

**MINUTES of the meeting of Planning Committee held at Council Chamber, The Shire Hall, St Peter's Square, Hereford, HR1 2HX on Wednesday 24 August 2016 at 10.00 am**

**Present:** Councillor PGH Cutter (Chairman)  
Councillor J Hardwick (Vice Chairman)

**Councillors:** BA Baker, WLS Bowen, CR Butler, EL Holton, JA Hyde, TM James, MT McEvilly, SM Michael, FM Norman, WC Skelton, D Summers, EJ Swinglehurst, LC Tawn and A Warmington

**In attendance:** Councillors JM Bartlett, JG Lester and MN Mansell

**37. APOLOGIES FOR ABSENCE**

Apologies were received from Councillors PJ Edwards, DW Greenow, KS Guthrie, AJW Powers and A Seldon.

**38. NAMED SUBSTITUTES**

Councillor WLS Bowen substituted for Councillor PJ Edwards, Councillor MT McEvilly for Councillor KS Guthrie, Councillor SM Michael for Councillor A Seldon, and Councillor A Warmington for Councillor AJW Powers.

**39. DECLARATIONS OF INTEREST**

**Agenda item 7: 152041 - proposed residential development of 10 dwellings (amendment to original application) at land to the north of Ashperton village hall, Ashperton.**

Councillor A Warmington declared a non-pecuniary interest because Canon Pyon cricket club for whom he sometimes played had made representations on the application,

**Agenda item 8: 161486 - outline application for residential development of up to 21 dwellings with means of access at land at pinfarthings, off north Mappenors Lane, Leominster**

Councillor EL Holton declared a non-pecuniary interest because she knew the person speaking on behalf of Leominster Town Council.

**40. MINUTES**

**RESOLVED:** That the minutes of the meeting held on 3 August 2016 be approved as a correct record and signed by the Chairman.

**41. CHAIRMAN'S ANNOUNCEMENTS**

There were no announcements.

**42. APPEALS**

The Planning Committee noted the report.

**43. 152041 - LAND TO THE NORTH OF ASHPERTON VILLAGE HALL, ASHPERTON, HEREFORDSHIRE**

*(Proposed residential development of 10 dwellings (amendment to original application)).*

The Development Manager gave a presentation on the application, and updates/additional representations received following the publication of the agenda were provided in the update sheet, as appended to these Minutes. He highlighted the position of listed buildings in relation to the proposed development.

In accordance with the criteria for public speaking, Mrs F Helme, of Ashperton Parish Council, spoke in opposition to the Scheme. Mr G Edwards, Chairman of the Neighbourhood Development Plan Steering Group, spoke in objection. Mr H Davies, the applicant, and Mrs P Upton, the applicant's agent, spoke in support.

In accordance with the Council's Constitution, the local ward member, Councillor JG Lester spoke on the application.

He made the following principal comments:

- The application had generated considerable public interest. The applicant had held consultation events and engaged with the local community on the proposal. The original scheme for 27 houses had been reduced to a proposal for 10 houses in response to local views.
- The Parish Council had fully debated the proposal.
- There had been 48 objections. The majority of local residents considered the scheme to be inappropriate.
- There was a view that the scheme was in the wrong location and would have a negative effect on Ashperton. It was considered that it would be visible from the road, with properties situated prominently above the A417, and have a suburban appearance. Piecemeal development was preferable to what would be an enclave uncharacteristic of the area.
- There was concern that the development would be incongruous with the listed buildings in the village. Paragraph 6.49 of the report stated that in designing the scheme regard had been had to concern expressed about the impact on the setting. However, in his opinion the development would significantly alter the view. Whilst it was located at a low point of the site it was still much higher than the existing settlement.
- Whilst, as paragraph 6.46 explained, the site had no formal landscape designation local residents considered that it did have an important landscape value adding to the amenity of the area. The development would not enhance the landscape. The community was not opposed to development in the village but considered that there were better sites that would not have such an adverse impact.
- In conclusion, the development was proportionate, it could be debated as to whether it was sustainable development having regard to policy RA2, and it would contribute to the housing supply. The question was whether these factors outweighed the local view that the development had a detrimental impact on the landscape and the proposal was therefore contrary to paragraph 17 and Section 11 of the National Planning Policy Framework and policy SS6 of the Core Strategy.

In the Committee's discussion of the application the following principal points were made:

- The development was of modest size, of low density and of good design.
- The proposal would provide additional homes for the village for which there was a need.
- The applicant had engaged with the local community and modified the proposal in response to local views.
- Weight should be given to the views expressed by a clear majority of local residents in opposition to the scheme. It was to be regretted if a development was imposed on a community against its wishes when it had given careful consideration to identifying preferable alternatives. In response to this point a member observed that there were letters in support of the application, the committee had to consider the application on its merits and could not take account of alternative sites. The opposition of the local community did not in itself represent planning grounds for refusal.
- Regrettably the Neighbourhood Development Plan was not sufficiently advanced for the Committee to give weight to it.
- Having regard to paragraph 134 of the National Planning Policy Framework (NPPF), whilst the Conservation Manager (Heritage) considered that there would be some impact on the listed buildings he did not consider this to be substantial. There was scope for mitigation at the reserved matters stage.
- The proposed scheme was prominent and uncharacteristic of the village. It had an adverse impact on the landscape. There must be preferable sites.
- The proposal was contrary to Section 11 of the NPPF, noting the reference in paragraph 109 to protecting and enhancing valued landscapes.
- The Parish Council's submission presented a case that the application should not be supported on environmental sustainability grounds.
- It was suggested that it would be beneficial if consideration could be given to the following issues at the reserved matters stage: extension of the 30 mph speed limit and provision of a pedestrian crossing; and ensuring that the development was of appropriate quality, to passivhaus standard if at all possible. It would also be important to ensure that proposed enhancement measures outlined at paragraphs 6.56 and 6.57 of the report were implemented and desirable if the applicant worked with the Parish Council on the design of the scheme to avoid a suburban appearance.
- It was requested that the proposed condition in relation to the height of buildings should govern the ridge height.

The Lead Development Manager commented that whilst there was a considerable weight of local opposition there was also some local support for the scheme. The proposed development was in the heart of the village, next to the village hall and close to the primary school, at which it was understood there was capacity. Given the previous policy context it was not surprising that there had been limited development in the village. However, policy RA 2 of the Core Strategy could now be given weight noting too the Council's lack of a 5 year housing land supply. Weight could not be given to the draft Neighbourhood Development Plan. The landscape may be valued but had no official designation and as such only limited weight could be given to that factor. The development had been reduced in scale and represented organic growth. He considered that it would be difficult to defend an appeal against refusal of planning permission. Officers would take note of the concerns about the height of the development, which was controlled by condition.

The local ward member was given the opportunity to close the debate. He commented that the landscape was valued by the local community. He understood why they wished to protect it and considered there were grounds for refusal of the application.

**RESOLVED:** That planning permission be granted subject to the following conditions and any additional conditions considered necessary by officers:

1. C02 – Time limit for submission of reserved matters (outline permission)
2. C03 – Time limit for commencement (outline permission)
3. C04 – Approval of reserved matters
4. C06 – Development in accordance with the approved plans
5. Drainage and surface water mitigation details and implementation
6. C62 – Restriction on height of building
7. C63 – Restriction on number of dwellings
8. C87 – Earthworks
9. C90 – Protection of trees/hedgerows that are to be retained
10. C95 – Details of Boundary treatments
11. C96 – Landscaping scheme
12. C97 – Landscaping scheme – implementation
13. CA1 – Landscape management plan
14. CA4 – Provision of open space areas (outline permissions)
15. Nature Conservation – site protection
16. Habitat Enhancement Scheme – Approval and implementation
17. CAB – Visibility splays
18. CAE – Vehicular access construction
19. CAL – Access, turning area and parking
20. CAR – On site roads – phasing
21. CB2 – Covered and secure cycle parking provision
22. CAH – Driveway gradient
23. CAG – Access closure
24. CAJ – Parking – estate development
25. CAP – Junction improvement/off site works
26. CAS – Road completion in 2 years
27. CAT – Wheel washing

**28. CAZ – Parking for site operatives**

**INFORMATIVES:**

- 1. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations. Negotiations in respect of matters of concern with the application (as originally submitted) have resulted in amendments to the proposal. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.**
- 2. N11A – Wildlife and Countryside Act 1981 (as amended) – Birds**
- 3. N11C – Wildlife – General**
- 4. I42 – European Protected Species Licence**
- 5. I06 – Public rights of way**
- 6. The applicant is encouraged to consider utilising the new off-site attenuation pond as part of the Great Crested Newt mitigation/enhancement plan and EPS Licence**
- 7. External lighting and ecology**
- 8. I11 – Mud on highway**
- 9. I45 – Works within the highway (Compliance with the Highways Act 1980 and the Traffic Management Act 2004)**
- 10. I08 – Section 278 Agreement**
- 11. I07 – Section 38 Agreement & Drainage details**
- 12. I35 – Highways Design Guide and Specification**

**44. 161486 - LAND AT PINFARTHINGS, OFF NORTH MAPPENORS LANE, LEOMINSTER, HEREFORDSHIRE.**

*(Outline application for residential development of up to 21 dwellings with means of access.)*

*(This item was considered after application 161638.)*

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

In accordance with the criteria for public speaking, Mr R Pendleton of Leominster Town Council spoke in opposition to the Scheme. Mr D Jones, the applicant's agent, spoke in support.

In accordance with the Council's Constitution, the local ward member, Councillor FM Norman spoke on the application together with the adjoining local ward member, Councillor JM Bartlett.

Councillor Norman made the following principal comments:

- She shared the concerns expressed by the Town Council in its objection to the Scheme about a range of highways issues. These included the narrowness of the roads within the estate with many parked vehicles, the high pollution and congestion on Green Lane and the Bargates. She questioned the view of the Transportation Manager that highway capacity was not an issue. It was estimated that the development would generate some 200 additional trips a day in a location where there were already problems. There were also concerns about the junction of Green Lane and Ginhall Lane.
- The proposal would involve the loss of valued open space. Although it was private land the space had been enjoyed by local residents for many years and was a green corridor enhancing health and wellbeing.
- It was important that trees and verges on the site were protected.
- She was concerned that if the development were approved further development on adjoining land would follow.
- The site was on a slope and she was concerned about run off into the Kenwater and River Lugg. Although Welsh Water had no objection there had been complaints about sewage overflow into Green Lane.
- The Core Strategy proposed an additional 2,300 houses for Leominster, a 45% increase. This was a huge challenge. It appeared that every available space was being taken for housing.
- If the development was approved it was imperative that the Town Council and local ward members were consulted on the detail. S106 money should be allocated to seek to alleviate traffic problems.

Councillor Bartlett made the following principal points:

- If the application was approved local ward members should be consulted at the reserved matters stage. She particularly requested that landscape character documents should be discussed with them. The S106 agreement should also be discussed with the Town Council.
- She highlighted the importance of the footpaths crossing the site in particular ZC5 and ZC7.
- Requiring bungalows to be provided on certain parts of the site would preserve the privacy of existing residents and prevent footpaths becoming enclosed alleyways.
- The site had never been within the Neighbourhood Development Plan settlement boundary and was not one of the sites identified in the Strategic Housing Land Availability Assessment (SHLAA). Sites for some 2,000 new dwellings had already been identified in Leominster, leaving 15 years of the life of the Core Strategy to provide the remaining 300 dwellings required by the plan.

In the Committee's discussion of the application the following principal points were made:

- Bungalows should be put on the eastern side of the site and gardens should back onto gardens. Larger buildings could be put on the northern side of the site.

- Building materials should be kept on site.
- Works should be undertaken at the Green Lane/Pinfarthings/Ginhall Lane junction to enforce the existing no left turn into Ginhall Lane restriction that was currently being ignored.
- Traffic congestion and pollution in the Bargates area was a significant concern. Policy LO1 stated that proposals would be encouraged where they ensured that developments did not exacerbate air pollution levels within the designated air quality management area at Bargates. A number of Members expressed the view that the traffic problems at the Bargates were so significant that the development should not be permitted.
- The scope for cycle links between the site and the Town should be fully explored.
- The access off Mappenors lane was a problem. However a parking restriction intended to ensure access for refuse and emergency vehicles would be unfortunate for existing residents.
- The detail should be fully discussed with the Town Council and local ward members.
- Whilst Welsh Water had no objection there were local reports of issues with water overflow from the site. It was essential to ensure that these issues were satisfactorily addressed.
- It was important to protect the public rights of way crossing the site and preserve their amenity. The ridge heights of buildings should be controlled to prevent the footpaths becoming enclosed alleyways.
- The loss of grade 2 farmland was regrettable.

The Transportation Manager commented that it was estimated that the development would generate between 100-200 additional vehicle movements. The site was close to the town centre with good pedestrian and cycling links. The traffic management system at the Bargates was to be renewed by the end of October. This would improve the junction's efficiency and would help to reduce the impact of traffic on air quality.

In response to questions the Principal Planning Officer commented that an access at the bottom of the site would not be feasible. He added that, although locally the site may be perceived to be a valued landscape, inspectors had made clear at appeals that to qualify as a valued landscape an area must have an official designation. The proposed development was for up to 21 houses and was of an acceptable density. However, the possibility of a lower density could be explored at the reserved matters stage. Conditions could be imposed to preserve amenity of existing residents on the eastern boundary and the amenity of public rights of way crossing the site.

The Lead Development Manager commented as follows:

- The proposed improvements at the Bargates junction would be beneficial.
- A revised Neighbourhood Development Plan (NDP) had been received from Leominster Town Council for officer comment. The Plan included the site within the settlement boundary. It did not identify the site as open space.
- The proposed S106 agreement offered a raft of improvements. Provision of cycle routes could be discussed with local ward members as part of that agreement.
- Welsh Water had stated that the development could be accommodated. The detail would be considered at the reserved matters stage to ensure there was no pollution of the Kenwater and River Lugg.

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

Councillor Norman expressed her dissatisfaction that the Town Council had been forced by Herefordshire Council to amend the draft NDP and change the settlement boundary. She continued to believe that the only sensible course was to provide additional road capacity in advance of further development. The situation at the Bargates junction was grounds for refusing the application.

Councillor Bartlett commented that nothing should be done that would exacerbate the existing problems at the Bargates junction. She requested that if at all possible a Beech tree at the proposed access should be protected. The scope for cycle routes should also be explored. She reiterated that the Town Council and local ward members should be consulted on the detail of the scheme if the application was approved. She too was aggrieved by the changes Herefordshire Council had required to the NDP, which she noted might not command support at the forthcoming referendum on the Plan. There were a number of preferable sites for development identified within the SHLAA.

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

1. **C02 - A02 Time limit for submission of reserved matters (outline permission)**
2. **C03 - A03 Time limit for commencement (outline permission)**
3. **C04 - A04 Approval of reserved matters**
4. **No development shall commence until a Construction Management Plan (CMP) has been submitted to and approved in writing by the Local Planning Authority. The plan shall include the following details:**
  - a. **Wheel cleaning apparatus which shall be operated and maintained during construction of the development hereby approved.**
  - b. **Parking for site operatives and visitors which shall be retained and kept available during construction of the development.**
  - c. **A noise management plan including a scheme for the monitoring of construction noise.**
  - d. **Details of working hours and hours for deliveries**
  - e. **A scheme for the control of dust arising from building and site works**
  - f. **A scheme for the management of all waste arising from the site**
  - g. **A travel plan for employees.**

**The agreed details of the CMP shall be implemented throughout the construction period.**

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

5. **CAE - H06 – Vehicular access construction**



6. **Prior to the first occupation of any of the dwellings hereby approved a scheme for the provision of covered and secure cycle parking within the curtilage of each dwelling shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details. The cycle parking shall be installed and made available for use prior to occupation of the dwelling to which it relates and shall be retained for the purpose of cycle parking in perpetuity.**

**Reason: To ensure that there is adequate provision for secure cycle accommodation within the application site, encouraging alternative modes of transport in accordance with both local and national planning policy and to conform to the requirements of Policy MT1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.**

7. **Prior to the first occupation of any of the dwellings hereby approved a Travel Plan which contains measures and targets to promote alternative sustainable means of transport for residents and visitors with respect to the development hereby permitted shall be submitted to and be approved in writing by the Local Planning Authority. The Travel Plan shall be implemented, in accordance with the approved details, on the first occupation of the development. A detailed written record shall be kept of the measures undertaken to promote sustainable transport initiatives and a review of the Travel Plan shall be undertaken annually. All relevant documentation shall be made available for inspection by the Local Planning Authority upon reasonable request.**

**Reason: In order to ensure that the development is carried out in combination with a scheme aimed at promoting the use of a range of sustainable transport initiatives and to conform to the requirements of Policy MT1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.**

8. **In this condition ‘retained tree/hedgerow’ means an existing tree/hedgerow that is to be retained in accordance with the approved plans and particulars.**

**No development, including demolition works shall be commenced on site or site huts, machinery or materials brought onto the site, before adequate measures have been taken to prevent damage to retained trees/hedgerows. Measures to protect retained trees/hedgerows must include:**

**a) Root Protection Areas for each retained tree/hedgerow must be defined in accordance with BS3998:2010 – Tree Work - Recommendations, shown on the site layout drawing and approved by the Local Planning Authority.**

**b) Temporary protective fencing, of a type and form agreed in writing with the Local Planning Authority must be erected around each retained tree/hedgerow. The fencing must be at least 1.25 metres high and erected to encompass the whole of the Root Protection Areas for each retained tree/hedgerow.**

**c) No excavations, site works or trenching shall take place, no soil, waste or deleterious materials shall be deposited and no site huts, vehicles, machinery, fuel, construction materials or equipment shall be sited within the Root Protection Areas for any retained tree/hedgerow without the prior written consent of the Local Planning Authority.**

**d) No burning of any materials shall take place within 10 metres of the furthest extent of any retained hedgerow or the crown spread of any retained tree.**

**e) There shall be no alteration of soil levels within the Root Protection Areas of any retained tree/hedgerow.**

**Reason: To safeguard the amenity of the area and to ensure that the development conforms to Policies SD1, LD1 and LD3 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.**

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

**a) 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**

**b) 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**

**c) if the risk assessment in (b) identifies unacceptable risk(s) a detailed scheme specifying remedial works and measures necessary to avoid risk from contaminants/or gases when the site is developed. The Remediation Scheme shall include consideration of and proposals to deal with situations where, during works on site, contamination is encountered which has not previously been identified. Any further contamination encountered shall be fully assessed and an appropriate remediation scheme submitted to the local planning authority for written approval.**

**Reason: In the interests of human health and to ensure that the proposed development will not cause pollution to controlled waters or the wider environment.**

**10. The Remediation Scheme, as approved pursuant to condition no. 9 above, shall be fully implemented before the development is first occupied. On completion of the remediation scheme the developer shall provide a validation report to confirm that all works were completed in accordance with the agreed details, which must be submitted before the development is first occupied. Any variation to the scheme including the validation reporting shall be agreed in writing with the Local Planning Authority in advance of works being undertaken.**

**Reason: In the interests of human health and to ensure that the proposed development will not cause pollution to controlled waters or the wider environment.**

- 11. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted, and obtained written approval from the local planning authority for, an amendment to the Method Statement detailing how this unsuspected contamination shall be dealt with.**

**Reason: In the interests of human health and to ensure that the proposed development will not cause pollution to controlled waters or the wider environment.**

- 12. No development shall commence until a detailed plan, showing the levels of the existing site, the proposed slab levels of the dwellings approved and a datum point outside of the site, has been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.**

**Reason: In the absence of sufficient detailed information, the clarification of slab levels is a necessary initial requirement before any groundworks are undertaken so as to define the permission and ensure that the development is of a scale and height appropriate to the locality and to comply with Policy SD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.**

- 13. No development shall commence until a drainage scheme for the site has been submitted to and approved in writing by the local planning authority. The scheme shall provide for the disposal of foul, surface and land water, and include an assessment of the potential to dispose of surface and land water by sustainable means. Thereafter the scheme shall be implemented in accordance with the approved details prior to the occupation of the development and no further foul water, surface water and land drainage shall be allowed to connect directly or indirectly with the public sewerage system.**

**Reason: To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no pollution of or detriment to the environment in accordance with Policy SD3 of the Herefordshire Local Plan – Core Strategy and the national Planning Policy Framework.**

- 14. The work and construction methodologies and recommendations as set out in section 6 of the ecological report (Star Ecology 17<sup>th</sup> May 2016) should be followed in relation to the identified species unless otherwise agreed in writing by the local planning authority.**

**Reason: The proper consideration of potential impacts on protected species and biodiversity assets is a necessary initial requirement before any demolition and/or groundworks are undertaken in order to ensure that diversity is conserved and enhanced in accordance with the requirements of the NERC Act 2006 and Policy LD2 of the Herefordshire Local Plan – Core Strategy and the National Planning**

## **Policy Framework.**

15. **No development shall commence on site until, based on the mitigation recommendations in the ecology report (Star Ecology 17<sup>th</sup> May 2016) with details of enhancements for bat roosting, bird nesting and hedgehog homes, a detailed habitat & biodiversity enhancement scheme, including type and location of bat roosting and bird nesting mitigation/enhancements, a lighting plan, landscape & planting proposal and an associated 5 year maintenance and replacement plan has been submitted to, and approved in writing by, the local planning authority. The scheme shall be implemented as approved.**

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

- 16 **The development shall be limited to 21 dwellings**
- 17 **Single storey dwellings only shall be located on the eastern boundary**

## **INFORMATIVES:**

1. **The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations, including any representations that have been received. It has subsequently determined to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.**
2. **This planning permission is pursuant to a planning obligation under Section 106 of the Town and Country Planning Act 1990.**
3. **The landscaping/enhancement scheme should take in to account Chalara Ash Dieback Disease that is now endemic to the UK and widespread across Herefordshire. With a 95-98% ash mortality consideration should be given as to the management of existing ash trees on site and ensure appropriate additional mitigation planting of future standard hedgerow trees of alternative species (eg Oak, Small-leaved Lime and Hornbeam) is included in the scheme submitted for approval. With a much better take up by wildlife the enhancement scheme should also see the inclusion of bat roosting opportunities within the houses (see Bat Conservation Trust website for details of appropriate ‘bat bricks’ raised ridge tiles and bat boxes) and the use of woodcrete bird nesting boxes including sparrow terraces. The lighting plan is needed so as to ensure bats and other nocturnal animals and the wider landscape are not impacted by any additional lighting and support the objectives of the ‘dark skies initiative’.**
4. **A public right of way crosses the site of this permission. The permission does not authorise the stopping up or diversion of the right of way. The right of way may be stopped up or diverted by Order under Section 257 of the Town and Country Planning Act 1990 provided that the Order is made before the development is carried out. If the right of way is obstructed**

before the Order is made, the Order cannot proceed until the obstruction is removed.

5. **I 09 Private apparatus within the highway**
6. **I 11 Mud on the highway**
7. **I 35 Highways Design Guide**
8. **I 41 Travel Plans**
9. **I 45 Works within the highway**
10. **It is possible that unforeseen contamination may be present on the site as a result of its former agricultural/orchard use. Consideration should be given to the possibility of encountering contamination on the site as a result of its former uses and specialist advice be sought should there be any concern about the land.**
11. **The applicant may need to apply to Dwr Cymru / Welsh Water for any connection to the public sewer under S106 of the Water Industry Act 1991. If the connection to the public sewer network is either via a lateral drain (i.e. a drain which extends beyond the connecting property boundary) or via a new sewer (i.e. serves more than one property), it is now a mandatory requirement to first enter into a Section 104 Adoption Agreement (Water Industry Act 1991). The design of the sewers and lateral drains must also conform to the Welsh Ministers Standards for Gravity Foul Sewers and Lateral Drains, and conform with the publication "Sewers for Adoption"- 7th Edition. Further information can be obtained via the Developer Services pages of [www.dwrcymru.com](http://www.dwrcymru.com).**
12. **The applicant is also advised that some public sewers and lateral drains may not be recorded on our maps of public sewers because they were originally privately owned and were transferred into public ownership by nature of the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011. The presence of such assets may affect the proposal. In order to assist us in dealing with the proposal the applicant may contact Dwr Cymru Welsh Water on 0800 085 3968 to establish the location and status of the apparatus. Under the Water Industry Act 1991 Dwr Cymru Welsh Water has rights of access to its apparatus at all times.**

**45. 161638 - LAND AT 19 FERNDAL ROAD, HEREFORD.**

*(Proposed erection of a dwelling.)*

*(This item was considered after application 152041 but before application 161486)*

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

In accordance with the criteria for public speaking, Mr J Burley, a local resident, spoke in objection to the scheme. Mr C Goldsworthy the applicant's agent, spoke in support. In accordance with the Council's Constitution, the local ward member, Councillor MN Mansell, spoke on the application.

He made the following principal comments:

- Every resident in Tensing Road objected to the proposal. Their concerns included traffic, road safety and the disruption associated with construction.
- Approval would set a precedent encouraging other owners in the area to build in their gardens.
- He noted that previous applications had been refused and sought clarification of the grounds for refusal.
- If the development proceeded an access of Ferndale Road would be preferable.

In the Committee's discussion of the application the following principal points were made:

- The Senior Planning Officer confirmed that the most recent application, in 2009, had been refused on the grounds of amenity.
- Whilst regrettable the personal circumstances of neighbouring residents and fear of stress occasioned by construction works were not material planning considerations. The impact could be mitigated through conditions.
- The development was sustainable and its impact limited.
- The loss of large gardens for family homes was of regret.
- It was asked whether there was any possibility of securing an alternative access.
- It was requested in terms of reserved matters that conditions be imposed requiring the proposed dwelling to be a bungalow, specifying the ridge height, and that as many trees and as much of the hedgerow should be retained as possible.

The Lead Development Manager commented that the Committee's wish that conditions secure a single storey dwelling and minimise any disruption during construction through controls on matters such as site operative parking and storage of materials had been noted. It was to be hoped that any construction phase would be relatively short. The Committee had to determine the application before it and this did not include an alternative access.

The local ward member was given the opportunity to close the debate. He reiterated his view that an access off Ferndale Road would be preferable and have the support of the residents of Tensing Road.

**RESOLVED: That planning permission be granted subject to the following conditions and any additional conditions considered necessary by officers:**

1. **C02 (A02 Time limit for submission of reserved matters (outline permission))**
2. **C03 (A03 Time limit for commencement (outline permission))**
3. **C04 (A04 Approval of reserved matters)**
4. **C05 (A05 Plans and particulars of reserved matters)**
5. **C06 (B01 Development in accordance with the approved plans - drawings received 25 May 2016)**
6. **C98 (G12 Hedgerow planting)**
7. **CBK (I16 Restriction of hours during construction)**

8. **CD6 (L04 Comprehensive & Integrated draining of site)**
9. **CE6 (M17 Water Efficiency – Residential)**
10. **CAD (H05 Access gates)**
11. **CAE (H06 Vehicular access construction)**
  
12. **CAH (H09 Driveway gradient)**
13. **CA2 (G15 Landscape maintenance arrangements)**
14. **CB2 (H29 Secure covered cycle parking provision)**
15. **C62 (F11 Restriction on height of dwelling: “1 storey in height”)**
16. **CAZ H27 Parking for site operatives**

**INFORMATIVES:**

1. **The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations, including any representations that have been received. It has subsequently determined to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.**
2. **Consideration should be given to the provision of a small footprint single storey dwelling at this location- so as to avoid potential amenity impacts on neighbouring dwellings through overlooking or loss of privacy (see planning condition 17 above).**
3. **I05 (No drainage to discharge to highway).**
4. **I45 (Works within the highway).**

**46. DATE OF NEXT MEETING**

The Planning Committee noted the date of the next meeting.

**Appendix 1 - schedule of updates**

The meeting ended at 12.54 pm

**CHAIRMAN**





# **PLANNING COMMITTEE**

**Date: 24 August 2016**

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

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

## **SCHEDULE OF COMMITTEE UPDATES**

**152041 - PROPOSED RESIDENTIAL DEVELOPMENT OF 10 DWELLINGS (AMENDMENT TO ORIGINAL APPLICATION) AT LAND TO THE NORTH OF ASHPERTON VILLAGE HALL, ASHPERTON, HEREFORDSHIRE,**

**For: Mr Davies per Twyford Barn, Upper Twyford, Hereford, Herefordshire HR2 8AD**

### **ADDITIONAL REPRESENTATIONS**

Ledbury Area Cycle Forum comment as follows –

I'm pleased to see better provision for cyclists in the amended plans. However, I would like to make the following points

- 'car ports' indicated on the plan may not offer sufficient security for bike storage.
- the sheds should have all-weather pathway level access from the public highway, wide enough for disability scooters and bikes and supplied with power for the recharging of scooters and electric bikes.
- the proposed self-binding gravel path for the pedestrian/cycleway path to the village is aesthetically appropriate, but, unless provided with a very well drained sub-base it is likely, on Herefordshire clay sub-soil to become waterlogged and liable to deterioration. A tarmac or a non-eroding permeable surface is preferable.

### **OFFICER COMMENTS**

The comments are welcomed and noted. The application is in outline form, so detailed design is subject to the reserved matters application.

### **NO CHANGE TO RECOMMENDATION**

**161486 - OUTLINE APPLICATION FOR RESIDENTIAL DEVELOPMENT OF UP TO 21 DWELLINGS WITH MEANS OF ACCESS AT LAND AT PINFARTHINGS, OFF NORTH MAPPENORS LANE, LEOMINSTER, HEREFORDSHIRE,**

**For: Cabot Trustees per Mr David Jones, Albany House, High Street, Hindon, SP3 6DP**

### **ADDITIONAL REPRESENTATIONS**

Further correspondence has been received from the applicant's agent. In summary this draws the Council's attention to a number of appeal decisions which have particular relevance in respect of five year housing land supply. These include the appeals in Ledbury and Leintwardine where, in both cases, the respective Inspectors found in favour of the appellants and allowed the appeals.

Attention is also drawn to a Court of Appeal judgement of 17th March 2016 *Suffolk District Council v Hopkins Homes Ltd and Richborough Estates Partnership LLP v Cheshire East Borough Council & Secretary of State for Communities and Local Government [2016] EWCA Civ 168*. The judgement considers the implications of paragraph 49 of the NPPF and whether policies for the supply of housing should be subject to a wider or narrow interpretation.

The correspondence draws attention to the fact that at paragraph 34 of the judgement it is concluded that the narrow interpretation is “*plainly wrong*” and the wider interpretation is to be adopted. The judgement continues (paragraph 35):

*“restrictive policies, whether broadly framed or designed for some more specific purpose, may have the effect of constraining the supply of housing land. If they do have that effect, they may act against the Government’s policy of boosting significantly the supply of housing land. If a local planning authority is unable to demonstrate the requisite five-year supply of housing land, both the policies of its local plan that identify sites for housing development and policies restrictive of such development are liable to be regarded as not “up-to-date” under paragraph 49 of the NPPF – and “out-of-date” under paragraph 14. Otherwise, government policy for the delivery of housing might be undermined by decisions in which development plan policies that impede a five-year supply of housing land are treated as “up-to-date”.*

The Court of Appeal considered how paragraph 49 should be applied having determined its wider meaning. Paragraph 44 – 45 of the Judgement set out three simple steps:

- Consider whether relevant policies for the supply of housing in the Development Plan are “*out-of-date*” because the Local Planning Authority cannot demonstrate “*a five-year supply of deliverable housing sites*” (paragraph 44);
- Whether a particular policy of the Plan, properly understood, is a relevant “*policy for the supply of housing*” in a question for the decision-maker who must act upon a correct understanding of the policy in paragraph 49 of the NPPF and also upon a correct understanding of the Development Plan policy (paragraph 45);
- If the decision-maker finds that relevant policies of the Plan are “*out-of-date*” he applies the “*presumption in favour of sustainable development*” in the way that paragraph 14 of the NPPF requires (paragraph 45).

The Court was clear that “*out-of-date*” policies are not irrelevant. The weight to be attached to them remains to be determined by the decision-maker, although paragraph 47 of the Judgement concludes that:

*“One may, of course, infer from paragraph 49 of the NPPF that in the Government’s view the weight to be given to out-of-date policies for the supply of housing will normally be less than the weight due to policies that provide fully for the requisite supply. The weight to be given to such policies is not dictated by government policy in the NPPF. Nor is it, nor could it be, fixed by the court. It will vary according to the circumstances, including, for example, the extent to which relevant policies fall short of providing for the five-year supply of housing land, the action being taken by the local planning authority to address it, or the particular purpose of a restrictive policy”.*

In respect of the Court of Appeal judgement and the appeal decisions in Ledbury and Leintwardine the correspondence considers that there are parallels with the application in that:

1. The Council is unable to demonstrate a robust five year housing land supply, due to slippage on delivery of some sites and an over optimistic expectation of lead in times on other sites. The current proposal will help contribute towards the meaningful supply and delivery of housing which is a significant material consideration in favour of the scheme.

2. Consistent with the appeal findings and position relative to a shortfall in the supply of readily available housing land, the adopted Core Strategy Policies SS2, SS3, and in the context of Leominster LO1 and LO2, are out-of-date and inconsistent with paragraph 49 of the NPPF. The policy position, is therefore concluded, by virtue of a lack of a five-year housing land supply in Herefordshire, for the application to be determined in accordance with paragraph 14 of the NPPF, and the presumption in favour of sustainable development.

3. The position relative to housing land supply is firmly established in the Council's determination of recent residential planning applications in the county, including land off Westcroft, Leominster for up to 35 dwellings (ref: 150812 dated 5 July 2016) and a number of approvals (each subject to S106) for 39 dwellings on land opposite Orleton School, Kings Road, Orleton (ref: 152204); for 10 dwellings at land off Ginhall Lane in Leominster (ref: 150052), and a large site on land to the north of the Roman Road and west of the A49 at Hereford (ref: 150478). In all cases, the Council acknowledge the absence of a five year housing land supply.

4. There are clear positive economic and social benefits arising from new housing (and particularly so in our client's case as the application provides for a mix of market and affordable housing to be provided), and is not an isolated or unsustainable pattern of development, with established residential areas of Leominster to three of the four boundaries of the application site.

5. The site is not subject to any environmental designations, and there are no other material considerations, or technical reasons raised by statutory or internal consultees as to why the scheme cannot be considered as anything other than sustainable development, and that planning permission should be granted without delay.

Correspondence from the applicant's agent also queries two elements of the Draft Heads of Terms Agreement. First is the need for an obligation relating to the maintenance of any on site Public Open Space (POS). Given the scale of the proposal, no POS is proposed.

Second is that in view of the outline nature of development and the description of up to a maximum of 21 units, it is requested that clarification be added that reference to five affordable units is made on the basis of a gross development of 21 units, or preferably, that the reference to five units is removed, were, for example, reserved matters to seek a slightly lower quantum of gross development.

A further letter of objection from a local resident has also been received. In summary this considers that the Brexit Referendum has changed the housing construction sector and that this has caused uncertainty about housing requirements.

The letter also refers to a number of other matters covered by other objectors including:

- The loss of an important green space that is used by dog walkers.
- The social, health and wellbeing implications associated with the loss of an amenity area.
- Brownfield sites should be used before the loss of green spaces is considered.
- Disruption caused by construction traffic.
- Loss of biodiversity.

## **OFFICER COMMENTS**

The implications of not having a five year housing land supply are dealt with by paragraphs 6.1 to 6.9 of the original report. Officers are familiar with the Court of Appeal decision referred to by the applicant's agent and paragraph 6.5 of the report reflects its conclusions that paragraph 49 of the NPPF should be given a wider interpretation.

The case officer's assessment of the application clearly concurs with the conclusions drawn at points 1 to 5 above and this is covered in the Summary and Conclusions section of the main report at paragraphs 6.31 to 6.34.

The queries raised regarding the Draft Heads of Terms are reasonable. The need for a management company does not prevail as there is no indication that any public open space will be provided on site. The removal of the reference to 5 affordable units is also accepted on the basis that the relevant clause refers to a need for 25% of the units to be affordable.

The additional letter received in objection to the application raises one new issue; that being the effect of Brexit on the housing sector. Whilst Brexit may affect house building in the country in the longer term, the economic implications of this are not material planning considerations to be weighed in the determination of the application. The other matters raised by the letter have been dealt with in the main report and none are considered to be of such significance as to outweigh the presumption in favour of sustainable development.

## **CHANGE TO RECOMMENDATION**

Amended version of the Draft Heads of Terms provided below:

# **DRAFT HEADS OF TERMS**

**Proposed Planning Obligation Agreement  
Section 106 Town and Country Planning Act 1990**

## **Planning Application – P161486/O**

Site address:

**Land at Pinfarthings, off North Mappenors Lane, Leominster, Herefordshire**

Planning application for:

**Outline application for residential development of up to 21 dwellings with means of access.**

This Heads of Terms has been assessed against the adopted Supplementary Planning Document on Planning Obligations dated 1<sup>st</sup> April 2008, and Regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010 (as amended). All contributions in respect of the residential development are assessed against open market units only except for item 2 which applies to all new dwellings.

1. The developer covenants with Herefordshire Council to pay Herefordshire Council the sums of (per open market unit):

£ 1,720.00 (index linked) for a 2 bedroom open market unit

£ 2,580.00 (index linked) for a 3 bedroom open market unit

£ 3,440.00 (index linked) for a 4+ bedroom open market unit

to provide sustainable transport infrastructure to serve the development. The sum shall be paid on or before the commencement of the development, and may be pooled with other contributions if appropriate.

The monies shall be used by Herefordshire Council, in consultation with the Parish

Council, at its option for any or all of the following purposes:

- a) Junction improvement/updating of the junction at Ginhall Lane and Green Lane and associated cycle path facility at the junction

**NOTE: A Sec278 agreement may also be required depending on the advice of the local Highways Authority**

2. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of £80.00 (index linked) per dwelling. The contribution will be used to provide 1x waste and 1x recycling bin for each dwelling. The sum shall be paid on or before the commencement of the development

3. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of:

£ 965.00 (index linked) for a 2 bedroom open market dwelling

£ 1,640.00 (index linked) for a 3 bedroom open market dwelling

£ 2,219.00 (index linked) for a 4 bedroom open market dwelling

The contributions will be used for off site play at Oldfields, Sydonia and The Grange or on improving the Council's Public Rights of Way to allow greater access to the wider countryside and Bridge Street Sports Park. The priority for expenditure will be decided at the time of receiving the contribution and in consultation with the local parish council.

The sum shall be paid on or before the commencement of the development, and may be pooled with other contributions if appropriate.

4. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of £152.00 (index linked) per open market dwelling towards off-site sports facilities. The contributions will be used for off site football and hockey provision at Bridge Street Sports Park or football provision at Earl Mortimer Cottage. The priority for expenditure will be decided at the time of receiving the contribution and in consultation with the local parish council.

The sum shall be paid on or before the commencement of the development, and may be pooled with other contributions if appropriate.

5. The developer covenants with Herefordshire Council that 25% of the residential units shall be "Affordable Housing" which meets the criteria set out in policy H1 of the Herefordshire Core Strategy or any statutory replacement of those criteria and that policy including the Supplementary Planning Document on Planning Obligations.

**NOTE: the mix of tenure and unit size of the affordable units shall be agreed with Herefordshire Council:**

**NOTE: For the avoidance of doubt, the term intermediate tenure shall not include equity loans or affordable rent.**

6. All the affordable housing units shall be completed and made available for occupation in accordance with a phasing programme to be agreed in writing with Herefordshire Council.

7. The Affordable Housing Units must at all times be let and managed or co-owned in accordance with the guidance issued by the Homes and Communities Agency (or any successor agency) from time to time with the intention that the Affordable Housing Units shall at all times be used for the purposes of providing Affordable Housing to persons who are eligible in accordance with the allocation policies of the Registered Social Landlord; and satisfy the following requirements:-:

- 7.1. registered with Home Point at the time the Affordable Housing Unit becomes available for residential occupation; and
  - 7.2. satisfy the requirements of paragraphs 9 & 10 of this schedule
8. The Affordable Housing Units must be advertised through Home Point and allocated in accordance with the Herefordshire Allocation Policy for occupation as a sole residence to a person or persons one of whom has:-
  - 8.1. a local connection with the parish of Leominster;
  - 8.2. in the event of there being no person with a local connection to Leominster any other person ordinarily resident within the administrative area of the Council who is eligible under the allocation policies of the Registered Social Landlord if the Registered Social Landlord can demonstrate to the Council that after 28 working days of any of the Affordable Housing Units becoming available for letting the Registered Social Landlord having made all reasonable efforts through the use of Home Point have found no suitable candidate under sub-paragraph 9.1 above.
9. For the purposes of sub-paragraph 9.1 of this schedule 'local connection' means having a connection to one of the parishes specified above because that person:
  - 9.1. is or in the past was normally resident there; or
  - 9.2. is employed there; or
  - 9.3. has a family association there; or
  - 9.4. a proven need to give support to or receive support from family members; or
  - 9.5. because of special circumstances;
10. In the event that Herefordshire Council does not for any reason use the sums in paragraphs 1, 2, 3 and 4 above, for the purposes specified in the agreement within 10 years of the date of payment, the Council shall repay to the developer the said sum or such part thereof, which has not been used by Herefordshire Council.
11. The sums referred to in paragraphs 1, 2, 3 and 4 above shall be linked to an appropriate index or indices selected by the Council with the intention that such sums will be adjusted according to any percentage increase in prices occurring between the date of the Section 106 Agreement and the date the sums are paid to the Council.
12. The developer 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.
13. If the developer wishes to negotiate staged and/or phased trigger points upon which one or more of the covenants referred to above shall be payable/delivered, then the developer shall pay a contribution towards Herefordshire Council's cost of monitoring and enforcing the Section 106 Agreement. Depending on the complexity of the deferred payment/delivery schedule the contribution will be no more than 2% of the total sum detailed in this Heads of Terms. The contribution shall be paid on or before the commencement of the development.

**161638 - PROPOSED ERECTION OF A DWELLING AT LAND  
AT 19 FERNDALE ROAD, HEREFORD.**

**For: Mr Knowles per Colin Goldsworthy, 85 St Owen Street,  
Hereford, Herefordshire, HR1 2JW**

**ADDITIONAL REPRESENTATIONS**

Two further letters of objection have been received commenting on the agent's email rebuttal (to representations made on the scheme). These highlight the previous planning history to the site (already set out in the planning report).

**OFFICER COMMENTS**

None.

**NO CHANGE TO RECOMMENDATION**