

<b>MEETING:</b>	<b>PLANNING COMMITTEE</b>
<b>DATE:</b>	<b>5 JUNE 2013</b>
<b>TITLE OF REPORT:</b>	<p><b>S123592/O - PROPOSED OUTLINE PERMISSION FOR A RESIDENTIAL DEVELOPMENT OF 16 NO. DWELLINGS WITH ASSOCIATED INFRASTRUCTURE INCLUDING ALTERATIONS ON A438, DRAINAGE AND LANDSCAPING WITH ALL MATTERS RESERVED EXCEPT FOR ACCESS AT LAND OFF BREINTON LEE, KINGS ACRE ROAD, HEREFORD.</b></p> <p><b>For: Mr Wakeley per Mrs Sally Tagg, Normandy House, 305-309 High Street, Cheltenham, Gloucestershire, GL50 3SH.</b></p>
<b>WEBSITE LINK:</b>	<a href="http://news.herefordshire.gov.uk/housing/planning/58286.aspx?ID=123592&amp;NoSearch=True">http://news.herefordshire.gov.uk/housing/planning/58286.aspx?ID=123592&amp;NoSearch=True</a>

**Date Received: 27 December 2012    Ward: Credenhill    Grid Ref: 347273,241325**

**Expiry Date: 22 April 2013**

Local Members: Councillor RI Matthews

## **1. Site Description and Proposal**

- 1.1 The application site is located within Kings Acre, part of Breinton Parish, approximately 6.5 km to the west of Hereford City Centre. The site is accessed via Breinton Lee on the south side of the A438 Kings Acre Road. Breinton Lee is a predominantly residential cul-de-sac. Immediately to the east of the site are five large detached dwellings situated within a gated development. To the north of the site is a mix of residential and commercial uses, with Cranston Mews including a small office development. Wyevale Garden Centre is located on the opposite site of the A438. To the south and west of the site is agricultural land.
- 1.2 The site is 0.84 ha in size and is previously undeveloped grassland with some trees and shrubs. The site has recently been cleared of some trees and planting. The site is agricultural in nature but is not currently used for this purpose. The site is predominantly square in shape with a small northwards protrusion created by the curvature of the access road to Breinton Lee.
- 1.3 The application is for outline planning permission for a residential development of 16 units (reduced from 18 during the application process) with only access being considered at this stage. All other matters are reserved. The application submission includes indicative layouts within the detailed Design and Access and Planning statements. Detailed information in respect of drainage, biodiversity and highway issues have also been received and considered. A revision during the application process also includes the reduction in length of the lay-by on Kings Acre Road to improve visibility.

- 1.4 The application includes the provision of 35% affordable dwellings (6 units). These are to be provided as low cost market units. The application also refers to the opportunities for some of the open market housing plots to be 'self build'.

## 2. Policies

### 2.1 National Planning Policy Framework (NPPF)

The following sections are of particular relevance:

Introduction – Achieving sustainable development

Section 6 – Delivering a wide choice of high quality homes

Section 7 – Requiring Good Design

Section 8 – Promoting healthy communities

Section 11 – Conserving and enhancing the natural environment

### 2.2 Herefordshire Unitary Development Plan (UDP)

S1	-	Sustainable Development
S2	-	Development Requirements
S3	-	Housing
S6	-	Transport
S7	-	Natural and Historic Heritage
S8	-	Recreation, Sport and Tourism
DR1	-	Design
DR2	-	Land Use and Activity
DR3	-	Movement
DR4	-	Environment
DR5	-	Planning Obligations
DR7	-	Flood Risk
H1	-	Hereford and the market towns: settlement boundaries and established residential areas
H7	-	Housing in the Countryside Outside Settlements
H9	-	Affordable Housing
H13	-	Sustainable Residential Design
H15	-	Density
H16	-	Car Parking
H19	-	Open Space Requirements
LA2	-	Landscape Character
LA3	-	Setting of Settlements
LA5	-	Protection of important trees, woodland and hedgerows
LA6	-	Landscaping Schemes
NC1	-	Biodiversity and Development
NC6	-	Biodiversity Action Plan priority habitats and species
NC7	-	Compensation for loss of biodiversity
NC8	-	Habitat Creation, Restoration and Enhancement
NC9	-	Habitat creation, restoration and enhancement
ARCH1	-	Archaeological Assessment and Field Evaluations
T6	-	Walking
T7	-	Cycling
T8	-	Road Hierarchy
T11	-	Parking Provision
RST4	-	Standards for Outdoor Playing and Public Open Space
W11	-	Development and Waste Implications
CF2	-	Foul Drainage

## 2.3 Supplementary Planning Documents

Landscape Character Assessment  
Planning Obligations  
Design  
Biodiversity and Development

## 2.4 Other Guidance

Strategic Housing Land Availability Assessment  
Annual Monitoring Report  
Urban Fringe Sensitivity Analysis

2.5 The Unitary Development Plan policies together with any relevant supplementary planning documentation can be viewed on the Council's website by using the following link:-

<http://www.herefordshire.gov.uk/housing/planning/29815.aspp>

## 3. Planning History

3.1 SH801075/F – Erection of 6 houses – Refused – Dismissed on appeal 15 June 1981

3.2 SH892019PO – Erection of 21 Dwellinghouses each with garage and vehicular access thereto – Refused – Dismissed on appeal 19 December 1990

3.3 SH930858PO – Erect 23 detached houses with associated garages / parking accessed from internal site road – Refused – Dismissed on appeal 19 October 1994

## 4. Consultation Summary

### Statutory Consultees

4.1 Welsh Water recommends conditions are attached to any permission.

### Internal Council Advice

4.2 The Transportation Manager makes the following comments: The application has been amended to include proposals to partially close the existing layby on A438 east of Breinton Lee, which will improve the guaranteed visibility for the junction. Details of these works should be submitted at the reserved matters or full application stage.

The indicative sketch plan layout would provide a satisfactory layout and access point from Breinton Lee, subject to provision of adequate parking and compliance with our Highways Design Guide. Recommend approval subject to conditions.

4.3 The Conservation Manager (Ecology) makes the following comments:

I have the following comments to make:

- On my second visit, I was disappointed to find that most of the trees and shrubs had been removed since my first visit and since the production of the ecology reports; I had been led to believe that some of these would be retained post-development in addition to the two trees that remain standing. There are conflicting statements in the ecological report regarding retention of existing vegetation, which now appears to have been removed. The report also

recommends that the fruit tree varieties be identified – was this done before they were removed?

- Historical records indicate that the site was part of the King's Acre Nursery and some of the trees and shrubs must have related to this, including fruit trees/orchard habitat; other species such as goat willow have probably self-seeded.
- There is evidence of badgers, including setts, at the site. The legislation protecting badgers relates to animal welfare rather than nature conservation issues. The report recommends closure of the sett under a license from Natural England to ensure there is no physical harm to the animals.
- The reptile surveys did not find any evidence of their presence and no mitigation is required.
- The proposals for provision of orchard and fruit tree planting at the site are appropriate and welcome, although it is not clear how retention of fruit trees planted in individual gardens can be secured. A fully detailed scheme for habitat creation and the future management of the areas of public open space will need to be secured by planning condition if this application is to be approved. The habitat creation scheme should also include full details of the numbers, types and locations of bat and bird boxes that are to be installed.
- The information regarding SUDS is rather limited. The ecological report states that a permanent pond is proposed in the NW corner of the site, but it's not clear how this will function as part of the SUDS. I would welcome a permanent water feature as part of the SUDS - full details will need to be submitted, including any biodiversity enhancements associated with it. I note that the provisional layout indicates that a wildflower meadow will also be provided in this area; I presume that this will include species that can tolerate temporary inundation where it is to be part of the SUDS.

If this application is to be approved, I recommend the inclusion of non-standard conditions.

#### 4.4 The Conservation Manager (Landscapes) makes the following comments:

The site was visited July 2012, with pre-application advice provided. The site was visited again 14 February 2013 and it was noted that the site vegetation had been cut down to ground level, other than two important trees that are shown for retention on the site layout plan.

The site has previously been assessed as part of the council's Urban Fringe Sensitivity Analysis and is considered to have medium-low sensitivity and is therefore suitable for housing development.

The inclusion of an arboricultural survey and habitat survey with this application is welcome. It is also considered that the process of design evolution has led to a more suitable possible layout, working with the existing trees and retaining a relatively substantial area of green space to the centre of the site.

If the application is to be approved, then conditions to be considered at reserved matters stage should include:

- Tree protection details
- Hard and soft landscape scheme - including habitat enhancement, SUDs details and boundary treatments. (Please note that the provision of close boarded fence to the road frontage of plots two and three could have a negative impact on the street scene).
- Landscape and ecology management plan.

- 4.5 The Council Drainage Engineer comments on the revised drainage strategy and updated information as follows:

I have considered the reply of Richard Fillingham to comments dated 8 May 2013 on the above planning application. The reply addresses satisfactorily the matters of topography and susceptibility to flood risk, the existing drainage system, the improvements and maintenance of the existing system and the design of the drainage for the proposed development. I have no objection to the proposals on the basis of the submission.

- 4.6 The Parks and Countryside Manager makes the following comments:

#### Layout Evaluation

Paragraph 3.16: It is agreed in principal that the layout can provide opportunities for residents and children to play informally. However, the final design and landscaping plans will need to make it clear which areas could be used and managed as such and are fit for purpose. This is particularly relevant to the pond area to be used as part of the infiltration scheme (SUDS) in respect of health, safety and accessibility. For example, consideration will need to be given to the design of the balancing pond as deep standing water can present a danger if publically accessible and future adoption as POS will be dependent on its final design.

The on-site provision doesn't include a formal play area and this is supported as they offer little in play value and are costly to maintain. Therefore, in accordance with UDP policy H19 and the requirements for 10 – 30 dwellings we would still seek an off-site contribution towards existing facilities. In this instance, existing play provision in the area is outside acceptable walking thresholds but given the potential to develop informal POS on the development site especially for younger children, the applicant has agreed to this approach. The contributions will be spent in consultation with the local community on priorities in accordance with the Play Facilities Strategy and Action Plans, and it is agreed that this will potentially be at Westfaling Street which is the nearest facility and a neighbourhood play facility.

#### Planning Obligations – Draft Heads of Terms

Off-site Public Open Space: paragraphs: 5.10 – 5.12 It is noted that an off-site contribution is to be provided. The amount and details are correct.

Sports Facilities: paragraphs 5.13 – 5.15. It is noted that an off-site contribution is to be provided. The amount and details are correct.

Open Space Maintenance: paragraphs 5.22. It is noted that a total contribution of £40k over 15years is offered. It is not clear how this sum has been calculated or for which "bits" of proposed POS as the plan is only indicative at this stage. Commuted sums can only be calculated on final agreed landscaping designs on agreed areas of POS to be adopted by the Council.

The future maintenance of the SUDS area can only be agreed once the final design has been agreed. If the pond area is suitable for POS it will need to be calculated separately from the main open space maintenance schedule as these areas are individually designed and fall under Highways as described in the Proposed Foul Drainage Strategy: paragraph 6.11 Maintenance and maintenance of infiltration basins.

The future adoption and maintenance of the other informal green spaces will also need to be agreed. The size, location and proposed landscaping (trees) will need to be a consideration as this could impact on whether or not the Council would wish to adopt the areas or if they form part of a management company set up by the housing.

## 5. Representations

5.1 Breinton Parish Council makes the following comments:

### Comments on original Submission

Thank you for your letter dated 25 January. Breinton Parish Councillors have considered the application and object to this planning application for the following reasons: -

1. The site of the application is outside of the area covered by the current UDP settlement policy, and so is still classified as open countryside. The existing policies state that no development should occur and the exception rules within the UDP do not apply to this site.
2. The site is classified as grade 2 agricultural land. In the NPPF Grade 2 agricultural land is classified along with Grade 1 agricultural land as a scarce resource. Before development of Grade 1 and 2 land should occur other sites within the county of a lower Grade should be considered first for any future development in order to protect this scarce resource for future generations.
3. Together, Grade 1 and 2 agricultural land make up 21% of the agricultural area in England. It is an extremely scarce resource across England so we therefore should conserve it in Herefordshire.
4. In addition, Herefordshire Council's SHLAA 2011 identified this site as "Greenfield site", so in accordance with NPPF rules priority should be given to developing Brownfield sites before Greenfield sites are considered for development. Breinton Parish Council understands that there are a number of Brownfield sites within the City which are available for redevelopment, which should be given priority over this site for housing development.
5. Although the Herefordshire Council's SHLAA Review 2011 report does not identify flooding as an issue in the area, there is a history of flooding in this area. The residents of Breinton Lee and Kings Acre Road have compiled much photographic evidence to show that flooding is a real issue, not only to the residents, but also on the site of the proposed development and over many years. It is understood that the residents will submit photographic evidence to substantiate this fact.
6. The fields of this proposed development are permanently in flood, and with heavy rain, properties in Breinton Lee and Kings Acre Road become flooded. The proposed development will be 45% impermeable so the flooding problem will be exacerbated. Even when an orchard was in existence on this site until recently, there is evidence of the orchard being under water, despite the uptake effect these trees would have had on the surrounding water table. Without these trees the situation regarding flooding has deteriorated further.
7. The flooding is not just a result of the last 12 months heavy rain. It is a long standing problem (the photographs showing a decade-long issue are already cited) but previous approvals / developments like Kings Court, and Breinton Lee itself make things worse. Enough is enough without adequate infrastructure and the current application is one proposed development too far.
8. The Herefordshire Council's SHLAA Review 2011 records that Dwr Cymru Welsh Water states that the area suffers from low water pressure and additional development would exacerbate the poor service levels.
9. As you know, over recent months the current owners have had a policy of clearing vegetation from the proposed site, to make it look more deserted. Historically the site was an orchard and a horticultural site. Previously there was a wide range of habitat which was abundant in wildlife. Much of this resource has been lost through the destruction of the historic orchard.

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Further information on the subject of this report is available from Ms K Gibbons on 01432 261781

Herefordshire Council were notified when the landowner commenced removal of the orchard. No mention of the destruction of this orchard is included in the planning application as the developer undertook this prior to the application date. A badger sett still remains on the site and this should be protected. Breinton Parish Council does not feel that the proposal for environmental habitats in very small private gardens can be implemented and enforced.

10. The Herefordshire Council's SHLAA Review 2011 identifies that already parts of the public sewerage infrastructure in the area suffers from hydraulic overloading. This is further evidenced by existing residents suffering with problems in emptying baths and flushing toilets during periods of heavy rainfall. No regulatory improvements by Dwr Cymru Welsh Water are included in the current 5 year Capital Investment programme. The addition of 18 dwellings will exacerbate overloading on the local sewerage infrastructure causing public health issues not just for new residents but the surrounding existing residents connecting to the sewerage system in the area should this development go ahead.
11. In addition to point 6 above, from the Herefordshire Council's SHLAA Review 2011 Dwr Cymru Welsh Water indicate that the site is further constrained by the lack of available headroom on sewage treatment generally in Hereford unless capital investment is planned to accommodate future development within the treatment catchment area.
12. Whilst the Highways Department has not yet submitted a report, there is a history of repeated minor accidents occurring at this point on Kings Acre Road, in particular due to parking in the lay-by, often by large vehicles such as lorries, which severely limits the visibility on this 40mph road. In addition, the fact it is opposite the entrance to a busy retail/ café establishment, further exacerbates traffic movements directly at the junction of traffic from this development onto the A438.
13. The design allows for the parking of 36 vehicles on this site. Breinton Parish Council does not feel that this proposal, whilst outline planning permission, accords with the HPPF requirement that any development should be "sustainable". The application does not identify safe cycle or pedestrian movements within the development and the issues around water supply; flooding and sewerage further indicate that this development fails to be considered "sustainable". The introduction of SUDs to deal with storm water is not suitable for this location, as there is no area within the development where the soakaway system can operate.
14. Should the planning officer or planning committee of Herefordshire Council be minded to permit this application, Breinton Parish Council reserves the right to require that the following conditions be imposed on any developer of this site:-
  - a) It should be a condition of any development that the developers fund the necessary improvements in the drainage infrastructure for the area around Breinton Lee and Kings Acre Road.
  - b) It must be a condition for the developers of this site to fund the necessary improvements to the sewerage infrastructure to ensure that it is fit for purpose and accords with the requirements of Dwr Cymru Welsh Water.
  - c) It must be a condition for any developers to fund the necessary improvements to fresh water via off-site main laying from a point of adequacy on larger diameter/pressure water mains.
  - d) In the event of flooding arising from the development of this site, both of new and existing residences, within a distance of 0.5km minimum of Breinton Lee, Herefordshire Council by permitting development in an identified flood risk area, will ensure that they will provide either a separate affordable scheme of insurance equivalent to any that will exist to surrounding residents unaffected by flood risk, from the date of the commencement of this new development (i.e. in perpetuity) or will make good the loss due to flooding suffered by both new and existing residents)

- e) It must be a condition for any developer to provide a suitable area for recreation closer than the play area on Westfaling Street, which is nearly 2 miles, along a 40 mph road, with no safe cycle route.
- f) It must be a condition that the developer contributes to improving sustainable travel routes within the area to minimise vehicle movements and minimise the risks to vehicles at the junction with the A438.
- g) To provide for the loss of habitat and trees, the developer will provide suitable landscaping and green habitat as part of any future development.

### **Comments on Amended Plans**

Most of the original points and concerns raised in previous correspondence have not been adequately addressed in the additional and amended plans supplied by Foxley Tagg. Breinton Parish Council still objects to this planning application for the original reasons provided.

In particular, the Parish Council is of the opinion that the proposed development lacks sustainability, with regards to energy, flooding, drainage and poses a real threat of ecological damage. The parish council responds to the letter from Foxley Tagg and the additional information provided by them as follows:

#### **Land use**

1. The Strategic Housing Land Availability Assessment (SHLAA) does consider the site as a suitable development site and central government is pressing for further housing development.
2. However, on closer inspection the evidence strongly suggests that the site is not suitable for further housing development. The proposed site is grade 2 agricultural land and is therefore a nationally scarce resource. Although the current owner has not chosen to farm this land, it has historically always been used for agriculture. It was previously a mature orchard used by Wyevale Nurseries, whereas the current owners use the plot for turning heavy agricultural machinery to access farmland beyond.
3. National Planning Policy Framework para 112 states "Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality." Lower Grade agricultural land in the county should be considered for development prior to development of a site such as this.
4. Greenfield sites should only be used for housing development once existing brown field sites have been developed. Indeed the brownfield site of the former Whitecross School on Baggallay Street is a prime example of available land for development and is a lot closer to the proposed play area on Westfaling Street than this site.

#### **Drainage**

5. It is noted that para 8.12 of the report proposes to extend and re-profile the ditches along the south and west sides of the site (and 2 properties in Breinton Lee). However, as evidenced by the experience of the residents in the properties along Breinton Lee (and evidenced by the report and photographs from Turnwater Ltd) the water run-off from the land to the south of the site does contain substantial amounts of sediment. Water regularly flows over the top of the existing drainage ditch. This leads to the ditches becoming silted up very quickly during periods of rain, so these ditches, even if re-dug, will require regular maintenance.



6. It is this silt that forms the debris which settles in the existing drainage system and causes this system to block, as seen in the Turnwater report. This deposition of silt will continue to be an issue with the drainage system. Contrary to the comments at 4.4 of the R J Fillingham report, the slope does provide for flash overland flood run-off following heavy rain.
7. Surface water regularly collects along the northern edge of the fields - on the boundary with Breinton Lee and the proposed development site.
8. The reports make no mention of who will have responsibility for the maintenance of these ditches. Indeed, following the original ditch being dug out in 2000, the landowner subsequently requested that it be filled back in again. The ditches are not on the applicants land or that of the existing residents of Breinton Lee. What guarantees will there be to ensure these ditches will be adequately maintained and remain effective in the future?
9. Para 2.6 of The Planning Statement Addendum goes on to say that these “may not be hugely effective in exceptionally wet periods given the clayey nature of the sub-strata”. As the problem is the substrata of the land which is a fluvial plane, this situation is to continue, even with the proposed ditching by the applicants.
10. The Surface water drainage report (R J Fillingham) describes a general lack of maintenance and repair of the ditches, pipework, gullies and culvert throughout the drainage system to the receiving ditch that on the opposite side of KAR between nos. 304 and 306a KAR. The Turnwater (Drainage) Report refers to a sizeable difference in pipe levels beneath the property of 343 KAR, and as the 'upstream' pipe is below the 'downstream' pipe, there is always a level of water that cannot drain away. The report concludes that the issue of pipe levels must be addressed for it to function properly. The applicants are not in any position to sanction redress of this situation.
11. The situation is not helped by the fact that Breinton Lee and the proposed development site are at a lower level than the than the Kings Acre Road, where the surface water is meant to drain away.
12. At para 2.8 of the same report, it is accepted that improvement of the drainage system relies on improvements in other areas not owned by the applicant. In which case the applicants cannot rely upon these third parties to carry out these further works, so cannot guarantee the effectiveness of the drainage system to prevent flooding of the proposed development site or properties in Breinton Lee. Any development will mean that the existing system will have to contend with a much greater volume of surface water passing through the system. Failure to ensure the upkeep of the drainage system will lead to flood damage on the proposed development site as well as the existing properties in Breinton Lee.
13. As there is a sizeable amount of impermeable ground arising from the proposed development, there is less ground for surface water to soak away, which will increase the pressure on the drainage system. Amey already attend to regular repairs to the drainage system in this area of Kings Acre Road. Over the last 18 months, Amey have responded to the following incidents: - blocked culverts parallel to Breinton Lee; blocked gullies along Kings Acre Road (4 instances); blocked gullies outside 333 Kings Acre road and the Breinton Lee turning; residents digging trench to prevent flooding off the farmer's field. This is indicative of the difficulties in trying to maintain an adequate drainage system for the existing houses. The difficulties will be made much worse by further housing development in the area.

14. I E Developments (builders of the original properties in Breinton Lee) were given the option to build further properties, but declined to do so because of the flooding and drainage issues that beset the local area. The evidence suggests they were right in not attempting to develop the site further.

#### Balancing ponds

15. It is noted that one of the proposed balancing ponds is higher than the surrounding area, so this will not collect surface water from the lower ground surrounding it.
16. The balancing ponds are of limited capacity, so in any prolonged periods of rain, the ponds will be full before any further surface water will have drained into them.
17. It is likely that the balancing ponds will become filled with debris and sediment so will require regular maintenance and dredging. The act of dredging will prevent any ecological benefit accruing from the existence of these water features.
18. The ponds will also provide a health and safety hazard to residents living in the area, and in particular to children. In many residential areas such ponds have been prohibited due to the hazards they pose.

#### Access and road layout

19. The lay-by on Kings Acre Road, south of the junction to Breinton Lee is frequently used as a parking area for local residents and large lorries. To improve the visibility for traffic emerging from Breinton Lee, it will be necessary to remove the lay-by completely.
20. It is noted there are currently accesses into 2 adjoining properties from the lay-by. It will be necessary to discuss any proposed changes with the owners of those properties that adjoin the lay-by before any alterations are made.
21. There are also visibility issues when people pull up opposite the post box to the north of the junction. With additional traffic emerging from Breinton Lee, there is more likelihood of collisions.
22. The drawings and reports regarding the access from Breinton Lee into the proposed development site make no mention of the gated entrance into Lambourne Gardens. As the proposed entrance is directly opposite the gates into Lambourne Gardens there are potential safety issues around this area, such as with the delays whilst vehicles enter and depart from those properties. Access for the emergency services and utility vehicles may be impeded by the layout of the access.

#### Biodiversity

23. At para 4.5, the report states: "We would not agree that the majority of the vegetation has been removed." This is demonstrably untrue - refer to the photos taken from Google Earth in 2000 and subsequent years. As previously stated at 2 above this was a mature fruit orchard planted in the 1930s as part of the nurseries and it was only removed by the applicant in the last couple of years prior to this application.
24. The application proposes that a fruit tree is planted in each of the gardens. Yet at para 4.9, it acknowledges that securing the longevity of habitat creation within residential gardens, cannot be guaranteed. This demonstrates a complete lack of respect and determination to take seriously the issue of biodiversity.

25. There is an extensive family of badgers in the area, which are a protected species. It is difficult to see how these will be protected with the current proposals to develop this site.
26. The response in the Planning Statement Addendum to the ecologists comments on clearance of vegetation on the site is to say that “the majority of the trees... were either not native (e.g. leylandii) or not mature”. This statement is clearly untrue - please refer to the photographs taken from Google Earth (in 2000 and subsequent years) submitted in the previous submission to the Planning officer. These photos clearly show extensive and mature trees growing on the proposed site.
27. The existing badger sett appears to be very close to the location of one of the proposed balancing ponds. What assurances are given to ensure the safety of the badgers and the sett?

### Sustainability

28. The proposals do specify certain amounts for off-site public amenities, but it is noted there are no amounts destined for sustainable transport - specifically to help support the bus service and also a contribution towards the proposed cycleway along Kings Acre Road. This would show a commitment towards sustainable transport and help alleviate potential traffic problems resulting from any development.
29. As the report states the use of SUDS is not appropriate due to the drainage problems on this site. The biodiversity and ecology of this site has been seriously devastated prior to this planning application and nothing in the plan indicates any commitment by the applicant to create a “sustainable” development

### Conclusion

30. Alternative brownfield sites include the nearby site of the former Whitecross School on Baggallay Street as an alternative to this development and which has suffered significantly less flooding than the area surrounding Breinton Lee.
31. The evidence describes that the properties in Breinton Lee are at a lower level relative to the highway on Kings Acre Road, which is supposedly 'downstream' in the surface water drainage system. Any breakdown in the drainage system following works carried out will inevitably lead to flooding of Breinton Lee and any properties on the proposed development site.
32. The report concludes that “the implementation of the above measures should ensure the existing flooding problems are alleviated as far as can be reasonably expected”. This assumes that everything goes according to plan, yet the developers do not appear to have full confidence in what they are proposing. It does not appear there is any capacity in the system to accommodate anything other than regular conditions. Nothing to cater for periods of heavy rain, or blockages of the system (of which there are many – see the evidence from Amey), which will lead to flooding of properties, not only of properties in Breinton Lee and Kings Acre Road, but also on the proposed development site itself.
33. Should the application be approved it will be necessary to establish a Management Company to oversee and fund maintenance of the balancing ponds, as well as the ditches and drainage system throughout. However, it will be dependent on third parties carrying out certain works in respect of the drainage system. It is unlikely that such a management system will be effective to maintain the drainage system.
34. The reports provided to support the application make reference to other parties having the responsibility to ensure the drainage system is kept in good repair, one of whom is I E

Developments, being the builders of the properties in Breinton Lee. I E Developments were given the option to build further properties, but declined to do so because of the flooding and drainage issues that beset the local area. The evidence suggests they were right in not attempting to develop the site further. Perhaps the applicants and Foxley Tagg may wish to reconsider their proposals.

For all the above reasons, Breinton Parish Council continues to object to this planning application.

If Herefordshire Council are minded to approve this application the points made in our earlier objection remain regarding S106 funds and the requirement for the imposition of conditions on the application.

## 5.2 Letters of representation and objection have been received from:

- Mr and Mrs R Underhill, Baggins Holt, 1 Breinton Lee
- NJ Thompson, Ash House, 2 Breinton Lee
- K and JE Farnes, 3 Breinton Lee
- Sheila Oakland, 5 Breinton Lee
- David Day, Cranston Lodge, 1A Breinton Lee
- Mrs Lee, 1 Cranston Mews
- C Whiteaway and Stephen Donnelly, 2 Cranston Mews, Breinton Lee
- L Hiett, 4 Cranston Mews, Breinton Lee
- Melanie Edwards, 2 Lambourne Gardens, Breinton Lee
- Mrs J Mclellan, Mr Raymond, 1 Lambourne gardens, Breinton Lee
- Melanie Edwards, 2 Lambourne Gardens, Breinton Lee
- Mrs Anderson, 3 Lambourne Gardens, Breinton Lee
- Mrs G Bezant, 4 Lambourne Gardens, Breinton Lee
- Mrs and Mrs A Richards, 5 Lambourne Gardens, Breinton Lee
- Mrs E Beddoes, 3651 Kings Acre Road
- Mr Evans, I E Developments, 335 Kings Acre Road
- Philip Sharpe, 345 Kings Acre Road
- Robert Brookes, 347 Kings Acre Road
- Dudley Jackson, 349 Kings Acre Road
- K Calvert, 355 Kings Acre Road
- Prof R Wise, Springfield House, Breinton
- P Ellis, Kings Acre

The issues raised in these letters are as follows:

- The site lies outside of a defined settlement and in an area considered to be rural / open countryside / greenbelt.
- The application is premature as the Core Strategy is in its infancy.
- There are other brownfield sites in Hereford that can accommodate the housing.
- The site is Grade 1 or 2 agricultural land that should be protected
- Density of development is too great for the area
- Will be highly visible from public footpath to the west (Wyevale Wood)
- Flooding within the site from surface water drainage and run off and 'pooling'. Significant amount of photographic evidence has also been provided by objectors.
- Drainage ditches and culverts are insufficient / failing
- Flooding of surrounding roads, pavements and properties – potential increase of this from development.
- Existing drainage problems in the area. Blockages, capacity issues.
- Concern about ongoing management of the drainage system / pools and cost of this if through a management company.

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Further information on the subject of this report is available from Ms K Gibbons on 01432 261781

- Balancing ponds may be dangerous for children.
- No evidence supplied that the culvert (when cleared) can accommodate the additional flows. Considerable doubt that the drainage system as proposed will
- Site is not sustainable – need to use a vehicle
- Highway safety issues – access onto Kings Acre Road, restricted visibility due to parking in layby.
- Conflict with traffic pulling around, and into Breinton Lee, to avoid traffic turning right into Wyevale.
- Additional traffic movements would be to the detriment of highway safety
- The removal of half the lay-by will not alter the problem of reduced visibility due to parked vehicles. The layby is, contrary to comments in the statements, frequently used.
- Vehicles waiting to access Lambourne Gardens will restrict access to the development.
- Loss of wildlife, trees and shrubs
- Impact upon Badgers sett.
- Concerns that the importance of the landscape and visual assessments are not robust enough and that enough weight has not been given to the sensitive area
- Concerns that the drainage engineer has not fully appreciated the situation / potential impact.

5.3 The consultation responses can be viewed on the Council's website by using the following link:-

<http://news.herefordshire.gov.uk/housing/planning/searchplanningapplications.aspx>

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

[www.herefordshire.gov.uk/government-citizens-and-rights/complaints-and-compliments/contact-details/?q=contact%20centre&type=suggestedpage](http://www.herefordshire.gov.uk/government-citizens-and-rights/complaints-and-compliments/contact-details/?q=contact%20centre&type=suggestedpage)

## 6. Officer's Appraisal

6.1 The proposed development of the site for 16 dwellings falls to be considered having regard to the following issues:

1. Principle of Development
2. Access and Highway Safety
3. Drainage Issues
4. Landscape impact, layout and amenity
5. Ecology
6. Affordable Housing
7. Open Space / Play Space
8. Section 106 Agreement

### Principle of Development

6.2 The application site is outside of the defined settlement boundary of Hereford City as defined by policy H1 of the UDP and thus Saved Policy H7 of the Herefordshire Unitary Development Plan (UDP) is relevant. This policy provides a clear presumption against development in open countryside, unless the proposal would meet with one of the identified exceptions. This is not the case here as such the proposal is contrary to this policy.

6.3 Notwithstanding this, at the heart of the NPPF is a general presumption in favour of sustainable development and applications for housing should be considered in this context. The NPPF now requires that local planning authorities identify a rolling five year supply of deliverable housing land to ensure choice and competition in the market and requires an additional buffer of 5% (increased to 20% if a planning authority has persistently under

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Further information on the subject of this report is available from Ms K Gibbons on 01432 261781

delivered housing land). On the basis of the evidence available to date, it is considered the requirement for a 5% buffer is applicable to Herefordshire. The Council's published Annual Monitoring Report (AMR) which monitors housing land availability identified a shortfall of 216 units which equates to a 4.6 year supply, increased to 356 units when a 5% buffer is added.

- 6.4 Paragraph 49 of the NPPF stipulates that relevant policies concerning the supply of housing land should not be regarded as up to date if a five year of housing land cannot be demonstrated. In view of this, there is a requirement to release further land for housing that is deliverable and sustainable within the next five years. There remains a requirement for the development to accord with other relevant UDP policies and NPPF guidance but in terms of the principle, if the development is acceptable in all other respects, the conflict with UDP policies H1 and H7 are not reasons for refusal of the application that could be sustained on appeal. This position has recently been reinforced by the Communities Secretary associated with a planning appeal elsewhere in the county where the Planning Inspector concluded that the relevant UDP housing delivery policies are no longer up to date and therefore not consistent with the NPPF.
- 6.5 Whilst each application must be considered on its merits, Planning Inspectors and the Communities Secretary are increasingly placing significant weight not only the shortfall but the scale of the deficit. In this regard, the published AMR is now somewhat dated being based on figures up to March 2011 and furthermore, is based on UDP and adopted Regional Spatial Strategy housing delivery requirements, both of which have now been determined by the government to be out of date and not consistent with the NPPF in housing land requirement terms. Analysis for 2011/2012 period has recently been completed and data collection for the 2012/2013 period is underway. Utilising more up to date evidence on housing need to establish the base line position, the latest figures are indicating that the shortfall is in fact considerably more than the published AMR and is likely to be in excess of a 1000 dwellings. It is considered that based on recent appeal decisions across the country, the scale of the shortfall is now also a material planning consideration relevant to this application.
- 6.6 An interim strategy to deal with sites of this nature was also agreed by the Council's Cabinet on 12th July 2012. That being to focus on sites that have been identified as having low or minor constraints in the Strategic Housing Land Availability Assessment on the edge of the city, market towns and main villages. The exception to this being where it can be demonstrated that the development and location is sustainable and appropriate for additional housing and the environmental and other impacts of the development are acceptable. The site (identified under reference number HLAA/050/001) is identified within the SHLAA as being considered to be suitable for housing with low or minor constraints for 16 units.
- 6.7 The site must also be considered in the context of 'sustainable development'. The site has good access to public transport travelling along the A438, with good pedestrian links from the site to access this. There are newly constructed shared footway / cycleway to the school and the new cycleway along Kings Acre Road towards Hereford City is programmed in as a priority project for Herefordshire Council. As such, the site is considered to be located in a sustainable location. Sustainable development would also apply to the design, layout and detail of the development, all of which will be considered as part of the reserved matters application. In conclusion, whilst the application would be contrary to the Saved housing delivery policies of the UDP, the absence of a 5-year supply of housing land means there are no grounds to recommend an application for refusal on a housing land supply policy issue.

#### Access and Highway Safety

- 6.8 The application submission relates to access only, with all other matter reserved. The indicative plans detail the access to the site from Breinton Lee in the north-west corner of the site. From this a new road will be created for vehicles. The Transportation Manager is satisfied

with the position and visibility of the proposed point of access and has raised no objection to this.

- 6.9 Residents of the gated Lambourne Gardens, have raised concerns about potential conflict of movement, where visitors to the 5 dwellings within Lambourne Gardens, have to wait on the road to be 'buzzed in' by the householder. This has been considered, and it is noted that there is a pull in before the gates large enough for a vehicle of average size to pull off the highway and not cause an obstruction. It is not considered that this would be sufficient to represent a highway safety objection. As such the proposed access to the site would comply with the requirements of policy DR3 of the Unitary Development Plan.
- 6.10 Local residents and the Parish Council also raised concerns about the increase in traffic movements from Breinton Lee onto the A438 (Kings Acre Road) due to the restricted visibility caused by cars parking in the lay-by adjacent to the access and the conflict of traffic movements with those waiting to turn into Wyevale. In response to this the applicants have amended the submission, and following liaison with the Transportation Manager have established that improvements can be achieved through the closure of half of the lay-by. The lay-by lies within highway land and details of how this closure would be undertaken would require detailed engineering drawings, a matter that can be dealt with by way of an appropriate condition. It is considered that this arrangement will also benefit existing users of the Breinton Lee. The Transportation Manager has also considered the concerns raised by local residents about the vehicles turning into Wyevale and advises that there is no personal injury accident record in at Breinton Lee junction in the last 5 years. For completeness, there are two personal injury accidents recorded within 100 metres either side of the Breinton Lee junction. One slight injury accident was recorded in May 2012 involving a stationary vehicle waiting to turn right into Wyevale being struck by a vehicle from behind. One slight injury accident was recorded in October 2012 involving a stationary vehicle waiting to turn right into No 306, (just to the east of Breinton Lee on the north side of Kings Acre Road), which turned into the path of an oncoming vehicle. These were not associated with vehicles using the Breinton Lee turning. The removal of half of the lay-by will also improve forward visibility as well. The existing access, with improvements to visibility as described, would ensure that this junction is more than capable of dealing with the predicted increase in traffic movements. The changes will not just benefit residents of the new development but would also have wider benefits for highway users. Accordingly it is considered that the proposal would comply with the requirements of policies DR3 and T8 of the UDP

#### Drainage

- 6.11 One of the key issues that has been raised during the appraisal and consideration of this application relates to surface water capacity issues. The site does not lie within a Flood Zone, but the local residents and parish council provided evidence that the site, adjoining properties, and the footways and land adjacent Kings Acre Road are all affected by water accumulations from surface water run-off.
- 6.12 Following the receipt of these, the applicants were asked to explore in more detail, the issues surrounding surface water drainage and flooding. This was to ensure that their proposals would not exacerbate existing problems and that the application site itself would not flood. A detailed drainage report was undertaken by Turnwater Ltd that assessed the current situation and this was submitted along with an updated Foul and Surface Water Drainage Strategy that looked at not just the proposals for the site, but the existing problems experienced by residents of Breinton Lee and Kings Acre Road.
- 6.13 It was established that the primary cause of the flooding to the south of Kings Acre Road has been the ineffective highway drainage, with road gullies being significantly blocked with debris. With exceptionally high levels of rainfall, water runs off the highway, bypassing the gullies and

into their driveways and garden. This is exacerbated by the fact that the receiving drainage system has also been found to be totally blocked, with its outfall barely visible.

- 6.14 Following the survey work, the jetting out of the culvert running between Breinton Lee, 343 King's Acre Road and the receiving highway surface water drainage system in King's Acre Road was undertaken by the applicants to help address the current issue. The report identified deficiencies with the culvert running along the boundary of 343 King's Acre Road which will require rectifying to ensure the effective operation of the drainage system. The report states that the culvert is the joint riparian responsibility of 343 King's Acre Road and I E Developments. The pipework within King's Acre Road is the responsibility of the Highway Authority.
- 6.15 An attenuation based surface water drainage system is proposed for the new development. It is proposed to make 2 restricted surface water discharges of 5 litres/second to the ditches that bound the site with the balance of flows being attenuated on site within 2 balancing ponds, up to the 1 in 100 year climate change event. Discharge rates will be restricted by the use of 'hydrobrake' vortex flow control devices. The Council's (AMEY) drainage engineer is satisfied that such a drainage system should ensure that existing flooding problems are not worsened.
- 6.16 The existing drainage ditches that bound the site will be re-profiled and extended to assist with the drainage of any excess surface water runoff from the field to the south of the site. A grill/screen will be fitted over the downstream culvert inlet to help prevent debris entering the drainage system. To ensure their future effective operation, the ongoing maintenance of the ditches should be included within the maintenance regime required for the proposed on site balancing ponds. It is proposed that a combination of conditions and agreements contained within the Section 106 Agreement would be sufficient to ensure that on-going maintenance is undertaken to implement the development and for the future.
- 6.17 The continued effective operation of the site ditches and downstream drainage system will, however, be dependant upon there being a clear unrestricted outfall and the integrity of the receiving ditch. It is therefore recommended within the report that the downstream ditch, running between 304 and 306a Kings Acre Road is cleared/re-profiled by the riparian owners, under the direction of Herefordshire Council, as the land authority.
- 6.18 After seeking further clarification on matters, the Council's Land Drainage Engineer, has concluded that the reply addresses satisfactorily the matters of topography and susceptibility to flood risk, the existing drainage system, the improvements and maintenance of the existing system and the design of the drainage for the proposed development. On that basis he raises no objection. As such the proposal would comply with the requirements of policies DR4 and DR7 of the Unitary Development Plan and recommendations are made in respect of conditions and use of a Section 106 agreement for on-going maintenance.
- 6.19 It is proposed to connect the foul drainage from the development to the public foul sewer located within Breinton Lee via a new gravity connection. Welsh Water has confirmed that there is sufficient capacity within the public foul sewer network to serve the foul flows from the development. Conditions regarding this matter are recommended.

#### Landscape Impact, Layout and amenity

- 6.20 The application site has been assessed as part of the Council's Urban Fringe Sensitivity Analysis and is considered to have medium-low sensitivity and is therefore suitable for housing. The site is relatively contained and clearly sits in the context of the other dwellings on Breinton Lee (the majority of which have been built in the last 15 years) and Kings Acre Road. The application submission reserves all other matters but an indicative layout has been submitted and officers are satisfied that 16 dwellings, with carefully considered landscaping and design, can be accommodated without detriment to the wider landscape or to the amenity



of neighbouring properties. The reduction in numbers and comments within the updated design and access statement also addresses this. These matters will be considered as part of any reserved matter application, including compliance with policies DR1 and H13 of the UDP, as well as guidance contained within the National Planning Policy Framework.

- 6.21 Unusually, for this type of development, it is noted that the applicants intend that some of the plots will be made available for self build projects.

#### Ecology

- 6.22 The Council's Ecologist has considered the reports submitted with the application and has recommended conditions. It is noted that there is an active badger sett to the western boundary of the site, and this is identified within the report and within representations. The conditions recommended ensure a scheme of habitat protection along with enhancement and mitigation measures. This would therefore comply with the requirements of policies NC1, NC6, NC7, NC8 and NC9 of the Herefordshire Unitary Development Plan.

#### Affordable Housing

- 6.23 The application submission, in line with policy H9 of the UDP, includes 35% affordable housing provision. In this instance, it has been agreed that this will be provided as 6 Low Cost Market dwellings that would be sold at a reduced cost (at the price stated in the Technical Data at the time of the Reserved Matters application(s)). Further sales would also reflect the Low Cost discount and this would be secured, in perpetuity, through the Section 106 agreement. All properties would be built to DQS, Lifetime Homes and a minimum level of Code 3 and allocated to those with a local connection to Breinton parish, cascading to adjoining parishes in the established manner.

#### Open Space / Play Space provision

- 6.24 Policy H19 of the UDP requires the provision of play space for children on sites of 10 – 30 dwellings. It is agreed in principle that the layout can provide opportunities for residents and children to play informally. However, the final design and landscaping plans will need to make it clear which areas could be used and managed as such and are fit for purpose. This is particularly relevant to the pond area to be used as part of the infiltration scheme (SUDS) in respect of health, safety and accessibility. For example, consideration will need to be given to the design of the balancing pond as deep standing water can present a danger if publically accessible and future adoption as POS will be dependent on its final design. This will be considered further as part of any reserved matters application.
- 6.25 The on-site provision doesn't include a formal play area and this is supported since they offer little in play value and are costly to maintain. Therefore, in accordance with UDP policy H19 and the requirements for schemes of 10 – 30 dwellings, an off-site contribution towards existing facilities is considered appropriate. In this instance, existing play provision in the area is outside acceptable walking thresholds but given the potential to develop informal POS on the development site especially for younger children, the applicant has agreed to this approach. The contributions will be spent in consultation with the local community on priorities in accordance with the Play Facilities Strategy and Action Plans, and it is agreed that this will potentially be at Westfaling Street which is the nearest facility and a neighbourhood play facility.

#### Section 106 Matters

- 6.26 The Heads of Terms appended to this report detail the proposed requirements of the Section 106 Agreement. This includes contributions for the enhancement of local education, sustainable transport and sports infrastructure as well as contributions for libraries, waste

management and public open space. The Section 106 Agreement will also control the delivery of the affordable units and ensure they remain affordable in perpetuity, ensure drainage maintenance and management and the maintenance / provision of any open space within the site.

- 6.27 The Section 106 Heads of Terms is based on the requirements of the adopted Supplementary Planning Document on Planning Obligations whilst also ensuring the need and scale of the contributions and uses for the money meet the relevant legislative tests set out in the Community Infrastructure Levy Regulations. It is considered that the Section 106 Agreement as drafted accords with the requirements of UDP policy DR5.

#### Other issues

- 6.28 Both Parish Council and local representatives note that the land is Grade II agricultural land. The land has not been used for agricultural purposes for a significant length of time. Policy E15 of the UDP does seek to protect the best and most versatile land from development unless there is a lack of suitable development opportunities within the existing urban areas. I would refer to the start of the officer appraisal that identifies the Council's current housing land supply deficit and given that this proposal would involve the loss of a very small parcel of land that is not in agricultural use at present (or recently) such that greater weight should be attached to the former. Officers do not consider that the loss of agricultural could be defended in this specific case.

#### Conclusion

- 6.29 The proposal fails to comply, in principle, with Policy H7 of the Herefordshire Unitary Development Plan, however weight must be given to the National Planning Policy Framework, which clearly identifies that where sites are considered to be sustainably located and where they comply with other relevant policies, there should be a presumption in favour of sustainable development.
- 6.30 The development of the site has been carefully considered having regard to the access, highway safety and junction capacity and it is concluded that this would accord with the requirements of policies DR3 and T8 of the Unitary Development Plan. The drainage of the site and the impact on the existing drainage systems has also been thoroughly considered having regard to the technical reports and recommendations provided that relate both to the existing problems in the locality and site constraints. Subject to details that can be agreed through appropriate conditions and legal agreement, the proposal would accord with the requirements of policies DR4 and DR7 of the Unitary Development Plan.
- 6.31 The site is not particularly sensitive in terms of landscape impact, and sits comfortably within the context and built form of the surrounding dwellings and commercial buildings. Therefore the proposal would comply with the requirements of policy LA2 of the Unitary Development Plan, subject to detailed landscape plans, required by policy LA6, as part of the reserved matters application.
- 6.32 Matters relating to design, scale, layout and impact on amenities of adjoining properties will be considered as part of subsequent reserved matters application and appropriate conditions but officers are satisfied that this will be possible having regard to policies DR1, DR2, H13, LA6, NC1, NC6, NC7, NC8 and NC9 of the Unitary Development Plan

## **RECOMMENDATION**

**That subject to completion of a Section 106 Agreement in accordance with the attached Heads of Terms, planning permission be granted subject to the following conditions:**

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Further information on the subject of this report is available from Ms K Gibbons on 01432 261781

1. **A02 Time limit for submission of reserved matters (outline permission)**
2. **A03 Time limit for commencement (outline permission)**
3. **A04 Approval of reserved matters**
4. **I51 Details of slab levels**
5. **G11 Landscaping scheme - implementation**
6. **G04 Protection of trees/hedgerows that are to be retained**
7. **The recommendations set out in the ecologist's report dated 19 June 2012 should be followed. Prior to commencement of the development, a full working method statement should be submitted to and be approved in writing by the local planning authority, and the work shall be implemented as approved.**

**Prior to commencement of the development, a habitat protection and enhancement scheme should be submitted to and approved in writing by the local planning authority. This should include provision for the long-term management of the site and the work shall be implemented as approved.**

**Reason: To ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010 and Policies NC1, NC6 and NC7 of the Herefordshire Unitary Development Plan. To comply with Policies NC8 and NC9 of the Herefordshire Unitary Development plan in relation to Nature Conservation and Biodiversity and to meet the requirements of the National Planning Policy Framework and the NERC Act 2006.**

8. **G15 Landscape maintenance arrangements**
9. **F14 Removal of permitted development rights**
10. **L01 Foul/surface water drainage**
11. **L02 No surface water to connect to public system**
12. **L03 No drainage run-off to public system**
13. **M01 Surface water drainage works to be agreed**
14. **H09 Driveway gradient**
15. **H11 Parking - estate development (more than one house)**
16. **H17 Junction improvement/off site works**
17. **H18 On site roads - submission of details**
18. **H19 On site roads - phasing**
19. **H21 Wheel washing**

- 20. H27 Parking for site operatives
- 21. I16 Restriction of hours during construction

#### Reason for Approval

- 1. The proposal fails to comply, in principle, with Policy H7 of the Herefordshire Unitary Development Plan, however weight must be given to the National Planning Policy Framework that clearly identifies that where sites are considered to be sustainably located, and where they comply with other relevant policies, there should be a presumption in favour of sustainable development.

The development of the site has been carefully considered having regard to the access to the site and impact, highway safety and junction capacity and it is concluded that this would accord with the requirements of policies DR3 and T8 of the Unitary Development Plan. The drainage of the site and the impact on the existing drainage systems has also been thoroughly considered having regard to the technical reports and recommendations provided that relate to the existing problems in the locality and site constraints. Subject to details that can be agreed through appropriate conditions and legal agreement, the proposal would accord with the requirements of policies DR4 and DR7 of the Unitary Development Plan.

The site is not particularly sensitive in terms of landscape impact sits comfortably within the context and built form of the surrounding dwellings and commercial buildings and therefore the proposal would comply with the requirements of policy LA2 of the Unitary Development Plan, subject to detailed landscape plans as part of the reserved matters application.

Matters relating to design, scale, layout and impact on amenities of adjoining properties will be considered as part of subsequent reserved matters application and appropriate conditions but the Local Planning Authority are satisfied that this will be possible having regard to policies DR1, DR2, H13 LA6, NC1, NC6, NC7, NC8 and NC9 of the Unitary Development Plan.

It is considered that the other associated impacts of the development can be mitigated through the completion of a Section 106 Agreement in accordance with policy DR5 of the Unitary Development Plan and that this sustainable form of development, which complied with the saved policies of the unitary Development Plan was in accordance with the guidance provided by the National Planning Policy Framework.

#### INFORMATIVES:

- 1. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations. Negotiations in respect of matters of concern with the application (as originally submitted) have resulted in amendments to the proposal. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.
- 2. HN10 No drainage to discharge to highway

3. **HN08 Section 38 Agreement & Drainage details**
4. **HN28 Highways Design Guide and Specification**
5. **HN05 Works within the highway**
6. **An appropriately qualified and experienced ecological clerk of works should be appointed (or consultant engaged in that capacity) to oversee the ecological mitigation work.**

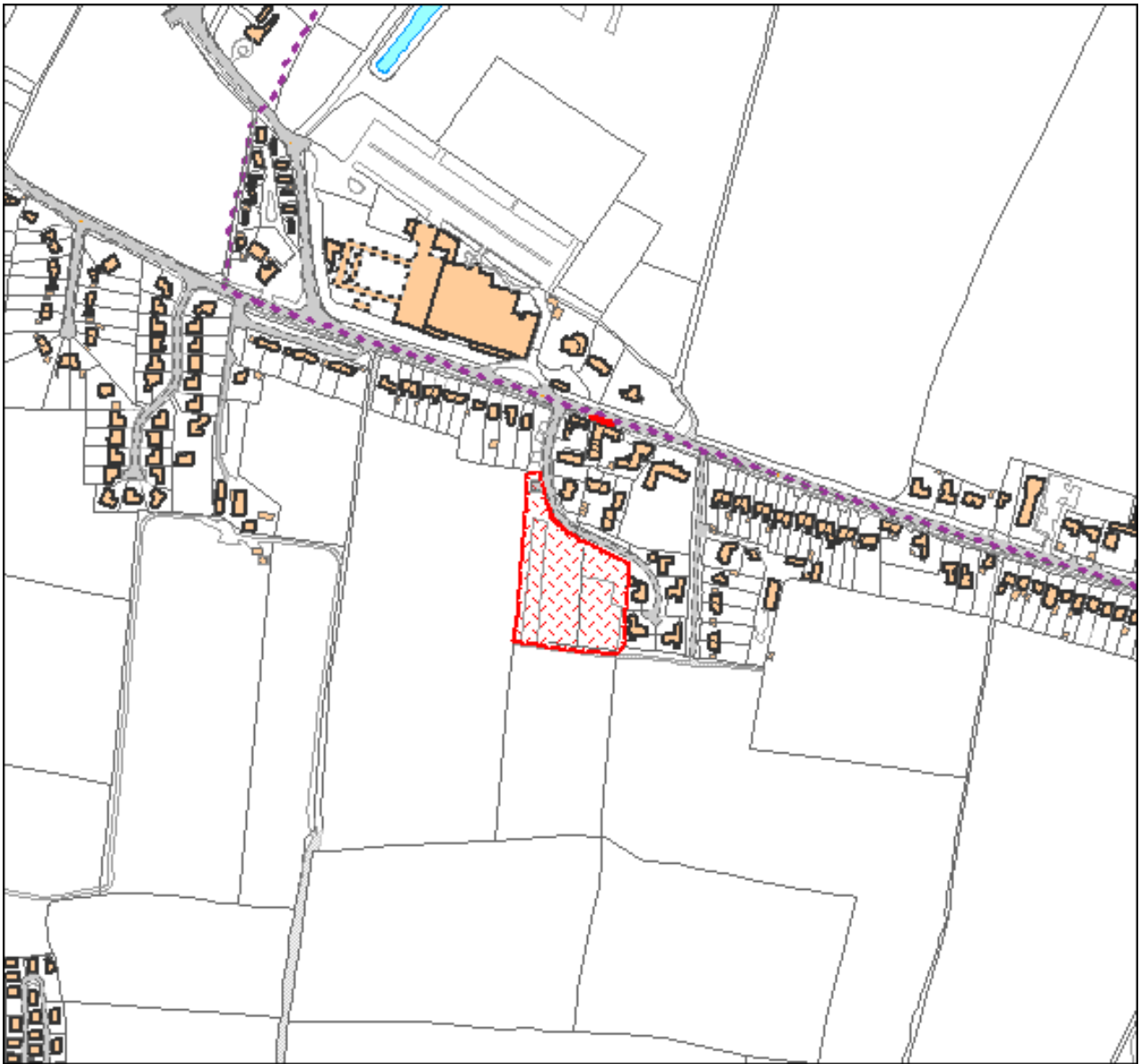
Decision: .....

Notes: .....

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**Background Papers**

Internal departmental consultation replies.



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**APPLICATION NO:** S/123592/O

**SITE ADDRESS :** LAND OFF BREINTON LEE, KINGS ACRE ROAD, HEREFORD

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**HEADS OF TERMS**  
**PROPOSED PLANNING OBLIGATION AGREEMENT**

Section 106 Town and Country Planning Act 1990

**PLANNING APPLICATION: 123592/O**

**PROPOSAL: PRE-APPLICATION ADVICE FOR RESIDENTIAL DEVELOPMENT.**

**SITE: LAND OFF BREINTON LEE, KINGS ACRE ROAD, HEREFORD**

1. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of:

£4,900 (index linked) for a 2/3 bedroom open market unit  
£8,955 (index linked) for a 4+ bedroom open market unit

The contributions will provide for enhanced educational infrastructure, youth service infrastructure, early years childcare insufficiency solutions and the Special Education Needs Schools. The sum shall be paid on or before first occupation of the 1st open market dwellinghouse (unless otherwise agreed with the LPA), and may be pooled with other contributions

2. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of:

£ 1,720.00 (index linked) for a 2 bedroom open market unit  
£ 2,580.00 (index linked) for a 3 bedroom open market unit  
£ 3,440.00 (index linked) for a 4+ bedroom open market unit

The contributions will provide for sustainable transport infrastructure to serve the development, which sum shall be paid on or before occupation of the 1st open market dwellinghouse (unless otherwise agreed with the LPA) and may be pooled with other contributions if appropriate.

The monies shall be used by Herefordshire Council at its option for any or all of the following purposes:-

- Improvements to pedestrian/cycling facilities and links (including cycle route along Kings Acre Road)
- Safer Routes for Schools
- Improvements to public transport facilities

3. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of:

£ 965.00 (index linked) for a 2 bedroom open market unit  
£ 1640.00 (index linked) for a 3 bedroom open market unit  
£ 2219.00 (index linked) for a 4 / 4+ bedroom open market unit

To be used as an off-site contribution towards Westfaling Street.

The sums shall be paid on or before the occupation of the 1st open market dwelling (unless otherwise agreed with the LPA). The monies may be pooled with other contributions if appropriate

OR – an on-site LAP alongside the informal play opportunities (expect a play area to the value of approx. £10,000 and approx. 0.02 ha (200 sq m) in size.

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Further information on the subject of this report is available from Ms K Gibbons on 01432 261781

4. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of:

- £ 408.00 (index linked) for a 1 bedroom open market unit
- £ 496.00 (index linked) for a 2 bedroom open market unit
- £ 672.00 (index linked) for a 3 bedroom open market unit
- £ 818.00 (index linked) for a 4 bedroom open market unit

(contribution based around the requirements of policy H19 and RST4 of the UDP and Sport England Sports Facilities Calculator). The money shall be used by Herefordshire Council to provide enhanced indoor sports facilities in Hereford City.

5. The developer covenants with Herefordshire Council to pay Herefordshire Council a 15 year commuted sum for the future maintenance of the on-site open space and play provision (to be agreed in line with 15 year maintenance schedule)

6. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of:

- £120.00 (index linked) for a 1 bedroom open market unit
- £146.00 (index linked) for a 2 bedroom open market unit
- £198.00 (index linked) for a 3 bedroom open market unit
- £241.00 (index linked) for a 4+ bedroom open market unit

The contributions will provide for enhanced Library facilities in Hereford. The sum shall be paid on or before the occupation of the 1st open market dwelling, and may ... be pooled with other contributions if appropriate.

7. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of £120 (index linked) per open market dwelling. The contribution will provide for waste reduction and recycling in Hereford. The sum shall be paid on or before occupation of the 1st open market dwelling (unless otherwise agreed by the LPA), and may be pooled with other contributions if appropriate.

8. The developer covenants with Herefordshire Council that the residential units shall be "Affordable Housing" which meets the criteria set out in policy H9 of the Herefordshire Unitary Development Plan or any statutory replacement of those criteria and that policy including the Supplementary Planning Document on Planning Obligations.

9. The Affordable Housing units shall be Low Cost Market.

10. All the affordable housing units shall be completed and made available for occupation prior to the occupation of no more than 50% of the general market housing or in accordance with a phasing programme to be agreed in writing with Herefordshire Council.

10.1 The Affordable Housing Units sold in agreement with a procedure agreed with the LPA and shall be retained as Low Cost Market in Perpetuity and shall be allocated . sold as a sole residence to a person or persons one of who has:-

- a local connection with the parishes of Breinton,
- cascading to Hereford City. In the event there being no person with a local connection to any of the above parishes any other person ordinarily resident within the administrative area of Herefordshire Council who is eligible under the allocation policies of the Registered Social Landlord if the Registered Social Landlord can demonstrate to the Council that after 28 working days of any of the Affordable Housing Units becoming available for letting the Registered Social Landlord having made all reasonable efforts through the use of Home Point have found no suitable candidate under sub-paragraph 10.1



11. For the purposes of sub-paragraph 11.3 of this schedule 'local connection' means having a connection to one of the parishes specified above because that person:
  - 11.1 is or in the past was normally resident there; or
  - 11.2 is employed there; or
  - 11.3 has a family association there; or
  - 11.4 a proven need to give support to or receive support from family members; or
  - 11.5 because of special circumstances
12. The developer covenants with Herefordshire Council to construct the Affordable Housing Units to the Homes and Communities Agency 'Design and Quality Standards 2007' (or to a subsequent design and quality standards of the Homes and Communities Agency as are current at the date of construction) and to Joseph Rowntree Foundation 'Lifetime Homes' standards. Independent certification shall be provided prior to the commencement of the development and following occupation of the last dwelling confirming compliance with the required standard.
13. The developer covenants with Herefordshire Council to construct the Affordable Housing Units to Code Level 3 of the 'Code for Sustainable Homes – Setting the Standard in Sustainability for New Homes' or equivalent standard of carbon emission reduction, energy and water efficiency as may be agreed in writing with the local planning authority. Independent certification shall be provided prior to the commencement of the development and following occupation of the last dwelling confirming compliance with the required standard.
14. In the event that Herefordshire Council does not for any reason use the sum specified in paragraphs 1, 2, 3, 4, 5, 6 and 7 above for the purposes specified in the agreement within 10 years of the date of this agreement, the Council shall repay to the developer the said sum or such part thereof, which has not been used by Herefordshire Council.
15. The sums referred to in paragraphs 1, 2, 3, 4, 5, 6 and 7 above shall be linked to an appropriate index or indices selected by the Council with the intention that such sums will be adjusted according to any percentage increase in prices occurring between the date of the Section 106 Agreement and the date the sums are paid to the Council.
16. The developer undertakes to re-profile and extend the ditches to the southern and western boundaries of the site in accordance with the detailed drainage strategy agreed by conditions of the planning permission. Works shall be undertaken and completed prior to the occupation of any unit of accommodation. A detailed future maintenance schedule shall also be provided.
17. The developer covenants with Herefordshire Council to pay a surcharge of 2% of the total sum detailed in this Heads of Terms, as a contribution towards the cost of monitoring and enforcing the Section 106 Agreement. The sum shall be paid on or before the commencement of the development.
18. The developer shall pay to the Council on or before the completion of the Agreement, the reasonable legal costs incurred by Herefordshire Council in connection with the preparation and completion of the Agreement.
19. The Children's Play Area (if provided) and amenity public open space area shall be provided on-site prior to the occupation of 50% of the open market dwellings. The Children's Play Area and public open space shall be maintained by the developer for a period of one year and then transferred to Herefordshire Council at a cost of £1 provided that the play area and open space are to an acceptable standard as agreed by Herefordshire Council. At the time of transfer the developer shall pay Herefordshire Council a 15 year maintenance sum in accordance with the Tariff for Calculation of Commuted Sums 2012 (or subsequently amended).

Kelly Gibbons, Principal Planning Officer, May 2013

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Further information on the subject of this report is available from Ms K Gibbons on 01432 261781