

<b>MEETING:</b>	<b>PLANNING AND REGULATORY COMMITTEE</b>
<b>DATE:</b>	<b>24 JULY 2019</b>
<b>TITLE OF REPORT:</b>	<b>182628 - APPLICATION FOR APPROVAL OF 1ST PHASE RESERVED MATTERS FOR THE ERECTION OF 275 DWELLINGS WITH APPEARANCE, LANDSCAPING, LAYOUT AND SCALE TO BE CONSIDERED ONLY AT LAND TO THE SOUTH OF LEADON WAY, LEDBURY.</b>  <b>For: Mr Mark Elliot, 60 Whitehall Road, Halesowen, B63 3JS</b>
<b>WEBSITE LINK:</b>	<a href="https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=182628&amp;search=182628">https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=182628&amp;search=182628</a>
<b>Reason Application submitted to Committee – deferred from last committee</b>	

**Date Received: 16 July 2018**

**Ward: Ledbury South    Grid Ref: 370718,236535**

**Expiry Date: 19 June 2019**

Local Member: Councillor Helen l'Anson,

This application was deferred at the last meeting for further information and an updated report has been prepared below.

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

- 1.1 The site to which this application relates occupies an area of 13.33 hectares and is located to the south of Ledbury and to the immediate south of the A417 (Leadon Way). The road acts as a bypass for the town and confines residential development to the north. The site is therefore at the urban fringe of Ledbury and currently represents its transition from the built up area of the town to countryside. However, this is tempered to some degree by the presence of development further to the west where it is bounded by the B4216, along which are located a number of buildings including Hazel Farm; a Grade II listed property whose associated buildings have been converted from their former agricultural use to residential, and an area of commercial development which includes the premises of Ornua (cheese factory). The character of the land further to the south and east is very much agricultural with irregularly shaped fields generally defined by hedgerows and small areas of woodland.
- 1.2 The land was originally agricultural/pastoral use and is divided into two fields with an established hedgerow defining the two areas. Hedgerows also define the roadside boundaries to the north and west, and the eastern boundary with an adjoining field, whilst the southern boundary is open and defined by a post and wire fence. Currently, the site is partially developed with road and drainage infrastructure partially built and completed including main access road and attenuation ponds. Three dwellings are in a state of partial completion, however works have ceased on site following the High Court decision and are on hold pending determination of this application.

- 1.3 The site is located within an undulating landscape. Within the western field levels rise across it from west to east and south to north to a high point at its centre, with levels continuing to rise across the eastern field steadily to a high point at its south eastern corner.
- 1.4 Outline planning permission was granted on appeal on 4 April 2016 following a Public Inquiry, for the erection of up to 321 no. residential dwellings. The details of access to the site were agreed as part of the outline proposal with all other matters reserved for future consideration. Accordingly the appeal decision includes a suite of conditions which relate to matters including the provision of 40% affordable housing, habitat enhancement, landscaping, construction management, phasing of development, noise mitigation and the provision of sustainable drainage.
- 1.5 The application now to be considered is one for Reserved Matters and follows a successful High Court challenge against Reserved Matters approved under reference 164078/RM. The scheme comprises a residential development of 275 dwellings, comprising 110 affordable units and 165 units for the open market. Approval is sought for the details of a) appearance, b) landscaping, c) layout, and d) scale, i.e. the reserved matters, in order to satisfy the requirements of Condition 1 of the outline permission. The access from Leaddon Way was approved as part of the outline permission in the form of a roundabout access. The application site and proposed layout is shown below.



- 1.6 The application has been amended since its original submission to take account of comments submitted during the consultation phase and by Local Members and Planning Committee and to ensure consistency with the original Outline permission and Section 106 agreement. This has related particularly to ensuring a policy compliant delivery of affordable housing based upon the reduced number of total units proposed (275 reduced from 321) and deliver appropriate landscaping and open space features. Furthermore, the proposal omits a section of the overall site which has outline planning permission from development under this reserved matters proposal. This land, as shown on the above plan as the greyed out section, is that located nearest to Ornua (cheese factory) and is, on the plans submitted, labelled as being for a future Phase 2 of development. This Phase 2 would come forward if and when noise impact from the factory can be successfully mitigated.

## 2. Policies

### 2.1 Herefordshire Core Strategy

SS1	–	Presumption in favour of sustainable development
SS2	–	Delivering new homes
SS3	–	Releasing land for residential development
SS4	–	Movement and transportation
SS6	–	Environmental quality and local distinctiveness
SS7	–	Addressing climate change
LB1	–	Development in Ledbury
H1	–	Affordable housing – thresholds and targets
H3	–	Ensuring an appropriate range and mix of housing
OS1	–	Requirement for open space, sport and recreation
OS2	–	Meeting open space, sport and recreation needs
MT1	–	Traffic management, highway safety and promoting active travel
LD1	–	Landscape and townscape
LD2	–	Biodiversity and geodiversity
LD3	–	Green infrastructure
LD4	–	Historic environment and heritage assets
SD1	–	Sustainable design and energy efficiency
SD3	–	Sustainable water management and water resources
SD4	–	Waste water treatment and river water quality

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)

### 2.2 Neighbourhood Development Plan

The Ledbury Neighbourhood Development Plan was made on 11 January 2019. It now forms part of the Development Plan for Herefordshire.

The application site is referenced and acknowledged within the NDP which states when combined with two other large scale housing sites – *'together amount to commitments of over 1,000 homes which the LNDP supports'*.

The Ledbury Neighbourhood Development Plan can be viewed on the Council's website by using the following link:-

[https://www.herefordshire.gov.uk/directory\\_record/3074/ledbury\\_neighbourhood\\_development\\_plan](https://www.herefordshire.gov.uk/directory_record/3074/ledbury_neighbourhood_development_plan)

### 2.3 National Planning Policy Framework – NPPF

The NPPF also seeks positive improvements in the quality of the built, natural and historic environment and in regards people's quality of life. The National Planning Policy Framework has been considered in the assessment of this application. The following sections are considered particularly relevant:

- 2. Achieving sustainable development
- 5. Delivering a sufficient supply of homes
- 11. Making effective use of land
- 12. Achieving well-designed places
- 15. Conserving and enhancing the natural environment
- 16. Conserving and enhancing the historic environment

### 3. Planning History

- 3.1 143116/O – Proposed outline planning permission for the erection of up to 321 residential dwellings (including up to 35% affordable housing, structural planting and landscaping, informal public open space, children's play area, surface water attenuation, vehicular access point from Leadon Way and associated ancillary works. All matters reserved with the exception of the main site access – Refused, then Allowed on appeal 4 April 2016.
- 3.2 150884/O – Proposed outline permission for erection of up to 321 residential dwellings (including up to 35% affordable housing), structural planting and landscaping, informal public open space, children's play area, surface water attenuation, vehicular access point from Leadon Way and associated ancillary works. All matters reserved with the exception of the main site access – Refused 26 June 2015
- 3.3 164078 – Application for approval of reserved matters following outline approval P143116/O for 321 residential dwellings – Approved w/conditions on 21 December 2017. A legal challenge followed and the decision was quashed in the High Court on a technical matter relating to noise on 23 August 2018.
- 3.4 164107 – Application for variation of conditions 14 and 17 of planning permission P143116/O – Approved with a Deed of Variation to the original Section 106 Agreement. *Note, Condition 1 of this permission references the plans approved under the quashed permission 164078 and as such this permission can not be implemented in its current guise.*
- 3.5 170075 – Application for approval of details reserved by conditions 6 – *Habitat Enhancement Plan*, 7 – *Arboricultural Method Statement*, 8 – *Method Statement for Nesting Birds*, and 23 – *Scheme for an Archaeological Watching Brief*, of planning permission 143116, all discharged 14 February 2017
- 3.6 173302 – Application for approval of details reserved by conditions 4 – Phasing, 11 – Levels, 13 – Construction Method, and 22 – Drainage, attached to planning permission 143116 – Undetermined
- 3.7 190874 – Application for approval of details reserved by condition 2 & 12 and part discharge of conditions 7 8 9 19 & 20 attached to planning permission 164107 – *Undetermined as references plans approved under the quashed permission 164078 and as such this permission can not be implemented in its current guise.*

### 4. Consultation Summary

#### Statutory Consultations

- 4.1 **Welsh Water** comments *The following response is based on a review of the potable water network only as welsh Water do not provide sewerage services in this area –*

We have previously undertaken a Hydraulic Modelling Assessment and identified a suitable point of connection which can serve the entire development. We seek your cooperation to impose a planning condition that enables suitable control to ensure that the connection point is directed towards a point of adequacy. Therefore, if you are minded to grant planning permission we request that the following Conditions and Advisory Notes are included within any subsequent consent.

Condition – *A potable water connection shall only be made to the 110mm HPPE main on Villa Way at approximate grid reference 370607, 236731. The agreed scheme shall be constructed and completed in full prior to the occupation of any dwelling hereby approved.*

*Reason: To ensure the site is served by a suitable potable water supply.*

4.2 **Transportation Manager** has no objection and notes –

- The access arrangements set in the 2014 permission are the provision of the roundabout and toucan crossing. Attached to this work is an additional footway route along Martins Way and some pedestrian improvement to the Full Pitcher Roundabout. This work is subject to a Section 278 agreement.
- The layout before the committee for consideration has achieved technical approval for a section 38 agreement and therefore meets the requirements of the Local Highway Authority.
- The layout, by virtue of the fact that it complies with our design guide has a design speed of 20mph, therefore the road layout within the site is suitably constrained to support cycling on the carriageway.

4.3 Service Manager Built and Natural Environment comments:  
**(Building Conservation Officer)**

Having looked at the proposals and the submission by the heritage consultant, my view would be that the bund and fence would cause a low level of harm to the setting of the buildings at Hazle Farm. This harm would be at the lower end of less than substantial harm and I would leave the weighing up of public benefit to you in this instance.

With regards to further amended plans and further supporting details dated 28 May 2019 comments as follows –

The 3m bund and fence would be an alien feature in close proximity to the listed and curtilage listed buildings at Hazel Farm. Whilst these buildings are screened when viewed from the NE, an aspect of the setting of these building which contributes to their significance is the way in which the immediate landscape form is understood. As such it is felt that the bund would cause less than substantial harm and at the lower end of the scale. This harm should be weighed up against any public benefits of the scheme in accordance with s196 of the revised NPPF. We are mindful that the vegetation cover will change and whilst this will not mitigate the harm, it will lessen by some degree over time. If this can be taken into consideration is a matter for the planning case officer to advise on, as we are aware that there may or may not be control over these trees remaining insitu.

4.4 Service Manager Built and Natural Environment comments:  
**(Archaeology)**

*No objections or further comments.*

Service Manager Built and Natural Environment comments:  
**(Landscape)**

I have seen the amended landscape proposals which relate to the detailed landscape sheets 1-4. The amendments proposed have addressed a number of issues raised at the meeting with the applicant which include:

- The provision of an extensive landscape buffer along the southern site boundary including a mix of both deciduous and coniferous species.
- Increased tree planting within the site to provide a green infrastructure connecting areas of open space.
- Consideration given to the provision of appropriate facilities within areas of open space which relate to the housing surrounding it including affordable housing and single storey dwellings.

- Provision of an attenuation pond which offers enhancement to the housing development; in terms of ascetics, biodiversity and play.

It is my understanding following on from a conversation with the case officer the attenuation plan will be dealt with by way of a drainage condition, this matter aside, I am therefore broadly satisfied with the layout of the landscape proposals and consider that what is now shown is in line with policies LD1 and LD3 of the Core Strategy.

The provision of a landscape management plan for a period of 5-10 years which includes height of hedgerow in particular along the northern site boundary can be secured via a condition.

#### 4.5 Service Manager Built and Natural Environment comments: **(Ecology)**

*Ecological protection & enhancement:* The advice and guidance provided within the EDP Enhancement Plan (December 2016) and FPCR Ecological Assessment (March 2015) should be followed, including biodiversity enhancements.

*Lighting:* The provided lighting scheme, Murwell Consulting Engineers Ltd (dated 11/05/2018) is appropriate and provides low-level lighting to minimise environmental impacts.

*Site drainage:* The letter of confirmation from Georisk Management (dated 01/02/2019) confirms that surface runoff will be maintained and that the application site is on higher ground to that surrounding to the south and west, thus concerns regarding sustained ground water supply to an offsite Great Crested Newt pond/population can be reassured that there will be no negative impacts.

#### 4.6 Service Manager Built and Natural Environment comments: **(Arboriculture)**

Comments on amended plans and updated details received 10 July 2019 are awaited and will be reported on the Committee Update Sheet.

#### 4.7 **Strategic Housing Manager** comments –

I refer to the amended plans received 10<sup>th</sup> July 2019 and can confirm that my comments of the 4<sup>th</sup> June 2019 with regards to the open market units remain unchanged.

With regards to the affordable housing, needs data indicates that there is an estimated additional 1,078 affordable housing dwellings required for the period 2011-2031. As off 2012 there was a net need of 68 additional homes per annum for the period 2012-2017 this included an existing backlog of 87 units. The last major development in Ledbury was March 2006 where 18 affordable housing units were built on New Mills. Since then there has only been an additional 14 affordable housing units provided with the last development of Ledbury Cottage Hospital taking place in 2009.

The 110 units being provided on this site will provide a mix of 1, 2, 3 and 4 bed units including 2 much needed accessible and adaptable bungalows.

Therefore I would advise that this is a fully compliant scheme providing 40% much needed affordable housing and I am in support of this application.

Referenced previous comments on open market housing stated With regards to the open market mix, I am aware of the sites' history and if I was reviewing this application afresh then I would be looking for the mix to be 6 x1 beds, 43 x 2 beds, 78 x 3 and 38 x 4 beds. However,

this is not the case and whilst the Local Housing Market Assessment 2013 (LHMA) refers to meeting identified needs, the range of house types provided across the county will be monitored to ensure an appropriate mix of housing. I can confirm that with the sites that have achieved planning in Ledbury a good and appropriate mix will and can be achieved.

#### 4.8 **Environmental Health Officer** (Noise and Nuisance) comments:

##### Background

With regard to this site and application there has been previous extensive correspondence, meetings and site visits to discuss concerns over environmental noise concerns in the area and the likely impact on the proposed dwellings. The proposed development site is located on the outskirts of Ledbury, on a greenfield site identified as a predominantly rural setting, however, in close proximity to two main noise sources; traffic noise (Leadon Way bypass) to the north and 24/7 Ornuva factory noise to the west. The reserved matters proposal for 275 houses omits 46 houses closest to the factory included in the proposed layout of the outline application.

Our department has been asked to comment on the noise constraints and proposed mitigation. In general terms when examining the impact of noise on residential development, we refer to BS8233: 2014 Guidance on sound insulation and noise reduction for buildings and BS4142:2014 Methods for rating and assessing industrial and commercial sound as well as the associated planning policy framework and guidance including the Noise Policy Statement for England, Planning Practice Guidance – Noise, National Planning Policy Framework (NPPF) and the ProPG Guidance.

##### Road traffic noise

Noise monitoring adjacent to Leadon Way gave an arithmetic average of 64.3dB LAeq day and 62.3 LAeq at night in 2014. The applicants noise assessment report dated March 2019 (Wardell Armstrong) proposes road traffic noise mitigation along the northern section of the site to protect proposed dwellings immediately to the south of Leadon Way.

These include:

- a) A reduction in the speed limit on Leadon Way from 60 to 40mph on the approach to the new roundabout (half way along the northern side of the development).
- b) A 3.00m high barrier comprising of a close boarded fence constructed with a minimum density of 10kg/m<sup>2</sup> to the eastern section of the northern boundary to the site.
- c) A 2.1m high barrier comprising of a close boarded fence constructed with a minimum density of 10kg/m<sup>2</sup> to the western part of the northern site boundary.
- d) A 1.8m high close boarded fence around all remaining gardens areas.

Figures 2, 3 and 4 of the applicant's March 2019 noise report (Wardell Armstrong) give the results of road traffic noise modelling at the proposed dwellings across the site with the above mitigation in place.

##### External amenity

All the gardens to the northern side of the site after mitigation will be exposed to daytime road traffic noise of between 50 and 55dB LAeq. This is slightly higher than the desirable standard for external amenity areas of 50dB but less than 55dB considered to be the upper guideline value for noisier environments. We are of the opinion that this greenfield site is not a 'noisy environment'. However it is recognised that the proposal incorporates close by recreational

space further away from Leadon Way which is considerable quieter and less than 50dB which provides for some mitigation in accordance with the ProPG guidance.\* So in this context we do not think that the amenity noise levels for the dwellings closest to Leadon Way are unacceptable.

### Internal noise levels

Daytime road traffic noise at the facades of the first floor of the proposed dwellings closest to the road are, however, predicted to be above 60dB LAeq, These exposure levels are higher than the desirable external standard of 50dB at the façade which would enable the achievement of desirable internal noise levels with the windows open. Therefore the north facing elevations of the proposed dwellings and some of the side elevations would have, without mitigation, internal noise levels with partially open windows above the desirable bedroom daytime standard of 35dB.

The applicant's noise report therefore proposes the following mitigation:

e) Two different higher glazing specifications and acoustic vents in the dwellings shown in Figure 3 of the noise specification report. The applicant has been requested to install the higher of the two glazing specifications in all the identified properties i.e. 10/12/6 glazing with acoustic vents and this has been agreed.

Windows on the impacted elevations will need to be kept closed during the daytime to ensure desirable daytime noise standards in bedrooms. Of the properties impacted, the majority will have south facing elevations where desirable bedroom daytime noises can be achieved with the windows open as facades away from the road will have noise level of less than 50dB. However, there are a handful of dwellings with facades facing east and west where this cannot be achieved. Although this is not ideal, our department does not object to this proposal as noise mitigation is possible in the majority of impacted dwellings and satisfactory daytime internal noise levels at ground floor level can be achieved due to the fencing mitigation.

Figure 4 of the report models road traffic noise impacts at night time where BS8233 specifies a desirable standard of 30dB in bedrooms. Noise levels at the worst impacted facades are predicted to be greater than 55dB with a number of properties with noise exposure levels between 45 and 55dB. The mitigation discussion in e) above equally applies to night time road traffic noise impacts. In other words bedroom windows for some north facing dwellings that about the road will be required to have their windows closed and mitigation proposed in e) above will apply.

NB Day and night time noise monitoring undertaken by Ornu's noise consultant December 2017 to establish background noise levels used the same monitoring location as the applicant's location for road traffic noise. This gave readings of 50-55dB and not as high as the applicants' measurements.

### Factory noise from the Ornu cheese factory

The Ornu cheese factory noise runs 24/7 generating an audible constant low frequency sound (hum) in close proximity to the factory. Unlike the passing traffic noise the factory noise source is in a fixed location so creating an audible directional point source at the north west area of the proposed development site. Road traffic noise from Leadon Way and to a degree Dymock Road is dominant during the daytime, however during the night (23:00 – 07:00), at the south western section of the proposed site the factory noise becomes the main dominant audible sound.

There has been extensive correspondence on this issue and subsequently noise mitigation work at the factory has taken place and further noise mitigation is proposed:



- The noise mitigation works were undertaken in early 2019 on the factory site included the removal of the green box extract, the acoustic enclosure of the pump motor and additional silencer to the yellow extractor. Officers from the local authority have verified subsequently that the low frequency tonal element of the noise was reduced so audibly less intrusive, however measurements of the overall volume of the factory sound was found not to be reduced.
- The applicant has removed the most adversely impacted proposed dwellings from this site proposal, increasing the distance of the now proposed dwellings from the factory (Phase 1) as the matter to be addressed in this application.

f) A 3 m high noise barrier sited on top of a physical bund 75m in length maintaining a height of AOD 55m to the north west corner of the site closes to the Ornuia cheese factory is proposed.

### Factory noise

It is not disputed by the representatives of the Ornuia factory that the noise from the Ornuia site is generally continuous and steady during the noise sensitive night-time hours (23:00-07:00), where the local authority's main concerns have been raised with regards to the factory noise at this proposed site.

### Background noise level

Central to the BS4142 assessment of the impact of the factory noise on the proposed dwellings is the establishment of a representative background sound level i.e. what is typical in context to the area. The methodology is not simply to ascertain what the lowest background sound level as is suggested by the Hayes McKenzie report of the 4th April but to identify a general, most frequently occurring representative value.

Ornuia's noise consultants (Hayes McKenzie) have argued the quietest background noise levels (between 4-5 am) are lower than the typical background noise levels of 33/34dB for a proportion of the time therefore it is more appropriate to refer to background noise levels of 27dB. With factory noise significantly above the 27dB level at the facades at the closest dwellings they contend that this might lead to complaints. Our department does not disagree that background noise levels will fluctuate and that therefore the steady continuous noise from the factory may be more audible at the lowest background sound level, however the methodology to be used is BS4142 relies on the use of a typical background sound level, in context to the area being assessed.

We would concur with the applicant's noise report (Wardell Armstrong) that given the range of findings of background sound levels found that the selection of a representative background for use in the assessment of 33-34dB (LA90) night time and 41-44dB daytime is appropriate. These levels take into account that traffic movements will be through the night although to a much reduced level than in the day time. Also the presence of the factory needs to be considered as it is a well-established industrial unit in the area. The lowest measured background reading (27dB L90) would be more representative of a fully rural, green site area. The 33-44dB (LA90) background reading is more representative and in context with the development site being on the outskirts of Ledbury town where rural meets a small market town divided by a by-pass road.

### Character correction and tonality

Noise which is tonal, impulsive and /or intermittent can be more intrusive and the BS4142 methodology awards penalties for the character of the noise. The initial noise report undertaken in 2014 found that there was a clearly audible tonal element to the noise and our own readings initially found that the noise had a low frequency characteristic. Ornuia's noise consultants in

December 2017 also identified a tonal element to the factory noise which they concluded would lead to a character correction of the noise by 6dB

The noise mitigation undertaken at the factory site in early 2019 has been found by the applicant's noise consultants not to have led to an overall reduction in the loudness of the factory noise. However, the distinctive tonal element of the noise previously identified has been eliminated and therefore in the March 2019 applicant's noise report no character corrections or penalties have been applied to the BS4142 rating. Local authority officers in spring 2019 subsequent to the mitigation works have been able to verify that the tonal element to the noise is no longer present.

The predicted factory noise has been modelled in the applicant's report such that it is expected that the rating level i.e. the specific noise level at the façade of the closest proposed dwelling will now be 43dB LAeq at first floor bedroom window height. Ornu's noise consultants in their response of 5th April 2019 argue that this is worse than what was initially predicted by Barratts consultants of 37dB LAeq in their earlier modelling in 2018 but this is addressed in Barrett's noise consultant's response to EHO questions on 25th April.

The BS4142 assessment however also requires the assessment of the industrial noise in a context. The absolute background sound levels are low and there would be noise mitigation through the structure of the proposed dwelling allowing for a 10-15dB reduction through an open window.

The outcome of the Wardell Armstrong report is that predicted noise levels across the site from the cheese factory is shown in figure 5. Their BS4142 initial assessment finds that at night time when background noise levels are lower there will be at the very closest houses a moderate adverse impact although we would advise that a difference of 9 or 10dB. The BS4142 methodology advises 'a difference of +5dB is likely to be an indication of an adverse' and 'a difference of +10 dB or more is likely to be an indication of a significant adverse impact *depending on the context*'.

Factors that the local authority has taken into consideration when considering the assessments findings in the context include a judgement that a night-time background noise level of 33-34dB is relatively low, there is still the bund and acoustic fence as mitigation to be undertaken and real-time overnight noise monitoring inside the worst impacted dwellings which are constructed show houses has been found to have desirable (BS8233) internal noise levels.

g) The March 2019 report proposes enhanced glazing and acoustic vents to the properties as set out in Figure 3 and Figure 4 to address road traffic noise impacts from Dymock Road. These will provide mitigation also for the factory noise.

#### Real time noise monitoring assessment

Two dwellings have been constructed in early 2018 as show houses for the site. (These are nos 1 SH and 2 SH shown on the amended site layout plans drawings 5000B and 5001B Feb 2019 which are the same plots 1 and 2 as shown on the drawings 1000AM and 1001AM submitted in September 2016 164078). This has enabled the concerns regarding the adverse impacts at the properties closest to the factory presented in the Wardell Armstrong report which anticipated moderate adverse impacts to be verified in practice.

These sites have been visited twice by Officers from the local authority during the daytime subsequent to the Ornu site mitigation. On both occasions road traffic noise was found to be dominant as expected for this time of day.

Wardell Armstrong have undertaken overnight noise monitoring to verify the impact of the mitigation at the factory. The findings of overnight monitoring undertaken on 29th March 2019

find that without the proposed mitigation bund and fence in place, factory noise levels dropped to below the BS8233 desirable internal noise level of 30dB inside the factory facing bedrooms. On 4th April 2019 Wardell Armstrong set up further night time noise monitoring in plots 1 and 2 closest to the factory with partially open windows (approximately 10 - 12cm) witnessed by local authority officers when overnight noise monitoring set up was taking place. These measurements were undertaken in rooms without soft furnishings and curtains.

The BS4142:2014 guidance no longer addresses the likelihood of complaints referred to in the Hayes McKenzie report. Whilst our findings are that within the most sensitive dwellings there may be occasions where at night time in the bedrooms facing the factory the factory noise is audible (due to fluctuations in background noise levels) with the windows open, it is unlikely to be intrusive.

Ornua's noise consultants Hayes McKenzie contend that complaints may also occur regarding factory noise in gardens leading to complaints (there will be no attenuation through the fabric of a building). Whilst factory noise may be audible in gardens (again due to fluctuating background noise levels), the dominant noise during daytime and early evening when gardens may be in use will be road traffic noise.

### Conclusion

Ornua's representative's argue that the revised NPPF (the relevant section published 24<sup>th</sup> July 2018) (reserved matters application received 18<sup>th</sup> July 2018) places an onus on the developer (the 'agent of change') such that existing businesses should not have unreasonable restrictions placed on them as a result of development permitted after they were established. This application eliminates a substantial number of proposed dwellings in close proximity to the factory and creates a distance buffer between the factory and the proposed dwellings. There are no planning controls on the factory to ensure that factory noise is not increased by for example additional plant, more intensive use of equipment or plant maintenance failure and we cannot say for certain therefore whether complaints from future occupants may or may not arise in the future.

We are of the view that substantial mitigation has been proposed by the applicant which renders the majority of the site to fall below the Lowest Observable Adverse Effect Level (LOAEL) as set out in the Noise Policy Statement for England (NPSE) and the perimeter to the north and factory facing as being above the LOAEL but below the SOAEL (Significant Observed Adverse Effect Level). The proposed dwellings in these localities would be categorised by the classification of the noise having an Observed Adverse Effect Level which could lead to small changes in behaviour or attitude and having to keep close windows for some of the time because of noise. The objective to which would be to mitigate and reduce to a minimum. The Noise Policy Statement for England (NPSE) concludes that where the noise impacts fall between the LOAEL and SOAEL 'all reasonable steps should be taken to mitigate and minimise adverse effects on health and quality of life while also taking into account the guiding principles of sustainable development.' The second objective of the NPSE (after the avoidance of significant adverse effects).

Our department therefore takes the view that it does not object to the details of the reserved matters scheme as it relates to the noise constraints and challenges on the site providing that the noise mitigation specified in a) to g) above is conditioned.

*\*Pro PG Planning & Noise: Professional Practice Guidance on Planning & Noise (Acoustics and Noise Consultants, Institute of Acoustics, Chartered Institute of Environmental Health).*

Following Ornua's further comments, the Environmental Health Officer responds:

The Council's Environmental Health Officers have reviewed these subsequent comments and responds as follows –

These comments are subsequent to Burgess Salmon's response dated 14<sup>th</sup> June 2019. With our consultation response of 23<sup>rd</sup> May 2019 in black

### **General comments**

#### **Layout and proposed mitigation**

As far as we are aware Ornuva has been kept informed of all noise reports that have come through the planning process subsequent to the High Court decision in summer 2018 which includes the proposed noise mitigation outlined in the Wardell Armstrong report dated March 2019 so we are not sure why Burges Salmon contend that they have not been consulted. (Bottom sentence first page).

We have attempted to answer the objector's key concerns regarding the potential for future noise complaints in the body of our response below. We cannot comment on the applicant's potential further application for reserved matters as this is not the subject of this reserved matters application. However we do not think unreasonable to state that further noise mitigation is likely to be required at source and we will scrutinise most carefully any reserved matters application made for the 46 houses currently termed 'Phase 2' omitted from this application.

We do not think para 4 of page 2 of the letter makes much sense. The key issue regarding factory noise is the night time noise levels at an anticipated 43dB LAeq to the outside façade of the closest houses so we are not sure where the quoted 55dB night time noise level comes from. Para 3 page 2 we have not said that no properties will be adversely impacted by road traffic noise. As much as we would aim for no properties to have to rely on closing the windows at the front façade during the day time at some point to block out road traffic noise during the day, and our representations are clear on this, we are of the opinion that if a refusal was granted on this basis it could be successfully challenged by the applicant.

The real time monitoring undertaken in March and April at the properties most likely to be adversely impacted by factory noise would indicate that the projected noise levels presented are not in practice as adverse as anticipated.

Mitigation on site has either contributed to the removal or removed the tonal element of the noise in early 2019. This is not insignificant as the tonal quality of the noise affects the BS4142 assessment and it is the characteristics of the noise which contribute towards its intrusiveness.

We cannot comment on the last paragraph of page 2 regarding the supposed agreement between Ornuva and the applicant that regarding the acceptability or not of a predicted rating of 37dB LAeq at the façade of the closest houses to the factory as we have not had sight of such an agreement. We have a note from Ornuva's noise consultants indicating that this is what was agreed dated 4<sup>th</sup> May 2018. We subsequently sought confirmation from the applicants regarding this but no confirmation was received.

We are not sure why Burges Salmon suggest that Council is promoting land use competition as the site has outline planning permission granted by the HM Planning Inspectorate for up to 321 houses (with appropriate noise mitigation) and note that Ornuva did not respond to the consultation regarding the outline planning application 150884.

In the objector's letter it is contended that the Council should ensure that noise limits are secured at each stage of development and that hard noise targets be set and achieved at each stage of the development. We do not think that this is a reasonable approach given the removal of the 46 proposed houses closest to the factory from Phase 1 and the real life monitoring results found on site. This approach would be without precedent and impractical, it could be

challengeable and furthermore this does not prevent the factory from upping its noise output by for example failing to maintain external plant and equipment.

## **Background**

With regard to this site and application there has been previous extensive correspondence, meetings and site visits to discuss concerns over environmental noise concerns in the area and the likely impact on the proposed dwellings. The proposed development site is located on the outskirts of Ledbury, on a greenfield site identified as a predominantly rural setting, however, in close proximity to two main noise sources; traffic noise (Leadon Way bypass) to the north and 24/7 Ornuia factory noise to the west. The reserved matters proposal for 275 houses omits 46 houses closest to the factory included in the proposed layout of the outline application.

Our department has been asked to comment on the noise constraints and proposed mitigation. In general terms when examining the impact of noise on residential development, we refer to BS8233: 2014 Guidance on sound insulation and noise reduction for buildings and BS4142:2014 Methods for rating and assessing industrial and commercial sound as well as the associated planning policy framework and guidance including the Noise Policy Statement for England, Planning Practice Guidance – Noise, National Planning Policy Framework (NPPF) and the ProPG Guidance.

## **Road traffic noise**

Noise monitoring adjacent to Leadon Way gave an arithmetic average of 64.3dB LAeq day and 62.3 LAeq at night in 2014. The applicants noise assessment report dated March 2019 (Wardell Armstrong) proposes road traffic noise mitigation along the northern section of the site to protect proposed dwellings immediately to the south of Leadon Way.

These include:

- a) A reduction in the speed limit on Leadon Way from 60 to 40mph on the approach to the new roundabout (half way along the northern side of the development).
- b) A 3.00m high barrier comprising of a close boarded fence constructed with a minimum density of 10kg/m<sup>2</sup> to the eastern section of the northern boundary to the site.
- c) A 2.1m high barrier comprising of a close boarded fence constructed with a minimum density of 10kg/m<sup>2</sup> to the western part of the northern site boundary.
- d) A 1.8m high close boarded fence around all remaining gardens areas.

Figures 2, 3 and 4 of the applicant's March 2019 noise report (Wardell Armstrong) give the results of road traffic noise modelling at the proposed dwellings across the site with the above mitigation in place.

## **External amenity Answer to question 2**

All the gardens to the northern side of the site after mitigation will be exposed to daytime road traffic noise of between 50 and 55dBLAeq. This is slightly higher than the desirable standard for external amenity areas of 50dB but less than 55dB considered to be the upper guideline value for noisier environments. We are of the opinion that this greenfield site is not a 'noisy environment' and in our response of July 2017 we raised concerns that road traffic noise could be elevated in garden amenity areas closest to the road above 50dB. Our position with regard to this has not changed; we raised concerns in July 2017 but did not object. In June 2017 the ProPG guidance was published. This guidance specifically extends the advice contained in BS8233:2014 regarding external amenity and para 3(v) of the guidance allows for further

external noise mitigation if a public amenity area or green space is within 5 minutes walk, hence our qualified next comment 'However it is recognised that the proposal incorporates close by recreational space further away from Leadon Way which is considerable quieter and less than 50dB which provides for some mitigation in accordance with the ProPG guidance.\* So in this context we do not think that the amenity noise levels for the dwellings closest to Leadon Way are unacceptable.'

### **Internal noise levels**

Daytime road traffic noise at the facades of the first floor of the proposed dwellings closest to the road are, however, predicted to be above 60dB LAeq, These exposure levels are higher than the desirable external standard of 50dB at the façade which would enable the achievement of desirable internal noise levels with the windows open. Therefore the north facing elevations of the proposed dwellings and some of the side elevations would have, without mitigation, internal noise levels with partially open windows above the desirable bedroom daytime standard of 35dB.

The applicant's noise report therefore proposes the following mitigation:

e) Two different higher glazing specifications and acoustic vents in the dwellings shown in Figure 3 of the noise specification report. The applicant has been requested to install the higher of the two glazing specifications in all the identified properties i.e. 10/12/6 glazing with acoustic vents and this has been agreed.

Windows on the impacted elevations will need to be kept closed during the daytime to ensure desirable daytime noise standards in bedrooms. Of the properties impacted, the majority will have south facing elevations where desirable bedroom daytime noises can be achieved with the windows open as facades away from the road will have noise level of less than 50dB. However, there are a handful of dwellings with facades facing east and west where this cannot be achieved. Although this is not ideal, our department does not object to this proposal as noise mitigation is possible in the majority of impacted dwellings and satisfactory daytime internal noise levels at ground floor level can be achieved due to the fencing mitigation.

Figure 4 of the report models road traffic noise impacts at night time where BS8233 specifies a desirable standard of 30dB in bedrooms. Noise levels at the worst impacted facades are predicted to be greater than 55dB with a number of properties with noise exposure levels between 45 and 55dB. The mitigation discussion in e) above equally applies to night time road traffic noise impacts. In other words bedroom windows for some north facing dwellings that about the road will be required to have their windows closed and mitigation proposed in e) above will apply.

NB Day and night time noise monitoring undertaken by Ornu's noise consultant December 2017 to establish background noise levels used the same monitoring location as the applicant's location for road traffic noise. This gave readings of 50-55dB and not as high as the applicants' measurements.

### **Factory noise from the Ornu cheese factory**

The Ornu cheese factory noise runs 24/7 generating an audible constant low frequency sound (hum) in close proximity to the factory. Unlike the passing traffic noise the factory noise source is in a fixed location so creating an audible directional point source at the north west area of the proposed development site. Road traffic noise from Leadon Way and to a degree Dymock Road is dominant during the daytime, however during the night (23:00 – 07:00), at the south western section of the proposed site the factory noise becomes the main dominant audible sound.

## Answer to Question 1

Over the time period of this application from 2014 through to 2019 officers of the council have assessed the factory sound levels using calibrated sound level meters and undertook additional subjective assessments of the noise characteristics as specified in the 'BS:4142:2014 method for rating and assessing industrial and commercial sound'. Over this time our findings are that the specific sound levels (loudness) from the factory have not altered significantly, (Approximately 3dB changes in sound levels.) However officers have noted changes in the character of the factory sound. The BS:4142 subjective method identifies 'certain acoustic features can increase the significance of impact over that expected from a basic comparison between specific sound level and background sound level; identifying 'tonality', 'impulsivity', 'intermittency' and 'other sound characteristics' as sound characteristics that could create a distinguishing sound characteristics that will attract attention. As such the assessment allows for a penalty to be placed on an identified characteristic depending on the subjective assessment of the sound characteristic. E.g. tonality when the sound has a distinctive tone which is audible over the other general sounds a penalty of; +2db just perceptible at receptor, +4dB clearly Perceptible and +6 highly perceptible.

In 2015 officers subjective assessment of the factory noise characteristics identified the sound to contain a general low frequency sound with additional high pitched continuous tone characteristic clearly perceptible over a continuous and slightly cyclical low frequency constant tone at the location of the proposed dwellings. For this tonal characteristic we broadly that concur the tonal penalty awarded to the applicants BS:4142 sound assessment was correct. In 2017 the factory sound characteristics were again assessed as part of our consultation response and it was noted the noise continued to have distinguishing sound characteristics. However we believe that the comment made in question 1 regarding our comments made on the 5<sup>th</sup> July 2017 with reference to the applicants BS:4142 assessment in which we stated, as quoted ' the noise source is likely to have a significant adverse impact on the dwellings closest to the noise source' is misleading as these comments were made in relation to the circumstances where the original applications detailed an additional 46 houses closest to the factory now omitted.

There has been extensive correspondence on this issue and subsequently noise mitigation work at the factory has taken place and further noise mitigation is proposed:

- The noise mitigation works were undertaken in early 2019 on the factory site included the removal of the green box extract, the acoustic enclosure of the pump motor and additional silencer to the yellow extractor. Officers from the local authority have verified subsequently that the low frequency tonal element of the noise was reduced so audibly less intrusive, however measurements of the overall volume of the factory sound was found not to be reduced.
- The applicant has removed the most adversely impacted proposed dwellings from this site proposal, increasing the distance of the now proposed dwellings from the factory (Phase 1) as the matter to be addressed in this application.

**Question 1 continued** Subsequent to the mitigation works at the factory site officers visited the vicinity at night-time on the 5<sup>th</sup> February 2019. The factory noise was witnessed to be a steady state with no distinctive noise characteristics including the previously witnessed tonal elements. Therefore following this visit we concur that it is inappropriate to award a tonal penalty. No evidence has been supplied by the objectors that a maximum tonal penalty of +6dB is still relevant in the current circumstances.

f) A 3 m high noise barrier sited on top of a physical bund 75m in length maintaining a height of AOD 55m to the north west corner of the site closes to the Ornu cheese factory is proposed.

## **Factory noise**

It is not disputed by the representatives of the Ornuva factory that the noise from the Ornuva site is generally continuous and steady during the noise sensitive night-time hours (23:00-07:00), where the local authority's main concerns have been raised with regards to the factory noise at this proposed site.

## **Background noise level**

Central to the BS4142 assessment of the impact of the factory noise on the proposed dwellings is the establishment of a representative background sound level i.e. what is typical in context to the area. The methodology is not simply to ascertain what the lowest background sound level as is suggested by the Hayes McKenzie report of the 4th April but to identify a general, most frequently occurring representative value.

Ornuva's noise consultants (Hayes McKenzie) have argued the quietest background noise levels (between 4-5 am) are lower than the typical background noise levels of 33/34dB for a proportion of the time therefore it is more appropriate to refer to background noise levels of 27dB. With factory noise significantly above the 27dB level at the facades at the closest dwellings they contend that this might lead to complaints. Our department does not disagree that background noise levels will fluctuate and that therefore the steady continuous noise from the factory may be more audible at the lowest background sound level, however the methodology to be used is BS4142 relies on the use of a typical background sound level, in context to the area being assessed.

We would concur with the applicant's noise report (Wardell Armstrong) that given the range of findings of background sound levels found that the selection of a representative background for use in the assessment of 33-34dB (LA90) night time and 41-44dB daytime is appropriate. These levels take into account that traffic movements will be through the night although to a much reduced level than in the day time. Also the presence of the factory needs to be considered as it is a well-established industrial unit in the area. The lowest measured background reading (27dB L90) would be more representative of a fully rural, green site area. The 33-44dB (LA90) background reading is more representative and in context with the development site being on the outskirts of Ledbury town where rural meets a small market town divided by a by-pass road.

## **Character correction and tonality**

Noise which is tonal, impulsive and /or intermittent can be more intrusive and the BS4142 methodology awards penalties for the character of the noise. The initial noise report undertaken in 2014 found that there was a clearly audible tonal element to the noise and our own readings initially found that the noise had a low frequency characteristic. Ornuva's noise consultants in December 2017 also identified a tonal element to the factory noise which they concluded would lead to a character correction of the noise by 6dB

The noise mitigation undertaken at the factory site in early 2019 has been found by the applicant's noise consultants not to have led to an overall reduction in the loudness of the factory noise. However, the distinctive tonal element of the noise previously identified has been eliminated and therefore in the March 2019 applicant's noise report no character corrections or penalties have been applied to the BS4142 rating. Local authority officers in spring 2019 subsequent to the mitigation works have been able to verify that the tonal element to the noise is no longer present.

## **Answer to question 5.**

The mitigation for this proposal Phase 1 provides for a distance barrier between the factory and the proposed dwellings which was not there in the quashed reserved matters application



164078. Please note that our comments quoted in question 5 relate to the amenity of residential properties in close proximity to the site. These properties have been removed under the reserved matters proposal in question.

The measures implemented in early 2019 did work in the sense that the tonal element of the factory noise was removed so we do not think true to say that the measures 'implemented to date by the Applicant did not work' as suggested. Our subsequent comments in our response of May 2019 has been to say that road traffic noise is dominant during the day time not the factory noise. See below comment (bottom para page 4 of response 23<sup>rd</sup> May) 'These sites have been visited twice by Officers from the local authority during the daytime subsequent to the Ornuva site mitigation. On both occasions road traffic noise was found to be dominant as expected for this time of day

The predicted factory noise has been modelled in the applicant's report such that it is expected that the rating level i.e. the specific noise level at the façade of the closest proposed dwelling will now be 43dB LAeq at first floor bedroom window height. Ornuva's noise consultants in their response of 5th April 2019 argue that this is worse than what was initially predicted by Barrett's consultants of 37dB LAeq in their earlier modelling in 2018 but this is addressed in Barrett's noise consultant's response to EHO questions on 25th April.

The BS4142 assessment however also requires the assessment of the industrial noise in a context. The absolute background sound levels are low and there would be noise mitigation through the structure of the proposed dwelling allowing for a 10-15dB reduction through an open window.

#### **Answer to question 4**

Ornuva have queried EHO acceptance of the assumption by Wardell Armstrong that an open window would mitigate noise by 15dB (not 10dB). (All the guidance suggests a sound reduction of 10-15dB). EHOs confirm that we have accepted this 15dB sound reduction because the bedrooms and the top hung casement windows at the development are small, a higher glazing specification has been agreed which would provide some mitigation with windows open and the on-site monitoring undertaken by Wardell Armstrong found at Plot 1 at 5.00am found 28dB inside the rooms against measured 43dB at the front façade which would support this approach.

The outcome of the Wardell Armstrong report is that predicted noise levels across the site from the cheese factory is shown in figure 5. Their BS4142 initial assessment finds that at night time when background noise levels are lower there will be at the very closest houses a moderate adverse impact although we would advise that a difference of 9 or 10dB. The BS4142 methodology advises 'a difference of +5dB is likely to be an indication of an adverse' and 'a difference of +10 dB or more is likely to be an indication of a significant adverse impact depending on the context'.

Factors that the local authority has taken into consideration when considering the assessments findings in the context include a judgement that a night-time background noise level of 33-34dB is relatively low, there is still the bund and acoustic fence as mitigation to be undertaken and real-time overnight noise monitoring inside the worst impacted dwellings which are constructed show houses has been found to have desirable (BS8233) internal noise levels.

g) The March 2019 report proposes enhanced glazing and acoustic vents to the properties as set out in Figure 3 and Figure 4 to address road traffic noise impacts from Dymock Road. These will provide mitigation also for the factory noise.

## Real time noise monitoring assessment

Two dwellings have been constructed in early 2018 as show houses for the site. (These are nos 1 SH and 2 SH shown on the amended site layout plans drawings 5000B and 5001B Feb 2019 which are the same plots 1 and 2 as shown on the drawings 1000AM and 1001AM submitted in September 2016 164078). This has enabled the concerns regarding the adverse impacts at the properties closest to the factory presented in the Wardell Armstrong report which anticipated moderate adverse impacts to be verified in practice.

These sites have been visited twice by Officers from the local authority during the daytime subsequent to the Ornuia site mitigation. On both occasions road traffic noise was found to be dominant as expected for this time of day.

Wardell Armstrong have undertaken overnight noise monitoring to verify the impact of the mitigation at the factory. The findings of overnight monitoring undertaken on 29th March 2019 find that without the proposed mitigation bund and fence in place, factory noise levels dropped to below the BS8233 desirable internal noise level of 30dB inside the factory facing bedrooms. On 4th April 2019 Wardell Armstrong set up further night time noise monitoring in plots 1 and 2 closest to the factory with partially open windows (approximately 10 - 12cm) witnessed by local authority officers when overnight noise monitoring set up was taking place. These measurements were undertaken in rooms without soft furnishings and curtains.

The BS4142:2014 guidance no longer addresses the likelihood of complaints referred to in the Hayes McKenzie report. Whilst our findings are that within the most sensitive dwellings there may be occasions where at night time in the bedrooms facing the factory the factory noise is audible (due to fluctuations in background noise levels) with the windows open, it is unlikely to be intrusive.

**Answer to question 3** The predicted 9-10dB above background noise levels at night-time outlined in the Wardell Armstrong report of March 2019 have not been evidenced in practice despite the lack of a bund as proposed mitigation. Noise levels in the bedrooms were below 30dB at night time with windows open (thus complying with the desirable standards set out in BS8233) and as outlined above, the BS4142 findings are always set in a context.

Ornuia's noise consultants Hayes McKenzie contend that complaints may also occur regarding factory noise in gardens leading to complaints (there will be no attenuation through the fabric of a building). Whilst factory noise may be audible in gardens (again due to fluctuating background noise levels), the dominant noise during daytime and early evening when gardens may be in use will be road traffic noise.

## Conclusion

Ornuia's representative's argue that the revised NPPF (the relevant section published 24th July 2018) (reserved matters application received 18th July 2018) places an onus on the developer (the 'agent of change') such that existing businesses should not have unreasonable restrictions placed on them as a result of development permitted after they were established. This application eliminates a substantial number of proposed dwellings in close proximity to the factory and creates a distance buffer between the factory and the proposed dwellings. There are no planning controls on the factory to ensure that factory noise is not increased by for example additional plant, more intensive use of equipment or plant maintenance failure and we cannot say for certain therefore whether complaints from future occupants may or may not arise in the future.

## **Answer to question 6**

In our response above we do not acknowledge nor contend as quoted in question 6 that nuisance is likely to occur. We acknowledge that we cannot say for certain whether or not complaints may arise that is all. We do not suggest at all in our response that the proposal would lead to Statutory Nuisance under the Environmental Protection Act 1990 as suggested. (This is also the answer to last sentence in question 3).

## **Question 7**

We are sorry but we do not understand this question.

## **Conclusion**

We are of the view that substantial mitigation has been proposed by the applicant which renders the majority of the site to fall below the Lowest Observable Adverse Effect Level (LOAEL) as set out in the Noise Policy Statement for England (NPSE) and the perimeter to the north and factory facing as being above the LOAEL but below the SOAEL (Significant Observed Adverse Effect Level). The proposed dwellings in these localities would be categorised by the classification of the noise having an Observed Adverse Effect Level which could lead to small changes in behaviour or attitude and having to keep close windows for some of the time because of noise. The objective to which would be to mitigate and reduce to a minimum. The Noise Policy Statement for England (NPSE) concludes that where the noise impacts fall between the LOAEL and SOAEL 'all reasonable steps should be taken to mitigate and minimise adverse effects on health and quality of life while also taking into account the guiding principles of sustainable development.' The second objective of the NPSE (after the avoidance of significant adverse effects).

Our department therefore takes the view that it does not object to the details of the reserved matters scheme as it relates to the noise constraints and challenges on the site providing that the noise mitigation specified in a) to g) above is conditioned.

\*Pro PG Planning & Noise: Professional Practice Guidance on Planning & Noise (Acoustics and Noise Consultants, Institute of Acoustics, Chartered Institute of Environmental Health)

### **4.9 Land Drainage Engineer comments –**

In previous responses we have requested that the following information is provided by the applicant prior to the discharge of condition 20 regarding the sustainable management of surface water runoff:

- The drainage calculations indicated that surcharging of the onsite drainage system may occur in the 1 year event, and that flooding of the on-site drainage system may occur in the 30 year event.
- The drainage calculations did not appear to have been run for any storm durations longer than 240 mins (and not longer than 180 mins for the 1 year and 30 year storms).
- The drainage calculations did not address previous comments in which we asked the Applicant to provide confirmation of how the volume and rate of runoff that currently discharges to the culverted watercourse to the north-west of the site compares to the volume and rate currently discharged to this culvert.
- The Applicant used an FSR model rather than FEH (which is the current best practice). Reference was also made to IH124 but it was not clear how this model has been used.
- The Applicant assumed that pipes and manholes outside of their model will provide an additional storage volume 20m<sup>3</sup>/ha for the 100 year calculations but not the others. They did not explain how this was calculated.
- The CCTV footage showed some siltation (S18 – upstream headwall) which was not modelled.

- The layout of the development appears to have changed slightly since the previous submission, however no amended calculations have been submitted.
- The drainage layout shows the key carrier drains. Prior to the approval of the reserved matters application we would want to see a more detailed layout of all drainage infrastructure serving the development.
- A high level overflow has been installed upstream of the proposed attenuation pond, with direct unattenuated discharge to the downstream existing sewer network. No explanation of this system has been provided.
- No details of the proposed attenuation pond have been provided, including cross sections through the pond and details of inlet and outlet structures.
- The pond does not appear to include a high level overflow which we recommended is located 100mm below the top of the pond and at the 100yr+40%CC flood level.

This response is in regard to the points raised above, with information obtained from the following sources:

- Statement on Surface Water Run-Off, prepared by Georisk Management, dated 01/02/2019;
- Response to Drainage Strategy Comments by Balfour Beatty, prepared by DDS, dated 07/03/2019;
- Drainage Strategy Sheet 1 of 2, drawing ref: 0058\_3\_F.
- Drainage Strategy Sheet 2 of 2, drawing ref: 0058\_4\_E.

Each of the points raised above are discussed below.

The drainage calculations indicated that surcharging of the onsite drainage system may occur in the 1 year event, and that flooding of the on-site drainage system may occur in the 30 year event.

In the Response to Drainage Strategy Comments document the applicant clarifies that the surcharging of the network indicated under the 1 year return period at nodes 62 and 103 represent the pond and Hydrobrake flow control chamber respectively, and are designed to fill to some extent even on lower return periods. The applicant clarifies that no flooding is predicted during the 30 year return period, highlighting that there are nodes that are marked as 'flood risk' however this is an indication of when the water level at the node is within 300mm of the cover level. We agree with the explanation provided by the applicant, although highlight that (as discussed below) revised drainage calculations are required to support the amended site layout and drainage layout.

The drainage calculations did not appear to have been run for any storm durations longer than 240 mins (and not longer than 180 mins for the 1 year and 30 year storms).

In the Response to Drainage Strategy Comments document the applicant clarifies that storm durations between 15 and 1440 minutes have been modelled but only results for the critical events for each node have been reported. We agree with the explanation provided by the applicant, although highlight that (as discussed below) revised drainage calculations are required to support the amended site layout and drainage layout.

The drainage calculations did not address previous comments in which we asked the Applicant to provide confirmation of how the volume and rate of runoff that currently discharges to the culverted watercourse to the north-west of the site compares to the volume and rate currently discharged to this culvert.

In the Response to Drainage Strategy Comments document the applicant states that the discharge rate from the development has been set in accordance with the approved Flood Risk Assessment addendum by Banners Gate, which acknowledges the existing ground levels are

split into northern and southern parcels. The applicant states that this has been approved by Hereford Council in July 2017, although our own review of previous correspondence indicates that Herefordshire Council have continued to request analysis of the existing discharge rates and volumes that would naturally flow to the culverted watercourse to the north-west of the site.

Whilst the principles to limit discharge to the equivalent greenfield rates for the 1 year, 30 year and 100 year events is acceptable, the applicant has not yet confirmed what these existing rates would be for the current drainage catchment.

We recommend that the Council requests clarification of how the volume and rate of runoff that currently discharges to the culverted watercourse to the north-west of the site compares to the volume and rate currently discharged to this culvert and amends the submitted drainage strategy accordingly.

Further analysis of the drainage calculations submitted previously (dated December 2016) indicates that drainage from the attenuation pond will be limited to the equivalent greenfield rates for the 1 year, 30 year and 100 year events although it is not clear how this will be achieved. We note that the Drainage Strategy drawing states that flows will be limited to 64 l/s but assumed this is a maximum discharge rate that would only occur during the 100 year event. The applicant must clarify how discharge rates will be limited to lower values during smaller events.

We recommend that the Council requests further clarification of how discharge rates will be limited to the equivalent 1 year, 30 year and 100 year events.

The Applicant used an FSR model rather than FEH (which is the current best practice). Reference was also made to IH124 but it was not clear how this model has been used.

In the Response to Drainage Strategy Comments document the applicant states that whilst it is acknowledged that FEH could be considered best practice for rainfall methodology, FSR is still a widely used and accepted methodology. Whilst FSR may still be widely accepted by other local authorities, in Herefordshire the Council promote the use of FEH data as recommended by

The SuDS Manual published in 2015 and as requested in our response dated November 2017. We appreciate, however, that the use of FEH data was not specifically requested prior to the submission of the drainage calculations dated December 2016 and therefore approve of the use of FSR in this instance. The applicant also clarified that the reference to IH124 was made in error.

The Applicant assumed that pipes and manholes outside of their model will provide an additional storage volume 20m<sup>3</sup>/ha for the 100 year calculations but not the others. They did not explain how this was calculated.

In the Response to Drainage Strategy Comments document the applicant states that the additional storage of 20m<sup>3</sup>/ha approximates the volume of storage available within the private drainage serving the dwellings across the development. The applicant goes on to state that it is generally accepted that under the 100 year plus climate change return period that this small volume can be included within the simulation, and that the additional storage is not considered when simulating the 30 year return period. Consultation with our in-house drainage team suggests that the volume of storage available in the network should be based on network calculations (not including predicted flooding from the network during extreme events) and not a generalised figure of 20m<sup>3</sup>/ha, although we would welcome a reference to the industry-recognised document where this allowance is stated.

We recommend that the Council requests calculations of the available storage volume within the network during the 100 year event, or reference to the document where this allowance is stated.

The CCTV footage showed some siltation (S18 – upstream headwall) which was not modelled. In the Response to Drainage Strategy Comments document the applicant states the siltation / debris between manhole S18 and the headwall to the ditch course is noted, however the applicant states that it is reasonable to assume that this would have little to no effect on the 'main run' of the surface water network i.e. S105 > S18 > S14A along which the discharge from the proposed development would travel. As such the condition of this particular run has not been considered within the applicants submitted calculations. We approve of the approach.

The layout of the development appears to have changed slightly since the previous submission, however no amended calculations have been submitted.

No further information has been provided. We recommend that the Council requests updated calculations that reflect the amended development layout and drainage layout as presented in the submitted Drainage Strategy drawings.

The drainage layout shows the key carrier drains. Prior to the approval of the reserved matters application we would want to see a more detailed layout of all drainage infrastructure serving the development.

No further information has been provided. We recommend that the Council requests updated plans that illustrate all drainage infrastructure serving the development.

A high level overflow has been installed upstream of the proposed attenuation pond, with direct unattenuated discharge to the downstream existing sewer network. No explanation of this system has been provided.

No further information has been provided. We recommend that the Council requests confirmation of how this overflow is proposed to operate and supporting calculations.

We stress that discharge from the site must not exceed equivalent greenfield rates and volumes up to the 1 in 100 year plus climate change event and that all site-generated surface water runoff up to the 1 in 100 year plus climate change event must be retained within the site boundary, with exceedance flows directed towards the proposed attenuation pond or other areas of low vulnerability for temporary storage. We note that the drainage calculations indicate flooding from certain areas of the network during the modelled 100 year event. Whilst this is acceptable, we highlight that exceedance flows should be managed within the site up to the 100 year plus climate change event and not discharged off site.

No details of the proposed attenuation pond have been provided, including cross sections through the pond and details of inlet and outlet structures.

No further information has been provided. We recommend that the Council requests this information prior to discharging the condition.

The pond does not appear to include a high level overflow which we recommended is located 100mm below the top of the pond and at the 100yr+40%CC flood level.

No further information has been provided. We recommend that the Council requests this information prior to discharging the condition.

The above was preceded by the following comments dated 24 October 2018 –

*We have reviewed the amended drawings provided for this development (182628) (Drawing Ref 0058\_3\_E Drainage Strategy Sheet 1 of 2, and Drawing Ref 0058\_4\_D Drainage Strategy Sheet 2 of 2) and cannot see any differences to the previously submitted drainage strategy. I also do not believe that any further information relevant to drainage has been provided. We*

*therefore have no further comments to make and our previous comments (attached) are still valid.*

4.10 **Open Spaces Manager** commented on amended and updated plans –

*I am happy in principle with the POS and play areas subject to precise details of the play area and costs, which are I understand still covered by planning condition that has not been discharged.*

4.11 **Waste Manager** commented on amended plans received 14 and 28 May 2019 –

*Whilst the new plan did address my primary concerns, there are still just a couple of small tweaks that could be made that would reduce the likelihood of future problems. A prior to occupancy condition securing appropriate details is considered acceptable to address the remaining points and secure appropriate refuse collection facilities over the whole site, which are –*

- Plots 116-188 – the distance the crew would need to walk to collect the bins I have measured as being over 25 metres.
- I noticed on the main site plan part of this private road is marked as being constructed to commercial vehicle standard, however it does look like it might be too tight for the vehicle to travel this, so the collection point needs to be within a 25 metre walking distance from the road.
- Shared collection points next to parking spaces aren't ideal, as you have a situation where multiple bins are being put directly next to someone's car – for plots 156-158 there could be another collection point

*Amended plans have been received which address the above comments.*

4.12 **Planning Obligations Manager** comments –

*The revised plans now accords with our discussion with representatives of Barratt West Midlands in respect of the policy requirement for affordable housing. The plans propose 40% affordable housing which is in accordance with the original outline permission.*

## 5. Representations

5.1 **Ledbury Town Council** post the previous Planning Committee meeting submitted a further comment on 27 June 2019 –

At a recent meeting of the Economic Development and Planning Committee of Ledbury Town Council Members received a presentation from a member of the Ledbury Area Cycle Forum (L AFC) in respect of proposed plans for the above application.

Mrs Johnson (L AFC) advised that the newly proposed plans do not comply with the Ledbury Neighbourhood Plan, which is a condition necessary in order to comply with Herefordshire Council policies to reduce car dependency.

She advised that the original application was approved subject to the condition that the Active Travel route would provide a highly attractive, wide traffic free, tree lined pathway through the site from the northeast corner to the point of the southern boundary. She believes the amended application no longer complies with this.

As a result Ledbury Town Council resolved to support the comments being submitted by LAFC in respect of this application and therefore authorised me to write to you in support of their comments/objections.

The Town Council commented on the first tranche of amended plans on 8 March 2019 –

At the meeting of Ledbury Town Council's Economic Development and Planning Committee held on Thursday 8 March 2019, members resolved NOT TO SUPPORT planning consultation reference 182628 on grounds previously stated, with the additional comments:

- continuing concern re noise abatement;
- uncertainty about adequacy of SUDS system;
- and reassurance needed that the social mix remains the same.

Comments from the Town Council dated 8 August 2018 stated –

At the meeting of Ledbury Town Council's Economic Development and Planning Committee on 2 August 2018, Members Resolved Not to Support due to the following:

1. Lack of clarity in visual plans on market mix, suggesting the mix of affordable housing may now be below the level previously agreed.
2. Lack of proper impact assessment.
3. Potential drainage problem due to surface attenuation pond not being at lowest of development.
4. Potential impact on off-site pond, which is a breeding ground for great crested newts.
5. Lack of a suitable plan for the vacant area in the now vacant western part of the site, beyond spur roads to facilitate future development.

5.2 Six **letters of objection** have been received from local residents. Comments received are summarised as –

- The road building particularly serving the second phase of development is premature. If the second phase is not approved it will leave an inappropriate eyesore detrimental to the surroundings
- The mix of houses has changed, the percentage of affordable dwellings and smaller homes now proposed is inappropriate
- Changes to housing mix are by stealth and to give greater profitability to the detriment of Ledbury
- The technical noise appraisal does not form part of the Reserved Matters application
- Impact of proposed surface water drainage plans on a third party pond which is a Great Crested Newt habitat
- This site is going to be blighted for ever by the factory noise and the developers should plan to accept it
- The phase 2 area should be a substantial planted landscaping area to mitigate noise
- The bund and acoustic fence by their combined size, are inappropriate to the area and will dominate and 'tower' over the hedgerows
- It is noted there is potential for the site to serve access to an adjoining field and proposed development, all of which would be served by a single access on to Leadon Way
- It is not possible to make substantive comments with phase 2 area omitted
- Future residents will have adverse amenity due to proximity to industrial premises
- Social housing located nearest industrial premises mean these homes are 'sacrificial' acting as a noise barrier
- Insufficient details regarding green spaces



- No services or facilities on the site, which is an out of town satellite settlement. A convenience store should be included

Following consultation on amended plans dated 28 May 2019 local residents have commented as follows –

- Pleased some consideration has been made regarding landscaping, essential as this is after all a bund plus barrier almost 20 feet high highly visible as one enters the Dymock Road and open countryside
- Requested that the following conditions be included:- 1) Materials used including colour etc for sound attenuation barrier to be approved prior to installation. 2) Tree landscaping to be: full length of bund; minimum 3 metres high on planting; x 4 trees deep on each side of barrier; spacing along length to be similar; species to be advised. Overall high density planting required albeit with some consideration required of future growth.
- The proposed amended layout and inclusion of a sound barrier bund do not go far enough in terms of mitigating the noise exposure from the existing cheese factory.
- One cannot look at this Application in isolation from the 'future application' section of the overall site.
- The phase 2 of the site is integral to the overall layout and workings of this new estate and must therefore be understood alongside this Application to be correctly and fairly approved or not.
- The location of affordable properties remains unchanged: next to the main roads and closest to the industrial premises i.e. affordable housing being used as an acoustic barrier.
- A second access route into the site should be included: there are simply too many properties proposed for a single access.
- It appears that the 'solution' to noise nuisance from the former Meadow Cheese plant is to create a 2 metre high bund with a further 3 metre high fence on top. this 'solution' as being a wholly unwarranted intrusion into the existing 'natural' landscape of the surrounding area.
- Why cannot a solution be sought to reduce the noise, to acceptable levels, at source, ie within the plant's own machinery, buildings
- If the bund plus fence 'solution' is approved there must be full living screening on both sides of the eyesore.

### 5.3 **Ornua Ingredients UK Limited** (Ornua) objects to the proposed reserved matters application as set out in below –

Ornua made additional representation following the publication of the June Committee Report. Their further objection dated 14 June 2019 is as follows –

We write again on behalf of Ornua Ingredients (UK) Limited in respect of the application referred to above. We had intended to submit this objection in respect of the planning condition discharge application ref: 190874 as well, but we understand that this application is not being pursued by the Applicant. The comments in this objection are pertinent to both applications but given that ref: 182628 is being considered by the Council on 19 June then this objection should stand against that application.

#### Layout

We maintain that the Council needs to be satisfied that the current proposed layout of the properties will not lead to complaints from future residents of the properties because of noise emitted from our client's cheese factory, located opposite the development site. Ornua considers that the proposal in its current form is contrary to the NPPF (paragraphs 170(e) and 180) and the development plan (policies SD1 and SS6)

Notwithstanding the removal of the Phase 2 properties from the reserved matters application, it is clear from the information provided by the Applicant that the properties closest to the factory will experience unacceptable noise levels likely to lead to complaints even with the proposed mitigation measures in place. The proposed layout (and suggested future mitigation measures) do not adequately safeguard our clients ongoing operations from complaints i.e. from both private and statutory nuisance. We are, unfortunately, in the exact same position as we were in 2017 when the Council authorised the quashed reserved matters application ref: 164078. The layout will prejudice the effective and successful delivery of any future noise mitigation scheme.

Both the Applicant and the Council's Environmental Health Officers (EHO) acknowledge that the proposed layout of the development, with the outlined mitigation measures in place, could result in complaints from future residents. It is unreasonable for the Council's EHO to state that "we cannot say for certain therefore whether complaints from future occupants may or may not arise in the future". If the Council considers that there are properties which form part of this application which might be adversely affected by noise they should refuse this application and ask the Applicant to revise the proposed layout so that the new layout, with mitigation in place, will safeguard the amenity of future residents.

### Proposed Mitigation

The Applicant has submitted outline details of proposed noise mitigation. It has also submitted a noise assessment report. Ornuva has not been consulted on either of these documents directly.

Whilst the noise mitigation measures proposed by the Applicant are not being secured at this stage, they are clearly the Applicant's best attempt to demonstrate that noise levels will be acceptable at all of the properties proposed in Phase 1. As such, it is likely that the mitigation measures outlined will form part of a future noise discharge application if the layout is approved, as these mitigation measures have been considered by the Council to work with the proposed layout.

We do not consider that the proposed mitigation measures are adequate and, as such, the Council should not approve the current proposed layout for Phase 1 due to the borderline significant impacts that will be experienced by future residents at a number of the properties even with the proposed mitigation in place.

We consider that it is unreasonable for the EHO to conclude that desirable bedroom daytime noises can be achieved at the majority of the properties with their windows closed but that "there are a handful of dwellings with facades facing east and west where this cannot be achieved. Although this is not ideal, our department does not object to this proposal as noise mitigation is possible in the majority of the impacted dwellings and satisfactory daytime internal noise levels at ground floor level can be achieved due to the fencing mitigation."

The threshold for acceptability is not "the majority of the properties". If there are properties that will be adversely affected by noise under the proposed development, as the EHO clearly acknowledges, the layout of the scheme needs to be amended to remove the affected properties. Clearly, therefore, sufficient noise mitigation measures have not been proposed by the Applicant and the Council will be authorising the development of properties where residents are likely to complain of noise nuisance.

It is equally unreasonable for the EHO to conclude that noise impacts at night time internally will be acceptable, where these properties will experience greater than 55dB against a recommended standard of 30dB. No conclusion is given by the EHO in this respect but it is clear that this position could lead to complaints.

WA's report states that the properties located closest to our client's factory would be subject to noise above the Lowest Observed Effect Level (as set out in NPPF/Noise Policy Statement for

England) and borderline Significant Observed Effect Level. In other words, the noise will be "noticeable and intrusive". The Council's EHO considers that the dwellings closest to the factory "would be categorised by the classification of the noise having an Observed Adverse Effect Level which could lead to small changes in behaviours or attitude and having to keep close windows for some time because of noise." This is the Council's conclusion with the proposed mitigation in place. The impact on amenity to future residents is clear and having to rely on residents keeping their windows closed in order to reduce noise is not a reasonable form of mitigation.

As such, this clearly demonstrates that the requirement that "all reasonable steps should be taken to mitigate and minimise adverse effects on health and quality of life while also taking into account the guiding principle of sustainable development" has not been undertaken, as required by the NPSE, because even with the mitigation measures in place there will be properties in the proposed phase that will experience borderline significant impacts from noise.

Our client also has serious concerns about the conclusion of both the Applicant and the Council's EHOs in determining that the tonal quality of the noise being emitted from the factory has now disappeared. Ornuia disagrees with the Applicant and the Council that the noise emitted from the factory is not tonal. Operations at the factory have not changed since the 2014 noise assessment undertaken by the Applicant, which demonstrated a tonal quality to the noise being emitted from the site. Ornuia's own noise experts maintain that the noise from the factory is tonal. Tonal noise requires a penalty of 6dB to be applied to the results of the assessment. In other words, if the noise is tonal further mitigation should be secured. No explanation has been provided by the Council's EHO on why or how they consider the tonal quality of the noise has now disappeared nor has any technical detail been published by the Council supporting this assertion and change in situation. Neither the EHO in its response to the consultation or the Applicant have provided evidence justifying the conclusion that the noise emitted from our client's factory is not tonal.

Ornuia and the Applicant had separately agreed that a predicted rating level of 37 dB LAeq would be acceptable on the development site because this noise level will be very unlikely to result in complaints over noise. Ornuia is disappointed that the proposed mitigation will not achieve this level. Ornuia considers that the Council should seek to secure mitigation which results in a rating level of 37 dB LAeq at the site. Whilst the Applicant carried out works to the cheese factory in January, in an attempt to reduce the noise being emitted from the factory, these works were not successful and predicted noise from the factory did not reduce following these works.

As previously mentioned, without a more robust approach to noise mitigation and a change in the proposed layout on the proposed development, Ornuia considers that the Council will be promoting land-use competition contrary to the terms of planning law and the NPPF.

#### Further control on noise compliance

As noise is such an important part of the proposed development, Ornuia would expect to see a scheme of mitigation and a layout that ensures that appropriate noise levels can be achieved at all properties proposed as part of this phase of the development. The Council needs to ensure that there are noise limits secured in any future approved noise mitigation scheme so that they are complied with and, where they are not, there is a penalty e.g. the development has to stop until the noise is attenuated to an appropriate level.

It is not clear which document submitted by the Applicant actually proposes the scheme of mitigation required by the outline consent given that the summary document is so brief. There is inconsistency in this document as the "Summary of the Noise Mitigation Measures", dated 22 February, details noise mitigation to be applied to properties (outlined in Figures 2 and 3) but these figures include properties which are not even a part of Phase 1. This document is unclear

and does not relate to the same layout proposed in the application. As such, it cannot properly give the Council comfort that the proposed mitigation will work as it is factually inaccurate.

Neither the Summary document nor the "Noise Assessment Report", prepared by the Applicant and dated March 2019, detail when (i.e. give a timeframe) any proposed mitigation will be in place; how the development will be brought forward in terms of which units will be developed first; and how further/future remediation measures will be secured in the event that the proposed noise mitigation does not achieve what is predicated.

We appreciate that the discharge application is not being pursued but these reports were originally submitted in respect of the condition discharge application too and are wholly inadequate. In addition, there are no hard noise targets included in the report, as such, it is unclear how the Council considers at this stage that an estimated upper ended range of predicted noise levels is appropriate when there is no set limit proposed. Given the linkage between the layout and the proposed mitigation the Council needs to be satisfied at this stage that the mitigation will work with the proposed layout. The detail provided by the Applicant is inadequate and cannot reasonably be relied on to be certain that noise issues will not arise from all of the properties as set out in the proposal.

A final point to consider in respect of the noise mitigation measures to be secured is that the current planning condition on the outline consent (condition 19 of ref: 164107) provides: "All works which form part of the approved scheme shall be completed in accordance with the approved details [i.e. those works secured as part of the noise mitigation scheme] prior to first occupation of any dwelling in that phase and such measures shall be retained thereafter."

Ornua does not consider that this condition adequately secures the successful implementation any proposed mitigation works. It simply requires that the works approved under the proposed mitigation scheme need to be implemented; it specifies nothing about them having to succeed or requiring future remediation in the event that the works do not succeed. It is unclear why the planning inspector considered that this planning condition was adequate but the Council will have an opportunity to remedy this and secure more stringent (and appropriate) controls.

As such, Ornua would urge the Council on any future noise discharge application to not only seek more control (as outlined above) but to ensure that either any revised RMA approval or the discharge approval is conditioned to ensure that an approved noise mitigation scheme is adhered to for the duration of the development otherwise the Council will have no recourse to the Applicant in the event that the mitigation approved through the discharge application fails. Without any additional means of control in place (e.g. appropriately worded planning conditions on the reserved matters approval or a section 106 agreement) the Council is saying, at this stage, that it is confident that the proposed mitigation works, coupled with the layout, will be effective and there is no need for any future control over the development in respect of noise.

On the basis of the information provided above, the Council should take a precautionary approach given the clear uncertainty over the appropriateness and effectiveness of the proposed layout on noise and the mitigation proposed. Ornua considers that the Applicant should have proposed the phased delivery of the site from east to west i.e. the development should begin at the eastern boundary and move further west. In addition to this, the Council should secure means to undertake noise reporting on a periodic basis, as the houses are developed from east to west, to demonstrate that the mitigation works are working. The Council should also secure set noise levels through conditions or a s.106 so that in the event that the noise levels are exceeded development should cease until further remediation is secured to the satisfaction of the Council. Given that none of this detail has been proposed by the Applicant in its proposed mitigation measures, which have informed the proposed layout design, the Council would be acting unreasonably to accept the proposed measures and the layout in their current form.

The following comments were received 16 May 2019:

**1. In respect of the email below from Wardell Armstrong (enclosing x2 notes), dated 8 April 2019**

There is no indication where the Plots 1 and 2 show homes are on any of the plans provided by the Applicant. The Council should be provided with this information.

It would have been helpful for the Applicant to provide photos of the proposed or assessed measurement locations / situations of the open window; particularly the openness of the windows. It is not clear specifically what assumption was used.

The two notes are explicit that a slightly open window attenuates noise by 15 dBA. However, the guidance provides that open window attenuation is generally 10-15 dB (see for instance in BS8233, which WA do refer to but they do not provide the range of attenuation, they simply use the upper range cited in the guidance with no justification for doing so). The notes are of course based on predicted noise level outside and measured noise level inside. My client's consultant considers that it would have been more helpful if the Applicant had measured inside and out – it is not clear what the purpose of the measurements in the gateway were.

The Applicant's argument seems to boil down to the fact that people will have to shut their windows because of the traffic noise so, in turn, the factory noise will not be an issue. However, my client's consultant does not consider that this will stop people complaining of noise from the Cheese Factory because the noise emission (i.e. potential nuisance from the Cheese Factory) is outside. Ornu has never disputed the fact that internal noise levels will be below the BS8233 guidance (which apply to 'anonymous' noise); the issue is BS4142 and the likelihood of complaints based on significant impact (externally).

In that regard, these submissions do not change the thrust of Ornu's original objection.

**2. In respect of the [Wardell Armstrong Letter dated 11 April 2019, titled *Response to Hayes McKenzie Comments 4<sup>th</sup> April 2019*], sent to Ornu on 12 April 2019**

Ornu still has outstanding concerns following WA's response of 11th April but at this stage Ornu does not propose submitting any further substantive response given the points it has raised to date.

The headline point is that windows will need to remain closed to mitigate the noise impact from the factory, which is assessed as significant adverse even without tonal components (see Ornu's original objection). The inclusion of facade insulation / double glazing can only be seen as a contextualising factor noted by BS4142 as affecting (reducing) the sensitivity of the receptor to the assessed level of impact. Ornu does not consider that this will prevent complaints, or even minimise them for the proposed layout, at the predicted level of noise.

**3. Noise barrier**

I am still unclear under what planning consent the Applicant is proposing to develop the acoustic barrier. I cannot see that it is authorised by the outline consent. Has the Applicant discussed this with you please?

## **Next steps**

Clearly, my client's consultants still consider that there are gaps and insufficient detail in the responses provided by Barratt. I would be grateful if you could ensure that these comments are taken into account by the Council and passed on to your Environmental Health Officer for review. I would also be grateful if you could please provide me with your EHO's response once you receive it as my client would like the opportunity to review these points and comment on them accordingly.

*The following objection and comments were received 5 April 2019 –*

## **Background**

Ornua is the owner and operator of the Meadow Cheese Factory, located opposite the proposed development site. Ornua successfully challenged the grant of the original reserved matters application (ref: 164078) which was quashed by the High Court. It is now with the Council for redetermination. We understand that this application, whilst live, is not being pursued by Barratt as they would prefer to focus attention on ref: 182628.

Application ref: 164078 was quashed because the Council did not take into account a representation submitted by Ornua which demonstrated that the noise levels to be experienced at a number of the proposed houses would be too high, causing detriment to the occupiers of those properties and potential nuisance issues which could affect the operation of the Cheese Factory. Ornua was clear that granting consent for the layout before discharging the noise condition could prejudice the outcome of the proposed noise mitigation. Ornua also contested that the methodology used by Barratt in assessing noise impacts was flawed on a number of points, one of which was that it did not take into consideration tonal emissions which attract a 6dB penalty under BS4142:2014.

RMA 182628 now seeks approval of what is known as Phase 1 i.e. the first 275 units consented by the original outline consent (which granted consent for a total of 321 units). The remaining 46 units will, we understand, be brought forward by Barratt as part of a future planning application (presumably known as Phase 2). Phase 2 is being delayed due to the greater noise issues that will be experienced by future occupiers of this part of the site because it is in even greater proximity to the Cheese Factory. As such, we understand that Barratt will bring Phase 2 forward once it has worked out how it can secure adequate noise mitigation for this part of the site which Ornua considers would need to be more extensive here compared to elsewhere.

Ornua and Barratt has separately sought to reduce noise emissions from the Cheese Factory and agreed a noise limit at the closest properties to the Cheese Factory which includes a correction for any tonal components. As part of this agreement Ornua gave Barratt the opportunity to undertake mitigation works to the Cheese Factory to lower the noise levels. Unfortunately, these works have not succeeded and the overall noise levels emitted from the factory have not reduced, as Wardell Armstrong note in their report on p.9, para. 2.2.31 – see the first bullet point. Barratt is now predicting significantly higher noise levels than previously stated, including a predicted noise level of 43dB at the boundary of the current Phase 1 properties.

## **Considering noise as part of the RMA**

Ornua appreciates that Barratt has submitted a separate condition discharge application to the Council under ref: 190874 for Phase 1 and it has been explained (in the Council's letter to Ornua of 13 March 2019) that noise will be dealt with through this application and not through the RMA 182628.

However, Barratt has submitted its noise report (prepared by Wardell Armstrong, dated March 2019) in support of the RMA ref: 182628 (see the Wardell Armstrong letter of 22 February 2019 and the March 2019 report itself). EHO comments in respect of this application also express concern with the noise being emitted from the Cheese Factory, which is a 24/h operation, and the need to engage Ornuva on both of these applications. As such, we come back to the principle discussed in the High Court case about the interaction between the layout of the site and how, in Ornuva's view, approving the layout before the discharge of condition 19/21 will prejudice the mitigation that can be provided. The Court was clear that the Council, having considered noise as part of the RMA, should have considered it fully and properly. The same is true of the applications currently before the Council.

Admittedly, we are in a different position today than we were in December 2017 because at that stage Barratt had not submitted any detail concerning the discharge of the noise condition. Today we have this detail but, for the reasons noted below, it is inadequate. Given that application ref: 182628 has now been submitted to the Council and given the importance of ensuring that the information in both applications is consistent, Ornuva considers that both applications (refs: 182628 (Phase 1 RMA) and 190874 (Condition 19 discharge for Phase 1)) should be considered at the same time by the Council once sufficient explanation and information in respect of the layout and proposed mitigation has been provided by Barratt and been considered by the Council, in agreement with Ornuva. As mentioned, this is a principle that Ornuva put forward in the High Court and one it maintains.

### **Objection to ref: 182628**

Ornuva's noise consultants, Hayes McKenzie, has produced the attached note on the noise report submitted by Barratt in support of both applications. This notes a number of points which the Council should take into consideration. In headline terms, it is of great concern to Ornuva that:

- the predicted noise levels to be experienced at the Phase 1 properties closest to the Cheese Factory have increased from less than 37dB LAeq (assessed in June 2018 by Wardell Armstrong) to 43 dB dB LAeq. No comment on this is made in the report and no explanation is provided as to why this level has increased so significantly;
- the report states that no tonal content correction has been included in Barratt's assessment but no data is provided to support this assumption. As mentioned above, tonal emissions require a tonal penalty of up to 6dB to be applied to the overall results and this then requires more adequate mitigation measures to be applied;
- due to the high noise levels that will be experienced by the occupiers of these properties, notwithstanding the measures proposed, occupiers are likely to complain about noise from the Cheese Factory if they are required to keep windows closed to prevent noise impact internally; and
- there a number of questions and inconsistencies raised in Barratt's noise report which should be clarified with them, as per the attached note.

Clearly therefore the current layout of the site means that those Phase 1 properties in closest proximity to the Cheese Factory will experience unacceptable noise levels which is likely to cause issues for Ornuva in the future.

As an aside, the Hayes McKenzie review of Wardell Armstrong's March 2019 report does not cover the detail submitted on behalf of Barratt in the 22nd February 2019 letter from Wardell Armstrong. This also states that it is submitted in support of the noise condition discharge application and the reserved matters application. The letter refers to the various guidance documents, also referred to in the report, and the proposed mitigation measures, but notes the adverse noise impact predicted at the nearest receptors. It is notable that the predicted noise levels from the Ornuva premises, shown at Figure 5 in the WA letter, include the properties now

noted to form Phase 2 of the development with levels which would be judged to have a significant adverse impact, using Wardell Armstrong's own assessment methodology.

It is also arguable that the predicted levels at the closest of the properties which now form Phase 1 would also be judged to have a significant adverse impact (see the Hayes McKenzie review of WA report). WA argue that this will be resolved through facade insulation but note in their conclusions that '*windows of proposed dwellings closest to and facing the cheese factory will need to be kept closed, to achieve internal guideline noise levels in bedrooms during the night-time*'. Ornuia does not therefore consider that the noise from the Cheese Factory can be considered negligible, as suggested in WA's conclusions, when assessed in accordance with BS4142:2014 which very specifically uses '*outdoor sound levels to assess the likely effects of sound on people who might be inside or outside a dwelling*'. Ornuia also considers that complaints about noise from the Cheese Factory will be very likely if this layout is approved and are not resolved through the mitigation measures secured through the noise condition discharge.

### **Next steps**

The layout of the proposed Phase 1 development should not be set before it is clear whether Barratt can deliver a noise mitigation scheme which adequately secures a reduction in the level of noise emitted from the Cheese Factory and secures the amenity of future residents. Currently, the March 2019 noise report does not adequately deal with this and needs more explanation because it proposes inadequate mitigation. Ornuia considers that the two applications should be considered together for the reasons detailed above and to ensure consistency in approach and flexibility.

Whilst Ornuia has been and remains willing to cooperate with Barratt to secure a mutually beneficial outcome it clearly wants to ensure that its current operation can run in the same manner as today. On this point, it is worth noting the protection afforded to existing businesses under the NPPF. Whilst the NPPF has always been clear that pre-existing businesses should be protected, and it is a well-established legal principle that decision makers should not promote land-use competition, the revised NPPF issued in July 2018 introduced the concept of 'agent of change'. Paragraph 182 seeks to ensure that decisions taken by local planning authorities should ensure that new development can be integrated effectively with existing businesses and that existing businesses should not have unreasonable restrictions placed on them as a result of development permitted after they were established. This requires that where existing businesses could have adverse effects on the new development, the applicant (or agent of change) of the new development should be required to secure suitable mitigation. This is a material consideration in the assessment of both of the applications before the Council. And, at this stage, Ornuia does not consider that Barratt has proposed adequate noise mitigation for the reasons noted above and maintain that the proposed layout could effectively prejudice the noise mitigation to be secured.

#### 5.4 The **Campaign to Protect Rural England** (CPRE) objected on 23 August 2018 as follows –

- The ratio of affordable to open market housing is not as per the approved reserved matters application P164078/RM and is well below the 'up to 40%' outlined in the planning inspectors report.
- The application shows a reduction in the percentage of open market 2 and 3 bedroom houses, these are the type of houses needed in Ledbury and Herefordshire as a whole
- The site seems to have been designed assuming that development of the western part of the site will eventually go ahead as per the original submission P143116/O. However should that not be the case the spur roads to the west of the site will be redundant and ugly and there will be no real western boundary to the development. This part of the site could be used to plant a buffer of trees/hedges to help mitigate noise to the development.



- 5.5 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=182628&search=182628](https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=182628&search=182628)

## 6. Officer's Appraisal

*Policy context and Principle of Development*

### Legislation

- 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."* The development plan is the Herefordshire Core Strategy.
- 6.2 Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 state the following respectively:-

*"In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."*

*"In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of] any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area."*

### Herefordshire Local Plan – Core Strategy

- 6.3 Policy LB1 – *Development in Ledbury* states Ledbury will accommodate a minimum of 800 new homes balanced with a minimum of 15 hectares of new employment land during the plan period. The majority of new housing development will be focussed to the north of the town as set out in Policy LB2 and the strategic location for new employment of around 12 hectares to the west of the town, south of Little Marcle Road. Further development will take place through the implementation of existing commitments, infill development, and sites allocated through a Neighbourhood Development Plan. A number of sites which have future potential for development have been identified in the Strategic Housing Land Availability Assessment (SHLAA).

Within Ledbury, new development proposals will be encouraged where they are relevant to this application:

- maintain and enhance the vitality and viability of the existing town centre.
- improve accessibility within Ledbury by walking, cycling and public transport, particularly where they enhance connectivity with, for example, local facilities, new employment areas and the town centre;
- contribute to addressing deficiencies in community facilities and/or allow for infrastructure improvements (including broadband) in the town, to promote sustainable development;

- reflect and enhance the characteristic built historic elements of Ledbury, such as its stone, brick and timber-framed buildings, medieval plan form, conservation areas and setting overlooking the Leadon Valley;
- protect and enhance its green infrastructure, including connections to the public right of way network and biodiversity, particularly the Malvern Hills Area of Outstanding Natural Beauty to the east and the Leadon valley to the west;
- protect and enhance the setting of the town from eastern and western viewpoints; and, where this is not possible, incorporate appropriate mitigation measures; and have demonstrated engagement and consultation with the community including the town council.

6.4 Policy H3 – *Ensuring an appropriate range and mix of housing* states Residential developments should provide a range and mix of housing units which can contribute to the creation of balanced and inclusive communities. Also, Policy H3 indicates that the latest *Local Housing Market Assessment* will provide evidence of the need for an appropriate mix and range of housing types and sizes. Whilst it is not in dispute these are policies for the supply of housing they also have wider implications in terms of ensuring the social benefits of providing a suitable mix of housing types.

6.5 The Herefordshire Local Housing Market Assessment (HLHMA) formed part of the evidence base for the CS, although it is now some five years old. However, it is specifically cited in CS Policy H3 and without any other substantive evidence in regard to housing need in this area significant weight is attached to this. For the Ledbury area the HLHMA indicated that the greatest demand was for two and three bedroom housing, which was estimated as providing 30.5% and 55.2% of open market housing needs, and 38.3% and 30% of affordable housing need with four bedroom or larger housing providing only 10% of the estimated open market and 4% of the affordable housing needs.

6.6 Core Strategy policy SS6 describes proposals *should conserve and enhance those environmental assets that contribute towards the county's distinctiveness, in particular its settlement pattern, landscape, biodiversity and heritage assets and especially those with specific environmental designations.*

6.7 Policy SS6 then states in its list of criteria states *Development proposals should be shaped through an integrated approach and based upon sufficient information to determine the effect upon landscape, townscape and local distinctiveness, especially in Areas of Outstanding Natural Beauty.*

6.8 Core Strategy Policy SS7 – *Addressing climate change* states Development proposals will be required to include measures which will mitigate their impact on climate change. At a strategic level, this will include:

- focussing development to the most sustainable locations;
- delivering development that seeks to reduce the need to travel by private car and which encourages sustainable travel options including walking, cycling and public transport;
- designing developments to reduce carbon emissions and use resources more efficiently;
- promoting the use of decentralised and renewable or low carbon energy where appropriate;
- supporting affordable, local food production, processing and farming to reduce the county's contribution to food miles\*;
- protecting the best agricultural land where possible

Key considerations in terms of responses to climate change include:

- taking into account the known physical and environmental constraints when identifying locations for development;
- ensuring design approaches are resilient to climate change impacts, including the use of passive solar design for heating and cooling and tree planting for shading;

- minimising the risk of flooding and making use of sustainable drainage methods;
- reducing heat island effects (for example through the provision of open space and water, planting and green roofs);
- reduction, re-use and recycling of waste with particular emphasis on waste minimisation on development sites; and
- developments must demonstrate water efficiency measures to reduce demand on water resources.

6.9 Core Strategy policy LD1 – *Landscape and townscape* criteria requires new development must achieve the following:

- demonstrate that character of the landscape and townscape has positively influenced the design, scale, nature and site selection, including protection and enhancement of the setting of settlements and designated areas;
- conserve and enhance the natural, historic and scenic beauty of important landscapes and features, including Areas of Outstanding Natural Beauty, through the protection of the area's character and by enabling appropriate uses, design and management

6.10 Core Strategy policy LD4 – *Historic environment and heritage assets* sets out as relevant to this appeal that Development proposals affecting heritage assets and the wider historic environment should:

*1. Protect, conserve, and where possible enhance heritage assets and their settings in a manner appropriate to their significance through appropriate management, uses and sympathetic design, in particular emphasising the original form and function where possible*

*2. the conservation and enhancement of heritage assets and their settings through appropriate management, uses and sympathetic design. Where opportunities exist, contribute to the character and local distinctiveness of the townscape or wider environment, especially within conservation areas*

### **Ledbury Neighbourhood Development Plan**

6.11 The Ledbury Neighbourhood Development Plan was made on 11 January 2019. It now forms part of the Development Plan for Herefordshire.

The application site is referenced and acknowledged within the NDP which states when combined with two other large scale housing sites – *‘together amount to commitments of over 1,000 homes which the LNDP supports’*.

The NDP with regards to housing delivery sets out: *It is considered that these sites, in conjunction with the site allocated by the LNDP and windfall sites that will come forward within the settlement boundary, more than meet the needs of the town in terms of housing provision over the plan period.*

Policy HO2.2 – *Housing Density* requires The housing density of new development should respect its surroundings through good design which responds positively to local character. Housing densities should be within the range of 30 to 50 dwellings per hectare. In keeping with local character, housing densities should be at the higher end of this range towards and within the town centre and at the lower end of the range towards the edge of the settlement.

Policy HO4.1 – *Housing for Young People* – states Proposals for 1, 2 and 3 bedroom starter homes will be supported.

A key built environment objective of the NDP is To protect the transition from town centre to edge of town where it is more rural, so that any new 'edge of town' development maintains the character of the current settlement boundary.

Policy BE2.1 – *Edge of Town Transition* states The density of housing in the vicinity of the perimeter of the town should be appropriate to the location and type of housing that is required, and its environment. Whilst exceptions may be appropriate, buildings in the vicinity of the perimeter of the town should respect local character and not be more than 2.5 storeys in height. The protection and enhancement of existing, or establishing of new, hedgerows, woodland, green spaces, landscape features and street trees will be supported. Development should respect the setting of the Malvern Hills AONB.

Policy BE1.1 – *Design* states Development should demonstrate that it is sympathetic to the character and appearance of Ledbury and where possible, that it contributes to the conservation and enhancement of the overall distinctiveness of the Neighbourhood Area. The use of design review is strongly supported.

Policy TR1.1 – *Footpaths & Cycleways* states Improvements and/or extensions to the network of footpaths and cycling routes in the Neighbourhood Area will be supported , especially where they:

- Create appropriate crossing facilities dedicated to cycle, pedestrian and disabled access from the proposed strategic housing location north of the viaduct to give safe access to the station, schools, out of town shops and the town centre
- Improve cycling, pedestrian and disabled access to and from the station and the town, especially where junctions create a hazard
- Improve the Ledbury Town Trail to provide better cycling and disabled access along its whole length, including provision of street lighting and footbridges
- Extend the Ledbury Town Trail at the Ross Road roundabout over Leadon Way to provide safer cycling, pedestrian and disabled access to the Rugby Club and new Cricket Club
- Provide an appropriate crossing facility across Leadon Way at the Little Marcle Road roundabout for cyclists, pedestrians and the disabled, going to and from the Little Marcle business and farming areas.

## **National Planning Policy Framework**

6.12 The NPPF has 'sustainable development' central to planning's remit and objectives. The NPPF also seeks positive improvements in the quality of the built, natural and historic environment and in regards people's quality of life. The National Planning Policy Framework has been considered in the assessment of this application. The following sections are considered particularly relevant:

- 2. Achieving sustainable development
- 5. Delivering a sufficient supply of homes
- 11. Making effective use of land
- 12. Achieving well-designed places
- 15. Conserving and enhancing the natural environment
- 16. Conserving and enhancing the historic environment

6.13 Paragraph 7 sets out and defines sustainable development and of the three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways, the social objective requires planning to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being.

- 6.14 Paragraph 11 of the Framework sets out the presumption in favour of sustainable development. For decision-taking this means where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless the application of policies of the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed or 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.
- 6.15 NPPF Paragraph 124 states *The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.* Paragraph 127 outlines Planning decisions should ensure that developments:
- will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
  - are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
  - are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);
  - establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;
  - optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and
  - create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.
- 6.16 NPPF paragraph 180 states Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:
- a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life

## **Assessment of Proposals**

### *Sustainable Development and Addressing Climate Change*

- 6.17 The site benefits from an outline planning permission for residential development and the application hereby assessed is for approval of reserved matters of layout, appearance, scale and landscaping relating to that permission. In accordance with the NPPF and Policy SS1 a *positive approach* must be taken by Herefordshire Council to reflect the presumption in favour of sustainable development. Furthermore the LPA through policy SS1 will be proactive wherever possible and to secure development that improves the social, economic and environmental conditions in Herefordshire.

- 6.18 The principle of residential development for up to 321 dwellings with an access from Leadon Way has been established by the outline planning permission. In accordance with Local and National Planning policy approval should be given unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits. It is not considered that there any restrictive policies that are applicable in this instance as outline planning permission has already been established and as such the acceptability of the proposals is based on the assessment of both material and technical considerations. These matters are considered in the Report below.
- 6.19 Policy SS7 is a strategic policy requiring focus on measures to address climate change. Reducing carbon footprint and CO<sub>2</sub> emissions has been at the forefront of recent political and media discourse, receiving rightful prominent coverage. Herefordshire Council's Core Strategy has been 'ahead of the curve' in that regard with Policy SS7 in place and a requirement to be satisfied by development since October 2015.
- 6.20 The site is located on the edge of Ledbury, its location lends itself to the ability to walk or cycle to the town centre and other services and facilities nearby. Improved pedestrian linkages have been secured including new controlled crossing facilities on Leadon Way. The development also includes substantial open and recreational space within it. Accordingly, the proposal is located whereby many day to day functions and journeys by future occupiers can be undertaken without the need to use a private vehicle.
- 6.21 The development includes a substantial amount of new planting exceeding previous green coverage on the site with regards to trees. A comprehensive drainage plan and proposals are also incorporated and subject to formal approval through the discharge of condition attached to the outline planning permission.
- 6.22 With regards to built form and energy efficiency Barratt and David Wilson Homes set out their approach to addressing climate change through the design of their dwellings is delivered through a fabric first approach to CO<sub>2</sub> emission reduction includes the following:
- High levels of insulation
  - Higher performance windows and doors
  - Reduced air infiltration rates
  - Enhanced thermal bridging performance
  - Enhanced services
  - Maximisation of passive solar and metabolic gains

Under current Building Regulations Approved Document Part L 2013 there is a backstop fabric energy efficiency standard which the developers' standard specification exceeds.

- 6.23 On the basis of the above and in principle the proposal represents sustainable development. Given the Government's requirement to deliver a significant number of new homes during the plan period, on the broad basis outlined above, the development will within that balance of meeting housing need and addressing climate change, in principle contribute to meeting both objectives. As such Core Strategy policies SS1 and SS7 and the associated aims and objectives of the NPPF are satisfied.

### Noise

#### Background and Context

- 6.24 The proposed development site is located on the outskirts of Ledbury, on a greenfield site identified as a predominantly rural setting, however, in close proximity to two main noise sources; traffic noise (Leadon Way) to the north and 24/7 Ornua factory noise to the west.

- 6.25 The Core Strategy notes the protection of residential and local amenity is essential to ensuring local communities are and remain sustainable. Amenity considerations include such issues as noise. Policy SD1, within its list of criteria for sustainable design requires new development does not contribute to, or suffer from, adverse impacts arising from noise.
- 6.26 The NPPF paragraph 170 (e) requires the decision making process should contribute to and enhance the natural and local environment by preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of noise pollution. Paragraph 180 requires development should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life.
- 6.27 The Ornu cheese factory noise runs 24/7 generating an audible constant low frequency sound (hum) in close proximity to the factory. Unlike the passing traffic noise the factory noise source is in a fixed location so creating an audible directional point source at the north west area of the proposed development site. Road traffic noise from Leadon Way and to a degree Dymock Road is dominant during the daytime, however during the night (23:00 – 07:00), at the south western section of the proposed site the factory noise becomes the main dominant audible sound.
- 6.28 Primary concern regarding noise and amenity relates to during the noise sensitive night-time hours (23:00-07:00), where the local authority's main concerns have been raised with regards to the factory noise at this proposed site.
- 6.29 It is noted there are no planning controls on the factory to ensure that factory noise is not increased by for example additional plant, more intensive use of equipment or plant maintenance failure and we cannot say for certain therefore whether complaints from future occupants of the proposed development may or may not arise in the future.
- 6.30 As detailed above, a previous approved Reserved Matters application was subsequently quashed by the Courts. The claim proceeded on one ground only, that the council failed to take into account a material consideration in that it did not take account of representations made by Ornu, including a report by acoustic engineers on its behalf which cast doubt on a conclusion reached by the council that it would in principle be possible to produce a scheme for mitigation of noise emitted by the cheese factory such that it would be reduced to acceptable levels at houses built to the proposed layout.
- 6.31 The Judge found *It follows in my judgment that an error of law was committed*. The error may be considered either as a failure by the planning authority to consider, either at the level of members or officers, a material factor in the form of the information provided by Ornu, or as a failure by officers properly to exercise the delegated power they had been given by evaluating and coming to a conclusion on that information.
- 6.32 The result and Court judgement was the decision must be quashed and remitted to the planning authority for redetermination.

#### Assessment

- 6.33 The application is presented with a Noise Assessment Report which includes acoustic contour modelling based on real time noise recordings. The Council's Environmental Health Officers have visited the site on a number of occasions and undertaken their own readings. The application features noise mitigation proposed or already implemented as follows to address both noise from the cheese factory and noise from traffic on Leadon Way –
- The noise mitigation works undertaken on site at the cheese factory in early 2019 included –
    - the removal of the green box extract

- the acoustic enclosure of the pump motor and
- additional silencer to the yellow extractor

6.34 Environmental Health Officers have verified subsequently that the low frequency tonal element of the noise was reduced so audibly less intrusive, however measurements of the overall volume of the factory sound was found not to be reduced.

- The applicant has removed the most adversely impacted proposed dwellings from this site proposal (shown as *Phase 2* on the proposed site plans), increasing the distance of the now proposed dwellings from the factory to the dwellings proposed within this application.
- A 3 metre high noise barrier sited on top of a physical bund 75 metres in length maintaining a height of AOD 55m to the north west corner of the site, closest to the Ornu cheese factory.
- A reduction in the speed limit on Leadon Way from 60 to 40mph on the approach to the new roundabout (half way along the northern side of the development).
- A 3.00m high barrier comprising of a close boarded fence constructed with a minimum density of 10kg/m<sup>2</sup> to the eastern section of the northern boundary to the site.
- A 2.1m high barrier comprising of a close boarded fence constructed with a minimum density of 10kg/m<sup>2</sup> to the western part of the northern site boundary.
- A 1.8m high close boarded fence around all remaining gardens areas.

6.35 The following extract from Figure 3 of the *Noise Assessment Report* by Wardell Armstrong shows dwellings which are built with additional higher glazing specifications and acoustic vents.

- Green dots denotate elevations with standard glazing and ventilation via opening windows achieve guidance internal noise levels
- Yellow dots denotes standard glazing and alternative means of ventilation required to achieve guidance internal noise levels
- orange dots denote elevations with enhanced glazing and alternative means of ventilation required to achieve guidance internal noise levels

6.36 The applicant was requested and has agreed to install the higher of the two glazing specifications in all the identified properties (orange and yellow dots) shown below and this will be secured by condition. These glazing measures also contribute to mitigation from noise from the cheese factory along with mitigation against road noise, in particular the dwellings abutting Leadon Way.





### Factory Noise

- 6.37 The starting point to the BS4142 assessment of the impact of the factory noise on the proposed dwellings is the establishment of a representative background sound level i.e. *what is typical in context to the area*. The methodology is not to ascertain what the lowest background sound level but to identify a general, most frequently occurring representative value.
- 6.38 Environmental Health Officers have considered both Wardell Armstrong's (applicant) and Hayes McKenzie's (objectors) positions on this and concluded given the range of findings of background sound levels found that the selection of a representative background for use in the assessment of 33-34dB (LA90) night time and 41-44dB daytime is appropriate. These levels take into account traffic movements will be through the night although to a much reduced level than in the day time. Also the presence of the factory needs to be considered as it is a well-established industrial unit in the area. The lowest measured background reading (27dB L90) would be more representative of a fully rural, green site area. The 33-44dB (LA90) background reading is more representative and in context with the development site being on the outskirts of Ledbury town where rural meets a small market town divided by a by-pass road.
- 6.39 Two dwellings were constructed in early 2018 as show houses for the site and has enabled the concerns regarding the adverse impacts at the properties closest to the factory presented in the Wardell Armstrong report (which anticipated moderate adverse impacts) to be verified in practice. Noise readings have been taken internally from these dwellings.
- 6.40 These sites have been visited twice by Officers from the local authority during the daytime subsequent to the Ornu site mitigation. On both occasions road traffic noise was found to be dominant as expected for this time of day.
- 6.41 Overnight noise monitoring has been carried out to verify the impact of the mitigation at the factory. The findings of overnight monitoring undertaken on 29th March 2019 find that without the proposed mitigation bund and fence in place, factory noise levels dropped to below the BS8233 desirable internal noise level of 30dB inside the factory facing bedrooms. On 4th April 2019 Wardell Armstrong set up further night time noise monitoring in the two built dwellings closest to the factory with partially open windows (approximately 10 - 12cm) witnessed by local authority officers when overnight noise monitoring set up was taking place. These measurements were undertaken in rooms without soft furnishings and curtains.
- 6.42 The findings are that within the most sensitive dwellings there may be occasions where at night time in the bedrooms facing the factory the factory noise is audible (due to fluctuations in background noise levels) with the windows open, however it is unlikely to be intrusive.

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Further information on the subject of this report is available from Mr C Brace on 01432 261947

- 6.43 The noise mitigation undertaken at the factory site in early 2019 detailed above has been found by the applicant's noise consultants not to have led to an overall reduction in the loudness of the factory noise. However, the distinctive tonal element of the noise previously identified has been eliminated and therefore in the noise report no character corrections or penalties have been applied to the BS4142 rating. Local authority officers in spring 2019 subsequent to the mitigation works have been able to verify that the tonal element to the noise is no longer present.
- 6.44 Ornu's further concerns are that complaints may also occur regarding factory noise in gardens leading to complaints. There will be no attenuation through the fabric of a building. Whilst factory noise may be audible in gardens (again due to fluctuating background noise levels), the dominant noise during daytime and early evening when gardens may be in use will be road traffic noise.

#### Road Noise

- 6.45 All the gardens to the northern side of the site after mitigation will be exposed to daytime road traffic noise of between 50 and 55dBLAeq which is slightly higher than the desirable standard for external amenity areas of 50dB but less than 55dB considered to be the upper guideline value for noisier environments. As the site is a greenfield site it is not by its nature a 'noisy environment'. However it is recognised that the proposal incorporates close by recreational space further away from Leadon Way which is considerable quieter and less than 50dB which provides for some mitigation in accordance with the ProPG guidance. Within this context Environmental Health Officers do not think that the amenity noise levels for the dwellings closest to Leadon Way are unacceptable.
- 6.46 With regards to internal areas, daytime road traffic noise at the facades of the first floor of the proposed dwellings closest to the road are predicted to be above 60dB LAeq, These exposure levels are higher than the desirable external standard of 50dB at the façade which would enable the achievement of desirable internal noise levels with the windows open. Therefore the north facing elevations of the proposed dwellings and some of the side elevations would have, without mitigation, internal noise levels with partially open windows above the desirable bedroom daytime standard of 35dB. As detailed above, combination of glazing and structural mitigation is proposed.
- 6.47 Windows on the impacted elevations directly facing Leadon Way will need to be kept closed during the daytime to ensure desirable daytime noise standards in bedrooms. Of the properties impacted, the majority will have south facing elevations where desirable bedroom daytime noises can be achieved with the windows open as facades away from the road will have noise level of less than 50dB. However, there are a handful of dwellings with facades facing east and west where this cannot be achieved. Although this is not ideal, Environmental Health Officers do not object to this proposal as noise mitigation is possible in the majority of impacted dwellings and satisfactory daytime internal noise levels at ground floor level can be achieved due to the fencing mitigation.

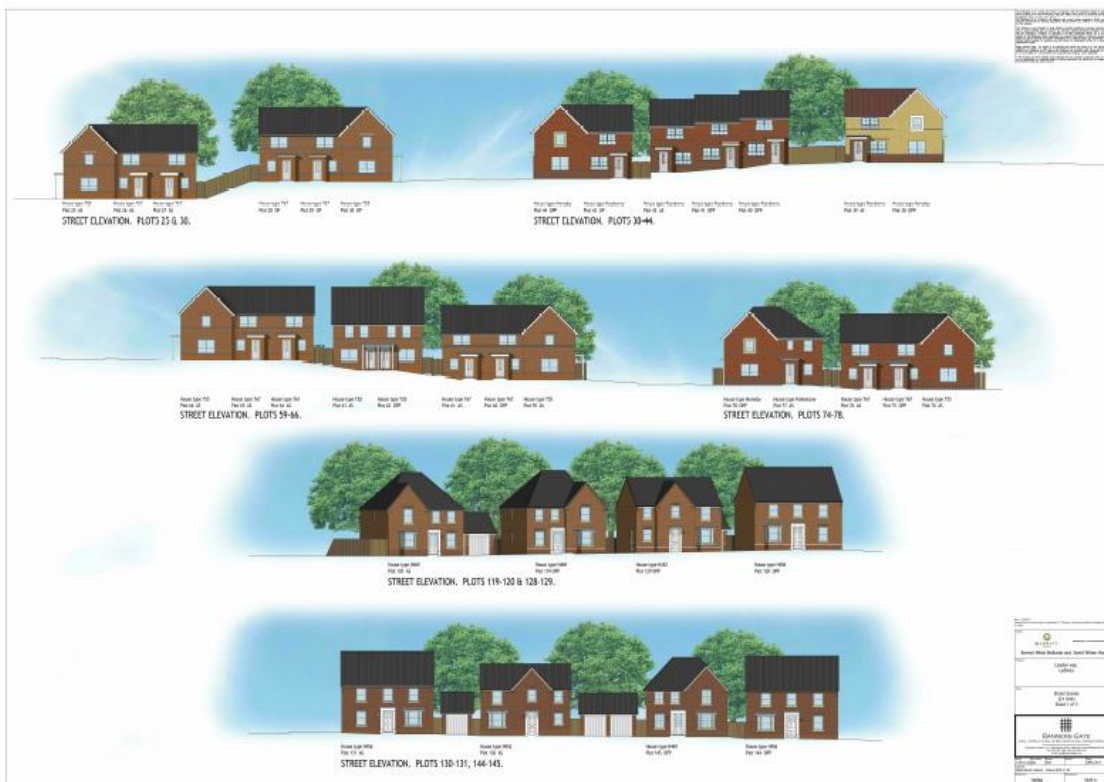
#### Conclusion

- 6.48 Ornu's position is the revised NPPF places an onus on the developer, the '*agent of change*', such that existing businesses should not have unreasonable restrictions placed on them as a result of development permitted after they were established. The application eliminates a substantial number of dwellings from the development as previously proposed, all of which are in close proximity to the factory and furthermore creates a distance buffer and increased separation between the factory and the nearest proposed dwellings.

- 6.49 Environmental Health Officers advise that on the basis of the substantial mitigation that has been proposed this renders the majority of the site to fall below the Lowest Observable Adverse Effect Level (LOAEL) as set out in the Noise Policy Statement for England (NPSE) and the perimeter to the north and factory facing as being above the LOAEL but below the SOAEL (Significant Observed Adverse Effect Level). The proposed dwellings in these localities would be categorised by the classification of the noise having an Observed Adverse Effect Level which could lead to small changes in behaviour or attitude and having to keep closed windows for some of the time because of noise. The objective to which would be to mitigate and reduce to a minimum. The Noise Policy Statement for England (NPSE) concludes that where the noise impacts fall between the LOAEL and SOAEL 'all reasonable steps should be taken to mitigate and minimise adverse effects on health and quality of life while also taking into account the guiding principles of sustainable development.' The second objective of the NPSE (after the avoidance of significant adverse effects).
- 6.50 Environmental Health Officers therefore confirm they have no objection to the details of the reserved matters scheme as it relates to the noise constraints and challenges on the site providing that the noise mitigation specified above is implemented. On the basis that can be secured and implemented by the use of conditions as set out below, Core Strategy policies SS6 and SD1 and the relevant aims and objectives of the NPPF as relate to noise and associated amenity are satisfied.

Design

- 6.51 The detailed design approach is similar to that of the dwellings previously approved under the quashed reserved matters application with a number of subsequent updates and amendments to reflect the applicants new house types. In broad terms, however these changes are minimal and include the introduction of hipped roofs within the design portfolio so when viewed with traditional gabled designs, there will be reduced massing and greater variety within the streetscene. Proposed streetscenes are shown below –



- 6.52 Overall the development comprises 32 different designs of dwellings over the 275 units proposed on the site. Only 8 of those 32 individual designs feature ten or more times over the

development. All except 5 units are two storey in extent, with 5 units being 2.5 storeys. All garages are single storey. Numerous design features which are also indicative to Ledbury and its surrounding area included within house types are –

- bay windows
- dormer windows
- Brick course detailing
- Feature gables
- Dormer windows
- Flat roofed open porches
- Symmetrical principal elevation design

6.53 Further to the above, a mix of 6 materials palettes are used across the house types and a variety of boundary treatments also feature over the site to add variety and interest, reduce commonality and utilise design aspects from local vernacular as follows. Materials include a range of bricks utilising various shades of ‘red’ and sandstone, slate and red roof tiles, brick plinths and detailing of various contrasting colours and use of render. Fencing variation includes larch lap, close boarded, timber post and rail and painted metal railings to delineate and enclose public and private spaces.



6.54 Overall the proposals draw on various elements of local character, ranging from materials to design features and detailing. The range and mix of house designs and materials provides visual interest and dilutes uniformity on what is a large housing development. This is welcomed and provides design merit and individuality to the development as a whole. Combined with the general landscaping proposals and heights of the proposed units all being 2 or 2.5 storeys in extent, it is considered the proposal represents an appropriate design response in respect of context and quality and as such Core Strategy policies SS6, LB1, LD1 and SD1, Ledbury Neighbourhood Plan policies BE1.1 and BE2.1, and the relevant design aims and objectives of the National Planning Policy Framework are satisfied.

### Landscape

6.55 The landscape proposals generally conform to the details provided and approved by the Local Planning Authority under Reserved Matters application 160478 which also in turn were considered satisfactory to be able to discharge the relevant landscaping conditions attached to

Outline permission 143116. Notably, the landscaping details omit the *Phase 2* area. With regards to the above, the Senior Landscape Officer commented at the time *The information submitted satisfies the requirements of the Reserved Matters and is approved by the Councils Landscape Officer.*

6.56 Whilst I attach considerable weight to that position, clearly there has been the passage of time since the assessment of those details was made and further to that, whilst there has been no change to Core Strategy policies, or changes to the relevant aims and objectives of the NPPF that would render the above position obsolete, the Neighbourhood Development Plan is now made and a material consideration. As such regard must be had and assessment made against NDP Policy BE1.1 – *Design* and BE2.1 – *Edge of Town Transition* in particular.

6.57 The overall layout affords areas of public open space, which includes functional formal and informal play areas within the development and a significant amount of new landscape planting. The proposed landscape planting has been increased and improved following comments from Local Members and Planning Committee as shown on the plan below and as follows –



The landscaping proposed is indicative of and responds to the edge of settlement location and its function as a transitional area from town to countryside. Furthermore hard landscaping and structural elements create a sense of place and appropriateness to an edge of market town location and features –

- Creation of an appropriate green infrastructure, in order to create an attractive and appropriate development setting;
- Focusing of main public open space areas within elevated site areas in order to minimise the visibility of the development within views from the AONB;
- Reinforcement of the landscape structure to the site boundaries through native tree and hedge planting to create an appropriate green edge to the development and to filter views from the wider countryside setting;
- Reinforcement of the existing vegetation structure along the site's eastern site boundary, to help further contain and filter views from the eastern site context and wider AONB setting;
- Retention of all vegetation to the site boundaries and carefully considered tree and hedge planting to the southern and eastern site boundaries to create an appropriate edge to the development, and a softened transition between the development and the wider countryside setting

- Tree planting within the residential area to break up the appearance of urban development, and within areas of proposed open space to increase level of tree cover generally within the site;
- Creation of a new permissive pedestrian link to the site perimeter linking into the wider footpath/ cycle network and the existing urban edge to the north

6.58 It is undoubtable the bund, which has start/ end of 51.17 and 52.12 OAD with a highest part at 55.00 AOB upon which an acoustic fence itself measuring 3 metres tall is located, as shown on the cross section below, creates and introduces a new, prominent feature within the streetscene and one which forms the setting and one of the approaches to Ledbury, however this would be read partially within a context and with views of the industrial estate opposite the site. It is noted substantial planting is proposed around the bund and acoustic fence, as part of wider green landscaping in the north east part of the site which includes an attenuation pond, which will have landscape and noise mitigation benefits along with biodiversity and drainage features. The approach utilised here replicates in many respects that used and approved at *Porthouse development site, Bromyard*. The detailed landscaping proposals around the bund and attenuation pond (Extract from Drawing titled *Public Open Space Detailed Landscape Proposals, Sheet 1 of 4*, Drawing Ref: P16\_0793\_04-N, Received 9 July 2019), along with sectional drawing (Extract from Drawing titled *Landscape Section to Earth Bund*, Drawing Ref: P16\_0793\_09-A) are shown below –



6.59 The defined areas of open space within the site are logically laid out and well spaced within the development and the enhanced extensive planting along the southern boundary of the site which should be retained as green infrastructure, regardless of whether future adjacent

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development takes place and can be protected by condition. Also now included is the introduction of communal raised planter beds and extended the orchard planting to support policy NE2.1 of the Ledbury Neighbourhood Plan. The central area of play provision has also been enhanced to meet the needs of children of all ages, a kick-about area has also be identified to the east of the site. The perimeter of the site features a 'green' walkway through more robust and appropriate planting.

- 6.60 In respect of wider landscape implications and assessment, It is noted the site is not within the Malvern Hills AONB and although within its foreground, there is limited intervisibility between the two and in particular, from key viewpoints from the AONB, in particular the Hills themselves.
- 6.61 With regards to longer range views, the wooded nature of the slopes on this side of the Malvern Hills generally limits outward views from public vantage points towards the site. The site comprises a very minor component in a much larger landscape. With the landscape mitigation proposed and conditioned, there would be no material harm to views of the surrounding area from the AONB, on its overall setting, or its special qualities.
- 6.62 The site is barely perceptible in the much longer range views from Marcle Ridge, some 6.5 kilometres away to the west. Consequently, particularly when landscape mitigation is taken into account, the development proposed would, if noticeable at all given the distance involved, represent a negligible change, with no material impact on views from the Ridge, or on its landscape setting.
- 6.63 The Landscape and Arboriculturalist Officers previously had no objection in principle, however their previous comments along with that of Local Members identified areas where the landscaping and planting could be both improved and beneficial to the development and wider setting of Ledbury. Amended landscaping plans received since the previous Planning Committee, as detailed above, has led to a better development with both more relevant and enhanced planting and landscape features offering a better response to context and greater amenity. On this basis and with the maintenance conditions set out in the recommendation below it is considered the landscaping criteria and policies of the Core Strategy, SS6, LD1, LD1 and SD1 are satisfied, along with the relevant policies of the Ledbury Neighbourhood Plan and landscape aims and objectives of the NPPF.

### Heritage

- 6.64 The Planning (Listed Buildings and Conservation Areas) Act 1990 states *"In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."*
- 6.65 When an authority finds that a proposed development would harm the setting of a listed building, it must give special attention to that harm with "considerable importance and weight". Importantly, this does not mean that an authority's assessment of likely harm of proposed development to the setting of a listed building or to a conservation area is other than a matter for its own planning judgement. Nor does it mean that an the authority should give equal weight to harm that it considers would be limited or "less than substantial" and to harm that it considers would be "substantial".
- 6.66 While Policy LD4 of the Core Strategy does require heritage assets to be protected, conserved and enhanced, and requires the scope of the work to ensure this to be proportionate to their significance, it does not include a mechanism for assessing how harm should be factored into the planning balance. As a result, and in order to properly consider the effects of development on heritage assets, recourse should be had to the NPPF in the first instance.

- 6.67 Paragraphs 193 – 196 of the NPPF (2018) deal with the approach to decision-making according to the significance of the heritage asset (this being the adjoining listed buildings) and the degree of harm arising as a consequence of development. Paragraph 193 confirms that great weight should be given to the conservation of designated heritage assets. Paragraph 195 is a restrictive policy and directs refusal where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset. Paragraph 196 explains the approach to decision-making where less than substantial harm to the significance of a designated heritage asset would arise. It states that such harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. 196 is thus also a restrictive policy.
- 6.68 Accordingly it is necessary for the decision-maker to judge, on the evidence before them and having particular regard to expert heritage advice, whether the proposal in this case represents substantial harm to the setting of listed buildings and their significance (in which case paragraph 195 directs refusal unless the scheme achieves substantial public benefits that outweigh the harm) or whether the harm falls within the purview of paragraph 196; in which case it is necessary to weigh the less than substantial harm against the public benefits in an unweighted planning balance. Even if harm is less than substantial, it is absolutely clear that such harm weighs heavily in the planning balance – the fact that it is not necessary to demonstrate that harm significantly and demonstrably outweighs the benefits gives weight to paragraph 196 as a restrictive policy.
- 6.69 The nearest heritage assets are located south west of the application site as shown below outlined blue. These buildings are the Grade II Hazel Farm farmhouse and associated Granary, Grade II listed in its own right.



- 6.70 Intervening distances from the development and Hazel Farm (130 metres) and the Granary (75 metres) to the nearest proposed dwellings. The setting of Hazel Farmhouse is mostly screened when viewed from the north east. However, whilst the impact upon those aspects of the setting of the building which contribute to its significance would not be harmed to any extent by the wider development.
- 6.71 The Council's historic advisors have considered the proposals and conclude that the acoustic fence and bund to the north of the buildings would harm the appreciation and understanding of



the buildings in their context. The landscape in the immediate vicinity is predominantly flat, with views across to the Malvern Hills AONB. The bund with an acoustic fence, would be visible from the south in the context of the buildings and it will take a number of years for the proposed planting to establish and mitigate.

- 6.72 This is considered as less than substantial harm (para 196) Therefore such harm should be weighed against the public benefits of the proposal and this matter is considered in the conclusions below.
- 6.73 The edge of Ledbury Conservation Area lies approximately 0.72 kilometres to the north-east of the appeal site. The Conservation Area contains numerous listed buildings, including the grade I listed church of St Michael and All Angels. In as much as the bell-tower spire of the church can be seen, together with the roofs of other buildings, then the Conservation Area can be said to be experienced from the site. As a consequence, the site lies within its setting.
- 6.74 However, the site is separated from the Conservation Area by intervening post-war residential development (Martins Way estate) and the John Masefield High School, with the consequence that there is little, if any, awareness of the presence of these fields from within the Conservation Area. On that basis, I am not persuaded the site makes any contribution to the heritage significance of the Conservation Area which derives from its history as a market town and its architecture, including numerous listed buildings. As such I find no harm to significance of the Conservation Area.
- 6.75 As such the proposals are considered to result in less than substantial harm on designated heritage assets. When assessed against the requirements of the NPPF, the proposal is considered acceptable based on an assessment of the assets value and importance weighed against and considering the wider benefits of the proposal. It is concluded the proposal accord with policies SS6 and LD4 of the Herefordshire Core Strategy, heritage aims and objectives of the NPPF and Section 66 (1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

### Ecology

- 6.76 The comments of the Council's Ecologist and Natural England are noted as are concerns from an objector regarding protected species.
- 6.77 The lighting scheme has three different lights all of which feature LED banks and photo electric control units set to switch on at 35 lux and has been assessed by the Council's Ecologist. The provided lighting scheme is considered appropriate and provides low-level lighting to minimise environmental impacts and in particular impact upon bats.
- 6.78 Concerns regarding the impact of the drainage proposals on adjoining ponds on third party land and impact upon them as Great Crested Newt habitats has been reviewed by the Ecologist.
- 6.79 The landform of the site prior to development broadly comprised an elevated ridge broadly running east-west in the central portion of the site, with ground levels falling away primarily to the north/north west and to a lesser degree to the south. The application site is on higher ground to that surrounding to the south and west. This landform would encourage surface water to flow following the natural fall of the land. Additionally, any water seepage through the soils in this locality, including the development site and arable land to the south, is likely to be minimal and slow.
- 6.80 Further to the above additional investigations into the land drains to the south of the application have been carried out. This included undertaking a camera survey along these drains. From this it has been confirmed that the land drains are completely within the Gladman appeal site and do

not extend into the Barratt application site. There is therefore no direct water drainage from the site to the Gladman land and, in turn, the ponds on the other side of Dymock Road.

- 6.81 Therefore, in terms of the development, the potential for surface water run-off to surrounding areas is unlikely to be significantly affected and it is considered that there is a very low risk of the site contributing to a significantly reduced flow of water off-site.
- 6.82 It is concluded there will be no negative impacts on offsite Great Crested Newt ponds and populations or sustained ground water supply to them will be impaired to have such a detrimental impact.
- 6.83 It is noted Outline permission 143116 Condition 6 stated –

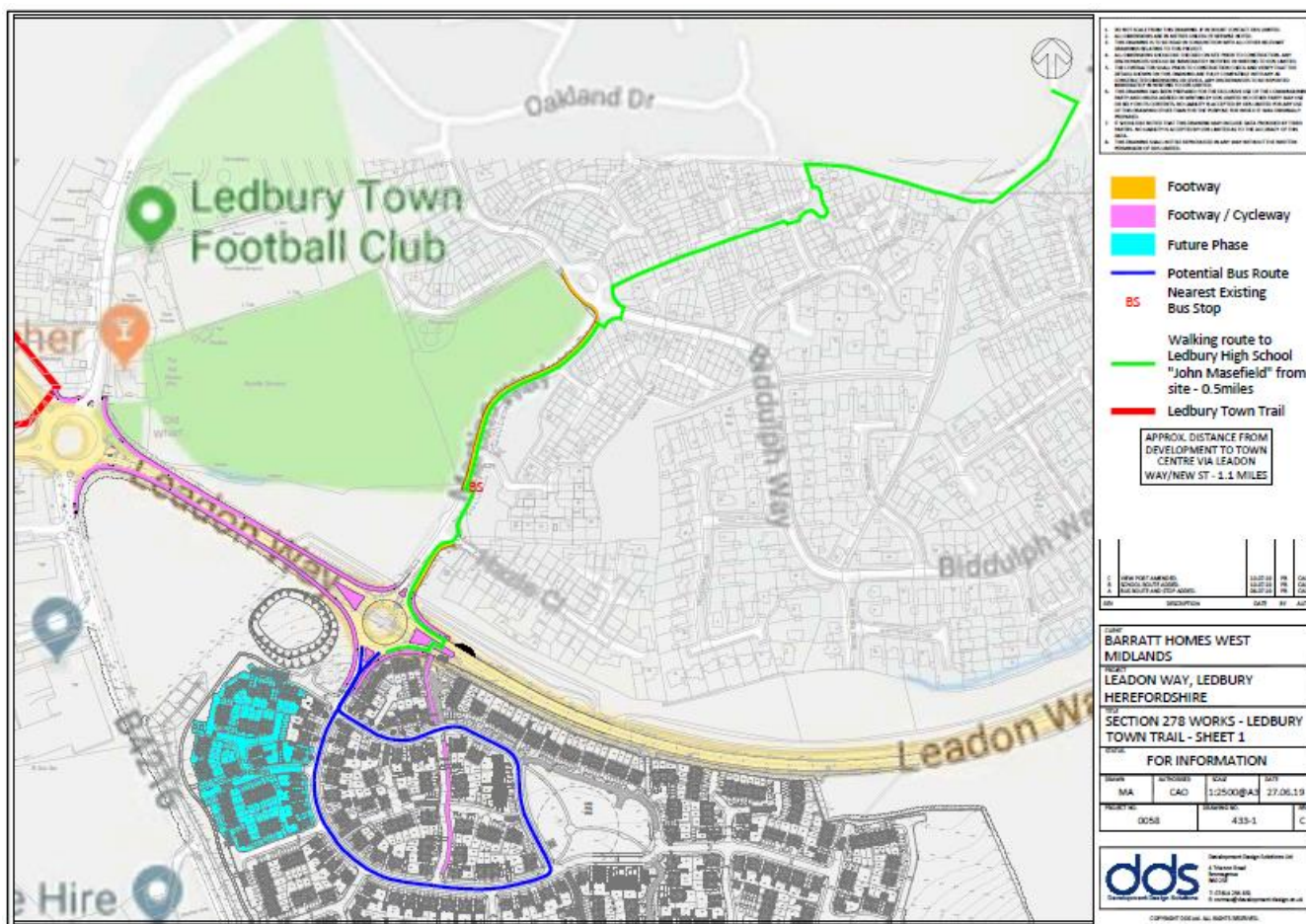
*Development, including works of site clearance, shall not begin until a Habitat Enhancement Plan, including a timetable for implementation, based on the recommendations set out at Section 4 of the Ecological Appraisal (October 2014) submitted with the planning application and integrated with the landscaping scheme to be submitted pursuant to condition 1 above, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved Habitat Enhancement Plan.*

- 6.84 The requirements of the condition were discharged under reference 170075 on 14 February 2017 on the basis of details contained within the submitted Mitigation, Enhancement and Management Plan prepared by The Environmental Dimension Partnership Ltd, received 12 January 2017.
- 6.85 Further to this the advice and guidance provided within the EDP Enhancement Plan (December 2016) and FPCR Ecological Assessment (March 2015) should be followed, including biodiversity enhancements and this is ensured by condition. On the basis of this and discharged condition 6 of Outline permission 143116 it is considered suitable biodiversity and habitat enhancements are secured and will be delivered.
- 6.86 As such the proposal satisfies Core Strategy policies LD2 and LD3 and the wider ecological and biodiversity aims and objectives of the NPPF.

#### Highways

- 6.87 It is noted access arrangements were approved under the original outline permission. The applicants propose to retain the spur and turning head referenced by the comments from the CPRE so to provide suitable access to the attenuation pond for maintenance purposes. The layout also matches the approved Section 38 Agreement so there are no highways objections to the matters considered as part of this application. The Transportation Manager confirms no objection on highway grounds to the proposals.
- 6.88 The access arrangements set in the 2014 permission are the provision of the roundabout and toucan crossing. Attached to this work is an additional footway route along Martins Way and pedestrian improvement to the Full Pitcher Roundabout. This work is subject to a Section 278 agreement.
- 6.89 The internal highways layout has achieved technical approval for a section 38 agreement and therefore meets the requirements of the Local Highway Authority. The layout, by virtue of the fact that it complies with the Council's highway design guide has a design speed of 20mph, therefore the road layout within the site is suitably constrained to support cycling on the carriageway.

- 6.90 Dwellings are served by suitable levels of off road parking and garages which are of dimensions recommended within the Council's Highways Design Guide. Secure covered cycle parking is provided either within garages or dedicated storage facilities. This, combined with the cycle lanes, internal roads designed to be able to be used as a 'shared surface' and controlled crossing over Leadon Way will help facilitate cycle use and encourage people to reduce car trips for local journeys.
- 6.91 Aligned to this and all the above, the site through its layout design and contributions to highways facilities creates both good connectivity from the site to the town and intervening facilities, whilst also enhancing connectivity within the south of the town. The plan below details connectivity, with route to School shown green, and location of town trail shown red, proposed features and improvements –



- 6.92 The proposed Improvements will help meet the NDP objectives to encourage cycling and walking connectivity through the provision and upgrade of crossings, footways and cycleways which help offset road congestion, limit and reduce air pollution, and provide a healthier option for short essential and recreational trips around the town. The routes above will create links between new and existing residential areas and local facilities and services; predominantly schools and community facilities: and the railway station. The proposals also demonstrate how account has been taken to improve the pedestrian and cycle network.
- 6.93 The controlled crossing over the Leadon Way road provided by the development is recognised within the NDP as a catalyst to open up other opportunities for more crossings to provide safe routes and support the cycling, pedestrian and disabled access priorities of which this is a firm desire of the people of Ledbury. On this basis the proposal more than demonstrates it complies with Core Strategy policies MT1 and NDP policy TR1.1 and furthermore helps contribute to

delivering 'sustainable development', reducing car dependency and reducing carbon emissions in line with Government aims and objectives.

- 6.94 Amended plans received 10 July 2019 address points raised by the Waste Manager with regards to refuse collection points and accessibility for refuse vehicles and a condition for these facilities being available prior to occupation condition is recommended.
- 6.95 As such regarding highway safety and related technical matters the proposal accords with CS policies SS4 and MT1, Ledbury Neighbourhood Plan policy SD1.1 and TR1.1, Herefordshire Council's Highways Design Guide and the NPPF.

#### Drainage

- 6.96 Whilst precise drainage details have not yet been agreed, it is noted Condition 22 attached to the original outline permission states –

*No development shall take place in any phase, including works of site clearance, until details of a sustainable surface water drainage scheme, based on the surface water drainage strategy set out in the Flood Risk Assessment and Surface Water Drainage Strategy dated October 2014 and the accompanying Drainage Strategy layout (Plan No 101 at Appendix E of the same) submitted with the planning application, has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details and timetable. The scheme to be submitted shall:*

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
  - ii) include a timetable for implementation of the scheme in relation to each phase of the development; and,
  - iii) provide a management and maintenance plan for the scheme, for the lifetime of the development, which shall include the arrangements for adoption of the scheme by any public authority or statutory undertaker, and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 6.97 This condition has not been discharged however details have been provided to support this application and are commented on by the Council's Drainage Engineer as set out above. Whilst unresolved, on the basis of this existing condition and previous assessment of drainage mitigation by the Appeal Inspector, the proposal accords with policies Core Strategy policies SD3 and SD4. It is emphasised conditions ensure surface water will be disposed of without adverse impact upon adjoining land uses and this position has been confirmed through the Inspector Decision and their appeal decision reference 143116 attached as to the Report.

#### Housing Mix

- 6.98 The 275 dwellings are made up of a mix of open market and affordable housing as follows:

##### Open Market – 165 Units

- 25 no. 2 bed units
- 70 no. 3 bed units
- 51 no. 4 bed units
- 19 no. 4/5 bed units

##### Affordable Housing – 110 units

- 10 no. 1 bed units
- 60 no. 2 bed units
- 35 no. 3 bed units

- 5 no. 4 bed units

6.99 It is noted the New Mills development was the last significant general needs development that has produced affordable housing in Ledbury, from around 15 years ago. The stock on that development belongs to West Mercia Housing. The Homepoint waiting list is growing considerably as there is a limited supply of affordable housing in Ledbury, and not enough to meet demand.

6.100 The housing mix of open market and affordable housing within the development is shown on the plan below (Drawing Title *Tenure Layout*, Drawing No. 5008 C, Received 28 May 2019), open market units are coloured blue, affordable rented units green, and affordable intermediate units red. Following concerns from Planning Committee a number of affordable units, seven, have been moved from the linear row of houses adjoining Leadon Way and swapped with seven open market dwellings.

6.101 The open market housing mix to strictly conform with policy would provide –

- 6 no. 1 bed units



- 43 no. 2 bed units
- 78 no. 3 bed units
- 38 no. 4 bed units

However, quashed permission reference 164078 ‘approved’ an open market mix as a percentage of the total open market mix as follows –

- 2 bed units 10%
- 3 bed units 50%
- 4 bed units 40%

The open market mix now proposed, as percentages provides –

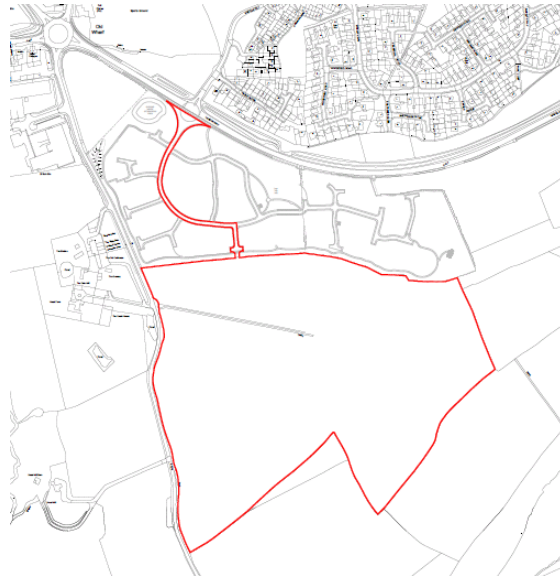
- 2 bed units 15%
- 3 bed units 42%
- 4 bed units 31%
- 4/5 bed units 12%

6.102 Whilst there has been a 3% increase in 4 and 4/5 units, the number of 2 bed units has also increased, by 5%. It is emphasised these figures are in regards to open market housing.

- 6.103 Further to the above, it is at the outline stage the housing mix should have been agreed. Article 2(1) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 includes definitions which provide a helpful starting point and a legal basis for determining what can and cannot be considered at the reserved matters stage. The phraseology used within the Order indicates the issues of scale and layout are principally concerned with the manner in which the buildings physically relate to one another and their surroundings and are not always appropriate for a mechanism for controlling the mix of housing.
- 6.104 Subsequent appeal decisions, including Appeal Ref: APP/Q3305/W/15/3137574 at *Land to the south of Longmead Close, Norton St. Philip, Frome BA2 7NS*, have considered the matter. Here Mendip Council refused to grant reserved matters approval on the basis that the mix of houses proposed, in terms of sizes/number of bedrooms, fails to reflect the identified local need within the sub-market housing area or the District as a whole.
- 6.105 The main issue in that appeal was whether this is material to the consideration of the application for reserved matters. The Inspector confirmed *the mix of housing in a development is a matter to be determined at the stage of granting planning permission*.
- 6.106 Noting the Council's previous position on a comparable open market mix, what is offered and the policy compliant affordable housing numbers it is considered the housing mix is acceptable.
- 6.107 The mix of 1, 2 and 3 bed units within the open market and affordable housing provision is considered to also meet the requirements of NDP Policy HO4.1 which supports such sized starter homes to help ensure young people can obtain suitable accommodation. This also reflects the areas of most need identified in the Housing Market Area Assessment.
- 6.108 On this basis The proposal will deliver an adequate suitable mix and numbers of housing and deliver much needed affordable housing compliant with Herefordshire Core Strategy policies SS2, SS3, H1 and H3 and relevant housing policies of the Ledbury Neighbourhood Plan and as such represents development that meets with regards to housing, the social objectives of the NPPF.

#### Other Matters

- 6.109 Objectors refer to a proposed adjoining development which would utilise the singular access to and from Leadon Way which serves the proposal subject to this report, and associated highway concerns from such a scenario.
- 6.110 An outline application for up to 420 dwellings with public open space, land for community facilities, landscaping and sustainable drainage system was made under reference 184032. The proposal has access for consideration within the application and would be as shown below utilising one of the main estate roads of the development under consideration in this report to then serve on and from Leadon Way via the new roundabout –



- 6.111 The application is subject to an Appeal which will be heard as a Public Inquiry with all dates regarding submission of statements, comments and the Public Inquiry itself still to be confirmed.
- 6.112 Comments have been made that Phase 2 should be considered and included within the reserved matters application to ensure appropriate assessment, however the applicant is not obliged to make a 'full area' application and phased approaches are not uncommon. In this situation the approach enables much needed housing to be delivered without delay whilst the area most impacted by noise is further assessed.

Section 106 Agreement / Planning Obligations and Conditions

- 6.113 On the basis of the 40% affordable housing proposed and as confirmed by the Planning Obligations Manager, the development is policy compliant with regards to Core Strategy policies and the completed Section 106 associated with the outline planning permission.

Summary and planning balance

- 6.114 In accordance with s.38 (6) of the 2004 Act, the application must be determined in accordance with the development plan, unless material considerations indicate otherwise. The Core Strategy constitutes a spatial strategy and policies designed to achieve sustainable development under the three objectives; social, economic and environmental. The NPPF, a material consideration, also seeks sustainable development through the economic, social and environmental objectives for planning. To enable a conclusion to be reached on whether the application proposals are in accordance with the development plan and to take account of material considerations, I now consider the conflicts with the development plan alongside the benefits and impacts of the proposals against each of the three roles or dimensions of sustainable development in turn.

**Turning to the three objectives of sustainable development;**

*Economic Objective*

- 6.115 A key aspect of the economic role played by the planning system is to ensure that sufficient land of the right type is available in the right places and at the right time to support growth.
- 6.116 In this context, the proposals score, in economic terms at least, positively. The proposal could help to support economic growth arising from:

- employment and supply of associated materials, goods and services in the construction phase
- support to local services and facilities arising from the new resident population
- economic benefits to the Council through the payment of New Homes Bonus.

6.117 The positive economic benefits arising from the scheme are significant, and will include direct economic betterment for local shops and businesses, however, these are not unique to this application proposal. However on the basis of the scale of the development I attach significant weight to these benefits.

*Social Objective*

6.118 Planning's social role incorporates providing support to strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment.

6.119 The proposal delivers a mix and range of housing, including affordable housing, which helps meet identified local demand now and for the future along with providing on site recreation facilities through 3 play areas, community landscaping and recreational walking routes. The delivery of these houses will also contribute to the social wellbeing of Ledbury through occupiers using and contributing to the town's existing society and life. The previously agreed Section 106 contributions include £390,000 towards Ledbury Primary School

6.120 As such the *social* objective is considered to be satisfied and I attribute significant weight to the benefits in community terms, particularly to establishing sustainable communities and a sense of place the development will secure.

*Environmental objective*

6.121 The environment objective requires consideration of how the development contributes to protecting and enhancing the natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution and mitigating climate change (low carbon economy).

6.122 The proposal will enable more sustainable patterns of activity through providing new housing located where the town centre and other services and facilities are accessible by foot or bicycle from the new houses. It is however clear the noise mitigation measures, namely acoustic fence and bund, will introduce a prominent feature, particularly until green landscaping and planting has matured to mitigate and screen it and a less than substantial harm to heritage asset results.

6.123 The proposal would result in less than substantial harm to the setting of a designated asset, however this is considered at the lower end of that scale, with significant landscape mitigation further minimising the harm. That harm is not considered to outweigh the wider benefits of the proposal, which includes the significant delivery of houses, including 110 affordable units.

6.124 Taking all of the above into account, officers consider that the public benefits arising from the scheme, as outlined above are positive. There is no evident harm arising in relation to other technical matters as discussed above, and officers do not feel that the impacts of the development should tip the planning balance in favour of refusal.

*Conclusions and planning balance.*

6.125 Policy SS1 of the CS reflects the presumption in favour of sustainable development in national policy and provides that planning applications that accord with the policies in the Core Strategy will be approved unless material considerations indicate otherwise.



6.126 The NPPF paragraph 11 provides the mechanism for the determination of the application stating:

**For decision making**

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

ii. 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.

6.127 As detailed above there is conformity with the housing and sustainable development policies of the development plan. These policies are consistent with the guidance contained within the NPPF.

6.128 The potential benefits that could be delivered by the scheme have also been considered above to which officers consider significant weight can be attributed.

**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. The development hereby approved shall be carried out strictly in accordance with the approved plans and details.**

**Reason: To ensure adherence to the approved plans and to protect the general character and amenities of the area in accordance with the requirements of Policy SD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.**

**2. Prior to the first occupation of the development hereby permitted details for the long term maintenance of the acoustic fence and structural noise mitigation adjoining Leadon Way as shown on the approved plans listed under Condition 1, shall be submitted to the Local Planning Authority for written approval. The maintenance of the fence and noise mitigation shall be undertaken in accordance with the agreed details unless otherwise agreed in writing by the Local Planning Authority.**

**Reason: To ensure the long term mitigation of noise and ensure adequate amenity to residents of the development hereby approved and to comply with Herefordshire Core Strategy policies SS6 and SD1 and the relevant aims and objectives of the National Planning Policy Framework as relate to noise and associated amenity are satisfied.**

**3. G11 Landscaping scheme – implementation  
The soft landscaping scheme approved as shown on the approved plans listed under Condition xx and xx of this Decision Notice shall be carried out concurrently**

with the development hereby permitted and shall be completed no later than the first planting season following the completion of the development. The landscaping shall be maintained for a period of xx years. During this time, any trees, shrubs or other plants which are removed, die or are seriously retarded shall be replaced during the next planting season with others of similar sizes and species unless the Local Planning Authority gives written consent to any variation. If any plants fail more than once they shall continue to be replaced on an annual basis until the end of the xx year maintenance period. The hard landscaping shall be completed prior to the first occupation of the development hereby permitted

**Reason:** In order to maintain the visual amenities of the area and to conform with Policy LD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

**5. G13 Tree planting**

With the exception of any site clearance and groundwork (excluding any works to retained features), no further development shall take place until a scheme of tree planting has been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall include details of the species, sizes and positions or density of all trees to be planted and the proposed time of planting. All tree planting shall be carried out in accordance with those details.

The trees shall be maintained for a period of xx years. During this time, any trees that are removed, die or are seriously retarded shall be replaced during the next planting season with others of similar sizes and species unless the Local Planning Authority gives written consent to any variation. If any trees fail more than once they shall continue to be replaced on an annual basis until the end of the xxyear maintenance period.

**Reason:** In order to maintain the visual amenities of the area and to conform with Policy LD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

**6. G14 Landscape management plan**

A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than privately owned domestic gardens shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the development or any phase of the development, whichever is the sooner, for its permitted use. The landscape management plan shall be carried out as approved.

**Reason:** In order to maintain the visual amenities of the area and to conform with Policy LD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

**7. Maintenance condition for acoustic fence**

**8. No development shall be undertaken to commence details of the play areas including equipment, surfacing, landscaping, means of enclosure and provision of seating, litter bins and the phasing of their provision until plans have been submitted and approved in writing by the Local Planning Authority. The play areas shall be constructed in accordance with the approved details and thereafter retained as approved.**

**Reason: in order to comply with the requirements of the Policies OS1 and OS2 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.**

- 9. Development shall be carried out in accordance with glazing specification details to be submitted to and approved in writing by the Local Planning Authority and thereafter included as such within the development and thereafter maintained.**

**Reason: To ensure adequate levels of amenity are maintained with those dwellings and to Comply with Herefordshire Core Strategy policies SS6 and SD1 and paragraphs 127 and 180 of the National Planning Policy Framework.**

**INFORMATIVES:**

- 1. Non Standard**

**The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations, including any representations that have been received. It has subsequently determined to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.**

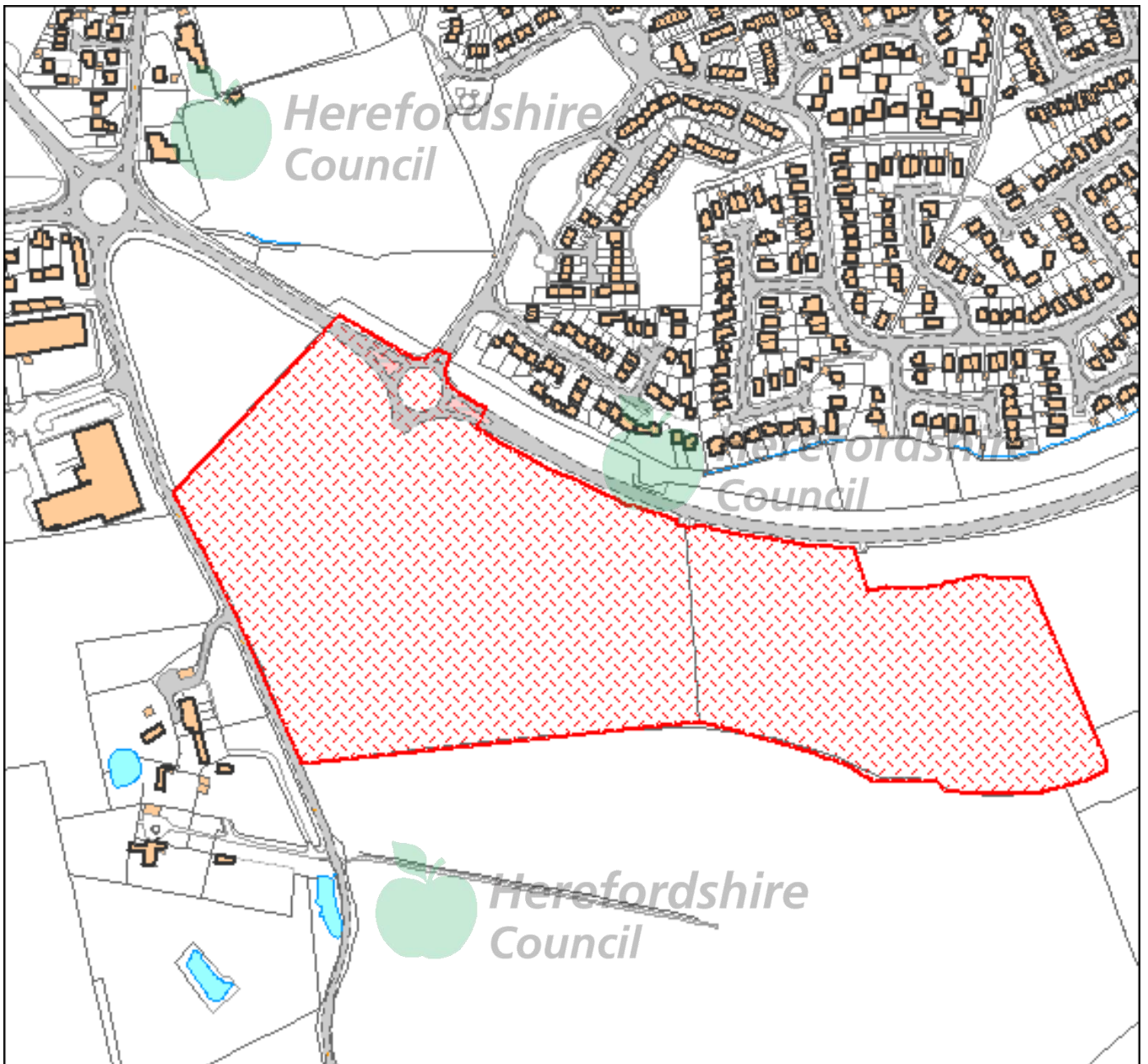
Decision: .....

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**Background Papers**

Internal departmental consultation replies.



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**APPLICATION NO:** 182628

**SITE ADDRESS :** LAND TO THE SOUTH OF LEADON WAY, LEDBURY

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Further information on the subject of this report is available from Mr C Brace on 01432 261947