

<b>MEETING:</b>	<b>PLANNING AND REGULATORY COMMITTEE</b>
<b>DATE:</b>	<b>4 AUGUST 2021</b>
<b>TITLE OF REPORT:</b>	<p><b>201961 - PROPOSED VARIATION OF CONDITION 10 OF PLANNING PERMISSION SE1999/2612/F GRANTED ON APPEAL (REFERENCE: APP/W1850/A/00/1039625) FOR 22 HOLIDAY CHALETS WITH PARKING FACILITIES – ‘ORIGINAL’ PLANNING PERMISSION REFERENCE: SS980398PF) TO EXPLICITLY DETAIL THE APPROVED DRAWINGS AT HARTLETON FARM, BROMSASH, ROSS-ON-WYE, HR9 7SB.</b></p> <p><b>For: Bellamy per Mr David F Baume, Studio 2, Thorn Office Centre, Holme Lacy Road, Rotherwas, Hereford, Herefordshire HR2 6JT</b></p>
<b>WEBSITE LINK:</b>	<a href="https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=201961&amp;search-term=201961">https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=201961&amp;search-term=201961</a>
<b>Reason Application submitted to Committee – Proxy Member Redirection</b>	

**Date Received: 23 June 2020**

**Ward: Penyard**

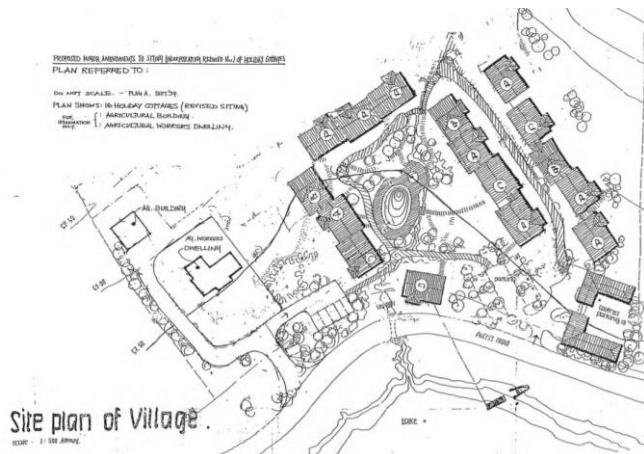
**Grid Ref: 364884,225436**

**Expiry Date: 6 August 2021**

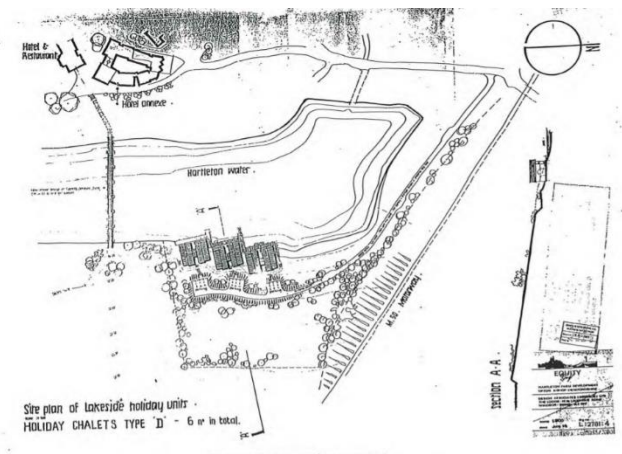
Local Member: Cllr Wilding – Proxy Member = Cllr Watson

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

- 1.1 The site subject to this application lies to the south of the M50, between the B4224 (Crow Hill – Bromsash) and Fording Lane (unclassified), some 3.5 kilometres (2.1 miles) to the east of the motorway terminus at its junction with the A449 near to Ross-on-Wye.
- 1.2 The site lies either side of Hartleton Water, which extends from land to the north of the former Hartleton Farmhouse, which is Grade II listed, almost to Fording Lane, where the Fording Farm complex lies beyond and includes Grade II listed buildings. Hartleton Water is adjacent to Drummonds Dub, with a Public Right of Way (LTR1/UB10) separating the two. South Herefordshire Golf Club lies to the southwest of the site, between the B4224 and Fording Lane. A private road (Hartleton Water Road) extends from the B4224 to Fording Lane and provides access to the application site. A Public Right of Way (LTR1) runs along part of this private road, from Fording Lane to the northwest before continuing in a northerly direction where it meets another Public Right of Way (UB10).
- 1.3 Planning permission was granted in 1999 (SS98/0398/PF) for 22 holiday chalets and parking facilities at Hartleton Water. This comprised 16 buildings on the southwestern side of the lake (referred to as the ‘village’) and 6 buildings to the northwest (referred to as ‘lakeside’). Each building comprises two units of holiday accommodation, equating to 44 units in total. Subsequently, a revised planning permission was granted, at appeal, (SE1999/2612/F), which deleted condition 11 and varied conditions 5 and 10 of the ‘original’ planning permission.



Site Plan of 'Village' – 16 'chalets'



Site Plan of 'lakeside' – 6 'chalets'

1.4 This application, made under section 73 of The Town and Country Planning Act 1990 (as amended), seeks permission to vary condition 10 of the planning permission SE1999/2612/F. Condition 10 of SE1999/2612/F states 'The development hereby permitted shall not be carried out except in complete accordance with details shown on the submitted plans, numbered V:2781:10 and L:2731:5'. This amended condition 10 of the earlier permission (SS98/0398/F), which states 'The proposed development shall be carried out in accordance with the approved plans.' The variation sought under the current section 73 application is to insert the drawing references of all the approved plans.

1.5 In support of the application a Statutory Declaration has been submitted by the applicant, which in summary sets out the planning history, the drawing references considered to be those approved under permission SS98/0398/PF and that the permission was acknowledged by the Council to have been implemented. A Planning Statement has also been submitted, which again provides a review of the case history and also outlines the caselaw relating to situations where drawings are absent.

**2. Legislative/policy background**

- 2.1 The Town and Country Planning Act 1990 ('the 1990 Act')
- 2.2 The National Planning Policy Framework (NPPF)
- 2.3 The National Planning Practice Guidance (NPPG)

**3. Planning History**

3.1

Application Reference	Proposed Description	Decision
SH86/1405/PO	Construction of new access, new road and erection of approximately 45 chalets	Refused 18.2.1987
SH87/0594/PO	Construction of new access onto the B4224, a new road and development of approximately 30 holiday chalets	Approved 26.9.1988
SH87/1383/F	Change of use to 18 hole golf course	Refused 25.11.1987
SH88/0179/F	Change of use to 18 hole golf course	Approved 6.4.1988
SH89/1227/PF	Change of use of agricultural land to golf course in addition to	Approved 6.11.1989

	that approved under SH88/0179/F	
SH89/1228/PM	30 holiday chalets with parking facilities	Approved 6.11.1989
SH89/1265/PF	Change of use from residential to hotel use and new and altered buildings to form hotel bedroom and restaurant	Approved 6.11.1989
SH89/1266/LA	Change of use from residential to hotel	Approved 6.11.1989
SH93/1077/PF	22 holiday chalets with parking facilities	Approved 10.7.1995
SH94/0797/PO	Erection of an agricultural workers dwelling (revised siting proposal)	Approved 18.11.1994
SH94/1494/PM	Erection of an agricultural workers dwelling	Refused 1.2.1995
SH95/0147/PM	Erection of an agricultural workers dwelling (revised house type)	Approved 26.4.1995
SS98/0398/PF	Renewal of permission for 22 chalets (SH93/1077/PF refers 10.7.95)	Approved 19.4.1999
SH98/0086/PO	Three dwellings in conjunction with revocation of existing consents for holiday chalet accommodation	Refused 13.3.1998
SE1999/2612/F	Removal of conditions No. 5 Holiday constraint, No. 10 in accordance with the approved plans, No. 11 Removal of PD rights, attached consent SS98/0398 (19.4.1999)	Refused 23.12.1999 Appeal Allowed 3.7.2000
SE2004/3958/F	Construction of 44 holiday apartments	Withdrawn 14.2.2005
SE2005/2651/F	Construction of 32 holiday apartments	Refused 26.10.2005 Appeal withdrawn 23.5.2006
SE09/2839/F	Removal of agricultural occupancy condition (condition 3 SH94/0797/PO)	Approved 11.1.2010
S102163/F	Removal of condition 2 of SE09/2839/F	Refused 24.11.2010 Appeal Allowed 20.4.2011
143488/F	Proposed erection of 4 dwellings	Refused 11.5.2015 Appeal Dismissed 26.1.2016

#### 4. Representations

- 4.1 Linton Parish Council  
The Parish Council object to this application.

The Councillors have been advised by some of its Parishioners this may be a flawed application as the matter of the missing documents may now have been resolved and the application does not give sufficient context with regard to the history of applications made before and after that referred to above.

It would appear that the applicant seeks to amend and overturn conditions deemed important and contingent on approval at appeal. The Council sees no reason for the condition to be changed or overturned. Indeed as this development is located in 'Open Countryside' it is essential that vernacular building materials be used.

4.2 Nineteen objections have been received from local residents (some sending more than one representation), the Protection for Rural Upton Bishop (PRuB) and from Counsel on behalf of residents of Hartleton. In summary these representations raise the following points:

- Application does not appear to accurately reflect the underlying documentation
- Application is over 30 years old and neither the Council nor the applicant have all the paperwork/evidence
- Understand that full details are not in file – concerned that the full picture is not available
- Chalets were originally part of a holiday 'village' including a hotel, golf course and water sports. Following land sales only the golf course exists
- Chalets would be in a field with no/poor amenities and infrastructure and access only from the B4224
- Chalets are substantial dwellings
- 22 chalets would result in 44 holiday units
- Extensive planning history, including withdrawn applications and appeals
- Condition 10 appears to focus on building materials – (local) natural stone and Spanish natural slates were approved (by letter dated 9.12.2003) – lesser quality materials (wood) should not be allowed
- This submission proposes to use drawings from 14 July 1987 (11 years prior to the grant of permission) for determination of this application
- Neither Council or developer have plans on file
- Statutory Declaration may not be complete
- Further plans have been provided by local residents (including those pertaining to SE04/3958/F, which should take precedence and mean no need to vary condition 10)
- Submitted plans include a hotel, restaurant and clubhouse, which cannot be provided due to land sales
- Condition 10 remains a core requirement of this development – it restricts design to the approved plans
- No purpose to this application, as it is based on information that has been superseded
- Application should be refused
- No longer a farm diversification scheme
- Need to improve roads
- Landscaping should be delivered prior to business activities on site
- Ecological Survey required
- Lack of affordable housing
- Condition 5 requires the development to be holiday lets, not continuous or extended occupancy
- Inappropriate development – climate change
- Variation of condition 10 was refused at appeal, so any further variations should be too (no appeal to High Court, so decision should stand)
- Commencement of the development appears to be invalid:
  - ❖ It should be in accordance with the approved plans, and
  - ❖ More than 'de minimis'
- Work carried out, construction of a driveway, is not in the correct position, appears to have been constructed to serve the caravans/their treatment plant to the southwest of Hartleton Farm and is very little in the way of evidence (a gravelled area)



- Condition 10 cannot be varied because the permission has expired – a new planning application is required
- Amendment applications should not be used for major applications
- The scheme's overdevelopment of the site would result in adverse impacts on:
  - ❖ the landscape
  - ❖ highways
  - ❖ walkers, cyclists, horse riders, anglers
  - ❖ amenity/tranquillity (noise/light pollution/pollution)
  - ❖ protected species/wildlife
  - ❖ drainage
  - ❖ the community
- Planning policy has changed since original application (30 years ago) – allowing it would not be fair on local residents, who have been objecting to applications during this time
- Application should be considered against up to date guidance and regulations and taking account of local residents and existing rural tourism businesses
- Application is unclear on the nature of occupation of the chalets: could be holiday lets, short term lets, farm workers, second homes, timeshares etc.
- If there is no opportunity to revisit the concept of this development, the condition should remain and the application be rejected
- Application is flawed as it seeks to vary condition 10 of SE1999/2612F, but that permission was not implemented so has lapsed – the Council's discharge of conditions letter and letter confirming a commencement had been made refer to the permission reference: SS98/0398/PF
- As condition 10 of SE1999/2612/F only refers to drawings for chalet types B and D there is no approved layout on which to confirm that operations to implement the permission were in accordance with the permission
- Condition 10, even when read in in the context of the permission as a whole, does not produce a permission capable of implementation
- Condition 10 is void/invalid due to uncertainty and although such conditions are only struck down in 'extreme cases of unintelligibility', this is considered to be the case here
- Section 73(4) states that s73 does not apply if the permission has expired, as is the case here
- Current application is invalid and should be returned to the applicant
- A certificate of lawfulness is an appropriate route to explore the legal status of the previous permissions
- Consider there to be no extant permissions on this land
- No evidence of a legitimate expectation that the Council should maintain the (mistaken) position of the enforcement officer who expressed the view that development had commenced (letter of 5 February 2004)

- 4.3 The consultation responses can be viewed on the Council's website by using the following link:-  
[https://www.herefordshire.gov.uk/info/200142/planning\\_services/planning\\_application\\_search/details?id=201961&search-term=201961](https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=201961&search-term=201961)

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>

## 5. Officer's Appraisal

### *Legal context and background*

- 5.1 This application, made under section 73 of The Town and Country Planning Act ('the Act'), seeks to vary condition 10 of planning permission SE1999/2612/F - 22 holiday chalets with parking facilities.
- 5.2 Section 73 states as follows:

**73 Determination of applications to develop land without compliance with conditions previously attached.**

- (1) *This section applies, subject to subsection (4), to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.*
- (2) *On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—*
- (a) *if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and*
- (b) *if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.*
- (2A) *See also section 100ZA, which makes provision about restrictions on the power to impose conditions under subsection (2) on a grant of planning permission in relation to land in England.]*
- (3) *Special provision may be made with respect to such applications—*
- (a) *by regulations under section 62 as regards the form and content of the application, and*
- (b) *by a development order as regards the procedure to be followed in connection with the application.*
- (4) *This section does not apply if the previous planning permission was granted subject to a condition as to the time within which the development to which it related was to be begun and that time has expired without the development having been begun.*
- (5) *Planning permission must not be granted under this section for the development of land in England to the extent that it has effect to change a condition subject to which a previous planning permission was granted by extending the time within which—*
- (a) *a development must be started;*

(b) *an application for approval of reserved matters (within the meaning of section 92) must be made.*

5.3 Subsection (2) makes it clear that the local planning authority can only consider the matter of the conditions and not the principle of the development granted. Subsection (5) stipulates that an application under section 73 cannot be used to extend the period for commencement of development.

5.4 The NPPG also confirms that a section 73 application cannot be made to extend the time limit within which a development must be started and clarifies that it cannot be used to change the description of the development (Paragraph: 014 Reference ID: 17a-014-20140306). The NPPG advises that section 73 provides flexible options for planning permissions (together with section 96A).

5.5 In this case the condition that the applicant wishes to vary, number 10, relates to the approved plans. The wording of condition 10 of planning permission SS98/0398/PF (granted 19.4.1999) is as follows:

*'The proposed development shall be carried out in accordance with the approved plans.'*

*Reason: To ensure compliance with the approved plans.'*

5.6 A subsequent application, SE1999/2612/F, was made to vary condition 10, along with others (numbers 5 and 11). The reason given for the requested variation (agent's letter of 19.9.1999) was that it was considered that as time had moved on from when the scheme was envisioned the applicant sought to implement 'a more economical form of building method and materials' and the 'materials proposed would be of a far more wooden type construction appearance than the traditional building method originally proposed.' The application was refused. The reason for refusal for the variation of condition 10 (& 11) was:

*'2. The site is conspicuous and given the scale of the proposal it is considered to be essential that the development be of a high standard. Conditions 10 and 11 were imposed to ensure that the high quality design and materials of these two groups of buildings would not be diluted or spoiled by insensitive alterations or extension which would adversely affect the visual amenities of this attractive rural area.'*

This refusal was appealed by the applicant (APP/W1850/A/00/1039625).

5.7 At appeal, the Inspector was not persuaded that the materials should be changed, through the variation of condition 10. The Inspector stated that '*Whilst it was not, normally, necessary to attach conditions to ensure development is carried out in accordance with the details shown on the approved plans, the specific circumstances of this case justify such control. The disputed condition is, however, imprecise – requiring definition of the relevant plans*'. The amended condition 10, SE199/2612/F, is worded as follows:

*'The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbered:- V:2781:10 and L:2731:5.'*

These drawing references are the elevations and floor plans for Chalet type B (village) and Chalet type D (lakeside), respectively.

5.8 This application seeks to amend condition 10 of SE1999/2612/F to include all the approved drawings to provide certainty of the approved scheme. The imposition of a condition requiring

development to be in accordance with the approved plans is currently standard practice. The NPPG (at paragraph: Paragraph: 022 Reference ID: 21a-022-20140306, Revision date: 06 03 2014) previously advised (though it has since been deleted) that '*specifying the application drawings and other details which form part of the permission was best practice and creates certainty for all parties, particularly where applications have been subject to a number of revisions.*' At the time of the determination of the applications and appeal (1999/2000), however, it was not standard practice, as pointed out by the Inspector (quote above at paragraph 5.7).

- 5.9 It was previously set out in Circular 11/95: Use of conditions in Planning Permissions, and remains the case now, as set out in paragraph 55 of the NPPF and the NPPG (Paragraph 003 Reference ID: 21a-003-20190723) that conditions should be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise; and reasonable in all other respects. This application seeks only to ensure that condition 10 is precise, by listing all approved plans rather than just two (as per SE1999/2612/F). The application does not seek approval of *revised* plans, as was the case previously when application SE1999/2612/F was submitted, refused and appealed.

#### *Status of the planning permissions*

- 5.10 It is a requirement of section 73, at subsection (4) that a condition cannot be varied if the previous planning permission was granted subject to a condition requiring development to have begun by a specific time and that period has since expired without development having been commenced. In this case planning permission SS98/0398/PF was granted subject to a time commencement condition (no. 1), which required development to be begun '*not later than the expiration of five years beginning with the date of this permission*'. The permission date was 19 April 1999, thus requiring a lawful commencement on or before 19 April 2004. The subsequently made, refused and appealed application, SE1999/2612/F, as a section 73 application was subject to the same time commencement condition, being reimposed by the Inspector. Consequently, development in respect of SE1999/2612/F must also have commenced by 19 April 2004.
- 5.11 This application to vary condition 10 of SE1999/2612/F can only be valid if the permission is extant. This requires that a lawful commencement needs to have taken place on or before 19 April 2004 to have implemented the planning permission and preserve it in perpetuity. To achieve a lawful commencement, firstly section 56 of the 1990 Act governs when development is taken to have begun. Where the development consists of the carrying out of operations (as in this case), it will be taken to be initiated at the time the operations are begun (section 56(1)(a)). Section 56(2) provides that these must be a "material" operation. A material operation is then defined in section 56(4) to mean:
- (a) any work of construction in the course of the erection of a building;*
  - (aa) any work of demolition of a building;*
  - (b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;*
  - (c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b);*
  - (d) any operation in the course of layout out or constructing a road or part of a road;*
  - (e) any change in the use of any land which constitutes material development."*
- 5.12 In this case the applicant wrote to the Planning Department (letter dated 27 January 2004) enclosing a copy of the Landscape Plan (pursuant to condition 3) and advised that the site entrance had been constructed (as shaded red on the Landscape Plan) and requesting a site visit from the Enforcement Officer to establish if sufficient 'construction of a road or part of a road' had been carried out to constitute making a start of the development. The Council's response (dated

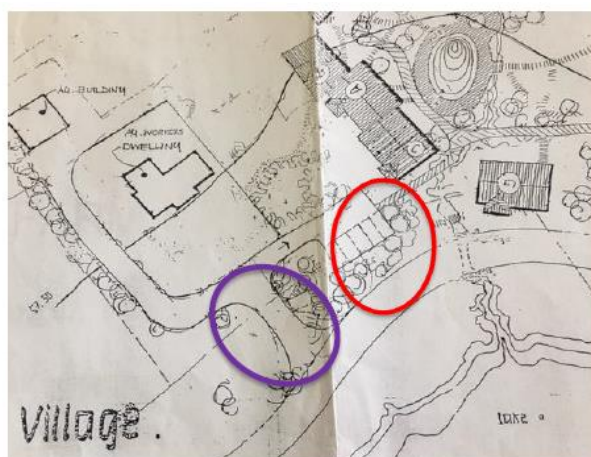


5 February 2004) confirmed that the site had been visited and access works had been viewed and these constituted a commencement of the planning permission.

- 5.13 From onsite observations only the marking out of the access was carried out by way of an area of hardstanding, in accordance with the Landscaping Plan. This did not include the installation of a tarmac surface or kerbs for example. No further development on site since those works have been carried out.
- 5.14 To assess if the works observed in 2004 did in fact constitute a 'material operation', as the Enforcement Officer's letter concluded, it is necessary to review relevant caselaw. Some objectors have suggest that the works are insufficient, not related to the approved development and failed to accord with the approved plans.
- 5.15 In the case of *Malvern Hills DC v SSE* [1982] JPL 439 the Court of Appeal held that the making out of a line and width of a road with pegs did amount to an 'operation' in the course of layout out part of a road as defined in s56(4)(d). In his judgment Eveleigh LJ commented that the specified operations "...are not necessarily very extensive. Very little need be done to satisfy the section. That which is done, however, must genuinely be done for the purpose of carrying out the development.' Since then the judgment in the *East Dunbartonshire Council v Secretary of State for Scotland* [1999] 1 PLR 53 case has confirmed section 56 is an objective test and the intentions of the person carrying out the development is irrelevant. It has also been established that such works will not be considered 'de minimis' simply because their cost is small in comparison to the overall projected cost of the development. As a result it is not important to consider how much of a material operation has taken place, compared to the scale of the development granted, but rather simply whether it is related to that permission (*Thayer v SSE* [1992] JPL 264).
- 5.16 Following consideration of the relevant caselaw, summarised above, it is opined that the, albeit modest, work to layout the access did constitute a 'material operation'. This is because it falls within the scope of section 56(4) (d) (*any operation in the course of layout out or constructing a road or part of a road*). It is clear from the Enforcement Officer's letter (5 February 2004) that this took place before the expiration of the planning permission (19 April 2004). None of the objections suggest that the work to provide the access was carried out after this date, although they do contest that it was a 'material operation' and was in accordance with the approved plans.
- 5.17 The next consideration is whether any pre-commencement conditions were discharged prior to the commencement of the development. Of the imposed conditions, only numbers 2, 3, 6 and 7 include 'pre-commencement' clauses. These conditions are imposed on both SS98/0398/PF and SE199/2612/F. Taking these in turn:
- 2 – requires a specification or samples of materials to be used externally on walls and roofs to be submitted and approved in writing*
- 3 – requires a scheme of landscaping to be submitted and approved in writing*
- 6 – requires the precise details of a water storage facility to serve the development to be submitted and approved in writing*
- 7 – requires the details of a scheme for foul and surface water drainage to be submitted and approved in writing*
- 5.18 The applicant provided details in respect of building materials, water storage, the visibility splay along the B4224, and the sewage treatment works and discharge of surface water run-off, whilst confirming that the landscaping scheme would be prepared, on a better understanding having spoken with the Landscape Officer (letter of 30 September 2003). The Council's response letter (9 December 2003) refers to the applicant's letters of 30 September 2003 and 27 October 2003 and accompanying plans, and confirms that the external materials (natural stone and Spanish

slates) are acceptable and “the landscape and drainage schemes are considered acceptable in accordance with Conditions 2, 3 & 7 of the planning permission SS980398PF and the second condition of the planning permission no. SE1999/2612/F.”

- 5.19. On the basis of this contemporaneous correspondence it is clear that the Council was satisfied at that time that the pre-commencement conditions were complied with and discharged.
- 5.20 Another matter of contention, which is highlighted by some objectors, is whether the access works undertaken can be relied upon as being in accordance with the approved plans, such that they implemented the planning permission. The reason for this is that the position of the access works accorded with the approved Landscape Plan required by condition 3 of the permissions, rather than the position of the access on the Site Plan (see extracts below – purple outlining the siting of the access on the Site Plan and red outlining the position of the access on the Landscape Plan)



Site Plan



Landscaping Plan

- 5.21 Referring to the applicant’s letter of 27 January 2004, which enclosed a copy of the landscaping plan showing the entrance to the site, it is noted that it specifically draws to the Council’s attention that the work carried out was on land “shaded red”. With this knowledge the Council’s Senior Enforcement Officer’s response (letter dated 5 February 2004) states “Following receipt of your letter of 2 [sic] January 2004 to Mr Holder I have visited the site and viewed the access works. I can confirm that the works carried out constitute commencement of the planning permission.”
- 5.22 It is considered that the Council’s letter is evidence that it was satisfied at that time that permission had been validly implemented. This is further corroborated by subsequent letters responding to enquiries from solicitors on behalf of clients with interest in purchasing the site, and also Paul Keetch, the then M.P. for the area. One such letter notes that the access works reflected the position shown on the landscaping plan, rather than the site plan, but concludes that after taking advice from the Council’s legal service that the works undertaken constituted a commencement of development and that the permission remains extant.
- 5.23 Reviewing this position, whether the works undertaken – being in accordance with the Landscaping Plan approved by way of a conditional requirement, rather than in accordance with the Site Plan, such that it could breach the requirement under condition 10 to be in accordance with the approved plans, the caselaw in general terms is that operations carried out in breach of condition cannot be relied on as material operations capable of commencing a development. That said, in the *FG Whitley & Sons v Secretary of State for Wales* (1992) 64 P&CR 296 case, the court held that whether or not the permission had been implemented had to be determined in an enforcement context (approval for the scheme had in that case nonetheless been granted) and once it was no longer possible to enforce against the operations, they could be taken to have commenced development. Subsequently, it has been held that whilst that general principle applies, it must be done so with common sense and regard to the particular facts of the case.

The broad test is therefore whether it is still possible for the local planning authority to take enforcement action against the works in question. It was held in *R (Hamerton) v London Underground Ltd* [2002] EWHC 2307 that if it would be unlawful for the authority to issue an enforcement notice, for example on the grounds of irrationality, then the works would be effective to have commenced the development.

- 5.24 Applying the above caselaw to the case in hand, where the access is as per the Landscape Plan and not the Site Plan, it is accepted that the difference is discernible. Nevertheless, the material operation was in accordance with a plan approved by the local planning authority and the confirmation that a commencement had been made was given in full knowledge that it accorded with the Landscape Plan, as this was the referenced plan in the applicant's letter. Furthermore, the period for taking enforcement action for a breach, 10 years in this case, has long since passed. However, during that period (2004-2014) and despite queries seeking clarification of whether a lawful commencement had been made no legal challenge was made, nor any enforcement action taken. On the basis of the facts of this case and the legal precedents referred to, it is considered that the permission had been validly implemented.
- 5.25 A further question is which of the permissions (SS98/0398/PF & SE1999/2612/F) have been implemented. Both permissions, the latter (SE1999/2612/F) being a section 73 application, have the same period for commencement (19 April 2004) and save for deletion of condition 11 (removal of permitted development rights) and variation of conditions 5 (holiday accommodation restriction) and 10 (in accordance with the approved plan), all other conditions are the same. The residents of Hartleton's legal advice contends that because the correspondence between the applicant and the Council in respect of the approval of details reserved by conditions and the seeking of confirmation that a commencement had taken place almost exclusively refer to SS98/0398/PF then only that permission can be taken to have been implemented, and not the later SE1999/2612/F, in respect of which this application seeks to vary condition 10.
- 5.26 The applicant's letter seeking to discharge the pre-commencement conditions referred to SS98/0398/PF. The Council, however, in response referred to both permissions (SS98/0398/PF & SE1999/2612/F). The Council's letter confirming that a start had been made on site only references SS98/0398/PF, as did the applicant's letter that requested the confirmation. This could reasonably be interpreted as the Council's recognition that the SS98/0398/PF permission was subsequently varied by SE1999/2612/F or that given that none of the amendments to the SS98/0398/PF permission were of substance that either permission could be implemented. To conclude, whilst accepting that the planning permission references have not always been consistent, the material operation undertaken equally applies to both permissions being for the same scheme, and as such the current application is considered to be valid.
- 5.27 It has been suggested in the representations that condition 10 of the permission is invalid, due to its uncertainty. Condition 10 of the SS98/0398/PF permission refers to the 'approved plans', and the Inspector in granting the SE1999/2612/F permission altered the wording so that it referred to plans 'V:2781:10 and L:2731:5' to make the position more specific. Although this does not meet the standard approach of the present times, at the juncture when the applications were determined it did. The Inspector acknowledges this in his decision. It therefore would be perverse to conclude that the conditions are unlawful due to their lack of precision now, when at the time they adhered to established practice. What is required, for the determination of this application to vary Condition 10, is for the Council to have sufficient clarity as to what the full set of original plans were, such that they can now be listed on a decision notice.
- 5.28 Turning to this final consideration, the applicant has submitted a Sworn Affidavit confirming the plans considered to have comprised the full set of approved drawings. The applicant has confirmed that he does not have a copy of the full set of the approved plans. Following a careful review of the history files, which are not all complete or in good order, it has become apparent that the proposed chalet development has been subject to a number of rolling applications between the 1980s and 1990s. Throughout this planning history there is repeated cross reference

to previous permissions and it appears that where it was considered that an application was a renewal of an earlier permission the plans were not always resubmitted. The Site Plan, amended to reflect the reduced number of chalets (22 from 30 - SH87/0894/PO & SH89/1228/PM), has been identified and the chalet drawings follow the same drawing reference used on earlier schemes (Prefix 'V' for the village element and 'L' for the lakeside area) and tally with those specifically referenced by the Inspector in respect of SE1999/2612/F. Subsequently, the approved landscape drawing has been identified. This appears to make sense of the Inspector's approach to only refer to two specific drawings, because they were the drawings the appellant was seeking to amend the materials for. It is therefore considered that there is sufficient certainty to insert the relevant drawing numbers into condition 10, so that it would be precise. Some of the objectors refer to more recent drawings from applications since the determination of SE1999/2612/F at appeal, including those pertaining to SE04/3958/F for example, and suggest that these drawings should take precedence because they are more recent. As clearly set out in the planning history section of this report none of the applications for alternative schemes for this chalet development have been approved since the appeal decision. The drawings for those refused/withdrawn schemes are therefore not approved, so have no relevance to the determination of this application.

- 5.29 The only outstanding matters that lack certainty relate to the quality of the drawings, which have been transferred to microfiche records, with some degree of distortion but having a scale bar and some dimensions annotated, and an absence of floor plans and elevations for the garaging shown on the Site Plan. In these circumstances it is considered appropriate to require better versions of the 1987 drawings to the modern standard and to condition the submission of drawings pertaining to the garaging prior to their construction. Plans have been submitted of the Chalets and are considered to accurately represent the microfiched plans.
- 5.30 Bringing all of the above assessment together, it is considered that the SE1999/2612/F permission can be accepted to have been lawfully implemented and the request to amend condition 10, to list the approved drawings to ensure it is precise, accords with the six tests for the impositions of conditions. It is therefore recommended that this application is granted.
- 5.31 A section 73 application, such as this, results in the grant of a new permission and as per the NPPG the expiry date of the new permission is as per the original. In this case, as development has been found to have commenced, a time period for commencement condition is not applicable. This results in a renumbering of the previous conditions. In addition when granting permission the new decision notice should describe the whole development and list all relevant conditions. The description reflects that this is a section 73 application. The conditions are modified to reflect that the requirement of the commencement condition (no. 1) has been met and also where the details required by other conditions have already been approved a compliance condition is imposed instead, in line with these procedural requirements.
- 5.32 For clarity the previously imposed conditions are set out below, with the necessary action required now alongside:

<b>Condition No.</b>	<b>SS98/0398/PF</b>	<b>SE1999/2612/F – appeal decision (APP/W1850/A/00/1039625)</b>	<b>201961/F ACTION</b>
<b>1</b>	The development must be begun not later than the expiration of five years beginning with the date of this permission.	Reimposed	No need to impose, as development has commenced
<b>2</b>	Before any work commences on site, a specification or samples of the materials to be used externally on the walls	Reimposed	Materials approved (letter dated 9.12.2003) impose compliance condition.

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

	and roofs shall be submitted to and approved by the Local Planning Authority in writing.		
<b>3</b>	No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of the development	Reimposed	Landscaping approved (letter dated 9.12.2003) impose compliance condition.
<b>4</b>	All planting, seeding or turfing comprised in the approved details shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation.	Reimposed	Reimpose
<b>5</b>	The accommodation to which this permission relates shall be used only for the purposes of holiday accommodation and no one person or family group shall use any part of the buildings for more than eight weeks in any period of four months.	AMENDED TO: The chalets hereby permitted shall only be used for holiday purposes and shall not be used as a permanent or main residence.	Reimpose
<b>6</b>	Provision shall be made for a water storage facility to serve the proposed development. Precise details of this facility shall be submitted to and approved by the Local Planning Authority in writing prior to work commencing on site and the approved scheme shall be implemented and operational prior to the occupation of the chalets	Reimposed	Reimpose

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7	No development shall take place until details of a scheme for foul and surface water drainage have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details before occupation of any of the chalets.	Reimposed	Drainage approved (letter dated 9.12.2003) impose compliance condition.
8	All vehicular access to the chalet sites shall be via the access road off the Class II B4224 at South Herefordshire Golf Course.	Reimposed	Reimpose
9	Before the occupation of the buildings, the visibility splay along the B4224 and the access drive from the B4224 to both sites shall be improved in accordance with a scheme previously submitted and approved by the Local Planning Authority.	Reimposed	Reimpose
10	The proposed development shall be carried out in accordance with the approved plans.	<p><b>AMENDED TO:</b></p> <p>The development hereby permitted shall not be carried out except in complete accordance with the details shown on submitted plans, numbered:- V:2781:10 and L:2731:5.</p>	<p><b>AMEND TO</b></p> <p>The proposed development shall be carried out strictly in accordance with the approved plans:</p> <ul style="list-style-type: none"> <li>• Site Plan of Village &amp; Proposed minor amendment to siting (incorporating reduced no. of holiday cottages – Plan A Sept '94</li> <li>• V:2781:9 – Holiday Chalet Type A</li> <li>• V:2781:10 - Holiday Chalet Type B *</li> <li>• V:2781:11 – Holiday Chalet Type C</li> <li>• L:2781:4 – Site Plan of lakeside holiday units</li> <li>• L:2731:5 – Holiday Chalet Type D (lakeside)</li> </ul>

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

			<ul style="list-style-type: none"> <li>• L:7781:6 - Holiday Chalets Lakeside (section and lakeside &amp; motorway elevations)</li> <li>• 256/01 - Landscape Layout and Maintenance</li> <li>• 256/02 - Detailed Landscape Proposals</li> </ul>
11	Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification) no works within Classes A, B, D, E, G and H of Part 1 of Schedule 2 of the Order shall be carried out to the chalets other than those expressly authorised by this permission.	Deleted	Not necessary to reimpose, as per the Inspector's decision letter

## RECOMMENDATION

That planning permission be granted subject to the following revised and reimposed conditions:

1. **Development shall be carried out in accordance with the external materials approved by letter dated 9.12.2003 (reference SE1999/2612/F).**

**Reason: To ensure that the materials harmonise with the surroundings so as to ensure that the development complies with the requirements of Policy SD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.**

2. **Development shall be carried out in accordance with the landscaping details approved by letter dated 9.12.2003 (reference SE1999/2612/F).**

**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.**

3. **All planting, seeding or turfing comprised in the approved details shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation.**

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

- 4. The chalets hereby permitted shall only be used for holiday purposes and shall not be used as a permanent or main residence.**

**Reason: Having regard to Policy RA3 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework the local planning authority are not prepared to allow the introduction of separate units of residential accommodation in this rural location, with limited access to facilities for day to day living.**

- 5. Provision shall be made for a water storage facility to serve the proposed development. Precise details of this facility shall be submitted to and approved by the Local Planning Authority in writing prior to work commencing on site and the approved scheme shall be implemented and operational prior to the occupation of the chalets.**

**Reason: In order to ensure that satisfactory potable water arrangements are provided and to comply with Policy SD3 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.**

- 6. Development shall be carried out in accordance with the drainage details approved by letter dated 9.12.2003 (reference SE1999/2612/F). Development shall be carried out in accordance with the approved details before occupation of any of the chalets.**

**Reason: In order to ensure that satisfactory drainage arrangements are provided and to comply with Policy SD4 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.**

- 7. All vehicular access to the chalet sites shall be via the access road off the Class II B4224 at South Herefordshire Golf Course.**

**Reason: In the interests of highway safety, so as to adhere to Policy MT1 of the Herefordshire Local Plan – Core Strategy and the requirements of the National Planning Policy Framework.**

- 8. The proposed development shall be carried out strictly in accordance with the approved plans:**

- **Site Location Plan**
- **Site Plan of Village & Proposed minor amendment to siting (incorporating reduced no. of holiday cottages – Plan A Sept '94**
- **V:2781:9 – Holiday Chalet Type A**
- **V:2781:10 - Holiday Chalet Type B**
- **V:2781:11 – Holiday Chalet Type C**
- **L:2781:4 – Site Plan of lakeside holiday units**
- **L:2731:5 – Holiday Chalet Type D (lakeside)**
- **L:2781:6 - Holiday Chalets Lakeside (section and lakeside & motorway elevations)**
- **256/01 – Landscape Layout and Maintenance**
- **256/02 – Detailed Landscape Proposals**

**Reason: To ensure adherence to the approved plans in the interests of a satisfactory form of development and to comply with Policies SD1 and LD1 of the Herefordshire**



**Local Plan – Core Strategy and the requirements of the National Planning Policy Framework.**

- 9. Prior to their construction elevations, floor plans of the garaging (footprint not to exceed that shown on the approved Site Plan) and an external material specification shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in strict accordance with the approved details.**

**Reason: To ensure the scale and appearance of the garaging is acceptable in the interests of a satisfactory form of development and to comply with Policies SD1 and LD1 of the Herefordshire Local Plan – Core Strategy and the requirements of the National Planning Policy Framework.**

**INFORMATIVE:**

- 1. The Local Planning Authority has acted positively and proactively in determining this section 73 application to vary an imprecise condition by assessing it against the extant planning permissions. It has subsequently determined to grant planning permission.**

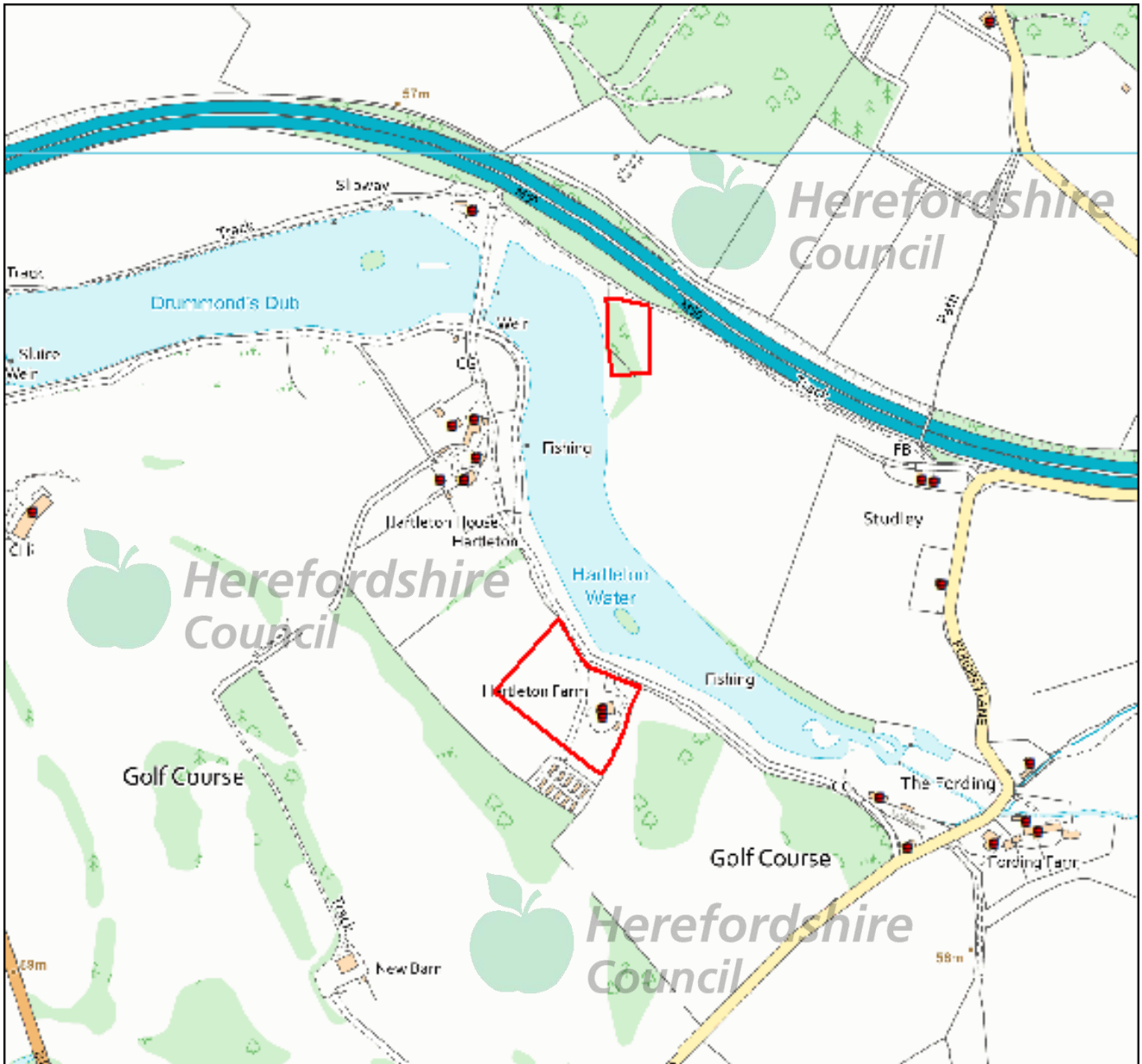
Decision: .....

Notes: .....

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**Background Papers**

Internal departmental consultation replies.



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**APPLICATION NO:** 201961

**SITE ADDRESS :** HARTLETON FARM, BROMSASH, ROSS-ON-WYE, HEREFORDSHIRE, HR9 7SB

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