

**PLANNING
COMMITTEE**

28th April 2021

Planning Application 20/00599/FUL

Development of 2 No Dwellings

**Land Opposite 24 Droitwich Road, Droitwich Road, Feckenham, Worcestershire,
B96 6JE,**

Applicant: h2land
Ward: Astwood Bank and Feckenham Ward

(see additional papers for site plan)

The case officer of this application is Charlotte Wood, Planning Officer (DM), who can be contacted on Tel: 01527 64252 Ext 3412 Email: Charlotte.Wood@bromsgroveandredditch.gov.uk for more information.

Site Description

The application site relates to a tree covered parcel of land which lies to the south of Droitwich Road and comprises a substantial brick wall to the front of the site with a central splay and simple wooden gate. The site abuts the village settlement boundary of Feckenham and is designated as Open Countryside. This site also lies within Feckenham Conservation Area and there are a number of listed buildings in close proximity, most notably the Grade II* listed building, The Manor House, which lies directly opposite the site. Records also show that a Public Right of Way (PRoW) runs along the western boundary of the site.

Proposal Description

The proposal is for the construction of two detached dwellings on the site along with associated parking and garden areas. The two dwellings would differ in design and would have separate parking areas, however would share the same existing access. A number of trees would be removed to facilitate the development; however, the existing wall and access would be retained.

Relevant Policies :

Borough of Redditch Local Plan No. 4

Policy 1: Presumption in Favour of Sustainable Development
Policy 2: Settlement Hierarchy
Policy 5: Effective and Efficient use of Land
Policy 9: Open Countryside
Policy 16: Natural Environment
Policy 17: Flood Risk Management
Policy 18: Sustainable water Management
Policy 20: Transport Requirements for New Development

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Policy 36: Historic Environment
Policy 37: Historic Buildings and Structures
Policy 38: Conservation Areas
Policy 39: Built Environment
Policy 40: High Quality Design and Safer Communities

Others

NPPF National Planning Policy Framework (2019)
NPPG National Planning Practice Guidance
Redditch High Quality Design SPD

Relevant Planning History

19/01588/FUL	Development of 1 No Dwelling	Refused (Dismissed at Appeal 02.10.2020)	12.03.2020
19/00716/FUL	Development of 2 No Dwellings	Refused Dismissed at Appeal 02.10.2020)	30.08.2019
1989/705/FUL	Alterations to Pedestrian Gateway and Boundary Wall	Granted	08.12.1989
1989/102/FUL	Vehicular Access	Granted	04.04.1989

Summary of Consultation Responses

Feckenham Parish Council

Objection – Contrary to policies 2, 9, 37 and 38 of the Redditch Local Plan No 4. The development is of a poor design which would impact a listed building and the conservation area. The proposal would introduce an additional vehicular access to a busy and dangerous road.

Worcestershire Archive and Archaeological Service

Given the location of the development site, there is high potential for former settlement from the Roman period onwards, and as sources suggest that the development site has been undeveloped/garden for an extensive period, any earlier settlement would likely be well preserved. Due to the below-ground archaeological potential a condition for a programme of archaeological work is recommended. However, there is enough information to determine the application (under para 189 NPPF), therefore an evaluation does not need to be pre-determination.

Conservation Officer

Due to the previous appeal decision at the site, the principle of some development on the site from a Conservation perspective has been established. Following amendments to the

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design of the proposed dwellings, no objections are raised subject to conditions relating to details of materials and joinery.

Red Kite Network (Ecology)

Concerns initially raised relating to; the initial survey of the site being out of date/invalid, insufficient desktop evidence, insufficient survey data and appraisal of bat foraging, commuting and roosts, and insufficient survey effort to determine presence/absence of Badgers.

Following additional surveys and report updates no objections are raised, however a suitable headline badger mitigation statement is recommended to be provided prior to determination of the application and conditions relating to avoidance measures and mitigation and enhancement measures are recommended in the event that planning permission is granted.

Historic England

Did not wish to offer any comments and suggested that the views of conservation and archaeological advisers were sought as relevant.

North Worcestershire Water Management

No concerns raised with the principle of development from a drainage perspective, however further details, including a drainage plan were requested by condition in the event that planning permission is granted.

WRS - Contaminated Land

No adverse comments raised in relation to contaminated land/air quality.

Highways Redditch

Noted that the proposed development is located within a residential area, with a bus stop and local amenities located within acceptable walking distance. Considered the use of the existing vehicular access to be acceptable and following amendments to the site layout, also considered the parking and turning area to be acceptable. No highway objections therefore raised subject to conditions relating to the vehicular access, parking, electric vehicle charging points and cycle storage.

Worcestershire County Council Countryside Service (Public Rights of Way)

Following amendments to the proposal whereby the Public Right of Way would be fenced outside of the main development, no objections are raised to the proposal; however, a number of obligations should be brought to the attention of the applicant.

Arboricultural Officer

Following amendments and clarification of further details, no objections are raised to the proposal subject to the development being carried out in accordance with the measures included within the most recent tree report.

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Public Consultation Response

- One site notice was posted 04.06.2020 and expired 28.06.2020
- A press notice was published in The Redditch Standard on 12.06.2020, and expired 29.06.2020.
- Thirteen neighbour letters were initially sent on 03.06.2020 and expired on 27.06.2020. Re-consultation letters were sent on 02.12.2020 and expired on 19.12.2020

Following initial public consultation on the 3rd June 2020, twelve letters of objection were received from third parties in relation to the application. Following the receipt of amendments and re-consulting third parties on the 2nd December 2021, a further ten responses were received. The comments raised the following material planning considerations which are summarised below for reporting purposes. The representations can be viewed using the Council's Public access system by following the link below and searching the reference number 20/00599/FUL. Officers have taken into account the full content of all representations in the preparation of this report.

<https://publicaccess.bromsgroveandredditch.gov.uk/online-applications/>

- Design, materials and layout and impact to the Conservation Area.
- Landscaping will not screen views throughout all seasons.
- Insufficient information in relation to protected species.
- Impact to trees. Miscalculation of Root Protection Areas (RPAs) on site.
- The proposal is contrary to Worcestershire Green Infrastructure Policy.
- Historic interest of the site and its link to the Grade II* Listed Manor House opposite.
- Impact to the setting of The Manor House/impact to open views from The Manor House.
- Highway safety and poor visibility of access.
- Impact to public footpath.
- Impact to neighbouring privacy
- Overbearing impact of the proposal.
- Loss of open countryside.
- Sustainability of site.
- The proposal is contrary to settlement policies
- The relevance of recent case law on the decision-making process.

Planning History of the Site

The application follows two preceding applications relating to the site; one for two dwellings and another for a single dwelling. Both of these applications were refused by the Local Planning Authority; the former on heritage grounds and trees, and the latter solely on heritage grounds. The subsequent combined appeal for these decisions was dismissed, as the Inspector found that the proposals were not in accordance with the

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development plan as a whole, and other material considerations did not outweigh the totality of this development plan conflict.

This combined appeal decision is a material consideration in the determination of the current application. The findings should inform the assessment of the current proposal, and the decision should be read in conjunction with this report and is appended to this report for completeness.

To summarise, however, the appeal decision (regarding the refusal of planning permissions under references 19/00716/FUL & 19/01588/FUL, dated October 2020) concluded as follows on a number of important points:

- Both proposals would be in conflict with Policy 9 of the Borough of Redditch Local Plan no. 4 (BoRLP 4) which only permits development in the Open Countryside in certain instances; none of which would apply in these cases (paragraph 9).
- Both proposals would result in substantial harm to a non-designated heritage asset (the kitchen garden), although the significance of this non-designated heritage asset is not great (paragraph 14).
- Neither proposal would detract from the setting of the Grade II* Listed Building “The Manor House”, which lies opposite the application site (paragraph 16).
- Both proposals would result in less than substantial harm to a designated heritage asset (Feckenham Conservation Area) (paragraph 27).
- There would be no harm arising to the protected trees on the site, subject to careful pruning (paragraph 24).

Furthermore, having regard to the above points, a planning balance was exercised which concluded that:

- The schemes would bring limited economic benefits to the local area and would also provide dwellings in a borough with a shortfall in housing land supply (paragraph 32).
- The benefits of the proposal would not outweigh the less than substantial harm identified to the designated heritage asset (Feckenham Conservation Area) (paragraph 32 & 34).
- The benefits of the proposal would, however, be sufficient to overcome the conflict with Local Plan Policy 9 (Open Countryside), given the absence of wider defined harm to the countryside or the aims of siting development in a sustainable location (paragraph 34).
- The benefits of the proposal would also be sufficient to overcome the harm arising from the loss of the kitchen garden, given its limited value as a non-designated heritage asset (paragraph 34).

Given that the appeal decision concluded that the benefits of providing dwellings would outweigh the identified conflict with Policy 9 of the BoRLP 4 and the loss of the non-designated heritage asset, “the kitchen garden”, the main outstanding issue or the

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consideration which lead to the appeal being dismissed, was the identified harm to Feckenham Conservation Area.

Assessment of Proposal

Since the determination of the above appeal decision, the Council continues to have a shortfall in housing land supply. The 5 year housing land supply (5YHLS) at 1st April 2020 was calculated to be 3.24 years.

In view of this and having regard to the presumption in favour outlined in paragraph 11 of the National Planning Policy Framework (NPPF), the lack of a 5 year housing land supply would mean that the policies that are most important for determining the application are deemed out of date (paragraph 11(d) and footnote 7), and that planning permission should be granted unless:-

- (i) The application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development. Footnote 6 clarifies that this includes Framework policies relating to designated heritage assets e.g. conservation areas. Or,
- (ii) Any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole

Settlement Strategy and Sustainability

Paragraph 79 of the NPPF states that isolated homes in the countryside should be avoided. In view of the close proximity of the site to a number of dwellings positioned to its northern, eastern, and western boundaries, the location of the site is not considered to be isolated.

Notwithstanding this, whilst the settlement boundary of Feckenham generally includes properties to the south of Droitwich Road, the application site is omitted, with the village's settlement boundary running along the site's western and northern sides. The site therefore lies within the Open Countryside, outside of but adjacent to the village boundary. Therefore, under Policy 9 of the Borough of Redditch Local Plan No 4 (BoRLP 4) development in this location is restricted to a closed list of exceptions. Although one of these exceptions is development within or adjacent to the settlement boundary, which this would be, this is on the proviso that it would contribute to a locally identified affordable housing need (9.2vii). Given that this would not be the case, none of the exceptions set out in Policy 9 would apply, and the proposal would be contrary to this Local Plan policy.

However, given the lack of 5YHLS and having regard to the presumption in favour outlined above, the most important policies for determining the application are deemed out of date. As Policy 9 of the BoRLP 4 is not a protected policy caught by paragraph 11d(i) of the NPPF, and is a key consideration in the assessment of the proposal, this policy is deemed out of date. Notwithstanding this it is still necessary to consider how much weight should be given to this policy (*Crane v Secretary of State for Communities*

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and Local Government [2015] EWHC 425 (Admin); Gladman Developments Ltd v SSHCLG & Corby BC & Uttlesford DC [2020] EWHC 518 (Admin)).

Weight to be given to Policy 9 of the BoRLP4

In consideration of the weight that should be given to a deemed-out-of-date policy, the court has held that this is a matter for the decision-maker and should be based on planning judgement (*Gladman Developments*). A key consideration is the degree of consistency of the policy with the policies within the NPPF.

The rationale behind the Open Countryside Policy (Policy 9 of the BoRLP4) stated within its pre-ambles, is to protect the countryside for its own sake and to prevent an unsustainable, dispersed pattern of development. The spirit of this policy therefore has some alignment to paragraphs 78 and 79 of the NPPF which respectively seek to promote sustainable development in rural areas by directing housing where it will maintain and enhance the vitality of rural communities, and avoid isolated homes within the countryside. The substance of policy 9 is not out of date and the rationale behind it remains valid as is demonstrated by considering the policy against related policies in the NPPF. Having regard to the similarities of the aims of Policy 9 of the BoRLP 4 to those found within the NPPF, moderate weight is given to this policy.

In view of the proposal to be considered, the new dwellings would be seen within the context of the existing housing along Droitwich Road to the north, east and west, and so visually would not appear as an encroachment into the countryside, as the development would effectively be “filling in a gap”.

In terms of the sustainability of the location of the site, it is noted that the future occupiers of the houses would have access to a number of nearby services in Feckenham, including a shop, garage and pub. The site lies on Droitwich Road which leads to the centre of the village and the facilities listed above. There is a pavement on the northern side of Droitwich Road opposite the site, and further towards the village centre, there is a pavement on both sides of the road. Feckenham first school is located to the north of the village settlement boundary, and although the walk to this would be less desirable, it would be achievable by a 15 minute walk along footpaths. Whilst it is acknowledged that the village does not offer a full range of services, and public transport availability is also very limited, offering only two (inbound and outbound) bus services to Redditch Town Centre on Monday-Friday, overall the location of the site is considered suitably sustainable for two dwellings. This finding accords with the recent appeal decision which agreed that the proximity of the site to services in Feckenham rendered it sustainable for this level of development. It is also noted that the Local Plan deems the location of the site suitable for locally identified affordable housing need, and therefore has not deemed it unsuitable for housing entirely.

Accordingly, whilst there would be a conflict with Policy 9 of the BoRLP 4, and this policy still retains moderate weight, having regard to the purposes of the policy, there would be a lack of actual harm on the ground arising from the development. The harms identified in

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policy 9 (unsustainable, dispersed pattern of development) do not arise in this case. In view of this, limited weight is given to this Local Plan conflict.

Design, Layout, and Impact to Heritage Assets

The site is positioned within Feckenham Conservation Area which covers almost the entire settlement of Feckenham. Feckenham is a multi-period village, comprising predominantly brick buildings but also a number of timber framed buildings. These buildings date from the 16th century onwards, and vary significantly in size. A large number of the buildings are positioned back of pavement, although some are set back, however walled gardens and plot boundaries give the overall impression of continuity. The range of buildings in terms of age, size and architectural style, as well as the spaces between them all contribute to the character of the conservation area. The significance of the conservation area is largely drawn from the range, quality and the number of historic buildings.

The appeal decision found harm arising to the character and appearance of the conservation area in both previous schemes. The scheme for two dwellings comprised timber framed buildings which alluded to agricultural barns, and the introduction of apparent agricultural buildings was found to cause confusion in terms of the historic role and use of the site. The scheme for a single dwelling was considered to comprise of a discordant design that would be unduly prominent, particularly in terms of the elevation that would face Droitwich Road.

Notwithstanding the above, the Inspector also reasoned that given the varying sized houses to the east and west, and the variation of curtilages of these adjacent houses, the principle of putting one or two dwellings on site could respect the existing pattern of development on this side of Droitwich Road and need not be harmful. On the other hand, the Inspector did not consider the overgrown nature of the site to presently be causing harm, and therefore development of the site would not remove a harmful feature from the conservation area.

The current application proposes two dwellings, which as above, is considered to be acceptable in conservation area terms in principle, subject to the detailing of these dwellings. The design of the two dwellings has been substantially changed during the course of the application as significant concerns were raised with the originally submitted design. With regards to the amended proposal, the two houses would be of a vernacular style, constructed in brick beneath pitched tiled roofs, both incorporating panels of decorative herringbone brickwork, with shiplap timber cladding on Unit B. Both houses would be set back in the site, Unit B, to the west of the site, facing the road and Unit A to the east, sideways on to the road.

The Council's Conservation Officer has been consulted in relation to the current application and has accepted, in line with the appeal decision, the principle of one or two houses on the site. Comments from the Conservation Officer were therefore focused on the issue of the design of the houses. Whilst it was considered that the overall vernacular

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design of the dwellings would be appropriate for the site, minor concerns were originally raised in relation to the garage element of unit A, which included an up and over garage door which was considered to detract from its vernacular appearance. Amendments have since been made to replace this with more appropriate wooden double doors, and to include an additional window on the front gable elevation of this unit, in order to break up an expanse of brickwork.

The siting of the dwellings set back from the road, their variation in layout, form and design, and the generous spacing between the two units mean that the development would integrate acceptably with the existing pattern of development. The removal of some of the trees and introduction of some management of the planting would also have the potential to open up views through the site to countryside beyond, whilst still retaining an appropriate level of vegetation so that the site retains a verdant edge of settlement feel. The issue of trees, however, will be considered in further detail later in the report. As with the previous schemes the boundary wall to the front of the site, which contributes positively to the conservation area, would be retained.

Opposite the application site is The Manor House, a Grade II* listed building that dates from the 16th Century with 18th and 19th Century alterations and additions. Its special architectural and historic interest lie in its architecture and its associations with the Throckmorton family. Moreover, its style and detailing, and its spacious gardens contribute to its significance as they portray it as being a house of some status from this period.

The importance of the site in terms of its history as a historic kitchen garden serving The Manor House was also explored within the appeal decision. The Inspector noted that whilst kitchen gardens were often an important element of large historic houses, demonstrating their status and independence, there is very little indication now that this piece of land served The Manor House in that way. This is because the site is physically separated by a 'B' road, is overgrown with no apparent historic layout or built form, and the existing curtilage of The Manor House is strongly enclosed by tall boundary walling. Furthermore, as it stands in extensive grounds the historic status of The Manor House is still apparent. Comparable to the appeal proposal, as the current application scheme proposes houses set back within the site, broadly following the alignment of other properties on the south side of Droitwich Road, the proposed dwellings would not impose on the Listed Building opposite. Therefore, it is concluded that, like the appeal proposals, the current proposal would not harm the current understanding of The Manor House nor detract from its setting.

Notwithstanding the above, the Inspector accepted that as the site previously served as a kitchen garden, and this was likely the case from at least the mid-19th Century, it could be deemed a non-designated heritage asset. In view of this however, the Inspector reasoned that whilst development of the site would result in substantial harm to any significance it has as a non-designated asset through its loss, the significance of this is not great due to its present state.

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During the course of the current planning application, comments have been received from third parties raising concerns that the current state of the site is a result of deliberate neglect. Paragraph 191 of the NPPF states that “*Where there is evidence of deliberate neglect of, or damage to, a heritage asset, the deteriorated state of the heritage asset should not be taken into account in any decision*” Given the appearance of the site it is clear that it has not received a great deal of management for a number of years. The ephemeral nature of gardens, however, means it is difficult to prove conclusively that the neglect is ‘deliberate’, as required by paragraph 191 of the NPPF. A letter has been provided that was published in the local newspaper in 2000 from the former, late owner of the site, Mrs Rushton. In the letter Mrs Rushton stated that she had taken the decision to stop maintaining the site. The reason for this was that anti-social behaviour was taking place on the site, and she reasoned that individuals would be deterred from using the site in this way if she left brambles to overgrow on the boundary wall. Mrs Rushton also expressed that her age and health meant that she could no longer carry out the work herself, and her children who now lived far away could no longer help either. Mrs Rushton further suggests in her letter that the site could be developed due to it not being within the “Green Belt” and given that the plots either side had been developed for housing.

Having regard to the contents of the letter discussed above, it is clear that a conscious decision was taken by the owner to stop maintaining the land. However, the motivation of the landowner is expressed as being to prevent anti-social behaviour and due to the physical demands of the work. The Planning Practice Guidance (PPG) advises that “*where there is evidence of deliberate damage to or neglect of a heritage asset in the hope of making consent or permission easier to gain the local planning authority should disregard the deteriorated state of the asset in any decision*”. There is no indication within the letter or elsewhere that the hope of obtaining planning permission is the reason why Mrs Rushton stopped maintaining the land. Conversely, Mrs Rushton assumed that the site could be developed if so wished. Further to this the planning history of the site does not indicate that there have been any persistent attempts to gain planning permission on the site over time.

Other anecdotal evidence has been put forward stating that local residents can confirm that no maintenance work has taken place over the last 20 years. Whilst this claim is not disputed, whether it has been neglected for any material gain such as the grant of planning permission cannot be inferred from this. It is noted that prior to the consideration of recent planning applications there have been no concerns raised from local residents regarding the appearance or condition of the site.

Whilst there is clear evidence of an absence of maintenance work over the last 20 years there is no firm evidence that the motivation behind this was to obtain planning permission. On the contrary, there is good evidence that the motivation for ceasing maintenance was unrelated to planning matters but was an attempt to address anti-social behaviour and a conscious decision in view of the demands of such work on an elderly person.

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Finally, a number of other comments were put forward in relation to this matter, however these raised concerns that should be dealt with by other agencies.

It should be noted that third party representations received in relation to this application have taken a different view regarding how to approach 'deliberate neglect'. Whilst the contents of these representations have been considered, officers have proceeded on the basis of national policy and the further guidance offered in the PPG, which is set out above.

Overall, having regards to the findings of the appeal decision, the current scheme would not detract from the understanding or the setting of the Grade II* listed building The Manor House opposite the site. The scheme would result in harm to a non-designated heritage asset through the loss of the historic kitchen garden serving The Manor House, however, given its state and as it comprises no apparent historic layout or built form, this harm is given limited weight. Finally, the proposal is considered to have a neutral impact on the character and appearance of the Conservation Area. However, to ensure the final finish of the dwellings would not detract from the conservation area conditions relating to materials and joinery details are considered necessary in the event that planning permission is granted.

Archaeology

The Historic Environment Officer has provided comments in relation to the application noting that the site lies on a Roman Road and that it is likely that the settlement of Feckenham was continuously occupied since the Roman period. Furthermore as evidence suggests that there is a link between the site and the Grade II* Listed Building opposite, it is considered that the site could contain the remains of formal gardens or other structures related to the Listed Building. Notwithstanding this, the Historic Environment Officer considers that there is enough information to determine the application, having regard to paragraph 189 of the NPPF, and thus an evaluation does not need to be prior to determination of the application. However, in the event that planning permission is granted it has been recommended that a programme of archaeological works is secured and implemented by condition.

Following the comments of the Historic Environment Officer, further public comments were received stating the site would likely contain earthwork remains of medieval Ridge and Furrow agricultural contouring, produced by ploughing. Views of the Historic Environment Officer on this matter were sought and the comments received stated that although the surviving medieval landscape around Feckenham is highly significant, there is no evidence of Ridge and Furrow on the application site. Furthermore, it was stated that whilst the land may have been agricultural in nature prior to it being used as a kitchen garden, the finding of below ground remains of Ridge and Furrow would be interesting but not a reason to refuse the application. The use of the land as part of The Manor House and its contribution to the Conservation Area were considered to be far more significant than a possible earlier agricultural use. On this basis of this the Historic Environment Officer did not alter her earlier recommendation.

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Residential Amenity

Paragraph 127(f) of the NPPF states that planning decisions should seek a good standard of amenity for existing and future occupants of land and buildings. Furthermore, the Borough of Redditch High Quality Design SPD (adopted June 2019) provides further guidance in relation to amenity.

Two small first floor windows serving bedrooms on the western elevation of Unit B would face towards Lavender Place. However these windows would broadly face towards the large single storey garage and flank side elevation of this property where there are no habitable windows. Furthermore, Lavender Place benefits from a particularly large garden area, most of which is sited a significant distance from these windows. In view of these considerations, there would be no unacceptable loss of privacy to this property or garden area. In addition to this, the distance of Unit B to the shared boundary of Lavender Place (between 4.5-6 metres) means that the proposed development would not be overbearing nor would it result in an unacceptable loss of light or outlook.

Juniper House (number 17) to the east would be the closest property to Unit A. There would be two first floor windows and a roof light on the eastern elevation of Unit A facing towards this neighbouring property, however they would also serve bathroom and en-suites. These could therefore be conditioned to be fitted with obscure glazing and remain top opening, to protect the privacy of the neighbouring garden area. Notwithstanding this, Unit A would be positioned approximately 6 metres from the shared boundary, and there is substantial tree screening along this boundary, with many of these trees protected by TPO's. In view of this and the distance and relationship of the proposed development to this neighbouring dwelling (approximately 38 metres) there would be no adverse impact to the residential amenity of these occupiers as a result of loss of light, outlook, or overbearing impact.

In terms of the relationship between Units A and B, there would be two first floor dormer windows serving a bedroom on Unit A which would face towards Unit B. These windows would, however, face towards the garage and flank side elevation of Unit B which contains one secondary bedroom window at first floor. Given the distance between these windows would measure approximately 22.5 metres, which would exceed the 21 metre standard set out in the Council's SPD, there would be no adverse impact to privacy.

In view of the proposed garden areas for the two dwellings, the Council's Design SPD sets out that private amenity space for new dwellings should be a usable size, with a minimum area of 70 square metres and a rear garden depth of 10.5 metres. Whilst both of the garden areas would be partially tree covered, the length of both garden areas would measure 15 metres at their shortest point, and the areas of both rear gardens would be in excess of 400 square metres. Having regards to this it is noted that the proposed garden areas would greatly exceed the standards contained in the Council's SPD.

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Based on the above, it is considered that the proposal would ensure a good standard of amenity for existing and future occupants of the properties.

Highways and Public Right of Way

Worcestershire County Council Highways have commented on the scheme and have raised no concerns with the location of the site for housing, which has been considered in detail above. Furthermore they concluded that the visibility of the existing access to be utilised is acceptable subject to the implementation vegetation being cut back to achieve adequate visibility. Notwithstanding this, concerns were initially raised with parking provision on site, given that three parking spaces are required for both three and four bedroom dwellings. Amendments to the proposed parking and turning areas on site have since been provided and the Highways Officer no longer raises objections to the scheme, subject to a number of conditions.

The Public Rights of Way (PRoW) Officer also raised objections initially to the application due to the hedging and landscaping proposal conflicting with the definitive line of the footpath FH-685, and the submitted plans failing to demonstrate how the access of the footpath would be maintained. However, the applicants have since shown that the PRoW would be fenced outside the main development. In view of this, the PRoW Officer no longer objects to the proposal but has outlined a number of obligations that the applicant would need to adhere to should development on the site take place.

Trees

The site is largely covered in vegetation, with much of this comprising of ruderal species, young Hazel stools and brambles. Whilst consideration has been given to the site being formally protected under a Woodland Designation Tree Preservation Order, given the poor species mix, quality and limited age class of stock within the site, the site was not considered to meet designation requirements. Notwithstanding this the Tree Officer concluded that a number of trees on site were worthy of protection and therefore a mature Walnut tree (T5) located in the south west corner of the site and a group of Hazel stools (G1) positioned along the eastern boundary are now subject to Tree Preservation Orders (TPOs).

The Tree Officer raised a number of concerns with the original proposal that was submitted. The location of a SUD water retention pond that was initially proposed on site conflicted with the mature Walnut tree on site. There was further conflict between the original siting of the dwellings and two young Ash trees, and between the proposed driveway/parking areas and the root protection area (RPA) of a number of other trees. In addition to this, concerns were raised in relation to the potential harm that could arise from the installation routes of utility services within the site.

The proposal has since been amended a number of times in order to address these concerns. With regards to the protected Walnut tree (T5), the Tree Officer has noted that whilst it is in a very good condition, the main stem is heavily covered in Ivy growth.

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Allowing for the width of the Ivy cover when measuring the main stem diameter, the RPA of this tree has been calculated to be 9.6 metres, meaning that there would be no incursion from the footprint of the nearest proposed dwelling, Unit B. With regards to the protected Hazel stools (G1), the footprint of Unit A has been moved slightly west, towards the centre of the site in order to ensure that the development does not conflict with the RPA of these trees, and that the pressure for future pruning of these trees is reduced.

The main core area of the site contains a mix of young to early semi-mature trees consisting predominantly of Ash, Hawthorn, Hazel and Prunus along with a number of mature Apples and Pear trees. The Tree Officer has identified that the majority of the younger stock is of self-set establishment, and the fruit trees are expected to have a short life span due to age, lack of management and competition with other trees. The revised tree report submitted with the application states that 16 individual trees would be removed plus scrub areas under the BS5837 size limit. Notwithstanding this as the majority of this tree stock is of poor condition or low prominence within the site and setting, the Tree Officer has confirmed that their loss could be mitigated by an appropriate level and grade of replanting. During the course of the application further details have been provided with regards to this mitigation planting, and the Tree Officer has confirmed he is satisfied with these details.

The southern boundary of the site is defined by a mature native mixed species hedge consisting predominantly of Hawthorn and Holly, which the landscaping plan indicates would be retained. The western boundary of the site is defined by a remnant hedge line and some semi-mature to mature trees. Whilst the Tree Officer has confirmed that this existing vegetation offers a valuable degree of screening, he has raised no objections to the proposed landscaping scheme which indicates a new native hedge and Hawthorn/Hazel tree planting along this boundary.

Finally, a plan indicating utility service routes within the site and further details of the No Dig method of construction to be used for the driveway and parking areas which conflict with the RPA of nearby trees have been provided. The Tree Officer has confirmed that these details are acceptable and that he no longer has any objections to the proposal on tree grounds.

Ecology

Given the rural location and overgrown nature of the site, it is necessary to consider the potential impacts of the development on biodiversity.

A Preliminary Ecological Appraisal (PEA) was submitted with the application which included a walkover survey of the site. This document has been updated a number of times during the course of the application and further surveys of the site have taken place in order to address concerns that have been raised by the Council's independent ecology consultants, Red Kite.

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The surveys concluded that most of the trees on site have 'Negligible' potential for bat roosts. Exceptions to this were some of the larger, mature Apple trees, which have low potential, and the large Walnut tree which has moderate potential, although does not show signs of previous use by bats. As this tree is to be retained, it is not considered that the proposal would affect any possible current use as a roost. Given the semi-rural location of the site, bats are also likely to forage and commute to at least some extent locally, however such activity is likely to be focused along the site boundaries. The report concludes that provided hedgerows or other tall linear vegetated features are retained or created around the site's west, south and east boundaries, there would be no adverse impact from the development.

The report also concluded that there was a high risk of common 'garden' birds nesting within taller/denser vegetation across the site during the spring and summer months, and therefore any significant removal of vegetation was recommended to be carried out between October and February, outside of nesting season. Due to the characteristics and location of the site, and given the lack of local records, it was not considered that the development would likely have any adverse effect on reptiles, the Noble chafer beetle, great crested newts or dormouse.

The initial survey did, however, find two badger setts upon the site. Both were described as not being recently used, and the entrance of one of the setts was described as being blocked. Whilst the PEA considered that both setts were in effect redundant, Red Kite requested that further presence/absence surveys were required to be carried out on site in order to ensure that enough survey data was present to meet the requirements of legislation. A Badger Sett Status Assessment was later provided which concluded one of the setts to be redundant, and the other sett to be extant and subject to at least occasional ongoing use.

Following the receipt of the latest badger survey Red Kite have confirmed that they have no objections to the proposal subject to the receipt of a suitable headline badger mitigation statement; however they have stated that this should be provided prior to the determination of the application. They have also clarified that a licence from Natural England will need to be granted for the closure of the setts and have recommended a planning condition to obtain this licence prior to commencement of development. In addition, they have suggested pre-commencement conditions for the receipt of a Reasonable Avoidance Method Statement (RAMS) in relation trees and bats, and to secure the biodiversity enhancement and mitigation measures outlined within the PEA.

Drainage

The proposed development would be located within flood zone 1, however flood zones 2 and 3 of the river Bow Brook are located approximately 40 metres from the south western corner of the site. Additionally, whilst there is no surface water flood risk to the site itself, there are significant areas of pooling on Droitwich Road. North Worcestershire Water Management have provided comments in relation to the amended proposal and consider that whilst the scheme is acceptable in principle, further details including a drainage plan

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will be required to ensure that the site is satisfactorily drained and to ensure that the development does not create or exacerbate any local flood in the area. These further drainage details can be secured by a planning condition.

Hereford & Worcester Gardens Trust

A representation has been received on behalf of Hereford and Worcester Gardens Trust (HWGT). Whilst these comments raise concerns with regards to not being formally consulted on the application, the site is not a registered garden and does not appear on the HWGT recently published survey.

The representation also raised objections to the proposal stating that it would harm the appearance of the village and the character of the conservation area, would obscure the historic relationship between the Manor House and its kitchen garden, and would detract from the setting of the Manor House by removing its curtilage. These matters have been considered within the Design, Layout, and Impact to Heritage Assets section of the report.

Parish Council

Feckenham Parish Council has raised objections to the application on the basis that the proposal would not satisfy policies 2, 9, 37 and 38 of the BoRLP 4. However these policies have been considered within the report above. The Parish Council have also noted that the proposal would not include affordable housing. Whilst this is noted, as the weight given to Policy 9 of the Local Plan has been reduced, this matter would not warrant refusal of the application. Further concerns were raised that the proposal would result in an additional vehicular access onto a busy and dangerous road, and that the access would have to be altered to be used. With regards to this, it is noted that the Highways Officer has raised no objections to the proposal. Furthermore, use of the access could resume without the need for planning permission. Finally, the design of the development was stated to be detrimental to the appearance of the village. This has been considered above.

Third Party Representations

Twelve letters of objection were originally received from third parties in relation to the application. Following the receipt of amendments and sending re-consultation letters, a further ten responses were received. A summary of the planning issues raised that have not already been covered within the report and an officer response to these issues are summarised below, however it should be noted regard has been had to the full contents of all submissions in the drafting of this report and forming the recommendation. It should also be noted that a full set of public representations (along with full consultee responses) can be viewed online by following the link below and searching the reference number 20/00599/FUL

<https://publicaccess.bromsgroveandredditch.gov.uk/online-applications/>

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Summary of Issues/Officer Response

- **The recent Gladman High Court Case confirms that the decision maker must still take all development plan policies into account.** The court case established that decision-makers are not legally bound to disregard policies of the development plan when applying the tilted balance under paragraph 11(d)(ii). However, whether and how policies of the plan are taken into account in the application of paragraph 11(d)(ii) is a matter for the decision-maker's planning judgment, in the circumstances of the case in hand. The relevant policies of the local plan in this case have been considered and given appropriate weight within the decision making process, based on the particular circumstances of the case.
- **Design, materials and layout of proposed houses would adversely affect the conservation area/detract from the sparse pattern of development.** The proposal has been amended during the process following comments raised by the conservation officer, and having regard to the findings of the recent appeal decision on the site, the amended proposal is now considered to be acceptable. Further details of this assessment is found within the design section of the report above.
- **Vegetation/landscaping will not screen views throughout all seasons and should not be used as a reason to allow unsuitable design.** Whilst appropriate landscaping and retention of some individual trees is considered important, the siting design and finish of the proposed dwellings are considered acceptable irrespective of the landscaping on site.
- **The site is off a dangerous and fast road and the access has poor visibility. The proposal would also increase traffic in the local area.** The Highway Officer has raised no objections in relation to highway safety or the use of the existing access. Given the scale of the proposed development it is not expected that the proposed development would result in a significant increase in traffic within the local area.
- **Insufficient information in relation to protected species. Survey needs to be repeated as the ecological status of the site may have changed since the last walkover survey was conducted.** A further survey of the site has been conducted including further investigation of the existing badger setts on site and the potential for bat roosts within trees. Following further information the Council's independent ecologist raises no objections to the proposal.
- **Destruction of biodiversity and habitats.** The Ecological appraisal has recommended a number of mitigation measures and enhancement measures in order to ensure there is a net gain to biodiversity. These measures can be secured by planning condition.

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- **A woodland TPO should be applied to the site.** This has been thoroughly considered by the Council's Tree Officers, however it was only considered appropriate to protect a number of trees on the site.
- **Miscalculation of Root Protection Areas (RPAs) on site.** This matter has now been addressed following the Tree Officer revisiting the site. Following amendments to the siting of the proposed dwellings, the Tree Officers do not raise concerns with regards to the proposed dwellings conflicting with the RPA of trees on site.
- **The Holly/Hawthorn hedgerow on the southern boundary has a high amenity value. Unit 1 is positioned too close to the hedge.** This hedgerow is proposed to be retained within the scheme. It is also noted that the siting of the dwellings within the amended proposal are further away from the southern hedgerow boundary.
- **Tree inventory underestimates the number of trees to be removed.** Smaller trees have been grouped together/not listed. This method of practice aligns with BS5837:2012.
- **Contribution of development to five year housing land supply is negligible.** Whilst the proposal would only provide a limited contribution, in view of the importance of providing an adequate supply of local housing, this matter is given moderate weight.
- **Site should not be built on at all due to historic interest and as it is the curtilage of Manor House.** The Conservation Officer has considered all available information in relation to this and has made comments based on this. The history of the site has therefore been taken into account during the decision making process.
- **The proposal would reduce open views from the Grade II* Listed Building opposite.** This matter was considered within the recent appeal decision and the Inspector did not agree that seeing the countryside from the Listed Building 'The Manor House' added to its significance as a heritage asset.
- **Loss of open countryside.** This has been considered, however the Open Countryside policy is given reduced weight for reasons outlined within the report. Regard has also been had to the impact to the character and appearance of the area.
- **The site is not sustainable.** Sustainability of the site has been considered within the report.

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- **Footpath issues remain outstanding.** As discussed within the report, these matters have now been resolved. However the landowners would have an obligation under separate legislation to ensure that the footpath is not obstructed.
- **The proposal would be contrary to Worcestershire Green Infrastructure Policy.** The Green Infrastructure Strategy encourages the planning and management of green spaces in order to provide multiple benefits. This includes the protection and enhancement of the environmental quality of The Forest of Feckenham and Feckenham Wetlands. Although the application site may positively contribute to the environment, the proposal has been assessed in terms of impact to trees and biodiversity and recommendations for mitigation and enhancement have been suggested in relation to these matters.
- **The assertion that because the plot looks like it is within the settlement area it should be treated as being within it is totally without policy support and should be disregarded.** Whilst the site lies outside of the defined settlement boundary, its close proximity to the village is a relevant consideration.
- **Original garden should be restored to its original role as a kitchen or ornamental garden.** The Local Planning Authority can only consider the proposal submitted and do not have control over alternative uses.
- **Privacy/overbearing impact to Lavender Place.** These matters have broadly been considered above within the residential amenity section of the report. There would only be two small windows facing towards this neighbouring property, which would not look onto any habitable window and would only face towards a small section of side garden, leaving the majority of the garden unaffected. A boundary treatment comprising of a post and rail fence with a native hedgerow and tree planting would also provide screening and reduce the impact of development.

Conclusion

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that planning applications must be made in accordance with the development plan unless material considerations indicate otherwise. The NPPF is one such material consideration. Paragraph 11(d) and footnote 7 of the NPPF together state where the Council cannot demonstrate a 5YHLS, planning permission should be granted unless:

- (i) The application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development. Footnote 6 clarifies that this includes Framework policies relating to designated heritage assets e.g. conservation areas. Or,
- (ii) Any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

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Having regard to paragraph 11(d)(i) and footnote 6, the proposal has been found to sustain the character and appearance of the conservation area and would not harm the significance of the Listed Building opposite the site. Therefore, there is no clear reason for refusing planning permission based on policies relating to designated heritage assets.

In view of the tilted balance outlined in limb (ii), the proposal would conflict with Local Plan Policy 9 and would result in the loss of a non-designated heritage asset, "the Kitchen Garden". However given the reduced weight of Policy 9, and in view of the lack of actual harm on the ground arising from this conflict, this matter is given limited weight. Similarly, given that the kitchen garden has been found to provide limited value as a non-designated heritage, this matter is also given limited weight. In view of the benefits of the scheme, the proposal would provide an additional two dwellings to the supply of local housing. Whilst this would be a small contribution, given the lack of 5YHLS and the importance of providing a sufficient supply of housing, this matter is given moderate weight. Furthermore, there would be a limited economic benefit arising from the proposal due to future occupiers supporting local businesses and during the construction phase of development.

Given the above considerations, and in the absence of any other identified harm arising from the proposal, it is considered that the limited adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits. Therefore, having regard to the development plan and all other material considerations, it is concluded that planning permission should be granted.

RECOMMENDATION:

That having regard to the development plan and to all other material considerations, authority be Delegated to the Head of Planning, Regeneration and Leisure Services to **GRANT planning permission subject to:-**

a) The receipt of a satisfactory badger mitigation statement

And

b) Conditions and informatives as summarised below:

Conditions:

- 1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date of the grant of this permission.

Reason: In accordance with the requirements of Section 91(1) of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

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- 2) The development hereby approved shall be carried out in accordance with the following plans and drawings:

Site Location Plan - drawing no. 901-08 at scale 1:1250
Site Context Plan - drawing no. 901-06-B at scale 1:500
Site Layout Plan - drawing no. 901-11E at scale 1:200
Proposed Elevations Unit A - 901-01B at scale 1:100
Proposed Elevations Unit B - drawing no. 901-02 at scale 1:100
Proposed House Plans Unit A - drawing no. 901-03B at scale 1:100
Proposed House Plans Unit B - drawing no. 901-04 at scale 1:100
Landscape Plan - drawing no. 901-07 E

Reason: To provide certainty to the extent of the development hereby approved in the interests of proper planning.

- 3) Prior to their first installation, details of the form, colour and finish of the materials to be used externally on the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved details.

Reason: To ensure that the development is satisfactory in appearance, to safeguard the visual amenities of the conservation area.

- 4) Prior to their installation, full details of all joinery at a scale of 1:5 shall be submitted to and approved in writing by the Local Planning Authority. The works shall then be carried out in accordance with the approved details.

Reason: To safeguard the appearance of the conservation area.

- 5) Prior to any works above foundation level commencing on site full details of a scheme for surface water drainage will be submitted to, and approved in writing by the Local Planning Authority. This scheme should be indicated on a drainage plan and the approved scheme shall be completed prior to the first use of the development hereby approved.

Reason: In order to ensure satisfactory drainage conditions that will not create or exacerbate flood risk on site or within the surrounding local area.

- 6) The Development hereby approved shall not be occupied until the first 5 metres of the access into the development, measured from the edge of the carriageway, has been surfaced in a bound material.

Reason: In the interests of highway safety.

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- 7) The Development hereby permitted shall not be first occupied until both of the proposed dwellings have been fitted with an electric vehicle charging point. The charging points shall comply with BS EN 62196 Mode 3 or 4 charging and BS EN 61851 and the Worcestershire County Council Streetscape Design Guide. The electric vehicle charging points shall be retained for the lifetime of the development unless they need to be replaced in which case the replacement charging point(s) shall be of the same specification or a higher specification in terms of charging performance.

Reason: To encourage sustainable travel and healthy communities.

- 8) The Development hereby approved shall not be first occupied until the existing vehicular access fronting the gates is cleared of any overgrown vegetation. This area shall thereafter be maintained free of obstruction exceeding a height of 0.6m above the adjacent ground level at all times. Any overgrown vegetation that overhangs the existing wall fronting the verge / carriageway shall also be cut back and maintained in perpetuity.

Reason: To ensure vehicular visibility is not obstructed; in the interests of highway safety.

- 9) The Development hereby approved shall not be occupied parking and turning facilities have been provided as shown on drawings 901 07E and 901 11E.

Reason: To ensure conformity with submitted details.

- 10) The Development hereby permitted shall not be first occupied until sheltered, safe, secure and accessible cycle parking for two cycles have been provided for each dwelling in accordance with the details shown on plan no. 901-11E. Thereafter, the approved cycle parking shall be kept available for the parking of bicycles only.

Reason: To comply with the standards within Worcestershire County Council's adopted highway design guide.

- 11) No development shall take place until a programme of archaeological work including a Written Scheme of Investigation, has been submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and research questions; and:

- a) The programme and methodology of site investigation and recording.
- b) The programme for post investigation assessment.
- c) Provision to be made for analysis of the site investigation and recording.
- d) Provision to be made for publication and dissemination of the analysis and records of the site investigation
- e) Provision to be made for archive deposition of the analysis and records of the site investigation

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f) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

Reason: In accordance with the requirements of paragraph 199 of the National Planning Policy Framework.

- 12) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition (1) and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason: In accordance with the requirements of paragraph 199 of the National Planning Policy Framework.

- 13) The development hereby approved shall be carried out in accordance with the protection, mitigation and enhancement measures outlined within section 4.1-4.5 inclusive and appendix 3 of the report 'Predevelopment Tree Survey BS5837: 2012' dated March 2021.

Reason: In order to protect the trees that form an important part of the amenity of the site.

- 14) Prior to the first occupation of the development hereby approved, the hard and soft landscaping scheme shown on drawing no. 901-07 E shall be implemented in its entirety. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar sizes or species.

Reason: In the interests of visual amenity and biodiversity.

- 15) The development shall be carried out in accordance with the recommendations for mitigation and enhancement outlined within section 5 of the Phase 1 Preliminary Ecological Appraisal; Consultant: Dr Peter Webb; Report Date: 18th December 2020 and as shown on drawing no. 901-07 E. Then enhancement measures shall be implemented prior to the first occupation of the development and shall be maintained for the life of the development.

Reason: In the interests of biodiversity.

- 16) Prior to the commencement of the development hereby approved a Reasonable Avoidance Method Statement (RAMS) in relation trees and bats shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved details.

Reason: In order to avoid harm to protected species.

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- 17) Prior to commencement of the development hereby approved a licence from Natural England shall be obtained to close off the on-site badger setts. The details of this approved licence and a full mitigation plan shall be submitted to the Local Planning Authority for approval. The works on site shall then be carried out in accordance with the approved details.

Reason: For the adequate protection of badgers.

- 18) The two sets of first floor windows and roof light on 'Gable Elevation 1' of Unit A, as shown on drawing no. 901-01B, shall be fitted with obscure glazing as shall remain as such for the lifetime of the development.

Reason: To protect the privacy of adjacent neighbouring occupiers to the east of the site.

Informatives

1) **Alteration of highway to provide new or amended vehicle crossover**

This permission does not authorise the applicant to carry out works within the publicly maintained highway since such works can only be carried out by the County Council's Approved Contractor, Ringway Infrastructure Service who can be contacted by email worcestershirevehicle.crossing@ringway.co.uk. The applicant is solely responsible for all costs associated with construction of the access.

No Drainage to Discharge to Highway

Drainage arrangements shall be provided to ensure that surface water from the driveway and/or vehicular turning area does not discharge onto the public highway. No drainage or effluent from the proposed development shall be allowed to discharge into any highway drain or over any part of the public highway.

- 2) The applicant should be aware they have a responsibility to keep the definitive line of the Public Right of Way FH 685 clear where it crosses their property and should adhere to the following obligations:

- No disturbance of, or change to, the surface of the path or part thereof should be carried out without our written consent.
- No diminution in the width of the right of way available for use by the public.
- Buildings materials must not be stored on the right of way.
- Vehicle movements and parking to be arranged so as not to unreasonably interfere with the public's use of the right of way.
- No additional barriers are placed across the right of way. No stile, gate, fence or other structure should be created on, or across, a public right of way without written consent of the Highway Authority.
- The safety of the public using the right of way is to be ensured at all times.

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- The developer should also be aware of the Department of Environment Circular 1/09 (part 7) which explains that the effect of development on a public right of way is a material consideration in the determination of applications for planning permission and that the grant of planning consent does not entitle developers to obstruct a public right of way.
- The applicant should note the National Planning Policy Framework published in July 2018 by the Ministry of Housing, Communities and Local Government, particularly paragraph 98, to ensure that planning policies protect and enhance public rights of way and access.
- The Definitive Map is a minimum record of public rights of way and does not preclude the possibility that unrecorded public rights may exist, nor that higher rights may exist than those shown.

Procedural matters

This application is being reported to the Planning Committee because two (or more) objections have been received.