

|                         |   |
|-------------------------|---|
| <b>MEETING:</b>         | <b>PLANNING COMMITTEE</b>   |
| <b>DATE:</b>            | <b>27 JUNE 2012</b>   |
| <b>TITLE OF REPORT:</b> | <p><b>S102921/ O - DEVELOPMENT OF GRASS AND ALL WEATHER SPORTS PITCHES, CLUBHOUSE, INDOOR TRAINING BUILDING, CAR PARKING AND LANDSCAPING SUPPORTED BY ENABLING RESIDENTIAL DEVELOPMENT OF 190 UNITS AT LAND TO THE EAST OF HOLYWELL GUTTER LANE, HAMPTON BISHOP, HEREFORD, HR1 4JN</b></p> <p><b>For: Hereford Rugby Football Club per Mrs Sally Tagg, Festival House, Jessop Avenue, Cheltenham, Gloucestershire, GL50 3SH</b></p> |

**Date Received: 9 November 2010**

**Ward: Backbury**

**Grid Ref: 354239,239067**

**Expiry Date: 11 March 2011**

Local Member: Councillor J Hardwick

## **1. Background and Introduction**

- 1.1 This application was first considered by Planning Committee on 31 August 2011. The previous Committee report, Committee updates as reported to Committee and the Committee minutes are appended to this report. The officer recommendation was for the application to be refused for two reasons. The first concerned the fact the site fell within open countryside in policy terms and the consequential adverse landscape and visual impact of the development and the loss of orchard was in conflict with adopted Unitary Development Plan policies. The second refusal reason was that at the time of consideration of the development, there was an outstanding objection from Natural England and the Council's ecologist concerning the possible impact of the development on the River Wye Special Area of Conservation.
- 1.2 Following a comprehensive debate, delegated authority was granted to officers to approve the development subject to the resolution of four issues as set out below:
- a) There being no further representations or consultations raising new material planning considerations by the end of the amended plan consultation period;
  - b) The resolution of the outstanding objection from Natural England;
  - c) The resolution of other issues identified in the officer's appraisal, and;
  - d) The completion of a planning obligation under Section 106 of the Town and Country Planning Act 1990 in accordance with the matters raised in the officer's appraisal and any additional matters considered necessary by officers.

- 1.3 Following further legal advice, it is necessary to bring the development back to Planning Committee for reconsideration. The reasons for this are as follows:
- a) To update members and allow further consideration of the four requirements set out in the previous recommendation for approval.
  - b) To consider whether the adoption of the National Planning Policy Framework materially changes the planning policy considerations.
  - c) To consider the Council's current supply of housing land and any ramifications arising from this.
  - d) To consider recent case law concerning the reasons given for the approval of a development contrary to the officer recommendation.
- 1.4 The proposed development remains unchanged from that previously considered and therefore this report primarily focusses on the above four issues. This report should also be read in conjunction with the previous Committee report and other appendices.

## **2. Site Description and Proposal**

- 2.1 The site area extends to 20.11 hectares (49.69 acres) located north of Hampton Park Road (B4224) and east of Hollywell Gutter Lane, approximately 0.75 KM west of Hampton Bishop Village. The site is largely set out to commercial apple orchards other than a semi mature broadleaved band of trees running east/west through the site. The site is presently accessed via two existing vehicles accesses directly onto the B4224 which serve gravelled tracks running throughout the site. Levels undulate significantly across the site.
- 2.2 The northern and eastern boundaries of the site are bordered by further commercial orchard with agricultural pasture land beyond. Along part of the site frontage either side of Hampton Park Road are a number of predominantly detached dwellings and bungalows. Adjacent the northwest corner of the site is the Martha Trust Residential Care which is currently under construction, north of which are further residential properties and on the western side of Hollywell Gutter Lane is an area of public open space with more recent residential housing estates beyond.
- 2.3 The site falls outside of the settlement boundary for the city as identified within the Unitary Development Plan and therefore lies entirely within open countryside. A small part of the south west corner of the site falls within Hampton Park Conservation Area and 300 metres north of the site is the Ring Ditch Scheduled Ancient Monument. The property known as Whistlefield south east of the site is also grade II listed. 400 metres south of the site is the River Wye which is designated a Special Wildlife Site, Site of Special Scientific Interest and Special Area of Conservation and the floodplain (floodzone 3) extends into the lower southern third of the site. Hollywell Gutter Lane is bridleway and west of here is a Site of Importance for Nature Conservation.
- 2.4 The site itself has no statutory landscape designation but is characterised within the Council's Landscape Character Supplementary Planning Document primarily as Principal Settled Farmlands. The Council's Urban Fringe Sensitivity Report prepared as part of the evidence base to support the Core Strategy designates the landscape as high-medium landscape sensitivity. Orchards are also priority habitats within both the Herefordshire and National Biodiversity Action Plan.

### The Proposal

- 2.5 The proposal is for a mixed-use development to create a new base for Hereford Rugby Football Club comprising 6 new grass senior pitches (2 of which are floodlit) and 2 grass junior pitches, a full size floodlit all weather pitch, clubhouse and indoor training facility with enabling

residential development of 190 units, 35% of which will be affordable and an area for allotments.

- 2.6 The application is in outline form with the principle of the development and means of access to be considered at this stage. The appearance, landscaping, layout and scale of the development are reserved for future consideration. The format of the application is rather unusual in that the proposed housing is required to enable the construction of the rugby club facilities. Effectively, the increase in the value of the land generated by the granting of planning permission would provide the funds from the housing developer to construct the club infrastructure and pitches: this is secured through a Section 106 Agreement.
- 2.7 The application is accompanied by an Environmental Statement (ES). This considers the likely significant environmental effects of the development and the scope to reduce or mitigate any environmental affects that may occur. The ES includes specific chapters on transport, noise, hydrology and drainage, utilities and services, ecology, landscape and visual impacts, community impacts, archaeology and cultural heritage, geo-environmental and agricultural impacts. The application is also supported by several additional reports as follows: Design and Access Statement incorporating a design code, Planning Statement incorporating a Statement of Community Involvement, draft Section 106 Heads of Terms, Arboricultural Report, Sequential Site Selection Report both for the development as a whole and the rugby club in isolation, Sports and Community Use Statement, Heritage Statement, Framework Travel Plan, Framework Waste and Construction Management Plan and a Viability Assessment.

### **3. Policies**

- 3.1 The relevant Unitary Development Plan policies and Supplementary Planning Guidance remain as set out in the previous Committee report. However, since the previous consideration of the development, all national planning policy statements have been replaced with the National Planning Policy Framework. The relevant policy guidance contained within this document is considered in the officer's appraisal.
- 3.2 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.asp>

### **4. Planning History**

- 4.1 As set out in the previous Committee report and updates appended to this report.

### **5. Consultation Summary**

- 5.1 As set out in the previous Committee report and updates appended to this report other than is updated in the officers appraisal.

### **6. Representations**

- 6.1 As set out in the previous Committee report and updates appended to this report other than is updated in the officer appraisal.

### **7. Officer's Appraisal**

- 7.1 As was the case when the application was first considered, the competing factors to be assessed with the proposal result in a very finely balanced decision and the adoption of the National Planning Policy Framework and Council's publication of its housing supply position

reinforces some of the previously secondary material planning considerations. This appraisal will focus on the four primary reasons for bringing the development back to the Committee for reconsideration as identified at paragraph 1.3 and consider their implications. The first being the issues to be addressed as outlined in the previous Committee recommendation.

#### Requirement 1 – Expiry of the amended plan consultation period

- 7.2 At the time of consideration of the report, the re-consultation period on the amended plans had not expired. During the outstanding period of consultation, no new representations were received raising new material planning considerations that were not already covered in the report or considered by members in debating the application. Consequently, the requirements of part one of the previous Committee recommendation have been met.
- 7.3 Approximately two months after the closure of the consultation period, a letter was received from the National Association of Cider Makers (NACM) expressing their concerns with the loss of orchard, parts of which were planted in the early 2000's by Bulmers resulting from a breeding programme begun in 1985. They identify that the trees are of great importance as a 'gene bank' to the future development of cider apple varieties that will survive changes in our climate. They request the scheme be amended to secure the retention of the orchard in question which is located where the junior pitches are proposed. This would entail stepping outside of the application site area and therefore is not possible within the terms of the application as currently presented. Notwithstanding, what has been agreed with the developer is that if approved, a condition will be imposed preventing any development in the relevant area until May 2013. This would allow time for either the affected trees to be translocated and/or cuttings to be taken to propagate the trees elsewhere. It should also be noted that approximately 50% of the orchard the NACM refer to will be unaffected by the development.

#### Requirement 2 – Resolution of the Natural England objection

- 7.4 Natural England remained in objection to the development primarily due to the potential impact of the development on the Conservation Objectives of the River Wye Special Area of Conservation. A summary of their response to the amended plan re-consultation undertaken prior to the previous consideration of the development is appended to this report as part of the previous Committee updates. The thrust of the objection concerned the increased foul drainage discharges arising from the development, the associated phosphate content of those discharges and the capacity of the protected watercourse to absorb the impact of the additional discharges via the sewage treatment works.
- 7.5 In response to this objection, the applicants commissioned a drainage study to establish the foul drainage flows from the development and the associated impact on the River Wye. The conclusion of this report was that the development would have no likely significant affects in the River Wye Special Area Conservation. Additionally, the Council has been working with the Environment Agency, Welsh Water and Natural England to establish what the future development capacity of the water course is through undertaking a computer modelling exercise. This has revealed that there remains capacity for several thousand houses within the River Wye catchment area before the Conservation Objectives of the watercourse are becoming close to being exceeded.
- 7.6 Consequently, the combination of the report provided by the developer along with analysis undertaken by the Council has demonstrated that the proposed development both in isolation and in combination with other relevant plans and projects will not result in any significant adverse effect of the River Wye Special Area of Conservation. Other concerns raised by Natural England regarding the potential impact of earthworks on the Special Area of Conservation would be addressed through a combination of planning conditions and the Section 106 Agreement. Natural England has now withdrawn their objection.

### Requirement 3 – Addressing other matters in the report

- 7.7 The two principal outstanding issues raised in the previous report concerned the preparation of the more detailed design code to support the planning permission and a review of the housing mix to achieve a better balance of house sizes.
- 7.8 A design code has now been prepared and agreed with the applicants and compliance would be achieved through a planning condition. The design code stipulates the parameters for the future detailed applications covering matter such as amenity space, waste management, parking, design, materials, boundary treatments, drainage, road structure, siting and orientation, scale and green infrastructure. The design code also stipulates the highest contour which the residential development can extend to, to assist in mitigating the visual impact of the development on the higher parts of the site. This will ensure the future detailed applications are sensitively designed around the physical opportunities and constraints of the site.
- 7.9 The affordable housing mix remains unchanged. This being 35% affordable housing with a mix of 50% social rented and 50% intermediate tenure. The overall housing provision is now 14% 1 bedroom units, 25% 2 bedroom units, 46% 3 bedroom units and 15% 4 bedroom units. This represents a more balanced provision with more two and three beds and less four bed units whilst still recognising both the location of the site and the format of the development justifies a higher number of family housing. Other matters raised in the report such as the preparation of a community use agreement for the sports facilities and preparation of more detailed travel plans have also now been secured through a Section 106 Agreement.

### Requirement 4 – Completion of a Section 106 Agreement

- 7.10 The Section 106 Agreement has now been agreed by all parties, is completed and is awaiting signature. This was a particularly complex Agreement and has taken a considerable period of time to assemble. It is also noteworthy that this represents the largest S106 Agreement in terms of direct community infrastructure provision, financial contributions, land transfers and other requirements the Council has ever negotiated. A summary of the requirements of the S106 Agreement are set out below:

| <b>Financial Contributions</b>                 |            |
|--|------------|
| Contribution to fund the rugby club facilities | £4,594,169 |
| Education                                      | £894,660   |
| Flood and Drainage Relief                      | £40,000    |
| Recycling                                      | £14,760    |
| Play, Sport and Recreation                     | £190,000   |
| Libraries                                      | £26,826    |
| Transportation                                 | £368,940   |

- Phased delivery of 35% affordable housing comprising of 67 units split between 34 units as social rented and 33 units as intermediate tenure (shared ownership, intermediate rent and low cost market housing)
- A requirement that all housing achieves level 4 of the Code for Sustainable homes and the rugby development achieves BREEAM Very Good or equivalent standard
- Creation of 36 fully serviced and equipped community allotments and freehold transfer to the Council at no cost
- Safeguarding of a corridor through the site to enable the construction of additional road infrastructure and freehold transfer of the land to the Council at no cost
- Freehold transfer of Hereford Rugby Club's existing grounds and buildings to the Council at no cost upon completion of their new facilities

- Full travel plans for both the residential and rugby developments – both requiring a 15% reduction in single occupancy vehicular trips to and from the site over 5 years
- A full Ecological Management Plan – this protects the retained orchard, requires it all to be converted to organic farming within 3 years and sets out a 15 years programme of works to enhance the biodiversity value of the site
- A Community Sports and Business Plan – this identifies how the club will enable wider use of the facilities by schools, other sports clubs, community groups and the public
- A detailed specification for the rugby facilities
- An insurance bond held in favour of the Council for the sum of £4,594,169 so as in the event the developer does not complete the rugby development, the Council has the funds to complete the works.

#### National Planning Policy Framework

- 7.11 Since the previous consideration of the development in August last year, two other notable changes have occurred, namely the adoption of the National Planning Policy Framework (NPPF) and the publication of the Council's latest Annual Monitoring Report (AMR) which includes an analysis of the current supply of deliverable housing land.
- 7.12 The NPPF clarifies that due weight can still be given to the relevant Unitary Development Plan policies for a period of 12 months from date of adoption of the NPPF providing those policies are largely consistent with the NPPF. It is not considered the Core Strategy is sufficiently advanced to be given due weight in the consideration of the application.
- 7.13 The application was previously recommended for refusal as it was considered the development would adversely erode the landscape character of the area and result in the significant loss of orchard which is a Biodiversity Action Plan Habitat. Consequently the development was considered contrary to UDP landscape policies S7, LA2 and LA3 and policy NC6 concerning the threat and loss of biodiversity action plan habitats. The development was also considered contrary to policy H7 in that none of the exceptions within this policy concerning development in the countryside were met and policy RST10 which requires that major sports facilities are acceptable in terms of their environmental impact. The second reason for refusal as reported to Committee as an update to the agenda concerned the impact of the development on the Special Area of Conservation. As explained at paragraphs 7.4-7.6, this issue has now been resolved.
- 7.14 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. It has previously been accepted that the development can be regarded as sustainable in terms of its location, accessibility, design and construction standards to be achieved. However, this presumption does not override normal, site specific planning considerations and the need to comply with the relevant Unitary Development Plan policies where they are consistent with the NPPF. In this regard, the site remains contrary to policy H7 being located in the open countryside.
- 7.15 Whilst the additional documents such as the design code and ecological management plan do go some way to mitigating the negative impacts of the development, in your officer's opinion, the loss of orchard and adverse visual and landscape impact of the development cannot be fully mitigated and therefore the development remains in conflict with the UDP policies listed in 7.13 above. The NPPF advises of the need to protect and enhance valued landscapes but that the level of protection should be commensurate with their status. In this instance, the site has no statutory designation but the Council's evidence supports the position that the landscape and orchard is of value, local distinctiveness and contributes to the landscape setting of the city. Therefore, whilst the NPPF places a lower importance on undesignated landscapes and habitats, it is considered the aims and requirements of UDP policies LA2, LA3 and NC6 are consistent with the NPPF.

### The NPPF and Housing Land Supply

- 7.16 The NPPF now requires that local planning authorities should identify a five year supply of housing with an additional 5% buffer to ensure choice and competition in the market for land. Since the previous consideration of the application, the Council has published its Annual Monitoring Report (AMR). Based on the AMR figures, the Council currently has a shortfall of 216 units which equates to a 4.6 year supply. This shortfall also does not account for the requirement to maintain an additional 5% buffer. Whilst the shortfall is not significant, it is nevertheless a shortfall. The NPPF stipulates that relevant policies concerning the supply of housing land should not be regarded as up to date if a five year land supply cannot be demonstrated. The need for the Council to provide for additional deliverable housing sites is now more explicit than was the case previously and therefore must be considered a material consideration in favour of the development.

### Recent Legal Case Law

- 7.17 The Council has recently been engaged in a legal case which primarily concerned the reasons given for approval of a development when contrary to an officer recommendation. The relevant case law now requires that in order to comply with its statutory duty, the local planning authority clearly sets out the issues that were considered, the relevant policies, the extent to which the development complies with those policies and the weight given to other material considerations. Following further legal advice, concerns exist as to whether these legal requirements have been fully satisfied to date in the consideration of this application and therefore, the application requires reconsideration and if recommended for approval again, the reasons for approval need to be clearly set out.

## **8. Conclusion**

- 8.1 The development site falls outside of the city boundary and falls within open countryside when assessed against the adopted Herefordshire Unitary Development Plan. Whilst the National Planning Policy Framework has now come into force and is a material planning consideration, where UDP policies are consistent with the NPPF, due weight can be given to the relevant UDP policies. The policies within the UDP therefore remain the primary tests against which the development must be judged subject to their compliance with the NPPF.
- 8.2 The housing development is therefore contrary to UDP policy H7. In terms of the sports facilities, policy RST10 permits major sporting facilities on the edge of the city subject to there being a strategic sporting need and they are acceptable in terms of their environmental impact.
- 8.3 Sequentially, the applicants acknowledge there are several other sites that are more suitable and appropriate for the development around the city. However, the availability of the application site is a material planning consideration and should be afforded weight if the development is acceptable in all other respects.
- 8.4 The local community have expressed concerns regarding highway capacity and the potential for the development to increase flood risk in the locality. Whilst the apprehension regarding flooding in particular is understandable given the recent local floods, the statutory consultees regarding these matters raise no objection. Natural England and the Council's ecologist objections concerning the Habitat Regulations assessment have now been addressed. The development is likely to have a short term negative impact on the biodiversity of site through site clearance and linked construction operations but the compensatory provision and ecological management plan can mitigate this impact and enhance the biodiversity value of the site in the medium to long term.
- 8.5 The primary concern relates to the magnitude of the landscape and visual impact. The site currently has a landscape character that may not be particularly unique for the County as a

whole but is distinctive to the urban fringe of this part of the city as confirmed in the Council's Urban Fringe sensitivity analysis report. The proposals including the additional information, namely the design code and ecological management plan are welcomed but they are not considered sufficient to mitigate the harmful landscape and visual impact caused by the scale of development and extent of orchard to be removed compounded by the undulating and elevated topography of the site.

- 8.6 The development will however deliver new housing which the Council requires to boost its housing land supply and enhance consumer choice. Early commitment to delivery will also realise the construction of much needed affordable housing and significant contributions towards enhanced community infrastructure delivered via the Section 106 Agreement. The benefits to Hereford Rugby Club are clear but the development will also fulfil a strategic need for new rugby pitches and facilities serving the City and County for generations to come.
- 8.7 Benefits will also arise from the availability of additional sporting and other facilities for use by schools and particular sports such as netball which currently experiences difficulties with the availability of facilities. The provision of allotments is also welcomed particularly as there is a significant need as evidenced by the long waiting list for existing allotments. The transfer of the clubs existing site to the Council at no cost will also be a significant sport and community asset for benefit of city. Although an eastern road corridor is currently not proposed, the safeguarding of land to deliver this infrastructure in the future is also a relevant consideration.
- 8.8 In summary, there a number of material planning considerations that can be given significant weight in the assessment of this application. In accordance with the NPPF, the sustainability of the development and the delivery of additional housing in particular should be given particular weight. However, on balance, these factors are not considered sufficient to outweigh the negative landscape and visual impacts of the development, the loss of orchard and the associated conflict with adopted policy requirements. The application is therefore recommended for refusal.

## RECOMMENDATION

**That planning permission is refused for the following reason:**

**The site is within open countryside outside of the settlement boundary for Hereford as defined by the adopted Herefordshire Unitary Development Plan (UDP). The residential element of the development does not satisfy any of the exception criteria within policy H7 and the presumption against new housing development within the open countryside therefore applies. UDP policy RST 10 only permits major sports facilities on the edge of Hereford where they are acceptable in terms of their environmental impact. It is considered the development will be visually intrusive, will result in the permanent loss of a significant area of orchard which is a Biodiversity Action Plan habitat, and will adversely erode the landscape character of the site and setting of the city. As such the development is contrary to policies S7, LA2, LA3, NC6, H7, and RST 10 of the UDP. The requirements of the National Planning Policy Framework are not considered sufficient to outweigh the conflict with the adopted policies.**

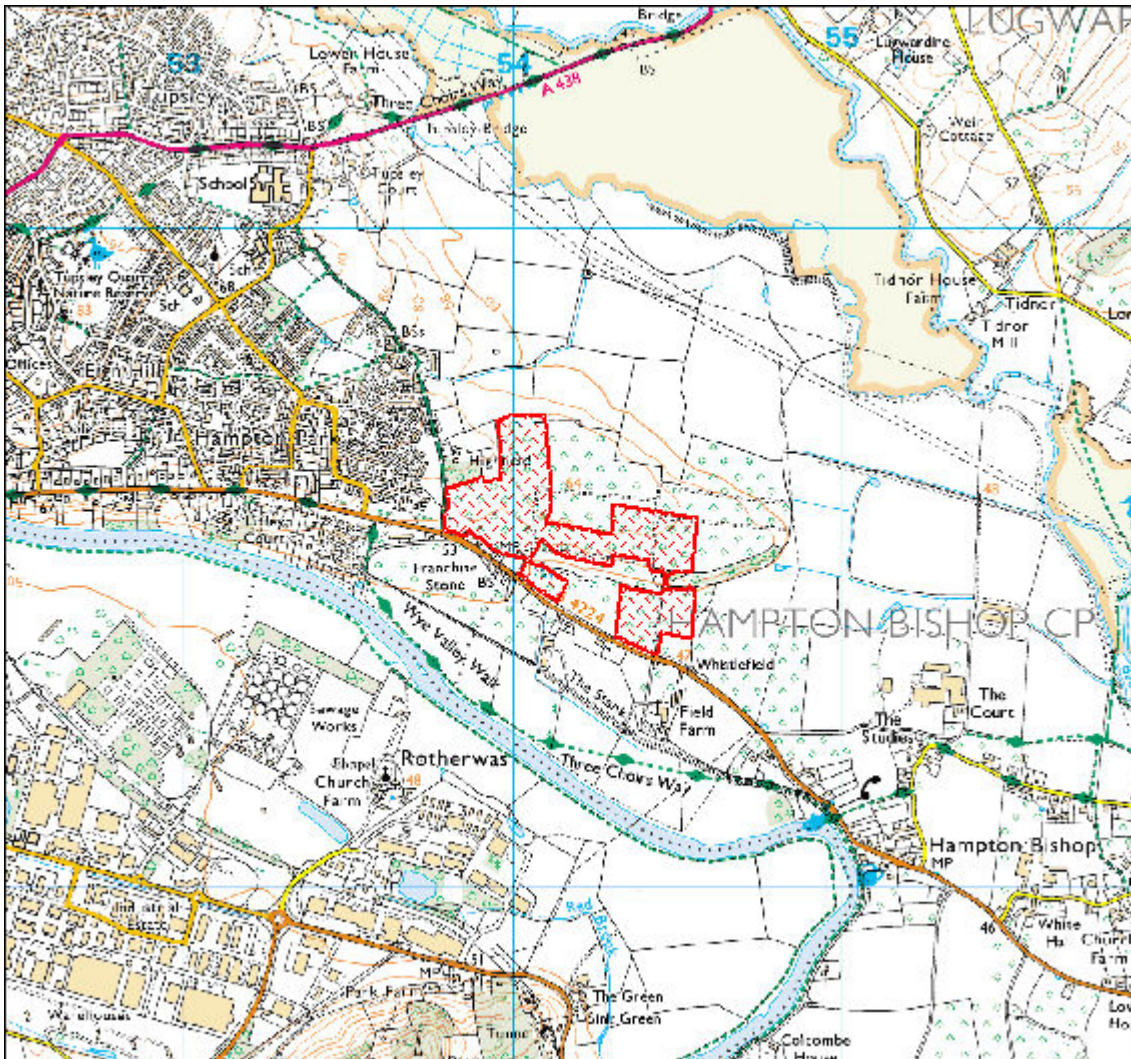
Decision: .....

Notes: .....

## Background Papers

- Appendix 1 - Original Committee report (31 August 2011) [page 19]
- Appendix 2 - Committee updates (31 August 2011) [page 69]
- Appendix 3 - Committee minutes [page 75]





This copy has been produced specifically for Planning purposes. No further copies may be made.

**APPLICATION NO:** S/102921/O

**SITE ADDRESS:** LAND TO THE EAST OF, HOLYWELL GUTTER LANE, HAMPTON BISHOP, HEREFORD, HR1 4JN

Based upon the Ordnance Survey mapping with the permission of the controller of Her Majesty's Stationery Office, © Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Herefordshire Council. Licence No: 100024168/2005

Further information on the subject of this report is available from Mr R Pryce on 01432 260288