

Planning application comment was submitted on the **06 September 2023 14:44 PM**

The following is a comment on application **P230457/F** by **Chris Stephens**

### **Nature of feedback: Objecting to the application**

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**Comment:** Dear HFC team

We really feel that the key issues offered in the last representations have not been addressed. They have not been sufficiently acted upon and the development should not be given planning permission. As such we along with the vast majority of the village parishioners continue to object to this application.

Almost everyone in the village have continually objected to the development (in favour of alternative sites) and responded appropriately to the consultation processes during the last 10years. This strength of feeling was formally confirmed at the very recent Herefordshire Council supported poll with a democratic vote by Colwall Parishioners with more than 92% of the village voting in favour of not developing Grovesend Field.

In addition to our previous comments we are keen to emphasise our objection to the development as follows:

Grovesend Field has National Conservation Area Status and this has not properly been considered

Herefordshire Council has a distinct statutory duty (enforceable by Judicial Review) to preserve or enhance Conservation Areas.

We believe the Conservation Area has protected status and legal Counsel advice indicates, in summary, that sufficient justification exists for a High Court challenge of any grant of planning permission for the reasons set out. This is against the background of a contentious neighbourhood plan allocation of this site within a conservation area (as well as the Malvern Hills AONB) when it is far from clear that the implications of doing so were understood by any of the parties involved

The status of Grovesend Field within the local Conservation Area is a key issue that appears not to have been given the correct attention in the preparation of the Colwall NDP. The present proposals would cause substantial harm to the Conservation Area. As Carly Tinkler, the author of the Colwall LSCA, advised; "4.1.14 The village's local distinctiveness and sense of place (described in detail in the 2019 Visual Study) is precious, and also at risk of diminishment through unsympathetic changes of many forms.

Absence of Localism in determining the choice and prioritisation of Development Site Options / Public Opinion / Democratic process

Much has been made of the importance of considering and acting on local feedback in the choices of site for development as key to the NDP and the planning development sites that are chosen.

Throughout the last 10years in public consultations local feedback has been clear that the Grovesend Field should not be chosen for development vs alternative sites. This has clearly not been the preferred option for development including the general feedback in the preference of the Mill Lane site vs Grovesend Field site and the results below

In 2013, 2015 the preference was (83%:17%) in favour of Mill Lane vs Grovesend Field

In 2018 it was (88%:15%)

In 2020 it was (97%:3%)

Nevertheless, and using a process contrary to the advice of Herefordshire Council's planners, the government, the Parish Council's professional planning consultants and the author of its LSCA report, Colwall's Parish Council's draft NDP reversed that selection and provided for development at Grovesend despite this local feedback but also subject to important qualifications relating to pedestrian access and the protection of ecology and the Conservation Area.

The draft NDP was approved at referendum by a very narrow margin of 563 votes for and 516 against. This is one of the poorest support scores of any NDP and most attribute this very low nett promoter score to the the Grovesend Field site being listed as an option for development

The NDP covers a very broad range of guidelines and many local people were not aware of the provision for development in the Conservation Area.

Again, and consequently, at the request of a formal Parish Meeting an official poll was conducted by Herefordshire Council on the 14th June 2023. In answer to the question "Do you oppose the development of a new housing estate on the Grovesend Field site in the conservation Area off Old Church Road?" 92% of parishioners voted "yes!"

### Access and Safety concerns

For practical purposes, the sole vehicular, cycle and pedestrian access to the site will be along Old Church Road, which already has severe problems. The slightly unclear drawings submitted by the Applicant would at best propose the creation of a severely substandard highway layout that would exacerbate existing problems/risks already highlighted in previous Colwall Parish Council and Highways reports.

The proposal would appear to require the removal of sections of the existing verges and mature hedges within existing homeowners boundaries including our own property and we will not give the permission for this. To the extent that they would involve use of land outside the highways land they would also require the consent of other adjoining landowners, which is very unlikely to be forthcoming. The narrow road would operate as a deterrent to safe pedestrian access and so the site would not be deliverable. The hedges and verges have been recognised as an important element in the character of the Conservation Area.

Furthermore we have safety concerns specific to our own boundary for the Grovesend property which has been built and in place since 1894. Looking at the plans and the vague highway side boundaries and verges at roadside there is an overlap on what we believe to be our boundary, hedging and the end of our driveway and entrance to Old Church Road. I have attached photos to confirm our boundary lines which would suggest the proposed design and footpath could not be delivered to meet safety requirements

The entrance to the development is also much too close to our entrance and would represent a significant safety risk for vehicles, pedestrians and animals entering Old Church Road. Currently we can stop safely on our drive off the highway to open/close our gates without entering the highway when leaving/entering our property. This must be maintained.

### Ecology

The Colwall NDP demands that "Ecological habitats must be retained, protected and enhanced, and managed to ensure their future health". The original Ecological Appraisal provided by the Applicant stated that the site was considered unsuitable for Great Crested Newts, was of low value for foraging or commuting bats, that the five species of birds observed were species of low conservation concern, [REDACTED]

[REDACTED] "The site was concluded to be of low wildlife interest".

We have counted over 20 species of birds. The revised report accepts that Great Crested Newts do exist in at least two gardens adjoining the site, that 5 different species of bat were recorded on further visits [REDACTED]

[REDACTED] It records inspections of one of at least three of the garden ponds concerned (albeit over the fence) but not the others and fails even to record a natural pond partly within the site. Crucially, no provision has been made to preserve vital existing wildlife corridors.

## Costs and Benefits

The application includes outline proposals for the creation of areas of public open space and play areas on what would be left of the existing open space. Subsequent maintenance of those areas would be a substantial commitment that the Parish Council has warned it will not undertake. The Applicant now says that it would probably be devolved to a management company. Will those costs fall on the affordable housing elements, or only on the open market properties? The proposed open spaces include locally important heritage assets. Those should be protected

Essential Details. The revised proposals include "Draft S. 106 Heads of Terms" covering around half a page. It makes no provision for the S. 278 agreement that would be required for the highway works to proceed. It is inadequate at this stage in the process.

**Attachment:** sandbox-files://64f8818156523413327007, sandbox-files://64f881815e590614229697, sandbox-files://64f8818157b2f740265983, sandbox-files://64f88196cd5ea464225438, sandbox-files://64f881971d05d302510212, sandbox-files://64f8819705075513353233

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Their contact details are as follows:

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**Last name:** Stephens

**Email:** [REDACTED]

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**Infrastructure from section 106 to consider:** Preserve hedges, verges and trees and ensure entrance is not to/from Old Church Road

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Link ID: [https://www.herefordshire.gov.uk/info/200142/planning\\_services/planning\\_application\\_search/details?id=230457](https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=230457)

Form reference: FS-Case-545026616



## **Sewage – Proposed development of 36 Homes at Grovesend Field, Colwall P230457F**

Our sewerage systems were designed to transport and process pee, poo and paper, plus a certain amount of ground and rainwater. The system that exists at any given time has a capacity limit. If that limit is exceeded, we have problems. It has, and we do!

The volume and nature of the load imposed on the system is not constant. For example, the population of Colwall is said to have trebled in the last 30 years, the new 60 bed care home on the old Shweppes Bottling Plant site is well under way, climate change is resulting in more frequent and more intense storms, changes in bathing habits and the frequent use of clothes and dish washers all contribute to increasing volumes of effluent. Increasingly aggressive cleaning chemicals change the nature of effluent, fats poured down drains and the increasing use of wet wipes combine to cause more blockages.

To be fair to the water companies, those changes are not their fault, but they have the responsibility of coping with them. Are they doing that? Sadly, no.

A joint opinion piece published in June 2022 by the chief Medical Officer for England and the Chairs of Ofwat and the Environment Agency emphasized “ When bacteria from human faeces are ingested it increases the risk of significant infections including antibiotic resistant bacteria. ... Raw sewage from storm overflows and continuous discharge of waste containing viable organisms from sewage treatment works is an increasing problem and ... a serious public health issue. ... raw sewage discharge from the sewage network ... should be exceptionally rare.” As the report pointed out, the public health dangers are in addition to the ecological and environmental impact.

In May this year the chair of Water UK (the body representing the water and sewage industry) said “The message from the water and sewage industry is clear - we are sorry. More should have been done to address the issues of spillages sooner and the public is right to be upset about the current quality of our rivers and beaches.” She promised that the industry would spend an extra £10bn this decade but acknowledged that “This problem cannot be fixed overnight but we are determined to do everything we can to transform our rivers and seas in the way we all want to see.” £10bn will not be sufficient to solve the problem, but it will be a good start when (and if?) it happens. What is happening in the meantime? Raw sewage is being dumped in our waterways now.

Charges levied by the water companies on individual tax payers are related to their success or otherwise in limiting pollution incidents. Companies are required to record raw sewage “dumps” with dwindling monitoring provided by Ofwat and the Environment Agency, but a program of annual tests has recently been delayed by six years. In effect, the companies are marking their own homework. Their income is also increased by every new property linked to the network. This means that the companies are massively incentivized to maximize their income by minimizing the recording of dumps and welcoming new customers. According to evidence in a class action currently being presented to the High Court, they are doing that to the tune of around £800m a year. However, even on the statistics provided by the water industry, untreated sewage was discharged to our rivers and seas over 300 million times last year.

So, what does that mean for Colwall? Published data show that in 2022 there were 79 dumps over a total of 579 hours from the Colwall combined sewer outlet and a further 103 dumps over 1360 hours from the Colwall Sewage Works itself. That cannot possibly be accepted as “exceptionally rare” or explained by storm water surcharges (2022 was an exceptionally dry year). One consequence of the discharge of untreated sewage other than during an exceptional storm surcharge is that the discharge is undiluted and therefore more potent.

Those data, plus citizen testing showing enhanced phosphate levels downstream of the sewage works, demonstrate that the system is failing, and failing badly, to cope with the existing load. Discharge from Grovesend might not be significant as a percentage of the total input to the Works, but would be a significant proportion as a concentrated addition to the current overload affecting the Works or individual pipelines.

The first location for concern will be the point on Old Church Road where pumped sewage from Grovesend joins the existing gravity sewer. While the pumped effluent should be free from storm water, the existing sewer is supplied from much older houses and will therefore include a substantial element of storm water. If the pumped sewage joins the gravity line when there is a storm water surcharge, presumably the pressurized contribution will win. A video of an overload near Cradley village a few years ago showed wet wipes, condoms, toilet paper and tampons swilling across the road in a faecal “soup”. Is that an acceptable risk?

The consequence of the addition of undiluted Grovesend effluent to the Colwall CSO and the Sewage Works will be a certainty, not a risk. It will be added to the existing overload which resulted in 182 dumps lasting over 1939 hours in the “dry” year of 2022. That situation, surely, is not acceptable.

**If the water industry does get its house in order then that will be welcomed, but it will take time and considerable capital investment. In the meantime it seems that we shall have to put up with the public health, ecological and environmental problems that already exist. But, we do not have to add to those problems. Herefordshire Council has an opportunity to avoid doing that by rejecting the current planning application for development on Grovesend Field.**

## **Ecology – Proposed development of 36 Homes at Grovesend Field, Colwall P230457F**

According to a joint report “State of Nature” published in 2019 by Government agencies and over 70 wildlife organisations, populations of the UK’s most important wildlife have plummeted by an average of 60% since 1970 and the UK is said to be amongst the most nature depleted in the world. The causes were said to include the loss and fragmentation of habitats for house building. The Colwall NDP demands that “Ecological habitats must be retained, protected and enhanced, and managed to ensure their future health”.

Ecology reports commissioned by the Applicant and its responses to them do not inspire confidence in their reaction to this situation. The site is described as being “of low wildlife interest”. In fact the site as a whole has a high level of wildlife interest, being used by [REDACTED] **newts (including Great Crested), foxes, deer, otter, snakes, frogs, toads, slow worms, well over 500 moth species, water shrew, a wide variety of birds, and bats.**

Some of the failings in the original ecology report have been addressed in the second version, but some persist. The Applicant has made a clear commitment to address a few of the reports’ recommendations, but its responses to most of them are either vague or absent.

The original appraisal stated that the site was unsuitable for **Great Crested Newts**. Following submission of photographic and other evidence that they existed in at least two gardens adjoining the site, formal records readily available with the Herefordshire Biological Records Office were consulted and further work was undertaken by distributing mats as refugia and by visual inspection. Unfortunately, the mats were laid across or close to [REDACTED] trails. [REDACTED] in the event that newts had taken refuge there, they would almost certainly have been eaten. Visual inspection was limited to the newest of the five garden ponds adjoining the site and did not include the two well established ponds which are the subject of formal records, sited in the garden of [REDACTED]. [REDACTED] The [REDACTED] visual inspection was carried out by pointing a green torch over the dividing fence rather than by visiting the pond. [REDACTED] The existence of a small natural pond and watercourse in the SE corner of the site has been ignored.

Newts are semi-itinerant for much of the year, covering as much as ½km where essential suitable corridors exist. The proposals would involve the closure of the existing corridor, trapping any found on the site and moving them to an isolated and inadequate location in the SuDS ponds, where they would be vulnerable to anthropogenic pressures and predation by domestic pets. The location should in any event be designed to improve site habitat, providing permanent refuge, overwintering (hibernacula) provision, along with secure scrub cover for dispersal and foraging and damp planted rougher areas. The enhanced area should not just be managed as a dog walking amenity area with no value to wildlife or as habitat corridor, or by the usual tidy municipal park planting.

Similar issues arise relating to other threatened amphibians (including **toads, and palmate and viviparous newts**) and reptiles such as **slow worms** and **grass snakes**.

[REDACTED]

The home range of a badger can vary considerably, depending on the territory, the quality and extent of the food available and the time of year, but they can range from 30ha to about 150ha and a nightly foraging perambulation of around 4km would be fairly typical. These nocturnal outings are also important as a way of marking their territory and facilitating interchange between setts to maintain genetic diversity. The maintenance of corridors is therefore essential for their welfare. [REDACTED]

[REDACTED]

According to the original appraisal the site is of low value for foraging or commuting **bats**. A more careful appraisal has identified at least 5 varieties of bats foraging or crossing over it. The appraisals still do not appear to have taken account of the nesting potential of the number of veteran oaks surrounding the site or of the brick built former icehouse on the boundary of the site, and of the need for residents to have low light corridors as navigational aids to access foraging sites. The foraging range for bats is normally around 4km but can be up to 6km.

The appraisers only identified five varieties of **birds** of “low conservation concern” using the site, which seems rather sad. In fact around 30 species have been identified, including kingfisher, heron, woodcock, kites, sparrowhawks, swallows, housemartins, siskins, owls, blackcaps, redpoll, bramblings, blackbirds nuthatch, redwing, fieldfare, grey wagtail, three varieties of tits, two of woodpeckers, two of pigeons, four of finches and two of thrush.

**Otter** have been recorded, probably en-route from other known local locations [REDACTED]

[REDACTED]

Helen Stace submitted a detailed objection on the 22<sup>nd</sup> April 2023 concerning the importance of conserving and propagating **historic orchard trees** on the site and on the design and maintenance of any new community orchard. She also emphasised the importance of the **piggery buildings** as an essential element of the fruit enterprise, a circular economy which dominated Colwall in many respects over the last two centuries. One of the buildings should be retained and restored or at least recorded and interpreted

The report sadly understates the value of the site as a wildlife corridor linking good habitats nearby.

Like people, many animals depend on the use of locations outside their immediate residential areas, and wildlife corridors are vital for their survival. The government and wildlife organisations are heavily promoting the importance of wildlife corridors through farmland as well as in urban areas. These proposals would cut off the existing well-used routes along the eastern boundary of the site. That is not necessary. There is adequate space on the site, which is already proposed to accommodate more houses than specified in the NDP. If the development is to proceed it should at the very least include a wildlife corridor along that route, again planted and maintained to include enhanced protective habitat rather than as a dog walking route.



The report also fails to suggest adequate plans for improving site habitat for wildlife biodiversity, given the national emphasis on this being an important part of developments caring for the nation's overall environment for future generations.

The decision by Natural England not to object to the proposals will presumably have been based on the bland picture painted in the ecology reports.

Despite their evident shortfalls, the ecology reports include a number of recommendations relating to the protection of fauna and flora both in the construction and completed stages of this proposed development. A few of those, such as the protection of the root area of an oak on the northern boundary, have been specifically accepted by the Applicant. Others have not been mentioned or have been referenced in disturbingly vague terms.

These include arrangements for the maintenance of areas of public open space and the pumping station (it is acknowledged that the Parish Council will not accept responsibility for this). The Applicant simply says they "are likely to be managed via a management agency"

This is an area of around 1.6 hectares which will apparently include a children's play area, community orchard, wildflower meadow, wildlife refuge, woodland and general amenity areas. It will be the equivalent of a modest municipal park, requiring considerable commitments of time, money and expertise. The proposed wildflower meadow alone will require much more than simply seeding an existing area of the field, and it will require specialized maintenance to avoid reversion to grassland. It would be reasonable for these expenses to be borne by the prospective residents rather than ratepayers in general because the benefit of the amenities will be almost entirely for the new estate. Will the additional expenses be levied on the affordable housing elements or only on the open market value properties? The Applicant's proposals should at the very least include detailed planting plans plus firm proposals for future maintenance.

**The ecological appraisals and especially the Applicant's proposals for the protection of the ecological elements of the site, both initially and in the longer term, are woefully inadequate to support an application for full planning permission, and Herefordshire Council is asked to reject them.**

**IN THE MATTER OF**  
**LAND TO THE SOUTH OF OLD CHURCH ROAD,**  
**COLWALL, HEREFORDSHIRE**

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**OPINION**

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**Introduction**

1. I am instructed by a group of residents in Colwall (“the Residents Group”), to review the material associated with an application for planning permission at Land to the South of Old Church Road, Colwall, Herefordshire (“the Site”).
2. The application is for the “*Construction of 36 no. dwellings, new vehicular and pedestrian access, internal infrastructure, landscaping, open space; and associated works, including demolition of piggery buildings*” (“the Application”) Application Reference Number P230457/F.

**The factual background**

3. The Colwall Neighbourhood Development Plan (“the NDP”) was made on 7 June 2021 following a referendum on 6 May 2021. It is now more than 2 years old. It forms part of the Development Plan of Herefordshire Council (“the Council”).
4. In Colwall, there is a conservation area (Colwall Stone/ Upper Colwall). One of the aims of the NDP, to protect the conservation area, is encapsulated in Aim 5. This is to provide new development which is high quality in terms of plan size and materials and in accordance with the Malvern Hills AONB Design Guides and other relevant documents.<sup>1</sup>
5. The NDP also states that:

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<sup>1</sup> Page 18 of the NDP.

“6.2.7 The built environment in Colwall Parish is generally of a very high quality with a distinctive local character and the different character areas are described below. There are many significant historic buildings throughout the designated neighbourhood area; the Parish includes 88 listed buildings (see Appendix IV) and a conservation area. As noted above the Parish also lies entirely within the Malvern Hills Area of Outstanding Natural Beauty (AONB).

6.2.8 The extent of the Colwall Stone / Upper Colwall Conservation Area is shown on Map 8. The special character of these areas within the Conservation Area is described in the Village Design Statement and summarised in paragraphs 6.2.9 and 6.2.10 below.”

6. §§6.2.9 and 10 of the NDP then deal with the NPPF §§124 and 125 which emphasise the importance of good design and the link between good design and sustainable development. §6.2.10 specifically refers to The Malvern Hills AONB Guidance on Building Design (2013), Highway Design (2011), Landscape Strategy and Guidelines (2011), Selection and Use of Colour in Development (2015). It is said that these provide detailed advice on design across the AONB area and relevant sections of these guidance documents have been used to inform the neighbourhood plan policies on design for Colwall.

7. Policy CD4 is the policy which deals with development in the Conservation Area and Protecting Built Heritage Assets:

“1. Proposals for new development will be required to demonstrate careful consideration of any potential impacts on the setting of the conservation area and other nearby heritage assets above or underground. Proposals will be required to describe the significance of any heritage assets affected, including any contribution made by their setting. Development proposals should protect, conserve, and where possible enhance heritage assets and their settings in a manner appropriate to their significance. ...”

8. I have been provided with a copy of the ‘Designation of Conservation Area: Colwall Stone/ Upper Colwall’ (“the Conservation Area Statement”). This is a document which is dated 24 August 2001 and is signed off by the Conservation Officer Miss R Bonner. Of note, is the following section of that document which reads as follows:

“Second, of particular note in that document is it says that there are ‘a number of open spaces, the majority of which are located around Old Church Road, that make a significant contribution to its rural character and form a backdrop to Walwyn Road. These open spaces are an intrinsic element of this part of the

village and they make a significant contribution to the character and appearance of the area. Their full importance can be viewed from Jubilee Drive on the Malvern's from where they can clearly be seen to be an integral part of the nuclei of the proposed conservation area. They form a setting which reinforces and enhances the characteristic."

9. Therefore, it seems to me that the open spaces are said to form part of the conservation area character; the conservation area is not merely defined by the buildings themselves.
10. The Conservation Officer has responded to the application. They note that the Site lies within the Colwall Conservation area and adjacent to listed buildings, the Homestead and attached Stable Block, Barn House, and Winterslow and that there are non-designated heritage assets in the form of tramlines, piggeries and an ice house.
11. The AONB Officer has responded and highlighted a range of issues including on the principle of development; the landscape and visual impacts; the design; the plot size and orientation; the housing mix; parking and erosion of tranquillity; light pollution; PV panels. In addition, the tree officer also makes comments about the road and whether it ought to be moved further south to avoid a no-dig zone around a Tree T43.

### **Legal principles**

12. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the LBCAA") sets out the general duty with respect to conservation areas in exercise of planning functions (s72(1)). It also requires that special attention be paid to the desirability of preserving or enhancing the character and appearance of that area (s72(2)).
13. Section 66 of the LBCAA refers to the general duty in respect of listed buildings in the exercise of planning functions. Section 66(1) states that, in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State, shall have regard to the desirability of preserving the building or its setting or any features of special architectural interest which it possesses.
14. The NPPF from §§199-202 deals with how applications which concern heritage assets should be treated.

“199. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

200. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of: a) grade II listed buildings, or grade II registered parks or gardens, should be exceptional; b) assets of the highest significance, notably scheduled monuments, protected wreck sites, registered battlefields, grade I and II\* listed buildings, grade I and II\* registered parks and gardens, and World Heritage Sites, should be wholly exceptional<sup>68</sup>.

201. Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply: a) the nature of the heritage asset prevents all reasonable uses of the site; and b) no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and c) conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and d) the harm or loss is outweighed by the benefit of bringing the site back into use.

202. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.”

15. In the preparation of the NDP, it was incumbent upon the Council to provide advice or assistance to the parish Council, neighbourhood forum or community organisation that is producing a neighbourhood plan or Order as required by paragraph 3 of Schedule 4B to the Town and Country Planning Act 1990.<sup>2</sup>

16. When a draft neighbourhood plan is submitted to the authority, the authority is required to consider the draft plan or order against the statutory requirements set out in paragraph

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<sup>2</sup> Also contained in the PPG on ‘Neighbourhood Planning’; Paragraph: 021 Reference ID: 41-021-20140306; Revision date: 16 11 2016 See [previous version](#)

6 of Schedule 4B of the Town and Country Planning Act 1990. When considering the content of a neighbourhood plan, an independent examiner's role is limited to testing whether or not a draft neighbourhood plan meets the '*basic conditions*' and other matters set out in paragraph 8 of Schedule 4B to the Town and Country Planning Act 1990.

17. One of the '*basic conditions*' set out in Schedule 4B, paragraph 8(2):

(2) A draft order meets the basic conditions if—

(a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the order,

(b) having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the order,

(c) having special regard to the desirability of preserving or enhancing the character or appearance of any conservation area, it is appropriate to make the order,

...

18. Paragraph 3 then provides that:

“(3) Sub-paragraph (2)(b) applies in relation to a listed building only in so far as the order grants planning permission for development that affects the building or its setting.

(4) Sub-paragraph (2)(c) applies in relation to a conservation area only in so far as the order grants planning permission for development in relation to buildings or other land in the area.

(5) In this paragraph “ listed building ” has the same meaning as in the Planning (Listed Buildings and Conservation Areas) Act 1990.

(6) The examiner is not to consider any matter that does not fall within sub-paragraph (1) (apart from considering whether the draft order is compatible with the Convention rights).”

19. There is a need to give ‘*considerable importance and weight*’ to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise in section 66(1) (*Barnwell Manor v East Northamptonshire DC*) [2014] EWCA Civ 137.
20. In *South Lakeland District Council v Secretary of State for the Environment* [1992] 2AC 141, the House of Lords found that preserving the character or appearance of a conservation area could only be achieved either by a positive contribution to preservation or enhancement, or by development that leaves character or appearance unharmed.

### **Opinion and Analysis**

21. **First**, I note the Conservation Area Statement. That does not appear to be referenced in Appendix II, the Bibliography of the NDP. Strikingly, it is also not referred to in the section which makes reference to the detailed design guides. I find that very surprising when it is the Colwall Conservation Area Character Statement. It is endorsed by Ms Bonner, the Conservation Officer. It is likely that this is the character statement against which the impacts on the Conservation Area ought to be assessed and it is surprising that the NDP makes no mention of it.
22. Under the Service Level Agreement (“the SLA”) it would have been for Herefordshire Council to provide feedback on the draft NDP. That would have also been necessary in order for it to discharge its duties under paragraph 8(2) and/or 8(3) of Schedule 4B. It seems to me that there is a risk that the NDP has been prepared in ignorance of the Colwall Conservation Area Character Statement, and that the Council has not corrected the position in the feedback it was to provide during the preparation of the NDP.
23. **Second**, not only is the Conservation Area Statement not mentioned in the NDP, but (perhaps consequently) it also does not appear to be mentioned in the Heritage Statement produced by the Applicant; it is not listed as part of the source material relied upon (see page 17). It is also not referenced in the Conservation Officer’s response to the application. Each party seems to have undertaken their analysis unaware of the existence of this document.

24. **Third**, from my reading of the Conservation Area Statement, it appears that a number of open spaces are of significance in the conservation area - §8 above and that these form part of the character of the Conservation Area. These have not been assessed by the Applicant or by the Conservation Officer. In my view, neither the Applicant nor the Council appear to have grappled with this point.
25. *South Lakeland* requires that the preservation of the character and appearance of the conservation area can only be achieved either by positively contributing to preservation or enhancement or by development that leaves character and appearance unharmed. In my view, both the Applicant and the Conservation Officer do not appear to have considered how the open spaces *themselves* are preserved or enhanced by the development. In my view, there is a risk of a Court finding that the statutory duty in s.72(1) has not properly been discharged.
26. **Fourth**, the Conservation Officer in their consultation response notes the fact that the site is adjacent to the stable blocks, the barn house, and winterslow, as well as the non-designated heritage assets. The Conservation Officer makes no assessment of the impact of the proposed development on the *significance* of those heritage assets and /or does not provide any reasoned justification for the acceptability of the impacts having regard to the statutory duty and the relevant paragraphs of the NPPF. If it is the case that the Consultation Officer has not grappled with the impacts on these listed buildings, there is also a risk that the s.66(1) duty has also not been properly discharged. It follows that having not grappled with the impacts on those heritage assets, the Council have not advised that ‘*great weight*’ needs to be given to the conservation of the assets (§199 of the NPPF).
27. **Fifth**, I note that there are a number of points made in the Malvern AONB Officer’s Report. This includes the lack of representative viewpoints from the north-west, north or north-east. There are also a litany of other points that the Planning Officer will need to grapple with. This includes the need to give ‘*great weight*’ to the conservation and enhancement of the landscape and scenic beauty in the AONB (NPPF §176); the importance of views into and out of the village; the landscape and visual impacts on the AONB; the plot sizes and orientation; the housing mix; the erosion of tranquillity and light pollution.



28. **Sixth**, I have reviewed the Planning Statement produced by the Applicant which correctly makes reference to the need to demonstrate that there are exceptional circumstances and where it can be demonstrated that the development is in the public interest (see §5.33). However, the Planning Statement does not appear to go on to provide that justification that such exceptional circumstances exist in this case.
29. In my view, the need to provide ‘*great weight*’ to the conservation and enhancement of the AONB, as well as the need to meet the threshold that there are ‘*exceptional circumstances*’ and where the development is in the public interest is a critical part of the planning balance. Whilst this appears to have been dismissed given that the Site is allocated in the NDP, that does not answer the point: there is still a need to meet the ‘*exceptional circumstances*’ test. In so doing, there is a requirement per §177 NPPF to demonstrate that (a) there is a need for the development, including in terms of national considerations and the impact of permitting it or refusing it on the local economy; (b) the cost of, and scope for developing outside the designated area, or meeting the need in some other way; and (c) any detrimental effect on the environment, the landscape, and recreational opportunities and the extent to which they could be moderated. In my view, (a) and (b) in particular have not been addressed.
30. In particular, I note that:
- a. there is 6.19 years of housing supply per the July 2022 Housing Land Supply update. There is arguably a question about how there is a ‘need’ for the development, per (a).
  - b. there appears to have been no alternative sites assessment to demonstrate that (b) has properly been discharged i.e the cost of and scope for developing outside of the designated area.
  - c. the specific points raised by the AONB officer will be relevant to (c). Accordingly, there is also a risk that the relevant tests in §177 have not been properly discharged either.

### **Conclusion**

31. I trust that this review is of assistance to those instructing. There appear to be a number of points which I hope have been adequately canvassed herein that the Colwall

Residents Group may consider pursuing further through litigation in the High Court if permission is granted.

32. If you require clarification, please do not hesitate to get in touch with me.

**Sioned Davies**  
**No5 Barristers' Chambers**

**18<sup>th</sup> August 2023**

**London – Birmingham – Bristol**

**IN THE MATTER OF**

**LAND TO THE SOUTH OF OLD CHURCH ROAD,**

**COLWALL, HEREFORDSHIRE**

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**OPINION**

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**Colwall Residents Group**

**Land to the South of the Old Church Road**