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| <b>MEETING:</b>                                                 | <b>PLANNING AND REGULATORY COMMITTEE</b>                                                                                                                                                                                                                                              |
| <b>DATE:</b>                                                    | <b>1 SEPTEMBER 2021</b>                                                                                                                                                                                                                                                               |
|                                                                 | <p><b>204317 - PROPOSED DETACHED AFFORDABLE DWELLING AND GARAGE/WORKSHOP. AT LAND AT BICTON HOUSE, BICTON, KINGSLAND, LEOMINSTER, HR6 9PR</b></p> <p><b>For: Mr Godding per Mr Alan Godding, Bicton House, Bicton Kingsland, Leominster, Herefordshire HR6 9PR</b></p>                |
| <b>WEBSITE LINK:</b>                                            | <a href="https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=204317&amp;search-term=204317">https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=204317&amp;search-term=204317</a> |
| <b>Reason Application submitted to Committee – Re-direction</b> |                                                                                                                                                                                                                                                                                       |

**Date Received: 8 December 2020**

**Ward: Bircher**

**Grid Ref: 346791,263974**

**Expiry Date: 2 February 2021**

Local Members: Cllr Bowen

## 1. Site Description and Proposal

- 1.1 The application site relates to a plot of land north-west of Bicton House and associated outbuildings, on the junction where Croft Lane (U92600) meets the C1039. The site formally contained a timber clad barn which has since been demolished.
- 1.2 The application seeks planning permission for the erection of a one and a half storey, two bedroomed dwelling and a detached single garage and workshop. The dwelling is proposed to have a floor area of 100m<sup>2</sup> and the garage/ workshop 26m<sup>2</sup>.

## 2. Policies

### 2.1 The Herefordshire Local Plan – Core Strategy (CS)

|     |   |                                                                |
|-----|---|----------------------------------------------------------------|
| SS1 | – | Presumption in favour of sustainable development               |
| SS2 | – | Delivering New Homes                                           |
| SS3 | – | Ensuring sufficient housing land delivery                      |
| SS6 | – | Environmental quality and local distinctiveness                |
| RA1 | – | Rural housing distribution                                     |
| RA2 | – | Housing in settlements outside Hereford and the market towns   |
| RA3 | – | Herefordshire's countryside                                    |
| MT1 | – | Traffic management, highway safety and promoting active travel |
| LD1 | – | Landscape and townscape                                        |
| LD2 | – | Biodiversity and geodiversity                                  |
| SD1 | – | Sustainable design and energy efficiency                       |
| SD3 | – | Sustainable water management and water resources               |
| SD4 | – | Waste water treatment and river water quality                  |

Further information on the subject of this report is available from Miss Amber Morris on 01432 260855

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)

The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) (the 2012 Regulations) and paragraph 33 of the National Planning Policy Framework requires a review of local plans be undertaken at least every five years in order to determine whether the plan policies and spatial development strategy are in need of updating, and should then be updated as necessary. The Herefordshire Local Plan Core Strategy was adopted on 15 October 2015 and a review was required to be completed before 15 October 2020. The decision to review the Core Strategy was made on 9<sup>th</sup> November 2020. The level of consistency of the policies in the local plan with the NPPF will be taken into account by the Council in deciding any application.

## 2.2 Yarpole Group Neighbourhood Development Plan (NDP) made 15th June 2018

- YG2 – Development strategy
- YG8 – Housing development in Yarpole
- YG13 – Sustainable design

## 2.3 National Planning Policy Framework (NPPF)

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

- Chapter 2 – Achieving sustainable development
- Chapter 4 – Decision making
- Chapter 5 – Delivering a sufficient supply of homes
- Chapter 9 – Promoting sustainable transport
- Chapter 11 – Making effective use of land
- Chapter 12 – Achieving well-designed places
- Chapter 15 – Conserving and enhancing the natural environment

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

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1005759/NPPF\\_July\\_2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005759/NPPF_July_2021.pdf)

## 2.4 Planning Practice Guidance (PPG)

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

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

## 3. **Planning History**

### 3.1 None

## 4. Consultation Summary

### Statutory Consultations

#### 4.1 Natural England

No response

#### 4.2 Welsh Water

As the applicant intends utilising a private treatment works we would advise that the applicant contacts

Natural Resources Wales who may have an input in the regulation of this method of drainage disposal. However, should circumstances change and a connection to the public sewerage system/public sewerage treatment works is preferred we must be re-consulted on this application.

### Internal Council Consultations

#### 4.3 Area Engineer Highways (superseded)

The proposal submitted includes an access to serve a single dwelling. The following observations are a summary of the highways impacts of the development:

The principle of the development is broadly acceptable in highways terms. There are some details that require refinement to consider the proposal acceptable.

The shown visibility of 20m is short for this environment, even though the speeds are likely low. It is not clear how the 20m dimensions have been settled upon, however the LHA is comfortable with the application of the DfT's Manual for Streets 2 document in this location. In reviewing the drawings it is noted that the set back is from the edge of the highway, rather than the carriageway at this point and a one metre offset from the carriageway channel is considered appropriate due to the rural nature of the road in the vicinity. This element requires review.

The amendments required to form the access will require separate permission from the local highway authority. This is likely to be in the form of a Section 184 Licence and details of this can be found by following the link below. The proposed access specification is not shown. As with all other details of the access arrangements it is recommended that condition CAE is applied to ensure that the correct specification is included.

The vehicle turning area is adequate for the scale of the dwelling. The dimensions of the driveway are adequate for the scale of the development.

The parking provided equals or exceeds one 2.4m x 4.8m space per bedroom to a maximum of 3 spaces. This element of the proposal is acceptable. The cycle parking required can be adequately accommodated in the garage without impacting on the parking provision for the site.

The following link may assist the applicant in developing their proposals:

[https://www.herefordshire.gov.uk/downloads/download/585/highways\\_and\\_new\\_development](https://www.herefordshire.gov.uk/downloads/download/585/highways_and_new_development)

For any works within the extent of the highway permission from the LHA will be required. Details of obtaining this permission can be found at:

[https://www.herefordshire.gov.uk/downloads/download/368/dropped\\_kerb\\_documents](https://www.herefordshire.gov.uk/downloads/download/368/dropped_kerb_documents)

The proposals are considered unacceptable at this time in highways terms due to the outstanding rationale around the splay dimension calculation.

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>

#### **Area Engineer Highways (amended)**

The updated site plan shows the highway geometry and the highway verge further delivers visibility from the proposed access point. The setback for the measurement of the visibility can be made from the carriageway edge rather than the rear of the highway extent and to ensure that the visibility is delivered in accordance with the updated site plan 131120/AG/SP1 Rev A condition CAB should be applied and this drawing referenced.

As with the previous highways response condition CAE is also recommended to ensure the access construction meets the LHA requirements.

There are no highways objections to the proposals, subject to the recommended conditions being applied in the event that permission is granted.

#### **4.4 Conservation Manager (Ecology)**

The application site lies within the catchment of the River Lugg SAC (Lugg- Ridgemoor Brook), which comprises part of the River Wye Special Area of Conservation (SAC); a habitat recognised under The Conservation of Habitats and Species Regulations 2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019' (the 'Habitats Regulations') 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 ONE new dwelling with associated creation of additional foul water flows. The application may also be granting consent for the replacement of the existing foul water system associated with the adjacent Bicton House

The following notes refer:

- The LPA does not have any detail or supporting evidence to provide the legal and scientific certainty required by the HRA process.
- The applicant has not supplied a professional drainage report with relevant BS6297 percolation and ground water testing – and associated detailed plan of foul water proposal and location of testing sites in relation to proposed soakaway drainage field.
- The drainage report should also clearly demonstrate the proposed system is fully compliant with the '5 criteria' in respect of drainage systems in the Lugg SAC as detailed in the council's guidance on their website:

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Further information on the subject of this report is available from Miss Amber Morris on 01432 260855

[https://www.herefordshire.gov.uk/downloads/download/2039/development\\_in\\_the\\_river\\_lugg\\_catchment](https://www.herefordshire.gov.uk/downloads/download/2039/development_in_the_river_lugg_catchment)

- The same detailed report and plans is required for any replacement foul water system for Bicton House – if this is subject to any form of approval or consent under this planning application
- All drainage systems should clearly be within the development boundary and on land clearly under the applicant's legal control - so they can be secured through any consent finally granted

The LPA as the competent authority is at this time and based on supplied information only able to conclude that there would be an adverse effect of the integrity of the River Lugg (Wye) SAC.

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 'higher status' 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.

At this time there is an Ecology OBJECTION raised as the application does not demonstrate compliance with Core Strategy SD4 (SS1, SS6 and LD2 also apply); The Conservation of Habitats and Species Regulations 2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019' (the 'Habitats Regulations'); NPPF; Wildlife & Countryside Act (1981 amended) and NERC Act considerations.

Additional ecology comments:

It is noted that the plans refer to a demolished barn – but no further information on if this is being approved as part of this planning application has been supplied. From images available this barn with wooden cladding would appear to offer potential for bat roosting (higher status protected species) in addition to bird nesting. If any works to this 'existing' barn fall within this application then a detailed ecology report including all relevant bat roosting assessments and any required optimal period surveys should be supplied as the LPA has a duty of care to ensure all protected species and wider biodiversity are fully considered in the planning process PRIOR to any grant of planning consent.

Once this has been clarified further comments can be made and conditions suggested to secure required Biodiversity Net Gain enhancements can be made.

#### 4.5 **Strategic Housing Manager**

I refer to this application and would advise that I am unable to support it in its current form as we need further information.

This site sits in a rural location outside of settlements. Policy RA3 is clear that a residential development will be limited to proposals which satisfy one or more criteria set out in policy RA3. My comments refer to criteria 5 rural exception Housing in accordance with policy H2.

Policy H2- Rural exception sites may be permitted on land which would not normally be released for housing if the applicant can demonstrate the proposal could assist in meeting a proven local need and that the affordable housing is made available to and retained in perpetuity for local people in need of affordable housing. A s106 would be required in order to secure the affordable housing unit in perpetuity.

Therefore, in order for me to support this application the applicant would need to evidence that they are in need of affordable housing and are unable to purchase a property to meet their needs on the open market.

The applicant would need to contact Strategic Housing so an affordable assessment can be undertaken.

## 5. Representations

### 5.1 Yarpole Group Parish Council

The Parish Council agreed that they object to the application. Policy YG2d of the adopted NDP states that residential development outside of the settlements identified in the NDP should be limited and in accordance with Core Strategy Policy RA3, and the Parish Council believes that this application does not satisfy any of the 6 criteria detailed in policy RA3. The application also does not meet the criteria for affordable housing detailed in policy H2 of the Core Strategy as whilst there is a need for affordable housing in the parish, there is no indication in the application that this house will be retained in perpetuity for local people.

### 5.2 To date a total of 9 letters of support have been received. The comments therein are summarised below:

- Allowing a local person to remain living in Bicton
- Design of dwelling blends in with the surrounding cluster of houses
- Construction and position of the dwelling are appropriate
- Development will not affect traffic
- Upgrade of existing drainage
- Shortage of affordable housing in locality

### 5.3 The consultation responses can be viewed on the Council's website by using the following link:-

[https://www.herefordshire.gov.uk/info/200142/planning\\_services/planning\\_application\\_search/details?id=204317&se-arch-term=204317](https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=204317&se-arch-term=204317)

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>

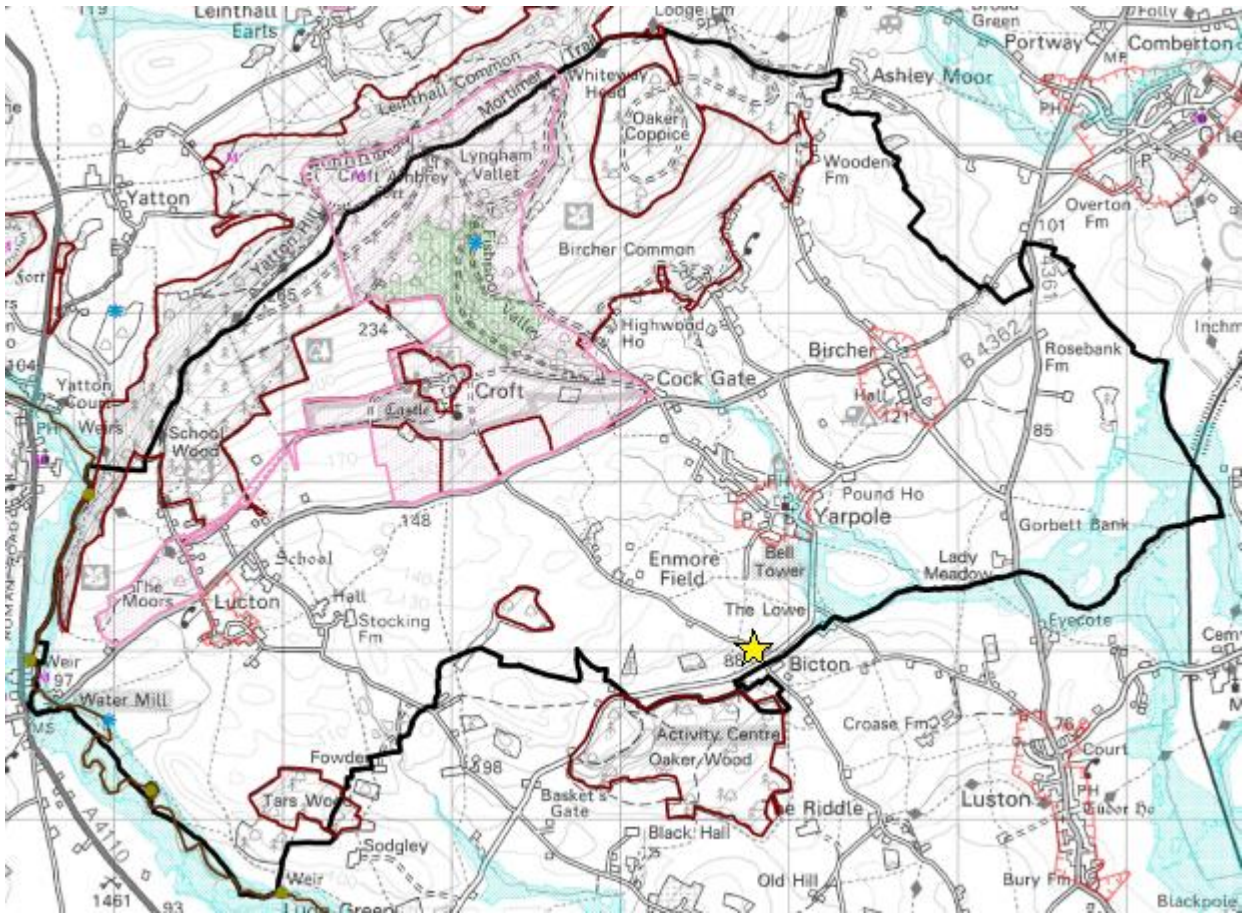
## 6. Officer's Appraisal

### *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."*
- 6.2 In this instance the adopted development plan is the Herefordshire Local Plan – Core Strategy (CS) and the Yarpole Group Development Plan (NDP). The National Planning Policy Framework (NPPF) is also a significant material consideration.

- 6.3 The NPPF requires that local planning authorities should identify and update annually a supply of housing sites sufficient to provide five years' worth of housing against their housing requirements. Where the existence of a five year land supply cannot be demonstrated, there is a presumption in favour of granting planning permission for new housing unless the development can be shown to cause demonstrable harm to other factors that outweigh the need for new housing. Other factors in this respect can include sites or areas protected as a result of their wider environmental importance or land at risk of flooding.
- 6.4 Following this year's survey work, the LPA can confirm that the Housing Land Supply is 6.90 years and the current delivery test is 106%. Effectively, this means that the housing policies in the adopted Core Strategy and made Neighbourhood Development Plans can be considered to be up-to-date and given full weight in decision making. Para 11d of the National Planning Policy Framework (NPPF) is not engaged, as the development plan policies are not deemed 'out of date'. As a result para 14 of the NPPF is not engaged.
- 6.5 In locational terms Policies SS2 (Delivering new homes) and SS3 (Releasing land for residential development) of the CS clearly set out the need to ensure sufficient housing land delivery across the County. In order to meet the targets of the CS the Council will need to continue to support housing growth by granting planning permissions where developments meet with the policies of the CS, (and, where relevant with policies in other Development Plan Documents and Neighbourhood Development Plans).
- 6.6 Outside of Hereford City, and the market towns, CS Policy RA1 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. The dwellings will be broadly distributed across the seven Housing Market Areas (HMA's). This site is within the Leominster HMA, which is earmarked for a 14% indicative housing growth and is listed in Figure 4.14 as a settlement which will be the main focus of proportionate housing development. This equates to 83 dwellings over the plan period.
- 6.7 Policy RA2 relates to housing in settlements outside Hereford and the market towns. This policy states that to maintain and strengthen locally sustainable communities across the rural parts of Herefordshire, sustainable housing growth will be supported in or adjacent to those settlements identified in Figures 4.14 and 4.15 (page 108 of the CS). Notwithstanding the above, the preamble to Core Strategy Policy RA2 states that NDPs will be the principal mechanism by which new rural housing will be allocated. As stated above, the NDP has been made and therefore forms part of the Development Plan for the county.
- 6.8 NDP policy YG2 is clear that new housing should be within the development boundaries of either Bircher, Lucton or Yarpole. The following map includes the black line of the Parish with the application site being indicated by the yellow star:





6.9 It is clear from the above that the application site is clearly divorced from an identified settlement under Policy YG2 of the NDP. As such the application site, in planning terms, is considered to lie within open countryside. Core Strategy policy RA3 relates to proposals for new residential development in rural locations outside of settlements, and states that proposals in such locations will be limited to those which satisfy one or more exceptional criteria. This accords with the approach set out under paragraph 80 of the NPPF, which states that new isolated dwellings in the countryside should be avoided unless special criteria are met

6.10 The seven criteria whereby residential development outside of settlements is acceptable under CS Policy RA3 is as follows;

1. Meets an agricultural or forestry need or other farm diversification enterprise for a worker to live permanently at or near their place of work and complies with Policy RA4; or
2. Accompanies and is necessary to the establishment or growth of a rural enterprise, and complies with Policy RA4; or
3. Involves the replacement of an existing dwelling (with a lawful residential use) that is comparable in size and scale with, and is located in the lawful domestic curtilage of the existing dwelling; or
4. Would result in the sustainable re-use of a redundant or disused building where it complies with Policy RA5 and leads to an enhancement of its immediate setting; or
5. Is rural exception housing in accordance with Policy H2; or
6. Is of exceptional quality and innovative design satisfying the design criteria set out in the NPPF; or
7. Is a site providing for the needs of gypsies and other travellers

6.11 Within the representations received it was mentioned that the dwelling would house a retired farm worker in compliance with RA4, however this is not what the submitted Design and Access Statement states and no evidence has been provided to support this exception criteria.



- 6.12 Instead the development within the Design and Access Statement is described as a proposal for an affordable dwelling in accordance with H2. Policy H2 of the CS states as follows:

Proposals for affordable housing schemes in rural areas may be permitted on land which would not normally be released for housing where:

1. The proposal could assist in meeting a proven local need for affordable housing; and
2. The affordable housing provided is made available to, and retained in perpetuity for local people in need of affordable housing; and
3. The site respects the characteristics of its surroundings, demonstrates good design and offers reasonable access to a range of services and facilities normally in a settlement identified in Policy RA2.

No evidence has been provided to say there is any form of need, the submitted Design and Access Statement states *'this development should be allowed as an exception site due to the applicant meeting a number of criteria'* but does not expand on this. Nor has the application satisfied the housing team in regards to the applicant's requirement for affordable housing. Therefore there is insufficient information provided for the proposal to accord to CS policy H2.

- 6.13 The NPPF at paragraph 72, directs LPA's to support the development of entry-level exception sites, suitable for first time buyers, through developments which comprise entry level homes with one or more types of affordable housing, which is located adjacent to an existing settlement and proportionate to said settlements size. Paragraph 78 states that local planning authorities should support opportunities to bring forward rural exception sites that will provide affordable housing to meet identified local needs.
- 6.14 Of further relevance is paragraph 85 of the Framework which is copied in full below:  
*Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist..*
- 6.15 As discussed above the Core Strategy sets out its spatial strategy for the allocation of residential development in line with the Framework. Firstly the Framework directs for exceptions to be made where an identified local need for affordable housing can be satisfied adjacent to an existing settlement, paragraph 72, and that decisions should be responsive to local circumstances. This is enacted by Core Strategy H2 which states that rural exception sites will still need to offer reasonable access to a range of services and facilities normally in a settlement identified by RA2. There is also the additional need to undertake a balance to understand whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.
- 6.16 The location of the application site does not offer reasonable access to any services that one might expect to be present in a RA2 identified settlement. I note that there is very limited employment opportunities near to the site and that any future residents would struggle to easily access local employment. While this is true of many rural sites I find the current site to be especially devoid of local services within the settlement.
- 6.17 Given the wording of the relevant sections of the Framework, above, and policy H2 I find the application site too remote from services and facilities to be an acceptable location to meet local needs in regards to affordable housing. Furthermore future residents would struggle to access local employment opportunities which would restrict the benefit of providing an affordable dwelling

for local needs. As such I find an objection to the principle of residential development on the site to be present.

- 6.18 In light of the preceding, the proposal is therefore viewed to be in conflict with policy RA3 of the CS and the application, as submitted, does not represent an exceptional circumstance whereby new residential development in the open countryside can be supported. It therefore follows that the principle of the development is not supported by the development plan. The site is outside of any settlement identified as an appropriate location for new housing and, whilst accepting the site is not isolated in the truest sense of the word given it sits within a small hamlet, future occupiers of the dwellings would be removed from the services and facilities available in nearby settlements such as Bircher, Lucton or Yarpole. Notwithstanding this, other matters relevant to the application are considered below.

### ***Design***

- 6.19 In respect of design, Core Strategy Policy SD1 directs that proposals take into account the local context and site characteristics. Moreover, new buildings should be designed to maintain local distinctiveness through incorporating local architectural detailing and materials and respecting scale, height, proportions and massing of surrounding development, while making a positive contribution to the architectural diversity and character of the area. Policy LD1 is also relevant in so far as it requires that proposal respond positively to the character of the townscape and landscape.
- 6.20 The pattern of development within this area is scattered dwellings, centred around the junction of Croft Lane and Lugg Green Road. It is characterised by wayside dwellings and farm derived development. The rural character of the street scene here is emphasized by gaps within the built frontage, which allow views of the wider countryside. The proposal follows this pattern and is located to the immediate north of Bicton House. The proposal would not result in built development that would be of an unacceptable scale or over development. The dwelling would be a two-bedroomed, one and half storey dwelling and is considered appropriate for the setting and has a minimal visual impact.

### ***Residential Amenity***

- 6.21 Whilst introducing a number of glazed openings, these maintain acceptable scale and positioning. Due to separation distances between the proposed dwelling and adjacent properties, impact upon residential amenity is minimal. The orientation of the dwelling and layout raises no concerns in overshadowing or overbearing that would lead to conflict with the requirements of SD1 of the CS, which strives to safeguard levels of residential amenity, and accords with paragraphs 130 and 185 of the NPPF.

### ***Landscape Impact***

- 6.22 It is not considered that the proposal departs from the character of the area, utilising timber cladding to reflect the adjacent barns. The dwelling is sympathetic to the area with mitigating circumstances here being a one and a half storey dwelling meaning the footprint is within site without harming the landscape character of the area. Landscape impact is minimal and the proposal is considered to suitably conserve local character and the character of the area, in line with Policy LD1 of the CS, consistent with Section 15 of the NPPF.

### ***Ecology***

- 6.23 There are no ecological records of important or Protected Species on or adjacent to site. The applicant has a legal duty of care towards wildlife protection under UK Legislation. Biodiversity

net gain can be secured by condition, in line with CS Policies LD1, LD2 and LD3, consistent with the relevant sections of the NPPF.

### **Highways**

- 6.24 Access is to be taken from the existing gateway immediately north of the demolished barn leading onto the unclassified public highway known as Croft Lane. After receiving an updated site plan, the Council's Area Engineer Highways is satisfied the access proposed meets the visibility requirements and is acceptable in demonstrating the access will not result in an unacceptable impact on road safety.
- 6.25 Adequate parking and turning space would be provided within the site to ensure that all vehicles enter the public highway in a forward gear. On the basis of the above, it is considered that use of the existing access is appropriate and that the proposal would preserve highway safety, in accordance with Policy MT1.

### **Drainage and Habitats Regulation Assessment**

- 6.26 Policy SD3 of the Core Strategy states that measures for sustainable water management will be required to be an integral element of new development in order to reduce flood risk, avoid an adverse impact on water quality, protect and enhance groundwater resources and provide opportunities to enhance biodiversity, health and recreation. This will be achieved by many factors including developments incorporating appropriate sustainable drainage systems to manage surface water. For waste water, policy SD4 states that in the first instance developments should seek to connect to the existing mains wastewater infrastructure. Where evidence is provided that this option is not practical alternative arrangements should be considered in the following order; package treatment works (discharging to watercourse or soakaway) or septic tank (discharging to soakaway).
- 6.27 The scheme in this instance proposes the use of a package treatment plant to manage foul water with outfall to a soakaway drainage field. In the absence of a mains sewer proximal to the site, this would be an acceptable solution which would accord with the hierarchal approach set out in CS policy SD4. Surface water from the development will be managed through the use of soakaways. This is an acceptable method in principle which would accord with CS policy RA3.
- 6.28 Members will note that the site in this instance lies within the catchment of the River Lugg which, in turn, is a sub-catchment of the River Wye Special Area of Conservation (SAC). The River Wye SAC is an internationally important conservation site which has been designated for its special features of ecological and biodiversity value. Under the Conservation of Habitats and Species Regulations 2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 Herefordshire Council has a legal duty to assess the potential impact of new developments in this area by undertaking an 'Appropriate Assessment' (AA) which must be able to determine with scientific certainty that there would be no 'likely significant effects' upon the designated site. The obligations are embodied in CS policies LD2 and SD4, as well as the guidance of the NPPF.
- 6.29 The River Lugg, which is a tributary of the River Wye and forms part of the SAC designated site, is currently failing its conservation targets on phosphate levels.
- 6.30 The proposal in this case would generate additional phosphates through foul water. Whilst foul water is to be managed through a new package treatment plant system, some phosphates will remain in water discharged post-treatment and therefore there is a potential pathway for the development to have an adverse impact upon the River Wye SAC. Previously, the approach taken by Herefordshire Council and Natural England has been that there is a route for development to be able to proceed in the River Lugg catchment, even when it may add to the existing phosphate levels in the river as above, as any increases would be mitigated by the River Wye's Nutrient

Management Plan (NMP). The NMP is a partnership project developed to reduce phosphate levels in the Wye catchment, including the River Lugg, to below the target level by 2027 in line with the Water Framework Directive. The NMP is managed by the Nutrient Management Board (NMB), comprising of Herefordshire Council, Powys Council, Natural England, Natural Resources Wales, the Environment Agency, Dwr Cymru Welsh Water, CABA (WUF), National Farmers' Union and the County Land and Business Association.

- 6.31 However, this situation regarding development with potential phosphate impacts in the Lugg catchment is currently under review following Natural England's advice to Herefordshire Council that, in light of the interpretation of the recent 'Dutch Case', a ruling in July 2018 by the Court of Justice of the European Union (the CJEU) on the interpretation of the Habitats Directive, from which the Habitats Regulations arise in UK law, in the case of *Cooperatie Mobilisatie* (AKA the Dutch Case) (Joined Cases C-293/17 and C-294/17). This is confirmed above by Natural England's consultation response on 24 July 2019 (section 4.2 of this report).
- 6.32 Natural England have therefore advised following the Dutch Case, that where a site is failing its water quality objectives, and is therefore classed as in unfavourable condition, there is limited scope for the approval of additional damaging effects and that the future benefit of measures cannot be relied upon at Appropriate Assessment, where those benefits are uncertain at the time of the assessment. Natural England have advised that for any plans or projects with a significant effect (on phosphate levels in the River Lugg) and which require Appropriate Assessment, the effects are currently uncertain, as in their opinion there remains reasonable scientific doubt as to whether the NMP can provide appropriate mitigation (based on how much certainty this currently demonstrates). Natural England have therefore advised that they will not, in the short term, provide advice on such planning applications that require Appropriate Assessments, while they seek legal advice. The Council is also seeking its own advice on this matter and members will be aware of the Council's position statement update of April 2021
- 6.33 It is noted that Council Ecology comments for this application state that the Local Planning Authority (LPA) as the competent authority is at this time and based on supplied information only able to conclude that there would be an adverse effect on the integrity of the River Lugg (Wye) SAC and hence permission should not be granted at the present time. The proposal is not considered to have any imperative public interests which would justify overriding this.
- 6.34 Owing to this, the proposal fails to meet the requirements of the Conservation and Habitats and Species Regulations 2017 and would also be in conflict with policies LD2 and SD4 of the CS. It is also noted that Paragraph 182 of the NPPF is engaged insofar as it directs that;
- 'The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (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'.*
- 6.35 The applicant has been requested to supply all additional information, including relevant professional reports and testing methodologies and outcomes such as to supply the LPA with legal and scientific certainty that the criteria at the end of the Council's issued updated position statement of April 2021, regarding soakaway drainage fields for foul water treatment systems can be demonstrated and legally secured through implementation condition. However, this has not materialised. Thus the application is to be considered on the basis of the Council's current position on policies on such matters and the onus is on the applicant to demonstrate otherwise.
- 6.36 Permission can only be granted if there is scientific certainty that no unmitigated phosphate pathways exist and that the HRA process can confirm 'no adverse effect on the integrity of the River Wye SAC'. Natural England; the statutory nature conservation body, advise that recent case law requires effective mitigation to be demonstrated on a case by case basis whilst the River Lugg

Nutrient Management Plan is reviewed to ensure greater certainty that this can provide large scale mitigation development in the area.

- 6.37 Therefore at this point in time on the basis of the information provided I find that the proposed development does not legally and scientifically demonstrate compliance with the soakaway criteria agreed between the LPA and Natural England to provide the required certainty that there are NO pathways for phosphates to enter the River Lugg hydrological catchment. Therefore the proposal would harm a designated nature conservation site and would therefore conflict with policy SD4 of the Core Strategy which seeks to ensure that development does not undermine the achievement of water quality targets for rivers within the county and policy LD2 which states that development should conserve, restore and enhance biodiversity and geodiversity. Additionally, the proposal would be inconsistent with the provisions in the NPPF in relation to conserving and enhancing the natural environment and would not accord with the Conservation of Habitats Regulations, (The Conservation of Habitats and Species Regulations 2017).
- 6.38 The limited evidence provided does not clearly establish that drainage arrangements for the proposal would be able to comply with the detailed criteria concerning the distance from watercourses, gradient of the field and hydrological pathways in order to provide mitigation.
- 6.39 As such, officers do not have certainty that there is a reasonable basis to suppose that a condition would secure compliance with the required criteria. Given this uncertainty, it is not a matter that can be left to a condition as it goes to the principle of the development. Therefore, officers are not assured that the proposal would not add to the unfavourable phosphate levels within the river.
- 6.40 In the light of these changes in circumstances, in conjunction with the lack of information submitted to undertake a Appropriate Assessment, and case law, the Habitats Regulations require consideration as to whether there are any alternative solutions and if not, whether there are any imperative reasons of overriding public interest that would justify the development. That said, officers have nothing before themselves that would rule out alternative solutions being available. Nevertheless, the provision of one additional dwelling would not amount to an imperative reason of overriding public interest justifying the development. In these circumstances the Habitats Regulations indicate that permission must not be granted.
- 6.41 Therefore, officers find that the proposed development cannot beyond reasonable doubt demonstrate that it would not harm a designated nature conservation site, with particular regard to the discharge of phosphates into the River Lugg, based on the Council's current policy position and advice available at this time. It would therefore, conflict with policy SD4 of the CS which primarily seeks to ensure that development should not undermine the achievement of water quality targets for rivers within the county, in particular through the treatment of waste water. Additionally, the proposal would be inconsistent with the provisions in the Framework in relation to conserving and enhancing the natural environment and would not accord with the Conservation of Habitats and Species Regulations 2017.

### ***Planning Balance and Conclusion***

- 6.42 For the reasons outlined above, your officers have found, having been offered limited information to demonstrate otherwise and given the current policy and Council's position on the matter, that the proposal would adversely affect the integrity of the River Wye SAC and thus, it is clear from paragraph 182 of the Framework that the presumption in favour of sustainable development does not apply in these circumstances. Moreover, the policies in the Framework relating to the protection of such areas provide a clear reason for refusing the proposal.
- 6.43 Even if this is set aside, there is no essential functional need for a new dwelling given the proposal fails to meet the policy tests, as outlined under Policy RA3 of the Core Strategy, for permitting new residential development at this location.



- 6.44 Planning law requires applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. There are benefits arising from the proposal including economic benefits as a result of the construction, and the social and economic benefits associated with the occupants of an additional dwelling supporting local services at Yarpole. However, in light of the modest scale of the proposal, these benefits attract limited weight. Accordingly, the benefits arising from the proposal do not provide sufficient justification for development that conflicts with the development plan, the NPPF and the Habitats Regulations.
- 6.45 In short, and taking planning policy and material considerations into account, and having regard to the information provided, the proposal does not satisfy any of the special circumstances which would allow new residential development in the countryside to be supported and is contrary to Policy RA3 of the Herefordshire Local Plan – Core Strategy and Paragraph 80 of the National Planning Policy Framework. Furthermore, conflict has also been identified in respect of the Habitats Regulations, to which recent appeal decisions have confirmed due thought needs to be given, as a material consideration.
- 6.46 In applying the planning balance, the proposal for a new residential dwelling in this rural location is without appropriate justification, would lead to significant harm in terms of its conflict with the Development Plan and promotes unsustainable development. The scheme is hence not representative of sustainable development, and does not benefit from the positive presumption set out in in the NPPF and CS, given the conflict with the development plan. The application is accordingly recommended for refusal in line with the reasons outlined below.

## **RECOMMENDATION**

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

1. A lack of information has been provided to achieve compliance with the exception criteria relating to affordable housing in policy RA3 , in line with policy H2. Furthermore, it has been found that the application site is too remote. There is no reasonable access to services, amenities and employment opportunities, as relevant for the proposed and future occupants of the dwelling. The site is therefore found to be in conflict with H2 and paragraph 72 of the Framework. The identified benefit of the proposal is significantly and demonstrably outweighed by the adverse impacts of allowing this inherently unsustainable pattern of development in open countryside distant from any local services where affordable housing is not deemed to be acceptable. The proposal is found to be contrary to Herefordshire Local Plan – Core Strategy Policy RA3 and H2 as well as the relevant provisions of the National Planning Policy Framework, namely Paragraph 72.
2. The application site lies within the River Lugg sub-catchment of the River Wye Special Area of Conservation (SAC) and the nature of the proposal triggers the requirement for a Habitat Regulations Assessment to be undertaken. Under the Regulations there is a requirement to establish with certainty, and beyond all reasonable scientific doubt, that there will not be any adverse effect on the integrity of the River Wye SAC. The River Lugg sub-catchment however suffers from the effects of point source and diffuse water pollution and phosphate levels in the river have already exceeded conservation objectives. The proposal in this case would add to this through the generation of additional foul water / phosphates and as such the Local Planning Authority is unable to conclude that the development would not have an adverse effect on the integrity of the River Lugg / River Wye SAC. As a result, the proposal has failed the Appropriate Assessment required by The Conservation of Species and Habitats Regulations 2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 and is hence contrary to Policies LD2 and SD4 of the Herefordshire Local Plan Core Strategy, the Natural Environment and Rural Communities (NERC) Act

**Informative**

1. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations 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 reason(s) for the refusal, approval has not been possible.

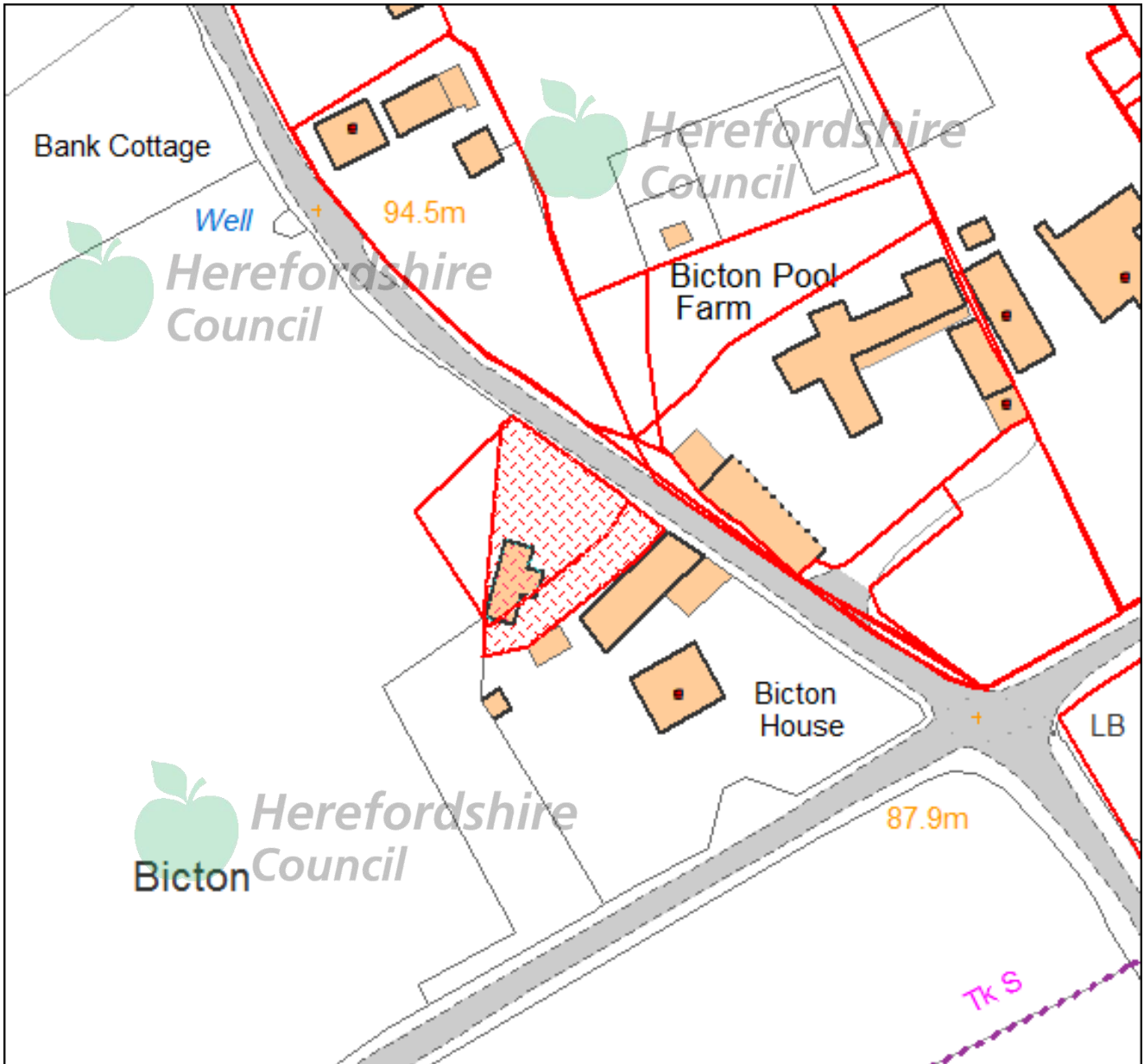
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**Background Papers**

Internal departmental consultation replies.



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**APPLICATION NO:** 204317

**SITE ADDRESS :** LAND AT BICTON HOUSE, BICTON, KINGSLAND, LEOMINSTER, HEREFORDSHIRE, HR6 9PR

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Further information on the subject of this report is available from Miss Amber Morris on 01432 260855