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| MEETING: | PLANNING COMMITTEE |
| DATE: | 29 AUGUST 2012 |
| TITLE OF REPORT: | <p>S112612/F - RESIDENTIAL DEVELOPMENT COMPRISING OF 29 DWELLINGS, WITH ASSOCIATED ACCESS, CAR PARKING, LANDSCAPING AND OPEN SPACE AT LAND OFF ATTWOOD LANE, HOLMER, HEREFORD, HR1 1LJ</p> <p>For: Crest Nicholson South West, C/O D2 Planning Limited, Suites 3 & 4 Westbury Court, Church Road, Westbury on Trym, Bristol, BS9 3EF</p> |
| WEBSITE LINK: | http://www.herefordshire.gov.uk/housing/planning/58286.aspx?ID=112612&NoSearch=True |

Date Received: 20 September 2011 **Ward: Burghill, Holmer and Lyde** **Grid Ref: 351203,242459**

Expiry Date: 23 January 2012
Local Member: Councillor SJ Robertson

FURTHER INFORMATION REPORT

1. Background

- 1.1.1 This application was reported to Planning Committee on 8th August 2012 where in accordance with Section 4.8.10 of Part 4, Section 8 of the Constitution, consideration was deferred. The reason for this as agreed by the Head of Neighbourhood Planning and the Monitoring Officer was that a refusal of the application would be difficult to defend if challenged.
- 1.2 The report to the 8th August meeting incorporating the updates as reported to that meeting is appended to this report.
- 1.3 Planning Committee concluded that the application should be refused on the following grounds:
- a) Housing in the countryside
 - b) Landscape impact,
 - c) Highway impact,
 - d) Drainage and infrastructure capacity,

2. Further Information

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

2.2.1 The applicants have provided a plan that identifies the existing drainage network in the area, proposed new drainage network serving this and the main development and the adjacent historic network which remains unadopted.

2.2.1 The Conservation Manager (Archaeology) has also confirmed no objection to the development.

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

2.3.1 Other than the request for the submission of a drainage plan as reported above, no further discussion has taken place with any parties with an interest in the proposed development.

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

2.4.1 Members expressed a number of concerns with the development culminating in a recommendation of refusal on several grounds which are now considered further.

Housing in the countryside

2.4.2 Policy H7 relates to the consideration of residential development outside of identified settlements as defined in the UDP. This site lies adjoining but outside the city settlement boundary and therefore falls within the countryside in planning policy terms. Approval would therefore be a departure from policy H7. However, the NPPF explicitly states that where a local planning authority cannot demonstrate a 5 year supply of deliverable housing land with an additional 5% buffer, the relevant policies for the supply of housing should not be regarded as up to date (Para 49). The Council is currently not able to meet this requirement. It should be noted that even accounting for recent approvals such as the rugby club development which includes 190 dwellings, the Council still will not be able to demonstrate a 5 year supply of deliverable housing land.

2.4.3 Furthermore, paragraph 215 of the NPPF states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. As set out above, policy H7 is inconsistent with the NPPF in so far as the delivery of additional sustainable housing land is concerned. To refuse the development on the basis of being contrary to policy H7 would not, therefore, be a defensible position if challenged on the basis that the clear policy direction within the NPPF has not been followed.

Landscape Impact

2.4.4 The Council's Senior Landscape Officer considers that the visual impact of the development is acceptably mitigated with the revised proposals. An objection remains, however, due to the impact of the development on the landscape character of the area. Any greenfield housing development is inevitably likely to impact on landscape character; the test is whether the impact is adverse and if it is, whether other material planning considerations outweigh the adverse impacts.

2.4.5 The conclusion within the officers appraisal is that the impact of the development on the visual and landscape character of the area is acceptable. The visual impact is acceptably mitigated with the design, reduced development area and proposed landscaping whilst the overall landscape character will be adequately preserved again, in part, due to the revised proposals.

2.4.6 Notwithstanding this conclusion, if it were considered that the development did result in an adverse landscape impact, in terms of the test set out in the NPPF against which the application must be judged, it is not considered that this adverse impact significantly and demonstrably outweighs the benefits of the development when considered as a whole. If Planning Committee were minded to draw a different conclusion on this matter and refuse

planning permission on the issue of landscape character, officer advice is that such a decision would be difficult to defend if challenged.

Highway Impact

- 2.4.7 The application is supported by a Transport Assessment (TA) which considers the traffic impact of the development on the A4103 (Roman Road) along with the suitability of the access, parking provision and accessibility by alternative modes of transport. The TA was carried out on the basis of 50 additional dwellings and therefore represents a robust technical assessment given the scheme now proposed is for 29 dwellings.
- 2.4.8 The conclusions of the TA are fully supported by the Traffic Manager and have previously been supported by the Highways Agency (on the basis of a 40 dwelling scheme). This being that the most sensitive junction is the Starting Gate roundabout and that the development will result in an increase in traffic through this junction of between 0.1% and 0.3% during peak periods. This change is unlikely to be perceptible and would not have any detrimental impact on Roman Road or the A49 Trunk Road. Consequently, the Traffic Manager raises no objection.
- 2.4.9 There is no technical evidence to support a highway refusal of the development and therefore to refuse the development on this ground would not be a defensible position if challenged particularly as that the statutory consultee raises no objection.

Drainage and Infrastructure Capacity

- 2.4.10 The site is to be connected to the new drainage infrastructure serving the main 300 house development. This is then pumped to the adopted pumping station on Roman Road which forms part of the adopted drainage network falling under the jurisdiction of Welsh Water. The new drainage network is also subject to a Section 104 Adoption Agreement with Welsh Water which is a contractual agreement for the new drainage infrastructure to be adopted. Technical information has been provided to demonstrate that the new network including the pumping station have adequate capacity to accommodate the development. Welsh Water raise no objection on drainage design or capacity grounds.
- 2.4.11 Surface water is to be discharged to the newly completed balancing pond adjoining the site which again has been designed to have capacity to accommodate the additional discharges from the development. This system is a sustainable drainage system that ensures that no surface water discharges into the public sewage system in line with best practice; and is also to be adopted by the Council. The drainage network serving the development including the adopted system therefore has capacity for the additional dwellings. All other community infrastructure considerations are also acceptable or are being mitigated through the Section 106 Agreement.
- 2.4.12 A separate matter is the adoption of historic drainage network serving the nearby residential estate constructed in the 1990's. Neither the current application nor the adjoining new development under construction has a connection with this historic network and so the adoption of this system is not a material planning consideration that is relevant to the consideration of this application. The applicants retain ownership of this historic system as they were the developer and they have appealed to Ofwat against Welsh Water's proposed adoption. The Council understands that Ofwat's decision on the appeal is due within the next two months. However, the outcome of this appeal has no bearing on the drainage serving this development. Therefore, to refuse the application on the basis of inadequate drainage capacity or that other drainage networks have not yet been adopted would not be a defensible position if challenged.

Other matters raised by Planning Committee Brownfield Land

- 2.4.13 A query was raised regarding the extent of available brownfield land in the city that could be developed for housing. Excluding all existing commitments (i.e. brownfield land already allocated for housing or brownfield land already with extant planning permission) which are already included within the existing housing land availability figures, there are no unrestricted brownfield sites within the city. Development on further brownfield land would therefore primarily entail speculative development of existing employment sites or safeguarded employment land which would be contrary to adopted policy and is likely to be difficult to deliver due to the need to re-locate businesses. The only exception to this is the adjoining site for which an application for 35 houses has already been submitted.
- 2.4.14 An analysis of available brownfield land has also been carried out as part of the work on the Core Strategy. The draft core Strategy proposes to allocate further brownfield housing land within the Edgar Street Grid but this is unlikely to come forward within the next 5 years. Sequentially, there are therefore no other available and deliverable brownfield sites that would make up the current deficit in the Councils housing land supply.

Strategic Housing Land Availability Assessment (SHLAA)

- 2.4.15 This document considers the availability of housing land across the county and includes a basic assessment of each sites suitability in respect of factors such as access, location, landscape, flood risk and ecology. The application site had been considered through the SHLAA assessment and dismissed at that time as being unsuitable on the basis of access and landscape impact grounds. However, the access is now proposed to be via the main development which therefore addresses this issue and with the benefit of a full landscape and visual impact assessment, the landscape impact is now also considered acceptable.

Conclusion

- 2.4.16 The Council is required to determine applications in accordance with the Development Plan, unless material considerations indicate otherwise. In Herefordshire, the UDP can be regarded as up to date where the policies are consistent with the NPPF. As explained at 2.4.2 and 2.4.3, in respect of UDP policies that govern the supply and distribution of housing land, the UDP cannot be regarded as up to date. Therefore, sustainable housing developments such as this should be approved unless the adverse impacts would significantly and demonstrably outweigh the benefits of the development when assessed against the NPPF as a whole.
- 2.4.17 Whilst each application must be considered on its merits, an examination of recent planning appeal history is also considered relevant in this instance. It is clear that both Planning Inspectors and the Secretary of State are consistently allowing developments on appeal where the development is considered sustainable and the authority cannot demonstrate a 5 year supply of deliverable housing land. This is the case even where the conclusion has been that the development would harm the landscape.
- 2.4.18 However, the decision is ultimately for Members to take and Members are not bound to accept the recommendation of Officers. In the event Planning Committee wish to re-confirm their recommendation to refuse the development, Members must show reasonable planning grounds for taking a different view and clear specific technical evidence would need to be provided in the event of an appeal to support each reason for refusal. If such evidence is not produced and/or the evidence does not provide a respectable basis for such stance at appeal, the council could be at risk of costs.
- 2.4.19 If the application is refused, it is also recommended that consideration be given to the absence of a signed Section 106 Agreement. An additional reason for refusal on these grounds would then enable the Council to defend this position if challenged or as is often the case, work with the applicant to complete a Section 106 Agreement prior to any challenge being heard.

2.5 Monitoring Officer Advice

- 2.5.1 When determining the application, as a matter of law, the Council should not have regard to matters which are not material planning considerations. To do so and to refuse permission based on such reasons could leave the Council open to complaint and to an adverse costs award at Appeal.

UPDATED OFFICER REPORT

1. Site Description and Proposal

- 1.1 The site comprises of 1.8 hectares of undeveloped agricultural land located 50 metres north east of Attwood Lane on the northern fringes of the city. More specifically, the site is broadly rectangular in shape and borders Public Right of Way H08A to the south and east, the former builder's yard employment site known as Pomona Works to the west and an existing small stream to the north. South east of the site is the 300 dwelling housing development currently under construction, south west is Holmer Court Residential Care Home, beyond which is Wentworth Park residential estate. The site is largely enclosed by native hedgerow interspersed with semi mature trees. Levels fall northwards within the site towards the stream corridor.
- 1.2 The site falls outside of Hereford City settlement boundary as defined by the Herefordshire Unitary Development Plan and therefore falls within open countryside in planning policy terms. The site has no statutory landscape designation but is identified as being of high/medium sensitivity in the council's urban fringe sensitivity analysis report. The lower part of the site adjoining the watercourse is also identified as being liable to flood although it is not designated as floodzone.
- 1.3 The application now proposes 29 dwellings, 35% of which (10 units) will be affordable housing consisting of a mixture of social rent and intermediate tenure. The originally submitted scheme was for 31 dwellings covering a larger development footprint with a different access alignment. Access is proposed via Roman Road through the permitted 300 house development with informal play and public open space being created in the northern half of the site. In addition to detailed plans, the application is supported by reports covering ecology, transport, landscape, archaeology, trees, drainage, flood risk, community consultation, design and access and planning policy. Some of these documents have been updated in light of the amended proposal.

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)

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| S1 | - | Sustainable Development |
| S2 | - | Development Requirements |
| S3 | - | Housing |
| S6 | - | Transport |
| S7 | - | Natural and Historic Heritage |
| S8 | - | Recreation, Sport and Tourism |

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

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| S11 | - | Community Facilities and Services |
| DR1 | - | Design |
| DR2 | - | Land Use and Activity |
| DR3 | - | Movement |
| DR4 | - | Environment |
| DR5 | - | Planning Obligations |
| DR7 | - | Flood Risk |
| 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 |
| LA6 | - | Landscaping Schemes |
| NC1 | - | Biodiversity and Development |
| NC8 | - | 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
 Green Infrastructure Study

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

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

3. Planning History

3.1 CW2006/2619/O – Residential development of 300 dwellings including new access off Roman Road, balancing pond, roads, public open space, footpaths, cycleways and engineering works. Outline planning permission approved 28 July 2008

3.2 CW0009/1678/RM - Residential development of 300 dwellings. Reserved matters approval 29 October 2009.

- 3.3 DMS/102691/F – Residential development of 40 dwellings with associated access, parking, public open space and landscaping. Application withdrawn 10 March 2011.
- 3.4 DMS/110884/RM – Construction of 300 dwellings. Reserved matters approval 14 September 2011.
- 3.5 DMS/121554/F – Demolition of existing buildings and erection of 35 houses and garages together with roads, sewers and associated external works. Application undetermined.

4. Consultation Summary

- 4.1 The comments below are in relation to the consultation on the amended proposals only.

Statutory Consultees

4.2 Welsh Water

No objection subject to conditions concerning foul and surface water drainage.

Internal Council Advice

4.3 Traffic Manager

The traffic impact of the development is detailed in the Transport Assessment, which was produced in respect of 50 additional dwellings rather than the 29 dwellings now proposed. The impact is less than 0.3% on flows at Starting Gate roundabout and is considered acceptable.

The principle of the revised access position from the initial Crest development is considered acceptable. The amended layout and revised garages sizes are also now acceptable.

4.4 Conservation Manager (Landscape)

Landscape Description

The site is located on the very north edge of Holmer, to the north of Hereford. It is outside of the urban landscape character area and lies within the Landscape Character Type of Principal Settled Farmlands. This shows the transitional nature of the site in this urban fringe area. In the Urban Fringe Sensitivity Analysis (UFSA): Hereford and the Market Towns (Jan 2010) it is designated as having a High-Medium Sensitivity to built development, meaning that key characteristics of landscape are susceptible to change and/or have value as a landscape resource. That document states that Holmer has an intricate, intimate landscape character. The key local characteristic is the setting of the stream valley and the topography that frames this linear feature. It should be noted that the adjoining brownfield site may be developed for housing in the future and that land further to the north is included in the northern corridor for a possible Hereford Relief Road.

Landscape and visual impact (LVIA)

The LVIA provided with this application has been updated (May 2012). It now includes reference to the National Planning Policy Framework, and sections 3 and 4 have been updated / re-worded to provide a clearer understanding of the landscape process undertaken. Section 3 provides an analysis of the existing landscape conditions and section 4 explains how this has led to the landscape and development strategy.

I disagree with the document conclusion and remain of the view that the principle of development on this site is not acceptable based on the Urban Fringe sensitivity classification. This site is of high-medium sensitivity, meaning that key characteristics of the landscape are vulnerable to change and have a high value as a landscape resource. On this site the intimate, rural character along the stream valley is vulnerable to change and this will be

reduced as a result of this housing development. The small-scale pastoral fields are a high value as a landscape resource and this field will be lost to housing and amenity space.

The key public viewpoints have been assessed in the LVIA. As well as the public footpath along the boundaries of the site, view point 5 will undergo the most significant visual impact. The existing small field slopes directly across the valley to this viewpoint and is currently open and rural in appearance. The introduction of development on this site will be highly visible and change the character of the valley. I agree with the LVIA that in longer distance views the site would be seen as the new northern fringe of the city, which is also filtered by existing topography and vegetation.

It is acknowledged that there are other landscape changes on land adjacent to this site, notably the large housing development to the east of Attwood Lane (fronting Roman Road), which will alter the northern boundary of the city. This development, however, purposely stops built development to the south of the natural valley and it is considered that overall the scheme will integrate well into the surrounding landscape with little impact on the visual quality of the area. The new balancing ponds are the only change that will take place within the valley and although this land will no longer be of agricultural character, the landscape will remain open and free from built development. The development proposed in this application does not readily connect or integrate with the existing housing area. The access road has been realigned; however it remains as a spur that does not relate well to the landscape.

Site layout/Landscape Design

If there are other planning policies that mean this site is deemed suitable for housing, then comparison between three different schemes for the site show that positive design progress has been made in landscape terms. In particular housing is now contained in upper area, directly related to the adjoining depot site and clearly shows a transition between smaller, dense units to the south and larger detached units to the north. The public open space has good integration with the housing and the adjoining balancing pond area. There will be some green infrastructure enhancement to the site boundaries and stream corridor.

There are further improvements to the layout that could be considered to better relate to the existing landscape character of the valley, particularly to remove plot number 26 from the corner of the development, so that the new edge follows the shape of the valley, rather than cutting a new straight line across the contours.

The landscape scheme is detailed in the Landscape Masterplan and the Soft Landscaping Proposals (ref: Bir.3511_01E), both are suitable to the site and reflect the existing landscape character. The curved roads and paths within the development help to provide a sense of transition between the urban and rural land use. There are good sized gaps between the houses on the northern boundary that allow integration with the public open space. The public open space is directly linked to the adjoining balancing pond area and retains part of the open feel of the valley. The proposed planting will be long-lived and present a major contribution to the environmental quality of the area. In particular the inclusion of Black Poplar is welcome, as this is a local biodiversity action plan species. The structure of landscaping allows for the free movement of people and wildlife around and within the site.

This landscape scheme has been designed specifically for the landscape and development requirements, however it does not compensate for the negative impact on the landscape character. No development on this site would be of a suitable scale and form to be in keeping with the intimate, rural character along the stream valley or the small-scale pastoral fields.

Conclusion

Remains contrary to UDP LA2 as the development would cause unacceptable adverse change to the landscape character.

If planning officers are minded to approve then a condition should be added for implementation of the landscape scheme and for a landscape & ecology management plan to be provided.

4.5 Conservation Manager (Ecology)

The soft landscaping plan including native species is broadly acceptable. However, the ornamental planting along the northern boundary of the housing should be changed to a native, species-rich hedgerow. I endorse the comments of the landscape officer regarding strengthening of the riparian corridor along the northern boundary of the site. Future appropriate management of all the boundaries will need to be secured.

Monitoring surveys in 2012 have found a few great crested newts still present in Pond 1 (on the corner of Attwood Lane). The mitigation strategy for the first phase of the development included provision of two ponds as well as terrestrial habitat for great crested newts in the north east of the main site. This area will also provide mitigation for this phase 2 development as it is the same population of newts that are affected. The proposed mitigation strategy also includes provision of two newt tunnels to maintain connectivity from ponds 1 and 4 to the new ponds and the wider countryside. An EPS license was granted by Natural England for the phase 1 works and an amendment to this license will be sought for this phase. It is my opinion that the proposed mitigation measures will maintain the favourable conservation status of the species. I also note that most of the exclusion fencing is still in place although the fencing along the Holmer Stream has been removed.

If European Protected Species are present on a development site, the Local Planning Authority must establish whether the three tests have been met prior to determining this application. If the Wildlife Licensing Unit at Natural England is also happy that these Tests have been satisfied, then an EPS development licence can be granted.

The three tests that must be satisfied are:

1. That the development is “in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment”.
2. That there is “no satisfactory alternative”
3. That the derogation is “not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range”

If this application is to be approved, conditions should be imposed to secure

- The implementation of the recommendations of the ecological report and mitigation strategy
- The submission and implementation of a full working method statement and habitat enhancement scheme
- The submission and implementation of an appropriate habitat management scheme

4.6 Conservation Manager (Archaeology)

The archaeological field surveys and monitoring done in the area have all been very negative; I think be unreasonable to insist on further archaeological measures here. Consequently I raise no objection to the development.

4.7 Public Rights of Way Manager

The amended proposal will affect public footpath H08A where the route is crossed by the new access road. The PROW department request that this footpath is surfaced with tarmac or similar hard wearing material as this route will become a major suburban link due to the surrounding new housing development. If the development works are likely to endanger users of the footpath, a temporary closure order should be sought.

4.8 Housing Development Officer

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

The affordable housing unit mix now more closely reflects the requested size and tenure mix and is acceptable.

There continue to be concerns about the location of the units in one corner of the site although ultimately, this is not sufficient to object to approval of the application.

4.9 Parks and Countryside Manager

The area and location of the public opens space is acceptable and fulfils the requirements of UDP policy RST3 and the creation of an informal kick-a-bout area will create opportunities for sport and recreation.

Delivery of the play provision required by UDP policy H19 through the S106 as an off-site contribution is also considered acceptable and opportunities exist to create a nature trail within the balancing pond area. The contribution to indoor/outdoor sports is in accordance with the SPD.

In terms of the landscaping, there are concerns with the proximity of some of the new tree planting to paths, benches and the houses in terms of the future maintenance but this could be addressed with minor changes to the landscaping. A controlled acces for maintenance vehicles to the open space will also be required.

4.10 Children and Yound Peoples Manager

The educational facilities provided for this development site are North Hereford City Early Years, Broadlands Primary School, St Francis R C Primary School, Aylestone High School and Hereford City Youth. A contribution is sought in acordance with the Planning Obligations SPD towards the enhancment of educational infrastructure at the schools and facilities where capacity does not currently exist and the heads of term meets the requirements.

4.11 In response to the consultation on the original proposals, comments were also received from Conservtaion Manager (Historic Buildings) and Environmental Health (Pollution) and Libaray Services officer. All these consultees raised no objection to the application.

5. Representations

5.1 Holmer and Shelwick Parish Council

The development site falls out of the settlement boundary and the UDP and has not been included as part of the strategic housing allowance. Due to the shortfall on the five year land bank it was acknowledged by Cabinet on 12 July that development sites should be considered on the following criteria:-

1. Fall at locations which currently have settlement status within the UDP.
2. Are located adjacent to the existing settlement boundary.
3. In terms of sites of five or more units, they should be sites which have been assessment through the Strategic Housing Land Review as having low or minor constraints.

This site fails on 2 of the above criteria. In respect of landscaping, the supporting evidence with the application indicates that this site has medium to high landscaping restraints. The site is bounded on three sides with hedgerows and being open sided on the lower side which therefore exposes the built up development to a high degree when viewed from Coldwell's Road. No attempts within the landscaping proposals have been made to close this open site to help reduce the visual impact of the development.

It is doubtful whether this development can be drained by gravity and requests for more details of floor levels to enable the full landscaping impact have not been forthcoming. It would appear that the properties to the north side of the development would need to be raised at

least a metre to enable the drainage to work and this would have a further devastating effect on the landscaping impact.

It is indicated on the proposed layout that there will be a football pitch and the parish requests further information to be provided as to how this football pitch would work on such sloping ground?

The site is presently a pastoral field retaining an historic field pattern with rural character, despite its proximity to the City.

The Parish Council objects to the inappropriateness of this site for residential development.

5.2 Two objections have been received from Mr and Mrs Preece of Coldwells Cottage, Holmer and an e-mail from Bill Wiggin MP reporting a telephone conversation with a local resident. The main points raised are:

- Although this amended scheme is a little better than the higher density original, it is continued urban sprawl with few proven figures to justify it
- The development will add to the eyesore of the existing on going development
- Flora and Fauna will continue to be destroyed
- The local infrastructure, particularly transport, is insufficient.
- If approved, conditions requiring heavy screening to mitigate the visual, noise and light impact for local residents should be imposed along with a new footpath along Attwood Lane.
- The development should not be approved until the historic drainage network has been adopted.

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

www.herefordshire.gov.uk/housing/planning/searchplanningapplications.aspx

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

www.herefordshire.gov.uk/community_and_living/consumer_advice/41840.asp

6. Officer's Appraisal

6.1 The key considerations in the determination of this application are as follows:

- 1) The Principle of the Development
- 2) The NPPF and Housing Land Supply
- 2) Landscape Impact
- 3) Layout and Design
- 4) Other Matters
- 5) Conclusion

The Principle of the Development

6.2 The site falls outside of the settlement boundary for the city as defined by the Herefordshire Unitary Development Plan (UDP) and therefore falls within open countryside. New residential development in the countryside can be permitted where it meets one of the exceptions listed within UDP Policy H7 such as a conversion of a rural building or a dwelling for a full time agricultural worker. This development does not satisfy any of the exception criteria within this policy and therefore is contrary to policy H7 of the UDP. However, it is necessary to consider whether are any other planning policy or material planning considerations to support the principle of development.

6.3 The Core Strategy is not sufficiently advanced to be given due weight in the consideration of the application and in any event, there are no specific policies or proposals that relate to this

particular site. The National Planning Policy Framework (NPPF) came into force in March this year. Paragraph 215 of the NPPF clarifies that due weight can still be given to the relevant UDP policies for a period of 12 months from the date of adoption of the NPPF providing those policies are largely consistent with the NPPF. The consistency of the UDP housing policies within the UDP is therefore key to whether the principle of development can be supported.

The NPPF and Housing Land Supply

- 6.4 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 should identify a rolling five year supply of deliverable housing land to ensure choice and competition in the market. Additionally, the NPPF requires an additional buffer of 5% (increased to 20% if a planning authority has persistently under 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.
- 6.5 Earlier this year, the Council published its Annual Monitoring Report (AMR) which monitors housing land availability. 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 the additional 5% buffer which would amount to a further 140 units. The data collection for the 2011/2012 period has commenced and this will provide a more up to date land supply position but it is not anticipated that the shortfall will have decreased a great deal, if at all.
- 6.6 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 land supply cannot be demonstrated. In view of this, there is a requirement to release further land for housing that is deliverable within the next five years and is sustainable. 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 policy H7 is not a reason for refusal of the application that could be sustained.
- 6.7 This position was also endorsed by the Council's Cabinet on 12th July 2012. The agreed process for considering proposals of this nature being that with larger developments, the focus should be on sites that have been identified as having low or minor constraints in the Strategic Housing Land Availability Assessment unless it can be demonstrated that the location is sustainable and appropriate for additional housing development and the environmental and other impacts of the development are acceptable.

Landscape Impact

- 6.8 The site itself has no statutory landscape designation but is designated as *Principal Settled Farmlands* in the Councils adopted Landscape Character Assessment Supplementary Planning Document and has been categorised as *high/medium sensitivity to built development* in the Council's Urban Fringe Sensitivity Analysis. This means that key characteristics of the landscape are susceptible to change and/or have value as a landscape resource. With this site and the surrounding landscape, the key characteristic is the setting of the stream valley and topography that frames this leaner feature.
- 6.9 The application is supported by a Landscape and Visual Impact Assessment, updated to reflect the amended scheme. This concludes that:
.... "the development proposal has taken into consideration the constraints and opportunities identified in the landscape assessment and will be acceptable in landscape and visual impact terms".
- 6.10 However, the Conservation Manager (Landscapes) considers the principle of the development to be unacceptable commenting that

“...the intimate rural character along the stream valley is vulnerable to change and this will be reduced as a result of the development. The small scale pastoral fields are a high value as a landscape resource and this field will be lost to housing and amenity space”.

- 6.11 It is acknowledged that the development of this greenfield site will have an impact on both the visual and landscape character of the site. Visually, when viewed from the north, the development site is seen in the context of existing built development somewhat softened by a backdrop of mature trees along the footpath corridor. When viewed from the east, the immediate context is the former builder's yard, upon which an application has been submitted for the construction of 34 units. From the west, the recently constructed sustainable drainage balancing pond serving the 300 house development provides the backdrop.
- 6.12 One of the principal amendments to the scheme is a reduction in the number of units and more importantly, a reduction in the extent of built development. The northern edge of the housing area now broadly aligns with the northern edge of the adjacent builder's yard which means that when viewed from the west and east, the notional building line will be safeguarded. The amended scheme and the proposed landscaping will ensure the visual impact of the development can be acceptably mitigated and this conclusion, although not the principle of the development, is supported by the landscape officer. Levels details have now also been submitted which identify the development being broadly constructed at existing site levels thus integrating the development with the existing site contours further mitigating the visual impact.
- 6.13 This amendment to the scheme is also relevant to the landscape character considerations as although part of the field will be lost to development, the lower section of the field will be dedicated to informal open space and landscaped with appropriate native species including Black Poplar which is a Biodiversity Action Plan Species. Consequently, the stream corridor itself and the immediate adjoining land forming part of the stream valley will be safeguarded.
- 6.14 The Conservation Manager (Landscapes) also supports the design and layout evolution of the development commenting as follows:
- “If there are other planning policies that mean this site is deemed suitable for housing, then comparison between the three schemes shows good design development progress has been made. In particular housing is now contained in upper area, directly related to the adjoining depot site and clearly shows a transition between smaller, dense units to the south and larger detached units to the north. The public space open space has good integration with the housing and the adjoining balancing pond area. There will be some enhancement to the site boundaries and stream corridor”.*
- 6.15 UDP Policy LA2 states that developments that will adversely affect the overall landscape character or its key attributes and features should not be permitted. The NPPF places a requirement to protect and enhance valued landscapes (paragraph 109) but highlights the need to distinguish between the*hierarchy of international, national and locally designated sites, so that protection is commensurate with their status and give appropriate weight to their importance and the contribution they make to the wider ecological networks* (paragraph 113).
- 6.16 The site is one of many small fields in the area that make up the small scale pastoral landscape character forming the northern edge to this part of the city further characterised by the stream corridor. This is a distinctive character that should be protected, although it has no formal or statutory protection. It is considered that the amended scheme achieves this requirement in that whilst part of the field will be lost to development which will reduce this landscape resource, the distinctive stream corridor landscape character will be safeguarded including views along and into this feature. It is considered that the landscape character can absorb the impact of development on the southern half of the field which will be further

mitigated, in time, with the proposed landscaping. On balance, the landscape impact is considered acceptable.

Layout and Design

- 6.17 The proposal has been amended three times to address officer and consultee concerns regarding the development extent, the layout and design. The original scheme submitted under application ref S102691/F in 2010 was for the construction of 40 dwellings which occupied the majority of the site. This current application was originally for the construction of 31 dwellings occupying approximately two thirds of the site. The built development within the current scheme now occupies around half of the site area and the unit numbers have been reduced to 29. This creates a more compact development without comprising the overall development density and will continue the notional building line and pattern of development to the west whilst also assisting in mitigating the landscape impact.
- 6.18 The format of the layout has also been amended to better assimilate the development into its setting. The density is higher at the southern end of the site nearest existing built development with a transition to larger detached properties at a lower density to the north. The road structure also becomes less formal from south to north with the northern edge to the development further softened with the proposed soft landscaping including a native hedge. Street trees are also proposed along with variations in the road surface material to create additional interest within the public spaces.
- 6.19 Although some of the gardens are relatively small, they are generally commensurate with the size of the dwellings and adequate spacing exists between properties to safeguard an acceptable level of privacy. This also applies to the relationship with the proposed residential development on the adjacent site.
- 6.20 Vehicular access to the development is via Roman Road through the 300 house development currently under construction immediately to the south. The alignment of the access road has also been modified to minimise its intrusion into the previously agreed planting area. Adequate parking is to be provided per dwelling with the majority also having garages. Amended plans have been submitted increasing the size of the garages to ensure they are sufficiently large to be used for storage and parking of vehicles.
- 6.21 Beyond the housing, the northern half of the site is to be dedicated as open space including an informal kick-a-bout area. The character and appearance of this area will be retained ensuring the stream valley which also acts as a wildlife corridor is protected and enhanced. New footpaths will link the development with this space whilst informal grass paths will link the public open space with existing local footpaths. No formal play equipment is proposed in this area and there will be no material changes in levels. Whilst this will not result in a flat area for football or other sports, it will create a usable area of open space. New play equipment is to be provided on the adjoining development to meet the policy requirements which is supported by the Parks and Countryside Manager.
- 6.22 A contemporary design theme is proposed for the dwellings in terms of the type and composition of the materials, style and arrangement of fenestration and design of the porches although the form is traditional and the height is all two storey. There is no prevailing vernacular or materials in the area therefore the site offers the opportunity to adopt a different design approach. The proposed dwelling designs will provide the site with its own identity whilst the palette of materials including stone and cedar cladding will soften the external appearance of the dwellings. The proposed roof material is considered unacceptable but this matter can be dealt with by condition. Amended plans have also been submitted to create additional surveillance over footpaths and the public open space.
- 6.23 UDP Policy H13 along with Section 7 of the NPPF emphasises the importance of good design both in terms of the architecture of the buildings, the function of the public and private spaces

and integration with the wider environment. Paragraph 60 of the NPPF highlights that planning authorities should not stifle innovation, originality or initiative in design and having regard to the requirements of these policies, the proposed amended layout and house designs are considered acceptable.

Other Matters

Housing Mix

- 6.24 The general market housing mix comprises of thirteen four bedroom units of four different sizes and six three bed units or three different sizes in the form of terrace, semi detached and detached units. Whilst this represents a relatively high proportion of four bedroom units, given the character and location of the site on the fringes of the city, the mix of house types and the broad mix being delivered on the larger development, the balance of provision is considered acceptable.
- 6.25 Ten of the units will be affordable housing comprising seven for social rent and three for intermediate tenure (shared Ownership) which are to be located in two clusters. The Strategic Housing Officer supports the number and tenure of the affordable and whilst they do not object to the affordable provision, they have requested a different mix of units to meet the current priority need. An alternative mix has been proposed by the applicants that more closely meets the housing requirements and is now considered acceptable.

Traffic and Accessibility

- 6.26 Access is via Roman Road through the larger development. The access has capacity to accommodate the additional traffic and the principal internal road structure is all being designed and constructed to an adoptable standard. A Traffic Assessment has also been provided which demonstrates the local road infrastructure including key junctions have capacity to accommodate the development, the traffic increase during peak hour periods being less than 0.3%.
- 6.27 The site will also be accessible by non car based modes of transport being within acceptable walking distance of the nearest bus stop and other community services and facilities. The site will also be directly connected to the existing public right of way network whilst a series of new cycleways are proposed within the larger development connecting to existing routes. The site is considered sustainable in terms of its location and accessibility to sustainable transport modes.

Section 106 Agreement

- 6.28 A Section 106 Heads of Terms is appended to the report. This provides for contributions towards the provision of new and the enhancement of existing community infrastructure in line with the adopted Planning Obligations Supplementary Planning Document. This includes an education, sustainable transport, off site play and sport and library contribution. Additionally, the applicants have agreed to the whole development being designed and constructed to meet level 4 of the Code for Sustainable Homes. This will ensure the dwellings are more energy and water efficient, exceeding current Building Regulations by 25% whilst requiring the introduction of other site wide measures to enhance the sustainability of the development.

Flood Risk and Drainage

- 6.29 The land adjoining the stream corridor is identified as an area that is liable to flood and the application is supported by a flood risk assessment. The amended scheme removes all physical development further away from this flood area although the flood depths are shallow and will not present any danger. The development accords with the requirements of policy DR7 and the NPPF in this regard.
- 6.30 A drainage statement has also been provided addressing foul and surface water drainage. This demonstrates that the newly installed foul and surface water drainage network within the

main development has capacity to accommodate the additional drainage flows from this development. Welsh Water also raise no objection to the drainage proposals.

Biodiversity

- 6.31 An updated ecological survey has been completed which does not identify the presence of any protected species on site. Recent records exist of protected species locally; this includes great crested newts which have been translocated to adjacent land. A great crested newt method statement and mitigation strategy has now been submitted which addresses the Council's ecologist requirements and demonstrates how the favourable conservation status of the protected and other species within the site will be safeguarded. The new landscaping will also enhance the existing habitat and wildlife corridor and create new habitat enhancing the biodiversity value of the site.
- 6.32 Additionally, all applications are presently being screened to establish the likely impact on local protected watercourse which in this instance is the River Wye. This concerns the increased foul drainage discharges from the development and the consequential impact on phosphate levels within the watercourse. In this regard, the screening opinion has concluded that the development will not have any likely significant effects on the River Wye Special Area of Conservation.

Conclusion

- 6.33 Paragraph 14 of the NPPF states that:
"..... a presumption in favour of sustainable development should be seen as a golden thread running through both plan making and decision-taking. In terms of the latter, this means
- approving development proposals that accord with the development plan without delay; and
 - where a development plan is absent, silent or relevant policies are out-of-date, permission should be granted unless:
 - Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF as a whole; or
 - Specific policies in the NPPF indicate development should be restricted."
- 6.34 It has already been established that the UDP housing supply figures are not up to date due to the deficit in housing land supply. The development offers benefits in terms of the delivery of additional housing potentially as early as next year including ten affordable units and it is accepted that the development is sustainable in terms of location of the site and accessibility by non car based transport modes, the revised layout and design and the commitment to construct to a high sustainability standard. The only outstanding issue is therefore the landscape considerations.
- 6.35 The development of a greenfield site will undoubtedly result in a visual impact and change the landscape character of the immediate area. The consideration is whether this impact is harmful and if it is, whether other benefits of the development outweigh the harm. Views of the site from public vantage points will materially change but the Council's landscape officer supports the view that the amended scheme and proposed landscaping will ensure the development integrates into the local environment and any visual impact is acceptably mitigated.
- 6.36 In terms of landscape character, the overall character of the wider landscape will be unaffected by the development and therefore the consideration is the localised impact on key features that contribute to this character, namely on the stream corridor and loss of part of a small pastoral field. Referring back to the NPPF test quoted above, on balance, it is not considered that impact of the development on the landscape character of the area significantly and demonstrably outweighs the benefits of the development. The application is therefore

recommended for approval in accordance with the requirements of the NPPF and the relevant UDP policies and the interim protocol agreed by the Council's Cabinet on 12th July 2012.

RECOMMENDATION

That officers named in the scheme of delegation be authorised to issue planning permission subject to:

- 1. The completion of a planning obligation under Section 106 of the Town and Country Planning Act 1990 in accordance with the Heads of Terms appended to this report.**
- 2. The conditions set out in this report and any additional conditions considered necessary by officers.**
 - 1. A01 Time limit for commencement (full permission)**
 - 2. B01 Development in accordance with the approved plans**
 - 3. G04 Protection of trees/hedgerows that are to be retained**
 - 4. G10 Landscaping scheme**
 - 5. G11 Landscaping scheme - implementation**
 - 6. G14 Landscape management plan**
 - 7. H11 Parking - estate development (more than one house)**
 - 8. H18 On site roads - submission of details**
 - 9. H29 Secure covered cycle parking provision**
 - 10. I16 Restriction of hours during construction**
 - 12. I18 Scheme of foul drainage disposal**
 - 13. I22 No surface water to public sewer**
 - 14. Submission of details of the pumping station**
 - 15. K2 Nature Conservation - site protection**
 - 16. K4 Nature Conservation – Implementation**

Reason for Approval:

- 1. In reaching the decision to grant planning permission, regard has been had to the relevant policies in the Herefordshire Unitary Development Plan and the National Planning Policy Framework. The local planning authority was also mindful of other supplementary planning guidance and other relevant documents.**

The site falls outside the city boundary as defined in the Herefordshire Unitary Development Plan where new residential development is ordinarily only permitted if it meets one of the exceptions identified within UDP Policy H7. The development does not accord with the requirements of this policy.

The National Planning Policy Framework requires the council to maintain a 5 year supply of deliverable housing land and where this requirement is not being met, the relevant development plan policies concerning the supply of housing land should not be regarded as up to date. As such, the conflict with UDP Policy H7 is not, in itself, a sustainable reason for refusal.

The development offers benefits in terms of the delivery of additional housing within the next five years including ten affordable units and the development is sustainable in terms of location of the site and accessibility by non car based transport modes, the revised layout and design, the commitment to construct to a high sustainability standard and the social and economic benefits that the development will bring. The amended proposals and accompanying landscaping also acceptably mitigates the visual impact of the development, the landscape character will be safeguarded and the favourable conservation status of the flora and fauna will not be adversely affected.

The need to deliver additional housing land and the requirement to consider new residential development in the context of a presumption in favour of sustainable development along with the benefits the development will bring outweigh the conflict with policy H7, in this instance. The development is considered to comply with other relevant UDP policies and is therefore considered acceptable.

Informatives:

1. **N02 Section 106 Obligation**
2. **Consideration should be given to the possibility of encountering contamination on the site and specialist advice should be sought should any contamination be found during the course of the development.**
3. **HN02 Public rights of way affected**

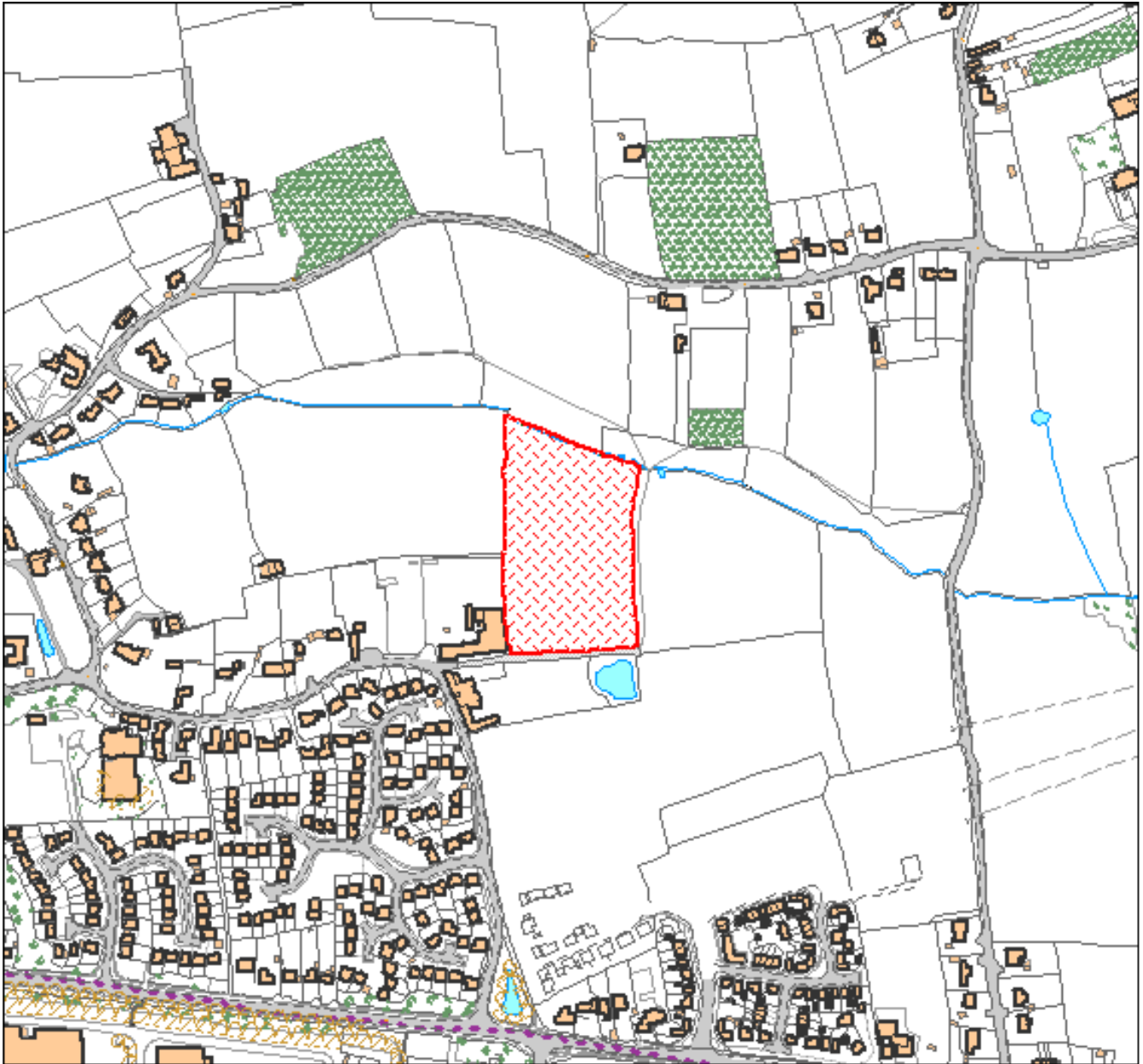
Decision:

Notes:

.....

Background Papers

Internal departmental consultation replies.



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APPLICATION NO: S/112612/F

SITE ADDRESS : LAND OFF ATTWOOD LANE, HOLMER, HEREFORD, HR1 1LJ

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

HEADS OF TERMS

PROPOSED PLANNING OBLIGATION AGREEMENT

Section 106 Town and Country Planning Act 1990

This Heads of Terms has been assessed against the adopted Supplementary Planning Document on Planning Obligations dated 1st April 2008. All contributions in respect of the residential development are assessed against general market units only.

Erection of 29 dwellings incorporating 35% affordable (10 units) – land east of Attwood Lane, Holmer, Hereford (Crest).

1. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of £82,095 to provide enhanced educational infrastructure at North Hereford City Early Years and St Francis Xavier primary schools, Hereford City Youth Service with 1% allocated for Special Education Needs. No secondary school contribution is required as capacity presently exists in all year groups. The sum shall be paid on or before the commencement of the development, and may be pooled with other contributions if appropriate.
2. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of £60,200 to provide new highway and sustainable transport infrastructure to serve the development, which sum shall be paid on or before the commencement of the development, 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:

- 2.1. Improvements to the Old School Lane/College Road/Venns Lane signalised junction
 - 2.2. Localised sustainable transport infrastructure to enhance the accessibility of the site for non car based modes of transport including but not limited to:
 - a) traffic calming measures on Cleve Orchard,
 - b) a new pedestrian crossing of the A49 north of the Starting Gate roundabout
 - 2.3. Enhancement in the usability of the localised public right of way network
 - 2.4. Provision of park and share and park and cycle facilities
 - 2.5. Provision of intelligent parking management infrastructure
3. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of £53,353 for the provision of new or the enhancement of existing play and sports facilities in the locality (contribution based around the requirements of saved policies H19 and RST4 of the UDP and Sport England Sports Facilities Calculator). The money shall be used by Herefordshire Council for priorities identified in the Indoor Sports Facilities Strategy, the emerging Play Facilities Strategy and emerging Playing Pitch Strategy including the extension of Hereford Skate park and new sports facilities at Aylestone Park.
 4. 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.
 5. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of £4,321 towards the provision of new and enhanced Library facilities in Hereford City. The sum shall be paid on or before the commencement of the development, and may be pooled with other contributions if appropriate.
 6. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of £2,280 towards the provision of new or the enhancement of existing waste and recycling facilities

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

in Hereford City (if appropriate provision/facilities are not provided on site).

7. The developer covenants with Herefordshire Council that ten (10) of 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.
8. Of those Affordable Housing units, at least eight (7) shall be made available for social rent with the remaining three (3) being available for intermediate tenure occupation. For the avoidance of doubt, the term intermediate tenure shall not include equity loans or affordable rent.
9. 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. The Affordable Housing Units must at all times be let and managed or co-owned in accordance with the guidance issued by the Homes and Communities Agency (or any successor agency) from time to time with the intention that the Affordable Housing Units shall at all times be used for the purposes of providing Affordable Housing to persons who are eligible in accordance with the allocation policies of the Registered Social Landlord; and satisfy the following requirements:-
 - 10.1. registered with Home Point at the time the Affordable Housing Unit becomes available for residential occupation; and
 - 10.2. satisfy the requirements of paragraphs 9 & 10 of this schedule.
11. The Affordable Housing Units must be advertised through Home Point and allocated in accordance with the Herefordshire Allocation Policy for occupation as a sole residence to a person or persons one of whom has:-
 - 11.1. a local connection with the parish of Holmer & Shelwick; or
 - 11.2. in the event of there being no person having a local connection to the parish of Holmer and Shelwick, a person with a local connection to one of the following parishes Burghill, Pipe & Lyde, Withington, Sutton St Nicholas, Bartestree & Lugwardine or Aylestone and Three Elms Wards
 - 11.3. in the event of there being no person with a local connection to any of the above parishes or Wards any other person ordinarily resident within the administrative area of the 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 1.5.1 or 1.5.2 above.
12. For the purposes of sub-paragraph 9.1 or 9.2 of this schedule 'local connection' means having a connection to one of the parishes specified above because that person:
 - 12.1. is or in the past was normally resident there; or
 - 12.2. is employed there; or
 - 12.3. has a family association there; or
 - 12.4. a proven need to give support to or receive support from family members; or
 - 12.5. because of special circumstances.
13. 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 such 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.

14. The developer covenants with Herefordshire Council to construct all residential units to a minimum of Code Level four (4) of the 'Code for Sustainable Homes – Setting the Standard in Sustainability for New Homes'. 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.
15. In the event that Herefordshire Council does not for any reason use the sums in paragraphs 1, 2, 3, 5 and 6 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.
16. The sums referred to in paragraphs 1, 2, 3, 5 and 6 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.
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.

HEADS OF TERMS 11/06/2012