

Agenda

Planning and regulatory committee

Date: **Wednesday 10 April 2019**

Time: **2.00 pm (or on conclusion of the meeting held in the morning if later)**

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:

Tim Brown, Democratic Services Officer

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If you would like help to understand this document, or would like it in another format, please call Tim Brown, Democratic Services Officer on 01432 260239 or e-mail tbrown@herefordshire.gov.uk in advance of the meeting.

Agenda for the meeting of the Planning and regulatory committee

Membership

Chairperson **Councillor PGH Cutter**
Vice-Chairperson **Councillor J Hardwick**

Councillor BA Baker
Councillor CR Butler
Councillor PJ Edwards
Councillor DW Greenow
Councillor KS Guthrie
Councillor EL Holton
Councillor TM James
Councillor MD Lloyd-Hayes
Councillor FM Norman
Councillor AJW Powers
Councillor NE Shaw
Councillor WC Skelton
Councillor SD Williams

Agenda

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|----|---|---------|
| 1. | <p>APOLOGIES FOR ABSENCE</p> <p>To receive apologies for absence.</p> | |
| 2. | <p>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> | |
| 3. | <p>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> | |
| 4. | <p>CHAIRPERSON'S ANNOUNCEMENTS</p> <p>To receive any announcements from the Chairperson.</p> | |
| 5. | <p>183281 - SWAN HOUSE, WEST STREET, PEMBRIDGE</p> <p>Proposed five bedroom dwelling to the rear of Swan House.</p> | 11 - 32 |
| 6. | <p>190122 - BALANCE FARM, EYWOOD LANE, TITLEY, KINGTON, HR5 3RU</p> <p>Application for approval of reserved matters following outline approval 160581/O (proposed site for the erection of 5 no. Four bedroom dwellings.). Reserved matters for access only.</p> | 33 - 72 |
| 7. | <p>182236 - BODENHAM LAKE NATURE RESERVE, BODENHAM, HEREFORDSHIRE</p> <p>Proposed re-profiling works to include: southern land spit at the eastern end of the lake to be lowered and divided into three islands. Small island close to bird hide on the southern side of the lake will be cleared of trees, lowered and divided into three smaller islands. The southern half of the western island will be re-profiled.</p> | 73 - 82 |
| 8. | <p>DATE OF NEXT MEETING</p> <p>Date of next site inspection – 18 June 2019 (provisional)</p> <p>Date of next meeting - 19 June 2019 (provisional)</p> | |

The Public's Rights to Information and Attendance at Meetings

YOU HAVE A RIGHT TO: -

- Attend all Council, Cabinet, Committee and Sub-Committee meetings unless the business to be transacted would disclose 'confidential' or 'exempt' information.
- Inspect agenda and public reports at least five clear days before the date of the meeting.
- Inspect minutes of the Council and all Committees and Sub-Committees and written statements of decisions taken by the Cabinet or individual Cabinet Members for up to six years following a meeting.
- Inspect background papers used in the preparation of public reports for a period of up to four years from the date of the meeting. (A list of the background papers to a report is given at the end of each report). A background paper is a document on which the officer has relied in writing the report and which otherwise is not available to the public.
- Access to a public register stating the names, addresses and wards of all Councillors with details of the membership of Cabinet and of all Committees and Sub-Committees.
- Have a reasonable number of copies of agenda and reports (relating to items to be considered in public) made available to the public attending meetings of the Council, Cabinet, Committees and Sub-Committees.
- Have access to a list specifying those powers on which the Council have delegated decision making to their officers identifying the officers concerned by title.
- Copy any of the documents mentioned above to which you have a right of access, subject to a reasonable charge (20p per sheet subject to a maximum of £5.00 per agenda plus a nominal fee of £1.50 for postage).
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- The Shire Hall is a few minutes walking distance from both bus stations located in the town centre of Hereford.

RECORDING OF THIS MEETING

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Please do not allow any items of clothing, etc. to obstruct any of the exits.

Do not delay your vacation of the building by stopping or returning to collect coats or other personal belongings.

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.

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| Councillor PGH Cutter (Chairperson) | Conservative |
| Councillor J Hardwick (Vice-Chairperson) | Herefordshire Independents |
| Councillor BA Baker | Conservative |
| Councillor CR Butler | Conservative |
| Councillor PJ Edwards | Herefordshire Independents |
| Councillor DW Greenow | Conservative |
| Councillor KS Guthrie | Conservative |
| Councillor EL Holton | Herefordshire Independents |
| Councillor TM James | Liberal Democrat |
| Councillor MD Lloyd-Hayes | It's Our County |
| Councillor FM Norman | Green |
| Councillor AJW Powers | It's Our County |
| Councillor NE Shaw | Conservative |
| Councillor WC Skelton | Conservative |
| Councillor SD Williams | Conservative |

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:

| | |
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| 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 | Ward members – The Constitution provides that the ward member will have the right to start and close the member debate on an application. In attendance - Other councillors may also attend as observers but are only entitled to speak at the discretion of the chairman. |

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.

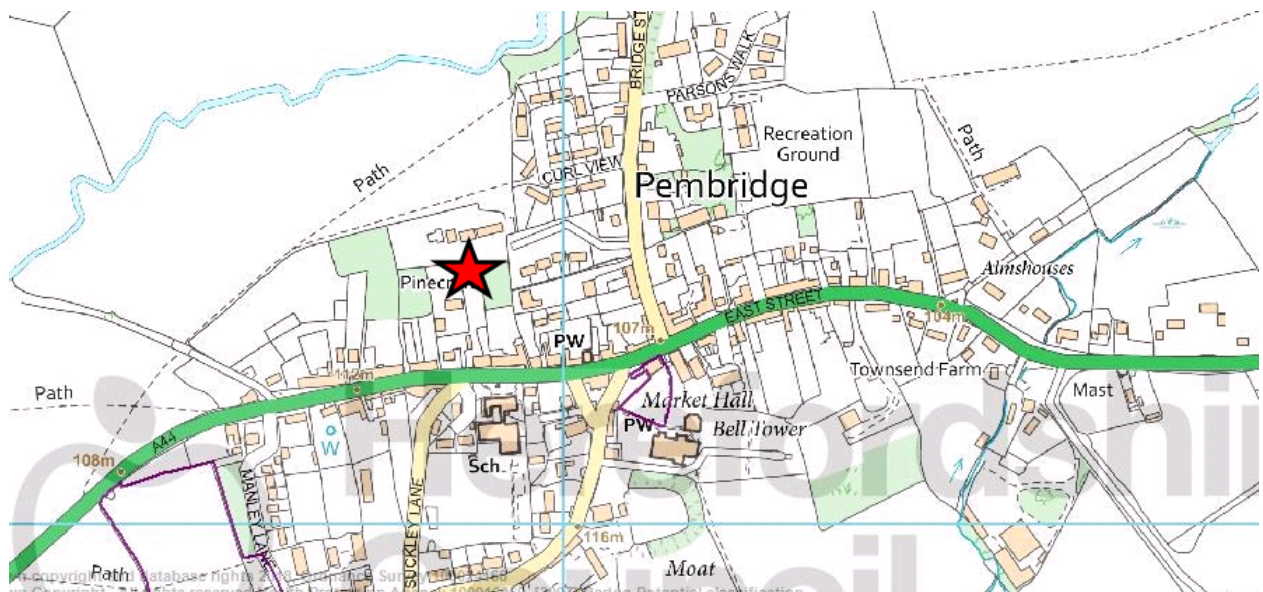
| | |
|-------------------------|---|
| MEETING: | PLANNING AND REGULATORY COMMITTEE |
| DATE: | 10 APRIL 2019 |
| TITLE OF REPORT: | 183281 - PROPOSED FIVE BEDROOM DWELLING TO THE REAR OF SWAN HOUSE AT SWAN HOUSE, WEST STREET, PEMBRIDGE. For: Mr Smith per Mr Alex Whibley, 43 College Road, Hereford, HR1 1EE |
| WEBSITE LINK: | https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=183281&search=SWAN%20HOUSE |

Reason Application submitted to Committee – Re-direction

Date Received: 3 September 2018 Ward: Arrow Grid Ref: 338984,258222
Expiry Date: 12th April 2019
 Local Members: Councillor RJ Phillips

1. Site Description and Proposal

1.1 The application relates to a site in the village of Pembridge in north-west Herefordshire. The village displays a predominantly linear settlement pattern and its historic core is characterised by wayside development running broadly east to west alongside the A44. More modern development extends off this on Bridge Street to the north and on Bearwood Lane to the south. The application in this case relates to a site on the west side of the village and to the north of the A44 (West Street). The location of the site is denoted by the red star on the map below.



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

Figure 1: Site Location

- 1.2 The proposal site is currently associated with the dwelling known as Swan House. The dwelling is sited at the end of a terrace of properties and is listed at Grade II*. It fronts onto the A44 to the south and has an elongated curtilage to the rear which forms part of the village's historic burgage plot layout. The proposal site comprises the northern portion of the curtilage and totals approximately 580m² in area. It is currently used as a garden and hosts a number of large shrubs and trees. The topography is relatively flat. The whole site is within the Pembridge Conservation Area.
- 1.3 The site is adjoined by domestic gardens to the east, whilst a relatively modern (~mid 2000's) dwelling known as Pinecroft occupies the plot to the west. To the north the site is adjoined by a group of residential properties which are currently under construction and known locally as the 'Ruby Development'. These are accessed from Bridge Street to the east.
- 1.4 The current application is submitted in full and seeks planning permission for the erection of a single dwelling. The plot and the proposed access arrangements are shown on Figure 2 below. Access to the site would be gained from the north via the estate road that serves the Ruby Development, which in turn links back to the C1032 Bridge Street approximately 140m to the east via the Sandiford Ploc cul-de-sac.



Figure 2: Site Location and Access Plan

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

1.5 The new dwelling would be two storeys in height and would provide five bedrooms of accommodation. The scheme has adopted a contemporary design approach, with the dwelling being predominantly linear in form with an elongated dual pitch ridge orientated broadly north to south. There would be a flat roof projection from the centre of the west elevation which would accommodate a garage and stairwell, giving the building a 'T' shaped footprint overall. The external materials would predominantly be white render with black stained timber cladding under a slate roof. An area of parking and turning space would be formed to the north of the dwelling. A small number of trees would need to be removed from the site in order to accommodate the development, which are detailed in the supporting Tree Report. The proposed plans are shown in Figure 3 and Figure 4 below.



Figure 3: Proposed Elevations

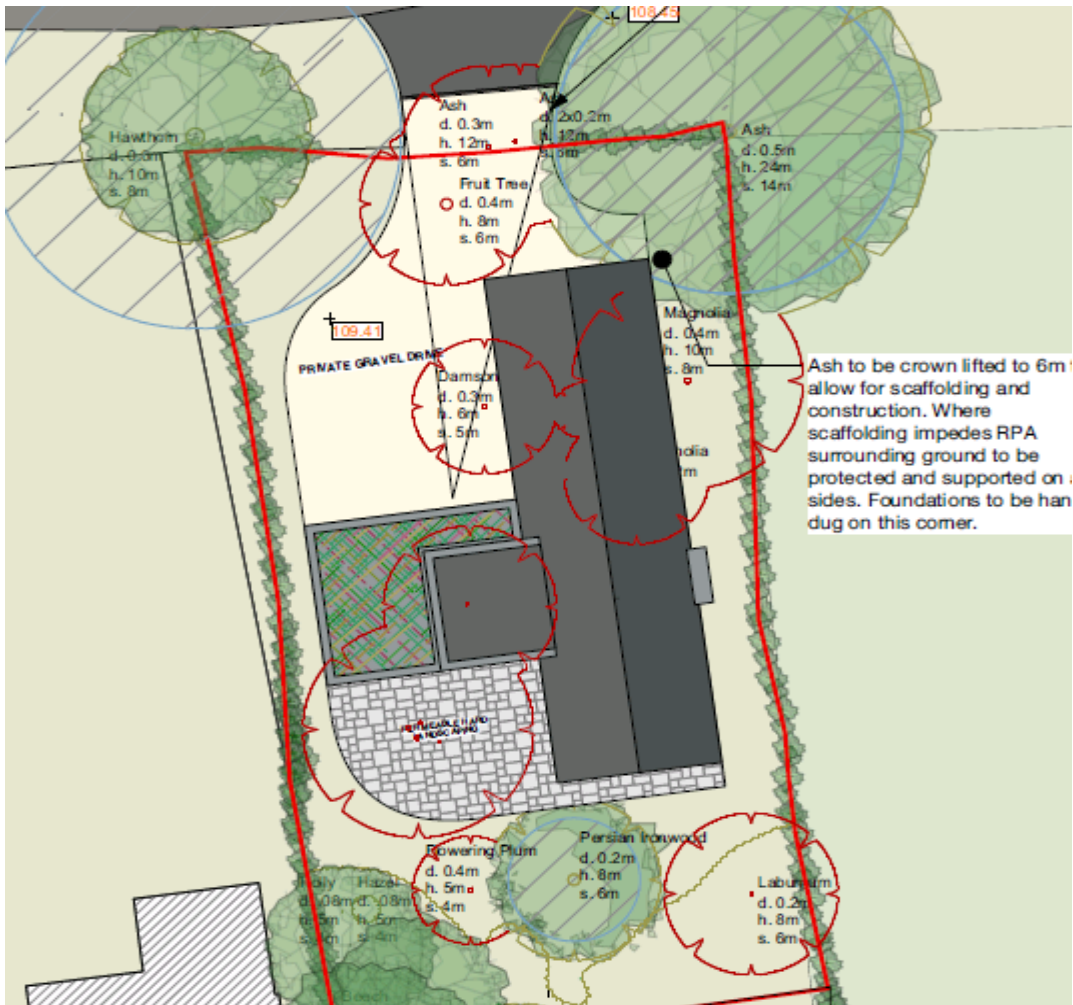


Figure 4: Proposed Site Plan

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
- SS7 - Addressing Climate Change
- RA1 - Rural Housing Strategy
- 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
- 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:-

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

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

2.2 Pembridge Neighbourhood Development Plan

The Pembridge Neighbourhood Development Plan passed local referendum on 28th February 2019. It was formally 'made' (adopted) on the 29th March 2019. It consequently forms part of the development plan and attracts full weight.

PEM1: Promoting Sustainable Development
PEM2: Development Strategy
PEM3: Housing Development in Pembridge Village
PEM5: Meeting Housing Needs
PEM6: Design Criteria for Residential Development
PEM7: Providing for Local Housing Need
PEM18: Retaining the Natural Environment and Landscape
PEM19: Protecting Heritage Assets
PEM20: Development within Pembridge Conservation Area
PEM22: Sewerage and Sewerage Infrastructure
PEM23: Sustainable Design
PEM25: Highways Design Requirements

The Neighbourhood Plan and its supporting documents can be viewed via the following link:
https://www.herefordshire.gov.uk/directory_record/3094/pembridge_neighbourhood_development_plan

2.3 The National Planning Policy Framework (Revised 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
9. Promoting sustainable transport
11. Making efficient use of land
12. Achieving well design places
14. Meeting the challenge of climate change, flooding and coastal change
15. Conserving and enhancing the natural environment
15. Conserving and enhancing the historic environment

3. **Planning History**

3.1 None directly relevant to this site.

3.2 The following permission however relates to the development to the north of the site and is relevant in so far as it provides the means of access to the current proposal site.

- *P163651/F - The proposed erection of 7 dwellings – Approved March 2017*

4. **Consultation Summary**

Statutory Consultations

4.1 **Historic England makes the following comments:**

First Consultation Response (October 2018);

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

The application site lies in the Pembridge Conservation Area on land to the rear of Swan House, a Grade II* listed fourteenth century hall house. The site contributes to the significance of the conservation area in terms of its characteristic medieval morphology of plots laid out in burgage style with buildings fronting the street and, in succession to the rear, gardens, orchards and open fields. Twentieth and twenty-first century residential development of orchards and open fields has and is taking place in the vicinity of the site. Its impact on the contribution made by the high quality aesthetic value of East Street to the significance of the conservation area is minimal; nevertheless the way that morphology contributes to character of this part of the conservation area is changing as former orchards and fields become more developed. The site makes a contribution to the historical value of Swan House as part of its historic burgage plot. However, the principal significance of Swan House lies in the evidential and aesthetic value of exceptionally high quality fourteenth century timber framing that appear to be remnants of the open hall range of a larger building that has lost its solar wing (to the west) and seen its service wing (to the east much reduced and separated as a dwelling called School View). In the case of Swan House, the frame is entirely obscured by a later re-fronting which was itself rebuilt in the 1980s. As part of the setting of Swan House the application site thus makes only a limited contribution to its significance.

The proposed new dwelling will change the appearance of the conservation area and the setting of the Grade II* listed building. Section 16 of the NPPF is clear that great weight should be given to the conservation of heritage assets (para.193) and that any harm including from development within their setting requires a clear and convincing justification (para.194). The NPPF is also clear that new development should make a positive contribution to local character and distinctiveness (para.192) and, where it enhances or better reveal significance, it should be treated favourably (para.200). In this regard policy in section 12 of the NPPF on achieving good design is also relevant.

In considering the proposed new dwelling, Historic England is disappointed that our pre-application advice recommending a statement of significance and a stepped approach to assessment of impact (as set out in our Historic Environment GoodPractice Advice in Planning Note 3: The setting of Heritage Assets) has not been followed. However, following a site visit and on the basis of our own assessment of how the site contributes to significance, we consider that the principle of development on the rear of the Swan House burgage plot represents a change that is without harm to the conservation area. As change within the setting of the Grade II* listed building it may be seen as part of an historic continuum of burgage plot sub-division that in this particular case has limited impact on the historical value of the heritage asset and no impact on the fourteenth century timber frame that is key to its significance. We appreciate the elements of design (5.6m span, linear alignment, pitched roof) that respond to local historic built forms but are less convinced that the very crisp rather harsh, monotone elevations and materials make a positive contribution to local character and distinctiveness or enhance or better reveal significance.

The proximity of the site to the Grade II* listed building and its location in the historic core of the conservation area present an opportunity to create a uniquely distinctive property that delivers the policy contained in section 12 of the NPPF. We encourage you to pursue this by negotiating further development of the design.

Recommendation

Historic England has concerns regarding the application on heritage grounds. We consider that the issues and safeguards outlined in our advice need to be addressed in order for the application to meet the requirements of paragraphs 192 and 200 of the NPPF.

In determining this application you should bear in mind the statutory duty of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural

or historic interest which they possess and section 72(1) to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas. Also section 38(6) of the Planning and Compulsory Purchase Act 2004 to determine planning applications in accordance with the development plan unless material considerations indicate otherwise.

Second Consultation Response (January 2019)

Our letter of 17 October 2018 advised that we had no objection to the principle of a new dwelling in this location but felt that its design could be amended to better deliver the policy requirements set out in sections 12 and 16 of the NPPF concerned with making a positive contribution to local character and distinctiveness and achieving high quality design. While we welcome the Heritage Statement now submitted, we regret that this does not appear to have prompted a design review or resulted in any amendments to the design of the proposed dwelling. The concerns set out in our letter of 17 October 2018 therefore remain.

Recommendation

Historic England has concerns regarding the application on heritage grounds

4.2 **Natural England – No comments to make.**

4.3 **Welsh Water – No Objection (Condition Recommended)**

We have reviewed the information submitted as part of this application and note that the intention is to drain foul water to the mains sewer and surface water to a soakaway. Whilst we have no further comment on the surface water proposal we welcome the introduction of sustainable drainage. With regards to foul water it is unclear how the site will effectively drain and how the adjacent site will accommodate this proposal as well.

Therefore, if you are minded to grant planning permission we request that the following Conditions and Advisory Notes are included within any subsequent consent.

Internal Council Consultations

4.4 **Conservation Manager (Historic Buildings) – No Objections (Conditions Recommended)**

First Consultation Response (October 2018);

Request further information: Section 189 of the NPPF requires applicants to provide a heritage statement describing the significance of heritage assets affected by the proposals.

The site lies within the Pembridge Conservation area between an area of generic modern suburban style housing and the linear main street of Pembridge with several listed, timber framed buildings. Pembridge is characterised as a linear medieval settlement with a core of market, castle and church towards the South of the main street. The land drops away to the North, towards the river Arrow.

It is not felt that the proposals would adversely impact upon those aspects of the setting of nearby listed buildings which contribute to their significance.

The impact upon the character and appearance of the conservation area should also be considered. The building would be situated towards the rear of a linear burgage plot. The linear nature of the building would emphasise this pattern of development. There is an argument for a more literal, traditional style, perhaps using timber framing, however it is felt that this would detract from the primacy of the remaining historic buildings on the street frontage and potentially

mislead as to the original function of this element of the village. A more neutral building, drawing upon the characteristics of traditional buildings in the area, would draw attention to the key buildings of interest, acting as a backdrop for them whilst creating its own layer of history in the village. There is a statutorily desirably objective for LPA's within the P(LB&CA) Act 1990 for development proposals to preserve or enhance the character and appearance of a Conservation Area. Whilst there might be elements of the design which could be finessed and improved, it is felt that the current proposals would meet the requirement to preserve or enhance.

Second Consultation Response (January 2019)

As per our previous comments, we would support the design and location of the development and confirm that the Heritage Statement is acceptable.

We note the concern about loss of clarity of burgage plots within the village, however do not feel that these proposals would detract from the interpretation of the historic layout.

We would recommend approval subject to conditions relating to external walling and roofing materials, roof details, external joinery details, rainwater goods and colour scheme.

4.5 Transportation Manager – No objection

Proposal is acceptable following review of additional information - Plan 2685 P (0) 006 REV B

'The initial submitted drawing number 2685 P(0) 002 shows trees each side of the proposed access, these appear to be sited near to the assumed visibility splay so the applicant should show the visibility splays as unobstructed on the drawing.'

This has now been further considered with additional information on Plan Rev B and it is considered the location of the trees is such that foliage can be sufficiently managed to remove this concern.

'It was unclear from the proposal how residents will safely use the driveway and parking areas. It would be beneficial to demonstrate how vehicles will use this access and parking area'

Drawing number 2685/P(0) 006 Rev B has now been provided showing that tracking for both parking spaces are achievable, which removes this concern.

With reference to any additional movements on the access road and local infrastructure a single additional property will likely not result in a 'severe' impact.

4.6 Conservation Manager (Archaeology) – No Objections (Conditions Recommended)

Given the comparatively small scale of the proposal and our level of knowledge of this area, I don't think a field evaluation would be necessary in this case.

Having said that, I am of the view that an archaeological site investigation condition (E01/ C47) would be fully justified in the event of the proposal being permitted. There is some below – ground interest.

The issues of the suitability of the location as regards the burgage plots, and potential impact on the setting of the listed house, are aired at length in the various representations already received. On this occasion, I do not feel I could add anything of substance to the debate.

4.7 Conservation Manager (Ecology) – No Objections (Conditions Recommended)

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

The supplied ecology report and biodiversity enhancement plan by Udall-Martin Associates Ltd are noted and appear relevant and appropriate. The recommendations should be secured through a relevant Condition.

4.8 **Conservation Manager (Arboriculture) – No Objections (Conditions Recommended)**

I have no objections to the proposed erection of a single dwelling.

There is however a condition recommended to adhere to the information provided within the tree report

4.9 **Environmental Health (Contaminated Land) – No Objections (Conditions Recommended)**

I refer to the above application and would make the following comments in relation to contaminated land and human health issues.

Land Behind Swan House, West Street, Pembridge. Letter report prepared by Environmental Management Solutions and dated 3rd September 2018.

The EMS report makes no recommendations for additional works when considering risks from contamination which are considered negligible to low on the basis that radon protection is included in the dwelling. The applicant may wish to ensure this barrier is protective for ground gases such as methane and carbon dioxide alongside radon as a matter of course during development. It is accepted the findings of the report do not require or recommend such and the note is recommended for the consideration of the applicant only.

On this basis I've no comments to make other than the note below:

"The submitted report advises risks from radon will be mitigated upon the inclusion of protective measures. The applicant may wish to consider the installation of a barrier which protects from ground gases such as carbon dioxide and methane alongside radon as a matter of course during development. "

5. **Representations**

5.1 **Parish Council – Objection**

First Consultation Response (October 2018);

The applicant is aware that this development is proposed to be built on the village burgage plots/plan. However Pembridge NDP clearly protects heritage assets in policy PEM19 para B and the village policies map clearly identifies the burgage plots. It would also like to draw your attention to PEM 6 which set out design criteria & PEM 20 Development in the conservation area. The applicant has respectfully considered ridge heights, but Councillors felt it did not contribute positively and sensitively or reflect the existing character of the village. On these point Pembridge Parish Council Object to this application

Second Consultation Response (January 2019);

Pembridge Parish Council have made prior comment on this application which still stand. It would like to make further comment on this application now additional information has been presented and confirm its OBJECTION to include the following points:

- The Parish Council strongly restates that this application sits on a site protected by PEM19 as shown on the Pembridge policy map (non-designated heritage assets) and stated in PEM19 and the accompanying narrative. Any interpretation that these sites do not have the protection given to them in the past by Herefordshire Council and Leominster Town Council is incorrect and this protection continues in the Pembridge Neighbourhood Development Plan
- Heritage Impact Assessment - reference page 16 “The setting of the neighbouring aforementioned assets and wider setting of the conservation area will be retained and unaffected. The significance of this part of the character area will be increased and enhanced by ensuring that the historic plan for of the medieval burgage plots is retained and accessing the property from the rear. This is accordance with local emerging policy from the Pembridge Neighbour Development Plan Policy PEM19: Protecting Heritage Assets”. is slanted and is a perversion of the intension of the Parish Council document. This is made clear in PEM6 Design Criteria for Residential Development. (d) (e) and (h) d) Avoid appearing to be isolated, incongruous, detached or ‘exclusive’ through design, lack of connectivity, layout or location; e) For development within it, preserve or enhance the character and appearance of Pembridge Conservation Area in accordance with Policy PEM19; h) Avoid inappropriate development of residential gardens, especially where this crams development unreasonably within existing curtilages;
- Finally the Parish Council wishes to express astonishment and disbelief that the Heritage Impact Assessment has been written by the applicant's architects, RRA Architects, who have an obvious conflict of interest which they have done little to manage. It is the first time in the memory of those on the Parish Council that a Heritage impact assessment has been produced by a party closely connected with an application and not by an independent assessor. The Parish Council questions if this assessment is valid and acceptable to Herefordshire Council, to Historic England and to the Conservation Officer coming from this source.

5.2 **Four Letters of Objection** have been received. They are summarised as follows:

- The scheme would be detrimental to the integrity and historic pattern of the village
- The scheme would harm the listed buildings on West Street
- The scheme would harm the setting of the Grade II* listed Swan House
- Previous planning policies have protected the burgage plots from development and this should be continued. The plots should have the same level of protection as the castle, bell tower and the numerous listed buildings.
- The proposal will encourage further development within the burgage plots and destruction of the village’s historic layout.
- The proposed dwelling is unattractive and is out of character for the site context and the style of the rest of the village.
- The scheme is in conflict with the policy of the NDP to protect the burgage plots
- The large scale of the new house means it will not meet local housing needs
- The scheme would harm the character of the new Ruby Development to the north.

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=183281&search=SWAN%20HOUSE

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>

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

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 Pembridge Neighbourhood Development Plan (NDP). The latter was formally made' (adopted) on the 29th March 2019 following a successful local referendum. The National Planning Policy Framework (NPPF) is also a significant material consideration in determining the application.

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 in a number of recent appeal inquiries and it has been consistently concluded that that the Council is not able to demonstrate a 5 year supply of housing land. The most recent supply statement (published October 2018) outlines that the supply position in Herefordshire stands at 4.55 years. Whilst this represents a marginal improvement from the previous position, the persistent shortfall in the five year supply means that the presumption in favour of sustainable development as set out at Paragraph 11 (d) 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 proposes 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 shortfall in supply is relatively low and 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.

6.7 Moreover, it is pertinent here that the Pembridge NDP has recently been made and therefore forms part of the development plan alongside the CS. At paragraph 14, the NPPF advises that where the positive presumption applies to applications involving the supply of housing, the adverse impact of allowing development that conflicts with the 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.*

In this case the preceding criteria are all satisfied. The neighbourhood plan is less than two years old; the plan contains policies and allocations to meet the parish's housing needs; the county level housing land supply exceeds three years (4.55); and the authority's housing delivery over the last three years exceeds 45% (74%). Notwithstanding the county wide shortfall in five year supply therefore, the policies of the Neighbourhood Plan relevant to housing supply attract full weight.

- 6.8 Strategic policy SS2 of the CS makes an overall provision for the delivery of a minimum of 16,500 new homes in Herefordshire between 2011 and 2031 to meet market and affordable housing needs. Policy RA1 goes on to state that the minimum requirement for 5,300 new homes to be provided in the rural areas will be distributed across seven Housing Market Areas (HMAs). The application site in this instance lies within the Kington HMA, which has an indicative growth target of 12% (equivalent to delivering 317 new homes across the plan period). For the parish of Pembridge, this equates to providing a minimum of 61 new dwellings.
- 6.9 Policy RA2 identifies the rural settlements which are to be the main focus for proportionate housing development in the rural areas. The village of Pembridge is identified as being a main focus for housing at Figure 4.14. The policy states that residential development proposals should be located within or adjacent to the main built up area of the settlement. 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.
- 6.10 Policy PEM2 of the NDP sets out the development strategy for the parish and reaffirms that Pembridge will be the focus for new residential development. A settlement boundary is defined and, in the context of housing proposals, policy PEM3 confirms that new development will be restricted to sensitive infilling and allocated sites within the boundary. It also states that infilling will be permitted where it meets appropriate design and other criteria set out in the NDP; particularly PEM6 and PEM20.
- 6.11 The proposal site in this instance is located within the settlement boundary identified by the NDP. In a purely locational sense therefore, the principle of new residential development can be supported by both CS policy RA2 and NDP policy PEM3.
- 6.12 It then falls to consider the detail of the proposal against the relevant policies of the CS, NDP, and other material considerations to establish whether there are any adverse impacts associated with the proposed scheme which would outweigh the benefits. This would be towards establishing if the scheme is representative of sustainable development, for which there is a positive presumption enshrined in the NPPF, CS and NDP. The key matters requiring consideration are set out below

Impact upon Heritage Assets

- 6.13 It is acknowledged that the application site here lies within an area of potential heritage sensitivity. The site for instance forms part of the curtilage of a dwelling which is listed at Grade II*, and there are numerous other listed buildings to the south of the site which front onto West

Street. The site is also within the designated Pembridge Conservation Area. It is also noted that the site forms part of the village's historic burgage plot layout, which are to be considered a non-designated heritage asset (discussed further below).

- 6.14 In respect of designated heritage assets, the duties placed upon the Planning Authority by the Planning (Listed Buildings and Conservation Areas) Act 1990 are applicable. Section 66 of the Act requires that in considering whether to grant planning permission for development which affects a listed building the local planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Similarly, section 72 of the Act requires that when considering applications in designated conservation areas the local planning authority should pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
- 6.15 In this respect, the advice set out at paragraph 193 of the Framework is relevant, insofar as it requires that great weight be given to the conservation of a designated heritage asset. The more important the asset, the greater the weight should be. Paragraph 194 goes on to advise that any harm to, or loss of, the significance of designated heritage assets should require clear and convincing justification. At paragraph 195, it states that where substantial harm is identified local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss. Paragraph 196 goes on to state that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. Paragraph 197 states that in weighing applications that affect non-designated heritage assets, a balanced judgement should be required having regard to the scale of any harm and the significance of the asset.
- 6.16 Policy SS6 of the Core Strategy states that development proposals should be shaped through an integrated approach which incorporates a range of environmental components from the outset, including the historic environment and heritage assets. Moreover, Policy LD4 states that development proposals affecting heritage assets and the wider historic environment should protect, conserve, and where possible enhance heritage assets and their settings in a manner appropriate to their significance through appropriate management, uses and design. Policy SD1 requires that development proposals take into account the local context and site characteristics. Moreover, new buildings should be designed to maintain local distinctiveness through incorporating local architectural detailing and materials and respecting scale, height, proportions and massing of surrounding development, while making a positive contribution to the architectural diversity and character of the area. Policy LD1 is also relevant in so far as it requires that proposal respond positively to the character of the townscape whilst conserving and enhancing important landscapes, such as conservation areas.
- 6.17 At a local level, the rich heritage of the Pembridge Parish is reflected by various policies in the NDP. PEM19 in particular requires that the significance of heritage assets and their settings should be conserved and enhanced (where appropriate) through adherence to a number of principles. This includes by resisting development which adversely affects designated heritage assets such as listed buildings, scheduled monuments and the conservation area. At point b), the policy also states that the conservation of heritage assets should be achieved through *'protecting the burgage plan from to the north and south of the A44 (West Street, High Street and East Street) through the village'*. Policy PEM20 then goes on to set out a number of criteria and design principles relating to development in the Conservation Area.
- 6.18 In considering the heritage impacts of the development, specialist advice has been sought from Historic England and the Council's Conservation Manager (Historic Buildings). Their full responses are set out at Section 4 of this report. In accordance with Paragraph 189 of the

Framework, the applicant has also supplied a Heritage Statement to consider the potential for impacts upon the historic environment.

6.19 Considering first the potential impact upon the setting of listed buildings, the most sensitive receptor in this sense is the host dwelling at Swan House. This is listed at Grade II* and accordingly Historic England are a statutory consultee. Further listed buildings are also found along West Street to the south of the site.

6.20 The proposal site in this case is approximately 50m from Swan House and the other listed buildings which form the linear frontage of dwellings onto West Street. The new dwelling would be sited in the northern portion of the existing garden which historically would have been part of the burgage plot associated with the host dwelling. The comments of Historic England highlight that the historic significance of Swan House is derived principally from the evidential and aesthetic value of its exceptionally high quality fourteenth century timber framing. Whilst it does form part of its setting, the burgage plot form and the application site to the north of the building make only a limited contribution to its historic significance. Furthermore, the degree of separation between Swan House and the proposed dwelling here, in combination with the orientation and form of the new build, is such that the linear form of the burgage plot remains clearly readable. The presence of dense vegetation on the intervening ground is also such that there is currently only very limited inter-visibility between Swan House and the development site. Historic England consequently offer the following comments with regards to the potential for impact upon the setting of the listed building;

'As change within the setting of the Grade II listed building it (the proposal) may be seen as part of an historic continuum of burgage plot sub-division that in this particular case has limited impact on the historical value of the heritage asset and no impact on the fourteenth century timber frame that is key to its significance.'*

The advice received from the Council's Conservation Manager supports the view that the proposal would not have an adverse impact upon the integrity or setting of the listed building. It follows therefore that there would be no conflict with policies LD4 or PEM19 in this sense.

6.21 In terms of the setting of the conservation area, it is considered that the proposal would only have a limited impact in this sense. It has been identified that the proposal would preserve the setting of the listed buildings and the form of the burgage plots that make up the protected area, and the site is visually discrete when experienced from sensitive public vantage points such as the historic village frontage on the A44 to the south. Historic England consequently offer the following comments in respect of the scheme and the effect upon the conservation area;

'...following a site visit and on the basis of our own assessment of how the site contributes to significance, we consider that the principle of development on the rear of the Swan House burgage plot represents a change that is without harm to the conservation area.'

Again, this advice is supported by the comments of the Council's Conservation Manager;

'There is a statutorily desirably objective for LPA's within the P(LB&CA) Act 1990 for development proposals to preserve or enhance the character and appearance of a Conservation Area. Whilst there might be elements of the design which could be finessed and improved, it is felt that the current proposals would meet the requirement to preserve or enhance [the protected area]'

Whilst some concerns have been raised regarding the design of the new dwelling (discussed further below), the professional heritage advice received directs to the conclusion that the scheme would not have any harmful impact upon the setting of the conservation area. It follows therefore that no conflict with policies LD4, PEM19 or PEM20 would occur in this sense.

- 6.22 As well as designated heritage assets, the NPPF also makes it clear at Paragraph 197 that the effect of a development proposal upon non-designated assets should be considered when determining an application. The village burgage plan in this case is considered to be a non-designated asset; although it is noted that these areas are afforded policy protection by PEM19 of the NDP. At point b), the policy requires that the significance of heritage assets and their settings are conserved and enhanced through '*protecting the burgage plot plan form to the north and south of the A44*'. The areas of the village deemed to be protected are highlighted in the village policies map, and the proposal site in this case is situated within the highlighted area. It is noted that the Parish Council have offered an 'in principle' objection to the scheme owing to the location of the site within the protected area.
- 6.23 However, in a comprehensive reading of policy PEM19 it is not considered that the requirement under point b) can be taken to uniformly prohibit all forms of development within the designated burgage plot areas. Indeed, the supporting text to the policy at 8.3 states that policy PEM19 should '*not restrict development but influence the approach taken, and even stimulate development where re-use and regeneration brings benefits*'. Policy PEM19 therefore affords protection to the burgage plots in the sense that undue harm should be avoided.
- 6.24 In this case, the specialist advice received from Historic England and the Council's Conservation Manager indicates that no harm would occur to the conservation area or the burgage plot plan as result of what is proposed. The proposal would represent a continuation of burgage plot sub-division that is already observable in the immediate locale (for instance, the dwellings of Hillview and Pinecroft which lie to the east and west of the site respectively), and the specific details of the scheme ensures that the linear plan form of the plots remains clearly readable. Given the absence of any identified harm therefore, it follows that the proposal would not conflict with policy PEM19 (b) as the burgage plan is protected by the proposal.
- 6.25 With regards to below ground heritage assets, the Council's Conservation Manager for Archaeology advises that the potential for impact in this sense is limited. The small scale of the scheme and knowledge of the locality from the adjacent Ruby Development is such that a full field evaluation of the site prior to determination would not be justified. A pre-commencement site investigation condition is however recommended to account for any unforeseen features of interest.

Design and Amenity

- 6.26 In terms of design, the requirements of CS policies SD1, LD1 and LD4 are applicable as set out above. Policy PEM6 of the NDP also sets out detailed design criteria for residential development in the parish, which is to be read in conjunction with policy PEM23 Sustainable Design. Amongst other things, policy PEM16 requires that schemes should achieve a high standard of architecture and ensure that the existing village character is respected.
- 6.27 The proposal here has adopted a contemporary approach for the new dwelling. The design takes direction from historic buildings that characterise the surrounding area, with locally distinctive features such as a relatively narrow building span and steeply pitched roof being reflected in the design. The design also corresponds to the burgage plan form through the building's elongated linear form and its alignment within the plot. The palette of materials are also considered appropriate for the site context, and full details can be secured by condition.
- 6.28 The reservations in Historic England's comments regarding the design of the dwelling are duly acknowledged. However, the representation also highlights that the scheme as a whole would be without harm to the character of the surrounding area. On balance therefore, the Officer supports the view of the Conservation Manager that the design of the dwelling is acceptable with regards to the requirements of relevant development plan policy. The design has responded positively to the context of the site and would serve to preserve local character and distinctiveness.

- 6.29 Given the design approach which has been adopted, it is considered appropriate to attach a condition removing permitted development rights to ensure that future alterations, additions and outbuildings can be controlled and the character of the scheme maintained.
- 6.30 Policies SD1 and PEM6 also require that development proposals deliver good standards of residential amenity for existing and proposed residents. This accords with the principles set out at Chapter 12 of the NPPF with regards to achieving well-designed places. In this case, it is considered the scheme maintains and achieves good standards of amenity and thus no policy conflict is identified. The siting, scale, and orientation of fenestration to the new dwelling is such that the proposal would not have any adverse impact upon existing neighbouring properties through means of overlooking, overshadowing or overbearing. The scheme would also deliver a good standard of amenity for occupants of the new dwelling in terms of private and outdoors amenity space.

Highways Matters

- 6.31 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, having regard to the standards of the Council's Highways Development Design Guide. The NDP also sets out a number of transport related policies at Chapter 9, with policy PEM25 in particular setting out similar highways design requirements to the CS in terms of ensuring safe access and layouts are achieved. This approach accords with the principles outlined in Chapter 9 of the NPPF.
- 6.32 The application is supported by a Transport Statement and the supporting plans outline that the dwelling would be accessed from the north via a new access onto the cul-de-sac road which links to the C1032 to the east of the site. This is a private road which serves the dwellings on Sandiford Ploc and the dwellings that are currently under construction as part of the Ruby Development. In total, the road as existing provides access to 15 units. The nature of the cul-de-sac road is such that traffic speeds will be low and the new access proposed from the site onto it provides adequate levels of visibility. Similarly, visibility from the existing junction from Sandiford Ploc onto the C1032 is adequate. The design and layout of the road is also such that it is not considered the addition of a further single unit would have a significant impact upon the function of access road over the existing usage in terms of capacity. The Transportation Manager consequently offers no objections to the scheme.
- 6.33 The internal site layout provides external parking for two vehicles with an additional space being available within the attached garage. A small turning head would be provided to the north of the house and a vehicle tracking plan has been provided which demonstrates there would be adequate manoeuvring space for cars to turn so that they can enter and leave the site in a forward gear. A condition is recommended to restrict any change of use of the garage to ensure that it remains available for parking and storage uses. Conditions will also be attached relating to the construction specification of the new access, parking and turning areas.
- 6.34 On the basis of the above, Officers are satisfied that the scheme would deliver safe access arrangements and that there would be no detrimental impact upon the local highways network. The proposal is therefore pursuant to CS policy MT1, NDP policy PEM25 and Chapter 9 of the NPPF in these terms.

Green Infrastructure and Ecology

- 6.36 The proposal site in this case is currently domestic garden. It hosts a number of shrubs and trees and, at the time of the Officer's visit, the site was largely overgrown. None of the trees on the site are protected by a Tree Preservation Order, but the site is within the designated conservation area.
- 6.37 A number of CS policies are relevant to matters of green infrastructure and the contribution this makes to the character of an area - notably LD3, LD1 and LD2. At a local level, policy PEM6 of the NDP requires that proposals retain important features such as tree cover and hedgerows that contribute to the character of the village, whilst PEM18 requires at point e) that the unacceptable harm to green infrastructure and biodiversity value in the parish should be avoided.
- 6.38 The application is supported by a tree report to BS5837:2012 standards. The report identifies 20 trees within the proposal site that are found to make varying contributions to local amenity and to be in varying physical conditions. The scheme has been designed around these constraints, with the dwelling sited in a manner that retains the highest quality and mature trees that are found predominantly at the site's boundaries. A small number of trees, which are at centre of the site and found to be of lower quality, would be removed. The report sets out a number of recommendations and working methods which have been carried forward to the proposed plans, and the Council's Arboricultural officer has no objections to the scheme on the basis that these are secured by condition. No conflict with relevant policy is therefore found. The scheme would retain to higher quality trees found on the proposal site and the positive contribution these make to the character of the area would be maintained.
- 6.39 The application is also supported by a Preliminary Ecological Appraisal of the site. The report makes a number of recommendations for mitigation measures and biodiversity enhancements, and the Council's Conservation Manager (Ecology) has no objections to the scheme on the basis that these are secured by condition. No conflict with policies LD2 or PEM18 are found in ecological terms.

Drainage

- 6.40 With regards to foul water management, policy SD4 of the CS sets out a hierarchal approach whereby a connection to the mains wastewater infrastructure is the preferred option. This is in the interests of securing effective foul water management towards ensuring that there would be no detrimental impact upon water quality and wider environmental objectives. At a local level, policy PEM22 of the NDP states that development which overloads the Pembridge wastewater treatment works will not be permitted. In terms of surface water, policy SD3 states that measures for sustainable water management will be required to be an integral part of new developments, including through the use of sustainable drainage systems (SuDS) where appropriate.
- 6.41 The scheme in this case proposes to connect to the mains public sewer network to manage foul water. Welsh Water have been consulted on this arrangement and do not offer any objections. It is recommended that full details of the drainage scheme be secured by condition. Surface water will be managed through the use of soakaways, which is an acceptable solution in accord with policy SD3. Again, full technical details of the scheme will be secured by condition.

Contaminated Land

- 6.42 The Council's records indicate that the proposal site is located approximately 200m from a closed landfill site (Leaders Lane). A risk assessment of the site has been supplied which builds upon the findings of a Phase 1 Geoenvironmental Report undertaken in 2016 in relation to the adjacent Ruby Development. The report finds the risk of ground contamination at the site to be low, and the Council's Environmental Health Officer has no objection to the scheme on the

basis of the report's findings. The proposal would thus safeguard human health and accord with policies PEM23 and SD1 in this sense.

Conclusion

- 6.43 The application 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 applying this presumption, the Core Strategy and Neighbourhood Development Plan both confirm that development proposals that accord with the development plan will be approved.
- 6.44 The application in this case is for housing, and given the current shortfall in the Council's five year housing land supply the presumption as set out at Paragraph 11 d) is also fully engaged. Planning permission should be granted unless;
- i. the application of policies in the Framework that protect areas or assets of particular importance (as set out at Footnote 6) 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.
- 6.45 In this case, none of the restrictive policies set out at footnote 6 are triggered. In particular, the specialist advice received from the Council's Conservation Officer and Historic England leads to the conclusion that the proposal would not lead to any harm to designated heritage assets in the form of nearby listed buildings or the Pembridge Conservation Area.
- 6.46 It therefore falls to apply the weighted balance as set out at Paragraph 11 d) ii. Planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
- 6.47 The site here is located within the settlement boundary that is allocated for Pembridge in the adopted NDP. The site is therefore identified as a location which is sustainable for new housing development as it would be within the confines of an existing settlement that provides good access to a range of services and facilities. In terms of the wider benefits of the scheme, the proposal would contribute a single unit towards the current shortfall in the housing land supply and this would bring minor benefits in the social sphere. Modest benefits would also accrue in the economic sphere through investment during the construction phase and the additional local spending potential associated with future residents. In the environmental sphere, the impacts of the scheme are considered to be neutral.
- 6.48 Having regard to the preceding appraisal, no significant harm or conflict with the adopted development plan has been identified as a result of the proposal. In particular, the scheme would not give rise to any harm to heritage assets such as nearby listed buildings, the Pembridge Conservation Area, or the village's burgage plan form, and the proposal would thus accord with the development plan in these terms. It follows therefore that there are no adverse impacts to place into the balance that would significantly or demonstrably outweigh the benefits of the scheme.
- 6.49 In conclusion, no conflict with the development plan has been identified and it is therefore considered that the scheme would be representative of sustainable development – for which there is a presumption in favour. The application is therefore recommended for approval subject to the conditions below.

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:

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

1. **A01 - Time limit for commencement (full permission)**
2. **C08 - Development in accordance with approved plans**
3. **C13 - Details of external materials and finishes (to include roof details, external joinery/fenestration details and rainwater goods)**
4. **C65 - Removal of Permitted Development Rights**
5. **CAL - Access, turning area and parking specification**
6. **C59 - No conversion of garage to habitable accommodation**
7. **C96 - Landscaping Scheme**
8. **C97 - Landscaping Scheme Implementation**
9. **The ecological protection, mitigation, compensation and working methods scheme and Biodiversity Enhancement Plan, as recommended in the reports by Udall-Martin Associates Ltd dated September 2018 shall be implemented in full and the mitigation measures and biodiversity enhancements hereafter maintained in full as stated unless otherwise approved in writing by the local planning authority. No external lighting should illuminate any area around the approved mitigation or compensation 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 2006

10. **Except where otherwise stipulated by conditions of this permission, the development hereby approved shall be carried out strictly in accordance with the recommendations and working methods set out in the supporting BS5837:2012 Tree Report (Cedarwood Tree Care – July 2018).**

Reason: For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and to comply with policies LD1 & LD3 of the Herefordshire Core Strategy and National Planning Policy Framework.

11. **No development shall commence until a drainage scheme for the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall demonstrate how the site will be effectively drained; the means of disposal of surface water and indicate how foul flows will communicate to the public sewerage system. Thereafter, the scheme shall be implemented in accordance with the approved details prior to the occupation of the development and no further surface water or land drainage shall be allowed to connect directly or indirectly with the public sewerage system.**

Reason: To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no pollution of or detriment to the environment and to comply with Policies SD3 and SD4 of the Herefordshire Local Plan Core

12. **C47 - Archaeological site investigation**

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

- 13. CCK - Details of slab level
- 14. CAZ - Site Operative Parking

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. I33 – Wildlife General
- 3. I35 – Highways Design Guide and Specification
- 4. I40 – Welsh Water Sewer Connection
- 5. The submitted EMS report advises risks from radon will be mitigated upon the inclusion of protective measures. The applicant may wish to consider the installation of a barrier which protects from ground gases such as carbon dioxide and methane alongside radon as a matter of course during development.

Decision:

Notes:

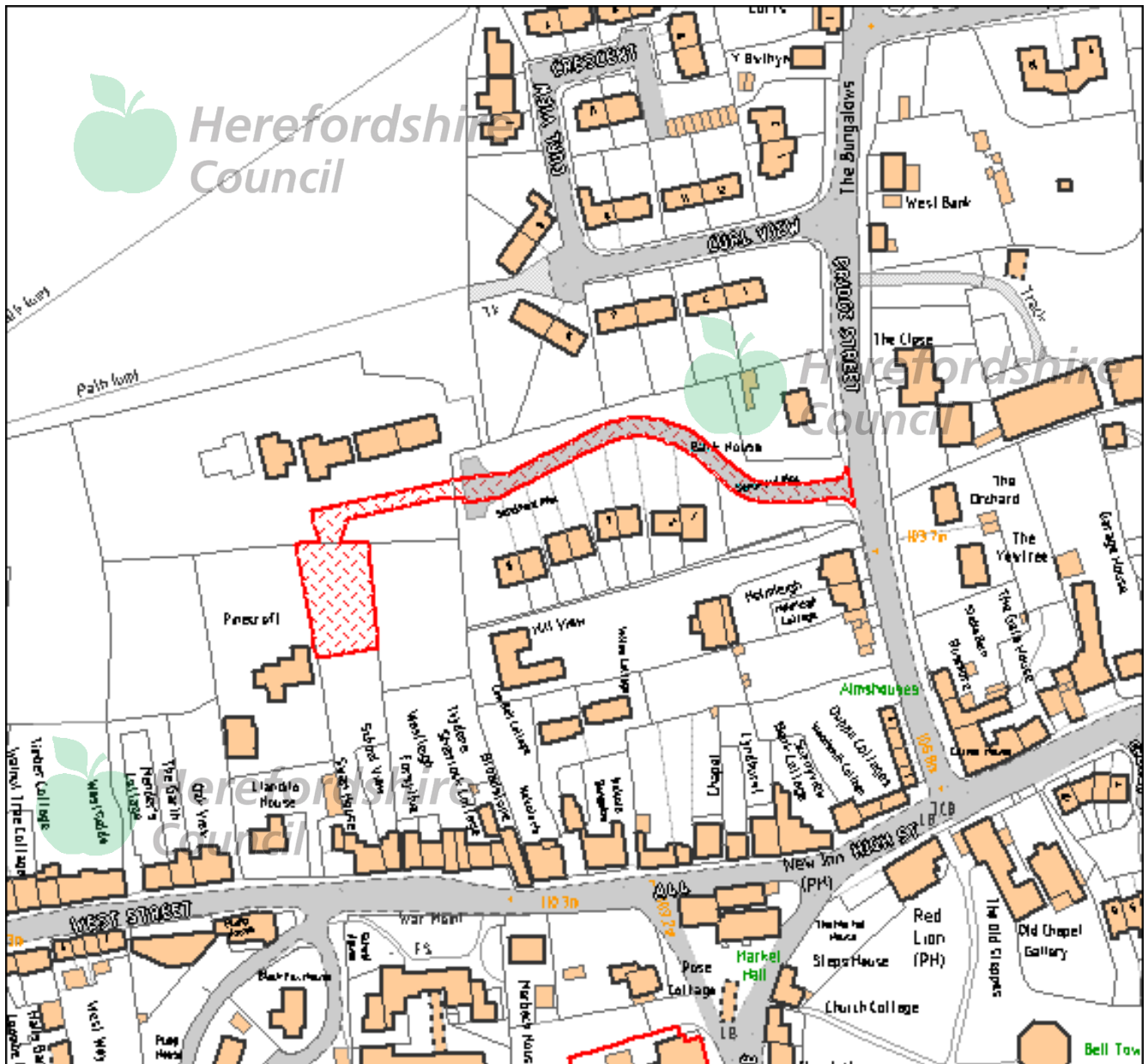
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Background Papers

Internal departmental consultation replies.



Herefordshire
Council



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APPLICATION NO: 183281

SITE ADDRESS : SWAN HOUSE, WEST STREET, PEMBRIDGE

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|---|---|
| MEETING: | PLANNING AND REGULATORY COMMITTEE |
| DATE: | 10 APRIL 2019 |
| TITLE OF REPORT: | 190122 - APPLICATION FOR APPROVAL OF RESERVED MATTERS FOLLOWING OUTLINE APPROVAL 160581/O (PROPOSED SITE FOR THE ERECTION OF 5 NO. FOUR BEDROOM DWELLINGS.). RESERVED MATTERS FOR ACCESS ONLY. AT BALANCE FARM, EYWOOD LANE, TITLEY, KINGTON, HR5 3RU For: Mrs Vaughan per Mr Alan Poole, Green Cottage, Brierley, Leominster, Hereford, HR6 0NT |
| WEBSITE LINK: | https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=190122&search=190122 |
| Reason Application submitted to Committee – Re-direction | |

Date Received: 14 January 2019

Ward: Arrow

Grid Ref: 332823,259745

Expiry Date: 11 March 2019

Local Member: Councillor RJ Phillips

1. Site Description and Proposal

1.1 The application relates to a site in the village of Titley in the north west of the county. The site lies on the west side of the village and just to the north of the unclassified highway known as Eywood Lane (U91602). The location of the application site is denoted by the red star on the map below;



Figure 1: Site Location

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

- 1.2 The site is a wedge shaped parcel of land that occupies a slight depression next to the adjacent highway. It currently hosts a range of modern steel framed agricultural buildings and at the time of the officer's visit the site appeared to be in use for agricultural storage. A number of residential properties are found to the east of the site in the complex of converted traditional agricultural buildings known as Balance Barns. Historically these were associated with The Balance Farmhouse, which sits approximately 50m to the south east of the site and is listed at Grade II. Although not within the designated area, the site is in close proximity to the Grade II registered park and garden of Eywood. The boundary of the designated area is located to the west of the site, and the former gatehouse to the park is found near to the site access.
- 1.3 The site is currently accessed from the south off the unclassified Eywood Lane (U91602). Eywood Lane is a 'no-through' road to the west, where it provides access to a number of dwellings and the wildlife site at Titley Pools. Access from the site to the wider highways network is therefore gained via a junction onto the B4355 approximately 100m to the east towards the centre of the village and near The Stag Inn.
- 1.4 The site currently has the benefit of outline planning permission for the erection of five dwellings. Outline permission was granted with all matters reserved in July 2016 under local authority reference number P160581/O.
- 1.5 The current application seeks approval of reserved matters in relation to access only. Details of layout, scale, landscaping and appearance are to be dealt with at a later date. The application provides technical drawings (SK01-REVD and SK03-REVC) of the proposed access from the site onto Eywood Lane. An extract of the latter, showing the proposed access arrangement and construction specification, is included below.

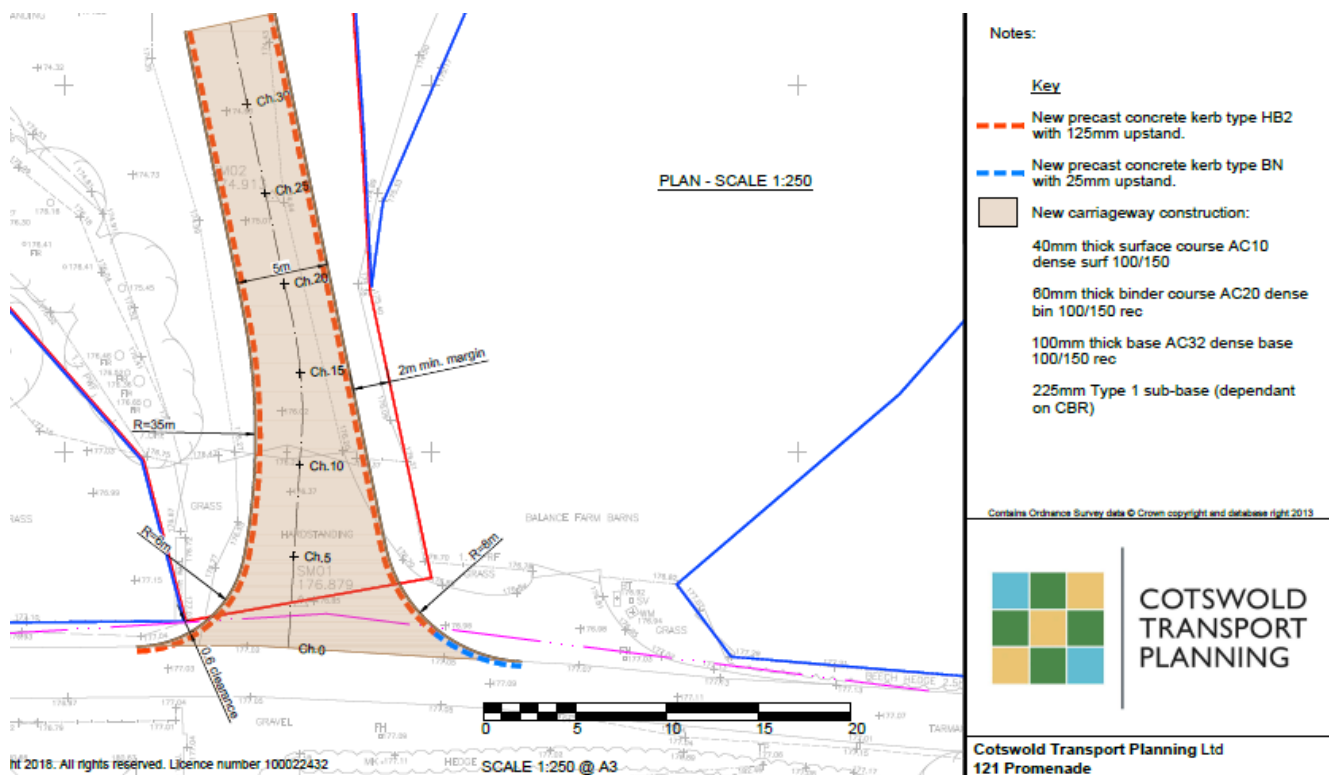


Figure 2: Proposed Access Plan

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 |
| SS4 | - | Movement and Transportation |
| MT1 | - | Traffic Management, Highway Safety and Promoting Active Travel |
| 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 |
| LD4 | - | Historic Environment and Heritage Assets |
| 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
9. Promoting sustainable transport
11. Making efficient use of land
12. Achieving well design places
15. Conserving and enhancing the natural environment
15. Conserving and enhancing the historic environment

2.3 Titley Neighbourhood Development Plan

The Titley Group Parish is currently in the process of preparing a Neighbourhood Development Plan. The plan is currently at the drafting stage and a consultation under Regulation 14 was carried out between the 3rd December 2018 and the 28th January 2019. Herefordshire Council has not had sight of the representations received during the draft plan consultation undertaken by the parish council, and therefore the decision makers are unable to evaluate the extent of any unsolved objections. However, the Strategic Planning team as part of the Regulation 14 consultation have confirmed that the plan as currently drafted is in general conformity with the adopted Herefordshire Core Strategy and the National Planning Policy Framework. At this stage, with regards to para 48 of the NPPF, limited weight can be attributed to the neighbourhood plan

TG1 – Sustainable Development
TG16 – Design and Access
TG14 – Natural Environment
TG15 – Historic Environment

The Neighbourhood Plan and its supporting documents can be viewed via the following link https://www.herefordshire.gov.uk/directory_record/3109/titley_group_neighbourhood_development_plan

3. Planning History

3.1 The following applications apply specifically to this site and are directly relevant to the current application;

- **P181476/ RM** - Application for approval of reserved matters following outline approval P160581/O. Access only – Refused 28th September 2018
- **P160581/O** - Proposed site for the erection of 5 no. four bedroom dwellings (Outline – all matters reserved) – Approved 27th July 2016

3.2 In addition, the following application applies to the parcel of land which lies immediately adjacent to the current site and utilises the same access arrangements.

- **P162824/O** - Site for the proposed erection of 5 dwellings – Appeal Against Non-determination – Appeal PP/W1850/W/17/3168668 Dismissed 26th July 2017

4. Consultation Summary

Statutory Consultations

4.1. Natural England – No Objections

The advice provided in our previous response applies equally to these Reserved Matters, although we made no objection to the original proposal.

The proposed amendments to the original application are unlikely to have significantly different impacts on the natural environment than the original proposal.

4.2 Gardens Trust – No bespoke comments

Thank you for consulting the Gardens Trust in its role as Statutory Consultee on the above application which affects Eywood, an historic designed landscape of national importance which is included by Historic England on the Register of Parks and Gardens of Special Historic Interest at Grade II. We have considered the information provided in support of the application and on the basis of this confirm we do not wish to comment on the proposals at this stage. We would however emphasise that this does not in any way signify either our approval or disapproval of the proposals.

4.3 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

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.

Internal Council Consultations

4.4 Transportation Manager

The access to the application site is considered in two main areas and comments relating to this are set out below:

Site Access to Eywood Lane:

The access onto the U91602 Eywood Lane is set out in drawing CTP-17-611 and depicts a simple junction onto the lane. The drawing shows the visibility splays of 2m x 33m, and these are appropriate. The visibility splay requirements have been based on the previously submitted ATC data for the refused planning application (181476).

The visibility splay line to the west runs in front of, but close to, the brick built gatepost. It is likely that the slight flare shown on the drawing on the western side of the access will discourage drivers from stopping at the proposed 2m set back, so this should be removed and instead run along the existing carriageway edge to the tangent point of the radius to encourage correct driver placement and therefore alleviate the issue of the proximity of the wall placement to the visibility line.

The access and kerbing appears to cross the adjacent access to Balance Barns to the east of the proposal site. Some clarity should be provided relating to the interaction of these two accesses. The proposal should ensure that satisfactory arrangements to both sites are maintained.

No details have been provided as to the drainage of the access area and it should be noted that this application does not consider layout, so the full extent of the drainage system cannot be set out. The gradient however means that the access falls into the site and therefore will not cause water to drain into the highway in any case.

The public highway extent runs into the existing gravelled gateway area, and the works outside of the application's red line will take place within the public highway. Should permission be granted, permission under the Highways Act will be required from the Highways Authority to construct the access.

Junction of Eywood Lane and the B4355:

It's understood that planning may not be in a position to consider this junction as part of this reserved matters application, however we would offer the following comments in respect of the junction.

This junction located in close proximity to the site and has a reduced visibility dimension when looking to the south east. This junction was considered in the Appeal for Application number 162824 on an adjacent site and highways safety was a reason for the refusal. The proposal considered by the inspector was for five houses, which were additional to the five already granted under the first outline permission 160581/O (i.e. a total of 10 dwellings). The inspector was therefore considering a greater intensification in use on account of the two schemes together. Whilst the junction falls short in terms of visibility, it is not considered that the current scheme for five dwellings in isolation could be considered a 'severe' impact at the location due to the relatively low traffic generation.

It is possible that improvements to the junction could be delivered to help mitigate the highways safety impacts of the development without the use of third party land. It is acknowledged that these improvements would need to be subject to feasibility considerations, but could also

deliver some sustainable transport links to the amenities of Titley. None have been offered as part of the current application however.

Further Comments (29th March 2019)

The Amended Drawing numbered SK01 Revision D dated 26th March 2019 addresses the comments related to the site specific access arrangements, therefore this drawing shows an acceptable arrangement for the scale of the development.

Recommended Conditions:

- CAB – Vis splays 2m x 33m
- Standard Informative I45 – Works within public highway

4.5 Conservation Manager (Ecology) – No Objections

4.6 Conservation Manager (Landscape) – No Objections

4.7 Environmental Health (Contaminated Land) – No Comments

5. Representations

5.1 Titley Group Parish Council object to the application;

The Titley Group Parish Council has consistently highlighted the highway safety issues with regard to both this application and the original plans for the five four bedroom houses. The lack of visibility at the Eywood lane junction with the B4355 has not changed and no alteration is to be made to the speed limit. There is still a large level of opposition within the community to this proposal not just on road safety issues but also on the impact such a potentially large development would have on a small village. As the road safety issues have now been accepted by both Hereford Council and the Government Planning Inspector at Appeal, we would consider that revoking the original approval for the four bedroom houses the only way to ensure the safety of the public. We would therefore endorse the letter from the Marches Planning and Property Consultancy regarding this matter.

We would also like to draw the attention of the council to our emerging Neighbourhood Development Plan which has reached Regulation 14. Due to the road safety issues, large level of community objection, estate style development inconsistent with the linear form of the village and, as already demonstrated, the developers wish to expand the proposal, we have not included any part of this development within our plan. We have instead included housing allocations that we consider better serve our community and do not create road safety issues. As can be seen we are still easily able to exceed our proportional growth requirements.

We also note that no consideration in the access plans has been given to the gate post to the west of the entrance that would obscure the splay visibility in this direction along Eywood lane.

Finally we would ask that this application be considered at committee, due to the large level of community opposition and to demonstrate Hereford Councils commitment to public safety.

5.2 22 Letters of Objection have been received. They can be summarised as follows;

- The junction of Eywood Lane and B4355 has limited visibility and the increase in traffic caused by this scheme would be harmful to highways safety. This has been confirmed by a previous Inspector and Council officers, but was overlooked in the grant of the original outline permission.

- The Inspector's decision refused an application (162824/O) on highways safety grounds where the access arrangements were identical to the current scheme.
- The original planning permission should be revoked using the powers under S.97 of the Town and Country Planning Act 1990 in the interests of public safety
- There is limited visibility from the site access onto Eywood Lane on account of the brick gatepost to the west.
- The plans show that a kerbing upstand will be formed near to the existing access to Balance Barns. This will impede safe access and egress for the seven dwellings on this site.
- The layout of the access does not meet the standards of the Council's Design Guide for New Developments
- The increase in traffic would be a danger to walkers who use the lane to access Titley Pools
- The scheme of entirely four bedroom houses does not meet the needs of Titley residents
- The application proposes works in highways land that are not in the applicant's control
- The original approval was granted on an incorrect view that the site was brownfield land
- Misleading information was given in the original outline application
- If this application is granted, a precedent will be set for further development on the site
- The SHLAA assessment for this site was inaccurate
- The site is not one identified for development in the draft neighbourhood development plan
- The land on the application site is not all within the developer's control
- Errors were made in the initial grant of outline permission
- The site is not vacant as reported in the application. It is still in regular agricultural use.
- Questions as to whether correct notices have been served as part of reserved matters application and initial outline application

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=190122&search=190122

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

Planning History and Procedural Context

- 6.1 The initial outline application for this site was validated by the Local Planning Authority on 25th February 2016. The application was made with all matters reserved. Although not specifically identified in the application, it was implicit in the submission that access to the site was to be via the existing access onto Eywood Lane to the south. The Council's Transportation Manager did not offer any objections to this arrangement at the time. Outline permission was subsequently granted subject to conditions on 27th July 2016.
- 6.2 A second outline application with all matters reserved was received on 8th September 2016 which related to the parcel of land immediately to the west of the current application site (P162824/O). The application proposed the erection of a further five dwellings. Whilst again not specifically identified, it was implicit that the proposal was to utilise the existing site access onto Eywood Lane in the same manner as the earlier approval. The Council's Transportation Manager subsequently raised concerns in respect of this arrangement and the potential impact upon highways safety, specifically in terms of the achievable visibility splays from the site access onto Eywood Lane and at the junction of Eywood Lane onto the B4355. An appeal against non-determination was submitted by the applicant on the 2nd February 2017

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

(APP/W1850/W/17/3168668). In the Council's evidence, the following reason for refusal was put forward;

'The required visibility splays cannot be achieved at the current design speed of 60mph at the access as well as onto the B4355 road. Visibility required at the access according to Manual For Streets requires 2.4 x 63m this is not achievable in both directions nor within total ownership of the applicant. Consequently the proposal is considered to be detrimental to the interests of highway safety, contrary to policy MT1 of the Herefordshire Local Plan - Core Strategy'

6.3 The appeal was dismissed by notice dated 26th July 2017. The Inspector's decision concluded that the proposal would cause significant harm to highways safety which would be contrary to policies of the development plan, notably Core Strategy policy MT1. The restricted levels of visibility from the site access onto Eywood Lane and at the junction of Eywood Lane onto the B4355, alongside the absence of evidence in relation to achievable splays and traffic speeds, underpinned the Inspector's Decision.

6.4 On 23rd April 2018, a reserved matters application (P181476/RM) was received in relation to the extant outline permission 160581/O (herein 'First Reserved Matters Application'). As in the present case, the application sought approval for access details only. Unlike the previous outline applications, the application was supported by the results of a 24 hour/7 day Automated Traffic Count (ATC) survey carried out on Eywood Lane and at its junction with the B4355. A technical drawing was also provided of the proposed access from the site onto Eywood Lane. With the exception of some minor technical points concerning the layout of the access, the Council's Transportation Manager confirmed that the additional information addressed the previous safety concerns regarding the junction from the site onto the unclassified Eywood Lane. However, in line with the conclusions drawn by the Inspector in the earlier appeal it was identified that visibility at the offsite junction between the Eywood Lane and the B4355 was substandard for the recorded traffic speeds. The application was subsequently refused on 28th September 2018 for the reason below;

'The application has failed to demonstrate that the local highway network can accommodate the traffic impacts of the development without adversely affecting the safe and efficient flow of traffic on the network, particularly with regards to the sub-standard visibility available at the junction of Eywood Lane and the B4355 and the intensification in use of this junction the proposal would give rise to. The proposal is hence in conflict with Policy MT1 of the Herefordshire Local Plan Core Strategy, the standards of Manual for Streets 2, and Chapter 9 of the National Planning Policy Framework'

6.5 Following this refusal, a second reserved matters application (P190122/RM) was submitted to the Local Planning Authority on 14th January 2019. This is the application currently being considered (herein 'Current Reserved Matters Application'), and to all intents and purposes the application is the same as the one refused under the first reserved matters application P181476/RM.

6.6 The current application however is supported by a Legal Opinion which has been sought by the Applicant from Landmark Chambers (London). This is attached in full at **Appendix 1**. The Barrister's advice considers the matter of whether the Council acted correctly in refusing the first reserved matters application. The Conclusion of the advice is that it did not. It is concluded that the Council erred in law in the sense that the reason for the refusal of the application related to matters that went to the principle of the development itself and which are therefore implicit in the grant of the outline planning permission. In short, the Council was not entitled to consider the traffic generation and highways safety implications of the development as part of a reserved matters application because these were 'fixed' with the grant of the outline permission.

6.7 The Council has sought its own independent Legal Opinion in respect of the first reserved matters application and this is attached in full at **Appendix 2**. The advice addresses a number

of matters (considered further in Section 6.35), but in relation to the propriety of the Council's refusal of the first reserved matters application similar conclusions are drawn to that of the Applicant's own Legal Opinion. The Council may not refuse to approve a reserved matters application on grounds going to the principle of the development itself. The following is offered by way of concluding remarks;

'Legally, the appropriate route seems to be to approve the Application on the basis that at the time of the consideration of application 160851/O, the Council did not take any point about highway safety and cannot reopen that issue now'

6.8 The current reserved matters application is considered in the context of the above.

Current Application - Policy Context and Appraisal

6.9 Outline Planning Permission for the erection of five dwellings was granted on this site in 2016 (Ref: 160581/O). This permission remains extant and the principle of residential development on the site is therefore established and cannot be revisited now. The current application has been submitted in line with the conditions of the Outline permission and seeks reserved matters approval in respect of access details only.

6.10 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."

6.11 In this instance the adopted development plan comprises the Herefordshire Local Plan – Core Strategy (CS). The National Planning Policy Framework (NPPF) is also a significant material consideration in determining the application. It is also noted that the Titley Parish is currently in the process of preparing a Neighbourhood Development Plan, with a draft recently being published for Regulation 14 consultation. At this stage the draft plan is a material consideration, but in applying the tests set out at Paragraph 48 of the NPPF it is considered it attracts limited weight for the purposes of decision taking (as set out in 2.3 of this report).

6.12 Paragraph 11 of the NPPF states that decisions should apply a presumption in favour of sustainable development. For decision taking, this means that proposals which accord with an up-to-date development plan should be approved without delay. At 11 d), it states that where there are no development plan policies relevant or the policies which are most important for determining the application are out-of-date, permission should be granted unless policies within the framework (outlined at Footnote 6) provide a clear reason for refusing the proposal or the adverse impacts of approving the scheme would significantly and demonstrably outweigh the benefits.

6.13 The application here is for the approval of reserved matters with regards to access. The policies most important for the determining the application are therefore those concerned with highways matters, and the development plan contains a number of policies of this nature which are considered to be 'up-to-date'. In applying the presumption as set out by Paragraph 11 (c) therefore, the proposal should be approved without delay provided it accords with the development plan.

6.14 CS 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 ensure that safe entrance and exit can be achieved and that adequate

operational and manoeuvring space is available, having regard to the standards set out in the Council's Design Guide for New Developments.

- 6.15 Although only attracting limited weight at this stage, it is noted that the emerging Titley Group NDP also reinforces highways requirements for new development via policy TG16. At point 4) the policy requires that development proposals should achieve high quality design by 'being capable of being safely accessed from the local road network without undue local environmental impacts which cannot be mitigated. The arrangements for access should include provisions for pedestrians and cyclists to encourage active travel wherever practicable'.
- 6.16 The approach of both the CS and NDP accords with the principles and advice set out within the National Planning Policy Framework (NPPF). Chapter 9 in particular relates to the promotion of sustainable transport, and paragraph 108 requires that in considering specific applications for development it should be ensured that (inter alia) safe and suitable access to the site can be achieved for all users. At paragraph 109, it is advised 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.
- 6.17 The applicant has supplied technical drawings SK01-REVD and SK03-REVC which show the proposed layout and construction specification of the access from the site onto Eywood Lane. The Council's Transportation Manager advises that the depicted visibility splays of 2m x 33m (shown on SK01-REVD) are appropriate when having regard to the traffic speeds that were recorded in the speed survey undertaken in support of application P1814761/RM. It has also been confirmed on site that the splays are achievable when having regard to physical constraints such as the geometry of the carriageway and the adjacent brick gate pillar. The splays will be secured by condition. Previous concerns regarding the technical layout of the access and its relationship with the adjacent driveway to Balance Barns have also been addressed through amendments to the plans SK03-REVC. The Transportation Manager therefore offers no objections and consequently no conflict with MT1 is identified as a result of the site access arrangements.
- 6.18 The representations received regarding the need for works outside of the outline application's red line are noted. The supplied plan SK01-REVD however shows that all of the works outside of the red lined would take place within the public highways extents (highlighted in blue in Figure 3), and the extents shown in the plan have been confirmed against the Council's records as being accurate. The works can therefore be controlled by relevant provisions of the Highways Act.

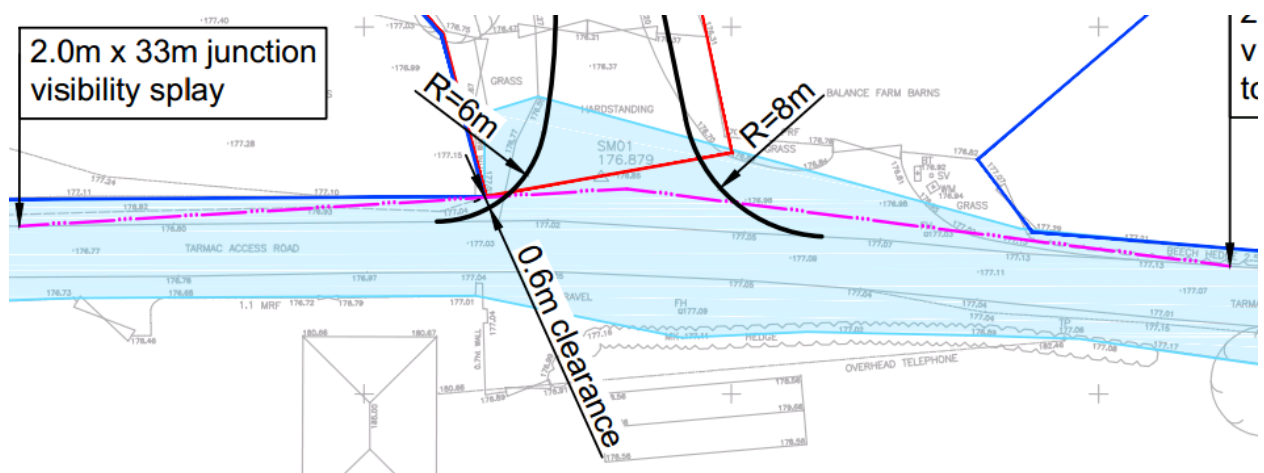


Figure 3 – Highways Extents Plan

- 6.19 The proposed access details would not have any demonstrable impact in respect of any other material planning considerations such as amenity, ecology, heritage, landscape or

contaminated land issues. It is noted that no objections have been received from statutory or internal consultees in relation to such matters. The relevant conditions of the outline permission will continue to apply, and these points will be considered further when approval of the outstanding reserved matters for landscape, layout, scale and appearance are submitted.

Eywood Lane and B4355 Junction

- 6.20 The issue of highways safety at the offsite junction between Eywood Lane and the B4355 has been extensively considered as part of previous applications in the locale. It is clear that visibility from the junction the south east towards Kington in particular is restricted by the geometry of the carriageway in conjunction with physical obstructions on the verge, and that there is limited scope to address this given that the issues stem from land in third party ownership. The Inspector considering a second outline application for five dwellings (162824/O) recognised this issue and subsequently dismissed the appeal for reasons (in part) relating to the application's failure to demonstrate safe access could be achieved from this junction. An ATC speed survey was consequently undertaken by the applicant which reduced visibility requirements to a small degree, but the junction still fell short of being able to deliver the splays required under Manual for Streets. The required splays to the south east have previously been identified to be 2m x 60m; whilst the achievable splays have been measured at 2m x 42m (or 2m x 55m with reliance on third party land). This shortfall formed the basis of the Council's refusal of the First Reserved Matters application for access in September 2018.
- 6.21 As outlined at Section 6.7 and 6.8 of this report, the current application is supported by a Legal Opinion on behalf of the applicant and the Council has also sought its own Legal Opinion in response to this (Appendix 1 and 2 respectively). Both opinions are clear in their conclusions; the Council's decision to refuse the First Reserved Matters Application on the grounds of the highways safety issue at the offsite junction between Eywood Lane and the B4355 was erroneous in law. This issue goes to the principle of the development and therefore was 'fixed' with the grant of the outline permission. The Council is hence not legally or procedurally entitled to re-open that issue as part of a reserved matters application.
- 6.22 It follows therefore that the issue regarding the Eywood Lane and B4355 junction cannot be used as grounds to refuse the current reserved matters application. To do so would likely be erroneous in law.
- 6.23 Notwithstanding this, the representation received from the Transportation Manager provides further analysis of the junction and the highways safety implications this would give rise to. First, it is noted that the current situation is materially different to the situation that was before the Inspector in the appeal relating to application 162824/O. This in the sense that the first outline permission for five dwellings had already been approved by that stage, and therefore the intensification in vehicle movements that would have occurred as a result of the two schemes together would be greater than those caused by the first outline permission alone. Moreover, ATC speed survey data has since been submitted that accurately quantifies traffic speeds and volumes on the B4355 and shows that the shortfall in achievable visibility from the junction is slightly less than previously noted. This leads to the conclusion from the Transportation Manager that although there would an impact upon highways safety, this impact could not be termed to be severe on account of the relatively limited traffic generated by the development.

Revocation of Outline Permission P160581/RM

- 6.24 Although it is not a matter than can be considered material to the determination of the current application, it is acknowledged that numerous representations received from the Parish Council and local residents invite the Council to utilise the powers afforded to them by Section 97 of the Town and Country Planning Act (1990) to revoke the original outline planning permission. Section 97 (1) makes the following provision;

'If it appears to the local planning authority that it is expedient to revoke or modify any permission to develop land granted on an application made under this Part, the authority may by order revoke or modify the permission to such extent as they consider expedient'

6.25 At face value, it may logically be argued that it would be appropriate for the Council to exercise these powers and revoke the original outline permission. Since the grant of the permission, it has become apparent that should the development proceed it would likely increase the risk to highways users on account of the shortfall in visibility at the junction between Eywood Lane and the B4355. The option of revoking the original permission in response to this has therefore been considered.

6.26 In considering the possibility of revocation, Section 107 of the Town and Country Planning Act (1990) is also pertinent. This section relates to the matter of compensation where planning permission is revoked or modified. It states as follows;

S.107 (1) *Subject to section 116, where planning permission is revoked or modified by an order under section 97, then if, on a claim made to the local planning authority within the prescribed time and in the prescribed manner, it is shown that a person interested in the land or in minerals in, on or under it—*

- (a) has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification; or*
- (b) has otherwise sustained loss or damage which is directly attributable to the revocation or modification,*

the local planning authority shall pay that person compensation in respect of that expenditure, loss or damage.

S.107 (2) *For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory to it, shall be taken to be included in the expenditure incurred in carrying out that work.*

S.107 (3) *Subject to subsection (2), no compensation shall be paid under this section in respect—*

- (a) of any work carried out before the grant of the permission which is revoked or modified, or*
- (b) of any other loss or damage arising out of anything done or omitted to be done before the grant of that permission (other than loss or damage consisting of depreciation of the value of an interest in land).*

6.27 In terms of the level of compensation that may be payable should the Council pursue a revocation, the representation received from Marches Planning on behalf of local residents makes the suggestion that this would be minimal given that works on the site have not yet commenced. However, this ignores the wording of sections 107(1)(b) and 107(3) which clearly envisage that compensation would also be due in respect of the depreciation in the value of the land that would inevitably occur as a result of the revocation of the planning permission. Should the permission be revoked therefore it follows that the level of compensation due would likely be significant.

6.28 Case Law and the Council's legal advice in respect of the current application are clear that in considering whether to exercise its discretion to revoke under section 97, one of the material considerations that the authority has to take into account is the cost of the compensation that it might have to pay under Section 107. This view was held by the *Supreme Court in Health and Safety Executive v Wolverhampton City Council [2012] UKSC 34*. The judgement given in that case commented;

24)...In simple terms, the question is whether a public authority, when deciding whether to exercise a discretionary power to achieve a public objective, is entitled to take into account the cost to the public of so doing.

25) Posed in that way, the question answers itself. As custodian of public funds, the authority not only may, but generally must, have regard to the cost to the public of its actions, at least to the extent of considering in any case whether the cost is proportionate to the aim to be achieved, and taking account of any more economic ways of achieving the same objective. Of course, the weight attributable to cost considerations will vary with the context.

- 6.29 Drawing together the above, it is considered that it would not be expedient for the Council to exercise its powers under S.107 and revoke the original outline permission for the site. Whilst it has been identified that the junction between Eywood Lane and the B4355 has restricted levels of visibility and that this would likely have an impact upon highways safety, the advice received from the Transportation Manager is that this impact would not be severe. The degree of risk is not therefore considered to be significant enough to justify or outweigh the considerable financial implications to public funds that would occur if the revocation were pursued.

Conclusions

- 6.30 In accordance with Paragraph 11 of the NPPF, all planning decisions should apply a presumption in favour of sustainable development. Paragraph 11 (c) requires that proposals which accord with an up to date development plan should be approved without delay.
- 6.31 The application in this case is for the approval of reserved matters in relation to access only. The application has provided technical drawings in respect of the layout and specification of the new access from the site onto Eywood Lane and these are considered to be acceptable with regards to the requirements of the Council's Highways Design Guide. The Transportation Manager offers no objection to the proposed access arrangements and no conflict with the development plan, notably CS policy MT1, has been identified.
- 6.32 The issue in relation to the off-site junction between Eywood Lane and the B4355 is acknowledged. However, legal advice directs that the Council is not entitled to consider this as part of their determination of this reserved matters application. This issue goes to the principle of the development and therefore was 'fixed' with the grant of the outline permission. It cannot be re-opened now.
- 6.33 In conclusion therefore, no conflict with the development plan has been identified as a result of the proposed access arrangements and the scheme is consequently representative of sustainable development. The reserved matters application is therefore recommended for approval subject to the conditions set out below.

RECOMMENDATION

That approval of reserved matters be granted subject to the following conditions and any further conditions considered necessary by officers named in the Scheme of Delegation to Officers:

- 1. C08 - Development in accordance with amended plans**
- 2. CAB – Visibility Splays – 2m x 33m in accordance with approved plans**

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. I45 – Works within the Public Highway

Decision:

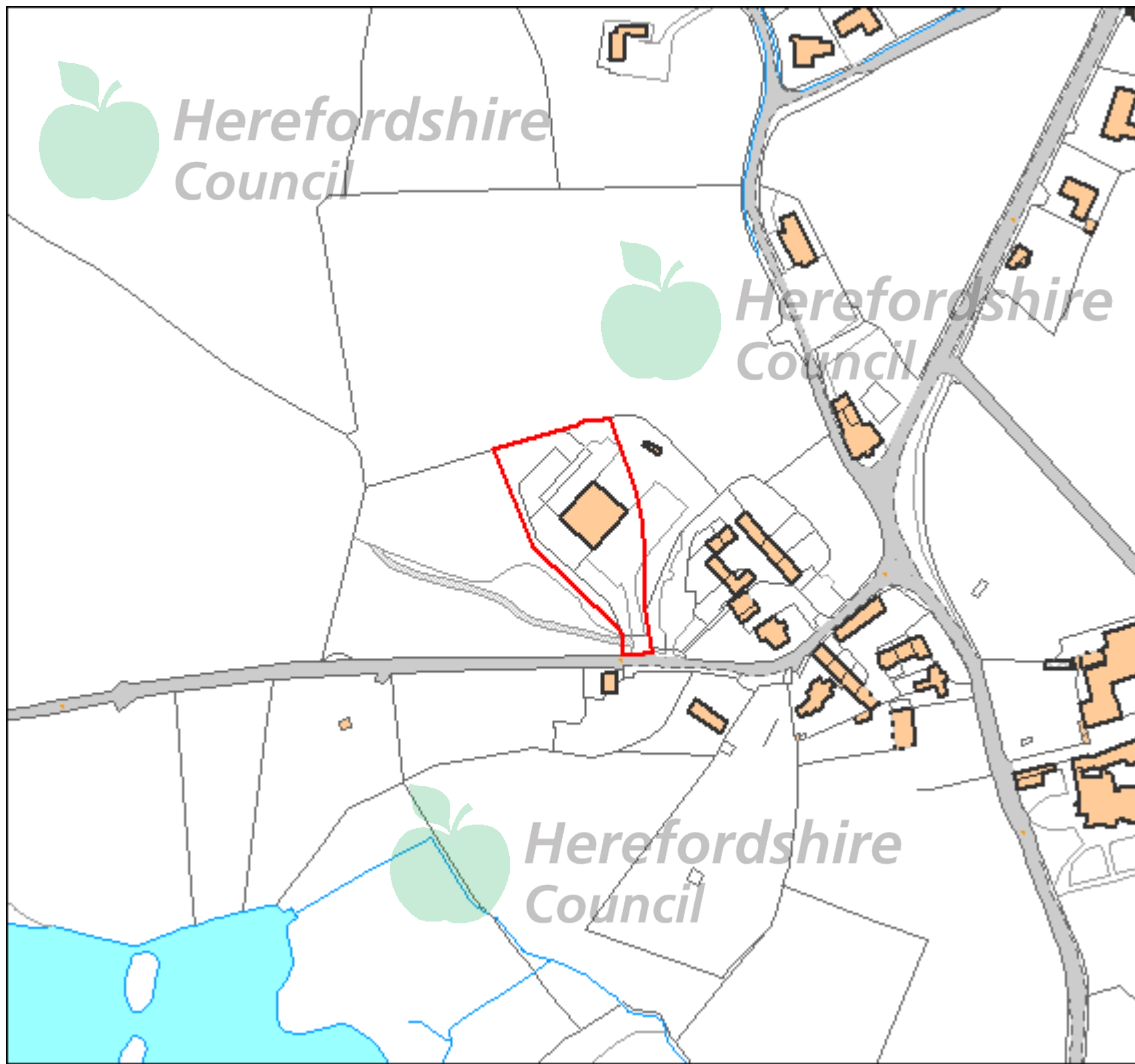
Notes:

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Background Papers

Appendix 1 – Applicant’s Legal Opinion (Stephen Whale, Landmark Chambers London)

Appendix 2 – Council’s Legal Opinion (Katherine Olley, Landmark Chambers)



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

APPLICATION NO: 190122

SITE ADDRESS : BALANCE FARM, EYWOOD LANE, TITLEY, KINGTON, HEREFORDSHIRE, HR5 3RU

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

**IN THE MATTER OF LAND AT BALANCE FARM, EYWOOD LANE, TITLEY,
HEREFORDSHIRE**

OPINION

Introduction

1. I am instructed by Angela Vaughan.
2. My instructions are to advise on whether or not Herefordshire Council (“the Council”) is acting properly by requiring works not identified at the outline planning permission stage (160581).
3. Since my instructions, the Council has in fact refused my client’s application for reserved matters approval of the access.

Background

4. On 25 February 2016, Mrs Vaughan applied to the Council for outline planning permission for the erection of 5 no. four bedroom dwellings on land at Balance Farm, Eywood Lane, Titley, Herefordshire (“the Site”), with all matters reserved. The Site is accessed via the unclassified 91602 road, some 100m to the west of the junction with the B4355.
5. The Transportation Department was consulted on the application. The consultation response, dated 19 April 2016, indicated that the Area Engineer had visited the Site. He commented that there were “No highway implications”. The proposal was said to be acceptable.
6. It would appear that the Parish Council held a public meeting, at which concerns were expressed “about the increase in traffic that would be generated by the proposal with specific regard to the junction of the B4355 and Eywood Lane.” The Parish Council endorsed this concern, specifically relating to the visibility in the Kington direction and the 40mph speed limit within the village. It would further appear that one or more local residents objected to the Council direct on the basis of an increase in traffic fast moving through the village coupled with the visibility at the junction.
7. In the appraisal section of the officer report, the case officer noted the local concern about highway safety but acknowledged that the Transportation Manager raised no objection. He rejected the suggestion of a traffic regulation order to reduce the speed limit in the village. He recommended that planning permission be granted. The Team Leader endorsed the recommendation.
8. On 27 July 2016, outline planning permission was granted subject to conditions. These included conditions 3-4, which, amongst other things, required the approval of

the details of the access before development commenced, the submission to the Council of plans and particulars relating to the access and the carrying out of the access plans and particulars as approved.

9. Self-evidently, it is implicit in the grant of outline planning permission that the Council as local planning authority was satisfied in terms of the impact of the proposed development with respect to traffic volume, traffic speed and the Eywood Lane junction with the B4355.
10. On 6 September 2016, Mrs Vaughan applied to the Council for outline planning permission for the erection of 5 no. dwellings on land to the east of the Site. Mrs Vaughan appealed for non-determination. On 26 July 2017, the Secretary of State's appointed Inspector dismissed the appeal. He or she concluded that the proposed development conflicted with Policy MT1 of the Council's Core Strategy. Part of the rationale for that conclusion was the finding that the proposal would substantially increase the traffic utilising the access with Eywood Lane and its junction with the B4355, and that, taken together with the restricted visibility in a south easterly direction, there would be an increased risk to the safety of highway users and significant harm caused to highway safety.
11. Pursuant to conditions 3-4 of the 27 July 2016 outline planning permission, Mrs Vaughan applied to the Council for reserved matters approval of the access.
12. The Transportation Department responded to the application. It had a concern about the surface and edge treatment of the proposed access, but this concern appears to be one capable of being overcome. The Transportation Department was also satisfied with the proposed 2m x 33m visibility splays at the access point. However, it also

stated that the visibility splays at the junction with the B4355 “falls short”. The signatory (or signatories) concluded that there was “no option” but to recommend refusal “as the proposal adds conflict in the area compromising policy MT1” having regard to details around the B4355 junction, speeds, visibility splay and safe walking.

13. The officer report into the reserved matters application is dated 28 September 2018. It recorded, correctly, that the principle of residential development on the Site has been established as being acceptable by the outline planning permission “and is not to be considered again in detail”. I would go further. The principle of 5 no. four bedroom dwellings was established as being acceptable by that outline planning permission. The officer report found it to be implicit in the outline planning application that access to the Site was to be via the existing access onto Eywood Lane.
14. In the appraisal section, the case officer plainly found the application to be acceptable in terms of the access arrangements from Eywood Lane into the Site and vice-versa.
15. However, the case officer took issue with the application in terms of the junction between Eywood Lane and the B4355. He stated: “Concerns over the suitability of this junction to safely support intensification in use again formed part of the reason for the Inspector’s dismissal of the appeal [on 26 July 2017]...visibility from the junction onto the priority road is limited to the south east in particular...the Transportation Manager raises concerns in respect of visibility to the south east...The junction therefore falls significantly short of providing the levels of visibility required to ensure that safe entrance and exit can be achieved.”

16. The case officer recommended refusal of the application, essentially by reference to the restricted visibility to the south east at the Eywood Lane/B4355 junction and increased traffic flow as a result of the proposed dwellings. It is plain that the Inspector's conclusions formed part of the rationale for the recommendation. Thus: "The conclusions of the Inspector in the appeal relating to the adjacent site...supports this view." The Team Leader endorsed the recommendation.
17. On 28 September 2018, the Council formally refused the application. The reason for refusal reflects the case officer's conclusion and recommended reason for refusal. There is no reference to the point of access to the Site, or to the verge width.

Legal framework

18. Pursuant to article 2(1) of the Town and Country Planning (Development Management Procedure)(England) Order 2015 ("the 2015 Order"), "reserved matters" in relation to an outline planning permission, or an application for such permission, means any of five identified matters in respect of which details have not been given in the application.
19. The five identified matters include "access".
20. Article 2(1) of the 2015 Order defines "access" in relation to reserved matters. Thus: "the accessibility to and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network; where 'site' means the site or part of the site in respect of which outline planning permission is granted or, as the case may be, in respect of which an application for such permission has been made."

21. It has been said that development orders such as the 2015 Order are to be construed in a broad or common sense manner: English Clays v Plymouth Corporation [1973] 1 WLR 1346, 1351 *per* Goulding J.
22. As can be seen, the definition of “access” includes the words “and how these fit into the surrounding access network”. Read in a broad or common sense manner, the word “these” refers back to “the positioning and treatment of access and circulation routes”.
23. A local planning authority is not entitled to refuse to approve a reserved matters application on grounds going to the principle of the development itself and which are therefore already implicit in the grant of the outline planning permission.
24. The case of Lewis Thirkwell Ltd v Secretary of State [1978] JPL 844 is an early illustration of this familiar proposition. Outline planning permission had been granted for 23 houses, subject to a condition that an existing public right of way remained undisturbed unless stopped up or diverted. The developer subsequently applied for the approval of details. The local planning authority refused the application, and the Inspector dismissed the appeal on the ground that the proposal would disturb the existing amenities. The High Court quashed the Inspector’s decision. Willis J endorsed the agreed proposition that, in granting outline planning permission, the local planning authority had “sold the pass” in relation to the right of way and if the development of the area with 23 houses was to take place its existing rural character was bound to be affected or urbanised. As the Judge put it, the local planning authority had given outline permission “from which they were not entitled to resile”. The Inspector was not entitled to take into account the urbanisation of the right of way

as a relevant factor in dismissing the appeal, since that urbanisation stemmed not from the subsequent details but from the outline planning permission “which had to be accepted”.

25. Proberun Ltd v Secretary of State¹ (1991) 61 P&CR 77 is also apposite. The Secretary of State granted outline planning permission despite a conclusion that the land was connected to the public highway by a narrow unmade track and that the junction between the two was patently sub-standard. The developer subsequently applied for reserved matters approval of the access. It did not propose to alter the position of the junction, because that could only be done by leaving the land forming the site and within its control. On appeal, the appointed Inspector concluded that the proposed access and junction details did not reach the required standard and he dismissed the appeal. The High Court quashed the Inspector’s decision, and the Court of Appeal dismissed the local planning authority’s appeal against that quashing order.
26. In R v Newbury DC, ex p Chieveley PC [1997] JPL 1137, the High Court endorsed the general approach as explained in Proberun Ltd before adding that its application must depend on the circumstances. Much will depend, said the Court, on the scope of the matters left open by the outline permission. In the case of an outline planning permission for residential development of a defined area, with all matters reserved, including numbers and form of housing, the Court concluded that questions of traffic generation were not irrelevant in fixing the form of access. Proberun Ltd merely showed that any limitations imposed at the reserved matters stage cannot be such as to nullify the principle of residential development. As a matter of chronology, the traffic

¹ Also known as Medina BC v Proberun Ltd.

issues in Newbury were not finally addressed by the authority before the issue of the outline planning permission. In the circumstances, the officers were wrong to advise the authority that traffic generation was not open to discussion at the reserved matters stage.

Discussion

27. Unlike the example canvassed in Newbury, the outline planning permission in the present case *is* specific as to the number of houses.

28. Moreover, and again by contrast with Newbury, the traffic and highway safety issues in the present case *were* finally addressed by the Council before the issue of the outline planning permission. As recorded above, the case officer (and the Team Leader) were cognisant of the traffic and highway safety issues prior to 27 July 2016 as indeed was the Transportation Department. The Council concluded that they did not give rise to grounds for refusing the application for outline planning permission. To adopt the language of Lewis Thirkwell Ltd, it can be said that the Council “sold the pass” in relation to the impact of the proposed development in terms of the intensification of use of the Eywood Lane/B4355 junction when it granted outline planning permission. In any event, the Court in Newbury concluded that questions of traffic generation were in the circumstances of that case not irrelevant in fixing “the form of access”. But the Council has no issue with “the form of access” in the present case. Its concern is with a junction some 100m away from the Site. So I cannot see how Newbury assists the Council.

29. The Eywood Lane/B4355 junction is outside the area of land granted outline planning permission and it would appear that the south east of the junction at least is outside my client's control.
30. As recorded above, the definition of "access" in the 2015 Order is referable to accessibility *to* and within *the site* in terms of the positioning and treatment of access and circulation routes and how "these" [*plural*] fit [*singular*] into the surrounding access network. The officer report misquotes the 2015 Order in the body of the report. It asserts, wrongly, that the 2015 Order makes it clear that "access" in the context of reserved matters should include consideration of the accessibility to the site "and how this [*singular*] fits [*plural*] into the surrounding road network." Rather than focusing on the positioning and treatment of access and circulation routes and how *these* fit into the surrounding access network, the case officer erroneously focuses on accessibility more generally including access *from* the site. Moreover, and despite the definition of "site" within the definition of "access," the case officer's consideration erroneously strays beyond the site to consideration of the Eywood Lane/B4355 junction some 100m to the east of the Site.
31. What is more, the case officer erroneously takes into account the adverse conclusions of the appeal Inspector despite the existence of the outline planning permission and despite the fact that the appeal Inspector was considering different proposed development on land different from the Site. In so doing, the Council made the same essential error as the Inspector in the Lewis Thirkwell Ltd case. In my opinion, the Council was not entitled to take into account the intensification of use of the Eywood Lane/B4355 junction as a relevant factor when refusing the reserved matters

application, since that intensification stemmed not from the subsequent access details but from the outline planning permission “which had to be accepted”.

32. The Council’s rejection of the reserved matters application on the grounds that it did not include any plan to improve visibility to the south east at the Eywood Lane/B4355 junction to the standard required by the Transportation Department (which would require works outside the Site and on land outside my client’s control) is, I would contend, as erroneous an approach as the Inspector’s approach in Proberun Ltd.
33. In short, and in the light of all the above, my conclusion is that the Council has erred in law in that it has refused the reserved matters application on grounds going to the principle of the development itself and which are therefore already implicit in the grant of the outline planning permission. Put another way, and in the language of Newbury, it has erred in law in that it has nullified the effect of the outline planning permission.

Conclusion

34. The Council did not act properly by requiring works to the Eywood Lane/B4355 junction not identified at the outline planning permission stage. Its 28 September 2018 refusal is erroneous in law.

STEPHEN WHALE
LANDMARK CHAMBERS, LONDON
16 OCTOBER 2018

**IN THE MATTER OF BALANCE FARM EYWOOD LANE TITLEY KINGTON
HEREFORDSHIRE HR5 3RU**

ADVICE

Introduction and background

1. I am asked to advise Herefordshire Council in relation to Reserved Matters Approval application reference P190122/RM dated 14th January 2019 (“the Application”).
2. The Application follows the grant of outline planning permission on 27th July 2016 in respect of application reference 160581/O for five 4-bedroom houses at Balance Farm, Titley (“the Site”). All matters were reserved. Condition 1 of the permission requires application for approval of the reserved matters to be made before the expiration of three years from the date of the permission, thus before 26th July 2019.
3. The Application seeks approval for access only.
4. It is important to note that the parcel of land at Balance Farm has been divided into two by the applicant with separate applications made in relation to each half. The extant permission referred to above relates to the Western part of the Site. The applicant made an application (reference 162824) for another 5 dwellings on the Eastern part of the Site but this was not determined by the Council and was then refused on appeal on 26th July

2017. However, this time the Council's Transportation Manager had raised concerns and requested a traffic speed survey to measure speeds on the B4355 in order to assess the adequacy of the visibility at the junction. In the absence of a survey, it was considered that the increase in traffic arising from the development at the junction would be detrimental to the interests of highway safety. The proposed reason for refusal (as recommended by the Transportation Manager) was as follows:

“The required visibility splays cannot be achieved at the current design speed of 60mph at the access as well as onto the B4355 road. Visibility required at the access according to Manual For Streets requires 2.4m x 63m. This is not achievable in both directions nor within total ownership of the applicant. Consequently the proposal is considered to be detrimental to the interests of highway safety, contrary to policy MT1 of the Herefordshire Local Plan Core Strategy.”

5. I pause to note the findings of the Inspector in the appeal. The Inspector noted at DL6 that that access to the Site would be from Eywood Lane, “...a road of restricted width that appears to serve properties within the adjacent Eywood Park...” There was no evidence before the Inspector (see DL7) to suggest that the road is normally heavily trafficked. At DL8 the Inspector described the situation at Eywood Lane:

“8. Eywood Lane bends around Balance Farm and there is a speed limit of 60mph, adjacent to the appeal site. The visibility to the east of the site is considerably restricted by the bend and a tall boundary hedge that is within close proximity of the bend. The visibility to the west is severely restricted by an entrance pillar to Eywood Park and landscaping around it. The Highway Authority have stated that the required visibility splay for an access to the appeal site, based on the guidance of Manual for Streets 2 (2010) should be 2.4m x 6.3m. I have no reason to dispute this.”

6. The Inspector then continued to set out (DL9-13) his reasoning and conclusions in relation to highway safety. Given that this is the key issue in this matter (and it was one of the two main issues in the appeal), it is convenient to set this out in full below:

“9. I have no information before [me] to indicate what the available visibility splays would be in both directions. However, based on my observations on site, even though the existing access is reasonably wide, I consider that the available

visibility splays would be significantly below that referred to above. Eywood Lane is not heavily trafficked but the national speed limit is in place on it. Due to its restricted width and the proximity of the bend it would be likely that the majority of cars would be travelling slower than 60mph. Nonetheless, without evidence, such as speed readings, it is not possible to ascertain with sufficient clarity and robustness that the development would achieve a safe entrance and exit from Eywood Lane.

10. The junction of Eywood Lane and B4355 is within close proximity of the site. The B4355 appears to be a relatively busy road and I observed that vehicles were regularly passing the junction. There is a speed limit of 40mph on the B4355 adjacent to the junction. I have no evidence before me to indicate what the available visibility splay to the south-east would be but visibility in that direction is considerably restricted by a bend and boundary treatments. The Highway Authority has stated that the usage of Eywood Lane and its junction with the B4355 should not be increased substantially with the existing 40mph speed limit in place.

11. The appellant has referred to developments that have been granted planning permission in the surrounding area including a barn conversion scheme adjacent to the junction of Eywood Lane and the B4355. Outline planning consent for 5 dwellings has been granted on an adjacent site that would utilise the same access as the appeal site. However, I do not have full details of the circumstances that led to these schemes being accepted. In any case, I am required to determine the appeal on its own merits.

12. Nevertheless, the proposal would substantially increase the traffic utilising the access with Eywood Lane and its junction with the B4355. The B4355 is a well-used thoroughfare with traffic moving at speeds of up to 40mph. As such, I consider that the restricted visibility in a south easterly direction would result in an increased risk to the safety of highway users and as such it would cause significant harm to highway safety.

13. In conclusion, I consider that it has not been demonstrated that a safe entrance and exit from the proposed development can be achieved and that the proposal would cause significant harm to highway safety. It follows that the proposal conflicts with Policy MT1 of the Herefordshire Local Plan Core Strategy (CS). This policy seeks development which, among other things, are [sic] designed to achieve safe entrance and exit.”

(emphasis added)

7. The Inspector in due course found at DL29 that the significant harm to highway safety would significantly and demonstrably outweigh the modest benefits associated with the

scheme, including the contribution to housing supply and the relatively accessible location.

8. In the officer's report relating to application 160581/O it had been stated, by contrast, that "Despite local concern about highway safety, the Transportation Manager raises no objection. It has been suggested that a TRO introducing a lower speed limit in the village should be required. However there is no basis on which to do so as a result of this development. Furthermore the scheme, which would be limited to less than 1000sqm floorspace, does not trigger the need for a S106 agreement."
9. The situation therefore is that whilst the Council approved application 160581/O on the basis that there were no significant highway concerns, the Inspector refused permission for essentially an identical development, and apparently without taking into account any question of intensification of use.
10. The Application is not the first Reserved Matters Approval application that the applicant has made. On 23rd April 2018 the applicant made application P181476/RM ("the First Reserved Matters Application") in relation to application 106581/O, again for approval of access details. However, this was refused on 28th September 2018.
11. As recorded in the officer's report, the Council's Transportation Manager objected:

"...The access location is close to pillars adjacent to the highway that restricts visibility. The drawing proposes 2m x 33m splays. This is deemed acceptable in this location which is supported by the speed survey, and has been confirmed on site as just being achievable.

If the development were to be deemed acceptable, conditions would be required in relation to the construction, parking, turning and splays.

The traffic generated from the proposed site is deemed to intensify the junction onto the B4355. The visibility at the junction, available within the highway land, looking towards Kington is 42m and crossing 3rd party land, is 55m.

The speed limit in the area is 30mph, the speeds demonstrate the 85%tile speeds in the location are 35.4mph.

The visibility required for the location and taking into account the traffic use, the vis splay needs to be 2.4x distance and 57m plus bonnet length = 60m.

Therefore the junction falls short of the requisite splay.

The location is in walking distance to the PH and the village Hall, the land is within the ownership of the application and no safe verge width is proposed as part of the application.

Due to the details around the junction, speeds, visibility splay and safe walking, I have no option but to recommend refusal as the proposal adds conflict in the area compromising policy MT1.”

12. Points set out in the letters of objection included the following:

“The site uses the same access arrangements as the proposal on the adjacent site which was dismissed on appeal on the grounds of highways safety.”

“The safety of the access arrangements should have been taken into account at the outline stage.”

“The outline permission is flawed as safe access to the site cannot be delivered.”

“The visibility from the site access to the west is restricted by the brick gate pillar of Eywood Park.”

“The incorrect visibility requirements have been applied to the access and do not adhere to the Council’s Highways Design Guide.”

“The traffic speeds are high on Eywood Lane and levels of vehicle movements fluctuate throughout the year with farm traffic.”

“The junction from Eywood Lane onto the B4355 has limited visibility and is unsafe.”

“The development would generate additional traffic which could not be safely accommodated on the local roads.”

13. The report correctly set out the definition of access in the Town and Country Planning (Development Management Procedure) Order 2015 in relation to reserved matters:

“...the accessibility to and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network; where “site” means the site or part of the site in respect of which outline planning permission is granted or,

as the case may be, in respect of which an application for such a permission has been made.”

14. It also explained that CS 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...that developments are designed and laid out to ensure that safe entrance and exit can be achieved and that adequate operational and manoeuvring space is available.”

15. The officer went on to say:

“In defining the term ‘access’ in the context of reserved matters, the Procedures Order makes it clear that this should include consideration of the accessibility to the site and how this fits into the surrounding road network. In this case access from the site itself would be provided onto the unclassified Eywood Lane. This is a no-through road to the west, and in order to gain access to the site or to the wider highways network all traffic generated by the development would be required to use the junction between Eywood Lane and the B4355 approximately 100m to the east of the site. Concerns over the suitability of this junction to safely support intensification in use again formed part of the reason for the Inspector’s dismissal of the appeal in relation to application P162824/O. The B4355 in this location is subject to a 40mph speed limit, and visibility from the junction onto the priority road is limited to the south east in particular by the geometry of the road and obstructions on the highways verge. The results of a 7 day speed survey have been provided in support of the application and the recorded 85th percentile traffic speeds are as follows;

South-eastbound towards Kington – 35.4mph

North-westbound towards Presteigne – 34.2mph

No plans have been formally submitted with the application in relation to the visibility achievable from this junction. Whilst the Authority is satisfied that visibility to the north is adequate, the Transportation Manager raises concerns in respect of visibility to the south east and advises that the maximum splay achievable within the highway extents (and without being reliant on 3rd party land) is 2.4m x 42m. Based upon the recorded traffic speeds and the nature of

the highway however, it is also advised that the required visibility splays for the recorded traffic speeds would be 2.4m x 60m in accordance with the standards of Manual for Streets 2. The junction therefore falls significantly short of providing the levels of visibility required to ensure that safe entrance and exit can be achieved.”

(emphasis added)

16. It was concluded:

“The current reserved matters application seeks approval of the proposed access arrangements to the site granted outline approval for five dwellings under outline permission P181476/O. The 2015 Procedures Order outlines that access as a reserved matter should include consideration of the accessibility to and within the site in terms of the positioning and treatment of the access and circulation routes and how these fit into the surrounding access network. In this instance, the proposed access arrangements would be reliant on the use of the junction between Eywood Lane and the B4355 which offers severely restricted levels of visibility to the south east. In combination with the increase in traffic which would occur as a result of the additional dwellings, it is considered that this arrangement would pose an increased risk to the safety of highways users and as such would cause significant harm to highways safety in the locale. The conclusions of the Inspector in the appeal relating to the adjacent site (APP/W1850/W/17/3168668) supports this view. The proposal would thus be in conflict with policy MT1 of the Core Strategy in terms of the need to ensure that safe entrance and exit can be achieved and to demonstrate that the local highway network can absorb the traffic impacts of the development without adversely affecting the safe and efficient flow of traffic. Conflict in relation to the advice set out in Chapter 9 of The Framework is also identified for the same reason, and paragraph 109 in particular, which directs that development should be refused on highways grounds if there would be an unacceptable impact upon highways safety or if the residual cumulative impacts on the road network would be severe, is applicable in this case. No proposals have been put forward in mitigation for the severe impact which has been identified, and indeed the Council is not convinced that any such solution exists. Accordingly, there is no option but to recommend the application for refusal for the reason set out below.”

(emphasis added)

17. The First Reserved Matters Application was refused for the reason that it had failed to demonstrate that the local highway network can accommodate the traffic impacts of the development without adversely affecting the safe and efficient flow of traffic on the

network, particularly with regards to the sub-standard visibility available at the junction of Eywood Lane and the B4355 and the intensification in use of this junction that the proposal would give rise to.

18. The Council therefore refused the First Reserved Matters Application for highway safety reasons, in line with the Inspector's own conclusions in relation to application 162824, but in contrast to the approach taken in 160851/O in which no sustainable objection was found on highway safety grounds.
19. The applicant argues, on the basis of a legal opinion submitted to the Council, that in considering these matters in relation to access the Council has re-opened matters going to the principle of the development which were a matter for the outline stage only, and that the Council did not act lawfully in refusing the First Reserved Matters Application.
20. On the other hand, it has been submitted on behalf of a local resident in a letter from Marches Planning dated 1st February 2019, that:

“Although it is now clear that permission 160851 was granted on the basis of erroneous advice from a highways officer who has now retired, the Council cannot query the principle of the development as long as the permission remains alive. However, if it were to allow the development to proceed, it would do so in the knowledge that it would be endangering the public.”

21. The letter goes on to argue that the Council should use its powers under section 97 of the Town and Country Planning Act 1990 (“the 1990 Act”) to revoke the outline planning permission.

Advice

22. I expect it is likely that if the Council proceeds to approve the Application, those represented by Marches Planning will seek to challenge the decision by way of judicial review. Yet, if the Council refuses the Application, equally it can be expected that the applicant will seek to challenge that decision. The Council is therefore in somewhat of a situation of ‘damned if you do, damned if you don’t’.

23. It is argued in the legal opinion supplied to the Council that the officer has misquoted the definition of access in the Development Management Procedure Order. On a proper reading of the officer's report, I do not agree. Neither do I really follow the argument based on the word "these" in the definition. I do not think that the officer erred in that regard.
24. However, the opinion is clearly correct in noting that a local planning authority may not refuse to approve a reserved matters application on grounds going to the principle of the development itself and which are already implicit in the grant of outline permission, although I would not necessarily accept that the facts and circumstances in the caselaw referred to are applicable to the current situation. In particular, in the *Lewis Thirkwell* case cited, it was found the urbanisation objected to stemmed not from the subsequent details submitted but from the outline planning permission itself, but on the facts of that case it was far more obviously a case of going back on the principle of what had already been granted. I have considered whether the Council might properly argue that all matters were served in application 160851/O and that now the stage of the technical assessment of the access has been reached, safe access onto the main highway network simply cannot be achieved. However, I consider that the applicant would have a highly arguable case that the issue of traffic generation must be considered to have been fixed at the outline stage, given that a specified number of 4-bedroom houses was what was proposed. Further, that the issue of safety concerns arising from the B4355 junction were properly to be dealt with at the outline (principle of development) stage and cannot be revisited at the reserved matters stage.
25. The Council is left in a situation where one application (160851/O) was approved with no highway safety concerns raised, but another virtually identical one, relating as it does to the other half of the same site and involving a proposal for the same number of houses (which as such might almost be referred to as the 'twin' application), was refused precisely due to highway safety concerns. The Inspector in 162824 essentially ignored the issue of intensification of use of the access points/junctions by virtue of the extant approval in 160851/O and so in my view it would be hard to explain away the Inspector's approach on that basis. There has simply been a polar opposite approach taken in respect of the two applications.

26. Clearly, there are serious safety concerns about the junction which were sufficient to lead both the Inspector and the Council (by the time of the second outline planning application in 162824) to conclude that the development should not be permitted. This does logically point to the prospect of a revocation of the outline permission in 160851/O. I would agree with the view expressed in the letter from Marches Planning that the conditions required in order for the Council to exercise its power to revoke the outline permission are present. Section 97 of the 1990 Act ('power to revoke or modify planning permission or permission in principle') provides as follows:

“(1) If it appears to the local planning authority that it is expedient to revoke or modify-

(a) any permission (including permission in principle) to develop land granted on an application made under this Part, or

(b) ...,

the authority may by order revoke or modify the permission to such extent as they consider expedient.

(2) In exercising their functions under subsection (1) the authority shall have regard to the development plan and to any other material considerations.

(3) The power conferred by this section may be exercised-

(a) in the case of planning permission that relates to the carrying out of building or other operations, at any time before those operations have been completed;

(b) in the case of planning permission that relates to a change of the use of any land, at any time before the change has taken place.

(4) The revocation or modification of planning permission for the carrying out of building or other operations shall not affect so much of those operations as has been previously carried out.”

27. On the face of it, it would be appropriate to revoke (or modify) the outline permission, because it has become clear that due to the access arrangements for the development at the Site, the development will be likely to place highways users in danger. I understand that, unfortunately, modification (presumably by way of the imposition of a condition requiring works to the B4355 junction) is unlikely to be a practical option because due to third party land ownership it is not actually possible to improve the junction with the B4355. It may be that it is still possible for this avenue to be explored. One can predict, however, that a third party landowner would demand from the applicant a share of the

development value of the land in return for allowing land to be used to improve the junction in order to make the development acceptable in planning terms.

28. However, I do not agree that compensation under section 107 of the 1990 Act ('compensation where planning permission or permission in principle is revoked or modified') would not be payable to the applicant upon revocation of the outline permission because the applicant has not commenced work. That would be to ignore the wording of sections 107(1)(b) and 107(3) which clearly envisage the payment of compensation due to depreciation in the value of the land without the planning permission.
29. The Supreme Court in *Health and Safety Executive v Wolverhampton City Council* [2012] UKSC 34 held that in considering whether to exercise its discretion to revoke under section 97, one of the material considerations that the authority has to take into account is the cost of the compensation that it might have to pay under section 107.
30. I do not know what the figures would be if the permission was 'merely' modified, requiring in turn a negotiation with the third party landowners in this case.
31. It seems to me then that the Council faces a moral dilemma. If it approves the Application, then (aside from a judicial review challenge being brought) the development will be permitted to proceed despite the known highway safety concerns. Yet the legal position points to approval being the appropriate action.
32. I should say that I would imagine that any application for judicial review may struggle to obtain permission to proceed in the face that the Council would be said to be 'fixed' with the principle of the development permitted in application 160851/O.

Conclusion

33. In conclusion, it does not appear to me to be expedient to consider revoking or modifying the outline permission as a first option. Legally, the appropriate route seems to be to approve the Application on the basis that at the time of the consideration of application 160851/O, the Council did not take any point about highway safety and

cannot reopen that issue now. If those instructing would like to discuss any issues arising from my advice, they should not hesitate to contact me.

Kate Olley
Landmark Chambers
21st February 2019

| | |
|---|---|
| MEETING: | PLANNING AND REGULATORY COMMITTEE |
| DATE: | 10 APRIL 2019 |
| TITLE OF REPORT: | <p>182236 - PROPOSED RE-PROFILING WORKS TO INCLUDE: SOUTHERN LAND SPIT AT THE EASTERN END OF THE LAKE TO BE LOWERED AND DIVIDED INTO THREE ISLANDS. SMALL ISLAND CLOSE TO BIRD HIDE ON THE SOUTHERN SIDE OF THE LAKE WILL BE CLEARED OF TREES, LOWERED AND DIVIDED INTO THREE SMALLER ISLANDS. THE SOUTHERN HALF OF THE WESTERN ISLAND WILL BE RE-PROFILED AT BODENHAM LAKE NATURE RESERVE, BODENHAM, HEREFORDSHIRE.</p> <p>For: Miss Cowling per Miss Sophie Cowling, Lower House Farm, Hereford, Herefordshire, HR1 1UT</p> |
| WEBSITE LINK: | https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=182236&search=182236 |
| Reason Application submitted to Committee – Council Owned Land | |

Date Received: 15 June 2018

Ward: Hampton

Grid Ref: 352392,251078

Expiry Date: 20 March 2019

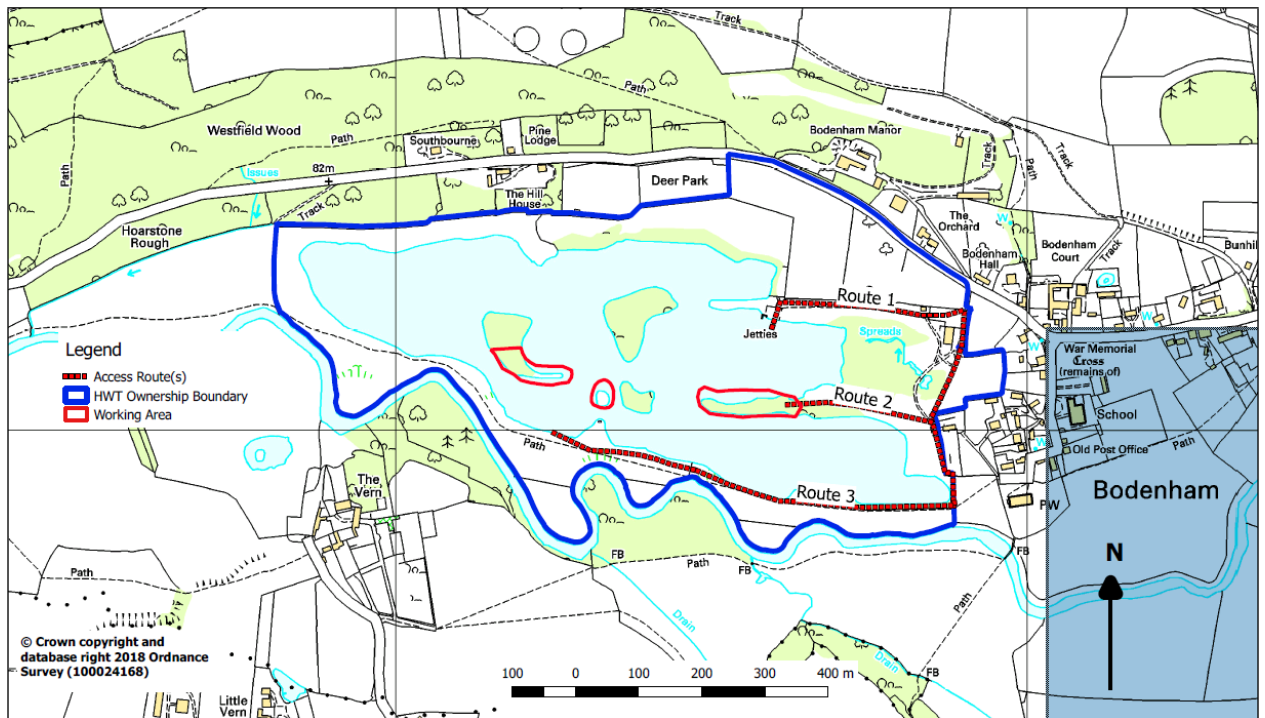
Local Member: Councillor BC Baker

1. Site Description and Proposal

- 1.1 This application seeks permission for the re-profiling of Bodenham Lake in connection with an expansion to works to create reedbeds within the lake. Work has already begun on application 162877 which sort permission for the first phasing of re-profiling of the lake as part of a planned habitat creation project, which aims to improve its wildlife value.
- 1.2 Bodenham Lake was formed by the extraction of gravel and is the largest water body in Herefordshire. The Lake is found in the Parish of Bodenham, on the southern side of Dinmore Hill, to the east of the A49. The old part of the village of Bodenham, with the Church and school, is located to the east of the Lake. Bodenham Lake is a designated Local Wildlife Site and is open to the public for leisure activities, such as walking, sailing and observing bird life.
- 1.3 The Lake lies in the floodplain of the River Lugg which us a tributary to the River Wye. The River Lugg is a SSSI and a SAC due to its conservation value. Bodenham Lake is an important overwintering and breeding area for birds and other aquatic wildlife. As a consequence approximately half of the 44.50ha site is managed as a wildlife refuge with restricted public access for recreational activities including sailing and birdwatching.

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

- 1.4 The re-profiling works are being constructed on islands within the centre of the lake, therefore machinery is having to be tracked and/or pontooned across the lake. The block plan below shows 3 possible routes to the islands. The re-profiling of the islands involve importing clean fill to create shallows. The margins are to be regraded. The aim of the works is to improve marginal plant growth and improve reedbeds which are crucial for otter and wildfowl.
- 1.5 Planning permission has already been granted for stage one of these works with three areas of reedbed to be created on the west and south-western edges of the lake (application 162877). Herefordshire Wildlife Trust are now seeking permission to expand re-profile works, to focus on the islands, as shown on the block plan below. The islands are covered in a uniform habitat of scrub and immature woodland that has grown up over the past few decades.



- 1.6 The majority of the works include clearing trees and lowering the level of the south eastern spit to allow aquatic vegetation to establish; and clearing trees and reprofiling two islands to enhance habitat for ground nesting birds.
- 1.7 The application has been supported with the following documents:
- Re-Profiling, Floating Wetland and Birdhide Installation Method of Work and Environmental Risk Assessment
 - Design and Access Statement
 - Flood Risk Assessment

2. Policies

2.1 The Herefordshire Local Plan - Core Strategy

The policies that are considered to be of relevance to the consideration of this application are:

| | | |
|-----|---|--|
| SS1 | - | Presumption in Favour of Sustainable Development |
| SS4 | - | Movement & Transportation |
| SS6 | - | Environmental Quality and Local Distinctiveness |
| MT1 | - | Traffic Management, Highway Safety and Promoting Active Travel |
| E4 | - | Tourism |
| LD1 | - | Landscape and Townscape |

- LD2 - Bio-diversity and Geo-diversity
- LD3 - Green Infrastructure
- SD1 - Sustainable design and energy efficiency
- SD3 - Sustainable Water Management and Water Resources
- RA6 - Rural Economy

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)

The following paragraphs and sections are considered to be relevant to this application:

- Section 1 - Introduction
- Section 2 – Achieving Sustainable Development
- Section 15 - Conserving and enhancing the natural environment

2.3 Bodenham Neighbourhood Development Plan

- Policy BNDP 7 : Local Community facilities
- Policy BNDP 8: Protection of landscape and important open space
- Policy BNDP 10: Protection and enhancement of the built environment
- Policy BNDP 12: Open Space

The Bodenham Neighbourhood Development Plan was made on 21 September 2018. It now forms part of the Development Plan for Herefordshire.

https://www.herefordshire.gov.uk/directory_record/3031/bodenham_neighbourhood_development_plan

3. Planning History

- 3.1 **182981** – Approval of conditions 5, 8 and 9 of application 162877. Approved 31/8/2018
- 3.2 **162877** – Re-profile Bodenham Lake in three areas; install floating bio-matrix and erect a bird hide. Approved.

4. Consultation Summary

Statutory Consultations

4.1 Environment Agency: No objection

We have no objection to the proposed development and would offer the following comments at this time.

As highlighted in the Flood Risk Assessment (FRA), produced by Herefordshire Wildlife Trust, the majority of the Bodenham Lake islands fall within Flood Zone 2 of the River Lugg (Medium Probability as defined in the Flood Zone and Flood Risk Tables (Table 1) of the Planning Practice Guidance). No material is to be imported to the site and any impacts of the re-profiling of the islands would be negligible. There are no residential properties falling within Flood Zone 3 (High Probability) at Bodenham upstream of the lake. The River Lugg hydraulic model ends just upstream of the lake at Bodenham village but the works are too minor in scale and nature to request additional modelling to be undertaken.

In addition to planning permission, the works may require a Flood Risk Activities permit under the Environmental Permitting Regulations (EPR) where works may act to affect a Main River or

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

its floodplain. Please see the gov.uk web site (<https://www.gov.uk/guidance/flood-risk-activities-environmental-permits>) for additional information or contact the Partnerships & Strategic Overview team (Email: ps0.midswest@environment-agency.gov.uk) for further clarification. It may be that the island re-profiling itself does not require a permit as it falls outside of Flood Zone 3 but a new access track in close proximity to the River Lugg (Route 3 shown on the Location Plan) may require a permit given its proximity to the watercourse.

We are supportive of the ecological benefits of the works and have had pre-application discussions with the Wildlife Trust with regards matters within our remit.

4.2 Natural England: No objection

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

Internal Council Consultations

4.3 Ecologist: No objection

It is noted that these are the second phase of works to improve the ecological potential of this nature reserve leased and managed by Herefordshire Wildlife Trust from the Council.

The works are appropriate and relevant to enhancing the biodiversity value of the site and the works are being undertaken by experienced contractors under the management and guidance of a recognised Wildlife Trust and 'competent' body. The Phase 1 works appear to have been completed to a good standard with minimal disruption to the wildlife and visitors using the site, there is no reason to think the same will not be true of phase 2 if permitted.

The site is adjacent to the River Lugg (River Wye) SAC/SSSI and so a Habitat Regulations Assessment is required. This HRA appropriate assessment will need to be approved by Natural England PRIOR to determination of this application. Subject to this approval being received the supplied ecological report remains appropriate and valid and the method of Work and Environmental Risk assessment from Phase 1 remains valid and appropriate and should be implemented through a condition for phase 2 should planning consent be granted.

4.4 Landscape Officer: No comments received

4.5 Highways Officer: No objection

4.6 Historic Buildings Officer: No objection

Recommendations: No objections. It is not felt that the proposals would have an adverse impact upon those aspects of the setting of listed buildings nearby which contribute to their significance.

4.7 PROW: No objection

4.8 Environmental Health Officer (Land Contamination): No objection

I refer to the above application and would make the following comments in relation to contaminated land issues only.

Former quarries such as this may be considered a potentially contaminative use and something which the applicant should be mindful of. But given what's proposed, it would seem unreasonable to recommend an assessment be carried out. As such, I've no comments to make.

5. Representations

5.1 Bodenham Parish Council: No objection

5.2 **Two letters of objection** from members of the public have been received. The letters are summarised below:

- Digging up existing swan nesting areas and other equally protected species of wild fowl is in breach of the royal decree to protect swans and their habitat.
- Any soil and excavations placed over the existing wildlife in residence along the shore and lake bed will destroy a habitat that has been flourishing since the 1970's when Bodenham Lake was sold by Redland Aggregates to Leominster District Council as it was then.
- the proposed works contradicts the caveats placed upon the lake by Herefordshire Council which were designed to protect wildlife, flora and fauna.
- Re- profiling works already undertaken at Bodenham Lakes have created significant sedimentation via run-off.
- The works pose a risk to freshwater invertebrates, fish and bird and mammal species due to lowered Biological Oxygen Demand
- operations already breach the Wildlife and Countryside Act 1981 and Water Framework Directive (WFD). To carry out further re-profiling without redressing the damage and providing assurance that mitigation will be implemented would be nothing short of irresponsible.
- Tree felling on the islands should not be carried out as these are currently providing shade and protection for nesting birds. 2Whilst creation of exposed island habitats is necessary to improve biodiversity on this site, clear felling existing habitat is not the solution.
- Whilst creation of exposed island habitats is necessary to improve biodiversity on this site, clear felling existing habitat is not the solution.
- The topography (size, aspect and slope) of the proposed re-profiled and new island areas needs to be considered more carefully, as existing islands that have been created as a result of the previous re-profiling effort are less than adequate.
- Appropriate placement of official signage needs to be ensured to communicate clear messages to visitors using the site.

5.3 Two letters of support have been received from members of the public.

- The work being carried out at Bodenham lake can only enhance and expand the diversity of this wonderful wildlife location in Herefordshire.
- To compliment the work that has already been done the Island reprofiling will not only supply suitable habitat for waders, and water fowl to breed it will also improve the habitat for young fish, reptiles and waters edge plantlife
- The habitat management is very carefully and extensively researched and carried out with due care to ensure any impact on any form of life is fully mitigated; this is why the proposed works would not be undertaken until after the bird nesting season.
- The reprofiling of the existing islands should in fact encourage more birds/waterfowl to nest, and provide a safer haven from some of their predators, currently the islands are so overgrown and steep sided they discourage rather than encourage a diverse range of species.
- The Herefordshire Wildlife Trust, provide excellent training for their volunteers to ensure we create as little disturbance for the existing inhabitants and plant life as possible, to enable us to enhance all habitats where possible/practicle.

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=181583&search=181583

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 Under Section 38(6) of the Planning and Compulsory Purchase Act 2004 decisions on applications for planning permission and appeals must be taken in accordance with the development plan, unless there are material considerations that indicate otherwise.
- 6.2 In this instance the adopted development plan is the Herefordshire Local Plan – Core Strategy (CS) and the made Bodenham Neighbourhood Development Plan (BNDP). Policy LD2 of the CS is considered to be the most relevant to the proposals as it deals specifically with biodiversity and geodiversity. The policy states that proposals should conserve, restore and enhance the biodiversity and geodiversity assets of the County including through the retention and protection of nature conservation sites and habitats and important species, restoring and enhancing of these assets on site and by creating new biodiversity features and wildlife habitats. The BNDP identifies Bodenham Lake as an important community asset with policy BNDP9 seeking to ensure that all new development protects and, where possible, enhances the River Wye SAC / SSSI and its catchment from the impacts of development.
- 6.3 Similarly, the NPPF states that the planning system should contribute to and enhance the natural environment by providing net gains in biodiversity and permitting development proposals where the primary objective is to conserve or enhance biodiversity.
- 6.4 The overall aims of the re-profiling works are to enhance the current habitat value of Bodenham Lake by clearing trees and lowering the levels around the islands to allow aquatic vegetation to establish and enhance habitat for nesting birds. The long term outcome of the project is to increase the biodiversity of the site and increase resilience of the species present. The re-profiling of the lake as outlined in the proposals is aimed at improving biodiversity at the lake and increasing and diversifying habitats.
- 6.5 Reed bed creation would provide a further habitat type in the lake, providing invertebrate habitat and therefore a food source for amphibians, bats and birds, as well as providing cover for nesting birds, otters and amphibians. In particular, it is expected that the re-profiled areas would enhance the habitat provision for wading birds, increasing the number of species that regularly visit the site and the length of the time that they stay on the lake. The proposed works would also contribute to a number of plans, projects and initiatives.
- 6.6 Overall, the various aspects of the proposed works are clearly in accordance with the Core Strategy in particular Policies LD2, LD3 and SD4 of the Core Strategy, Policy BNDP10 of the BNDP and the NPPF, therefore the principle of the development is supported.
- 6.7 Notwithstanding the principle of development being accepted, the two representations which have been received have correctly identified that some of the species using the lake may experience some short-term disturbance from the raised level of activity during the construction period in certain parts of the lake. As part of the application an Ecological Report and Environmental Risk Assessment has been carried out. The potential key impacts that have been identified during the construction period are limited to the following:
- Impact on disturbance to habitats and species both directly through physical intervention and indirectly through noise and light.
 - Disturbance of overwintering birds and roosting bats
 - Disturbance to nesting birds
 - Direct loss of or damage to habitats/species through indirect changes to stability of river to from and sustain habitats

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

- Spread of species in the catchment caused by non native species being disturbed and spread downstream by transported by machinery and equipment to another site
 - Damage or removal of mature and veteran trees
 - Increased risk of pollution caused by working near to surface water
 - Direct run-off, or in channel flow from works within bank
 - Changes in quantity and dynamics of water flow; connecting to groundwater bodies, river connectivity, river depth and width variation; and structure and substrate of river bed and structure of riparian zone.
- 6.8 The re-profiling work will also support the ground nesting of bird species as trees do not provide protection for ground nesting birds as they prevent good visibility to spot predators approaching nests. The islands are currently heavily vegetated and overgrown and value of the islands has diminished in recent years. 1 ha of wooded island habitat will remain unaltered to benefit the few species which currently breed on the islands, such as the grey lag geese and cormorants.
- 6.9 The conclusions of the Ecological Report and Environmental Risk Assessment is that through careful management and planning of operations, there will be no deterioration of the River Lugg SSSI or River Wye SAC as a result of the proposed works providing that the method of workings identified are followed. The relatively large area of the lake is such that it should allow resident species to avoid the main areas of construction and since the proposed works would only take place during daylight hours, there would be regular periods of respite. A series of measures have been identified in the submitted Ecological Report and Environmental Risk Assessment Report that would be implemented to avoid, mitigate and manage these potential impacts. These measures, together with a requirement to prepare and implement a Construction Environmental Management Plan for the proposed works would be secured by planning conditions.
- 6.10 Consideration has been given to flood risk. In accordance with advice from the Environment Agency, the applicant has confirmed that no material is to be imported to the site. The proposed work to the re-profiling is considered to be negligible in relation to flood risk. There is no conflict with policy SD3 of the CS or policy BNDP 10 of the NDP.
- 6.11 In conclusion Officers are content that on the basis of the information submitted in support of the proposal and from the available evidence, there are no matters of such material weight that would justify withholding planning permission. On this basis the proposal is compliant with the Herefordshire Local Plan – Core Strategy, relevant policies within the Bodenham Neighbourhood Development Plan and the National Planning Policy Framework the application is accordingly recommended for approval.

RECOMMENDATION

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

- 1. A01 Time limit for commencement (full permission)**
- 2. C06 Development in accordance with approved plans**
- 3. During the construction phase no machinery shall be operated, no process shall be carried out and no deliveries taken at or despatched from the site outside the following times: Monday-Friday 7.00 am-6.00pm, Saturday 8.00 am-1.00 pm nor at any time on Sundays, Bank or Public Holidays.**

Reason: To protect the amenity of local residents and to comply with Policy SD1 of Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

4. **The Method of Work and Environmental Risk Management by Frog environmental dated September 2016 shall be implemented in full as stated unless otherwise approved in writing by the local planning authority.**

Reason: In order to comply with Conservation of Habitats and Species Regulations (2017), National Planning Policy Framework, NERC Act (2006), NPPF (2018), Wildlife & Countryside Act (1981 as amended) and Core Strategy (2015) policy LD2.

INFORMATIVES:

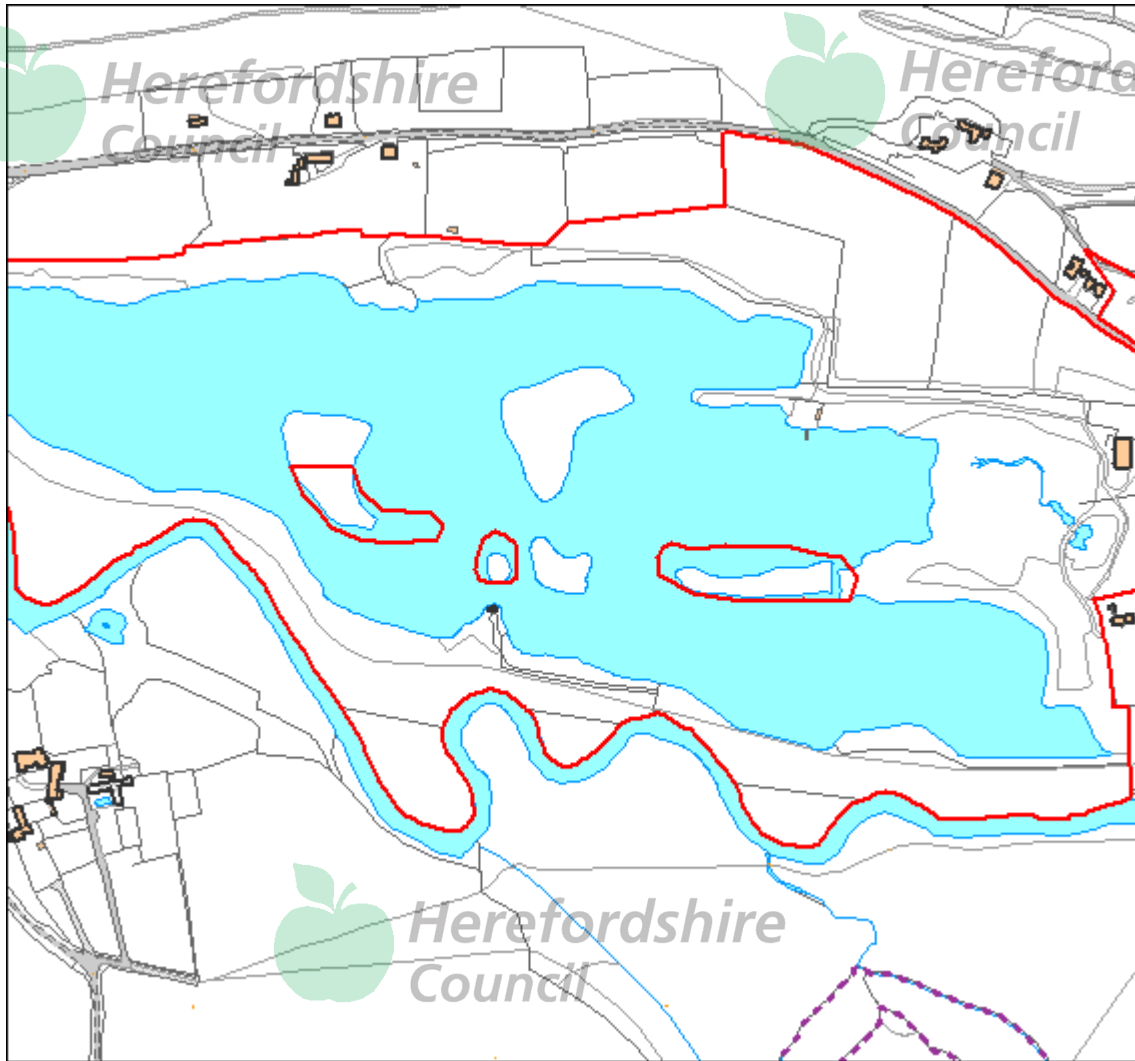
1. **The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations, including any representations that have been received. It has subsequently determined to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.**
2. **Bodenham Lake and adjacent River Lugg (SAC) are recognised for their importance for biodiversity, protected species and ecological habitat and we would like to formally remind the applicant that they have a legal duty to ensure compliance with all relevant legislation and best working practices such as CDM, Health & Safety, Wildlife & Countryside Act, Habitat Regulations et all, at all times during the project and construction.**
3. **In addition to planning permission, the works may require a Flood Risk Activities permit under the Environmental Permitting Regulations (EPR) where works may act to affect a Main River or its floodplain. The applicant is advised to contact the Environment agency direct for clarification**

Decision:

Notes:

Background Papers

Internal departmental consultation replies.



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APPLICATION NO: 182236

SITE ADDRESS : BODENHAM LAKE NATURE RESERVE, BODENHAM, HEREFORDSHIRE

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

