

POST COMMITTEE COMPLIANCE REPORT

Planning Ref: 24/01444/FP	
Site Address: Land Between Huntsridge And Ashwell House 5, High Street, Ashwell, Hertfordshire	
Proposal: Erection of 14 dwellings (including affordable housing) including creation of access from Ashwell Street, footpath link to Lucas Lane, public open space and soft and hard landscaping, biodiversity enhancement and, associated infrastructure on land north of Ashwell Street, Ashwell.	
Committee date	18 th September 2025
Date final draft S106 posted on website	TBC
Case Officer	Alex Howard

1. Purpose of report

- 1.1. The propose of this report is to provide an update to the Development and Conservation Manager on any amendments to the proposed conditions and planning obligations pursuant to those agreed by the Planning Control Committee (PCC), and to demonstrate that the Section 106 Heads of Terms agreed by PCC have been captured in the final S106 agreement or similar mechanism.
- 1.2. This report also considers whether there have been any relevant material considerations arising between the PCC meeting and the date of preparing this report, which could have led PCC Members to a different planning decision, and which would require reconsideration at PCC.
- 1.3. This report summarises the relevant issues raised by representations received on the application since the PCC meeting. Any representations that raise new planning issued are addressed in this report.
- 1.4. The report also lists any relevant changes to legislation, planning policies and guidance since the assessment of the application.

2. Recommendation

- 2.1. That application 24/01444/FP be GRANTED planning permission subject to the following matters:
 - a) The completion of a suitable legal agreement in line with the agreed Heads of Terms.
 - b) An agreement to an extension of time to the statutory determination date to allow for a) to occur.
 - c) The conditions and informatives set out below.

The following written update dated Tuesday 16th September 2025 was circulated to members of the Planning Control Committee and is therefore relevant to the above recommendation:

- 1) Following correspondence with the applicant on the proposed conditions submitted with this recommendation, the following amendments are put forward for consideration:

- Condition 6 is proposed to be amended as follows to incorporate the correct document reference:

“6 - Prior to the first occupation of the development hereby permitted the vehicular access shall be completed and thereafter retained as shown on drawing number **190-TA10 rev N (of Transport Note rev D November 2024 by Martin Andrews Consulting Ltd)** in accordance with details/specifications to be submitted to and approved in writing by the Local Planning Authority in consultation with the highway authority. Prior to use appropriate arrangements shall be made for surface water to be intercepted and disposed of separately so that it does not discharge from or onto the highway carriageway.

Reason: To ensure satisfactory access into the site and avoid carriage of extraneous material or surface water from or onto the highway in accordance with Policy 5 of Hertfordshire's Local Transport Plan (adopted 2018).

- Condition 8 is proposed to be amended as follows to incorporate the correct document reference:

“Notwithstanding the details indicated on the submitted drawings, no on-site works shall commence until a detailed scheme for the off-site highway improvement works as indicated on drawing number **190-TA10 rev N (of Transport Note rev D November 2024 by Martin Andrews Consulting Ltd)** including surfacing, traffic calming and pedestrian/cycling facilities on Ashwell Street have been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. B) Implementation / Construction Prior to the first use of the development hereby permitted the improvement works referred to in part A of this condition shall be completed in accordance with the approved details.

Reason: To ensure construction of a satisfactory development and that the highway improvement works are designed to an appropriate standard in the interest of highway safety and amenity and in accordance with Policy 5, 13 and 21 of Hertfordshire's Local Transport Plan (adopted 2018).

- Condition 13 is proposed to be omitted from the recommendation, given that the contents of this condition are covered by the contents of Condition 4 (North Herts Ecologist).

- Condition 14 is proposed to be omitted from the recommendation, given that the contents of this condition are covered by the contents of Condition 9 (Hertfordshire Highway Authority).

- As a result, the proposed conditions will need to be re-numbered to take account of the omitted Conditions 13 and 14.

2) An additional Condition is also recommended to cover the installation of a fire hydrant prior to occupation of the development, which is recommended as follows:

- Prior to the occupation of the development hereby permitted, a fire hydrant shall be installed at no cost to the County Council, or fire and rescue service.

Reason: to ensure that there is adequate water supplied available for use in the event of a fire.

3) Following receipt of an email from the North Hertfordshire Archaeological Society on the 11th September 2025, concerns were raised over the considered inadequacy

of the proposed archaeological condition recommended in the report. There is an error in my report at 4.3.46, where the County Councils Archaeological Team have in fact responded formally to this application recommending as follows:

“For the north and eastern parts of the site, an open area full excavation of the area of new housing and access secured by archaeological conditions. However, for the western part of the site we require further information about the impact of these proposals, including the possibility that this area will require fencing off during site preparation and construction to conserve the heritage assets in that part of the site. The precise nature of the preservation in situ and/or mitigation required in this western area of public open space will need to be informed by the provision of detailed information regarding the numbers and precise location for the tree planting, and the methodology for the creation of the wildflower meadow as well as the aforementioned protection of this area during development. When we receive this information, we will be able to advise you fully”.

Further to continued correspondence with the Hertfordshire County Council Archaeological Officer, a further formal response has been submitted on the 11th September 2025, recommend the following conditions: “First condition: No demolition/development shall take place/commence until an Archaeological Written Scheme of Investigation has been submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of archaeological significance and research questions; and:

1. The programme and methodology of site investigation and recording
2. The programme for post investigation assessment
3. Provision to be made for analysis of the site investigation and recording
4. Provision to be made for publication and dissemination of the analysis and records of the site investigation
5. Provision to be made for archive deposition of the analysis and records of the site investigation
6. Provision to be made for public outreach and interpretation
7. Nomination of a competent person or persons/organisation to undertake the works set out within the Archaeological Written Scheme of Investigation.

Second condition: The demolition/development shall take place/commence in accordance with the programme of archaeological works set out in the Written Scheme of Investigation approved under condition (First condition)

Third condition: The development shall not be occupied/used 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 (First condition) and the provision made for analysis and publication where appropriate.”

The current recommended Condition 16, which covers an archaeological watching brief for this site, was copied from the Inspectors decision notice for the previous application at this site allowed on appeal under ref: 22/03094/FP. Due to a transfer of Officers dealing with the previous application, the formal response from HCC Archaeological Team was not received and was therefore not sent to the Inspector

considering the application under the appeal. However, during the course of the appeal, the Council did present the Inspector with draft conditions for archaeological matters which were largely identical to that recommended by HCC. The Inspector considered these draft conditions and sought to enforce the watching brief condition instead.

The North Herts Archaeological Society have requested that a more robust method for archaeological evaluation take place, in accordance with the formal response from HCC's Archaeological Team.

Officers consider that a more robust approach to archaeological evaluation is considered acceptable in this instance, notwithstanding the level of evaluation covered under Condition 8 of the Inspectors appeal decision for the previous scheme. It is therefore recommended that the proposed Condition 16 is replaced by the above 3 conditions to ensure full regard is had to archaeological matters and interests on this site.

4) Following further correspondence with the County Councils Growth and Infrastructure Team since the publication of the report, some errors were noted on the most recent formal response dated 16th July 2025 given the number of dwellings/bedrooms proposed, as well as some omissions and incorrect references to contributions and monitoring. An amended formal response has been received on the 10th September 2025 which has sought to correct these errors, which has seen slight amendments to the requested contributions from HCC. The Heads of Terms table has been updated and agreed in writing by the applicant, and this table is set out below with the amended figures cited in red where appropriate. This table forms part of the draft S106 agreement posted on the public access as of Wednesday 11th February 2026.

3. Background

3.1. This application was reported to Planning Control Committee with a resolution to grant permission subject to the measures set out under section 2.1 of this report. The Planning Committee voted to grant permission and since the meeting, Officers have been working to ensure compliance with the recommended resolution.

4. Condition amendments

4.1. The Planning Committee agreed to Officers recommended amendments to conditions and details, which related to Highways, Ecology, Fire Hydrants, Archaeology, and the s106 Heads of Terms.

5. Representations received by interested parties and statutory consultees (Post PCC)

5.1. No response have been received by any consultees post Planning Committee.

6. Planning Policies and Material considerations

6.1. This report considers whether the application:

- (a) Can be determined (by issuing a decision notice) based upon the existing resolution of PCC; or
- (b) Whether there have been any material changes in circumstances or new planning issues that would or could lead to the PCC reaching a different conclusion from that reached.

- 6.2. The Council is required to discharge its statutory duty under s70(2) of the Town and Country Planning Act (as amended), and in doing so the Council must consider whether to grant planning permission or not, considering all relevant material considerations at the time of issuing a decision notice on a planning application. Case law – Kides, R (on the application of) v South Cambridgeshire District Council & Ors [2002] EWCA Civ 1370, is relevant given that a period has passed following the resolution of the PCC to grant planning permission.
- 6.3. In summary the Kides case assessed the nature and extent of a Council's duty under Section 70(2) of the Act. The appellant's contention was based on a duration of more than five years passing between the Council's decision, in principle, to grant planning permission and the issuing of the decision notice; and that several material changes in circumstances had taken place during that period. The permission to apply for judicial review was refused and the appeal dismissed at the Court of Appeal. This was on the basis that the Council had not failed in its duty to 'have regard to' material considerations when issuing the decision. The case provides guidance to local planning authorities in considering whether new or emerging planning consideration would result in a requirement to refer back to planning committee. In the Kides case, it was found that not in every case where a new material consideration arises, after passing a resolution, but before the issuing of a decision notice, that there has to be referral back to committee.
- 6.4. The judgement in Kides indicated that the Council's duty is discharged if, at the date on which the decision notice is issued, the Authority has considered all material considerations relating to the application and has done so with the application in mind. In practical terms, therefore, where since the passing of the resolution, a new factor has arisen of which the delegated officer is aware, and which might rationally be regarded as a 'material consideration' the delegated officer should err on the side of caution and refer the application back to PCC for specific reconsideration, in light of that new factor.
- 6.5. The application should only proceed for determination if the delegated officer is satisfied (a) that the authority is aware of the new factor, (b) that it has considered it with the application in mind, and (c) that on a reconsideration the authority would reach the same decision. In the Kides case the Council did not accept that any of the factors were justified or significant objections at all, let alone ones, which taken together, would lead to a different result. The judge held that the Council's decision would have been the same.
- 6.6. Since the resolution by PCC the following changes have occurred:

No changes to the proposal outside of those matters required to comply with the resolution. Any correspondence since Planning Control Committee has been focused on the drafting of the S106 agreement between the applicant, HCC and NHC. The draft s106 agreement has been circulated and has been published on the public access.

7. Planning Obligations – S106 Heads of Terms

- 7.1. The Heads of Terms presented to the PCC contained headlines summarising the proposed content of the detailed Section 106 Legal Agreement. In the intervening

period between the meeting of PCC and this report, detailed s106 drafting has been undertaken, translating the headlines into detailed clauses, triggers and contributions.

7.2. The final S106 is in accordance with the Heads of Terms.

8. Conclusion and Recommendation to the Development and Conservation Manager

- 8.1. **Officers consider that no material considerations have arisen since PCC that would have resulted in a different recommendation from the PCC or would have affected the determination of the PCC.**
- 8.2. **It is considered that the Council's duty has been discharged in this case, as that the date at which the decision notice is to be issued, the authority has considered all material considerations affecting the application and has done so with the application in mind. Since the passing of the resolution, all new factors which might rationally be regarded as material considerations or the purposes of Section 70(2) of the Act, have been duly considered and the delegated officer is fully aware of their relevance to the decision-making process. On further consideration taking account all of the above, officers have concluded that the authority would reach the same decision.**
- 8.3. **The final S106 Legal Agreement is considered to accord with the Heads of Terms, and therefore it is recommended that the Development and Conservation Manager agree the details of the Section 106 Agreement for execution and issue the decision notice.**

Recommending Officer and Date

Alex Howard

11th February 2026

Authorising Officer and Date



Shaun Greaves

11th February 2026