

DELEGATED DECISION REPORT

APPLICATION NUMBER

182071

Land Adjacent to the Village Hall - Plot 7, Aymestrey, Leominster, Herefordshire,

CASE OFFICER: Mr M Tansley

DATE OF SITE VISIT:

**Relevant Development
Plan Policies:**

Herefordshire Local Plan – Core Strategy (CS)

Policies:

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
RA1 - Rural Housing Distribution
RA2 - Housing in Settlements Outside Hereford and the Market Towns
H3 - Ensuring an Appropriate Range and Mix of Housing
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

The **Aymestrey Neighbourhood Development Plan** (NDP) was made on 28 June 2019. It now forms part of the Development Plan for Herefordshire.

AYH2 Settlement Boundaries

AYEnv2 Biodiversity and Geodiversity

AYEnv3 Protecting heritage Assets

AYEnv4 Addressing Climate Change

AYEnv5 Waste water Treatment

AYEnv7 Protection of Views and Vistas

AYEnv8 Protection from Flood Risk

AYT2 Highway Design Requirements

AYS1 Promoting Sustainable Development

AYS2 development Strategy

NPPF

Relevant Site History: 173692 erection of 5 dwellings approved 12/3/18 development commenced.

CONSULTATIONS

	Consulted	No Response	No objection	Qualified Comment	Object
Parish Council	x				x
Transportation	x			x	
Historic Buildings Officer	x			x	
Ecologist	x				x
Historic England	x				x
Drainage consultant BBLP	x			x	
Forward Planning	x			x	
Natural England	x			x	
Welsh Water	x	x			
Press/ Site Notice	x				
Local Member	x				x

PLANNING OFFICER'S APPRAISAL:

Site description and proposal:

The site, referred to as plot 7 , lies immediately south of the development approved in March 2018, ref 173692, to the south-east of the village hall. The site would be an extension to that cul –de –sac development. The proposal is to erect a 2 bed bungalow with ridge height of 5.9m and detached double garage. The slab level is proposed to be 102.15 aod and this would result in ridge height of 108.05 aod, below that of the village hall, to the north.

Representations:

Parish Council 6 different submissions.

I write in respect of the three planning applications detailed above as the identical issues affect all three. The issues raised also relate to planning applications 173692 and P183425/XA2 (five houses adjacent to the village hall), where permission has been granted and the applicant seeks confirmation that planning conditions are met.

This letter is in response to the amended Access/Visibility Plan dated 26.2.19 submitted on behalf of the three applicants of the above numbered applications; but as the same plan is also submitted to

support application P183425/XA2 to satisfy planning conditions, the points made below also apply to that application.

This letter also considers the applicants' claim to self-build status.

Following the Parish Council meeting held on Wednesday 27 February, I am directed to make the following points:

- The Parish Council has already stated that visibility of 104m from a point 2.4m back from the carriageway edge at the proposed entrance to the development is not possible. Please see my letter to you dated 24 January 2019.
- You will have considered the superseded visibility splay dated 9 October 2018, drawing reference 1447/SW/1D. The plan is to scale, but does not show the extended line from the eyeball point to a point 104m to the north, the claimed visibility. Our objection was that this visibility cannot be achieved because of obstructions on land not in the control of the applicants.
- It is reasonable to assume that this plan was drawn in order to show the maximum visibility available (to the nearest metre) and, as it is to scale, it was put forward as accurate and reliable. It was certainly intended that the Highways Officer should rely on it.
- The amended access/visibility plan dated 26.2.19, drawing number 1447/SW/1E, still does not show the extended visibility line to the north. However, examination of the plan shows that the angle of this line has been altered so that it passes further from the inner radius of the pavement shown and passes the north side of the village hall entrance at a point closer to the road. This line is at a fine angle to the margin of the road and the change will make a significant difference to the point at which the visibility splay is measured.
- Both plans claim a visibility splay of 104m. They cannot both be correct, which calls into question the accuracy of the amended plan now put forward as part of the application. It also calls into question the actual visibility of the superseded plan, a version of which was relied upon in planning application 173692., assuming that the change has been made to provide a line on a plan not obstructed at the village hall.
- Neither the location plan nor the site plan show ownership boundaries nor has any certificate B notice been served on the Trustees of the village hall. It seems then that the applicants expect to achieve the relevant visibility splay and footpath without alteration to third party property. That brings us back to the point that the splay cannot be achieved on the original plan, and if the later, current plan has been altered to avoid the obstructions then the visibility has been reduced, which reduction is not shown on the plan.

At best, the plans are unclear. This leads us to suggest that all caution should be taken with both of the submitted plans and, recognising the great importance of these applications to the village of Aymestrey, that the only way forward is for the applicants to submit a scale plan showing a line from eyeball to roadside 104m away and including the position of obstructions we have identified in our previous objection and a location plan showing land ownership; and for the Highways Officer then to make his own physical inspection of the site.

A decision taken without reliable information on these matters would be unsound. It will be objected that no representations are allowed on application P183425/XA2, but no reasonable planning decision can be made when the plans exhibited are open to question.

Both of the plans in question suggest a bend in the boundary between the applicant site and the village hall. It is notable that the boundary is not shown to the roadside. Inspection of the land registry titles show that this line is straight and meets the carriageway at a point further south than the plan implies. If the corrected line is overlaid on the plan it shows that the proposed footpath to the north of the entrance to the new development is partly on land belonging to the trustees of the village hall. The said path exits onto land belonging to the village hall. The village hall is under no obligation to allow access to pedestrians at that point and currently there is a fence between the two properties. In addition, while the applicants seek to establish status as self-builders, possibly as a means of defeating the objection that the proposed properties are outside the Aymestrey settlement area defined in the Neighbourhood Development Plan (NDP), the following issues are relevant:

- The NDP does not identify any need for self-build exceptions to the settlement areas. This is after all consultation required. No suggestion was made that there was a requirement for such, nor were the sites in question put forward for any development.
- In addition there are conflicts with a number of NDP policies, not least to protect heritage assets, biodiversity and the landscape. The NDP landscape policies have a heightened importance because the examiner accepted the NDP's statement that the entire parish formed a "valued landscape", which should be protected and enhanced in accordance with paragraph 170 (a) of the National Planning Policy Framework 2018.
- Historic England have raised objection to housing on the proposed site, and it is not open to the applicants to say that because there is permission for five houses despite the Historic England objection that the objection no longer matters. Indeed, the Historic England objection raises a presumption of refusal of permission. The site does not meet criteria for development by self-build.
- There is planning permission for five houses on contiguous plots. The land is currently in the same ownership or control of the same family, which is one of the points made in support of the applications. These five plots can be used for the suggested self-build requirement.
- The five houses already permitted may never be built, in which case the permission for these three houses spread out across the field would be inappropriate.
- No case is suggested or made that these houses are 'affordable housing' and therefore might provide an exception to normal planning requirements, which require refusal outside the Aymestrey settlement area.

In summary, to allow a further three houses to be built, based on unsound presumptions as to boundaries and land ownership, a disputed visibility splay, outside the settlement boundary, on farmland, in the face of objection by Historic England and when alternative sites are available would be contrary to planning principles.

Our earlier objections on matters not connected with visibility remain.

I write in respect of the three planning applications detailed above as the issues affect all three. At the meeting of Aymestrey Parish Council which took place last night concern was expressed about the memorandum from 'Highways' dated 10 October 2018 authored by Farzanah Mamoojee and Bruce Evans. I have been asked to write to you in the following terms:

The Parish Council is concerned with three aspects of the review:

First, the review seems to have been undertaken on the mistaken premise that there is a s106 agreement in place as a condition of the planning permission for five houses on the same site under reference 173692. While the Parish Council would welcome extra funds, there is no s106 condition attached to the planning permission granted under that reference.

Second, while the visibility splay angle shown in drawing 1447/SW/1D suggests that there is a visibility of 104m to the north from a point 2.4m from the road edge, this is not achievable without removing one or more trees, the village notice board, the fence of the village hall car park and the Post Office letter box, none of which are shown on the plan. The trees, fence, Post Office letter box and notice board are all on land which is not under the ownership or control of the applicants. While plans filed by the respective applicants in connection with these three applications and application 173692 suggest that the splay is achievable, given the certainty by the people who live in the village that the visibility splay to the north is not achievable without removal of the trees and obstructions, the Parish Council asks that the suitability of the road access is inspected on site by the Highways department before further process.

Third, the memorandum states that 'Footway provision is also provided at the site access point.'. This footway also involves land not under the control of the applicants as it ends where the aforementioned trees are on the land attached to the Village Hall. The memorandum may have been written as a 'desktop' review without a site visit, but the Parish Council considers that it cannot be right that the agreement of the Highways department is given on no less than three material misapprehensions.

Further to its letters of objection dated 4 July 2018, 27 September 2018 and 28 November 2018, The Parish Council wishes to make the following objections to Planning Application P182069/F. In relation to the Heritage Impact Assessment dated 5.12.18; and other aspects of the application –

1. The proposed dwelling cannot be described as affordable as it does not meet the specific criteria set out by Herefordshire Council or the National Planning Policy Framework 2018 and the applicant does not meet the eligibility criteria for affordable housing.
2. The fact that the applicant is a long-standing resident is not a material planning consideration. There are many other long-standing residents whose families do not own land on which to build.
3. The applicant already has five plots with existing permission to choose from, on land within the same ownership as the application site. The applicant is a member of the site owners' family.

4. There is huge public interest in abiding by Neighbourhood Development Plans, enacted by the Localism Act 2011.
 5. Aymestrey's Neighbourhood Development Plan is at examination stage and must be taken into account. The NDP does **not** include this site for housing.
 6. There is huge public benefit in maintaining the setting and historic linear character of the village, which this application fails to do.
 7. The description of the second photograph is misleading. The house shown is **not** 'infill' as suggested, but is in fact a replacement dwelling which emphasises the linear nature of the village. It does **not** give a ...*very random form to building alignment and orientation.*."
 8. Paragraph headed Plot 1A states "*It consolidates the linear pattern of development...*". This is disingenuous. The proposed plan fails to respect the historic linear settlement pattern of the village.
- Objection to planning application P182069/F Plot 6
9. The skills required for "*...ongoing care and maintenance of the traditional buildings of Aymestrey.....*" are not specific to this site. It is noted that the dwellings would be constructed using modern building methods, not green oak with lime plasterwork as would be more characteristic of local building styles, for example.
 10. The same Heritage Statement has been prepared for all three applications, but does not address the cumulative effect of a potential eight dwellings.

Further objections –

11. The Parish Council asks why the access for this proposal differs from the access to the original 5 dwellings on P173692/F. Drawing number 1447/SW/1D differs from drawing number 1447/SW/1A, and it appears that the visibility splay encroaches upon land belonging to The Parish Hall and would require the removal of fencing and trees on Parish Hall land.
12. The Parish Council reiterates its concern about the safety of the proposed access.
13. The Parish Council is concerned that the red boundary line has still not been revised to include all of the proposed operational development, and the treatment plant and soakaways are shown as outside the curtilage of the individual property. The Parish Council questions whether the ownership of the land to which the treatment plant discharges has been established.
14. The Parish Council is concerned that Natural England does not appear to have been re-consulted on this application, despite having raised concerns about the foul drainage arrangements within a SSSI impact risk zone.

The cumulative effect of the run off from the treatment plants poses a severe risk to the River Lugg SSSI; the further 3 treatment plants making a potential of 8 on this site. The risk of harm to the ecological and chemical quality of the SSSI is greatly increased.

Further to its letters of objection dated 4 July 2018 and 27 September 2018, The Parish Council has debated the R Foul Drainage Report 7.11.18 and AMENDED Heritage Impact Assessment 7.11.18 on the applications listed above. The Parish Council strongly objects for the following reasons. The Parish Council asks that its Neighbourhood Development Plan, which is at examination stage, be taken into account. The NDP does **not** include this site for housing.

The Drainage Report states that the package treatment plants are “all within each properties curtilage”. The plan in Appendix A, drawing 1503/1 does not appear to support this. The treatment plants are each shown as not only outside the curtilage of the individual properties, but beyond the boundary line of the application site shown by the red line. Our submission is that this change requires the site boundary to be redrawn to include all of the proposed operational development and reconsideration of the application with the enlarged site. It is difficult to tell from a screen version of the plan, but we question whether the PTPs are 15m from the dwellings.

There appears to be no control of the run off from the treatment plants, and the Parish Council asks that its extreme concern about the cumulative effect of a further 3 treatment plants, making a potential total of 8 on a site which is in the River Lugg SSSI impact risk zone, be taken into account. The risk of harm to the ecological and chemical quality of the SSSI is greatly increased.

The Parish Council has already lodged its objection to P153330/F for 5 dwellings on this site. I attach a copy of the Parish Council's objection dated 11 April 2017 for ease of reference. These objections still stand, and are relevant to the 3 additional dwellings proposed.

Aymestrey Parish Council objects to planning applications P182069/F; P182071/F and P182072/F for the following reasons:

The applications fail to respect the setting of the church, contrary to NDP Policy AYEnv3 (c), and the historic linear settlement pattern of the village. The proposals are outside the settlement boundary, contrary to NDP Policy AYH2, and, if approved, would constitute creeping urbanisation of a rural setting.

The impact on traffic management, access to the site and its effect on the landscape would all be exacerbated by an additional 3 dwellings. The application does not comply with NDP Policy AYT2.

If permission is granted for 3 dwellings, and the already permitted 5 dwellings do materialise, a scattered pattern of housing across an undeveloped agricultural field will result.

The relationship between proposed and permitted development has not been addressed.

If permission is granted for a further 3 dwellings the access will be required to be built to adoption standard in accordance with Herefordshire Council's Highways Design Guide. This was not a requirement of the original planning permission and it is unclear from the application documents which party will be responsible for upgrading the access to this standard. The Parish Council asks at what stage this will be enforced?

The Parish Council has concerns about the site's accessibility and would recommend footpath access to Mortimers Cross, the nearest centre of employment, in order to comply with NDP Policy AYT2. Land over which access could be provided is within the control of the applicants' family, who are also the owners of the site on which permission for five houses has been granted planning permission.

The Parish Council objects to the loss of Grade 2 agricultural land which is contrary to NDP Policy AYEnv2 (f). The use of best and most versatile agricultural land is also contrary to NPPF paragraph 109 and HC Core Strategy policies SS6. The lack of good quality agricultural land in the rest of the parish should be noted.

It is noted that the 3 proposed dwellings are for local residents. The Parish Council asks why these 3 dwellings are required when there will be 5 available on the adjoining site, which is owned by the applicant's family? This already takes Aymestrey over the 14% required increase in housing number. The need for housing identified by Herefordshire Council has been exceeded by a site included in the Neighbourhood Development Plan at Mortimers Cross and windfall development already delivered during the plan period. The proposals are thus contrary to NDP Policies AYS1 and AYS2.

Aymestrey Parish Council concurs with the concerns raised by the Council's Ecologist and Natural England about the potential impact on the River Lugg. Further information is required to comply with Policy AYEnv6. With a potential 8 new package treatment plants in the SSSI impact zone, and in proximity to the river

itself, the risk of harm to the ecological and chemical quality of the SSSI is greatly increased and may contravene NDP Policy AYEnv2. If used correctly these systems are adequate, but if mis-used they are insufficient, and as the management of package treatment plants is not monitored or controlled there is a risk of pollution. Few people are aware that package treatment plants do not function properly if bleaches, household cleaning products and excessive personal hygiene products are used. Package Treatment Plants must also be properly and regularly maintained to ensure that they continue to function effectively. The cumulative effect of 8 package treatments plants in this location raises the risk of a significant adverse impact on the SSSI.

The height and level of the buildings has not been confirmed. In lowering ground levels, as proposed with the application for five houses already permitted, the flood risk is increased. The Council's drainage advisers have required that the finished floor levels of houses in a proposed development at Mortimers Cross (application ref. P174073/O), at the same distance from the flood risk zone, must be built 300mm above ground levels. This is to ensure that the floors are above predicted flood levels for a 1-200 year flood event, in accordance with the Environment Agency's guidance on flood risk assessment. The drainage advisers also require that soakaways should be designed to cope with the 1 in 100 year + 40% climate change event. The base of soakaways and unlined storage/conveyance features should be a minimum of 1m above groundwater levels, and must have a half drain time of no greater than 24 hours. These standards should also apply to this site, which is the same distance if not closer to the flood risk zone.

Surface water management has simply not been addressed in the application documents, despite the vulnerable nature of the location, and they do not comply with NDP Policy AYEnv8.

Clearly the requirement to address flood risk will affect the height of the proposed buildings. This was a critical matter in the determination of the application for five houses.

The Parish Council seeks clarification on the ridge height of the proposed dwellings and also asks that, should permission be granted, any landscaping proposed is maintained at a height that does not obscure the view of the Grade 1 listed church, St John the Baptist and St Alkmund in compliance with NDP Policy AYEnv7a.

It must be understood, however, that low ridge heights do not alleviate the harm to the setting of this important heritage asset: the setting of the Grade 1 listed church is not confined to visibility. The fact that people may be able to see over the tops of a modern housing development does not significantly reduce the harmful change to the setting to the church. It stands amid open fields and orchards, and this is how it is currently experienced. The church is also clearly visible from the surrounding hills and these views

must be considered as well as the approach from Mortimers Cross. The proposals are in clear conflict with HC CS Policy LD4 and NDP Policy AYEnv3.

An additional 3 dwellings would increase the housing stock by over 70% in Aymestrey Village, if another current application for five houses is also approved. This is a disproportionate amount and far in excess of the capacity of the settlement for 14% growth identified by HC Core Strategy Policy RA2. Numerous planning appeal decisions have supported refusal of applications for housing on the grounds that they would constitute disproportionate expansion of an existing settlement. Relevant appeal reference numbers can be provided if verification of this point is required.

The development would result in an uncharacteristic form of development in open agricultural land, disrupting and harming the settlement pattern of the village and adversely affecting views of the village from viewpoints identified as important to the local community in the NDP. It is contrary to NDP Policy AYENV7a and HC CS Policy LD2.

The application documents do not demonstrate that any consideration has been given to sustainable construction methods or the requirement to address climate change, contrary to NDP Policies AYEnv4 and AYEnv5 and CS policies SD1 and SD2.

These applications are contrary to the following policies in the Aymestrey Neighbourhood Development Plan (Reg 16). There were no objections to the plan or any of its policies and as the Consultation Statement demonstrates, it has the strong support of the community. Relevant guidance/case law and planning appeals on the weight to be attached to an emerging development plan (including a neighbourhood development plan) is attached.

At its meeting on 24 July 2019 Aymestrey Parish Council resolved to **OBJECT** to the above, and asks that its comments be taken in consideration.

1) Package treatment plants may not be relied upon to avoid harm to the ecology of the river (SSSI) as they only work if used properly. They are not infallible. The River Lugg is already failing targets for water quality.

2) Natural England does not appear to have been re-consulted, despite having raised concerns about foul drainage arrangements within an SSSI impact risk zone.

3) The applications are contrary to the Aymestrey Neighbourhood Development Plan which was adopted by Herefordshire Council on 5 July 2019.

4) The Government has this week updated its guidance on self-build housing. The argument that these proposals would provide self-build plots does not overcome the conflict with planning policy or the statutory duty to protect the settings of the Grade I listed church. The government has updated its guidance on assessing the need for self-build plots: the new method is likely to demonstrate that the need for self-build plots in Herefordshire is much smaller than indicated by the number of people who have registered an interest. I refer you to Paragraph: 003 Reference ID: 67-003-20190722 Revision date: 22 07 2019

Transportation Manager-

As the proposal would effectively result in a total eight units being accommodated on land adjacent to the Village Hall (planning references: 173692, 182069, 182071 and 182072), the Highway Authority

requested that the previously consented site access arrangement and internal access road design (consented as part of a previous scheme for five units only – ref. 173692) would need to be upgraded to comply with adoptable standards set out in Herefordshire Highways Design Guide.

The submitted drawing (no. 1447/SW/1D) confirms that the internal site access road will be designed as a shared surface, to adoptable standards, comprising a 4.5m wide carriageway with a 2m service strip along the western side. Footway provision is also provided at the site access point. A proposed turning head to the south of the site has also been designed in accordance with HCC Design Guidance as set out at Section 2.13.

The proposed internal shared surface access road will need to be block paved to accord with guidance.

A private driveway is then proposed to be provided from the shared surface access road to Plot 6.

The drawing also demonstrates achievable visibility splays of 104m and 160m, to the north and south respectively, at a setback of 2.4m as previously consented.

The revised proposal, as submitted, is considered acceptable subject to the conditions and informatives:

Historic Building Officer-

Provided that the housing is not being constructed piecemeal and considered ‘as a whole’, I would not have an objection to the proposals.

It is not felt that the development would harm those aspects of the setting of the church which contribute to its significance.

Historic England-

Summary

The application is one of three, each for an additional dwelling to the five already permitted under application ref:173692, that lie within the setting of the Grade I listed church in Aymestrey. The application is unsupported by a heritage assessment describing how the setting of the church contributes to its significance or how this is affected by the proposal. This form of assessment is required by the NPPF in order to ensure that you are able to weigh the harm caused by the proposal against any public benefits it may offer. Historic England’s assessment is that the proposal will have an aggregative impact resulting in additional less than substantial harm but that in the absence of a heritage assessment, you are not currently in a position to determine the application. We therefore object to the application in its current form.

Historic England Advice

The Church of St John the Baptist and St Alkmund in Aymestrey is listed Grade I and sits in the flat land of the Lugg valley. The majestic square stone tower of the church is a focal point in views up the valley on leaving Mortimer’s Cross. The valley provides the setting in which the church is experienced and one which bears evidence an ancient history of strategic occupation from the Scheduled hillforts of Pyon Wood and Croft Ambrey to the undesignated route of the Roman Road to Leintwardine, the

Scheduled remains of medieval motte and bailey castles, the undesignated site of the Battle of Mortimer's Cross and medieval and post medieval Listed Buildings. The setting of the church is therefore extensive, attractive and characterised by designated and undesignated heritage which contributes to the significance of the church.

Planning permission (ref:173692) has recently been granted for the erection of five dwellings south of the Village Hall. The proposal is for the erection of an additional dwelling using the access road already approved and is one of three additional dwellings currently being applied for under separate applications. Historic England considers that the proposed development lies within the wider setting of the church as described above and will necessarily impact upon it.

Relevant national policy for consideration in decision making therefore includes: paragraph 128 of the NPPF which requires applicants to describe the significance of any heritage assets affected by their proposals, including any contribution made by their setting. Guidance on the identification of setting and its contribution to significance is provided in 'The Setting of Heritage Assets: Historic Environment Good Practice in Planning Note 3' which recommends a staged approach to the assessment of development proposals. Paragraph 132 of the NPPF is clear that heritage assets are irreplaceable and that harm to their significance including that resulting from development within their setting requires a clear and convincing justification. Where harm is less than substantial, it should be weighed against the public benefits of the proposal (paragraph 134).

The application fails to comply with paragraph 128 of the NPPF because it does not provide an assessment of the heritage assets affected by the proposal or their setting. Historic England's assessment of the scheme permitted under 173692 was that the amount, location and layout of the development would change the way in which the church is experienced in its wider rural setting resulting in a negative impact on views approaching via the main road from the south. In our view this amounted to less than substantial harm to the significance of the Grade I listed church. We consider that additional development to that already permitted and its aggregative effect would result in additional, though still less than substantial, harm. In order to allow proper consideration of the proposal against NPPF policy, the application requires its own heritage assessment and an evaluation of its impact upon the significance identified; we recommend that this is done in accordance with our published guidance referred to above. Without this assessment Historic England does not consider that you are in a position to evaluate the level of harm against any public benefits the application may offer, we therefore object to the proposal in its current form.

Recommendation

Historic England objects to the application on heritage grounds.

We consider that the application does not meet the requirements of the NPPF, in particular paragraph numbers 128, 132 and 134. In determining this application you should bear in mind the statutory duty of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess. And also of section 38(6) of the Planning and Compulsory Purchase Act 2004 to determine planning applications in accordance with the development plan unless material considerations indicate otherwise.

Your authority should take these representations into account and seek amendments, safeguards or further information as set out in our advice. If, however, you propose to determine the application in its current form, please treat this as a letter of objection, inform us of the date of the committee and send us a copy of your report at the earliest opportunity.

(Since the original comment the revision of the NPPF has changed the paragraphs to 189, 193 and 196)

Response following receipt of heritage report :-

Thank you for your letter of 6 December 2018 regarding further information on the above application for planning permission. On the basis of this information, we offer the following advice to assist your authority in determining the application.

Historic England Advice

Historic England concurs with the conclusion of the amended heritage assessment that the proposed development represents a change in setting that will result in less than substantial harm to the significance of the Grade I listed church of St John the Baptist and St Alkmund.

We note the points made in the amended heritage assessment regarding the topography, ridge height, form, materials and layout of what it describes as the proposed estate. We disagree however, with the analysis that the development as a whole reflects the established plan-form of the village. Land on the east side of the A4110 south of the church is undeveloped with the exception of the village hall and the historic buildings of Aymestrey Court. Elsewhere the village is characterised by a linear development of individual plots. In this context we consider that the development of an estate of houses laid out two-deep off a shared cul-de-sac represents an encroachment of open farmland and change in local character that is harmful to the significance of the church.

We therefore regret that the amended and additional information supplied does not alter the concerns and recommendation set out in our letter of 20 November 2018 and reiterated below.

Recommendation

Historic England has concerns regarding the application and is unable to support it on heritage grounds. We consider that the issue of public benefit outlined in our advice needs to be addressed in order for the application to meet the requirements of paragraphs 196 of the NPPF.

In determining this application you should bear in mind the statutory duty of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess. Also section 38(6) of the Planning and Compulsory Purchase Act 2004 to determine planning applications in accordance with the development plan unless material considerations indicate otherwise.

Your authority should take these representations into account and seek amendments, safeguards or further information as set out in our advice. If there are any material changes to the proposals, or you would like further advice, please contact us.

Drainage Consultant

I have reviewed the additional information for 182069, 182071 and 182072. We last provided comments in December 2018. Since then the Surface & Foul Water Management Plan (Ref: L0183 Rep.2) (dated 9th July 2019) has been provided. Upon review of this, we provide the following comments:

Surface Water

The established infiltration rate is approx. 3.67×10^{-5} m/s. 2 sizes of soakaway have been designed to serve individual dwellings of impermeable areas of 200m² and 265m². The correct parameters have been used and they have been designed to cope with the 1 in 100 year + 40% climate change event.

It has not yet been stated whether the proposed section of road serving 6 dwellings will be put for adoption by Herefordshire Council. This should be clarified. The section of road serving less than 6 houses must remain private. Currently, the access road is proposed to be drained into 4 concrete ring soakaways, these are currently located beneath the road. We suggest that these are re-located to avoid being in trafficked areas.

Foul Water

The Vp value has been established by converting the infiltration rate (f) into Vp using the equation from Building Regulations Part H. The Vp value has been established as 9. Building Regulations state values between 12 and 100 are acceptable. We suggest that an ecology representative shares their views on treated effluent being disposed of into soil with a Vp of 9 given the close proximity to the River Lugg (a Site of Special Scientific Interest).

We note that all the package treatment plants will be located within the curtilage of each dwelling, however all the drainage fields serving the individual package treatment plants are proposed to be located outside the curtilage of the plots. The hedge indicates the land owned by the respective homeowner. The land on which the drainage field is located should be owned by the respective homeowner(s). This may lead to future confusion in regards to the ownership of land. We appreciate locating drainage fields and surface water soakaways in back gardens may prove difficult. If it is not possible to locate the drainage fields within the curtilage of each dwelling, either the boundary should be extended to accommodate both features, or the land ownership should be clearly included within the deeds of each property.

The sizing of the drainage fields has been stated to be 10.9m² per property. This should be converted to a linear meterage dependent upon the trench width (see page 14 of BS6297). We note that Plot 3 and 4 are proposed to have a combined foul drainage system. The Applicant should review the attached information in relation to a single package treatment plant serving multiple dwellings.

As previously stated, we would not object to the proposals for each of these plots, however the above information should be included within suitably worded planning conditions in addition to a surface water drainage strategy.

Ecologist

The additional information relating to the required habitat Regulation Assessment process supplied by the applicant (direct forwarding of email from an unnamed or substantiated firm with email @hydro-int.com) is noted.

This additional information is supplied in a form that provides no professional confirmation of even who the firm supplying the information are or their professional credentials or experience to make a professional statement. The email is not in the form of any substantiated, reasoned or clearly discussed and supported professional document and is merely a very basic email with unreasoned and brief comments and no discussion or conclusion.

Some of the supplied data is also not clearly related to the specific site:

Criteria d – this refers to BSG data from a point 155m from the site but the location of this point is not supplied. So it is not possible to clearly determine that the same data would apply actually at the site and location of the soakaway drainage fields. There is no discussion or reasoning by the author of the email to discuss this and justify why this data is relevant. There is no supporting on site trial pit testing to relevant British Standards (allowing for a change of ground water depth measurements to

comply with required HRA criteria) such as to demonstrate that any time GWL is at least 2m below normal surface levels.

Criteria e – The state soil strata sample quoted is not even from within the same river catchment area as the application site. SO4264468088 refers to a site approx. 450m NE of Brinshope Cottage, just south of Wigmore. The data refers to a site within the Wigmore 'glacial lake' area which is River Teme catchment (site is River Lugg). The gap between these catchments arose in the last ice age which altered local river flows and catchments. There may be significant differences in local geology and soils. This data is not scientifically valid for the actual development site.

Based on the information submitted there is insufficient valid data to support the LPA undertaking the required HRA 'Appropriate Assessment'.

The LPA can only currently determine that there is an **Unmitigated adverse effect on the integrity of the River Lugg (River Wye) Special Area of Conservation**

This application should not legally be granted planning consent until such time as a satisfactory Habitats Regulation Assessment can be completed.

Natural England

SUMMARY OF NATURAL ENGLAND'S ADVICE

Having received HRA Screening reports for all three application detailed above. Natural England has the following advice:

FURTHER INFORMATION REQUIRED TO DETERMINE IMPACTS ON DESIGNATED SITES

As submitted, the application could have potential significant effects on the River Wye SAC. Natural England requires further information in order to determine the significance of these impacts and the scope for mitigation.

The following information is required:

- Details of waste water (etc.) as required by HRA Screening report prepared by Herefordshire Ecology.
- Appropriate Assessment.

Without this information. Natural England may need to object to the proposal.

Please re-consult Natural England once this information has been obtained.

Policy Team

With regard to meeting the demand on the self-build register the legislation states that relevant authorities have 3 years in which to permission an equivalent number of plots of land, as there are entries for each base period. Therefore the Council has until 31 October 2019 to grant these planning permissions for the first base period which ended on 30 October 2016. There were 177 individuals and one association registered during that period. Our view is that it is not only permissions that have self or custom build in the development description that can be counted towards meeting the demand on the register but that a significant proportion of permissions for single dwellings would meet the definition of self and custom build in the legislation. We are currently investigating the exact number that would meet the definition of self and custom build but it is worth noting that between 1 April 2016 and 31 March 2017 permissions were granted for 228 single dwellings.

Representations

9 letters of objection have been received , summarised as follows

1. Revised access details include land belonging to village hall, with visibility to north restricted by silver birch, fence and notice board.
2. Precedent for further ribbon development along A4110.
3. Contrary to NDP
4. Pressure on SSSI- River Lugg
5. Highway safety
6. Setting of grade 1 listed church.
7. Loss of top quality agricultural land
8. Proximity to village hall may give rise to complaints about use.
9. Flood plain.

Pre-application discussion: None

Constraints: heritage/ NDP/HRA

Appraisal:

Policy context and Principle of Development

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 is the Herefordshire Local Plan – Core Strategy (CS) and the 'made' Aymestrey Neighbourhood Development Plan (NDP). At this time the policies in the NDP can be afforded weight as set out in paragraph 48 of the National Planning Policy Framework 2019, which itself is a significant material consideration.

NPPF paragraph 73 requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old.

The Council has published its up to date housing land supply position (as of April 2019) and this is confirmed to be 4.05 years. As such the Council does not have an up to date 5 year supply of housing land as required by the NPPF. The Council's Housing Land Supply deficit means paragraph 11 of the National Planning Policy Framework (NPPF) is engaged in the assessment of housing proposals.

Paragraph 11 of the NPPF states that plans and decisions should apply a presumption in favour of sustainable development. It sets out that, for decision-taking, where the policies which are most important for determining the appeal are out of date, planning permission should be granted unless the application of policies in the NPPF that protect areas or assets of particular importance provides clear reason for refusing the development proposed; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. This is commonly referred to as ‘tilted balance’ and will form the conclusion of this report.

Since the permission for 5 houses, ref 173692 was approved, the NDP has been adopted. As this plan is less than 2 years old and the Council housing land supply exceeds 3 years it can be afforded full weight. As the application site lies outside of the proposal is contrary to policy AYH2 of the NDP and RA2 of the CS

The target growth of 14% requiring 23 dwellings in the period 2011-2031 has been exceeded by 10, the figures being as follows: 14 dwellings completed, 7 commitments and 12 in the NDP allocation. However, given the Council's lack of 5 year housing land supply, currently

4.05 years, and the fact that the proposal being considered in this instance is for a single dwelling, it is not considered to constitute disproportionate growth.

Heritage Impacts

Policy LD4 of the Core Strategy (Historic environment and heritage assets) sets out the approach to the assessment of development proposals affecting heritage assets and the wider historic environment. It identifies that proposals should “*protect, conserve and where possible enhance heritage assets and their settings in a manner appropriate to their significance through appropriate management, uses and sympathetic design....*”

Where possible, development should also contribute to the character and local distinctiveness of the townscape or wider environment, especially within conservation areas. What LD4 does not include is a mechanism to assist the decision-maker where harm to significance of a heritage asset is identified. In this regard recourse must be made to the NPPF and Chapter 16 in particular.

Historic England maintain their objection to the proposal. They consider that, whilst the harm to the significance of the setting of the Grade I listed church to the north of the site is less than substantial, the harm identified is not outweighed by the public benefits. The comments are clear that the harm to the heritage asset results from a combination of the proposal and the previous permission, which itself results in an uncharacteristic two deep development in a cul-de-sac layout. Their comments note particularly that the area of land to the east of the A4110 is largely free from development and the accumulated impact of the approved scheme and this proposal are contrary to the pattern of development to the detriment of the setting of the church.

Officers take the view that, given that the NDP is less than two years old and that the Council can demonstrate a housing land supply in excess of three years, its housing supply policies can now be attributed full weight. The provision of one additional dwelling has a nominal impact in terms of re-dressing the housing land supply shortfall and therefore has very limited weight in terms of public benefit. Consequently, taking into account the comments from Historic England and the requirements of S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 the proposal is considered to be contrary to policy LD4 of the CS, AyEnv3 of the NDP and para 195 of the NPPF.

Highway Matters

The comments made by the parish council and local residents with respect to highway safety are noted. However, the starting point for the assessment of this application on highway grounds is the consented scheme for five dwellings. In accordance with paragraph 109 of the NPPF, officers have to consider whether the cumulative impact of this proposal is so severe that it represents an unacceptable compromise to highway safety such that this application ought to be refused on highway safety grounds.

In this case the consultation response from the Transportation Manager acknowledges that there are two other applications currently being considered and that cumulatively they would require the proposed access road to be upgraded to comply with adoptable standards set out

in Herefordshire Highways Design Guide. Officers are of the view that this is a matter that could be addressed through the imposition of an appropriately worded condition

In terms of the proposed visibility splays, the plans submitted as part of this proposal demonstrate achievable visibility splays of 104m and 160m, to the north and south respectively, at a setback of 2.4m. This is as previously consented. The proposed intensification of use does not lead to a corresponding requirement to increase visibility splays; these are required on the basis of traffic speed along the A4110. It is therefore concluded that the scheme demonstrates that the local road network can absorb the traffic impact associated with the development without adversely affecting the safe and efficient flow of traffic and thus accords with Policy MT1 of the Core Strategy and AYT2 of the NDP.

Design and Layout

With the previous permission in mind it is considered that there are no reasons to refuse the application on design, privacy grounds or landscape grounds as the proposal continues the same design ethos. Notwithstanding policy SD1 of the CS and AYEnv4 of the NDP require evidence of the use of materials/construction methods that demonstrate consideration of such issues. The proposal refers to code 3 sustainable development and consideration of solar panels. Code 3 is no longer applicable and solar panels are not proposed. It is not considered therefore that these matters have been adequately addressed and therefore the proposal is contrary to those policies accordingly.

Habitat Regulations Assessment (HRA)

The site lies within the catchment of the River Lugg which, in turn, is a sub-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 assess the potential impact of new developments in this area by undertaking 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, as well as the guidance of the NPPF.

The River Lugg, which is a tributary of the River Wye and forms part of the SAC designated site, is currently failing its conservation targets on phosphate levels. This as a result of water pollution from 'point' source, particularly sewage outlets, and 'diffuse' source, particularly from agricultural run-off.

Until recently, the approach taken by Herefordshire Council and Natural England has been that there is a route for development to be able to proceed in the River Lugg catchment, even when it may add to the existing phosphate levels in the river as above, as any increases would be mitigated by the River Wye's Nutrient Management Plan (NMP). The NMP is a partnership project developed to reduce phosphate levels in the Wye catchment, including the River Lugg, to below the target level by 2027 in line with the Water Framework Directive.

However, this situation regarding development with potential phosphate impacts in the Lugg catchment is currently under review following Natural England's advice to Herefordshire

Council, on 22nd July 2019, and through subsequent further advice in August 2019, that, in light of the interpretation of the recent 'Dutch Case', a ruling in July 2018 by the Court of Justice of the European Union (the CJEU) on the interpretation of the Habitats Directive, from which the Habitats Regulations arise in UK law, in the case of Cooperatie Mobilisatie (AKA the Dutch Case) (Joined Cases C-293/17 and C-294/17).

Natural England have advised that following the Dutch Case, that where a site is failing its water quality objectives, and is therefore classed as in unfavourable condition, there is limited scope for the approval of additional damaging effects and that the future benefit of measures cannot be relied upon at Appropriate Assessment, where those benefits are uncertain at the time of the assessment. Natural England have advised that for any plans or projects with a significant effect (on phosphate levels in the River Lugg) and which require Appropriate Assessment, the effects are currently uncertain, as in their opinion there remains reasonable scientific doubt as to whether the NMP can provide appropriate mitigation (based on how much certainty this currently demonstrates). Natural England have therefore advised that they will not, in the short term, provide advice on such planning applications that require Appropriate Assessments, while they seek legal advice. The Council is also seeking its own advice on this matter.

Notwithstanding the above, the Council's Ecologist has advised that an Appropriate Assessment cannot be passed at the present time as it cannot be concluded that the scheme would have no likely adverse effect on the integrity of the River Lugg and River Wye SAC. Furthermore it is not considered that the information submitted to comply with the exception available satisfies those requirements.

Consequently the proposal fails to meet the requirements of the Conservation and Habitats and Species Regulations 2017 and would also be in conflict with policies LD2 and SD4 of the CS. and AEnv5 of the NDP. 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'.

The council's drainage consultant has no objection in principle to the development subject to conditions, though refers to consideration of results required by Council's Ecologist.

The application refers to a self build development (with a unilateral undertaking submitted) as part of the justification.

Self Build Register

The Local Planning Authority's register confirms that at present there are 542 entrants who are interested in building their own properties (541 individuals and 1 group (with 2 people)). The Local Planning Authority contends that with permission for 679 'serviced plots' that meet the legal definition of self and custom build plots the demand is clearly met within the County. As suitable permissions, in compliance with the wording of the NPPG, have been granted to meet

the demonstrated demand, as per the register, the Local Planning Authority has complied with its duty to grant permissions. In forming this view it is noted that neither the Self Build and Custom Housebuilding Act 2015, the Housing and Planning Act 2016, the NPPG nor the NPPF stipulate that the serviced plots must be limited to those who will develop them as a self build/custom build. On this basis the grants of permission for serviced plots are available for those wishing to self build/custom build on the open market and this supports the Government's objective of significantly boosting the supply of homes. There is no mention in the legislation or the Government's policies and guidance that those wishing to undertake such developments do not need to compete for such plots on the open market. Single plot permissions have been included in the Local Planning Authority's annual returns to the Department of Communities and Local Government for the last two years and they have not been challenged, which endorses this approach.

Therefore a proposal for a self-build dwelling is not an overriding factor to lead the council to abandon the strategic approach to housing allocation that is set out by policy RA2 of the Core Strategy and HFSP5 of the NDP. The site is considered to be located outside the settlement and the delivery of self-build dwellings is not an exceptional justification as set out by Policy RA3. The location of the site is considered to be in conflict with policy RA2. Even in the absence of a five year housing land supply, the Council is of the view that this should be afforded considerable weight. Consequently, the proposal for a self build dwelling does not make the proposal acceptable.

Planning Balance and Conclusion

Paragraph 177 of the NPPF is clear that the presumption in favour of sustainable development does not apply where a proposal is likely to have a significant effect on a habitats site. It is considered that the proposal will have a likely significant effect in terms of water quality objectives and in the first instance the application cannot be recommended favourably.

Furthermore, the site lies outside of the settlement boundary for Aymestrey. The NDP is less than two years old and the Council is able to demonstrate a three year housing land supply and therefore the NDP policies attract full weight. Paragraph 14 of the NPPF is clear that in such situations the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits. In this case, and notwithstanding the above, it is considered that the public benefits of the development are limited in nature and they do not outweigh the conflict with NDP policy.

Finally, the harms to the significance of the setting of the Grade I listed church; whilst being less than substantial, are not outweighed by the public benefits to be derived from allowing the development. On this basis the application is recommended for refusal for the reasons set out below.

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

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

1. It has not been demonstrated that the development will not have an adverse effect on the integrity of the River Lugg / River Wye SAC. As a result, the proposal has failed the Appropriate Assessment required by The Conservation of Species and Habitats Regulations 2017 and is hence contrary to Policies LD2 and SD4 of the Herefordshire Local Plan Core Strategy, policy AYEnv5 of the Aymestrey Neighbourhood Development 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
2. It is considered that the proposal is contrary to policy AYH2 of the Aymestrey Neighbourhood Development Plan in that the site is not identified within the settlement boundary. RA2 of the Herefordshire Local Plan- Core Strategy and AYH2 of the Aymestrey Neighbourhood Development Plan. As all of the criteria of para 14 of the NPPF are met policy AYH2 is afforded full weight. Accordingly the site is in open countryside and does not meet any of the exceptional criteria tests set out by Policy RA2 of the Herefordshire Local Plan- Core Strategy. The provision of a self build property does not represent an exceptional justification to set the development plan aside. No other exceptional justification has been provided by the applicant and the proposal is therefore also contrary to Policy RA3 of the Herefordshire Local Plan – Core Strategy
3. It is considered that less than substantial harm would be caused to the significance of the setting of the Grade I Listed Church of St John the Baptist and St Alkmund from the cumulative impacts of this development and those previously approved. However, there are no public benefits identified to outweigh the harm caused and therefore the proposal is contrary to policy LD4 of the Herefordshire Local Plan- Core Strategy and AYEnv3 of the Aymestrey Neighbourhood Development Plan, and paragraph 196 of the National Planning Policy Guidance.
4. It is considered that the proposal is contrary to policy SD1 of the Herefordshire Local Plan- Core Strategy and AYEnv4 of the Aymestrey Neighbourhood Development Plan in that the proposal does not adequately demonstrate that consideration has been given to the use of sustainable construction methods or renewable energy provision.

Informatives

The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations and identifying matters of concern with the proposal and discussing those with the applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which have been clearly identified within the reason(s) for the refusal, approval has not been possible.

M. J. ...

Signed: Dated: 10/12/19.....

TEAM LEADER'S COMMENTS:

DECISION:

PERMIT ☐

REFUSE ☒

Signed: *AB.*

..... Dated: 10/12/19