

230457 - CONSTRUCTION OF 36 NO. DWELLINGS, NEW VEHICULAR AND PEDESTRIAN ACCESS, INTERNAL INFRASTRUCTURE, LANDSCAPING, OPEN SPACE; AND ASSOCIATED WORKS, INCLUDING DEMOLITION OF PIGGERY BUILDINGS AT LAND TO THE SOUTH OF OLD CHURCH ROAD, COLWALL, HEREFORDSHIRE

For: Rosconn Strategic Land Limited per Mrs Elizabeth Bloomfield, First Floor, South Wing, Equinox North, Great Park Road, Almondsbury, Bristol, BS32 4QL

ADDITIONAL REPRESENTATIONS

Five Additional Representations (4 x objections and 1 x Support (Agent) have been received and have been published to the website at:

https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=230457&search-term=230457

1. Ms Anne Haywood. Hopyard Cottage, Old Church Road

The letters raise concerns relating to:

Email 15/7 (19:36)

Hopyard Cottage is situated on the Western flank of the PDS (not the Eastern as stated in my previous email.)

I also understand that there will be no sewage discharged into these SuDs.

However, we still are extremely concerned about the fact that Hopyard is at a lower ground level on all boundaries with the PDS and that there is no clear adequate plan in place to deal with both the extra surface water or the sewage which will be generated by the proposed development.

Email 15/7 at 12:09

For many reasons, we believe that the application 230457 should be refused.

However, if HC Planning Committee is minded to pass this application, we ask that it not be passed without a definitive and workable solution/plan from Severn Trent to deal with the Sewage and Surface/Storm water runoff.

We, the owners of Hopyard Cottage, the sole property sited on the Eastern boundary of the PDS, strongly object to the siting of the SuDs as laid out in the existing application submitted.

Chloe Smart had kindly attended Hopyard Cottage last year - partly with reference to the danger of the increased surface water "runoff" and possible subsequent flooding

across our Northern boundary. Hopyard Cottage property sits an average of 1 metre below the PDS. She was able to identify our concerns.

However, until we read HC's Planning report of last week, we did not realise that the SuDs are proposed to be used for sewage storage as well as Surface/storm water "runoff" and will sit at a ground level above that of Hopyard Cottage.

We must point out that the current plan shows the Suds sited just to our Southern boundary. In fact the closest SuD will sit **within 5 metres** of our Sitting Room windows. We will look directly onto them and be subject to the associated smells, and any overflow or seepage.

It cannot be acceptable to site a SuD so close to a residential property and I have requested a site specific inspection in this matter.

Hence, we ask that HC Planning Committee do not grant permission without a workable and acceptable plan from Severn Trent to deal with this acute problem.

Email 12/7 (19:02) – Sent to Members

1. Surface/storm water "runoff" from the Proposed Development Site (PDS).
2. Proximity of the SuDs to the existing property - Hopyard Cottage, WR13 6EZ

1. As the owners of Hopyard Cottage, we wish to draw particular attention to the increased possibility that our property could flood as a result of the proposed development.

Hopyard Cottage is the sole property bordering the Western side of the PDS and sits an average of 1 metre below the level of the PDS at that boundary.

At present the "runoff" from the PDS flows along the culvert (mentioned in your report), passes west along Hopyard's Northern boundary (next to our garage and driveway), across the Track (which runs between Old Church Road to the S.W. Corner of the PDS and the Ice House) and discharges into the field beyond to the West.

(See location of Hopyard in - "Figure 2: EA Surface Water Flood Risk Mapping, May 23" – Page 36 of your latest report)

After rain, its route can be clearly seen. It forms a substantial pool next to our driveway and then pools onto the track and can be clearly seen pooling in the field beyond.

I have previously raised these concerns with HCP and have attached the relevant photos to this email.

Up to the present, there is no history of flooding at Hopyard Cottage. However, once the site is developed, the additional "runoff" generated by the amount of hard standing will increase considerably and increase the risk that the property at Hopyard will flood.

Your latest report acknowledges our concerns but does nothing to alleviate them. The solutions proposed are vague and inadequate to say the least. Full consideration has not been given to the flood risk posed by the surface water flow route.

We therefore ask for a site specific flood appraisal with direct relevance to the effects on the property at Hopyard Cottage as required by the National Planning Policy Framework.

(See P 82 of your latest report).

2. We are also extremely concerned that the third SuD is to be located at our Southern boundary within 5 metres of our living room windows and will sit at a higher ground level. In fact, all 3 SuDs appear to be situated too close.

Smells, overflow or seepage will come directly to us!

This is an unacceptably short distance from a residential property, let alone the opening windows of a living room.

Also the SuDs should logically sit at a lower ground level to the surrounding properties?

How can this ever have been considered acceptable?

We also ask for a site specific appraisal in this instance.

We propose that Planning Permission be refused for many reasons but particularly in view of the major unresolved issues as stated in this document.

Photographs attached:



Pond created by storm water on north side Hopyard Cottage

2. Letter from Mr Chris Walker (also sent to Members direct 15/7/24) with appendices.

- Landmark Chambers Presentation - Engaging the sequential test: practical lessons
- High Court Judgement – Substation Action Save East Suffolk Limited and SoS for Business Energy and industrial Strategy

These have been published to the website:

Whilst you will be aware that the application has been the subject to a significant level of objections, I am concerned that the application has failed to be considered based upon the **Sequential Test and Exception Test** applicable under paragraph 167 which states that;

“All plans should apply a sequential, risk-based approach to the location of development – taking into account all sources of flood risk and the current and future impacts of climate change – so as to avoid, where possible, flood risk to people and property...”

Whilst the Herefordshire Core Strategy was subject to strategic level flood risk assessment, this is not the case for the Colwall Neighbourhood Plan. The Neighbourhood Plan was prepared with reference to landscape and heritage based background evidence, however at no stage was the plan prepared based upon an analysis of the proposed allocations risk to surface water or fluvial flooding.

As a consequence Colwall Neighbourhood Plan was not prepared in accordance with the requirements of paragraph 167 of NPPF.

Whilst the land at Old Church Road remains an allocation within the Neighbourhood Plan, the current planning application P230457/F needs to be considered based upon the requirements of paragraph 168 and 169 of the NPPF which advise that;

“168. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.”

A similar position was considered under Case No AC-2023-LON-002327 Mead Realisation v Secretary of State for Levelling Up, Housing and Communities. This case is with regard to a challenge brought forward by the developer Mead Realisations against the dismissal of an appeal by the Inspector (appeal reference APP/D0121/W/22/3313624) following refusal of an application by the Council on the basis that a speculative application had not been subject to a Sequential Approach.

In this case Justice Holgate sets out at paragraph 2 that;

“In AC-2023-LON-002327 Mead Realisations Limited (“Mead”) brings a challenge under s.288 of the Town and Country Planning Act 1990 (“TCPA 1990”) to the decision of the Inspector on behalf of the first defendant, the Secretary of State for Levelling Up, Housing and Communities, dated 20 June 2023 dismissing its appeal against the refusal by the second defendant, North Somerset Council (“NSC”), of an application for planning permission for residential development of up to 75 dwellings at Lynchmead Farm, Ebdon Road, Wick Street, Lawrence, Weston-Super-Mare (“the Lynchmead decision”).”

At paragraph 101 of the judgement, Justice Holgate sets out that;

“It is common ground that when a development plan is being prepared, the sequential test is applied in the context of policies aimed at meeting the housing, employment and other development needs of the local authority’s area, or other relevant “catchment” (see also para. 026 of the PPG). Paragraph 166 of the NPPF states that where an application is made for development on a site allocated in a development plan which satisfied the sequential test, that test does not have to be applied again. Where in other cases a sequential test is being carried out for the first time in relation to an application THE HON. MR JUSTICE HOLGATE Approved Judgment (1) Mead Realisations Ltd v SoS LUHC (2) Redrow Homes Ltd v SoS LUHC 23 site, I see no logical reason why the issue of need should be treated as wholly irrelevant to that assessment as Mr. Flanagan suggested. In addition, para. 027 of the PPG suggests that the relevant catchment area or area of search for some types of development will be affected by need considerations. On that basis, I do not see why all considerations of need must be excluded when considering the “appropriateness” of alternatives.

The case was dismissed and the findings of the Inspector with regard for the need for a sequential analysis of the site at planning application stage was upheld.

In the context of the current planning application 230457/F, the land at Old Church Road has not been the subject of a strategic level sequential approach. In addition, the application site, which is identified as being subject to surface water flooding within the applicants Flood Risk Assessment, has not been subject to a sequential assessment that has taken into account the availability of alternative sites that could be brought forward for development and which may be not at risk of surface water flooding.

As a result, it is requested that the application be refused on the basis that the provisions of paragraph 166 and 168 of the NPPF

**3. (Adrian Mealing) The Croft, Old Church Road, Colwall
Colwall Revised NDP Group (Also sent to Planning Committee Members 14/7/24)**

Thank you for considering our objections at the meeting on Wed 17 July'24.



Grovesend Farm site, looking eastwards towards the Malvern Hills

Colwall is keen to support HC's drive for new housing on appropriate land - predominantly brown and grey sites - and housing which is prioritised by a Local Housing Needs Survey to be undertaken shortly. We anticipate this will emphasise small, affordable homes for young families and not homes which are largely unaffordable to local workers and to young people starting out who want to live where they've grown up with family support around them.

Extraordinarily, none of the Neighbourhood Plan (NDP) Consultation sessions or papers identified that the application site, in addition to Conservation Area and AONB status, was also an important open space in the Council's own adopted **Conservation Area Character Assessment** (24 Aug 2001).

Grovesend's **Character Assessment & Heritage Asset** was not highlighted or communicated by the local or county councils during the numerous processes including the NDP.

Since 2011, Mill Lane - now included in HC's 2024 Emerging Local Plan draft for Colwall's development, we note - was the housing site favoured by the community in the consultations for the NDP and the site overwhelmingly preferred by the village and HC (SHLAA¹) & CPC since the get go. Herefordshire Planning officers clearly state in their 2015 strategic land assessment that Mill Lane was suitable for development and Grovesend Farm was not.

Grovesend is not 'ugly Greenbelt'. It is within clear view of British Camp, one of the country's finest Heritage Assets.

Polls and NDP consultations conducted in the village, 2015-2023, consistently record 90%+ of the village against development on Grovesend and 90% in favour of development on Mill Lane. We can re-supply these figures to the Planning Officer.

For reasons genuinely unfathomable to the village, CPC suddenly switched its preferred site in 2018 from Mill Lane to Grovesend without community consultation. CPC later

¹ HC's Strategic Housing Land Availability Assessment – Which also ruled Grovesend Field unsuitable due to access.

suggested that its-landscape surveyor opted for Grovesend over Mill Lane; either way, we know that landscape considerations are not the only criterion, a point confirmed below by **HC's Claire Ward, Director of Governance & Law (15.12.21)**. We have grave concerns as to why the landscape assessment was changed and given undue weight in the face of other factors.

'Colwall Parish Council focused on landscape issues. Herefordshire council officers raised with them that other planning grounds should be taken into the planning balance but they decided to focus on landscape as the primary factor...'

The inclusion of Grovesend in Colwall's NDP surprised & infuriated the village when its location & status & protections under planning law became clear. I say this because the **Character Assessment** referred to above only emerged AFTER the NDP had been 'made' and officers of Herefordshire Council are on record as saying no such document existed. This despite a copy being sourced by our group in 2018.

The Opinion of Counsel obtained by the community sets out potential grounds for legal challenge of any decision to approve this development.

Localism in Colwall has taken a hammering. The 2023 Parish Poll brought out 504 voters on a non-election day, of which 92% voted down the main product of what purported to be 'their' neighbourhood plan; the application before you.

The credibility of Colwall PC is at a low ebb as many of its members (most of whom have never competed for a vote) are utterly dismissive of the consistent & overwhelming opposition to Grovesend development since 2015 when it was suggested as a site for the new primary school (now built at Mill Lane). You are aware of the large number of representations - **2 for the application, 342 against** - objections not limited to those affected but indignation as to what this application represents in terms of harm to the environment and disrespect to the community.

Given all the above factors plus the unresolved issues of ...

- vehicle access along a narrow country lane
- the increased danger to pedestrians, horses & riders, cyclists on Old Church Road
- the non-deliverability of cycle & pedestrian access into the centre of the village, despite this being a requirement of several previous editions of the NDP but now ignored or dismissed as irrelevant in the current application – a recent, odd change of attitude by those few who prepared the NDP. There is no separate safe, navigable & accessible footpath or cycle route into the village
- STW's inadequate sewerage infrastructure, with high levels of sewage dumps to local watercourses
- lack of a workable solution from STW to the problem of additional ground & storm water run-off which will be created
- new ground water legislation

... we trust you will reject the Grovesend application and allow the village & Colwall PC together to revise the NDP and undertake a Local Housing Needs Survey to underpin location & appropriate types of housing.

Please support the community of Colwall and say NO.

4. Paul Evans, 5 Stone Close, Colwall Email sent to Councillors 13/7/24 (09:51)

There is a simple theory that applications for full planning permission should be in a form that would allow the local planning authority to make its decision.

There are sensible opportunities for an applicant to have discussions with the LPA before the application is submitted. There are further opportunities for discussions post-application to address any fresh issues raised and to make alterations to the application. Over a period of around two years Herefordshire's planners have worked constructively with the Applicant which has, to some extent, taken appropriate advantage of those opportunities.

Finally, it is possible to grant permission subject to conditions to deal with secondary issues. That is not what is suggested here. The Planning Officer has recommended approval of this highly controversial application, subject to 11 pages of conditions. Many of those conditions are fundamental to the acceptability of the whole scheme. For example,

- The last advice supplied by Severn Trent Water's consultants concluded that the development would be likely to cause flooding and pollution. STW is ignoring freedom of information requests to disclose information held by it, but has stated that it continues to be concerned about this application and is currently processing the results of its latest investigations. We know that STW is already dumping raw sewage into the Cradley Brook on a regular basis and Old Colwall was left ankle deep in sewage earlier this year because of a pipeline failure. Does anyone believe it is right to permit this development to exacerbate these problems? And does anyone really believe that STW will resolve capacity problems in both the pipelines and the treatment works at Colwall, within three years?
- We have yet to see a detailed plan for works proposed for Old Church Road, including the extent to which it will require damage to the hedgerows (noted as important in the Conservation Area Character Statement), whether that can be done within the adopted highway, and whether account has been taken of the effect of regular regrowth on the already substandard width of the proposed pavement. This is not a new problem. Why is it still outstanding 16 months after the application was submitted?
- The application proposes the creation of substantial areas of amenity space, including some requiring specialist maintenance, but has failed to show how those areas would be maintained in future. It would be expensive and of very little value to the rest of the Village, and Colwall Parish Council has refused to take it over. The Applicant is a subsidiary of Bellway Housing, a major development company with substantial experience of this issue. Why has it failed to offer a substantive option?
- The Applicant offered a sadly deficient ecological survey eg denying the existence there of Great Crested Newts until we proved them wrong, failing to spot clear evidence that the field is used as an important wildlife corridor by badgers and several other protected species, failing to consult available records and consequently concluding that the area is "of low wildlife interest". Having been proved wrong, the Applicant has had ample opportunity to provide proposals for the protection of ecology, including the reinstatement of a crucial wildlife corridor. It has not done so. Again, why?

As it stands, the plan would damage the Conservation Area and ecology, result in the provision of sub-standard pedestrian access and in the probability of more pollution and flooding. The Applicant has either been unable or unwilling to offer substantive solutions to those and other problems. There is a clear and much better alternative which is supported overwhelmingly by Villagers, but two arguments are offered in support of this plan; the Colwall NDP and public benefit.

This “flagship” element of the NDP has proved to be a disaster. It was arrived at using a method that conflicted with common law and advice from the government, both of CPC’s professional advisers and Herefordshire Council’s planners, and with repeated and overwhelming expressions of local opinion. It has united Villagers in opposition to elements of CPC’s grim determination to secure the building of a new housing estate in Colwall’s Conservation Area instead of where everyone else wants it to go. Explanations given by CPC do not stand up to scrutiny. Nevertheless, the NDP exists and HC has to decide what weight to give to it, if any.

That task has been simplified by the fact that the NDP specified conditions precedent to development on Grovesend Field, relating to pedestrian access and protection of the Conservation Area, heritage assets and ecology etc. None of those conditions is satisfied by the application and so no significant weight should be attached to the inclusion of the site in the NDP.

It is claimed that damage caused by the development would be outweighed by the provision of much needed affordable housing. In fact the opposite is true. But for the NDP, affordable homes on Mill Lane would almost certainly be ready for occupation by now. Even if planning permission is granted now it would be several years (if ever) before construction work could proceed at Grovesend. The relative isolation of the site would also limit its suitability for non-car users. Meanwhile, development at Mill Lane is blighted by this application.

My concern is that if approval is granted as proposed then the already hard-pressed planning officers will be subject to a “war of attrition” to accept watered down versions of what is needed, in a process taking place out of the public gaze. The site is a comparatively expensive one to develop. Once permission is granted, shall we find that the Applicant claims to be unable to afford S106 contributions, or to continue with plans for affordable housing, or to be able to fund future maintenance costs for the amenity land or a wildlife corridor? If ever there was a need for the sunlight of open involvement of the democratic process, this is it.

Despite some 16 months of constructive work by HC staff, the application is seriously deficient in many respects. Some of those deficiencies might be remedied (if the Applicant is prepared to pay for them) but others might not. At the end of the day, it is for the Applicant to offer a plan which is suitable for approval. As it stands this plan simply is not in a state that admits of a fully informed decision. It should be rejected to open the way for more suitable development on Mill Lane.

If the Applicant believes that it is willing and able to remedy the existing defects, a fresh application might be made. That would enable the plan and proposed solutions to its many current problems to be considered as a whole, warts and all!

5. Letter from Planning Agent (Elizabeth Bloomfield, Pegasus Group) to Planning Committee Councillors (16/7 – 16:06)

I hope you don’t mind me approaching you direct in relation to this planning application, which will be considered at tomorrow’s Planning Committee.

As you know, Officers have prepared a comprehensive assessment of the application in the Committee Report, following a thorough review of all planning considerations. However, there is a lot to consider, so I wanted to take the opportunity to summarise key points from my point of view. I’m sure others will be approaching you too.

I am the planning consultant acting on behalf of the applicant on this application and I have to say that this is the type of development project a planner is pleased to work on.

We are all aware of the need to deliver housing, and most people know someone who would love to purchase their own home, but is not in a position to do so. Most people are not against housing delivery in principle; and those who are generally in support of a proposal, and have no issues to raise, tend not to comment on planning applications.

Understandably, however, people worry about what change development could bring if it is near where they live.

There is always a discussion about where is the right place to deliver housing, and whether it may be anywhere other than the application site currently being considered.

Development is intended to be plan-led, meaning that sites which are considered suitable in the local development plan **are** those which have been determined to be the right sites to accommodate the housing we need. Of course, not everyone will always agree, particularly if they consider themselves directly impacted by such a proposal.

This site has been allocated to deliver housing in the local development plan, which confirms the acceptability of development of the site to provide housing in principle. The decision to allocate the site followed due consideration of heritage and AONB sensitivities, as acknowledged and accepted by the independent Inspector appointed to examine the plan process.

As a result, your Council is counting the delivery of housing on this site to count towards your housing land supply figure. Delivery of any housing has the potential to assist those at all price ranges, as it facilitates movement in the market which potentially releases 'entry-level' housing.

Beyond the principle of development, there are a number of specific policy requirements that housing development proposed on this site is required to meet, unless there are good planning reasons which justify otherwise.

This proposal is policy compliant:

- The housing has been carefully designed, with due regard to the specific AONB guidance and heritage advice.
- Substantial areas of open space are included, in line with those identified in the allocation.
- In line with policy, it will provide a mix of housing types and sizes, comprising 15 x 2-bed houses; 13 x 3-bed houses; and 8 x 4-bed houses, at a density of 16 dwellings per hectare. 7 of the dwellings will be bungalows and no buildings exceed 2-storeys in height.
- **It provides a policy compliant amount and mix of affordable housing.**
- Existing boundary vegetation will be retained and enhanced (including the protected tree at the northern boundary), except where required for access, which is in the location specified in the allocation policy.
- The proposal will deliver a safe pedestrian link to the amenities and facilities of Colwall, as required by the allocation.
- Key views are retained, and the application is supported by a technical Landscape Visual Impact Assessment, which confirms that the development will assimilate very well into the existing settlement pattern.
- A full assessment of impacts on heritage assets, including the Colwall Conservation Area, have been considered in the submission documentation; and by the Conservation Officer and Planning Officer, who all agree that the proposal meets the relevant policy requirements.
- Ecological habitats will be enhanced.
- The drainage strategy will improve the existing uncontrolled drainage conditions on-site by the installation of sustainable drainage features designed to manage the collection, retention and slow release of surface

water. In discussion with the Council's drainage engineers, further survey work on an existing storm drain was carried out to ascertain its condition, which was confirmed to be poor and essentially currently not functioning. This will be replaced and diverted within the site as part of the proposals.

- In terms of foul drainage, the proposal includes a suitable system to connect to the public sewer, which is appropriate for adoption by the water authority. It is entirely the water body's responsibility to ensure capacity in the public system to accommodate development which is allocated in the development plan. A pre-commencement condition is proposed to ensure there is further opportunity to consider the drainage strategy prior to any development starting on-site.

We understand neighbours' concerns about change in an area they choose to make their home; but we trust that a balanced decision will be made, with due regard to your Officers' assessment of the relevant issues to be considered in our plan-led system which is designed to deliver the housing we need in an appropriate way.

Please don't hesitate to contact me if you do have any queries we may be able to assist with.

OFFICER COMMENTS

In response to the above comments.

Officers would draw your attention to Flood Risk Assessment and drainage strategy that has been submitted with the application.

<https://myaccount.herefordshire.gov.uk/documents?id=d2ef6b06-3781-11ef-9081-005056ab11cd>

This, and other superseded documents have been carefully considered and appraised during the course of the application, taking into account concerns raised locally.

The detailed comments of the Drainage Consultant have been included in the officers report and I would draw your attention to paragraphs 6.124 – 6.141 that carefully consider matters relating to drainage and flood risk on the site in relation to the Local Plan policies and National Planning Policy Framework and guidance.

Turning to the specific matter of the requirement for a sequential test to have been undertaken at plan making stage, I have briefly reviewed the documents that were included as part of the plan making stages and can see that flood risk as a constraint did form a part of the considerations in relation to site selection. (2019 NPPF at time)

<https://www.herefordshire.gov.uk/directory-record/3046/colwall-neighbourhood-development-plan>

I would refer you to the Made Colwall NDP paragraph 6.0.9 in the section that advises on the strategy used to determine the Proposed Settlement Boundary:

At the same time a Capacity Table was developed which graded the potential sites in order of their ability to accept development, in landscape terms. The table was then populated with the other constraints, including whether the landowner wished to develop in the Plan period, and taking account of technical constraints such as access, flood risk and impacts on built and natural heritage assets

Notwithstanding this, as directed by paragraph 173 of the NPPF 2023 a site specific Flood Risk Assessment was undertaken. I would refer Councillors to the submitted reports and the committee report as above.

In respect of other matters raised, these are matters that have been raised previously and have been considered in the writing of the report and in making the recommendation.

NO CHANGE TO RECOMMENDATION