

**APPELLANT'S RESPONSE TO HEREFORDSHIRE  
COUNCIL'S APPEAL STATEMENT**

**APPEAL REFERENCE: APP/W1850/W/24/3350526**

**PROPOSED 4 NO. SELF-BUILD DWELLINGS ON  
LAND ADJ. TO ARROW LEA, EARDISLAND,  
LEOMINSTER, HEREFORDSHIRE, HR6 9BU**

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## **APPELLANT'S RESPONSE STATEMENT TO THE LPA APPEAL STATEMENT**

After a rehearsal of all relevant policies, at Page 7 the LPA states that their reasons “*for refusal are clearly set out in the officer report and on the subsequent decision notice. It is stated: The reasons for refusal relate to adverse impact on ecology; impact on settlement pattern and landscape; adverse impact on heritage assets; lack of provision of adequate pedestrian safety measures and absence of an agreed emergency evacuation plan*”.

### **REFUSAL REASON 1**

Had the Council responded to the Appellant's consultants Technical Note from Corner Water Engineering, dated 15<sup>th</sup> September 2023 before issuing the Refusal the means of disposal of waste water could have been resolved. The LPA have now responded during the appeal process.

The Council have now included an HRA with their Appeal Statement at appendices 2 & 3 which they could have done during the planning process. They have now completed a Habitats Regulations Assessment and insist that the project does not comply with current regulations.

Corner Water Consulting say the Council are aware that Natural England have agreed a solution for small developments close to other properties simply by introducing Braeburn Apple trees or Walnut trees which will absorb 100% of all nutrients and the Council have already agreed this solution on other sites in Herefordshire with Corner Water Consulting.

Corner Engineering have now produced a Nutrient Neutrality Report dealing with the issues raised by the HRA which is attached at **Appendix A**

The Drainage Consultant also sets out the position in response to the Council's comments in their Technical Noted dated 25 November 2024, **Appendix B**, responding to the Council's assertion in their Appeal Statement.

In it is stated: -

**“This report addresses the Herefordshire Council Statement of Case, plus Appendix 2 and Appendix 3, in relation to the matters of Nutrient Neutrality and potential impacts on the River Wye SAC plus issues in relation to the acceptability of the submitted Flood**

**Management Emergency Plan (FMEP). The FMEP covers the Emergency response to a flood event as evacuation is not the only option, especially at this site where the Environment Agency and the Council Flood Team have ensured the inside of the dwellings will remain dry by setting the floor levels above the peak flood level.”**

**“In summary the appellants states that the one single reason that matters were not adequately demonstrated, were not concluded, plus were not agreed, prior to the application being refused on 13 June 2024 are due to the council’s failure to act or in any manner communicate any information to the applicant/appellant before 11 June 2024”**

If the Inspector is minded to allow this appeal, it is suggested that a Condition could be introduced stating that work should not start on site until written permission had been obtained from Natural England and the Ecology Officer that the scheme introducing trees to make the site nutrient neutral was acceptable.

The Appellant believes that if the Council had responded during the application process Corner Water Engineering would have responded by including a few trees which would have resolved the phosphates issue. The Appellant believes that the LPA have acted unreasonably throughout the planning process on this issue.

#### **ADVERSE IMPACT ON ECOLOGY.**

The Council have now introduced an issue that was not a reason for refusal, at Appendix 2.

They now say: -

2. the Preliminary Ecological Assessment is out of date and an update is required
3. A bat roost assessment on the mature Sycamore is required;
4. A BS5837 tree survey is required.

With regard to Appendix 2 in the LPA’s Appeal Statement, Dr Kate Thorne of Churton Ecology in her Ecology Report of September 2021 states :- ***“With avoidance and mitigation measures in place 1) further assessment (e.g. ladder inspection) of the Sycamore before lopping or felling ii) loss of hedgerow kept to a minimum, and hedgerow protection in place during construction and iii) a sensitive lighting plan, there will be no significant residual effects on biodiversity.”***

Dr Thorne in her letter of 19 November 2024 - attached to this statement at **Appendix C** states that at no time during the planning process was any request made for further information.

There is no intention to lop or fell the Sycamore which is over 8.5m from the dwelling on Plot 4 and outside its root protection area. There is an existing field access to the site which will be widened and a wicket gate positioned for pedestrian access. All other hedges will remain unaltered and further hedges will be introduced between the plots. There will be no external lighting other than VIR over the front doors which will only be on for very limited periods.

The Appellant believes that the requests now being made in Appendix 2 of the LPA's Appeal Statement for:

- i) An up to date Ecology Assessment
- ii) A bat roost assessment on the mature Sycamore
- iii) A BS5837 tree survey is required

Is wholly unreasonable because

- i) There is no intention to either top or fell the Sycamore
- ii) The ecology report dated September 2021 was in date and validated when the application was made in November 2022.
- iii) The planning application form under Trees & Hedges is quite clear when it says ***“you may need to provide a full tree survey, at the discretion of the local planning authority”***. A tree survey was not requested.

The application was made on 17<sup>th</sup> November 2022 and Refused on 13<sup>th</sup> June 2024, and it is believed that 19 months was sufficient time for the LPA to make such requests. In fact, no ecology comment from the LPA has ever appeared on the website.

The Appellant believes that he has been put to unnecessary additional cost in dealing with this issue and particularly as this would appear to be a request for further information and not included in the Reasons for Refusal or referred to in the Officer's Report.

### **IMPACT ON SETTLEMENT PATTERN - REFUSAL REASONS 2 & 3**

With regard to these reasons for Refusal:

Location	Both the LPA & PC acknowledge that the site is suitable for development and falls within policy.
Siting	This site allows dwellings to be built on virtually the only FRA Zone 1 land available in Eardisland. Although 18 dwellings are allocated in the ENDP only 2 dwellings have been built in Eardisland in the last 10 years and not on Zone 1 land.
Density	4 No. dwellings on 1.5 acres cannot be regarded as excessive. The LPA & PC objected to 6 dwellings.
Massing	Again this cannot reasonably be described as over development.
Scale	The dwellings are all either 1.5 or 2 storey high and designed to be sympathetic to the traditional style of dwellings in Eardisland.
Layout	The original layout started with a row of 3 attached traditional cottages providing 2 & 3 bed accommodation with an archway through to allow access to the rear for garages & parking and keeping the fronts clear of cars.

The Conservation Officer at the time of the first refusal suggested turning the cottages 90° to face the road and set back further from the road. A drawing was submitted showing that this did not work. It was believed that it had been agreed that a single dwelling faced in stone and facing the road and set further back than the cottages had been agreed as acceptable by the LPA and thereby reducing the number of dwellings on the site to 4.

The present Conservation Officer appears to take a different view.

An email with photographs disputing the present Conservation Officer's comments was sent to the LPA on 3<sup>rd</sup> October 2023 and no response from the Conservation Officer was received or has ever appeared on the website.

The Appellant believes he was entitled to a response and this was unreasonable behaviour on behalf of the Council.

The use of the word “urbanise” by the LPA is a repeat of their refusal of an application made in 2016 which the Inspector Mrs J A Vyse DipTP DipPBM MRTPI said in appeal APP/W1850/W/16/3141786 at Item 8 ***“Although the officer’s report asserts that the design of the dwellings proposed, and the layout, is suburban in nature and thus is not in keeping with the rural location of the site (there is no mention in this section of the report to the Conservation Area, even though impact on heritage assets is a concern in one of the other reasons for refusal) there is no assessment by the Council of that character. Absent such an assessment, it is not clear how, in the Council’s view, the character would be harmed by the layout or design of the dwellings proposed. There is no further discussion on this matter either, in the Council’s written statement. Although I came to the same view as the Council in terms of the layout, the Council did not produce evidence to substantiate its ongoing concerns in relation to the design of the dwellings. Therefore, in pursuing this element of the related reason for refusal, its behaviour has been unreasonable.”***

A resubmission of that application was again refused and Inspector Stephen Roscoe in his decision to Appeal Ref: APP/W1850/W/16/3165503 says at Item 7 ***“The Council’s behavior in refusing the planning application has led to the appellant incurring the cost of proceeding with the subsequent appeal. In view of my finding that the Council’s behavior was unreasonable, I consider that this expense was unnecessary as the entire appeal could have been avoided.”*** And at Item 8 the Conclusion says ***“Having taken into account all other matters raised, none lead me to an alternative decision. I therefore find that substantive unreasonable behavior resulting in unnecessary or wasted expenses, as described in PPG, has been demonstrated and that a full award of costs is justified.”***

The Appellant believes the Council have produced no evidence to substantiate its ongoing concerns in relation to the design of the dwellings and have only repeated these concerns. The Appellant believes the LPA have acted unreasonably in not responding to the Agent’s email of 3<sup>rd</sup> October 2023 and had ample time to do so.

#### **REFUSAL REASON 4**

The local Highways Authority at APP4 in the LPA Appeal Statement states *“The LHA notes that the applicant has amended the site layout so that the footpath now terminates within the 30mph zone. While the placement of signage and gateways is not ideal, we likely do not have grounds for refusal based on these factors.”*

The LHA has now withdrawn its Objection.

With respect, the Appellant complied with the suggestion from the LHA that a footpath should be provided within the site boundary and exit through a wicket gate within the 30mph limit and sent amended drawings to the LPA on 4<sup>th</sup> September 2023 months before the Refusal Notice was issued on 13<sup>th</sup> June 2024.

The Appellant considers that he has been put to unnecessary expense in dealing with Refusal Reason 4 at Appeal.

#### **REFUSAL REASON 5**

The Appellant finds the reason for refusal quite extraordinary.

The Council’s Emergency Planning Officer on the previous application recommended that the FMEP should be dealt with by Condition, but the Planning Officer did not agree and because no FMEP had been submitted this became the reason for refusal. The Appellant had believed the FMEP would be submitted to discharge the Condition.

An FMEP was submitted with this application on 17<sup>th</sup> November 2022 and despite emails from the Agent to the Planning Officer over 18 months seeking a response not even an acknowledgment of the emails, let alone a response to the report, was received.

Details of the emergency route and agreement of the neighbouring farmer were sent to the Council and despite phone calls and emails direct to the Emergency Planner by Corner Water Consulting they received no response either.

Flood signs are further down the road towards Leominster. If the road flooded at the access to this site photographs would have very quickly been produced by the objecting neighbours.

There is no comment on the website from the Emergency Planner and the Appellant believes that in the 19 months of the planning process the Council had ample time to make some comment or seek further information.

The Officer's report says "*...found to be lacking in detail in relation to ensuring that residents will join the flood warning scheme.*"

The flood warning scheme applies to every property in the village and the Appellant regards this suggestion as utterly absurd and particularly as he intends to be the occupier of Plot 1.

### **Why would any sensible person not join the flood warning scheme?**

The Appellant believes that the Council have acted unreasonably in not putting anything on the website in 19 months on details submitted with regard to emergency access and that as the reason for refusal is "**... in the absence of an agreed emergency plan**" this was entirely because of lack of co-operation by the Council. The Appellant submitted an entirely workable plan. What more could he do to reach agreement?

### **INFORMATIVES**

The Appellant takes issue with the Statement made by the Council in the Decision Notice.

The Council may have identified matters of concern but those that have been raised have all been addressed by return and the application process has been dragged out over 19 months purely by the LPA taking months to respond or in most cases not responding at all.

At no time has there been any attempt by the LPA to discuss a single issue. The Appellant believes the emails sent to the LPA reveal that they have not acted positively or proactively and their attitude, with respect, has been obstructive rather than helpful.

At one point the Appellants agent had, as the emails reveal, to email another Planning Officer after months of no action to even get a drainage report put on the website and confirmation that it had even been received.

Following the Refusal this appeal could have been avoided if the Council had responded to the agent's emails of the 17<sup>th</sup> June 2024 & 24<sup>th</sup> June 2024 to the area lead Planning Officer head of major developments and Chief Planning Officer requesting a meeting. A subsequent email to the Planning Officer who prepared the report saying as no response had been received the agent was left with no alternative but to appeal. **Appendix C.** Once again no reply was received.



The Appellant believes that the LPA has acted unreasonably throughout the 19 months planning process.

### **UNILATERAL UNDERTAKING**

The Appellant submits a unilateral undertaking. It is his intention to build Plot 1 for his own family use and is on the Council's Self-build Register.

### **CONCLUSION**

1. Had the Council responded with their HRA appraisal during the planning process Corner Water Consulting say they could have resolved this issue with the introduction of a few trees which they say Natural England have agreed with Herefordshire Council to be acceptable on other applications they have been involved with in Herefordshire.
2. The introduction of new issues not included as a reason for refusal with regard to the Sycamore tree and tree survey is a red herring because there is no intention to lop or fell the sycamore tree. The Ecology Report prepared by Churton Ecology said these were only issues if that event was likely to happen. In any case these issues should have been raised during the planning process and not at appeal.
3. The Council's Highways Officer had suggested putting a footpath within the site with a wicket gate giving pedestrian access to within the 30mph limit. This was agreed and an amended drawing was sent to the LPA on 4<sup>th</sup> September, 2023, nine months prior to the refusal notice. The Highways Officer should surely have realised in that timeframe that they did not have grounds for refusal based on these factors, not at the appeal stage.
4. The Appellant's agent submitted an email on 3<sup>rd</sup> October 2023 with photographs in response to the Conservation Officer's comments. No response to that email has ever been received or appeared on the website. The Council have produced no evidence to substantiate its ongoing concerns in relation to the designs of the dwellings.
5. The Flood Emergency Management Plan and details of the means of escape through the neighbouring property were submitted to the Council and despite repeated requests to know whether these were acceptable no comment was ever made or

appeared on the website. For the Council to suggest that the occupants of the dwellings might not join the village flood warning scheme is utterly absurd and would suggest that the occupants of these dwellings would be lacking in commonsense.

6. No discussion or helpful suggestion has ever taken place within the 19 months of this application planning process. No response was received from the Council for a meeting following the issue of the Refusal to discuss a way forward, leaving an Appeal as the only option.

27<sup>th</sup> November 2024

JOHN NEEDHAM ASSOCIATES

APPENDICES TO APPELLANT'S RESPONSE TO HEREFORDSHIRE COUNCIL'S  
APPEAL STATEMENT

Appendix A Corner Water Consulting Nutrient Neutrality Report 26 November 2024

Appendix B Corner Water Consulting Technical Note 25 November 2024

Appendix C Churton Ecology letter dated 19<sup>th</sup> November 2024

Appendix D Email exchange with LPA 17<sup>th</sup> June to 4 July 2024.