

Open

# Planning Committee

## Agenda

6pm  
Tuesday, 10th February 2015  
Council Chamber  
Wyre Forest House  
Finepoint Way  
Kidderminster



## Planning Committee

### Members of Committee:

	<b>Chairman: Councillor F M Oborski</b>
	<b>Vice-Chairman: Councillor S J M Clee</b>
<b>Councillor J Aston</b>	<b>Councillor C Brewer</b>
<b>Councillor B T Glass</b>	<b>Councillor D R Godwin</b>
<b>Councillor J Greener</b>	<b>Councillor P B Harrison</b>
<b>Councillor M J Hart</b>	<b>Councillor R J Lloyd</b>
<b>Councillor B McFarland</b>	<b>Councillor C D Nicholls</b>
<b>Councillor D R Sheppard</b>	<b>Councillor M J Stooke</b>
<b>Councillor S J Williams</b>	<b>Councillor M J Wrench</b>

### Information for Members of the Public:-

**Part I** of the Agenda includes items for discussion in public. You have the right to request to inspect copies of Minutes and reports on this Agenda as well as the background documents used in the preparation of these reports.

An update report is circulated at the meeting. Where members of the public have registered to speak on applications, the running order will be changed so that those applications can be considered first on their respective parts of the agenda. The revised order will be included in the update.

**Part II** of the Agenda (if applicable) deals with items of "Exempt Information" for which it is anticipated that the public may be excluded from the meeting and neither reports nor background papers are open to public inspection.

**Delegation** - All items are presumed to be matters which the Committee has delegated powers to determine. In those instances where delegation will not or is unlikely to apply an appropriate indication will be given at the meeting.

### Public Speaking

Agenda items involving public speaking will have presentations made in the following order (subject to the discretion of the Chairman):

- Introduction of item by officers;
- Councillors' questions to officers to clarify detail;
- Representations by objector;
- Representations by supporter or applicant (or representative);
- Clarification of any points by officers, as necessary, after each speaker;
- Consideration of application by councillors, including questions to officers

All speakers will be called to the designated area by the Chairman and will have a maximum of 3 minutes to address the Committee.

If you have any queries about this Agenda or require any details of background papers, further documents or information you should contact Sue Saunders Committee and Electoral Services Officer, Wyre Forest House, Finepoint Way, Kidderminster, DY11 7WF. Telephone: 01562 732733 or email [susan.saunders@wyreforestdc.gov.uk](mailto:susan.saunders@wyreforestdc.gov.uk)

## **Declaration of Interests by Members – interests of members in contracts and other matters**

Declarations of Interest are a standard item on every Council and Committee agenda and each Member must provide a full record of their interests in the Public Register.

In addition, alongside the Register of Interest, the Members Code of Conduct (“the Code”) requires the Declaration of Interests at meetings. Members have to decide first whether or not they have a disclosable interest in the matter under discussion.

Please see the Members’ Code of Conduct as set out in Section 14 of the Council’s constitution for full details.

## **Disclosable Pecuniary Interest (DPI) / Other Disclosable Interest (ODI)**

DPI’s and ODI’s are interests defined in the Code of Conduct that has been adopted by the District.

If you have a DPI (as defined in the Code) in a matter being considered at a meeting of the Council (as defined in the Code), the Council’s Standing Orders require you to leave the room where the meeting is held, for the duration of any discussion or voting on that matter.

If you have an ODI (as defined in the Code) you will need to consider whether you need to leave the room during the consideration of the matter.

## **WEBCASTING NOTICE**

This meeting is being filmed for live or subsequent broadcast via the Council’s website site ([www.wyreforestdc.gov.uk](http://www.wyreforestdc.gov.uk)).

At the start of the meeting the Chairman will confirm if all or part of the meeting is being filmed.

You should be aware that the Council is a Data Controller under the Data Protection Act 1998. The footage recorded will be available to view on the Council’s website for 6 months and shall be retained in accordance with the Council’s published policy.

**By entering the meeting room and using the public seating area, you are consenting to be filmed and to the possible use of those images and sound recordings for webcasting and or training purposes.**

If members of the public do not wish to have their image captured they should sit in the Stourport and Bewdley Room where they can still view the meeting.

If any attendee is under the age of 18 the written consent of his or her parent or guardian is required before access to the meeting room is permitted. Persons under 18 are welcome to view the meeting from the Stourport and Bewdley Room.

**If you have any queries regarding this, please speak with the Council’s Legal Officer at the meeting.**

## **NOTES**

- Councillors, who are not Members of the Planning Committee, but who wish to attend and to make comments on any application on this list or accompanying Agenda, are required to give notice by informing the Chairman, Solicitor to the Council, or Director of Economic Prosperity & Place before the meeting.
- Councillors who are interested in the detail of any matter to be considered are invited to consult the files with the relevant Officers to avoid unnecessary debate on such detail at the Meeting.
- Members should familiarise themselves with the location of particular sites of interest to minimise the need for Committee Site Visits.
- Please note if Members wish to have further details of any application appearing on the Schedule or would specifically like a fiche or plans to be displayed to aid the debate, could they please inform the Development Control Section not less than 24 hours before the Meeting.
- Members are respectfully reminded that applications deferred for more information should be kept to a minimum and only brought back to the Committee for determination where the matter cannot be resolved by the Director of Economic Prosperity & Place.
- Councillors and members of the public must be aware that in certain circumstances items may be taken out of order and, therefore, no certain advice can be provided about the time at which any item may be considered.
- Any members of the public wishing to make late additional representations should do so in writing or by contacting their Ward Councillor prior to the Meeting.
- For the purposes of the Local Government (Access to Information) Act 1985, unless otherwise stated against a particular report, "background papers" in accordance with Section 110D will always include the case Officer's written report and any letters or memoranda of representation received (including correspondence from the Highway Authority, Statutory Undertakers and all internal District Council Departments).
- Letters of representation referred to in these reports, together with any other background papers, may be inspected at any time prior to the Meeting, and these papers will be available at the Meeting.
- **Members of the public** should note that any application can be determined in any manner notwithstanding any or no recommendation being made.

Wyre Forest District Council

Planning Committee

Tuesday, 10th February 2015

Council Chamber, Wyre Forest House, Finepoint Way, Kidderminster

Part 1

Open to the press and public

<b>Agenda item</b>	<b>Subject</b>	<b>Page Number</b>
1.	<b>Apologies for Absence</b>	
2.	<b>Appointment of Substitute Members</b>  To receive the name of any Councillor who is to act as a substitute, together with the name of the Councillor for whom he/she is acting.	
3.	<b>Declarations of Interests by Members</b>  In accordance with the Code of Conduct, to invite Members to declare the existence and nature of any Disclosable Pecuniary Interests (DPI's) and / or Other Disclosable Interests (ODI's) in the following agenda items and indicate the action that they will be taking when the item is considered.  Please see the Members' Code of Conduct as set out in Section 14 of the Council's Constitution for full details.	
4.	<b>Minutes</b>  To confirm as a correct record the Minutes of the meeting held on the 9 <sup>th</sup> December 2014.	7
5.	<b>Applications to be Determined</b>  To consider the report of the Development Manager on planning and related applications to be determined.	15
6.	<b>Planning and Related Appeals</b>  To receive a schedule showing the position in relation to those planning and related appeals currently being processed and details of the results of appeals recently received.	38
7.	<b>Section 106 Obligation Monitoring</b>  To consider a report from the Director of Economic Prosperity & Place that gives details of the most current Section 106 Obligations which require monitoring.	77

8.	<b>To consider any other business, details of which have been communicated to the Solicitor to the Council before the commencement of the meeting, which the Chairman by reason of special circumstances considers to be of so urgent a nature that it cannot wait until the next meeting.</b>	
9.	<p><b>Exclusion of the Press and Public</b></p> <p>To consider passing the following resolution:</p> <p>“That under Section 100A(4) of the Local Government Act 1972 the press and public be excluded from the meeting during the consideration of the following item of business on the grounds that it involves the likely disclosure of “exempt information” as defined in paragraph 3 of Part 1 of Schedule 12A to the Act”.</p>	

Part 2

Not open to the Press and Public

10.	<p><b>New Enforcement Case</b></p> <p>To receive a report from the Director of Economic Prosperity &amp; Place on a new enforcement case.</p>	-
11.	<p><b>Live Enforcement Cases</b></p> <p>To receive a report which lists live enforcement cases as at 28<sup>th</sup> January 2015.</p>	-
12.	<b>To consider any other business, details of which have been communicated to the Solicitor to the Council before the commencement of the meeting, which the Chairman by reason of special circumstances considers to be of so urgent a nature that it cannot wait until the next meeting.</b>	

**WYRE FOREST DISTRICT COUNCIL**

**PLANNING COMMITTEE**

**COUNCIL CHAMBER, WYRE FOREST HOUSE, FINEPOINT WAY,  
KIDDERMINSTER**

**9TH DECEMBER 2014 (6.00 PM)**

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**Present:**

Councillors: F M Oborski (Chairman), S J M Clee (Vice-Chairman), J Aston, C Brewer, B T Glass, D R Godwin, J Greener, P B Harrison, M J Hart, R J Lloyd, B McFarland, C D Nicholls, D R Sheppard, M J Stooke, S J Williams and M J Wrench.

**Observers:**

There were no members present as observers

**PL.53 Apologies for Absence**

There were no apologies for absence

**PL.54 Appointment of Substitutes**

No substitutes were appointed

**PL.55 Declarations of Interests by Members**

Councillor R Lloyd declared a Disclosable Pecuniary Interest in Application 14/0560/S73 Tesco as he works for a rival supermarket.

**PL.56 Minutes**

**Decision: The minutes of the meeting held on 11<sup>th</sup> November 2014 be confirmed as a correct record and signed by the Chairman.**

**PL.57 Applications To Be Determined**

The Committee considered those applications for determination (now incorporated in Development Control Schedule No. 527 attached).

**Decision: The applications now submitted be determined, in accordance with the decisions set out in Development Control Schedule No. 527 attached, subject to incorporation of any further conditions or reasons (or variations) thought to be necessary to give full effect to the Authority's wishes about any particular application.**

**PL.58 Planning and Related Appeals**

The Committee received details of the position with regard to planning and related appeals, still being processed, together with particulars of appeals that had been determined since the date of the last meeting.

**Decision: The details be noted.**

**PL.59 Conservation Area Character Appraisal Updates**

The Committee considered a report from the Director of Economic Prosperity & Place which advised Members of the process being undertaken to update Character Appraisals for Conservation Areas within Wyre Forest District, to reflect the current Legislative and Policy Frameworks, and to seek Planning Committee approval to adopt Conservation Area Character Appraisals updated in this way.

**Decision: The updated Conservation Area Character Appraisals for each of the 17 Conservation Areas within Wyre Forest District be approved for adoption with delegated authority to the Director of Economic Prosperity and Place to determine the final format and presentation of the Character Appraisals.**

**PL.60 Exclusion of the Press and Public**

**Decision: That under Section 100A(4) of the Local Government Act 1972 the press and public be excluded from the meeting during the consideration of the following item of business on the grounds that it involves the likely disclosure of “exempt information” as defined in paragraph 3 of Part 1 of Schedule 12A to the Act.**

**PL.61 Enforcement Matters**

The Committee received a report from the Director of Economic Prosperity and Place which provided Members with a summary report on enforcement matters, and specifically the volume of new complaints.

**Decision: The report be noted.**

The meeting ended at 6.50 p.m.



**WYRE FOREST DISTRICT COUNCIL**

**PLANNING COMMITTEE**

9<sup>th</sup> December 2014 Schedule 527 Development Control

The schedule frequently refers to various standard conditions and notes for permission and standard reasons and refusals. Details of the full wording of these can be obtained from the Development Manager, Wyre Forest House, Fine Point Way, Kidderminster. However, a brief description can be seen in brackets alongside each standard condition, note or reason mentioned.

**Application Reference: 14/0390/FULL**

**Site Address: BRINTONS BUILDING, EXCHANGE STREET, KIDDERMINSTER, DY10 1BU**

**APPROVED** subject to the following conditions:

1. A6 (Time limit for implementation of permission).
2. A11 (In accordance with approved plans).
3. Samples of materials including decking and glazed boundary treatment to walkway.
4. Notwithstanding details submitted, submission of details regarding lighting which would ensure no increase of illumination of the river corridor.
5. Details of drainage including details to ensure no internal flooding.
6. Flood Evacuation Management Plan.
7. Programme of historic building recording.
8. Provision for the analysis, publication and dissemination of the results of the historic building recording.
9. Large scale details of windows and doors.
10. Structural Engineer's report explaining how the north side of Unit 5 is to be opened up
11. Details of fixed plant and ventilation prior to first use of any part of Units 1, 2, 3, 3a, 4, 5 and 6 (and agreed details to be retained unless otherwise agreed).
12. Details of noise insulation to protect upper floors which has approval for hotel use prior to first use of Units 1, 2, 3, 3a, 4, 5 and 6.
13. Submission of details of landscaping, plant to accord with submitted and landscaping plan including indication of existing proposed large rocks to be submitted.
14. Further bat survey of existing culvert prior to commencement with details of any necessary mitigation.
15. Notwithstanding details submitted the bat boxes shall be implemented in a position to be agreed in writing by the Local Planning Authority before first use of the development and details of any necessary mitigation.
16. Additional otter survey(s) up and down stream of the application site prior to commencement in accordance with a methodology agreed in writing by the Local Planning Authority.
17. Notwithstanding details submitted the details of an otter shelf shall be submitted to and agreed in writing by the Local Planning Authority and implemented in an agreed position before first use of the development.
18. Methodology for removal of Himalayan balsam.
19. Provision/submission of landscape maintenance plan.
20. Removal of shrubs, trees and other vegetation outside of bird breeding

- season.
21. Submission of a Construction Environmental Management Plan.
  22. Submission of Habitat Management Plan.
  23. Finished floor levels of building and decking area / walkway in accordance with agreed details.

**NOTES**

- A. Environment Agency regarding Flood Warning System.
- B. Flood Defence consent required.

**Application Reference: 14/0391/LIST**

**Site Address: BRINTONS BUILDING, EXCHANGE STREET, KIDDERMINSTER, DY10 1BU**

**APPROVED** subject to the following conditions:

1. A7 (Time limit for implementation of permission).
2. A11 (In accordance with approved plans).
3. Programme of historic building recording.
4. Provision for the analysis, publication and dissemination of the results of the historic building recording.
5. Large scale details of windows and doors.
6. Structural Engineer's report explaining how the north side of Unit 5 is to be opened up.
7. Details of fixed plant and ventilation prior to first use of any part of Units 1, 2, 3, 3a, 4, 5 and 6 (and agreed details to be retained unless otherwise agreed).
8. Details of noise insulation to protect upper floors which has approval for hotel use prior to first use of Units 1, 2, 3, 3a, 4, 5 and 6.

**Application Reference: 14/0541/OUTL**

**Site Address: SITE OF FORMER SION HILL MIDDLE SCHOOL, SION HILL, KIDDERMINSTER, DY10 2XT**

**DELEGATED AUTHORITY TO APPROVE** subject to the following:

- a) The signing of a Section 106 Agreement to secure:
  - i) Affordable Housing Provision;
  - ii) Education Contributions;
  - iii) Public Open Space Contributions; and
  - iv) Highway Contributionsas detailed above; and
- b) The following conditions:
  1. A1 (Standard outline).
  2. A2 (Standard outline – Reserved Matters).
  3. A3 (Submission of Reserved Matters).
  4. A5 (Scope of Outline Permission).

5. A11 (Approved plans).
6. B1 (Samples/details of materials).
7. B11 (Details of enclosure).
8. B13 (Levels details).
9. C2 (Retention of existing trees).
10. C3 (Tree protection during construction).
11. C5 (Hand digging near trees).
12. C8 (Landscape implementation).
13. C13 (Landscape Management Plan).
14. E2 (Foul and Surface Water).
15. Ecology Surveys prior to demolition.
16. G11 (Details of Works to Listed Buildings).
17. Archaeology.
18. Contaminated land.
19. Visibility Splays.
20. Access closure – occupation – vehicular.
21. Access, turning and parking.
22. Parking for site operatives.

NOTES

- A. SN2 (Section 106 Agreement).
- B. Footpaths.
- C. Section 278 Agreement.
- D. Design of Street Lighting for Section 278.
- E. SN6 (No Felling – TPO).
- F. Demolition in accordance with Worcestershire Regulatory Service Code of Practice.

Councillor R Lloyd left the meeting at this point, (6.45pm)

**Application Reference: 14/0560/S73**

**Site Address: TESCO, SEVERN ROAD, STOURPORT-ON-SEVERN, DY13 9AH**

**APPROVED** subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby approved shall be carried out strictly in accordance with the approved drawings.
3. The foodstore hereby approved shall not exceed the following floor space allocations (maxima):  
Gross external- up to 4546 sq. metres measured externally  
Net retail sales- up to 3146 sq. metres  
Notwithstanding the floor space figures above no more than 2,401 sq.m shall be used as Net Sales Floor Area as defined in the 2009 Unilateral Undertaking as that part of the foodstore within the development that is used for the sale and display of goods including the checkouts and the customer counters but excluding lobbies, customer services, circulation areas and customer toilets in accordance with the retail study submitted and considered as part of the Council's determination of Application reference 07/1105/EIA.
4. The areas indicated as 'Mitton Street entrance lobby' and 'Main entrance lobby' on Drg. 11217-728 Rev F shall not be used for retail sales or the display of any goods or services, including concessions kiosks, whether or not

- related to those available in-store.
5. The development hereby approved shall not be commence until a large scale detail of the approved bi-parting doors together with details of the proposed glazing of the bi-parting doors at the Mitton Street junction lobby entrance have been submitted to and agreed in writing by the Local Planning Authority. No external lighting is allowed to the exterior of the lobby unless otherwise agreed in writing by the Local Planning Authority.
  6. The restoration and mitigation for the restoration and enhancement of the River Stour corridor (west bank) within the application site shall be implemented in accordance with details agreed.
  7. The Landscape and Biodiversity plan to improve and enhance the biodiversity of the site shall be implemented and retained in accordance with details agreed.
  8. The lighting within the site shall be retained and adhered to as agreed.
  9. The entrance to the foodstore from the Mitton Street/Severn Road junction shall be made available for public use at all times when the store is open to the public.
  10. The external materials shall be retained in accordance with details agreed.
  11. The means of enclosure as agreed shall be retained at all times unless otherwise agreed in writing by the Local Planning Authority.
  12. The storage of refuse, crates, packing cases and other waste materials shall be retained within the service yard only prior to disposal. Thereafter they shall be disposed of in accordance with the Refuse Policy Statement agreed.
  13. The finished floor levels across the site and the finished floor level of the store shall be retained in accordance with details agreed.
  14. The hard and soft landscaping details shall be retained in accordance with the details agreed.
  15. Those trees agreed to be retained shall accord with the details agreed.
  16. All hard and soft landscape works shall be carried out in accordance with the approved details and to a standard in accordance with the relevant recommendations of British Standard [4428:1989]. The works shall be carried out in accordance with a timetable agreed with the Local Planning Authority. Any trees or plants that, within a period of five years after planting, are removed, die or become seriously damaged or defective, shall be replaced with others of species, size and number as originally approved, by the end of the first available planting season thereafter.
  17. Within one month of the date of approval a Verification Report demonstrating completion of the works set out in the Remediation Strategy agreed and the effectiveness of the remediation shall be submitted to and approved by the Local Planning Authority in writing.
  18. Reports on monitoring, maintenance and any contingency action carried out in accordance with the long term monitoring and maintenance plan referred to in the condition above shall be submitted to the Local Planning Authority in accordance with a timetable to be incorporated within that Plan, unless otherwise agreed in writing with the Local Planning Authority. On completion of the monitoring programme a final report demonstrating that all long-term site remediation criteria have been met and documenting the decision to cease monitoring shall be submitted to and approved by the Local Planning Authority in writing.
  19. If, during development, contamination not previously identified, is found to be present at the site then (unless otherwise agreed in writing with the Local Planning Authority) no further development shall be carried out until an amendment to the approved Remediation Strategy, which shall detail how this

- contamination shall be dealt with, has been submitted to and approved by the Local Planning Authority in writing.
20. No infiltration of surface water drainage into the ground shall be permitted other than with the written consent of the Local Planning Authority.
  21. The surface water and foul water drainage scheme as agreed.
  22. All fixed plant and noise emitting machinery shall be sited and mitigated in accordance with the details agreed.
  23. Retention of visibility splays at the junction of the new site access road with Severn Road.
  24. There shall be no deliveries to or despatched from the site outside the hours of 06:00 and 23:00.
  25. No baking, cooking or food preparation shall be carried out on the site unless in accordance with the details submitted.
  26. Neither the foodstore nor the petrol filling station hereby permitted shall be open to customers or any other persons not employed within the business operating from the site outside the following times:  
07:00 – 22:00 hours on Mondays to Saturdays  
10:00 – 16:00 hours on Sundays
  27. No part of the petrol filling station shall be used for the sale, display, repair, servicing or washing of vehicles.
  28. No part of the petrol filling station shall be used for the sale, display, repair, servicing or washing of vehicles.
  29. The Floodplain Compensation Scheme as agreed shall be retained in accordance with the agreed details.

NOTES

- A. This approval shall be read in conjunction with
  - i. the obligation entered into under Section 106 of the Town and Country Planning Act (as amended) dated 19th May 2008;
  - ii. the unilateral undertaking dated 12<sup>th</sup> February 2009; and
  - iii. the obligation entered into under Section 106 of the Town and Country Planning Act (as amended) dated 14<sup>th</sup> November 2014.
- B. The Reserved Matters approval (Ref. 10/0706/RESE) was approved on 19 January 2011. There has since this date been agreement to the two following Non-Material Amendments:
  - i. 12/9008/NMA - Non-material Amendments to Planning Permission 10/0706/RESE (Variation to approved landscaping scheme to allow removal of No. 1 tree (T6 Sycamore) and replacement with No. 3 extra heavy standard trees (2 x Common Alder and 1 x Ash) :Approved 18/03/13
  - ii. 12/9014/NMA - Non-material amendment to Planning Permission 07/1105/EIA (Alteration to highways layout to accommodate an existing gas mains pipe) : Approved 06/03/13
- C. This permission does not authorise the laying of private apparatus within the confines of the public highway.
- D. The Applicant's attention is drawn to the need to ensure that the provision of the visibility splay(s) required by this consent is safeguarded in any sale of the application site or part(s) thereof.

Councillor R Lloyd came back to the meeting at this point, (6.46pm).

<b>Application Reference: 14/0637/FULL</b>
<b>Site Address: 327 HURCOTT ROAD, KIDDERMINSTER, DY10 2QX</b>
<b>APPROVED</b> subject to the following condition:  1. A11 (Approved plans).

**EXECUTIVE SUMMARY TO REPORT OF  
DEVELOPMENT MANAGER**

**Planning Committee**

**10/02/2015**

**PART A Reports**

<b>Ref.</b>	<b>Address of Site</b>	<b>Recommendation</b>	<b>Page No.</b>
14/0501/FULL	197 BIRMINGHAM ROAD KIDDERMINSTER	APPROVAL	16
14/0616/FULL	15 EASTWOOD DRIVE KIDDERMINSTER	APPROVAL	24

**PART B  
Reports**

<b>Ref.</b>	<b>Address of Site</b>	<b>Recommendation</b>	<b>Page No.</b>
14/0664/FULL	FOXMEAD ROCK KIDDERMINSTER	APPROVAL	29
14/0738/TREE	50 LOWE LANE KIDDERMINSTER	APPROVAL	34

WYRE FOREST DISTRICT COUNCIL

**PLANNING COMMITTEE**  
**10<sup>TH</sup> FEBRUARY 2015**

**PART A**

<b>Application Reference:</b>	14/0501/FULL	<b>Date Received:</b>	18/08/2014
<b>Ord Sheet:</b>	384322 277136	<b>Expiry Date:</b>	13/10/2014
<b>Case Officer:</b>	James Houghton	<b>Ward:</b>	Greenhill

**Proposal:** Change of use to Ambulance Response Location (Sui Generis)

**Site Address:** 197 BIRMINGHAM ROAD, KIDDERMINSTER, DY10 2SD

**Applicant:** West Midlands Ambulance Service

<b>Summary of Policy</b>	CP11 (CS) SAL.CC1, SAL.UP7 (SAAPLP) Section 11 (NPPF) Online Planning Practice Guidance – Noise and Light Pollution
<b>Reason for Referral to Committee</b>	Third party has registered to speak at Committee
<b>Recommendation</b>	<b>APPROVAL</b>

**1.0 Site Location and Description**

- 1.1 The application refers to a site off the Birmingham Road which is occupied by a former dwelling and out buildings to the rear. A protected tree is located immediately adjacent to the entrance to the site.
- 1.2 The property is currently utilised by St Johns Ambulance as a training facility. The application site shares boundaries to the sides and rear with residential properties.

**2.0 Planning History**

- 2.1 14/0023/FULL – Change of use to ambulance response post (sui generis) : Refused 01/04/14.

**3.0 Consultations and Representations**

- 3.1 Highway Authority – No objections.



14/0501/FULL

3.2 Worcestershire Regulatory Services – The initial response received from Environmental Health is reproduced verbatim below:

I can understand your concern at first glance you might think that the location is unusual to place such a facility however if you look at nearly all ambulance stations historically many are in residential areas (unless they are joined on to a hospital) so its reasonably ordinary really. The best example being the current location on Stourport Road which is surrounded on all sides by residential properties. The same is also true of the Ambulance HQ in Whittington Road, Worcester, which is in the middle of residential. None of the stations give rise to noise problems or complaints. I think the council needs to also bear this in mind along with the fact that this is a satellite operation so strategic first response vehicles are intended to man this location and not a full blown depot.

With regard to noise sources generated from the site, we have had confirmation that vehicles entering and leaving the property will be an infrequent occurrence during the day and night, so in that respect this should be no different to that of any other residential area. The mobile siren policy of the Ambulance services (same as that of the police) is that sirens are curfewed between the hours of 11pm and 7am unless absolutely necessary in congested areas to make way. This was an initial concern when the first application came in however the Ambulance Service has sought to confirm that this is not the case due to the aforementioned. So I can see occasional sirens during busier times (mostly during rush hour only) would be the only noise detriment, as the Birmingham Road has little or no traffic at night.

So in summary if you were minded to refuse the application on noise grounds I think that we would not be able to successfully defend any arguments that may be tabled with regard to noise at appeal as there are no tangible reason to object with regard to noise impact.

*(Officer Comment - Following a query relating to the impact of the flashing/strobe lights on the amenity enjoyed by the occupants of neighbouring dwellings Worcestershire Regulatory Services provided the following additional response:*

*The lights are usually switched on when they are on the highway. If lights on the premises was an issue we would just serve a light nuisance notice prohibiting their use on the premises. Whilst on the public highway there is no restriction. In addition to this the area is subject to significant ambient lighting (street lights) so the level of additional lighting would be minimal).*

14/0501/FULL

3.3 Neighbour/Site Notice – Four residents of the immediate area have provided objections in response to the application. The objections are on the grounds that:

- the development has the potential to have a significant impact on the amenity enjoyed by the occupants of neighbouring dwellings and their health due to the increased noise produced by sirens and the running of engines;
- the use of flashing lights on site has the potential to cause disturbance to the occupants of neighbouring dwellings;
- the impact of both of these issues would be exacerbated by the working/operational hours of the site; and
- there is potential that the change of use might have a detrimental impact on highway safety, both for drivers and pedestrians, particularly given that the Birmingham Road is busy at this point and the site is close to a major junction.

One of those objecting provides significantly more detail and includes a commentary on the supporting information submitted by the applicant and raises the following issues:

- the data provided calls into question the need for the CAS (Community Ambulance Station) given the response times already achievable by WMAS (West Midlands Ambulance Service);
- the additional information contradicts the information supplied to support the previous application in terms of the number of call outs per day;
- on the basis of the information provided to the objector on the DY10 and DY11 post codes there is an average of 11 emergency call outs during the day, 8 during the evening and a further 8 during the night. This is an average of 170 in a week and extrapolated to 8500 per year;
- the objector states (on the basis of a US publication) that an ambulance siren emits a noise of 120dB which is on the threshold of the injury range and which can cause damage to hearing;
- whilst the protocol limiting the use of sirens is noted, sirens would not be used unless there is a hazard perceived in the highway and as such they could be utilised during the night;
- whilst sirens may not be used, flashing lights would be. Flashing lights have the capacity to disturb sleep and the amenity enjoyed by the occupants of neighbouring properties; and
- the access to the site is within 50m of the junction at the Land Oak where there is frequently heavy traffic and as such an ambulance or other response vehicle responding to an emergency call may have to pass through the tailback to the detriment of highway and pedestrian safety.

One of the objectors also comments that the applicant has been deliberately vague on the number of emergency calls, this has been addressed by the additional information supplied by WMAS.

14/0501/FULL

One letter of support has been received welcoming the change of use as it would increase security on both the site and those who share a boundary of it.

#### **4.0 Officer Comments**

- 4.1 Through this application West Midlands Ambulance Service intends to create a Community Ambulance Station (CAS) at 197 Birmingham Road, to serve the east side of Kidderminster and beyond. The area in which the application site is located is characterised by residential properties. The site shares both side and rear boundaries with dwellings and residential properties also occupy the land opposite the site fronting Birmingham Road. This CAS would form part of a network of 103 CASs within the West Midlands Area which would supplement 15 Ambulance hubs. Typical CAS sites consist of a toilet and kitchen facilities and parking spaces for one or two emergency vehicles. To this end the applicant intends to demolish existing prefabricated garages to provide parking spaces, part of the existing building would provide the other facilities.
- 4.2 The CAS would be one of two within the Kidderminster area. This site would usually have a staff member on duty twenty four hours a day and seven days a week (on shifts). It is anticipated that a single rapid response vehicle would normally be based on site and two ambulances would be based elsewhere within Kidderminster. The intention behind the provision of two CAS sites is to improve the response times of emergency vehicles in the DY10 area in order to achieve an eight minute target response time.
- 4.3 It is acknowledged that the change of use of this property to provide a CAS formed the subject of planning application 14/0023/FULL. The previous application was refused on the grounds that the proposed use would have a significant detrimental impact on the amenity enjoyed by the occupants of neighbouring dwellings, primarily through the use of sirens and flashing/strobe lights. The current application differs in that significantly more information has been provided initially through a supporting statement followed by an additional tranche of information. These documents provide greater insight into the specifics of what is proposed; how the use would be operated and how the provision of a CAS fits into the "Service Transformation" and "Make Ready" projects currently being undertaken by West Midlands Ambulance Service. Had such information been forthcoming with the earlier application the Officer recommendation would have reflected the current recommendation.

14/0501/FULL

- 4.4 One of the key factors in assessing the impact of the CAS on the immediate area is the frequency of call outs. Amongst the submitted information is a summary of the number and temporal distribution of call outs in the DY10 postcode area. These figures, which represented the most up to date available at the time the application was submitted, demonstrate an average of 13.2 call outs per day for the DY10 area with average figures showing a maximum of 0.81 call outs per hour between 1800 and 1900 and a minimum of 0.27 call outs per hour between 0500 and 0600. The supporting text states that the average job cycle time (time of call, vehicle dispatched, patient assessed and treated and vehicle departs) is one hour and six minutes, as such there are likely to be occasions where the vehicle would not return to the CAS and activity at the site would be negligible.
- 4.5 The key issues in determining this application are the impact of the change of use on the amenity enjoyed by the occupants of nearby dwellings and the implications for highway safety.
- 4.6 Paragraph 123 of the National Planning Policy Framework states:  
*“Planning policies and decisions should aim to:*
- *avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development;*
  - *mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions;*
  - *recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established; and*
  - *identify and protect areas of tranquillity which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason.”*

The supporting statement provided by the applicant provides details of the existing WMAS protocol to minimise noise impact whereby sirens are not used between 2300 and 0700 hours unless a hazard is perceived on the highway.

Members may wish to note that in this regard, any possible planning condition restricting the use of sirens would a) be difficult to enforce, and b) could only relate to ‘on site’ operations. As soon as the vehicle exits onto the public highway, no controls could be imposed through planning law.

14/0501/FULL

- 4.7 Paragraph 125 states:  
*“By encouraging good design, planning policies and decisions should limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.”*

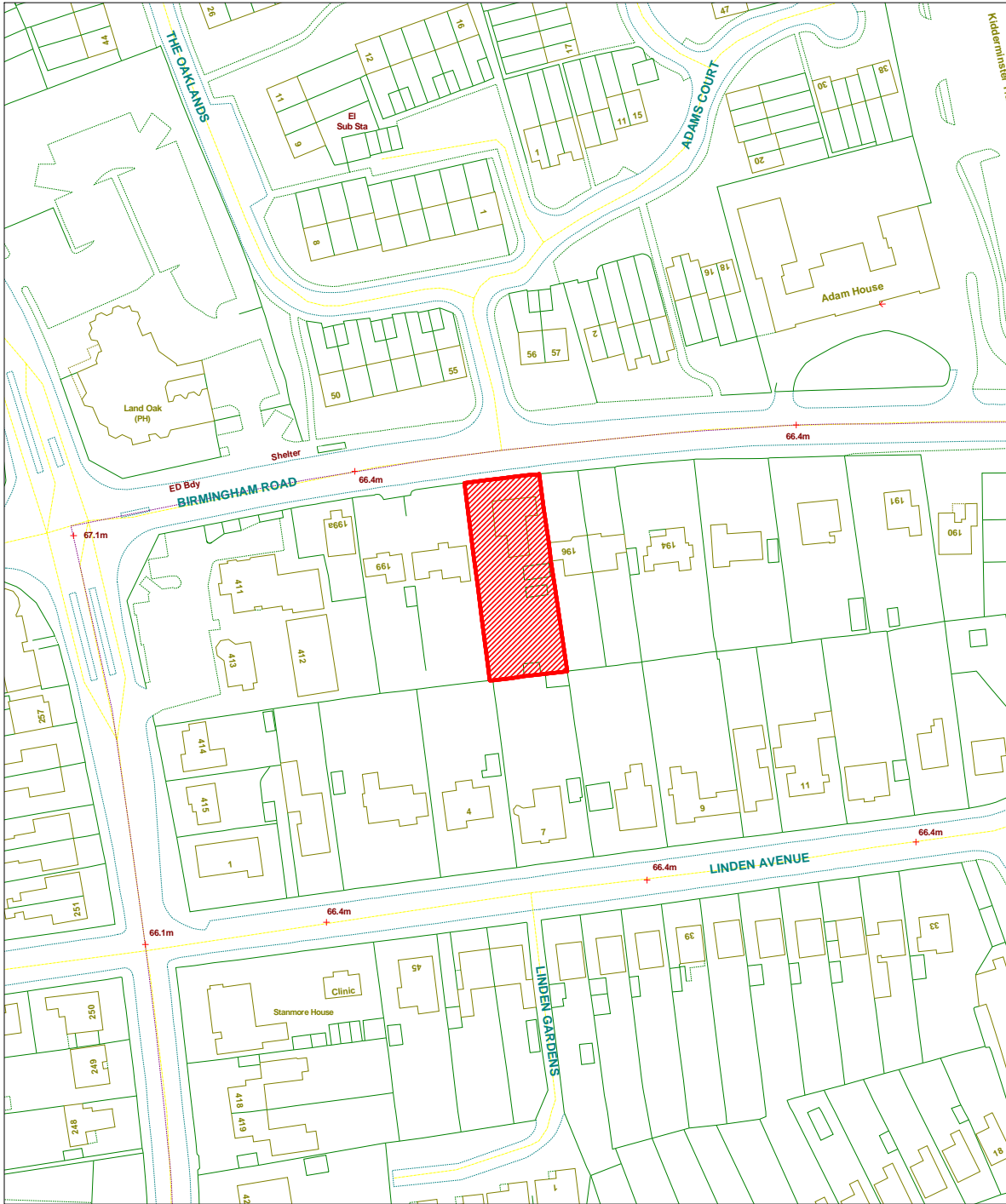
The online Planning Practice Guidance provided by the Department for Communities and Local Government contains a section on light pollution which points out that the introduction of light sources can create disturbance to people within a given area. The introduction of flashing lights to an area has the potential to impair sleeping and to cause disturbance. This potential harm is exacerbated by the colour of the lights. The Planning Practice Guidance notes that “for humans, light intrusion by white/blue light is more disruptive to sleep”. In addition it may be necessary for the flashing lights to be accompanied by sirens which, on the basis of the information submitted by the applicant, would only be used in exceptional circumstances during the hours of darkness.

- 4.8 Worcestershire Regulatory Services as the relevant Environmental Health body for Wyre Forest has examined the information submitted and, on the basis of their experience with similar facilities, have provided no objections to the proposed change of use. With regard to the impact of lighting it is observed that any impact would be mitigated by the existence of street lighting and that the lights are normally used on the highway, where their use is entirely unrestricted.
- 4.9 Officers can appreciate the concerns raised by local residents in respect of potential disturbance and impact on residential amenity. However, as already identified, the impact of the development on highway safety has been assessed by the Highway Authority. No objections have been offered to the scheme and no conditions requested.
- 4.10 On the basis of the consultation responses supplied by the relevant consultees, there are no objections to the proposed change of use. In the absence of objections from the relevant consultees, Officers are unable to substantiate a reason for refusal, despite misgivings about the proposal. As such the development would be considered to accord with the requirements of Policy CP11 of the Adopted Wyre Forest District Core Strategy and Policies SAL.CC1 and SAL.UP7 of the Adopted Wyre Forest District Site Allocations and Policies Local Plan.

14/0501/FULL

## 5.0 Conclusions and Recommendations

- 5.1 As previously identified, Officers do have some misgivings about the proposal, and can appreciate the concerns being expressed by local residents. That said, the additional information provided by the Applicant in respect of the current application, and the explanation as to how this CAS site would operate does provide some comfort. Furthermore, it is clear from the submitted documents that a CAS site is required in this general area to improve response times in the DY10 area, based upon the WMAS current business model.
- 5.2 In light of the 'no objection' response received from the relevant consultees, the proposed change of use is considered supportable. On the basis of the information available the proposed use would have little or no significant impact on the amenity enjoyed by the occupants of nearby dwellings or on highway safety in this area. As such the development would be considered to accord with the requirements of Policy CP11 of the Adopted Wyre Forest District Core Strategy and Policies SAL.CC1 and SAL.UP7 of the Adopted Wyre Forest District Site Allocations and Policies Local Plan.
- 5.3 It is recommended that the application is **APPROVED** subject to the following conditions:
1. A6 (Full with no reserved matters).
  2. A11 (Approved plans).



ECONOMIC PROSPERITY AND PLACE DIRECTORATE

**197 Birmingham Road  
Kidderminster, DY10 2SD**

Date:- 26 January 2015

Scale:- 1:1250

OS Sheet:- SO8477SW

Crown Copyright 100018317 2014

Wyre Forest House, Finepoint Way, Kidderminster, Worcs. DY11 7WF Telephone: 01562 732928. Fax: 01562 732556



<b>Application Reference:</b>	14/0616/FULL	<b>Date Received:</b>	21/10/2014
<b>Ord Sheet:</b>	384577 276052	<b>Expiry Date:</b>	16/12/2014
<b>Case Officer:</b>	Julia McKenzie-Watts	<b>Ward:</b>	Offmore and Comberton

**Proposal:** Replacement of existing first floor bedroom window with French doors to balcony

**Site Address:** 15 EASTWOOD DRIVE, KIDDERMINSTER, DY10 3AW

**Applicant:** Mr J Kane

<b>Summary of Policy</b>	CP11 (CS) SAL.UP7, SAL.UP8 (SAAPLP)
<b>Reason for Referral to Committee</b>	Third party has registered to speak at Committee
<b>Recommendation</b>	<b>APPROVAL</b>

## **1.0 Site Location and Description**

- 1.1 Number 15 Eastwood Drive is a semi detached property located in a residential area to the south east of Kidderminster town centre.
- 1.2 The application property is a two storey, pitched roofed, dwelling with a 10 metre rear garden, similar in design to the majority of other dwellings within the immediate vicinity. The rear elevation of the property faces the back garden of number 21 Eastwood Drive and shares side boundaries with numbers 13 and 17.
- 1.3 The applicant has constructed a centrally located 3.2m wide rear balcony and the application proposes retention of this, along with the replacement of an existing first floor window with French doors in order to provide access to the balcony, and the provision of obscurely glazed privacy screens.
- 1.4 The balcony itself has been reduced in size from 6.4m in width with willow screens after discussions with Officers over its size as it previously extended to the edge of the house immediately adjacent to the boundary with number 17 Eastwood Drive. Members are advised that this application has come about following Officers being alerted to the construction of a 6.4m wide balcony at the property, which has since been reduced to the current 3.2m wide balcony.

## **2.0 Planning History**

- 2.1 None.



14/0616/FULL

### 3.0 Consultations and Representations

#### 3.1 Neighbour– 1 letter received following the submission of revised plans:

##### OVERLOOKING/ LOSS OF PRIVACY

The elevated location of the balcony enables the residents of 15 Eastwood Drive to overlook a number of properties at the side and behind the property.

It feels very uncomfortable using the garden whilst the balcony is in use, as they look directly down on us, (and have tried to interject within private conversations) forcing us to remain indoors.

##### NOISE AND DISTURBANCE RESULTING FROM USE

The elevated location of a balcony has resulted in greater noise and light pollution as there is a direct line of sight between the balcony and the surrounding properties gardens. Sounds travels further when there are no barriers such as walls, hedges or the ground to absorb the noise. Although planning permission has yet to be granted the balcony is already being used, and the willow screens have been removed.

I feel this would have a direct impact on my quality of life and/or any tenant. This would include being uncomfortable to invite friends and family round.

##### OTHER RELEVANT FACTS

The design and location of the houses in Eastwood Drive were not designed for balconies.

No other properties in Eastwood Drive have a balcony. It is out of character for the property design.

Having spoken to our tenant we feel that if planning permission was granted for any form of balcony, more significant barriers would need to be in place, for example the partition between the gardens should be increased in height. The fence is already 6ft but the balcony is higher than that so they look straight across. The new planning application is for a level 5 glass screen on either side of the balcony but that does not offer any sound proofing and only shields approximately 1.5 metres by the house any further into the garden and they are still looking down on you. By increasing the height of the barrier between the properties, whether by a solid structure (i.e. a wall or fence, or semi solid say trellis fence that plants could be encouraged to grow up and over) would provide a more effective barrier.

14/0616/FULL

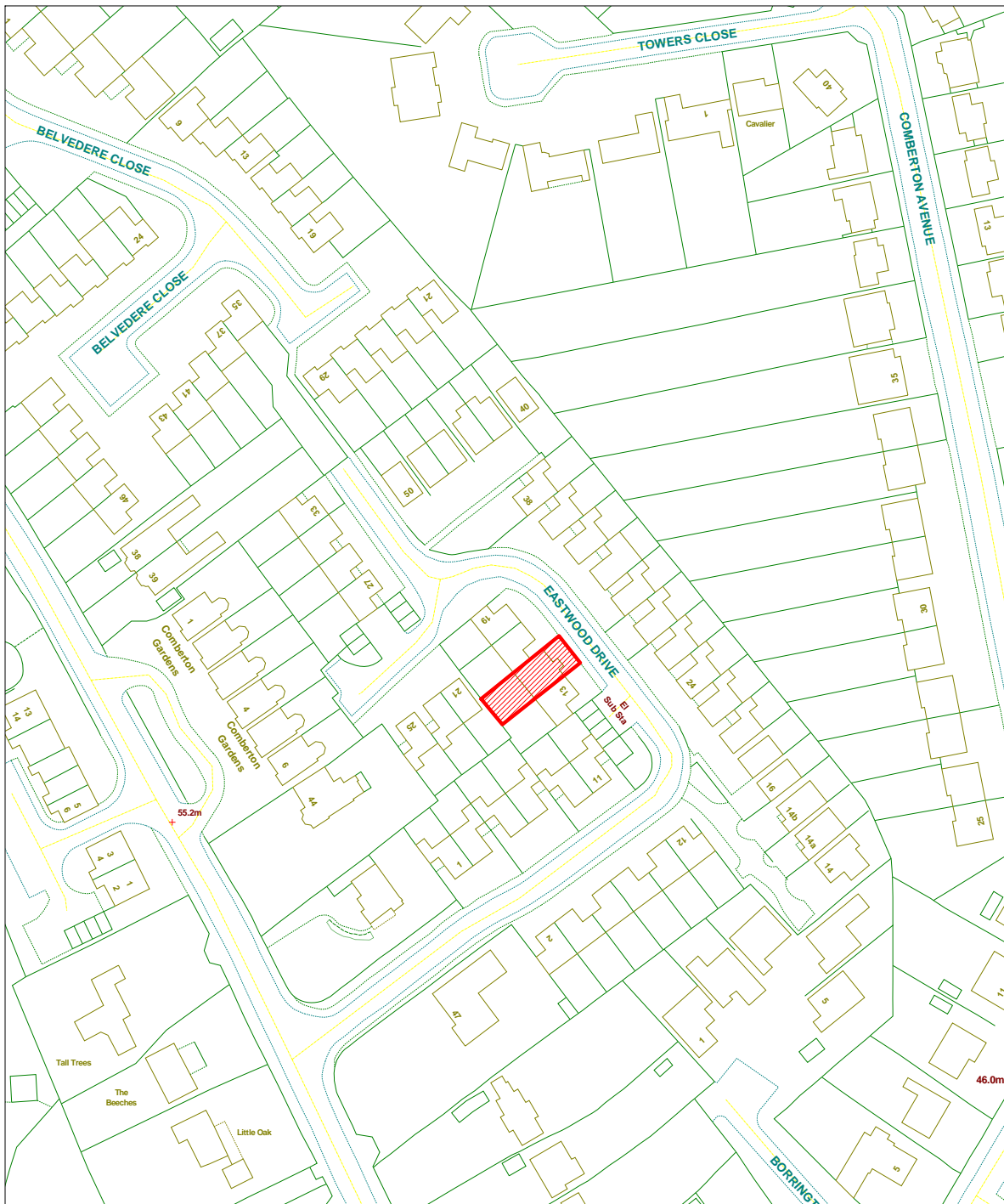
**4.0 Officer Comments**

- 4.1 As previously identified, the current application seeks consent for the replacement of an existing first floor bedroom window with French doors, the retention of a rear balcony and the provision of 1.8m obscurely glazed screens to either side. The balcony measures 3.2 m in width and 1.2m in depth located to the centre of the first floor rear elevation.
- 4.2 Policy SAL.UP8 of the Adopted Wyre Forest Site Allocations and Policies Local Plan sets out the Council's expectations for extensions and alterations to residential properties. The policy requires that extensions and alterations should harmonise with the existing landscape or townscape and not create incongruous features, and not have a serious adverse effect on the amenity of neighbouring residents or occupiers.
- 4.3 Balconies on residential properties can be considered to be appropriate development provided that the design takes full account of the privacy and amenity of any neighbouring properties or occupiers. As previously indicated, when first alerted to the presence of a balcony at this property Officers discovered a much wider (6.4m wide) balcony present. The width of the balcony has now been reduced and the proposed permanently fixed glazed privacy screens at either end of the balcony will further reduce any impact on the neighbouring properties. The screens will measure 1.8m in height and 1m in width, constructed with toughened glass with the highest level of obscurity (Privacy Level 5 Pilkington Optifloat Opal). The provision of these screens will soften the impact of the balcony and ensure that privacy is retained; a condition relating to their retention will help alleviate the concerns of the neighbours regarding their possible removal in the future.
- 4.4 Given the relationship between the application property and the neighbouring dwellings at numbers 13 and 17, the French doors and balcony are positioned some distance away from the private amenity space of both of these neighbours and as such there is unlikely to be an issue with overlooking and the associated loss of privacy currently enjoyed. Regarding overlooking issues with number 21 to the rear, the separation distance of approximately 9 metres to the boundary would ensure that overlooking of this rear garden would be minimal.
- 4.5 With regard to issues of amenity and privacy, the rights enjoyed by the neighbouring properties under the provisions of Article 1 of Protocol 1 and Article 8 of the Human Rights Act 1998 have been balanced against the scope of the development in this context. No potential breach has been identified.
- 4.6 It is not considered that any conditions relating to raising the height of the current boundary treatment are necessary.

14/0616/FULL

## 5.0 Conclusions and Recommendations

- 5.1 The proposed French doors, balcony and glazed screens are considered to be of an appropriate scale and design in relation to the original building. The installation of privacy screens effectively minimises any harmful effect on neighbouring properties and as such no undue loss of privacy and amenity would occur as a result of the development. For these reasons, the proposal is considered to be in accordance with the above policies of the Adopted Wyre Forest Site Allocations and Policies Local Plan.
- 5.2 It is therefore recommended that the application is **APPROVED** subject to the following conditions:
1. A6 (Full with no reserved matters).
  2. A11 (Approved plans).
  3. B3 (Finishing materials to match).



ECONOMIC PROSPERITY AND PLACE DIRECTORATE

**15 Eastwood Drive  
Kidderminster, DY10 3AW**

Date:- 26 January 2015      Scale:- 1:1250      OS Sheet:- SO8476SE      Crown Copyright 100018317 2014  
Wyre Forest House, Finepoint Way, Kidderminster, Worcs. DY11 7WF Telephone: 01562 732928. Fax: 01562 732556



WYRE FOREST DISTRICT COUNCIL

**PLANNING COMMITTEE**  
**10<sup>TH</sup> FEBRUARY 2015**

**PART B**

<b>Application Reference:</b>	14/0664/FULL	<b>Date Received:</b>	12/11/2014
<b>Ord Sheet:</b>	374470 273846	<b>Expiry Date:</b>	07/01/2015
<b>Case Officer:</b>	James Houghton	<b>Ward:</b>	Rock

**Proposal:** Retention of a steel portal framed, general purpose, agricultural building for use on existing smallholding

**Site Address:** FOXMEAD, ROCK, KIDDERMINSTER, DY14 9XW

**Applicant:** Mr & Mrs M Kent

<b>Summary of Policy</b>	DS04, CP11, CP12 (CS) SAL.PFSD1, SAL.CC1, SAL.UP7 (SAAPLP)
<b>Reason for Referral to Committee</b>	Statutory or non-statutory Consultee has objected and the application is recommended for approval
<b>Recommendation</b>	<b>APPROVAL</b>

**1.0 Site Location and Description**

1.1 The application site is in an area of paddock to the rear of dwellings fronting Callow Hill. Within this space is a stable block, which appears to be utilised as residential accommodation, as well as a flat roofed structure with walls formed by close boarded fencing. The site has an area of 0.64ha (1.55 acres) and is located outside the settlement boundary of Callow Hill.

1.2 The site is within an area described as Forest Smallholdings and Dwellings by the Worcestershire Landscape Character Assessment. This area is characterised by densely settled pattern of wayside dwellings, small cottages of brick and stone are particularly prevalent.

**2.0 Planning History**

2.1 09/0598/CERTE – Use of existing former stable block building as a dwelling: Undetermined.

2.2 13/0675/FULL – Retention of agricultural implement store building : Refused 14/02/14.

14/0664/FULL

- 2.3 14/0281/FULL – Retention of agricultural implement store : Refused 02/07/14.

### 3.0 Consultations and Representations

- 3.1 Rock Parish Council – Object to the development and recommend refusal on the basis that “This application is grossly overdevelopment. No established smallholding has been identified. Totally unsuitable in its current form.”
- 3.2 Highway Authority – No objections.
- 3.3 Neighbour/Site Notice – Two letters of objection have been received from the occupants of nearby dwellings. The objections are made on the grounds that:
- it is contended that the land on which the building is sited is amenity land and has been used to provide a play area, an above ground swimming pool and as storage for caravans and vehicles;
  - goats and chickens have occasionally been kept on the land;
  - the Dexter cattle specified in the supporting information accompanying the application would require more space than is available to the applicant, the keeping of animals on the land is likely to substantially degrade the quality of the grazing land;
  - there are concerns that the use of the site would result in detriment to highways safety;
  - the height of the building is significant and is “a major problem”;
  - the building was erected without planning consent, the three applications submitted have all presented differing uses for the building;
  - the site is not of sufficient size to accommodate a viable agricultural concern;
  - the building would not be of sufficient size to house three separate species of livestock;
  - the building is more commercial in appearance than agricultural and as such is not characteristic for this residential area;
  - there are concerns about the storage of fodder and associated vermin; and
  - the storage of slurry and manure may have an impact on the amenity enjoyed by the occupants of nearby dwellings.

### 4.0 Officer Comments

- 4.1 The applicant seeks permission to retain a general purpose agricultural building on the land to the rear of the residential curtilage of Foxmead. The building is 18.288m long, 9.144m wide, 3.660m to the eaves and 4.674m to the ridge. It is proposed to finish the building in tanalised timber rather than the box profile sheets previously proposed in order to reduce the visual impact of the building.

14/0664/FULL

- 4.2 The Council has determined two previous applications which relate to the retention of this building. On both occasions the application was refused on the basis that the building formed a dominant, incongruous and alien feature within the landscape and that insufficient information had been provided to justify the retention of a building of this size.
- 4.3 In contrast to the previous applications, a comprehensive Planning Statement has been provided. The submitted information states that the land on which the application building is sited has been registered with the Rural Payments Agency in order that the applicant can register as a livestock keeper with the Animal Health Office (now Animal and Plant Health Agency). The applicants have retired and intend to supplement their income by running the site as a small holding where livestock are sold for a commercial purpose. Five letters have been submitted from local businesses expressing an interest in purchasing native species fruit and vegetables and rare breed meat from the applicants.
- 4.4 The submitted information sets out a case for why the building is required. It is the applicants intention to utilise one bay of the building to store machinery and tools, the middle bay for housing livestock as it is open on one side and the other bay for the storage of hay and feed. The height of the building is justified by the need to store hay in large cylindrical bales. Two of these bales stacked would be 3.0m high and as such the 3.66m eaves height provides sufficient height to manoeuvre an stack fodder. It is intended to keep Dexter cattle to produce both milk and meat and goats and sheep to produce meat. In addition it is proposed to grow a small amount of fruit within the site.
- 4.5 The key considerations in determining this application are the policy context, the impact on the amenity enjoyed by the occupants of neighbouring dwellings and, the impact on the highway network.

#### POLICY CONTEXT

- 4.6 The applicants set out their case for the use of the building to provide storage and accommodation for livestock relating to the use of the site as a smallholding and the site has been registered with the relevant agency. On the basis of the information available it does not appear that the use of the land has changed from a paddock use. This use is reflected by the aerial photographs held by the Council (earliest dated 1999). The provision of small scale rural businesses is supported by Policy DS04 of the Adopted Wyre Forest District Core Strategy which states that *“The rural economy will be supported by promoting development which contributes to traditional rural employment sectors”*. The proposed small holding would be considered to complement the rural economy, producing meat, milk and fruit which are in demand by local businesses.

14/0664/FULL

- 4.7 In addition, Policy CP12 of the Adopted Wyre Forest District Core Strategy states that *“small scale development which can reasonably be considered to meet the needs of the rural economy, outdoor recreation, or to support the delivery of services for the local community will be supported subject to it meeting all other relevant criteria within the LDF.”*
- 4.8 Whilst the above policies broadly support the principle of the development, there is no specific provisions for small holdings or recreational agriculture. As such Policy SAL.PFSD1 of the Adopted Wyre Forest District Site Allocations and Policies Local Plan is relevant. This policy sets out the Council's Presumption in Favour of Sustainable Development, of particular relevance to this application is the paragraph which states *“Where there are no policies relevant to the specific application, the Council will grant permission unless material considerations indicate otherwise, taking into account whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against policies in the NPPF”*.

#### IMPACT ON THE AMENITY ENJOYED BY THE OCCUPANTS OF NEIGHBOURING DWELLINGS

- 4.9 The building that forms the subject of this application is at least 57m from dwellings fronting Callow Hill, and 35m from the live work unit recently formed on land to the rear of the Royal Forester. It should be noted that an application for a Certificate of Lawful Existing Use or Development has been submitted for the use of a stable block approximately 16m away from the site as a dwelling. Given the separation distance between the application site and neighbouring dwellings it is not considered that the retention of the building would offer any significant detriment to the amenity currently enjoyed by the occupants of those dwellings in terms of outlook, privacy or light. Whilst the building may have an impact on the views enjoyed from nearby dwellings this would not be a material consideration in determining the application. It is considered appropriate to require through condition the submission and approval of details relating to the storage and disposal of manure produced by the use of the site.

#### IMPACT ON HIGHWAY SAFETY

- 4.10 The concerns of the objectors relating to the potential impact of the building and its associated use on highways safety are noted, however the Highway Authority has no objections to the development and has suggested no conditions.



14/0664/FULL

## 5.0 Conclusions and Recommendations

- 5.1 The retention of the agricultural building is considered acceptable. Unlike previously submitted applications the applicants have supplied justification for the size and use of the building and associated land as well as details of the use of the space within the building. The building would be considered to have no significant impact on the amenity enjoyed by the occupants of nearby dwellings and the development would have no adverse effect on highway safety. The development would be considered to accord with the requirements of Policies DS04, CP11 and CP12 of the Adopted Wyre Forest District Core Strategy and Policies SAL.PFSD1, SAL.CC1 and SAL.UP7 of the Adopted Wyre Forest District Site Allocations and Policies Local Plan.
- 5.2 It is recommended that the application is **APPROVED** subject to the following conditions:
1. A11 (Approved plans).
  2. The development hereby approved shall be utilised for the purposes of agriculture only and shall at no time be used for any industrial or residential purpose.
  3. J35 ([modified] Manure storage/disposal).
  4. Should the building cease to be utilised for agricultural purposes it shall be removed from the site and the land returned to its former condition

## Agenda Item No. 5

**Application Reference:** 14/0738/TREE  
**Ord Sheet:** 381923 278302  
**Case Officer:** Alvan Kingston

**Date Received:** 23/12/2014  
**Expiry Date:** 17/02/2015  
**Ward:** Franche

**Proposal:** Fell Two Pines

**Site Address:** 50 LOWE LANE, KIDDERMINSTER, DY11 5QN

**Applicant:** Mr D Mc Culloch

<b>Summary of Policy</b>	CP14 (CS)
<b>Reason for Referral to Committee</b>	Development Manager considers that the application should be considered by Committee
<b>Recommendation</b>	<b>APPROVAL</b>

### 1.0 Site Location and Description

- 1.1 The two trees, the subject of this application, are located within the rear garden of 50 Lowe Lane, Kidderminster.
- 1.2 The rear garden of the host property is 36 metres long and 6 metres wide and is made up of a mixture of soft and hard landscaping, a garden shed and the two mature pine trees that are the subject of this application.
- 1.3 The two pines are situated on the south west boundary of the applicant's garden; stand at approximately 25 metres tall; and, are located 4.5 metres from the neighbouring property.

### 2.0 Planning History

- 2.1 In between 2007 to 2013 there have been a total of six applications to fell the two pines. All of these applications were refused, due to the loss of amenity to the local area and a lack of supporting evidence to demonstrate that the trees posed any danger or were unsound.

### 3.0 Consultations and Representations

- 3.1 Ward Members – No objections received.
- 3.2 Neighbour/Site Notice - There have been 4 objections (representations 1 to 4) and 1 letter of support (representation 5), submitted in respect of the current application.

14/0738/TREE

OBJECTIONS TO THE APPLICATION

1. As in the past few years I find it unnecessary to cut these trees as they are not in a dangerous state and are under a protection order. I live in the property adjoining and they are as sound as they were in previous applications. They are healthy and strong and should be left to grow.
  
2. Would you please not allow the pines to be felled. This is probably the third application that has been made? On each occasion I have voiced my opposition to their felling. The trees provide an opportunity for nature to survive and take refuge in a time where our countryside is under attack from all forms of development. The trees would support our native birds of prey. Our small community has pines and cedars and these provide a welcoming mature skyline. Please preserve for our children to enjoy, respect and protect.
  
3. I object because I have lived in the shadow of these trees for over 50 years and they have never changed. If they do have branches that are dangerous then surely just those can be removed. Is removing the whole tree not a danger to property around. As far as conservation goes these trees are home to many birds and insects.
  
4. We would like to once again object to the trees being lopped or felled, as we feel that they still look healthy and have not moved or changed their appearance from the last application to have them cut down (August 2013). To cut down such beautiful trees would also have an enormous impact on the landscape around here, and on the wildlife that share these trees.

SUPPORT FOR APPLICATION

5. As you know the trees are very close to the side of our house, only about 4 metres. Up to 2013, we have been opposed to the removal of these trees, but we have become increasingly worried about the encroachment of branches over our roof. If they were to fall on the roof, quite a lot of damage could be caused. We will consider a planning application for their removal, but the tree concerned would look strange if it was left standing without these branches.

Also, we had reason to be visited by our insurer's surveyor last year on a quite separate matter. He quickly noted the trees. He was quite definite that the trees are a long-term threat to the structure of the house, and he told me that they should be removed. He emphasised that, although they do not lean towards the house, the trees would fall the way the wind was blowing if uprooted during a severe storm. Although this is a remote possibility, it is alarming to think that someone could be killed if this happened, and we are of course living in times when severe storms are more frequent.

14/0738/TREE

In his report the surveyor states:

"There are two 25m high conifer trees within 4 metres of the house owned by a third party. Substantial branches overhang the legal boundary and lie over the roof of the insured property. These trees represent a long term structural risk to the house, and if possible should be either removed or substantially reduced in height. We have written to your neighbour asking for the removal of their conifer trees as these may cause future damage to your property."

In conclusion, we support the application because of our fear of future damage either by the trees falling, or by branches falling, or by the roots eventually causing subsidence problems.

#### **4.0 Officer Comments**

- 4.1 As stated in paragraph 1.3, the two mature pine trees within this application are very large specimens. Should either tree fail neither are close enough to the applicant's house to cause damage, however there is a strong chance that a whole tree failure would undermine the foundations of the owner of the neighbouring property.
- 4.2 It is not unusual for mortgage providers and home insurance companies to request for trees near to properties to be felled, even before any detailed investigation has taken place to ascertain the health and condition of the tree, or the potential for structural damage. However, even without detailed investigations it is clear that these two pines have a poor relationship with the neighbouring property.
- 4.3 Notwithstanding the history of refusals to fell the trees, as summarised at paragraph 2.1, I must consider this current application on the basis of my most recent inspection which took place on 9 January 2015. At that time I noted that the pine on the south side looked to have shifted.
- 4.4 The two pines are large mature trees that have always grown with a moderate lean. In considering every previous application to fell these trees, I have carefully considered whether the lean on either tree has become more pronounced. In respect of more recent applications there did not appear to be any movement in the tree. However in comparing my records from 2013 to my recent inspection, the trunk is clearly closer to the existing garden shed by around 20 to 30 millimetres, suggesting some movement in the tree. Given the size, weight and lean of the tree this is of a major concern to me as it shows that the tree has moved over the last 16 months and that it may have become less stable.

14/0738/TREE

- 4.5 I do not disagree with the sentiment of all of the objectors. The two trees have been a significant amenity and wildlife value in the local area for many years. However, as there is clear evidence of root-plate movement in one of the trees I have to now consider that there is a real possibility of whole tree failure, which would have serious implications.
- 4.6 As both of these trees have grown as a pair they are interdependent on each other to effectively deal with strong wind events. Removing one and leaving the other would open the remaining tree to wind-throw as it has not developed the correct reaction wood on the side of the neighbouring tree where it is currently situated. Given the proximity of the remaining pine to the neighbouring property, I would not feel comfortable with this tree being retained. It is, therefore, with some regret that I must now support this application for their removal.

## 5.0 Conclusions and Recommendations

- 5.1 Although I would prefer to see both of these tree remain in-situ, I consider the proposed works to be acceptable, for the reasons set out above, on the grounds of health and safety. Two suitable replacement trees should be planted to mitigate for the loss.
- 5.2 It is therefore recommended that the application is **APPROVED** subject to the following conditions:
1. TPO1 (Non-standard Condition '2 year restriction of Consent Notice').
  2. C16 (TPO replacement trees).
  3. C17 (TPO Schedule of Works).

### Schedule of Works

Only the following works shall be undertaken:

Fell 2 x pines.

## WYRE FOREST DISTRICT COUNCIL

Planning Committee

10 February 2015

### PLANNING AND ENFORCEMENT APPEALS

Appeal and Application Number	Planning Inspectorate Reference	Appellant	Site (Proposal)	Form of Appeal and Start Date	Written Reps. or Statement Required By	Proof of Evidence Required By	Public Inquiry, Hearing or Site Visit Date	Decision
WFA 1445 14/0476/CERT/3000296	APP/R1845/X/14	MISS M PARKER	PUNCHS OAK CLEOBURY ROAD ROCK KIDDERMINSTER  Proposed demolition of existing double garage and existing store, proposed erection of Oak framed single storey Oak framed home Office and games room, and two bay Oak car-port.	WR  18/11/2014	23/12/2014			

Appeal and Application Number	Planning Inspectorate Reference	Appellant	Site (Proposal)	Form of Appeal and Start Date	Written Reps. or Statement Required By	Proof of Evidence Required By	Public Inquiry, Hearing or Site Visit Date	Decision
WFA1437 12/0784/FULL	APP/R1845/A/14 /2218688	Mr I Grant	75 MILL ROAD STOURPORT-ON- SEVERN DY139BJ	WR 13/05/2014	24/06/2014			
			Demolition of existing houses (75-77 Mill Road) and erection of 7 dwellings with associated access, parking and alteration of Public Right of Way. (Renewal of Planning Permission 08/0490/FULL)					
WFA1438 13/0456/CERT	APP/R1845/X/14 /2220757	Mrs G Hunt	POUND BUNGALOW DOWLES ROAD BEWDLEY DY122RD	WR 14/07/2014	18/08/2014			Dismissed  27/11/2014
			C3 Dwelling house with garden and detached garage and vehicle access from public highway					

Appeal and Application Number	Planning Inspectorate Reference	Appellant	Site (Proposal)	Form of Appeal and Start Date	Written Reps. or Statement Required By	Proof of Evidence Required By	Public Inquiry, Hearing or Site Visit Date	Decision
WFA1440 14/0060/HHED	APP/HH/14/1380	Mr D Scriven	NEW HOUSE FARM BELBROUGHTON ROAD BLAKEDOWN KIDDERMINSTER  High Hedge Complaint	WR 04/08/2014	08/09/2014			
WFA1441 13/0656/FULL	APP/R1845/A/14 /2224699	QW Retail Estates Ltd	FOLEY HOUSE 123 STOURPORT ROAD KIDDERMINSTER DY117BW  Demolition of existing building and redevelopment of the site to provide a class A1 retail unit and a class A3/A5 unit, car parking, landscaping and associated works (amendment to and resubmission of withdrawn application 13/0521/FULL)	WR 05/09/2014	10/10/2014			Allowed  03/12/2014



Appeal and Application Number	Planning Inspectorate Reference	Appellant	Site (Proposal)	Form of Appeal and Start Date	Written Reps. or Statement Required By	Proof of Evidence Required By	Public Inquiry, Hearing or Site Visit Date	Decision
WFA1442 14/0256/FULL	APP/R1845/A/14 /226124	Mr J Dyas	Land Adjacent to 10 HUSUM WAY KIDDERMINSTER DY103XY  Proposed new dwelling	WR  01/10/2014	05/11/2014			Dismissed  29/12/2014
WFA1443 14/0199/FULL	APP/R1845/A/14 /2226387	Mr Howles	CROSS BANK HOUSE CROSS BANK BEWDLEY DY122XB  Erection of an extension to office to provide additional work area & file storage accommodation; and erection of a domestic garage.	WR  03/10/2014	07/11/2014			Dismissed  31/12/2014

Appeal and Application Number	Planning Inspectorate Reference	Appellant	Site (Proposal)	Form of Appeal and Start Date	Written Reps. or Statement Required By	Proof of Evidence Required By	Public Inquiry, Hearing or Site Visit Date	Decision
WFA1444 14/0126/FULL	APP/R1845/A/14 /2225496	Tesco Stores Limited	SQUIRREL INN 61 ARELEY COMMON STOURPORT-ON- SEVERN DY130NG  Demolition of existing outbuildings and porch on front entrance, erection of single storey extension (189 sq m gross) to rear of existing public house, installation of plant and enclosure, replacement shopfront to front elevation and external alterations	HE  15/10/2014	19/11/2014		18/12/2014 Council Chamber	Allowed With Conditions  20/01/2015
WFA1446 14/0246/FULL	APP/R1845/A/14 /2229001	Mr R Blunt	125 BRINDLEY STREET STOURPORT-ON- SEVERN DY138JW  Proposed new 3 bedroom dwelling	WR  10/12/2014	14/01/2015			

Appeal and Application Number	Planning Inspectorate Reference	Appellant	Site (Proposal)	Form of Appeal and Start Date	Written Reps. or Statement Required By	Proof of Evidence Required By	Public Inquiry, Hearing or Site Visit Date	Decision
WFA1447 14/3072/PNH	APP/R1845/D/15 /3002565	Mr T Morgan	40 AGGBOROUGH CRESCENT KIDDERMINSTER DY101LQ  Single storey rear extension	WR  12/01/2015	16/02/2015			

## Appeal Decision

Site Inspection on 21 November 2014

by **Graham Self MA MSc FRTPI**

Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 November 2014

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**Appeal Reference: APP/R1845/X/14/2220757**

**Site at: Pound Bungalow, Dowles Road, Bewdley DY12 2RD**

- The appeal is made by the executor of Mr Trevor Hunt (deceased) under Section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against the refusal by Wyre Forest District Council to grant a certificate of lawfulness.
- The application (Reference No. 13/0456/CERTE) dated 18 August 2013 was refused on 18 December 2013.
- The application was made under Section 191 of the Town and Country Planning Act 1990 as amended.
- The application sought a certificate of lawfulness for: "C3 dwelling house with garden and detached garage and vehicular access from public highway".

**Summary of Decision: The appeal does not succeed.**

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### The Appeal Site

1. The appeal site occupies some steeply sloping land on the west side of Dowles Road. An old stone-built garage building stands near the road. At a higher level, reached by a zig-zag path up the slope, there is a building constructed of timber with a felt roof. Much of the site is covered by vegetation including trees, shrubs and unkempt undergrowth.

### Reasons

2. In order to obtain a certificate of lawfulness for the use described in the application (essentially use as a dwellinghouse), the appellant has to show either that the use was authorised, or that it began without planning permission at least four years before the date of the application and continued during that period, so as to become "immune" and therefore lawful. It is necessary to bear in mind that for the purposes of planning law, uses of land can be dormant - that is to say, a use may be continued even if it is not active "on the ground" at any one time. However, use rights can be lost through abandonment. The onus of proof is on the appellant. The standard of proof required is the balance of probability.
3. The matter of planning permission does not arise in this appeal, as the history of the site goes back into the period before modern planning controls came into being, and there is no dispute that planning permission has never been granted for a dwellinghouse at the appeal site. In setting out their cases, both the council and the appellant have focused on the issue of whether the use of the appeal

property as a dwellinghouse has been abandoned, and I comment on this issue below. However, it is only one of several matters relevant to the decision.

4. The timber building which I saw during my inspection had obviously been subject to considerable recent work. Comparing the existing building with the photographic evidence, I judge that what has been done has involved repair and renovation to such an extent as to amount to virtual rebuilding. An external decking structure has also been added. Be that as it may, the current state of the building is immaterial - I have to make a judgement about lawfulness as at the time of the application, and the recent work appears to have been carried out after August 2013.
5. As both sides have recognised, several factors need to be taken into account when considering the question of abandonment, including: the physical condition of the buildings and the site; the length of time for which the property has not been used for residential purposes; whether there had been any intervening use; and the owner's or occupier's intentions.
6. The available evidence indicates that the appeal site was first acquired by Mr Trevor Brian Hunt's grandfather in the 1920s, and a timber building was originally placed or constructed on the upper part of the site many decades ago, probably in the 1930s. Extensive maintenance and repair work was apparently carried out in the 1950s and at other times. In 1979 the site is mentioned in a council "shack survey", which records "a single storey wooden building.... apparently used as a holiday residence only". According to a statement submitted in support of a planning appeal in 1987, the property was let to tenants between about 1948 and 1985; but by 1987 the timber building was in urgent need of reconstruction, after two years when it had apparently not been lived in and had suffered vandalism.
7. For some 12 years between about 1990 and 2002 the garage and garden were let to tenants, apparently for storage use. Council tax records show that an exemption relating to uninhabitable properties was applied between 1993 and 2000 and that between 2000 and 2011 an "empty property" charge was applied. A statement submitted for an applicant seeking planning permission for a "replacement chalet" in 2012 describes the building as "dilapidated" and mentions a site inspection in 2006 when the building was evidently described by a council housing officer as "beyond repair".
8. It is clear from photographs taken in 2012 that at that time, the timber building, or as much of it as then remained, was uninhabitable. Parts of what had been its structure were lying around the site, and the remnant structure was open to the elements. The site was also heavily overgrown with vegetation. This included the lower area between the road and the garage, where a photograph taken in August 2012 shows no sign of any recent use. A reasonable person seeing the physical condition of the property then would judge that any use as a dwelling had been abandoned, and the evidence indicates that this would have been so in August 2013.
9. I have some doubt whether the property was ever used for residential purposes as a single dwellinghouse. I make that judgement because there is ambiguity in some of the documentary evidence. Although there are references to the timber building being let as a "holiday cottage", there are other descriptions. For example, Mr Trevor Brian Hunt's affidavit refers to use as a "holiday chalet", and later (while the garage and garden were let to a Mr Lester for about seven years from 1995) to use by Mr Hunt and his family "for recreational purposes". Mr Hunt also stated that between about 1997 and 2010 "we used the chalet less, but

we still went there regularly each year". A letter from Mr Hunt's son-in-law (Dr Geoffrey Lloyd) mentions going to the site and states that "Brian continued to use the bungalow". This letter also states that until about 2008 the land and bungalow were in reasonable condition and "until then were being used".

10. What is striking in these references is that the nature of the "use" is not mentioned. The fact that people went to the site regularly and "used" it does not mean that they lived there. The name of the property (Pound Bungalow) is also not evidence of its use during any particular period. It seems to me that what is being described in many of these documents is use as a kind of "leisure plot", perhaps with what might best be termed occasional overnight camping. That is not the same as use as a dwellinghouse. I judge that although the timber building may have been used as a dwelling (albeit irregularly for holiday purposes but probably enough to continue the use during "dormant" periods) up to about the mid-1980s, it has not been so used for well over 25 years.
11. I note in passing that there was no indication from my site inspection of the existence of a toilet (or any personal washing facility such as a shower or bathroom). Other evidence suggests that at one time there was a toilet in a building separate from the main timber structure (not the small semi-derelict outbuilding which I saw at the site), and cesspit drainage is mentioned. The separate toilet building seems to have ceased to exist some years ago, almost certainly long before August 2013, so that by the certificate application date the appeal property did not provide facilities for normal day-to-day living.
12. I can see from Mr Hunt's affidavit and from other evidence that the main reasons why the site became, as he puts it, run down and overgrown were the decline in Mr and Mrs Hunt's health and the effects of vandalism. Mr Hunt stated in his affidavit that "at no time did I intend to abandon it". That statement is a material consideration, but it has to be weighed against all the other factors. It is also of note that in his affidavit, Mr Hunt did not state that he had no intention of abandoning the use of the property as a dwelling, only that he had no intention of abandoning "it" - meaning the property.
13. Because of the site's layout, the access to the garage and garden and the access to the timber building is in effect shared. Therefore when the garage was let for storage (with some apparently related use of the garden) what would have happened for the purposes of planning law was a change of use of the whole planning unit into a mixed or composite use.<sup>1</sup> This mixed use appears to have comprised storage and leisure plot use (what Mr Hunt 's affidavit describes as "recreational purposes"). But even giving the appellant the benefit of the doubt, at best the mixed use would have been for storage and residential. Either way, even assuming the site had been in residential use as a single dwellinghouse up to the late 1980s (with associated garage and garden used for purposes ancillary to residential), this was followed by an intervening use materially different from residential alone. This intervening use went on for about 12 years from 1990 until about 2002. After that, I find that there has not been any residential or dwellinghouse use.
14. Whatever may have been the owner's intentions, the weight of evidence relating to the physical condition of the property, the length of time during which the property has not been used for residential purposes as a dwellinghouse, and the existence of an intervening materially different use when part of the site was let

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<sup>1</sup> The council have suggested that during this period there were two planning units. This is conceivable, but I prefer my analysis for reasons relating to the site layout and overlapping uses as explained above.

to tenants for storage, all in my judgement indicate that any dwellinghouse use which may have existed in the past had been abandoned before August 2013. Thus such use was not lawful at that time.

15. I have considered whether there might be grounds for granting a certificate for a use other than that applied for. No suggestion has been made for the appellant that such a step should be even a possibility, and taking into account all the evidential points mentioned above, I have decided that this would not be justified.
16. I conclude that the council's refusal to grant a certificate of lawfulness was well founded.

**Formal Decision**

17. I dismiss the appeal.

*G F Self*  
Inspector

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## Appeal Decision

Site visit made on 4 November 2014

**by P N Jarratt BA DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 3 December 2014**

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**Appeal Ref: APP/R1845/A/14/2224699**

**Foley House, 123 Stourport Road, Kidderminster, DY11 7BW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by QW Retail Estates Ltd against the decision of Wyre Forest District Council.
  - The application Ref 13/0656/FULL, dated 6 December 2013, was refused by notice dated 3 March 2014.
  - The development proposed is the demolition of the existing building and redevelopment of the site to provide a Class A1 retail unit and a Class A3/A5 unit, car parking, landscaping and associated works.
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### Procedural Matters

1. Although not required by the procedural rules for written representation appeals, a Statement of Common Ground (SoCG) has been prepared and agreed by the parties.

### Decision

2. The appeal is allowed and planning permission is granted for the demolition of the existing building and redevelopment of the site to provide a Class A1 retail unit and a class A3/A5 unit, car parking, landscaping and associated works at Foley House, 123 Stourport Road, Kidderminster, DY11 7BW in accordance with the terms of the application, Ref 13/0656/FULL, dated 6 December 2013, and the plans submitted with it, subject to the conditions listed in the Conditions Schedule attached to this decision.

### Main Issues

3. The proposed development has generated substantial opposition from local residents with many pro forma letters, individual letters and a petition either submitted to the Council or to the Planning Inspectorate, with objections primarily relating to traffic congestion and highway safety; environmental matters including noise, smell, anti-social behaviour, litter, the impact on healthy living and on protected species.
4. In the light of these concerns, I consider that the main issues in this appeal are the effects of the proposed development on:
  - i) the living conditions of local residents arising from increased pedestrian and vehicular activity, including deliveries, from ventilation and extraction equipment, and from potential anti-social behaviour; and



- ii) the effects of the proposed development on pedestrian and highway safety.

### Reasons

5. The appeal site is located at the junction of Stourport Road and Clee Avenue and adjacent to the cutting of the Severn Valley Railway to the rear. The site extends to about 0.4 hectare and is occupied by Foley House, which is a vacant, predominantly two storey office building and car park. The site is identified in the Wyre Forest District Council Site Allocations and Policies Local Plan as being within an area where the primary use is residential.
6. The proposal is for the redevelopment of the site with two buildings and parking for 44 cars. The Class A1 retail unit would be a single-storey hipped roof brick and tile building, with a gross internal area of 371 square metres. It would be sited in the north east part of the site close to the rear boundary and some 8 metres from the common boundary with No 6 Clee View. The Class A3/A5 building would be a drive through restaurant for KFC and it would be sited close to Stourport Road. It would be modular in design and have the character and appearance typically associated with fast food restaurants. A modest external seating area is proposed.
7. Access to the site would be from Clee Avenue, which is a residential cul-de-sac, close to its junction with Stourport road, and be in a similar position to the existing access. To the south side of Clee View is a dental surgery with its own car park. Land to the east of Stourport Road is being redeveloped for housing.
8. The principle of the retail redevelopment of the site for the proposed uses is acceptable under Policy SAL.GB2 of the Site Allocations and Policies Local Plan<sup>1</sup>. This policy requires a sequential test for development of a retail unit of more than 280 square metres net but as the appellant has accepted that the net floorspace would not exceed this threshold such a test is not required. However, the policy requires that proposals for the sale of food and drink must not have an adverse impact in terms of residential amenity, pollution (light, litter, noise, odour) and crime and disorder.

### *Effects on Living Conditions*

9. The appellant has indicated that the proposed premises would not be open to customers outside the hours of 07:00 – 23:00. Although I am not aware of any restrictions on the operating hours of the existing office building, it is reasonable to assume that the pattern of use of an office would be different as the proposed development would introduce activity on and around the site outside normal office working hours. This activity will, because of the nature of the proposed uses, have different impacts to that of the existing office use.
10. The Council considers that there will be an increased frequency of traffic movements, which is likely to be the case with a development such as this, and that this would cause disturbance to residential properties through traffic noise and from the shutting of car doors, sounding of horns, as well as noise generated by people and delivery vehicles and people consuming food in the car park.

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<sup>1</sup> As the Local Plan was adopted in July 2013 after the publication of the National Planning Policy Framework, I attach substantial weight to the relevant Local Plan policies.

11. The number and frequency of car borne trips to the site will be different but there is no technical evidence to suggest that noise generated from deliveries or customers using the car park or drive-through facility would be so different to that generated by the office use of the site or from the use of the nearby car park to the dental surgery to cause harm to the living conditions of residents.
12. The appellant has submitted an acoustic assessment of the proposed development<sup>2</sup> and further comments on the Council's reasons for refusal. The assessment concludes that the noise from activities in the car park will be similar to or below the noise level produced by other vehicular activity in the vicinity; that noise levels from fixed plant and equipment which operate on a 24 hour basis will need to be controlled achieving a maximum noise level of 38dB(A) when measured outside houses during the night; noise from goods vehicles will be similar in character and level, but less frequent than that produced by the existing traffic; and that an acoustic fence to the west boundary and separation distances would minimise disturbance. No substantive evidence has been submitted by the Council or from local residents to indicate that the technical assessment should be disregarded although I note that Worcestershire Regulatory Services (WRS) expressed concern over the method of assessment used by the appellant's acoustic consultant.
13. Although the Council is satisfied that the proposed extraction equipment for the KFC restaurant would not have an adverse impact on air quality, concern has been expressed by WRS that there was insufficient information from the acoustic survey to assess the impact on local residents of noise from the extraction and ventilation equipment from both units. Furthermore, it was not considered that this matter could be controlled by condition. Although the Council draws attention to guidance on commercial kitchen exhaust systems<sup>3</sup>, that guidance does not state that the information required by planning authorities should be submitted with a planning application, only that it is information that should be submitted for approval by the planning authority (Annex B). Bearing in mind that the proposed buildings are detached and separate from residential dwellings, it would be very unlikely that systems would not be available to control extraction/ventilation systems satisfactorily. The details of these systems can be the subject of appropriate conditions requiring the submission of details to the Council for their approval.
14. Local residents have expressed concern over potential anti-social behaviour arising from the proposed drive-through restaurant. Whilst the threat of anti-social behaviour could be a material planning consideration, no substantive evidence has been submitted relating to incidents either in the vicinity or in association with other similar restaurants elsewhere. I note also that the West Mercia Crime Risk Advisor has not raised ASB issues.
15. The National Planning Policy Framework (the Framework) makes it clear at paragraph 203 that an otherwise unacceptable development could be made acceptable through the use of conditions. Appropriate conditions could be imposed to control extraction/ventilation systems, deliveries, the use of the car park overnight, the hours of operation of the uses, boundary treatment and other matters in order to minimise any adverse impacts on the living conditions of local residents.

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<sup>2</sup> Acoustic assessment by Belair Research Ltd dated 6/12/13 and letters dated 28/8/14 and 27/10/14

<sup>3</sup> Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems, DEFRA January 2005

16. I conclude on this issue that the effect of the proposed development on the living conditions of local residents, with effective planning conditions in place, would not be significant. It would therefore accord with Policies SAL.GB2 and SAL.GB3 (which relates to the location of local retail services) of the Site Allocations and Policies Local Plan. It would also accord with the Framework which at paragraph 17 indicates that a core planning principle is to seek to secure a high standard of amenity for existing and future occupants of land and buildings.

*Effects on pedestrian and highway safety*

17. It is common ground that that the site is in a sustainable location for retail development, that there would be a net increase in peak hour traffic flows of 4 in the morning and 28 vehicles in the evening. It is also acknowledged that the highway authority agree that the proposed development can be delivered in a safe manner for all users of the highway, subject to conditions relating to vehicle access during construction; access; turning and parking facilities; and parking for site operatives.

18. The Council considers that the width of the site would be double than that at present and with the increased vehicular activity, this would harm pedestrian safety. Furthermore, they consider that at peak times queuing cars would create conflict causing harm to pedestrian and vehicular safety. These concerns are little more than assertions unsupported by technical evidence. However an independent road safety audit referred to by the appellant indicates that measures to improve pedestrian accessibility around the site access could be undertaken and these could be the subject of an appropriate condition.

19. I therefore conclude on this issue that the proposed development would not result in harm to pedestrian and highway safety and would accord with Policy SAL.CC1 of the Site Allocations and Policies Local Plan regarding highway safety.

*Other matters*

20. Reference to great crested newts has been made by some local residents but there is no evidence to indicate that such protected species are present. Nevertheless the appellants have indicated that they are aware of responsibilities under the Habitat Regulations.

21. Issues relating to healthy eating have also been raised. Whilst this is a significant issue in modern society, it is not one that would be resolved through the planning system.

*Conditions*

22. The parties have suggested a number of conditions in the SoCG. I have considered the need for these in the context of paragraph 206 of the Framework and Part 21a of the Planning Practice Guidance regarding the use of planning conditions. I have made minor variations to the wording of the conditions in the interests of clarity or simplicity where appropriate.

23. Condition 1 is the standard commencement condition and Conditions 2 and 3 are necessary to define the permission and for the avoidance of doubt. Conditions 4, 12 and 21 are imposed in the interests of pedestrian and highway

safety. Conditions 5 and 6 are necessary to control the type and extent of the proposed uses. Conditions 7, 8, 9, 10, 13, 14, 15 and 16 are necessary in the interests of the living conditions of local residents. Condition 11 is necessary to control the demolition of existing buildings and activities during the period of construction in the interests of environmental safety, living conditions and highway safety. Conditions 17, 18, 19 and 20 are necessary to protect existing trees, ensure that landscaping works are carried out and for the replacement of any failed tree.

24. It will be noted that Conditions 9 and 10 reflect those suggested by the Council as I consider the wider scope of the conditions to be necessary to protect living conditions. I have also included the appellant's suggested Condition 21 in the interests of highway safety in the light of the expressed concern of the Council over potential pedestrian vehicular conflict at the site access.

**Conclusion**

25. For the reasons given above and having had regard to all relevant matters I conclude that the appeal should be allowed.

*P N Jarratt*

Inspector

### **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - 2147/A100G proposed site plan
  - 2147/A002F proposed site location plan
  - 2147/A101B proposed KFC elevations (restaurant)
  - 2147/A102G proposed landscaping plan
  - 2147/A121B proposed KFC roof and floor plans (restaurant)
  - 2147/A910E proposed elevations, floor and roof plans – Unit 1
- 3) The development hereby permitted shall be constructed entirely of the materials details which are shown on plan Nos 2147/A101B, 2147/A121B and 2147/A910E
- 4) No part of the development hereby permitted shall be brought into use until the site access, car park and turning and delivery facilities have been provided in accordance with the approved plans. The access shall be retained thereafter and the car park kept available for parking, deliveries and turning for the development hereby permitted.
- 5) Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1995 (or any order revoking, re-enacting or modifying that Order), the drive-through restaurant hereby approved shall be used for no other purpose than as a drive-through restaurant as shown on the approved plans.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), the net trading area of the shop shall not be increased beyond 280 square metres unless otherwise approved through a separate planning permission.
- 7) No customer shall be permitted to be on the premises outside the hours of 07:00 – 23:00 daily.
- 8) Before the drive through restaurant is used, full details of the extraction equipment to be installed shall be submitted to and approved in writing by the local planning authority. The extraction equipment shall thereafter be retained in full working order for the lifetime of the development.
- 9) Before the drive through restaurant is used, the submitted scheme for the installation of equipment to control the emission of cooking smells shall be implemented in full. The equipment shall thereafter be retained, maintained in accordance with the maker's recommendations and operated at all times when the drive through restaurant is used.
- 10) No external extraction, ventilation or cooling equipment shall be installed to Unit 1 hereby approved without the prior written approval of the local planning authority. Any noise mitigation measures for any such

- approved equipment shall be retained during the period when the approved equipment remains in place.
- 11) No development shall take place, including works of demolition, until an Asbestos Survey and Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- i) the parking of vehicles of site operatives and visitors
  - ii) loading and unloading of plant and materials
  - iii) storage of plant and materials used in constructing the development
  - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
  - v) wheel washing facilities
  - vi) measures to control the emission of dust and dirt during construction
  - vii) the safe removal, if necessary, of any asbestos found upon survey of the site
  - viii) a scheme for recycling/disposing of waste resulting from demolition and construction works
- 12) No development shall take place until a scheme for the provision of staff car parking has been submitted to and approved in writing by the local planning authority. No part of the development hereby approved shall be brought into use until the approved scheme has been implemented, and the approved staff car parking spaces shall be retained for as long as the use continues.
- 13) No part of the development hereby permitted shall be brought into use until boundary treatments have been provided in accordance with details that shall first be approved in writing by the local planning authority.
- 14) No development shall take place until details of external lighting and CCTV have been submitted to and approved in writing by the local planning authority. No part of the development hereby approved shall be brought into use until lighting and CCTV has been installed in accordance with the approved details, and this lighting and CCTV shall be retained thereafter.
- 15) No development shall take place until a scheme to control vehicular access to the site between 00:00 and 06:00 hours each day has been submitted to and approved in writing by the local planning authority. No part of the development hereby approved shall be brought into use until the approved scheme has been implemented, and the approved measures to control vehicular access to the site between 00:00 and 06:00 hours each day shall be retained and operated thereafter.
- 16) No part of the development hereby permitted shall be brought into use until a Servicing Management Plan has been submitted and approved in writing by the local planning authority. Deliveries must thereafter not be made to the site otherwise in accordance with the approved Servicing Management Plan, unless with the prior written approval of the local planning authority.

- 17) Unless approved in writing by the local planning authority, no ground clearance, demolition or construction work shall commence until protective fencing to BS 5837:2005 has been erected around each tree to be retained within the site or on immediately adjoining land. The fencing shall be located at least 1 metre beyond the extent of a tree canopy. Within the fenced area, there shall be no construction work or development related activity or storage or spoil or materials within the fenced areas. The fenced areas shall be retained during the demolition and construction period.
- 18) The existing willow tree between the site access and Stourport Road as shown on drawing 2147/A102G shall be retained.
- 19) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the local planning authority.
- 20) If within a period of five years from the date of the planting of any tree that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written approval to any variation.
- 21) Notwithstanding conditions 2, 3 and 4 above, no part of the development hereby permitted shall be brought into use until dropped kerbs have been provided within the site in accordance with details that shall be submitted and approved in writing by the local planning authority. The dropped kerbs shall be retained thereafter.

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## Costs Decision

Site visit made on 4 November 2014

**by P N Jarratt BA DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 3 December 2014**

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### **Costs application in relation to Appeal Ref: APP/R1845/A/14/2224699 Foley House, 123 Stourport Road, Kidderminster, DY11, 7BW**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by QW Retail Estates Ltd for a full award of costs against Wyre Forest District Council.
  - The appeal was against the refusal of planning permission for the demolition of the existing building and redevelopment of the site to provide a Class A1 retail unit and a Class A3/A5 unit, car parking, landscaping and associated works.
  - **Summary of Decision:** Application for an award of costs is allowed
- 

1. Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

#### **The submissions of QW Retail Ltd**

2. The Council failed to provide evidence beyond assertion and conjecture to substantiate each reason for refusal; they made vague, generalised and inaccurate assertions about the impact of the proposals, unsupported by objective analysis; and, refused permission on grounds capable of being dealt with by conditions.

#### **The response of the Council**

3. The Council relied on the Worcestershire Regulatory Services (WRS) for advice on the extraction equipment; it is not uncommon for professional opinions to differ; and it is reasonable to seek additional information on a matter considered fundamental to the acceptability of the proposal.
4. The Council relied on the information supplied by the appellant in reaching its decision; increased traffic is not conjecture; impact on noise disturbance was based on logical and rational subjective analysis; without the proposed use in operation it is impossible to produce quantitative, objective analysis; and, refusal reason 1 rests on a finely balanced matter. The use of conditions was not considered to be feasible.
5. The Council has not behaved unreasonably in seeking further information as this would have been required at some time from the appellant. The Planning Committee is not bound to accept the recommendations of its officers.



## Reasons

6. Members are not bound to accept the recommendations of their officers but where professional or technical evidence is not followed, a local planning authority needs to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all its respects.
7. While the local planning authority is expected to consider the views of local residents, the extent of local evidence is not, in itself, a reasonable ground for resisting development. To carry significant weight, opposition should be founded on valid planning reasons which are supported by sound evidence.
8. Although the Council was satisfied that the proposed extraction equipment for the KFC restaurant would not have an adverse impact on air quality, concern was expressed by WRS that there was insufficient information from the acoustic survey to assess the impact on local residents of noise from the extraction and ventilation equipment. Quite properly, the officer report recommended that a condition requiring the submission and approval of full technical details of any extraction/ventilation equipment proposed for either building would satisfactorily safeguard residential impacts. This is normal practice. As indicated in the Guidance (at ID 16-049-20140306), refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs where it is concluded that suitable conditions would enable the proposal to go ahead. The technical mitigation of noise associated with a fast food restaurant or in Unit 1, in the location proposed and with the separation distances between the proposed buildings and the receptors, is quite capable of being achieved and I do not regard it to have been fundamental to the principle of development.
9. I acknowledge that the assessment of the potential noise of customers of the proposed uses is not an exact science and can be subjective but I find that the Council's explanation that it would be unable to produce a quantitative analysis without the uses being in operation to be of limited value. An acoustic report had been submitted by the appellant with consideration of average background noise levels and various mitigation measures proposed. No technical appraisal or other substantive evidence has been submitted by the Council to indicate why the findings of the acoustic report should be disregarded and in order to support its own views on potential noise disturbance.
10. The highway authority did not raise objections to the proposals subject to a number of conditions. However the Council refused the proposed development because they considered that the increased vehicular movements in the vicinity of the entrance of the site would be detrimental to pedestrian and road safety. The Council's evidence in support of their position related to the increased width of the entrance and the potential queuing of vehicles which they considered could lead to pedestrian/vehicular conflict. This is a vague and generalised assertion unsupported by any objective analysis. In view of the highway authority's view on the scheme, at the very least the Council should have sought a separate technical appraisal in order to prove in a more robust manner that their concerns were justified and why the measures recommended in the Road Safety Audit would be inappropriate.
11. No evidence was produced by the Council in respect of the potential for antisocial behaviour.

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

**Decision**

13. The application for an award of costs is allowed in the terms set out below.

**Costs Order**

14. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Wyre Forest District Council shall pay to QW Retail Estates Ltd, the costs of the appeal proceedings described in the heading of this decision.

15. The applicant is now invited to submit to Wyre Forest District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

*P N Jarratt*

Inspector

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## Appeal Decision

Site visit made on 2 December 2014

**by Elaine Benson BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 29 December 2014**

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**Appeal Ref: APP/R1845/A/14/2226124**

**Proposed new dwelling at land adjacent 10 Husum Way, Kidderminster, Worcestershire DY10 3XY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr John Dyas against the decision of Wyre Forest District Council.
  - The application Ref 14/0256/FULL, dated 24 April 2014, was refused by notice dated 27 June 2014.
  - The development proposed is *Proposed new dwelling at land adjacent 10 Husum Way*.
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### Decision

1. The appeal is dismissed.

### Main Issue

2. No objections are made to the proposal in terms of its effect on the character and appearance of the surrounding area, the protected trees on the site or the living conditions of nearby residents. There are no reasons to disagree with these assessments. This appeal therefore turns on whether the proposed development is consistent with the Council's policies for directing residential development to previously developed land.

### Reasons

3. The triangular appeal site is part of the garden of 10 Husum Way, a detached house. The site is in a residential area with open countryside to the rear which is washed over by the West Midlands Green Belt. There is no dispute that the appeal site does not constitute previously developed land as defined in the National Planning Policy Framework (the Framework) and I agree.
4. The adopted Wyre Forest Core Strategy sets out a housing requirement of 4000 (net) new dwellings up to 2026. It indicates among other things that development will be concentrated on brownfield sites within the urban areas of Kidderminster. It does not rule out development elsewhere. The Reasoned Justification to this Policy refers to the Strategic Housing Land Availability Assessment (SHLAA) which was undertaken during 2009 and indicates that all of the District's future housing requirements to 2026 can be met from brownfield sites and that Kidderminster is the indicative location for 60% of future residential development.

5. To meet the identified housing requirements, Policy SAL.DPL1 of the Adopted Wyre Forest Site Allocations and Policies Local Plan (SAPLP) sets out the locations where residential development will be allowed. It states that residential development outside the identified locations will not be permitted unless in accordance with Rural Housing or relevant Rural Development and Green Belt policies. The Reasoned Justification to Policy SAL.DPL1 indicates that existing residential areas where the principle of further residential development on previously developed land is considered acceptable are identified within the Policies Map. None of the allocations or exceptions apply to the appeal site.
6. The policies identified above are consistent with Paragraph 17 of the Framework which among other things identifies the effective reuse of previously developed land as a core planning principle. The wider policy objective of supporting spatially targeted local regeneration is underpinned by the identified availability of previously developed land within the District. Consequently, the proposed development runs counter to this objective.
7. The Council states that it has in excess of a five-year housing land supply and that the latest declaration of housing land availability in April 2014 identified a 6.5 years land supply. In respect of delivery, it indicates that the average supply of 214 dwellings per year since 2006 falls within the 20% tolerance set out in the Core Strategy and therefore adequately meets the phasing and deliverability objectives intended by its policies. The Council therefore considers that there is no requirement to bring forward new housing sites or to hold back existing sites.
8. This position is disputed by the appellant based on the information within the April 2014 Update to the SHLAA. He highlights that during 2013/14 the average number of net completions was up compared to the annual average since 2006, whereas the number of approvals for the same period was down. In the appellant's view the increased number of completions stems from the early stages of economic recovery and because planning permissions are extant for 3 years. It is suggested that the house building industry is 'catching up' with previously approved schemes. The appellant also highlights that the number of approvals for the same period is far lower than the average since 2006 and he believes that the housing forecast will be short of the predicted targets at this point in the plan period.
9. The appellant notes that the SHLAA identifies several sites which have been mothballed with no further development since site clearance. He considers that it cannot be assumed that all of the identified sites will come forward as projected and within the suggested timeframes for reasons including site and development constraints and planning conditions. He further notes that not all of the land committed for residential development relates to previously developed land.
10. This appellant's analysis has not been addressed by the Council. However, it is necessary to consider the SHLAA Update as a whole and to consider the appellant's points in context. As the document indicates, it provides a snapshot at 1 April 2014 of the latest position on all sites with residential permission together with those sites in the SHLAA that were deemed to have housing potential. Whilst it states that the number of new residential permissions is lower than came forward in the previous 2 years, the Update also indicates that

- with the SAPLP and the Kidderminster Central Area Action Plan both being adopted during the year, many of the allocated sites are now starting to come forward and should gain permission over the next 12 months.
11. Moreover, although some SHLAA sites have been mothballed, it notes that sites on the edge of Kidderminster Town Centre are being developed and revised schemes are being drawn up for neighbouring sites which have been vacant for a number of years following site clearance. The Update states that 32 of the identified sites are either completed or under construction and also indicates that viability considerations including matters such as site contamination and flooding have been taken into account.
  12. Much of the appellant's evidence about housing land supply and delivery is based on assumptions. I am not convinced by it that the Council's figures should be set aside. Whilst there can be no certainty that the Council's housing projections will be achieved, they would have been tested through the development plan process. There is insufficient evidence in this appeal to reach any other conclusion than that the Council has in excess of a five-year supply of deliverable housing land.
  13. Furthermore, I note that the Council intended to undertake a new SHLAA during 2014 to inform the Local Plan Review which is due to commence next year. Whilst I have no information relating to its progress, this will feed into the development plan process which is the appropriate forum for testing housing land supply issues. In my judgement the policy position in respect of meeting housing targets, its delivery and the priority for development on previously developed land is robust enough to justify dismissing the appeal. The Council's policies are up to date and are consistent with the objectives of the Framework.
  14. Turning to the presumption in favour of sustainable development; as set out above, there is a fundamental objection in principle to the appeal proposal although there are no objections on other grounds. Whilst the dwelling would provide an additional unit in a residential area which there may be a demand, approval of the proposal would undermine the Council's sustainable objective of regenerating its District. Whilst this decision is finely balanced, the positive sustainability credentials of the development do not outweigh the need to deliver development on previously developed land.
  15. The appellant points out that the appeal decision APP/R1845/A/13/2205679 was determined prior to the publication of the SHLAA Update. Whilst each case should be considered on its own merits, the broad policy position is similar in both appeals and it is set out above why the SHLAA Update does not support his case. I do not have the full details of an approval for a dwelling at land adjacent to 2 Husum Way, but in any event it pre-dates by some years the publication of the Core Strategy and the Framework. It attracts little weight.
  16. I conclude that the proposed development would conflict with SAPLP Policy SAL.DPL1. There are no material considerations which justify a departure from the policies of the development plan. I have had regard to all other matters raised in this appeal; however none outweigh the conclusions set out above. Accordingly the appeal is dismissed.

*Elaine Benson*

INSPECTOR

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## Appeal Decision

Site visit made on 2 December 2014

**by Elaine Benson BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 31 December 2014**

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**Appeal Ref: APP/R1845/A/14/2226387**

**Cross Bank House, Cross Bank, Bewdley, Worcestershire DY12 2XB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Howles against the decision of Wyre Forest District Council.
  - The application Ref 14/0199/FULL, dated 4 April 2014, was refused by notice dated 15 July 2014.
  - The development proposed is erection of an extension to office to provide additional work area and file storage accommodation; and erection of a domestic garage and car port.
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### Preliminary Matter

1. The description of development above is taken from the planning application form. The car port was deleted from the proposal prior to the determination of the application and has not been considered in this decision.

### Decision

2. The appeal is dismissed.

### Main Issue

3. The effect of the proposed development on the character and appearance of the outbuilding and the appeal site.

### Reasons

4. The appeal site is within the open countryside and contains a detached house and an outbuilding. The latter is in use as an office providing employment for 6 local people and potentially a further 2 employees. Part of the outbuilding is also used to house a covered bar area and pool equipment associated with the use of the dwelling house. The roof space above the pool bar would be converted to provide additional office area and a link between the existing and proposed office space. Since the refusal of the appeal proposal, an alternative scheme has been approved by the Council<sup>1</sup>.

#### *Design*

5. The proposed extension would comprise high quality materials and would incorporate some design features taken from the existing buildings on the site.

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<sup>1</sup> planning application 14/0473/FULL

However, the extension would be wider than the original outbuilding and its footprint would be approximately doubled in size. Although the extension would be set back some distance from the front elevation it would have a significantly greater mass. This would overwhelm the modest size of the outbuilding, resulting in a dominant and incongruous addition. The resulting development would not in my view respect the existing hierarchy of the buildings on the site or have the scale and appearance of an ancillary outbuilding when viewed in the context of the house, despite its lower ridge height.

6. The fact that external views of the appeal site are limited by the boundary hedges does not affect these conclusions. The appellant states that the scale of the proposed and approved schemes is comparable. However, I consider that they are significantly and materially different proposals and each has been determined on its own merits.
7. I conclude that the proposal conflicts with aspects of Policy CP11 of the Adopted Core Strategy and the Adopted Wyre Forest District Site Allocations and Policies Local Plan Policies SAL.UP7 and SAL.UP8. In summary and of relevance to this scheme they require that new development has an appropriate building footprint for the locality, respects the form, materials, architectural characteristics and detailing of the original building; and does not overwhelm the original building which should retain its visual dominance. Given the dual use of the wider appeal site I have referred to the residential and non-residential criteria.

#### *Rural Economy*

8. Core Strategy Policies DS04 and CP08 support the diversification and growth of the rural economy, including through small-scale workspace. Similarly, Paragraph 28 of the National Planning Policy Framework (the Framework) states that planning should support the sustainable growth and expansion of all types of businesses and enterprise in rural areas, both through conversion of existing buildings and well-designed new buildings.
9. It is recognised that the appellant has made a significant investment in the business and must meet the requirements of the Financial Conduct Authority to securely store personal data on- rather than off-site. There is no objection to the principle of extending the office premises, as demonstrated by the subsequent planning permission. However, as identified above, in Paragraph 28 and elsewhere throughout the Framework is an emphasis on the need to promote good design, including through local distinctiveness. In the circumstances of the appeal proposal, the unacceptable design aspects of the proposed extension outweigh the benefits of the growth of the rural enterprise.
10. Notwithstanding that an alternative scheme has already been approved, it may well be that there are other means of providing the additional accommodation required by the appellant's business and on-site storage for his collection of specialist cars (thereby removing his need to travel to access them) which would not harm the character and appearance of the host outbuilding and the appeal site as a whole.

#### *Other matters*

11. I note that the costs of carrying out the approved development are greater than for the proposed scheme and would include reinforcing a retaining wall

and additional ground works. However these factors can be given very little weight. It appears that the proposed number of car parking spaces was acceptable to the Council when the subsequent planning application was approved. Nonetheless, an alternative proposal could potentially address the appellant's desire to provide additional parking space. The lack of objection from local residents, a councillor and the Parish Council do not affect my conclusions. The process for deciding whether a committee site visit is carried out is a matter for the Council.

*Conclusion*

12. All other matters raised have been taken into account, however none affect my conclusions. Accordingly the appeal is dismissed.

*Elaine Benson*

INSPECTOR



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## Appeal Decision

Hearing held on 18 December 2014

Site visit carried out one on the same day

**by Mrs J A Vyse DipTP DipPBM MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 20 January 2015**

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**Appeal Ref: APP/R1845/A/14/2225496**

**Squirrel Inn, 61 Areley Common, Stourport-on-Severn, Worcestershire  
DY13 0NG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Tesco Stores Limited against the decision of Wyre Forest District Council.
  - The application No 14/0126/FULL, dated 5 March 2014, was refused by a notice dated 21 May 2014.
  - The development proposed is demolition of existing outbuildings and porch on front entrance, erection of single storey extension (189 square metres gross) to the rear of existing public house, installation of plant and enclosure, replacement shop front to front elevation and external alterations to create a Class A1 convenience store (357 square metres gross).
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### Decision

1. For the reasons that follow, the appeal is allowed and planning permission is granted for demolition of existing outbuildings and porch on front entrance, erection of single storey extension (189 square metres gross) to the rear of existing public house, installation of plant and enclosure, replacement shop front to front elevation and external alterations to create a Class A1 convenience store (357 square metres gross) at Squirrel Inn, 61 Areley Common, Stourport-on-Severn, Worcestershire, in accordance with the terms of the application, No 14/0126/FULL, dated 5 March 2014, subject to the conditions set out in the attached schedule.

### Procedural/Preliminary Matters

2. Objectors were concerned about the possibility of an ATM<sup>1</sup> as part of the proposal. Whilst an ATM was included on early plans, it does not feature on the plans that formed the basis of the planning application. It was also confirmed by the appellant at the Hearing, that an ATM did not form part of the development for which permission was sought. I have dealt with the scheme on that basis. Should the appeal succeed and the scheme be implemented, any subsequent proposal for an ATM would be a matter for the Council in the first instance.
3. In response to concerns about the distance over which delivery cages would need to be pulled, between the loading/unloading bay and the rear door, as shown on plan No 1402-117 PL03, a revised plan was submitted at the Hearing, No 131986/AL12E. The amended plan showed an additional door

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<sup>1</sup> Automated Teller Machine

close to the loading bay, leading directly into the 'back-of-house' area of the proposed store. The amendment is very minor and the Council agreed that it could be considered as part of the scheme proposed without causing prejudice to the interests of any person or organisation concerned with this appeal. I agree and shall deal with the appeal on the basis of the revised plans.

### **Main Issue**

4. Whilst the alterations proposed are linked to a wider proposal to change the use of the public house premises to a shop, specifically a Tesco Express store, the change of use does not require planning permission and thus, is not part of the proposal before me. As agreed at the Hearing, the main issue in this case relates to the effect of the development proposed on the living conditions and general amenity of local residents, having particular regard to noise and disturbance arising from associated commercial and customer vehicle movements.

### **Planning Policy**

5. The development plan for the area includes the Wyre Forest District Council Core Strategy (2006-2026), which was adopted in December 2010, and the Wyre Forest District Council Site Allocations and Policies Local Plan 2006-2026, adopted in July 2013.
6. In seeking to protect and enhance local retail services, policy SAL.GPB3 of the Site Allocations and Policies Local Plan is supportive of new retail development in neighbourhood or village centres where it comprises the conversion or extension of existing facilities, provided that the floor space would not exceed 280 square metres (sqm) net. Outside of the neighbourhood or village designations, the policy is also supportive for the development of new retail (A1) uses subject to the same floor area restriction and where they would be located on previously-developed land and would not cause adverse impact on local amenity.
7. The accompanying Proposals Map does not provide a definitive boundary for neighbourhood/village centres, the Areley Common centre being identified simply by a red dot positioned in part over the road, and in part over an existing Londis store, a short distance to the south of the appeal site. In pre-application discussions, and as set out in the committee report,<sup>2</sup> officers were of the view that the appeal site did lie within the Areley Common centre. However, although recommended for approval, Members refused the application citing, among other things, conflict with policy SAL.GPB3. Whilst the Council's Hearing Statement acknowledges that the policy lends itself to a degree of interpretation, it reiterates the view of Members that the appeal site lies outwith the neighbourhood/village centre.
8. Although predominantly a residential area, there are, in addition to the public house at the appeal site and the aforementioned Londis store, a pharmacy and a newsagent which are located in the vicinity of the red dot. To define the neighbourhood/ village centre therefore, as simply the Londis store, seems to me to be an overly narrow interpretation of the policy. Indeed, at the start of the Hearing, the Council accepted that it was reasonable to treat the appeal site as forming part of the centre. Accordingly, since the appeal scheme

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<sup>2</sup> Paragraph 1.2

relates to the extension of an existing building, creating a maximum net sales area of 280 sqm,<sup>3</sup> in an existing neighbourhood/village centre, I find no conflict with policy SAL.GPB3. There was no suggestion, in this regard, that the policy conflicts with the thrust of the National Planning Policy Framework (the Framework) which seeks, among other things, to encourage economic development.

9. Although the relevant part of policy SAL.GPB3 does not require that such retail proposals should have no adverse impact on local amenity, local amenity/living conditions are a material planning consideration. I am mindful, in this regard, that one of the core planning principles set out at paragraph 17 of the Framework, which post-dates the development plan, is that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. It would not be good planning to simply ignore any effect of a development proposal in this regard, simply because a requirement to do such was not included in a relevant development plan policy. Indeed, it was accepted for the appellant that living conditions/amenity are an important planning consideration.

### Reasons for the Decision

10. The carriageway is relatively narrow in the vicinity of the appeal premises – just 6 metres in width. Although there are double yellow lines along the same side of the carriageway as the appeal premises, the opposite side of the road is available for on-street parking and is well used for such. The combination of those circumstances means that, notwithstanding that this is a classified road (B4196) the carriageway is reduced, in effect, to a single vehicle width for sometimes considerable stretches.
11. Based on the Design Manual for Roads and Bridges (DMRB) and on a traffic count undertaken in May 2014, the appellant advises that the road is operating at approximately 18% of its maximum capacity. I recognise, in this regard, that the DMRB takes account of on-street parking on roads such as this, with 'shuttle' working, whereby there are sections of highway where only one vehicle can pass at a time. However, from my own observations during the site visit, and as evidenced by video footage shown during the Hearing and the many detailed letters from local residents, the congestion caused often has significant implications for the flow of traffic along Areley Common on a daily basis. Problems include stationary traffic blocking private drives and side access roads, vehicles being forced onto the pavements at times, or sometimes accelerating hard in a 'race' to get in to a gap to avoid an oncoming vehicle. Those problems are compounded at times, when on-street deliveries are taking place, and when large vehicles use the route, including refuse collection vehicles, and the regular bus service (some 5-7 per hour). I am in no doubt therefore, that the highway is heavily congested on a regular basis.
12. Based on the TRICS database, the appellant's Transport Statement calculates anticipates daily two-way traffic movements associated with use of the existing premises as a public house on its present floor space but trading at full capacity, to be in the region of 92 movements Monday – Friday, 100 on a Saturday. In relation to the development proposed, the anticipated two-way

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<sup>3</sup> The scheme includes demolition of the existing rear extension and its replacement with a larger extension to create a maximum net sales area of 280 square metres (sqm) plus a 'back-of-house' area. Storage would be on the first floor.

daily total is anticipated to be 775 movements Monday – Friday, 506 on a Saturday.

13. It is very clear therefore, that there would be a significant increase in traffic movements, were the appeal scheme to go ahead. Even taking account of the evidence that some 90% of trips associated with the development proposed are likely to involve vehicles that are already on the road network,<sup>4</sup> the scheme might be expected to introduce some 77 new two-way traffic movements onto this part of the highway network on a daily basis during the week. I am very firmly of the opinion, notwithstanding the theoretical capacity of the road, that any increase in traffic movements on Areley Common in the vicinity of the appeal premises, but particularly of the order indicated above, would add materially to the existing problems experienced in relation to congestion on this part of the highway network, with a significant adverse impact on the living conditions and general amenity of local residents in terms of disturbance. There would be conflict, therefore, with the Framework core principle of providing a good standard of amenity for existing local residents.
14. Whilst concern in relation to noise from traffic movements also formed part of the Council's reason for refusal, no quantitative technical evidence was submitted to support its case. Rather, reliance was placed on the Noise Policy Statement for England of March 2012 (NPSE) and the accompanying Explanatory Note, to which paragraph 123 of the Framework refers.
15. The Framework requires that planning decisions should aim to avoid noise from giving rise to significant and other adverse impacts on health and quality of life as a result of new development, and that any impact should be mitigated and reduced to a minimum through the use of conditions. The NPSE makes it clear that environmental noise includes noise from transportation sources, and that neighbourhood noise includes noise arising from trade and business premises and noise in the street. However, there is no single objective noise-based measure which defines the level of noise which would be considered to have a significant adverse effect in all situations, with the NPSE advising that the effect of noise on quality of life is a subjective measure and that the means of assessing noise impact should focus on a qualitative assessment of the likely human reaction to it.
16. Given the substantial increase in traffic movements over and above those associated even with maximum use being made of the premises as a public house, I am in no doubt that there would be a corresponding increase in noise from traffic movements, both within the site itself and the immediate vicinity of the site. Again, there would be conflict with one of the Framework core principles in this regard.
17. However, one of the material considerations that I am obliged to take into account, is what else can be done with the land/premises without the need for planning permission i.e. the fall back position. The Courts have held that the fall back does not have to be probable, or even have a high chance of occurring. Rather, in order to be a material consideration, a fall back only has to be more than a merely theoretical prospect. While the likelihood of the fall back occurring may affect the weight to be attached to it, that does not affect its status as a material planning consideration. Even where the possibility of

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<sup>4</sup> Paragraph 5.16 of the appellant's Transport Statement

the fall back position happening is very slight indeed, or merely an outside chance, that is sufficient to make the position a material consideration.

18. Under the provisions of the Town and Country Planning (General Permitted Development)(Amendment)(England) Order 2005, the building can be converted to retail use and extended to provide a net sales area of some 213 sqm, with the first floor used for storage, without the need for planning permission. I was shown plans to demonstrate how a scheme such as this could be achieved by the appellant,<sup>5</sup> and was provided with examples of other Tesco stores that operate from buildings with limited sales and bulk storage areas, using first floor storage if necessary. In answer to my questions at the Hearing, I was firmly assured for the appellant that this fall back arrangement represented a robust alternative which would be implemented were the appeal to fail.
19. For significant weight to be afforded to a fall back position, there needs not only to be a reasonable prospect of it being carried out in the event that planning permission was refused, but it would also need to be equally or more harmful than the scheme for which permission is sought. In this regard, the fall back arrangement would not be controlled by any planning conditions. The appellant's highways evidence demonstrates that the retail floor space in the fall back arrangement would be likely to result in very similar two-way movements during the busiest peak hour to that associated with the development proposed. However, in the event that the appeal should succeed, a number of conditions are proposed in relation to the scheme proposed that would offer control over matters such as delivery times, delivery vehicle size and opening hours. The appeal scheme also includes an in/out access arrangement, as opposed to use of the existing access point by incoming and exiting vehicles, as well as the provision of a dedicated on-site loading/unloading bay, a formalised parking layout and cycle parking, and the provision of acoustic grade fencing around the car park.
20. The fall back position maintained by the appellant would be likely to give rise to greater harm, in terms of noise and disturbance from associated vehicle movements, than would the appeal scheme, which would be subject to conditions that would mitigate some of the additional traffic impact. That fall back position is, therefore, a material consideration of significant weight in this case. I find, therefore, subject to conditions, that the appeal scheme would have benefits when considered against the fall back position. Having in mind well established case law, that consideration outweighs the harm in terms of noise and disturbance arising from commercial and customer vehicle movements that would be associated with development proposed.

#### *Other Matters*

21. The Squirrel Inn is included on the Local Heritage List. I have therefore treated it as a non-designated heritage asset. Whilst the significance of the building derives from its history as a mid-19th Century village inn, extensive alterations and extensions to the building over the years mean that its architectural significance is limited principally to the front, roadside elevation.
22. At some time during the 20<sup>th</sup> Century, an unsympathetic porch was added to the centre of the front elevation, and a fairly utilitarian outbuilding, currently

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<sup>5</sup> Appendix 14 to the evidence of Miss R Lees

- used for garaging, was erected to the side/rear. The porch, which dominates the front of the building, would be demolished as part of the appeal scheme, to be replaced with a traditional timber shop front and a new entrance. Those alterations would result in a more sensitive arrangement that would be sympathetic to the historical form of the building. It is also proposed to retain/refurbish the existing timber sash windows, which is welcomed, and to retain the original water pump and building plaque. The piecemeal additions to the rear of the building would be demolished, together with the various outbuildings, and replaced with a rear extension of matching facing brickwork, with a cement slate mansard roof. I agree with the Council that the extension would be appropriate in terms of its scale and appearance, given that it would be located at the rear of the property. All in all, I consider that there would be no harm to the special interest or significance of the appeal building as a heritage asset. There would be no conflict, therefore, with policy SAL.UP6, or the advice in the Framework, which seek to protect such interests.
23. Residents are concerned at the loss of the public house as a local facility. However, I am advised for the appellant that, although the premises have been marketed since December 2011, there has been very little interest. Although policy SAL.DPL11 seeks to retain community facilities, including public houses, the loss of the use has to be weighed against the fact that planning permission is not required for the proposed change of use, which is not part of the proposal before me.
24. Whilst the building has been registered as an Asset of Community Value, demonstrating the value placed on the premises by local residents, that does not convey with it protection in terms of the use of building. The purpose of registration is not to act as a constraint on competition. Rather, it has implications for disposal of the building. In this instance, none of the provisions set out in the legislation apply, since Punch Taverns would remain as freeholder of the premises, with Tesco being a leaseholder, with a lease of 20 years.
25. There was concern locally that the development proposed would result in the closure of other local retail businesses. However, it is not the purpose of the planning system to determine whether or not another convenience shop is needed here, nor is its purpose to protect individual traders or prevent competition. Indeed, the appeal site is located in a designated neighbourhood/village centre, wherein policy SAL.GPB3 is supportive of new retail development. In any event, as already mentioned, the proposed use as a retail premises is not part of the development for which permission is sought.
26. There was concern that the proposal would increase danger to highway users, including pedestrians. However, the evidence before me is that there is no adverse or unusually poor safety record in the vicinity of the appeal site. An on-site loading/unloading bay is proposed and visibility splays for exiting vehicles would be in excess of the minimum requirements recommended in the Manual for Streets. Were the appeal to succeed, a condition could control delivery arrangements, including the size of vehicle and the timing of deliveries, to ensure that they did not coincide with peak traffic or school drop off/pick up times. The level of on-site parking proposed (15 car parking spaces plus disabled parking, and six cycle parking spaces) is commensurate with the size of development proposed. On balance, therefore, in the absence of any technical evidence to the contrary, I conclude that there would be no material

harm to highway safety. Indeed, there would be a benefit over and above the fall back position, in that the parking and access arrangements etc would be secured by condition. I am also mindful, that the local highway authority raises no objection on highway safety grounds, subject to conditions.

27. Although part of the site is shown as a bowling green on the Ordnance Survey map, I saw, during the site visit, that it currently comprises an area of rough grassland that is starting to become overgrown. Were the appeal to succeed, the development would not result in the loss of an existing bowling green facility.

### **Conclusion**

28. There is strong local feeling about this proposal, as reflected by the volume of objections received at every stage and the eloquent opposition demonstrated at the Inquiry itself. I too have significant concerns in relation to the adverse implications of the development proposed on the general amenity and living conditions of local residents. However, subject to conditions, the appeal scheme would have benefits when considered against the fall back arrangement referred to above. Based on the firm assurance given by the appellant at the Hearing that, were the appeal to fail, the company would implement the fall back, and having regard to the relevant case law, I have found that that consideration outweighs the harm in terms of noise and disturbance arising from commercial and customer vehicle movements associated with development proposed. I conclude, therefore, that the appeal should succeed.
29. I recognise that this decision will be disappointing for local residents and their representatives, and am mindful, in this regard, of the Government's 'localism' agenda. However, even under 'localism', the views of local residents, very important though they are, must be balanced against other considerations. In coming to my conclusions on the issues that have been raised, I have taken full and careful account of all the representations that have been made, which I have balanced against the provisions of the development plan and the National Planning Policy Framework, as well as the relevant case law. For the reasons set out above, the evidence in this case leads me to conclude, on balance, that the appeal should be allowed.
30. The conditions suggested by the Council were discussed in detail at the Hearing. During that discussion, suggested conditions 11 and 15 were deleted.<sup>6</sup>
31. In addition to the standard implementation condition, and otherwise than as set out in the decision and conditions, it is necessary that development is carried out in accordance with the approved plans for the avoidance of doubt and in the interests of proper planning. A condition relating to external materials, including hard surfacing, is necessary to protect the character and appearance of the area.
32. Conditions relating to the retention and refurbishment of the sash windows, and to the retention of the water pump and the Squirrel plaque on the front elevation are required, given their historic interest. Given the historic interest of the property and the archaeological potential of the site, the Squirrel Inn

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<sup>6</sup> Condition 11 related to the closure of an access and condition 15 related to on-site traffic management arrangements. Both are matters covered by other of the conditions.

representing a phase of development of common land in the locality, a conditional programme of archaeological works is required, pursuant to the guidance at paragraph 141 of the Framework. I have combined the three suggested conditions in this regard, into a single condition.

33. Conditions relating to the hours of opening, hours during which deliveries can take place and the submission of a Service Management Plan are necessary in the combined interest of highway safety and protecting the living conditions and general amenity of local residents. To the same ends, it was agreed that suggested condition 14 should be worded as requiring a Construction Traffic Management Plan. I recognise that the opening hours sought would mean that the premises would be open later than the nearby Londis store. However, they are no later than the hours common to public houses and regard must also be had to the fall back position, whereby there would be no control whatsoever over hours of operation. The timings of deliveries were discussed in detail at the Hearing and the related condition reflects that discussion.
34. In order to protect the living conditions of local residents, conditions are necessary in relation to the installation and operation of external lighting, the provision of acoustic fencing to the car park area, the submission of a scheme of noise mitigation in relation to the operation of external plant. The 40dBA rating limit set out in the condition is based on the existing typical daytime background sound level. The 35dBA at night time is selected on the basis that it would equate to an internal level of 20-25 dBA, well below the WHO guideline noise values.<sup>7</sup>
35. In the interest of highway safety, conditions are necessary to ensure that the proposed on-site car/cycle parking spaces and vehicle circulation/manoeuvring areas are provided and retained, and that the proposed alterations to the kerbing and pedestrian protection bollard, shown on plan No 1402-117 PL03, are provided.
36. It is necessary to ensure that the net retail floor space does not exceed 280 sqm to ensure that that there would be no adverse impact sequentially on the retail hierarchy of the District Plan, in the interest of highway safety and in the interest of protecting the living conditions and general amenity of local residents.

*Jennifer A Vyse*

INSPECTOR

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<sup>7</sup> These are set out at paragraph 5.15 of Sharps Redmore Hearing statement on behalf of the appellant.



**Schedule of conditions attached to  
Appeal Decision APP/R1845/A/14/2225496  
Squirrel Inn, 61 Areley Common, Stourport-on-Severn  
Worcestershire DY13 0NG**

- 1) The development hereby permitted shall begin not later than the end of three years from the date of this decision.
- 2) Unless required otherwise by the conditions set out below, the development hereby permitted shall be carried out in accordance with the following approved plans:  
131986/AL01 (1:1250 site location plan);  
131986/AL15C (proposed elevations – side (north) and front);  
131986/AL16C (proposed elevations – side (south) and rear);  
1402-117 PL03 (proposed site layout) as amended in part by  
131986/AL12E (submitted during the Hearing).
- 3) No development shall take place until samples of the type and colour of all external materials for the development hereby permitted, including hard surfacing, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until detailed plans for the external treatment/finish of the existing sash windows to be retained, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 5) Development shall not take place other than in accordance with a scheme that shall previously have been submitted to and approved in writing by the local planning authority that provides for the retention and protection during construction works, of the Squirrel plaque on the front elevation, and the water pump.
- 6) No development shall take place, including any works of demolition and site clearance, until a Programme of Historic Building Recording and Interpretation, including a Written Scheme of Investigation, has been submitted to and approved in writing by the local planning authority. Development shall then be carried out in accordance with the approved details. The details to be submitted shall include, but are not confined to:
  - a) an assessment of significance and research questions;
  - b) the programme and methodology of site investigation and recording;
  - c) the programme for post investigation assessment;
  - d) provision to be made for analysis of the site investigation and recording, including a timetable;
  - e) provision to be made for publication and dissemination of the analysis and recording, including a timetable;
  - f) provision to be made for archive deposition of the analysis and records of the site investigation, including a timetable;
  - g) nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

- 7) The retail premises hereby permitted shall not be open other than between the hours of 07.00-23.00 on any day.
- 8) Other than newspaper deliveries/pick up, no delivery vehicles shall arrive/depart from the premises hereby permitted other than between the following times:  
07.00-08.00, 10.00-15.00 and 17.00-20.00 Monday – Friday  
09.00-14.00 on Saturdays  
10.00-14.00 on Sundays and bank/public holidays.
- 9) The development hereby permitted shall not be brought into use until a Servicing Management Plan for the operation of the premises has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved Plan and the Plan shall be adhered to during the lifetime of the development hereby permitted. The details to be submitted shall include, but are not confined to:
  - a) arrangements to ensure that any delivery vehicle does not exceed 10.35 metres in length;
  - b) the operation and management of the loading/unloading bay shown on plan No 1402-117 PL03, including arrangements to ensure that deliveries take place via access door B, adjacent to the loading bay i.e. directly into the 'back-of-house area, as shown on plan No 131986/A12E.
  - c) the storage/management of delivery cages and shopping trolleys;
  - d) arrangements to ensure that refrigeration plant on delivery vehicles is switched off prior to arrival at the site and is not turned on again until the vehicle has left the site.
- 10) No development, including works of demolition and site clearance, shall take place until a Construction Traffic Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved Plan shall be adhered to throughout the construction period. The plan shall include, but is not restricted to:
  - a) provision for the on-site parking of delivery vehicles and the vehicles of site operatives and visitors;
  - b) hours of construction operations, including the hours during which construction activities can take place on the site, and the timings for vehicle movements associated with the delivery of building materials, contractors' vehicles, and the removal of building waste;
  - c) site management arrangements, including on-site storage of materials, plant and machinery.
- 11) No external lighting shall be installed and/or operated at the site other than in accordance with a scheme that has previously been submitted to and approved in writing by the local planning authority.
- 12) The development hereby permitted shall not be brought into use unless and until acoustic grade fencing, the full details of which shall previously have been submitted to and agreed in writing by the local planning authority, have been erected around the boundaries of the car

park/vehicle circulation and manoeuvring area. Once installed the fencing shall be retained thereafter.

- 13) The development hereby permitted shall not be brought into use until a scheme for protecting the occupiers of adjoining dwellings from noise from the operation of external fixed plant or machinery has been implemented in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority. The scheme to be submitted shall ensure that the rating level of the noise emitted from the site in this regard shall not exceed 40dBA between 07.00-23.00 hours and 35 dBA at any other time. The noise levels shall be determined by measurement or calculation at the nearest noise sensitive premises. The measurements and assessments shall be made in accordance with the guidance in BS 4142:2014.
- 14) The development hereby permitted shall not be brought into use until the access/egress, turning/manoeuvring and parking spaces, including the loading/unloading bay, shown on plan No 1402-117 PL03, have been properly consolidated, drained and surfaced in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority. Those areas shall not thereafter be used for any purpose other than the intended purpose.
- 15) The development hereby permitted shall not be brought into use until the six cycle parking spaces shown on plan No 1402-117 PL03 have been provided in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority. The cycle parking provided shall be retained thereafter for that purpose.
- 16) The development hereby permitted shall not be brought into use until the full height kerbing along the carriageway, and the provision of a bollard to the left hand side of the site egress, as shown on plan No 1402-117 PL03, have been provided in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority. The kerbing and the bollard shall be retained thereafter.
- 17) At no time shall the net retail floor space of the building exceed 280 square metres.

-----End of Schedule -----

## APPEARANCES

### FOR THE APPELLANT:

Mr C Young	No 5 Chambers
Miss Rhian Lees BSc(Hons), MSc, MRTPI	Principal Planner with DPP Planning
Mr Nathan Hanks CPDT, MCIHT	Associate Director with Transport Planning Associates
Mr Keith Metcalfe BSc(Hons), DipANC, MIOA	Acoustic Consultant with Sharps Redmore

### FOR THE LOCAL PLANNING AUTHORITY:

Miss Emma Anning MA, MRTPI	Development Control Officer with the Council
Mr John Baggot MA, MRTPI	Development Manager with the Council

### INTERESTED PERSONS:

Councillor James Shaw	District Councillor
Mrs Susan Crowther	Local resident and member of Areley Kings First
Mr Derek Wood	Local resident
Mr Andrew Booton	Chair of Areley Kings First

## DOCUMENTS SUBMITTED DURING THE HEARING

- Doc 1 Speaking notes of Mrs Crowther
- Doc 2 Speaking Notes of Mr Wood
- Doc 3 Speaking notes of Mr Booton
- Doc 4 Extract from the Localism Act 2011 re Assets of Community Value
- Doc5 Alternative ground floor plan showing alternative access door on the south side of the building, to the 'back-of-house' area.

# SECTION 106 OBLIGATION MONITORING

**NOTE: THIS LIST IS NOT EXHAUSTIVE BUT DETAILS THE MOST 'CURRENT' OBLIGATIONS, WHICH REQUIRE MONITORING**

This list only records applications dating back to 2010 and should Members wish to see records relating to applications before then, they are available on request

Application Number	Site	Provisions	Triggers for Compliance	Performance
14/0541/FULL	Site of former Sion Hill Middle School Sion Hill Kidderminster	<ul style="list-style-type: none"> <li>• Public Open Space : Will be based on the following calculation:                             <ul style="list-style-type: none"> <li>- Number of childbed spaces x £20.47 x 24.</li> <li>- There is 50% for affordable housing units.</li> </ul> </li>   <li>• Education Contributions : Will be based on the following:                             <ul style="list-style-type: none"> <li>- 1 bed dwelling of any type = £0</li> <li>- 2 bed house = £2119</li> <li>- 3 bed house = £2119</li> <li>- 4+ bed house = £3179</li> <li>- 2+ bed flats/apartments = £848</li> <li>- Affordable Housing = £0</li> </ul> </li> </ul>		Heads of Terms agreed

Application Number	Site	Provisions	Triggers for Compliance	Performance
		<ul style="list-style-type: none"> <li>Affordable Housing - Total 30% - 78.5% / 21.5% in favour of Social Rented                             <ul style="list-style-type: none"> <li>1 bed social rented = 28.5%</li> <li>2 bed social rented = 36%</li> <li>2 bed shared ownership = 21.5%</li> <li>3 bed social rented = 14%</li> </ul> </li> </ul>		
14/0358/FULL	Land adjacent 29 Mitton Street Stourport on Severn	<ul style="list-style-type: none"> <li>Education contribution of £43,656,00</li> <li>Public Open Space provision of £6,877.92 (allocation of funds to be confirmed)</li> </ul>	<ul style="list-style-type: none"> <li>First residential occupation</li> <li>First residential occupation</li> </ul>	<p>Agreement signed and completed.</p> <p>Development not commenced</p>
14/0105/FULL	Stone Manor Hotel Stone Chaddesley Corbett	<ul style="list-style-type: none"> <li>Education contribution of £9,810</li> <li>Open Space provision of £2,862.72</li> </ul>	<ul style="list-style-type: none"> <li>Commencement of development</li> <li>First residential occupation</li> </ul>	Agreement signed and completed
14/0056/FULL	Land at Sebright Road Wolverley	<ul style="list-style-type: none"> <li>Open Space provision of £6,679.68</li> </ul>	<ul style="list-style-type: none"> <li>First residential occupation</li> </ul>	Agreement signed and completed

**Agenda Item No. 7**

<b>Application Number</b>	<b>Site</b>	<b>Provisions</b>	<b>Triggers for Compliance</b>	<b>Performance</b>
14/0027/OUTL	Chichester Caravans Vale Road Stourport on Severn	<ul style="list-style-type: none"> <li>• Education Contribution of £48,069 – to be used at Stourport Primary School / Stourport High School</li> <li>• Public Open Space Contribution of £11,450.88 – to be used at Riverside, Stourport</li> <li>• 30% Affordable Housing Provision – 8 units (4 Social Rent / 4 Shared Ownership) 1 No. House and 7 No. Apartments.</li> </ul>	<ul style="list-style-type: none"> <li>• First residential occupation</li> <li>• First residential occupation</li> </ul>	<p>Agreement signed and completed.</p> <p>No commencement on site</p>
13/0657/FULL	Former Garage Site Off Orchard Close Rock	<ul style="list-style-type: none"> <li>• Open Space provision of £1,908.48</li> </ul>	<ul style="list-style-type: none"> <li>• First residential occupation</li> </ul>	<p>Agreement signed and completed</p>
13/0645/FULL	Land adjacent to Upton Road Kidderminster	<ul style="list-style-type: none"> <li>• Open Space provision of £2,385.60</li> </ul>	<ul style="list-style-type: none"> <li>• First residential occupation</li> </ul>	<p>Agreement signed and completed.</p> <p>Triggers not reached to date</p>
13/0574/FULL	17-26 Vicar Street Kidderminster	<ul style="list-style-type: none"> <li>• Education Contribution of £2,544 (Foley Park Community Primary School and Baxter College)</li> <li>• Public Open Space Contribution of £1,431.36 to be spent at St Georges Park</li> <li>• Affordable Housing Contribution of £140,000 to be spent across Wyre Forest</li> </ul>		<p>Agreement drafted but unsigned</p>

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<b>Application Number</b>	<b>Site</b>	<b>Provisions</b>	<b>Triggers for Compliance</b>	<b>Performance</b>
13/0573/FULL	Coopers Arms Canterbury Road Kidderminster	<ul style="list-style-type: none"> <li>• Education contribution of £12,714</li> <li>• Open space provision of £4,294.08</li> </ul>	<ul style="list-style-type: none"> <li>• Commencement of development</li> <li>• First residential occupation</li> </ul>	Agreement signed and completed
13/0494/FULL	Reilloc Chain Stourport Road Kidderminster	<ul style="list-style-type: none"> <li>• Public Open Space contribution of £13,896 (The agreement should replicate the agreement previously agreed under reference 13/0049/FULL)</li> </ul>	<ul style="list-style-type: none"> <li>• First residential occupation</li> </ul>	<p>Agreement signed and completed.</p> <p>No occupation to date</p>
13/0465/FULL	Stadium Close Aggborough Kidderminster	<ul style="list-style-type: none"> <li>• Public Open Space contribution of £6,202.56</li> <li>• Transport contribution – To be confirmed</li> </ul>		Agreement signed and completed
13/0082/FULL	Riverside Building Former Carpets of Worth Site Severn Road Stourport on Severn	<ul style="list-style-type: none"> <li>• Education contribution of £9,810</li> <li>• Public Open Space contribution of £2,316</li> <li>• Affordable Housing – 3 no. dwellings</li> </ul>		Draft with applicant's solicitors and remains unsigned



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<b>Application Number</b>	<b>Site</b>	<b>Provisions</b>	<b>Triggers for Compliance</b>	<b>Performance</b>
13/0208/FULL	Corner of Castle Road and Park Lane Kidderminster	<ul style="list-style-type: none"> <li>• Education contribution of £16,952</li> <li>• Highway contribution of £3,660 for Traffic Regulation Order</li> <li>• Public Open Space contribution of £3,816.96</li> </ul>		Agreement signed and completed
13/0299/FULL	Former Garage Site Bredon Avenue Kidderminster	<ul style="list-style-type: none"> <li>• Public Open Space contribution of £1,192.80</li> </ul>		Agreement signed and completed
13/0282/FULL	Stone Manor Hotel Stone Chaddesley Corbett	<ul style="list-style-type: none"> <li>• Education contribution of £24,525</li> <li>• Public Open Space contribution of £4,771.20</li> </ul>		Agreement signed and completed
13/0186/FULL	Former Sutton Arms Sutton Park Road	<ul style="list-style-type: none"> <li>• Variation to education contributions</li> </ul>		Agreement signed and completed

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<b>Application Number</b>	<b>Site</b>	<b>Provisions</b>	<b>Triggers for Compliance</b>	<b>Performance</b>
13/0193/FULL	78 Mill Street Kidderminster	<ul style="list-style-type: none"> <li>• Education contribution of £12,714</li> <li>• Public Open Space contribution of £1,908.48</li> <li>• Affordable Housing – at 30% resulting in 4 no. of the 13 no. Units being for affordable housing</li> </ul>		Agreement signed and completed
13/0049/FULL	Reilloc Chain Stourport Road Kidderminster	<ul style="list-style-type: none"> <li>• Public Open Space Contribution of £13,896</li> <li>• Affordable housing</li> </ul>		Agreement signed and completed
12/0321/FULL	Unit 2 Greenacres Lane Bewdley	Provision of a dry access across third party land (two plots)		Agreement signed and completed
12/0507/FULL	Land off Clensmore Street Churchfields Kidderminster	Supplemental agreement to confirm the terms of the original apply to the new application		Agreement signed and completed
12/0690/FULL	5 and 6 Church Street Kidderminster	<ul style="list-style-type: none"> <li>• Education Contribution of £2,542.80</li> </ul>		Agreement signed and completed
12/0447/FULL	Six Acres Castle Hill Lane Wolverley	An obligation not to carry out any further work in respect of the planning permission issued under 11/0345/Full		Awaiting proof of title

**Agenda Item No. 7**

<b>Application Number</b>	<b>Site</b>	<b>Provisions</b>	<b>Triggers for Compliance</b>	<b>Performance</b>
12/0667/FULL	British Red Cross Society Redcross House Park Street Kidderminster	<ul style="list-style-type: none"> <li>• Education contribution of £3,390.40</li> <li>• Open Space contribution of £2,779.20</li> </ul>		Agreement signed and completed
12/0644/S106	Primary Care Centre Hume Street Kidderminster	Variation to allow a Community Transport contribution to replace already agreed public transport contribution		Draft out for agreement
12/0623/FULL	Land adjacent 7 Hartlebury Road Stourport on Severn	<ul style="list-style-type: none"> <li>• Education contribution of £15,696</li> <li>• Open Space contribution of £2,316</li> </ul>		Agreement signed and completed
12/0433/FULL	Caunsall Farm 100 Caunsall Road Caunsall	Revocation of Secretary of State's decision dated 19 March 1979 which allowed a retail shop		Agreement signed and completed
12/0155/FULL	Land to rear of 10 York Street/ 31 High Street Stourport on Severn	<ul style="list-style-type: none"> <li>• Education contribution of £2,460</li> <li>• Public Open Space contribution of £1,349.28</li> </ul>	Commencement of development	Draft with applicants

Application Number	Site	Provisions	Triggers for Compliance	Performance
12/0146/EIA	Former British Sugar Site Stourport Road Kidderminster	(i) a minimum of 12% affordable housing; (ii) £100k towards a MOVA to be installed to increase the capacity at the junction of Stourport Road/Walter Nash Road West; (iii) a minimum of £90k towards maintaining three areas of informal open space (i. the knoll, ii. the informal space to the south of the site, iii. the wooded embankment adjacent to the canal) (iv) up to £35k towards public realm		Agreement signed and completed
11/0471/FULL	Clent Avenue, Kidderminster	<ul style="list-style-type: none"> <li>Open space contribution of £2,023.92</li> </ul>		Agreement signed and completed

Application Number	Site	Provisions	Triggers for Compliance	Performance
11/0163/FULL	Churchfields Business Park, Clensmore Street Kidderminster	<ul style="list-style-type: none"> <li>• Affordable housing 22% (49 units – 17 shared ownership / 32 social rented)</li> <li>• Education - £150 000</li> <li>• AQMA - £29 000 (towards</li> <li>• appropriate traffic management scheme to reduce emissions)</li> <li>• Sustainable Transport - £35 000 (towards refurbishing Limekiln bridge)</li> <li>• Highway Improvements - £284 000 (as indicated in Churchfields Masterplan including but not limited to improving bus services 9/9a)</li> <li>• Open Space £200 000</li> </ul>	<p>Prior to occupation of one third general market dwellings in phase 1 and 50% in phase 2</p> <p>1<sup>st</sup> dwelling in phase 1 &amp; 106<sup>th</sup> in Phase 2</p> <p>Commencement of development</p> <p>Commencement of development</p> <p>1<sup>st</sup> dwelling in phase 1 &amp; 106<sup>th</sup> in Phase 2</p> <p>On site: 5 years after landscaping completed &amp; maintained</p> <p>Offsite: 1<sup>st</sup> dwelling in phase 1 &amp; 106<sup>th</sup> in Phase 2</p>	<p>Agreement signed and completed.</p> <p>Phase 1 triggers met and payments received</p>

**Agenda Item No. 7**

<b>Application Number</b>	<b>Site</b>	<b>Provisions</b>	<b>Triggers for Compliance</b>	<b>Performance</b>
10/0550/FULL	Land adjacent to Sebright Road, Kidderminster	<ul style="list-style-type: none"> <li>• Public open space contribution of £3055.92</li> <li>• Sustainable transport contribution of £90.00</li> </ul>	Commencement of development	Agreement signed and completed
10/0347/FULL	Hume Street, Kidderminster	<ul style="list-style-type: none"> <li>• Bus Service contribution £58,000</li> <li>• Highways contribution £22,000</li> </ul>	<ul style="list-style-type: none"> <li>• Commencement of Development</li> <li>• First occupation</li> </ul>	Agreement signed and completed
10/0165/FULL	Rear of 78 Mill Street Kidderminster	<ul style="list-style-type: none"> <li>• Education contribution</li> <li>• Public Open Space contribution</li> </ul>	<ul style="list-style-type: none"> <li>• First dwelling to be occupied</li> </ul>	Agreement signed and completed