

MEETING:	PLANNING AND REGULATORY COMMITTEE
DATE:	13th March 2024
TITLE OF REPORT:	213413 - PROPOSED ERECTION OF A DWELLING OF OUTSTANDING DESIGN AND ACCOMPANYING WORKS, INCLUDING A NEW ACCESS, EXTENSIVE LANDSCAPING, BIODIVERSITY IMPROVEMENTS, AND DRAINAGE ARRANGEMENTS AT GLENWOOD SPRINGS, CHASE ROAD, UPPER COLWALL, HEREFORDSHIRE, WR13 6DJ For: Mr Yardley per Mr Matt Tompkins, 10 Grenfell Road, Hereford, Herefordshire, HR1 2QR

Email received 8th March: Malvern Hills National Landscape Team Assistant Manager

The Malvern Hills National Landscape Team have reviewed the officer report for this application which you are to consider at your meeting on Wednesday 13 March. We wish to make several observations.

Legislative Duty

At Section 2.5 of the report, the officer errs in respect of legislation and a factually misleading statement as to members' statutory duties is presented. As part of the Levelling Up and Regeneration Act (2023), Section 245 (Protected Landscapes) introduced legislation which came into effect 26 December 2023, amending Section 85 of the Countryside and Rights of Way Act (2000), which now requires *"in exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty in England, a relevant authority other than a devolved Welsh authority must seek to **further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty**"* (Section 85(A1) of the Countryside and Rights of Way Act, 2000).

This inherently strengthens the previous duty to 'have regard' which the officer refers to. We feel it is critical that members are clear on their current legal statutory duty as Herefordshire Council is a 'relevant authority'. Failure to correctly discharge a statutory duty when determining an application, particularly when legislation is incorrectly cited, could be a prima-facie ground for judicial review.

Misapplying of policy/weighting in the context of housing land supply position

The Council has a five-year housing land supply and housing policies within the Council's Core Strategy can be considered 'up-to-date'. The Colwall NDP is also 'made' (adopted). Section 6.60 of the report states, "on the basis that the proposal complies with policy RA3(6) of the Core Strategy, the proposal is fully policy compliant". Policy RA3 clearly states, "In rural locations outside of settlements, as to be defined in either neighbourhood development plans or the Rural Areas Sites Allocations DPD, residential development will be limited to proposals which satisfy one or more of the following criteria: 6. is of exceptional quality and innovative design satisfying the design criteria set out in Paragraph 55 [now 84 as per the 2023 revision] of the National Planning Policy Framework and achieves sustainable standards of design and construction".

If the proposal is considered to comply with Policy RA3, it must be assessed against Paragraph 84 rather than paragraph 139, but this is not clear from the officer report. Paragraphs 84 and 139 houses demand different architectural responses and must meet different criteria. Analysis of previously dismissed appeals reveal the potential drawbacks of overlooking this distinction e.g. an appeal in Bath and North East Somerset (Appeal. Ref: 3208289). Whilst both policies require development to be 'outstanding', the latter (Para 139) must be sensitive to surroundings and regard local design policies, the former (Para 84) often has a 'stand-out' approach. We consider that Policy RA3 requires the proposal to be assessed against Paragraph 84 not Paragraph 139, as inferred at 6.22 of the report. If officers do not consider the proposal to align with Paragraph 84 because it is not 'isolated', how can it accord with Policy RA3(6) and be policy compliant?

Applications for Paragraph 84 and Paragraph 139 developments within National Landscapes are few and far between. Given recent revisions to the NPPF, this 'test case' application will contribute to planning case law. If you are unsure about the proposals, we advise you to refuse planning permission to enable the Planning Inspectorate to make an appropriate judgement.

Credentials of the development - Innovation and sustainability

Whether the proposal is judged against Para 84 or 139, the design should be outstanding. In the case of Para 139, it should demonstrate state of the art technologies and new products which push the sustainable housing envelope in ways which are new and innovative. We draw the committee's attention to the fact that the 'innovative design' approach set out, particularly sustainability, is not new and appears to be very similar to a proposed dwelling at Flow House, Ullingswick (P202412/F and P221177/F), where Tesla Batteries and Earth Energy Bank storage was also promoted. Both applications were refused by this committee as it was not representative of innovative sustainable development and was deemed to harm landscape character and visual amenity. Fabric first approaches are also not unique and are found in many applications presented to you. The same applies to other 'innovative' sustainability measures presented in this application.

Form and scale

We consider that there are some good elements of the proposed development such as the work on colour but the proposed building, overall, shares similarities with modern architectural approaches found elsewhere in the country and the local area, including existing design methodology and technologies. The exceptionally large building footprint (680m²) does not add to the sense of local distinctiveness i.e. does not fit in with the overall form and layout of buildings close by. No assessment of this appears in the report. There are no planning conditions which require the supposed 'innovative' credentials to be secured, leaving little control for enforcement. This significantly diminishes any positive weight which should be attached to the dwelling's sustainability credentials.

Conflict with Colwall NDP

Policy CD8 of the 'made' Colwall NDP states that proposals in the open countryside outside the settlement boundary of Colwall, notwithstanding being required to establish the principle of development, are also required to respond positively to the relevant design principles relevant to landscape character type. Does this three storey dwelling (noting the ground floor, first floor and second floor plans) relate to the following criteria of 'Principal Wooded Hills' which the site lies within: "11. New development, alterations and conversions should respect the characteristic simple plan form and small scale of no more than two storeys."

Planning Conditions

Many details intend to be dealt with by discharge of conditions. Many of the proposed schedule of conditions do not meet the six tests of Planning Practice Guidance in respect of 'Use of Planning Conditions', and having regard to the recently introduced Paragraph 140 of

the NPPF, including conditions 2, 4, 5, 7, 8, 9, 12 and 15. There is nothing to stop the applicant, for instance, from erecting a 2 metre high close board fence around the entire application site, which may fundamentally alter many of the currently suggested visual effects upon the National Landscape, or of occupying the dwelling without a landscaping scheme which is appropriate for the AONB designation.

Summary

We accept the proposal has some merits, but do not consider it to be the 'exceptional quality and innovative design' that the very high-bar of Policy RA3(6) of the Core Strategy clearly requires. We consider the application to conflict with Policies RA3, LD1 and SD1 of the Council's Core Strategy, Policy CD8 of the Colwall NDP, Paragraphs 84 and 139 of the National Planning Policy Framework (December 2023), and the Malvern Hills AONB Management Plan 2019-2024.

We urge the committee to refuse the application.

Email received 8th March: Tompkins Thomas (applicant's agent)

Please find attached a Construction Traffic Management Plan (CTMP) as required by condition 5 of the planning application. Movement of construction vehicles seems to be a major concern of locals, particularly the MHT, so the applicant has commissioned the attached in advance of the meeting to allay any fears in this respect.

A copy of the CMTP is included as an appendix to this update.

OFFICER COMMENTS

With regard to legislative duties, the comments from the Malvern Hills National Landscape Team Assistant Manager are noted and Members should apply and be cognisant of the amended wording of Section 85 of the Countryside and Rights of Way Act (2000) as set out above, and must consider whether the scheme furthers the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty

Officers take the view that the proposal does further the purpose of conserving and enhancing the AONB. Whilst not explicitly expressed in such terms, paragraphs 6.35 and 6.40 of the officer's report refer.

The comments from the Malvern Hills National Landscape Team Assistant Manager suggest a misapplication of policy in respect of policy RA3 and the requirement to apply it in respect of paragraph 84 as opposed to 134 of the NPPF. Officers accept that there is a degree of tension here, but the NPPF, as with the policies contained within the Core Strategy and the Colwall NDP, should be read in their entirety rather than applied individually.

RA3(6) of the NPPF refers to paragraph 55 of the NPPF, which is now superseded by paragraph 84. Paragraph 84 refers to the development of "...*isolated homes in the countryside*..." It is clearly evident that the site is not 'isolated', but it is entirely irrational to suppose that it's intention is to only allow schemes that are truly isolated and not schemes, such as this, which achieve high quality of design and sustainability but lie at the fringes of settled areas.

The comments from the Malvern Hills National Landscape Team Assistant Manager are not clear as to why the recommended conditions do not meet the tests of the Planning Practice Guidance. It is however acknowledged that condition 15, which seeks to remove permitted development rights, does not include boundary fences and walls. It is therefore proposed to amend the wording of condition 15 to reflect this.

With regard to the CMTP the Council's Transportation manager has commented as follows:

I have reviewed the CTMP and there are a few points which need clarifying:

- 1) The method for wheel washing needs to be specified, e.g. jet wash
- 2) The Layby for construction vehicles – this should be constructed with a 225mm compacted sub-base as it will be a fairly permanent feature (1-2 years) rather than the matting or crushed stone as referenced in Section 8.2. In addition, it would need to be removed in its entirety and the grass verge reinstated
- 3) It is understood that staff and visitors would park within Glenwood Paddock – a plan showing what land would be set aside and how it will be surfaced should be included within the CTMP.

At this stage I cannot agree to the discharge/removal of the condition without the above information.

CHANGES TO RECOMMENDATION

Condition 15 is to be re-worded as follows:

Notwithstanding the provisions of article 3(1) and Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015,(or any order revoking or re-enacting that Order with or without modification), no development which would otherwise be permitted under Classes A, B, C, D, E and H of Part 1 and Class A of Part 2 of Schedule 2, shall be carried out.

Reason: In order to protect the character and amenity of the locality, to maintain the amenities of adjoining property and to comply with Policy SD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.