

<b>MEETING:</b>	<b>PLANNING COMMITTEE</b>
<b>DATE:</b>	<b>4 MARCH 2015</b>
<b>TITLE OF REPORT:</b>	<p><b>142356/F - PROPOSED REMOVAL OF CONDITION 4 OF PLANNING PERMISSION DCNC2004/2013/F (CONVERSION OF COTTAGE ANNEXE TO PROVIDE ONE BEDROOM HOLIDAY COTTAGE) TO ALLOW 'FODDER STORE' TO BE USED AS A DWELLING AT FODDER STORE ADJ THE OLD RECTORY, BOAT LANE, WHITBOURNE, WORCESTER, WR6 5RS</b></p> <p><b>For: Mr &amp; Mrs Poultney per Mr Paul Smith, 41 Bridge Street, Hereford, Herefordshire, HR4 9DG</b></p>
<b>WEBSITE LINK:</b>	<a href="https://www.herefordshire.gov.uk/planning-and-building-control/development-control/planning-applications/details?id=142356&amp;search=142356">https://www.herefordshire.gov.uk/planning-and-building-control/development-control/planning-applications/details?id=142356&amp;search=142356</a>
<b>Reason Application submitted to Committee – re-direction</b>	

**Date Received: 31 July 2014**

**Ward: Bringsty**

**Grid Ref: 372477,256995**

**Expiry Date: 25 September 2014**

Local Member: Councillor GR Swinford

## **Introduction**

This application was reported to Committee on 21 January, where it was deferred for further clarification on the question of implementation of an earlier application on site. A late submission, containing Counsel Opinion on behalf of a neighbour objector, was also received and the report is updated accordingly. In addition, further evidence has been submitted, by the applicants, to support their case.

### **1. Site Description and Proposal**

1.1 The Fodder store is physically attached to The Olde Rectory a grade II listed building in Boat Lane, within the Whitbourne Conservation Area. The application seeks removal of condition 4 in order to permit its use as an unrestricted dwelling.

### **2. Policies**

#### **2.1 National Planning Policy Framework (NPPF)**

The following sections are of particular relevance

Section 12 Conserving and Enhancing the Historic Environment

## 2.2 Herefordshire Unitary Development Plan

S1	-	Sustainable Development
S2	-	Development Requirements
S7	-	Natural and Historic Heritage
DR2	-	Land Use and Activity
HBA4	-	Setting of Listed Buildings
HBA3	-	Change of Use of Listed Buildings
HBA13	-	Re-use of Rural Buildings for Residential Purposes
H17	-	Sub-Division of Existing House

## 2.3 Core Strategy

LD4	-	Historic Environment and Heritage Assets
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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:-

<https://www.herefordshire.gov.uk/planning-and-building-control/planning-policy/unitary-development-plan>

## 3. **Planning History**

- 3.1 131973/F Replacement of extant planning permission DMNC/101265/F (see below)  
Approved 2/9/13
- 3.2 DMNC/101265/F - Removal of condition 4 of planning permission DCNC2004/2013/F. To allow use as annex accommodation to The Olde Rectory. Approved 19/7/10, subject to condition that it be used as annex to the Olde Rectory.
- 3.3 DCNC2004/2013/F - Conversion of cottage annexe to provide one bedroom holiday cottage.  
Approved 29/7/04, subject to holiday use condition ( subject of this application).
- 3.4 DCNC/2004/2014/L - Listed building consent for above works, also 29/7/14. These works included an extension to provide the kitchen and new entrance, the bricking up of a door in what was a yard wall, a number of replacement windows and new glazed openings, a replacement staircase and an opening from the original element to the kitchen addition.

## 4. **Consultation Summary**

### 4.1 Statutory Consultees

#### 4.1 Severn Trent

I confirm that Severn Trent Water Limited has NO OBJECTION to the proposal subject to the inclusion of the following condition:

#### **Condition**

The development hereby permitted shall not commence until drainage plans for the disposal of surface water and foul sewage have been submitted to and approved by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use.

#### **Reason**

To ensure that the development is provided with a satisfactory means of drainage as well as to reduce the risk of creating or exacerbating a flooding problem and to minimise the risk of pollution.

## Internal Consultees

### 4.2 Conservation Manager (Historic Buildings)

It is clear on site and in looking at the historic and currently submitted drawings, that there is a discrepancy between the drawings and works carried out on site. Since The Old Rectory and The Fodder Store are grade II listed there should be no such differences – all changes requiring Listed Building Consent (LBC):

The covered lobby at the rear of The Old Rectory has clearly been substantially truncated and the steps up to the retained service door have been removed.

The service door was due to be retained in the 2004 conversion drawings and should have remained visible on the inside of the annex. This has not occurred and the wall internally shows no sign of the doorway.

The trellis fencing which delineates the small amenity area is attached to the listed building and therefore needs LBC and Planning Permission, neither of which has been requested.

There is still an accessible link between The Old Rectory and the cellar beneath The Fodder Store and this is a locked door. The only other access point to the cellar is the former coal hole which is only visible as a very low opening on the courtyard elevation and would require a rather slim person to gain access. It may be that there is more of an opening than currently visible but it is clear that at present access would be difficult. It is considered that this arrangement, should The Fodder Store become independent, might lead to improved access being requested, however there is no guarantee that permission for such a change would be granted. It would be more appropriate for the cellar to be accessible from The Old Rectory, as it historically always has been. On my visit to The Fodder Store it was clear that the first floor bedroom and the main window of the living room look out directly over the south front garden of The Old Rectory. There are trees and shrubs to partly obscure the view but the glazing is clear. Any proposal to obscure these windows would need to gain LBC and the impact on the appearance of the building would need to be considered.

The rear bathroom window does enable a view over the rear north garden of The Old Rectory but no more so than any adjoining properties.

The Fodder Store has clearly been part of The Old Rectory complex historically but, apart from the windows/overlooking issue, there are relatively few areas where intervention would be necessary to enable independence. Many buildings are subdivided even when they have historically always acted as one.

Overall I have a number of concerns about this particular application. In order to facilitate the independence of the building, various works are required which have either been carried out without LBC or would require LBC. Until those items are submitted for assessment then it is difficult to see how the change of use could be supported. It is worth noting that my colleague who submitted previous comments was not aware that any works to the listed building would be required, or had taken place with LBC.

The most that can be said is that in principle a change of use to independent dwelling might be possible subject to the changes involved being acceptable in terms of Listed Building Legislation. It is suggested that the application is resubmitted in conjunction with an LBC application explaining/regularising the works involved.

## 5. Representations

### 5.1 Whitbourne Parish Council

We strongly object to this application for the following reasons:

1. The Old Rectory is a Grade II listed building, which, if divided up in this way would be deemed as an inappropriate development impacting upon its historic heritage and the historic fabric should be preserved.
2. The impact of the application on the present occupants of the Rectory - with regard to overlooking both front and rear gardens, increased density - ie, noise, cars, people, etc.
3. This would be providing residential accommodation for a separate family within what should be one residential unit - thus impacting detrimentally upon the occupants of the main dwelling.
4. Lack of amenity for the annex accommodation - as this is essentially ancillary accommodation to The Old Rectory and as such does not have a defined curtilage. This inadequacy renders the unit not capable of being practical or appropriate as a form of accommodation.
5. We consider this application contrary to policy guidance in the Herefordshire UDP and the NPPF. The separation of the property is unauthorised.

### 5.2 Letters of objection have been received from Mr Wood (the owner of the Old Rectory, adjoining the Fodder store and 7 other Whitbourne residents.

They can be summarised as follows:

1. The basis for the application is flawed as the 2004 permission has already been replaced by the 2011/13 permissions, so there is no condition to remove.
2. The proposal is contrary to policies H17, H18, P7, S7, HBA1 and HBA4.
3. The proposal would result in loss of privacy to the Old Rectory through overlooking of both front and rear gardens.
4. There would be insufficient amenity for the new dwelling as the amenity space, which is unauthorised, is too small for an oil tank, laundry drying and refuse and leisure area.
5. The proposal would be detrimental to the integrity of the listed building, the fodder store, a newly created name formed part of the north wing of the Old Rectory.
6. Further work requiring listed building consent would be necessary to facilitate the change, including bricking up of the existing cellar door and creation of a new entrance thereto. (The cellar, which lies below the fodder store, is currently accessed via the door in the main house).
7. Either situation is untenable, namely a separate dwelling or holiday let.
8. This part of the historic Conservation Area should be safeguarded.
9. Agree with comments of Parish Council and is contrary to wishes of local community.

10. The implications of the unauthorised works and means of resolution of them should be considered before creating an independent dwelling.

5.3 Counsel Opinion was submitted, on behalf of the adjoining neighbour, Mr Wood, raising a number of points.

- i) Unauthorised listed building works undertaken and need for listed building consent first.
- ii) Implementation of the 2010 planning permission as a residence.
- iii) Reason for holiday let condition and consistency.

5.4 Legally sworn statutory declarations, dated 28/ 1/15, have been submitted by the applicants, that

‘Since 2004 the fodder store has been used only as independent holiday accommodation in accordance with planning permission DCNC2004/2013/F. There has occurred no intervening alternative planning use of this building. Planning permissions NC/101265/F and NC/131974/F which permitted the use of the Fodder Store as annex accommodation to the Olde Rectory have never been implemented’

5.5 A letter from Slater Johnstone Chartered Accountants, dated 22/1/15, confirms that, between June 1999 and April 2014, the applicants’ business included the letting of 6 properties for holiday accommodation, including the Fodder Store, following its restoration in 2004.

5.6 In support of the application the applicants’ agent has submitted the following:

1. Removal of external steps:

I am informed by my clients, who were engaged in the refurbishment of this building, that previous plywood ‘boxed’ steps did exist at the rear of the building leading up to the old doorway. They were removed when building works were completed as they were no longer required and clearly had no historical significance. The land on which these steps stood is now in the ownership of my clients’ neighbour.

2. External door blocked up:

The doorway in question was shown as being retained on the approved plans with the refurbishment of this building. It was blocked up following agreement on site with the Council’s Conservation Officer overseeing this scheme and the Building Regulation Inspector during works and was ‘signed off’ at completion. The blocking up of this doorway was to keep the integrity of the building and it was agreed that it could be insulated and plaster-boarded on the understanding that the original door and frame were retained as can be seen today.

3. External area:

The creation of the amenity area in front of the building did not require listed building consent.

4. Cellar entrance:

You are correct that an application for listed building consent, to block up an existing cellar entrance and to create a replacement cellar entrance, has not been submitted. The cellar is not only accessible via the Olde Rectory. There exists a coal hatch in front of the building by which access could be achieved if need be. There is a cellar entrance, via the Olde Rectory utility room, and this doorway is presently locked to prevent access from the neighbouring property.

5. Use of Fodder Store as holiday accommodation:

- 5.a My clients reiterate that the Fodder Store has not been used as annex living accommodation to The Olde Rectory. Rather, until last December, it has been used as holiday accommodation, together with the other buildings in this holiday unit complex. In support of this, I attach copies of the income derived from the holiday use of the Fodder Store for the years ending 2010, 2012 and 2013. I would be grateful if you could handle this information on a confidential basis.
- 5.b On a general note, I question the materiality of these past works to the Fodder Store to the planning application under consideration. The previous removal of apparently unattractive external steps, and blocking up of a doorway (the latter being undertaken under the supervision of Council officers) are not related to the issue of the residential use of the dwelling which is not dependent upon these works having been undertaken. Indeed, with the passage of time, my clients would not be able to reinstate the external steps unilaterally as the land on which they once stood is no longer in their ownership.
- 5.c Similarly, access to the cellar is not a pre-requisite of the proposed use of the Fodder Store as a dwelling as opposed to holiday accommodation independent of The Olde Rectory. As I have explained there is another means into the cellar should the owners of the Fodder Store wish to gain access to the cellar for maintenance purposes. It is acknowledged that listed building consent would be required were the owners of the Fodder Store wish to create an internal cellar entrance.
- 5.d With regard to the listed building issues, I remain firmly of the view that works undertaken to this building relating to external plywood steps, a doorway partitioned over only from inside the building and the cellar issue are not material to the application under consideration. These works, (some of which were authorised on site during construction works) are not a pre-requisite of the proposed use of this building as a dwelling. Its use as a dwelling (or permanent holiday accommodation for that matter) is not determined by whether or not the steps are reinstated, the doorway reinstated from the inside and the cellar is used.

In my view it would be wholly wrong of your Council to take into account these works to the listed building in determining the planning application. Any decision taking these works into account would be flawed.

- 5.e Confidential details have also been submitted by the applicant regarding the letting of the Fodder store for holiday purposes.
- 5.f Additionally, following the original committee meeting the following has been received from the applicants agent:

I refer to the planning application, submitted on behalf of my clients Mr and Mrs Poultney. This application was presented to the Planning Committee last week at which Members resolved to defer a decision to establish whether or not planning permissions to use the Fodder Store as an annex to the Olde Rectory were ever implemented.

You will have in your possession two Statutory Declarations, signed by my clients, confirming that neither of these two annex planning permissions were ever implemented.

To assist in this matter, I wish to identify a logical time line for this property. Planning permission was granted on 19 July 2010, to use this holiday accommodation as annex accommodation to The Olde Rectory, which was in my client's ownership at that

time (Council reference: DMNC/101265/F). Condition 1 of this permission stated that it expired three years of the date of this permission i.e. on 19 July 2013.

A planning application was submitted by my clients, to renew planning permission DMNC101265/F [removal of condition so as to allow the Fodder Store to be used as annex accommodation to the Olde rectory], on 18 July 2013 (Council reference: 131973/F). Planning permission was granted on 2 September 2013. The fact that permission 131973/F was granted over one month after planning permission DMNC/101265/F expired raises questions, in my mind, as to whether this latter permission could be granted given that the permission it sought to extend had already expired.

Be that as it may, the fact that my clients sought permission on 18 July 2013 to renew the permission DMNC/101265/F demonstrates that permission DMNC/101265/F had not been implemented up to that date. My clients could not implement permission DMNC/101265/F after 19 July 2013 as it had already expired by that date. There would be little point in my clients seeking permission to renew permission DMNC/101265/F if it had been implemented before 2 September 2013.

My clients sold The Olde Rectory, in April 2014. Beyond this date, it would not have been possible to implement the annex condition with the Fodder Store and The Olde Rectory in different ownerships.

Therefore, even if planning permission 131973/F was properly granted, the only possible window of time during which it could be implemented is between 2 September 2013 (when it was granted planning permission) and April 2014, when The Olde Rectory was sold by my clients.

To address specifically this window of time, between 2 September 2013 and April 2014, I attach evidence demonstrating the Fodder Store was used and available for use as holiday accommodation up to mid-April 2014.

I consider that this evidence, taken together with the contents of my clients' Statutory Declarations demonstrates that, on the balance of probabilities, neither planning permission DMNC/101265/F nor 131973/F were implemented.

References Made to the Planning History of the Fodder Store at Planning Committee  
There were several references made to the recent planning history of the Fodder Store to which I consider important to respond.

#### Enforcement Appeal

Reference has been made to the Planning Inspector's decision letter relating to a 2013 enforcement appeal. I see nothing in the inspector's decision letter that refers to the specific use of the Fodder Store at that time.

#### Canopy Works

Reference was also made at the Planning Committee to works that have been undertaken to remove a canopy between the Fodder Store and The Olde Rectory. These works were undertaken last October not by my clients but presumably on behalf of the owner of The Olde Rectory on whose land these works took place. Photographs of this event are available if you require them.

#### Temporary Hatch

My clients can confirm that a temporary hatch was inserted into the ground floor of the Fodder Store into its cellar. This was required to install a large boiler. The wooden flooring is in the process of being reinstated following this. The maintenance of the boiler would be achievable via the existing access to the cellar via the external entrance at the base of the front wall.

5.7 In addition as the report has progressed the following information has been submitted.

My clients' response in the Law Society [sales enquiries] document that the use of the Fodder Store was 'residential' was made in error and it remains incorrect. It was based upon the Poultnes' belief at the time that the grant of a planning permission in itself changes the lawful planning use of a building. This error is perhaps understandable given that they are not versed in planning law.

During my first meeting with the Poultnes before they commissioned me as their planning agent, it was I who explained to them that a planning permission has to be implemented before a material change of use could occur. They confirmed to me at that time that they had not implemented the annex permission and the fact that the Poultnes did not seek discharge of a car parking condition attached to the annex permission supports this statement.

5.8 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:-

<https://www.herefordshire.gov.uk/government-citizens-and-rights/customer-services-enquiries/contact-details?q=customer&type=suggestedpage>

## 6. Officer Appraisal

6.1 The main issues to be considered in this matter are:

- (i) evidence of implementation of the earlier permissions ref 101265 and 131973 respectively
- (ii) listed building consent
- (iii) amenity issues

### 6.2 Evidence of implementation of the 2010 (*renewed in 2013*) planning permission

This is relevant because, should there be evidence that it has been implemented, on a balance of probabilities then this particular application would be seeking relief from a condition which was no longer extant.

6.2.1 The applicants maintain that the annex use was not implemented, and that the existing use remains as holiday accommodation, additional evidence, as described above, has been submitted on that behalf.

6.2.2 Evidence to the contrary is that a car parking area has been created, thus implementing the annex permission, ref 131973, that the council tax banding is no longer business use, a reference to the Inspector dealing with the planning appeal in Aug 2013 and the law society form completed prior to sale referring to holiday change to residential.

6.2.3 In turn, a car parking area has been created, prior to submission of the details required by condition 3 of that permission. The applicants advise that this was created in mid 2014 for the use generally of the adjacent properties. Mr Wood, the neighbour subsequently submitted details in September 2014 to retrospectively satisfy that condition. On the face of it this is further unauthorised development, however as it causes no harm there are no grounds to pursue this.

6.2.4 The Council tax section received details from the applicant that the holiday use had ceased, as a consequence that section sought revaluation on the basis of residential use. The ceasing of operation for holiday use does not of itself mean that the holiday use is not still the authorised planning use.



- 6.2.5 The enforcement notice appeal decision, in relation to the larger site at the olde rectory has been referred to as evidence of use of the Fodder Store as ancillary accommodation to the Olde Rectory

In this regard it should be noted that the planning Inspector's decision letter states (inter alia):

..' Then, the appellants ( the applicants in this case) started using the site for functions, nearly all of which have, so far, been weekend wedding receptions following a ceremony at the church across the lane. Anyone wishing to use the venue has to rent all the holiday accommodation, along with the main house itself, which together provide about 47 bed spaces'.

The enforcement notice which resulted in the appeal was on the basis that a material change of use had occurred from a single dwelling house (the Old Rectory) to a mixed use for holiday accommodation and function venue. Consequently it is submitted that the Fodder Store could not have been used as an annex at this time, since, for planning purposes, the house was not being used as a dwelling.

- 6.2.6 It has also been submitted that the completion by the applicants, as sellers, of the Law Society sales enquiry is evidence that they understood that there had been a change of use of the Fodder store to ancillary accommodation for the Olde Rectory. Their planning agent advises that the applicants were under the misapprehension that the grant of the 2010 planning permission meant there was automatically a change of use and they had not realised that this was incorrect and actual use must be in evidence. It is the case officer's opinion that the applicants could indeed of inadvertently misunderstood this area of planning law.
- 6.2.7 The applicants' agent also considers that the renewal of the permission ref 131973 was invalid as the original permission had expired prior to its determination. There was no challenge to the validity of this decision at the time.
- 6.2.8 On balance therefore, it is considered that the weight of evidence suggests that the 2013 planning permission ref 131973 (being a renewal of the 2010 permission) has not been implemented and that the authorised use of the Fodder Store is as holiday accommodation. If members consider otherwise, and that the authorised use is as an annex, then the position is that there is a listed building, with a restriction on its use which cannot be complied with, since the main house is now in separate ownership.
- 6.2.9. The proposal, in seeking to remove the holiday occupancy condition would permit the Fodder Store to be used as a separate dwelling.

### **6.3.1 Listed Building Consents**

- 6.3.1 The Conservation Manager advises that unauthorised works have been carried out to the Fodder Store including the blocking of an internal door, removal of external steps and covered lobby area. Originally those comments considered that the unauthorised works should be resolved before the planning application could be determined. This is no longer the opinion of the Conservation Manager, furthermore there is no intention to obscure glaze the windows.

In this regard the provisions of S.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires 'In considering whether to grant planning permission.....special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses'

- 6.3.2 It is considered that the resolution of these matters however do not significantly impact upon the use of the building as a dwelling and need not be an impediment to the determination of this application. Notwithstanding the comments about integrity, this building and the main house are

already in separate ownership. It is considered therefore that the 'special regard' test, contained in S.66 is satisfied.

6.3.3 The applicant's agent refers to amendments agreed on site, however there is no record of such agreement. Any such agreement made would have been long prior to the current regulations regarding the procedure for dealing with amendments which is now in place. He also considers that the renewal of the permission ref 131973 was invalid as the original permission had expired prior to its determination. There was no challenge to the validity of this decision at the time.

#### 6.4 Amenity Issues

6.4.1 The main consideration is whether the use as a dwelling compared to holiday use creates sufficient additional amenity issues to justify refusal. Policy HBA3 sets out the criterion for change of use, namely:

The change of use of part or the whole of a listed building will be permitted where it can be demonstrated that:

1. The building is structurally capable of accommodating the proposed use without requiring substantial rebuilding;
2. The proposed use is compatible with the preservation of the existing building, its features and setting and where relevant those of any immediately adjacent listed buildings;
3. The proposed use complements any other existing uses of the building which are to be retained;
4. The proposal assists the retention and beneficial use of a historic building; and
5. In relation to reuse and adaptation of traditional rural buildings, the use complies with policies HBA12 and HBA13.

6.4.2 Reference has been made to the reason for imposition of conditions on the previous annex applications to comply with policy H18 of the Unitary Development Plan, which relates to the alteration or extension to dwellings, not the creation of new dwellings as objections suggest, the relevant criterion being;

3. the proposal would not be cramped in its plot, including having regard to provision of suitable private open amenity space, and would not adversely impact on the privacy and amenity of occupiers of neighbouring residential property; and
4. The level of resulting off street parking provision is in accordance with policy H16.

6.4.3 Whilst the proposal would result in a small dwelling with limited amenity space of its own it is not considered that the occupation for this purpose would result in an unacceptable level of privacy and amenity either for its own purposes or those of the adjoining property. It is not considered that the use as a separate dwelling is incompatible with the adjoining listed building, nor the setting thereof or of the other adjacent properties. It is considered that the proposal complies with policy H17 of the Herefordshire Unitary Development Plan. In terms of sustainability Whitbourne is considered to be a sustainable location. Members will recall the recent resolution to grant planning permission for 20 houses on that basis, and that S55 of the NPPF is satisfied.

6.5 It is therefore considered that the proposal complies with relevant policies, in particular, HBA3 and H17 the principles of the NPPF, and is recommended for approval accordingly.

**RECOMMENDATION**

That planning permission be granted subject to the following conditions:

1. **A01 Time limit for commencement (full permission)**

**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. **The applicant is advised that there are currently unauthorised works to the listed building which require amelioration. To this end you are strongly advised the contact the Historic Buildings Officer at the Council to put these matters in hand.**

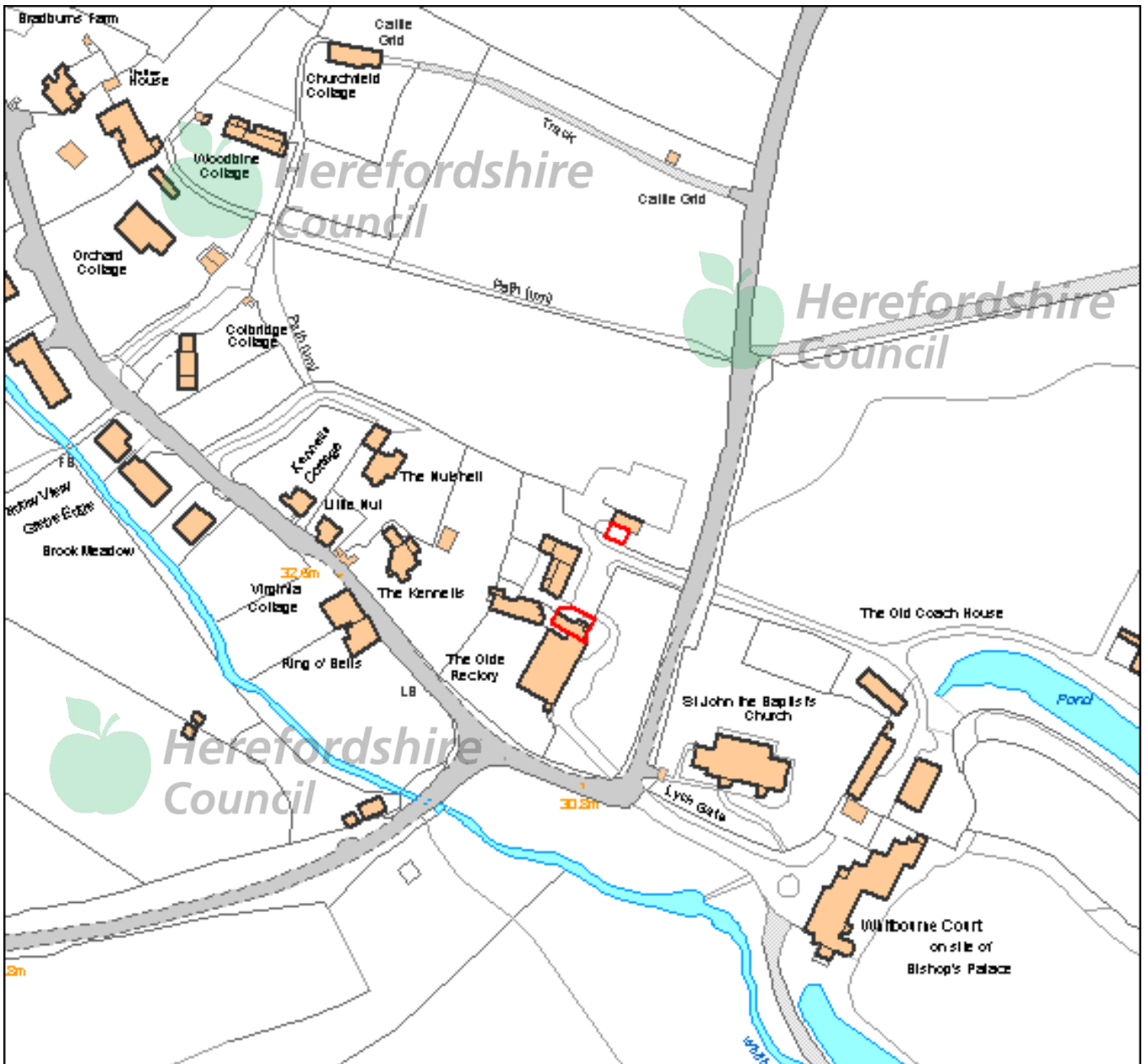
Decision: .....

Notes: .....

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**Background Papers**

Internal departmental consultation replies.



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**APPLICATION NO:** 142356/F

**SITE ADDRESS :** FODDER STORE ADJ THE OLD RECTORY, BOAT LANE, WHITBOURNE, WORCESTER, HEREFORDSHIRE, WR6 5RS

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