

MEETING:	PLANNING AND REGULATORY COMMITTEE
DATE:	29 JULY 2026
TITLE OF REPORT:	163932 - PENDING S106 AGREEMENT - OUTLINE PLANNING APPLICATION FOR A SUSTAINABLE URBAN EXTENSION COMPRISING: UP-TO 250 DWELLINGS; OPEN SPACE, ALLOTMENTS AND LANDSCAPING; SCHOOL EXPANSION LAND; AREAS OF CHILDREN'S PLAY; SUSTAINABLE URBAN DRAINAGE INFRASTRUCTURE; INTERNAL ROADS; AND ASSOCIATED INFRASTRUCTURE. DETAILED APPROVAL IS SOUGHT FOR AT LAND AT HARDWICK BANK, BROMYARD, HEREFORDSHIRE, For: The Owner and/or Occupier per Russell Smith, 119 Promenade, Cheltenham, GL50 1NW
WEBSITE LINK:	https://www.herefordshire.gov.uk/planning-and-building-control/planning-search/details?id=163932
Reason Application submitted to Committee – Re-direction	

Date Received: 7 December 2016 Ward: Bromyard West Grid Ref: 364358,254665

Expiry Date: 11 May 2026

Local Members: Cllr Clare Davies (Bromyard West)

UPDATE REPORT

1.0 BACKGROUND / PURPOSE OF THIS REPORT

- 1.1 The application seeks outline planning permission for a sustainable urban extension comprising up to 250 dwellings, public open space, allotments, school expansion land, children's play areas, sustainable drainage infrastructure, internal roads and associated works at Land at Hardwick Bank, Bromyard. Detailed approval is also sought for access and layout, with all other matters reserved for consideration later. The site forms part of the strategic housing site identified under Policy BY2 of the Core Strategy for up to 500 dwellings.
- 1.2 The purpose of this report is to update members on the application and to seek a revised resolution in light of the continued failure to complete the Section 106 agreement necessary to make the development acceptable in planning terms.
- 1.3 Members will recall that Planning and Regulatory Committee considered the application on 17 January 2024 and resolved that planning permission be granted subject to the completion of a Section 106 agreement within six months to secure affordable housing, infrastructure contributions, phosphate mitigation and associated planning obligations.

Further information on the subject of this report is available from Mr Ollie Jones on 01432 260504

- 1.4 The application was subsequently returned to Planning and Regulatory Committee on 17 July 2024 as the Section 106 agreement had not been completed within the prescribed timescale. Members resolved to provide a further extension until 17 November 2024 and delegated authority to continue negotiations where reasonable progress was being made.
- 1.5 At the date of preparing this report, the Section 106 Agreement remains incomplete and planning permission has not been issued. Approximately two and a half years have now elapsed since the original committee resolution to grant planning permission. Despite ongoing attempts by officers to progress the Agreement, little substantive progress has been made in recent months. Officers understand that instructions required from the applicant to enable completion of the Agreement have not been forthcoming and, consequently, the legal process has stalled.
- 1.6 Officers have continued to engage with the applicant's agent in an effort to secure completion of the Section 106 agreement and resolve outstanding matters. Notwithstanding the above, the agreement remains incomplete and therefore, the obligations previously identified by committee have not been secured.
- 1.7 The planning obligations were considered necessary to make the development acceptable and included, amongst other matters:
- Affordable housing provision;
 - Education contributions;
 - Transport contributions;
 - Sports and recreation contributions;
 - Healthcare contributions;
 - Public open space management arrangements;
 - Land transfer for school expansion; and
 - Nutrient mitigation through the purchase of phosphate credits from Herefordshire Council.
- 1.8 In the absence of a completed legal agreement, these matters cannot be secured and the Local Planning Authority is therefore unable to issue planning permission on the basis of the committee's previous resolution.
- 1.9 Members are referred to the committee reports dated 17 January 2024 and 17 July 2024, attached as **Appendix 1** and **Appendix 2** respectively. Those reports contain the full description of the site and proposal, consultation responses, planning assessment and reasons underpinning the previous committee resolutions. This update report should therefore be read in conjunction with those reports and focuses on matters which have changed since the application was last reported to committee. This report therefore does not revisit matters which are considered to remain unchanged.

2.0 OFFICER APPRAISAL

- 2.1 The merits of the proposal were comprehensively assessed within the committee reports attached as **Appendix 1** and **Appendix 2**. Officers have reviewed the application in light of the matters set out in those reports and consider that the principal issues requiring reconsideration relate to the continued failure to complete the Section 106 agreement and the consequential inability to secure phosphate mitigation.
- 2.2 In this instance the adopted development plan is the Herefordshire Local Plan – Core Strategy. The National Planning Policy Framework (NPPF) is also a significant material consideration.

- 2.3 The application site forms part of the strategic housing allocation identified under Policy BY2 of the Herefordshire Local Plan – Core Strategy. The principle of residential development on the site was previously accepted by Planning and Regulatory Committee when members resolved to grant outline planning permission on 17 January 2024, subject to the completion of a Section 106 agreement.
- 2.4 The application subsequently returned to Planning and Regulatory Committee on 17 July 2024 where members resolved to extend the period for completion of the Section 106 agreement. Despite this additional time and continued engagement between officers and the applicant, the legal agreement remains incomplete
- 2.5 With this in mind, Policy ID1 of the Strategy requires development proposals to provide or contribute towards the infrastructure, services and facilities necessary to mitigate their impacts and support sustainable development.
- 2.6 The previous committee resolution identified a number of planning obligations that were necessary to make the development acceptable in planning terms. These included the provision of affordable housing, education contributions, transport improvements, healthcare contributions, public open space management arrangements, sports and recreation provision, land for school expansion and nutrient mitigation.
- 2.7 The Council remains of the view that these obligations are necessary, directly related to the development and fairly and reasonably related in scale and kind to the proposal, having regard to Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).
- 2.8 In the absence of a completed Section 106 agreement there is no mechanism through which these obligations can be secured. As such, the proposal fails to mitigate its impacts and cannot be considered policy compliant.

Impact on River Lugg / Wye Special Area of Conservation (SAC)

- 2.9 The application lies within the River Lugg catchment and is therefore subject to the requirements of the Conservation of Habitats and Species Regulations 2017 (as amended) having regard to the River Wye SAC.
- 2.10 An Appropriate Assessment (AA) was undertaken by the Council in November 2023. The assessment identified that the development would generate an annual phosphorous load of 35.08kg TP/year requiring mitigation. The assessment concluded that this impact could be fully mitigated through the purchase of phosphate credits from Herefordshire Council's Integrated Wetland Programme, secured as part of the Section 106 agreement. The AA concluded, therefore, that there would be no adverse effect on the integrity of the River Wye SAC, subject to the mitigation being secured.
- 2.11 Natural England was consulted on the AA and confirmed that it had no objection to the proposal and agreed that, with the appropriate mitigation secured, there would be no adverse effect on the integrity of the River Wye SAC.
- 2.12 However, as above indicated, the phosphate mitigation relied upon by the AA has not been secured because the Section 106 agreement remains incomplete. The mechanism through which the required phosphate credits would be purchased and secured therefore does not exist. The credit allocation would be released, and this means that the quantum of credits reserved for this development would be available to mitigate other eligible developments in the relevant catchment.

- 2.13 As a consequence, the mitigation relied upon by both the Council's Appropriate Assessment and Natural England's consultation response cannot be secured. In the absence of a completed planning obligation, officers are unable to rely upon the conclusions of the AA and the proposal fails to demonstrate nutrient neutrality.
- 2.14 As such, the proposal fails to demonstrate nutrient neutrality and the Local Planning Authority cannot conclude, beyond reasonable scientific doubt, that the development would not adversely affect the integrity of the River Wye Special Area of Conservation, either alone or in combination with other plans and projects. In the absence of the required phosphate mitigation, the proposal is contrary to Policy SD4 of the Core Strategy, the Conservation of Habitats and Species Regulations 2017 (as amended) and the principles set out in the NPPF.

Ecology

- 2.15 The application was supported by an Ecological Appraisal dated December 2022, which include a suite of habitat and protected species surveys undertaken during 2022. These informed the consideration of the application when it was reported to Planning and Regulatory Committee in January 2024.
- 2.16 Given the passage of time since those surveys were undertaken, officers have reviewed the ecological position in consultation with the Council's Ecologist. They have advised that there is no evidence to indicate that circumstances have changed to such an extent that the principle of development is no longer capable of being appropriately mitigated through the detailed design process. However, updated ecological information would be expected to support the future consideration of Reserved Matters submissions, including the matter of landscaping in relation to habitat creation and enhancement, protected species, biodiversity delivery and lighting.
- 2.17 As such, whilst the age of the ecological information is noted, it is not considered that it constitutes a determinative reason for refusal of the current outline application.

3.0 CONCLUSION

- 3.1 The Planning and Regulatory Committee previously considered the proposals in January 2024 and resolved that planning permission be granted, subject to the completion of a Section 106 agreement. In reaching that conclusion, members accepted the principle of residential development on this strategic housing site identified within the Development Plan, and concluded that, subject to appropriate mitigation, the proposal represented a sustainable form of development capable of delivering significant housing growth, including affordable housing, together with public open space, education land, drainage infrastructure and other associated benefits.
- 3.2 The application subsequently returned to committee in July 2024, at which time members agreed to provide additional time for the completion of the Section 106 agreement in recognition of the ongoing negotiations and the strategic significance of the site.
- 3.3 The proposed development itself remains unchanged, and for the reasons set out within **Appendix 1** and **Appendix 2**, officers still recognise that the site is identified for growth under Policy BY2 of the Core Strategy. Furthermore, the assessments previously relied upon, including the Council's Habitat Regulations Assessment and the consultation response from Natural England, demonstrated that the impacts of the development could be satisfactorily addressed through the mitigation package proposed at that time.

- 3.4 However, the committee's previous resolution was expressly dependent upon the completion of a Section 106 agreement. Despite the passage of a significant period of time and continued engagement between officers and the applicant, that agreement remains incomplete. As a consequence, the Local Planning Authority is unable to secure the affordable housing, infrastructure contributions, school expansion land, public open space management arrangements and other planning obligations previously identified as necessary to make the development acceptable in planning terms.
- 3.5 Critically, the legal mechanism required to secure the phosphate mitigation identified through the Council's Appropriate Assessment has also not been completed. Accordingly, the mitigation relied upon by both the Council and Natural England to conclude that there would be no adverse effect on the integrity of the River Wye Special Area of Conservation cannot be secured.
- 3.6 Officers acknowledge that the principle of development on this strategic housing site remains established through the Development Plan, and that the proposal would contribute towards the Council's housing supply, including the delivery of affordable housing at a time when the Council cannot currently demonstrate a five-year supply of deliverable housing land. However, the absence of a completed Section 106 agreement means that the proposal fails to secure the mitigation and planning obligations (including the provision of said affordable housing) previously identified as necessary to make the development acceptable in planning terms. Furthermore, in the absence of secured phosphate mitigation, the Local Planning Authority cannot conclude that the proposal would not adversely affect the integrity of the River Wye Special Area of Conservation in accordance with the Conservation of Habitats and Species Regulations 2017 (as amended). The proposal is therefore contrary to Policies H1, OS1, OS2, ID1, SD4 and BY2 of the Core Strategy, the NPPF and the Habitats Regulations
- 3.7 The benefits associated with the development are recognised, including the provision of market and affordable housing on a strategic site. However, those benefits in themselves do not overcome the fundamental requirement to secure the planning obligations and phosphate mitigation previously identified as necessary. As such, it is concluded that planning permission cannot lawfully be granted and therefore, refusal is recommended.
- 4.0 **RECOMMENDATION:** That officers named in the Scheme of Delegation to Officers be authorised to refuse outline planning permission for the reasons set out below.
1. In the absence of a completed planning obligation pursuant to Section 106 of the Town and Country Planning Act 1990, the proposed development fails to secure affordable housing, education contributions, transport contributions, healthcare contributions, sports and recreational provision, public open space management arrangements, land transfer for school expansion and other planning obligations necessary to make the development acceptable. The proposal is therefore contrary to Policies H1, OS1, OS2, BY2 and ID1 of the Herefordshire Local Plan – Core Strategy, the Council's Planning Obligations Supplementary Planning Document and the National Planning Policy Framework.
 2. In the absence of a completed planning obligation pursuant to Section 106 of the Town and Country Planning Act 1990, securing the phosphate mitigation identified as necessary through the Council's Habitats Regulations Assessment, the proposal fails to demonstrate it would be 'nutrient neutral', and the Local Planning Authority cannot conclude that the development would not adversely affect the integrity of the River Wye Special Area of Conservation. The proposal is therefore contrary to Policy SD4 of the Herefordshire Local Plan – Core Strategy, the Conservation of Habitats and Species Regulations 2017 (as amended) and the National Planning Policy Framework.

INFORMATIVES:

1. In accordance with the requirements of the National Planning Policy Framework, Herefordshire Council has worked proactively and positively with the applicant throughout the consideration of this application. The Planning and Regulatory Committee previously resolved to grant planning permission subject to the completion of a Section 106 Agreement and subsequently agreed to extend the period for completion of that agreement. Despite continued engagement and negotiation between the Local Planning Authority and the applicant over a prolonged period, the Section 106 Agreement has not been completed and the planning obligations and phosphate mitigation necessary to make the development acceptable in planning terms have therefore not been secured. Subsequently, in these circumstances the Local Planning Authority has been unable to issue planning permission.

Decision:

Notes:

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Appendices

Appendix 1 – Committee Report (January 2024)

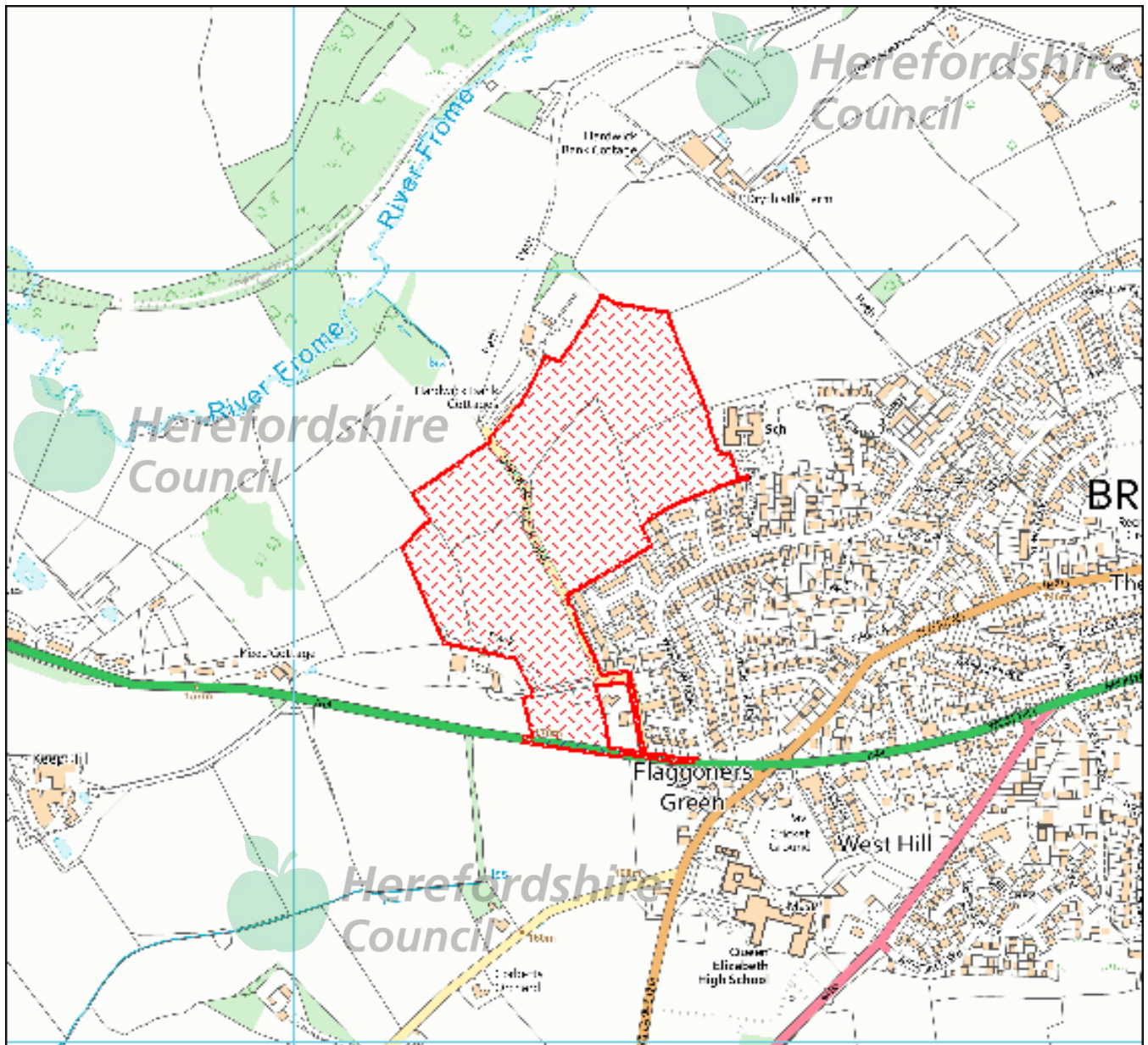
Appendix 2 – Committee Report (July 2024)

Appendix 3 – Minutes – January 2024

Appendix 4 – Minutes – July 2024

Background Papers

No background papers



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APPLICATION NO: 163932

SITE ADDRESS : LAND AT HARDWICK BANK, BROMYARD, HEREFORDSHIRE

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