

# **ANNEX 1**

## **Report to Planning Committee**

**On 4<sup>th</sup> April 2012**

**Re: N111899/O**

<b>MEETING:</b>	<b>PLANNING COMMITTEE</b>
<b>DATE:</b>	<b>4 APRIL 2012</b>
<b>TITLE OF REPORT:</b>	<p><b>N111899/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,</b></p> <p><b>For: Ms Harrison per Mr John Cornwell, Oakview House, Station Road, Hook, Hampshire, RG27 9TP</b></p>
<b>WEBSITE LINK:</b>	<a href="http://www.herefordshire.gov.uk/housing/planning/58286.aspx?ID=111899&amp;NoSearch=True">http://www.herefordshire.gov.uk/housing/planning/58286.aspx?ID=111899&amp;NoSearch=True</a>

Date Received: 14 July 2011

Ward: Bromyard

Grid Ref: 365239,255362

Expiry Date: 13 October 2011

Local Members: Councillors A Seldon and JG Lester

## 1. Background

- 1.1 This planning application was reported to the Planning Committee on 1<sup>st</sup> February 2012. Attached, as **Annex 1** is a copy of that report (amended to include the update report to that earlier Committee).
- 1.2 The application was deferred to enable the issue of noise to be addressed in more detail. Specific concern had been expressed by Members as to noise from the Polytec open yard where forklifts trucks operate on a 24 hour basis moving metal stillages.

## 2. Representations

- 2.1 Since the Planning Committee on 1<sup>st</sup> February 2012, further representations have been received.
- 2.2 Three further letters of OBJECTION have been received. They do not raise any matters not expressed by the other objectors (see Annex 1 paragraph 4.1).
- 2.3 Five further letters of SUPPORT have been received. In addition to the points previously made (see Annex 1 paragraph 4.2), they make the following points:-
  - There is no interest in the site for industrial use;
  - The Linton site is preferable for employment land as it has direct access onto the A44
  - Bromyard has a shortage of suitable labour – the reason why Polytec Holden (and Holden Aluminium) employ workers from Eastern Europe;
  - There is no indigenous labour on which to draw;

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

- Employment development upon this land would create traffic and pollution problems;
- Housing on this land, in contrast would benefit local traders & boost school populations providing more resources and security;
- More people residing in Bromyard may assist in revitalising aspects of the town social and cultural life;
- The proposed new housing may have a more beneficial effect on Bromyard's economy and well being than industry which is unlikely to materialise; and
- Unless there is some urgent economic regeneration of the town in the form of new residents, one cannot foresee Legges of Bromyard being able to remain in the town, in the forthcoming years.

2.4 The Bromyard and Winslow Town Council has written again to request an increase in the financial contribution towards CCTV coverage from £6,150 (index linked) to £16,150 (index linked) and to request a financial contribution towards Queen Elizabeth Humanities College.

### 3.0 Officer Appraisal

#### Noise

3.1 With respect the issue of noise, professional independent expert consultants (RPS) have been engaged and their detailed report is attached as **Annex 2** to this report. It is worth noting that they consider both of the acoustic / noise reports accompanying the planning application to be "... professional and fit for purpose. Measurement and assessment appears to have been undertaken in accordance with current good practice" (paragraph 3.2 of the RPS report). However, a few areas were identified as requiring further examination. In summary, RPS considers that appropriate mitigation measures can be secured to ensure that the occupiers of the proposed houses would enjoy a satisfactory level of amenity (paragraph 6.7).

3.2 I would draw Members specific attention to the following elements of the RPS report:-

- Paragraph 3.6 that recommends a change to condition 7 of the original report to Committee;
- Paragraph 3.11 that recommends attaching a condition preventing the use of tonal reversing alarms to vehicles within the Polytec site. This would effectively require the fitting of a white noise reversing alarm such as the bbs-tek "white sound warning system";
- Paragraph 5.13 that recommends the erection of a 6 metre high timber acoustic fence along the northern boundary of the Polytec site (at the base of the bund on the "industrial side"); and
- Paragraphs 5.17 & 5.18 that recommends a condition that would secure double glazing and ventilation to certain dwellings.

3.3 It is the recommended 6 metre high acoustic fence and the non-use of tonal reversing alarms that would primarily provide the noise mitigation with respect the activities within the open yard (i.e. the forklift trucks moving the stillages). The 6 metre high timber acoustic fence would be a significant structure. However, it would screen the open yard of stillages that are not in themselves an attractive feature. Furthermore the bund as proposed to be remodelled would partially obscure the acoustic fence. Landscaping of the bund would assist in softening the visual impact of this fence further. Therefore it is considered that such an acoustic barrier can satisfactorily be integrated into the landscape. With the provisions of the acoustic fence, the bund would no longer fulfill an acoustic function but would still provide a landscape function.

3.4 Other significant points within the RPS report that I would draw Members attention to are:-

- The garden areas would not suffer from an unacceptable level of noise (paragraphs 5.21 and 5.22); and

- No noise which would significantly affect the application site, either during the day or night was observed from any facility other than the Polytec site (paragraph 4.9);

3.5 As a consequence it is considered the noise mitigation measures proposed would ensure that a satisfactory level of amenity would be enjoyed by future occupiers of the proposed development.

3.6 In addition, to the noise issue Members raised a number of other matters at the Planning Committee on 2<sup>nd</sup> February 2012 that are addressed below.

### **Affordable Housing**

3.7 The Housing Needs and Development Team of the Places and Communities Directorate confirm that there is a need in Bromyard for 107 affordable houses. The proposed development would secure up to 44 affordable houses. This is considered to be a significant benefit of the scheme. The delivery of affordable housing is identified as a priority within Herefordshire Council's Corporate Plan 2011-14.

### **Vacant Business Units in Bromyard**

3.8 For Members information, research since the Planning Committee on 2<sup>nd</sup> February 2012 has revealed some business units being marketed in Bromyard and its immediate surroundings. These include Unit 2/3 Porthouse Farm Industrial Estate (144.23 sq m), units of varying size at Collington Works and small office units in two buildings in Rowberry Street.

### **Highways**

3.9 It is recommended that a condition be attached securing the closure of the existing vehicular means of access and the provision of the two new vehicular means of access prior to commencement of any of the building operations.

3.10 Whilst the speed limit along Tenbury Road past the application site is in the national limit (i.e. 60mph), it is likely that if the application is approved, steps can be taken to lower the limit to a more appropriate value for a road adjoining a residential site. This is done through a Traffic Regulation Order, which is subject to consultation, and various criteria must also be met (e.g. number of accesses per 500m; current speeds on the road; usage by pedestrians etc). It is unlikely that the criteria would be met prior to development approval.

3.11 The proposed access points have sufficient visibility splay dimensions to be acceptable without the speed limit being lowered.

### **Publicity of Planning Application**

3.12 For information purposes, Members are informed that all those business premises on the northern side of the road into the Porthouse Farm Industrial Estate were advised by letter of the planning application and two site notices were displayed along that specific road.

### **Draft Heads of Terms**

3.13 With regard the further views of the Bromyard and Winslow Town Council with respect the Draft Heads of Terms, attention is drawn to paragraph 5.40 of the report to the Planning Committee on 1<sup>st</sup> February 2012 (see Annex 1). In addition, the People's Services Directorate state:-

"Queen Elizabeth Humanities College have recently reduced their planned admission numbers as they were aware that the children were not coming through the system to fill the school and have therefore removed teaching spaces in order to achieve this. As a little exercise I have looked at the number of children coming through the system in the primary sector that can be considered to be their feeder primary children. Obviously it is never that clear cut and parents with children in the catchment area can express a preference and send their children to alternative schools. However, historical information would suggest that 90% of the children attending Queen Elizabeth come from within their own catchment and that the school consistently take in around 65% of all children from their catchment.

- 3.14 Based on current numbers on roll it is unlikely that the school will fill to capacity even with this new development taking place. Even if the development was for 127 4+ bedroom houses we would only expect 28 children of secondary age to be created from the development. Not all these children will be the same age and therefore we have to assume that the spread of ages will be even resulting in 5-6 children per year group. The school would therefore need to have at least 74 children in any one year group currently or anticipated in the future in order for us to justify a contribution for the school. Based on the numbers on roll in the feeder primary schools and the percentages identified above, I cannot see this figure being reached."
- 3.15 The Council's Commissioning Officer (CCTV) has obtained an up-to-date quote for the CCTV coverage (i.e. 6 cameras fully fitted). The quote is £9,250. I therefore recommend a change to the figure clause 7. of the Heads of Terms from £,6150 (index linked) to £9,250 (index linked).

### Summary

- 3.16 In the light of the above, it is considered that the recommendation for approval should remain. Members specific attention is drawn to recommended conditions 7, 16, 26, 27, 28 and 29.

### RECOMMENDATION

**Subject to the prior completion of a Section 106 legal agreement in accordance with the Draft Heads of Terms attached as Annex 1 to the report to Planning Committee on 1<sup>st</sup> February 2012 with the amendment to the figure in clause 7. to £9,250 (index linked), the Assistant Director Economic, Environment & Cultural Services be DELEGATED POWERS TO GRANT OUTLINE 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 26th 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. The scheme of noise attenuating measures proposed for the Polytec-Holden facility by Colin Waters Acoustics and submitted as part of the application, including:-
- Digester Fan - Acoustic Louvre Air - In & Out, Blockwork Enclosure
  - Paint Dryer Fan - Acoustic Louvre Enclosure End Intake – 2 sides & Top Acoustic Panel Enclosure
  - Extract next to Paint Dryer - Exhaust attenuator upgrade
  - Compressor House 'A' - Acoustic Louvre's & Acoustic Louvre Door
  - Compressor House 'B' - Acoustic Louvre's & Acoustic Louvre Door
  - Chemical Mixer Extract - Exhaust Attenuator
  - Dust Extractor - Acoustic Panel Surround & Exhaust Attenuator

shall be completed prior to the first occupation of any of the dwelling houses and thereafter maintained to the satisfaction of the Local Planning Authority.

All other individual noise sources associated with fixed plant on the Polytec Holden site shall be installed and maintained so that they emit to the external environment no more than 50 dB Laeq SPL sound pressure level as measured at 4 metres from the individual noise source.

A rating level of 35 dB LAr,Tr using the methodology prescribed by BS 4142 'Method for Rating Industrial Noise affecting mixed residential and industrial areas' shall not be exceeded at the facade when measured at ground and upper floor level at any dwelling on the site.

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.

8. 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.

9. The Remediation Scheme, as approved pursuant to condition number 8 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.

10. No building operation shall take place until the regraded bund permitted by planning permission DMN/111900/N has been completed. Thereafter this bund shall remain in-situ and be maintained to the satisfaction of the Local Planning Authority.

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.

11. 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.

12. 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, cycles 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.

13. 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.

14. 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.

15. Prior to commencement of the development hereby permitted protective fencing in accordance with the advice contained in Section 9.2 of BS5837 comprising vertical and horizontal framework of scaffolding (well braced to withstand impacts) supporting either chestnut cleft fencing or chain link fencing in accordance with figure 2 of BS5837:2005 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.

16. 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.

17. The approved vehicular access including visibility splays, cycleway and pedestrian route shown upon drawing number 617-05 Revision A received 8th November 2011 shall be fully implemented prior to the first occupation of any of the dwellinghouses hereby permitted and thereafter maintained to the satisfaction of the Local Planning authority.

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.

18. **B01 Development in accordance with the approved plans**

19. 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.

20. 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.

21. The recommendations set out in the ecologist's reports dated March 2010 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.

22. 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.

23. 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.

24. **I55 Site Waste Management**

25. **H27 Parking for site operatives**

26. 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.

27. No vehicle upon the Polytec site fitted with tonal reversing alarms shall operate on site between the hours of 23:00 and 07:00 hours. Prior to the first occupation of any of the dwelling houses hereby permitted, all forklift trucks upon the general industrial site that forms part of the planning application site shall be fitted with white noise reversing alarms / warning systems and thereafter maintained as such;

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

28. Prior to the first occupation of any dwellinghouse hereby permitted a continuous and impermeable 6 metre high timber acoustic fence, sealed at the base, with a density of at least 15 kg/m<sup>2</sup> be erected along the alignment shown on the drawing number 2589/027 Revision A received 19 March 2012 and thereafter maintained to the satisfaction of the local planning authority.

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.

29. 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 LA<sub>eq</sub> for living rooms and bedrooms, with windows shut and other means of ventilation provided. Levels of 45 dB LA<sub>max,fast</sub> shall not normally be exceeded in bedrooms (23:00 to 07:00 hours night-time) with the windows closed.

Before any of the development hereby permitted takes place, 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 development hereby permitted shall take place until the Local Planning Authority has given such written approval. The development shall take place in full accordance with the approved detail and thereafter maintained as such.

Reason: To ensure the occupants of the dwellings enjoy a satisfactory noise environment with regard to LA<sub>eq</sub> and night-time LA<sub>max</sub> 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 received 8th November 2011;**
  - **Colin Water Acoustics (Consultants in Environmental Acoustics) Report CWA 26310/R05/1/ May 2011 received 14th July 2011;**
  - **Tree Survey Report prepared by illmanyounng May 2011 received 14th July 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;**

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

- Phil Jones Associates Transport Assessment dated May 2011 received 14th July 2011;
- Proposed Zebra Crossing (Porthouse Farm Development) – Stage 2 Road Safety Audit prepared by Amey dated 21st June 2011 received 14<sup>th</sup> July 2011;
- Flood Risk Assessment (Report No. 1577) prepared by Robert West Consulting received on 14th July 2011;
- Topographical Survey Drawing No. T 5637/2 received 14th July 2011;
- Application Site Plan – Drawing number 2589/015 (Scale 1:1250) received 14th July 2011.
- Ecological Appraisal (March 2010)
- Reptile Survey (June 2010); and
- Proposed Acoustic Fence Location Plan - Drawing Number 2589/027 Revision received 19 March 2012

5. N15 Reason(s) for the Grant of PP/LBC/CAC
6. N11C General
7. 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.
8. HN01 Mud on highway
9. HN04 Private apparatus within highway
10. HN05 Works within the highway

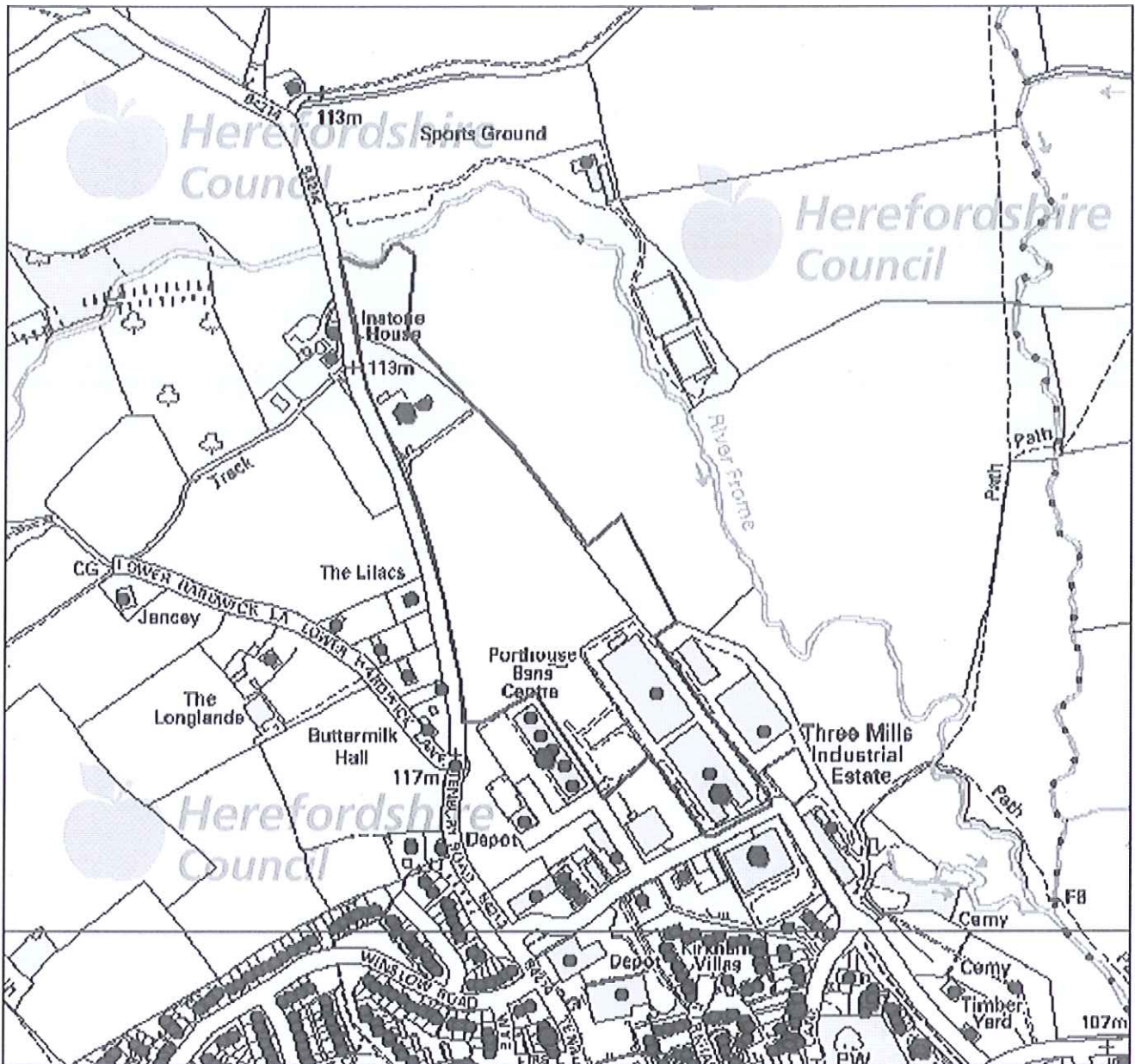
Decision: .....

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**Background Papers**

Internal departmental consultation replies.



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**APPLICATION NO:** N/111899/O

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

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<b>MEETING:</b>	<b>PLANNING COMMITTEE</b>
<b>DATE:</b>	<b>1 FEBRUARY 2012</b>
<b>TITLE OF REPORT:</b>	<p><b>DMN/111899/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,</b></p> <p><b>For: Ms N Harrison per Mr John Cornwell, Oakview House, Station Road, Hook, Hampshire, RG27 9TP</b></p>

**Date Received: 14 July 2011**

**Ward: Bromyard**

**Grid Ref: 365239,255362**

**Expiry Date: 13 October 2011**

Local Members: Councillors A Seldon and J G Lester

## **1. Site Description**

- 1.1 The application site is on the eastern side of Tenbury Road (B4214) at the northern end of Bromyard. The boundary of the site, adjacent to Tenbury Road, is largely characterised by a roadside hedge of indigenous species. Within or immediately to the rear of this hedge are seven trees of amenity value. These trees are protected by a Tree Preservation Order (Ref: TPO 557/T1-T7). Within the application site in its south-eastern corner is the Polytec factory which is a general industrial premises. The eastern boundary of the site largely follows the line of the former railway in a general arc. The land slopes down from west to east towards the River Frome. Between the application site and the River Frome is an attractive riverside meadow, a part of which is liable to flood. Upon the application site, parallel to the industrial premises to the south is a bund. The retention of that bund in a materially different form (in terms of grading) is the subject of a separate application (DMN/111900/N) reported upon this agenda. The application site, other than the Polytec premises, was formerly used for agricultural purposes.
- 1.2 Beyond the application site on the western side of the Tenbury Road and to the north built development is of a sporadic nature. To the north beyond the River Frome is the Bromyard Rugby Club.
- 1.3 The site is located approximately 500 metres from the Town Centre.

### **Proposal**

- 1.4 The planning application is made in outline form and proposes to erect up to 127 dwellings (35% to be affordable). Significantly all matters, other than access, are reserved for future

consideration. This means that matters of layout, scale (i.e. design), appearance (i.e. materials) and landscaping are reserved for future consideration.

- 1.5 There would be two vehicular means of access onto the Tenbury Road. One would be located to the south of the site some 15 metres south of the property known as 'Becks Cottage' which is situated on the opposite (western) side of Tenbury Road accessed off Lower Hardwick Lane. The second would be sited further north some 25 metres north of the property known as 'The Lilacs' on the opposite (western) side of Tenbury Road. The southernmost access would have a visibility splay of 2.4m x 112 metres in a southerly direction and a splay of 2.4 metres x 160 metres in a northerly direction. The northernmost access would have splays of 2.4 metres x 160 metres in both directions. The two existing vehicular means of accesses would be closed.
- 1.6 The issue of access is not merely confined to how vehicles would enter the site from the public highway but also how pedestrians and cyclists would enter the site. The access plans show the provision of a shared pedestrian/cycleway parallel to the Tenbury Road but set inside the site to the rear of the existing roadside hedgerow, other than a small section to the north of the site immediately south of the River Frome that would be in front of the roadside hedgerow. A zebra crossing for pedestrians would be provided to the south of the southernmost access allowing pedestrians to cross to the western side of Tenbury Road prior to Winslow Road.
- 1.7 A Section 106 Agreement would be required and Draft Heads of Terms are attached as Annex 1.

### **Planning History**

- 1.8 As will become apparent within the appraisal below the site is allocated for housing development. It is worth noting that its allocation for housing purposes was the subject of objections at the time by twelve persons or organisations (although two of those objections were withdrawn). An Inspector appointed by the Secretary of State held an Inquiry to consider the objections that had been lodged to the Herefordshire Unitary Development Plan Revised Deposit Draft. After considering the objections and examining all the evidence the Inspector accepted the suitability of the land for housing purposes and supported the residential allocation. The Council accepted the Inspector's conclusions and the allocation for housing purposes were retained in the adopted Herefordshire Unitary Development Plan 2007.
- 1.9 On 5<sup>th</sup> January 2010 an outline planning application (DCNC0009/2844/O) was submitted for the erection of up to 175 dwellings with garages, sports pavilion and pitches, community/youth building, landscaping and associated works. That application proposed, amongst other matters, the erection of new housing beyond the allocated site and as such within open countryside. That planning application was refused on the following summarised grounds:-
- The unjustified erection of new residential development within the countryside;
  - The failure to demonstrate that the local highway network has sufficient capacity to cater with the traffic generated by the proposal;
  - The failure to provide sufficient detail with regard access for pedestrians and cyclists;
  - The failure to demonstrate how the additional community facilities they were proposing were to be managed and maintained;
  - The deficiency of the ecological assessment;
  - The failure to satisfactorily address the inter-relationship between the industrial development and the proposed residential development;
  - The failure to complete the requisite Planning Obligation; and
  - The failure to demonstrate that the local sewerage network had sufficient capacity.
- 1.10 An appeal was then lodged but formally withdrawn in July 2010.

- 1.11 Pre-application discussions then took place that resulted in the submission of this materially different application that limits the extent of residential development to the allocated housing site.

## 2. Policies

### Central Government advice

Planning Policy Statement 1 – ‘Delivering Sustainable Development’ and Planning Policy Statement: ‘Planning and Climate Change’ Supplement to Planning Policy Statement 1.

Planning Policy Statement 3 – ‘Housing’

Planning Policy Statement 9 – ‘Biodiversity and Geological Conservation’

Circular 06/2005 ‘Bio-diversity and Geological Conservation – statutory Obligations and their impact within the planning system’

Planning Policy Statement 12 – ‘Local Spatial Planning’

Planning Policy Guidance Note 13 – ‘Transport’

Planning Policy Guidance Note 23 – ‘Planning and Pollution Control’

Planning Policy Guidance Note 24 – ‘Planning and Noise’

Planning Policy Statement 25 – ‘Development and Flood Risk’

Draft National Planning Policy Framework – July 2011

Circular 05/05 – ‘Planning Obligations’

### Herefordshire Unitary Development Plan 2007

#### Part I

S1 – Sustainable Development

S2 – Development Requirements

S3 – Housing

S6 – Transport

S7 – Natural and Historic Heritage

S8 – Recreation, Sport and Tourism

#### Part II – Development Requirements

DR1 – Design

DR2 – Land Use and Activity

DR3 – Movement



DR4 – Environment

DR5 – Planning Obligations

DR7 – Flood Risk

DR10 – Contaminated Land

DR13 – Noise

#### Housing

H1 – Hereford and the Market Towns: Settlement Boundaries and Established Residential Areas

H2 – Hereford and the Market Towns: Housing Land Allocations

H9 – Affordable Housing

H13 – Sustainable Residential Design

H15 – Density

H19 – Open Space Requirements

#### Transportation

T6 – Walking

T7 – Cycling

#### Natural and Historic Heritage

LA2 – Landscape Character and Areas Least Resilient to Change

LA5 – Protection of Trees, Woodlands and Hedgerows

NC1 – Regard for and Retention of Biodiversity

NC6 – Protection and Enhancement of Herefordshire's Biodiversity Action Plan Priority Habitats and Species

NC7 – Habitat Mitigation and Compensation Measures

NC8 – Habitat Creation, Restoration and Enhancement Measures

NC9 – Habitat Management and Monitoring

#### Recreation Sport and Tourism

RST3 – Standards for Outdoor Playing and Public Open Space

#### Supplementary Planning Guidance

Supplementary Planning Document entitled 'Planning Obligations' (April 2006)

### **3. Consultation Summary**

#### External Consultees

- 3.1 Environment Agency – no objections raised, although conditions are recommended.
- 3.2 The Land Drainage advisor is satisfied with the proposal.
- 3.3 Welsh Water – no objection. A condition is recommended.
- 3.4 River Lugg Internal Drainage Board – No objections raised.

#### Internal Consultees

- 3.5 Transportation/Highways – Area Engineer (Development Control) – No objections to the proposed access.
- 3.6 Strategic Housing – No objections. Satisfied with the level of affordable housing provision (35%) and the proposed tenure mix of at least 65% social rent and the remainder intermediate tenure.
- 3.7 Public Rights of Way – no public rights of way affected.
- 3.8 The County Archaeologist has no objections.
- 3.9 The Environmental Health Section has no objections to the proposal subject to conditions.

### **4 Representations**

- 4.1 Thirteen letters have been received raising the following matters and/or objecting to the development:-
  - Bromyard requires employment land also to ensure an adequate balance;
  - Concern regarding noise and odour from the Polytec factory;
  - Concern with regard foul sewerage capacity;
  - Potential traffic congestion;
  - Undue visual impact;
  - Concern as to light pollution from headlights into 'Becks Cottage' adversely affecting amenity;
  - Devaluation of property.
  - Concern as to the juxtaposition of the proposed residential development in close proximity to several industrial premises some of which operate on a 24-hour a day basis;
  - Further land is necessary for employment related development in Bromyard and the application site would be suitable; and
  - Concern with regard security.
- 4.2 Three letters of support have been received which makes the following points:-
  - Additional housing in Bromyard will make it a more attractive place to live & work;
  - The company struggles to attract the right calibre of people. Provision of such housing may assist in attracting people; and
  - The noise mitigation measures are adequate.

- The advantages of building more houses within Bromyard – creating greater expenditure capacity thus enhancing the viability and vitality of the Town Centre, bringing more children into the schools.
- The application site would not be attractive as an employment site due to the problems associated with larger vehicles accessing the site;
- The noise issue has been satisfactorily addressed and the Managing Director Polytec has no objections; and
- The Section 106 contributions would be of benefit to the local community especially sporting facilities.

4.3 Bromyard and Winslow Town Council in their response to the initial consultation merely stated “A resolution to support this application was defeated”.

4.4 In a subsequent response to amended details the Bromyard and Winslow Town Council stated that they oppose the housing development and made detailed comment upon the Draft Heads of Terms in relation to the proposed Planning Obligation.

4.5 Brockhampton Group Parish Council object on the following summarised grounds:-

- Concern that a residential development in close proximity to the existing industrial premises could potentially prejudice the future of those businesses;
- The adequacy of the local highway network
- There still needs to be employment land provided to ensure sufficient supply;
- Doubt as to whether the sewerage network has sufficient capacity;
- Concern re: flood risk; and
- Concern as to whether the bund includes any contaminated material.

4.6 The full text of these letters can be inspected at Hereford Customer Services, Franklin House, 4 Commercial Road, Hereford, HR1 2BB and prior to the Committee meeting.

## 5. Officer's Appraisal

### 5.1 Principle of Development

5.2 The proposal involves residential development upon a parcel of land that is specifically allocated for residential development in the Herefordshire Unitary Development Plan 2007 (UDP) by virtue of policy H2. As stated earlier within this report the allocation of this land for residential purposes was the subject of objection when the Plan was on Deposit. Those objections were heard by an Inspector appointed by the Secretary of State at a public inquiry. Following consideration of all the objections raised, the Inspector concluded that the land was suitable as a residential allocation.

5.3 The site does not immediately adjoin other residential development and would need to create an identity of its own. Whilst policy H2 of the Herefordshire Unitary Development Plan estimated that the site may have a capacity of 87 dwellings, it must be understood that the figures given in that policy are estimates. The figure of 87 was based on an estimated site area of 3.7 hectares and an estimated net site area of 2.9 hectares. Some sites may yield a greater number of dwellings whilst others may yield a lesser number. In this particular case the site area of the allocated site is actually 3.9 hectares (net area of some 3.4 hectares excluding the bund). The planning application proposes “up to 127 dwellings” which would create a density of development of some 32.63 dwellings to the hectare (or some 37.35 dwellings to the hectare excluding the bund). Your officers consider that the site could accommodate this number of dwellings. Much would depend on the size and mix of the dwelling houses. This is a matter that can adequately be dealt with at the reserved matters stage.

#### 5.4 Affordable Housing

5.5 The application proposes 35% affordable housing provision. Within the affordable housing element of the development 65% of dwellings will be made available for social rent with the remainder being available for intermediate tenure. This accords with the level of affordable housing provision set out in policy H2 of the Herefordshire Unitary Development Plan 2007.

#### 5.6 Sewerage Capacity

5.7 At the time of the previous application there was an issue of foul sewerage capacity at Bromyard. However, Welsh Water has undertaken improvements such that the Petty Bridge Sewage Pumping Station or the Bromyard Waste Water Treatment Works can now cater with the amount of development proposed upon this allocated housing site.

5.8 Discussions with Welsh Water did reveal, however, that the developer would either need to undertake improvement works to the Porthouse Farm Industrial Estate Sewage Pumping Station or construct a new pumping station upon the allocated site. It is the latter option that the applicant has chosen. The new pumping station would need to be designed such that the flow into the system is controlled.

5.9 Welsh Water has recommended a series of conditions, which are reflected in the recommendation.

#### 5.10 Flooding

5.11 Unlike the previous application (DCNC0009/2844/O), this application does not propose any housing development within the riverside meadow, east of the disused railway line and boundary of the allocated housing site. The application site is not liable to flood.

5.12 The Environment Agency has been consulted upon the planning application and do not raise objection.

#### 5.13 Noise

5.14 The inter-relationship between the proposed residential development and the adjoining employment uses needs to be addressed to ensure that the occupiers of any residential development enjoy a satisfactory level of amenity and the operators of the industrial premises do not receive complaint.

5.15 This issue has been assessed in detail. The current position is that the noise from the Polytec general industrial premises (which operates on a 24 hours a day basis) would have an adverse impact upon the occupiers of the proposed residential development.

5.16 However, following thorough analysis and discussions it is considered that this issue can be satisfactorily addressed by a series of noise mitigation measures. Firstly, it is proposed to undertake a series of noise mitigation measures at source (i.e. upon the Polytec premises themselves). Noise/acoustic experts have identified seven elevated sources of noise upon the Polytec site that are capable of radiating noise to the proposed residential development. A technical solution has been found to attenuate these sources as follows:-

- Digester Fan – Acoustic Louvre Air – In & Out, Blockwork Enclosure
- Paint Dryer Fan – Acoustic Louvre Enclosure End Intake – 2 sides & Top Acoustic Panel Enclosure
- Extract next to Paint Dryer – Exhaust attenuator upgrade
- Compressor House 'A' – Acoustic Louvre's & Acoustic Louvre Door
- Compressor House 'B' – Acoustic Louvre's & Acoustic Louvre Door

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Further information on the subject of this report is available from «offname» on «offtel»

- Chemical Mixer Extract – Exhaust Attenuator
- Dust Extractor – Acoustic Panel Surround & Exhaust Attenuator

- 5.17 The Environmental Health Manager is satisfied as to the efficacy of these works. The works together with the future maintenance can be secured by way of a planning condition.
- 5.18 The bund proposed to be retained by way of planning application DMN/111900/N, albeit in a regraded form, also has an acoustic function in attenuating the Polytec noise sources closer to the ground. These include the storage and movement of materials / products, general activity on the yard area and plant that is located near the ground level. This would become more relevant with the reduction in noise output of the higher level sources as the noise from these lower areas would become more pronounced. The retention of the bund, albeit in its modified form, would have the benefit of mitigating this noise.
- 5.19 The retention of the bund, albeit in a modified form, is an integral part of the acoustic design of the noise reduction package of the Polytec site. It serves to safeguard the amenities of the occupiers of future residents whilst protecting Polytec's operational activities from possible adverse reaction by new residents.
- 5.20 It is concluded that this package of noise mitigation measures will ensure that the future occupiers of the dwelling houses would enjoy a satisfactory level of quietude and as such the proposal complies with policy DR13 of the Herefordshire Unitary Development Plan 2007.
- 5.21 Odour
- 5.22 The control of odours due to the operations at Polytec are regulated by means of a permit from the Local Authority which requires that emissions to air are controlled at an acceptable level and there is a requirement for ongoing improvement. The Environmental Health Manager is satisfied that the occupiers of the proposed dwellings are sufficiently protected. The company is required by the permit to comply with nationally set standards.
- 5.23 Transportation
- 5.24 The Transportation Manager is satisfied that the local highway network has sufficient capacity. The proposed development would generate significantly less vehicle movements than the previously refused planning application which proposed 175 dwellings rather than a maximum of 127 dwellings.
- 5.25 Two vehicular means of access are required for this scale of development. The positions of the accesses are logical and the visibility splays acceptable.
- 5.26 The proposed accesses for pedestrians and cyclists are also considered to be suitable.
- 5.27 The site is in a sustainable location being within reasonable walking distance of the Town Centre, community facilities and employment premises. There are no objections from the Transportation Manager.
- 5.28 Residential Amenity
- 5.29 The occupiers of 'Becks Cottage' on the western side of Bromyard Road have expressed concerns as to the impact upon their amenity by the southernmost vehicular access. The case officer has specifically visited their property, which is split-level, to assess the impact. There is a need for a vehicular access in this area close to the Town and it has in fact been deliberately offset from 'Becks Cottage', so that it is not directly opposite, to safeguard the amenities of the occupiers of that property. It is considered that the occupiers of 'Becks Cottage' would not suffer any undue loss of amenity.

5.30 Landscape & Ecology

5.31 By allocating the site for residential development the Council has accepted that such a development can be satisfactorily integrated into the landscape.

5.32 The trees along the road frontage of amenity value have been protected by way of a Tree Preservation Order and are shown to be retained as is the majority of the roadside hedgerow on the eastern side of the Tenbury Road which is considered to be of both landscape and ecological value.

5.33 An ecological assessment and reptile survey did not identify any protected species on the housing development site. The site is allocated for housing in the UDP and it is concluded that whilst there will be some loss of nesting bird habitat on site, the revised scheme will retain roadside hedgerow where possible as well as the mature oak tree. A habitat and biodiversity enhancement scheme will compensate for habitat loss and provide opportunities to enhance local wildlife.

5.34 Employment Land Supply

5.35 Concern has been expressed with regard the adequacy of employment land supply in the Bromyard area. The Inspector in considering objections to the deposit version of the UDP considered that there was sufficient employment land supply in the area, as the Council also considered in adopting the Plan.

5.36 The current position is that there is limited available employment land in Bromyard and for a variety of reasons the allocated employment site south of the Linton Trading Estate has limited prospects of being delivered. However, the Economic Development Manager advises that demand for employment land in and around Bromyard is only moderate and tends to be locally derived demand.

5.37 With regard the future, the need for 5 hectares of employment land for Bromyard for the Core Strategy Plan Period (2011-2031) has been identified. This is linked to the additional housing proposed for Bromyard. The original preferred options for the Market Towns identified the general area for the provision of this further 5 hectares being in the vicinity of the Linton Trading Estate. The Planning Policy Team are currently reviewing this issue as part of the consideration of the comments received during the recent Core Strategy consultation. However, ultimately, the precise allocation of land would need to be considered via the Market Town and Rural Areas Plan or a Neighbourhood Plan.

5.38 Draft Heads of Terms

5.39 The Draft Heads of Terms set out in Annex 1 comply with the policy DR5 of the Herefordshire Unitary Development Plan 2007 and the Council's adopted Supplementary Planning Document entitled 'Planning Obligations' (April 2008).

5.40 Bromyard and Winslow Town Council are satisfied with the proposal other than on two matters:-

1. They wish an education contribution for the Queen Elizabeth Humanities College also. However, based on the numbers on roll at October 2011 and the latest census data, no year groups are at or near capacity and therefore there is no justification to put forward to request a contribution for the secondary school.
2. They wish the financial contribution with regard the CCTV coverage to be increased from (£6,150 index linked) to £16,150 (index linked), an increase of £10,000. This has been reviewed by the Commissioning Officer (CCTV) who sees no justification for such an

increase and actually has a quote for a scheme that demonstrates that a payment of £6,150 (index linked) is sufficient.

## 6. Conclusion

- 6.1 The application site is allocated in the Herefordshire Unitary Development Plan 2007 for housing development.
- 6.2 The principle of the development has been established. The application is made in outline with, other than the access, all matters reserved for future consideration. There are no objections to the access.
- 6.3 As such, the proposal clearly accords with the provisions of the development plan and there are no other material considerations that indicate that a decision should be made contrary to the Council's adopted policy.

## RECOMMENDATION

Subject to the prior completion of a Section 106 legal agreement in accordance with the Draft Heads of Terms attached as Annex 1, the Assistant Director Economic, Environment & Cultural Services be DELEGATED POWERS TO GRANT OUTLINE 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 26th 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:-

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Further information on the subject of this report is available from «offname» on «offtel»

- 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. The scheme of noise attenuating measures proposed by Colin Waters Acoustics and submitted as part of the application, including:-

- Digester Fan - Acoustic Louvre Air - In & Out, Blockwork Enclosure
- Paint Dryer 7Fan - Acoustic Louvre Enclosure End Intake – 2 sides & Top Acoustic Panel Enclosure
- Extract next to Paint Dryer - Exhaust attenuator upgrade
- Compressor House 'A' - Acoustic Louvre's & Acoustic Louvre Door
- Compressor House 'B' - Acoustic Louvre's & Acoustic Louvre Door
- Chemical Mixer Extract - Exhaust Attenuator
- Dust Extractor - Acoustic Panel Surround & Exhaust Attenuator

shall be completed prior to the first occupation of any of the dwelling houses and thereafter maintained to the satisfaction of the Local Planning Authority

A noise level rating level of 35dBA Laeq,T using the methodology prescribed by BS4142 'Method for Rating Industrial Noise affecting mixed residential and industrial areas' shall not be exceeded at the façade when measured at ground and first floor level at any dwelling on the site.

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.



8. 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.

9. The Remediation Scheme, as approved pursuant to condition number 8 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.

10. No building operation shall take place until the regraded bund permitted by planning permission DMN/111900/N has been completed. Thereafter this bund shall remain in-situ and be maintained to the satisfaction of the Local Planning Authority.

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.

11. 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.

12. 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, cycles 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.

13. 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.

14. 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.

15. Prior to commencement of the development hereby permitted protective fencing in accordance with the advice contained in Section 9.2 of BS5837 comprising vertical and horizontal framework of scaffolding (well braced to withstand impacts) supporting either chestnut cleft fencing or chain link fencing in accordance with figure 2 of BS5837:2005 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.

16. 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 first occupation of any of the dwellinghouses hereby permitted.

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

17. The approved vehicular access including visibility splays, cycleway and pedestrian route shown upon drawing number 617-05 Revision A received 8th November 2011 shall be fully implemented prior to the first occupation of any of the dwellinghouses hereby permitted and thereafter maintained to the satisfaction of the Local Planning authority.

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.

18. B01 Development in accordance with the approved plans
19. 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.

20. 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.

21. The recommendations set out in the ecologist's reports dated March 2010 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.

22. 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.

23. 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.

24 CCO – Site Waste Management

25 CAZ - Parking for Site Operatives

#### 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 received 8<sup>th</sup> November 2011;
  - Colin Water Acoustics (Consultants in Environmental Acoustics) Report CWA 26310/R05/1/ May 2011 received 14<sup>th</sup> July 2011;
  - Tree Survey Report prepared by illmanyounng May 2011 received 14<sup>th</sup> July 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 received 14th July 2011;
  - Proposed Zebra Crossing (Porthouse Farm Development) – Stage 2 Road Safety Audit prepared by Amey dated 21<sup>st</sup> June 2011 received 14<sup>th</sup> July 2011;
  - Flood Risk Assessment (Report No. 1577) prepared by Robert West Consulting received on 14<sup>th</sup> July 2011;
  - Topographical Survey Drawing No. T 5637/2 received 14<sup>th</sup> July 2011; and
  - Application Site Plan – Drawing number 2589/015 (Scale 1:1250) received 14<sup>th</sup> July 2011.
  - Ecological Appraisal (March 2010)
  - Reptile Survey (June 2010)
5. N15 Reason(s) for the Grant of Outline Permission
6. N11C – General
7. 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.
8. I11 - Mud on Highway
9. I09 - Private Apparatus within Highway
10. I45 - Works within the Highway

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Further information on the subject of this report is available from «offname» on «offtel»

Decision: .....

Notes: .....

.....

**Background Papers**

Internal departmental consultation replies.

## ANNEX 1

### HEADS OF TERMS Proposed Planning Obligation Agreement Section 106 Town and Country Planning Act 1990

Planning Application: N/111899/O

Proposal: Construction of up to 127 dwelling houses with all matters other than the means of access reserved for future consideration

Site: Porthouse Farm, Tenbury Road, Bromyard, Herefordshire

1. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of
  - £ 1,809 (index linked) for a 2 bedroom open market unit
  - £ 2,951 (index linked) for a 3 bedroom open market unit
  - £ 4,953 (index linked) for a 4+ bedroom open market unit

The contributions will provide for enhanced educational infrastructure at St Peters Primary School, Post 16, Bromyard Early Years, Bromyard Youth Service and the Special Education Needs Schools. The sum shall be paid on or before first occupation of the 1<sup>st</sup> open market dwelling house, and may be pooled with other contributions if appropriate.

2. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of
  - £ 2,092 (index linked) for a 1 bedroom open market unit
  - £ 2,457 (index linked) for a 2 bedroom open market unit
  - £ 3,686 (index linked) for a 3 bedroom open market unit
  - £ 4,915 (index linked) for a 4 bedroom open market unit
  - £ 6,143 (index linked) for a 5 bedroom open market unit

The contributions will provide for sustainable transport infrastructure to serve the development, which sum shall be paid on or before occupation of the 1st open

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Further information on the subject of this report is available from «offname» on «offtel»

market dwelling house 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:-

- Dropped crossings in the Town. All along routes used by residents of the development to shops and schools.
  - Improved cycle parking in the town centre and schools.
  - Improvements to the junction from the B4214 into Porthouse Industrial Estate. The footway to be diverted to the open grass area on the town side. This is on the route from the development to town/schools.
  - Provision/improvements to proposed Greenway along old railway.
  - Old Road Footway
  - Extension of footway on the A465 towards the garage and Panniers Lane
  - Enhancement of southerly visibility at junction of Winslow Road with Tenbury Road (B4214)
3. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of £627 (index linked) per head of population (the population shall be calculated by multiplying the total number of open market and affordable dwellings by 2.3 which is the assumed occupancy of each dwelling) to be spent for the enhancement / provision of outdoor sports facilities in consultation with local sports clubs in Bromyard & Winslow and adjacent parishes. The sums shall be paid on or before the occupation of the 1st open market dwelling. The monies may be pooled with other contributions if appropriate.
4. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of £292 (index linked) per head of population (the population shall be calculated by multiplying the total number of open market dwellings by 2.3 which is the assumed occupancy of each dwelling) to be spent to support the existing indoor sports provision in Bromyard & Winslow and adjacent parishes. The sums shall be paid on or before occupation of the 1st open market dwelling. The monies may be pooled with other contributions if appropriate.
5. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of
- £120 (index linked) for a 1 bedroom open market unit
  - £146 (index linked) for a 2 bedroom open market unit
  - £198 (index linked) for a 3 bedroom open market unit
  - £241 (index linked) for a 4+ bedroom open market unit

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

6. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of £120 (index linked) per open market dwelling. The contribution will provide for waste reduction and recycling in Bromyard & Winslow. The sum shall be paid on or before occupation of the 1st open market dwelling, and may be pooled with other contributions if appropriate.
7. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of £6,150 (index linked) towards the enhancement of CCTV provision in Bromyard Town Centre to include 6 cameras, DVR, PC review station and wireless links to the local police station. The sum shall be paid on or before the occupation of the 1<sup>st</sup> open market dwelling, and may be pooled with other contributions if appropriate.
8. The developer covenants with Herefordshire Council to pay a sum equal to 1% of the gross project cost, which will be used to provide for public art within the development or within the vicinity of the development. The sum shall be paid on or before the occupation of the 1st open market dwelling.
9. The developer covenants with Herefordshire Council that 35% 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.
10. Of those Affordable Housing units, at least 65% shall be made available for social rent with the remainder being available for intermediate tenure.
11. 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.
12. The Affordable Housing Units must be let and managed or co-owned in accordance with the guidance issued by the Homes and Communities Agency (or 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:-
  - 12.1 registered with Home Point at the time the Affordable Housing Unit becomes available for residential occupation; and
  - 12.2 satisfy the requirements of paragraphs 13 & 14 of this schedule
13. 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 who has:-
  - 13.1 a local connection with the parish of Bromyard and Winslow; or Grendon Bishop, Bredenbury, Wacton, Edwyn Ralph, Norton, Linton, Avenbury, Stoke Lacy, Little Cowarne, Pencombe and Grendon Warren



- 13.2 in the event there being no person with a local connection to any of the above parishes any other person ordinarily resident within the administrative area of Herefordshire Council who is eligible under the allocation policies of the Registered Social Landlord if the Registered Social Landlord can demonstrate to the Council that after 28 working days of any of the Affordable Housing Units becoming available for letting the Registered Social Landlord having made all reasonable efforts through the use of Home Point have found no suitable candidate under sub-paragraph 12.1 or 12.2 above.
14. For the purposes of sub-paragraph 13.1 or 13.2 of this schedule 'local connection' means having a connection to one of the parishes specified above because that person:
- is or in the past was normally resident there; or
  - is employed there; or
  - has a family association there; or
  - a proven need to give support to or receive support from family members; or
  - because of special circumstances
15. The developer covenants with Herefordshire Council to construct the Affordable Housing Units to the Homes and Communities Agency 'Design and Quality Standards 2007' (or to a subsequent design and quality standards of the Homes and Communities Agency as are current at the date of construction) and to Joseph Rowntree Foundation 'Lifetime Homes' standards. Independent certification shall be provided prior to the commencement of the development and following occupation of the last dwelling confirming compliance with the required standard.
16. The developer covenants with Herefordshire Council to construct the Affordable Housing Units to Code Level 3 of the 'Code for Sustainable Homes – Setting the Standard in Sustainability for New Homes' or equivalent standard of carbon emission reduction, energy and water efficiency as may be agreed in writing with the local planning authority. Independent certification shall be provided prior to the commencement of the development and following occupation of the last dwelling confirming compliance with the required standard.
17. In the event that Herefordshire Council does not for any reason use the sum specified in paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 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.
18. The sums referred to in paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 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.
19. 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.

20. 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.
21. The Children's Play Area and amenity public open space area shall be provided on-site prior to the occupation of 50% of the open market dwellings. The Children's Play Area and public open space shall be maintained by the developer for a period of one year and then transferred to Herefordshire Council at a cost of £1 provided that the play area and open space are to an acceptable standard as agreed by Herefordshire Council. At the time of transfer the developer shall pay Herefordshire Council a 15 year maintenance sum in accordance with the Tariff for Calculation of Commuted Sums 2011.

# PLANNING COMMITTEE

4 April 2012

## Schedule of Committee Updates/Additional Representations

**Note:** The following schedule represents a summary of the additional representations received following the publication of the agenda and received up to midday on the day before the Committee meeting where they raise new and relevant material planning considerations.

**N111899/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**

**For: Ms Harrison per Mr John Cornwell, Oakview House, Station Road, Hook, Hampshire, RG27 9TP**

### ADDITIONAL REPRESENTATIONS

A letter of SUPPORT has been received from the occupier of 'Rosebank', 52 New Road, Bromyard. In summary the following points are made:-

- The current Council's policies of directing housing to Porthouse Farm and employment to the east at Linton would benefit Bromyard and its future wealth creation potential;
- The Porthouse Farm site would not be attractive to any modern, efficient company due to the poor highway network that serves it which is unsuitable for lorries;
- There are no current plans by Herefordshire council for a relief road and finance would not be forthcoming;
- Bromyard requires employment land but it must be in the correct place at Linton. Interestingly after the current industrial buildings were completed, although aggressively marketed they remained empty for approximately four years;
- The issues of noise and odour are satisfactorily addressed;
- Congestion in town is caused by lorries finding their way to Porthouse through the Town Centre. A plan for employment use of the Porthouse Farm site would make this intolerable;
- Housing would be more visually acceptable than industrial development;
- Linton is a suitable location for industrial development. There is an additional three acres of level land available.
- Polytec support the proposal; and

- Bromyard desperately needs affordable housing for young people. The proposed development would deliver some 44 affordable houses. During the last 12 months only 52 such affordable houses were delivered in the whole of Herefordshire; and
- The proposal is policy compliant.

A letter has been received from the Micron Group who state that they intend expanding their operations and state that they need to retain the ability to utilise their existing Porthouse Farm facility.

It has come to Officers attention that at an Extraordinary Meeting of the Bromyard & Winslow Town Council on 28<sup>th</sup> March 2012 a resolution was passed to send a report to Members of the Planning Committee with respect this application. In summary that report urges Members to refuse the planning application. The following summarised planning arguments are made:-

- The decision by the Planning Inspector reporting into objections to the Unitary Development Plan endorsing the residential allocation of the land at Porthouse site was unsound;
- Building houses next to the Porthouse Industrial Estate will jeopardise the operation of successful companies on the estate, which employ hundreds of people and will damage the residential amenity of new households – with regard the amenity issue it is stated that some houses will have to be designed to allow for ventilation without opening windows and the report fails to address the issue of outdoor amenity for residents;
- Porthouse Farm is the only area of land available in Bromyard for employment. If it is lost to housing Bromyard will be left with no employment land, in perpetuity;
- Housing on Porthouse farm would deprive Bromyard of the ability to build a very much needed relief road; and
- The planning application is contrary to UDP policies and PPS4.

## OFFICER COMMENTS

No comment upon the support representation received.

With regard the report of the Bromyard & Winslow Town Council, the following summarised points are made:-

- The site is allocated for residential development within the adopted Herefordshire Unitary Development Plan 2007. The allocation of the land for housing purposes was the subject of objections at the time by twelve persons or organisations (although two of those objections were withdrawn). One objector was the Bromyard & Winslow Town Council who advanced their objections to the Inspector appointed by the Secretary of state to consider the objections that had been lodged to the Herefordshire Unitary Development Plan Revised deposit Draft. After considering the objections and examining all of the evidence the Inspector accepted the suitability of the land for housing purposes and supported the allocation. The Inspector did not recommend any change to the policy. The Council were not obliged to accept the Inspector's recommendations but did so and effectively retained the allocation in accordance with his recommendation and adopted the Herefordshire Unitary Development Plan 2007. In the event that the Town Council or any other group considered this allocation to still be "unsound" they could have legally challenged the adopted Plan within 90 days of its adoption (as was done with regard the Bullinghope allocation with an approximate yield of 300 dwellings). No such challenge was lodged by the Bromyard & Winslow Town Council or any other group.

- There is no reason to believe that the proposed development would jeopardise existing businesses in the area. Concern has been expressed as to whether the provision of a residential development will in some way inhibit existing business premises in the immediate vicinity and any future plans they may have for expansion. It is interesting that paragraph 123 of NPPF states that:-

“Planning policies and decisions should aim to:-

Recognise 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.”

It is considered that it is worth clarifying a few issues with regard the noise issue. With respect the garden areas Members attention is drawn to paragraph 3.4 of the Committee Report. With regards to outdoor amenity areas, such as gardens, the RPS report draws upon the noise contours provided in the TSA report, indicating that outdoor levels will fall below 50/55 dB LAeq during the day, the BS8233 recommended limits for external amenity areas. With the increased barrier specification, external noise levels across amenity areas would further reduce.

It must be noted that the metrics used to determine 'appropriate internal night-time maximum noise levels required for sleep' and 'external daytime levels for amenity use' are very different, and not comparable. The requirement for ventilation does not indicate that amenity areas are unsatisfactory.

It appears that there may be an impression that the housing development would only be acceptable if windows are kept permanently shut with the benefit of ventilation. That is not the case. Satisfactory internal levels will be achieved during daytime with windows open. The proposed timber acoustic barrier design is such as to bring the majority of night-time noise events below 45 dB L<sub>Amax</sub> internally with windows open. However, some individual night-time noise events may still exceed 45 dB L<sub>Amax</sub> ; which could adversely affect more noise-sensitive individuals. The proposed scheme allows these individuals to close windows and sleep in a noise environment surpassing the mandated levels whilst also experiencing appropriate ventilation.

- The issue at the supply of employment land is dealt with in paragraphs 5.34 – 5.37 (inclusive) of the report to Planning Committee on 1<sup>st</sup> February 2012 attached as Annex 1; and
- It remains Officers views that the proposal is UDP compliant and it must be recognised that the Central Government advice contained within PPS4 was cancelled on 27<sup>th</sup> March 2012 prior to the meeting of the Bromyard & Winslow Town Council meeting on the Wednesday.

Last week new Central Government advice with respect Planning was published and came into force in the form of the 'National Planning Policy Framework' (NPPF). This replaced much existing Central Government advice including Planning Policy Statements 1, 3, 9, 12, 13, 23, 24 and 25 and Circular 05/05 mentioned in the Committee Report. The existing report has been reviewed in the light of the new Central Government advice. The NPPF makes it clear (para. 12) that there is no change to the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an

up-to-date Local Plan should be approved unless other material considerations indicate otherwise. Indeed the NPPF states (para. 14) that in terms of decision making development proposals that accord with the plan should be approved without delay. The NPPF stresses the importance of delivering an adequate supply of housing and the provision of affordable housing to meet local need. The recommendation to grant conditional outline planning permission subject to the prior completion of a legal agreement remains unchanged.

## **CHANGE TO RECOMMENDATION**

For the purposes of precision substitute the words in conditions 7, 17 and 28 "...to the satisfaction of the Local Planning Authority" with the words "...in accordance with the approved details".

Amend reason for condition 10 to read:-

To ensure that there is a satisfactory landscape buffer between the residential development hereby permitted and the Porthouse Industrial Estate including the acoustic fence required to be erected by way of condition 28 below in accordance with policy LA2 of the Herefordshire Unitary Development Plan 2007 paragraph 5.4.27 of the explanatory text to the Herefordshire Unitary Development Plan 2007;

Change recommended informative 5 to read:-

The reasons for granting planning permission in respect of the development are:-

The proposal is in outline form with all matters except access reserved for future consideration. The proposal is for residential development upon a site allocated for residential development by virtue of policy H2 of the adopted Herefordshire Unitary Development Plan 2007. The proposed means of access is considered to be acceptable in all respects including highway safety. It is considered that the density of development being a maximum of 32.63 dwellings to the hectare (or some 37.35 dwellings to the hectare excluding the bund) would be acceptable in terms of the context of this site. The development would deliver affordable housing in compliance with policy H2 of the Herefordshire Unitary Development Plan 2007. There are no environmental reasons (i.e. sewage capacity, flooding, noise, odour, residential amenity, landscape & ecology) to justify refusal of the application. The matter of noise impact from the adjoining general industrial use has been fully assessed and it is considered that a mitigation strategy secured by way of conditions 7, 27, 28 and 29 will ensure a satisfactory level of residential amenity for the occupiers of the dwellinghouses hereby permitted. In conclusion the proposal complies with the provisions of the Herefordshire Unitary Development Plan 2007 together with the Central Government advice contained within the National Planning Policy Framework and there are no other material planning considerations that justify refusal of the application.

**ANNEX 2**  
**Appeal Decision**

**Re: N111899/O**



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## Appeal Decision

Site visit made on 17 October 2012; Hearing held on the 4 December 2012.

**by Wendy J Burden BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 31 December 2012

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**Appeal Ref: APP/W1850/A/12/2177220**

**Porthouse Farm, Tenbury Road, Bromyard, HR7 4LW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Marsten Developments Ltd against the decision of Herefordshire Council.
  - The application Ref N111899/O, dated 12 July 2011, was refused by notice dated 4 April 2012.
  - The development proposed is the erection of up to 127 dwellings comprising 83 open market and 44 affordable units, with all matters except access reserved for future determination, garages, car parking areas estate roads, footpaths and cycleways, landscaping and public open space, including 0.2 hectares of on-site children's play areas and 2.6 hectares of on-site public amenity open space; remodelling of existing bund and noise mitigation works at the Polytec site.
- 

### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Marsten Developments Ltd against Herefordshire Council in relation to the written representations appeal. This application is the subject of a separate Decision.

### Procedural Issue

3. The Council has withdrawn the second reason for refusal relating to the impact of external lighting on both the Polytec site and the Bromyard Rugby Club. This was as a result of a review by a professional lighting engineer which found that the nearby lighting would have no undue impact on the amenities of future occupiers of the proposed dwellings. In these circumstances I consider that the impact of external lighting has been adequately assessed and find no reason to identify it as an issue in my decision.
4. A completed S106 agreement between the appellant and the Council has been submitted to secure the delivery of the affordable housing and a financial contribution towards open space facilities. There is also an agreement between the appellant and Polytec for the installation of noise attenuation measures at the appellant's expense.
5. Following the accompanied site visit on the 17 October, and the consideration of all the submitted written evidence, I raised concerns about the conditions proposed to secure noise mitigation. A letter was sent to the parties on the 19 October alerting them to these matters and calling for a Hearing to be held in



accordance with the powers conferred by S319A of the Town and Country Planning Act 1990. A further letter was sent on the 16 November to direct the parties to the particular matters on which the hearing should focus.

6. For the Hearing some amendments were proposed to conditions 7, 27, 28 and 29 which deal with the implementation and maintenance of the noise mitigation measures. I deal with the appeal scheme on the basis of the amended conditions. In addition, a Unilateral Undertaking (UU) under S106 of the Town and Country Planning Act 1990 has been submitted in favour of Herefordshire Council, and a UU in common law has been submitted in favour of Polytec Car Styling Bromyard Ltd. I take these undertakings into account in reaching my decision.

### **Main Issue**

7. The main issue is whether the implementation and maintenance of noise attenuation measures can be secured; and in the event that they could be secured, whether future residents of the proposed development would be affected by an unacceptable level of night time noise nuisance arising from the movement of stillages in the open yard of the adjoining Polytec site.

### **Reasons**

8. The appeal site was allocated for residential development in the Herefordshire Unitary Development Plan (UDP) adopted in 2007. It is the largest of the 4 allocated sites in Bromyard required to fulfil the strategy set out in Policy S3 of the plan. The allocation was made by Herefordshire Council and the principle of the residential use was considered by the Inspector who dealt with objections to the allocation of the site at the UDP examination. The issues of the impact of the operation of the Polytec site on future occupiers of the site, and the needs of the Polytec Holden factory operators were given full consideration, and the Council produced a noise assessment report as a part of its evidence to support the allocation. Although the UDP identified the site as suitable for 87 dwellings, the site area is greater than originally indicated and the Council does not object in principle to the increase in the number of dwellings now 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.
9. In this case the proposed residential development would adjoin the site of an acknowledged noise generating use in the form of the general industrial premises of Poytec-Holden with its outside storage area. The Bromyard Town Council and other objectors argue that there is a need for further industrial sites within Bromyard and that the appeal site is ideally located to meet that need. They also point out the unsuitability of another site which has been allocated for industrial development in the town. 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 the residential development of the site.
10. UDP Policy DR13 sets out the criteria to be applied when considering noise issues. This states that "development which after taking account of mitigation measures proposed, would still have an unacceptable noise impact or result in

unacceptable exposure to noise will not be permitted". At the Polytec site, noise from the industrial operation arises primarily from plant upon and within the existing buildings, and external noise from the operation of fork lift trucks and movement of stillages in the outside open yard.

11. The appellants have put forward noise attenuation measures which would address the output from seven items of plant which form the main sources of noise within and upon the Polytec building. The Council is satisfied that these sources of noise could be effectively mitigated by the listed measures, and clearly any reduction in such noise would be of benefit to the employees of the company as well as other residential occupiers within the locality. There is an amendment proposed to condition 7 to put it in the negative form, with no dwellings to be occupied until these measures have been implemented. Together with the agreement that the appellants have entered with Polytec for the mitigation measures to be installed into the Polytec site at the developer's expense, I am satisfied that the implementation of the attenuation measures to the building could be secured through condition 7.
12. In terms of maintenance, the appellants argue that the measures would be virtually maintenance free, since there are no moving parts involved. Materials used in the acoustic louvres which would replace existing dilapidated wooden louvres would be made from galvanised or stainless steel, powder coated to counteract corrosion. Similar materials would be used for the acoustic enclosures and exhaust attenuators which would be installed to equipment within and on the building. With the use of such materials, the measures would be expected to have a 20-25 year lifespan on this site. External damage from fork lift trucks or vandalism was considered to be unlikely. However, the residential development is likely to endure beyond 25 years, and to maintain a satisfactory noise environment for residents into the long term I consider it essential that maintenance or repair of the noise attenuation measures can be secured. To achieve this, the appellants propose to provide Polytec with a sum of money to carry out any future repair or replacement of the attenuation measures through the UU which was submitted for the Hearing. I deal with the efficacy of this approach below.
13. There is some dispute as to whether it is necessary to seek further control over fixed plant on the Polytec site, with a requirement in condition 7 that no more than 50 dB Laeq SPL sound pressure level as measured at 4 metres from the individual noise source be achieved. However, as the appellant argued, the surveys of the Polytec building have identified the main sources of noise and those are to be provided with measures for attenuation. New fixed plant could be introduced, but if it is at the opposite end of the building from the residential development, it could operate above those noise levels without causing any nuisance to the occupiers of the dwellings. Furthermore, the appellants do agree to a clause which would allow for noise to be monitored at the façade of any dwellings, and requires that noise should not exceed a certain level. Since it is the amenities of the future occupiers of the dwellings which the condition seeks to protect, this seems to me to be an adequate way of providing the Council with a means of ensuring that any new fixed plant should not cause nuisance to future occupiers. The clause relating to the fixed plant is therefore not necessary.
14. Turning now to the issue of securing the maintenance of the provisions of condition 7, the maintenance of the scheme of attenuation is required by the

condition, but the condition does not specify where the responsibility for maintenance would lie. For the developer of the residential site to ensure compliance in the future with the maintenance clause of the condition, the company would require access to the Polytec land which may not be forthcoming. However, since the Polytec land is included within the red line and forms part of the development site for which planning permission is being sought, it would be open to the Council to issue an enforcement notice on Polytec requiring the company to comply with the condition. Enforcement of the condition against Polytec is therefore theoretically possible, but the question then arises as to whether enforcing the condition would be reasonable.

15. Circular 11/95 para 28 provides an example of a situation where it would be unreasonable to enforce a condition requiring works within the application site but on land outside the control of the applicant. In this example the developer failed to acquire consent over land included within his application which meant that the only way for the Council to enforce would be to serve a notice on the third party who derived no benefit from the application. In this scenario the condition would be unreasonable. However, in the appeal case a letter has been provided from the Managing Director of Polytec to indicate the satisfaction of the company with the arrangements which have been put in place with the appellants, and the company's acceptance of responsibility for the future maintenance of the noise attenuation measures. Furthermore, through the provisions of the UU, the appellant intends to provide Polytec with a sum of money to meet the costs of future maintenance and repair of the attenuation measures.
16. The working environment at the Polytec site would be improved through the noise attenuation measures both within the factory building and on the fork lift trucks. Thus through the provisions of the UU, Polytec would become a beneficiary of the appeal scheme, and it would be reasonable for the Council to enforce condition 7 relating to maintenance against the company by issuing a breach of condition notice or enforcement notice. However, this would depend upon whether or not Polytec is able to ensure, through the UU, that the company is compensated for assuming this responsibility.
17. The question therefore arises as to whether the UU in favour of Polytec is enforceable. This undertaking is not made under S106 TCPA and can not be enforceable by the Council as a third party who do not receive any benefit from the undertaking. I accept that at common law a deed executed by one person alone can be enforced by a third party in whose favour it is executed. This means that: provided that it is clear that the document is intended to be a deed, Polytec is clearly identified as a beneficiary, and the deed is correctly executed, Polytec should be able to take the benefit of and enforce the obligations given in its favour even though it has not executed the deed itself. However, I have some concerns about the drafting of the deed.
18. Clause 5.4 states that the deed shall only be enforced by the Owner or the Council. It appears that this provision has simply been lifted from a standard S106 agreement and included within this document in error. Firstly, the term Owner is not defined anywhere in this deed; Marsten Developments Limited refer to themselves as "Marston" and not the Owner. Secondly, this clause would appear to exclude Polytec, as a third party, from enforcing the deed against Marston. The appellant argued that this error does not alter the

application of the deed. However, this is not a matter on which I can be at all certain, and may ultimately be a matter for the courts to decide.

19. Secondly, as the UU is not made in accordance with the provisions of S106, it will not automatically run with the land. Clause 1.1 of the deed purports to provide that it will apply to the successors in title of Marsten and Polytec. However, I am not convinced that it is possible for Marsten to bind their successors in title in this way. It might be possible for Polytec successors in title, as beneficiaries of the deed, to enforce against Marston, but in view of the error in clause 5.4, this is far from certain.
20. I am also concerned that the undertaking does not specify when the money is to be paid to Polytec. In the Third Schedule at para 1.1 it provides that prior to first occupation the Noise Attenuation Measures will be paid for and installed and this does not pose any problems. Unfortunately paras 1.2 – 2.2 do not contain such a provision or any indication of when payment should be made. This could cause problems for Polytec if it was necessary to take action to enforce the agreement. In these circumstances I am not convinced that the UU would provide certainty that Polytec would be compensated for assuming the responsibility of future maintenance. Without the certainty of the payment to underpin the provisions of the maintenance clause in condition 7, an action by the Council against Polytec to secure compliance with condition 7 may be regarded as unreasonable.
21. The other main source of noise relates to the operation of fork lift trucks within the open storage area together with the sounds of clanking and banging as stillages are moved around the industrial site. Condition 27 is proposed to stop any vehicle fitted with a tonal reversing alarm from operating on the Polytec site between the hours of 23.00 and 07.00, and before any dwellings are occupied, there is a requirement to fit all forklift trucks with white noise reversing alarms. Clearly the imposition of such a condition would have the effect of reducing noise from within the open storage area of the industrial site. In addition, condition 28 would require the erection of a 6 metre high timber acoustic fence along the boundary with the industrial site before the occupation of any dwelling, and condition 29 is worded to secure a high level of internal sound insulation for the new dwellings. Nevertheless, even with these measures in place, the Council maintains its objection to the development on the basis of the potential for night time noise events that exceed 45dBLAMax within future dwellings when windows are open.
22. Taking first the Council's objection, and then turning to the efficacy of the two conditions, I find as follows. BS8233 indicates that for a reasonable standard in bedrooms at night, individual noise events should not normally exceed 45 dBLAMax,fast. Survey work undertaken by the Council's noise consultants concluded that even with the proposed noise barriers in place, with windows partially open, some noise events would occur which exceeded the sleep disturbance threshold within the dwellings. However, with appropriate means of alternative ventilation in dwellings with facades facing the Polytec site, such that adequate ventilation can be achieved with windows shut, and provided the other mitigation measures meet the performance indicated, noise emissions from the Polytec site would meet appropriate criteria and would not be expected to result in any loss of amenity for the occupiers of the new dwellings.

23. I understand that the Council considers it to be unfair that the occupiers of dwellings with windows facing the industrial site would not be able to open their windows without the risk of some noise disturbance. However, with the mitigation measures in place, it is clear from the noise evidence that the number of such noise events would most likely be limited. Since alternative means of ventilation would be built into those dwellings which could be affected, future occupiers would not be obliged to open their windows in order to properly ventilate their bedrooms. Furthermore, purchasers of the properties would be aware of the presence of the industrial estate. They could make their own decisions as to whether a choice between an open window with the risk of limited noise disturbance or use of an expressly fitted ventilation system was acceptable. In these circumstances I consider that the new dwellings would provide an appropriate standard of residential amenity.
24. This conclusion is dependent on the implementation and maintenance of all the mitigation measures which would be provided through conditions 7, 27, 28 and 29. I turn now to consider whether the remaining noise mitigation conditions are capable of implementation and enforcement and whether enforcement would be reasonable.
25. The first part of condition 27 requires that no vehicle on the Polytec site fitted with a tonal reversing alarm shall operate on the site between the hours of 23:00 and 07:00 hours. In their letter, Polytec confirms that no vehicle fitted with a tonal reversing alarm operates on the site between those hours apart from fork lift trucks. The second part of condition 27 requires white noise reversing alarms to be fitted to all fork lift trucks on the general industrial estate before any of the new dwellings are occupied. The appellant is to pay for the fitting of the new alarms, and I am satisfied that the Council could enforce this second part of the condition. Having regard to the assurance provided by Polytec, and with the fork lift trucks fitted with white noise reversing alarms at the appellant's expense, it seems to me that it would be reasonable for the Council to take action against Polytec in the event that the first part of condition 27 was breached.
26. Condition 27 requires all fork lift trucks to be maintained with white noise reversing alarms in the future. This means that any new fork lift truck would require to be fitted with the alarms in order to comply with the condition. The UU in favour of Polytec provides at clause 2.1 payment by the appellant for the fitting of the white noise reversing alarms to existing fork lift trucks on the factory site. Since this measure is required by condition 27 to be in place before any dwelling is occupied, I am satisfied that the provision at 2.1 would be fulfilled. However, para 2.2 gives no date for the provision of funds to ensure that all fork lift trucks be maintained with white noise reversing alarms in the future, and in any event the enforceability of this provision is subject to the flaws in the UU which I identified in relation to the requirements of condition 7. Without the certainty of the payment to underpin the provisions of the maintenance clause in condition 27, an action by the Council against Polytec to secure compliance with condition 27 may be regarded as unreasonable.
27. The acoustic fence would be constructed using galvanised steel posts and high quality timber which has been vigorously treated. It would benefit from a 25 year guarantee which could be transferred from the purchaser to whoever is responsible for its long term maintenance. On this basis it is unlikely that any

maintenance would be required for many years. However, I would expect the houses to have a longer than 25 year lifespan, and damage to the fence could occur from vandalism or abnormal weather events. In my view therefore it is necessary to ensure that future maintenance can be secured. As a means of securing future maintenance of the fence, the appellants have provided a S106 UU which would pay a sum of money to the Council to cover future maintenance costs. The Council has indicated that it is not prepared to take on that responsibility, but an amended form of condition 28 is proposed by the appellants through which a scheme for the future maintenance of the 6 metre high fence would be required for submission and approval before the start of construction of the dwelling houses. The condition then requires the erection of the fence before first occupation of the dwellings, and its retention and maintenance in accordance with the approved scheme. Therefore whether the Council or a management company takes the responsibility for maintenance, I am satisfied that the requirements of condition 28 could be met.

28. Objectors raise issues concerning the visual impact of the 6 metre acoustic fence. In views from within the new housing site, it would be largely screened by the existing bund with the new planting which would be provided along its ridge. At the site visit I was taken to more distant viewpoints in the Bromyard Downs which overlook the appeal site. From these locations the fence would appear in the context of the existing industrial estate, and in my judgement its scale would not appear excessive adjacent to the substantial buildings within the Polytec site. I am therefore satisfied that the fence would not be so visually intrusive as to justify refusal of planning permission. There is also concern that noise would be reflected by the fence from the highway into 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.
29. There is little dispute that condition 29 generally meets the tests of Circular 11/95. Clearly the level of noise attenuation measures which needs to be constructed into the new dwellings to secure the criteria identified in the condition will depend to some extent on the noise environment which is achieved adjacent to the industrial site. 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 site to secure acceptable living conditions for future residents.
30. With the rewording of the conditions proposed by the appellant, I find that the implementation of the noise attenuation measures required in the conditions could be secured. The only concern that remains relates to the flaws which I have identified in the UU in favour of Polytec which bring into doubt the future maintenance of the noise attenuation measures required in conditions 7 and 27. There is a risk that action by the Council against Polytec for example to enforce the repair of the attenuation measures to the fixed plant, or to ensure that future fork lift trucks were fitted with white noise reversing alarms would not be reasonable in the event that the UU failed to deliver the specified funds to Polytec. For this reason alone I consider that the appeal should not succeed.

*Wendy Burden*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

Miss N Sharif of Counsel	instructed by Mr Wilson of Tyler Parkes
Mr Wilson	Tyler Parkes
Mr Waters	Colin Waters Acoustics
Mr Davison	Noico
Mr Tune	Jacksons Fencing

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Close	Planning Officer
Mr Scott	RPS Acoustic Consultant
Mr Trezins	Environmental Protection Manager
Mr Tansley	Development Manager - Enforcement

### INTERESTED PERSONS:

Councillor Page	Bromyard Town Council
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### DOCUMENTS

- 1 Council's letter of Notification
- 2 Attendance list
- 3 Statement submitted by Tyler Parkes re Planning
- 4 Statement submitted by Colin Waters re Noise issues
- 5 S106 UU in favour of Herefordshire Council
- 6 UU in favour of Polytec Car Styling Bromyard Limited
- 7 Closing statement on behalf of the Appellant
- 8 Statement submitted on behalf of Herefordshire Council dated 27 November 2012
- 9 Council's comments on Unilateral Undertakings
- 10 Submissions of RPS on behalf of the Council

**ANNEX 3**  
**Costs Decision**

**Re: N111899/O**





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## Costs Decision

Site visit made on 17 October 2012

**by Wendy J Burden BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

**Decision date: 21 January 2013**

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### **Costs application in relation to Appeal Ref: APP/W1850/A/12/2177220 Porthouse Farm, Tenbury Road, Bromyard, HR7 4LW**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Marsten Developments Ltd for a partial award of costs against Herefordshire Council.
  - The appeal was against the refusal of planning permission for the erection of up to 127 dwellings comprising 83 open market and 44 affordable units, with all matters except access reserved for future determination, garages, car parking areas estate roads, footpaths and cycleways, landscaping and public open space, including 0.2 hectares of on-site children's play areas and 2.6 hectares of on-site public amenity open space; remodelling of existing bund and noise mitigation works at the Polytec site..
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### **Decision**

1. The application for an award of costs is allowed in the terms set out below.

### **Procedural issue**

2. The appeal was originally submitted to be dealt with under the written representation procedure, and the costs application was made on the basis of the work carried out for that procedure. However, I had a number of questions concerning the conditions which had been agreed between the parties relating to the implementation and maintenance of the noise mitigation measures. A Hearing was then held on the 4 December 2012 in accordance with the powers conferred by S319A of the Town and Country Planning Act 1990. The Hearing focussed entirely on the issues raised in relation to the 4 conditions which were agreed to be required in order to attenuate noise from the adjoining industrial estate. At the Hearing, it was confirmed on behalf of the applicant that no addition to the costs application submitted in relation to the written representations appeal was to be made to cover the costs of the Hearing. I am therefore dealing with the application as one for a partial award of costs relating to the work carried out for the written representations part of the procedure only.

### **Reasons**

3. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

4. In this case the officers recommended to the planning committee of the Council that planning permission should be granted. That recommendation was not accepted by the members of the committee, but it is clear from para B20 of Circular 03/2009 that Planning Authorities are not bound to accept the recommendations of their officers. Nevertheless, the Circular goes on to make it clear that where the officer's advice is not followed, authorities will need to show reasonable planning grounds for taking a contrary decision and to produce relevant evidence on appeal to support the decision in all respects.
5. The appeal site is allocated for residential development in the statutory Herefordshire Unitary Development Plan (UDP) adopted in 2007. The allocation was made by Herefordshire Council and the principle of the residential use was considered by the Inspector who dealt with objections to allocation of the site at the UDP examination. The issues of the impact of the operation of the Polytec site on future occupiers of the site, and the needs of the Polytec Holden factory operators were given full consideration; and the Council produced a noise assessment report as a part of its evidence to support the allocation.
6. The Council adopted the UDP with the allocation of the site in accordance with the recommendation of the Inspector. There has been no suggestion of any change in circumstances since the UDP was adopted, and there is no proposal in the emerging LDF documents to suggest that the allocation should be reconsidered. In these circumstances I find the third reason for refusal cited by the Council to be unreasonable. It is clear from the status of the site in the development plan that the residential use of the site is considered to be an appropriate land use.
7. In these circumstances where the Council is dealing with a site which has been designated for development in the statutory plan, the National Planning Policy Framework makes it clear that Councils should approve development proposals which accord with the development plan without delay. Local planning authorities should approach decision taking in a positive way to foster the delivery of sustainable development and to seamlessly translate plans into high quality development on the ground.
8. I accept that it was appropriate for the Council to give full consideration to the future living conditions of the residents of the proposed houses. Clearly in adopting the allocation of this site in the UDP, the Council would have had in mind the requirements of Policy DR13 which sets out the criteria to be applied when considering noise issues. Having regard to the extent to which noise was considered at the UDP examination, it is safe to assume that the Council would have been satisfied that in principle the objectives of DR13 could be achieved on the appeal site.
9. The appeal scheme has been the subject of noise reports from three reputable firms of acoustic consultants. Agreement was reached among experts as to the level of mitigation measures required, and the applicant has included all those measures in the appeal scheme. The Council's own consultant concluded that with those measures in operation, noise emissions from the Polytec site would meet appropriate criteria and would not be expected to result in any loss of amenity for the occupiers of the new dwellings. In dealing with the application, the Council did not question whether the implementation and maintenance of the noise attenuation measures could be secured through condition and/or legal agreements. Consequently the Council assumed that the noise attenuation measures could be put in place, and the first reason for refusal

relates solely to the potential for disturbance at night with those noise attenuation measures in place. I accept that the Council is entitled to use its own judgement, but in this case it has made that judgement in spite of the technical advice from its noise consultants.

10. Para B16 of Circular 3/2009 states that unreasonable behaviour can result from a council's failure to substantiate a reason for refusal, and para B20 states that it may also result from failure to follow professional or technical advice without demonstrating reasonable planning grounds for taking a contrary decision and producing relevant evidence to support their decision. 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 taking a contrary view in relation to the efficacy of the 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.
11. No issue in relation to lighting had been raised during the discussion of the application and this was confirmed by the officer to the planning committee. The Council had no relevant technical evidence to support its second reason for refusal, which was then withdrawn by the Council some 13 days prior to the end of the six week period for the submission of the applicant's case. Meanwhile it is clear from the history of email exchanges between the applicant's consultants that a lighting expert had been instructed and had carried out the work and produced a report in response to the reason for refusal. In these circumstances I find the Council has 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.
12. I have dismissed the planning appeal on the basis of flaws in a supporting unilateral undertaking which I consider to be necessary to underpin the conditions required to secure the long term maintenance of the noise attenuation measures. This reason for dismissing the appeal is not one which was raised by the Council. In my view the Council should have satisfied itself that appropriate conditions and agreements were in place to secure both the implementation and long term maintenance of the noise attenuation measures. If the Council had accepted the advice of its consultants, and conditions and their long term enforceability had been resolved between the Council and the appellant, then the matter would not have necessitated an appeal in order to progress the implementation of this development plan allocation.
13. It is clear that the applicant has incurred unnecessary and wasted expense as a result of the Council's unreasonable refusal of this planning application which brought about the appeal under the written representations procedure.

#### **Costs Order**

14. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Herefordshire Council shall pay to Marsten Developments Ltd, the costs of the

appeal proceedings described in the heading of this decision limited to those costs incurred in respect of the written representations procedure.

15. The applicant is now invited to submit to Herefordshire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

*Wendy Burden*

INSPECTOR

# **ANNEX 4**

## **Section 106 Legal Agreement**

### **Draft Heads of Terms**

**Re: 130907/O**

## ANNEX 4

### HEADS OF TERMS Proposed Planning Obligation Agreement Section 106 Town and Country Planning Act 1990

Planning Application: 130907/O

Proposal: Construction of up to 127 dwelling houses with all matters other than the means of access reserved for future consideration

Site: Porthouse Farm, Tenbury Road, Bromyard, Herefordshire

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

- £ 1,809 (index linked) for a 2 bedroom open market unit
- £ 2,951 (index linked) for a 3 bedroom open market unit
- £ 4,953 (index linked) for a 4+ bedroom open market unit

The contributions will provide for enhanced educational infrastructure at St Peters Primary School, Post 16, Bromyard Early Years, Bromyard Youth Service and the Special Education Needs Schools. The sum shall be paid on or before first occupation of the first open market dwelling house, and may be pooled with other contributions if appropriate.

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

- £ 2,092 (index linked) for a 1 bedroom open market unit
- £ 2,457 (index linked) for a 2 bedroom open market unit
- £ 3,686 (index linked) for a 3 bedroom open market unit
- £ 4,915 (index linked) for a 4 bedroom open market unit
- £ 6,143 (index linked) for a 5 bedroom open market unit

The contributions will provide for sustainable transport infrastructure to serve the development, which sum shall be paid on or before occupation of the first open market dwelling house 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:

- Dropped crossings in the Town. All along routes used by residents of the development to shops and schools
- Improved cycle parking in the town centre and schools
- Improvements to the junction from the B4214 into Porthouse Industrial Estate. The footway to be diverted to the open grass area on the town side. This is on the route from the development to town/schools
- Provision/improvements to proposed Greenway along old railway
- Old Road Footway
- Extension of footway on the A465 towards the garage and Panniers Lane
- Enhancement of southerly visibility at junction of Winslow Road with Tenbury Road (B4214)

3. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of £627 (index linked) per head of population (the population shall be calculated by multiplying the total number of open market dwellings by 2.3 which is the assumed occupancy of each dwelling) to be spent for the enhancement/provision of outdoor sports facilities in consultation with local sports clubs in Bromyard & Winslow and adjacent parishes. The sums shall be paid on or before the occupation of the 1st open market dwelling. The monies may be pooled with other contributions if appropriate.

4. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of £292 (index linked) per head of population (the population shall be calculated by multiplying the total number of open market dwellings by 2.3 which is the assumed occupancy of each dwelling) to be spent to support the existing indoor sports provision in Bromyard & Winslow and adjacent parishes. The sums shall be paid on or before occupation of the 1st open market dwelling. The monies may be pooled with other contributions if appropriate.
5. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of
  - £120 (index linked) for a 1 bedroom open market unit
  - £146 (index linked) for a 2 bedroom open market unit
  - £198 (index linked) for a 3 bedroom open market unit
  - £241 (index linked) for a 4+ bedroom open market unit

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

6. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of £120 (index linked) per open market dwelling. The contribution will provide for waste reduction and recycling in Bromyard & Winslow. The sum shall be paid on or before occupation of the 1st open market dwelling, and may be pooled with other contributions if appropriate.
7. The developer covenants with Herefordshire Council to pay a sum of £100 per open market dwelling which will be used to provide for public art within the development or within the vicinity of the development. The sum shall be paid on or before the occupation of the 1st open market dwelling.
8. The developer covenants with Herefordshire Council that 35% 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.
9. Of those Affordable Housing units, at least 65% shall be made available for social rent with the remainder being available for intermediate tenure.
10. All the affordable housing units shall be completed and made available for occupation prior to the occupation of no more than 50% of the general market housing or in accordance with a phasing programme to be agreed in writing with Herefordshire Council.
11. The Affordable Housing Units must be let and managed or co-owned in accordance with the guidance issued by the Homes and Communities Agency (or 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:-
  - 11.1 registered with Home Point at the time the Affordable Housing Unit becomes available for residential occupation; and
  - 11.2 satisfy the requirements of paragraphs 12 & 13 of this schedule
12. 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 who has:-
  - 12.1 a local connection with the parish of Bromyard and Winslow; or Grendon Bishop, Bredenbury, Wacton, Edwyn Ralph, Norton, Linton, Avenbury, Stoke Lacy, Little Cowarne, Pencombe and Grendon Warren
  - 12.2 in the event there being no person with a local connection to any of the above parishes any other person ordinarily resident within the administrative area of

Herefordshire Council who is eligible under the allocation policies of the Registered Social Landlord if the Registered Social Landlord can demonstrate to the Council that after 28 working days of any of the Affordable Housing Units becoming available for letting the Registered Social Landlord having made all reasonable efforts through the use of Home Point have found no suitable candidate under sub-paragraph 11.1 or 11.2 above.

13. For the purposes of sub-paragraph 12.1 or 12.2 of this schedule 'local connection' means having a connection to one of the parishes specified above because that person:
  - is or in the past was normally resident there; or
  - is employed there; or
  - has a family association there; or
  - a proven need to give support to or receive support from family members; or
  - because of special circumstances
14. The developer covenants with Herefordshire Council to construct the Affordable Housing Units to the Homes and Communities Agency 'Design and Quality Standards 2007' (or to a subsequent design and quality standards of the Homes and Communities Agency as are current at the date of construction) and to Joseph Rowntree Foundation 'Lifetime Homes' standards. Independent certification shall be provided prior to the commencement of the development and following occupation of the last dwelling confirming compliance with the required standard.
15. The developer covenants with Herefordshire Council to construct the Affordable Housing Units to Code Level 3 of the 'Code for Sustainable Homes – Setting the Standard in Sustainability for New Homes' or equivalent standard of carbon emission reduction, energy and water efficiency as may be agreed in writing with the local planning authority. Independent certification shall be provided prior to the commencement of the development and following occupation of the last dwelling confirming compliance with the required standard.
16. In the event that Herefordshire Council does not for any reason use the sum specified in paragraphs 1, 2, 3, 4, 5, 6, and 7 above for the purposes specified in the agreement within 10 years of the date of this agreement, the Council shall repay to the developer the said sum or such part thereof, which has not been used by Herefordshire Council.
17. The sums referred to in paragraphs 1, 2, 3, 4, 5, 6, and 7 above shall be linked to an appropriate index or indices selected by the Council with the intention that such sums will be adjusted according to any percentage increase in prices occurring between the date of the Section 106 Agreement and the date the sums are paid to the Council.
18. 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.
19. 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.
20. The Children's Play Area and amenity public open space area shall be provided on-site prior to the occupation of 50% of the open market dwellings. The Children's Play Area and public open space shall be maintained by the developer for a minimum period of one year and then transferred to Herefordshire Council at a cost of £1 provided that the play area and open space are to an acceptable standard as agreed by Herefordshire Council. At the time of transfer the developer shall pay Herefordshire Council a 15 year maintenance sum in accordance with the Tariff for Calculation of Commuted Sums 2013.



21. 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.
22. The owner of the housing site shall fund the above installation (no more than £60,000) – this will be evidenced to the Council with payment before occupation of the development.
23. Thereafter Polytec or successors in title keeps and maintains those noise mitigation measures as long as they are reasonably necessary.
24. Prior to the first occupation of the first dwelling Polytec shall fit all forklift trucks at the factory with white noise reversing alarms/warning systems and thereafter maintain them satisfactorily.
25. The owner of the housing site shall fund the installation of the white noise reversing alarms/warning systems (no more than £5,000) – this will be evidenced to the Council.
26. A maintenance sum of £70,000 shall be paid by the owners of the housing land to Polytec for future maintenance of 22. and 25. – this will be evidenced to the Council with payment before occupation of the development; and
27. 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.