

AGENDA

Planning Committee

Date: **Wednesday 22 February 2012**

Time: **10.00 am**

Place: **The Shirehall, St Peter's Square, Hereford**

Notes: Please note the **time, date** and **venue** of the meeting.

For any further information please contact:

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If you would like help to understand this document, or would like it in another format or language, please call Ricky Clarke, Democratic Services Officer on 01432 261885 or e-mail rclarke@herefordshire.gov.uk in advance of the meeting.

Agenda for the Meeting of the Planning Committee

Membership

Chairman	Councillor PGH Cutter
Vice-Chairman	Councillor BA Durkin
	Councillor PA Andrews
	Councillor AN Bridges
	Councillor PJ Edwards
	Councillor DW Greenow
	Councillor KS Guthrie
	Councillor J Hardwick
	Councillor AJ Hempton-Smith
	Councillor JW Hope MBE
	Councillor RC Hunt
	Councillor Brig P Jones CBE
	Councillor JG Lester
	Councillor MD Lloyd-Hayes
	Councillor G Lucas
	Councillor RI Matthews
	Councillor FM Norman
	Councillor GR Swinford
	Councillor PJ Watts

GUIDANCE ON DECLARING PERSONAL AND PREJUDICIAL INTERESTS AT MEETINGS

What is a personal interest?

You have a personal interest in a matter if that matter affects the well-being or financial position of you, your relatives or people with whom you have a close personal association more than it would affect the majority of other people in the ward(s) to which the matter relates.

A personal interest can affect you, your relatives or people with whom you have a close personal association positively or negatively. If you or they would stand to lose by the decision, you should also declare it.

You also have a personal interest in a matter if it relates to any interests, which you must register.

What do I need to do if I have a personal interest?

You must declare it when you get to the item on the agenda headed "Declarations of Interest" or as soon as it becomes apparent to you. You may still speak and vote unless it is a prejudicial interest.

If a matter affects a body to which you have been appointed by the authority, or a body exercising functions of a public nature, you only need declare the interest if you are going to speak on the matter.

What is a prejudicial interest?

You have a prejudicial interest in a matter if;

- a) a member of the public, who knows the relevant facts, would reasonably think your personal interest is so significant that it is likely to prejudice your judgment of the public interest; and
- b) the matter affects your financial interests or relates to a licensing or regulatory matter; and
- c) the interest does not fall within one of the exempt categories at paragraph 10(2)(c) of the Code of Conduct.

What do I need to do if I have a prejudicial interest?

If you have a prejudicial interest you must withdraw from the meeting. However, under paragraph 12(2) of the Code of Conduct, if members of the public are allowed to make representations, give evidence or answer questions about that matter, you may also make representations as if you were a member of the public. However, you must withdraw from the meeting once you have made your representations and before any debate starts.

AGENDA

	Pages
1. APOLOGIES FOR ABSENCE	
To receive apologies for absence.	
2. NAMED SUBSTITUTES (IF ANY)	
To receive details any details of Members nominated to attend the meeting in place of a Member of the Committee.	
3. DECLARATIONS OF INTEREST	
To receive any declarations of interest by Members in respect of items on the Agenda.	
4. MINUTES	1 - 12
To approve and sign the Minutes of the meeting held on 1 February 2012.	
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To receive any announcements from the Chairman.	
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Proposed replacement of conservatory with dining room.	
10. S113513/CD - WATERFIELD ROAD, HEREFORD, HR2 7EL	87 - 94
Construction of carpark and footway / cycleway off Waterfield Road for the Belmont Haywood Country Park.	
11. SINGLE ENFORCEMENT AND PROSECUTION POLICY	95 - 100
To consider the adoption of a Single Enforcement and Prosecution Policy for all relevant activities undertaken by Herefordshire Council.	
Single Enforcement & Prosecution Policy	101 - 110
12. DATE OF NEXT MEETING	
Date of next site inspection -	13 March 2012
Date of next meeting -	14 March 2012

The Public's Rights to Information and Attendance at Meetings

YOU HAVE A RIGHT TO:-

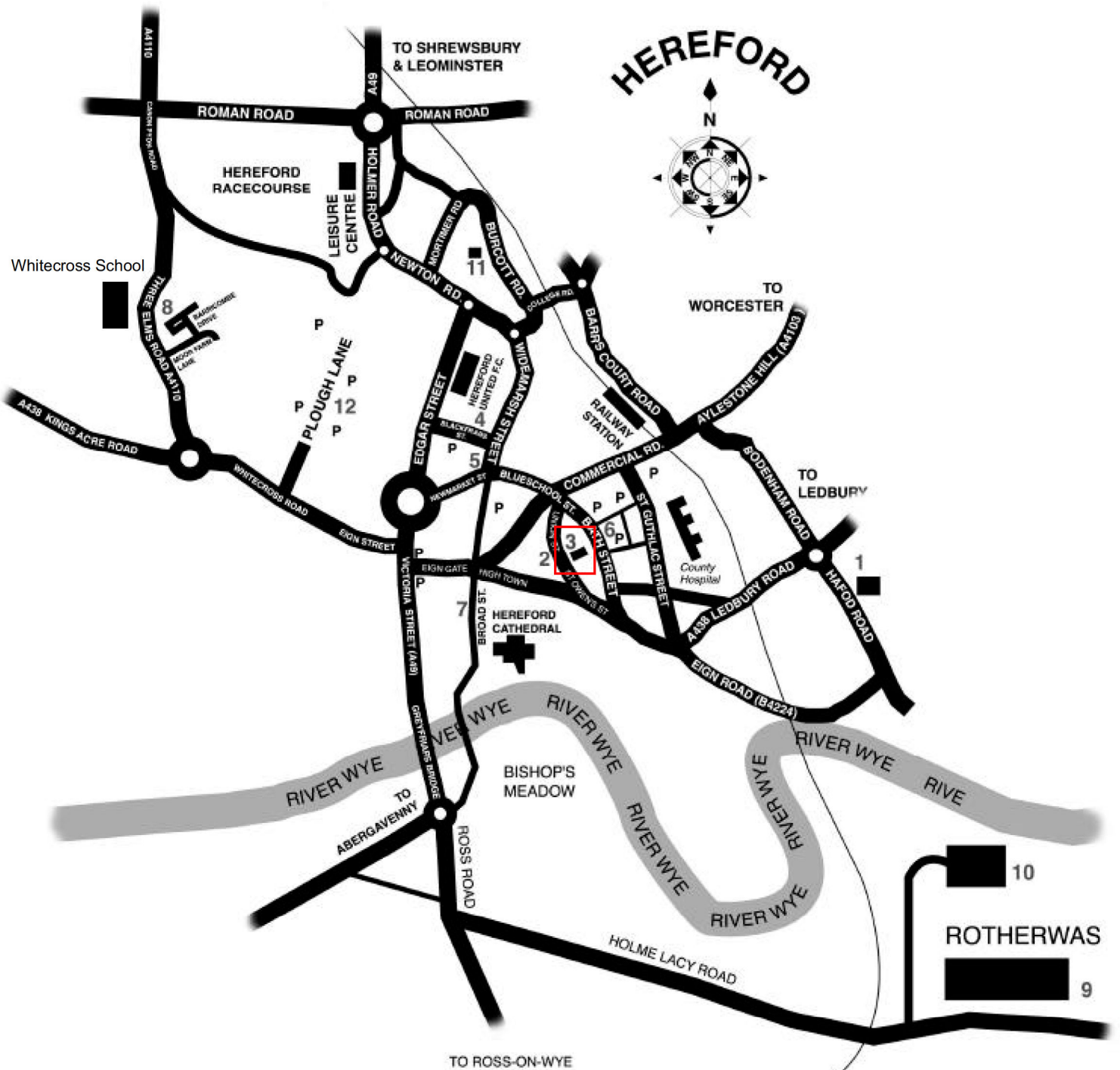
- Attend all Council, Cabinet, Committee and Sub-Committee meetings unless the business to be transacted would disclose 'confidential' or 'exempt' information.
- Inspect agenda and public reports at least five clear days before the date of the meeting.
- Inspect minutes of the Council and all Committees and Sub-Committees and written statements of decisions taken by the Cabinet or individual Cabinet Members for up to six years following a meeting.
- Inspect background papers used in the preparation of public reports for a period of up to four years from the date of the meeting. (A list of the background papers to a report is given at the end of each report). A background paper is a document on which the officer has relied in writing the report and which otherwise is not available to the public.
- Access to a public Register stating the names, addresses and wards of all Councillors with details of the membership of the Cabinet, of all Committees and Sub-Committees.
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- Have access to a list specifying those powers on which the Council have delegated decision making to their officers identifying the officers concerned by title.
- Copy any of the documents mentioned above to which you have a right of access, subject to a reasonable charge (20p per sheet subject to a maximum of £5.00 per agenda plus a nominal fee of £1.50, for postage).
- Access to this summary of your rights as members of the public to attend meetings of the Council, Cabinet, Committees and Sub-Committees and to inspect and copy documents.
- A member of the public may, at a meeting of the full Council, ask a Cabinet Member or Chairman of a Committee any question relevant to a matter in relation to which the Council has powers or duties or which affects the County as long as a copy of that question is deposited with the Monitoring Officer eight clear working days before the meeting i.e. by 12:00 noon on a Monday in the week preceding a Friday meeting.

Public Transport Links

- The Shirehall is ten minutes walking distance from both bus stations located in the town centre of Hereford. A map showing the location of the Shirehall is found opposite.



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|---|------------------|----|-----------------------------------|
| 1 | Brockington | 7 | Kemble House |
| 2 | Town Hall | 8 | Trinity House |
| 3 | Shire Hall | 9 | Thorn Office Centre |
| 4 | Education Centre | 10 | Herefordshire Commercial Services |
| 5 | Garrick House | 11 | Merchant House |
| 6 | Bath Street | 12 | Plough Lane |

FIRE AND EMERGENCY EVACUATION PROCEDURE

IN CASE OF FIRE

(no matter how small)

1. Sound the Alarm
2. Call the Fire Brigade
3. Fire party - attack the fire with appliances available.

ON HEARING THE ALARM

Leave the building by the nearest exit and proceed to assembly area on:

GAOL STREET CAR PARK

Section Heads will call the roll at the place of assembly.

HEREFORDSHIRE COUNCIL

MINUTES of the meeting of Planning Committee held at The Council Chamber, Brockington, 35 Hafod Road, Hereford on Wednesday 1 February 2012 at 10.30 am

Present: Councillor PGH Cutter (Chairman)
Councillor BA Durkin (Vice Chairman)

Councillors: PA Andrews, CNH Attwood, AN Bridges, PJ Edwards, DW Greenow, KS Guthrie, J Hardwick, JW Hope MBE, RC Hunt, JA Hyde, Brig P Jones CBE, JLV Kenyon, JG Lester, MD Lloyd-Hayes, FM Norman, R Preece and P Sinclair-Knipe

In attendance: Councillors AJM Blackshaw and A Seldon

122. APOLOGIES FOR ABSENCE

Apologies were received from Councillors G Lucas, RI Matthews, GR Swinford and PJ Watts.

123. NAMED SUBSTITUTES (IF ANY)

In accordance with paragraph 4.1.23 of the Council's Constitution, Councillors JA Hyde, R Preece, CNH Attwood and P Sinclair-Knipe attended the meeting as substitute members for Councillors G Lucas, RI Matthews, GR Swinford and PJ Watts.

124. DECLARATIONS OF INTEREST

9. DMN/111770/F - LAND ADJACENT TO 4 VALENTINE COURT, CANON PYON, HEREFORD, HR4 8NZ.

Councillor DW Greenow, Personal, The Councillor knows the farmer who farms the land.

10. DMS/113120/F - MARSH FARM, TANHOUSE ROAD, UPTON BISHOP, HEREFORDSHIRE, HR9 7UP.

Councillor PGH Cutter, Personal, The Councillor knows the applicant.

11. DMS/112643/F & DMS/113213/G - WESTHOLME, FOWNHOPE, HEREFORDSHIRE, HR1 4NN.

Councillor J Hardwick, Personal, The Councillor is a Member of the Wye Valley AONB Board; owns land adjacent to the site; and knows the applicant.

11. DMS/112643/F & DMS/113213/G - WESTHOLME, FOWNHOPE, HEREFORDSHIRE, HR1 4NN.

Councillor JA Hyde, Personal, The Councillor is a Member of the Wye Valley AONB Board.

11. DMS/112643/F & DMS/113213/G - WESTHOLME, FOWNHOPE, HEREFORDSHIRE, HR1 4NN.

Councillor PGH Cutter, Personal, The Councillor is a Member of the Wye Valley AONB Board.

125. MINUTES

Councillor DW Greenow advised the Committee that his declaration of Interest had been incorrectly recorded in respect of application DMN/111770/F as he did not know the applicant but knew the farmer who farmed the land.

RESOLVED: That subject to the amendment detailed above the Minutes of the meeting held on 11 January 2012 be approved as a correct record and signed by the Chairman.

126. CHAIRMAN'S ANNOUNCEMENTS

There were no announcements.

127. APPEALS

The Planning Committee noted the report.

128. DMN/111899/O - PORTHOUSE FARM, TENBURY ROAD, BROMYARD, HEREFORDSHIRE

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. He advised the committee that the principle of development on the site had been established in the UDP and had been reaffirmed in 2010 when the policy was saved. He added that the objection in respect of the allocation of the site for housing had been heard by an Inspector appointed by the Secretary of State at a Public Inquiry who had concluded that the land was suitable as a residential allocation.

In summing up he confirmed that the inspector had stated that there was no technical evidence to indicate that the allocation for residential use was inappropriate. He added that the application before the Committee was for outline permission and that therefore the only issues for consideration were the technical issues and the vehicular access.

Members were advised of amendments to three of the conditions contained within the Officer's recommendation of approval for the application. It was also noted that following further consultation four additional trees had been added to the negotiated scheme.

In accordance with the criteria for public speaking, Mr Davis, representing Bromyard & Winslow Town Council, and Mr McGladdery, speaking on behalf of some of the local businesses who had objected to the application, both spoke in objection to the application and Mr Hewitt, representing the applicant, spoke in support.

In accordance with paragraph 4.8.2.2 of the Council's Constitution, Councillor A Seldon, one of the local ward members, commented on a number of issues, including:

- The Town Council had debated the pros and cons of the application at length over a considerable amount of time.
- The UDP could be amended by a resolution at Full Council.
- The land had been designated for industrial usage prior to 2007.
- The allocated industrial land at Linton was not, or was unlikely to be, deliverable.
- The application failed to address three key points in respect of density, the increase in traffic along Tenbury Road, and noise.

Councillor JG Lester, the other local ward member, also commented on a number of issues, including:

- The site visit had proved beneficial and the attendees were thanked.
- The application would have a detrimental effect on industry in Bromyard.

- The application highlighted the issues resulting in siting two incompatible land uses in close proximity.
- The applicant had worked closely with Polytec Holden, which was noted and welcomed.
- The Inspector's report stated that the site could accommodate 87 dwellings yet the application was for up to 127 dwellings.
- The applicant was unable to predict further noise that could result of new machinery or operations at the nearby industrial estate.
- The application was contrary to Policy H2 of the Council's Unitary Development Plan.
- Businesses on the industrial estate could be afraid to expand their operations due to neighbour concerns in respect of noise.
- The proposed bund would not address the noise concerns adequately.
- The original objections in respect of the application being contrary to UDP Policies DR2, DR13, H13 and PPG 24 still remains.
- The Transport Manager's comments in paragraph 5.23 of the report were disputed.
- The application would result in the allocated land being detached from the rest of the town and would be contrary to policy DR1 of the UDP.

The debate was opened with a member questioning the suitability of the proposed access and questioning whether it had been subject to any objections as the report stated at paragraph 6.2 that no objections had been raised in respect of the access. The Member continued to address his concerns in respect of the application with particular reference being made to the lack of industrial land in Bromyard should the application be approved. He noted that there didn't appear to be a strong policy case to refuse the application but felt that he would not be able to support it.

One Member of the Committee stated that he would be happy to move the recommendation subject to the resolution of three issues. He requested clarification in respect of the density of the proposed development; the speed limit on Tenbury Road; and further details in respect of the noise of the outdoor activities taking place on the nearby industrial estate.

The issue of density was addressed with the Principal Planning Officer explaining that the site had been found to be larger than initially thought at the deposit stage of forming the UDP Policy. He stated that detailed analysis had proved that a larger number of dwellings could be accommodated and that 127 dwellings on the site would result in a density of 32.63 dwellings per hectare. The Committee were reminded that the actual number of dwellings would be determined at the reserved matters stage.

In response to an issue raised by the previous speakers the Principal Planning Officer advised that it would be beneficial to include a condition requiring the access to be completed prior to the development being commenced; that the speed limit on the road would be reduced in the future; and that the public space concerns were addressed in condition 14 of the recommendation.

The Member still had concerns in respect of noise and felt that this could be addressed through an increase to the height of the proposed bund. In response to this point the Principal Planning Officer advised that the analysis from the Councils' Environmental Health team had indicated that the bund was sufficient and that there would not be a requirement to increase its height. The Member therefore felt that he could not support the application in its current format.

In response to the issue raised in respect of industrial land allocation at Linton, the Assistant Director - Economic, Environment & Cultural Services confirmed that the Council were actively seeking alternative employment land at Linton.

The Committee continued to debate the application and noted that the current application was solely for outline permission and that the detail could be determined at a later date. They noted that affordable housing was required throughout the County and that the proposed development would help to regenerate Bromyard.

In response to a question regarding the local ward members' input in the draft heads of terms, the Assistant Director - Economic, Environment & Cultural Services confirmed that the local ward members would be involved in the discussion regarding allocation of the Section 106 funds.

Further discussion took place in respect of the neighbouring businesses, it was noted that Polytec Holden had been consulted with but members requested clarification in respect of the number of other businesses in the vicinity and whether they had also been subject to the consultation. It was noted that there were a number of different industrial uses on the nearby industrial estate and that some of them had objected to the application.

Further concern was expressed in respect of the noise concerns. Members noted that there were instances of 'metal on metal' noise during the site visit and that these noise disturbances would be difficult to control. It was also noted that the noise levels from the industrial estate could increase subject to a new business type moving into one of the existing units, it was felt that this future issue could not be addressed through the noise controls recommended.

In response to the noise issue, the Principal Planning Officer confirmed that the noise consultants had considered all of the units on the industrial estate and not just Polytec Holden. He also advised the Committee that the proposed conditions in respect of noise would also improve the noise issues for existing dwellings in the vicinity.

In response to a question regarding the policy issues in respect of the application, the Assistant Director - Economic, Environment & Cultural Services advised that the Committee should give significant weight to the Council's Unitary Development Plan and that even more weight should be given as the issue in question regarding the allocation of the land had been tested through a Public Inquiry. He reminded the Committee that they should determine the application on its merits and should steer away from debating the UDP, the forthcoming LDF or the employment options in Bromyard.

Councillors A Seldon and JG Lester were given the opportunity to close the debate. They reiterated their opening remarks and made additional comments, including:

- There was a lack of empty industrial units in Bromyard
- Specialised companies tend to build custom units as and when required.
- The proposal of housing in Bromyard was supported but there were other, more suitable, sites.
- The Inspector's comments were in respect of 87 dwellings and not the 127 proposed within the application.
- The ambient noise levels in the area were very low.
- If forklift truck reversing indicators had to be silenced in the evenings it was evident that the bund would not work.
- Concerned in respect of the long term prospects for Bromyard.

A motion to approve the application in accordance with the Principal Planning Officer's recommendation and subject to the additional conditions and amended conditions referred to in the Members' Update Sheet and during the debate was lost.

The Assistant Director - Economic, Environment & Cultural Services and the Locum Lawyer - Planning and Regulatory discussed the legal implications in respect of the application being refused contrary to the Principal Planning Officer's recommendation in accordance with paragraph 5.13.10 of the Council's constitution. They were both of the opinion that a refusal would be difficult to successfully defend and felt that the Committee would benefit from further technical information in respect of noise issues and the viability and benefits of increasing the bund height. The Committee were therefore requested to defer the determination of the application pending a further information report.

RESOLVED

THAT the determination of the application be deferred in accordance with paragraph 5.13.10 of the Council's constitution pending a Further Information Report in respect of noise concerns and the viability and benefits of increasing the bund height.

129. DMN/111900/N - PORTHOUSE FARM, TENBURY ROAD, BROMYARD, HEREFORDSHIRE, HR7 4NS

The Committee noted that the application was linked to the previous agenda item which had been deferred pending a further information report. It was therefore felt that it would be in the interest of all concerned to defer the determination of the application until such a time that application DMN/111899/O was determined.

RESOLVED

THAT the determination of the application be deferred.

130. DMN/111770/F - LAND ADJACENT TO 4 VALENTINE COURT, CANON PYON, HEREFORD, HR4 8NZ

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.

In accordance with the criteria for public speaking, Mr Drew, representing Pyons Group Parish Council, and Mrs McLeod, a neighbouring resident, spoke in objection to the application and Miss Wright, the applicant, spoke in support.

In accordance with paragraph 4.8.2.2 of the Council's Constitution, Councillor AJM Blackshaw, the local ward member, commented on a number of issues, including:

- The site proposed by the Parish Council and the local residents in their submission should be considered.
- The exception to Unitary Development Plan H10 was only valid if there were no other suitable sites within the settlement boundary.
- The Committee could focus on the UDP or could embrace the themes coming from the LDF and the Localism Act.
- The proposed layout was contrary to UDP policy DR1.

Members discussed the application and felt that the site inspection had been extremely beneficial in assisting them in addressing the concerns raised by the local residents and the parish Council. They also thanked the Principal Planning Officer for highlighting the alternative site proposed by the Parish Council during the site visit.

The Committee noted that a hedge was proposed to be removed as part of the application and it was felt that this could have a detrimental impact on pedestrian safety.

In response to a question, the Assistant Director - Economic, Environment & Cultural Services advised that if the application had been for open market housing it would have been contrary to policy however as it was for affordable housing it fell into an exception category. He advised Members that they should determine the application on its merits as a rural exception.

Members continues to debate the application and felt that the concerns raised by the Parish Council and the local residents would be given significant weight in determining the application.

The issue of density of the proposed site was also raised with the committee of the opinion that 14 dwellings on the site may result in over intensification. Members also questioned whether the design of the development was in keeping with the village of Canon Pyon with a number of Members expressing concern in respect of the layout of the proposed dwellings, with the gable end adjacent to the road.

Members appreciated the sustainable aspect of the proposed development and welcomed the inclusion of photovoltaic solar panels as part of the application. It was also noted that the application was on a bus route, further enhancing the sustainable nature of the proposal. However it was still considered that the application site was not in the right place and that the site should be protected.

In response to a question regarding the proposed replacement footpath, the Principal Planning Officer confirmed that it would be widened to two metres.

Councillor AJM Blackshaw was given the opportunity to close the debate. He reiterated his opening remarks and made additional comments, including:

- The Localism Act was at the heart of decentralisation and should be at the forefront of Members thinking.
- The applicant was encouraged to engage with the Parish Council and further encouraged to consider a development on the alternative site proposed.

Neither the Head of Neighbourhood Planning nor the Locum Lawyer, representing the Monitoring Officer, requested a further information report and the Committee therefore proceeded to the vote where the resolution as set out below was agreed.

RESOLVED

THAT the application be refused for the following reasons:

- 1. The design and layout of the application is out of character with the village of Canon Pyon.**
- 2. There would be a significant environmental impact as a result of the loss of the mature hedgerow.**

131. DMS/113120/F - MARSH FARM, TANHOUSE ROAD, UPTON BISHOP, HEREFORDSHIRE, HR9 7UP

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.

The Senior Planning Officer confirmed that there was an error in the title of the report and that 'Tanhouse Road' should be amended to read 'Tanhouse Lane'.

In accordance with paragraph 4.8.2.2 of the Council's Constitution, Councillor BA Durkin, the local ward member, commented on a number of issues, including:

- He agreed with the Officer's report.
- The refurbishment to the house and barn was welcomed.
- The Parish Council was also in support of the application.

RESOLVED

That planning permission be granted subject to the following conditions:

- 1. The development hereby permitted shall be begun before the expiration of one year from the date of this permission.**

Reason: To comply with the provisions of Section 91(1) (b) of the Town and Country Planning Act 1990 (as amended) and to reflect the decision of the local planning authority on 4 March 2009 to suspend (effective from 1 April 2009) the requirements of the Authority's Planning Obligations Supplementary Planning Document (February 2008) in relation to all employment developments falling within Classes B1, B2 and B8 of the Town and Country Planning Use Classes Order 1987 as amended by the Town and Country Planning (Use Classes) (Amendment) (England) Order 2005, the employment element of any mixed use development and residential developments of five dwellings or less.

- 2. B01 Development in accordance with the approved plans**
- 3. C01 Samples of external materials**
- 4. D05 Details of external joinery finishes**
- 5. F14 Removal of permitted development rights**
- 6. H09 Driveway gradient**
- 7. H13 Access, turning area and parking**
- 8. H12 Parking and turning - single house (2)**
- 9. G09 Details of Boundary treatments**
- 10. E02 Archaeological survey and recording**
- 11. I18 Scheme of foul drainage disposal**
- 12. The recommendations set out in the ecologist's report dated October 2011 should be followed in relation to the identified protected species (bats and birds) unless otherwise agreed in writing by the local planning authority. Prior to commencement of the development, a full habitat enhancement**

scheme and working method statement should be submitted to and be approved in writing by the local planning authority, and the work 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 the Herefordshire Unitary Development Plan.

Informatives:

- 1. HN01 Mud on highway**
- 2. HN04 Private apparatus within highway**
- 3. HN05 Works within the highway**
- 4. N11C General**
- 5. N15 Reason(s) for the Grant of PP/LBC/CAC**

132. DMS/112643/F & DMS/113213/G - WESTHOLME, FOWNHOPE, HEREFORDSHIRE, HR1 4NN

The Development Manager (Hereford and Southern Localities) gave a presentation on the application and updates / additional representations received following the publication of the agenda were provided in the update sheet.

He advised the Committee that the report now made reference to a linked application in respect of the discharge of the existing Section 106 Agreement on the site. He advised Members that there was a restriction on further development of the site as a result of the Section 106 Agreement granted in 1992 at a time when the site was outside of the settlement boundary. He added that the site now fell within the settlement boundary so the Section 106 Agreement served no purpose.

In accordance with the criteria for public speaking, Mr Clark, representing Fownhope Parish Council, and Mr Jolley, a neighbouring resident, spoke in objection to the application.

In accordance with paragraph 4.8.2.2 of the Council's Constitution, Councillor J Hardwick, the local ward member, commented on a number of issues, including:

- The planning history of the site, including the Section 106 Agreement, had to be considered when determining the application.
- The site fell on a highly visible piece of green open space at the gateway to the village.
- The proposed application failed to preserve or enhance the conservation area and was therefore contrary to UDP policies HBA6 and HBA9.
- The proposed application was also contrary to UDP Policy LA5 due to the loss of several trees on the site.
- The application was a concern to the local residents and the Parish Council, whose comments should be noted.
- The proposed dwellings were too large in scale.

Members discussed the application and felt that the site visit had proved beneficial in assessing the application and highlighting the concerns of the local residents. The existing Section 106 Agreement was noted but the Committee was of the opinion that planning policy had changed and that the site was now contained within the settlement boundary and therefore the Section 106 Agreement should be discharged as per the application.

Some Members of the Committee had reservations in respect of the design of the development and felt that a single storey development on the site would be more acceptable and would also appease the concerns of some of the neighbouring residents' concerns.

Councillor J Hardwick, the local ward member, was given the opportunity to close the debate and reiterated his opening remarks.

RESOLVED

In respect of DMS/112643/F that planning permission be granted subject to the following conditions:

- 1. A01 Time limit for commencement (full permission)**
- 2. B02 Development in accordance with approved plans and materials**
- 3. C01 Samples of external materials**
- 4. F07 Domestic use only of garage**
- 5. F17 Obscure glazing to windows**
- 6. G11 Landscaping scheme - implementation**
- 7. G07 Protection of trees covered by a Tree Preservation Order**
- 8. G03 Retention of existing trees/hedgerows**
- 9. G12 Hedgerow planting**
- 10. H03 Visibility splays**
- 11. H09 Driveway gradient**
- 12. H13 Access, turning area and parking**
- 13. H27 Parking for site operatives**
- 14. Foul water and surface water discharges shall be drained separately from the site.**

Reason To protect the integrity of the public sewerage system.

- 15. No surface water shall be allowed to connect, either directly or indirectly, to the public sewerage system unless otherwise approved in writing by the local planning authority.**

Reason: To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no detriment to the environment.

- 16. Land drainage run-off shall not be permitted to discharge, either directly or indirectly, into the public sewerage system.**

Reason: To prevent hydraulic overload of the public sewerage system and pollution of the environment.

- 17. K5 Habitat Enhancement Scheme (to include working method statement)**

Informative:

- 1. N15 Reason(s) for the Grant of PP/LBC/CAC**

In respect of DMS/11321/G that the Planning Obligation associated with Application No. SH920169PO be discharged for the following reason:

- 1. The local planning authority consider that the provisions of the Section 106 Agreement dated 5 August 1992 to restrict residential development on land adjacent to Westholme, Fownhope, Herefordshire, reference SH920169PO, is no longer required and does not serve a useful planning purpose.**

133. DATE OF NEXT MEETING

The Planning Committee noted the date of the next meeting.

APPENDIX 1 - SCHEDULE OF COMMITTEE UPDATES

The meeting ended at 1.57 pm

CHAIRMAN

PLANNING COMMITTEE

1 February 2012

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.

DMN/111899/O - AN OUTLINE APPLICATION FOR THE ERECTION OF UP TO 127 DWELLINGS (35% TO BE AFFORDABLE) WITH ALL MATTERS EXCEPT ACCESS TO BE RESERVED FOR FUTURE CONSIDERATION AT PORTHOUSE FARM, TENBURY ROAD, BROMYARD, HEREFORDSHIRE

For: Ms N Harrison per Mr John Cornwell, Oakview House, Station Road, Hook, Hampshire, RG27 9TP

ADDITIONAL REPRESENTATIONS

Seven further letters have been received expressing objections / concern to the proposed development on the following summarised grounds:-

- Concern as to the juxtaposition of the proposed residential development in close proximity to several industrial premises some of which operate on a 24 hour a day basis;
- Further land is necessary for employment related development in Bromyard and the application site would be suitable; and
- Concern with regard security.

Two letters of support have been received. They emphasise:-

- The advantages of building more houses within Bromyard – creating greater expenditure capacity thus enhancing the viability and vitality of the Town Centre, bringing more children into the schools
- The application site would not be attractive as an employment site due to the problems associated with larger vehicles accessing the site;
- The noise issue has been satisfactorily addressed and the managing director Polytec has no objections; and
- The Section 106 contributions would be of benefit to the local community especially sporting facilities.

OFFICER COMMENTS

The Officer has no further comment to make upon the above representations

Following receipt of legal advice, changes are recommended to three conditions to effectively tighten them up.

CHANGE TO RECOMMENDATION

Amend condition 7 by substituting the words “fully implemented with the word “completed”

Amend condition 10 by substituting the words "None of the dwelling houses hereby permitted shall be occupied" with the words "No building operation shall take place" and the words "fully implemented" with the word "completed".

Amend condition 22 by inserting the words "including timescale for implementation", after the word "Species".

DMN/111900/N - RETROSPECTIVE PLANNING APPLICATION FOR THE RETENTION OF AN EXISTING BUND AND ITS REMODELLING WITH APPROPRIATE ENGINEERING WORKS AND LANDSCAPING OF THE REMODELLED BUND AT PORTHOUSE FARM, TENBURY ROAD, BROMYARD, HEREFORDSHIRE, HR7 4NS

For: Ms N Harrison per Mr John Cornwell, Bell Cornwell LLP, Oakview House, Station Road, Hook, Hampshire, RG27 9TP

ADDITIONAL REPRESENTATIONS

Mr B Hunt has sent an email (30 January 2012) offering general support for the proposal

OFFICER COMMENTS

The comments are noted

NO CHANGE TO RECOMMENDATION

DMN/111770/F - ERECTION OF 14 NO. AFFORDABLE HOMES ON GREENFIELD SITE INCLUDING REQUIRED ACCESS AND SERVICES AT LAND ADJACENT TO 4 VALENTINE COURT, CANON PYON, HEREFORD, HR4 8NZ

For: Two Rivers Housing per Mr Colm Coyle, Imperial Chambers, Longsmith Street, Gloucester, GL1 2HT

ADDITIONAL REPRESENTATIONS

A letter has been received from a Mr Davies who has farmed the field for the past 20 years. He expresses his concern at the emotive language used in a recent newspaper article.

He also says that he has been unable to persuade his cattle to eat the grass from the meadow, attributing this to the unpalatable species evident within the meadow. He advises that the grass has been cut for hay and salt added to it to improve it, but this has not proved to be successful. This has been compounded by the fact that the meadow is infested with moles. Hay would then be full of soil and this increases opportunities for disease to spread, particularly *Listeria* and *Neospora*.

He concludes by saying that the field is too small to farm with modern agricultural machinery and that, in his opinion, it has little agricultural value.

OFFICER COMMENTS

The letter offers an opinion in terms of the practicalities of using the field for agricultural purposes. Its contents are not critical in terms of the recommendation and consequently there is no change to it.

NO CHANGE TO RECOMMENDATION

Schedule of Committee Updates



MEETING:	PLANNING COMMITTEE
DATE:	22 FEBRUARY 2012
TITLE OF REPORT:	APPEALS

CLASSIFICATION: Open

Wards Affected

Countywide

Purpose

To note the progress in respect of the following appeals.

Key Decision

This is not a key decision

Recommendation

That the report be noted

APPEALS RECEIVED

Application No. S112474/F

- The appeal was received on 13 January 2012
- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission
- The appeal is brought by Mr L Andrews
- The site is located at 40 Blackmarston Road, Hunderton, Hereford, HR2 7AJ
- The development proposed is Proposed demolition of garage and construction of attached two-bed dwelling.
- The appeal is to be heard by Written Representations

Case Officer: Ms Kelly Gibbons on 01432 261781

Application No. S112967/F

- The appeal was received on 26 January 2012
- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission
- The appeal is brought by Anthea Morton-Saner
- The site is located at Nupend Barn, Woolhope, Herefordshire, HR1 4QH
- The development proposed is Proposed solar photovoltaic panels attached to roof.
- The appeal is to be heard by Written Representations

Case Officer: Mr E Thomas on 01432 260479

Further information on the subject of this report is available from the relevant case officer

Application No. S112968/L

- The appeal was received on 26 January 2012
- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission
- The appeal is brought by Anthea Morton-Saner
- The site is located at Nupend Barn, Woolhope, Herefordshire, HR1 4QH
- The development proposed is Proposed solar photovoltaic panels attached to roof.
- The appeal is to be heard by Written Representations

Case Officer: Mr E Thomas on 01432 260479

Application No. N111375/F

- The appeal was received on 27 January 2012
- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission
- The appeal is brought by Mr Paul Thorne
- The site is located at Lucton School, Lucton, Herefordshire, HR6 9PN
- The development proposed is New equestrian manege for school and community use with improvements to road access
- The appeal is to be heard by Written Representations

Case Officer: Mr C Brace on 01432 261795

APPEALS DETERMINED

Application No. DMN/111666/FH

- The appeal was received on 15 November 2011
- The appeal was made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission
- The appeal was brought by Mr Peter Chalk
- The site is located at Laurel Cottage, Birchwood, Storridge, Malvern, Herefordshire, WR13 5HA
- The application dated 22 June 2011 was refused on 3 October 2011
- The development proposed was a first floor extension.
- The main issue is the effect of the proposal on the character of the existing dwelling.

Decision: The application was refused under delegated powers on 3 October 2011.
The appeal was dismissed on 10 January 2012.

Case Officer: Mr N Banning on 01432 383093

Application No. S110810/F

- The appeal was received on 10 October 2011
- The appeal was made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission
- The appeal was brought by Mr Harry Bramer
- The site is located at Land nr Caradoc, Sellack, Herefordshire
- The application dated 14 April 2011 was refused on 29 June 2011
- The development proposed was a carport to plot 1, and five garages to replace garden sheds.
- The main issue is the effect of the proposal on the character and appearance of the area

Decision: The application was refused by Committee contrary to Officer Recommendation.
The appeal was allowed on 20 January 2012.

Case Officer: Mr E Thomas on 01432 260479

Application No. N111007/F

- The appeal was received on 1 September 2011
- The appeal was made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission
- The appeal was brought by Mr Peter Sanderson
- The site is located at Tick Bridge Farm, Tick Bridge Lane, Hamnish, Leominster, Herefordshire
- The application dated 12 April 2011 was refused on 7 July 2011
- The development proposed was the retention of two mobile homes for one year for temporary agricultural dwelling and storage (as originally granted for applications DCN/2007/2648 and DCN2008/2739/F)
- The main issue is whether there is a proven functional need for residential accommodation on the site on a temporary or permanent basis, to house someone primarily employed at the farm, and if there is, whether the enterprise is economically viable and has a clear prospect of remaining so.

Decision: The application was refused under delegated powers on 7 July 2011.
The appeal was allowed on 26 January 2012.

Case Officer: Mr A Banks on 01432 383085

Application No. N103149/O

- The appeal was received on 1 September 2011
- The appeal was made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission
- The appeal was brought by Mr Peter Sanderson
- The site is located at Tickbridge Farm, Tickbridge Lane, Hamnish, Leominster, Herefordshire
- The application dated 29 November 2010 was refused on 30 March 2011
- The development proposed was an outline planning application for an agricultural dwelling.
- The main issue is whether there is a proven functional need for residential accommodation on the site on a temporary or permanent basis, to house someone primarily employed at the farm, and if there is, whether the enterprise is economically viable and has a clear prospect of remaining so

Decision: The application was refused under delegated powers on 30 March 2011.
The appeal was dismissed on 26 January 2012.

Case Officer: Mr A Banks on 01432 383085

Application No. EN11/001404/ZZ

- The appeal was received on 9 September 2011
- The appeal is made under Section 174 of the Town and Country Planning Act 1990 against the service of an Enforcement Notice
- The appeal is brought by Mr Peter Sanderson
- The site is located at Tick Bridge Farm, Tick Bridge Lane, Hamnish, Leominster, Herefordshire, HR6 0QL
- The breach of planning control alleged in this notice is without planning permission the use of the land as a site for the positioning of 2 mobile homes both used for mixed residential and storage use.
- The requirements of the notice are: Remove the 2 mobile homes, hard standing and associated buildings from the land and reinstate the land to grass. The period of compliance with the requirements is 180 days for the removal of the 2 mobile homes and associated buildings; and 270 days for the removal of the hard standing and reinstatement of the land to grass.
- The main issue is whether there is a proven functional need for residential accommodation on the site on a temporary or permanent basis, to house someone primarily employed at the farm, and if there is, whether the enterprise is economically viable and has a clear prospect of remaining so.

Decision: The appeal was allowed on 26 January 2012, the enforcement notice is quashed, and planning permission is granted.

Case Officer: Mr A Banks on 01432 383085

Further information on the subject of this report is available from the relevant case officer

Application No. EN2011/001347/ZZ

- The appeal was received on 2 August 2011
- The appeal is made under Section 174 of the Town and Country Planning Act 1990 against the service of an Enforcement Notice
- The appeal is brought by Ms Deborah Gillingham & Mr Richard Greatrex
- The site is located at Mulberry Cottage, Woods Eaves, Eardisley, Herefordshire, HR3 6LZ
- The breach of planning control alleged in this notice is the installation of two solar panels on the roof of a side lean-to which forms part of the building affecting its character of special architectural or historic interest.
- The requirements of the notice are: Removal of the solar panels from the lean-to roof and the making good of any fixing or pipe-holes
- The main issue is the effect of the works upon the special architectural or historic interest of the listed building

Decision: The appeal is dismissed and the listed building enforcement notice is Upheld. Listed building consent is refused for the retention of the works carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended on 31 January 2012

Case Officer: Mr P Mullineux on 01432 261808

Application No. N102856/L

- The appeal was received on 14 June 2011
- The appeal was made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission
- The appeal was brought by Ms Deborah Gillingham & Mr Richard Greatrex
- The site is located at Mulberry Cottage, Woods Eaves Lane, Eardisley, Herefordshire, HR3 6LZ
- The application dated 4 January 2011 was refused on 24 February 2011
- The development proposed was the retention of two solar panels
- The main issue is the effect of the works upon the special architectural or historic interest of the listed building

Decision: The application was refused under delegated powers on 24 February 2011.
The appeal was dismissed on 31 January 2012.

Case Officer: Mr P Mullineux on 01432 261808

Application No. N102858/FH

- The appeal was received on 14 June 2011
- The appeal was made under Section 78 of the Town and Country Planning Act 1990 against a planning condition.
- The appeal was brought by Ms Deborah Gillingham & Mr Richard Greatrex
- The site is located at Mulberry Cottage, Woods Eaves, Eardisley, Herefordshire, HR3 6LZ
- The application dated 2 November 2010, was granted on 28 February 2011
- The development proposed was the construction of a rear conservatory extension, repair 3 no windows and one new window, insulation of interior roof slopes and replacement garage (retrospective application).
- The main issue is the effect of the works upon the special architectural or historic interest of the listed building

Decision: The application was approved on 28 February 2011 under delegated powers.
The appeal was allowed on 31 January 2012.

Case Officer: Mr P Mullineux on 01432 261808

If members wish to see the full text of decision letters copies can be provided.



MEETING:	PLANNING COMMITTEE
DATE:	22 FEBRUARY 2012
TITLE OF REPORT:	<p>N113052/F - DEMOLITION OF EXISTING BUILDINGS AND CONSTRUCTION OF A SUPERSTORE CLASS A1 PETROL FILLING STATION, CAR PARKING, BIOMASS BOILER, LANDSCAPING AND ASSOCIATED WORKS AT LAND AT GALEBREAKER HOUSE, LEADON WAY, LEDBURY, HEREFORDSHIRE, HR8 2SS</p> <p>For: Sainsbury's Supermarkets Ltd per Turley Associates, 25 Saville Row, London, W1S 2ES</p>

Date Received: 31 October 2011 **Ward: Ledbury**

Grid Ref: 370185,237883

Expiry Date: 7 March 2012

Local Members: Councillors PL Bettington, EPJ Harvey and PJ Watts

1. Site Description and Proposal

Introduction

- 1.1 Ledbury is an historic Market Town set immediately to the west of the Malvern Hills Area of Outstanding Natural Beauty and bounded by the river Leadon to the west. It has a population of approximately 9,800 persons. Ledbury has a central north – south axis that comprises the High Street, The Homend and The Southend. The Ledbury Conservation Area is defined upon the Herefordshire Unitary Development Plan Proposals Map 2007. Its extent is shown on the plan attached as **Annex 1** to this report. Within this Conservation Area and also shown upon the Plan attached as **Annex 1** is the extent of the defined Town Centre.
- 1.2 The character of Ledbury Conservation Area consists of several factors. However, central to its character is its status as a market town with retail activity at its heart. It is worth noting that the first market charter was granted by King Stephen to Bishop Robert de Bethune in 1138. This confirmed the transition of Ledbury to a market economy (which is likely to have started earlier). The intrinsic nature of retail/commercial activity to the character of Ledbury as a market town is well documented in the books by Sylvia Pinches entitled 'Ledbury – people and parish before the Reformation' and 'A Market Town and its Tudor Heritage'. This has remained the case from the twelfth century to the current day.
- 1.3 Ledbury has two major transport nodes – the railway station and the bus terminus in the High Street in close proximity to the Ledbury Market Hall within the Town Centre. The plan attached as **Annex 1** marks the location of the railway station. At present Ledbury has two edge of centre (i.e. within 300 metres of the defined Town Centre) supermarkets. These are the existing Co-op store on the southern side of New Street and the existing Tesco store on the western side of the Homend accessed off Orchard Lane.

Further information on the subject of this report is available from «offname» on «offtel»

Site Description

- 1.4 The application site is physically divorced from Ledbury Town Centre, being at the western periphery of Ledbury. The site lies upon the New Mills Industrial Estate immediately north of the loop road that is accessed off a roundabout upon Leadon Way, the A417, to the west. The site has an area of some 2.8 hectares comprising land actively used for industrial purposes by Galebreakers and an undeveloped parcel of land. It is understood that whilst the existing industrial building may provide some constraints to Galebreakers, the site does not. The site has significant changes in level, being some 6 metres from the highest point adjacent to Lyndon Business Park to the south-east to the lowest point being at the junction of Leadon Way and New Mills Way to the north-west.
- 1.5 Immediately outside the eastern boundary of the application site is an existing area of landscaping beyond which are the two-storey houses in Bronte Drive. Within the north-western boundary of the site is an existing area of landscaping. There is a stream close to the north-western boundary of the site. It should also be noted that on the south-eastern side of New Mills Way is a bus stop.

Proposal

- 1.6 The proposal involves demolishing the existing building on the site and erecting a retail store with a gross floorspace of 5,427.8 square metres. It is understood that the net sales area would be 2,787 square metres of which 2,090 square metres would be for the sale of convenience goods (i.e. everyday essential items, including food, drinks, newspapers/magazines and confectionary) and 697 square metres for the sale of comparison goods (i.e. items such as clothing, footwear, household and recreational goods). In addition, it is proposed to provide a petrol filling station (4 pumps) with a "kiosk" of 79.7 square metres.
- 1.7 The existing land levels would be remodelled to effectively create a level area with retaining walls. None of these walls would exceed 1.9 metres in height. The store would be located close to the north-eastern boundary of the site with the service yard provided adjacent to the northern flank elevation of the store. Within the service yard area adjacent to the north-western boundary a bio-mass boiler would be provided.
- 1.8 272 car parking spaces would be provided (246 standard spaces, 11 parent and child spaces and 15 disabled spaces). Provision would be made for 44 cycles to be parked. Nine trolley bays are proposed.
- 1.9 The vehicular means of access to the site off Leadon Way would be provided by way of the provision of a new roundabout at the point where the existing vehicular access to the 'Homebase' store currently exists.
- 1.10 The petrol filling station would be provided in the western apex of the site.
- 1.11 It is proposed to create a pedestrian connection from New Mills Way beside the existing bus stop into the car park of the store. It is also proposed to create a pedestrian connection from the south-east corner of the site to the footpath network across an existing area of public open space. This footpath would also extend along the southern boundary of the site to link to the industrial estate loop road.
- 1.12 The proposals with regard landscaping involve supplementing the planting along the eastern and north-western boundaries together with tree planting within the proposed car park. This matter is addressed in more detail later.
- 1.13 The predominant materials for the store would be shop front glazing and a cladding panel system. There would be a canopy to the store frontage extending around the southern flanks of the store.

Further information on the subject of this report is available from Roland Close on 01432 261803

- 1.14 Attached as **Annex 2** are the Draft Heads of Terms in relation to a Planning Obligation that the agent for the applicant has submitted. This offers a sum (to be agreed) to provide “sustainable transport infrastructure to serve the proposed development”. This includes enhancing pedestrian and cycle routes to the Town Centre and “improvements to “bus infrastructure provision in Ledbury”.

2. Policies

2.1 Central Government advice

Planning Policy Statement 1 – ‘Delivering Sustainable Development’ and Planning Policy Statement: ‘Planning and Climate Change’ Supplement to Planning Policy Statement 1

Planning Policy Statement 4 – ‘Planning for Sustainable Economic Growth’

Planning Policy Statement 5 – ‘Planning for the Historic Environment’

Planning Policy Statement 9 – ‘Biodiversity and Geological Conservation’

Circular 06/2005 – ‘Bio-diversity and Geological Conservation – Statutory Obligations and their impact within the planning system’

Planning Policy Statement 12 – ‘Local Spatial Planning’

Planning Policy Guidance Note 13 – ‘Transport’

Planning Policy Statement 25 - ‘Development and Flood Risk’

Draft National Planning Policy Framework – July 2011

Circular 05/05 – Planning Obligations

2.2 Herefordshire Unitary Development Plan 2007

Part I

- S1 – Sustainable Development
- S2 – Development Requirements
- S4 – Employment
- S5 – Town Centre and Retail
- S6 – Transport
- S7 – Natural and Historic Heritage

Part II

Development Requirements

- DR1 – Design
- DR2 – Land Use and Activity
- DR3 – Movement
- DR4 – Environment
- DR5 – Planning Obligations
- DR7 – Flood Risk
- DR10 – Contaminated Land
- DR13 – Noise
- DR14 – Lighting

Employment

E5 – Safeguarding Employment Land and Buildings

Town Centres and Retail

TCR1 – Central Shopping and Commercial Areas

TCR2 – Vitality and Viability

TCR9 – Large Scale Retail and Leisure Development Outside Central Shopping and Commercial Areas

TCR18 – Petrol Filling Station

Transport

T6 – Walking

T7 – Cycling

T8 – Road Hierarchy

T11 – Parking Provision

T16 – Access for All

Natural and Historic Heritage

LA6 – Landscaping Schemes

NC1 – Biodiversity and Development

NC6 – Biodiversity Action Plan Priority Habitats and Species

NC7 – Compensation for Loss of Biodiversity

NC8 – Habitat Creation, Restoration and Enhancement

NC9 – Management of Features of the Landscape Important for Fauna and Flora

2.3 Supplementary Planning Guidance

Planning Obligations SPD (April 2008)

3. Planning History

3.1 Whilst the site has planning history associated with it none is considered relevant to the proposal under consideration.

3.2 There is, however, a recent appeal decision relating to the Homebase Car Park site immediately to the west that is considered to be of relevance. The proposal was for the siting of a catering unit. A copy of that decision is attached as **Annex 3**.

4. Consultation Summary

4.1 External Consultees

4.2 English Heritage state:-

“The objectives in paragraph 7 of PPS5 include sustaining viable uses for historic assets and the integration of the historic environment into planning policies and place-shaping more generally. Furthermore the protection of the retail health of town centres is a planning policy objective whether the centre in question is regarded as historic or not. This issue has received some prominence recently in national news.

Ledbury is one of the West Midlands’ outstanding historic towns and the retail core of the town contains many listed buildings. Several of the Herefordshire market towns: Ross-on-Wye, Kington and Bromyard, are “Conservation Areas at Risk” and this is partly because of the

Further information on the subject of this report is available from Roland Close on 01432 261803

health of the retail environment in their historic centres. Ledbury is not identified as at risk and, on the basis of a superficial inspection, its retail base appears to be healthy. As a consequence listed buildings in retail use in the historic centre of Ledbury appear to be generally well-maintained.

If the Council concluded from its own information and its assessment of the merits of this case that the proposal may harm the significance of Ledbury town centre by prejudicing the chance of maintaining economic uses for the historic buildings then that may be an effect contrary to the objectives in paragraph 7 of PPS5. Loss of economic uses for buildings in the town centre could in time lead to Ledbury's being identified as a Conservation Area at Risk.

English Heritage would urge the Council to make a careful assessment of the evidence available to it on the possible secondary effects of the proposal on Ledbury as a heritage asset and to frame its recommendation and decision accordingly should possible negative effects be identified".

4.3 The Environment Agency is not satisfied that the submission includes an appropriate assessment of flood risk. The submission does not include an assessment of flood risk associated with the watercourse that runs along the north-west boundary of the site. Nor does the submitted flood risk assessment include a blockage analysis of the culvert downstream. In all other respects (e.g. pollution) the Environment Agency do not raise any other concerns

4.4 Severn Trent Water has no objections.

4.5 Internal Consultees

4.6 The Traffic Manager makes a number of detailed comments. However, in summary he objects on the basis of:-

- The location of the site will increase reliance upon the use of the private motor vehicle;
- The location of the site means that the propensity of linked trips to the town centre is likely to be low;
- The location of the proposed store remote from the railway station and bus terminus is such that trips to the store by certain public transport users further afield from Ledbury is likely to be low as their journeys would necessitate a change onto another bus.

4.7 The Environmental Health Manager does not raise objections. The issue of contaminated land could satisfactorily be dealt with by way of a planning condition. In addition, the issues of noise from plant and deliveries could satisfactorily be dealt with by way of a planning condition.

4.8 The Conservation Section state:-

"This application for a new superstore and fuel station on the Ledbury by-pass brings forward the same considerations, in terms of impact on the historic built environment, as the application recently considered for the same use on the other side of the road. Both applications relate to out-of-town shopping locations. As with that application there are fundamental concerns about the impact of the use on the historic environment particularly because of the remote location from the town centre of Ledbury.

As previously commented (but updated to reflect the 2011 Heritage at Risk Register):

English Heritage compiles an annual survey of the condition of England's key heritage assets (high grade listed buildings, scheduled monuments, registered parks, battlefield and wreck sites plus conservation areas) and the most recent 2011 Heritage at Risk Register notes in relation to conservation areas:

'The risks to conservation areas are difficult to address as they cover large areas of land: they include the spaces between buildings and trees as well as buildings and structures and therefore involve many different owners. Looking after them is a responsibility shared by those of us who own homes and businesses in them and those of us whose job it is to manage the spaces between the buildings or make decisions about their future.

Conservation areas are designated by local authorities and are areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance. For more than 40 years conservation areas have proved a highly effective mechanism for managing change on an area-wide basis. There are currently some 9,300 conservation areas in England including town and city centres, suburbs, industrial areas, rural landscapes, cemeteries and residential areas. They form the historic backcloth to national and local life and are a crucial component of local identity and community cohesion.

English Heritage has asked every local authority in England to complete (and update as appropriate) a survey of its conservation areas, highlighting current condition, threats and trends, identifying those that are deteriorating, or are in very bad or poor condition and are not expected to change significantly in the next three years, as being defined as at risk.

The methodology for assessing conservation areas at risk has been refined since the first survey in 2008/2009. The information collated provides a detailed assessment of each conservation area and an overall category for condition, vulnerability and trend is included for each conservation area on this Register. Conservation areas identified as at risk in 2009, but not reassessed since using the revised methodology, are included on the Register but with more limited information.

516 (6.6%) of the conservation areas for which English Heritage have information for are at risk, 66 (10.2%) of them in the West Midlands region.'

There are currently four (out of 64) conservation areas in Herefordshire included on the 2011 Heritage at Risk register, and it is significant that three – Kington, Bromyard & Ross-on-Wye – of the county's five market towns are included. The assessment is made on the basis of the condition of the conservation areas' physical environment but it also takes into account wider factors which impact on this, and it is clear that the common denominator is lack of investment. Ledbury is something of an exception to the rule as it has a generally well-maintained built environment, with low vacancy rates, few buildings in poor condition and healthy levels of new build and conversion activity. However as the other market towns illustrate, this situation is finely balanced and dependent upon maintaining the vitality of the town centre.

This application site would encourage customers to not venture into the town centre but to stay on the by-pass, thereby potentially reducing trade within Ledbury town centre with the consequent reduction in footfall and consumer spend. This could further result in the many independent businesses in the centre of Ledbury, most of which occupy listed buildings, having no funds to invest in the proper maintenance of their properties.

In Paragraph 6.3 (page 10) of the Archaeology and Cultural Heritage Report it states that "The Conservation Area is sufficiently distant from the proposed development site that it will not be affected". For the reasons given above, this statement is disputed. Similarly the statements in paragraphs 10.1 and 12.1 concerning the settings of heritage assets are disputed. The setting of an asset can be considered from both near and far and given the topography around Ledbury, particularly when approaching from the west, the long view of the town is an important part of its character and appearance. An increase in large sheds around the town would have a detrimental effect on the character and appearance of the area and would tend to discourage people from visiting the town centre.

The design of the proposed superstore and its associated filling station is disappointingly bland with the store being just a simple flat-roofed shed. It is interesting that the design chooses to respond to the industrial/shed nature of the area to the south of the site rather than taking the opportunity to provide a more iconic building that reflects its retail use and domestic customer and draws people in. It is a missed opportunity that seems to have taken a “lowest common denominator” approach, to the detriment of the area”.

- 4.9 The Public Rights of Way Section has no objections.
- 4.10 The Council’s Land Drainage advisor states that “The findings of the flood risk assessment and drainage strategy are not clear – the flow rates vary considerably between different parts of the report. The principles are sound but the numbers are inconsistent. Clarification is therefore required.”
- 4.11 The Country Archaeologist has no objections.
- 4.12 The views of the Planning Ecologist and Senior Landscape Officer are reflected in the Officer’s Appraisal later in this report.

5. Representations

5.1 Ledbury Town Council OBJECT on the following grounds:-

- The application site is in the wrong place i.e. too far out of town;
- The building size is out of proportion, and would have a dire economic effect on the town;
- There is no justified need for the proposed 30,000 sq ft store;
- Loss of employment land;
- Impact on viability and vitality of the town centre;
- Potential loss of employment in the town and its hinterland;
- Increased traffic and access problems particularly from the town centre via Bye Street and Bridge Street, through to the trading estate. This would also conflict with the recommended route for HGV’s

The objection was taken with regard to Sections EC10, 13, 14, 15, 16 and 17 of PPS4 and policies TCR1, TCR2 and TCR9 of the Herefordshire Unitary Development Plan 2007.

5.2 Wellington Heath Parish Council object to the planning application for the following summarised reasons:-

- Adverse impact upon the viability and vitality of the Town Centre;
- The out-of-town location would not be conducive to linked-trips to the Town Centre;
- There are numerous examples of declining town centres due to “out of town” supermarkets and other retail developments both locally (e.g. Ross-On-Wye and Malvern) and nationally;
- Notwithstanding the issue of location, the scale of the proposal is too large – in the opinion of the Parish Council a net sales area not exceeding 2,000 square metres would be more appropriate;
- The Parish Council are not opposed to the provision of more retail space in a more central location. The Parish Council are not satisfied that the applicant has given proper consideration to the “Lawnside site”;
- If the viability and vitality of the Town Centre is adversely affected the ability to upkeep the listed buildings in the town would be affected. This may also have an impact upon the tourism trade;
- The current food shops in the town centre tend to source produce locally whereas national retailers tend to source produce from a much wider area. Local produce has a much lower carbon footprint;

- Major supermarket retailers are producing more cheap pre-prepared meals and processed food than local independent shops with obvious consequences to human health;
- The profits from major retailers leave the locality whereas the profits from local independent shops tend to be ploughed back into the local economy;
- Loss of employment land. It is important that manufacturing is retained in the town to provide long-term stable full time employment; and
- Only 44 of the 220 jobs would be full-time.

5.3 Bosbury Parish Council supports the proposal and makes the following summarised comments:-

- Concern that a new store would be detrimental to the town or could have the opposite effect of encouraging more people to come to Ledbury;
- Competition with existing stores could be beneficial for all;
- As the Ledbury population grows in the coming years the store could be needed;
- Another petrol filling station in the town would be very beneficial;
- The Parish Council questions how many jobs would be full-time and how many part-time; and
- Galebreakers would be helped to stay in Ledbury and with larger premises could employ more people

5.4 Putley Parish Council state that their Councillors were split with 4 opposing the proposed development and 3 favouring it. The points that were made are summarised as follows:-

Those against:-

- It will impact Ledbury town and its character.
- The creation of new jobs will simply displace existing jobs in the High Street, to little benefit in employment
- It will change the opportunity to buy local produce which will not be available at Sainsbury's, therefore being detrimental to local suppliers.
- In other towns, there is a history of smaller shops and local producers have closed as a result of a supermarket being built.
- Potential danger of loss of tourism in Ledbury if smaller shops close and character of this Market Town changes.
- A supermarket of this scale will doubtless sell everything, which will not just impact on local food producers.
- The scale of the retail specification seems to allow for future housing development and an increase in population. Is this also wanted in Ledbury?
- Location and size is objectionable

Those in favour: -

- This should not make much difference to the character of Ledbury
- There are more specialist shops in Ledbury, so the impact would be minimal
- It is not really out of town as it is easy accessible.
- It will not draw shoppers out of Ledbury as people already shop at Homebase and don't necessarily go into Ledbury from there
- The petrol station would give extra competition to the only other filling station in Ledbury
- There will naturally be creation of jobs
- Many people go to the bigger supermarkets in Malvern and Hereford for their main shopping. This will keep them in Ledbury

5.5 Aylton Parish Council support the proposal.

5.6 The Herefordshire and Worcestershire Chamber of Commerce consulted their Members in the Ledbury area, the majority of whom supported the Sainsbury's proposal (as opposed to Tesco's recently withdrawn proposal or neither proposal). They state that Sainsbury's proposal itself is a brand, working to keep investment and business in Ledbury, and avoid losing business investment to Malvern and further afield. They state that their Members feel that the presence of another fuel station in Ledbury would be a positive development, whilst feeling that the Sainsbury's plan will help Ledbury to become more diverse in bringing a different brand to the town, over Tesco, which already has a presence in the town. They state that many of their Members felt that it should be restricted to convenience shopping only to negate the impact upon the Town Centre. They express the view that further consultation would be needed in Ledbury regarding the scale. They also state that the proposal would assist the relocation and expansion of an existing local business.

5.7 The Council for the Protection of Rural England (CPRE) (Herefordshire) object to the proposed development on the following summarised grounds:-

- The store is out-of-centre
- The scale of the store is "huge" and would inevitably lead to a loss of trade in the town centre and the closure of retail shops
- There are unlikely to be linked trips with the Town Centre
- Because of the method of operation of superstores and economies of scale compared to smaller retail shops there is likely to be a net loss of jobs
- The closure of town centre shops would make jeopardise listed buildings and make Ledbury less attractive for residents and tourists
- The Sainsbury proposal would have an even more serious impact than the recently withdrawn Tesco proposal as the net increase in retail floorspace to Ledbury would be materially greater; and
- The proposal results in the loss of high quality employment land that is needed
- Ledbury is in the centre of a local food web. Ledbury retailers sell local products and this is important to the viability of local farming and horticultural businesses. Superstores source their goods from all over the country, adding significantly to food miles, and the profits from sales are largely lost to the local community.

5.8 Ledbury Civic Society object on the following summarised grounds:-

- The inappropriate out-of-centre location of the proposed development;
- Adverse impact upon the viability and vitality of the town centre (including small independent retailers);
- The site is in an unsustainable location dependant upon the car;
- The site would not encourage "linked-trips" to town centre shops as it is so distant;
- The proposal is likely to lead to deterioration in the condition of listed buildings in the town centre currently occupied by retailers. Such a deterioration would adversely affect the conservation area and the attractiveness of the town to tourists;
- Concern re: traffic travelling through the town from the east;
- Concern that the extra jobs claimed may not be maintained in the long-term;
- Supermarkets have national purchasing policies while local traders are much more likely to have local purchasing policies, especially in food retailing. Where retailers purchase locally much of the money spent stays within the local economy and has a significant multiplier effect;
- Ledbury Town Centre has been acclaimed as an environment of European importance (Civic Trust Regeneration Report on 'Ledbury a Visitor Strategy') and in Radio Four's Today programme survey came out of one of the top four high streets in the country.

5.9 The Ledbury Area Cycle Forum considers that:-

- Insufficient cycle parking provision is proposed
- Lockers should be provided for staff; and
- Increase in traffic along the bypass would prejudice the safety of pedestrians and cyclists

5.10 At the expiry of the publicity period inviting representations (i.e. 3rd February 2012) the Local Planning Authority had received 2,409 written expressions (i.e. letters, e-mail and completed printed cards) of OBJECTION. The planning grounds of objection are summarised as follows:

- Loss of employment land;
- Failure to comply with local and national policy for the consideration of large format out of town stores, including the requirements of the sequential assessment;
- Detrimental to the vitality and viability of Ledbury's Town Centre;
- Detrimental impact on existing shops, businesses and independent retailers in Ledbury's Town Centre and the surrounding area by reducing 'linked shopping trips' and creating a 'one stop' shopping experience;
- Failure to demonstrate need or demand given the town already has two supermarkets;
- Scale of development disproportionate to the size of Ledbury Town,
- Detrimental impact on the character, attractiveness and quality of Ledbury's High Street;
- Risk to Tourism economy if Ledbury loses its identity and charm
- Risk to existing jobs in the wider economy with misleading prospect for new employment;
- Detrimental effect on the historic buildings and fabric of Ledbury's Town Centre;
- Additional traffic could lead to congestion at peak times and noise and pollution throughout the town and surrounding areas;
- Detrimental impact on amenities of adjoining neighbouring residential properties, particularly Bronte Drive, through noise of deliveries and general activity from within the store, increased traffic and lighting;
- Development will reduce the sense of belonging, well being and social cohesion within Ledbury;
- Unsustainable locations which will be heavily reliant on car usage;
- Harmful to the environment and climate change;
- Scale and design of the proposed building detrimental to the character and appearance of the area and will be visually obtrusive.
- The development will affect the slow worms present on the site and provides habitats for bats and owls.
- Contrary to Central Government advice and UDP policies.

5.11 Ledbury Opposes Out of Centre Town Superstores (LOTS) object to the proposed development on the following summarised grounds:-

- The scale / size of the store is unjustified and will inevitably have an adverse impact upon the vitality and viability of the Town Centre;
- The submitted sequential assessment is inadequate and fails to address whether a more appropriately scaled smaller store could be accommodated closer to the Town Centre;
- The proposal would have an adverse impact upon the High Street;
- The development is in an unsustainable location that would not encourage linked-trips. It would become a one stop shop – destination in its own right;
- The argument that the store will draw shoppers from further afield to the town centre is flawed;
- A loss of trade in the High Street leading to vacancies or introducing low rent uses; and
- A consequence of vacant and low rent premises would be a deterioration of the fabric of buildings in the High Street deterring both residents and visitors.

5.12 LOTS make the point that in relation to a similar proposal for an out-of-centre superstore (5,069 sq metres) that was recently withdrawn, a public petition of 3,255 signatories was received by the Council objecting on the following summarised grounds:-

- Ledbury currently has a highly unusual and greatly treasured High Street renowned for its interesting independent shops and its vibrant community life. Evidence shows that out of town superstores cause independent shops to shut and town centres to die;
- The jobs lost from shop closures, which will extend to suppliers' businesses in the local countryside, will far exceed the jobs created, which by definition are mainly part-time and low-paid. Ledbury's unique historic and architectural heritage will be threatened as shops close and buildings cannot be adequately maintained.
- There will be additional problems with increased traffic in narrow and already congested streets.

That site is directly opposite the land the subject of this application. LOTS specifically state:

"When we collected these signatures our clear intention was not to object to Tesco as a company but to the proposed disproportionately large out of town centre retail development which we and our signatories believed would have an intensely negative impact on Ledbury.

We would submit that our petition is as relevant a statement of objection to the identically sized and located Sainsbury's development which has now superseded the Tesco proposal.

We did nor could not have feasibly repeated a petition against the Sainsbury's plan so soon after collecting signatures against the rival Tesco plan. We very much hope therefore that you will accept the spirit of our objection encapsulated in our campaign group title of which everyone is aware: Ledbury Opposes Out of Town Superstores."

5.13 At the expiry of the publicity period inviting representations (i.e. 3rd February 2012) the Local Planning Authority had received 992 written expressions (i.e. letters, e-mail and completed printed cards) of SUPPORT. The planning grounds of support are summarised as follows:-

- More product choice
- More affordable products
- Employment creation
- The provision of a petrol station (more competition and cheaper prices)
- Plenty of car parking which the Town Centre lacks
- Assisting local companys to expand
- The provision of such a superstore would redirect people who currently travel out of Ledbury to shop to stay within the Town thus 'reducing carbon footprints'

Further information on the subject of this report is available from Roland Close on 01432 261803

- The proposal would relieve High Street of traffic within walking distance of many private houses on town circular bus route.
- The proposal would help the local economy to grow
- As a growing town there is a need for a new supermarket as the current two are insufficient in scale and often struggle to meet the consumer demands.
- The proposed store is close enough to the Town Centre for people to walk
- The store would provide a valuable range of comparison goods (e.g. clothes., CD's. books)
- Jobs would be created by the construction phase;
- The enhanced pedestrian & cycle routes to town would be acceptable
- The proposal would enable the relocation and expansion of the Galebreakers business which intends to expand and create at least 10 skilled jobs;
- There are not any sequentially preferable sites in Ledbury
- The proposed store would open longer hours than the existing Town Centre stores;
- The proposal would not adversely affect Town Centre premises and even if shops become unviable, alternative uses would be found (e.g. residential)

5.14 A petition with 2,517 signatories has been received urging Herefordshire Council to consider and view this planning application favourably. They consider the proposed development to be much needed.

5.15 The professional agent acting on behalf of the Co-Op have submitted a detailed objection which concludes that:-

“Policy EC17.1 of PPS4 recommends that planning applications for main town centre uses that are not in a centre and not in accordance with an up to date development plan should be refused where:

- The applicant has not demonstrated compliance with the requirements of the sequential approach; or
- There is clear evidence that the proposal is likely to lead to significant adverse impacts in terms of any one of the impacts set out in EC10.2 and EC16.1 of PPS4, taking account of the likely cumulative effect of recent permissions, developments under construction and completed developments.

In this instance, it is clear that the Sainsbury’s application has failed both limbs of Policy EC17.1 and should be refused. In particular, the applicant has failed to offer a robust assessment of the proposed development in the context of the sequential approach under Policy EC15 of PPS4 and development plan policies. In addition, there are significant adverse impacts associated with at least two of the criteria in EC16.1 of PPS4, including the financial impact of the proposed development and its overall adverse effect on the vitality and viability of Ledbury town centre.

Beyond these core policy criteria, there are also concerns over the conformity of the proposed development in the context of its accessibility (EC10.2 of PPS4) and the loss of employment land.

In light of the above, the Co-op invites Council officers to show consistency with their recommendation in relation to the Tesco proposal and also recommend the Sainsbury’s application for refusal, and we hope that in due course the Council’s Planning Committee will refuse this application.”

5.16 The full text of these letters can be inspected at Hereford Customer Services, Franklin House, 4 Commercial Road, Hereford, HR1 2BB and prior to the Committee meeting.

6. Officer's Appraisal

6.1 At the pre-application stage advice was supplied to the applicant that the proposal was contrary to both Central Government advice and Development Plan policy. Nevertheless, upon submission of the planning application independent advice was sought especially with regard the potential impact of the proposed development upon the viability and vitality of the Ledbury Town Centre. A full copy of the advice received is attached as **Annex 4**. This report will therefore provide a less technical and briefer summary of the retail impact issues and address the other relevant planning issues.

6.2 Sequential Testing

6.3 The Central Government advice currently contained within PPS4 and the relevant Development Plan policy basically adopt a "Town Centre first" approach as the Government is committed to promote the vitality and viability of town centres. In addition, Town Centre sites tend to be in sustainable locations that reduce the need to travel, especially by car. Sites should be selected using the sequential process in the following order:-

- a) sites in the town centre;
- b) sites on the edge-of centre (i.e. up to 300 metres walking distance of the Town Centre);
and
- c) sites out-of centre.

6.4 In this case the application site is in an out-of-centre location. Policy EC14.3 of Planning Policy Statement 4 requires the applicant to submit sequential assessments in such cases. The agent for the applicant has submitted such a sequential assessment in this instance.

6.5 The agent has submitted a sequential assessment. Of the two sites that the agent has identified, it is considered that they have not been assessed appropriately. The report deals with each site in turn.

6.6 The existing retail store (Tesco) site at the corner of The Homend and Orchard Lane (Approximate Site Area = 0.8 hectares)

6.7 This site is an edge-of-centre site. It is within easy walking distance of the Town Centre and Railway Station.

6.8 It is considered that the existing store was poorly planned at the time it was built. In essence it is an excavated big, flat bottomed hole with the store built at the lowest level set back from the Homend. A simple level site with parking to the front and the store built to the rear. The development makes no positive contribution to the townscape and historic fabric of Ledbury. The building fails to address The Homend. Furthermore it appears that even from an operational point of view the development was poorly designed. The service yard was located poorly vis-à-vis neighbouring properties, only one delivery bay was created and there is not adequate room for another lorry to wait without at least partially waiting upon the public highway. It is understood that the delivery bay is not a proper docking bay and as such goods need to be unloaded using metal cages.

6.9 It is considered that this site could be redeveloped by excavating the existing site by say a further 60cm, creating a parking area at that lower ground level including upon the site of the existing store and building a store, effectively on stilts, above that fronting The Homend, such that it appears as a single storey store from The Homend. Vehicular entry to the store could be achieved from the existing vehicular access. The service yard, with two delivery docks, could then be moved back (north) further into the site away from Orchard Lane and shielded by the present high wall at the rear of the site.

- 6.10 Entry to the store from the car park would be by lift or travelator or stair or walking up the present ramping pavement of Orchard Lane to an entrance at the corner of The Homend. An entrance at this corner would allow people to see and be “invited” into the Town Centre which would be downhill. There may even be the ability to create a further floor over part of the building at its south-eastern corner and along The Homend frontage. It is considered that it would be possible in design terms to create a store in the region of 4,830 sq metres (gross) with a net sales area in the region of 2,400 square metres. This is not an acceptance that Ledbury has sufficient residual capacity to support such a store but a case that there is a sequentially preferable site.
- 6.11 The agent for the applicant submits that a larger store is not capable of being accommodated on this site as:-
- Tesco do not consider it to be feasible or viable to either extend their existing store, or to develop a new store on the site;
 - Such a development would raise a series of design challenges; and
 - The cost of closing the store to allow for redevelopment would be unviable.
- 6.12 It is considered that as described above, with a degree of creative design it would be possible to design a scheme that enhances the townscape. It is also considered that notwithstanding, the cost of closing the store to allow for redevelopment, such a development would be viable. It is understood that a reasonable “rule of thumb” would be that to justify a twelve month closure (although a full twelve-month closure may not be necessary) and redevelopment one would normally need to double the floorspace of the store being demolished. Given that the existing store has gross floorspace of some 2,162 square metres with a net sales area of 1,175 square metres and the redevelopment concept outlined above would have a gross floorspace of 4,830 square metres with a net sales area of some 2,400 sq metres, the size of the resultant store would be more than double. As a consequence and without a full financial viability study to the contrary it is considered that the redevelopment of the existing Tesco site remains an option.
- 6.13 Interestingly given that a redevelopment would partially replace existing floorspace to be lost such a scheme would only add some 2,568 square metres (gross) and 1,225 square metres net sales to the existing retail floorspace of Ledbury as opposed to the Sainsbury’s proposal under consideration that would add 5,427.8 square metres (gross) and 2,787 square metres net sales .
- 6.14 Therefore the reasoning forwarded by the agent for the applicant in dismissing this site in providing additional retail floorspace within Ledbury is not considered to be robust. In fact, the site is considered to represent an opportunity for the provision of additional retail provision within Ledbury on a site well linked to the Town Centre whilst providing Ledbury with a new development that would genuinely enhance the Townscape.
- 6.15 Car Park west of Lawnside Road, off Bye Street (Approximate Site Area = 1.12 hectares)
- 6.16 This is another genuinely edge-of-centre site. The site comprises a car park, swimming pool, youth centre, ambulance station, fire station, community hall, BT exchange building, and a couple of commercial businesses. The current development upon this site is of a low density.
- 6.17 It is considered that this wider site could easily accommodate a two storey development with short-term parking beneath a store. The surrounding area includes buildings of varying heights including three storey flatted blocks on the eastern side of ‘Lawnside’ and three storeys to the ‘Ledbury Community Health and Care Centre Hospital’ complex. The landowners may or may not wish to sell their land and may wish to secure appropriate replacement provision within a comprehensive redevelopment or relocation of the existing

uses (e.g. relocation of the swimming pool with associated fitness gym and meeting room to the John Masefield School site). They may not even wish to retain their facility at all.

6.18 Such land assembly and a comprehensive redevelopment may take time and, as such, the site may not be capable of becoming genuinely available within a reasonable time period (say five years) but there is no evidence whatsoever that this possibility has been investigated by the agent for the applicant. Whilst the entirety of the site is not currently being marketed, this does not necessarily mean that it may not be available. For example there is no evidence that the application site itself (i.e. the Galebreakers site) was being actively marketed prior to the submission of this planning application. Interestingly, at the time of writing this report the ambulance station land is currently on the market. The agent for the applicant has not provided any written documentary evidence to demonstrate that genuine enquiries have been made to the landowners of this site and the landowner's responses.

6.19 The agent has argued that this site would not be acceptable as:-

- a) there would be concerns about the bulk, massing and scale of development, especially given the close proximity to the conservation area and listed buildings;
- b) there is not sufficient space to provide the necessary car parking, which would also need to provide for the loss of current spaces; and
- c) Bye Street would not be able to accommodate the vehicular movements generated by a foodstore.

6.20 In response to the above three points it is considered that:-

- a) a scheme could be designed that would not adversely affect the area and the setting of the listed buildings and the Conservation Area. Only the ambulance station is in the Conservation Area and only the adjoining public house is listed. It is considered that a comprehensive two storey redevelopment of the site would afford the opportunity of enhancing the townscape;
- b) one would envisage any proposal for a retail store upon this site to include car parking provision that would enable persons using the store to park and have sufficient time to have a linked trip into the Town Centre. In fact, one could envisage the number of car parking spaces increasing; and
- c) the agent for the applicant fails to state whether the problems he foresees with regard Bye Street are matters of the design of the highway or ones of highway capacity. No professional Transport Assessment has been submitted addressing this matter. Clearly traffic volumes would depend upon the size of store proposed.

6.21 Therefore I do not consider the submitted sequential assessment to be robust and as such is considered to be contrary to the Central Government advice contained within Policies EC15 and Policy E17 of Planning Policy Statement 4 and policies TCR1, TCR2 and TCR9 of the Herefordshire Unitary Development Plan 2007.

6.22 Impact upon the vitality and viability of the existing town centre

6.23 The agent has submitted a Retail Assessment. This has been examined in detail and attention is drawn to the expert advice received by the Council at **Annex 4**. Therefore rather than repeat that analysis in this Committee Report, it is relied upon.

6.24 However, in summary, the independent professional planning consultants (Drivers Jonas Deloitte) have expressed concerns about the robustness of both the agent's for Sainsbury's (Turley's) expenditure capacity and impact assessments.

- 6.25 Drivers Jonas Deloitte are of the opinion that Turley's assessment of expenditure capacity is unrealistic, principally because it assumes redirection from centres elsewhere to Ledbury of all residents' expenditure from the catchment area, despite the eastern part of the catchment extending into areas relatively close to and with a strong allegiance to Great Malvern.
- 6.26 Drivers Jonas Deloitte believe that Turley's assessment of impact on Ledbury shops is incomplete, because the impact on Ledbury shops has been calculated based on the proposed store turnover from the catchment only, and has ignored trade diversions from expenditure from beyond the catchment. This is a major omission which will have underestimated the impact on Ledbury convenience stores in particular.
- 6.27 Drivers Jonas Deloitte accepts that because of the specialist nature of many of the independent shops in Ledbury they may be more resilient to the trading impact of a large foodstore than would otherwise be the case. However, it should not be assumed that the specialist convenience shops in Ledbury will be immune from the commercial pressures of substantial additional large foodstore provision.
- 6.28 In addition, Drivers Jonas Deloitte considers that the historic character and conservation area status of much of the town centre places greater weight on consideration of the implications of impact than would otherwise be the case.
- 6.29 Therefore it is considered that the expenditure capacity and impact assessments forming part of the planning application are not robust and fail to demonstrate that the proposal would not have a significant adverse impact upon the viability and vitality of Ledbury Town Centre contrary to the Central Government advice contained within Policy EC15 of Planning Policy Statement 4 and Policies S5, TCR1, TCR2 and TCR 9 of the Herefordshire Unitary Development Plan 2007.
- 6.30 "Linked –trips"
- 6.31 Whilst later in this report is a section entitled transportation, the issue of linked trips is so intrinsically linked to the issue of impact upon the viability and vitality of the Town Centre that it is addressed at this stage of the report.
- 6.32 The application site is a walking distance of approximately 830 metres to the Town Centre boundary, in excess of 1km from the Market Hall in the centre of the Town Centre and approximately 1.5km from the railway station. The routes are uphill, rather convoluted and not particularly safe in that pedestrians are likely to have personal security concerns. Whilst these routes could be enhanced (e.g. by provision of lighting) parts do not have passive surveillance (are not overlooked).
- 6.33 It is considered that the walking distance is such that people are very unlikely to make linked trips with the Town Centre. Whilst a financial contribution may be made via a Planning Obligation under Section 106 of the Act that may make these routes more attractive, they could never bring the site closer to the Town Centre.
- 6.34 Therefore it is considered that the store would become a destination in its own right with shoppers unlikely to visit the Town Centre. If they were to visit the Town Centre it is considered that such a trip is likely to be a separate car trip which is in itself unsustainable. In this regard attention is drawn to paragraphs 5 and 6 of the appeal decision attached as **Annex 3**.
- 6.35 Impact upon Heritage Assets
- 6.36 As described earlier, the existing Town Centre lies within the heart of the Ledbury Conservation Area. Intrinsic to its character are the retail uses. Given the view formed above that the proposal would have an adverse impact upon the viability and vitality of Ledbury Town

Further information on the subject of this report is available from Roland Close on 01432 261803

Centre, it is submitted that there would be a secondary negative impact upon the character of the Ledbury Conservation Area. Clearly to retain retail uses within existing premises, many of which are listed (see plan attached as **Annex 5**), the businesses must remain viable. Given the limited expenditure capacity of the Ledbury catchment there is a prospect of existing retail businesses ceasing trading. This would lead to the vibrancy of Ledbury Town Centre declining. If one does not have viable uses for listed buildings they are likely to fall into disrepair. Whilst alternative uses may be found, these would be of a fundamentally different character. Clearly one would not wish the Ledbury Conservation Area to become a heritage asset which is at risk. It is considered that such erosion in the character of the Ledbury Conservation Area is likely to lessen its attractiveness to tourists.

6.37 Transportation

- 6.38 From a highway capacity point of view it is considered that the local highway network can satisfactorily accommodate the proposed development. Similarly it is considered that the vehicular means of access and associated visibility splays are adequate.
- 6.39 However, good planning involves the proper integration of land-use planning and transportation planning. It is now a fundamental of the planning system reflected in both Central Government advice and Development Plan policy that such developments should be located so as to reduce the need to travel especially by way of the private motor vehicle. Such sustainable patterns of development also respond to issues of climate change. Ideally one should locate such developments in close proximity to the existing commercial core and transport nodes.
- 6.40 The proposed development is located in a position that is not readily accessible by modes of transport other than the private motor vehicle. Those persons living outside of Ledbury and arriving at the railway station or bus terminus would then have to take a separate bus trip to the proposed store. The mere need for a change is likely to deter many public transport users.
- 6.41 Other than from the New Mills residential estate to the north of the site, it is difficult to envisage residents living in the north-east of the Town, east of the Homend (e.g. Homend Crescent area) and the south-east of the Town (Deer Park residential estate) walking to the proposed store. It is considered that it is likely that people would use their car and travel around the town on the by-pass (A417).
- 6.42 With regard to a cycling perspective, the location of the proposed store is not considered to be readily accessible from the south-east of the town and again the likelihood of linked trips is low.
- 6.43 Attention is drawn to paragraph 4 of the appeal decision attached as **Annex 3**.
- 6.44 As a consequence it is considered that the location of the proposal is such that it would increase reliance upon the private motor vehicle contrary to the Central Government advice contained within Planning Policy Statement 1, Planning Policy Statement 4, Planning Policy Guidance Note 13 and policies S1, S5, S6, DR2 and DR3 of the Herefordshire Unitary Development Plan 2007.
- 6.45 Detailed matters that are not fundamental to consideration of the application and could be overcome by way of negotiation are:-
- design of cycle parking; and
 - the omission of dropped kerbs at the site entrance.

6.46 Loss of employment land & other employment issues

- 6.47 The site is currently actively used for employment purposes. It has a good vehicular access and is divorced from residential properties to such a degree that a general industrial use can satisfactorily take place. It is well located in terms of access to the wider road network.
- 6.48 It is understood that the proposed store would generate some 230 jobs. Of these 44 are likely to be full time. The remainder would be part-time staff. The applicant estimates the total full time equivalent job (FTE) numbers to be 100. However given the appraisal above which concluded that the expenditure capacity of the catchment is less than that required to support the proposed store, it is logical to assume that there would be a degree of employment loss within the existing Town Centre and associated local suppliers. It is also considered to be logical to assume that due to economies of scale, larger stores such as that proposed may have lower employment densities (i.e. staff / floorspace ratios) than smaller stores.
- 6.49 Notwithstanding the issues surrounding the existing business, the land is safeguarded employment land by virtue of policy E5 of the Herefordshire Unitary Development Plan 2007. In addition, Policy S4 (2) seeks to ensure a suitable range of quality employment land. The proposed development would be contrary to this statement as it would represent a loss of good quality employment land that is immediately available. The real issue is to ensure that Ledbury has an adequate supply of employment land from both a quantitative and qualitative perspective.
- 6.50 Documentation submitted in support of the planning application states that there are sufficient levels of employment land in Ledbury to meet current and future demands. However, despite reference to Herefordshire Council's Employment Land Study (update September 2011), the supporting documentation omits reference to the quality of such land.
- 6.51 The Employment Land Study undertakes a qualitative and quantitative assessment of strategic employment sites across Herefordshire. Information submitted in support of the application (Harris Lamb report – October 2011) identifies 18.31 hectares of employment land allocations in Ledbury. However the Employment Land Study notes that land north of the railway viaduct (12.27 hectares) is of poor to moderate quality. The reasoning for this rating is based on two factors. Firstly the viaduct site is considered to be poor when judged against criteria for market attractiveness (e.g. site development constraints and access to strategic road network). Alongside this the viaduct site is assigned the lowest rating for its sustainability and strategic planning potential.
- 6.52 In comparison to the above, the Lower Road Trading Estate is the only employment land within Ledbury classified as 'good'. This is due to the site scoring highly both in terms of its market attractiveness and its sustainability and strategic planning potential. The Employment Land Study notes the Lower Road Trading Estate is 13.87 hectares in size of which 5.15 hectares is currently vacant. The application represents 20.2% of the overall Trading Estate. The application site includes approximately 1.5 hectares of vacant land (former Huna Designs site) which equates to approximately 29.1% of current vacant land on the site.
- 6.53 Policy S4 part 2 seeks to ensure a suitable range of quality and location of employment land. Accordingly the proposed development would be contrary to this statement as it would represent a loss of good quality employment land.
- 6.54 Policy S5 part 3 states that town centre uses that generate and attract many trips, including retail should be located in or adjacent to existing centres. This proposal is contrary to this policy as it is located in an out of centre location being located approximately 900 metres from the primary shopping frontage and located in excess of a 10 minutes walk from an hourly public transport service.

- 6.55 Policy E5 Safeguarding employment land and buildings seeks to only permit loss of employment land where there would be substantial benefits to residential or other amenity in allowing alternative forms of development. Furthermore it would also be necessary for a development proposal to demonstrate that the application site is unsuitable for other employment uses.
- 6.56 The supporting Planning Statement states that “*The partnership with Sainsbury’s will also ensure that Galebreaker are able to remain in Ledbury.*” However, during discussions, Galebreakers stated that their continuing operation in Ledbury was not reliant upon relocation and that they could continue to operate in their existing premises. This indicates that their site is suitable for continued employment operation and therefore the application is contrary to the principles of policy E5 part 1. The land would also be suitable for other potential employment users.
- 6.57 Policy E5 part 2 states that any retail use within designated employment sites should be ancillary to the employment use. The application is contrary to this policy as it would replace the entire employment use.
- 6.58 Paragraph 6.4.26 of the UDP states that retail development within employment sites could detrimentally impact future employment development. The proposed development would have detrimental impact upon both the employment opportunities on the existing site and, alongside the shortage of good quality employment land in Ledbury, a detrimental impact upon the wider economic development of the area.
- 6.59 The Core Strategy has recently been subject to a Revised Preferred Options consultation. This consultation focused on amendments to housing figures and the plan period. Specifically for Ledbury, there has been no change to the housing requirement and the current UDP employment land designation north of the viaduct site is identified for residential development. The viaduct employment allocation was identified in the previous two development plans covering Ledbury (Herefordshire Council UDP and Malvern Hill District Council Local Plan) but did not advance to application stage due to access difficulties for heavy good vehicles. Accordingly the site has been classed as moderate – poor in its quality as employment land.
- 6.60 The general policies of the Core Strategy were subject to consultation at the preferred options stage (Autumn/Winter 2010) and of particular importance is policy EC.1 – Economy. Policy EC.1 states that highest quality employment land will be protected from alternative uses. Accordingly as the application site is the only good quality employment site in Ledbury, the application is contrary to emerging policy.
- 6.61 Central Government advice contained within part d policy EC2 of Planning Policy Statement 4 entitled ‘Planning for Sustainable Economic Growth’ seeks that Local Authorities take account of business requirements including the quality of land. As stated, Herefordshire Council’s evidence base identifies that the application site is the only good quality employment site in Ledbury. The loss of such land would be contrary to PPS4.
- 6.62 The Planning Inspectorate note that the National Planning Policy Framework is capable of being a material consideration in the decision making process but the weighting of the document is a judgement to be made by the decision maker. Notwithstanding this the supporting documentation with the application refers to the principles of the NPPF including the default answer of “yes” to sustainable development. It is considered that the proposal does not represent sustainable development and therefore fails to meet this most fundamental policy test.
- 6.63 The NPPF states that Local Authorities should avoid the long term protection of employment land and alternative uses should be judged on their merits (para 75). However the NPPF notes that the planning system is plan led (para 62). The plan, in this case the UDP, does not support the loss of employment land. Furthermore the market signals do not give rise to the

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claim that the site is being unduly protected. Galebreakers indicate they can continue to operate from their existing site. Should their long-term future be away from their existing site, then this site should be subject to a robust and extensive marketing campaign for alternative employment uses prior to allowing any changes of use.

- 6.64 Core indicator E(3) of Herefordshire Council's Annual Monitoring Report (AMR) 2009/2010 identifies the loss of employment land to alternative uses. The AMR 2009/2010 identifies that 0.18ha of employment land was lost to alternative uses. This primarily consisted of a number of small-scale planning applications for the conversion of above ground floor offices into residential units. The current application would represent a fifteen-fold increase on this figure. As noted in the AMR (paragraph 4.25) such significant loss of existing employment land would lead to increase pressures on greenfield land development. Given the setting and landscape constraints around Ledbury, this could result in unsustainable development.
- 6.65 Current work is ongoing to complete the AMR for the monitoring period 2010/2011. Early indications are that a significant decrease in employment land completions has taken place. This is not uncommon and represents the significant economic pressures being experienced at a broader level.
- 6.66 Furthermore a number of planning permissions, and therefore identified as commitments in previous AMRs, have subsequently lapsed. This leaves an approximate 3.43ha of employment land with planning permission in Ledbury. Accordingly, in the short-term, there is a lack of deliverable employment sites within Ledbury that would be exacerbated by the proposed development and result in potential failure to delivery a diverse range of employment land across the county.
- 6.67 Therefore on the issue of employment, it is considered that the proposal represents the loss of high quality employment land contrary to the Central Government advice contained within Planning Policy Statement 4 and policies S4 and E5 of the Herefordshire Unitary Development Plan 2007.
- 6.68 Flooding
- 6.69 The Environment Agency and the Council's Land Drainage advisor have raised concern that the submitted Flood Risk Assessment contains inadequate information to demonstrate to their satisfaction that there would not be an increase in flood risk and as such the proposal is considered to be contrary to the Central Government advice contained within Planning Policy Statement 25 and policy DR7 of the Herefordshire Unitary Development Plan 2007.
- 6.70 Design
- 6.71 The design of the building is functional and considered acceptable in terms of its location within an industrial area.
- 6.72 Landscaping
- 6.73 The proposed landscaping strategy appears reasonable although further detail would be required with regard location, species and density of planting. However, there is a fundamental problem in that the enhanced planting in the existing landscape buffer to the east of the proposed store to the rear of the houses in Bronte Drive is not within the planning application site area or on adjoining land within the applicant's ownership and as such cannot be secured other than by way of legal agreement. The deposited Draft Heads of Terms does not cover this issue. The enhancement of this landscape buffer is considered to be critical in terms of softening the expanse of the rear elevation of the store from those properties in Bronte Drive. This is one of the few benefits offered by the scheme as it completes a wildlife corridor and would be of benefit to local residents. Tree planting within the expanse of car parking is welcomed. Precise details of hard landscaping materials and "furniture" would be

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required (e.g. lighting, bollards, barriers, trolley park design). Particular attention would need to be had with regard the retaining walls. By levelling the land the store and parking would effectively be enclosed to a high degree by retaining walls. These walls would dominate the user experience of the car park. The precise treatment and appearance of these walls would be crucial. Innovative design and construction of these walls could help to create a sense of place rather than merely a utilitarian and functional wall.

6.74 Ecology

6.75 The application is accompanied by an ecological assessment. A presence/absence reptile survey has been undertaken at an appropriate time of year and slow worms have been found to be present although it is not possible to assess the population size from this number of surveys. Slow worms are protected against sale and injury under the Wildlife and Countryside Act and are also a BAP (Biodiversity Action Plan) species of conservation concern. The survey information that has been presented does not include details of the locations of the reptile tiles that were placed or under which refuges the slow worms were found. Insufficient habitat will be retained on the site for reptiles so the proposed mitigation includes translocation of the reptiles to a suitable receptor site. To comply with Natural England's guidance and Standing Advice on reptiles, the receptor site should be close to the application site and of at least the same size. The receptor site should also be within Herefordshire, have suitable reptile habitat and ideally no existing populations of slow worms; it should also have long-term security from future development. No receptor site has been identified and in the absence of this information it is not possible to establish whether translocation is a potential or suitable mitigation strategy. This is a significant omission from the submitted application. Details of the site and landowner would need to be included in a Section 106 Agreement to ensure long-term protection and monitoring of the receptor site. It should also be noted that trapping and translocation could take much longer than the 10 days indicated in the report.

6.76 Therefore, the presence of protected species in the form of slow worms has been established. Insufficient habitat will be retained on the site for reptiles so the mitigation measures proposed by the applicant include translocation of the reptiles to a suitable receptor site. Such a receptor site should be close to the application site, within Herefordshire, have suitable reptile habitat and ideally no existing populations of slow worms. The submitted application fails to identify a suitable receptor site. The submitted planning application cannot be approved without a suitable receptor site having been identified as in the absence of a suitable receptor site being identified, the Local Planning Authority are unable to establish whether translocation is a suitable mitigation strategy. In addition, the application does not include a suitable legal mechanism to secure translocation to an identified suitable receptor site together with long-term protection and monitoring of the receptor site. As such the proposal is contrary to the Central Government advice contained within Circular 06/2005, Planning Policy Statement 9 entitled 'Biodiversity and Geological Conservation and policies NC1, NC6, NC7, NC8 and NC9 of the Herefordshire Unitary Development Plan 2007.

6.77 Residential Amenity

6.78 Concern has been expressed with respect the impact of the proposal upon the amenities of the occupiers of the houses in Bronte Drive to the north-east of the site.

6.79 The proposed store building would be close to the north-eastern boundary.

6.80 The eaves height of numbers 12, 18, 32, 36 and 38 are 55.3 (AOD), 55.3 (AOD), 56.75 (AOD), 56.8 (AOD) and 56.8 (AOD) respectfully. The ridge heights of the houses at numbers 12, 18, 32, 36 and 38 are 58.35 (AOD), 58.35 (AOD), 58.8 (AOD), 58.9 (AOD) and 59.6 (AOD). The height of the rear elevation of the store varies between 56.15 (AOD) and 57.35 (AOD). In essence, at no point is the eaves level of the store more than 85 cm above the eaves level of the aforementioned houses and the ridge level of the store (57.63 AOD) is materially lower

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than the ridge level of the houses. This has been achieved by effectively lowering the store into the ground as previously described. The restricted height of the store and the fact that the distance from the original rear elevations of the houses in Bronte Drive exceeds 21 metres means that I am satisfied that the proposed store not be unduly high nor would it result in an undue loss of daylight and / or sunlight to properties in Bronte Drive.

6.81 The Environmental Health Manager has addressed issues relating to noise, lighting and air pollution from the service yard, car park, plant and the bio-mass boiler. He is satisfied that there would not be undue loss of amenity to occupiers of residential properties in the immediate vicinity. An appropriate planning condition could be attached restricting the hours of deliveries and despatches.

6.82 Contaminated Land

6.83 The issue of contaminated land could satisfactorily be dealt with by way of a planning condition.

Petrol Filling Station

6.84 Ledbury currently has two petrol filling stations, one within the Town Centre on the eastern side of The Homend and one on the western side of the A417 approximately one mile south of the Town.

6.85 The proposed Petrol Filling Station needs to be considered against the provisions of policy TCR18 of the Herefordshire Unitary Development Plan 2007 and other Development Plan policies.

6.86 The site is located within Ledbury, albeit on the periphery. The proposed kiosk is considered to be modest in scale. It is also considered that the proposed petrol filling station would not adversely affect the amenities of the occupiers of existing residential properties in the area. Emission of petrol vapours would be regulated under the Environmental Permitting Regulations 2010.

6.87 However, the petrol filling station is located upon land safeguarded for employment purposes. This employment land is of a high quality. As such, the petrol filling station element of the proposal also conflicts with Policies S4 and E5 of the Herefordshire Unitary Development Plan 2007.

6.88 Draft Heads of Terms

6.89 The Draft Heads of Terms submitted by the agent for the applicant is attached as **Annex 2**. For information, *if* planning permission were to be granted the normal formula applied by this Authority would require the sum in clause 1 to be £652,065 (index linked). The Draft Heads of Terms fails to secure the proposed enhancement to landscaping outside of the planning application site adjacent to the eastern boundary.

6.90 However, given the recommendation is for refusal, a further reason for refusal is required on the ground that there is no completed legal agreement under Section 106 of the Town and Country Planning Act 1990 and as such the proposal is contrary to policy DR5 of the Herefordshire Unitary Development Plan 2007 and the Local Planning Authority's adopted Supplementary Planning Document entitled 'Planning Obligations' (April 2008).

6.91 Conclusion

6.92 In the light of the above appraisal it is considered that the proposal is contrary to both Central Government advice and Development Plan policy. The fundamental objections to the

proposal as outlined in recommended grounds of refusal 1-5 (inclusive) cannot be overcome by way of an amendment to the submitted scheme or through negotiation.

RECOMMENDATION

That Planning Permission be REFUSED on the following grounds:-

- 1. The Local Planning Authority do not consider the submitted sequential assessment to be robust and as such is considered to be contrary to the Central Government advice contained within Policies EC15 and EC17 of Planning Policy Statement 4 and policies S5, TCR1, TCR2 and TCR9 of the Herefordshire Unitary Development Plan 2007.**
- 2. The local planning authority consider that the expenditure capacity and impact assessments forming part of the planning application are not robust and fail to demonstrate that the proposal would not have a significant adverse impact upon the viability and vitality of Ledbury Town Centre contrary to the Central Government advice contained within Policy EC17 of Planning Policy Statement 4 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 Ledbury Conservation Area contrary to the Central Government advice contained within Planning Policy Statement 5 and policy S7 of the Herefordshire Unitary Development Plan 2007.**
- 4. The proposal including the petrol filling station, would result in the loss of high quality employment land contrary to the Central Government advice contained within Policy EC2 of Planning Policy Statement 4 and policies S4 and E5 of the Herefordshire Unitary Development Plan 2007.**
- 5. The location of the proposal in an unsustainable location is such that it would increase reliance upon the private motor vehicle contrary to the Central Government advice contained within Planning Policy Statement 1, Planning Policy Statement 4, Planning Policy Guidance Note 13 and policies S1, S5, S6, DR2 and DR3 of the Herefordshire Unitary Development Plan 2007.**
- 6. The submitted Flood Risk Assessment contains inadequate information to demonstrate to the satisfaction of the Local Planning Authority that there would not be an increase in flood risk and as such the proposal is considered to be contrary to the Central Government advice contained within Planning Policy Statement 25 and policy DR7 of the Herefordshire Unitary Development Plan 2007.**
- 7. The presence of protected species in the form of slow worms has been established. Insufficient habitat will be retained on the site for reptiles so the mitigation measures proposed by the applicant includes translocation of the reptiles to a suitable receptor site. Such a receptor site should be close to the application site, within Herefordshire, have suitable reptile habitat and ideally no existing populations of slow worms. The submitted application fails to identify a suitable receptor site. The submitted planning application cannot be approved without a suitable receptor site having been identified as in the absence of a suitable receptor site being identified, the Local Planning Authority are unable to establish whether translocation is a suitable mitigation strategy. In addition, the application does not include a suitable legal mechanism to secure translocation to an identified suitable receptor site together with long-term protection and monitoring of the receptor site. As such the proposal is contrary to the Central Government advice contained within Circular 06/2005, Planning Policy Statement 9 entitled 'Biodiversity and Geological**

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Conservation and policies NC1, NC6, NC7, NC8 and NC9 of the Herefordshire Unitary Development Plan 2007.

8. The proposed development would necessitate a planning obligation (which complies with the criteria set out in the Supplementary Planning Document on 'Planning Obligations' which was adopted in April 2008) securing contributions towards sustainable transport infrastructure (including enhanced pedestrian and cycle links to the Ledbury Town Centre), to mitigate against the impact of the development together with the requisite legal costs in preparing such an Agreement and the requisite monitoring costs . A completed Planning Obligation has not been deposited and as such the proposal is contrary to Policy DR5 of the Herefordshire Unitary Development Plan 2007 and the Council's Supplementary Planning Document entitled 'Planning Obligations' (April 2008).
9. The proposed enhancement of the landscape buffer with associated biodiversity benefits to the rear of the proposed retail store does not lie within the planning application site area and as such a planning condition could not secure its provision. Furthermore no other legal mechanism is provided by the applicant to secure this landscaping. In the absence of this landscaping, it is considered that the continual horizontal mass and expanse of the building is such that it would have an adverse impact upon the amenities of the occupiers of numbers 12, 14, 16, 18, 20, 34, 36, 38, 40, 42, 44 and 46 Bronte Drive, contrary to Policies S2, DR2, LA6 and NC7 of the Herefordshire Unitary Development Plan 2007.

Informative:

1. For the avoidance of any doubt the documents to which this decision relates are:-
 - 1) Letter dated 28th Oct from Turley Associates received 31st October 2011
 - 2) Draft Heads of Terms received 31st October 2011
 - 2a) Existing Site Plan / Red Line Boundary - Drawing PL-01 received 31st October 2011
 - 3) Existing Site Layout – Drawing No. PL-02 received 31st October 2011
 - 4) Existing Elevations – Drawing No. PL-04 received 31st October 2011
 - 5) Existing Site Sections – Drawing No. PL-03 received 31st October 2011
 - 6) Proposed Site Plan – Drawing No. PL-10 received 31st October 2011
 - 7) Proposed Ground Floor Plan – Drawing No. PL-11 received 31st October 2011
 - 8) Proposed Roof Plan – Drawing No. PL-12 received 31st October 2011
 - 9) Proposed Elevations – Drawing No. PL-13 Rev A received 2nd February 2012
 - 10) Proposed Sections – Drawing No. PL-14 Rev A received 2nd February 2012
 - 11) Proposed Boundary Sections – Drawing No. PL-15 Rev A received 2nd February 2012
 - 12) Proposed Site Sections – Drawing No. PL-16 Rev A received 2nd February 2012
 - 13) Proposed Part Bays – Drawing No. PL-17 received 31st October 2011
 - 14) Sainsbury's PFS – Drawing No. 2592/20 received 31st October 2011
 - 15) Sainsbury's PFS – Drawing No 2592/12 received 31st October 2011
 - 16) Sprinkler Tank & Biomass Boiler details – Drawing No PL-20 received 7th December 2011
 - 17) Trolley Bay Shelter Details – Drawing No. PL21 received 7th December 2011
 - 18) Tree Survey Schedule received 31st October 2011
 - 19) Tree Survey Plan – Drawing No. 900-01 Revision B received 31st October 2011
 - 20) Tree Removal, Retention & Protection Plan – Drawing No. 900-02 Revision B received 31st October 2011
 - 21) Outline Landscape Proposals – Drawing No. 900-03 Revision D received 31st

Further information on the subject of this report is available from Roland Close on 01432 261803

October 2011

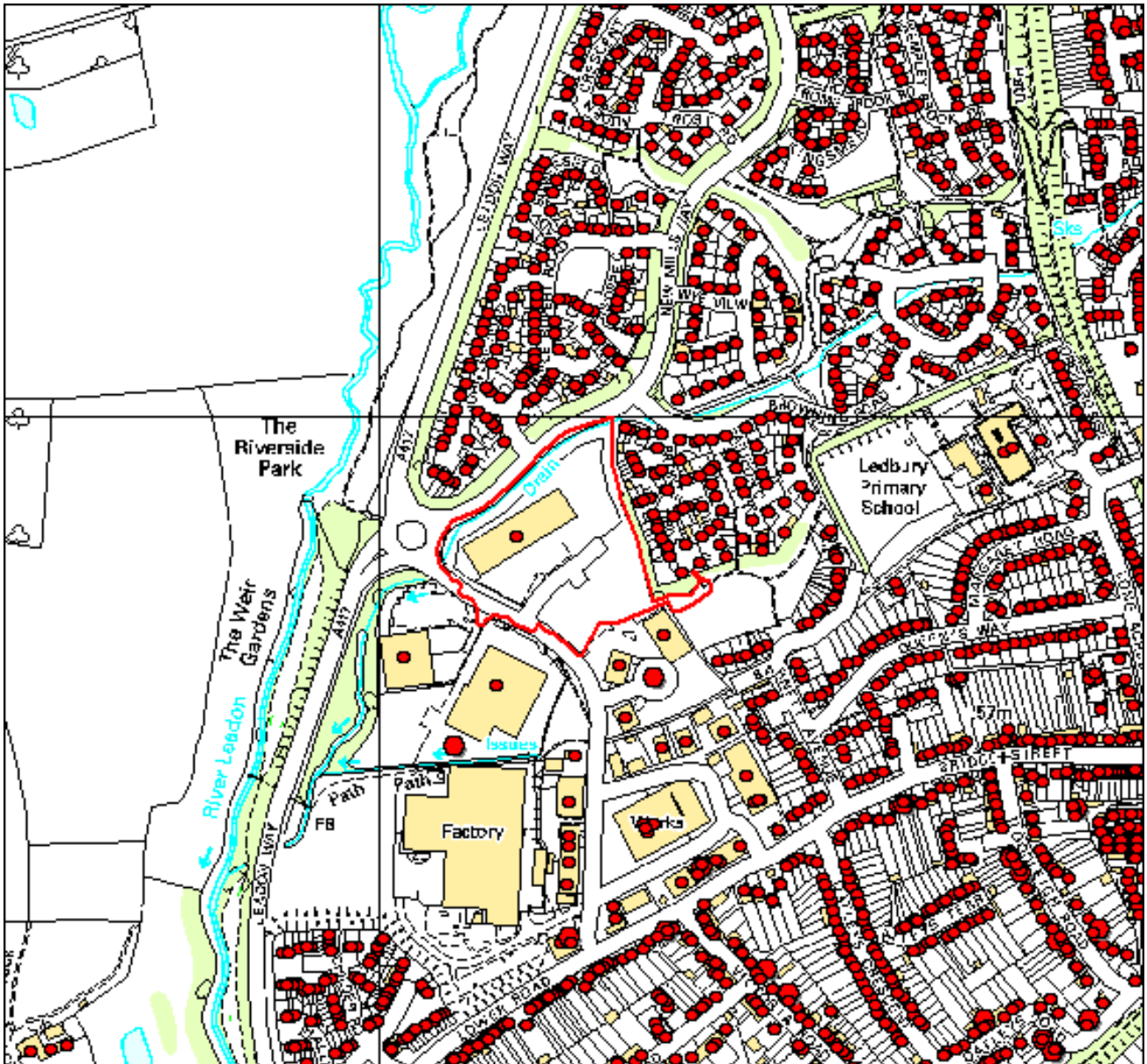
- 22) Inter Car Park Tree Pit Detail – Drawing No. 900-04 received 31st October 2011
- 22a) Pedestrian Walkway Tree Pit Detail – Drawing No. 900-05 received 31st October 2011
- 23) Statement of Community Involvement received 31st October 2011
- 24) Design & Access Statement received 31st October 2011
- 25) Planning Statement received 31st October 2011
- 26) Economic Assessment 7th November 2011
- 27) Employment Land Study received 31st October 2011
- 28) Transport Assessment received 31st October 2011
- 29) Interim Travel Plan received 31st October 2011
- 30) Service Yard Management Plan received 31st October 2011
- 31) Noise Impact Assessment received 31st October 2011
- 32) Air Quality Assessment received 31st October 2011
- 33) Renewable Energy & Energy Efficiency Assessment received 31st October 2011
- 34) External Car Park Lighting Statement received 31st October 2011
- 35) Landscape Statement received 31st October 2011
- 36) Ecological Assessment received 31st October 2011
- 37) Pan Brown Associates Phase 1 Desk Study received 31st October 2011
- 38) Flood Risk Assessment received 31st October 2011
- 39) Archaeological & Cultural Heritage Desk – Based Assessment received 31st October 2011 received 31st October 2011
- 40) Application Form received 31st October 2011

Decision:

Notes:

Background Papers

Internal departmental consultation replies.



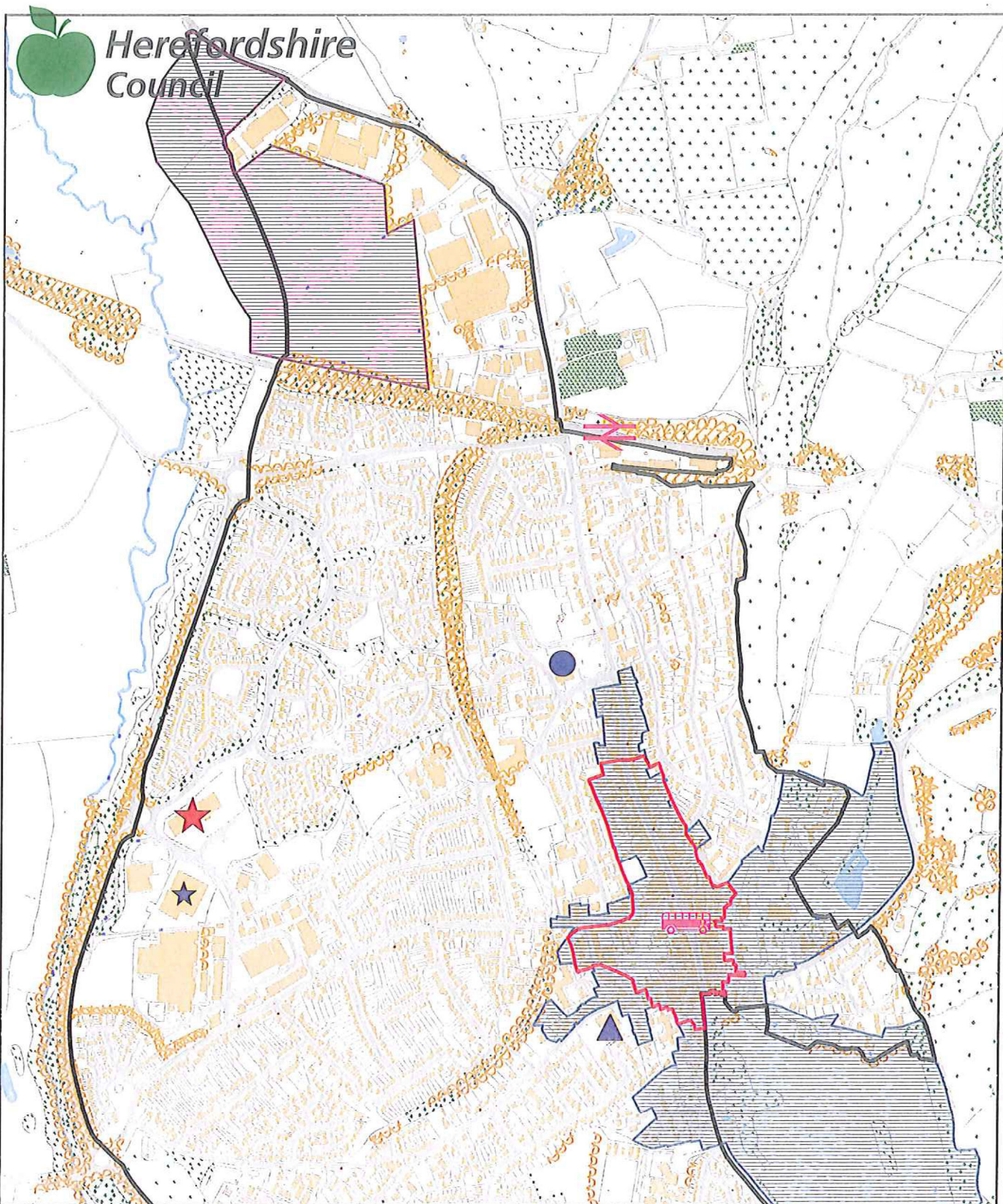
This copy has been produced specifically for Planning purposes. No further copies may be made.

APPLICATION NO: DMN/113052/F

SITE ADDRESS : LAND AT GALEBREAKER HOUSE, LEADDON WAY, LEDBURY, HEREFORDSHIRE, HR8 2SS

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KEY	
★	Proposed Sainsbury's Superstore
★	Withdrawn Tesco Application - DMN/111544/F
●	Existing Tesco Store
▲	Existing Co-Operative Store
—	Ledbury Settlement Boundary
↔	Ledbury Train Station
🚌	Ledbury Bus Terminus
▨	Ledbury Conservation Area
▭	Ledbury Town Centre
▨	Proposed New Housing Allocation (Preferred Option Paper) in Core Strategy



Proposed Sainsbury's Development, Ledbury (Contextual)
Scale 1:10,000
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/113052/H

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Draft Heads of Terms
Proposed Planning Obligation Agreement
Section 106 Town and Country Planning Act 1990

Proposed Development:

Application for demolition of existing buildings and the construction of a superstore (Class A1), petrol filling station, car parking, landscaping and associated works at Galebreakers, New Mill Industrial Estate, Ledbury, HR8 2SR

Obligations to include, subject to negotiations upon assessment of the application proposals:

1. Sainsbury's Supermarkets limited (Sainsbury's) covenants with Herefordshire Council to pay Herefordshire Council a sum (to be agreed) to provide a sustainable transport infrastructure to serve the development, which sum shall be paid on or before the commencement of the development, and may be pooled with other contributions if appropriate (the "Transport Contribution"). The Transport Contribution shall be used by Herefordshire Council at its option for any or all of the following purposes for the benefit of the development:
 - o Seal and light ZB2 path, upgrade to shared use from Leadon Road to Barnett Avenue;
 - o Upgrade Orchard Way footbridge to shared use standards;
 - o Introduction of cycle contraflow in New Street at Top Cross end;
 - o Footway improvements including dropped kerbs and widening between the development and Lower Road, Bridge Street, Biddulph Way and Town Centre;
 - o Improvements to bus infrastructure provision in Ledbury to provide connectivity to the development site;
 - o Improvements to infrastructure provision in Ledbury to provide connectivity to the development site ; potentially to include:
 - Barnett Avenue;



- Dropped crossings;
 - Relocation of Kerbs
 - Relocation of bus shelters
 - Provision of shared cycle/footway links;
 - Pedestrian link to Bronte Drive
2. In the event that Herefordshire Council does not for any reason use the Transport Contribution for the purposes specified above within 5 years from the date of receipt of the Transport Contribution, (unless otherwise agreed in writing with the Council) the Council shall repay Sainsbury's the said sum or part thereof which has not been used by Herefordshire Council.
 3. Sainsbury's shall submit to the Council a Travel Plan which shall be approved prior to the permitted store commencing trading.
 4. The developer covenants with Herefordshire Council to pay Herefordshire Council an additional administrative charge of 2% of the total contributions detailed in this Head of Terms to be used toward the cost of monitoring and enforcing the Section 106 Agreement.
 5. All of the financial contributions shall be Index Linked and paid on or before commencement of the development.
 6. Sainsbury's shall pay to the Council on or before the completion of the Agreement the reasonable legal costs incurred by Herefordshire Council in connection with the preparation and completion of the Agreement.





The Planning
Inspectorate

Appeal Decision

Site visit made on 6 January 2011

by R J Yuille MSc Dip TP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 January 2011

Appeal Ref: APP/W1850/A/10/2139518

New Mills Industrial Estate, New Mills Road, Ledon Way, Ledbury, HR8 2SR

- o The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- o The appeal is made by Mr Esat Kurt against the decision of Herefordshire Council.
- o The application Ref: DMN/101425/F, dated 08/06/10, was refused by notice dated 18/08/10.
- o The development proposed is the use of part of the car park for the siting of a catering unit.

Decision

1. I dismiss the appeal.

Main Issues

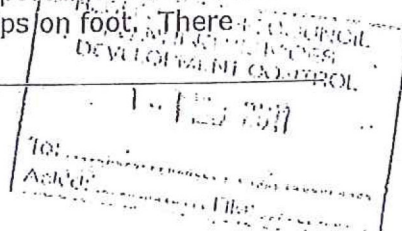
2. The main issues are the effect of the proposed development on; the vitality and viability of Ledbury Town Centre and the aim of locating development where it is accessible by a choice of means of transport; on the level of parking provision on the site and on highway safety; and on the appearance of the area.

Reasons

Vitality, viability and choice of transport

3. The proposed catering unit would be located in the car park of a large existing store on the edge of Ledbury and would thus divert expenditure away from the town centre. The fact that individually its effect on expenditure in the town centre would be relatively small is of little relevance. Such an argument could be made too often and, if successful, would cumulatively undermine the vitality and viability of the town centre.
4. The question of whether the site is accessible to a choice of means of transport is less straightforward. The site is relatively close to industrial and residential areas and a bus route runs near by - so in theory customers using the catering unit could walk or cycle or use public transport. However, in practice people are far less likely to do this than if the unit were in the town centre where there are a range of other attractions. It is likely that this site, which is after all located in a car park, would for the most part attract car borne users.
5. Moreover, a town centre location would offer greater opportunities for linked trips where people travel by car but then make other trips on foot. There

<http://www.planning-inspectorate.gov.uk>



would be little opportunity to do this at the appeal site other than for those people who combined a trip to the catering unit with a trip to the store in whose car park it would be located.

6. The appeal scheme would, therefore undermine the vitality and viability of Ledbury town centre and would be likely to attract car borne customers rather than being accessible by a range of means of transport. In these respects it would run counter to the aims of Policies S5, TCR1 and TCR2, S1, S6 and DR2 of the Herefordshire Unitary Development Plan (the UDP).

Parking Provision and Highway Safety

7. The proposed unit would be located at the end of a parking bay not on a parking space and it would not seriously impede access to more than one parking space. Assuming that two parking spaces would be needed to serve the catering unit this would mean that only 3 of the 95 or so spaces in the car park would be affected by the appeal scheme. While this car park is of an appropriate size for the store it serves there is evidence that it has spare capacity. The loss of three spaces would not, therefore, be likely to lead to a situation in which people parked on the carriageway or footway close to the site.
8. The access road to the car park is clearly apparent from the approach roads to the nearby roundabout. In such a situation it is unlikely that drivers, seeing the proposed catering unit, would make the snap decision to park on the highway. The appeal scheme would not, therefore, conflict with the aims of UDP Policies T11 and DR3 which seek to ensure that suitable parking is provided and highway safety maintained.

Appearance

9. The proposed catering unit, a box like structure adorned with advertisements, would be clearly visible from the approach roads leading to the nearby roundabout on the A417 by pass – particularly to traffic travelling south. While it would be set against the backdrop of the large modern store and seen in the context of parked cars, lighting columns and other street furniture, it would be in a prominent position close to the site frontage. The introduction of such a utilitarian structure in such a prominent position would create an unattractive and cluttered view when seen from nearby roads. It would thus detract unacceptably from the character and appearance of the area and conflict with the aims of UDP Policy DR1.
10. Reference is made by the Council and the appellant to the possibility of relocating the unit to a less prominent position in the car park but this does not form part of the appeal scheme.

Other Matters

11. Reference is made to various other catering units which have been granted planning permission elsewhere in the area. However, on the information available, there is nothing to suggest that these create a desirable precedent that should lead to the granting of planning permission in this instance.

Conclusions

12. While the appeal scheme would not have an adverse effect on the level of parking on the site nor undermine highway safety these considerations are

outweighed by the harmful effect it would have on the vitality and viability of Ledbury town centre, on the aim of securing sustainable development and on the character and appearance of the area. For these reasons, having taken into account all other matters raised, the appeal should be dismissed.

R. J. Vuille
Inspector

The Inspector has considered the evidence and the representations made by the appellant and the respondent. He has also taken into account the views of the local planning authority and the public. He has concluded that the proposed development is not in the public interest and that it would be harmful to the vitality and viability of the town centre and to the character and appearance of the area. He has also taken into account the fact that the proposed development would be a permanent change to the town centre and that it would be difficult to reverse if it were to be approved.

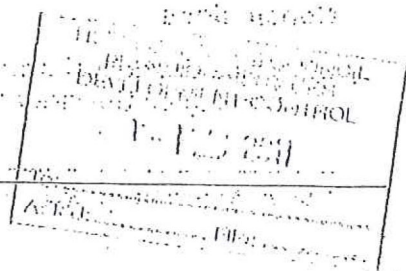
The Inspector has also taken into account the fact that the proposed development would be a permanent change to the town centre and that it would be difficult to reverse if it were to be approved. He has also taken into account the fact that the proposed development would be a permanent change to the town centre and that it would be difficult to reverse if it were to be approved.

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31 January 2012
Our Ref: JW/
Client Ref:

Dear Roland

Proposed Sainsbury Foodstore, Ledbury: Planning Application N/113052/F

This letter is in response to your letter of 16 December 2011 confirming Drivers Jonas Deloitte's instructions to advise the Council on the retail policy and impact issues arising from the above planning application. In response to the Council's Brief, we summarised the matters on which the Council required to be advised in our letter to you of 19 July. These were:

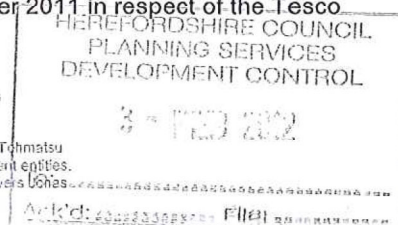
- (i) The impact of the proposal on the vitality and viability of Ledbury town centre;
- (ii) The likely impact of the proposal upon the historic and architectural heritage of Ledbury town centre / conservation area (e.g. retaining viable uses for the listed buildings within the town centre);
- (iii) Whether the proposal delivers a sustainable pattern of development reducing the need to travel, especially by car;
- (iv) The likelihood or otherwise of linked trips to the town centre;
- (v) Whether there are sequentially preferable sites that meet the identified need (redevelopment of the existing Tesco Store, redevelopment of Bye Street car park);
- (vi) A critical review of evidence put forward by the applicants on expenditure / floorspace capacity, the turnover of the proposed store, potential to clawback expenditure currently lost from the catchment area, etc.
- (vii) Compliance with Central Government advice and Development Plan policy.

This letter covers all the above matters. Our response focuses on the findings of the Turley Associates Economic Assessment (EA) dated October 2011, which provides supporting material for the planning application. However, it does not cover employment land issues, which are not part of our remit. Our response broadly follows the structure of the Turley EA. Some of the material in this letter, for example on the policy background, is the same as in our letter to you of 6 October 2011 in respect of the Tesco proposal on an adjacent site at the New Mills Industrial Estate.

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The Proposal

1. The proposal is described in the application form as:

"Demolition of existing buildings and the construction of a superstore (Class A1), petrol filling station, car parking, landscaping and associated works".

The gross floorspace of the store is proposed to be 5,427.8 sq m and the net sales area 2,787 sq m. 697 sq m of the sales area is proposed to be devoted to the sale of comparison goods.

2. The application site is located within the New Mills Industrial Estate adjacent to the A417 Leadon Way on the western edge of the town, just under 1km from the town centre. It is currently occupied by Galebreaker, an agricultural equipment manufacturer, who would relocate to an alternative site.

National Planning Guidance

3. National planning guidance provides the policy framework against which the proposals should be judged. Because of its direct relevance to retail development (as well as other uses), we refer to PPS4 'Planning for Sustainable Economic Growth' guidance only.
4. The government's publication in July of its 'Draft National Planning Policy Framework' (NPPF) has introduced significant potential changes to national planning policy. We first describe current national planning policy guidance as set out in PPS4, and then comment on relevant parts of the Draft NPPF.

PPS4 Planning for Sustainable Economic Growth

5. PPS4 Planning for Sustainable Economic Growth was published on 29 December 2009 replacing earlier PPGs and PPSs, including PPS6, which were cancelled on the same date.

Government Objectives

6. Paragraph 9 states that *"The Government's overarching objective is sustainable economic growth."* Paragraph 10 goes on to identify the Government's objectives to help achieve sustainable economic growth. These include:
 - delivering more sustainable patterns of development, and reducing the need to travel, especially by car and respond to climate change;
 - Promoting the vitality and viability of town and other centres as important places for communities. To do this, the Government wants:
 - *"new economic growth and development of main town centre uses to be focused in existing centres, with the aim offering a wide range of services to communities in an attractive and safe environment and remedying deficiencies in provision in areas with poor access to facilities*
 - *competition between retailers and enhanced consumer choice through the provision of innovative and efficient shopping, leisure, tourism and local services in town centres, which allow genuine choice to meet the needs of the entire community (particularly socially excluded groups)*
 - *....."*

Development Management Policies

7. This section of PPS4 contains the guidance of most relevance to consideration of planning applications.
8. Policy EC10 relates to all planning applications for economic development stating:

“EC10.1 Local planning authorities should adopt a positive and constructive approach towards planning applications for economic development. Planning applications that secure sustainable economic growth should be treated favourably.”

Policy EC10.2 All planning applications for economic development should be assessed against the following impact considerations:

 - (a) *whether the proposal has been planned over the lifetime of the development to limit carbon dioxide emissions, and minimise vulnerability and provide resilience to, climate change*
 - (b) *the accessibility of the proposal by a choice of means of transport including walking, cycling, public transport and the car, the effect on local traffic levels and congestion (especially to the trunk road network) after public transport and traffic management measures have been secured*
 - (c) *whether the proposal secures a high quality and inclusive design which takes the opportunities available for improving the character and quality of the area and the way it functions*
 - (d) *the impact on economic and physical regeneration in the area including the impact on deprived areas and social inclusion objectives*
 - (e) *the impact on local employment*
9. Policies EC13, EC14, EC15, EC16, and EC17 are of relevance to retail proposals, with all but EC13 being of particular relevance to the proposals before the Council.
10. Policy EC14 describes the supporting evidence that is required for planning applications for main town centre uses. The requirements include:

EC14.3 A sequential assessment (under EC15) is required for planning applications for main town centres uses that are not in an existing centre and are not in accordance with an up-to-date development plan.

EC14.5 In advance of development plans being revised to reflect this PPS, an assessment of impacts in policy EC16.1 is necessary for planning applications for retail and leisure developments below 2,500 square metres gross floorspace, which are not in an existing centre and not in accordance with an up-to-date development plan.

EC14.7 Assessments of impacts should focus in particular on the first 5 years after the implementation of a proposal and the level of detail and type of evidence and analysis required in impact assessments should be proportionate to the scale and nature of the proposal and its likely impact. Any assumptions should be transparent and clearly justified, realistic and internally consistent.
11. In order to interpret these requirements, it is relevant to note that the application site is an 'out-of-centre' location in retail planning policy terms.
12. Policy EC15 describes the sequential assessment requirements for planning applications for main town centre uses that are not in a centre and not in accordance with an up-to-date development plan, which includes the application proposal.

"EC15.1 In considering sequential assessments required under policy EC14.3, local planning authorities should:

- (a) ensure that sites are assessed for their availability, suitability and viability.*
- (b) ensure that all in-centre options have been thoroughly assessed before less central sites are considered*
- (c) ensure that where it has been demonstrated that there are no town centre sites to accommodate a proposed development, preference is given to edge of centre locations which are well connected to the centre by means of easy pedestrian access*
- (d) ensure that in considering sites in or on the edge of existing centres, developers and operators have demonstrated flexibility in terms of:*
 - i. scale: reducing the floorspace of their development;*
 - ii. format: more innovative site layouts and store configurations such as multi-storey developments with smaller footprints;*
 - iii. car parking provision; reduced or reconfigured car parking areas; and*
 - iv. the scope for disaggregating specific parts of a retail or leisure development, including those which are part of a group of retail or leisure units, onto separate, sequentially preferable, sites. However, local planning authorities should not seek arbitrary sub-division of proposals*

EC15.2 In considering whether flexibility has been demonstrated under policy EC15.1.d above, local planning authorities should take into account any genuine difficulties which the applicant can demonstrate are likely to occur in operating the proposed business model from a sequentially preferable site,

Policy EC15 is of particular relevance in this case.

13. Policy EC16 describes the impact assessment requirements for planning applications that are not in a centre and not in accordance with an up-to-date development plan, which includes the application proposal.

"EC16.1 Planning applications for main town centres uses that are not in a centre (unless EC16.1.e applies) and not in accordance with an up to date development plan should be assessed against the following impacts on centres:

- (a) impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal*
- (b) the impact of the proposal on town centre vitality and viability, including local consumer choice and the range and quality of the comparison and convenience retail offer*
- (c) the impact of the proposal on allocated sites outside town centres being developed in accordance with the development plan*
- (d) in the context of a retail or leisure proposal, the impact of the proposal on in-centre trade/turnover and on trade in the wider area, taking account of current and future consumer expenditure capacity in the catchment area up to five years from the time the application is made, and, where applicable, on the rural economy*
- (e) if located in or on the edge of a town centre, whether the proposal is of an appropriate scale (in terms of gross floorspace) in relation to the size of the centre and its role in the hierarchy of centres*

- (f) *any locally important impacts on centres under policy EC3.1.e."*
14. Policy EC17 indicates how planning authorities should respond to planning applications not in a centre and not in accordance with an up to date development plan. Such applications should be refused if:
- (a) *the applicant has not demonstrated compliance with the requirements of the sequential approach (policy EC15); or*
- (b) *there is clear evidence that the proposal is likely to lead to significant adverse impacts in terms of any one of impacts set out in policies EC10.2 and 16.1 (the impact assessment), taking account of the likely cumulative effect of recent permissions, developments under construction and completed developments*
15. EC17.2 goes on to say:
- Where no significant adverse impacts have been identified under policies EC10.2 and 16.1, planning applications should be determined by taking account of:*
- (a) *the positive and negative impacts of the proposal in terms of policies EC10.2 and 16.1 and any other material considerations; and*
- (b) *the likely cumulative effect of recent permissions, developments under construction and completed developments*
16. EC17.3 indicates that judgements about the extent and significance of any impacts should be informed by the development plan (where this is up to date), as well as information sources such as town centre or retail strategies and health assessments.

PPS4 Practice Guidance Note

17. PPS4 is accompanied by a document 'Planning for Town Centres - Practice guidance on need impact and the sequential approach', published on the same date 29 December 2009. This identifies more specific technical requirements when undertaking impact and sequential approach assessments. Turley draws on this Guidance in relation to the sequential approach.

Draft National Planning Policy Framework

18. Subsequent to submission of the planning application, the Government published in July its Draft National Planning Policy Framework (NPPF), which is to become an all-embracing statement of national planning policy replacing existing PPSs and PPGs, including the relatively recent PPS4.
19. in paragraph 3.14 of the EA Turley states that they believe significant weight should be attached to the Draft Framework, as the Government will not be consulting further on it. We do not accept this. Consultation on the document has given rise to considerable controversy and generated interest at a high political level, on which a response is awaited. We also noted in our previous letter the recent note from PINS to Inspectors stating:

"Whilst it is a consultation document and, therefore, subject to potential amendment, nevertheless it gives a clear indication of the Government's 'direction of travel' in planning policy. Therefore, the draft National Planning Policy Framework is capable of being a material consideration, although the weight to be given to it will be a matter for the decision maker's planning judgment in each particular case. The current Planning Policy Statements, Guidance notes and Circulars remain in place until cancelled."

20. The NPPF states that the purpose of the planning system is the achievement of sustainable development (paragraph 9). The Guidance goes on to describe sustainable development as having three threads
- planning for prosperity (an economic role) – use of the planning system to build a strong, responsive and competitive economy;
 - Planning for people (a social role) – use the planning system to promote strong, vibrant and healthy communities; and
 - planning for places (an environmental role) – use the planning system to protect and enhance the natural, built and historic environment.
21. The emphasis placed on economic considerations is indicated in paragraph 13.
- “The Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. A positive planning system is essential because, without growth, a sustainable future cannot be achieved.”*
22. The importance attached to the achievement of sustainable development is re-emphasised in paragraphs 14 and 53 (Development Management):
- “At the heart of the planning system is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan making and decision taking.”*
- “The primary objective of development management is to foster the delivery of sustainable development, not to hinder or prevent development.”*
23. Core land-use planning principles are set out in paragraph 19, the first one of which is:
- “planning should be genuinely plan-led, with succinct Local Plans setting out a positive long-term vision for an area. These plans should be kept up to date and should provide a practical framework within which decisions on planning applications can be made with a high degree of certainty and efficiency”*
24. Paragraphs 76-80 deal with promotion of the vitality and viability of town centres. Paragraph 76 requires that planning policies should be positive, promoting competitive town centre environments and setting out policies for the management and growth of centres over the plan period. It goes on to describe actions that local authorities should take including:
- Recognising town centres as the heart of communities and pursuing policies to support the viability and vitality of town centres
 - Defining a network and hierarchy of centres that is resilient to anticipated future economic changes
25. The 'sequential approach' is retained in respect of retail and leisure uses only. Paragraphs 77-78 broadly summarise PPS4 requirements (although the word 'prefer' is used).
- “Local planning authorities should apply a sequential approach to planning applications for retail and leisure uses that are not in an existing centre and are not in accordance with an up to date Local Plan.*
- Local planning authorities should prefer applications for retail and leisure uses to be located in town centres where practical, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. In applying this sequential approach, local planning authorities should ensure that potential sites are assessed for their availability, suitability*

and viability and for their ability to meet the full extent of assessed quantitative and qualitative needs.”

26. Similar to PPS4 requirements, impact assessments are required for retail and leisure developments outside town centres for schemes in excess of a locally defined floorspace threshold, which are not in accordance with an up-to-date Local Plan. If there is no locally set threshold, the default threshold is 2,500 sq m (paragraph 79).
27. Impact considerations for retail and leisure development should include:
 - the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and
 - the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to ten years from the time the application is made.
28. In our opinion the Draft NPPF Guidance that is of particular relevance to the application proposal is:
 - The emphasis on the achievement of sustainable development;
 - The priority attached to economic growth;
 - The key role of the development plan;
 - The continued support for town centres and the definition of a hierarchy of centres;
 - Retention of the sequential approach and impact considerations in broadly the same form.

Local Planning Policy

Herefordshire UDP 2007

29. The Herefordshire Unitary Development Plan (UDP) was adopted in March 2007.

Proposals Map Allocation

30. On the Proposals Inset Map LED1 the site is allocated as 'Safeguarded Employment Land' under Policy E5. The policy resists proposals resulting in the loss of existing, permitted or proposed employment land and buildings to non-employment uses, except where there would be substantial benefits to residential or other amenity and the site can be shown to be unsuitable for other employment uses.
31. We make no further comment on employment policy issues, as this is outside our remit.

Town Centre and Retail Policies

32. Within the County retail hierarchy Ledbury is defined as a 'Market Town'.
33. **Policy S5** describes the strategic objectives for town centres and shopping within the County. It says:

"Town centres and retail

The range of shopping, employment, entertainment, social and other community services that are available in existing centres should continue to be available to all in locations accessible by a choice of means of transport. This will be achieved by:

- (i) *protecting and enhancing the vitality and viability of Hereford City Centre, market town centres and local, neighbourhood and village centres throughout the County, with*

particular reference to maintaining the County's retail hierarchy and the role of Hereford City Centre as a sub-regional shopping centre;

- (ii) supporting continued investment in existing centres, maintaining an attractive environment, and encouraging high quality design and mixed uses including housing, particularly above shops;*
- (iii) locating key town centre uses that generate and attract many trips, including retail, entertainment and leisure, commercial and public offices, in or adjacent to existing centres where there is convenient access by a choice of means of transport; and*
- (iv) in edge of centre or out of centre locations, applying first a test of need and then, if need can be demonstrated, a sequential approach to retail and other proposals that generate and attract many trips. The likely impact of proposals on the Plan's strategy and on the vitality and viability of existing centres will also be considered, as will the accessibility of the site by a choice of means of transport, the likely effect of development on overall travel patterns and car use and the scope to encourage investment to regenerate deprived areas."*

34. **Policy TCR1** describes the policy for Central Shopping and Commercial Areas (CSCAs):

"The central shopping and commercial areas of Hereford and the market towns will be retained and protected as the prime focus for retail, leisure and commercial activity in order to ensure the continued vitality and viability of these city and town centres."

35. **Policy TCR2** describes the means by which the vitality and viability of Hereford City Centre and the market towns will be maintained and enhanced. The first stated consideration is:

- (i) directing proposals for new shopping and commercial uses to the central shopping and commercial areas;*

36. **Policy TCR9** is particularly relevant to the application proposal as it describes tests that must be satisfied prior to any planning permission being granted for large scale retail and leisure development outside the central shopping and commercial areas of Hereford and the market towns. It requires that:

- (i) "it can be demonstrated that there is a need for the development in the location proposed, with a retail need for both comparison and convenience goods shown if both are proposed within the same development;*
- (ii) it can be demonstrated that a sequential approach has been taken to site selection, and that land and buildings in each of the following categories have been thoroughly assessed in turn and found to be not available before considering less central locations:*
 - within central shopping and commercial areas*
 - edge-of-centre locations*
 - out-of-centre locations which are well served by public transport;*
- (iii) the proposal is compatible with and does not undermine the Plan's central shopping and commercial area strategy or the overall Plan strategy;*
- (iv) the proposal will not seriously harm the vitality and viability of existing central shopping and commercial areas, either by itself or in conjunction with other recent and proposed retail development;*
- (v) the site is easily and safely accessible to customers and staff by a choice of modes of transport and will not lead to an increase in the use of the private car; and*

- (vi) the proposal is not sited within open countryside or on land allocated or safeguarded for another use.”

Plainly criterion (i) has been superseded by the provisions of PPS4, which has removed the 'need' requirement.

Herefordshire LDF

37. The Herefordshire LDF is currently in preparation. In respect of the Core Strategy, a Draft Revised Preferred Options Background Paper was published in July 2011. This identifies the preferred growth strategy for the County, and updates the preferred strategy upon which consultation took place in 2010. It indicates significant new housing in the market towns.
38. In respect of the market towns, a Draft Preferred Options Paper for the Market Towns and Rural Areas Plan (MTRAP) was published in July 2010. The preferred option for Ledbury is the provision of some 800 new homes in the period 2006-2026, of which 700 will be provided in a single strategic urban extension to the north of the railway viaduct in the northern part of the town.
39. In so far as new retail development is concerned, the emphasis on steering new large scale retail development to the CSCAs is likely to remain.

Driver Jonas Deloitte PPS4 Assessments

40. Drivers Jonas Deloitte (DJD) has undertaken an assessment of the potential for new retail development and other town centre uses within Hereford City and the market towns, as part of the evidence base for the LDF. The most recent updates were provided to the Council in September and November 2010. We draw on material from these studies in our comments on the Turley assessments.
41. In paragraph 3.36 of the EA Turley states that DJD finds that Ledbury accounts for only 50% of Zone 5 (Ledbury) residents' first choice food shopping destinations. This is incorrect. The figure from DJD Paper 4 Appendices Table Convenience 4 is 83%.

Existing Retail Provision

42. We have no comments on the factual content of Turley's description of existing retail provision in Ledbury, identifying:
- The high proportion of independent retailers;
 - The presence of an unusual selection of independent / specialist convenience shops, including three butchers, two bakers, two greengrocers, two health food stores, and two delicatessens;
 - The specialist nature of many of the comparison goods shops and their focus on visitor spending as well as that of Ledbury residents.
43. We note the comments made in respect of the deficiencies of the Tesco and Co-Op. In our opinion the degree to which these stores meet the reasonable shopping needs of Ledbury residents is a matter of judgement, and needs also be judged in the context of the changes in shopping provision that might be brought about by the proposed store.

Retail Trading Patterns

44. In Section 5 of the EA Turley first summarises the findings of the DJD PPS4 Assessments in respect of the findings for Ledbury and its catchment area. We make two observations in respect of Turley's comments.

45. First, in paragraph 5.5 Turley refers to DJD convenience goods floorspace forecasts of up to 1,108 sq m by 2021 and up to 1,581 sq m by 2026. It is appropriate to note that the DJD specified floorspace range is based upon whether the 'surplus' expenditure is taken up by a discount trader or quality foodstore. Turley has quoted the top of the range figures based upon discount trading with a low sales density. The DJD lower end of the range floorspace figures, based upon high sales density quality foodstore trading directly relevant to the application proposal, are 407 sq m by 2021 and 581 sq m by 2026.
46. Second, in paragraph 5.9 Turley observes that the 2007 household surveys upon which the DJD findings were based are now almost four years old and therefore dated. In this context it is also relevant to note that the surveys were undertaken just before the onset of the current economic recession, and that in respect of Ledbury specifically, the current Co-Op store was then trading as Somerfield.

Catchment Area

47. The catchment area adopted by Turley is described in paragraph 4.14 and shown in Appendix 1. It is somewhat more extensive than the DJD Ledbury Zone 5, particularly in east. This is illustrated by the 2011 population estimates for the respective catchments – Turley 21,672, DJD Zone 5 15,848.
48. Turley judge that 30% of the proposed store's turnover will be drawn from outside their catchment area. In support of this estimate they refer to the findings of the DJD street interview surveys and the DJD Ledbury expenditure estimates for Ledbury set out in DJD PPS4 Assessments Paper 4.
49. In respect of the former, DJD found that "*Of the total respondents to the On-street Interview Survey, 31% lived outside the Study Area.*" Turley rightly point out that the Study Area is broadly Hereford County. It is also important to note that the respondents include all respondents, not merely shoppers (although they were in the majority). In our opinion this statistic is strongly influenced by the attractions (including specialist visitor oriented shops) of the historic centre of Ledbury, and is not a particularly helpful indicator of the draw of a new large foodstore outside the town centre.
50. We place greater reliance in our estimates of shopping expenditure patterns, which estimated that 20.4% of convenience expenditure attracted to Ledbury in 2011 came from outside Zone 5 – DJD Paper 4 Table Convenience 16. It needs to be borne in mind that this figure relates to the smaller DJD Zone 5 catchment (and that an equivalent figure for a larger catchment area would therefore be smaller). Turley judges that the new larger store would attract custom from further afield. Set against this, we believe its out-of centre location would mean that it would benefit much less from the spin-off of visitors to the town centre. We believe that 20% would be an appropriate allowance for the proposed store's draw from beyond the catchment area. Our maximum allowance would be 25%.

Existing Retail Provision within the Catchment Area

51. We have no comments on this part of the EA.

Existing Shopping Patterns within the Catchment Area

52. Turley commissioned a household telephone survey of residents within their catchment area, which was undertaken in September 2011. This provides a useful information source for their assessment.

Convenience Goods Shopping Patterns

53. Convenience goods shopping patterns are shown in Table 5.1 of the EA, the principal results of which we reproduce alongside the DJD findings. At the outset it must be borne in mind that

because the Turley catchment is bigger (by some 37% in population terms), lower market shares are to be expected. The additional 5,824 persons in the Turley catchment area reside on the edge of the catchment where the draw to other centres will be strongest.

**Convenience Goods Market Shares by Store / Centre
Turley Main Food / DJD Main Food First Choice**

Store / Centre	Turley	DJD
Tesco Ledbury	39.6%	53.2%
Co-Op / Somerfield Ledbury	12.6%	27%
Elsewhere Ledbury	5.3%	2.9%
Total Ledbury	57.5%	83%
Great Malvern Stores	25.1%	-
Total Elsewhere	40%	17%

54. Ledbury's draw is a little under 60% with 40% being drawn to stores elsewhere. This compares with a Ledbury draw of over 80% in the DJD surveys. The change of the Somerfield to the Co-Op appears to have caused some diminution of its market share (in addition to any reduction reflecting the difference in the catchments).
55. It is noticeable within EA Table 5.1 that the bulk of the trade leakage from the catchment area is to Morrisons and Waitrose in Great Malvern. As shown above, the overall draw to stores in Great Malvern is 25%. From Turley Appendix 3 Table 3 it can be seen that the draw to Great Malvern from Turley Zone 2 is 51.5% and from Zone 4 36.9%, which in both cases is greater than the draw to Ledbury from these zones of 40.9% and 32.4%. This indicates to us that the parts of these zones that are outside the DJD Zone 5 (including settlements on the western edge of the Malvern Hills) are within the natural catchment area of Great Malvern. We consider the implications of this later in this letter.
56. Unlike for comparison goods (see below), the draw to Hereford for main food shopping is very small at 2.6% only.
57. In paragraphs 5.33-5.44 of the EA Turley refers to the strong trading performance of Ledbury foodstores based on their comparison of the household survey derived turnovers and 'benchmark' averages. We comment below on the Turley assessed 'benchmark' figures.

Comparison Goods Shopping

58. In respect of all comparison goods Turley finds that Ledbury retains some 43% of available catchment area expenditure. The biggest draw outside the catchment area is to Hereford - 20%.

Policy EC10: Economic Development

59. We make no comment on Turley's response on PPS4 Economic Development considerations, as they cover matters that are outside our remit, which we assume officers will be addressing.

Sequential Approach

Approach

60. The purpose of the sequential approach is to ascertain whether the type of retail development for which a need has been identified (and is under consideration) could reasonably be accommodated on an alternative site in a location that is preferable in planning policy terms. We have described above the specific requirements of Policy EC15.1.
61. Turley describes their approach in paragraphs 8.1-8.7, which we broadly accept. As required by criterion a) of the policy, Turley focuses on the availability, suitability, and viability of the alternative sites identified. In considering the requirements of large foodstores and their business models, Turley quotes from the PPS4 Practice Guidance Note (paragraph 6.32). We quote the relevant paragraphs 6.32 and 6.33 below in full, which emphasise the need for a balanced approach to be taken between the business model requirements of retailers and the requirements of national policy.

"In the case of large foodstores, the trend towards selling a wide range of goods, including comprehensive ranges of fashion/clothing and homeware products creates particular issues. Again, such proposals will need to demonstrate flexibility in terms of the scale and format of development proposed; car parking provision and the scope for disaggregation. This will need to be set in the context of other national planning policy objectives for town centres, including the requirement to provide consumer choice and promote competitive town centre environments.

The decision by an individual retailer to promote a business model which cannot be accommodated in an existing centre will not justify discounting more central sites where they are available, suitable and viable. In every case it will be necessary to strike an appropriate balance between the requirements of the commercial sector and the requirements of national policy based upon local circumstances. While there is no policy requirement to demonstrate need, an operator claiming that it is unable to be flexible about its chosen 'business model' would be expected to demonstrate why a smaller store or stores could not meet a similar need."

62. As noted at the outset of this letter, the application proposal is for a store of 5,427.8 sq m gross on a site of 2.8 hectares. Turley has given no indication of any reduction of these requirements that there may be in applying a flexible approach on more centrally located sites. Site area requirements are of particular importance in more central locations where car parking layouts and usage may be different than in an out-of-centre location.
63. In terms of identifying a candidate list of sites, we accept that the need under consideration relates to Ledbury and that any alternative sites should therefore be in Ledbury.

Town Centre (Central Shopping and Commercial Area)

Vacant Units

64. We accept that there are no existing vacant units in Ledbury town centre that could accommodate a large foodstore of the type proposed.

Bye Street Car Park

65. We referred to this site in our letter to you of 6 October 2011 in respect of the Tesco application, noting that it has a site area of 0.18 hectares and is currently in use as public car parking. Because of its existing use and small size, we accepted that it was unlikely to meet the PPS4 tests of availability or suitability for a large foodstore. Turley's comments in paragraph 8.12 are based on a misunderstanding, as it appears that they thought our comments related to the car park off Lawnside Road.

St Katherine's Car Park

66. Turley describes this site in paragraphs 8.14 of the EA. It has a site area of 0.42 hectares and is currently in use as public car parking. It is of an irregular layout and overlooked by a prominent historic building. We accept that it is unlikely to meet the PPS4 tests of availability or suitability.

Edge-of-Centre Sites

Sites and Premises to the west of Lawnside Road

67. Turley describes this site in paragraphs 8.13 of the EA. It extends from the rear of properties fronting Bye Street in the south to the northern boundary of the car park within the site. It contains a variety of public / community uses - including a Youth Centre, swimming pool, Police buildings, ambulance Station, fire station, and car park.
68. In our opinion this site would be locationally well suited for new retail development, being close to the central part of the CSCA and its primary shopping frontages.
69. ***Suitability:*** Turley finds the site to be unsuitable because of its size "*little more than one hectare*", and because of access difficulties onto Bye Street. We have stated above that Turley has given no indication of the site area that might be required for a centrally located store. We are unable therefore to accept at this stage that the site can be dismissed on the grounds of size. Nor are we aware of any assessment that indicates insuperable problems in providing adequate access to the site.
70. ***Viability:*** We accept that significant costs would be involved in relocating existing public facilities from the site. However, we are not aware of the origin of the £5m to which Turley refer, nor whether this cost would have to be borne by the development (as implied by Turley). We understand that some of the existing uses are outworn and reprovision is likely to be required irrespective of any alternative uses for the site.
71. ***Availability:*** The site is occupied by a number of existing uses. Although we are aware from local press reports that the ambulance station premises are currently on the market, we are not aware of any current programme for relocation of other uses from the site. Plainly therefore the site is not available for a foodstore development in the short term. Its availability within a reasonable period of time (say five years) would depend upon the active involvement of a number of public agencies and securing of suitable relocation sites within the town.

Existing Tesco Store Orchard Lane

72. ***Suitability for a larger store:*** Turley summarises Tesco's principal reasons for dismissing the suitability of the Orchard Lane site for a larger store.
- The site is not large enough to provide the required level of car parking;
 - The service arrangement within any redevelopment would be compromised;
 - Access to the store by pedestrians would be poor;

73. In our letter of 6 October 2011 in respect of the Tesco application, we stated that we were not aware of any detailed investigatory work that may have been undertaken by Tesco's architects to test the feasibility of accommodating a larger store on the existing site. However, we made the following comments, based on an inspection of the site and its surroundings.
74. In respect of the first point, we accepted that to provide the size of store that is sought would be likely to require more than one level of car parking. We referred to the possibility of putting some parking underneath a store relocated at the front of the site. Obviously there are other possible solutions for relocating the store and providing split-level car parking. Such arrangements could be facilitated by the slope of the site away from The Homend, and the considerable drop in level from The Homend to the existing car parking area.
75. We stated we believed the feasibility of accommodating a larger foodstore on the site needs to be thoroughly investigated to satisfy the requirements of the sequential approach.
76. We are not entirely clear as to the point being made by Turley in the last paragraph of 8.15 under the heading 'Suitability'. It appears to suggest that even if a larger store were developed on the site by Tesco, this would not satisfy the "need identified". If the point being put is that there is a need for a new large foodstore in Ledbury, irrespective of any extension of an existing large foodstore, we are not in agreement on this.
77. **Viability:** Turley findings in respect of viability are based on closure of the existing store for a period of time. We are not convinced that this need necessarily be the case on this site.
78. **Availability:** We accept that the Orchard Lane site is unlikely to be available to Sainsbury. However, this appears to be a point not taken by Turley. Their point appears to be that any redevelopment presupposes closure of the store for a period of time, which they believe is not practical. We have stated above in the context of viability that we are not convinced that redevelopment for a larger store necessitates closure of the existing store for a period of time.

Policy EC16: Impact Considerations

79. Turley assesses the retail impact of the application proposal under the PPS4 Policy EC16 headings. We deal with the considerations in a slightly different order, because in our view the findings in respect of Consideration d) inform the findings of some of the other considerations.

a) impact on existing, committed and planned public and private investment in a centre

80. There is plainly a considerable amount of existing public and private sector investment that has already been committed in Ledbury town centre. However, we are not aware of any major town centre investment proposals under consideration at the present time.

d) impact of the proposal on in-centre trade/turnover, taking account of current and future consumer expenditure capacity in the catchment area up to five years from the time the application is made

81. We accept that there is no policy requirement to demonstrate need, but that the quantitative assessment undertaken by Turley is of assistance in considering the wider economic effects of the proposal (EA paragraph 9.17).

Turnover of the Proposed Development

82. For the purposes of assessing the turnover of the application proposal, Turley has assumed that it will trade at a company benchmark average sales density figure. Their Verdict derived convenience goods sales density of £12,063 per sq m at 2011 (2010 prices) has been applied to

the sales floorspace of the proposed store to give a convenience turnover of £25.21m (of which £17.65m would be drawn from the catchment area, 70%). We accept this methodology, which is frequently used.

83. An issue does arise, however in interpreting the published Verdict information. Turnover and floorspace figures for convenience and comparison categories have to be extrapolated from the company information provided by Verdict on sales for different product categories. DJD provides an analysis of Verdict information and have recently done so for the 2011 Report. DJD's convenience goods average sales density for Sainsbury is £13,837 per sq m, somewhat higher than the Turley assessed figure. The DJD sales density for comparison goods is a little lower at £6,761 per sq m, compared with Turley's £6,969 per sq m. Based on the DJD sales density figures, the convenience store turnover would be £28.29m (compared with Turley's £25.21m).
84. We have questioned above (under the heading Catchment Area) Turley's judgement that 30% of the store's trade would be drawn from beyond the catchment area; and have stated that we believe that 20% would be an appropriate allowance for the proposed store's draw from beyond the catchment area. On this basis the store turnover drawn from the catchment area would be £22.63m.
85. We refer to these differences later when examining Turley's assessment of surplus expenditure.

Quantitative Assessment

86. Turley describes their methodology for assessing impact in paragraph 9.23 of the EA, which we summarise below:
- Assessment of population and expenditure (convenience and comparison) within the catchment area for both the base year 2011, opening year 2014, and assessment year 2016;
 - Assessment of the turnover of existing and committed retail floorspace at the existing, design and assessment years.
 - Application of market shares derived from their household surveys to determine retained expenditure within the catchment area and potential surplus expenditure (overtrading and/or expenditure leakage to centres outside the catchment area)
 - Identification of the trade draw to the proposed store and resultant impact on existing stores / centres.

Base and Design Years

87. We are content to use Turley's base year of 2011 and design year of 2016, and their analysis of the position at the intervening year of 2014, for the purposes of commenting on their EA. For the purposes of considering impact, Turley's has used a test date of 2019, on which we comment later.

Population and Expenditure

88. Population and expenditure information has been obtained from Pitney Bowes/MapInfo (2010 estimates). The population of the Study Area is forecast to grow from 21,672 persons in 2011 to 22,003 persons in 2016. Pitney Bowes produces trend based forecasts that we presume will not have made direct allowance for an urban expansion on the northern side of Ledbury, currently being under consideration as part of the MTRAP Preferred Strategy, to which we have referred earlier in this letter.
89. For the purpose of forecasting retail expenditure over the forecast period, Turley has used 'ultra-long term' trend growth rates from Pitney Bowes/MapInfo (Retail Expenditure Guide, September 2011). These are based on trends over the period 1964-2010, and provide an annual average growth rate of +0.6% for convenience goods and +4.5% for comparison goods.

90. In paragraph of the EA Turley says:
- "We believe it is wholly appropriate to apply trends rather than forecasts. Forecasts provide estimates of expenditure growth at a particular point in time and are based on short-term projections. Consequently, they are updated on an annual basis. The benefit of using trends is that they are based on longer periods (1964 to 2010) and are therefore not as susceptible to short-term changes. Furthermore, it is important to note that, in accordance with PPS4 and recent ministerial statements (including the draft NPPF), we should be planning for growth and not recession. Therefore, we believe that it is inappropriate to use short-term forecasts when planning for schemes that seek to meet need over the long-term."*
91. Having regard to the current recession and economic uncertainties affecting the 'High Street' directly, we question this approach. In particular it appears to us that an annual comparison goods growth of +4.5% is unlikely to be achieved over the forecast period. However, because expenditure growth rate assumptions are unlikely to be a determining issue in this case, we have used the Turley figures at this stage in making our further comments
92. Turley has used the findings of the household telephone interview surveys to identify expenditure accounted for by Special Forms of Trading (SFT) for each of the four zones within the catchment area. For convenience goods the Zone range is from 1.4% to 3.5% and for comparison goods 9% to 13.6%. The convenience goods deduction in particular is significantly lower than the Experian SFT forecast, which at 2011 is 8.1% (and for comparison goods 12.6%).
93. Furthermore, even though a key component of SFT is internet purchases, Turley makes no allowance for a growth of SFT over time. The Experian NSRT rates are forecast to grow over time to 9.8% for convenience goods and 13.8% for comparison goods by 2018. Pitney Bowes/MapInfo does not provide growth estimates.
94. Having regard to the discrepancy with national Experian figures, we are of the view that use of the household survey responses to assess SFT may have underestimated the convenience goods allowance. The estimate is derived from the question asking "Where do you normally do your main food and grocery expenditure?". Some respondents may make visits to a store as well as on other occasions making internet purchases, and the relationship between the answers to this question and actual SFT expenditure may not therefore be straightforward.
95. Allowance for NSRT/SFT is a complex area, with variations between the Research Company estimates. A significant part of the problem stems from definitional difficulties arising from different forms of internet trading. Some companies such as Amazon are pure internet, but a high proportion of retailers now mix store sales with internet sales. A further problem arises in respect of foodstores, as operators often source internet orders from the sales area of the local store (rather than storage areas). In these cases the it is questionable therefore whether internet purchases lead to any material diminution of sales floorspace requirement.
96. However, as with expenditure growth rate assumptions, SFT deductions are unlikely to be a determining issue in this case and we have therefore used the Turley figures at this stage in making our further comments
97. Available convenience goods expenditure is expected to grow from £41.09m in 2011 to £42.97m in 2016, a growth of £1.89m (Table 1). Available comparison goods expenditure is expected to grow from £68.16m in 2011 to £86.20m in 2016, a growth of £18.04m (Table 2).

Retail Capacity

98. Turley's assessment of retail capacity is set out in paragraphs 9.36-9.42 of the EA.

Convenience Goods

99. Turley identifies a capacity of £26m by 2016. This is derived from overtrading of existing Ledbury stores and redirection to Ledbury of catchment area expenditure currently attracted to competing facilities outside the catchment area. This assessment is shown in Appendix 5 Table 7.
100. In respect overtrading of existing Ledbury stores, it can be calculated from Table 5 (columns 6 and 7) that this amounts to £9.14m (£25.75m-£16.61m). First, we have commented above that DJD finds some differences in the assessment of sales densities. We set out below a comparison of the different estimates for relevant stores in Ledbury. Application of a higher sales density to the existing Tesco store has the effect of increasing its benchmark turnover and therefore lessening the degree of overtrading identified for existing Ledbury stores

Convenience Goods Sales Density Estimates (£ per sq m)

	Turley	DJD
Sainsbury	12,063	13,835
Tesco	12,531	14,024
Co-Op	8,467	8,460

101. Second, we have questioned above Turley's judgement that only 70% of the proposed store's trade would be drawn from beyond the catchment area (30% beyond). This comment applies equally to the estimates of turnover from beyond the catchment area of existing Ledbury shops, for which Turley assume Tesco 70%, Co-Op and other shops 75%. As with the proposed store, we believe that 80% would be a reasonable estimate.
102. Application of the DJD Tesco sales density (the Co-Op is the same) plus increasing the draw from the catchment area of all the Ledbury stores to 80% would increase the benchmark of Ledbury convenience shops to approximately £19.1m, which compared with the survey derived turnover from the catchment area of £25.75m gives an overtrading level of some £6.7m or some 35%.
103. The majority of the capacity identified by Turley at 2011 in Table 7 is accounted for by the redirection to Ledbury of all catchment area expenditure that is currently attracted to centres outside the catchment area, principally from large foodstores in Great Malvern. This amounts to some £15.33m – £24.47m less the £9.14m, which we have noted above Turley estimates as capacity arising from overtrading of Ledbury stores.
104. In our view it is unrealistic to assume that all residents' convenience expenditure within Turley's catchment area might be redirected to Ledbury (and village shops within the catchment area). We have noted earlier in this letter that the majority of this expenditure is attracted to large foodstores in Great Malvern from residents who live on the eastern side of the catchment from which Great Malvern is readily accessible and has been the centre at which they have traditionally shopped.
105. In summary we are not convinced that convenience goods expenditure capacity does exist to support the turnover of the application proposal. However, we accept that this is not a determining factor of itself, as there is no onus on the applicants to demonstrate a 'need' for the proposed store. It is, however, informative in considering the likely impact of the proposal.

Comparison Goods

106. Earlier in this letter, we have questioned Turley's assumption that comparison goods expenditure will grow by +4.5% per annum. However, even allowing for a lower growth rate, we accept that the scale of available comparison goods expenditure in the catchment area is large compared with the comparison goods turnover of the proposed store.
107. More than half of the catchment area residents' expenditure is currently drawn to centres outside the catchment area, particularly Hereford and Great Malvern. Whilst a heavy outflow to Hereford in particular as the County town must be expected to continue, we accept that in quantitative terms there is comparison goods expenditure capacity in the catchment to support the application proposal.

Trade Diversions

Convenience Goods

108. Turley's assessment of trade diversions is set out in Table 10. The third column of figures in the table shows that Turley anticipates that the majority (55%) of the trade diversions will be from stores outside the catchment area. This is consistent with Turley's expenditure capacity assumption (to which we have referred above) that the proposed store would redirect to Ledbury all convenience expenditure currently attracted to centres outside the catchment area. However, we have already stated that we do not believe that this is a realistic assumption. Having regard to the location of Ledbury within its rural catchment area, we believe that the biggest trade diversions are likely to be from Ledbury stores.
109. In paragraph 9.56 of the EA Turley states that redirected expenditure from centres elsewhere will be most notably from large format stores in Hereford and Malvern. As Hereford currently draws only 2.6% of catchment area residents' expenditure, Turley must be assuming that the redirection of expenditure from the City is from residents living beyond the catchment area.
110. In paragraph 9.57 Turley states that "*As a result of this clawback, the overall convenience market share of Ledbury will increase from 41% currently to 64% by 2019*". We do not understand this statement. Turley demonstrates in Table 5.1 of the EA that Ledbury already attracts 57.5% of the catchment area's main food expenditure and 64.1% of its top-up expenditure.
111. The trade diversions that Turley identifies gives rise to trade impacts on Tesco of 42% and 15% on the Co-Op at 2019, and an overall convenience goods impact on Ledbury of 30%.
112. In respect of the Tesco store, Turley states (paragraph 9.49) that "*this store falls in an out-of-centre location and is therefore afforded no protection under planning policy*". This statement is inconsistent with their later comment in paragraph 9.71, where they refer to the store as being in an 'edge-of-centre' location. However, we accept that in respect of impact the principal issue is the implications for the role and functioning of the town centre as a whole, which we address later in this letter.
113. No figures for 2016 are provided by Turley. They justify this on the basis of PPS4 advice (EA paragraph 9.43). PPS4 EC14.7 says:

"Assessments of impacts should focus in particular on the first 5 years after the implementation of a proposal"

2019 is obviously the very last date on which PPS4 is indicating a proposal should be examined. In our opinion a test scenario at 2016, two years after the store opening date of 2014, would have been helpful. However, we comment on the assessment provided by Turley at 2014 and 2019.
114. We have two principal comments in respect of this assessment. First, we have indicated earlier that based on the DJD Verdict sales density estimates the convenience turnover of the proposed

store would be higher at £28.29m. This would have the effect of increasing the impact on existing facilities.

115. Secondly, Turley has calculated the impact on Ledbury shops arising from the store turnover from the catchment only, and has ignored diversions from the store turnover drawn from beyond the catchment. This is clear from the total store turnover figures at the foot of Table 10 (£17.73m at 2014 and £17.86m at 2019). Turley's assessment is based on the proposed store achieving 30% of its turnover from beyond the catchment area (Table 6A). Plainly a material proportion of this turnover from beyond the catchment area would be diverted from Ledbury convenience stores (which Turley has also assumed attract significant proportions of their turnover from beyond the catchment area). We have questioned whether the scale of this turnover drawn from beyond the catchment area would be as high as 30%. However, it is a fundamental component of Turley's assessment, and has therefore to be included within their analysis of impact. This is a major omission in respect of Turley's assessment, which has underestimated the impact on Ledbury convenience stores.

Comparison Goods

116. Turley's assessment of trade diversions is set out in Table 11 and broadly follows the pattern for convenience goods. The third column of figures in the table shows that Turley anticipates that the majority (55%) of trade diversions will be from centres / stores outside the catchment area. Within Ledbury they expect that 20% of the trade diversion would be from Tesco and 20% from local shops in the town.
117. The trade diversions that Turley identifies give rise to trade impacts on Tesco of 21.9%, 5.4% on the Co-Op, and 3.2% on local shops at 2019, and an overall comparison goods impact on Ledbury of 5.3%. As with convenience goods, no figures for 2016 are provided by Turley.
118. Our principal comment in relation to the comparison goods assessment is that, as with convenience goods, Turley has calculated the impact on Ledbury shops arising from the store turnover of the catchment only, and has ignored diversions arising from the store turnover drawn from beyond the catchment. This is clear from the total store turnover figures at the foot of Table 11 (£3.55m at 2014 and £3.83m at 2019). This has had the effect of underestimating the impact on Ledbury stores.

Overall Impact

119. Turley's assessment of convenience and comparison goods trade diversions combined is set out in Table 12, and is summarised in paragraph 9.70.

Tesco, Orchard Lane	-41.3% (2014)	-38.7% (2019)
Co-op, New Street	-14.7% (2014)	-13.9% (2019)
Other Shops in Ledbury	-4.7% (2014)	-4.0% (2019)
Overall	-20.0% (2014)	-17.7% (2019)

These are relatively high levels of impact. However, for the reasons we have outlined above Turley's impact assessment is incomplete, and we therefore make no further comments at this stage.

Comparison of the Implications of Sainsbury and Tesco Proposals

120. Likewise we make no comments on this part of the EA, in part because the Turley economic assessment is incomplete. Also there are underlying assumptions with which we are not necessarily in agreement, namely continued trading by the Co-Op store in competition with large Sainsbury and Tesco foodstores in the town.

Linked Trips

121. This section of the EA on linked trips also seeks to compare the respective implications of the Sainsbury and Tesco proposals. We make few comments at this stage for the reasons indicated above. We do, however, note the importance of linked trips from the answers to question 8 of the household survey – “*When you go food shopping, is your trip linked with another activity?*” 47.2% of respondents answered “Yes” to this question, of which the principal activity was non-food shopping (Question 9).
122. The proposed store lies on the western edge of the town some 850 m from the primary shopping frontage of the town centre. In our opinion shoppers would not walk this distance and any linked trips would be by car. On the other hand both the existing Tesco store and Co-Op stores lie close to the edge of the CSCA boundary and primary shopping frontages, and are within comfortable walking distance of other shops and services.
123. In our opinion the household interview survey findings indicate the importance of linked shopping trips, where the location of the main food shopping facility facilitates this. The location of the proposed store is too far from Ledbury town centre to facilitate linked trips from the store on foot. We believe that this is a major defect of the application site in planning policy terms.

b) impact on town centre vitality and viability, including local consumer choice and the range and quality of the comparison and convenience retail offer

124. Turley describes the impact of Sainsbury supermarkets in various other towns throughout the country. We have noted, but do not seek to comment on these case examples. We focus on the issues in Ledbury.
125. We have indicated above that there is common ground with Turley in respect of:
 - the general health of the town centre;
 - the high proportion of independent retailers, including specialist convenience and comparison goods shops;
 - the town centre’s focus on visitor spending as well as that of Ledbury residents;
 - the historic character and attractiveness of the centre.
126. The above factors should generally assist in strengthening the town centre’s ability to withstand impact from competing facilities, such as an out-of-centre foodstore.
127. Set against the above we have concerns in respect of the following matters that we believe are evident from Turley’s assessment.
128. First, we are not convinced that there is adequate expenditure capacity in the Ledbury catchment to support three large foodstores – Sainsbury, Tesco, and the Co-Op, plus a range of small convenience shops. We are of the opinion that Turley’s assessment of expenditure capacity is unrealistic, principally because it assumes redirection from centres elsewhere to Ledbury of all residents’ expenditure from the catchment area, despite the eastern part of the catchment extending into areas relatively close to and with a strong allegiance to Great Malvern.
129. Second, the levels of impact currently indicated are high and a potential cause of concern (in advance of any amendments that may be made to address issues we have raised above). Plainly the principal impact will be on the two existing large foodstores – Tesco and Co-Op. However, the precise level of impact on other facilities is a difficult judgement dependent on a variety of factors. The range of independent food traders (including five butchers and bakers) is very unusual. Such businesses have generally not proved viable on this scale in other towns throughout the country. In our opinion it should not be assumed that they will be immune in Ledbury from similar commercial pressures. We therefore have concerns that provision of a third

large foodstore in Ledbury will risk altering the current balance of convenience shops in the town centre, placing some of the independent traders at risk. Many of the comparison goods shops may more easily be able to differentiate their product range from the goods on offer at the supermarkets.

130. In addition to the conclusions that we have drawn above in respect of independent traders, it appears to us that, because of limited expenditure capacity, implementation of the application proposal would place major competitive pressure on the existing Co-Op store with a significant risk of its closure.
131. We accept the additional range and quality of products that would be offered by a new Sainsbury store in Ledbury. These have to be considered against the disbenefits that could arise, in particular any disbenefits in terms of an undermining of the performance of retailers who already play a key role in supporting Ledbury's unusual and valued offer.

c) impact on allocated sites outside town centres being developed in accordance with the development plan

132. We accept that there are no allocated sites outside Ledbury town centre that would be prejudiced by the application proposal.

e) if located in or on the edge of a town centre, whether the proposal is of an appropriate scale (in terms of gross floorspace) in relation to the size of the centre and its role in the hierarchy of centres

133. The application proposal is in an out-of-centre location and therefore this consideration is not directly applicable to it.

f) any locally important impacts on centres under policy EC3.1.e.

Historic building / conservation area issues

134. We raised historic building / conservation area issues in our letter of October 2007 in respect of the Tesco application. In paragraph 9.86 of their EA Turley states:
- "DJD infer that greater weight should be placed on the consideration of impact because the town centre is located in a conservation area. Such an assertion is not based in policy."*
135. Our position remains that impacts on the historic environment are a material planning consideration; although we entirely understand that Turley may have a different view to us on whether such impacts warrant concern. We reiterate our concerns here.
136. The whole of the Ledbury town centre shopping area is a designated conservation area, within which there are a large number of listed buildings. Many of these listed buildings are in commercial/retail use. An important planning objective in Ledbury is protection and enhancement of the town centre conservation area in accordance with Policy S7 of the Adopted UDP.
137. One of the key ways in which the town centre conservation area can be protected and enhanced is through the maintenance of viable uses for buildings, particularly those that are listed. In our opinion this places greater weight on the identification of impacts that might undermine the viability of uses within buildings. Most of the buildings themselves are of value visually, and in many cases are likely to be more costly to maintain.

Policy EC17: Significance of Impact

138. In this section of the EA Turley draws attention to a recent planning permission for a Sainsbury store in Bishops Waltham, Hampshire. We have noted their description of the circumstances in this case. We presume that the new foodstore is not yet open and that it is not therefore possible to identify any changes in shopping patterns on the ground.
139. Turley summarise their findings in paragraph 10.14. Because our views on the issues that are within our remit have been expressed elsewhere in this letter, we do not reiterate them here.

Our Conclusions

140. The application proposal is for a new retail foodstore to be occupied by Sainsbury at Leadon Way (A417) within the New Mills Industrial Estate, which is an out-of-centre location in retail planning policy terms. A gross retail floorspace of 5,427.8 sq m is proposed with a net sales area 2,787 sq m.
141. The principal town centre / retail planning guidance and planning policies against which the proposal should be assessed are those contained within PPS4 Planning for Sustainable Growth, and the Adopted Herefordshire UDP 2007. In addition the Draft National Planning Policy Framework July 2011 and documents from the emerging Herefordshire LDF are relevant.
142. The key planning tests against which the application proposal is required to be tested are:
 - Compliance with sequential approach requirements as set out in Policy EC15 of PPS4 and Policy TCR9 of the Herefordshire UDP;
 - Impact criteria as set out in Policy EC16 of PPS4 and Policy TCR9 of the Herefordshire UDP;
 - Compliance with the retail spatial strategy for the area as set out in Policy S5 of the Herefordshire UDP;
 - The achievement of a sustainable form of development as required by PPS4 and the Herefordshire UDP.

Sequential Approach

143. The application site is on the edge of Ledbury urban area well beyond walking distance to the town centre for shopping purposes.
144. The existing Tesco store site at Orchard Lane is a superior location for new retail development in planning policy terms. In the context of the former Tesco application, we have previously indicated that we are not satisfied that it has been adequately demonstrated that the site is neither suitable nor viable for a larger foodstore than currently exists on the site. This remains our view.
145. We have also indicated that, in the absence of information on what site area would be required for a centrally located foodstore, we are not satisfied that the Lawnside Road area can be dismissed on grounds of unsuitability.

Economic Impact

146. We have expressed concerns about the robustness of both Turley's expenditure capacity and impact assessments.
147. We are of the opinion that Turley's assessment of expenditure capacity is unrealistic, principally because it assumes redirection from centres elsewhere to Ledbury of all residents' expenditure from the catchment area, despite the eastern part of the catchment extending into areas relatively close to and with a strong allegiance to Great Malvern.

148. We believe that Turley's assessment of impact on Ledbury shops is incomplete, because the impact on Ledbury shops has been calculated based on the proposed store turnover from the catchment only, and has ignored trade diversions from expenditure from beyond the catchment. This is a major omission which will have underestimated the impact on Ledbury convenience stores in particular.
149. We accept that because of the specialist nature of many of the independent shops in Ledbury they may be more resilient to the trading impact of a large foodstore than would otherwise be the case. However, it should not be assumed that the specialist convenience shops in Ledbury will be immune from the commercial pressures of substantial additional large foodstore provision.
150. In addition, the historic character and conservation area status of much of the town centre places greater weight on consideration of the implications of impact than would otherwise be the case.

Linked trips

151. The NEMS Interview Survey findings indicate the importance of linked shopping trips, in association with main shopping trips. The location of the proposed store is too far from Ledbury town centre to facilitate linked trips from the store on foot. We believe that this is a major defect of the application site in planning policy terms.

Retail Spatial Strategy

152. *Prima facie* the application proposal is inconsistent with the retail spatial strategy for the area as set out in Policy S5 of the Adopted UDP, which is:
- to protect the vitality and viability of the market towns;
 - support continued investment in existing centres; and
 - locate key town centre uses (which includes the application proposal) in or adjacent to existing centres.

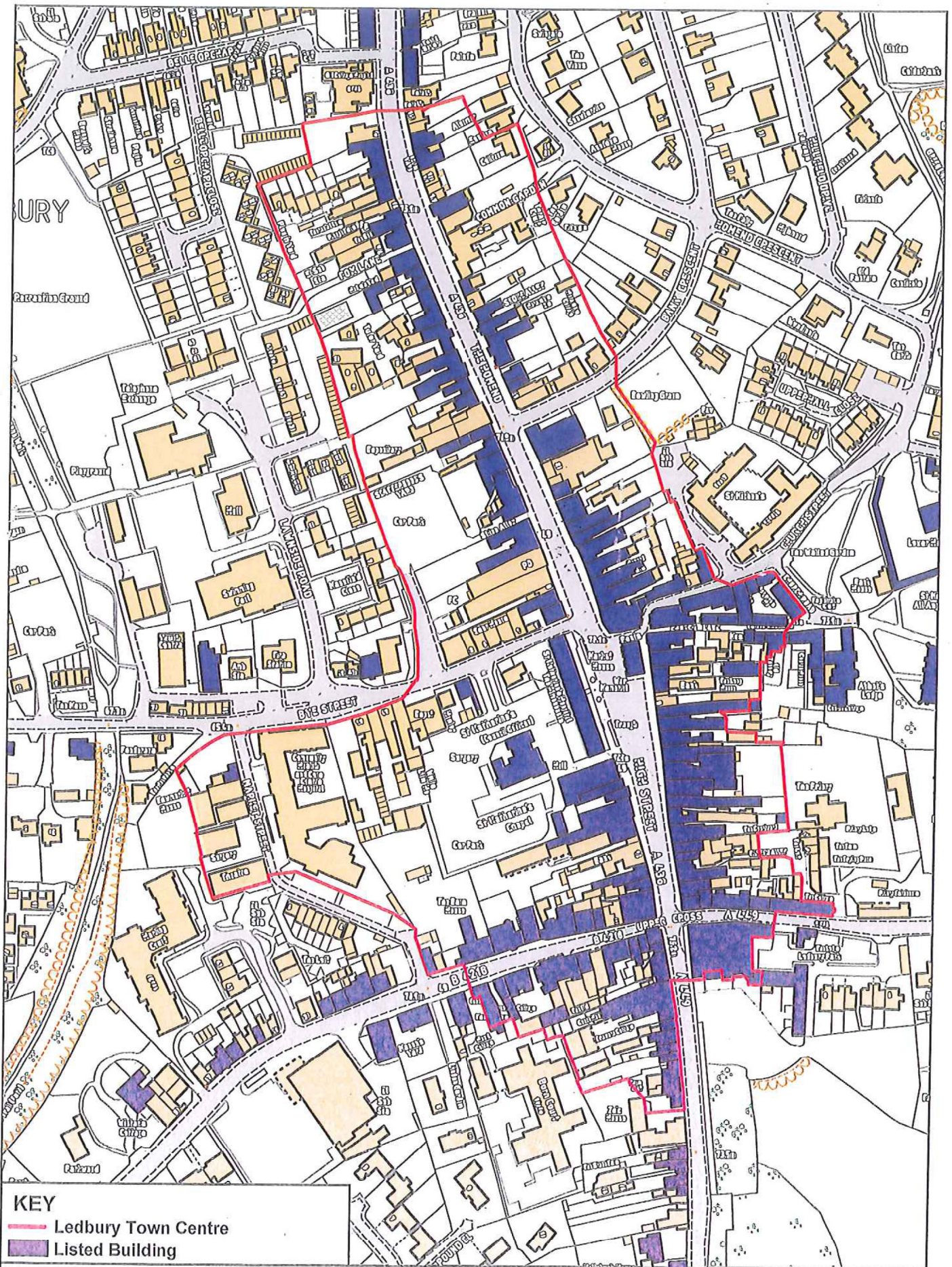
Sustainable Development

153. Because the application proposal is on the edge of the town, some 850 metres from the principal shopping area of the town centre, we do not believe it to be a sustainable location for new shopping development. Although the proposed store may claw back some retail expenditure currently lost from Ledbury, we do not consider that this would be of a scale to offset the above sustainability disadvantages arising from the site location.

Please contact me if there are any matters that you would like to discuss arising from this letter.

Yours sincerely

James Williams
for Deloitte LLP (trading as Drivers Jonas Deloitte)



KEY

- Ledbury Town Centre
- Listed Building



Listed Buildings in and around Ledbury Town Centre

Scale 1:2500

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MEETING:	PLANNING COMMITTEE
DATE:	22 FEBRUARY 2012
TITLE OF REPORT:	<p>S113380/F - ERECTION OF TWO DWELLINGS WITH ATTACHED GARAGING AT HILLCREST, GORSLEY, ROSS ON WYE, HR9 7SW</p> <p>For: Country Construction per Mr David Pearce, Lavender Cottage, Nettleton, Chippenham, Wiltshire, SN14 7NS</p>

Date Received: 29 November 2011

Ward: Penyard

Grid Ref: 367506,226184

Expiry Date: 27 January 2012

Local Members: Councillor H Bramer

1. Site Description and Proposal

- 1.1 Hillcrest is a development site of 3 detached dwellings on the north side of the B4221, south of Ivy House Estate, Gorsley. Plots 1 and 3 have been built. The site is relatively flat. A hedge defines the rear boundary. 5 Ivy House Estate, a bungalow is to the north.
- 1.2 This application proposes full planning permission for a semi-detached house. Each house will accommodate living room/dining room, kitchen, WC and a garage on the ground floor with 2 bedrooms, study and a bathroom on the first floor. Dormer windows are proposed to the front elevation and low-level rooflights are proposed to the rear elevation. External walls are to be finished with render and reconstituted stone that will match the neighbouring property. Gorsley stone is proposed for the front gable and plain tiles are proposed for the roof. Vehicular access will be off a driveway that serves Hillcrest and the 2 recently constructed dwellings. The drive exits onto the B4221.

2. Policies

2.1 National Planning Guidance

- PPS1 - Delivering Sustainable Development
PPS3 - Housing.

2.2 Herefordshire Unitary Development Plan

- S1 - Sustainable development
S2 - Development requirements
S3 - Housing
DR1 - Design
DR5 - Planning obligations
H13 - Sustainable residential design

Further information on the subject of this report is available from Mr D Thomas on 01432 261974

3. Planning History

- 3.1 DCSE0009/1487/O - Three detached dwellings with new access and associated works. Approved 28.10.2009.
- 3.2 DCSE092942/F - Variation of condition 5 on outline planning permission DCSE2009/1487/O to enable construction of visibility splays and new access. Approved 4.1.2010.
- 3.3 DMSE/101047/RM - Three detached dwellings with new access and associated works. Approved 10.11.2010
- 3.4 DMS/111943/F - Proposed erection of two dwellings with attached garaging. Refused 3.10.2011.

4. Consultation Summary

Statutory Consultees

- 4.1 Welsh Water advise there are no public sewers in this area. It may be possible for the developer to requisition sewers from Dwr Cymru Welsh Water under Sections 98 -101 of the Water Industry Act 1991.

Internal Council Advice

- 4.2 Traffic Manager has no objection subject to conditions.
- 4.3 Public Rights of Way Officer will not affect a public right of way.
- 4.4 Environmental Health and Trading Standards – Contaminated Land comments the development is some 140 metres to the west of a former landfill site commonly referred to as Hartleys quarry landfill. Landfills may be considered a potentially contaminative use and as such the following condition is recommended:

1. No development shall take place until the following has been submitted to and approved in writing by the local planning authority:

A 'desk study' report including previous site and adjacent site uses, potential contaminants arising from those uses, possible sources, pathways, and receptors, a conceptual model and a risk assessment in accordance with current best practice

If the risk assessment in (a) confirms the possibility of a significant pollutant linkage(s), a site investigation should be undertaken to characterise fully the nature and extent and severity of contamination, incorporating a conceptual model of all the potential pollutant linkages and an assessment of risk to identified receptors

5. Representations

- 5.1 Linton Parish Council has no objection.
- 5.2 A Design and Statement has been submitted with the application.
- The revised form of development is to create 2 lower value, 2 bedroom dwellings with the option to be extended to provide 3 bedrooms in place of the single 4 bedroom dwelling
 - The applicant is a local building company aware of the difficulties experienced by local people wishing to purchase dwellings in rural areas

- The applicant has discussed his proposal with neighbours and the parish council who have and has not been advised of any grounds for concern and has been requested to pursue the proposal as a means of improving the availability of small houses
- The footprint of the dwellings will be 118 square metres compared with the consented 130 square metres dwelling
- The siting of the dwellings retains the relationship with 2 neighbouring properties but has taken the opportunity to position the dwellings closer to the private access drive
- In common with the previous application the proposal addresses the potential of overlooking by placing rooflights in the north facing roof slope with the main windows in the side elevations

5.3 Three objections have been received. In summary it is said:

- The houses will be built on higher ground behind our bungalow
- They will overlook and overshadow our property
- Windows will look directly into our property so as to affect our privacy
- There will be an increase in traffic
- The plan leaves no room for an eco-system to be re-established
- It is not in keeping with neighbouring properties

5.4 Twenty one letters in support of this application have been received. In summary it is said

- There should be more opportunities to allow starter homes for the younger population of Gorsley
- The proposal to turn a 4 bed executive home into 2 low cost starter homes should be welcomed
- The village needs more affordable housing so that local people can stay in the village
- The village will benefit from the proposal
- The parish has very little in the way of affordable housing
- It will not have any serious adverse affect on the neighbouring properties

5.5 The full text of these letters can be inspected at Hereford Customer Services, Franklin House, 4 Commercial Road, Hereford, HR1 2BB and prior to the Committee meeting.

6. Officer's Appraisal

6.1 This application has been submitted following the refusal of DMS/111934/F which proposed an identical housing development. The only difference between this application and the previous application is a supporting statement submitted which implies the proposal will provide 2 lower value houses as a means of improving the availability of small houses in the area. However, the applicant has not offered a Section 106 Agreement or any other method that will retain the development for this purpose.

6.2 With regard to local affordable housing need in the Linton and Gorsley area Herefordshire Council's Homes and Communities Division commissioned a housing needs survey. The survey was designed to assess the need for affordable housing over the next three years, forming part of the rolling programme of surveys across the county, as a statutory duty to assess housing needs under the Housing Act 1985. The survey identified a need for 7 one-bedroom dwellings, 1 two-bedroom dwelling and 3 three-bedroom dwellings a site has been identified on the northwest side of the junction of Ivy House Lane and the B4221, opposite The Roadmaker Public House for this purpose.

6.3 The application site is located in the main village boundary of Gorsley as shown on Inset Map 19a in the Herefordshire Unitary Development Plan. As such the principle of housing development on this site is acceptable. Also, planning permission has been granted for a

dwelling on this plot as part of the approval of reserved matters, DMSE/101047RM, which is the same as the recently constructed dwelling on plot 1, to the west. This application proposes a semi-detached house that will be bulkier when compared against the approved dwelling; ridge height of 8 metres compared to 7.2 metres of the approved scheme and 16.5 metres wide compared against 9 metres of the detached house. This increase in size and proximity to the adjoining bungalow, 5 Ivy House Estate, will lead to an overdevelopment of the site so as to have an adverse impact on the amenity of the occupants through the intensification of development.

6.4 Furthermore, the approved layout was conceived as a spacious edge of settlement development in an area primarily characterised by lower density housing. In this context it is considered that in addition to the increased overbearing effect, the cramped form of the semi-detached arrangement will be out of keeping with the character of the site and the surrounding area

RECOMMENDATION

That planning permission be refused for the following reasons:

- 1. It is considered the scale and form of the proposed dwellings would lead to an overdevelopment of the site so as to have adverse impact on the residential amenity of adjoining properties and a detrimental effect on the character and appearance of the site and the surrounding locality. As such the proposal conflicts with policies DR1, DR2 and H13 of the Herefordshire Unitary Development Plan.**

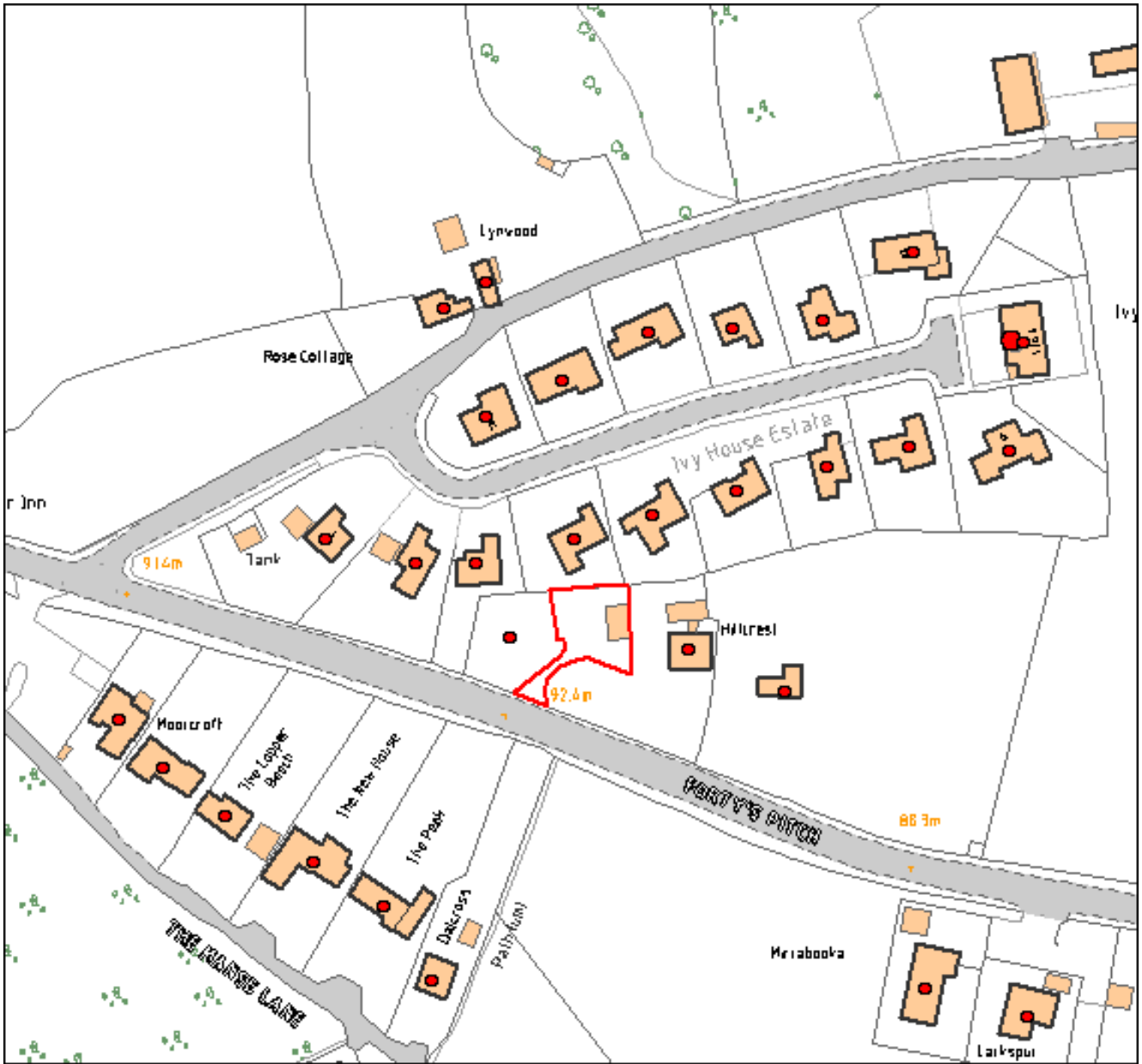
Decision:

Notes:

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Background Papers

Internal departmental consultation replies.



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APPLICATION NO: DMS/113380/F

SITE ADDRESS : HILLCREST, GORSLEY, ROSS ON WYE, HR9 7SW

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Further information on the subject of this report is available from Mr D Thomas on 01432 261974



MEETING:	PLANNING COMMITTEE
DATE:	22 FEBRUARY 2012
TITLE OF REPORT:	<p>N120142/FH - PROPOSED REPLACEMENT OF CONSERVATORY WITH DINING ROOM AT THE KILNS, AVENBURY LANE, AVENBURY, BROMYARD, HEREFORDSHIRE HR7 4LD</p> <p>For: Mr Spriggs per Mr Ian Williams, Office 6-7 Mortimer House, Hereford, HR4 9TA</p>

Date Received: 17 January 2012 **Ward: Bromyard**

Grid Ref: 366329,253206

Expiry Date: 13 March 2012

Local Members: Councillors JG Lester and A Seldon

1. Site Description and Proposal

- 1.1 The Kilns is a residential property to the east of the C1135 in Avenbury which is to the south east of Bromyard. The property consists of two former stone barns which were converted to a residential property in the early 1990's. The property is surrounded by Open Countryside, which is characterised by mature dense hedgerow boundaries and clusters of woodland. The land rises to the rear of the property, therefore the dwelling is only visible from the adjoining highway to the west and south.
- 1.2 The buildings are linked by a narrow glazed link building approved under application 96/0238. From the front of the property the link building appears to be a stone wall, with all the glazing behind. Prior to the existing link building being approved, two similar applications were refused and dismissed at appeal as they were considered to be of a scale and design which would detract from the character and appearance of the buildings.
- 1.3 The proposal seeks planning permission to extend the link building to provide a dining area. The proposal represents an increase in floor area of 20m². The extension will be constructed from stone to match the existing and have a pitched roof to match the two former barns constructed from slate. Two windows will be inserted into the proposed north east elevation which fronts onto the highway, and to the rear double doors will open out onto the patio.

2. Policies

2.1 Herefordshire Unitary Development Plan:

- S1 - Sustainable Development
- DR1 - Design
- HBA12 - Re-use of Rural Buildings
- HBA13 - Re-use of Rural Buildings for Residential Purposes

2.2 Supplementary Planning Guidance: Re-use of Rural Buildings

Further information on the subject of this report is available from Ms R Jenman on 01432 261961

3. Planning History

- 3.1 91/0535 Conversion of redundant barn to from residential dwelling. Refused 21/5/1991. Dismissed at appeal 4/11/1991.
- 3.2 92/0075 Link to form dining area between existing buildings. Refused 3/3/1992. Dismissed at appeal 11/7/1992.
- 3.3 96/0238 Link block building between two buildings. Approved 16/4/1996.
- 3.4 97/0697 Revision to rebuild building with increased in ridge height. Approved 19/5/1997.
- 3.5 DCNC2003/2819/F Proposed creation of new entrance and closure of existing entrance. Approved 7/11/2003.
- 3.6 N/112758/FH Proposed replacement of conservatory with dining room. Withdrawn.

4. Consultation Summary

- 4.1 None required.

5. Representations

- 5.1 Avenbury Parish Council – at the time of writing the report no representation had been received.
- 5.2 The full text of these letters can be inspected at Hereford Customer Services, Franklin House, 4 Commercial Road, Hereford, HR1 2BB and prior to the Committee meeting.

6. Officer's Appraisal

- 6.1 Given the former use of the buildings the application falls to be considered against policies HBA12 and HBA13 which both set the provision for the re-use of rural buildings for residential. The objectives of both policies, amongst other things, are to retain the qualities and essential features of the existing rural buildings and to ensure that the new uses can be accommodated without substantial alterations or extensions.
- 6.2 The proposed new dining room would introduce a large and visually distinct element between the two former barns. Its prominence and bulk would detract from the original form and character of the buildings and would significantly change the appearance and character of the site. It was noted by the inspector in the previous appeals on the site that the two long narrow parallel buildings, which are set at right angles to the road, are not all that prominent in their setting and have a limited profile to the road. The existing link is formed from the former yard wall, and from the highway appears just that, with no indication of a link behind. The proposed extension would result in a loss, in visual terms, of the individuality of the original buildings and would create a substantial addition to the structure which significantly increases the scale of the property when seen from the adjoining highway.
- 6.3 It is therefore concluded that the proposal does not comply with the objectives of policies HBA12 and HBA13 as it represents a substantial extension which does not preserve the qualities and essential features of the buildings. As such the application is recommended for refusal.

RECOMMENDATION

That planning permission be refused for the following reason:

1. **The proposal does not comply with the objectives of Policies HBA12 and HBA13 of the Herefordshire Unitary Development Plan as it represents a substantial extension to former rural buildings which does not preserve the qualities and essential features of the buildings. Furthermore the visual impact of the proposal would be detrimental to the character and appearance of the buildings and their rural setting.**

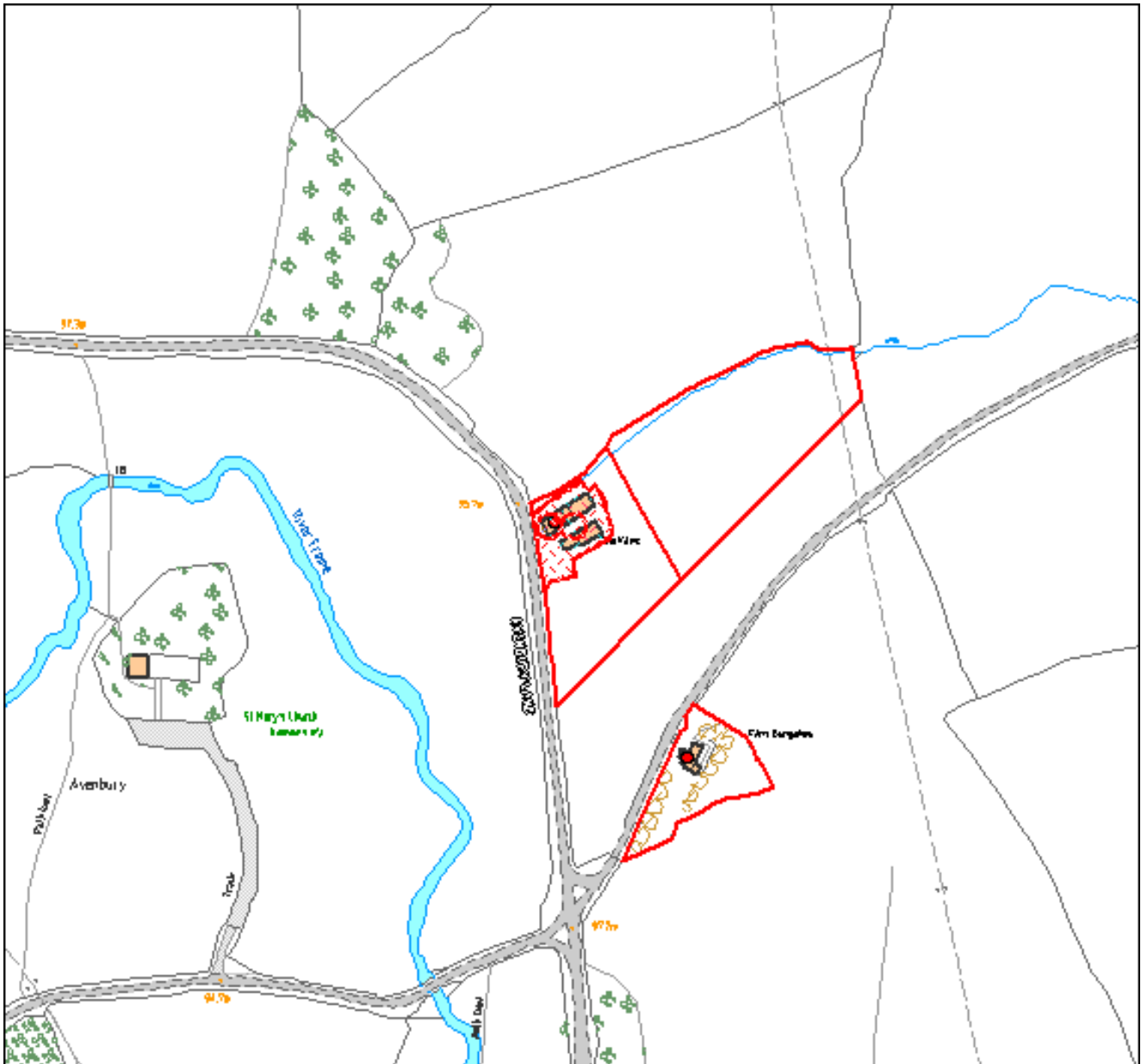
Decision:

Notes:

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Background Papers

Internal departmental consultation replies.



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APPLICATION NO: DMN/120142/FH

SITE ADDRESS : THE KILNS, AVENBURY LANE, AVENBURY, BROMYARD, HEREFORDSHIRE, HR7 4LD

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MEETING:	PLANNING COMMITTEE
DATE:	22 FEBRUARY 2012
TITLE OF REPORT:	<p>S113513/CD - CONSTRUCTION OF CARPARK AND FOOTWAY / CYCLEWAY OFF WATERFIELD ROAD FOR THE BELMONT HAYWOOD COUNTRY PARK. AT WATERFIELD ROAD, HEREFORD, HR2 7EL</p> <p>For: Mr Hemblade per Ms Paula Jobson, Amey, 3 Thorn Business Park, Rotherwas, Hereford, HR2 6JT</p>

Date Received: 14 December 2011

Ward: Belmont

Grid Ref: 349280,237920

Expiry Date: 8 February 2012

Local Members: Councillor Cllr PJ Edwards, Cllr GA Powell and Cllr Adrian Bridges

1. Site Description and Proposal

- 1.1 The application site comprises part of the Belmont Hayward Country Park that is currently being established to the south west fringes of the city, accessed to the east of Waterfield Road and via the newly constructed Cedar Avenue and Sycamore Avenue and from the west from Haywood Lane.
- 1.2 This application comprises the provision of a car park and cycle / footway linking through to the eastern side of the Country Park.
- 1.3 The car park would be accessed via an existing gated access onto Waterfield Road and would be sited on the corner of Waterfield Road and Kestrel Road. The existing site is a grassed area, slightly elevated from the adjoining highway and surrounded by a shallow ditch. The site is open fronted to the east but benefits from a quite substantial landscape boundary hedge to the north along Kestrel Road.
- 1.4 The proposal involves the levelling and laying of a grasscrete parking surface over an area that would measure approximately 30m by 16m to 20m across. The boundary would be a birds-mouth fence (timber). The entrance to the car park would have a height restrictive barrier. The hedgerow to the north would be trimmed back but would be maintained. The car park would be able to accommodate approximately 20 spaces (including 2 disabled spaces).
- 1.5 The proposal is intended to allow for visitors to park safely when visiting the park and minimise the disturbance to the lives of adjacent residents. It is also expected that this facility would provide parking for local fisherman, rather than on street near to the pools.
- 1.6 Leading away from the car park towards the west would be a 3m wide footway / cycleway that would meet with an existing 2m wide footway / cycleway at the site boundary, providing an extended leisure route from Waterfield Road, through the park, to Hayward Lane. The pathway would be constructed of crushed stone surface.

Further information on the subject of this report is available from Ms Kelly Gibbons on 01432 261781

- 1.7 Funding for this project has been secured through the Section 106 agreement relating to the development at Mulberry Close by Persimmon.

2. Planning Policies

2.1 National Planning Guidance

- PPS1 - Delivering Sustainable Development
- PPS9 - Biodiversity and Geological Conservation
- PPG17 - Planning for Open Space, Sport and Recreation

2.2 Herefordshire Unitary Development Plan

- S1 - Sustainable Development
- S2 - Development Requirements
- S8 - Recreation, sport and tourism
- DR2 - Land use and activity
- DR3 - Movement
- DR4 - Environment
- T6 - Walking
- T7 - Cycling
- T16 - Access for All
- LA2 - Landscape Character
- LA5 - Protection of trees, woodlands and hedgerows
- LA6 - Landscaping schemes
- NC1 - Biodiversity and Development
- NC8 - Habitat Creation, restoration and enhancement
- HBA9 - Protection of open areas and green spaces
- RST1 - Criteria for recreation, sport and tourism development
- RST4 - Safeguarding existing recreational space
- RST5 - New Open Space
- RST6 - Countryside access
- RST7 - Promoted recreational routes

3. Planning History

- 3.1 DCCW2007/2834/F - Proposed erection of 69 dwellings and delivery of Haywood Country Park – Allowed on appeal March 2008.

4. Consultation Summary

Statutory Consultations

- 4.1 None

Internal Consultation Responses

- 4.2 Public Rights of Way comment that the proposal will not affect the Public Right of Way

The Conservation Manager makes the following comments:

4.3 Ecology

Whilst I have no objection in principle to the provision of a cycle path, I have the following comments to make and some concerns about the information that has been submitted with this application:

Further information on the subject of this report is available from Ms Kelly Gibbons on 01432 261781

The ecological information that has been submitted is very limited. I have since obtained a copy of the ecological assessment by Abyecology dated 05/08/2010 which includes part of the area that is the subject of this application. The grassland would appear to be relatively low quality / coarse with little botanical interest.

The proposed cycle path lies partially within the Belmont Meadows Local Nature Reserve and a Site of Importance for Nature Conservation – SINC 44 Newton Farm. SINC 45 – Pond North of Newton Farm lies to the north. The cycle path will follow the route of an existing informal footpath, although this will need to be widened and there will be a change to the levels across the route. Local Nature Reserves are designated by Local Authorities partly for their nature conservation interest, but also to provide an element of public access to nature. This proposed cycle path will facilitate this access. The bridge has already been constructed to provide access across to the Belmont Haywood Country Park.

The application asserts that the River Wye is Ramsar site; it is in fact a Special Area of Conservation. There is also no mention of the SINC designation in the submitted information.

No information regarding the restoration of habitats adjacent to the route has been submitted. I would expect an application of this nature that will cross the grassland habitat of a SINC and LNR to include a habitat restoration and enhancement scheme for the working areas that will be disturbed; I recommend that a wildflower seed mix will need to be used for these areas, preferably locally sourced.

I am concerned about the proposed car park and the implications for hedgerow loss. Whilst I can appreciate that some hedgerow management may be required, the car park area should be amended to enable the retention of the hedgerow.

If the hedgerow can be retained and this application is to be approved, I recommend the inclusion of an appropriate non-standard condition.

4.4 Landscape

The site is located on the south west edge of Hereford city. The landscape character type is on the boundary between Urban and Wooded Estatelands, which reflects the suitable location for a country park. The site is identified within the Green Infrastructure Study, as an important corridor and local enhancement zone (ref: HerLSC12 and HerLEZ7). The site fronts Waterfield Road, which has a typical suburban character. Part of the footpath and cyclepath pass through a Site of Importance for Nature Conservation and a Local Nature Reserve.

The car park development and associated infrastructure will result in a loss of green, open space; however it is balanced against the aim of promoting access to the countryside. It will provide a positive link to the development of the Belmont Haywood Country Park, which has been laid out and is currently being finished (as explained in the design and access statement). The proposed grasscrete surface finish and birdsmouth fence are considered suitable for this location, as a transition between urban and rural.

The design and access statement includes that '*some hedging is to be thinned or removed within the north east boundary of the proposed car park*'. As compensation for this loss, and to enhance the streetscape, new tree planting could be included along the road boundary. A suitable proposal would be for new trees a 10m centres to reflect the street trees on the opposite side of the road, to create an attractive avenue to the edge of the park.

There is no objection to this application.

4.5 The Transportation Manager has no objection to the grant of permission.

Further information on the subject of this report is available from Ms Kelly Gibbons on 01432 261781

5. Representations

5.1 Hereford City Council comments as follows:

We agree with the principle but we would like to make sure that there's adequate lighting and, possibly, a lockable gate for the night time to prevent anti-social behaviour.

5.2 The Ramblers Association comment as follows:

Footpath HER50 passes through this proposed car park. We are concerned for the safety of pedestrians (probably young) who might have to pass through a melee of parking cars. There needs to be a means of separating the footpath from the traffic.

5.3 The Open Spaces Society comments are summarised as follows:

- Concerns raised about walking of dogs in park (Fouling etc)
- How is the car park going to be policed? Will parking be limited to a certain time and no overnight parking?
- There should be a legal diversion of the Footpath (No 50)
- Provision of Cycle stands may be appropriate
- Concern about chicane gate and how cyclists would negotiate this?

5.4 Letters of representation raising objection or concern have been received from the following:

Mr G Brawley, 8 Kestrel Road
Mr P Lisseman, 5 Kestrel Road
Mr R Green, 3 Kestrel Road
Mr M Gilleland, 35 Muir Close
Ms N Lynch, 6 Argyll Rise

5.5 These letters of representation raise the following issues:

- The car park may attract anti social behaviour such as late night gatherings / drinking / vandalism and noise in addition to the problems that already occur at the ball park;
- If the car park is not lit, this may attract anti-social behaviour?
- Can the car park be locked overnight?
- Is there a need for this car park when there is on street parking available?
- Is it realistic that fisherman would walk from this car park to the pools? What is happening with the suggested car park of Hayward Lane?
- Local residents expressed concern about a car park in this location and desire for the siting of this car park at the Haywood Lane side during the consultation meeting last year.
- The land is designated as safeguarded open space in the UDP (RST4) so how can a car park be built on this?
- The car park will have an adverse impact or loss of the natural environment;
- The car park will encourage the use of the motor vehicle
- The proposal includes the loss of the hedgerow;
- The amenities of nearby residents would be harmed, including their setting and views;
- The PROW would be obstructed by parked cars

5.6 A petition asking the question 'is this car park in the wrong place?' has been circulated and has attracted 44 names / responses, all answering yes to this question.

5.7 The consultation responses can be viewed on the Council's website by using the following link:- www.herefordshire.gov.uk/housing/planning/58286.aspx?ID=113513

Internet access is available at the Council's Customer Service Centres:-
www.herefordshire.gov.uk/community_and_living/consumer_advice/41840.asp

6. Officer's Appraisal

- 6.1 The Belmont Haywood Country Park was identified by policy RST5 of the Herefordshire Unitary Development Plan as a new recreational, amenity and open space facility to provide additional countryside access and recreational facility in an urban fringe location to the south west of Hereford. This has been brought to fruition through the recent delivery of a housing development off Mulberry Close. The 'Transport and Highways contribution' of £216,528.00 within the section 106 associated with the Mulberry Close development explicitly makes provision (amongst other priorities) for infrastructure and car parking area (including signage) to serve the Country Park. The need for this has been identified following the application and appeal process and the concern about indiscriminate parking on the highway around the development site and park. The chosen site could be easily signed and found by visitors that may be coming to use the facility by car.
- 6.2 The application site lies adjacent to the land allocated for the Country Park and is allocated in the Herefordshire Unitary Development Plan under policy RST4 as land that is safeguarded existing recreational open space. The proposed car park and pathway will provide a connection and link to the developing Country Park.
- 6.3 RST4 seeks to protect public and private open spaces with recreational value, but is permissive for development on such areas that complement the main uses of the open space. It is considered that the provision of this small car park area and footway / cycleway are clearly associated with the wider open space provision. The loss of this small area of land has been balanced against the aim of promoting the access to the wider open space amenity area and is considered to be acceptable. As such the proposed development would comply with the requirements of this policy.
- 6.4 The physical works required by the development have been kept to a minimum, with the use of grasscrete and birdsmouth fencing to the car park and crushed stone to the pathway being low key and appropriate for the type of development in this location and the transition between urban and rural. The retention of the hedgerow to the northern boundary has now been confirmed and a condition requiring its retention and details of future maintenance or works is recommended. The retention of the hedge is also considered important to offer a buffer between the proposed car park and those residents in Kestrel Walk that would otherwise overlook the car park. As this hedge is now being retained, the replacement planting requested by the Landscape Officer is not considered necessary. Therefore the proposed works are considered to comply with the requirements of policies LA2 and LA6 of the Herefordshire Unitary Development Plan.
- 6.5 One of the key concerns raised by local residents focuses on the potential that the car park would have to attract and possibly exacerbate anti-social behaviour in the area. Letters of representation indicate that there is already anti-social behaviour that occurs on a regular basis at the ball court that lies to the south of the proposed car park and they are concerned that by providing a parking area this may attract further problems and gatherings in this location that will cause disruption and disturbance to local residents.
- 6.6 The site is very open, is overlooked by dwellings and in a fairly prominent position. Following these concerns being raised it has been agreed with the applicant that a double head street light would be installed providing a well lit area which would hopefully deter anti social activity. The applicants have also been approached with regard to providing a locked gate that would prevent overnight use of the car park. The cost implications of undertaking this are quite significant and the Parks and Countryside department are unable to commit to this on the basis that the car park 'may' cause a problem. It has been suggested that a community led

Further information on the subject of this report is available from Ms Kelly Gibbons on 01432 261781

scheme to provide persons who would be willing to commit to locking and unlocking a gate could be a solution and this is being explored further. Nonetheless, the proposal in its current form is considered to be acceptable, and a refusal of the grounds of a potential problem could not be substantiated.

- 6.7 Local residents concerns have been noted by the Parks and Countryside Manager and Ward Members and contact has been made with the Local Policing Team on these matters and the existing problems that are ongoing.
- 6.8 The potential impact of the development has been considered in relation to the amenities of local residents and it is considered that the development itself, and use as a car park would not harm the amenities that are enjoyed by local residents. Any anti-social behaviour or disturbance can / should be dealt with by the appropriate authorities. The provision of this car park will provide a facility for use by the wider community and help prevent indiscriminate parking on the highway by those visiting the Country Park. Having regard to the above the proposals are considered to comply with policy DR2 of the Herefordshire Unitary Development Plan.
- 6.9 Local residents also raise the question and query the necessity for this proposal query why a car park cannot be sited to the Haywood Lane as was raised during a public meeting last year. The possibility of a car park off Haywood Lane is also being explored by the relevant officers but does not form part of this application.
- 6.10 The application site is crossed by a Public Right of Way. At present this does not follow the legal line. The current application does not show any definition or protection of this legal line, (which actually passes through dwellings on the other side of the Waterfield Road). Representations have raised concern about the potential for conflict with cars and pedestrian on this Public Right of Way. The applicants' agents are currently looking at ways to address this matter and the outcome of this will be reported at Planning Committee. Likewise, the type of chicane gate that is proposed is also being reconsidered following concerns being raised by the Open Spaces Society.
- 6.11 The proposed access to the site off Waterfield Road would not cause any concern from a Highway Safety perspective. The existing lighting column would be re-sited behind the visibility splay. The footpath along Kestrel Road would be continued to this access, improving pedestrian access onto the site. As such the proposal would comply with policy DR3 of the Herefordshire Unitary Development Plan.
- 6.12 Having regard to the above the proposal is considered to comply with the requirements of the Herefordshire Unitary Development Plan and will provide a facility that will encourage access to this Country Park and help to prevent indiscriminate parking on the highway that may be to the detriment of highway safety and the amenities of local residents.

RECOMMENDATION

That planning permission be granted subject to the following conditions:

- 1. A01 Time limit for commencement (full permission)**
- 2. B01 Development in accordance with the approved plans**
- 3. Prior to commencement of development, a full working method statement and habitat restoration and enhancement scheme shall be submitted for approval in writing by the local planning authority. The Plan shall include timing of the works and details of storage of materials and shall be implemented as approved.**

Reasons: To ensure that all species and sites are protected having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010 and Policies NC1, NC4, NC6 and NC7 of Herefordshire's Unitary Development Plan.

To comply with policies NC8 and NC9 within Herefordshire's Unitary Development Plan in relation to Nature Conservation and Biodiversity and to meet the requirements of PPS9 Biodiversity and Geological Conservation and the NERC Act 2006

4. The existing trees and hedgerow to the northern boundary of the site shall not be removed, destroyed or felled without the prior approval in writing of the Local Planning Authority. Prior to any maintenance or works being undertaken to the trees or hedge a detailed method / maintenance scheme shall be submitted to and approved in writing by the local planning authority. Works shall be carried out in accordance with the approved details.

Reason: To safeguard the amenity of the areas and to protect the amenities of local residents in accordance with policies DR2 and LA2 of the UDP.

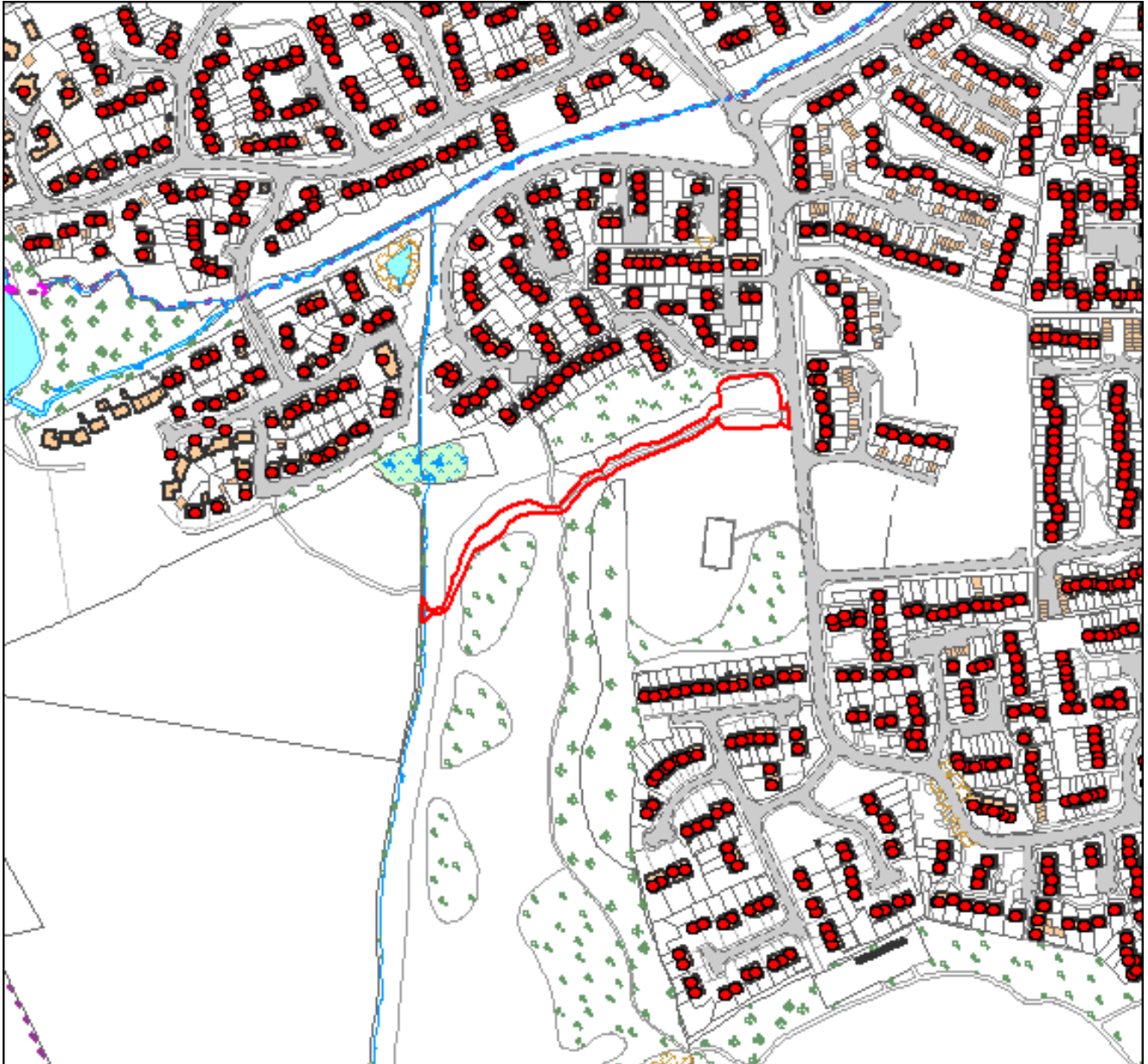
Decision:

Notes:

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Background Papers

Internal departmental consultation replies.



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MEETING:	PLANNING COMMITTEE
DATE:	22 FEBRUARY 2012
TITLE OF REPORT:	SINGLE ENFORCEMENT AND PROSECUTION POLICY
REPORT BY:	CHRIS CHAPMAN – ASSISTANT DIRECTOR LAW AND GOVERNANCE

CLASSIFICATION: Open

Wards Affected

County-wide

Purpose

To gain the Planning Committee's support for the adoption of a Single Enforcement and Prosecution Policy for all relevant activities undertaken by Herefordshire Council and to endorse same.

Recommendation(s)

THAT:

- (a) the principle of a Single Enforcement and Prosecution Policy is supported;**
- (b) the detail contained within a Single Enforcement and Prosecution Policy is supported**

Key Points Summary

- HPS has listed 'cutting bureaucracy' (inc. less regulation and red tape) as one of their 'principles for the future'
- Reducing bureaucracy, simplifying rules and regulations, and supporting business by being more 'business friendly' will benefit those who live and work in Herefordshire
- Enforcement policies and practices have a significant effect on the ways enforcement activities are undertaken across a varied range of services throughout the County
- Being transparent about how we approach enforcement and, where necessary, prosecute individuals and businesses is important in giving assurances to those who have duties to comply with the law and those who are protected by the law.
- Whilst there is a wide ranging spectrum of enforcement activities across the organisation, nevertheless there is a need to ensure that the principles that apply to all enforcement are visible and applied appropriately and consistently across the County.
- All of the Council's enforcement activities operating to and within one single policy is not only in

Further information on the subject of this report is available from
Paul Nicholas, Regulatory Services Programme Manager on (01432) 260543

line with good practice but will help boost confidence amongst the public, business and members.

Alternative Options

1. Do not support the principle i.e. continue to operate at least five separate policies, and/or amend the detail

Reasons for Recommendations

2. To give Cabinet a clear message that this Committee supports the principle and detail of a Single Policy.

Introduction and Background

3. The government set a clear aim: to leave office having reduced the overall burden of regulation. Furthermore they said, with more than 21,000 regulations active in the UK today, it was not going to be an easy task. They are determined to cut red tape.
4. Nationally, a number of steps to reduce regulatory burden have been started including:
 - The introduction of the Red Tape Challenge, which gives the public and business an opportunity to review the entire stock of regulations
 - The One-in One-out process and the Statement of New Regulation, both introduced to restrict the volume of new regulation
 - The creation of the Reducing Regulation Committee (RRC)
 - Commitment for the implementation of Lord Young's proposals to reform the enforcement of health and safety law
 - A consultation paper produced by the Department for Business, Innovation and Skills (BIS) on the subject of transforming regulatory enforcement.
5. Locally, Herefordshire Council has listed 'cutting bureaucracy' (inc. less regulation and red tape) as one of their 'principles for the future'.
6. Activity to underpin such a principle was the setting up of 'Reducing Red Tape' project in 2011. Its brief was:
 - a) To consider ways in which the regulatory burden for people and business in Herefordshire may be reduced and efficiency savings or other improvements may be made
 - b) To revisit enforcement practice across the authority and make recommendations for any changes required to introduce a "light touch" approach.
 - c) To recommend changes to existing byelaws and local legislation which eliminate obsolete provisions and produce a set of relevant provisions which are no more than are required to ensure the quality of life for Herefordshire residents, reflecting the principle of Reducing Red Tape.
 - d) To recommend any changes to how regulatory functions are currently managed across the Council to improve co-ordination, communication and overall efficiency.

7. A report was presented to HPS Leadership Team in October 2011, and all recommendations were agreed.
8. In order to implement that recommendation relating to a Single Policy, the Policy itself should be brought before Regulatory Committee and Planning Committee before being signed off by Cabinet.
9. Most enforcement-related activity is undertaken by services that report to either the Regulatory Committee or Planning Committee. Both Committees have responsibilities with respect to the overseeing of enforcement-related activity and periodically receive reports on such activity.
10. Whilst Policy on enforcement is an Executive function, the governance of enforcement lies with the Committees and therefore it is appropriate to consult with these Committees and gain their support for the Policy. This report is also being presented to the Regulatory Committee.
11. The decision of these Committees will be reported to Cabinet when they consider the forthcoming recommendation to implement the Single Policy.

Key Considerations

12. Part of the second task of the 'Reducing Red Tape Project' was to gain understanding of enforcement practice. It was evident that there were a number of policies followed in various parts of the organisation that whilst not necessarily inconsistent, made it confusing to the public and business.
13. The following is taken from the Project Report:

"Any 'enforcement' should be targeted, proportionate, risk-based, transparent, and consistent. It should aim at achieving the following: Helping Businesses and Others to Compliance thus Supporting Economic Progress; Openness through Clear Accessible Advice and Guidance, and Helpfulness through Clear Accessible Guidance. This can be better achieved by Working with Other Enforcement Agencies, and Adopting Good Enforcement Procedures

Council service areas which are responsible for enforcement activities frequently need to demonstrate that the actions they take are consistent with legal requirements, public interest and government guidance. Enforcement Policies have been used to provide a decision making framework that enables officers to consider issues in an effective way.

Guidance on prosecution such as the Code for Crown Prosecutors has existed for some time. Successive governments and their various departments have produced more and more guidance for regulatory and enforcement services to follow, particularly those dealing with businesses. The Enforcement Concordat and Regulatory Code are examples of these.

Latterly, the Department for Business, Innovation and Skills (BIS) has proposed drawing any separate policies together and removing the duplicated information. This has the advantage of simplicity, consistency and easier management.

Within the Council each individual service area has historically had its own enforcement policy. This was primarily driven by the need of each service area to demonstrate to its stakeholders that the issue had been addressed. This has resulted in a total of six area specific enforcement policies being used by the Council - Planning Enforcement, Building Control, Private sector housing, Public rights of way, Environmental Health & Trading Standards (inc. Community Protection), and Housing & Council Tax Benefit.

The opportunity now therefore exists for a single Herefordshire Enforcement and Prosecution Policy

containing, where necessary, service specific appendices to give service area specific information and guidance where required. By introducing an overall enforcement and prosecution policy it is felt that consistency in enforcement within service areas and across the different service areas will improve.”

14. A single, overarching Enforcement and Prosecution Policy would not only bring this organisation into line with most other local authorities and mean that we are following best practice, but give the public and business a clearer view of the principles that underpin our decision making as it relates to enforcement and prosecution. The Policy is at Appendix 1.
15. Visibility and understanding of the Policy is key to assisting the Committee in discharging some of its responsibilities with respect to ‘regulation’. Consistency and fairness across all enforcement activities whether the responsibility of this or any other Committee, is essential.
16. Whilst the Single Policy will be a more condensed and thorough document than its predecessors nevertheless it is recognised that a further simplified summary document aimed at the public would be helpful and, to that end, a summary will be published and available.

Community Impact

17. It is envisaged that greater openness will result from the adoption of a single, more transparent approach. In addition, any such improvement in openness should facilitate greater adherence to a better ‘level playing field’ environment for business regulation and support. This supports many of the issues highlighted as being in need of change to reduce burden but improve regulation when it is needed.

Equality and Human Rights

18. Adopting a Single Policy improves transparency, constancy and will reduce the risk of not fulfilling our public sector equality duty.

Financial Implications

19. Any costs associated with the adoption and implementation of a single Enforcement and Prosecution Policy will be insignificant and will be part of ‘business as usual’.

Legal Implications

20. Any changes from current Enforcement and/or Prosecution Policies to a consolidated single Policy will need to be supported by changes (if any) to processes and procedures followed by the various parts of the organisation.

Risk Management

21. No risks associated with supporting the recommendations have been identified.

Consultees

22. The Policy was formulated with the help of and is supported by senior officers who sat on the working group that looked at “reducing red Tape’.
23. At the conclusion of the ‘reducing red tape’ project a report was submitted to HPS Leadership Team where the support for a single enforcement and prosecution policy was noted.
24. In December 2011 the single enforcement and prosecution policy was submitted to the

Councils consultation team. The policy was circulated to the readers panel to ensure that it was clear and precise. The policy was also hosted on the Council's e-consult pages to enable the public an opportunity to comment on the policy based on the following criteria:

- Is the Enforcement and Prosecution Policy easy to understand?
- Does the Policy appear to reflect a fair approach?
- Does the Enforcement and Prosecution Policy make sense when linked to the service specific policies?
- Does it help manage expectations for those initiating enforcement (e.g. complainants) and those who are the subject of enforcement?
- Do you think there is anything we can do to make the policy better?

25. Other agencies that are responsible for regulation/enforcement in the County have had the opportunity to consider and comment upon the Policy.

Appendices

26. Appendix 1 - The Single Enforcement and Prosecution Policy

Background Papers

Report to HPS Leadership Team, 12th October 2011

20111011 - Cutting Red Tape in Herefordshire – Report

Herefordshire Council

Enforcement and Prosecution Policy

January 2012

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1. Introduction

- 1.1 This policy sets out the general principles that Herefordshire Council will follow in relation to regulation, enforcement and prosecution. In particular it sets out what businesses, individuals and the community as a whole can expect from the council's regulatory services and its enforcement/investigation officers.
- 1.2 The policy may be complemented, where appropriate, by service area specific policy or procedure.
- 1.3 The primary function of the council's regulatory and enforcement work is to protect the public, public funds, the environment and groups such as consumers, residents and tenants, workers and businesses. At the same time, carrying out such activity in an equitable, practical and consistent manner helps to maintain a level playing field for local businesses, individuals and our other service users. Good regulation and enforcement will help to promote a thriving local economy.
- 1.4 This policy has been developed with due regard to the 'Principles of Good Enforcement' set out in the following guidance documents:
- Central and Local Government Enforcement Concordat
 - The Regulators' Compliance Code issued under the Legislative and Regulatory Reform Act 2006
 - The Code for Crown Prosecutors issued by the Director of Public Prosecutions under the Prosecution of Offenders Act 1985.
- 1.5 In certain circumstances we may conclude that a provision contained in one or more of the above-mentioned documents is either not relevant or is outweighed by another provision or relevant factor. We will ensure that any decision to depart from policy guidelines is properly reasoned and based on material evidence.
- 1.6 For the purposes of this policy the following definitions are given to the terms 'regulatory' and 'enforcement':
- 'Regulatory' encompasses the council's numerous powers and duties enabling the behaviour of individuals and/or organisations to be controlled in the public interest.
 - 'Enforcement' includes any action carried out in the exercise of, or against the background of, statutory powers and duties of regulation. This is not limited to formal enforcement action such as prosecution in the criminal Courts or the giving of Statutory Notices. It also includes, among other things, the inspection of premises for the purpose of checking compliance with regulations and conditions, the imposition of conditions on any licence, consent or similar formal permission, the issue of fixed penalty notices, the giving of cautions and the making of applications to the Courts for Orders to control the conduct of individuals and/or organisations.
- 1.7 All enforcement activities, including investigation and formal actions, will always be conducted in compliance with the council's statutory obligations. Council enforcement officers should act within the scope of their delegated authority and with due regard to the provisions of the Police and Criminal Evidence Act 1984, the Criminal Procedures and Investigation Act 1996, the Human Rights Act 1998, the Data Protection Act 1998,

the Regulation of Investigatory Powers Act 2000, the Legislative and Regulatory Reform Act 2006, and any other legislation relevant to specific service areas and legislation designed to tackle discrimination and promote equality.

2. Principles of enforcement – Policy

2.1 Supporting Economic Progress through Compliance

The effectiveness of legislation in protecting consumers, other businesses and the community depends crucially on the compliance of those regulated. We recognise that most people and most businesses want to comply with the law. We will, therefore, take care to help businesses and others meet their legal obligations without unnecessary expense.

We will strive to ensure that when information is needed from businesses that it is assessed to avoid duplication of requests and amended where necessary. We aim to seek feedback on the forms we use to collect information from business.

Whenever practicable we will promote positive incentives for businesses that comply, such as ‘Scores on the Doors’.

2.2 Openness through Clear Accessible Advice and Guidance

2.2.1 We will provide information and advice in plain language on the legislation that we enforce and disseminate this as widely as possible, through information leaflets, newsletters, training schemes and on the Council website at www.herefordshire.gov.uk.

2.2.2 Within any limits imposed by law, we will be open about how we carry out our work, including any charges that we make for services. We will make a point of seeking appropriate consultation with business, voluntary organisations, charities, landlords, tenants, consumers and workforce representatives about the services that we provide and about our enforcement policies and procedures. We will discuss general issues, specific compliance failures or problems with those experiencing difficulties.

2.3 Helpfulness through Clear Accessible Guidance

2.3.1 We believe that it is in the interests both of regulated businesses and the wider public to get things ‘right first time’, and that therefore our enforcement role should involve actively working with all those subject to regulation, especially small and medium sized businesses, to guide and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name and carry proof of their identity. We will provide a contact point and telephone number for further dealings with us and we will encourage businesses and others to seek guidance or information from us. All requests for service, including applications for approval of establishments, licences, registrations, etc, will be dealt with efficiently and promptly within the resources available. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays. This reflects our approach to delivering services in an efficient way.

2.4 Targeted, Proportionate and Risk-based Enforcement

2.4.1 We will minimise the costs of compliance by ensuring that any action we require is proportionate to the risks. We will adopt a risk-assessment approach to target resources where most needed. In line with the codes referred to above, we will take account of the

circumstances of the case and the response of those subject to regulation when considering action. We will take particular care to work with small businesses and with voluntary and community organisations, to help them meet their legal obligations without unnecessary expense. At the same time we will use intelligence and direct resources to identify those who flout the law or act irresponsibly and take firm action against them, including prosecution where appropriate.

2.5 Consistent Enforcement

2.5.1 We will carry out our duties in a fair, equitable and consistent manner. While officers are expected to exercise judgement in individual cases and to treat each case on its own merits, we will have arrangements in place to promote consistency. We support and will promote arrangements for effective liaison with other authorities and enforcement bodies through schemes such as the Home Authority principle, the Lead Authority principle and the Primary Authority Principle.

2.6 Working with Other Enforcement Agencies

2.6.1 Some regulatory activity involves consultation with other agencies before deciding on the most appropriate course of action. Sometimes there is more than one agency that can act in response to a problem. If there is a shared enforcement role with other agencies, whenever possible our enforcement activities will be co-ordinated with these agencies in order to minimise unnecessary duplication or delays and to increase our overall effectiveness. For example, joint working may be carried out with the Police, Fire Service, Health and Safety Executive, Office of Fair Trading, Environment Agency, Revenue and Customs other local authorities and government departments. Persistent offenders may also be reported, for example, to the Office of Fair Trading for further action. Equally, there are instances when more than one part of the Authority may have enforcement options in respect of the same issue. We will ensure that appropriate liaison occurs and that the 'best option' for enforcement is taken.

- Wherever we have a statutory duty to report regulatory matters to another body or agency, we will have procedures in place to ensure that this happens;
- If we become aware of an enforcement issue that would be of legitimate interest to, or more properly be dealt with by, another enforcement agency, we will ensure that the information is passed to that agency in good time.
- Occasionally an offence can be dealt with under more than statute. In these cases a decision will be made between officers as to which is the most effective course of action.

2.7 Adopting Good Enforcement Procedures

2.7.1 Guidance from an officer will be put clearly and simply, explaining why any remedial work or action is considered to be necessary and over what time-scale, and making sure that legal requirements are clearly distinguished from best practice advice. Such guidance will be usually be confirmed in writing.

2.8 Complaints about service

2.8.1 We provide a dedicated Customer Insight Unit to help with any complaint about council services. This team can be contacted by telephone on 01432 260535 or by email at feedback@herefordshire.gov.uk.

3. Principles of Enforcement - Procedures

- 3.1 Wherever possible officers will provide an opportunity to discuss the relevant circumstances before any decision to take formal enforcement action is made. Examples of where it may not be appropriate to discuss the matter may include cases where immediate action is required in the interests of health and safety or environmental protection, or cases where it is necessary to prevent evidence being destroyed.
- 3.2 Where immediate action is considered necessary, an explanation of why such action is required will be given at the time and where reasonable confirmed in writing within 5 working days.
- 3.3 Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken (whenever possible this advice will be issued with any enforcement notice).

4. Investigation

- 4.1 The council will carry out risk assessments to ensure that our regulatory efforts are targeted where they would be most effective. Inspections and other visits will be in accordance with the risk assessment, except where visits are requested, or we are required to investigate.
- 4.2 All Officers will have regard to the principles contained in this policy when making enforcement decisions. Regard will also be had to any approved statutory, governmental or other national guidance, and to any internal quality procedures.

5. Enforcement options

- 5.1 There are a variety of enforcement actions available to the council:
 - compliance advice and support
 - review of any licence and/or licence conditions
 - written warning
 - legal enforcement notice
 - fixed penalty notice
 - work in default/cost recovery action
 - seizure/application for forfeiture
 - the issue of a caution
 - administrative penalty
 - prosecution or other legal proceedings including injunctive action
 - Proceeds of Crime Act confiscation proceedings
 - Community resolution
- 5.2 This is not an exhaustive list and other options may be available under legislation relevant to specific areas.
- 5.3 In choosing which enforcement option(s) to take the council will aim to change the inappropriate behaviour causing the problem and to deter future non-compliance. The enforcement option(s) chosen will be proportionate to the nature of the non-compliance/alleged offence and the harm caused by it, and appropriate to the individual or business which the action is taken against. Enforcement action will be followed

up as appropriate and may result in further enforcement options being pursued if the initial action has not achieved the appropriate result.

- 5.4 In some circumstances matters may be referred to another agency for enforcement action, or officers may liaise and take joint action with other council departments and/or external organisations in order to achieve enforcement aims.

6. Prosecution

- 6.0.1 The Attorney General's guidelines on criteria for prosecution endorsed the principle that suspected criminal offences should not automatically be the subject of prosecution.
- 6.0.2 Herefordshire Council acknowledges that the decision to prosecute a business or an individual is serious. The policy is designed to ensure that the council makes fair and consistent decisions about prosecutions. In doing so it will pay full regard to the criteria set out in The Code for Crown Prosecutors issued by the Director of Public Prosecutions.
- 6.0.3 A decision to prosecute will only be made by an officer not involved with the investigation, and authorised in such a capacity in line with the council's scheme of delegation.
- 6.0.4 Council officers charged with investigating alleged offences must give due regard to the provisions of this policy when making recommendations to authorised officers.

6.1 General Principles

- 6.1.1 Whilst each case is unique and will be considered on its own facts and merits, there are certain general principles that authorised officers will follow in their approach to every case.
- 6.1.2 They will be fair, independent and objective. They will not let any personal views about a suspect's, victim's or witness's ethnic or national origin, disability, sex, religious beliefs, political views, or sexual orientation influence their decisions.
- 6.1.3 Authorised officers have a responsibility to ensure that the right person is prosecuted for the right offence. They will always act in the interests of justice and not solely for the purpose of obtaining a conviction.

6.2 The Decision to Prosecute

- 6.2.1 In making a decision on prosecution the authorised officer will apply two tests. Application of these tests will ensure that all relevant factors are considered and that fair consistent decisions are made about each potential prosecution.
- 6.2.2 The first test is consideration of the evidence. If the case does not pass the evidential test a prosecution must not go ahead no matter how serious the case is. If the evidential test is satisfied the authorised officer will consider if it is in the public interest to prosecute. A prosecution will only be taken if both tests are satisfied.

6.3 The Evidential Test

6.3.1 Authorised officers must be satisfied that there is sufficient admissible reliable evidence to provide a realistic prospect of conviction.

Sufficient

6.3.2 There is only sufficient evidence to provide a realistic prospect of conviction if, when presented with that evidence, a jury or bench of Magistrates properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is an objective test and when applying it to the case the authorised officer will aim to be completely impartial. They will also have regard to any statutory defence that is available

Admissible

6.3.3 There are legal rules which might not allow evidence that appears relevant to be given at a trial. If the authorised officer believes that some of the evidence falls within this category, he/she will satisfy him/herself that there is enough other evidence for a realistic prospect of conviction.

Reliable

6.3.4 Evidence may be regarded as unreliable for a number of reasons. It may be affected by factors such as age, intelligence or level of understanding, by the background of the witness, for example, a motive that may affect his or her attitude to the case, or a relevant previous conviction, or a general concern over the accuracy or credibility of the evidence.

6.3.5 Where there are such concerns, authorised officers will not ignore the evidence, but will look at it closely in conjunction with the other evidence to decide whether there is a realistic prospect of conviction.

6.4 The Public Interest Test

6.4.1 The general principle of this policy is that a prosecution will usually take place unless the public interest factors against prosecution clearly outweigh those in favour of prosecution, or it appears more appropriate in the circumstances to divert the defendant from prosecution.

6.4.2 The public interest factors will vary from case to case. Not all factors will apply to each case and there is no obligation to restrict consideration just to the factors listed.

Public Interest Factors in Favour of Prosecution

6.4.3 The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. A prosecution is likely to be needed if:

- a) a conviction is likely to result in a significant sentence;
- b) a conviction is likely to result in a confiscation or any other order;
- c) a weapon was used or violence was threatened during the commission of the offence;
- d) the offence was committed against a person serving the public;

- e) the risk presented to the public, trade or environment by the commission of the offence was serious or widespread;
- f) the defendant has failed to comply, in part or in full, with a statutory notice;
- g) the defendant acted fraudulently, wilfully or negligently;
- h) harm was caused to human health, animal health or the environment;
- i) the defendant was in a position of authority or trust;
- j) the evidence shows that the defendant was a ringleader or an organiser of the offence;
- k) there is evidence that the offence was premeditated;
- l) there are grounds to believe that the defendant was motivated solely by personal gain;
- m) there is evidence that the offence was carried out by a group;
- n) the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance;
- o) the offence was motivated by any form of discrimination against the victim's ethnic or national origin, disability, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics;
- p) there is a marked difference between the actual or mental age of the defendant and the victim, or if there is any element of corruption;
- q) the defendant is alleged to have committed the offence whilst under an order of the court;
- r) the offence was committed in the presence of or in close proximity to a child;
- s) the defendant's previous convictions or cautions are relevant to the present offence;
- t) there are grounds for believing that the alleged offence is likely to be continued or repeated;
- u) the offence, although not serious in itself, is widespread in the area where it was committed;
- v) a prosecution would have a significant positive impact on maintaining community confidence;
- w) the outcome of the prosecution might establish an important precedent or draw public attention to national or local campaigns or issues.

Public Interest Factors against Prosecution

6.4.4 A prosecution is less likely to be needed if:

- a) the alleged offence was committed as a result of a genuine mistake or misunderstanding of the circumstances or of the law;
- b) the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;
- c) the defendant has put right the loss or harm that was caused (but defendants must not avoid prosecution simply because they have offered compensation);
- d) there has been a long delay between the alleged offence taking place and the decision made to prosecute, unless:-
 - i) the alleged offence has only recently come to light;
 - ii) the offence is serious;
 - iii) the complexity of the offence has meant that there has been a long investigation;
 - iv) the delay has been caused in part by the defendant;
- e) the Court is likely to impose a very small or nominal penalty;
- f) a prosecution is likely to have a bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence;
- g) the defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health;
- h) details may be made public that could harm sources of information, international relations or national security.

6.4.5 Deciding on the public interest is not simply a matter of adding up the number of factors on each side as some factors will be more important than others. As such authorised officers will 'weight' factors in making an overall assessment.

6.5 Diversion from Prosecution

- 6.5.1 When deciding whether a case should be prosecuted authorised officers will consider the alternatives to prosecution in pursuit of the aim to change inappropriate behaviour and to deter future non-compliance.
- 6.5.2 A conviction can have wide ranging and long lasting effects, and particular care will be taken when deciding whether it is in the public interest to prosecute in cases involving a young person. For the purposes of this policy a young person is someone under the age of 18 years.

7. Publicity

- 7.1 In order to deter others the council will aim to publish any prosecution or other enforcement action.

8. Review

- 8.1 This policy will be reviewed annually, or sooner if necessary to reflect statutory changes or national guidance.

9 Appendices

Appendix A – Housing and Council Tax Benefits Supplementary Enforcement Policy

Appendix B – Building Control Supplementary Enforcement Policy

Appendix C – Planning Supplementary Enforcement Policy

Appendix D – Public Rights of Way Supplementary Enforcement Policy

Appendix E – Public Sector Housing Supplementary Enforcement Policy

Version Log

<i>Version</i>	<i>Status</i>	<i>Date</i>	<i>Description of Change</i>	<i>Reason for Change</i>	<i>Pages</i>
1.0	Draft	May 2011	Document Creation		
2.0	Draft	June 2011	Various content	Comments from EHTS and Housing & Council Tax Benefit	All
3.0	Draft	July 2011			
4.0	Draft	August 2011	Various Content	Review of Regulatory Burden	All
5.0	Draft	January 2012	Various Content	Consultation with Cabinet Members	4,