

MEETING:	PLANNING AND REGULATORY COMMITTEE
DATE:	17 MARCH 2021
TITLE OF REPORT:	191409 - PROPOSED REDEVELOPMENT OF TOWER LODGE, 15 LINTON LANE, BROMYARD TO INCLUDE ALTERATIONS TO EXISTING DWELLING TOGETHER WITH CONSTRUCTION OF TWO NEW DWELLINGS AT TOWER LODGE, 15 LINTON LANE, BROMYARD, HEREFORDSHIRE For: Mr Paul Brooks, Allsetts Farm, Broadwas, Worcester, WR6 5NS
WEBSITE LINK:	https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=191409&search-term=191409
Reason Application submitted to Committee – Re-direction	

Date Received: 16 April 2019

**Ward: Bromyard
Bringsty**

Grid Ref: 365643,254432

Expiry Date: 11 June 2019

Local Member: Councillor Nigel Shaw

1. Site Description and Proposal

- 1.1 The site comprises a largely triangular shaped plot, which lies immediately south of the A44 (Bromyard Bypass), to the south-east of Bromyard Town Centre. Topography slopes gently east, in which boundary treatments comprise a mixture of trees and hedgerow to all sides. The site itself currently comprises a single detached dwelling with considerable garden area and the area hereabouts is of urban land use, with a caravan park to the immediate south and residential properties both east and west. To the north, on the other side of the A44, uses comprise a Petrol Station, currently closed car dealership and further residential dwellings.
- 1.2 Vehicular access is via an existing cul-de-sac off Linton Lane (U65407) that currently serves three other dwellings in addition to the application site (No. 7, 9 and 11 Linton Lane) and the site is well-connected. This includes a pedestrian footpath north-west of site, which leads directly to the A44, with a bus stop 150 yards from the footpath to the east, where Linton Lane meets the A44, which serves passengers to Hereford, Leominster and Worcester.
- 1.3 The application seeks planning permission for alterations and extensions to 15 Linton Lane, along with the erection of two detached dwellings and associated development within the garden area. Officers refer members to the proposed site plan below under consideration:



Proposed Site Plan

1.4 Officers wish to highlight that there is an outstanding objection in respect of HRA/phosphates, however the applicant requests the application be determined, as submitted.

2. Policies

2.1 Herefordshire Local Plan – Core Strategy 2011-2031 (adopted October 2015)

- 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
- BY1 – Development in Bromyard
- RA1 – Rural housing distribution
- H3 – Ensuring an appropriate range and mix of housing
- MT1 – Traffic management, highway safety and promoting active travel
- LD1 – Landscape and townscape
- LD2 – Biodiversity and geodiversity
- 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 relevant supplementary planning documentation can be viewed on the Council's website using the following link:-

https://www.herefordshire.gov.uk/info/200185/local_plan/137/adopted_core_strategy

2.2 Bromyard and Winslow Neighbourhood Development Plan is at drafting stage, although a request has been made to withdraw the neighbourhood area.

2.3 National Planning Policy Framework (NPPF – revised February 2019)

The revised NPPF sets out the UK government's planning policies and how these are expected to be applied. Officers view the following sections are applicable to this application:

- 1 – Introduction
- 2 – Achieving sustainable development
- 4 – Decision-making
- 5 – Delivering a sufficient supply of homes
- 8 – Promoting healthy and safe communities

- 9 – Promoting sustainable transport
- 11 – Making effective use of land
- 12 – Achieving well-designed places
- 14 – Meeting the challenge of climate change, flooding and coastal change
- 15 – Conserving and enhancing the natural environment
- 16 – Conserving and enhancing the historic environment

The NPPF, together with all relevant documents and revision, are viewable at the following link:

<https://www.gov.uk/government/publications/national-planning-policy-framework--2>

2.4 Planning Practice Guidance (PPG)

PPG categories have been revised and updated to make it accessible and should be read in conjunction with the NPPF. PPG can be accessed at the following link:

<https://www.gov.uk/government/collections/planning-practice-guidance>

3. **Planning History**

None

4. **Consultation Summary**

Statutory Consultations

4.1 **Welsh Water – Conditions recommended:**

“We have reviewed the information submitted as part of this application and note that the intention to drain foul water to the mains sewer and surface water to a soakaway. We have no objection to this proposal in principle, however if you are minded to grant planning permission we request that the following Conditions and Advisory Notes are included within any subsequent consent.

Conditions

No surface water and/or land drainage shall be allowed to connect directly or indirectly with the public sewerage network.

Reason: To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no pollution of or detriment to the environment.

Advisory Notes

The applicant may need to apply to Dwr Cymru / Welsh Water for any connection to the public sewer under S106 of the Water Industry Act 1991. If the connection to the public sewer network is either via a lateral drain (i.e. a drain which extends beyond the connecting property boundary) or via a new sewer (i.e. serves more than one property), it is now a mandatory requirement to first enter into a Section 104 Adoption Agreement (Water Industry Act 1991). The design of the sewers and lateral drains must also conform to the Welsh Ministers Standards for Gravity Foul Sewers and Lateral Drains, and conform with the publication "Sewers for Adoption"- 7th Edition. Further information can be obtained via the Developer Services pages of www.dwrcymru.com

The applicant is also advised that some public sewers and lateral drains may not be recorded on our maps of public sewers because they were originally privately owned and were transferred into public ownership by nature of the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011. Under the Water Industry Act 1991 Dwr Cymru Welsh Water has rights of access to its apparatus at all times”.

Internal Council Consultations

4.2 **Transportation – Conditions recommended:**

“The site benefits from existing sustainable links and a number of suggestions previously made relating to this site have been included in the proposal which makes it acceptable. These are set out in the Design and Access Statement and the Site Plan drawing which are part of the submission. In the event that permission is granted it would be beneficial to include condition CAZ to ensure that Site Operatives can park within the site extents.”

4.3 **Ecology – Objection:**

Most recent response (5th March 2020):

“The previous comments (holding objection) as regards the River Lugg Sac and phosphate pathways are updated below for completeness in addition to the updated ‘ecology’ comments.

The application site lies within the catchment of the River Lugg catchment, which comprises part of the River Wye Special Area of Conservation (SAC); a habitat recognised under the Habitats Regulations, (The Conservation of Habitats and Species Regulations 2017) as being of international importance for its aquatic flora and fauna. At present the levels of phosphates in the River Lugg exceed the water quality objectives and it is therefore in unfavourable condition. Where a European designated site is considered to be ‘failing’ its conservation objectives there is limited scope for the approval of development which may have additional damaging effects.

The competent authority (in this case the Local Planning Authority) is required to consider all potential effects (either alone or in combination with other development) of the proposal upon the European site through the Habitat Regulations Assessment process. Permission can only be granted if there is scientific certainty that no unmitigated phosphate pathways exist and that the HRA process can confirm ‘no adverse effect on the integrity of the River Wye SAC’. Natural England; the statutory nature conservation body, advise that recent case law requires effective mitigation to be demonstrated on a case by case basis whilst the River Lugg Nutrient Management Plan is reviewed to ensure greater certainty that this can provide large scale mitigation development in the area.

Therefore at this point in time on the basis of the information provided I find that the proposed development would harm a designated nature conservation site and would therefore conflict with policy SD4 of the Core Strategy which seeks to ensure that development does not undermine the achievement of water quality targets for rivers within the county and policy LD2 which states that development should conserve, restore and enhance biodiversity and geodiversity. Additionally, the proposal would be inconsistent with the provisions in the NPPF in relation to conserving and enhancing the natural environment and would not accord with the Conservation of Habitats Regulations, (The Conservation of Habitats and Species Regulations 2017). Notes: See position statement and any additional information at:

https://www.herefordshire.gov.uk/info/200142/planning_services/66/about_planning_services/12

The site proposes connection to the Bromyard mains Sewer which is managed through DCWW Bromyard STW which discharges in to the River Lugg SAC catchment area. This application clearly demonstrates an increase in occupancy for the site - previously 1x4 bedroom (6p foul water flows) – proposed 1x2bed, 2x3 bed (total 15P foul water flows) and so significant increased flows in to the main sewer system and an associated increase in Phosphate loading. These flow numbers are based on current water industry standard calculations. It is advised that no consent should legally be granted until such time as this HRA process has been fully and satisfactorily completed.

Updated other ecology comments:

The updated ecology report now supplied is noted and the detailed working methods, mitigation and biodiversity net gain enhancements should be secured through a relevant condition.

Nature Conservation – Ecology Protection, Mitigation and Biodiversity Net Gain

The ecological protection, mitigation, compensation and working methods scheme including the Biodiversity net gain enhancements, as recommended in the ecology report by Clarke Webb Ecology dated 1st March 2020 shall be implemented and hereafter maintained in full as stated unless otherwise approved in writing by the local planning authority.

Reason: To ensure that all species are protected and habitats enhanced having regard to the Wildlife and Countryside Act 1981 (as amended), the Habitats & Species Regulations 2018 (as amended), Policy LD2 of the Herefordshire Core Strategy, National Planning Policy Framework (2019) and NERC Act 2006”

4.4 Land Drainage – Conditions recommended:

“Overall Comment

In principle we do not object to the proposals, however we recommend that the following information provided within suitably worded planning conditions:

- Provision of a detailed drainage strategy that demonstrates that opportunities for the use of SUDS features have been maximised, where possible, including use of infiltration techniques and on-ground conveyance and storage features;*
- A detailed surface water drainage strategy with supporting calculations that demonstrates there will be no surface water flooding up to the 1 in 30 year event, and no increased risk of flooding as a result of development between the 1 in 1 year event and up to the 1 in 100 year event and allowing for the potential effects of climate change;*
- Evidence that the Applicant is providing sufficient on-site attenuation storage to ensure that site-generated surface water runoff is controlled and limited to agreed discharge rates for all storm events up to and including the 1 in 100 year rainfall event, with an appropriate increase in rainfall intensity to allow for the effects of future climate change;*
- Evidence that the Applicant is providing sufficient storage and appropriate flow controls to manage additional runoff volume from the development, demonstrated for the 1 in 100 year event (6 hour storm) with an appropriate increase in rainfall intensity to allow for the effects of future climate change;*
- Results of infiltration testing undertaken in accordance with BRE365 and confirmation of groundwater levels to demonstrate that the invert level of any soakaways or unlined attenuation features can be located a minimum of 1m above groundwater levels in accordance with Standing Advice;*
- A foul water drainage strategy showing how foul water from the development will be disposed of including evidence that the Applicant has sought and agreed permissions to discharge foul water from the site with the relevant authorities;*
- Confirmation of the proposed authority responsible for the adoption and maintenance of the proposed drainage systems”.*

5. Representations

5.1 Bromyard & Winslow Town Council – Objection

“At their meeting on 05/08/19 the Town Council resolved to object to this application (Minute Ref P19/75 1.) on the following material considerations; over development of the site, unreasonable development within this location, inadequate highway in both width and in non-conformity to modern standards resulting in increased endangerment to public health & safety, poor

landscaping and negative environmental impact. In addition, the Council wish to draw attention to the recent Planning Inspectorate Appeal Decision APP/W1850/W/19/3222582 - Red Lynch, Old Road, Bromyard HR7 4AU as it creates a precedent. The Town Council have again requested that Cllr Nigel Shaw as Ward Member to call this application into Committee and that Cllr Roger Page of the Town Council be allocated a speaking slot (P19/53.1)."

5.2 46 letters of representation, from 32 parties have been received, all objecting to the application. They raise the following considerations:

- Highway and pedestrian safety;
- Noise and disturbance;
- Overdevelopment;
- Impact on character and townscape; and
- Damage to property

A 35 signatory petition objecting to this application was also submitted.

The application can be viewed on the Council's website by the following link:-

https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=191409&search-term=191409

Internet access is available at the Council's Customer Service Centres:-

<https://www.herefordshire.gov.uk/government-citizens-and-rights/customer-services-enquiries/contact-details?q=customer&type=suggestedpage>

6. Officer's Appraisal

Policy context

- 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."* In this instance, the adopted development plan is the Herefordshire Local Plan – Core Strategy (CS). The National Planning Policy Framework (NPPF) is also a significant material consideration.
- 6.2 The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) (the 2012 Regulations) and paragraph 33 of the NPPF require a review of local plans be undertaken at least every five years in order to determine whether the plan policies and spatial development strategy are in need of updating, and should then be updated as necessary. The CS was adopted on 15 October 2015 and a review was required to be completed before 15 October 2020. The decision to review the CS was taken in November 2020. The level of consistency of the policies in the local plan with the NPPF will be taken into account by the Council in deciding any application. In this case, the policies relevant to the determination of this application have been reviewed and are considered to remain entirely consistent with the NPPF and as such can be afforded significant weight.
- 6.3 The Council is currently unable to demonstrate a 5-year housing land supply, currently at 4.22 years (January 2021). The latest Housing Delivery Test results show the Council have had three good years of housing delivery and no longer (until the next results are published) need to apply a 20% buffer to the target. Instead, a 5% buffer is applied. As set out at paragraph 11 of the NPPF, which engages a presumption in favour of sustainable development, the relevant policies in the Development Plan for the supply of housing should not be considered up to date where there are no relevant development plan policies or the policies which are most important for determining the application are out of date, permission should be granted unless the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusal (11di) or the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the NPPF, taken as a whole (11dii). This is consistent with Policy SS1 of the CS.

Further information on the subject of this report is available from Mr Josh Bailey on 01432 261903

- 6.4 The matter of housing land supply has been the subject of particular scrutiny in a number of recent appeal inquiries and it has been consistently concluded that the Council is not able to demonstrate a 5 year supply. However, this does not render such policies irrelevant and they may still be afforded weight. The spatial strategy of the Council's CS is considered sound and consistent with the NPPF; which itself seeks to avoid isolated development, as set out at Paragraph 79. It is considered the CS continues to attract weight, as confirmed by previous appeal decisions. It is a matter for the decision-maker to ascertain the degree of weight to be attributed to these policies, accounting for the specific context and circumstances of the case.

Principle of development

- 6.5 Policy SS1 of the CS states the Council will take a positive approach when considering development proposals that reflects the presumption in favour of sustainable development, which fully accords with the aims of the NPPF. The approach to housing distribution within the county is set out at Policy SS2. Hereford, as the largest settlement and service centre is identified to accommodate up to 6,500 of the requisite 16,500 homes, with the market towns identified in the second tier as recipients of approximately 4,700 dwellings. A separate policy for Bromyard, Policy BY1 (development in Bromyard) describes the town will accommodate a minimum of 500 new homes, balanced with approximately 5 hectares of employment land. Within Bromyard, new development proposals will be encouraged, where relevant, provided they facilitate a genuine choice of modes of travel including public transport, cycling and walking as alternatives to the private car; take account of the ability of existing and proposed infrastructure including foul drainage, water supply and water resources, allow the highway network to serve the development proposed without undue environmental impact; and contribute to the quality of Bromyard's local environment, including its landscape and historic character.
- 6.6 Policy BY1 focuses on delivering quality, sustainably constructed new homes to meet housing need and demand. It also aims to balance new development against the environmental constraints of this historic market town. The policy aims to deliver new homes in a dispersed manner, namely between a single strategic site expansion to the north-west of the town (Policy BY2) and through other smaller sites within and around the town. This is economically viable and spreads the effect of new buildings across this sensitive town and its surroundings.
- 6.7 In the absence of an NDP, it is for officers to assess an application in terms of its relationship to the main built form. In this instance, the site lies north of Linton Lane, within what would be regarded as an established and built up residential area of Bromyard. Indeed the existing use of site is residential. It is within walking distance of the town centre and officers are of the view that, in purely locational terms, the site is sustainable and development in this location is found to be compliant with Policy BY1 of the CS, which is consistent with the NPPF. The principle of development would be accepted. Of course, an application is not assessed on a matter of location alone and that there other material considerations, which are discussed in turn.

Design and Scale

- 6.8 Following receipt of amended plans, it is considered that the proposal would not result in development that would be of an unacceptable scale or constitute over development. The proposal, which was originally submitted for alterations to Tower Lodge, and for the erection of three new dwellings, has since been amended, omitting a new dwelling in the front garden to the west of site, to address concerns over scale.
- 6.9 The existing dwellinghouse (Tower Lodge) will be altered by demolishing the existing garage, insertion of new windows to the north and south elevations, together with a new single storey garage extension to the west elevation. This is shown below:



Figure: Tower Lodge (15 Linton Lane) proposed alterations

6.10 The two proposed detached dwellings take the form of 1 no. 3-bedroomed one-and-a-half storey dwelling and 1 no. 2-bedroomed single storey bungalow. They are shown below:

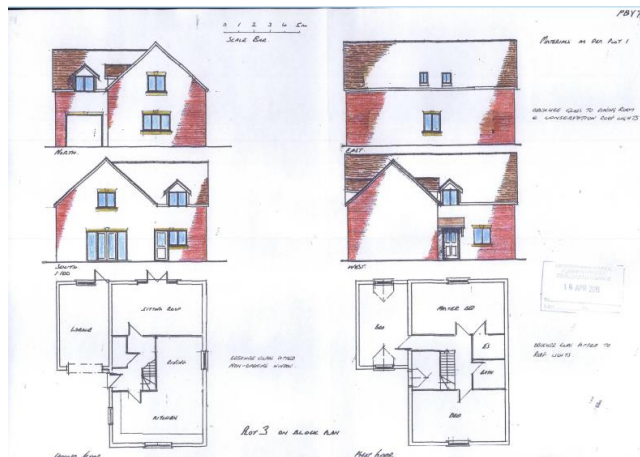


Figure: Plot 1 (3-bedroomed detached dwelling of brick walling and concrete plain tile to match Tower Lodge)

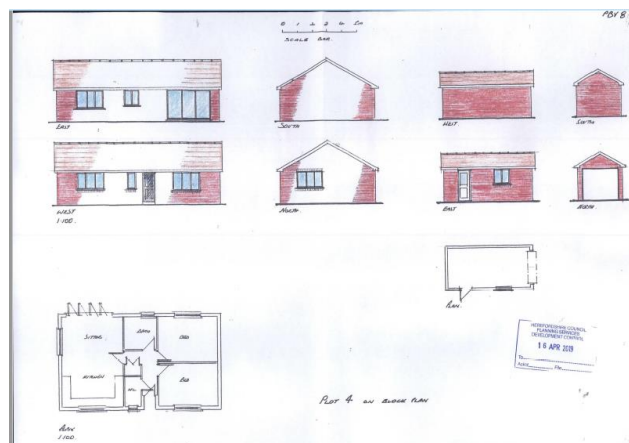


Figure: Plot 2 (2-bedroomed bungalow of brick walling and concrete plain tile to match Tower Lodge)

6.11 The scale, mass and appearance of the dwellings is reflective of the surrounding built form. Proposed materials and inclusion of local architectural detailing shows that the proposal has considered surrounding development, including dormer windows.

- 6.12 The provision of a 1.5 storey three-bedroomed dwelling and a single-storey 2-bedroomed dwelling will deliver an appropriate development which reflects the well-established need of housing in the Bromyard Urban HMA, which particularly identifies a need single storey bungalows and smaller 3-bedroomed dwellings. The proposed new dwellings reflect their immediate environment and are acceptable in terms of their design. It is considered the proposal is of an acceptable design in line with policies SD1 and LD1 of the CS, consistent with Section 12 of the NPPF.

Residential Amenity

- 6.13 The new dwellings will introduce development in closer proximity to existing properties, and this will inevitably give rise to a perception of a loss of residential amenity. However, officers are of the view that the new and existing dwellings will be sufficiently spaced from one another, particularly respecting that this forms part of an urban area, and do not consider that there is justification to refuse this application on amenity. Furthermore, the orientation of the dwellings and their layout does not give rise to overarching concerns for overshadowing or overbearing that would lead to conflict with the requirements of SD1 of the CS, which strives to safeguard levels of residential amenity, which is consistent with paragraphs 127 and 180 of the NPPF.

Landscape and Townscape Impact

- 6.14 It is not considered that the proposal departs from the character of the area, in which brick walling and concrete tiled roof are the primary materials on dwellings hereabouts. Thus, the development as a whole reflects the character of its immediate environs. The development will read; particularly from longer distances on the approach to the town, as part of a well-established built form that would not look out of place. Landscape and townscape impact is therefore minimal and the proposal is considered to conserve local character and the character of the area, in line with Policy LD1 of the CS, which is consistent with Section 15 of the NPPF.

Heritage

- 6.15 Based on evidence before officers, including site history and observations, there are adequate separation distances between the site and the nearest identified listed buildings of 24 Linton Lane (Grade II); Tower Hill (Grade II) and Tower Hill House (Grade II* Listed), largely as a result of built-up inter-visibility and land topography. Officers are also mindful of assessing the impact on the setting of the Bromyard Conservation Area, which lies east and west of the application site. The statutory duties of Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 hence apply. Although the site is elevated when viewed from the east of town looking west, it is relatively well screened, although this existing vegetation will be non-existent in certain months of the year. The density of development is also not uncharacteristic for the town. Although there will be glimpses of the proposed new dwellings, the development, in the view of officers would not result in harm to the character and appearance of the setting, experience and significance of these identified designated heritage assets. In the absence of any identified harm, no conflict is identified with CS Policy LD4, which is consistent with Section 16 of the NPPF.

Ecology

- 6.16 As confirmed by the ecologist, no loss of hedgerow is proposed and there are no significant ecological related concerns. There are also no ecological records of important or Protected Species on or adjacent to site. The updated ecology report now supplied is noted and the detailed working methods, mitigation and biodiversity net gain enhancements can be secured through a relevant condition, in line with CS Policies LD1, LD2 and LD3, consistent with the relevant sections of the NPPF.

Highways

- 6.17 The existing access arrangements are to remain unaltered, in which vehicles will access the site from the unclassified public highway at Linton Lane, which has appropriate visibility and is mitigated by road geometry, therefore reducing vehicle speeds. A new access within site will be created to provide for the two new dwellings. As confirmed by the transportation area engineer, there are no highway objections to the proposal, with parking and turning areas suitable and no objections to the intensification of this access or concerns raised over the surrounding network, including Linton Lane itself. A condition requiring details of parking for site operatives and construction traffic prior to development commencing is recommended. Accordingly, in the view of officers, the proposal accords with Policies MT1 and SS4 of the CS, which is consistent with Section 9 of the NPPF, not contravening paragraph 109.

Drainage

- 6.18 Surface water is to be disposed of by discharging to soakaways, in line with Policy SD3 and Foul Sewerage disposed of by discharging to the Mains Sewer, in line with Policy SD4 of the CS. Welsh Water do not object and relevant surface and foul water drainage strategies can be secured by condition as requested by Land Drainage.

Climate Change

- 6.19 In line with Policy SS7 of the CS, the following measures are proposed in this application (also detailed in planning statement):
- Incorporation of water saving devices to minimise use of water;
 - Rain water pipes to discharge into water butts;
 - The inclusion of solar panels on the roof slope, namely each dwelling to be provided with a 3.00 kW PV array facing east/west;
 - The site layout includes potential for passive solar gain with a higher proportion of glazing orientated within 30° of south;
 - Inclusion of cycle storage for each dwelling; and
 - Designed to meet energy performance standards as required by Building Regulations.

Habitats Regulations Assessment (HRA)

- 6.20 Policy LD2 of the CS requires proposals to conserve, restore, and enhance biodiversity and geodiversity assets in Herefordshire. The policy requires protection and retention of nature conservation sites, habitats, and important species in accordance with status.

- 6.21 Paragraphs 174 – 177 of the NPPF outlines the requirement for planning policies and decision to protect and enhance biodiversity and geodiversity. Paragraph 177 clearly states:

“The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site”.

Paragraph 176 clearly confirms that Special Areas of Conservation should be given the same protection as habitats sites.

- 6.22 The application site lies within the Lugg catchment (Lugg-Middle Frome sub-catchment), which comprises part of the River Wye Special Area of Conservation (SAC); a habitat recognised under the Habitats Regulations, (The Conservation of Habitats and Species Regulations 2017) as being of international importance for its aquatic flora and fauna. At present the levels of phosphates in the River Lugg exceed the water quality objectives and it is therefore in unfavourable condition.

Where a European designated site is considered to be 'failing' its conservation objectives there is limited scope for the approval of development which may have additional damaging effects. The competent authority (in this case the LPA) is required to consider all potential effects (either alone or in combination with other development) of a proposal upon the European site through the HRA process.

- 6.23 Planning Permission can only be granted if there is legal and scientific certainty that no unmitigated phosphate pathways exist and that the HRA process can confirm '*no adverse effect on the integrity of the River Lugg (Wye) SAC*'. Natural England, who are the statutory nature conservation body, advise that recent case law requires effective mitigation to be demonstrated on a case by case basis whilst the River Lugg Nutrient Management Plan is reviewed to ensure greater certainty that this can provide large scale mitigation development in the area. The 'Wealden' case judgement also confirms that it is not just individual applications (projects) that must be considered but any potential cumulative or 'in combination' effects (which applies to SSSI and SAC designated sites).
- 6.24 Case law (People over Wind and Peter Sweetman v Coillte Teoranta (Case C-323/17)) requires the decision maker, when considering the effect that a proposal may have on such a European Site either individually or in combination with other development, to consider mitigation within an appropriate assessment rather than at screening stage. In the absence of mitigation measures and using a precautionary approach, run off from drainage associated with the development may affect the nutrient levels and therefore, the water quality of nearby watercourses. The balance of which could impact on the habitat supporting wildlife and further exacerbate the unfavourable water quality condition within the SAC. As such, there is a risk of a significant effect on the internationally important interest features of the SAC.
- 6.25 Whilst previously Natural England and the Council had considered that development that accorded with the Nutrient Management Plan (NMP) for the River Wye SAC, that aimed to reduce phosphate levels to below the target by 2027, might be acceptable, the position has changed in light of more recent caselaw (Cooperatie Mobilisation for the Environment UA and College van gedeputeerde staten van Noord-Brabant (Cases C-293/17 and C-294/17)). This decision suggests that where a designated European conservation site is failing its water quality objectives there is no, or very limited scope for the approval of development that may have additional damaging effects.
- 6.26 Advice from Natural England dated 5 August 2019 to the Council confirms that reasonable scientific doubt remains as to whether the NMP would provide appropriate mitigation. However, specifically in relation to the use of private foul water treatment systems discharging to soakaway drainage fields at some distance from watercourses, criteria are set whereby there would be sufficient scientific certainty to ensure that all phosphate pathways to the River Lugg would be mitigated. These criteria were reiterated following consultation under Regulation 63 (3) of the Habitats Regulations 2017 whereby Natural England have indicated that if the following thresholds are met, then there will be no likely significant effects. '*All parts of the site are more than 30m from a mains connection; The drainage field is more than 50m from the designated site boundary (or sensitive interest feature) and; The drainage field is more than 50m from any surface water feature e.g. ditch, drain, watercourse, and; The drainage field is in an area with a slope no greater than 15%, and; The drainage field is in an area where the high water table groundwater depth is at least 2m below the surface at all times and; There are no other hydrological pathways which would expedite the transport of phosphorus e.g. fissured geology, flooding, shallow soil.*'
- 6.27 In this instance, the application proposes to connect to the mains sewer that is managed through the DCWW's Bromyard waste water treatment works and which discharges a final outfall into the catchment of the River Lugg SAC. A Habitat Regulations Assessment is therefore triggered by this application. As the Lugg catchment of the River Wye SAC is currently failing its legal conservation status due to exceedance of phosphate levels, no additional flows in to the mains sewer network are currently acceptable, as this would lead to additional volumes at outfall

containing phosphate levels above the conservation status. This application would create potential for additional phosphate flows into the mains sewer network, creating a direct pathway into the River Wye SAC.

- 6.28 The proposal cannot demonstrate that the proposed development would lead to reduced foul water flows compared to those actually occurring and contributing to the 'failure' of the SAC in July 2019. The proposed development would be creating new and additional flows over those in July 2019 and so this development would lead to an increase in foul water flows and thus phosphate pathways into the River Lugg SAC hydrological catchment. These pathways are identified as having a potential unmitigated 'adverse effect on the integrity' of the River Lugg SAC and thus, planning consent should not be granted at this time. Any grant of planning consent would be contrary to Conservation of Habitats and Species Regulations (2017); Core Strategy Policies SD4 and LD2; NPPF (2019) and the council's duty of care under the NERC Act (2006).
- 6.29 Although foul water is to be managed through the existing drainage system, that is the mains system, some phosphates will remain in water discharged post-treatment and therefore there is potential pathway for the development to have an adverse impact upon the River Lugg SAC. It is therefore the view of officers that insufficient information has been provided which has enabled the LPA to conclude, with scientific certainty, that there would be 'no likely significant effects' on the Lugg catchment of the River Wye SAC.
- 6.30 The LPA is therefore unable to undertake a HRA Appropriate Assessment, concluding there would be an unmitigated adverse effect on the integrity on the River Lugg (Wye) SAC and that there are NO 'Considerations of overriding public interest' under Habitat Regulations, Part 6, section 64. At this point in time on the basis of the information provided your officers find that the proposed development would harm by having an 'unmitigated adverse effect on the integrity' of a designated 'European' nature conservation site and would therefore conflict with policy SD4 of the Core Strategy which seeks to ensure that development does not undermine the achievement of water quality targets for rivers within the county and policy LD2 which states that development should conserve, restore and enhance biodiversity and geodiversity. The application would be contrary to CS Policies SS1 and SS6 on sustainability and environmental quality and conflict with paragraphs 174-177 of the NPPF in relation to conserving and enhancing the natural environment which would not accord with the Conservation of Habitats Regulations (The Conservation of Habitats and Species Regulations 2017).

Other considerations

- 6.31 Damage to property is not a material planning consideration. Restriction on working hours during construction can be addressed through a suitably worded condition.

Summary, Planning Balance and Conclusion

- 6.32 The NPPF has at its heart, a presumption in-favour of sustainable development, detailed at section 2. Sustainable development is considered to consist of three key elements, those being Economic, Social and Environmental objectives. Development proposals that are considered to meet these objectives (when taken as a whole) meet the first test and are considered to be sustainable development, thus benefiting from a presumption in favour of the development. The second half of Paragraph 11 of the NPPF applies the presumption in-favour of sustainable development for decision-making; 11 c) outlines that development proposals in accordance with an up-to-date development plan should be approved without delay. Paragraph 11 d) outlines that where the development plan is silent or the policies most relevant for the determination of the application are out-of-date (those being the housing policies), permission should be granted unless either of the following criteria are met. One, the proposed development will impact on protected areas or assets and the policies of the framework give a clear reason for refusal as set out at 11di), or the adverse impact of granting permission would significantly and demonstrably outweigh the benefits when assessed against the NPPF, as a whole, at 11dii).

- 6.33 The restrictive policies referred to at Paragraph 11di), are set out at Footnote 6 of the NPPF. This includes those relating to habitats sites, which the glossary of the NPPF confirms includes Special Areas of Conservation (SAC). Assessment of this application has identified conflict with paragraph 11di), through identification of an adverse impact upon the integrity of the River Wye SAC, namely the generation of additional phosphates through foul water into the mains sewer and create a direct pathway for phosphates to enter to River Wye SAC, without the legal and moreover, scientific certainly to demonstrate otherwise. This adverse impact would be contrary to the requirements of the Conservation and Habitats and Species Regulations 2017 and Policies LD2 and SD4 of the CS. Paragraph 177 also directs that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site. Given an adverse effect has been identified on the River Wye SAC in this case, the proposal does not benefit from the positive presumption and the tilted balance in favour of development at Paragraph 11dii) does not apply. Rather, the policies of the NPPF provide a clear reason for refusing, in accordance with Paragraph 11di). It follows that the proposed development is in conflict with the development plan as a whole, as well as the provisions of the National Planning Policy Framework and the Habitat Regulations and is unacceptable by virtue of its effect on the River Wye SAC alone.
- 6.34 The applicant has requested a determination is made, as submitted. Officers view the development is acceptable in all other regards apart from this matter. However, planning permission cannot be granted at this time and thus, the application is recommended for refusal.

RECOMMENDATION

That planning permission be refused for the following reason:

- 1. The application site lies within the extent of Lugg catchment, which forms part of the River Wye Special Area of Conservation (SAC), and the nature of the proposal triggers the requirement for a Habitat Regulations Assessment (HRA) to be undertaken. Under the Conservation of Species and Habitats Regulations 2017, there is a requirement to establish with certainty, and beyond all reasonable scientific doubt, that there will not be any adverse effect on the integrity of the River Wye SAC. The Lugg catchment however suffers from the effects of point source and diffuse water pollution and phosphate levels in the river have already exceeded conservation objectives. The proposal in this case would add to this through the generation of additional phosphates and there is insufficient information in providing the scientific and moreover, legal certainty, to conclude that that the development would not have an adverse effect on the integrity of the River Wye SAC. In the absence of sufficient information, the Local Planning Authority is unable to undertake a HRA Appropriate Assessment and concludes that there would be an unmitigated adverse effect on the integrity on the River Lugg (Wye) Special Area of Conservation and that there are no considerations of overriding public interest under Habitat Regulations, Part 6, Section 64. As a result, a satisfactory 'no adverse effect' HRA appropriate assessment cannot be achieved at this time, as required by The Conservation of Species and Habitats Regulations 2017. Therefore, the proposal, as submitted, is contrary to Policies SS1, SS6, LD2 and SD4 of the Herefordshire Local Plan – Core Strategy, the Natural Environment and Rural Communities (NERC) Act 2006 and guidance set out within the National Planning Policy Framework, namely paragraphs 174-177.**

INFORMATIVE:

- 1. **The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations by identifying matters of concern with the proposal and discussing those with the Applicant. Unfortunately, it has not been possible to resolve those matters within the timescale allocated for the determination of this planning application. However, the Local Planning Authority has clearly set out, within its report, the steps necessary to remedy the harm identified within the reasons for refusal – which may lead to the submission of a more acceptable proposal in the future. The Local Planning Authority is willing to provide pre-application advice in respect of any future application for a revised development.**

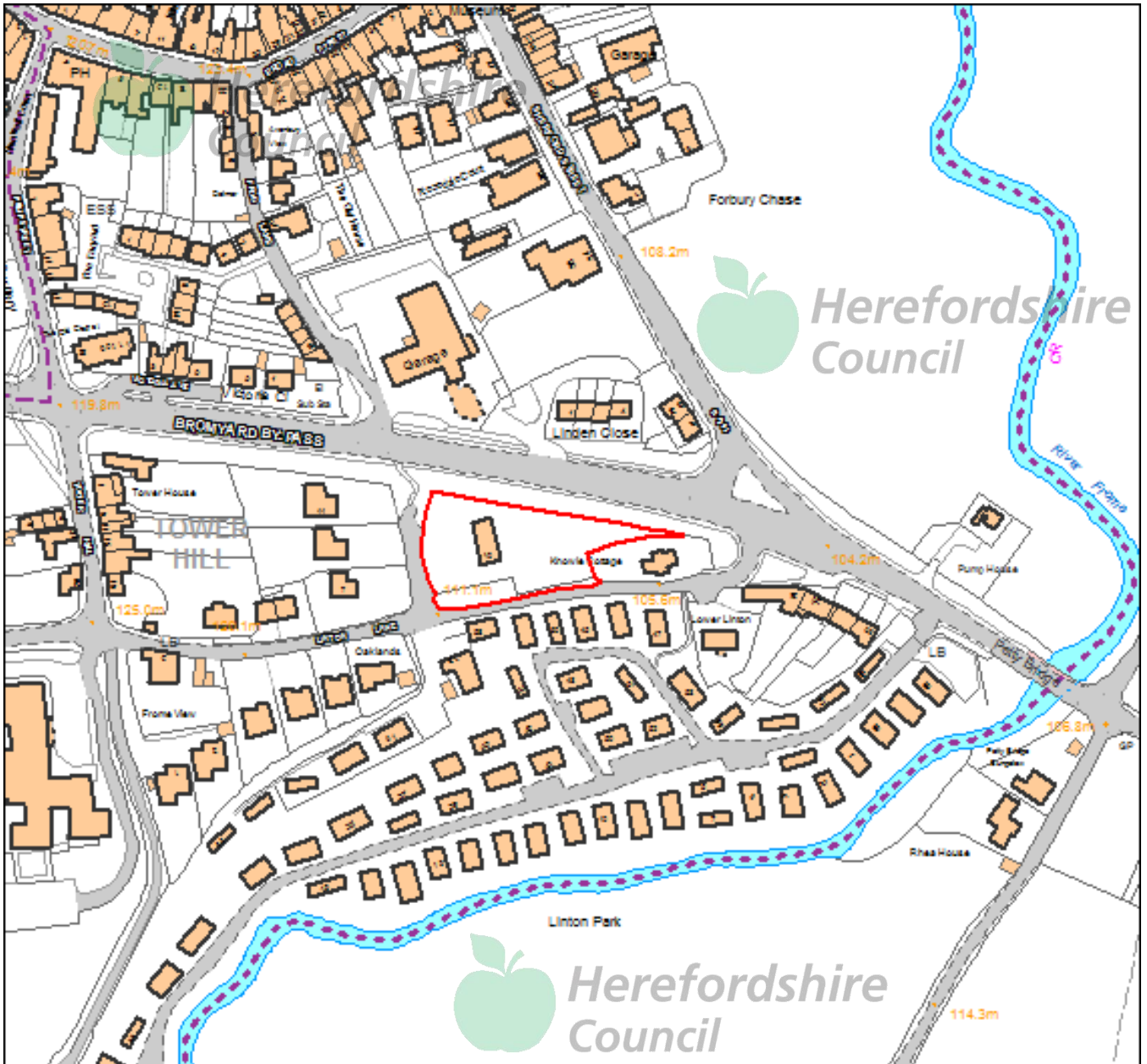
Decision:

Notes:

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Background Papers

Internal departmental consultation replies.



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APPLICATION NO: 191409

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