

Agenda

Planning and regulatory committee

Date: **Wednesday 15 January 2020**

Time: **10.00 am**

Place: **Council Chamber, The Shire Hall, St Peter's Square,
Hereford, HR1 2HX**

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

For any further information please contact:

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Agenda for the meeting of the Planning and regulatory committee

Membership

Chairperson **Councillor John Hardwick**
Vice-Chairperson **Councillor Alan Seldon**

Councillor Graham Andrews
Councillor Paul Andrews
Councillor Polly Andrews
Councillor Toni Fagan
Councillor Elizabeth Foxton
Councillor Bernard Hunt
Councillor Terry James
Councillor Tony Johnson
Councillor Mark Millmore
Councillor Jeremy Milln
Councillor Paul Rone
Councillor John Stone
Councillor Yolande Watson

Agenda

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<p>1. APOLOGIES FOR ABSENCE</p> <p>To receive apologies for absence.</p>	
<p>2. NAMED SUBSTITUTES (IF ANY)</p> <p>To receive details of any Member nominated to attend the meeting in place of a Member of the Committee.</p>	
<p>3. DECLARATIONS OF INTEREST</p> <p>To receive declarations of interests in respect of Schedule 1, Schedule 2 or Other Interests from members of the committee in respect of items on the agenda.</p>	
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<p>11. DATE OF NEXT MEETING</p> <p>Date of next site inspection – 10 February 2020</p> <p>Date of next meeting – 11 February 2020</p>	

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- Attend all Council, Cabinet, Committee and Sub-Committee meetings unless the business to be transacted would disclose 'confidential' or 'exempt' information.
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- 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.
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The Chairperson or an attendee at the meeting must take the signing in sheet so it can be checked when everyone is at the assembly point.

Guide to Planning and Regulatory Committee

The Planning and Regulatory Committee consists of 15 Councillors. The membership reflects the balance of political groups on the council.

Councillor John Hardwick (Chairperson)	Herefordshire Independents
Councillor Alan Seldon (Vice-Chairperson)	It's Our County
Councillor Graham Andrews	Herefordshire Independents
Councillor Paul Andrews	Herefordshire Independents
Councillor Polly Andrews	Liberal Democrat
Councillor Toni Fagan	The Green Party
Councillor Elizabeth Foxton	It's our County
Councillor Bernard Hunt	True Independents
Councillor Terry James	Liberal Democrat
Councillor Tony Johnson	Conservative
Councillor Mark Millmore	Conservative
Councillor Jeremy Milln	The Green Party
Councillor Paul Rone	Conservative
Councillor John Stone	Conservative
Councillor Yolande Watson	Herefordshire Independents

The Committee determines applications for planning permission and listed building consent in those cases where:

- (a) the application has been called in for committee determination by the relevant ward member in accordance with the redirection procedure
- (b) the application is submitted by the council, by others on council land or by or on behalf of an organisation or other partnership of which the council is a member or has a material interest, and where objections on material planning considerations have been received, or where the proposal is contrary to adopted planning policy
- (c) the application is submitted by a council member or a close family member such that a council member has a material interest in the application
- (d) the application is submitted by a council officer who is employed in the planning service or works closely with it, or is a senior manager as defined in the council's pay policy statement, or by a close family member such that the council officer has a material interest in the application
- (e) the application, in the view of the assistant director environment and place, raises issues around the consistency of the proposal, if approved, with the adopted development plan
- (f) the application, in the reasonable opinion of the assistant director environment and place, raises issues of a significant and/or strategic nature that a planning committee determination of the matter would represent the most appropriate course of action, or
- (g) in any other circumstances where the assistant director environment and place believes the application is such that it requires a decision by the planning and regulatory committee.

The regulatory functions of the authority as a licensing authority are undertaken by the Committee's licensing sub-committee.

Who attends planning and regulatory committee meetings?

Coloured nameplates are used which indicate the role of those attending the committee:

Pale pink	Members of the committee, including the chairperson and vice chairperson.
Orange	Officers of the council – attend to present reports and give technical advice to the committee
White	<p>Ward members – The Constitution provides that the ward member will have the right to start and close the member debate on an application.</p> <p>In attendance - Other councillors may also attend as observers but are only entitled to speak at the discretion of the chairman.</p>

How an application is considered by the Committee

The Chairperson will announce the agenda item/application to be considered, invite public speakers to move from the public gallery and take their seats in the council chamber, and explain any particular procedural matters relevant to the application.

The case officer will then give a presentation on the report.

The public speakers will then be invited to speak in turn (Parish Council, objector, supporter). Having spoken they will be asked to return to the public gallery. (see further information on public speaking below.)

The local ward member will be invited to start the debate (see further information on the role of the local ward member below.)

The Committee will then debate the matter.

Officers are invited to comment if they wish and respond to any outstanding questions.

The local ward member is then invited to close the debate.

The Committee then votes on whatever recommendations are proposed.

Public Speaking

The public will be permitted to speak at meetings of the Committee when the following criteria are met:

- a) the application on which they wish to speak is for decision at the planning and regulatory committee
- b) the person wishing to speak has already submitted written representations within the time allowed for comment
- c) once an item is on an agenda for planning and regulatory committee all those who have submitted representations will be notified and any person wishing to speak must then register that intention with the monitoring officer at least 48 hours before the meeting of the planning and regulatory committee

- d) if consideration of the application is deferred at the meeting, only those who registered to speak at the meeting will be permitted to do so when the deferred item is considered at a subsequent or later meeting
- e) at the meeting a maximum of three minutes (at the chairman's discretion) will be allocated to each speaker from a parish council, objectors and supporters and only nine minutes will be allowed for public speaking
- f) speakers may not distribute any written or other material of any kind at the meeting
- g) speakers' comments must be restricted to the application under consideration and must relate to planning issues
- h) on completion of public speaking, councillors will proceed to determine the application
- i) the chairman will in exceptional circumstances allow additional speakers and/or time for public speaking for major applications and may hold special meetings at local venues if appropriate.

Role of the local ward member

The ward member will have an automatic right to start and close the member debate on the application concerned, subject to the provisions on the declaration of interests as reflected in the Planning Code of Conduct (Part 5 section 6).

In the case of the ward member not being a member of the Committee they would be invited to address the Committee for that item.

In the case of the ward member being a member of the Committee they move to the place allocated for the local ward member to sit, do not vote on that item, and act as the ward member as set out above.

To this extent all members have the opportunity of expressing their own views, and those of their constituents as they see fit, outside the regulatory controls of the Committee concerned.

HEREFORDSHIRE COUNCIL

MINUTES of the meeting of Planning and regulatory committee held at Council Chamber, The Shire Hall, St Peter's Square, Hereford, HR1 2HX on Wednesday 11 December 2019 at 10.00 am

Present: Councillor John Hardwick (Chairperson)
Councillor Alan Seldon (Vice Chairperson)

Councillors: Paul Andrews, Polly Andrews, Toni Fagan, Bernard Hunt, Terry James, Tony Johnson, Mark Millmore, Jeremy Milln, Paul Rone, John Stone, David Summers and William Wilding

In attendance: Councillors Liz Harvey, Phillip Howells and Helen I'Anson

58. APOLOGIES FOR ABSENCE

Apologies were received from Councillors Graham Andrews, Foxton and Watson.

59. NAMED SUBSTITUTES

Councillor Summers substituted for Councillor Foxton and Councillor Wilding for Councillor Watson.

60. DECLARATIONS OF INTEREST

None.

61. MINUTES

In relation to minute 48 it was noted that the correct description of the role of Mr Rawlings, who had spoken in support of the application during the time allocated for public speaking was: Planning Director – Bloor Homes.

RESOLVED: That the minutes of the meetings held on 13 November, 2019 as amended be approved as a correct record and signed by the Chairman.

62. CHAIRPERSON'S ANNOUNCEMENTS

The legal advisor to the Committee read a statement to the meeting reminding all present of the requirements of the purdah period preceding the general election on 12 December 2019.

The Chairperson reported receipt of an email from Bloor Homes to Officers with attached letter at 9.50 am, shortly before the meeting, in relation to agenda item 6: application 171532 – Land North of Viaduct, Ledbury. The letter was dated 9 December 2019 and was from a Senior Surveyor Network Rail to Bloor Homes This was circulated to members present.

63. 171532 - LAND NORTH OF VIADUCT, ADJOINING ORCHARD BUSINESS PARK, LEDBURY, HEREFORDSHIRE. OUTLINE PLANNING PERMISSION

(Site for a mixed use development including the erection of up to 625 new homes (including affordable housing), up to 2.9 hectares of B1 employment land, a canal corridor, public open space (including a linear park), access, drainage and ground modelling works and other associated works.)

The Principal Planning Officer gave a presentation on the application, the Committee having deferred consideration of it on 13 November. Updates/additional representations received following the publication of the agenda were provided in the update sheet, as appended to these minutes.

In addition, the legal advisor read the letter dated 9 December 2019 from a Senior Surveyor Network Rail to Bloor Homes. This had been made available to members of the Committee shortly before the meeting, as referred to in the Chairperson's announcements.

This stated:

"We refer to your query regarding the possibility of installing a public highway beneath Ledbury Viaduct to serve your land to the north and as you will be aware the current agreement between Bloor Homes and Network Rail Structure Limited (NRIL) does not allow for such a proposal. Any departure from the current agreement would require both internal and industry wide consultation and approval.

Having held conversations with NRIL's Structures Asset Engineer we would not allow a public highway to be built beneath the structure as it would introduce undue risk to the railway. These risks would include making the piers susceptible to bridge strikes and increasing the difficulty for our examiners to gain access to the piers for inspection. The vibrations caused by the construction and continued use of any highway would also increase the risk profile of the asset going forward."

In accordance with the criteria for public speaking, Mr J Bannister, of Ledbury Town Council spoke in opposition to the scheme as did Mr D Williams of Wellington Heath Parish Council. Mr N Rawlings, Planning Director – Bloor Homes, spoke in support.

In accordance with the Council's Constitution, the local ward member and adjoining ward members were invited to speak.

Adjoining ward member Councillor l'Anson made the following principal comments. The application, consideration of which had been deferred by the Committee in November, had been returned to the Committee without amendment. The question of access was a key part of the application. However, other aspects of the site's suitability needed to be considered, given, for example, increased risk of flooding as a result of climate change. She questioned whether the inclusion of the site as a strategic site in the core strategy should be reviewed. The single access was described as "satisfactory". However, she doubted that assessment.

Adjoining ward member Councillor Howells expressed disappointment that the concerns that had been expressed at the Committee's meeting in November had not been addressed. The letter from Network Rail dated 9 December had been provided to members that morning. This did not suggest that the developer was giving weight to the views of the local community. He made the following principal points:

- Ledbury Town Council supported the provision of much needed housing the development would bring. However, the proposal to provide a single access was not acceptable. The intention throughout the site's planning history had been that there

would be access off the A438 Leadon Way/Hereford Road roundabout. There had been no technical objection during that time. Improvements to the junction of the Homend and the Bromyard Road by the railway station had always been viewed as problematic. The change to the wording of the core strategy made following the public examination to provide for “satisfactory vehicular access arrangements” had never been explained and understood. The term was vague and open to interpretation. The proposed access could not cope with the increased volume of traffic the site would generate.

- The Malvern Hills AONB Unit objected to the application considering increased traffic would damage the special qualities and features of the AONB. It would lead to a reduction in the recreational use of the minor road network as well as contributing to vehicular damage to banks and verges. This was counter to the principal objective of the AONB Management Plan in relation to transport and accessibility. The application did not address this concern.
- Wellington Heath Parish Council had expressed concern about the development of “rat runs” and the ongoing financial costs of repairs. It was contrary to the provision in policy SS6 that “the management plans and conservation objectives of the county’s international and nationally important features and areas will be material to the determination of future development proposals.”
- The independent traffic management study commissioned by the Town Council had shown traffic modelling conclusions were flawed, and in every instance biased in support of the finding the access would be satisfactory. The impact of traffic from the town backing up at the railway station blocking accesses to residential areas had not been considered.
- Bloor Homes previous position had been that they could not provide an access off the A438 Leadon Way/Hereford Road roundabout because of the physical constraints and the prohibitive technical measures that would be necessary. This was contrary to the long held view in the history of the site that this was the preferred access. Hunter Page on behalf of Bloor Homes in an e-mail of 23 March 2016 were advised that the environmental statement would need to include as a minimum a full assessment as to alternative arrangements with respect to 4 vehicular access options including under the viaduct. There was no evidence this has been conducted. The transport assessment made it clear Network Rail had no objections and there were no insurmountable technical issues to using a route under the viaduct. The Herefordshire and Gloucestershire Canal Trust had had no objection to their proposals.
- Planning Officers had commented that the proposal did not have an unacceptable impact on the highway network that could not be mitigated. However, Bloor Homes original transport consultants dismissed a similar proposal because the junction would be operating beyond its design capacity and would create an unacceptable tail back of traffic at peak times. Bloor Homes had employed new consultants who concluded a junction could be developed that would operate adequately. He viewed this with some scepticism.
- The local community did not consider a single access was satisfactory. There was clearly potential for judicial review if the application were approved as it stood.
- Network Rail was not saying that a road under the viaduct was not feasible. The letter circulated at the meeting said that the current agreement between Bloor Homes and Network Rail did not allow for such a proposal. It went on to say that any departure from the current agreement would require both internal and industry wide consultation and approval. He suggested a provision could be considered allowing development to proceed on the basis a second access was negotiated and provided by the time the development reached a certain size.

Councillor Harvey, the local ward member, then spoke on the application. She made the following principal comments.

- Ledbury as a community was not objecting to growth. However, proposals had to be satisfactory and sustainable. The parish poll had demonstrated the community's view that a single access to a development of the scale proposed was not satisfactory.
- The application had been under discussion since 2014/2015. It had always been made clear to Bloor Homes that an access under the viaduct was a pre-requisite. The site had been preferred to others in developing the core strategy because with an access primarily off the A438 Leadon Way/Hereford Road roundabout it was closer to Ledbury. With the access point moved to the Bromyard Road there were a number of other deliverable sites with access closer to the Town.
- Turning to the letter of 9 December from Network Rail she stated that this did not say that an access under the viaduct could not be achieved. In 2016 Network Rail had written a response to a local resident stating that in principle a road under the viaduct may be feasible. Bloor Homes in 2017 had included a statement in their Residential Travel Plan that having discussed the matter with Network Rail they had been told that Network Rail would not accept a road under the viaduct. Bloor Homes had removed that statement from the Plan when made aware of the 2016 correspondence. That had remained the position until the letter of 9 December.
- Given the focus on the access point off the A438 Leadon Way/Hereford Road roundabout the late receipt of this letter was surprising. In addition the letter still did not say that a road under the viaduct was not possible.
- Malvern Hills District Council and Hereford and Worcester County Council had had this site in their strategic plans with the access under the viaduct.
- Possible obstacles to achieving the access included additional cost and the difficulty of negotiating with Network Rail. However, it was not an impossible option.
- The junction by the railway station in Ledbury had been operating in excess of its design capacity since the mid-1980s. The proposals were a betterment but had to be seen in that context. The impact on the highway network and road safety was described as "not severe". The traffic assessments identified that additional vehicles would use Knapp Lane to access the Worcester Road avoiding the crossroads at the centre of Town. However, that crossroads would also have to accommodate extra traffic. Neither junction had good visibility that met highway design criteria. An access off A438 Leadon Way/Hereford Road roundabout would better serve traffic from the development. Advice was that junctions should operate at 15% below capacity. The calculations of the second consultant employed by Bloor Homes indicated that the junction by the railway station would be operating at 85% capacity.
- She detailed 3 reasons for refusal. In summary these were: the vehicular access arrangements proposed were not satisfactory, the adverse effect on the sense of remoteness, limited noise and disturbance and tranquillity of the landscape within the Malvern Hills AONB and the material increase in traffic flow along the Homend and The Southend through the heart of Ledbury Town Centre harming the character of the Conservation Area. (*The detailed reasons subsequently formed the basis of the Committee's decision and are set out in full in the resolution below.*)

(The meeting adjourned between 11.39-11.51)

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

- A single access point was not sufficient for such a large development.

- A technical solution could be found to develop a second access under the viaduct off the A438 Leaden Way/Hereford Road roundabout. The issue was one of cost. If the developer did not provide this solution now, the taxpayer would have to fund solutions in the years ahead to problems that a development with a single access would present.
- A member, whilst supporting the need for a second access, expressed a contrary view in that the narrowness of the viaduct arches would at best permit a single lane of traffic between a span and the risk of an accident was too high to countenance.
- If the development were to proceed with a single access additional traffic would use the narrow roads around Ledbury.
- The developer had not maximised the scope for sustainable transport. This meant the development was car dependent thereby creating the need for a second access.
- The letter from Network Rail of 9 December merely indicated that insufficient effort had been made to explore the possibility of an access under the viaduct.
- There appeared to be an inconsistency in that Network Rail seemed content for a canal to be built under the viaduct.
- The current proposal would have significant adverse consequences for Ledbury for years ahead.

The Lead Development Manager commented that the Core Strategy identified the proposed site as a strategic site subject to a satisfactory access. That access was not required to be under the viaduct. He noted that the letter of 9 December did state, “we would not allow a public highway to be built beneath the structure as it would introduce undue risk to the railway”. The Canal Trust had not yet discussed their proposal to put the canal through the viaduct with Network Rail. It was an indicative route and a matter for them to progress. There were no other deliverable sites north of Ledbury viaduct. The Strategic Housing Land Availability Assessment analysis had considered sites that came forward to be not capable of development because of their impact on the AONB. The Malvern Hills local plan clearly identified that the extension of Ledbury bypass to the north did not form part of the strategic highway network plans. Any proposal would have to be brought forward by a developer. In any event that Plan had been superseded by the Core Strategy. Highways officers had carefully considered the proposals requesting improvements that had been made. The proposal contained enhanced provision for cycling and walking. It could be argued that the provision of a second access would encourage car use in preference to these sustainable travel options. It was not unusual for there to be deviations from highway standards. These would be addressed as part of the conditions or a S278 agreement. Schemes were built to a level that was acceptable, safe and satisfactory. The proposed housing was not on land that was liable to flood. The proposal was policy compliant and would deliver a significant contribution to the council’s housing land supply. A claim had been made that failure to deliver the site would bring the council’s housing land supply below 3 years with implications for the Neighbourhood Development Plans across the County.

The legal advisor commented that officers were obliged to advise the Committee of the potential implications of not following an officer recommendation including the potential appeal implications.

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

Councillor l’Anson referred to photographs in the Ledbury Reporter described as showing flooding in the area of the site.

Councillor Howells questioned the feasibility of some of the active travel measures in the proposal.

Councillor Harvey acknowledged the obligation on officers to advise the Committee of the potential financial consequences if an appeal against refusal of the application were to be successful and costs were awarded against the council.

Councillor Summers proposed and Councillor Johnson seconded a motion that the application be refused citing the reasons advanced by Councillor Harvey in her opening remarks. In summary these were: the vehicular access arrangements proposed were not satisfactory, the adverse effect on the sense of remoteness, limited noise and disturbance and tranquillity of the landscape within the Malvern Hills AONB and the material increase in traffic flow along the Homend and The Southend through the heart of Ledbury Town Centre harming the character of the Conservation Area.

The Lead Development Officer cautioned that he considered that there was a risk of costs being awarded against the council in the event of a successful appeal.

The motion was carried with 10 votes in favour, 3 against and 1 abstention. The reasons are set out in full in the resolution below.

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

Reason 1

In the opinion of the Local Planning Authority the vehicular access arrangements proposed are not “satisfactory” by virtue of:-

- **The discrepancies in operating load between the two transport assessments provided by the developer for the same junction configuration and vehicle volumes when the site is fully built out, which result in the applicant having failed to satisfactorily and convincingly demonstrate that the proposed signalised layout at the junction of the Hereford Road (A438) and Bromyard Road (B4214) would have sufficient capacity to provide a sustainable solution.**
- **The more recently forecast operational loading of the proposed junction, restricts any further housing or employment growth of Ledbury in a northerly direction in the future (i.e. both now and beyond the current Core Strategy period post 2031) thus prejudicing and constraining the proper future planning of the area;**
- **There would not be clear inter-visibility between the stop lines of the proposed signalised arrangement at the junction of the Hereford Road (A438) and Bromyard Road (B4214), as clearly annotated on drawing number 010 - P5 prepared by PJA, would present a hazard to highway safety in the event of the signals failing or drivers of motor vehicles or non-motorised users “jumping the lights”;**
- **The proposal would result in a material increase in undesirable trips, frequently referred to as “rat running”, along Knapp Lane (U67005) and Cut Throat Lane (U67005) which are sub-standard in design terms as:-**
 - a) **Knapp Lane (U67005) has inadequate visibility at its south-western end at its junction with ‘The Homend’ (A438) and does not have footways; and**

- b) Vehicles travelling in a south-westerly direction along the A449 turning into the Cut Throat Lane end of Knapp Lane (U67005) (a dangerous right hand turn where a number of accidents have occurred) have inadequate forward visibility.

As a consequence highway safety, including pedestrian and cyclists safety, would be prejudiced; and

- In the event of an emergency (e.g. a bridge strike, flooding of Bromyard Road and / or Rhea Lane) closing the road between the proposed vehicular access onto the Bromyard Road (B4214) and the junction of Bromyard Road (B4214) and Hereford Road (A438), or indeed at the aforementioned junction itself, there would be undesirable trips frequently referred to as “rat running” via Rhea Lane (U67003) by traffic wishing to travel along the A438 towards Hereford or towards the M50. Rhea Lane (U67003) is sub-standard in its width and at its junction with Hereford Road (A438) has sub-standard visibility in a south-easterly direction. As such highway safety would be prejudiced. Furthermore, that route north along the Bromyard Road (B4214) to the Hereford Road (A438) via Rhea Lane (U67003) cannot be relied upon as it floods both before and after Storesbrook Bridge.

As a consequence the proposed development is considered to be contrary to:

- paragraph 110 of the National Planning Policy Framework (February 2019),
- policies SS1, SS4, LB2 (seventh bullet point) and MT1 of the Herefordshire Local Plan Core Strategy adopted 16 October 2015 and
- the provisions of Herefordshire Council’s ‘Highways Design Guide for New Developments’ (July 2006).

In forming this decision the Local Planning Authority have been fully conscious of the provisions of paragraph 109 of the National Planning Policy Framework (February 2019) and indeed consider that the proposal would have an unacceptable impact on highway safety and would have severe residual impacts on the local road network.

As such, the proposal is not considered to represent sustainable development.

Reason 2

A sense of remoteness, limited noise and disturbance and the tranquillity of the landscape are all special qualities that contribute to the character of the Malvern Hills Area of Outstanding Natural Beauty. The proposed development would result in a significant increase in vehicle traffic travelling up Beggars Ash (C1172) and Burtons Lane (C1171) and through minor roads within the Parish of Wellington Heath harming the aforementioned tranquillity of the Malvern Hills Area of Outstanding Natural Beauty a defining element of its character.

Furthermore the increased use of these minor roads within this part of the Malvern Hills Area of Outstanding Natural Beauty by motorised vehicles is likely to lead to a reduction in their recreational use as well as leading to vehicular damage of banks and verges as a result of motor vehicles attempting to pass each other.

As a consequence the proposed development is considered to be contrary to:

- paragraph 172 of the National Planning Policy Framework (February 2019),
- policies SS6 and LD1 of the Herefordshire Local Plan Core Strategy adopted 16 October 2015 and

- objective TRO1 together with policy TRP6 of the adopted Malvern Hills Management Plan 2019-2024.

As such the proposal is not considered to represent sustainable development.

In forming this view the Local Planning Authority are conscious that whilst it may be the case that only a small proportion of the traffic generated by the proposed development is likely to take place though Beggars Ash (C1172) and Burtons Lane (C1171), compared to the existing baseline number of motor vehicles that currently use these routes the increase in vehicular movements would be substantial.

Reason 3

The proposed development would materially increase vehicular traffic flow along both 'The Homend' (A438) and 'The Southend' (A449) through the heart of the Ledbury Town Centre Conservation Area harming the character of the Conservation Area contrary to the provisions of Section 16 of the National Planning Policy Framework (February 2019) entitled 'Conserving and enhancing the historic environment' and policies SS6 and LD4 of the Herefordshire Local Plan Core Strategy adopted 16 October 2015.

INFORMATIVE

Statement of Positive and Pro-active Working – All of the above reasons for refusal are easily capable of being overcome by the applicant providing a second vehicular means of access off the Leadon Way (A417) / Hereford Road (A438) roundabout. Being a positive and pro-active Local Planning Authority rather than refuse the application on the 13th November 2019 Herefordshire Council deferred the application to allow the applicant to amend the application to provide this second vehicular means of access (which the applicant has never claimed could not physically be provided). The applicant as is their prerogative, chose not to do so.

The meeting ended at 12.28 pm

CHAIRPERSON

**Minutes of the meeting of Planning and regulatory committee
held at Council Chamber, The Shire Hall, St Peter's Square,
Hereford, HR1 2HX on Wednesday 11 December 2019 at 2.00 pm**

Present: Councillor John Hardwick (chairperson)
Councillor Alan Seldon (vice-chairperson)

Councillors: Paul Andrews, Polly Andrews, Barry Durkin, Toni Fagan,
Bernard Hunt, Terry James, Jeremy Milln, Paul Rone, John Stone,
David Summers and William Wilding

In attendance: Councillor Elissa Swinglehurst

64. APOLOGIES FOR ABSENCE

Apologies were received from Councillors Graham Andrews, Foxton, Johnson, Millmore, and Watson.

65. NAMED SUBSTITUTES

Councillor Durkin substituted for Councillor Millmore, Councillor Summers for Councillor Foxton and Councillor Wilding for Councillor Watson.

66. DECLARATIONS OF INTEREST

Agenda item 5 – Land off Cotts Lane, Lugwardine

Councillor Rone declared an other declarable interest because he knew the applicant.

Agenda item 7 Land at Old Trecilla Buildings, Lower Herberts Hill, Llangarron.

Councillor Hardwick declared an other declarable interest because he knew one of the applicants.

67. CHAIRPERSON'S ANNOUNCEMENTS

The legal advisor to the Committee read a statement to the meeting reminding all present of the requirements of the purdah period preceding the general election on 12 December 2019.

68. 190279 - LAND OFF COTTES LANE, LUGWARDINE, HEREFORD

(Proposed erection of 8 bungalows. Including 5 chalet type and construction of new access road.)

(Councillor Paul Andrews fulfilled the role of local ward member and accordingly had no vote on this application.)

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. He added that Natural England had now confirmed that it had no objection to the application.

In accordance with the criteria for public speaking, Mr M Wilson, of Bartestree and Lugwardine Parish Council spoke in opposition to the scheme. Mr E Thomas, the applicant's agent, spoke in support.

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

He made the following principal comments:

- The site was outside the settlement boundary in the Parish's Neighbourhood Development Plan.
- The application site adjoined another site being developed by the applicant and had been referred to in correspondence as phase 2 of the development. He was concerned that pursuing two smaller developments rather than one larger one avoided the obligation to provide affordable housing that would have attached to a larger development.
- Access was onto a narrow country lane and the prospect of increased traffic was of concern to residents and parish councillors.
- The proposal involved the loss of 120m of hedgerow. He was not convinced that translocation of the hedge, as proposed, was viable.
- He sought assurance that the development on the site was not prevented by the recent judgments relating to development in the River Lugg catchment area.
- He supported the views of residents and the Parish Council that the application should be refused.
- Housing provision in the Parish had already exceeded the minimum housing target.
- The proposal was contrary to NDP policy BL5 – housing in the open countryside and was also contrary to policy BL3 iv as it would not have a safe and suitable access.

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

- There were no objections from statutory consultees.
- The proposal abutted existing dwellings, fitted within the settlement and would contribute to its viability.
- The provision of 8 bungalows as part of the development was to be welcomed.
- In the absence of a five year housing land supply the location of the site adjacent to the settlement boundary weighed in the application's favour.
- It was important to recognise the historic environment. The proposal would be to the detriment of a sunken lane on the western side of the site and its ancient linear bank. This could have been avoided by an access to the bottom left of the site. There was also an unregistered historic park and garden.

In response to questions the Lead Development Manager commented:

- The local ward member's reference to two phases of development and the avoidance of certain planning obligations as a consequence was addressed within the report at paragraphs 6.62-6.70. The developer had completed the development of one plot of land and was now seeking to develop an adjoining plot. He did not own the second plot, but had a contract to buy it. The matter had been carefully considered and it had been concluded that there had been no deliberate attempt to avoid planning obligations.
- The NDP was out of date as it was over 2 years old. The Core Strategy policies therefore held sway and the proposal complied with policy RA2. However, as a windfall site the proposal was also consistent with the NDP.
- In response to reservations expressed about the feasibility of translocating the hedge he commented that there were examples of successful translocations within the County. The proposal was governed by condition 14. The applicant had made this offer, a new replacement hedge having originally been proposed.
- In reply to the view that PV panels were essential to provide electricity for charging points and both should be a requirement, he commented that the proposed provision of PV panels would be reviewed at a later date when details were submitted, mindful of the need to consider the impact on external appearance of the buildings. The applicant's stated intention was to avoid a visual impact.
- There would be no public access to the area of restored grassland to the north of the site, to be provided in mitigation for the loss of meadowland. The Parish Council had not wished to consider this option. A management company would be responsible for maintenance of the site. This was covered by condition.
- The request that the Committee consider the application prior to the conclusion of the public consultation was a little unusual but not unprecedented. In this case the consultation period had exceeded 28 days. The closing date was 12 December. It had been considered appropriate to submit the application to the Committee rather than delay consideration. The recommendation provided for any further responses received before the closing date to be considered.
- Air source heat pumps were relatively new hence the need to assess their feasibility. Their provision was governed by building regulations rather than the planning process.

The Lead Development Manager commented in conclusion that the housing targets in the Core Strategy were minimum numbers. The council lacked a five year housing land supply. The development met a need. The council had defended appeals against refusal of some sites within the parish on the grounds that they would represent over development. However, the application before the Committee represented organic growth and included the provision of bungalows.

The local ward member was given the opportunity to close the debate. He commented that it was to be regretted that the NDP was currently out of date.

Councillor Hunt proposed and Councillor James seconded a motion that the application be approved in accordance with the printed recommendation with additional and revised conditions as set out in the update sheet. The motion was carried unanimously with 12 votes in favour, none against and no abstentions.

RESOLVED: That subject to no further objections raising additional material planning considerations being received by the end of the consultation period 12th December 2019, the officers named in the Scheme of Delegation to Officers be

authorised to approve the application subject to the following conditions and any further conditions considered necessary by officers.

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

Reason: Required to be imposed by Section 91 of the Town and Country Planning Act 1990

- 2 The development shall be carried out strictly in accordance with the following approved plans, Drawing Numbers:

1260-20, Rev C – Location & Block Plan

1260-21 – Plots 1-3

1260-22 – Plot 4

1260-24 – Plot 5

1260-23 – Plots 6-8

except where otherwise stipulated by conditions attached to this permission.

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

- 3 With the exception of any site clearance and groundwork, no further development shall take place until details or samples of materials to be used externally on walls and roofs have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

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

- 4 The ecological protection, mitigation, compensation and working methods scheme including the Biodiversity net gain enhancements, as recommended in the ecology reports by James Johnston Ecology dated August 2019 and Andrew Hall dated June 2019 shall be implemented and hereafter maintained in full as stated unless otherwise approved in writing by the local planning authority. No external lighting should illuminate any boundary feature, adjacent habitat or area around the approved mitigation or any biodiversity net gain enhancement features.

Reason: To ensure that all species are protected and habitats enhanced having regard to the Wildlife and Countryside Act 1981 (as amended), the Habitats & Species Regulations 2018 (as amended), Policy LD2 of the Herefordshire Core Strategy, National Planning Policy Framework (2019) and NERC Act 2006.

- 5 All foul water shall discharge through a connection to the local (Hereford - Eign sewage treatment works) Mains Sewer network; and all surface water

managed through onsite sustainable drainage scheme; unless otherwise agreed in writing by the Local Planning Authority.

Reason: In order to comply with Habitat Regulations (2018), National Planning Policy Framework (2019), NERC Act (2006) and Herefordshire Council Local Plan - Core Strategy (2011-2031) policies LD2, SD3 and SD4.

- 6 Before any other works hereby approved are commenced, visibility splays, and any associated set back splays at 45 degree angles shall be provided from a point 0.6 metres above ground level at the centre of the access to the application site and 2.4 metres back from the nearside edge of the adjoining carriageway (measured perpendicularly) for a distance of 90 metres in each direction along the nearside edge of the adjoining carriageway. Nothing shall be planted, placed, erected and/or allowed to grow on the triangular area of land so formed which would obstruct the visibility described above.

Reason: In the interests of highway safety and to conform to the requirements of Policy MT1 of the Herefordshire Local Plan – Core Strategy (2011-2031), Policies BL3 & BL13 of the Bartestree with Lugwardine Neighbourhood Development Plan (2011-2031) and the provisions of the National Planning Policy Framework.

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

Reason: In the interests of highway safety and to conform to the requirements of Policy MT1 of the Herefordshire Local Plan – Core Strategy (2011-2031), Policies BL3 & BL13 of the Bartestree with Lugwardine Neighbourhood Development Plan (2011-2031) and the provisions of the National Planning Policy Framework.

- 8 Prior to the first occupation of any of the dwellings to which this permission relates an area for car parking shall be laid out within the curtilage of that property, in accordance with the approved plans which shall be properly consolidated, surfaced and drained, in accordance with details to be submitted to and approved in writing by the local planning authority and those areas shall not thereafter be used for any other purpose than the parking of vehicles.

Reason: In the interests of highway safety and to ensure the free flow of traffic using the adjoining highway and to conform to the requirements of Policy MT1 of the Herefordshire Local Plan – Core Strategy (2011-2031), Policies BL3 & BL13 of the Bartestree with Lugwardine Neighbourhood Development Plan (2011-2031) and the provisions of the National Planning Policy Framework.

- 9 Development shall not begin in relation to any of the specified highways works until details of the highways access works have been submitted to and approved by the local planning authority. The development shall not be occupied until the scheme has been constructed in accordance with the approved details.

Reason: To ensure the safe and free flow of traffic on the highway and to conform to the requirements of Policy MT1 of the Herefordshire Local Plan – Core Strategy (2011-2031), Policies BL3 & BL13 of the Bartestree with

Lugwardine Neighbourhood Development Plan (2011-2031) and the provisions of the National Planning Policy Framework.

- 10 Development shall not begin until details and location of the following have been submitted to and approved in writing by the local planning authority, and which shall be operated and maintained during construction of the development hereby approved:**

- A method for ensuring mud is not deposited onto the Public Highway**
- Construction traffic access location**
- Parking for site operatives**
- Construction Traffic Management Plan**

Construction working hours

The development shall be carried out in accordance with the approved details for the duration of the construction of the development.

Reason: In the interests of highway safety and to conform to the requirements of Policy MT1 of Herefordshire Local Plan – Core Strategy (2011-2031), Policies BL3 & BL13 of the Bartestree with Lugwardine Neighbourhood Development Plan (2011-2031) and the provisions of the National Planning Policy Framework.

- 11 The development hereby permitted shall not be brought into use until the access, turning area and parking facilities shown on the approved plan have been properly consolidated, surfaced, drained and otherwise constructed in accordance with details to be submitted to and approved in writing by the local planning authority and these areas shall thereafter be retained and kept available for those uses at all times.**

Reason: In the interests of highway safety and to ensure the free flow of traffic using the adjoining highway and to conform with the requirements of Policy MT1 of Herefordshire Local Plan – Core Strategy (2011-2031), Policies BL3 & BL13 of the Bartestree with Lugwardine Neighbourhood Development Plan (2011-2031) and the provisions of the National Planning Policy Framework.

- 12 With the exception of site clearance and ground works, no development approved by this permission shall be commenced until a scheme for the provision of surface water drainage works has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented before the first use occupation of any dwelling hereby approved.**

Reason: To prevent the increased risk of flooding by ensuring the provision of a satisfactory means of surface water disposal and to comply with Policy SD3 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

- 13 Prior to the first occupation of any of the residential development hereby permitted written evidence / certification demonstrating that water conservation and efficiency measures to achieve the ‘Housing – Optional Technical Standards – Water efficiency standards’ (i.e. currently a maximum of 110 litres per person per day) for water consumption as a**

minimum have been installed / implemented shall be submitted to the Local Planning Authority for their written approval. The development shall not be first occupied until the Local Planning Authority have confirmed in writing receipt of the aforementioned evidence and their satisfaction with the submitted documentation. Thereafter those water conservation and efficiency measures shall be maintained for the lifetime of the development.

Reason: To ensure water conservation and efficiency measures are secured, in accordance with policy SD3 (6) of the Herefordshire Local Plan – Core Strategy (2011-2031), Policy BL1 of the Bartestree with Lugwardine Neighbourhood Development Plan (2011-2031) and the provisions of the National Planning Policy Framework.

- 14 With the exception of site clearance and groundworks, no further development shall commence until a biodiversity enhancement plan and landscape scheme shall be submitted and approved in writing by the local planning authority. This biodiversity enhancement plan and landscaping scheme must include the provision of the landscape buffer area and all land within the red line to the north of said buffer (up to the watercourse), as indicated on Dwg. No. 1260-20 Rev C (& as indicatively illustrated on Fig.02 'Proposed landscape scheme'). The plan/scheme shall include a scaled topographic plan identifying:
- a) A plan showing the existing and proposed finished levels (or contours), specifically including the grading of the bank that adjoins the public highway and forms part of the visibility splays.
 - b) Trees and hedgerow to be retained, setting out measures for their protection during construction, in accordance with BS5837:2012.
 - c) Trees and hedgerow to be relocated or translocated, including the provision for replacement planting in the event that any relocation/translocation does not succeed.
 - d) Trees and hedgerow to be removed.
 - e) An ecological enhancement scheme providing for lowland meadow priority grassland, wood pasture and traditional orchard. Including all proposed planting, accompanied by a written specification setting out; species, size, quantity, density with cultivation details and the specification of the grass and wildflower seed mix for the whole area. For clarity, all fruit tree planting shall utilise 'standard' trees grown on fully vigorous or 'seedling' rootstocks relevant to the fruit type and be managed such as to create a Traditional 'standard' Orchard at maturity.
 - f) All proposed hardstanding and boundary treatment.
 - g) An implementation programme

Reason: To safeguard and enhance the biodiversity, character and amenity of the area in order to conform with policies SS6, LD1, LD2 and LD3 of the Herefordshire Local Plan – Core Strategy (2011-2031), Policy BL1 of the Bartestree with Lugwardine Neighbourhood Development Plan (2011-2031) and the provisions of the National Planning Policy Framework.

- 15 The hard and soft landscape works shall be carried out in accordance with the approved details before any part of the development is first occupied into use in accordance with the agreed implementation programme. The completed scheme shall be managed and /or maintained in accordance with an approved scheme of management and/ or maintenance.

Reason: To ensure implementation according to the biodiversity enhancement, hard and soft landscape works plan agreed with local

planning authority and in order to conform with policies SS6, LD1, LD2 and LD3 of the Herefordshire Local Plan – Core Strategy (2011-2031), Policy BL1 of the Bartestree with Lugwardine Neighbourhood Development Plan (2011-2031) and the provisions of the National Planning Policy Framework.

- 16 Before the first dwelling is occupied or brought into use, a schedule of maintenance for the biodiversity enhancement and landscaping scheme (required by conditions 14 & 15) for a period of thirty years, shall be submitted to and approved in writing by the local planning authority. Maintenance shall be carried out in accordance with this approved schedule and the biodiversity enhancements and landscaping scheme retained in perpetuity.

Reason: To ensure the establishment and benefits of the approved biodiversity enhancement plan and landscaping scheme are secured, so the mitigation is considered to be a biodiversity enhancement of the area. In order to conform with policies SS6, LD1, LD2 and LD3 of the Herefordshire Local Plan – Core Strategy (2011-2031), Policy BL1 of the Bartestree with Lugwardine Neighbourhood Development Plan (2011-2031) and the provisions of the National Planning Policy Framework.

- 17 With the exception of ground works and site clearance, a detailed specification and plan for the surfacing of the public right of way which crosses the site and the footpath link (as indicated on dwg. No. 1260-20 Rev C), for a width of at least 2 metres shall be provided to and agreed in writing by the Local Planning Authority. The surfacing and works to the public right of way and footpath link shall be completed and confirmed in writing to the Local Planning Authority, prior to the occupation of the fourth dwelling on the development.

Reason: To ensure the Public Right of Way and footpath link is surfaced to a satisfactory standard. In order to conform with policies MT1 of the Herefordshire Local Plan – Core Strategy (2011-2031), Policy BL13 of the Bartestree with Lugwardine Neighbourhood Development Plan (2011-2031) and the provisions of the National Planning Policy Framework.

- 18 Details of any external lighting proposed to illuminate the development shall be submitted to and approved in writing by the local planning authority prior to the installation of said lighting. Development shall be carried out in accordance with the approved details and there shall be no other external illumination of the development.

Reason: To safeguard local amenities and to comply with Policy SD1 of the Herefordshire Local Plan – Core Strategy, Policy BL1 of the Bartestree with Lugwardine Neighbourhood Development Plan (2011-2031) and the provisions of the National Planning Policy Framework

- 19 Notwithstanding the provisions of article 3(1) and Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, (or any order revoking or re-enacting that Order with or without modification), no development which would otherwise be permitted under Classes A, B, C & E of Part 6 and of Schedule 2, shall be carried out.

Reason: To safeguard the biodiversity enhancements and landscaping scheme secured so the mitigation may be considered a biodiversity enhancement of the area, as per the draft wording of the in order to conform with policies SS6, LD1, LD2 and LD3 of the Herefordshire Local

Plan – Core Strategy (2011-2031), Policy BL1 of the Bartestree with Lugwardine Neighbourhood Development Plan (2011-2031) and the provisions of the National Planning Policy Framework.

- 20. With the exception of any site clearance, a scheme to enable the charging of plug in and other ultra-low emission vehicles (e.g provision of Electric Vehicle charging points within garaging, cabling and outside connection points) to serve the occupants of the dwellings hereby approved shall be submitted to and approved in writing by the local planning authority.**

Reason: To address the requirements policies in relation to climate change SS7 and SD1 of the Herefordshire Local Plan Core Strategy and the guidance contained within the National Planning Policy Framework.

INFORMATIVES:

- 1. IP2 Application Approved Following Revisions**
- 2. The developer should be aware that a 3inch watermain may cross the application site and the watermain may need to be diverted under Section 185 of the Water Industry Act 1991, the cost of which will be re-charged to the developer. The developer must consult Dwr Cymru Welsh Water before any development commences on site.**
- 3. I11 Application Approved Following Revisions**
- 4. I45 Works within the highway**
- 5. I05 No drainage to discharge to highway**
- 6. I43 Protection of visibility splays on private land**
- 7. I35 Highways Design Guide and Specification**
- 8. In regard to condition 12 which relates to the provision of a surface water drainage strategy, the Local Planning Authority anticipates that the following details need be provided as part of an acceptable drainage scheme:**
 - Provision of a detailed drainage strategy that demonstrates that opportunities for the use of SUDS features have been maximised, where possible, including use of infiltration techniques and on-ground conveyance and storage features;**
 - A detailed surface water drainage strategy with supporting calculations that demonstrates there will be no surface water flooding up to the 1 in 30 year event, and no increased risk of flooding as a result of development between the 1 in 1 year event and up to the 1 in 100 year event and allowing for the potential effects of climate change;**
 - Evidence that the Applicant is providing sufficient on-site attenuation storage to ensure that site-generated surface water runoff is controlled and limited to agreed discharge rates for all storm events up to and including the 1 in 100 year rainfall event, with an appropriate increase in rainfall intensity to allow for the effects of future climate change;**
 - Evidence that the Applicant is providing sufficient storage and appropriate flow controls to manage additional runoff volume from the**

development, demonstrated for the 1 in 100 year event (6 hour storm) with an appropriate increase in rainfall intensity to allow for the effects of future climate change;

- **Results of infiltration testing undertaken in accordance with BRE365 and confirmation of groundwater levels to demonstrate that the invert level of any soakaways or unlined attenuation features can be located a minimum of 1m above groundwater levels in accordance with Standing Advice.**

69. 190032 - LAND TO THE WEST OF B4361, LUSTON, HEREFORDSHIRE

(Proposed development of 8 houses and garages.)

This application was withdrawn from the agenda.

70. 191276 - LAND AT OLD TRECILLA BUILDINGS, LOWER HERBERTS HILL, LLANGARRON.

(Erection of three dwellings and associated works.)

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.

In accordance with the criteria for public speaking, Mr Lodge, of Llangarron Parish Council, spoke in support of the scheme. Mr M Tompkins, the applicant's agent, and Mrs A Farr, the applicant, spoke in support.

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

She made the following principal comments:

- There had been a high level of objection to the proposal. However, the Parish Council supported the application and there had also been a number of letters in support of it. Those in support considered the application to be compliant with policy bringing new life to the village and that the impact of the proposal had been exaggerated. The applicant had listened and amended the plans in response to views expressed. The site was well located and close to what amenities there were. The dwellings were well designed.
- Those objecting considered the proposal would have a negative impact on the settlement and was unacceptable in form, design and location. It would also have a negative impact on neighbouring properties, in particular the Grade II listed Box Bush Cottage, a heritage asset, because of the proximity and the height of the new dwellings. The elevated position of the site meant the floor level of the dwellings would be higher than the cottage's eaves potentially dominating the dwelling. There would also be an adverse impact on the wider setting and landscape.
- The development would add to the cumulative impact on the road network.
- Drainage was also a concern because of the area's hilly nature.
- The parish had exceeded the minimum housing target. Objectors considered that the proposal did not meet the requirements of policy RA2.

- The applicant had sought to include sustainability measures. However, the lack of public transport meant people would have to travel by car.
- The landscaping would be an important factor in mitigating the impact of the development.

A member observed that there had been no objections from statutory consultees and the Parish Council supported the application.

Councillor Polly Andrews proposed and Councillor Hunt seconded a motion that the application be approved in accordance with the printed recommendation with an amended condition as set out in the update sheet. The motion was carried unanimously with 13 votes in favour, none against and no abstentions.

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

1. **C01 - Time limit for commencement (full permission)**
2. **C06 – Development in accordance with the approved plans (drawing nos. P1.003 Rev C, P1.10 Rev C, P1.020 Rev A, P1.030, P1.100 Rev C, P1.101 Rev A, P1.102 Rev A, VA002 Rev A, the Sustainability Statement PF 301, 1396 C05 Rev B, the Flood Risk and Drainage Statement – Rev B dated 4 March 2019) and the Preliminary Ecological Appraisal dated March 2018.**
3. **C13 - Samples of external materials**
4. **C65 - Removal of permitted development rights (Class E)**
5. **CK3 - Landscape Scheme**
6. **CK4 – Implementation**
7. **CAB - Visibility Splays Eastbound - 60m x 2.4m, Westbound 36 x 2.4m**
8. **CAD - Access gates**
9. **CAE - Vehicular access construction**
10. **CAH - Driveway gradient**
11. **CAI - Parking – single/shared private drives**
12. **CAJ - Parking - Estates**
13. **CAT - Construction Management Plan**
14. **CB2 - Secure covered cycle parking provision**
15. **CBK - Restriction of hours during construction**
16. **Prior to the occupation of any of the dwellings hereby approved details of a foul and surface water system incorporating an updated surface water drainage strategy using a safety factor of 2 for the soakaways; results of infiltration testing undertaken in accordance with BRE365 and confirmation of groundwater levels to demonstrate that the invert level of**

any soakaways or unlined attenuation features can be located a minimum of 1m above groundwater levels in accordance with Standing Advice; results of percolation testing undertaken in accordance with BS6297 and calculations to demonstrate the sizing of the drainage fields shall be submitted to and approved in writing by the local planning authority. The implementation of the drainage system shall be carried out in accordance with the approved details and maintained thereafter.

Reason: To prevent pollution of the water environment and to comply with Policy SD3 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

17. CCK - Details of slab levels

- 18. All foul water shall discharge through connection to new plot specific private foul water treatment systems with final outfall to suitable soakaway drainage field on land within each plot; and all surface water shall discharge to appropriate soakaway systems; unless otherwise agreed in writing by the Local Planning Authority.**

Reason: In order to comply with Conservation of Habitats and Species Regulations (2018), National Planning Policy Framework, NERC Act (2006), and Herefordshire Local Plan Core Strategy policies LD2, SD3 and SD4.

- 19. The ecological protection, mitigation, compensation and working methods scheme including the europaeus land management services shall be implemented and hereafter maintained in full as stated unless otherwise approved in writing by the local planning authority. No external lighting should illuminate any boundary feature, adjacent habitat or area around the approved mitigation or any biodiversity net gain enhancement features.**

Reason: To ensure that all species are protected and habitats enhanced having regard to the Wildlife and Countryside Act 1981 (as amended), the Habitats & Species Regulations 2018 (as amended), Policy LD2 of the Herefordshire Local Plan Core Strategy, National Planning Policy Framework and NERC Act 2006.

- 20. Prior to first occupation evidence (such as photos/signed Ecological Clerk of Works completion statement) of the suitably placed installation within the site boundary of at least three Bat roosting enhancements, three bird nesting boxes and one Hedgehog habitat home should be supplied to and acknowledged by the local authority; and shall be maintained hereafter as approved unless otherwise agreed in writing by the local planning authority.**

Reason: To ensure that all species are protected and habitats enhanced having regard to the Wildlife and Countryside Act 1981 (as amended), Habitat Regulations 2018, Herefordshire Local Plan Core Strategy Policy LD2, National Planning Policy Framework, NERC Act 2006 and Dark Skies Guidance Defra / NPPF 2013/2019.

21. CE6 - Efficient use of water

INFORMATIVES:

- 1. IP2 - Application Approved Following Revisions**

2. I11 - Mud on highway
3. I09 - Private apparatus within the highway (Compliance with the New Roads and Streetworks Act 1991, the Traffic Management Act 2004 and the Highways Act 1980)
4. I45 - Works within the highway (Compliance with the Highways Act 1980 and the Traffic Management Act 2004)
5. I35 - Highways Design Guide and Specification
6. I47 - Drainage other than via highway system
7. I05 - No drainage to discharge to highway

71. DATE OF NEXT MEETING

The Committee noted the date of the next meeting.

Appendix - Schedule of Updates

The meeting ended at 3.39 pm

Chairperson

PLANNING AND REGULATORY COMMITTEE

Date: 11 December 2019

Afternoon meeting

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

190279 - PROPOSED ERECTION OF 8 BUNGALOWS. INCLUDING 5 CHALET TYPE AND CONSTRUCTION OF NEW ACCESS ROAD. AT LAND OFF COTTS LANE, LUGWARDINE, HEREFORD,

For: Sweetman Developments Ltd per Mr John Phipps, Bank Lodge, Coldwells Road, Holmer, Hereford, Herefordshire HR1 1LH

ADDITIONAL REPRESENTATIONS

Conservation Manager (Trees):

The amendments that myself and the landscape officer requested for tree species and layout have unfortunately not been acknowledged.

This is disappointing as we hoped the applicant/agent would appreciate that these amendments would enhance the site visually and environmentally.

Should this application be approved via planning committee I would request that a condition is included that relates to the amendments submitted by the Landscape officer and myself.

Transportation Manager:

The local highway authority has no further comments.

Land Drainage:

No further comments to make

Bartestree with Lugwardine Group Parish Council:

Bartestree with Lugwardine Group Parish Council wish to object to this application for the following reasons:

- The comments of 19th February and 7th October 2019 still stand.
- It does not appear to have been considered under the 15th October 2019 Nutrient Management Plan.
- The Parish has already exceeded its target proportional growth target up to 2031 within the NDP, and whilst over 2 years old should be given significant weight as a result. A review of the NDP has begun.

Furthermore the PC would like to request that this application goes before the Planning Committee.

Public Representations:

Six letters of support have been received and one letter of objection has been received, since the drafting of the officer's report. The new points raised are summarised as follows:

- The historic meadow was ploughed last year thus eradicating the natural flora and fauna but fortunately bats do fly over adjacent properties as recorded in the ecology

report and it would be callous to introduce lighting in this area unless appropriate measures were taken to cater for 'bat-lighting'.

- The application is a breath of fresh air for a local developer to be involved in the construction of quality properties using local qualified tradesmen which aids in the fuelling of the local economy.

These are not considered to raise any new material planning grounds beyond that have already been raised and considered by the officer report.

Applicant's additional comments (dated 9th December 2019):

The principle of development

We note the officers' professional opinion that the development represents a logical 'rounding off' of the settlement and accords with the Development Plan; specifically, Neighbourhood Development Plan Policy BL3, which supports windfall development outside the settlement boundary, subject to compliance with other relevant policies.

Landscaping and enhancement of Green Infrastructure

The applicant notes the Tree Officer's preference that the Cotts Lane hedgerow be translocated as opposed to replaced and is very happy to agree this suggestion.

The Officer Report refers variously to the loss of 120m / 130m of hedgerow, but given the hedgerow will be translocated, the loss will equate to only 8m at the point of access.

Elsewhere there is significant hedgerow and tree planting within the development and landscaped area to the north, extending to over 400m of new hedgerow and c.40 specimen trees. This amounts to significant enhancement of Green Infrastructure overall, in accordance with Core Strategy Policies LD1, LD2 and LD3 and NDP Policy BL1.

Sustainable design

The approach to design and construction follows the 'fabric first' approach, with particular attention given to air tightness.

Properties on the adjoining development have exceeded their Building Regulations Standard Assessment Procedure (SAP) target by almost 20%.

To complement the existing sustainability statement the applicant has been reviewing the feasibility of installing PV panels and Air Source Heat Pumps in consultation with experts in the field. The orientation of the dwellings is such that PV panels are feasible, and it is the intention to install those that fit within the plane of the slate roof covering, minimising visual impact. Air source heat pumps are also intended in substitution for traditional gas boilers, representing a significant reduction in CO2 emissions.

Provision will be made for EV charge points within the garages and connection points added to the external façade of the dwellings.

All of the dormer bungalows provide master-suite accommodation on the ground floor providing flexibility for those with limited mobility and futureproofing for those wishing to remain in their own homes.

The applicant fits as standard Category 5e data cabling throughout his dwellings, promoting excellent IT communications.

In accordance with NDP Policy BL1 all dwellings have suitable storage provision for cycles and generous private gardens. The development gives rise to excellent standards of residential amenity without imposing on existing dwellings.

Housing land supply

The Officer Report correctly acknowledges that the Council cannot demonstrate a 5-year supply of deliverable housing sites. A position that has persisted and worsened recently. The application proposal would make a reasoned and proportionate contribution to addressing this deficit in a manner that is consistent with the Development Plan when read in the round.

OFFICER COMMENTS

As noted above the applicant has supplied an additional statement to support the proposed development (in the form of a letter received on Monday 9th December and included un-abridged above), this statement raises a number of new matters, which are addressed below.

As indicated above the applicant states it is their intention to install Photovoltaic panels ('PV panels' henceforth) and Air Source Heat Pumps ('ASHPs' henceforth) on the proposed dwellinghouses. Officers welcome this addition but consider this proposal to be only aspirational, as it does not currently form part of the proposed development, as no PV panels or ASHPs are included on the submitted plans.

Further, officers do not consider it appropriate to attach conditions requiring the provision and securing the maintenance of PV panels and ASHPs, as they may alter the external appearance and amenity of the development and would be a matter for further consideration when details are submitted.

In addition, the applicant intends to provide Electric Vehicle charging points with the proposed dwellinghouses. Officers consider that a suitably worded planning condition could secure such provisions and an additional condition, condition 20, is recommended below in regards to this matter.

The matter of landscape impact has been considered in detail, with the inclusion of a Landscape Appraisal & Landscape Statement (as supplied by the applicant) as well as formal consultation responses from the Council Senior Landscape Officer and are covered within the report.

The applicants' additional comments seek to clarify the treatment of the hedgerow adjoining the highway. The applicants' comments set out the intention to translocate the hedgerow from its current position to back behind the visibility splays required for the access. Officers consider this will further assist in minimising the harm and, if successful, will enable the hedgerow to re-establish at a faster rate than a hedgerow grown afresh. These details are secured via a landscaping condition (condition 14, as well as conditions 15 and 16). Further the development will include the planting of significant additional hedgerow amounting to over 480m including the roadside translocation hedge.

Officers have recently received correspondence from Natural England ('NE' henceforth) indicating that in their opinion, the application site forms part of a 'priority habitat', specifically as a "lowland meadow priority grassland". Officers have checked both the Council's internal mapping system (GIS) and the Defra published 'Magic mapping' for the site, neither of which indicate the site having any ecological designations, such as a priority habitat. Whilst a formal consultation response from NE and remains outstanding on this matter (at the time of writing); it is understood that a NE ecologist visited the site following a complaint under Environmental Impact Assessment Regulations (Agriculture), regarding an area of land

being ploughed which had not previously been cultivated in a number of years. The applicant has clarified their understanding that NE was first aware of the ploughing of the field (by the then agricultural tenant, not the applicant for planning permission) in April 2019. Officers understand that following NE's assessment of the remaining field margins, it is their consideration that the site was a priority habitat as a "lowland meadow priority grassland". Officers have considered this matter in consultation with the Council's Ecologist, and consider that the loss of this identified priority habitat can be mitigated for and the biodiversity on the application site could be enhanced by the imposition of a planning condition requiring the land to the north of the proposed dwellinghouses, within the application site, being required to form an area of restored grassland with additional biodiversity enhancement as well as a landscaping buffer. Officers consider that a series of conditions (conditions 14, 15 & 16), provide for this enhancement and secure it with a maintenance period of thirty years. In this manner, officer consider the biodiversity enhancement plan and landscape scheme, would provide a positive biodiversity enhancement to the site, by providing for lowland meadow priority grassland, wood pasture and traditional orchard on this land.

Officers have had regard to the guidance set out in the Natural Environment section of the Planning Practice Guidance on this matter (Paragraph: 023 Reference ID: 8-023-20190721), which sets out that: planning conditions or obligations can, in appropriate circumstances, be used to require that a planning permission provides for works that will measurably increase biodiversity. The work involved may, for example, involve creating new habitats, enhancing existing habitats, providing green roofs, green walls, street trees or sustainable drainage systems. Though care needs to be taken to ensure that any benefits promised will lead to genuine and demonstrable gains for biodiversity. It will also be important to consider whether provisions for biodiversity net gain will be resilient to future pressures from further development or climate change, and supported by appropriate maintenance arrangements. Thus considering the development against the provisions of policies SS6, LD1, LD2 and LD3 of the Core Strategy, as well as Policy BL1 of the Bartestree with Lugwardine Neighbourhood Development Plan, the proposed development would offer adequate mitigation and enhancement to the area of land within the application boundary that Natural England consider to be a priority habitat, as per the requirement of paragraph 175 a) of the National Planning Policy Framework.

An error at paragraph 6.84 of the officer report should be amended as follows. The 'and' in the first sentence of the paragraph is substituted for the following: ", this is the". Thus the report at paragraph 6.84 should have read as follows:

"6.84 The appraisal has identified some conflict with the provisions of the development plan, namely the harm arising from the loss of hedgerows on Cotts Lane which is considered to detrimentally impact the landscape character of the locale. However, this harm is not considered to significantly and demonstrably outweigh the benefits of providing eight houses in this instance, when considered against the provisions of the framework as a whole. Therefore, on balance the application is recommended for approval as per the recommendation below."

Officers note the additional representations that have been received regarding the application, these are noted and have been considered but are not considered to alter the recommendation.

CHANGE TO RECOMMENDATION

The following conditions 4, 9, 14, 15, 16 & 18 should be amended to those set out below. There are two additional conditions recommended, conditions 19 and 20 which are set out below.

4	<p>The ecological protection, mitigation, compensation and working methods scheme including the Biodiversity net gain enhancements, as recommended in the ecology reports by James Johnston Ecology dated August 2019 and Andrew Hall dated June 2019 shall be implemented and hereafter maintained in full as stated unless otherwise approved in writing by the local planning authority. No external lighting should illuminate any boundary feature, adjacent habitat or area around the approved mitigation or any biodiversity net gain enhancement features.</p> <p>Reason: To ensure that all species are protected and habitats enhanced having regard to the Wildlife and Countryside Act 1981 (as amended), the Habitats & Species Regulations 2018 (as amended), Policy LD2 of the Herefordshire Core Strategy, National Planning Policy Framework (2019) and NERC Act 2006.</p>
9	<p>Development shall not begin in relation to any of the specified highways works until details of the highways access works have been submitted to and approved by the local planning authority. The development shall not be occupied until the scheme has been constructed in accordance with the approved details.</p> <p>Reason: To ensure the safe and free flow of traffic on the highway and to conform to the requirements of Policy MT1 of the Herefordshire Local Plan – Core Strategy (2011-2031), Policies BL3 & BL13 of the Bartestree with Lugwardine Neighbourhood Development Plan (2011-2031) and the provisions of the National Planning Policy Framework.</p>
14	<p>With the exception of site clearance and groundworks, no further development shall commence until a biodiversity enhancement plan and landscape scheme shall be submitted and approved in writing by the local planning authority. This biodiversity enhancement plan and landscaping scheme must include the provision of the landscape buffer area and all land within the red line to the north of said buffer (up to the watercourse), as indicated on Dwg. No. 1260-20 Rev C (& as indicatively illustrated on Fig.02 'Proposed landscape scheme'). The plan/scheme shall include a scaled topographic plan identifying:</p> <ul style="list-style-type: none"> a) A plan showing the existing and proposed finished levels (or contours), specifically including the grading of the bank that adjoins the public highway and forms part of the visibility splays. b) Trees and hedgerow to be retained, setting out measures for their protection during construction, in accordance with BS5837:2012. c) Trees and hedgerow to be relocated or translocated, including the provision for replacement planting in the event that any relocation/translocation does not succeed. d) Trees and hedgerow to be removed. e) An ecological enhancement scheme providing for lowland meadow priority grassland, wood pasture and traditional orchard. Including all proposed planting, accompanied by a written specification setting out; species, size, quantity, density with cultivation details and the specification of the grass and wildflower seed mix for the whole area. For clarity, all fruit tree planting shall utilise 'standard' trees grown on fully vigorous or 'seedling' rootstocks relevant to the fruit

	<p>type and be managed such as to create a Traditional 'standard' Orchard at maturity.</p> <p>f) All proposed hardstanding and boundary treatment.</p> <p>g) An implementation programme</p> <p>Reason: To safeguard and enhance the biodiversity, character and amenity of the area in order to conform with policies SS6, LD1, LD2 and LD3 of the Herefordshire Local Plan – Core Strategy (2011-2031), Policy BL1 of the Bartestree with Lugwardine Neighbourhood Development Plan (2011-2031) and the provisions of the National Planning Policy Framework.</p>
15	<p>The hard and soft landscape works shall be carried out in accordance with the approved details before any part of the development is first occupied into use in accordance with the agreed implementation programme.</p> <p>The completed scheme shall be managed and /or maintained in accordance with an approved scheme of management and/ or maintenance.</p> <p>Reason: To ensure implementation according to the biodiversity enhancement, hard and soft landscape works plan agreed with local planning authority and in order to conform with policies SS6, LD1, LD2 and LD3 of the Herefordshire Local Plan – Core Strategy (2011-2031), Policy BL1 of the Bartestree with Lugwardine Neighbourhood Development Plan (2011-2031) and the provisions of the National Planning Policy Framework.</p>
16	<p>Before the first dwelling is occupied or brought into use, a schedule of maintenance for the biodiversity enhancement and landscaping scheme (required by conditions 14 & 15) for a period of thirty years, shall be submitted to and approved in writing by the local planning authority. Maintenance shall be carried out in accordance with this approved schedule and the biodiversity enhancements and landscaping scheme retained in perpetuity.</p> <p>Reason: To ensure the establishment and benefits of the approved biodiversity enhancement plan and landscaping scheme are secured, so the mitigation is considered to be a biodiversity enhancement of the area. In order to conform with policies SS6, LD1, LD2 and LD3 of the Herefordshire Local Plan – Core Strategy (2011-2031), Policy BL1 of the Bartestree with Lugwardine Neighbourhood Development Plan (2011-2031) and the provisions of the National Planning Policy Framework.</p>
18	<p>Details of any external lighting proposed to illuminate the development shall be submitted to and approved in writing by the local planning authority prior to the installation of said lighting. Development shall be carried out in accordance with the approved details and there shall be no other external illumination of the development.</p> <p>Reason: To safeguard local amenities and to comply with Policy SD1 of the Herefordshire Local Plan – Core Strategy, Policy BL1 of the Bartestree with Lugwardine Neighbourhood Development Plan (2011-2031) and the</p>

	provisions of the National Planning Policy Framework.
19	<p>Notwithstanding the provisions of article 3(1) and Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015,(or any order revoking or re-enacting that Order with or without modification), no development which would otherwise be permitted under Classes A, B, C & E of Part 6 and of Schedule 2, shall be carried out.</p> <p>Reason: To safeguard the biodiversity enhancements and landscaping scheme secured so the mitigation maybe considered a biodiversity enhancement of the area, as per the draft wording of the in order to conform with policies SS6, LD1, LD2 and LD3 of the Herefordshire Local Plan – Core Strategy (2011-2031), Policy BL1 of the Bartestree with Lugwardine Neighbourhood Development Plan (2011-2031) and the provisions of the National Planning Policy Framework.</p>
20	<p>With the exception of any site clearance, a scheme to enable the charging of plug in and other ultra-low emission vehicles (e.g provision of Electric Vehicle charging points within garaging, cabling and outside connection points) to serve the occupants of the dwellings hereby approved shall be submitted to and approved in writing by the local planning authority.</p> <p>Reason: To address the requirements policies in relation to climate change SS7 and SD1 of the Herefordshire Local Plan Core Strategy and the guidance contained within the National Planning Policy Framework.</p>

191276 - ERECTION OF THREE DWELLINGS AND ASSOCIATED WORKS AT LAND AT OLD TRECILLA BUILDINGS, LOWER HERBERTS HILL, LLANGARRON,

For: Mr & Mrs Farr per Mr Matt Tompkins, 10 Grenfell Road, Hereford, Herefordshire, HR1 2QR

ADDITIONAL REPRESENTATIONS

Councillors will have received further representation from Mr Gary Felton of Box Bush Cottage, Llangarron. The letter refers to a number of material planning matters, all of which are fully reported within your agenda item.

OFFICER COMMENTS

Further to the publication of the report and for the purposes of clarity, the Principal Conservation Officer has clarified his existing advice commenting that whilst there is a change to the way the Listed Cottage (Box Bush Cottage) is experienced resulting from this proposal, the setting which contributes to its significance is limited to its curtilage. The wider

agricultural and rural context within which the cottage is experienced would remain such that the development wouldn't trigger s196 of the revised NPPF.

In this regard the position set out in the report remains- namely that the proposed development will not harm the setting of Box Bush Cottage or those designated assets further away and as such there is no requirement in this case for the decision-maker to consider the public benefits of the scheme.

There are a number of incorrect plan references set out at Condition 2 in the report which need correcting and these are set out below

CHANGE TO RECOMMENDATION

Condition 2 should include reference Drawing No. E1.001 A, P1.100 C (not B as reported), P102 A (0 omitted), P020 A and P1.030

MEETING:	PLANNING AND REGULATORY COMMITTEE
DATE:	15 JANUARY 2020
TITLE OF REPORT:	190032 - PROPOSED DEVELOPMENT OF 8 HOUSES AND GARAGES AT LAND TO THE WEST OF B4361, LUSTON, HEREFORDSHIRE For: Mr Brechtmann per Mr Edward Brechtmann, Kingsland Sawmills, Kingsland, Leominster, Herefordshire HR6 9SF
WEBSITE LINK:	https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=190032&search=190032
Reason Application submitted to Committee – Re-direction	

Date Received: 7 January 2019
Expiry Date: 15th January 2019

Ward: Bircher

Grid Ref: 348644,262710

Local Member: Councillor Sebastian Bowen

1. Site Description and Proposal

- 1.1 The application relates to a site approximately 3km north of the market town of Leominster in the village of Luston. The site is located on the southern edge of the village on the western side of the B4361 and comprises a broadly rectangular parcel of land totalling 0.85 hectares (2.1 acres) in area. The location of the application site in relation to the village is denoted by the red star in Figure 1 below.

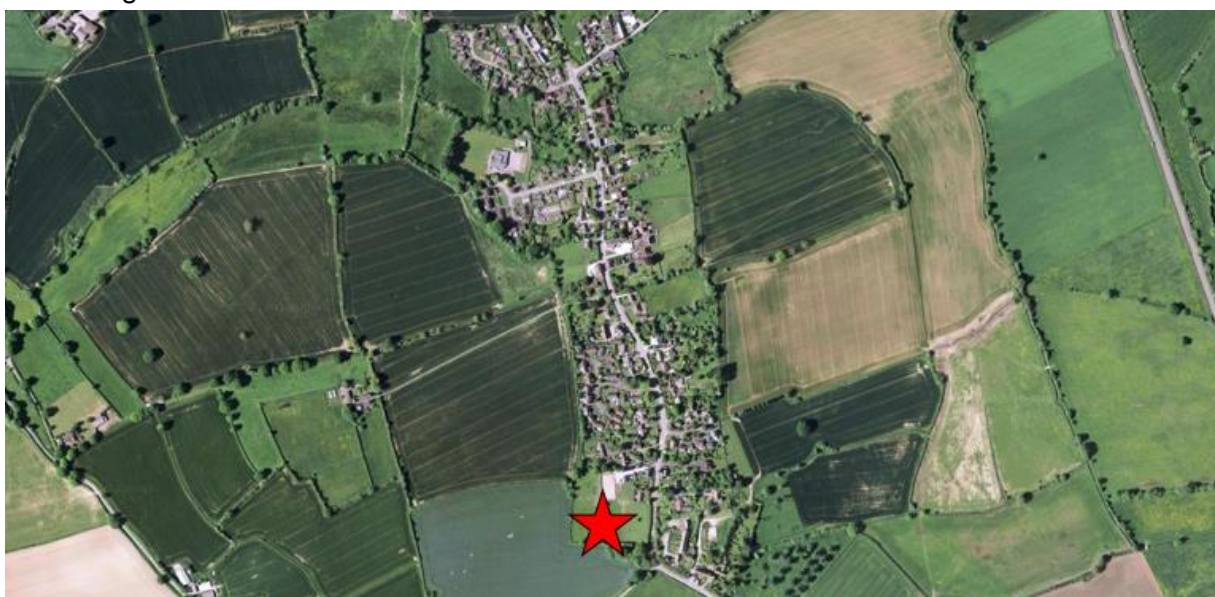


Figure 1: Site Location Plan

Further information on the subject of this report is available from Mr Adam Lewis on 01432 383789

- 1.2 Historically the proposal site has been associated with the residential dwelling known as the White House and has been used as paddocks / pasture for the grazing of horses. The land is currently subdivided into smaller parcels by post and rail fencing and is laid to grass interspersed with a number of small trees. Whilst not forming part of the proposal site, a ménage and stable building is situated immediately to the north. A residential bungalow known as Ashlea adjoins the site in the north eastern corner near to the roadside. The site has a frontage onto the B4361 to the east which is defined by an established mixed species hedgerow. A hedgerow also forms the site boundary to the west with open countryside beyond, whilst to the south there is thick band of mature trees that includes a patch of oaks and elms which are subject to a Tree Preservation Order. The site is elevated relative to the adjacent highway by approximately 1.75 metres and the topography is gently undulating with the land rising slightly to the south. The site is located within the designated Luston Conservation Area, and the White House (to the north) and the converted barns at Bury Farmhouse (on the opposite side of the highway to the east) are listed at Grade II. The extent of the proposal site is shown on Figure 2 below;



Figure 2: Application Site

- 1.3 The current application has been made in full and seeks consent for the erection of 8 dwellings. The proposed site layout is shown in Figure 3, below;



Figure 3: Proposed Site Layout Plan

Further information on the subject of this report is available from Mr Adam Lewis on 01432 383789

- 1.4 As part of the proposal a new single point of access would be created approximately midway along the site's frontage onto the B4361, with the existing roadside hedgerow being removed and replanted to achieve the required visibility splays. The dwellings would then be arranged around a permeable tarmacadam internal road which includes provision to retain a means of access to the parcel of pasture land to the north west of the proposal site. The scheme would also provide a new footpath link which abuts the boundary of the property known as Ashlea and provides pedestrian connectivity to the existing village footway network that runs alongside the B4361 to north east of the site.
- 1.5 Eight dwellings are proposed in total and these would be arranged as six detached units and a pair of semi-detached units. It is understood that the six detached units would be offered as custom build plots whereby future owners would commission their own homes through the developer, whilst the two semi-detached units would be completed by the developer and sold through the open market. A summary of the proposed dwellings is included below;

Plot 1	3 bed two storey detached unit with detached three bay garage
Plot 2	4 bed two storey detached unit with detached two bay garage
Plot 3	3 bed two storey detached unit with detached two bay garage
Plot 4	5 bed three storey detached unit with separate annexe and adjoining two bay garage
Plot 5	4 bed two storey detached unit with detached three bay garage with studio above
Plot 6	3 bed two storey detached with detached two bay garage
Plot 7	Pair of semi-detached 3 bed two storey units
Plot 8	

- 1.6 In general terms, the internal layout of the site has been arranged to have smaller units at the front (east) roadside boundary with the larger units at the rear of the site to the west. The semi-detached units would be sited near to the eastern boundary and, alongside the detached unit on Plot 1, would form the site's frontage on the B4361. A street scene section plan has been provided with the application and is included below at Figure 4;

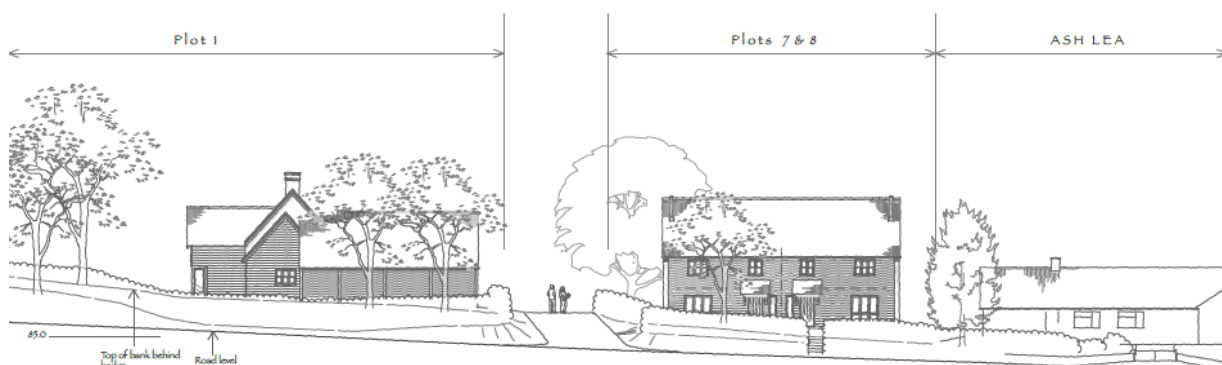


Figure 4: Proposed Street Scene Section

- 1.7 Each unit is individually designed and a mixed palate of materials is proposed for external finishes to include a combination of brick work, render and timber weatherboarding under clay tile roofs. The existing hedge and tree boundaries to the south and west would be retained as part of the scheme, with new internal boundaries between plots being formed by new hedgerow planting and metal 'estate' style fencing. New tree planting is also proposed within the site which includes an area of traditional orchard planting on a parcel of land to the north of the site. The driveway and parking areas to each property would be formed of permeable gravel.
- 1.8 An outline drainage strategy has been provided which shows foul water to be managed through a connection to the mains sewer network. Surface water would be dealt with through the use of soakaways on each individual plot.

Procedural Note

- 1.9 Members are advised that this application was originally scheduled to be heard at the meeting of the Planning and Regulatory Committee on the 16th October 2019. Members will recall conducting a Site Inspection on the 15th October 2019 in advance of the meeting. However, the application was subsequently withdrawn from the meeting's agenda following concerns over amended plans and materials that had been received by Members which had not been sent to Officers or formally consulted upon. For clarity, those materials have not been formally accepted and do not form part of the application that is currently being considered. In essence the proposal before Members is the same as that which was due to be presented to the Committee for consideration on the 16th October; with the exception of an amended Design and Access Statement which has now been formally supplied to the planning authority by the applicant.
- 1.10 The application was subsequently scheduled to be heard at the meeting of the Planning and Regulatory Committee on 11th December 2019. The item was however again withdrawn from the agenda at the request of the Local Ward Member and the Applicant, as the former was unable to attend the scheduled meeting. The proposal before Members today has not changed since 11 December 2019.

2. Policies

2.1 Herefordshire Local Plan – Core Strategy (2015)

The following policies are considered to be of relevance to this application:

SS1	-	Presumption in Favour of Sustainable Development
SS2	-	Delivering New Homes
SS3	-	Releasing Land for Residential Development
SS4	-	Movement and Transportation
SS6	-	Environmental Quality and Local Distinctiveness
RA1	-	Rural Housing Strategy
RA2	-	Housing in Settlements Outside Hereford and the Market Towns
RA3	-	Herefordshire's Countryside
H1	-	Affordable Housing – Thresholds and Targets
H3	-	Ensuring an Appropriate Range and Mix of Housing
MT1	-	Traffic Management, Highway Safety and Promoting Active Travel
LD1	-	Landscape and Townscape
LD2	-	Biodiversity and Geodiversity
LD3	-	Green Infrastructure
LD4	-	Historic Environment and Heritage Assets
SD1	-	Sustainable Design and Energy Efficiency
SD3	-	Sustainable Water Management and Water Resources
SD4	-	Wastewater Treatment and River Water Quality
ID1	-	Infrastructure delivery

The Herefordshire Local Plan Core Strategy policies together with any relevant supplementary planning documentation can be viewed on the Council's website by using the following link:-

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

2.2 The Luston Group Neighbourhood Development Plan (made 2nd January 2018)

LG1	–	General Development Principles
LG2	–	Design of development in Luston Group
LG3	–	Protecting and enhancing local landscape character and views
LG4	–	Dark Skies

LG5	–	Flood Risk, Water Management and Surface Water Run Off
LG6	–	Scale and type of new housing in Luston
LG11	–	Developer contributions and Community Infrastructure Levy

The Luston Neighbourhood Development Plan policies together with any relevant supporting documentation can be viewed on the Council's website by using the following link:-

https://www.herefordshire.gov.uk/directory_record/3083/luston_group_neighbourhood_development_plan

2.3 National Planning Policy Framework (February 2019)

1. Introduction
2. Achieving sustainable development
3. Plan Making
4. Decision-making
5. Delivering a sufficient supply of homes
6. Building a strong, competitive economy
8. Promoting healthy and safe communities
9. Promoting sustainable transport
11. Making effective use of land
12. Achieving well designed places
14. Meeting the challenge of climate change, flooding and coastal change
15. Conserving and enhancing the natural environment
16. Conserving and enhancing the historic environment

3. **Planning History**

- 3.1 The site does not have any directly relevant planning history.

4. **Consultation Summary**

Statutory Consultations

4.1. **Natural England** – Qualified Comments / Objection

Thank you for your re-consultation on the above dated and received by Natural England on 04 October 2019 following an updated Habitats Regulation Assessment.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

The application site is within the catchment of the River Lugg which is part of the River Wye Special Area of Conservation (SAC) which is a European designated site (also commonly referred to as Natura 2000 sites), and therefore has the potential to affect its interest features. European sites are afforded protection under the Conservation of Habitats and Species Regulations 2017, as amended (the 'Habitats Regulations'). The SAC is notified at a national level as the River Lugg Site of Scientific Interest (SSSI) Please see the subsequent sections of this letter for our advice relating to SSSI features.

In considering the European site interest, Natural England advises that you, as a competent authority under the provisions of the Habitats Regulations, should have regard for any potential impacts that a plan or project may have. The Conservation objectives for each European site explain how the site should be restored and/or maintained and may be helpful in assessing what, if any, potential impacts a plan or project may have.

European site - River Wye SAC

Natural England notes that your authority, as competent authority, has undertaken an appropriate assessment of the proposal, in accordance with Regulation 63 of the Conservation of Species and Habitats Regulations 2017 (as amended). Natural England is a statutory consultee on the appropriate assessment stage of the Habitats Regulations Assessment process, and a competent authority should have regard to Natural England's advice.

Your appropriate assessment concludes that your authority is not able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question. Having considered the assessment, and the measures proposed to mitigate for any adverse effects, Natural England concurs with the conclusion you have drawn that it is not possible to ascertain that the proposal will not result in adverse effects on site integrity. Following the ruling of Coöperatie Mobilisation (AKA the Dutch Case) (Joined Cases C-293/17 and C-294/17) Natural England is currently unable to advise that the proposals are acceptable within the River Lugg catchment with regards to the question of phosphate inputs to the SAC.

Regulation 63 states that a competent authority may agree to a plan or project only after having ascertained that it will not adversely affect the integrity of the European site, subject to the exceptional tests set out in Regulation 64 of the Conservation of Habitats and Species Regulations 2017 (as amended). As the conclusion of your Habitats Regulations Assessment states that it cannot be ascertained that the proposal will not adversely affect the integrity of the European site, your authority cannot permit the proposal unless it passes the tests of Regulation 64; that is that there are no alternatives and the proposal must be carried out for imperative reasons of overriding public interest.

Your authority may now wish to consider the exceptional tests set out within Regulation 64. Specific guidance about these tests can be found at: <https://www.gov.uk/government/publications/habitats-and-wild-birds-directives-guidance-on-the-application-of-article-6-4>.

4.2 **Welsh Water – No Objection**

We would request that if you are minded to grant Planning Consent for the above development that the Conditions and Advisory Notes provided below are included within the consent to ensure no detriment to existing residents or the environment and to Dwr Cymru Welsh Water's assets.

SEWERAGE

We have reviewed the information submitted as part of this application with particular focus on drawing number 1743.15 which shows that the intention is to drain foul water to the mains sewer and surface water to soakaways to which we have no objection to in principle. Therefore, if you are minded to grant planning permission we request that the following Conditions and Advisory Notes are included within any subsequent consent.

Conditions

No surface water and/or land drainage shall be allowed to connect directly or indirectly with the public sewerage network

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

WATER

Dwr Cymru Welsh Water has no objection to the proposed development

Internal Council Consultations

4.3 **Neighbourhood Planning Manager – Qualified Comment / Objection**

The Luston Neighbourhood Plan was Made on the 2 January 2018. The application for 8 dwellings with associated garages is on the southern section of an allocated site as referenced in Policy LG6 (site 136/212). The whole site is 1 ha and has 11 dwellings as indicative number of dwellings for the site.

The application is contrary to Criteria (e) of policy LG6, as by developing only part of the site means that no affordable housing is required to be delivered as detailed:

(e) Demonstrates a contribution to the delivery of an appropriate mix of dwelling types and sizes including affordable housing, to meet the needs of all sectors of the community;

Therefore it is considered that this application is contrary to the Luston Neighbourhood Plan.

4.4 **Housing Development Officer – Qualified Comment / Objection**

This site has 11 units as an indicative number of dwellings for the site. The developer is proposing 8 units which is contrary to Lustons NDP. As a result there would be a requirement to provide 40% affordable housing on this site which equates to 4 units.

With this in mind I am mindful to object to this application.

In order for me to support this application I would be looking for the developer to provide affordable housing by way of intermediate tenure; 2 x 2 and 2 x 3 bed houses.

With regards to the open market units having reviewed the needs data for the area it is apparent that the greatest need is for 3 beds followed by 2 beds then 4 beds and finally 1 bed.

Whilst the developer is providing a majority of 3 beds it would be good to see the inclusion of 2 bed units as well.

4.5 **Transportation Manager – No objections**

The amended drawings and the submission of an ATC that supports the calculation of the visibility splays is sufficient to demonstrate that an acceptable and correct splay can be formed at the site.

It is noted that the amended drawing shows a tarmac area for the access and shared private drive and the access area should be constructed to the requirements of Appendix A1 (Construction Thicknesses) of Herefordshire Council's Highways Specification for New Developments. If minded for approval it is suggested that a condition would be sufficient to ensure this.

The pedestrian route to the development, connecting residents to the walking routes on the B4361 is shown behind the property 'Ashlea'. Whilst this may be appropriate further agreement over the suitability of this crossing point may be required prior to installation. In any case, it is clear that an acceptable crossing point is deliverable and a further condition may be appropriate to allow more detailed design to occur prior to implementation.

There are no highways objections to the proposal, subject to the following conditions being applied:

CAB (Visibility Splays – 2.4m x 50m in both directions)

CAE (Vehicular Access Construction Details)

CAP (Relating to the provision of a suitable uncontrolled crossing point on the B4361)

4.6 **Arboricultural Officer – No Objections**

After viewing the proposed layout and the documents: Tree survey and Categorisation to BS5837:2012 Arboricultural Impact Assessment – H.E.C Proposed Landscaping – drawing 1743.1B, I can confirm that I do not have any objections to the proposal. Tree protection and soft landscaping will be undertaken via condition.

4.7 **Conservation Manager (Historic Buildings) – No objections**

The proposal is in the south-western corner of Luston Conservation Area, and also within the settlement boundary. This part of the conservation area is characterised by the farm buildings across the road, the road itself and detached dwellings of various ages in good sized plots. Boundaries are tall mature hedgerows and trees which give an enclosed feeling to the road. The older buildings which enhance the character of the conservation area are further into the village, and new housing here will not overly dilute the experience of these older buildings. The proposals are for detached houses in their own plots which is in keeping with the general density of development within the conservation area.

The site plan preserves as much hedgerow as possible whilst allowing for the access required to allow the new housing and maintains the enclosed feel of this part of the village.

The proposal will not harm the setting of the nearby listed buildings - the barns at Bury Farmhouse across the B4361 or the White House to the north. Both are sufficiently shielded from the development site by topography, distance and plantings that there will be little inter-visibility between the listed buildings and new development.

The proposed designs for the houses and garages use materials and proportions which reflect the local vernacular and are appropriate for the conservation area.

Therefore, we have no objection to this proposal.

4.8 **Conservation Manager (Ecology) – Qualified Comments / Objection**

Habitats Regulations Assessment / Appropriate Assessment Comments 4th October 2019

The previous Habitats Regulations Assessment – Appropriate Assessment was undertaken for this application 22nd February 2019 with a formal ‘no objection’ response received from Natural England 6th March 2019. This however was completed prior to recent rulings concerning HRA and before the implications of these rulings for applications in the River Lugg (part of River Wye SAC catchment) became apparent. Further review and scrutiny is therefore required PRIOR to any planning consent being granted. This review is due to the Dutch ‘nitrogen’ Judgement and the failing phosphate level conservation status of the River Lugg SAC catchment area of the wider River Wye SAC. See attached Natural England formal casework response letter dated 4th August 2019.

Notwithstanding the previous information and HRA appropriate assessment (in which the applicant has indicated that foul water will be managed through a connection to the local mains sewer network which had been confirmed as acceptable by Welsh Water) the updated advice

from Natural England and ongoing QC and other consultations by this LPA confirm that any additional phosphate loading, even to main sewage treatment works, will result in additional phosphates being discharged in to the River Lugg SAC catchment which would mean this development is contrary to the 'Dutch Nitrogen' judgement and so 'fail' this HRA appropriate assessment.

This updated HRA has to therefore conclude that there remains a pathway for phosphates to enter the River Lugg SAC and these phosphates would have an adverse effect on the integrity of the River Lugg SAC. This application should NOT be granted planning consent until such time in the future that legal and scientific certainty that these Phosphate pathways can be mitigated and that the Lugg Catchment can scientifically and legally be shown to have a capacity to accommodate additional phosphate loadings can be provided and a further HRA process and supportive appropriate assessment undertaken at that time.

There are no identified adverse effects for surface water based on the supplied information

Comments in Respect of Ecology Report

The supplied ecology report appears relevant and appropriate and full implementation of all recommendations should be secured through condition:

Nature Conservation – Ecology Protection, Mitigation and Protected Species

The ecological protection, mitigation, compensation and working methods scheme including the Biodiversity Enhancements (net gain), as recommended in the report by Betts Ecology dated October 2018 shall be implemented and hereafter maintained in full as stated unless otherwise approved in writing by the local planning authority. No external lighting should illuminate any boundary feature, adjacent habitat or area around the approved mitigation and biodiversity enhancement features.

Reason: To ensure that all species are protected and habitats enhanced having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation (Natural Habitats, &c) Regulations 2017 (as amended) and Policy LD2 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework (2018), NERC Act 2006

4.9 Land Drainage – No objections

In principle we do not object to the proposals, however we recommend that the following information provided within suitably worded planning conditions:

- Provision of a detailed drainage strategy that demonstrates that opportunities for the use of SUDS features have been maximised, where possible, including use of infiltration techniques and on-ground conveyance and storage features;
- A detailed surface water drainage strategy with supporting calculations that demonstrates there will be no surface water flooding up to the 1 in 30 year event, and no increased risk of flooding as a result of development between the 1 in 1 year event and up to the 1 in 100 year event and allowing for the potential effects of climate change;
- Evidence that the Applicant is providing sufficient on-site attenuation storage to ensure that site-generated surface water runoff is controlled and limited to agreed discharge rates for all storm events up to and including the 1 in 100 year rainfall event, with an appropriate increase in rainfall intensity to allow for the effects of future climate change;
- Evidence that the Applicant is providing sufficient storage and appropriate flow controls to manage additional runoff volume from the development, demonstrated for the 1 in 100 year event (6 hour storm) with an appropriate increase in rainfall intensity to allow for the effects of future climate change;

- Results of infiltration testing undertaken in accordance with BRE365 and confirmation of groundwater levels to demonstrate that the invert level of any soakaways or unlined attenuation features can be located a minimum of 1m above groundwater levels in accordance with Standing Advice;
- A detailed foul water drainage strategy showing how foul water from the development will be disposed of;
- Evidence that the Applicant has sought and agreed permissions to discharge foul water from the site with the relevant authorities;
- Demonstration that appropriate pollution control measures are in place prior to discharge;
- Confirmation of the proposed authority responsible for the adoption and maintenance of the proposed drainage systems.

4.10 **Waste Management – General Comment**

This area is currently accessed by an 18 tonne refuse collection vehicle (RCV). The road within the site, including the turning area, would need to be constructed to adoptable standard in order for the RCV to travel it. A swept path analysis should also be provided to show in principle, that the RCV can safely access and turn within the development.

A collection point at the entrance to the site would not be acceptable for this development due to the risk to collection operatives working to the rear of the RCV, in close proximity to the bend in the road.

5. **Representations**

5.1 **Luston Group Parish Council – Support**

Luston Group Parish Council supports the planning application but would like the physical connection to the village to be improved via a suitable footway for pedestrians, and for surface water run-off to use existing drainage infrastructure to drain away on the other side of the B4361 (to avoid additional water being directed under the culvert by the telephone kiosk).

Second Consultation - Luston Group Parish Council supports the amended and additional plans/ documents

5.2 **Two Letters of Support** have been received. They are summarised as follows;

- The scheme is full compliant with the Luston Group NDP
- The mix, density and character as currently proposed is appropriate to the village
- A higher density of development would be out of keeping with the village
- The allocation of 11 units in the Luston NDP is indicative and not a requirement
- The scheme will support local business and have economic benefits
- The scheme can be delivered quickly by the developer to help the village deliver its required housing growth.
- The scheme provides two lower cost homes
- The proposed orchard planting will enhance biodiversity

5.3 **Two General Letters** have been received. They are summarised as follows;

- The surface water flooding issues need to be resolved before the development proceeds
- External lighting should be kept to a minimum to preserve dark skies
- Visibility from the proposed access is limited. Access would be preferred from the lane to the south of the site near Bury Corner

- 5.4 The consultation responses can be viewed on the Council's website by using the following link:-
https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=190032&search=190032

Internet access is available at the Council's Customer Service Centres:-

<https://www.herefordshire.gov.uk/government-citizens-and-rights/customer-services-enquiries/contact-details?q=customer&type=suggestedpage>

6. Officer's Appraisal

Policy context and Principle of Development

- 6.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states as follows:

"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

- 6.2 In this instance the adopted development plan comprises the Herefordshire Local Plan – Core Strategy (CS) and the Luston Neighbourhood Development Plan. The latter was formally 'made' as part of the statutory development plan on 2nd January 2018. The National Planning Policy Framework (NPPF) is also a significant material consideration.
- 6.3 A range of CS policies are relevant to development of this nature, and these are outlined in full at Section 2.1. Strategic policy SS1 of the CS sets out the presumption in favour of sustainable development, which is reflective of the positive presumption that lies at the heart of the NPPF. Policy SS1 confirms that proposals which accord with the policies of the Core Strategy (and, where relevant, other Development Plan Documents and Neighbourhood Development Plans) will be approved, unless material considerations indicate otherwise.
- 6.4 The presumption in favour of sustainable development and how this should be applied to planning decisions is discussed in more detail at paragraph 11 of the NPPF. At 11 (d), the framework states that where the policies most important for determining the application are 'out-of-date' planning permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits or the application of the policies in the framework provides a clear reason for refusing the proposal. At footnote 7, it is confirmed that a failure to demonstrate a five year supply of housing and requisite buffer in accordance with paragraph 73 will render policies relevant to delivering housing out-of-date.
- 6.5 The matter of housing land supply has been the subject of particular scrutiny and it has been consistently concluded that the Council is not able to demonstrate a 5 year supply of housing land. The most recent supply statement outlines that the supply position in Herefordshire stands at 4.05 years as of April 2019. Owing to this shortfall in the five year supply, the housing relevant policies of the development must be taken to be out-of-date and the presumption as set out at Paragraph 11d is engaged.
- 6.6 It should also be noted that Paragraph 14 of the Framework directs that in situations where the presumption at 11d) applies to applications involving the supply of housing, the adverse impact of allowing development that conflicts with a neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided all of the following apply;
- a) *the neighbourhood plan became part of the development plan two years or less before the date on which the decision is made*
 - b) *the neighbourhood plan contains policies and allocations to meet its identified housing requirement*
 - c) *the local planning authority has at least a three year supply of deliverable housing sites (against its five year housing supply requirement, including the appropriate buffer as set out in paragraph 73); and*
 - d) *the local planning authority's housing delivery was at least 45% of that required over the last three years.*

Further information on the subject of this report is available from Mr Adam Lewis on 01432 383789

- 6.7 In this case, the latter three criteria are satisfied in that the Luston Neighbourhood Plan contains policies and allocations to meet its identified housing need; the Local Planning Authority has over a three year supply of housing land (4.05 years); and the housing delivery test exceeds 45% (74%). However, the first criterion is not met as NDP has now been part of the development plan for a period exceeding 2 years (having been formally 'made' on the 2nd January 2018). Paragraph 14 is therefore not engaged in this instance.
- 6.8 Notwithstanding the above, the absence of a 5 year housing land supply and the engagement of Paragraph 11 d) does not render policies related to the supply of a housing an irrelevance for the purposes of decision taking. Indeed, recent case law (Suffolk Coast DC v Hopkins Homes [2016 – EWVA Civ 168]) has reinforced that it is a matter of planning judgement for the decision-maker to attribute the degree of weight to be afforded depending on the context of the decision. In this case, given that the development plan policies relevant to the supply of housing are consistent with the aims of the Framework in terms of promoting sustainable patterns of development which meets identified housing needs (and that Luston NDP in particular contains policies and allocations in order to achieve this), it is considered that the housing policies of the CS and NDP continue to attract a considerable degree of weight. Moreover, development plan policies which are not directly relevant to the supply of housing (such as those dealing with matters of environmental protection, design or heritage) are not considered to be 'out-of-date' by virtue of Paragraph 11 and therefore still attract full weight
- 6.9 Core Strategy policy RA1 sets out the general approach to housing in the rural areas and states that 5,300 new dwellings will be provided across seven Housing Market Areas (HMAs). The application site in this instance lies within the Leominster HMA, which has an indicative growth target of 14% across the plan period. For the Luston Group Parish, this equates to providing a minimum of 55 new dwellings over the period to 2031.
- 6.10 CS policy RA2 goes on to state that within the county's rural areas housing growth will be directed to existing settlements in order to support sustainable patterns of development. The policy identifies the settlements where housing growth is considered to be appropriate at Figures 4.14 and 4.15. The village of Luston is identified in Figure 4.14 as a settlement to be the main focus for proportionate housing growth. The settlement has been identified as a sustainable location for housing which provides a good range of services and facilities, including a primary school and public house, and good access to additional services in the nearby market town of Leominster. The policy also sets the expectation that, where appropriate, settlement boundaries or reasonable alternatives for the identified settlements will be defined by either Neighbourhood Development Plans or Rural Areas Sites Allocations DPD.
- 6.11 The status of Luston as a settlement for proportionate growth is reflected in the policies of the NDP and the approach to meeting the group parishes' housing needs is set out at Section 5.3 of the plan. The supporting text outlines that the parishes housing needs will be met by retaining sites which already have planning permission as commitments; allocating land for development; and making a small allowance for windfall development based upon past trends. Policy LG6 then sets out the approach to development within Luston itself as the parish's main settlement. The policy defines a settlement boundary for the village and states that new residential development will be supported on sites within the boundary which are either allocated for development, are an infill site, or involve the conversion of an existing building. The village policies map is shown in Figure 5 below;

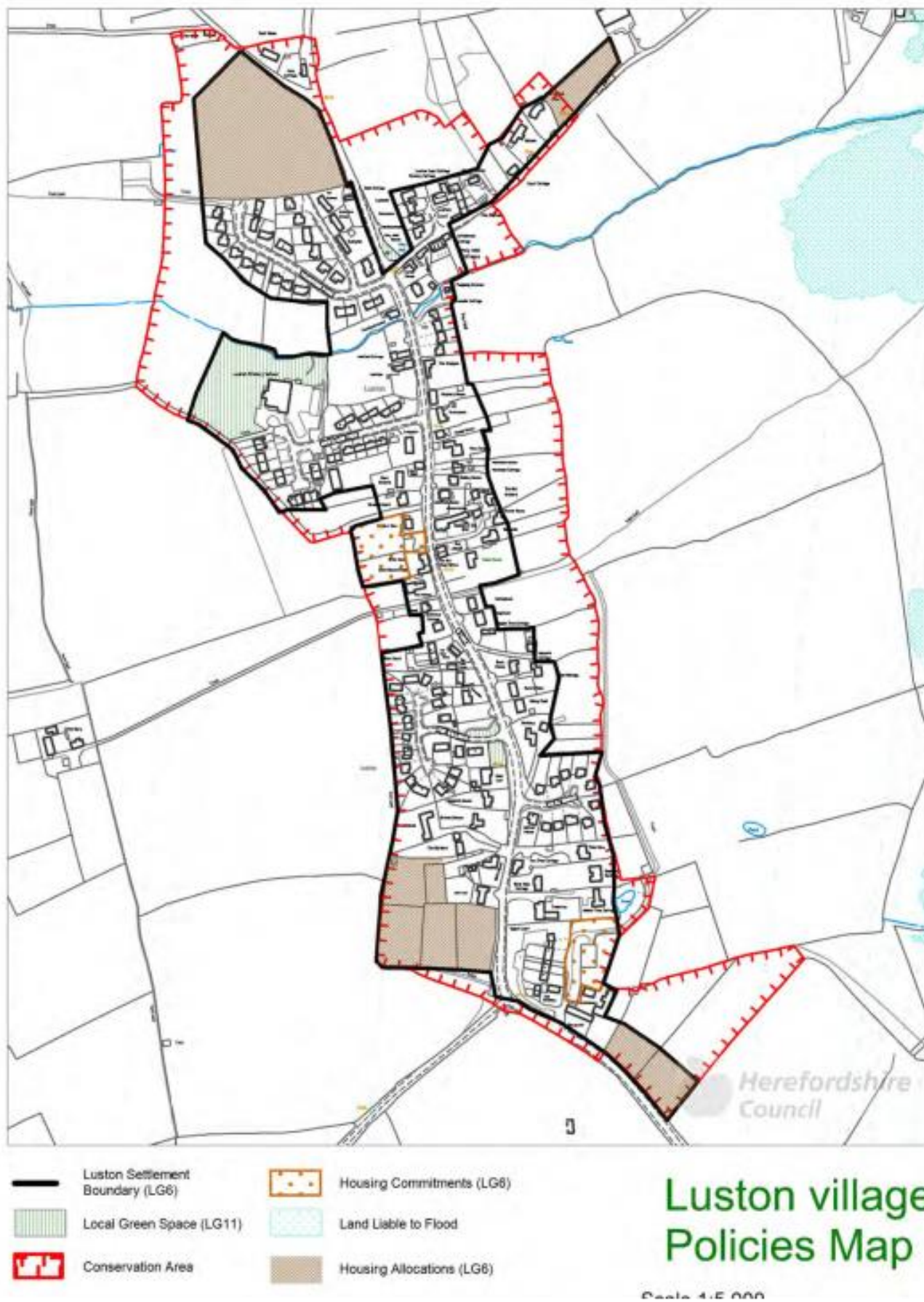


Figure 5: Luston Village Policies Map

- 6.12 The proposal site in this instance is located in the south west corner of the village and is shown in greater detail in Figure 6;

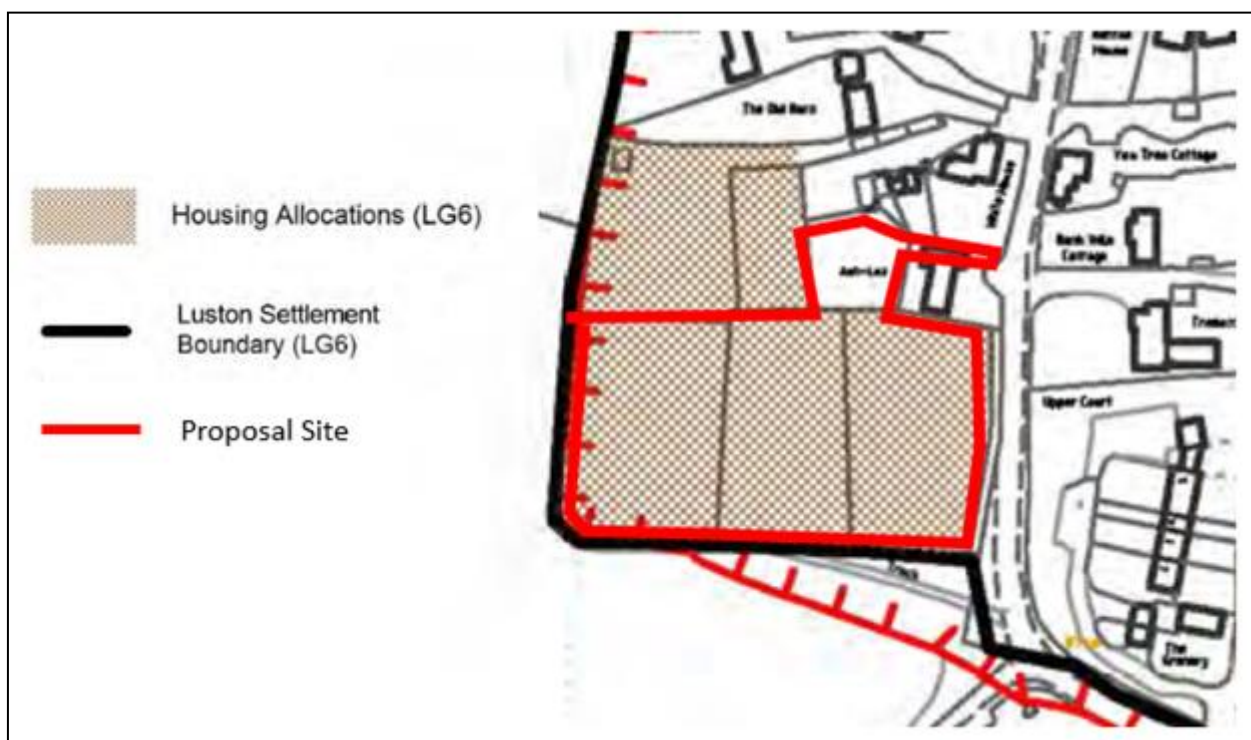


Figure 6: Proposal Site in relation to Luston Settlement Boundary and Site Allocation

- 6.13 As can be seen in the map above, the proposal site lies within the settlement boundary for Luston and it is noted that it forms part of a parcel of land which is allocated for residential development through policy LG6. In a purely locational sense therefore, the principle of new residential development on this site is acceptable.
- 6.14 In order to gain full support however, the application must be considered against the detailed policy requirements of the CS, NDP and guidance contained within the NPPF. In the view of Officers there are two primary issues in this regard, which are discussed further below.

Under-Utilisation of Allocated Housing Land

- 6.15 Chapter 5 of the NPPF makes it clear that it is a key Government objective to significantly boost the supply of homes. Paragraph 59 sets out that in order to do so, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay. Chapter 11 of the Framework adds to this, with Paragraph 117 directing that planning policies and decisions should promote effective use of land in meeting the need for new homes whilst safeguarding and improving the environment and ensuring safe and healthy living conditions. At paragraph 122, it is directed that planning policies and decisions should support development which makes effective use of land taking into account a number of factors and constraints.
- 6.16 In the context of the current shortfall in the county's five year housing land supply, the advice set out at Paragraph 123 is also particularly pertinent. This states that;

'Where there is an existing or anticipated shortage of land for meeting identified housing needs, it is especially important that planning policies and decisions avoid homes being built at low densities, and ensure that developments make optimal use of the potential of each site.'

In such circumstances, point C of Paragraph 123 directs that;

'c) local planning authorities should refuse applications which they consider fail to make efficient use of land, taking into account the policies in this Framework'

- 6.17 As highlighted previously, there is a requirement within the Luston group parish for 55 new dwellings to be provided across the plan period to meet identified housing needs. In the parish of Luston alone, this equates to a need to provide 43 new dwellings and the approach to delivering this required growth is manifested through policy LG6. The approach consists of allocating land for development, as well as retaining existing commitment sites and making a small allowance for windfall development. As well as site allocations, the policy also sets out a number of detailed criteria for new residential development in the village, which includes under point e) that schemes should *'demonstrate a contribution to the delivery of an appropriate mix of dwelling types and sizes including affordable housing to meet the needs of all sectors of the community'*. This policy requirement reflects Objective 6 of the NDP, which is to 'ensure that new housing is provided of a size, type and tenure to accommodate local need'.
- 6.18 From the CS, policy SD1 seeks to ensure that development proposals create safe, sustainable and well integrated environments for all members of the community. The first bullet of the policy also states that proposals should make efficient use of land – taking into account local context and site characteristics. The objective of SD1 to create inclusive communities is further supported by policies RA2 and H3. The former requires under point 4) that development proposals should result in the delivery of schemes that generate the size, type, tenure and range of housing that is required in particular settlements reflecting local demand. The latter requires that residential developments should provide a range and mix of housing units based upon the latest Local Housing Market Assessment in order to contribute to the creation of balanced and inclusive communities.
- 6.19 As previously established, the proposal site in this case forms part of a larger parcel of land which is allocated for residential development through policy LG6. The allocation as a whole totals just over 1 hectare in area and it is earmarked for an indicative 11 dwellings through policy LG6 of the NDP under the site reference 136/212. However, the current application omits a sizeable 0.3 hectare portion of the allocated land (shown hatched red in Figure 7 below) and is only for 8 units. This is despite the omitted area remaining within the ownership of the applicant, and it is also noted that the current proposal scheme has been laid out in a manner which retains a means of access to the excluded part of the allocated site.



Figure 7: Area of allocation 316/212 omitted from current proposal (hatched red)

- 6.20 The issues stemming from the omission of the allocated site are considered to be two-fold.
- 6.21 First, in omitting part of the allocated site the proposal fails to make use of the site's full potential and deliver the indicative number of houses the land has been allocated for by policy LG6 of the Luston NDP. This is in direct conflict with the advice contained within the NPPF in terms of ensuring that development makes optimal use of the potential of each site in order to meet the Government's aim of significantly boosting the supply of housing. Moreover, in the context of the current housing land supply shortfall at a county level the failure of the scheme to make efficient use of an allocated site to deliver housing is a significant dis-benefit that weighs heavily against the scheme. It also leads to conflict with policies SD1, RA2, H3 and LG6 in terms of making efficient use of land and providing housing to meet local needs.
- 6.22 With regards to housing numbers, it is noted that the Parish Council support the application for 8 units and that there has been much discourse throughout the application process between the applicant, the Parish Council and Local Planning Authority regarding the interpretation of policy LG6 and its allocation of the site for an 'indicative' 11 dwellings. It is argued by the applicant that the use of the word 'indicative' means that the figure of 11 is not an absolute requirement; a minimum; or indeed a maximum which is to be delivered on the site. In order to understand the significance of the chosen figure however, it is important to understand how it was established in the first instance. Referring back to the draft version of the NDP which was submitted for Independent Examination in 2016, it is noted that policy LG6 as originally drafted sought to set an upper limit of 5 dwellings to any one site. The Examiner noted at Section 4.51 of their report however that this was an overly restrictive policy which was not based on robust evidence, and hence that reference was removed from the plan. The specific land parcel to which the current application relates (136/212) was also originally put forward as an allocation for 5 units in the Examination version of the NDP; however again the Examiner noted that no evidence had been submitted to support this and justify the provision of such a low density that was equivalent to just 5 units per hectare. At Section 4.52-3 of their, the Examiner noted that the site allocation 136/212 is;
- '...sufficiently large to be developed for 10 or more dwellings and would therefore provide scope for a mix of house types and sizes and the inclusion of some affordable homes should the need be demonstrated.... A more realistic indicative number of dwellings should be included for sites 136/212 [and 136/214] and the background text should explain that the figures are indicative only and not maximum figures'.*
- 6.23 There was clearly a concern on the Examiner's part therefore that the original draft allocation on this site failed to make efficient use of land. At 1 hectare in area, the allocated site was considered to be of ample size to accommodate 10 units or more; provide a mix of housing; and provide some affordable housing to meet local needs. Presumably, it was these comments from the Examiner which led to the inclusion of the indicative number of 11 units in the final version of policy LG6 which was subsequently passed through a local referendum and adopted as part of the development plan. Officer's would agree with the findings of the Inspector that this site is readily capable of accommodating 10 units or more, and are also of the view that the current application does not offer any convincing reason which would justify departing from the NDP's indicative figure of 11 and delivering a lesser number of dwellings which does not make use of the site's full potential.
- 6.24 Moreover, even if the omitted part of the allocated site is taken out of the equation the scheme as deposited still presents a very low density of development equivalent to 10 dwellings per hectare. This in itself is still considered to represent an inefficient use of land. For the sake of comparison, an assessment of the existing developed areas of land within the settlement boundary against registered address points shows that Luston village has an existing density of approximately 14 dwellings per hectare. However, it is noted that this calculation includes large

areas of historic buildings within large curtilages and a review of more recent residential developments shows higher densities again. The nearby development at The Willows for instance has a density equivalent to 22 units per hectare, whilst developments at Brick House and Lilac Grove have densities equivalent to 18 and 16 units per hectare respectively. Based on existing patterns therefore, there is clearly scope for the site to accommodate a higher number of dwellings without causing adverse impacts upon the character of the village.

- 6.25 The second issue stemming from the subdivision of the allocated site and the delivery of fewer dwellings is that the proposal now falls below the threshold whereby affordable housing provision is required. The NPPF and policy H1 of the CS stipulate that schemes of 10 units or more will be expected to contribute to meeting affordable housing needs, and criterion e) of NDP policy LG6 requires that schemes demonstrate delivery of affordable housing where appropriate. Had the allocated site been brought forward in full for 11 units (or more) in line with indicative figures set out by LG6, there would be a policy requirement for the scheme to make provision for affordable housing to meet local needs. The Council's Housing Development Officer has confirmed there is a need for affordable homes within the village and advises that in this area of the county (Northern Rural housing value area) a target of 40% affordable would be sought from qualifying schemes. The Herefordshire Local Housing Market Assessment (2013) also provides an insight into affordable housing needs and the estimated requirements within the Leominster HMA are included below for reference;

Table 62: Estimated Size and Type of Dwellings Required 2011 to 2031 – Affordable Housing (Leominster HMA)

Type/size	Leominster Urban		Leominster Rural		Leominster HMA	
	Number	%	Number	%	Number	%
1 bedroom	133	23.1%	44	24.1%	177	23.4%
2 bedroom	188	32.6%	57	31.5%	245	32.4%
3 bedroom	225	39.0%	78	42.6%	302	39.9%
4+ bedroom	30	5.2%	3	1.8%	33	4.4%
Total	575	100.0%	183	100.0%	757	100.0%
Houses	385	66.9%	171	93.9%	556	73.4%
Flats	190	33.1%	11	6.1%	201	26.6%
Total	575	100.0%	183	100.0%	758	100.0%

Source: Housing Market Model

Figure 8: Estimated requirements for affordable housing in the Leominster HMA

- 6.26 The provision of affordable housing would represent a significant benefit of any scheme and would contribute to the achievement of the social dimension of sustainable development as set out in the NPPF. Moreover, the NDP highlights at Section 1.9 that Luston Parish has a lower proportion of shared ownership and social rented housing (9.4%) than Herefordshire as a whole (14.9%), and therefore the provision of affordable housing on this allocated site would have tangible benefits locally in terms of addressing this shortfall and helping to create a balanced and inclusive community. The provision of affordable housing, which is likely to be more attainable to younger households and families, would also have benefits in terms of supporting service such as the local primary school, which is understood to currently be under capacity across all year groups.
- 6.27 It is the view of Officers that the allocated site as a whole is more than capable of delivering in excess of 10 units and consequently affordable housing, and no reasonable explanation has been offered by the applicant as to why the full extent of the site allocation has not been brought forward as one comprehensive scheme. The only conclusion that can be reached is that the omission of part of the allocated site from the current application is a mechanism to artificially bring the number of dwellings proposed below the threshold whereby affordable housing (and other financial contributions) is required by the NPPF, policy H1 and LG6. It is noted in this sense that the omitted 0.3 hectare part of the allocated site remains in the ownership of the

applicant, and had it been included in the current scheme at the same density of 10 dwellings per hectare it could support a further 3 units; which would bring the scheme up to 11 units given as a indicative figure in policy LG6 of the NDP. It is entirely possible that the remaining area of the allocation may come forward in the future; but granting planning permission for the current scheme of 8 dwellings would sterilise the site's ability to provide any affordable housing and deprive the community of this significant benefit.

- 6.28 In considering the scheme's liability to provide affordable housing, is noted that the supporting D&A makes reference to Paragraph 64 of the NPPF. This paragraph sets the expectation that where major development involving the provision of housing is proposed, planning policies and decisions should seek a minimum of 10% of homes to be provided for affordable home ownership. The applicant however draws attention to the exceptions offered by Paragraph 64, specifically point C) which advises that exceptions to the 10% requirement should be made where the site is proposed to be developed by people who wish to build or commission their own homes. The D&A statement therefore concludes that a self build scheme would be exempt from affordable housing obligations. However, Officers are of the view that Paragraph 64 has limited relevance to the current application and that the Applicant's interpretation of this paragraph is incorrect in any case. With the proposal being for eight dwellings, the scheme falls below the threshold of major development and therefore Paragraph 64 is not applicable to the determination of the current application. Moreover, even if it were engaged the Applicant's interpretation of Paragraph 64 fails to recognise that it only refers to affordable home ownership. No references (or indeed exceptions) are made to other permutations of affordable housing, such as affordable rented, which would suggest that self-build schemes would be wholly exempt from providing any form of affordable housing. Indeed, Footnote 29 makes it clear that the requirement referenced in Paragraph 64 to provide 10% of dwellings for affordable home ownership should form part of the 'overall affordable contribution from the site'. Overall, it is not considered that Paragraph 64 provides any reason to justify why the allocated site has been subdivided and no affordable housing subsequently provided.
- 6.29 In summary of the above, it is the view of Officers that the scheme as deposited fails to make efficient use of land by omitting part of a site which has been allocated for residential development and in doing so it fails to provide the number of dwellings which could reasonably be accommodated on the land; including the provision of affordable housing for which there is a local need. By consequence the proposal is contrary to policy LG6 of the NDP, policy RA2, H3 and SD1 of the CS, and the guidance set out at Chapters 5 and 11 of the NPPF.

Housing Mix

- 6.30 Notwithstanding the issue above in relation to tenure, the NPPF, CS and NDP all also seek to ensure that development proposals provide a range of housing types and sizes to support the creation of strong, inclusive and vibrant communities. This is integral to the achievement of the social objective of sustainable development as set out at Paragraph 8 of the NPPF.
- 6.31 At Section 5.3, the Luston NDP highlights that a key issue arising from the plan's supporting evidence and questionnaire was support for a mix of house sizes to be provided in new developments to meet local housing need. This is reflected by Objective 6 of the plan which is to 'ensure that new housing is provided of a size, type and tenure to accommodate local need'. Policy LG6 e) supports this objective by requiring that schemes should 'demonstrate a contribution to the delivery of an appropriate mix of dwelling types and sizes including affordable housing to meet the needs of all sectors of the community'. Based on Census data, the plan also recognises that there is currently a disproportionately high number of larger dwellings within the parish when compared to Herefordshire as a whole (33.5% four+ bedrooms in Luston, compared to 24.8% four+ across Herefordshire as a whole).

- 6.32 The Herefordshire Local Housing Market Assessment was undertaken in 2013 and forms part of the evidence base to the CS. It provides an assessment of housing need across the county's seven Housing Market Areas (HMA) in terms of sizes, types and tenure for the plan period 2011-2031. The site in the case is within the rural part of the Leominster HMA and the table below sets out the estimated requirements for Open Market Housing in this region;

Table 61: Estimated Size and Type of Dwellings Required 2011 to 2031 – Market Housing (Leominster HMA)

Type/size	Leominster Urban		Leominster Rural		Leominster HMA	
	Number	%	Number	%	Number	%
1 bedroom	112	6.5%	32	5.8%	144	6.3%
2 bedroom	412	23.9%	142	25.8%	554	24.4%
3 bedroom	846	49.1%	324	59.1%	1,170	51.5%
4+ bedroom	354	20.5%	50	9.2%	405	17.8%
Total	1,725	100.0%	548	100.0%	2,272	100.0%
Houses	1,623	94.1%	547	99.9%	2,170	95.5%
Flats	102	5.9%	1	0.1%	103	4.5%
Total	1,725	100.0%	548	100.0%	2,273	100.0%

Source: Housing Market Model

Figure 9: Estimated market housing needs in the Leominster HMA

- 6.33 The Needs Assessment indicates that the greatest area of need for open market housing within the Leominster Rural area is for three bedroom dwellings at 59.1%. This is followed by a 25.8% need for two bedroom properties and a 9.2% need for dwellings which have four bedrooms or more.
- 6.34 The scheme in this case provides 5 three bedroom dwellings which are delivered as three larger detached units and two smaller semi detached units. They make up the equivalent of 62.5% of the scheme and this is broadly in line with the requirements highlighted above. The remaining three units, however, provide four bedrooms or more and make up the equivalent of 37.5% of the scheme as a whole. By contrast, the estimated requirement for units of this size is just 9.2%. There is not any provision in the current scheme for two bedroom units; despite this making up the second greatest area of need in the HMA at 25.8%.
- 6.35 The under provision of smaller units in the current scheme and over provision of larger ones is considered to be such that the proposal fails to deliver an appropriate mix of housing types and sizes to meet local needs. The over provision of 4+ bedroom units in particular fails to address the disproportionately high number of larger dwellings in the Parish's existing housing stock which has been identified by the NDP, whilst the absence of any smaller and more attainable units compounds the issue identified previously in terms of no affordable housing being provided. For this reason the scheme as deposited is considered to be contrary to the requirements of policy LG6 e), RA2 (4) and H3 and the guidance set out at Chapter 5 of the NPPF.

Self and Custom Build Housing

- 6.36 The amended D&A which supports the application highlights the contribution that the scheme would make towards addressing local needs for self and custom build plots. It is understood that the six detached units would be offered as custom build plots whereby future owners would commission their own homes through the developer, whilst the two semi-detached units would be completed by the developer and sold through the open market.

- 6.37 Paragraph 61 of the NPPF (supplemented by Footnote 26) explains that planning policies should contain provision which reflects and seeks to meet the different needs in the community. This includes, amongst others, those who wish to build or commission their own homes. This obligation is embodied in the Self Build and Custom Housebuilding Act 2015 which requires Local Authorities to keep a register of individuals or groups who are seeking to acquire a serviced plot in the area for those purposes. The Authority also has a duty under sections 2 and 2A of the Act to have regard to this register and to give enough suitable development permissions to meet the identified demand. The NPPG provides the following clarification on what this 'duty to grant planning permission' means;

Relevant authorities must give suitable development permission to enough suitable serviced plots of land to meet the demand for self-build and custom housebuilding in their area. The level of demand is established by reference to the number of entries added to an authority's register during a base period.

Paragraph: 023 Reference ID: 57-023-201760728

- 6.38 The NPPG then goes on to provide a definition of 'serviced plots of land'. It states;

A serviced plot of land is a plot of land that either has access to a public highway and has connections for electricity, water and waste water, or, in the opinion of a relevant authority, can be provided with access to those things within the duration of a development permission granted in relation to that land.

Access to a public highway can include sections of private or unadopted road, it does not mean that the plot has to be immediately adjacent to the public highway just that there is the guaranteed right of access to the public highway.

Connections for electricity, water and waste water means that the services must either be provided to the boundary of the plot so that connections can be made as appropriate during construction or adequate alternative arrangements must be possible such as the use of a cesspit rather than mains drainage.

For example a plot of land alongside an existing public highway that is an infill between existing dwellings would count as being serviced. There is no expectation that services must be physically connected to the plot at the time of granting planning permission

Paragraph: 026 Reference ID: 57-026-201760728

- 6.39 A review of the Local Planning Authority's register shows that there are currently 587 entrants who have formally registered their interest in building or commissioning their own homes in Herefordshire (recorded across 5 annual 'base periods'). The Authority's monitoring figures show that in the first three base periods alone, permission was granted for 679 plots which meet the definition of self build or serviced plots. With the number of permissions granted exceeding the number of entries on the register, it is clear that the Local Planning Authority has already fulfilled its duty under the Self Build and Custom Housebuilding Act 2015 to give enough suitable development permissions to meet the identified demand. In light of this, it is considered that the benefits of the current scheme in terms of providing self build plots can be given only limited weight as sufficient permissions have already been granted elsewhere to meet the recorded need.

Design, character and appearance

- 6.40 CS Policy RA2 requires that the design and layout of new development within identified settlements should reflect the size, role and function of the location. Schemes should result in high quality, sustainable developments which are appropriate to the their context and make a

positive contribution to the surrounding environment. Policy SD1 supports this insofar as it directs that proposals should be designed to maintain local distinctiveness through detailing and materials, respecting scale, height, proportions and massing of surrounding development. LD1 is also of relevance in so far as it relates to the impact of the development upon the landscape and townscape. At a local level, policy LG2 sets out a range of principles for the design of new development in the Luston Group Parish. Amongst other things, it requires that developments contribute to local identity and sense of place, respect the character and setting of Luston Conservation Area, and have an active frontage which relates well to the surrounding street scene. These all embody the tenets set out in the NPPF with regards to achieving well designed places.

- 6.41 The site in this instance is well related to the existing built up form of the village and the allocated land forms a natural extension of the settlement to the south west. The topography of the surrounding land and vegetation features at its boundaries also mean that the site is reasonably well contained within the wider landscape and hence the potential for adverse impacts in this regard is fairly limited. Whilst the dwellings would be slightly elevated within the street scene on account of the sunken nature of the road in this location, this characteristic is typical in this area of the village and Officers are satisfied that the frontage of the development would not appear as unduly prominent or overbearing. The design of the dwellings themselves is also broadly appropriate, with the use of locally distinctive features and materials being seen throughout the scheme. On the whole therefore, the design of the scheme is not considered to create any significant tension with development plan policy.
- 6.42 Policies SD1 and LG1 also both require that all developments achieve good standards of residential amenity for existing and future occupiers and avoid any potential for adverse impact through means such as overlooking, overshadowing, overbearing, noise or nuisance. This accords with the principles of the NPPF to achieve well designed places and high standards of amenity. In this case, Officers are satisfied that the proposal adheres to these principles. The proposal is compatible with neighbouring land uses; the amenity of existing residents is safeguarded; and good standards of living would be delivered for future occupants of the dwellings. No conflict with SD1 or LG1 is therefore found in these terms.

Sustainable Design and Energy Efficiency

- 6.43 SS7 of the CS also sets the strategic objective for all development proposals to include measures which help mitigate the impact upon climate change. This includes locating development in the most sustainable locations; reducing the need to travel; and designing development to reduce carbon production and promote the efficient use of resources. Policy SD1 also states that development will be supported where it utilises physical sustainability features such as orientation of buildings, water conservation measures; cycle storage and renewable energy generation. In this case, the proposal is considered to adhere to the principles of SS7 in the sense that the site is sustainably located within a settlement that offers a range of services, facilities and public transport links – including to the wider range of services found in nearby Leominster. In terms of the details of the scheme, the Design and Access Statement highlights that the dwellings will be constructed using sustainably grown oak framing and these will be pre-fabricated within a 5 mile radius of the site. The statement also confirms that the dwellings will be built to high levels of efficiency and insulation which will reduce demand upon ‘conventional’ energy sources and natural resources. Whilst no specific details have been provided with the proposal, the statement also advises that the properties are capable of incorporating solar panels and air source heat pumps if required. Any future dwelling will also be required to meet the minimum standards of energy efficiency as required by Building Regulations. On the whole therefore, it is not considered the proposal creates any significant conflict with SS7 or SD1.

Potential for Impact upon Designated Heritage Assets

- 6.44 The proposal site in this case is within the Luston Conservation Area and as such Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty upon the Local Planning Authority to have special attention to the desirability of preserving or enhancing the character or appearance of that area. Grade II listed buildings are also found nearby at the White House and the barns at Bury Farmhouse, and therefore Section 66 of the Act places a similar duty upon the Local Planning Authority to have special regard to the desirability of preserving the buildings or their setting.
- 6.45 These duties are manifested through policies LD4, LD1, LG2 and LG3 of development plan. The policies broadly require that development proposals affecting heritage assets and the wider historic environment should protect, conserve, and where possible enhance heritage assets and their settings. The NPPF contains guidance for considering proposals affecting heritage assets at Paragraphs 193-196.
- 6.46 The proposal site in this instance lies at the fringes of the conservation area where the character of the settlement transitions from built up form to undeveloped countryside. It is the view of the Council's Conservation Officer that the scheme respects this setting and he advises that no adverse impact would occur upon the Conservation Area as a result of what is proposed. In a similar vein, it is also considered that the degree of separation, topography and visual screening between the site and nearby listed buildings is such that no harm or adverse impacts are identified upon their settings. There is hence no conflict with relevant conservation policies and the duties placed upon the Local Planning Authority by Sections 66 and 72 of the 1990 Act are fulfilled.

Highways and Pedestrian Connectivity

- 6.47 Core Strategy Policy MT1 relates to the highways impacts of new development, and requires that proposals demonstrate that the strategic and local highway network can absorb the traffic impacts of the development without adversely affecting the safe and efficient flow of traffic on the network or that traffic impacts can be managed to acceptable levels to reduce and mitigate any adverse impacts from the development. It also requires under (4) that developments are designed and laid out to achieve safe entrance and exit and have appropriate operational and manoeuvring space. Similar principles are found in policy LG1 of the NDP, and both policies are reflective of Chapter 9 of the NPPF. Of particular relevance is Paragraph 109, which advises that development should only be prevented or refused on highways grounds if there would be an unacceptable impact upon highways safety, or the residual cumulative impacts on the road network would be severe.
- 6.48 The application here proposes the creation of a new access onto the B4361 to the east of the site which would require the removal of a section of roadside hedgerow and ground works to accommodate the change in levels between the site and the highway. The plans indicate that the new access would deliver visibility splays of 2.4m x 50m in each direction. An Automated Traffic Count (ATC) survey has also been undertaken and the Council's Transportation Manager confirms that the visibility splays are appropriate for the recorded traffic speeds on the adjacent highway. The internal layout of the site also ensures that adequate manoeuvring space is available for a range of vehicles, and adequate parking is provided with the curtilage of each dwelling to ensure there would be no overspill onto the public network. The Transportation Manager consequently confirms he is satisfied the proposal would have no adverse impact upon the highways network and thus no conflict with MT1 or LG1 is found.
- 6.49 In terms of pedestrian connectivity, the application proposes the creation of a new footpath link onto the B4361 to the north of the site between the existing dwellings at the White House and Ashlea. Limited details of this footpath have been supplied, however, the Transportation

Manager is satisfied that the solution is appropriate subject to full details of the crossing point on the B4361 being secured by condition. The path would facilitate pedestrian access from the development to the existing village footway network which provides access to services and facilities such as the school and public house. The scheme therefore promotes the use of sustainable transport modes, and accords with MT1 and SS4 in this sense.

Ecology and Green Infrastructure

- 6.50 Policy LD2 of the CS is most applicable in considering matters of ecology and this broadly requires that all developments should conserve, restore and enhance the biodiversity assets of the county through a range of measures. Policy LD3 also requires that proposals should protect, manage and plan for the preservation and provision of green infrastructure, whilst policy LD1 states that developments should maintain and extend tree cover where they are important to amenity. Similar requirements are also found within the development and design principles set out by policies LG1 and LG2 of the Luston NDP. All of these policies are in line with the tenets set out by Chapter 15 of the NPPF.
- 6.51 The proposal site in this case predominantly comprises grassland interspersed by a number of small fruit trees with mature hedgerows and trees at the site boundaries. An Ecological Survey of the site has been undertaken and concludes that the proposals are likely to have only minor adverse impacts on ecological or biodiversity assets. The Council's Planning Ecologist has reviewed this report in the context of the site and does not dispute its conclusion. Subject to the recommended surveys, mitigation, compensation and working methods being secured by condition, no conflict with relevant policy is identified and no objections are offered.
- 6.52 The application is also supported by a Tree Survey conducted to BS5837:2012. The report highlights that the majority of the trees on the site are to be retained with only two specimens, which are recorded as being in poor condition, proposed for removal. There would be no impact upon the area of TPO'd trees which lie slightly beyond the site boundary to the south. Existing hedgerows would also be retained with the exception of an area to the eastern roadside boundary which would be relocated in order to deliver the necessary visibility splays. The scheme however offers a range of additional planting and enhancement measures, including the provision of a new area of traditional orchard to the north of the site, and the Tree Report sets out protection measures for the trees and hedgerow features which are to be retained. The Council's Arboricultural Officer offers no objections to the scheme subject to the recommendations and measures being secured through condition if consent is granted. On that basis, no conflict with policies LD3, LD2 or LD1 is identified.

Drainage

- 6.53 It is proposed to manage foul water from the development through a connection to the mains sewer network. This is an appropriate solution in principle which would accord with the hierarchical approach required by CS policy SD4. Welsh Water confirm that there are no capacity issues and they have no objection to the connection being made, hence there is no conflict with the requirements of LG1 (h) in particular. The Habitats Regulations impacts of the proposed drainage arrangements are considered at 6.55.
- 6.54 In respect of surface water, the scheme proposes the use of soakaways within each individual plot to manage additional runoff. The Council's Land Drainage Team have reviewed the context of the site and have not identified any critical drainage issues. In principle therefore there are no objections to the proposals and the use of SuDS features accords with the principles set out in policies SD3 and LG5. It is recommended that full technical details of the scheme be secured by condition if permission is granted.

- 6.55 The site in this instance also lies within the catchment of the River Lugg which, in turn, is a sub-catchment of the River Wye Special Area of Conservation (SAC). The River Wye SAC is an internationally important conservation site which has been designated for its special features of ecological and biodiversity value. Under the Conservation of Habitats and Species Regulations 2017, Herefordshire Council has a legal duty to assess the potential impact of new developments in this area by undertaking an 'Appropriate Assessment' (AA) which must be able to determine with scientific certainty that there would be no 'likely significant effects' upon the designated site. The obligations are embodied with CS policies LD2 and SD4, as well as the guidance of the NPPF.
- 6.56 The River Lugg, which is a tributary of the River Wye and forms part of the SAC designated site, is currently failing its conservation targets on phosphate levels. This as a result of water pollution from 'point' source, particularly sewage outlets, and 'diffuse' source, particularly from agricultural run-off.
- 6.57 The proposal in this case would generate additional phosphates through foul water. Whilst foul water is to be managed through the mains system, some phosphates will remain in water discharged post-treatment and therefore there is potential pathway for the development to have an adverse impact upon the River Wye SAC. Until recently, the approach taken by Herefordshire Council and Natural England has been that there is a route for development to be able to proceed in the River Lugg catchment, even when it may add to the existing phosphate levels in the river as above, as any increases would be mitigated by the River Wye's Nutrient Management Plan (NMP). The NMP is a partnership project developed to reduce phosphate levels in the Wye catchment, including the River Lugg, to below the target level by 2027 in line with the Water Framework Directive. The NMP is managed by the Nutrient Management Board (NMB), comprising Herefordshire Council, Powys Council, Natural England, Natural Resources Wales, the Environment Agency, Dwr Cymru Welsh Water, CABA (WUF), National Farmers' Union and the County Land and Business Association.
- 6.58 However, this situation regarding development with potential phosphate impacts in the Lugg catchment is currently under review following Natural England's advice to Herefordshire Council, on 22nd July 2019, and through subsequent further advice in August 2019, that, in light of the interpretation of the recent 'Dutch Case', a ruling in July 2018 by the Court of Justice of the European Union (the CJEU) on the interpretation of the Habitats Directive, from which the Habitats Regulations arise in UK law, in the case of *Cooperatie Mobilisatie* (AKA the Dutch Case) (Joined Cases C-293/17 and C-294/17).
- 6.59 Natural England have advised that following the Dutch Case, that where a site is failing its water quality objectives, and is therefore classed as in unfavourable condition, there is limited scope for the approval of additional damaging effects and that the future benefit of measures cannot be relied upon at Appropriate Assessment, where those benefits are uncertain at the time of the assessment. Natural England have advised that for any plans or projects with a significant effect (on phosphate levels in the River Lugg) and which require Appropriate Assessment, the effects are currently uncertain, as in their opinion there remains reasonable scientific doubt as to whether the NMP can provide appropriate mitigation (based on how much certainty this currently demonstrates). Natural England have therefore advised that they will not, in the short term, provide advice on such planning applications that require Appropriate Assessments, while they seek legal advice. The Council is also seeking its own advice and published a Position Statement on the matter in October 2019 (Appendix 1).
- 6.60 It is noted that the Council's Ecologist initially undertook the required AA in February 2019 and this concluded that the scheme would have no un-mitigated likely significant effects upon the River Wye SAC. Natural England, as the relevant statutory consultee, confirmed they had no objections shortly after. As above however, the circumstances have changed considerably since

the initial AA was undertaken and therefore a further assessment was undertaken on 3rd October 2019 in light of recent developments and advice from statutory consultees. The revised assessment finds that the scheme would lead to the generation of additional phosphates through foul water and that there would be a pathway for these phosphates to enter the River Lugg through discharge from the mains sewerage treatment network. It consequently concludes that the development would have a likely adverse effect on the integrity of the River Lugg and River Wye SAC and hence permission should not be granted at the present time. This assessment has been presented to Natural England and they have confirmed that they agree with its conclusions. The proposal is not considered to have any imperative public interests which would justify overriding the identified harm in accordance with Section 64 of the Habitats Regulations.

- 6.61 It is understood that the Applicant has explored alternative means of foul water management, specifically a package treatment plant and soakaway field, in response to the identified HRA issue. However, policy SD4 states that developments should connect to the mains wastewater infrastructure in the first instance and alternative options should only be considered where a mains connection is not practical. It is not impractical for the scheme here to connect to the mains system given that there is a sewer proximal to the site and it is noted that EA General Binding Rules would restrict the installation of a treatment plant as the site is within 30m of a mains sewer in any case. The use of a package treatment plant to manage foul water in lieu of a mains connection is therefore not supported by SD4 and this would not be an appropriate response to the current HRA issue.
- 6.62 Owing to this potential for adverse effects on the integrity of the River Lugg and the River Wye SAC, the proposal fails to meet the requirements of the Conservation and Habitats and Species Regulations 2017 and would also be in conflict with policies LD2 and SD4 of the CS. It is also noted that Paragraph 177 of the NPPF is engaged insofar as it directs that;

‘The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site’

- 6.63 The issue of phosphates within the River Lugg catchment has recently been considered in an appeal relating to a proposal for a single dwelling in Risbury and the approach of the Inspector in that case is relevant to the current application (LPA Ref: 184541 / PINS Ref: APP/W1850/W/19/3234852 – Appendix 2). In dismissing the appeal, the Inspector confirmed that the identification of an adverse impact upon the River Wye SAC through an Appropriate Assessment engages Paragraph 177 of the Framework whereby the presumption in favour of sustainable development does not apply. Moreover, it was concluded that where such an adverse impact is identified the policies of the Framework provide a clear reason for refusing the development and, as such, the tilted balance in paragraph 11d) (ii) does not apply.

Planning Balance and Conclusions

- 6.64 The application here is to be considered in the context of the presumption in favour of sustainable development as set out by Paragraph 11 of the National Planning Policy Framework. In light of the identified shortfall in the Council's five year housing land supply, Paragraph 11 d) directs that planning permission should be granted unless;
- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

- 6.65 The restrictive policies which are referred to at Paragraph 11 i) are set out at Footnote 6 of the NPPF. They include those relating to habitats sites, which the glossary of the Framework confirms includes Special Areas of Conservation (SAC). The proposal in this instance has been identified through an Appropriate Assessment as having an adverse impact upon the integrity of the River Lugg / River Wye SAC through the generation of additional phosphates through foul water. This adverse impact would be contrary to the requirements of the Conservation and Habitats and Species Regulations 2017 and Policies LD2 and SD4 of the CS. Moreover, Paragraph 175 a) directs that if significant harm to biodiversity cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused. Paragraph 177 also directs that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site. Given an adverse effect has been identified on the River Wye SAC in this case, the proposal does not benefit from the positive presumption and the tilted balance in favour of development at Paragraph 11 d (ii) does not apply. Rather, the policies of the Framework provide a clear reason for refusing the proposal in accordance with Paragraph 11 d (i).
- 6.66 Notwithstanding this clear direction on account of HRA issues, it is also considered that there are a number of fundamental issues with the proposal as deposited which ultimately stem from the omission of part of the land which has been allocated for residential development through policy LG6 of the Luston Group NDP. In omitting part of the allocated site from the current application, the proposal fails to utilise the site allocation to its full potential and deliver the indicative number of houses which have assigned to it by the NDP. Permitting the proposal for a fewer number of dwellings would therefore potentially compromise the ability of the NDP to achieve its minimum housing growth requirements, and in the context of the current shortfall in the Council's housing land supply the under-delivery of housing on an allocated site would represent a significant harm which goes against the Government's objective to substantially boost housing supply. In this regard, it is noted that Paragraph 123 of the NPPF directs that where there is a shortage of land for meeting housing needs, Local Planning Authorities should ensure that developments make optimal use of each site and refuse applications which they consider fail to make efficient use of land (123 c)).
- 6.67 Moreover, Officers consider that they have not been presented with any reasonable justification for the omission of part of the allocated site from the current application and therefore the only conclusion that can be reached is that it has been used as a mechanism to artificially keep the scheme below the threshold whereby affordable housing provision and financial contributions would be due. Whatever the reason may be, the failure to deliver any affordable housing - for which there is an identified local need - is again a significant harm which weighs against the proposal and would compromise the achievement of the social dimension of sustainable development as defined in the NPPF. It also brings the proposal into conflict with the requirements of Core Strategy policies RA2 and H3 and NDP policy LG6 e), which broadly are that schemes should provide of an appropriate mix of housing, including affordable, to meet the needs of all sectors of the community. Notwithstanding the 5 year supply issue, these policies continue to attract considerable weight.
- 6.68 It is also considered that the deposited scheme for 8 market houses fails to provide an appropriate mix of dwellings sizes and types to meet local needs. The scheme is predominantly comprised of larger 3 and 4+ bed units, and there is no provision of any smaller 2 bed units which make up the second largest area of need (25.8%) within the Leominster HMA. Further conflict is identified with CS policies RA2 and H3 and NDP policy LG6 e) for these reasons.
- 6.69 Overall, it is considered that the policies of the Framework (specifically Paragraph 175) clearly direct that the application in this case should be refused in light of the adverse impact which would occur upon the integrity of the River Wye Special Area of Conservation. Paragraph 177 of the Framework also makes it clear that when such an adverse impact is identified, the presumption in favour of sustainable development does not apply.

- 6.70 Even with HRA issues were to be placed aside, it is considered that the adverse impacts associated with granting planning permission for the scheme as deposited would significantly and demonstrably outweigh the benefits. Whilst it is acknowledged that the current proposal would bring some benefits in terms of helping to address the housing supply shortfall and delivering socio-economic gains as a result of this, it is considered that these benefits can be given only limited weight as they have been stunted by the scheme's failure to make effective use of an allocated housing site. If the proposal had utilised the site to its full potential in accordance with policy LG6, the benefits which could be attributed to the scheme would be proportionately and inherently greater. The identified harms therefore, in terms of the failure to make effective use of the site and provide housing to meet identified local needs, significantly and demonstrably outweighs the limited benefits.
- 6.71 Drawing together the above, it is recommended that the application be refused for the reasons set out below.

RECOMMENDATION

That planning permission be refused for the following reasons;

1. **The application site lies within the River Lugg sub-catchment of the River Wye Special Area of Conservation (SAC) and the nature of the proposal triggers the requirement for a Habitat Regulations Assessment to be undertaken. Under the Regulations there is a requirement to establish with certainty, and beyond all reasonable scientific doubt, that there will not be any adverse effect on the integrity of the River Wye SAC. The River Lugg sub-catchment however suffers from the effects of point source and diffuse water pollution and phosphate levels in the river have already exceeded conservation objectives. The proposal in this case would add to this through the generation of additional foul water / phosphates and as such the Local Planning Authority is unable to conclude that the development would not have an adverse effect on the integrity of the River Lugg / River Wye SAC. As a result, the proposal has failed the Appropriate Assessment required by The Conservation of Species and Habitats Regulations 2017 and is hence contrary to Policies LD2 and SD4 of the Herefordshire Local Plan Core Strategy, the Natural Environment and Rural Communities (NERC) Act 2006 and the guidance set out at Paragraphs 174-177 of the National Planning Policy Framework**
2. **By omitting a large portion of land parcel 136/212 which has been allocated for an indicative 11 dwellings through Policy LG6 of the Luston Group Neighbourhood Development Plan, the Local Planning Authority considers that the scheme as deposited represents an underutilisation of land which fails to provide the number of dwellings which could reasonably be accommodated on the site in order to meet local housing needs. Moreover, by bringing forward only part of the allocated site in the current scheme the proposal has circumvented the requirement to provide affordable housing, for which there is an identified local need. In the context of the current shortfall in the county's housing land supply, the under delivery of housing is considered to be a significant harm which is contrary to the advice contained at Paragraph 123 of the National Planning Policy Framework to ensure that developments make efficient use of land and make optimal use of a site's potential. In failing to make efficient use of the site and provide a range of housing to meet local needs, the proposal is also in conflict with policy LG6 of the Luston Group Neighbourhood Development Plan and policies RA2, H3 and SD1 of the Herefordshire Local Plan Core Strategy.**

3. The scheme as deposited fails to deliver an appropriate mix of sizes and types of market housing to meet the needs of all sectors of the local community and thus the proposal would be contrary to policy LG6 of the Luston Group Neighbourhood Development Plan, policies RA2 and H3 of the Herefordshire Local Plan Core Strategy and the guidance set out at Chapter 5 of the NPPF.

INFORMATIVES

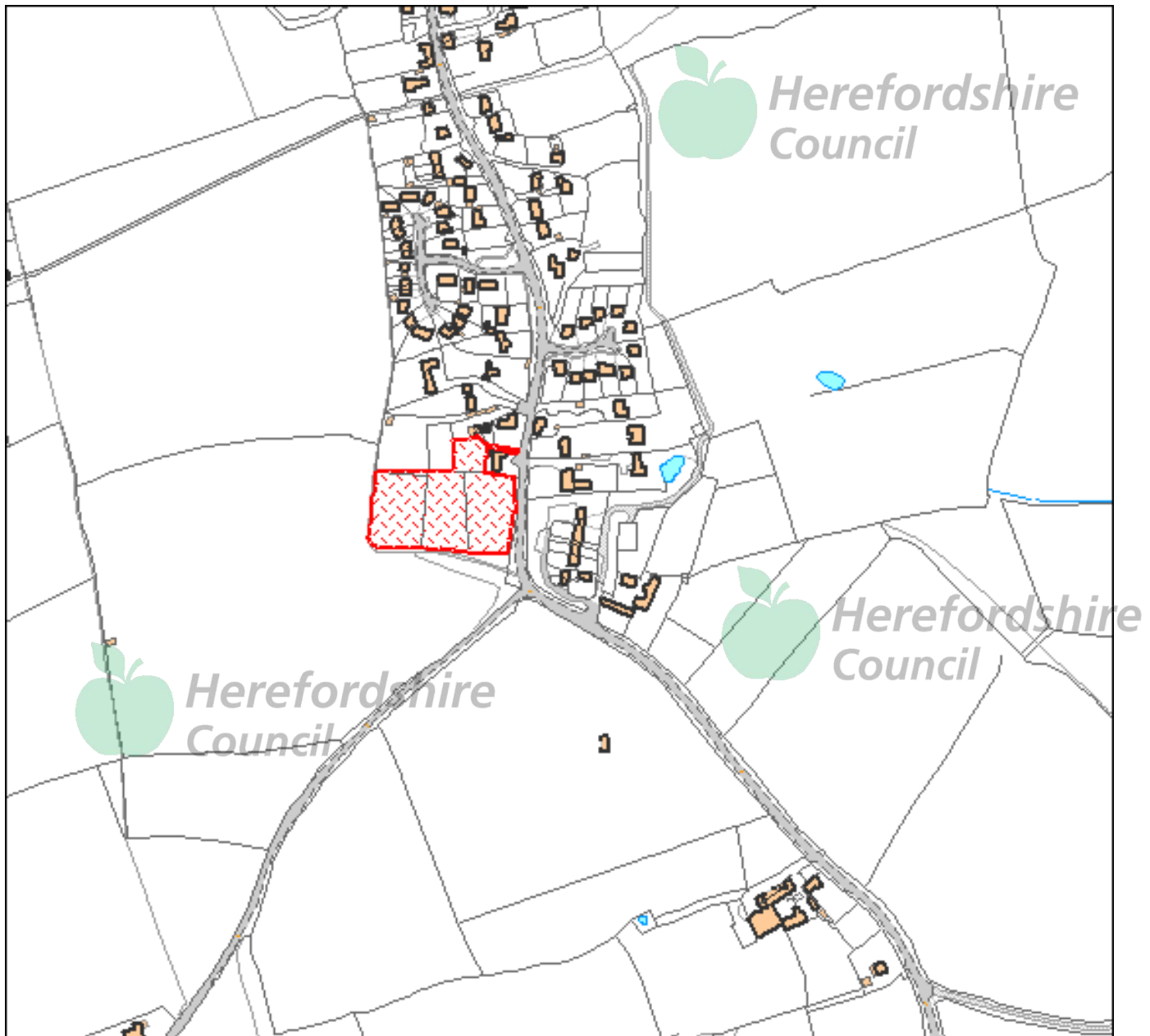
- 1 The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations by identifying matters of concern with the proposal and discussing those with the Applicant. Unfortunately, it has not been possible to negotiate a way forward for the current proposal. However, the Local Planning Authority has clearly set out, within its report, the steps necessary to remedy the harm identified within the reasons for refusal – which may lead to the submission of a more acceptable proposal in the future. The Local Planning Authority is willing to provide pre-application advice in respect of any future application for a revised development.

Appendices

1. Development in the River Lugg Catchment Area Position Statement 15th October 2019
2. Appeal Decision APP/W1850/W/19/3234852 (LPA Ref: 184541)

Background Papers

Internal departmental consultation replies



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

APPLICATION NO: 190032

SITE ADDRESS : LAND TO THE WEST OF B4361, LUSTON, HEREFORDSHIRE

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Further information on the subject of this report is available from Mr Adam Lewis on 01432 383789

Current Development in the River Lugg Catchment Area Position Statement 15th October 2019

Background

Herefordshire is an area rich in its natural features of special value; its landscape, wildlife, recreation and health benefits, as well as its local economy. The River Wye and its tributaries are recognised as being of international importance for their unique character and wildlife, requiring the highest level of protection, management, enhancement and where appropriate, restoration.

Herefordshire Council as the 'competent authority' under the Habitats Regulations, (The Conservation of Habitats and Species Regulations 2017) are legally required to assess the potential impacts of projects and plans, including planning applications, on internationally important sites which include the River Wye SAC (Special Area of Conservation).

The River Lugg, which is a tributary of the River Wye and forms part of the designated site covering predominantly the north of the Herefordshire administrative area (refer to plan), is currently failing its conservation targets of phosphate levels as a result of water pollution from both 'point' source; in particular sewage outlets and 'diffuse' source; agricultural run-off.

The council as the competent authority under the Habitats Regulations must carry out an 'Appropriate Assessment' on any relevant planning application that falls within the red and purple areas shown on the attached to plan and must be able to determine, with scientific certainty, that there would be no 'Likely Significant Effect' (LSE) on the designated site, from the project, either alone or in combination with other plans and projects, in order for the planning application to be granted.

In making this assessment, the council has a legal requirement to consult Natural England and to have regard to their advice. The approach taken by Herefordshire Council and Natural England, as the statutory consultee, has to date been that there is a route for development to be able to proceed in the River Lugg catchment, even when it may add to the existing phosphate levels in the river, as any increases would be mitigated by the River Wye's Nutrient Management Plan (NMP). The NMP is a partnership project developed to reduce phosphate levels in the Wye catchment, including the River Lugg, to below the target level by 2027 in line with the Water Framework Directive. The NMP is managed by the Nutrient Management Board (NMB), comprising of Herefordshire Council, Powys Council, Natural England, Natural Resources Wales, the Environment Agency, Dwr Cymru Welsh Water, CABA (WUF), National Farmers' Union and the County Land and Business Association.

For further information: on the Nutrient Management Plan; The Wye and Lugg Monitoring Dashboard web:

https://www.herefordshire.gov.uk/directory_record/2097/nutrient_management_plan

Recent developments

However, this approach regarding development with potential phosphate impacts in the Lugg catchment is currently under review following the judgment in the case of *Coöperatie Mobilisatie* (the Dutch Case) (Joined Cases C-293/17 and C-294/17) handed down in November 2018 by the Court of Justice of the European Union (CJEU). Natural England provided initial advice to Herefordshire Council on 22nd July 2019 and subsequent further advice: In the light of the interpretation of the Dutch judgment (on the interpretation of the Habitats Directive, from which the Habitats Regulations arise in UK law), where a site is failing its water quality objectives, and is therefore classed as an unfavourable condition, there is limited scope for the approval of additional damaging effects and that the future benefit of measures cannot be relied upon at Appropriate Assessment, where those benefits are uncertain at the time of the assessment.

Natural England have advised that for any plans or projects with a significant effect (on phosphate levels in the River Lugg) and which require Appropriate Assessment, the effects are currently uncertain, as in their opinion there remains reasonable scientific doubt as to whether the NMP can provide appropriate mitigation (based on how much certainty this currently demonstrates).

The way forward

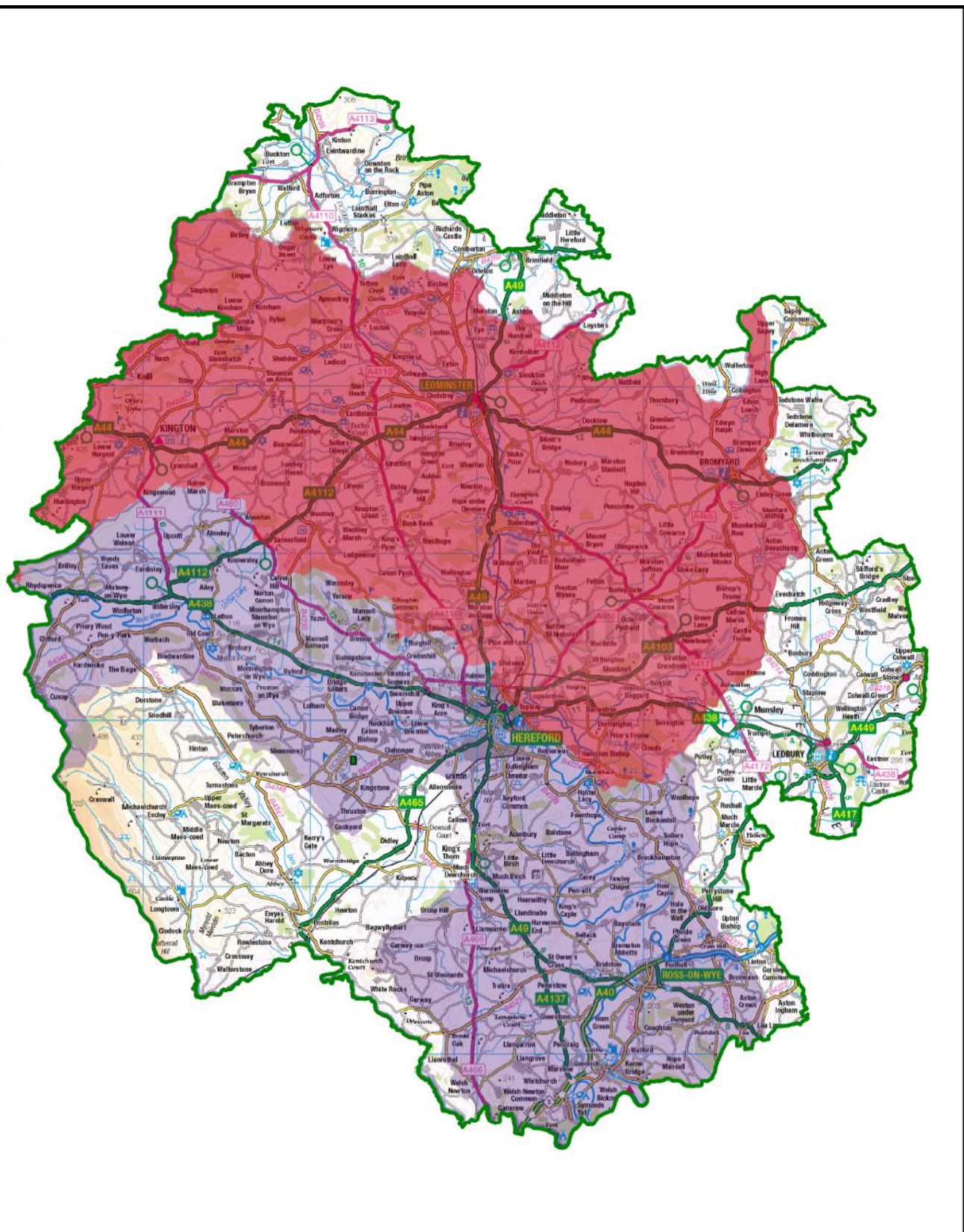
Herefordshire Council have sought their own legal advice on how to proceed and are in talks with Natural England and other partners to liaise closely to find an effective solution as soon as possible. This includes discussions with the NMB.

There remains potential for a positive Appropriate Assessment to enable development to proceed, on Natural England's advice, where it can be demonstrated that any impacts would be neutral (where avoidance / mitigation measures included in the plan or project, counterbalance any nutrient (phosphate) increase from the plan or project), **or would lead to 'betterment'**.

In relation to discharges to drainage fields in the red zone, Natural England have indicated that if the following criteria are in place then phosphorous would be unlikely to reach the river and there is therefore no pathway for impacts, the development could therefore be acceptable:

- The drainage field is more than 50m from the designated site boundary or sensitive interest feature (includes Habitats of Principal Importance and other designated ecological important features identified through Core Strategy SD4/LD2/SS6 **and**;
- The drainage field is more than 50m from any surface water feature e.g. ditch, drain, watercourse, **and**;
- The drainage field in an area with a slope no greater than 15%, **and**;
- The drainage field is in an area where the high water table groundwater depth is at least 2m below the surface at all times **and**;
- There are no other hydrological pathways which would expediate the transport of phosphorous e.g. fissured geology, flooding, shallow soil.

The Map below shows the area affected by this;



River Lugg (SAC) sub-catchment - Red **River Wye (SAC) sub-catchments - Purple**



Scale (approx) 1: 300,000 at A4

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Herefordshire Council

Plough Lane
 Hereford
 HR4 0LE

Appeal Decision

Site visit made on 29 October 2019

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 December 2019

Appeal Ref: APP/W1850/W/19/3234852

Land to the West of Risbury Cross, Risbury HR6 0NG

- 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 made by Mr and Mrs Andrew Smout against the decision of Herefordshire Council.
 - The application Ref 184541, dated 13 December 2018, was refused by notice dated 28 February 2019.
 - The development proposed is a bungalow with new access and incidental outbuilding.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. In my heading above I have used the site address given in the appeal form given that this was omitted from the original planning application form.
3. Notwithstanding the Council's reference to the application being made in outline with all matters reserved¹, it is reasonably clear from the application form and level of detail included in the submitted plans, that the application is made for full planning permission.
4. Since the Council made its determination, there has been relevant recent caselaw² regarding the potential effect on designated nature conservation sites from wastewater associated with development. The main parties have had the opportunity to comment on this in their appeal statement or final comments. I have determined the appeal on the submissions and evidence before me.

Main Issues

5. The main issues are:
 - Whether the site is suitably located for new housing development, having regard to local and national policies, and;
 - The effect of the proposal on the River Wye Special Area of Conservation.

Reasons

¹ Paragraph 2.2 Council's appeal statement

² Cooperatie Mobilisation for the Environment UA and College van gedeputeerde staten van Noord-Brabant (Cases C-293/17 and C-294/17, referred to as the 'Dutch case')

Location of development

6. As part of the overall housing strategy in the county, Policy RA2 of the Herefordshire Local Plan Core Strategy 2011-2031, October 2015 (CS) permits housing in identified settlements outside of Hereford and the main market towns in order to strengthen rural communities. Risbury is listed amongst those settlements that would be the main focus for proportionate rural housing development³. The policy further outlines how neighbourhood development plans will be the main mechanism for establishing minimum growth targets and allocating sufficient land to address development in such rural areas. Otherwise new residential development in rural locations is limited to the exceptions identified in policy RA3 of the CS. The proposal is not for affordable housing and the evidence presented does not show that the proposal would otherwise fall within any of the exceptions listed in policy RA3.
7. Policy HFSP3 of the Humber, Ford and Stoke Prior Neighbourhood Development Plan 2011-2031, May 2016 (NP) establishes the target of a minimum of 43 new homes by 2031 within the area covered by the NP and Policy HFSP5 specifically relates to Risbury. It stipulates that, subject to certain criteria being met, housing development in Risbury will be accommodated through permitting new homes to be built on suitable sites within the defined settlement boundary. The appeal site comprises part of a field that lies adjacent to, but outside of, the settlement boundary for Risbury as defined in the NP.
8. I therefore conclude that the proposal would be inconsistent with NP policy HFSP5 and it follows that it would also conflict with policy RA2 of the CS relating to the location of new housing development. These policies are broadly consistent with the provisions of the National Planning Policy Framework (the Framework) in relation to the provision of rural housing.
9. The Council have also referred to policies SS1 and SS6 of the CS in the refusal reason on the decision notice. Policy SS1 sets out the presumption in favour of sustainable development similar to that in paragraph 11 of the Framework, which I consider further below. Policy SS6 states that development should conserve and enhance environmental assets that contribute towards the county's distinctiveness. However, although the Council object to the location of the appeal site for housing in principle, it is not part of the Council's case that the development would fail to conserve or enhance environmental assets or diminish local distinctiveness⁴ and I have nothing before me to suggest otherwise. Consequently, I do not find conflict with these policies in relation to the location of the site.

Special Area of Conservation

10. The site lies within the catchment area for the River Lugg which comprises part of the River Wye Special Area of Conservation (SAC), a habitat recognised under the Conservation of Habitats and Species Regulations 2017 as being of international importance for the aquatic flora and fauna it supports. At present the levels of phosphates in the River Lugg sub-catchment of the River Wye SAC exceed the water quality objectives and is therefore, in an unfavourable condition.

³ Figure 4.14 Policy RA2 of Herefordshire Local Plan Core Strategy 2011-2031, October 2015

⁴ Page 7, paragraphs 4 and 6 Council's Delegated Decision Report

11. Caselaw⁵ requires the decision maker, when considering the effect that a proposal may have on such a European Site either individually or in combination with other development, to consider mitigation within an appropriate assessment rather than at screening stage. In the absence of mitigation measures and using a precautionary approach, run off from drainage associated with the development may affect the nutrient levels and therefore, the water quality of nearby watercourses. The balance of which could impact on the habitat supporting wildlife and further exacerbate the unfavourable water quality condition within the SAC. As such, there is a risk of a significant effect on the internationally important interest features of the SAC.
12. Whilst previously Natural England and the Council had considered that development that accorded with the Nutrient Management Plan (NMP) for the River Wye SAC, that aimed to reduce phosphate levels to below the target by 2027, might be acceptable, the position has changed in light of more recent caselaw⁶. This decision suggests that where a designated European conservation site is failing its water quality objectives there is no, or very limited scope for the approval of development that may have additional damaging effects.
13. Recent advice from Natural England⁷ to the Council confirms that reasonable scientific doubt remains as to whether the NMP would provide appropriate mitigation. However, specifically in relation to the use of private foul water treatment systems discharging to soakaway drainage fields at some distance from watercourses, criteria are set whereby there would be sufficient scientific certainty to ensure that all phosphate pathways to the River Lugg would be mitigated.
14. These criteria were reiterated following consultation under Regulation 63 (3) of the Habitats Regulations 2017 whereby Natural England have indicated that if the following thresholds are met, then there will be no likely significant effects. *'All parts of the site are more than 30m from a mains connection; The drainage field is more than 50m from the designated site boundary (or sensitive interest feature) and; The drainage field is more than 50m from any surface water feature e.g. ditch, drain, watercourse, and; The drainage field is in an area with a slope no greater than 15%, and; The drainage field is in an area where the high water table groundwater depth is at least 2m below the surface at all times and; There are no other hydrological pathways which would expedite the transport of phosphorus e.g. fissured geology, flooding, shallow soil.'* In light of their specialist expertise I have taken account of, and given considerable weight to, this advice.
15. The development proposes to deal with surface water via soakaway and in relation to foul drainage proposes a septic tank system to serve the dwelling with a soakaway across the adjacent paddock⁸. Policy SD4 of the CS indicates that where connection to wastewater infrastructure is not practical, connection to a package sewage treatment works should be utilised in

⁵ People over Wind and Peter Sweetman v Coillte Teoranta (Case C-323/17)

⁶ Cooperatie Mobilisation for the Environment UA and College van gedeputeerde staten van Noord-Brabant (Cases C-293/17 and C-294/17)

⁷ Letters dated 5 August 2019 & 30 August 2019, Appendices C & D, Council Statement of case

⁸ Drawing 274/03

preference to a septic tank. Furthermore, the limited evidence provided does not clearly establish that drainage arrangements for the proposal would be able to comply with the detailed criteria concerning the distance from watercourses, gradient of the field and hydrological pathways in order to provide mitigation.

16. As such, based on the evidence before me, I do not have certainty that there is a reasonable basis to suppose that a condition would secure compliance with the required criteria. Moreover, although the appellant suggests a condition to require an unspecified alternative foul water scheme that does not require a soakaway in the event that the criteria could not be met⁹, there would be even less certainty as to whether this would be sufficient to overcome the adverse effects. Given this uncertainty, it is not a matter that can be left to a condition as it goes to the principle of the development. Therefore, I am not assured that the proposal would not add to the unfavourable phosphate levels within the river.
17. In the light of a negative assessment, the Habitats Regulations require consideration as to whether there are any alternative solutions and if not, whether there are any imperative reasons of overriding public interest that would justify the development. I have nothing before me that would rule out alternative solutions being available but am aware that none have been put forward for my consideration. Nevertheless, the provision of one additional dwelling would not amount to an imperative reason of overriding public interest. In these circumstances the Habitats Regulations indicate that permission must not be granted.
18. Therefore, I find that the proposed development would harm a designated nature conservation site, with particular regard to the discharge of phosphates into the River Lugg. It would therefore, conflict with policy SD4 of the CS which primarily seeks to ensure that development should not undermine the achievement of water quality targets for rivers within the county, in particular through the treatment of waste water. Additionally, the proposal would be inconsistent with the provisions in the Framework in relation to conserving and enhancing the natural environment and would not accord with the Conservation of Habitats and Species Regulations 2017.

Planning Balance

19. The Council does not dispute that it cannot demonstrate a 5-year supply of deliverable housing sites¹⁰. Paragraph 11 of the Framework states that in these circumstances relevant policies for the supply of housing should not be considered up-to-date and the presumption in favour of sustainable development means that planning permission should be granted unless (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development, or (ii) that any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole (the tilted balance).

⁹ Appellants final commented dated 17.10.19

¹⁰ Paragraph 5.3 Council's Statement of Case

20. For the reasons already outlined above, I have found, having undertaken an appropriate assessment, that the proposal would adversely affect the integrity of the SAC and therefore, it is clear from paragraph 177 of the Framework that the presumption in favour of sustainable development does not apply in these circumstances. Moreover, the policies in the Framework relating to the protection of such areas provide a clear reason for refusing the proposal. As such, the tilted balance in paragraph 11d)(ii) does not apply.
21. I have had regard to the two appeal decisions to which I am referred¹¹. However, these related to different districts with different development plan policies and neither case raised issues in relation to a European designated site. As such, the balance of issues in each case was considerably different to that before me, and so they are of limited weight.
22. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise¹². There are benefits arising from the proposal including the provision of an additional dwelling to the housing supply where there is unmet demand. Furthermore, this would be close to other residential development and the appellants intend to commission the construction for themselves¹³, general support for which is given in paragraph 61 of the Framework. It would also bring economic benefit as a result of the construction, and the social and economic benefits associated with the occupants of an additional dwelling supporting local services. However, in light of the modest scale of the proposal, these benefits attract limited weight. Accordingly, the benefits arising from the proposal do not provide sufficient justification for development that conflicts with the development plan, the Framework policy and the Habitats Regulations.

Conclusion

23. For the reasons given above, I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector

¹¹ Referenced APP/F1610/W/18/3217856 & APP/P1615/W/18/3213122

¹² Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

¹³ Paragraph 5.22 Appellant's Appeal Statement

MEETING:	PLANNING AND REGULATORY COMMITTEE
DATE:	15 JANUARY 2020
TITLE OF REPORT:	<p>193156 - APPLICATION FOR APPROVAL OF RESERVED MATTERS FOLLOWING OUTLINE APPROVAL 161674/O (CONSTRUCTION OF THREE DWELLINGS AND ALTERATIONS TO THE EXISTING ACCESS) FOR APPEARANCE, LANDSCAPING, SCALE. AT LAND TO THE REAR OF THE LAURELS VETERINARY PRACTICE, PONTRILAS ROAD, EWYAS HAROLD, HEREFORDSHIRE</p> <p>For: Mr Buchanan per Mr Russell Pryce, Unit 5, Westwood Industrial Estate, Ewyas Harold, Hereford, Herefordshire HR2 0EL</p>
WEBSITE LINK:	https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=193156&search=laurels%20ewyas%20harold
Reason Application submitted to Committee – Councillor Application	

Date Received: 6 September 2019 Ward: Golden Valley Grid Ref: 339200,227668
South

Expiry Date: 1 November 2019

Local Member: Councillor Peter Jinman (Councillor Sebastian Bowen has fulfilled the role of local ward member for this application)

1. Site Description and Proposal

- 1.1 The application site is found within the village of Ewyas Harold, located about 12 miles to the south-west of Hereford City.
- 1.2 As with the majority of development in the vicinity, the site is located to the south-western side of the B4347, otherwise known as Pontrilas Road, the main road connecting the A456 and the neighbouring village of Pontrilas with Ewyas Harold and the Golden Valley. The location of the site is denoted by the red star on the map shown below.



- 1.3 The site is to the rear of the Laurels Veterinary Practice, with shared access taken from the B4357. Public Right of Way EH32 runs along the north-western boundary of the site in a north-east south-west trajectory. At present, the site comprises redundant agricultural buildings to the north-western portion of the site which give the site a rather unkempt appearance. The large proportion of the site however, is grassed and is relatively flat. The site is bound to the south-east by a post and wire fence where it adjoins the long and narrow rear garden of 'The Furlong'. Noting the irregular shape of the site, the rear boundary of 'New House' abuts the north-eastern boundary of the application site, bound by a leylandii hedgerow. The site is bound to the rear of the aforementioned redundant buildings by a tall, leylandii hedge which runs for the entirety of the north-western boundary of the site. The site backs onto open agricultural land which rises up to the west gently before forming a relatively low ridge at Cae-newydd Wood.
- 1.4 This site benefits from an outline planning permission for the erection of three dwellings with appearance, scale and landscaping reserved for future consideration. The application was made under planning reference 161674/O and was approved in September 2016.
- 1.5 The application now to be considered is one for Reserved Matters and therefore in this instance seeks to deal with the appearance, scale and landscaping in order to satisfy Condition 3. Matters relating to access and layout were dealt with at the outline stage and thus will not be revisited.

2. Policies

2.1 Herefordshire Local Plan – Core Strategy

The following policies are considered to be of relevance to this application:

SS1	-	Presumption in Favour of Sustainable Development
SS2	-	Delivering New Homes
SS3	-	Releasing Land for Residential Development
SS6	-	Environmental Quality and Local Distinctiveness
RA1	-	Rural Housing Strategy
RA2	-	Housing in Settlements Outside Hereford and the Market Towns
LD1	-	Landscape and Townscape
SD1	-	Sustainable Design and Energy Efficiency

The Herefordshire Local Plan Core Strategy policies together with any relevant supplementary planning documentation can be viewed on the Council's website by using the following link:-

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

2.2 The National Planning Policy Framework (Revised February 2019)

1. Introduction
2. Achieving sustainable development
4. Decision-making
6. Building a strong, competitive economy
8. Promoting healthy and safe communities
11. Making efficient use of land
12. Achieving well design places
15. Conserving and enhancing the natural environment

2.3 Abbeydore, Bacton, Ewyas Harold, Dulas, Llancillo, Rowlestone and Kenturch Parish Neighbourhood Development Plan (made 20 April 2018)

- | | | |
|-----|---|---|
| G1 | – | Protecting and enhancing the landscape of the Golden Valley |
| G2 | – | Design |
| G5 | – | Golden Valley green infrastructure |
| G8 | – | Dark skies |
| EH1 | – | Housing in the village of Ewyas Harold |
| EH3 | – | Housing design in Ewyas Harold and Rowlestone |

https://www.herefordshire.gov.uk/download/downloads/id/13407/neighbourhood_development_plan_february_2018.pdf

2.4 The Core Strategy policies together with any relevant supplementary planning documentation can be viewed on the Council's website by using the following link:-

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

3. **Planning History**

- 3.1 161674/O - Construction of three dwellings and alterations to the existing access – Approved Thursday 15 September 2016

4. **Consultation Summary**

Statutory Consultations

4.1 Welsh Water

We refer to your planning consultation relating to the above site, and we can provide the following comments in respect to the proposed development.

We have no objection to the application for approval of the reserved matters subject to compliance with the requirements of the drainage conditions imposed on the outline planning permission, and the subsequent applications to vary the conditions thereon.

Our response is based on the information provided by your application. Should the proposal alter during the course of the application process we kindly request that we are re-consulted and reserve the right to make new representation

Internal Council Consultations

4.2 Public Rights of Way Manager- No objection

4.3 Transportation Manager – No objection, commenting as follows; -

Please condition the following: -

CAT Construction Management Plan
CB2 Secure covered cycle parking provision

I11 Mud on highway
I09 Private apparatus within the highway (Compliance with the New Roads and Streetworks Act 1991, the Traffic Management Act 2004 and the Highways Act 1980)
I45 Works within the highway (Compliance with the Highways Act 1980 and the Traffic Management Act 2004)
I35 Highways Design Guide and Specification
I47 Drainage other than via highway system
I05 No drainage to discharge to highway

4.4 Ecologist – No objection, commenting as follows; -

There are no conditions on outline application 161674 requiring any ecology approval or discharge

5. Representations

5.1 Ewyas Harold Group Parish Council – Support the application

5.2 Ramblers Association Herefordshire – the comments received are summarised as follows; -

- Footpath passing through the site is poorly maintained and is blocked by obstructions and overgrown hedge.
- Impossible to use footpath with a pushchair.
- Developer or landowner should be required to improve and maintain the footpath here in the future.

5.3 The consultation responses can be viewed on the Council's website by using the following link:-

https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=193156&search=laurels%20ewyas

Internet access is available at the Council's Customer Service Centres:-

<https://www.herefordshire.gov.uk/government-citizens-and-rights/customer-services-enquiries/contact-details?q=customer&type=suggestedpage>

6. Officer's Appraisal

Policy context and Principle of Development

6.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states as follows:

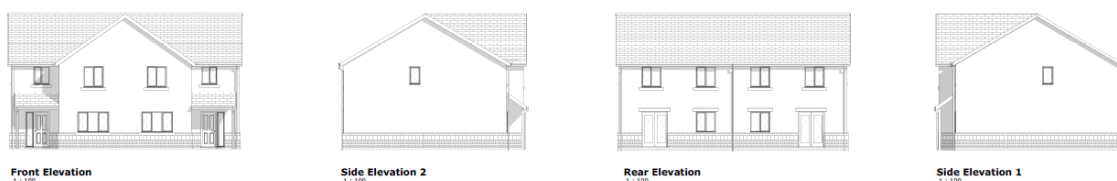
"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

Further information on the subject of this report is available from Mr Ollie Jones on 01432 260612

- 6.2 In this instance the adopted development plan is the Herefordshire Local Plan – Core Strategy. The National Planning Policy Framework (NPPF) is also a significant material consideration. It is also noted that the site falls within the Abbeydore, Bacton, Ewyas Harold, Dulas, Llancillo, Rowlestone and Kentchurch Neighbourhood Area. The Abbeydore, Bacton, Ewyas Harold, Dulas, Llancillo, Rowlestone and Kentchurch Neighbourhood Development Plan (NDP) was ‘made’ on 20 April 2018 and therefore now forms part of the development plan.
- 6.3 The principle of development of this land has been established via the outline planning permission and the reserved matters application now made is submitted in accordance with the relevant conditions. With this in mind, it is not for this reserved matters application to re-visit this. Rather, the matters which were reserved under the outline permission are to be assessed. For the avoidance of doubt these are appearance, landscaping and scale. Both access and layout were approved under the outline permission.

Appearance

- 6.4 As defined under in article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 appearance means:
- ‘the aspects of a building or place within the development which determine the visual impression the building or place makes, including the external built form of the development, its architecture, materials, decoration, lighting, colour and texture’*
- 6.5 The design of any building is to be assessed against policy SD1 of the Core Strategy. This states that proposals should be designed to maintain local distinctiveness through detailing and materials, respecting scale, height, and proportions and massing of surrounding development. The proposal should also safeguard the amenity of existing and proposed residents in terms of overlooking, overshadowing and overbearing.
- 6.6 At a the local level, Policy EH3 of the NDP seeks to set a series of guidelines for design approach to new development in the villages of Ewyas Harold and Rowlestone which includes ensuring that designs take account of existing roof lines, respect existing buildings and using local material where possible.
- 6.7 The proposed dwellings would be constructed from red-facing brickwork plinth and light cream rendered elevations under ‘Marley duo rustic red’ roof tiles. Having regard to the drawings of the proposed dwelling as shown below, it is accepted that the designs of the dwellings are neither innovative, exemplar nor pre-possessing by way of their appearance. Notwithstanding this, noting the variety of materials used on dwellings within the vicinity, the proposal is found to be in keeping. Furthermore, having regard to the fact that there is no particular architectural lead for the development to take, the design approach does reference the use of light coloured render and external facing brick which can be found in the locale, albeit without pattern along the southern side of Pontrilas Road.



Semi-detached dwelling type



Detached dwelling type

- 6.8 With the above in mind, officers are content that the proposals have paid particular regard to Policy SD1 and LD1 of the Core Strategy and Policy EH3 of the NDP.

Scale

- 6.9 As defined in article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 scale means:

'the height, width and length of each building proposed within the development in relation to its surroundings'

- 6.10 Policy EH3 of the NDP sets out that development proposals should be designed to take account of existing roof lines and respect existing buildings. Policy SD1 of the Core Strategy requires proposals to respect the scale, height, proportions and massing of surrounding development with LD1 seeking to ensure that the landscape or townscape character of the area has positively influenced, inter alia, the scale of the development.
- 6.11 The three dwellings are two-storey and are in the form of detached and semi-detached. The scale, in terms of numbers along with the layout, has been already been agreed and considered acceptable and therefore the proposal is consistent with the outline permission in this regard.
- 6.12 For the purposes of this assessment, officers are content that the scale of development with regards to massing and proportions of the dwellings themselves is acceptable, according with Policy LD1 and SD1 of the Core Strategy and Policy EH3 of the NDP.
- 6.13 Notwithstanding that the layout of the scheme was considered acceptable with regards to residential amenity at the outline stage, the scale of the proposed dwellings is not considered to be such that it would be prejudicial to the occupiers of neighbouring dwellings by way of overshadowing, overlooking or through their overbearing appearance. Therefore, no conflict is found with Policy SD1 of the Core Strategy and Policy G2 of the NDP.
- 6.14 Finally, having due regard to the Housing Market Study for the Golden Valley Housing Market Area (HMA), the proposal presents 1 No. 4 bedroom dwelling and 2 No. 3 bedroom dwellings. Noting the identified need for 3 bedroomed dwellings, the housing mix proposed is not considered unacceptable and accords with Policy H3 of the Core Strategy and Policy EH1 of the NDP.

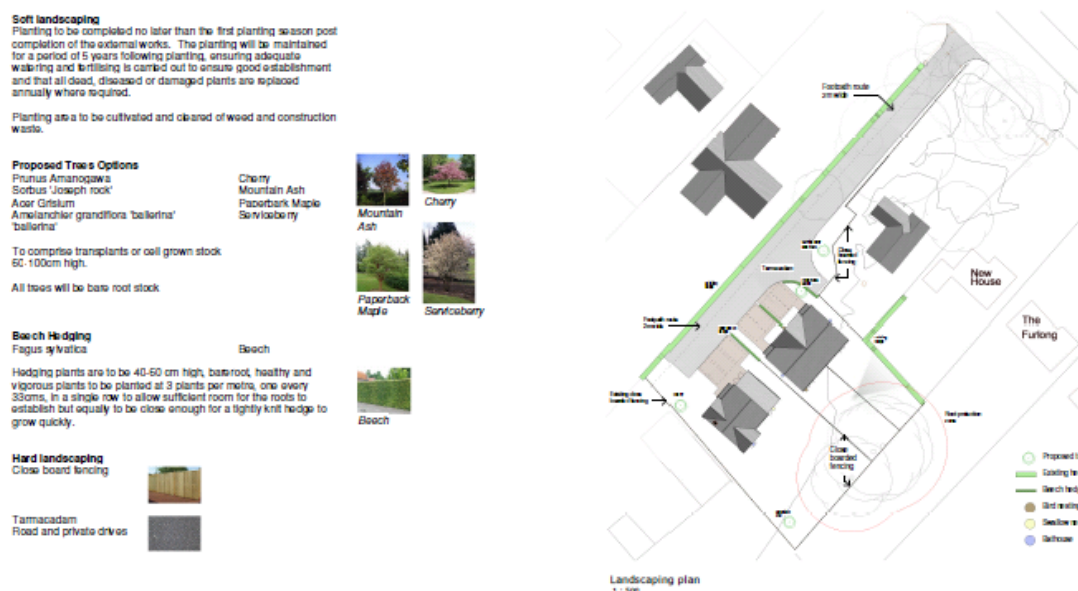
Landscaping

- 6.15 As defined under in article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 landscaping means:

'the treatment of land (other than buildings) for the purpose of enhancing or protecting the amenities of the site and the area in which it is situated and includes: (a) screening by fences, walls or other means; (b) the planting of trees, hedges, shrubs or grass; (c) the formation of

banks, terraces or other earthworks; (d) the laying out or provision of gardens, courts, squares, water features, sculpture or public art; and (e) the provision of other amenity features'

6.16 The below drawing illustrated the layout of the site with the proposed landscaping features.



6.17 Whilst noting that the site is already rather enclosed, the proposed landscaping has been illustrated on drawing number AB-01. It illustrates the retention of the existing, mature leylandii hedge along the boundary with New House and that along the entirety of the north-west boundary with Dros-y-ffin. This would also serve to protect the residential relationship between the new dwellings and New House and Dros-ffin, preventing any unacceptable levels of overlooking. The close-boarded fencing would delineate the rear garden boundaries of the proposed dwellings along the southern boundary of the access road and adjacent to the Laurels Veterinary Practice. The close-boarded fencing along the western and southern boundaries of the site would be retained. This treatment is considered sympathetic to the setting of the site. The tree planting of suitable garden species is welcomed and would assist the softening of the appearance of the dwellings within the immediate locale.

6.18 The hardstanding proposed is not considered to be excessive and is commensurate for the scale of the dwellings. It is with this mind that the proposal is considered to accord with Policy EH3 of the NDP.

6.19 As such, officers are of the view that the proposed landscaping is acceptable and, in terms of amenity, impacts are found to respect neighbouring properties through the retention of existing boundary treatments. As such, the proposal is acceptable in terms of the requirements of Policy SD1 and LD1 of the Core Strategy and Policy EH1 and EH3 of the NDP.

Other Matters

6.20 Concerns raised with regards to the Public Right of Way by the Herefordshire Ramblers Association are recorded. It is noted that the Council's Public Right of Way Officer does not raise any objection to the proposal and regard is had to the proposed site plan demonstrating the footpath route being 2 metres wide and unobstructed. Therefore, whilst it is appreciated that the route may be in a poor condition at present, the proposal would allow for clear and unobstructed use of the right of way and is thus considered an improvement to the existing.

- 6.21 Noting the comments received from the Council's Transportation Manager which suggests recommended conditions for this application, The National Planning Practice Guidance makes it clear that:

'Conditions relating to anything other than the matters to be reserved can only be imposed when outline planning permission is granted. The only conditions which can be imposed when the reserved matters are approved are conditions which directly relate to those reserved matters.'

Officers are mindful that access and layout was considered at the outline stage and therefore the recommendations made by Transportation do not directly relate to the reserved matters of scale, appearance and landscaping as being considered by this reserved matters application. It is also noted that the suggested condition relating to the provision of cycle storage was imposed on the outline permission and must be satisfied prior to the occupation of any dwellings hereby approved. The suggested informatives were also attached to the decision of the outline consent and thus need not be repeated.

Conclusion

- 6.22 The scheme provides the requisite detail in respect of the matters reserved for future consideration by the outline approval. It is of an appropriate scale in terms of the amount of development proposed and also in terms of the type and mix of dwellings. The appearance of the dwellings is found to be in keeping with the surrounding built environment and has taken reference from surrounding properties in the vicinity. The proposal ensures that residential amenity is safeguarded and the proposed landscaping features are considered appropriate and well responsive to the site and wider setting. Officers are therefore satisfied that the scheme is in accordance with the Herefordshire Local Plan – Core Strategy, the Abbeydore, Bacton, Ewyas Harold, Dulas, Llancillo, Rowlestone and Kentchurch Neighbourhood Development Plan and the National Planning Policy Framework. Accordingly, the application is recommended for approval.

RECOMMENDATION

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

- 1. The development hereby approved shall be carried out strictly in accordance with the approved plans (drawing nos. AB-01, AB-02a, AB-03a – Received: 06 September 2019) and the schedule of materials indicated thereon.**

Reason: To ensure adherence to the approved plans and to protect the general character and amenities of the area in accordance with the requirements of Policy SD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

INFORMATIVES:

- 1. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations, including any representations that have been received. It has subsequently determined to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.**

Background Papers

Internal departmental consultation replies.

Further information on the subject of this report is available from Mr Ollie Jones on 01432 260612



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APPLICATION NO: 193156

SITE ADDRESS : LAND TO THE REAR OF THE LAURELS VETERINARY PRACTICE, PONTRILAS ROAD, EWYAS HAROLD, HEREFORDSHIRE

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MEETING:	PLANNING AND REGULATORY COMMITTEE
DATE:	15 JANUARY 2020
TITLE OF REPORT:	192317 - ERECTION OF A SINGLE DWELLING AND GARAGE FOR OCCUPATION BY SITE MANAGER AT DOCKLOW POOLS, DOCKLOW, NR LEOMINSTER, HR6 0RU For: Mr Bozward per Mr Ed Thomas, 13 Langland Drive, Hereford, Herefordshire, HR4 0QG
WEBSITE LINK:	https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=192317&search=192317
Reason Application submitted to Committee – Re-direction	

Date Received: 28 June 2019
Expiry Date: 23 August 2019

Ward: Hampton

Grid Ref: 355753,257522

Local Member: Councillor John Harrington

1. Site Description and Proposal

- 1.1 The site forms part of an extensive coarse-fishing enterprise at Docklow Pools, which is located to the north of the A44 Leominster-Worcester road, approximately 3.5 miles east of Leominster. The business is based at the former West End Farm and is principally arranged as a courtyard, which includes the Grade II listed farmhouse (formerly West End Farmhouse), now called the Fisherman's Arms pub and restaurant.
- 1.2 A number of farm buildings to the west of the Fisherman's Arms have been converted to guest accommodation for visitors to tie in with the fishery enterprise, with additional chalet-style accommodation located around the pools to the north, which offers 52 self-contained units in total on site.
- 1.3 The site is set in amongst approximately 140 acres across the valley floor, including the pools themselves. The applicant is currently the 'de-facto' site manager at Docklow Pools, overseeing the day-to-day management of the site.
- 1.4 For the avoidance of doubt, the applicant already lives on site, residing in accommodation within the Fisherman's Arms.
- 1.5 The site to which this application refers is a well-vegetated and somewhat overgrown parcel of land approximately 80 metres south-west of the main group of buildings at Docklow Pools. The site lies immediately north of a 'pitch-and-putt' golf course, which is visible as visitors enter the site from the A44 and along the access road, which includes a number of passing places into the site. Within this parcel of land under consideration, there are a small number of structures, which are understood to be currently used as storage in relation to the enterprise.

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

- 1.6 The application seeks outline planning permission for the erection of a single dwelling and garage for the applicant to reside in. All matters are reserved except that of access. Matters in relation to layout, landscaping, appearance and scale would form part of any future reserved matters application.
- 1.7 Rather than extensively describe the proposal in further detail, attention is drawn to the submitted location plan below, alongside an 'indicative' proposed layout of the site, shown in Figures 1 and 2:

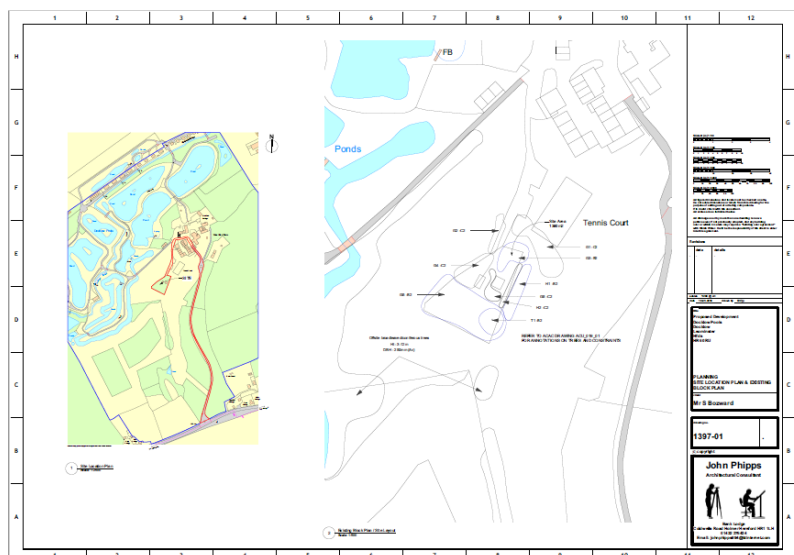


Figure 1: Site Location Plan & Existing Block Plan

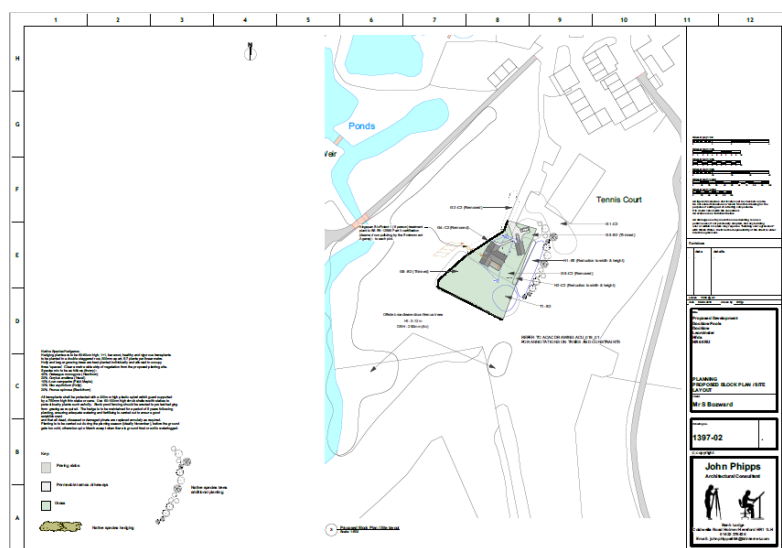


Figure 2: Proposed Block Plan/Site Layout shown 'indirectly'

- 1.8 The current storage sheds on the parcel of land, used in connection with the enterprise, would be demolished, in order to make way for the proposed dwelling.
- 1.9 Foul sewerage will be dealt with by way of the addition of a new package treatment plant to serve the dwelling and surface water will be dealt with by means of soakaway.
- 1.10 The following supporting documentation has been deposited with the application, during consideration of this application by officers:

- Planning, Design and Access Statement;
- Phase 1 Habitat Survey Report;
- Tree Survey & Constraints Plan;
- Tree Retention & Removal Plan;
- Tree Protection Plan; and
- Ecological Method Statement and Additional Ecological Observations Report

1.11 A number of photos of site are also shown below to visually illustrate the site in the context of its surroundings:



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

2. Policies

2.1 Herefordshire Local Plan – Core Strategy

The following policies from the Herefordshire Local Plan – Core Strategy are applicable to this application:

SS1 - Presumption in Favour of Sustainable Development
SS2 - Delivering New Homes
SS3 - Releasing Land for Residential Development
SS4 - Movement and Transportation
SS6 - Environmental Quality and Local Distinctiveness
RA1 - Rural Housing Strategy
RA2 - Housing in Settlements Outside Hereford and the Market Towns
RA3 - Herefordshire's Countryside
RA4 - Agricultural, forestry and rural enterprise dwellings
RA6 - Rural Economy
MT1 - Traffic Management, Highway Safety and Promoting Active Travel
LD1 - Landscape and Townscape
LD2 - Biodiversity and Geodiversity
LD3 - Green Infrastructure
LD4 - Historic Environment and Heritage Assets
SD1 - Sustainable Design and Energy Efficiency
SD3 - Sustainable Water Management and Water Resources
SD4 - Wastewater Treatment and River Water Quality

The Herefordshire Local Plan Core Strategy policies together with any relevant supplementary planning documentation can be viewed on the Council's website by using the following link:-

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

2.2 National Planning Policy Framework (June 2019)

1. Introduction
2. Achieving sustainable development
4. Decision-making
5. Delivering a sufficient supply of homes
6. Building a strong, competitive economy
9. Promoting sustainable transport
11. Making effective use of land
12. Achieving well designed places
14. Meeting the challenge of climate change, flooding and coastal change
15. Conserving and enhancing the natural environment
16. Conserving and enhancing the historic environment

The NPPF can be viewed in full detail through the following link:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810197/NPPF_Feb_2019_revised.pdf

2.3 Neighbourhood Development Plan

The site is within Docklow parish, which forms part of the Hatfield and District Group Neighbourhood Development Plan. A Neighbourhood Development Plan is currently in drafting. In accordance with paragraph 48 of the National Planning Policy Framework (June 2019), the Neighbourhood Development Plan can only be afforded limited weight.

3. Planning History

- 3.1 The proposal site itself has not been the subject of any previous planning applications.

4. Consultation Summary

Statutory Consultations

4.1 Welsh Water – No objections

“We note from the application that the proposed development does not intend to connect to the public sewer network. As the sewerage undertaker we have no further comments to make. However, we recommend that a drainage strategy for the site be appropriately conditioned. Implemented in full and retained for the lifetime of the development”.

4.2 Natural England – No objection (dated 24 July 2019)

“Based on the plans submitted. Natural England considers that the proposed development will not have significant adverse impacts on designated sites and has no objection.

Notwithstanding the above, your authority should be aware of a recent Ruling made by the Court of Justice of the European Union (the CJEU) on the interpretation of the Habitats Directive in the case of Codperatie Mobilisation (AKA the Dutch Case) (Joined Cases C-293/17 and C-294/17).

The Cooperatie Mobilisation case relates to strategic approaches to dealing with nitrogen. It considers the approach to take when new plans/projects may adversely affect the ecological situation where a European site is already in ‘unfavourable’ conservation status, and it considers the acceptability of mitigating measures whose benefits are not certain at the time of that assessment.

Competent authorities undertaking HRA should be mindful of this case and should seek their own legal advice on the implications of these recent ruling for their decisions”.

Internal Council Consultations

4.3 Ecology – Holding Objection (most recent comments received on 19 November 2019):

“The site falls within the River Lugg SAC catchment, based on current case law in relation to the Conservation of Habitats and Species Regulations (2017 as amended) the Habitat Regulations Assessment process already undertaken for this application will need to be reviewed PRIOR to any grant of planning consent.

The applicant must supply all additional information, including relevant professional reports and testing methodologies and outcomes such as to supply the LPA with legal and scientific certainty that the 5 criteria at the end of the position statement regarding soakaway drainage fields for foul water treatment systems can be demonstrated and legally secured through implementation condition. Once this additional information has been received the LPA can undertake the required reassessment under Habitat Regulations.

Notwithstanding the above

The updated ecology report is noted although it is very surprising that Ash is mentioned as a potential tree to plant in the mitigation scheme given that this species hasn't been available for

sale for several years due to the endemic presence of Ash Dieback Disease in UK and associated DEFRA restrictions on plant sales.

As this is an outline application with an unknown implementation date and proximity to good ecological habitats it is reasonable for this LPA to require an updated ecological report and fully detailed ecological working method statement as a pre-commencement condition.

Ecological Working Method Statement

Prior to commencement of any site clearance, preparation or development, an updated ecological assessment including any species specific surveys required shall be undertaken and the report including fully detailed and specified Ecological Working Method Statement (EWMS) including details of appointed Ecological Clerk of Works, shall be provided to the local planning authority. The approved EWMS shall be implemented in full unless otherwise agreed in writing by the local planning authority.

Reason:

To ensure that all species and habitats are protected and conserved having regard to the Wildlife and Countryside Act 1981, Conservation of Habitats and Species Regulations (2017), National Planning Policy Framework , NERC Act (2006), Herefordshire Local Plan - Core Strategy policies SS6, LD1, LD2 and LD3

To secure the mitigation tree planting a relevant condition is requested.

Specification for Tree Planting

Prior to any construction work commencing on site a full specification and management scheme for all proposed tree planting shall be submitted to and approved in writing by the local planning authority.

The specification shall include the quantity, size, species and position or density of all trees to be planted; as well as cultivation details - how they will be planted and protected and the proposed time of planting; a five year establishment plan accompanied by a subsequent 5 year maintenance specification must be included.

All tree planting shall be carried out in the first planting season following the occupation of the building, in accordance with the approved plant specification as well as BS 8545: - Trees from nursery to independence within the landscape.

Any trees or plants which die, are removed or become severely damaged or diseased within 5 years of planting will be replaced in accordance with the approved plans.

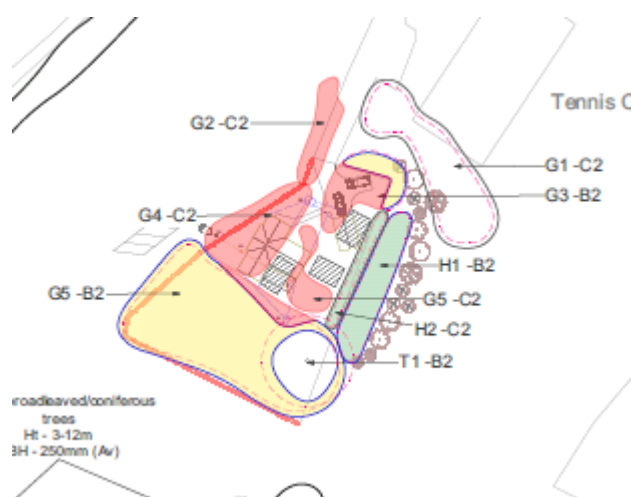
Reason: To safeguard the character and amenity of the area and to ensure that that the development conforms with Policies SS6, LD1, LD2 and LD3 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

4.4 Trees Officer – No objections and conditions Recommended:

"Following a visit to the site on 22-7-19 and viewing the plans I can confirm that I do not have objections to the proposal to erect a single dwelling and garage for occupation by site manager.

Currently the site is used to storage of materials for site management contained within a number of outbuildings which will be removed for development. The buildings are obscured from view by a number of young/early mature trees which I would guess were planted to obscure the view of the buildings.

The tree retention and removal plan illustrates that a large number of trees will be removed to make way for development (red areas) and the yellow parts will be thinned retaining the better specimens.



Due to the poor quality of the trees in the main I don't have any concerns for the losses but it is important that a landscaping plan is submitted to mitigate for the felling's. The western side of the plot which looks towards the access road will be require new planting to soften the building in the setting and I would also suggest that new planting will be required where thinning is to take place.

In summary, I do not have a any objections to the proposals and the information provided in the tree reports supplied by Andrew Cunningham Arboricultural Consultancy demonstrate that tree felling is acceptable on account of their negligible quality. A soft landscaping plan will be required via condition to for the betterment around the site and to ensure the development is compliant with policies LD1 & LD3 of the Herefordshire Core Strategy.

Conditions:

CK3 (c)

CK9 Andrew Cunningham Arboricultural Consultancy (tree constraints report/Tree removal and retention plan/tree protection plan)"

4.5 **Transportation Manager**– No objections:

"The proposals are for the existing 'Docklow Pools' access to be utilised onto the A44, this is adequate for the addition of the dwelling. The internal infrastructure of the site is also sufficient to cater for the minor demand of the single dwelling. There are no highways objections to the proposals".

5. **Representations**

5.1 **Hatfield and District Group Parish Council** – No objections:

"No objections - The PC recommend this for approval NB The Site address is incorrect Docklow Pools is NOT situated at Lower Docklow Church there are approximately 7 houses and 2 fields between Docklow Pools and Docklow Church"

5.2 **Humber, Ford and Stoke Prior Parish Council** (parish council consulted as adjacent to the submitted 'red line' of application) – No comments to make:

“Humber, Ford & Stoke Prior Group Parish Council considered this application at its meeting on 31 July 2019. The Council appreciated being consulted, but considered that as the site is some distance from the parish boundary and will not directly affect residents of this parish, it would defer to such comments as are made by Docklow Parish Council”.

5.3 25 letters of in support raising the following points:

- Applicant is integral to running of site
- Applicant needs suitable accommodation
- Lack of amenity space at the moment for the applicant
- Lack of impact by nature of proposal
- Improved health and well-being of the applicant
- Improved job security and continued establishment of enterprise

Consultation responses can be viewed on the Council's website by using the following link:-
https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=192317&search=192317

Internet access is available at the Council's Customer Service Centres:-
<https://www.herefordshire.gov.uk/government-citizens-and-rights/customer-services-enquiries/contact-details?q=customer&type=suggestedpage>

6. Officer's Appraisal

Policy context and Principle of Development

- 6.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states as follows: *“If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”*
- 6.2 In this instance, the adopted development plan is the Herefordshire Local Plan – Core Strategy (CS). The National Planning Policy Framework (NPPF) is also a significant material consideration. It is also noted that the site falls within the Hatfield and District Neighbourhood Area, which is currently drafting a Neighbourhood Development Plan (NDP).
- 6.3 A range of CS policies are relevant to the development proposal, and these are outlined at Section 2.1. Strategic policy SS1 of the CS sets out a presumption in favour of sustainable development. Policy SS1 confirms that proposals which accord with the policies of the Core Strategy (and, where relevant, other Development Plan Documents and Neighbourhood Development Plans) will be approved, unless material considerations indicate otherwise.
- 6.4 The presumption in favour of sustainable development and how this should be applied to planning decisions is discussed at paragraph 11 of the NPPF. At paragraph 11(d), the framework states that where the policies most important for determining the application are 'out-of-date' planning permission should be granted, unless the adverse impacts of doing so significantly and demonstrably outweigh the benefits or application of policies in the framework provides a clear reason for refusing a proposal. At footnote 7, it is confirmed that a failure to demonstrate a five year supply of housing and requisite buffer in accordance with paragraph 73 will render policies relevant to delivering housing out-of-date.
- 6.5 The matter of housing land supply has been the subject of particular scrutiny in a number of recent appeal inquiries and it has been consistently concluded that the Council is not able to demonstrate a 5 year supply of housing land. The most recent supply statement as of 1 April 2019 outlines that the supply position in Herefordshire stands at 4.05 years. The shortfall in the five year supply means that the presumption in favour of sustainable development as set out at Paragraph 11 of the Framework is engaged.

- 6.6 Notwithstanding this, the absence of a 5 year housing land supply does not render policies related to the supply of a housing an irrelevance for the purposes of decision taking. Indeed, recent case law (Suffolk Coast DC v Hopkins Homes [2016 – EWVA Civ 168]) has reinforced that it is a matter of planning judgement for the decision-maker to attribute the degree of weight to be afforded depending on the context of the decision.
- 6.7 This is particularly relevant in the context of housing supply in the rural context, where policies RA2 and RA3 accord with the approach endorsed at Paragraph 79 of the NPPF whereby isolated homes in the countryside should be avoided unless there are special circumstances or exceptions. The CS policies relevant to housing supply are in general conformity with the NPPF, it is considered that the relevant policies of the CS continue to attract significant weight.
- 6.8 It is clear that the application site is clearly divorced from an identified settlement under Policy RA2 of the CS, where new sustainable housing growth can be capable of being supported. The village of Docklow lies approximately 0.7 miles to the east of the site across open countryside, whilst the other nearest identified settlements of Steensbridge (1.5 miles west of site) and Pudleston (2.5 miles north of site) are considerable distances away. It therefore follows that the site is not located in a settlement identified as a focus for proportionate housing growth under Core Strategy policy RA2.
- 6.9 Core Strategy policy RA3 relates to proposals for new residential development in rural locations outside of settlements, and states that proposals in such locations will be limited to those which satisfy one or more exceptional criteria. This accords with the approach set out under paragraph 79 of the NPPF, which states that new isolated dwellings in the countryside should be avoided unless special criteria are met. Under criterion 2 of policy RA3 of the CS, it states that one of the special exceptions is where,

“a proposal accompanies and is necessary to the establishment or growth of a rural enterprise and complies with Policy RA4”.

This also reflects point a) of paragraph 79 under the NPPF.

- 6.10 Policy RA4 states that proposals for dwellings associated with agriculture, forestry and rural enterprises can be permitted where it can be demonstrated there is a sustained essential functional need; it forms an essential part of a financially sustainable business and that such need cannot be met in existing accommodation. Policy RA4 states that proposals for such dwellings should:

- **demonstrate that the accommodation could not be provided in an existing building(s);**
- **be sited so as to meet the identified functional need within the unit or in relation to other dwellings; and**
- **be of a high quality, sustainable design which is appropriate to the context and makes a positive contribution to the surrounding environment and rural landscape.**

The fishery enterprise at Docklow Pools is accepted as being financially sound. The holiday units and chalets have been on site for a considerable period of time, and the enterprise is well established. It is not disputed that the fishery enterprise is considered to be financially sustainable and is likely to continue to be so for the foreseeable future.

- 6.11 Core Strategy policy RA4 also states that proposals for a new enterprise worker's dwelling will be supported where it can be demonstrated that there would be a “sustained functional need” for it, and the supporting text at 4.8.27 outlines that such needs typically relate to providing essential supervision and management. That is the case with the current application, with the planning, design and access statement outlining that in the context of the fisheries enterprise and holiday units, the essential need for a worker to live on site is considered to arise from the

need to respond quickly to any alarms or systems failures. It is accepted that it is essential that such issues are dealt with expediently; both for the welfare of the public and to prevent harm occurring to the business enterprise.

- 6.12 In this case, the fishery enterprise at Docklow Pools has been in operation for a considerable period of time. The last holiday units were granted permission and constructed nearly ten years ago. Over this time, the site has been managed by the applicant, who resides in accommodation on site within the Fisherman's Arms, approximately 100 metres away from the proposed siting of the dwelling under consideration.
- 6.13 The planning and design and access statement confirms the applicant is already resident on site. The close proximity of the existing accommodation, clearly allows for a prompt response to any alarms or issues in conjunction with the enterprise, and this is presumably why no need for an additional dwelling has arisen in the preceding decades that Docklow Pools have been in operation. Put simply, the need for accommodation for the applicant to manage the site is already met.
- 6.14 Whilst the planning, design and access statement outlines a desire to dedicate more time to other areas of the business, no legitimate reason is given why the applicant cannot continue to respond to emergencies or breakdowns from their current accommodation.
- 6.15 Policy RA4 of the Core Strategy, makes it clear that proposals for new dwellings will only be supported where it can be demonstrated "that the accommodation could not be provided in an existing building(s)". Under point 1, it sets out a preference whereby the use of existing buildings should be considered first in order to meet accommodation needs. As well as existing residential properties, it is explained at 4.8.33 of the CS, that preference should be given to the conversion of suitable existing buildings before new development is considered. Whilst there are no existing buildings in the vicinity of the site which could be converted for the proposal, Docklow Pools has the Fisherman's Arms and associated residential accommodation, within its ownership, found approximately 100m to the east of the proposed dwelling. This residential accommodation is currently being occupied by the applicant. Given this level of active involvement, it is considered that significant weight can be given to the availability of this dwelling to house the applicant if there were a genuine essential need.
- 6.16 The applicant already lives on site in accommodation that is unrestricted in terms of its occupancy. In policy terms, the proposal is in conflict with CS policy RA4(1) in this regard, given accommodation can be provided in existing buildings and the proposal would not satisfy the exceptional circumstances which would allow for a new dwelling in the open countryside to be supported.
- 6.17 Indeed, a search of property websites Rightmove and Zoopla show 2 properties for sale within a 3 mile radius of the site under £250,000 (at the time of report publication). Whilst this may be slightly less convenient than living on site, it is not considered that this would be an unreasonable day-to-day commute for a worker given that the existing accommodation at the Fisherman's Arms can still be occupied by the applicant so that any emergencies with the enterprise can be responded to immediately. If such arrangements were not acceptable to the applicant, a site manager could be employed by the enterprise, who could reside in the applicant's accommodation at the Fisherman's Arms, to which the applicant could then subsequently commute to site, given there would still be a continued presence of a site manager.
- 6.18 Members will note that a large number of third party representations make the point that the applicant needs additional curtilage and amenity space. The fact that there is an element of disturbance from musical events and 'untimely' door knockers from users of the Fisherman's Arms, is not in itself sufficient grounds for setting aside the provisions of policies within the CS and the NPPF. Indeed, this would continue to a degree, irrespective of whether the applicant

resides in the existing accommodation or a new dwelling just 100 metres away. It is the needs of the enterprise and not those of the applicant that need to be substantively demonstrated.

- 6.19 Whilst it is not disputed that the applicant is integral to the continued day-to-day operations of Docklow Pools, your officers view is that planning policies should not be 'set aside' on the basis of an application proposing a dwelling to have additional private amenity space. The Core Strategy and NPPF clearly set out where an application can be supported. In this application, such need is already being met by virtue of the applicant residing on site and that existing accommodation on site is meeting such essential need, which has no occupancy restrictions on it.
- 6.20 In light of the preceding, the proposal is therefore viewed to be in conflict with policies RA4 and RA3 of the CS and the application, as submitted, does not represent an exceptional circumstance whereby new residential development in the open countryside can be supported. Notwithstanding this, other matters relevant to the application are considered below.

Design, Amenity and Landscape Impacts

- 6.21 It is acknowledged that matters in relation to appearance, scale, layout and landscaping would form a part of any future reserved matters application. In respect of locality impacts CS policy LD1 is of pertinence, and requires that the character of the landscape and townscape has positively influenced, inter alia, the design, scale and site selection and that the scheme incorporates new landscape schemes to ensure development integrates appropriately into its surroundings.
- 6.22 Whilst unable to comment on the design of a dwelling, your officers consider that it is unlikely the proposal would cause any tension with the above policies in respect of landscape and locality impact. In general terms, the proposed siting of the dwelling is considered to be appropriate in the context of existing surrounding development, being that whilst slightly separated from the main built form at Docklow Pools, the same can be said for the holiday lodges to the north of the pools.

Highways Matters

- 6.23 Core Strategy Policy MT1 relates to the highways impacts of new development, and requires that proposals demonstrate that the strategic and local highway network can absorb the traffic impacts of the development without adversely affecting the safe and efficient flow of traffic on the network or that traffic impacts can be managed to acceptable levels to reduce and mitigate any adverse impacts from the development. It also requires under criteria (4) that developments are designed and laid out to achieve safe entrance and exit and have appropriate operational and manoeuvring space, having regard to the standards of the Council's Highways Development Design Guide. This approach accords with the principles outlined in section 9 of the NPPF, in particular Paragraphs 108-9 inclusive, which advise that it should ensure that safe and suitable access can be achieved for all users and that development should only be refused on highways grounds if there would be an unacceptable impact on highways safety.
- 6.24 The proposed dwelling would be served by the existing access onto the private track which heads back south towards the A44, and which also serves all traffic using Docklow Pools. It is considered that the provision of a single new dwelling would lead to a minimal intensification in the use of this access over the current, and the layout of the access and nature of the highway is not such that any concerns arise in respect of highways safety. Appropriate parking to serve the new dwelling could also be provided within the site, subject to an appropriate layout, and adequate manoeuvring space would be available to ensure that vehicles can turn and enter/leave the site in a forward gear. The Council's Transportation Manager does not object to the proposal, and no conflict with policy MT1 is identified.

Ecology/Biodiversity and Green Infrastructure

- 6.25 The applicant has submitted an ecology report although the Council's ecologist is somewhat surprised that Ash is being mentioned as a potential tree to plant in the mitigation scheme given that this species hasn't been available for sale for several years, primarily due to the endemic presence of Ash Dieback Disease in UK and associated DEFRA restrictions on plant sales.
- 6.26 However, whilst this is an outline application with an unknown implementation date and proximity to good ecological habitats, it is reasonable for this LPA to require an updated ecological report and fully detailed ecological working method statement, which can be dealt with by way of a pre-commencement condition.
- 6.27 As identified in the NPPF, NERC Act and Core Strategy Policy LD2, all developments should demonstrate how they are going to practically enhance ("Net Gain") the Biodiversity potential of the area. To secure these enhancements, a relevant Condition can be suggested.
- 6.28 The Council's tree officer has also visited the site and from viewing the plans, does not have objections to the proposals. The submitted tree retention and removal plan illustrates that a large number of trees will be removed to make way for the development (red areas) and the yellow parts (shown in section 4.4 of this report) will be thinned retaining the better specimens. The tree officer's view is that due to the poor quality of the trees in the main, there are not any concerns for the losses, but it is important that a landscaping plan is submitted to mitigate for the fellings. The western side of the plot which looks towards the access road will require new planting to soften the building in the setting and it is suggested that new planting will be required where thinning is to take place. A soft landscaping plan will be required via condition for the betterment around the site and to ensure the development is compliant with policies LD1 & LD3 of the CS.

Heritage

- 6.29 Grade II listed buildings adjoin the complex at Westend Cottage and Westend Farmhouse, and therefore Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (hereafter 'The Act') places a similar duty upon the Local Planning Authority to have special regard to the desirability of preserving the buildings or their setting.
- 6.30 The NPPF contains guidance for considering proposals affecting heritage assets at Paragraphs 193-196.
- 6.31 The proposal site in this instance lies at the fringes of the site where the character of the settlement transitions from the built up form of Docklow Pools to undeveloped countryside. It is considered that the degree of separation, topography and visual screening between the site and nearby listed buildings by a large number of holiday lets, is such that no harm or adverse impacts are identified upon their settings. There is hence no conflict with relevant conservation policies and the duties placed upon the Local Planning Authority by Section 66 of 'the Act' are fulfilled.

Drainage and Habitats Regulation Assessment

- 6.32 Policy SD3 of the Core Strategy states that measures for sustainable water management will be required to be an integral element of new development in order to reduce flood risk, avoid an adverse impact on water quality, protect and enhance groundwater resources and provide opportunities to enhance biodiversity, health and recreation. This will be achieved by many factors including developments incorporating appropriate sustainable drainage systems to manage surface water. For waste water, policy SD4 states that in the first instance developments should seek to connect to the existing mains wastewater infrastructure. Where

evidence is provided that this option is not practical alternative arrangements should be considered in the following order; package treatment works (discharging to watercourse or soakaway) or septic tank (discharging to soakaway).

- 6.33 The scheme in this instance proposes the use of a package treatment plant to manage foul water with outfall to a soakaway drainage field. In the absence of a mains sewer proximal to the site, this would be an acceptable solution which would accord with the hierarchal approach set out in CS policy SD4. Surface water from the development will be managed through the use of soakaways. This is an acceptable method in principle which would accord with CS policy RA3. Full details of both management schemes can be secured through appropriately worded conditions.
- 6.34 Members will note that the site in this instance lies within the catchment of the River Lugg which, in turn, is a sub-catchment of the River Wye Special Area of Conservation (SAC). The River Wye SAC is an internationally important conservation site which has been designated for its special features of ecological and biodiversity value. Under the Conservation of Habitats and Species Regulations 2017, Herefordshire Council has a legal duty to assess the potential impact of new developments in this area by undertaking an 'Appropriate Assessment' (AA) which must be able to determine with scientific certainty that there would be no 'likely significant effects' upon the designated site. The obligations are embodied in CS policies LD2 and SD4, as well as the guidance of the NPPF.
- 6.35 The River Lugg, which is a tributary of the River Wye and forms part of the SAC designated site, is currently failing its conservation targets on phosphate levels. This as a result of water pollution from 'point' source, particularly sewage outlets, and 'diffuse' source, particularly from agricultural run-off.
- 6.36 The proposal in this case would generate additional phosphates through foul water. Whilst foul water is to be managed through a new package treatment plant system, some phosphates will remain in water discharged post-treatment and therefore there is a potential pathway for the development to have an adverse impact upon the River Wye SAC. Until recently, the approach taken by Herefordshire Council and Natural England has been that there is a route for development to be able to proceed in the River Lugg catchment, even when it may add to the existing phosphate levels in the river as above, as any increases would be mitigated by the River Wye's Nutrient Management Plan (NMP). The NMP is a partnership project developed to reduce phosphate levels in the Wye catchment, including the River Lugg, to below the target level by 2027 in line with the Water Framework Directive. The NMP is managed by the Nutrient Management Board (NMB), comprising of Herefordshire Council, Powys Council, Natural England, Natural Resources Wales, the Environment Agency, Dwr Cymru Welsh Water, CABA (WUF), National Farmers' Union and the County Land and Business Association.
- 6.37 However, this situation regarding development with potential phosphate impacts in the Lugg catchment is currently under review following Natural England's advice to Herefordshire Council that, in light of the interpretation of the recent 'Dutch Case', a ruling in July 2018 by the Court of Justice of the European Union (the CJEU) on the interpretation of the Habitats Directive, from which the Habitats Regulations arise in UK law, in the case of Cooperatie Mobilisatie (AKA the Dutch Case) (Joined Cases C-293/17 and C-294/17). This is confirmed above by Natural England's consultation response on 24 July 2019 (section 4.2 of this report).
- 6.38 Natural England have therefore advised following the Dutch Case, that where a site is failing its water quality objectives, and is therefore classed as in unfavourable condition, there is limited scope for the approval of additional damaging effects and that the future benefit of measures cannot be relied upon at Appropriate Assessment, where those benefits are uncertain at the time of the assessment. Natural England have advised that for any plans or projects with a significant effect (on phosphate levels in the River Lugg) and which require Appropriate Assessment, the effects are currently uncertain, as in their opinion there remains reasonable

scientific doubt as to whether the NMP can provide appropriate mitigation (based on how much certainty this currently demonstrates). Natural England have therefore advised that they will not, in the short term, provide advice on such planning applications that require Appropriate Assessments, while they seek legal advice. The Council is also seeking its own advice on this matter and members will be aware of the Council's position statement of October 2019.

6.39 It is noted that the Council's Ecologist initially undertook the required AA in July 2019 and this concluded that the scheme would have no un-mitigated likely significant effects upon the River Wye SAC. Natural England, as the relevant statutory consultee, confirmed they had no objections shortly after. As above however, the circumstances have changed considerably since the initial Appropriate Assessment (AA) was undertaken, members will note the Council's Ecologist's updated comments of 19 November 2019. This clarifies that the proposal would result in the generation of foul water in that the development would lead to additional phosphates entering the River Lugg, which is already failing its conservation objectives in these terms. Consequently, it cannot be demonstrated that the development would not have a likely adverse effect on the integrity of the River Lugg and River Wye SAC and hence permission should not be granted at the present time. The proposal is not considered to have any imperative public interests which would justify overriding this.

6.40 Owing to this, the proposal fails to meet the requirements of the Conservation and Habitats and Species Regulations 2017 and would also be in conflict with policies LD2 and SD4 of the CS. It is also noted that Paragraph 177 of the NPPF is engaged insofar as it directs that;

'The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site'.

6.41 The applicant has been requested to supply all additional information, including relevant professional reports and testing methodologies and outcomes such as to supply the LPA with legal and scientific certainty that the 5 criteria at the end of the Council's issued position statement of October 2019, regarding soakaway drainage fields for foul water treatment systems can be demonstrated and legally secured through implementation condition. However, this has not materialised. Thus the application is to be considered on the basis of the Council's current position on policies on such matters and the onus is on the applicant to demonstrate otherwise.

6.42 Indeed, members will note a recently dismissed appeal decision at Risbury, Herefordshire (*Appeal Decision: 3234852*) by the Planning Inspectorate, in which case law (*People over Wind and Peter Sweetman v Coillte Teoranta (Case C-323/17)*) requires the decision maker, when considering the effect that a proposal may have on such a European Site either individually or in combination with other development, to consider mitigation within an appropriate assessment rather than at screening stage. In the absence of mitigation measures and using a precautionary approach, run off from drainage associated with the development may affect the nutrient levels and therefore, the water quality of nearby watercourses. The balance of which could impact on the habitat supporting wildlife and further exacerbate the unfavourable water quality condition within the SAC. As such, there is a risk of a significant effect on the internationally important interest features of the SAC.

6.43 The limited evidence provided does not clearly establish that drainage arrangements for the proposal would be able to comply with the detailed criteria concerning the distance from watercourses, gradient of the field and hydrological pathways in order to provide mitigation.

6.44 As such, officers do not have certainty that there is a reasonable basis to suppose that a condition would secure compliance with the required criteria. Given this uncertainty, it is not a matter that can be left to a condition as it goes to the principle of the development. Therefore,

officers are not assured that the proposal would not add to the unfavourable phosphate levels within the river.

- 6.45 In the light of these changes in circumstances, in conjunction with the lack of information submitted to undertake a Appropriate Assessment, and case law, the Habitats Regulations require consideration as to whether there are any alternative solutions and if not, whether there are any imperative reasons of overriding public interest that would justify the development. Officers have nothing before themselves that would rule out alternative solutions being available but are aware that none have been put forward for consideration. Nevertheless, the provision of one additional dwelling would not amount to an imperative reason of overriding public interest justifying the development. In these circumstances the Habitats Regulations indicate that permission must not be granted.
- 6.46 Therefore, officers find that the proposed development cannot beyond reasonable doubt demonstrate that it would not harm a designated nature conservation site, with particular regard to the discharge of phosphates into the River Lugg, based on the Council's current policy position and advice available at this time. It would therefore, conflict with policy SD4 of the CS which primarily seeks to ensure that development should not undermine the achievement of water quality targets for rivers within the county, in particular through the treatment of waste water. Additionally, the proposal would be inconsistent with the provisions in the Framework in relation to conserving and enhancing the natural environment and would not accord with the Conservation of Habitats and Species Regulations 2017.

Planning Balance and Conclusion

- 6.47 For the reasons outlined above, your officers have found, having been offered limited information to demonstrate otherwise and given the current policy and Council's position on the matter, that the proposal would adversely affect the integrity of the River Wye SAC and thus, it is clear from paragraph 177 of the Framework that the presumption in favour of sustainable development does not apply in these circumstances. Moreover, the policies in the Framework relating to the protection of such areas provide a clear reason for refusing the proposal. As such, the tilted balance in paragraph 11d (ii) does not apply.
- 6.48 Even if this is set aside, there is no essential functional need for a new dwelling given the proposal fails to meet the policy tests, as outlined under Policy RA3 and RA4 of the Core Strategy, for permitting new residential development at this location.
- 6.49 Planning law requires applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. There are benefits arising from the proposal including the provision of an additional dwelling in addressing the Council's lack of a five-year housing land supply where there is unmet demand. Furthermore, this would be close to other development and the applicant intends to live in the accommodation. It would also bring economic benefit as a result of the construction, and the social and economic benefits associated with the occupants of an additional dwelling supporting local services at Docklow Pools. However, in light of the modest scale of the proposal, these benefits attract limited weight. Accordingly, the benefits arising from the proposal do not provide sufficient justification for development that conflicts with the development plan, the NPPF and the Habitats Regulations.
- 6.50 In short, and taking planning policy and material considerations into account, and having regard to the information provided, the application does not demonstrate that there is an essential functional need for a new dwelling to be provided at Docklow Pools. This is given that accommodation is already provided on site, which the applicant resides in and to which they have full access. The proposal does not satisfy any of the special circumstances which would allow new residential development in the countryside to be supported and is contrary to Policies RA3 and RA4 of the Herefordshire Local Plan – Core Strategy and Paragraph 79 of the National

Planning Policy Framework. Furthermore, conflict has also been identified in respect of the Habitats Regulations, to which recent appeal decisions have confirmed due thought needs to be given, as a material consideration.

- 6.51 In applying the planning balance, the proposal for a new residential dwelling in this rural location is without appropriate justification, would lead to significant harm in terms of its conflict with the Development Plan and promotes unsustainable development. The scheme is hence not representative of sustainable development, and does not benefit from the positive presumption set out in in the NPPF and CS, given the conflict with the development plan. The application is accordingly recommended for refusal in line with the reasons outlined below.

RECOMMENDATION

That outline planning permission be refused for the following reasons:

- 1. Having regard to the supporting information provided, the nature of the existing enterprise and the applicants circumstances, the application does not demonstrate that there is an essential functional need for a new dwelling to be provided at Docklow Pools. This is given that the need is already being met through existing accommodation already on site, which the applicant resides in. The proposal hence does not satisfy any exceptional circumstance which would allow new residential development in the countryside to be supported and is contrary to Policies RA3 and RA4 of the Herefordshire Local Plan – Core Strategy and Paragraph 79 of the National Planning Policy Framework.**
- 2. The application site lies within the River Lugg sub-catchment of the River Wye Special Area of Conservation (SAC) and the nature of the proposal triggers the requirement for a Habitat Regulations Assessment to be undertaken. Under the Regulations, there is a requirement to establish with certainty, and beyond all reasonable scientific doubt, that there will not be any adverse effect on the integrity of the River Wye SAC. The River Lugg sub-catchment however currently suffers from the effects of point source and diffuse water pollution and phosphate levels in the river have already exceeded conservation objectives. The proposal in this case would add to this through the generation of additional foul water / phosphates. In accordance with guidance from Natural England and Herefordshire Council's current position, the Local Planning Authority is unable to conclude that that the development would not have an adverse effect on the integrity of the River Lugg / River Wye SAC. As a result, the proposal cannot undertake a positive Appropriate Assessment as required by The Conservation of Species and Habitats Regulations 2017 and is hence contrary to Policies LD2 and SD4 of the Herefordshire Local Plan Core Strategy, the Natural Environment and Rural Communities (NERC) Act 2006 and the guidance set out at Paragraphs 174-177 of the National Planning Policy Framework.**

INFORMATIVES:

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

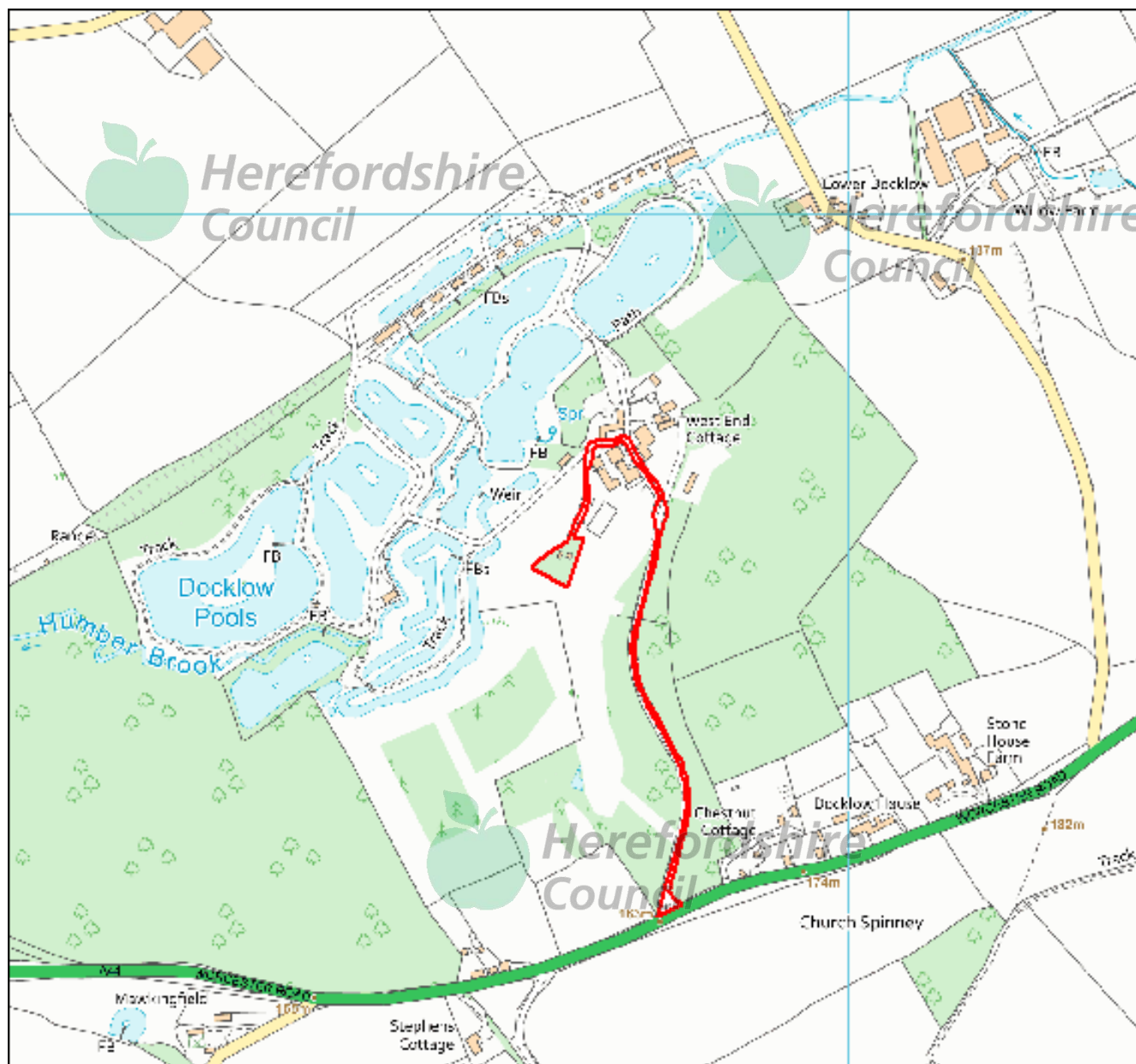
Decision:

Notes:

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Background Papers

Internal departmental consultation replies.



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

APPLICATION NO: 192317

SITE ADDRESS : DOCKLOW POOLS, DOCKLOW, NR LEOMINSTER, HEREFORDSHIRE, HR6 0RU

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

MEETING:	PLANNING AND REGULATORY COMMITTEE
DATE:	15 JANUARY 2020
TITLE OF REPORT:	191286 - PROPOSED DEVELOPMENT OF TWO DWELLINGS AT STEEPWAYS, FROM ST WOLSTONS ROAD TO NYTHFA PROPERTY, WELSH NEWTON, HEREFORDSHIRE, NP25 5RT For: Ms Boughton per Mr David Kirk, Coppice View, 100 Chase Road, Ross-On-Wye, Herefordshire, HR9 5JH
WEBSITE LINK:	https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=191286&search=191286
Reason Application submitted to Committee – Re-direction	

Date Received: 9 April 2019
Expiry Date: 23 August 2019

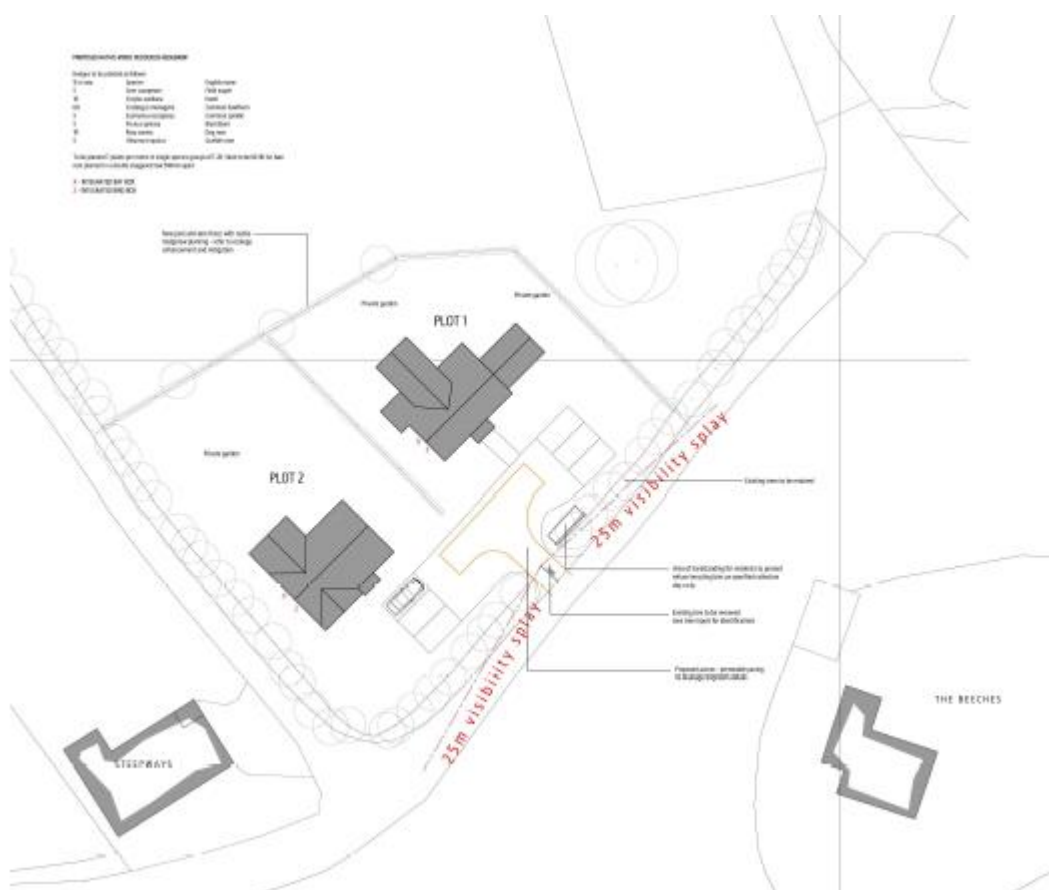
Ward: Llangarron

Grid Ref: 351160,217488

Local Member: Councillor Elissa Swinglehurst

1. Site Description and Proposal

- 1.1 The application site comprises part of an equestrian field lying on the corner of St Wolston's Road and a private street within the centre of Welsh Newton Common. The site is bounded by trees along the roadside and while there is an access gate in the eastern corner into the wider field, this is not contained within the application site itself.
- 1.2 The wider field benefits from two large beech trees and a field shelter. The private road that runs along the southern boundary used to lead to a Post Office which has now closed.
- 1.3 This application seeks full planning permission for the erection of two dwellings and a new single access point off the private street. Through the process of the application the scheme has been reduced from three dwellings to two in light of local concerns and those of the Council's Tree Officer. A new field access to the west has also been removed from the scheme. Relevant re-consultations have taken place following the submission of amended plans and additional information.
- 1.4 Below is the amended block plan indicating the siting of the two dwellings and the relationship with neighbouring dwellings:



2. Policies

2.1 Herefordshire Local Plan – Core Strategy (CS):

SS1	-	Presumption in Favour of Sustainable Development
SS2	-	Delivering New Homes
SS3	-	Releasing Land For Residential Development
SS4	-	Movement and Transportation
SS6	-	Environmental Quality and Local Distinctiveness
RA1	-	Rural Housing Distribution
RA2	-	Housing in Settlements Outside Hereford and the Market Towns
MT1	-	Traffic Management, Highway Safety and Promoting Active Travel
LD1	-	Landscape and Townscape
LD2	-	Biodiversity and Geodiversity
LD3	-	Green Infrastructure
SD1	-	Sustainable Design and Energy Efficiency
SD3	-	Sustainable Water Management and Water Resources
SD4	-	Waste Water Treatment and River Water Quality

The Herefordshire Local Plan Core Strategy policies together with any relevant supplementary planning documentation can be viewed on the Council's website by using the following link:-

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

2.2 National Planning Policy Framework (NPPF):

Chapter 2	-	Achieving sustainable development
Chapter 4	-	Decision making
Chapter 5	-	Delivering a sufficient supply of homes

Further information on the subject of this report is available from Miss Emily Reed on 01432 383894

Chapter 6	-	Building a strong, competitive economy
Chapter 8	-	Promoting healthy and safe communities
Chapter 9	-	Promoting sustainable transport
Chapter 11	-	Making effective use of land
Chapter 12	-	Achieving well designed places
Chapter 14	-	Meeting the challenge of climate change, flooding and coastal change
Chapter 15	-	Conserving and enhancing the natural environment

2.3 Welsh Newton and Llanrothal Group Neighbourhood Development Plan (NDP) Made Sept 2019 (no allocated sites)

Policy WNL1	-	Protecting and Enhancing Local Landscape Character
Policy WNL2	-	Green Infrastructure
Policy WNL3	-	Protecting and Enhancing Local Wildlife and Habitats
Policy WNL4	-	Building Design Principles
Policy WNL5	-	Welsh Newton Common Settlement Boundary and New Housing
Policy WNL11	-	Supporting New Communications Technologies and Broadband
Policy WNL13	-	Renewable and Low Carbon Energy Development

https://www.herefordshire.gov.uk/download/downloads/id/18419/neighbourhood_development_plan_june_2019.pdf

3. **Planning History**

- 3.1 **S102768/F** – Re-instate lean-to adjoining existing store, change of use of land from agricultural to equestrian, to include hardstanding and parking area, installation of septic tank. (Across this site and area relating to application ref: 190827). Approved

4. **Consultation Summary**

Statutory Consultations

4.1 **Welsh Water** – no objections

We refer to your planning consultation relating to the above site, and we can provide the following comments in respect to the proposed development.

As the applicant intends utilising a private treatment works we would advise that the applicant contacts The Environment Agency/Herefordshire Council Land Drainage Department who may have an input in the regulation of this method of drainage disposal.

However, should circumstances change and a connection to the public sewerage system/public sewerage treatment works is preferred we must be re-consulted on this application.

4.2 **Natural England** – no objection

Based on the plans submitted. Natural England considers that the proposed development will not have significant adverse impacts on designated sites and has no objection.

Internal Council Consultations

4.3 **Conservation Manager (Ecology)** – no objection following additional information

Initially commented (22 May 2019):

As noted by Natural England and this LPA this application triggers the requirement for a Habitat Regulations Assessment. Subject to Natural England formally 'approving' the appropriate

Further information on the subject of this report is available from Miss Emily Reed on 01432 383894

assessment submitted to them by this LPA a condition to secure the mitigation is required on any planning consent granted.

Habitat Regulations (River Wye SAC) – Foul and Surface Water Management

All foul water shall discharge through connection to new private foul water treatment systems with final outfall to suitable soakaway drainage fields on land under the applicant's control; and all surface water shall discharge to appropriate SuDS or soakaway system; unless otherwise agreed in writing by the Local Planning Authority.

Reason: In order to comply with Conservation of Habitats and Species Regulations (2018), National Planning Policy Framework (2019), NERC Act (2006), and Herefordshire Core Strategy (2015) policies LD2, SD3 and SD4

Based on current information there is an Ecology Objection to this application. Contrary to Conservation of Species and Habitat Regulations, NPPF, NERC Act, Core Strategy SS6, LD1-3, Wildlife & Countryside Act.

The proposed works and the ecology report do not marry up with an additional new access being proposed within the SW hedgerow to provide an additional new access to the retained northern paddock area. This is in addition to a new access to the proposed development site in the southern species rich hedgerow. These accesses appear to cross Section 9 (no known owner) Common Land and the LPA and Herefordshire Council as the Commons Registration Authority have a legal duty to protect this common land. The ecology report recognises that the hedgerows are likely to support nesting, foraging and commuting protected species – Dormice a European Protected Species that are already well recorded and known to regularly utilising local hedgerows. The ecology report fails to acknowledge the habitat and wildlife corridor fragmentation that this development will cause. Any loss or gap in hedgerows and loss of natural common land habitat corridors will cause fragmentation of this Dormouse population and hence any works to remove any sections of Hedgerow will require a relevant European Protected Species Licence – the current level of survey effort is not sufficient to demonstrate to this LPA that the 'three tests' required to obtain a Protected Species Licence have been met.

The three tests are:

- the activity must be for a certain purpose (for example, for scientific research or in the public interest)
- there must be no satisfactory alternative that will cause less harm to the species
- the activity must not harm the long-term conservation status (eg ability to breed) of the species

As Dormice are known to require continuous aerial (they are unlikely to cross open ground) linkage as their habitat and movement corridors any proposed mitigation will need to be designed to ensure that this aerial corridor remains intact and usable and accessible to Dormice. Additional survey work and proposed mitigation plans are required, sufficient to support a European Protected Species Licence application (this can only be finally applied for to Natural England subsequent to a grant of planning consent).

The loss and fragmentation of hedgerow linear corridors could also have a detrimental effect on local Great Crested Newt populations, although unlike Dormice it may be possible to create sufficient mitigation movement corridors to ensure the continued and safe movement of GCN under any proposed accesses. Further detailed advice should be sought from a GCN Licensed ecologist and full details of proposed newt mitigation and underpasses and adjacent habitat betterment supplied. Great Crested Newts are also a European Protected Species and this additional information must be supplied for consideration by the LPA PRIOR to any grant of planning consent.

Once the required additional information above has been supplied for consideration revised ecology comments can be made consideration of lifting of the current objection and any appropriate detailed conditions suggested.

On receipt of amended plans commented as follows (31 July 2019):

The removal of the additional unassociated field access is noted and appreciated. The loss of dormouse connectivity through the proposed new access to the actual development as previously raised does not appear to have been considered further in any information supplied and the objection over this aspect of the development and impact on this protected species ability to breed and thus impact the conservation status of the species remains outstanding.

Further information and proposed mitigation to retain dormouse connectivity is requested.

Additional comments based on public comments received:

Just to confirm the methodology of the ecology report and survey as regards Great Crested Newts assessment (Habitat Suitability Index assessments) is acceptable and compliant with best practice. There are no formally recorded bat roosts currently shown within 150M in the relevant and accessible Herefordshire Biological Records Centre data available to this LPA. This data is an appropriate and accepted source of information within the ecological assessment process as outlined by best practice guidance. Provided hedgerows are retained small gaps such as the new access are not a significant issue for bat species, unlike Dormice. Any external lighting can be restricted through condition such as to have no significant effect on local bat foraging and commuting activity.

Following the submission of a Dormice Survey, commented as follows (10 December 2019):

The additional detailed Dormice survey that was requested has now been submitted. The report demonstrates that Dormice are present in small numbers within the hedgerows around the site, in particular during the autumn foraging season prior to their period of hibernation. The supplied report provides clear details of relevant dormice ecological working methods, mitigation and enhancement measures. All works will be supervised by a suitably licensed ecological clerk of works. The LPA should secure these recommendations and actions through a relevant condition on any planning consent granted; notwithstanding this Condition the applicant and their contractors are also still bound to comply with all relevant wildlife protection legislation (Wildlife & Countryside Act and Conservation of Habitats and Species Regulations) that sit separately to and above any planning regulations.

Nature Conservation – Dormice (Protected Species)

The working methods scheme, mitigation and enhancement features relating to Dormice as detailed in the Dormice report by Natasha James on behalf of Wilder Ecology supplied December 2019 shall be implemented and hereafter maintained in full as stated unless otherwise approved in writing by the local planning authority. No external lighting should illuminate any boundary feature, adjacent habitat or area around the approved Dormice mitigation or enhancement features.

Reason: To ensure that all species are protected and habitats enhanced having regard to the Wildlife and Countryside Act 1981 (as amended), the Habitats & Species Regulations 2017 (as amended), Policy SS6 and LD2 of the Herefordshire Core Strategy, National Planning Policy Framework (2019) and NERC Act 2006

The wider ecological assessment for the site prepared by Wilder Ecology dated October 2018 is noted and is still valid and relevant. The recommended ecological working methods and mitigation measures, including those for Great Crested Newts (excepting Dormice covered in

more detail in a further species specific survey and report) should be secured through a relevant condition:

Nature Conservation – Ecology Protection, Mitigation

The ecological protection, mitigation, compensation and working methods scheme including for Great Crested Newts, as recommended in the ecology report by Wilder Ecology dated October 2018 shall be implemented and hereafter maintained in full as stated unless otherwise approved in writing by the local planning authority. No external lighting should illuminate any boundary feature, adjacent habitat or area around the approved mitigation measures.

Reason: To ensure that all species are protected and habitats enhanced having regard to the Wildlife and Countryside Act 1981 (as amended), the Habitats & Species Regulations 2018 (as amended), Policy LD2 of the Herefordshire Core Strategy, National Planning Policy Framework (2019) and NERC Act 2006

As identified in the NPPF, NERC Act and Core Strategy LD2 all developments should demonstrate how they are going to practically enhance (“Net Gain”) the Biodiversity potential of the area. To secure these enhancements a relevant Condition is suggested:

Nature Conservation – Biodiversity Net Gain

In addition to the secured Dormice mitigation-enhancement, prior to first occupation evidence (such as photos/signed Ecological Clerk of Works completion statement) of the suitably placed installation within the site boundary of at least FOUR Bat roosting enhancements, FOUR bird nesting boxes, THREE insect hotels/invertebrate habitat boxes, and ONE Hedgehog habitat home should be supplied to and acknowledged by the local authority; and shall be maintained hereafter as approved unless otherwise agreed in writing by the local planning authority. No external lighting should illuminate any biodiversity net gain enhancement feature.

Reason: To ensure that all species are protected and habitats enhanced having regard to the Wildlife and Countryside Act 1981 (as amended), Habitat Regulations 2017, Core Strategy LD2, National Planning Policy Framework (2019), NERC Act 2006 and Dark Skies Guidance Defra/NPPF 2013/2019.

4.4 **Conservation Manager (Trees)** – no objection following amended plans and additional details

Initially commented (8 May 2019):

I have viewed the plans, conducted a site visit, read the accompanying documents and I am unable to support the application in its current form because I do not believe that it is compliant with LD1 & LD3 of the Herefordshire Core Strategy.

Plot 1

My objection is primarily based around plot 1 which is in close proximity to two mature beech trees.

Both trees show signs of damage, T1 by horses and T2 has an old pruning wound which looks to have been made some time ago. Despite this damage both trees appear physiologically in good condition indicating existing faults are not impairing their vascular functionality, their structural condition also appears to be reasonable.

Plot 1 will encroach significantly into the rooting area of both trees to the extent that I don't think any form of foundation design would prevent catastrophic damage to both trees. The proposed drainage as illustrated in drawing 0923/00/010 shows further encroachment.

As these two trees are the prominent landscape features of the site it is important that they are both retained, currently the proposal is not compliant with policies LD1 & LD3.

I would recommend that the layout is reconfigured or reduced to 2 plots so that I am able to support the application.

Access

The location of the access is not a problem but the drawings and the trees report does not provide enough information to state which trees are specifically would be removed. There is a significant Oak tree in close proximity to the access which has been omitted from the report and again from the drawings. There is also a semi mature Sycamore which is in close proximity to the access but it is not clear if this tree is affected as it is also missing from drawings/tree report. My understanding is that both are to be retained.

Summary

At this point I can't support this application for the reason I have mentioned already. The applicant/agent should consider the following:

- The position of plot 3 needs to be reconsidered or omitted.
- Provide drawings which include the position of the retained trees
- Provide an amended tree report that adheres strictly with BS5837:2012. The one submitted with this application uses parts of the relevant 2012 version and the defunct 2005 one.
- All trees within the red line boundary must be included in the tree report so that it can be ascertained accurately which trees will be impacted.
- The tree report plan should be overlaid onto the proposed drawings to help understand the proximity of trees to dwellings.

Following the submission of amended plans and details commented as follows (1 August 2019):

The omission of 1 dwelling to reduce the application from 3 plots to 2 means that my original objection on account of the proximity of dwellings to T1 & T2 is no longer an issue.

Accordingly I do not have an objection to the proposals.

The tree survey categorisation was updated and the Tree Officer commented as follows:

I still think the tree report is average at best but it does at least have adequate root protection areas and protection plan.

Seeing as the risk to trees is relatively low I don't think there's any point asking for or Conditioning a method statement.

Conditions

CK9 – Trees in Accordance with plans - Survey of Trees at Welsh Newton Common Sites – Abersenny Ltd.

CKA – Retention of existing trees

CKF – Specifications for tree planting

4.5 **Transportation Manager** – no objection

Initially commented (26 April 2019):

No objections to the proposals however it should be noted due to the lack of sustainable modes of travel the use of private vehicles will be the only option for residents to use.

Following comments within representations on the highways impacts, additional comments received (27 September 2019):

After receiving a number of objections regarding the implication of this development on the highway network, Welsh Newton Common was revisited on a number of occasions to assess the level of vehicle movements and to look at the passing place provision.

Whilst the speed and volume survey equipment has not been located on the northern section of the U71222 (potentially higher volume carriageway), the increase in numbers would not significantly differ to the level of vehicles on the surrounding network. Calculating the vehicles using the speed survey equates to an average of 6 vehicles per hour in both directions and the proposed development will generate around 4 vehicle movements per household per day. Therefore if this development is permitted then a potential additional 8 vehicle movements per day for two dwellings would not be classed as severe in terms of delay under the NPPF. There are a number of passing areas along the lane, which are already being used for large farm vehicles.

The NPPF states *“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”* The proposed development does not present an unacceptable impact on highway safety and does not provide impacts in regards to capacity, therefore the proposals for the development should not be refused.

The recently approved Welsh Newton NDP states that *“The access road to Welsh Newton Common is a single track lane with a few passing places. New development schemes should be small in scale and the Neighbourhood Plan may identify a preference or a maximum number of units in a single scheme.”* If this application was refused on highway grounds and went to appeal, the Planning Inspector would use the above paragraph as the NDP now would have full weight in their review of the application.

Please condition a construction management plan along with the previously stated conditions.

Following the submission of a consultation report on behalf of residents group (4 December 2019):

After reviewing all submitted representation documentation along with Herefordshire Council's Core Strategy, and the recently approved Welsh Newton and Llanrothal Neighbourhood Development Plan 2011-2031 the following points can be made.

1. The site has been visited several times and has been visited at different times of the day to match with the peaks highlighted in the surveys. During the site visits to assess the highway, the impact of two way flows resulted in vehicles requiring reversing and using passing places to negotiate the oncoming traffic. This is not unusual in a rural setting and is typical for the character and usage of the highway in this area. The existing vehicle movements have been recorded as low and the modest development will not bring the cumulative impact to the severe level as stipulated in the NPPF.
2. The approved NDP for the area highlights the Welsh Newton Common access road *being a single track lane with a few passing places this makes the area unsuitable for any form of major development expect slow, organic growth. New development schemes should be small in scale and the Neighbourhood Plan may identify a preference or a maximum number*

Further information on the subject of this report is available from Miss Emily Reed on 01432 383894

of units in a single scheme. As yet the NDP have yet to propose a preference or maximum number of units in a single scheme, but it does appear to support development in the locale, and therefore the trips associated to it. The application proposes a development of two houses, this is in keeping with the approved NDP.

3. The NPPF states “*Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.*” The proposed development does not present an unacceptable impact on highway safety and does not provide impacts in regards to capacity.

In conclusion the proposed development is acceptable in highways terms and the previous highways comments remain applicable.

CAB - Visibility Splays 2.4 x 25m
CAD - Access gates – 5m
CAE - Vehicular access construction
CAH - Driveway gradient
CAI - Parking – single/shared private drives
CAT - Construction Management Plan
CB2 - Secure covered cycle parking provision

I11 – Mud on highway
I09 – Private apparatus within the highway
I45 – Works within the highway
I05 – No drainage to discharge to highway
I47 – Drainage other than via highway system
I35 – Highways Design Guide and Specification

4.6 **Land Drainage** – no objection following additional information

Initially concluded (2 May 2019):

We do not object the proposed development, however the flooded volume and flood exceedance routes should be clarified and demonstrated.

Following the submission of amended plans and following a site meeting concludes as follows (6 September 2019):

We do not object the proposed development, however we request that the following information is provided within suitably worded planning conditions:

- An updated surface water drainage strategy and calculations to demonstrate that they have been correctly sized for the 1 in 100 year + 40% climate change event;
- An updated foul water drainage strategy with supporting calculations to demonstrate the drainage fields have been sized correctly for the associated population.

5. **Representations**

5.1 **Welsh Newton and Llanrothal Group Parish Council** – qualified comment

Initially objected to the application as follows (10 May 2019):

Welsh Newton and Llanrothal Group Parish Council wish to OBJECT to this application for the following reasons:

- It would alter the character of the area as written in the draft NDP (at examination stage) as this is not “sporadic or organic” development.
- It would add to drainage and flooding issues already causing problems in the area.
- It would affect the ecological habitat of the area including having an impact on local trees.
- Highway access is not suitable for such a size of development.

Following the submission of amended plans and additional information the Parish Council wished only to provide comments and no recommendation (7 August 2019):

The applicant was given the opportunity to address the meeting, in order to counter the reasons that were given for objection to the previous application for 3 houses on the same site.

A question was raised as to whether two of the parish councillors had pre-determined the application, it was pointed out that the parish council is not determining the application but in order to make this very clear it was decided to only submit comments on this occasion and not to make a recommendation.

Whilst the NDP is not yet adopted the parish council asks that it be given substantial weight in determining the application.

- 1) Broadly compliant with RA2 and NDP WNL4,WNL5
- 2) Drainage issues are not within the purview of the parish council which notes that there has been no objection from the council consultee.
- 3) Noted the planting of new hedgerows
- 4) Noted only one access/egress now
- 5) Noted the use of local materials and the effort to respond to the local environment.
- 6) Noted the beech tree will remain now only 2 houses.
- 7) Noted that there seemed to be an unresolved question regarding mitigation for dormouse habitat which we hope the applicant will address
- 8) The parish council felt that it might be appropriate to add an informative or condition of some sort to retain a higher hedge in places to protect habitat.
- 9) There was a strong feeling from the public that Welsh Newton Common should not be an RA2 settlement because it no longer has a shop and the information that was originally used to determine the rural hierarchy was inaccurate.
- 10) There was a strong feeling from the public that the road cannot accommodate 2 more houses.
- 11) There was concern from the public that this application is not for housing for local people and the houses are too big.
- 12) PC agreed to investigate the detail and method of the Highways review to ensure that was robust.

5.2 **To date a total of 44 letters of representation have been received. The comments therein are summarised below.**

40 objecting representations from 23 households:

- Appear to ignore and do not comply with many considerations stated and set out within the local NDP and policy RA2
- Why Welsh Newton Common was originally identified as an area of development with services so poor has perturbed me
- Hierarchy matrix to adjudicate suitability for sustainable development was incorrect and false. Awarded points for facilities settlement does not have
- Welsh Newton Common is identified under figure 4.15 and not 4.14 and not a focus for new housing
- Character and visual amenity of settlement will be detrimentally affected forever

Further information on the subject of this report is available from Miss Emily Reed on 01432 383894

- Area is very unique in that it holds approximately fifty houses at the end of a single track. The poor infrastructure must be taken into account
- Object to the new builds due to it being contrary to common law in that both development propose crossing common. Historically this has been rejected on all counts and should not be waived in this case
- Proposes new homes in supported village location putting pressure on the already burdened existing facilities – provision of water, internet, schooling, post office and bus service (once a week). Frequent outages to all essential services
- Sustainable development surely means within areas where there is local work and public transport, neither of which is on offer in Welsh Newton Common and is ever likely to be
- Area of great heritage and unspoilt natural beauty which does not lend itself to more development without spoiling the habitat
- Traffic sensor should be null and void as it does not show true statistics as large percent of traffic would have turned off before that point
- Concerns regarding the highways impacts and supported by a Transport Consultant report on behalf of residents
- Roads are in poor condition so more traffic from new houses would compound this
- Proposed developments do are not essential to the social well-being of the community
- Proposed developments would not generate the size, type, tenure and range of housing or reflect local demand
- Are on greenfield sites and not brownfield
- Is not sustainable or appropriate to their context and does not make a positive contribution to the surrounding landscape and environment
- Scale and layout is completely inconsistent with the development pattern
- Development does not incorporate single storey or adaptable dwellings
- Proposal adds to the already significant drainage problems
- Would have thought existing residents would have priority over new houses for their extended families
- Would be setting a precedent for more green areas to be taken over for housing and no additional infrastructure provided to cope with it
- If more dwellings are constructed the extra traffic would make the common rights virtually impossible to exercise
- Common has no owner and has been vested to the Council. Crossing common to allow development would be eroding and destroying it
- Believe settlement target has been met and we should not seek to overload the area with excess development that should be on brownfield land and not greenfield sites
- All amenities are within Welsh Newton not Welsh Newton Common
- Biodiversity report is flawed – has not identified ponds that are closest to the development site, includes information could a survey of three local ponds undertaken in October when amphibians are not usually active, fails to identify the importance of the network of ponds
- Object based on the method of assessment regarding biodiversity – Great Crested Newts, Dormouse, Bats, European Protected Species
- Hedge will be reduced in height and otherwise disturbed because it will be judged as an untidy household boundary
- Concerned development will damage the two very large beech trees
- Second access within drainage map has not been noted in the ecology report
- Development does not incorporate ‘passivhaus’ standards so would require coal, oil or bottle gas for heating purposes. None of these are sustainable
- Sewage soakaways are to be directed towards our ponds (neighbouring field). Drainage report does nothing to alleviate these concerns
- Experience with shared septic tanks is it will cause problems in the future
- Common couldn’t sustain this large a development
- Noting that relatively recent permitted dwelling is to be sold there is great concern this will follow a similar ilk and precedent

- Properties on the Common generally take considerable time to sell suggesting that the demand for additional housing is not significant
- Provision of executive houses in the position indicated: the most elevated section of the common and widely regarded as the centre and focal point of the common speak for the importance historically of the site
- Question of light pollution and what this would mean for the habitat and wildlife
- Detrimental impact of the development on the community and environment of Welsh Newton Common would significantly and demonstrably outweigh the very few benefits
- Dwellings have been reduced from 3 to 2 dwellings but supporting documentation has not been updated
- Newer application (for 2 dwellings) involves development of even larger executive style home which reflects the developer wanting to make a financial gain not provide accommodation for local need
- Numerous Tree Preservation Orders (TPOs) in Welsh Newton Common and the proposed should be reviewed in line with the existing TPOs
- Number of planning applications have been turned down in the past due to the effects on the common and access across it
- Inconsistency with the dormice survey. Important that hedges are retained as removal will greatly reduce their value for wildlife

4 letters of support from 2 households

- Some new development is inevitable with the settlement being selected under policy RA2
- Mix of 3 and 4 bedroom properties reflects the size and style of existing properties
- Each house being located within its own plot also reflects the character
- Amount of hedgerow lost will be more than adequately replaced by new planting. Will provide additional habitat as well as provide screening
- Traffic volumes are low
- Core Strategy came into force years ago and only one new dwelling has been proposed/approved
- Small fields are becoming uneconomic and impractical. Land at Welsh Newton Common is poor quality
- With the road being a dead end there is no through traffic
- There has been recent development that has not affected the newts
- Presence of solar panels would require hedgerows and trees to be lowered and this would be detrimental to the wildlife
- Overall impact of this development would be beneficial
- Faith in professional bodies who assess things not from a position of interest
- Unfortunate to see residents who enjoy the location and in some instances have developed property wish to stop others from identical enjoyment and benefit
- Cessation of traffic to the post office and some farm activity is likely to mean no overall increase
- Notice objections on dormice but no objections to recently approved development, despite being much closer to dormice activity
- Very small development of two houses in a settlement of about 50 houses therefore impact will be negligible

5.3 The consultation responses can be viewed on the Council's website by using the following link:-

https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=191286

Internet access is available at the Council's Customer Service Centres:-

<https://www.herefordshire.gov.uk/government-citizens-and-rights/customer-services-enquiries/contact-details?q=customer&type=suggestedpage>

6. Officer's Appraisal

Policy context

- 6.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states as follows:

"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

- 6.2 In this instance the adopted development plan is the Herefordshire Local Plan – Core Strategy (CS). The National Planning Policy Framework (NPPF) is also a significant material consideration. It is also noted that the site falls within the Welsh Newton and Llanrothal Group Neighbourhood Area, which published a made Neighbourhood Development Plan (NDP) on 13 September 2019 but did not include site allocations.

- 6.3 Policy SS1 of the Herefordshire Local Plan – Core Strategy (CS) sets out that proposals will be considered in the context of the 'presumption in favour of sustainable development' which is at the heart of national guidance contained within the NPPF. This policy states:

'When considering development proposals Herefordshire Council will take a positive approach that reflects the presumption in favour of sustainable development contained within national policy. It will always work proactively to find solutions which mean that proposals can be approved wherever possible and to secure development that improves the social, economic and environmental conditions in Herefordshire.'

Planning applications that accord with the policies in this Core Strategy (and, where relevant, with policies in other Development Plan Documents and Neighbourhood Development Plans) will be approved, unless material considerations indicate otherwise.

Where there are no policies relevant to the application or the relevant policies are out of date at the time of making the decision then the Council will grant permission unless material considerations indicate otherwise – taking account whether:

- a) Any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in national policy taken as a whole; or*
- b) Specific elements of national policy indicate that development should be restricted.'*

- 6.4 It is acknowledged at this moment in time, the Council is unable to demonstrate a five year housing land supply (this has recently been reduced to 4.05 years). Paragraph 11d of the Framework echoes the above in that it advises the following in respect of decision making:

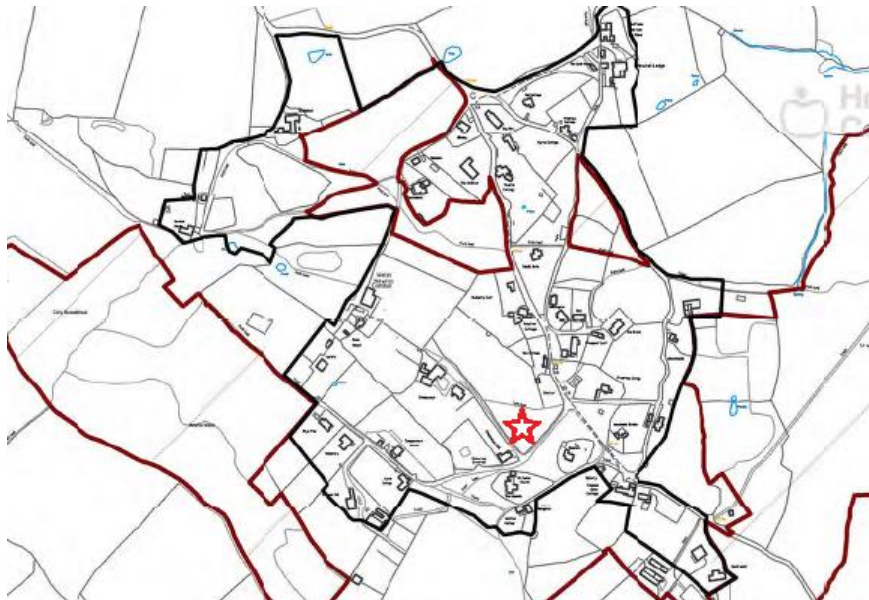
'Where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date, granting permission unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development; or*
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

- 6.5 While the Neighbourhood Development Plan is less than 2 years old, there are no site allocations within it (the one allocated site was removed by the Examiner). As such, paragraph 14 of the NPPF which states that the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, is not engaged. The test within paragraph 11d is therefore relevant.

Location of residential development

- 6.6 In locational terms, paragraph 79 of the Framework seeks to restrict development in isolated locations, but does acknowledge in rural locations it may be the case that development in one village supports the services in another village nearby. That said, the adoption of the Core Strategy represents a shift in policy that recognises proportionate growth is required in rural areas for social and economic purposes. It is with this in mind that the proposal is assessed under the CS policies alongside the Framework, notwithstanding the out of date nature of the policies.
- 6.7 Policies SS2 (Delivering new homes) and SS3 (Releasing land for residential development) of the CS clearly set out the need to ensure sufficient housing land delivery across the County. In order to meet the targets of the CS the Council will need to continue to support housing growth by granting planning permissions where developments meet with the policies of the CS, (and, where relevant with policies in other Development Plan Documents and Neighbourhood Development Plans). Policy SS2 states that a supply of deliverable and developable land will be identified to secure the delivery of a minimum of 16,500 homes in Herefordshire between 2011 and 2031 to meet market and affordable housing need. 6,500 of these will be in Hereford, where it is recognised that there is a wide range of services and consequently it is the main focus for development.
- 6.8 Outside of Hereford City, and the market towns, CS Policy RA1 identifies that Herefordshire Rural areas will need to find a minimum of 5,300 new dwellings between 2011 and 2031 to contribute towards the county's housing needs. The dwellings will be broadly distributed across the seven Housing Market Areas (HMAs). Welsh Newton Common is within the Ross-on-Wye HMA, which is earmarked for an indicative 14% indicative housing growth and is listed in Figure 4.14 under policy RA2 as a settlement which will be the main focus of proportionate housing development. This percentage increase translates to 61 dwellings being required across the plan period.
- 6.9 Notwithstanding the above, the preamble to Core Strategy Policy RA2 states that NDPs will be the principal mechanism by which new rural housing will be allocated. As stated above, the Welsh Newton and Llanrothal NDP has been adopted and therefore forms part of the Development Plan for the county.
- 6.10 Policy WNL5 of the NDP states that proposals for new market housing will be supported within the identified settlement boundary in Welsh Newton Common. The following map includes the black line of the settlement boundary with the site being indicated by the red star:



6.11 It is clear from the above that the site is located within the centre of the settlement boundary. Notwithstanding this, policy WNL5 goes on to state other criteria that a proposal should meet. This includes:

- Within the Settlement Boundary for Welsh Newton Common, proposals should be small in scale i.e. for one or two properties, and development should adjoin clusters of existing buildings and not be on isolated sites away from other housing and settlements. Proposals will be expected to demonstrate particular attention to the form, layout, character and setting of the site and its location within Welsh Newton. New housing should be accessed directly from a made up road.
- House sizes should be limited to a maximum of 2/3 bedrooms to help address the local shortage of smaller, affordable units for young families.

6.12 With the proposal seeking planning permission for the erection of two dwellings, the scale is supported by this policy. Also, noting the location of site in the centre of the settlement, surrounded by existing dwellings, it is not considered that the site is isolated. Welsh Newton Common is largely made up of individual, detached dwellings, often in their own plots – although there are examples of shared accesses in some cases. The amended siting of the two dwellings is found to have been influenced by the surrounding development in that they are different in form from one another (this will be touched on further below) and continue the largely wayside pattern of the settlement. It is acknowledged that the proposal will utilise a small paddock and that the NDP recognises the contribution these make to the character of the area. However, the utilisation of this site which is located adjacent to other dwellings for a proposal that has been reduced in size is not found to be considered detrimental to the overall character of the settlement as a whole.

6.13 The inclusion of a ‘made up road’ within policy WNL5 came from the Examiner’s report which states as follows:

Access to Welsh Newton Common is via a narrow lane which ends in a cul-de-sac. Parts of the settlement are accessed by narrow unmade roads. It is recommended that any further development in the settlement should be accessed directly from a made up road. This would in effect limit the areas suitable for development or result in the making up of other roads.

6.14 There is no definition within the NDP as to what a ‘made up road’ is, but the intention to limit the areas for development is noted. St Wolston’s Road is tarmacked and runs through the centre of

the settlement. As such, it is not considered unreasonable to assume this constitutes at least one made up road. It is also considered that the way the term has been included within policy WNL5, it is not unreasonable to assume there is more than one made up road within the settlement (the policy is written as 'a' made up road, not 'the').

- 6.15 Given that the private street off which the site will be accessed relatively recently served the Post Office, its construction (hard based with gravel) and the proximity to St Wolston's Road I do not find the erection of dwellings off this road to undermine the 'made up road' inclusion within this policy. The intention to limit development as a result of its inclusion is appreciated and the proposal puts forward two dwellings in the centre of the settlement boundary. This is not found to be a location that compromises the aims of policy WNL5.
- 6.16 The conflict with policy WNL5 in terms of bedroom numbers within the proposed dwellings is acknowledged. The proposed includes two x 4 bedroom properties. This conflict will be weighed up within the planning balance at the end of this report. The following sections will go on to consider whether there are any other material considerations of such weight and magnitude that might lead to a conclusion that the proposal represents an unsustainable form of development.

Design and amenity

- 6.17 The detail of the design is assessed by policy SD1 of the Core Strategy. This policy states that proposals should be designed to maintain local distinctiveness through detailing and materials, respecting scale, height, proportions and massing of surrounding development. The proposal should also safeguard the amenity of existing and proposed residents in terms of overlooking, overshadowing and overbearing.
- 6.18 The above is reinforced through policy WNL4 of the NDP which states, amongst other things; care should be taken to ensure that building(s) height, scale, and form do not disrupt the visual amenities of the immediate surroundings or impact adversely on any significant wider landscape views; building materials are encouraged that retain the character of the settlement such as natural red sandstone, mellow red brick, timber or timber style windows and slate or tiled roofs and Designs should be informed by the distinctive local character of the rural area. Ridge heights should not exceed 6m.
- 6.19 The dwellings proposed are detached, two storey properties with communal living space on the ground floor and bedrooms above. The form of the dwellings has been amended through the application process to result in dwellings that differ from one another – similar to the general development of Welsh Newton Common which has arguably grown dwelling by dwelling and individually. The elevations of the two dwellings can be seen below:



- 6.20 In terms of the scale of the buildings proposed, the ridge height does exceed 6m (measuring approximately 7.4m) – a limit included within policy WNL5. This tension with the policy will be weighed up in the planning balance at the end of this report but the surrounding development is noted – consisting of two storey properties to the south and north east and single storey dwellings to the west.
- 6.21 Both dwellings will be constructed from facing stonework elevations with areas of render with slate roofs and aluminium/timber windows. Noting the dwellings nearest the site comprising of render and stone, these materials are not found to be out of keeping with the locality or unacceptable in principle. However, it is found to be appropriate to condition exact details and finishes of the materials on any approval.
- 6.22 The sustainability credentials of the proposal have been touched on within the Design and Access Statement and states the following:
- The dwellings have been designed to exceed current building regulation requirements for thermal performance, highly insulated timber framed walls and roofs with continuous external insulation to eliminate cold bridges within the structures.*
- 6.23 Turning now to amenity impacts, each dwelling will benefit from adequate private gardens to the rear, noting the size of each property. Given the orientation of the dwellings, there are not found to be detrimental issues of overlooking for future occupiers of either dwelling. In relation to existing properties, the location of Steepways (formerly the Post Office) to the west is noted, as are the windows proposed in the western elevation of plot 2. However, given the separation of approximately 15.5m, the intervening track to Steepways (which runs along the western boundary of the site) and the hedge to be retained along the boundary, overlooking issues to a detrimental degree that would justify refusal of the application are not found. Similarly, as a result of distance, issues of overshadowing are not anticipated.
- 6.24 In light of the foregoing, the design of the dwellings is found to have been influenced by the locality – the materials are in keeping with the surroundings and the differing form respects the ad hoc way in which Welsh Newton Common has grown. The policy conflict in terms of height of the dwellings is noted and will be weighed up against the benefits of the scheme. In all other respects however the proposal is found to comply with policy SD1 of the Core Strategy and policy WNL5 of the NDP.

Transport

- 6.25 Policy MT1 of the CS and NPPF policies require development proposals to give genuine choice as regards movement. NPPF paragraph 103 requires local planning authorities to facilitate the use of sustainable modes of transport and paragraph 108 refers to the need to ensure developments generating significant amounts of movement should take account of whether safe and suitable access to the site can be achieved for all people and whether improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where 'the residual cumulative impacts of development are severe.' (NPPF para. 109).
- 6.26 The foregoing is reinforced through policy WNL1 of the NDP which states that *proposals will be required to maintain the area's sense of tranquillity, through careful and sympathetic design of access and consideration of traffic impacts on local roads.*
- 6.27 As can be seen from the consultation responses from the Council's Transportation Manager, the site has been visited several times (and at different times in the day) in order to assess the highways impacts as a result of two additional dwellings in this location. While the nature of the road does require some instances of reversing and the use of passing places, at the level of two dwellings this is not found to amount to a cumulative 'severe' impact. The proposed

development does not present an unacceptable impact on highway safety and does not result in detrimental impacts in regards to capacity.

- 6.28 The Transportation Manager has been made aware of the representation from the Residents Group in terms of the traffic report but this does not alter the assessment of the impact that two dwellings in this location would have on highway safety.
- 6.29 With the proposal seeking permission for 2 x 4 bedroom properties, a minimum of 3 car parking spaces per dwelling are required to meet the standards contained within the highways design guide. The submitted block plan indicates this provision as well as turning areas so that any vehicle can enter the highway in forward gear.
- 6.30 At the level of development proposed, the highway impacts are not found to represent a reason to refuse the application. The associated impacts on highway safety and the capacity of the road would not result in the residual cumulative impacts being classed as severe. As directed by the NPPF, and corroborated by the lack of objection from the Transportation Manager, refusal on highways grounds is not found to be justified. With this in mind, as well as the proposed internal layout, the application is found to meet the aims of policy MT1 of the Core Strategy and WNL1 of the NDP.

Ecology and trees

- 6.31 Policies LD2 and LD3 of the Core Strategy are applicable in relation to ecology and the impact on trees. These state that development proposals should conserve, restore and enhance the biodiversity and geodiversity asset of the County and protect, manage and plan for the preservation of existing and delivery of new green infrastructure.
- 6.32 The application is accompanied by a Tree Report and Survey and Ecological Assessment and Mitigation Method Statement. The survey makes several recommendations including the timing of any hedgerow removal, the type of species to be included within re-planting and bird and bat enhancements. The Council's Ecologist has viewed this and is happy with the findings and recommendations, subject to these being conditioned on any approval. With the site falling within the River Wye SAC catchment, a Habitat Regulations Assessment Appropriate Assessment (HRA AA) has been sent to Natural England for their approval. They have confirmed they have no objections to the proposal.
- 6.33 During the application process, additional information has also been received in relation to Dormice, following comments from the Council's Ecologist in this regard. Again, this has been viewed and the recommendations are agreed with. The Council's Ecologist is happy that as works will be licensed as required to avoid any breach of Wildlife Legislation (above planning regs/requirements) and fully monitored by a Licence holding specialist that all considerations have been made. In terms of light pollution, a condition will be attached to any approval (as suggested by the Ecologist) so that no external lighting should illuminate any boundary feature, adjacent habitat or area around the approved Dormice mitigation or enhancement features.
- 6.34 With regard to the impacts on the trees on the site, the Council's Tree Officer has viewed the submission and upon the removal of one unit, does not object to the scheme. The site does not benefit from any Tree Protection Orders, but a condition ensuring those trees proposed to be retained, will be attached to any approval as well as the development being carried out with the submitted tree survey and specifications of tree planting.
- 6.35 In light of the foregoing, and following the submission of amended plans and additional information, the proposal is found to comply with the aims of policies LD2 and LD3 and all reasonable and responsible measures have been taken such as to ensure the LPA legal duty of care.

Drainage

- 6.36 Policy SD3 of the Core Strategy states that measures for sustainable water management will be required to be an integral element of new development in order to reduce flood risk, avoid an adverse impact on water quality, protect and enhance groundwater resources and provide opportunities to enhance biodiversity, health and recreation and will be achieved by many factors including developments incorporating appropriate sustainable drainage systems to manage surface water. For waste water, policy SD4 states that in the first instance developments should seek to connect to the existing mains wastewater infrastructure. Where evidence is provided that this option is not practical alternative arrangements should be considered in the following order; package treatment works (discharging to watercourse or soakaway) or septic tank (discharging to soakaway).
- 6.37 Foul water will be disposed of using private treatment plants with outfall into soakway drainage fields. Surface water will be disposed of using a Sustainable Urban Drainage system. Given the size of the site and the supporting information, the methods are found to be policy compliant and achievable on the site.
- 6.38 While the proposal has been reduced from three dwellings to two on the site, the drainage strategy has not been updated. Notwithstanding this, the Council's Land Drainage Consultant, having visited the site and noting that the population within the development is decreasing, is happy with the proposal. As such, it is considered that the requirements of Policies SD3 and SD4 would be satisfied subject to suitably worded conditions.

Other matters

- 6.39 In terms of the hierarchy matrix that was used to determine the settlements for proportionate growth under policy RA2, the Core Strategy is adopted and therefore forms part of the Development Plan for the County. Any concerns relating to the inclusion of Welsh Newton Common as a RA2 settlement should have been submitted during the consultation on that document. This does not represent a reason to refuse a planning application now being considered.
- 6.40 It is likely that previous to the adoption of the Core Strategy Welsh Newton Common saw little new housing as it was not identified as a settlement for growth under the previous Unitary Development Plan. This notwithstanding, there has been a clear shift in policy and it is acknowledged that development in rural settlements bring forward economic, social and environmental benefits.
- 6.41 There is no such thing as a precedent within planning and each application is assessed on its own merits. Furthermore, an application is not assessed on who is the applicant, whether they are a local person or what their intention is after gaining permission – the relevant policies are applied consistently. For the avoidance of doubt, planning permission goes with the land as opposed to the applicant.
- 6.42 It is acknowledged that the access to the site will cross common land. However, any such agreement would be the subject of a Section 38 consent under the Commons Act and separate to the granting of any planning permission. Notice was served in the newspaper as a result of there being no known owner of the common and as such the planning application is valid and capable of being assessed.
- 6.43 The housing targets within the settlement are a minimum. Considering the 14% indicative growth required across the Ross on Wye Housing Market Area, a total of 14 new houses are required within the Parish between 2011 and 2031. As of April 2019 there was a total of 13 completions and 3 commitments meaning that the target has been surpassed. However, in light

of the 5 year housing land supply across the County as a whole, as directed by paragraph 11 of the NPPF an application for housing should be refused if the harm significantly and demonstrably outweighs the benefits. Surpassing the minimum target within a Parish is not a justified reason to refuse an application if it is found to be acceptable in all other respects.

- 6.44 The Council do not have an adopted Community Infrastructure Levy and at the scale of the proposal (for two dwellings) developer contributions are not sought.

Planning balance and conclusion

- 6.45 Both CS policy SS1 and paragraph 11 of the National Planning Policy Framework engage the presumption in favour of sustainable development and require that development should be approved where they accord with the development plan. The NPPF encompasses the government's view of what is meant by sustainable development in practice. The three themes, economic, environmental and social should be pursued jointly and simultaneously.
- 6.46 The application is for housing and in the light of the housing land supply deficit must be considered against the test prescribed at NPPF paragraph 11 and CS Policy SS1. Paragraph 14 of the NPPF is not engaged given that there are no site allocations within the NDP. Permission should be granted, therefore, unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the NPPF when considered as a whole.
- 6.47 The Welsh Newton and Llanrothal NDP is adopted and therefore forms part of the statutory development plan for the county. The site lies within the settlement boundary identified under policy WNL5 of the NDP and therefore somewhere the principle of development is accepted. In terms of the scale of the proposal and location adjacent to existing dwellings, the scheme is policy compliant in this regard also. The lack of definition in relation to a 'made up road' is acknowledged but the proximity to St Wolston's Road, the construction of the private street and that it relatively recently served the post office are all appreciated and two dwellings off this are not found to be unacceptable outright or undermine the inclusion of 'made up road' in the NDP after the Examiner's report.
- 6.48 The design of the dwellings are found to be in keeping with the variety within Welsh Newton Common as a whole – they take reference from traditional proportions and materials. They also avoid issues of overlooking or loss of light for both future occupants and existing residents. While it is acknowledged that the provision of 2 x 4 bedroom dwellings conflicts with the second bullet point of policy WNL5, this is still a size of dwelling that is required across the HMA as a whole. The height of the dwellings also exceeds the maximum included within policy WNL4 but noting the design of surrounding development is not found to lead to significantly and demonstrable harm to the local landscape. Noting that paragraph 14 of the NPPF is not engaged, the conflict with the NDP policies does not direct the decision maker to automatically refuse the application, rather to assess whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.
- 6.49 The local concerns in relation to highways impacts as a result of the proposal are appreciated, but the impacts are not found to amount to be severe which would justify refusing the application in light of the direction provided the NPPF. Following the submission of amended plans and additional information the ecological and tree impacts are also found to be policy compliant.
- 6.50 While the concerns in terms of ecology are acknowledged, the Council's Ecologist and Tree Officer are satisfied with the proposal and the information supplied. The LPA have taken all reasonable and responsible measures to ensure our legal duty of care.

- 6.51 Given the lack of objection from Natural England and the consultees on highways, ecology, trees and land drainage, the proposal is found to be compliant technically.
- 6.52 In assessing the three indivisible dimensions of sustainable development as set out in the CS and NPPF, officers are of the opinion that the scheme is representative of sustainable development and that the presumption in favour of approval is engaged. The scheme will bring forward two dwellings with the associated economic and social benefits that small developments in rural settlements support.

RECOMMENDATION

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

1. **C01 Time limit for commencement (full permission)**
2. **C07 Development in accordance with approved plans and materials**
3. **C13 Samples of external materials**
4. **CE6 Efficient use of water**
5. **CBK Restriction of hours during construction**
6. **The working methods scheme, mitigation and enhancement features relating to Dormice as detailed in the Dormice report by Natasha James on behalf of Wilder Ecology supplied December 2019 shall be implemented and hereafter maintained in full as stated unless otherwise approved in writing by the local planning authority. No external lighting should illuminate any boundary feature, adjacent habitat or area around the approved Dormice mitigation or enhancement features.**

Reason: To ensure that all species are protected and habitats enhanced having regard to the Wildlife and Countryside Act 1981 (as amended), the Habitats & Species Regulations 2017 (as amended), Policy SS6 and LD2 of the Herefordshire Core Strategy, National Planning Policy Framework (2019) and NERC Act 2006
7. **The ecological protection, mitigation, compensation and working methods scheme including for Great Crested Newts, as recommended in the ecology report by Wilder Ecology dated October 2018 shall be implemented and hereafter maintained in full as stated unless otherwise approved in writing by the local planning authority. No external lighting should illuminate any boundary feature, adjacent habitat or area around the approved mitigation measures.**

Reason: To ensure that all species are protected and habitats enhanced having regard to the Wildlife and Countryside Act 1981 (as amended), the Habitats & Species Regulations 2018 (as amended), Policy LD2 of the Herefordshire Core Strategy, National Planning Policy Framework (2019) and NERC Act 2006
8. **In addition to the secured Dormice mitigation-enhancement, prior to first occupation evidence (such as photos/signed Ecological Clerk of Works completion statement) of the suitably placed installation within the site boundary of at least FOUR Bat roosting enhancements, FOUR bird nesting boxes, THREE insect hotels/invertebrate habitat boxes, and ONE Hedgehog habitat home should be supplied to and acknowledged by the local authority; and shall be maintained hereafter as approved unless otherwise agreed in writing by the local planning authority. No external lighting should illuminate any biodiversity net gain**

enhancement feature.

Reason: To ensure that all species are protected and habitats enhanced having regard to the Wildlife and Countryside Act 1981 (as amended), Habitat Regulations 2017, Core Strategy LD2, National Planning Policy Framework (2019), NERC Act 2006 and Dark Skies Guidance Defra/NPPF 2013/2019.

9. All foul water shall discharge through connection to new private foul water treatment systems with final outfall to suitable soakaway drainage fields on land under the applicant's control; and all surface water shall discharge to appropriate SuDS or soakaway system; unless otherwise agreed in writing by the Local Planning Authority.

Reason: In order to comply with Conservation of Habitats and Species Regulations (2018), National Planning Policy Framework (2019), NERC Act (2006), and Herefordshire Core Strategy (2015) policies LD2, SD3 and SD4

10. CAB Visibility splays (2.4M X 25M)
11. CAD Access gates (5m)
12. CAE - Vehicular access construction
13. CAH - Driveway gradient
14. CAI - Parking – single/shared private drives
15. CAT - Construction Management Plan
16. CB2 - Secure covered cycle parking provision
17. Protection of trees/hedgerows that are to be retained
18. Prior to the commencement of the development updated details of the proposed foul and surface water drainage arrangements shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented before the first occupation of any of the buildings hereby permitted. The information shall include the following:
- An updated surface water drainage strategy and calculations to demonstrate that they have been correctly sized for the 1 in 100 year + 40% climate change event;
 - An updated foul water drainage strategy with supporting calculations to demonstrate the drainage fields have been sized correctly for the associated population.
19. CK9 – Trees in Accordance with plans
20. CKA – Retention of existing trees
21. CKF – Specifications for tree planting

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. I11 – Mud on highway
3. I09 – Private apparatus within the highway
4. I45 – Works within the highway
5. I05 – No drainage to discharge to highway
6. I47 – Drainage other than via highway system
7. I35 – Highways Design Guide and Specification

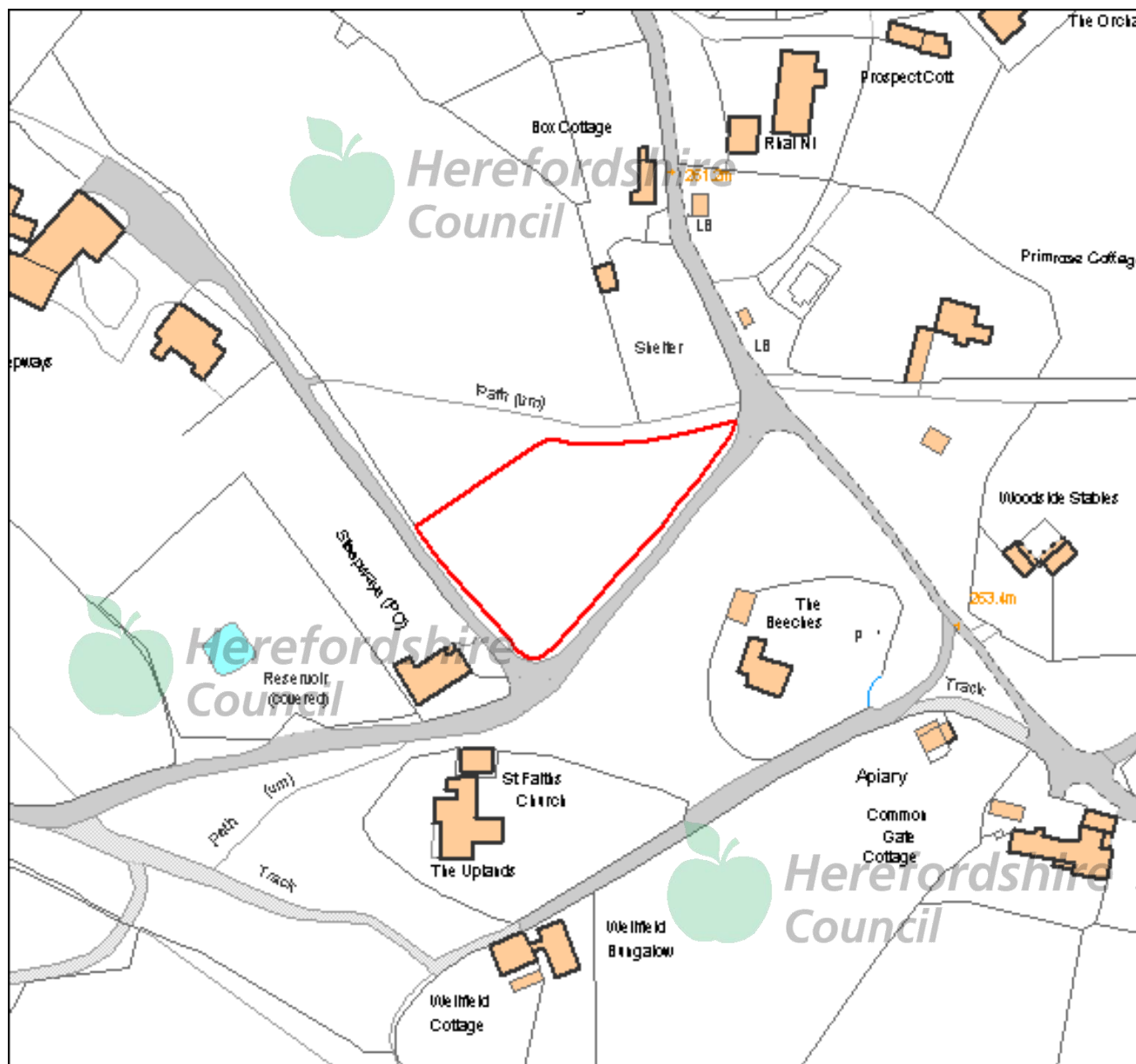
Decision:

Notes:

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Background Papers

Internal departmental consultation replies.



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

APPLICATION NO: 191286

SITE ADDRESS : STEEPWAYS, FROM ST WOLSTONS ROAD TO NYTHFA PROPERTY, WELSH NEWTON, HEREFORDSHIRE, NP25 5RT

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Further information on the subject of this report is available from Miss Emily Reed on 01432 383894

MEETING:	PLANNING AND REGULATORY COMMITTEE
DATE:	15 JANUARY 2020
TITLE OF REPORT:	190827 - PROPOSED NEW DWELLING AT WOODSIDE STABLES, WELSH NEWTON COMMON, WELSH NEWTON, HEREFORDSHIRE, NP25 5RT For: Ms Boughton per Mr David Kirk, 100 Chase Road, Ross-On-Wye, Herefordshire, HR9 5JH
WEBSITE LINK:	https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=190827&search=190827
Reason Application submitted to Committee – Re-direction	

Date Received: 6 March 2019
Expiry Date: 23 August 2019

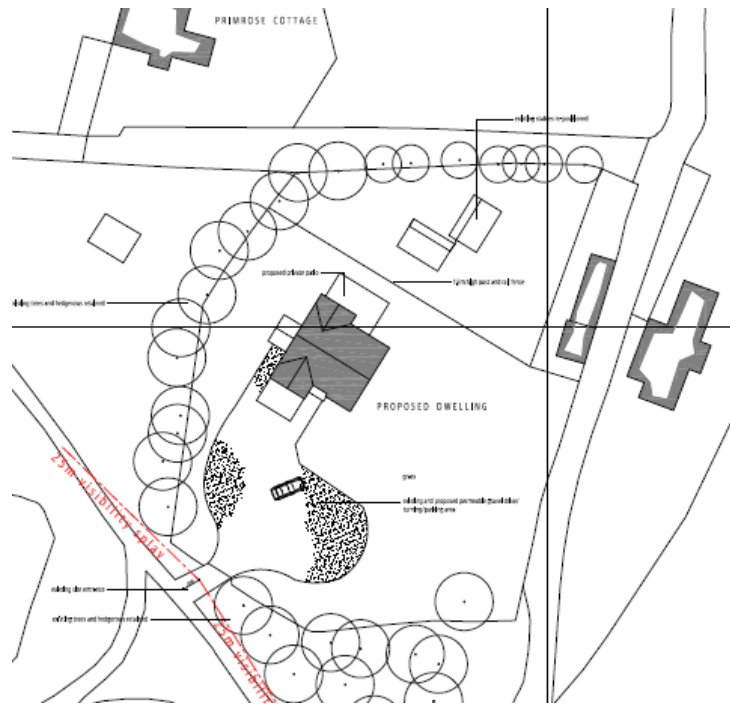
Ward: Llangarron

Grid Ref: 351279,217490

Local Member: Councillor Elissa Swinglehurst

1. Site Description and Proposal

- 1.1 The application site comprises of stables and associated hardstanding lying to the east of St Wolston's Road in the centre of Welsh Newton Common. The site is bounded by hedgerows and a field access gate onto the road.
- 1.2 The application seeks full planning permission for the erection of a detached, two storey dwelling in place of the stables. Through the application process additional information has been supplied in relation to trees. Relevant re-consultations have been carried out.
- 1.3 Below is the proposed block plan indicating the dwelling and the relationship with the existing dwellings:



- 1.4 For the avoidance of doubt, the application is for the erection of the dwelling only. The re-siting of the existing stables would be subject to a separate planning application noting that it is not included within the description of development.

2. Policies

2.1 Herefordshire Local Plan – Core Strategy (CS):

- SS1 - Presumption in Favour of Sustainable Development
- SS2 - Delivering New Homes
- SS3 - Releasing Land For Residential Development
- SS4 - Movement and Transportation
- SS6 - Environmental Quality and Local Distinctiveness
- RA1 - Rural Housing Distribution
- RA2 - Housing in Settlements Outside Hereford and the Market Towns
- MT1 - Traffic Management, Highway Safety and Promoting Active Travel
- LD1 - Landscape and Townscape
- LD2 - Biodiversity and Geodiversity
- LD3 - Green Infrastructure
- SD1 - Sustainable Design and Energy Efficiency
- SD3 - Sustainable Water Management and Water Resources
- SD4 - Waste Water Treatment and River Water Quality

The Herefordshire Local Plan Core Strategy policies together with any relevant supplementary planning documentation can be viewed on the Council's website by using the following link:-

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

2.2 National Planning Policy Framework (NPPF):

- Chapter 2 - Achieving sustainable development
- Chapter 4 - Decision making
- Chapter 5 - Delivering a sufficient supply of homes
- Chapter 6 - Building a strong, competitive economy
- Chapter 8 - Promoting healthy and safe communities

Further information on the subject of this report is available from Miss Emily Reed on 01432 383894

Chapter 9	-	Promoting sustainable transport
Chapter 11	-	Making effective use of land
Chapter 12	-	Achieving well designed places
Chapter 14	-	Meeting the challenge of climate change, flooding and coastal change
Chapter 15	-	Conserving and enhancing the natural environment

2.3 Welsh Newton and Llanrothal Group Neighbourhood Development Plan (NDP) Made September 2019 (no allocated sites)

Policy WNL1	-	Protecting and Enhancing Local Landscape Character
Policy WNL2	-	Green Infrastructure
Policy WNL3	-	Protecting and Enhancing Local Wildlife and Habitats
Policy WNL4	-	Building Design Principles
Policy WNL5	-	Welsh Newton Common Settlement Boundary and New Housing
Policy WNL11	-	Supporting New Communications Technologies and Broadband
Policy WNL13	-	Renewable and Low Carbon Energy Development

https://www.herefordshire.gov.uk/download/downloads/id/18419/neighbourhood_development_plan_june_2019.pdf

3. **Planning History**

- 3.1 **141213/F** – Change of use from equestrian storage to one bedroom residential dwelling. Withdrawn
- 3.2 **S102768/F** – Re-instate lean-to adjoining existing store, change of use of land from agricultural to equestrian, to include hardstanding and parking area, installation of septic tank. (Across this site and area relating to application ref: 191286). Approved

4. **Consultation Summary**

Statutory Consultations

4.1 **Natural England** – no objection

Based on the plans submitted. Natural England considers that the proposed development will not have significant adverse impacts on designated sites and has no objection.

Internal Council Consultations

4.2 **Conservation Manager (Ecology)** – no objection

It would appear that the proposed access (upgrade to existing field access) crosses part of Welsh Newton Common (CL_054) – the applicant is advised to seek advice on any legal requirements or wayleaves that this upgrade to a residential access may require in addition to any immediate Highway Consents. The Council's Property Service Land Agent acts as the relevant Commons Registration Authority.

As identified by Natural England the site falls within the River Wye SAC catchment and a Habitat Regulations assessment process is triggered. Subject to Natural England formally approving the required appropriate assessment submitted to them by this lpa a condition is required to secure the appropriate mitigation.

Habitat Regulations (River Wye SAC) – Foul and Surface Water Management

All foul water shall discharge through connection to a new private foul water treatment system with final outfall to suitable soakaway drainage field on land under the applicant's control; and

all surface water shall discharge to appropriate SuDS or soakaway system; unless otherwise agreed in writing by the Local Planning Authority.

Reason: In order to comply with Conservation of Habitats and Species Regulations (2018), National Planning Policy Framework (2019), NERC Act (2006), and Herefordshire Core Strategy (2015) policies LD2, SD3 and SD4

The supplied ecology report is noted. The highway visibility splay indicated does not appear to be within the applicant's ownership and appears to be solely within the area of Welsh Newton Common. No removal of any trees or hedgerows should be undertaken so as to ensure the local dormouse population is not negatively impacted by this development.

The ecological working methods in the supplied ecology report should be secured through a relevant condition. It is noted that this report covers more than this current development location.

Nature Conservation – Ecology Protection, Mitigation and Biodiversity Net Gain

The ecological protection, mitigation, compensation and working methods scheme as recommended in the ecology report by Wilder Ecology dated december 2018 shall be implemented and hereafter maintained in full as stated unless otherwise approved in writing by the local planning authority. No external lighting should illuminate any boundary feature, adjacent habitat or area around the approved mitigation or any biodiversity net gain enhancement features.

Reason: To ensure that all species are protected and habitats enhanced having regard to the Wildlife and Countryside Act 1981 (as amended), the Habitats & Species Regulations 2018 (as amended), Policy LD2 of the Herefordshire Core Strategy, National Planning Policy Framework (2019) and NERC Act 2006

As identified in the NPPF, NERC Act and Core Strategy LD2 all developments should demonstrate how they are going to practically enhance ("Net Gain") the Biodiversity potential of the area. To secure these enhancements a relevant Condition is suggested:

Nature Conservation – Biodiversity and Habitat Enhancement

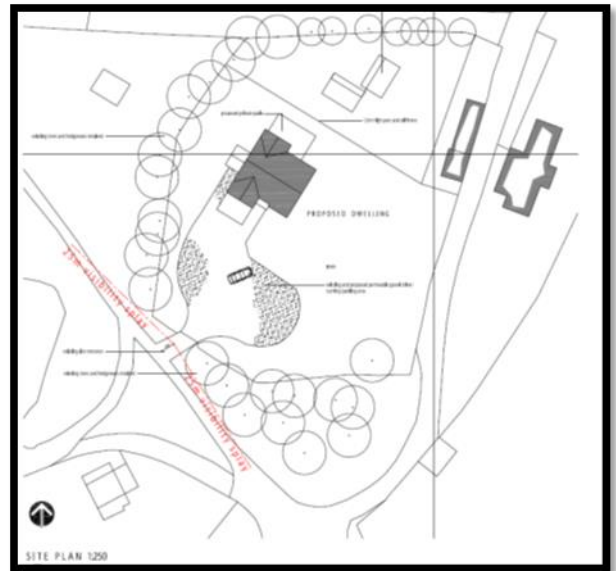
Within 3 months of completion of the works approved under this planning decision notice evidence (such as photos/signed Ecological Clerk of Works completion statement) of the suitably placed installation within the site boundary of at least TWO Bat roosting enhancements, FOUR bird nesting boxes and ONE Hedgehog habitat home should be supplied to and acknowledged by the local authority; and shall be maintained hereafter as approved unless otherwise agreed in writing by the local planning authority. No external lighting should illuminate any habitat enhancement or boundary feature.

Reason: To ensure that all species are protected and habitats enhanced having regard to the Wildlife and Countryside Act 1981 (as amended), Habitat Regulations 2018, Core Strategy LD2, National Planning Policy Framework (2019), NERC Act 2006 and Dark Skies Guidance Defra/NPPF 2013/2019.

4.3 Conservation Manager (Trees) – no objection

Initially commented (10 April 2019):

There are a number of discrepancies within the tree report submitted with this application and consequently I will require that it is resubmitted with amendments.



posed plan with the tree report is not the same as drawing 925-PL02 submitted by HDP. The tree report also includes another site referenced as proposed site 1 which I'm not able to find reference to anywhere else.



Drawing 925-PL02 correctly shows that the site is surrounded by trees/hedges whereas the tree report appears to omit all except a section of trees which will be adjacent to the proposed position of the dwelling.

I am not completely convinced that the trees have been categorised in accordance with BS5837:2012 which it states at the beginning of section 3 Methodology. L3, which is the group of trees adjacent to the proposed dwelling have been categorised B without the inclusion of sub categories which identify either arboricultural, landscape or cultural value. Cat B trees will have an expected life span of at least 20 years but not able to exceed 40.

Therefore going by this guidance these L3 should be category A trees of high value due to the 40+ years life expectancy. They are in fact a group of trees located on the field edge and I personally would not categorise them any higher than C because they have limited value and don't offer much in relation to the 3 sub headings. Other trees in the report which are not on the proposed site but still included have been categorised as R, this is now defunct, it was used in the 2005 version of the 5837 but replaced in 2012.

In summary I would like to see an amended version of the tree report which includes all of the trees which are within the curtilage of the proposed site and particular attention given to the site access and the impact on trees. Welsh Newton Common is an area with a dense tree cover, consisting of mainly Beech trees. I would recommend that replacement planting and soft landscaping uses this species as a focal point.

Following the submission of an amended tree categorisation the Council's Tree Officer comments as follows:

I still think the tree report is average at best but it does at least have adequate root protection areas and protection plan.

Seeing as the risk to trees is relatively low I don't think there's any point asking for or conditioning a method statement.

Conditions

CK9 – Trees in Accordance with plans - Survey of Trees at Welsh Newton Common Sites – Abersenny Ltd.

CKA – Retention of existing trees

CKF – Specifications for tree planting

4.4 **Transportation Manager** – no objection

Initially commented (1 April 2019):

No objection to the principle, however for visibility splays to be conditioned they need within the red area. If a plan is altered to accommodate this issue, then please condition as follows :

CAB - 2.4M X 25M
CAE, CAH, CAL, CAZ, CB2,
I11, I45, I09, I05, I47, I35

Following the submission of a consultation report on behalf of residents group (4 December 2019):

After reviewing all submitted representation documentation along with Herefordshire Council's Core Strategy, and the recently approved Welsh Newton and Llanrothal Neighbourhood Development Plan 2011-2031 the following points can be made.

1. The site has been visited several times and has been visited at different times of the day to match with the peaks highlighted in the surveys. During the site visits to assess the highway, the impact of two way flows resulted in vehicles requiring reversing and using passing places to negotiate the oncoming traffic. This is not unusual in a rural setting and is typical for the character and usage of the highway in this area. The existing vehicle movements have been recorded as low and the modest development will not bring the cumulative impact to the severe level as stipulated in the NPPF.
2. The approved NDP for the area highlights the Welsh Newton Common access road *being a single track lane with a few passing places this makes the area unsuitable for any form of major development expect slow, organic growth. New development schemes should be small in scale and the Neighbourhood Plan may identify a preference or a maximum number of units in a single scheme.* As yet the NDP have yet to propose a preference or maximum number of units in a single scheme, but it does appear to support development in the locale, and therefore the trips associated to it. The application proposes a development of two houses, this is in keeping with the approved NDP.
3. The NPPF states “*Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.*” The proposed development does not present an unacceptable impact on highway safety and does not provide impacts in regards to capacity.

In conclusion the proposed development is acceptable in highways terms and the previous highways comments remain applicable.

CAB - Visibility Splays 2.4 x 25m
 CAD - Access gates – 5m
 CAE - Vehicular access construction
 CAH - Driveway gradient
 CAI - Parking – single/shared private drives
 CAT - Construction Management Plan
 CB2 - Secure covered cycle parking provision

I11 – Mud on highway
 I09 – Private apparatus within the highway
 I45 – Works within the highway
 I05 – No drainage to discharge to highway
 I47 – Drainage other than via highway system
 I35 – Highways Design Guide and Specification

4.5 **Land Drainage** – no objection

Surface Water Drainage

Infiltration testing has been undertaken which has established an infiltration rate of 1.6x10⁻⁵m/s. The soakaway has been designed to accommodate the 1 in 100 year + 40% climate change event.

The driveway will be constructed of permeable paving which will feature check dams owing to the slope (1 in 13 maximum for this site).

It is stated that the soakaway will be owned by the respective homeowner.

Foul Water Drainage

A package treatment plant will be installed with disposal of treated effluent to a drainage field. Percolation tests have established a Vp value a 20.8. The drainage field has been calculated to be 12m x 3 linear meterage.

Overall Comment

We do not object the proposed development.

5. Representations

5.1 Welsh Newton and Llanrothal Group Parish Council – support

Welsh Newton and Llanrothal Group Parish Council wish to SUPPORT the application subject to the following conditions:

- The right of access across the common is confirmed as legal
- The issues of limited highway access is properly investigated
- No further development of existing or new buildings are allowed on the site in the future

5.2 **To date a total of 19 letters of representation have been received. The comments therein are summarised below.**

17 letters of objection:

- Hierarchy matrix to adjudicate suitability for sustainable development was incorrect and false. Awarded points for facilities settlement does not have
- Concerned about the impact of the development on nearby hedgerows which periodically support dormice
- Ecology report has missed the stone wall to the east of the site where young grass snakes have been seen. Also suggests that the ponds near the site are unsuitable for great crested newts but they are definitely suitable for amphibians and is a breeding site for common frogs. Would question some of the other judgements in this report about suitability of local ponds for great crested newts
- NDP supports development of properties that are built in response to local need for somewhere to live. A 4 bedroom property for a single person does not fit this description. A smaller property would add to the range of properties in the village
- NDP does not support developments that result in the loss of the small fields that are part of the character of Welsh Newton Common
- Cannot see how this proposal looks to tackle climate change
- Provision of bird and bat boxes is encouraging but there is a great need to provide nesting sites for migratory birds
- Would question suitability of Welsh Newton Common as a sustainable community for future development. Recently lost the shop and post office, no longer have a church, no community building and served by a single bus service once a week
- Local people have been refused permission to build homes due to the road capacity and it seems surprising that this, which has not changed, is now suitable to serve a larger community and the surrounding agricultural land
- While Woodside Stables is mentioned as a suitable site for future development in the NDP this is for redevelopment of the existing buildings
- Can't see the proposal having any economic merits. Provides nothing for the local community and isn't a development that seeks to ensure the continuation of a local business
- Environmentally the application has not merits whatsoever
- Development will be built on greenfield site without any demonstrable need
- Development will set a dangerous precedent
- Proposal is contrary to common law in that the development proposes crossing common land. Historically crossing common land has been rejected on all counts and should not be waived in this case
- This is an area of great heritage and unspoilt natural beauty which does not lend itself to more development without spoiling the habitat

- Traffic sensor should be null and void as it does not show true statistics as large percent of traffic would have turned off before that point
- Proposal is out of line with the NDP and policy RA2 – not brownfield, design and layout does not seem to reflect the size and design of other houses and does not make a positive contribution to the surrounding environment
- Don't believe villages infrastructure can cope with the additional drain on current resources
- Would have thought existing residents would have priority over new houses for their extended families
- If more dwellings are constructed the extra traffic would make the common rights virtually impossible to exercise
- Area is very unique in that it holds approximately fifty houses at the end of a single track. The poor infrastructure must be taken into account
- Area already has drainage and services issues
- Drainage strategy states that a topographical survey was not undertaken and therefore make it impossible to reply on this report
- Common has no owner and has been vested to the Council. Crossing common to allow development would be eroding and destroying it
- Believe settlement target has been met and we should not seek to overload the area with excess development that should be on brownfield land and not greenfield sites
- All amenities are within Welsh Newton not Welsh Newton Common
- Properties on the Common generally take considerable time to sell suggesting that the demand for additional housing is not significant
- Draft NDP contains requirement that development will be required to provide appropriate high quality infrastructure for any new developments or to contribute to the local community by providing monetary sums for use in the parishes through developer contributions and community infrastructure levy
- The development of further housing may set a precedent as there are many properties with fields/paddocks who could do the same
- Whole scheme is a purely commercial venture
- Noting that relatively recent permitted dwelling is to be sold there is great concern this will follow a similar ilk and precedent
- Question of light pollution and what this would mean for the habitat and wildlife
- Safety issues here too for the emergency services
- Issues of visual amenity
- Number of planning applications have been turned down in the past due to the effects on the common and access across it
- Concerns regarding the highways impacts and supported by a Transport Consultant report on behalf of residents

2 letters of support from 1 property:

- The design and materials fit in well with the character of the village
- Plot size is suitable
- Inclusion of disabled facilities shows exceptional consideration and foresight
- Design makes use of existing access so there will be no loss of hedgerow
- Application is accompanied by very comprehensive reports that demonstrate the applicant has given a great deal of thought to the proposed

5.3 The consultation responses can be viewed on the Council's website by using the following link:-

https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=190827&search=190827

Internet access is available at the Council's Customer Service Centres:-

<https://www.herefordshire.gov.uk/government-citizens-and-rights/customer-services-enquiries/contact-details?q=customer&type=suggestedpage>

6. Officer's Appraisal

Policy context

6.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states as follows:

"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

6.2 In this instance the adopted development plan is the Herefordshire Local Plan – Core Strategy (CS). The National Planning Policy Framework (NPPF) is also a significant material consideration. It is also noted that the site falls within the Welsh Newton and Llanrothal Group Neighbourhood Area, which published a made Neighbourhood Development Plan (NDP) on 13 September 2019 but does not allocate any sites.

6.3 Policy SS1 of the Herefordshire Local Plan – Core Strategy (CS) sets out that proposals will be considered in the context of the 'presumption in favour of sustainable development' which is at the heart of national guidance contained within the NPPF. This policy states:

'When considering development proposals Herefordshire Council will take a positive approach that reflects the presumption in favour of sustainable development contained within national policy. It will always work proactively to find solutions which mean that proposals can be approved wherever possible and to secure development that improves the social, economic and environmental conditions in Herefordshire.'

Planning applications that accord with the policies in this Core Strategy (and, where relevant, with policies in other Development Plan Documents and Neighbourhood Development Plans) will be approved, unless material considerations indicate otherwise.

Where there are no policies relevant to the application or the relevant policies are out of date at the time of making the decision then the Council will grant permission unless material considerations indicate otherwise – taking account whether:

- a) Any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in national policy taken as a whole; or*
- b) Specific elements of national policy indicate that development should be restricted.'*

6.4 It is acknowledged at this moment in time, the Council is unable to demonstrate a five year housing land supply (this has recently been reduced to 4.05 years). Paragraph 11d of the Framework echoes the above in that it advises the following in respect of decision making:

'Where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date, granting permission unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development; or*
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

6.5 While the Neighbourhood Development Plan is less than 2 years old, there are no site allocations within it (the one allocated site was removed by the Examiner). As such, paragraph 14 of the NPPF which states that the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, is not engaged. The test within paragraph 11d is therefore relevant.

Location of residential development

- 6.6 In locational terms, paragraph 79 of the Framework seeks to restrict development in isolated locations, but does acknowledge in rural locations it may be the case that development in one village supports the services in another village nearby. That said, the adoption of the Core Strategy represents a shift in policy that recognises proportionate growth is required in rural areas for social and economic purposes. It is with this in mind that the proposal is assessed under the CS policies alongside the Framework, notwithstanding the out of date nature of the policies.
- 6.7 Policies SS2 (Delivering new homes) and SS3 (Releasing land for residential development) of the CS clearly set out the need to ensure sufficient housing land delivery across the County. In order to meet the targets of the CS the Council will need to continue to support housing growth by granting planning permissions where developments meet with the policies of the CS, (and, where relevant with policies in other Development Plan Documents and Neighbourhood Development Plans). Policy SS2 states that a supply of deliverable and developable land will be identified to secure the delivery of a minimum of 16,500 homes in Herefordshire between 2011 and 2031 to meet market and affordable housing need. 6,500 of these will be in Hereford, where it is recognised that there is a wide range of services and consequently it is the main focus for development.
- 6.8 Outside of Hereford City, and the market towns, CS Policy RA1 identifies that Herefordshire Rural areas will need to find a minimum of 5,300 new dwellings between 2011 and 2031 to contribute towards the county's housing needs. The dwellings will be broadly distributed across the seven Housing Market Areas (HMA's). Welsh Newton Common is within the Ross-on-Wye HMA, which is earmarked for an indicative 14% indicative housing growth and is listed in Figure 4.14 under policy RA2 as a settlement which will be the main focus of proportionate housing development. This percentage increase translates to 61 dwellings being required across the plan period.
- 6.9 Notwithstanding the above, the preamble to Core Strategy Policy RA2 states that NDPs will be the principal mechanism by which new rural housing will be allocated. As stated above, the Welsh Newton and Llanrothal NDP has been adopted and therefore forms part of the Development Plan for the county.
- 6.10 Policy WNL5 of the NDP states that proposals for new market housing will be supported within the identified settlement boundary in Welsh Newton Common. The following map includes the black line of the settlement boundary with the application site being indicated by the red star:



6.11 It is clear from the above that the site is located within the settlement boundary. Notwithstanding this, policy WNL5 goes on to state other criteria that a proposal should meet. This includes:

- Within the Settlement Boundary for Welsh Newton Common, proposals should be small in scale i.e. for one or two properties, and development should adjoin clusters of existing buildings and not be on isolated sites away from other housing and settlements. Proposals will be expected to demonstrate particular attention to the form, layout, character and setting of the site and its location within Welsh Newton. New housing should be accessed directly from a made up road.
- House sizes should be limited to a maximum of 2/3 bedrooms to help address the local shortage of smaller, affordable units for young families.

6.12 With the application seeking planning permission for the erection of a single dwelling, the scale is supported by this policy. Also, noting the location of site in the centre of the settlement, surrounded by existing dwellings, it is not considered that the site is isolated. Welsh Newton Common is largely made up of individual, detached dwellings, often in their own plots – although there are examples of shared accesses in some cases. The site benefits from built form at the present time, albeit in the form of stables, but the erection of a dwelling would not undermine the character of the area.

6.13 The inclusion of a ‘made up road’ within policy WNL5 came from the Examiner’s report which states as follows:

Access to Welsh Newton Common is via a narrow lane which ends in a cul-de-sac. Parts of the settlement are accessed by narrow unmade roads. It is recommended that any further development in the settlement should be accessed directly from a made up road. This would in effect limit the areas suitable for development or result in the making up of other roads.

6.14 There is no definition within the NDP as to what a ‘made up road’ is, but the intention to limit the areas for development is noted. St Wolston’s Road is tarmacked and runs through the centre of the settlement. As such, it is not considered unreasonable to assume this constitutes at least one made up road. It is also considered that the way the term has been included within policy WNL5, it is not unreasonable to assume there is more than one made up road within the settlement (the policy is written as ‘a’ made up road, not ‘the’). With this in mind, and the proposed dwelling being accessed off this (albeit across a common like the majority of dwellings in the settlement) the proposal is found to accord with criteria of the policy also.

- 6.15 The conflict with policy WNL5 in terms of bedroom numbers within the proposed dwellings is acknowledged. The proposed includes 1 x 4 bedroom property. This conflict will be weighed up within the planning balance at the end of this report. The following sections will go on to consider whether there are any other material considerations of such weight and magnitude that might lead to a conclusion that the proposal represents an unsustainable form of development.

Design and amenity

- 6.16 The detail of the design is assessed by policy SD1 of the Core Strategy. This policy states that proposals should be designed to maintain local distinctiveness through detailing and materials, respecting scale, height, proportions and massing of surrounding development. The proposal should also safeguard the amenity of existing and proposed residents in terms of overlooking, overshadowing and overbearing.
- 6.17 The above is reinforced through policy WNL4 of the NDP which states, amongst other things; care should be taken to ensure that building(s) height, scale, and form do not disrupt the visual amenities of the immediate surroundings or impact adversely on any significant wider landscape views; building materials are encouraged that retain the character of the settlement such as natural red sandstone, mellow red brick, timber or timber style windows and slate or tiled roofs and Designs should be informed by the distinctive local character of the rural area. Ridge heights should not exceed 6m.
- 6.18 The dwelling proposed is detached with communal living space on the ground floor and four bedrooms, en suites and a bathroom on the first floor. The elevations of the proposed can be seen below:



- 6.19 In terms of the scale of the building proposed, the ridge height does exceed 6m (measuring approximately 7.4m) – a limit included within policy WNL5. This tension with the policy will be weighed up in the planning balance at the end of this report but the surrounding development is noted – two storey dwellings to the south and west of largely traditional cottage vernacular.
- 6.20 The dwelling will be constructed from facing stonework elevations with areas of render with slate roofs and aluminium/timber windows. Noting the dwellings nearest the site are comprised of render and stone these materials are not found to be out of keeping with the locality or unacceptable in principle. However, it is found to be appropriate to condition exact details and finishes of the materials on any approval.
- 6.21 The sustainability credentials of the proposal have been touched on within the Design and Access Statement which states:
- The dwelling has been designed to exceed current building regulation requirements for thermal performance, highly insulated timber framed walls and roofs with continuous external insulation to eliminate cold bridges within the structures.*
- 6.22 Turning now to amenity impacts, the proposed dwelling will benefit from a large garden to the rear and side of an adequate level for a four bedroomed property. It is noted that a post and

wire fence is proposed along the rear boundary which will demarcate the residential curtilage from the rest of the site. This is found to be acceptable, particularly noting that the dwelling will benefit from a truly private area to the side.

- 6.23 Moving onto impacts for the amenity of neighbouring dwellings, the nearest to the proposed is 1 Woodside which lies approximately 45m to the east/north east. With this distance in mind, as well as the intervening track, issues of overlooking or overshadowing are found unlikely to be experienced. As a result of the common land located to the north west/west and south as well as St Wolston's Road, such issues are also unlikely for any other neighbouring dwelling in the vicinity.
- 6.24 In light of the foregoing, the design of the dwelling is found to have been influenced by the locality – the materials are in keeping with the surroundings and the individual plot responds well to the character of the surrounding build form. The policy conflict in terms of height and size of the dwelling is noted and will be weighed up against the benefits of the scheme. In all other respects however the proposal is found to comply with policy SD1 of the Core Strategy and policy WNL5 of the NDP.

Transport

- 6.25 Policy MT1 of the CS and NPPF policies require development proposals to give genuine choice as regards movement. NPPF paragraph 103 requires local planning authorities to facilitate the use of sustainable modes of transport and paragraph 108 refers to the need to ensure developments generating significant amounts of movement should take account of whether safe and suitable access to the site can be achieved for all people and whether improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where 'the residual cumulative impacts of development are severe.'(NPPF para. 109).
- 6.26 The foregoing is reinforced through policy WNL1 of the NDP which states that *proposals will be required to maintain the area's sense of tranquillity, through careful and sympathetic design of access and consideration of traffic impacts on local roads.*
- 6.27 As can be seen from the consultation responses from the Council's Transportation Manager, the site has been visited several times (and at different times in the day) in order to assess the highways impacts as a result of one additional dwelling in this location. While the nature of the road does require some instances of reversing and the use of passing places, at the level of one dwelling this is not found to amount to a cumulative 'severe' impact. The proposed development does not present an unacceptable impact on highway safety and does not provide impacts in regards to capacity
- 6.28 The Transportation Manager has been made aware of the representation from the Residents Group in terms of the traffic report but this does not alter the assessment of the impact that one dwelling in this location would have on highway safety.
- 6.29 With the proposal seeking permission for 1 x 4 bedroom property, a minimum of 3 car parking spaces per dwelling are required to meet the standards contained within the highways design guide. The submitted block plan indicates this provision as well as turning areas so that any vehicle can enter the highway in forward gear.
- 6.30 The comments from the Highways Officer in relation to visibility splays crossing common land are noted but any works or access across this requires the benefit of consent under the Commons Act, something separate to the granting of planning permission. Furthermore, notice has been published in the newspaper noting that the owner of the Common is unknown. The application is therefore capable of being assessed and the splays travelling across common land is not a reason to refuse a planning application.

- 6.31 At the level of development proposed, the highway impacts are not found to represent a reason to refuse the application. The associated impacts on highway safety and the capacity of the road would not result in the residual cumulative impacts being severe. As directed by the NPPF, and corroborated by the lack of objection from the Transportation Manager, refusal on highways grounds is not found to be justified. With this in mind, as well as the proposed internal layout, the application is found to meet the aims of policy MT1 of the Core Strategy and WNL1 of the NDP.

Ecology and trees

- 6.32 Policies LD2 and LD3 of the Core Strategy are applicable in relation to ecology and the impact on trees. These state that development proposals should conserve, restore and enhance the biodiversity and geodiversity asset of the County and protect, manage and plan for the preservation of existing and delivery of new green infrastructure.
- 6.33 The application is accompanied by an Ecology Report which the Council's Ecologist has viewed. They are happy with the recommendations and mitigation therein and recommend that this be conditioned on any approval. Biodiversity enhancement will also be conditioned on any approval, making it clear that there should be no illumination of any habitat enhancement or boundary feature. With the site falling within the River Wye SAC catchment, a Habitat Regulations Assessment Appropriate Assessment (HRA AA) has been sent to Natural England for their approval. They have confirmed they have no objections to the proposal.
- 6.34 The initial comments from the Council's Tree Officer are noted but following the submission of an amended tree categorisation they do not object to the application subject to conditions being attached to any approval relating to the development being carried out in accordance with the submitted tree survey, the retention of existing trees and specifications of tree planting being submitted to the local planning authority.
- 6.35 In light of the foregoing, and following the submission of amended plans and additional information, the proposal is found to comply with the aims of policies LD2 and LD3 and all reasonable and responsible measures have been taken such as to ensure the LPA legal duty of care.

Drainage

- 6.36 Policy SD3 of the Core Strategy states that measures for sustainable water management will be required to be an integral element of new development in order to reduce flood risk, avoid an adverse impact on water quality, protect and enhance groundwater resources and to provide opportunities to enhance biodiversity, health and recreation and will be achieved by many factors including developments incorporating appropriate sustainable drainage systems to manage surface water. For waste water, policy SD4 states that in the first instance developments should seek to connect to the existing mains wastewater infrastructure. Where evidence is provided that this option is not practical alternative arrangements should be considered in the following order; package treatment works (discharging to watercourse or soakaway) or septic tank (discharging to soakaway).
- 6.37 Foul water will be disposed of using a private treatment plant with outfall into soakaway drainage fields. Surface water will be disposed of using a Sustainable Urban Drainage system. Given the size of the site and the supporting information, the methods are found to be policy compliant and achievable on the site.

- 6.38 The Council's Land Drainage Consultant has viewed the proposal as well as visited the site. They have confirmed they are happy with the scheme and the methods outlined above conform with the aims of policies SD3 and SD4 of the Core Strategy.

Other matters

- 6.39 In terms of the hierarchy matrix that was used to determine the settlements for proportionate growth under policy RA2, the Core Strategy is adopted and therefore forms part of the Development Plan for the County. Any concerns relating to the inclusion of Welsh Newton Common as a RA2 settlement should have been submitted during the consultation of that document. This does not represent a reason to refuse a planning application now being considered.
- 6.40 It is likely that previous to the adoption of the Core Strategy Welsh Newton Common saw little new housing as it was not identified as a settlement for growth under the previous Unitary Development Plan. This notwithstanding, there has been a clear shift in policy and it is acknowledged that development in rural settlements bring forward economic, social and environmental benefits.
- 6.41 While the development of Woodside Stables is commented upon within the NDP this is as a conversion scheme. Notwithstanding this, the proposal for a new build has been set out above and assessed against policies within the Core Strategy and NDP as a whole.
- 6.42 There is no such thing as a precedent within planning and each application is assessed on its own merits. Furthermore, an application is not assessed on who the applicant, whether they are a local person or what their intention is after gaining permission – the relevant policies are applied consistently. For the avoidance of doubt, planning permission goes with the land as opposed to the applicant.
- 6.43 It is acknowledged that the site will gain access cross common land. This is an existing access. However, any such agreement would be the subject of a Section 38 consent under the Commons Act and separate to the granting of any planning permission. Notice was served in the newspaper as a result of there being no known owner of the common and as such the planning application is valid and capable of being assessed.
- 6.44 The housing targets within the settlement are a minimum. Considering the 14% indicative growth across the Ross on Wye Housing Market Area a total of 14 new houses are required within the Parish between 2011 and 2031. As of April 2019 there was a total of 13 completions and 3 commitments meaning that the target has been surpassed. However, in light of the 5 year housing land supply, as directed by paragraph 11 of the NPPF an application for housing should be refused if the harm significantly and demonstrably outweighs the benefits. Surpassing the minimum target within a Parish is not a justified reason to refuse an application if it is found to be acceptable in all other respects.
- 6.45 The Council do not have an adopted Community Infrastructure Levy and at the scale of the proposal (for one dwelling) developer contributions are not sought.

Planning balance and conclusion

- 6.46 Both CS policy SS1 and paragraph 11 of the National Planning Policy Framework engage the presumption in favour of sustainable development and require that developments should be approved where they accord with the development plan. The NPPF encompasses the government's view of what is meant by sustainable development in practice. The three themes, economic, environmental and social should be pursued jointly and simultaneously.

- 6.47 The application is for housing and in the light of the housing land supply deficit must be considered against the test prescribed at NPPF paragraph 11 and CS Policy SS1. Paragraph 14 of the NPPF is not engaged given that there are no site allocations within the NDP. Permission should be granted, therefore, unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the NPPF when considered as a whole.
- 6.48 The Welsh Newton and Llanrothal NDP is adopted and therefore forms part of the statutory development plan for the county. The site lies within the settlement boundary identified under policy WNL5 of the NDP and therefore the principle of development is accepted. In terms of the scale of the proposal and location adjacent to existing dwellings, the scheme is policy compliant in this regard also. With the site being accessed directly off St Wolston's Road, it is considered to be accessed off a 'made up road'.
- 6.49 The design of the dwelling proposed is found to be in keeping with the variety within Welsh Newton Common as a whole – it takes reference from traditional proportions and materials. It also avoids issues of overlooking or loss of light for both future occupants and existing residents. While it is acknowledged that the provision of 1 x 4 bedroom dwelling conflicts with the second bullet point of policy WNL5, this is still a size of dwelling that is required across the HMA as a whole. The height of the dwelling also exceeds the maximum included within policy WNL4 but noting the design of surrounding development is not found to lead to significantly and demonstrable harm to the local landscape. Noting that paragraph 14 of the NPPF is not engaged, the conflict with the NDP policies does not direct the decision maker to automatically refuse the application, rather to assess whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.
- 6.50 The local concerns in relation to highways impacts as a result of the proposal are appreciated, but the impacts are not found to amount to severe which would justify refusing the application in light of the direction provided the NPPF. Following the submission of amended plans and additional information the ecological and tree impacts are also found to be policy compliant.
- 6.51 Given the lack of objection from Natural England and consultees on highways, ecology, trees, and land drainage, the proposal is found to be compliant technically.
- 6.52 In assessing the three indivisible dimensions of sustainable development as set out in the CS and NPPF, officers are of the opinion that the scheme is representative of sustainable development and that the presumption in favour of approval is engaged. The scheme will bring forward a dwelling with the associated economic and social benefits that small developments in rural settlements support.

RECOMMENDATION

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

- 1. Time limit for commencement (full permission)**
- 2. C07 Development in accordance with approved plans and materials**
- 3. C13 Samples of external materials**
- 4. CE6 Efficient use of water**
- 5. CBK Restriction of hours during construction**
- 6. All foul water shall discharge through connection to a new private foul water**

treatment system with final outfall to suitable soakaway drainage field on land under the applicant's control; and all surface water shall discharge to appropriate SuDS or soakaway system; unless otherwise agreed in writing by the Local Planning Authority.

Reason: In order to comply with Conservation of Habitats and Species Regulations (2018), National Planning Policy Framework (2019), NERC Act (2006), and Herefordshire Core Strategy (2015) policies LD2, SD3 and SD4

7. The ecological protection, mitigation, compensation and working methods scheme as recommended in the ecology report by Wilder Ecology dated december 2018 shall be implemented and hereafter maintained in full as stated unless otherwise approved in writing by the local planning authority. No external lighting should illuminate any boundary feature, adjacent habitat or area around the approved mitigation or any biodiversity net gain enhancement features.

Reason: To ensure that all species are protected and habitats enhanced having regard to the Wildlife and Countryside Act 1981 (as amended), the Habitats & Species Regulations 2018 (as amended), Policy LD2 of the Herefordshire Core Strategy, National Planning Policy Framework (2019) and NERC Act 2006

8. Within 3 months of completion of the works approved under this planning decision notice evidence (such as photos/signed Ecological Clerk of Works completion statement) of the suitably placed installation within the site boundary of at least TWO Bat roosting enhancements, FOUR bird nesting boxes and ONE Hedgehog habitat home should be supplied to and acknowledged by the local authority; and shall be maintained hereafter as approved unless otherwise agreed in writing by the local planning authority. No external lighting should illuminate any habitat enhancement or boundary feature.

Reason: To ensure that all species are protected and habitats enhanced having regard to the Wildlife and Countryside Act 1981 (as amended), Habitat Regulations 2018, Core Strategy LD2, National Planning Policy Framework (2019), NERC Act 2006 and Dark Skies Guidance Defra/NPPF 2013/2019.

9. CAB Visibility splays (2.4M X 25M)
10. CAD Access gates (5m)
11. CAE - Vehicular access construction
12. CAH - Driveway gradient
13. CAI - Parking – single/shared private drives
14. CAT - Construction Management Plan
15. CB2 - Secure covered cycle parking provision
16. CK9 – Trees in Accordance with plans
17. CKA – Retention of existing trees
18. CKF – Specifications for tree planting

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. I11 – Mud on highway

- 3. I09 – Private apparatus within the highway

- 4. I45 – Works within the highway

- 5. I05 – No drainage to discharge to highway

- 6. I47 – Drainage other than via highway system

- 7. I35 – Highways Design Guide and Specification

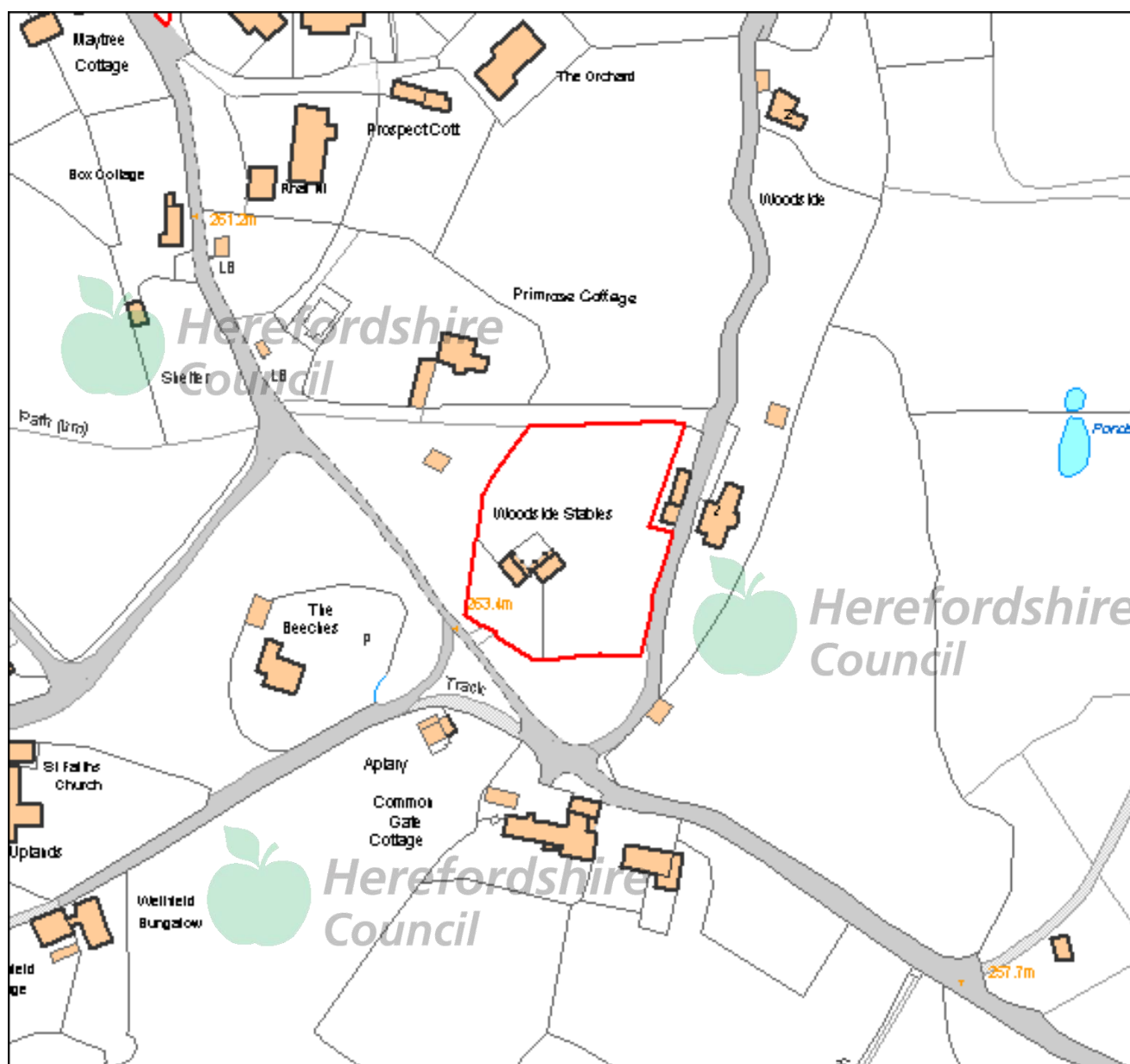
Decision:

Notes:

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Background Papers

Internal departmental consultation replies.



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APPLICATION NO: 190827

SITE ADDRESS : WOODSIDE STABLES, WELSH NEWTON COMMON, WELSH NEWTON,
HEREFORDSHIRE, NP25 5RT

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Further information on the subject of this report is available from Miss Emily Reed on 01432 383894