



Appeal Decision

Hearing held on 17 June 2009

Site visit made on 17 June 2009

by **John Woolcock** BNatRes(Hons) MURP
DipLaw MPIA MRTPI

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

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Decision date:
21 August 2009

Appeal Ref: APP/W1850/A/09/2098857

Holmer Trading Estate, College Road, Hereford HR1 1JS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Hereford Residential Developments Limited against the decision of Herefordshire Council.
- The application code:DCCE2007/1655/O, dated 2 May 2007, was refused by notice dated 3 September 2008.
- The development proposed is development of residential, employment (B1, B2 and B8), retail (A1) uses and supporting infrastructure including roads, footpaths, open space, landscaping, parking facilities and reopening of part of canal.

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Decision

1. I allow the appeal and grant outline planning permission for mixed use development comprising residential (115 units), employment (office, industrial and warehousing), retail and supporting infrastructure including new access off College Road, roads, footpaths, open spaces, landscaping, parking and re-opening of part of canal at Holmer Trading Estate, College Road, Hereford HR1 1JS in accordance with the terms of the application, code:DCCE2007/1655/O, dated 2 May 2007, and the plans submitted therewith, as amended, numbered, No.30321_P(0)01A and No.1910.07D, subject to the conditions set out in the Schedule of Conditions attached to this decision.

Preliminary matters

2. During the registration of the application the Council and the applicant agreed revised wording for the description of the proposed development, and amended plans were submitted. The description was amended to;

"Mixed use development comprising residential (115 units), employment (office, industrial and warehousing), retail and supporting infrastructure including new access off College Road, roads, footpaths, open spaces, landscaping, parking and re-opening of part of canal".

The plans submitted were Red line plan, Drawing No.30321_P(0)01A; Proposed Site Access Drawing No.1910.07D and Masterplan 30321_P(0)004_RevD. Notwithstanding the details shown on the appeal form, it was clarified at the Hearing that the Council determined the application on the basis of these revisions.

3. The appeal application is in outline with all matters reserved for later consideration, except for means of access, which is to be determined as part of the application. I have had regard to the Masterplan 30321_P(0)004_RevD as

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illustrative material not forming part of the application.

4. The validity of the application and appeal was challenged ~~at the Hearing on the grounds that proper notification had not been given to all owners of the appeal site.~~ It was acknowledged at the Hearing that it would appear that a triangular section of land, part of an access road, owned by the adjoining business, Cavanagh Holdings, had been inadvertently included within the site edged red. However, even if this were so, I do not consider that the defect would necessarily invalidate either the application or the appeal, which the respective authorities have accepted and dealt with as valid. Cavanagh Holdings has been fully aware of the proposed development from its inception, and submitted representations to the Council at the application stage, and about the appeal. Representatives also attended the Hearing and participated fully in the discussion and site visit. The notification procedure is intended to ensure that affected landowners are aware of proposals and opportunities to make representations. I find, therefore, that no prejudice would result in the circumstances which apply here from any error in the site plan or omission in the certificates issued at application and appeal stage. I consider the appeal to be valid, and have dealt with it accordingly.
5. A deed pursuant to section 106 was discussed at the Hearing, but was unsigned by two parties. I allowed 7 days after the close of the Hearing for this to be submitted. A signed obligation, dated 24 June 2009, agreed by the County of Herefordshire District Council, HRD Estates Limited, Herefordshire and Gloucestershire Canal Trust Limited and other parties with an interest in the site, would provide, on commencement of the development that is the subject of this appeal, for affordable housing, along with contributions towards transport, community, recreation and sports facilities; education; public art; recycling; a skate park and biodiversity enhancements and contribution. It would also provide for the restoration of part of the Canal and its transfer to the Canal Trust. The agreement also includes an existing business occupier protection scheme. I deal with the obligation in more detail later in this decision.

Main issue

6. I consider the main issue in this appeal to be the effects of the proposed development on the supply of employment land and employment provision, having regard to relevant policy and other material considerations.

Reasons

Employment and other considerations

7. I am required to decide this appeal having regard to the development plan, and to make my determination in accordance with it, unless material considerations indicate otherwise. Policy E5 of the Herefordshire Unitary Development Plan 2007 (UDP) permits the loss of existing employment land only where there would be substantial benefits to residential or other amenity in allowing alternative forms of development, and the site or premises concerned can be shown to be unsuitable for other employment uses, including consideration of mitigation measures; or for proposals incorporating retail use, this would be restricted to a minor or incidental activity associated with an otherwise acceptable Use Class B or other employment generating use.

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8. The proposed redevelopment scheme would result in the loss of some 1.65-ha of existing employment land. I do not consider that ~~the second part of Policy E5~~ applies here because the retail element proposed includes a 200 m² convenience store, which would not be incidental to an employment generating use. I do not consider that a proposal for a total of 760 m² of Class A1 retail, in an out of centre location, can be described as 'minor' for the purposes of applying Policy E5 in the circumstances which apply here. The appellant argues that the appeal scheme complies with Policy E5 because it would deliver substantial 'other amenity' benefits. However, this is not all that the first part of Policy E5 requires. The 'and' within this sentence means that compliance with part 1. would require both substantial benefits to residential or other amenity, and that the site was shown to be unsuitable for other employment uses. That is not the case here. There is no compelling evidence, by way of the site's location, its access, any adverse environmental impact; or complaints arising from such issues, to indicate that the site, or any part of it, is unsuitable for employment use. I note the appellant's views about the viability of a wholly employment use redevelopment scheme for the site, which I return to later, but even if it were to be accepted that such a scheme would be unviable, that would not be tantamount to 'unsuitable', and so bring the proposal into compliance with Policy E5. As a result, I find that the proposal would conflict with the provisions of Policy E5 of the UDP.
9. I have also considered the likely effects of the loss of some 1.65 ha of employment land. Land availability was discussed in detail at the Hearing and I saw relevant sites on an unaccompanied part of my site visit. I acknowledge that some allocated sites are constrained, and I accept that the river crossing affects how the accessibility and marketability of some allocated land is perceived. The parties agree that the position with respect to readily available employment land north of the river is broadly the same as that which existed at the time of the Faraday Road appeal in 2007.¹ The Inspector then found that available land did not strike him as a generous provision for a City the size of Hereford. I find, in the case before me, that the policy conflict, and harm to the supply of employment land, weighs against permitting the scheme.
10. In deciding what weight to give to this harm, it is necessary to note that the employment provision in the proposed scheme would provide for more jobs than currently exists on the appeal site. However, the estate is in a run-down condition, with some vacant, fire-damaged and derelict buildings. Retaining it in its current state would not be in the interests of the proper planning of the area, or accord with the underlying objectives of relevant employment policies. Some employment benefits would result from the redevelopment of the site, and the issue would then become the proportion of the redevelopment scheme which was for employment purposes. This raises viability matters, which I come to later.
11. There is considerable local concern about the effects on local businesses, as was evident at the Hearing and from the submitted petition.² Negotiations about relocating existing tenants are ongoing. Many have made, or are able to make, alternative arrangements, some within the proposed redevelopment.

¹ Appeal ref: APP/W1850/A/06/2022861.

² Document 4 states "Please help to support our local businesses. Save our businesses save our jobs on Holmer Trading Estate".

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However, some of the businesses on the existing estate, especially those which require large, open sites, might not be able to find premises that are directly comparable with those that they currently occupy. Accommodation, space and terms that enable their businesses to operate in the way which they currently do might not be available. I acknowledge that this could result in hardship associated with a transition to a different site or circumstances. But maintaining the status quo here seems to me to be untenable. Substantial capital investment is necessary to prevent further decline. It seems to me that the estate is in transition, and that difficulties for some businesses might arise in any event. Any job losses and hardship that would result from the appeal scheme must be weighed in the balance, but must also recognise the practical realities of the circumstances here.

12. I have found that the proposed development would conflict with the provisions of UDP Policy E5. It would also result in some harm to employment land supply and hardship for some existing occupiers. However, for the reasons set out above, I believe that the harm likely to arise here would be limited.

Other considerations

13. I turn next to consider possible benefits of the proposed development, which might properly be weighed against the harm and policy conflict I have identified above. Chief amongst these is the restoration of the Canal.
14. UDP Policy RST9 provides that the historic route of the Canal, together with its associated infrastructure, buildings, towpath and features would be safeguarded. It adds that new developments would be required to incorporate land for the Canal restoration. The supporting text states that this is a long-term project with the aim of re-opening the canal link between Hereford and the Severn at Gloucester. Some sections have already been restored and the recreation, tourism and economic potential of the project are recognised in the UDP. The development of the appeal site would make a significant contribution towards achieving these objectives.
15. Parts of the site are highly contaminated. The infilled Canal contains high levels of lead, and other parts of the site have high levels of hydrocarbons. The proposal would remediate land contamination. However, there is no evidence of any specific and current pollution problem. Whilst the remediation would be beneficial, there is nothing to indicate that there is any particular matter which requires immediate attention.
16. The mixed-use scheme, with about 1.85 ha of employment land, 115 residential units and retailing, would provide scope to minimise travel, and the affordable housing provision would make a useful contribution to local need. Local highway improvements would also be implemented. No such works are currently included in any programme, and so these would be unlikely to be achieved unless associated with redevelopment of the appeal site.
17. The s106 contributions outlined above would be necessary and reasonable to enable the appeal scheme to go ahead, and so would not result in any additional benefits to be weighed in the balance.

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18. I do not consider that the benefits arising from land remediation, affordable housing provision and local highway improvements would be sufficient to outweigh the harm I have identified. However, the likely benefits associated with the re-opening of the Canal would be substantial. It seems to me that this is an important section of the Canal in terms of achieving the UDP's long-term restoration aims. The Canal to the east of the site is being restored and passes through a substantial park, and there is an important tunnel portal to the west of the site. Restoration of the length of Canal indicated in the obligation would add substantially to the significance of the Canal as a feature within the City. In my judgement, the benefit of the scheme to the restoration of the Canal is sufficient to tip the balance in favour of allowing the appeal, notwithstanding the conflict with the provisions of UDP Policy E5.
19. I acknowledge that most of these benefits might potentially be achieved by a wholly employment-use redevelopment scheme for the appeal site. However, I am not convinced that there is a realistic prospect of this eventuality. The parties dispute the information submitted about the viability of an all-employment scheme. The Council has not produced a viability assessment of its own, but acknowledges that even if such a scheme were to be profitable the margins would be small. Such viability assessments are heavily dependent upon the assumptions on which they are based, and so I do not consider that they should be decisive here. I note that the site has not been marketed. However, I do not believe that a marketing exercise would necessarily demonstrate whether an all-employment redevelopment scheme for the site would be viable. It was apparent from my site visit and the surveys submitted that the investment needed here in site clearance, infrastructure and remediation would be substantial. I prefer the appellant's view that a mixed-use scheme would be required to achieve a viable redevelopment project for the appeal site. I do not consider that the evidence adduced by the Council demonstrates that a wholly employment scheme, or a scheme with a lower proportion of employment land than that proposed, would be feasible.
20. On the main issue, I have found that the proposal would conflict with UDP Policy E5, and would be likely, by reason of the loss of some employment land and possible hardship for some existing tenants, to result in harm. However, in my judgement, the Canal restoration, and its resultant benefits to long-term planning objectives for the City, are material considerations in this case, which are sufficient to outweigh the conflict with the development plan and the limited harm I have identified.

Other matters

21. I have had regard to relevant retail policy, and to existing and previously permitted retail development on the estate. This is an out-of-centre location, but given the history of retail use on the site, I do not consider that any harm or conflict with retail policy would weigh against allowing the proposal. I note in this regard that the effect on retailing in the City was not a reason for refusal.

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22. There are local concerns about the likely ~~effects on the living~~ conditions of nearby occupiers, but I am satisfied that there is sufficient separation distance to enable there to be a reasonable prospect of designing a detailed layout that would not unduly impact on neighbours. I share the local planning authority's view that, with the proposed improvements, the local road network would have the overall capacity to accommodate the proposed development.
23. I have taken into account all the other matters raised in the evidence, including the right of way across the site, but this is a private matter for the relevant parties to consider in any detailed layout. Neither these, nor any of the other matters raised, are sufficient to outweigh my conclusions on the main issues, which have led to my decision on this appeal.

Conditions

24. The Council has suggested conditions that it would accept if the appeal were to be allowed. I have considered the need for these and their wording in the light of the advice contained in Circular 11/95 *The Use of Conditions in Planning Permissions*.
25. In addition to the standard conditions for an outline planning permission, approval of samples of external materials would be necessary in the interests of the appearance of the area. Construction times would need to be restricted and wheel cleaning apparatus provided to safeguard the residential amenity of nearby occupiers. Details and phasing of internal access arrangements would need to be approved in the interests of the proper planning of the area. Cycle parking and Travel Plans would be required to minimise the use of cars. Garages should be kept available for parking for highway safety reasons. Restrictions on the use of machinery, outdoor plant, deliveries, and to control noise would be necessary to safeguard residential amenity. Approval of drainage and controls of discharge would be required for similar reasons and to minimise pollution.
26. The height of the buildings would need to be limited to four storeys in the interests of the appearance of the area. Restrictions on the floor area of permitted uses would be necessary to achieve an appropriate mixed-use scheme, which should follow the layout principles identified on the Masterplan. Details of uses and the range of goods to be sold would need to be approved for similar reasons. The restriction of permitted development rights would, exceptionally, be necessary so as to ensure that the local planning authority retained control over future development within the mixed-use scheme. It would be necessary to specify requirements for landscaping and boundary treatment, external lighting, along with a landscape management plan, for townscape reasons. Waste management and recycling facilities would need to be approved on amenity grounds. A condition would be necessary to reflect the proposal's commitment regarding the Code for Sustainable Homes and BREEAM. The public sewer across the site would need to be protected.
27. A scheme for habitat protection and enhancement would need to be approved in the interests of nature conservation. A phasing programme would be needed for the mixed-use scheme and to ensure that some employment provision was constructed in advance of the occupation of residential units. The access improvements would be necessary, on highway safety grounds, to

enable the development to proceed. Conditions regarding remediation of land contamination would be necessary, but the parties agreed at the Hearing that these should be in the general form of the model conditions set out in PPS23: *Planning and Pollution Control*.

28. Where necessary the suggested conditions would need to be altered in accordance with the advice in Circular 11/95 in the interests of precision and enforceability. I have no reason to doubt that the contributions set out in the obligation are necessary and reasonable to enable the development to proceed, and I accordingly find no conflict with the guidance in Circular 5/2005 *Planning Obligations*.

Conclusions

29. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

John Woolcock
Inspector



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SCHEDULE OF CONDITIONS 1-37

- 1) Details of the appearance, landscaping, layout, and scale, ~~(hereinafter~~ called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) No development shall take place until samples and a full schedule of materials to be used externally on walls and roofs 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) During the construction phase no machinery shall be operated, no process shall be carried out and no deliveries taken at or despatched from the site outside the following hours: 0730 to 1800 Monday to Friday and 0800 to 1700 on Saturday nor at any time on Sundays, Bank or Public Holidays.
- 6) Development shall not begin until the full engineering details and specifications, including a phasing programme, of the proposed internal roads, footpaths and highway drains (the works) have been submitted to and approved in writing by the local planning authority. The works shall be completed in accordance with the approved details and phasing programme.
- 7) Development shall not begin until wheel cleaning apparatus has been provided in accordance with details to be submitted to and approved in writing by the local planning authority. The approved wheel cleaning apparatus shall be maintained and operated during construction of the development hereby permitted.
- 8) Before the development is commenced a scheme for the provision of covered and secure cycle parking to serve each dwelling and business unit shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. The cycle parking shall be installed and made available for use prior to the first occupation of each dwelling or business unit to which it relates and shall thereafter be retained.
- 9) Prior to the first occupation of any part of the development or in accordance with a timetable to be approved in writing with the local planning authority, Travel Plan(s) for both the residential and commercial units which contain measures to promote alternative sustainable means of transport for occupants, staff and visitors, with respect to the development hereby permitted, shall be submitted to and approved in writing by the local planning authority. The Travel Plan(s) shall be implemented, in accordance with the approved details. A detailed written

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- record shall be kept of the measures undertaken to promote sustainable transport initiatives and a review of the Travel Plan(s) shall be undertaken annually. All relevant documentation shall be made available for inspection by the local planning authority upon reasonable request.
- 10) All integral garages and access thereto shall be reserved for the garaging or parking of private motor vehicles and the garages shall at no time be converted to habitable accommodation.
 - 11) Unless otherwise approved in writing by the local planning authority, no machinery shall be operated, no process shall be carried out and no deliveries taken at or despatched from the site outside the following hours: 0730 to 1800 Monday to Friday and 0800 to 1700 Saturdays nor at any time on Sundays, Bank or Public Holidays.
 - 12) No development shall take place until a noise survey has been undertaken to establish background noise levels in accordance with a methodology previously submitted to and approved in writing by the local planning authority. The rating level of noise emitted from industrial and commercial development on the site, when measured or calculated at the nearest sensitive noise receptor, shall not exceed the background noise level surveyed above by more than 5 dB(A) at any time. The measurements and assessment shall be made according to BS 4142:1997.
 - 13) Development shall not commence until a scheme to safeguard the residential units hereby permitted from road traffic, railway and industrial noise has been submitted to and approved in writing by the local planning authority. All works which form part of the approved scheme shall be completed before occupation of any dwellings and shall thereafter be retained.
 - 14) Prior to the commencement of development, details of a scheme for acoustic attenuation of noise from the extract fans at Cavanaghs shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details prior to first occupation of any of the residential units hereby permitted and any works or attenuation measures shall thereafter be retained.
 - 15) There shall be no open air operation of power or hand tools, plant, machinery or equipment outside of the commercial development hereby permitted.
 - 16) Prior to the commencement of the development details of the proposed foul drainage arrangements shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented before the first use or occupation of any of the development hereby permitted.
 - 17) No development hereby permitted shall be commenced until a scheme for the provision and implementation of a surface water regulation system, including the use of SuDs, along with a timetable of implementation and completion, has been submitted to and approved in writing by the local planning authority. The drainage works shall be completed in accordance with the approved details and timetable.

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- 18) No infiltration of surface water drainage into the ground permitted other than with the express written approval of the local planning authority, which may only be given for those parts of the site where it has been demonstrated that there would be no resultant unacceptable risk to controlled waters.
- 19) Prior to being discharged into any watercourse (including the Canal), surface water, sewer or soakaway system, all surface water drainage from parking areas and hardstandings shall be passed through an oil interceptor designed and constructed to have a capacity and details compatible with the site being drained, unless otherwise approved in writing by the local planning authority. Roof water shall not pass through interceptors. Foul water and surface water discharges shall be drained separately from the site. No surface water shall be allowed to connect, either directly or indirectly to the public sewerage system unless otherwise approved in writing by the local planning authority. No land drainage run-off shall, either directly or indirectly, discharge into the public sewerage system.
- 20) The development hereby permitted is for the construction of the following: 2235 sq metres floor area of Use Class B1; 2537 sq metres floor area of Use Class B2; 2537 sq metres floor area of Use Class B8; up to 760 sq metres floor area of Use Class A1 retail, comprising 500 sq metres non-food bulky goods, 200 sq metres convenience store, and 60 sq metres unrestricted non food retail; up to 70 sq metres floor area of Use Class A3 café; and 115 residential units. Use Classes shall be as defined in the Town and Country Planning Use Classes Order (as amended). All floor areas shall be gross.
- 21) No part of the development shall exceed four storeys in height above the existing ground levels as identified on the topographical survey Drawing No. 01, dated July 2005.
- 22) The details to be submitted under Condition 1 shall follow the layout principles identified on the Masterplan, Drawing No. 30321_4(0)004-Revision D, unless otherwise approved in writing by the local planning authority.
- 23) Notwithstanding the provisions of Article 3(1) and Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995, (or any order revoking or re-enacting that Order with or without modification), no development which would otherwise be permitted under Classes A, B, C, D, E, F and G of Part 1, Class B of Part 2, and Classes A, B and C of Part 8 of Schedule 2 of the Town and Country Planning (General Permitted Development Order) 1995 shall be carried out.
- 24) The details to be submitted under Condition 1 shall include a plan indicating the position, type, design and materials of any boundary treatment to be erected within and around the site. The boundary treatment shall be completed before the buildings are occupied in accordance with a timetable to be approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and the boundary treatment shall thereafter be retained.

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- 25) The details to be submitted under Condition 1 shall include a soft and hard landscape design, including the following:
- (a) Plan(s) showing details of all existing trees and hedges on the application site. The plan shall include, for each tree/hedge, the accurate position, species and canopy spread, together with an indication of which are to be retained and which are to be removed.
 - (b) Details of the measures to protect the trees to be retained during construction.
 - (c) Plan(s) at a scale of 1:200 or 1:500 showing the layout of proposed tree, hedge and shrub planting and grass areas.
 - (d) A written specification clearly describing the species, sizes, densities and planting numbers and giving details of cultivation and other operations associated with plant and grass establishment.
 - (e) Existing and proposed finished levels or contours including the slab levels of each building assessed against a fixed datum point outside of the site.
 - (f) Car parking layout and other vehicular and pedestrian areas.
 - (g) Hard surfacing materials.
 - (h) Minor structures (e.g. play equipment, street furniture, lighting, refuse areas, signs etc.).
 - (i) Location of existing and proposed functional services above and below ground (e.g. drainage, power, communications cables, pipelines etc. indicating routes, manholes, supports etc.)
 - (j) Any retained historic features and proposals for restoration.
- 26) The approved soft landscaping scheme shall be carried out concurrently with the development hereby permitted and shall be completed no later than the first planting season following the completion of the development. The landscaping shall be maintained for a period of 5 years. During this time, any trees, shrubs or other plants which are removed, die or are seriously retarded shall be replaced during the next planting season with others of similar sizes and species unless the local planning authority gives written consent to any variation. If any plants fail more than once they shall continue to be replaced on an annual basis until the end of the 5-year maintenance period. The hard landscaping shall be completed prior to the occupation of the unit to which the landscaping relates.
- 27) A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than privately owned domestic gardens shall be submitted to and approved in writing by the local planning authority prior to the occupation of the development or any phase of the development, whichever is the sooner, for its permitted use. The landscape management plan shall be carried out as approved and it shall be applied

for the lifetime of the development hereby permitted unless otherwise approved in writing by the local planning authority.

- 28) The plans to be submitted with the details required under Condition 1 shall clearly identify the proposed Use Class for all of the commercial buildings and the range of goods to be sold from the retail buildings, and notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 or any provision equivalent to that class in any statutory instrument revoking and re-enacting that order with or without modification, the buildings shall not be used for any other purposes including any within the same use classes without the prior written approval of the local planning authority.
- 29) Prior to the commencement of the development hereby permitted, full details of all external lighting to be installed upon the site, including upon the external elevations of the buildings, and a phasing programme, shall be submitted to and approved in writing by the local planning authority. No external lighting shall be installed upon the site (including upon the external elevations of the building) without the prior written consent of the local planning authority. The approved external lighting shall be installed in accordance with the approved details and phasing programme and shall thereafter be retained.
- 30) Prior to the commencement of development a scheme for the provision of storage, prior to disposal, of refuse, crates, packing cases and all other waste materials, including separate storage for recyclable materials for each commercial unit and dwelling, shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the first occupation of the commercial unit or dwelling to which it relates and the installed refuse and recycling facilities shall thereafter be retained.
- 31) No development shall take place until a Site Waste Management Plan has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the provisions of the approved Plan, which shall be applied for the lifetime of the development hereby permitted unless otherwise approved in writing by the local planning authority.
- 32) The residential units shall be designed and constructed to meet level four of the Code for Sustainable Homes: A Step change in Sustainable Home Building Practice Design, dated December 2006, and the commercial development designed and constructed to meet BREEAM rating of Excellent or equivalent standards as may be approved in writing by the local planning authority. No development shall commence until authorised certification has been provided confirming compliance with the approved standard, and prior to the occupation of the last dwelling or commercial unit, further certification shall be provided confirming that the development has been constructed in accordance with the approved standard.
- 33) No buildings shall be permitted within 3 metres either side of the centre line of the public sewer which crosses the site.

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- 34) Unless otherwise approved in writing by the local planning authority, no development shall commence on site, or materials or machinery brought to the site for the purposes of development until a scheme of habitat protection and enhancement works has been submitted to and approved in writing by the local planning authority and the approved scheme implemented on site. The scheme should be informed by a further ecological survey completed in accordance with a methodology approved in writing by the local planning authority to establish the presence of any protected species or other wildlife. The development shall be carried out in accordance with the approved scheme.
- 35) The development shall be constructed in accordance with a phasing programme to be submitted to and approved in writing by the local planning authority prior to the commencement of the development. A minimum of 1000 sq metres Use Class B1 floorspace, 1500 sq metres Use Class B2 floorspace and 1000 sq metres Use Class B8 floorspace of the total floorspace hereby permitted shall be completed and be ready for occupation prior to the first occupation of any residential units hereby permitted.
- 36) Engineering specifications and detailed plans for the site access and associated highway works indicated on Drawing No.1910.07D shall be submitted to and approved in writing by the local planning authority prior to the commencement of the development hereby permitted. The access and associated highway works shall be completed in accordance with the approved plans and specifications prior the first occupation of any commercial, retail or residential units hereby permitted.
- 37) Unless otherwise approved in writing by the local planning authority, development other than that required to be carried out as part of an approved scheme of remediation must not commence until (a), (b) and (c) below have been complied with.
- (a) An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme shall be submitted to and approved in writing by the local planning authority prior to the investigation. The investigation and risk assessment shall be undertaken by competent persons and a written report of the findings must be produced. The written report shall be submitted to and approved in writing by the local planning authority. The report of the findings shall include:
- (i) A survey of the extent, scale and nature of contamination.
- (ii) An assessment of the potential risks to human health; property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes; adjoining land; ground and surface waters.
- (iii) An appraisal of remedial options, and proposal of the preferred option(s).

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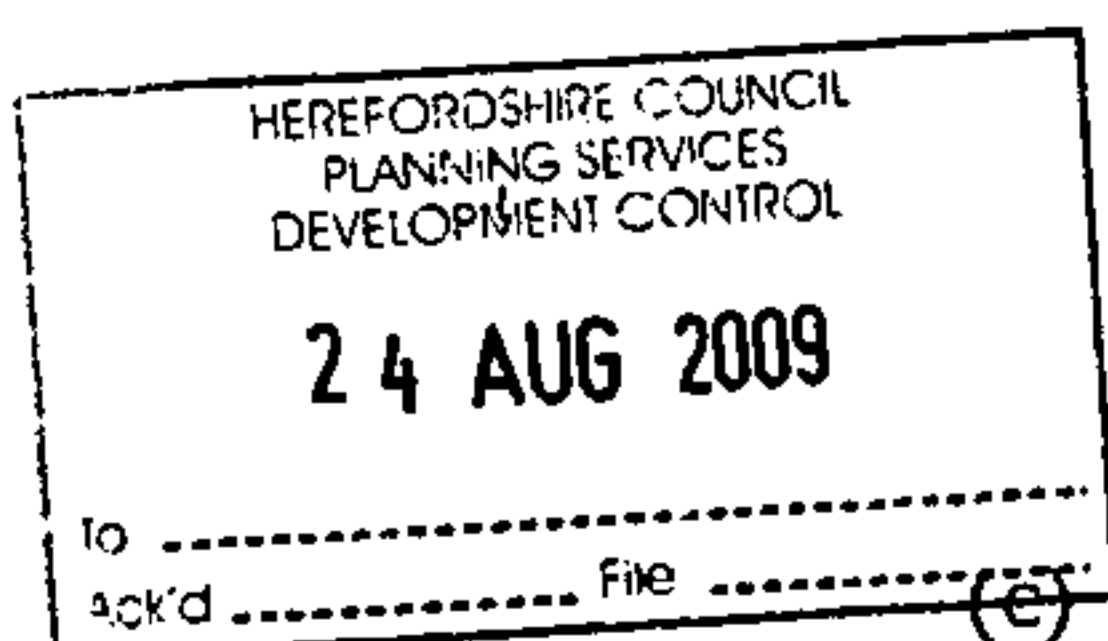
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This shall be conducted in accordance with Defra and the Environment Agency's Model Procedures for the Management of Land Contamination, CLR 11.

- (b) A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property shall be prepared and submitted to and approved in writing by the local planning authority. The scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme shall ensure that the site would not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.



The approved remediation scheme shall be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise approved in writing by the local planning authority. The local planning authority shall be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme a validation report that demonstrates the effectiveness of the remediation carried out shall be produced and shall be submitted to and approved in writing by the local planning authority.

- (d) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it shall be reported in writing immediately to the local planning authority. Development shall be halted on that part of the site affected by the unexpected contamination to the extent specified in writing by the local planning authority. An investigation and risk assessment shall be undertaken in accordance with the requirements of (a), and where remediation is necessary a remediation scheme shall be prepared in accordance with the requirements of (b). Following completion of measures identified in the approved remediation scheme a validation report shall be prepared and submitted to and approved in writing by the local planning authority in accordance with (c).
- (e) A monitoring and maintenance scheme to include monitoring the long-term effectiveness of the proposed remediation and the provision of reports on the same, including a timetable, shall be prepared, submitted to and approved in writing by the local planning authority prior to the occupation of the permitted development. Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the

effectiveness of the monitoring and maintenance carried out shall be produced and submitted in accordance with the approved timetable to the local planning authority for approval in writing. This shall be conducted in accordance with Defra and the Environment Agency's Model Procedures for the Management of Land Contamination, CLR 11.

End of conditions

HEREFORDSHIRE COUNCIL PLANNING SERVICES DEVELOPMENT CONTROL
24 AUG 2009
To
Ack'd File

DOCUMENTS SUBMITTED AT THE HEARING

- Document 1 Planning Committee Report concerning saved UDP policies after March 2010.
- Document 2 Letter from proprietor Hereco, dated May 2009.
- Document 3 Letter from Council to Cavanagh Holdings, dated 16 May 2007, in response to submission about the application from Cavanagh Holdings, dated 14 May 2007.
- Document 4 Petition.
- Document 5 Extract from RICS Building Cost Information Services.
- Document 6 Position with regard to Holmer Trading Estate Tenants, revised 11 June 2009.
- Document 7.1 Extract from title plans showing land owned by Cavanagh Holdings.
- 7.2 Plan showing right of way.
- Document 8 Supplementary Noise Information, Sharps Redmore Partnership, March 2008.
- Document 9 Draft suggested conditions.

PLANS

- Plan A Red line plan, Drawing No.30321_P(0)01A.
- Plan B Proposed Site Access, Drawing No.1910.07D.
- Plan C Masterplan, Drawing No.30321_P(0)004_RevD.
- Plan D Site Survey, Project No.050504, Drawing No.01, July 2005.

