

<b>MEETING:</b>	<b>PLANNING AND REGULATORY COMMITTEE</b>
<b>DATE:</b>	<b>16 AUGUST 2023</b>
<b>TITLE OF REPORT:</b>	<p><b>181494 - PENDING SECTION 106 AGREEMENT PROPOSED LAND FOR RESIDENTIAL DEVELOPMENT AND ASSOCIATED WORK TOGETHER WITH PUBLIC OPEN SPACE AND LOCAL GREEN SPACE. AT LAND ADJACENT TO SPRING COTTAGE, HEADBROOK, KINGTON, HR5 3DY</b></p> <p><b>For: Mr &amp; Mrs Turner per Mr Peter Draper, Yew Tree Cottage, Byford, Hereford, Herefordshire HR4 7LB</b></p>
<b>WEBSITE LINK:</b>	<a href="https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=181494">https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=181494</a>
<b>Reason Application submitted to Committee – Re-direction</b>	

**Date Received: 23 April 2018**

**Ward: Kington**

**Grid Ref: 330174,256478**

**Expiry Date: 30 July 2018**

Local Member: Cllr Terry James (Kington)

**1. Background / Reason for application being returned to Committee**

1.1 The application was considered by the Planning and Regulatory Committee ('the Committee) on 18 December 2018. The Committee resolution was that planning permission be granted on the grounds that the application was supported by policies SS1, SS2 OS2 and MT1, with approval to be subject to a Section 106 agreement to be prepared by officers after consultation with the Chairman and local ward member, and officers named in the scheme of delegation to officers be authorised to detail the conditions and reasons put forward for approval. The minutes of the Committee meeting are available at **Appendix 1**. A link to an audio recording of the meeting is available through the agenda webpage below:

[Agenda for Planning and Regulatory Committee on Tuesday 18 December 2018, 10.00 am](#)

1.2 Following the Committee's resolution and prior to the completion of the required Section 106 agreement, Natural England advised Herefordshire Council that it could no longer rely upon the Nutrient Management Plan to offset the phosphate generated by development. The associated restrictions imposed follow a judgement in the Court of Justice of the European Union on the application of the Habitats Regulations. Known as the 'Dutch Case', the judgement essentially directed that in situations where a designated site is already failing its conservation objectives, planning permission can only be granted for new development where it can be shown that this would have a neutral impact (or represent betterment) commonly now referred to as 'nutrient neutrality' upon the integrity of the designated site. Those requirements have been transferred into law in the United Kingdom following its exit from the European Union.

- 1.3 The application site is located within the hydrological the catchment of the River Lugg, which is a tributary of the River Wye Special Area of Conservation (SAC) and forms part of the designated site. It is currently failing its conservation targets on phosphate levels. Following advice issued by Natural England (as the relevant statutory body) in July 2019 as above referred to, Herefordshire Council as the Local Planning Authority (LPA) has been unable to approve new developments within the Lugg catchment unless it can be demonstrated with certainty that it would be nutrient neutral with respect to water quality and the integrity of the designated site. This has become known as the need to demonstrate 'nutrient neutrality'.
- 1.4 The proposal is for residential development and would therefore generate foul water that is proposed to be managed through a connection to the mains sewer network serving Kington. The additional phosphate load generated has the potential to impact upon the River Wye SAC through the discharge of treated sewerage into the catchment. As such, there is requirement for the LPA to complete an 'Appropriate Assessment' before permission can be granted. A positive assessment in this regard was not possible following the application being considered by Planning Committee in 2018 – given the length of time taken to progress the Section 106 agreement; there were no methods available at the time to mitigate for the effects of the development and hence it could not be concluded that the proposal would have a neutral effect on the integrity of the River Lugg SAC. As a result, the application was placed 'on hold' pending a solution coming to fruition that would allow for a positive HRA to be completed.
- 1.5 In the interim, Herefordshire Council has been developing a project to deliver a series of integrated wetlands to provide secondary treatment to discharge of mains wastewater treatment works. The first site in Luston has been granted planning permission with construction completed. The delivery of the wetlands will reduce the amount of phosphate entering the catchment, allowing Herefordshire Council to offer a Phosphate Credits scheme to mitigate for the effects of proposed development (achieve nutrient neutrality) whilst still delivering net betterment to water quality in the Lugg catchment. Herefordshire Council's Cabinet took the decision to authorise the commencement of credit trading in July 2022:

<https://councillors.herefordshire.gov.uk/ieDecisionDetails.aspx?Id=8974>

- 1.6 The application in this case now seeks to purchase phosphate credits to mitigate for the effects of the development on the SAC and is eligible for such an allocation. This is discussed within the relevant section in the main body of the report which follows.
- 1.7 Notwithstanding the Committee resolution, the application is returned to this Committee given that since December 2018, there have been demonstrable changes to the planning policy context. These are material and therefore must be considered by this Committee. To explain, the application was previously considered in the context of the Council not being able to demonstrate a 5 year housing land supply – the position of April 2018 being 4.55 years. The implication of this was prescribed by the 2018 version of the National Planning Policy Framework (NPPF) which specifically set out at Paragraph 11d the following;
- d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
    - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
    - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

- 1.8 As per the minutes of the Committee meeting on 18 December 2018 as shown in **Appendix 1** and the recording of the meeting, officers consider it clear that in reaching the resolution to grant planning permission, the above ‘tilted-balance’ was engaged, meaning that the adverse impacts were identified but it was considered that they did not significantly and demonstrably outweigh the benefits of the development.
- 1.9 However, the currently supply position is that Herefordshire Council are able to demonstrate in excess of a 5 year housing land supply. When having regard to most up to date version of the NPPF (2021) – the same test as above-mentioned applied. However, because of the change in supply position, it can no longer be engaged. Rather, it is Paragraph 11 which is instead engaged. This states the following;
- c) approving development proposals that accord with an up-to-date development plan without delay.
- 1.10 Therefore, in simple terms – any adverse impacts that were identified by the Committee must no longer significantly and demonstrably outweigh the benefits. Instead, development proposals should accord with an up-to-date plan. This represents a significant change to the planning policy context and is material to the consideration of this application. Therefore, while the previous resolution reached by the Committee is acknowledged, this can only be attributed very limited weight in the context of the aforementioned significant changes to the planning policy context.
- 1.11 With the above in mind, the application has been reappraised as per the report set out below. The original Officer Report can be found in **Appendix 2**.

## **2. Site Description**

- 2.1 The site is situated on the north side of Headbrook, east of Kington’s town centre and west of the A44 by-pass. It is currently in agricultural use but is adjacent to existing residential areas along Headbrook, Old Eardisley Road and Bridge Street. The site amounts to 3.83 hectares and is irregularly shaped, essentially level and bound to the north by the River Arrow and to the south by the dwellings that front onto Headbrook which are arranged in a linear fashion along Headbrook are all set in narrow plots with little in the way of residential curtilage to the rear. Views into and across the site are afforded from its edges and there are defined visual boundaries created by the existing development and the mature trees and hedgerows within and along the boundaries, especially to the north and east.
- 2.2 There is an existing field accesses to the site; a narrow field gate between 45 and 47 Headbrook. This is considered to be inadequate to serve the proposed housing development and consequently the application site includes land immediately to the west of 45 Headbrook. There are no definitive Public Rights of Way into or across the site, but north of the site and river and within 300 to 400 metres are several local public footpaths and stretches of Offa’s Dyke Path and the Herefordshire Trail, both National and Local Long Distance Paths. The application submission highlights opportunity for new footpath and cycle routes to be created and linked into existing routes, and includes the possibility of a new footbridge across the River Arrow in the north-west corner of the land. At its closest the site is approximately within 300 metres of the town centre, which includes a post office, the bulk of shops, services and public transport facilities. The site is all within easy walking and cycling distance of the town centre and its full range of services.

## **3. Proposal**

- 3.1 This application is made in outline and seeks planning permission for residential development, associated works and the provision of public open-space and green space, with other matters reserved for future consideration. The proposal is for 35 dwellings although the submitted plans are illustrative only (see **Figure 1**), showing 33 dwellings and demonstrates how residential development on the site could come forward. The scheme would provide 35% affordable

provision. It has been illustrated how access to the site could be taken off Headbrook between Numbers 43 and 45.



Figure 1 – Indicative Proposed Site Plan

#### 4. Policies

##### 4.1 Herefordshire Local Plan – Core Strategy

- SS1 Presumption in favour of sustainable development
- SS2 Delivery new homes
- SS3 Ensuring sufficient housing land delivery
- SS4 Movement and transportation
- SS6 Environmental quality and local distinctiveness
- KG1 Development in Kington
- RA1 Rural housing distribution
- H1 Affordable housing – thresholds and targets
- H3 Ensuring an appropriate range and mix of housing
- OS1 Requirement for open space, sport and recreation facilities
- OS2 Meeting open space, sport and recreation Needs
- MT1 Traffic management, highway safety and promoting active travel
- LD1 Landscape and townscape
- LD2 Biodiversity and geodiversity
- LD3 Green infrastructure
- LD4 Historic environment and heritage assets
- SD1 Sustainable design and energy efficiency
- SD3 Sustainable water management and water resources

**SD4** Waste water treatment and river quality  
**ID1** Infrastructure delivery

#### 4.2 **Kington Area Neighbourhood Development Plan**

The referendum for voters within the Kington, Kington Rural and Lower Harpton Group and Huntington parish areas was held on 25 July 2019. Because the number of votes cast in favour of a 'yes' vote did not constitute more than half of those voting, the Kington Area Neighbourhood Development Plan was not made. It therefore carries no material weight for the purposes of decision-taking.

#### 4.3 **National Planning Policy Framework (NPPF)**

**Chapter 2** Achieving sustainable development  
**Chapter 4** Decision-making  
**Chapter 5** Delivering a sufficient supply of homes  
**Chapter 6** Building a strong, competitive economy  
**Chapter 9** Promoting sustainable transport  
**Chapter 11** Making effective use of land  
**Chapter 12** Achieving well-designed places  
**Chapter 14** Meeting the challenge of climate change, flooding and coastal change  
**Chapter 15** Conserving and enhancing the natural environment  
**Chapter 16** Conserving and enhancing the historic environment

#### 5. **Planning History**

5.1 None.

#### 6. **Consultations**

Following receipt of additional supporting documents (Phosphate Calculations, updated Ecology Assessment), additional consultations were undertaken locally and with the Town Council, as well as with technical consultees where relevant to the submitted information. The original and updated responses are detailed below.

6.1 HC Built and Natural Environment Team (Building Conservation) – object

6.1.1 12/10/18 –

Recommendations:

The corridor of the River Arrow makes a strong contribution to the setting of the Conservation Area and the housing proposed to the North of the site would cause less than substantial harm to this setting. Policy 196 of the NPPF would apply.

Background to Recommendations:

The site is situated to the South of the Kington Conservation Area. A Conservation Area Appraisal exists from 2007, although this doesn't look at the site or the River Arrow Corridor in detail.

Whilst there is not statutory protection in the Planning (Listed Buildings and Conservation Areas) Act 1990 for the setting of Conservation Areas, (as there would be for Listed Buildings for example), this is a material planning consideration.

Comments:

The River Arrow makes a strong visual and historic contribution to the significance of the Conservation Area. Historically this is a primary reason for the Town being in this location, the crossing point allowed for traders to meet and also the means for a Mill, tanneries and other industries to develop. In terms of the character of the Conservation Area there are key views from the Bridge to the South of the town, looking East and from the East towards the Town. It is the view from the Conservation Area which would be most affected by the proposals, in

particular the proposed housing towards the north of the site. The transition from Headbrook to the River Arrow Corridor is an important aspect of views from the Conservation Area. Those views from the south extremity of the town looking directly south should not be entirely discounted, although it is noted that this is an area of more modern housing and not within the Conservation Area.

6.2 HC Built and Natural Environment Team (Landscape) - object

6.2.1 9/7/18 –

Policy context

National Planning Policy Framework

11. Conserving and enhancing the natural environment

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

SS6. Environmental quality and local distinctiveness

SS7. Addressing climate change

LD1. Landscape and Townscape

LD2. Biodiversity and Geodiversity

LD4. Historic environment and heritage assets

SD3. Sustainable water management and water resources

Designations/Constraints

- Draft – Kington Neighbourhood Development Plan – GS06 Land Beside River – designated as Green Space
- Listed Buildings (Conservation Advisor to provide further information) Grade II, No 19 Headbrook
- Registered Park and Garden – Hergest Croft – no views envisaged
- Agricultural Land Classification – Grade 3 Good to Moderate Agricultural soil
- Settlement boundary – The proposal is within the settlement boundary
- Conservation Area – Western boundary adjacent to a conservation area
- Flood zones and Ground Water Sensitivity areas – (Drainage engineer to provide further information)
- Pollution areas – The north western part of the site has a pollution area
- Public view points : See Figure 6 of the Landscape Visual Impact Assessment for various views of the site

Herefordshire Landscape Character Assessment

Riverside Meadows – Main Characteristics are: ‘Pastoral land use, with well defined linear patterns of willow and alder trees. Tree cover represented by stream side and hedgerow trees’. Secondary characteristics are ‘Wetland habitat with river channels and hedge and ditch boundaries’.

Landscape and Visual effects

I have visited the site

I have read the Landscape Visual Impact Assessment (September 2017)

I have seen the Illustrative Site Plan, Job No A.174 13.01 P.04, No Revision

I have seen the HK B7A. LVIA Appendix 1 – Revised layout Concept

These are my landscape comments which reference to this application relating to the following above planning policy statements:

The National Planning Policy Framework, Item 11, 109 states: 'The planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes and soils'

The northern boundary of the proposal site lies parallel and adjacent to the River Arrow. The site provides an attractive historical visual amenity for the town with its association to the river. The western boundary of the site is adjacent to the town's conservation area and the site when seen from nearby public rights of way view-points has a strong sense of place. On the northern boundary of the site the River Arrow is designated as a Special Wildlife Site corridor. On the southern boundary of the site there is a Grade II Listed building No 19 Headbrook. The agricultural land classification is that of a Grade 3 soil which is considered to be a good to moderate agricultural soil.

The Herefordshire Local Plan Core Strategy 2011 – 2031, Dated October 2015, following policies state:

SS6. Environmental quality and local distinctiveness: 'Development proposals should conserve and enhance those environmental assets that contribute towards the county's distinctiveness, in particular its settlement pattern, landscape, biodiversity and heritage assets and especially those with specific environmental designations'.

The River Arrow and its associated flood plain represent a distinct landscape character of Riverside Meadows and local distinctiveness for the town, providing both visual amenity, flood storage and biodiversity value. The proposed site lies in an area designated in the emerging Kingston Neighbourhood Development Plan as a Local Green Space. The loss of this Local Green Space would not contribute towards the county's distinctiveness with reference to this historical, environmental and heritage asset.

SS7. Addressing climate change: 'Development proposals will be required to include measures which will mitigate their impact on climate change'.

With future erratic weather predicted due to climate change, flooding adjacent to river corridors will occur more often. Further information on these development proposals adjacent to the flood plain should be obtained from our Drainage Risk team.

LD1. Landscape and townscape: 'Development proposals should'

- Demonstrate that character of the landscape and townscape has positively influenced the design, scale, nature and site selection, protection and enhancement of the setting of settlements and designated areas;
- Conserve and enhance the natural, historic and scenic beauty of important landscapes and features, including Areas of Outstanding Natural Beauty, nationally and locally designated parks and gardens and conservation areas; through the protection of the area's character and by enabling appropriate uses, design and management;
- Incorporate new landscape schemes and their management to ensure development integrates appropriately into its surroundings; and
- Maintain and extend tree cover where important to amenity, through the retention of important trees, appropriate replacement to trees lost through development and new planting to support green infrastructure.

The River Arrow and its associated flood plain provide a natural, historic and scenic beauty for the town of Kingston. This historical, environmental and aesthetically valued asset will not be protected by this proposed development, due to the loss of Riverside Meadow land which will deplete this existing valued Green Space asset.

LD2. Biodiversity and Geodiversity: 'Development proposals should conserve, restore and enhance the biodiversity and geodiversity assets of Herefordshire'.



The River Arrow corridor is a Special Wildlife Site. Further information can be obtained from our Ecologist.

LD4. Historic environment and heritage assets: 'Development proposals should protect, conserve and where appropriate enhance heritage assets'

There is a listed building near to the south western site boundary, a Grade II No 19 Headbrook House. Further information can be obtained from our Conservation officer. There will be a loss of Riverside Meadows which has an historic value for the residents of Kington and tourist to the town.

SD3. Sustainable water management and water resources: 'Measures for sustainable water management will be required to be an integral element of new development in order to reduce flood risk; to avoid and adverse impact on water quantity; to protect and enhance groundwater resources and to provide opportunities to enhance biodiversity, health and recreation'.

The northern part of the site runs parallel to the River Arrow is in a Flood Zone 3. The northern central part of the site is within a Flood Zone 2. On the eastern boundary of the site a stream corridor which runs in a northerly direction towards the River Arrow experiences a 1: 30 year deep flood. Further information on these constraints should be sought from our Flood Risk Team.

#### Recommendations

I would object to this Outline application on the basis of the following points:

The proposed development site lies in an area designated in the emerging Kington Neighbourhood Development Plan as a Local Green Space. Even though the NDP is not in an advanced stage, this green space should be protected as a valued community and environmental resource for the future.

The proposed development would deplete the size of the existing Riverside Meadows adjacent to the River Arrow flood plain. This existing green space is an historic, aesthetic and communally valued open space. This depletion of existing environmental, historical and locally valued aesthetic would therefore not contribute or enhance the natural, historical and locally valued landscape.

This proposal is adjacent to the River Arrow flood plain. With climate change there is the potential to exacerbate the present flood issues and water quality issues in this area with this proposed development.

6.3 HC Built and Natural Environment Team Archaeology – no objection

6.3.1 11/5/18 – no objection.

6.4 HC Built and Natural Environment Team (Ecology) - comment

6.4.1 6/2/23 – HRA completed and submitted to Natural England. See **Appendix 3**.

6.4.2 11/1/23 - These comments only apply to Ecological matters that are outside the purview of required Habitat Regulations Assessment.

#### General Ecology Comments

The updated ecological assessment-report by Middlemarch dated November 2022 is noted and refers.

It appears that there has been little substantive change since original 2018 ecology comments. It is noted that as an outline application required detailed and specific information can be



secured for final consideration as part of future Reserved matters/Discharge of Conditions. These comments remain valid for 18 months/two main optimal periods from the date of the supplied ecology report. If outline permission is not granted by October 2024 a further update ecological report should be produced, submitted and updated ecology comments made.

Subject to relevant mitigation there are no identified likely effects on local populations of protected species or general biodiversity interests.

As identified in supplied ecology report to ensure all relevant considerations are a comprehensive Construction Environmental Management that should include wider effects of construction as well as specific section on ecological/wildlife considerations and protections, with details of appointed responsible person and relevant ecological clerk of works. If submission of required CEMP is delayed for any reason the submitted CEMP should be based on an valid and updated ecological/proposed development assessment process. . A good guide to all aspects requiring consideration with a CEMP can be found at: [https://www.designingbuildings.co.uk/wiki/Construction\\_environmental\\_management\\_plan](https://www.designingbuildings.co.uk/wiki/Construction_environmental_management_plan)

#### Ecological Protection and Construction Environmental Management Plan

No longer than one year prior to any works commencing on site a detailed Construction Environmental Management Plan – including ecological working method statement based on the assessment and details of the person responsible for the implementation of the CEMP, shall be supplied to the LPA for written approval. The approved CEMP shall be implemented in full for the duration of all construction works at the site unless otherwise approved in writing by the local planning authority.

Reason: To ensure that all species are protected and habitats enhanced having regard to the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019' (the 'Habitats Regulations'), Wildlife and Countryside Act 1981, National Planning Policy Framework (2021), NERC Act (2006) and Herefordshire Local Plan - Core Strategy policies SS1, SS6, LD1, LD2 and LD3 and the council's declared Climate Change & Ecological Emergency.

As identified in current guidance and policies all developments should show how they will deliver a meaningful and lasting Biodiversity Net Gain. A detailed specification and location scheme for all permanent biodiversity net gain features is requested for approval through a relevant condition on any planning permission granted.

#### Nature Conservation – Biodiversity and Habitat Enhancement

Prior to any construction work above damp proof course a specification and annotated location plan for proposed biodiversity net gain enhancement features including significant and meaningful provision of 'fixed' habitat features including a range of bird nesting boxes, bat boxes (or similar roosting features), Hedgehog homes and hedgehog highways through all impermeable boundary features must be supplied to and approved in writing by the local authority. The approved scheme shall be implemented in full and hereafter maintained as approved unless otherwise agreed in writing by the local planning authority.

Reason: To ensure that biodiversity net gain is secured and habitats enhanced having regard to 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'), Wildlife and Countryside Act 1981, National Planning Policy Framework, NERC Act (2006) and Herefordshire Local Plan - Core Strategy (2015) policies SS1, SS6 LD1, LD2 and LD3; and the council's declared Climate Change and Ecological Emergency

The site is in an area with an intrinsically dark landscape that benefits local amenity and nature conservation interests, including nocturnal protected species present at the site. A condition to ensure all external lighting is kept to the essential minimum for householder safety and any systems installed compliant with current best practice is requested:

#### Protected Species and Dark Skies (external illumination)

No external lighting shall be provided other than the maximum of one external LED down-lighter above or beside each external door (and below eaves height) with a Corrected Colour Temperature not exceeding 2700K and brightness under 500 lumens. Every such light shall be directed downwards with a 0 degree tilt angle and 0% upward light ratio and shall be controlled by means of a PIR sensor with a maximum over-run time of 1 minute. The Lighting shall be maintained thereafter in accordance with these details.

Reason: To ensure that all species and local intrinsically dark landscape are protected having regard to 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'), Wildlife & Countryside Act (1981 amended); National Planning Policy Framework, NERC Act (2006) and Herefordshire Local Plan - Core Strategy policies SS1, SS6, LD1-3; ; and the council's declared Climate Change and Ecological Emergency

- 6.4.3 23/8/18 – Thank you for consulting me again on this application. I note my colleague has completed the HRA assessment process for this satisfactorily. With regard to the ecological assessment, I welcome the updated survey which finds much remains unchanged. However, the presence of two riparian species (otter and white clawed crayfish) have been raised and confirmed as present along this stretch of the R. Arrow. I believe the plans to be ultimately adequate in habitat creation along the stream corridor here and so good water quality and lack of disturbance will be of utmost importance to maintain before and after construction. The bulk of the development will fall outside the flood plain and will lie some distance from the course of the river but a Construction Environmental Management Plan (CEMP) should be produced to ensure no construction materials/fuels etc. will be placed near the buffer zone. Except for planting there should be no need to enter this buffer zone during construction. Certainly no heavy machinery should be allowed the CEMP should clearly designate this zone as fenced off from the rest of the site. I do not believe it is possible, enforceable or even reasonable to adopt an exclusion zone around the river post-construction but site development should in no way impede the use of the river by these two species including barrier installations, lighting or bank access points. If the footbridge across the proposed in the Design and Access Statement is intended as part of this application, then details of construction must be submitted as part of the approval and accommodated in the species' mitigation..

In addition, the recommendations of the ecological report should be encompassed within a ecology mitigation and enhancement plan. This should include a programme of Reasonable Avoidance Measures for two species above. I would also advise that information boards should be installed as part of the interpretation and advisory element of enhancement highlighting the features living adjacent to such a spectacular biodiversity resource. The signs should also indicate controls on disturbance which people should exercise (such as by dogs, vegetation damage and any water-sports intended).

Consequently, the following non-standard conditions should be added to any approval:

Prior to commencement of development, a Construction Environmental Management Plan shall be submitted for approval in writing by the local planning authority and shall include timing of the works, details of storage of materials and measures to minimise the extent of dust, odour, noise and vibration arising from the demolition and construction process. The Plan shall be implemented as approved.

#### Reasons:

To ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (with amendments and as supplemented by the Countryside and Rights of Way Act 2000), the Natural Environment and Rural Communities Act 2006 and the Conservation of Habitats and Species Regulations 2010 (and 2012 amendment).

To comply Herefordshire Council's Policies LD2 Biodiversity and Geodiversity, LD3 Green Infrastructure of the Herefordshire Local Plan Core Strategy 2013 – 2031 and to meet the requirements of the National Planning Policy Framework (NPPF).

AND

The recommendations for species mitigation and habitat enhancements set out in the ecologist's report from Ecology Services dated 2018 should be followed unless otherwise agreed in writing by the local planning authority and the scheme shall be carried out as approved. An enhancement plan for the site including interpretive advice boards for protected riparian species present should be submitted to the local planning authority in writing. The plan shall be implemented as approved.

An appropriately qualified and experienced ecological clerk of works should be appointed (or consultant engaged in that capacity) to oversee the ecological mitigation work.

Reasons:

To ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (with amendments and as supplemented by the Countryside and Rights of Way Act 2000), the Natural Environment and Rural Communities Act 2006 and the Conservation of Habitats and Species Regulations 2010 (and 2012 amendment).

To comply Herefordshire Council's Policies LD2 Biodiversity and Geodiversity, LD3 Green Infrastructure of the Herefordshire Local Plan Core Strategy 2013 – 2031 and to meet the requirements of the National Planning Policy Framework (NPPF).

- 6.4.4 21/5/18 - Thank you for consulting me on this application. My pre-application comments of four years ago welcomed the ecological survey (from 2014). Unfortunately, this application submits the same survey without any updated information. There is a need to at least carry out a walk-over survey as a check on potential changes. For the ecologist to advise on enhancement measures there will be a need to base this on current site conditions in any case. This should be done at the outline stage and not left to reserved matters

Secondly, I note Natural England's comment regarding foul waste treatment. A mains connection is clearly intended and also, a SuD system is proposed for surface water which appears acceptable. Consequently, Natural England's requirement is met provided the condition from Welsh for foul water management is applied.

- 6.5 Area Engineer (Highways) – comment

- 6.5.1 10/7/18 –

Site Location and Access

The application site is located on Land adjacent to Spring Cottage Headbrook Kington. The proposal sets out the creation of a new access through land between 43 and 45 Headbrook which is within the ownership of the developer. The proposed development site lies in an area designated in the emerging Kington Neighbourhood Development Plan as a Local Green Space. Headbrook road is subject to 30mpg speed limit however the 85th percentile speed in the transport assessment for the development shows speeds at 33mph.

The new access would adjoin the existing public access. A transport assessment sets out the proposed access and associated works. It must be ensured that the access does not deviate in location from this point as access from another location, between 45 and 47 Headbrook for instance, would not be appropriate.

There is a bus service near the site, including hourly services which connect Hereford with Llandrindod Wells via Kington.

Traffic Generation

The information provided by the transport assessment is for 60 dwellings. Using this as a baseline, 33 two-way trips were associated with the proposal. As the current proposal is indicative of approximately half the number of dwellings, then it is logical to assume that half the number of two-way trips will be associated with this site. The highway network should not be adversely affected by this increase in movement.

#### Visibility

The visibility splays set out in the transport assessment (51m) in line with the 85th percentile speeds are appropriate and achievable at the proposed location of the access.

#### Drainage

The developer should ensure that run off does not flow to the public highway.

#### Waste Collection

A waste collection strategy should be provided by the applicant.

#### Policy

Section 106 contributions are mentioned in the planning statement and the developer is happy to contribute an average of £9,284 per dwelling.

As a new public road and footway is proposed, the developer should adhere to section 38 highways adoption agreement and section 278 of the Highways Act 278.

#### Conclusion

The transportation department has no objections to this application, subject to the following conditions:

#### CAL - Access, turning area and parking

The development hereby permitted shall not be brought into use until the access, turning area and parking facilities shown on the approved plan have been properly consolidated, surfaced, drained and otherwise constructed in accordance with details to be submitted to and approved in writing by the local planning authority and these areas shall thereafter be retained and kept available for those uses at all times.

Reason: In the interests of highway safety and to ensure the free flow of traffic using the adjoining highway and to conform with the requirements of Policy T11 of Herefordshire Unitary Development Plan

#### CAJ - Parking - estate development (more than one house)

Prior to the first occupation of any dwelling to which this permission relates an area for car parking shall be laid out within the curtilage of that property, in accordance with the approved plans which shall be properly consolidated, surfaced and drained, in accordance with details to be submitted to and approved in writing by the local planning authority and those areas shall not thereafter be used for any other purpose than the parking of vehicles.

Reason: In the interests of highway safety and to ensure the free flow of traffic using the adjoining highway and to conform with the requirements of Policy T11 of Herefordshire Unitary Development Plan

#### CAQ - On site roads - submission of details

Development shall not begin until the engineering details and specification of the proposed roads and highway drains have been submitted to and approved in writing by the local planning authority.

## Informative

### I45 – Works within the highway (Compliance with the Highways Act 1980 and the Traffic Management Act 2004)

This planning permission does not authorise the applicant to carry out works within the publicly maintained highway and Balfour Beatty Living Places (Managing Agent for Herefordshire Council) Highways Services, Unit 3 Thorn Business Park, Rotherwas, Hereford HR2 6JT, (Tel. 01432 349517), shall be given at least 28 days' notice of the applicant's intention to commence any works affecting the public highway so that the applicant can be provided with an approved specification, and supervision arranged for the works.

Under the Traffic Management Act 2004, Herefordshire Council operate a notice scheme to co-ordinate Streetworks. Early discussions with the Highways Services Team are advised as a minimum of 4 weeks to 3 months notification is required (dictated by type of works and the impact that it may have on the travelling public). Please note that the timescale between notification and you being able to commence your works may be longer depending on other planned works in the area and the traffic sensitivity of the site. The Highway Service can be contacted on Tel. 01432 845900.

### I08 – Section 278 Agreement

No work on the site should commence until engineering details of the improvements to the public highway have been approved by the Highway Authority and an agreement under Section 278 of the Highways Act 1980 entered into. Please contact the Senior Engineer, PO Box 236, Plough Lane, Hereford HR4 0WZ to progress the agreement.

### I07 – Section 38 Agreement & Drainage details

The developer is required to submit details of the layout and alignment, widths and levels of the proposed roadworks, which shall comply with any plans approved under this planning consent unless otherwise agreed in writing, together with all necessary drainage arrangements and run off calculations. It is not known if the proposed roadworks can be satisfactorily drained to an adequate outfall. Adequate storm water disposal arrangements must be provided to enable Herefordshire Council, as Highway Authority, to adopt the proposed roadworks as public highways. The applicant is, therefore, advised to submit the engineering and drainage details referred to in this conditional approval at an early date to the Senior Engineer, PO Box 236, Plough Lane, Hereford HR4 0WZ for assessment and technical approval. No works on the site of the development shall be commenced until these details have been approved and an Agreement under Section 38 of the Highways Act 1980 entered into.

### I05 – No drainage to discharge to highway

Drainage arrangements shall be provided to ensure that surface water from the driveway and/or vehicular turning area does not discharge onto the public highway. No drainage or effluent from the proposed development shall be allowed to discharge into any highway drain or over any part of the public highway.

### I51 – Works adjoining highway

Any work involving the removal or disturbance of ground or structures supporting or abutting the publicly maintained highway should be carried out in accordance with details to be submitted to and approved in writing by the Highway Authority or their agent. Please contact Balfour Beatty Living Places (Managing Agent for Herefordshire Council) Highways Services, Unit 3 Thorn Business Park, Rotherwas, Hereford HR2 6JT, (Tel. 01432 349517),

### I35 – Highways Design Guide and Specification

The applicant's attention is drawn to the requirement for design to conform to Herefordshire Council's 'Highways Design Guide for New Developments' and 'Highways Specification for New Developments'.

6.6 HC Strategic Housing – comment

6.6.1 31/5/18 - I have reviewed the above outline planning application and would advise that the applicant is meeting the requirement to provide 35% affordable housing. Local connection in relation to the affordable units would need to be included within the S106 and the units would need to be tenure neutral and will be integrated within the open market units.

The proposed layout for the open market and affordable units are only indicative and I would advise that the exact mix and tenure for both, needs to be agreed prior to the submission of any reserved matters application. Therefore, I would look for a condition to be applied to the outline planning permission to ensure that this happens.

6.7 HC Waste and Recycling – comment

6.7.1 1/6/18 - Please refer to "Guidance Notes for storage and collection of domestic refuse and recycling" for advice with regards to Waste Management arrangements for households.

6.8 HC Environmental Health (Noise and Nuisance) – comment

6.8.1 31/5/18 - The proposal has not yet taken into account the acoustic environment in which the houses are proposed to be built and I note that there are alternative site layout plans which could have different noise exposure risks. I am of the opinion that these risks are a relevant factor when determining site layout.

The applicant is requested to undertake a noise risk assessment using Stage 1 of the ProPG guidance. This would capture the noise levels across the site and will be useful in assisting in the determination of the proposed site layout. Should the noise risks be more than negligible, which is likely at the eastern boundary of the site, the application is also requested to follow Stage 2 of the ProPG guidance and supply an Acoustic Design Statement

6.9 HC Education – comment

6.9.1 30/5/18 - The educational facilities provided for this development site are Kington Primary School and Lady Hawkins High School.

Kington Primary School has a planned admission number of 30. As at the schools spring census 2018:-

- 2 year groups are at or over capacity- Y3=31, Y5=30

Lady Hawkins Secondary School has a planned admission number of 80. As at the schools spring census 2018:-

- All Year groups have spare capacity- no contribution

Approximately 1% of the population are affected by special educational needs and as such the Children's Wellbeing Directorate will allocate a proportion of the monies for Primary, Secondary and Post 16 education to schools within the special educational needs sector. Although there is currently surplus capacity with the catchment secondary school and therefore we are unable to ask for a full contribution as indicated in the SPD towards this element please note that 1% of the contribution will go towards Special Educational Needs provision within the Local Authority maintained Special Schools and therefore we would still be seeking this 1% contribution.

In accordance with the SPD the Children's Wellbeing Directorate would therefore be looking for a contribution to be made that would go towards the inclusion of all additional children generated by this development. The Children's Wellbeing contribution for this development would be as follows:

<b>Contribution by No of Bedrooms</b>	<b>Pre-School</b>	<b>Primary</b>	<b>Post 16</b>	<b>SEN</b>	<b>Total</b>
<b>2+bedroom apartment</b>	£117	£1,084	£87	£89	£1,377
<b>2/3 bedroom house or bungalow</b>	£244	£1,899	£87	£138	£2,368
<b>4+ bedroom house or bungalow</b>	£360	£3,111	£87	£247	£3,805

Although no contribution has been requested for the catchment Secondary schools for this development, please note that parental preference may dictate that children from this development may attend other schools that would ordinarily require a contribution as a result of this development taking place.

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

If you have any queries please do not hesitate to contact me

6.10 HC Open Space Planning Officer – comment

6.10.1 1/6/18 –

Open Space Requirements.

Core Strategy Policies:

OS1: Requirement for open space, sport and recreation facilities

OS2: Meeting open space and recreation needs

Core Strategy Policies OS1 and OS2 apply. Open space requirements from all new development are to be considered on a site by site basis and in accordance with all applicable set standards which are set out below. Where on-site provision is not appropriate off-site contributions may be sought where appropriate on an equally beneficial basis for the local community.

- Herefordshire Open Space Study 2006 which recommends POS should be at a rate of 0.4ha per 1000 population (to note data for amenity public open space has not changed significantly and it is still considered to be accurate),
- Local Evidence: Herefordshire Play Facilities Study and Investment Plan 2012 and National Evidence: Fields in Trust Guidance: These recommend children's play at a rate of 0.8ha per 1000 population. Of this 0.25ha should be formal equipped play.
- Herefordshire Playing Pitch Assessment 2012 and Outdoor Sports Investment Plan (2016) and National Evidence: Fields in Trust Guidance: These recommends outdoors sports provision of between 1.4 and 1.6ha per 1000 population and where future investment in outdoor sport should be directed to maximise the benefits to the local community.

\*please note this information will form the basis of a separate SPD on POS standards currently being prepared.

On site Provision: The illustrative site plan shows on-site POS /SUDS areas as detailed in both the accompanying Planning Statement and Design and Access Statement.

The POS comprises smaller ancillary areas of play and public open space within the housing areas and a larger green space area which is in the flood plain and bounds the river corridor. The total amount is shown as 1.8ha (4.5 acres) and covers over half of the application site. That said, it is understood from the Planning Statement that should this application go forward the applicant is considering a future phase subject to EA consultation which would potentially mean 0.5ha (1.3acres) of this land would be used for housing.

Taking this into account the applicant has exceeded the policy requirements for POS as outlined above. The illustrative site plan shows 33 houses. For a development of up to



33 houses and an occupancy rate of 2.3 (population 75.9) the developer would be required to provide as a minimum of 0.09ha (900sq m) of on-site green infrastructure comprising:

- 0.03 ha (300sq m) of Public Open Space @ 0.4ha per 1000 population
- 0.06ha (600sq m) of Children's play @ 0.8ha per 1000 population: of this 0.018ha (180sq m) should be formal play @ 0.25ha per 1000 population

However the land does not make provision for outdoor sports and this is supported. An off-site contribution towards Outdoor Sports will be sought based on the Playing Pitch Assessment for Kington and the Outdoor Sports Investment Plan as described below.

It is noted that this is an outline application and the illustrative proposal may change if the application progresses to reserved matters and the areas shown as POS may not necessarily appear as shown in a subsequent detailed proposal. Whilst it is recognised that the provision far exceeds policy requirement the site does provide an opportunity to create an impressive area of open space. Planning for healthier spaces is good practice and as the plan develops any on site provision should be well designed and of a usable size to offer a range of recreation opportunities and experiences appropriate to the site and location. Open space needs to be well connected and safe and accessible networks of green spaces should incorporate both walking and cycling opportunities where possible. The applicant's approach to provide POS for both recreation and biodiversity/wildlife, formal and informal children's play space including a dedicated play area and recreational activity, together with a managed environmental/ wildlife zone based around the River Arrow's tributary brook is supported.

Open space needs to be well connected incorporating both pedestrian and cycling opportunities. The applicant has indicated that the site will be fully integrated into the neighbourhood via existing and new public routes for walking and cycling and possibly a new footbridge across the river towards the north-west of the land, which could connect into existing town walkways and this too is supported.

Any POS and children's play areas should be overlooked and housing should be orientated to provide natural surveillance. Given the size of development proposed the policy requirement for formal play provision is small at 180sq m. In this instance, it may be more appropriate to provide more natural play opportunities in keeping with the nature of the proposed POS.

It is noted that the SuDS will be designed to incorporate balancing ponds into the future open-space and landscaping schemes as appropriate. SuDS areas if designed accordingly to take account of health and safety and standing water issues can provide good opportunities for both informal recreation and biodiversity.

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

The Council's SuDS Handbook provides advice and guidance including national guidance on the inclusion of SuDS on new development. The applicant should seek further advice from the Council at the earliest opportunity.

Off site requirements for outdoor sports: It is noted that the applicant will negotiate with Herefordshire Council the s.106 requirements arising from this development as part of the overall planning application discussions.

An off-site contribution will be sort in accordance with the NPPF and evidence bases: Kington Area Playing Pitch Assessment 2012 and the Outdoor Sports Investment Plan 2018.

The Outdoor Sports Investment Plan, has been prepared by a partnership of Sport England, Herefordshire Council, the National Governing Bodies (NGB) for cricket, football, hockey and rugby and the County Sports Partnership. It is annually reviewed and provides up to date information on clubs and facilities in accordance with Sport England's requirements to review the Playing Pitch Assessment. A list of projects for cricket, football, rugby and hockey are included which are considered to be sustainable and deliverable in helping to meet the needs of both the existing and future populations (future proofed to 2031). All projects have the support of the relevant NGB in both their regional and local facilities development plans.

Summary of Projects for Kington:

Football: Kington Town Football Club: used by Kington Town Football club both senior and junior teams.

- Quality Deficiency: Improvements to the existing changing facilities required. Its quality rating has deteriorated to below a quality required by Sport England since 2011.
- Support: The FA has rated this as a priority project to enable the club to develop and to move up the football pyramid.

Cricket: Kington Recreation Ground: Used by Kington Cricket Club both senior and junior teams.

- Quality Deficiency: improvements to the facility including the 3 lane nets required. Its quality rating has deteriorated to below a quality required by Sport England since 2011.
- Support: The HCB supports this project.

The methodology used to assess requirements arising from new development is considered to be CIL compliant and contributions are calculated using the following methodology:

- Total Investment costs: £285,000:
- Total housing planned for Kington (Core Strategy): 200 new houses
- Cost per market house) £1,425
  
- Total off-site contribution arising from this development of 21 market houses: £29,925

6.11 Natural England – no objection

6.11.1 28/2/23 – Based on the plans submitted, Natural England considers that the proposed development will not have significant adverse impacts on designated sites and has no objection. This is on the basis of nutrient neutrality being secured.

6.11.2 20/8/18 – Based on the plans submitted, Natural England considers that the proposed development will not have significant adverse impacts on designated sites and has no objection.

Natural England's advice on other natural environment issues is set out below.

6.11.3 16/5/18 - As submitted, the application could have potential significant effects on The River Wye SAC.

Natural England requires further information in order to determine the significance of these impacts and the scope for mitigation.

The following information is required:

- Clarification of waste water (sewage) treatment.

Without this information, Natural England may need to object to the proposal. Please re-consult Natural England once this information has been obtained.

Natural England's advice on other issues is set out below.

6.12 BBLP Land Drainage Engineer – no objection

6.12.1 23/5/18 - We have no objections to this outline planning application but recommend that the Applicant submits the following information within any subsequent reserved matters application:

Amended calculations of the greenfield runoff rates and proposed discharges rates and attenuation volumes using FEH methods and 2013 rainfall data for the site area included within the planning application;

- Results of infiltration testing at the location(s) and proposed depth(s) of any proposed infiltration structure(s), undertaken in accordance with BRE Digest 365 methodology;
- Confirmation of groundwater levels to demonstrate that the invert level of any soakaways or unlined attenuation features can be located a minimum of 1m above groundwater levels;
- Detailed drawings of proposed features such as attenuation features and outfall structures;
- Confirmation that the attenuation pond will not be situated above ground; if it is proposed to be situated above ground level the Applicant must provide an assessment of breach.
- Consideration of the risk of water backing up the drainage system from any proposed outfall and how this risk will be managed without increasing flood risk to the site or to people, property and infrastructure elsewhere, noting that this also includes failure of flap valves;
- Description and drawing demonstrating the management of surface water runoff during events that may temporarily exceed the capacity of the drainage system;
- A detailed foul water drainage strategy showing how foul water from the development will be disposed of and illustrating the location of key drainage features;
- Confirmation where the proposed connection into the foul sewer network will be and if access to third party land will be required.
- If discharge to the public sewerage system is proposed, confirmation that this has been agreed with the relevant authority;
- If access or works to third party land is required, details of these works and agreement in principle with necessary landowners/consenting authorities to cross third party land and/or make a connection to the proposed watercourse/sewer;

If the results of infiltration testing indicate that infiltration will provide a feasible means of managing surface water runoff, an alternative drainage strategy must be submitted to the Council for review and approval. Best practice SUDS techniques should be considered and we promote the use of combined attenuation and infiltration features that maximise infiltration during smaller rainfall events.

6.13 Dwr Cymru Welsh Water

18/5/18 - We refer to your planning consultation relating to the above site, and we can provide the following comments in respect to the proposed development.

We have reviewed the information submitted as part of this application with particular focus on the Flood Risk Assessment Statement (HKB4) Ref PJD/pjda.HR.1020908.18 which indicates that foul water will drain to the public combined sewer and surface water will discharge to the nearby watercourse.

We are aware of flooding concerns on the main road but our investigations have concluded that the root cause is not due to hydraulic overload on the sewer network.

Therefore, if you are minded to grant planning permission we request that the following Conditions and Advisory Notes are included within any subsequent consent.

#### Conditions

Foul water from the development site shall be allowed to discharge to the public sewerage system and this discharge shall be made between manhole reference number SO60560422 and SO30560529 as indicated on the extract of the Sewerage Network Plan attached to this decision notice. Thereafter, no surface water, land or highway water shall drain directly or indirectly to the public sewerage system.

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

#### Advisory Notes

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

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

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

#### 6.14 Historic England

##### 6.14.1 22/5/18 -

The outline application affects land within the setting of Kington Conservation Area that makes a positive contribution to the conservation area's significance in terms of its historic, aesthetic and communal value. Historic England objects to the application on the grounds that the supporting information does not comply with paragraph 128 of the NPPF and the design, amount, location and density of the development will result in harm to the conservation area that is unjustified in terms of paragraphs 131, 132, 134 and 137.

#### Historic England Advice

Kington Conservation Area encompasses the historic town of Kington established as a borough in the twelfth century. The heart of the conservation area is characterised by a typically tight urban form deriving from the layout of medieval burgage plots along the High Street. This area has dense two and three storey buildings set at the back of pavement providing a high degree

of enclosure to the street and funnelled views with a rich visual texture of historic building materials. A similar plot pattern characterises Bridge Street but the density of development is significantly lower and gaps between buildings and views through carriage arches allow garden greenery and trees to come through into the streetscape experience.

The form of the landscape around the town is such that setting contributes much to the significance of the conservation area. Kington is located between and contained by the course of two rivers, the Arrow and Back Brook which flow from the Radnorshire Hills to the west to form a confluence just east of the town. The rivers cut through higher ground to the north, Bradnor Hill, and west, Hergest Ridge and these hills form a prominent rural setting for the conservation area. At the end of Bridge Street the flood meadows of the River Arrow that form the town's natural southern boundary make themselves apparent particularly to the southeast where views from a public footpath have a distinctly rural feel and layers of trees, open space and topography limit the impact of linear development on the north side of Headbrook and the more substantial new development on rising ground to its south side. The application site forms part of the rural, water meadow setting and the wider landscape setting which contribute to the significance of the conservation area in terms of its aesthetic quality, its historic interest as a settlement developed within the natural constraints of the river confluence and its communal value.

While the detailed impact of the proposed development cannot be assessed due to the outline nature of the application, it is clear to Historic England that the scale and amount of development represents a change in setting that will impact on the significance of the conservation area. The application should therefore be assessed against the policy contained in Section 12 of the NPPF which places great weight on the conservation of heritage assets and most particularly against paragraphs 128, 131, 132, 134 and 137. The Historic England publication 'The setting of Heritage Assets, Historic Environment Good Practice Advice in Planning Note 3' provides relevant advice on the identification of setting and assessment of the impact of change within it on significance.

Historic England is concerned that, for a number of reasons, the Design and Access Statement submitted in support of the application does not meet the requirements of paragraph 128. It relies on a compartmentalised landscape assessment and views analysis that does not draw out the contribution of setting to the historic, aesthetic and communal value of the conservation area and does not follow the staged approach to assessment set out in our guidance referred to above. We are also concerned that, in its outline form, the application does not demonstrate the design quality required by paragraphs 131 and 137. On the basis of the information submitted Historic England considers that, while the proposals have sought to reduce impact by locating housing in the southwest corner of the site, the amount, density and location of the development and loss of green space will result in an urbanisation of the water meadows that will change their character considerably. Taken with the existing development on the south side of Headbrook, the aggregative amount of development in the setting of the conservation area will increase considerably.

We consider that this will harm the significance of the conservation area by obscuring the links between its historic pattern of development and the Arrow's water meadows and diminishing the aesthetic value of its undeveloped, rural, green setting and the communal value of the conservation area that lies in this setting.

We note that the Kington NDP identifies land between Headbrook and the River Arrow as important green space forming part of the river corridor that contributes to the character and setting of Kington Town and that housing would lead to loss of its rural character. Historic England concurs with this conclusion. The NDP indicates that potential for alternative sites to meet the town's housing needs exists and in this context we would suggest that the harm caused by the proposal to the significance of the conservation area is unjustified in terms of paragraphs 132 and 134.

Recommendation

Historic England objects to the application on heritage grounds. We do not consider that the application meets the requirements of the NPPF, in particular paragraph numbers 128, 131, 132, 134 and 137. In determining this application you should bear in mind the statutory duty of section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas and section 38(6) of the Planning and Compulsory Purchase Act 2004 to determine planning applications in accordance with the development plan unless material considerations indicate otherwise

6.15 Wye Valley NHS Trust – comment

6.15.1 8/6/18 - In the circumstances, it is evident from the above that the Trust's request for a contribution is not only necessary to make the development acceptable in planning terms if it is directly related to the development; and fairly and reasonably related in scale and kind to the development. The contribution will ensure that Health services are maintained for current and future generations and that way make the development sustainable.

## 7. Representations

7.1 Kington Town Council – object

7.1.1 10/1/23 – , Kington Town Council considered the revised documentation for this application at its meeting last night and it was evident that we were unclear what we were being asked to comment on, given that outline permission has, I believe, been granted. I will shortly be updating the website with our comments but there was nothing in the newly uploaded documentation that we felt changed in any way the comments that the Town Council has submitted previously.

However, the renewed interest in this site has meant that we have reviewed the draft s106 material, including the Draft Heads of Terms which I believe has been drawn up by the applicant's agent albeit that it is dated September 2018. It is unclear whether we are being asked to comment on this now and there is reference within the document to a potential liability accruing to Kington Town Council in the form of a possible transfer of land to the Town Council as public open space. I've copied Kevin Bishop into this email in respect of this element and would request that if this current re-consultation is to include the provisions within the draft s106 agreement for this site, Kington Town Council would wish to add further comment on this.

7.1.2 17/9/18 – As was specified in the Council's objection to this application, the Kington and Area Neighbourhood Development plan is now nearing the Regulation 16 Stage. The Plan has been fully revised in relation to the Regulation 14 Consultation and the voluminous consultation appendices have had a final edit. The completed Plan will be submitted to Herefordshire Council's NDP Team on Wednesday Sept 19th. As previously identified the Plan proposes that the whole of application site should be designated Local Green Space and identifies a range of other sites which will fully meet the housing allocation for Kington specified in Herefordshire's Core Strategy. These policies have been strongly supported in the various consultations during the development of the NDP and we trust they will be given full consideration by the Planning Committee when this application is considered.

7.1.3 6/6/18 - Kington Town Council considered this application at its meeting on June 4th and resolved to object to the application for the reasons detailed below.

1. The Council's views on the application are informed by its role in preparing the Kington Area Neighbourhood Plan (KANP) and the central role it has played in identifying housing development sites. This role is a formal requirement of the Herefordshire Core Strategy which delegates the task to the Town Council. (Core Strategy. Policy KGI. Development in Kington)
2. The KANP completed the Regulation 14 stage in 2017 which included consultations which fully "demonstrated engagement and consultation with the community" (KGI). In

light of the consultations the Plan has been revised and in the form of the Draft Regulation 16 Plan is ready to be submitted to Herefordshire Council for the final stages of the Neighbourhood Plan process.

3. In preparing the draft KANP, the Town Council carried out detailed assessment of the sites throughout the town in relation to the criteria in KGI. In this task it received wide ranging professional and technical support through grant provision provided by ocality as agents for the National Government's Neighbourhood Planning policies. Our objection to the application is based on the extensive assessment we undertook to fulfil the delegation of site selection to Kington Council (KGI).
4. Local Green Space - The Kington Area Neighbourhood Plan has designated all the land south of the River Arrow at Headbrook as Local Green Space. The designation has had the strong support of the community . Together with the land on the opposite side of the river it has been described as a 'green lung' linking the eastern area of the town to the western end with its green riversides. As an open green space it is perceived to contribute to the spatial character and form of the town, providing a green entry to the town and a wildlife habitat for birds including owls, bats and riverside trees and plants.
5. Green Infrastructure - Herefordshire Council's Green Infrastructure Study ( 2010) shows this land north of Headbrook as part of a Local Strategic Corridor embracing the south side of the town. A Local Strategic Corridor is defined in the Study as "aconnected linear component of green infrastructure around the town",thus echoing in more technical terms the views of local people. The Study contains a description of the land as being "wet grassland and wet woodland that should be preserved and enhanced" . Core Strategy Policy LD3 Green Infrastructure states that "Development proposals should protect, manage and plan for the preservation of existing and delivery of new green infrastructure...". By its nature a housing development on this land will be unable to comply with this policy since it will building on the green infrastructure, thereby removing it and impacting on the adjacent remaining land.
6. Biodiversity - Core Strategy Policy LD2 Biodiversity and geodiversity states "Development proposals should conserve, restore and enhance the biodiversity ...".

Para 5.3.12 "Wildlife is not confined to designated sites and many features serve as wildlife corridors, links and stepping stones. Ecological networks are vital to the survival and dispersal of species. Herefordshire 's biodiversity makes a major contribution to the economy, supporting the tourism sector and providing a healthy and attractive environment for its residents."

The land of this application is not an AONB or SSSI but it is an important feature of the Kington Town landscape and losing this area of biodiversity will diminish the local pool of ecological habitats by urbanising the riverside biodiversity. The application does not comply with LD2.

A development of 33 or so dwellings will inevitably lead to 60 or more vehicles coming and going on this land. This is low-lying area where it is likely that air currents, winds etc are not going to ensure rapid dispersal of emissions such as nitrous oxides. The cumulative impact of N<sub>2</sub> is well documented as being harmful to butterflies, bees and other insects as well as a range of plant life. The likelihood is a deterioration in any remaining green space adjacent to the development rather than enhancement .

7. Landscape and Townscape - The application does not comply with Core Strategy Policy LD1 which requires that "development proposals should demonstrate that the character of the landscape and townscape has positively influenced the design, scale, nature and site selection, protection and enhancement of the setting of settlements...".



The application site borders the Conservation Area and buildings therein of an historically important small Market Town. The site area is part of the setting of the Town. No evidence is presented as to how the development proposed will meet the objective of LD1.

It does not comply with NPPF paras 132 and 134 which are concerned with the settings of designated heritage assets; settings are important components of the value of historic buildings. The site where development is proposed is a part of the setting of the heritage assets of the Town. Any alteration to the setting such as new build development will inevitably harm the setting and thereby the assets themselves. It would lead to a loss of space and a diminution of the rural setting of the Town.

8. Requirement to Meet the Core Strategy Housing Target for Kington - Any public benefits that might accrue from developing housing on this area can be obtained from other sites that are identified in the draft Neighbourhood Plan which fully meets the target set for housing provision (200 dwellings) and which more adequately meet the requirements of KG1.
9. Relationship of the Application to the draft Settlement Boundary as defined in the draft plan -The implication of development on various sites in the town was assessed at the Regulation 14stage. This led to a revision of the current UDP Settlement Boundary to exclude the application site and its counterpart to the north of the Arrow from within the settlement . This more clearly identifies their long term value as a green setting for the town as open country on the town's border.
10. Previous Site Planning History - The identification of the application site as Local Green Space in the KANP is in line with previous planning guidance for Kington.

The Leominster District Local Plan (1999) which included Kington, strongly emphasised the importance of the site for the setting of the town. "There should be no development on the river meadows of the Arrow and Back Brook which form essential elements in the setting for Kington as defined on the map. Landscape proposals will be encouraged which would enhance the river meadows, enable recent developments to fit more sensitively into the town's setting, encourage a diversity of wildlife and promote a riverside walk.

These river meadows contribute significantly to the character and setting of the town and should be protected from intrusive development in particular in accordance with Policy A.25 Much of the area is subject to serious flooding or is described as flood prone and so is not suitable for development in accordance with Policy A15. The River Arrow is designated a SWS by the Herefordshire Nature Trust "

The Herefordshire Unitary Development Plan (2007) sustained this policy by designating the whole site as "Protection of Open Areas and Green Space" (Inset Map Kingl)

A portion of the site was included in Herefordshire's 2012 Strategic Housing Land Availability Assessment (SHLAA) but identified as "Land that had Significant Constraints". As a result, the site was re-assessed at the first stage of the Neighbourhood Plan process. The Town Council did consider whether a small development of 15 houses might be appropriate but unanimously resolved (December 2015) that the importance of the site as part of the green setting for the town militated against any development and that the whole site should be designated as Local Green Space. This decision has been fully supported in all subsequent public consultations on the Plan and confirmed by Kington Town Council when it signed off the Draft Regulation 16 Plan in December 2017.

11. Ambiguities in the Application - The extensive documentation provided by the applicant provides confusing information about the level of development proposed which vary from 33 to 70 dwellings in the text and attached site plans.
12. Requirement for More Detailed Site Assessment - Though this is an outline application, we would strongly suggest, given the potential impact of the proposed development on the setting and environment of the town, that much more detailed information is required at this stage on:

Landscape assessment including issues of sensitivity and capacity site biodiversity given frequent reports of bats and owls on the site, site archaeology, in view of other investigations in the Arrow Valley impact on the Conservation Area, (See Historic England's objection for detail on this) impact on the river systems (the Arrow, the Lugg SSSI and the Wye Special Area of Conservation) of waste water.

Impact on the sewerage system. The following guidance provide to us by Welsh Water in response to our Regulation 14 Consultation should be noted:

Wastewater treatment works (WwTW) - Kington's WwTW is currently overloaded and there are no improvements planned within Welsh Water's current Capital Investment Programme (AMP6 - 1st April 2015-31st March 2020). An improvement scheme will form part of their submission to the Industry Regulators for the next Capital Investment Programme (AMP7 - 1st April 2020-31st March 2025). As such, should a developer wish to progress this site in advance of their future Regulatory Investment they will need to fund the improvements themselves, firstly by commissioning Welsh Water to undertake a feasibility study of the WwTW, before entering into a Section 106 Agreement (of the Town & Country Planning Act 1990) to pay for the improvements required.

A more detailed flood risk assessment by the Environment Agency.

## 7.2 Public consultation

7.2.1 Site Notices displayed on 14 December 2022 and 4 January 2023. 7 representation received objecting to the application (this includes where parties have made successive representations) – the comments can be summarised as follows; -

- Previous committee resolution was based on benefits (allotments and extended gardens) that have not been forthcoming, or do not form part of the application.
- The change in the Council's housing land supply is such which removes any justification for the adverse impacts (loss of important water meadow and impact on conservation area).
- Development would adversely impact on the natural beauty of the area.
- Concerns previously raised by Historic England have not been addressed.
- The river floods and this will only get worse because of climate change.
- Natural drainage provided by a riverside meadow is now more relevant because of Climate Change.
- What has changed in the last 4 years to make this site suitable for development?
- Previous reasons for recommending refusal have not diminished.
- More efficient use should be made of existing housing developed on brownfield sites to protect rights under The Human Rights Act 1998.
- Development would adversely affect the amenities of properties along Headbrook (light, noise and privacy)
- No guarantee of additional garden space.
- Impact of additional population (including light pollution) on natural environment, especially along River Arrow.
- Ecology Survey makes no reference to otters.
- Site is designated as open-space and should be safeguarded for such.
- Would the development provide more funding for local infrastructure?

- Development would lead to increased traffic on a very busy road (Headbrook).
- Parked cars along Headbrook are a hazard.
- Would the development provide traffic calming measures?
- Implications of water table has not been investigated.
- Does the existing sewerage system have sufficient capacity?
- Phosphate calculations have not accurately take account of how the site is used with respect to agriculture.

7.2.2 Site Notices displayed 9 May 2018. 22 representations received objecting to the application – the comments can be summarised as follows; -

- Parts of the field are prone to flooding.
- If the area is surfaced, where will excess water go?
- Development could well result in existing properties in the locality flooding, as well as those proposed.
- The area is a haven for wildlife, including red kites, herons and bats. The land is outstandingly beautiful and an important wildlife habitat; a 'green lung' for the town.
- There is a duty to preserve and conserve the natural environment. This is an ancient meadow and once lost, it can never be replaced.
- Concerns around the safety of the proposed access off Headbrook.
- Access is too narrow and vision will be obscured by parked vehicles.
- Not a suitable road system to support any more housing.
- The application does not accord with the Kington Area Neighbourhood Development Plan.
- The NDP clearly defines the whole of Headbrook meadow as green space.
- Proposals were put forward in the NDP to allow for 15 dwellings on the site. The town council voted unanimously to exclude it as a potential housing site.
- The NDP has established sufficient potential housing sites to meet its targets for growth.
- There are no employment opportunities in the area
- Doctors surgery and local schools are all at capacity
- Earlier plans have all concluded that the site should not be built on. What has changed now?
- Barn conversion scheme adjacent to the site was dismissed on appeal with an Inspector saying it was 'inappropriate' to build on the site
- Construction of affordable housing for elderly people would free up existing housing for families
- The sewerage system in Kington is not able to cope with the increased amount of housing proposed

4 representations received supporting the application – the comments can be summarised as follows; -

- Kington is under pressure to provide new homes and this is the best proposal put forward
- The town would benefit from the opening up of a riverside walk
- Development would be 'in' town and not looming over it from some higher point
- The NDP is still some way from being adopted
- There has been extensive research as part of the application submission with respect to flooding
- The 2011 Herefordshire Strategic Land Availability Assessment deemed that the site was suitable, in part, for housing, unlike other land put forward by the NDP
- Home owners will be able to walk to local shops, schools and other services
- The proposal provides new public open space

7.3 CPRE Herefordshire – object;

7.3.1 8/6/18 – The comments can be summarised as follows; -

- The proposed development would harm the setting of Kington Conservation Area which lies immediately adjacent to the site.
- The site has been identified as a green space in the emerging Kington NDP
- Should this application be allowed then it would set a precedent for further development in green space with the potential to hugely damage the setting of this important historic town.
- It is recognized that Herefordshire Council has not identified a 5 year housing land supply and that the Local Plan may be considered out of date thus invoking paragraph 14 of the NPPF, the presumption in favour of sustainable development.
- However, for the reasons outlined above this development proposal is not sustainable, conflicts with several specific NPPF policies and in line with the final clause of paragraph 14 should be refused: “For decision-taking this means where the development plan is absent, silent or relevant policies are out of date granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against policies in this Framework taken as a whole or specific policies in this Framework indicate development should be restricted”.

## **8. Officer’s Appraisal**

### **Principle of development**

- 8.1 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.”
- 8.2 In this instance the adopted development plan is the Herefordshire Local Plan – Core Strategy (CS). With respect to the Kington Area Neighbourhood Development Plan does not form part of the development plan, a referendum for voters was held on 25 July 2019. Because the number of votes cast in favour of a ‘yes’ vote did not constitute more than half of those voting, the Kington Area Neighbourhood Development Plan has not been adopted and accordingly does not form part of the development plan. The National Planning Policy Framework (NPPF) is also a significant material consideration. The Kington Area NDP did not pass the referendum and therefore cannot be attributed any weight for the purposes of decision-making.
- 8.3 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 was updated in November 2020. The level of consistency of the policies in the local plan with the NPPF will be taken into account by the Council in deciding any applications. In this case the relevant policies have been reviewed and are considered entirely consistent with the NPPF and therefore can be attributed significant weight.
- 8.4 In accordance with the NPPF, the delivery of sustainable housing development to meet objectively assessed need is a central theme of the Core Strategy. Policy SS2 confirms that Hereford City, with the market towns in the tier below, is the main focus for new housing development. In the rural areas new housing development will be acceptable “where it helps to meet housing needs and requirements, supports the rural economy and local services and facilities and is responsive to the needs of its community”.
- 8.5 Policy SS2 makes an overall provision for the delivery of a minimum 16,500 homes in Herefordshire between 2011 and 2031 to meet market and affordable housing need. Of these, just over two thirds are directed to Hereford City and the market towns. With specific regard to Kington, Policy KG1 sets out that the town will accommodate around 200 new homes over the plan period.

- 8.6 As set out in Paragraph 1.9 of this report, Herefordshire Council are now able to demonstrate a 5 year housing land supply. Accordingly, this renders the housing supply policies as contained within the Core Strategy as being compliant with the principles as set out within the NPPF and therefore are up-to-date. They therefore attract full-weight for decision-taking purposes in terms of applying the presumption in favour of sustainable development as set out within Paragraph 11 of the NPPF.
- 8.7 As a starting point, Policy KG1 is most relevant, identifying a minimum proportionate housing growth target of around 200 dwellings through the plan period. It also sets out a number of criteria against which new development proposals will be assessed. These are material to the determination of the application.
- 8.8 The site is located to the south of the substantive built part of Kington and to the north of the linear pattern of residential development along Headbrook. More recent development has taken place further south around Old Eardisley Road and this has served to create in effect, a secondary residential area that is somewhat separate from the rest of the town.
- 8.9 It is approximately a 500-metre walk from the town centre along lit footways, providing safe and reasonable means of access to the services and amenities afforded within the town, including the Primary School and Lady Hawkins (Secondary School). In addition, the site lies within very close proximity to the bus stop on Headbrook which provides daily, and relatively frequent services towards Hereford via Lyonshall or Eardisley, and Llandrindod, via Kington town centre and New Radnor. The site is, therefore, spatially well-located with respect to accessibility to services, providing genuine choice in terms of means of movement, and consequentially can be considered sustainable in a locational sense.
- 8.10 The latest (April 2022) Housing Growth Figures for the Kington (Rural) Housing Market Area (HMA) indicate that while the parishes of Kington & Lower Harpton (-17) and Brilley (-2) have so far underperformed with respect to meeting its housing targets, the HMA as a whole has exceeded its target by 176. Although this does not include Kington town itself which as of April 2022 benefits from 39 completions (2011 – 2022) and 21 commitments, so far underperforming noting that Policy KG1 identifies the town will accommodate around 200 new homes in the plan period. As such, the benefits of providing housing within indisputably the most sustainable settlement within the wider HMA should be given considerable weight.
- 8.11 The site is not designated for use as public open space. It is acknowledged that while it was previously earmarked for such as part of the Kington Area NDP, the plan is not adopted. Therefore, while noting any desires locally for the use of the site for open space (or other), these are purely aspirational and there is no policy requirement or designations precluding its use for residential development. Nevertheless, the development would comprise the provision of open-space and thus facilitate walking routes through the site.
- 8.12 However, the proposal must be assessed under the three indivisible dimensions of sustainable development – economic, social and environmental, if it is to be considered as sustainable. Paragraph 8 of the NPPF is clear that these roles are mutually dependent upon one another and that to achieve sustainable development economic, social and environmental gains should be sought jointly and simultaneously through the planning system. The following sections of this report consider aspects of the scheme and the constraints of the site that will be material to the determination as to whether the scheme represents sustainable development in the round.

### **Impact on the character and appearance of Kington Conservation Area**

- 8.13 The application site lies approximately 60-metres to the east of the boundary of the Kington Conservation Area. The Conservation Area covers a large portion of the town, taking in Bridge Street (where it is closest to the application site), the town centre area as well as the recreation ground to the south of Park Avenue and Church Road/Castle Hill whereby prominently stands

the Grade I-listed Church of St Mary, with its spire visible from the application site and along Headbrook.

- 8.14 Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that with respect to any buildings or other land in a conservation area “special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area”.
- 8.15 With the above in mind, it must be recognised that considerable importance and weight must be given to this abovementioned duty. It does not allow for a local planning authority to treat the desirability of preserving or enhancing the character or appearance of the area as merely a material consideration to be weighed up in the planning balance. The minimum requirement of ‘preserving’ is set out within the upstanding case of *South Lakeland District Council v Secretary of State for the Environment* whereby it was concluded that ‘to preserve’ meant doing no harm.
- 8.16 Policy LD1 of the Core Strategy makes reference to a need to conserve historic features, amongst which it includes conservation areas, with Policy LD4 of the Core Strategy requiring that heritage assets should be protected, conserved and enhanced, and seeks to ensure that the scope of the work to ensure this is proportionate to the assets significance. Specifically, Policy KG1 of the Core Strategy expresses how development for proposals in Kington will be encouraged where they protect, conserve and where possible enhance the historic character of Kington, in particular the Conservation Area and its significance and setting, including particular features, its heritage assets important buildings, scenic views and the landscape features surrounding the town.
- 8.17 Paragraph 195 of the NPPF states how local planning authorities should identify and assess the particular significance of any heritage assets affected. Although from a legislative perspective no statutory protection is afforded to the setting of conservation areas, the NPPF which proceeds the aforementioned Act, groups together a number of designated heritage assets through the very definition ‘heritage asset’, treating them alike with respect to considering affects of proposals.
- 8.18 The application site in this particular instance forms part of the rural water meadow setting. The pivotal importance of the site in this regard is such that it forms a natural boundary between the main bulk of development lying to the north of the River Arrow and linear development along the northern side of Headbrook. There are views into the southeastern portion of the site from Bridge Street – as well as along the footpath which heads northeast along Tanyard Lane. The views in this direction, but as well north-westwards from Headbrook (close to the access point to the site) offer a distinctly rural feel with layers of trees and open space. Furthermore, from elevated land forming a play area to the north of ‘Sutton Walls Grove’ off the western side of Old Eardisley Road, there is inter-visibility between the majority of the application site and the Kington Conservation Area and the wider setting of Kington, set beneath Bradnor Hill. These attributes contribute demonstrably to the significance of the Kington Conservation Area given the sites aesthetic quality, historic interest in terms of understanding how the town developed within the natural constraints of the River Arrow confluence and its associated communal value, as expressed by Historic England in their consultation response objecting to the application.
- 8.19 The NPPF defines setting of a heritage asset as “the surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral”.
- 8.20 Relevant case law is also useful in helping to understand the meaning of setting in practice and its implications thereafter with respect to considering development that may impact upon in it. In *R. (on the application of Miller) v North Yorkshire CC*, it was advised that the extent of a setting was a matter of judgement to be considered “in the round” and can include the view from the heritage asset towards the development, the view from the development towards the heritage asset and; any other relevant view which includes both the heritage asset and the development.

- 8.21 In this case, it is considered that, as detailed above, the site contributes to the setting of the Kington Conservation Area. The proposal in this case would give rise to an urbanisation of the existing water meadows which flank the River Arrow on the eastern fringes of the town. The infilling of this area would obscure but also erode the critical links between the historic pattern of development (to the north of the river and then linear along the northern side of Headbrook). As articulated by Historic England, this would lead to a diminishing of the aesthetic value of its undeveloped, rural, green setting and the communal value of the conservation area that lies in this setting. It would fundamentally and permanently detract from Kington's rural character.
- 8.22 The proposal, therefore, for the above reasons, has failed to demonstrate that it would protect, conserve and where possible enhance the historic character of Kington and the significance of the Conservation Area and its setting – as explicitly required by Policy KG1 of the Core Strategy and reflected through Policy LD4. The harm identified is considered to be 'less than substantial', as set out within the NPPF.
- 8.23 Paragraph 202 of the NPPF states that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. Paragraph 206 also recognises that local planning authorities should look for opportunities for new development within Conservation Areas to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably.
- 8.24 Those public benefits can include the economic, educational and socio economic benefits. Only if it is considered that such benefits are substantial enough to outweigh the identified less than substantial harm should policy tension with respect to heritage matters be considered as reconciled.
- 8.25 In this case, the proposal would provide a modest but arguably locally significant supply of housing with an on-site, policy-compliant affordable provision. This would provide benefits in the social sphere and it is also recognised that with this, wider socio-economic benefits would be felt by Kington and its wider hinterland through increased expenditure and trade during the construction phase, and also by occupiers – although the level and extent of these benefits cannot be accurately estimated or guaranteed in any case. Officers acknowledge that the development may facilitate an increased appreciation of the river meadow, through open-space. However, such benefits cannot be substantiated as part of this outline application, and would come at the aforementioned expense of harm to the setting of the Conservation Area. Indeed, while no weight can be attributed to the aspirations of the un-adopted Kington Area NDP, other uses for the site which could provide significant public benefits have not been shown as undeliverable in lieu of residential development.
- 8.26 Furthermore, the proposal now looks to provide the opportunity for gardens along Headbrook – this would be secured through a Section 106 agreement. The National Planning Practice Guidance at Paragraph 20 states that public benefits “should be of benefit to the public at large and not just be a private benefit”. The nature of this benefit would not be genuinely public as it relates ultimately to benefits received by private property as a result of the development and therefore, it is the view of officers that this can only be attributed limited weight.
- 8.27 When taking the above into account and acknowledging the significance of the application site to the setting of the Kington Conservation Area, it is considered that the standard expected benefits of a development of this nature would not sufficiently outweigh the identified less than substantial harm. As such, the inability to reconcile heritage harm solicits tension with Policy LD4 and KG1 of the Core Strategy, as well as the principles set out within the NPPF.

### **Impact on wider landscape**



- 8.28 Policy LD1 requires that proposals demonstrate that the character of the landscape and townscape has positively influenced the design, scale, nature and site selection of the development, as well as the protection and enhancement of the setting of settlements and designated areas. Development proposals should conserve and enhance the natural, historic and scenic beauty of important landscapes and features (specifically designated assets) through the protection of the area's character and by enabling appropriate uses, design and management. New landscape schemes along with their management should ensure development integrates appropriately into its surroundings and maintains tree cover. In wider terms, Policy SS6 sets out that development proposals should conserve and enhance environmental assets that contribute towards the county's distinctiveness, in particular its settlement pattern, landscape, biodiversity, heritage assets, and especially those with specific environmental designations. All proposals should be shaped through an integrated approach to planning to ensure environmental quality and local distinctiveness.
- 8.29 Policy KG1 of the Core Strategy states that development in Kington will be encouraged where it would protect, conserve or enhance scenic views and the landscape features surrounding the town.
- 8.30 The site is very typical of a riverside meadow landscape type as defined by the Council's Landscape Character Assessment (the LCA). It is a flat, well defined, alluvial floodplain with the river lined by trees on either side. A similar flat area of meadow land flanks the river on its northern bank. The LCA suggests that such landscapes are often framed by steeply rising ground and that settlement is typically absent and this is the case as far as the site is concerned. The site forms an attractive setting for this part of Kington and is framed more widely by Bradnor Hill to the northwest, the Radnorshire Hills to the west and Hergest Ridge to the southwest. The site is therefore significant in its contribution to the distinctively rural setting of Kington. The site is especially important to the town's setting when arriving from the east (and traversing west along Headbrook). It forms a green corridor which provides a visual link towards the centre of the town.
- 8.31 The proposal indicatively shows that the areas immediately adjacent to the river are to be kept free from development, in part a result of the flood related constraints discussed in the proceeding sections of this report. This enables the tree-lined bank to remain undisturbed. The hedge line that runs south in the western quadrant of the site is to be retained and enhanced, and; whilst the application is made in outline and landscaping is a matter to be reserved for future consideration, the submission nevertheless indicates that substantial areas of new planting could be proposed.
- 8.32 However, the inherent character of the landscape is of an open meadow that is free from development. As above outlined, the land forms an important setting to Kington and its Conservation Area when approaching the town from an easterly direction, and this will be changed to the detriment of the area through the introduction of development. Although made in outline, the development would invariably require the provision of road access from Spring Cottage, scarring the site to provide access to the development in the southwestern portion of the parcel of land. Together – this would result in a significant and permanent urbanisation of this attractive river meadow.
- 8.33 Attention is also drawn to the fact that, in relation to an appeal in 2007 for a barn conversion adjacent the site (Headbrook Barn Appeal Reference APP/W1850/A/07/2038659), the Inspector commented on the significance of the area of land, stating that:
- “...I consider that it (the site) makes an important contribution to the attractive appearance and open rural setting of this part of Kington.”
- 8.34 In dismissing the appeal on grounds, amongst others, relating to the detrimental impact of the development on the open character of the area, the Inspector considered the benefits of bringing the building back into use and providing an additional dwelling and said that:

“...I consider that these benefits do not outweigh the harm that would be caused to an important open area of green space which contributes to the character and setting of Kington.”

- 8.35 Although the proposal is different from that to which the appeal relates, it does serve to demonstrate the importance of the site in terms of its contribution to the setting of Kington. This has not changed in the intervening period and the setting of settlements carries significant weight. This is simply reinforced by the fact that a significant proportion of the town is designated as a conservation area, as set out within the preceding assessment. It is the view therefore, that the proposal does not respect the landscape character of the area and consequently fails to accord with Policy LD1 and KG1, as it does not protect or enhance the landscape setting of Kington.

### **Impact on amenity of the site's neighbours**

- 8.36 Policy SD1 of the Core Strategy seeks to ensure development does not give rise to any adverse impacts on the amenity of existing or future occupiers. For a residential scheme, this could be as a result of overlooking, overshadowing and loss of light. Additionally, during the construction phase there could be impacts in terms of noise, dust and other pollution.
- 8.37 In this case, the application is made in outline with all matters reserved for further consideration as part of any reserved matters application. The site is essentially level but there is a closer inter-relationship with many of the dwellings along Headbrook, especially to the southwestern corner where development is proposed. The boundary treatments are limited which enables views from these dwellings across the site and river meadow. Although the right to a private view is not protected, and is not a material planning consideration, ensuring acceptable and adequate outlook certainly is.
- 8.38 It is noted that following the previous Planning Committee resolution, the application confirmed their commitment to provide a continuous 5-metre wide area of land between numbers 31 to 43 Headbrook to enable the gardens of these properties to be extended. This would be planted and landscaped in accordance with the details submitted as part of any forthcoming reserved matters application approved by the authority. This would be where this has been agreed with the respective property owners. This would be secured by the Section 106 agreement and is set out in the draft agreement submitted by the applicant.
- 8.39 As such, it would be for any forthcoming reserved matters submission to suitably demonstrate how the quantum of proposed development could come forward without adversely impacting the relationship between the site and adjacent properties in an unacceptable manner. At this stage, the submitted indicative plans provide officers with sufficient comfort that this can be addressed at a later stage.
- 8.40 Given the proximity of the site to residential areas, conditions requiring details of the construction process and how this would be managed, together with restrictions on hours of construction are recommended, should approval of this application be forthcoming.

### **Access and highway safety**

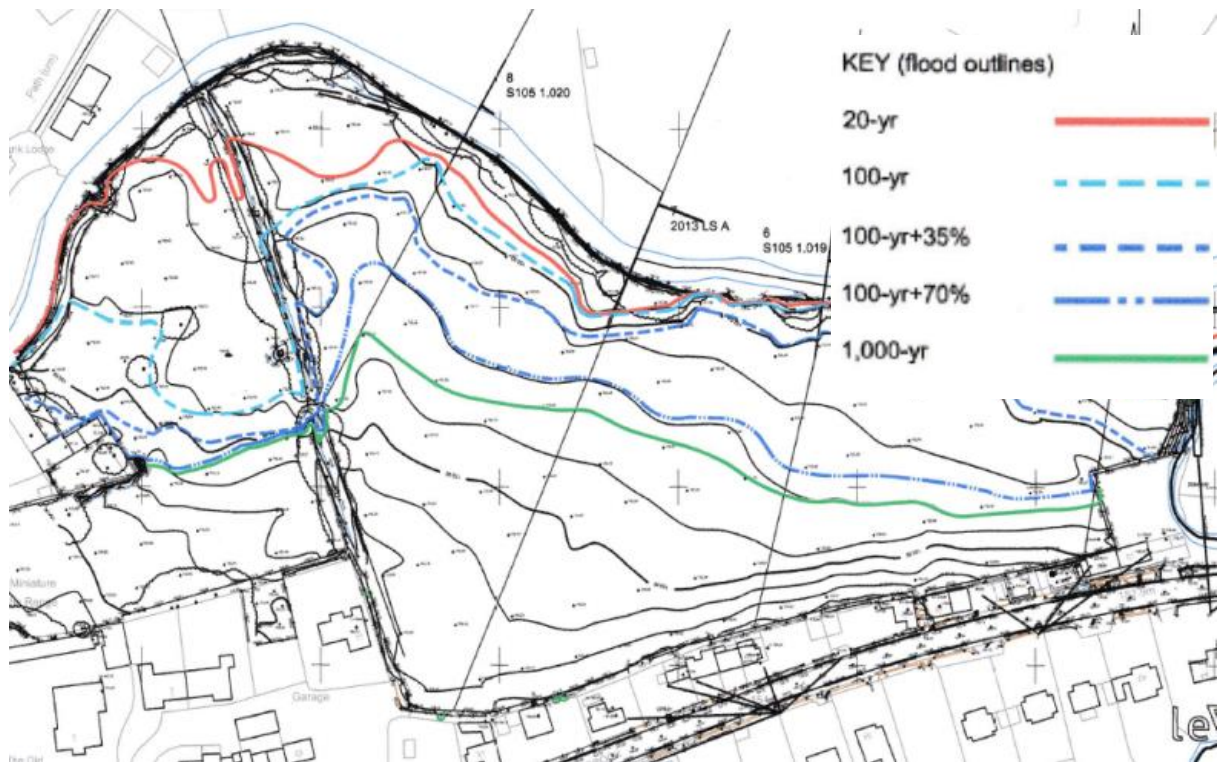
- 8.41 Policy MT1 of the Core Strategy relates to the highways impacts of new development, and requires that proposals demonstrate that the strategic and local highway network can absorb the traffic impacts of the development without adversely affecting the safe and efficient flow of traffic on the network or that traffic impacts can be managed to acceptable levels to reduce and mitigate any adverse impacts from the development. It also requires that developments are designed and laid out to achieve safe entrance and exit and have appropriate operational and manoeuvring space, having regard to the standards of the Council's Highways Development Design Guide. This approach accords with the principles outlined in section 9 of the NPPF, in particular Paragraphs 108-9 which advises that it should ensure that safe and suitable access

can be achieved for all users and that development should only be refused on highways grounds if there would be an unacceptable impact on highways safety.

- 8.42 Whilst the application reserves all matters for future consideration, the opportunities for the provision of access are limited to a single point onto Headbrook. Concerns have been raised by some local residents about the impacts of a new access and increased vehicle movements on highway safety, particularly given that there are limited off-street parking opportunities for existing properties on Headbrook and that on-street parking could obscure visibility from the proposed new access.
- 8.43 The application is supported by a Transport Statement (TS) that has been written on the basis of an initial proposal for a development of up to 60 dwellings. The Council's Area Engineer (Highways) has commented in detail on this aspect of the submission and has also been mindful of the objections received. As the information provided by the TS is for 60 dwellings. It assumes 33 two-way trips at peak hourly periods. As the current proposal is for just over half the number of dwellings, it is considered reasonable to assume that it would generate 15 to 20 two-way trips. The view of the Area Engineer (Highways) is that there is sufficient capacity and that the highway network should not be adversely affected by this increase in movement.
- 8.44 The proposal is therefore considered acceptable when having regard to Policy MT1 of the Core Strategy and the principles as set out within Paragraph 111 of the NPPF.

### **Drainage and flooding**

- 8.45 Policy SD3 expects that new development comprises effective and sustainable water management in order to reduce flood risk. This includes ensuring that development proposals are located in accordance with the sequential test and exception tests where appropriate, consistent with the overarching guidance and principles as set out within the NPPF. Furthermore, development should include appropriate sustainable drainage systems (SuDS) to manage surface water, appropriate to the hydrological setting of the site.
- 8.46 The majority of the letters of objection received express concerns about the potential for the development to increase the risk of flooding in areas immediately surrounding the application site. They note the proximity of development to the River Arrow and the fact that the land is a water meadow.
- 8.47 When having regard to the Environment Agency's 'Flood Map for Planning', it is indicated that the site is located outside of, but within very close proximity Flood Zones 2 and 3. This is confirmed by the Flood Risk Assessment (FRA) submitted with the application and in the response from the BBLP Land Drainage Team.
- 8.48 The submitted FRA clarifies the extent and depth of fluvial flood risk within the site boundary and considers the potential effects of climate change. It also identifies how flood risk to the proposed development has been minimised, how the development has been made safe, and how the impacts of the development on people and property elsewhere have been avoided.
- 8.49 The FRA considers the risk of flooding on site from all sources, including surface water, groundwater, sewers, reservoirs and any other manmade sources. The FRA also assesses the potential effects of climate change on the probability and extent of the flood risk, this being shown on the plan in **Figure 2**.



**Figure 2 – Flood Risk Map**

- 8.50 The detailed consultation response from the Land Drainage Engineer confirms that the FRA includes an update of the Environment Agency’s hydraulic model of the River Arrow. The Flood Appraisal drawing (above) shows the flood extents derived from the updated model for the 1 in 100yr +35%CC, 1 in 100yr +70%CC and the 1 in 1000yr return periods. The illustrative site plan drawing indicates the residential dwellings will be located outside of the modelled 1 in 1000 year flood extent. On this basis the proposed development does not displace flood water from the floodplain to other parts of the town during periods of heavy rainfall and is not considered to increase flood risk elsewhere. It demonstrates sequentially that the site has capacity to accommodate some development, outwith areas at risk of flooding. This would importantly also allow for the access from Spring Cottage.
- 8.51 The submission also provides a draft strategy for surface water attenuation which confirms that runoff rates will not exceed existing Greenfield runoff rates. The BBLP Land Drainage Engineer is content with the assumptions made and confirms that there is no objection to the proposal subject to the imposition of conditions to require the submission of a detailed drainage strategy. This would factor into concerns with respect to water table but wider issues relating to impact on stability would be considered a Building Regulations issue. Therefore, in light of the fact that the area proposed for development indicatively lies outside of Flood Zones 2 and 3, the application of the Sequential Test as outlined in the NPPF, which requires ‘more vulnerable’ development to be steered away from areas at flood risk, is not required. Furthermore, although officers acknowledge that the former draft Kington Area NDP allocated for housing land that are at a significantly lower risk of flooding, no weight can be attributed to this given that the NDP does not form part of the development plan.
- 8.52 On the basis of the consultation responses received, officers are satisfied that the proposal takes full account of the risk of flooding and that any potential impacts can be mitigated through the imposition of conditions and dealt with suitably at the reserved matters stage. The proposal is therefore considered to comply with Policy SD3 of the Core Strategy.

## **Ecology**

- 8.53 Policy LD2 of the Core Strategy seeks to ensure that development proposals conserve, restore and enhance biodiversity assets of Herefordshire. Important sites, habitats and species shall be retained and protected in accordance with their status. Relevant guidance and principles are set out within the NPPF at Chapter 15.
- 8.54 In terms of impacts on biodiversity and protected species, the presence of two particular riparian species; otter and white clawed crayfish, have been raised and confirmed as present along this stretch of the River Arrow. The application has been accompanied by an updated Ecology Assessment (November 2022) which reflects the time in which the application has been on hold rendering the previous 2018 submission out of date. The Ecology Team have reviewed the submission and note that there have been limited substantial changes since 2018.
- 8.55 The submission is such which demonstrates that habitat creation along the river corridor could be achieved and secured through detail submitted at a later stage, either as part of the reserved matters or details to be submitted and required by conditions. The bulk of the development would fall outwith the flood zone and will lie some distance from the course of the River Arrow but that a Construction Environmental Management Plan (CEMP) should be produced to ensure no construction materials/fuels etc. will be placed near the buffer zone. This is a matter that could be secured by way of condition.
- 8.56 On the basis of the above, it is considered the potential impacts of development on ecology and biodiversity can be mitigated. Policy LD2 places a requirement on development to conserve, restore and enhance biodiversity assets and, whilst this is not entirely evident from this outline submission, officers are sufficiently content that further details as part of a reserved matters submission and by way of a detailed Biodiversity Enhancement Plan could adequately address this.

## **Impact on the River Lugg / Wye Special Area of Conservation**

- 8.57 The application site lies within the hydrological catchment of the River Lugg, which forms part of the River Wye Special Area of Conservation (SAC) currently failing its conservation status as a result of phosphate levels within the river.
- 8.58 As the competent authority, Herefordshire Council is required to complete an Appropriate Assessment of the implications of the plan or project for that site in view of that site's conservation objectives. Regulation 63 (5) directs that the competent authority may agree to the project (i.e. grant planning permission) only after having ascertained that it will not adversely affect the integrity of the European site. Regulation 63 (3) requires consultation and regard to representations made by the relevant statutory body, which in this case is Natural England.
- 8.59 The Applicant in this case has utilised Natural England's 'Nutrient Neutrality Budget Calculator – River Lugg Catchment' to determine that the development would create an annual phosphorus load of 4.47kg TP/year which must be managed against in order to avoid detriment to the River Lugg. The Council's Built and Natural Environment Manager (Ecology) has quality checked and confirmed these figures as accurate.
- 8.60 The comments received querying the existing land use calculations have been also been reviewed by Ecology. The land use element is intended to be an average of the last ten years so if the use is on and off (i.e. that the site is not or has not always been used for dairy production), then it does not render the calculations as inaccurate. The coefficients in the model which generate the 0.48 existing use figure are set by Natural England and Ricardo, taking data from a large number of research studies and building in precautionary buffers in order to allow the model to be considered sufficiently certain for the purposes of HRA.

- 8.61 Noting the above, the Applicant has applied for, and received, an allocation of phosphate credits from Herefordshire Council. In purchasing these credits, the Applicant will be funding the delivery of the wetland project which, in turn, will mitigate for the effects of their development and deliver net betterment to the Lugg. The amount of credits to be purchased must therefore be commensurate with the impact that requires mitigation. The Council's Phosphate Credit Pricing and Allocation Policy April (2022) sets a charge of £14,000 per Kg of phosphate generated. Based upon the annual phosphorus load of 4.47kg TP/year, the Applicant is required to purchase credits to the value of £62,580. This would be secured by a Section 106 legal agreement.
- 8.62 The Council's Built and Natural Environment Team (Ecology) has completed an appropriate assessment. This assessment concludes, subject to appropriate mitigation being secured in the form of Phosphate Credits, that the proposal would not give rise to any adverse effects on the integrity of the River Lugg / River Wye SAC. It is therefore the view of the Council, as the competent authority, that the proposal is compliant with the Conservation of Habitats Regulations (2017) (as amended) and that there is no conflict with policies LD2 and SD4 of Core Strategy.
- 8.63 This assessment has been submitted to Natural England for consideration and a response was received on 28 February 2023 to confirm that the statutory body agreed with the LPA's conclusions. The proposed development would be made nutrient neutral by purchasing credits to a constructed wetland and Natural England agrees that with this nutrient neutrality in place, there are no adverse effects on the integrity of the River Wye SAC. They hence offer no objection.

#### **Section 106 – Planning Obligations**

- 8.64 A development of this scale and nature attracts various financial contributions which would need to be secured via a Section 106 Agreement. The provision of a policy compliant level of affordable housing would also need to be secured within such an agreement. Consultation comments have been provided in respect of certain requirements, for example for health care provision and education. These are set out within the draft Section 106 agreement, which now also includes the mechanism for the securing of the requisite purchase and allocation of phosphate credits to mitigate the phosphate impacts of the development as above set out. While the Section 106 has been progressed, as the application is recommended for refusal, it has not been completed. Therefore, presently, in the absence of a completed Section 106 agreement which is considered necessary to mitigate the impacts of the development, the proposal runs contrary to the requirements of Policy ID1 of the Core Strategy.

#### **Conclusion**

- 8.65 Policy SS1 of the Core Strategy and Paragraph 11 of the NPPF engage the presumption in favour of sustainable development and require that developments should be approved where they accord with the development plan. The NPPF encompasses the government's view of what is meant by sustainable development in practice. The three themes, economic, environmental and social should be pursued jointly and simultaneously.
- 8.66 The application sites lies immediately adjacent to Kington's main built form and in simple terms therefore, is locationally sustainable. The town offers a range of local services and the site is readily accessible to all of these. The proposal would also contribute to a local under supply of housing within Kington (also enabling the provision of affordable housing), although it is recognised that less sustainable settlements within the wider rural Kington HMA have performed well.
- 8.67 Notwithstanding the above, the proposal would give rise to harm to the significance of the Kington Conservation Area and it is not possible to reconcile the harm with the public benefits accruing from the development. Similarly, the proposal would unacceptably result in harm to the

riverside meadow and the significance of such with respect to the rural setting of Kington and the wider landscape.

- 8.68 In accordance with Paragraph 11 of the NPPF, planning decisions should apply a presumption in favour of sustainable development. In recognising that the Council are able to demonstrate a 5 year housing land supply – the development plan is considered up-to-date for the purposes of decision-taking. In applying the aforementioned presumption, this means approving development that accords with an up-to-date development plan. In this case, the proposal has been found to conflict with the relevant policies as contained within the development plan, as discussed within the officer's appraisal section of the report. Therefore, the proposed development cannot be taken as according with the development plan in the round and therefore, is considered to be representative of a unsustainable form of development.
- 8.69 The application is therefore recommended for refusal for the reasons as set out below.

**RECOMMENDATION; - That planning permission be refused for the following reasons:**

1. **The application site forms part of the rural, water meadow setting and the wider landscape setting which contribute to the significance of the Kington Conservation Area in terms of its aesthetic quality and its historic interest as a settlement. The proposal will harm the significance of the Conservation Area by obscuring the links between its historic pattern of development and the River Arrow's water meadows and diminishing the aesthetic value of its undeveloped, rural, green setting and the communal value of the conservation area that lies in this setting. Whilst these impacts are considered to be less than substantial in terms of the significance of the conservation area as a heritage asset, they are towards the upper end of the less than substantial spectrum. The local planning authority does not consider that there are other public benefits that outweigh the harm caused by permitting the development. The proposal is therefore contrary to Policies LD1 and LD4 of the Herefordshire Local Plan – Core Strategy and paragraph 202 of the National Planning Policy Framework.**
2. **The application site is described as a Riverside Meadow in the Council's Landscape Character Assessment. These are landscapes that are typically absent of built development. The introduction of a residential development in this location is contrary to the landscape character which also makes an important contribution to the attractive appearance and open rural setting of this part of Kington. The proposals fail to demonstrate that they have been positively influenced by the landscape and townscape character of their surroundings. Accordingly the proposal is contrary to Policy LD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.**
3. **Therefore, in light of the environmental harm caused by permitting the development and in considering the three overarching objectives of sustainable development the local planning authority does not consider that the proposal represents a sustainable form of development. The proposal is therefore contrary to Policy SS1 of the Herefordshire Local Plan – Core Strategy and paragraph 11 of the National Planning Policy Framework.**
4. **The application is not accompanied by a completed Section 106 Agreement which is considered necessary to mitigate the impacts of the development and to ensure the delivery of affordable housing. In the absence of such an agreement the proposal is contrary to Policy ID1 of the Herefordshire Local Plan – Core Strategy and the Council's Supplementary Planning Document – Planning Obligations.**



Decision: .....

Notes: .....

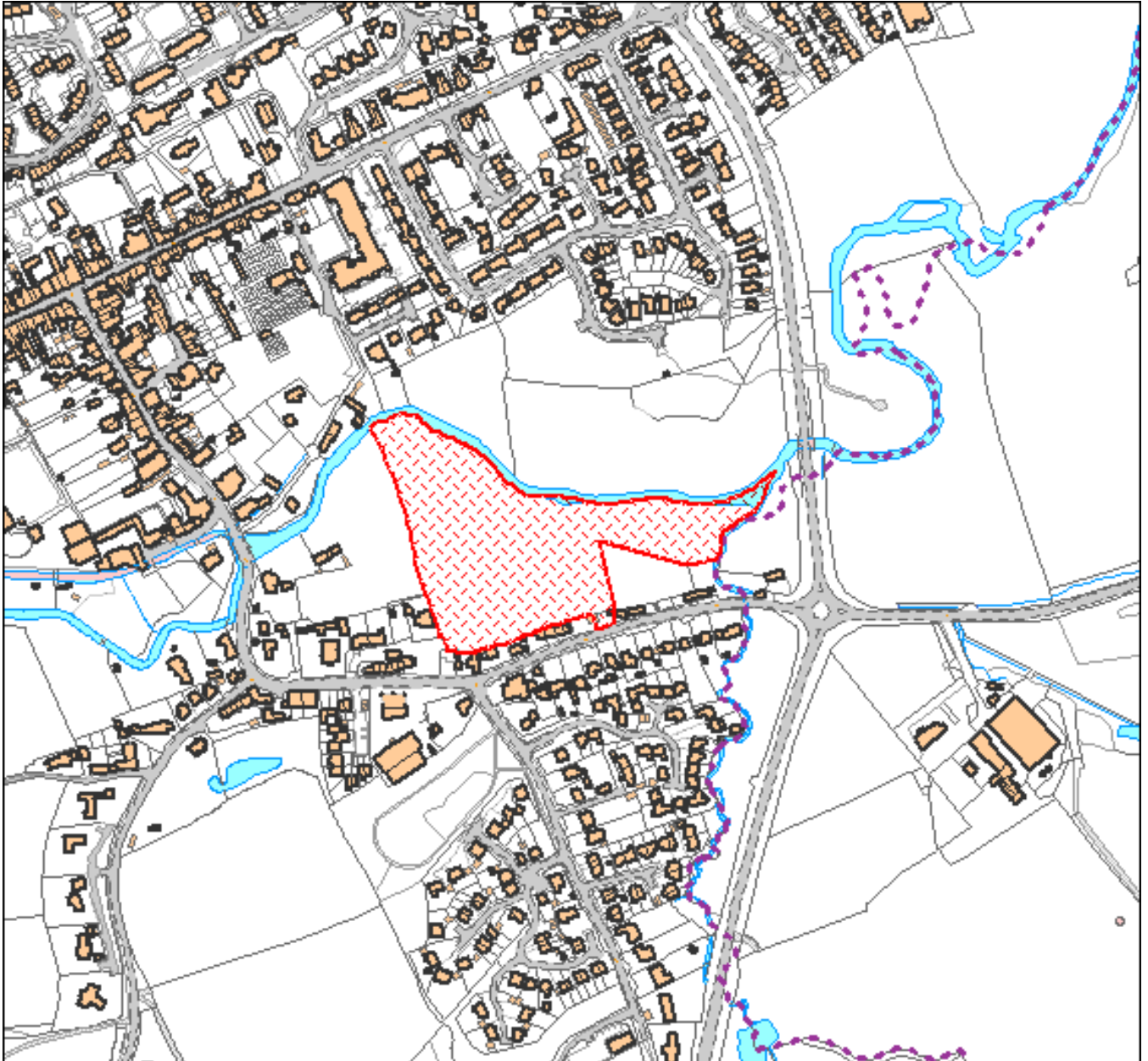
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**Appendices**

- Appendix 1 – Minutes of Planning and Regulatory Committee meeting – 18 December 2018
- Appendix 2 – Officer report to Planning and Regulatory Committee meeting – 18 December 2018
- Appendix 3 – Habitats Regulation Assessment

**Background Papers**

None identified.



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**APPLICATION NO:** 181494

**SITE ADDRESS :** LAND ADJACENT TO SPRING COTTAGE, HEADBROOK, KINGTON, HR5 3DY

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