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**Sent:** 28 January 2016 17:31

**To:** Paul Barton

**Cc:** 'Esrich, Paul (ES, Malvern Hills AONB)' (PEsrich@worcestershire.gov.uk); Wade, Michael; Jill.Addis@bblivingplaces.com; Lowe, Sarah; Widdicombe, Robert

**Subject:** 143731/CE - Land at Church Stile Farmhouse, Cradley

Dear Mr Burton,

I refer to your letter dated 20<sup>th</sup> January 2016 and our subsequent telephone conversation.

Earlier today I e-mailed you our formal EIA Screening Opinion (EIA not required).

Nevertheless, in our telephone conversation I did state that I would visit the site myself and relay to you my own professional views with respect to the potential development of the site for residential purposes. Essentially my views reflect those previously expressed to you by Mr Banks but I would go further in stating that I see such fundamental objections that I would not advise that the project be pursued further.

### **Core Strategy / Housing Supply**

The Local Planning Authority are currently of the view that they have a five year housing land supply. Core Strategy policy does allow for some 14% proportionate housing growth in Cradley. Cradley has some 738 households. A 14% proportional growth would amount to some 103 dwellinghouses in the period 2011 to 2031. As I understand it in the period 2011 1<sup>st</sup> April 2014 there were 9 completions and 33 commitments leaving a residual of some 61 dwellinghouses. Since 1<sup>st</sup> April 2014 there have been in excess of 61 commitments including up to 60 dwellings at Pixiefields (P140942/O). Therefore in lay man's terms, I do not see a desperate need to release more land for housing development in Cradley in the foreseeable future.

### **Major Development within AONB & landscape character**

As you will be aware the site to which you refer lies within the Malvern Hills Area of Outstanding Natural Beauty, a national designation.

In my mind the first significant issue is whether the proposal represents a 'Major Development' as you will be aware that paragraph of the NPPF states:-

**“116. Planning permission should be refused for major developments in these designated areas except in exceptional circumstances and where it can be demonstrated they are in the public interest. Consideration of such applications should include an assessment of:**

- the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
- the cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way; and
- any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.”

The issue as to what represents a Major development in terms of paragraph 116 has been the subject of considerable discussion and legal cases. In this regard I must draw your attention to the relevant case law. The Glossary to the NPPF does not include a definition of “major development” and as a consequence, therefore, these words are to be given their ordinary and natural meaning in their context.

In the case of R(Trevone Objectors Group) v Cornwall Council [2013] EWHC 4091 (Admin) (judgment given on 23 December 2013) the objectors sought to quash a grant of planning permission for 12 dwellings in an AONB on the basis that it was ‘major development’ for the purposes of the adopted development plan. They argued, inter alia, that the words “major development proposal” in the local plan should be accorded the definition set out at the time of the local plan's adoption in Article 8(7) of the GDPO. It was common ground that the development in that case fell within that meaning.

However, the Judge concluded:

“[35] In the absence of an express definition of ‘major development proposals’ in the Local Plan, I agree with Mr Brett that whether a proposal is a major development is a matter of

planning judgement to be exercised by the relevant decision maker on a case by case basis. If the Council intended to use a numerical rule for assessing whether developments were 'major developments' under the policy, it would have included one (or subsequently added one to the policy). Such a rule would prevent the Council from using its judgement having regard to all relevant circumstances including the characteristics of the surrounding area. For example, a proposal for 30 properties may be 'major' in a very small village but not major in a city."

[36] In my judgment it would be wrong in law to import the meaning of 'major development' as defined by the Town and Country Planning (Development Management Procedure) Order 2010 ('the DMPO') for the following reasons:

- (a) First, the Council could have included a definition of 'major development' in the policy but decided not to. The Council could have confirmed that the meaning of the term as set out in the DMPO would apply in the context of the policy but it decided not to. The Council was entitled to leave the issue to be determined on a case by case basis and should not be bound by a meaning afforded other legislation merely because it uses the same words.
- (b) Second, the meaning given in the DMPO is not the ordinary meaning in planning law. The definition in Article 2(1) starts 'In this Order, unless the context otherwise requires' and the provisions of the Order are clearly distinct from the provisions of the EIA Regulations. The definition in the DMPO (and previously the Town and Country Planning (General Development Procedure) Order 1995 ('the GDPO')) is the subject matter of that order and does not thus extend to any other policy or legislation.
- (c) Third, when read in the context of the whole policy, I do not consider that 'major development' clearly does not mean 'more than 10 dwellings'.

6. In *Aston v SSCLG* [2013] EWHC 1936 (Admin) the High Court considered a challenge to an appeal decision in which an inspector on appeal had concluded that an application for 14 dwellings in the Surrey Hills AONB did not amount to major development for the purposes of 116 of the NPPF.

The Judge held:

“[90] ..... The NPPF does not define or seek to illustrate the meaning of the phrase “major developments”. Mr Harwood QC points out that in the Town and Country Planning (Development Management Procedure) Order 2010 Article 2 defines major development as development involving any one or more of the following:—

(a) .....

( c ) the provision of dwelling-houses where –

(i) the number of dwelling-houses to be provided is 10 or more; or

(ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c) (i);

(d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or

(e) development carried out on a site having an area of 1 hectare or more.”

[91] Mr Harwood QC points out, too, that this definition appears or is incorporated into other regulatory provisions. That being so, he submits that the term “major development” should be given the same meaning wherever it appears in regulations or planning policy documents and, consequently, the proposal to erect 14 dwelling-houses upon the appeal site constituted major development.

[92] The Inspector declined to treat the application before him as major development. His view was that the development of 14 dwellings could not properly be described as major “by any

published or even common sense criterion” – see paragraph 39 of the decision letter.

[93] Despite Mr Harwood's persuasive submissions I do not accept that the phrase “major development” should have a uniform meaning wherever it may appear in a policy document, procedural rule or Government guidance provided the context is town and country planning and, I presume, no contrary meaning is provided in the policy document, rule or guidance. Rather, it seems to me much more appropriate that the term should be construed in the context of the document in which it appears. In my judgment the context of the NPPF and paragraphs 115 and 116 in particular militate against the precise definition which Mr Harwood QC suggests should attach to the phrase “major development”. The word major has a natural meaning in the English language albeit not one that is precise. In my judgment to define “major development” as precisely as suggested by Mr Harwood QC would mean that the phrase has an artificiality which would not be appropriate in the context of national planning policy. As Mr Kolinsky points out in his skeleton argument the Regulations in which the phrase major development is defined are procedural in nature as is the guidance contained within Circular 02/2009 which is also relied upon by Mr Harwood QC – a point

with which Mr Harwood QC did not disagree. I do not consider it appropriate to import a definition which may be sensible and desirable in Regulations or guidance concerned with procedural matters into a document intended to form a detailed policy framework. 94I am satisfied that the Inspector made no error of law when he determined that the meaning of the phrase major development was that which would be understood from the normal usage of those words. Given the normal meaning to be given to the phrase the Inspector was entitled to conclude that the Third Defendant's application to erect 14 dwelling-houses on the appeal site did not constitute an application for major development.”

It is therefore clear, as a matter of law, that in the NPPF, because the government did not see fit to define the term ‘major development’, the term’s meaning in paragraph 116 is not to be ascertained by any numerical value, and whether a particular proposal, such as we are dealing with here at the site, is ‘major development’ is a matter of fact and degree for the decision-maker. In the first instance the decision-maker is the Council, but

in reaching a conclusion on this issue, the Council will need to have regard to the way the Secretary of State's Inspectors have considered the issue on appeal.

Indeed the National Planning Practice Guidance states:-

*“Whether a proposed development in these designated areas should be treated as a major development, to which the policy in paragraph 116 of the Framework applies, will be a matter for the relevant decision taker, taking into account the proposal in question and the local context.”*

As noted above, proposals of 12 and 14 dwellings in Cornwall were found not to constitute major development in an AONB. In a recent appeal at Tetbury, Gloucestershire (in the Cotswold AONB) the Secretary of State agreed with his Inspector that a 39 dwelling scheme was not to be regarded as major development.

The Tetbury Inspector (with whom the Secretary of State agreed) also said:

“[13.41] ... this current proposal does not constitute major development within the AONB. The advice of paragraph 116 [of the NPPF] (which sets out the “exceptional circumstances” in which permission for such development might be granted) is therefore not applicable here.

[13.42] Paragraph 115 is however highly relevant, and states that great weight should be given to conserving landscape and scenic beauty in AONBs, which have the highest status of protection  
.....”

10. So, it is also clear that simply because a proposal in an AONB is not ‘major development’ does not mean that the status of the AONB is irrelevant; the weight to be given to any harm to the landscape and scenic remains ‘great’. What there is not, however, for development which is not ‘major’ is a need to show “exceptional circumstances”.

The conclusion that I draw is that context is everything. A good example in terms of Herefordshire would be that in terms of para. 116 of the NPPF I may not regard a development of 30 houses on the edge of Ross-On-Wye in the Wye Valley AONB as being major but I may regard

a development of 30 houses in Cradley(within the Malvern Hills AONB) as major.

In the circumstance of this site in its specific context I am of the view that the proposal is major. As a consequence I see a fundamental conflict with para. 116 of the NPPF.

**Therefore my view is that:-**

- 1) The proposal in the context of this specific landscape represents Major Development within an Area of Outstanding Natural Beauty. As a consequence paragraph 116 of the NPPF is clear that any such development should be refused unless there are exceptional circumstances. It is not considered that there are any overriding material planning considerations or exceptional circumstances. There is not any overriding national need and such developments can clearly be accommodated outside of Areas of Outstanding Natural Beauty.**
- 2) Notwithstanding 1) above the proposal primarily by virtue of its scale would dilute / erode the prevailing landscape character within this part of the Malvern Hills area of Outstanding Natural Beauty contrary to policies SS6 and LD1 of the Herefordshire Local Plan Core Strategy 2011-2031.**

In the light of the above, I would not advise the submission of an application. Such an application is likely to be recommended for refusal by Officers. I must stress that it is evident to me that our own Landscape Officer (and the Malvern Hills AONB Unit (Paul Esrich) are essentially of the view that this is the wrong locality for *any* such large scale and as such there is an “in principle” objection.

### Other Matters

Notwithstanding he above I would make a few further observations.

The proposal appears to straddle parts of two fields. It is not confined to one field. There does not appear to be regard to the historic field patterns / boundaries.

Cradley is essentially a divided village with the “old part” centred around the Church and the “new part” centred along the B4220. They have distinct characters. The “old part” has a Conservation Area and a series of listed buildings. It is certainly the more sensitive area. To the east of the “old part” of the village including the site is the Malvern Hills AONB (a national designation). Furthermore, the eastern side of the road hereabouts is of a totally different character to the western side.

In my mind when I stand on the application site I have a real and genuine sense of open countryside and the character and beauty of the AONB.

The public right of way through the site is an important and valuable route. Your proposals would obstruct the legal line. When one progresses down this footpath in a southerly direction one appreciates the listed Church Stile Farmhouse and later the Church (also listed). The currently open undeveloped agricultural fields provide the setting to Church Stile Farmhouse, the wider setting to the Church and to the Conservation Area. In my mind built development upon this land in the manner envisaged would detrimentally affect the setting of those listed buildings and the Cradley Conservation Area.

In my mind the emerging proposal pays no regard to the prevailing character, pattern and grain of development (including depth).

Therefore I consider that **the proposal would harm the setting of the listed Church Stile Farmhouse, Church and Conservation Area contrary to policies SS6 and LD4 of the Herefordshire Local Plan Core Strategy 2011-2031.**

## **Conclusion**

In the light of the above and the previous pre-application advice supplied to you on 20<sup>th</sup> April 2015, I would not encourage the preparation and submission of a planning application. However, if your client chooses not to follow this advice and progress the matter further I would advise that any application should be made in **full** (not outline) so that the aforementioned matters can be evaluated in detail.

In addition to the normal forms, plans, fee and design & access statement I would expect any application to include:-

- A full topographical survey

- A BS5837:2012 tree survey and qualitative assessment. This must be prepared by a suitably qualified Arboricultural Consultant (i.e. member of the Arboricultural Association - <http://www.trees.org.uk/>)
- A full LVIA prepared by a suitably qualified Landscape Consultant (Member of the Landscape Institute)
- An ecological assessment (including any further survey work that may be required if protected species are found to be likely)
- A Transport Assessment – this should include a traffic survey including a 7 day 24 hr speed survey that establishes the 85<sup>th</sup> percentile speeds – thus informing splays)
- Clarity as to the extent of hedgerow removal that would be required (if any) to create the requisite visibility splays;
- Flood risk assessment
- Drainage strategy (foul & surface water)
- A heritage assessment

I hope this provides the clarity and degree of advice required to make informed decisions.

If your client decides to pursue the project further, I would encourage further pre-application discussions.

Regards

Roland Close

Principal Planning Officer

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