

MEETING:	PLANNING COMMITTEE
DATE:	17 MARCH 2010
TITLE OF REPORT:	<p>FURTHER INFORMATION REPORT</p> <p>DMSW/092133/O - OUTLINE PLANNING APPLICATION FOR CONSTRUCTION OF A THREE BEDROOM DWELLING AT LAND ADJACENT TO SUN COTTAGE, GARWAY HILL, HEREFORDSHIRE, HR2 8EZ</p> <p>For: MR A HEATH, TURPINS, ST WEONARDS, HEREFORDSHIRE, HR2 8QG</p>

Date Received: 29 September 2009 **Ward: Pontrilas** **Grid Ref: 344740,224877**
Expiry Date: 24 November 2009

Local Member: Councillor RH Smith

1. Background

- 1.1 This application was reported to the meeting on 20 January 2010 where in accordance with Section 4.8.10 of Part 4 – Section 8 – The Planning Rules, of the Constitution, consideration was deferred. The reason for this as agreed by the Head of Planning and Transportation and the Monitoring Officer was that an approval of the application raised fundamental planning policy issues.
- 1.2 The report to the 20 January 2010 meeting as updated by the Update Sheet on that date is attached as an Appendix.
- 1.3 The full Minute is available in Section 4 of this Agenda. In summary the Committee concluded that there was a justification for a house in this location based on the requirements of the applicant's business and his local need.

2. Further Information

- 2.1 The Planning Rules set out, in Section 4.8.10.2 of the Constitution, the requirements for the content of this report, as follows:
- 2.2 Updating Members on any additional information received

Since the 20 January 2010 the following has been received:

- a) A letter from the applicant advising as follows:

"I refer to our recent telephone conversation and, as requested, write to formally confirm that I am not the owner of the land on which my new workshop and car parking area will be constructed.

Further information on the subject of this report is available from Mr M Willmont on 01432 261782

This land at Oldfield Farm, Garway Hill, is owned solely by my grandfather, Mr John Heath. He has advised that he is quite prepared to give any reasonable legal/written undertaking protecting my entitlement to use the workshop for so long as I wish and I believe that he is intending to give you a statement to that effect.

I can confirm that the only property that I own is the small piece of land adjacent to Sun Cottage, Garway Hill.”

- b) A letter from J Heath, Castle View, Garway who advises that he is the owner of the land at Oldfield Farm and that he is prepared to provide “any reasonable legal/written undertaking in order to formally protect (A Heath’s) entitlement to use the workshop- for so long as he may wish to do so.”
- c) A copy of a letter from Mrs S West, 15 Green Meadows, Hom Green, HR9 7RE, addressed to the Chief Executive. In summary this points out that the recommendation was for refusal, they previously owned the land and were advised that permission would not be granted, suggests that the applicant’s business is not proven in the long term, why if needed the residence would not be at Oldfield Farm, there is no verification of the business plan, the justification needs to be severely tested to ensure it is not speculative and a precedent would be set. It requests (the Chief Executive) investigates the matter.

2.3 Reporting on any discussions that have taken place with the applicant/objectors since the initial meeting

The discussions with the applicant have been to establish the question of ownership of the land at Oldfield Farm. This is reported above in Section 2.2.

2.4 Setting out the legal procedure and likely financial implications of proceeding with the initial resolution

2.4.1 The case revolves around the applicant’s business and whether there is a requirement in terms of its proper operation for a dwelling. In association with this is the desire of the applicant to continue to live in Garway.

2.4.2 It has long been enshrined in national planning policy that for its own sake the countryside should be protected from development. Indeed PPS7 (Paragraph 10) states that isolated new houses will require special justification and it gives more specific advice when the request for a house relates to the essential need in connection with a business. (Annex A).

2.4.3 The Unitary Development Plan develops national policy to suit local circumstances however the policy principle remains that the countryside should be protected from unnecessary development. Policy H8 sets out the criteria against which applications for dwellings associated with rural businesses will be considered. The primary test is whether it is essential for a worker to be available for the proper functioning of the business at most times.

2.4.4 The applicant currently operates his business from a farm building at Oldfield Farm, but this does not have the benefit of planning permission. On 23 December 2009 the applicant was granted planning permission for a workshop at Oldfield Farm, but to date this has not been implemented. The case for the dwelling is based on the applicant’s intention to develop the business so it is advised that until there is a lawful business in operation it would be premature to grant permission for the dwelling. However and importantly the policy basis for such dwellings is that there is an essential requirement to live at or near the business. In this case the business is as a blacksmith and it is doubted whether such an activity requires a worker to live in close proximity. There is no doubt that such a business is valuable to the local

community but it is not directly linked as such to Garway and the requirement for a worker to be readily available is considered to be slim.

2.4.5 Unitary Development Policy H10 deals with rural exception housing which includes on an exception basis local housing need. Individual dwellings can be permitted but they should be in locations with a recognisable settlement form with some provision of local community facilities. It is not the intention of the policy to permit isolated new housing in the countryside. In this case there are just three dwellings in the vicinity of the site with the nearest recognisable settlement being Garway Common some 1.5 miles to the south. This is not a location that would meet the context of Policy H10.

2.4.6 In the taking of the decisions the Council is required to determine applications in accordance with the Development Plan, unless material considerations indicate otherwise. It is not considered that the case advanced is so exceptional that it meets the policy tests set out in Policies H7, H8 and H10. Whilst it is possible to approve departures to policy care should be taken in terms of how the decision will be viewed particularly in the context of similar proposals in the past or future. It is important that the integrity of the Unitary Development Plan Policies are upheld.

2.4.7 A decision to approve this proposal would have the following potential implications:

- *Reputation*

The Council has a duty to determine application in accordance with the Development Plan. A decision to approve the application may impact on the Council's reputation with the Local Government Ombudsman and others who would reasonably expect the Council to uphold its own policies/and as based on regional and national policies.

- *Financial*

An objector (Paragraph 2.2(c) mentions the possibility of seeking compensation, as she sold the land on the basis of lack of development potential.

- *Monitoring/Compliance*

In the event that Committee is minded to restate its desire to grant planning permission for the proposal the remainder of the report sets out the basis on which it might be achieved and to reflect the Committee debate on 10 February. This course of action would generate restrictions on the permission that would be at the margins of what is acceptable in terms of guidance in Circular 5/05. It attempts to relate the application site to another site over which the applicant has no control, it introduces unusual occupancy conditions, and would involve complicated arrangements if the building had to be disposed.

2.4.8 The following section considers the detailed implications of proceeding to grant planning permission.

2.4.9 The application is an outline with all matters reserved for subsequent approval. There is an indicative block plan showing the position of the dwelling and the vehicular access. The application proposes a three-bedroom dwelling.

The case for the dwelling is primarily based around the needs of a business at Oldfield Farm. It currently operates from a farm building but does not have the benefit of planning permission. On 23 December 2009 planning permission was granted for the erection of a workshop, display shop and office for blacksmithing business (Application DMSW/091993/F). The planning permission is personal to Mr A Heath and is limited to a blacksmith workshop. The development has not commenced.

The applicant does not own the land at Oldfield Farm but from the details given above in Section 2.2 he will be able to use it for so long as he wishes.

Having regard to the views of the Committee it would seem appropriate to ensure that the occupation of the dwelling is linked to the business and/or in the circumstances when such a requirement no longer arises that it is available to meet a local housing need.

The current business operation is unauthorised. This was not pursued by officers as it was clear that the applicant wished to develop and expand the business which necessitated a new building. It would appear therefore that as the dwelling is required to manage an expanded business then the implementation of any permission for a dwelling should be dependant upon the new workshop being available for use. It would be inappropriate to tie the dwelling to a business which does not have planning permission.

In order to ensure that the dwelling will be of a size commensurate with the applicant's requirements and for it to be potentially available to meet other local housing needs a limit on its size would be appropriate. Unitary Development Plan Policy H10 requires the size of three bedroom houses to be limited to a habitable living space of 90 sq.m (c.r. to Policy H6).

Having regard to the above prior to the grant of planning permission there would be a necessity for a Section 106 Agreement. The requirements of this and appropriate planning conditions could be as follows:

Section 106 Agreement – Heads of Terms

- The dwelling not to be constructed until the development approved under Application DMSW/091993/F is constructed and available for use.
- The dwelling is limited to a habitable floor area of no greater than 90 sq.m.
- The occupation of the dwelling is limited to person(s) employed, last employed, or dependants, in Oldfield Forge, Oldfield Farm, Garway HR2 8HA
- If the above requirement ceases then any disposal of the dwelling shall be restricted to a person in need of Affordable Housing firstly in Garway Parish and then cascading to Herefordshire.
- Any disposal of the dwelling shall not exceed 50% of the open market value.

Outline Planning Permission – Conditions:

- 1 A01 Time limit for commencement (full permission)
- 2 A02 Time limit for submission of reserved matters (outline permission)
- 3 A03 Time limit for commencement (outline permission)
- 4 A04 Approval of reserved matters
- 5 The development hereby permitted shall not commence until the development approved under Application Reference DMSW/091993/F has been constructed and is available for use.

Reason: In order to ensure that the workshop for which the dwelling is required is available for use having regard to Policies H7 and H8 of the Herefordshire

Unitary Development Plan.

6 F14 Removal of permitted development rights

INFORMATIVES:

1 N02 Section 106 Obligation

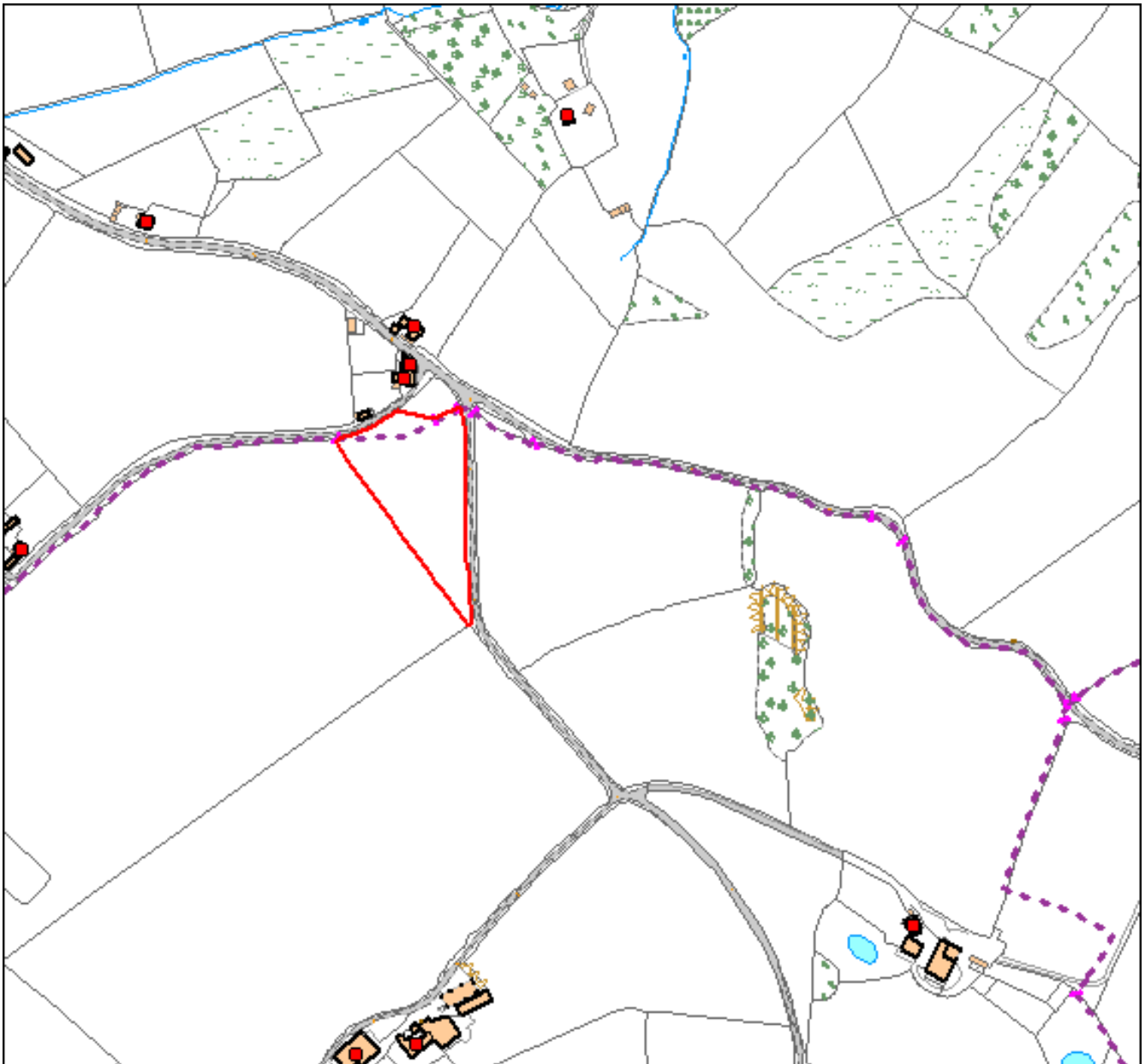
2 N15 Reason(s) for the Grant of Planning Permission

2.4.10 It will be appreciated that elements of the Section 106 and Conditions are on the margins of acceptability having regard to Government advice (Circulars 11/95 : Use of Conditions in Planning Permissions and 05/2005 Planning Obligations). Certainly any monitoring in respect of the ongoing occupation of the house would be problematic.

2.5 Any Monitoring Officer Advice

The relevant parts of the Development Plan have been referred to elsewhere in this report. In addition PPS3 is clear that any development in the countryside away from established settlements should be strictly controlled. Moreover, PPS7 states clearly that a primary Government objective for rural areas is to promote sustainable development focusing most development in, or next to existing towns and villages and discourage development of "green field" land. The Government's aim is to protect the countryside for its intrinsic character and beauty so it may be enjoyed by all. As stated elsewhere in this report there are exceptions to prohibition on development in the open countryside. These relate to dwellings essential for agricultural, forestry workers. In coming to a conclusion in this respect, annex A of PPS7 provides a "functional" test where it is necessary to establish whether it is essential for the proper functioning of the enterprise for one or more workers to be readily available at most times.

In the light of the foregoing approval of the application would be a departure from the Development Plan and Government guidance.



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APPLICATION NO: DMSW/092133/O

SITE ADDRESS : LAND ADJACENT TO SUN COTTAGE, GARWAY HILL, HEREFORD, HR2 8EZ

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