

PLANNING COMMITTEE

Date: 24 August 2016

Schedule of Committee Updates/Additional Representations

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

SCHEDULE OF COMMITTEE UPDATES

152041 - PROPOSED RESIDENTIAL DEVELOPMENT OF 10 DWELLINGS (AMENDMENT TO ORIGINAL APPLICATION) AT LAND TO THE NORTH OF ASHPERTON VILLAGE HALL, ASHPERTON, HEREFORDSHIRE,

For: Mr Davies per Twyford Barn, Upper Twyford, Hereford, Herefordshire HR2 8AD

ADDITIONAL REPRESENTATIONS

Ledbury Area Cycle Forum comment as follows –

I'm pleased to see better provision for cyclists in the amended plans. However, I would like to make the following points

- 'car ports' indicated on the plan may not offer sufficient security for bike storage.
- the sheds should have all-weather pathway level access from the public highway, wide enough for disability scooters and bikes and supplied with power for the recharging of scooters and electric bikes.
- the proposed self-binding gravel path for the pedestrian/cycleway path to the village is aesthetically appropriate, but, unless provided with a very well drained sub-base it is likely, on Herefordshire clay sub-soil to become waterlogged and liable to deterioration. A tarmac or a non-eroding permeable surface is preferable.

OFFICER COMMENTS

The comments are welcomed and noted. The application is in outline form, so detailed design is subject to the reserved matters application.

NO CHANGE TO RECOMMENDATION

161486 - OUTLINE APPLICATION FOR RESIDENTIAL DEVELOPMENT OF UP TO 21 DWELLINGS WITH MEANS OF ACCESS AT LAND AT PINFARTHINGS, OFF NORTH MAPPENORS LANE, LEOMINSTER, HEREFORDSHIRE,

For: Cabot Trustees per Mr David Jones, Albany House, High Street, Hindon, SP3 6DP

ADDITIONAL REPRESENTATIONS

Further correspondence has been received from the applicant's agent. In summary this draws the Council's attention to a number of appeal decisions which have particular relevance in respect of five year housing land supply. These include the appeals in Ledbury and Leintwardine where, in both cases, the respective Inspectors found in favour of the appellants and allowed the appeals.

Attention is also drawn to a Court of Appeal judgement of 17th March 2016 *Suffolk District Council v Hopkins Homes Ltd and Richborough Estates Partnership LLP v Cheshire East Borough Council & Secretary of State for Communities and Local Government [2016] EWCA Civ 168*. The judgement considers the implications of paragraph 49 of the NPPF and whether policies for the supply of housing should be subject to a wider or narrow interpretation.

The correspondence draws attention to the fact that at paragraph 34 of the judgement it is concluded that the narrow interpretation is “*plainly wrong*” and the wider interpretation is to be adopted. The judgement continues (paragraph 35):

“restrictive policies, whether broadly framed or designed for some more specific purpose, may have the effect of constraining the supply of housing land. If they do have that effect, they may act against the Government’s policy of boosting significantly the supply of housing land. If a local planning authority is unable to demonstrate the requisite five-year supply of housing land, both the policies of its local plan that identify sites for housing development and policies restrictive of such development are liable to be regarded as not “up-to-date” under paragraph 49 of the NPPF – and “out-of-date” under paragraph 14. Otherwise, government policy for the delivery of housing might be undermined by decisions in which development plan policies that impede a five-year supply of housing land are treated as “up-to-date”.

The Court of Appeal considered how paragraph 49 should be applied having determined its wider meaning. Paragraph 44 – 45 of the Judgement set out three simple steps:

- Consider whether relevant policies for the supply of housing in the Development Plan are “*out-of-date*” because the Local Planning Authority cannot demonstrate “*a five-year supply of deliverable housing sites*” (paragraph 44);
- Whether a particular policy of the Plan, properly understood, is a relevant “*policy for the supply of housing*” in a question for the decision-maker who must act upon a correct understanding of the policy in paragraph 49 of the NPPF and also upon a correct understanding of the Development Plan policy (paragraph 45);
- If the decision-maker finds that relevant policies of the Plan are “*out-of-date*” he applies the “*presumption in favour of sustainable development*” in the way that paragraph 14 of the NPPF requires (paragraph 45).

The Court was clear that “*out-of-date*” policies are not irrelevant. The weight to be attached to them remains to be determined by the decision-maker, although paragraph 47 of the Judgement concludes that:

“One may, of course, infer from paragraph 49 of the NPPF that in the Government’s view the weight to be given to out-of-date policies for the supply of housing will normally be less than the weight due to policies that provide fully for the requisite supply. The weight to be given to such policies is not dictated by government policy in the NPPF. Nor is it, nor could it be, fixed by the court. It will vary according to the circumstances, including, for example, the extent to which relevant policies fall short of providing for the five-year supply of housing land, the action being taken by the local planning authority to address it, or the particular purpose of a restrictive policy”.

In respect of the Court of Appeal judgement and the appeal decisions in Ledbury and Leintwardine the correspondence considers that there are parallels with the application in that:

1. The Council is unable to demonstrate a robust five year housing land supply, due to slippage on delivery of some sites and an over optimistic expectation of lead in times on other sites. The current proposal will help contribute towards the meaningful supply and delivery of housing which is a significant material consideration in favour of the scheme.

2. Consistent with the appeal findings and position relative to a shortfall in the supply of readily available housing land, the adopted Core Strategy Policies SS2, SS3, and in the context of Leominster LO1 and LO2, are out-of-date and inconsistent with paragraph 49 of the NPPF. The policy position, is therefore concluded, by virtue of a lack of a five-year housing land supply in Herefordshire, for the application to be determined in accordance with paragraph 14 of the NPPF, and the presumption in favour of sustainable development.

3. The position relative to housing land supply is firmly established in the Council's determination of recent residential planning applications in the county, including land off Westcroft, Leominster for up to 35 dwellings (ref: 150812 dated 5 July 2016) and a number of approvals (each subject to S106) for 39 dwellings on land opposite Orleton School, Kings Road, Orleton (ref: 152204); for 10 dwellings at land off Ginhall Lane in Leominster (ref: 150052), and a large site on land to the north of the Roman Road and west of the A49 at Hereford (ref: 150478). In all cases, the Council acknowledge the absence of a five year housing land supply.

4. There are clear positive economic and social benefits arising from new housing (and particularly so in our client's case as the application provides for a mix of market and affordable housing to be provided), and is not an isolated or unsustainable pattern of development, with established residential areas of Leominster to three of the four boundaries of the application site.

5. The site is not subject to any environmental designations, and there are no other material considerations, or technical reasons raised by statutory or internal consultees as to why the scheme cannot be considered as anything other than sustainable development, and that planning permission should be granted without delay.

Correspondence from the applicant's agent also queries two elements of the Draft Heads of Terms Agreement. First is the need for an obligation relating to the maintenance of any on site Public Open Space (POS). Given the scale of the proposal, no POS is proposed.

Second is that in view of the outline nature of development and the description of up to a maximum of 21 units, it is requested that clarification be added that reference to five affordable units is made on the basis of a gross development of 21 units, or preferably, that the reference to five units is removed, were, for example, reserved matters to seek a slightly lower quantum of gross development.

A further letter of objection from a local resident has also been received. In summary this considers that the Brexit Referendum has changed the housing construction sector and that this has caused uncertainty about housing requirements.

The letter also refers to a number of other matters covered by other objectors including:

- The loss of an important green space that is used by dog walkers.
- The social, health and wellbeing implications associated with the loss of an amenity area.
- Brownfield sites should be used before the loss of green spaces is considered.
- Disruption caused by construction traffic.
- Loss of biodiversity.

OFFICER COMMENTS

The implications of not having a five year housing land supply are dealt with by paragraphs 6.1 to 6.9 of the original report. Officers are familiar with the Court of Appeal decision referred to by the applicant's agent and paragraph 6.5 of the report reflects its conclusions that paragraph 49 of the NPPF should be given a wider interpretation.

The case officer's assessment of the application clearly concurs with the conclusions drawn at points 1 to 5 above and this is covered in the Summary and Conclusions section of the main report at paragraphs 6.31 to 6.34.

The queries raised regarding the Draft Heads of Terms are reasonable. The need for a management company does not prevail as there is no indication that any public open space will be provided on site. The removal of the reference to 5 affordable units is also accepted on the basis that the relevant clause refers to a need for 25% of the units to be affordable.

The additional letter received in objection to the application raises one new issue; that being the effect of Brexit on the housing sector. Whilst Brexit may affect house building in the country in the longer term, the economic implications of this are not material planning considerations to be weighed in the determination of the application. The other matters raised by the letter have been dealt with in the main report and none are considered to be of such significance as to outweigh the presumption in favour of sustainable development.

CHANGE TO RECOMMENDATION

Amended version of the Draft Heads of Terms provided below:

DRAFT HEADS OF TERMS

**Proposed Planning Obligation Agreement
Section 106 Town and Country Planning Act 1990**

Planning Application – P161486/O

Site address:

Land at Pinfarthings, off North Mappenors Lane, Leominster, Herefordshire

Planning application for:

Outline application for residential development of up to 21 dwellings with means of access.

This Heads of Terms has been assessed against the adopted Supplementary Planning Document on Planning Obligations dated 1st April 2008, and Regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010 (as amended). All contributions in respect of the residential development are assessed against open market units only except for item 2 which applies to all new dwellings.

1. The developer covenants with Herefordshire Council to pay Herefordshire Council the sums of (per open market unit):

£ 1,720.00 (index linked) for a 2 bedroom open market unit

£ 2,580.00 (index linked) for a 3 bedroom open market unit

£ 3,440.00 (index linked) for a 4+ bedroom open market unit

to provide sustainable transport infrastructure to serve the development. The sum shall be paid on or before the commencement of the development, and may be pooled with other contributions if appropriate.

The monies shall be used by Herefordshire Council, in consultation with the Parish

Council, at its option for any or all of the following purposes:

- a) Junction improvement/updating of the junction at Ginhall Lane and Green Lane and associated cycle path facility at the junction

NOTE: A Sec278 agreement may also be required depending on the advice of the local Highways Authority

2. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of £80.00 (index linked) per dwelling. The contribution will be used to provide 1x waste and 1x recycling bin for each dwelling. The sum shall be paid on or before the commencement of the development

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

£ 965.00 (index linked) for a 2 bedroom open market dwelling

£ 1,640.00 (index linked) for a 3 bedroom open market dwelling

£ 2,219.00 (index linked) for a 4 bedroom open market dwelling

The contributions will be used for off site play at Oldfields, Sydonia and The Grange or on improving the Council's Public Rights of Way to allow greater access to the wider countryside and Bridge Street Sports Park. The priority for expenditure will be decided at the time of receiving the contribution and in consultation with the local parish council.

The sum shall be paid on or before the commencement of the development, and may be pooled with other contributions if appropriate.

4. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of £152.00 (index linked) per open market dwelling towards off-site sports facilities. The contributions will be used for off site football and hockey provision at Bridge Street Sports Park or football provision at Earl Mortimer Cottage. The priority for expenditure will be decided at the time of receiving the contribution and in consultation with the local parish council.

The sum shall be paid on or before the commencement of the development, and may be pooled with other contributions if appropriate.

5. The developer covenants with Herefordshire Council that 25% of the residential units shall be "Affordable Housing" which meets the criteria set out in policy H1 of the Herefordshire Core Strategy or any statutory replacement of those criteria and that policy including the Supplementary Planning Document on Planning Obligations.

NOTE: the mix of tenure and unit size of the affordable units shall be agreed with Herefordshire Council:

NOTE: For the avoidance of doubt, the term intermediate tenure shall not include equity loans or affordable rent.

6. All the affordable housing units shall be completed and made available for occupation in accordance with a phasing programme to be agreed in writing with Herefordshire Council.

7. The Affordable Housing Units must at all times be let and managed or co-owned in accordance with the guidance issued by the Homes and Communities Agency (or any 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:-:

- 7.1. registered with Home Point at the time the Affordable Housing Unit becomes available for residential occupation; and
 - 7.2. satisfy the requirements of paragraphs 9 & 10 of this schedule
8. 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 whom has:-
 - 8.1. a local connection with the parish of Leominster;
 - 8.2. in the event of there being no person with a local connection to Leominster any other person ordinarily resident within the administrative area of the 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 9.1 above.
9. For the purposes of sub-paragraph 9.1 of this schedule 'local connection' means having a connection to one of the parishes specified above because that person:
 - 9.1. is or in the past was normally resident there; or
 - 9.2. is employed there; or
 - 9.3. has a family association there; or
 - 9.4. a proven need to give support to or receive support from family members; or
 - 9.5. because of special circumstances;
10. In the event that Herefordshire Council does not for any reason use the sums in paragraphs 1, 2, 3 and 4 above, for the purposes specified in the agreement within 10 years of the date of payment, the Council shall repay to the developer the said sum or such part thereof, which has not been used by Herefordshire Council.
11. The sums referred to in paragraphs 1, 2, 3 and 4 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.
12. 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.
13. If the developer wishes to negotiate staged and/or phased trigger points upon which one or more of the covenants referred to above shall be payable/delivered, then the developer shall pay a contribution towards Herefordshire Council's cost of monitoring and enforcing the Section 106 Agreement. Depending on the complexity of the deferred payment/delivery schedule the contribution will be no more than 2% of the total sum detailed in this Heads of Terms. The contribution shall be paid on or before the commencement of the development.

**161638 - PROPOSED ERECTION OF A DWELLING AT LAND
AT 19 FERNDALE ROAD, HEREFORD.**

**For: Mr Knowles per Colin Goldsworthy, 85 St Owen Street,
Hereford, Herefordshire, HR1 2JW**

ADDITIONAL REPRESENTATIONS

Two further letters of objection have been received commenting on the agent's email rebuttal (to representations made on the scheme). These highlight the previous planning history to the site (already set out in the planning report).

OFFICER COMMENTS

None.

NO CHANGE TO RECOMMENDATION