

**DCNC2007/2869/F - PROPOSED 4 NEW HOUSES ON
LAND ADJACENT TO 44 VICARAGE STREET,
LEOMINSTER, HEREFORDSHIRE**

**For: CNG Developments Ltd per Mr L F Hulse, 19
Friars Gardens, Ludlow, Shropshire SY8 1RX**

Date Received:

7th September 2007

Ward:

Leominster North

Grid Ref:

49431, 59369

Expiry Date:

2nd November 2007

Local Member: Councillor Mrs J French & Councillor Brig P Jones

Introduction

This application was deferred by the Main Committee on 14th December 2007.

During the debate the Members expressed some concern about the requirement for vehicles to pass across a well used public footpath and questioned who would be responsible for its maintenance in the event of planning permission being granted.

As part of the submission, the applicants have submitted a detailed schedule of works for the treatment of the public footpath, information which the Rights of Way Officer was originally in receipt of. This reads as follows:

- a. Road make up will not be to an adoptable standard, but will have a suitable stone and tarmac sub base, which will be specified by the architect and dictated by the existing ground conditions.
- b. Drainage will be installed along one edge of the road and discharge into a soak away system, this is also to be designed by the architect if planning permission is granted.
- c. The road will have an edging set flush with the top of the tarmac to allow the gravel to finish against the grass verges to give a natural edge appearance.
- d. As noted above the topping will be tar bound gravel.
- e. A demarcation kerb will be set at the edge of the adopted Vicarage Street road and the new track.

CNG Developments will request their solicitors to include in the deeds of the new properties, that it will be shared responsibility of the house owners to maintain the track, the actual wording of this requirement will be advised by the solicitors, prior to completion of the proposed project.

With regard to the issue of parking on the public footpath, the applicants suggest that a metal sign could be erected to advise that parking is not permitted on the footpath, and also suggest that a letter could be included in the house information packs to notify the owners that it is an offence to park on a public right of way.

With the exception of a letter in an information pack, these are otherwise matters that can be addressed by condition and are reflected in the recommendation.

This application was considered originally by the Northern Area Planning Sub-Committee at its meeting on 17th October 2007 when Members resolved to refuse planning permission contrary to the recommendation of the report. This decision was accordingly referred to the Head of Planning Services to determine if it should be reported to the Planning Committee for further consideration.

In the debate Members of the Area Sub-Committee were concerned that the proposals for the site would be overdevelopment but were unable to give any specific indication of what aspect of this damaged any material planning interests.

The following factors are relevant to this case:

1. There have been material planning objections to this scheme, in particular with regard to flooding and wildlife issues. However these have been resolved as explained below and the site is therefore an urban site capable of being redeveloped for residential purposes. In these circumstances the proposals are acceptable in principle.
2. A refusal on grounds of "overdevelopment" would need to be supported of evidence of some harm to material planning interests. In the absence of such specific adverse effects a refusal in these circumstances would be very difficult to defend on appeal.

Overall it has not been shown that the proposal causes demonstrable harm to any matter of public interest and therefore an appeal against a refusal would be very difficult to defend. For these two reasons the application is referred to this Committee for further consideration.

The original report to the Northern Area Planning Sub-Committee follows, updated as appropriate with details of correspondence which has been received since the first report was compiled and further correspondence received since the meeting of the Area Sub-Committee.

1. Site Description and Proposal

- 1.1 The application relates to a strip of land associated to 44 Vicarage Street in Leominster. Part of it forms the residential curtilage of the dwelling, whilst a second part is a vacant and overgrown area. The site is triangulated to the western end and is sandwiched between the Kenwater to the north-east and a public footpath to the south.
- 1.2 The proposal is for the erection of four two bed dwellings arranged as two pairs of semis. The plans show that each dwelling will be provided with two parking spaces to their side with gardens to the rear onto the Kenwater. In this respect the plans indicate a seven metre exclusion zone within which no building should be placed. This is to ensure that the Kenwater can be maintained by the Environment Agency without obstruction.
- 1.3 The design of the dwellings is basic, but not dissimilar to other developments along Vicarage Street. Access to each of the properties is via the public footpath. The ownership of this area has not been determined and accordingly the proposals have been advertised by the applicant in accordance with Article 6 of the Town and Country Planning (General Development Procedure) Order 1995.

2. Policies

2.1 Herefordshire Unitary Development Plan

S1 - Sustainable development

S2 - Development requirements

DR1 - Design

DR7 - Flood risk

H1 - Hereford and the market towns - settlement boundaries and established residential areas

H13 - Sustainable residential design

NC1 - Biodiversity and development

NC3 - Sites of national importance

CF2 - Foul drainage

T6 - Walking

3. Planning History

3.1 DCNC07/1263/F - Erection of five dwellings - Withdrawn

3.2 DCNC07/2258/F - Erection of four dwellings - Refused 29th August 2007. For the following reason:

- In the absence of an ecological survey of the site the local planning authority is unable to assess the impact of the proposal on the adjacent Site of Special Scientific Interest and the acknowledged habitat for protected species. The proposal is therefore contrary to Policies DR1, NC1 and NC3 of the Herefordshire Unitary Development Plan.

4. Consultation Summary

Statutory Consultations

4.1 None required.

Internal Council Advice

4.2 **Transportation Manager** raises no objection.

4.3 **Archaeological Advisor** - No objection subject to condition

4.4 **PROW Officer**

“The proposed erection of 4 new houses will affect public footpath ZC5, which as the applicant acknowledges, passes along the extension of Vicarage Street, and would provide the vehicular access to the site.

We will require full details of any proposed surface treatments so that they can be considered for approval by the PROW Manager, acting as highway authority. This is to ensure that the footpath surface is well drained and of a construction standard so as to minimise future maintenance. I would be grateful for a condition that details of surface treatments need written approval from the planning authority, and to be advised when they are submitted.

The applicant should note that because the right of way has footpath status it will only be maintained by the highway authority as such. I would be grateful for an informative note to this effect.

Although two parking bays are provided for each dwelling, I am concerned that because of their layout, residents or their visitors may be tempted to park their vehicles on the public footpath. This would constitute an obstruction of the public's right of way, which extends across the full width of the land comprising the existing track and its verges and would be viewed as an offence under the Highways Act 1980. I request an informative note to this effect so that future residents are aware of this situation.

The applicant should ensure that the residents of any new dwelling will have lawful authority to drive over the public footpath and he is strongly advised to seek independent legal advice on this matter.

I would be grateful if you include standard informative note HN03 if permission is granted so that future purchasers of properties are aware of this."

4.5 **Ecologist:-**

"I have received the ecological report for this application by Will Watson and Nigel Hand dated August 2007 and note that they found grass snake and slow worm on the site. These species are protected from intentional killing, sale and injury under the Wildlife and Countryside Act 1981; their habitat is not protected. Whilst I cannot condone the unnecessary removal of these animals from the site prior to the determination of planning permission, it appears that the consultants had thought that outline permission had already been granted and that translocation was therefore necessary and appropriate. The receptor site is ideally suited for these species.

I welcome the retention of an area for nature conservation to the northwest of the car parking area for house 1. This needs to be identified upon the site plan; I would suggest this to be all the land to the north west of the car parking. This area can include the refugia for reptiles as detailed in the ecological report.

The Kenwater is a SSSI and the riverbank must remain undeveloped and uncultivated. A buffer strip of 7 metres along the river shall be maintained during development works.

I have no objection to approval of this application subject to the inclusion of conditions.

5. **Representations**

5.1 **Leominster Town Council** - object to the application as they have concerns about the small green habitat area. The Council was also shocked to discover that wildlife had been removed from the area. This application has not shown a true mitigation on the wildlife situation.

5.2 **Environment Agency** - comment as follows:

"The development site lies within Flood Zone 2 (1 in 1000 year annual probability flooding) of the Kenwater (Main River). According to our Section 105 (detailed flood study) flood outlines for this area, the site is defended against flooding from the

Kenwater during the 1 in 100 year flood event by the Leominster Flood Alleviation Scheme (FAS).

As part of the planning application the applicant submitted a site levels survey as part of the required Flood Risk Assessment (FRA) comparative to relevant flood levels. This demonstrated that both the site and access route were flood free during the 1 in 100 year, plus 20% allowance for climate change, flood event, in line with PPS25. Finished floor levels were also proposed at an appropriate level to ensure a safe development for the lifetime of the use. A copy of our formal response dated 24 July 2007 to the planning application confirms our position, which stated that we had no objection subject to the LPA being satisfied on the sequential test.

In response to potential concerns regarding machinery along the riverbanks, the Environment Agency requires a Flood Defence Consent (FDC) to be applied for prior to the commencement of any works in, under or over a Main River (such as the Kenwater) or within 7 metres of the top of the Main riverbank (or from the landward toe of a flood defence). This is to ensure that there is no adverse effect on access for maintenance, flood risk (including flow) and the biodiversity of the river system.

As part of the application for planning permission on the site in question, the applicant incorporated within the layout of the development, a 7 metre grassed buffer strip along the top of the riverbank, which we recommend be secured through a condition of any planning permission that may be granted. This would ensure that there will be no adverse effects to the riverbanks concerned and we were satisfied with this aspect of the proposal.

Bridge Street sports field is part of the Leominster FAS and is designed to flood during an extreme flood event.”

In response to comments relating to the accuracy of current data, the Environment Agency comments as follows:

“The comments in point 1 of the letter dated 12th May 2007 have been noted. However, our Section 105 flood model shows the 1 in 100 year flood (flood zone 3) to be contained within the river channel with the development site, in question, lying outside this boundary. This is the best available information at the present time.

In support of the development there was no proposed flood alleviation scheme because the topographical survey submitted in support of the planning application demonstrated that the site lay in excess of 400mm above the 1 in 100 year, plus 20% (climate change) flood level. We recommended that finished floor levels be set at least 600mm above the 1 in 100 year, plus 20% flood level, to ensure a safe development for the lifetime of the use, as detailed within the planning application.

- 5.3 **Welsh Water** – raise no objection to the application. They advise that if the Council is minded to approve the application that a condition is attached to ensure that none of the dwellings are occupied before the completion of the improvement works.
- 5.4 **Natural England** – this proposal has no meaningful impact on the features of the Site of Special Scientific Interest. The seven metre buffer, insisted upon by the Environment Agency, provides a useful safeguard to water quality.

- 5.5 **The Ramblers Association** – comment that the lane should not be in any way affected, either during building works or after completion, and that its width must be retained.
- 5.6 Seven letters of objection from local residents and one petition in objection with a total of 29 signatories have been received. In summary the points raised are as follows:
1. Concerns about flooding and obstruction of land used to maintain the Kenwater.
 2. The proposal will add to the burden of an already stretched sewage system.
 3. Would be more appropriate for an area of land adjacent to the SSSI to be used for community purposes.
 4. The proposal constitutes over-development.
 5. Not appropriate to allow vehicular traffic to use a public footpath.
 6. Access from Vicarage Street onto Broad Street is inadequate.
 7. The proposal will impact on the privacy of the bungalow (Elba) to the rear of the site.
 8. The Council should review the flood zones allocated by the Environment Agency as they are outdated.
- 5.7 The full text of these letters can be inspected at Northern Planning Services, Garrick House, Widemarsh Street, Hereford and prior to the Sub-Committee meeting.

6. Officers Appraisal

- 6.1 The application has generated significant public opposition, the reasons for which seem to focus primarily on the flood risk associated with the site and the requirement for vehicles to pass along a public footpath to gain access to the site. Detailed responses have been included in this report from both the PROW Officer and the Environment Agency and both conclude that there is no objection to the scheme.
- 6.2 The site falls within a flood risk zone 2 and the Environment Agency are satisfied that sufficient information has been submitted with the application by way of the topographical survey showing it to be 400mm above the 1% plus climate change flood plain of 71.59 metres AOD. Finished floor levels must be set no lower than 600mm above this level ie at 72.19 metres AOD. The proposed floor levels of 72.4 metres AOD are above the minimum requirement as outlined by PPS25. A flood alleviation scheme is not required and the proposal accords with policy DR7 as a result.
- 6.3 Similarly the Environment Agency has commented in some detail on their need for access to the river bank for maintenance purposes. Pre-application discussions did take place between the Agency and the applicant and as a result a 7 metre maintenance strip is shown on the submitted block plan. Concerns raised about the erosion of the river bank are also covered in their response and consequently the objections raised in this respect do not provide sufficient justification to refuse the application.
- 6.4 The comments made by the Environment Agency have been made in full knowledge of the recent flood events and the comments made by objectors to the proposal. The Council does not have any scientific basis i.e. its own flood risk assessment, upon which to question the advice given by the Environment Agency and there is no evidence that the site was flooded as a result of the recent heavy rainfall.

- 6.5 Improvement works for Leominster's main sewage system are set for completion in April 2008. Although Welsh Water consider the application to be premature, they do advise that if the local planning authority were minded to approve the application a condition should be imposed to require that none of the dwellings be occupied before improvement works are complete. A condition of this nature would completely satisfy the objection raised by them.
- 6.6 The number of dwellings has been reduced on the site from the original submission from five to four. Principally the reason for this was to remove a concern regarding overlooking and overshadowing of the bungalow to the rear known as Elba. The current proposal is well spaced from the bungalow with the side elevation of the dwelling on plot four corresponding with its north-western boundary, with approximate distance between buildings of 14 metres measured from corner to corner. The distance and relationship between the two is sufficient to ensure that there will be no demonstrable overlooking or overshadowing of Elba and therefore the scheme is acceptable in this respect and accords with policy H13.
- 6.7 Objections raised in respect of overdevelopment cannot be substantiated. Each dwelling is afforded two parking spaces and has well sized gardens. In light of the reduction in numbers the relationship with surrounding properties is acceptable.
- 6.8 Similarly the increases in traffic movements onto Broad Street from the Vicarage Street junction will be negligible in terms of the existing residential context of the area. Whilst it is accepted that the junction is not ideal and does not afford the level of visibility that would be expected from a new development, traffic speeds are slow due to the 90 degree bend to the south-east and the addition of traffic movements associated with a development of four 2 bed dwellings is not sufficient to refuse the application on highway safety grounds.
- 6.9 The only outstanding issue from the previous application, which was refused, is the proximity of the site to the SSSI. The application is accompanied by an ecological report that was previously missing. It has been acknowledged that the site provides a habitat for grass snakes and slow worms and the comments from the Council's Ecologist deal with this in detail, concluding that the proposal is acceptable, subject to conditions. On this basis the previous refusal reason has been addressed.
- 6.10 In conclusion the proposal accords with the Unitary Development Plan. The previous reason for refusal has been addressed and therefore the application is recommended for approval.

RECOMMENDATION

That the planning permission be granted subject to the following conditions:

1. A01 - Time limit for commencement (full permission)

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

2. B01 - Samples of external materials

Reason: To ensure that the materials harmonise with the surroundings.

3. C04 - Details of window sections, eaves, verges and barge boards

Reason: To safeguard the character and appearance of the area.

4. C05 - Details of external joinery finishes

Reason: To safeguard the character and appearance of the area.

5. E16 - Removal of permitted development rights

Reason: To maintain access to the watercourse for maintenance or improvements of the Flood Alleviation Scheme and as a buffer to protect and enhance the water environment.

6. F16 - Restriction of hours during construction

Reason: To protect the amenity of local residents.

7. F49 - Finished floor levels (area at risk from flooding)

Reason: To protect the development from flooding.

8. G01 - Details of boundary treatments

Reason: In the interests of visual amenity and to ensure dwellings have satisfactory privacy.

9. H13 – Access, turning area and parking

Reason: In the interests of highway safety and to ensure the free flow of traffic using the adjoining highway.

10. None of the dwellings hereby approved shall be occupied before the 1st April 2008 or until such time that essential improvements to the public sewerage have been completed by Welsh Water.

Reason: To mitigate the existing hydraulic overloading of the public sewerage system and to ensure that the local community and environment are not unduly compromised.

11. W01 - Foul/surface water drainage

Reason: To protect the integrity of the public sewerage system.

12. W02 - No surface water to connect to public system

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

13. W03 - No drainage run-off to public system

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

14. The recommendations set out in the ecologists' report dated August 2007 should be followed unless otherwise agreed in writing with the Local Planning Authority. Details of the agreement for habitat management and reptile monitoring as well as a site plan detailing the area to be retained undisturbed for nature conservation shall be submitted for written approval by the Local Planning Authority.

Reason: To ensure the law is not breached with regard to protected species and nesting birds which are protected under the Wildlife and Countryside Act 1981, the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) and policies NC1, NC5, NC6 and NC7 within the UDP.

15. No development shall take place until a Wildlife Protection Plan for Construction has been submitted to and approved in writing by the local planning authority. The plan shall include an appropriate scale drawing showing "Wildlife Protection Zones" where construction activities are restricted and where protective measures will be installed or implemented and details of protective measures (both physical measures and sensitive working practices) to avoid impacts during construction. Development shall proceed in accordance with the approved plan.

Reason: To comply with Herefordshire Council's UDP Policies NC8 and NC9 in relation to Nature Conservation and Biodiversity and to meet the requirements of PPS9 Biodiversity and Geological Conservation and the NERC Act 2006.

16. An appropriately qualified and experienced ecological clerk of works should be appointed (or consultant engaged in that capacity) to oversee the ecological mitigation work including clearance of the site."

Reason: To conserve and enhance protected habitat and designated sites in compliance with UDP Policies NC3, NC6, NC7, NC8 & NC9, and PPS9

17. The development hereby approved shall not be commenced until a scheme for the provision and implementation of a surface water regulation system including the use of Sustainable Urban Drainages Systems has been submitted to and approved in writing by the local planning authority. Surface water generated from the site shall be limited to the equivalent Greenfield runoff rate for the site. The scheme shall be implemented in accordance with the approved details unless otherwise agreed in writing by the local planning authority.

Reason: To prevent the increased risk of flooding by ensuring the provision of a satisfactory means of surface water disposal.

18. Prior to the commencement of development details of the wording and location of a sign to advise that it is an offence to park motorised vehicles on the public footpath shall be submitted to and approved in writing by the local planning authority. The sign shall be erected in accordance with the approved details before the dwellings are occupied and shall be retained in perpetuity.

Reason: In the interests of pedestrian safety and to avoid indiscriminate parking on the public footpath.

Informatives:

- 1 - N15 - Reason(s) for the Grant of PP/LBC/CAC
- 2 - N19 - Avoidance of doubt
- 3 - HN03 - Access via public right of way
- 4 - HN23 - Vehicular use of public rights of way

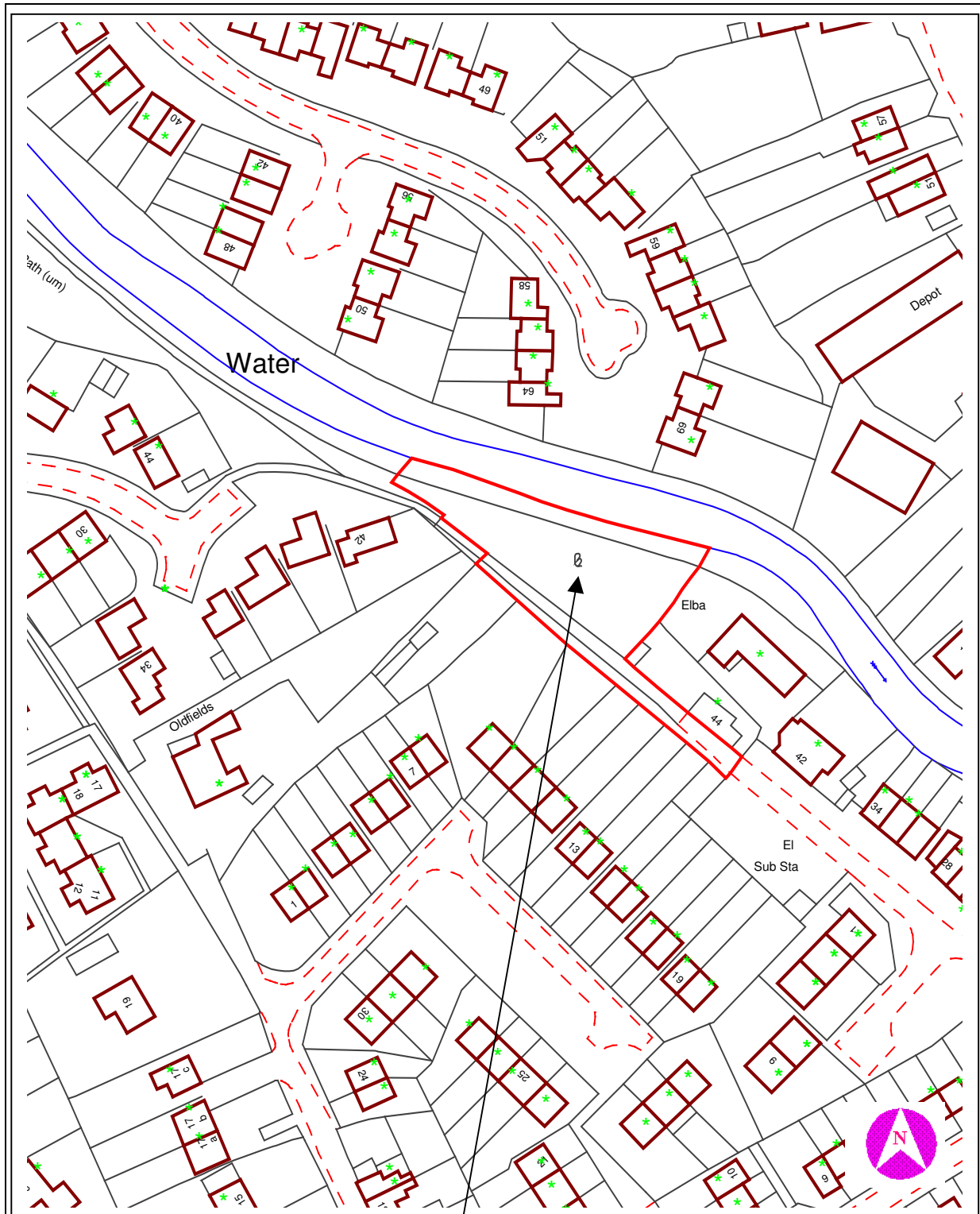
Decision:

Notes:

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Background Papers

Internal departmental consultation replies.



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APPLICATION NO: DCNC2007/2869/F

SCALE : 1 : 1250

SITE ADDRESS : Adjacent to 44 Vicarage Street, Leominster, Herefordshire

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