

# **DELEGATED DECISION REPORT**

## **APPLICATION NUMBER**

### **200265**

Land at Sallie's Mill, Newchurch Road, Kinnersley, Herefordshire,

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**CASE OFFICER: Mr Adam Lewis**  
**DATE OF SITE VISIT: 21<sup>st</sup> February 2019**

#### **Relevant Development Plan Policies:**

##### **Herefordshire Local Plan – Core Strategy**

SS1 Presumption in favour of sustainable development  
SS2 Delivering new homes  
SS3 Releasing land for residential development  
SS4 Movement and transportation  
SS6 Environmental quality and local distinctiveness  
SS7 Addressing climate change  
RA1 Rural housing distribution  
RA2 Housing settlements outside Hereford and market towns  
RA3 Herefordshire's countryside  
H3 Ensuring an appropriate range and mix of housing  
MT1 Traffic Management, highway safety, 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  
SD2 Renewable and low carbon energy  
SD3 Sustainable water management and water resources  
SD4 Waste water treatment and river water quality

##### **National Planning Policy Framework (2019)**

1. Introduction
2. Achieving sustainable development
4. Decision-making
5. Delivering 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, coastal change
15. Conserving and enhancing the natural environment
16. Conserving and enhancing the historic environment

**Relevant Site History:** **P184538/F** - Residential development of 5 detached dwellings – Refused June 2019  
**N102937/F** - Demolition of factory sheds, conversion and alteration of offices and workshop to create 1 no. bedroom and 3 no. 2 bedroom live/work units – Approved 2010 (not implemented - lapsed)

## CONSULTATIONS

	Consulted	No Response	No objection	Qualified Comment	Object
Parish Council	X	X			
Transportation	X			X	X
Historic Buildings Officer	X	X			
Ecologist	X			X	X
Tree Officer	X			X	
Land Drainage	X		X	X	
Environmental Health (contamination)	X			X	X
Press/ Site Notice	X			X2	
Local Member	X			X	

## PLANNING OFFICER'S APPRAISAL:

### Site description and proposal:

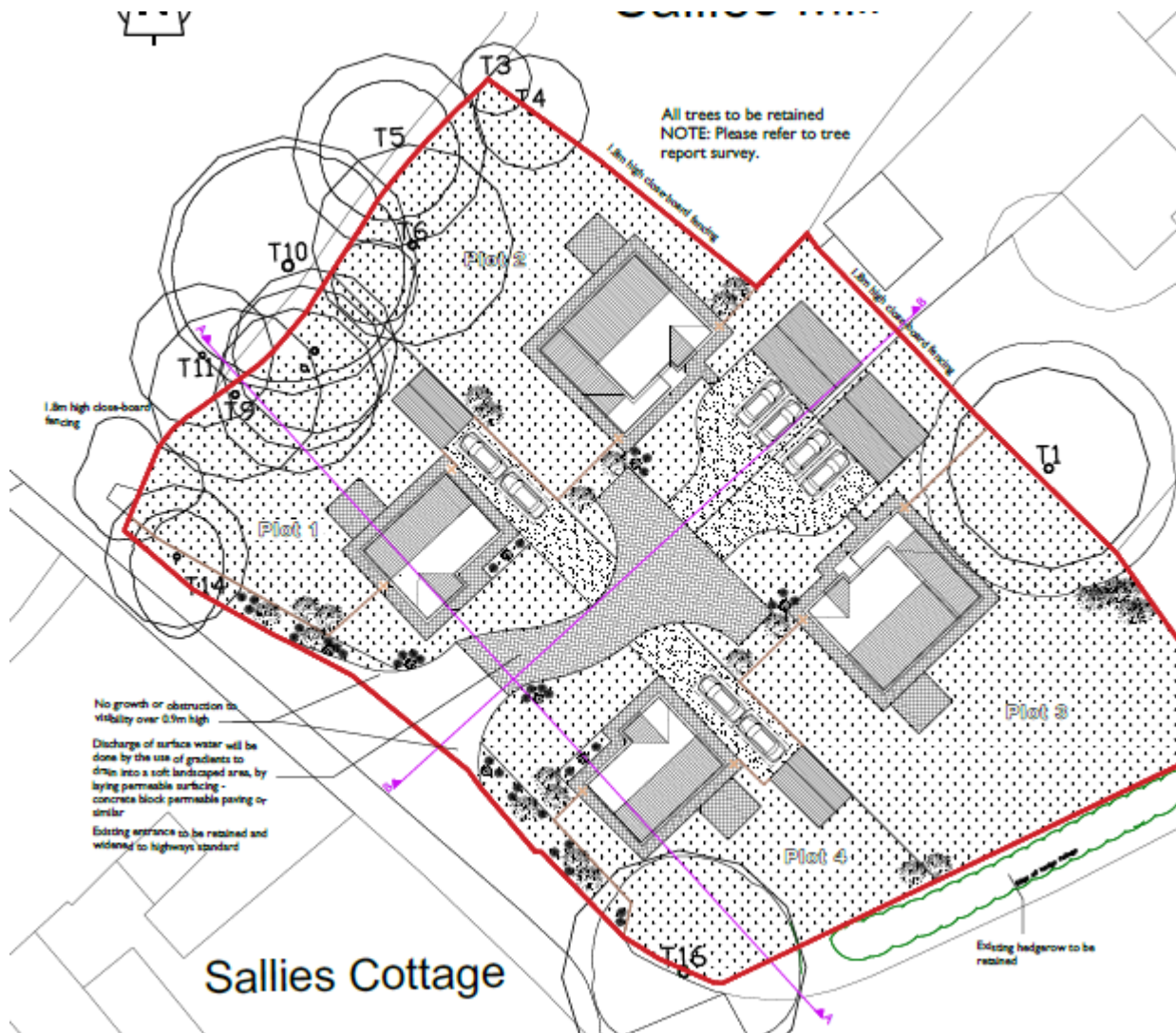
The application relates to a site in the north west of the county approximately midway between the small rural settlements of Kinnersley and Sarnesfield. The site measures around 0.4 hectares in area and occupies a corner plot at the junction between the A4112 and the unclassified highway known as Newchurch Road. It hosts range of buildings which have previously been used as a saw mills and a variety of other commercial purposes; however at present the site is overgrown with vegetation and appears not to have been in use for some time. The main building is a two storey red brick structure which fronts onto the A4112 to the south east, and a range of steel framed structures are found to the north west of this. Access is gained of Newchurch Road to the south west of the site. A watercourse is adjacent to the rear site boundary and this is lined with a number of mature trees. Immediately adjoining the site to the north east is a residential property known as The Sallies, which along with its outbuilding is listed at Grade II.

It is noted that an earlier application for the erection of five dwellings on the site was refused in June 2019. The current application is made as a resubmission of the refused application, although the number of units proposed has been reduced.

The application seeks full planning permission to clear the existing buildings on the site and erect four new detached dwellings. The scheme would utilise the existing access onto Newchurch Road to the west of the site and the units would be arranged in cul-de-sac type arrangement around a shared drive and turning head. The units themselves would comprise 2 x three bedroom dwellings and 2 x four bedroom dwellings. They would be two storey and would be finished in render with timber frame detailing under a concrete tile roof. Fenestration and rainwater goods etc would be of uPVC. The application form indicates four

water would be managed through a septic tank with surface water to soakaways. The proposed site plan and elevations are shown below;

*Proposed Site Plan;*



*Plots 1 and 4 (three bedroom):*



Plots 2 and 3 (four bedroom);



### Representations:

**Local Member** – Updated in person on Wednesday 11<sup>th</sup> March 2020. No issues were offered with the Officer recommendation and no redirection request was made.

**Parish Council** – No response

**Transportation Manager** – Objection / Further Information Required

*In assessing the highways implications of the proposal the previous use of the site has been taken into account. There are no highways objections to the principle of the conversion, however there are some design aspects of the development that may require review.*

*The visibility splays are not shown on the drawing. Whilst it is acknowledged an access is at this point on the network, this application is to effectively change the use of that access point from a commercial use to residential. As such appropriate splays for the character and usage of the road network at this point should be set out, clear of obstruction and planting to support this. Linked to this point it is difficult to appreciate if any of the proposed planting is located in the highway verge to the north west of the proposed access point. Planting in the highway is not permitted.*

*The access point on the site plan appears to have a section associated to it (B – B) that has not been submitted as part of the application. The levels from the site survey in the drainage report indicates that the site is higher than the road and therefore appropriate construction shall be required to ensure that water does not shed from the development onto the public highway at this point. The application of condition CAE would allow this to be adequately controlled in the event permission is granted.*

*The layout of the shared private drive meets the requirements of Herefordshire Council's Highways Design Guide for New Developments and is therefore acceptable.*

*The parking provision on the site is appropriate for the scale of the dwellings and it is noted that this parking provision allows for the use of garages as secure cycle storage, which is acceptable.*

## **Planning Ecologist – Objection / Further Information Required**

*The site is within the River Wye SAC catchment (Wye-Letton Lakes) and a Habitat Regulations Assessment process is triggered by this application. The required assessment completed by the LPA is subject to a satisfactory consultation response from Natural England prior to any consent being granted.*

*To enable the LPA to have the legal and scientific certainty to be able to undertake the HRA process the following detailed information must be supplied. The whole scheme must clearly demonstrate compliance with Core Strategy polices LD2, SD3 and SD4 in addition to all other relevant regulations and constraints. All reports and tests submitted should be undertaken by relevantly qualified professional drainage engineers.*

- Details of locations of the proposed septic tank and soakaway drainage field to manage the outfall.*
- Ground water and percolation tests (to relevant 'foul water' British Standard or BRE) at the proposed location of the soakaway drainage field – any field should ideally be 50m (minimum 10m if clearly demonstrated no other options are available) from any water course to ensure there are no pathways for phosphates and clearly on land under the applicant's ownership.*
- If the foul water systems are not 'plot specific' then full details of the legal entity responsible for managing and maintaining the foul water scheme (plant, pipework and drainage field) should be supplied such to provide the LPA with a legal certainty on the in perpetuity management and maintenance of operation.*
- For surface water details of locations of proposed soakaway-infiltration systems with relevant 'surface water' percolation tests.*

*This HRA process may be more vigorous than the previous application due to subsequent changes in case law, judgements and guidance.*

*Once these detailed drainage strategies have been supplied the LPA can look to commence the required HRA process.*

*Notwithstanding the above:*

*The supplied ecology report which it is noted is the same report as was rejected and not considered valid when submitted in support of the previously refused application 184538 as the recorded presence of roosting bats had not been considered, despite this being previously advised at pre-application advice stage. The comments made previously are copied below for information*

*The supplied ecology report by Fiona Elphick has NOT picked up the pre-application advice that there are Bat records within the building complex/adjacent building and so Optimal Period Bat Surveys were requested to determine actual usage of the site and buildings, in particular any more seasonal maternity period occupation as well as any implications to bat roost access, foraging and commuting routes. Fiona has also failed to undertake a Local Records Centre search (Herefordshire Biological Records Centre) that is normal best practice as the NBN gateway does not hold all the local records, or records at a sufficiently*

*detailed location accuracy. This HBRC search would have confirmed the advice already provided by the LPA at pre-application. The types of buildings on this site have been known within Herefordshire (and elsewhere) to support active bat roosts. It is noted that there are no recommendations for general good ecological working methods and risk avoidance within the supplied report – species such as Otters are considered to be utilising all aquatic corridors for commuting and movement. This LPA has a duty of care to ensure protected species are fully considered within the planning process.*

*Given that the 'flawed' ecology report is now two optimal seasons old (Considered 'not valid' after this period based on all best practice, BS42020 and as recorded presence of protected species) and as the applicant has had sufficient time and opportunity to ensure an updated report with appropriate optimal period surveys to provide required legal and scientific certainty in an updated report available to submit to this application the previous option suggested of additional pre-commencement optimal surveys is no longer considered reasonable or appropriate.*

*The updated ecology report, with relevant confirmation optimal surveys, detailed risk avoidance measures, working methods, mitigation and compensation proposals – with details of any protected species licences that may be required should be supplied for the LPA to consider prior to any consent being granted. In addition to any required mitigation or compensation features a fully detailed biodiversity net gain enhancement plan (locations and specifications) should be supplied – net gain enhancements should include consideration for bat roosting, bird nesting and pollinating invertebrates*

#### **Environmental Health Officer (Contaminated Land) – Objection / Further Information**

*Investigation: The submitted Phase 2 report prepared by Georisk ref:18081/1 doesn't seem to include a revised Conceptual Site Model (CSM). It appears to refer back to that contained in the preceding Hydrogeo report. I am unclear why this approach has been adopted. A revision of a CSM helps to demonstrate which uncertainties have been addressed and which have been dismissed, found to require further investigation or need remediation.*

*I cannot see that a detailed rationale for the number or location of the trial pits has been included. The contaminants of concern have been adopted from the Hydrogeo report but I'm unclear as to whether the trial pitting has been similarly targeted. Much information is contained within the preceding reports which can help to inform and address this uncertainty. Alongside this, the mill buildings themselves don't appear to have been investigated and should be considered alongside further consideration of the sources/risks/uncertainties identified by both this and earlier reports.*

*The above should be addressed through addendum or revised Phase 2 report(s).*

*Remediation and validation: The risk evaluation identifies a risk from vapours which requires remediation. (s9.1.1 and 9.1.2). I am unclear what this is based on given the results of the investigation. Nevertheless, the remedial techniques proposed in the following section (s9.3) do not include inhalation of vapours as something which needs addressing. To my mind, this appears inconsistent and further advice should be sought.*

*Notwithstanding the above, the report recommends removal of all made ground in garden areas of plots 2, 4 and 5 alongside the wood rich made ground in the north of the site. Material in TP1 requires removal from site and its extent delineated and demonstrated as wholly removed as part of the validation plan and subsequent reporting discussed below. This should include confirmation of the removal of the made ground and imported soils for garden areas as described in the report where necessary (the report states that made ground in Trial Pits 2 to 4 pose no plausible risk beneath plots or hardstanding).*

*Following review of any additional information found through the additional investigation and updating of the CSM, a Detailed Remediation Method Statement should be prepared and submitted to include a validation plan. A validation report will also be required following completion of the required remediation.*

*Recommendation: In the first instance the applicant/technical specialist should review the Phase 2 findings as the uncertainties appear to be such that the site cannot be considered to have been reasonably characterised. An addendum/revised report will be able to address most of the points raised above with the DRMS and validation to follow. Please note that this should also include consideration of the inside of the existing mill buildings. Although it is accepted that this may only be able to be addressed post demolition.*

#### **Land Drainage – No Objections / Qualified comment**

*We recommend that a Flood Risk Assessment is provided prior to the Council granting planning permission*

*Once the above information has been submitted and approved, should the Council be minded to grant planning permission, the following information should be provided within suitably worded planning conditions:*

- Provision of a detailed drainage strategy that demonstrates that opportunities for the use of SUDS features have been maximised, where possible, including use of infiltration techniques and on-ground conveyance and storage features;*
- A detailed surface water drainage strategy with supporting calculations that demonstrates there will be no surface water flooding up to the 1 in 30 year event, and no increased risk of flooding as a result of development between the 1 in 1 year event and up to the 1 in 100 year event and allowing for the potential effects of climate change;*
- Results of infiltration testing undertaken in accordance with BRE365 and confirmation of groundwater levels to demonstrate that the invert level of any soakaways or unlined attenuation features can be located a minimum of 1m above groundwater levels in accordance with Standing Advice;*
- A detailed foul water drainage strategy showing how foul water from the development will be disposed of;*

#### **Tree Officer – Qualified Comments / No Objections**

*T16 – The mature Oak tree appears to be located outside of the site, possibly on highway land. I have concerns that the regular circle used to illustrate the rooting may not be accurate*

*to the actual form of the root spread. With a physical boundary, the road, so close to the base of the tree there is a strong likelihood much of rooting spread will be further into the site than represented.*

*As stated in the AIA when roots over the diameter of 25mm are discovered they must be severed using sharp implements and not mechanical diggers (not digger buckets/spades).*

*A condition can be issued where an arb method statement is required to detail how works can be carried out where there is potential to disturb roots.*

*The above comments will also be applicable for T1.*

*The collection of trees located on the western side of the site appear to be of average quality and also the impact on them by the proposals is negligible and I concur with the findings of the report that the impact on them is low.*

#### **Conditions**

- CK9 - Trees In accordance with plans
- CKA - Protection during Construction (5yrs)
- CKC - Method Statement

**Historic Buildings Officer – No response**

**Two General Letters of Comment** have been received. They raise the following points;

- Land contamination and asbestos concerns
- Concerns over arrangements for managing surface water runoff
- Concerns over capacity of road network and junction safety – previous RTC fatality
- Concerns over noise and disruption in construction phase
- Concerns over age and validity of ecology survey
- Reduction in house numbers welcomed
- Provision of tree report and landscaping measures welcomed
- Setting of adjacent listed buildings must be respected
- Risk of pollution and contamination of the adjacent brook
- Should be more focus on sustainability in the proposed design

#### **Pre-application discussion:**

None sought. Resubmission following refusal of P184538/F

#### **Constraints:**

Countryside Location

Listed Buildings – adjacent

Contaminated Land uses – on site

Protected species records – on site

SSSI Impact Risk Zone

Appraisal:

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). The National Planning Policy Framework (NPPF) is also a significant material consideration in determining the application. The Kinnersley Parish has chosen not to pursue a Neighbourhood Development Plan.

Strategic policy SS1 of the CS sets out the presumption in favour of sustainable development, which is reflective of the positive presumption that lies at the heart of the NPPF. Policy SS1 confirms that proposals which accord with the policies of the Core Strategy (and, where relevant, other Development Plan Documents and Neighbourhood Development Plans) will be approved, unless material considerations indicate otherwise.

The presumption in favour of sustainable development and how this should be applied to planning decisions is discussed in more detail at paragraph 11 of the NPPF. At 11 (d), the framework states that where the policies most important for determining the application are ‘out-of-date’ planning permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits or the application of the policies in the framework provides a clear reason for refusing the proposal. At footnote 7, it is confirmed that a failure to demonstrate a five year supply of housing and requisite buffer in accordance with paragraph 73 will render policies relevant to delivering housing out-of-date.

The matter of housing land supply has been the subject of particular scrutiny in a number of recent appeal inquiries and it has been consistently concluded that the Council is not able to demonstrate a 5 year supply of housing land. The most recent supply statement outlines that the supply position in Herefordshire stands at 4.05 years. The shortfall in the five year supply means that the presumption in favour of sustainable development as set out at Paragraph 11 (d) of the Framework is engaged.

Notwithstanding this, the absence of a 5 year housing land supply does not render policies related to the supply of a housing an irrelevance for the purposes of decision taking. Indeed, recent case law (Suffolk Coast DC v Hopkins Homes [2016 – EWVA Civ 168]) has reinforced that it is a matter of planning judgement for the decision-maker to attribute the degree of weight to be afforded depending on the context of the decision. In this case, given that the shortfall in supply is relatively low and the CS policies relevant to housing supply are in general conformity with the NPPF in terms of promoting sustainable patterns of development, it is considered that the relevant policies of the CS continue to attract considerable weight.

The application site in this case is within the Kington Housing Market Area (HMA), which through Core Strategy policy RA1 has an indicative housing growth target of 12% over the plan period. At a group parish level, this translates to Kinnersley (alongside Letton and

Norton Canon) needing to deliver a minimum of 27 new dwellings over the plan period. The most recently available supply figures show that so far there have been 11 completions in the parish with a further 13 planning permission commitments. Although the minimum growth target has therefore not been met, the fact there is only a residual need for a further 3 dwellings over the plan period until 2031 supports the view that the spatial strategy is sound and the housing supply policies should attract considerable weight.

Policy RA2 goes on to identify numerous rural settlements where a proportionate level of housing development is considered to be appropriate. The policy states that residential development proposals should be located within or adjacent to the main built up area of the settlement and should reflect its size, role and function, and where possible be on brownfield land. Where appropriate, settlement boundaries for the identified settlements will be defined by either Neighbourhood Development Plans or Rural Areas Sites Allocations DPD. In this case the Kinnersley Parish is not pursuing an NDP, and therefore in the absence of a defined settlement boundary the proposal is to be determined using the 'main built up form' test as set out in RA2 of the Core Strategy.

The settlement of Kinnersley is identified by RA2 at 4.15 as a smaller 'other' settlement where proportionate housing growth is considered to be appropriate. However, what may be considered to be the 'main built up part' of the village is taken to be the ribbon of development alongside the A4112 approximately 1.5km to the south west of the site. The application site is therefore clearly divorced from the main built up form of the village. This is not just in terms of physical detachment, but also in the way in which the area is experienced. For instance, when travelling eastwards on the A4112 there is a significant and distinct buffer of undeveloped countryside between Kinnersley and the proposal site which ensures the cluster of development near The Sallies does not read as being part of the village. For these reasons, the site is not in a location where the principle of development can be supported under RA2.

The site therefore is within the countryside and the proposal hence falls to be considered against Policy RA3. This outlines that in areas outside of settlements new residential development will be limited to proposals which satisfy one or more of a number of criteria. These criteria are broadly reflective of the circumstances outlined at paragraph 79 of the National Planning Policy Framework. They are set out below

1. meets an agricultural or forestry need or other farm diversification enterprise for a worker to live permanently at or near their place of work and complies with Policy RA4; or
2. accompanies and is necessary to the establishment or growth of a rural enterprise, and complies with Policy RA4; or
3. involves the replacement of an existing dwelling (with a lawful residential use) that is comparable in size and scale with, and is located in the lawful domestic curtilage, of the existing dwelling; or
4. would result in the sustainable re-use of a redundant or disused building(s) where it complies with Policy RA5 and leads to an enhancement of its immediate setting; or
5. is rural exception housing in accordance with Policy H2; or
6. is of exceptional quality and innovative design satisfying the design criteria set out in Paragraph 55 of the National Planning Policy Framework and achieves sustainable standards of design and construction; or

7. is a site providing for the needs of gypsies or other travellers in accordance with Policy H4.

Based upon the information presented with the application, the proposal would not satisfy any of the special circumstances set out by policy RA3. The principle of development can therefore not be supported under this policy either.

It therefore follows that the principle of the development is not supported by the development plan. The site is outside of any settlement identified as an appropriate location for new housing and, whilst accepting the site is not isolated in the truest sense of the word given it sits within a cluster of historic wayside development, future occupiers of the dwellings would be significantly removed from the services and facilities available in nearby settlements such as Kinnersley or Almeley. For day to day living they would therefore be reliant on the use of a private motor vehicle, as alternative means such as walking, cycling or public transport are unlikely to be feasible options here. This compounds the conflict with RA2 and RA3 in the sense it also causes tension with SS4, SS7 and MT1 (and the overarching sustainability objectives of the NPPF) in terms of focusing development to the most sustainable locations which reduce the need to travel and promotes access to services by means other than private motorised transport.

The brownfield status of the site is duly noted and it is acknowledged that both the CS and the NPPF direct that considerable weight should be given to the benefits of proposals which make use of previously developed land. However, they also make it clear that sites should still be within appropriate locations (Paragraph 118C relates) and schemes should contribute to achieving the wider objectives of sustainable development. Given this, it is considered the benefits of the proposed redevelopment of a brownfield site here would not outweigh the policy conflict and harm that arises as a result of the site's location within the open countryside.

### ***Housing type and mix***

Amongst other things, policy H3 of the CS requires that developments should provide a range and mix of housing units which meet local needs and contribute to the social wellbeing of settlement. This also a requirement of policy RA2 and is reflective of the general principles set out within the NPPF. The site here lies in the Kington HMA and the Council's Local Housing Market Assessment (2012) identified the following needs for new open market housing;

<b>House Size</b>	<b>Market Housing Proportion Required</b>
One Bedroom	6.4%
Two Bedroom	22.3%
Three Bedroom	59.6%
Four Bedroom +	21.7%

The scheme here proposes 2 x three beds and 2 x four beds. Although this is slightly skewed in favour of larger units, it is not considered that the housing mix departs so significantly from the identified needs that this would warrant a reason for refusal of the application.

## ***Design, character and heritage impacts***

In respect of design, Core Strategy Policy SD1 directs that proposals take into account the local context and site characteristics. Moreover, new buildings should be designed to maintain local distinctiveness through incorporating local architectural detailing and materials and respecting scale, height, proportions and massing of surrounding development, while making a positive contribution to the architectural diversity and character of the area. Policy LD1 is also relevant in so far as it requires that proposal respond positively to the character of the townscape and landscape. With the site being adjacent to a number of listed buildings the duties under Section 66 of the Planning (Listed Buildings) Act are also triggered and the LPA must have special regard to the desirability of preserving listed buildings and their settings. Policy LD4 applies in this sense and broadly requires that proposals respect, conserve and enhance heritage assets and their settings.

In terms of the existing buildings on the site, whilst they appear to be of substantive construction they are not considered to be of any heritage value or particular architectural merit. They are not subject of any formal designations, no objections are therefore offered in respect of their demolition.

It is noted that the previous scheme was refused partially on grounds related to the design and appearance of the proposed dwellings. Whilst appreciating that some amendments have been made to the design of the dwellings since the previous application (such as increasing roof pitches), these are minor and it is not considered that they have overcome the previous reason for refusal. As before, it is assumed that the design approach is an attempt to respond to the character of the traditional rural buildings which neighbour the site but on the whole it is considered that this approach is somewhat misguided. The external elevations of the dwellings for instance show elements of timber frame detailing, however the positioning of this and the general form of the dwellings would suggest that this is not genuine or structural but a purely aesthetic addition. The overall scale, massing and proportions of the buildings are also at odds with what one would expect to see in a genuinely timber framed building. The dwellings for instance maintain a very square plan form and have wide building spans – whereas typical rural timber framed buildings have a narrow span and more rectilinear form. There is also a lack of regard to incorporate features that are truly reflective of vernacular timber framed buildings, such as low eaves heights or external chimney stacks, which taken together contribute to an external appearance in the dwellings that would read as a poorly executed pastiche. The specified use of external materials and finishes (including the imitation framing, concrete roof tiles and uPVC fenestration) are also of a low quality which are not considered appropriate in this rural setting and would add to the impression of pastiche further. Although no specific comments have been received from the Historic Buildings Officer in respect of the resubmission, the concerns raised in respect of the design and use of materials in the earlier application are considered to remain applicable to the current application. Overall therefore, it is considered the design of the proposed dwellings is such that the scheme would fail to maintain local distinctiveness or contribute positively to the architectural diversity of the locality and it is therefore found to be contrary to policies SD1 and LD1 of the CS in these terms.

It is generally accepted that the proposal would not have any adverse impact upon the setting of the adjacent Grade II listed buildings. The existing buildings on the site currently detract

from the setting of these heritage assets and hence a re-development scheme in general terms would have the inherent ability to address this. No conflict with LD4 is therefore found

### ***Highways Matters***

Core Strategy Policy MT1 relates to the highways impacts of new development, and requires that proposals demonstrate that the strategic and local highway network can absorb the traffic impacts of the development without adversely affecting the safe and efficient flow of traffic on the network or that traffic impacts can be managed to acceptable levels to reduce and mitigate any adverse impacts from the development. It also requires under (4) that developments are designed and laid out to ensure that safe entrance and exit can be achieved and that adequate operational and manoeuvring space is available for all vehicles. This approach accords with the principles and advice set out within Chapter 9 of the NPPF.

The Council's Transportation Manager has been consulted in respect of the scheme and advises that he has no objections to the principle of conversion and that it is not considered that the traffic generated by the development would have any demonstrable adverse effect upon the operation of the highways network. However, he has raised a number of points with regards to the technical details of the scheme which would require clarification if the application were to be supported going forwards. In particular, the achievable visibility from the proposed access point has not been demonstrated on the supplied plans and therefore it is unclear if acceptable sightlines can be delivered which are unobstructed or within the control of the applicant. A number of other technical points have also been raised that could be addressed by condition if the application were to be recommended for approval. In the absence of fundamental information relating to visibility however, it must be concluded that the application has not demonstrated the scheme would comply with MT1 in terms of ensuring that safe access can be delivered which avoids any potential for a detrimental impact upon highways safety.

### ***Contaminated Land***

The previous use of the site as a sawmills is a potentially contaminated land use, and policy SD1 of the CS requires that proposals demonstrate that appropriate mitigation of this can be undertaken where this issue arises. This is in line with the paragraph 178 of the NPPF which states that planning decisions should ensure that the site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. At paragraph 179, the Framework specifically directs that the responsibility for securing a safe development lies with the developer/landowner.

The application here is supported by a Phase 2 Geoenvironmental Assessment by GeoRisk and this identifies a presence of contamination which will need to be addressed as part of the development. However, the Council's Environmental Health Officer has raised various issues with this in respect of the scope and approach of the report and subsequent lack of clarity in terms of the remediation works proposed. It is noted for instance that the report does not include an appropriate Conceptual Site Model and this leads to concerns in terms of whether the report has adequately considered all potential risks. A full appraisal of the report and recommendations for revisions required in order to address its shortcomings is set out with the EHO's representation. On the basis of the current report however, it is considered that the proposal has failed to demonstrate that the site would be remediated in an appropriate

manner which would ensure the health of future residents would be safeguarded. The application is hence contrary to SD1 and the principles set out in Chapter 15 of the NPPF in this sense.

### ***Ecology and Protected Species***

In respects of matters of ecology, CS policy LD1 applies. This generally requires that proposals protect, conserve and enhance the county's biodiversity assets and make adequate provision for protected species. LD1 and LD3 are also pertinent in the sense that they require proposals to maintain and extend tree cover where it makes a positive contribution to visual amenity and the biodiversity.

The application is supported by a Phase I Habitat Survey and Preliminary Bat Roost Survey which is the same report that was submitted as part of the refused application in 2019. The report concludes that the site is of low conservation value and the buildings of negligible potential to support roosting bats. As part of the earlier application the Council's Ecologist raised a number of issues with these conclusions, including that there were numerous protected species records applicable to the site which did not appear to have been recognised in the supplied survey. Those comments are equally applicable to this re-submission and the Ecologist subsequently advises that prior to works commencing it would be necessary to undertake 'optimal period' surveys to determine the actual usage of the site and buildings by protected species. This in turn, would inform working methods and subsequent mitigation/enhancement measures. Moreover, the Ecologist has also highlighted that the supplied survey is now over 'two seasons' old and hence is no longer considered to be valid to support the application. An updated ecology report, with relevant confirmation optimal surveys; detailed risk avoidance measures; working methods; mitigation and compensation proposals would be needed to support the application if it were to be looked upon favourably.

In the absence of valid and appropriately scoped surveys however, it cannot be concluded that the current application has made adequate provision for the protection, conservation and enhancement of protected species and other assets of biodiversity value. The application would thus be contrary to Core Strategy policy LD2 in this sense.

### **Green Infrastructure**

In relation to trees and green infrastructure, policy LD3 of the CS requires that development proposals should protect, manage and plan for the preservation of existing and delivery of new green infrastructure such as trees, woodlands and hedgerows. The application site in this case also hosts a number of notable trees and hedgerows which make a positive contribution to the setting of the site, including a corridor of riparian trees to the northern site boundary and a prominent mature oak tree at the fore of the site adjacent to the highway.

The Council's Arboriculture Specialist has been consulted in respect of the scheme and has not offered any objection on the basis of the information submitted. Although some queries have been raised with regards to the allowances made in the supplied report for root protection areas, he is satisfied that further details and appropriate working methods could be secured by condition if consent were to be granted. He therefore offers no objections and it is not considered the scheme gives rise to any conflict with LD1 or LD3.

## **Drainage**

In respect of foul water management, policy SD4 sets out a hierarchical approach whereby a connection to the mains network is the preferred option. Where this is not an option, private arrangements (such as package treatment plants and septic tanks respectively) should be provided which ensure there will be no adverse impact upon water quality.

Although specific details have not been provided with the submission, the application form indicates that foul water from the development would be managed through the use of a septic tank. In the absence of a proximal mains sewer, this is likely to be an appropriate solution which accords with SD4 and the Land Drainage Team have not offered any objections subject to full technical details being secured by condition. It is noted however that the application does not clarify how outfall from the septic tank would be managed. The information supplied in the GeoEnvironmental report in respect of surface water suggests that infiltration methods may not be feasible at this site and this would in turn suggest that a direct discharge to the adjacent watercourse would be needed. Whilst there is provision for such an arrangement in SD4 and Council's Engineers are satisfied the full technical details can be secured by condition, the lack of a detailed and demonstrably feasible scheme at this stage does have implications for the Habitats Regulations Assessment which must be conducted. This is set out in the relevant section of this report.

In respect of surface water, the supplied application form indicates that this would be managed through soakaways. Whilst an acceptable solution in principle, the information provided within the GeoEnvironmental report suggests that it is unlikely to be a viable solution here;

*10.6.1; Infiltration testing was attempted in TP2 and TP3 to assess the potential use of soakaway drainage at the site. The results are presented in Appendix C. No significant infiltration was recorded over a timed period of approximately 3.5 hours. In view of these results and the ground conditions encountered, it is considered that surface water from the development could not be effectively discharged by soakaway drainage and an alternative drainage solution will need to be sought.*

Whilst the application has therefore failed to provide a viable scheme of surface water management in the first instance, the Council's Land Drainage Engineer is satisfied that a viable scheme could be delivered on the site (likely in the form of a controlled discharge to the adjacent watercourse) and that the details of this can be secured by condition. No fundamental conflict with SD3 is therefore found.

Policy SD3 also relates to matters of flood risk. The site here is not located in an area identified as being at risk from fluvial or pluvial flooding on the EA maps, although it is noted that the site adjoins a watercourse to the north. The response received from the Council's Land Drainage Engineer's advises that there is a potential risk of flooding on the site owing to this watercourse and requests that a Flood Risk Assessment be undertaken to consider this. However, having visited the site it is apparent that there is a significant difference in levels between the watercourse and the proposal site which means it is highly unlikely the proposed houses would be adversely effected by fluvial flooding. The LPA also does not have any evidence that the site has been affected by flooding in the past. On this basis, it is not

considered to be reasonable that a flood risk assessment be required having regards to the circumstances set out at Footnote 50 of the NPPF.

### ***Habitats Regulations Matters***

The site here however lies within the catchment of the River Wye Special Area of Conservation (SAC). The River Wye SAC is an internationally important conservation site which has been designated for its special features of ecological and biodiversity value. Under the Conservation of Habitats and Species Regulations 2017, Herefordshire Council has a legal duty to screen the development and where potential for a likely significant effect upon the designated site is identified in accordance with Section 63 of the Regulations. Where such a potential is identified the competent authority must undertake an 'Appropriate Assessment' (AA) which must be able to determine with scientific certainty that there would be no 'likely significant effects' upon the designated site. The obligations are embodied with CS policies LD2 and SD4.

The scheme here has the potential to impact upon the integrity of the River Wye through the generation of additional foul water from the new dwellings. The response received from the Council's Ecologist indicates that the lack of a clear and feasible drainage strategy, particularly with regards to the foul water and details of how the discharge of treated effluent would be managed, is such that the LPA is unable to conclude with certainty that the scheme would not have any detrimental impact upon local water quality or the integrity of the River Wye SAC. It is therefore not possible to undertake a positive Appropriate Assessment based upon the information which has been submitted.

Given that the LPA as the competent authority is unable to conclude through an Appropriate Assessment that the scheme would not have any adverse effect on the integrity of the River Wye SAC, the scheme would be contrary to the requirements the Conservation and Habitats and Species Regulations 2017 as well as policies LD2 and SD4 of the CS. The proposal is not considered to have any imperative public interests which would justify overriding this in accordance with Section 64 of the Habitats Regulations. It is also noted that Paragraph 177 of the NPPF is engaged insofar as it directs that;

*'The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site'.*

Moreover, where such an adverse impact is identified it is considered the policies of the Framework provide a clear reason for refusing the development and, as such, the tilted balance in paragraph 11d) (ii) does not apply.

### ***Planning Balance and Conclusion***

The Council is currently unable to demonstrate a 5 year supply of housing land with requisite buffer. The presumption in favour of sustainable development is therefore engaged and, in accordance with paragraph 11 of the Framework, planning permission should be granted unless the policies in the framework protecting areas/assets of particular importance provide a clear reason for refusal or the adverse impacts of granting permission would significantly

and demonstrably outweigh the benefits when assessed against the policies of the framework as a whole.

In the first instance, the application has not provided sufficient detail in relation to the management of foul water which allows the LPA to conclude that the development would not have any adverse impact on the water quality and consequently the integrity of the River Wye SAC. Given that a likely significant adverse effect upon the designated site cannot be ruled out, the application as deposited fails to meet the requirements of the Conservation and Habitats and Species Regulations 2017 and is contrary to policies LD2 and SD4 of the development plan. The proposal here hence does not benefit from the positive presumption (as set out at Paragraph 177 of the NPPF) and the tilted balance in favour of development at Paragraph 11 d (ii) does not apply. Rather, the policies of the Framework provide a clear reason for refusing the proposal in accordance with Paragraph 11 d (i).

Moreover, even if the HRA issue were placed to one side it is considered that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. The scheme is hence not representative of sustainable development, for which there is appositive presumption. Paragraph 8 of the Framework sets out that the pursuit of sustainable development is reliant on three overarching and interdependent objectives; environmental, social and economic. In terms of the benefits of the scheme, it is acknowledged that the proposal would contribute to addressing the current shortfall in the housing land supply and that this would have some benefits in the social sphere. There would also be some benefits in the economic sphere through expenditure during the construction phase and increased spending potential associated with additional residents. However, the site is located in a countryside location which is divorced from the nearest settlement which has been identified as an appropriate location of growth and this creates harm in the sense of conflict with the development plan – the policies of which are considered to attract significant weight. The countryside location also leads to consequent harm in the environmental sphere in terms of promoting unsustainable patterns of development which isolates future residents from the services and facilities in existing population centres and thus increasing reliance on the use of private motorised transport. Further policy conflict and harm in the environmental sphere also arises as a result of the scheme's poor design and failure to adequately address technical matters pertaining to ecology, contaminated land and highways accessibility. Drawing together the three elements, it is considered that the policy conflict and harm arising from the scheme would significantly and demonstrably outweigh the limited benefits. The proposal is therefore not representative of sustainable development.

The application is consequently recommended for refusal for the reasons set out below. The Local Member has been updated and has no issue with a delegated decision.

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

**CONDITION(S) & REASON(S) / REASON(S) FOR REFUSAL:**  
*(please note any variations to standard conditions)*

1. The application site is significantly detached from the main built up form of the nearest identified settlement in a countryside location where proposals for new residential development are only supported when exceptional criteria are met. The current proposal does not satisfy any of these exceptional criteria and as such the proposal would represent an unsustainable form of development which would render future occupiers reliant on the use of private motorised transport to access services and facilities. The proposal would thus be contrary to policies SS1, RA2, RA3, SS4, SS7 and MT1 of the Herefordshire Local Plan Core Strategy and the principles and objectives set out in the National Planning Policy Framework.
2. The site occupies a visually prominent position adjacent to the A4112 and the design and appearance of the proposed dwellings is considered to be such that the scheme has failed to respond positively to the site context and would be out of keeping with the character of the locale. In particular, the proportions, massing and use of materials proposed for the new units' leads to a convoluted design approach which would read as a poorly executed pastiche of the traditional timber framed buildings that are found in the vicinity of the site. As a consequence, it is considered the scheme would fail to maintain local distinctiveness or contribute positively to the architectural diversity of the locality and it is therefore found to be contrary to policies SD1 and LD1 of the Herefordshire Local Plan Core Strategy and the principles set out within Chapter 12 of the National Planning Policy Framework
3. The application as deposited has failed to demonstrate that the scheme would deliver an access arrangement onto the public highway which provides sufficient visibility to ensure the safe entrance and exit can be achieved and thereby ensures there would be no detrimental impact upon highways safety. The proposal is thus contrary to the policy MT1 and SS4 of the Herefordshire Local Plan Core Strategy and Chapter 9 of the National Planning Policy Framework.
4. A number of protected species records apply to the site and the application has failed to supply an up-to-date ecological survey which provides an appropriate level of assessment of the potential impact of the development upon protected species and biodiversity, as well as subsequently putting into place appropriate mitigation, compensation and enhancement measures to account for any impact. The application has therefore failed to demonstrate that protected species and assets of biodiversity would be adequately protected, conserved or enhanced and is thus contrary to policy LD2 of the Herefordshire Local Plan Core Strategy and Chapter 15 of the National Planning Policy Framework.
5. The proposal site is identified as having land contamination issues on account of its previous use as a sawmill and the application has not demonstrated that this would be adequately remediated in order to ensure the health of future residents is safeguarded. The application would thus be contrary to policy SD1 of the Herefordshire Local Plan Core Strategy and the advice set out in Chapter 15 (Paragraphs 178-179) of the National Planning Policy Framework.
6. The application site lies within the catchment of the River Wye Special Area of Conservation (SAC) and the nature of the proposal triggers the requirement for a Habitat Regulations Assessment to be undertaken. Under the Regulations there is a

requirement to establish with certainty, and beyond all reasonable scientific doubt, that there will not be any adverse effect on the integrity of the River Wye SAC. The application as deposited however has failed to provide sufficient information with regards to the management of foul water which would allow the Local Planning Authority to conclude that the development would not have any adverse impacts upon the integrity of the River Wye SAC. It is subsequently not possible to undertake a positive Appropriate Assessment and the proposal is subsequently contrary to The Conservation of Species and Habitats Regulations 2017; policies LD2 and SD4 of the Herefordshire Local Plan; the Natural Environment and Rural Communities (NERC) Act 2006 and the guidance set out at Paragraphs 174-177 of the National Planning Policy Framework

## Informatives

1. IP3 – discussion with no way forward

A.M.L.

Signed:

Dated: 24<sup>th</sup> March 2020

### TEAM LEADER'S COMMENTS:

DECISION:

PERMIT ☐

REFUSE ☒

Signed: A.B.

Dated: 24/3/2020