and Garden and to the north with topography rising towards Badley Wood Common.
- 1.3 The closest residential properties are the on-site farmhouse and 'The Helts', a pair of semi-detached dwellings located approximately 100 metres south-west of site. They are tenant occupied. Approximately 415 metres south-east of the application site (as the crow flies), is the

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

Grade II* Listed 'Whitbourne Hall', sub-divided into residential apartments. There are also a small cluster of dispersed dwellings heading north towards Badley Wood Common and adjacent to the common itself, albeit at varying orientations and distances. The nearest is approximately 450 metres north as the crow flies and 435 metres measuring north-east, as identified on the Council's Geographical Information System ('GIS'). PROW Footpath WH16 runs to the east of the site, albeit almost equidistant between the site and Whitbourne Hall.

1.4 In 2017, planning permission was granted (reference: P163902/F) with the following description of development: *"Demolition of 5 no. existing redundant agricultural outbuildings to facilitate the expansion of the existing restaurant and the following events facilities: Function Suite, Fine Dining Restaurant and Lounge, Conference Space and 16 no. Accommodation Suites"*.

1.5 The development is complete, although a number of conditions are currently in the process of being discharged. However, none are viewed to run to the heart of the permission or constitute pre-commencement conditions, most notably conditions 8 (passing places on Norton Lane) and 21 (signage), which are relevant commencement and first occupation, respectively.

1.6 This application, made as a Section 73 application, proposes to amend two conditions from the 2017 permission (reference P163902/F), namely conditions 5 and 16. Condition 5 states:

This permission shall enure for the benefit of Mr J & Mrs K Evans only and not for the benefit of the land or any other persons interested in the land.

Reason: The nature of the development is such that it is only considered acceptable in this location having regard to the applicant's special circumstances having regard to Policy SD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework

Condition 16 states:

No amplified or other music shall be played in the premises outside the following times: 12.00hrs to 23.00 hrs.

Reason: In order to protect the amenity of occupiers of nearby properties and to comply with Policy SD1 of Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

1.7 This application proposes to remove condition 5 and vary condition 16 to read as follows:

16. No amplified music shall be played in the premises outside of the following times: 12:00pm hours to 00:00am.

1.8 The site area is the same as set out in the original permission. Thus, as a Section 73 application, this does not necessarily require plans to be submitted for consideration. It is noted that the two conditions relate to whom the permission benefits and different times for the playing of amplified music. Therefore, there are no plans for consideration.

1.9 Members of committee will be familiar with the site following a previous section 73 application to remove condition 4 and vary condition 16 in November 2020 (reference: 194408/F). The application was refused on grounds of highway safety and residential amenity and an appeal has been lodged with the Planning Inspectorate. However, this application is materially different given the application seeks to remove condition 5, instead of condition 4.

2. Policies

2.1 Herefordshire Local Plan – Core Strategy (CS)

SS1	-	Presumption in favour of sustainable development
SS4	-	Movement and transportation
SS5	-	Employment provision
SS6	-	Environmental quality and local distinctiveness
SS7	-	Addressing climate change
RA6	-	Rural economy
MT1	-	Traffic management, highway safety and promoting active travel
E1	-	Employment provision
E4	-	Tourism
LD1	-	Landscape and townscape
LD2	-	Biodiversity and geodiversity
LD3	-	Green infrastructure
LD4	-	Historic environment and heritage assets
SD1	-	Sustainable design and energy efficiency
SD2	-	Renewable and low carbon energy
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 in full on the Council's website through the following link:-

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

The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) (the 2012 Regulations) and paragraph 33 of the National Planning Policy Framework requires 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 has yet to be 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. From reviewing those policies contained within the Core Strategy that are pertinent to the determination of this application, they are viewed to be entirely consistent with the NPPF and as such, significant weighting can be afforded to these policies.

2.2 Whitbourne Neighbourhood Development Plan (Whitbourne NDP) made on 1 December 2016

LU9	-	Environmental Considerations
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The Whitbourne NDP, together with any relevant supplementary planning documentation can be viewed on the Council's website through the following link:-

https://www.herefordshire.gov.uk/directory_record/3119/whitbourne_neighbourhood_development_plan_made_1_december_2016

2.3 National Planning Policy Framework (July 2021)

- 2 - Achieving sustainable development
- 4 - Decision-making
- 6 - Delivering a strong, competitive economy
- 8 - Promoting healthy and safe communities
- 9 - Promoting sustainable transport
- 12 - Achieving well-designed places

- 15 - Conserving and enhancing the natural environment
- 16 - Conserving and enhancing the historic environment

The NPPF, together with all relevant documents and revision, are viewable at the following link:
<https://www.gov.uk/government/publications/national-planning-policy-framework--2>

2.4 Planning Practice Guidance

Planning Practice Guidance, can be accessed through the following link:
<https://www.gov.uk/government/collections/planning-practice-guidance>

3. **Planning History**

- 3.1 P210527/U – application for a certificate of lawfulness for the continued use of the venue for hosting civil weddings and wedding receptions – undetermined
- 3.2 P210447/XA2 – application for approval of details reserved by conditions 2 3 4 5 6 11 13 & 15 attached to planning permission 200500 – APPROVED on 10 June 2021
- 3.3 P194408/F – Proposed removal of condition 4 and variation of condition 16 of planning permission P163902/F (Demolition of 5no. existing redundant agricultural outbuildings to facilitate expansion of existing restaurant and following events facilities: function suite, fine dining restaurant and lounge, conference space and 16no. accommodation suites) – REFUSED on 10 November 2020, currently being considered by Planning Inspectorate (APP/W1850/W/21/3271872)
- 3.4 P200500/F – 1) Change of use of the barn from agricultural to office space. Works undertaken include replacement beams and glazing to open north gable end of barn. 2) Formalise an historic change of use from riding arena to car park - works included tarmacking the arena. 3) Access road. (All works retrospective) – APPROVED WITH CONDITIONS on 10 November 2020.
- 3.5 P200858/XA2 – Application for approval of details reserved by conditions 8 20 & 21 attached to planning permission 163902 – SPLIT DECISION issued on 3 April 2020 (Condition 8 is currently being signed off with regards to technical aspects of S.278 agreement; Condition 20 discharged; Condition 21 cannot yet be discharged, although this is pre-occupancy).
- 3.6 P200335/F – Proposed variation of conditions 2 and 4 of planning permission 182223 (Proposed construction of new mono-pitch building) - To allow for 2nd biomass boiler – APPROVED WITH CONDITIONS on 6 April 2020.
- 3.7 P193647/F – Proposed variation of condition 16 of planning permission 163902 (Demolition of 5no. existing redundant agricultural outbuildings to facilitate expansion of existing restaurant and following events facilities: Function Suite, Fine Dining Restaurant and Lounge, Conference Space and 16no. Accommodation Suites) - No amplified music shall be played in the premises outside the following times 12.00hrs to 00.00hrs – WITHDRAWN on 9 December 2019.
- 3.8 P182223/F – Proposed construction of new mono-pitch building – APPROVED WITH CONDITIONS on 8 October 2018
- 3.9 P181441/XA2 – Application for approval of details reserved by conditions 9 & 18 attached to planning permission P163902/F – APPROVED on 26 July 2018
- 3.10 P181140/XA2 – Application for approval of details reserved by condition 3 attached to planning permission 163902 – APPROVED on 1 May 2018
- 3.11 P180280/XA2 – Application for approval of details reserved by conditions 8, 11, 14, 17, 22 attached to planning permission P163902/F – APPROVED on 27 July 2018 (Conditions 11, 14,

17 and 22 are fully discharged with condition 8 subject to a Section 278 agreement so condition not fully discharged)

- 3.12 P163902/F – Demolition of 5no. existing redundant agricultural outbuildings to facilitate expansion of existing restaurant and following events facilities: Function Suite, Fine Dining Restaurant and Lounge, Conference Space and 16no. Accommodation Suites) – APPROVED WITH CONDITIONS on 3 August 2017
- 3.13 P131619/F – Retrospective change of use of existing outbuilding from B1 to A3 – APPROVED WITH CONDITIONS on 2 August 2013

4. Consultation Summary

4.1 Statutory Consultations

None

4.2 Internal Council Consultations

Transportation – No objection

“The local highway authority has no objection to the removal of condition 5 and the variation of condition 16 as proposed by this application. All applicants are reminded that attaining planning consent does not constitute permission to work in the highway. Any applicant wishing to carry out works in the highway should see the various guidance on Herefordshire Council’s website: www.herefordshire.gov.uk/directory_record/1992/street_works_licence <https://www.herefordshire.gov.uk/info/200196/roads/707/highways>”

Environmental Health (Noise & Nuisance) – No objections and conditions recommended

“With reference to noise and nuisance this application represents a resubmission of planning application 194408 with a request to extend the hours when amplified music can be played inside the main hall (Grand Hall) from 23:00 to midnight.

Our department did not object to this proposal on noise and grounds and does not object to this proposal.

We take the view that noise emanating from this venue at peak occupancy will not, with controls in place, cause unacceptably adverse impacts on neighbours and that there are therefore no planning grounds on which noise could be cited as a reason for refusal. (RA6 and SD1).

The amended noise report dated 4th March 2020 undertaken by Audio Definitions is submitted by the applicant. The context is that the venue opened briefly at the end of 2019. Our department received noise complaints from 2 local residences at the end of 2019. We understand that during this period not all noise mitigation that could have been in place was. In January 2020 Audio Definitions visited the site made some recommendations for mitigation and undertook a noise survey. As a result of the visit a set of heavy duty acoustic curtains were installed to the north window of the Grand hall as well as the 2 fire exit doors to the east and west. Noise readings were then undertaken to measure the impact of this immediately to the north of the dance studio and also at the boundary to the premises of this mitigation the result of which is discussed on 4th March 2020 report. Our department was notified prior to a subsequent single large event with the mitigation in place which we understand was held on 1st March 2020 but no further complaints were made to ourselves. Since that time a number of lockdowns in relation to the Coronavirus pandemic have taken place which means that there has been no further opportunity for the mitigation to be demonstrated.

The noise assessment finds a 6dB reduction in noise at 1 m from the outside of the Grand Hall and concludes that the curtain should be used in all instances where a live band is playing at

night. The applicant has supplied an updated noise management plan which includes the planned use of this curtain as a control measure when amplified music is played.

The noise assessment uses the BS4142 methodology as a tool to assess the impact of noise 300m to the north. Whilst this methodology is designed for the assessment of industrial noise, (and not noise from the entertainment industry for which there is no technical assessment available), it has been used to as a mechanism to assess the impact of the attenuated noise at 300m distance against background noise levels. The calculation supplied in the assessment finds that with the curtains in place, noise levels emanating from the premises will be significantly below the background noise level. The applicant's acoustic technician included within this assessment the effects of attenuation by distance, ground absorption and topography of the landscape.

It is noted that a desk top review (no site assessment) of Audio Definitions report was undertaken by Clear Acoustic Design commissioned by an objector dated 3rd March 2020 which is supplied as an objection to this application. This desk top review made a number of critiques of the Audio Definitions report and a response was supplied by Audio Definitions on 1st April 2020 this is contained in the email trail for this application under 'correspondence'. Our department reviewed this correspondence at the time of the earlier reports and concluded together with supporting evidence that there were no grounds to object to the earlier proposal on noise and nuisance grounds. We have taken this opportunity to review this correspondence as part of this application and conclude that the original Audio Definitions working background noise levels against which the assessment was made of 27dB LA90 are considered appropriate.

We have had sight of the comments provided by the applicant's noise consultant Audio Definition Ltd dated 18th March 2021 which is in further response to the comments made by Clear Acoustic Design in their second submission dated 28/5/20.

A site visit was undertaken by 3 local authority Environmental Health Officers on 18th March 2021 in the early evening. The purpose of the visit was to evidence the noise mitigation in place and also to witness the impacts of amplified music on and off the site including inside and outside some local residences. At this visit we were able to witness the noise limiter in operation (we understand that this is for all the noise including singing and speaking as well as amplified music in the Grand Hall as noise is monitored from the ceiling), the acoustic curtains as recommended by Audio Definitions Ltd and additional mitigation by way of sound absorption installed over the glazing of the 2 fire doors in the Grand Hall. The music was put on a loop by the applicant and the door leading from the Grand Hall to the reception area (The Atrium) left open. Reception area doors were left open and the bar door (The Drinking Trough) leading to the sunken terrace outside to the west of the proposal left open. The music remained on and doors open until departure. With the fire doors kept shut, there are no openings direct to the outside from the Grand Hall where amplified music is played.

Whilst the music was playing officers undertook some noise clips and measurements of the music in different locations. It was noted that the noise from the music playing was substantially attenuated between the Grand Hall and the reception area and then again into the bar area. The main opening from the reception area is to the south and shielded by the building itself from all the dwellings in the distance to the north and east. Outside the open doors at the sunken terrace from the bar and reception area, the music although audible was not loud. To the north of the Grand Hall, at 40m into the field the music could only be heard very faintly.

Officers visited 4 locations close to or at local residences in the area around the north and eastern sides of the proposal and found that the music noise was either inaudible or barely audible. One officer remained on site to witness that the doors remained open and music was not turned down during this exercise. Whilst it is accepted that the noise listening exercise was not undertaken at a representative time of day (between the hours of 17:00 and 19:00) to that of a late evening operation, this is a locality where background noise levels are low all the time daytime and night

time. Other noise was occasionally audible, such as bird song but no music noise was heard between birdsong. No road traffic noise could be heard as such.

It should be noted that this is a purpose built venue with planning permission to operate until 23:00. There are no external doors to the main function room (Grand Hall) save for fire doors and there is no need for any attendees to exit the function room other than via the large reception/lobby area. The structure of the building is well insulated and designed for its purpose. An air handling unit is in situ to provide ventilation to the Grand Hall.

An extension of the playing of amplified music would allow events at the venue to continue later and thus result in a later departure time from the site. We note that concerns have been raised by some neighbouring residents regarding the noise generated by voices and car doors closing or slamming.

The area in which these events would take place is limited and the residences themselves at some considerable distance. The updated Noise Management Plan dated 1st April 2021 identifies the Sunken Terrace as the only area that guests may congregate in the evenings beyond 9.00pm and this location is sunken and shielded by the main building from properties to the north east. Furthermore this location and indeed the whole of this proposal including the car park are at considerable distances from the closest residential properties allowing for very significant sound attenuation by distance and ground absorption.

Our department does not object to the extension of the playing of amplified music from 23.00 to midnight on noise and nuisance grounds. We do not take the view that the business will cause a noise nuisance to neighbours if the noise management plan is adhered to. That is not to say that there would be absolutely no noise impacts ever at all but that they would be minimal and not be intrusive, harmful nor cause significant adverse impact.

We refer to the National Planning Policy Framework (NPPF) 2018, the Noise Policy Statement for England and the Planning Practice Guidance for Noise. We are of the view that noise from the proposal is likely to be either not noticeable or noticeable and not intrusive and would therefore come within the classification of between No Observed Effect Level and No Observed Adverse Effect level. Noise will either not be present or at the worst noise may be heard but does not cause any change in behaviour, attitude or other physiological response.

Hence our view that any refusal is likely to fail on appeal. Our department has no objections on noise and nuisance grounds provided that the following conditions are met:

- The noise management plan shall be reviewed at a minimum at least once a year and supplied to the local authority in writing on request.
- There shall be no playing of amplified music outside the premises at any time.
- There shall be no use of Chinese lanterns at these premises.

Reason: In order to protect the amenity of occupiers of nearby properties so as to comply with Policies SS6 and SD1 of the Herefordshire Local Plan Core Strategy 2011-31”

Ecology – No objections

“There is no objection to removal of condition 5. It is noted that removal of Condition 16 is already subject to an appeal against refusal of application 194408. There was no objection to this previous application and no ecology objection is now raised.”

Landscape – No objections

“Condition 5 relates to who the permission benefits – no landscape issues. Condition 16 relates to noise – increasing noise would be dealt with by Environmental Health colleagues.”

Building Conservation Officer – No objections

“Comments: No comment/objection. Condition 5 – Limits the benefit of planning permission to the applicants only – This is not a heritage concern. As the heritage impact has been established in the extant permission, limiting the implementation of this permission would result in no additional benefit or harm. Condition 16 – Relates to the hours of music played – This has no heritage impact.”

5. Representations

5.1 Whitbourne Parish Council – Objection:

Due to the extensive length of this representation, officers have summarised comments below:

- The 2017 application was presented as an extension of the existing Estate restaurant business and to support corporate conferences and the Estate’s shoot business. No mention was made of weddings and no suggestion to sell/transfer the venue to an independent commercial entity.
- A separate limited company (Whitbourne Estate Ltd) owns the development. A different limited company (Crumplebury Ltd) appears to be the trading company that appears to run the development. It would appear there has already been a breach of Condition 5.
- The 2017 officers’ report makes clear that this was very much a Whitbourne Estate venture and there was a very close interrelationship between the Estate and the proposed development. By removing condition 5, applicant may be able to sell the development.
- The Planning Officer recognised, as did the Parish Council, that the proposed development was integral to the Estate and a “bold venture” (that entailed significant risk), that it was justified as an extension to the Estate’s diversification and was highly dependent for its success on the personal commitment of the applicant. The Parish Council consider the circumstances were exceptional and that it was reasonable and necessary to impose this condition.
- It is understood that representatives of the Environmental Health Department were due to attend the development and the surrounding area on 18th March to undertake various tests relating to the efficacy of an acoustic curtain. The Parish Council had no notice of this proposed visit before the meeting that was held (on 15th March) to consider the application.
- The Parish Council’s previous comments make reference to the acoustic curtain and the fact that all circumstances need to be taken into account including the fact that the curtain will have no impact on noise emanating from outside the building and when guests leave the venue. The Parish Council Object to the amendment of Condition 16 for the reasons previously stated.
- Conditions which attempt to protect residential amenity are necessary and reasonable particularly given the applicant's clear assurances. Applicants could have appealed these conditions before any development took place. They did not appeal the conditions and implicitly accepted that the conditions were appropriate. The applicants chose to adopt the 23.00 hours threshold [Condition 16] for the purposes of their Noise Management Plan - which HCC required. They explicitly accepted that this threshold was reasonable and necessary.
- Four functions have resulted in residents calling Environmental Health to register distress at loud noise nuisance and the fact that at least in the case of the wedding celebration it continued until midnight in breach of Condition 16.
- Residents are concerned that it may well take over an hour after the entertainment has finished before the party attendees have left the venue with all the attendant post party outside noise - laughing, shouting and car doors slamming.
- Use of external areas during the Summer months is likely [as is the unauthorized opening of fire doors] because the Grand Hall does not have any external opening doors [save for fire doors] or windows and it has no air conditioning or cooling system.
- Applicants do not have planning permission for D2 events [live music and dancing] and are already been in breach of their existing permission in this respect.

- Any relaxation of the conditions which control the usage of the facility or an extension of the condition which allows amplified music to be played is very likely to exacerbate the already unacceptable light pollution.
- Understand the applicants have attempted to ameliorate levels of amplified noise by the installation of an acoustic curtain. This is a positive step but even if successful, it cannot justify the removal and amendment of the conditions in question given all the circumstances.
- In the view of the Parish Council, the conditions are, therefore, both necessary and reasonable in order to protect the residential amenity of local residents in accordance with Core Policy SD1 and RA6.
- Consultants instructed by the objectors have considered the reports prepared by the applicant's consultant and concluded in March that: "The issued noise impact assessment report cannot be considered a professional report, contains no information about the measurement equipment used, is lacking in technical detail, contains no measurement data of any kind, provides no objective assessment, and is not seen to be suitable to support a planning application of this nature".
- It seems likely that the Environmental Health department may have approached this matter from a statutory nuisance perspective. Planning authorities (and Environmental Officers) should obviously consider noise and other emissions in the wider context of the planning process and not just from the narrow perspective of statutory nuisance.
- The NPPF states planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development.

5.2 There have been 25 letters of representation from 19 parties, therein comment as follows:

21 letters of representation from 16 different parties, object on the following grounds:

- Conditions 5 and 16 are essential;
- Condition 5 was clearly reasonable;
- Adverse impacts on residential amenity;
- Highway safety;
- Noise and light pollution;
- Impact on quality of life;
- Would put the estate at risk from external development;
- Consistency principle should apply;
- Retrospective nature of application;
- Licensing is a separate regime and should not apply the same in planning terms;
- Quality of the building and noise-mitigating measures inadequate;
- Loss of tranquillity;
- Application inaccuracies;
- Other poor examples of corporate involvement;
- Whitbourne Hall and Crumplebury should not be compared; and
- Health and Safety

2 letters from 1 party make general comments:

- Whitbourne Hall is a traditional country house venue and that Crumplebury is a contemporary venue

The remaining 2 letters from 2 parties support the application with the following comments:

- Whitbourne Hall as a wedding venue has live music until 12 and has done so previously;
- Allow for Crumplebury to have a future rather than be a folly;
- 24:00 is a standard condition on many licensing permission;

- Following sound measuring meeting, sound reducing equipment is effective

5.3 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=210640&search-term=210640

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

- 6.1 The application 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. 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 development plan comprises the Herefordshire Local Plan – Core Strategy (CS) and Whitbourne Neighbourhood Development Plan (Whitbourne NDP). The National Planning Policy Framework (NPPF) is a significant material consideration, but does not constitute a statutory presumption, unlike the development plan which carries the statutory presumption as set out above. The NPPF sets out the Government's planning policies for England and how these are expected to be implemented. Specifically paragraph 30 sets out that once a NDP has been made, the policies it contains take precedence over existing non-strategic policies in a local plan (namely, CS), where they conflict.
- 6.3 The presumption in favour of sustainable development does not change the statutory status of the development plan as a starting point for decision making. Where a application conflicts with an up-to-date development plan (including neighbourhood plans that form part of the development plan), permission should not usually be granted as set out at paragraph 11c) of the NPPF, unless material considerations indicate otherwise.

Introductory Comments

- 6.4 Considering the acceptability of location, officers note the development plan and NPPF seek to support rural enterprises, although this is subject to a number of criteria. The site is some distance beyond Whitbourne and is viewed to be within open countryside. Given the provisions of Policies RA6 of the Core Strategy and Policy LU9 of the NDP, the council has granted planning permission P163902/F on the grounds that the location of the application site to be spatially acceptable for a rural business use.
- 6.5 This application proposes to amend two conditions imposed on the original decision notice, issued under P163902/F. Condition 5 is proposed to be removed, and condition 16 is proposed to be varied to allow amplified music to be played until 00:00 rather than 23:00. The use of the site is authorised by the existing planning permission, which includes restrictions by way of planning condition. Being a Section 73 application, if members come to a resolution of refusing this application, the applicant can continue the operation of the site as a restaurant, conference centre and guest accommodation, all year round.
- 6.6 Conditions imposed on a decision notice do not preclude further development or subsequent applications being submitted to the Council for determination. Consideration must be given as to whether the reasons for imposing such conditions are still applicable and/or whether different

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conditions could be imposed to give appropriate alternative mitigation. If neither are acceptable, the application should be refused.

Use of Planning Conditions

- 6.7 The NPPF advises the use of planning conditions and where they should be implemented. Paragraphs 55 and 56 clarify that,

“55. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition”

“56. Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decisionmaking. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification”

- 6.8 The NPPF is supplemented through Paragraph 003 (Reference ID: 21a-003-20190723) of Planning Practice Guidance (PPG) on use of planning conditions and conditions should be used, where they satisfy the following six tests:

1. necessary;
2. relevant to planning and;
3. to the development to be permitted;
4. enforceable;
5. precise and;
6. reasonable in all other respects.

This is reinforced by Paragraph 005 (Reference ID: 21a-005-20140306) of PPG, which states that: *‘Any proposed condition that fails to meet any of the 6 tests should not be used.’*

- 6.9 Paragraph 015 of PPG (Reference ID: 21a-015-20140306) confirms that when planning permission is granted, it runs with the land. It is rarely appropriate to provide otherwise. There may be the odd occasion where development that would not normally be permitted may be justified on planning grounds because of whom the permission would benefit. For example, a condition limiting new residential accommodation in the open countryside for agricultural or forestry workers, may be justified on the grounds that an applicant has successfully demonstrated an exceptional need or a dwelling of outstanding or exceptional quality. However, a condition limiting the benefit of the permission to a company is inappropriate because shares can be transferred to other persons without affecting the legal personality of the company, circumnavigating the issue altogether.

Condition 5

- 6.10 In this instance, members will note condition 5 of decision notice P163902/F states:

“5. This permission shall enure for the benefit of Mr J & Mrs K Evans only and not for the benefit of the land or any other persons interested in the land.

Reason: The nature of the development is such that it is only considered acceptable in this location having regard to the applicant's special circumstances having regard to Policy SD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework”.

- 6.11 As can be seen in PPG, it is rare to use personal conditions. When granting planning permission, it will usually run with the land, although it is appreciated that there may be the rare instance when

such a condition may be justified in the circumstances e.g. a worker with a specific business that would be contrary to the development plan.

- 6.12 From reading the case officers' report for delegated decision report P163902/F, no reference within the report is made specifically to the personal circumstances of the applicant or moreover, that the permission should only endure for the benefit of the applicant. Simply, condition 5 is included in the recommendation of the personal condition and the name of the applicants, which is subsequently translated onto the decision notice, as a standard condition.
- 6.13 Reading the report further, the case officer made an informed decision that the economic clout that the proposal would bring to the immediate local economy and given the proposals' compliance with the CS, NPPF and Whitbourne NDP, came to the view that the proposal aligned with the development plan, taken as a whole. In short, aside from the condition actually being placed into the recommendation and subsequently onto the decision notice, no justification was given to the requirement of such a condition, albeit in the decision notice, which simply confirms that given the nature of the proposal, it is only considered acceptable in this location and had regard to the applicant's special circumstances.
- 6.14 This does not correlate with what the officer had written in the report and indeed, the report confirmed the proposal clearly aligned with the development plan and that there were no material considerations which outweighed such a view. Indeed, had that been the case, the proposal would have represented a departure from the development plan and the application would have been referred to planning committee at that time, which did not materialise.
- 6.15 There are similar examples across Herefordshire and the country, which have similar operations and uses which do not have personal conditions attached to decision notices, although officers are mindful that every application should be treated on its own merit. Of course, an applicant has a right to appeal against a local planning authority's decision to impose certain conditions attached to a planning permission which they may not agree with. However, no such appeal was lodged back in 2017. In this instance, officers do not consider condition 5 to satisfy the six tests as advocated in PPG, namely the tests of necessity, the lack relevance to the development to be permitted and its reasonableness.
- 6.16 This is given that this is not a unique application and the circumstances that led to the approval of the 2017 permission, particularly given the proposal, in the view of the relevant officer, accorded with the development plan. The Council approved the expansion of Crumplebury on clear planning grounds and it is clearly plain to see that there were no exceptional circumstances that would indicate why the permission should benefit the applicants personally. Hence, in the view of officers, condition 5 should be removed from the decision notice.

Condition 16

Highway Safety

- 6.17 The removal of condition 5, as well as the proposed variation of condition 16, is certainly a material consideration on the basis in which Highways considered the original application. The Transport Statement submitted with the original application (163902/F) states "*The proposed expanded provision at the restaurant is predicted to see a doubling in the average number of visitors each week, to 200. In exceptional circumstances 160-guest events will be held. These will require 18 staff but will only occur approximately 12 times a year*".
- 6.18 For reference, planning permission was granted on the understanding that the site was to operate an arrangement of a one direction usage in and out of the junction for visitors from the east (coming via the A44) and west (coming via the B4203), along Norton Lane/Parish Road, an unclassified public highway (U65018), albeit with gated access at the A44 junction, which is in third party ownership.

- 6.19 Promoting two separate routes to and from site through route signage on the ground, verbal confirmation at booking and continued publication on the applicants' website is important. Unfortunately, a condition to ensure access to site would only be served off the B4203 and not the A44, would not meet the six tests for conditions, as set out in the PPG. In particular, this would be difficult to enforce. The only way this could be done is for directions to be provided on the applicant's (Crumplebury's) website and signs to be put up.
- 6.20 Whilst highways were comfortable at the time with the applicants transport statement regarding 100 covers per week, they still felt a suitable condition must be placed on this usage and additional events, although this is not apparent on the decision notice.
- 6.21 It is not disputed that the removal of condition 5 and variation of condition 16 certainly has implications on highways. However, members will note the highways area engineer does not object to this particular application before them.
- 6.22 Furthermore, the lawful use of the site is a material consideration. This includes a restaurant, guest accommodation and a conference centre. Additionally, the premises and the land associated within the red line can be used for any purpose ancillary to the restaurant, guest accommodation, or conference centre permitted by the planning permission. Indeed, temporary use of land can be achieved under Class B, Part 4, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- 6.23 Even if members come to a resolution to refuse this application, the operation of the site as a restaurant, conference centre and guest accommodation 365 days of the year and playing amplified music until 23:00 can continue. Subsequently, associated issues raised by third parties, including loss of tranquillity and increased light pollution (discussed later) would remain, irrespective of resolution. Officers consider significant weighting should be afforded to this fall-back position.
- 6.24 In considering the highway arrangements for this application, officers note the consultation responses from the Local Highway Authority (LHA) as well as the local representations received on this matter. The development plan, at policy RA6 of the Core Strategy, sets out that rural enterprises would be supported where they: do not generate traffic movements that can't safely be accommodated within the local road network; and are located close to existing highways and do not have an unacceptable impact on traffic, in addition to the highways safety requirements of Core Strategy policy MT1.
- 6.25 In considering highway safety, the fact remains that an extant permission exists for the site which permits daily use. Regard must also be given to the nature of events which can take place as permitted. The use of the site is unconstrained in terms of the number of guests able to attend an event at any one time. The original application allowed for 100 whereas the applicant states that the site is now being marketed for groups of up to 200. It is worthwhile to address the point regarding the size of groups allowed in the venue. There is no limit set out in the original permission however capacity is realistically limited due to health and safety. Whilst this raises a point on the intensification of the use, in the view of officers, a judgement is being made specifically about timing of vehicle movements likely to arise, but there is no clear evidence to support the conclusions that are being made as shown above.
- 6.26 The venue is entirely self-contained. It provides on-site catering. Indeed, it is likely that only one type of event will be taking place at Crumplebury at any one time. Associated vehicular movements are therefore going to be similarly in line with what is taking place. In the view of officers, when considering the nature of the application, the proposal would not amount to being unacceptable in highway terms or the residual cumulative impact being severe, as clearly outlined by the NPPF at paragraph 111 and Policies MT1 and RA6 of the Core Strategy.

Residential Amenity

- 6.27 CS policy SD1 requires, amongst other things, that all development proposals safeguard the residential amenity and/or living conditions of existing residents and that they do not contribute to adverse impacts arising from noise and light pollution. Further, policy RA6 supports development so long as it does not cause unacceptable adverse impacts on the amenity of nearby residents by virtue of design and mass, noise, dust, lighting and smell; with Whitbourne NDP policy LU9 echoing this, supporting development that does not have a detrimental impact on surrounding living conditions.
- 6.28 Crumplebury is circa 100 metres from 'The Helts' and 415 metres (as the crow flies) from Whitbourne Hall. The closest activity on the site is that of the biomass boilers, circa 30 metres from the curtilage of the neighbouring properties at The Helts. The effect of the removal of condition 5 and variation of condition 16 is to be assessed against the residential amenity of dwellings as a whole and not in relation to specific elements of any nearby residential property.
- 6.29 Condition 16 currently restricts the times to which amplified or other music may be played inside the premises. Indeed, condition 16 was imposed in the interests of residential amenity. The applicant currently benefits from a premises license granted by the Council, permitting the playing of live music between the hours of 1900 – 0100 Monday – Saturday and 1900 – 2400 Sundays; recorded music 0700 – 0100 Mondays – Thursday, 0700 – 0200 Friday – Saturday and 0800 – 2400 Sundays.
- 6.30 The Council's licensing authority are responsible for ensuring that activities do not cause a statutory nuisance. There is of course, a distinct difference between amenity and nuisance and this is something that interested parties have commented upon. Officers acknowledge that there have been complaints raised by third parties on this site. However, the principal matters of residential amenity have already been considered under the original planning application P163902/F. The threshold is key in this instance between what is defined as a nuisance and what impinges on residential amenity and officers are assessing on grounds of residential amenity as a whole and not merely statutory nuisance.
- 6.31 It is reasonable to consider whether new suitably drafted planning conditions to secure control over areas where noise producing activities take place and their implications, may be of long-term benefit and whether this can be improved on what is allowed on the existing permission.
- 6.32 Members will acknowledge the applicant can currently play amplified music until 23:00. The assessment to consider is what additional harm of extending the playing of amplified music by 1 hour would have on amenity. The noise management plan, which has previously been approved by Herefordshire Council, will need to be reviewed, as recommended by the Council's Environmental Health Officer, should this application be approved, to provide additional mitigation for nearby residential receptors. A new time-restricted condition is proposed to be added to facilitate this in the interests of residents.
- 6.33 In supporting the application, an up-to-date noise survey has been commissioned and provided since the application was validated, although third party representations dispute this and have sought to provide a counter report, although the latter appears to be a desktop study and not based on an actual site visit. This has been considered in the comments by Environmental Health.
- 6.34 Notwithstanding this, since the refusal of P194408/F, the site has been visited by the Council's Environmental Health Team, in March 2021, to witness a 'test event'. Third parties do dispute the validity of the results given the time of day (17:00-19:00) although this is a locality where background noise levels are low throughout the time daytime and night time.
- 6.35 In the view of the Council's Environmental Health Officer, it is reasonable to consider that suitably drafted planning conditions to secure control over the areas where noise producing activities take

place, including an updated Noise Management Plan, will provide appropriate mitigation and, in the view of your officers, will be a considerable improvement on the existing permission. This includes the retractable acoustic curtain which under the original permission, the applicant does not have to use.

6.36 Members will acknowledge that the Environmental Health concludes the following:

“Our department does not object to the extension of the playing of amplified music from 23.00 to midnight on noise and nuisance grounds. We do not take the view that the business will cause a noise nuisance to neighbours if the noise management plan is adhered to. That is not to say that there would be absolutely no noise impacts ever at all but that they would be minimal and not be intrusive, harmful nor cause significant adverse impact.

We refer to the National Planning Policy Framework (NPPF) 2018, the Noise Policy Statement for England and the Planning Practice Guidance for Noise. We are of the view that noise from the proposal is likely to be either not noticeable or noticeable and not intrusive and would therefore come within the classification of between No Observed Effect Level and No Observed Adverse Effect level. Noise will either not be present or at the worst noise may be heard but does not cause any change in behaviour, attitude or other physiological response.

Hence our view that any refusal is likely to fail on appeal. Our department has no objections on noise and nuisance grounds provided that the following conditions are met:

- *The noise management plan shall be reviewed at a minimum at least once a year and supplied to the local authority in writing on request.*
- *There shall be no playing of amplified music outside the premises at any time.*
- *There shall be no use of Chinese lanterns at these premises.*

Reason: In order to protect the amenity of occupiers of nearby properties so as to comply with Policies SS6 and SD1 of the Herefordshire Local Plan Core Strategy 2011-31

6.37 Notwithstanding this, officers and in turn, members are being asked to consider residential amenity, as a whole, including cumulative impacts. It is also relevant that use of the site itself has generated levels of noise in relation to its operation and associated vehicle movements.

6.38 However, officers view the conditions specified and recommended in the consultation response by Environmental Health meet the six tests set out in PPG and can be implemented with regard to this proposal, namely to update the site's noise management plan in a timely fashion, as well as the prohibiting of fireworks and Chinese lanterns. That is not to say that there would be absolutely no noise impacts at all but that they would be minimal and not cause significant adverse impact that would lead to conflict with the development plan. Officers have afforded significant weighting to the views of the technical consultee to offer their perspective on this matter and accounting for cumulative impacts.

6.39 The applicant is willing to accept a condition, limiting the hours in which music may be played. In turn, the Council will be able to re-dress outstanding concerns over residential amenity by ensuring the acoustic curtain is installed, as well as prohibiting any fireworks/Chinese lanterns being used altogether.

6.40 For avoidance of doubt, any statutory noise nuisance can be dealt with through Environmental Health legislation, namely under the Environmental Protection Act 1990. Complaints which are submitted through this channel can be and are investigated.

6.41 Members will acknowledge that the relevant technical consultee advises that impacts can be managed to acceptable levels to reduce and mitigate any adverse impact from the development. The mitigation proposed now is a considerable step forward from what was originally consented

in 2017. That, in terms of residential amenity, is sufficient in officers' opinion for the development to not result in additional harm to residential amenity, nor the amenity of users of the public right of way, accounting cumulative impacts. Further it is presumed that the site would continue to operate efficiently and as designed in line with paragraph 185 of the NPPF.

- 6.42 By mitigating potential adverse impacts resulting from noise, in the view of officers, the proposal would not give rise to significant adverse impacts on health and quality of life, and that the proposal would not conflict with paragraph 185 of the NPPF, Policies SD1 and RA6 of the Core Strategy and Policy LU9 of the made Whitbourne NDP, although this is subject to the insertion of new conditions, as laid out in officer recommendation.

Heritage

- 6.43 The LPA has a statutory duty to give due diligence to the Planning (Listed Buildings and Conservation Areas) Act 1990. Section 66(1) requires decision makers to “*have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.*”
- 6.44 Officers are aware of the result of the judgement of *Catesby Estates Ltd v Steer Secretary of State for Communities and Local Government v Steer* - [2018] EWCA Civ 1697; specifically in relation to the effect of setting in that the judge in this case provided guidance in the interpretation of the concept of “setting”, to include much more than visual impact.
- 6.45 A number of heritage assets are in the vicinity of the site, including Whitbourne Hall (Grade II* Listed); Whitbourne Hall Unregistered Park & Garden; The Sconce (Grade II Listed); and Rose Cottage (Grade II Listed). Given the clear significant separation distances, in conjunction with the existing built forms and landscape features between the application site and any heritage asset, the listed buildings' orientations and outlooks, officers do not consider that the proposals submitted would be deemed to cause harm to the ‘significance’; experience or additionally setting of any listed building or heritage asset nearby.
- 6.46 The Council's Building Conservation Officer raises no objections to which significant weighting has been afforded to this view. Accordingly, officers consider the scheme to accord with Policy LD4 of the Council's Core Strategy in that the proposal will conserve the identified heritage assets and the wider historic environment and Section 16 of the NPPF, and the Council has exercised its right in regards to section 66 of the Act.
- 6.47 There are no physical proposed alterations to the approved development, which incidentally relate to the uses of the site, which are not considered to adversely affect, namely Whitbourne Hall (Grade II* Listed); Whitbourne Hall Unregistered Park & Garden; The Sconce (Grade II Listed); and Rose Cottage (Grade II Listed). Accordingly, officers consider there is no need to undertake the test prescribed in paragraph 202 of the NPPF, as no harm has been identified.

Landscape

- 6.48 Members will note the Council's landscape officer has no objections, on the grounds that there are no landscape implications and given the application relates to the uses of site. Accordingly, the proposal is considered to conserve the landscape character and locality, in line with Policy LD1 of the Core Strategy and Policy LU9 of the Whitbourne NDP and Section 15 of the NPPF.

Ecology/Biodiversity

- 6.49 Members will note the return of no objection from the Council's ecologist, to which officers afford significant weighting to this view. In terms of biodiversity, the application is considered to accord with Policy LD2 of the Core Strategy and Policy LU9 of the Whitbourne NDP.

Other considerations

- 6.50 The impact upon surrounding business competition is not a material planning consideration and should not form part of any decision taken.
- 6.51 Whilst officers appreciate issues raised regarding the tranquillity and dark skies, this will still potentially be apparent regardless of the resolution taken by committee, given planning permission has already been granted here. The applicant has been made aware of this and has indicated to replace the existing lighting system with more subdued lighting, as requested by Council and the retractable acoustic curtain in respect of residential amenity.
- 6.52 Third party representations have raised matters concerning breaches of condition and issues on this site. Members should be aware that these aspects are dealt with through Planning Enforcement.
- 6.53 Comments stating that lifting condition 5 would put Whitbourne Estate at risk from external development needs to be put into context that the LPA would assess any planning application on its own merits in accordance with Local Plan Policies and other material planning considerations and is not comparing similar uses and layout e.g. against Whitbourne Hall or corporate involvement at Saltmarshe Caravan Park. Indeed, such views that a consistency principle should apply, must be borne in mind that this is a materially different application to P194408/F.
- 6.54 Members will be aware that licensing is a separate regime to the planning process and that Health and Safety of site is not a material planning consideration.

Summary and Conclusion

- 6.55 The NPPF states the purpose of the planning system is to contribute to the achievement of sustainable development. Achieving sustainable development means the planning system has three overarching objectives (economic, social and environmental), which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives).
- 6.56 These objectives should be delivered through preparation and implementation of plans and the application of the policies in the NPPF; they are not criteria against which every decision can or should be judged. Sustainable development is pursued in a positive way, so at the heart of the NPPF is a presumption in favour of sustainable development. The presumption does not change the statutory status of the development plan as the starting point for decision making. Where an application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted as set out at paragraph 11c of the NPPF.
- 6.57 Taking the above into account, there are no technical objections to this application. It is recommended that condition 5 be removed entirely and condition 16 varied to extend the hours amplified music may be played within the venue to 00:00. A number of additional conditions are recommended to ensure an appropriate form of development.
- 6.58 Given the application is made as a Section 73 (s73) application under the Town and Country Planning Act 1990, permission granted under section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact. It is open to the applicant to decide whether to implement the new permission or the one originally granted. A decision notice describing the new permission should clearly express that it is made under section 73. It should set out all of the conditions imposed on the new permission, and, for

the purpose of clarity, restate the conditions imposed on earlier permissions that continue to have effect.

- 6.59 It is therefore appropriate to identify conditions in full, rather than simply identify those conditions which have been applied for. This includes details under discharge of condition applications that the Council has already approved prior to considering this application, in conjunction with recommended conditions by technical consultees and officers, to achieve an appropriate form of development. Given condition 5 is recommended to be removed, conditions 6 onwards would therefore move to condition 4 onwards, as material operations have commenced and hence, condition 1 is no longer required. Subsequently, condition 16, which is under consideration to be varied, would now appear as condition 14.

RECOMMENDATION

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

That planning permission be granted subject to the following conditions:

- 1. The development shall be carried out strictly in accordance with the approved plans (Drawing nos.1821/1000 Rev A, 1821/1100, 1821/3000 Rev A, 1821/3100 Rev A, 1821/3601, 1821/3602 and 1821/9001), except where otherwise stipulated by conditions attached to this permission.**

Reason: To ensure adherence to the approved plans in the interests of a satisfactory form of development and to comply with Policy SD1 of the Herefordshire Local Plan – Core Strategy; Policy LU9 of the Whitbourne Neighbourhood Development Plan and the National Planning Policy Framework.

- 2. With respect to details of materials, the development shall be carried out in accordance with the approved details, confirmed under discharge of condition letter P181140/XA2 dated 30 April 2018, unless an alternative scheme is submitted to an approved in writing by the Local Planning Authority.**

Reason: To ensure that the materials harmonise with the surroundings so as to ensure that the development complies with the requirements of Policy SD1 of the Herefordshire Local Plan – Core Strategy; Policy LU9 of the Whitbourne Neighbourhood Development Plan and the National Planning Policy Framework.

- 3. The premises shall be used for restaurant, guest accommodation and a conference centre and for no other purpose (including any other purpose in Classes A3, C1 and D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.**

Reason: The local planning authority wish to control the specific use of the land/premises, in the interest of local amenity and to comply with Policy SD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

- 4. The accommodation block building which is the subject of this application shall be used for holiday accommodation only and for no other purpose including any other purpose within Class C of the Schedule of the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.**

Reason: Having regard to Policy RA3 of the Herefordshire Local Plan – Core Strategy; Policy LU9 of the Whitbourne Neighbourhood Development Plan and the National Planning Policy Framework, the local planning authority are not prepared to allow the introduction of a separate units of residential accommodation, in this rural location.

- 5. None of the existing trees and or hedgerows on the site (other than those specifically shown to be removed on the approved drawings) shall be removed, destroyed or felled without the prior approval in writing of the Local Planning Authority.**

Reason: To safeguard the amenity of the area and to ensure that the development conforms with Policies SD1 and LD1 of the Herefordshire Local Plan – Core Strategy; Policy LU9 of the Whitbourne Neighbourhood Development Plan and the National Planning Policy Framework.

- 6. Development shall not be occupied until the passing bays on Norton Lane have been constructed in accordance with the approved details, namely under discharge of condition letter P180280/XA2 dated 27 July 2018 and subject to a Section 278 agreement.**

Reason: To ensure the safe and free flow of traffic on the highway and to conform with the requirements of Policy MT1 of Herefordshire Local Plan – Core Strategy Plan and the National Planning Policy Framework.

- 7. With respect to details of landscape design, this shall be carried out in accordance with decision notice P181441/XA2 dated 26 July 2018, unless an alternative scheme is submitted to an approved in writing by the Local Planning Authority.**

Reason: Reason: In order to maintain the visual amenities of the area and to conform with Policy LD1 of the Herefordshire Local Plan – Core Strategy; Policy LU9 of the Whitbourne Neighbourhood Development Plan and the National Planning Policy Framework.

- 8. The soft landscaping scheme approved under condition 7 shall be carried out concurrently with the development hereby permitted and shall be completed no later than the first planting season following the completion of the development. The landscaping shall be maintained for a period of 5 years. During this time, any trees, shrubs or other plants which are removed, die or are seriously retarded shall be replaced during the next planting season with others of similar sizes and species unless the Local Planning Authority gives written consent to any variation. If any plants fail more than once they shall continue to be replaced on an annual basis until the end of the 10- year maintenance period. The hard landscaping shall be completed prior to the first use of the development hereby permitted, unless an alternative scheme is submitted to an approved in writing by the Local Planning Authority.**

Reason: In order to maintain the visual amenities of the area and to conform with Policy LD1 of the Herefordshire Local Plan – Core Strategy; Policy LU9 of the Whitbourne Neighbourhood Development Plan and the National Planning Policy Framework.

- 9. With reference to details of Arboricultural Impact Assessment and arboricultural working method statement, this shall be implemented in accordance with details confirmed under discharge of condition letter P180280/XA2 dated 27 July 2018, unless an alternative scheme is submitted to an approved in writing by the Local Planning Authority.**

Reason: To ensure that all species are protected and habitats enhanced having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation (Natural Habitats, &c) Regulations 1994 (as amended) and Policy LD2 of the Herefordshire Local Plan – Core Strategy; Policy LU9 of the Whitbourne Neighbourhood Development Plan and the National Planning Policy Framework, NERC 2006.

- 10. The ecological protection, mitigation, working methods and biodiversity enhancements as recommended in the Preliminary Ecological Report by Focus Ecology dated October 2016 shall be implemented in full as stated unless otherwise approved in writing by the local planning authority.**

Reason: To ensure that all species are protected and habitats enhanced having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation (Natural Habitats, &c) Regulations 1994 (as amended) and Policy LD2 of the Herefordshire Local Plan – Core Strategy; Policy LU9 of the Whitbourne Neighbourhood Development Plan and the National Planning Policy Framework, NERC 2006.

- 11. The Protected Species (Bats) protection, mitigation and working methods and compensation scheme with required European Protected Species Licence, as recommended in the detailed bat report by Focus Ecology dated June 2017 shall be implemented in full as stated unless otherwise approved in writing by the local planning authority.**

Reason: To ensure that all species are protected and habitats enhanced having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation (Natural Habitats, &c) Regulations 1994 (as amended) and Policy LD2 of the Herefordshire Local Plan – Core Strategy; Policy LU9 of the Whitbourne Neighbourhood Development Plan and the National Planning Policy Framework, NERC 2006.

- 12. With reference to details of noise emanating from site, the development shall be carried out in accordance with the approved details, as confirmed under discharge of condition letter P180280/XA2 dated 27 July 2018, unless an alternative scheme is submitted to an approved in writing by the Local Planning Authority.**

Reason: In order to protect the amenity of occupiers of nearby properties so as to comply with Policy SD1 of Herefordshire Local Plan – Core Strategy; Policy LU9 of the Whitbourne Neighbourhood Development Plan and the National Planning Policy Framework

- 13. The loading and unloading of service and delivery vehicles together with their arrival and departure from the site shall not take place outside the hours of 0800 to 1800 Mondays to Fridays and 0800 to 1300 on Saturdays nor at any time on Sundays, Bank or Public Holidays.**

Reason: To safeguard the amenities of the locality and to comply with Policy SD1 of the Herefordshire Local Plan – Core Strategy; Policy LU9 of the Whitbourne Neighbourhood Development Plan and the National Planning Policy Framework.

- 14. No amplified music shall be played in the premises outside of the following times: 12.00hrs to 00.00hrs.**

Reason: In order to protect the amenity of occupiers of nearby properties and to comply with Policy SD1 of Herefordshire Local Plan – Core Strategy; Policy LU9 of the Whitbourne Neighbourhood Development Plan and the National Planning Policy Framework.

- 15. With reference to details of foul and surface water drainage arrangements, this shall be implemented in accordance with details approved under discharge of condition letter P180280/XA2 dated 27 July 2018, unless an alternative scheme is submitted to an approved in writing by the Local Planning Authority.**

Reason: In order to ensure that satisfactory drainage arrangements are provided and to comply with Policies SD3 and SD4 of the Herefordshire Local Plan – Core Strategy; Habitat Regulations and NERC Act and Policy LU9 of the Whitbourne Neighbourhood Development Plan.

- 16. With reference to floodlighting and external lighting, details shall be carried out in accordance with the approved details, as confirmed under discharge of condition letter P181441/XA2 dated 26 July 2018., unless an alternative scheme is submitted to an approved in writing by the Local Planning Authority.**

Reason: To safeguard local amenities and to comply with Policy SD1 of the Herefordshire Local Plan – Core Strategy; Policy LU9 of the Whitbourne Neighbourhood Development Plan and the National Planning Policy Framework.

- 17. The development hereby permitted shall not be brought into use until an area has been properly laid out, consolidated, surfaced, drained and the spaces demarked on the ground within the application site in accordance with the approved plans for the parking of vehicles. These shall thereafter be retained and kept available for those uses at all times thereafter, unless an alternative scheme is submitted to an approved in writing by the Local Planning Authority.**

Reason: To minimise the likelihood of indiscriminate parking in the interests of highway safety and to conform with the requirements of Policy MT1 of Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

- 18. With reference to details of improving visibility for traffic joining Parish Lane after leaving the site, in an easterly direction, this shall be implemented in accordance with details approved under discharge of condition letter P200858/XA2 dated 3 April 2020, unless an alternative scheme is submitted to an approved in writing by the Local Planning Authority.**

Reason: In the interests of highway safety and to conform with the requirements of Policy MT1 of Herefordshire Local Plan-Core Strategy.

- 19. Prior to use of the development hereby approved, details for new signage along the A44 and B4203 shall be submitted for approval in writing of the local planning authority. The signs shall be installed in accordance with the approved details prior to the use of the development hereby approved, unless an alternative scheme is submitted to an approved in writing by the Local Planning Authority.**

Reason: In the interests of highway safety and to conform with the requirements of Policy MT1 of Herefordshire Local Plan- Core Strategy together with requirements as set out in the Transport Statement dated 15 June 2017.

- 20. With reference to the Construction Management Plan (CMP), the agreed details shall be implemented throughout the construction period, in accordance with the**

approved details under discharge of condition letter P180280/XA2 dated 27 July 2018, unless an alternative scheme is submitted to an approved in writing by the Local Planning Authority.

Reason: In the interests of the residential amenity of properties within the locality and of highway safety in accordance with Policies SD1 and MT1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

21. By 30 November 2021, an updated noise management plan, shall be submitted to and approved in writing by the local planning authority. The relevant details shall include, as a minimum:

- a. How the planned use of the acoustic curtains to the North Wall and fire exits will be used;
- b. The use of the installed noise limiter and maximum noise limits set;
- c. How the external doors will be kept closed during the playing of loud music;
- d. A noise monitoring proposal;
- e. A complaints procedure; and
- f. Consider noise from voices outside the venue and in the car park(s).

Following approval, the noise management plan shall be implemented as approved, reviewed at a minimum of at least once annually and shall at any time, upon reasonable request in writing, be submitted to the Local Planning Authority.

Reason: In order to protect the amenity of occupiers of nearby properties so as to comply with Policies SS6 and SD1 of the Herefordshire Local Plan Core Strategy 2011-31; Policy LU9 of the Whitbourne Neighbourhood Development Plan and the National Planning Policy Framework.

22. There shall be no use of fireworks or Chinese lanterns on the premises at any time.

Reason: In order to protect the amenity of occupiers of nearby properties so as to comply with Policies SS6 and SD1 of the Herefordshire Local Plan Core Strategy 2011-31; Policy LU9 of the Whitbourne Neighbourhood Development Plan and the National Planning Policy Framework.

23. No amplified music shall be played outside of the buildings on the premises at any time.

Reason: In order to protect the amenity of occupiers of nearby properties so as to comply with Policies SS6 and SD1 of the Herefordshire Local Plan Core Strategy 2011-31; Policy LU9 of the Whitbourne Neighbourhood Development Plan 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. 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.

- 2. This planning permission does not authorise the applicant to carry out works within the publicly maintained highway and Balfour Beatty (Managing Agent for Herefordshire Council) Highways Services, Unit 3 Thorn Business Park, Rotherwas, Hereford, HR2 6JT (Tel: 01432 261800), shall be given at least 28 days' notice of the applicant's intention to commence any works affecting the public highway so that the applicant can be provided with an approved specification, and supervision arranged for the works.**
- 3. Under the Traffic Management Act 2004, Herefordshire Council operate a notice scheme to co-ordinate Streetworks. Early discussions with the Highways Services Team are advised as a minimum of 4 weeks to 3 months notification is required (dictated by type of works and the impact that it may have on the travelling public). Please note that the timescale between notification and you being able to commence your works may be longer depending on other planned works in the area and the traffic sensitivity of the site. The Highway Service can be contacted on Tel: 01432 261800.**
- 4. Informative in respect of foul drainage: (Condition 17) - Discharge of final outfall through a soakaway-spreader field is recommended. No direct discharge of any final outfall from the proposed treatment system to any swale, watercourse, stream or culvert is acceptable unless it can be clearly demonstrated that residual Phosphorous (phosphates) have been removed from the discharge water.**
- 5. This planning permission does not authorise the applicant to carry out works within the publicly maintained highway and Balfour Beatty (Managing Agent for Herefordshire Council) Highways Services, Unit 3 Thorn Business Park, Rotherwas, Hereford, HR2 6JT (Tel: 01432 261800), shall be given at least 28 days' notice of the applicant's intention to commence any works affecting the public highway so that the applicant can be provided with an approved specification, and supervision arranged for the works.**
- 6. Under the Traffic Management Act 2004, Herefordshire Council operate a notice scheme to co-ordinate Streetworks. Early discussions with the Highways Services Team are advised as a minimum of 4 weeks to 3 months notification is required (dictated by type of works and the impact that it may have on the travelling public). Please note that the timescale between notification and you being able to commence your works may be longer depending on other planned works in the area and the traffic sensitivity of the site. The Highway Service can be contacted on Tel: 01432 261800.**
- 7. No work on the site should commence until engineering details of the improvements to the public highway have been approved by the Highway Authority and an agreement under Section 278 of the Highways Act 1980 entered into. Please contact the Senior Engineer, PO Box 236, Plough Lane, Hereford HR4 0WZ to progress the agreement.**
- 8. The developer is required to submit details of the layout and alignment, widths and levels of the proposed roadworks, which shall comply with any plans approved under this planning consent unless otherwise agreed in writing, together with all necessary drainage arrangements and run off calculations. It is not known if the proposed roadworks can be satisfactorily drained to an adequate outfall. Adequate storm water disposal arrangements must be provided to enable Herefordshire Council, as Highway Authority, to adopt the proposed roadworks as public highways. The applicant is, therefore, advised to submit the engineering and drainage details referred to in this conditional approval at an early date to the Senior Engineer, PO Box 236, Plough Lane, Hereford HR4 0WZ for assessment and technical approval. No works on the site of the development shall be commenced until these details have been approved and an Agreement under Section 38 of the Highways Act 1980 entered into.**

9. Drainage arrangements shall be provided to ensure that surface water from the driveway and/or vehicular turning area does not discharge onto the public highway. No drainage or effluent from the proposed development shall be allowed to discharge into any highway drain or over any part of the public highway.
10. There is increasing concern over the problem of 'sky glow' caused by artificial lighting in towns and cities. Astronomical observations have been severely affected in recent years and there is a growing lobby to curtail lighting which emits light above the horizontal. Highway Authorities pay due regard to this problem when specifying new highway lighting and recommend that all proposals for exterior lighting should also comply with this requirement. Guidance can be found in 'Guidance Notes for the Reduction of Light Pollution', published by The Institution of Lighting Engineers (ILE).
11. The attention of the applicant is drawn to Section 175A(3) of the Highways Act 1980 within which the Highway Authority shall have regard to the needs of disabled persons when considering the desirability of providing ramps at appropriate places between carriageways and footways and to any requirement of the Disability Discrimination Act.
12. The applicant's attention is drawn to the requirement for design to conform to Herefordshire Council's 'Highways Design Guide for New Developments' and 'Highways Specification for New Developments'.
13. The applicant shall be made aware that Herefordshire Council's Environment Health department has legal powers and duties to investigate Statutory Nuisance complaints regarding noise nuisance under the Environmental Protection Act 1990. Where a Statutory Nuisance is found to be established and is likely to occur or recur, our department has powers under the Act for the nuisance to be abated.
14. The permission hereby granted is an amendment to planning permission P163902/F dated 3 August 2017 and, otherwise than is altered by this permission, the development shall be carried out in accordance with that planning permission and the conditions attached thereto.

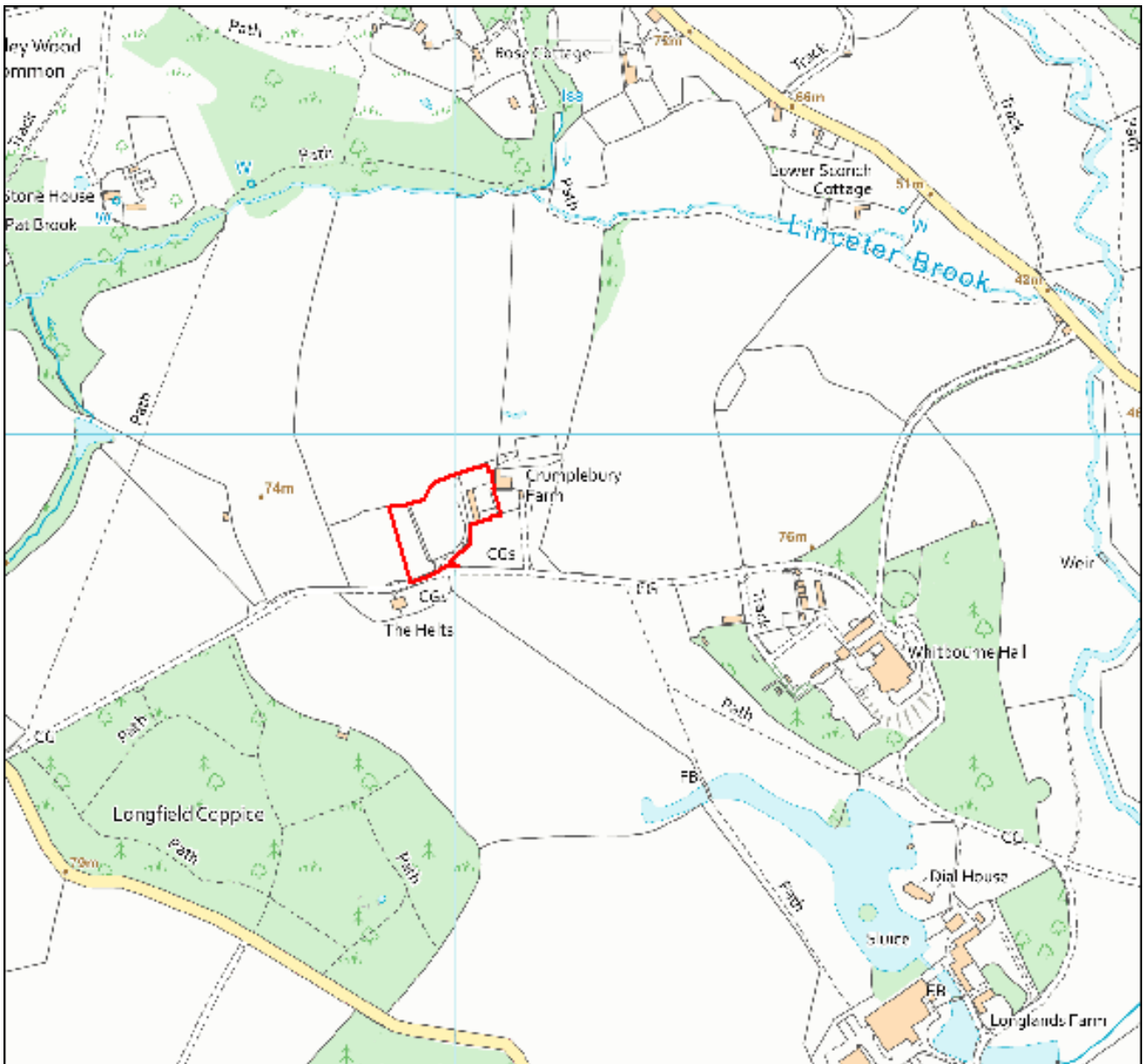
Decision:

Notes:

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Background Papers

Internal departmental consultation replies.



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APPLICATION NO: 210640

SITE ADDRESS : CRUMPLEBURY FARM, WHITBOURNE, WORCESTER, HEREFORDSHIRE, WR6 5SG

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