

DCNC2009/0168/F - PROPOSED CHANGE OF USE FROM AGRICULTURAL TO A SITE FOR THE ACCOMMODATION OF SEASONAL AGRICULTURAL WORKERS IN MOBILE HOMES AND DEMOUNTABLE PORTABLE BUILDINGS AND SPORTS PITCH ON LAND AT BRIERLEY COURT FARM, BRIERLEY, HEREFORDSHIRE HR6 0NU

For: S & A Produce (UK) Limited, Antony Aspbury Associates, 20 Park Lane Business Centre, Park Lane, Basford, Nottingham, NG6 0DW

**Date Received: 28th January 2009 Ward: Leominster South Grid Ref: 48947, 56010
Expiry Date: 29th April 2009**

Local Member: Councillor R Hunt, Councillor P McCaull

Introduction

This application was deferred on Counsel's advice at the previous meeting in order to allow time to consider the additional representations received. The report has been updated to take account of these matters.

1. Site Description and Proposal

- 1.1 The application site lies on the south side of the unclassified 93600 road, approximately 500m west of Brierley. It is set back from the road behind a mature roadside hedgerow and is entirely flat. Separate proposals would see polytunnels erected to the south west and north east of the site, and an existing sewage treatment works to the north retained. Both matters are the subject of separate planning applications and are dealt with elsewhere on this agenda. Originally submitted plans outlined a site with an area of 7.5 hectares. This has now been reduced to an irregularly shaped site of 4.45 hectares.
- 1.2 The site lies with the open countryside. It does not benefit from any special landscape designation and the Landscape Character Assessment defines the site as lying within an area of Principal Settled Farmlands, a landscape that is resilient to change.
- 1.3 The scheduled Ancient Monument, Ivington Camp Hillfort, lies approximately 1 Km to the south-west. The rivers Arrow and Little Arrow approximately 1 Km and 0.5 Km to the north. A number of public rights of way cross the applicant's land and also bound it to the east and west from which the site would be visible. The town of Leominster lies approximately 2 kilometres to the north of the application site. A large Poplar plantation lies at the northern edge of the site, between it and the town. Beyond this the land begins to rise from the floor of the river valley by approximately 30 metres to a high point on the southern fringe of Leominster known as Cock Croft Hill.

- 1.4 The application is for the change of use of land for the siting of accommodation to be used for seasonal agricultural workers. The applicant's agent has been advised that should planning permission be granted, a further application for the associated operational development, including the laying out of access tracks and the construction of an amenity building, will be required.
- 1.5 The originally submitted plans indicated show the siting of 500 two person residential 'pods' with 40 associated service units providing kitchen recreation and bathroom facilities. In its amended form the plans show 250 2 person pods and 15 associated service units. The pods are laid out in single storey terraces, grouped around a series of grassed squares within which the service units are located. The accommodation and bathroom facilities are provided by the same basic pod with dimensions of 6.05m x 2.4m and a height of 2.8m. The kitchen facilities and social/television rooms are provided by the more familiar portacabin-type units. These are slightly larger in terms of floor area than the pods, measuring 9.5m x 3m, but are the same height at 2.8m.
- 1.6 The applicant's agent requests that the Council considers the imposition of a three year time period for the re-organisation and completion of the company's accommodation strategy in order that it can move from the current mix of caravans, portacabins and pods on an adjacent unauthorised site, and also allow for the submission of a further application for the operational development as described above.
- 1.7 The application is accompanied by a range of supporting documents and these are listed as follows:
- Design and Access Statement
 - Town Planning Statement
 - Statement of Community Engagement
 - Economic Appraisal of the S&A soft fruit business at Brook Farm, Marden and Brierley Court Farm, Brierley
 - Landscape and Visual Appraisal
 - Ecological Impact Assessment
 - Outline Landscape and Ecological Management Plan
 - Flood Risk Assessment
 - Water Resources Evaluation
- 1.8 Discussions are currently taking place with the applicant on a proposed unilateral undertaking. Key elements under discussion are a woodland management plan, a restriction of the use of land elsewhere at Brierley for polytunnels, and linkages between polytunnel land take and the units of accommodation.

2. Policies

National Guidance

- 2.1 PPS1 - Delivering Sustainable Development
PPG4 - Industrial and Commercial Development and Small Firms
PPS7 - Sustainable Development in Rural Areas
PPS9 – Biodiversity and Geological Conservation
PPG11 - Regional Planning
PPG13 – Transport
PPG16 – Archaeology and Planning
PPG25 – Development and Flood Risk
Emerging Draft PPS4 – Planning for Sustainable Economic Development

Regional Guidance

Rural Spatial Strategy (RSS)
PA14 – Economic Development and Rural Economy
PA15 – Agricultural and Farm Diversification

Herefordshire Unitary Development Plan 2007

- 2.2 Policy S1 - Sustainable Development
- Policy S2 - Development Requirements
- Policy S4 - Employment
- Policy DR2 - Land Use and Activity
- Policy DR3 - Movement
- Policy DR13 - Noise
- Policy DR7 - Flood Risk
- Policy H7 - Housing in the Countryside Outside Settlements
- Policy H8 - Agriculture and Forestry Dwellings and Dwellings Associated with Rural Businesses
- Policy H11 – Residential Caravans
- Policy E10 - Employment Proposals Within or Adjacent to Main Villages
- Policy E13 - Agricultural and Forestry Development
- Policy HBA4 - Setting of Listed Buildings
- Policy LA2 – Landscape Character and Areas Least Resilient to Change
- Policy LA3 - Setting of Settlements
- Policy CF2 - Foul Drainage

3. Planning History

- 3.1 This is one of three applications currently being considered. The other two are for the retention of a sewage treatment plant (DCNC2009/0166/F) and for the erection of fixed Spanish polytunnels (DCNC2009/0167/F). Members will need to assess the cumulative impact of the proposals and the relationship between them.
- 3.2 The following applications are all considered to be relevant to the determination of this application as they show the planning history in relation to the entirety of the applicant's land in relation to the development of their soft fruit growing business:
 - NC2004/0224/S - Construction of new access roads - Prior approval not required - 06/02/2004
 - NC2004/0321/F - Construction of amenity building, toilet buildings and site works for 300 unit caravan standing (change of use) for farm workers accommodation - Refused 12/05/2004 and dismissed on appeal.
- 3.3 In dismissing the appeal the Inspector concluded that the proposal would have an unacceptably damaging impact on the quality of the landscape, particularly in that its regimented layout would result in a harsh, imposing and alien form of development, and that the increased level of noise and activity of the inhabitants of the site would intrude upon the peaceful nature of the location, harming the tranquillity of the countryside. The site is identified on plan 3 appended to this report.
- 3.4 Furthermore, whilst the Inspector concluded that there was a need to accommodate a temporary workforce within a reasonable distance of the site used for strawberry

growing, she was not convinced that the proposal was fully justified due to the fact that the appellant had failed to consider whether there were any other alternative solutions. Without any such special justification, the Inspector concluded that a development that would seriously damage the character and appearance of the countryside was unacceptable.

- 3.5 NC2004/0902/F - Proposed sewage treatment plant and pumping station - Refused 12/05/2004 and dismissed on appeal.
- 3.6 NC2007/1801/S - Proposed general purpose storage building for the housing of irrigation equipment at Arrow Fisheries site- Prior approval required - 06/07/2007. Concerns were expressed that the site was within the flood plain. Further information was required but not received and so this application is deemed to have lapsed.
- 3.7 DCNC2008/0155/F - Proposed use of land for the siting of seasonal agricultural workers accommodation (caravans and pods), construction of amenity building and associated works at The Fisheries, Elm Green, Brierley Court Farm - Refused 07/05/2008
- 3.8 The application was refused for the following reasons:
 1. The need for this development is dependent upon the use of the land at Brierley Court Farm for soft fruit production under polytunnels. At the time at which this application has been determined, no planning permission exists for the siting of polytunnels on the land, and those which are currently on the site are subject to enforcement proceedings. In the absence of any lawfully sited polytunnels, the long term use of the land for the production of soft fruit is not assured and therefore the siting of 576 caravans, accommodation pods, service pods and an amenity building cannot be justified. Accordingly the proposal is contrary to Policy H8 of the Herefordshire Unitary Development Plan.
 2. The site lies within an area defined by the Council's Landscape Character Assessment as Riverside Meadow. In the absence of an overriding need for the accommodation, the proposal has an unacceptably adverse visual impact which will detract from the character of this landscape particularly by virtue of the introduction of 576 caravans, accommodation pods and service pods and a large amenity building into a landscape characterised by its open nature and absence of built structures. The proposal is thereby contrary to Policy LA2 of the Herefordshire Unitary Development Plan.
 3. In the absence of an ecological survey of the site, the local planning authority is unable to assess the impact of the proposal on its ecology, whether it will affect any recognised protected species and if so what mitigation strategies will be employed to ensure its acceptability. As a result the proposal is contrary to Policy NC1 of the Herefordshire Unitary Development Plan.
- 3.9 DCNC2008/0167/F - Retention of sewage treatment plant - Refused 14/05/08
- 3.10 Following the commencement of unauthorised works to construct an amenity building and siteworks for a permanent seasonal worker caravan site in March 2004 and refusal of planning applications in respect of these works on 12th May 2004, the Council was granted an interim injunction at Hereford County Court to prohibit further works commencing on the site. On the 21st May 2004 the High Court granted the continuance of this injunction.

Following this injunctive action, three enforcement notices were served in respect of the unauthorised development. These notices and the refused planning application were later to be the subject of an appeal, which after a number of determinations were dismissed by the Secretary of State.

Whilst the planning appeal process was ongoing, S & A Property Ltd sought leave to appeal the High Court Injunction on three occasions in the later half of 2004, at all hearings their leave to appeal was refused. Furthermore on 23rd June 2005 the company were successfully prosecuted for breaching the terms of the injunction by installing windows in the amenity building. The Judge ordered the windows to be removed and the defendant to pay a fine of £25,000 and the company director £40,000, plus costs of £11,000.

With their appeals against the enforcement notices and planning refusals dismissed, S & A returned to the Court of Appeal in February 2008 to seek an injunction prohibiting the Council enforcing the enforcement notices on the grounds that such actions would be contrary to human rights. This application was dismissed.

4. Consultation Summary

Statutory Consultations

Natural England

- 4.1 Consider significant effects on the SAC to be unlikely. However, given the unfavourable condition of the River Lugg and the sites hydrological connections to it, recommend the production of a Habitat Regulations Assessment screening report to formally assess the likelihood of any significant effects on the SAC.

A Habitat Regulation Assessment has been completed. It has found that there will be no significant effect on the SAC as a result of this proposal.

English Heritage

- 4.2 Has commented both in its capacity in relation to the historic built environment and that of archaeology. Their comments in relation to each are as follows:
- 4.3 Historic Buildings Inspector - Raises no objection to the proposal and advises that the application should be determined in accordance with national and local policy guidance, and on the basis of specialist conservation advice.
- 4.4 Inspector of Ancient Monuments - Considers that the proposal will affect the landscape setting of Ivington Camp and that it would have a dominant effect upon the landscape setting of Ivington Camp. English Heritage recommends that if the local planning authority is minded to approve the application that mitigation to remove a very high proportion of the visual impact of the scheme is carefully designed.

Comments on amended proposal – maintains original comments.

Environment Agency

- 4.5 Raise no objection to the proposal. The Agency is satisfied that the sewage treatment plant has sufficient capacity to deal with the proposed occupancy levels and the site

has a 'consent to discharge' which was granted in May 2005. A condition is recommended to ensure that surface water run-off shall be limited to the relevant Greenfield run-off rate in accordance with the submitted Flood Risk Assessment. This is included at condition 7 of the recommendation of this report.

Comments on amended proposal – no further comments (subject to minor changes on condition wording).

River Lugg Drainage Board

- 4.6 Raise no objection to the proposal as it will have no direct effect on its interests or operations, nor will it affect watercourses under the Board's operational control. A condition relating to the management of surface water drainage is recommended.

Internal Council Advice

4.7 Transportation Manager

Remains concerned about pedestrian traffic between the site and Leominster. Despite the welcome provision of buses, there will still be many people walking to and from Leominster. Any assemblage of 1000 people will have travel needs outside the times the buses operate, and to potentially different places.

Given the unfortunate fatality on the B4361, there is still a need to improve the pedestrian route between the site and Leominster. A detailed survey would be necessary to confirm exactly where improvements are required, depending on the condition of the route at the time the permission is granted.

4.8 Conservation Manager

- 4.9 Historic Buildings - Listed buildings are sufficiently remote and there will be no visual harm to their immediate setting. No objection.

- 4.10 Archaeology - The new location of the 'seasonal workers accommodation site' is very close to where significant Roman and other remains were found previously, and also close to areas of high potential for medieval / post medieval finds at Brierley Court. Therefore, there may be issues regarding damage to below ground archaeology here, and more information about the sensitivity of the site is required.

- 4.11 Ecology - No objection to the proposal subject to the imposition of conditions.

- 4.12 Landscape - The Landscape and Visual Impact Assessment submitted with the application is fair and accurate and is carried out in accordance with recognised guidance and good practice. The assessment identifies an impact on the character of the landscape and it is therefore reasonable to secure some form of mitigation.

It is not considered that the impact of the development is sufficient reason to refuse the application. However, the visibility of the site from the west is an area that needs a degree of attention but is not fully resolved by the landscaping proposals. Reinforcement of existing hedgerow boundaries and the planting of additional standard trees will be required.

Concerns regarding the future of the Poplar plantation to the north of the site have been addressed through the submission of a Woodland Management Plan. This is

important as it currently provides an adequate screen between the site and the southern edge of Leominster.

- 4.13 Environmental Protection Manager - No objection subject to the imposition of a condition to require the submission of details of any external lighting.
- 4.14 Public Rights of Way Manager - The proposal would not appear to significantly affect the use and enjoyment of the various public rights of way from which views across the site are available.

The proposed planting to mitigate the impact on the public rights of way will take time to mature and there will continue to be moderate visual impacts. However, this is not significant and there is no objection to the proposal.

- 4.15 Land Drainage Engineer - Suggests that the additional hardstanding will produce additional surface runoff volume and this will need to be attenuated to accommodate the 1 in 100 year +20% storm event. Further information is required about the type of attenuation storage that is proposed. This is addressed by condition 7 proposed in the recommendation of this report.

5. Representations

- 5.1 Leominster Town Council - Raise no objection but suggest that the accommodation and community building should be operational in the first season.

Comments on amended proposal – Recommends approval subject to conditions relating to overall capacity, restructuring the number of people in each pod, the provision of some en-suite facilities, and wider controls on showers and toilet facilities.

- 5.2 Arrow Valley Residents Association (AVRA) via its agent (DPDS Consulting) - Object to the application on the following grounds:

- The application is flawed and incomplete
- Lack of an Environmental Impact Assessment
- Adverse landscape impact
- No proof of need for the accommodation
- Considers that the Council's consideration of the application flawed and intend to seek judicial review if approved.

The objection submitted by AVRA also includes a 170 signatory petition. These letters and the petition are retained on file and are available for public inspection.

Comments on the amended proposal – The enforceability of conditions and the unilateral undertaking in specific relation to landscape mitigation are questioned given the applicant's expressed intention to sell the land, including the Poplar plantation, and lease parts back. The comments otherwise remain unchanged from the original submission.

- 5.3 Leominster Civic Society - Object to the application on the following grounds:

- That it will adversely affect the landscape
- The proposed land use would waste large areas of agricultural land
- The proposal is unsustainable

- The development does not provide suitable employment opportunities for the County's teenagers
 - It will damage small businesses dependent upon tourism
 - Highway safety issues both in terms of high volumes of traffic and as a hazard for site workers walking along the road
- 5.4 CPRE - Object to the application. Concern is expressed about the scale of the proposal and that it will be out of character with the character of the agricultural rural scene. They also comment that the proposal is likely to give rise to traffic problems.
- 5.5 Campaign for Polytunnel Control - Object to the application. The proposal will be detrimental to the residential amenities of residents of Brierley and that residential development on this scale would not normally be permitted.
- 5.6 39 letters of objection have been received in response to the public consultation process. In summary the points raised are as follows:
- Adverse landscape impact
 - Unnecessary use of high quality agricultural land
 - Permanent residential development of this nature and at this scale is not appropriate in a rural area - the proposal equates to a new town
 - The business could quite readily take place on brownfield or industrial land
 - The site of the old hop buildings should be used to accommodate temporary workers
 - Nothing has changed since the Inspector's decision to dismiss the appeal in 2005
 - Increased pressure on local services
 - Concerns about highway safety
 - The proposal will not have the significant economic benefits suggested by the applicant
 - The scale of the accommodation required does not equate to the need demonstrated on other sites in the county.
 - There are no details of the community building. The application is therefore incomplete
 - The proposal will damage the local tourism economy
 - If permitted the development would be capable of accommodating twice as many people. Conditions to regulate this would be unenforceable
 - Fear of crime and intimidation
 - Lack of an Environmental Impact Assessment
- 5.7 Eight letters of support have been received. In summary the points raised are as follows:
- The applicant has made every effort to consult with neighbours and stakeholders
 - The plans include landscape mitigation, which requires significant investment
 - Labour requirements must be accommodated on site due to a lack of low cost housing in the locality
 - The company makes a significant contribution to the local economy and uses local businesses
- 5.8 Two non-committal letters have also been received. They ask that if the committee is minded to grant permission, that it thinks carefully about the conditions that it imposes

and ensures that they are monitored and robustly enforced. One letter suggests that the colour of the pods should be the subject of a condition.

- 5.9 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. Officer's Appraisal

- 6.1 The Council has issued a Screening Opinion as to whether the proposal constitutes EIA (Environmental Impact Assessment) development. The Screening Opinion concludes that the proposal does not constitute EIA Development and therefore an Environmental Statement has not been requested. This is in accordance with the First Secretary of State's conclusion in his letter of 29th December 2004 in relation to the earlier appeal where he directed that the development for which permission was sought was not EIA development. This proposal is not so significantly different in terms of its scale or effects to warrant any different outcome.

- 6.2 In determination of this application the main issues would appear to be as follows:

- The justification for residential accommodation in the countryside
- The impact on visual amenity and character of the area, including upon the Scheduled Monument
- Ecological issues
- Highway safety
- Residential Amenity

Justification for Accommodation in the Countryside

- 6.3 The normal application of planning policies would preclude the granting of planning permission for the extent of development proposed in this application in the open countryside. The application is however for seasonal agricultural workers and should be considered accordingly. In determining the appeal in 2005 the Inspector stated that:

"...it is clear that the Appellant relies upon a very large temporary workforce, the size of which peaks from mid May to mid July..."

- 6.4 However, one of the main criticisms levelled by her was that the applicants were operating other sites without the need for on-site accommodation (Wickton and Wharton) and had not considered any other options for providing accommodation for workers.
- 6.5 In response to this the applicant's agent has prepared a supplementary document that relates to the operational need and justification for on-site workers accommodation. The report advises that the applicant has undertaken and continues to conduct regular reviews of local property agents' databases, but these rarely reveal any suitable properties.
- 6.6 The report goes on to suggest that, notwithstanding the lack of availability of suitable properties, it will often be the case that properties will require planning permission for multiple occupational use. Reference is made to an application made in 2002 to use a former nursing home to house seasonal workers. This was refused on amenity grounds.

- 6.7 Enquiries were also made about the possibility of using land at Moreton Business Park at a similar time. The site became unavailable to the applicant and has since been designated as land with a commercial use in the adopted Unitary Development Plan.
- 6.8 Your officers consider that the applicant's agents' assessment of the situation is fair and accurate. The business employs 100 permanent staff and relies on large influxes of seasonal workers. The numbers identified by the applicant are significantly less than those considered by the Inspector at the time of the appeal in 2005, primarily due to the switch to table top growing which is seen to be more efficient. The number of workers required were not in question in 2005 and there is no evidence to suggest that workers will be employed anywhere other than on the application site.
- 6.9 Your Officers understand that the applicant recently undertook a recruiting campaign in the local area with advertisements in local newspapers and job centres. It is understood that this resulted in just 20 enquires. Therefore the applicant seemingly has little option but to rely on seasonal labour recruited mostly from Eastern European Countries under the Home Office approved Seasonal Agricultural Workers Scheme.
- 6.10 There are not large areas of land immediately available to the business for this purpose. The only area of any significant size within reasonable proximity to the application site is land that is as yet undeveloped on the Leominster Enterprise Park. This is allocated for commercial use in the Unitary Development Plan. The applications for change of use to dwellings in multiple occupation will often give rise to objections and refusal of planning permission.
- 6.11 It is therefore concluded that the need for accommodation in this location is justified and that the applicant has demonstrated any reasonable satisfaction that there are no alternative options for housing such a large workforce, even in a dispersed fashion, within the local area. On the basis of the evidence submitted your officers conclude that the amended proposal (i.e. for 500 rather than 1000 workers) continues to justify the need for on-site accommodation due to both the lack of reasonably available alternative sites and the operational requirement of the company.

Landscape Impact

- 6.12 The site is not located within a landscape with any national designation and is characterised as Principal Settled Farmland in the Council's Landscape Character Assessment, a landscape that it describes as being resilient to change.
- 6.13 Almost without exception, the letters of objection received express concern that provision of 500 pods to accommodate workers is tantamount to the creation of a new village in the open countryside, is contrary to policy and will be detrimental to the appearance and views across the landscape for some distance. These views remain unchanged to the scheme in its amended form.
- 6.14 The Landscape Officer has fully considered the Landscape and Visual Impact Assessment submitted with the application and carried out in accordance with adopted guidelines. He acknowledges that the proposal will have some visual impact, as indeed does the submitted Landscape Assessment, but also highlights the fact that the area does not have any landscape designation. He is satisfied that the measures proposed are sufficient to mitigate the impact subject to appropriately worded conditions.

- 6.15 The most important part of the landscape mitigation scheme in specific relation to this application relates to the retention, replanting and reinforcement of existing hedgerows across the applicant's land. The landscape appraisal advises that all hedgerows will be retained and maintained at a height of 4 metres. In areas where they are in need of replanting or reinforcement, this will be undertaken with a mix of native species including Field Maple, Hazel, Hawthorn, Common ash and Blackthorn at densities of three rows (0.45 metres apart) at 0.3 metre centres. The case officer and Council's Landscape Officer have identified in their assessment of the site, hedgerows along the western boundary that are in particular need of such replanting and reinforcement.
- 6.16 Additionally the mitigation strategy includes the long-term management over a 30 year period of the Poplar plantation with its expressed intentions being to:
- Create a wet and broadleaved woodland
 - Diversify tree species and encourage the creation of new habitats
 - To filter views of the site from elevated positions on the southern fringes of Leominster
 - Enhance the setting and ecological value of the river corridors
 - Enhance the visual and landscape quality of the woodland, particularly where the public have access through or near it.

The Management Plan has three phases. The first of these sees a central core of the Poplar plantation being retained, with areas to its north and south being replanted with a combination of broadleaf and wetland tree species as appropriate, shrubby planting, and the creation of some grassland areas. The first phase covers 15 years, giving new planting time to become established whilst providing continuing screening of the site over the course of the ten year temporary permission proposed. The area of Poplars is further reduced in Phase 2 and eventually they are completely replaced by Phase 3, taking the Plan to its 30 year conclusion.

- 6.17 The plantation is in itself a rather alien feature in the landscape. A detailed plan that secures its replanting with native species and its active management over a 30 year period is considered to represent a positive enhancement of the landscape and the biodiversity of the local area. The resulting woodland would exist as a feature in the landscape well beyond the change of use that this application proposes, particularly as it is anticipated that any planning permission is granted for a limited period.
- 6.18 See para 1.8.
- 6.19 The existence of the Scheduled Ancient Monument at Ivington Camp and the impact upon it is also assessed. The comments from English Heritage acknowledge that there will be an impact its setting and refer to the need for a carefully designed mitigation strategy. The impact of this proposal should be assessed cumulatively with the siting of polytunnels on the surrounding land. In the report relating to the polytunnels, a conclusion has been drawn that the combined effect of the proposed landscape mitigation measures and the omission of polytunnels from the upper slopes of rising ground to the south of the site bounding Brierley Wood and Ivington Camp are sufficient to allow that application to be recommended for approval. The same mitigation strategy is considered to minimise the impact of this proposal on the setting of the Scheduled Ancient Monument.
- 6.20 It is noted that in dismissing the appeal in 2005 the Inspector highlighted the fact that the regimented layout of the proposed accommodation at that time would result in a harsh, imposing and alien form of development, and that the increased level of noise

and activity of the inhabitants of the site would intrude upon the peaceful nature of the location, harming the tranquillity of the countryside.

- 6.21 This proposal can only be acceptable on the basis that planning permission is granted for the polytunnels, as they provide the justification for seasonal workers accommodation. If the former are considered to be acceptable in accordance with the officer's recommendation (DCNC2009/0167/F), then the visual impact of allowing a change of use of the land to site the pods should be considered cumulatively. Similarly the impact upon the peace and tranquillity of the countryside has to be assessed in the light of the same.
- 6.22 This application is fundamentally different to the scheme dismissed on appeal as it would be surrounded by polytunnels (assuming that the application for them is approved). The site is different, as can be seen from the plan appended to this report. This proposal includes a reasoned justification for the accommodation, as discussed in paragraphs 6.3 to 6.11 of this report, and a landscape mitigation strategy and management plan. The combination of these factors leads the Council to a conclusion that the scheme is different to that dismissed on appeal in 2005 and therefore it is entitled to come to a different conclusion if it so wishes. It is acknowledged that there will be some impact upon the tranquil nature of the area, but if the proposal is seen to be justified in other respects, this impact can be mitigated through a condition requiring the submission and implementation of a management plan for the site.
- 6.23 It is therefore concluded that the visual impact and impact upon the character of the countryside are not sufficient reasons to warrant the refusal of this proposal. The submission and implementation of a landscape management plan is required by condition in relation to the application for the polytunnels and, should that application be approved, it is not considered necessary to replicate the same condition here as the scheme will benefit from the improved landscaping that results.

Ecological Issues

- 6.24 Many of the issues relating to the ecology of the site are inter-linked with the landscape improvements proposed through the woodland management plan referred to above. Its implementation and completion will represent a long term improvement to the biodiversity of the area and is something that would be unlikely to be achieved in isolation. Its inclusion is therefore considered to represent significant mitigation in terms of ecological enhancement as well as landscape improvement.
- 6.25 The Habitats Regulations Assessment (HRA) Screening Report has been completed and it concludes that there will be no impact on the River Lugg or River Wye SAC due to their distance away from the application site.

Highway Safety

- 6.26 Concerns about highway safety arise not from traffic movements in relation to the business (as these have minimal impact on the local area because of the service track that gives direct access onto the B4361) but from the significant numbers of workers on the site walking along the road into Leominster.
- 6.27 The Transportation Manager has referred to a fatal accident involving a pedestrian and on the basis of this recommends that there is a need for a detailed survey from which further improvements could be made to secure pedestrian safety.

- 6.28 This is considered to be entirely reasonable and necessary as the development will result in pedestrian movements along the B4361 that would not occur without the development. A condition requiring the completion and submission of a survey to the local planning authority, and then the completion of improvement works within a specified period is seen as an appropriate way to address this particular matter.

Residential Amenity

- 6.29 The proposed units of accommodation are proposed to be located within the wider context of the proposed polytunnel development. The major concentration of residential properties in the locality are to be found in Brierley, approximately 400 metres to the east of the eastern-most part of the application site. It is considered that with the appropriate management of the site, subject to condition, to take account of music, lighting and other activities on site there should be no unreasonable adverse impact on the amenity of nearby residents.

Other Issues

- 6.30 The comments from the Environment Agency and the Council's own Land Drainage Engineer highlight the potential for additional surface water runoff to be created by the proposal. Accordingly a condition to limit this is recommended.

Summary

- 6.31 Your officers consider that the applicant has produced a reasonable and well-balanced case to justify the accommodation proposal. Considerable information has been provided to identify the reasoning why temporary or seasonal workers are required for the operation of the applicant's proposed soft fruit operation, and why alternative accommodation is not readily available. To this extent the current application contrasts significantly with previous proposals.
- 6.32 As mentioned earlier in this report the application has been submitted in accordance with the applicant's wider proposals as set out in its evolving Development Plan. The intention is to consolidate their operations in general, and to focus development at Marden and Brierley in particular.
- 6.33 Planning applications are to be determined in accordance with the development plan unless there are other material considerations. For the purposes of clarity, Section 38-(6) of the Town and Country Planning Act 1990 reads 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.'

- 6.34 Whilst the development proposed represents significant development in the countryside it reflects the special circumstances that the applicant faces in sourcing and accommodating the number of seasonal workers required to sustain its soft fruit business. Your officers are satisfied that the need for workers has been justified. A locally sourced workforce is not available and the workers brought to the site cannot be accommodated elsewhere, principally due to the numbers that are required. This continues to be the case with the amended proposal.
- 6.35 The proposal (both in its own right and cumulatively with the proposed polytunnel development) will have an impact on the character of the wider open countryside.

These impacts, and proposed mitigation strategies are set out in the submitted Landscape and Visual Assessment documents. However given the context of the application your officers do not consider that these are sufficient to warrant the refusal of the application. Various other studies have indicated that other technical matters can be addressed in a satisfactory way.

- 6.36 On balance, and subject to appropriate conditions, the proposal is considered to be acceptable. Conditions of particular importance are:
- (a) Condition 2 – specifying the total number of persons and/or units of accommodation (and to reflect the amendments to the proposal).
 - (b) Condition 3 – which would require the cessation of the use and restoration of the land in the event that the associated use of adjacent land for polytunnels ceased.
 - (c) Condition 5 – removal of permitted development rights in order to retain control over the number of units of accommodation.
 - (d) Condition 8 – requiring the prior approval of a management plan, and thereafter compliance with its term.
- 6.37 In the event that the application for the polytunnels is refused, the justification for the accommodation site clearly loses significant weight and this application would be recommended for refusal.

RECOMMENDATION

Subject to the completion of the Unilateral Undertaking as submitted by the applicant in accordance with the provisions of Section 106 of the Town & Country Planning Act 1990 in relation to the provision of a Woodland Management Plan, an undertaking not to develop any Raised Crop Protection Structure or Poly tunnel on any other land in their ownership at Brierley other than that applied for and appropriate linkages between the use of land for polytunnels and the use of land for worker's accommodation the officers named in the Scheme of Delegation to Officers be authorised to approve the application subject to the following conditions and any further conditions considered necessary by officers.

1. F21 (Temporary permission (mobile home/caravan)) (10 years)

Reason: To enable the local planning authority to retain effective control over the site and to re-assess the need for on-site workers accommodation and to conform with Policy H7 of the Herefordshire Unitary Development Plan.

2. The occupation of the pods shall be limited to persons employed at Brierley Court Farm, Brierley and shall be limited to providing accommodation for up to 500 workers at any one time, and subject to a maximum number of 250 units of accommodation at any one time.

Reason: Planning permission has only been granted for the farming requirements of Brierley Court Farm and to conform with Policy H7 of the Herefordshire Unitary Development Plan.

3. In the event that the poly tunnel development approved by application (DCNC2009/0167/F) in the opinion of the local planning authority ceases to be

operational the use of land hereby approved shall cease. Subsequent to this and within 12 months of the local planning authority indicating to the applicant that the adjacent polytunnel land has ceased to be operational all buildings and structures on the site shall be removed and the land restored to its former condition.

Reason: The local planning authority would not have granted planning permission for this use unless it was required in relation to the adjoining polytunnel development.

4. Prior to the commencement of development the colour of the accommodation pods and service units shall be agreed in writing with the local planning authority.

Reason: To protect the visual amenities of the area and to ensure that the development conforms with Policy DR1 of the Herefordshire Unitary Development Plan.

5. 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 other caravans or pods shall at any time be placed on the land which is under the control or ownership of the applicant as defined by Drawing No. 1856/29. Those currently located on land lying to the west of the application site shall be permanently removed within 12 months of the date of this permission.

Reason: In order that the local planning authority can consider the visual impact of the addition of any further temporary seasonal workers accommodation in the interests of visual amenity and to conform with Policy LA2 of the Herefordshire Unitary Development Plan.

6. No development shall commence until the applicant has submitted to and has been approved in writing by the LPA a survey of the B4361 between its junctions with the companies service access and Southern Avenue, Leominster. The survey shall include details of:

- a) the alignment of the road
- b) the risks to pedestrian safety associated with the alignment of the road
- c) the measures necessary to overcome the identified risks to pedestrian safety.

No units of accommodation hereby approved shall be occupied prior to the completion of the measures set out in c) above of this condition. To this effect the applicant will supply to the Council details of both the completion of the works necessary for pedestrian safety and the date on which the first unit of accommodation is occupied.

7. All surface water shall be limited to the relevant Greenfield run-off rate, with attenuation for the 1% plus climate change storm event, in accordance with the Flood Risk Assessment dated July 2009. Details of the methods to be introduced for attenuation storage shall be submitted to and approved in writing by the local planning authority before the use hereby approved is first commenced.

Reason: To prevent flood risk and ensure sustainable disposal of surface water run-off and to conform with Policy DR7 of the Herefordshire Unitary Development Plan.

- 8. Prior to the commencement of the use hereby approved a management plan for the operation of use (to include maintenance of buildings and common areas, litter collection and disposal, the control of amplified music, lighting, car parking arrangements) shall be submitted to and approved in writing by the local planning authority. The operation and use of the site shall thereafter be in accordance with the approved management plan.**

Reason: In the interests of amenity of nearby residents and to ensure compliance with Policy E13 of the Unitary Development Plan.

9. Amended Plans 14 August 2009

Informatives:

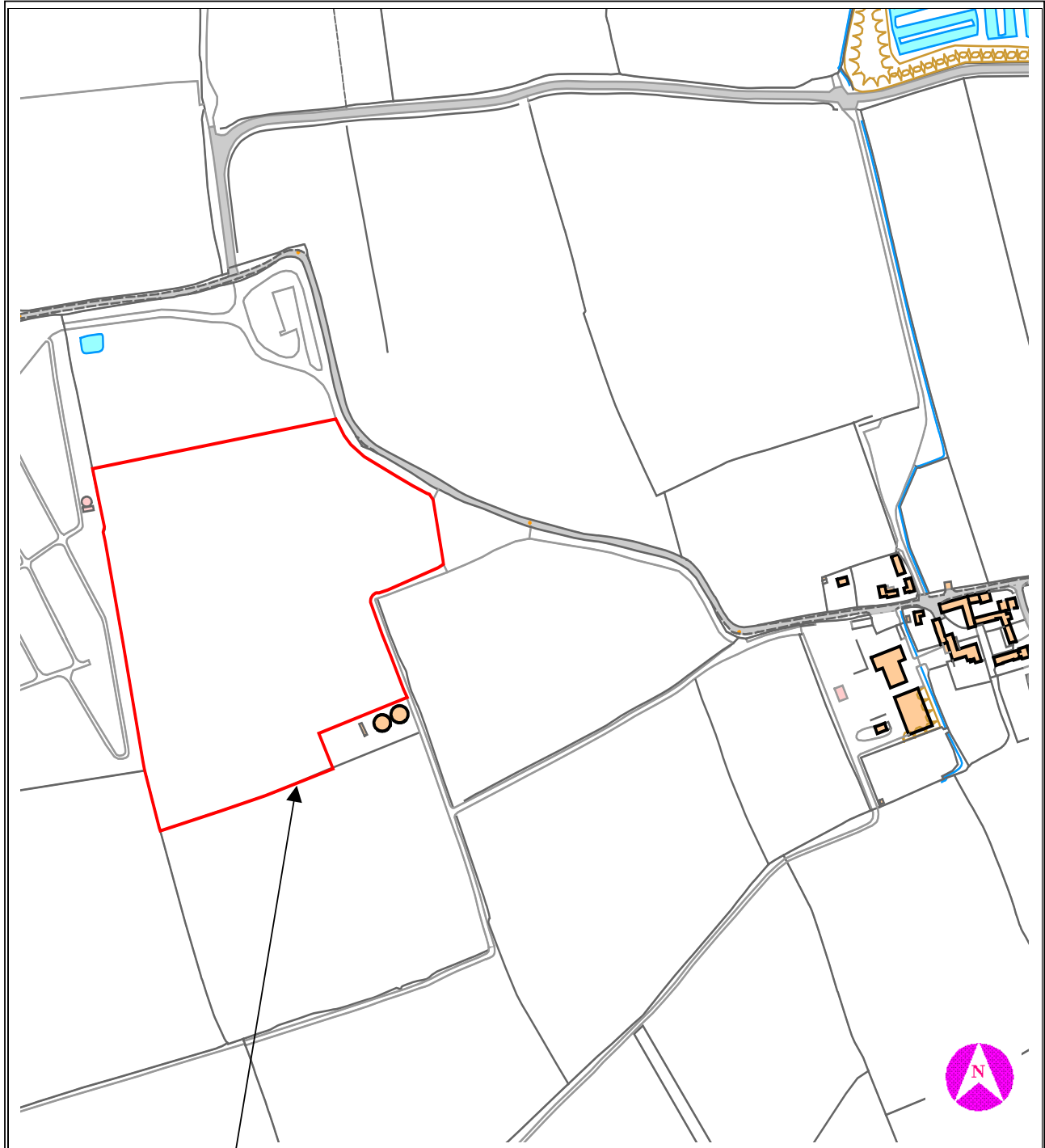
- 1. N15 - Reason(s) for the Grant of Planning Permission**
- 2. N19 - Avoidance of doubt - Approved Plans**

Decision:

Notes:

Background Papers

Internal departmental consultation replies.



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APPLICATION NO: DCNC2009/0168/F

SCALE : 1 : 5001

SITE ADDRESS : Land at Brierley Court Farm, Brierley, Herefordshire HR6 0NU

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