

MEETING:	PLANNING COMMITTEE
DATE:	26 JUNE 2013
TITLE OF REPORT:	<p>130907/O - AN OUTLINE APPLICATION FOR THE ERECTION OF UP TO 127 DWELLINGS (35% TO BE AFFORDABLE) WITH ALL MATTERS EXCEPT ACCESS TO BE RESERVED FOR FUTURE CONSIDERATION AT PORTHOUSE FARM, TENBURY ROAD, BROMYARD, HEREFORDSHIRE</p> <p>For: Marsten Developments Ltd per Mr John Wilson, 66 Stratford Road, Shirley, Solihull, West Midlands B90 3LP</p>
WEBSITE LINK:	http://news.herefordshire.gov.uk/housing/planning/58286.aspx?ID=130907&NoSearch=True

Date Received: 28 March 2013

Ward: Bromyard

Grid Ref: 365239,255362

Expiry Date: 11 July 2013

Local Members: Councillors JG Lester and A Seldon

1 Proposal and Context

- 1.1 The proposed development is identical to that determined by the Planning Committee on 4 April 2012 under reference N111899/O. Prior to the decision a site visit was made on 1 February 2012. A copy of the report to the Planning Committee on 4 April 2012 is attached as **Annex 1** to this report.

2 Previous decision by the Local Planning Authority

- 2.1 The Planning Committee refused the planning application on the following three grounds:-

- 1 Despite the extensive noise mitigation measures that form part of the application proposal, the Local Planning Authority consider that the occupiers of at least some of the proposed dwellinghouses would suffer an undue level of night-time noise as the likelihood is that there would be many individual night-time noise events arising from the movement of stillages within the the open yard of the Polytec site that would still exceed 45 dB LAmax internally with windows open. As such the proposal is considered to be contrary to the Central Government advice contained within paragraph 123 of the National Planning Policy Framework and policy DR13 of the Herefordshire Unitary Development Plan 2007.
- 2 The submitted application fails to address the issue as to the impact of the existing external lighting sited/installed on both the Polytec site and the Bromyard Rugby Club upon the amenities of the occupiers of the proposed dwellinghouses. In the absence of any evidence to the contrary, it is the opinion of the Local Planning Authority that the occupiers of the proposed dwellinghouses would not enjoy a satisfactory level of amenity due to excessive light pollution from the aforementioned sources. As such the proposal is

considered to be contrary to policy DR14 of the Herefordshire Unitary Development Plan 2007.

- 3 Given reasons for refusal 1 and 2 above the location of the proposed residential development adjacent to the general industrial use of the Polytec site is considered to represent an inappropriate land-use contrary to policy DR2 of the Herefordshire Unitary Development Plan 2007.

3 Appeal

- 3.1 An appeal was lodged by the applicant against the decision. A copy of the planning appeal decision is attached as **Annex 2** and attached as **Annex 3** is the costs decision that the Inspector made in respect of an application by the appellant for an award of costs. The following is a summary of the appeal decision:-

Reason for refusal 1

- 3.2 The appeal proceedings examined the issue of noise in depth with both the Council and the appellants engaging professional experts. The Inspector made the point in paragraph 8 of the appeal decision (**Annex 2**) that when allocating land for residential purposes in the adopted Development Plan for Herefordshire the issue of the impact of the operation of the Polytec site on the future occupiers of the site, and the needs of the Polytec factory operators were given full consideration, and the Council produced a noise assessment report as a part of its evidence supporting the allocation at the Public Inquiry into objections to the Unitary Development Plan.

- 3.3 Notwithstanding the above, the Inspector addressed the noise matter again in detail with respect the appeal against the refusal of the planning application and concluded in paragraph 29 that:-

“I am satisfied that provided the package of factory source noise treatment measures, the 6 metre noise barrier and the acoustic double glazing to the new dwellings is secured and maintained into the future, there would be adequate control of noise within the residential development to secure acceptable living conditions for future residents”

- 3.4 In terms of the Costs Decision (**Annex 3**) Members specific attention is drawn to paragraph 10 where the Inspector stated:-

“In reaching its decision on noise, the Council did not follow the technical advice of its own consultants and officers in relation to the efficacy of the noise attenuation measures. Then in the appeal, the Council failed to produce any relevant technical evidence which would demonstrate reasonable planning grounds for making a contrary view in relation to the efficacy of noise attenuation measures. In these circumstances I find that the Council’s first reason for refusal is unreasonable, and fails to accord with the advice in the NPPF for local authorities to approach decision taking in a positive way”.

Reason for refusal 2

- 3.5 Members will note that the second ground of refusal with respect of the impact of external lighting was withdrawn by the Council during the course of the appeal. This was done following expert technical advice which essentially concluded that there was no technical evidence to support this ground of refusal. This decision was made after consultation with the Local Ward Members. However, Members will note in paragraph 11 of the costs decision (**Annex 3**) that the Inspector found that the “...Council acted unreasonably in imposing a reason for refusal without any technical support for its position, and then withdrawing it at a

late stage resulting in wasted preparatory work on behalf of and at the expense of the applicant”.

Reason for refusal 3

3.6 The Inspector found the proposed land-use to be entirely appropriate. The Inspector made the point that the site is allocated within the Council’s own adopted Development Plan (i.e. Herefordshire Unitary Development Plan 2007) for residential development. The allocation was made by Herefordshire Council and the principle of residential use was considered by the Inspector who dealt with objections to allocation of the site at the examination in public of the Unitary Development Plan. The Council then allocated the site in accordance with the recommendation of the Inspector. The Inspector stated at the end of paragraph 6 of that costs decision (**Annex 3**) that:-

“It is clear from the status of the site in the development plan that the residential use is considered to be an appropriate land use”.

3.7 Also within the same paragraph the Inspector concluded that:-

“In these circumstances I find the third reason for refusal cited by the Council to be unreasonable”.

3.8 The Inspector found the proposed development to be NPPF compliant.

4 Costs

4.1 The Inspector concluded that the Council’s three grounds of refusal were unjustified and found them all to be unreasonable. An award of costs was made against the Council.

4.2 The settled costs claim, after the Council engaging the services of a professional cost assessor was £27,000. The costs assessors’ fee was £3,494.98. As a consequence the total cost to the Council was £30,494.98.

5 Reason for appeal being dismissed

5.1 Notwithstanding the above, the appeal was dismissed. Whilst the Inspector was entirely satisfied with the package of noise mitigation measures, it was concluded that an effective legal mechanism was not in place to secure their provision and long-term maintenance upon the Polytec site.

6 Legal mechanism now proposed

6.1 This application proposes an agreement under Section 106 of the Town and Country Planning Act 1990 (as amended) which Polytec would also be a party to.

6.2 In summary, the owners’ and Polytec’s covenants would be:-

- a. Covenant by Polytec to install and complete to the Council’s reasonable satisfaction the (fixed) noise mitigation measures prior to the first occupation of the first dwelling (n.b. previously this was not forwarded as part of the legal agreement - there was a condition that did not meet the tests in the Circular and effectively there was only a promise that the developer would pay Polytec money to install);
- b. The owner of the housing site funds the above installation (no more than £60,000) - this will be evidenced to the Council with payment before occupation of the development;

- c. Thereafter Polytec (binds future owners also) keeps and maintains those noise mitigation measures as long as they are reasonably required;
- d. Prior to the first occupation of the first dwelling Polytec fit all forklift trucks at the factory with white noise reversing alarms / warning systems and thereafter maintain them satisfactorily;
- e. The owner of the housing site funds the installation of the white noise reversing alarms / warning systems (no more than £5,000) - this will be evidenced to the Council;
- f. A maintenance sum of £70,000 to be paid by the owners of the housing land to Polytec for future maintenance of a) and d) - this will be evidenced to the Council with payment before occupation of the development; and
- g. Following occupation of any of the dwellings no vehicle operating at the factory fitted with tonal reversing alarms / warning systems (e.g. delivery vehicles) shall operate between 23:00 hours and 07:00 hours.

6.3 The Section 106 would bind all future owners of housing site and factory site. All sums are index linked.

6.4 This is considered to be an appropriate legal mechanism that overcomes the technical matter that led to dismissal of the appeal.

6.5 Draft Heads of Terms are attached as **Annex 4** to this report.

7 Are there any new material planning considerations?

7.1 Since the original decision of this Council to refuse this scheme under planning application reference N111899/O on 4 April 2012 it became evident that this Council had a demonstrated shortfall in its five year supply of housing land supply, and is unable to meet the requirement set out in the National Planning Policy Framework (NPPF) for a 5% oversupply. The Inspector made specific reference to this matter in paragraph 8 of the appeal decision (see **Annex 2**). This matter has also been given weight in other recent appeal decisions including the appeal that was allowed at Land off Attwood Lane, Holmer, Hereford HR1 1LJ (LPA Ref:- S112612/F & Appeal Ref:- APP/W1850/A/12/2185069) and other similar decisions across the country.

8 Consultation Summary

Internal

8.1 The Environmental Protection Manager does not raise any objections.

8.2 The Team Leader Waste Operations does not raise any objections.

8.3 The Transportation Manager has no objections.

8.4 Strategic Housing Manager has no objections to the proposal.

8.5 The Schools Organisation & Capital Investment Support Officer has no objections.

8.6 The Planning Ecologist has no objections. For Members' information an updated Extended Phase 1 Survey has been submitted in relation to this application.

8.7 Land Drainage Adviser (Amey) - No objections subject to the recommended conditions.

External

8.8 River Lugg Internal Drainage Board - No objections raised.

8.9 Welsh Water - No objections subject to conditions.

8.10 Environment Agency - No objection subject to conditions.

9 Representations

9.1 The application has resulted in objections being received from thirteen individuals, twelve local businesses and the Bromyard & District Chamber of Commerce. They raise the same objections to those previously raised by objectors in relation to planning application N111899/O and addressed through the appeal process.

9.2 The only new matter raised is concern as to:-

- Increase in commuter traffic to Hereford along the A465 through Burley Gate that has an accident history
- The aforementioned traffic will create undue levels of noise

9.3 Bromyard & Winslow Town Council made the following initial comments:-

"The above numbered planning application was discussed at a meeting of the Town Council last night and after a full and frank discussion the Council resolved to make the following comments.

1) Given that potential employment land at Linton Tile Works has been withdrawn from the emerging Local Development Plan - Core Strategy, the Town Council asks that any decision regarding this Planning Application be deferred until the District Council is in a position to identify an area of employment land to serve the needs and requirements of Bromyard.

To proceed with this application would be contrary to UDP policy which calls for an 80:20 ratio of housing to employment land. A development of 127 houses on approximately 2.9 hectares of land should be accompanied by 0.625 hectares of employment land which does not exist. NPPF policy 156 says that "local planning authorities should set out the strategic priorities for the area in the Local Plan. This should include strategic policies to deliver the homes and jobs needed in the area..."

Should Herefordshire District Council be minded to consider the application at this stage, the Town Council OPPOSES the application on the following grounds;

2) In spite of comments by the applicants' agent Council was not persuaded that the proposed measures were sufficient to ensure the long term maintenance of the noise attenuation barrier. Council was not persuaded that the matter could be dealt with by an "unspecified" condition.

3) Although this Council acknowledges the decision of the Planning Inspector following the Hearing on 5th December 2012 regarding what she considered to be acceptable noise attenuation measures, this Council remains unconvinced that proposed noise attenuation measures will resolve issues caused by noise emanating from Polytec Car Styling Bromyard Ltd and affecting residents of existing properties in the Winslow Road area. The Inspector misunderstood the point put by the Town Council's representative regarding noise deflection and its effects upon those existing resident. To our knowledge no research has been carried out to counter this assertion.

4) The development represents on a 2.9 hectare developed site a proposed density is 44 DPH. The emerging Core Strategy appears to set a maximum density of 35 DPH. Given the current state of flux between the expiring UDP and the emerging Local Development Framework the Town Council maintains that the density of 44DPH is unacceptably high, particularly when set against the current UDP 2007, in which it is stated that the Inspector agreed to the designation of the Porthouse Farm Site from employment land to housing but on the basis of 87 dwellings representing 30DPH. Therefore this Council considers this to be an overdevelopment of the site.

5) The Town Council remains concerned that this development would have an adverse impact upon other industrial activities also adjacent. UDP policy DR2 and NPPF 123 "Planning policies and decisions should aim to:- recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established". Clearly these policies need to be taken into account.

6) UDPS4 states "Council should identify a suitable portfolio of land" including for housing and employment. Given the removal of employment land at Linton, nr. Bromyard (P105 Core Strategy - Draft) there is now no suitable portfolio of land to serve Bromyard.

7) NPPF 17 "Efficient Use of Land" - it should be noted that for this planning application a two acres buffer strip of land left unused. This cannot be regarded as an "efficient use of land".

9.4 and further comments:-

"The Town Council raises the following further objections to this application:-

The Section 106 agreement

The Town Council is astonished that Herefordshire Council can even be considering an application which places the financial burden, albeit after 15 years, of the maintenance of the bund, open space, children's play area and SUDS ponds on this proposed private housing development, in perpetuity, on the Council Tax payers of Herefordshire. The area in question is at least three acres. It is not clear to the Town Council who has authorised the agreement that Herefordshire Council will take on this responsibility after 15 years.

In any case this agreement is unacceptable and contrary to NPPF policy 176 which says that "development should not be approved if the measures required cannot be secured through appropriate conditions or agreements." An agreement which places the burden on the local taxpayer to upkeep in perpetuity several acres of open space and ponds on a private housing development is clearly not appropriate.

With regard to the landscaping of the bund, open space, children's play area and SUDS ponds the Town Council notes that this does not need to be carried out by the developer until half of the open market houses have been occupied. This means that the bund, open space and children's play area could be left as wasteland for an unspecified number of years. The prospect of children playing on such areas cannot be contemplated and should not be given any consideration whatsoever by Herefordshire Council. The Town Council also notes that there is no mention of timescales for the construction of the affordable housing element of the scheme, so it is perfectly feasible that the occupiers of the 27 affordable houses, which are designed to act as a noise barrier between the open market houses and the Polytec factory, could be looking onto wasteland for many years.

There is no provision whatsoever in the agreement for the construction and maintenance of the proposed 6 metre high, 123 metre long noise attenuation fence which is acknowledged by all parties to be necessary. The Town Council fundamentally disagrees with the Inspector that

one can rely on a condition (Condition 28) to achieve the construction and maintenance for 100 years of this enormous barrier.

The Town Council contends that this application should not even be considered without a written commitment from both Polytec and HSBC, which has a charge on the Polytec site.

Overdevelopment

The site area is 3.7 hectares as stated in the UDP; the “buffer zone” (now called “open space”) was required by the Inspector to be 0.8 hectares, leaving 2.9 hectares of developable land. The suggested capacity of the site at 87 dwellings is a simple calculation: - 2.9 hectares x 30 dwellings per hectare = 87 dwellings.

The size of the site was confirmed at 3.7 hectares by Mr Singleton twice in emails to Cllr Swinford during the March/April 2013 LDF consultation process.

The applicant's agent Tyler Parkes has simply placed the SUDS ponds outside of the site identified in the UDP and reduced the buffer zone (open space) from 0.8 hectares to about 0.4 hectares, hence achieving an apparently larger site with lower density.

The correct density with the required 0.8 hectare buffer zone is 127 dwellings on 2.9 hectares = 44 dwellings per hectare. This is clearly a serious overdevelopment, as can be seen from a glance at the master-plan which accompanies the application.

Lack of acoustic barrier between housing and stillage yard

The Town Council notes that there is no acoustic barrier proposed between Polytec Holden's stillage yard and the proposed new housing, merely an earth mound. The stillage yard is an extremely noisy environment with fork-lift trucks clattering about and metal stillages being manoeuvred and dropped 24/7. The Town Council does not believe this issue has been properly addressed.

Reflection of sound from fence

If the proposed acoustic barrier fence is reasonably effective in reducing noise levels in the proposed new housing development then by definition that sound is going to be bounced back off the fence in a different direction. This will inevitably affect existing residential properties. The Town Council contends that this issue has not been addressed at all. The Town Council is pleased to see that Professor Colin Walters of CWA confirms its fears in his letter of the 29th April 2013 to Tyler Parkes, when he states that the noise when reflected can increase by “a maximum of 3dB”. He goes on to say that “the barrier surface would not be acoustically flat and would be further softened by the natural growth screening that is envisaged “. Firstly, there is no clarity whatsoever on how, when or by whom this fence is going to be built, let alone what its design characteristics might be. Furthermore there is no screening envisaged between the Polytec factory and the fence. The Town Council contends that this matter requires proper investigation.

Location of affordable housing

It is perfectly clear to the Town Council from the master-plan that 27 of the proposed 44 affordable houses are to be used as a noise barrier, separating the open market houses from the Polytec factory and stillage yard. This same layout has come before the Planning Committee twice before and the applications have been refused. To rely upon reserved matters is simply not good enough and this fundamental issue should form part of the outline planning application.

The Town Council notes that Tina Wood, Housing Development Manager for Herefordshire Council, agrees. In her submission on this application she says “I would not like to see the affordable units being built as a buffer between the open market units and the industrial estate.”

Potential for flooding of properties

The Town Council notes that in its submission on this application the River Lugg Drainage Board states, in its letter of the 29th April 2013, that “... both current and future developers/owners should be made aware of the risks associated within the area being considered.”

9.5 A petition with 205 signatures has been received objecting to the proposed development and requesting that consideration of the application be deferred until a “Local Plan” has been agreed for Bromyard. It is submitted that significant new housing can not be justified in the absence of new employment land being allocated for Bromyard. It is stated that this site is the only land suitable for a future employment land allocation. In addition it is stated that the proposed housing requires extreme noise mitigation measures represents an inefficient use of land and represents an overdevelopment.

9.6 Six letters of support have been received. In summary, they state:-

- Bringing more houses to the Bromyard can only be of benefit to local retailers and the local schools;
- The development would bring more business to the area and help to develop the future of Bromyard; and
- The proposal would bring affordable housing to Bromyard that is required.
- In 2006/07 Elgar Properties built five industrial units at the Porthouse Farm Industrial Estate. These five units stood vacant for a number of years, proving that there was not a need for these commercial premises in Bromyard;
- The appeal Inspector found the proposed development to be acceptable, other than upon one technicality, that has now been addressed;
- The financial cost of the actions of a few objectors is regrettable;
- From the late 1980's to the time the site was sold to the current applicants in approximately 2006 there was no interest in this site for employment related purposes despite marketing;
- All three of the Council's previous grounds of refusal were found to be unreasonable in the appeal decision, a full award of costs was made against the Council;
- If the site were to be developed for employment purposes it would involve heavy traffic passing through the congested Town Centre;
- Land could be developed for employment related in the vicinity of the existing Linton Industrial Estate and the Draft Core Strategy identifies 5 hectares of employment land.

10 Appraisal

10.1 To avoid repetition the previous appraisal is as set out in the report to Planning Committee on 4 April 2012.

10.2 The only material matters with weight that have emerged since that date are:-

- a) The appeal decision that found all three of the previous grounds of refusal to be unreasonable; and
- b) The demonstrated shortfall in the Council's housing land supply.

- 10.3 The proposed legal mechanism now advanced to secure the noise mitigation measures is considered to be acceptable.
- 10.4 For the avoidance of any doubt it is worth noting that planning permission was granted for the retention of the earth bund in a materially different form under planning permission DMN/111900/N.
- 10.5 With respect to the initial seven matters raised by the Bromyard & Winslow Town Council the following comments are made:-

- 10.5.1 In paragraph 9 of the appeal decision (see **Annex 2**) the Inspector considered the matter raised by the Town Council relating to the need for further employment land within Bromyard, including the Town Council's reference to the unsuitability of the Linton site, but concluded that:-

"However, since the site has been designated for housing in a statutory development plan, and having regard to the shortfall in the supply of housing land, these considerations do not outweigh the strong presumption in favour of planning permission being granted for residential development of the site"

In paragraph 8 (see **Annex 2**) of the appeal decision, the Inspector found that "the (*residential*) allocation is clearly important to the fulfilment of the Council's housing land strategy in view of the shortfall in the Council's five year housing land, and its inability to meet the requirement set out in the NPPF for a 5% oversupply".

- 10.5.2 The Inspector was clear in paragraph 27 of the appeal decision that the provision and future maintenance of the acoustic fence on the applicant's land (not Polytec's land) could satisfactorily be dealt with by way of a planning condition.
- 10.5.3 The matter concerning noise reflection from the proposed barrier was raised by the Town Council at the Informal Hearing in respect of the appeal. The Town Council were concerned with the reflection of noise from traffic on the Tenbury Road being reflected back onto the residents adjacent to that road and to the potential new residents. The professional Acoustic Consultant on behalf of the appellant was asked by the Inspector to give an opinion as to whether this was a possibility and to comment upon the Town Council's point. He replied that there was no reason to assume that noise would be reflected in this way and that no impact or subsequent effect would be expected. He then explained his answer as follows:-

"Noise can be reflected from a suitable surface and when this occurs the reflected sound ray is equal to the incident ray in energy terms. As a result an observer close to the reflector would experience a maximum theoretical increase in noise of 3dB. At a distance of more than about 2m from the reflector the reflected ray would decrease according to the normal laws of acoustic reduction with distance so that after about 3-4m the noise increase due to reflection would be at about +1 dB. This is the theoretical maximum. For a real case there are a number of other factors that affect the level of the reflected ray.

- The characteristics of the reflecting surface. It has to be flat, and for maximum effect, be at right angles to the incident ray.
- The nature of the incident noise. If it is diffuse and not a narrow 'beam' then the reflections are further diffused.

For the case under consideration the barrier surface would not be acoustically flat and would be further softened by the natural growth screening. It would not be at right angles to the incident sound. The potentially affected dwellings would be at some distance from the barrier ensuring that any reflected sound is further attenuated, diffused and screened. It is therefore

evident that any reflections from the barrier would be reduced to an increase of a tiny fraction of a dB before they could impact upon local residents. As it is accepted that increases of the order of 3dB are not usually perceptible to most people it can be seen that a theoretical increase of very much less than 1dB is of no consequence.”

This explanation was accepted at the Hearing by the Council’s noise consultant and the Council’s Environmental Health Officer.

This answer was accepted by the Inspector at the Hearing and in the appeal decision (**Annex 2**) where she stated in paragraph 28:-

“There is also concern that noise would be reflected by the fence from the highway onto the residential site. However, having regard to the angle of the fence in relation to the road, and the existence of the bund which would be in front of the fence, I am satisfied that such effects would not occur”

10.5.4 This matter of an “overdevelopment” was not a ground that the Council previously refused the application upon. This matter was fully addressed in paragraph 5.3 of Annex 1 to the report to Committee on 4 April 2012 (see **Annex 1**).

Furthermore the Inspector stated in paragraph 8 of the appeal decision that:-

“Although the UDP indicated the site as being suitable for 87 dwellings, the site area is greater than originally indicated and the Council do not object in principle to the increase in the number of new dwellings proposed. The allocation is clearly important to the fulfilment of the Council’s housing land strategy in view of the shortfall in the Council’s five year supply of housing land, and its inability to meet the requirement set out in the National Planning policy Framework (NPPF) for a 5% oversupply.”

10.5.5 This matter of noise impact is covered earlier. The appeal decision is clear that the Inspector found that the package of noise attenuation measures proposed would create a satisfactory residential environment whilst not prejudicing the legitimate interests of existing businesses.

In many ways the NPPF recognises that providing residential properties in proximity to existing businesses should not impede the future or diversification of such businesses. In paragraph 123 it specifically states that:-

“Planning policies and decisions should aim to recognise that development will often create noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of nearby changes in nearby land uses since they were established”.

Therefore if any of the existing adjoining businesses were to apply for planning permission for say some form of expansion, it is not considered that the existence of residential properties upon the site the subject of this application would in itself create a planning problem.

10.5.6 Portfolio of employment land – this matter is dealt with in 10.5.1 above.

10.5.7 The point raised by the Town Council appears to conflict with their expressed concern with respect an “overdevelopment”. The proposal for a landscape buffer to separate the residential development from existing employment uses was accepted by the Inspector reporting into objections to the Unitary Development Plan and is reflected in paragraph 5.4.27 of the UDP. As stated earlier planning permission has been granted for the retention of the earth bund, albeit in a remodelled form.

10.6 With regard to the further comments from Bromyard & Winslow Town Council, the following observations are made:-

10.6.1 *The Section 106 Agreement* - The layout is submitted for illustrative purposes only. The Town Council appears to be under the misunderstanding that Herefordshire Council would adopt and maintain the bund and SUDS ponds. No such agreement or commitment is in place. In any reserved matters application the layout would need to include useable children's play area(s) and useable amenity public open space in accordance with the Council's UDP policies. This would certainly not include the bund and is unlikely to include the SUDS ponds in this case although on occasions, such as the Holmer site in Hereford balancing ponds can form part of a larger integrated open space with bio-diversity value. In such circumstances such provision would be additional to the UDP requirement and an additional commuted sum required.

No more than 50% of the open market dwellings could be occupied without the open space and children's play equipment being provided. This is normal procedure and regarded as an effective timing/phasing mechanism.

The location of the affordable housing is not a matter to be considered as part of this application which is an outline planning application with all matters except for the vehicular means of access reserved for future consideration. The layout is a reserved matter. The only matter being considered at this stage is the affordable housing provision. A level of 35% is proposed in accordance with UDP policy. The legal agreement requires that prior to 50% of the open market dwellings being occupied the affordable housing would have to be provided. Again this is normal practice in terms of timing/phasing mechanism.

The legal agreement does not deal with the issue of the acoustic fence as this is on the applicant's land and can satisfactorily be dealt with by a planning condition. This was confirmed by the Inspector in paragraph 27 of the appeal decision (**Annex 2**).

10.6.2 *Over development* - this matter has been dealt with in 10.5.4 above.

10.6.3 *Lack of an acoustic barrier between housing and stillage yard* - a 6 metre high fence is proposed. The professional noise consultants are of the view that this acoustic fence and the fitting of the "white noise" reversing warning systems to the forklift trucks would satisfactorily address the matter of noise from the stillage yard. Again, attention is drawn to the Inspector's decision that concluded that the package of noise mitigation measures would ensure a satisfactory residential environment.

10.6.4 *Reflection of sound from fence* - This matter is dealt with in 10.5.3 above. There would be landscaping between the Tenbury Road and the fence on the bund. The remodelled bund would in itself partially screen the acoustic fence.

10.6.5 *Location of affordable housing* - As stated earlier the layout and location of the affordable housing is a reserved matter. The Local Planning Authority would wish any layout to show affordable housing "pepper-potted" / dispersed around the site with no single group of affordable housing having more than 15 dwellings.

10.6.6 *Potential for flooding of properties* - The Environment Agency did not object to the previous application. This matter is dealt with by recommended conditions 2, 3, 4 and 5.

10.7 It is not considered that there are any safety or noise issues associated with the use of the A465 in the vicinity of Burley Gate. The adequacy of the wider highway network is a matter that was considered by the Council when allocating the land for housing purposes.

- 10.8 The draft legal agreement is considered to comply with policy DR5 of the Herefordshire Unitary Development Plan 2007 and the Council's Planning Obligations Supplementary Planning Document 2008. The only material change is the omission of the financial contribution with regard CCTV coverage. This is due to changes within West Mercia Police which have meant that they have withdrawn from the project and there is no longer a specific project in any capital programme to which funding is sought.
- 10.9 The law requires that decisions are made in accordance with the development plan unless material considerations indicate otherwise (NPPF paragraph 11). In Herefordshire the development plan remains as the Herefordshire Unitary Development Plan 2007.
- 10.10 The NPPF sets out (in its Annex 1) the implementation programme for national policy in relation to current policy. Paragraph 215 requires that from March 2013 weight can be given to policies in existing development plans according to their degree of consistency with the NPPF.
- 10.11 In respect of emerging plans Paragraph 216 of the NPPF is relevant. This states that weight (in decision making) can be given to such plans depending on:
- their stage of preparation;
 - the extent to which there are unresolved objections; and
 - the degree of consistency to the policies in the NPPF.
- 10.12 Herefordshire Local Plan; Core Strategy 2011-2031 was published for consultation on 4 March and ran until 22 April 2013.
- 10.13 At this stage of preparation it is considered that no or minimal weight should be given in decision making on planning applications to the Core Strategy as the recently published draft plan has only been approved for consultation purposes. An independent examination of the Core Strategy is not anticipated until Winter 2013 with final adoption Spring 2014.
- 10.14 Bromyard and Winslow Town Council intend to prepare a neighbourhood plan with Avenbury Parish Council. To date they have merely applied to designate area of the Plan that is out for consultation at the moment. Such a plan will need to be in conformity with the Core Strategy. It is unlikely that such a Neighbourhood Plan would progress through the full preparation process and be adopted before Spring 2014.
- 10.15 Consequently planning applications should be determined in accordance with the Unitary Development Plan where the relevant policy is consistent with the NPPF.
- 10.16 The UDP policies as far as they relate to this site were considered to be compliant with the National Planning Policy Framework (NPPF) by the Inspector determining the recent appeal.
- 10.17 Furthermore, I advise Members that the Draft Core Strategy uses the housing land position as of 2011 as the base which treats commitments as extant planning permissions and UDP allocations at that time. Therefore in ensuring adequate housing land supply the Core Strategy itself assumes the development of sites allocated in the UDP for housing purposes. That includes the Porthouse Farm site.

11. **Conclusion**

- 11.1 There is a statutory duty for the Council to determine planning applications in accordance with the Development Plan unless material planning considerations indicate otherwise.
- 11.2 The application is made in outline with all matters except for access reserved for future consideration.

- 11.3 The Development Plan for the area remains the Herefordshire Unitary Development Plan 2007 that allocates the site for residential development. The allocation of the land for residential development was the subject of scrutiny by the Planning Inspector appointed by the Secretary of State to consider objections to the Unitary Development Plan prior to its adoption.
- 11.4 The other material planning considerations of considerable weight are:-
- a) the Central Government advice contained within the National Planning Policy Framework (NPPF); and
 - b) the appeal decision relating to the previously refused application N111899/O.
- 11.5 The Inspector's decision with respect the refusal of planning application N111899/O considered the policies of the Herefordshire Unitary Development Plan 2007 and the proposal itself to be compliant with the provisions of the National Planning Policy Framework. The lack of a five year housing land supply plus 5 % oversupply as required by the NPPF is a significant additional factor.
- 11.6 The Inspector also found all three of the Council's previous grounds of refusal to be unreasonable, resulting in a substantial award of costs against the Council.
- 11.7 The only reserved matter to be considered is the access to which there are no objections and to which the Council did not previously object.
- 11.8 The legal mechanism to secure the package of noise attenuation measures is now in place.
- 11.9 As a consequence the recommendation is for approval.

RECOMMENDATION

That subject to the completion of the Section 106 legal agreement, the Assistant Director Economic, Environment & Cultural Services be authorised to issue the Planning Permission subject to the following conditions:-

- 1. The development shall not commence until approval of the following reserved matters has been obtained from the Local Planning Authority:-**
 - **Layout**
 - **Scale**
 - **Appearance**
 - **Landscaping**

Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

The development hereby permitted shall be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last reserved matters to be approved, whichever is the later.

Reason: No such details have been submitted and in accordance with Section 92 of the Town and Country Planning act 1990.

- 2. The finished floor levels of all the dwelling houses shall be set a minimum of 600mm above Q1000 flood level at each river station section (sections referred to in Appendix H of the Flood risk Assessment Report 1577 dated 26 June 2009).**

Reason: To protect the development from flooding, in accordance with policy DR7 of the Herefordshire Unitary Development Plan 2007.

3. **There shall be no raising of ground levels within flood zone 3, the 'high risk', 1% annual probability flood plain.**

Reason: To protect the development from flooding, in accordance with policy DR7 of the Herefordshire Unitary Development Plan 2007.

4. **Prior to commencement of the development hereby permitted the following matters shall be submitted to the Local Planning Authority for their written approval:-**
- **Full details of foul sewerage disposal arrangements**
 - **Full details of surface water drainage arrangements**
 - **Full details of land drainage arrangements**

The development hereby permitted shall not commence until the Local Planning Authority has given such written approval. The development shall be carried out in strict accordance with the approved detail and thereafter maintained as such.

Reason: To ensure that effective drainage facilities are provided for the proposed development and that no adverse impact occurs to the environment or the existing public sewerage system, in accordance with policies DR4 and DR6 of the Herefordshire Unitary Development Plan 2007.

5. **With regard the details required to be submitted pursuant to condition 4 above, no surface water or land drainage run-off shall be discharged, either directly or indirectly, to the public sewerage system.**

Reason: To protect the integrity of the public sewerage system, to prevent hydraulic overloading of the public sewerage system and ensure no detriment to the environment, in accordance with policies DR4 and DR6 of the Herefordshire Unitary Development Plan 2007.

6. **With regard the details of foul sewerage disposal arrangements required to be submitted pursuant to condition 4 above, no more than 7 litres per second shall be discharged into the public sewerage system, thus requiring an on-site pumping station. The scheme shall be implemented with this restricted flow and thereafter maintained as such.**

Reason: To protect the integrity of the public sewerage system, to prevent hydraulic overloading of the public sewerage system and ensure no detriment to the environment, in accordance with policies DR4 and DR6 of the Herefordshire Unitary Development Plan 2007.

7. **No development shall take place until the following has been submitted to and approved in writing by the Local Planning Authority:**

a) a 'desk study' report including previous site and adjacent site uses, potential contaminants arising from those uses, possible sources, pathways, and receptors, a conceptual model and a risk assessment in accordance with current best practice.

b) if the risk assessment in (a) confirms the possibility of a significant pollutant linkage(s), a site investigation should be undertaken to characterise fully the nature and extent and severity of contamination, incorporating a conceptual model of all the potential pollutant linkages and an assessment of risk to identified receptors.

c) if the risk assessment in (b) identifies unacceptable risk(s) a detailed scheme specifying remedial works and measures necessary to avoid risk from contaminants/or gases when the site is developed. The Remediation Scheme shall include consideration of and proposals to deal with situations where, during works on site, contamination is encountered which has not previously been identified.

Any further contamination encountered shall be fully assessed and an appropriate remediation scheme submitted to the local planning authority for written approval.

Reason: In the interests of human health in accordance with policy DR10 of the Herefordshire Unitary Development Plan 2007.

8. The Remediation Scheme, as approved pursuant to condition number 7 above, shall be fully implemented before development is first occupied. On completion of the remediation scheme the developer shall provide a validation report to confirm that all works were completed in accordance with the agreed details, which must be submitted before the development is first occupied. Any variation to the scheme including the validation reporting shall be agreed in writing with the Local Planning Authority in advance of works being undertaken.

Reason: In the interests of human health in accordance with policy DR10 of the Herefordshire Unitary Development Plan 2007.

9. No building operation shall take place until the re-graded bund permitted by planning permission DMN/111900/N has been completed. Thereafter this bund shall remain in-situ and be maintained in accordance with the approved details.

Reason: To ensure that the occupiers of the dwellinghouses enjoy a satisfactory level of amenity in compliance with policy DR13 of the Herefordshire Unitary Development Plan 2007.

10. The hedgerow along the western boundary of the site on the eastern side of the Tenbury Road shall be retained as shown on the approved plans.

Reason: The roadside hedgerow is considered to be of both landscape and ecological value, to accord with policy LA5 of the Herefordshire Unitary Development Plan 2007.

11. The details of layout required to be submitted pursuant to condition 1 above shall show the entirety of the residential development, including the dwelling houses, gardens, roadways, pedestrian routes, cycle routes, outdoor playing space, open space and equipped children's play space, confined to the allocated housing site as defined on the Proposals Map to the Herefordshire Unitary Development Plan 2007.

Reason: To ensure that there is no unjustified encroachment of development into the open countryside or onto employment land in accordance with policies H7 and E5 of the Herefordshire Unitary Development Plan 2007.

12. The details of layout required to be submitted pursuant to condition 1 above shall show the entirety of the provision of a shared pedestrian/cycleway route along the approximate route of the former railway line adjacent to the eastern boundary of the site.

Reason: To ensure that there is adequate permeability through the development and to enhance both cycle and pedestrian routes, in accordance with policies T6 and T7 of the Herefordshire Unitary development Plan 2007.

13. The details of layout required to be submitted pursuant to condition 1 above shall include the provision of outdoor playing space, open space and equipped children's play space in accordance with policies H19 and RST3 of the Herefordshire Unitary Development Plan 2007.

Reason: In accordance with policies H19 and RST3 of the Herefordshire Unitary Development Plan 2007.

14. Prior to commencement of the development hereby permitted protective fencing in accordance with the advice contained within BS5837:2012 shall be erected at the furthest extent of the root protection areas to the seven trees protected by way of a Tree Preservation Order and the furthest extent of the roots of the roadside hedgerow that is to be retained. Once these protective measures have been erected but prior to commencement of the development hereby permitted a suitably qualified arboricultural consultant shall inspect the site and write to confirm that the protective measures specified by this condition are in-situ. Upon receipt of that letter by the Local Planning Authority the development may commence but the protective measures must remain in-situ until completion of the development. No storage may take place within the tree protection areas. If any works are required within the tree protection areas an Arboricultural Method Statement shall be submitted to and approved by the Local Planning Authority prior to commencement of the development.

Reason: To ensure that the trees and hedgerow of amenity value that are both worthy and capable of retention are not damaged and their long- term health and future retention not prejudiced, in accordance with policy LA5 of the Herefordshire Unitary Development Plan 2007.

15. The details of layout and landscaping required to be submitted pursuant to condition 1 above shall include a scheme for the permanent closure of the two existing vehicular means of accesses. The two existing vehicular means of accesses shall be permanently closed in full accordance with the approved scheme prior to the commencement of any building operation hereby permitted.

Reason: In the interests of highway safety, in accordance with policy DR3, T6 and T7 of the Herefordshire Unitary Development Plan 2007.

16. The approved vehicular accesses including visibility splays, cycleway and pedestrian route shown upon drawing number 617-05 Revision A shall be fully implemented prior to the first occupation of any of the dwellinghouses hereby permitted and thereafter maintained in accordance with the approved details.

Reason: In the interests of highway safety and to encourage travel by alternative modes of transport in accordance with policy DR3 of the Herefordshire Unitary Development Plan 2007.

17. The details of layout required to be submitted pursuant to condition 1 above, shall include full details of all proposed boundary treatments (i.e. walls, gates, fences or any other means of enclosure).

Reason: To ensure a satisfactory appearance to the development in accordance with policies DR1 and LA2 of the Herefordshire Unitary Development Plan 2007.

18. The details of layout required to be submitted pursuant to condition 1 above, shall include full details of existing site levels, all proposed earthworks and proposed finished levels.

Reason: To ensure that the development is satisfactorily integrated into the landscape

in accordance with policy LA2 of the Herefordshire Unitary Development Plan 2007.

19. The recommendations set out in the ecologist's reports dated February 2013 and June 2010 shall be followed unless otherwise agreed in writing by the local planning authority. Prior to commencement of the development, an update assessment and full working method statement should be submitted to and be approved in writing by the local planning authority, and the work shall be implemented as approved.

Reasons: To ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010 and Policies NC1, NC6 and NC7 of the Herefordshire Unitary Development Plan.

To comply with Policies NC8 and NC9 of Herefordshire's Unitary Development Plan in relation to Nature Conservation and Biodiversity and to meet the requirements of PPS9 Biodiversity and Geological Conservation and the NERC Act 2006.

20. Prior to commencement of the development, a full habitat enhancement and management scheme, including reference to Herefordshire's Biodiversity Action Plan Priority Habitats and Species, including timescale for implementation, shall be submitted to and be approved in writing by the local planning authority. The work shall be implemented as approved.

Reasons: To ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010 and Policies NC1, NC6 and NC7 of the Herefordshire Unitary Development Plan.

To comply with Policies NC8 and NC9 of Herefordshire's Unitary Development Plan in relation to Nature Conservation and Biodiversity and to meet the requirements of PPS9 Biodiversity and Geological Conservation and the NERC Act 2006.

21. An appropriately qualified and experienced ecological clerk of works shall be appointed (or consultant engaged in that capacity) to oversee the ecological mitigation and enhancement work.

Reasons: To ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010 and Policies NC1, NC6 and NC7 of the Herefordshire Unitary Development Plan.

To comply with Policies NC8 and NC9 of Herefordshire's Unitary Development Plan in relation to Nature Conservation and Biodiversity and to meet the requirements of PPS9 Biodiversity and Geological Conservation and the NERC Act 2006.

22. No development shall take place until a Site Waste Management Plan has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the provisions of the approved Plan.

Reason: In the interests of pollution prevention and efficient waste minimisation and management so as to comply with Policies S10 and DR4 of Herefordshire Unitary Development Plan.

23. H27 Parking for site operatives.

24. The two new vehicular means of access hereby permitted shall be provided prior to commencement of any building operation hereby permitted.

Reason: In the interests of highway safety, in accordance with policies DR3, T6 and T7 of the Herefordshire Unitary Development Plan 2007.

25. Prior to the start of construction of any dwellinghouse hereby permitted a detailed scheme for the future maintenance of a continuous and imperforate 6 metre high timber acoustic fence, sealed at the base, with a density of at least 15 kg/m² shall be submitted for approval to the Local Planning Authority. The fence shall then be erected prior to the first occupation of any dwellings along the alignment shown on the drawing number 2589/027 Revision A and thereafter be retained and maintained in accordance with the approved scheme.

Reason: To ensure that the occupiers of the dwelling houses hereby permitted do not suffer an undue level of noise in accordance with policy DR13 of the Herefordshire Unitary Development Plan 2007.

26. All dwellings shall be constructed in accordance with BS 8233:1999 so as to provide sound insulation against externally generated noise. The "good" room criteria shall be applied, meaning internal noise levels must be no more than 30 dB LAeq for living rooms and bedrooms, with windows shut and other means of ventilation provided. Levels of 45 dB L_{Amax}, fast shall not normally be exceeded in bedrooms (23:00 to 07:00 hours night-time) with the windows closed.

Prior to the construction of any houses on the site, written details of the methods of construction and attenuation to achieve this standard shall be submitted to the Local Planning Authority for their written approval. None of the houses hereby permitted shall start to be constructed until the Local Planning Authority has given such written approval. The development shall take place in full accordance with the approved details and thereafter maintained as such.

Reason: To ensure the occupants of the dwellings enjoy a satisfactory noise environment with regard to LAeq and night-time L_{Amax} noise levels, in accordance with policy DR13 of the Herefordshire Unitary Development Plan 2007.

INFORMATIVES:

1. A written Land Drainage Consent will need to be obtained from the Board under the terms of the Land Drainage Act 1991 and the Flood and Water Management Act 2010.
2. The details of layout required to be submitted pursuant to condition 1 should follow the advice contained within 'Manual for Streets 2' and include the vehicle parking and cycle parking facilities as set out in the Herefordshire Council 'Highways Design Guide for New Development (July 2006)'.
3. This permission does NOT relate to illustrative drawing 2589/008 Revision F.
4. The documents to which this decision relate are:
 - Proposed Site Access - Drawing number 617-05 Revision A
 - Colin Water Acoustics (Consultants in Environmental Acoustics) Report CWA 26310/R05/1/ May 2011;
 - Tree Survey Report prepared by Illman Young May 2011 2011 which sets out the root protection areas in Appendix 2 (i.e. T15 - T7 of the TPO - 6 metres radius, T7 - T6 of the TPO - 6.48 metres radius, T6 - T5 of the TPO - 7.08 metres radius, T4 - T3 of the TPO - 5.64 metres radius, T3 - T2 of the TPO - 6 metres radius and T2 - T1 of the TPO - 7.2 metres radius);
 - Phil Jones Associates Transport Assessment dated May 2011;
 - Proposed Zebra Crossing (Porthouse Farm Development) - Stage 2 Road Safety

Further information on the subject of this report is available from Mr R Close on 01432 261803

- Audit prepared by Amey dated 21 June 2011;
- Flood Risk Assessment (Report No. 1577) prepared by Robert West Consulting;
- Topographical Survey Drawing No. T 5637/2;
- Application Site Plan - Drawing number 2589/015 (Scale 1:1250);
- Ecological Appraisal (March 2010);
- Reptile Survey (June 2010);
- Extended Phase 1 Survey (March 2013); and
- Proposed Acoustic Fence Location Plan - Drawing Number 2589/027 Revision A

5. **N11C General**

6. The details of landscaping required to be submitted pursuant to Condition 1 shall include hard landscaping, soft landscaping and a fully detailed landscape management plan.

7. **HN01 Mud on highway**

8. **HN04 Private apparatus within highway**

9. **HN05 Works within the highway**

10. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations, including any representations that have been received. It has subsequently determined to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

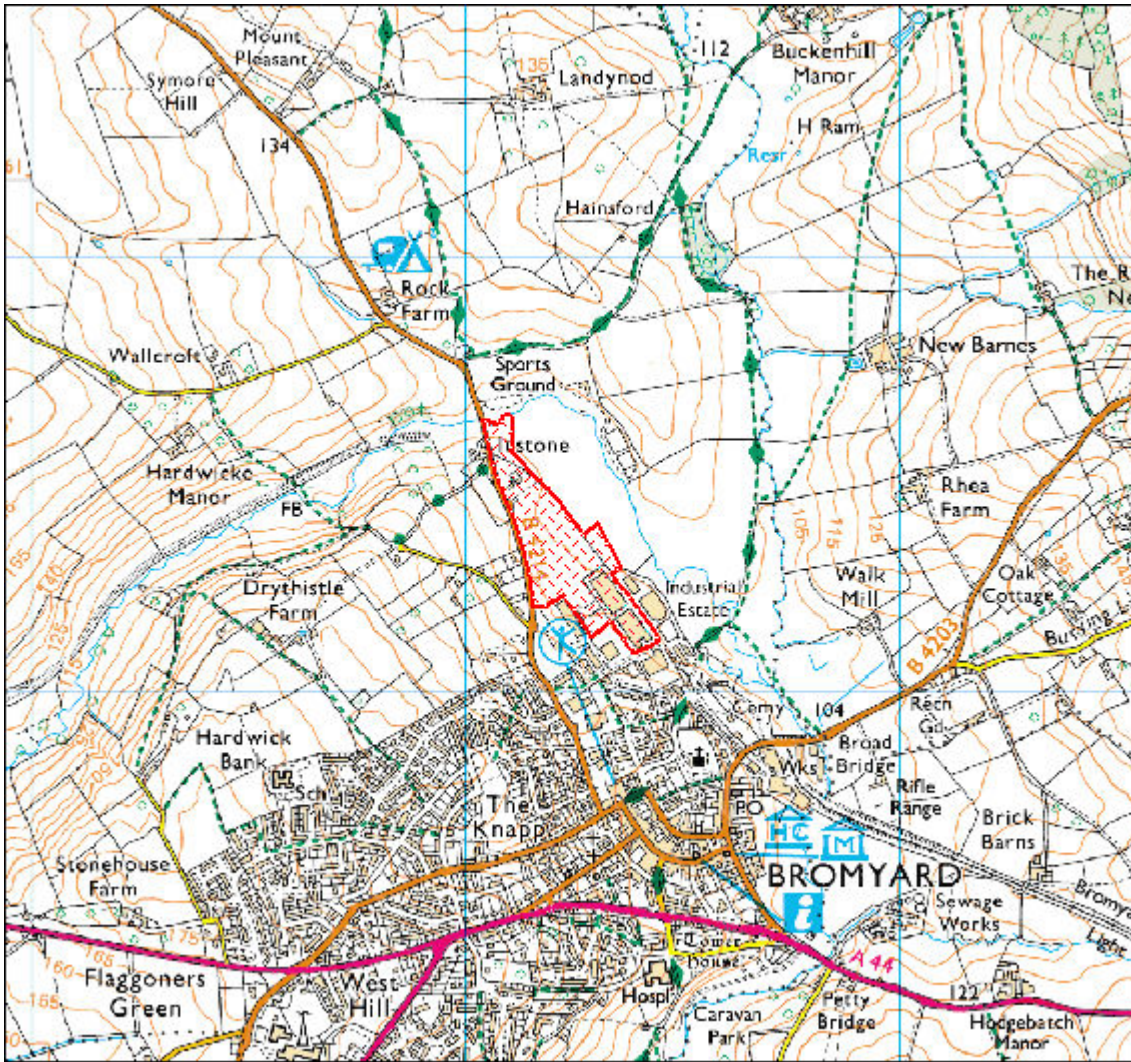
Decision:

Notes:

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Background Papers

Internal departmental consultation replies.



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APPLICATION NO: 130907/O

SITE ADDRESS : PORTHOUSE FARM, TENBURY ROAD, BROMYARD, HEREFORDSHIRE

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