

**SUPPLEMENT TO THE AGENDA FOR**

# **Planning Committee**

**Wednesday 8 October 2014**

**10.00 am**

**The Shire Hall, Hereford HR1 2HX**

**4. MINUTES**

To approve and sign the Minutes of the meetings held on 17 and 24 September 2014.

**Pages**

3 - 48



HEREFORDSHIRE COUNCIL

**MINUTES of the meeting of Planning Committee held at The Shirehall, St Peter's Square, Hereford HR1 2HX on Wednesday 17 September 2014 at 10.00 am**

**Present:** Councillor PGH Cutter (Chairman)  
Councillor PA Andrews (Vice Chairman)

Councillors: AJM Blackshaw, WLS Bowen, AN Bridges, EMK Chave, PJ Edwards, KS Guthrie, J Hardwick, EPJ Harvey, JW Hope MBE, JG Jarvis, JG Lester, MD Lloyd-Hayes, RL Mayo, PJ McCaull, NP Nenadich, FM Norman and J Norris

**In attendance:** Councillors AW Johnson, JW Millar and PD Price

**58. APOLOGIES FOR ABSENCE**

Apologies were received from Councillors BA Durkin, DW Greenow, MAF Hubbard, RI Matthews, TL Widdows and DB Wilcox.

**59. NAMED SUBSTITUTES**

In accordance with paragraph 4.1.23 of the Council's Constitution, Councillor WLS Bowen attended the meeting as a substitute member for Councillor RI Matthews, Councillor EPJ Harvey for Councillor TL Widdows, Councillor JG Jarvis for Councillor DW Greenow, Councillor MD Lloyd-Hayes for Councillor MAF Hubbard and Councillor NP Nenadich for Councillor DB Wilcox.

**60. DECLARATIONS OF INTEREST**

**Agenda Item 9: P141157/F Land at Green Lane Cottage, Green Lane, Yarpole.**

Councillor FM Norman declared a non-pecuniary interest because she lived in the area and knew the applicant and objectors.

**61. MINUTES**

**RESOLVED:** That the Minutes of the meeting held on 27 August 2014 be approved as a correct record and signed by the Chairman.

**62. CHAIRMAN'S ANNOUNCEMENTS**

The Chairman welcomed Councillor PJ McCaull as a new Member of the Committee.

**63. APPEALS**

The Planning Committee noted the report.

**64. P141712/O LAND OPPOSITE ENGLAND'S GATE INN, THE MOOR, BODENHAM, HEREFORDSHIRE**

(Outline application with all matters reserved for residential development.)

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

In accordance with the criteria for public speaking Mrs E Dimbylow, a resident, spoke in objection. Mr D Hughes, the applicant's agent spoke in support.

In accordance with paragraph 4.8.2.2 of the Council's Constitution, the local ward member, Councillor JW Millar spoke on the application indicating his support for it.

He commented on a number of issues including:

- The local community had embraced the concept of neighbourhood planning. It had concluded that the proposed site was the best site for additional housing and that a development of 40 houses was acceptable.
- He acknowledged that there were some concerns about the development but he considered that these could be addressed. Sustainable development required growth in existing villages.

The debate opened and the following principal points were made:

- The Parish Council had identified the site as the preferred site and had submitted no objection. This was a good example of localism and the application should be supported.
- It was requested that the width of the highway be reduced in order to provide a continuous footpath to the development supporting the policy objective of giving priority to the needs of pedestrians. The Principal Planning Officer confirmed that a continuous footpath of adequate width could be provided and that was now the intention. However, it may not be possible to provide a path 2 metres wide. This would be resolved when detailed drawings were completed.
- Consideration needed to be given at the reserved matters stage to ensuring that the housing was of appropriate design so that it reduced the impact on England's Gate Inn and the other historic buildings nearby. The Principal Planning Officer commented that a landscape buffer was proposed. He drew attention to paragraph 6.35 of the report which recommended further consultation with the Parish Council and local community on the detail of any reserved matters submission.
- Clarification was sought on how villages were placed in terms of the assessment of the number of houses they could accommodate in the absence of an adopted Core Strategy. It was asked whether, if the proposed development were approved, it would count towards the allocation identified for Bodenham in the draft Core Strategy. The Development Manager commented that the Committee could not give weight to the draft Core Strategy in considering the application. The position would be assessed when the Core Strategy was approved and a Neighbourhood Plan was produced. The Principal Planning Officer added that the development would count towards the growth identified for the period of the Core Strategy (2011-2031) but a final figure for housing growth for the village could not be confirmed until the Core Strategy was adopted.
- The Principal Planning Officer clarified the provisions relating to affordable housing set out in paragraphs 8 and 9 of the draft Heads of Terms appended to the report. He confirmed that there would be 14 affordable housing units and that

a covenant would apply to those units proposed for intermediate tenure occupation.

- The applicant's intention to construct buildings to a minimum of code 4 of the code for sustainable homes was welcomed.

The local ward member was given the opportunity to close the debate. He reiterated his support for the proposal which represented sustainable development with community benefits and had the support of the majority of the village.

**RESOLVED: That subject to the completion of a Section 106 Town & Country Planning Act 1990 obligation agreement in accordance with the Heads of Terms stated in the report, officers named in the Scheme of Delegation to Officers are authorised to grant outline planning permission, subject to the conditions below and any other further conditions considered necessary.**

1. **A02 Time limit for submission of reserved matters (outline permission)**
2. **A03 Time limit for commencement (outline permission)**
3. **A04 Approval of reserved matters**
4. **C01 Samples of external materials**
5. **The development shall include no more than 40 dwellings and no dwelling shall be more than two and a half storeys high.**

**Reason: To define the terms of the permission and to conform to Herefordshire Unitary Development Plan Policies S1, DR1, H13 and the National Planning Policy Framework.**

6. **H06 Vehicular access construction**
7. **H09 Driveway gradient**
8. **H11 Parking - estate development (more than one house)**
9. **H17 Junction improvement/off site works**
10. **H18 On site roads - submission of details**
11. **H19 On site roads - phasing**
12. **H20 Road completion in 2 years**
13. **H21 Wheel washing**
14. **H27 Parking for site operatives**
15. **H29 Secure covered cycle parking provision**
16. **H30 Travel plans**
17. **E01 Site investigation - archaeology**
18. **L01 Foul/surface water drainage**

19. L02 No surface water to connect to public system
20. L03 No land drainage to connect to public system
21. L04 Comprehensive & Integrated draining of site
22. G10 Landscaping scheme
23. G11 Landscaping scheme - implementation
24. The recommendations set out in Section 5.1.2 of the ecologist's report from Turnstone Ecology dated March 2014 should be followed unless otherwise agreed in writing by the local planning authority. Prior to commencement of the development, a habitat protection and enhancement plan should be submitted to and be approved in writing by the local planning authority, and the scheme shall be implemented as approved.

**Reason:** To ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010 and Policies NC1, NC6 and NC7 of Herefordshire Unitary Development Plan.

25. Prior to commencement of the development a 'Tree Protection Plan' to include hedgerow protection following BS 5837:2012 *Trees in relation to design, demolition and construction* should be submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved.

**Reason:** To ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010 and Policies NC1, NC6 and NC7 of Herefordshire Unitary Development Plan.

**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 outline planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.
2. HN10 No drainage to discharge to highway
3. HN08 Section 38 Agreement & Drainage details
4. HN07 Section 278 Agreement
5. HN04 Private apparatus within highway
6. HN28 Highways Design Guide and Specification
7. HN27 Annual travel Plan Reviews
8. HN25 Travel Plans

**9. HN13 Protection of visibility splays on private land**

**10. N02 - S106 Obligation**

**65. P140942/O LAND OFF PIXIEFIELDS, WESTFIELDS, CRADLEY, HEREFORDSHIRE**

(Site for residential development of up to 60 houses.)

The Principal Planning Officer gave a presentation on the application, and updates/additional representations received following the publication of the agenda were provided in the update sheet, as appended to these Minutes. He elaborated in particular on the land drainage proposals.

In accordance with paragraph 4.8.2.2 of the Council's Constitution, Councillor AW Johnson, one of the two local ward members, spoke on the application.

He commented on a number of issues including:

- The Parish Council had identified that the remaining housing need identified for the village within the draft core strategy was now fewer than 50 houses. However, the proposed development was for up to 60 houses and was too large. This was his principal concern about the development, although he would also have liked more detail to have been provided.
- He acknowledged officers comments that concerns about flooding could be addressed at the reserved matters stage.

The debate opened and the following principal points were made:

- Concern was expressed about the proposed size of the development noting that the Parish Council had suggested that the site, at a maximum, could accommodate 30 houses. In addition there was concern about the ability of facilities in Cradley to cope with a development of the size proposed. Existing facilities including the school and Dr's Surgery appeared to be at capacity. The village post office had closed.
- The Development Manager commented that Cradley was identified as a main settlement in the Unitary Development Plan and was identified in the draft core strategy as a village where there would be the main focus for growth. A development of up to 60 houses was of an acceptable size and the village did have facilities. The Principal Planning Officer added that the proposal was for up to 60 houses and it was possible that if there were constraints on the site the size of the development could be reduced. However, a development of up to 60 dwellings was acceptable. A development of 25 houses per hectare was not a high density. Given the absence of a five year housing land supply he questioned whether this could be sustained as a ground for refusal of the application. If at the reserved matters stage the applicant proposed a lower number of houses this could be accommodated.
- The robustness of the provision in the S106 agreement for maintenance of the on-site Public Open Space (POS) was questioned as the proposed location of the POS. The Principal Planning Officer commented that the provision of POS would be subject to detailed discussions with the applicant. The proposal was to provide the POS on the site. The Council did not have the resources to adopt POS. The location of the POS would also be considered at the reserved matters stage. The aim would be to mitigate the landscape impact of the development.

- The viability of the drainage proposals was questioned. The Principal Planning Officer commented that there was sufficient capacity in the proposed attenuation basins to cope with a 1 in 100 year rainfall event.
- The vehicular access and pedestrian access were criticised.
- Building to Code Level 3 of the Code for Sustainable Homes was not appropriate. It was noted that the draft Heads of Terms provided that the affordable housing units were to be constructed to Code Level 4.
- It was requested that the affordable housing should be “pepperpotted” across the site.
- A concern was expressed about the protection of trees on the site. The site did not bring the two halves of the village together. The provision in the draft Heads of Terms for creation of new footpaths and cycleway and enhancement in the usability of existing ones connecting to the site was important. It was noted that this aspect would require discussion at the reserved matters stage.

The Development Manager made the following comments:

- Only one year group at Cradley Primary School was currently over capacity. The draft Heads of Terms provided for enhanced educational infrastructure.
- The vehicular access was good. He considered that refusal on grounds of access would not be defensible at appeal and there was a risk of costs being awarded against the Council.
- The village through previous Development Plan documents had sought to maintain a strategic gap between the two halves because of landscape impact.
- The distribution of affordable homes within the development would be one of a number of issues considered at the reserved matters stage. If the details of the scheme were not considered acceptable the matter could be brought back before the Committee.
- He reiterated that the proposed density of development (25 houses per hectare) was relatively low. The Council’s policies had previously considered a density of a minimum of 35 houses per hectare to be acceptable. Under the current policy regard was had to the character of the area but a density of 25 was still relatively low. He cautioned against refusal of the application on this ground.

The Planning Lawyer commented that in considering the number of homes proposed weight could not be given to the draft Core Strategy. Regard had to be had to the Unitary Development Plan and the National Planning Policy Framework. The Committee had not utilised the NPPF balance, benefits had not been discussed and real and significant harm, with evidence in support, had not been identified. She therefore considered that if the application were refused there would be a significant risk of costs being awarded against the Council at appeal.

In response to a suggestion that consideration of the application might be deferred the Development Manager commented that such a course ran the risk of an appeal on the grounds of non-determination. The development represented sustainable development.

The local ward member was given the opportunity to close the debate. He commented that a group of houses below the site would be overlooked by the development. He considered that the development was out of keeping with the village and supported a



deferral to allow greater detail to be provided. He hoped that this would enable officers to negotiate a smaller development.

An observation was made that the application was for outline permission. Many of the Committee's concerns related to detailed matters that would have to be the subject of a further application. It was therefore proposed that, without incurring the risks outlined by officers, the Committee could approve the outline application but require the detailed application to be returned to it for consideration.

**RESOLVED: That subject to the expiration of the public consultation period on 18 September 2014 and that no new material planning considerations are raised, officers named in the Scheme of Delegation to Officers be authorised to complete a Section 106 Town & Country Planning Act 1990 planning obligation agreement in accordance with the Heads of Terms stated in the report, and are authorised to grant outline planning permission, subject to the conditions below and any other further conditions considered necessary, and subject to any application for detailed reserved matters being forwarded to the Committee for determination.**

1. **A02 Time limit for submission of reserved matters (outline permission)**
2. **A03 Time limit for commencement (outline permission)**
3. **A04 Approval of reserved matters**
4. **A05 Plans and particulars of reserved matters**
5. **Prior to commencement of the development, a habitat and species enhancement scheme based upon Section 5 of the report by Ecology Services dated April 2014 should be submitted to and be approved in writing by the local planning authority. The work shall be implemented as approved and an appropriately qualified and experienced ecological clerk of works should be appointed (or consultant engaged in that capacity) to oversee the ecological enhancement work.**

**Reason: To ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010 and Policies NC1, NC6, NC7, NC8 and NC9 of the Herefordshire Unitary Development Plan and to meet the requirements of the National Planning Policy Framework and the NERC Act 2006.**

6. **Prior to the commencement of the development hereby approved the applicant or any successor in title shall enter into an agreement under Section 278 of the Highways Act (date) to determine the extent of highway improvement works required along the residential estate road of Pixiefields from the boundary of the application site to its junction with the B4220. The works as approved shall be completed prior to the occupation of the first dwelling on the site.**

**Reason: In order to provide an appropriate means of access to the site and to comply with Policies H13 and T8 of the Herefordshire Unitary Development Plan and the National Planning Policy Framework.**

7. **The development hereby permitted shall not commence until drainage plans for the disposal of surface water and foul sewage**

have been submitted to and approved by the Local Planning Authority in liaison with Severn Trent Water. The scheme shall be implemented in accordance with the approved details before the development is first brought into use.

**Reason:** To ensure that the development is provided with a satisfactory means of drainage as well as to reduce the risk of creating or exacerbating a flooding problem and to minimise the risk of pollution and to comply with Policies DR4 and DR7 of the Herefordshire Unitary Development Plan and the National Planning Policy Framework.

8. L01 Foul/surface water drainage
9. L02 No surface water to connect to public system
10. L03 No drainage run-off to public system
11. M02 Limit rate of surface water discharge
12. G03 Retention of existing trees/hedgerows
13. G04 Protection of trees/hedgerows that are to be retained
14. G17 Provision of open space and play areas (outline permissions)
15. I26 Interception of surface water run off

**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.
2. N11A Wildlife and Countryside Act 1981 (as amended) - Birds
3. N11C General
4. HN04 Private apparatus within highway
5. HN28 Highways Design Guide and Specification
6. HN05 Works within the highway
7. The reserved matters application will be considered by the Planning Committee when submitted.

**66. P141157/F LAND AT GREEN LANE COTTAGE, GREEN LANE, YARPOLE, LEOMINSTER, HR6 9BG**

(Proposed demolition of an existing dwelling and erection of five detached dwellings with new access, garages and parking.)

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

In accordance with the criteria for public speaking, Ms J King, Clerk to Yarpole Group Parish Council spoke in objection to the Scheme. Mr T Rogers of the Yarpole Built Environment Group spoke in objection. Mr B Thomas, the applicant's agent, spoke in support.

In accordance with paragraph 4.8.2.2 of the Council's Constitution, Councillor WLS Bowen, the local ward member, spoke on the application.

He commented on a number of issues including:

- The village wanted the best quality of development for this central and significant site. Some development would be welcomed if it were of the highest quality of design and layout and the density was acceptable.
- With the exception of one parish meeting, the developers had not engaged in discussions with the Parish Council, as the Parish Council wished.
- The Planning Inspectorate Appeal decision of 27 August 2013 raised a number of matters. The decision had stated that the design of a development on the site should look to reflect the older part of the village. Although the original plans had been modified to a degree this was still not the case.
- The development would involve the loss of hedgerow and destroy the character of an historic green lane.
- He questioned the need to move the existing access.
- He requested that consideration of the application should be deferred to provide an opportunity for the Parish Council, residents, and the developer to discuss the design and layout to deliver a high class development with a mix of housing.

The debate opened and the following principal points were made:

- It was asked if it could be required that any houses should be built to at least code 3 of the code for sustainable homes.
- Clarification was sought on the site level.
- Villages needed to grow gradually. The scheme provided such gradual growth and should be supported.
- The development represented a bridge between the newer and older part of the village
- The developer was a local builder who would produce a high quality development.
- Green Lane Cottage had become an eyesore and needed to be demolished. The plot was clearly ripe for development.
- Design was subjective. The Scheme represented betterment.
- One suggestion was that the local ward member should be consulted by officers on final aspects of the Scheme's design.

- Another proposal was that consideration should be deferred. The Parish Council had a clear view of what was required in terms of quality of design and density of development. There had been insufficient engagement with the developer to date. A deferral would provide the opportunity for consultation.
- The Council should demonstrate its support for community led development.
- An archaeological record of the cottage was requested.

The Development Manager commented that there had been a number of changes to the scheme since the appeal decision to which reference had been made. The amended scheme was of a better design. The previous proposal had been for two storey houses. The new scheme was for 1 1/2 storey cottage style properties which would bridge the newer and older parts of the village. A slab level would be agreed as one of the conditions. The scheme represented organic growth within the settlement boundary; Members had expressed a preference for this form of growth during recent Committee meetings. A Neighbourhood Development Plan was not in place and would not hold weight until the Core Strategy and the Plan were adopted. He confirmed that the code levels for sustainable homes were to be abolished. Building Regulations had already been amended to encourage high energy efficient dwellings.

The local ward member was given the opportunity to close the debate. He reiterated that detail on design and layout was missing from the application and that he would like there to be more discussion of these issues with the village, as residents had requested..

The Planning Lawyer referred to the officer recommendation and confirmed that if planning permission were granted further delegation would relate to conditions only. She further asked that Members consider the utility of deferral.

A motion that consideration of the application be deferred, to permit further discussion between the developer and the Parish Council, was lost.

**RESOLVED: That officers named in the Scheme of Delegation to Officers are authorised to grant full planning permission, subject to finalising the conditions below and any other further conditions considered necessary after consultation with the Chairman and the local ward member.**

1. **A01 Time limit for commencement (full permission) (12 months)**
2. **B02 Development in accordance with approved plans and materials (site plan – amended drawing number 886/03, rev. B, Proposed house – plot 1, elevations and floor plan – amended drawing number 886/04, Rev A, Proposed house – plot 2, elevations and floor plan – amended drawing number 886/05 rev. A, Proposed house – plot 3, elevations and floor plan – amended drawing number 886/06, Rev B, Proposed house – plot 4, elevations and floor plan – drawing number 886/07, Proposed house – plot 5, elevations and floor plan – drawing number 886/08, Proposed garages – drawing number 886/09 and detail as set out in the application form dated stamped received by Herefordshire Council 10 April 2014)**
3. **C01 Samples of external materials**
4. **G11 Landscaping scheme - implementation (plan number 888/03)**
5. **No timber panelled fences will be constructed on site and**

boundary hedges will be in accordance with the approved plan number 886/03 rev. B, and where no boundary hedge is indicated between the individual dwellings on site this will also be of hedge/plant boundary treatment with associated post and wire fence if considered necessary. If hedgerow protection during growth is required this will be of post and wire mesh construction.

Reason: With consideration to the overall visual appearance of the site and to comply with Policies DR1 and LA2 of the Herefordshire Unitary Development Plan.

6. No development will commence on Plot number 4 until the public footpath order has been confirmed by the Council in writing.

Reason: In order to ensure a public footpath remains available for use and to comply with Policy T6 of the Herefordshire Unitary Development Plan.

7. H13 Access, turning area and parking

8. The recommendations set out in Section E and Appendix 3a of the ecologist's report from Edward's Ecology dated June 2012 must be followed in relation to the identified protected species. Prior to commencement of the development, a species and habitat enhancement plan must be submitted to and be approved in writing by the local planning authority, and the work shall be implemented as approved. An appropriately qualified and experienced ecological clerk of works will be appointed (or consultant engaged in that capacity) to oversee the ecological mitigation work.

Reason: To ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010 and Policies NC1, NC6, NC7 NC8 and NC9 of the Herefordshire Unitary Development Plan in relation to Nature Conservation and Biodiversity and to meet the requirements of the National Planning Policy Framework and the NERC Act 2006

9. L01 Foul/surface water drainage

10. L02 No surface water to connect to public system

11. L03 No drainage run-off to public system

12. Prior to any development on site details must be submitted to the Local Planning Authority and approved in writing with regards to a detailed surface water drainage design. This must include the following information, as a minimum:

- a. The results of infiltration testing undertaken in accordance with BRE 365 and data regarding groundwater levels.
- b. A detailed drainage strategy designed in accordance with the draft National Standards for Sustainable Drainage and Policy DR4 of the Herefordshire Unitary Development Plan.
- c. Calculations and drawings that demonstrate that the development will manage surface water runoff from the proposed

**dwellings and access road up to and including the 1 in 100 year event (taking climate change effects into account) within the site boundary to ensure no increased flood risk to people and property elsewhere.**

**d. Demonstration that the Applicant has considered designing for larger events that overwhelm the surface water drainage system and/or occur as a result of blockage.**

**e. Calculations and details of any proposed infiltration features, including the access road and driveway construction should permeable paving be used.**

**Reason: To protect the proposed development and people and property elsewhere against increased flood risk associated with surface water runoff and to comply with Policy DR4 of the Herefordshire Unitary Development Plan and the National Planning Policy Framework.**

- 13. Detail will also be provided prior to any development on site to the Local Planning Authority and approved in writing regarding the proposed adoption and maintenance of the surface water drainage system, including all infiltration features and this will also include detail for the proposed access road.**

**Reason: To protect the proposed development and people and property elsewhere against increased flood risk associated with surface water runoff and to comply with Policy DR4 of the Herefordshire Unitary Development Plan and the National Planning Policy Framework.**

- 14. Prior to development on site the applicant/developer must provide to the Local Planning Authority evidence which will be agreed in writing of adequate separation and/or treatment of polluted water to ensure no risk of pollution is introduced to groundwater or watercourses both locally and downstream of the site, especially from proposed parking and vehicular areas.**

**Reason: To protect the quality of the natural environment and to comply with Policy DR4 of the Herefordshire Unitary Development Plan and the National Planning Policy Framework.**

- 15. Before work commences, details of the finishes to be used for all external joinery, timber, plaster and masonry surfaces shall be submitted to the local planning authority. The work shall subsequently only be carried out in accordance with details approved in writing by the local planning authority.**

**Reason: In order to ensure that the development is of high quality construction and to comply with Policy DR1 of the Herefordshire Unitary Development Plan and to comply with the National Planning Policy Framework**

- 16. Before work commences, details of the guttering, down pipes and all associated fittings shall be submitted to the local planning authority. The work shall subsequently only be carried out in accordance with details approved in writing by the local planning authority.**

**In order to ensure that the development is of high quality construction and to comply with Policy DR1 of the Herefordshire Unitary Development Plan and to comply with the National Planning Policy Framework.**

- 17. I51slab levels**
- 18 D24 archaeological record**

**Informatives:**

- 1. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations. Negotiations in respect of matters of concern with the application (as originally submitted) have resulted in amendments to the proposal. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.**
- 2. HN04 Private apparatus within highway**
- 3. HN01 Mud on highway**
- 4. HN28 Highways Design Guide and Specification**
- 5. HN05 Works within the highway**
- 6. N11A Wildlife and Countryside Act 1981 (as amended) - Birds**
- 7. N11C General**

**67. LLANERCH Y COED, DORSTONE, HEREFORD, HR3 6AG**

(Change of use of redundant farm buildings into 3 residential cottages to be used as holiday lets. Erection of 5 demountable geo domes (or shepherds huts). Purpose built shower/w.c. adjacent to farm buildings (to replace soon to be demolished new build stable block. Communal lounge/dining and kitchen for geo dome guests in existing buildings.)

The Senior Planning Officer gave a presentation on the application.

In accordance with the criteria for public speaking, Mr A Williams of Clifford Parish Council spoke in opposition to the Scheme. Mr M Cooke, a resident, spoke in objection. Mr P Smolas spoke on behalf of the applicant in support.

In accordance with paragraph 4.8.2.2 of the Council's Constitution, Councillor PD Price, the local ward member, spoke on the application.

He expressed concern about the appropriateness, implementation and enforcement of the proposed S106 agreement and whether it was too onerous for the business. However, he noted that the applicant had agreed to comply with the conditions contained within the agreement.

In debate, reservations were expressed about the proposed use of the S106 agreement and concern expressed that it was disproportionate.

The Development Manager commented that the use of a S106 agreement in this way was unusual. However, the approach had been proposed in response to concerns expressed by the Committee about access when they had considered the application on 8 January and their wish to protect local residents. The matter had been brought back to the Committee due to additional detail and because the proposed approach was different from that which had originally been proposed. The Applicants were content to enter into this potentially punitive agreement. If the S106 agreement was not supported this would permit unlimited use of the roads to the site. Members could, however, reject the S106 agreement if they wished.

The local ward member was given the opportunity to close the debate. He reiterated his concern that the proposed S106 agreement was too onerous. However, he acknowledged that the applicant had agreed to accept the proposal.

**RESOLVED: That subject to the completion of a S106 agreement, officers named in the scheme of delegation to officers be authorised to grant planning permission subject to the following conditions and any further conditions considered necessary by officers**

1. **The development hereby permitted shall be begun before the expiration of three years from the date of this permission.**

**Reason: Required to be imposed by Section 91 of the Town and Country Planning Act 1990 and the National Planning Policy Framework.**

2. **The development hereby approved shall be carried out strictly in accordance with the approved plans and documents, received 8 August 2013 and the schedule of materials indicated thereon unless otherwise stipulated by conditions attached to this Planning Permission.**

**Reason: To ensure adherence to the approved plans and to protect the general character and amenities of the area in accordance with the requirements of Policy DR1 of the Herefordshire Unitary Development Plan and the National Planning Policy Framework.**

3. **The existing Bed and Breakfast use occurring on the land and buildings within the line edged red and blue on the approved plans shall permanently cease on the first use of the any part of the development hereby permitted.**

**Reason: In order to protect the amenity of this open countryside location and occupiers of nearby properties so as to comply with Policies S1, DR2, DR13 and RST1 of Herefordshire Unitary Development Plan and the National Planning Policy Framework.**

4. **Notwithstanding the provisions of article 3(1) and Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995, (or any order revoking or re-enacting that Order with or without modification), no development which would otherwise be permitted under Classes A, B, C, D, E and H of Part 1, or development or land uses permitted under Part 4, Part 5, Part 27 and Part 40 of Schedule 2, shall be carried out.**



**Reason: To ensure the character and amenity of this tranquil open countryside location is maintained and also to ensure the character and appearance of the original conversion scheme is maintained and to comply with Policies S1, S2, DR1, DR2, DR3, T8, LA2, HBA12 and HBA13 of the Herefordshire Unitary Development Plan and the heritage aims and objectives of the National Planning Policy Framework.**

- 5. The buildings subject of this planning permission, the holiday accommodation permitted and the dwelling known as Llanerch Y Coed, Dorstone, Herefordshire shall not be sold or leased separately from each other.**

**Reason: It would be contrary to the policy of the local planning authority to grant permission for a separate dwelling or separate independent economic use in this location having regard to policies S1, S2, DR1, DR2, DR3, H7 and E8 of Herefordshire Unitary Development Plan and the relevant aims and objectives of the National Planning Policy Framework.**

- 6. The buildings which are 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.**

**An up to date register of all visitors and occupiers of the holiday accommodation including names, date and duration of stay and home address shall be kept and made available to the Local Planning Authority at all times.**

**No single person or group is permitted to stay in the accommodation permitted in this permission for more than 28 consecutive days or for a total of 156 days in any calendar year.**

**Reason: Having regard to Policy S1, DR2 and RST1 of the Herefordshire Unitary Development Plan and the National Planning Policy Framework the local planning authority are not prepared to allow the introduction of separate units of residential accommodation in this rural, isolated unsustainable open countryside location.**

- 7. The existing public right of way crossing the application site shall not be obstructed, to diverted or stopped up during the construction phase or at anytime thereafter during the use of hereby permitted development.**

**Reason: To ensure the public right of way is not obstructed and to conform with the requirements of Policy T6 of Herefordshire Unitary Development Plan and the National Planning Policy Framework.**

- 8. The Travel Plan shall be implemented, in accordance with the approved details, on the first occupation of the development. A detailed written record shall be kept of the measures undertaken to promote sustainable transport initiatives and a review of the Travel**

**Plan shall be undertaken annually. All relevant documentation shall be made available for inspection by the local planning authority upon reasonable request.**

**Reason: In order to ensure that the development is carried out in combination with a scheme aimed at promoting the use of a range of sustainable transport initiatives and to conform with the requirements of Policy DR3 of Herefordshire Unitary Development Plan and the relevant aims and objectives of the National Planning Policy Framework.**

- 9. The soft landscaping scheme approved and as shown on the approved plans listed under Condition 2 of this permission 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 5-year maintenance period. The hard landscaping shall be completed prior to the first use of the development hereby permitted**

**Reason: In order to maintain the visual amenities of the area and to comply with Policy LA6 of Herefordshire Unitary Development Plan and the relevant aims and objectives of the National Planning Policy Framework.**

- 10. Not later than 1 October in each of the 5 calendar years following the planting of any trees or shrubs on this site in connection with the development hereby permitted the operator shall submit to the Local Planning Authority a written statement detailing:**
- a) The number, location and species of any trees, shrubs and hedge plants which have died, become diseased or seriously damaged in the preceding 12 months, and**
  - b) Proposals for the replanting and maintenance of any such failures with plants of similar size and species within the following 6 months.**

**Reason: In order to maintain the visual amenities of the area and to conform with Policy LA6 of Herefordshire Unitary Development Plan and the relevant aims and objectives of the National Planning Policy Framework.**

- 11. The external lighting shall be installed and operated in accordance with the approved details received 4th April 2014 and thereafter be maintained as such.**

**No further external lighting shall be installed upon the site (including upon the external elevations of any existing or proposed building or structure within the red or blue line area identified on the plans listed under Condition 2 of this permission) without the prior written consent of the local planning authority.**

**Reason: To safeguard the character and amenities of the area and to comply with Policy DR14 of Herefordshire Unitary Development Plan and the relevant aims and objectives of the National Planning Policy Framework.**

- 12. The development shall be carried out in strict accordance with the details of the foul and surface water drainage arrangements received 27 June 2014. This scheme shall be implemented before the first use of any of the buildings or development hereby permitted.**

**Reason: In order to ensure that satisfactory drainage arrangements are provided and to comply with Policy DR4 of Herefordshire Unitary Development Plan**

- 13. The recommendations set out in the ecologist's report listed under Condition 2 of this Decision Notice and The Ecological Measures contained within the Construction Environmental Plan, received 10 June 2014 shall be followed in relation to the identified protected species unless otherwise agreed in writing by the local planning authority.**

**Reason: To ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation (Natural Habitats, &c) Regulations 1994 (as amended) and Policies NC1, NC5, NC6 and NC7 of Herefordshire Unitary Development Plan and the relevant aims and objectives of the National Planning Policy Framework**

- 14. The architectural details of windows and their openings, doors and their openings, eaves, verges and bargeboards and ridges, shall be carried out in accordance with the details received 27 June 2014 and thereafter be maintained as such.**

**Reason: To ensure that the work is carried out in accordance with details that are appropriate to the safeguarding of the architectural or historic interest of the building (as one which is of local interest) and to comply with the requirements of Policies HBA12 and HBA13 of the Herefordshire Unitary Development Plan and the relevant aims and objectives of the National Planning Policy Framework .**

- 15. The finishes to be used for all external joinery, timber, plaster and masonry surfaces work shall be carried out in accordance with details received 27 June 2014.**

**Reason: To ensure that the work is finished with materials, textures and colours that are appropriate to the safeguarding of the architectural or historic interest of the building (as one which is in a conservation area, or of local interest) and to comply with the requirements of Policy HBA12 and HBA13 of Herefordshire Unitary Development Plan and the relevant aims and objectives of the National Planning Policy Framework.**

- 16. The chimney flues shall have a dark matt finish of a colour as described in details Received 27th June 2014 and thereafter be maintained as such.**

**Reason: To ensure that the work is carried out in accordance with details that are appropriate to the safeguarding of the architectural or historic interest of the building (as one which is of local interest) and to comply with the requirements of Policies HBA12 and HBA13 of the Herefordshire Unitary Development Plan and the relevant aims and objectives of the National Planning Policy Framework.**

- 17. The guttering, down pipes and all associated fittings shall be carried out in accordance with details Received 27th June 2014 and thereafter be maintained as such.**

**Reason: To ensure that the rainwater goods are of an appropriate form in the interests of the building (as one which is of local interest) and to comply with the requirements of Policies HBA12 and HBA13 of Herefordshire Unitary Development Plan and the relevant aims and objectives of the National Planning Policy Framework.**

- 18. All works of external repair, restoration and replacement are to exactly match the original features, materials and finishes of the building.**

**Reason: To ensure that all of the works arising from the approved scheme are of an appropriate form in the interest of the building (as one which is in a conservation area, or of local interest) and to comply with the requirements of Policies HBA12 and HBA13 of Herefordshire Unitary Development Plan and the relevant aims and objectives of the National Planning Policy Framework.**

- 19. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification), no windows other than those expressly authorised by this permission shall be constructed in any elevation of the buildings subject of this permission, and no dormer windows shall be constructed in the roof slope of any building subject of this permission.**

**Reason: In order to protect the character and appearance of the original buildings that are of historic merit worthy of safeguarding through the permitted use and conversion and to protect the residential amenity of adjacent properties and to comply with Policies DR1, DR2, H18, HBA12 and HBA13 of the Herefordshire Unitary Development Plan and the relevant aims and objectives of the National Planning Policy Framework.**

- 20. The geodomes (excluding the bases) hereby permitted shall be removed from the site from 1 October to 31 March of each year.**

**Reason: The local planning authority is only prepared to allow this accommodation as a temporary measure as the application was assessed and permitted on the basis of the geodomes being removed from the site during these dates and in the interests of the character and appearance of this open countryside location and having regard to Policies S1, DR1, DR2, DR3, LA2 and RST1 of the Herefordshire Unitary Development Plan and the relevant aims and objectives of the National Planning Policy Framework.**

21. In the event of the holiday use ceasing or the business failing, the geodomes hereby permitted including their bases and all associated infrastructure shall be removed permanently from the site and the land reinstated in accordance with details (including timescale) which shall be submitted to and approved in writing by the local planning authority.

**Reason:** The local planning authority permitted this development having regard to the special circumstances and business plan provided by the applicants and is not prepared to allow unused buildings and infrastructure to undermine and despoil the character and appearance of this isolated rural landscape and to comply with Policies S1, S2, DR1, DR2 and LA2 of the Herefordshire Unitary Development Plan and the relevant aims and objectives of the National Planning Policy Framework.

22. No more than 13 people in total are permitted to stay on site in the accommodation and/or geodomes at any time during a training event and no more than 26 people in total are permitted to stay on site in the holiday accommodation or geodomes at any other time.

**Reason:** The application has been assessed and permitted on the basis of this maximum occupancy number set out in the application submission and having regard to safeguarding the character, appearance and amenity of this isolated rural location and having regard to the sustainability of the location and capacity of the local road network and to comply with Herefordshire Unitary Development Plan Policies S1, DR1, DR2, DR3, E8, LA2, and RST1 and the relevant aims and objectives of 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. Negotiations in respect of matters of concern with the application (as originally submitted) have resulted in amendments to the proposal. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.
- 2 Your attention is drawn to the requirements of Part M of the Building Regulations 1991 in respect of the need to provide access and facilities for the disabled.
- 3 This permission does not imply any rights of entry to any adjoining property nor does it imply that the development may extend into or project over or under any adjoining boundary.
- 4 This permission does not extinguish any rights of way which may exist over the site nor does it imply that such rights of way may be diverted or otherwise altered.
- 5 All nesting birds, their nests, eggs and young are protected by law and it is an offence to:

- intentionally kill, injure or take any wild bird
- intentionally take, damage or destroy the nest of any wild bird whilst it is in use or being built
- intentionally take or destroy the egg of any wild bird
- intentionally (or recklessly in England and Wales) disturb any wild bird listed on Schedule 1 while it is nest building, or at a nest containing eggs or young, or disturb the dependent young of such a bird. The maximum penalty that can be imposed - in respect of a single bird, nest or egg - is a fine of up to 5,000 pounds, six months imprisonment or both.

The applicant is therefore reminded that it is an offence under the Wildlife and Countryside Act 1981 (as amended) to remove or work on any hedge, tree or building where that work involves the taking, damaging or destruction of any nest of any wild bird while the nest is in use or being built, (usually between late February and late August or late September in the case of swifts, swallows or house martins). If a nest is discovered while work is being undertaken, all work must stop and advice sought from Natural England and the Council's Ecologist.

**6 It is an offence for any person to:**

**Intentionally kill, injure or take any bats.  
Intentionally or recklessly damage, destroy or obstruct access to any place that a bat uses for shelter or protection. This is taken to mean all bat roosts whether bats are present or not.**

**Under the Habitats Regulations it is an offence to damage or destroy a breeding site or resting place of any bat. This is an absolute offence - in other words, intent or recklessness does not have to be proved. The applicant is therefore reminded that it is an offence under the Wildlife and Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2010 that works to trees or buildings where that work involves the disturbance of a bat is an offence if a licence has not been obtained from Natural England. If a bat is discovered while work is being undertaken, all work must stop and advice sought from Natural England (0300 060 6000) and the Council's Ecologist. Advice is also available from the Bat Conservation Trust Helpline on 0845 1300 228.**

**7 The attention of the applicant is drawn to the provisions of the Wildlife and Countryside Act 1981 (as amended). This gives statutory protection to a number of species and their habitats. Other animals are also protected under their own legislation. Should any protected species or their habitat be identified during the course of the development then work should cease immediately and Natural England should be informed. They can be contacted at: Block B, Government Buildings, Whittington Road, Worcester, WR5**

**2LQ. Tel: 0300 060 6000.**

**The attention of the applicant is also drawn to the provisions of the Conservation of Habitats and Species Regulations 2010. In particular, European protected animal species and their breeding sites or resting places are protected under Regulation 40. It is an offence for anyone to deliberately capture, injure or kill any such animal. It is also an offence to damage or destroy a breeding or resting place of such an animal.**

**68. DATE OF NEXT MEETING**

The Planning Committee noted the date of the next meeting.

**Appendix 1 - Schedule of Committee Updates**

The meeting ended at 1.40 pm

**CHAIRMAN**





# **PLANNING COMMITTEE**

**Date: 17 September 2014**

## **Schedule of Committee Updates/Additional Representations**

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

## SCHEDULE OF COMMITTEE UPDATES

**P141712/O - OUTLINE APPLICATION WITH ALL MATTERS RESERVED FOR RESIDENTIAL DEVELOPMENT AT LAND OPPOSITE, ENGLAND'S GATE INN, THE MOOR, BODENHAM, HEREFORDSHIRE**

**For: Mr Richards per Hughes Architects Limited, 29 Broad Street, Newtown, Powys, SY16 2BQ**

### ADDITIONAL REPRESENTATIONS

One further letter of representation has been received from Mrs E Dimbylow, 7 Brockington Road, Bodenham.

The letter focusses upon the impact that the development would have upon the setting of the Grade II listed England's Gate PH and associated outbuilding and stables. The letter considers that the application site is an important component of the pub's rural setting and that the failure to preserve this setting when housing developments took place in the 1960s and 1970s is scant justification for eroding what remains still further. Hedgerow loss is also noted.

It is also noted that despite the apparent high level of support for this site in preference to another site in the village, a large majority of residents did not write in support and may therefore be taken to not be in favour of development of this site.

### OFFICER COMMENTS

The impact of the development on the setting of the public house and its associated complex has been assessed by the Conservation Manager(Historic Buildings). Whilst acknowledging that the proposal would influence the setting of the listed building, the degree of impact is capable of mitigation at the Reserved Matters stage such that it is unlikely to be 'significant' within the meaning of paragraph 134 of the NPPF; which requires any harm to be weighed against the public benefits of a proposal.

### NO CHANGE TO RECOMMENDATION

**P140942/O - SITE FOR RESIDENTIAL DEVELOPMENT OF UP TO 60 HOUSES AT LAND OFF PIXIEFIELDS, WESTFIELDS, CRADLEY, HEREFORDSHIRE**

**For: Quercus PRF LLP per Mr James Spreckley, Brinsop House, Brinsop, Hereford, Herefordshire, HR4 7AS**

### ADDITIONAL REPRESENTATIONS

Eight letters of support have been received. In summary the points raised are as follows:  
Schedule of Committee Updates

- the need for more family housing to ensure Cradley continues as a thriving community
- the need for more affordable housing
- the resultant infrastructure improvements resulting from the S.106 monies
- the need for more housing for the younger people in the village.

A further eight letters of objection have been received. No new issues are raised from those listed at paragraph 5.6 of the main report.

The Council's Land Drainage Engineer has been asked to further consider the objections raised on flooding grounds and advises that their responses to the application have been reviewed again along with the latest FRA/drainage strategy submitted by the applicant. She maintains the views expressed at paragraph 4.9 of the report that the applicant has provided sufficient confirmation for an Outline Planning Application to demonstrate that there are viable means to sustainably and safely manage surface water runoff within the site boundary to protect adjacent development from increased flood risk.

She considers that the objections made on the grounds of flooding are valid, but is confident that all concerns can be addressed via the Reserved Matters application and/or detailed planning conditions.

#### **OFFICER COMMENTS**

Conditions 7 to 11 inclusive all relate to the treatment of foul and surface water from the proposed development. They will appropriately mitigate the impact of the proposed development. In particular, condition 11 requires that surface water should be limited to Greenfield run-off rates. The measures proposed for flood mitigation are intended to improve existing conditions and the conditions proposed are considered to appropriately cover the comments made by the Land Drainage Engineer.

#### **NO CHANGE TO RECOMMENDATION**

**P141157/F - PROPOSED DEMOLITION OF AN EXISTING DWELLING AND ERECTION OF FIVE DETACHED DWELLINGS WITH NEW ACCESS, GARAGES AND PARKING AT LAND AT GREEN LANE COTTAGE, GREEN LANE, YARPOLE, LEOMINSTER, HR6 0BG**

**For: Mr Thomas per Architectural Design Limited, The Malt House, Shobdon, Leominster, Herefordshire HR6 9NL**

#### **ADDITIONAL REPRESENTATIONS**

The Land Drainage Manager has responded in respect of the amended plans received indicating no changes to the original response to the application.

#### **NO CHANGE TO RECOMMENDATION**



**MINUTES of the meeting of Planning Committee held at The Shire Hall, Hereford HR1 2HX on Wednesday 24 September 2014 at 10.00 am**

**Present:** Councillor PGH Cutter (Chairman)  
Councillor PA Andrews (Vice Chairman)

**Councillors:** AJM Blackshaw, AN Bridges, EMK Chave, BA Durkin, PJ Edwards, KS Guthrie, J Hardwick, EPJ Harvey, JW Hope MBE, JG Lester, RL Mayo, PJ McCaull, NP Nenadich, FM Norman, J Norris, GA Vaughan-Powell and TL Widdows

**In attendance:** Councillors JM Bartlett and Brig P Jones CBE

**69. APOLOGIES FOR ABSENCE**

Apologies were received from Councillors MAF Hubbard, RI Matthews and DB Wilcox.

**70. NAMED SUBSTITUTES**

In accordance with paragraph 4.1.23 of the Council's Constitution, Councillor EPJ Harvey attended the meeting as a substitute member for Councillor MAF Hubbard, Councillor NP Nenadich for Councillor DB Wilcox and Councillor GA Vaughn-Powell for Councillor RI Matthews.

**71. DECLARATIONS OF INTEREST**

**AGENDA ITEM 5: P140910/O LAND AT MILL STREET, LEOMINSTER**

Councillor AN Bridges declared a non-pecuniary interest as an employee of Network Rail.

**AGENDA ITEM 7: P141024/F LAND AT FLAG STATION, MANSELL LACY**

Councillor AJM Blackshaw declared a non-pecuniary interest because he knew the applicant's father through his role as Ward Councillor.

Councillor PJ Edwards declared a non-pecuniary interest because he knew the applicants, and some of the objectors and supporters.

**72. CHAIRMAN'S ANNOUNCEMENTS**

The Chairman explained the procedure to be used for determining the applications that were the subject of agenda items 5 and 6: land at Mill Street, Leominster, and land at Southern Avenue Leominster.

He explained that, to ensure fair consideration, each application would be debated in turn but no motions would be moved until the conclusion of both debates. A vote would then be taken on the Mill Street application followed by a vote on the Southern Avenue application.

**73. P140910/O LAND AT MILL STREET, LEOMINSTER, HEREFORDSHIRE, HR6 8EF**

(Outline application for the part demolition of existing buildings and structures and development of the site to provide a retail store (use class a1) and associated works and improvements including access. Amended plans.)

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

He commented that there were two applications before the Committee for convenience goods stores in Leominster. Similar proposals had been refused by the Committee on 8 January 2014. The Town Centres Study update demonstrated that Leominster had capacity for additional convenience goods floor space and this had been confirmed by Deloitte's independent advice on the retail impact assessment submitted by the applicant.

The Committee needed to consider the respective merits of each application. It was not bound to find in favour of one application or the other.

The Committee was advised to have regard to paragraphs 26 and 27 of the National Planning Policy Framework which provided that where an application failed to satisfy the sequential test or was likely to have significant adverse impacts it should be refused.

He highlighted proposed changes to the conditions in the recommendation as set out in the update that had been circulated to the Committee.

In accordance with the criteria for public speaking, Mr P Ellis spoke on behalf of Leominster Town Council in opposition to the Scheme. Mr J Verity, Chairman of the Leominster Civic Society, spoke in objection. Mr S Hoare, the applicant's agent, spoke in support.

In accordance with paragraph 4.8.2.2 of the Council's Constitution, Councillors FM Norman and Brig P Jones, the local ward members, spoke on the application.

Councillor Norman commented on a number of issues including:

- The Committee had had strong grounds for refusing the previous application. The new application was for a smaller development and no longer contained a petrol station. The grounds for refusal otherwise remained.
- Concerns about the risk of flooding remained high. The flood risk assessment accompanying the application was desk based. There had been no survey and local knowledge had not been sought. A photograph showing the site under water in Christmas 2012, a state in which it had remained for 2 weeks, had not been made available to the Committee. The Flood Risk Assessment report was therefore inaccurate in stating that there was no evidence of surface water on the site. She noted that it was proposed that the floor level of the store was to be elevated to prevent flooding of the store itself. The flood risk assessment also focused on the risk of fluvial flooding and did not take account of flash flooding and the resulting surface water. It also did not consider what might happen if the flood risk increased.
- The access to the site remained problematic. Network rail had initially responded that an access was not feasible unless a bridge was constructed. The rail crossing would be closed for approximately 17 minutes every hour (one quarter of the day). In the report to the Committee in January 2014 officers had stated that the proposal

would increase the frequency of queuing traffic along Mill Street. This remained an issue.

- There was concern that although the current application was for a smaller development than the previous application the outline plan suggested that a future application may be made to increase the size.
- The Town Centre needed to be safeguarded and the development's impact upon it also remained a concern. Pedestrian access from Mill Street to the Town was not easy. The development would divert trade not provide additional trade. The applicants themselves estimated that there would be a £2m trade loss for the Town. The retail reports for the Council identified the potential risk to the Town Centre.
- The concerns about the impact on the conservation area also remained relevant.
- She did not accept that there were no viable alternative sites. No consideration appeared, for example, to have been given to expanding the two existing supermarkets in the town centre.
- Having regard to the NPPF and the Unitary Development Plan the application should be refused.

Councillor Jones commented that he supported the development, which would provide competition to the benefit of the Town.

The debate opened and the following principal points were made:

- The rail upgrade referred to at paragraph 4.6 had been put back. The railway crossing would be closed for an increased time representing a significant period of time each hour. This would lead to frustration, traffic problems, and increase the risk of misuse of the crossing. High speed trains went through the crossing and there had to be considerable concerns about safety.
- There would be increased queuing of traffic compounding the existing congestion.
- Clarification was sought about a consultation exercise underway on making Mill Street a clearway. The Development Manager commented that the proposal was being made at the request of West Mercia Police in response to traffic generated by car boot sales at Brightwells and was not related to this application.
- A member referred to representations received from Brightwells expressing concerns about the risks of flooding both to the business and to Leominster as a whole and read their submission to the meeting.
- It was noted that the floor level of the supermarket was to be raised to avoid the risk of it flooding. However, there was no mention of the potential impact on neighbouring properties. It was stated that insurers were refusing to renew the insurance of a number of surrounding properties because of the flood risk. Consideration had to be given to the risk that flooding events would increase in frequency. The report stated that "the northerly part of the site is prone to ponding during periods of prolonged and extreme rainfall events."
- It was unrealistic to suggest that people would walk or cycle to the Town Centre having shopped at the supermarket. Most shoppers would wish to take perishable goods straight home. Linked trips were unlikely.
- If there was capacity for additional convenience goods floor space it was questioned why existing stores in the Town Centre could not compete for this market.
- Reference was made to the damage that had been caused to the Town Centre by a previous out of town supermarket development and the investment and time that it had taken to promote a recovery.

- It was suggested that regard needed to be had to the timeframe for development of additional retail capacity. The assessment of demand took account of housing development and employment opportunities that had not yet been secured in the anticipated timescale. This had a bearing on the potential impact on the Town Centre of a new retail development at this time.
- It was acknowledged that increased competition can be a benefit in terms of choice and pricing.
- The provision of only £20k in the S106 agreement for flood defence was questioned, noting that some £6m had been provided for the Asda store development in Hereford City. The Development Manager confirmed that £20k was the sum requested by the Environment Agency.
- Food stores operated to tight margins and there had to be concern that the new development would gain trade at the expense of other retailers.

The Development Manager commented that the application proposed to provide a storage tank to store water to accommodate rainfall. He also observed that the application refused in January had been for a much larger store. This had led to officers removing their objections. He reminded the Committee of the sequential testing conclusions and noted the observations that had been made on the vitality and viability of the Town Centre, whilst reiterating that officers had concluded that there was capacity for additional convenience goods floor space. He acknowledged the traffic issues that had been raised. However, he cautioned against citing flooding issues as a ground for refusal.

The debate concluded at this point.

*(The meeting adjourned between 11.25 and 11.35. Following the adjournment the Committee debated the application relating to land at Southern Avenue Leominster. The Committee then returned to consideration of the Mill street application.)*

The local ward members were given the opportunity to close the debate on the Mill Street application.

Councillor Jones commented that Leominster needed a new supermarket and the Mill Street proposal was the better option.

Councillor Norman reiterated that the flood risk and traffic issues were major concerns with the application. The impact on the Town Centre and small shops was also relevant.

It was moved that the application should be refused on the grounds that had formed the basis of the previous refusal as set out at paragraph 3.1 of the report paragraphs 1, 2, 3 and 5.

**RESOLVED: That planning permission be refused for the following reasons:**

- 1. The applicant has failed to demonstrate that the proposal would not have a significant adverse impact upon the viability and vitality of Leominster Town Centre contrary to paragraph 26 of the National Planning Policy Framework and Policies S5, TCR1, TCR2 and TCR9 of the Herefordshire Unitary Development Plan 2007.**
- 2. Given reason for refusal 1 above, the Local Planning Authority consider that the proposed development would be likely to adversely affect the character of the Leominster Conservation Area contrary to paragraphs 128 to 133 of the National Planning Policy Framework and policy S7 of the Herefordshire**



## **Unitary Development Plan 2007.**

- 3. The proposal is considered to be in an unsustainable location that would increase reliance upon the private motor vehicle, contrary to paragraph 29 of the National Planning Policy Framework and policies S1, S5, S6, DR2 and DR3 of the Herefordshire Unitary Development Plan 2007.**
- 4. The proposal is likely to result in traffic movements that increase the frequency of queuing traffic along Mill Street to the detriment of highway safety, contrary to Policies S1, S2, S6, DR3 and T8 of the Herefordshire Unitary Development Plan.**

### **Informative**

- 1 The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations and by identifying matters of concern with the proposal and clearly setting these out in the reasons for refusal. Members of the planning committee which took the decision to refuse planning permission were asked to consider whether there are opportunities to amend the development to address this harm. However, the issues are so fundamental to the proposal that it will not be possible to negotiate a satisfactory way forward and, due to the harm that the reasons for refusal clearly identify, approval has not been possible.**

#### **74. P141281/O LAND AT SOUTHERN AVENUE, LEOMINSTER, HEREFORDSHIRE, HR6 0QF**

(Site for class a1 foodstore with petrol filling station.)

The Principal Planning Officer gave a presentation on the application.

In accordance with the criteria for public speaking, Mrs V Mifflin, representing Friends of Leominster/Leominster Town Centre Action Group spoke in objection. Mr K Nutter, the applicant, spoke in support.

In accordance with paragraph 4.8.2.2 of the Council's Constitution, Councillors JM Bartlett and PJ McCaull, the local ward members, spoke on the application.

Councillor Bartlett commented on a number of issues including:

- The site had no connectivity with the Town and was unsustainable, increasing reliance on car use.
- The proposal entailed the loss of employment land. It would set a precedent, changing the site from an industrial estate to a retail park. It would mean the loss of three small businesses providing 30 jobs paying higher wages than those which would be paid by the supermarket.
- The development would have an adverse effect on the town centre. The Deloitte report described the town centre as vulnerable. It estimated the development would take £5m from the centre, £3m of which would be from small shops which operated on small margins.
- The Aldi and Co-op supermarkets in the town centre were crucial in generating linked trips.

- Shop closures would lead to decline putting at risk the listed buildings in the centre. Policies designed to protect these buildings should be upheld. Policy S7 and the National Planning Policy Framework supported action to safeguard the Leominster conservation area.
- The Town had a significant tourist trade which would be adversely affected if the centre went into decline.
- The Town had suffered decline in the 1990s when the first out of town supermarket had been established. The impact of the proposed development on retail trade in the town centre was of the greatest concern.

Councillor McCaull commented on a number of issues including:

- The industrial estate was really a business park and already included several retail uses.
- The supermarket would provide 200 jobs. Leominster needed part time jobs.
- The site did have footpath access to the Town centre.
- Vehicle access to the site was good and it was easily reached by residents from Ludlow to Hereford via the A49.
- The applicant had offered to fund a bus service from the site to the Town for years.
- The site was not at risk of flooding.
- The Section 106 agreement would bring benefits. However, if the application were approved he requested that the Town Council be consulted on priorities for S106 funding.
- He requested that the Committee support the proposal.

The debate opened and the following principal points were made:

- The development would bring £9m to the Town through the S106 agreement with a further £1m in community benefits.
- The development would provide retail choice and the proposed bus service provided the opportunity for shoppers to visit the town centre making linked trips.
- Out of town stores accessible by cars were necessary.
- It was to be hoped that more diverse shops would emerge in the town centre in response to the development.
- The town centre already had a lot of interesting shops.
- The industrial estate was a business park with a variety of uses. It was unrealistic to expect heavy industry to flourish in the area. Small and medium sized businesses would develop.
- The Committee was not obliged to make a choice between the two supermarket applications before it. It had to consider each application on its merits.
- The report set out substantial grounds for refusing the application. In particular concern was expressed about the adverse impact on the vitality and viability of the town centre.
- The concerns raised by the Committee in refusing the application in January 2014 had not been addressed.

- There wasn't connectivity with the town centre. A hopper bus would not adequately address this issue. There would be an adverse impact on the small shops, risking a spiral of decline.
- It had taken Leominster a number of years to recover from a previous out of centre supermarket development. It was questioned whether there really was capacity to support another out of centre development.
- The development would adversely affect the existing town centre supermarkets which were a part of the shopping mix.
- It was questioned whether there really was an absence of alternative sites in the town centre. It was also suggested that with the closure of public houses there was an opportunity to develop some smaller convenience stores.
- The Unitary Development Plan and the NPPF focused on a town centre first approach.
- Sequential testing identified alternative sites as set out in paragraph 6.10 of the report.
- Paragraph 6.14 of the report stated in relation to the Mill Street and Southern Avenue that it was concluded there was little material difference between the two sites in terms of connectivity to the town centre.

The local ward members were given the opportunity to close the debate.

Councillor Bartlett reiterated concerns about the vulnerability of the town centre. She considered there were alternatives within the centre.

Councillor McCaull noted that alternative sites referred to in the report were on existing car parks which the town needed to retain.

**RESOLVED: That planning permission be refused for the following reasons:**

- 1. The Local Planning Authority does not consider the submitted sequential assessment to be robust and as such is considered to be contrary to the National Planning Policy Framework and Policies S5, TCR1, TCR2 and TCR9 of the Herefordshire Unitary Development Plan 2007.**
- 2. The application site is remote from the town centre and the proposed food retail store would become a destination in its own right with shoppers unlikely to visit the town centre to make linked trips. The proposal is therefore likely to have a detrimental qualitative impact upon the vitality and viability of Leominster town centre contrary to the National Planning Policy Framework and Policies S5, TCR1, TCR2 and TCR9 of the Herefordshire Unitary Development Plan 2007.**
- 3. Given reason for refusal 2 above, the Local Planning Authority consider that the proposed development would be likely to adversely affect the character of the Leominster Conservation Area contrary to the National Planning Policy Framework and policy S7 of the Herefordshire Unitary Development Plan 2007.**
- 4. The proposal would result in the loss of good quality employment land. The applicant has not demonstrated that there is a surplus of such land or that removal of the existing use from the site would give rise to substantial benefits to residential or other amenity issues. Furthermore, the proposal is not a minor or incidental activity**

associated with another use that is compliant with policy. The proposal is therefore contrary to the National Planning Policy Framework and Policies S4 and E5 of the Herefordshire Unitary Development Plan 2007.

5. The proposal is considered to be in an unsustainable location that would increase reliance upon the private motor vehicle, contrary to the guiding principles of the National Planning Policy Framework and Policies S1, S5, S6, DR2 and DR3 of the Herefordshire Unitary Development Plan 2007.

**Informative:**

- 1 The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations and identifying matters of concern with the proposal and discussing those with the applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reasons for the refusal, approval has not been possible.

**75. P141024/F LAND AT FLAG STATION, MANSELL LACY, HEREFORDSHIRE, HR4 7HN**

The Committee deferred consideration of this application to its next meeting because it was not practical to proceed in the unavoidable absence of the officer due to present the report on the application.

**76. DATE OF NEXT MEETING**

The Planning Committee noted the date of the next meeting.

**Appendix 1 - Schedule of Committee Updates**

The meeting ended at 12.55 pm

**CHAIRMAN**

# **PLANNING COMMITTEE**

**Date: 24 September 2014**

## **Schedule of Committee Updates/Additional Representations**

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

## SCHEDULE OF COMMITTEE UPDATES

**P140910/O - OUTLINE APPLICATION FOR THE PART DEMOLITION OF EXISTING BUILDINGS AND STRUCTURES AND DEVELOPMENT OF THE SITE TO PROVIDE A RETAIL STORE (USE CLASS A1) AND ASSOCIATED WORKS AND IMPROVEMENTS INCLUDING ACCESS. AMENDED PLANS AT LAND AT MILL STREET, LEOMINSTER, HEREFORDSHIRE, HR6 8EF**

**For: Frank H Dale Ltd per Barton Willmore LLP, 7 Soho Square, London, W1D 3QB**

### ADDITIONAL REPRESENTATIONS

The applicant's agent has submitted further correspondence regarding the conditions proposed as part of the officer recommendation. Their comments refer specifically to condition 5 which seeks to restrict the ancillary uses within the food store. They consider that the condition should specify the amount of floor space to be used for comparison goods, and that this should be 20% in accordance with their retail assessment. They also confirm that their client is willing to accept that the condition should restrict the establishment of a post office, dry cleaners and a dispensing pharmacy, but that the sale of pharmaceutical products should be allowed.

They also point out a typographical error in condition 8, which refers to the A40. This should be the A44.

The correspondence also highlights the need to form a clear conclusion that the impacts of the proposed development would not be classed as 'significantly adverse'; which is the test within the NPPF, and that the scheme is therefore compliant with paragraph 27 of the NPPF.

A further letter of representation has been received. It raises four points as follows:

1. Is the whole site Zone 3a or should it have been zoned 3b (no development except essential infrastructure permitted)?

2. Historic evidence of surface flooding of A44 is acknowledged by JBA, yet it is still deemed a safe route for emergency egress via a roundabout and railway level crossing.

3a There is a risk of Surface Flooding in this area– central and northern areas of the larger site are at risk. Acknowledged in Para. 4.2.2 (confirmed by photos)

3b. the scenario of 2007 has not been modelled for this report i.e. when flooding from both the river and rainfall occurred together. The River Lugg, a relatively short river, rises quickly in response to heavy rainfall in the region and so it is likely that surface water flooding is going to occur at the same time as the river levels rise, when the non-return valves will close and cannot accept any more outflow water.

4. Methodology and full results of the modelling undertaken by JBA is not clear in the reports to assess the *change* of flood risk in Leominster brought about by the development.

Correspondence has also been received from local residents who are concerned about the increased risk of flooding on Porters Mill Close.

The Council's Archaeologist raises no objection to the application but recommends the imposition of a condition requiring site investigation prior to the commencement of development.

## **OFFICER COMMENTS**

The agent's comments about the precision of condition 5 are accepted. The inclusion of a 20% limit of the total retail floor space to be used for the sale of comparison goods would give greater clarity to the condition. The comments regarding the sale of pharmaceutical products are also accepted. On reflection this part of the condition is unduly restrictive as it would potential prevent the sale of items such as paracetamol, vitamins and cough medicines; products that are widely available in most food retail outlets. The intention of the condition is to limit the establishment of ancillary uses within the main store that might reduce the potential for linked trips to take place and thus affect the viability and vitality of the town centre. The inclusion of a dispensing pharmacy within those uses to be restricted would help to achieve this.

Paragraph 27 is clear that planning permission should be refused if an application fails to satisfy the sequential test, if it is likely to have a significant adverse impact on planned public and private investment in a centre or catchment area of a proposal, or if it detrimentally impacts upon the vitality and viability of a town centre. It has been demonstrated through the completion of a retail assessment by the applicant, and its independent assessment by Deloitte, that the proposal satisfies the sequential test, and that it will not have an adverse impact on investment or on the vitality and viability of the town centre. The scheme is therefore considered to be compliant with paragraph 27 of the NPPF.

The consultation responses from the Environment Agency and the Council's Land Drainage Engineer both confirm that the site falls within a flood zone 3a where developments that are less vulnerable to flooding are considered to be acceptable. This includes retail uses as is proposed .

The proposal is accompanied by a detailed Flood Risk Assessment and Drainage Strategy which has been assessed by EA and the Land Drainage Engineer. EA did object to the earlier scheme that was refused by committee on 8<sup>th</sup> January 2014, but they have confirmed that they are now satisfied with the proposal. They have not questioned the methodology and have recommended that the local planning authority seek to secure improvements to existing flood defences by requesting a financial contribution through a Section 106 Agreement.

The proposal includes the removal of an existing building with an approximate gross floor area of 3,200 square metres. It is surrounded by concreted service areas. The proposal is for a similar sized building and the car park covers an area that is already hard surfaced. The introduction of a sustainable surface water drainage scheme is considered to represent betterment. Officers are content with the level of detail provided and that the proposal is compliant with the NPPF and policy DR7 of the UDP.

## **CHANGE TO RECOMMENDATION**

Condition 5 to be amended to read as follows:

The development hereby approved shall be limited to a net retail sales floor area of 2,323 square metres of which no more than 20% shall be given over for the sale of comparison goods. Notwithstanding this, the following activities shall not be permitted:

- i) A dispensing pharmacy
- ii) The reception of goods for dry cleaning
- iii) A post office

Reason: To define the terms of the permission and to protect the vitality and viability of Leominster town centre in accordance with Policy TCR2 of the Herefordshire Unitary Development Plan and the National Planning Policy Framework.

Condition 8 to be amended to refer to the A44 and not the A40.

Additional condition to reflect the advice of the Council's Archaeologist to read as follows:

No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority. This programme shall be in accordance with a brief prepared by the County Archaeology Service.

Reason: To ensure the archaeological interest of the site is recorded and to comply with the requirements of Policy ARCH6 of Herefordshire Unitary Development Plan and the National Planning Policy Framework.

**P141024/F - PROPOSED ERECTION OF 4 NOS. POULTRY BUILDINGS, ASSOCIATED FEED BINS, HARD-STANDINGS AND ACCESS ROAD AT LAND AT FLAG STATION, MANSELL LACY, HEREFORD, HR4 7HN**

**For: Mr Davenport per Mr Ian Pick, Llewellyn House, Middle Street, Kilham, Driffield, YO25 4RL**

## **ADDITIONAL REPRESENTATIONS**

A further objection from Marches Planning and Property Consultancy(MPPC) on behalf of Mr Palmer

This objection is made on behalf of Mr and Mrs Palmer of Cirrus Holiday Lettings, owners of Shetton Barns, Mansel Lacy.

The proposed development should be refused on the grounds that neither the application nor the application site show all of the development proposed in breach of the EIA Regulations 2011, that the proposed development would have an unacceptable impact on a nearby tourist business and on residential amenity and that it would be sited on Grade A agricultural land.

### **1) Scope of Development**

This application is for four poultry buildings, associated feed bins, hard standing and access road. It is a requirement of poultry units that they are heated and thus the



biomass boilers and the building that contains the boilers and stores the fuel forms an integral part of the development. Despite this, neither the application nor the drawings show the boiler shed.

However, the building that will house the boilers is shown on plans accompanying the Environmental Permit for this development (appendix 1)

The applicant has confirmed in an email to one objector that the units will be heated by biomass boiler (appendix 2).

The boiler building is shown in field outside the application site and thus has not been subjected to any assessment for its impact on the landscape, heritage assets or residential amenity.

**Schedule 4 of the Environmental Impact Assessment Regulations 2011 requires:**

### **1. Description of the development, including in particular—**

**(a) a description of the physical characteristics of the *whole* development and the land-use requirements during the construction and *operational* phases;**  
(our italics)

Thus the boilers which heat the unit, and the infrastructure to support it, must be considered as part of the whole EIA application.

The boiler building cannot be constructed as General Permitted Development following amendments under The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2012 no 748:

### **Amendment in relation to agricultural land**

**2. (1) Part 6 of Schedule 2 (agricultural buildings and operations) is amended as follows.**

**(2) In Class A, after paragraph (i) of paragraph A.1 (development not permitted) insert—**

**(j) any building for storing fuel for or waste from a biomass boiler or an anaerobic digestion system—**

**(i) would be used for storing waste not produced by that boiler or system or for storing fuel not produced on land within the unit; or**

**(ii) is or would be within 400 metres of the curtilage of a protected building.”**

**(3) In Class A, in paragraph (1)(a) of paragraph A.2 (conditions) after “for the storage of slurry or sewerage sludge” insert “, for housing a biomass boiler or an anaerobic digestion system, for storage of fuel or waste from that boiler or system, or for housing a hydro-turbine.”**

**(4) In Class B, after paragraph (e) of paragraph B.1 (development not permitted) insert—**

**(f) any building for storing fuel for or waste from a biomass boiler or an anaerobic digestion system would be used for storing waste not produced by that boiler or system or for storing fuel not produced on land within the unit.”**

## **2) Land Use**

The proposed development would be sited on Grade A agricultural land in contravention of NPPF guidance:

**112. Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality**

The site also falls under land currently in a Higher Level Stewardship scheme. Thus the development would waste public funds, which have been spent on improving biodiversity on this land.

## **3) Tourist Assets and Residential Amenity**

The proposed development would be 300m away from Shetton Barns, a complex of high quality holiday lets, which also host weddings and conferences. There are also 11 homes within 400m of the site.

Shetton Barns has a five-star rating on Trip Advisor, the UK’s main online source of information for tourists. Reviews describe the “peaceful” and “beautiful” location.

While the applicant asserts that the impact on Shetton Barns and nearby residences would be minimal, the evidence used to back up these claims contains major flaws.

The odour and noise assessments for the proposed development were based on a maximum crop of 180,000 birds, but the applicant simultaneously applied for an environmental permit for 257,000 birds. This permit was granted on 31st July 2014, after the Environment Agency was advised that the development had received planning consent.

The Environment Agency department which grants the environmental permit does not examine the odour and noise reports submitted with the planning application and will not, therefore, have been aware of the discrepancy in crop numbers. (See email at Appendix 3, which sets out EA procedures.)

The EA in its response to this application, advised the planning authority to assess the impact of the proposed development on amenity, reminding the council of its duty under Paragraph 122 of the NPPF to:

**“...focus on whether the development itself is an acceptable use of land, and the impact of the use, rather than the control of the processes or emissions themselves where these are subject to approval under pollution control regimes.”**

The EA response continued: **“you should seek adequate “assessment of material planning issues (odour, noise, etc.) when considering the impact of the use at the proposed location.”**

So although the Environment Agency granted the Environmental Permit, it did so under the apprehension that the planning authority had approved the application having taken into account the likely impacts on amenity.

In addition to failing to consider maximum crop numbers, the odour and noise reports also under-assess the number of crop cycles per year. On a 42-day cycle there would be 8.7 crops per year. There is no indication given - nor is it likely - that the units would be vacant for any period longer than that required for clean-out.

Thus the odour and noise assessments for this proposed development have understated the potential nuisance caused by at least one third.

### Noise

- The consultant who carried out the noise assessment placed noise monitor positions at two points close to the existing farm at Flag Station, rather than at the properties that will be affected and thus did not get an accurate indication of background levels. The noise will be in addition to, not a replacement of, existing levels.
- The noise assessment assumes that transport movements will occur between the hours of 0700 and 1900 and has assessed traffic noise against daytime background noise levels, whereas the grown birds are unloaded from the sheds and transported overnight whilst roosting.
- The noise assessment has not considered the noise created when the feed is blown into the hoppers every 36 hours during the growing cycle.

In its response to the Noise Assessment, the Environment Agency advised that:

“if actual emissions from the broiler unit are greater than those modelled, your council should recognise the potential limitations of further noise reduction using commercially available techniques.”

Thus given that the noise assessment has not allowed for the potential number of birds and has failed to assess the impact of overnight traffic or of that created by feed deliveries, there is an unacceptable likelihood that the development would disturb the peace and quiet so valued by visitors to Shetton Barns. Once this nuisance has been created, the EA does not have the means to address this problem.

### Odour

- The odour report makes no assessment of the smell caused when the units are cleared of litter at the end of each cycle, even though it states the odour “is likely to be greater than any emission that might occur when the birds are in the house.”

- The assessment contains a table (Table 1) of the odour emission rates per bird anticipated, but does not explain how these values have been arrived at. This data differs significantly from the odour per bird data submitted by the same applicant and consultant for other broiler unit planning applications, where the nearest receptors have been more distant.

For example, the odour report for this application gives a summer average odour unit per bird (OU<sub>E</sub>/s) of 0.203 during the summer and 0.181 in the spring. The odour report submitted with the application to Wychavon District Council for two broiler units at Upton Snodsbury (application no. W/13/01511/OU) was based on summertime average odour units per bird of 0.3578 and springtime ones of 0.3003.

- The odour assessment has been calculated on the basis of an empty period of 10 days after each crop, whereas the Environmental Statement gives the empty period as seven days.

The EA said in its response to the application that “If the odour was significantly above this indicative threshold we may have serious concerns regarding short term more intense odour events typically associated with the late stages of the crop cycle and clean out.”

Given that the odour assessment has underestimated the number of birds, the frequency of the crop cycles and the periods of vacancy, the odour is certain to exceed the “indicative threshold”.

The EA also pointed out that the Odour Management Plan that will form part to an Environmental Permit:

**“...may not necessarily prevent all odours at levels likely to cause annoyance.”**

The EA continues **“the OMP requirement is often a reactive measure where substantiated complaints are encountered. The OMP can reduce the likelihood of odour pollution but is unlikely to prevent odour pollution when residents are in proximity to the units and there is a reliance on air dispersion to dilute odour to an acceptable level.”**

While periods of bad odour may be unpleasant for nearby residents, they would be disastrous for the tourist business 300m away. The smell and disturbance from clean out would seriously undermine the enjoyment of visitors and would destroy the experience of a wedding hosted at the venue.

#### Visual Impact

- The proposed development would be visible from the both the holiday lets, which are some 300m away and several other residential units within 400m.
- Although there are some trees screening the site, these are insufficiently dense or tall to screen the proposed buildings - as demonstrated by a visualisation previously provided by my client. The trees to the immediate

west - and so between the proposed development and Shetton Barns - are deciduous and would provide minimal screening in winter.

- Planting of coniferous trees would not be in keeping with the local landscape and would further damage the landscape, while native deciduous trees would take many years to grow and only provide visual protection for half of the year, while the tourism business operates throughout the seasons.

Given the uncertainties expressed by the Environment Agency about the impact of odour and noise on sensitive receptors, the proposed development poses a serious and unacceptable threat to the tourism business at Shetton Barns.

A single negative comment about noise or smell on a site such as TripAdvisor could destroy the business, which employs five people as well as local service people. Not only that, but it would have wider implications, damaging the county's image as a peaceful and unspoilt place to visit.

Tourism spending supported over 8,500 jobs in Herefordshire in 2009 and since GVA from tourism has risen since then, it now probably accounts for many more. Tourism contributed £468m to Herefordshire's GVA in 2011, compared with just £188m from agriculture, according to the Office for National Statistics.

That is why Herefordshire Council is seeking to promote tourism through its Tourism Strategy, which lists among the council's strengths its, "scenic landscape." The strategy says tourism is "crucial for the economic and environmental sustainability of the entire county." It stresses the need for "characterful accommodation that is designed and operated to meet the particular needs of the market" - accommodation such as Shetton Barns.

\*\*\*\*\*

**An additional letter from MPPC** sets out concern about the procedural element of the Environmental Impact Statement as follows;

1) The Environmental Statement submitted does not assess the whole of the development proposed, in breach of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011

2) The biomass boilers and the building that contains the boilers and stores the fuel form an integral part of the development (or, to use the language of the EIA Directive and the European case law, the project). Despite this, the Environmental Statement contains no assessment of the boilers/the boiler building.

As the application redline has been drawn so as to exclude the boiler building, it has not been subjected to any assessment for its impact on the landscape, heritage assets, residential amenity, or other environmental effects.

As a result, the Environmental Statement that the applicant has provided is unlawful for failure to comply with Schedule 4 to the EIA Regulations 2011, in particular paragraphs 1 and 4 of that Schedule:

3) The boilers which heat the unit, and the infrastructure to support them, including the boiler building proposed close to Flag Station, must be considered as part of the whole of this Schedule 1 application.

There is a great deal of high authority on this point, beginning with a decision of Mr Justice Sullivan (as he then was) in the *Milne* case (involving a retail park) and continuing through to the decision of the Court of Appeal in *R (Brown) v Carlisle City Council* case (about Carlisle Airport). There is also the more recent decision of the Court of Appeal in *R (Burrige) v Breckland DC*.

The essential point from the case law is that an Environmental Statement must assess the development or project as a whole, even if the application for planning permission is only in respect of part of the development. If the other omitted part of the development or project is an integral part of the development or project, then it cannot be excluded from the Environmental Statement.

This is tied up with the case law that warned against the “salami slicing” of projects.

I attach for your information, the three cases mentioned. If the Council were to grant permission on the basis of what it has we believe it would be committing an error of law.

\*\*\*\*\*

**An e-mail from the Env Agency to Helen Hamilton (MPPC) regarding the Environmental Permit stating**

‘I can confirm that as the permit application was for 257,000 bird places we did not consider the odour or noise modelling reports in detail as these were for 180,000 bird places.

A permit applicant is required to produce an odour management plan and a noise management plan if there are sensitive receptors within 400 metres of the proposed site boundary. Sensitive receptors include residential properties, schools and businesses etc but not properties owned or occupied by the farm itself. The applicant is not required to submit odour or noise modelling information but may do so.

I believe that the Planning Authority should itself consider the Environmental Impact Assessment and in particular the noise and odour assessments when deciding whether the proposed development is suitable for the locality. This is stated in the third paragraph of the letter which the Agency has sent to the Planning Authority (please see attached).’

\*\*\*\*\*

**An e-mail from Env Agency to Mark Tansley**

‘I can confirm that the permit was issued without prejudice or regard to the planning status of the site. We however consulted Herefordshire Council Planning Services and Environmental Health about this application prior to determination and no issues were received.

I can also confirm that the operator will have to comply with all the conditions in their Environmental Permit and other permissions it holds. Failure to comply could ultimately lead to a revocation of the permit.

\*\*\*\*\*

**A question was raised regarding location of the alternative sites the agent confirmed**

We had a site meeting with Mr Mullineux to look at alternative sites. The sites were adjacent to the existing farmstead at Yazor Court. These were dismissed because they are very visible from the A480 and close to the listed Yazor Church.

\*\*\*\*\*

**A letter of support from Joanna Hilditch Whittern farms Ltd Lyonshall** which in addition to the importance of Cargill Meats to Herefordshire advises that there are 22 poultry sheds inside a 700 acre farm near Lyonshall in the middle of which she has a 5 Star gold holiday let and 4 other lets on the same holding,.In total sleeping 54 people.' During the entire time we have been running the luxury holiday lets we have neverhad a single complaint about the chicken sites or smells, this is for over 10 years.'

## **OFFICER COMMENTS**

The proposed development does not include a biomass boiler. Any such proposal will need to be subject to a further planning application. The proposal is to house 180,000 birds, not 257,000. So that there is no doubt on this matter a condition can be added to that effect. It is understood that the applicant sought the additional elements in the Environmental Permit to cover potential expansion in the future.

The fact that the Env Agency were prepared to issue a permit for more than a third more birds than currently proposed and a biomass boiler, does not mean that a planning application for them would not be required.

The applicant's agent advises that the agricultural land classification is 3B.

In response to the recent letter reported above the Environmental Health Officer advises,

Having had opportunity to consider the letter of objection dated September 2014 from the Marches Planning & Property Consultancy I would make the following observations:-

### **Noise**

- The background levels reported in the noise assessment are typical of the levels experienced in a rural locality and as such are consistent with what would be expected at receptor/neighbouring properties. I have no reason to suspect that they are not an accurate indication of the existing background levels.
- The reference to additional noise, not replacement of, existing levels is puzzling in that BS4142, the standard used to assess the acceptability of the noise produced by the development considers the specific noise (noise produced by the development) against existing background levels. It takes into account the difference and advises as to the likelihood of complaint. It does not consider the acceptability of combined noise levels. Advice is provided on noise levels affecting living areas by the World Health Organisation and reflected by BS 8233:2014; however the introduction of the noise from these poultry houses would be insignificant in raising the combined noise to an unacceptable level.
- The noise assessment addresses noise from transport movements only between 0700 and 1900; The use of BS 4142 is restricted where noise levels are very low as might be found in this situation. The Environmental Permit issued by the Environment Agency considers the acceptability of noise levels and the control methods. Should problems occur the Agency can vary this permit to require that improved controls are in put in place however these would not necessarily include traffic movements

outside the permitted site. If this is considered to be an issue consideration could be given to imposing a condition with any planning permission prohibiting deliveries between 1900 and 0700.

- Noise from the blowing of feed into hoppers is a relatively short operation and due to the distance from neighbours I would not expect it to be a problem however if this should not be so the Environment Agency could put controls in place e.g. restricting night time deliveries etc.

### **ODOUR**

- The odour assessment does appear to consider smell caused when the units are cleaned of litter. I would refer you to last 2 paragraphs of section 5, page 16 of the report and to the last paragraph on page 2 of Environment Agency's letter dated 9/5/14. Also due the relatively short duration of the cleaning process it would be unlikely to be the cause statutory nuisance.
- I am unable to comment on the anticipated odour rates per bird.
- I would expect that the discrepancy between the numbers of empty days is insignificant.
- The extract from the Environment Agency's letter 'if odour was significantly above this indicative threshold we may have serious concerns regarding short term more intense odour events typically associated with the late staged of the crop cycle and clean out' taken from the above mentioned paragraph on page2/3 appears to have been taken out of context. The paragraph read in its entirety it advises that a higher indicative threshold is used for these short term events and that they do not perceive odour to be a problematic issue.

### **CONCLUSION**

The Environment Agency permits this type of operation and has to be satisfied that it can operate without causing undue environmental harm and I understand that such a permit can be issued without a planning permission having been granted. The Agency requires that applicants for such permits provide suitable supporting information on which they can base their decision. It would appear that they are satisfied that a larger poultry rearing operation than the one subject to this planning application can comply with their requirements.

Experience of other similar poultry rearing operations suggests that due to the separation distance from sensitive receptors that nuisance is unlikely  
I trust this is of assistance to you.

### **CHANGE TO RECOMMENDATION**

Additional condition limiting number of chickens to 180,000.

Note to applicant; The permission does not extend to a biomass boiler, a separate application for which would be required.