

DELEGATED DECISION REPORT

APPLICATION NUMBER

192023

The Cliffe Arms, Mathon, Herefordshire

CASE OFFICER: Mr Josh Bailey
DATE OF SITE VISIT: 16TH August 2019

**Relevant Development
Plan Policies:**

Herefordshire Local Plan – Core Strategy

Policies:

SS1 – presumption in favour of sustainable development
SS2 – delivering new homes
SS4 – movement and transportation
SS6 – environmental quality and local distinctiveness
RA2 – housing in settlements outside Hereford and the market towns
RA6 – rural economy
SC1 – social and community facilities
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

Mathon parish are not seeking to progress a Neighbourhood Development Plan at this time

NPPF

Sections:

2 – achieving sustainable development
4 – decision-making
5 – achieving a sufficient supply of homes
6 – building a strong, competitive economy
8 – promoting healthy and safe communities
9 – promoting sustainable transport
11 – making effective use of land
12 – achieving well-designed places

14 – meeting the challenge of climate change, flooding and coastal change

15 – conserving and enhancing the natural environment

16 – conserving and enhancing the historic environment

Relevant Site History: NE/2000/1172/O – site for one dwelling on adjacent land – refused

MH88/3202 – alterations and extensions to form restaurant, kitchen and toilets – approved with conditions

CONSULTATIONS

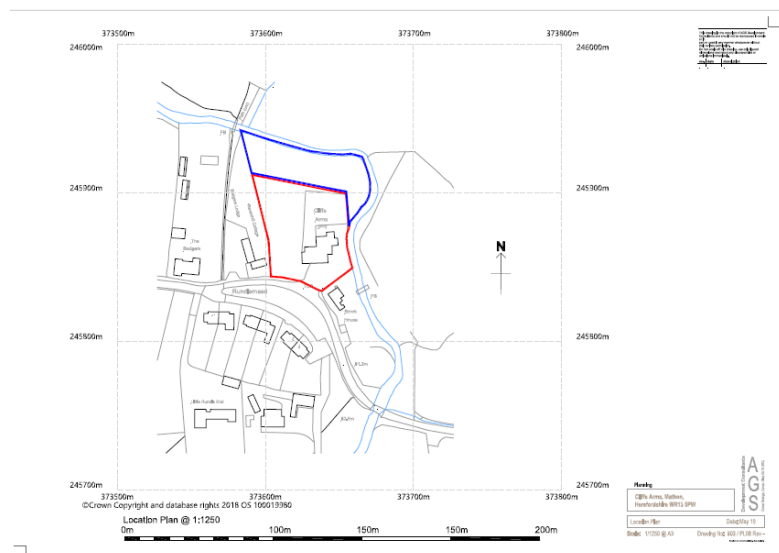
	Consulted	No Response	No objection	Qualified Comment	Object
Mathon Parish Council	X				X
Transportation	X			X	
Buildings Conservation Officer	X			X	
Ecologist	X				X
Severn Trent	X		X		
Environment Agency	X	X (No comment)			
Land Drainage	X	X			
Environmental Health (Housing)	X	X			
Herefordshire CAMRA	X				X
AONB Officer Malvern Hills	X				X
Economic Development	X	X			
Historic England	X	X (No comment)			
Council for British Archaeology	X				X
Society for the Protection of Ancient Buildings	X				X
The Georgian Group	X				X
PROW	X		X		
Site Notice/Newspaper	X				X(79 objections from 93 residents)
Local Member for Hope End	X				X

PLANNING OFFICER'S APPRAISAL:

Site description and proposal:

Sited north of the C1162, the Cliffe Arms is a currently closed public house within the small dispersed settlement of Mathon. The public house has been closed since 2004 but in planning terms, its current use class is that of a public house, without substantive evidence to demonstrate otherwise. Whilst notwithstanding that the building is Grade II Listed and adjacent to a number of Grade II Listed Buildings, the site also lies wholly within the Malvern Hills Area of Outstanding Natural Beauty (hereafter AONB).

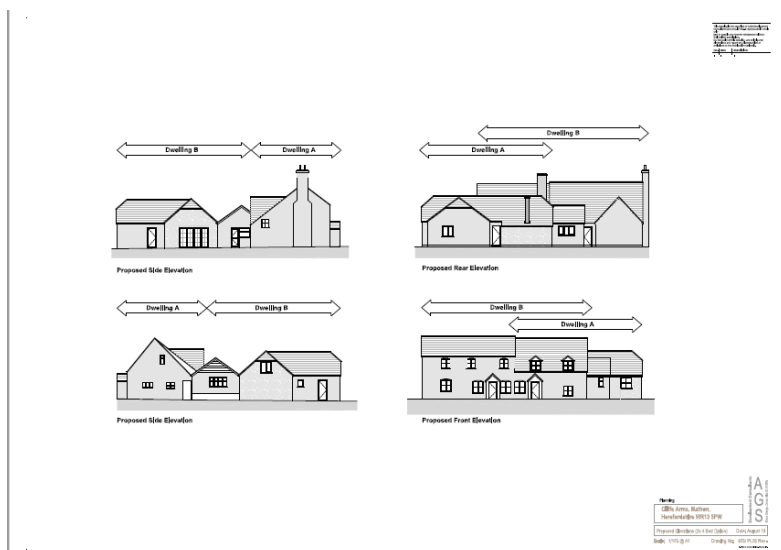
The application before me seeks planning permission for the proposed conversion of the Cliffe Arms to form 2 no. dwellings and the erection of 1 no. detached dwelling with the garden of the site. I refer one below to the proposed plans:



- Location plan



- Proposed site plan



Cliffe Arms)

- Proposed elevations (conversion of



- Proposed elevations (new dwelling)

Accompanying this application in addition to the existing and proposed plans was the following:

- Application Form
- Residential Units form
- 1-page flood risk assessment
- A 6-page design and access statement, however no reference made to marketing

Representations:

Mathon Parish Council – Objection: “A Council Planning Meeting was held to consider the above application on 28 August 2019 at 7.30 pm in Mathon Parish Hall. 56 residents of the Parish attended the meeting ALL of whom registered their opposition to this application.

Mathon Parish Council, therefore, strongly objects to this application on the following grounds:

- 1. Changing the use of The Cliffe would deprive the parish of a social amenity, which is at the heart of the community and important for its health and wellbeing. Herefordshire Council Policy SC1 applies.*
- 2. The reinstatement of the pub would create employment opportunities and would enhance the tourism aspects for the Bed & Breakfast/holiday lets available in the parish.*
- 3. Building a separate house in the garden area of The Cliffe would restrict the future development of the pub. The new build would detract from the row of listed cottages adjoining The Cliffe.*
- 4. A number of potential buyers for The Cliffe (to retain it as a pub) have approached the owner, some via the Parish Council, but all offers have been refused. However, a local landowner is still able and willing to purchase the pub at market value, restore it and run it as a pub for the benefit of the local community and adjoining parishes. Due to its location, on the edge of Malvern and close proximity to Ledbury, the pub is a viable business opportunity.*
- 5. There is an inaccuracy in the Application Form - item 11 headed Existing Use - contrary to the answer stated on the form the previous use was NOT residential, it was a pub (and still is). The only residential area of the pub was for the management/staff of the pub only and restricted to upstairs rooms. The question - When did this “residential use end” has not been answered because the property has always been a pub, so the question could not apply.*
- 6. The site is a flood risk. Any new build would have to be made flood resilient and would itself exacerbate the flooding problems, pushing flood water onto neighbouring land and properties. The Cliffe site is the least appropriate new build site in the village”.*

Transportation – Qualified comments: *“The local highway authority request the following amendments are made:*

- Visibility splays of 2m x 43m should be provided for each access driveway and the proposed hedging/planting should be positioned at least 1m behind the visibility splay.*
- The first 5m of the driveway should be of a hard surface such as tarmac rather than gravel.*
- Gates are not shown on the plans but if gates are proposed they should be positioned at least 5m back from the edge of the carriageway”.*

Buildings Conservation Officer – Qualified comments: *“Thank you for consulting the building conservation team. We require more information to prove that the current planning use as a public house will not allow viable use of the building. As the building has been a public house for much of its history, it has high communal value as a place which was key to the social, public and commercial life of the village. Communal value is part of the special historic interest of the building protected by its designation as a listed building. The proposals here would also require a low level of less than substantial harm to the fabric of the building to convert it to dwellings. This harm could only be permitted if there was evidence that there was no way the building had a viable use as a public house. The proposal for the new garage in front of the pub would be harmful to the setting of the nearby listed buildings,*

should evidence be forthcoming on the impossibility of viably using the building as a pub, this aspect of the scheme would need to be revised”.

Ecologist – Holding objection: *“The lpa has a legal duty to ensure all protected species are assessed as part of the planning process prior to any grant of planning consent. (Habitat & Species Regulations, NERC Act, NPPF, Core Strategy LD2, Wildlife & Countryside Act). There are bat roost and presence of multiple bat species including higher conservation status species such as Horseshoe and Bechstein’s records in the locality and potential for bat roosting (and bird nesting) within the existing buildings on the site proposed for conversion or that could be impacted by works on the site. The surrounding habitats offer excellent potential for foraging and commuting by bat species.*

To ensure this due consideration and ecological report is requested a detailed ecological report should be supplied, supported by all relevant Optimal Period species surveys, including all appropriate static monitoring periods to fully ascertain Bat roosting, foraging and commuting. The final report should clearly detail all results, ecological working methods, mitigation and compensation proposed along with recommendations of any protected species licences that may be required. A full lighting plan with light levels and spreads clearly demonstrating that there will be no illumination of the adjacent brook wildlife corridor will occur must be supplied. In addition the ecology report should clearly detail the biodiversity net gain (enhancements) that the development will offer as required through the NPPF, NERC Act and Core Strategy LD2 – these are in addition to any mitigation or compensation proposed for any habitats lost or that may be required to obtain a protected species licence. As a minimum enhancements for bat roosting, bird nesting hedgehogs and insects/invertebrates are expected. A fully detailed and specified ‘green infrastructure plan should be supplied including full specification for all proposed tree and shrub planting, planting and protection specifications and a 10 year establishment and management plan. All proposed tree and shrub species should only consist of locally characteristic, native species and must fully consider climate change and pest-pathogen resilience. Beech, Rowan and Silver Birch are not considered appropriate species”.

Severn Trent – No objection: *“With Reference to the above planning application the company’s observations regarding sewerage are as follows. As the proposal has minimal impact on the public sewerage system I can advise we have no objections to the proposals and do not require a drainage condition to be applied”.*

Environment Agency – No comments to make: *“I have received consultation on a proposed change of use application in Mathon (ref: 192023). I would have no comments to offer on the proposed development and have attached a copy of our Standing Advice for non-major development within Flood Zone 2 of an Ordinary Watercourse. I would recommend you seek comments from your internal drainage team as the Lead Local Flood Authority.”*

Land Drainage – No response received

Environmental Health (housing) – No response received

Herefordshire CAMRA – Detailed 7-page letter of objection on the following four grounds:

“CAMRA wishes to OBJECT to these applications on the following FOUR grounds;

1. *Community impact of Closure: The continued closure of the Cliffe Arms is having a harmful effect on the local community. As the only pub (and commercial facility) in the village and parish of Mathon, it has been a vital provider of social amenity, economic activity and employment opportunity for generations. Its permanent loss will create real long-term harm and should therefore be resisted.*
2. *Failure to Market the premises; There is no evidence provided with this application to show the premises have been marketed by the current owners as a public house business at any time. Further, overtures from potential owners (seeking to run the premises as a pub) have been declined or ignored. In light of this interest still persisting, it would be both perverse and at odds with national and local planning policies to consider an alternative use for the premises.*
3. *Non-viability not demonstrated: The Cliffe Arms has been described as a 'redundant pub' in the application. This is not correct. The pub is closed, but it is still a pub. No evidence has been provided that indicates the pub is in any way redundant, unwanted or commercially unviable. It is only closed for the reason that the owners have decided to neither open for business or to sell the premises.*
4. *Impact on the Built environment: The Cliffe Arms is a Grade II-listed building dating back to the Century. It has been recorded as a village inn for c.180 years and, as a distinguished building sat at the heart of Mathon, it contributes significantly to the character of the Malvern Hills AONB in which it is located. If approved, this proposal would deprive a valued listed building of its historic and established purpose”.*

AONB Officer Malvern Hills – Objection: *“The site of the proposed development lies within the boundary of the Malvern Hills Area of Outstanding Natural Beauty (AONB), which is an area designated for its national landscape importance. The Malvern Hills AONB Partnership seeks to encourage high quality design and to protect and enhance the landscape. The AONB Unit objects to this application.*

Design

The AONB Management Plan (2019-24) is a material consideration in relation to planning, it aims to Conserve and enhance the distinctive landscapes of the AONB and its setting, particularly those that are most sensitive or have little capacity for change. Policy BDP2 in the plan states that Development in the AONB and its setting should be in accordance with good practice guidance including that produced by the AONB Partnership.

The Design and Access statement states that careful consideration of the site’s constraints and contextual surroundings have been taken into account to ensure that the proposed dwellings respond to the challenges offered. However, a clear justification of how this has been done and how it has taken account of the AONB Management Plan (2019-24) and associated guidance is not provided. Neither can we find evidence of the AONB Guidance on the Selection and Use of Colour in Development having been used to inform the application, in particular the new proposed residential unit. Therefore, the application appears to be contrary to AONB Management Plan policy BDP2.

The AONB Guidance on Building Design states that new development should respect the scale, mass and form of the existing locally characteristic buildings within the landscape character type where the development is located to avoid eroding local identity. It also considers that the local pattern of spacing between buildings and roads should be respected.

Such guidance does not appear to have been adhered to in this case. For example, with the scale of the garages and the proposal to locate garages between the road and the house, both of which appear to be atypical for the area.

Community Life

The Malvern Hills AONB Management Plan recognises the importance of people and community to the designated area and seeks to enable communities to grow by stimulating diverse and sustainable economic prosperity whilst conserving and enhancing the distinctive character of the area. Policy LWP3 of the Management Plan is as follows: Seek new, inventive and sensitive solutions to the retention of local shops and provision of viable services...'

It is clear from the weight of response to the current application that there is a lot of local opposition to the proposal and, further, that there appears to be a willingness and funds to reopen the pub on this site. The Unit is conscious of the lack of community facilities in Mathon and would find it regrettable if all avenues had not been explored to reopen a pub on the site within its own, existing garden. Such a facility might also be expected to give a significant boost to tourism in the AONB, in furtherance of objective LO11 and Policy TP12 in the AONB Management Plan".

Economic Development – No response received

Historic England – No comments to offer

Council for British Archaeology (CBA) – Detailed Objection in summary: *"The CBA has concerns regarding the impact of the above application on the historic, archaeological and architectural interest of the Listed Grade II Cliffe Arms, formerly the Trundle Inn. We raise the following points:*

- The application lacks an appropriate heritage statement that assesses significance and impact as required by the National Planning Policy Framework paragraph 189.*
- The scope of works incorporates many interventions into the fabric of the main building, curtilage listed outbuilding and setting that may harm heritage significance and value".*

Society for the Protection of Ancient Buildings (SPAB) – Objection: *"We feel that the application lacks the information necessary to make an informed determination. In the absence of an accompanying Heritage Statement and/or Design & Access Statement we feel that this application should be refused. We refer to paragraph 193 of the NPPF which states, "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. "and to paragraph 194, "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."*

The Georgian Group – Objection: *"From first view the application lacks an appropriate heritage statement that assesses significance and impact. Following some further research it is included in its planning application. Such document needs to be uploaded to both the*

planning and listed building consent applications, as it would be easy to assume that no such heritage statement was provided. The building incorporates much surviving internal and external fabric that make a substantial contribution to its significance. The accompanying Heritage Assessment does not address the significance of these internal features, nor does it attempt to justify in removing historical fabric. The proposed development will potentially harm the significance and setting of the Cliffe Arms, as well as the setting of the adjacent Brook House and Ravens Hill. More information is needed in the Heritage Impact Assessment in order to assess the setting of these listed buildings, and the impact that the proposed development would have. In line with Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, in assessing the proposals, special regard should be given to the desirability of preserving the listed building, its setting and any of its features of special architectural or historic interest. As a result consent should not be given in this instance”.

PROW – No objection

Site Notice/Newspaper – 79 letters have been received on behalf of 93 residents, all of whom OBJECT to the application. They raise the following points:

- No marketing undertaken
- Proposal is contrary to the development plan
- Pub should be re-opened with interest to purchase by local residents
- Impact on social amenity/exclusion on local community
- Unsustainable modes of travel to access alternative given Council has declared climate change
- Loss of popular attraction within AONB
- New dwelling undermines viability as a public house
- Building is seeking to become an asset of community value
- Flooding issues
- Risk to highway safety
- Loss of employment
- Loss of biodiversity
- Building currently unoccupied with number of shipping containers permanently on site, residency cannot be claimed
- Application inaccuracies
- Council should consider a Compulsory Purchase Order

Local Member for Hope End – Ward Cllr Johnson was updated via email on 2nd October 2019, to which a delegated refusal has been agreed by return on the same day through email.

Representations, supporting documentation and proposed plans, are on the Council's website:

https://www.herefordshire.gov.uk/info/200142/planning_services/planning_application_search/details?id=192023&search=192023

Pre-application discussion:
171506/CE

Constraints:

C1162 adj.

Grade II Listed Building and Grade II Listed Buildings adjacent

PROW (MA18) adj.

Flood Zone 1, however edge of site is in flood zone 2 and 3

Protected Species adj.

Surface Water

SSSI Impact Zone

Malvern Hills AONB

Appraisal:

Policy context

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.”*

In this instance the adopted development plan comprises the Herefordshire Local Plan – Core Strategy (CS). It is also noted that the site falls within the Mathon Neighbourhood Area, however the parish is not seeking to progress a Neighbourhood Development Plan at this time. The National Planning Policy Framework 2019, is also a significant material consideration.

As a starting point, whilst the applicant looks to make the point that the public house has been closed for 15 years, and that such a use ‘ceases’, and in effect reverts to residential, in planning terms, the use of the building is considered to be that of a public house. There is insufficient information to demonstrate otherwise and it has been brought to my attention through a number of representations that the building has been uninhabited for some time or used for storage, but not on a continuous basis. Given there is insufficient evidence to demonstrate otherwise, as such, I will assess this application on the basis of this understanding as a public house.

There are a number of considerations to discuss, however, the overriding issue concerns whether the pub, as a community facility, has been satisfactorily marketed and whether its conversion to a residential use as proposed is justified.

Marketing

Policy SC1 of the CS seeks to retain existing social and community facilities, including public houses. However, it identifies circumstances where the loss of these facilities can be justified. These are:

- where an appropriate alternative facility is available; or
- where the facility is no longer required, viable or fit for purpose; and
- where appropriate, it has been vacant and marketed for community uses without success.

In terms of the marketing aspect, Policy SC1 refers to the phrase ‘where appropriate’. I view that there may be instances where it may not be appropriate to market a community facility, for instance if it were a church, where there would be limited scope for alternative uses. However, in this case, where the facility could readily be re-used, such as a public house or an alternative community facility e.g. such as a village hall with bar/function rooms, then I view that it is appropriate to market the building.

The marketing of community facilities, such as public houses, needs to be undertaken in accordance with policy SC1 of the CS. It is acknowledged that public houses, particularly in rural settlements are often at the heart of the community, offering a place to socialise and a sense of inclusion. However, it is becoming increasingly common that in some locations, the retention of public houses and other rural services are under threat, and it is essential that support is given to enable businesses and their facilities, to continue to serve their local communities. This has become increasingly common across the county in the last 12-18 months with a number of applications to change the use of public houses to residential.

As part of the supporting text to Policy SC1 of the CS, where a business is shown to be no longer viable, the first alternative should be to investigate alternative community uses. Indeed, paragraph 5.1.36 of the CS, quotes,

“in order to demonstrate that alternative community uses have been considered, evidence of marketing for a period of at least 12 months should be provided with any proposals involving the loss of community facilities”.

It is not sufficient to state that the case proposed overcomes this basic requirement simply due to the passage of time that the premises has been closed, it must be regarded that The Cliffe Arms needs to be the subject of appropriate marketing. Therefore, a proposed change of use can be refused on such grounds if it is considered that the appropriate marketing exercise has not been completed.

It is accepted that public houses do close. However, there are prominent examples of public houses across Herefordshire, which have re-opened and are subsequently thriving. The Red Lion at Kilpeck was subject of an application for a change of use to a dwelling that was refused and subsequently dismissed on appeal in 16 November 2006, (APP/W1850/A/06/20209045 – DCSW2005/3916/F). The appeal centred on whether or not the public house had been marketed appropriately. This was before the advent of the NPPF, the Core Strategy and Neighbourhood Development Plans. The Newtown Inn is another example of where the council have successfully defended appeals of this nature. Furthermore, a recent appeal at the Lamb Inn, Stoke Prior (APP/W1850/W/18/3199884 – 174653), considered that it had not been demonstrated that the property could not be used for an alternative community use, that it is unviable, and that there are other alternative comparable facilities to serve the community. As such, in the case of the Lamb Inn, the loss of the community facility was not satisfactorily justified and the proposal was viewed to not accord with policy SC1 of the CS. Given the recent appeal decision, this should be taken into consideration, when applying Policy SC1 in this context, although it should be stated that each particular application should be assessed on its own merits.

Notwithstanding its prolonged closure, no marketing has been undertaken on The Cliffe Arms. I must consider the application on what has been submitted in front of me. I view that the business has not been marketed for an appropriate timeframe at an adequate valuation, as outlined as part of the supporting text for Policy SC1 of the CS, particularly outlined under the supporting information of paragraph 5.1.36. Furthermore, assessment of the suitability of the site for other community uses has not been pursued and no substantive justification has been provided as to whether the building could be re-used as an alternative community use, which Policy SC1 also makes clear for proposals to meet.

To satisfy policy SC1, the pub needs to be offered for sale independently and at an asking price that reflects the pub premises' condition and its non-trading circumstances. One will note from the representations received that there is clear appetite and interest to re-open the Cliffe Arms and that a number of these representations have evidence to demonstrate this.

My view is constructed through noting that the impetus is on the applicants to actively market the property to gauge demand, rather than passively await enquiries, notwithstanding the offers that have been made previously. The fact that the property has been closed since 2004, does not necessarily suggest there would be no interest now. There is clearly interest locally to re-open the Cliffe Arms as a public house. It would clearly bring a modest employment benefit as well as tourism benefit from walkers and users of the Malvern Hills AONB. As such, at this time, the proposal is contrary to SC1 of the CS. It would go against the premise of Policy RA6 of the Core Strategy given it would not seek to protect the viability and vitality of a commercial facilities in a rural area, namely a public house, resulting in the loss of potential employment locally and opportunities to benefit from visitors to the AONB who would potentially use the site.

The applicant's case is that as the building has 'ceased' such a public house use and on this basis there is not a policy requirement to market the site for alternative community uses, and indeed, they confirm no marketing has been carried out. In the first instance I think it is an incorrect interpretation of the use of the building. Just because the extant use is put on hold for a period of time, that use does not extinguish. For example, a dwelling does not cease to be a dwelling just because it is not occupied. There is a process for the applicant to follow if they consider that the use of the building has changed – such as an application for a Certificate of Lawfulness. If they were able to demonstrate a continuous alternative use, be that residential or some other use, then the policy requirement to market would not apply. But the applicant haven't taken this course of action and I don't believe that it falls within the remit of this application to consider whether the public house use has been superseded by some other use at this time. The information submitted to suggest an alternative use is entirely circumstantial and doesn't provide any clear evidence. To put it simply, the need for marketing of the Cliffe Arms is not absolved by the fact that the property is vacant. Notwithstanding this view, no assessment of the suitability of the site for other community uses has been provided and no substantive justification for this has accompanied the application and conflicts with Policy SC1 of the Core Strategy.

Viability

The Cliffe Arms has traded successfully previously. This successful trading lineage is not indicative of a structurally unsound business location.

Indeed, a large number of representations from local residents identified the successful running of the public house under previous owners, and noted that offers were also received for the pub from potential operators, including after its closure in 2004. This certainly suggests that there are aspirations that The Cliffe Arms was and could still be a commercially successful venue.

To ascertain whether a property is non-viable as a business, it is essential to seek an objective assessment of what the pub's commercial potential might be - can the business be rekindled by new owners? It is necessary to get a picture of the likely commercial viability in the long term. CAMRA has a Pub Viability Test to help make a more objective and meaningful analysis of the situation, however the applicant has not sought to progress this. What is stated in the applicant's design and access statement is not supported by hard evidence or specific examples. Indeed, much assumption appears to be based on owner's knowledge to which a number of representations do not agree.

Notwithstanding this, in terms of its sustainability, the Cliffe Arms benefits from having reasonable access, through being located on the C1162: a road that links with the B4220, A4103 and B4218. As such, the site is well positioned to capitalise on ever-increasing passing trade to use its facilities, particularly within the Malvern Hills AONB. It is important to recognise that public houses are an important aspect of the county's economy and tourism/leisure offer.

Based on this business model, such pubs can then provide facilities and amenities to small communities on the margin of their core operation, including a hub to meet and socialise.

In determining the viability of a pub premises, it is therefore essential to look beyond the applicant's experience alone and consider carefully what potential future operations might be able to achieve. Can the future be different to the applicant's personal business experience at the premises? No viability assessment has been provided to demonstrate this. I do not consider its location, referred to as 'tucked away', would have had any material effect on its popularity as it appears to be as prominent as a pub in any village would expect to be. Policy SC1 identifies that the viability of the facility is not necessary if appropriate alternative facilities are available, however no substantive evidence has even been provided on this.

The pub has thrived in the past and, given its ideal location, the viability with regards to a Public House must relate to the performance of that Public House of a number of roles in the local community, in creating sustainable development which encompasses and contributes to economic, social and environmental issues for the benefit of a local community in the area. Indeed, the view could be made that if a prospective purchaser was looking to invest, as a small number of representations have expressed, the Cliffe Arms, with some refurbishment and re-working, could undoubtedly become a viable public house again, offering a space for the local community and passers by.

Social and Economic Impact

To describe the Cliffe Arms as an "isolated countryside located public house", is perhaps a little disingenuous. It is important to appreciate that this site is not remote. The Cliffe Arms lies within the main built form of Mathon, and therefore the building has the benefit of a community effectively on its doorstep. Today, the next nearest pub to the Cliffe Arms, is the Colwall Park Hotel, 3.6 miles south-east from the public house or at the Red Lion at Stiffords Bridge, nr Cradley (approximately 2.1 miles north). And then there are the numerous villages and settlement areas surrounding – many of which do not have their own pub.

The closure of a public house therefore would be viewed to have a significant and persistent negative impact on the social and economic welfare of the local community, as well as the wider community, given its attractive location adjacent to the C1162. Such concerns have also been referred to by a number of representations.

For some residents living in Mathon, the Cliffe Arms is the only facility of interest within walking distance. To walk to the next nearest pub, would result in possible social exclusion and unsustainable modes of travel for residents of Mathon, whom may find difficulty accessing an alternative public house due to unavailable means of access, i.e. lack of private transport and this must also be taken into consideration.

Given the lack of private transport and unsustainable modes of travel which would be required to access nearby facilities, this would be contrary to Policies SS4 and MT1 and paragraphs 103 and 108 of the NPPF. The planning system should actively manage patterns of growth in support of these objectives. Development should limit the need to travel and offer a genuine choice of transport modes. This can help to reduce congestion and emissions, and improve air quality and public health. However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making. Indeed, those residents at Mathon who could have walked to the Cliffe Arms would be faced with having to drive to a nearby facility, which would run contrary to the NPPF to which it advocates that appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location.

Heritage

Under Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the local planning authority is required, when considering development which affects a listed building or its setting: *“to have special regard for the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.”*

The proposed application involves works to the Grade II Listed building of the Cliffe Arms and would also propose a new dwelling within the grounds of the Cliffe Arms, exposing its setting. Paragraph 189 of the NPPF states that,

“In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets’ importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation”.

The applicant has failed to submit such a heritage statement to allow the LPA to identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise (Paragraph 190 of the NPPF). Whilst I do acknowledge that a design and access statement has been submitted for my consideration, it only contains a method statement for works proposed and does not assess the significance of the heritage assets the propose development affects, including the Cliffe Arms, but also that of Raven Hill and Brook House, all grade II listed.

In respect of heritage assets, the advice set out at paragraph 193 of the Framework is relevant, insofar as it requires that great weight be given to the conservation of a designated heritage asset. The more important the asset, the greater the weight should be. Paragraph 194 goes on to advise that any harm to, or loss of, the significance of designated heritage assets should require clear and convincing justification. At paragraph 195, it states that where substantial harm is identified 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. Paragraph 196 goes on to state that 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. In the lack of clear justification and assessment of heritage impact, in accordance with Paragraph 194 of the NPPF, any harm to the significance of designated heritage assets must be appropriately considered.

I refer to the comments of the Council’s Building Conservation Officer, whom has requested further information in respect of this aspect, which has not materialised. As the building has been a public house for much of its history, it has high communal value as a place which was key to the social, public and commercial life of the village of Mathon. Communal value is part of the special historic interest of the building protected by its designation as a listed building. The proposals here before me are considered to constitute a low level of less than substantial harm to the fabric of the building, as identified by the Building Conservation Officer’s view, to convert it into dwellings. This harm could only be permitted if there was evidence that there was no way the building had a viable use as a public house. As discussed above, no evidence has been forthcoming. The proposal for the new garage in

front of the pub would also add harm to the setting of the nearby listed buildings, Raven Hill and Brook House, and indeed the erection of a new dwelling itself.

I must consider on the information before me. On the basis of the case advanced, the application lacks any convincing Heritage Statement or any other detail that would allow others to properly understand the detailed significance of the Listed Grade II Cliffe Arms. Without this assessment it is also difficult to understand the impacts of the proposed development. In the officers' view, one needs to follow the test underlined under paragraph 196 of the NPPF namely,

"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".

In my view, the proposed development, based on the view of the Building Conservation Officer, comprising the conversion of the former public house to form two dwellings and the erection of one detached dwelling within original garden, will establish less than substantial harm to the significance and setting of the Listed Grade II Cliffe Arms and the setting of the adjacent Listed Grade II Brook House and Ravens Hill. However, the public benefits do not outweigh this. Conversion of redundant public houses to a residential use is not uncommon unless the harm to significance can be minimised and "clear and convincing justification" (NPPF paragraph 194) for harm is evidenced. This evidence also need to consider why the building's "optimum viable use" (NPPF paragraph 196) as a public house cannot be sustained. However, I find a total absence of such evidence of this. Therefore, I find the application to fail to meet the requirements of Section 16 of the NPPF, namely paragraph 196 given there are no public benefits, given the loss of a community facility and would not secure its optimum viable use, for which there is appetite and interest locally to re-open.

It would also be contrary to Policy LD4 in so that the proposal would fail to record and advance the understanding of the significance of any heritage assets to be partly lost and no evidence to be publically accessible. Indeed, it would not improve public access to the building itself given the change of use proposed. Each application should be assessed on its own merits and notwithstanding the lack of a heritage statement, I have assessed that less than substantial harm identified would not be outweighed by public benefits.

Highways

The highways area engineer has requested further information given the formation of a new access onto the C1162, namely visibility splays. However, such information has not been forthcoming. As such, the LPA is unable to assess whether it is possible to achieve an access which enables the safe entrance and exit of motor vehicles. Therefore the proposal is deemed insufficient to satisfy the requirements of policy MT1 of the Herefordshire Local Plan – Core Strategy and the guidance contained with the National Planning Policy Framework. The proposed hedging/planting should be positioned at least 1m behind the visibility splay, which has not been amended and it is difficult to suggest whether visibility can be achieved within the applicant's ownership and whether the hedgerow would compromise on such visibility.

AONB/Locality Impact

The legal framework for AONBs in England and Wales is provided by the Countryside and Rights of Way Act (CROW) 2000 which reaffirms the primary purpose of AONBs: to conserve and enhance natural beauty, and sets out responsibilities for their management. In particular relevance to the proposal is following section – Section 82 reaffirms the primary purpose of AONBs: to conserve and enhance natural beauty; Section 84 confirms the powers of local authorities to take appropriate action to conserve and enhance the natural beauty of AONBs; Section 85 places a duty on all public bodies

and statutory undertakers to 'have regard' to the 'purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.

One will note that the Malvern Hills AONB Unit have objected to this application. It is clear that great weight should be given to the conservation of AONBs under paragraph 172 of the NPPF, in which proposals should seek to enhance the distinctive landscapes of the AONB and its setting, particularly those that are most sensitive or have little capacity for change.

The Design and Access statement states that 'careful consideration' of the site's constraints and contextual surroundings have been taken into account to ensure that the proposed dwellings respond to the challenges offered. However, a clear justification of how this has been done is not provided. Neither is evidence or consideration of guidance to inform the application, in particular the new proposed residential unit. Therefore, the application appears to be contrary to the AONB Management Plan policy BDP2.

The AONB Guidance on Building Design states that new development should respect the scale, mass and form of the existing locally characteristic buildings within the landscape character type where the development is located to avoid eroding local identity. It also considers that the local pattern of spacing between buildings and roads should be respected. Such guidance does not appear to have been adhered to in this case. For example, with the scale of the garages and the proposal to locate garages between the road and the house, both of which appear to be atypical for the area. Policy LD1 of the Core Strategy is clear in so that proposals should demonstrate that the character of the landscape and street scene has positively influenced the design, scale, nature and site selection, with particular protection and enhancement of the setting of settlements and designated area, including AONBs, which should be conserved and where possible, enhanced.

The proposal has failed to consider the character of the locality in demonstrating that the development would positively influence the design, scale and nature of site selection submitted. As such, by virtue of not respect scale and siting, the outbuildings proposed are not considered to reinforce a positive contribution to the distinctive appearance and character of the area hereabouts, namely the setting of the Mathon settlement and would be incongruous with its surroundings. The proposal is thus contrary to Policies SD1; LD1 and SS6 of the Herefordshire Local Plan – Core Strategy and the relevant design policies of the National Planning Policy Framework

Drainage/Ecology

The LPA has a legal duty to ensure all protected species are assessed as part of the planning process prior to any grant of planning consent. (Habitat & Species Regulations, NERC Act, NPPF, Core Strategy LD2, Wildlife & Countryside Act). There are bat roost and presence of multiple bat species including higher conservation status species such as Horseshoe and Bechstein's records in the locality and potential for bat roosting (and bird nesting) within the existing buildings on the site proposed for conversion or that could be impacted by works on the site. The surrounding habitats offer excellent potential for foraging and commuting by bat species.

In the absence of an detailed and relevant ecological survey, as requested by the Council's Ecologist, including any identified 'optimal period' survey requirements which reflects current circumstances, the Local Planning Authority is unable to assess the potential impact upon protected species, in particular with relation to crevice dwelling bat species and nesting birds. The proposal is therefore contrary to Policies LD1 and LD2 of the Herefordshire Local Plan – Core Strategy, paragraph 99 of circular 06/2005 and the relevant paragraphs of the National Planning Policy Framework (2019).

Drainage has also been raised by a number of representations, as for instance, in the photo below submitted under the representations received locally:



One notes the proposed connection to the foul sewer, to which Severn Trent has no objection to. As such, foul water drainage is suitable. Given the concerns above, I had consulted with the Environment Agency, given the site's partly being sited within flood zone 2/3 and proximity to Cradley brook, however they have no comments to offer. However, there is clearly concern that a change of use of the land to residential has the potential to increase the vulnerability of flooding. The NPPF at paragraph 150 states that new development should be planned for in ways that:

"a) avoid increased vulnerability to the range of impacts arising from climate change. When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through suitable adaptation measures, including through the planning of green infrastructure".

However, it is possible for development to be located in flood zone 1, indeed the new dwelling would be located here with a lower risk of flooding (taking into account wider sustainable development objectives). Whilst the vulnerability of such a change of use would increase by changing to residential, again the Cliffe Arms itself is also in Flood Zone 1. I do not consider this to be a reason for refusal.

Other considerations

The Herefordshire Local Housing Market Assessment produced by GL Hearn consultants (Appendix 6), forms part of the evidence base for the Core Strategy, provides an insight into local housing needs in terms of tenure and size for the period 2011-31. It deals not only with affordable housing, but also open market requirements across the county over the plan period.

Mathon is located within the Ledbury Rural Housing Market Area (HMA), and for market housing, table 83 of the Local Housing Market Assessment specifies that the greatest demand is for three bedroom housing, (66.4%), followed by two bedroom housing (37% of needs). Four bedroom or larger housing is -8.7% of needs, given the oversupply of these dwelling types across the identified area. Therefore, there is not the need or indeed local appetite for 4 bedroomed dwellings in the Ledbury Rural HMA.

Table 83: Estimated Size and Type of Dwellings Required 2011 to 2031 – Market Housing (Ledbury HMA)

Type/size	Ledbury Urban		Ledbury Rural		Ledbury HMA	
	Number	%	Number	%	Number	%
1 bedroom	18	3.7%	18	5.2%	36	4.3%
2 bedroom	124	25.9%	126	37.0%	250	30.5%
3 bedroom	227	47.3%	225	66.4%	452	55.2%
4+ bedroom	111	23.1%	-29	-8.7%	82	10.0%
Total	480	100.0%	339	100.0%	819	100.0%
Houses	445	92.6%	336	99.3%	781	95.4%
Flats	35	7.4%	3	0.7%	38	4.6%
Total	480	100.0%	339	100.0%	819	100.0%

Source: Housing Market Model

Table 1 – Estimated Size and Type of Dwellings Required 2011-2031 – Market Housing (Ledbury HMA) taken from The Herefordshire Local Housing Market Assessment produced by GL Hearn consultants 2012.

The proposal is for 1 no. 4 bed property. Using the same approach as the GL Hearn report this amounts to 100% of 4 or more bed properties, which is vastly disproportionate to the established needs of this part of the county. The Council considers that in maintaining and strengthening sustainable communities across rural Herefordshire, development proposals need to result in the delivery of a scheme which generates a size, type, tenure and range of housing required in particular settlements, reflecting local demand. Using the assessment above, the proposed development has not demonstrated compelling evidence of why this proposal meets such a need. The Council has clearly shown evidence above that there is a need for predominately three- and two-bedroomed dwellings and not 4+ bedroomed dwellings, to which the scheme proposes. As such, the proposed erection of 1 no. 4 bedroomed property on this site, does not adequately reflect the mix of development which is required in order to meet local identified need, and is contrary to Policy RA2 of the CS.

I also understand that during consideration of the application by officers, an application has been made by the local parish council to register the Cliffe Arms as an Asset of Community Value (ACV). However, this application is currently undetermined and would not change the outcome of my decision given the conflict identified above. I cannot afford weight to this position at this time.

I also note a small number of representations in expressing that Herefordshire Council should make a compulsory purchase order, however is not a material planning consideration in determining this application.

Summary

One notes that the NPPF is a material consideration. At paragraph 83(d), it advises that planning policies and decision should enable,

“the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship”.

Despite the applicant making the presumption that the public house use has ceased and should now be considered to be residential, in purely planning terms, the current use of the site is that of a public house and indeed, there is insufficient justification or substantive evidence to suggest that such a lawful use is identified otherwise. Given this position, no marketing of the Cliffe Arms has been undertaken. Namely, a marketing exercise which proposes to solely market the Cliffe Arms Public House, as a viable community facility for the local population and/or to promote alternative community uses, in accordance with SC1 of the CS, at a price which reflects the business solely and its trading circumstances. It is clear, through local representations, that there is still appetite for the Cliffe Arms to re-open and become a thriving community facility and hub, as well as serving wider patrons and visitors, to positively contribute to the social and economic well-being of the Malvern Hills AONB. Indeed, there is still interest to purchase locally and no opportunity has been afforded to this. Notwithstanding this, the Cliffe Arms has not been marketed at a price as a public house business or alternative community facility and consequently fails to satisfy Policy SC1 given the lack of a suitable alternative which would not result in promoting unsustainable modes of travel, contrary to Policy SS4 and MT1 of the Core Strategy.

The NPPF is clear in that its requirement that the planning system should be genuinely planned. Allowing development in this instance which conflicts with the development plan would undermine this requirement. Consequently, the adverse impacts of allowing the proposals, this being the permanent loss of a community facility, is considered to significantly and demonstrably outweigh the minor benefits of converting this building in 2. no dwellings and the addition of 1 no. dwelling in the garden of the Cliffe Arms, in addressing the county's lack of a five-year housing supply, acknowledging that the site lies in an RA2 settlement (Mathon). However, conflict has also been identified with regards to prevailing development in consideration; heritage; highways; ecology; and local need.

In closing, notwithstanding that the principle of development cannot be established, harm has been identified in this proposed development, which would not outweigh the minor social, economic and environmental benefits as outlined under paragraph 8 of the NPPF, notwithstanding the Council's lack of a five-year housing land supply at this time. There are clear material considerations which significantly and demonstrably the presumption in favour of sustainable development, outlined under paragraph 11 of the NPPF, which is considered in cases where there is a lack of a five-year housing land supply apparent.

For clear understanding, I outlined my concerns on this application to the applicant's agent on 17th September 2019 and gave them until 30th September 2019. However, this has failed to materialise and as such, I am left with little alternative but to consider the application on the information before me.

As such, the application is recommended for refusal on the basis of the reasons detailed below. The local member has been kept informed and appraised of my recommendation and is subsequently content for the application to be determined as a delegated matter at this time.

RECOMMENDATION: **PERMIT** ☐ **REFUSE** ☒

REASONS FOR REFUSAL:

1. There is insufficient evidence to demonstrate that this community facility is not a viable business and could not continue to meet community need. This is given that the Cliffe Arms, Mathon, has not been marketed appropriately, in terms of either solely as a public house or for an alternative community use, without success, at a price which reflects business trading circumstances. Furthermore, the loss of this community facility would not contribute to the social well-being, vitality and viability of the settlement as a consequence. This would be contrary to Policies SC1 and RA6 of the Herefordshire Local Plan – Core Strategy and the relevant sections of the National Planning Policy Framework.
2. In the absence of a detailed heritage statement, which requires an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting, which in itself conflicts with paragraph 189 of the National Planning Policy Framework, the Local Planning Authority has identified that the less than substantial harm the proposals would have on the Cliffe Arms and the setting of Ravens Hill and Brook House, all Grade II Listed Buildings, would not be outweighed by the public benefits of the proposal, namely the loss of the optimum viable use of the Cliffe Arms as a public house, contrary to Paragraph 196 of the National Planning Policy Framework and Policy LD4 of the Herefordshire Local Plan – Core Strategy.
3. Given the site constraints, most relevantly the proximity of the site to the C1162, insufficient information has been submitted to determine whether it is possible to achieve an access which enables the safe entrance and exit of motor vehicles into the site of the proposed new dwelling. Therefore, the proposal is deemed insufficient to satisfy the requirements of policy MT1 of the Herefordshire Local Plan – Core Strategy and guidance contained with the National Planning Policy Framework (2019), namely section 9, and the Herefordshire Highways Design Guide for New Developments (2006).
4. In the absence of an detailed and relevant ecological survey, as requested, including any identified ‘optimal period’ survey requirements which reflects current circumstances, the Local Planning Authority is unable to assess the potential impact upon protected species, in particular with relation to crevice dwelling bat species and nesting birds. The proposal is therefore contrary to Policies LD1 and LD2 of the Herefordshire Local Plan – Core Strategy, paragraph 99 of circular 06/2005 and the relevant paragraphs of the National Planning Policy Framework (2019).
5. The proposed introduction of 1 no. 4-bedroom detached dwelling to be erected in the garden of the Cliffe Arms is not reflective of the open market housing need in Mathon under the Ledbury Rural Housing Market Area, as evidenced by the Herefordshire Local Housing Market Assessment produced by GL Hearn consultants, which forms part of the evidence base for the Herefordshire Local Plan – Core Strategy. The scheme would not deliver the size, type, tenure and range of housing required for the settlement of Mathon, and fails to contribute to local demand. As such, the proposal conflicts with Policy RA2 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.
6. The proposed erection of a dwelling within the grounds of the Cliffe Arms would diminish the viability of the Cliffe Arms, as a community facility, without any sound justification and therefore result in the facility being at persistent long term risk, restricting its capacity, functionality and ability to expand as a community facility. This results in the proposal being

in conflict with Herefordshire Local Plan – Core Strategy Policies SS1 and SC1 and the intents of Paragraph 83 of the National Planning Policy Framework.

7. The proposal has failed to consider the character of the locality in demonstrating that the development would positively influence the design, scale and nature of site selection submitted, particularly given the site's sensitivity within the Malvern Hills Area of Outstanding Natural Beauty. As such, by virtue of scale and siting, the outbuildings proposed are not considered to reinforce a positive contribution to the distinctive appearance and character of the area hereabouts, namely the setting of the Mathon settlement and would be incongruous with its surroundings. The proposal is thus contrary to Policies SD1; LD1 and SS6 of the Herefordshire Local Plan – Core Strategy; Sections 11, 12 and 15 of the National Planning Policy Framework and guidance contained within the Malvern Hills Guidance on Building Design.

8. Notwithstanding the Local Planning Authority's lack of a five-year housing land supply, the proposed development does not represent a justifiable form of sustainable development. Whilst there is a presumption in favour of sustainable development, where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, the adverse impacts identified as a consequence of the proposed development, are viewed to significantly and demonstrably outweigh the minor benefits identified. This is when assessed against the policies in the National Planning Policy Framework, as a whole, and the Herefordshire Local Plan – Core Strategy. Furthermore, the proposal fails to align with the three mutually interdependent objectives identified under paragraph 8 of the National Planning Policy Framework. Therefore, the proposal conflicts with Paragraphs 8 and 11 of the National Planning Policy Framework and Policy SS1 of the Herefordshire Local Plan – Core Strategy.

Informatives

1. IP3



Signed:

..... Dated: 10/10/19

TEAM LEADER'S COMMENTS:

DECISION:

PERMIT

☐

REFUSE

☒

Signed:

AB.

..... Dated: 10/10/19