



Agenda

Planning and regulatory committee

Date: **Wednesday 4 August 2021**

Time: **10.00 am**

Place: **Three Counties Hotel, Belmont Road, Belmont,
Hereford, HR2 7BP**

Notes: Please note the time, date and venue of the meeting. Watch the meeting on the Herefordshire Council YouTube channel through the link: https://www.youtube.com/watch?v=Z6Sye1OCb_Y

For any further information please contact:

Matthew Evans, Democratic Services Officer

Tel: 01432 383690

Email: matthew.evans@herefordshire.gov.uk

If you would like help to understand this document, or would like it in another format, please call Matthew Evans, Democratic Services Officer on 01432 383690 or e-mail matthew.evans@herefordshire.gov.uk in advance of the meeting.

Agenda for the meeting of the Planning and regulatory committee

Membership

Chairperson Councillor Terry James
Vice-chairperson Councillor Alan Seldon

Councillor Paul Andrews
Councillor Polly Andrews
Councillor Sebastian Bowen
Councillor Toni Fagan
Councillor Elizabeth Foxton
Councillor John Hardwick
Councillor Tony Johnson
Councillor Graham Jones
Councillor Mark Millmore
Councillor Jeremy Milln
Councillor Paul Rone
Councillor John Stone
Councillor William Wilding

Agenda

	Pages
PUBLIC INFORMATION	
GUIDE TO THE COMMITTEE	
NOLAN PRINCIPLES	
1. APOLOGIES FOR ABSENCE	
To receive apologies for absence.	
2. NAMED SUBSTITUTES (IF ANY)	
To receive details of any Member nominated to attend the meeting in place of a Member of the Committee.	
3. DECLARATIONS OF INTEREST	
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.	
4. MINUTES	13 - 28
To approve the minutes of the meeting held on 9 June 2021.	
5. CHAIRPERSON'S ANNOUNCEMENTS	
To receive any announcements from the Chairperson.	
6. 203907 - LAND AT WOODSIDE STABLES FROM GREAT HALL ROAD TO ST WULSTANS ROAD, WELSH NEWTON, NP25 5RT	29 - 48
Proposed new dwelling.	
7. 204346 - LAND ADJACENT TO STEEPWAYS, WELSH NEWTON, HEREFORDSHIRE, NP25 5RT	49 - 70
Proposed development of two dwellings.	
8. 201961 - HARTLETON FARM, BROMSASH, ROSS-ON-WYE, HR9 7SB	71 - 88
Proposed variation of condition 10 of planning permission SE1999/2612/F granted on appeal (reference: APP/W1850/A/00/1039625) for 22 holiday chalets with parking facilities – ‘original’ planning permission reference: SS980398PF) to explicitly detail the approved drawings at Hartleton Farm, Bromsash, Ross-on-Wye, HR9 7SB.	
9. DATE OF NEXT MEETING	
Date of next site inspection – 31 August 2021	
Date of next meeting – 1 September 2021	

The Public's Rights to Information and Attendance at Meetings

In view of the continued prevalence of covid-19, we have introduced changes to our usual procedures for accessing public meetings. These will help to keep our councillors, staff and members of the public safe.

Please take time to read the latest guidance on the council website by following the link at www.herefordshire.gov.uk/meetings and support us in promoting a safe environment for everyone. If you have any queries please contact the Governance Support Team on 01432 260201 / 261699 or at governancesupportteam@herefordshire.gov.uk

We will review and update this guidance in line with Government advice and restrictions. Thank you very much for your help in keeping Herefordshire Council meetings a safe space.

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 access to a list specifying those powers on which the Council have delegated decision making to their officers identifying the officers concerned by title.
- Copy any of the documents mentioned above to which you have a right of access, subject to a reasonable charge (20p per sheet subject to a maximum of £5.00 per agenda plus a nominal fee of £1.50 for postage).
- Access to this summary of your rights as members of the public to attend meetings of the Council, Cabinet, Committees and Sub-Committees and to inspect and copy documents.

Recording of meetings

Please note that filming, photography and recording of this meeting is permitted provided that it does not disrupt the business of the meeting.

Members of the public are advised that if you do not wish to be filmed or photographed you should let the governance services team know before the meeting starts so that anyone who intends filming or photographing the meeting can be made aware.

The reporting of meetings is subject to the law and it is the responsibility of those doing the reporting to ensure that they comply.

The council may make an official recording of this public meeting or stream it live to the council's website. Such recordings form part of the public record of the meeting and are made available for members of the public via the council's web-site.

Public transport links

The three counties hotel is accessible by bus; bus stops in each direction are positioned on the Belmont Road at the front of the hotel.

Guide to Planning and Regulatory Committee

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

Councillor Terry James (Chairperson)	Liberal Democrat
Councillor Alan Seldon (Vice-Chairperson)	Independents for Herefordshire
Councillor Paul Andrews	Independents for Herefordshire
Councillor Polly Andrews	Liberal Democrat
Councillor Sebastian Bowen	True Independents
Councillor Toni Fagan	The Green Party
Councillor Elizabeth Foxton	Independents for Herefordshire
Councillor John Hardwick	Independents for Herefordshire
Councillor Tony Johnson	Conservative
Councillor Graham Jones	True Independents
Councillor Mark Millmore	Conservative
Councillor Jeremy Milln	The Green Party
Councillor Paul Rone	Conservative
Councillor John Stone	Conservative
Councillor William Wilding	Independents for Herefordshire

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?

The following attend the committee:

- Members of the committee, including the chairperson and vice chairperson.
- Officers of the council – to present reports and give technical advice to the committee
- Ward members – The Constitution provides that the ward member will have the right to start and close the member debate on an application.

(Other councillors - may 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. The case officer will then give a presentation on the report.

The registered public speakers will then be invited to speak in turn (Parish Council, objector, supporter). (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 Council's Constitution provides that 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 (see note below)

- 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.

(Note: Those registered to speak in accordance with the public speaking procedure are able to attend the meeting in person to speak or participate in the following ways:

- *by making a written submission (to be read aloud at the meeting)*
- *by submitting an audio recording (to be played at the meeting)*
- *by submitting a video recording (to be played at the meeting)*
- *by speaking as a virtual attendee.)*

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 in the Council's Constitution (Part 5 section 6).

In the case of the ward member being a member of the Committee they will be invited to address the Committee for that item and act as the ward member as set out above. They will not have a vote on that item.

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.

**The Seven Principles of Public Life
(Nolan Principles)**

1. Selflessness

Holders of public office should act solely in terms of the public interest.

2. Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

3. Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

4. Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

5. Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

6. Honesty

Holders of public office should be truthful.

7. Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.



Minutes of the meeting of Planning and regulatory committee held at Three Counties Hotel, Belmont Road, Belmont, Hereford, HR2 7BP on Wednesday 9 June 2021 at 10.00 am

Present: Councillor Terry James (chairperson)
 Councillor Alan Seldon (vice-chairperson)

Councillors: Polly Andrews, Toni Fagan, Elizabeth Foxton, John Hardwick, Tony Johnson, Graham Jones, Mark Millmore, Jeremy Milln, Paul Rone, John Stone, David Summers and William Wilding

In attendance: Councillors Bob Matthews and Yolande Watson (virtual attendee)

1. APOLOGIES FOR ABSENCE

Apologies were received from Councillor Paul Andrews.

2. NAMED SUBSTITUTES (IF ANY)

Councillor David Summers substituted for Councillor Paul Andrews.

3. DECLARATIONS OF INTEREST

Councillor John Hardwick declared an other interest in respect of agenda item number 6, Land at Wye Valley View, as a member of the Wye Valley AONB.

4. MINUTES

RESOLVED: That the Minutes of the meeting held on 28 April 2021 are approved as a correct record and signed by the Chairman.

5. CHAIRPERSON'S ANNOUNCEMENTS

The Chairman expressed thanks to the previous Chairman of the Planning and Regulatory Committee and the former clerk.

6. 202050 - LAND AT WYE VALLEY VIEW, SYMONDS YAT, ROSS-ON-WYE, HR9 6BJ

The Senior Planning Officer gave a presentation on the application.

In accordance with the criteria for public speaking, Mr R Smith, of Whitchurch and Ganarew Parish Council, had submitted a written submission in opposition to the application. This was read to the meeting. Ms R Miller, a local resident, spoke in opposition to the scheme as a virtual attendee. Mr R Pryce, the applicant's agent, spoke in support of the application as a physical attendee.

In accordance with the Council's Constitution, the local ward member spoke on the application. In summary, she commented on the inclusion of mention of the Wye Valley

AONB and the condition relating to the geo-technical survey which were positive additions to the report. Concerns were expressed regarding the access for the site from the B1464 and across land at Wye Valley View. The local community had only been made aware of the application late in the process and the need for housing locally militated against the concerns of local communities when applications were determined. The interests and need of the local community should be considered and the application refused.

The committee discussed the application.

The Lead Development Manager commented that the application had been amended to ensure it was more acceptable. A condition had been added to ensure that a geo-technical survey would be undertaken. The application had assured officers, including the landscape officer, and statutory consultees. Construction issues would be regulated in the construction management plan.

The local ward member was given the opportunity to close the debate, she explained that the application did not conserve or protect the Wye Valley AONB. The views of the local residents did not accord with the assessments undertaken by officers.

A motion that the application be approved was carried.

RESOLVED: 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:

That planning permission be granted subject to the following conditions:

1. C01 - Time limit for commencement (full permission)
2. C07 - Development in accordance with approved plans and materials
3. CE6 - Efficient use of water
4. CBK - Restriction of hours during construction
5. A Construction Site Waste Management Plan shall be submitted to and approved by the LPA prior to development commencing on site to ensure waste management provisions compliment the construction activities on site and that all waste emanating from the development are dealt with in an appropriate manner and follows the waste hierarchy. The Plan shall include, but not be limited to:
 - (i) a description of the likely quantity and nature of waste streams that will be generated during construction of the development;
 - (ii) measures to monitor and manage waste generated during construction including general procedures for waste classification, handling, reuse, and disposal, use of secondary waste material in construction wherever feasible and reasonable, procedures or dealing with green waste including timber and mulch from clearing activities and measures for reducing demand on water resources;
 - (iii) measures to monitor and manage spoil, fill and materials stockpiles, including details of how spoil, fill or material will be handled, stockpiled, reused and disposed of, and locational

criteria to guide the placement of stockpiles; and
(iv) details of the methods and procedures to manage construction related environmental risks and minimise amenity impacts associated with waste handling.

Construction works shall thereafter be carried out in full accordance with the CEMP Sub-Plans.

Reason: To ensure, manage and co-ordinate the protection and enhancement of the Environment in accordance with the requirements of Policies SD1, SD3, SD4, LDI, LD4 of the Herefordshire Local Plan - Core.

6. The ecological protection, mitigation, compensation and working methods scheme including the Biodiversity Enhancements, as recommended in the report by Willder Ecology, dated June 2020, shall be implemented and hereafter maintained in full as stated unless otherwise approved in writing by the local planning authority.
In order to comply with Conservation of Habitats and Species Regulations (2017), National Planning Policy Framework (2018), NERC Act (2006), and Herefordshire Core Strategy (2015) policies LD2, SD3 and SD4.
7. The lighting scheme as recommended in the ecology report by Willder Ecology, dated June 2020, shall be implemented and hereafter maintained in full as stated unless otherwise approved in writing by the local planning authority. No external lighting should illuminate any boundary feature, adjacent habitat or area around the approved mitigation and biodiversity enhancement features.
Reason: To ensure that all species and Dark Skies are protected having regard to the Wildlife and Countryside Act 1981, Conservation of Habitats and Species Regulations (2017), National Planning Policy Framework (2018), NERC Act (2006), Herefordshire Core Strategy (2015) policies SS6, LD1-3 and, Dark Skies initiative (DEFRA-NPPF 2013/18)
8. All foul water shall discharge through a connection to the local Mains Sewer network and surface water shall be managed through on site SuDs and soakaway, within the development boundary; unless otherwise agreed in writing by the Local Planning Authority.
Reason: In order to comply with Conservation of Habitats and Species Regulations (2017), National Planning Policy Framework (2018), NERC Act (2006), and Herefordshire Core Strategy (2015) policies LD2, SD3 and SD4.
9. No surface water and/or land drainage shall be allowed to connect directly or indirectly with the public sewerage network
Reason: To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no pollution of or detriment to the environment
10. All planting, seeding or turf laying in the approved landscaping scheme pursuant to Approved plan WVV-05A shall be carried out in the first planting season following the occupation of the building or the completion of the development, whichever is the sooner.
Any trees or plants which die, are removed or become severely

damaged or diseased within 5 years of planting will be replaced in accordance with the approved plans.

Reason: To ensure implementation of the landscape scheme approved by local planning authority in order to conform with policies SS6, LD1 and LD3 of the Herefordshire Local Plan - Core Strategy and the National Planning Policy Framework.

11. **Prior to the first occupation of the residential development hereby permitted a scheme to enable the charging of plug in and other ultra low emission vehicles (e.g provision of cabling and outside sockets) to serve the occupants of the dwellings hereby approved shall be submitted to and approved in writing by the local planning authority.**

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

12. **CAT - Construction Management Plan**

13. **CBO - Scheme of surface water drainage**

14. **Prior to commencement a Geo-technical report shall be submitted to the Local Authority to demonstrate that the existing and post development ground conditions can be stabilised. The development shall be carried out in accordance with the approved details**

Reason: To protect the health and safety of existing residents and ensure no detriment to the environment or surrounding land in accordance with policies MT1, LD1 and SD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework

INFORMATIVES:

1. **Non Standard**

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. **The applicant may need to apply to Dwr Cymru / Welsh Water for any connection to the public sewer under S106 of the Water industry Act 1991. If the connection to the public sewer network is either via a lateral drain (i.e. a drain which extends beyond the connecting property boundary) or via a new sewer (i.e. serves more than one property), it is now a mandatory requirement to first enter into a Section 104 Adoption Agreement (Water Industry Act 1991). The design of the sewers and lateral drains must also conform to the Welsh Ministers Standards for Gravity Foul Sewers and Lateral Drains, and conform with the publication**

"Sewers for Adoption"- 7th Edition. Further information can be obtained via the Developer Services pages of www.dwrcymru.com

3. The applicant is also advised that some public sewers and lateral drains may not be recorded on our maps of public sewers because they were originally privately owned and were transferred into public ownership by nature of the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011. Under the Water Industry Act 1991 Dwr Cymru Welsh Water has rights of access to its apparatus at all times.

(There was an adjournment at 10:46 a.m., the meeting reconvened at 10:56 a.m.)

7. 201747 - LAND OFF BREINTON LEE, KINGS ACRE ROAD, HEREFORD (Pages 11 - 16)

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

In accordance with the criteria for public speaking Dr T Geeson, representing Breinton Parish Council, spoke in opposition to the application as a virtual attendee. Mr E Thomas, the applicant's agent, spoke in support of the application as a physical attendee.

In accordance with the Council's Constitution, the local ward member, Councillor Bob Matthews spoke on the application. In summary, he provided a statement from local residents which highlighted the longstanding flooding problems on King's Acre Road and the requirement for surface water flood mitigation scheme and a comprehensive drainage plan in the area. The statement also opposed the inclusion of housing with black cladding which were felt to be unsightly. Further Cllr Matthews explained that he had requested that the application was considered at committee due to the level of local feeling. Flooding problems existed in the area and there was uncertainty regarding the effectiveness of the flood attenuation scheme. An adjacent site had experienced flooding problems despite no objection from the flooding officer at the application stage. An additional condition had been added concerning the landscaping to ensure the boundary of the site to the South conserved the local the nature reserve.

The Committee discussed the application.

The Lead Development Manager explained that the application concerned a variation to the planning permission granted to amend the design of the houses and the layout. Matters relating to drainage and landscaping were contained in the original permission. The update circulated included further enhancements and sustainability measures.

The local ward member was given the opportunity to close the debate. He commented that issues such as runoff onto an application site from sloping land should be dealt with before permission was granted.

A motion that the application be approved was carried.

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

1. **Development in accordance with the approved plans**

2. The Protected Species Mitigation Strategy by James Johnstone Ecology dated August 20017 shall be implemented in full as stated unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that all species are protected and habitats enhanced having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation (Natural Habitats, &c) Regulations 1994 (as amended) and Policy LD2 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework, NERC 2006.

- 3 Prior to commencement of any further site preparation, site clearance or construction, an Ecological Working Method Statement with details of the appointed ‘Responsible Person’ should be submitted to and be approved in writing by the local planning authority, and the scheme shall be implemented as approved.

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

- 4 Prior to commencement of and further site preparation, site clearance or construction, a detailed habitat enhancement scheme should be submitted to and be approved in writing by the local planning authority, and the scheme shall be implemented as approved.

Reason: To ensure that all species are protected and habitats enhanced having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation (Natural Habitats, &c) Regulations 1994 (as amended) and Policy LD2 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework, NERC 2006.

5. CE6 - Water Efficiency

6. Prior to the first occupation of any dwelling within any phase of residential development hereby permitted a scheme to enable the charging of plug in and other ultra low emission vehicles (e.g. provision of outside electric sockets) to serve the occupants of the dwellings hereby approved shall be submitted to and approved in writing by the local planning authority.

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

7. C68 – Obscure glazing to first floor side elevations plots 5 and 6
8. Prior to the installation of any windows, the glazing specification shall be submitted to and approved in writing by the local planning

authority. Works shall be carried out in accordance with the approved details.

To ensure that the windows are not ‘dark glazing’ and for the avoidance of doubt having regard to the character of the area and amenities of the local residents in accordance with the requirements of policy SD1 of the Core Strategy.

9. Prior to the first occupation of each dwelling, rain water harvesting scheme shall be submitted to and approved by the local planning authority. Works shall be carried out in accordance with the approved scheme before the occupation of the dwelling to which it relates.

Reason: To address the requirements of policies in relation to climate change and water management (SS7, SD1 and SD3 of the Core Strategy and the guidance contained within the National Planning Policy Framework.

10. Prior to first occupation of the development, a full specification of all proposed tree planting shall be submitted to and approved in writing by the local planning authority. The specification shall include the quantity, size, species and position or density of all trees / Hedges to be planted. All tree planting shall be carried out in the first planting season following the first occupation of the development in accordance with the approved plant specification. Any trees or plants which die, are removed or become severely damaged or diseased within 10 years of planting will be replaced in accordance with the approved plans.

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

INFORMATIVES:

1. IP2 – Positive and Proactive
2. The enhancement plan should include details and locations of any proposed Biodiversity/Habitat enhancements as referred to in NPPF and HC Core Strategy. At a minimum we would be looking for proposals to enhance bat roosting, bird nesting and invertebrate/pollinator homes to be incorporated in to the new buildings as well as consideration for amphibian/reptile refugia, hedgehog houses within the landscaping/boundary features. No external lighting should illuminate any of the enhancements or boundary features beyond any existing illumination levels and all lighting on the development should support the Dark Skies initiative.
3. It is brought to the applicants attention that the conditions imposed on the Outline Planning Permission, granted on appeal under reference: APP/W1850/A/13/2203561 (LA Ref: 123592) and any subsequent approval of these conditions, should be strictly adhered to.

(The meeting adjourned at 11.45 a.m. and reconvened at 11.51 p.m.)

(Councillor John Stone left the committee to act as the local ward member for the next application)

8. 203268 - ROBINS NEST AT THE YARD, WOOFFERTON GRANGE, WYSON LANE, BRIMFIELD, HEREFORDSHIRE, SY8 4NP

The Senior Planning Officer gave a presentation on the application and advised the committee of a correction to the detail in the report; the proposed lean-to extension in the application would be attached to the Western elevation of the building not the Eastern as stated in the report.

In accordance with the criteria for public speaking, Mr G Burton, spoke in opposition to the application as a physical attendee.

In accordance with the Council's Constitution, the local ward member, Councillor John Stone, spoke on the application. In summary, the application had resulted in opposition and concerns regarding the impact of noise on residential amenity, traffic levels and the suitability of the proposal in a rural setting. The local parish council objected to the application and cited that it was unsuitable in the proposed location and therefore contrary to the neighbourhood development plan. The noise produced by the compressor would impact upon residential amenity and the condition to regulate its use may be difficult to enforce. There was uncertainty concerning the number of traffic movements that would be associated with the site; concern regarding the potential congregation of motorcycles; and the impact on highway safety. It was noted that other more suitable locations existed locally for such an enterprise.

The Committee discussed the application.

A motion that the application be deferred to: allow for clarification around the B1 and B2 use of the site; and detail of potential conditions to mitigate the impact of the noise of the compressor, was carried.

RESOLVED: That consideration of the application be deferred pending an updated report including clarification around the B1 and B2 use of the site and detail of potential conditions to mitigate the impact of the noise of the compressor.

(Councillor John Stone resumed his seat on the committee)

(Councillor Terry James left the chair and committee to act as the local ward member for the next application. Councillor Alan Seldon acted as Chairperson for the remainder of the meeting.)

9. 211495 - WESTERINGS, KINGTON, HEREFORDSHIRE, HR5 3HE

The Planning Officer gave a presentation on the application.

No public speakers.

In accordance with the Council's Constitution, the local ward member, Councillor Terry James, spoke on the application. The application was an officer application which was a small scale proposal in a bungalow development.

The Committee discussed the application.

A motion that the application be approved was carried.

RESOLVED: 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:

That planning permission be granted subject to the following conditions:

1. C01 – Time limit for commencement (full permission)
2. C07 – Development in accordance with approved plans and materials

INFORMATIVES:

1. IP1 – Application Approved Without Amendment

10. DATE OF NEXT MEETING

The Planning Committee noted the date of the next meeting on Friday 9 July with the site visits taking place on Thursday 8 July.

The meeting ended at 12.37 pm

Chairperson

PLANNING COMMITTEE

Date: 9 June 2021

Schedule of Committee Updates/Additional Representations

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

SCHEDULE OF COMMITTEE UPDATES

201747 - APPLICATION FOR VARIATION OF CONDITIONS 1 OF PLANNING PERMISSION OF THE RESERVED MATTERS APPROVAL 170579 (APPLICATION FOR APPROVAL OF RESERVED MATTERS FOLLOWING OUTLINE APPROVAL (APP/W1850/A/13/2203561) (LA REF: 123592) FOR 10 DWELLINGS). TO IMPROVE THE DESIGN OF THE DWELLINGS, IMPROVE CONNECTIVITY TO THE AMENITY SPACES AND PROVIDE AT LAND OFF BREINTON LEE, KINGS ACRE ROAD, HEREFORD,

For: Mr Stewart per Mr Stephen Vaughan, The Heathers, 74 Ross Road, Hereford, Herefordshire, HR2 7RL

ADDITIONAL REPRESENTATIONS

None received.

OFFICER COMMENTS

Following queries raised at the committee site visit I would make the following points:

1. Flood Risk – Consideration by the inspector in Appeal Decision .

The matter of flood risk due to the existing localised flooding issues were carefully considered at the Outline Planning Permission stage by the inspector and through the discharge of the condition over a prolonged period whilst the use of soakaways were explored and agreed (as per the committee report at para 6.18 – 6.20)
For ease, the relevant section of the appeal decision is inserted below:

Whether the site is at risk of flooding, and if so whether the proposed drainage strategy and any proposed mitigation measures would address the risk of flooding

15. The appeal site comprises about 0.84ha of land which is indicated on the Environment Agency flood mapping as being located within Flood Zone 1 and therefore at the lowest probability of fluvial flooding (<0.1%). This has not been disputed by the Council. The application form at Box 12 has the answer 'no' to the question "Is the site within an area at risk of flooding"; and the answer 'no' to the question "Will the proposal increase the risk of flood elsewhere". Furthermore, there is no evidence to suggest that the site has been notified to the local planning authority by the Environment Agency as having critical drainage problems. As such, no flood risk assessment was required.
16. However, from the photographic evidence, and from the representations of local residents put in during the application and appeal process, there have at times been significant problems in the area surrounding the appeal site from flooding during the last 10 years or so. Notably, adjoining properties in Breinton Lee, and the footways and land adjacent to Kings Acre Road (to the north of the appeal site) have all previously been flooded. Furthermore, I made a comprehensive visit of the site and its surroundings and I was able to see evidence by way of algal growth and pattern staining of where previous flooding had occurred. I therefore understand the concerns of local residents.
17. The Appellant has done extensive work to try to establish the source of these problems and points to existing drainage problems with ditches, culverts, and gullies being silted up, or inadequate in size; and the application was amended in terms of the drainage proposals.
18. The Appellant commissioned 2 detailed Drainage Reports (18 March 2013; 4 & 5 April 2013) that assessed the current situation which was submitted along with an updated Foul and Surface Water Drainage Strategy, November 2012 (Rev A – April 2013) that looked at, not just the proposals for the site, but the existing problems experienced by residents of Breinton Lee and Kings Acre Road. I am therefore satisfied that the Appellant has thoroughly considered the proposed drainage of the appeal site and its likely impact on the existing drainage systems having regard to the technical reports and recommendations provided that relate both to the existing problems in the locality and site constraints.
19. The Appellant established that the primary cause of the flooding to the south of Kings Acre Road has been the ineffective highway drainage, with road gullies being significantly blocked with debris. As a consequence, when levels of rainfall are exceptionally high, water runs off the highway, bypassing the gullies and into the driveways and gardens of adjoining residential properties, which are at a lower level. This has been exacerbated by the fact that the receiving drainage system has also been found to be totally blocked with its outfall barely visible.
20. Following survey work, the Appellant jetted out the culvert between Breinton Lee, 343 Kings Acre Road and the highway surface water drainage system in Kings Acre Road, in order to help to address the then current issue. I should note that at the time of my site visit, despite ongoing and persistent heavy rainfall in what has become one of the wettest winters on record, there was no

evidence of flooding on the appeal site or the surrounding properties. This may perhaps reflect the efficacy of cleaning out the culvert and gullies.

21. A revised surface water drainage scheme was put forward during the course of the application process. This revised scheme involves retaining the existing culvert (at Kings Acre Road) as well as providing additional storage to accommodate any excess Greenfield run-off from the site and the land to the south in the event of severe/exceptional rainfall events. This will be achieved through the provision of 2 balancing ponds, which are detailed on the amended plans; and the existing drainage ditches running along the western and southern boundaries of the site would be re-profiled and extended to provide greater protection from overland flooding to the existing Breinton Lee properties and the proposed development.
22. Balancing Pond A would be located to the north western corner of the site with a restricted discharge to the western ditch, while the smaller Balancing Pond B would be located in the open space to the north of Plot 10 with a restricted discharge to the southern ditch, as indicated on the Concept Layout Plan. Thus these 2 proposed restricted surface water discharges of 5 l/s would be attenuated on site within the 2 balancing ponds up to the 1 in 100 year climate change event. Discharge rates would be restricted by the use of 'hydrobrake' vortex flow control devices. Such a drainage system should ensure that any existing flooding problems are not worsened.
23. I am mindful of the fact that the pipework within Kings Acre Road is the responsibility of the Highway Authority; and that the existing downstream, outfall arrangement to the ditch between Nos. 304 and 306a Kings Acre Road would remain regardless of whether the proposed development proceeds. Nevertheless, in my assessment, the above measures demonstrate that the development of the site would not add to the existing flooding issues in the area. The proposed improvements would have a significant benefit to existing residents, with surface water run off from the land to the south being collected in new ditches and retained within the balancing pond before being discharged at a Greenfield run-off rate to the existing system. This would benefit the dwellings on Breinton Lee that currently do not have the benefit of the ditch to the south of their properties and as such, are on occasion flooded by surface water running from the land to the south. The proposal has been amended to ensure that this water can be attenuated within the site and released slowly, which would represent a significant betterment to the current situation where there is no attenuation and where the water collected in the ditch discharges to the culvert and subsequently out onto Kings Acre Road. The proposed development, through the s106 UU would also ensure the long term maintenance of the proposed ditches and site drainage system.
24. For these reasons I am satisfied that the proposals would comply with the requirements of Policy DR4 and DR7 of the UDP and would also offer a significant wider benefit to the local area whilst also ensuring that the proposed dwellings on the new development would be protected from flooding.

2. Rainwater harvesting and Solar PV panels

You can read more about the background and exploration of sustainable measures in the accompanying report:

<https://myaccount.herefordshire.gov.uk/documents?id=788102cd-1a9e-11eb-97a0-0050569f00ae>

In relation to rainwater harvesting, the applicant is agreeable to a further condition for their inclusion in the proposed scheme (see below).

3. Landscape Specification

Cllr Matthews has requested that mature landscaping is used to the southern boundary. The applicant is agreeable to the inclusion of an additional condition to the end (see below)

CHANGE TO RECOMMENDATION

Additional conditions are proposed as follows:

Prior to the first occupation of each dwelling, rain water harvesting scheme shall be submitted to and approved by the local planning authority. Works shall be carried out in accordance with the approved scheme before the occupation of the dwelling to which it relates.

To address the requirements of policies in relation to climate change and water management (SS7, SD1 and SD3 of the Core Strategy and the guidance contained within the National Planning Policy Framework.

Prior to first occupation of the development, a full specification of all proposed tree planting shall be submitted to and approved in writing by the local planning authority. The specification shall include the quantity, size, species and position or density of all trees / Hedges to be planted. All tree planting shall be carried out in the first planting season following the first occupation of the development in accordance with the approved plant specification. Any trees or plants which die, are removed or become severely damaged or diseased within 10 years of planting will be replaced in accordance with the approved plans.

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

INFORMATIVES

It is brought to the applicants attention that the conditions imposed on the Outline Planning Permission, granted on appeal under reference: APP/W1850/A/13/2203561 (LA Ref: 123592) and any subsequent approval of these conditions, should be strictly adhered to.

MEETING:	PLANNING AND REGULATORY COMMITTEE
DATE:	4th August 2021
TITLE OF REPORT:	203907 - PROPOSED NEW DWELLING AT LAND AT WOODSIDE STABLES, FROM GREAT HALL ROAD TO ST WULSTANS ROAD, WELSH NEWTON, NP25 5RT For: Boughton per Mr David Kirk, 100 Chase Road, Ross-On-Wye, Herefordshire, HR9 5JH
WEBSITE LINK:	https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=203907&search-term=203907

Reason Application submitted to Committee – Redirection

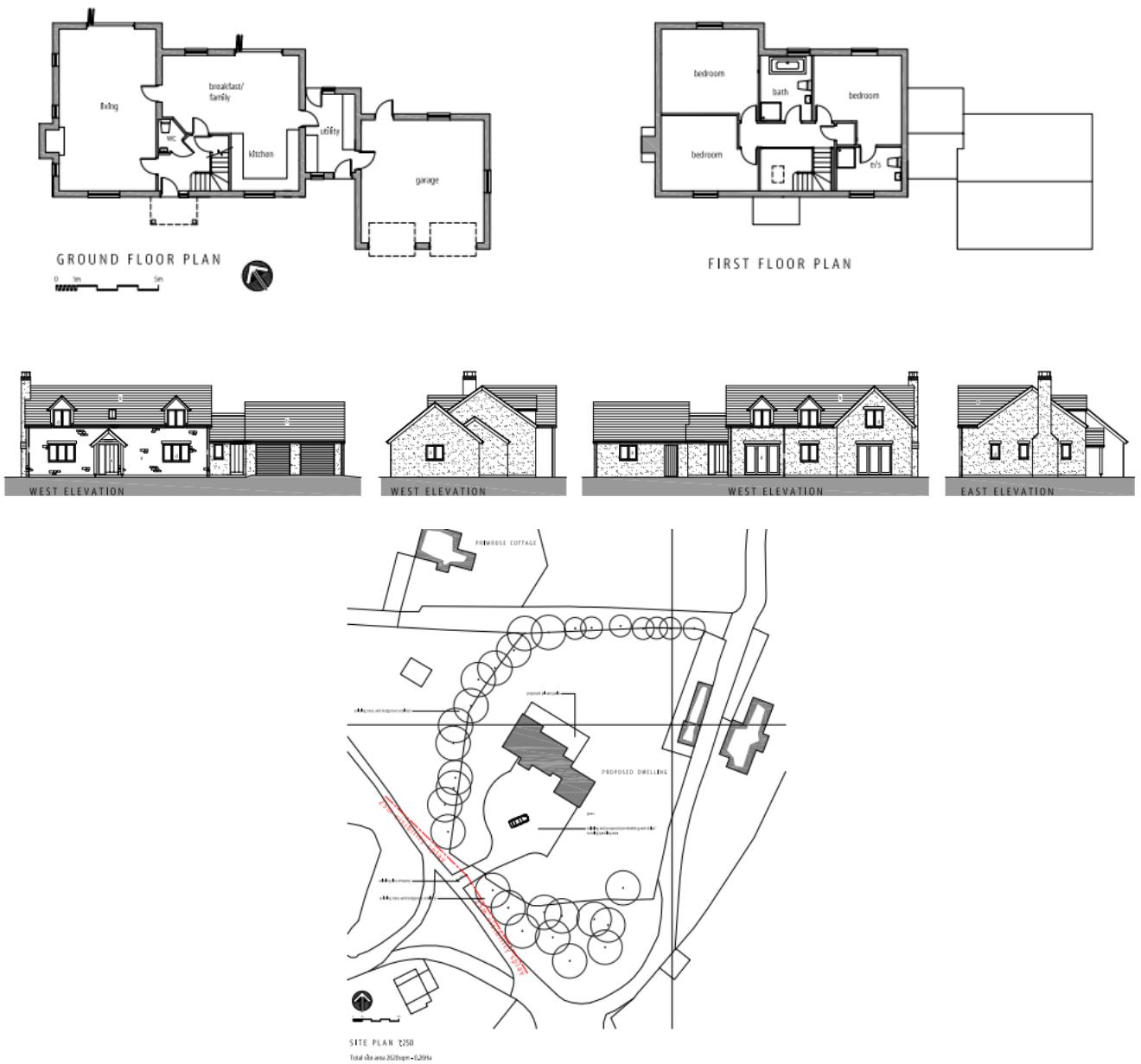
Date Received: 11 November 2020 Ward: Llangarron Grid Ref: 351279,217490

Expiry Date: 5 August 2021

Local Member: Cllr Swinglehurst

1. Site Description and Proposal

- 1.1 The application site comprises of stables and associated hardstanding lying to the east of St Wulstans Road in the centre of Welsh Newton Common. The site is bounded by hedgerows and a field access gate onto the road.
- 1.2 The application seeks full planning permission for the erection of a detached, one and a half storey, three bedroom dwelling in place of the stables, with an attached double garage. The proposal will be 6 metres to the ridge. The design includes dormer windows on the first floor and the materials will be a mix of natural stone and render under a slate roof.
- 1.3 This application is on the same site as a refusal (P190827/F), which was subsequently dismissed at appeal. This application seeks to amend and address the details and plans that were the reason for refusal in the previous application.
- 1.4 Below is the proposed block plan indicating the dwelling and the relationship with the existing dwellings, and dwelling elevations and floorplan.



2. Policies

2.1 Herefordshire Local Plan – Core Strategy (CS):

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

Further information on the subject of this report is available from Mrs G Webster on 01432 261803

SD4 - Waste Water Treatment and River Water Quality

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

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

The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) (the 2012 Regulations) and paragraph 33 of the National Planning Policy Framework requires a review of local plans be undertaken at least every five years in order to determine whether the plan policies and spatial development strategy are in need of updating, and should then be updated as necessary. The Herefordshire Local Plan Core Strategy was adopted on 15 October 2015 and a review was required to be completed before 15 October 2020. The decision to review the Core Strategy was made on 9th November 2020. The level of consistency of the policies in the local plan with the NPPF will be taken into account by the Council in deciding any application. In this case, the policies relevant to the determination of this application have been reviewed and are considered to remain entirely consistent with the NPPF and as such can be afforded significant weight.

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

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

2.3 National Planning Policy Framework (NPPF):

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

3. Planning History

3.1 **P190827/F** – Proposed new dwelling. Refused at Planning Committee for the following reason:

"The proposed development by reason of its design and scale would have a detrimental impact on the character of the area. The proposal also includes a scale of dwelling that conflicts with the Welsh Newton & Llanrothal Group Neighbourhood Development Plan in terms of ridge height and number of bedrooms. Accordingly it is considered that the proposal is contrary to policies SS6, RA2 and SD1 of the Herefordshire Local Plan – Core Strategy, policies WNL4 and WNL5 of the Welsh Newton & Llanrothal Group Neighbourhood Development plan and the guidance provided by the National Planning Policy Framework."

This was subsequently, dismissed at appeal on the basis that the proposed 4 bedroom property would be contrary to the NDP policy WNL5 and Core Strategy policy RA2. “*The proposed housing would not be suitable to the location, as it exceeds the housing size limit for the number of bedrooms and therefore fails to accord with Policy WNL5 of the NDP. It would also fail to accord with Policy RA2 of the CS where it seeks to deliver schemes that generate the size of housing that is required in a particular settlement, reflecting local demand. The scheme would cause significant harm to the development strategy for the area.*”

Appeal Dismissed 22nd Oct 2020

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

4. Consultation Summary

4.1 Statutory Consultations

Natural England

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

Welsh Water

As the applicant intends utilising a private treatment works, we would advise that the applicant contacts Natural Resources Wales who may have an input in the regulation of this method of drainage disposal. However, should circumstances change and a connection to the public sewerage system/public sewerage treatment works is preferred we must be re-consulted on this application.

Forestry Commission

No comments to make

4.2 Internal Council Consultations

Area Engineer – Team Leader

The proposal submitted includes an access to serve a single dwelling. The following observations are a summary of the highways impacts of the development:

It is noted from the traffic data collection volume survey that the network usage in this location is light. As a result the introduction of a single dwelling could not result in a cumulative impact that could be classed as severe as set out in the NPPF.

The access proposed meets the visibility requirements and the associated rationale is acceptable in demonstrating the access amendments will not result in an unacceptable impact on road safety. This is based on the results from the 24 hour 7 day traffic survey used to support this application and paying regard to the content of the DfT's Manual for Streets 2 document. The access meets the highway in a perpendicular fashion. This maximises visibility and ensures that turning movements can happen efficiently.

The amendments required to form the access will require separate permission from the local highway authority to make the connection to the carriageway. This is likely to be in the form of a Section 184 Licence and details of this can be found by following the link below. The proposed

access specification meets the requirements of the Section 184 licence. This is acceptable and a licence should be applied for in the event that permission is granted.

It should be noted that the red line to the site does not connect to the carriageway of the public highway and the land ownership of the section between the carriageway edge and the site boundary as set out by the red line on the site plan is questionable. This may form part of the common and if this is the case the applicant should satisfy themselves that appropriate rights exist to form this vehicular crossing.

Vehicular accesses over 45m in length from the highway boundary to the face of a building should be referred to a Building Regulation Approved Inspector. In these circumstances, access and turning for emergency vehicles may be required, refer to Section 6.7 of Manual for Streets. The vehicle turning area is adequate for the scale of the dwelling.

The parking provided equals or exceeds one 2.4m x 4.8m space per bedroom to a maximum of 3 spaces. This element of the proposal is acceptable. It is clear from the submission that cycle parking can be appropriately accommodated in the garage without compromising on-site parking provision.

For any works within the extent of the highway permission from the LHA will be required. Details of obtaining this permission can be found at:

https://www.herefordshire.gov.uk/downloads/download/368/dropped_kerb_documents

There are no highways objections to the proposals, subject to the recommended conditions being included with any permission granted.

In the event that permission is granted the following conditions and informative notes are recommended.

- CAB - Visibility Splay Required (2.4m x 25m)
- CAE - Access Construction Specification
- I11 - Mud on Highway

All applicants are reminded that attaining planning consent does not constitute permission to work in the highway. Any applicant wishing to carry out works in the highway should see the various guidance on Herefordshire Council's website.

Tree Officer

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

Conditions

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

CKA – Retention of existing trees

CKF – Specifications for tree planting

Land Drainage

Fluvial Flood Risk

Review of the Environment Agency's Flood Map for Planning (Figure 1) indicates that the site is located within the low risk Flood Zone 1. As the proposed development is less than 1ha and is located within Flood Zone 1, in accordance with Environment Agency standing advice, the planning application does not need to be supported by a Flood Risk Assessment (FRA).

Surface Water Flood Risk

Further information on the subject of this report is available from Mrs G Webster on 01432 261803

Review of the EA's Risk of Flooding from Surface Water map indicates that the site is not at risk of surface water flooding.

Other Considerations

Review of the EA's Groundwater map indicates that the site is not located within a designated Source Protection Zone or Principal Aquifer.

Surface Water Drainage

The Applicant has proposed a soakaway feature to drain surface water runoff from the proposed development, with details provided in the Drainage Strategy Report. It is acknowledged that the worst case infiltration rate of 1.5×10^{-5} m/s is acceptable for discharge of surface water runoff to ground. The applicant should now provide site specific calculations to size the soakaway, as the calculations provided within the Drainage Strategy Report are based on a previous planning application for the site, which details a different site layout to the one now proposed. The location of the soakaway should also be relevant to the current site plans. It should be noted that soakaways should be located a minimum of 5m from building foundations, that the base of soakaways and unlined storage/conveyance features should be a minimum of 1m above groundwater levels, and must have a half drain time of no greater than 24 hours. The proposed maintenance arrangements for the surface water drainage system is acceptable, it is assumed that this will be undertaken by the site owner.

Foul Water Drainage

As there is no foul public sewer within 30m of the proposed development site, the Applicant should demonstrate that the proposals are compliant with the general Binding Rules and are in accordance with the Building Regulations Part H Drainage and Waste Disposal. The Applicant has provided details of percolation test results which suggest that discharge of treated effluent to ground is viable with a V_p result of 20.8. A package treatment plant with discharge to a drainage field is proposed. Site specific plans have not been provided showing the location of the proposed drainage features. Site specific calculations have not been provided based on the proposed development. The calculations provided are based on a previous planning application and site layout. No detail has been provided regarding depth to groundwater.

The following must be adhered to for Package Treatment Plants:

- The drainage field should be located a minimum of 10m from any watercourse, 15m from any building, 50m from an abstraction point of any groundwater supply and not in any Zone 1 groundwater protection zone. The drainage field should be sufficiently far from any other drainage field, to ensure that overall soakage capacity of the ground is not exceeded.
- Drainage fields should be constructed using perforated pipe, laid in trenches of uniform gradient which should not be steeper than 1:200. The distribution pipes should have a minimum 2m separation.
- Drainage fields should be set out in a continuous loop, i.e. the spreaders should be connected. If this feature is missed, it will gradually clog with debris and the field will become increasingly ineffective. Foul water drainage must be separated from the surface water drainage. The Applicant should provide evidence that contaminated water will not get into the surface water drainage system, nearby watercourse and ponds.

Overall Comment

In principle we do not object to the proposals, however we recommend that the following information is provided prior to the Council granting planning permission:

- Submission of site specific calculations to size the proposed surface water and foul water drainage features.

- Submission of a site specific layout showing the proposed location of surface water and foul water drainage features.
- Confirmation of groundwater levels.

Following addition information additional comments received

Thank you very much for the information, we are happy to Condition the remaining two points

Conservation Manager (Ecology)

It is noted that a previous application for a similar (but greater occupancy) dwelling was refused and the refusal upheld at appeal – application ref 190827 (appeal determination 22nd October 2020). No ecology related reasons for original refusal were raised, or questioned/countered at the appeal process and considerations by PINS

There is no reason for the LPA Ecology to consider any differently with approx.12 months since previous refusal and under 12 months from appeal decision.

The site is within the River Wye SAC catchment and a relevant Habitat Regulations Assessment is again triggered by the changes in occupancy now subject to consideration and decision. It is noted that the only change in potential effects from the HRA process previously completed is the reduction in maximum potential occupancy.

The following notes apply to the updated HRA

- The development is for one additional residential dwelling.
- No mains sewer connection is available at this location.
- A private package treatment system is proposed to manage all foul water from the new dwelling.
- The PTP will discharge to a ground discharge soakaway drainage field on land under the applicant's control.
- From supplied percolation and test results the LPA has no reason to consider that the proposed scheme cannot be achieved at this location.
- All potential phosphate pathways are considered as fully mitigated by the proposed scheme.
- Natural England have not advised the LPA that the River Wye is failing its conservation status
- All additional surface water can be managed through appropriate on-site infiltration and soakaway systems.
- The agreed schemes for foul and surface water management can be secured by condition on any planning consent granted.

Subject to Natural England confirming a 'no objection' response to the HRA appropriate assessment submitted to them by the LPA there are no identified 'adverse effects on the integrity' of the River Wye SAC identified from this development.

Additional ecology comments (similar and based on previous application comments that remain relevant and valid. The ecology report by Wilder Ecology dated December 2018 remains valid and relevant and any local changes will be minimal and are already considered within the supplied report

Plans indicate that no removal of any trees or hedgerows will be undertaken and this can be secured by a relevant condition so as to ensure (in particular) the local dormouse population is not negatively impacted by this development.

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

The site is in an area with an intrinsically dark landscape that benefits local amenity and nature conservation, including nocturnal protected species known to be present in the. A condition to ensure all external lighting is kept to the essential minimum and any systems installed compliant with current best practice is requested.

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

A ‘standard’ Tree Officer condition to secure protection for all trees and hedgerows should be included.

A standard landscaping condition should be included to enhancement of the ‘soft’ landscaping of the site utilising locally characteristic native species chosen to consider climate change and pest-pathogen resilience.

5. Representations

5.1 Welsh Newton and Llanrothal Parish Council

Following their meeting last night, Welsh Newton and Llanrothal Group Parish Council wish to OBJECT to this application for the following reasons:

- It does not satisfy NDP Policy WNC1 – meet the need for affordable housing
- It is contrary to NDP Policy WNL1 – enhancing the local character, wildlife and habitat of the area
- It is contrary to Policy LD2 as there are protected species (Dormice) known to be living in the hedgerows
- The highway to the property is unsuitable for an increase in traffic
- There is concern that the drainage from this site will impact on the Lower Wye SAC
- There is nothing in the application in response to the Climate and Ecological Emergency

5.2 To date a total of 38 letters of representation have been received. The comments therein are summarised below.

36 letters of objection:

- Unsustainable development
- Infrastructure unable to support development
- Hierarchy matrix is incorrect and false as Welsh Newton has no facilities
- The development would need to cross the common
- Development is part of a larger development by same applicants
- Habitats locally need protecting
- On greenfield site
- Light pollution
- Not a response to local need
- Travel by car a necessity
- Single track road with no through route – highway safety
- Already met housing target
- Although roof height and number of bedrooms reduced the floorspace still similar (4sqm more)
- Large pond within 100 metres will hold reptiles and amphibians
- Development is unwanted and detriment to the character of the area

- TPO's are present across the common
- Size and scale of proposed is at odds to the character of the settlement
- Has inclusion of a garage which could be converted
- Prominent position so harm to visual amenity
- Against what the NDP was looking for
- Hedgerows likely to be removed to allow for visibility splays
- Traffic survey does not reflect reality.

2 letters of support:

- Design has been amended to be acceptable to policy
- Reduced height and three bedrooms it will now be ideal and affordable for a young family
- Will support local services in nearby villages
- Previous reason for refusal has been addressed

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=203907&search-term=203907

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

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

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

6.2 In this instance the adopted development plan is the Herefordshire Local Plan – Core Strategy (CS) and the Welsh Newton and Llanrothal Neighbourhood Development Plan (NDP). The National Planning Policy Framework (NPPF) is also a significant material consideration.

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

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

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

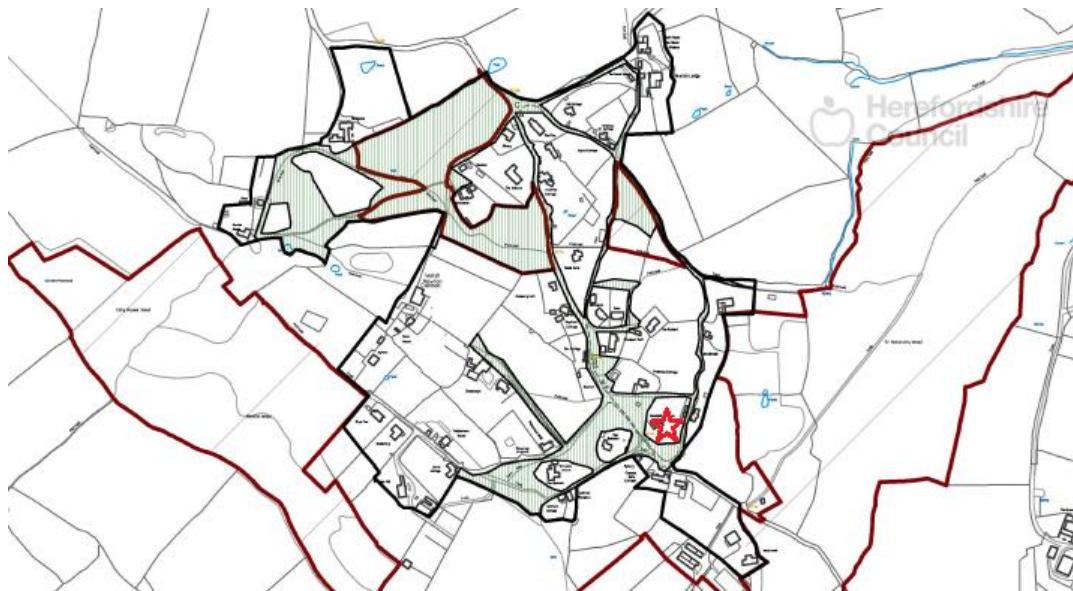
Where there are no policies relevant to the application or the relevant policies are out of date at the time of making the decision then the Council will grant permission unless material considerations indicate otherwise – taking account whether:

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

- 6.4 Following the recent publication of the 5 year housing land supply, it is confirmed that the Council is now able to demonstrate a five year housing land supply (6.9 years), the result of which is that the tilted balance set out at Paragraph 11d of the Framework no longer applies. Development proposals should now be considered more simply in relation to their compliance with the Development Plan and other material considerations

Location of residential development

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



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

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

6.11 With the application seeking planning permission for the erection of a single 3 bedroom dwelling, the scale and size is supported by this policy. This proposal has reduced the number of bedrooms from the previous application, to ensure compliance with the NDP policy. Also, noting the location of site in the centre of the settlement, surrounded by existing dwellings, it is not considered that the site is isolated. Welsh Newton Common is largely made up of individual, detached dwellings, often in their own plots – although there are examples of shared accesses in some cases. The site benefits from built form at the present time, albeit in the form of stables, but the erection of a dwelling would not undermine the character of the area.

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

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

6.13 There is no definition within the NDP as to what a ‘made up road’ is, but the intention to limit the areas for development is noted. St Wulstans Road is tarmacked and runs through the centre of the settlement. As such, it is not considered unreasonable to assume this constitutes at least one made up road. It is also considered that the way the term has been included within policy WNL5, it is not unreasonable to assume there is more than one made up road within the settlement (the policy is written as ‘a’ made up road, not ‘the’). The Planning Inspector within the previous appeal (APP/W1850/W/20/3254946) stated ‘*in the absence of a definition within the NDP of a made up*

road, I consider the site would be accessed off such a road.' With this in mind, and the proposed dwelling being accessed off this (albeit across a common like the majority of dwellings in the settlement) the proposal is found to accord with criteria of the policy also.

- 6.14 The following sections will go on to consider whether there are any other material considerations of such weight and magnitude that might lead to a conclusion that the proposal represents an unsustainable form of development.

Design and amenity

- 6.15 The detail of the design is assessed under policy SD1 of the Core Strategy. This policy states that proposals should be designed to maintain local distinctiveness through detailing and materials, respecting scale, height, proportions and massing of surrounding development. The proposal should also safeguard the amenity of existing and proposed residents in terms of overlooking, overshadowing and overbearing.
- 6.16 The above is reinforced through policy WNL4 of the NDP which states, amongst other things; care should be taken to ensure that building(s) height, scale, and form do not disrupt the visual amenities of the immediate surroundings or impact adversely on any significant wider landscape views; building materials are encouraged that retain the character of the settlement such as natural red sandstone, mellow red brick, timber or timber style windows and slate or tiled roofs and Designs should be informed by the distinctive local character of the rural area. Ridge heights should not exceed 6m.
- 6.17 The proposed dwelling is detached with communal living space on the ground floor and three bedrooms, ensuite and a bathroom on the first floor. In terms of the scale of the building proposed, the ridge height is 6 metres this is in accordance to the limit included within NDP policy WNL5. This height has been reduced from the previous application and has overcome the tension with the NDP policy. The proposal will be a one and half storey dwelling, there are two storey dwellings to the south and west of largely traditional cottage vernacular. The new dwelling would be set back from the road in a relatively spacious plot, comparable to some in the area and would be seen in the context of other properties nearby.
- 6.18 The dwelling will be constructed from a facing of natural stonework elevations with areas of render with natural slate roofs and aluminium/timber windows. Noting the dwellings nearest the site comprising of render and stone, these materials are not found to be out of keeping with the locality or unacceptable in principle. However, it is found to be appropriate to condition submission of the exact details and finishes of the materials on any approval.
- 6.19 The agent has completed the Council's Climate Change checklist, stating that photovoltaic panels and an air source heat pump will be installed, secure cycle storage and the provision of an electric charging point will also be part of the scheme and will be conditioned. The sustainability credentials of the proposal have also been touched on within the Design and Access Statement and states the following:

The dwelling has been designed to exceed current building regulation requirements for thermal performance, highly insulated timber framed walls and roofs with continuous external insulation to eliminate cold bridges within the structures.

- 6.20 Turning now to amenity impacts, the proposed dwelling will benefit from a large garden to the rear and side of an adequate level for a three bedrooomed property. Existing trees and hedgerows will be retained along the rear, front and western side boundary to maintain privacy and also screening into the site. This is found to be acceptable, particularly noting that the dwelling will benefit from a truly private area to the side. Representations received were detailing that the floorspace of the proposed dwelling had increased since the previous application, however it should be noted that the living space of this proposed dwelling has been significantly reduced and

the floorspace now includes an attached garage to the side of the property. A condition is recommended to secure control over future extensions in order to maintain the number of bedrooms in accordance with the aims of the NDP.

- 6.21 Moving onto impacts for the amenity of neighbouring dwellings, the nearest to the proposed is 1 Woodside which lies approximately 45m to the east/north east. With this distance in mind, as well as the intervening track, issues of overlooking or overshadowing are found unlikely to be experienced. As a result of the common land located to the north west/west and south as well as St Wolstons Road, such issues are also unlikely for any other neighbouring dwelling in the vicinity.
- 6.22 The Planning Inspectors decision of (APP/W1850/W/20/3254946) concluded, '*the proposal would not be harmful to the character and appearance of the area. It would accord with Policies SD1 and SS6 of the CS, where they, in part, require development to take into account the local context, that new buildings should be designed to maintain local distinctiveness, including through height, and conserve the settlement pattern and landscape.*'

The scheme would conflict with Policy WNL4 of the NDP, where it states ridge heights should not exceed 6m. Notwithstanding this, it would accord with the aims of the policy to ensure care is taken so that the height, scale and form of buildings do not impact adversely on any significant wider landscape views and should fit with the character, scale, mass and layout of the surrounding area.'

- 6.23 In light of the above, the proposed revised scale of the dwelling has overcome the previous tensions with the NDP policy, the design of the dwelling is found to have been influenced by the locality, the materials are in keeping with the surroundings and the individual plot responds well to the character of the surrounding build form. Therefore, the proposal is found to comply with policy SD1 of the Core Strategy and policy WNL5 of the NDP.

Access and Highways

- 6.24 Policy MT1 of the CS and NPPF policies require development proposals to give genuine choice as regards movement. NPPF paragraph 105 requires local planning authorities to facilitate the use of sustainable modes of transport and paragraph 110 refers to the need to ensure developments generating significant amounts of movement should take account of whether safe and suitable access to the site can be achieved for all people and whether improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where 'the residual cumulative impacts of development are severe.'(NPPF para. 111).
- 6.25 The foregoing is reinforced through policy WNL1 of the NDP which states that *proposals will be required to maintain the area's sense of tranquillity, through careful and sympathetic design of access and consideration of traffic impacts on local roads.*
- 6.26 The Council's Team Leader Area Engineer has visited the site several times (and at different times in the day) for the previous application and this current application in order to assess the highways impacts as a result of one additional dwelling in this location. While the nature of the road does require some instances of reversing and the use of passing places, at the level of one dwelling this is not found to amount to a cumulative 'severe' impact. The proposed development does not present an unacceptable impact on highway safety and does not provide impacts in regards to capacity
- 6.27 With the proposal seeking permission for a single 3 bedroom property, a minimum of 2 car parking spaces per dwelling are required to meet the standards contained within the highways design guide. The submitted block plan indicates this provision as well as turning areas so that any vehicle can enter the highway in forward gear.

- 6.28 The comments from the Team Leader Area Engineer in relation to the access crossing common land are noted but any works or access across common land requires the benefit of consent under the Commons Act, something separate to the granting of planning permission. The application is therefore capable of being assessed and the splays travelling across common land is not a reason to refuse a planning application.
- 6.29 At the level of development proposed, the highway impacts are not found to represent a reason to refuse the application. The associated impacts on highway safety and the capacity of the road would not result in the residual cumulative impacts being severe. As directed by the NPPF, and corroborated by the lack of objection from the Team Leader Area Engineer, refusal on highways grounds is not found to be justified. With this in mind, as well as the proposed internal layout, the application is found to meet the aims of policy MT1 of the Core Strategy and WNL1 of the NDP.

Ecology and trees

- 6.30 Policies LD2 and LD3 of the Core Strategy are applicable in relation to ecology and the impact on trees. These state that development proposals should conserve, restore and enhance the biodiversity and geodiversity asset of the County and protect, manage and plan for the preservation of existing and delivery of new green infrastructure.
- 6.31 The application is accompanied by an Ecology Report which the Council's Ecologist has viewed. He is content with the recommendations and mitigation therein and recommends that this be conditioned on any approval. Biodiversity enhancement will also be conditioned on any approval, making it clear that there should be no illumination of any habitat enhancement or boundary feature. With the site falling within the River Wye Special Area of Conservation (SAC) catchment, a Habitat Regulation Appropriate Assessment (HR AA) has been carried out and sent to Natural England for their approval. They have confirmed they have no objections to the proposal.
- 6.32 The Council's Tree Officer does not object to the application subject to conditions being attached to any approval relating to the development being carried out in accordance with the submitted tree survey, the retention of existing trees and specifications of tree planting being submitted to the local planning authority.
- 6.33 In light of the foregoing, the proposal is found to comply with the aims of policies LD2, LD3, SD3 and SD4 and all reasonable and responsible measures have been taken such as to ensure the LPA legal duty of care has been exercised.

Drainage

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

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

Other matters

- 6.37 In terms of the hierarchy matrix that was used to determine the settlements for proportionate growth under policy RA2, the Core Strategy is adopted and therefore forms part of the Development Plan for the County. Any concerns relating to the inclusion of Welsh Newton Common as an RA2 settlement should have been submitted during the consultation of that document. This does not represent a reason to refuse a planning application now being considered.
- 6.38 It is likely that previous to the adoption of the Core Strategy, Welsh Newton Common saw little new housing as it was not identified as a settlement for growth under the previous Unitary Development Plan. This notwithstanding, there has been a clear shift in policy and it is acknowledged that development in rural settlements bring forward economic, social and environmental benefits.
- 6.39 While the development of Woodside Stables is commented upon within the NDP this is as a conversion scheme. Notwithstanding this, the proposal for a new build has been set out above and assessed against policies within the Core Strategy and NDP as a whole.
- 6.40 There is no such thing as a precedent within planning and each application is assessed on its own merits. Furthermore, an application is not assessed on who the applicant, whether they are a local person or what their intention is after gaining permission – the relevant policies are applied consistently. For the avoidance of doubt, planning permission goes with the land as opposed to the applicant.
- 6.41 It is acknowledged that the site will cross common land in order to gain access to the site (albeit there is an existing access onto the site that will be utilised). However, any such agreement would be the subject of a Section 38 consent under the Commons Act and separate to the granting of any planning permission. Notice was served in the newspaper as a result of there being no known owner of the common and as such the planning application is valid and capable of being assessed.
- 6.42 The housing targets within the settlement are a minimum. Considering the 14% indicative growth across the Ross on Wye Housing Market Area a minimum of 14 new houses are required within the Parish between 2011 and 2031. As of April 2020 there was a total of 13 completions and 3 commitments meaning that the target has been surpassed by 2 dwellings. However, in view of the proposals compliance with the Development Plan, the very minor exceedance of the minimum target within a Parish is not a justifiable reason to refuse an application as it is found to be acceptable in all other respects.
- 6.43 The Council do not have an adopted Community Infrastructure Levy and at the scale of the proposal (for one dwelling) developer contributions are not sought.

Planning balance and conclusion

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

- 6.45 The Welsh Newton and Llanrothal NDP is made and therefore forms part of the statutory development plan for the county and is the most up to date Plan in relation to development within the Parish. The site lies within the settlement boundary identified under policy WNL5 of the NDP and therefore the principle of development is accepted. In terms of the scale of the proposal and location adjacent to existing dwellings, the scheme is policy compliant in this regard also. With the site being accessed directly off St Wulstons Road, it is considered to be accessed off a 'made up road'.
- 6.46 The design of the dwelling proposed is found to be in keeping with the variety within Welsh Newton Common as a whole – they take reference from traditional proportions and materials. It also avoids issues of overlooking or loss of light for both future occupants and existing residents. This proposal for one 3 bedroom dwelling is now compliant with the second bullet point of policy WNL5. The height of the dwelling has also been reduced from the previously refused application and is 6 metres to be in accordance with NDP policy WNL4.
- 6.47 The local concerns in relation to highways impacts as a result of the proposal are appreciated, but they are not found to amount to severe which would justify refusing the application in light of the direction provided the NPPF.
- 6.48 Given the lack of objection from highways, ecology, trees, Natural England and land drainage, the proposal is found to be compliant technically.
- 6.49 In assessing the three indivisible dimensions of sustainable development as set out in the CS and NPPF, officers are of the opinion that the scheme is representative of sustainable development. The scheme will bring forward a policy compliant dwelling with the associated economic and social benefits that small developments in rural settlements support.

RECOMMENDATION

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

- 1. Time limit for commencement (full permission)**
- 2. C07 Development in accordance with approved plans and materials**
- 3. C13 Samples of external materials**
- 4. C65 (Class A only with non standard reason linked to NDP policy)**
- 5. CE6 Efficient use of water**
- 6. CBK Restriction of hours during construction**
- 7. All foul water shall discharge through connection to a new private foul water treatment system with final outfall to suitable soakaway drainage field on land under the applicant's control; and all surface water shall discharge to appropriate SuDS or soakaway system; unless otherwise agreed in writing by the Local Planning Authority.**

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

- 8. The ecological protection, mitigation, compensation and working methods scheme as recommended in the ecology report by Wilder Ecology dated December 2018 shall**

be implemented and hereafter maintained in full as stated unless otherwise approved in writing by the local planning authority. No external lighting should illuminate any boundary feature, adjacent habitat or area around the approved mitigation or any biodiversity net gain enhancement features.

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

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

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

10. CAB Visibility splays (2.4M X 25M)
11. CAD Access gates (5m)
12. CAE - Vehicular access construction
13. CAH - Driveway gradient
14. CAI - Parking – single/shared private drives
15. CAT - Construction Management Plan
16. CB2 - Secure covered cycle parking provision
17. CK9 – Trees in Accordance with plans
18. CKA – Retention of existing trees
19. CKF – Specifications for tree planting
20. At no time shall any external lighting except in relation to safe use of the approved development be installed or operated in association with the approved development and no permanently illuminated external lighting on any building within the application boundary under this consent shall be operated at any time, without the written approval of this local planning authority.

All lighting installed shall demonstrate compliance with latest best practice guidance relating to lighting and protected species-wildlife available from the Institution of Lighting Professionals.

Reason: To ensure that all species and local intrinsically dark landscape are protected having regard to The Conservation of Habitats and Species Regulations

2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019' (the 'Habitats Regulations'), Wildlife & Countryside Act (1981 amended); National Planning Policy Framework, NERC Act (2006) and Herefordshire Local Plan - Core Strategy policies SS1, SS6, LD1-3

21. With the exception of any site clearance and groundwork, no further development shall take place until the following information has been submitted and approved by the local planning authority:
- Submission of a site specific layout showing the proposed location of surface water and foul water drainage features.
 - Confirmation of groundwater levels.

The approved scheme shall be implemented before first occupation of the dwelling hereby permitted.

Reason: In order to ensure satisfactory drainage arrangements are provided and to comply with Policies SD3 and SD4 of the Herefordshire Local plan – Core Strategy and the National Planning Policy Framework.

22. Prior to the first occupation of the dwelling hereby permitted a scheme to enable the charging of plug in and other ultralow emission vehicles (e.g provision of cabling and outside sockets) to serve the occupants of the dwelling hereby approved shall be submitted to and approved in writing by the local planning authority.

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

INFORMATIVES:

1. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations. Negotiations in respect of matters of concern with the application (as originally submitted) have resulted in amendments to the proposal. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.
2. I11 – Mud on highway
3. I09 – Private apparatus within the highway
4. I45 – Works within the highway
5. I05 – No drainage to discharge to highway
6. I47 – Drainage other than via highway system
7. I35 – Highways Design Guide and Specification

Decision:

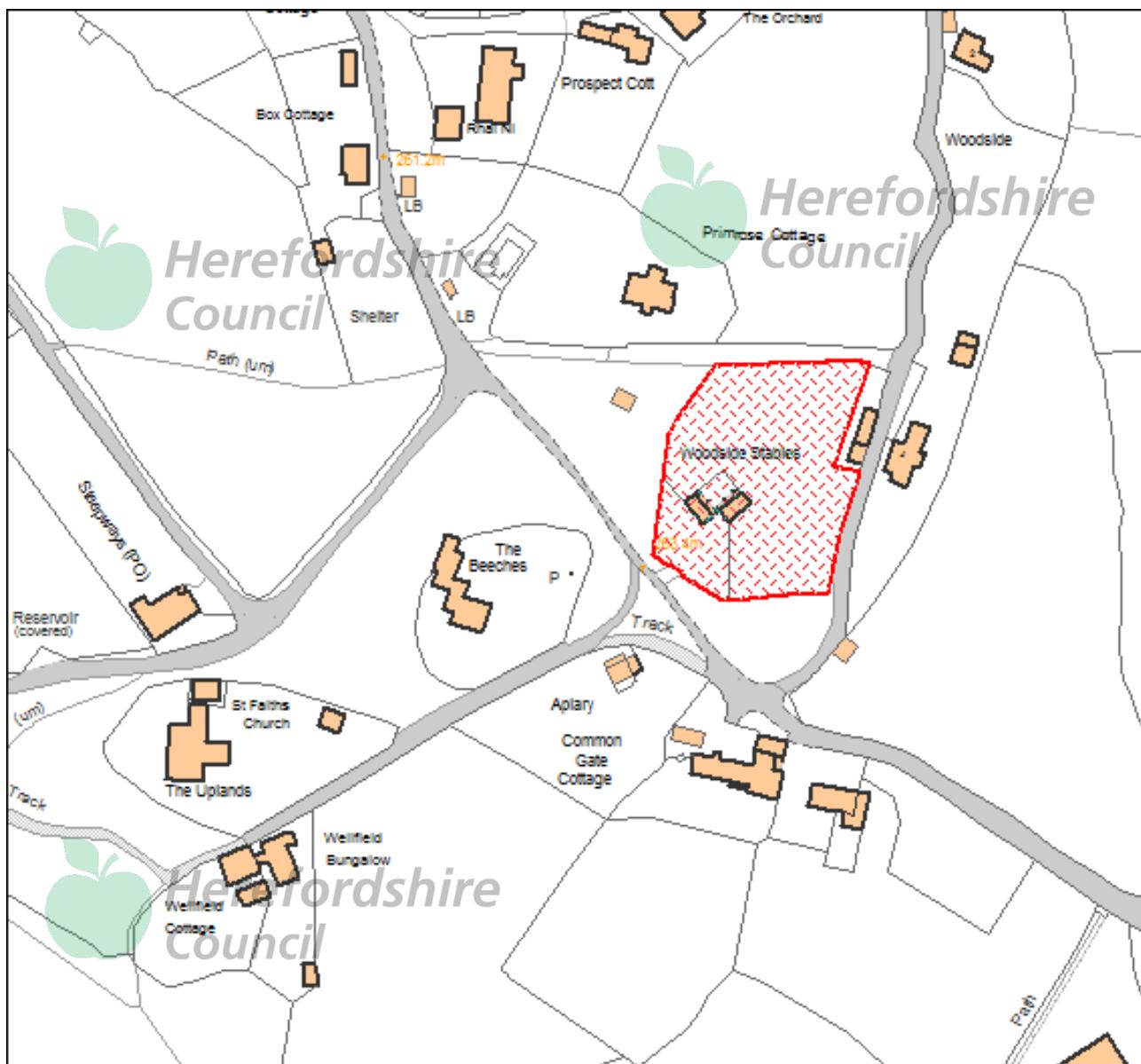
Further information on the subject of this report is available from Mrs G Webster on 01432 261803

Notes:

.....

Background Papers

Internal departmental consultation replies.



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

APPLICATION NO: 203907

SITE ADDRESS : LAND AT WOODSIDE STABLES, FROM GREAT HALL ROAD TO ST WOOLSTONS ROAD, WELSH NEWTON, NP25 5RT

Based upon the Ordnance Survey mapping with the permission of the controller of Her Majesty's Stationery Office, © Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Herefordshire Council. Licence No: 100024168/2005

Further information on the subject of this report is available from Mrs G Webster on 01432 261803



MEETING:	PLANNING AND REGULATORY COMMITTEE
DATE:	4th August 2021
TITLE OF REPORT:	204346 - PROPOSED DEVELOPMENT OF TWO DWELLINGS. AT LAND ADJACENT TO STEEPWAYS, WELSH NEWTON, HEREFORDSHIRE, NP25 5RT For: Ms Boughton per Mr David Kirk, 100 Chase Road, Ross-On-Wye, Herefordshire, HR9 5JH
WEBSITE LINK:	https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=204346&search-term=204346

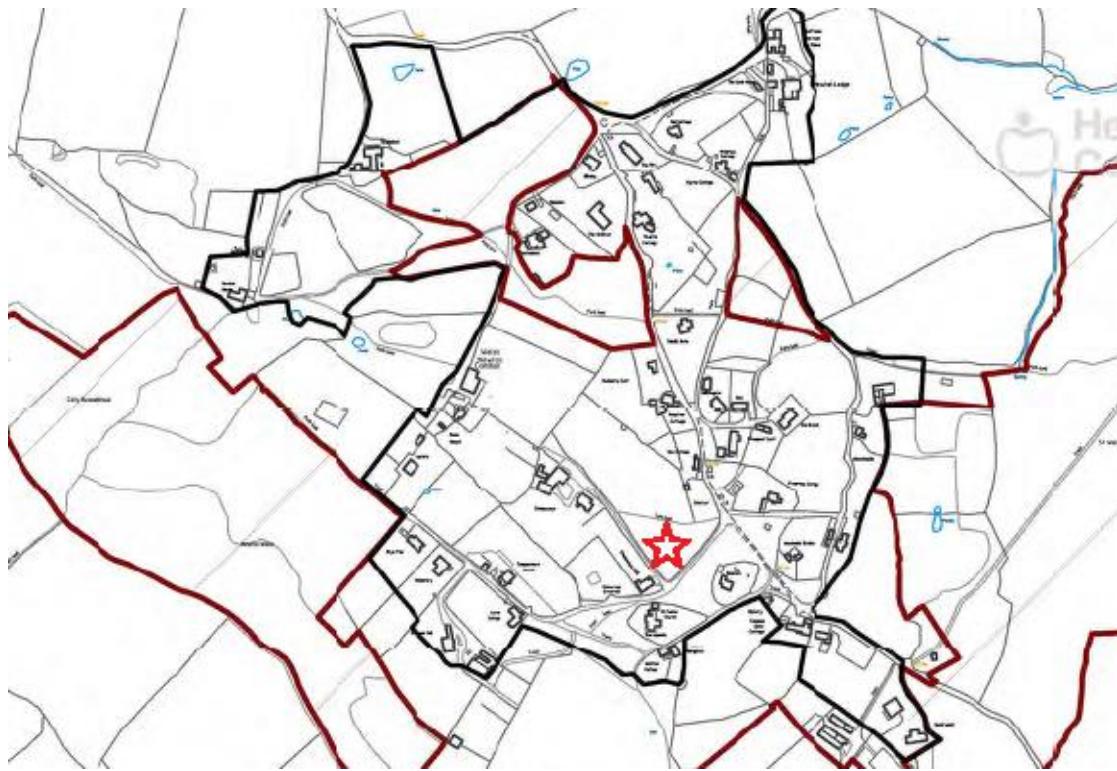
Reason Application submitted to Committee – Redirection

Date Received: 8 December 2020 Ward: Llangarron Grid Ref: 351152,217486
Expiry Date: 12 February 2021

Local Members: Cllr Swinglehurst

1. Site Description and Proposal

- 1.1 The application site comprises part of a field lying on the corner of St Wulstans Road and a private street in the centre of Welsh Newton Common. The site is bounded by trees along the roadside and while there is an access gate in the eastern corner into the wider field, this is not contained within the application site itself.
- 1.2 The wider field benefits from two large beech trees and a field shelter. The private road that runs along the southern boundary used to lead to a Post Office which has now closed.
- 1.3 The map below shows the location of the site (marked by the red star) within the settlement and in relation to the surrounding properties.



- 1.4 The site is not located within an Area of Outstanding Natural Beauty nor is it in a Conservation Area. There are no Listed Buildings within the immediate vicinity. There are no other designations on site.
- 1.5 The application follows two previous applications (191286 and 200954). The first application was refused for the following reason:

The proposed development by reason of its design and scale would have a detrimental impact on the character of the area. The proposal also includes a scale of dwelling that conflicts with the Welsh Newton & Llanrothal Group Neighbourhood Development Plan in terms of ridge height and number of bedrooms. Accordingly it is considered that the proposal is contrary to policies SS6, RA2 and SD1 of the Herefordshire Local Plan – Core Strategy, policies WNL4 and WNL5 of the Welsh Newton & Llanrothal Group Neighbourhood Development plan and the guidance provided by the National Planning Policy Framework. This proposal seeks permission for the erection of two dwellings and a new single access point off the private street.
- 1.6 The subsequent application (which was amended to relate to only two dwellings) was the subject of an appeal against non-determination which was dismissed but on the sole ground that the Inspector concluded that there was insufficient certainty in relation to the long term maintenance of the drainage solution to conclude that there would be no likely significant effect on the River Wye Special Area of Conservation (SAC)
- 1.7 The dwellings proposed are detached, one and a half storey, three bedroom properties with communal living space on the ground floor and bedrooms above.
- 1.8 Both dwellings will be constructed from facing stonework on the front elevations with areas of render on the other elevations, with natural slate roofs and aluminium/timber windows.
- 1.9 The ridge height for the proposed dwellings is 6.0 metres. Plot 1 has 203sq metres of usable floorspace, and has a detached garage. Plot 2 has 155sq metres of usable floorspace and has an attached garage to the dwelling.
- 1.10 The elevations of the two dwellings can be seen below:

Further information on the subject of this report is available from Mrs G Webster on 01432 261803



Plot 1



Plot 2

2. Policies

2.1 Herefordshire Local Plan – Core Strategy (CS)

- | | | |
|-----|---|--|
| SS1 | - | Presumption in favour of sustainable development |
| SS2 | - | Delivering new homes |
| SS3 | - | Releasing land for residential development |
| SS4 | - | Movement and transportation |
| SS6 | - | Environmental quality and local distinctiveness |
| SS7 | - | Addressing climate change |
| RA1 | - | Rural housing distribution |
| RA2 | - | Housing in settlements outside Hereford and the market towns |
| MT1 | - | Traffic Management, highway safety and promoting active travel |
| LD1 | - | Landscape and townscape |
| LD2 | - | Biodiversity and geodiversity |
| LD3 | - | Green Infrastructure |
| SD1 | - | Sustainable design and energy efficiency |
| SD3 | - | Sustainable water management and water resources |
| SD4 | - | Waste water treatment and river water quality |

The Herefordshire Local Plan Core Strategy policies together with any relevant supplementary planning documentation can be viewed on the Council's website by using the following link:-
https://www.herefordshire.gov.uk/info/200185/local_plan/137/adopted_core_strategy

The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) (the 2012 Regulations) and paragraph 33 of the National Planning Policy Framework requires a review of local plans be undertaken at least every five years in order to determine whether the plan policies and spatial development strategy are in need of updating, and should then be updated as necessary. The Herefordshire Local Plan Core Strategy was adopted on 15 October 2015 and a review was required to be completed before 15 October 2020. The decision to review the Core Strategy was made on 9th November 2020. The level of consistency of the policies in the local plan with the NPPF will be taken into account by the Council in deciding any application. In this case, the policies relevant to the determination of this application have been reviewed and are considered to remain entirely consistent with the NPPF and as such can be afforded significant weight.

- 2.2 **Welsh Newton and Llanrothal Group Neighbourhood Development Plan (NDP)**
Made September 2019 and full weight can be afforded to the Plan. (although there are no allocated sites)
Policy WNL1 - Protecting and Enhancing Local Landscape Character
Policy WNL2 - Green Infrastructure
Policy WNL3 - Protecting and Enhancing Local Wildlife and Habitats
Policy WNL4 - Building Design Principles
Policy WNL5 - Welsh Newton Common Settlement Boundary and New Housing
Policy WNL11 - Supporting New Communications Technologies and Broadband
Policy WNL13 - Renewable and Low Carbon Energy Development

- 2.3 **National Planning Policy Framework (NPPF):**
Chapter 2 - Achieving sustainable development
Chapter 4 - Decision making
Chapter 5 - Delivering a sufficient supply of homes
Chapter 6 - Building a strong, competitive economy
Chapter 8 - Promoting healthy and safe communities
Chapter 9 - Promoting sustainable transport
Chapter 11 - Making effective use of land
Chapter 12 - Achieving well designed places
Chapter 14 - Meeting the challenge of climate change, flooding and coastal change
Chapter 15 - Conserving and enhancing the natural environment

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810197/NPPF_Feb_2019_revised.pdf

3. Planning History

- 3.1 P191286/F – Proposed development of two dwelling – Refused 22/1/2020
Appeal Dismissed 20/11/2020

This application was refused at Planning committee and was subsequently dismissed at appeal (APP/W1850/W/20/3255238) for not being in accordance with Core Strategy and NDP Policies, the Inspector concluded; '*Appeal A would harm the character and appearance of the area and conflict with Policies SS6, RA2 and SD1 of the Herefordshire Local Plan – Core Strategy and Policies WNL4 and WNL5 of the NDP.*'

- 3.2 P200954/F - Proposed development of two dwellings – Non determination appeal
Appeal Dismissed 20/11/2020

This application was subject to a non-determination appeal (APP/W1850/W/20/3255329) and dismissed. The Inspector stated; '*there is not an executed planning obligation in front of me, the proposal cannot demonstrate that it would secure the required mitigation in perpetuity. Accordingly, there are residual risks that could give rise to significant adverse effects on the integrity of the SAC*' Concluding that; '*Appeal B would preserve the character and appearance of the area in accordance with those aforementioned development plan documents and policies, which among other things, seek to ensure that proposals are appropriately designed and respond to the local context.....even though Appeal B is acceptable in relation to effects on character and appearance, it must be dismissed in relation to uncertainty relating to mitigating significant adverse effects on the integrity of the River Wye SAC.*'

4. Consultation Summary

Statutory Consultations

Further information on the subject of this report is available from Mrs G Webster on 01432 261803

4.1 Welsh Water

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

4.2 Natural England

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

Internal Council Consultations

4.3 Principal Natural Environment Officer (Trees)

No Objections – the recommended conditions listed below will provide adequate protection to the retained trees.

Conditions –

CK9 – (Welsh Newton Common Tree Report)

CKA (5 Yrs)

CKE

4.4 Team Leader Area Engineer

It is noted that this is a resubmission of previously submitted applications on this site. Upon review of the list of streets it is apparent that the initial connection is onto a private road which is not part of the local highway authority network. An extract of this plan is shown below for completeness.



The previous highways comments on this site resulted in no objection from the local highway authority due to the small scale of the development and low flows in this area of the network, as demonstrated in the traffic surveys undertaken as part of the previous applications. These comments are set out below:

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

- 1. The site has been visited several times and has been visited at different times of the day to match with the peaks highlighted in the surveys. During the site visits to assess the highway, the impact of two way flows resulted in vehicles requiring reversing and using passing places to negotiate the oncoming traffic. This is not unusual in a rural setting and is typical for the character and usage of the highway in this area. The existing vehicle movements have been recorded as low and the modest development will not bring the cumulative impact to the severe level as stipulated in the NPPF.*

Further information on the subject of this report is available from Mrs G Webster on 01432 261803

2. *The approved NDP for the area highlights the Welsh Newton Common access road being a single track lane with a few passing places this makes the area unsuitable for any form of major development expect slow, organic growth. New development schemes should be small in scale and the Neighbourhood Plan may identify a preference or a maximum number of units in a single scheme. As yet the NDP have yet to propose a preference or maximum number of units in a single scheme, but it does appear to support development in the locale, and therefore the trips associated to it. The application proposes a development of two houses, this is in keeping with the approved NDP.*
3. *The NPPF states "Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe." The proposed development does not present an unacceptable impact on highway safety and does not provide impacts in regards to capacity.*

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

The current proposals do not alter this view. The traffic flow data sets out low peak hour flows commensurate with the character and usage of the highway network.

As with the previous applications managing the construction phase is a key consideration in the event that permission is granted and a construction management plan will be required to include delivery routing and timing where possible to avoid these natural peaks in flow. This will also include parking for site operatives within the site extents and wheel washing apparatus to show that mud will not be deposited from vehicles exiting the site.

In order to secure the proposed visibility splays onto the private infrastructure condition CAB is recommended at dimensions of 2.4m x 25m in accordance with drawing 924 PL04.

There are no objections from the local highway authority to the proposals, subject to the recommended conditions being applied.

4.5 Principal Natural Environment Officer (Ecology)

Habitat Regs. Assessment- River Wye SAC

The site falls within the River Wye SAC catchment and within the River Wye SAC Impact Risk Zone "any discharges of water or liquid including to mains sewer." This application is subject to a formal Habitat Regulations Assessment (HRA) process by this local planning authority (LPA) as the competent body in consultation with Natural England.

The initial Habitat Regulations Screening Assessment identifies surface water and foul water as 'likely significant adverse effects.'

The application is a re-submission of the previous application refused in January 2020 Planning application 191286. Correspondence from David Kirk, dated 24th Feb 2021 included information relating to the previous application, which refers to that at appeal, *the Planning Inspector's only objection stemmed from how best to secure the proper drainage of the development as he did not feel able to address this matter by Condition.*

In relation to a separate application at the same site, correspondence from Natural England Dated: 11th August 2020, NE ref: 323747 Application ref: 200954 Natural England did not object to application 200954.

Land Drainage have requested the submission of further Drainage details for the above application 204346 to be secured by Condition with any approved decision.

The application must demonstrate the required information to support a positive AA. Ecology is unable to Condition prior to determining the impact of the development upon the SAC.

Ecology request an up to date Foul and Surface water layout should be submitted with the corresponding percolation calculations and trial pit details for the proposals 204346 prior to completing the Ecology Comments.

Further comments following additional information

The site is within the River Wye SAC catchment; the previous application 191286 submitted April 2019 was prior to significant case law (Sweetman, Dutch Nitrogen etc) and other changes in the Habitat Regulations Assessment process and consequently a whole new HRA appropriate assessment process is now triggered in respect of this new, current application.

The updated 'AA' completed by the LPA should be subject to a formal 'no objection' response from Natural England PRIOR to any grant of planning consent. The following notes are made in respect of the new appropriate assessment:

- The Drainage Strategy Report by Morton Roberts Consulting Engineers Limited ref 0923/R02 dated May 2019 refers. In this application Plot 1 shown in strategy is now omitted but the rest of the proposed scheme and location plans for the treatment plant and drainage fields remain unchanged. The drainage field may be resized as relevant at proposed location to accommodate the reduced flows from just two dwellings.
- The applicant proposes the use of a 'shared' private foul water treatment system (Package Treatment Plant) as a mains sewer connection is not achievable at this location.
- The shared PTP and the associated shared ground water soakaway drainage field are on land under the applicant's control.
- The ongoing ownership and maintenance of the shared foul water system (and any shared surface water systems) will be secured through a responsible maintenance company subject to a relevant condition on any planning consent granted.
- The LPA has no reason to consider that the proposed foul and surface water schemes cannot be achieved at this location.
- There are no identified pathways for any remaining nutrients (including phosphates) to enter the River Wye SAC from the foul water/surface water scheme as proposed.

Other Ecology comments

These remain the same as for the previous application 191286 as no information to the contrary of original reports has been supplied. The original reports and relevant mitigation and working methods were sufficiently thorough and detailed such that no update is considered as being necessary in support of this new application. The applicant and their contractors are still subject to all relevant statutory wildlife protection legislation current at the time any works are carried out and grant of a planning consent would not amend or change this legal obligation. The supplied report provides clear details of relevant dormice ecological working methods, mitigation and enhancement measures. All works will be supervised by a suitably licensed ecological clerk of works. The LPA should secure these recommendations and actions through a relevant condition on any planning consent granted; notwithstanding this Condition the applicant and their contractors are also still bound to comply with all relevant wildlife protection legislation (Wildlife & Countryside Act and Conservation of Habitats and Species Regulations) that sit separately to and above any planning regulations.

The wider ecological assessment for the site prepared by Wilder Ecology dated October 2018 is noted and is still valid and relevant. The recommended ecological working methods and mitigation measures, including those for Great Crested Newts (excluding Dormice covered in more detail in a further species specific survey and report) should be secured through a relevant condition.

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

4.6 **Commons Registration Officer**

The access to the site goes across registered common land CL54 Welsh Newton Common. The common is registered as having no known owner. Any works to the common will need a section 38 consent from the planning inspectorate.

4.7 **Drainage Consultant**

Fluvial Flood Risk

Review of the Environment Agency's Flood Map for Planning indicates that the site is located within the low risk Flood Zone 1. As the proposed development is less than 1ha and is located within Flood Zone 1, in accordance with Environment Agency standing advice, the planning application does not need to be supported by a Flood Risk Assessment (FRA).

Surface Water Flood Risk

Review of the EA's Risk of Flooding from Surface Water map indicates that the site is not at risk of surface water flooding.

Other Considerations

Review of the EA's Groundwater map indicates that the site is not located within a designated Source Protection Zone or Principal Aquifer.

Surface Water Drainage

The Surface Water Drainage Strategy submitted to support the planning application includes plans relating to a previous planning application for three houses on the same plot. The surface water drainage strategy has not been amended to reflect the change from 3 houses to 2 houses. This can be provided as part of suitably worded planning conditions. As previously stated, an acceptable infiltration rate of $1.6 \times 10^{-5} \text{ m/s}$ has been established. It is understood and agreed that all surface water runoff will be directed to a soakaway (to accommodate the 1 in 100 year + 40% climate change event). We would expect to see calculations to demonstrate this. It has been stated that a maintenance company would be responsible for any shared drainage features and the shared permeable pavement. It is stated that the permeable pavement will include check dams (parallel with the contours) due to the slope of the site.

Foul Water Drainage

Similarly, to the surface water drainage aspect, the foul water drainage strategy has not been amended to reflect the change from 3 houses to 2 houses. As the population is decreasing, we do not object or have concerns in regard to the foul water drainage strategy. The previous foul water management proposals was to provide 1 package treatment plant to serve Plots 1, 2 and 3. A management plan is required to outline the responsibility and maintenance of the package treatment plant and drainage field. It has been stated that a maintenance company will be responsible for the package treatment plant and drainage field. The land on which these features are located should be jointly owned by the residents. A V_p value of 20.8 has been established through infiltration testing. Updated calculations should be provided to demonstrate that the drainage fields have been correctly sized. An Environmental Permit is required for the discharge of treated effluent from this package treatment plant as it exceeds 2m³ per day.

Overall Comment

We do not object the proposed development; however we request information is provided within suitably worded planning conditions.

5. Representations

5.1 Welsh Newton and Llanrothal Parish Council

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

- It does not satisfy NDP Policy WNC1 – meet the need for affordable housing
- It is contrary to NDP Policy WNL1 – enhancing the local character, wildlife and habitat of the area
- It is contrary to Policy LD2 as there are protected species (Dormice) known to be living in the hedgerows.
- The hedgerows earmarked for removal are on common land.
- The highway to the property is unsuitable for an increase in traffic.
- There is concern that the drainage from this site will impact on the Lower Wye SAC
- There is nothing in the application in response to the Climate and Ecological Emergency
- The application is lacking in detail
- Access to the site is over common land.

5.2 In response to the public consultation a total of 37 objections were received, stating the following points:

- Potential residential amenity loss through overlooking
- Great crested newts are within the pond 50m from the site
- Run off of water from the site to the road could cause issues
- Could do with more to tackle climate change and future proof homes
- Not meeting any affordable need
- Ecological survey submitted is inadequate
- The PTP will be on land retained by the applicant
- Public highways and road infrastructure to the village and the site are unsuitable for further traffic
- HRA not undertaken by the applicant
- Development proposed on green belt land
- Limited parking and turning in the area
- Given the UN report on biodiversity and human impact on the natural world, it would seem inappropriate to allow two dwellings to be erected in such rural setting without immediate purpose or benefit to the local community
- Impact on visual amenity of the area
- No services / amenities for housing to support
- No economic benefit from the plans
- Proposal infringes on common land
- Potential for impact upon TPO
- Parish has met housing need quota
- No improvements to infrastructure
- Not sustainable development and reliance on the car
- Loss of agricultural land
- Construction traffic would cause congestion
- Drainage on site not capable of supporting the development
- Scale and size is in contradiction to Core Strategy and NDP policies
- Impact upon settlement pattern and harm character of the area
- Potential impact upon European species in the area

- 5.3 Two letters of support were received raising the following points:
- Previous reason for refusal have been addressed
 - The Inspector was content with all aspects of the proposal but was missing the S106 agreement
 - The County needs more housing
 - This is a small development, an ideal addition to the village
 - Many houses in Welsh Newton Common have had extensions allowing existing residents to be able to stay, but they are the ones protecting against new development
 - Highway consultants do not agree that traffic is an issue
 - Housing targets are set as minimum not maximum
 - Small increase of 2 dwellings will not have a material impact upon life in the village, it provides slow and steady expansion
- 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=204346&search-term=204346

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

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

6. Officer's Appraisal

Policy context and Principle of Development

- 6.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states as follows:
"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."
- 6.2 In this instance the adopted development plan is the Herefordshire Local Plan – Core Strategy (CS) and the Welsh Newton and Llanrothal Neighbourhood Area which published a made Neighbourhood Development Plan (NDP) on 13 September 2019. The National Planning Policy Framework (NPPF) is also a significant material consideration.
- 6.3 Policy SS1 of the Herefordshire Local Plan – Core Strategy (CS) sets out that proposals will be considered in the context of the 'presumption in favour of sustainable development' which is at the heart of national guidance contained within the NPPF. This policy states:

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

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

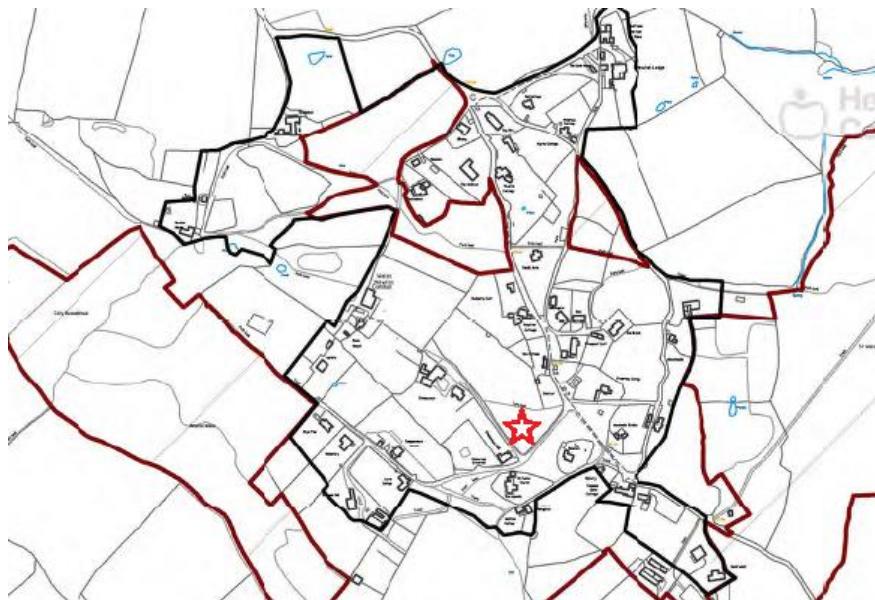
Where there are no policies relevant to the application or the relevant policies are out of date at the time of making the decision then the Council will grant permission unless material considerations indicate otherwise – taking account whether:

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

6.4 Following the recent publication of the 5 year housing land supply, it is confirmed that the Council is now unable to demonstrate a five year housing land supply (6.9 years), the result of which is that the tilted balance set out at Paragraph 11d of the Framework no longer applies. Development proposals should now be considered more simply in relation to their compliance with the Development Plan and other material considerations:

Location of residential development

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



- 6.10 It is clear from the above that the site is located within the centre of the settlement. Notwithstanding this, policy WNL5 goes on to state other criteria that a proposal should meet. This includes:
- Within the Settlement Boundary for Welsh Newton Common, proposals should be small in scale i.e. for one or two properties, and development should adjoin clusters of existing buildings and not be on isolated sites away from other housing and settlements. Proposals will be expected to demonstrate particular attention to the form, layout, character and setting of the site and its location within Welsh Newton. New housing should be accessed directly from a made up road.
 - House sizes should be limited to a maximum of 2/3 bedrooms to help address the local shortage of smaller, affordable units for young families.
- 6.11 With the proposal seeking planning permission for the erection of two dwellings, the scale is supported by this policy. Also, noting the location of site in the centre of the settlement, surrounded by existing dwellings, it is not considered that the site is isolated. Welsh Newton Common is largely made up of individual, detached dwellings, often in their own plots – although there are examples of shared accesses in some cases. The siting of the two dwellings is found to have been influenced by the surrounding development in that they are different in form from one another (this will be touched on further below) and continue the largely wayside pattern of the settlement. It is acknowledged that the proposal will utilise a small paddock and that the NDP recognises the contribution these make to the character of the area. However, the utilisation of this site which is located adjacent to other dwellings is not considered to be detrimental to the overall character of the settlement as a whole.
- 6.12 The inclusion of a ‘made up road’ within policy WNL5 came from the Examiner’s report which states as follows:
- Access to Welsh Newton Common is via a narrow lane which ends in a cul-de-sac. Parts of the settlement are accessed by narrow unmade roads. It is recommended that any further development in the settlement should be accessed directly from a made up road. This would in effect limit the areas suitable for development or result in the making up of other roads.*
- 6.13 There is no definition within the NDP as to what a ‘made up road’ is, but the intention to limit the areas for development is noted. St Wolston’s Road is tarmacked and runs through the centre of the settlement. As such, it is not considered unreasonable to assume this constitutes at least one

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

- 6.14 Given that the private street off which the site will be accessed relatively recently served the Post Office, its construction (hard based with gravel) and the proximity to St Wulstans Road, I do not find the erection of dwellings off this road to undermine the 'made up road' inclusion within this policy. The intention to limit development as a result of its inclusion is appreciated and the proposal puts forward two dwellings in the centre of the settlement boundary. This is not found to be a location that compromises the aims of policy WNL5.
- 6.15 Therefore, in principle the proposal is acceptable and in accordance with planning policy. The following sections will go on to consider whether there are any other material considerations of such weight and magnitude that might lead to a conclusion that the proposal represents an unsustainable form of development.

Design and amenity

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



- 6.19 In terms of the scale of the buildings proposed, the ridge height measures 6m – a limit included within policy WNL5. The height and designs have been amended since the previous application

Further information on the subject of this report is available from Mrs G Webster on 01432 261803

(P191286) was dismissed at appeal, to reduce the overall height to 6 metre to be in line with the WNNDP policy WNL5 and overcoming the previous reason for refusal. This was recognised by the Inspector in the more recent appeal.

- 6.20 Both dwellings will be constructed from facing stonework elevations with areas of render with slate roofs and aluminium/timber windows. Noting the dwellings nearest the site comprising of render and stone, these materials are not found to be out of keeping with the locality or unacceptable in principle. However, it is found to be appropriate to condition exact details and finishes of the materials on any approval.
- 6.21 The agent has confirmed that photovoltaic panels and an air source heat pump will be installed, secure cycle storage and the provision of an electric charging point will also be part of the scheme and will be conditioned. The sustainability credentials of the proposal have also been touched on within the Design and Access Statement and states the following:

The dwelling has been designed to exceed current building regulation requirements for thermal performance, highly insulated timber framed walls and roofs with continuous external insulation to eliminate cold bridges within the structures.

- 6.22 Turning now to amenity impacts, each dwelling will benefit from adequate private gardens to the rear. Given the orientation of the dwellings, there are not found to be detrimental issues of overlooking for future occupiers of either dwelling. In relation to existing properties, the location of Steepways (formerly the Post Office) to the west is noted, There are no windows in the western elevation of Plot 1 therefore it is considered that there will be no issues of overlooking to the neighbouring property. In addition, given the separation of approximately 15.5m, the intervening track to Steepways (which runs along the western boundary of the site) and the hedge to be retained along the boundary, issues of overshadowing are not anticipated.
- 6.23 In light of the foregoing, the design of the dwellings is found to have been influenced by the locality – the materials are in keeping with the surroundings and the differing form respects the adhoc way in which Welsh Newton Common has grown. The proposal is found to comply with policy SD1 of the Core Strategy and policy WNL5 of the NDP.

Access and Highway Safety

- 6.24 Policy MT1 of the CS and NPPF policies require development proposals to give genuine choice as regards movement. NPPF paragraph 105 requires local planning authorities to facilitate the use of sustainable modes of transport and paragraph 110 refers to the need to ensure developments generating significant amounts of movement should take account of whether safe and suitable access to the site can be achieved for all people and whether improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where ‘the residual cumulative impacts of development are severe.’(NPPF para. 111)
- 6.25 The foregoing is reinforced through policy WNL1 of the NDP which states that *proposals will be required to maintain the area’s sense of tranquillity, through careful and sympathetic design of access and consideration of traffic impacts on local roads.*
- 6.26 As can be seen from the consultation responses from the Team Leader Area Engineer, the site has been visited several times (and at different times in the day) in order to assess the highways impacts as a result of two additional dwellings in this location. While the nature of the road does require some instances of reversing and the use of passing places, at the level of two dwellings this is not found to amount to a cumulative ‘severe’ impact. The proposed development does not present an unacceptable impact on highway safety and does not result in detrimental impacts in regards to capacity.

- 6.27 The Team Leader Area Engineer is aware of the representation from the Residents Group in terms of the traffic report but this does not alter the assessment of the impact that two dwellings (in combination with the additional dwelling considered earlier) in this location would have on highway safety.
- 6.28 With the proposal seeking permission for 2 x 3 bedroom properties, a minimum of 2 car parking spaces per dwelling are required to meet the standards contained within the highways design guide. The submitted block plan indicates this provision as well as turning areas so that any vehicle can enter the highway in forward gear.
- 6.29 The Team Leader Area Engineer has commented that managing the construction phase is a key consideration in the event that permission is granted and a construction management plan will be required to include delivery routing and timing where possible to avoid these natural peaks in flow, this is to be included within the list of planning conditions.
- 6.30 At the level of development proposed, the highway impacts are not found to represent a reason to refuse the application. The associated impacts on highway safety and the capacity of the road would not result in the residual cumulative impacts being classed as severe. As directed by the NPPF, and corroborated by the lack of objection from the Team Leader Area Engineer, refusal on highways grounds is not found to be justified. With this in mind, as well as the proposed internal layout, the application is found to meet the aims of policy MT1 of the Core Strategy and WNL1 of the NDP.

Ecology and trees

- 6.31 Policies LD2 and LD3 of the Core Strategy are applicable in relation to ecology and the impact on trees. These state that development proposals should conserve, restore and enhance the biodiversity and geodiversity asset of the County and protect, manage and plan for the preservation of existing and delivery of new green infrastructure.
- 6.32 The application is accompanied by a Tree Report and Survey and Ecological Assessment and Mitigation Method Statement. The survey makes several recommendations including the timing of any hedgerow removal, the type of species to be included within re-planting and bird and bat enhancements. The Council's Ecologist has viewed this and is happy with the findings and recommendations, subject to these being conditioned on any approval. With the site falling within the River Wye Special Area of Conservation (SAC) catchment, a Habitat Regulations Appropriate Assessment (HR AA) has been sent to Natural England for their approval. They have confirmed they have no objections to the proposal.
- 6.33 A full ecological survey was submitted with the application which the Council's Ecologist has reviewed and the recommendations are agreed with. The Council's Ecologist has recommended conditions to ensure the recommendations and working methods detailed within the report are followed and fully monitored by a Licence holding specialist for both dormice and Great Crested Newts. In terms of light pollution, a condition will be attached to any approval (as suggested by the Ecologist) so that no external lighting should illuminate any boundary feature, adjacent habitat or area around the approved Dormice mitigation or enhancement features.
- 6.34 For the avoidance of doubt, the recent appeal was dismissed only on the grounds that the Inspector considered that a S106 Agreement was required to ensure that there would be lifelong management of the shared elements of the foul and surface drainage in place. The Local Authority do not consider that such an agreement is necessary or required in this circumstance and the new HRA was completed which details a condition for the requirement for lifelong management plan which will provide sufficient security for the management of the scheme.

- 6.35 With regard to the impacts on the trees on the site, the Council's Tree Officer has viewed the submission and does not object to the scheme. The site does not benefit from any Tree Protection Orders, but a condition ensuring those trees proposed to be retained, will be attached to any approval as well as the development being carried out with the submitted tree survey and specifications of tree planting.
- 6.36 In light of the foregoing, and following the submission of amended plans and additional information, the proposal is found to comply with the aims of policies LD2, LD3, SD3 and SD4 and all reasonable and responsible measures have been taken such as to ensure the LPA legal duty of care has been exercised.

Drainage

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

Other matters

- 6.40 In terms of the hierarchy matrix that was used to determine the settlements for proportionate growth under policy RA2, the Core Strategy is adopted and therefore forms part of the Development Plan for the County. Any concerns relating to the inclusion of Welsh Newton Common as a RA2 settlement should have been submitted during the consultation of that document. This does not represent a reason to refuse a planning application now being considered.
- 6.41 It is acknowledged that the site will cross common land in order to gain access to the site. However, any such agreement would be the subject of a Section 38 consent under the Commons Act and separate to the granting of any planning permission. Notice was served in the newspaper as a result of there being no known owner of the common and as such the planning application is valid and capable of being assessed. In addition, the Commons Registration Officer has no objection.

- 6.42 The housing targets within the settlement are a minimum. Considering the 14% indicative growth required across the Ross on Wye Housing Market Area, a total of 14 new houses are required within the Parish between 2011 and 2031. As of April 2020 there was a total of 13 completions and 3 commitments meaning that the target has been surpassed by 2 dwellings (3 in the event that the earlier application on this agenda is approved). However, in view of the proposals compliance with the Development Plan, the very minor exceedance of the minimum target within a Parish is not a justifiable reason to refuse an application as it is found to be acceptable in all other respects.

Planning balance and conclusion

- 6.43 Both CS policy SS1 and paragraph 11 of the National Planning Policy Framework engage the presumption in favour of sustainable development and require that development should be approved where they accord with the development plan. The NPPF encompasses the government's view of what is meant by sustainable development in practice. The three themes, economic, environmental and social should be pursued jointly and simultaneously.
- 6.44 The Welsh Newton and Llanrothal NDP is made and therefore forms part of the statutory development plan for the county and is the most up-to-date policy relating to development within the Parish. The site lies within the settlement boundary identified under policy WNL5 of the NDP and therefore the principle of development is accepted. In terms of the scale of the proposal and location adjacent to existing dwellings, the scheme is policy compliant in this regard also. The lack of definition in relation to a 'made up road' is acknowledged but the proximity to St Wulstans Road, the construction of the private road and that it relatively recently served the post office are all appreciated and two dwellings off this are not found to be unacceptable outright or undermine the inclusion of 'made up road' in the NDP after the Examiner's report.
- 6.45 The design of the dwellings are found to be in keeping with the variety within Welsh Newton Common as a whole – they take reference from traditional proportions and materials. They also avoid issues of overlooking or loss of light for both future occupants and existing residents. The size and scale of the dwellings are in accordance with the NDP policies WNL5 and WNL4.
- 6.46 The local concerns in relation to highways impacts as a result of the proposal are appreciated, but they are not found to amount to severe which would justify refusing the application in light of the direction provided the NPPF. Following the submission of amended plans and additional information the ecological and tree impacts are also found to be policy compliant.
- 6.47 While the concerns in terms of ecology by local residents are acknowledged, the Council's Ecologist and Tree Officer are satisfied with the proposal and the information supplied. The inclusion of the condition for the management of the site, the LPA have taken all reasonable and responsible measures to ensure our legal duty of care.
- 6.48 Given the lack of objection from highways, ecology, trees, Natural England and land drainage, the proposal is found to be technically compliant.
- 6.49 This application overcomes the requirement for the S106 due to the recommended condition number 21 below, which seeks for full details of a management plan for the shared elements of the foul and surface water drainage system prior to first occupation and for the lifetime of the development.
- 6.50 In assessing the three indivisible dimensions of sustainable development as set out in the CS and NPPF, officers are of the opinion that the scheme is representative of sustainable development. The scheme will bring forward two policy compliant dwellings with the associated economic and social benefits that small developments in rural settlements support.

RECOMMENDATION

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

That planning permission be granted subject to the following conditions:

- 1. Time limit for commencement (full permission)**
- 2. Development in accordance with approved plans and materials**
- 3. Efficient use of water**
- 4. Samples of external materials**
- 5. C65 (Class A only with non standard reason linked to NDP policy)**
- 6. Restriction of hours during construction**
- 7. HRA New Private Treatment Plant & Surface Water to Soakaway**
- 8. Ecological Protection & Protected Species**
- 9. Ecological Protection**
- 10. Visibility splays 2.4m x 25m**
- 11. Access gates**
- 12. Vehicular access construction**
- 13. Driveway gradient**
- 14. Parking - single/shared private drives**
- 15. Construction Management Plan**
- 16. Retention of existing trees (5 years)**
- 17. Trees In accordance with plans Welsh Newton Common Tree Report**
- 18. Remedial Works**
- 19. Habitat Regulations River Wye SAC – Foul Drainage Strategy**

As detailed in the Drainage Strategy Report by Morton Roberts Consulting Engineers ref 0923/R02 dated May 2019 all foul water shall discharge through connection to a new shared private foul water treatment system on land under the applicant's control unless otherwise agreed in writing by the Local Planning Authority.

Reason: In order to comply with The Conservation of Habitats and Species Regulations 2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019' (the 'Habitats Regulations'), National Planning Policy Framework, NERC Act (2006) and Herefordshire Local Plan - Core Strategy policies SS1, SS6, LD2 and SD4.

- 20. Habitat Regulations River Wye SAC – Surface Water Management Plan**
As detailed in the Drainage Strategy Report by Morton Roberts Consulting Engineers ref 0923/R02 dated May 2019 all surface water shall be managed through a Sustainable Drainage Scheme on land under the applicant's control unless otherwise agreed in writing by the Local Planning Authority.
Reason: In order to comply with The Conservation of Habitats and Species Regulations 2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019' (the 'Habitats Regulations'), National Planning Policy Framework, NERC Act (2006) and Herefordshire Local Plan - Core Strategy policies SS1, SS6, LD2 and SD4.
- 21. Habitat Regulations River Wye SAC – Foul and Surface Water Management Arrangements**
Prior to first occupation of any dwellings hereby approved details of how all the shared aspects of the foul drainage scheme and surface water scheme will be managed for the lifetime of the development will be supplied to the Local Planning Authority for written approval. The approved management scheme shall be hereafter implemented in full unless otherwise agreed in writing by the Local Planning Authority

Reason: In order to comply with The Conservation of Habitats and Species Regulations 2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019' (the 'Habitats Regulations'), National Planning Policy Framework, NERC Act (2006) and Herefordshire Local Plan - Core Strategy policies SS1, SS6, LD2, SD3 and SD4.
- 22. Nature Conservation – Dormice (Protected Species)**
The working methods scheme, mitigation and enhancement features relating to Dormice as detailed in the Dormice report by Natasha James on behalf of Wilder Ecology supplied December 2019 shall be implemented and hereafter maintained in full as stated unless otherwise approved in writing by the local planning authority. No external lighting should illuminate any boundary feature, adjacent habitat or area around the approved Dormice mitigation or enhancement features.
Reason: To ensure that all species are protected and habitats enhanced having regard to The Conservation of Habitats and Species Regulations 2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019' (the 'Habitats Regulations'), the Wildlife and Countryside Act 1981 (as amended), Policy SS1 SS6 and LD2 of the Herefordshire Core Strategy, National Planning Policy Framework (2019) and NERC Act 2006.
- 23. Nature Conservation – Ecology Protection, Mitigation**
The ecological protection, mitigation, compensation and working methods scheme including for Great Crested Newts, as recommended in the ecology report by Wilder Ecology dated October 2018 shall be implemented and hereafter maintained in full as stated unless otherwise approved in writing by the local planning authority. No external lighting should illuminate any boundary feature, adjacent habitat or area around the approved mitigation measures.
Reason: To ensure that all species are protected and habitats enhanced having regard to The Conservation of Habitats and Species Regulations 2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019' (the 'Habitats Regulations'), the Wildlife and Countryside Act 1981 (as amended), Policy SS1, SS6 and LD2 of the Herefordshire Core Strategy, National Planning Policy Framework (2019) and NERC Act 2006.
- 24. Nature Conservation – Biodiversity Net Gain**
In addition to the secured Dormice mitigation-enhancement, prior to first occupation evidence (such as photos/signed Ecological Clerk of Works completion statement) of the suitably placed installation within the site boundary of at least FOUR Bat roosting enhancements, FOUR bird nesting boxes, TWO insect hotels/invertebrate habitat boxes,

and ONE Hedgehog habitat home should be supplied to and acknowledged by the local authority; and shall be maintained hereafter as approved unless otherwise agreed in writing by the local planning authority. No external lighting should illuminate any biodiversity net gain enhancement feature or boundary feature.

Reason: To ensure that all species are protected and habitats enhanced having regard to the Conservation of Habitats and Species Regulations 2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019' (the 'Habitats Regulations'), the Wildlife and Countryside Act 1981 (as amended), Policy SS1, SS6 and LD2 of the Herefordshire Core Strategy, National Planning Policy Framework (2019) and NERC Act 2006 and Dark Skies Guidance Defra/NPPF 2013/2019.

25. Prior to the occupation of the development, submission of an updated strategy for the proposed foul and surface water drainage arrangements with the following information:

- Site specific calculations to size the proposed surface water and foul water drainage features
- Submission of a site specific layout showing the proposed location of surface water and foul water drainage features.
- Confirmation of groundwater levels

Shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented before the first use of any of the buildings hereby permitted.

Reason: In order to ensure that satisfactory drainage arrangements are provided and to comply with Policies SD3 and SD4 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

26. Prior to the first occupation of the dwelling hereby permitted a scheme to enable the charging of plug in and other ultralow emission vehicles (e.g provision of cabling and outside sockets) to serve the occupants of the dwelling hereby approved shall be submitted to and approved in writing by the local planning authority.

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

INFORMATIVES:

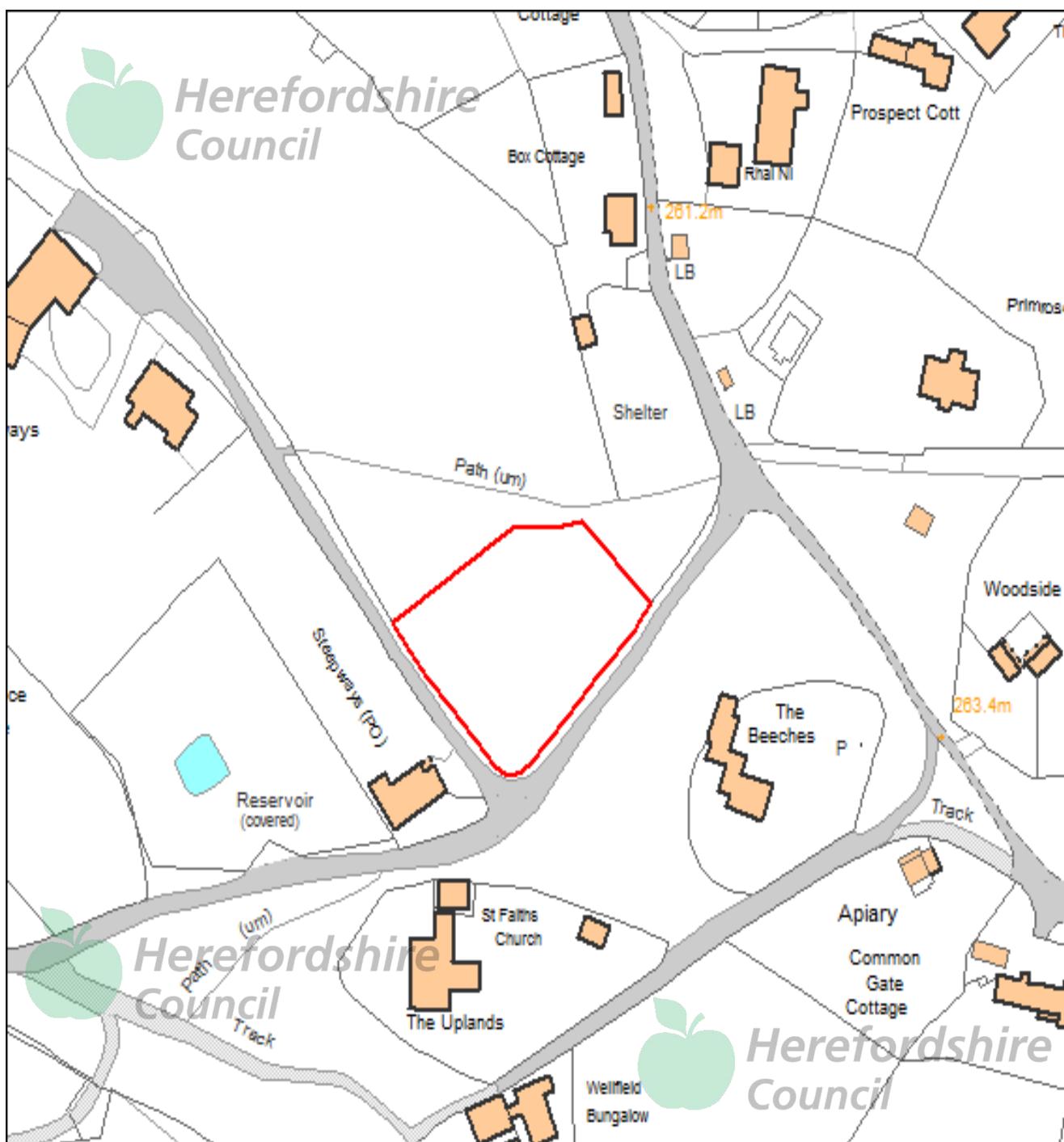
1. **The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations, including any representations that have been received. It has subsequently determined to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.**
2. **I11 – Mud on highway**
3. **I09 – Private apparatus within the highway**
4. **I45 – Works within the highway**
5. **I05 – No drainage to discharge to highway**
6. **I47 – Drainage other than via highway system**
7. **I35 – Highways Design Guide and Specification**

Decision:

Notes:

Background Papers

Internal departmental consultation replies.



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

APPLICATION NO: 204346

SITE ADDRESS : LAND ADJACENT TO STEEPWAYS, WELSH NEWTON, HEREFORDSHIRE, NP25 5RT

Based upon the Ordnance Survey mapping with the permission of the controller of Her Majesty's Stationery Office, © Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Herefordshire Council. Licence No: 100024168/2005

Further information on the subject of this report is available from Mrs G Webster on 01432 261803



MEETING:	PLANNING AND REGULATORY COMMITTEE
DATE:	4 AUGUST 2021
TITLE OF REPORT:	201961 - PROPOSED VARIATION OF CONDITION 10 OF PLANNING PERMISSION SE1999/2612/F GRANTED ON APPEAL (REFERENCE: APP/W1850/A/00/1039625) FOR 22 HOLIDAY CHALETS WITH PARKING FACILITIES – ‘ORIGINAL’ PLANNING PERMISSION REFERENCE: SS980398PF) TO EXPLICITLY DETAIL THE APPROVED DRAWINGS AT HARTLETON FARM, BROMSASH, ROSS-ON-WYE, HR9 7SB.
	For: Bellamy per Mr David F Baume, Studio 2, Thorn Office Centre, Holme Lacy Road, Rotherwas, Hereford, Herefordshire HR2 6JT
WEBSITE LINK: https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=201961&search-term=201961	
Reason Application submitted to Committee – Proxy Member Redirection	

Date Received: 23 June 2020

Ward: Penyard

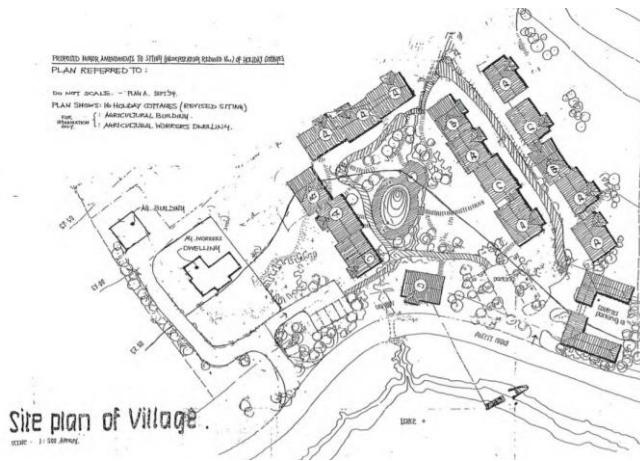
Grid Ref: 364884,225436

Expiry Date: 6 August 2021

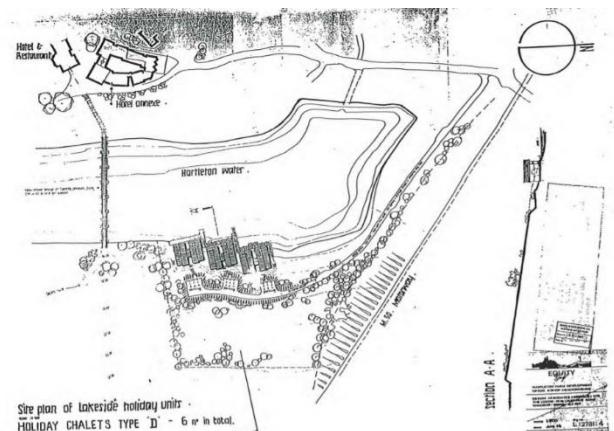
Local Member: Cllr Wilding – Proxy Member = Cllr Watson

1. Site Description and Proposal

- 1.1 The site subject to this application lies to the south of the M50, between the B4224 (Crow Hill – Bromsash) and Fording Lane (unclassified), some 3.5 kilometres (2.1 miles) to the east of the motorway terminus at its junction with the A449 near to Ross-on-Wye.
- 1.2 The site lies either side of Hartleton Water, which extends from land to the north of the former Hartleton Farmhouse, which is Grade II listed, almost to Fording Lane, where the Fording Farm complex lies beyond and includes Grade II listed buildings. Hartleton Water is adjacent to Drummonds Dub, with a Public Right of Way (LTR1/UB10) separating the two. South Herefordshire Golf Club lies to the southwest of the site, between the B4224 and Fording Lane. A private road (Hartleton Water Road) extends from the B4224 to Fording Lane and provides access to the application site. A Public Right of Way (LTR1) runs along part of this private road, from Fording Lane to the northwest before continuing in a northerly direction where it meets another Public Right of Way (UB10).
- 1.3 Planning permission was granted in 1999 (SS98/0398/PF) for 22 holiday chalets and parking facilities at Hartleton Water. This comprised 16 buildings on the southwestern side of the lake (referred to as the ‘village’) and 6 buildings to the northwest (referred to as ‘lakeside’). Each building comprises two units of holiday accommodation, equating to 44 units in total. Subsequently, a revised planning permission was granted, at appeal, (SE1999/2612/F), which deleted condition 11 and varied conditions 5 and 10 of the ‘original’ planning permission.



Site Plan of 'Village' – 16 'chalets'



Site Plan of 'lakeside' – 6 'chalets'

- 1.4 This application, made under section 73 of The Town and Country Planning Act 1990 (as amended), seeks permission to vary condition 10 of the planning permission SE1999/2612/F. Condition 10 of SE1999/2612/F states '*The development hereby permitted shall not be carried out except in complete accordance with details shown on the submitted plans, numbered V:2781:10 and L:2731:5*'. This amended condition 10 of the earlier permission (SS98/0398/F), which states '*The proposed development shall be carried out in accordance with the approved plans.*' The variation sought under the current section 73 application is to insert the drawing references of all the approved plans.
- 1.5 In support of the application a Statutory Declaration has been submitted by the applicant, which in summary sets out the planning history, the drawing references considered to be those approved under permission SS98/0398/PF and that the permission was acknowledged by the Council to have been implemented. A Planning Statement has also been submitted, which again provides a review of the case history and also outlines the caselaw relating to situations where drawings are absent.

2. Legislative/policy background

- 2.1 The Town and Country Planning Act 1990 ('the 1990 Act')
- 2.2 The National Planning Policy Framework (NPPF)
- 2.3 The National Planning Practice Guidance (NPPG)

3. Planning History

3.1

Application Reference	Proposed Description	Decision
SH86/1405/PO	Construction of new access, new road and erection of approximately 45 chalets	Refused 18.2.1987
SH87/0594/PO	Construction of new access onto the B4224, a new road and development of approximately 30 holiday chalets	Approved 26.9.1988
SH87/1383/F	Change of use to 18 hole golf course	Refused 25.11.1987
SH88/0179/F	Change of use to 18 hole golf course	Approved 6.4.1988
SH89/1227/PF	Change of use of agricultural land to golf course in addition to	Approved 6.11.1989

Further information on the subject of this report is available from Mrs Charlotte Atkins on 01432 260536

	that approved under SH88/0179/F	
SH89/1228/PM	30 holiday chalets with parking facilities	Approved 6.11.1989
SH89/1265/PF	Change of use from residential to hotel use and new and altered buildings to form hotel bedroom and restaurant	Approved 6.11.1989
SH89/1266/LA	Change of use from residential to hotel	Approved 6.11.1989
SH93/1077/PF	22 holiday chalets with parking facilities	Approved 10.7.1995
SH94/0797/PO	Erection of an agricultural workers dwelling (revised siting proposal)	Approved 18.11.1994
SH94/1494/PM	Erection of an agricultural workers dwelling	Refused 1.2.1995
SH95/0147/PM	Erection of an agricultural workers dwelling (revised house type)	Approved 26.4.1995
SS98/0398/PF	Renewal of permission for 22 chalets (SH93/1077/PF refers 10.7.95)	Approved 19.4.1999
SH98/0086/PO	Three dwellings in conjunction with revocation of existing consents for holiday chalet accommodation	Refused 13.3.1998
SE1999/2612/F	Removal of conditions No. 5 Holiday constraint, No. 10 in accordance with the approved plans, No. 11 Removal of PD rights, attached consent SS98/0398 (19.4.1999)	Refused 23.12.1999 Appeal Allowed 3.7.2000
SE2004/3958/F	Construction of 44 holiday apartments	Withdrawn 14.2.2005
SE2005/2651/F	Construction of 32 holiday apartments	Refused 26.10.2005 Appeal withdrawn 23.5.2006
SE09/2839/F	Removal of agricultural occupancy condition (condition 3 SH94/0797/PO)	Approved 11.1.2010
S102163/F	Removal of condition 2 of SE09/2839/F	Refused 24.11.2010 Appeal Allowed 20.4.2011
143488/F	Proposed erection of 4 dwellings	Refused 11.5.2015 Appeal Dismissed 26.1.2016

4. Representations

4.1 Linton Parish Council

The Parish Council object to this application.

The Councillors have been advised by some of its Parishioners this may be a flawed application as the matter of the missing documents may now have been resolved and the application does not give sufficient context with regard to the history of applications made before and after that referred to above.

It would appear that the applicant seeks to amend and overturn conditions deemed important and contingent on approval at appeal. The Council sees no reason for the condition to be changed or overturned. Indeed as this development is located in 'Open Countryside' it is essential that vernacular building materials be used.

4.2 Nineteen objections have been received from local residents (some sending more than one representation), the Protection for Rural Upton Bishop (PRuB) and from Counsel on behalf of residents of Hartleton. In summary these representations raise the following points:

- Application does not appear to accurately reflect the underlying documentation
- Application is over 30 years old and neither the Council nor the applicant have all the paperwork/evidence
- Understand that full details are not in file – concerned that the full picture is not available
- Chalets were originally part of a holiday 'village' including a hotel, golf course and water sports. Following land sales only the golf course exists
- Chalets would be in a field with no/poor amenities and infrastructure and access only from the B4224
- Chalets are substantial dwellings
- 22 chalets would result in 44 holiday units
- Extensive planning history, including withdrawn applications and appeals
- Condition 10 appears to focus on building materials – (local) natural stone and Spanish natural slates were approved (by letter dated 9.12.2003) – lesser quality materials (wood) should not be allowed
- This submission proposes to use drawings from 14 July 1987 (11 years prior to the grant of permission) for determination of this application
- Neither Council or developer have plans on file
- Statutory Declaration may not be complete
- Further plans have been provided by local residents (including those pertaining to SE04/3958/F, which should take precedence and mean no need to vary condition 10)
- Submitted plans include a hotel, restaurant and clubhouse, which cannot be provided due to land sales
- Condition 10 remains a core requirement of this development – it restricts design to the approved plans
- No purpose to this application, as it is based on information that has been superseded
- Application should be refused
- No longer a farm diversification scheme
- Need to improve roads
- Landscaping should be delivered prior to business activities on site
- Ecological Survey required
- Lack of affordable housing
- Condition 5 requires the development to be holiday lets, not continuous or extended occupancy
- Inappropriate development – climate change
- Variation of condition 10 was refused at appeal, so any further variations should be too (no appeal to High Court, so decision should stand)
- Commencement of the development appears to be invalid:
 - ❖ It should be in accordance with the approved plans, and
 - ❖ More than 'de minimis'
- Work carried out, construction of a driveway, is not in the correct position, appears to have been constructed to serve the caravans/their treatment plant to the southwest of Hartleton Farm and is very little in the way of evidence (a gravelled area)



- Condition 10 cannot be varied because the permission has expired – a new planning application is required
- Amendment applications should not be used for major applications
- The scheme's overdevelopment of the site would result in adverse impacts on:
 - ❖ the landscape
 - ❖ highways
 - ❖ walkers, cyclists, horse riders, anglers
 - ❖ amenity/tranquillity (noise/light pollution/pollution)
 - ❖ protected species/wildlife
 - ❖ drainage
 - ❖ the community
- Planning policy has changed since original application (30 years ago) – allowing it would not be fair on local residents, who have been objecting to applications during this time
- Application should be considered against up to date guidance and regulations and taking account of local residents and existing rural tourism businesses
- Application is unclear on the nature of occupation of the chalets: could be holiday lets, short term lets, farm workers, second homes, timeshares etc.
- If there is no opportunity to revisit the concept of this development, the condition should remain and the application be rejected
- Application is flawed as it seeks to vary condition 10 of SE1999/2612F, but that permission was not implemented so has lapsed – the Council's discharge of conditions letter and letter confirming a commencement had been made refer to the permission reference: SS98/0398/PF
- As condition 10 of SE1999/2612F only refers to drawings for chalet types B and D there is no approved layout on which to confirm that operations to implement the permission were in accordance with the permission
- Condition 10, even when read in the context of the permission as a whole, does not produce a permission capable of implementation
- Condition 10 is void/invalid due to uncertainty and although such conditions are only struck down in 'extreme cases of unintelligibility', this is considered to be the case here
- Section 73(4) states that s73 does not apply if the permission has expired, as is the case here
- Current application is invalid and should be returned to the applicant
- A certificate of lawfulness is an appropriate route to explore the legal status of the previous permissions
- Consider there to be no extant permissions on this land
- No evidence of a legitimate expectation that the Council should maintain the (mistaken) position of the enforcement officer who expressed the view that development had commenced (letter of 5 February 2004)

- 4.3 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=201961&search-term=201961

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>

5. Officer's Appraisal

Legal context and background

- 5.1 This application, made under section 73 of The Town and Country Planning Act ('the Act'), seeks to vary condition 10 of planning permission SE1999/2612/F - 22 holiday chalets with parking facilities.
- 5.2 Section 73 states as follows:

73 Determination of applications to develop land without compliance with conditions previously attached.

- (1) *This section applies, subject to subsection (4), to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.*
- (2) *On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—*
 - (a) *if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and*
 - (b) *if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.*
- (2A) *See also section 100ZA, which makes provision about restrictions on the power to impose conditions under subsection (2) on a grant of planning permission in relation to land in England.]*
- (3) *Special provision may be made with respect to such applications—*
 - (a) *by regulations under section 62 as regards the form and content of the application, and*
 - (b) *by a development order as regards the procedure to be followed in connection with the application.*
- (4) *This section does not apply if the previous planning permission was granted subject to a condition as to the time within which the development to which it related was to be begun and that time has expired without the development having been begun.*
- (5) *Planning permission must not be granted under this section for the development of land in England to the extent that it has effect to change a condition subject to which a previous planning permission was granted by extending the time within which—*
 - (a) *a development must be started;*

(b) an application for approval of reserved matters (within the meaning of section 92) must be made.

- 5.3 Subsection (2) makes it clear that the local planning authority can only consider the matter of the conditions and not the principle of the development granted. Subsection (5) stipulates that an application under section 73 cannot be used to extend the period for commencement of development.
- 5.4 The NPPG also confirms that a section 73 application cannot be made to extend the time limit within which a development must be started and clarifies that it cannot be used to change the description of the development (Paragraph: 014 Reference ID: 17a-014-20140306). The NPPG advises that section 73 provides flexible options for planning permissions (together with section 96A).
- 5.5 In this case the condition that the applicant wishes to vary, number 10, relates to the approved plans. The wording of condition 10 of planning permission SS98/0398/PF (granted 19.4.1999) is as follows:

'The proposed development shall be carried out in accordance with the approved plans.'

Reason: To ensure compliance with the approved plans.'

- 5.6 A subsequent application, SE1999/2612/F, was made to vary condition 10, along with others (numbers 5 and 11). The reason given for the requested variation (agent's letter of 19.9.1999) was that it was considered that as time had moved on from when the scheme was envisioned the applicant sought to implement '*a more economical form of building method and materials*' and the '*materials proposed would be of a far more wooden type construction appearance than the traditional building method originally proposed*'. The application was refused. The reason for refusal for the variation of condition 10 (& 11) was:

'2. The site is conspicuous and given the scale of the proposal it is considered to be essential that the development be of a high standard. Conditions 10 and 11 were imposed to ensure that the high quality design and materials of these two groups of buildings would not be diluted or spoilt by insensitive alterations or extension which would adversely affect the visual amenities of this attractive rural area.'

This refusal was appealed by the applicant (APP/W1850/A/00/1039625).

- 5.7 At appeal, the Inspector was not persuaded that the materials should be changed, through the variation of condition 10. The Inspector stated that '*Whilst it was not, normally, necessary to attach conditions to ensure development is carried out in accordance with the details shown on the approved plans, the specific circumstances of this case justify such control. The disputed condition is, however, imprecise – requiring definition of the relevant plans*'. The amended condition 10, SE199/2612/F, is worded as follows:

'The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbered:- V:2781:10 and L:2731:5.'

These drawing references are the elevations and floor plans for Chalet type B (village) and Chalet type D (lakeside), respectively.

- 5.8 This application seeks to amend condition 10 of SE1999/2612/F to include all the approved drawings to provide certainty of the approved scheme. The imposition of a condition requiring

development to be in accordance with the approved plans is currently standard practice. The NPPG (at paragraph: Paragraph: 022 Reference ID: 21a-022-20140306, Revision date: 06 03 2014) previously advised (though it has since been deleted) that '*specifying the application drawings and other details which form part of the permission was best practice and creates certainty for all parties, particularly where applications have been subject to a number of revisions.*' At the time of the determination of the applications and appeal (1999/2000), however, it was not standard practice, as pointed out by the Inspector (quote above at paragraph 5.7).

- 5.9 It was previously set out in Circular 11/95: Use of conditions in Planning Permissions, and remains the case now, as set out in paragraph 55 of the NPPF and the NPPG (Paragraph 003 Reference ID: 21a-003-20190723) that conditions should be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise; and reasonable in all other respects. This application seeks only to ensure that condition 10 is precise, by listing all approved plans rather than just two (as per SE1999/2612/F). The application does not seek approval of *revised* plans, as was the case previously when application SE1999/2612/F was submitted, refused and appealed.

Status of the planning permissions

- 5.10 It is a requirement of section 73, at subsection (4) that a condition cannot be varied if the previous planning permission was granted subject to a condition requiring development to have begun by a specific time and that period has since expired without development having been commenced. In this case planning permission SS98/0398/PF was granted subject to a time commencement condition (no. 1), which required development to be begun '*not later than the expiration of five years beginning with the date of this permission*'. The permission date was 19 April 1999, thus requiring a lawful commencement on or before 19 April 2004. The subsequently made, refused and appealed application, SE1999/2612/F, as a section 73 application was subject to the same time commencement condition, being reimposed by the Inspector. Consequently, development in respect of SE1999/2612/F must also have commenced by 19 April 2004.
- 5.11 This application to vary condition 10 of SE1999/2612/F can only be valid if the permission is extant. This requires that a lawful commencement needs to have taken place on or before 19 April 2004 to have implemented the planning permission and preserve it in perpetuity. To achieve a lawful commencement, firstly section 56 of the 1990 Act governs when development is taken to have begun. Where the development consists of the carrying out of operations (as in this case), it will be taken to be initiated at the time the operations are begun (section 56(1)(a)). Section 56(2) provides that these must be a "material" operation. A material operation is then defined in section 56(4) to mean:

- "(a) any work of construction in the course of the erection of a building;
- (aa) any work of demolition of a building;
- (b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;
- (c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b);
- (d) any operation in the course of layout out or constructing a road or part of a road;
- (e) any change in the use of any land which constitutes material development."

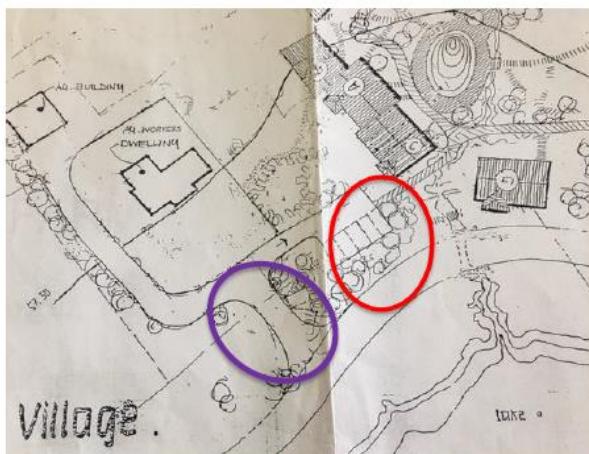
- 5.12 In this case the applicant wrote to the Planning Department (letter dated 27 January 2004) enclosing a copy of the Landscape Plan (pursuant to condition 3) and advised that the site entrance had been constructed (as shaded red on the Landscape Plan) and requesting a site visit from the Enforcement Officer to establish if sufficient 'construction of a road or part of a road' had been carried out to constitute making a start of the development. The Council's response (dated

5 February 2004) confirmed that the site had been visited and access works had been viewed and these constituted a commencement of the planning permission.

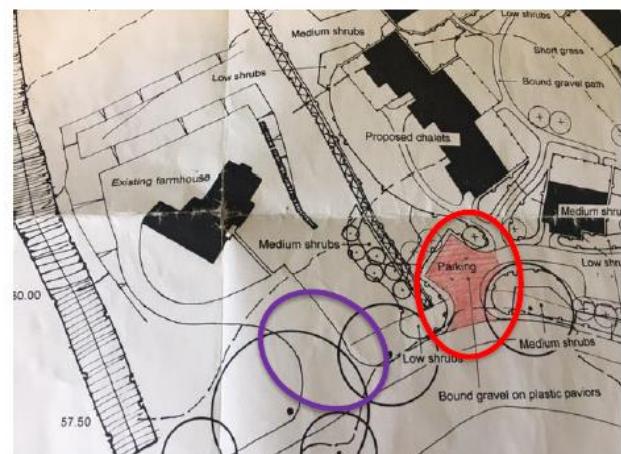
- 5.13 From onsite observations only the marking out of the access was carried out by way of an area of hardstanding, in accordance with the Landscaping Plan. This did not include the installation of a tarmac surface or kerbs for example. No further development on site since those works have been carried out.
- 5.14 To assess if the works observed in 2004 did in fact constitute a ‘material operation’, as the Enforcement Officer’s letter concluded, it is necessary to review relevant caselaw. Some objectors have suggest that the works are insufficient, not related to the approved development and failed to accord with the approved plans.
- 5.15 In the case of Malvern Hills DC v SSE [1982] JPL 439 the Court of Appeal held that the making out of a line and width of a road with pegs did amount to an ‘operation’ in the course of layout out part of a road as defined in s56(4)(d). In his judgment Eveleigh LJ commented that the specified operations “*...are not necessarily very extensive. Very little need be done to satisfy the section. That which is done, however, must genuinely be done for the purpose of carrying out the development.*” Since then the judgment in the East Dunbartonshire Council v Secretary of State for Scotland [1999] 1 PLR 53 case has confirmed section 56 is an objective test and the intentions of the person carrying out the development is irrelevant. It has also been established that such works will not be considered ‘de minimis’ simply because their cost is small in comparison to the overall projected cost of the development. As a result it is not important to consider how much of a material operation has taken place, compared to the scale of the development granted, but rather simply whether it is related to that permission (Thayer v SSE [1992] JPL 264).
- 5.16 Following consideration of the relevant caselaw, summarised above, it is opined that the, albeit modest, work to layout the access did constitute a ‘material operation’. This is because it falls within the scope of section 56(4) (d) (*any operation in the course of layout out or constructing a road or part of a road*). It is clear from the Enforcement Officer’s letter (5 February 2004) that this took place before the expiration of the planning permission (19 April 2004). None of the objections suggest that the work to provide the access was carried out after this date, although they do contest that it was a ‘material operation’ and was in accordance with the approved plans.
- 5.17 The next consideration is whether any pre-commencement conditions were discharged prior to the commencement of the development. Of the imposed conditions, only numbers 2, 3, 6 and 7 include ‘pre-commencement’ clauses. These conditions are imposed on both SS98/0398/PF and SE199/2612/F. Taking these in turn:
- 2 – *requires a specification or samples of materials to be used externally on walls and roofs to be submitted and approved in writing*
- 3 – *requires a scheme of landscaping to be submitted and approved in writing*
- 6 – *requires the precise details of a water storage facility to serve the development to be submitted and approved in writing*
- 7 – *requires the details of a scheme for foul and surface water drainage to be submitted and approved in writing*
- 5.18 The applicant provided details in respect of building materials, water storage, the visibility splay along the B4224, and the sewage treatment works and discharge of surface water run-off, whilst confirming that the landscaping scheme would be prepared, on a better understanding having spoken with the Landscape Officer (letter of 30 September 2003). The Council’s response letter (9 December 2003) refers to the applicant’s letters of 30 September 2003 and 27 October 2003 and accompanying plans, and confirms that the external materials (natural stone and Spanish

slates) are acceptable and “the landscape and drainage schemes are considered acceptable in accordance with Conditions 2, 3 & 7 of the planning permission SS980398PF and the second condition of the planning permission no. SE1999/2612/F.”

- 5.19. On the basis of this contemporaneous correspondence it is clear that the Council was satisfied at that time that the pre-commencement conditions were complied with and discharged.
- 5.20 Another matter of contention, which is highlighted by some objectors, is whether the access works undertaken can be relied upon as being in accordance with the approved plans, such that they implemented the planning permission. The reason for this is that the position of the access works accorded with the approved Landscape Plan required by condition 3 of the permissions, rather than the position of the access on the Site Plan (see extracts below – purple outlining the siting of the access on the Site Plan and red outlining the position of the access on the Landscape Plan)



Site Plan



Landscaping Plan

- 5.21 Referring to the applicant's letter of 27 January 2004, which enclosed a copy of the landscaping plan showing the entrance to the site, it is noted that it specifically draws to the Council's attention that the work carried out was on land “shaded red”. With this knowledge the Council's Senior Enforcement Officer's response (letter dated 5 February 2004) states “*Following receipt of your letter of 2 [sic] January 2004 to Mr Holder I have visited the site and viewed the access works. I can confirm that the works carried out constitute commencement of the planning permission.*”
- 5.22 It is considered that the Council's letter is evidence that it was satisfied at that time that permission had been validly implemented. This is further corroborated by subsequent letters responding to enquiries from solicitors on behalf of clients with interest in purchasing the site, and also Paul Keetch, the then M.P. for the area. One such letter notes that the access works reflected the position shown on the landscaping plan, rather than the site plan, but concludes that after taking advice from the Council's legal service that the works undertaken constituted a commencement of development and that the permission remains extant.
- 5.23 Reviewing this position, whether the works undertaken – being in accordance with the Landscaping Plan approved by way of a conditional requirement, rather than in accordance with the Site Plan, such that it could breach the requirement under condition 10 to be in accordance with the approved plans, the caselaw in general terms is that operations carried out in breach of condition cannot be relied on as material operations capable of commencing a development. That said, in the FG Whitley & Sons v Secretary of State for Wales (1992) 64 P&CR 296 case, the court held that whether or not the permission had been implemented had to be determined in an enforcement context (approval for the scheme had in that case nonetheless been granted) and once it was no longer possible to enforce against the operations, they could be taken to have commenced development. Subsequently, it has been held that whilst that general principle applies, it must be done so with common sense and regard to the particular facts of the case.

The broad test is therefore whether it is still possible for the local planning authority to take enforcement action against the works in question. It was held in *R (Hammerton) v London Underground Ltd [2002] EWHC 2307* that if it would be unlawful for the authority to issue an enforcement notice, for example on the grounds of irrationality, then the works would be effective to have commenced the development.

- 5.24 Applying the above caselaw to the case in hand, where the access is as per the Landscape Plan and not the Site Plan, it is accepted that the difference is discernible. Nevertheless, the material operation was in accordance with a plan approved by the local planning authority and the confirmation that a commencement had been made was given in full knowledge that it accorded with the Landscape Plan, as this was the referenced plan in the applicant's letter. Furthermore, the period for taking enforcement action for a breach, 10 years in this case, has long since passed. However, during that period (2004-2014) and despite queries seeking clarification of whether a lawful commencement had been made no legal challenge was made, nor any enforcement action taken. On the basis of the facts of this case and the legal precedents referred to, it is considered that the permission had been validly implemented.
- 5.25 A further question is which of the permissions (SS98/0398/PF & SE1999/2612/F) have been implemented. Both permissions, the latter (SE1999/2612/F) being a section 73 application, have the same period for commencement (19 April 2004) and save for deletion of condition 11 (removal of permitted development rights) and variation of conditions 5 (holiday accommodation restriction) and 10 (in accordance with the approved plan), all other conditions are the same. The residents of Hartleton's legal advice contends that because the correspondence between the applicant and the Council in respect of the approval of details reserved by conditions and the seeking of confirmation that a commencement had taken place almost exclusively refer to SS98/0398/PF then only that permission can be taken to have been implemented, and not the later SE1999/2612/F, in respect of which this application seeks to vary condition 10.
- 5.26 The applicant's letter seeking to discharge the pre-commencement conditions referred to SS98/0398/PF. The Council, however, in response referred to both permissions (SS98/0398/PF & SE1999/2612/F). The Council's letter confirming that a start had been made on site only references SS98/0398/PF, as did the applicant's letter that requested the confirmation. This could reasonably be interpreted as the Council's recognition that the SS98/0398/PF permission was subsequently varied by SE1999/2612/F or that given that none of the amendments to the SS98/0398/PF permission were of substance that either permission could be implemented. To conclude, whilst accepting that the planning permission references have not always been consistent, the material operation undertaken equally applies to both permissions being for the same scheme, and as such the current application is considered to be valid.
- 5.27 It has been suggested in the representations that condition 10 of the permission is invalid, due to its uncertainty. Condition 10 of the SS98/0398/PF permission refers to the 'approved plans', and the Inspector in granting the SE1999/2612/F permission altered the wording so that it referred to plans 'V:2781:10 and L:2731:5' to make the position more specific. Although this does not meet the standard approach of the present times, at the juncture when the applications were determined it did. The Inspector acknowledges this in his decision. It therefore would be perverse to conclude that the conditions are unlawful due to their lack of precision now, when at the time they adhered to established practice. What is required, for the determination of this application to vary Condition 10, is for the Council to have sufficient clarity as to what the full set of original plans were, such that they can now be listed on a decision notice.
- 5.28 Turning to this final consideration, the applicant has submitted a Sworn Affidavit confirming the plans considered to have comprised the full set of approved drawings. The applicant has confirmed that he does not have a copy of the full set of the approved plans. Following a careful review of the history files, which are not all complete or in good order, it has become apparent that the proposed chalet development has been subject to a number of rolling applications between the 1980s and 1990s. Throughout this planning history there is repeated cross reference

to previous permissions and it appears that where it was considered that an application was a renewal of an earlier permission the plans were not always resubmitted. The Site Plan, amended to reflect the reduced number of chalets (22 from 30 - SH87/0894/PO & SH89/1228/PM), has been identified and the chalet drawings follow the same drawing reference used on earlier schemes (Prefix 'V' for the village element and 'L' for the lakeside area) and tally with those specifically referenced by the Inspector in respect of SE1999/2612/F. Subsequently, the approved landscape drawing has been identified. This appears to make sense of the Inspector's approach to only refer to two specific drawings, because they were the drawings the appellant was seeking to amend the materials for. It is therefore considered that there is sufficient certainty to insert the relevant drawing numbers into condition 10, so that it would be precise. Some of the objectors refer to more recent drawings from applications since the determination of SE1999/2612/F at appeal, including those pertaining to SE04/3958/F for example, and suggest that these drawings should take precedence because they are more recent. As clearly set out in the planning history section of this report none of the applications for alternative schemes for this chalet development have been approved since the appeal decision. The drawings for those refused/withdrawn schemes are therefore not approved, so have no relevance to the determination of this application.

- 5.29 The only outstanding matters that lack certainty relate to the quality of the drawings, which have been transferred to microfiche records, with some degree of distortion but having a scale bar and some dimensions annotated, and an absence of floor plans and elevations for the garaging shown on the Site Plan. In these circumstances it is considered appropriate to require better versions of the 1987 drawings to the modern standard and to condition the submission of drawings pertaining to the garaging prior to their construction. Plans have been submitted of the Chalets and are considered to accurately represent the microfiched plans.
- 5.30 Bringing all of the above assessment together, it is considered that the SE1999/2612/F permission can be accepted to have been lawfully implemented and the request to amend condition 10, to list the approved drawings to ensure it is precise, accords with the six tests for the impositions of conditions. It is therefore recommended that this application is granted.
- 5.31 A section 73 application, such as this, results in the grant of a new permission and as per the NPPG the expiry date of the new permission is as per the original. In this case, as development has been found to have commenced, a time period for commencement condition is not applicable. This results in a renumbering of the previous conditions. In addition when granting permission the new decision notice should describe the whole development and list all relevant conditions. The description reflects that this is a section 73 application. The conditions are modified to reflect that the requirement of the commencement condition (no. 1) has been met and also where the details required by other conditions have already been approved a compliance condition is imposed instead, in line with these procedural requirements.
- 5.32 For clarity the previously imposed conditions are set out below, with the necessary action required now alongside:

Condition No.	SS98/0398/PF	SE1999/2612/F – appeal decision (APP/W1850/A/00/1039625)	201961/F ACTION
1	The development must be begun not later than the expiration of five years beginning with the date of this permission.	Reimposed	No need to impose, as development has commenced
2	Before any work commences on site, a specification or samples of the materials to be used externally on the walls	Reimposed	Materials approved (letter dated 9.12.2003) impose compliance condition.

	and roofs shall be submitted to and approved by the Local Planning Authority in writing.		
3	No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of the development	Reimposed	Landscaping approved (letter dated 9.12.2003) impose compliance condition.
4	All planting, seeding or turfing comprised in the approved details shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation.	Reimposed	Reimpose
5	The accommodation to which this permission relates shall be used only for the purposes of holiday accommodation and no one person or family group shall use any part of the buildings for more than eight weeks in any period of four months.	AMENDED TO: The chalets hereby permitted shall only be used for holiday purposes and shall not be used as a permanent or main residence.	Reimpose
6	Provision shall be made for a water storage facility to serve the proposed development. Precise details of this facility shall be submitted to and approved by the Local Planning Authority in writing prior to work commencing on site and the approved scheme shall be implemented and operational prior to the occupation of the chalets	Reimposed	Reimpose

Further information on the subject of this report is available from Mrs Charlotte Atkins on 01432 260536

7	No development shall take place until details of a scheme for foul and surface water drainage have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details before occupation of any of the chalets.	Reimposed	Drainage approved (letter dated 9.12.2003) impose compliance condition.
8	All vehicular access to the chalet sites shall be via the access road off the Class II B4224 at South Herefordshire Golf Course.	Reimposed	Reimpose
9	Before the occupation of the buildings, the visibility splay along the B4224 and the access drive from the B4224 to both sites shall be improved in accordance with a scheme previously submitted and approved by the Local Planning Authority.	Reimposed	Reimpose
10	The proposed development shall be carried out in accordance with the approved plans.	<p>AMENDED TO: The development hereby permitted shall not be carried out except in complete accordance with the details shown on submitted plans, numbered:- V:2781:10 and L:2731:5.</p>	<p>AMEND TO The proposed development shall be carried out strictly in accordance with the approved plans:</p> <ul style="list-style-type: none"> • Site Plan of Village & Proposed minor amendment to siting (incorporating reduced no. of holiday cottages – Plan A Sept '94) • V:2781:9 – Holiday Chalet Type A • V:2781:10 – Holiday Chalet Type B * • V:2781:11 – Holiday Chalet Type C • L:2781:4 – Site Plan of lakeside holiday units • L:2731:5 – Holiday Chalet Type D (lakeside)

Further information on the subject of this report is available from Mrs Charlotte Atkins on 01432 260536

			<ul style="list-style-type: none"> • L:7781:6 - Holiday Chalets Lakeside (section and lakeside & motorway elevations) • 256/01 - Landscape Layout and Maintenance • 256/02 - Detailed Landscape Proposals
11	<p>Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification) no works within Classes A, B, D, E, G and H of Part 1 of Schedule 2 of the Order shall be carried out to the chalets other than those expressly authorised by this permission.</p>	Deleted	<p>Not necessary to reimpose, as per the Inspector's decision letter</p>

RECOMMENDATION

That planning permission be granted subject to the following revised and reimposed conditions:

1. **Development shall be carried out in accordance with the external materials approved by letter dated 9.12.2003 (reference SE1999/2612/F).**

Reason: To ensure that the materials harmonise with the surroundings so as to ensure that the development complies with the requirements of Policy SD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.
2. **Development shall be carried out in accordance with the landscaping details approved by letter dated 9.12.2003 (reference SE1999/2612/F).**

Reason: To safeguard and enhance the character and amenity of the area in order to conform with policies SS6, LD1 and LD3 of the Herefordshire Local Plan - Core Strategy and the National Planning Policy Framework.
3. **All planting, seeding or turfing comprised in the approved details shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation.**

Further information on the subject of this report is available from Mrs Charlotte Atkins on 01432 260536

Reason: To ensure implementation of the landscape scheme approved by local planning authority in order to conform with policies SS6, LD1 and LD3 of the Herefordshire Local Plan - Core Strategy and the National Planning Policy Framework.

4. The chalets hereby permitted shall only be used for holiday purposes and shall not be used as a permanent or main residence.

Reason: Having regard to Policy RA3 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework the local planning authority are not prepared to allow the introduction of separate units of residential accommodation in this rural location, with limited access to facilities for day to day living.

5. Provision shall be made for a water storage facility to serve the proposed development. Precise details of this facility shall be submitted to and approved by the Local Planning Authority in writing prior to work commencing on site and the approved scheme shall be implemented and operational prior to the occupation of the chalets.

Reason: In order to ensure that satisfactory potable water arrangements are provided and to comply with Policy SD3 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

6. Development shall be carried out in accordance with the drainage details approved by letter dated 9.12.2003 (reference SE1999/2612/F). Development shall be carried out in accordance with the approved details before occupation of any of the chalets.

Reason: In order to ensure that satisfactory drainage arrangements are provided and to comply with Policy SD4 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

7. All vehicular access to the chalet sites shall be via the access road off the Class II B4224 at South Herefordshire Golf Course.

Reason: In the interests of highway safety, so as to adhere to Policy MT1 of the Herefordshire Local Plan – Core Strategy and the requirements of the National Planning Policy Framework.

8. The proposed development shall be carried out strictly in accordance with the approved plans:

- Site Location Plan
- Site Plan of Village & Proposed minor amendment to siting (incorporating reduced no. of holiday cottages – Plan A Sept '94)
- V:2781:9 – Holiday Chalet Type A
- V:2781:10 - Holiday Chalet Type B
- V:2781:11 – Holiday Chalet Type C
- L:2781:4 – Site Plan of lakeside holiday units
- L:2731:5 – Holiday Chalet Type D (lakeside)
- L:2781:6 - Holiday Chalets Lakeside (section and lakeside & motorway elevations)
- 256/01 – Landscape Layout and Maintenance
- 256/02 – Detailed Landscape Proposals

Reason: To ensure adherence to the approved plans in the interests of a satisfactory form of development and to comply with Policies SD1 and LD1 of the Herefordshire

Local Plan – Core Strategy and the requirements of the National Planning Policy Framework.

9. Prior to their construction elevations, floor plans of the garaging (footprint not to exceed that shown on the approved Site Plan) and an external material specification shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in strict accordance with the approved details.

Reason: To ensure the scale and appearance of the garaging is acceptable in the interests of a satisfactory form of development and to comply with Policies SD1 and LD1 of the Herefordshire Local Plan – Core Strategy and the requirements of the National Planning Policy Framework.

INFORMATIVE:

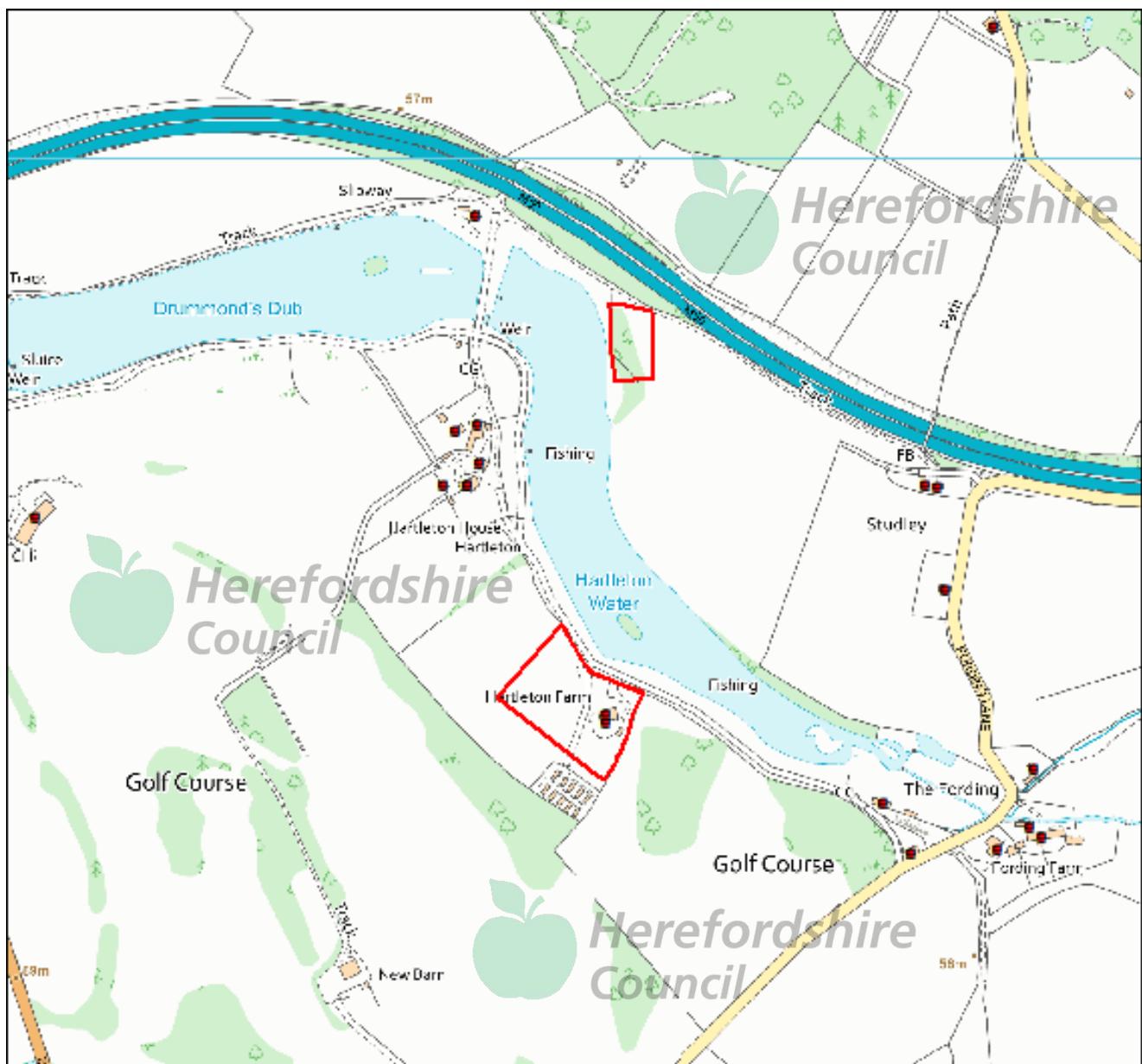
1. The Local Planning Authority has acted positively and proactively in determining this section 73 application to vary an imprecise condition by assessing it against the extant planning permissions. It has subsequently determined to grant planning permission.

Decision:

Notes:

Background Papers

Internal departmental consultation replies.



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

APPLICATION NO: 201961

SITE ADDRESS : HARTLETON FARM, BROMSASH, ROSS-ON-WYE, HEREFORDSHIRE, HR9 7SB

Based upon the Ordnance Survey mapping with the permission of the controller of Her Majesty's Stationery Office, © Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Herefordshire Council. Licence No: 100024168/2005

Further information on the subject of this report is available from Mrs Charlotte Atkins on 01432 260536