

MEETING:	PLANNING COMMITTEE
DATE:	23 APRIL 2014
TITLE OF REPORT:	<p>P132734/F - DEMOLITION OF EXISTING BUILDINGS, EXCLUDING THE GRADE II LISTED TANK HOUSE, A SMALL LODGE AND ASSOCIATED SUBSTATION, AND THE ERECTION OF 25 NEW DWELLINGS COMPRISING 12 PURPOSE DESIGNED UNITS FOR OLDER RESIDENTS, 4 OPEN MARKET UNITS AND 9 AFFORDABLE UNITS, PLUS A RETAIL UNIT AND 46 BED NURSING HOME AT LAND AT FORMER BOTTLING PLANT, WALWYN ROAD, COLWALL, MALVERN, WR13 6RN</p> <p>For: Blue Cedar Homes, 3 Richmond Hill, Clifton, Bristol, BS8 1AT</p>
WEBSITE LINK:	https://www.herefordshire.gov.uk/planningapplicationsearch/details/?id=132734

Date Received: 7 October 2013

Ward: Hope End

Grid Ref: 375726,242685

Expiry Date: 10 January 2014

Local Members: Councillors CHN Attwood and AW Johnson

1. Site Description and Proposal

- 1.1 The application site lies on the eastern side of Walwyn Road (B4218) within the village of Colwall. The site has an area of some 1.45 hectares. The site is an important site in the centre of the village. The site is largely rectangular in shape. It formerly accommodated the Malvern Water enterprise. Prior to the closure of the works in late 2010 the bottling works on this site were the longest remaining continuous bottling facility around the Malvern Hills. It was built by Schweppes in 1892 next to the Great Western railway line so that bottles were easily transported to and from the site. Upon the site are a series of buildings at its south-western end with more open landscaped grounds reminiscent of a parkland in the north-eastern half of the site. At present the site has three vehicular means of access. There is a quality native hedgerow along the frontage. Walwyn Road is lined by lime trees on its eastern side hereabouts.
- 1.2 There is a Tree Preservation Order upon the site that protects five individual trees and one group of trees. In addition, there are three buildings on-site that Officers consider represent heritage assets. One is a Grade 2 listed (ie nationally significant) Tank House whilst the other two are considered to be locally important buildings. These are the original bottling plant building and a small lodge. The site lies within the Malvern Hills Area of Outstanding Natural Beauty.

- 1.3 The proposal under consideration is a fully detailed planning application. Essentially, all of the existing on-site buildings other than the lodge and the Grade 2 listed Tank House would be demolished. Towards the northern end of the site it is proposed to erect twelve detached or linked detached sheltered housing units (Units 1-12). These would be served off the northerly most existing vehicular access and a new access road created off Walwyn Road in a gap between the existing street trees. In many respects these proposed units would be arranged in an inverted 'U' shape around the most important trees upon the site. All these units would have two dedicated car parking spaces each.
- 1.4 Further south, the Tank House would be repaired. To the rear of the Tank House which faces the Malvern Hills (east) a new two storey building would be built accommodating a shop at ground floor level and two affordable (social rent) one bed units (Units 13 & 14) above. The shop would be provided with four dedicated car parking spaces, whilst the two flats would have one parking space each.
- 1.5 To the north-east of the proposed shop, a pair of two-storey three-bedroomed semi-detached affordable (intermediate) houses (Units 15 & 16) is proposed. Each of these houses would have two dedicated car parking spaces each.
- 1.6 To the south of the Tank House framing the Tank House from views from the Malvern Hills would be two two-storey terraced rows of houses. The north-eastern row (Units 17-20) inclusive would be four three bedroomed open market houses. Each unit would have two dedicated parking spaces.
- 1.7 The south-western row (Units 21-25) would accommodate one three bedroomed affordable (social rent) (unit 21), two two-bedroomed affordable units (units 22 and 25) (intermediate) and two one bedroomed affordable units (units 23 and 24) (social rent). The two bedroomed units would each have two dedicated car parking spaces whilst the one bedroomed units would have one dedicated car parking space.
- 1.8 At the southern extreme of the site a forty-six bed three storey nursing home is proposed. This would have eighteen dedicated parking spaces, an ambulance space and a minibus space.
- 1.9 The open market, houses, shop, affordable houses and nursing home would be served off a vehicular access to the south of the site between the Tank House and the proposed nursing home.
- 1.10 Off-site the existing build-out at the existing southern entrance to the site would be removed and the stone kerbs re-instated on the original kerb line.
- 1.11 For clarity nine affordable units are proposed, four of which would be intermediate tenure (units 15, 16, 22 and 25) and five social rent (units 13, 14, 21, 23 and 24).
- 1.12 A draft legal agreement has been negotiated that would secure the following summarised index linked financial contributions (in addition to the affordable housing):-
 - Education – Ledbury Early Years (£976), Colwall Primary School and St Joseph Primary School (£7,596), John Masefield Secondary School (£7,796), Post 16 (£348), Youth provision (£2,332) and Special Educational Needs (£552);
 - Library - £2,544;
 - Open Space - £6,560 towards play provision and improvements at the play facility adjacent to the Humphrey Walwyn Library in Walwyn Road or other identified priorities within Colwall;

- Recycling - £1,920;
- Sports Contribution - £2,688 towards off-site sport provision and improvements at Colwall playing fields or on other priorities in consultation with the Parish Council; and
- The requisite 2% monitoring charge.

A copy of the draft legal agreement is attached as Annex 1 to this report.

2. Policies

Central Government advice

2.1 National Planning Policy Framework – the key paragraphs to consideration of this application are considered to be paragraphs 47, 49, 126 and 135.

2.2 Herefordshire Unitary Development Plan 2007 (HUDP)

S1	-	Sustainable Development
S2	-	Development Requirements
DR1	-	Design
DR2	-	Land use and Activity
DR3	-	Movement
DR5	-	Planning Obligations
DR10	-	Contaminated Land
DR14	-	Lighting
S3	-	Housing
H4	-	Main Villages - Settlement Boundaries
H9	-	Affordable Housing
H13	-	Sustainable Design
H14	-	Re-using Previously Developed Land and Buildings
H15	-	Density
H18	-	Open Space Requirements
S4	-	Employment
E5	-	Safeguarding Employment Land and Buildings
S5	-	Town Centre and Retail
TCR14	-	Village Commercial Facilities
S6	-	Transport
T6	-	Walking
T7	-	Cycling
T8	-	Road Hierarchy
T11	-	Parking Provision
S7	-	Natural and Historic Heritage
LA1	-	Area of Outstanding Natural Beauty
LA5	-	Protection of Trees, Woodlands and Hedgerows
LA6	-	Landscaping Schemes
HBA4	-	Setting of Listed Building
HBA8	-	Locally Important Building
CF7	-	Residential Nursing Homes and Care Homes
NC1	-	Biodiversity and Development
NC7	-	Compensation for Loss of Biodiversity
NC8	-	Habitat Creation, Restoration and Enhancement
NC9	-	Management of Features of the Landscape Important for Fauna and Flora

2.3 Herefordshire Local Plan Draft Core Strategy 2011 – 2031

SS1	-	Presumption in Favour of Sustainable Development
SS2	-	Delivering New Homes
SS3	-	Releasing Land for Residential Development
SD1	-	Sustainable Design and Energy Efficiency
ID1	-	Infrastructure Delivery
RA2	-	Herefordshire's Villages
H1	-	Affordable Housing
H3	-	Ensuring an Appropriate Range and Mix of Housing
E2	-	Redevelopment of Existing Employment Land and Buildings
SS4	-	Movement and Transportation
LD1	-	Landscape and Townscape
LD2	-	Bio-diversity and Geodiversity
LD3	-	Green Infrastructure
LD4	-	Historic Environment and Heritage Assets

2.4 The Unitary Development Plan policies together with any relevant supplementary planning documentation can be viewed on the Council's website by using the following link:-

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

3. **Planning History**

3.1 For Members information the lawful use of the site is as a general industrial (B2) use.

130272/F - Demolition of existing buildings, excluding the Grade II Listed Tank House, a small lodge and associated substation and the erection of 27 no. new dwellings comprising 12 no. purpose designated units for older residents, 5 no. open market units and 10 no. affordable units plus a retail unit and 45 bed nursing home – Withdrawn

4. **Consultation Summary**

Statutory Consultations

4.1 English Heritage objects to the development. They state:-

“Summary

English Heritage objects to this application, and advises that the earlier buildings of the former bottling plant should be retained and adapted for appropriate uses.

English Heritage Advice

As you know, this former bottling plant was built c1900 in the Arts and Crafts manner to the design of Truefitt and Truefitt, architects of national distinction. The quality of detail and construction is most unusual for industrial buildings, a reflection of the quality of the product and the statement that the buildings were intended to make about it.

The former Tank House, which is almost unaltered externally, is grade II listed; the other contemporary buildings are largely intact, but heavily obscured by a sequence of extensions through the 20th century. These buildings are unlisted, but English Heritage has no doubts that they are of major local significance even in their obscured state both architecturally and as the built evidence of a significant chapter in the history of the Malvern Hills. The scale and location of the proposals would affect the character of the Colwall Conservation Area, although they are not within its boundary. It is noteworthy that the buildings were apparently designed as a picturesque composition to be viewed from the hills, rather than only from Walwyn Road.

We note that the present application proposes to demolish almost all the existing buildings on the site, retaining only the listed former Tank House and a lodge. Inspection of the existing buildings reveals that the c1900 ranges are substantially complete, with their arcaded brick walls and queen post truss tiled roofs. It appears to English Heritage that these buildings can and should be retained as the basis of new development and uses, with the later flat roofed extensions stripped away and the elevations made good. The resulting buildings would be of domestic proportions and plan depth, and readily adaptable with care and imagination.

Recommendation

English Heritage objects strongly to this application, and firmly recommends that it should be refused. I would be very willing to join in further discussions with yourselves and the applicants' architects on alternative proposals that retain and adapt the early buildings.

We would welcome the opportunity of advising further. Please consult us again if any additional information or amendments are submitted. If, notwithstanding our advice, you propose to approve the scheme in its present form, please advise us of the date of the committee and send us a copy of your report at the earliest opportunity."

Internal Consultees

- 4.2 The Conservation Manager (Historic Buildings) objects to the proposed development on the basis of the loss of the bottling plant building. With regard to that aspect she states:

"In assessing the large H-plan bottling plant building, also a Truefill and Truefitt design, English Heritage noted that "The local interest of the site is considerable, but the compromised state of the structure means that it cannot be recommended for designation at a national level". Though this building has been extended to respond to the changing needs of the industrial process, this was in accordance with the original intention as set out in The Builder in 1892. The original plan form and spaces are still clearly legible and could be revealed by stripping back the more unsympathetic additions. The condition of this building appears sound and its plan and volume would allow for a number of different alternative uses. It is considered to be of local heritage value in its own right in addition to forming a significant part of the industrial context for the Tank House. With this in mind it is generally considered that the Bottling Plant building should be retained within any redevelopment scheme for the larger site.

Whilst the loss of Dilkush and The Nook could be accommodated without reducing the significance of the wider site unduly, the loss of the Bottling Plant building is considered to be unacceptable. This building is considered to be a locally important building though it hides its light under a bushel. It currently has little presence along Walwyn Road due to the closed nature of the site but a redevelopment scheme that opened up the site to the public would enable its architectural value to be appreciated. In addition it provides important context and setting for the Tank House which otherwise could become a rather isolated remnant."

- 4.3 The Strategic Housing Manager has no objection. She is satisfied with the level of affordable housing, the size of the units and the tenure.
- 4.4 The Conservation Manager (Tree Officer) has no objections subject to the imposition of appropriate conditions.
- 4.5 The Conservation Manager (Ecology) has no objections subject to the imposition of appropriate conditions.
- 4.6 The Transportation Manager has no objections subject to the imposition of appropriate conditions.

4.7 There are no objections from the Parks & Countryside Service to the provision of the legal agreement.

5. Representations

5.1 Colwall Parish Council strongly objects to the plans as the proposal failed to make best use of the largest brown field site within the Settlement Boundary of the Parish of Colwall.

Colwall has an allocation of some 129 new homes to build within the Parish between 2011 and 2031 as stated in the emerging Herefordshire Core Strategy, which has been approved by Herefordshire Council.

Consequently it was felt that by demolishing the existing building and erecting 25 new homes (of which 12 will be restricted to the over 55's, 9 will be affordable and 4 open market), one retail unit and a 46 bed nursing home - for which we get no housing allocation allowance for the nursing home was poor use of the site.

Notwithstanding the above comments should the planning officer be minded to approve the plans then the Parish Council request the following:-

1. The site lies in the Area of Outstanding Natural Beauty and consequently, the design, detailing and materials must be of the highest quality.
2. The timing for the overnight gate closures and the arrangements for the emergency access gate to be agreed by discussion with the Parish Council.
3. There needs to be significant planning restrictions on the use of the retail unit to reduce the likelihood of a change of use.
4. B1 use of the Tank House should be permitted to increase the likelihood of the future use of the building.
5. The Parish is consulted on the use of at least 25% of the Planning Gain/Community Infrastructure Levy.
6. The Highway at the entrance of the site should be reinstated to its original width (as this was previously altered to prevent damage to the kerbside by lorries at the Coca Cola Schweppes facility).

5.2 The Victorian Society object on the following grounds:-

“Thank you for consulting the Victorian Society on this application. In terms of what is proposed to be demolished, the application is more or less identical to the one submitted in April of this year, which was withdrawn in September. We therefore renew our **objections** to the proposed scheme, as it would result in the loss of the vast majority of an interesting and attractive historic industrial complex. The clearance of the site would also harm the setting of the one designated heritage asset within the confines of the development.

The former bottling works are a charming and characterful legacy of an industrial use which persisted right up until 2010 when the works finally closed. What survives is a remarkably intact industrial complex characterised by appealing arts and crafts buildings from the turn of the twentieth century. The Victorian and Edwardian pride in the design and construction of their buildings, industrial or otherwise, is widely acknowledged. Even in light of this however, and despite subsequent and incremental alterations, the surviving structures on Walwyn Road represent a high quality and pleasingly-detailed series of buildings. The architectural merit of the buildings is matched by the social significance of the site to the town and their more general historic interest.

In addition, the remaining listed building, the elaborate Tank House, would be divorced of its historic context and its setting substantially harmed, contrary to paragraph 129 of the National Planning Policy Framework. The proposed demolition of the buildings would largely obliterate the multifaceted interest and significance of the site. It would remove near all trace of the

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

bottling plant, which was a fundamental part of the development of Victorian Malvern, and to the historic context of Tank House.

It is clear that the buildings proposed for demolition are not only structurally sound, but are of a scale and proportion which would seem to lend itself to conversion, particularly the former Manager's House. The more utilitarian later extensions could be removed with relative ease, and the architectural interest of the site better revealed.

The feasibility study which is attached to the current application confirmed that the site could be converted into residential units, or for a variety of commercial operations. Although it stated this would be at a significant cost, there were no estimate figures presented to support this claim. It has not been demonstrated that a less damaging scheme would not be financially viable.

In light of the above, it is urged that you refuse consent for this damaging application."

- 5.3 SAVE Britain's Heritage and the Ancient Monuments Society object to the proposed development on essentially the same grounds as English Heritage and the Victorian Society.
- 5.4 The Malvern Civic Society expresses the following concerns:-
- The bottling plant building should be retained;
 - Any development should be designed such that does not have an adverse impact when viewed from the Malvern Hills;
 - The tree screen should be protected.
- 5.5 The Malvern Spa Association object on the following summarised grounds:-
- The loss of the locally important bottling plant building;
 - The adverse impact of a formal residential development to the setting of the Grade 2 listed Tank House;
 - An appropriate future use of the Tank House needs to be secured;
 - Recommend that original features be salvaged from the original buildings and that appropriate recording of the buildings takes place;
 - Concern regarding the design of the shop and its impact on the setting of the Tank House;
 - Care needs to be taken to protect the TPO trees and to secure appropriate new planting in keeping with the Victorian landscape character;
 - Concern as to the visual impact from the Malvern Hills ridges and upper west facing slopes;
 - The LVIA is not in accordance with published guidance.
- 5.6 The Malvern Hills AONB Unit object to the loss of the bottling plant building. They make detailed comment on landscape issues and would wish any future landscaping scheme to include tall native trees (especially along the eastern boundary). They express concern as to the setting of the Tank House also.
- 5.7 Eleven letters of support from residents (primarily local) and the Friends of Malvern Springs and Wells have written in support of the scheme on the following summarised grounds:-
- The use of the site for residential purposes as opposed to a factory is beneficial in terms of highway safety. The highway network in Colwall is too restrictive to support the traffic likely to be generated from a factory;
 - The proposed additional housing will assist Herefordshire in terms of increasing its supply of housing;
 - The sheltered housing will allow older people in Colwall to move into smaller units freeing up their existing larger houses;

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- The site is in an extremely sustainable location well located to the shops, railway station and services;
- The proposed development does not involve the release of greenfield land;
- There is a need for this type of development in Colwall;
- The provision of a reasonably sized shop in the centre of Colwall is to be welcomed;
- The re-use of the site for employment purposes would be regrettable due to the highway network and the condition of the highway network;
- There is a need for a nursing home and sheltered housing in the area;
- The proposal would provide employment opportunities; and
- The proposal would increase the viability of the small surgery in Colwall;

5.8 Occupiers of two dwellinghouses in the vicinity object on the following summarised grounds:-

- The twelve sheltered housing units is a poor use of the site – a higher density not discriminating on grounds of age would better address the shortfall of housing in the Country and village;
- Colwall needs housing for all generations;
- It seems a shame that the bottling plant building would be lost; and
- The finances of the applicant are questioned.

5.9 The Hereford Police liaison officer has no objections and makes the point that the site has good access control and natural surveillance.

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

<http://news.herefordshire.gov.uk/housing/planning/searchplanningapplications.aspx>

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

www.herefordshire.gov.uk/government-citizens-and-rights/complaints-and-compliments/contact-details/?q=contact%20centre&type=suggestedpage

6. Officer's Appraisal

Principle of Residential Development

- 6.1 Whilst the site lies within the settlement boundary of Colwall, the site has a lawful employment use and policy E5 of the Herefordshire Unitary Development Plan 2007 safeguards employment land for employment purposes. At present there is no evidence to suggest that Herefordshire has an oversupply of employment land and this site is considered to be of a good quality.
- 6.2 The site has historically been used for B2 general industrial purposes without complaint and would be suitable for a B1 use (i.e. offices, research or development and light industrial) which by definition is appropriate in any residential area. The existing buildings upon the site appear to be both structurally sound and in good condition whilst being relatively flexible. Furthermore there is scope to the north-east of the existing range of buildings for new buildings.
- 6.3 A very good example and apparently successful employment use in the area can be found at the Wyche Innovation Centre <http://www.wyche-innovation.com/> where a formerly largely redundant building has been re-used for B1 purposes with high rates of occupancy.
- 6.4 Therefore the proposal is considered to be contrary to policy E5 of the Herefordshire Unitary Development Plan 2007. However, the Local Planning Authority does not have a five year housing land supply. This is evident from the Council's most recent annual monitoring report and also the recent appeal decision relating to 'Home Farm', Belmont, Hereford (Ref:-

S122747/O). The Central Government advice on this matter is clear. In paragraph 49 of the National Planning Policy Framework (NPPF) it states that:-

“Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites.”

- 6.5 The application site is in a highly sustainable location being located in the centre of Colwall which is a highly sustainable settlement not only having a range of facilities and services but also having a railway station that is within easy walking distance of the application site.
- 6.6 Given the lack of a five year housing land supply and the sustainability of the location, it is considered that in this instance the principle of a primarily residential development on this safeguarded employment land is acceptable.

Heritage Assets

- 6.7 It is considered that heritage assets, in terms of buildings, are not restricted to those that are listed due to their national significance. In this case it is considered that there are three heritage assets upon the site:-
- a) The Grade 2 listed Tank House;
 - b) The lodge building; and
 - c) The bottling plant building.
- 6.8 The proposal involves the retention of the Tank House and the lodge building. Whilst no “end use” is proposed to either the Tank House or the lodge, that is understandable due to their extremely limited scale. Furthermore the applicant has submitted a schedule of repairs that would be carried out to the Tank House.
- 6.9 The proposal involves the loss of the original ‘H’ shaped bottling plant building. It is considered that this building is a heritage asset of local importance. It is considered to be of value due to:-
- a) its architectural and historic interest;
 - b) its group value with the Tank House – it is considered that its loss would harm the setting of the nationally significant Tank House; and
 - c) its inherent relationship with the landscape.
- 6.10 When English Heritage considered whether to list the Tank House they also considered the merits of listing the lodge and the bottling plant building. They only listed the Tank House. Whilst they did not consider the bottling plant to be of national significance that is not to say that they do not consider it to be of local importance. Indeed in their report dated 17 February 2011 they recognised that “the local interest of the site is considerable, ...”. Furthermore their consultation response in relation to this application is clear that they consider the bottling plant building to be a heritage asset of local importance. Therefore it is considered that whilst the bottling plant building is not of national significance it is of local importance and as such should be considered as a heritage asset. This view is the consistent view of the Council’s Conservation Manager and all of relevant external heritage bodies (i.e. English Heritage, Ancient Monuments Society, Save Britain’s Heritage and Victorian Society).
- 6.11 It is considered that the original ‘H’ shaped bottling plant building could be retained as part of a redevelopment of the scheme of the wider site. This would involve demolishing the modern additions to that building. There is no evidence to suggest that it is not structurally sound and is in a relatively good physical condition. The building is also considered to be very flexible in terms of future potential uses.

- 6.12 The applicants have argued that the building should not be regarded as a heritage asset but have not really advanced a case other than stating that it is not listed and not considered to be of national significance. That of course is correct but is a simplistic argument as it suggests that any building that is not listed of national importance cannot be a heritage asset of local importance.
- 6.13 It has also been argued that the bottling plant building is not readily visible from Walwyn Road. However, it is visible from the Malvern Hills both individually and as part of the group. Glimpses are obtained from Walwyn Road. Furthermore any good inclusive redevelopment scheme would open the site up to public access.
- 6.14 The applicants have argued that retaining the original bottling plant building as part of a wider redevelopment of the site is not viable. However, this largely depends upon the amount that the current applicant purchased the site for. A residual valuation (i.e. the process of valuing land with development potential - the sum of money available for the purchase of land can be calculated from the value of the completed development minus the costs of development (including profit). The complexity lies in the calculation of inflation, finance terms, interest and cash flow against a programme timeframe) suggests that the redevelopment of the site for entirely residential purposes whilst retaining the bottling plant building, and providing the requisite level of affordable housing, Section 106 financial contributions and developer profit of 18% does generate a positive land value.
- 6.15 It is accepted that such a scheme would not be viable when compared to the current scheme before Members. However, when using a site value, either as part of an input into a scheme specific appraisal or as a benchmark one should ensure that it equates to the market value subject to the assumption that the value has regard to Development Plan policies and all other material considerations and disregards that which is contrary to the development plan.
- 6.16 It is considered that the proposal under consideration is clearly contrary to policy HBA8 of the Herefordshire Unitary Development Plan 2007 together with the Central Government advice contained within paragraphs 126 and 135 of the National Planning Policy Framework (NPPF) in that it results in the loss of a locally important building (i.e. the original bottling plant building). It is considered that when the current applicant purchased the site in December 2011 (after English Heritage's deliberations with regard the bottling plant building) they should have been aware that the bottling plant building was a locally important building effectively safeguarded by policy HBA8 of the Herefordshire Unitary Development Plan 2007 and taken that into account when agreeing a purchase price for the land. At no point did the applicant approach Officers of the Local Planning Authority prior to their purchase of the site to seek professional advice as to the bottling plant building or the site as a whole.
- 6.17 It is accepted, however, that the consistent professional view does not appear to be shared by the local community. The Parish Council do not consider the bottling plant building to be of local importance and only one local resident has expressed concern as to the loss of the bottling plant building. Nevertheless, it is considered that the professional view upon this matter is well founded and that the loss of the bottling plant building is in itself sufficient reason to refuse this application. The social history of this complex of industrial buildings (including the bottling plant) and its direct relationship with the landscape (i.e. the springs) should not be underestimated.

Sheltered Housing Element

- 6.18 The proposed twelve sheltered units are arranged in an inverted 'U' shape around the most significant trees upon the site. The units are designed such that they have spacious gaps between them, especially at first floor level. The gardens are considered to be of a reasonable size with a generous central communal area. These units are classified as dwellinghouses and as such would assist in redressing the shortfall in the Council's five year housing land supply.

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

- 6.19 The car parking provision is considered to be satisfactory complying with standards.
- 6.20 The existing ornamental gates to the site would be salvaged and re-used in the new entrance to the sheltered housing units.

Proposed Terraced Row of Houses and Semi-Detached Pair

- 6.21 The proposed two terraced rows of houses have been purposely designed to provide a linear frame to the grade 2 listed Tank House when viewed from the Malvern Hills to the east. These houses are considered to be particularly well designed by virtue of the fact that their span/depth has been limited to seven metres.
- 6.22 The car parking to the front of these properties, which accords with standards, is shown to be effectively softened/broken up by tree planting.
- 6.23 The semi-detached pair of houses proposed to the north of the Tank House is also considered to be acceptable in terms of siting and design.

Proposed Shop Building With Flats Over

- 6.24 The proposed shop would be sited to the rear of the Tank House and front Walwyn Road. This building would primarily be timber boarded with a frame of green oak and have a slate roof. It would have a direct pedestrian access from Walwyn Road.
- 6.25 The provision of an additional modest sized retail shop in Colwall is considered appropriate in the context of policy TCR14 of the Herefordshire Unitary Development Plan 2007. The only issue surrounding the shop is the lack of on-site parking to be provided. Only four, rather than the required seven, dedicated car parking spaces are proposed. However, in this instance this is considered to be satisfactory as the store should primarily act as a village shop where a significant number of customers should be able to walk or cycle to. Furthermore, even if on-street parking were to occur on the eastern side of Walwyn Road it would be likely to have the benefit of slowing traffic approaching from the north in a southerly direction without causing hazard to highway safety.
- 6.26 The flats over the shop are considered to be acceptable as is the parking provision for those shops.

Nursing Home

- 6.27 Policy CF7 of the Herefordshire Unitary Development Plan 2007 allows for the provision of nursing homes in areas where residential development is considered to be acceptable. There is no evidence to suggest that there is not a need or a demand for a nursing home in the Colwall area. Furthermore the demonstration of need or demand is not a policy requirement. The proposed building would be three storeys high. However, immediately to the south are the higher Victorian/Edwardian Villas on the eastern side of Walwyn Road.
- 6.28 The mass of the building would be broken up in the traditional use of differing roof heights, articulation of window and door openings within the elevations, the use of projections and recesses to the elevations and the use of differing materials.

Impact Upon Trees

- 6.29 All of the trees upon the site that are the subject of the Tree Preservation Order would be retained and adequately protected during the construction phase. The application is also accompanied by a method statement prepared by a suitably qualified arboricultural consultant

that satisfactorily deals with the issue of removing existing tarmac surfaces near trees and the removal of an existing hedge without damage to the roadside lime trees.

- 6.30 Whilst there could be future pressure to remove or excessively prune the retained trees and the roadside limes from future occupiers, this matter is under the control of the Local Planning Authority who should resist any such pressure due to issues of light, "nuisance"/leaf fall, aphid activity and the resultant 'honey dew' etc.

Biodiversity/Ecology

- 6.31 These matters have been satisfactorily addressed. If planning permission were to be granted the submission of a habitat provision and enhancement scheme would be required.

Contaminated Land

- 6.32 This matter has been satisfactorily addressed such that if planning permission were to be granted two conditions would need to be attached.

Impact Upon Occupiers of Neighbouring Dwellinghouses

- 6.33 No objections have been received from the occupiers of neighbouring dwellinghouses. It is considered that the proposed development would not result in an undue loss of daylight and/or sunlight to occupiers of neighbouring properties. Similarly it is considered that the proposal would not result in any undue loss of privacy to occupiers of neighbouring dwellinghouses. A number of supporting letters point to a perceived improvement to highway safety associated with the residential use of the site.

External Materials

- 6.34 Detailed discussions have taken place with regard the use of materials (including surfacing materials for vehicle parking and turning/manoeuvring areas. This has resulted in a detailed submission of materials at this stage. It includes the use of a natural stone (sourced from Black Mountain Quarries), a quality red brick (i.e. Northcot Multi Red Rustic), a clay plain tile (i.e. Marley Eternit Dark Heather) a natural slate (i.e. 'Burbia'). That schedule of materials is considered to be of a very high quality lifting the development above the norm.

Highway Matters

- 6.35 The existing highway network is considered to be satisfactory in design and capacity terms to serve the proposed development. The vehicular means of access are also considered to be satisfactory.

Landscape Impact

- 6.36 The proposed development is not considered to have a harmful impact, other than the loss of the bottling plant building, upon the landscape which hereabouts is designated as an Area of Outstanding Natural Beauty. The development, especially, the roof forms and materials would be visible from the ridge of the Malvern Hills and the western slopes. However, it is considered that development with the high quality of materials proposed would integrate well into the landscape.

Affordable Housing/Planning Obligations

- 6.37 The proposed development provides the requisite level of affordable housing and financial contributions towards associated infrastructure. The draft Section 106 Agreement is considered to be satisfactory.

Conclusion

- 6.38 The site is safeguarded employment land. However, given the lack of a five year housing land supply and the sustainability of the location the principle of a primarily residential development is considered to be acceptable. However, in this instance the detail of the scheme under consideration is not considered to be satisfactory as it results in the loss of the locally important original 'H' shaped bottling plant building.

RECOMMENDATION

That planning permission be refused for the following reason:

1. The proposal would not represent sustainable development since it results in the loss of the locally important original 'H' shaped bottling plant building contrary to policy HBA8 of the Herefordshire Unitary Development Plan 2007, Policy LD4 of the Draft Herefordshire Local Plan Draft Core Strategy and paragraphs 126 and 135 of the National Planning Policy Framework (NPPF). Furthermore the original 'H' shaped bottling plant building is intrinsically functionally and historically linked with the Grade 2 listed Tank House such that they have "group value" and as such its loss would harm the setting of the Grade 2 listed Tank House contrary to policy HBA4 of the Herefordshire Unitary Development Plan 2007, Policy LD4 of the Draft Herefordshire Local Plan Draft Core Strategy and paragraph 132 of the National Planning Policy Framework (NPPF). The adverse impacts of the loss of the building would significantly and demonstrably outweigh the benefits.

Informatives:

1. The applicant did not engage with the Local Planning Authority prior to purchasing the site. However, since they purchased the site the Local Planning Authority have worked positively and pro-actively with the agents for the applicant to resolve as many planning issues as possible. However, the one area where disagreement remains is the retention of the original 'H' shaped locally important bottling plant building that is considered by the Local Planning Authority to be a heritage asset.
2. For the avoidance of any doubt the documents to which this decision relate are:-
 - Location Plan – Drawing number 12017(L) 001 Revision A (Scale 1:1250) received 7th October 2013;
 - Survey Plan – Drawing number 12017 (L) 002 Revision A (Scale 1:500);
 - Demolition Plan – Drawing number 12017 (L) 204 Revision A (Scale 1:500) received 7th October 2013;
 - Ground Floor Site Layout – Drawing number 12017 (L) 200 Revision N (Scale 1:500) received 6th November 2013;
 - Site at First Floor Level – Drawing number 12017 (L) 201 Revision L (Scale 1:500) received 6th November 2013;
 - Site at Second Floor Level – Drawing number 12017 (L) 202 Revision M (Scale 1:500) received 6th November 2013;
 - Site at Roof Level – Drawing number 12017 (L) 203 Revision L (Scale 1:500) received 6th November 2013;
 - Nursing Home Floor Plans – Drawing number 12017 (L) 101 Revision G (Scale 1:200) received 7th October 2013;
 - Nursing Home Elevations – Drawing number 12017 (L) 100 Revision G (Scale 1:200) received 11th October 2013;
 - Detail Illustrating Exterior Construction of Nursing Home – Drawing number 12017 (D) 001 Revision A (Scale 1:50);
 - Proposed Southern Terrace Plans & Elevations – Drawing number 12017 (L)

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

- 104 Revision F (Scale 1:100) received 6th November 2013;
- Proposed Northern Terrace – Drawing number 12017 (L) 105 Revision E (Scale 1:100) received 6th November 2013;
- Proposed Shop Plans & Elevations – Drawing number 12017 (L) 102 Revision H (Scale 1:100) received 7th October 2013;
- Construction Detail for Shop – Drawing number 12017 (D) 002 Revision A (Scale 1:20);
- Proposed Semi-Detached Housing – Drawing number 12017 (L) 103 Revision D (Scale 1:100) received 6th November 2013;
- Blue Cedar House Type A Floor Plans – Drawing number 12017 (L) 107 Revision F (Scale 1:100) received 7th October 2013;
- Blue Cedar House Type A Elevations – Drawing number 12017(L)108 Revision F (Scale 1:100) received 7th October 2013;
- Blue Cedar House Type E Floor Plans – Drawing number 12017 (L) 106 Revision F (Scale 1:100)
- Blue Cedar House Type E Elevations – Drawing number 12017 (L) 109 Revision G (Scale 1:100);
- Garages & Refuse Store – Drawing number 12017 (L) 110 Revision D (Scale 1:100);
- Proposed Site Layout Section Plan – Drawing number 12017 (L) 205 Revision G (Scale 1:500) received 6th November 2013;
- Site Sections: Existing & Proposed of Walwyn Road – Drawing number 12017 (L) 220 Revision F (Scale 1:200) received 6th November 2013;
- Proposed Site Section BB CC – Drawing number 12017 (L) 221 Revision G (Scale 1:200) received 11th October 2013;
- Proposed Site Sections EE FF GG – Drawing number 12017 (L) 222 Revision G (Scale 1:200) received 7th October 2013;
- Proposed Site Sections HH II JJ – Drawing number 12017 (L) 223 Revision G (Scale 1:200) received 7th October 2013;
- Proposed Site Sections KK LL MM – Drawing number 12017 (L) 224 Revision F (Scale 1:200) received 7th October 2013;
- Proposed Site Sections DD NN OO – Drawing number 12017 (L) 225 Revision E (Scale 1:200) received 7th October 2013;
- Tree Protection Plan – Drawing number TPP-1 Revision B (Scale 1:400) received 11th October 2013;
- Tree Protection Plan – Drawing number TPP-2 Revision B (Scale 1:400) received 11th October 2013;
- Tree Removal Plan – Drawing number TR-1 Revision C received 7th October 2013;
- Proposed Site Access Arrangements – Job No. 1108-50 – Drawing number Figure 3.1 Revision B received 13th November 2013;
- External Materials Schedule – Revision A together with covering letter from Blue Cedar Homes dated 6th March 2014 received 7th March 2014;
- External Finishes Plan – Drawing number SK01 Revision C (Scale 1:200) received 7th March 2014;
- External Finishes Plan – Drawing number SK02 Revision C (Scale 1:200) received 7th March 2014;
- Environmental Due Diligence (December 2010) zenith international report;
- EDD Phase 3 Site Investigation Report July 2011 received 7th October 2011;
- Site Investigation (November 2011) Report No. 726091 Structural Soils Ltd. received 30th October 2013;
- Ecological Appraisal prepared by Malford Environmental Consulting 8 August 2013 received 7th October 2013;
- Arboricultural Impact Assessment prepared by boskytrees dated 29th August 2013 received 7th October 2013; and

- **Richard Jones Chartered Surveyors and Building Consultants – Schedule of Repairs required at the Tank House 6 February 2014.**

Decision:

Notes:

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Background Papers

Internal departmental consultation replies.

THIS DEED dated

is made BETWEEN:-

1. THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL of Brockington 35 Hafod Road Hereford HR1 1SH ("the Council")
2. EAGLE ONE MMXI LIMITED (company registration number (077787710) of Palatine House Matford Court Exeter Devon EX2 8NL ("the Owner")
3. BLUE CEDAR HOMES LIMITED (company registration number 06444180) of Palatine House Matford Court Exeter Devon EX2 8NL ("the Developer")

WHEREAS:-

1. The Council is empowered by Section 106 of the Town and Country Planning Act 1990 (as amended) ("the Act") to enter into an agreement with any person interested in land in its area for the purpose of restricting or regulating the development or use of that land.
2. The Owner is the registered proprietor of the Land described in the First Schedule to this Deed ("the Land").
3. The Developer has by its agent submitted to the Council the application reference P132734/F for planning permission as described in the Second Schedule to this Deed ("the Application").
4. The Council acting by its planning committee has resolved to delegate authority to its officers for the grant of the Permission (subject to conditions) and subject to the completion of this Deed for the purpose of restricting or regulating the development or use of the Land.
5. The Council is the local planning authority by whom the restrictions and obligations contained in this Deed are enforceable.

THIS DEED is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers and enactments which may be relevant for the purposes of giving validity hereto or facilitating the enforcement of the obligations herein contained with the intent to bind the Land and WITNESSES as follows:-

1(A). Construction of this Deed:

In this Deed the following words and expressions shall where the context so admits have the following meanings:-

The expressions "the Owner" the "the Council" and "the Developer" shall include their respective successors in title and assigns.

Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

Words of the masculine gender include the feminine and neuter genders and all references in this Deed to a person or persons shall include corporations and unincorporated associations and all other legal entities.

Where there are two or more persons included in the expression "the Owner" covenants expressed or implied to be made by Owner shall be deemed to be made by such persons jointly and severally.

Words denoting an obligation on a party to do any act include an obligation to procure that it be done.

Words placing a party under a restriction include an obligation not to permit infringement of that restriction.

References to any statute or statutory instrument shall except where otherwise specifically provided include reference to any statutory modification or re-enactment thereof for the time being in force.

1(B). Definitions

For the purposes of this Deed the following expressions shall have the following meanings:

“Affordable Housing” means housing provided to eligible households whose needs are not met by the Open Market. Eligibility is determined with regard to local incomes and local house prices. Affordable Housing should remain at an affordable price for future eligible households or the subsidy recycled for alternative Affordable Housing provision. The descriptions of all types of Affordable Housing in Herefordshire are contained in the Technical Data.

“Affordable Housing Units” mean (unless otherwise agreed in writing by the Council) the five residential units and ancillary areas comprised within the Development intended for occupation as Social Rented Housing and the four residential units and ancillary areas comprised within the Development intended for occupation as Intermediate Housing and shown edged green on the Plan being units 13, 14, 21, 23 and 24 (as to Social Rented Housing) and as units 15, 16, 22 and 25 (as to Intermediate Housing).

“Code for Sustainable Homes” means the national standard for the sustainable design and construction of new homes as defined by the Department of Communities and Local Government.

“Commence Development” and “Commencement of Development” mean to commence the Development pursuant to the Permission by the carrying out of a Material Operation.

“Contributions” mean the Education Contribution; the Library Contribution; the Open Space Contribution; the Recycling Contribution and the Sports Contribution.

“Design and Quality Standards” mean the requirements and recommendations for all new homes as defined by the Homes and Communities Agency ‘design and quality standards April 2007’.

“Development” shall mean the development of the Land described by the Application.

“Education Contribution” means the sum of nineteen thousand six hundred pounds (£19,600.00) index-linked in accordance with clause 3.11 of this deed to provide the Education Facilities required as a consequence of the Development.

“Education Facilities” mean education improvements towards: pre-school provision at Ledbury Early Years (£976.00); primary school provision at Colwall Primary School and St Joseph's RC Primary School (£7,596.00); secondary school provision at John Masefield High School (£7,796.00); post 16 provision (£348.00); youth provision (£2,332.00); special educational needs (£552.00).

“Herefordshire Allocations Policy” shall mean the Council’s Policy for the allocation of Affordable Housing in the administrative area of the Council which under the Housing Act 1996 as amended by the Homelessness Act 2002 and the Localism Act 2011 the Council has a duty to provide.

“Home Point” means the agency or body (or any successor agency or body) that on behalf of the Council holds the common housing register and operates a choice based lettings system (or any subsequent lettings system) through which Affordable Housing in the administrative area of the Council is advertised.

“Intermediate Housing” means homes for purchase and rent provided at a cost above levels for Social Rented Housing but below Open Market levels subject to the criteria in the Affordable Housing definition above. For the purposes of this Deed this means housing provided by way of Shared Ownership only.

“Library Contribution” means the sum of two thousand five hundred and forty four pounds (£2,544.00) index-linked in accordance with paragraph 3.11 of this deed to improve the Library Facilities.

“Library Facilities” mean existing library services in Colwall.

“Lifetime Homes Standard” means the principles developed by the Joseph Rowntree Foundation establishing 16 design criteria (revised July 2010) intended to maximise good housing design and make homes adaptable for lifetime use.

“Material Operation” has the meaning given by Section 56 (4) of the Act.

“Occupy” “Occupied” and “Occupation” means the first occupation of the Development for residential purposes but excluding occupation for the purposes of construction and fitting out.

“Open Market” means the open market for the sale or letting of housing by a person or body other than (a) a local housing authority (b) a Registered Provider or (c) any other person or body offering housing accommodation to the public at less than the prevailing market sale/rent price.

“Open Market Units” mean the Sheltered Accommodation and the four units of residential accommodation in the Development that are not Affordable Housing Units and which are intended for sale or letting on the Open Market.

“Open Space Contribution” means the sum of six thousand five hundred and sixty pounds (£6,560.00) index-linked in accordance with clause 3.11 of this deed to provide the Open Space Facilities.

“Open Space Facilities” mean off-site open space(s) and children’s play provision and improvements at the play facility adjacent to the Humphrey Walwyn Library Walwyn Road or on priorities in Colwall identified the ‘Play Facilities Study and Investment Plan’ in consultation with the Parish Council

“Permission” means the planning permission subject to conditions to be granted by the Council permitting the Development pursuant to the Application

“Plan” means the drawing numbered 12017(L)201M attached to this deed.

“Recycling Contribution” means the sum of one thousand nine hundred and twenty pounds (£1,920.00) index-linked in accordance with clause 3.11 of this deed towards the Recycling Facilities.

“Recycling Facilities” mean new or enhanced recycling and waste management facilities within Hereford in lieu of such facilities within the Development.

“Registered Provider” means a registered provider of Affordable Housing under Part 2 of the Housing and Regeneration Act 2008 being a preferred development partner listed (or intended

for listing) in the Council's 'provision of affordable housing technical data' which supports the Supplementary Planning Document Planning Obligations dated April 2008 (or any subsequent or updated document), or any such other Registered Provider as may previously be agreed with the Council in writing such agreement not to be reasonably withheld.

"Shared Ownership" means ownership under the terms of a lease by which a lessee may (subject to the restriction in clause 1.9 of the Third Schedule to this Deed) acquire a share or shares of the equity in an Affordable Housing Unit from the Registered Provider who retains the remainder and may charge a rent.

"Sheltered Accommodation" means that part of the Development comprising of 12 two bedroomed units of accommodation the Occupation of which is subject to the qualifying criteria in paragraph 1 of Part 2 of the Third Schedule and shown for identification edged in blue on the Plan.

"Social Rented Housing" means housing owned by local authorities and Registered Providers for which guideline target rents are determined through the national rent regime and may also be owned by other persons and provided under equivalent rental arrangements to the above as agreed with the local authority or with the Homes and Communities Agency (or any successor agency or body).

"Sports Contribution" means the sum of two thousand and six hundred and eighty eight pounds (£2,688.00) index-linked in accordance with clause 3.11 of this deed to provide the Sports Facilities.

"Sports Facilities" mean off-site sport provision and improvements at Cowall Playing Fields or on priorities identified in accordance with the Council's 'Indoor Facilities' and 'Playing Pitch' strategies in consultation with the Parish Council.

"Technical Data" means the data updated annually by the Council entitled 'Provision of Affordable Housing Technical Data to Support the SPD – Planning Obligations April 2008' (or any technical data published by the Council in support of any replacement planning policy document).

2. Covenant

- 2.1 The Owner for the purposes of Section 106 of the Act with the intention of binding the Land agrees and covenants with the Council to observe the restrictions and perform the obligations set out in the Third Schedule to this Deed.
- 2.2 The Council covenants with the Owner that the Council will comply with the obligations on its part set out in the Fourth Schedule to this Deed

3. Agreement and Declarations

IT IS HEREBY AGREED AND DECLARED that

- 3.1 The restrictions and obligations in the Third Schedule to this Deed are planning obligations enforceable by the Council in accordance with the provisions of Section 106(3) of the Act against the Owner and his successors in title to the Land.
- 3.2 With the exception of this clause 3.2 and clauses 5, 6, 7, 9 and 13, delivery and any other relevant clauses of this Deed which have effect on the date of this Deed none of the terms or provisions of this Deed will have operative effect until the Permission has been issued by the Council and the Commencement of Development.

- 3.3 If the Permission shall expire before Commencement of Development or shall at any time be revoked this Deed shall forthwith determine and cease to have effect insofar only as it has not already been complied with and without prejudice to the validity of anything done or payments or Contributions made or expended whilst this Deed is in force.
- 3.4 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Permission) granted (whether or not on appeal) after the date of this Deed.
- 3.5 If any provision or part provision of this Deed:
- 3.5.1 shall be held by any court or competent authority to be invalid illegal or unenforceable the validity legality or enforceability of the remaining provisions shall not in any way be deemed to be affected or impaired; and
- 3.5.2 if any invalid illegal or unenforceable provision or part provision of this Deed would be valid legal and enforceable if some part or parts of it were amended the parties shall amend such provision(s) so that as amended it is legal valid and enforceable and so far as possible achieves the original intentions of the parties.
- 3.6 The Owner and the Developer shall not be entitled to any costs or compensation whatsoever from the Council arising from the agreement restrictions and obligations contained in this Deed.
- 3.7 A person who is not a party to this Deed has no right under the Contracts (Rights of Third Party) Act 1999 to enforce any term of this Deed but this does not affect any right or remedy of a third party which exists or is available apart from such act.
- 3.8 No person shall be liable for a breach of a covenant contained in this Deed after parting with all interest in the Land or the part of the Land in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.
- 3.9 The restrictions and obligations in the Third Schedule to this Deed shall not be enforceable against owners or occupiers of the Open Market Units nor against those deriving title from them except for the restrictions on residential occupation in:
- 3.9.1 paragraph 1.2 (Part 1) of the Third Schedule;
- 3.9.2 paragraphs 1.1 and 1.2 (Part 3) of the Third Schedule; and
- 3.9.3 paragraph 1 (Part 2) of the Third Schedule in relation to the Occupation of the Sheltered Accommodation only .
- 3.10 The restrictions and obligations in the Third Schedule to this Deed shall not be enforceable against any Registered Provider or their mortgagees or chargees with a legal interest in the Affordable Housing Units or occupiers thereof except for the restrictions and obligations contained in paragraphs 1.4 to 1.9 inclusive in the Third Schedule (Part 1) of this Deed.
- 3.11 The Contributions payable in accordance with the obligations contained in Part 3 of the Third Schedule to this Deed shall be uplifted by reference to:
- 3.11.1 any increase in the BCIS tender price index published by the Royal Institute of Chartered Surveyors occurring between the date of its publication prior to the date of this Deed and the date that such sum is actually paid to the Council; or

3.11.2 an equivalent index that the Council may at their discretion reasonably select in the event that the BCIS tender price index shall cease to be published before such sums are paid.

3.12 The Contributions paid to the Council under the terms of this Deed may at the Council's discretion be pooled with other contributions paid or intended for payment to secure such facilities as referred to in this Deed for the benefit of the Development and for the wider locality.

3.13 The headings in this Deed are for convenience only and shall not be taken into account in the construction and interpretation thereof.

3.14 It is hereby agreed that where the consent or agreement of the Council is required under this Deed then that consent or agreement shall not be unreasonably withheld or delayed.

4. Reservations

For the avoidance of doubt nothing in this Deed shall prevent the Council from exercising any of its statutory powers or functions in relation to the development of the Land.

5. Local Land Charge Provisions

5.1 This Deed is a local land charge and shall be registered by the Council as such.

5.2 On the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged the Council will issue a written confirmation of such performance or discharge.

5.3 Following the performance and full satisfaction of paragraphs 1.1 or 1.2 of Part 3 of the Third Schedule or all the terms of this Agreement or if this Deed is determined pursuant to clause 3.3 the Council will on the written request of the Owner record such performance or determination in the Local Land Charges Register in respect of this deed.

6. Costs

On or before the date of this Deed the Owner shall pay to the Council its reasonable and proper costs in the preparation and completion of this Deed and before the Commencement of Development an administration fee of £666.24 towards the cost to the Council of monitoring the obligations in this Deed.

7. Notices and Notice of Commencement of Development

7.1 A notice under this Deed is valid only if it is given by hand sent by recorded delivery or document exchange or sent by fax provided that a confirmatory copy is given by hand or sent by recorded delivery or document exchange on the same day and it is served at the address shown in this Deed for the receiving party or at any address specified in a notice given by that party to the other parties.

7.2 A notice sent to the Council:

7.2.1 in relation to any matters arising from sub-clauses 1.4; 1.5; 1.6 and 1.8 of the Third Schedule of this Deed shall be addressed to the Housing Manager (Development) Homes and Community Services, Herefordshire Council, PO Box 4, Plough Lane, Hereford HR4 0XH; or

7.2.2 in relation to any matters arising from all other obligations in this Deed shall be addressed to the 'Planning Obligations Manager,' Planning Management Team, Herefordshire Council, Blue School House, Blue School Street, Hereford HR1 2ZB quoting reference 1327374.

- 7.3 A notice sent to the Developer or the Owner shall be addressed to Blue Cedar Homes Limited, Eagle House, 1 Babbage Way, Exeter Science Park, Exeter EX5 2FN.
- 7.4 A notice:
- 7.4.1 sent by recorded delivery is to be treated as served on the second working day after posting if sent by first class post or on the third working day after posting if sent by second class post;
- 7.4.2 sent through a document exchange is to be treated as served on the first working day after the day on which it would normally be available for collection by the recipient;
- 7.4.3 sent by fax is to be treated as served on the day on which it is successfully sent or the next working day where the fax is sent successfully after 1600 hours or on a day that is not a working day whenever and whether or not the confirmatory copy is received unless the confirmatory copy is returned through the Royal Mail or the document exchange undelivered
- 7.5 The Council's Planning Obligations Manager shall be given 14 days prior notice of Commencement of Development.

8. Waiver

No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the obligations or other terms of this deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the obligations or other terms of this Deed or from acting upon any subsequent breach or default by the Owner.

9 Settlement of Disputes

- 9.1 Any dispute arising out of the provisions of this Deed shall be referred to a person having appropriate qualifications and experience in such matters (the "Expert") for the determination of that dispute PROVIDED THAT the provisions of this clause shall be without prejudice to the right of any party to seek the resolution of any dispute arising out of the provisions of this Deed by referring the matter to the courts and also or alternatively by the Council in accordance with Section 106(6) of the 1990 Act and the referral of any such dispute to the Expert shall not prejudice prevent or delay the recourse of any party to the courts or to the provisions of Section 106(6) of the 1990 Act for the resolution of any dispute arising out of the provisions of this Deed.
- 9.2 The Expert shall be appointed jointly by the relevant parties to the dispute or in default of agreement then by a person nominated by the President for the time being of the Royal Institution of Chartered Surveyors on the application of any of the parties.
- 9.3 The decision of the Expert shall be final and binding upon the relevant parties (subject to the right of the relevant parties to refer the matters to the court) and the following provisions shall apply:
- 9.3.1 The charges and expenses of the Expert shall be borne equally between the relevant parties unless the Expert shall otherwise direct;
- 9.3.2 The Expert shall give the relevant parties an opportunity to make representations and counter-representations to the Expert before the Expert shall make their decision;
- 9.3.3 The Expert shall be entitled to obtain opinions from others if the Expert so wishes;

9.3.4 The Expert shall make their decision within the range of any representations made by the relevant parties themselves; and

9.3.5 The Expert shall comply with any time limit or other directions agreed by the relevant parties on or before the appointment of the Expert.

10. Warranty as to title

The Owner warrants to the Council that the title details referred to in recital 2 and the First Schedule are complete and accurate in every respect and that no person other than the Owner and the Developer have any legal or equitable interest in the Land.

11. VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

12. Interest

If any payment due under the terms of this Deed is paid late interest calculated at the rate of 4% per annum above the National Westminster Bank Plc base rate from time to time will be payable from the date payment is due to the date payment is made.

13. Jurisdiction

This Deed is governed by and in accordance with the law of England.

14. Developer's Consent and Acknowledgement

The Developer hereby consents to the execution of this Deed and acknowledges that the Land shall be bound by the restrictions and obligations contained in this Deed and that any interest in the Land the Developer may take shall so be taken subject to this Deed.

IN WITNESS of which this instrument has been duly executed as a deed by the parties and delivered on the date set out above

FIRST SCHEDULE

(the Land)

The freehold land on the south east side of Walwyn Road Colwall registered under title number HE6777 and shown edged red on the Plan.

SECOND SCHEDULE

(the Application)

An application for "full planning permission for the demolition of existing buildings. excluding the Grade II Listed Tank House, a small lodge and associated substation, and the erection of 25 new dwellings comprising 12 purpose designed units for older residents, 4 open market units and 9 affordable units, plus a retail unit and 46 bed nursing home" made under the Council's reference 132734/F and validated by the Council on 11 October 2013.

THIRD SCHEDULE

(PART 1)

The Owner covenants with the Council as follows:

1. Affordable Housing
- 1.1 To construct or procure the construction of the Affordable Housing Units at no cost to the Council in accordance with the Permission; and
 - 1.1.1 the Design and Quality Standards 2007 (or to such subsequent design and quality standards of the Homes and Communities Agency as are current at the date of construction);
 - 1.1.2 the Lifetime Homes Standard; and
 - 1.1.3 a minimum of level 3 of the Code for Sustainable Homes as updated by the technical guide issued in November 2010 assessed against the building regulations (2010) or any subsequent building regulations that come into force prior to the Commencement of Development; and
 - 1.1.4 independent certification of compliance with sub-clauses 1.1.1, 1.1.2 and 1.1.3 above shall be given to the Council before the Occupation of the final dwelling within the Development.
- 1.2 Not to Occupy or cause or permit the Occupation of more than eight Open Market Units on any part or parts of the Land until the Affordable Housing Units have all been constructed in accordance with paragraph 1.1 above and are ready and available for residential occupation and are accessible by vehicles and pedestrians and have been transferred (by freehold transfer with title absolute and full title guarantee) to a Registered Provider.
- 1.3 The transfer of the Affordable Housing Units to the Registered Provider shall include the following provisions:-
 - 1.3.1 the grant to the acquiring Registered Provider of all rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units.
 - 1.3.2 a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purposes of the Development.
- 1.4 The Affordable Housing Units must at all times be let or managed by a Registered Provider in accordance with the guidance issued from time to time by the Homes and Communities Agency (or any successor agency) with the intention that the Affordable Housing Units shall not be used for any purpose other than the provision of Affordable Housing by way of (unless otherwise agreed in writing by the Council) Intermediate Housing and Social Rented Housing to persons who are:
 - 1.4.1 registered with Home Point at the time the Affordable Housing Unit becomes available for residential occupation; and
 - 1.4.2 satisfy the requirements of paragraph 1.5 below.

- 1.5 The Affordable Housing Units must be advertised through Home Point unless otherwise agreed by the Council and allocated in accordance with the Herefordshire Allocations Policy for occupation as a sole residence to a person or persons one of whom has:-
- 1.5.1 a local connection with the parish of Colwall; or
 - 1.5.2 in the event of there being no person having a local connection to the parish of Colwall a person with a local connection to one of the following parishes: Eastnor and Dorrington; Wellington Heath; Cradley; Bosbury and Coddington and Ledbury Town; or
 - 1.5.3 in the event of there being no person with a local connection to a relevant parish referred to in sub-paragraphs 1.5.1 and 1.5.2 above any other person who has a local connection to the County of Herefordshire of a type described in sub-paragraphs 1.6.1 to 1.6.5 below and is eligible under the allocations policies of the Registered Provider if the Registered Provider can demonstrate to the Council that after 20 working days of any of the Affordable Housing Units becoming available for letting the Registered Provider having made all reasonable efforts through the use of Home Point have found no suitable candidate under sub-paragraphs 1.5.1 or 1.5.2 above.
- 1.6 For the purposes of sub-paragraphs 1.5.1 or 1.5.2 of this schedule 'local connection' means having a local connection to one of the parishes specified above or the County (if appropriate) because that person:
- 1.6.1 is or in the past was normally resident there; or
 - 1.6.2 is employed there; or
 - 1.6.3 has a family association there; or
 - 1.6.4 a proven need to give support to or receive support from family members; or
 - 1.6.5 because of special circumstances
- 1.7 For the purposes of clause 1.6 of this schedule
- 1.7.1 "normally resident" shall be established by having resided in one of the parishes specified in sub-paragraphs 1.5.1 or 1.5.2 of this schedule or the County (if appropriate) for 6 out of the last 12 months or 3 out of the last 5 years.
 - 1.7.2 "employed" shall mean in the employ of another (or a formal offer of such employment) not being of a casual nature but shall not exclude part-time employment of 16 hours or more per week or self employment.
 - 1.7.3 "family association" shall mean where a person or a member of his household has parents, adult children, brothers or sisters currently residing in one of the parishes specified in sub-paragraphs 1.5.1 or 1.5.2 above or the County (if appropriate) and who have been resident for a period of at least 12 months and that person indicates a wish to be near them.
 - 1.7.4 "support" shall mean a proven need to provide or receive personal and physical care to enable a person or a family member to live independently in the community and includes people who are in need of such support but are not normally resident but have long standing links with the local community.
 - 1.7.5 "special circumstances" shall not normally apply but amount to circumstances which in the view of the Council may give rise to a local connection.

- 1.8 The provisions of paragraphs 1.4, 1.5, 1.6 and 1.7 of this schedule shall not be binding on nor enforceable against
- 1.8.1 any mortgagee or chargee of the Registered Provider of the land or any part thereof which exercises its power of sale appointment of a receiver or power of entry as mortgagee or chargee or its successors in title deriving title under such mortgagee or chargee shall not be bound by any of the restrictions provisions or obligations set out in this Schedule if the mortgagee or chargee shall have complied with its obligations pursuant to Sections 144 to 154 of the Housing and Regeneration Act 2008 and no proposals for the future ownership and management of the Land by a Registered Provider shall have been agreed by the mortgagee or chargee within the moratorium period determined in accordance with Sections 145 to 147 of the said Act and thereupon (for the avoidance of doubt) the covenants in this Third Schedule shall be deemed to be extinguished in respect of the Land or any relevant part thereof; or
- 1.8.2 any mortgagee or chargee of an Affordable Housing Unit designated for Shared Ownership ("SO Unit") shall prior to seeking to dispose of any SO Unit pursuant to any default under the terms of the mortgage or charge give not less than 20 working days' prior notice to the Council and to the Registered Provider with an interest in the SO Unit of its intention to dispose and:
- 1.8.2.1 in the event that the Registered Provider responds within 20 working days from receipt of the notice indicating that arrangements for the transfer of the SO Unit can be made in such a way as to safeguard it as Affordable Housing then the mortgagee or chargee shall co-operate with such arrangements and use its best endeavours to secure such transfer
- 1.8.2.2 if the Registered Provider does not serve its response to the notice served under paragraph 1.8.2 within the 20 working days then the mortgagee or chargee shall be entitled to dispose of the SO Unit free of all the restrictions set out in clause 1 of the Third Schedule which shall from the time of completion of the disposal cease to apply
- 1.8.2.3 if the Registered Provider cannot within 60 working days of the date of service of its response under paragraph 1.8.2.1 secure a binding contract for sale then provided that the mortgagee or chargee shall have complied with its obligations under paragraph 1.8.2.1 the mortgagee or chargee shall be entitled to dispose of the SO Unit free of all the restrictions set out in paragraph 1 of the Third Schedule which shall from the time of completion of the disposal cease to apply
- Provided that at all times the rights and obligations in this clause 1.8.2 shall not require the mortgagee or chargee to dispose of the SO Unit for any sum less than the monies outstanding pursuant to the mortgage or charge; or
- 1.8.3 any occupier of an Affordable Housing Unit who has exercised a statutory right to buy (or any subsequent or substituted contractual right) the whole of the freehold estate in an Affordable Housing Unit nor any mortgagee or such occupier or their respective successors in title.
- 1.9 Where any of the Affordable Housing Units are made available for Shared Ownership housing the occupiers shall not (unless otherwise agreed in writing by the Council) be permitted to own more than 80% of the total equity value of such Affordable Housing Units PROVIDED THAT this clause shall not apply if the Shared Ownership lease of any such unit is in a model form for the protection of Affordable Housing in rural areas published or approved by the Homes and Communities Agency (or a successor body) containing provisions that:

1.9.1 permit an occupier to acquire more than 80% of the total equity in such unit ; and

1.9.2 require the mandatory buy back of any such unit by the Registered Provider or its nominee in the event of an intended disposal by any such occupier.

(PART 2)

1. Sheltered Accommodation

1.1 The Owner covenants with the Council that the Sheltered Accommodation shall not be Occupied by anyone except a person who meets one or more of the following qualifying criteria:

1.1.1 is 55 years of age or over;

1.1.2 is the spouse or partner of a person described in clause 1.1.1 above;

1.1.3 is a licensee or invitee residing temporarily with the persons described in clauses 1.1.1 or 1.1.2 above;

1.1.4 a person otherwise approved in writing by the Council (such approval not to be unreasonably withheld or delayed) in respect of a registered carer providing care to a person described in clauses 1.1.1 or 1.1.2 above;

1.1.5 the widow or widower of a person described in clauses 1.1.1 or 1.1.2 above.

(PART 3)

1. Contributions

1.1 Not to Occupy any of the Open Market Units unless the Sports Contribution; the Library Contribution and the Recycling Contribution have all been paid to the Council.

1.2 Not to Occupy any of the Open Market Units (and for the purpose of this sub-paragraph only and for no other purpose the term 'Open Market Units' excludes the Sheltered Accommodation) unless the Education Contribution and the Open Space Contribution have both been paid to the Council.

FOURTH SCHEDULE

(Council's Covenants)

1. Upon receipt of the Contributions the Council will place the same in an interest bearing account.

2. The Council shall apply the Contributions towards the facilities referred to in this Deed or to such other facilities that the Council and the Owner may agree in writing are appropriate as a result of the Development.

3. The Council agree that if any part of the Contributions has not been expended or remains uncommitted following five years from the date of payment then such part of the Contributions as may remain unspent or uncommitted together with interest accrued as aforesaid on the balance shall be returned to the payer of the Contributions.

4. If so requested to provide the payer of the Contributions with such evidence as shall be reasonably requested to confirm the expenditure of the Contributions.

EXECUTED AS A DEED when
THE COMMON SEAL OF
**THE COUNTY OF HEREFORDSHIRE
DISTRICT COUNCIL**
was hereunto affixed BY ORDER

Authorised Officer

SIGNED AS A DEED by
EAGLE ONE MMXI LIMITED
acting by a director and its secretary or two directors

Director (signature)

Name (capitals)

Director/Secretary (signature)

Name (capitals)

SIGNED AS A DEED by
BLUE CEDAR HOMES LIMITED
acting by a director and its secretary
or two directors

Director (signature)

Name (capitals)

Director/Secretary (signature)

Name (capitals)

Dated

THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

- and -

EAGLE ONE MMXI LIMITED

- and -

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

BLUE CEDAR HOMES LIMITED

DEED OF PLANNING OBLIGATION
made under the provisions of
Section 106 Town and Country Planning Act 1990 (as amended)
relating to
land at former bottling plant Walwyn Road Colwall
Herefordshire

Legal Services
Legal and Democratic
Herefordshire Council,
Brockington,
35 Hafod Road,
Hereford, HR1 1SH.