

<b>MEETING:</b>	<b>PLANNING AND REGULATORY COMMITTEE</b>
<b>DATE:</b>	<b>7 APRIL 2021</b>
<b>TITLE OF REPORT:</b>	<b>202265 - PROPOSED OUTLINE APPLICATION WITH ALL MATTERS, SAVE ACCESS, RESERVED FOR THE RESIDENTIAL DEVELOPMENT OF 20 OPEN MARKET HOMES AND 10 AFFORDABLE HOMES AT LAND SOUTH WEST OF ORCHARD CLOSE, DILWYN, HEREFORDSHIRE, HR4 8HQ</b>  <b>For: Garnstone Estate Ltd per Mr James Spreckley MRICS, Brinsop House, Brinsop, Hereford, Herefordshire HR4 7AS</b>
<b>WEBSITE LINK:</b>	<a href="https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=202265&amp;search-term=202265">https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=202265&amp;search-term=202265</a>
<b>Reason Application submitted to Committee – Redirection</b>	

**Date Received:** 15 July 2020

**Ward:** Weobley

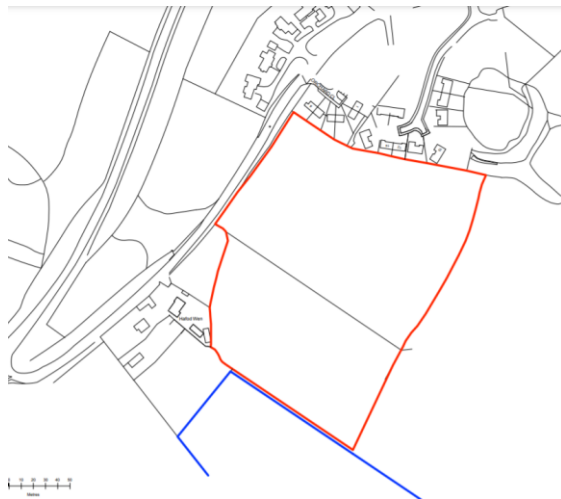
**Grid Ref:** 341432,254280

**Expiry Date:** 9 April 2021

Local Member: Councillor Mike Jones

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

- 1.1 The site lies to the south of Orchard Close and Castle Mound on the southwestern fringe of the village of Dilwyn. It comprises 3.76 hectares of agricultural grazing land that is accessed off the C1091, which runs alongside the northwestern boundary. The Dilwyn Conservation Area abuts the northern site boundary. The nearest listed building (The Great House: Grade II listed along with its separately listed garden wall, railings, gate and gate piers) is some 140 metres to the north of the site. Beyond The Great House lies the historic centre of the village where there are an abundance of listed buildings, with the Grade I listed Church of St Mary sited to the north. To the northeast of the site lies a moated mound, which is a Scheduled Monument. To the east and south of the site land is primarily in agricultural use, with two properties, with associated outbuildings, beyond the site to the southwest on the southeastern side of the C1091.
- 1.2 Hedgerows of varied densities and heights demark the site boundaries. There is an existing gated field access off the C1091 just within the 30 mph speed limit. Within the site levels fall by approximately 2.45 metres from the northwest corner to the southeast.
- 1.3 The application is in outline form, with only the principle of development and access for consideration at this time. Consequently, layout, scale, appearance and landscaping are reserved matters, for future consideration. The proposal is for 30 dwellings, comprising 20 open market and 10 affordable housing units. A single vehicular access is proposed off the C1091, to the southwest of the existing field gate.



Extract of Site Location Plan



Illustrative 'master plan' drawing extract

- 1.4 The following documents were submitted in support of the application: Preliminary Ecological Survey, Tree Survey Report, Transport Statement, Landscape and Visual Impact Assessment, Geophysical Survey Report, Planning Design and Access Statement, Surface Water Management Plan and Flood Risk Assessment, Heritage Impact Assessment (revised).
- 1.5 The applicant has also provided a response to Historic England and the Archaeology consultations.

## 2. Policies

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

SS1	-	Presumption in Favour of Sustainable Development
SS2	-	Delivering New Homes
SS3	-	Ensuring Sufficient Housing Land Delivery
SS4	-	Movement and Transportation
SS6	-	Environmental Quality and Local Distinctiveness
SS7	-	Addressing Climate Change
RA1	-	Rural Housing Distribution
RA2	-	Housing in Settlements Outside Hereford and the Market Towns
RA3	-	Herefordshire's countryside
H1	-	Affordable Housing – Thresholds and Targets
H3	-	Ensuring an Appropriate Range and Mix of Housing
SC1	-	Social and community facilities
OS1	-	Requirement for Open Space, Sports and Recreation Facilities
OS2	-	Meeting Open Space, Sports 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	-	Wastewater Treatment and River Water Quality
ID1	-	Infrastructure delivery

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 Supplementary Planning Document: Planning Obligations (SPD)

The SPD can be viewed on the Council's website by using the following link:  
<https://www.herefordshire.gov.uk/downloads/file/2616/planning-obligations-supplementary-planning-document>

## 2.3 Herefordshire Unitary Development Plan (saved policies) – (HUDP)

M5 - Safeguarding mineral reserves

This saved policy can be viewed on the Council's website by using the following link:  
<https://www.herefordshire.gov.uk/downloads/file/5376/chapter-11-minerals>

## 2.4 Minerals and Waste Local Plan (draft Plan – January 2019) – (dMWLP)

M2 - Safeguarding of Minerals Resources from Sterilisation

This emerging Plan can be viewed on the Council's website by using the following link:  
<https://www.herefordshire.gov.uk/downloads/file/16729/draft-minerals-and-waste-local-plan-january-2019>

## 2.5 National Planning Policy Framework (NPPF) 2019

Section 1	-	Introduction
Section 2	-	Achieving Sustainable Development
Section 4	-	Decision-Making
Section 5	-	Delivering a sufficient supply of homes
Section 6	-	Building a strong, competitive economy
Section 8	-	Promoting healthy and safe communities
Section 9	-	Promoting sustainable transport
Section 11	-	Making effective use of land
Section 12	-	Achieving well-designed places
Section 14	-	Meeting the challenge of climate change, flooding and coastal change
Section 15	-	Conserving and Enhancing the natural environment
Section 16	-	Conserving and Enhancing the historic environment

The NPPF can be viewed via the following link:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/810507/NPPF\\_Feb\\_2019\\_print\\_revised.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810507/NPPF_Feb_2019_print_revised.pdf)

## 2.6 National Planning Practice Guidance

The NPPG can be viewed via the following link:  
<https://www.gov.uk/government/collections/planning-practice-guidance>

## 2.7 Historic England's Historic Environment Good Practice Advice in Planning Notes

These can be viewed at this link:  
<https://historicengland.org.uk/advice/planning/planning-system/>

## 2.8 Dilwyn Neighbourhood Development Plan (dDNDP)

A Neighbourhood Development Plan Area was designated on 6 September 2016. The designation follows the Parish boundary.

The draft Dilwyn Neighbourhood Development Plan was sent for examination on 5 April 2019. On 17 January 2020 Dilwyn Parish Council decided to formally withdraw from the examination process. The stated reason was to allow the Parish Council to work with the landowner to ascertain whether there is potential for unexpected archaeological finds and for further information

in respect of the proposed allocated site, land to the southwest of Orchard Close and Castle Mound.

Policy DW1	-	Promoting Sustainable Development
Policy DW2	-	Housing Development in Dilwyn Village
Policy DW3	-	Housing Sites in Dilwyn Village
Policy DW4	-	Development Principles for Land to the south-west of Orchard Close and Castle Mound
Policy DW5	-	Affordable, including Intermediate Homes
Policy DW6	-	Conserving and Enhancing the Landscape, Scenic Beauty and Natural Environment of the Parish
Policy DW7	-	Protecting Heritage Assets
Policy DW8	-	Development within Dilwyn Conservation Area
Policy DW9	-	Foul and Storm Water Drainage and Flooding
Policy DW11	-	Design and Appearance
Policy DW13	-	Rural Enterprises, Diversification and Tourism
Policy DW14	-	Promotion of High-speed Broadband and Telecommunications
Policy DW17	-	Contribution to Community Facilities
Policy DW18	-	Traffic Measures within the Parish
Policy DW19	-	Highway Design Requirements
Policy DW20	-	Protection and Enhancement of the Public Rights of Way Network

The draft Dilwyn NDP, together with relevant supplementary planning documentation is viewable on the Council's website through the following link:-

<https://www.herefordshire.gov.uk/directory-record/3050/dilwyn-neighbourhood-development-plan>

### **3. Planning History**

3.1 No planning application history.

### **4. Consultation Summary**

#### Statutory Consultations

4.1 Welsh Water

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

Firstly, we note that the proposal isn't allocated within the Authority's Core Strategy and Neighbourhood Development Plan (NDP) for the area has been withdrawn. In reference to our representations during the NDP consultation process however, we can confirm that an assessment has been undertaken of the public sewerage system and receiving Waste Water Treatment Works (WwTW).

The proposed development would overload the WwTW and no reinforcement works are planned within Dwr Cymru Welsh Water's Capital Investment Programme. We consider the development prior to the delivery of reinforcement works to mitigate against the detriment associated with the proposed flows to be premature and are therefore unable to support the application in full. This is consistent with our representations during the NDP consultation process.

In order to understand what reinforcement works are required to facilitate the proposed development in advance of any future capital investment, the applicant can commission a Developer Impact Assessment at the WwTW.

Turning to matters of the proposed drainage we have reviewed the information submitted as part of this application with particular focus on the Surface Water Management Plan and drawing

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Further information on the subject of this report is available from Mrs Charlotte Atkins on 01432 260536

number 1679.00 which provides a high-level strategy for both foul and surface water. We note the intention to drain foul water to the mains sewer and surface water to a local watercourse and have no objection in principle. However, our record of public sewers does not show an asset in the location indicated on drawing 1679.00 for the mains sewer connection. The applicant is encouraged to contact us to commission a Sewer Location Survey which will then identify a suitable point of connection to the existing public sewer network.

Notwithstanding the above, we welcome dialogue with the applicant to explore options and identify solutions that will overcome the concerns. Therefore we are content for matters to progress and for the application to be determined, however we seek your co-operation to impose our recommended conditions and advisory notes set out below on any subsequent planning permission to provide us with the control we need to protect our interest and avoid pollution to the environment.

### Conditions

No development shall commence until a drainage scheme for the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall demonstrate how the site will be effectively drained; the means of disposal of surface water and indicate how foul flows will communicate to the public sewerage system. Thereafter, the scheme shall be implemented in accordance with the approved details prior to the occupation of the development and no further surface water or land drainage shall be allowed to connect directly or indirectly with the public sewerage system.

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.

No development shall take place until:

- i) A survey to establish the current flow and load received at Dilwyn waste water treatment works has been undertaken; and
- ii) An assessment of the impact of the development hereby approved on the waste water treatment works having regard to the results of the flow and load survey has been undertaken and agreed with the local planning authority; and
- iii) If necessary, a scheme of mitigation for the Dilwyn waste water treatment works has been agreed with the local planning authority in order to allow it to accommodate the foul discharges from the development hereby approved without increasing the risk of breaches to the discharge consent of the waste water treatment works.

No dwellings shall be occupied until the agreed scheme has been completed.

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](http://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.

The proposed development is crossed by a trunk/distribution watermain, the approximate position being shown on the attached plan. Dwr Cymru Welsh Water as Statutory Undertaker has statutory powers to access our apparatus at all times. I enclose our Conditions for Development near Watermain(s). It may be possible for this watermain to be diverted under Section 185 of the Water Industry Act 1991, the cost of which will be re-charged to the developer. The developer must consult Dwr Cymru Welsh Water before any development commences on site.

Our response is based on the information provided by your application. Should the proposal alter during the course of the application process we kindly request that we are re-consulted and reserve the right to make new representation.

If you have any queries please contact the undersigned on 0800 917 2652 or via email at [developer.services@dwrcymru.com](mailto:developer.services@dwrcymru.com)

Please quote our reference number in all communications and correspondence.

## 4.2 Historic England

Thank you for your letter of 22 July 2020 regarding the above application for planning permission. On the basis of the information available to date, we offer the following advice to assist your authority in determining the application.

### Summary

Historic England objects to proposal on heritage grounds. The proposal is assessed as causing a high degree of harm to the significance of the scheduled monument and the historic character of Dilwyn. This is through the impact it will have on the large enclosure associated with Dilwyn Castle and through its impact on the relative position of the castle on the southern edge of the settlement.

### Historic England Advice

The application is outline planning permission for a residential development of 30 dwellings to the immediate south of the village of Dilwyn. The site abuts a medieval castle (Dilwyn Castle) that is a scheduled monument known as 'Moated mound S of church (National Heritage List for England (NHLE) 1005336) and it also borders the Dilwyn conservation area.

The site has previously been proposed as an allocation in the Dilwyn Neighbourhood Plan to which Historic England expressed their concerns of the impact on the scheduled monument and historic character of Dilwyn. We understand that these concerns were highlighted on examination and the plan was withdrawn to permit further consideration of potential alternative allocation sites and discussion with Historic England regarding the current site.

### Significance of designated heritage assets

Dilwyn castle is a medieval motte castle located at the southeast end of the historic core of the village, with the church located at the northwest end. The castle's position on the southern edge of the settlement is illustrative of its role commanding the surrounding countryside and approaches from the south and east.

A large enclosure identified from LiDAR data has been recorded to the south of the castle (Herefordshire Historic Environment Record number 53767), including the application site, and may represent a large outer enclosure or bailey to the castle.

Although a recent geophysical survey has not shown any conclusive archaeological features within the enclosure, it was limited to the interior and did not include sample areas across the boundary of the enclosure. The application does not include a desk based assessment or heritage impact assessment, and does not include any other archaeological assessments assessing the field evidence of the enclosure through survey or evaluation. It is our view that the enclosure is likely to be associated with the castle and therefore makes a strong positive contribution to the scheduled monument. Surviving earthworks and below ground archaeological remains should be considered in relation to footnote 63, page 56 of the National Planning Policy Framework (NPPF) and further investigation would be required to assess more fully.

The proposal site makes a positive contribution to the significance of the scheduled monument and historic character of Dilwyn as it preserves part of the large enclosure to the south of the castle and, undeveloped; it maintains the historic setting of the castle on the southern edge of the settlement.

#### Impact on designated heritage assets

The proposal is accompanied by a geophysical survey, but no heritage impact statement (HIA) that assesses the site through assessment of available information and supporting field evidence. As such, we do not view the supporting information as meeting the requirements of paragraph 189 of the NPPF.

Notwithstanding the lack of an HIA, the proposal would develop a significant part of the interior of the large enclosure weakening the ability to appreciate and understand the relationship between the enclosure and the castle. It is likely to remove important archaeological remains that contribute to knowledge of the enclosure and the development of the castle and settlement.

It would also extend the settlement to the south of the castle, removing the ability to appreciate the historic position of the castle and harming the historic character of Dilwyn.

We assess this application as causing a high degree of harm to the significance of the scheduled monument and the historic character of Dilwyn.

#### Policy

Historic England's advice is provided in line with the importance attached to significance and setting of heritage assets in the Government's National Planning Policy Framework (NPPF) and associated guidance, and Historic England's Historic Environment Good Practice Advice in Planning Notes.

In accordance with NPPF 189, local authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be sufficient to understand the potential impact of the proposal on significance of the heritage asset. This information should be used to assess the application remembering that great weight should be given to the asset's conservation (NPPF 193) and any harm to the significance of a designated heritage asset (including within its setting) requires clear and convincing justification (NPPF 194).

#### Position

Historic England objects to the application on heritage grounds. The proposal causes a high degree of harm to the significance of the scheduled monument and also harms the historic character of Dilwyn, which is designated as a conservation area.

Although the application is accompanied by a report on geophysical investigation of the site, no further heritage assessment information is provided with the application and therefore we view the supporting information as not meeting the requirements of NPPF 189.

We recommend you seek the advice of your own specialist archaeological and conservation advisers regarding this application.

#### Recommendation

Historic England objects to the application on heritage grounds.

We consider that the application does not meet the requirements of the NPPF, in particular paragraph numbers 189, 193 and 194.

In determining this application you should bear in mind the statutory duty of section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

Your authority should take these representations into account in determining the application. If you propose to determine the application in its current form, please inform us of the date of the committee and send us a copy of your report at the earliest opportunity.

Please contact me if we can be of further assistance.

### **4.2.1 Historic England (amended)**

Thank you for your letter of 8 September 2020 regarding further information on the above application for planning permission. On the basis of this information, we offer the following advice to assist your authority in determining the application.

#### Summary

Historic England maintains its objection to the proposal on heritage grounds. We retain the view that the proposal would cause a high degree of harm within the less than substantial scale, as defined in the NPPF, to the significance of the scheduled monument and also the historic character of Dilwyn.

#### Historic England Advice

The further information is a Heritage Impact Assessment (HIA) prepared by Archaeology Warwickshire in July 2020. The HIA assesses the proposal site and recorded large outer enclosure or bailey to Dilwyn Castle in relation to the contribution they make to the significance of designated and non-designated heritage assets. The assessment is based on the results of a geophysical survey and a walkover of the site, but does not include any more detailed survey work or investigation such as measurements across the boundary of the recorded large enclosure or present the historic mapping against the recorded form of the large enclosure shown on LiDAR imagery.

The HIA postulates that the large enclosure is a product of boundary modifications and removals in the 20th century. However, the form of the boundary bank indicated on LiDAR is broad being over 5m wide and consistently displays as an internal bank and external ditch. In addition elements of the enclosure boundary do not coincide with boundaries shown on available historic ordnance survey mapping and the tithe mapping is not presented for comparison. In addition the geophysical survey was restricted to the interior of the enclosure and did not assess the character of the surrounding boundary. We therefore view the information as not sufficient to determine the character of the enclosure and the impact of the proposal. As such the information does not meet the requirements of National Planning Policy Framework (NPPF) 189. Further, more detailed measured survey of the boundary form, an extension of the geophysical survey over the boundary and possible follow on archaeological field evaluation would be, in our view, required to clearly understand the character of the enclosure.



Notwithstanding the need to better understand the large enclosure through further field assessment, we retain the view that the development of this site would extend the settlement to the south of the castle, removing the ability to appreciate the historic position of the castle in relation to the historic settlement and therefore harming the significance of the scheduled monument and the historic character of Dilwyn.

We retain the view that the proposal would cause a high degree of harm within the less than substantial scale, as defined in the NPPF, to the significance of the scheduled monument and also the historic character of Dilwyn. We therefore maintain our objection to the application on heritage grounds.

#### Recommendation

Historic England objects to the application on heritage grounds.

We consider that the application does not meet the requirements of the NPPF, in particular paragraph numbers 189, 193 and 194.

In determining this application you should bear in mind the statutory duty of section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

Your authority should take these representations into account in determining the application. If you propose to determine the application in its current form, please inform us of the date of the committee and send us a copy of your report at the earliest opportunity.

Please contact me if we can be of further assistance.

#### 4.2.2 Historic England (amended)

Thank you for your letter of 23 October 2020 regarding further information on the above application for planning permission. On the basis of this information, we offer the following advice to assist your authority in determining the application.

##### Summary

Historic England maintains its objection to the proposal on heritage grounds. We retain the view that the proposal would cause a high degree of harm within the less than substantial scale, as defined in the NPPF, to the significance of the scheduled monument and the historic character of Dilwyn.

##### Historic England Advice

The further information is a written response by the applicant to comments made by Historic England and Herefordshire Council's archaeological advisor, and an amended Heritage Impact Assessment (HIA). The amended HIA includes additional photographs and additional diagrams to inform an understanding of the proposal site.

The HIA characterises the area as low lying wet ground defined by higher ground to all sides. The site is located to the south of Dilwyn Castle, which occupies a position on the southern edge of the settlement.

We maintain our view that the proposal would be harmful to the significance of the scheduled monument and the historic character of Dilwyn. The undeveloped character of the proposal site is important in maintaining the castle's position on the southern edge of the settlement, which is illustrative of its role commanding the surrounding countryside and approaches from the south and east. The castle is a key component of the Dilwyn conservation area. Development would enclose the monument, removing this legibility and the positive contribution to the significance of the designated heritage assets.

Historic England maintain the view that the proposal would cause a high degree of harm within the less than substantial scale, as defined in the NPPF, to the significance of the scheduled monument and historic character of Dilwyn. We therefore maintain our objection to the application on heritage grounds.

#### Recommendation

Historic England objects to the application on heritage grounds.

We consider that the application does not meet the requirements of the NPPF, in particular paragraph numbers 192, 193 and 194.

In determining this application you should bear in mind the statutory duty of section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

Your authority should take these representations into account in determining the application. If you propose to determine the application in its current form, please inform us of the date of the committee and send us a copy of your report at the earliest opportunity.

Please contact me if we can be of further assistance.

#### Internal Council Consultations

#### 4.3 Archaeology Advisor

The application as submitted is fundamentally deficient in that it does not actually include an appropriate archaeological assessment, as is required under Para 189 of the NPPF.

From what was previously known about the site, (augmented since by the submitted geophysical survey) there do not appear to be significant risks as regards below-ground archaeology here. However, there are clearly major issues as regards the layout of the development as proposed, in relation to the setting of the scheduled 'castle' mound [1005336] in particular.

By introducing, against advice, extensive built development into the especially sensitive southern / south-eastern aspect of the mound, the proposed development would harm the significance of this key heritage asset to an unacceptable degree - the limited landscape buffer notwithstanding. Also, the broad segmented zones that make up the development would be completely alien to the historical form of Dilwyn, characterised as it is here by a much more lineal pattern of growth.

Whilst we would accept that there may be some potential for suitable housing in the western part of the site only, close to the road, this does not mean any spread of development across the field to the east is acceptable. As things stand, the application fails to conserve and enhance the historic environment. Given the considerable weight that should be afforded to the protection of heritage assets here, planning permission should be refused.

##### 4.3.1 Archaeology Advisor (amended)

1. To be clear, these comments are made subsequent to those already given 13/08/2020, but now also having regard to a submitted heritage impact assessment (Land South of Orchard Close Dilwyn Herefordshire – Heritage Impact Assessment ; Archaeology Warwickshire Report 2062).
2. This Heritage Impact Assessment, although in some ways a good report of its type, does not properly follow the staged approach to heritage assets and 'setting' laid out in GPA 3 (The

Setting of Heritage Assets, Historic Environment Good Practice Advice in Planning Note 3 – Historic England).

3. Perhaps partly as a consequence of this, the assessment significantly underestimates the impact of the development on the scheduled castle mound and its' near environs. We cannot agree that this impact would be "moderate – slight [adverse]" as is claimed in Section 7.19, and would regard the reasoning behind that conclusion as flawed.
4. We remain of the opinion that the development as currently proposed would occasion a high level of harm to the historic environment here, so our objection still stands.

#### 4.3.2 Archaeology Advisor (amended)

Given the extensive correspondence up to this point, from the abortive neighbourhood plan proposal up to this application stage, and the very clear negative views consistently given by archaeology in relation to it, we would as a matter of principle question the need for further comment from ourselves.

In reality, there is little 'new' or 'additional' to consider here. The matter, in our view, is straightforward, and the application should move forward to determination without delay on that basis.

Objection maintained, no further comments.

#### 4.4 Principal Building Conservation Officer

Designation and constraints:  
Scheduled ancient monument  
Conservation Area

Summary of response:  
Site visit made: Tuesday 24th November 2020

Summary: The proposal is for a residential development on open farmland on the southern edge of the village of Dilwyn. The land abuts the conservation area and is in close proximity to the moated site of Dilwyn castle, a scheduled ancient monument. The character of the village is very much defined by its concentration of historic buildings located within the centre of the village with landmark features at gateways into the village at the northern end of the village with the church and the scheduled ancient monument on the southern edge. The open farmland which surrounds the village greatly contributes to the character of this tightly knit settlement. It is considered that further development outside the conservation area would be harmful to its character and would adversely affect the setting of the scheduled ancient monument.

Criteria for decision making:

In determining any planning applications, special attention shall be paid to the desirability of preserving listed buildings and preserving the character of conservation areas.

Relevant policies:

National policies:

Planning (Listed buildings and Conservation Areas) Act 1990  
NPPF 2019 – Chapter 16 (Paras 184 – 202 )

Local policies:

Policy LD1 – Landscape and Townscape

Policy LD4 Historic Environment and Heritage Assets

SD1 Sustainable design and energy efficiency

Policy SS6 Environmental Quality and Local Distinctiveness

RA2- housing growth within identified settlements

RA3 Herefordshire countryside

Other relevant policy guidance:

Conservation Principles, Policies and Guidance for the Sustainable Management of the Historic Environment – English Heritage 2008

Historic Environment – Good Practice Advice Notes 2 +3

Statements of heritage Significance: analysing significance in heritage assets, Historic England Advice Note 12

Potential impact of the development:

The main route through the village from the north is from the A4112, snaking its way through the historic centre of the village on a north south axis before rejoining the main road south of the village. From the centre of the village roads lead off east to Dilwyn Common and Weobley Marsh. The church of St Mary effectively marks the gateway into the village from the north, and as the road pinches in and bends as it exits the village at its southern end the imposing gate piers and gates of Great House to all intents suggests the southern gateway. The historic settlement mostly comprises timber framed buildings with some rendered and some brick dwellings, and the modern development such as it is, is clustered around Castle Mount, Orchard Close and Henwood Close. Set back from the village centre they do not significantly impact on the appreciation of the historic core.

The proposed site is located at the extreme southern edge of the village on open farmland. It is most visible when the village is approached from the south as the road here drops down into the village and you get wide views over the village and to the open farmland to the east. It is from this point too that the large moated site of the castle is most prominent. The motte is now largely covered with trees and with the modern development to its west, it is perhaps hard to appreciate how imposing a structure it must have appeared rising up above the flat landscape that surrounds it. A more oblique view is also gained from the Ledgemoor Road.

The conservation area draws a fairly tight ring around the village and its character is as much defined by its buildings as the landscape which surrounds it. The key and earliest elements of the village are the church and castle, both of similar date.

Whilst the setting of the castle site has been adversely affected by the modern development of Orchard Close and Castle Mount, it places a greater emphasis on the need to protect the open landscape which surrounds it to the south, east and north.

The preliminary layout provided identifies 3 blocks of residential development concentrated in the northern half of the site closest to the scheduled ancient monument. The access road is indicated as the means by which a view to the monument is maintained and its immediate setting is shown as being protected by a traditional orchard.

However It should be recognised that it is the open landscape which surrounds a castle which is as integral to its defence as the castle structure itself. By surrounding it with housing and setting aside a small undeveloped corner of the site and planting it with trees this does not preserve or protect its setting.

The entry point into the village from the south is quite clearly appreciated and to some extent Orchard Close does distinctly form the southern boundary of the village. To extend modern development beyond this point would in my opinion breach the quite tightly enclosed settlement pattern which is an integral characteristic of the conservation area.

#### Recommendation:

It is my opinion that the site is unsuitable for development. It would adversely affect the character of the conservation area to a high degree within the less than substantial scale as defined in the NPPF. Similarly, by developing land which is integral to our appreciation and understanding of the scheduled ancient monument of Dilwyn Castle, the setting would be irrevocably compromised. It would therefore fail to meet requirements as set out in local and national guidelines and result in a high degree of harm with in the less than substantial scale as defined above.

## 4.5 Team Leader Area Engineer

This application is an outline application and comments made will only be concerned with the access arrangements, as layout is a reserved matter. This proposal is for residential development of 20 open market homes and 10 affordable homes located in Dillwyn village.

This development would not have a detrimental impact road safety. This is because according to the data provided by Herefordshire Council of the Personal Injury Collision data over the past five years there has only been one incident recorded and that was considered 'slight' by West Mercia Police and this record is not considered to be severe. Therefore, with the addition of this development they will be no negative effects on road safety.

Time Range	Trip Rates per Dwelling			Trip Generation		
	Arrivals	Departures	Totals	Arrivals	Departures	Totals
	30 dwellings					
08:00 - 09:00	0.123	0.392	0.515	4	12	15
17:00 - 18:00	0.425	0.123	0.548	13	4	16
Daily	2.095	2.080	4.175	63	62	125

#### Peak Hour Trip Rates and Traffic Generation

The table above from the transport statement shows that the development is predicted to generate 15 vehicles movements in the AM peak and 16 vehicle movements in the PM peak hours. The daily number of vehicle movements generated by the development is forecast to be 125 vehicles. When comparing this to the existing vehicle movements and the nature of the C1091 these additional trips will have no major effect to the local highway network.

The visibility splay of 2.4m x 54m both directions will be acceptable and comply with the guidance set out in the DfT's Manual for Streets 2 document. This visibility splay will be achievable as there no obstructions in the way. In order to secure this splay it is recommended that condition CAB is applied for these dimensions.

Information on access construction has not been provided. The access construction details will need to be in accordance with the Herefordshire Council specification and to ensure this CAE should be applied in the event that permission is granted.

In order to make the access strategy acceptable the pedestrian facilities should extend along the C1091 for as far as possible to minimise the distance pedestrians will be required to share the surface with the two-way traffic on the route. It is recognised by the LHA that a natural pinch in

highways extents occurs for some of the route, but a pedestrian facility should exit the site and provide safe facility for pedestrians to make a journey to the amenities of Dilwyn village. Details of this scheme will be required before the LHA can finalise a response on this scheme.

Due to its proposed scale, the development will attract Section 106 contributions for highway improvements in the area, in line with Herefordshire Council's SPD. Based on the content of the application form, paragraph 3.1.14 of the Supplementary Planning Document setting out planning obligations is relevant for the site which sets out that affordable housing numbers are exempt from these contributions, as a result the indicative value is calculated excluding these dwellings. Low accessibility weighting S106 contributions would be required as follows, as a contribution towards the cost of public realm improvements and supporting active travel measures:

- Residential per 2 bed house - £ 2457
- Residential per 3 bed house - £ 3686
- Residential per 4 bed house - £ 4915

All applicants are reminded that attaining planning consent does not constitute permission to work in the highway. Any applicant wishing to carry out works in the highway should see the various guidance on Herefordshire Council's website:

[www.herefordshire.gov.uk/directory\\_record/1992/street\\_works\\_licence](http://www.herefordshire.gov.uk/directory_record/1992/street_works_licence)  
<https://www.herefordshire.gov.uk/info/200196/roads/707/highways>

#### 4.6 Waste Operations Team Leader

Should the applicant proceed to a reserved matters application the following should be provided:

A swept path analysis to show in principle that a large refuse collection vehicle (RCV) can access all internal access roads and turning heads where it is intended the RCV would access.

Bin storage locations for each plot. Where wheeled bins are to be stored to the front of the property (including when bins are to be placed in the front on collection day) there should be at least 1 metre space around the bin to allow the resident and collection operatives to manoeuvre the bin, and it should not cause an obstruction to the entrance to the property.

Bin collection points (areas of hardstanding where residents can place their bins for collection) should be provided for any plot located over a 25 metre walking distance from where the RCV can safely access in accordance with "Guidance Notes for storage and collection of domestic refuse and recycling"

Please refer to "Guidance Notes for storage and collection of domestic refuse and recycling" for advice with regards to waste management arrangements for households.

[www.herefordshire.gov.uk/downloads/file/2883/guidance\\_notes\\_for\\_storage\\_and\\_collection\\_of\\_domestic\\_refuse\\_and\\_recycling](http://www.herefordshire.gov.uk/downloads/file/2883/guidance_notes_for_storage_and_collection_of_domestic_refuse_and_recycling)

Please note, in the event that the roads within this development do not become adopted by Herefordshire Council, the council will only agree to travel private roads for the purposes of waste collection if:

The council and its contractors determine that collections can be carried out safely; and

The council receive written confirmation from the landowner/developer that the roads over which the refuse collection vehicle (RCV) will travel are built to a suitable specification for this type of vehicle to travel over on a frequent basis; and



The council and its contractor(s) are indemnified against damage to property and general wear and tear, other than that caused through negligence.

#### 4.7 Strategic Housing Manager

I have reviewed the above outline application and can confirm that the requirement is to provide 35% affordable housing on the development which equates to 10 dwellings, which has been proposed. I appreciate that this application is for outline with all matter reserved except access, but I would advise that I would be looking for a split of 53% for social rent and 47% for intermediate tenure. The exact mix and location of both the open market and affordable units to be agreed prior to the submission of a reserved matters application and may include houses and bungalows

Local connection in relation to the affordable units would need to be included within a S106. As well as wheelchair accessible units.

I note from the NDP that shared ownership, social rent and discounted market units are required. Therefore I would also be happy to support low cost market as an intermediate tenure on this application.

With regards to the open market units I would suggest the following:

2 Bed x 7, 3 Bed x 11, 4 Bed x 2

#### 4.8 Environmental Health Service Manager (Noise/Nuisance)

From a noise and nuisance perspective our department has no objections to this proposal.

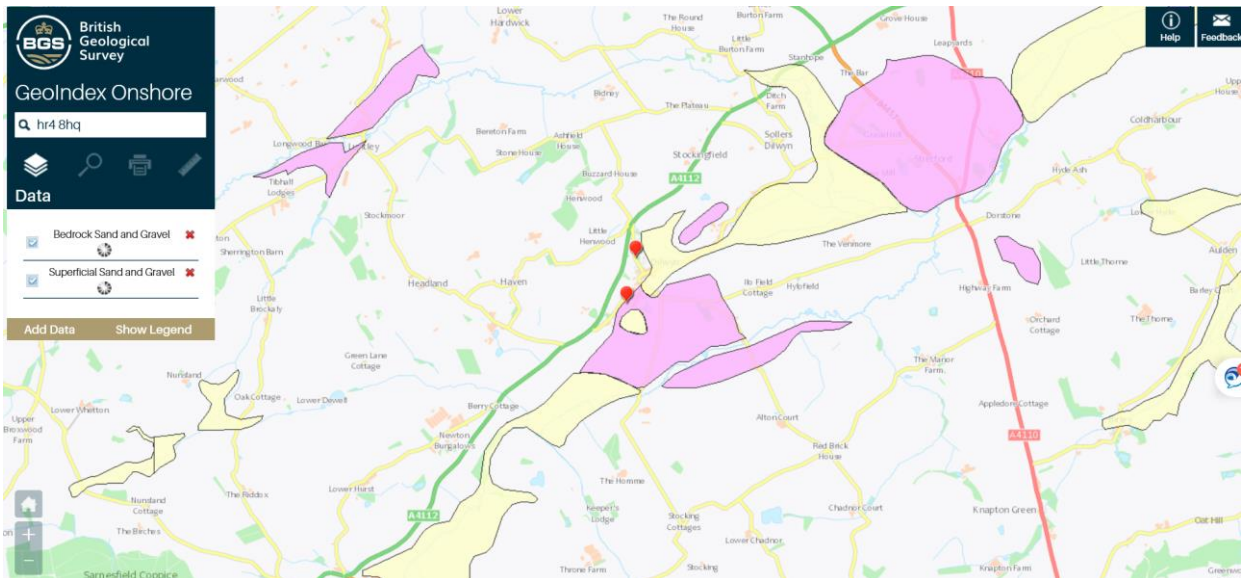
#### 4.9 Public Rights of Way Manager

No objection.

#### 4.10 Minerals and Waste

Thank you for consulting me on the above application. I can confirm that the site is identified under policy M5 of the Herefordshire Unitary Development Plan (HUDP) for the safeguarding of minerals due to presence of a sand and gravel deposit across the site. The policies within the HUDP will be replaced by the policies within the Draft Minerals and Waste Local Plan (DMWLP) once adopted. At the current time theses polices can be afforded moderate weight.

This application has been supported by a Geophysical Survey Report dated February 2020 which purposes was to identify any archaeological potential of the site. The survey was not aimed at assessing the effect of the proposed development on the mineral resource beneath the site. It does however identify in paragraph 4.13 that the underlying geology comprises siltstone and mudstone of Raglan Mudstone Formation, with superficial deposits consisting of head clay, silt and sand and gravel. The British Geological Survey (2020) mapping below also identifies a superficial deposit of sand and gravel beneath the site.



The Council recognises that mineral resources are finite and must be protected for future generations to meet their own needs. Minerals can only be worked where they naturally occur but with increased pressure on land use the Council must also ensure that those resources are not needlessly sterilised by other forms of development. As a consequence both local and national planning policies identify that it is important to make best use of them to secure their long term conservation. Within section 17 of the NPPF at paragraph 204 it is identified that planning policies should safeguard mineral resources by defining Minerals Safeguarding Area in order that known locations of specified mineral resources of local and national importance are not needlessly sterilised by non-mineral development, whilst not creating a presumption that resources defined can be worked. The aim of both Policy M5 within the HUDP and Policy M2 of the DMWLP are consistent with the NPPF in relation to protecting mineral reserves from sterilisation from non-minerals development.

If an area is identified as being within a Mineral Safeguarded Area it does not automatically preclude other forms of development. Neither is there a presumption that an application to extract the mineral resource defined within the Mineral Safeguarding Areas will be granted permission. What it does mean however, is that attention to the presence of important mineral resource is needed and that any proposals should adequately and effectively considers the importance and nature of the reserve in land-use planning decisions. Non- mineral developments, such as the housing proposed under this application, are required to submit an assessment of the effects of the proposed development on the mineral resource beneath and adjacent to the site (mineral resource assessment).

Policies M5 (HUDP) and M2 (DMWLP) both set out criteria/circumstances for which proposals within the minerals safeguarding areas for non-mineral developments will be permitted. This includes where it is demonstrated that the resource is not of economic value; it occurs at a depth and can be extracted in an alternative way; it does not exist or has been sufficiently depleted by previous extraction; the mineral can be extracted satisfactorily prior to non-mineral development without affecting the timing and viability of the non-mineral development; or the need for the non-mineral development is strategic and can be demonstrated to outweigh the need for the mineral resource.

The planning process should ensure that minerals are not unnecessarily sterilised whilst allowing competing development to proceed if there is an overriding need for it. In these circumstances, extraction of the mineral ahead of the development (prior extraction) should also be considered. Without further consideration I cannot conclude that the application is not in conflict with policy M5 of the HUDP.

The applicant is requested to provide an assessment of mineral resource beneath and adjacent to the site and the impacts of the proposed development upon the resource prior to any decision of approval being granted.

#### 4.11 Open Spaces Planning Officer

Open Space requirements:

Relevant Policies: In this instance the following national and local planning policies are relevant for the provision of open space arising from this development

National Planning Policy Framework (NPPF):

- Paragraph 96: Open Space and Recreation: provision of what open space, sports and recreational opportunities required in a local area should be based on robust assessments of need

Core Strategy(CS)

- OS1: Requirements for Open Space, Sports and Recreation Facilities
- OS2: Meeting Open Space and Recreation Needs

Evidence Bases

- Herefordshire Open Space Study 2006 (data for amenity public open space has not changed significantly and it is still considered to be accurate).
  - o This recommends POS should be at a rate of 0.4ha per 1000 population.
- Herefordshire Play Facilities Study and Investment Plan 2014 and Fields in Trust Guidance:
  - o These recommend children's play at a rate of 0.8ha per 1000 population.
  - o Of this 0.25ha per 1000 population should be formal equipped play
  - o These recommends where future investment in formal play should be directed to maximise the benefits to the local community
- There is no requirement for formal outdoor sport.

Open Space Policy Requirements: In accordance with CS policies OS1 and OS2 requirements for open space, sport and recreation facilities will be sought from all new residential development on a site by site basis in accordance with all applicable set standards and evidence bases.

In this instance the applicant has proposed a number of areas on site as shown on the indicative site plan/scheme comprising:

- o A central village green
- o Large informal POS to the south to include a SuDs pond

At this stage the applicant has not indicated the quantum of proposed POS to meet recreation needs, including children's play. The area to the north east may be acceptable as POS. It is described in the Design and Access Statement as structural landscaping to form traditional orchard planting to the north east end of the site to protect the setting of the Castle Mound Scheduled Ancient Monument as required by Dilwyn Neighbourhood Development Plan (reg 16) Policy DW4.

The Dilwyn Neighbourhood Development Plan (reg 16) Policy DW16 acknowledges that there is little open space serving local needs, therefore the provision of additional POS on site as proposed by the applicant is welcome and supported. In meeting CS Policies OS1 and OS2 requirements the applicant will need to demonstrate that on-site provision meets the following minimum requirements:

For 30 houses at an occupancy of 2.3 (total population 69) the following is required:

- The developer provides a minimum of 0.084ha (840 sq m) of on-site green infrastructure comprising;
- 0.028ha (280sqm) of Public Open Space (@ 0.4ha per 1000 population)
- 0.056ha (560sq m) of Children's Play (@ 0.8ha per 1000 population) of which 0.028ha (280sq m) should be formal children's play. (@ 0.25ha per 1000 population).

Given the location of the site, and the potential for large areas of informal open space to the south including a SuDs pond, some more natural play provision and play trails would be appropriate in this area.

It should also be noted that the Dilwyn Neighbourhood Development Plan (reg 16) policy DW16 supports the need to retain and enhance the existing open spaces serving the village and policy DW17 supports the requirements to secure contributions towards community facilities and where necessary the Parish Council should be consulted as to which facilities are a priority. If it is the case that the Parish Council are seeking to improve the existing play area at the Village Hall site and would prefer us to secure an off-site contribution instead of on-site provision, this would be acceptable. The existing play area is within acceptable thresholds and caters for all ages including infants, juniors and teenagers. In accordance with the Play Facilities Study and Investment Plan the facility although good and well maintained is now old and may be in need of some investment in support of a rolling programme of work, but the Parish Council would need to confirm this.

This would reduce the need to provide as much on-site provision and contributions would be sought on the following basis from market housing only and in accordance with the SPD on Planning Obligations on the following basis:

- 2 bed: £965
- 3 bed: £1,640
- 4+ bed: £2,219

SUDs: The proposed SuDs attenuation basins can be included within the open space if designed accordingly to take account of health and safety and standing water issues. It is acknowledged that these areas can provide good opportunities for informal recreation and natural play along with being areas suitable for biodiversity and wildlife. The landscape aspects of SUDs and appropriate gradients for SUDs on areas of POS should be designed in accordance with the Councils SuDS Handbook which provides advice and guidance on the inclusion of SuDs on new development. Plans submitted as part of the landscape scheme should demonstrate that appropriate gradients can be achieved where appropriate.

If it is not possible to design a pond within these parameters for health and safety reasons the SuDS area should be fenced off.

In addition the council advises that developers seek guidance from the CIRIA SuDS Manual and the Wildfowl & Wetland Trust /RSPB available from the Susdrain website.

Adoption and Maintenance: Suitable management and maintenance arrangements will be required to support any provision of open space and associated infrastructure within the open space in line with the Council's policies. This could be a management company which is demonstrably adequately self-funded or will be funded through an acceptable on-going arrangement; or through local arrangements such as a Trust set up for the new community for example. There is a need to ensure good quality maintenance programmes are agreed and implemented and that the areas remain available for public use.

#### 4.12 Principal Natural Environment Officer (Landscape)

Approve with conditions

##### Access only

In terms of landscape, the access results in a loss of hedgerow arriving and leaving the village of Dilwyn. The hedgerow lined road or lane is an important part of the Herefordshire landscape character and wildlife corridors. The applicant proposes to mitigate this loss with a replacement native hedgerow and trees, and I suggest conditions are applied to ensure this is of the highest quality and specification in terms of species mix and post care. I also recommend that hedgerow trees (i.e. oak) are planted to reinforce a tree and hedgerow lined road into Dilwyn.

The access and the development impacts on the physical landscape, including the best and most versatile land for agriculture; biodiversity habitats and natural hydrology systems. This impact will need to be compensated and enhanced through a landscape led development.

Conditions:

##### CK6 Landscape Scheme

- b) A Soil Resource Survey (SRS) and Soil Resource Plan (SRP) in accordance with the 'Construction Code of Practice for the Sustainable Use of Soils in Construction Sites' (DEFRA 2009).
- c) A plan showing existing and proposed finished levels or contours.
- d) A drawing detailing hard surfacing materials
- f) Boundary treatments and means of enclosure.
- h) Vehicle /Cycle /Pedestrian access and circulation areas.
- i) Vehicle parking layouts (if applicable)
- j) Lighting and CCTV
- k) Trees and hedgerow to be removed.
- l) Trees and hedgerow to be retained, setting out measures for their protection during construction, in accordance with BS5837:2012.
- m) All proposed planting, accompanied by a written specification setting out species, size, quantity, density and cultivation details.

Reason: To safeguard and enhance the character and amenity of the area in order to conform with policies SS6, LD1 and LD3 of the Herefordshire Local Plan - Core Strategy and the National Planning Policy Framework

##### CK7 Implementation

##### CK5 Maintenance Plan

##### CK8 Management plan

Reason: To ensure the successful establishment of the approved scheme, local planning authority and in order to conform with policies SS6, LD1 and LD3 of the Herefordshire Local Plan - Core Strategy and the National Planning Policy Framework.

##### Reserved Matters

Should the application proceed, the following provides recommendations for reserved matters for appearance, landscaping, layout and scale.

Minimise the visual impacts by limiting the degree or magnitude of the development and its implementation with strategic tree and hedgerow planting.

Reduce the impact of the development by design, material, colour and finishes. Investigate how the building can blend in with the landscape. Non reflective materials and finishes are

recommended, along with colours that are recessive the landscape. It is recommended to undertake an Environmental Colour Assessment to objectively validate the choice of colours.

Compensate for the loss of biodiversity (both terrestrial and soil); natural hydrological systems and best and most versatile agricultural land, resulting from the developments footprint by planting trees, hedgerows, wildflowers and aquatics (associated with the attenuation pond).

#### Planting approach suggestions

The following are suggested planting regimes.

'Right trees – in the right places'

Herefordshire Wildlife Trust

'Select and use trees appropriate to the context'

Trees and Design Action Group (TDAG)

#### Hedgerow

Hedging plants are to be 60-80 cm high, 1+1, bareroot, healthy and vigorous transplants to be planted in a double staggered row, 450mm apart, and 7 plants per linear metre. Species mix to be as follows:

40% *Crataegus monogyna* (Hawthorn)

30% *Corylus avellana* (Hazel)

10% *Prunus spinosa* (Blackthorn)

10% *Acer campestre* (Field Maple)

10% *Ilex aquifolium* (Holly)

All transplants shall be protected with a 400mm high plastic spiral rabbit guard supported by a 750mm stake or cane. Stock proof fencing should be erected to protect hedging from grazing as required. The hedge is to be maintained for a period of 5 years following planting, ensuring adequate watering and fertilising is carried out to ensure good establishment and that all dead, diseased or damaged plants are replaced annually where required.

#### Suggested Species

Only native and locally characteristic species should be used or species that can reinforce the local landscape character.

Common native, thorny species:

*Crataegus monogyna* (Hawthorn)

*Ilex aquifolium* (Holly)

*Prunus spinosa* (Blackthorn)

Non thorny species:

*Acer campestre* (Field Maple)

*Carpinus betula* (Hornbeam)

*Corylus avellana* (Hazel)

*Cornus sanguinea* (Dogwood)

*Euonymus europaeus* (Spindle)

*Viburnum lantana* (Wayfaring Tree)

*Viburnum opulus* (Guelder Rose)

#### Notes:

- Dog Rose (*Rosa canina*) can be planted as an additional non woody species but is not considered part of the 5-7 plants per metre. This species will also quickly colonise naturally.
- Elder should not be planted in a new hedge it will out compete/kill other species and quickly develop in to a thin and gappy hedgerow.



- Honeysuckle should not be planted as it does not 'grow with the tree' leading to strangulation and its climbing habit can cause woody species to collapse.
- Ivy will colonise naturally but excessive growth may need to be managed to ensure excessive shading of woody species does not occur.
- Thorny species should be avoided next to pedestrian paths.

#### Foot of the hedgerow (Ground flora)

The hedgerow should be considered holistically and that goes for establishing the herbaceous vegetation at the foot of the hedge, including species such as cow parsley and hedge mustard with coarse grasses and depending on the location, woodland flora.

#### Hedgerow trees

Single mature trees in hedgerows enhance Herefordshire's landscapes and are very important for wildlife. Research reveals that trees substantially boost the numbers of insects, and so their predators like birds and bats, in landscapes. They also make it easier for many animals to move across the countryside. From a landscape character perspective they are intrinsic to Herefordshire.

#### Suggested species

Only native and locally characteristic species should be used or species that can reinforce the local landscape character.

*Acer campestre* (Field Maple)

*Acer pseudoplatanus* (Sycamore) \*Non-native, introduced in 1500's

*Euonymus europaeus* (Spindle)

*Quercus robur* (English Oak)

*Sorbus torminalis* (Wild Service Tree)

Individual trees shall be planted as follows: Trees should be planted in areas previously cleared of all weeds, grass and vegetation. The trees are to be of 'Standard' size, 12-14 cm girth, approximately 3.0 metres tall, bareroot or rootballed and healthy and vigorous. Trees should be planted in planting holes 1.2m. x 1.2m. x 900mm deep, with the topsoil mixed with a minimum of 20 litres of suitable tree planting compost and replaced carefully around the roots and lightly compacted every 150mm layer. Trees should be supported with a treated timber stake and rubber ties and protected from both rabbit and stock damage. This may require the construction of sufficiently robust timber guards of a size appropriate for the type of stock kept in the field. A water regime is to be followed to ensure the health of the tree is maintained during the establishment period:

- Space the trees far enough to let crowns develop without competing or producing too much shade
- Space far enough apart so the gaps between trees can be easily trimmed with a mechanical flail
- Use irregular spacing to create a more natural landscape - look at the local landscape to see what is appropriate
- Young trees need to be clearly marked for at least 5 years so that hedge cutters can see and avoid cutting them.

#### Stand-alone trees or groups

Placed in strategic locations, individual trees or groups of trees can assist in the overall wider green infrastructure strategy and the design of the landscape will integrate the buildings into the landscape, and assist in mitigating the visual impacts of the buildings.

### Suggested species

Only native and locally characteristic species should be used or species that can reinforce the local landscape character.

### Recommendations for future application/s:

- Provide careful analysis that the buildings along the road are set back to avoid disturbing the landscape approach into Dilwyn.
- The village has a rich history (with many 'black and white' houses), and within a conservation area. The architectural style and village layout should be taken into consideration to enhance the overall character of the village and rural setting.
- Provide a substantial street tree strategy and integrated, high quality designed public open space to create a landscape led development with associated benefits (health, storm water management, enhanced development value and biodiversity net gain).
- Look carefully at how the existing surrounding landscape structure (i.e. established trees) can be reinforced to enhance green infrastructure. For example native trees, with long term legacy specimens, such as oak trees. Don't overly rely on orchard trees.
- Provide a soft landscape plan with industry standard specifications, with particular attention to soil quality, as the foundation for successful and long term plant growth and health.
- Provide a hard landscape and furniture plan with industry standard specifications, with particular attention to the integrated design of streets, open spaces and buffer zone, from kerbs, benches to street lights.
- Provide a management and maintenance plan and schedule, for a 5-10 year period to ensure the successful establishment of plants, and that the general landscape is maintained to a high standard.
- Provide an integrated SuDS system as part of the public open space. Ensuring careful consideration of levels and gradients and the opportunity to make an interesting aquatic, semi-aquatic and terrestrial landscape.
- If pump facilities are required, ensure these are located discreetly and shielded from views and the fence painted in colours to blend in with the landscape.

Overall, the scheme will need to demonstrate a high quality of design, as outlined in NPPF, 12, 127b,c and d; and LD1; and ensure that biodiversity and green infrastructure contribute an enhancement to the local area to meet LD2, LD3 and SS6 and climate change requirements SS7.

### Background

#### Designations/constraints

- Conservation Area (adjacent north-east boundary).
- Traditional Orchard (adjacent lower west boundary, north of Hafed Wen property).
- Scheduled Monument (adjacent north-east boundary).
- PROW (closest c.175m north-west of site).
- PROW (closest c 205m east of site).

#### Relevant policies

##### NPPF

- Chapter 12, para 127 b, c and d
- Chapter 15, para 170 a and b
- Chapter 16, paragraph 192

#### Core strategy

- LD1, LD2, LD3, SS6 and SS7

#### Landscape & visual amenity

Read with figures 1 and 2

#### Summary of site:

- Topography: Slightly sloping close to the road and flattens across the field.
- Landscape Character: Principle Settled Farmland
- Views: Existing - The site is relatively well screened due to trees and hedgerows. This includes from the PROWs. The site is visible through gaps, such as gateways, and potentially in winter, leaf fall and early growth months. Proposed – The access will open up views into the site. The future development will be visible due to the height and scale of the buildings.
- Historic: Circa 1843-1893, the sites and surrounds field pattern is relatively unchanged compared to today. West and north of the site shows a dominant land use of orchard plantations. Only small remnant pockets of historic orchards remain today, including a small rectangular field adjacent the south-west boundary.



Figure 1: Aerial image with overlay.

Conservation area (light blue hatch); Scheduled Ancient Monument (purple hatch); PROWs (pink dashed lines); Roads/lanes (red, green and yellow lines); and contours at every 5m.

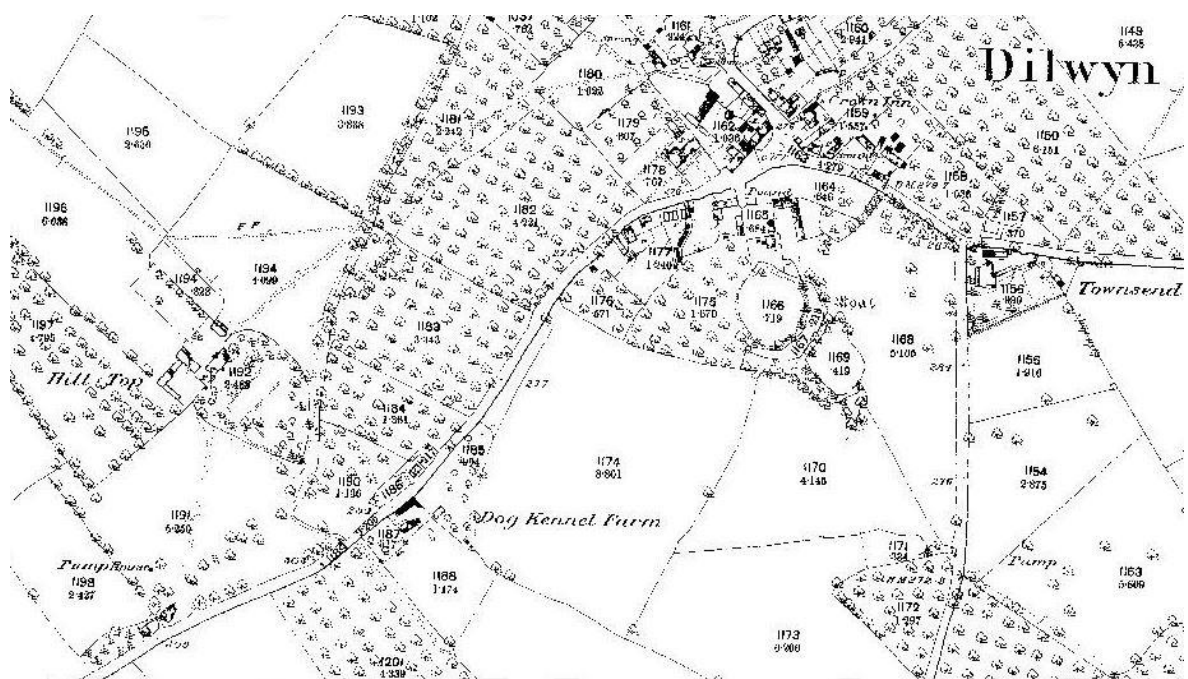




Figure 2: Historic image. circa 1843-1893

#### Impacts

- Loss of hedgerows and some trees accommodate the development, with the potential impact on retained trees and hedgerow root zones.
- The building impacts on the visual amenity of the local landscape, arrival into and departure out of the village of Dilwyn.
- The building impacts on the physical landscape (included biodiversity above and below ground).
- The access, buildings and associated external hardstand will impact on natural hydrological systems.
- The development destroys grade two (very good), best and most versatile land for agriculture (Reference: West Midland Region Agricultural Land Classification, 2010, Natural England) and is contrary to NPPF 15, 170b and local policy (Core Strategy) SS7.

Note: The site is on the margin with grade one (Excellent) land, making this site in general a high quality farming land.

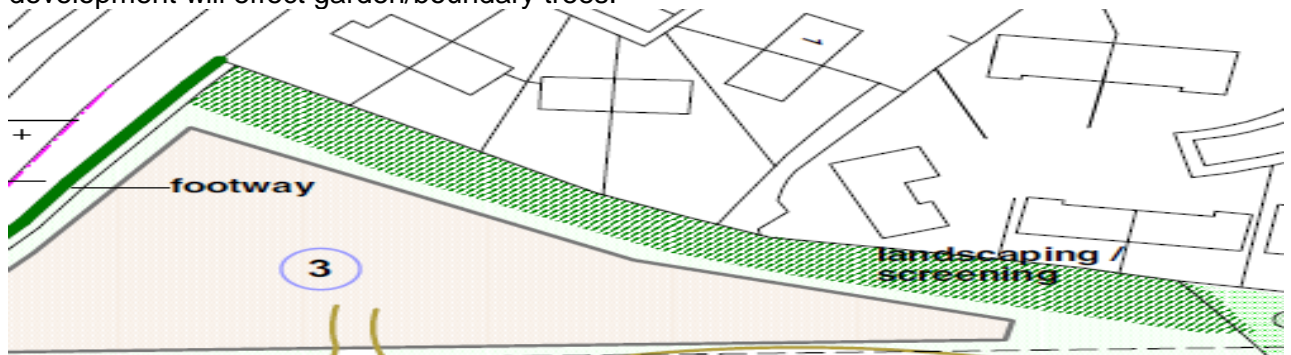
#### 4.13 Principal Natural Environment Officer (Trees)

Approve with conditions

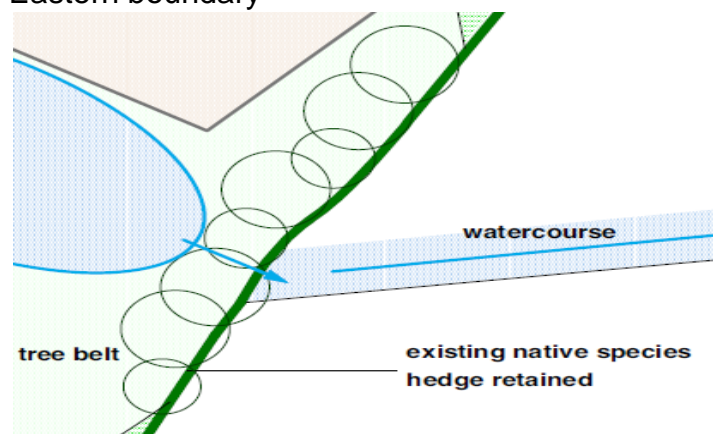
I have conducted a desk top check of the planned development of 30 homes and have not been to the site. From what I can gather from the available plans/drawings and our own available data the arboreal constraints appear to be low.

#### Northern boundary-

The existing edge of Dilwyn abuts the northern boundary and as such the site backs onto dwellings that have trees located within gardens. The proposed buffer would indicate that no development will effect garden/boundary trees.



#### Eastern boundary-



Hedgerow with a group of established trees are have been identified for retention. As with the northern boundary the impacts here appear to be low.

Further information on the subject of this report is available from Mrs Charlotte Atkins on 01432 260536

Southern Boundary-

Appears to contain low tree numbers and this boundary is unaffected by the indicative layout.

Western Boundary-

The point of access is located here where there will be a requirement for the removal of a section of hedgerow to facilitate the vision splay.

Soft Landscaping

I can understand the requirement to retain the setting of the scheduled ancient monument which is located on the north east of the site but I have some reservations for planting an orchard in the north east corner to preserve the SCM setting.

Why is an orchard the preferred proposal? My assumption, regarding the SCM is because fruit trees tend to be smaller in stature and therefore they won't block views? If this is the case why can't a broader mix of native species be used that will offer a more diverse mix of ecological enhancements? I'm not against the planting in this location and appreciate the increased Green Infrastructure but would like to see a greater mix of species.



As with the orchard at the top of the site, I am a little sceptical about the need for the abundance of fruit trees. A mix of native species (including fruit trees) will be more in keeping with policies LD1 & LD3 of the core strategy.

This is a reserved matter and finer details can be dealt with at this point.

The public and informal open spaces offer the opportunity to plant large individual trees that will provide landscape prominence and enhance the character of the site in the locality. Consider small leaved limes, Oak, Sweet Chestnut. Smaller species should be considered and included in a detailed soft landscape plan in these areas.

The edges of the attenuation pond should be populated with water tolerant species.

## Recommendations

I am of the opinion that this site could potentially facilitate the development without having a detrimental impact on existing green infrastructure. However there is a requirement for a revision of the proposed soft landscaping taking into account my comments.

## Outline Conditions

### CKA - Retention of existing trees

No retained tree shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner prior or during the construction phase other than in accordance with the approved plans and particulars.

Reason: To safeguard the character and amenity of the area and to ensure that the development conforms with Policies LD1 and LD3 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

### Reserved matter conditions

#### CKF - Specification for Tree Planting

Prior to completion or first occupation of the development whichever is sooner, a full specification of all proposed tree planting shall be submitted to and approved in writing by the local planning authority.

The specification shall include the quantity, size, species and position or density of all trees to be planted. As well as cultivation details - how they will be planted and protected and the proposed time of planting. The areas designated for planting shall be fenced off and soil left undisturbed to avoid soil compaction.

All tree planting shall be carried out in the first planting season following the occupation of the building, in accordance with the approved plant specification as well as guidance provided by BS 8545: - Trees from nursery to independence within the landscape.

Any trees or plants which die, are removed or become severely damaged or diseased within 5 years of planting will be replaced in accordance with the approved plans.

Reason: To safeguard the character and amenity of the area and to ensure that that the development conforms with Policies LD1 and LD3 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

## 4.14 Principal Natural Environment Officer (Ecology)

### Object

The application site lies within the catchment of the River Lugg SAC, 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 Lugg (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.

The proposal here is for a total of 30 new dwellings with an associated creation of additional foul water flows.

Welsh Water have confirmed that a connection to any local mains sewer is not possible due to lack of local capacity. In any case at this location any such additional mains sewer flows would create associated additional outfall from the local WWTW in to the River Lugg SAC Hydrological catchment – and the associated additional phosphate loading/pathways is not currently acceptable.

No alternative foul water management scheme is likely to currently be possible and this may be why no alternative proposal to the mains sewer connection appears to have been considered or full details with all supporting professional reports and testing supplied for consideration by the LPA. The applicant is reminded that any such scheme must demonstrate compliance with all current guidance for drainage in the Lugg Catchment. See:

<https://www.herefordshire.gov.uk/planning-services/planning-services-1/12?documentId=66&categoryId=200142>

Therefore at this point in time on the basis of the information provided I find that the proposed development would harm - have an 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.

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).

The LPA as the competent authority is therefore only able to conclude that there would be an unmitigated adverse effect of the integrity of the River Lugg (Wye) SAC.

There is an Ecology-HRA Objection raised to this application at this time.

In addition to the foul water surface water is also a consideration within the HRA process – It is noted that a Sustainable Drainage Scheme with a managed outfall to a local watercourse is proposed. This system would provide the required mitigation and management of any potential pollutants, contaminants and nutrient/phosphate pathways from the surface water flows. The LPA has no reason to consider that subject to a final approval of technical matter this is not an achievable option and thus this aspect would achieve a satisfactory HRA consideration subject to final approval by Natural England of the full appropriate assessment completed by the LPA and securing the approval of technical design matters as a Reserved Matter.

Additional ecology comments:

The preliminary ecological appraisal (PEA) by Red Kite dated March 2020 is noted.

It is noted that the report has not completed additional species specific surveys identified as being required (including Great Crested Newts). The development and site are such that the PEA is sufficient for the LPA to be able to conclude that any requirements for mitigation measures required as a result of the more detailed protected species and update surveys prior to the commencement of actual development cannot be secured and this it is appropriate for the LPA to consider a Condition to secure these updated and additional surveys as a Reserved Matter.

A relevant condition based on standard condition CKS is suggested below.

#### Ecological Working Method Statement

Prior to commencement of any site clearance, preparation or development, a fully detailed and specified Ecological Working Method Statement (EWMS) based on all relevant updated and optimal period ecological surveys, including details of the appointed Ecological Clerk of Works, shall be provided to the local planning authority for approval in writing. The EWMS should consider all relevant species, but in particular Great Crested Newts and Reptile species. The approved EWMS shall be implemented in full unless otherwise agreed in writing by the local planning authority.

Reason: To ensure that all species and habitats are protected and conserved having regard to the Wildlife and Countryside Act 1981, Conservation of Habitats and Species Regulations (2017), National Planning Policy Framework , NERC Act (2006) and Herefordshire Local Plan - Core Strategy policies SS6, LD1, LD2 and LD3..

As identified in the NPPF and the Core Strategy all development should demonstrate how it will enhance the local biodiversity potential (net gain). A condition to secure this 'biodiversity net gain' is requested on any consent that may finally be granted.

#### CNS:

##### Nature Conservation – Biodiversity and Habitat Enhancement

No demolition or construction should commence until a detailed scheme and annotated location plan for proposed biodiversity net gain enhancement features including provision for enhanced bat roosting opportunities, bird nesting, hedgehogs, amphibians and pollinating insect homes on land or buildings under the applicant's control has been supplied to and approved in writing by the local authority. The approved scheme shall be implemented in full and hereafter maintained as approved unless otherwise agreed in writing by the local planning authority.

Reason: To ensure that all protected species are considered and habitats enhanced having regard to the Conservation of Habitats and Species Regulations (2017), Wildlife and Countryside Act 1981 (as amended), Policy SS1, SS6 and LD2 of the Herefordshire Core Strategy, National Planning Policy Framework (2019) and NERC Act 2006.

## 4.15 Land Drainage

This response is in regard to flood risk and drainage aspects, with information obtained from the following sources:

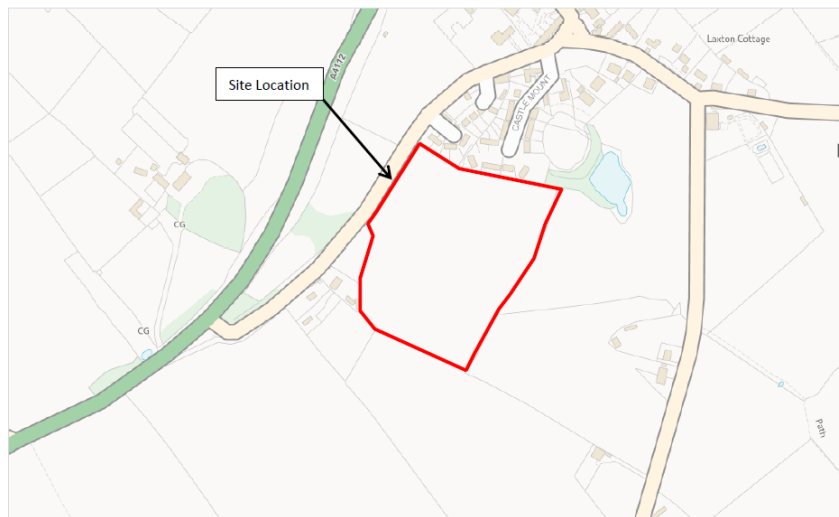
- Application for outline planning permission
- Location Plan
- Planning Design and Access Statement
- Surface Water Management Plan and Flood Risk Assessment
- Site Plan
- Topographical Survey

We highlight that any planning application should be submitted in accordance with the Herefordshire SuDS Handbook and the Herefordshire Council Planning Applications Flood Risk & Drainage Checklist available on the Council's website:

[https://www.herefordshire.gov.uk/info/200142/planning\\_services/66/about\\_planning\\_services/11](https://www.herefordshire.gov.uk/info/200142/planning_services/66/about_planning_services/11)

### ***Site location and extract of flood map(s)***

Figure 1: Environment Agency Flood Map for Planning (Rivers and Sea), August 2020



### ***Development description***

The Applicant proposes the construction of 30 dwellings, laid out in three distinct groups off a main 'village road' around a large area of public open space with associated garages and access roads. The site occupies an area of 3.76ha and is currently used for agricultural grazing. The topography of the site slopes down from approximately 84.25m AOD in the north-west to approximately 81.8m AOD in the south-east.

### ***Identifying the need for a Flood Risk Assessment***

All Applicants must provide sufficient information to address the points listed below to enable an accurate assessment of flood risk and the need for a flood risk assessment to be made.

Information required	Reviewers comments
Confirmation of the site area in hectares or square metres	Site area confirmed as 3.76ha
Identification of all designated main rivers within 20m of the site boundary	There are no main rivers in close proximity to the site.
Identification of all designated ordinary watercourses and land drains within 20m of the site boundary	There is an ordinary watercourse leading away from the eastern edge of the site.
Confirmation of the site's location in Flood Zone 1, Flood Zone 2 or Flood Zone 3, and taking climate change effects into account	The site is located in Flood Zone 1. It is not expected that this will be changed by the advent of climate change.
Confirmation and supporting justification of whether the site is at significant risk of flooding from other sources, including surface water flood risk or flood risk from minor watercourses with unmapped flood extents	The EA's long term flood risk maps indicate the site is at significant risk surface water flooding, with a large portion of area in the southern end of the site being at a low to high risk of surface water flooding.

A Flood Risk Assessment (prepared in accordance with NPPF and EA Standing Advice) must support the planning application for any development:

- Located in Flood Zone 2 or Flood Zone 31.
- With a site area greater than 1 hectare.
- Located in an area identified to be at significant risk of flooding from other sources, including surface water flood risk or flood risk from minor watercourses with unmapped flood extents.

Review of the information summarised in Section 1 indicates that a FRA is required to support the planning application for this development.

#### *Flood Risk Assessment*

The following information should be provided within the FRA:

- ✓ Information provided is considered sufficient
- ✗ Information provided is not considered sufficient and further information will be required

Information required	Reviewer comments	✓ ✗
Sources of risk		
Assessment of Flood Zone 2 and 3 taking the effects of climate change into account, including predicted flood depths for the 1 in 100 and 1 in 1000 annual probability events	The FRA provided by the client indicates that the development is located in Flood Zone 1. The distance to the closest area of Flood Zone 2 indicates that the risk of this changing with the onset of climate change is negligible.	✓
Assessment of areas protected by flood defences and risk of flooding in the event of breach, taking the effects of climate change into account	The site is not in an area benefitting from flood defences.	✓
Assessment of fluvial flood risk from other watercourses in close proximity (c.20m) to the site including those with no mapped flood extent, and taking the effects of climate change into account	The FRA provided by the applicant states that there is a small ordinary watercourse adjacent to the eastern edge of the site. While this watercourse is considered to be very small (is not actually shown on OS mapping) the EA's surface water flood risk maps indicate it has a low risk of flooding.	✓
Assessment of mapped surface water flood risk	At the top end of the watercourse (within the boundary of the site) the area of surface water flood risk is much larger, with some areas being at a high risk of surface water flooding. This surface water flooding corresponds with low points in the topography that slope towards the top end of the watercourse.	✓
Assessment of flood risk associated with potential overland flow from adjacent steeply sloping land	Examination of OS mapping indicates that the site is unlikely to be at risk of flooding from overland flows.	✓
Assessment of groundwater flood risk	A ground investigation conducted on the site indicates that the site is mostly underlain by clayey soils that may restrict groundwater emergence. Our own review of borehole records indicates that groundwater may not be close to the ground's surface. As such, the risk of groundwater flooding is considered to be low <u>although this should still be given further consideration in the detailed design of drainage systems</u> . We note that the drainage strategy indicates that groundwater emergence could be a risk of the lower-lying south-east of the site.	✓ (with note)
Assessment of flooding from surface water, foul water and highway sewers	The provided FRA has not included an assessment of potential flooding from sewers. Topography suggests the risk would be low.	✓
Assessment of flood risk from any other manmade sources, including reservoirs, ponds, detention basins etc.	EA mapping indicates that the site is not at risk of flooding from manmade features such as reservoirs.	✓

Information required	Reviewer comments	✓ ✗
Summary of historic flooding records and anecdotal evidence	No information has been provided around historical flood event. Our own review of Herefordshire Council's records indicates that there are no known historic flooding events in the vicinity of the site that would affect or influence site development.	✓
Other works that could pose risk		
Are there any other proposed works that could lead to increase flood risk to the site or elsewhere, for example culverting or diversion of watercourses?	There are no significant works that are considered likely to lead to an increase in flood risk to the site or elsewhere.	✓
Sequential and exception tests		
Demonstration that the development is in accordance with the Sequential and Exception Tests outlined in the NPPF	As the site is located entirely within Flood Zone 1 it is considered to satisfy the requirements of the Sequential test, and the application of the Exception test is not required.	✓
Demonstration of how a sequential approach has been taken to locate development in the lowest risk areas of the site, including the risk of flooding from other sources	While the site is located entirely within Flood Zone 1 the location of the proposed residential areas have been set out in the northern end of the site so as to avoid the areas at risk of surface water flooding in the southern end of the site. We welcome this approach.	✓
Mitigation		
Summary of how the development has addressed the identified flood risks and incorporated appropriate mitigation into the layout and operation of the development	As noted above, the layout of the site has been developed to keep the proposed residential areas free of the areas of surface water flood risk in the northern of the site. It is also proposed that the development site levels be raised 300mm above existing ground levels to provide additional freeboard above areas at a low risk of surface water flooding. This mitigation is considered to be sufficient to mitigate the risks currently identified onsite.	✓

### Surface Water Management Strategy

A surface water management strategy should be submitted that includes the following information:

✓ Information provided is considered sufficient

✗ Information provided is not considered sufficient and further information will be required

Information required	Reviewer comments	✓ ✗
Strategy		
Summary of proposed surface water management strategy with supporting illustration, including location of proposed outfalls, attenuation structures and/or infiltration features	It is proposed that surface water discharge from the site will be attenuated in an attenuation basin to be situated in the existing low point in the site (according to provided topographic survey) with a controlled discharge to a local watercourse. While only basic outline drawings of the proposed strategy have currently been provided, this is considered sufficient and more detailed designs of the system can be provided as part of the reserved matters application.	✓



Information required	Reviewer comments	✓ ✗
Summary of likely ground conditions including permeability and contamination risks	Infiltration testing conducted onsite indicated that soils onsite were impermeable, and as such unlikely to support drainage via infiltration. The tests are not in accordance with BRE365 and are generally of poor quality. However, the description of site conditions provided by the contractor does indicate that the site is unlikely to be suitable for an infiltration-based system. Our own review of borehole records also indicates that the underlying soils may also have low permeability (noting that the infiltration testing was conducted at shallow depths and in very wet conditions). <u>We therefore accept the applicant's approach for the purpose of outline planning although do require that further consideration is given to opportunities for combined infiltration and attenuation systems in the detailed design submitted to support the reserved matters application.</u>	✓ (with note)
Confirmation of whether the site is located in a Source Protection Zone or Principal Aquifer	The site is not located in a source protection zone or principal aquifer.	✓
Demonstration that the SuDS hierarchy has been considered in accordance with NPPF and justification for the proposed method of surface water discharge	The SuDS hierarchy has been considered and we agree with the overall strategy, subject to our comments above.	✓
Demonstration that best practice SuDS have been promoted, appropriate to the size and nature of development	Beyond the intent to provide an onsite attenuation basin, minimal detail has been provided around the proposed use of SuDS on the site. As such, it is recommended that the use of SuDS is considered where possible during the detailed design of the proposed scheme. <u>For a development of this site we expect online vegetated features to be promoted that maximise treatment potential, where suitable, infiltration during smaller rainfall events.</u>	✓ (with note)
If pumped systems are proposed, justification for the use of these systems, summary of key design principles and assessment of residual risk	No pumps are proposed.	✓
<b>Off-site discharge</b>		
For discharge to a watercourse, sewer or local authority asset, confirmation of the relevant authority from which consent will be required	The drainage strategy promotes discharge to the ordinary watercourse to the east of the site. We note that the watercourse is located on land owned by the same landowner, however Ordinary Watercourse Consent is likely to be required from Herefordshire Council prior to the construction of any new outfalls into the watercourse.	✓ (with note)
For discharge to a watercourse, sewer or local authority asset, summary of greenfield and, if relevant, current runoff rates calculated using the methods outlined in The SuDS Manual 2015 for the 1 in 1 year, Qbar and 1 in 100 year events	The provided surface water management strategy states that the greenfield runoff rates have been calculated using ReFH2 methods and have produced the following: 1 in 2 year – 5l/s 1 in 30 year – 11l/s 1 in 100 year – 16l/s It is assumed that these rates apply to the entire site area of 3.76 ha although this is not clear. <u>We request that full details of the calculations be provided as part of the reserved matters application so that the required inputs can be checked, noting that errors may require amended rates to be applied to the detailed design.</u>	✓ (with note)

Information required	Reviewer comments	✓ ✗
For discharge to a watercourse, sewer or local authority asset, summary of proposed discharge rates and volumes calculated using the methods outlined in The SuDS Manual 2015 for the 1 in 1 year, Qbar and 1 in 100 year events	<p>The provided surface water management strategy states that the discharge from the site will be restricted to the following values for the following events:</p> <p>1 in 2 year – 5l/s 1 in 30 year – 10l/s 1 in 100 year – 16l/s</p> <p>The submitted MicroDrainage calculations indicate however that these rates will be applied to the impermeable areas of the site. As per above, it is not clear if the calculated greenfield rates have been calculated for the entirety of the site or just the impermeable areas. We stress that the drainage strategy should limit runoff to equivalent greenfield rates for just those areas that will be drained by the drainage system (i.e. impermeable areas) which may require a discharge rate to be applied that is lower than those stated above.</p> <p>If the proposed discharge rate is lower than what would be considered reasonable to prevent blockage (noting Herefordshire Council accept a discharge rate of c.2l/s with appropriate trash screen / overflow in place) it is expected that the applicant maximise opportunities to reduce runoff during smaller events, for example through use of vegetated systems that promote infiltration and evaporation in upper soil layers.</p> <p><u>Given the size of the site and availability of land for attenuation we are confident that this can be demonstrated as part of the reserved matters application.</u></p> <p><u>We also highlight that calculations of pre and post development runoff volumes will also need to be provided as part of the reserved matters application.</u></p>	✓ (with note)
For discharge to a watercourse, sewer or local authority asset, summary of proposed attenuation volume to manage the rate and volume of runoff to greenfield or current rates and volumes, allowing for climate change effects and demonstrating sufficient space within the site	<p>The proposed attenuation volume onsite is approximately 800m3. <u>As per above, we highlight that a larger attenuation volume may be required.</u> While detailed drawings of the basin have not yet been provided, the large amount of space in the site indicates that there are unlikely to be issues with the size of the basin once a fully detailed design is completed.</p>	✓ (with note)
Assessment of potential failure of any above-ground attenuation features, including assessment of residual risks to downstream receptors, and proposed mitigation and management measures	<p>Design cross-sections have not been provided at this stage. However, in the event than an above ground structure at the location of the basin where to fail it is expected that the flows would be contained within areas of paddock around the watercourse that the proposed basin is intended to discharge to. The risk to properties in close proximity the watercourse indicates that the risk from a breach of this nature is likely to be negligible.</p>	✓
Drawing to illustrate that attenuation structures are not located within an area at risk of fluvial flooding up to the 1 in 100 annual probability event and taking the effects of climate change into account, unless it can be demonstrated that the capacity of the drainage system	<p>As the site is located entirely in Flood Zone 1 the proposed attenuation structure is not located within the 1 in 100 annual probability flood extent.</p> <p>The drainage strategy states that the attenuation basin will be located outside of the area mapped to be at risk of surface water flooding.</p>	✓

Information required	Reviewer comments	✓ ✗
will not be reduced and that any loss of fluvial flood storage can be compensated for elsewhere without increasing risk to people, property or infrastructure		
For discharge to a watercourse, sewer or local authority asset, demonstration that a viable connection can be made and that the suitability and capacity of the downstream system has been explored in consultation with the relevant authority	The provided surface water drainage strategy has not included an assessment of the capacity of the downstream watercourse. However, as the topography of the site indicates that this was previously the receiving watercourse for the existing catchment it is expected (that as discharge will be maintained at existing levels) that the watercourse will have sufficient capacity. <u>We stress however that the reserved matters application will need to be supported by a survey of the watercourse to demonstrate clear flow to its outfall with the Stretford Brook.</u>	✓ (with note)
General		
If the development is to be delivered in phases, demonstration of proposed delivery and ability to maintain key design criteria	It is assumed that the development will not be developed in phases.	✓
Exceedance		
Assessment of natural surface water flow paths through the site, noting that natural flow paths should be retained as far as practicable within a development layout, and demonstration that consideration has been given to the potential for overland flow to overwhelm the capacity of the proposed drainage system	Assessment of the surrounding topography indicates that the risk of impact of flows from outside the site is low. We do however stress that the surface water flooding in the south of the site will need to be considered in the siting of the attenuation basin (as stated in the submitted drainage strategy).	✓
Demonstration of how surface water that exceeds the capacity of drainage features will be managed within the site up to and including the 1 in 100 annual probability event to ensure no unacceptable flood risk to the development and no increased flood risk to people, property and infrastructure elsewhere	Minimal information has been provided in regard to exceedance flows. However, as the natural topography of the site will remain largely unchanged it is expected any flows that exceed the capacity of the proposed drainage system can be directed as overland to the onsite attenuation basin that is to be located as the natural low point of the existing topography. <u>This will need to be evidenced as part of the reserved matters application, noting that the design will also need to demonstrate that the attenuation basin will not be overwhelmed by surface water flows from elsewhere (i.e. that may contribute to the mapped surface water flood risk).</u>	✓ (with note)
Access, adoption and maintenance		
Confirmation if access or works to third party land will be required and, if so, confirmation of the party with which agreement will be required	Access or works to third party land will not be required.	✓
Confirmation of proposed adoption and maintenance arrangements for the surface water drainage system	The proposed surface water management strategy states that the maintenance of SuDS features onsite will be the responsibility of the site owner/owners, likely through a separate management company. <u>This is acceptable in principle although details of the proposed</u>	✓ (with note)

Information required	Reviewer comments	✓ ✗
	<u>arrangements will need to be provided as part of the reserved matters application.</u>	
Demonstration that appropriate access is available to maintain SuDS features (including pumping stations)	It is expected that access for maintenance will be achievable although <u>details of the proposed arrangements will need to be provided as part of the reserved matters application.</u>	✓ (with note)

### ***Foul Water Management Strategy***

No Foul Water Management Strategy has been submitted with the application. It is recommended the applicant submit this to the council for review prior to the granting of planning permission.

### **Overall Comment**

As discussed above, we recommend that the following information is provided prior to the Council granting planning permission for this development:

- A foul water drainage strategy demonstrating the proposed methods of managing foul water from the proposed development. Connection to the public sewerage network should be explored and promoted in the first instance. The site is located in the catchment of the River Lugg SAC therefore a package treatment plant discharge to a watercourse would require agreement with Natural England.

Should the Council be minded to grant planning permission, we recommend that the Applicant submits the information requested above along with the following information within any subsequent reserved matters application:

- Detailed drawings of the proposed surface water drainage strategy that demonstrate the inclusion of SuDS where appropriate and location and size of key drainage features;
- Detailed drawings of proposed features such as attenuation features and outfall structures;
- Detailed calculations of existing greenfield runoff rates and volumes and proposed discharge rates and volumes;
- Calculations to demonstrate that the proposed surface water drainage system has been designed to prevent the surcharging of any below ground drainage network elements in all events up to an including the 1 in 2 annual probability storm event;
- Calculations to demonstrate that the proposed surface water management system will prevent any flooding of the site in all events up to an including the 1 in 30 annual probability storm event;
- Calculations that demonstrates that the proposed drainage system will have sufficient capacity to cater for up to the 1 in 100 year event and allowing for the potential effects of climate change;
- Confirmation of the proposed methods of treating surface water runoff to ensure no risk of pollution is introduced to groundwater or watercourses both locally and downstream of the site, especially from proposed parking and vehicular areas;
- Demonstration of the management of exceedance flows;
- Demonstration of the suitability and condition of the receiving watercourse to manage discharge from the development;
- Confirmation of agreement in principle of proposed adoption and maintenance arrangements for the surface water drainage system and demonstration that appropriate access is available;
- Operational and maintenance manual for all proposed drainage features that are to be adopted and maintained by a third party.

#### **4.16 Herefordshire & Worcestershire Clinical Commissioning Group**

I refer to the above planning application and advise that, further to a review of the applicant's submission the following comments are with regard to the primary healthcare provision on behalf of Herefordshire & Worcestershire Clinical Commissioning Group (CCG).

### **Existing Healthcare Position Proximate to the Planning Application Site**

The proposed development is likely to have an impact on the services of 2 GP practices in the area. The GP practices at present would not have the capacity to accommodate the additional growth without either expansion or relocation.

The proposed development will be likely to have an impact on the NHS funding programme for the delivery of primary healthcare provision within this area and specifically within the health catchment of the development. Herefordshire & Worcestershire CCG would therefore expect these impacts to be fully assessed and mitigated.

### **Review of Planning Application**

Herefordshire & Worcestershire CCG acknowledges that the planning application does not appear to include a Health Impact Assessment (HIA), and therefore does not appear to recognise that a capital contribution may be required to mitigate the primary healthcare impacts arising from the proposed development.

### **Assessment of Development Impact on Existing Healthcare Provision**

The existing GP practices do not have capacity to accommodate the additional growth resulting from the proposed development. The development could generate an additional 72 residents and subsequently increase demand upon existing constrained services.

The primary healthcare service directly impacted by the proposed development and the current capacity position is shown in Table 1.

**Table 1:**

**Summary position for primary healthcare services within catchment (or closest to) the proposed development**

Practice	Weighted List Size <sup>1</sup>	NIA (m <sup>2</sup> ) <sup>2</sup>	Capacity <sup>3</sup>	Spare Capacity (NIA m <sup>2</sup> ) <sup>4</sup>
Weobley & Staunton-on-Wye Surgery	7,979	268	547	-279
Westfield Surgery	9,741	444	668	-224
<b>Total</b>	<b>17,720</b>	<b>712</b>	<b>1,215</b>	<b>-503</b>

**Notes:**

1. The weighted list size of the GP Practice based on the Carr-Hill formula, this figure more accurately reflects the need of a practice in terms of resource and space and may be slightly lower or higher than the actual patient list.
2. Current Net Internal Area occupied by the Practice
3. Based on 120m<sup>2</sup> per 1,750 patients (this is an optimal list size for a single GP). Space requirement aligned to DH guidance within "Health Building Note 11-01: facilities for Primary and Community Care Services"
4. Based on existing weighted list size, negative numbers show capacity shortfall

The development would have an impact on primary healthcare provision in the area and its implications, if unmitigated, would be unsustainable. The proposed development must therefore, in order to be considered under the 'presumption in favour of sustainable development' advocated in the National Planning Policy Framework, provide appropriate levels of mitigation.

### **Healthcare Needs Arising from the Proposed Development**

The intention of Herefordshire & Worcestershire CCG is to promote Primary Healthcare Hubs with co-ordinated mixed professionals. This is encapsulated in the strategy document: The NHS Five Year Forward View.

The development would give rise to a need for improvements to capacity, in line with emerging STP estates strategy; by way of new and additional premises or infrastructure.



Table 2 provides the Capital Cost Calculation of additional primary healthcare services arising from the development proposal.

**Table 2**

Primary Care Network	Additional Population Growth (30 dwellings) <sup>5</sup>	Additional floorspace required to meet growth (m <sup>2</sup> ) <sup>6</sup>	Spare Capacity (NIA) (m <sup>2</sup> ) <sup>7</sup>	Capital required to create additional floor space (£) <sup>8</sup>
Hereford City HMG, North and West Herefordshire	72	4.94	-503	11,355

**Notes:**

5. Calculated using the National average household size of 2.4 taken from the ONS Families and Households 2017.
6. Based on 120m<sup>2</sup> per 1,750 patients (this is an optimal list size for a single GP). Space requirement aligned to DH guidance within "Health Building Note 11-01: facilities for Primary and Community Care Services"
7. Existing capacity within premises as shown in Table 1
8. Based on standard m<sup>2</sup> cost multiplier for primary healthcare in the Midlands and East from the BCIS Public Sector Q3 2015 price & cost Index, adjusted for professional fees, fit out and contingencies budget (£2,300/m<sup>2</sup>), rounded to nearest £100.

A developer contribution will be required to mitigate the impact of this proposal. Herefordshire & Worcestershire CCG calculates the level of contribution required in this instance to be **£11,355**. Payment should be made available before the development commences.

Herefordshire & Worcestershire CCG therefore requests that this sum be secured through a planning obligation linked to any grant of planning permission, in the form of a Section 106 planning obligation.

### Conclusions

In its capacity as the primary healthcare commissioner, Herefordshire & Worcestershire CCG has identified that the development will give rise to a need for additional primary healthcare provision to mitigate impacts arising from the development.

The capital required through developer contribution would form a proportion of the required funding for the provision of capacity to absorb the patient growth generated by this development.

Assuming the above is considered in conjunction with the current application process, Herefordshire & Worcestershire CCG would not wish to raise an objection to the proposed development. Otherwise the Local Planning Authority may wish to review the development's sustainability if such impacts are not satisfactorily mitigated.

The terms set out above are those that Herefordshire & Worcestershire CCG deem appropriate having regard to the formulated needs arising from the development.

Herefordshire & Worcestershire CCG look forward to working with the applicant and the Council to satisfactorily address the issues raised in this consultation response and would appreciate acknowledgement of the safe receipt of this letter.

#### 4.17 Wye Valley Trust

This is a consultation response to the planning application ref: P202265/O in relation to Proposed Outline application with all matters, save access, reserved for the residential development of 20 open market homes and 10 affordable homes.

## Introduction

Planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. The creation and maintenance of healthy communities is an essential component of sustainability as articulated in the Government's National Planning Policy Framework, which is a significant material consideration. Development plans have to be in conformity with the NPPF and less weight should be given to policies that are not consistent with the NPPF. Consequently, local planning policies along with development management decisions also have to be formulated with a view to securing sustainable healthy communities. Access to health services is a fundamental part of sustainable healthy community.

As the attached document demonstrates, Wye Valley NHS Trust (the Trust) is currently operating at full capacity in the provision of acute and planned healthcare.

It is further demonstrated that this development will create potentially long term impact on the Trust ability provide services as required.

The Trust's funding is based on previous year's activity it has delivered subject to satisfying the quality requirements set down in the NHS Standard Contract. Quality requirements are linked to the on-time delivery of care and intervention and are evidenced by best clinical practice to ensure optimal outcomes for patients.

The contract is agreed annually based on previous year's activity plus any pre-agreed additional activity for clinical services. The Trust is unable to take into consideration the Council's housing land supply, potential new developments and housing trajectories when the contracts are negotiated. Further, the following year's contract does not pay previous year's deficit retrospectively. This development creates an impact on the Trust's ability provide a services required due to the funding gap it creates. The contribution sought is to mitigate this direct impact.

## **CIL Regulation 122 and 123**

The Trust considers that the request made is in accordance with Regulation 122:

*"(2) A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—*

- (a) necessary to make the development acceptable in planning terms;*
- (b) directly related to the development; and*
- (c) fairly and reasonably related in scale and kind to the development."*

Regulation 123 does not apply to this s 106 Contribution. The request is not to fund infrastructure as defined by S 216 of the Planning Act 2008.

## S 106

S 106 of the Town and Country Planning Act 1990 (as amended) allows the Local Planning Authority to request a developer to contribute towards the costs it creates on the services. The contribution in the amount **£19,999.35** sought will go towards the gap in the funding created by each potential patient from this development. The detailed explanation and calculation are provided within the attached document.

Without the requested contribution, the access to adequate health services is rendered more vulnerable thereby undermining the sustainability credentials of the proposed development due to conflict with NPPF and Local Development Plan policies as explained in the attached document.



The Wye Valley Trust's evidence for the requested s106 developer contributions for services is viewable in full on the website.

#### 4.18 Education

<b>Site: Land South West of Orchard Close, Dilwyn, Herefordshire, HR4 8HQ</b> <b>Description: Proposed Outline application with all matters, save access, reserved for the residential development of 20 open market homes and 10 affordable homes</b> <b>Application No: 202265</b>		
Date application received:	<b>22/07/2020</b>	
Date reply sent:	<b>20/08/2020</b>	
Schools affected:	Weobley Primary School  Weobley Secondary School	
Breakdown of Housing:	2+ bedroom flat / apartment 2/3 bed house / bungalow 4+ bed property	TBC
Total Contribution expected:	<b>£TBC once breakdown confirmed</b>	

The educational facilities provided for this development site are Early Years, Weobley Primary School, Weobley High School and Youth.

Weobley Primary School has a planned admission number of 15. As at the schools spring census 2020:-

- 2 year groups are at or over capacity- Y3=30, Y6=30

The school will require additional classroom space to accommodate the needs of the children created by this development and we would therefore be seeking the contribution to provide a classroom extension with classrooms that are the recommended size and can accommodate sufficient number of pupils rather than the small mobile accommodation they currently have

Weobley Secondary School has a planned admission number of 100. As at the schools spring census 2020:-

- 5 years groups are at or over capacity- Y7= 108, Y8=108, Y9=107, Y10=100, Y11= 103

The school will require additional classroom space to accommodate the needs of the children created by this development and we would therefore be seeking the contribution to build a new RE classroom, this would help them accommodate increasing numbers in sufficiently sizes classroom spaces rather than the small spaces they currently have to use.

Approximately 1% of the population are affected by special educational needs and as such the Children's and Families Directorate will allocate a proportion of the monies for Primary, Secondary and Post 16 education to schools within the special educational needs sector.

Please note that the Planned Admission Number of the above year groups is based on permanent and temporary accommodation, whereas section 3.5.6 of the SPD states that the capacity should be based on the permanent accommodation, therefore, additional children may also prevent us from being able to remove temporary classrooms at Weobley Primary School and Weobley High School that we would otherwise be able to do.

In accordance with the SPD the Children's and Families Directorate would therefore be looking for a contribution to be made that would go towards the inclusion of all additional children

generated by this development. The Children and Families Directorate contribution for this development would be as follows:

Contribution by No of Bedrooms	Pre-School	Primary	Secondary	Post 16	Youth	SEN	Total
2 or 3 bedroom house or bungalow	£244	£1,899	£1,949	£87	£583	£138	£4,900
4+ bedroom house or bungalow	£360	£3,111	£4,002	£87	£1,148	£247	£8,955

Please note this is the contribution that would be requested at this point in time based on the current information available that is pupil census data and the criteria in the SPD. It is therefore likely that this level of contribution will change (increase or decrease) for all subsequent applications made.

#### 4.19 Planning Obligations Manager

Planning Gain Type	Contributions	Infrastructure Project
Education	<ul style="list-style-type: none"> <li>£4,900.00 per 2 bedroom open market dwelling</li> <li>£4,900.00 per 3 bedroom open market dwelling</li> <li>£8,955.00 per 4 bedroom open market dwelling</li> </ul>	<ul style="list-style-type: none"> <li>Classroom extension at Weobley Primary School to provide a classroom to the recommended size rather than the small mobile accommodation that they have.</li> <li>New Religious Education classroom at Weobley Secondary School.</li> </ul>
Transport	<ul style="list-style-type: none"> <li>£2,457.00 per 2 bedroom open market dwelling</li> <li>£3,686.00 per 3 bedroom open market dwelling</li> <li>£4,915.00 per 4 bedroom open market dwelling</li> </ul>	<ul style="list-style-type: none"> <li>Introduction of traffic calming measures in the village</li> <li>Improvements to pedestrian and cycling infrastructure</li> <li>Improvements to bus infrastructure</li> <li>Improvements to Public Rights of Way</li> </ul> <p><i>NOTE: A section 278 highway agreement would be required to deliver pedestrian facilities along the C1091 to access the amenities in the village and a Traffic Regulation Order to reduce the speed limit in the village</i></p>
Waste and Recycling	£80.00 per dwelling	To provide 1 x waste bin and 1 x recycling bin
Library	<ul style="list-style-type: none"> <li>£146.00 per 2 bedroom open market dwelling</li> <li>£198 per 3 bedroom open market dwelling</li> <li>£241.00 per 4 bedroom open market dwelling</li> </ul>	Leominster library
Wye Valley Trust	£19,999.35	To provide services at Hereford Hospital
Herefordshire & Worcestershire Clinical Commissioning Group	£11,355.00	To provide services at Weobley, Staunton on Wye and Westfield surgeries.

Public Open Space/Play facilities	<p>A minimum of 0.084 hectares (840sqm) of on-site green infrastructure comprising;</p> <ul style="list-style-type: none"> <li>• 0.028 hectares (280sqm) of Public Open Space</li> <li>• 0.056 hectares (560sqm) of children's play of which 0.28 hectares (280sqm) should be formal play.</li> </ul> <p>If it is decided to provide the play off-site then the following contributions will be required;</p> <ul style="list-style-type: none"> <li>• £965.00 per 2 bedroom dwelling</li> <li>• £1,640.00 per 3 bedroom dwelling</li> <li>• £2,219.00 per 4 bedroom dwelling</li> </ul>	Formal play could be provided on or off site as there is an existing play area at the village hall site which is within acceptable walking thresholds and caters for all ages including infants, juniors and teenagers.
Affordable Housing	35% of the development will be delivered as affordable housing.	53% social rent and 47% intermediate tenure (shared ownership, social rent, discounted market and low cost market).
Monitoring fee	2% of total contributions.	To monitor compliance with the obligations if the payment of the contributions are to be phased.

## 5. Representations

### 5.1 Dilwyn Parish Council

The parish Council wished to make no comment with respect of this application.

#### 5.1.1 Dilwyn Parish Council (amended)

Further to the Dilwyn Parish Council meeting held on Tuesday 8th December - I have been asked to inform you :

Dilwyn Parish Council support this application as it fits in with their Neighbourhood Development Plan.

However, the Parish Council would very much appreciate being kept informed following the proposed determination date of the 31st December 2020.

### 5.2 River Lugg Drainage Board

With reference to the above application dated 22nd July 2020. The Board must advise that the proposed development lies within the Board's operational area and, since it is stated that SW run-off will be via a SUDS, there is no objection providing that there is no discharge to any local watercourse.

We don't have any objection but I would like to inform you of the Board's standard requirements in respect of surface water disposal and ask that they be taken into consideration when the application is assessed.

Requirements	
1	Rates for storm water runoff discharged from the site to replicate or achieve a reduction from the 'greenfield' response of the site over a range of storm probabilities, accompanied by the <i>required On-site Storage</i> designed for the 1 in 100 year storm event.
2	For the range of annual flow rate probabilities, up to and including the 1% annual probability (1 in 100 year storm event) the developed rate of run-off <i>discharged from the site into an ordinary watercourse shall be no greater than the undeveloped rate of run-off for the same event.</i>
3	The potential effect of future climate change shall be taken into account by increasing the rainfall depth by 10% for computing storage volumes.
4	All in compliance with The Institute of Hydrology Report 124 (IoH 124) - <i>Flood estimation for small catchments (1994)</i>
5	All to the satisfaction of the Engineer to the Board
6	<b>No additional surface water run-off</b> to adjacent watercourse or any outfall structure is permitted without written <b>Land Drainage Consent</b> , which would have to be obtained from the Board under the terms of <i>the Land Drainage Act 1991</i> and the <i>Flood and Water Management Act 2010</i> .

I would also draw your attention to:

- The area of River Lugg Internal Drainage Board is a Natural Flood Plain and whilst every effort will continue to be made to guard against and to alleviate flooding, no guarantee can be given against the worst effects of abnormal weather and river conditions.
- Compliance with the recommendations in the following Report: "Technical Guidance to the National Planning Policy Framework 2012".
- That both current and future developers/owners should be made aware of the risks associated within the area being considered.

5.3 10 representations have been received, of which 4 object, 3 support and 3 make general comments. In summary the points raised are as below:

#### Objections

- Site has a high water table – development would increase the risk of flooding
- Historic drainage system and existing surface water flooding/increased water retention, made worse by recent developments
- Castle Mound development had to be rafted
- Castle moat used to be dry, but now is a bog due to surface water, slurry and debris from the village (surface water is directed to the castle moat)
- Proposed attenuation pond would flow into the stream, but this passes through neighbouring fields, which do not belong to the landowner/developer
- Directly backs on to rear garden (6 Orchard Close)
- Noise and dust disturbance during construction would be harmful to health and well being
- Drainage details are inadequate
  - Foul drainage is proposed to the mains, but WW confirm insufficient capacity
  - Site is unsuitable for SuDS – hard surfacing will concentrate surface water to smaller areas
  - FRA has errors regarding total impermeable areas and other factors
  - Site is proposed to be raised 600mm
  - Attenuation pond is to be 0.8m below ground level, yet is stated to be 1m deep
  - Query calculations for cubic size required for attenuation pond
  - Who would carry out the frequent management of the surface water management system?
  - Site regularly floods
  - Application does not demonstrate it would not increase flooding elsewhere

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Further information on the subject of this report is available from Mrs Charlotte Atkins on 01432 260536

- Strategy assumes watercourse will be desilted, but it is land outside of the application site and may not be in the applicant's control
- Drainage report is based on indicative layout, but this could change as it is a reserved matter
- Open market housing mix is unclear
- Ecology Report is incomplete – no GCN survey has been undertaken, grass snakes are prevalent
- Draft NDP has been withdrawn, so cannot be given 'significant weight' as stated in the Design and Access Statement
- Dilwyn NDP can only be afforded very little weight (para 48 of the NPPF)
- Other much more suitable sites exist, which were considered in the early stages of the draft NDP
- NPPF is a significant material consideration, but does not have the statutory presumption of the development plan (in this case the CS)
- Para 11dii) 'titled' planning balance test applies
- Site lies in open countryside, outside the settlement
- Development is disproportionate to Dilwyn, which is a hamlet
- Unsustainable development, due to lack of nearby services
- An appropriate Archaeological Assessment is required (para 189 of the NPPF)
- Significant harm to the scheduled 'castle' mound
- English Heritage and the Archaeologist note harmful impacts
- Indicative layout would be alien to Dilwyn's historical form
- No justification for harm to significance of the Scheduled Ancient Monument
- Contrary to CS and NPPF
- Landscape impact is based on speculation, as layout is a reserved matter
- Apple trees unlikely to thrive on the site, due to soil conditions

#### Support

- Only site in the NDP that would bring forward affordable housing – should be prioritised for local people
- Would attract younger people that the village needs to support the facilities (pub, hall, church and school) so they can thrive
- Reg 14 and 16 NDPs were produced with significant community involvement
- Few negative comments about the proposed allocation of the site in the NDP reg 14 and 16 stages
- Strategic Housing Land Availability Assessment (SHLAA) identified the site as having medium suitability
- Neither the Archaeologist nor Historic Buildings Officer objected to the site's proposed allocation in the NDP
- All other sites considered in the SHLAA were considered to be unsuitable and NDP preparation found no other sites with less constraints and which would be less harmful to heritage assets
- Site was not contentious at reg 14 stage of the NDP
- When informal advice about roadside development on the site was sought it was suggested that a larger portion of the site should be considered
- AECOM planning consultants advised the site should be adopted
- Range of housing proposed is a benefit
- Form of development meets the design provisions in the draft NDP (DW4)
- Proposal would safeguard the setting of the Scheduled Ancient Monument and would not affect any associated archaeology – impact would be less than significant
- Monument cannot be viewed from across the site; local knowledge is required to recognise its presence. It is more readily visible from the east
- Development of the site has potential to afford greater public access to the southern side of the mound – opportunity to enhance or better reveal its significance

- Site is outside of the Dilwyn Conservation Area – subsequent review did not change the boundary
- Dilwyn community has a track record for supporting initiatives to retain its heritage assets
- Application meets the vision statement and objectives of the draft NDP
- S106 contributions to education should be to St Mary's Church of England Primary School and Dilwyn Playgroup/preschool to facilitate growth – as the only stated funded educational facility in the Parish
- School is over capacity (71 pupils – 38% live in Parish) – with two portable classrooms for two year groups. Extra classroom is needed, but no funding is in place
- Open space contribution is requested for the school – for adjacent playing field that serves the school and also leisure/play facilities for the wider community out of school hours

#### General comments

- Opportunities to design out crime/fear of crime
- Should achieve Secured by Design award scheme and approved document Q requirements
- Further consideration of archaeology, ecology, drainage and potential mineral deposits is required
- Tithe maps show the site as 'Mere Meadow', indicating former marshy ground – acting as defence to the castle
- Site gets waterlogged
- Any new dwellings would be likely to need substantial foundations and drainage
- Possibility of pre-historic archaeology, not yet identified
- Water-filled half of the castle moat and fish pond exist still to the east of the mound – unsure of its water supply, but development should not interfere with this
- Would the development affect the pumping system (if it exists) at the Castle Mound estate?
- If granted permission the development should be called something to retain its origin, e.g. Meadow Close, Mere Meadow Close, Castle Meadow or Castle Mere
- Unfeasible for more development along Common Road
- NDP Committee worked hard to find a way to accommodate housing growth
- Site is acceptable for development
- Siting and design of dwellings needs to be carefully considered, to protect existing residents' living conditions and to be in keeping with the village

#### Infrastructure from s106

- WW – potential sewage system work
- Consider needs for traffic calming methods
- Primary and pre-school: extra classroom and playing field

- 5.2 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=202265&search-term=202265](https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=202265&search-term=202265)

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

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

## 6. Officer's Appraisal

### Policy context and Principle of Development

- 6.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states as follows:  
*"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."* Section 70(2)(a) of the Town and Country Planning Act 1990 states that *'In dealing with an application for planning permission the authority shall have regard to the provisions of the development plan, so far as material to the application.'*

- 6.2 In this instance the adopted development plan is the Herefordshire Local Plan – Core Strategy (CS) and the relevant saved policy of the Herefordshire Unitary Development Plan (HUDP).
- 6.3 The National Planning Policy Framework (NPPF) is a significant material consideration.
- 6.4 The site falls within the Dilwyn Neighbourhood Area. The draft Dilwyn Neighbourhood Development Plan (dDNDP) has completed the Regulation 16 consultation stage (25 January to 8 March 2019) and was sent for Examination on 5 April 2019. Following questions from the Examiner in respect of land allocated to the southwest of Orchard Close and Castle Mound for development (the site subject to this planning application) Dilwyn Parish Council decided to formally withdraw from the Examination process. This was stated to be to allow review of the evidence and site allocations to ensure community aspirations and the issues raised by Historic England were addressed. The Parish Council stated that they would work with the landowner to obtain further knowledge about the archaeological remains on site, with advice from Herefordshire Council and Historic England.
- 6.5 The dDNDP is a material planning consideration, but does not form part of the Development Plan. The weight that can be afforded to it, as an ‘emerging’ plan, is to be determined by applying the criteria set out in paragraph 48 of the NPPF. This states as follows:
- Local planning authorities may give weight to relevant policies in emerging plans according to:
- a) *the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);*
  - b) *the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and*
  - c) *the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)*
- 6.6 Taking these criteria in turn:
- a) the dDNDP has completed regulation 16 consultation and was sent for Examination, but has since been withdrawn from this process
  - b) the Examiner raised questions with regards the suitability of the site subject to this application, such that there are considered to remain significant unresolved objections to policies pertinent to the determination of this application
  - c) the basic conditions statement submitted previously confirmed overall conformity, but it must be noted that there is potential conflict between the site’s allocation for housing and heritage asset policy requirements and also that an updated Habitat Regulations Assessment would not be able to demonstrate that there would be no likely significant effects on the River Lugg catchment area. As such, because the dDNDP area is within the River Lugg Catchment Area at the present time it would fail the ‘basic conditions’ test.
- 6.7 In light of the above, at this time, the relevant policies in the dDNDP can be afforded limited weight. This is because of the significant degree of conflict between the site’s allocation and the objections from Historic England and the Council’s Archaeology Advisor and Building Conservation Officer with regards the impact on heritage assets.
- 6.8 The draft Minerals and Waste Local Plan (dMWLP) is an emerging plan, which has not yet been subject to regulation 19 consultation. Applying the criteria stipulated in paragraph 48 of the NPPF (as set out in paragraph 6.5 above), it is considered that the dMWLP can be afforded limited



weight at this time. This is because it is in the early, pre-consultation stage, so unresolved objections have not yet been identified.

- 6.9 In summary, as per the statutory requirement, the starting point is the Development Plan, which in this case is the CS and relevant saved policy of the HUDP (as set out at paragraph 4.10 earlier). The dDNDP and dMWLP are material considerations that can be afforded limited weight. The NPPF can be afforded significant weight, as it provides up to date Government policy.

#### Appraisal

- 6.10 The starting point for assessing this application for residential development is the CS. The CS underpins the importance of maintaining a supply of housing land with Policy SS1 echoing the positive presumption, SS2 setting out the spatial strategy insofar as housing delivery is concerned and SS3 setting out the measures that might be promoted where housing completions are below the required level.
- 6.11 With regards housing delivery in the rural areas outside of Hereford and the market towns, the CS promotes sustainable growth. Policy RA1 of the CS identifies that Herefordshire Rural areas will need to find a minimum of 5,300 new dwellings between 2011 and 2031 to contribute towards the county's housing needs. These new dwellings will be broadly distributed across the seven Housing Market Areas (HMA's) and are to maintain and strengthen locally sustainable communities. Dilwyn lies within the Leominster HMA and is listed as being one of the 'settlements which will be the main focus of proportionate housing development' (figure 4.14). This seeks a minimum growth target of 14% over the plan period across the HMA, which for Dilwyn equates to a minimum of 46 dwellings between 2011 and 2031. With 8 completions and 10 commitments, as of April 2020, this means there is a minimum of 28 dwellings remaining to be provided within the plan period.
- 6.12 CS policy RA2 sets out the criteria for considering applications for housing growth in figure 4.14 and 4.15 settlements and states:-

*"The minimum growth target in each rural Housing Market Area will be used to inform the level of housing development to be delivered in the various settlements set out in Figures 4.14 and 4.15. Neighbourhood Development Plans will allocate land for new housing or otherwise demonstrate delivery to provide levels of housing to meet the various targets.*

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

- 1. Their design and layout should reflect the size, role and function of each settlement and be located within or adjacent to the main built up area. In relation to smaller settlements identified in fig 4.15 proposals will be expected to demonstrate particular attention to the form, layout, character and setting of the site and its location in that settlement; and/or they result in development that contributes to or is essential to the social well-being of the settlement concerned;*
- 2. Their locations make best and full use of suitable brownfield sites wherever possible;*
- 3. They result in the development of high quality, sustainable schemes which are appropriate to their context and make a positive contribution to the surrounding environment and its landscape setting; and*
- 4. They result in the delivery of schemes that generate the size, type, tenure and range of housing that is required in particular settlement, reflecting local demand.*

*Specific proposals for the delivery of local need housing will be particularly supported where they meet an identified need and their long-term retention as local needs housing is secured as such."*

- 6.13 Both the policy and pre-amble specify the need for the site to be located within or adjacent to the main built up area. Where appropriate, settlement boundaries (or a reasonable alternative) for those settlements listed in CS policy RA2 figures 4.14 and 4.15 will be defined in either NDPs or the Rural Areas Sites Allocation DPD.
- 6.14 The application site lies adjacent to Orchard Close and Castle Mount, both twentieth century residential developments. Presently these developments demark the southeastern fringe of the village. Accordingly, in contextual terms, the site is adjacent to the main built up area and therefore meets the qualifying requirement of the Development Plan – CS policy, RA2.
- 6.15 The dDNDP identifies a settlement boundary for Dilwyn village and the application site lies within it. The site is allocated for housing under dDNDP policy DW3 a) (figure 1 below - the site is demarked by the red star on the extract of the dDNDP reg 16 settlement boundary plan). Table 1 of the dDNDP identifies the site for the delivery of 30 dwellings, in calculating the required housing target. In addition, dDNDP policy DW4 provides detailed policy principles for development of the site. On this basis the dDNDP reflects the CS locational requirement for new housing growth.

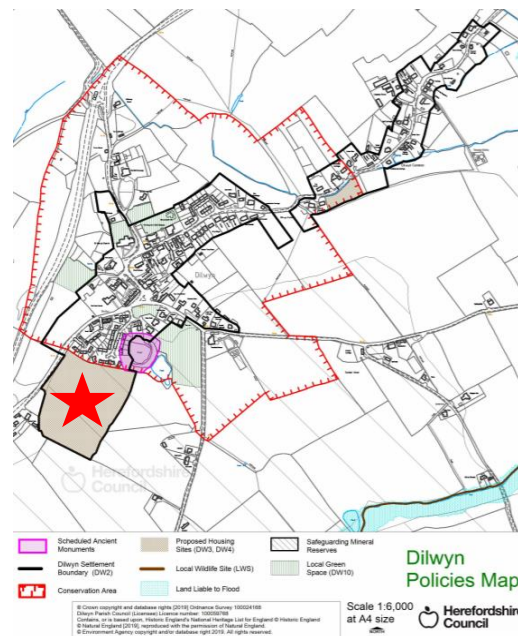


Table 1 – dDNDP Dilwyn policies Map

- 6.16 With regards the remaining detailed requirements of CS policy RA2, which should be read in conjunction with other more detailed CS policies, it must be recognised that this is an outline application, with appearance and layout being reserved for future consideration. The submitted layout is indicative only. The site does not make use of a brownfield site (CS policy RA2 ii), however given that the allocated sites in the dDNDP do not either, suggests that none are available or suitable for residential redevelopment. In terms of housing mix, as per criterion 4 of CS policy RA2, the application forms only specify the affordable housing mix, which is stated to be 5 x 2 bed and 5 x 3 bed units of a social, affordable or intermediate rent tenure. No details have been provided with regards the 20 proposed open market properties. The GL Hearn Report (which formed part of the evidence based to the CS) sets out a requirement for 5.8% 1 bed units, 25.8% 2 bed units, 59.2% 3 bed units and 9.2% 4+ bed units in the rural Leominster housing market area. Policy DW4 of the dDNDP sets out a preference for 2 and 3 bed units, with limited numbers of 4 bed units, which as a broad principle aligns with the GL Hearn requirements. The housing mix could be controlled by condition should outline permission be granted.

- 6.17 The proposal is for 30 dwellings, so crosses the threshold set out in CS policy H1 requiring affordable housing to be provided on site. The scheme proposes 10 affordable housing units, which would equate to 35% affordable housing provision. This accords with CS policy H1 in respect of site in the Northern Hinterland.

#### Heritage Assets

- 6.18 In assessing the principle of development, the impact on heritage assets needs to be considered. As identified the site is adjacent to a Scheduled Monument, abuts the southern edge of the Dilwyn Conservation Area and there are numerous listed buildings in the locality. The location of the Scheduled Monument and extent of the Conservation Area are shown on the dNDP Dilwyn Policies Map above (table 1 – paragraph 6.12). An extract from the Revised Heritage Impact Assessment is provided below, which shows the siting of the proposed development, including the three development zones (indicative only) in relation to the Scheduled Monument.

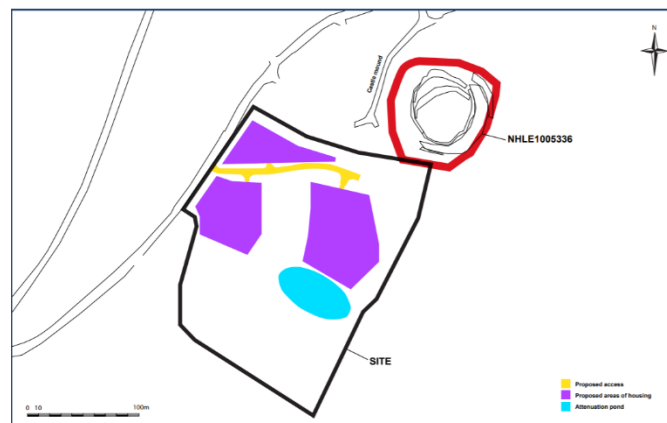


Fig 6: Location of proposed development

Extract of Figure 6 from the Revised Heritage Impact Assessment

- 6.19 Scheduling is the process of giving legal protection to archaeological sites (and monuments) via a list (schedule) where they are of national importance. The Ancient Monuments and Archaeological Areas Act 1979 is the relevant current legislation. The legal context, setting out the statutory duty for listed buildings and Conservation Areas, is provided under sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. These require the decision maker to have special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses (section 66) and that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the Conservation Area (section 72).
- 6.20 Turning to the adopted planning policy context, this is provided in the CS (policies SS6 and LD4) and the NPPF – Chapter 16. Firstly, SS6 states that proposals should conserve and enhance those environmental assets that contribute towards the county's distinctiveness and amongst those it includes heritage assets, and especially those assets that have specific environmental designation. It confirms that development should be shaped through an integrated approach to plan for the listed environmental components, which includes the '*historic environment and heritage assets, especially Scheduled Monuments and Listed Buildings*' from the outset and importantly that it is based on sufficient information for determining the effect on these assets.
- 6.21 SS6 is underpinned by a more detailed set of policies, including those dealing with local distinctiveness (LD1) and heritage assets (LD4). The pre-text (5.3.3) to policy LD1 notes that "*Locally distinctive assets ... are finite and irreplaceable and any detrimental impacts can carry cultural, environmental, economic and social costs*". LD4 states that development proposals affecting heritage assets and the wider historic environment should '*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.'*

6.22 The NPPF provides the following definition of 'setting of a heritage assets':

*The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.*

6.23 The NPPG elaborates further on the topic of 'setting' and explains that although the extent and importance of setting is often expressed with reference to the visual relationship between the asset(s) and the proposed development the way in which the asset(s) is experienced in its setting is also influenced by other environmental factors, which amongst other things includes an understanding of the historic relationship between places. The relationship may have a historic connection that amplifies the experience of the significance of the asset's setting. This does not depend on there being public rights of way or an ability to otherwise access or experience that setting (NPPG - 013 Reference ID: 18a-013-20190723).

6.24 Historic England, the Council's Archaeological Advisor and Principal Building Conservation Officer have all identified that the proposed development would result in harm to the significance of the scheduled monument and the setting of the Conservation Area, which comprises the historic character of Dilwyn. This means that the development would conflict with the requirements of the CS policies, which require either no harm or enhancement. For instances where harm is identified the tests to be applied in assessing the proposal are set out in the NPPF.

6.25 Chapter 16 of the NPPF sets out in detail the Government's planning policy stance on conserving and enhancing the historic environment. Paragraph 189 of the NPPF requires that in determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. A Heritage Impact Statement was submitted with the application and an updated Statement and response to Historic England and the Archaeological Advisor's comments have been provided during the assessment of the application.

6.26 At paragraph 184 the NPPF states that heritage assets '*should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations.*' When considering applications NPPF paragraph 192 identifies the following matters that should be take account of:

- a) *the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;*
- b) *the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and*
- c) *the desirability of new development making a positive contribution to local character and distinctiveness.*

6.27 In summary the subsequent NPPF paragraphs advise as follows:

- *Para 193 - great weight should be given to the asset's conservation (the more important the asset, the greater the weight should be).*

➤ *this is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance*

- *Para 194 - Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.*
- *Para 195 sets out the approach when substantial harm/total loss to the significance of a heritage asset is identified.*
- *Para 196 sets out the approach when less than substantial harm to the significance of a heritage asset is identified,*
  - *The harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.*
- *Para 200 states that Local Planning Authorities should look for opportunities for new development within Conservation Areas and within the setting of heritage assets, to enhance or better reveal their significance.*
  - *Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably.*

6.28 The site abuts a medieval castle (Dilwyn Castle), which is a Scheduled Monument known as 'Moated mound S of Church'. Historic England provide a full assessment of the significance of this designated heritage asset in their comments (paragraph 4.2, 4.2.1 & 4.2.2 of this report). These highlight the castle's position on the southern edge of the settlement and explain that this is illustrative of its role in commanding the surrounding countryside and approaches from the south and east. A large enclosure identified from LiDAR data has been recorded to the south of the castle and includes the application site. Historic England's initial representation was that this may represent a larger outer enclosure or bailey to the castle and that the site makes a positive contribution to both the significance of the scheduled monument and the historic character of the village, because it preserves part of the large enclosure to the south of the castle and, undeveloped, it would maintain the historic setting of the castle on the settlement's southern edge. Historic England also challenged the completeness of the Heritage Impact Assessment, due to the methods used and the geographical extent, such that it did not meet the requirements of paragraph 189 of the NPPF. The submission of further information (an updated HIA with additional photographs and additional diagrams) and a written response from the applicant satisfied the level of detail required under paragraph 189, but Historic England and the Council's Archaeological Advisor and Building Conservation Officer remain of the view that the development to the south of the scheduled monument would be harmful to its significance, derived from its edge of settlement location which is illustrative of its commanding role.

6.29 Both Historic England and the Archaeological Advisor considered that development of the site would diminish the ability to appreciate and understand the relationship between the enclosure and castle. The Archaeological Advisor has confirmed that there do not appear to be significant risks to below-ground archaeology on the site, but nonetheless harm would still result from the proposed development of the site, in relation to the setting of the scheduled 'castle' mound. It is considered that the HIA significantly underestimates the impact on the scheduled monument, because of the importance of its setting to its significance. The proposed introduction of development to the south of the castle would remove the ability to appreciate the castle's historic, edge of settlement position and thus its legibility and also cause harm to the overall historic character of the village.

6.30 The applicant submits that the HIA demonstrates that the enclosure is not an outer bailey, but rather a combination of topographic features and post-medieval and/or modern boundaries. From this assessment the applicant concludes that the application site is not associated with the castle

mound. Historic England disputes this conclusion and considers that development that would enclose the monument, removing its legibility and the positive contribution to the significance of the designated heritage assets, would result in a high level of harm in the less than substantial grade. Put another way, just because the site was not part of an outer bailey it does not mean it is of no importance to the significance of this heritage asset of national significance. The submission still does not provide a full understanding of the site's history relevant to the castle mound and is considered to underestimate the importance of this low lying ground and its association with the castle and its relative juxtaposition between village and countryside. Nonetheless, the HIA summarises that development may impact on the significance of the Scheduled Monument and Conservation Area, and then quantifies that harm as less than substantial. The application illustratively shows proposed traditional orchard planting to the northeast corner of the site, which the HIA states would screen the mound from the development, whilst the alignment of the proposed new access road would provide a view northeast towards the castle mound.

- 6.31 The adverse impact of Orchard Close and Castle Mound on the setting of the mound are acknowledged, however it is considered that this places greater importance on the need to protect its open aspect to the south, where the proposed development would be sited. The inclusion in the illustrative site 'masterplan' of the access road into the site and traditional orchard planting to the northeast corner of the site are noted, although there seems some conflict in their suggested ability to both screen the mound from development and provide views to it. Nonetheless, the Principal Building Conservation Officer opinion is that the open landscape which surrounds a castle is as integral to its defence as the castle structure itself and that by surrounding it with housing and setting aside a small undeveloped corner of the site and planting it with trees would not preserve or protect its setting.
  
- 6.32 Turning to the impact on the setting of the Conservation Area and the historic character of Dilwyn, it should first be noted that the statutory duty under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 does not apply to the setting of the Conservation Area. Nevertheless, there are still key local and national policy requirements that require an assessment of the impact of proposals on the setting of Conservation Areas. Specifically, CS policy LD4 states that developments should protect, conserve and where possible enhance heritage assets and their settings and at para 190 the NPPF states that Local Planning Authority's should '*identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise.*'
  
- 6.33 The dDNDP includes a specific policy (DW4) that sets out the principles for the development of the site subject to this application. Amongst other requirements, in terms of heritage assets it stipulates that a Heritage Impact Assessment should inform the location and design of development on the site '*and protect the open aspect of that part of Dilwyn Castle Moated Mound which contributes to its setting*'. DW7 – Protecting Heritage Assets states that developments will be expected to conserve or enhance heritage assets and their settings, in accordance with their significance and retain the overall character of the wider village. With regards the setting of the Conservation Area, DW8 requires development to respect and continue Dilwyn's historical evolution, demonstrate it has responded adequately to its context and setting, and views into and from the village that comprise the Conservation Area should be preserved.
  
- 6.34 Both local (adopted and emerging) and national policies therefore include an assessment of the setting of the Conservation Area. CS policy LD4 and dDNDP policies seek to protect, conserve and enhance, commensurately with the significance of the asset and the NPPF provides a clear view that Local Planning Authorities should look for opportunities for new developments within the setting of heritage assets, to enhance or better reveal their significance. Where harm is identified, the NPPF sets out the nature of the judgement to be taken.

- 6.35 With regards the significance of the site to the setting of the Conservation Area, the Principal Building Conservation Officer describes the site as open farmland on the southern edge of the village that abuts the Conservation Area and is in close proximity to the moated site of Dilwyn Castle. It is asserted that the character of the village is defined by the concentration of historic buildings at its core, the landmark features at its gateways; at the northern end the church and at the southern end the scheduled monument, and the landscape around it. The open farmland is considered to greatly contribute to the setting of the tightly knit settlement. In particular when approaching the village from the south there are wide views over the village to open farmland to the east. Included in these views are the motte, albeit now largely covered with trees, with a further more oblique view from Ledgemoor Road. It is considered that the quantum of development proposed, 30 dwellings, together with the associated infrastructure, would erode the tightly enclosed settlement pattern, resulting in harm to the setting of the Conservation Area. The harm is graded as being at the upper end of less than substantial.
- 6.36 Taking into account the specialist, professional advice from Historic England and the Council's Archaeological Advisor and Principal Building Conservation Officer it is considered that the scheme would not comply with CS policies SS6 and LD4 due to the harm that would result. Turning to NPPF paragraph 196, this less than substantial harm, advised to be at a high degree within this scale, should be weighed against the public benefits of the proposal. This is not a weighted 'planning balance', as set at paragraph 11dii) of the NPPF, but rather an assessment of harm to heritage assets, with great weight given to the assets' conservation and the requirement for clear and convincing justification for any harm (NPPF paragraphs 193 & 194) against public benefits. This will be undertaken in the conclusion section of this report. In terms of heritage impacts, a high level of harm within the less than substantial spectrum is identified and this conflicts with the CS, policies SS6 and LD4.

#### Minerals

- 6.37 The site is identified for the safeguarding of minerals due to the presence of sand and gravel deposits across the site. These deposits are noted in the Geophysical Survey Report that was submitted to clarify the site's archaeological potential. The Report notes that the underlying geology comprises siltstone and mudstone of the Raglan Mudstone Formation, with superficial deposits of head clay, silt, sand and gravel. The British Geological Survey mapping also confirms a superficial deposit of sand and gravel beneath the site.
- 6.38 Saved HUDP policy M5 and emerging dMWLP policy M2 are consistent with the NPPF in relation to protecting finite resources for future generations and from being sterilised by non-mineral development. At paragraph 203 of the NPPF it states that *'It is essential that there is a sufficient supply of minerals to provide the infrastructure, buildings, energy and goods that the country needs. Since minerals are a finite natural resource, and can only be worked where they are found, best use needs to be made of them to secure their long-term conservation.'* This does not mean there is a local or national policy presumption to either justify refusal of all non-mineral applications on safeguarded sites or to grant permission for extraction of the minerals, but rather that any proposal should adequately and effectively consider the importance and nature of the reserve in land-use planning decisions and for residential schemes to submit an assessment of the effects of the proposal on the mineral resource beneath and adjacent to the site. A Mineral Resource Assessment has not been submitted with this application.
- 6.39 Policy M5 (HUDP) states that proposals which could sterilise potential future mineral workings will be resisted in order to safeguard identified mineral resources. In cases where such development is proposed a geological assessment, protection of the minerals and/or extraction of all or part of the mineral reserve may be required as part of the development. Mineral extraction will only be required where the need for the development significantly outweighs the harm that the extraction may cause to other matters of acknowledged importance.





the principles to be applied to development of the site that off-site measures should be provided to reduce vehicular speeds entering the village from the south-west, with the aim to then meet the criteria for a 20mph zone through the village and also that a footpath should be provided within the site to enable pedestrians to reach its northern edge and be protected from the road by the existing hedgerow.

- 6.45 A footway is annotated on the illustrative 'masterplan', but the extent of this is not shown. Nevertheless, if the principle of development was acceptable a footway could reasonably be accommodated in the site's layout at reserved matters stage. As submitted the application does not include any proposals for off-site improvements to facilitate pedestrian connectivity from the site to the village and the facilities found there, such as the public house, bus stops, church and village hall. From the north of Orchard Close to just beyond Westview, approximately 37 metres in length, there is no footway and the extent of the highway is such that it is unlikely that there would be scope to provide one. However, there is a wide verge from the north of the site alongside 6 Orchard Close (Conifers), such that a scheme could include a new section of footway here and thus reduce the length of the journey to the centre of the village that would have to be on the carriageway. The Team Leader Area Engineer advises that the pedestrian facilities should extend along the C1091 as far as possible to minimise the shared surface with two way traffic. In the absence of this there is some degree of conflict with policy requirements to facilitate alternative modes of transport in the interests of accommodating and encouraging sustainable travel patterns, recognising the existing constraints. This weighs negatively against the proposal.

Other matters

Water quality

- 6.46 The site lies within the catchment of the River Lugg, 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 amended)) as being of international importance for its aquatic flora and fauna. CS policy LD3 states that '*Development that would be liable to harm Sites of Special Scientific Interest or nationally protected species will only be permitted if the conservation status of their habitat or important physical features can be protected by conditions or other material considerations are sufficient to outweigh nature conservation considerations*'. Furthermore, policies SD3 and SD4 state that development proposals should not lead to deterioration of EU Water Framework Directive water body status, or adversely affect water quality, either directly through unacceptable pollution of surface water or groundwater, or indirectly through overloading of Wastewater Treatment Works and should fully mitigate their adverse effects of wastewater discharges into rivers. More specifically SD4 confirms that:
- *in the case of development which might lead to nutrient levels exceeding the limits for the target conservation objectives within a SAC river, planning permission will only be granted where it can be demonstrated that there will be no adverse effect on the integrity of the SAC in view of the site's conservation objectives; and*
  - *where the nutrient levels set for conservation objectives are already exceeded, new development should not compromise the ability to reduce levels to those which are defined as favourable for the site*
- 6.47 The NPPF, at paragraph 175b) states that '*development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest*'. Paragraph 177 confirms 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 (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.'*

- 6.48 The Principal Natural Environment Officer (Ecology) identifies surface water and foul water as '*likely significant adverse effects*'. The application states that foul drainage would be to the mains, with a connection point to the existing network in the C1091 near to the proposed vehicular access and surface water would be to an attenuation pond within the site and outfall to a watercourse to the east of the site. Welsh Water have advised that there is no capacity at the receiving Waste Water Treatment works (WWTW) and as a consequence the proposed development would overload it. They also confirm that no reinforcement works are proposed within their Capital Investment Programme and the location of the proposed foul connection (drawing 1679.00) does not tally with their asset records. On this basis Welsh Water do not support the application. This is in line with their representations made during the dNDP consultations. As a result Welsh Water recommend pre-commencement conditions that would require a survey of the current flow and load at the WWTW, an assessment of the impact of the proposed development on this and, if necessary, a scheme of mitigation to allow for the scheme to connect its foul discharges. Any mitigation would be a development cost. In addition the applicant is advised to contact Welsh Water to ascertain where a suitable point of connection is.
- 6.49 As a site located within the catchment of the River Lugg SAC, which comprises part of the River Wye SAC the requirement for an assessment under the Habitat Regulations is triggered. That assessment must satisfy beyond all reasonable scientific doubt that there would not be an adverse effect on the integrity of the River Wye SAC (Lugg sub catchment) which is currently failing in terms of phosphate levels. As set out in the preceding paragraph there is a degree of uncertainty, due to the lack of capacity at the WWTW. Notwithstanding this, even if capacity was available an increase in foul flows to the WWTW would create additional outfall in to the River Lugg SAC hydrological catchment resulting in additional phosphate loading and thereby worsening the current situation. The applicant has suggested that the current application (203468/F) for a wetland complex to provide tertiary treatment of the outflow from Dilwyn WWTW, which is on land in the applicant's ownership, provides scientific certainty that the proposed housing on the application site would have no adverse effect on the integrity of the River Lugg (Wye) SAC. Given that the application for the wetland is undetermined (further information is required, including that to inform the HRA AA), it provides no such scientific certainty at this time. The applicant's suggestion of a condition requiring commissioning and construction of the wetland prior to the first occupation of the dwellings would not be reasonable at this time, because it has not yet been demonstrated that the wetland would mitigate the phosphorous issue or that permission will be granted.
- 6.50 With regards surface water, it is considered that the sustainable drainage strategy proposed would be able to achieve the required mitigation and management of any potential pollutants, contaminants, and nutrient/phosphate pathways. Conditional on this technical approval, which could be secured by planning condition to be submitted with the reserved matters, there is considered to be sufficient scientific certainty that surface water would not result in an adverse effect on the integrity of the SAC, subject to Natural England's final approval. It is therefore concluded that by virtue of the requirement for foul drainage from the proposed development there would be an adverse effect on the integrity of the SAC (a designated 'European' nature conservation site) and this would conflict with CS policies SD3, SD4 and LD2 and would fail to accord with the Conservation of Habitats and Species Regulations (2017) (as amended). Furthermore, it not been demonstrated that the proposal would meet the requirements of paragraph 175 of the NPPF, which states that development outside a SSSI (and as per paragraph 176 SACs, which are afforded the same protection) that is likely to have an adverse effect on it should not normally be permitted. The implications of this for decision taking is assessed in the conclusion section of this report.

## Ecology – protected species/biodiversity enhancement

- 6.51 CS policies SS6 and LD2 state that development proposals should conserve, restore and enhance those environmental assets that contribute towards the county's distinctiveness, including biodiversity. With regards protected species, LD2 states that development that is liable to harm nationally protected species will only be permitted if the conservation status of their habitat or important physical features can be protected by conditions, or other material considerations are sufficient to outweigh nature conservation considerations. Similarly the NPPF states that decisions should contribute to and enhance the natural and local environment by, amongst other things minimising impacts and achieving net biodiversity gain. It further states that when determining planning applications, local planning authorities should apply certain, specified principles, which include that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts) adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
- 6.52 A Preliminary Ecological Appraisal has been submitted with the application. Although it is noted that the report does not contain additional specific species surveys, identified as being required (including Great Crested Newts), due to the nature of the site and proposal the Appraisal is considered to be sufficient at this stage and it can be concluded that any mitigation required as a result of more detailed protected species surveys can be secured through a pre-commencement condition and stipulation that the reserved matters addresses these requirements.
- 6.53 With regards biodiversity and habitat enhancement (net gain) this could be achieved by way of a condition if outline planning permission were granted, together with appropriate landscaping included in any reserved matters scheme. It should be noted that the Tree Officer has challenged the appropriateness of orchard planting and suggests a broader mix of native species in the interests of achieving a more positive contribute to ecological enhancements. Similarly the Principal Natural Environment Officer (Landscape) recommends the inclusion of hedgerow trees (oaks) and the requirement for the reserved matters to provide strategic planting, hedgerows, wildflowers and aquatics (attenuation pond). These are matters for future consideration, as part of the layout and landscaping. The indication on the site masterplan of a new native species hedgerow, to reinstate the 1843 field boundary is a positive aspect in habitat terms, as well as landscape. It is not however solely dependent on the development proposed being brought forward.

## Flood risk and drainage

- 6.54 The site is located in Flood Zone (FZ) 1; the lowest risk of flooding. CS policy SD3 and the NPPF sequentially steer new development to sites in FZ1. As the site exceeds 1 hectare there is a requirement for a Flood Risk Assessment (FRA) and one has been submitted.
- 6.55 At present, as an agricultural field, the land drains naturally. Local objections raise concerns about the site having a high water table, existing surface water flooding issues and the unsuitability of the surface water strategy due to land ownership and errors in the calculations used in the FRA. The River Lugg Drainage Board advise that they have no objection providing that there would be no discharge to a watercourse. In their listed requirements it states that no additional surface water run-off is permitted to an adjacent watercourse without Land Drainage Consent, which would need to be obtained from the Board under the terms of the Land Drainage Act (1991) and the Floods and Water Management Act (2010). The outfall from the proposed attenuation pond is to a watercourse to the east of the site, meaning that if permission were granted the developer would need to secure the Board's consent for an outfall to the watercourse, and as suggested in the objections also the consent of the landowner on the basis that the watercourse lies outside of the applicant's ownership.
- 6.56 The Land Drainage comments (at paragraph 4.15) consider the risk of groundwater flooding to be low, on the basis of borehole records, but nonetheless highlight that this must be given

comprehensive consideration in the detailed design of the drainage scheme. The risk of surface water flooding is also considered to be low, due to the topography, and there are no records of historical flood events in the vicinity. Despite the generally poor quality of the infiltration tests undertaken by the applicant (not in accordance with BRE365) it is considered that infiltration is likely to be low and it is recommended that consideration is given to combined infiltration and attenuation systems when the detailed drainage design is progressed. Surface water run-off from impermeable areas would be limited to greenfield rates. Some errors in the calculations are noted, however, as this is essentially a high level drainage strategy, at this outline stage these are not determinatively consequential. Greater detail can be submitted with the reserved matters application and the Land Drainage comments advise that given the size of the site and availability of land there can be confidence that an acceptable technical drainage solution can be achieved.

6.57 The absence of a confirmed foul drainage strategy is noted in the Land Drainage comments. As set out above (Paragraph 6.48) Welsh Water have confirmed that pre-commencement conditions would be required to establish the impact of the development on the current flow and load at the WWTW and how this could be mitigated, at the developer's expense, to accommodate the housing growth proposed on the application site. An alternative foul drainage strategy has not been proposed. Sequentially, it is a policy requirement that a mains connection is made where the infrastructure exists and in any event due to the water quality issues an alternative means of foul drainage would need to demonstrate compliance with the following criteria, as set out in the Council's Position Statement:

- *The drainage field is more than 50m from the designated site boundary or sensitive interest feature (includes Habitats of Principal Importance and other designated ecological important features identified through Core Strategy SD4/LD2/SS6 **and**;*
- *The drainage field is more than 50m from any surface water feature e.g. ditch, drain, watercourse, **and**;*
- *The drainage field 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 expediate the transport of phosphorous e.g. fissured geology, flooding, shallow soil.*

6.58 Overall, the site is located in the sequentially preferred FZ1 and it is considered that it can reasonably accommodate a suitable, detailed surface water drainage strategy, which it is proportionate to require by condition and also by ensuring that the layout and landscaping reserved matters are planned to accommodate it. Foul water drainage would be controlled by a pre-commencement condition, which ultimately would secure any required upgrade to facilitate increased flows. The critical consideration in drainage terms, at this juncture, is the impact of development on water quality (as assessed in paragraphs 6.46-6.50).  
Section 106 contributions

6.59 CS Policy ID1- Infrastructure Delivery, states that provision for new and/or the enhancement of existing infrastructure, services and facilities to support development and sustainable communities, will be achieved through a co-ordinated approach. Where compliant with Regulation 122(2) of the Community Infrastructure Levy Regulations 2010, as set out in paragraph 56 of the NPPF, contributions can be sought to mitigate the impacts of development on infrastructure through a planning obligation (section 106 agreement). To meet the tests obligations must satisfy all of the following:

- a) *necessary to make the development acceptable in planning terms;*
- b) *directly related to the development; and*
- c) *fairly and reasonably related in scale and kind to the development.*

6.60 To mitigate impacts on infrastructure contributions are considered to meet these tests in respect of highways, education, open space and by the Clinical Commissioning Group (GP services) and the Wye Valley Trust (primary health care). Contributions to the Wye Valley Trust are necessary to bridge an initial funding gap resulting from the unplanned for increased population resulting from the development. Some of the local representations advance the needs for contributions to the local primary school and preschool, playing fields, traffic calming and to upgrade the Waste Water Treatment Works.

6.61 The Planning Obligations Manager has confirmed (paragraph 4.19) the required contributions and the infrastructure projects that would benefit. The Education consultation response confirms that the primary school funding would be allocated to Weobley Primary School. The representation on behalf of the Board of Governors of St Mary's Church of England Primary School and Dilwyn Playgroup/pre-school request that the financial contributions are provided to them as they are only state funded educational facility in the parish. Clearly St Mary's is the nearest primary school to the application site. However, it is a 'free school' with central government funding rather than through the Local Education Authority. In addition it does not have a catchment. The representation on behalf of the Board of Governors confirms that only 38% of pupils on roll live within the Parish. The Supplementary Planning Documents - Planning Obligations (SPD), at 3.5.8, states that '*Developments have been divided into bands based on the size of the development. A contribution will be requested if the number of spare places meets the trigger point for that band in at least one year group at each of the catchment schools. The bands are:*

- *For a development of 30 or fewer dwellings, contributions will be sought for schools that have no spare places in at least 1-year group*

On the basis of the SPD the education contributions can only be sought for the catchment schools, which as confirmed by Education are Weobley Primary (including Early Years) and Weobley High Schools.

6.62 The contributions, and affordable housing, are considered to meet the tests and could be secured by way of a section 106 agreement. Whilst there is a means of securing the requisite affordable housing and financial contributions required to mitigate the impacts of the development a signed section 106 has not been received to secure this. This has not been sought, because of the principle objections to this application. As such compliance with policy requirements has not yet been secured.

Conclusion/planning balance

6.63 In accordance with the statutory requirement determination must be made in accordance with the Development Plan, unless material considerations indicate otherwise. The NPPF affirms at paragraph 12 that the presumption in favour of sustainable development does not change the statutory status of the Development Plan as the starting point for decision making.



- 6.64 For the purposes of this application the Development Plan comprises the CS and saved policies of the HUDP. Locationally the site lies adjacent to the main built up part of the settlement and thus in terms of the qualifying criterion of CS policy RA2 it accords with policy requirements. However, as set out in detail in the preceding assessment there is significant conflict with CS policies in respect of the impact on heritage assets, water quality, safeguarding mineral reserves and to some degree with regards connectivity and promoting alternative modes of transport. Added to that a legal agreement to secure the affordable housing and financial contributions has not been secured. Taking all these considerations together it is opined that the proposal fails to accord with the Development Plan (CS and saved HUDP policies) when taken as a whole. As a result, on the basis of the Development Plan alone, permission should be refused.
- 6.65 Next, in accordance with the statutory requirement, it is necessary to turn to the material considerations, to ascertain if these indicate that a decision should be made other than in accordance with the Development Plan (as set out in Section 38 (6) of the Planning and Compulsory Purchase Act 2004 – see paragraph 6.1).
- 6.66 The first key material consideration is the NPPF. Paragraph 11c) states that when applying the presumption in favour of sustainable development, for decision-taking, this means ‘*approving development proposals that accord with an up to date development plan without delay*’. Given the conclusion above that the proposal does not accord with the Development Plan, this direction does not apply in this case. Next it is necessary to consider paragraph 11 d) and to ascertain if limb i) or ii) is the correct decision taking route.
- 6.67 With regards paragraph d) it must be taken in account that the Council cannot demonstrate a 5 year housing land supply (current published position is a 4.22 year supply) and as a result the policies within the Development Plan that are most important for determination of the application should be considered out of date (as confirmed in NPPF footnote 7). Paragraph 11d) states that:
- d) *where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date<sup>7</sup>, 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<sup>6</sup>; 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.’*
- (Footnotes:
- 6: *The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 176) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 63); and areas at risk of flooding or coastal change*
- 7: *This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. Transitional arrangements for the Housing Delivery Test are set out in Annex 1.)*
- 6.68 Starting with paragraph 11 d) i: that permission should be granted unless the policies in the NPPF that protect areas or assets of particular importance provide a clear reason for refusal, it is noted that habitats sites (including those sites listed in paragraph 176) and designated heritage assets are included. There are therefore three qualifying protected areas/assets, namely the SAC, the Scheduled Monument and the Conservation Area. As such paragraph d)i is applicable and next it is necessary to apply those policies in the NPPF that protect these areas/assets to establish if they do indeed provide a clear reason for refusal. In doing so, only the policies that protect the

areas/assets listed in footnote 6 can be taken into account and not any other NPPF policies or Development Plan policies.

- 6.69 Firstly, with regards the impact on the SAC, for the reasons above (paragraphs 6.46 - 6.50) it cannot be concluded that the proposal would not have an adverse effect. This provides a clear reason for refusal, under paragraph 175 of the NPPF, and as stipulated in paragraph 177 the presumption in favour of sustainable development does not apply because the proposed development is likely to have a significant effect on this habitats site. As a consequence, as directed by paragraph 11d) i, permission should not be granted on this ground alone. With regards the protection of such areas, case law (Monkhill [2019]) has established that because the application of a legal code for the protection of a particular area or asset determines the outcome of a planning application there is no justification for the application of limb 11d) ii. In practice this means that the decision taking assessment stops at this point, with a clear reason to refuse permission and no requirement to weigh other matters in the balance, weighted or otherwise.
- 6.70 Notwithstanding the firm conclusion above, given that there are other protected areas in this case it is considered appropriate to assess and reach conclusions on whether they also provide clear reasons to refuse, under paragraph 11d) i.
- 6.71 Secondly, in respect of the Scheduled Monument, the relevant NPPF policy test is provided in paragraph 196, because the harm has been quantified as '*less than substantial*'. The test in paragraph 196 is that the harm to the asset should be weighed against the public benefit of the proposal. As advised previously, this does not incorporate a biased weighting to either consideration, nor does it require other harms to be factored in, at this stage. Although the identified harm falls within the '*less than substantial*' category the advice of the specialist consultees, including Historic England –a statutory consultee, unanimously concludes that the degree is at the upper end of this spectrum. In addition paragraph 194 of the NPPF requires clear and convincing justification for any harm to the significance of a designated heritage asset. The specialist advice explains that the application site, as open land, is important to the understanding of the Scheduled Monument and therefore positively contributes to its significance. In terms of the environmental objective (paragraph 8 c) of the NPPF) the scheme's failure to protect or enhance the built and historic environment weighs heavily against the proposal. The harm would be permanent and at the upper end of the '*less than substantial*' range. Moreover, it is necessary to give great weight to the asset's conservation, with the degree of weight being greater the more important the asset is (paragraph 193 NPPF). In this case the asset is a Scheduled Monument, which by definition is of national importance. As a result the degree of weight to be afforded to its conservation is increased commensurately with its importance. Turning to the public benefits to be derived from the scheme, these are the provision of housing (30 units), including affordable housing, in a context of a shortfall of supply across the county, and the associated social and economic benefits that would flow from this, such as payment of the New Homes Bonus and the employment of trades and purchase of materials during construction and after occupation through increased expenditure of disposable incomes, both in the village itself and the county. An increased population also has the opportunity to contribute to the sustainability of community facilities and events. Open space provision on site is another benefit, bearing in mind that dNDP policy DW16 acknowledges that there is little open space serving local needs. There is scope for environmental benefits in terms of biodiversity enhancement, although these cannot be quantified at this outline stage so are not taken into account. For a development of 30 dwellings these benefits are moderate. Weighing the identified harm against the public benefit, bearing in mind the increased weight required for the asset's conservation, it is considered that the harm outweighs the benefits. Thus the harm to the Scheduled Monument provides another clear reason to refuse permission under paragraph 11d) i. Case law has established that a NPPF policy can provide a clear reason, even when it does not direct refusal (Monkhill [2019]), and whether it does in a particular case is a matter of planning judgement. Although harm to the significance of the Scheduled Monument has been established to provide a clear reason to refuse permission in this case, unlike the assessment above for harm to a European protected site, it is still necessary for the decision-maker to have regard to all other relevant considerations before

determining the application (s. 70(2) of the 1990 Act and s. 38(6) of the 2004 Act). This is because the relevant 'footnote 6 policy' (paragraph 196) does not require all relevant considerations to be taken into account. This approach is confirmed in the Monkhill case (paragraph 39, point 13). Whilst the application of policy 196 has been considered to provide a clear reason for refusing planning permission in this case, in reaching a decision it is necessary to have regard to all other relevant considerations. Critically, however, and as clarified by Mr Justice Holgate in the Monkhill case, this exercise '*must be carried out without applying the tilted balance in limb (ii), because the presumption in favour of granting permission has already been disapplied by the outcome of applying limb (i)*'. In light of there being a third protected area/asset, the Dilwyn Conservation Area, which is a designated heritage asset, the paragraph 11) d) i limb test should be reapplied.

- 6.72 Thirdly, with regards the impact on the setting of the Dilwyn Conservation Area, and historic character of Dilwyn, this falls within the application of paragraph 11) d) i because footnote 6 confirms it includes policies that relate to designated heritage assets. Chapter 16 of the NPPF provides the policy context that relates to conserving and enhancing the historic environment. A Conservation Area is a designated heritage asset and although its setting is not part of the designated asset it can contribute positively to its setting. This is the position held by the relevant building conservation advice in this case. Paragraph 194 stipulates that any harm to the significance of a designated heritage asset, which includes that resulting from development within its setting, should require clear and convincing justification. In addition, paragraph 200 states that '*Local planning authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites, and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably*'. This confirms that new development within the setting of the Conservation Area should look to enhance or better reveal its significance and schemes that do so should be treated favourably. The Building Conservation advice is that the proposal would harm the setting of the Conservation Area, so it is opined that this means it should be considered less favourably. The test in paragraph 196 of the NPPF applies again. This requires the harm to be weighed against the public benefit. The less than substantial harm has been quantified as a high degree within the less than substantial scale. Given the interrelationship between the historic character of Dilwyn, the Scheduled Monument and the Conservation Area, it is considered that the harm to their significance outweighs the identified benefits. Cumulatively, after applying paragraph 196 the harm to the protected heritage assets provides a clear reason to refuse.
- 6.73 In completing the decision-taking tests, it is finally necessary to have regard to all other relevant considerations before determining the application (as required by (s. 70(2) of the 1990 Act and s. 38(6) of the 2004 Act), but as explained above (paragraph 6.71) because of the conclusion under the first limb of NPPF paragraph 11) d) i, which provides a clear reason to refuse, this is not the tilted balance set out in the second limb (ii). The purpose of carrying this out, is due to the clear reason provided by the harm to heritage assets only taking into account the impact on heritage assets. It is also essential to bear in mind that the clear reason for refusal resulting from harm to the SAC by itself does not require the factoring in of all considerations (as set out in paragraph 6.69).
- 6.74 In assessing all of the other relevant considerations as set out earlier in this report the proposal would result in potential sterilisation of mineral reserves and without further information this weighs negatively in the balance. In addition, the scheme does not incorporate pedestrian connectivity improvements, such that it would act as a deterrent for future occupiers accessing local facilities and public transport, thus placing greater emphasis on car reliance even for short journeys. This also weighs negatively against the application. Finally, the lack of a legal agreement to secure the affordable housing and financial contributions to mitigate the impacts of the proposal, also weighs negatively, although it is appreciated that if the scheme were policy compliant in all other respects this could have been sought.

- 6.75 The dDNDP is a material consideration, so relevant in assessing the proposal. However, as set out at paragraphs 6.6 and 6.7 it can only be afforded limited weight at this time. In particular, the dDNDP's allocation of the site and the pertinent policies to it are considered to remain in conflict with the CS and NPPF. This issue was identified at the dDNDP's Examination, resulting in its withdrawal from that process. This was stated to provide an opportunity to explore other sites with Historic England to ascertain if they had less heritage impacts. This has not taken place.
- 6.76 Even setting aside (and there is no reason to do so) the first conclusion under paragraph 11 d) i, with regards the harm to a European protected site providing a clear reason to refuse permission with no requirement to consider any other matter, it is nevertheless considered that collectively the harm to heritage assets, safeguarded mineral reserves and missed opportunity to improve pedestrian connectivity clearly outweigh the benefits resulting from the scheme, which have been set out in paragraph 6.71 above. Accordingly, by virtue of NPPF paragraph 11d) i and ii), with the tilted bias disapplied, planning permission should be refused.
- 6.77 Starting with the Development Plan (CS and saved HUDP policies) the proposal conflicts with their requirements and as such should be refused. After establishing and applying the NPPF's range of assessments, it is firmly demonstrated that this material consideration does not indicate that an alternative decision should be made. At this time the weight to the dDNDP is limited (as explained at paragraphs 6.6 and 6.7), such that it cannot outweigh the Development Plan and the NPPF. Consequently, on the basis of the Development Plan and material considerations, it is recommended that permission is refused.

## **RECOMMENDATION**

**That planning permission be refused for the following reasons:**

1. **The site lies within the catchment of the River Lugg Special Area of Conservation (SAC), which comprises part of the River Wye SAC, and triggers the requirement for a Habitat Regulations Assessment. Under the Conservation of Habitats and Species Regulations 2017 (as amended) there is a requirement to establish beyond all reasonable scientific doubt that there will not be an adverse effect on the integrity of the River Wye SAC (Lugg sub catchment) which is currently failing its water quality targets. The proposal therefore fails to meet the requirements of policies LD2, SD3 and SD4 of the Herefordshire Local Plan - Core Strategy and the National Planning Policy Framework (paragraph 170e)), together with the provisions set out in The Conservation and Habitats and Species Regulations 2017 (as amended). This provides a clear reason to refuse planning permission under paragraph 11 d) i of the National Planning Policy Framework.**
2. **Development of the site would result in less than substantial harm (quantified as being at a high degree within this category) to the significance of designated heritage assets; namely a Scheduled Monument (Castle Mound) and the setting of the Dilwyn Conservation Area. This is contrary to policies SS6 and LD4 of the Herefordshire Local Plan - Core Strategy. Furthermore, the harm is considered sufficient to outweigh the public benefits, taking into account the weight to be afforded to the assets' conservation as set out in Chapter 16 – Conserving and enhancing the historic environment of the National Planning Policy Framework. Consequently, this provides a clear reason to refuse planning permission under paragraph 11 d) i and also when having regard to all other considerations (as required by section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2)(a) of the Town and Country Planning Act 1990 (as amended)), the adverse impacts outweigh the benefits such that permission should be refused under paragraph 11 d) ii as well.**
3. **On the basis of the information submitted it has not been demonstrated that the proposed development would not unacceptably sterilise mineral reserves. This is**

contrary to policy M5 of the Herefordshire Unitary Development Plan and the requirements of the National Planning Policy Framework.

4. The proposal does not include necessary improvements to facilitate pedestrian connectivity to local services and public transport. As such the proposal would fail to meet the requirements of policies SS4 and MT1 of the Herefordshire Local Plan – Core Strategy and the requirements of the National Planning Policy Framework.
5. A legal agreement pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) has not been completed. As such, there is no legal mechanism by which the Local Planning Authority can properly secure the delivery, construction and occupation of the proposed affordable dwellings and secure financial contributions towards required community infrastructure. These measures are necessary to make the development acceptable. The absence of an agreement is in conflict with policies SC1, H1 and ID1 Herefordshire Local Plan Core Strategy 2011-2031, the Council’s Planning Obligations Supplementary Planning Document (April 2008) and the provisions of the National Planning Policy Framework.

**Informative:**

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 and identifying matters of concern with the proposal and discussing those with the applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which have been clearly identified within the reasons for the refusal, approval has not been possible.

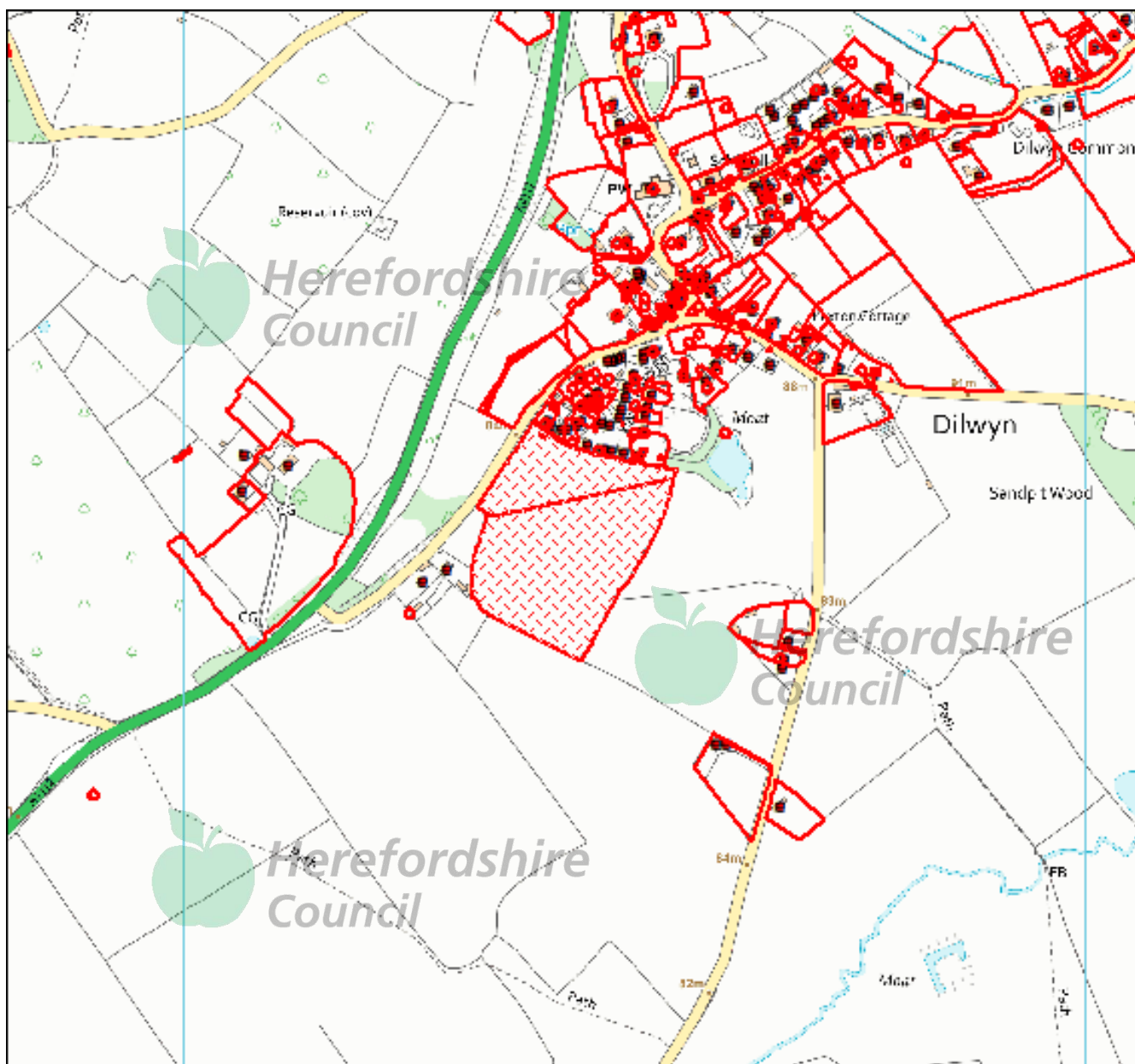
Decision: .....

Notes: .....

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**Background Papers**

Internal departmental consultation replies.



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**APPLICATION NO:** 202265

**SITE ADDRESS :** LAND SOUTH WEST OF ORCHARD CLOSE, DILWYN, HEREFORDSHIRE, HR4 8HQ

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