

<b>MEETING :</b>	<b>PLANNING AND REGULATORY COMMITTEE</b>
<b>DATE:</b>	<b>10 OCTOBER 2018</b>
<b>TITLE OF REPORT:</b>	<b>182086 - PROPOSED ANCILLARY ANNEXE AT 3 ROCKLANDS COTTAGES, BEARWOOD COTTAGE LANE, GOODRICH, HEREFORDSHIRE, HR9 6JQ</b>  <b>For: Mr Fisher per Mr David Kirk, Coppice View, 100 Chase Road, Ross-On-Wye, Herefordshire, HR9 5JH</b>
<b>WEBSITE LINK:</b>	<a href="https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=182086&amp;search=182086">https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=182086&amp;search=182086</a>
<b>Reason Application submitted to Committee – Redirection</b>	

**Date Received: 5 June 2018**

**Ward: Kerne Bridge**

**Grid Ref: 357425,218554**

**Expiry Date: 3 August 2018**

Local Member: Councillor PD Newman

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

- 1.1 3 Rocklands Cottages is located in an elevated position on the western slope of Coppett Hill. It is accessed via a narrow unmade track that is shared with 5 other properties (1 and 2 Rocklands Cottages, High View, The Old Cider Mill and Cider Mill Cottage). Coppett Hill Common lies to the east of the site and a small section of the access to the property forms part of the Common. 3 Rocklands Cottages is located in an elevated position on the western slope of Coppett Hill. It is accessed via a narrow unmade track that is shared with 5 other properties (1 and 2 Rocklands Cottages, High View, The Old Cider Mill and Cider Mill Cottage). Coppett Hill Common lies to the east of the site and a small section of the access to the property forms part of the Common. The Common, excluding the access track, is designated as a Special Wildlife Site and the site and wider area is within the Wye Valley Area of Outstanding Natural Beauty. Public Right of Way GR9 skirts along the northern edge of the application site.
- 1.2 The site itself lies below the level of the access track and the detached property benefits from a large well landscaped garden curtilage. A private driveway drops steeply into the site from the Common and immediately to the east of the driveway is a detached double garage which is set into the bank and measures 4.4 metres to the ridge and has a floor area of 5.7 metres by 6.1 metres.
- 1.3 Planning permission is sought for the replacement of the double garage with a detached annexe that is intended to provide accommodation for the applicant's father who has moved back to the UK from overseas due to ill health. The applicant has also advised that he too has a degenerative arthritic condition so there would be a degree of mutual support possible initially as well as potentially providing for future care requirements. The annexe, in its revised form would measure 5.3 metres to the ridge and has a floor area of 5.7 metres by 9.2 metres.

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Further information on the subject of this report is available from Mr Simon Withers on 01432 260612

- 1.4 The annexe would be timber clad under a natural slate roof and would provide a combined living room/kitchen with garage/store on the ground floor with a bedroom and bathroom within the roof space on the first floor.

## 2. Policies

- 2.1 The Herefordshire Local Plan Core Strategy 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/info/200185/local\\_plan/137/adopted\\_core\\_strategy](https://www.herefordshire.gov.uk/info/200185/local_plan/137/adopted_core_strategy)

Policy MT1	-	Traffic Management, Highway Safety and Promoting Active Travel
Policy LD1	-	Landscape and Townscape
Policy LD2	-	Biodiversity and Geodiversity
Policy SD1	-	Sustainable Design and Energy Efficiency
Policy SD3	-	Sustainable Water Management and Water Resources
Policy SD4	-	Waste Water Treatment and River Water Quality

### 2.2 NPPF

Section 2	Achieving sustainable development
Section 4	Decision taking
Section 12	Achieving well designed places
Section 15	Conserving and enhancing the natural environment

### 2.3 NPPG

- 2.4 The Goodrich and Welsh Bicknor Neighbourhood Development Plan is at the Regulation 14 draft plan stage and as such does not currently attract any weight in decision making.

- 2.5 The Core Strategy 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/info/200185/local\\_plan/137/adopted\\_core\\_strategy](https://www.herefordshire.gov.uk/info/200185/local_plan/137/adopted_core_strategy)

## 3. Planning History

- 3.1 P180570/FH Proposed single storey extension. Approved 12 April 2018
- SH971102PF Proposed extension and re-roofing plus detached garage. Approved 12 November 1997

## 4. Consultation Summary

### Statutory Consultations

- 4.1 Natural England

### **NO OBJECTION - SUBJECT TO APPROPRIATE MITIGATION BEING SECURED**

We consider that without appropriate mitigation the application would have an adverse effect on the integrity of River Wye Special Area of Conservation damage or destroy the interest features for which River Wye / Lugg Site of Special Scientific Interest has been notified.

In order to mitigate these adverse effects and make the development acceptable, the following mitigation measures are required / or the following mitigation options should be secured:

Foul sewage to be disposed in line with Policy SD4 of the adopted Herefordshire Core Strategy. Where a package treatment plant is used for foul sewage, this should discharge to a soakaway or a suitable alternative if a soakaway is not possible due to soil/geology.

Surface water should be disposed of in line with Policy SD3 of the adopted Herefordshire Core Strategy and the CIRIA SuDS Manual (2015) C753.

We advise that an appropriate planning condition or obligation is attached to any planning permission to secure these measures. Subject to the above appropriate mitigation being secured, we advise that the proposal can therefore be screened out from further stages in the Habitats Regulations Assessment process, as set out under Regulation 63 of the Habitats Regulations 2017.

#### Internal Council Consultations

#### 4.2 Conservation Manager (Ecologist)

##### Original comments

The site lies within the River Wye (River Lugg) SAC Impact Risk Zone “any discharges of water or liquid including to mains sewer”. I note the applicant has not indicated how the additional foul water loading created by the development will be managed. Under Habitat Regulations and in line with NPPF, NERC Act and Core Strategy SD4/LD2 + retained Biodiversity SPG, this authority has a duty of care to ensure all relevant ‘Likely Significant Effects’ are fully mitigated. The identified LSE is the phosphate loading (not removed through septic tank or standard package treatment plant systems) in the final outfall, to mitigate this **confirmation from the applicant of the type of treatment system proposed and that that it will discharge to a soakaway drainage field is requested**. Direct discharge in to any local watercourse, stream or culvert would not be acceptable. No part of any soakaway field or discharge system should be within 50m of any part of Little Mountain Common (Local Nature Reserve, Local Wildlife Site, Priority Habitat and provisional local geological site)

**Subject to this soakaway discharge being confirmed and subject to implementation as part of a specific Foul Water implementation condition then I can not see any unmitigated LSE on the River Wye (River Lugg) SAC from this proposed development.**

In line with NPPF Guidance, NERC Act and Core Strategy policies developments should show how they are going to increase the biodiversity potential of any area and I would request a relevant Condition is included to secure these enhancements

#### **Nature Conservation – Enhancement**

*Prior to first use of the new annex evidence (such as photos/signed Ecological Clerk of Works completion statement) of the suitably placed installation of at least TWO Bat roosting enhancements and TWO bird nesting boxes built in to, or attached to the new annex should be supplied to and acknowledged by the local authority; and shall be maintained hereafter as approved unless otherwise agreed in writing by the LPA. External habitat boxes should be made of a long-lasting material. No external lighting should illuminate any habitat enhancement feature, adjacent track or habitat.*

Reason: To ensure that all species are protected and habitats enhanced having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation (Natural Habitats, &c) Regulations 1994 (as amended) and Policy LD2 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework, NERC 2006. Dark Skies Guidance Defra/NPPF 2013

In support of the comments by the Coppett Hill Common Trust, NO upgrading, beyond 'like for like' maintenance of the access track owned by the Trust or running through or alongside any designated habitat or feature that would require a planning consent from this planning authority would be acceptable. Detailed surveys and full consideration of all impacts on these features, relevant mitigation and provision of 'betterment' would have to be clearly demonstrated within the application. Any such application would be subject to a full Habitat Regulations Assessment process.

#### Further response in respect of drainage arrangements

Unless otherwise agreed in writing by the Local Planning Authority; as advised by the applicant in an email ("Subject: Re: 182086 - 3 Rocklands Cottage" dated 17th August 2018,) Foul Water shall be managed through connection to the existing septic tank that discharges final outfall through a soakaway drainage field.

Reason: In order to comply with Habitat Regulations (2017), National Planning Policy Framework, NERC Act (2006) and Herefordshire Council Core Strategy (2015) policies LD2 and SD4.

#### 4.3 Conservation Manager (Trees)

I have no objections to the proposal

#### 4.4 Public Rights of Way Manager

No objection

#### 4.5 Commons Registration Officer

The land subject to the application abuts registered common land CL126, which is an owned common. The proposed works will not affect the common. Any works that may need to be done to improve the access to the property will require a section 38 order as well as agreement by the owner.

### **5. Representations**

#### 5.1 Goodrich and Welsh Bicknor Parish Council

##### Original Comments

The parish council objects to this application on the following grounds:

1. The development is contrary to the parish council's policy against new development on Coppett Hill.
2. The development is contrary to the Neighbourhood Development Plan that is nearing Regulation 15 status.

3. The parish council does not consider the development to be an annex, but rather that it creates a separate dwelling, particularly as it requires a larger footprint than the existing garage.
4. The development would set a precedent for all detached garages to be made into separate dwellings. Additionally, the parish council is concerned that the address detailed on the application makes it difficult to locate it and therefore may prevent local residents from providing feedback on the application via your online service. The address should clearly state "Coppett Hill".

#### Comments on Revised Plans

Scale - This is an entirely new building and not a conversion of a redundant building it has a completely new footprint that is much bigger than current garage. So, it is Contrary to Core Strategy Policy RA5

Size - This development has a 2nd storey so it is much taller than the current garage and has a much bigger footprint than the current building.

Precedent – approval would result in possible development of all detached garages on Coppett Hill and as such it would set a precedent for development of every outbuilding on Coppett Hill and within the AONB.

Scale of development – due to size and scale this development is unacceptable in this sensitive location adjacent to a nature reserve and in the AONB.

GNP - The site is in an area that local consultation for the Goodrich Neighbourhood Development Plan did not select as suitable for development, Coppett Hill was designated as an area of special interest; the GNP has identified sites elsewhere within the parish which more than satisfy the number required.

Wildlife - No ecological survey has been done – great crested newts have been seen in the pond and vicinity, as well as bats, dormice and rare pearl bordered fritillary butterflies.

Amenity - The development will have a direct detrimental effect on the amenity of its neighbours and will also cause significant light pollution to the area.

- 5.2 A total of 18 representations have been received from 8 local residents and the Coppett Hill Common Trust Company. The objections can be summarised as follows:

#### Original Comments

A total of 10 objections (from 6 households) were received expressing concerns as follows:

- Will set a precedent as this is a new house, contrary to Core Strategy Policies RA3 and RA5
- Will require soil removal and the loss of oak trees
- Access via a single track with no passing places will compromise access for emergency vehicles
- Impact on habitats and wildlife on local wildlife site
- Likely Significant Effects on River Wye SAC/SSSI and impact on Great Crested Newts, dormice, grass snakes, adders, slow worms and pearl bordered fritillaries
- No ecological survey done
- Site not identified for growth and contrary to Neighbourhood Development Plan
- Adverse impact upon neighbouring amenity/light pollution
- Unsustainable location

- Contrary to Core Strategy Policies LD1 and LD2
- Access unsuitable for new dwellings
- Application is inaccurate and does not include reference to ownership of the Common, its status as a nature reserve or the AONB
- Proposal is 2 storey and 50% bigger than existing garage
- Building is separate and capable of self-contained occupation
- Loss of parking space and vehicles associated with the property already park on the lane/Common
- Conditions would not provide long term control over occupation
- Right of access over the Common cannot be assumed. May require an additional easement

### Comments on Revised Plans

A further 8 objections (4 from 1 household) were received following the re-consultation. No additional concerns were expressed in these responses but all reiterated the same concerns as were identified in response to the first consultation.

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

[https://www.herefordshire.gov.uk/info/200142/planning\\_services/planning\\_application\\_search/details?id=182086&search=182086](https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=182086&search=182086)

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**

### *Policy context and Principle of Development*

- 6.1 Section 38 (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."*

- 6.2 In this instance the adopted development plan is the Herefordshire Local Plan – Core Strategy (CS). The National Planning Policy Framework (NPPF) is also a significant material consideration. It is also noted that the site falls within the Goodrich and Welsh Bicknor Neighbourhood Area, which published a draft Neighbourhood Development Plan (NDP) for Regulation 14 consultation on 12 March 2018. At this stage it cannot be afforded weight in the decision-making process.

- 6.3 It is recognised that the site is located in open countryside where CS Policy RA3 establishes strict controls over new residential development. In this case, the application does not propose a new dwelling but rather an annexe which although capable of independent occupation is intended to provide for the needs of the applicants elderly father. In this sense there would be a degree of interdependence between the main house and the annexe such that it is not considered that a separate dwelling would be created. Rather, the proposal would be more appropriately described as providing additional accommodation linked by its association with the applicant's property with no material change of use of the land taking place on the basis that the accommodation is used for purposes incidental to the predominant use.

- 6.4 Interpretation of the legislation has, over time, given rise to the now well-established principle that the right to use land for a singularly defined purpose includes the right to use it for purposes which would be ancillary to that primary purpose. The inherent requirement of an ancillary use is that there should be a functional relationship with the primary use of the planning unit.

- 6.5 A number of cases have shown that the term “incidental to the enjoyment” may be interpreted generously. The creation of an annexe would therefore be unlikely to require permission provided the building was occupied by a family member. However if the accommodation created constitutes a separate self-contained unit and a separate planning unit, this would cease to be incidental.
- 6.6 In essence, an annexe will become a separate single dwellinghouse where it is self-contained with all the necessary day to day living facilities and has resulted in the creation of a separate planning unit. The case of Uttlesford DC v SoS and White 1992 is pertinent here as it involved a garage attached to a dwelling that had been converted to a ‘granny annexe’. An Inspector had determined that where a domestic garage within a residential curtilage was used for living accommodation in connection with the dwelling, no material change of use had occurred. The Court agreed ruling that the fact that the elderly occupier of the annexe had living facilities that enabled her to live independently from the rest of the family did not amount to the creation of a separate planning unit that required permission. The significance of this case is that even though accommodation in the garage was capable of independent use, the Court judgment suggested that a quality of separateness was occupation by someone who was not connected with the family occupation of the whole planning unit.
- 6.7 Testing separateness and independence of residential accommodation is key to decision making on whether accommodation is in the form of an annexe providing accommodation ancillary to the main dwellinghouse or a single dwellinghouse occupied separately.
- 6.8 In this instance, the annexe would be occupied by the father of the occupant of 3 Rockland Cottage who would be provided with a degree of care by the family and also continue to enjoy some form of independent living. In future the applicant foresees the potential need to have live-in care in relation to his own degenerative condition. In both cases the degree of inter-relationship is considered to remain incidental. Furthermore, whilst the proposed building is patently larger than the existing double garage, it maintains an appropriate residential scale in relation to the main dwelling and the context of the large garden curtilage. The application does not propose to separate the land and granting permission would enable conditional control over the occupation to be secured. Importantly in my judgement, the access is shared and there is a close physical relationship between the two buildings (approximately 8.5 metres apart). Furthermore there are clear limitations in relation to access to the site that would be associated with the creation of a separate dwelling and also legal implications in respect of the granting of the necessary easement.
- 6.9 On the basis of the information provided, it is officer’s opinion that the proposed annexe would be used for purposes ancillary to the use of the main dwelling and that there would be sound policy grounds to resist the creation of any form of separate planning unit should this be sought in the future.
- 6.10 In planning terms this proposal should not to be considered as a new dwelling and as such, with respect to the objections that have been lodged, Policy RA3 is not considered relevant and neither by extension is Policy RA5 which has been referred to as the proposal is not for the conversion or adaptation of an existing building. In this regard, it is not considered that there can be a sustainable objection to the principle of an annexe with restricted occupancy.
- 6.11 The key question relates to the nature of the accommodation proposed and whether it can reasonably be considered to remain incidental to the main house. In this regard, it would be more appropriate to consider the proposal against Policies SD1 (Sustainable design and energy efficiency) and LD1 (Landscape and townscape) in terms of the acceptability of its scale and impact by comparison to the existing dwelling and its sensitive landscape setting.

### *Scale and Visual Impact*

- 6.12 The site is located within the Wye Valley Area of Outstanding Natural Beauty, a designation that is afforded the highest level of protection and careful consideration has been given to the visual impact of the proposed annexe building. By comparison to the existing double garage, the annexe would be 0.9 metres taller to the ridge and 1.3 metres taller to the eaves and as such has greater mass. Furthermore whilst it maintains the same depth, it would be 3.1 metres wider than the existing garage.
- 6.13 I do not consider this size of building to be out of keeping with the site or its surrounding and this coupled with the use of timber cladding and matching slate roof, together with the close physical relationship with the main dwelling and its setting against rising land is such that in my view, it would conserve the scenic beauty of this important landscape in a manner that accords satisfactorily with CS Policies LD1 and SD1.
- 6.14 A number of objections refer to the loss of trees within the garden to accommodate the larger footprint of development. The applicant has refuted the loss of any trees and maintains the intention of retaining trees to provide screening.
- 6.15 The existing structure is set into an embankment with a semi-mature oak tree set upon higher ground to the south beyond the retaining structure. The intended extension to the footprint would not change this relationship with the additional footprint extending northwards. There would be no resulting tree loss with the boundary planting on the eastern boundary to the Common retained. The only work to a the oak tree referred to above would potentially to remove a lateral limb that currently overhangs the existing garage but due existing levels and relative distances from other trees within the garden, this would be the only impact and is not considered to result in any unacceptable adverse effects upon the character of the site or its contribution to the surrounding area.
- 6.16 The Arboricultural Advisor has not raised an objection and a condition is recommended to ensure that existing trees are appropriately protected during construction work

### *Biodiversity and Water Quality*

- 6.17 The proximity of the site the the Coppett Hill Special Wildlife Site and its relationship with the River Wye Special Area of Conservation and Site of Special Scientific Interest are acknowledged and a number of objections refer to the presence of protected species in the locality and the lack of an Ecological Survey.
- 6.18 Notwithstanding these, the Council's Ecologist has reviewed the proposal and does not raise an objection on the basis of a lack of a survey. The building itself is not considered likely to provide habitat and the recommendation in this case is to secure some biodiversity enhancement through the conditional requirement to install bat and bird boxes within the site.
- 6.19 The main concern identified by the Ecologist was in relation to the drainage requirements of the extended accommodation. In this regard the applicant has advised that the main dwelling has been reduced from a 4 bed dwelling to a 3 bed dwelling (2 smaller bedrooms formed into 1) and as such there would be no uplift in the number of bedrooms and limited implications for further discharges from the site. The Ecologist has considered the additional information provided and is content to recommend a condition and Natural England raise no objection subject to appropriate mitigation.



### *Access and Highway Safety*

- 6.20 The limitation of the access arrangements to the site are abundantly clear and there are specific legal controls over the rights of access to individual dwellings which are outside of Planning legislation. As referred to above this, in addition to a policy presumption against building new dwellings on Coppett Hill militates against any further intensification that might arise for a further unrestricted residential use or holiday accommodation. The applicant's father currently lives at the property and in this regard there would be no change to its lawful use or the amount of private vehicles arriving and leaving the site. Clearly access to the site during construction will present a significant challenge but no more so than for the construction of an extension to an existing dwelling. A condition is recommended to ensure that adequate provision is made for site operative/deliveries and it is understood that other legal mechanisms will need to be addressed in relation to access via the Common or works that might affect it.
- 6.21 In light of the above, subject to an occupancy condition, it is not considered that there would be any additional impact upon the existing access arrangements which would continue to be to a single 3 bed dwelling and one bedroom annexe.
- 6.22 In this regard, CS policy MT1 would be satisfied.

### *Conclusion and Planning Balance*

- 6.23 The level of objection and the nature of concerns expressed in response to this application is acknowledged and it is clear that much of this results from the potential precedent that would be set by allowing a building that is described as tantamount to a new dwelling. In planning terms, the position is more nuanced when proposals involve accommodation that is capable of independent occupation but where the intention is to maintain a level of use that is ancillary to the main dwelling. In this case it is considered that the intended use of the annexe would be incidental to the dwelling and as such it would not fall foul of CS policy RA3. It is not considered that the annexe would have any significant adverse environmental effect in terms of its visual impact and the application has satisfactorily addressed matters relating to ecological mitigation and drainage discharges. The restriction of occupation that is recommended is such that there would be no intensification in vehicular access to and from the site beyond that which might lawfully occur and as such whilst respecting the concerns that have been expressed, I do not consider that there is any conflict with policy that would justify the refusal of this proposal.

## **RECOMMENDATION**

**That planning permission be granted subject to the following conditions and any other conditions considered necessary by officers named in the Scheme of Delegation to Officers:**

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1. **A01 Time limit for commencement (full permission)**
2. **B01 Development in accordance with the approved plans (Drawing Nos. 809 PL02 Rev A)**
3. **C01 Samples of external materials**
4. **CG3 Roofing Materials**
5. **F08 No conversion of garage to habitable accommodation**
6. **F13 Restriction on separate sale**

- 7. **F28 Occupation ancillary to existing dwelling only (granny annexes)**
- 8. **G04 Protection of trees/hedgerows that are to be retained**
- 9. **H27 Parking for site operatives**
- 10. **I16 Restriction of hours during construction**
- 11. **Unless otherwise agreed in writing by the Local Planning Authority; as advised by the applicant in an email (“Subject: Re: 182086 - 3 Rocklands Cottage” dated 17th August 2018,) foul water shall be managed through connection to the existing septic tank that discharges final outfall through a soakaway drainage field.**

**Reason: In order to comply with Habitat Regulations 2017, National Planning Policy Framework, NERC Act 2006 and Herefordshire Local Plan Core Strategy policies LD2 and SD4.**

- 12. **Prior to first use of the new annexe evidence (such as photos/signed Ecological Clerk of Works completion statement) of the suitably placed installation of at least two bat roosting enhancements and two bird nesting boxes built in to, or attached to the new annex should be supplied to and acknowledged by the local authority; and shall be maintained hereafter as approved unless otherwise agreed in writing by the local planning authority. External habitat boxes should be made of a long-lasting material. No external lighting should illuminate any habitat enhancement feature, adjacent track or habitat.**

**Reason: To ensure that all species are protected and habitats enhanced having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation (Natural Habitats, &c) Regulations 1994 (as amended) and Policy LD2 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework, NERC Act 2006 and Dark Skies Guidance Defra/NPPF 2013**

- 13. **CE6 Efficient use of water**

**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. Negotiations in respect of matters of concern with the application (as originally submitted) have resulted in amendments to the proposal. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.**
- 2. **N11C General**

Decision: .....

Notes: .....

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## **Background Papers**

Internal departmental consultation replies.

