

MEETING:	PLANNING COMMITTEE
DATE:	16 MARCH 2015
TITLE OF REPORT:	<p>P143390/F - PROPOSED ERECTION OF 10 HOUSES WITH ASSOCIATED HIGHWAY INFRASTRUCTURE AND LANDSCAPING AT THE ELMS, EARDISLAND, LEOMINSTER, HEREFORDSHIRE, HR6 9BN</p> <p>For: Mr & Mrs Hicks per Mr Jim Hicks, Second Floor Offices, 46 Bridge Street, Hereford, Herefordshire, HR4 9DG</p>
WEBSITE LINK:	https://www.herefordshire.gov.uk/planning-and-building-control/development-control/planning-applications/details?id=143390&search=143390
Reason Application submitted to Committee - Contary to Policy.	

**Date Received: 13 November 2014 Ward: Golden Cross Grid Ref: 341732,258475
with Weobley**

Expiry Date: 16 February 2015

Local Member: Councillor MJ K Cooper.

1. Site Description and Proposal

- 1.1 The site, which covers an area of approx. 0.56 of an hectare, is located outside, but adjacent to the recognised settlement boundary for Eardisland, a main village in accordance with Policy H4 of the Herefordshire Unitary Development Plan. The site is located within the Eardisland Conservation Area and although there are no listed buildings within close proximity to the site, there are a number of listed dwellings within the surrounding vicinity to the east of the site.
- 1.2 The site, which is a field used for grazing, is sandwiched between a residential area to the south and east. Located alongside the northern boundary is the applicants' dwelling known as The Elms. To the west of the site is open farmland. Access into the site is from the C1035 highway which is located to the north west of the site.
- 1.3 The application proposes the construction of ten dwellings, and associated access road, which will lead into the site off the existing access road to The Elms. The breakdown of the dwellings is four 4 bed dwellings, three 3 bed dwellings and three affordable dwellings, which consist of three 2 bed dwellings.
- 1.4 The application is made in 'full' and is accompanied by a Planning statement, Design and Access statement, which incorporates a Heritage Statement, ecology survey, flood risk assessment, topographical survey, landscape assessment, transport and a draft Section 106 Planning Obligation. Also accompanying the application are detailed elevations, floor plans, site layout plan and street scene. The Draft Heads of Terms drawn up in accordance with Section 106 of the Town and Country Planning Act 1990 in-line with the Council's Supplementary Planning Document on Planning Obligations, is attached as an appendix to the report.

Further information on the subject of this report is available from Mr Philip Mullineux on 01432 261808

2. Policies

2.1 National Planning Policy Framework.

The following sections are of particular relevance:

Introduction	-	Achieving Sustainable Development
Section 6	-	Delivering a Wide Choice of High Quality Homes
Section 7	-	Requiring Good Design
Section 8	-	Promoting Healthy Communities
Section 10	-	Meeting the Challenge of Climate Change, Flooding and Coastal Change
Section 11	-	Conserving and Enhancing the Natural Environment
Section 12	-	Conserving and Enhancing the Historic Environment

2.2 Herefordshire Unitary Development Plan

S1	-	Sustainable Development
S2	-	Development Requirements
S3	-	Housing
S7	-	Natural and Historic Environment
S10	-	Waste
DR1	-	Design
DR3	-	Movement
DR4	-	Environment
DR5	-	Planning Obligations
DR7	-	Flood Risk
H4	-	Main Villages: Settlement Boundaries
H7	-	Housing in the Countryside Outside Settlements
H10	-	Rural Exception Housing
H13	-	Sustainable Residential Design
H15	-	Density
H19	-	Open Space Requirements
T8	-	Road Hierarchy
NC1	-	Biodiversity and Development
NC6	-	Biodiversity Action Plan Priority Habitats and Species
NC8	-	Habitat Creation, Restoration and Enhancement
NC9	-	Management of Features of the Landscape Important for Fauna and Flora
LA2	-	Landscape Character and Areas Least Resilient to Change
LA3	-	Setting of Settlements
LA5	-	Protection of Trees, Woodlands and Hedgerows
HBA4	-	Setting of Listed Buildings
HBA6	-	New Development in Conservation Areas.

2.3 Supplementary Planning Guidance

Planning Obligations

2.4 Herefordshire Local Plan Core Strategy

The pre-submission consultation on the Draft Local Plan – Core Strategy closed on 3 July 2014. At the time of writing this report an Independent Inspector is in the process of considering the Core Strategy following the recent examination. The majority of the Core Strategy policies were subject to objection and can be afforded only limited weight for the purposes of decision making.

SS1	-	Presumption in Favour of Sustainable Development
SS2	-	Delivering New Homes
SS3	-	Releasing Land for Residential Development
SS4	-	Movement and Transportation
SS6	-	Environmental quality and local distinctiveness
SS7	-	Addressing Climate Change
RA1	-	Rural Housing Strategy
RA2	-	Herefordshire's Villages
H1	-	Affordable Housing – Thresholds and Targets
H3	-	Ensuring an Appropriate Range and Mix of Housing
OS1	-	Requirement for Open Space, Sports and Recreation Facilities
OS2	-	Meeting Open Space, Sports and Recreation Needs
MT1	-	Traffic Management, Highway Safety and Promoting Active Travel
LD1	-	Landscape and Townscape
LD2	-	Biodiversity and Geodiversity
LD4	-	Historic Environment and Heritage Assets
SD1	-	Sustainable Design and Energy Efficiency
SD3	-	Sustainable Water Management and Water Resources
ID1	-	Infrastructure Delivery.

2.5 Eardisland has been designated a Neighbourhood Area under the Neighbourhood Planning (General) Regulations 2012. The Parish Council will prepare a Neighbourhood Development Plan for that area. The plan must be in general conformity with the strategic content of the emerging Core Strategy, but is not sufficiently advanced to attract weight for the purpose of decision-taking.

2.6 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 None.

4. Consultation Summary

Statutory Consultees

4.1 English Heritage has responded to the application indicating: 'The proposed scheme will take place within the Eardisland Conservation Area. As the application affects a conservation area, the statutory requirement to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area (s.72, 1990 Act) must be taken into account by your authority when making its decision. Under the NPPF it is a core planning principle to conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations (para.17 NPPF). When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. No other planning concern is given a greater sense of importance in the NPPF. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification (para.132, NPPF). The onus is therefore on you to rigorously test the necessity of any harmful works. Development within this site should seek to promote or reinforce the local distinctiveness of the conservation area in line with NPPF paragraphs 58 to 61. This should be reflected in the materials, rhythm, style of architectural details and form of the proposed development. And we

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therefore advise you to consider whether the proposed design takes these matters into consideration.

Recommendation

We would urge you to address the above issues, and recommend that the application should be determined in accordance with national and local policy guidance, and on the basis of your specialist conservation advice.'

4.2 The Environment Agency has responded objecting to the application. Their response states:

'We object to the proposals on flood risk grounds and in particular on the lack of a safe access/egress route to land outside of the floodplain during flood events.

Flood Risk: This site falls within Flood Zone 1 (Low Risk) on our Flood Map for Planning and is defined as land assessed as having a less than 1 in 1,000 annual probability of river or sea flooding (<0.1%). However, the site is adjacent to, and surrounded by, Flood Zone 3 of the River Arrow (High Probability) and is effectively a dry island. Eardisland is also known to have surface water flooding issues. National planning policy confirms that More Vulnerable development is appropriate in Flood Zone 1 although, in this instance, the Flood Risk Assessment (FRA) must still demonstrate that the development is safe, does not increase flood risk elsewhere and, ideally, reduces flood risk post development including climate change impacts.

Sequential Test: Paragraph 101 of the National Planning Policy Framework (NPPF) requires decision-makers to steer new development to areas at the lowest probability of flooding by applying a 'Sequential Test'. It states that 'Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding'. Only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 be considered, taking into account the flood risk vulnerability of land uses and applying the Exception Test if required (see Paragraph 102 of the NPPF). **Flood Risk Assessment (FRA):** The submitted FRA uses the 2D hydraulic modelling for the River Arrow from our Lugg and Arrow hydraulic model which is the latest and best available data for Eardisland. The 2D results have been included in Section 2 and Appendix C of the FRA and the 1 % plus climate change modelled flood level to the north of the Elms confirmed at 85.65mAOD used.

We are generally satisfied with the FRA produced and the assessment of flooding in Eardisland. The topographical survey provided in Appendix A is detailed and demonstrates that the vast majority site of the site is elevated above the highest 2D 1 % plus climate change level of 85.65mAOD. Section 1.18 of the FRA confirms that Eardisland is identified in the SFRA as being a heavily flood prone area. However, Section 2.7 and Appendix C of the FRA confirms that the site was not affected by flooding during the 1947 flood event on the River Arrow. It is well known that the main vehicular routes through the village can flood extensively from the River Arrow during high flows with floodwater entering Eardisland upstream of the main road bridge flowing down the main road through the village. However, the main road has also been known to flood from surface water not being able to drain to the river during high flows. Herefordshire Council's drainage team, as the Lead Local Flood Authority (LLFA), will be able to comment on the surface water flooding within Eardisland.

Finished Floor Levels: We are satisfied with the proposed finished floor level of 86.25mAOD provided in Section 3.2 of the FRA as it is 600mm above the highest 1% plus climate change 2D flood level to the north of the site.

Safe Access/Egress Route/Flood Management and Evacuation Plan: Safe access and flood management are the key issues for this proposal as the FRA clearly identifies (Section 3.5) that

safe access/egress is not possible in a 1% plus climate change event on the River Arrow, as is the case for most existing properties in Eardisland. Using the Environment Agency's River Lugg and Arrow model, the FRA clearly sets out the flood risk in the village both in a 1 in 20 and 1 in 100 year plus climate change flood events. The FRA confirms that the main road is affected in a 1 in 5 year flood event. Potential depths of up to 1.3 metres in a 1 in 100 year plus climate change event are predicted on the main road leading south out of the village. Even potential depths of over 1 metre are possible in a 1 in 20 year event. These sort of depths are not considered safe and Table 13.1 of the EA/Defra document on Flood Risk Assessment Guidance for New Development (FD2320/TR2) states that depths of 1 to 1.5 m, even with low velocities, are considered as 'Danger for Most', a point which is acknowledged in Section 2.18 of BWB's FRA. It is not just the significant depths of flooding that are concerning but also the length of floodwater through which occupants of this site may be expected to walk through, potentially in the dark with obstacles on the route such as and manhole covers removed by flooding. Section 3.13 of the FRA suggests a suitable lead time to evacuate residents but the roads begins to flood from surface water prior to floodwater spilling from the River Arrow. We would support the proposed installation of a more localised/site specific warning system located adjacent to the main Bridge in Eardisland, outlined in Section 3.17, to ensure that the dwellings were evacuated and vehicles moved prior to flooding occurring on the main road. It is important to relate any triggers on the Titley Mill Gauge with flooding occurring in Eardisland. We do offer a flood warning service in this area on which a Flood Management and Evacuation Plan can be based but it is not our remit to comment on the adequacy of the proposed plan as outlined in Section 3.0 of the FRA. We therefore recommend you consult with your Emergency Planning team with regard to specific emergency planning issues relating to new development and would await confirmation that they are satisfied that this level of risk can be dealt with using a Flood Management and Evacuation Plan. If the plan were to fail this would increase the burden on the Emergency Services at a time when they will already be extremely busy and we question whether adding an additional 10 properties to the existing properties in Eardisland, which already have no access during flood events, is the most sustainable approach. The FRA does not confirm if contact with the Emergency Planners has been made by the applicant. However, we believe that the FRA has enough flood risk information to allow the Emergency Planners to make an informed decision on flood risk and the consequence for occupants/the Emergency Services should the plan fail during a 1 in 20 year or 1% plus climate change event.

Surface Water Drainage: Section 4.0 discusses the proposed surface water drainage arrangements for the site but we would expect the LLFA to lead and comment on these proposals.

Summary: We are satisfied that BWB's FRA has provided a thorough assessment of the flood risk to the site in order to allow the LPA to make an informed decision on flood risk and how it will affect the site and its potential occupants. We have no option but to object to the proposals given the potential depth of flooding of 1.3 metres on the main road (Danger for Most) when climate change impacts are considered and the distance of several hundred metres to land outside of the floodplain. However, we appreciate that this would prevent any additional development within Eardisland itself and why the LPA may wish to approve this application against our advice. Should the application be approved we would seek confirmation that the Emergency's Planners are satisfied with the Flood Management and Evacuation proposals'

- 4.3 Welsh Water raises no objections in relationship to the proposed development.

Internal Consultation

- 4.4 The Transportation Manager raises no objections.
- 4.5 The Conservation Manager (Ecology) raises no objections indicating: *'I have read the report from Star Ecology and would agree with its findings. The proposals for species and site mitigation/enhancement can be secured by a non-standard condition.'*

I am content that the survey reveals no potential impact upon bats; although there are two ponds nearby and, although it is not known whether they harbour great crested newts (GCN) I believe they are at sufficient distance and location whereby the risk of any newt impacts is negligible. I note the proposals for habitat and species enhancement for the site and, if approved, I would recommend a condition based upon this as follows:

The recommendations set out in Section 9 and 10 of the ecologist's report from Star Ecology dated August/November July 2013 should be followed in relation to species mitigation and habitat enhancement. Prior to commencement of the development, a species and habitat enhancement plan integrated with the landscape plan should be submitted to, and be approved in writing by, the local planning authority, and the work shall be implemented as approved. An appropriately qualified and experienced ecological clerk of works should be appointed (or consultant engaged in that capacity) to oversee the ecological mitigation work.

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

4.6 The Conservation Manager, (Historic Buildings), has responded with no objections indicating:

'The land to the south of The Elms is within the Eardisland Conservation Area boundary and is located to the rear of a recent development called Orchard Green. There are several grade II listed cottages and a grade II* property in the vicinity of the site. Pre-application advice was given concerning the site.

From a heritage perspective the relevant policies are saved policies HBA4, relating to the setting of listed buildings, and HBA6, relating to new development within conservation areas.

The site is located to the west of the listed buildings, which line the east side of the village road, and it is behind the buildings on the west side of the road. This has the effect of creating visual separation between the listed heritage assets and the development site such that the setting of the assets is not considered to be compromised. The direct distance between the site and the various listed buildings is relatively short; however there are buildings and mature vegetation within that distance that serve to further separate the two. Overall it is considered that the scheme would not be contrary to Policy HBA4.

The proposed scheme will be visible within the Eardisland Conservation Area but would be situated off the main route through the village. This should reduce the impact of the scheme on the conservation area in visual terms, though for any scheme within a conservation area there should be no need to hide the development.

The layout of the scheme along a slightly winding access road is considered sympathetic to the character of the local road network, as is the relationship between that road and the various dwellings. The spaces between the dwellings and the use of a terrace of three are elements reminiscent of Eardisland village, though the positioning of dwellings to both sides of the road is atypical of the historic village layout.

The dwelling designs are slightly larger forms of local properties with a similar massing but on a slightly larger scale. The use of a traditional materials palette is proposed but with more contemporary detailing and more contemporary sizing of windows.

It is considered that the scheme taken in isolation represents a carefully considered mix of traditional and contemporary features. Assessed in the context of this particular conservation

area it is also considered to be acceptable, though not a pastiche response to one of the “black and white” trail villages.

The materials proposed are considered to be acceptable but I would stress the need to condition the type and appearance of the solar panels as these may easily cause glare and glint which is not considered appropriate for the conservation area. It is recommended that a condition is attached to any consent requiring the solar panels to be of non-reflective glass with a dark frame and dark spacers within the panels. This will minimise the visual prominence of the panels, particularly on the slate roofs.’

- 4.7 The Conservation Manager (Archaeology) raises no objections.
- 4.8 The Conservation Manager (Landscape) has responded to the application raising concerns that no landscape assessment has not been submitted in support of the application. Given that the site is located within the Conservation Area and its prominence; in terms of its elevated landform in relation to the settlement of Eardisland, it is recommended that a landscape appraisal be submitted in order to examine the potential visual impact of the proposal as well as the impact upon the landscape of the site and its surroundings.
- 4.9 The Emergency Planner initially responded to the application acknowledging the comments from the Environment Agency confirming that in his opinion the risk can be mitigated by a Flood Management and Evacuation Plan as discussed during pre-application discussions. As part of the conditions, if the application is approved, a Flood Management and Evacuation Plan (including signing up to flood warning and in-situ sheltering) should be drafted and approved by the Emergency Planning Officer (or another member of the Resilience Team) before any residence is taken. The response also indicated that it should be noted that he was not in a position to accept this risk on behalf of the council and that this decision lies with the planning committee.

A further response in consideration of the Case Officer’s concerns about this application in relationship to emergency flood evacuation indicates:

‘What I wanted to highlight was that in this particular case I believe that the members of the planning committee must make the decision on whether an application that carries this level of risk goes ahead. The NPPF p.103 states that a “development is appropriately flood resilient and resistant, including safe access and escape routes *where required*, and that any residual risk can be safely managed, including by emergency planning”. As I am not an expert on the NPPF I cannot determine whether this application requires safe access and escape routes, I presume this should be based on the advice of the Environment Agency, but in my professional opinion believe that the risk to this site can be managed via a Flood Management and Evacuation Plan. However, this level of risk may still be deemed too high; I am unaware of local council policy of on what is an acceptable level of risk for new planning developments and don’t feel it is my place to make that decision.

If any of the members would like me to speak to them regarding the hazard present at this development and how we might mitigate against it I would be happy to do so.’

- 4.10 The Land Drainage Manager has responded with no objections. The response concludes indicating:

We have no objections in principle to the proposed development, subject to the Council agreeing the proposed emergency response plan with the Emergency Planning Department.

‘Prior to construction we recommend that the following information is provided by the Applicant as part of appropriate planning conditions:

- *A detailed surface water drainage strategy that includes drawings and calculations that demonstrate consideration of SUDS techniques, no surface water flooding up to the 1 in 30 year event and no increased risk of flooding as a result of development up to the 1 in 100 year event and allowing for the potential effects of climate change;*
- *Demonstration of designing for exceedance and the management of overland flows;*
- *Proposals for the adoption and maintenance of the surface and foul water drainage systems;*
- *Results of infiltration testing undertaken in accordance with BRE365 and results of recorded groundwater levels, noting that the base of any infiltration structure should be a minimum of 1m above the highest recorded groundwater level.*

As discussed above, we also recommend that further clarification is sought by the Council regarding the ownership and future aspirations of the parcel of land to the north of the development. ‘

- 4.11 The Housing Manager raises no objections indicating that the application meets the UDP requirement to provide 35% affordable housing and the required build standards of the local authority. Therefore, in principal I support the application. However, I would like the tenure of the affordable units to be agreed and as a result, from data available, I propose that the affordable units be 2x2 beds for social rent and 1x2 bed for intermediate tenure.
- 4.12 The Schools Organisation and Capital Investment Manager raises no objections.
- 4.13 The Parks and Countryside Manager raises no objections.

5. Representations

- 5.1 Eardisland Parish Council has responded to the application raising no objections in their response stating:

‘Eardisland Parish Council resolved to support this application, conditional upon assurance from the Environment Agency and the hydrologist employed by the applicant that the flood risk to current residencies will not be exacerbated. The Parish Council wish to receive feedback before a formal decision is made’.

- 5.2 Two letters in support of the application have been received and the main issues raised can be summarised as follows:

- The village needs an injection of new development.
- Application proposes a good mix of affordable dwellings and dwellings that are considered appropriate for the village concerned.

- 5.3 Six letters of objections/comments have been received. Issues raised can be summarised as follows:

- Impact of the proposed development on surrounding public highways with regards to increase in vehicular movements.
- Proposed development is considered to be of poor design and proposes too many dwellings in relationship to the scale of the village.
- Concerns about the location of proposed soakaways in relationship to neighbouring dwellings.
- Potential for increase in flooding in a fragile settlement with consideration to flooding and drainage issues.
- Concerns whether adequate drainage and potential for flooding surveys have been carried out with consideration to the nature of the surrounding environment in relationship to drainage and flooding issues.

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- Insufficient consideration has been given to the requirement for an evacuation plan in the event of an emergency in relationship to flooding.

5.4 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's Appraisal

6.1 The key issues in relationship to this application are;

- Principle of the development.
- Conservation Area and Listed Buildings
- Landscape and Ecology.
- Flooding and drainage issues

Principle of the Development

6.2 S38(6) of the Planning and Compulsory Purchase Act 2004 states as follows:

"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

6.3 In this instance the Development Plan for the area is the Herefordshire Unitary Development Plan 2007 (UDP). UDP policy S3 sets out provision for the erection of 800 dwellings per year between 2001 and 2007 and 600 per year thereafter. The distribution for housing is split between Hereford and the market towns, main villages and the wider rural area. The plan is time-expired, but relevant policies have been 'saved' pending the adoption of the Herefordshire Local Plan/Core Strategy. UDP policies can only be attributed weight according to their consistency with the National Planning Policy Framework, (NPPF). Essentially, the greater the degree of consistency, the greater the weight that can be attached.

6.4 Eardisland is defined as a main village under saved UDP Policy H4 and offers within its built up boundary, a range of public facilities such as two public houses, village stores, community centre, church and also has a public transport bus service to surrounding larger areas such as Leominster and thus is considered a sustainable settlement suitable for residential development. However, the site falls outside but adjacent to the settlement boundary. Development is thus contrary to 'saved' UDP policy H4 and none of the exceptions under Policy H7 are met. It is clear, therefore, that the proposal is contrary to the housing delivery policies of the UDP.

6.5 The two-stage process set out at S38 (6) requires, for the purpose of any determination, assessment of material considerations. In this instance the NPPF is the most significant material consideration. Paragraph 215 recognises the primacy of the Development Plan but only where saved policies are consistent with the NPPF:-

"In other cases and following this 12-month period, due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)."

6.6 The effect of this paragraph is to effectively supersede the UDP with the NPPF where there is inconsistency in approach and objectives. The NPPF approach to Housing Delivery is set out in Chapter 6 – Delivering a wide choice of high quality homes. Paragraph 47 requires that local authorities allocate sufficient housing land to meet 5 years worth of their requirement with an additional 5% buffer. Deliverable sites should also be identified for years 6-10 and 11-15. Paragraph 47 states:

“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.”

6.7 The effect of this paragraph is to supersede the UDP with the NPPF where there is inconsistency in approach and objectives. As such, and in the light of the housing land supply deficit, the housing policies of the NPPF must take precedence and the presumption in favour of approval as set out at paragraph 14 is engaged if development can be shown to be *sustainable*.

6.8 The Council’s published position is that it cannot demonstrate a five year supply of housing land. This has been reaffirmed by the recently published Housing Land Supply Interim Position Statement – May 2014. This, in conjunction with recent appeal decisions, confirms that the Council does not have a five year supply of deliverable housing land, is significantly short of being able to do so, and persistent under-delivery over the last 5 years renders the authority liable to inclusion in the 20% bracket.

6.9 In this context, therefore, the proposed erection of 10 dwellings is on a deliverable and available Strategic Housing Land Availability Assessment (SHLAA) site. The assessment indicates it is a site suitable for up to 15 dwellings. although it is classed as a site with significant constraints. It indicates that the site is achievable with suitable highway access. Although the site is higher than the adjoining estate road and is a remnant orchard with grazing the site is suitable for development. This is a significant material consideration telling in favour of the development to which substantial weight should be attached.

6.10 Taking all of the above into account, officers conclude that in the absence of a five-year housing land supply and advice set down in paragraphs 47 & 49 of the NPPF, the presumption in favour of sustainable development expressed at Paragraph 14 of the NPPF is applicable if it should be concluded that the development proposal is sustainable. As such, the principle of development cannot be rejected on the basis of its location outside the UDP settlement boundary.

6.11 On this issue, officers conclude that in the light of the housing land supply issue and NPPF policies, the principle of development at this location outside but adjoining the UDP defined settlement boundary, is acceptable.

Conservation Area and Listed Buildings

6.12 The site is located within the Conservation Area for Eardisland on land elevated above the settlement. Residential development surrounds the site on three sides, the only open land being located to the north west of the site. The proposal to site 10 dwellings with appropriate landscaping is considered to be reflective of the surrounding built environment. Listed Buildings (Grade2 and 2 *) are located within the vicinity of the site however it is considered that this proposal does not cause harm to the setting of these buildings or the Conservation Area which would warrant refusal of the application.

6.13 Paragraph 132 of the NPPF indicates in relationship to the historic environment:

‘When considering the impact of a proposed development on the significance of a designated heritage asset great weight should be given to the asset’s conservation. The more important the

asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification.'

6.14 Paragraph 134 of the NPPF states:

'Where a development proposal will lead to less than substantial harm to the significance of a designated asset, the harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.'

6.15 The Conservation Manager (Historic Buildings) has confirmed no objection to the proposal. The development is therefore considered acceptable in relationship to heritage assets and relevant policies of the UDP and the NPPF on this matter

Landscape and Ecology

6.16 The applicants have submitted an ecological assessment which indicates that the site is of low ecological value and the Conservation Manager (Ecology) concurs with the findings.

6.17 The site contains the remnants of a former orchard with few trees remaining. The proposed landscaping scheme seeks to enhance the site with new tree and hedge planting which will also support enhanced bio-diversity of the area.

6.18 On balance it is considered that the proposal is considered acceptable on landscape and ecology matters together with the attachment of appropriate conditions.

Flooding and Drainage Issues

6.19 The NPPF in paragraph 103 indicates that "when determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere and only consider development appropriate in areas at risk of flooding where it can be demonstrated that development is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed, including by emergency planning". The application site is located on flood zone 1, (low risk), in accordance with the Environment Agency, (EA), flood risk data maps, however access to the site is located within flood zones 2 and 3 and as a consequence the applicants have submitted a flood risk assessment, (FRA), in support of their application.

6.20 The conclusions and recommendations of the assessment indicate that the proposed development is at an acceptable level of flood risk subject to flood risk mitigation strategies being implemented. The recommendations include finished floor levels to be raised a minimum of 600mm above 1 in 100 year + 20% floor level; residents signing up to the EA flood warning service; and a site wide evacuation plan prepared for the development prior to construction. The potential to increase flood risk elsewhere will be mitigated by maintaining current drainage conditions on site and providing appropriate treatment prior to discharge.

6.21 However the EA have responded objecting to the application. Their response indicates that they are generally satisfied with the FRA produced and the assessment of flooding in Eardisland. The topographical survey provided in Appendix A is detailed and demonstrates that the vast majority of the site is elevated above the highest 2D 1 % plus climate change level of 85.65m AOD. Section 1.18 of the FRA confirms that Eardisland is identified in the SFRA as being a heavily flood prone area. However, Section 2.7 and Appendix C of the FRA confirms that the site was not affected by flooding during the 1947 flood event on the River Arrow. It is well known that the main vehicular routes through the village can flood extensively from the River Arrow during high flows with floodwater entering Eardisland upstream of the main road bridge flowing

down the main road through the village. In addition, the main road has also been known to flood from surface water not being able to drain to the river during high flows.

- 6.22 The response indicates that safe access and flood management are the key issues for this proposal as the FRA clearly identifies (Section 3.5) that safe access/egress is not possible in a 1% plus climate change event on the River Arrow, as is the case for most existing properties in Eardisland.
- 6.23 Using the Environment Agency's River Lugg and Arrow model, the FRA clearly sets out the flood risk in the village both in a 1 in 20 and 1 in 100 year plus climate change flood events. The FRA confirms that the main road is affected in a 1 in 5 year flood event. Potential depths of up to 1.3 metres in a 1 in 100 year plus climate change event are predicted on the main road leading south out of the village. Even potential depths of over 1 metre are possible in a 1 in 20 year event. These sort of depths are not considered safe and Table 13.1 of the EA/Defra document on Flood Risk Assessment Guidance for New Development (FD2320/TR2) states that depths of 1 to 1.5 m, even with low velocities, are considered as 'Danger for Most', a point which is acknowledged in Section 2.18 of the applicants FRA.
- 6.24 It is not just the significant depths of flooding that are concerning, but also the length of floodwater through which occupants of this site may be expected to walk, potentially in the dark with obstacles on the route such as manhole covers removed by flooding. Section 3.13 of the FRA suggests a suitable lead time to evacuate residents but the road begins to flood from surface water prior to floodwater spilling from the River Arrow. The EA indicate they would support the proposed installation of a more localised/site specific warning system located adjacent to the main bridge in Eardisland, outlined in Section 3.17, to ensure that the dwellings were evacuated and vehicles moved prior to flooding occurring on the main road. It is important to relate any triggers on the Titley Mill Gauge with flooding occurring in Eardisland.
- 6.25 The EA offer a flood warning service in this area on which a Flood Management and Evacuation Plan can be based but do not consider that it is their remit to comment on the adequacy of the proposed plan as outlined in Section 3.0 of the FRA and recommend consultation with the Council's emergency planning team.
- 6.26 If the plan were to fail this would increase the burden on the emergency services at a time when they will already be extremely busy and the EA question whether adding an additional 10 properties to the existing properties in Eardisland, which already have no access during flood events, is the most sustainable approach.
- 6.27 The EA in their response have indicated that they believe that the FRA has enough flood risk information to allow the Emergency Planners to make an informed decision on flood risk and the consequence for occupants/the Emergency Services should the plan fail during a 1 in 20 year or 1% plus climate change event.
- 6.28 The EA confirm they have no option but to object to the proposals given the potential depth of flooding of 1.3 metres on the main road (danger for most), when climate change impacts are considered and the distance of several hundred metres to land outside of the floodplain. However, they appreciate that this would prevent any additional development within Eardisland itself and therefore would understand why the local planning authority may wish to approve this application against EA advice.
- 6.29 The Council's Emergency Planning Officer acknowledges the comments from the Environment Agency and confirms that in his opinion the risk can be mitigated by a Flood Management and Evacuation Plan.

- 6.30 The NPPF in paragraph 103 states that a *"development is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed, including by emergency planning"*.
- 6.31 The NPPF Section 10: Meeting the challenge of climate change, flooding and coastal change provides advice to local planning authorities when determining planning applications in relationship to flood risk indicating that flood risk should not be increased elsewhere as a result of the development and that development should only be considered in areas at risk of flooding which are informed by site-specific flood risk assessment following a sequential test.
- 6.32 The EA in their response have referred to the NPPF with regards to a sequential test, to which paragraph 101 of the NPPF requires decision-makers to steer new development to areas at the lowest probability of flooding by applying a 'Sequential Test'. It states that 'development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding' and that only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 be considered, taking into account the flood risk vulnerability of land uses and applying the exception test if required.
- 6.33 Clearly the site for the proposed development is in flood zone 1 and as such this in itself is not an issue of concern. The concerns refer to a safe means of access through the area adjoining the site which is classed as flood risk zones 2 and 3 and that development on site will not exacerbate flooding elsewhere.
- 6.34 The village of Eardisland is classed as a main village in accordance with the UDP and therefore considered suitable for development. The village is mostly all within a high risk flood area, (Zones 2 and 3), and this appears to include most of the land around its existing development boundary in accordance with the UDP Inset map and EA flood risk data maps, however this does not include the land subject to this application. As such in relation to the requirement for a sequential test officers are satisfied with the conclusions reached.
- 6.35 Therefore Officers are of the opinion that the risk to this site can be managed via a flood management and evacuation plan
- 6.36 The response from the Land Drainage Manager indicates that the applicants proposed surface water drainage is in accordance with the draft National Standards for Sustainable Drainage and Policy DR4 of the UDP. They recommend that further infiltration testing is undertaken at the location of the proposed soakaways in accordance with BRE 365 and that the results are submitted to the Council for approval prior to construction on site, along with detail in relationship to ground water levels. This can be covered by condition.
- 6.37 No objections are also raised to the applicants method of foul drainage via a package treatment plant for the treatment of waste water generated by the development to a soakaway .
- 6.38 With consideration to the comments made by the Land Drainage Manager and confirmation received from the applicants, the issues in relation to detailed surface water drainage and foul drainage systems are considered acceptable. With appropriate conditions attached to any approval notice as recommended by both the Emergency Planning Officer and the Land Drainage Manager these matters can be adequately addressed.

Other Matters

Public Highway Access

- 6.39 Concerns have been raised by members of the public about public highway access and impacts with regards to additional vehicle movements on surrounding highways. It is noted that the Transportation Manager raises no objections to the development.

Scale and Design

- 6.40 A letter of objection from a member of the public also raises concerns about the scale and design of the proposed development. Whilst it is accepted that the individual dwelling designs are mostly of slightly larger forms of local properties, they are of a similar massing but on a slightly larger scale. The use of a traditional material palette is proposed, but with contemporary detail. It is considered that the scheme taken in isolation represents a carefully considered mix of traditional and contemporary features and assessed in the context of the conservation area, the development is considered to be acceptable.

Benefits Arising from the Proposal

- 6.41 S38(6) of the Planning and Compulsory Purchase Act necessitates review of other material considerations alongside the provisions of the Development Plan in exercising the 'planning balance'. The main material consideration in the context is the National Planning Policy Framework, which supersedes the housing supply policies of the UDP. As such the acknowledged shortfall in deliverable housing sites represents a consideration of significant weight in favour of the scheme. The scheme would also boost the supply of housing as well as contribute towards addressing the current need for affordable housing within the parish. In terms of the economic dimension of sustainable development, the development would introduce benefits in terms of the New Homes Bonus, as well as investment in jobs and construction in the area.
- 6.42 S106 contributions of £93,120 have been confirmed. It is agreed that contributions towards education infrastructure, open space, library and waste/recycling facilities and sustainable transport strategies are compliant with the CIL regulations (122(2)). In this respect the scheme complies with 'saved' UDP policy DR5, the Planning Obligations SPD and the Framework.

7. Conclusions

- 7.1 In accordance with S38 (6) of the Planning and Compulsory Purchase Act 2004, the application should be determined in accordance with the development plan, unless material considerations indicate otherwise.
- 7.2 In the weighing of material considerations regard must be had to the provisions of the NPPF; especially in the context of a shortage of deliverable housing sites. It is acknowledged that the development places reliance upon the presumption in favour of sustainable development as set out at paragraph 14 of the NPPF in the context of a housing land supply deficit, but equally that the emerging policies of the Core Strategy and Neighbourhood Plan are not sufficiently advanced to attract weight in the decision-making process.
- 7.3 The contribution that the development would make in terms of jobs and associated activity in the construction sector and supporting businesses should also be acknowledged. The raft of S106 contributions is also noted. The ability of an increased population to underpin local services is also recognised.
- 7.4 Officers consider that in the context of existing development within Eardisland, the design of the proposal in terms of its layout and architecture is acceptable. Therefore on issues in relation to

the surrounding historic built environment, Conservation Area and landscape on balance the development is considered acceptable. It is acknowledged that issues of concern have been raised on flooding and drainage issues, however it is considered that these matters can be mitigated and addressed satisfactorily with appropriate conditions.

- 7.5 When considering the three indivisible dimensions of sustainable development as set out in the NPPF, officers consider that the scheme when considered as a whole is representative of sustainable development and that the presumption in favour of approval is engaged.
- 7.6 Any adverse impacts associated with granting planning permission are not considered to significantly and demonstrably outweigh the benefits and it is recommended that planning permission be granted subject to the completion of a legal undertaking under Section 106 of the Town and Country Planning Act 1990 and planning conditions as referred to below.

RECOMMENDATION

Subject to the completion of a Section 106 Town & Country Planning Act 1990 obligation agreement in accordance with the Heads of Terms as attached to this report, officers named in the Scheme of Delegation to Officers are authorised to grant full planning permission, subject to the conditions below and any other further conditions considered necessary.

1. **A01 Time limit for commencement (full permission)**
2. **B02 Development in accordance with approved plans and materials**
3. **The recommendations set out in Section 9 and 10 of the ecologist's report from Star Ecology dated August/November July 2013 must be followed in relation to species mitigation and habitat enhancement. Prior to commencement of the development, a species and habitat enhancement plan integrated with the landscape plan must be submitted to, and be approved in writing by, the local planning authority, and the work shall be implemented as approved. An appropriately qualified and experienced ecological clerk of works should be appointed (or consultant engaged in that capacity) to oversee the ecological mitigation work.**

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

4. **Notwithstanding the approved plans prior to any development on site details of the proposed solar panels and their construction will be submitted to the Local Planning Authority and approved in writing.**

Reason: In consideration of the impact on the surrounding Conservation Area and to comply with Policy HBA6 of the Herefordshire Unitary Development Plan.

5. **G02 Retention of trees and hedgerows**
6. **G03 Retention of existing trees/hedgerows**
7. **G09 Details of Boundary treatments**

8. Finished floor levels will be of 86.25mAOD as indicated in Section 3.2 of the flood risk assessment submitted in support of the application .

Reason: With consideration to flood risk and to comply with Policies DR4 and DR7 of the Herefordshire Unitary Development Plan.

9. L04 Comprehensive & Integrated draining of site

10. I55 Site Waste Management

11. I52 Finished floor levels (area at risk from flooding)

12. M07 Evacuation management plan

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. N11A Wildlife and Countryside Act 1981 (as amended) - Birds

3. N11C General

Decision:

Notes:

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Background Papers

Internal departmental consultation replies.



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APPLICATION NO: 143390/F

SITE ADDRESS : THE ELMS, EARDISLAND, LEOMINSTER, HEREFORDSHIRE, HR6 9BN

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DRAFT HEADS OF TERMS
Proposed Planning Obligation Agreement
Section 106 Town and Country Planning Act 1990
Planning Ref – P143390/F

This Heads of Terms has been assessed against the adopted Supplementary Planning Document on Planning Obligations dated 1st April 2008. All contributions in respect of the residential development are assessed against general market units only.

Proposed erection of 10 dwellings comprising 3 x 3 bed open market dwellings, 4 x 4 bed open market dwellings and 3x 2 bed affordable dwellings and associated works to provide a new access on land at The Elms, Eardisland, HR6 9BN.

1. The developer covenants with Herefordshire Council, in lieu of the provision of open space on the land to serve the development to pay Herefordshire Council the sum of **£9,455** which sum shall be paid on or before the commencement of development. The monies shall be used by Herefordshire Council at its option for improvements to the quality / accessibility of existing facilities in Eardisland. Priorities to spend will be identified through local consultation. The monies may be pooled with other contributions if appropriate.
2. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of **£50,520** to provide education improvements to Conningsby Early Years, Kingsland Primary School, Weobley High School, St. Mary's Roman Catholic School, (8% of education contribution), Herefordshire Youth Service and Special Educational Needs, (1% of total contribution). This sum shall be paid on or before the commencement of development, or to a timetable to be agreed between the Council and the developer prior to the formal completion of a Section 106 Agreement.
3. The developer covenants with Herefordshire Council, to pay Herefordshire Council the sum of **£30747** to provide sustainable transport measures in Eardisland. The sum shall be paid on or before the commencement of development. The monies shall be used by Herefordshire Council at its option for any or all of the following purposes:
 - a) Pedestrian access improvements near the development and within Eardisland.
 - b) Improvements to bus provision/passenger waiting facilities.
 - c) Improvements to safe routes to local schools etc.
 - d) Contribution to safe routes to schools.
4. The developer covenants with Herefordshire Council, to pay Herefordshire Council the sum of **£1,558** towards the provision of library services in Leominster. The sum shall be paid on or before the commencement of development, or to a timetable to be agreed between the Council and the developer prior to the formal completion of a Section 106 Agreement.
5. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of **£840.00** (index linked). The contribution will provide for waste reduction and recycling in Leominster. The sum shall be paid on or before occupation of the 1st open market dwelling, and may be pooled with other contributions if appropriate.
6. The developer covenants with Herefordshire Council that 35% of the residential units shall be "Affordable Housing" which meets the criteria set out in policy H9 of the Herefordshire Unitary Development Plan and the National Planning Policy Framework or any statutory replacement of those criteria and that policy including the Supplementary Planning Document on Planning Obligations (2008).
7. Of those Affordable Housing units, at least 2 (two) shall be made available for social rent with the remaining 1 (one) being available for intermediate tenure occupation.

8. All the affordable housing units shall be completed and made available for occupation prior to the occupation of no more than 50% of the general market housing or in accordance with a phasing programme to be agreed in writing with Herefordshire Council.
9. The Affordable Housing Units must be let and managed or co-owned in accordance with the guidance issued by the Homes and Communities Agency (or successor agency) from time to time with the intention that the Affordable Housing Units shall at all times be used for the purposes of providing Affordable Housing to persons who are eligible in accordance with the allocation policies of the Registered Social Landlord; and satisfy the following requirements:-
 - 9.1 registered with Home Point at the time the Affordable Housing Unit becomes available for residential occupation; and
 - 9.2 satisfy the requirements of paragraph 10 of this schedule
10. The Affordable Housing Units must be advertised through Home Point and allocated in accordance with the Herefordshire Allocation Policy for occupation as a sole residence to a person or persons one of who has:-
 - 10.1 a local connection with the parish of Eardisland:
 - 10.2 in the event there being no person having a local connection to the parish of Eardisland, a person with a connection to the adjacent Parishes
 - 10.3 in the event there being no person with a local connection to any of the above parish or wards any other person ordinarily resident within the administrative area of Herefordshire Council who is eligible under the allocation policies of the Registered Social Landlord if the Registered Social Landlord can demonstrate to the Council that after 28 working days of any of the Affordable Housing Units becoming available for letting the Registered Social Landlord having made all reasonable efforts through the use of Home Point have found no suitable candidate under sub-paragraph 10.1 and 10.2 above.
11. For the purposes of sub-paragraph 10.1 and 10.2 of this schedule 'local connection' means having a connection to one of the parishes specified above because that person:
 - 11.1 is or in the past was normally resident there; or
 - 11.2 is employed there; or
 - 11.3 has a family association there; or
 - 11.4 a proven need to give support to or receive support from family members; or
 - 11.5 because of special circumstances
12. The developer covenants with Herefordshire Council to construct the Affordable Housing Units to the Homes and Communities Agency 'Design and Quality Standards 2007' (or to a subsequent design and quality standards of the Homes and Communities Agency as are current at the date of construction) and to Joseph Rowntree Foundation 'Lifetime Homes' standards. Independent certification shall be provided prior to the commencement of the development and following occupation of the last dwelling confirming compliance with the required standard.
13. The developer covenants with Herefordshire Council to construct the Affordable Housing Units to Code Level 3 of the 'Code for Sustainable Homes – Setting the Standard in Sustainability for New Homes' or equivalent standard of carbon emission reduction, energy and water efficiency as may be agreed in writing with the local planning authority. Independent certification shall be provided prior to the commencement of the development and following occupation of the last dwelling confirming compliance with the required standard.
14. The developer covenants with Herefordshire Council to pay Herefordshire Council a 2% surcharge fee for the monitoring of the Section 106 Agreement. The sum shall be paid on or before the commencement of the development.

15. In the event that Herefordshire Council does not for any reason use the sum specified in paragraphs 1, 2, 3, 4, 5 and 14 for the purposes specified in the agreement within 10 years of the date of this agreement, the Council shall repay to the developer the said sum or such part thereof, which has not been used by Herefordshire Council.
16. The sums referred to in paragraphs 1, 2, 3, 4, 5 and 14 above shall be linked to an appropriate index or indices selected by the Council with the intention that such sums will be adjusted according to any percentage increase in prices occurring between the date of the Section 106 Agreement and the date the sums are paid to the Council.
17. The developer shall pay to the Council on or before the completion of the Agreement, the reasonable legal costs incurred by Herefordshire Council in connection with the preparation and completion of the Agreement.

Philip Mullineux, Planning Officer – February 9th 2015.