

**PLANNING COMMITTEE**

**Date: 22 February 2017**

**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

**163797 - CHANGE OF USE OF PART OF Paddock FROM EQUESTRIAN TO RESIDENTIAL. CONSTRUCTION OF NEW 3 BED DWELLING WITH ASSOCIATED GARAGING, ACCESS AND LANDSCAPING AT CAREY BANK, KILFORGE ROAD, CAREY, HEREFORDSHIRE**

**For: Mr & Mrs Du Cros per Mr Dean Benbow, 21-22 Mill Street, Kington, Herefordshire, HR5 3AL**

### OFFICER COMMENTS

The final clause of the last sentence of the 'informative' (pages 36/37) should read that 'approval is not possible'.

### NO CHANGE TO RECOMMENDATION

**162824 - SITE FOR THE PROPOSED ERECTION OF 5 DWELLINGS AT LAND AT BALANCE FARM, EYWOOD LANE, TITLEY, KINGTON, HEREFORDSHIRE, HR5 3RU**

**For: Mrs Vaughan per Mr Alan Poole, Green Cottage, Brierley, Leominster, Herefordshire HR6 0NT**

This application is now the subject of an appeal against non determination, this means the Council is not entitled to make a formal decision on this application, but instead is seeking confirmation of the matters upon which the appeal should be defended.

### ADDITIONAL REPRESENTATIONS

The following additional representations have been received:

#### **Marches Planning and Property Consultancy**

This objection is made on behalf of residents of Titley.

It is made in view of deficiencies in the committee report, which while recommending refusal of the application, appears to support the proposed development. The report fails to address numerous material grounds for refusal of the application, it misdirects the committee by asserting that the proposals constitute "*sustainable development*" and is misleading in its interpretation of the National Planning Policy Framework (NPPF).

#### 1) Sustainable Development

The report asserts at paragraphs 6.8 and 6.10 that the application site is "*sustainable*" and that the proposals constitute "*sustainable development*". It is wrong to do so because the proposals do not comply with the NPPF definition of sustainable development.

The procedure for determining whether or not development is sustainable is contained within

paragraph 14 of the National Planning Policy Framework. In **East Staffs Borough Council v. Secretary of State for Communities and Local Government (2016)** Mr Justice Green ruled that if a proposed development is in conflict with the local plan, it is not sustainable development.

He said:

*“Paragraph [14] NPPF is the embodiment of the presumption and once that paragraph has been worked through and a conclusion has been arrived at that the proposal is inconsistent with the Local Plan, then there is no presumption remaining which can be relied upon in favour of grant... This is because, as per paragraph [12] NPPF, it is inconsistent with the Local Plan and the proposal should be refused.”*

Decision-makers have discretion to approve development that does not accord with the local plan where there are strong material reasons to do so, *“but it does mean that the discretion does not incorporate a presumption in favour of approval and, moreover, the starting point is not neutral but is adverse to the grant of permission,”* Mr Justice Green said.

Justice Green’s judgement upheld the view of Justice Jay in **Cheshire East Borough Council v Secretary of State for Communities and Local Government [2016]** that *“there is no significant discretion for decision makers to apply a broader test of sustainable development operating independently of paragraph [14].”*

Having failed to carry out any assessment of whether or not the proposals in this planning application accord with the local plan, the case officer could not have concluded that they constituted *“sustainable development”* or that the site was *“sustainable.”* To assert that they are amounts to a mis-direction of the planning committee.

2) Paragraphs 6.1 and 6.2 of the report

Marches Planning asked the case officer to explain what is meant by paragraph 6.2 of the report, because it does not appear to make sense, but has had no response.

The paragraph apparently aims to set out the framework for making planning decisions. Having acknowledged at 6.1 the primacy of the development plan, 6.2 then appears to suggest that paragraph 14 of the NPPF contradicts this requirement where *“relevant policies are out of date”*. It misquotes paragraph 14 as saying: *“permission will be granted unless material considerations indicate otherwise - taking into account whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefit when assessed against the policies in **national policy** taken as a whole or **specific elements of national policy** indicate that development should be restricted.”*

The report emphasises the words *“significantly”* and *“demonstrably”* although they are not highlighted in the NPPF and the two sections shown here in bold have removed the word *“framework”* and referred instead to *“national policy”* and to *“specific elements of national policy”* instead of to *“specific policies in this framework”*. This may have been inadvertent but it is important for the committee to understand that the application should be judged against policies in the NPPF.

The committee report does not say whether or not Herefordshire Council can demonstrate a five year housing supply and so does not advise the committee as to whether its relevant housing policies are up to date (NPPF 49). It is unclear, therefore, why paragraph 6.2 recites this part of paragraph 14 or the policies listed at the top of the report include NPPF paragraph 49.

In the absence of any explanation from the case officer, the paragraph appears to suggest that, having concluded that the proposed development is *“sustainable”*, the committee would have to find significant and demonstrable harm in order to refuse it.

This is a mis-interpretation of the NPPF. As set out above, the courts have construed paragraph 14 as saying that where a proposed development is in conflict with the development plan (or where relevant policies are out of date, in conflict with the NPPF) the presumption is for refusal unless there are material reasons why it should be approved.

Marches Planning asked about the status of the housing land supply and Kevin Bishop advised the following:

*“As we do not have a 5 year housing supply, policies are considered out of date and paras 14 and 49 kick in. However the courts have held that although out of date the weight that they should receive in the planning balance is a judgement for the decision maker.”*

Whether or not local plan policies can be applied where a council cannot demonstrate a five-year housing supply rests entirely upon the extent to which they accord with the NPPF: **R (Wynn- Williams) v. Secretary of State for Communities and Local Government (2014)**.

Given that the Core Strategy has been found to be in conformity with the NPPF, only specific policies such as those setting settlement boundaries or allocating sites for residential development are relevant and, therefore, out of date.

Furthermore, there is an important footnote to NPPF paragraph 14 (footnote 9), which the committee report has failed to note. This specifies the national policies where development is restricted and includes policies protecting designated heritage assets. Where a development would harm a heritage asset or its setting, it is not sustainable.

### 3) Harm to Heritage Assets

The application site is adjacent to the Grade II listed Eywood Park - a registered park and garden - and to Grade II listed Balance Farmhouse and its curtilage-listed barns.

Planning authorities have a duty under S.66 of the **Planning (Listed Buildings and Conservation Areas) Act 1990** to have special regard to the requirement to preserve the setting of listed buildings. The courts have interpreted this as a requirement to attach *“considerable importance and weight”* to the impact of any development on a listed building.

The report quotes the consultation response from the Conservation Manager at 6.6 as follows

*“The site to the east of the gate piers and lodge can be viewed as within the settlement boundary and therefore potentially suitable for development. Its position is set down below the roadside, is well screened and adjacent to barns which have already been converted for residential use. In this location I do not consider that further development would necessarily have a detrimental impact on the character of the village or on the nearby listed dwelling, Balance Farm.”*

The conclusion that further development would not *“necessarily have a detrimental impact”* on the listed building, does not amount to any analysis of the impact of the development and does not suggest that any - let alone considerable - weight has been attached to the potential harm to the listed building or its setting. The registered park and garden is not even mentioned.

And there is no settlement boundary - Titley is in the process of developing its Neighbourhood Development Plan and the parish council has made clear in its objections that this amount of development on the site is unlikely to be supported.

The committee report appears to rely on the fact that the application site is included in the SHLAA as evidence that there would be no harm to the heritage assets, although the SHLAA specifically requires an assessment of heritage impact (see appendix 2). The

SHLAA also makes clear that inclusion of a site is no indication that permission would be granted, saying the following:

*“The inclusion of a site within this document does not imply that the Council would necessarily grant planning permission for residential use. Similarly, the exclusion of sites from the study does not preclude the possibility of planning permission for development being granted.”*

Not only does CS policy LD4 still apply where the council cannot demonstrate a five year housing land supply, LD4 is in strict accordance with NPPF Paragraph 132, one of the policies referenced by Footnote 9.

If an application is in conflict with LD4 and/or paragraph 132 it is not sustainable development.

Neither the conservation officer nor the committee report have demonstrated that the proposals conform with these policies.

#### 4) Conflict with RA2 and LD1

The application site constitutes less than one tenth of the piece of land included in the SHLAA (appendix 2) and along with the permission already granted for five houses on adjoining land - under delegated powers and with even less assessment than in this case - it would create a housing development of ten houses, in addition to the seven residences quite recently created in the barns adjoining Balance Farm.

The parish council and others have objected that the scale of the development is disproportionate to the size of the settlement. The objections have been cited in the report, but not addressed. They are a material consideration and the report should explain why it has not given them credence.

The supporting text to CS Policy RA2 says this about the settlements identified in Tables 4.14 and 4.15 of the CS (Titley is in table 4.14):

*Within these settlements carefully considered development which is proportionate to the size of the community and its needs will be permitted.”*

And the policy itself says:

*Housing proposals will be permitted where the following criteria are met:*

- 1. Their design and layout should reflect the size, role and function of each settlement and be located within or adjacent to the main built up area.*
- 4. They result in the delivery of schemes that generate the size, type, tenure and range of housing that is required in particular settlements, reflecting local demand.*

The RA2 policies are consistent with NPPF paragraph 50, requiring planning authorities to:

- *identify the size, type, tenure and range of housing that is required in particular locations, reflecting local demand;*

And paragraph 55:

*To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities.*

The SHLAA suggests that the - much larger - site may be suitable for 20 houses - subject to the qualifications set out above. It says that any development on this site should be “*sensitively designed*” and although the design would be left to the reserved matters stage, it is hard to see how crowding ten houses into about 1/6 of the site could be considered sensitive.

The SHLAA acknowledges that the village has a dispersed settlement pattern and so concentrating ten houses into this small area (and leaving a much larger site available for further development) would conflict with CS policy RA2 , which requires that design and layout reflect the size, role and function of each settlement.

CPRE, whose objection is not referenced in the committee report, says the development “*would be a visual intrusion in a landscape of rolling pasture land with occasional ploughed fields and woodland.*”

The committee report does not make any assessment of the impact of the proposals on the landscape and makes no attempt to explain why CPRE’s objection on landscape grounds was disregarded. The proposals are in conflict with Core Strategy Policy LD1 and, so once again, could not be construed as sustainable development.

#### *Policy LD1 – Landscape and townscape*

*Development proposals should:*

- *demonstrate that character of the landscape and townscape has positively influenced the design, scale, nature and site selection, protection and enhancement of the setting of settlements and designated areas;*

A 2007 application to store caravans on this site was refused on grounds of landscape impact, unsustainable location and highway safety. The committee report, cites this decision but makes no attempt to reconcile the apparent conflict between this refusal and the lack of concern about landscape impact and the sustainability of the location in this case.

One final anomaly to note is that the SHLAA assesses this site as brownfield, when it is evidently agricultural land. This raises a question as to why this site is in the SHLAA at all.

#### **Appendix 1: NPPF paragraph 14**

14. At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.

For plan-making this means that:

- local planning authorities should positively seek opportunities to meet the development needs of their area;
- Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:
  - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
  - specific policies in this Framework indicate development should be restricted.<sup>9</sup>

For decision-taking this means:<sup>10</sup>

- approving development proposals that accord with the development plan without delay; and

- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
  - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
  - specific policies in this Framework indicate development should be restricted.<sup>9</sup>

Footnote 9

9 For example, those policies relating to sites protected under the Birds and Habitats Directives (see paragraph 119) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion.

**Appendix 2: SHLAA Assessment and Plan**

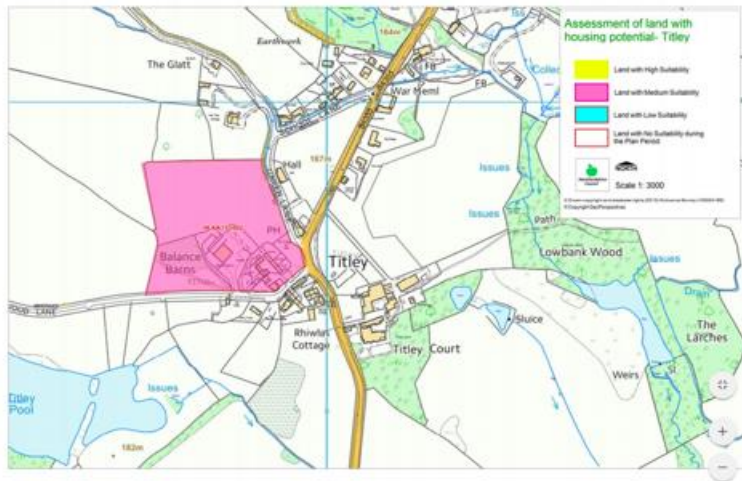
<b>Settlement Name</b>	Titley	<b>Site Ref</b>	HCAA/153/002	<b>Post Code</b>	HR5 3RU
<b>Site Address</b>	Land at the Balance Farm	<b>Information Source</b>	Call for sites		

**Landscape and Historic Environment information**  
 Landscape Sensitivity: Low - Moderate  
 Landscape Capacity: Moderate - High

Sensitivity & Capacity Analysis: The existing village appears to have a dispersed settlement pattern, the scale of development appropriate to the village is therefore a consideration. The historic park adjacent to the Western boundary is marked by a gatehouse, the topography of the site is low but consideration as to how any proposals would relate to both the Historic Park & Garden and the farmhouse with outbuildings would be required. The Northern section of the site is arable field with a rolling topography that is at the Northern extremity of the village and relates to the open countryside.

**Site probability**  
 Medium potential

**Justification**  
 There is potential for a sensitively designed scheme to come forward where the existing buildings are situated. The historic park on the western boundary, the listed farmhouse and its curtilage should be taken into account should a scheme come forward. The BAP site should also be avoided.



## Herefordshire Campaign to Protect Rural England (CPRE)

On behalf of Herefordshire CPRE I sent, early in December, a preliminary letter of **objection** to this application. I now wish to add a more detailed set of reasons for our strong **OBJECTION** to this application.

The principal reasons for objection are:

- Extreme paucity of information
- Suitability of the location
- Environmental and visual impacts
- Proximity to heritage assets
- Traffic
- Planning Obligations

I said in my previous letter that in my view this application is woefully short of information and barely warrants being termed an application. Much the same observation could have been made of the application **No: 160581**; I am astonished that that one was approved so readily.

### Location.

The location map is little more than an outline sketch of the site with no information as to its relationship with the location of the five adjacent dwellings that have been approved. Nor is there any indication of how the site might be developed without degrading the immediate environment of existing dwellings.

I understand that Herefordshire Council needs to meet housing targets and that Titley is categorised in the **Core Strategy RA2** as a village where proportionate housing development will be appropriate. But that does not require that dwellings of any type will be allowed anywhere an applicant specifies that land is available.

**CS 4.6.12** *“All settlements identified (includes Titley) will have the opportunity for sensitive and appropriate housing growth” ..and..” particular attention will be given to ensure that housing developments should respect the scale, form, layout, character and setting of the settlement concerned”.*



**4.8.20** *“Housing proposals will be expected to reflect the range that is required for the settlement concerned.”*

These two quotes show that proposals for new housing need to be justified in terms of the proposed location and the types of dwellings. They form part of the Council’s strategy to ensure that speculative development without acceptable justification does not occur. The strategy is clearly laid out in **Policy RA2** with its four distinct criteria that are required to be met if proposals for development in rural areas are to be approved.

The application contains no statements that meet the criteria of the relevant **Core Strategy Policies**.

The applicant has made no attempt to argue a case for what is proposed other than to describe the site as redundant farm land. Since the applicant’s agent is experienced in Planning procedures there must have been a conscious decision to omit any information that might support the application and to **give no reason for the omission**.

### **Environmental and Visual Impacts.**

No Environmental or Visual Impact Assessments are provided despite what could be a housing estate of at least ten dwellings if this application were to be approved adjacent to the earlier one. The ten would represent a cluster of a considerable size, not existing elsewhere in Titley village. The site itself lies on the border of Eywood Park and would be a visual intrusion in a landscape of rolling pasture land with occasional ploughed fields and woodland.

*LD1 “Development proposals should demonstrate that the character of the landscape has positively influenced the design, scale, nature and site selection, protection and enhancement of the setting of settlements and designated areas...”*

The applicant has made no attempt to comply with this policy.

### **Heritage assets**

#### **LD4 Historic environment and heritage assets.**

*Development proposals affecting heritage assets and the wider historic environment should:*

*1. Protect, conserve, and where possible enhance heritage assets and their settings...”*

Not only is there no attempt by the applicant to comply with this Policy, but the adjacent Listed Grade 11 Eywood Parkland is not even mentioned. Titley Court is situated across the road from the site.

The principal access route to Eywood is the lane that will provide the access route to the development site.

### **Traffic**

The lack of information extends to the absence of any mention of cars, car parking, garages, provision for cyclists and safe passage for pedestrians who would be residents on the development.

Ten dwellings could well produce 20 vehicles owned by residents; the lane would also need to accommodate refuse lorries and delivery vans etc. Eywood Lane is narrow with buildings on either side up to the site entrance. There is no pedestrian path or cycle track. Vehicles coming and going from this new development would be added to those from exiting adjacent housing and also from visitors to Eywood Park and dwellings on the estate as well as farm vehicles and horse riders. Eywood Lane seems to be unsuitable for a large increase in vehicular traffic.

Local people have commented on the difficult access onto the lane from the main road, the B4353, and the Council’s Transport Officer clearly has concerns.

Driving out of Eywood Lane and turning right across the main road is hazardous because of very limited visibility.

**Policy MT1** requires:

**4.** *“... that there should be safe entrance and exit, have appropriate manoeuvring space, accommodate provision for all modes of transport, the needs of people with disabilities and provide access for the emergency services”*

The application contains no information as to how there will be compliance with this Policy.

### **Drainage and water**

The application contains no information as to the hydrological nature of the site, the permeability of the land, the level of the water table or proposals for drainage and removal of foul water and rain water.

**Policy SD3 Sustainable water management and water resources** require assessments to be made. In the absence of any such it is not possible to decide whether or not the site could be developed satisfactorily.

Ten dwellings and associated hard standing, driveways etc all reduce the ability of an area to absorb water and thereby add to local flood risks.

### **Obligations**

The Planning Obligations Supplementary Planning Document is clear about the subdivision of sites by applicants to avoid the delivery of affordable housing and 106 contributions.

**Para 3.2.8** states that affordable housing will be required in the following circumstances:

- *Where the Council reasonably considers that the development of a site has been phased, or a site sub-divided or parcelled in order to avoid the application of the affordable housing policy, whether in terms of number of units or site size. In these circumstances the whole site will be assessed; or*
- *Where the Council reasonably considers that a development scheme has been specifically designed to fall under the threshold or a site's potential is not being fully realised; or*
- *If having had a scheme approved, a subsequent proposal for additional housing units brings the cumulative total over the threshold.*

At the end of last year (2016) Herefordshire Council applied this principle to **Application No: 161329**, Land South of Kings' Acre Road, Swainshill HR4 0SR. The Council considered that the applicant had submitted one application for housing that had been approved, swiftly followed by a second application for more housing on the same field and that this was a deliberate subdivision of the site which if successful would have circumvented the requirement for a 106 agreement and affordable housing.

A similar situation is presented now by the applicant in this application.

**Application No 160581** for 5 x 4bedroom houses was approved in July 2016.

The present application was submitted two months later, in September, on another section of the same site. It appears to be a blatant attempt to circumvent obligations by manipulating the Council's procedures.

HCPRE **objects** very strongly to such behaviour and urges the Council to ensure that if minded to approve this second application the appropriate obligations are placed as clear and firm conditions on the approval.

No calculation of the density that will be on the site if ten dwellings result from this application. If minded to approve, the Council could require that one further dwelling be added to bring the number over the threshold when an affordable house would be provided.

### **Conclusion**

It is difficult to consider this application as a serious submission. The applicant has not supplied the most minimal essential information, made no assessments of the impact of such a development and appears to assume that none are required. If this application is allowed the decision would be an obvious candidate for seeking a judicial review.

On behalf of HCPRE I submit the application should **not** be allowed.

## OFFICER COMMENTS

In response to the comments about heritage assets the Historic Building officer adds

Further to the response from Marches Planning Consultancy I reiterate my stated opinion that proposed residential re-development of the site at Balance Farm would in principle be acceptable in terms of its impact on the setting of the nearby listed building and registered park. In coming to this opinion the application site has been assessed against advice given in Section 66(1) of the Planning (Listed buildings and Conservation Areas) Act 1990, section 12 of the National Planning Policy Framework, heritage policy LD4 of The Core Strategy and Historic Environment Good Practice Advice in Planning: Note 3 , The Setting of Heritage Assets ( Historic England 2015).

The proposed site is set considerably lower than the road and is also well screened by mature planting. The site contains farm buildings which have no architectural or historic interest – they are modern structures of a non- traditional scale and design.

It is not possible to see the site when viewed from the registered parkland and therefore in my opinion it makes no contribution to its character nor would any development be likely to affect its setting. As such replacement of the modern farm buildings with smaller scale dwellings will have neutral impact on its setting or interest.

In respect of the impact on the setting of the listed building, removal of non –traditional agricultural sheds must be regarded as beneficial. Replacing these with a well- designed residential development has the potential to make a positive contribution to the local character and distinctiveness of the village, and thereby would enhance the setting of the listed building.

In terms of the housing land supply position the council can currently demonstrate a 4.39 yr supply.

In principle RA2 settlements are by definition considered to be sustainable locations. This is an outline application with all matters reserved for subsequent approval. Should the appeal be successful the outstanding matters will be considered at that stage and can address those issues raised in the representations.

Strictly since the proposal is considered to be contrary to policy MT1 of the Core Strategy it cannot be considered to be sustainable development and is thus contrary to presumption in favour of sustainable development within the NPPF and Core Strategy

## CHANGE TO RECOMMENDATION

**The Committee is asked to indicate that it is mindful to refuse the application as unsustainable development as a consequence of the failure to comply with policy MT1.**