

**MINUTES of the meeting of Planning Committee held at The Council Chamber, Brockington, 35 Hafod Road, Hereford on Friday 23 October 2009 at 10.00 am**

**Present:** Councillor TW Hunt (Chairman)  
Councillor RV Stockton (Vice Chairman)

Councillors: WU Attfield, ACR Chappell, PGH Cutter, H Davies, GFM Dawe, DW Greenow, KG Grumbley, JW Hope MBE, B Hunt, Brig P Jones CBE, G Lucas, RI Matthews, JE Pemberton, DC Taylor, WJ Walling, PJ Watts and JD Woodward

**In attendance:** Councillors PJ Edwards, JP French, RC Hunt, JG Jarvis, PJ McCaull and SJ Robertson

**32. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors KS Guthrie and PM Morgan.

**33. NAMED SUBSTITUTES (IF ANY)**

The following named substitutes were appointed:-

Councillor KG Grumbley for KS Guthrie.

Councillor Brig P Jones for Councillor PM Morgan.

**34. DECLARATIONS OF INTEREST**

In accordance with the Planning Code of Conduct and criteria for public speaking, Councillor SJ Robertson declared a prejudicial interest in agenda item 17 (DCCW0009/1683/F DCDC/091945/G - removal of condition 7 of planning permission DCCW2004/0209/F, proposed dwelling at 2 Lower Orchards, Burghill, Hereford ) spoke for three minutes after the Officer's presentation, then left the meeting.

**35. MINUTES**

**RESOLVED: That the Minutes of the meeting held on 7th August, 2009 be approved as a correct record and signed by the Chairman, subject to the penultimate paragraph in Minute No. 27 (DCNC2009/0435/CD & DCNC2009/0436/L - proposed removal of existing minor extensions, internal alterations and new extension to form offices and community rooms for rent at Grange Court, Pinsley Road, Leominster) being replaced by the following;**

Councillor RC Hunt, one of the Local Ward Members, said that the decision to defer consideration of the application had proved to be a good one because it had given time for the applicants to arrange a public meeting where the project had been fully explained and all the concerns addressed. The black pine, which had already had to have a number of boughs removed and needed further work, would be replaced with a new one. Although the scheme required the removal of most of the Victorian staircase, part of it would be retained and

incorporated into the new scheme and photos of it would be on display in the building. Steps would also be taken to preserve mediaeval stonework forming the 'grotto' situated in the grounds, into the scheme. He had concerns that Pinsley Road should not be used for access purposes because it was too narrow. Careful thought should be given to access and the delivery of materials via Church St when the alterations were being carried out. Overall he felt that the proposals could now be welcomed because all the concerns had been addressed about the building and grounds, together with those raised by local residents.

Councillor JP French, a Leominster Ward Member also felt that the recent meeting had gone a considerable way to more fully explain the proposals. The local residents who would be most affected had been given the opportunity to speak and twelve pages of information had been provided to answer concerns. An explanation had been given about the condition of the black pine, a proposed 5 metre replacement, landscaping, tree planting, the creation of 21 new jobs and the provision of better facilities for visitors and tourists. The proposals would help to ensure the future of the building. Brigadier P Jones, a Leominster Ward Member also now welcomed the scheme because of the assurances given and the fact that it would bring the building back into use, and help to provide employment and tourism. Councillor PJ McCaull, one of the Local Ward Members agreed with the comments that had been made. He felt that the layout and orientation of the scheme would minimise its impact on adjoining residents once the work was completed and although the loss of the black pine was regrettable it did require major surgery and a suitable replacement was to be welcomed. The timber from the tree had also been earmarked to be used within projects in the Town if the proposals were approved.

**36. CHAIRMAN'S ANNOUNCEMENTS**

The Chairman announced the arrangements for the meeting.

**37. NORTHERN AREA PLANNING SUB-COMMITTEE**

**RESOLVED: That the report of the meetings held on 26th August and 23rd September, 2009 be received and noted.**

**38. CENTRAL AREA PLANNING SUB-COMMITTEE**

**RESOLVED: That the report of the meetings held on 19th August, 16th September and 14th October, 2009 be received and noted.**

**39. SOUTHERN AREA PLANNING SUB-COMMITTEE**

**RESOLVED: That the report of the meetings held on 5th August, 2nd September and 30th September, 2009 be received and noted.**

**40. DCCE0009/1595/F DCCE/091717/F - CONSTRUCTION OF A FLOOD RELIEF CULVERT FROM THE YAZOR BROOK AT CREDENHILL TO THE RIVER WYE, INCLUDING AN OFFTAKE WEIR ADJACENT TO CREDENHILL COMMUNITY CENTRE AND AN ENERGY DISSIPATION CHAMBER AND OUTFALL TO THE RIVER WYE ON LAND AT OLD WEIR FARM. AT LAND BETWEEN THE YAZOR BROOK ADJACENT TO CREDENHILL COMMUNITY CENTRE AND THE NORTH BANK OF THE RIVER WYE, SOUTH OF OLD WEIR FARM**

The Principal Planning Officer presented a report about an application for a new flood alleviation scheme to assist with the Edgar Street Grid development and which was aimed at improving the protection for some 115 homes and businesses in Hereford. The scheme was an essential part of the plans to improve the infrastructure in the city to provide for new leisure attractions, jobs, homes and shops. The aim was to significantly minimise the threat to those areas that were subject to regular flooding, particularly in the vicinity of the A49 at Edgar Street, the A438 at Whitecross Road, Merton Meadow car park the County Hospital car park, Millbrook Street and Nolan Road. The scheme involved a two-metre diameter underground culvert, following the natural contours of the landscape and would divert water from the Yazor Brook at Credenhill to the River Wye, when water levels reached a pre-determined trigger point. The water would travel through the mile-long culvert before joining the River Wye to the south east of Old Weir Farm and water flow would be digitally monitored.

He reported on the receipt of the following since the report had been prepared:-

**ADDITIONAL REPRESENTATIONS**

Stretton Sugwas Parish Council raise no objection to the minor amendment to the site area but maintained their objection to the elements of the design south of the A438. They suggested that the design through the dingle should be a more natural solution with flows baffled with boulders and new tree planting including boulders on the River Wye embankment.

They commented that this would be cheaper, less engineered and more natural solution that will cause less disruption to farming operations during construction and reduce HGV movements on the A438.

Councillor RI Matthews, the Local Ward Member, had some concerns about access and egress to the site; the impact of the scheme on The Weir and Weir Farm and how effective the scheme would actually prove to be in alleviating flooding. He also asked about the potential dangers of contamination to the water course from the adjoining land. He also referred to the concerns raised by Stretton Sugwas Parish Council and suggestion that the scheme was over-engineered and that there were cheaper and more practical options available. Councillor GFM Dawe suggested that there was a need to re-visit the scheme in view of the comments and concerns that had been received. Councillors H Davies and JD Woodward noted the benefits that would be offered by the scheme but had reservations that flooding could be increased at Greyfriars, Wye Terrace and other areas.

The Principal Planning Officer outlined the considerable research that had been undertaken by the applicants who had evaluated various alternatives and studied the impact in numerous locations. Extensive research had been undertaken into historical water flows and depths, and several worst case scenarios had been analysed using computer modelling. It was anticipated that the scheme would change the high flood-risk areas from a one in twenty year risk to one in a hundred year or one in a thousand year risk rating. He described the benefits that would be provided in reducing flooding along the course of the Yazor Brook in the City and the monitoring and remedial work that would be provided for, should there prove to be any contamination of sediments

deposited by the outfall. Because of the route that the pipe would follow and the landscaping near the outfall, there would be minimal effect on the historic buildings and landscape. The alternative solution suggested by the Parish council had been considered but was discounted due to adverse ground conditions and lack of ground stability which would have necessitated the requirement for significant engineering works.

Having considered the different aspects of the scheme, the Committee noted the overall benefits and improvements that it would bring and decided that it should be approved, subject to no objections being received from the Environment Agency.

**RESOLVED THAT:**

**the Environmental Statement and associated documents including the consultation and other responses received on the Environmental Statement and the associated documents have been taken into account in making this decision:**

**Subject to no further objections raising additional material planning considerations by the end of the consultation period, 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 A01 Time limit for commencement (full permission)**
- 2 C01 Samples of external materials**
- 3 C06 Stonework laid on natural bed**
- 4 D02 Approval of details**
- 5 E03 Site observation – archaeology**
- 6 E04 Submission of foundation design**
- 7 G01 Earthworks**
- 8 G02 Retention of trees and hedgerows**
- 9 G04 Protection of trees/hedgerows that are to be retained**
- 10 G10 Landscaping scheme**
- 11 G11 Landscaping scheme – implementation**
- 12 G14 Landscape management plan**
- 13 H21 Wheel washing**
- 14 H27 Parking for site operatives**
- 15 No development shall commence until scaled plans of the temporary construction access points on the A438, the engineering details of the culvert construction under the A438 and the means of securing safe crossing of the A438 by construction traffic during the course of the development have been submitted for the approval in writing by the local planning authority. The development shall be carried out in accordance with approved details.**

**Reason: In the interest of highway safety and to confirm with the requirements of Policy DR3 of the Herefordshire Unitary Development Plan.**

- 16 Prior to commencement of the development a construction traffic management plan including a scaled plan identifying the principle route of construction traffic including the route of all traffic associated with the off-site waste disposal shall be submitted for the approval in writing of the local planning authority. Development shall be constructed and waste material disposed of in accordance with the agreed traffic management agreement.**

**Reason: In the interests of highway safety and to safeguard local amenity and to comply with Policies DR2 and DR3 of the Herefordshire Unitary Development Plan.**

- 17 I16 Restriction of hours during construction.**

- 18 Prior to commencement an Environmental Management Plan shall be submitted for the approval in writing of the local planning authority and shall include measures to minimise the extent of dust, odour, noise, vibration and risk of pollution arising from the construction process as set out, but not limited to paragraphs 13.71 and 14.20 of the Environmental Statement dated July 2009. The construction shall be carried out in accordance with the approved Environmental Management Plan.**

**Reason: To safeguard the residential amenity of surrounding properties and to comply with Policy DR2 of the Herefordshire Unitary Development Plan.**

- 19 K2 Nature Conservation - site protection.**

- 20 I55 Site Waste Management.**

- 21 K4 Nature Conservation Plan – Implementation.**

- 22 The proposed site compounds and temporary haul road shall be in accordance with drawing no. CS02394-TRA-05 Rev P1 and the accompanying briefing notes unless otherwise agreed in writing with the local planning authority.**

**Reason: To safeguard the character and amenity of the locality and comply with Policies DR1 and DR2 of the Herefordshire Unitary Development Plan.**

- 23 Prior to commencement of development, details of the post construction operation and maintenance requirements in the form of a manual including confirmation of the authority/agency with responsibility for future operation and maintenance shall be submitted for the approval in writing of the local planning authority. The Flood Alleviation Scheme shall be operated and managed in accordance with the agreed details and agreement thereafter unless otherwise agreed in writing by the local planning authority.**

**Reason: To minimise flood risk as a result of the Flood Alleviation Scheme failing and to comply with Policy DR7 of the Herefordshire Unitary Development Plan.**

- 24 Prior to the commencement of the development, details shall be provided of the method, location height of waste material to be stored on site and the site for the re-use and/or disposal of waste material off site shall be submitted for**

the approval in writing of the local planning authority. All waste shall be stored and disposed in accordance with the approved details.

Reason: To ensure appropriate storage and disposal of all waste and to comply with policy W11 of the Herefordshire Unitary Development Plan.

**25 I18 – Foul and surface water drainage (Site Compounds).**

**26 Prior to the commencement of the development, the details including scaled plans of the trash screens on the entry weir and security grill on the outfall structure shall be submitted for the approval in writing of the local planning authority. The screens and grills shall be installed in accordance with the agreed details.**

Reason: To safeguard the biodiversity of the site and security of the development and to comply with policies and NC1, DR1 and DR2 of the Herefordshire Unitary Development Plan.

**INFORMATIVES:**

1 HN05 Works within the highway

2 N15 Reason(s) for the Grant of PP/LBC/CAC

3 N19 Avoidance of doubt - Approved Plans

**41. DCCE0009/1942/CD DCCE/092343/CD - NEW SINGLE STOREY HEALTH CENTRE. SECTION OF EXISTING SITE BOUNDARY WALL TO BE REMOVED AND THE REST LOWERED. AT STONEBOW UNIT, COUNTY HOSPITAL, UNION WALK, HEREFORD, HEREFORD, HR1 2E**

The Head of Planning and Transportation said that the applicants had requested that the Committee should not consider the application because they were investigating alternative schemes within the hospital complex. The Committee was agreeable to this request.

**RESOLVED THAT:**

**Consideration of the application be deferred for the time being whilst the applicants are investigating alternative proposals.**

**42. DCNC2009/0167/F - APPLICATION (PART RETROSPECTIVE) TO ERECT FIXED (NON ROTATING) SPANISH POLYTUNNELS OVER ARABLE (SOFT FRUIT) CROPS GROWN ON TABLE TOPS AT BRIERLEY COURT FARM, BRIERLEY, LEOMINSTER, HEREFORDSHIRE, HR6 0NU**

The Principal Planning Officer presented the report of the Head of Planning and Transportation. He reminded the Committee that at a previous meeting the application was deferred on Counsel's advice in order that time could be given for the Officers to consider the additional representations that had been received. The application as originally submitted related to an area of land amounting to 67 hectares of Grade 1 and 2 agricultural land. On 14th August, 2009, an amended application was received which reduced the area to 35 hectares. The revised scheme will mean that the tunnels are to

be fixed permanently in one position rather than rotated as has previously occurred. The planning statement supporting the application advised that there was a willingness to accept a condition precluding the siting of polytunnels on any other field parcels other than those of the application site. He outlined the main points of the application and the views which had been received during the consultation process. He presented the following updates regarding further representations that had been received since the report had been prepared:

### **ADDITIONAL REPRESENTATIONS**

Additional correspondence has been received from Justin Sacks inventor of the LM3 methodology, submitted on behalf of Arrow Valley residents Association (AVRA).

In summary:

1. S&A has failed to rectify previous errors for calculating the local economic contribution of Brierley Court Farm.
2. There is no economic evidence to suggest that the Council should overturn previous decisions rejecting planning permission to S&A's proposals at Brierley Court Farm.
3. S&A has failed to rectify previous errors for calculating the local economic contribution of the farms under consideration.
4. 4My previous two responses have pointed out where S&A has misinterpreted, inadvertently or wilfully, the LM3 methodology and their local economic contribution.
5. The figures S&A continues to present are for their impact as an entire business rather than the impact of Brierley Court Farm only. I have highlighted this error in the previous responses, which S&A has disregarded.
6. Even within S&A's calculation of its overall impact, there remain errors that I have highlighted previously that remain unchanged. For instance, their local spending figures are based on a 'sample of local businesses' rather than their actual suppliers.
7. None of the figures that S&A have submitted in this latest appraisal shed any new light on the economic contribution of Brierley Court Farm to the local economy.
6. There is no economic evidence to suggest that the Council should overturn previous decisions rejecting planning permission of S&A's proposals at Brierley Court Farm.
7. S&A alleges that failure to secure planning permission for Brierley Court Farm would 'force the business to restructure and reduce numbers employed'. There is no economic basis, however, for granting planning permission to a business solely to 'prop up' the business if it relies on production methods considered unacceptable.
8. The Council has already rejected previous planning applications and issued enforcement action, and S&A has presented no new data

concerning Brierley Court Farm that demonstrate why precedent should be overturned in this instance.

9. There is already proof that S&A's restructuring would not necessarily be detrimental to the local economy. The sale of Brierley Court Farm in October 2009 for £3.4 million to a conventional farmer demonstrates that there are other commercially viable uses for land under consideration. The new owner has signalled they will farm Brierley Court Farm conventionally if S&A's planning application is refused.
10. As stated previously, now more than ever, a thorough comparison of options for the land at Brierley Court Farm would be necessary to overturn planning precedent on the basis of business support. Such comparisons may in fact find that S&A contributes less to the local economy than alternative business models.

Correspondence has also been received from Mr Greene as chairman of AVRA. In relation to this application the relevant paragraphs read as follows:

**Ownership** – Brierley Court Farm has been sold. This is fundamental to the way the application is determined in relation to the poplar plantation in particular and the undertaking on not including polytunnels on the other land which will not be in the applicants control. But also in relation to landscaping and habitat management (condition 3 of DCNC2009/0167). The committee report includes a plan showing ownership which DPDS believe to be now incorrect. It is labelled "*land in the ownership of the applicant*" which is clearly incorrect, but it raises the issue of how far the Council has been kept up to date. No consideration at all of the issues raised our DPDS letter of 6<sup>th</sup> October. This has obvious implications for the management agreement for the Poplar Plantation, the restrictions on other land but also conditions generally as DPDS spelt out in the October letter.

**Bias and Consultation** – The failure to understand the consultee's case is demonstrated in para 6.14 and following paras of the report on DCNC2009/0167. The point that AVRA made is that it is not sufficient that there would be economic benefits, but that the Council must understand with some accuracy how great these benefits are before it can balance them against the harm. Those benefits have to be assessed effectively as a net benefit above that which would be achieved by farming without polytunnels.

Furthermore the Council has prepared a Committee report and made recommendations while a document (the revised economic assessment) is still out for public consultation. Since it is accepted that the proposal would have an adverse landscape impact, the economic case and in terms of accommodation would be contrary to policy H7, this must be fundamental to any case to permit the application. Para P62.83 of the Planning Encyclopaedia quotes Webster J that sufficient time must be given to the consulted party to prepare a helpful advice and to for the consulting party to consider it.

Failure to provide the planning obligation under S106 for reasonable consultation.

Condition 3 – Unenforceable because of ownership and because there is no time limit for implementation.



Condition 6 – Impossible to measure whether run off exceeds the stated rate and therefore unenforceable. Works, measures or procedures should be specified.

**Landscape** – leaving aside whether the landscaping offered by the applicant is effective even after 15 years, failure to record that DPDS consider the 15 year landscape assessment period excessive for development which has such extensive effects to consider the reasonableness of a 15 year assessment when the permission is limited to 10 years. It is irrational to base a visual impact assessment on 15 years planting growth for a development with a 10 year life span.

It appears unreasonable to parcel up the land as in paras 4.10 & 6.10. of the report on DCNC2009/1067. A development which can be seen from one type of landscape character will affect that character regardless of whether it is in Principal Wooded Hills, which is not resilient to change, or Principal Settled Farmland, which is.

Correspondence has also been received from AVRA's legal advisors, BrookStreet des Roches LLP. In summary the points it raises in addition to those raised by Mr Greene and Mr Sacks are as follows:

- The Council has not dealt with AVRA's concerns that the application is flawed and incomplete.
- The Council has not acted consistently in relation to enforcement action taken on the site.
- The suggestion by the Council that the initial enforcement action taken in 2007 was to prevent the polytunnels receiving retrospective permission after four years misunderstands the purpose of serving an enforcement notice. The author considers that their purpose is to prevent development that a local authority would not conceive granting planning permission for.
- A further issue arises in relation to the ownership as it would seem that the farm itself is no longer within the sole ownership of the applicant. This has implications on the validity of the Unilateral Undertaking and the proposed conditions.
- The Council has inconsistently reported AVRA's objections by failing to report comments adequately or to consider the issues raised by them.
- Considers that condition 3 is unenforceable due to land ownership issues and a lack of a time limit for implementation.
- Condition 6 is unenforceable as run off rates are impossible to measure.

#### **OFFICER COMMENTS**

It is clear that there is a fundamental disagreement between the applicant and objectors about the application of the LM3 economic model. Notwithstanding this, it falls to your officers to make a judgement based on the information provided.

The economic appraisal has aided officers in making an assessment of the weight to be given to Guideline 1 of the Polyunnel SPD. The reduction in the land take and workers associated with the amended scheme has had an impact on this factor. It remains your officers view that the proposal will have a positive economic impact and that this is an important material planning consideration to which weight has been given when considering the scheme against other factors such as landscape impact.

With regards to ownership issues, the schedules contained within the Unilateral Undertaking not only refer to first and second owners, but also successors in title. Your officers are satisfied that this ensures that its requirements are incumbent upon any future owners. Similarly the conditions are not specific to the applicant and therefore run with the land.

The application has attracted considerable interest from third parties and their representations have been summarised in the report. It deals with all of the relevant issues in details and your officers are satisfied that these have been dealt with comprehensively and in response to the objections received.

The supposition that enforcement notices are served against developments that local authorities would not conceive granting planning permission for is incorrect and there is nothing to suggest that a local planning authority cannot grant planning permission for development on land that it has previously served an enforcement notice on.

There is a need to amend condition 3 to include a time limit for implementation.

### **CHANGE TO RECOMMENDATION**

Condition 3 to be amended to read as follows:

Within three months of the date of this permission, a full habitat management and enhancement scheme (based upon the Outline Landscape and Ecological Management Plan dated December 2008) shall be submitted to and approved in writing by the local planning authority. This shall include mitigation and protection measures for protected species and a timetable for their implementation. The scheme shall be implemented in accordance with the approved timetable and continued thereafter unless otherwise agreed in writing by the local planning authority.

In accordance with the criteria for public speaking, Mr Greene and Mrs Jackson of AVRA spoke against the application and Mr Snow spoke in favour on behalf of the applicants.

Councillor RC Hunt one of the Local Ward Members said that the scale and massing of the original proposal had proved to be very controversial locally because of its detrimental visual impact for a considerable distance from the site. He felt that the considerable reduction of the polytunnels and accommodation coupled with screening and the removal of the plastic sheeting for four months of the year was welcome. It was essential however that if approval was granted, all the conditions were properly enforced. Councillor PJ McCaul the other Ward Member also welcomed the reduction and attempt to locate the operation in the lowest part of the site rather than on higher ground. He noted that the method of fruit production was necessary to meet demand but felt that the process was equally suited to a concrete surface and questioned the need to use prime agricultural land which would be better used for the production of traditional crops. He also agreed that the conditions needed to be properly enforced.

Councillor JP French, one of the Leominster Ward Members, also felt that the course of the application had proved to be lengthy and controversial. She welcomed the approach of the new company and outlined the problems that had previously arisen with issues around the accommodation for seasonal workers and the hours worked. Agriculture was relied upon to preserve the countryside but was also a place of work. She also welcomed the reduced land and the proposed tree screening. She requested that condition No.2 should also require the polythene to be cleared from the land between

each growing season during the period 31st October to 1st March. She also welcomed the proposals for greater pedestrian safety. A friendship centre had previously been established to welcome the seasonal workers and she felt that it was important to continue to develop community relations. If the application was approved she also suggested that there was a need for the establishment of a local reference group involving Members to enable any issues to be aired.

Councillor Brigadier P Jones, another of the Leominster Ward Members supported the application with its reduced area and Councillor Greenow commended the applicants for listening to the views of the local community and objectors and making every effort to minimise the effect of the scheme. He drew particular attention to contribution that this type of growing had made to the domestic production of fruit and had reduced the need for importing. Councillor Chappell pointed out that the use of polytunnels was common place in agriculture now and considered the proposals to be an important part fruit production. Councillor PGH Cutter agreed with the views of Councillor French about the need to make every effort that seasonal workers were integrated into the local community during their stay. He noted that the objectors had indicated that they would be seeking a judicial review if the Committee decided to grant permission and had some sympathy for them but felt that the application should be approved. The Interim Head of Legal and Democratic Services drew attention to the fact that judicial review was not a material planning consideration in reaching a decision on the application. Councillor RI Matthews noted that the applicants had gone so far in allaying the concerns that had been raised but felt that there was still a long way for the applicants to go before the impact of the proposals on local residents and the community was reduced. He felt that a reduced scheme on smaller pockets of land would be more appropriate.

The Head of Planning and Transportation summarised the merits of the application and the Unitary Development Plan issues that related to it. The proposals had changed considerably from the first application and needed to be considered on their own merits in the light of the Councils planning policies. The changes were fully explained in the report and updates. He was confident that there would be the capacity to ensure that the planning conditions within the recommendation and suggested during the debate were enforced and would ensure the appropriate monitoring was undertaken.

Having considered all the issues relating to the application, the Committee was satisfied that it should be approved with the amendments proposed to the planning conditions. It was also agreed that there should be a liaison group established as suggested by Councillor French.

## **RESOLVED THAT**

**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 F20 (Temporary permission and reinstatement of land) (10 years)**

**Reason: In order to clarify the terms under which this permission is granted and in accordance with Policies DR1, LA2 and E13 of the Herefordshire Unitary Development Plan.**

- 2 The polythene shall be removed by 31st October each year and not replaced until or after 1st March in the following year unless otherwise agreed in writing by the local planning authority.

Reason: In order to protect the visual amenity of the area in accordance with Policy LA2 of the Herefordshire Unitary Development Plan.

- 3 Within three months of the date of this permission, a full habitat management and enhancement scheme (based upon the Outline Landscape and Ecological Management Plan dated December 2008) shall be submitted to and approved in writing by the local planning authority. This shall include mitigation and protection measures for protected species and a timetable for their implementation. The scheme shall be implemented in accordance with the approved timetable and continued thereafter unless otherwise agreed in writing by the local planning authority.

Reason: To ensure the protection of European and nationally designated sites and to comply with Herefordshire Council's Unitary Development Plan Policies NC2 and NC3. To ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation (Natural Habitats, & C) Regulations 1994 (as amended) and Policies NC1, NC5, NC6 and NC7 of Herefordshire Council's Unitary Development Plan. To comply with Herefordshire Council's 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.

- 4 No polytunnels shall be erected within 2 metres of the centre line of a public right of way or 3 metres in the case of a bridleway.

Reason: In order to protect the Public Right of Way in accordance with Policy T6 of the Herefordshire Unitary Development Plan.

- 5 The Public Right of Way shall be maintained strictly in accordance with the submitted drawings L09, L10A, L10B, L11A and L11B unless otherwise agreed in writing by the local planning authority.

Reason: In order to protect the Public Right of Way in accordance with Policy T6 of the Herefordshire Unitary Development Plan.

- 6 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, unless otherwise agreed in writing by the local planning authority.

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.

- 7 H30 (Travel plans )

Reason: In order to ensure that the development is carried out in combination with a scheme aimed at promoting the use of a range of sustainable transport initiatives and to conform with the requirements of Policy DR3 of Herefordshire Unitary Development Plan.

- 8 G10 (Landscaping scheme )

**Reason: In order to maintain the visual amenities of the area and to comply with Policy LA6 of Herefordshire Unitary Development Plan.**

**9 G11 (Landscaping Scheme – implementation)**

**Reason: In order to maintain the visual amenities of the area and to comply with Policy LA6 of Herefordshire Unitary Development Plan.**

**10 Amended Plans 14<sup>th</sup> August, 2009.**

**INFORMATIVES**

**1 N19 - Avoidance of doubt - Approved Plans**

**2 N15 - Reason(s) for the Grant of Planning Permission**

**3 HN25 - Travel Plans**

**4 HN26 - Travel Plans**

**43. 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**

The Principal Planning Officer explained that as with the previous application, this one was deferred on Counsel's advice at a previous meeting in order to allow time to consider the additional representations received. The report had been updated to take account of these matters. He advised that the number of proposed units had been reduced in relation to the reduced area for polytunnels approved in the previous application. He said that if the polytunnels were removed, the accommodation and related facilities would also be removed. He explained where the units would be located on the land in relation to the polytunnels and the landscaping and screening that would be undertaken by the applicants. He also advised that the Committee should take into consideration the cumulative impact of the two applications. He also drew attention to proposed planning condition No.5 which would impose limitations on the number of units of accommodation which would total no more than 250 with 500 seasonal workers occupying them. He presented the following updates:

**ADDITIONAL REPRESENTATIONS**

Correspondence received from Mr Greene as chairman of AVRA. In relation to this application the relevant paragraphs read as follows:

change of use when works are clearly contemplated (DPDS letter March 2009). Not addressed or reported properly. It is clearly not enough to say the application is flawed and incomplete without saying somewhere in the report why DPDS/AVRA are wrong. Since Counsel has considered the earlier report, one would have expected his view on the change of use to have been reported.

**Bias and Consultation** – Failure to report comments adequately or to consider the issues raised in them – for instance the report on the nature of the application. Equally the comment made about the nature of application

DCNC2009/0168 is repeated in relation to the polytunnels. The Council have clearly not understood or considered the objections.

**Failure to Review the Search for Alternative Accommodation** – This was an element of the Secretary of State decision in 2004 – that less objectionable alternatives for accommodation had not been properly considered. The applicant submitted a case that it had done so now and this is reported in the committee report on DCNC2009/0168 para 6.3 – 6.11. With the halving of the required workforce the exercise needs to be reviewed but this has not been done.

In relation to the proposed conditions Mr Greene comments as follows:

Condition 2 – inadequate. “Employed at Brierley Court Farm” is insufficiently precise – anybody living in accommodation could be considered to be employed at Brierley regardless of where they are working on the day.

Condition 3 – insufficiently precise “in the opinion of the local planning authority” gives a vetting procedure to the LPA contrary to para 32 of circular 11/95 and gives no indication to the applicant (or anybody else) when the use might be considered to have ceased. A proper definition of the polytunnel use ceasing is required in the condition, but this is just poor drafting and considerably more care is needed to include a proper definition at this stage.

Condition 5 – does not mean what the Council thinks it means, because of the ownership change. Another camp could be built on the fields not leased back and used by S & A Davis. It needs an entire rethink and includes in S106 obligation for the reasons set out in DPDS letter of Oct.

Condition 6 – This should have been sorted out in the 7/8 months the application has been running or before the application was submitted. There is no guarantee that the necessary works could be carried out on highway land or without needing other land.

Condition 7 – Is unenforceable. It is impossible to measure whether the run off has exceeded Greenfield rates + 1% for climate change and circular 11/95 para 42 applies. Any resolution of surface water drainage is likely to require engineering operations as recognised in the condition. (PD rights will not apply because the land will not be in agricultural use and the works would be required for accommodation not agriculture). The Council cannot allow development without a planning application and following the regulations and the GDPO.

Condition 8 – The application is for change of use but refers to buildings, common areas and parking areas. The management plan would take out of the public domain, matters which should be considered in public as part of the application such as lighting and noise. Such conditions were considered in relation to the earlier appeals, but the proposal was rejected in part precisely because of these impacts.

Correspondence has also been received from AVRA’s legal advisors, Brook Street des Roches LLP. In summary the points it raises in addition to those raised by Mr Greene are as follows:

- The Council has not dealt with AVRA’s concerns that the application is flawed and incomplete.

- The Council has inaccurately reported Leominster Town Council's consultation response. The author believes that the Town Council objected to the application due to a lack of information.
- The comments made by Mr Greene in relation to conditions are replicated in this letter.

### **OFFICER COMMENTS**

With regards to ownership issues, the schedules contained within the Unilateral Undertaking not only refer to first and second owners, but also successors in title. Your officers are satisfied that this ensures that its requirements are incumbent upon any future owners. Similarly the conditions are not specific to the applicant and therefore run with the land.

The comments in relation to the conditions are noted and amendments/alterations are proposed below.

### **CHANGE TO RECOMMENDATION**

Condition 2 – after the word 'employed' add 'in agriculture'

Condition 3 – after the application reference number remove the words 'in the opinion of the local planning authority'

Condition 5 – to be re-worded to read as follows:

This planning permission relates solely to the land hatched blue on Drawing No 1856/29A. Notwithstanding the provisions of Schedule 2 Part 5 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 mobile homes, caravans or demountable portable buildings shall be placed on land within Brierley Court Farm as identified in blue on Drawing No 1856/29A. Those other mobile homes or demountable portable buildings currently located on land lying to the west of the application site (hatched blue) shall be permanently removed within 12 months of the date of this permission.

Condition 6, 7 and 8 remain unchanged

The following spoke in accordance with the Council's criteria for public speaking:  
Councillor Westwood of Leominster Town Council;

Mr Sladen of AVRA spoke against the application; and

Mr Greg spoke in favour on behalf of the applicants.

Councillor PJ McCaul, a local Ward Member welcomed the reduction in numbers of the pods and agreed with the views of the Town Council that occupancy should be limited to two persons to each unit. He drew attention to the considerable concerns about the welfare issues that had previously arisen for seasonal workers and trusted that these would be greatly improved under the new arrangements. Councillor JP French, one of the Leominster Ward Members, also had concerns about the need to improve the welfare conditions for the workers. She felt that this was important to address by the new owners and management. There was also an issue about ensuring that the accommodation would not be suitable for children and that workers would need to be aware of this. She also noted that the company had undertaken some advertising for

workers locally but felt that more effort should be put into this by them. She asked for consideration to be given to the pods being finished in a more suitable colour than yellow so that they would blend more into the landscape.

Councillor Brigadier P Jones, another Ward Member also welcomed the reduction in units and also shared the concerns of other Members about the welfare issues and the problems that had arisen when workers were due to return home but had been obliged to leave their accommodation early. Councillor RI Matthews was of the view that it was not appropriate to provide such temporary accommodation in the countryside and that workers should be accommodated in the nearby settlements and transported into the site. Councillor GFM Dawe opposed the proposal because he considered the accommodation to be inadequate for the workers. Councillor KG Grumbley felt that the proposal would give an element of certainty that had not previously existed together with the ability of the Council to take any appropriate action to ensure that the conditions were complied with.

Having considered the various aspects of the application, the Committee decided that it should be approved together with the suggested changes to the conditions and the Council being provided with monthly details about the occupancy of the pods.

**RESOLVED THAT:**

**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 Polytunnel 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 in agriculture 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 to Policy H7 of the Herefordshire Unitary Development Plan.**

**3. In the event that the polytunnel development approved by application (DCNC2009/0167/F) 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 and so maintained.**

**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. **This planning permission relates solely to the land hatched blue on Drawing No 1856/29A. Notwithstanding the provisions of Schedule 2 Part 5 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 mobile homes, caravans or demountable portable buildings shall be placed on land within Brierley Court Farm as identified in blue on Drawing No 1856/29A. Those other mobile homes or demountable portable buildings currently located on land lying to the west of the application site (hatched blue) 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**

**44. DCNC2009/0166/F - RETROSPECTIVE APPLICATION TO RETAIN PRIVATE PACKAGE SEWAGE TREATMENT PLANT ON LAND AT BRIERLEY COURT FARM, BRIERLEY, LEOMINSTER, HEREFORDSHIRE, HR6 0NU**

The Principal Planning Officer introduced the report of the Head of Planning and Transportation about an application for a sewage treatment plant to serve the accommodation for seasonal workers on the Brierley Court Farm site.

Councillor PJ McCaull asked if the pipe-work to the plant could be placed underground and the Principal Planning Officer said that this would be addressed by the licence that the applicants would need to obtain from the Environment Agency if planning permission was granted. Councillor WJ Walling asked about the Environment Agency being consulted and the Principal Planning Officer said that this was not necessary because the applicants had to obtain a licence directly from them in respect of the plant. Councillor RI Matthews asked what had changed since planning permission had been refused for previous applications. The Principal Planning Officer said that permission was now essential to provide for the seasonal worker accommodation which had been approved.

Having considered the various points raised about the application, the Committee decided that it should be approved.

**RESOLVED THAT:**

**planning permission be granted subject to the following condition:**

- 1 F20 (Temporary permission and reinstatement of land ) (10 years)**

**Reason: The provision of the sewage treatment works is only considered to be acceptable as a temporary expedient in conjunction with the applicant's identified need to provide on site workers accommodation and to conform to Policy CF2 of the Herefordshire Unitary Development Plan.**

**INFORMATIVES:**

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

**45. DCCW0009/1990/CD DCCW/092151/CD - AMENDMENT TO PLANNING CONDITION 2 OF CW2000/1575/F, TO ALLOW PARKING FOR CHRISTMAS PARK & RIDE SERVICE AT HEREFORD RACECOURSE, ROMAN ROAD, HOLMER, HEREFORDSHIRE, HR4 9QU**

A report was presented by the Senior Planning Officer about an application to vary an existing planning permission allow the vehicular hard standing off Roman Road entrance to Hereford Racecourse for the parking of vehicles in connection with a public Christmas Park and Ride service which will operate during November and December 2009. The following had been received since the report had been prepared:

a local resident has confirmed that an accident occurred at the junction of Aylesbrook - Roman Road on 15th October 2009 and at least 2 or 3 other accidents have happened in the preceding two to three weeks.

The Transportation Manager had reviewed the additional information and does not change his recommendation on the application.

In accordance with the Council's criteria for public speaking, Mrs Smart a local resident, spoke in objection to the application.

Councillor SJ Robertson, an adjoining Ward Member, said that Holmer Parish Council had raised no objection to the application. She said that there were however concerns about an increase in the number of accidents in Roman Road as the volume of traffic travelling along it had been steadily increasing. She also suggested that there was a need to look at the provision of a roundabout and upgrading the pedestrian crossing. She felt that although the proposal should reduce traffic into the City, it would increase traffic in Roman Road

The Head of Planning and Transportation said that the application should be viewed in the context of a straightforward variation of a previous permission for a relatively short period of time. The objectors had raised some valid areas of concern regarding the cumulative use of the land for other purposes and this was being carefully monitored by the officers.

Having considered the points raised, the Committee decided that the application should be approved.

**RESOLVED THAT:**

**Subject to no further objections raising additional material planning considerations by the end of the consultation period, the Officers named in the Scheme of Delegation to Officers be authorised to issue planning permission subject to the following conditions and any other conditions considered necessary by Officers:**

- 1 B04 Amendment to existing permission (CW2000/1575/F and 1 November 2000).**
- 2 The land shall be limited to the parking of vehicles only on:
  - a) days when race meetings are being held and/or**
  - b) any Saturday or Sunday on or between 7 November 2009 and 3 January 2010**and for no other purpose**

**Reason: In order to define the terms under which this permission is granted.**

**Informatives:**

- 1            **N19 Avoidance of doubt - Approved Plans.**
- 2            **N15 Reason(s) for the Grant of PP/LBC/CAC.**

**46.        DCCW0009/1950/CD DCCW/092345/CD - REPLACEMENT BMX TRACK AND RE-  
INSTALEMENT OF EXISTING TRACK TO PARKLAND AT LAND TO THE REAR OF  
102-140 WESTFALING STREET, HEREFORD, HR4 0JF**

The Senior Planning Officer presented a report about an application to refurbish and upgrade the existing Bicycle Motocross (BMX) track to provide improved recreational facilities, which would involve engineering operations to create new earth jumps and burms. The refurbished track would occupy a more compact area, allowing for the western section of the existing track to be re-instated to general open amenity space. He provided the following updates:

**ADDITIONAL REPRESENTATIONS**

Further letter from local resident who supports small car park but requires assurance that their parking will not be impacted or that on 'event days' provision is made for residents parking and that the decorated metal fencing is retained.

**OFFICER COMMENTS**

Condition 6 covers the event days and retention of the decorated fencing is not identified to be removed.

In accordance with the Council's criteria for public speaking, Fran White the Parks Development Manager, spoke in support of the application.

Councillor JD Woodward, one of the Local Ward Members, commended the application because it provided a popular amenity which was unique in her Ward.

**RESOLVED THAT:**

**Subject to no further objections raising additoinal material planning considerations by the end of the consultation period, the Officers named in the Scheme of Delegation to Officers be authorised to issue planning permission subject to the following conditions and any other conditions considered necessary by Officers:**

1.            **A01 Time limit for commencement (full permission)**
2.            **G09 Details of Boundary treatments**
3.            **H13 Access, turning area and parking**
4.            **I16 Restriction of hours during construction**
5.            **I32 Details of floodlighting/external lighting**
6.            **The BMX track hereby permitted shall only be used for informal recreational purpose. No organised events including races, competitions or**

**demonstrations shall take place without the prior written approval of the local planning authority.**

**Reason: To define the terms of the planning permission and to safeguard the amenity of the established residential area to comply with Policies DR1, DR2, DR3 and TC5 of the Herefordshire Unitary Development Plan 2007.**

**Informatives:**

- 1. N08 Advertisements**
- 2. N10 Council contract**
- 3. N19 Avoidance of doubt - Approved Plans**
- 4. N15 Reason(s) for the Grant of PP/LBC/CAC**

**47. DCNE0009/1841/F - PROPOSED ERECTION OF 15 METRE WIND TURBINE AND ASSOCIATED WORKS AT LEADON COURT, FROMES HILL, LEDBURY, HEREFORDSHIRE, HR8 1HT**

The Interim Head of Legal & Democratic Services reiterated the situation about personal and public interest in respect of applications from Councillors.

A report was presented by the Senior Planning Officer about an application for a wind turbine with a total height of some 19.82 metres. The mast would be a galvanised steel/silver in colour and the blades a matt black. The rated output of the turbine would be 15kW and likely to generate 30,000 kWh per year. The Community Sustainable Energy Programme put a standard useful life expectancy of 20 years on such wind turbines. The Senior Planning Officer said that the environmental impact of the application was acceptable on all grounds. In answer to a question from Councillor WJ Walling he said that there was evidence of bat roosts in the area and that the turbine area would be closely monitored to determine if it had any impact on foraging corridors.

**RESOLVED THAT:**

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

- 1 A01 Time limit for commencement (full permission)**
- 2 An annual report detailing any bat or bird fatalities associated with the domestic wind turbine hereby permitted shall be submitted to the Local Planning Authority for a period of three years after the installation of the wind turbine. Monthly checks shall be made from 1<sup>st</sup> May to 31<sup>st</sup> October in each calendar year as a minimum and the report shall include dates, times, location and condition (dead or injured, and type of injury where identified) of all bats and birds found within a 5 metre radius of the domestic wind turbines.**

**The landowner shall afford access at all reasonable times to any ecologist nominated by the Local Planning Authority for monitoring purposes, between May and September each calendar year for a period of 3 years from completion of installation.**

**Reason: To provide information on bats and birds affected by domestic wind turbines to Herefordshire council for research purposes, in the interests of biodiversity and to meet the requirements of PPS9 Biodiversity and Geological Conservation and the NERC Act 2006. To comply with Herefordshire Council's UDP Policies NC5 and NC6 in relation to Nature conservation and Biodiversity and to meet the requirements of PPS9 Biodiversity and Geological Conservation and the NERC Act 2006.**

**3**

**The wind turbine hereby permitted shall be removed from the land within six months of it no longer being required for harnessing wind energy or no longer fulfilling its purpose due to it having reached the end of its useful life.**

**Reason: To safeguard the open countryside from structures that no longer have a useful function / purpose.**

**INFORMATIVES:**

**N15 Reason(s) for the Grant of Planning Permission**

**N11A Wildlife and Countryside Act 1981 (as amended) - Birds**

**N11B Wildlife & Countryside Act 1981 (as amended) & Cons (Nat. HaB Bats)**

**48. DCCW0009/1683/F DCDC/091945/G - REMOVAL OF CONDITION 7 OF PLANNING PERMISSION DCCW2004/0209/F, PROPOSED DWELLING AT 2 LOWER ORCHARDS, BURGHILL, HEREFORD, HEREFORDSHIRE, HR4 7SD**

A report was presented by the senior Planning Officer about an application to remove a planning condition which prevented the extension of the dwelling or sheds and greenhouses in the garden without the grant of a specific planning permission.

In accordance with the provisions of the Council's Constitution, Councillor SJ Robertson, the Local Ward Member, spoke in favour of the application then withdrew from the meeting.

In accordance with the Council's criteria for public speaking, Mr Dutton a local resident, spoke in objection to the application and Mr James the applicants agent, spoke in favour.

It was noted that the applicant had been under the impression that his sheds, which were modest structures and not obtrusive, did not need to seek permission for them.

The Committee did not consider there to be an adverse impact on the local amenity and that the application could be granted.

**RESOLVED THAT:**

**That planning permission be granted:**

**Informative:**

**1 N15 Reason(s) for the Grant of PP/LBC/CAC**

**49. DCNC2009/0748/F - CHANGE OF USE OF LAND FROM AGRICULTURE TO A ONE FAMILY TRAVELLER SITE, INCLUDING STATIONING OF ONE MOBILE HOME, TWO TOURING CARAVANS AND DAY/WASHROOM - PART RETROSPECTIVE AT THE PADDOCKS, NORMANS LANE, STOKE PRIOR, LEOMINSTER, HEREFORDSHIRE, HR6 0LQ**

The senior Planning Officer presented the report of the Head of Planning and Transportation regarding a planning application for the change of use of agricultural land to a traveller site for one family. The development Control Manager said that the application had been referred to the Committee because the Northern Area Planning Committee was mindful to refuse it contrary to the Council's planning policies and Officer advice. The Sub-Committee had concerns about the suitability of the site, its location and the eligibility of the applicant to meet traveller status. The Sub Committee had also questioned the need for the site because there were vacant pitches on authorised Council sites and the applicant has previously confirmed (in 2006) that there was no need to reside on the site. As such, for these reasons the proposal was in conflict with Policy E15 – (Protection of Green Field Land) of the Herefordshire Unitary Development Plan. The Sub-Committee was advised that the application needed to be considered under Policy H12 (Gypsies and other Travellers) of the Herefordshire Unitary Development Plan.

In accordance with the criteria for public speaking, Councillor Brown spoke against the application on behalf of Humber, Stoke Prior & Ford Group Parish Council; Mr Hubbard spoke in objection to the application and Mr Baines spoke in support.

The Development Control Manager said that together with Policy H7, the circumstances, requirements and location regarding the application enabled it to be acceptable. Councillor KG Grumbley, the Local Ward Member, was of the view that the development was unauthorised and said that it was also the second retrospective application by the occupants. He said that he could not support the development as he felt there was insufficient need for it. He drew attention to the fact that the existing travellers' pitches provided in the County by the Council were under-occupied and he said that he was not satisfied that the occupants of the site fulfilled the criteria for travellers. He therefore proposed that planning permission should be refused as he regarded it as an unnecessary development on green field land; there was no need; it was contrary to ODPM Circular 1/2006; there was more on the site than covered by the application; and that the proposal was contrary to sustainability requirements.

Councillor B Hunt was of the view that no further evidence had been offered which would support the application since it went to the Northern Area Planning Sub-Committee. In addition to the points raised by Councillor Grumbley, he was concerned at the lack of conditions in the report in respect of water supply and sewage disposal. Concerns were also raised about the erosion of the bridleway due to the applicant gaining vehicular access over it to the site; the uses that the land may be put to and why an exception should be made for the benefit of travellers which did not apply to others. The Senior Planning Officer said that visits to the site by the Officers had not revealed any uses of it other than agriculture and that the bridleway was not a planning issue. The Head of Planning and transportation referred to the planning policies that had already been set out under which the application could be granted. He reiterated that these were designed to specifically meet the requirements of travellers and gypsies and that the Officers were satisfied that the supporting documents provided by the applicant had confirmed that the applicant had met all the required criteria. He added that the application site also met the requirements for becoming a travellers' site because it was close enough to relevant amenities. He also did not feel that ODPM Circular 1/206 was relevant to the application. The site was relatively small and met the criteria for scale and setting and was well screen and included amenity, work and storage.

The Interim head of Legal and Democratic advised that the Officers had provided a number of grounds and tests for the application to be approved and that the Committee needed to carefully weigh the material planning considerations that needed to be taken into account. Having carefully considered all the facts in respect of the application, the Committee noted the planning policy issues involved but had reservations about a number of matters of concern relating to the application including the number of people occupying the site, access, water supply, sewerage arrangements and overall condition.

## **RESOLVED**

**that the application be refused for the following reasons:**

- (i) there is no need for this site:**
  - (a) the Council has 9 other vacant sites in the County**
  - (b) the applicant stated that he had no need to further develop the site, particularly for residential use as he was happy with operating it from where he then lived, therefore this is unnecessary development of greenfield land contrary to Herefordshire Unitary Development Plan Policy E15;**
- (ii) the application is contrary to ODPM Circular 1/2006 which states that mixed uses are not permitted on exception sites;**
- (iii) the application is invalid as there are or have been more than the applicant, his partner and three children living on the site;**
- (iv) permanent permission is contrary to planning policies H11 and H13 in respect of environmental and sustainability aspects; and**
- (v) sub-standard amenity levels**

**50. DCSE0009/1676/F DCDS/091843/F - PROPOSED DORMITORY ACCOMMODATION WITH DINING AND RECREATIONAL UNIT IN ASSOCIATION WITH CONTINUED USE OF LAND AS A CHILDREN'S NURSERY SCHOOL AND KIDS CLUB, TOGETHER WITH APPROVED LEISURE, RECREATIONAL, EDUCATIONAL AND CULTURAL USE (DIVERSIFICATION OF EXISTING USE) AT CATS NURSERY SCHOOL, LEYS HILL, WALFORD, ROSS ON WYE, HEREFORD, HR9 5Q**

A report was presented by the Southern Team Leader about an application for additional facilities at an established business. The application had been referred to the Committee because the Southern Area Planning Sub-Committee was mindful to refuse it contrary to the Officer's recommendation. The Sub-Committee had expressed concerns in relation to the perceived incompatibility of the children's nursery and health and spa facilities with particular reference to the potential risk to children associated with unrestricted access by adults and the sale of alcohol. It was considered that this was contrary to Policy DR2 of the Herefordshire Unitary Development Plan. In addition there were concerns about highway safety implications regarding difficult access onto the B4324. The proposal involved a commitment to reduce the number of nursery children from the potential 30 that the premises is currently licensed for to 10. This reduction would offset any traffic generated by the dormitory accommodation which was also likely to generate traffic outside the times when the nursery traffic would be at its peak. This together with the formalisation of a Travel Plan was considered acceptable by the Traffic Manager. The Head of Planning and Transportation was concerned that the reasons for refusal might not be defensible if challenged by way of an appeal.



The Southern Team Leader said that the applicants had provided details of their existing Ofsted licence, demonstrating that the necessary authority had been obtained in relation to the operation of the nursery. The applicant had also explained that the proposed dormitory building was intended to provide overnight accommodation for families and groups using the health and spa facilities. The applicants had also explained that the diversification was a response to changing Government legislation which threatened the viability of the children's nursery. The enhanced health and spa facilities were seen as an important tourism opportunity by the applicants.

The receipt of the following updates was reported:

### **ADDITIONAL REPRESENTATIONS**

It has been brought to the attention of your officers that the site boundary for was incorrectly drawn along the southern boundary. A suitably amended showing a revised site boundary drawing has been received.

The Environmental Health Officer has raised no objection to the dormitory accommodation.

A further objection has been received from Mrs VC Stoddard, Creeds Cottage, Leys Hill. The letter does not raise any further objection to those reported under paragraph 5.3

A further letter from the applicant has been received:

- the Spa is pre-booked registered guests only. Nursery children are never permitted to use the Spa;
- CATS Nursery (OFSTED Registered) is a safe, secure environment. Security measures include gated access, a locked door and parental/guardian sign in procedures. The nursery is closed evenings and weekends;
- the dormitory will be pre-booked and registered spa groups only;
- all use of the gated and fenced tennis court is pre-booked. Nursery children are supervised at all times by OFSTED and CRB approved staff during the day. Guests are restricted to evenings and weekends.
- the swimming pool is exclusively for pre-booked guests. No nursery children are allowed;
- parents escort their children to and from the car park. Sleeping policemen are installed for safety and there are clearly visible parking bays and a segregated children's walkway;
- the performance area at the end of the proposed dormitory will be used as an outdoor fitness and table tennis area. It is not a stage;
- there is no interaction between adult guests and nursery children anywhere;
- all of our healthy group Spa Packages are pre-booked. The parties have exclusive use of the Spa and registration forms are completed by the group leader. If they request a theme for their booking we will happily oblige with a 60/70's spa experience or a salsa dance session;

- we are a health spa and do not hold an adult entertainment license and will not book stag parties;
- groups of 8-12 ladies (sometimes called a hen party) who have exclusive use of the health spa because it is a healthy alternative. The Spa is not available as a venue only;
- teen Queen parties (12-17 year old girls). They have exclusive use of the spa in parental approved age related activities. Parents accompany them to the health spa where they are registered and greeted by qualified CRB approved teachers, lecturers and beauty therapists who fully supervise the agreed programme;
- prohibited drugs. There is a zero tolerance policy in place. We have been an educational, recreational, fitness and leisure establishment for 22 years. We hold an unblemished record;
- we are qualified personal license holders and are fully aware of the licensing laws. A premises license has been applied for because we serve wine with a meal and we donate a bottle of champagne to some groups;
- this empirical information is a professional response to the child protection issue discussed at the Sub Committee meeting on Wednesday 30 September 2009.

Letter of support from Mr S Mitchell, The Firs, Welsh Newton Common

The objections centred on two issues: that of 'risk to children' and 'the highway safety implications of the proposal'.

- the presence of adults adjacent to the nursery premises where the children are subject to close and personal supervision already exists.
- dormitory wing would allow the option for an overnight stay for clients who may already be using the leisure facility anyway and would of course be outside nursery hours.
- shared use of premises is hardly a new concept. Most authorities encourage it in the interest of a cost effective service to the council tax payer.
- many supermarkets are providing crèches within the supermarket itself to allow parents to shop while their children enjoy supervised play activities and hospitals often set aside play areas for children.
- Regarding the issue of highway safety, I do understand that this may be of concern to those in the area, but I believe that the concern is misplaced, particularly as the proposals and the recommendations set out by your officers would ensure that the likely traffic on Leys Hill Rd would be less than the existing development already allows.

To object to the proposals would deny CATS the reasonable flexibility that any small business and employer needs to remain viable, and would jeopardise the continuance of what I believe to be a very attractive and socially responsible community service, with detrimental consequences for both employment and amenity in the area.

A petition in support of the application with 98 signatures has also been received together with a further 6 letters from local residents expressing their support for this proposal.

In accordance with the criteria for public speaking, Mrs Saxon a local resident spoke in objection to the application, and Mrs Mitchell, the applicant, spoke in support.

Councillor JG Jarvis expressed concerns about potential noise arising from the evening activities and the potential traffic hazards that would arise at the road junction near to the premises. The local parish councils objected to the proposal and the new facilities would be some 41% larger than the existing premises.

The Head of Planning and Transportation said that the objector had spoken very clearly about the planning policies she had concerns about in respect of the application. The applicant had explained the business aspects and the need for the business to diversify. The business had been in existence for some 23 years and with the economic downturn the applicant had been forced to reduce staff from twelve full-time to six part-time. There were material planning considerations and he reiterated his view that the application should be approved and that it would be difficult to sustain a refusal if challenged.

Councillor JE Pemberton enquired about the compatibility of the proposal with the nursery. The Southern Team Leader advised that a 'before and after' school service was provided by the applicants and that the other activities did not impinge upon this. Councillor GW Greenow felt that the proposals were leading to a vibrant business which needed to expand. Councillor PGH Cutter did not feel that the concerns raised justified a refusal.

Members discussed the application and having considered all the points raised, decided that it should be approved.

**RESOLVED THAT:**

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

- 1 A01 Time limit for commencement (full permission)**
- 2 C01 Samples of external materials**
- 3 G04 Protection of trees/hedgerows that are to be retained**
- 4 I51 Details of slab levels**
- 5 H30 Travel plans**
- 6 I33 External lighting**
- 7 Prior to the first use of the dormitory accommodation hereby approved, the applicant shall provide registration details of the nursery limiting the number of children attending to no more than 10 at any one time and it shall thereafter be restricted in accordance with these details.**

**Reason: To maintain appropriate control over the trips generated by the use and ensuring the safe and free flow of traffic on the highway so as to conform with Policy DR3 of the Herefordshire Unitary Development Plan.**

**Informatives:**

- 1 N19 Avoidance of doubt - Approved Plans**
- 2 N15 Reason(s) for the Grant of PP/LBC/CAC**

**51. REGIONAL SPATIAL STRATEGY : INSPECTORS' PANEL REPORT – SEPTEMBER 2009**

The Planning Policy Manager reported that the Examination in Public (EIP) into Phase 2 of the Regional Spatial Strategy (RSS) took place during April to June 2009, and the Panel of Inspectors involved published their "Panel Report" on 28th September. The Report would be submitted to the Secretary of State who although is not bound to accept the recommendations is likely to do so. Final amendments will be made to the RSS by the end of 2009 with the intention of completing the formal process during 2010. Once this process is complete, the local planning authorities in the West Midlands Region will be obliged to ensure that their planning policies (in emerging Local Development Frameworks) are in compliance with the new RSS. The main features of the Report are:

- Herefordshire's housing target for the period 2006 to 2026 has gone up from 16,600 to 18,000;
- within that overall target the Hereford City (and immediate environs) allocation has gone up only 200, from 8,300 to 8,500 – this is not significant over a 20 year period;
- the allocation to the rest of the County (including the Market Towns) has increased more significantly, from 8,300 to 9,500 – this is intended to increase supply in rural areas to improve affordability;
- the approach to employment allocations has been revised – whilst the five year "reservoir" of 37 hectares has been maintained unchanged, the gross figure over the 20 year period has been recommended for an increase from 111 hectares to 148 hectares – but this figure takes no account of "recycling" of employment land where employment sites are redeveloped for employment use;
- the retail allocation has stayed unchanged at 40,000 sq metres of retail floor space to 2021 with a further 20,000 for 2021 to 2026;
- a revised housing "trajectory" has reduced the number of dwellings per year to be constructed in the period to 2011 but progressively increases it after then (this will have important consequences as we move into the "Delivery" phase);
- all the above figures are now "Targets" and are not to be regarded as either minimum or maximum figures;
- whilst no specific policy is introduced in respect of the Outer Distributor Road the supporting text makes it clear that one will almost certainly be required;
- any relief road proposed for Leominster is regarded as a local matter and not included in the RSS because it is not strategic enough in the Regional context;

- the practical difficulties of dual tracking the railway line between Hereford and Malvern are such that it was not considered practical to make a policy commitment to this;
- amongst the general policies there is a requirement for local planning authorities to do Strategic Flood Risk Assessments and Water Cycle Studies (both of which Herefordshire has been doing anyway);
- there is also the introduction of a “Merton” style rule to require developments above a certain threshold to ensure that at least 10% of the energy needs come from renewable sources; and
- the consequences, under the Habitats Regulations, for water quality and quantity in the Rivers Lugg and Wye were not fully resolved and further work will have to be done at County level to ensure that the new development does not have an adverse effect on the biodiversity of these rivers – this is mainly an issue of ensuring adequate water supply and treatment. There will, however, be restrictions in the “Pilleth Water Resource Zone” which affects part of the County.

**RESOLVED THAT;**

**The report be received and noted,**

**52. LOCAL DEVELOPMENT FRAMEWORK UPDATE REPORT OCTOBER 2009**

A report was presented by the Planning policy Manager about developments on the Local Development Framework. He said that the 2004 reforms to the planning system obliged each Local Planning Authority to replace its Development Plans with a Local Development Framework. In the case of Herefordshire, that meant replacing the Unitary Development Plan with Development Plan Documents set out in the Local Development Scheme. There were to be three such documents at the centre of the Local Development Framework: the Core Strategy which sets out the overarching development strategy for the County; and two documents to set out detailed allocations - the Hereford Area Plan and the Market Towns and Rural Areas Plan. The Core Strategy is due to be the subject of a final round of public consultation early in the New Year.

The Core Strategy has to look forward to the year 2026 and has, at its heart, the vision and objectives with that in mind; in addition to the Regional Spatial Strategy the Core Strategy must also sit comfortably with the Council’s Sustainable Community Strategy for which the Herefordshire Partnership Board has responsibility. Thus the new planning system required that the Core Strategy:

- complies with the regional policies (as set out in the Regional Spatial Strategy);
- is backed up with evidence for the choices it makes;
- has had the full involvement of the local communities it is intended to serve; and
- meets other legal tests such as a the need for a Sustainability Assessment and a Habitat Regulations Assessment;

7. The policies in Herefordshire's Core Strategy will need to cover such issues as the distribution of new housing, employment and commercial development, policies to cover the location of "social infrastructure" such as schools and health facilities, and deal with such generic matters as transportation, minerals, waste and climate change. In order to take these issues forward the Council has published a series of evidence studies and background papers on the website. The evidence base will soon be substantially complete. Notable recent additions to the reports on the website include the Multi Modal Model (Transportation Study), the Water Cycle Study and the Strategic Housing Land Availability Study.

The stage has now been reached to undertake the final public engagement in the process – this will be the "Placeshaping" Consultation which will help the Council to refine its policy choices. The Placeshaping Consultation documents will be the subject of Member Briefings in the next few weeks and will be reported to Cabinet on 26th November to seek formal approval for public consultations in January, February and March 2010. Once the Placeshaping Consultation Results have been analysed the Council will then prepare the Core Strategy itself, initially to publish as a document for submission to the Secretary of State. This is expected to happen towards the end of 2010.

**53. DATE OF NEXT MEETING**

The meeting ended at 4:40 pm

**CHAIRMAN**