DELEGATED DECISION REPORT

APPLICATION NUMBER

211734

Townsend Farm, East Street, Pembridge, Leominster, HR6 9HB

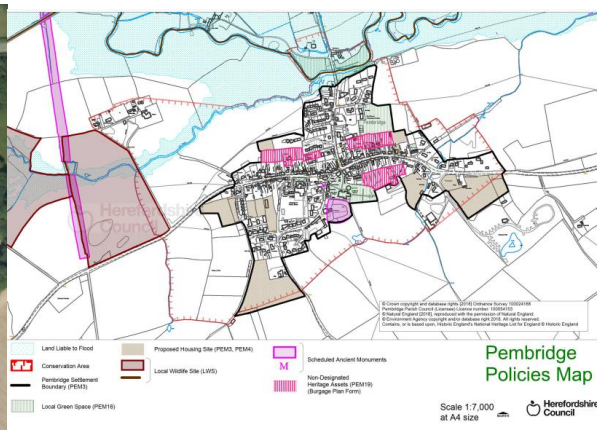
CASE OFFICER: **Charlotte Atkins**
DATE OF SITE VISIT: 24.6.2021

Consultation period end date: 7.10.2021
Target date for determination: 18.10.2021

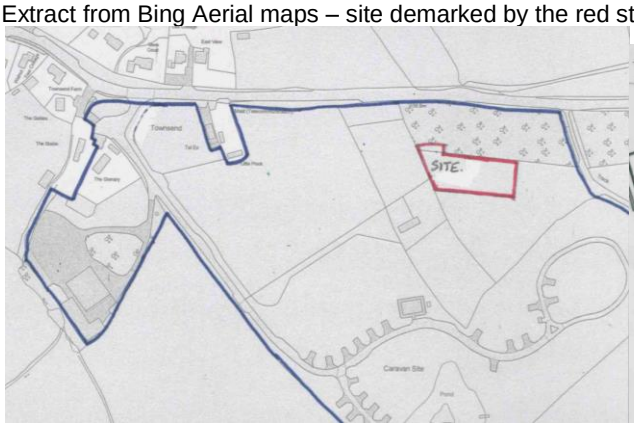
1 SITE DESCRIPTION AND PROPOSAL

1.1 The site subject of this application lies to the south of the A44, beyond a wooded area, on the eastern fringes of Pembridge and just outside of the village's Conservation Area. It comprises a roughly rectangular, 0.18 hectare, area of land to the north of the established touring and camping park, which is also within the applicants' ownership. It is immediately to the east of an allocated housing site (land at Townsend) in the Pembridge Neighbourhood Development Plan. A public right of way (PM61) runs through the woodland, approximately 33m to the northeast of the site.

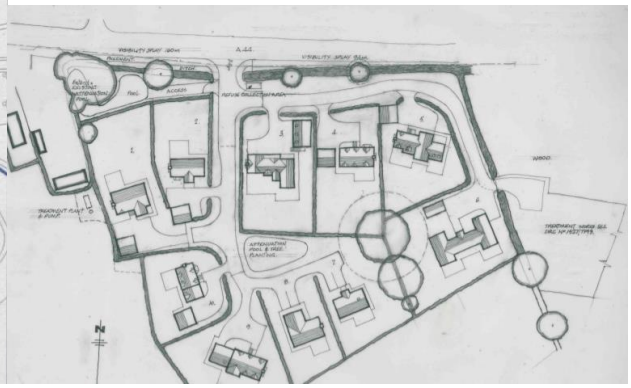
Extract from Bing Aerial maps – site demarked by the red star



Pembridge Policies Map (PNDP)



Extract of Amended Site Location Plan



Extract of Amended Site Layout Plan

1.2 Permission is sought for a drainage field, following the amendment of the original submission for a drainage mound. The proposed drainage field is proposed to serve two proposed residential developments (202402/F & 202385/F), which provides for a combined total of 10 dwellings. These applications are being considered concurrently. A foul drainage pump is proposed to the west of the proposed housing sites.

1.3 The following were submitted with and during the consideration of the application:
Planning, Design and Access Statement, Amended Surface Water Management Plan and Flood Risk Assessment and Foul Drainage Strategy, Drainage Consultant's covering letter, Preliminary Ecological Assessment, Arboricultural Method Statement, Arboricultural Impact Assessment (incorporating an updated Tree Survey) and drainage consultant's response to the HRA AA and NE consultation response (Hydro-Logic Services, dated 16.11.2021).

1.4 As noted in paragraph 1.1 above, the site lies adjacent to a housing allocation site in the Pembridge Neighbourhood Development Plan and as set out in paragraph 1.2 the proposal forms part of the foul drainage for two current planning applications for housing on part of the allocated site. The Planning History and Background section below therefore provides a summary of all relevant, associated applications to set the context of this application. The allocated site as a whole is currently subject to two applications for housing and an application for an all-weather riding arena (marked with a *) and two applications for housing have also been recently withdrawn (marked with a *).

2 PLANNING HISTORY AND BACKGROUND

History for wider - PNDP allocated housing site

Application No.	Description of Development	Decision
172253/F	Proposed 5 no. dwellings with garages. Formation of vehicular access.	Refused 24.7.2019
*202402/F	5 No. Dwellings with garages (All self-build). Formation of vehicle access.	Undetermined
*202382/F	Proposed erection of 5 No. dwellings with garages, all self-build, off private drive (phase 2).	Withdrawn 31.3.2021
*202384/F	Proposed erection of 2 pairs of semi-detached affordable houses to rent (phase 3)	Withdrawn 31.3.2021
*202385/F	5 No. open market dwellings, garages & private drive (phase 4 – originally submitted for 6 no. open market dwellings)	Undetermined
*211508/F	Proposed all weather riding arena.	Undetermined

3 PRE-APPLICATION ADVICE

3.1 183307/CE - Pre-application advice request for dwellings and garages – which included this advice regarding drainage and ecological issues - *The area is exceeding acceptable phosphate levels. At this stage, officers are still unable to positively determine applications within the affected area where the requirement for a Habitat Regulations Assessment and there are no*

options to meet the 'drainage field' requirements set out in the October position statement (email from Principal Planning Officer to applicant, dated 15.1.2020). During the assessment of the housing proposal applications the applicant was advised of the policy and binding rules requirement to connect to the mains, where this was possible.

4 RELEVANT POLICIES

4.1 **Herefordshire Local Plan Core Strategy 2011 – 2031**

SS1 - Presumption in favour of sustainable development
SS2 - Delivering new homes
SS3 - Releasing land for residential development
SS4 - Movement and transportation
SS6 - Environmental quality and local distinctiveness
SS7 - Addressing climate change
RA1 - Rural housing distribution
RA2 - Housing in settlements outside Hereford and the market towns
RA3 - Herefordshire's countryside
MT1 - Traffic Management, highway safety and promoting active travel
LD1 - Landscape and townscape
LD2 - Biodiversity and geodiversity
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 water quality

4.2 **Pembridge Neighbourhood Development Plan (made 22 March 2019 – forms part of the Development Plan)**

PEM 1 Promoting Sustainable Development
PEM 2 Development Strategy
PEM 3 Housing Development in Pembridge Village
PEM 4 Housing Sites in Pembridge
PEM 5 Meeting Housing Needs
PEM 7 Providing for Local Housing Need
PEM 10 Agricultural Diversification and Tourism Enterprises
PEM 18 Retaining the Natural Environment and Landscape
PEM 19 Protecting Heritage Assets
PEM 20 Development within Pembridge Conservation Area
PEM 23 Sustainable Design
PEM 25 Highway Design Requirements

4.3 **National Planning Policy Framework (NPPF) – Relevant Chapters:**

2. Achieving sustainable development
3. Plan Making
4. Decision-making
5. Delivering a sufficient supply of homes
6. Building a strong, competitive economy
11. Making Effective use of land
12. Achieving well-designed places
15. Conserving and enhancing the natural environment

16. Conserving and enhancing the historic environment

4.4 **National Planning Practice Guidance**

5 CONSULTATION RESPONSES

5.1 **Statutory Consultations**

	Consulted	No Response	No objection	Qualified Comment	Object
Natural England	√				√

Statutory Consultations comments are as follows:

5.2 **Natural England:**
Thank you for your consultation on the above dated.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

Internationally and nationally designated sites
The application site is within the catchment of the River Lugg which is part of the River Wye Special Area of Conservation (SAC) which is a European designated site (also commonly referred to as Natura 2000 sites), and therefore has the potential to affect its interest features. European sites are afforded protection under the Conservation of Habitats and Species Regulations 2017, as amended (the 'Habitats Regulations'). The SAC is notified at a national level as the River Lugg Site of Scientific Interest (SSSI).

In considering the European site interest, Natural England advises that you, as a competent authority under the provisions of the Habitats Regulations, should have regard for any potential impacts that a plan or project may have[1]. The Conservation objectives for each European site explain how the site should be restored and/or maintained and may be helpful in assessing what, if any, potential impacts a plan or project may have.

European site - River Wye SAC
Natural England notes that your authority, as competent authority, has undertaken an appropriate assessment of the proposal, in accordance with Regulation 63 of the Conservation of Species and Habitats Regulations 2017 (as amended). Natural England is a statutory consultee on the appropriate assessment stage of the Habitats Regulations Assessment process, and a competent authority should have regard to Natural England's advice.

([1] Requirements are set out within Regulations 63 and 64 of the Habitats Regulations, where a series of steps and tests are followed for plans or projects that could potentially affect a European site. The steps and tests set out within Regulations 63 and 64 are commonly referred to as the 'Habitats Regulations Assessment' process.
The Government has produced core guidance for competent authorities and developers to assist with the Habitats Regulations Assessment process. This can be found on the Defra website. http://www.defra.gov.uk/habitats-review/implementation/process-guidance/guidance/sites/)

Your appropriate assessment concludes that the proposal will result in adverse effects on the integrity of the sites in question. Natural England agrees with the assessment conclusions.

Following the recent Coöperatie Mobilisation judgement (AKA the Dutch Case) (Joined Cases C-293/17 and C-294/17), proposals that would increase Phosphate levels in the River Lugg part of the River Lugg SAC are deemed to be having an adverse effect on integrity.

Regulation 63 states that a competent authority may agree to a plan or project only after having ascertained that it will not adversely affect the integrity of the European site, subject to the exceptional tests set out in Regulation 64 of the Conservation of Habitats and Species Regulations 2017 (as amended). As the conclusion of your Habitats Regulations Assessment states that it cannot be ascertained that the proposal will not adversely affect the integrity of the European site, your authority cannot permit the proposal unless it passes the tests of Regulation 64; that is that there are no alternatives and the proposal must be carried out for imperative reasons of overriding public interest.

Your authority may now wish to consider the exceptional tests set out within Regulation 64 Specific guidance about these tests can be found at: https://www.gov.uk/government/publications/habitats-and-wild-birds-directives-guidance-on-the-application-of-article-6-4.

Should the developer wish to explore options for avoiding or mitigating the effects described above, we advise they speak to the council in the first instance. If Natural England's advice is required then this is available through our Discretionary Advice Service.

Further general advice on the protected species and other natural environment issues is provided at Annex A. Should the proposal change, please consult us again.
Annex A – Additional advice (refer to the consultation response on the website for full comments)

5.3 **Internal Consultation Responses**

	Consulted	No Response	No objection	Qualified Comment	Object
Area Engineer (Highways)	√√			√√	
Tree Officer	√√√			√√√	
Ecology	√				√
Environmental Health (noise)	√		√		
Land Drainage	√√√			√√√	

Internal Consultation responses (latest comments, unless stated otherwise. Previous responses can be viewed here)

5.4 **Land Drainage**
This response is in regard to flood risk and drainage aspects for all phases of the development. It is noted that these separate phases have been submitted as separate planning applications, as numbered above. However, the same surface water management strategy and flood risk assessment has been submitted for all three applications.

It should be noted that two additional applications for this site, 202382 and 202384, have been subsequently withdrawn. These comments should be read in conjunction with those dated 30th

June 2021 and 5th July 2021. New comments will be provided in red for clarity. No update has been made to the flood risk of the site, so that section of our comments has not been updated.

The following information has been considered in the completion of this response:

- Drainage Field Drawing (Ref:1527/TP3)
- Site Layout (Ref: 1527/1C)
- Response to Drainage Comments (Dated 9th September 2021 but received on 5th September 2021)
- Surface water Management Plan and Flood Risk Assessment as submitted to all applications (Ref: L0286A_FRA_SWMP_Pembridge_Rev 7-Issue)

Site location and extract of flood map(s)

Figure 1: Environment Agency Flood Map for Planning (Rivers and Sea), June 2021

We highlight that any planning application should be submitted in accordance with the Herefordshire SuDS Handbook and the Herefordshire Council Planning Applications Flood Risk & Drainage Checklist available on the Council's website:
https://www.herefordshire.gov.uk/info/200142/planning_services/66/about_planning_services/11

Development description
The Applicant proposes the construction of 10 dwellings with associated garages and access roads. The original set of applications were for a four phase development seeking to create 20 houses, however following the withdrawal of applications 202382 and 202384 (which were to be phases two and three of the development) it is no longer clear whether the development is to remain phased or to be constructed concurrently.

Application number 202402 was to be phase one of the development, with 202385 to be phase four of the development. The new application, 211734, for the creation of a drainage mound for the development is not currently associated with either development phase. This will be discussed later.

The development will be located on a greenfield site that is currently used for agricultural purposes. Application number 202402 covers an area of approx. 0.63ha. Application number 202385 covers an area of approx. 0.54ha. Application number 211734 covers an area of approx. 0.07ha.

This gives a total site area of 1.24ha.

The topography of the combined sites slopes from the south to the north with an existing pond located in the north west corner of the site that feeds flows into a culvert that passes underneath the A44 before eventually connecting to an ordinary watercourse to the north west. The watercourse in turn discharges to the River Arrow.

Identifying the need for a Flood Risk Assessment
All Applicants must provide sufficient information to address the points listed below to enable an accurate assessment of flood risk and the need for a flood risk assessment to be made.

Information required	Reviewers comments
Confirmation of the site area in hectares or square metres	The combined site area for the four phases is stated as 1.51 hectares
Identification of all main rivers within 20m of the site boundary	There are no main rivers in close proximity to the development.
Identification of all ordinary watercourses and land drains within 20m of the site boundary	The closest ordinary watercourse is located approximately 100m to the west of the site.
Confirmation of the site's location in Flood Zone 1, Flood Zone 2 or Flood Zone 3, and taking climate change effects into account	Review of the EA's Flood Map for Planning and the information submitted in the applicants FRA confirms the location of the site in Flood Zone 1. Given the distance to predicted Flood Zones it is expected that the advent of climate change would not put the site at a greater risk of flooding from fluvial sources.
Confirmation and supporting justification of whether the site is at significant risk of flooding from other sources, including surface water flood risk or flood risk from minor watercourses with unmapped flood extents	Review of the EA's surface water flood risk maps and OS mapping indicate the site is at a low risk of flooding from surface water and other sources. An existing dam was identified to the south of the site. However, examination of the topography indicates that exceedance flows from this structure would flow overland to the east rather than impacting the site.

A Flood Risk Assessment (prepared in accordance with NPPF and EA Standing Advice) must support the planning application for any development:

- Located in Flood Zone 2 or Flood Zone 3[1]
- With a site area greater than 1 hectare.
- Located in an area identified to be at significant risk of flooding from other sources, including surface water flood risk or flood risk from minor watercourses with unmapped flood extents.

Review of the information summarised in Section 1 indicates that a FRA is required due to the size of the combined site. This has been provided by the applicant.

Completing a Flood Risk Assessment
The following information should be provided within the FRA:

✓ Information provided is considered sufficient

✘ Information provided is not considered sufficient and further information will be required

Information required	Reviewer comments	✓✖
Sources of risk		
Assessment of Flood Zone 2 and 3 taking the effects of climate change into account, including predicted flood depths for the 1 in 100 and 1 in 1000 annual probability events	Review of the EA's Flood Map for Planning and the information submitted in the applicants FRA confirms the location of the site in Flood Zone 1. Given the distance to predicted Flood Zones it is expected that the advent of climate change would not put the site at a greater risk of flooding from fluvial sources.	✓
Assessment of areas protected by flood defences and risk of flooding in the event of breach, taking the effects of climate change into account	The site is not protected by flood defences.	✓
Assessment of fluvial flood risk from other watercourses in close proximity (c.20m) to the site including those with no mapped flood extent, and taking the effects of climate change into account	The closest ordinary watercourse is located approximately 100m to the west of the site. The site is not considered to be at flood risk.	✓
Assessment of mapped surface water flood risk	Review of the EA's surface water flood risk maps indicate the site is at a low risk of flooding from surface water.	✓
Assessment of flood risk associated with potential overland flow from adjacent steeply sloping land	Review of OS mapping indicates that the site is not likely to be at significant risk of flooding from overland flow.	✓
Assessment of groundwater flood risk	The site is considered to be at low risk of flooding from groundwater.	✓
Assessment of flooding from surface water, foul water and highway sewers	The site is considered to be at low risk of flooding from sewerage sources.	✓

[1] Note that the Council may also request an assessment of flood risk where the development is indicated to be at risk of flooding when the potential effects of climate change are taken into account.

Information required	Reviewer comments	✓✖
Assessment of flood risk from any other manmade sources, including reservoirs, ponds, detention basins etc.	An existing dam was identified to the south of the site. However, examination of the topography indicates that exceedance flows from this structure would flow overland to the east rather than impacting the site.	✓
Summary of historic flooding records and anecdotal evidence	Review of historic records indicates no known flooding issues within the vicinity of the site. However, it is important to note that the River Arrow causes significant flood risk to people and property downstream of the site.	✓ (with note)
Other works that could pose risk		
Are there any other proposed works that could lead to increase flood risk to the site or elsewhere, for example culverting or diversion of watercourses?	There are no other known works that could increase flood risk elsewhere.	✓
Sequential approach		
Demonstration that the development is in accordance with the Sequential Test outlined in the NPPF	The site is located entirely in Flood Zone and passes the Sequential Test.	✓
Demonstration of how a sequential approach has been taken to locate development in the lowest risk areas of the site, including the risk of flooding from other sources	A sequential approach to the site layout is not considered necessary.	✓
Mitigation		
Summary of how the development has addressed the identified flood risks and incorporated appropriate mitigation into the layout and operation of the development	No mitigation beyond the sustainable management of surface water runoff is considered necessary.	✓
Assessment of how a safe access route(s) to Flood Zone 1 (not including dry islands) would be achieved from the development, taking flood hazard and climate change into account	Safe access and egress is available from Flood Zone 1.	✓
Assessment of how the development will ensure no increased risk to people, property or infrastructure elsewhere, for example through the displacement of floodplain compensation or failure of flood defence structures, and demonstration of how mitigation will be incorporated into the design, with supporting calculations	No mitigation beyond the sustainable management of surface water runoff is considered necessary.	✓
Exception Test		

Information required	Reviewer comments	✓✖
Justification for the successful application of the Exception Test, if applicable	The Exception Test is not required.	✓

Herefordshire Council

Surface Water Management Strategy

A surface water management strategy should be submitted that includes the following information:

✓ Information provided is considered sufficient

✖ Information provided is not considered sufficient and further information will be required

Information required	Reviewer comments	✓✖
Strategy		
Summary and illustration of the proposed surface water drainage system including location of SuDS features, manholes, external pipework, attenuation features, pumping stations (if required) and discharge locations	It is proposed that surface water drainage for the site will be directed to two ponds. One existing pond in the north west corner of the development and a new pond in the centre of the development. The new pond (pond 1) will drain approximately 45% of the site area, while the existing pond (pond 2) will drain the remaining 55% of the area as well as having the outfall flows from pond 1 directed through to outflow offsite. The applicant has clarified that the access roads will not be put forward for adoption and will instead be under the purview of a management company. As such, the road drainage will also be directed into the proposed pond system. In a previous version of these comments we highlighted concerns regarding the position of pond 2 within a private garden and pipework positioned beneath an additional private garden. The applicant has now addressed this issue by reducing the size of the gardens of plots 1 and 2 to accommodate an area of jointly owned land on which the pond and associated pipework can be situated. This is acceptable. A previous version of these comments requested further information regarding the invert levels for ponds and their outfalls to provide greater detail around the connections of the surface water drainage. This has now been provided. The applicant has provided topographic survey data and annotated drawing to illustrate the proposed connections between the two ponds. Pond 1 has a cover level of approx. 109m AOD, with an invert of approx. 108m AOD and a base area of approx. 162m^2. Pond 2 will have a cover level of approx. 105.5m AOD and will require a bund of approx. 400mm from the surrounding ground level of approx. 105.1m AOD. The invert level of pond 2 is approx. 104.8m AOD with a base area of approx. 192m^2. Pond 2 will utilise an existing outfall from the site to discharge surface water and this has been confirmed at a level of 104.64m AOD by the client. At discharge of condition the applicant will need to demonstrate that a suitable hydraulic head can be achieved for the proposed flow control device. Pond 1 is proposed to have a flow control device with an orifice of only 33mm. This poses a significant blockage risk. We suggest the applicant consider the provision of a 50mm diameter orifice plate installed within	✓

Information required	Reviewer comments	✓✖
	the headwall so that debris can be easily observed and removed by residents as and when needed.	
Summary of likely ground conditions including permeability and contamination risks	Previous versions of these comments highlighted that although the infiltration rates were low, there was some infiltration capacity within the soils. As such the applicant should consider utilising both infiltration and attenuation techniques for the management of surface water. The applicant has confirmed that it would not be possible for infiltration only techniques to be used, as the half drain time of a single infiltration basin would be much greater than the 24hrs advised in the SUDs guidance, at 51 hours. The design has instead been modelled based on some infiltration at a rate of $1.73x10^{-6}$ for both ponds, however the applicant should consider how to best utilise the infiltration potential of the basins more effectively during smaller storms, such as by raising the outflow slightly above the pond invert to provide storage and opportunities for infiltration during smaller storms.	✓
Confirmation of whether the site is located in a Source Protection Zone or Principal Aquifer	The site is not located in a principal aquifer or source protection zone.	✓
Demonstration that the SuDS hierarchy has been considered in accordance with NPPF and justification for the proposed method of surface water discharge	Infiltration testing was conducted onsite which determined that discharge via infiltration is not likely to be viable for the whole site. As such, the applicant has elected to discharge runoff to an existing outfall point that connects to a local watercourse. This is considered to satisfy the application of the SuDS hierarchy. The applicant has also included some infiltration within the calculations for the ponds and thus satisfies the SuDS hierarchy.	✓
Demonstration that best practice SuDS have been promoted, appropriate to the size and nature of development	Discharge from the site will be collected in an attenuation basin and passed through a second existing pond prior to be discharged from site. This is considered an appropriate and sufficient implementation of SuDS for this development.	✓
If pumped systems are proposed, justification for the use of these systems, summary of key design principles and assessment of residual risk, with supporting calculations	No pumps are proposed to be used as part of the drainage strategy	✓
Confirmation that the system will be designed to prevent any flooding of the site in all events up to an including the 1 in 30 annual probability storm event with supporting preliminary calculations	The applicant has provided appendix D, microdrainage calculations. These calculations have been based on a flow control device at pond 1 limiting flows to 0.5l/s to ensure pond 1 will fill. Pond 2 will then discharge at the rate of 2.0l/s into the existing outfall and on towards the ordinary watercourse to the north west. Detailed calculations to include the pipe network and all manholes etc will be required at the discharge of conditions stage.	✓ **(with note)**
Off-site discharge		

Information required	Reviewer comments	✓✖
For discharge to a watercourse, sewer or local authority asset, confirmation of the relevant authority from which consent will be required	It is understood that discharge will be made to an ordinary watercourse under the jurisdiction of Herefordshire Council as LLFA. It is also understood that this will be via an existing outfall and, therefore, it is assumed that no works within or adjacent to the watercourse will be required.	✓
For discharge to a watercourse, sewer or local authority asset, detailed calculations of greenfield and, if relevant, current runoff rates calculated using the methods outlined in The SuDS Manual 2015 for the 1 in 1 year, Qbar, 1 in 30 and 1 in 100 year events	Existing runoff rates have been calculated using ReFH2 methodology. This methodology is considered appropriate although detailed calculations have not been provided for review. The calculated discharge rates are as below: 1 in 2yr – 0.74l/s 1 in 30yr – 2.1l/s 1 in 100yr – 3.1l/s In the applicant's response to our previous comments, they state: "The greenfield has been used for the total area. However as you agree we have used 2l/s for all events as per your guidance which is the minimum. It should not make any difference. If concerned please can this be conditioned as the layout is likely to change." We accept that the applicant has used the lowest allowable discharge rate, however it is still important to know the difference between the rate of discharge proposed and the calculated rate of greenfield run off in order to establish the potential influence on downstream flood risk. The greenfield runoff will be greater for the whole site than for only the impermeable areas, particularly as these were calculated based on the original four phase development and not on the smaller development covered by these applications. **We again highlight that the applicant should consider how infiltration could be used to limit the discharge associated with small events, such as by raising the outflow from the ponds to allow small storms to be attenuated and infiltrated without resulting in outflow. This should be given more consideration at detailed design.**	✓ (with note)
For discharge to a watercourse, sewer or local authority asset, detailed calculations of proposed discharge rates and volumes calculated using the methods outlined in The SuDS Manual 2015 for the 1 in 1 year, Qbar, 1 in 30 and 1 in 100 year events	The applicant proposes to limit discharge to the HC minimum guide rate of 2 l/s. This is acceptable, however it should be noted that, if the greenfield runoff rates need to be recalculated for only the impermeable areas this 2 l/s may represent a significant increase on the greenfield rate for the 1 in 1 and 1 in 30 year storms. The applicant should consider the use of combined infiltration and attenuation so ensure that the risk of flooding downstream is not increased due to the potential for larger discharges during smaller storms. The use of infiltration features in smaller events would allow for a smaller discharge volume during these frequent, small events.	✓
For discharge to a watercourse, sewer or local authority asset, detailed calculations of proposed attenuation volume to manage the rate and volume of runoff to greenfield or current rates and volumes, allowing for climate change effects and demonstrating sufficient space within the site		✖

Information required	Reviewer comments	✓✖
Clarification if attenuation structures are to be provided partly or wholly above adjacent ground level (i.e. above ground storage), and assessment of potential failure of above-ground attenuation features, including assessment of residual risks to downstream receptors, and proposed mitigation and management measures	In a previous version of our comments we highlighted that the ground levels were such that an embankment would be needed in order to provide 1m pond depth across the whole pond. The applicant has confirmed that Pond 2 will require a 400mm embankment. This is a relatively small embankment, and the risks associated are correspondingly low, however assessment of failure potential and flow routes in the event of failure will be required at the discharge of conditions phase.	✓ (with note)
Drawing to illustrate that attenuation structures are not located within an area at risk of fluvial flooding up to the 1 in 100 annual probability event and taking the effects of climate change into account, unless it can be demonstrated that the capacity of the drainage system will not be reduced and that any loss of fluvial flood storage can be compensated for elsewhere without increasing risk to people, property or infrastructure	As the entire site is located in Flood Zone 1 all drainage and attenuation features will be located outside the 1 in 100 annual probability flood extent.	✓
For discharge to a watercourse, sewer or local authority asset, demonstration that a viable connection can be made and that the suitability and capacity of the downstream system has been explored in consultation with the relevant authority	It is noted that the intended discharge point is the existing outfall from the existing pond onsite, indicating that a viable connection to the watercourse can be established. The applicant proposes a discharge rate of 2 l/s, the minimum recommended rate from the HC SuDS guidance. The applicant has now clarified the invert and cover levels for the infiltration ponds and it is evident that a viable connection to the outfall can be achieved.	✓
For discharge to a watercourse, sewer or local authority asset, 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	The applicant has highlighted that the watercourse they are discharging into has no record of flooding and so there is little likelihood that water will back up into the surface water system. The applicant should highlight the potential pathways of water in the event of backing up or blockage of the system as part of the discharge of condition application.	✓
Pollution		
Confirmation of the proposed methods of treating surface water runoff to ensure no risk of pollution is introduced to groundwater or watercourses both locally and downstream of the site, especially from proposed parking and vehicular areas	Discharge from the majority of the site is intended to be passed through two onsite ponds before leaving the site. This is considered sufficient treatment for potential pollutants onsite.	✓

Information required	Reviewer comments	✓✖
General		
If the development is to be delivered in phases, demonstration of proposed delivery and ability to maintain key design criteria	The original applications proposed a four phase development, however the withdrawal of the phase 2 and phase 3 applications makes it unclear whether there will now be a two phase development or if both 'sites' will be developed concurrently. The applicant should provide confirmation of the phases of development and that the proposed drainage will be put in place prior to any construction phases taking place. This can however be addressed as part of suitably worded planning conditions.	✓ (with note)
Exceedance		
Assessment of natural surface water flow paths through the site, noting that natural flow paths should be retained as far as practicable within a development layout, and demonstration that consideration has been given to the potential for overland flow to overwhelm the capacity of the proposed drainage system	Topography of the site suggests low risk of overland flows passing through the site that would pose significant risk to the proposed drainage system.	✓
Description and drawings demonstrating the management of surface water runoff during events that may exceed the capacity of the drainage system (including temporary exceedance of inlet features) up to the 1 in 100 annual probability event with climate change (including assessment of where water is likely to emerge) and noting that surface water should be retained within the site boundary and not pose risk to the development	The provided SWMP has indicated that the exceedance of the proposed drainage system is a residual risk for the site, however no indication has been given for how this will be managed. We stress that exceedance flows will be required to be managed within the site boundary up to the 1 in 100 year event. This will require demonstration that exceedance of the drainage system (including temporary exceedance of inlet systems such as gullies during high intensity events) will be retained within low vulnerability areas until they are able to drain into the drainage system, or conveyed overland towards the proposed attenuation basin. This must be demonstrated as part of the detailed design.	✓ (with note)
Access, adoption and maintenance		
If access or works to third party land is required, details of these works and agreement in principal with necessary landowners/consenting authorities to cross third party land and/or make a connection to the proposed watercourse/sewer	Access to third party land will not be required.	✓
Confirmation of agreement in principle of proposed adoption and maintenance arrangements for the surface water drainage system	The applicant has stated that the access road and drainage systems will be maintained by a management company who will be responsible for the maintenance of these systems. The applicant should provide maintenance plans at discharge of conditions stage.	✓ (with note)

Information required	Reviewer comments	✓✖
Demonstration that appropriate access is available to maintain SuDS features (including pumping stations)	The updated plans provided by the applicant demonstrate that suitable access can be gained to all of the surface water drainage elements.	✓

Foul Water Management Strategy

A foul water management strategy should be submitted that includes the following information:

✓ Information provided is considered sufficient

✖ Information provided is not considered sufficient and further information will be required

Information required	Reviewers comments	✓✖
Description and illustration of the proposed foul water drainage system including location of manholes, external pipework, package treatment plants, drainage fields, pumping stations and discharge locations	it is proposed that all foul water drainage onsite will be managed through the use of a package treatment plant and dispersed into a drainage field. A pumping station will be located to the north-west of the site that will pump the secondary treated effluent to the drainage field situated to the east of the site. We note that the foul sewer pipework travels through the gardens of each property and in close proximity to the proposed buildings. The applicant should consider the availability of access to this pipework and what easement would be required to ensure that appropriate maintenance and repair can be carried out. The applicant has provided the results of percolation testing that indicate the ground has a Vp of between 58.14 s/mm and 55.05 s/mm. These values are between the recommended 15 – 100 s/mm for drainage field. We also note that the drainage field will be draining the foul flows from 10 properties thus the flows are likely to exceed the minimum 2m^3/day of the Binding Rules. The applicant should approach the Environment Agency to establish whether they would be able to get a permit for the discharge activity. **The proposals are in the catchment of the River Lugg SAC and therefore we highlight that agreement with Natural England will be required.**	✓
Identification of the public foul sewerage network within the vicinity of the development and assessment of the viability to connect to this network	If a development is within 30m x number of properties from a foul public sewer a connection to that sewer must be sought. IN this case, the applicant should seek a connection to the foul public sewer if the development is within 300m of a foul public sewer.	✖ **(with note)**

Information required	Reviewers comments	✓✖
	The applicant has confirmed that the development site as given within this application is 135m away from the foul public sewer. A connection to the sewer should be sought. We note that the application is within the River Lugg catchment and thus any connection to the sewer would result in further discharge of phosphates to the Lugg catchment. Should the connection be deemed unfeasible, the applicant will require a bespoke environmental permit to discharge to ground.	
If pumped systems are proposed, justification for the use of these systems, summary of key design principles and assessment of residual risk, with supporting calculations	The applicant has provided percolation rates from a number of tests conducted around the site, indicating that the area to the east provides the best percolation test results. This has been chosen as the location of the drainage field. Foul flows will drain via gravity to a shared package treatment plant (PTP) which will discharge into a pumping station to pump flows to the drainage field. The rising main will pass through the rear gardens of plots 1 and 2 before following the route of the access road to reach the drainage field. The applicant should consider routing the rising main around to the south of the development instead of travelling through gardens. **It is currently unclear how the PTP and pump will be accessed. This should be clarified prior to the granting of planning permission.** The applicant should provide detailed design of the pump system, including size of wet well, details of duty and back up pumps and the maintenance schedule for the pumping station at the discharge of condition stage. The applicant should also provide details of the potential flow route in the event of pump failure as part of the discharge of conditions.	✖
Discharge via infiltration		
If infiltration to ground is proposed, summary of likely ground conditions including likely soil permeability, contamination risks, superficial and bedrock geology, depth to groundwater and proximity to a Source Protection Zone	The applicant has provided details of percolation testing that show average Vp rates of between 58.14 and 55.05 mm/s in the vicinity of the proposed drainage field. These rates are acceptable.	✓
If infiltration to ground is proposed, detailed calculations of proposed drainage field in accordance with BS6297 and Building Regulations Part H	The applicant has sized the drainage field based on a Vp of 58 s/mm, which is an acceptable rate based on the provided test results, and on the assumption that all of the 10 houses will have 3 bedrooms, giving an occupancy based on British Flows and Loads of 40 occupants. This gives a floor area of 464m^2. Given the proposed trench width of 900mm this would require 515.5m of linear trench.	✓

Information required	Reviewers comments	✓✖
	Detailed drawings of the layout of the proposed drainage field will be required at discharge of conditions stage.	
General		
If the development is to be delivered in phases, demonstration of proposed delivery and ability to maintain key design criteria	The original applications proposed a four phase development, however the withdrawal of the phase 2 and phase 3 applications makes it unclear whether there will now be a two phase development or if both 'sites' will be developed concurrently. The applicant should provide confirmation of the phases of development and that the proposed drainage will be put in place prior to any construction phases taking place. This can however be addressed as part of suitably worded planning conditions.	✓
Access, adoption and maintenance		
If access or works to third party land is required, details of these works and agreement in principal with necessary landowners/consenting authorities to cross third party land and/or make a connection to the proposed watercourse/sewer	No access to third party land is required	✓
Confirmation of agreement in principle of proposed adoption and maintenance arrangements for the foul water drainage system	The applicant has stated that the foul drainage would be managed and maintained by a management company	✓ (with note)
Demonstration that appropriate access is available to maintain drainage features (including pumping stations)	The proposed site layout currently provides access to the drainage field, however access to the PTP and pumping station is not clear. This should be clarified during discharge of conditions stage.	✓

Overall Comment

Prior to the granting of planning permission we recommend that further detail regarding the access arrangements for the PTP and foul pumping station be provided.

However, should the Council be minded to grant planning permission, we recommend that the following information is requested within suitably worded planning conditions:

- Detailed drawings of the proposed surface water drainage system and proposed features such as infiltration structures, attenuation features, pumping stations and outfall structures;
- Calculations to demonstrate that the proposed surface water drainage system has been designed to prevent the surcharging of any below ground drainage network elements in all events up to an including the 1 in 2 annual probability storm event. FEH 2013 rainfall data is expected;
- Calculations to demonstrate that the proposed surface water management system will prevent any flooding of the site in all events up to an including the 1 in 30 annual probability storm event. FEH 2013 rainfall data is expected;

- Calculations that demonstrates that the proposed drainage system will have sufficient capacity to cater for up to the 1 in 100 year event and allowing for the potential effects of climate change. FEH 2013 rainfall data is expected;
- Assessment of potential failure of above-ground attenuation features, including assessment of residual risks to downstream receptors, and proposed mitigation and management measures;
- Detailed drawing demonstrating the management of surface water runoff during events that may temporarily exceed the capacity of the drainage system;
- Detailed drawings of the foul water drainage strategy showing how foul water from the development will be disposed of and illustrating the location of key drainage features;
- Detailed calculations of proposed infiltration features informed by the results of infiltration testing;
- Demonstration that appropriate access is available to maintain drainage features, including pumping stations;
- Operation and maintenance manual for all proposed drainage features that are to be adopted and maintained by a third party management company;

5.5 **Principal Natural Environment Officer (Ecology)**

This application is linked and required in support of new Housing applications 202402 and 202385 –for a total of 10 new residential dwellings. The HRA process after Wealden and as required by the Habitat Regulations themselves requires that all relevant applications are considered 'in-combination' based on a precautionary methodology.

This application and 202402 and 202385 are considered in-combination in respect of the required HRA process and the same comments are applicable to all THREE applications and the single HRA appropriate assessment hereby completed.

The application site lies within the catchment of the River Lugg SAC, which comprises part of the River Wye Special Area of Conservation (SAC); a habitat recognised under the Habitats Regulations, (The Conservation of Habitats and Species Regulations 2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019' (the 'Habitats Regulations')) as being of international importance for its aquatic flora and fauna.

At present the levels of phosphates in the River Lugg exceed the water quality objectives and it is therefore in an unfavourable condition. Where a European designated site is considered to be 'failing' its conservation objectives there is limited scope for the approval of development which may have additional damaging effects. The competent authority (in this case the Local Planning Authority) is required to consider all potential effects (either alone or in combination with other development) of the proposal upon the European site through the Habitat Regulations Assessment process.

Permission can only be granted if there is scientific certainty that no unmitigated phosphate pathways exist and that the HRA process can confirm 'no adverse effect on the integrity of the River Lugg (Wye) SAC'. Natural England; the statutory nature conservation body, advise that recent case law requires effective mitigation to be demonstrated on a case by case basis whilst the River Lugg Nutrient Management Plan is reviewed to ensure greater certainty that this can provide large scale mitigation development in the area.

Notes in respect of HRA process:

- This development comprises of a total of TEN new residential dwellings and associated additional foul water flows created (Applicant estimates 6m3 per day)

- The applicant originally advised on their application form and supporting information that Foul water would be managed by a connection to the local mains sewer network (Pembridge Wastewater Treatment Works (WwTW).
- There was no technical, legal or physical reason that this connection could not be achieved and no objection was raised by Welsh Water to the proposed connection.
- The Pembridge WwTW discharges its outfall directly in to the River Lugg SAC hydrological catchment. This outfall is at P (nutrient) concentration above the conservation status level set for the River Lugg SAC catchment area.
- Additional flows in to the local mains sewer system such as those created by this development will directly generate equivalent additional flows at outfall from the WwTW and thus clearly identified pathways for additional P to enter the Lugg SAC.
- No alternative Nutrient Neutrality option has been proposed that would be needed to offset the additional phosphate loading from this development, be scientifically evidenced and legally secured for the lifetime of the development (in perpetuity). Latest guidance and advice on this issue and a specific 'Phosphate Calculator' is available at: https://www.herefordshire.gov.uk/downloads/download/2039/development_in_the_river_lugg_catchment

- National guidance and advice including (e.g. .Gov and Environment Agency), the council's Core Strategy Policy SD4 and previous local case precedence advises and confirms that where a physical connection to the local mains sewer network can be achieved (10 houses is mains sewer within 300m as applies in this case) then this should be the default and actual option utilised.
- The potential and priority to connect to the local mains sewer system has been acknowledged and highlighted by the Council's drainage consultants in their formal response updated 14-09-2021
- The current Lugg SAC phosphate scenario is not a reason of overriding public interest as defined within the Habitat Regulations to suggest that other constraints, advice and guidance detailed should not be followed in consideration of this 'in-combination' application.
- The Environment Agency have advised the LPA at recent meetings that their discharge consent system does not include any HRA process that considers nutrient level discharges and effects on designated habitats as part of their assessment and subsequently the LPA cannot rely on this process within their own required HRA appropriate assessment.
- A private foul water treatment system proposed by the applicant (drainage report: by Hydro-Logic Services Lo286A_FRA_SWMP_Pembridge_Rev4-Issue 25-05-2021) as the alternative to the achievable mains sewer connection is not considered as a relevant or appropriate alternative for the HRA process.
- A mains sewer system operated by a statutory provider can provide the greatest long-term 'in perpetuity' security and scientific certainty of satisfactorily managing the foul water created by the development. This can be achieved by a legally and scientifically demonstrated Nutrient Neutrality scheme proposed by the applicant or through a future 'Nutrients Credit' type scheme currently in development.
- Even if considered relevant the proposed private treatment scheme has not supplied specific and detailed scientific and legally certain evidence of how nutrient neutrality will be secured. The '6 criteria' referred to in the supplied drainage report that have been agreed between Natural England and Herefordshire Council are only applicable to 'small scale private foul water treatment systems' – specifically schemes that fall under the

current General Binding Rule threshold of under 2m3/day flows to discharge to ground at outfall.

At this time due to legal and scientific uncertainty and phosphate neutrality not secured there is an identified Adverse Effect on the Integrity of the River Lugg (Wye) Special Area of Conservation (a European Site, 'National Network Site' or 'Higher Status' nature conservation site). There is an Ecology OBJECTION raised as the application does not demonstrate compliance with Core Strategy SD4 and SD3 (SS1, SS6 and LD2 also apply); The Conservation of Habitats and Species Regulations 2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019' (the 'Habitats Regulations'); NPPF; and NERC Act obligations.

5.5.1 **Principal Natural Environment Officer (Ecology) (**16.11.2021 - *202402, 202385 and 211734 -= Townsend Farm, Pembridge - additional ecology comments*)

As these three applications are in the same location and have a potential 'in-combination' consideration the following comments apply to all applications and any additional requests subject to a Condition on any planning permission granted should fully reflect and consider this holistic approach to the site and the 'in-combination' nature of the development.

The additional Ecology Report by Shropshire Wildlife Surveys dated August 2021 is noted and refers. No Local Biodiversity Records Centre search as is normally expected under BS 42020 to ensure all information and biodiversity records appears to have been undertaken in support of this specific ecology report. The surveyors significant experience – in particular in respect of Bats is noted and can be considered as at least in part mitigation for the lack of a detailed LBRC search.

Due to the potentially sensitive nature of the site; the wider and extensive works proposed across all the applications being considered on the same location; local populations of protected species and other biodiversity; it is appropriate to request that a detailed Construction Environmental Management Plan – to consider all potential effects of the development process due to wider environmental factors (e.g. dust, noise, staff welfare, vehicle movements, material storage) and the potential for more direct effects on actual species – is secured as a pre-commencement condition on any planning permission granted. If more than one optimal season has passed prior to works commencing the CEMP should be based on a refreshed consideration of the ecological baseline of the site and presence of mobile and opportunistic species.

As the development is split across multiple planning applications and permissions a complete (holistic) site wide Biodiversity Net gain and linked Landscaping and Planting scheme is requested as a condition for approval prior to any construction above damp proof course level. This detailed scheme should clearly detail location and specification of all proposed 'hard habitat boxes' (considering bats, birds, invertebrates/insects and hedgehogs); soft landscaping (including detailed specifications of all seeding and planting proposed); a detailed planting, protection and seeding method statement; and a scheme demonstrating how the 'biodiversity net gain' and habitat enhancements will be managed and maintained for a minimum of 30 years (Environment Act 2021).

To ensure the locally dark landscape that benefits local amenity and nature conservation is maintained a detailed lighting and illumination plan is requested - as the development is split

across multiple planning applications and permissions a complete (holistic) site wide scheme should be supplied. This should include details relevant to both any transmitted lighting from occupation use of the dwellings and all external lighting. Full specifications of all fixtures and fitting is requested to accompany the detailed scheme and plans. The proposed scheme should clearly demonstrate that the development and its occupation will not increase any local illumination levels.

(Charlotte – can you word such as to apply to all the applications being considered 'in combination' so we approve a site wide holistic scheme at DoC.)

Protected Species and Lighting (Intrinsically Dark Landscape)

Prior to any new construction commencing a detailed lighting and illumination report– including consideration for all external lighting and internal light transmission – shall be supplied to the LPA. The report shall detail all relevant luminaire specifications, locations and any other recommended mitigation features. The approved scheme shall be implemented in full and hereafter maintained as approved unless otherwise agreed in writing by the local planning authority.

All lighting installed shall clearly demonstrate compliance with latest best practice guidance relating to lighting and protected species-wildlife available from the Bat Conservation Trust/Institution of Lighting Professionals.

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

(This condition can be either standalone or included as part of a wider landscaping and planting scheme request.)

Nature Conservation – Biodiversity and Habitat Enhancement
Prior to any construction work above damp proof course level commencing a detailed scheme and annotated location plan for proposed biodiversity net gain enhancement features including provision of 'fixed' habitat features such as habitat boxes supporting bat roosting, bird nesting, hedgehog home, hedgehog 'highways' through all solid boundary features and pollinator homes 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 all protected species are considered 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.Compliance with council's declared Climate Change and Ecological Emergency.

Construction Environmental Management Plan
Before any work; including site clearance, demolition or creation of temporary access track and parking area begin or equipment and materials are moved on to site, a Construction Environmental Management Plan (CEMP) including a full Ecological Working Method Statement and a specified 'responsible person', shall be supplied to the local planning authority for written approval. The approved CEMP shall be implemented and remain in place until all work is complete on site and all equipment and spare materials have finally been removed; unless otherwise agreed in writing by the local planning authority. If work will commence later than autumn 2022 the CEMP must be based on an updated (and included as appendix to CEMP) ecology assessment of the site and current/potential presence of protected species and other mobile and opportunistic species.

Reason: To ensure Biodiversity Net Gain as well as species and habitats enhancement 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, NERC Act (2006) and Herefordshire Local Plan - Core Strategy policies SS1, SS6, LD1, LD2 and LD3.

5.6 **Principal Natural Environment Officer (Trees) – final comments**
The amended drainage field plan is now in accordance with the tree report regarding T16 and its root protection area.

In light of this amendment I don't have an objection to the proposal but ask that should the application be approved a condition is included to adhere to the tree report.
Bea Landscape design – Tree Protection Plan - number 19-110-05 revision A

5.7 **Team Leader Area Engineer**
No Highways objection – with conditions

It is noted that this application is ancillary to applications 202402 & 202385 which the LHA has commented fully on in relation to the access and layout. There are no highways objections to the proposal, and whilst it is recognised that this facility has no value without the other application, the delivery of this application should be phased to ensure safe access has been formed prior to commencing the delivery of this part of the site. As a result condition CAT is recommended in the event that permission is granted.

All applicants are reminded that attaining planning consent does not constitute permission to work in the highway. Any applicant wishing to carry out works in the highway should see the various guidance on Herefordshire Council's website:

www.herefordshire.gov.uk/directory_record/1992/street_works_licence

https://www.herefordshire.gov.uk/info/200196/roads/707/highways

CAT – Construction Management Plan

5.8 **Environmental Health Service Manager (Noise/Nuisance)**
From a noise and nuisance perspective our department has no objections to this proposal.

5.9 **Representations**

	Consulted	No Response	No objection	Qualified Comment	Object
Parish Council	√√		√		
Public Consultation	√√	√√			

Representations received are:

5.10 **Pembridge Parish Council**
Support

This site is allocated in the Pembridge Neighbourhood Development Plan for housing to provide 16 homes.

The applicant has been in discussion with Herefordshire Council since 2017 to produce compliant plans to work for both the authority and the applicant, however this has not been possible to achieve.

Recently, following previous plan withdrawals and reapplications the plans provided has reduced to 10 dwellings on the front section of proposed allocated area in the NDP and it follows that this application conforms to the NDP. The applicant addressed the Parish Council to summarise the challenges faced whilst trying to provide suitable housing on this site and their decision and reasoning to reduce the overall plan to 10 houses over these two remaining applications.

The Parish Council has reviewed the latest plans in line with the NDP and note as follows:

PEM3 Housing development in Pembridge site allocation in PEM 4 vi) specific requirements
This site on the edge of the village entrance must be in keeping with Pembridge setting in design and visual appearance as set out in in the NDP.

PEM5 Local housing need –
A combination of housing sizes are moderate for this smaller sized development containing self-build with opportunity for home working.

PEM6 Design criteria met

PEM7 – There are no affordable homes in this application, but the application does include self-build opportunities which could provide affordable homes.

PEM9 – Self build opportunities to include working from home options

PEM18 & 19 &20 Met

PEM22 Sewerage installation proposed to serve sites application 211734

PEM 23 – High standard of design

PEM25 Highway requirements considered.

5.11 The Ward Councillor was provided with an update on this application, by email dated 10 November 2021, and no request for the redirection of the application to planning committee was received. Determination therefore falls within the Scheme of Delegation to Officers.

6 PLANNING OFFICER'S APPRAISAL

6.1 **Constraints:**
Adjacent to Housing allocation site – PNDP
Adjacent to Pembridge Conservation Area
SSSI Impact Zone
River Lugg Catchment
Trees

Appraisal:

Statutory and Policy context

6.2 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states as follows:

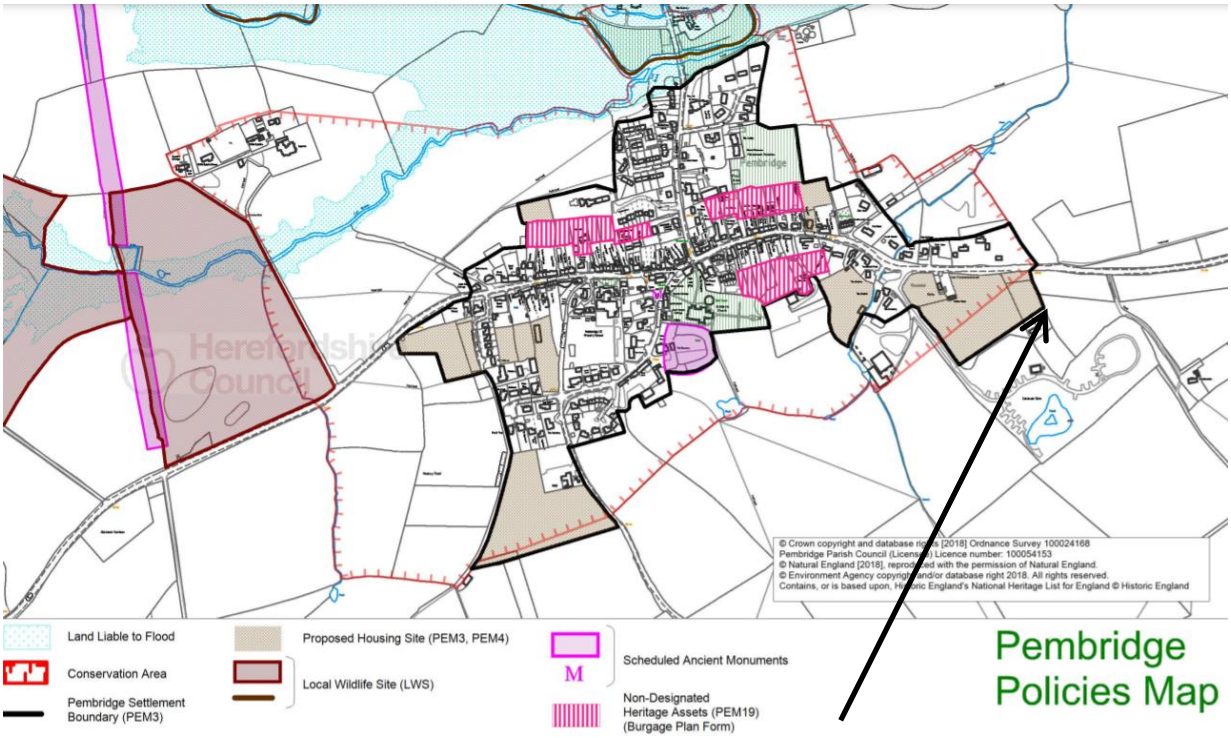
"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

6.3 In this instance the adopted development plan is the Herefordshire Local Plan – Core Strategy (CS) and the 'made' Pembridge Neighbourhood Development Plan (PNDP). The National Planning Policy Framework (NPPF) is a significant material consideration.

6.4 Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) (the 2012 Regulations) and paragraph 33 of the NPPF require a review of local plans be undertaken at least every five years in order to determine whether the plan policies and spatial development strategy are in need of updating, and should then be updated as necessary. The CS was adopted on 15 October 2015 and a review was required to be completed before 15 October 2020. The decision to review CS was made on 9 November 2020. The level of consistency of the policies in the local plan with the NPPF will be taken into account by the Council in deciding any application. In this case, the policies relevant to the determination of this application have been reviewed and are considered to remain entirely consistent with the NPPF and as such can be afforded significant weight.

Proposal

6.5 The proposed drainage field would serve 10 dwellings proposed under two separate applications (202402/F & 202385/F), which are both within an allocated housing site, as set out in the PNDP (Land at Townsend – PEM 4vi).



Pembridge Policies Map – PNDP (site subject to this application)

Ecology/drainage/water quality

6.6 CS policy SD4 confirms the sequential preference for developments to connect to existing mains waste water infrastructure. Where this would result in nutrient levels exceeding conservation objective targets the policy stipulates that developments must fully mitigate the adverse effect and sets out five bullet pointed options that may achieve this. In cases where there is evidence that a connection to the mains is not practical alternative foul drainage options can be considered, with a package sewerage treatment works (discharging to a watercourse or soakaway) being the sequentially first alternative. PNDP Policy PEM22: Sewage and Sewerage Infrastructure states that the public sewerage network and/or Pembridge WwTW will not be permitted to be overloaded and that development may need to be phased or developer contributions sought to address this. The post-policy text, at paragraph 8.9 states that '*Where foul drainage can be connected to the village sewerage system, alternative arrangements should be avoided, and it is understood the Environment Agency would object to such arrangements in any event. For development that cannot connect to the village sewerage system, appropriate provision for the treatment of foul drainage should be utilised in accordance with Herefordshire Local Plan Core Strategy policy SD4.'*

6.7 This application for a drainage field has been submitted, following amendments to the proposed drainage strategy for the two associated housing schemes. The housing schemes originally proposed that foul drainage would be to the mains, but have since been amended and now propose a shared Private Treatment Plant, with pump, which would discharge to the drainage field proposed under this application. These housing application sites lie some 135 metres from the foul public sewer. The applicants assert that a connection to the wastewater infrastructure network is not practical now, because to do so at this juncture would result in a likely significant

adverse effect on the Special Area of Conservation (SAC), but that the provision of a Private Treatment Plant to a drainage field would not.

6.8 The site lies within the River Lugg sub-catchment of the River Wye SAC, a European designated site which is protected by the Conservation of Habitats and Species Regulations 2017 ('Habitats Regulations'). In order for development to be acceptable, these Regulations require it to be demonstrated that it will have no likely significant effect on the River Wye SAC, either alone or in combination with other proposals. If it cannot, measures must be proposed to remove the impact, or the proposal should be refused.

6.9 CS policy LD3 states that '*Development that would be liable to harm Sites of Special Scientific Interest or nationally protected species will only be permitted if the conservation status of their habitat or important physical features can be protected by conditions or other material considerations are sufficient to outweigh nature conservation considerations*'. Furthermore, policies SD3 and SD4 state that development proposals should not lead to deterioration of EU Water Framework Directive water body status, or adversely affect water quality, either directly through unacceptable pollution of surface water or groundwater, or indirectly through overloading of Wastewater Treatment Works and should fully mitigate their adverse effects of wastewater discharges into rivers. More specifically SD4 confirms that:

- *in the case of development which might lead to nutrient levels exceeding the limits for the target conservation objectives within a SAC river, planning permission will only be granted where it can be demonstrated that there will be no adverse effect on the integrity of the SAC in view of the site's conservation objectives; and*

- *where the nutrient levels set for conservation objectives are already exceeded, new development should not compromise the ability to reduce levels to those which are defined as favourable for the site*

6.10 The NPPF, at paragraph 180b) states that '*development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest*'. Paragraph 182 confirms that '*The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site*.'

6.11 The River Wye SAC is currently considered to be failing its conservation objectives. As a site located within the catchment of the River Lugg SAC, which comprises part of the River Wye SAC the requirement for an assessment under the Habitat Regulations is triggered. That assessment must satisfy beyond all reasonable scientific doubt that there would not be an adverse effect on the integrity of the River Wye SAC (Lugg sub catchment) which is currently failing in terms of phosphate levels. In respect of the housing applications WW has not objected to a connection in principle; only highlighted that the network is for foul connections only. Notwithstanding this, the housing applications have been amended to connect to a shared PTP with outfall to the drainage field proposed under this application. This amendment to the housing applications and consequently the submission of this application for a drainage field

have been made on the (misguided) understanding that this would overcome an objection on water quality grounds. The amended drainage scheme suggests that it accords with Natural England's criteria for acceptable discharges to drainage fields in the Lugg Catchment (as set out in the Council's Position Statement, update of April 2021) and as such would not have a likely significant effect on the SAC. This approach fails on two grounds.

6.12 Firstly, Natural England and the Environment Agency have confirmed (recent publication: Planning and permitting: the respective roles of Natural England and the Environment Agency in managing impacts on European1 sites through the Habitats Regulations, the Water Environment (Water Framework Directive) Regulations, and the Environmental Permitting Regulations) that:

> *'Any plan or project which requires planning permission, Building Regulations approval or an environmental permit from the Environment Agency must comply with the requirements of those regulatory regimes as well as what is needed to meet the Habitat Regulations. For example, all these regimes require that developments should be connected to the public foul sewerage network wherever this is reasonable. This includes areas where the Habitats Regulations apply and any need to reduce nutrient inputs in those areas should not lead to the installation of non-mains foul drainage systems in circumstances where connection to the public foul sewer would otherwise be considered reasonable. Any plan or project then connecting to mains would still need to also be compliant with the Habitat Regulations.'*

6.13 This confirms that the current need to reduce phosphate levels in the Lugg catchment does not, of itself, justify a non-mains foul drainage scheme where one exists. The Land Drainage comments are clear, and accord with the general binding rules, that if a public sewer is within 30m x the number of properties proposed (here: combined housing schemes of 30 x 10 = 300m) then a mains connection must be sought. The housing application sites are some 135 metres from the foul public sewer and there is no good reason why a connection cannot be made, i.e. as per the government's guidance – 'there is a river or a railway line in the way'.

6.14 Secondly, Natural England's criteria for discharges to drainage fields (as set out in the Position Statement), stipulates an initial, qualifying criterion of '*Small discharges to ground i.e. less than 2m^3/day*[1]'. The proposed drainage field would serve 10 units (202402/F & 202385/F). The application predicts the discharge to be 6m3 per day, acknowledges that Environment Agency consent would be required and requests that this is a condition of any planning permission. The Government's Daily discharge calculator for domestic properties confirms that the combined proposals:

- 202402/F – 5 x 4 bed units
- 202385/F - 1 x 2 bed, 2 x 3 bed & 2 x 4 bed

exceed the calculator's values (see populated spreadsheets below).

Daily discharge calculator for domestic properties V2.0 July 2019

Use this calculator to work out how much effluent your septic tank or small sewage treatment plant will discharge a day when it's being used to treat the sewage from one or more houses or flats.

Number of properties	10	→	Enter the number of properties which are connected to the plant
Number of bedrooms	36	→	Enter the total number of bedrooms for all of the properties and press return
Cubic metres a day	0	→	**This is how much treated sewage your plant will discharge a day**
			The values entered are too large for this calculator.
			Please see the Flows and Loads 4 guidance

For example, if you have 2 houses sharing a septic tank, one with 3 bedrooms and the other with 4, enter 2 for the number of properties, 7 for the number of bedrooms. and this will give you a result of 1.65 cubic metres a day.

Combined 202402/F & 202385/F = 10 units

Even if the discharge was from one housing scheme only it would still exceed 2m3/day1.

Daily discharge calculator for domestic properties V2.0 July 2019

Use this calculator to work out how much effluent your septic tank or small sewage treatment plant will discharge a day when it's being used to treat the sewage from one or more houses or flats.

Number of properties	5	→	Enter the number of properties which are connected to the plant
Number of bedrooms	20	→	Enter the total number of bedrooms for all of the properties and press return
Cubic metres a day	3.6	→	**This is how much treated sewage your plant will discharge a day**

For example, if you have 2 houses sharing a septic tank, one with 3 bedrooms and the other with 4, enter 2 for the number of properties, 7 for the number of bedrooms, and this will give you a result of 1.65 cubic metres a day.

202402/F – 5 x 4 bed units

Daily discharge calculator for domestic properties V2.0 July 2019

Use this calculator to work out how much effluent your septic tank or small sewage treatment plant will discharge a day when it's being used to treat the sewage from one or more houses or flats.

Number of properties	5	→	Enter the number of properties which are connected to the plant
Number of bedrooms	16	→	Enter the total number of bedrooms for all of the properties and press return
Cubic metres a day	3.15	→	**This is how much treated sewage your plant will discharge a day**

For example, if you have 2 houses sharing a septic tank, one with 3 bedrooms and the other with 4, enter 2 for the number of properties, 7 for the number of bedrooms, and this will give you a result of 1.65 cubic metres a day.

202385/F - 1 x 2 bed, 2 x 3 bed & 2 x 4 bed

6.15 If the qualifying criterion of the discharge being 'small' is met, Natural England's position is that all of the following criteria must then be demonstrated:

a) *The drainage field is more than 50m from the designated site boundary (or sensitive interest feature) and;*
b) *The drainage field is more than 40m from any surface water feature e.g. ditch, drain, watercourse, and;*
c) *The drainage field is in an area with a slope no greater than 15%, and;*
d) *The drainage field is in an area where the high water table groundwater depth is at least 2m below the surface at all times and;*
e) *The drainage field will not be subject to significant flooding, e.g. it is not in flood zone 2 or 3 and;*
f) *There are no other known factors which would expedite the transport of phosphorus for example fissured geology, insufficient soil below the drainage pipes, known sewer*

flooding, conditions in the soil/geology that would cause remobilisation phosphorus, presence of mineshafts, etc. and;

g) To ensure that there is no significant in combination effect, the discharge to ground should be at least 200m from any other discharge to ground.

6.16 Consequently, if the drainage field served only one housing scheme or both, it would not fall within the definition of a 'small discharge'. It, therefore, does not fall to be considered against criteria a)-g) because it has fallen at the first hurdle, by exceeding the requirement to be a 'small discharge'. The applicants query why discharges of more than 2m3/day do not fall within a 'small discharge' and contend that whilst their drainage strategy would result in some temporary increase in phosphate load it could be partially mitigated by the removal of agricultural land from production (grazing) and the remainder offset thought the purchase of 'phosphate credits' when wetland schemes have been delivered and this can be a conditional requirement of the grant of permission. The applicants also suggest that the drainage scheme is acceptable in all respects, on the basis that the Council's Land Drainage Consultant has no objection. The current situation and scale of development proposed (drainage for 10 units = approximately 6m3/day) means that at this juncture neither a mains connection nor drainage field are acceptable. Whilst understanding the applicants' frustration, it is not simply the case that one or other strategy must be allowed. The applicants' request that the matter is conditioned, to allow either a connection to the mains when the scheme is built out or that 'phosphate credits' are purchased is not acceptable either, because these suggestions fundamentally ignore the requirement for scientific certainty at the time of determination of an application. Similarly, the suggestion that some of the phosphate load would be offset by the removal of agricultural land is without evidenced details or legal mechanism to actually achieve this. The Council's Land Drainage Consultant's remit is flood risk and the technical details of the drainage system, and not specifically water quality and the impact on protected areas. That falls to the Ecologist and Natural England, who both object to this application.

6.17 To conclude on foul drainage the proposed drainage strategy to serve the proposed housing does not accord with the policy requirement to connect to mains infrastructure where it exists and critically as concluded in the HRA AA does not provide scientific certainty that the proposed foul drainage strategy to serve the proposed housing would have no adverse effect on the integrity of the River Lugg (Wye) SAC. Natural England, as statutory consultee, concur with this assessment and advise that on this basis the local planning authority cannot grant permission for this proposal, unless it passes the tests of Regulation 64 of the Conservation of Habitats and Species Regulations 2017 (as amended). This states that permission cannot only be granted if there are no alternatives and the proposal must be carried out for imperative reasons of overriding public interest. It is recognised that at this time there are no alternative drainage strategies that would not adversely effect the integrity of the River Lugg (Wye) SAC, but the provision of 5 dwellings would not amount to an imperative reason to override the public interest in protecting water quality. The applicants have challenged the information included in the HRA AA and conclude that it has misled Natural England. On this basis they have requested that an updated HRA AA is sent to Natural England. I note that the HRA AA does not expressly mention the offsetting or suggested conditioning of a mains connection and/or purchasing of phosphate credits, however as set out above these still do not provide the level of certainty required at the time of determination of a planning application. Bearing in mind that the proposal conflicts with the Development Plan in terms of the under provision of housing etc., I am not persuaded that another HRA AA would be beneficial at this time. If the applicants appeal, as they have advised they intend to, a fresh HRA AA will be undertaken by the competent authority (the Inspector), and which will take into account all the relevant information

at that time. Given the evolving nature of this situation, the recent submission of a wetland application (213571/F) and the length of time before an appeal is likely to be determined, the position may well be different to now and consequently it is best reconsidered then.

6.18 The proposal fails to accord with the Conservation of Habitats and Species Regulations (2017) (as amended) and conflicts with CS policies LD2, SD3 and SD4 and the requirements of the NPPF. The latter confirms that in such cases development should not normally be permitted and the presumption in favour if sustainable development is not engaged. The only exception is stated to be '*where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest'.* In this case the benefits are the delivery of 10 dwellings, but as set out in the reports for the associated housing schemes these proposals have significant disbenefits. In summary, they would provide for an under provision of housing on an allocated site, thereby prejudicing housing growth and circumventing the requirement for affordable housing and financial contributions, would constitute inefficient use of land, would not provide a balance of open market house sizes and would result in harm to the character, appearance and setting of the Conservation Area and nearby listed building and comprises poor design.. Had the housing schemes been policy compliant the applications could have been held in abeyance whilst the wetland scheme(s) progressed and the approach to 'phosphate credits' finalised. However, as that it not the case at the time of determination the drainage strategy fails to meet policy requirements and does not demonstrate that it would not increase phosphate levels and consequently it would have a likely significant effect on the SAC. Overall the schemes conflict with the Development Plan and would not provide benefits that clearly outweigh harm to the Special Area of Conservation (SAC).

6.19 Turning to other matters, as a below ground feature the proposed drainage system would not materially alter the natural topography, subject to the requirement for levels to remain as existing. Following the submission of amend layout plans that tally with the tree protection plans, the Tree Officer has no objection, subject to compliance with the Tree Protection Plan. By virtue of distance separation there would be no adverse impact on the amenity of those using the caravan/camping site. As confirmed in the Ecology comments, subject to conditions protected species and areas, and biodiversity net gains can be protected and achieved, in a manner that adopts a holistic approach across this site and the allied housing schemes.

6.20 In the absence of material considerations that indicate a decision being made other than in accordance with the Development Plan, it is considered that the proposal is unacceptable and is therefore recommended for refusal.

RECOMMENDATION: REFUSE [√]

REASONS FOR REFUSAL:

1 The site lies within the catchment of the River Lugg Special Area of Conservation (SAC), which comprises part of the River Wye SAC, and triggers the requirement for a Habitat Regulations Assessment. Under the Conservation of Habitats and Species Regulations 2017 (as amended) there is a requirement to establish beyond all reasonable scientific doubt that there will not be an adverse effect on the integrity of the River Wye SAC (Lugg sub catchment) which is currently failing its water quality targets. The proposal, which is proposed to serve 10 dwellings (36 bedrooms) does not demonstrate either nutrient neutrality or betterment. It is considered to

result in a likely significant effect on a habitat site, so therefore fails to meet the requirements of policies LD2, SD3 and SD4 of the Herefordshire Local Plan - Core Strategy and the National Planning Policy Framework (paragraph 174 e)), together with the provisions set out in The Conservation and Habitats and Species Regulations 2017 (as amended). The presumption in favour of sustainable development does not apply (as stipulated at paragraph 182 of the National Planning Policy Framework) and there is therefore a clear reason to refuse planning permission under paragraph 11 d) i of the National Planning Policy Framework.

2 The proposed private treatment plant, with outfall to a drainage field, fails to accord with the requirement to connect to the mains where it exists and it is reasonable to do so, without either justification or evidence that it would achieve nutrient neutrality or betterment in any event. The proposal therefore conflicts with policy SD4 of the Herefordshire Local Plan - Core Strategy.

Informative Notes

Informative code (use INS for non-standard)	
IP3	Application refused following discussions (no way forward)
	This decision should be read in conjunction with those for applications 202402/F and 202385/F (the housing schemes which the proposed drainage field would serve).

Final Application Checks

➢ Habitat Regulation Assessment process undertaken:	Yes – NE object
➢ Pre-commencement conditions agreed with applicant / agent:	N/A
➢ Ward Councillor contact made?	√
➢ Redirection request received?	No
➢ Extension of time obtained (if necessary) and PA6 added?	No, applicant would not agree to one
➢ Does any part of this report require redaction?	No

Signed: .....  ..... Dated: 26 November 2021

Herefordshire Council

TEAM LEADER'S COMMENTS:

DECISION: **PERMIT** ☐ **REFUSE** ☒ X

Signed: ..... Dated: 1st December 2021 .....