

<b>MEETING:</b>	<b>PLANNING COMMITTEE</b>
<b>DATE:</b>	<b>13 JULY 2016</b>
<b>TITLE OF REPORT:</b>	<p><b>P143252/F - PROPOSED DEVELOPMENT OF 12 NOS. DWELLINGS, CONSISTING OF 5 NOS. AFFORDABLE AND 7 NOS. OPEN MARKET. WORKS TO INCLUDE NEW ROAD AND LANDSCAPING AT LAND ADJOINING KINGSLEANE, KINGSLAND, LEOMINSTER, HEREFORDSHIRE, HR6 9SP</b></p> <p><b>For: Mr &amp; Mrs Glynne Schenke per Mr R Mills, Les Stephan Planning Ltd, 9 Sweetlake Business Village, Shrewsbury, SY3 9EW</b></p>
<b>WEBSITE LINK:</b>	<a href="https://www.herefordshire.gov.uk/planning-and-building-control/development-control/planning-applications/details?id=143252&amp;search=143252">https://www.herefordshire.gov.uk/planning-and-building-control/development-control/planning-applications/details?id=143252&amp;search=143252</a>
<b>Reason Application Submitted to Committee – Member of Staff Application</b>	

**Date Received: 21 February 2014**

**Ward: Bircher**

**Grid Ref: 344255,261307**

**Expiry Date: 23 May 2014**

Local Member: Councillor WLS Bowen

## **1. Site Description and Proposal**

- 1.1 The site, which covers an area of approx. 0.63 of a hectare, is located outside, but within close proximity to the former UDP settlement boundary for Kingsland, a main village in accordance with Policy RA2 of the Herefordshire Local Plan – Core Strategy. The site is located within the Kingsland Conservation Area and nearby are listed buildings (Kingsland House Grade 2\* and Arbour Farm Grade 2).
- 1.2 The site is situated alongside (east) an existing housing development known as ‘Kingsleane’, which is an affordable housing site and it is this housing development that is located adjacent to the former settlement boundary. The C1036 public highway adjoins the southern side of the site, which provides a convenient walking route to the village’s community facilities such as a primary school, village hall, post office/shop, public house, church and recycling centre. The site forms part of a cultivated field and is surrounded on its southern and northern boundaries by native hedgerows.
- 1.3 The application proposes the construction of twelve dwellings, and associated access road, which will lead into the site off the existing Kingsleane access road. The breakdown of the dwellings is two 4 bed dwellings, five 3 bed dwellings and five affordable dwellings, which consist of four 2 bed dwellings and one 3 bed dwelling.
- 1.4 The application is fully detailed and accompanied by a Planning Statement, Design and Access Statement, Archaeology, Drainage, Affordable Housing, and Heritage Statements, Ecology/Biodiversity and Landscape Management reports and a draft Section 106 agreement. Addendum reports for Landscaping, Heritage and Planning have also been submitted. Also accompanying the application are detailed proposed elevation and floor plans, site layout plan

---

Further information on the subject of this report is available from Mr K Bishop on 01432 260756

and street scene. The Draft Heads of Terms, drawn up in accordance with Section 106 of the Town and Country Planning Act 1990 in line with the Council's Supplementary Planning Document on Planning Obligations, is attached as an appendix to the report.

- 1.5 This application was originally approved subject to a Section 106 agreement however following the decision a Judicial Review (JR) was made and the notice subsequently quashed. The application is represented for determination. The JR challenged the original decision in three areas; that is was contrary to the emerging Neighbourhood Plan, heritage matters and five year housing land supply.
- 1.6 The report has been updated with revised consultation responses following further publication of the application.

## **2. Policies**

### **2.1 National Planning Policy Framework**

The following sections are of particular relevance:

Introduction	-	Achieving Sustainable Development
Section 6	-	Delivering a Wide Choice of High Quality Homes
Section 7	-	Requiring Good Design
Section 8	-	Promoting Healthy Communities
Section 11	-	Conserving and Enhancing the Natural Environment
Section 12	-	Conserving and Enhancing the Historic Environment

### **2.2 Historic England - The Setting of Heritage Assets**

### **2.3 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	-	Addressing Climate Change
RA1	-	Rural Housing Strategy
RA2	-	Herefordshire's Villages
H1	-	Affordable Housing – Thresholds and Targets
H3	-	Ensuring an Appropriate Range and Mix of Housing
OS1	-	Requirement for Open Space, Sports and Recreation Facilities
OS2	-	Meeting Open Space, Sports and Recreation Needs
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
ID1	-	Infrastructure Delivery

### **2.4 Supplementary Planning Guidance**

- Kingsland Parish Plan
- Supplementary Planning Document: Planning Obligations

## Neighbourhood Planning

- 2.5 Kingsland Parish Council has designated a Neighbourhood Area under the Neighbourhood Planning (General) Regulations 2012. An emerging neighbourhood plan may be a material consideration once it has reached submission / local authority publication stage (Regulation 16). In the case of the Kingsland Parish, the Parish Council has prepared a Neighbourhood Development Plan for the area. The neighbourhood area was designated on 15<sup>th</sup> August 2014. Work has commenced and the plan reached draft plan (Regulation 14) stage on 5<sup>th</sup> January 2104. However no weight can be attached in the decision making process at this stage.
- 2.6 The Core Strategy policies together with any relevant supplementary planning documentation can be viewed on the Council's website by using the following link:-

<https://www.herefordshire.gov.uk/planning-and-building-control/planning-policy/core-strategy/adopted-core-strategy>

## **3. Planning History**

- 3.1 P140534/F – Proposed development of 12 number dwellings consisting of 4 affordable and 8 open market housing. Works to include new road and landscaping. Refused 25<sup>th</sup> June 2014.

The application was refused for the following reasons:

- The proposed development by reason of its design and layout does not enhance or preserve the Conservation Area and therefore will have a detrimental impact on the setting of the settlement. The proposed development is accordingly considered contrary to Policies HBA6, LA3 and H13 of the Herefordshire Unitary Development Plan and the National Planning Policy Framework.
- No completed Section 106 Agreement under the Town and Country Planning Act 1990 in relationship to planning obligations accompanied the application. Therefore, the proposal is considered contrary to Policy DR5 of the Herefordshire Unitary Development Plan.

- 3.2 NW09/2679/F – Residential development comprising 10 number affordable houses with car parking, shared access and landscaping. Refused 15<sup>th</sup> December 2009.

The application was refused for the following reasons:

- The application site is not considered to be adjacent to the settlement boundary of the village of Kingsland. Consequently, the proposal does not comply with policy H10 of the Herefordshire Unitary Development Plan (2007).
- The proposed development fails to preserve or enhance the character and appearance of the conservation area contrary to policy HBA6 of the Herefordshire Unitary Development Plan (2007) and to guidance contained with Planning Policy Guidance 15 - Planning and Historic Environment.
- The proposed development by virtue of its location and prominent position is considered to be harmful to the landscape quality of the area contrary to Policy LA2 of the Herefordshire Unitary Development Plan (2007). The introduction of built form in this location would harm the setting and approach to the village contrary to policy LA3 of the Herefordshire Unitary Development Plan (2007).

- The application site is designated as a Special Wildlife site and is recognised as unimproved hay meadow. As such the introduction of development would be contrary to the aims of policies NC4 and NC6 of the Herefordshire Unitary Development Plan (2007) and guidance contained within Planning Policy Statement 9 - Biodiversity and Geological Conservation.
- The proposal, when considered in relation to the adjacent affordable housing site known as Kingsleane, would create a development, harmful to the social cohesion of Kingsland by virtue of not being integrated within or with meaningful context to the existing local community, contrary to policies S1 and S3.

3.3 NW08/1915/F - Residential development comprising 10 affordable housing units, car parking and shared access and landscaping. Refused 22<sup>nd</sup> October 2008.

The application was refused for the following reasons:

- The application site is not considered to be adjacent to the settlement boundary of the village of Kingsland. Consequently, the proposal does not comply with policy H10 of the Herefordshire Unitary Development Plan (2007).
- The proposed development fails to preserve or enhance the character and appearance of the conservation area contrary to policy HBA6 of the Herefordshire Unitary Development Plan (2007) and to guidance contained with PPG15 - Planning and Historic Environment.
- The proposed development by virtue of its location and prominent position is considered to be harmful to the landscape quality of the area contrary to Policy LA2 of the Herefordshire Unitary Development Plan (2007). The introduction of built form in this location would harm the setting and approach to the village contrary to policy LA3 of the Herefordshire Unitary Development Plan (2007).
- The application site is designated as a Special Wildlife site and is recognised as unimproved hay meadow. As such the introduction of development would be contrary to the aims of policies NC4 and NC6 of the Herefordshire Unitary Development Plan (2007) and guidance contained within PPS9 - Biodiversity and Geological Conservation.
- The proposal, when considered in relation to the adjacent affordable housing site known as Kingsleane, would create a development, harmful to the social cohesion of Kingsland by virtue of not being integrated within or with meaningful context to the existing local community, contrary to policies S1 and S3.
- The proposed development fails to make provision for or in lieu of a small children's /infants play area, properly equipped and fenced and therefore fails to meet the criteria of policy H19 of the Herefordshire Unitary Development Plan (2007).
- The proposal would result in unacceptable over-loading of the waste water treatment works and as such would be detrimental to the local environmental and public health, and therefore contrary to Herefordshire Unitary Development Plan policies DR2 and CF2.

3.4 92/418 – (Adjoining the site). Erection of ten dwellings approved 4<sup>th</sup> February 1993. Forming part of the planning approval was an associated section 39 agreement in accordance with the Wildlife and Countryside Act 1981) to ecologically manage the adjoining land and its botanical interests for a period of 10 years, expiring 3 February 2003.

## 4. Consultation Summary

### Statutory Consultees

#### 4.1 Historic England

We have received amended proposals for the above scheme. We do not wish to comment in detail, but offer the following general observations.

#### **Historic England Advice**

- 4.2 Conditions should be imposed requiring your Council's prior approval of all external details, materials and finishes, including all building works and all landscaping, including boundary treatments.

#### **Recommendation**

- 4.3 We would urge you to address the above issues, and recommend that the application should be determined in accordance with national and local policy guidance, and on the basis of your specialist conservation advice. It is not necessary for us to be consulted again. However, if you would like further advice, please contact us to explain your request.

Previous comments:

Thank you for your letter of 5 November 2014 notifying us of the application for planning permission relating to the above site. We do not wish to comment in detail, but offer the following general observations.

#### **English Heritage Advice**

- 4.4 As the application affects a conservation area, the statutory requirement to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area (s.72, 1990 Act) must be taken into account by your authority when making its decision.

The elevational treatment of the proposed development should be informed by the conservation area. Where the conservation area is strong in character it should reinforce the choice of materials and the rhythm and style of architectural details and form of the proposed development. If the character of the area is used in a creative way to inform the design of the new building there is an opportunity for new work to add to the design of the conservation area and create a development that reinforces the local distinctiveness of the conservation area in line with NPPF paragraphs 58 to 61. The detailed design of the scheme will be key to the success of the development. We therefore advise you to consider whether the proposed design takes these matters into consideration.

If you are minded to approve the scheme conditions should be imposed requiring your council's prior approval of architectural details, materials and finishes in relation to both aspects of the development.

#### **Recommendation**

- 4.5 We would urge you to address the above issues, and recommend that the application should be determined in accordance with national and local policy guidance, and on the basis of your specialist conservation advice. It is not necessary for us to be consulted again. However, if you would like further advice, please contact us to explain your request.

- 4.6 Welsh Water raises no objections subject to conditions with regards to foul and surface water discharges.

#### Internal Consultees

- 4.7 The Transportation Manager recommends conditions with regards to access, parking and turning, parking for site operators and no conversion of garages to habitable accommodation.

- 4.8 The Conservation Manager (Historic Buildings),

Since the last set of comments was submitted on 8 January 2015 there has been no change to the submitted scheme for 12no. dwellings or its location in the central area of the Kingsland Conservation Area. Additional photographic assessment and comment has been made on the conservation area plus an endorsement by a conservation consultant, all of which has been read. There has been a change in the policy context however with the adoption of the Core Strategy in October 2015. This means that the scheme needs to be assessed against Policy LD4 of the Core Strategy in addition to the relevant policies of the NPPF Chapter 12.

- 4.9 The site, as previously stated, is in the centre of the Kingsland Conservation Area, which was designated in 1975. At that time there were two main areas of built development: the ribbon development of the main village street of Kingsland and the cluster of properties known as West Town on the main road. The lane linking the two had a few properties at the main village end, including the former Rectory, now called Kingsland House (grade II\*) and The Lees (grade II). More recently these were joined by the Kingsleane development on the sharp bend in the lane, creating more of a cluster than was previously the case, but one that seems to have added to the character of the Conservation Area.

- 4.10 Despite the Kingsleane development in the late 1990s, there has remained a considerable open space gap between the built development of West Town and that of Kingsleane/Kingsland; a gap noted in the original designation report for the Conservation Area. Also in that designation report the distinct village character of West Town was remarked upon.

To recap, the fundamental aspects of the Conservation Area in terms of layout and general character are:

1. Kingsland: formed by ribbon development along a mile-long single street
2. West Town: separate cluster of approx. 30 buildings
3. Kingsleane: very small node of housing at sharp bend between Kingsland and West Town
4. Open fields and hedges separating three distinct built elements of Kingsland Conservation Area.

- 4.11 As previously stated, since 2008 the application site has been the subject of three applications for housing, the first two on a smaller part of the existing field, but all adjacent to the Kingsleane development. The previous applications were considered by three different Senior Building Conservation Officers and each independently recommended refusal of the application before them. Subsequently the applications were formally refused with the last application being refused in July 2014. The Conservation Team have consistently raised strong objections to any development of the application site due to the adverse impact on the character and appearance of the Kingsland Conservation Area at this particular point.

- 4.12 As indicated above there are now three separate areas within the Kingsland Conservation Area: the main village, which has developed in a linear form along a single village road; West Town, which is a loose cluster of about 30 dwellings to the west of the main village; Kingsleane, which

is a more recent, very small cluster of housing located between Kingsland and West Town and includes Kingsland House and The Lees, listed grade II\* and grade II respectively. Other than these three distinct areas the built environment is scattered and small scale.

- 4.13 The separation of the three areas is clearly visible when visiting the Kingsland Conservation Area and is supported by the cartographic evidence. The separation of the nodes by means of open fields is a fundamental part of the character of the conservation area. It is therefore considered critical to the preservation of the designated heritage asset of the Kingsland Conservation Area that the balance between space and built form be respected and upheld.
- 4.14 As I have already commented in relation to the July 2014 application and to this application in January 2015, the proposal to develop half of the field, currently separating Kingsleane and West Town, would visually link the two nodes together by significantly reducing their separation distance. It is noted that in the intervening period the roadside hedge has been allowed to grow unchecked and consequently is very high but also is becoming very sparse for at least half its height as it reverts to a series of trees rather than hedge. The effect on the character and appearance of the Conservation Area at this point is not considered protection or enhancement as such a high hedge is out of character with the area. In addition, landscaping should be the mitigation route of last resort, if indeed that is the reason behind letting the hedge grow overly high.
- 4.15 The proposed development would alter the character of the current Kingsleane node by elongating it more towards ribbon development in the direction of West Town. The more visually obvious linking of West Town to Kingsleane and then on to Kingsland by built development would be contrary to the character of the conservation area and would neither preserve nor enhance it.
- 4.16 As pointed out previously, to the south of the development is the Fire Station: the proposed scheme would link the Kingsleane node to that currently detached element. Whilst an expansion to the Fire Station had previously been granted (objected to by a previous colleague), it is understood that this scheme is unlikely to be proceeding, so the site will remain as a small detached plot rather than a large facility, unless the proposed housing scheme proceeds. It currently does not dominate the views from the south but should the proposed housing development be constructed there will be a significant increase in built form which will link visually with the fire station and also West Town. The scale of this intrusion would be harmful to the heritage asset of the conservation area in this particular area.
- 4.17 The layout of the proposed scheme is arranged round a cul de sac, which is not a historic form of development in this rural context, though it has been used on many infill plots in the 20<sup>th</sup> century in the main linear village due to the way land has become available. The access road design does allow for the retention of the existing hedgerow but this is considered inadequate compensation for the location of 12 dwellings behind the hedge which are clearly visible from both long and short views and do not reflect the rural character of the area. As noted above, letting the existing hedge grow unchecked appears to have the intention of hiding the development, whereas the right design in the right place should not need to be hidden.
- 4.18 The 1993 Kingsleane development immediately to the east of the application site was extremely well considered and is a positive introduction to the landscape and conservation area. It is considered that this careful scheme would be visually compromised by the development of the currently open field to the west as a more suburban form would be introduced. This is despite the much more appropriate designs that have been introduced to the scheme, in comparison to earlier submissions.

- 4.19 The impact on the settings of the grade II\* and II listed buildings near the site would however be only slightly adverse. This is partly due to the maturity of the landscaping immediately surrounding the various buildings. However it is considered that the wider setting would be altered, in that the balance would change between open space and built form. The linking of West Town to Kingsleane would remove the distinction between the two nodes, to the detriment of the local character.
- 4.20 The scheme is considered to be contrary to policy LD4 as it would not protect, conserve or enhance the conservation area of Kingsland; it would not contribute to the character and local distinctiveness of the townscape, particularly in terms of the balance between areas of built form and open space between them. The retention of the hedges is applauded but they should not be used to hide built form that is considered to be in an inappropriate place, especially when the height of the hedge then starts to appear out of place.
- 4.21 My Building Conservation Officer colleagues and I have been consistent in our advice and comments on this site, and indeed on the Fire Station expansion scheme across the road, that there would be a highly negative effect on the Kingsland Conservation Area at this point and to a much reduced extent to the grade II listed buildings in West Town, Kingsland House (grade II\*) and The Lees (grade II). This latest scheme, in terms of heritage, does not comply with the principle of development in the conservation area, regardless of the merits of the design and details, or otherwise.
- 4.22 The recent Draft Neighbourhood Plan for Kingsland supports the retention of the “clear separation between Kingsland village and West Town” in Policy KNDP 6.2f. The application site is not within the DNP Settlement Boundary and scheme does not respect the original form of development within the Conservation Area (as opposed to the later 20<sup>th</sup> century, cul de sac developments).
- 4.23 It is noted that the DNP states that 44 houses are required within Kingsland village during the Plan period up to 2031 and that of these, 7 have already been built and a further 33 have existing permissions. That leaves only 4 houses required to fulfil the quota. There would seem little need therefore to grant permission for 12no. houses on a site which is in a particularly sensitive and pivotal location within the Conservation Area.
- 4.24 In terms of assessing the proposed scheme against the NPPF, in paragraph 131 bullet point three, it is required that we should take account of “the desirability of new development making a positive contribution to local character and distinctiveness”. However the nature of the proposed scheme is to turn its back on the public road, only creating a street frontage onto the development’s cul de sac. This is not typical of development along a road in Kingsland, only where development goes deep into a plot of land away from a road. As a result the scheme does not add enhance the character and appearance of the Conservation Area. Rather, it provides a built form linkage between the Kingsleane buildings and West Town which is contrary to the character and local distinctiveness of the Conservation Area.
- 4.25 Whilst it is considered that the scheme would cause “less than substantial harm” to the character and appearance to a fundamental element of the designated heritage asset of Kingsland Conservation Area, that harm is considered to be at the higher end of the scale. Therefore the proposal should be assessed under NPPF paragraph 134 where that harm should be weighed against the public benefits.

4.26 The Conservation Manager (Archaeology) raises no objections.

4.27 The Conservation Manager (Landscape)

*I note the revised soft landscape proposals plan submitted in conjunction with landscape consultants comments dated February 2016.*

*The application in essence remains unchanged from that submitted in 2014, therefore refer the applicant to my earlier comments:*

- The particular location of the site means that it performs a dual function; forming part of the open countryside that enhances the setting of the settlement of Kingsland, as well as maintaining a clear visual gap between the built form of West Town and Kingsleane.
- The site lies within the Kingsland Conservation Area. The settlement pattern of which is ribbon development that has extended along North Road. The proposal is visually separate from the village and most closely relates to the 1990's development of Kingsleane; a distinct development which has been designed in sympathy with its particular surroundings around the curvature of the road.
- Given the particular location of this proposal and the function it performs as part of the setting of the rural settlement of Kingsland, it is considered that development in this location will impact upon the setting of Kingsland and whilst I note the landscape consultants comments, my professional view is that the proposed development will permanently alter the historic field pattern, be unsympathetic with the distinct layout of Kingsleane and will not relate to the settlement pattern of either Kingsland or West Town serving to close the gap between the two settlements.
- *I note the proposed mitigation in particular the roadside hedgerow which is stated within the soft landscape proposals as being left to grow to 6-8m reduced annually to approximately 3.6m in the autumn, however I would suggest that this is in itself is somewhat at odds with the height of the adjacent privet hedgerow which forms the boundary vegetation at Kingsleane and is closely clipped to between 1-2m. In my view the mitigation should serve to assimilate a development into its surroundings and but not be required to obscure the proposal in its entirety.*
- *Following on from the recent adoption of the Core Strategy the scheme is not considered to demonstrate that the character of the landscape has positively influenced the design and site selection and does not enhance the rural setting of the settlement thereby conflicting with policy LD1.*

Further comment has been received as follows:- Further to our earlier conversation, a landscape appraisal was not submitted as part of the application, however Appendix 8 is a report submitted by the landscape consultant; John Challoner, which 'responds to the various consultee comments'. Mr Challoner concludes in his comments the overall impact and visual intrusion of the proposed development is negligible.

Whilst I agree that the visual intrusion is confined to near distance views; in the main from the C1036 Kingsland to Harbour Farm Road with potentially less significant views from KL1, in this instance the harm relates to the adverse effect upon landscape character.

As stated by both myself and in comments relating to an earlier application (P140534) by the Built and Natural Environment Service Manager; Juliet Wheatley, the field contributes to the rural setting of Kingsland as well as providing visual separation between West Town and Kingsland. Whilst the current layout allows for the retention of a small green space, the historic field pattern will have been further altered to allow for the proposal and in my view further development will be difficult to withstand.

The layout of the proposal is focussed around a new access road taken off Kingsleane, but neither takes its context from the layout of Kingsleane or that of its landscape character type; Principal Settled Farmlands, for these reasons therefore I would conclude that the potential effect on the landscape character is substantially adverse which conflicts with LD1 of the Core Strategy.

- 4.28 The Conservation Manager, (Ecology), has responded with reservations about the ecological planning history in relationship to the site and indicates '*I am bound to accept the recommendations for enhancement proposed by the ecological report given the substantial and unrealistic prospect of re-creating and maintaining the habitat for which the site was designated.*' The response recommends the attachment of a condition in order to ensure ecological mitigation is carried out as proposed.
- 4.29 The Strategic Housing Manager raises no objections.
- 4.30 The Parks and Countryside Manager raises no objections indicating that the final mix of housing has changed and the market housing now consists of 5 x 3 bed and 2 x 4 bed which has been acknowledged in the draft heads of terms and contributions including that for off-site play provision have been amended accordingly and are in accordance with the SPD on Planning Obligations. The initial response indicated that a contribution towards play facilities at the Millennium Green is in accordance with UDP policy requirements, the Play Facilities Study and Investment Plan and the SPD on Planning Obligations for a development of this size.
- 4.31 The Land Drainage Manager raises no objections subject to provision of detailed surface water management design, infiltration test results, groundwater level data, drainage calculations, demonstration that the soakaways are located more than 5m from building foundations, and consideration of adoption, maintenance and siltation control.
- 4.32 The Schools Organisation and Capital Investment Manager raises no objections subject to appropriate contributions in line with the Council SPD Planning Obligations as identified in the Heads of Term.
- 4.33 Neighbourhood Planning Manager

With regards to your request for a position on the Kingsland Neighbourhood Plan, I hope the following is of use;

The Kingsland Neighbourhood Plan was submitted under Regulation 15 on 2 November 2015. The consultation is under 17 November 2015 to 4 January 2016. A high volume of representations were made during this period from the local community. There were also concerns that the plan did not conform to the Core Strategy with regards to the ability to meet proportional growth requirements within Policy RA2. For this reason a Decision Document was issued on 15 January recommending that the plan did not progress to examination and additional consultation (under Regulation 16) should be undertake.

As a result, the parish council have commissioned additional evidence base to demonstrate the capacity within the settlement boundary is achievable in light of heritage issues and this will be publically available when the plan is re-consulted upon in due course.

The direction of travel of the plan is to provide the proportional growth within three defined settlement boundaries at Kingsland, Cobnash and Shirl Heath in accordance with policy KNDP14, 15 and 16. This approach is unlikely to change in the revised submitted plan. It is anticipated that a revised Kingsland Neighbourhood Plan (Reg16) will be received in the near future.

## 5. Representations

- 5.1 Kingsland Parish Council met on 26 April 2016 to consider the additional planning document and agreed that the reason for objecting to the application remains; namely that the proposed site is outside the settlement boundary for the village of Kingsland, and is contrary to the Neighbourhood Development Plan which has progressed to Regulation 16.

Previously Kingsland Parish Council has responded to the application indicating:

In response to the amended plans received their response states:

*'Kingsland Parish Council met yesterday evening, Monday 5 January 2015, in an extraordinary meeting to consider the amendments to planning application P1432522/F Land adjoining Kingsleane, Kingsland.*

*The parish council agreed that the amended plans do not change the comments provided on 27 November 2014. The parish council remains opposed to the planning application. However, in the event that the application is approved, the parish council supports the amended plans (dated 5 December 2014) in preference to the original application.*

Their initial response indicated:

*'On 25 November 2014, Kingsland Parish Council voted to oppose the planning application on the following grounds:*

- The proposed site for development falls outside the current settlement boundary. The parish plan for Kingsland shows clear support for most new homes to be built within the settlement boundary or using brownfield sites.*
- The emerging neighbourhood plan for Kingsland, which is in its final stages, and will shortly be submitted to Herefordshire Council, anticipates that the proposed site for development will remain outside the settlement boundary. One of the planning policies in the draft Kingsland neighbourhood plan is to conserve the traditional separation between West Town and Kingsland village – building on the proposed plot will undermine this policy.*
- Herefordshire Council's SHLAA designates the proposed site for development as having "no potential during the plan period".*

- *As the proposed site is not within or adjacent to the built up area of the village it is contrary to policies in the NPPF, UDP and the emerging Core Strategy.*
- *Since 2011, 40 houses have been built or given planning permission in Kingsland, which means the village is on track to achieve the development guideline of 14 percent, or 44 houses, in Herefordshire Council's Core Strategy.*

5.2 60 letters in support/positive comments in relation to the application have been received together with a petition with 85 signatures. Key issues raised in support of the application can be summarised as follows:

- The location is considered a sustainable location with consideration to the services the village provides.
- Impact on surrounding built environment area is considered acceptable.
- No detrimental impact on public highway matters.
- The High Court confirmed that the Council had given proper weight to the heritage issues and permission should be granted
- The site is available for immediate delivery with a housing association engaged to provide 5 much needed affordable dwellings
- Will provide valuable open market and affordable housing which is required in the village to retain young people and those on low income.
- No impact on the setting of the Conservation Area or Listed Buildings
- The site cannot be seen from the listed buildings -The Lees and Kingsland House
- Developing the spaces within the centre of the village will have a greater impact on the Conservation Area.
- S106 money will benefit the whole community
- Objections have been made to the exclusion of this site from the Neighbourhood Plan
- The scheme compliments the existing development and enhanced landscaping will ensure this sits well within the area.
- The proposed housing and mix will enhance the provision within the village and are of a good design and layout
- The site is a commitment site in the Neighbourhood Plan

5.3 Kingsland Primary School Headteacher supports the application

5.4 6 Letters of objection have been received

The key objections can be summarised as follows:

- Proposal is in conflict with the Kingsland Neighbourhood Plan.
- Location is not considered sustainable in relationship to access to local services, with poor public transport provision.
- The overall scale, design and layout of the development is considered poor and not in accordance with advice as set out in paragraph 56 (requiring good design), of the NPPF. Proposed solar panels will look prominent and are an untraditional feature within a Conservation Area.
- Detrimental impact on the character of the surrounding Conservation Area in which the site is located within.
- Proposed development does not compliment the historic field pattern of the area in which Kingsland is located within and will have an urbanisation affect on the character of the surrounding area.

- The site forms part of a field that was until recently a species rich wildflower meadow, a special wildlife site that appears to have been destroyed.
- The application site is not considered to be adjacent to the settlement boundary of the village of Kingsland.
- Not enough sufficient need for the development in Kingsland.
- The village Primary School is at full capacity and is always oversubscribed for places.
- Local employment prospects are unfavourable.
- The survey recently conducted for the Kingsland Parish Plan has identified that the majority of residents favour new housing units to be built on brown field and infill sites and within the village boundary. In addition the results of the Housing Needs Survey have not yet been analysed.
- The expansion of the built environment at this location would detract from the essential character of the area. It would significantly reduce the separation between West Town and Kingsleane and therefore be counter to the character of the area. It would be a form of ribbon development in a part of the area where it is important to retain the open fields as the local setting to the village.
- The proposed development would link Kingsleane with the fire station and significantly increase the overall scale and impact of the built form.
- The proposed Kingsland Fire Station training block and associated buildings which would have significantly altered the appearance of the conservation area has been shelved and will now not be built. Consequently there is still a characterful conservation area worth protecting. In their proposal the applicant attempts to use the Fire Station development to mitigate the effect of and therefore to support their application.
- The proposed development by virtue of its location and prominent position would be harmful to the landscape quality of the area.
- The site is designated as a Site of Special Wildlife and is a site of special interest for nature conservation. It is recognised as an unimproved hay meadow and despite the loss of the original nature of the hay meadow, it still forms part of the Green Wildlife Corridor that connects sites within the village. This corridor would disappear if it were to be developed for housing. The wildflower meadow could also be re-established.
- The proposal would result in unacceptable overloading of the waste water system in this area of Kingsland. Welsh Water have been categorical in their assessment that no further waste water or surface runoff can be introduced into the current system.
- Winter flooding from the drains, including foul sewage, has historically been and still is, a regular occurrence on this road. This results in flooding on the corner and the filling of the adjacent ditch. During this winter particularly, the water has flowed across our land and entered the Lugg River drainage system via the stream which connects with the Pinsley Brook.
- Comments are also made about further affordable housing on a site alongside an existing affordable housing development.

- The short term economic benefits of granting planning permission are outweighed by the significant long term harm that would prevail

5.5 Herefordshire Campaign for the Protection of Rural England has responded to the application recommending refusal of the application indicating:

### **Landscape**

5.6 The application site is a green field outside the main village envelope of Kingsland. The site, together with the adjacent fields forms part of a green corridor to the western edge of the village. Until recently the site was part of a Special (local) Wildlife Site, NC4 and NC6, listed in the UDP as SO 46/12, categorised as an unimproved hay meadow, one of a rapidly vanishing number in Herefordshire. It was that designation that ensured that an application in 2009 to build on the site was refused. No prior warning of its destruction by ploughing was given by the owner (the present applicant). Although it is now stated that the meadow was ploughed after the designation had lapsed, the action demonstrates a lack of concern for the locality's biodiversity and ecological heritage. The original designation could have been renewed.

We therefore object because we consider the proposed development will be an intrusion in the visual landscape of a green area outside the village envelope.

We also object because the development will further reduce the biodiversity on this old meadow. The land has been reseeded with grass and if left alone and cut for hay, some of the previously identified meadow flora will probably re-emerge. If built over they most certainly will not.

### **Neighbourhood Plan**

5.7 We understand that the Kingsland Neighbourhood Plan is well advanced and does not identify this site as one that the community wishes to see developed for housing. Sites are identified elsewhere that are of sufficient area to satisfy the stated housing needs and the requirements of the new Herefordshire Local Plan. Thus the application, in terms of its location, is contrary to, and in conflict with the expressed wishes of the local community. If the site is developed it will result in over-development for the village and a disregard for the democratic principles that underpin the present government's legislation that encourages Neighbourhood Planning.

### **Housing Land Supply**

5.8 In line with many other recent proposals for developing on green-field sites in Herefordshire, the applicant refers to Herefordshire Council's shortfall in producing a 5 year supply of housing land, using the strictures of the NPPF to support the case for development on the site.

However, the NPPF does not state that each and every green space should be built on to provide a contribution to the 5 year supply.

The NPPF is very clear that sustainable development should be the aim of every development plan.

"Pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment....moving from a net loss of bio-diversity to achieving net gains for nature..." Paragraph 9

We consider that the present application fails to comply with those principles.

The NPPF, section 7, requires good design, and indicates ways in which that might be interpreted with concepts of layout and building design that are sympathetic to local architectural vernacular. We consider that the proposal fails to do this.

- 5.9 Given the success of the Kingsleane development that has been judged to integrate well into its location, it is puzzling why the present application has not followed a similar path. The houses with attached garages are wide on their plots and result in a bulky aggressive street scheme. It is a scheme that might be suitable as part of a large suburban development but is totally unsympathetic to the conservation area of a village with very old origins.

We do not agree with the Design & Access statement in section 4. That the layout "is reflective of the local built environment".

*NPPF , Para 64 states "Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area... "*

*H13 "Proposals for residential development at all scales... will be expected to .. take an integrated and comprehensive approach to design , layout and landscape which respects the townscape and landscape context of the site and the distinctive character and appearance of the locality"*

- 5.10 HCPRE considers that the proposal does not comply with H13.

HCPRE considers that the proposed design and layout will be a highly undesirable addition to Kingsland, and will moreover have a directly negative effect on the neighbouring Kingsleane.

From the details of the house designs it is unclear whether the "massive external chimney stacks" function as usable chimneys.

We are surprised that all 4 affordable properties have only 2 bedrooms. Many villages in Herefordshire are in need of affordable family homes with at least 3 bedrooms. The designs portray extremely small dwellings, with no internal storage space. Had the designs of the market houses been more similar to other properties within the village, more space might have been available for larger footprints for the 4 affordable houses.

HCPRE welcomes the proposal in 4.2 to provide solar thermal panels to all plots on the roof slopes.

In the light of the list of aspects of the application that are not in compliance with either the NPPF or Herefordshire Council's Planning principles we consider it should not be allowed.

- 5.11 The consultation responses can be viewed on the Council's website by using the following link:-

<https://www.herefordshire.gov.uk/planning-and-building-control/development-control/planning-applications/details?id=143252&search=143252>

Internet access is available at the Council's Customer Service Centres:-

<https://www.herefordshire.gov.uk/government-citizens-and-rights/customer-services-enquiries/contact-details?q=customer&type=suggestedpage>

## **6. Officer's Appraisal**

- 6.1 This application is a re-submission of a previous application (reference P140534/F), refused planning permission on 25<sup>th</sup> June 2014 following a Planning Committee site visit where members resolved that the proposed development by reason of its design and layout did not enhance or preserve the Conservation Area and therefore would have a detrimental impact on the setting of the settlement. The proposed development was considered contrary to Policies HBA6, LA3 and H13 of the Herefordshire Unitary Development Plan and the National Planning Policy Framework. The current application under consideration seeks to address these issues.
- 6.2 The site for the proposed development adjoins an affordable housing development(Kingsleane) comprising ten dwellings which itself is adjacent to the former settlement boundary for Kingsland.

---

Further information on the subject of this report is available from Mr K Bishop on 01432 260756

6.3 The application is presented back to Planning Committee following a Judicial Review of the original decision. The challenge to the decision was based on three main areas; contrary to the emerging Neighbourhood Plan, Heritage Matters and five year housing land supply. The appraisal will cover these matters and those raised as part of the consultation process.

6.4 S38 (6) of the Planning and Compulsory Purchase Act 2004 states as follows:

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

6.5 In this instance the Development Plan for the area is the Herefordshire Local Plan - Core Strategy (CS). A range of CS policies, referred to above (section 2) are relevant. The strategic Policy SS1 sets out a presumption in favour of sustainable development, reflective of the positive presumption enshrined in the NPPF. SS1 confirms that proposals that accord with the policies of the CS (and, where relevant other Development Plan Documents and Neighbourhood Development Plans) will be approved, unless material considerations indicate otherwise.

### **The Principle of development**

6.6 As per the NPPF, the delivery of sustainable housing development to meet objectively assessed need is a central theme of the CS. Policy SS2 ‘Delivering new homes’ confirms that Hereford, with the market towns in the tier below, is the main focus for new housing development. In the rural areas new housing development will be acceptable *“where it helps to meet housing needs and requirements, supports the rural economy and local services and facilities and is responsive to the needs of its community.”*

6.7 Equally it is clear that failure to maintain a robust NPPF compliant supply of housing land will render the housing supply policies of the CS out-of-date. Policy SS3 ‘Ensuring sufficient housing land delivery’ thus imposes requirements on the Council in the event that completions fall below the trajectory set out in Appendix 4 of the CS.

6.8 Despite relatively recent adoption of the CS, it is clear that the Housing Land Supply deficit persists. The Examination Inspector concluded that there was a marginal but realistic five-year housing land supply on the basis of the Core Strategy provisions. The supply was assessed at 5.24 years. Housing land supply has been further examined in recent Inquiries in the County in respect of appeals for proposed housing developments at Leintwardine, Ledbury and Bromyard. The Inspectors have concluded in relation to all of these appeals that the Council is unable to demonstrate a robust five-year supply of deliverable housing sites sufficient to meet its identified needs. This view was reached on an assessment of the amount of housing reasonably likely to be delivered on the strategic sites allocated in the Core Strategy. The Inspectors’ conclusions as to the lack of a robust five-year housing land supply have also been accepted by the Council for the purposes of the most recent Public Inquiry at Bartestree (143771, May 2016) where it was agreed with the appellants that the supply stood at 3.63 years; this figure taking into account the contribution to supply arising from the allowed appeals at Leintwardine and Ledbury.

6.9 The Core Strategy sets out a number of policies in chapters 3, 4 and 5 for the supply of housing which are relevant to the present application. As a consequence of the housing land supply position, the policies in the Core Strategy relating to the supply of housing are out of date by reason of paragraph 49 of the NPPF. Although these policies are out of date, the weight that they should receive is a matter of planning judgment for the decision-maker. This is a matter that has been reinforced in recent case law, Suffolk Coast / Hopkins Homes.

- 6.10 Core Strategy policy SS2, Delivering new homes, makes an overall provision for the delivery of a minimum 16,500 homes in Herefordshire between 2011 and 2031 to meet market and affordable housing need. Of these, just over two thirds are directed to Hereford and the market towns, with a distribution of a minimum 5,300 homes (32%) to rural settlements. Here, new housing development will be acceptable where it helps to meet housing needs and requirements, support the rural economy, local services and facilities, and is responsive to community needs.
- 6.11 Policy SS3, Ensuring sufficient housing land delivery, sets out a range of measures to be undertaken should a material shortfall in the rate of housing delivery be identified through the annual monitoring process. The policy addresses the relationship between the delivery of strategic housing sites and key elements of infrastructure.
- 6.12 Policy RA1, Rural housing distribution, explains that the minimum 5,300 new dwellings will be distributed across seven Housing Market Areas (HMAs). This recognises that different parts of the County have differing housing needs and requirements. Kingsland lies within the rural part of the Leominster HMA, which is tasked with an indicative housing growth target of 14% (65 dwellings).
- 6.13 The policy explains that the indicative target is to be used as a basis for the production of Neighbourhood Development Plans (NDPs). The growth target figure is set for the HMA as a whole, rather than for constituent Neighbourhood Areas, where local evidence and environmental factors will determine the appropriate scale of development. The Inspector's Report on the Core Strategy Examination makes clear that a flexible and responsive approach is necessary to deliver the level of development sought, whilst recognising and respecting the rural landscape. The Modification proposed, and now incorporated within the adopted Core Strategy, leaves flexibility for NDPs to identify the most suitable housing sites.
- 6.14 RA2, Housing in settlements outside Hereford and the market towns, identifies the rural settlements which are to be the main focus of proportionate housing development in the rural areas (fig. 4.14) and other settlements where proportionate housing is considered appropriate (Fig. 4.15). In these locations, housing growth will enable development that has the ability to bolster existing service provision, improve facilities and infrastructure and meet the needs of the communities concerned. Policy RA2 seeks to support housing growth in or adjacent to these settlements and confirms that the indicative targets established in policy RA1 will be used to inform the level of development in the identified settlements. The expectation of this policy is that NDPs will define appropriate settlement boundaries or reasonable alternatives or will allocate land for new housing or otherwise demonstrate delivery by indicating levels of suitable and available capacity.

### **Kingsland Neighbourhood Plan**

- 6.15 The site lies within the Parish of Kingsland, and within its designated Neighbourhood Area but outside of the settlement boundary as proposed by the emerging Neighbourhood Plan.
- 6.16 Kingsland NDP acknowledges in its objectives, the need to promote a level of housing growth to meet the indicative housing target for Herefordshire that is proportionate to the size of Kingsland Parish and its settlements so that the parish retains its essentially rural character. The Kingsland NDP is currently held at Reg 16 as confirmed by the Neighbourhood Planning Manager due to the high volume of representations, issues surrounding conformity with the CS and heritage issues relating to the capability of the settlement area to accommodate the proportionate growth required by the CS. It is however clear that the emerging settlement plan identifies this site as being outside of the settlement boundary as indeed is the adjoining Kingsleane development and it is unlikely that this will change albeit that there are unresolved objections to the plan.

- 6.17 The Neighbourhood Plan does not allocate sites for housing but does identify settlement boundaries with criteria policies. There is a current shortfall of 35 dwellings from the proportional growth requirement.
- 6.18 However, paragraph 216 of the NPPF highlights that the extent to which there are unresolved objections to relevant policies should also be taken into account when determining the weight to be attributed emerging plans. There are unresolved objections to the Kingsland NDP as identified above and whilst the direction of travel of the Plan is that the site lies outside of the emerging settlement boundary, it is officer's opinion that only limited weight could be attributed in the decision making process.

### **Impact on the Character of the Surrounding Conservation Area and Listed Buildings**

- 6.19 Under Section 66 (1) and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, Herefordshire Council, as the local planning authority, is required, when considering development which affects a listed building or its setting or a Conservation Area:

*S 66 "to have special regard for the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."*

*S72 "special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area"*

The "*special regard*" to which Section 66(1) refers has been tested in recent appeals and Court cases. The Courts have held that the desirability of preserving the settings of listed buildings should be given "*considerable importance and weight*" when the decision-maker carries out the balancing exercise, not simply consideration. The following cases have had a particular influence on this.

- *South Lakeland DC v Secretary of State* [1992];
- *East Northamptonshire DC v Secretary of State* [2013] (the Barnwell Manor case, considering the effect of a proposed wind turbine on the setting of a nearby Grade I listed building); and
- *R (Forge Field Society) v Sevenoaks DC* [2014].
- *Forest of Dean District Council v Secretary of State for Communities and Local Government & Anr.*

In *South Lakeland*, it was held that "preserving" means doing no harm. And in the two more recent cases the courts held that having "special regard" to the desirability of preserving the setting of a listed building under section 66.

- 6.20 It follows that the duties in section 66 do not allow a local planning authority to treat the desirability of preserving the setting of listed buildings merely as material considerations to which it can simply attach such weight as it sees fit. When an authority finds that a proposed development would harm the setting of a listed building, it must give that harm "*considerable importance and weight*".
- 6.21 Importantly, this does not mean that an authority's assessment of likely harm of proposed development to the setting of a listed building or to a conservation area is other than a matter for its own planning judgement. Nor does it mean that an the authority should give equal weight to harm that it considers would be limited or "less than substantial" and to harm that it considers would be "substantial".

However, as the Court of Appeal emphasised in *East Northamptonshire*, (often referred to a Barnwell Manor) that said;

*“a finding of harm to the setting of a listed building or to a conservation area gives rise to a strong presumption against planning permission being granted. The presumption is a statutory one. It is not irrebuttable. It can be outweighed by material considerations powerful enough to do so. But an authority can only properly strike the balance between harm to a heritage asset on the one hand and planning benefits on the other if it is conscious of the statutory presumption in favour of preservation and if it demonstrably applies that presumption to the proposal it is considering”.*

- 6.22 The more recent Forest of Dean case expands and confirms the findings of the Barnwell Manor case and Forge Field Society cases. In his decision Judge Coulson referred to the Court of Appeal comments in *Barnwell* and in Para 28 of Sullivan LJ judgement in *Barnwell* said:

*“Even if the harm would be “less than substantial”, the balancing exercise must not ignore “the overarching statutory duty imposed by section 66(1), which properly understood ... requires considerable weight to be given ... to the desirability of preserving the setting of all listed buildings, including Grade II listed buildings*

Based on the above, where the authority concludes that a proposed development will cause harm to the setting of a listed building or to a conservation area, a grant of permission can only be justified if there exist other material considerations of comparable importance and weight, sufficient to override that strong presumption. This does not amount to an absolute prohibition on all new development in such circumstances; but it does mean that it will need to be very clearly justified.

- 6.23 The Court in *Forge Field Society* also considered the question of alternative sites. It held as follows:

*“... this was a case in which possible alternative sites for the development had to be considered. ... If there is a need for development of the kind proposed, which in this case there was, but the development would cause harm to heritage assets, which in this case it would, the possibility of the development being undertaken on an alternative site on which that harm can be avoided altogether will add force to the statutory presumption in favour of preservation. Indeed, the presumption itself implies the need for a suitably rigorous assessment of potential alternatives.”*

- 6.24 The NPPF reinforces this as one of its core principles being that planning should “conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations”. Chapter 12 (Conserving and enhancing the historic environment) gives further guidance on how the planning system should deal with heritage assets. This is a very important factor in the consideration of this planning application and the relevant paragraphs of the NPPF are set out below.

- 6.25 *129. Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking into account of the available evidence and any necessary expertise. They should take this assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset’s conservation and any aspect of the proposal.*

- 6.26 *131. In determining planning applications, local planning authorities should take account of:*

- *the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;*
- *the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and*
- *the desirability of new development making a positive contribution to local character and distinctiveness.*

- 6.27 132. *When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Substantial harm to or loss of a grade II listed building, park or garden should be exceptional. Substantial harm to or loss of designated heritage assets of the highest significance, notably scheduled monuments, protected wreck sites, battlefields, grade I and II\* listed buildings, grade I and II\* registered parks and gardens, and World Heritage Sites, should be wholly exceptional.*
- 6.28 133. *Where a proposed development will lead to substantial harm to or loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply;*
- *the nature of the heritage asset itself prevents all reasonable uses of the site; and*
  - *no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and*
  - *conservation by grant funding or some form of charitable or public ownership is demonstrably not possible; and*
  - *the harm or loss is outweighed by the benefit of bringing the site back into use.*
- 6.29 134. *Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use."*

The definition of "significance" in the NPPF is:

*"The value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting".*

And the definition of "setting" is as follows:

*"The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral".*

- 6.30 It may be noted that the distinction between para 133 and 134 relates to the degree of harm to the significance of the asset as a whole. The High Court in *Bedford BC v Secretary of State* recently considered the meaning of "substantial harm", and held that

*"Significance may be harmed through alteration of the asset [listed building], ie physical harm, or development within its setting, ie non-physical or indirect harm. Significance may be lost through the destruction of the asset or, in a very extreme case, development within its setting. ... What the inspector was saying was that, for harm to be substantial, the impact on significance was required to be serious such that very much, if not all, of the significance was drained away."*

- 6.31 137. *Local Planning Authorities should look for opportunities for new development within Conservation Areas and World Heritage sites and within the setting of heritage assets to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to or better reveal the significance of the asset should be treated favourably.*

- 6.32 The Court accordingly accepted the formula adopted by the inspector in that case, namely that for harm to be “substantial” in the terms of the NPPF, it would have to be “something approaching demolition or destruction” – in the context of non-physical or indirect harm, it would have to be an impact that would have such a serious effect on the significance of the asset that its significance was spoiled altogether or very much reduced.
- 6.33 However, both paragraphs require that the decision-maker balance the public benefit arising from a proposal against the harm to the significance of any heritage assets affected – para 133 requires a substantial benefit to outweigh substantial harm; whereas para 134 requires public benefit, albeit to outweigh less than substantial harm.
- 6.34 So, either way, there needs to be a balancing exercise. Even where there is less than substantial harm, the decision in *East Northamptonshire* makes it plain that there is still a presumption against the grant of planning permission; and the more recent decision in *Forge Field* and *Forest of Dean* emphasises the strength of that presumption.

### Local Plan Policy

- 6.35 Policy SS6 Environmental quality and local distinctiveness, sets the strategic approach to the conservation and enhancement of those environmental assets that contribute to the County’s distinctiveness such as settlement pattern, landscape, biodiversity and heritage assets. The policy is underpinned by more detailed sets of policies, including those dealing with local distinctiveness (LD1) and set out in chapter 5 of the Core Strategy. Here, it is recognised that “Locally distinctive assets ... are finite and irreplaceable and any detrimental impacts can carry cultural, environmental, economic and social costs.” LD1 further requires that development proposals should “*conserve and enhance the natural, historic and scenic beauty of important landscapes and features...including conservation areas.*”
- 6.36 Policy LD4 is applicable to heritage assets throughout Herefordshire whether formally designated e.g. listed buildings and conservation areas, or not, ranging from individual structures and their settings, archaeological remains, to larger neighbourhoods of historic value, parks, gardens and other green spaces of local interest.

*Policy LD4 states:*

*Development proposals affecting heritage assets and the wider historic environment should:*

- 1. 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, in particular emphasising the original form and function where possible;*
- 2. Where opportunities exist, contribute to the character and local distinctiveness of the townscape or wider environment, especially within conservation areas;*
- 3. Use the retention, repair and sustainable use of heritage assets to provide a focus for wider regeneration schemes;*
- 4. Record and advance the understanding of the significance of any heritage assets to be lost (wholly or in part) and to make this evidence or archive generated publicly accessible and*
- 5. where appropriate, improve the understanding of and public access to the heritage asset.*

*The scope of the works required to protect, conserve and enhance heritage assets and their settings should be proportionate to their significance. Development schemes should*

*emphasise the original form and function of any asset and, where appropriate, improve the understanding of and public access to them.*

- 6.37 The historic environment and heritage assets are significant contributors to sustainable development. Important local buildings have a social value and can act as focal points for local communities. The historic environment is of cultural value as it illustrates the historical development of Herefordshire.
- 6.38 Heritage assets also bring economic benefits as Herefordshire's well preserved historic environments a major factor in its tourism industry and the county's quality of life can also serve to attract and retain investment. The sustainable re-use of existing buildings can also help mitigate climate change through reducing development pressures on greenfield sites, reducing demand for construction energy and materials and by minimising construction waste.

### **Built Heritage**

- 6.39 As can be seen from the assessments provided by the statutory consultee, Historic England, and the Councils Conservation Manager, the assessment of the impacts and effects on both the built environment and buried assets have been undertaken. Historic England have identified the key heritage assets namely Kingsland Castle (A scheduled Ancient Monument), Kingsland House a Grade 2\* listed building and Kingsland Conservation Area which the Council need to be satisfied are not adversely affected. In addition the Conservation Manager has identified The Lees a Grade 2 listed building.
- 6.40 The impacts of the development upon the significance of the designated heritage assets vary between applicant, supporters and objectors to the scheme. However, the Council's Conservation Manager confirms that in relation to the listed buildings the impact is only slightly adverse due to the landscaping that surrounds the listed buildings. However there wider settings would be changed in that the balance would be altered between open space and built form to the detriment of the distinctive local character underpinning the conservation area designation. In assessing this impact in relation to Para 131 of the NPPF it is considered that the development does not make a positive contribution to local character and distinctiveness and creates a built form linkage between the Kingsleane development and West Town. The harm is considered to be 'less than substantial' albeit on the higher end of the scale and therefore the proposal needs to be assessed under NPPF para 134 where the harm is assessed against the public benefits.
- 6.41 This is particularly important when considering the proposal and how to apply the guidance of the NPPF (para 133 and 134) and the local development plan policies.
- 6.42 Once that level of detail has provided the understanding, it is then possible to make the assessment as to the degree of harm to the significance of the asset as a whole and establish whether paragraphs 133 or 134 of the NPPF would apply.
- 6.43 The High Court in *Bedford BC v Secretary of State* considered the meaning of "substantial harm", and held that
- "Significance may be harmed through alteration of the asset [listed building], ie physical harm, or development within its setting, ie non-physical or indirect harm. Significance may be lost through the destruction of the asset or, in a very extreme case, development within its setting. ... What the inspector was saying was that, for harm to be substantial, the impact on significance was required to be serious such that very much, if not all, of the significance was drained away."*
- 6.44 The Court accordingly accepted the formula adopted by the inspector in that case, namely that for harm to be "substantial" in the terms of the NPPF, it would have to be "something

approaching demolition or destruction” – in the context of non-physical or indirect harm, it would have to be an impact that would have such a serious effect on the significance of the asset that its significance was spoiled altogether or very much reduced. The bar is set high.

- 6.45 Since the proposed site is not actually causing the loss of historic fabric, only harm to the setting, the relevant NPPF Paragraph is considered to be 134, which deals with “less than substantial harm”, rather than the “substantial harm” of 133. The Conservation Manager has confirmed that the degree of harm to be “less than substantial” although in respect of the conservation area on the higher end of the scale.
- 6.46 Paragraph 134 requires “Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.” It is crucial to note, as per the Forest of Dean, that paragraph 134 is a restrictive policy, which in the context of NPPF paragraph 14 requires application of the ‘limb 2’ test. That is an unweighted test where it is not necessary to demonstrate that adverse impacts significantly and demonstrably outweigh the benefits of the scheme. Rather, it is a straight-forward unweighted test where if it is held that harm outweighs the public benefits, development should be restricted; which in this case translates to a recommendation for refusal.
- 6.47 Detailed representations received challenge this view, and maintain, through detailed analysis that there is no adverse impacts of the heritage asset. Conversely objectors maintain a contrary view.
- 6.48 Many of the comparisons made between heritage assets within the applicant’s documentation seem to make no distinction between the relative values of those assets. Whilst “great weight” should certainly be given to their conservation, care has to be given to balance the significance of one asset against another appropriately.
- 6.49 Even where there is less than substantial harm, the decision in *East Northamptonshire* makes it plain that there is still a presumption against the grant of planning permission; and the more recent decision in *Forge Field* and *Forest of Dean* emphasises the strength of that presumption in that merely because a development proposal will cause less than substantial harm, that does not amount to a less than substantial objection.
- 6.50 Paragraph 129 of the NPPF requires the LPA to identify and assess the particular significance of any heritage asset that may be affected by the proposal taking account the available evidence and any necessary expertise. This assessment should be taken into account when considering the impact of a proposal on any heritage asset, to avoid or minimise conflict between the heritage assets conservation and any aspect of the proposal.
- 6.51 In making this assessment it is considered necessary to ensure that all possible alternatives have been explored to ‘avoid or minimise conflict’. This was emphasised in the *Forge Field Society* case. It is therefore necessary to see whether there is any way in which it is possible to solve the problem without causing significant harm (whether “substantial”, in NPPF terms, or “less than substantial”) to the heritage asset or its setting or indeed any other heritage asset or its setting.
- 6.52 Core Strategy Policies, identified above, require development proposals affecting heritage assets and the wider historic environment to ‘*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, in particular emphasising the original form and function where possible*’
- 6.53 In considering the impact upon built heritage, and recognising the identified potential impacts, the proposed development cannot be said to ‘protect, conserve or... enhance’ the heritage

asset. As such, it would fail to comply with the requirements of policy LD4 of the Herefordshire Local Plan – Core Strategy. This policy does not include a ‘balancing exercise’ to be undertaken. Nonetheless, the NPPF is a material consideration in the determination of this application and does require a balance to be made having regard to paragraph 134. As identified above, this is an unweighted balancing exercise.

- 6.54 Having recognised the level of harm, and the conflict with the policy, it is necessary to weigh this harm to the significance of the designated heritage assets against the public benefits of the proposal.

#### Benefits Arising From the Proposal

S38(6) of the Planning and Compulsory Purchase Act necessitates review of other material considerations alongside the provisions of the Development Plan in exercising the ‘planning balance’. The main material consideration in the context is the National Planning Policy Framework, As such the acknowledged shortfall in deliverable housing sites represents a consideration of significant weight in favour of the scheme. The scheme would also boost the supply of housing as well as contribute towards addressing the current need for affordable housing within the parish. In terms of the economic dimension of sustainable development, the development would introduce investment in jobs and construction in the area.

S106 contributions of £80,079 have been confirmed. It is agreed that contributions towards education infrastructure, open space, and waste/recycling facilities and sustainable transport strategies are compliant with the CIL regulations (122(2)). In this respect the scheme complies with CS policy ID1, the Planning Obligations SPD and the Framework.

#### Other Matters

##### Ecological Status of the Site

- 6.55 Objections have been received from Herefordshire Campaign for the Protection of Rural England, (HCPRE), as well as comments made in a letter of objection from a member of the public, with regards to the ecological interests of the site, which is a designated special wildlife site.
- 6.56 The former UDP identified the site as a special wildlife site, (ref: SWS 46/012). In accordance with planning approval reference 92 418 dated 4<sup>th</sup> February 1993, the applicants agreed to a Section 39 agreement under the Wildlife and Countryside Act 1981 and the Town and Country Planning Act 1990 in consideration of the affordable housing. The Section 39 agreement was to ensure that the adjoining meadow was managed for a period of 10 years in order to retain the variety of flora on the land to the east of Harbour House, (including the site subject to this application).The agreement allowed the production of hay on site and stated that the applicants must control notifiable weeds in accordance with good agricultural practice and that surrounding hedgerows were to be retained and managed. This agreement expired on 3<sup>rd</sup> February 2003 as confirmed in a letter from the Council to the applicant dated 2<sup>nd</sup> March 2005.
- 6.57 The Planning Ecologist has responded indicating he accepts the recommendations for enhancement proposed by the ecological and amended landscape reports submitted in support of the application given the substantial and unrealistic prospect of fully re-creating and maintaining the habitat for which the site itself was originally designated. It is recommended that a condition is attached to any approval notice issued as recommended by the Conservation Manager(Ecology) in order to ensure ecological mitigation as proposed is carried out.
- 6.58 It is considered that a refusal based on ecological issues could not be sustained.

### Drainage Issues

- 6.59 A letter of objection received raises concerns about flooding and drainage issues.
- 6.60 Welsh Water have responded to the application with no objections recommending conditions be attached to any approval notice issued with regards to foul and surface water drainage from the site. The Land Drainage Manager also raises no objections subject to provision of detailed surface water management design, infiltration test results, groundwater level data, drainage calculations, demonstrating that the soakaways are located more than 5 metres from building foundations and consideration of adoption maintenance and siltation control.
- 6.61 It is considered that drainage issues can be adequately addressed via the attachment of suitable worded conditions.

### Kingsland Primary School

- 6.62 Concerns have also been raised about the capacity of Kingsland Primary School and its ability to accommodate more children as a result of the development. The Planning Obligations Manager raises no objections in respect of the Draft Heads of Terms submitted in support of the application which makes a contribution towards local infrastructure requirements which includes Kingsland Primary School. It is also noted that a letter of support for the application from the headteacher of Kingsland Primary School has been submitted.

### Transportation

- 6.63 Issues have also been raised about public transport issues. It is noted that the Transportation Manager raises no objections. As indicated earlier in this report the site is considered sustainable being located alongside existing residential development that forms part of the village.

### Design

- 6.64 Design and layout has also been raised as an issue in that the development does not appear significantly different to the previous refused application and that solar panels as proposed are a prominent and untraditional feature that appear incongruous in this part of the Conservation Area. The layout still retains a road dominated arrangement and that parking arrangements for vehicles in relation to the affordable housing appears dominant.
- 6.65 With consideration to the surrounding built environment and landscape which includes reference to the heritage assets, the revised plans submitted indicate a layout, design and scale of development which is a significant improvement on the previous refused application. It should also be noted that a substantial number of letters in support and a petition has been submitted many of which make reference to the requirement for dwellings of a scale and design as proposed. Regarding solar panels it is understood these are as a result of member comments to the previous refused planning permission. However the consultation responses from the Conservation Manager provide a significant counter view where objection are raised on design and landscape. These concerns are such that they should be given significant weight in the decision making process.

### Kingsland Fire Station

- 6.66 Reference is made to Kingsland Fire Station which is located on the opposite side of the C1036 road alongside the southern side of the site and a previous planning approval for training facilities. This approval is still valid and was subject to a Judicial Challenge which was dismissed by the High Court. However it is understood that this development will not now proceed.

## Further Housing Development

- 6.67 Comments with regards to land to the west of the site are noted and members are reminded that each application has to be considered on its own merits. Dwelling construction standards will have to be in accordance with Building Regulation standards and it has been established that development of the site is sustainable.
- 6.68 A Draft Heads of Terms drawn up in accordance with the Town and Country Planning Act 1990 on planning obligations has been submitted in support of the application to which no objections are raised. They provide for a raft of contributions amounting to £80,079 details of which are appended to this report.

## **7. Conclusion / Planning Balance**

- 7.1 The Council cannot demonstrate a five-year supply of housing land with requisite buffer. The housing supply policies (in this instance SS2 and SS3) of the Core Strategy are therefore considered to be out of date and the full weight of the NPPF is applicable. The remaining Core Strategy policies may be attributed weight according to their consistency with the NPPF; the greater the consistency, the greater the weight that may be accorded. As detailed above, Policy RA2 of the Core Strategy positively seeks growth consistent with the aims of the NPPF to encourage growth in sustainable locations and can be attributed significant weight. This proposal would support this objective and is considered to accord with the requirements of policy RA2. As discussed above, the site would lie outside of the settlement boundary defined by the emerging Kingsland NDP but due to the extent of the unresolved objections to the NDP with regards to the settlement boundary only limited weight can be attributed to this policy at this time. A refusal on this ground, at this time, could not be sustained.
- 7.2 The pursuit of sustainable development is a golden thread running through both plan-making and decision-taking and identifies three dimensions to sustainable development; the economic, social and environmental roles. Policy SS1 of the Core Strategy acknowledges this and mirrors the guidance at paragraph 14 of the National Planning Policy Framework. When considering the three indivisible dimensions of sustainable development as set out in the NPPF, officers consider that the scheme when considered as a whole is representative of sustainable development and that the presumption in favour of approval is engaged.
- 7.3 The contribution the development would make in terms of jobs and associated activity in the construction sector and supporting businesses should also be acknowledged. Likewise S106 contributions and the New Homes Bonus should also be regarded as material considerations. In providing a greater supply of housing and breadth of choice the scheme also responds positively to the requirement to demonstrate fulfilment of the social dimension of sustainable development. However the significance of these benefits is tempered by the adverse impacts on the Conservation Area, Listed Buildings and the landscape setting of Kingsland.
- 7.4 For the reasons identified above, the scheme's inability to contribute positively to preserving and enhancing our natural, built and historic environment undermines any claim that the development is sustainable. Therefore in terms of heritage impacts the proposal must be considered in the context of NPPF guidance which directs the decision-maker in the context of the restrictive policies at paragraph 133 and 134. The Conservation Manager's comments confirm that the level of harm to the significance of the designated heritage asset (Kingsland Conservation Area) falls at the upper end of the 'less than substantial' spectrum and needs to be weighed against the public benefits of the proposal. In this instance, the development of the open field would remove what is regarded as valuable and locally significant open space within the Conservation Area and erode the space between the setting of the built environment creating a coalescence of development to the detriment of the setting of the listed buildings; this harm also requiring consideration against NPPF 134. In any event, it is concluded that the

proposal is contrary to LD4 of the CS and paragraph 134 of the NPPF. As such, applying the unweighted test prescribed by NPPF 134, the harm to the significance of the designated heritage assets is considered to outweigh the public benefits of the proposal to the extent that limb 1 of the paragraph 14 test is not engaged.

- 7.5 The scheme is also in conflict with CS Policy LD1, RA2 (3) and NPPF paragraph 137. The scheme would not preserve an important part of the setting of the Conservation Area and listed buildings and nor would it conserve or enhance the natural, historic or scenic beauty of the Conservation Area. This in turn confirms conflict with RA2 (3) in that the proposal is not considered to result in a high-quality scheme appropriate to its context or capable of making a positive contribution to the surrounding environment and the landscape setting of the settlement.
- 7.6 Mitigation for the significant harm caused by the residential proposal would not be possible due to the fundamental nature of the harm, ie removal of the rural character and separation and its replacement with suburban development. It is an objection 'in principle' to development at this location rather than against the detail of the application per se.
- 7.7 Technical matters in respect of drainage have been considered and are found to be acceptable and in accordance with the requirements of the relevant policies of the Core Strategy. The key concern locally relating to highways capacity have also been considered carefully, and whilst acknowledging the constraints and concerns, the application has successfully demonstrated that the additional traffic can be accommodated within the local highway network in accordance with policy MT1 of the Core Strategy and in accordance with the requirements of paragraph 32 of the National Planning Policy Framework..
- 7.8 When assessed against the policies of the NPPF and the CS it is considered that the foregoing assessment to represent demonstrable proof of the significant and demonstrable adverse impacts that would arise in the event that planning permission is granted and that these adverse impacts outweigh any benefits arising; particularly on application of the limb 2 test of paragraph 14 – that is the unweighted balance that is applicable when a restrictive policy is relevant. The effect is that planning permission should be refused.

## **RECOMMENDATION**

**That planning permission be refused for the following reasons:**

- 1. The proposed development fails to preserve or enhance the character and appearance of the Conservation Area by eroding the open space and thereby coalescence of the built form contrary to policy LD4 and RA2 of the Herefordshire Local Plan – Core Strategy and NPPF.**
- 2. The proposed development by virtue of its location and prominent position is considered to be harmful to the landscape quality by impact detrimentally to the setting and approach to Kingsland contrary to Policy LD1 of the Herefordshire Local Plan - Core Strategy.**

## **INFORMATIVE:**

- 1. 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 has been clearly identified within the reasons for the refusal, approval has not been possible.**

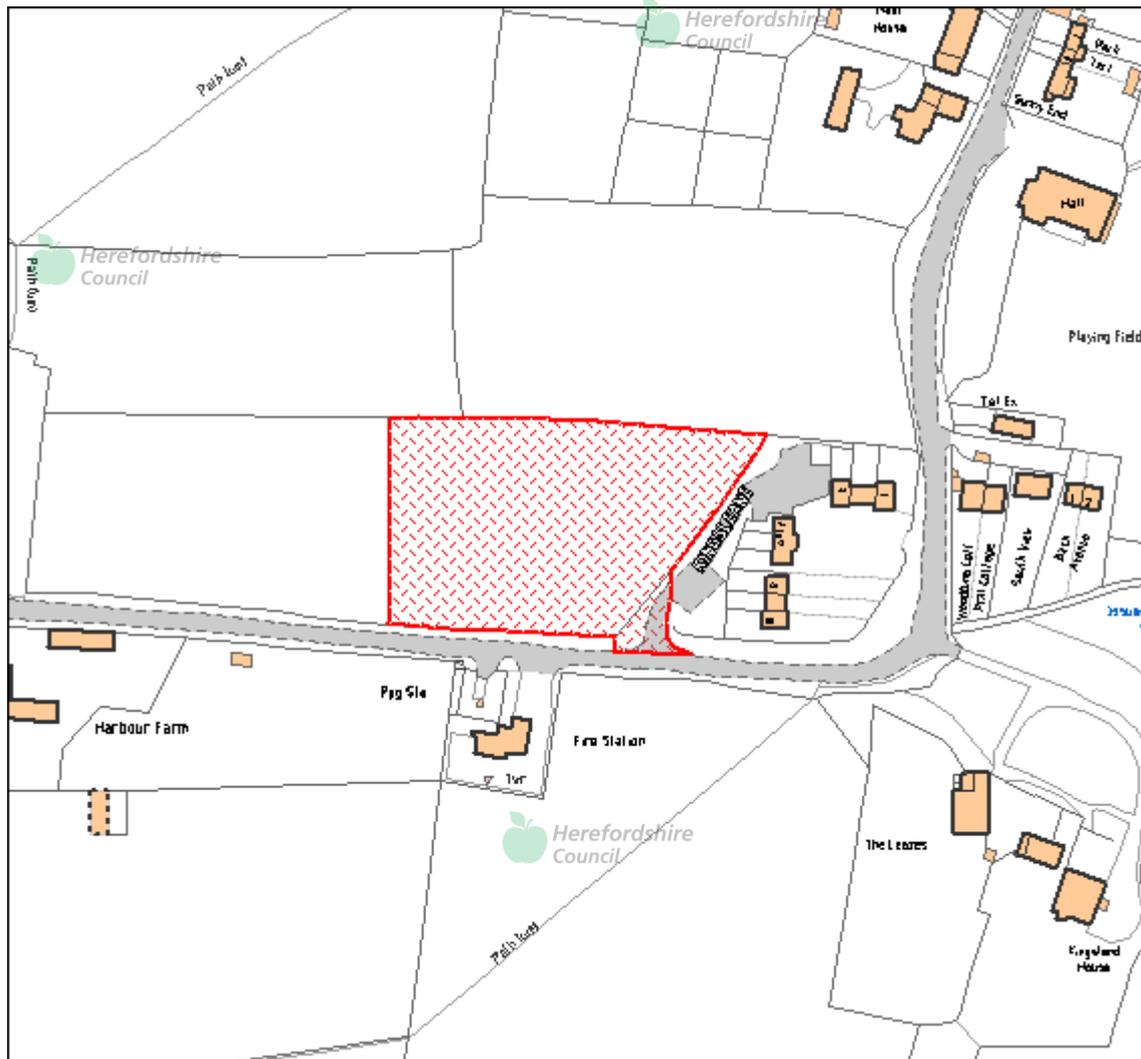
Decision: .....

Notes: .....

.....

**Background Papers**

Internal departmental consultation replies.



This copy has been produced specifically for Planning purposes. No further copies may be made.

**APPLICATION NO:** 140534/F

**SITE ADDRESS :** LAND ADJOINING KINGSLEANE, KINGSLAND, LEOMINSTER, HEREFORDSHIRE, HR6 9SP

Based upon the Ordnance Survey mapping with the permission of the controller of Her Majesty's Stationery Office, © Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Herefordshire Council. Licence No: 100024168/2005

# DRAFT

# HEADS OF TERMS

Proposed Planning Obligation Agreement  
Section 106 Town and Country Planning Act 1990

Planning Application – P143252/F

## SITE:

Land adjoining Kingsleane, Kingsland, Leominster, Herefordshire

## PROPOSAL:

Proposed development of 12 dwellings consisting 5 affordable and 7 open market. Works to include new road and landscaping.

This Heads of Terms has been assessed against the adopted Supplementary Planning Document on Planning Obligations dated 1<sup>st</sup> April 2008, and Regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010 (as amended).

1. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of **£33,466.00 (index linked)** to provide enhanced educational infrastructure at Kingsland Primary School and Wigmore Secondary School. The sum shall be paid on or before the commencement of the development, and may be pooled with other contributions if appropriate.
2. The developer covenants with Herefordshire Council to pay Herefordshire Council the sums of **£22,609.00 (index linked)**. The contribution shall provide sustainable transport infrastructure to serve the development. The sum shall be paid on or before the commencement of the development, and may be pooled with other contributions if appropriate.

The monies shall be used by Herefordshire Council, in consultation with the Parish Council, at its option for any or all of the following purposes:

- improvements to the public right of way network within the vicinity of the development;
- improved crossing facilities between the application site and village facilities and;
- improved bus infrastructure within the vicinity of the development

**NOTE: A Sec278 agreement may also be required and/or used in lieu of the above contributions depending on the advice of the local Highways Authority**

3. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of **£560.00 (index linked)**. The contribution will be used to provide 1x waste and 1x recycling bin for each open market property. The sum shall be paid on or before the commencement of the development.
4. The maintenance of any on-site Public Open Space (POS) will be by a management company which is demonstrably adequately self-funded or will be funded through an acceptable on-going arrangement; or through local arrangements such as the parish council and/or a Trust set up for the new community for example. There is a need to ensure good quality maintenance programmes are agreed and implemented and that the areas remain available for public use.

**NOTE: Any attenuation basin and/or SUDS which may be transferred to the Council will require a**

---

Further information on the subject of this report is available from Mr K Bishop on 01432 260756

commuted sum calculated in accordance with the Council's tariffs over a 60 year period

5. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of **£14,278.00 (index linked)** for off-site play facilities (provision and maintenance). The contribution would be used towards improving the existing play facilities in Kingsland as identified in the Neighbourhood Plan and in consultation with the Parish Council. The sum shall be paid on or before the commencement of the development, and may be pooled with other contributions if appropriate.
6. The developer covenants with Herefordshire Council to pay Herefordshire Council the sum of **£9,166.00 (index linked)** for outdoor sports. The money shall be used by Herefordshire Council in accordance with priorities identified in the playing pitch assessment and the outdoor sports investment plan at Mortimer Park. The sum shall be paid on or before the commencement of the development, and may be pooled with other contributions if appropriate.
7. The developer covenants with Herefordshire Council that 40% (5 units on basis of a gross development of 12) of the residential units shall be "Affordable Housing" which meets the criteria set out in policy H1 of the Herefordshire Core Strategy or any statutory replacement of those criteria and that policy including the Supplementary Planning Document on Planning Obligations.
8. The developer covenants with Herefordshire Council that of the 5 affordable houses, 2 shall be for social rented tenure, 2 shall be for intermediate tenure and 1 low cost market.
9. All the affordable housing units shall be completed and made available for occupation in accordance with a phasing programme to be agreed in writing with Herefordshire Council.
10. The Affordable Housing Units must at all times be let and managed or co-owned in accordance with the guidance issued by the Homes and Communities Agency (or any successor agency) from time to time with the intention that the Affordable Housing Units shall at all times be used for the purposes of providing Affordable Housing to persons who are eligible in accordance with the allocation policies of the Registered Social Landlord; and satisfy the following requirements:-:
  - 10.1. registered with Home Point at the time the Affordable Housing Unit becomes available for residential occupation; and
  - 10.2. satisfy the requirements of paragraphs 9 & 10 of this schedule
11. The Affordable Housing Units must be advertised through Home Point and allocated in accordance with the Herefordshire Allocation Policy for occupation as a sole residence to a person or persons one of whom has:-
  - 11.1. a local connection with the parish of Kingsland
  - 11.2. In the event of there being no person having a local connection to the parish of Kingsland a person with a local connection to Shobdon, Eardisland, Monkland and Stretford, Eyeton, Lucton, Croft and Yarpole, Aymestry and the Leominster North ward
  - 11.3. in the event of there being no person with a local connection to any of the parishes referred to in 11.2 then any other person ordinarily resident within the administrative area of the Council who is eligible under the allocation policies of the Registered Social Landlord if the Registered Social Landlord can demonstrate to the Council that after 20 working days of any of the Affordable Housing Units becoming available for letting the Registered Social Landlord having made all reasonable efforts through the use of Home Point have found no suitable candidate under sub-paragraph 9.1 above.
12. For the purposes of sub-paragraph 11.1 of this schedule 'local connection' means having a connection to one of the parishes specified above because that person:
  - 12.1. is or in the past was normally resident there; or
  - 12.2. is employed there; or
  - 12.3. has a family association there; or
  - 12.4. a proven need to give support to or receive support from family members; or

---

Further information on the subject of this report is available from Mr K Bishop on 01432 260756

12.5. because of special circumstances;

13. In the event that Herefordshire Council does not for any reason use the sums in paragraphs 1, 2, 3, 5 and 6 above, for the purposes specified in the agreement within 10 years of the date of payment, the Council shall repay to the developer the said sum or such part thereof, which has not been used by Herefordshire Council.
14. The sums referred to in paragraphs 1, 2, 3, 5 and 6 above shall be linked to an appropriate index or indices selected by the Council with the intention that such sums will be adjusted according to any percentage increase in prices occurring between the date of the Section 106 Agreement and the date the sums are paid to the Council.
15. If the developer wishes to negotiate staged and/or phased trigger points upon which one or more of the covenants referred to above shall be payable/delivered, then the developer shall pay a contribution towards Herefordshire Council's cost of monitoring and enforcing the Section 106 Agreement. Depending on the complexity of the deferred payment/delivery schedule the contribution will be no more than 2% of the total sum detailed in this Heads of Terms. The contribution shall be paid on or before the commencement of the development.
16. The developer shall pay to the Council on or before the completion of the Agreement, the reasonable legal costs incurred by Herefordshire Council in connection with the preparation and completion of the Agreement.