

**MINUTES of the meeting of Planning Committee held at The Council Chamber, Brockington, 35 Hafod Road, Hereford on Wednesday 5 June 2013 at 10.00 am**

**Present:** Councillor PGH Cutter (Chairman)  
Councillor BA Durkin (Vice Chairman)

Councillors: PA Andrews, AM Atkinson, WLS Bowen, AN Bridges, PJ Edwards, KS Guthrie, J Hardwick, JW Hope MBE, MAF Hubbard, RC Hunt, Brig P Jones CBE, RI Matthews, FM Norman, AJW Powers, P Rone and PJ Watts

**In attendance:** Councillors MJK Cooper, JF Knipe and PJ McCaull

**1. APOLOGIES FOR ABSENCE**

Apologies were received from Councillors DW Greenow, JG Lester and GR Swinford.

**2. NAMED SUBSTITUTES (IF ANY)**

In accordance with paragraph 4.1.23 of the Council's Constitution, Councillors P Rone and WLS Bowen attended the meeting as substitute members for Councillors JG Lester and GR Swinford.

**3. DECLARATIONS OF INTEREST**

7. 130351/F - Land South of the B4349 and West of the C1221, Kingstone, Herefordshire, HR2 9HP.

Councillor FM Norman, Non-Pecuniary, The Councillor advised that she had met the applicant several times.

Councillor J Hardwick, Non-Pecuniary, The Councillor advised that he knew the applicant.

Councillor MAF Hubbard, Non-Pecuniary, The Councillor advised that he had met the applicant several times.

8. 130940/CD and 130983/CD - Leominster Infant and Junior Schools, Hereford Road, Leominster.

Councillor Brig P Jones CBE, Non-Pecuniary, The Councillor advised that he was the Chair of Governors for the Mortimer School.

Councillor FM Norman, Non-Pecuniary, The Councillor advised that she was a Governor for the Mortimer School.

Councillor RC Hunt, Disclosable Pecuniary, The Councillor advised that he was a Governor for the Leominster Junior School.

11. 130779/F - Land at Orchard House, Credenhill, Herefordshire.

Councillor J Hardwick, Non-Pecuniary, The Councillor advised that he knew the applicant.

12. 130870/N - Leadon Court Farm, Fromes Hill, Herefordshire, HR8 1QJ.

Councillor J Hardwick, Non-Pecuniary, The Councillor advised that he knew the applicant.

#### 4. MINUTES

**RESOLVED: That the Minutes of the meeting held on 15 May 2013 be approved as a correct record and signed by the Chairman.**

#### 5. CHAIRMAN'S ANNOUNCEMENTS

The Chairman advised the Committee that cakes were being sold in the glass link in order to raise money for research into motor neurone disease.

#### 6. APPEALS

The Planning Committee noted the report.

#### 7. 130351/F - LAND SOUTH OF THE B4349 AND WEST OF THE C1221, KINGSTONE, HEREFORDSHIRE, HR2 9HP

The Principal Planning Officer gave a presentation on the application and updates / additional representations received following the publication of the agenda were provided in the update sheet.

Members had asked for clarification on a number of points at the recent Planning Committee Site Inspection. The Principal Planning Officer advised that:

- The distance from the development to the community centre and shop was 600m, the distance to the Doctors' Surgery and school was less than 150 metres.
- The land transfer to the housing association had been put on hold pending the outcome of the proposed application and an additional appeal for 35 dwellings at Kingstone.
- The proposed cladding, Cedar and UK grown Douglas Fir, would have a life span of approximately 60 years.
- The Passivhaus standard was the most rigorous in Europe and resulted in heating costs of £70 per year.
- There were currently 470 households in Kingstone and the population, based upon average occupancy of 2.3 persons, was estimated at 1081 people, making it the fifth largest village in the County.

In accordance with the criteria for public speaking, Mr Wright, representing Kingstone and Thrupton Parish Council and Mr Barton, a neighbouring resident, spoke in objection to the application and Mr Hines and Mr Murrin-Earp, the applicant and a supporter, spoke in support.

In accordance with paragraph 4.8.2.2 of the Council's Constitution, Councillor JF Knipe, the local ward member, commented on a number of issues, including:

- The local residents were unhappy with the application with 95% of local people in objection to it.
- A freedom of information request had identified that £3000 had been paid to the Planning Department in 2011 for pre-application advice.
- Reference had also been made in the report to CIL contributions to the Council.
- Surprised that officers had not declared an interest in the application.
- Further concerned that it appeared that the case officer was reviewing his own work.

- The local MP had also stated that the application had been handled incorrectly.
- A comment was made regarding an email exchange between the case officer and the Housing Development Manager, with particular mention made of the informal tone of the correspondence.

The Chairman and Vice-Chairman interjected on three occasions to advise the local ward member in respect of comments made about the case officer. The local ward member was further advised to limit his comments to matters regarding the application. Following the advice from the Chairman and Vice-Chairman the local ward member made the following comments:

- 35 new homes in the area had been refused by the Planning Committee recently.
- The reasons given for refusing the previous application in Kingstone included; the application was outside of the settlement boundary; the application did not satisfy the exceptional criteria as set out in the NPPF; the application was contrary to 3,5 and 6 of policy H10 of the UDP; the proposed development was a mixed development; the application was deficient in terms of paragraph 14 of the NPPF; the impact would outweigh the benefits of the application; the application was contrary to UDP policies DR1, H4 and H13 in terms of character and size, and the application was contrary to UDP policy CF2.
- The same reasons for refusal should be given to refuse the proposed application.
- The Parish Council's concerns in respect of the application were reiterated.
- Mr Madison had recently been contacted by Mr Hines and Mr Pryce regarding the sports field. Mr Madison's view had not changed and he still had concerns regarding the proposed path.
- The applicants had failed to understand the importance of sport to the people of Kingstone.
- There were safety issues with people cycling in close proximity to football pitches.
- The case officer had omitted some statistics in his presentation regarding the need for affordable houses in the area. The figure for Kingstone was 15 units required.
- The spend was estimated at being £11m prior to a house being sold on the development.
- Some concern was expressed regarding the change in business name since the correspondence with the Council had first begun in 2008.

The debate was opened with a Member voicing his concerns in respect of the scale and form of the proposed application and the detrimental impact it would have on the village of Kingstone. Concerns were also expressed in respect of drainage and impact on the road network.

Another Member addressed the Committee with an opposing view. She considered that the application was an exemplar of sustainable development and was welcomed at a time when the world was facing serious climate change.

Some Members of the Committee continued to voice their concerns in respect of the application. Particular comment was made regarding the impact the application would have on the existing drainage network; the impact the application would have on the road network in the South-Wye area; concern regarding the design, scale and mass of the development; issues regarding a lack of jobs in the area and the large number of proposed dwellings in relation to the affordable units required in Kingstone. It was also

considered that 150 additional houses in a small village was too significant an increase and that the development should be taken stage by stage in consultation with the local residents.

One Member of the Committee made a significant number of points in support of the application, including:

- The application site would be developed at some stage in the future.
- The application was visionary.
- In future energy costs would continue to rise.
- Visited an existing Passivhaus in the County, which was a retrofit design but had still benefitted from a 70% reduction in fuel bills.
- Shared space had been proved to work in Cheshire where a busy junction had been converted to a shared space with no incidents.
- If there were concerns regarding the loss of any sports facilities then Sport England would object and the application would not be able to proceed.
- The professional advice was that the drainage proposal was acceptable.
- The Traffic Manager was happy with the access and egress to the site.
- The houses need to be aligned in a certain way to ensure sufficient light to ensure the Passivhaus standard was maintained.
- The density of the proposed dwelling was lower than the rest of the village.
- The application would be good for the County with Herefordshire having the first Passivhaus development in the Country.

In response to a question, the Principal Planning Officer advised that the development would take place in three phases; each phase would then be split into sub-phases. This would result in approximately 15 – 20 dwellings being constructed each year. Condition 4 of the recommendation addressed the proposed phasing and could be amended if the Committee wished for further restrictions to be put in place. In response to a further question he advised that all of the proposed dwellings would be constructed in a new production facility at Rotherwas.

The Committee continued to debate the application, some members spoke in support and reiterated the comments made previously, others spoke in objection and shared the concerns previously raised.

Councillor Knipe was given the opportunity to close the debate. He reiterated his opening remarks and made additional comments, including:

- Members had mentioned that the application was an improvement on a standard housing development, this was not agreed with as a company such as Barrett Homes had 50 years' experience in house building, the applicant in this case had none.
- The proposed development was too large.
- The local residents were in objection to the application.

**RESOLVED:**

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

**1. The completion of a planning obligation under Section 106 of the Town and Country Planning Act 1990 in accordance with the Heads of Terms appended to this report.**

**2. The conditions set out in this report and any varied or additional conditions considered necessary by officers.**

- 1. A01 Time limit for commencement (full permission)**
- 2. B01 Development in accordance with the approved plans**
- 3. B07 Section 106 Agreement**
- 4. No development shall commence until a plan has been submitted to and approved in writing by the local planning authority identifying the construction phasing of the development. The development shall be constructed in accordance with the agreed phasing plan unless otherwise agreed in writing with the local planning authority.**

**Reason: To ensure the acceptable phasing of the construction and to comply with Policy DR1 of the Herefordshire Unitary Development Plan.**

- 5. C01 Samples of external materials**
- 6. E03 Site observation - archaeology**
- 7. F08 No conversion of garage to habitable accommodation**
- 8. G02 Retention of trees and hedgerows**
- 9. G11 Landscaping scheme - implementation**
- 10. G14 Landscape management plan**
- 11. The business floorspace of each live/work unit shall be finished and ready for occupation before the residential floorspace for that unit is occupied and the residential use shall not precede commencement of the business use.**

**Reason: To ensure the business floorspace is constructed and brought into use concurrently with the residential to achieve the live/work format and comply with Sections 1 and 3 of the NPPF.**

- 12. The business floorspace of each live/work unit shall not be used for any purpose other than for purposes within Class B1 in the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.**

**Reason: To safeguard the amenities of the locality and to comply with policy DR2, E8 and E9 of the Herefordshire Unitary Development Plan.**

- 13. The residential floorspace of each live/work unit shall not be occupied other than by a person solely or mainly employed, or last employed in the business occupying the business floorspace of that unit, a widow or widower of such a person, or any resident dependants.**

**Reason: To ensure the linkages between the residential and business floorspace is retained and to protect the amenity of nearby properties in accordance with UDP policy DR2.**

- 14. F14 Removal of permitted development rights (fences and frontage hardstanding)**
- 15. H03 Visibility splays**
- 16. H08 Access closure**
- 17. H11 Parking - estate development (more than one house)**
- 18. H18 On site roads - submission of details**
- 19. No development shall take place until a construction method statement has been submitted to, and approved in writing by, the local planning authority. The approved statement shall include details of deliveries and timing,  
a) construction compound(s)  
b) hours of work,  
c) traffic and parking management scheme and  
d) measures to keep the highway free of mud.  
The approved statement shall thereafter be implemented for the duration of the construction unless otherwise agreed with the local planning authority in writing.**

**Reason: In the interest of the amenity of the area and highway safety and to comply with policies DR3 & DR4 of the Herefordshire Unitary development Plan.**

- 20. H30 Travel plans**
- 21. No construction works shall commence on any phase of the development that is to be connected to the public sewage system until a hydraulic modelling assessment has been completed by the developer in consultation with Dwr Cymru Welsh water in order to establish a point of discharge of the new foul drainage system serving the proposed development to a point of adequacy on the existing public sewerage system, together with any necessary associated foul sewerage infrastructure works.**

**There shall be no beneficial use of any buildings on site that are to be connected to the public sewerage system until any necessary foul sewerage infrastructure works required by the hydraulic modelling assessment have been completed and approved by Dwr Cymru Welsh Water and the local planning authority has been informed in writing of its completion.**

**Reason: To ensure the proposed development does not adversely affect the integrity of the existing public sewage system and to prevent pollution of the environment and to comply with policy DR4 of the Herefordshire Unitary Development Plan.**

- 22. I18 Scheme of foul and surface water drainage disposal**
- 23. I33 External lighting**
- 24. I45 Restriction of open storage**

- 25. I51 Details of slab levels
- 26. K2 Nature Conservation - site protection
- 27. K4 Nature Conservation - Implementation
- 28. F06 Restriction on Use

**Reason for Approval**

- 1. This is an innovative development proposal that is a radical and positive departure from conventional modern housing developments. The proposal is a mixed use development that embraces all aspects of the NPPF and Policies:

S1	-	Sustainable Development
S2	-	Development Requirements
S3	-	Housing
S4	-	Employment
S6	-	Transport
S7	-	Natural and Historic Heritage
S8	-	Recreation, Sport and Tourism
S10	-	Waste
S11	-	Community Facilities and Services
DR1	-	Design
DR2	-	Land Use and Activity
DR3	-	Movement
DR4	-	Environment
DR5	-	Planning Obligations
DR7	-	Flood Risk
DR13	-	Noise
DR14	-	Lighting
H4	-	Main Villages: Settlement Boundaries
H7	-	Housing in the Countryside Outside Settlements
H9	-	Affordable Housing
H13	-	Sustainable Residential Design
H16	-	Car parking
H19	-	Open Space Requirements
E8	-	Design Standards for Employment Sites
E10	-	Employment Proposals in or Adjacent to Main Villages
TCR14	-	Village Commercial Facilities
T1	-	Public Transport Facilities
T6	-	Walking
T7	-	Cycling
T8	-	Road Hierarchy
T11	-	Parking Provision
LA2	-	Landscape Character
LA3	-	Setting of Settlements
LA5	-	Protection of Trees, Woodlands and Hedgerows
LA6	-	Landscaping Schemes
NC1	-	Biodiversity and Development
NC3	-	Sites of National Importance
NC4	-	Sites of Local Importance
NC6	-	Biodiversity Action Plan Priority Habitats and Species
NC8	-	Habitat Creation, Restoration and Enhancement

<b>NC9</b>	-	<b>Management of Features for the Landscape Important for Fauna and Flora</b>
<b>ARCH 1</b>	-	<b>Archaeological Assessment and Field Evaluations</b>
<b>ARCH6</b>	-	<b>Recording of archaeological remains</b>
<b>RST1</b>	-	<b>Criteria for Recreation, Sport and Tourism</b>
<b>Development</b>		
<b>RST3</b>	-	<b>Standards for Outdoor Playing and Public Open Space</b>
<b>W11</b>	-	<b>Development and Waste Implications</b>
<b>CF2</b>	-	<b>Foul Drainage</b>
<b>CF5</b>	-	<b>New Community Facilities</b>

and is capable of delivery without compromising on the quality, design and functionality of the development. All technical matters including drainage, landscape, biodiversity, transport and employment have been addressed or can be addressed through conditions and the Section 106 Agreement. The development will also maintain and enhance the vitality and harmony of the community without harming its physical or social characteristics. Finally, the environmental sustainability of the buildings in particular is exemplar and would set the benchmark for other developments both within the county and elsewhere to follow.

Whilst the considerable local objection is acknowledged, the application is considered compliant with the NPPF and the relevant UDP policies that are consistent with the NPPF and having regard to the Councils deficit in deliverable housing land and applying the NPPF test of a presumption in favour of sustainable development, the development is considered acceptable.

#### **INFORMATIVES:**

1. **The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations. Negotiations in respect of matters of concern with the application (as originally submitted) have resulted in amendments to the proposal. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.**
  2. **N02 Section 106 Obligation**
  3. **HN08 Section 38 Agreement & Drainage details**
  4. **HN07 Section 278 Agreement**
8. **130940/CD AND 130983/CD - LEOMINSTER INFANT AND JUNIOR SCHOOLS, HEREFORD ROAD, LEOMINSTER**

The Principal Planning Officer gave a presentation on the application and updates / additional representations received following the publication of the agenda were provided in the update sheet. Particular reference was made to the comments of Welsh Water which required two additional conditions to be added to the recommendation.

In accordance with the criteria for public speaking, Mr Parker and Mr Wright spoke in support of the application.



In accordance with paragraph 4.8.2.2 of the Council's Constitution, Councillor PJ McCaull, the local ward member, commented on a number of issues, including:

- The proposal was a vast improvement on the previously withdrawn application.
- The application was needed as the current school was deteriorating.
- The proposed design was the best for the budget available.
- The school was now contained within the site and did not spread onto the neighbouring field.

The Committee discussed the application and were fully in support of it. Some comments were made regarding the possibility of adding solar PV panels at a later stage; the importance of a sustainable travel plan and the possibility of a 20mph limit around the school.

Councillor McCaull was given the opportunity to close the debate. He reiterated his opening remarks and requested that the application be approved.

## **RESOLVED**

**For planning application 130940/CD:**

**That subject to there being no objection from Sport England, planning permission be granted subject to the following conditions:**

1. **A01 Time limit for commencement (full permission)**
2. **B01 Development in accordance with the approved plans**
3. **C01 Samples of external materials**
4. **G03 Retention of existing trees/hedgerows**
5. **G04 Protection of trees/hedgerows that are to be retained**
6. **G10 Landscaping scheme**
7. **G11 Landscaping scheme - implementation**
8. **Prior to the commencement of the development hereby approved a Construction & Delivery Traffic Management Plan shall be submitted to and approved in writing by the local planning authority. The plan should cover the following points:**
  - a. **Details of a routing agreement with construction and delivery vehicle operatives to ensure that all traffic enters and leaves the site via Hereford Road and Southern Avenue.**
  - b. **The method to segregate construction and delivery vehicles from school traffic at the point of access onto Hereford Road.**
  - c. **The arrival and departure of construction and delivery vehicles will not be permitted between 0815 to 0915 and 1445 to 1615 Monday to Friday.**

**Reason: In the interests of highway safety so that potential conflicts between construction and school traffic are avoided and to comply with Policy DR3 of the Herefordshire Unitary Development Plan.**

9. H21 Wheel washing
10. H27 Parking for site operatives
11. H29 Secure covered cycle parking provision
12. H30 Travel plans
13. I16 Restriction of hours during construction
14. I41 Scheme of refuse storage (commercial)
15. I43 No burning of material/substances
16. I55 Site Waste Management
17. Prior to the commencement of the development hereby approved a scheme for the comprehensive and integrated drainage of the site, showing how foul water, surface water and land drainage will be dealt with has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

**Reason: To ensure that effective drainage facilities are provided and to comply with Policy DR4 of the Herefordshire Unitary Development Plan.**

- 18 L02 No surface water to connect to public system
- 19 L03 No drainage run-off to public system

**Reasons for Approval:**

1. It is considered that the proposal would result in the significant enhancement of the existing facilities, would be of an appropriate scale in relation to the needs of the local community, is well related to the settlement that it serves and would not adversely impact upon the residential amenity of neighbouring residents in accordance with the principles set out in Policy CF5 of the Herefordshire Unitary Development Plan. This revised proposal addresses in full the previous concerns raised in relation to the visual impact and implications for biodiversity. The position of the building within the school grounds means that it will lie behind existing development and does not project beyond the clear edge of development that is currently defined by the southerly hedge. This reflects the landscape character of the area, whilst the retention of the hedge minimises the loss of a biodiversity asset. The scheme demonstrates the use of sustainable design methods and consequently the proposal complies with Policies S1, S2, S11, DR1, LA2, LA3, LA5, LA6, NC1, NC6, NC7, NC8 and NC9 of the Herefordshire Unitary Development Plan.
2. Matters relating to drainage arrangements and potential flooding of neighbouring property arising from surface water run-off have been carefully considered. The applicant's drainage consultant has been able to demonstrate that flow rates from the proposal would be lower than as presently exists. The methods proposed to be employed to control surface

water discharges in the event of high levels of rainfall are considered to be appropriate, subject to the submission of a detailed scheme. The scheme therefore accords with Policies DR4 and DR7 of the Herefordshire Unitary Development Plan.

3. The provision of a pedestrian and cycle link from the existing point of access into the Junior School on George Street to the new site will provide parents with a legitimate alternative to car usage. The parking area accessed via Hereford Road will also be available for drop off / pick up and it is considered that these combined elements will encourage sustainable travel methods. The proposal accords with Policies S1, DR3, E15, CF5 and T14 of the Herefordshire Unitary Development Plan.
4. In other respects the proposal is considered to be compatible with the surrounding residential environment and will not give rise to any significant effects upon the residential amenity of neighbouring residents in accordance with Policies CF5 and DR2 of the Herefordshire Unitary Development Plan.
5. It is considered that the policies of the Herefordshire Unitary Development Plan are consistent and therefore in accordance with the guidance provided by the National Planning Policy Framework.

**Informatives:**

1. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations, including any representations that have been received. It has subsequently determined to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.
2. HN25 Travel Plans
3. HN27 Annual Travel Plan Reviews
4. N20 Site Waste Management
5. If development works are perceived to be likely to endanger members of the public then a temporary closure order must be applied for from the Public Rights of Way Manager, Herefordshire Council, Unit 3, Thorn Business Park, Rotherwas Industrial Estate, Hereford, HR2 6JT (tel 01432 845900), at least six weeks in advance of works commencing.
6. The applicants should ensure that their contractors are aware of the line of the public right of way and that the right of way must remain at its historic width and suffer no encroachment or obstruction during the works or at any time after completion. No vehicles, materials debris, etc shall be stored on the line of the footpath at any time.

For planning application 130983/CD:

That subject to there being no objection raised by Sport England, planning permission be granted subject to the following conditions:

1. **A01 Time limit for commencement (full permission)**
2. **The recommendations set out in the ecologist's reports dated August 2012 should be followed in relation to the identified protected species [bats, great crested newts etc]. Prior to commencement of the development, a full working method statement and habitat enhancement scheme should be submitted to and be approved in writing by the local planning authority, and the work shall be implemented as approved.**

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

#### **Reasons for approval**

1. **The phased re-development of the area currently occupied by the existing school buildings will provide enhanced open space provision over and above that which currently exists. Although there will be a short term reduction whilst the new school building is constructed, this is necessary in order to enable the schools to continue operation and would be appropriately mitigated by the improvements that will be achieved. Therefore the scheme for the provision of sports pitches is compliant with RST4.**

#### **Informatives:**

1. **The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations, including any representations that have been received. It has subsequently determined to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.**
2. **N11C – General**
3. **An appropriately qualified and experienced ecological clerk of works should be appointed (or consultant engaged in that capacity) to oversee the ecological mitigation work.**

#### **9. S123592/O - LAND OFF BREINTON LEE, KINGS ACRE ROAD, HEREFORD**

The Principal Planning Officer gave a presentation on the application and updates / additional representations received following the publication of the agenda were provided in the update sheet.

In accordance with the criteria for public speaking, Mr Geeson, representing Breinton Parish Council and Col. Farnes, a neighbouring resident, spoke in objection to the application and Mrs Tagg, the applicant, spoke in support.

In accordance with paragraph 4.8.2.2 of the Council's Constitution, Councillor RI Matthews, the local ward member, commented on a number of issues, including:

- Three previous applications had been refused in the area as they were contrary to UDP Policy H7. This application was also contrary to H7.
- The application must be considered on its merits.
- There had been unrecorded accidents on Kings Acre Road so the figures provided were not accurate.
- The Transport Manager had admitted that there was an issue with visibility hence why he had proposed closing part of the well-used layby.
- The application was contrary to DR3, DR4 and DR7 of the UDP.
- There was a serious issue with flooding in the area.
- There were a number of badger sets in the area which would be disturbed through the development.
- There were concerns regarding sewerage.
- An email had been received from the residents of 304 Kings Acre Road voicing their concern in respect of the proposed drainage works and stating that they may need to terminate the drain where it entered their land or take out an injunction to stop additional water being piped onto their land.
- The drainage issues would be moved to the other side of the road and not actually addressed.

Members discussed the application and had concerns regarding the drainage issues raised and also in respect of access and egress to the site. They therefore decided to defer the application pending further discussions with the applicant.

The Principal Planning Officer explained the reasons for the existing drainage problem in the area and advised that the changes to the drainage strategy had resulted from the concerns raised by local residents. He added that the site was capable of being developed as the surface water drainage could be collected and controlled to discharge at greenfield rates and therefore the proposals would represent a betterment.

The legislation relating to badgers was also explained and the Committee were advised that any works affecting the setts would need to be carried out under licence from Natural England.

Councillor Matthews was given the opportunity to close the debate. He reiterated his opening remarks and made additional comments, including:

- The drainage issues needed to be resolved before the application could be determined.

## **RESOLVED**

**That determination of the application be deferred pending further discussions with the applicant in respect of highway and drainage concerns.**

### **10. N123065/F - LAND ADJOINING PEPPER PLOCK, WEOBLEY, HEREFORDSHIRE**

The Senior Planning Officer gave a presentation on the application and updates / additional representations received following the publication of the agenda were provided in the update sheet.

In accordance with the criteria for public speaking, Mr Brenner, representing Weobley Action Group, spoke in objection to the application.

In accordance with paragraph 4.8.2.2 of the Council's Constitution, Councillor MJK Cooper, the local ward member, commented on a number of issues, including:

- The application was a proposed development outside of the settlement boundary in an area where there was already a high number of affordable housing.
- 95% of the local residents were against the application.
- Objections had been received from the Council's Ecology Officer and the Senior Landscape Officer.

The debate was opened with a member voicing his concerns in respect of the application and in particular the loss of the historic meadow, hedgerow and field pattern. Concern was also expressed regarding development outside of the settlement boundary.

Other Members discussed the application and supported the officer's recommendation. They considered that an appeal could be difficult to defend due to the Council's current lack of a five year housing supply as required under the National Planning Policy Framework. It was also noted that although 40 yards of hedgerow was being removed a larger section was being planted.

In response to a question, the Senior Planning Officer advised that the existing footpath would be diverted around the boundary of the proposed dwelling. In response to a further question he advised that there had been a delay due to the need to undertake a newt survey, this had now been completed and conditions had been recommended accordingly.

Some concern was expressed regarding the effectiveness of replanting hedgerows. The Committee also noted that the proposed dwellings were not of a high standard in terms of sustainable features.

Councillor Cooper was given the opportunity to close the debate. He reiterated his opening remarks and asked the Committee to consider the concerns of the local residents.

## **RESOLVED**

**That subject to the completion of a S106 Agreement, in accordance with the attached Draft Heads of Terms, planning permission be granted subject to the following conditions:**

1. **A01 Time limit for commencement (full permission)**
2. **B01 Development in accordance with the approved plans**
3. **C01 Samples of external materials**
4. **L01 Foul/surface water drainage**
5. **L02 No surface water to connect to public system**
6. **L03 No drainage run-off to public system**
7. **H13 Access, turning area and parking**
8. **G09 Details of Boundary treatments**
9. **G12 Hedgerow planting**

10. **Prior to commencement of the development, a full working method statement should be submitted to and be approved in writing by the local planning authority, and the work shall be implemented as approved.**

**Prior to commencement of the development, a habitat enhancement scheme 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 the NPPF and the NERC Act 2006.**

11. **I16 Restriction of hours during construction**

12. **H28 Public rights of way**

#### **Reasons for Approval**

1. **Having regard to the principle of delivering affordable housing on the edge of a designated Main Village, the development is considered to be in accordance with the requirements of the Herefordshire Unitary Development Plan, Supplementary Planning Guidance, the Weobley Parish Plan and the National Planning Policy Framework.**
2. **There is an identified need for the provision of affordable housing in Weobley, and this development, subject to the completion of a Section 106 Agreement will contribute towards meeting the need and secure its availability in perpetuity.**
3. **It is considered that the acknowledged localised adverse impact upon the historic field pattern of the landscape in this particular location is outweighed by the needs for affordable housing and in reaching this decision, it was noted that the site, whilst located within the Weobley Conservation Area, does not have the benefit of any other landscape designation.**
4. **The development is considered acceptable having regard to the residential amenity of neighbouring residents, foul and surface water drainage arrangements, the impact upon the identified biodiversity value of the site and the mitigation proposals that would be secured by condition.**
5. **The access and parking arrangements are such that there would be no adverse impact upon the local road network.**
6. **On balance the development is considered to be in accordance with Policies S1, S7, DR1, DR2, DR3, DR4, H4, H7, H9, H10, HBA6, LA2, LA3, LA5, LA6, NC1, NC6, NC7, NC8 and NC9 of the Herefordshire Unitary Development Plan, the National Planning Policy Framework and other adopted Supplementary Planning Guidance and Documentation.**

#### **INFORMATIVES:**

**1 The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations. Negotiations in respect of matters of concern with the application (as originally submitted) have resulted in amendments to the proposal. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.**

**2 HN04 Private apparatus within highway**

**11. 130779/F - LAND AT ORCHARD HOUSE, CREDENHILL, HEREFORDSHIRE**

The Principal Planning Officer gave a presentation on the application and updates / additional representations received following the publication of the agenda were provided in the update sheet.

In accordance with paragraph 4.8.2.2 of the Council's Constitution, Councillor RI Matthews, the local ward member, commented on a number of issues, including:

- There was no objection to the application.

In response to a question, the Head of Neighbourhood Planning advised that the application had been brought before the Committee as it was contrary to policy H7 of the Unitary Development Plan.

During the debate members considered the merits of an occupancy tie condition being added to the resolution. An amendment to the original motion, to approve the application in accordance with the case officer's recommendation, requesting an occupancy tie condition was supported, and therefore the resolution as set out below was approved.

**RESOLVED**

**That planning permission be granted subject to the following conditions:**

- 1. A01 Time limit for commencement (full permission) - 1 year**
- 2. B02 Development in accordance with approved plans and materials**
- 3. C01 Samples of external materials**
- 4. G10 Landscaping scheme**
- 5. G11 Landscaping scheme – implementation**
- 6. F28 – Occupation ancillary to existing dwelling only**

**Reason for Approval**

- 1. The proposal fails to comply, in principle, with policies H4 and H7 of the Herefordshire Unitary Development Plan, however significant weight has been given to the guidance provided by the National Planning Policy Framework that clearly identifies that where sites are considered to be sustainably located, and where they comply with other relevant policies, there should be a presumption in favour of sustainable development. The**



sites development accords with policies in relation to character of the area, highway safety and relationship with neighbouring properties namely policies DR1, DR2, DR3, DR4, H13, LA5 and LA6 of the Herefordshire Unitary Development Plan. In conclusion, whilst the application would be contrary to Saved Policies of the Herefordshire Unitary Development Plan, the absence of a 5-year supply of housing land and the sustainable location of the site are of sufficient weight to grant planning permission in this case.

**12. 130870/N - LEADON COURT FARM, FROMES HILL, HEREFORDSHIRE, HR8 1QJ**

The Principal Planning Officer gave a presentation on the application and updates / additional representations received following the publication of the agenda were provided in the update sheet.

**RESOLVED**

**That planning permission be granted subject to the following conditions:**

- 1. A01 Time limit for commencement (full permission)**
- 2. B01 Development in accordance with the approved plans**
- 3. The external surface of the above-ground kiosk shall be coloured Midnight Green (BS4800 12B29) or a similar dark colour to be approved in writing in advance by the local planning authority.**

**Reason: To protect the visual amenity of the area and to ensure the development complies with policy DR1 of the Herefordshire Unitary Development Plan.**

- 4. G02 Retention of trees and hedgerows**
- 5. G09 Details of Boundary treatments**
- 6. The waste-water treatment plant hereby approved shall not be brought into use unless or until a scheme for the final discharge of treated effluent has been submitted to and approved in writing by the local planning authority. The scheme shall include details of the method of discharge and the means of disposal.**

**Reason: To ensure satisfactory final drainage arrangements are provided and to prevent pollution, in accordance with policy DR4 of the Herefordshire Unitary Development Plan.**

- 7. G11 Implementation of submitted landscaping scheme**
- 8. H15 Turning and parking: change of use - commercial**
- 9. I32 Details of floodlighting/external lighting**

**Reason for Approval**

- 1. The proposal has been considered with reference to all the key issues outlined in this report, including site choice and the overall low risk of adverse effects. Particular regard has been given to the wine-making farm diversification project and the clear need for adequate management of**

waste water and pollution prevention, along with improvements to car parking arrangements. Drainage aspects are regulated by the Environment Agency through consents and permits issued by that body. There is no reason to suppose that the proposal is not capable of compliance, and the finer operational detail lies outside of the planning system. National and local policies support sustainable development and the rural economy.

The applicant sought pre-application advice in advance of submission. The local planning authority has engaged in positive, pro-active negotiation through this provision. The applicant has heeded the written and verbal advice given. No objections have been received. In light of this the proposal is considered to accord with, or be capable of compliance with, policies S1, S2, S10, DR1, DR2, DR4, DR7, DR14, T8, T11, LA2, LA5, LA6, NC1, W1 and CF2 of the Herefordshire Unitary Development Plan. It is also considered to accord with the National Planning Policy Framework with particular reference to paragraphs 6 to 14, section 3 (Supporting a prosperous rural economy) and section 11 (Conserving and enhancing the natural environment). Paragraphs 120 to 125 stress the need to prevent pollution and meet environmental protection legislation. As a result, the local planning authority has been able to grant planning permission subject to conditions.

#### **INFORMATIVES:**

1. **N11C General**
2. **Final discharge is subject to additional Environment Agency consent. The effluent treatment system hereby approved may not be implemented unless or until such permits and consents as are required have been issued, in addition to submission and approval of final discharge methodology required under condition 6 above.**

#### **13. 131021/F - PEGASUS JUNIORS FOOTBALL, OLD SCHOOL LANE, HEREFORD, HR1 1EX**

The Development Manager gave a presentation on the application and updates / additional representations received following the publication of the agenda were provided in the update sheet.

In accordance with paragraph 4.8.2.2 of the Council's Constitution, Councillor PA Andrews, one of the local ward members, commented on a number of issues, including:

- The club had been at its current site since 2000.
- There had never been any complaints in respect of the club.
- The application was supported.

In response to a question, the Development Manager advised that a condition limiting hours of work had not been recommended and that this was an established recreational use in a mixed commercial and residential area with the nearest dwelling being a significant distance away.

Councillor Andrews was given the opportunity to close the debate. She reiterated her opening remarks and requested that the application be approved.

#### **RESOLVED**

That planning permission be granted subject to the following conditions:

1. **A01 Time limit for commencement (full permission)**
2. **B03 Amended plans - Site Location Plan, Site layout, New Dugouts, indicative hit and miss tanalised wood fencing with metal post, tea room and hospitality area - roof plan, end elevations, floor plan, drawing numbers TL 001 and TL 002 (amended - received 29.4.2013)**

**Reason for Approval**

1. **The proposal comprises the upgrading of existing sporting facilities and there would be no adverse impact upon amenity, highway safety or hazardous installations. The scheme accords with Herefordshire Unitary Development Plan policies S1, S2, S8, DR1, DR2, DR3, RST1 and CF6 and chapters 7 and 8 of the National Planning Policy Framework.**

**INFORMATIVES:**

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

**14. DATE OF NEXT MEETING**

The Planning Committee noted the date of the next meeting.

**APPENDIX 1 - SCHEDULE OF COMMITTEE UPDATES**

The meeting ended at Time Not Specified

**CHAIRMAN**



# PLANNING COMMITTEE

5 June 2013

## 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.

**130351/F - ERECTION OF 150 DWELLINGS (MIX OF 1-5 BED), NEW EMPLOYMENT (COMMERCIAL AND LIVE WORK UNITS), COMMUNITY BUILDING, 1.4 HECTARES OF PUBLIC OPEN SPACE, COMMUNITY ORCHARDS AND ALLOTMENTS, PLAY AREAS, CYCLE & FOOTPATHS, BUS STOP & PEDESTRIAN CROSSING. AT LAND SOUTH OF THE B4349 & WEST OF THE C1221, KINGSTONE, HEREFORDSHIRE, HR2 9HP**

**For: Mr Hines per Upper Twyford, Twyford, Hereford, Herefordshire HR2 8AD**

### OFFICER COMMENTS

Acceptable amended plans for the two commercial buildings along the frontage have now been received.

The proposed highway works have been independently audited and have been confirmed as acceptable

A revised framework travel has been received setting out more clearly the targets to be achieved

### CHANGE TO RECOMMENDATION

The issues identified in the report have now been addressed and therefore delegated authority is only required to complete the Section 106 Agreement and finalise the planning conditions.

**130940/CD - DEVELOPMENT OF A NEW PRIMARY SCHOOL ON THREE LEVELS, LOCATED ON AN EXISTING PLAYING FIELD FOLLOWED BY THE DEMOLITION OF THE EXISTING INFANTS AND JUNIOR SCHOOLS**

**130983/CD – DEMOLITION OF EXISTING SCHOOL BUILDING, SITE CLEARANCE AND THE DEVELOPMENT OF SCHOOL PLAYING FIELDS AT LEOMINSTER INFANT AND JUNIOR SCHOOLS, HEREFORD ROAD, LEOMINSTER**

**For: Mr Williams per Mr Philip Parker, Explorer 2, Fleming Way, Crawley, West Sussex RH10 9GT**

#### **ADDITIONAL REPRESENTATIONS**

Welsh Water raises no objection subject to conditions restricting foul and surface water drainage arrangements to the public sewerage system.

#### **CHANGE TO RECOMMENDATION**

Attach standard conditions L02 and L03 in addition to recommended condition 17

**S123592/O - PROPOSED OUTLINE PERMISSION FOR A RESIDENTIAL DEVELOPMENT OF 16 NO. DWELLINGS WITH ASSOCIATED INFRASTRUCTURE INCLUDING ALLTERATIONS ON A438 + DRAINAGE AND LANDSCAPING WITH ALL MATTERS RESERVED EXCEPT FOR ACCESS. AT LAND OFF BREINTON LEE, KINGS ACRE ROAD, HEREFORD,**

**For: Mr Wakeley per Mrs Sally Tagg, Normandy House, 305-309 High Street, Cheltenham, Gloucestershire, GL50 3SH**

#### **ADDITIONAL REPRESENTATIONS**

Additional representations have been received from Mr and Mrs Underhill (1 Breinton Lee) and Mr Calvert at 355 Kings Acre Road. These raise the following issues:

Technical issues regarding this application which we believe have not been adequately addressed by the Planning Officer:

1. There are no calculations as to whether or not the culverts (see attached complex plan), assuming they are cleared and repaired (survey shows “clay pipe has multiple displaced joints throughout”), is adequate to dispose of even the existing water flows (excluding that which currently comes into Breinton Lee/Conifer Walk). This question (amongst others) was raised by the Council’s Land Drainage Engineer on 15 April 2013, but has not been answered.

Our engineering son has calculated that a clear 225 mm pipe can handle some 37 litres per second. This is based on a head/height of 30 cm, but which may well be generous and, if less, will reduce flow capacity. Also, it does not take account of two almost right angle corners in the piping, nor total length of some 100 m; again, both factors will reduce flow capacity.

If it is assumed the ditches drain a very modest 10 Ha (25 acres) of fields to the south, 25 mm (one inch) of rain will generate 2.5 million litres (25 litres per square metre). If the ground is already saturated, a realistic discharge of this quantity over 4 hours and 6 hours will involve 173 and 115 litres per second respectively. **This does not include** the 10 litres per second which will be **added** by drainage of the development site itself, nor water flowing off the Kings Acre/Breinton Lee Roads.

Thus, even if cleared, the culvert would seem to be totally inadequate for the existing discharge, never mind any increase; if so, flooding of houses along the Kings Acre Road would continue and indeed be exacerbated if building went ahead. It is surely essential such calculations are undertaken and, if it is shown the culverts need enlarging, this is made a condition at the developer's expense.

2. The drainage Consultants' first report stated "a gravity discharge system, restricted or otherwise, is unlikely to be feasible"; their second report advocates such a system. There is no explanation for this contradiction; additionally, there must be doubt, due to its proposed siting on elevated ground, as to the functionality of Pond A. It is accepted any on site attenuation structures will be very shallow; is such a high maintenance system really workable in the long term? What happens if water inflows into the Ponds faster than the restricted discharge of 5 litres per second?

The Consultants advised 12 May 2013 "The enhanced perimeter ditches can be included within the on-site maintenance regime that will be required for the proposed balancing ponds." How will this be enforced? After all, the adjacent landowners (wife/sister-in-law of applicant) have a track record of delayed (it took some 10 years for the southern ditch to be dug and is not being maintained) and inadequate action to avoid frequent (and continuing) flooding of Breinton Lee and Conifer Walk over the past 13+ years.

Is a Management Company fair and practical for future house owners, some living in affordable housing; particularly bearing in mind their reliance on adjacent landowners/Highway Authority regarding future maintenance of the perimeter ditches and culverts?

3. Removal of half the lay-by will not really help safe egress from Breinton Lee. Adrian Smith, Area Engineer Control (Transportation), on 13 March 2013 considered "it would be beneficial to highway safety if the lay-by was removed to retain an unobstructed visibility splay". Why (para. 6.10) is this seemingly being ignored?

### **Comments from Applicant's agent in response to representations:**

#### **Drainage**

The culvert that runs along the eastern boundary of No. 343 King's Acre Road was constructed to replace the original ditch.

Under the Land Drainage Act 1991, it is the riparian owner's responsibility to ensure that any water draining through their land is allowed to freely pass. This is clearly stated on the Council's own website.

Site investigation work, funded by our Client, found this culvert to be almost totally blocked with silt, indicating that it has received little or no maintenance in recent years. Once cleaned out, again at our Client's expense, the culvert has been found to be in poor condition so as to affect its hydraulic performance.

The Council's website confirms that Amey Herefordshire, together with the Environment Agency and the relevant Internal Drainage Boards should ensure that landowners undertake their responsibilities. As far as we are aware, no such action has been taken in this case.

It should be noted that it cannot be the responsibility of any one developer to solve all the flooding problems in the vicinity of the site, especially when problems are caused by the lack of maintenance on third party land.

In response to issues raised the flood alleviation measures have either already been carried out or are offered as part of the development proposals.

- The cleaning out of the existing surface water drainage system (private culvert and highway drains).
- The re-profiling and extension of the existing drainage ditches.
- The restriction of surface water run-off from the new development to Greenfield equivalent rates with appropriate on site attenuation for the balance of flows up to the 1 in 100 year climate change event.
- The implementation of these measures will provide significant betterment to all local residents in the post development scenario.

In addition to the above, our Client is now prepared to offer the replacement of the deficient 225mm diameter culvert with a new pipe to be laid off-line within Breinton Lee. As this is an outline application, we suggest that the design details can be conditioned with the new pipe offered for adoption.

Also notes:

The client suggests that in terms of Para 6.14 that IE Developments no longer have any such riparian responsibility.

In addition the site map (attached to report) includes the hammerhead which is not included within the site redline

## **Highways**

In relation to the issue of the lay-by, the agreement with the highway authority is that works remove part or all of the lay by would be undertaken in association with the development. We and the highway officer are currently of the view that removal of half of the length of the lay by would increase the unobstructed visibility splay (beneficial in highway safety terms) and at the same time retain a degree of parking for existing users of the lay by.

However the final detail for the works would be agreed with the highway authority post planning at detailed design and at this stage a final decision would be made on the extent of the lay-by to be removed. This decision would be informed by the results of an independent safety audit that would be undertaken at the time.

An addendum report and revised plan in respect of drainage has also been submitted and the revised drainage arrangement, including a new culvert under the adopted highway will be presented to planning committee.

## **OFFICER COMMENTS**

### Queries in respect of drainage

#### *Maintenance and responsibility*



Land owners with a watercourse passing through or adjacent to their land have a responsibility to allow water to freely pass. They are required to maintain the bed and banks of the watercourse, and also the trees and shrubs growing on the banks. They must also clear debris, even if it did not originate from their land. This debris may be natural or man-made, and includes litter and animal carcasses.

Amey Herefordshire together with the Environment Agency and the Internal Drainage Boards in Herefordshire (River Lugg, Lower Wye, and Lower Severn Internal Drainage Boards) ensure landowners undertake this responsibility.(extract from HC website)

### **Use of Management Companies**

The ongoing responsibility for the maintenance of drainage solutions through management companies is not an unusual occurrence on developments where there are drainage or open spaces that require ongoing maintenance and that would not be adopted by the Council. This ensures that these areas are protected in the long term. Future occupiers of these properties would be aware of this upon purchase of the properties and this would form part of the Section 106 Agreement.

### **Change to Heads of Terms:**

Paragraph 1 should have identified Stretton Sugwas and St Francis Xavier Primary Schools as the recipients of contributions.

### **NO CHANGE TO RECOMMENDATION**

**N123065/F - PROPOSED ERECTION OF 8 NO. AFFORDABLE HOUSES WITH ASSOCIATED ACCESS AT LAND ADJOINING PEPPER PLOCK, WEOBLEY, HEREFORDSHIRE**

**For: Markey Builders (Gloucester) Ltd per Quattro Design Architects Ltd, Imperial Chambers, Longsmith Street, Gloucester, Gloucestershire, GL1 2HT**

### **ADDITIONAL REPRESENTATIONS**

A further letter of comment (via email) has been received from Mrs P Rockett. The letter expresses concerns as to why the houses subject to this application need to be built at Weobley, where residents have indicated they do not want the houses as proposed, whereas the neighbouring village of Dilwyn does want affordable houses. Concerns are also raised that the development as proposed will lead to further development to the rear of the site. The letter also raises concerns that the proposed development will lead to 16 more cars travelling through Weobley, which is already congested during school times. Comments are also made that the site is well used by children playing, dog walking and sheep that graze.

### **OFFICER COMMENTS**

Condition 3 is no longer required based upon the recommendation to secure the completion of S106 Agreement before issuing a Decision Notice

### **CHANGE TO RECOMMENDATION**

Omit Condition 3

**130779/F - PROPOSED REPLACEMENT CORRUGATED GARAGE AND IMPLIMENT STORE WITH TWO BEDROOM SINGLE STOREY DWELLING TO CARE FOR ELDERLY PARENTS. AT LAND AT ORCHARD HOUSE, CREDENHILL, HEREFORDSHIRE,**

**For: Mr Prosser per Mr R Pritchard, The Mill, Kenchester, Hereford, Herefordshire HR4 7QJ**

#### **CHANGE TO RECOMMENDATION**

##### **Additional Informative:**

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

**131021/F - PROPOSED TEA BAR, EXTENSION TO CLUB ROOM AND REPLACE BOUNDARY FENCING AND DUG-OUTS. AT PEGASUS JUNIORS FOOTBALL CLUB, OLD SCHOOL LANE, HEREFORD, HEREFORDSHIRE, HR1 1EX**

**For: Mr Wells per Mr Chris Wells, Sports Ground And Club Room, Old School Lane, Hereford, Herefordshire, HR1 1EX**

#### **ADDITIONAL REPRESENTATIONS**

Sport England has raised no objection

The applicants have now provided a detailed materials schedule and as such there is no requirement to apply Condition 3

#### **CHANGE TO RECOMMENDATION**

Omit Condition 3