

MEETING:	PLANNING AND REGULATORY COMMITTEE
DATE:	10 APRIL 2019
TITLE OF REPORT:	190122 - APPLICATION FOR APPROVAL OF RESERVED MATTERS FOLLOWING OUTLINE APPROVAL 160581/O (PROPOSED SITE FOR THE ERECTION OF 5 NO. FOUR BEDROOM DWELLINGS.). RESERVED MATTERS FOR ACCESS ONLY. AT BALANCE FARM, EYWOOD LANE, TITLEY, KINGTON, HR5 3RU For: Mrs Vaughan per Mr Alan Poole, Green Cottage, Brierley, Leominster, Hereford, HR6 0NT
WEBSITE LINK:	https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=190122&search=190122
Reason Application submitted to Committee – Re-direction	

Date Received: 14 January 2019

Ward: Arrow

Grid Ref: 332823,259745

Expiry Date: 11 March 2019

Local Member: Councillor RJ Phillips

1. Site Description and Proposal

- 1.1 The application relates to a site in the village of Titley in the north west of the county. The site lies on the west side of the village and just to the north of the unclassified highway known as Eywood Lane (U91602). The location of the application site is denoted by the red star on the map below;



Figure 1: Site Location

Further information on the subject of this report is available from Mr Adam Lewis on 01432 383789

- 1.2 The site is a wedge shaped parcel of land that occupies a slight depression next to the adjacent highway. It currently hosts a range of modern steel framed agricultural buildings and at the time of the officer's visit the site appeared to be in use for agricultural storage. A number of residential properties are found to the east of the site in the complex of converted traditional agricultural buildings known as Balance Barns. Historically these were associated with The Balance Farmhouse, which sits approximately 50m to the south east of the site and is listed at Grade II. Although not within the designated area, the site is in close proximity to the Grade II registered park and garden of Eywood. The boundary of the designated area is located to the west of the site, and the former gatehouse to the park is found near to the site access.
- 1.3 The site is currently accessed from the south off the unclassified Eywood Lane (U91602). Eywood Lane is a 'no-through' road to the west, where it provides access to a number of dwellings and the wildlife site at Titley Pools. Access from the site to the wider highways network is therefore gained via a junction onto the B4355 approximately 100m to the east towards the centre of the village and near The Stag Inn.
- 1.4 The site currently has the benefit of outline planning permission for the erection of five dwellings. Outline permission was granted with all matters reserved in July 2016 under local authority reference number P160581/O.
- 1.5 The current application seeks approval of reserved matters in relation to access only. Details of layout, scale, landscaping and appearance are to be dealt with at a later date. The application provides technical drawings (SK01-REVD and SK03-REVC) of the proposed access from the site onto Eywood Lane. An extract of the latter, showing the proposed access arrangement and construction specification, is included below.

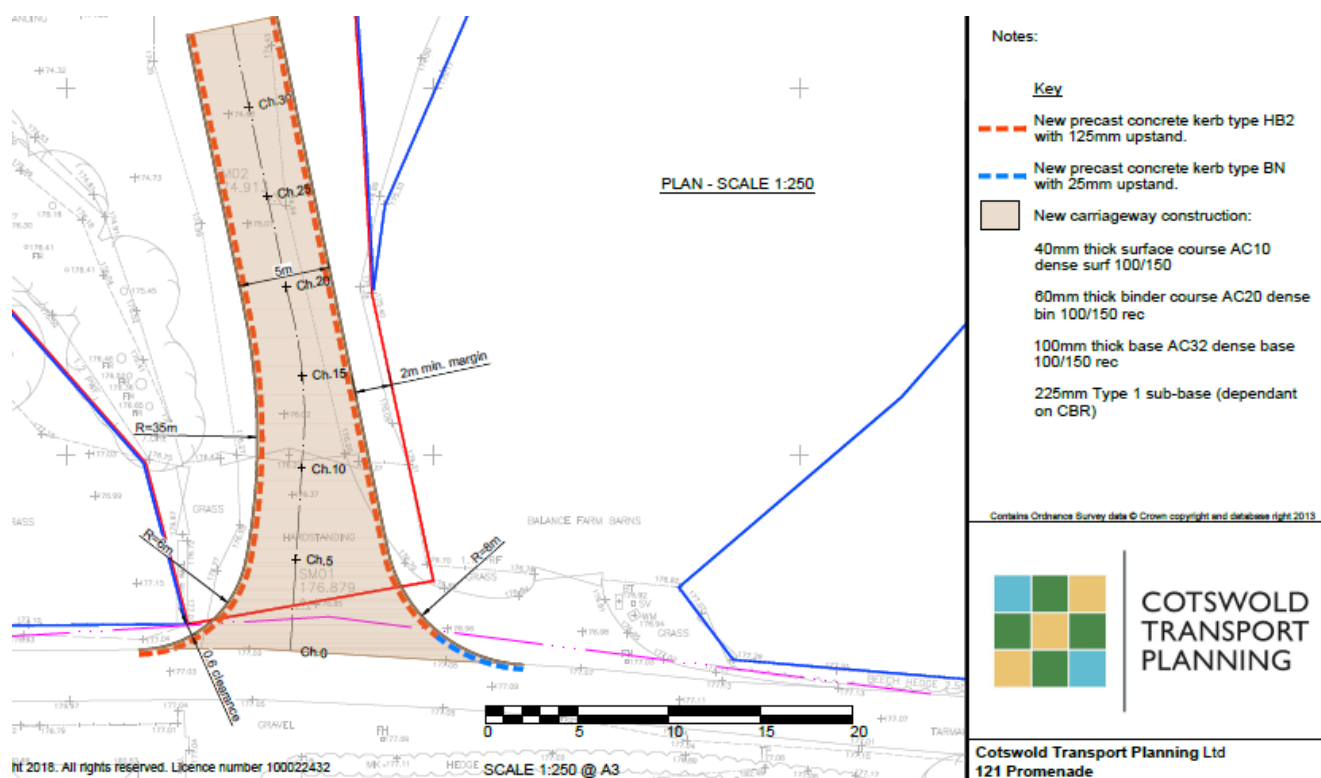


Figure 2: Proposed Access Plan

2. Policies

2.1 Herefordshire Local Plan – Core Strategy 2015

The following policies are considered to be of relevance to this application:

SS1	-	Presumption in Favour of Sustainable Development
SS4	-	Movement and Transportation
MT1	-	Traffic Management, Highway Safety and Promoting Active Travel
SS2	-	Delivering New Homes
SS3	-	Releasing Land for Residential Development
SS6	-	Environmental Quality and Local Distinctiveness
RA1	-	Rural Housing Strategy
RA2	-	Housing in Settlements Outside Hereford and the Market Towns
LD1	-	Landscape and Townscape
LD4	-	Historic Environment and Heritage Assets
SD1	-	Sustainable Design and Energy Efficiency

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

2.2 The National Planning Policy Framework (Revised February 2019)

1. Introduction
2. Achieving sustainable development
4. Decision-making
6. Building a strong, competitive economy
8. Promoting healthy and safe communities
9. Promoting sustainable transport
11. Making efficient use of land
12. Achieving well design places
15. Conserving and enhancing the natural environment
15. Conserving and enhancing the historic environment

2.3 Titley Neighbourhood Development Plan

The Titley Group Parish is currently in the process of preparing a Neighbourhood Development Plan. The plan is currently at the drafting stage and a consultation under Regulation 14 was carried out between the 3rd December 2018 and the 28th January 2019. Herefordshire Council has not had sight of the representations received during the draft plan consultation undertaken by the parish council, and therefore the decision makers are unable to evaluate the extent of any unsolved objections. However, the Strategic Planning team as part of the Regulation 14 consultation have confirmed that the plan as currently drafted is in general conformity with the adopted Herefordshire Core Strategy and the National Planning Policy Framework. At this stage, with regards to para 48 of the NPPF, limited weight can be attributed to the neighbourhood plan

TG1 – Sustainable Development
TG16 – Design and Access
TG14 – Natural Environment
TG15 – Historic Environment

The Neighbourhood Plan and its supporting documents can be viewed via the following link
https://www.herefordshire.gov.uk/directory_record/3109/titley_group_neighbourhood_development_plan

3. Planning History

3.1 The following applications apply specifically to this site and are directly relevant to the current application;

- **P181476/ RM** - Application for approval of reserved matters following outline approval P160581/O. Access only – Refused 28th September 2018
- **P160581/O** - Proposed site for the erection of 5 no. four bedroom dwellings (Outline – all matters reserved) – Approved 27th July 2016

3.2 In addition, the following application applies to the parcel of land which lies immediately adjacent to the current site and utilises the same access arrangements.

- **P162824/O** - Site for the proposed erection of 5 dwellings – Appeal Against Non-determination – Appeal PP/W1850/W/17/3168668 Dismissed 26th July 2017

4. Consultation Summary

Statutory Consultations

4.1. Natural England – No Objections

The advice provided in our previous response applies equally to these Reserved Matters, although we made no objection to the original proposal.

The proposed amendments to the original application are unlikely to have significantly different impacts on the natural environment than the original proposal.

4.2 Gardens Trust – No bespoke comments

Thank you for consulting the Gardens Trust in its role as Statutory Consultee on the above application which affects Eywood, an historic designed landscape of national importance which is included by Historic England on the Register of Parks and Gardens of Special Historic Interest at Grade II. We have considered the information provided in support of the application and on the basis of this confirm we do not wish to comment on the proposals at this stage. We would however emphasise that this does not in any way signify either our approval or disapproval of the proposals.

4.3 Welsh Water – No Objections

We refer to your planning consultation relating to the above site, and we can provide the following comments in respect to the proposed development

We have no objection to the application for approval of the reserved matters subject to compliance with the requirements of the drainage conditions imposed on the outline planning permission, and the subsequent applications to vary the conditions thereon.

4.4 Transportation Manager

The access to the application site is considered in two main areas and comments relating to this are set out below:

Site Access to Eywood Lane:

The access onto the U91602 Eywood Lane is set out in drawing CTP-17-611 and depicts a simple junction onto the lane. The drawing shows the visibility splays of 2m x 33m, and these are appropriate. The visibility splay requirements have been based on the previously submitted ATC data for the refused planning application (181476).

The visibility splay line to the west runs in front of, but close to, the brick built gatepost. It is likely that the slight flare shown on the drawing on the western side of the access will discourage drivers from stopping at the proposed 2m set back, so this should be removed and instead run along the existing carriageway edge to the tangent point of the radius to encourage correct driver placement and therefore alleviate the issue of the proximity of the wall placement to the visibility line.

The access and kerbing appears to cross the adjacent access to Balance Barns to the east of the proposal site. Some clarity should be provided relating to the interaction of these two accesses. The proposal should ensure that satisfactory arrangements to both sites are maintained.

No details have been provided as to the drainage of the access area and it should be noted that this application does not consider layout, so the full extent of the drainage system cannot be set out. The gradient however means that the access falls into the site and therefore will not cause water to drain into the highway in any case.

The public highway extent runs into the existing gravelled gateway area, and the works outside of the application's red line will take place within the public highway. Should permission be granted, permission under the Highways Act will be required from the Highways Authority to construct the access.

Junction of Eywood Lane and the B4355:

It's understood that planning may not be in a position to consider this junction as part of this reserved matters application, however we would offer the following comments in respect of the junction.

This junction located in close proximity to the site and has a reduced visibility dimension when looking to the south east. This junction was considered in the Appeal for Application number 162824 on an adjacent site and highways safety was a reason for the refusal. The proposal considered by the inspector was for five houses, which were additional to the five already granted under the first outline permission 160581/O (i.e. a total of 10 dwellings). The inspector was therefore considering a greater intensification in use on account of the two schemes together. Whilst the junction falls short in terms of visibility, it is not considered that the current scheme for five dwellings in isolation could be considered a 'severe' impact at the location due to the relatively low traffic generation.

It is possible that improvements to the junction could be delivered to help mitigate the highways safety impacts of the development without the use of third party land. It is acknowledged that these improvements would need to be subject to feasibility considerations, but could also

deliver some sustainable transport links to the amenities of Titley. None have been offered as part of the current application however.

Further Comments (29th March 2019)

The Amended Drawing numbered SK01 Revision D dated 26th March 2019 addresses the comments related to the site specific access arrangements, therefore this drawing shows an acceptable arrangement for the scale of the development.

Recommended Conditions:

- CAB – Vis splays 2m x 33m
- Standard Informative I45 – Works within public highway

4.5 Conservation Manager (Ecology) – No Objections

4.6 Conservation Manager (Landscape) – No Objections

4.7 Environmental Health (Contaminated Land) – No Comments

5. Representations

5.1 Titley Group Parish Council object to the application;

The Titley Group Parish Council has consistently highlighted the highway safety issues with regard to both this application and the original plans for the five four bedroom houses. The lack of visibility at the Eywood lane junction with the B4355 has not changed and no alteration is to be made to the speed limit. There is still a large level of opposition within the community to this proposal not just on road safety issues but also on the impact such a potentially large development would have on a small village. As the road safety issues have now been accepted by both Hereford Council and the Government Planning Inspector at Appeal, we would consider that revoking the original approval for the four bedroom houses the only way to ensure the safety of the public. We would therefore endorse the letter from the Marches Planning and Property Consultancy regarding this matter.

We would also like to draw the attention of the council to our emerging Neighbourhood Development Plan which has reached Regulation 14. Due to the road safety issues, large level of community objection, estate style development inconsistent with the linear form of the village and, as already demonstrated, the developers wish to expand the proposal, we have not included any part of this development within our plan. We have instead included housing allocations that we consider better serve our community and do not create road safety issues. As can be seen we are still easily able to exceed our proportional growth requirements.

We also note that no consideration in the access plans has been given to the gate post to the west of the entrance that would obscure the splay visibility in this direction along Eywood lane.

Finally we would ask that this application be considered at committee, due to the large level of community opposition and to demonstrate Hereford Councils commitment to public safety.

5.2 22 Letters of Objection have been received. They can be summarised as follows;

- The junction of Eywood Lane and B4355 has limited visibility and the increase in traffic caused by this scheme would be harmful to highways safety. This has been confirmed by a previous Inspector and Council officers, but was overlooked in the grant of the original outline permission.

- The Inspector's decision refused an application (162824/O) on highways safety grounds where the access arrangements were identical to the current scheme.
- The original planning permission should be revoked using the powers under S.97 of the Town and Country Planning Act 1990 in the interests of public safety
- There is limited visibility from the site access onto Eywood Lane on account of the brick gatepost to the west.
- The plans show that a kerbing upstand will be formed near to the existing access to Balance Barns. This will impede safe access and egress for the seven dwellings on this site.
- The layout of the access does not meet the standards of the Council's Design Guide for New Developments
- The increase in traffic would be a danger to walkers who use the lane to access Titley Pools
- The scheme of entirely four bedroom houses does not meet the needs of Titley residents
- The application proposes works in highways land that are not in the applicant's control
- The original approval was granted on an incorrect view that the site was brownfield land
- Misleading information was given in the original outline application
- If this application is granted, a precedent will be set for further development on the site
- The SHLAA assessment for this site was inaccurate
- The site is not one identified for development in the draft neighbourhood development plan
- The land on the application site is not all within the developer's control
- Errors were made in the initial grant of outline permission
- The site is not vacant as reported in the application. It is still in regular agricultural use.
- Questions as to whether correct notices have been served as part of reserved matters application and initial outline application

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=190122&search=190122

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

Planning History and Procedural Context

- 6.1 The initial outline application for this site was validated by the Local Planning Authority on 25th February 2016. The application was made with all matters reserved. Although not specifically identified in the application, it was implicit in the submission that access to the site was to be via the existing access onto Eywood Lane to the south. The Council's Transportation Manager did not offer any objections to this arrangement at the time. Outline permission was subsequently granted subject to conditions on 27th July 2016.
- 6.2 A second outline application with all matters reserved was received on 8th September 2016 which related to the parcel of land immediately to the west of the current application site (P162824/O). The application proposed the erection of a further five dwellings. Whilst again not specifically identified, it was implicit that the proposal was to utilise the existing site access onto Eywood Lane in the same manner as the earlier approval. The Council's Transportation Manager subsequently raised concerns in respect of this arrangement and the potential impact upon highways safety, specifically in terms of the achievable visibility splays from the site access onto Eywood Lane and at the junction of Eywood Lane onto the B4355. An appeal against non-determination was submitted by the applicant on the 2nd February 2017

(APP/W1850/W/17/3168668). In the Council's evidence, the following reason for refusal was put forward;

'The required visibility splays cannot be achieved at the current design speed of 60mph at the access as well as onto the B4355 road. Visibility required at the access according to Manual For Streets requires 2.4 x 63m this is not achievable in both directions nor within total ownership of the applicant. Consequently the proposal is considered to be detrimental to the interests of highway safety, contrary to policy MT1 of the Herefordshire Local Plan - Core Strategy'

6.3 The appeal was dismissed by notice dated 26th July 2017. The Inspector's decision concluded that the proposal would cause significant harm to highways safety which would be contrary to policies of the development plan, notably Core Strategy policy MT1. The restricted levels of visibility from the site access onto Eywood Lane and at the junction of Eywood Lane onto the B4355, alongside the absence of evidence in relation to achievable splays and traffic speeds, underpinned the Inspector's Decision.

6.4 On 23rd April 2018, a reserved matters application (P181476/RM) was received in relation to the extant outline permission 160581/O (herein 'First Reserved Matters Application'). As in the present case, the application sought approval for access details only. Unlike the previous outline applications, the application was supported by the results of a 24 hour/7 day Automated Traffic Count (ATC) survey carried out on Eywood Lane and at its junction with the B4355. A technical drawing was also provided of the proposed access from the site onto Eywood Lane. With the exception of some minor technical points concerning the layout of the access, the Council's Transportation Manager confirmed that the additional information addressed the previous safety concerns regarding the junction from the site onto the unclassified Eywood Lane. However, in line with the conclusions drawn by the Inspector in the earlier appeal it was identified that visibility at the offsite junction between the Eywood Lane and the B4355 was substandard for the recorded traffic speeds. The application was subsequently refused on 28th September 2018 for the reason below;

'The application has failed to demonstrate that the local highway network can accommodate the traffic impacts of the development without adversely affecting the safe and efficient flow of traffic on the network, particularly with regards to the sub-standard visibility available at the junction of Eywood Lane and the B4355 and the intensification in use of this junction the proposal would give rise to. The proposal is hence in conflict with Policy MT1 of the Herefordshire Local Plan Core Strategy, the standards of Manual for Streets 2, and Chapter 9 of the National Planning Policy Framework'

6.5 Following this refusal, a second reserved matters application (P190122/RM) was submitted to the Local Planning Authority on 14th January 2019. This is the application currently being considered (herein 'Current Reserved Matters Application'), and to all intents and purposes the application is the same as the one refused under the first reserved matters application P181476/RM.

6.6 The current application however is supported by a Legal Opinion which has been sought by the Applicant from Landmark Chambers (London). This is attached in full at **Appendix 1**. The Barrister's advice considers the matter of whether the Council acted correctly in refusing the first reserved matters application. The Conclusion of the advice is that it did not. It is concluded that the Council erred in law in the sense that the reason for the refusal of the application related to matters that went to the principle of the development itself and which are therefore implicit in the grant of the outline planning permission. In short, the Council was not entitled to consider the traffic generation and highways safety implications of the development as part of a reserved matters application because these were 'fixed' with the grant of the outline permission.

6.7 The Council has sought its own independent Legal Opinion in respect of the first reserved matters application and this is attached in full at **Appendix 2**. The advice addresses a number

of matters (considered further in Section 6.35), but in relation to the propriety of the Council's refusal of the first reserved matters application similar conclusions are drawn to that of the Applicant's own Legal Opinion. The Council may not refuse to approve a reserved matters application on grounds going to the principle of the development itself. The following is offered by way of concluding remarks;

'Legally, the appropriate route seems to be to approve the Application on the basis that at the time of the consideration of application 160851/O, the Council did not take any point about highway safety and cannot reopen that issue now'

- 6.8 The current reserved matters application is considered in the context of the above.

Current Application - Policy Context and Appraisal

- 6.9 Outline Planning Permission for the erection of five dwellings was granted on this site in 2016 (Ref: 160581/O). This permission remains extant and the principle of residential development on the site is therefore established and cannot be revisited now. The current application has been submitted in line with the conditions of the Outline permission and seeks reserved matters approval in respect of access details only.
- 6.10 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."*
- 6.11 In this instance the adopted development plan comprises the Herefordshire Local Plan – Core Strategy (CS). The National Planning Policy Framework (NPPF) is also a significant material consideration in determining the application. It is also noted that the Titley Parish is currently in the process of preparing a Neighbourhood Development Plan, with a draft recently being published for Regulation 14 consultation. At this stage the draft plan is a material consideration, but in applying the tests set out at Paragraph 48 of the NPPF it is considered it attracts limited weight for the purposes of decision taking (as set out in 2.3 of this report).
- 6.12 Paragraph 11 of the NPPF states that decisions should apply a presumption in favour of sustainable development. For decision taking, this means that proposals which accord with an up-to-date development plan should be approved without delay. At 11 d), it states that where there are no development plan policies relevant or the policies which are most important for determining the application are out-of-date, permission should be granted unless policies within the framework (outlined at Footnote 6) provide a clear reason for refusing the proposal or the adverse impacts of approving the scheme would significantly and demonstrably outweigh the benefits.
- 6.13 The application here is for the approval of reserved matters with regards to access. The policies most important for the determining the application are therefore those concerned with highways matters, and the development plan contains a number of policies of this nature which are considered to be 'up-to-date'. In applying the presumption as set out by Paragraph 11 (c) therefore, the proposal should be approved without delay provided it accords with the development plan.
- 6.14 CS Policy MT1 relates to the highways impacts of new development, and requires that proposals demonstrate that the strategic and local highway network can absorb the traffic impacts of the development without adversely affecting the safe and efficient flow of traffic on the network or that traffic impacts can be managed to acceptable levels to reduce and mitigate any adverse impacts from the development. It also requires under (4) that developments are designed and laid out to ensure that safe entrance and exit can be achieved and that adequate

operational and manoeuvring space is available, having regard to the standards set out in the Council's Design Guide for New Developments.

- 6.15 Although only attracting limited weight at this stage, it is noted that the emerging Titley Group NDP also reinforces highways requirements for new development via policy TG16. At point 4) the policy requires that development proposals should achieve high quality design by 'being capable of being safely accessed from the local road network without undue local environmental impacts which cannot be mitigated. The arrangements for access should include provisions for pedestrians and cyclists to encourage active travel wherever practicable'.
- 6.16 The approach of both the CS and NDP accords with the principles and advice set out within the National Planning Policy Framework (NPPF). Chapter 9 in particular relates to the promotion of sustainable transport, and paragraph 108 requires that in considering specific applications for development it should be ensured that (inter alia) safe and suitable access to the site can be achieved for all users. At paragraph 109, it is advised that development should only be prevented or refused on highways grounds if there would be an unacceptable impact upon highways safety, or the residual cumulative impacts on the road network would be severe.
- 6.17 The applicant has supplied technical drawings SK01-REVD and SK03-REVC which show the proposed layout and construction specification of the access from the site onto Eywood Lane. The Council's Transportation Manager advises that the depicted visibility splays of 2m x 33m (shown on SK01-REVD) are appropriate when having regard to the traffic speeds that were recorded in the speed survey undertaken in support of application P1814761/RM. It has also been confirmed on site that the splays are achievable when having regard to physical constraints such as the geometry of the carriageway and the adjacent brick gate pillar. The splays will be secured by condition. Previous concerns regarding the technical layout of the access and its relationship with the adjacent driveway to Balance Barns have also been addressed through amendments to the plans SK03-REVC. The Transportation Manager therefore offers no objections and consequently no conflict with MT1 is identified as a result of the site access arrangements.
- 6.18 The representations received regarding the need for works outside of the outline application's red line are noted. The supplied plan SK01-REVD however shows that all of the works outside of the red lined would take place within the public highways extents (highlighted in blue in Figure 3), and the extents shown in the plan have been confirmed against the Council's records as being accurate. The works can therefore be controlled by relevant provisions of the Highways Act.

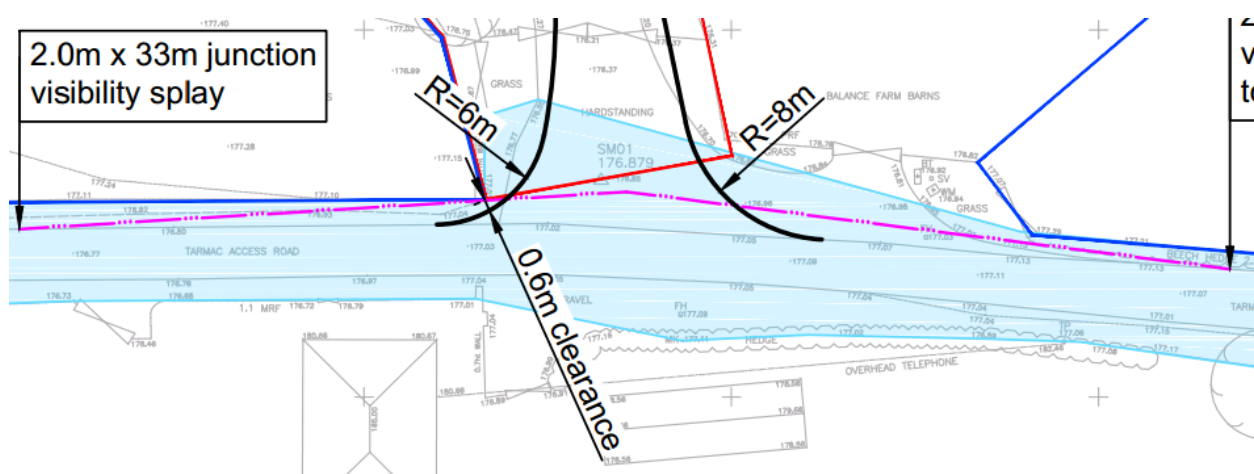


Figure 3 – Highways Extents Plan

- 6.19 The proposed access details would not have any demonstrable impact in respect of any other material planning considerations such as amenity, ecology, heritage, landscape or

contaminated land issues. It is noted that no objections have been received from statutory or internal consultees in relation to such matters. The relevant conditions of the outline permission will continue to apply, and these points will be considered further when approval of the outstanding reserved matters for landscape, layout, scale and appearance are submitted.

Eywood Lane and B4355 Junction

- 6.20 The issue of highways safety at the offsite junction between Eywood Lane and the B4355 has been extensively considered as part of previous applications in the locale. It is clear that visibility from the junction the south east towards Kington in particular is restricted by the geometry of the carriageway in conjunction with physical obstructions on the verge, and that there is limited scope to address this given that the issues stem from land in third party ownership. The Inspector considering a second outline application for five dwellings (162824/O) recognised this issue and subsequently dismissed the appeal for reasons (in part) relating to the application's failure to demonstrate safe access could be achieved from this junction. An ATC speed survey was consequently undertaken by the applicant which reduced visibility requirements to a small degree, but the junction still fell short of being able to deliver the splays required under Manual for Streets. The required splays to the south east have previously been identified to be 2m x 60m; whilst the achievable splays have been measured at 2m x 42m (or 2m x 55m with reliance on third party land). This shortfall formed the basis of the Council's refusal of the First Reserved Matters application for access in September 2018.
- 6.21 As outlined at Section 6.7 and 6.8 of this report, the current application is supported by a Legal Opinion on behalf of the applicant and the Council has also sought its own Legal Opinion in response to this (Appendix 1 and 2 respectively). Both opinions are clear in their conclusions; the Council's decision to refuse the First Reserved Matters Application on the grounds of the highways safety issue at the offsite junction between Eywood Lane and the B4355 was erroneous in law. This issue goes to the principle of the development and therefore was 'fixed' with the grant of the outline permission. The Council is hence not legally or procedurally entitled to re-open that issue as part of a reserved matters application.
- 6.22 It follows therefore that the issue regarding the Eywood Lane and B4355 junction cannot be used as grounds to refuse the current reserved matters application. To do so would likely be erroneous in law.
- 6.23 Notwithstanding this, the representation received from the Transportation Manager provides further analysis of the junction and the highways safety implications this would give rise to. First, it is noted that the current situation is materially different to the situation that was before the Inspector in the appeal relating to application 162824/O. This in the sense that the first outline permission for five dwellings had already been approved by that stage, and therefore the intensification in vehicle movements that would have occurred as a result of the two schemes together would be greater than those caused by the first outline permission alone. Moreover, ATC speed survey data has since been submitted that accurately quantifies traffic speeds and volumes on the B4355 and shows that the shortfall in achievable visibility from the junction is slightly less than previously noted. This leads to the conclusion from the Transportation Manager that although there would an impact upon highways safety, this impact could not be termed to be severe on account of the relatively limited traffic generated by the development.

Revocation of Outline Permission P160581/RM

- 6.24 Although it is not a matter than can be considered material to the determination of the current application, it is acknowledged that numerous representations received from the Parish Council and local residents invite the Council to utilise the powers afforded to them by Section 97 of the Town and Country Planning Act (1990) to revoke the original outline planning permission. Section 97 (1) makes the following provision;

'If it appears to the local planning authority that it is expedient to revoke or modify any permission to develop land granted on an application made under this Part, the authority may by order revoke or modify the permission to such extent as they consider expedient'

6.25 At face value, it may logically be argued that it would be appropriate for the Council to exercise these powers and revoke the original outline permission. Since the grant of the permission, it has become apparent that should the development proceed it would likely increase the risk to highways users on account of the shortfall in visibility at the junction between Eywood Lane and the B4355. The option of revoking the original permission in response to this has therefore been considered.

6.26 In considering the possibility of revocation, Section 107 of the Town and Country Planning Act (1990) is also pertinent. This section relates to the matter of compensation where planning permission is revoked or modified. It states as follows;

S.107 (1) *Subject to section 116, where planning permission is revoked or modified by an order under section 97, then if, on a claim made to the local planning authority within the prescribed time and in the prescribed manner, it is shown that a person interested in the land or in minerals in, on or under it—*

- (a) has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification; or*
- (b) has otherwise sustained loss or damage which is directly attributable to the revocation or modification,*

the local planning authority shall pay that person compensation in respect of that expenditure, loss or damage.

S.107 (2) *For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory to it, shall be taken to be included in the expenditure incurred in carrying out that work.*

S.107 (3) *Subject to subsection (2), no compensation shall be paid under this section in respect—*

- (a) of any work carried out before the grant of the permission which is revoked or modified, or*
- (b) of any other loss or damage arising out of anything done or omitted to be done before the grant of that permission (other than loss or damage consisting of depreciation of the value of an interest in land).*

6.27 In terms of the level of compensation that may be payable should the Council pursue a revocation, the representation received from Marches Planning on behalf of local residents makes the suggestion that this would be minimal given that works on the site have not yet commenced. However, this ignores the wording of sections 107(1)(b) and 107(3) which clearly envisage that compensation would also be due in respect of the depreciation in the value of the land that would inevitably occur as a result of the revocation of the planning permission. Should the permission be revoked therefore it follows that the level of compensation due would likely be significant.

6.28 Case Law and the Council's legal advice in respect of the current application are clear that in considering whether to exercise its discretion to revoke under section 97, one of the material considerations that the authority has to take into account is the cost of the compensation that it might have to pay under Section 107. This view was held by the *Supreme Court in Health and Safety Executive v Wolverhampton City Council [2012] UKSC 34*. The judgement given in that case commented;

24)....In simple terms, the question is whether a public authority, when deciding whether to exercise a discretionary power to achieve a public objective, is entitled to take into account the cost to the public of so doing.

25) Posed in that way, the question answers itself. As custodian of public funds, the authority not only may, but generally must, have regard to the cost to the public of its actions, at least to the extent of considering in any case whether the cost is proportionate to the aim to be achieved, and taking account of any more economic ways of achieving the same objective. Of course, the weight attributable to cost considerations will vary with the context.

- 6.29 Drawing together the above, it is considered that it would not be expedient for the Council to exercise its powers under S.107 and revoke the original outline permission for the site. Whilst it has been identified that the junction between Eywood Lane and the B4355 has restricted levels of visibility and that this would likely have an impact upon highways safety, the advice received from the Transportation Manager is that this impact would not be severe. The degree of risk is not therefore considered to be significant enough to justify or outweigh the considerable financial implications to public funds that would occur if the revocation were pursued.

Conclusions

- 6.30 In accordance with Paragraph 11 of the NPPF, all planning decisions should apply a presumption in favour of sustainable development. Paragraph 11 (c) requires that proposals which accord with an up to date development plan should be approved without delay.
- 6.31 The application in this case is for the approval of reserved matters in relation to access only. The application has provided technical drawings in respect of the layout and specification of the new access from the site onto Eywood Lane and these are considered to be acceptable with regards to the requirements of the Council's Highways Design Guide. The Transportation Manager offers no objection to the proposed access arrangements and no conflict with the development plan, notably CS policy MT1, has been identified.
- 6.32 The issue in relation to the off-site junction between Eywood Lane and the B4355 is acknowledged. However, legal advice directs that the Council is not entitled to consider this as part of their determination of this reserved matters application. This issue goes to the principle of the development and therefore was 'fixed' with the grant of the outline permission. It cannot be re-opened now.
- 6.33 In conclusion therefore, no conflict with the development plan has been identified as a result of the proposed access arrangements and the scheme is consequently representative of sustainable development. The reserved matters application is therefore recommended for approval subject to the conditions set out below.

RECOMMENDATION

That approval of reserved matters be granted subject to the following conditions and any further conditions considered necessary by officers named in the Scheme of Delegation to Officers:

- 1. C08 - Development in accordance with amended plans**
- 2. CAB – Visibility Splays – 2m x 33m in accordance with approved plans**

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. I45 – Works within the Public Highway

Decision:

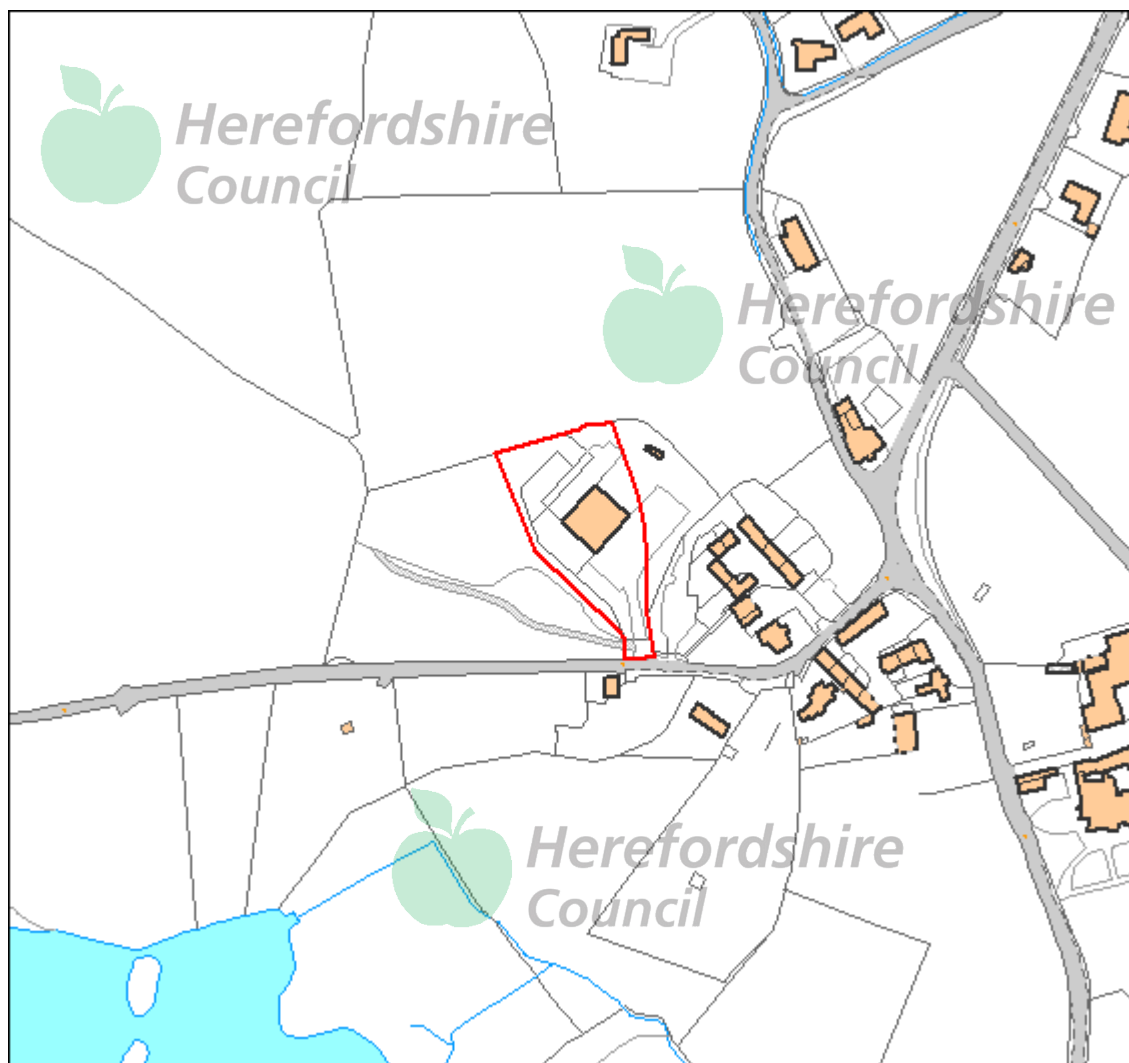
Notes:

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Background Papers

Appendix 1 – Applicant's Legal Opinion (Stephen Whale, Landmark Chambers London)

Appendix 2 – Council's Legal Opinion (Katherine Olley, Landmark Chambers)



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APPLICATION NO: 190122

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