
Appeal Decision

Hearing held on 8 May 2014

Site visit made on 8 May 2014

by David Wildsmith BSc(Hons) MSc CEng MICE FCIHT MRTPI

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

Decision date: 6 June 2014

Appeal Ref: APP/J1860/A/14/2214624

Land off A4104, Upton-upon-Severn, Worcestershire, WR8 0PB

- 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 Tingdene Marinas Ltd against the decision of Malvern Hills District Council.
 - The application Ref 13/00431/OUT, dated 28 March 2013, was refused by notice dated 21 October 2013.
 - The development proposed is the erection of up to 70 residential units.
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Decision

1. The appeal is allowed and outline planning permission is granted for the erection of up to 70 residential units on land off the A4104, Upton-upon-Severn, Worcestershire, WR8 0PB in accordance with the terms of the application, Ref 13/00431/OUT, dated 28 March 2013 subject to the conditions set out in the Schedule at the end of this decision.

Application for costs

2. At the hearing an application for costs was made by Tingdene Marinas Ltd against Malvern Hills District Council. This application is the subject of a separate Decision.

Procedural and preliminary matters

3. The application was submitted in outline with only the means of access to be determined at this stage.
4. The Council refused planning permission for 2 reasons which, in summary, related to highway safety concerns and the absence of a legal agreement to secure various financial contributions. However, prior to the hearing Council Officers met with representatives of both the appellant and Worcestershire County Council (WCC) as local Highway Authority (HA) and, as a result, the HA decided to withdraw its objection to this proposal. In turn the Council subsequently withdrew its first reason for refusal, although objections on various highway safety matters were still maintained by a number of interested persons.
5. In addition, shortly before the hearing the appellant submitted a draft unilateral undertaking, made under S106 of the Town and Country Planning Act 1990, as amended, with a finalised, signed version handed in at the hearing. This was aimed at addressing the Council's second reason for refusal and I deal with this unilateral undertaking later in this decision.

6. A Statement of Common Ground (SoCG) in respect of housing matters was agreed between the Council and the appellant in which the Council accepts that the erection of up to 70 residential units on the appeal site is acceptable in principle. The Council also acknowledges that it cannot demonstrate a 5-year supply of deliverable housing land and agrees that in accordance with paragraph 49 of the National Planning Policy Framework ("the Framework"), relevant development plan policies for the supply of housing should therefore not be considered up-to-date.
7. In such circumstances, housing applications should be considered in the context of the presumption in favour of sustainable development, set out in paragraph 14 of the Framework. This makes it plain that where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. I have considered the proposed development on this basis.

Main issues

8. In view of the above points I consider the main issues in this case to be:
 - whether the proposed development would provide safe and satisfactory access arrangements; and
 - whether the proposal would provide the necessary, justified financial contributions to offset the impacts of the proposed development.

Site description and planning background

9. A further SoCG covering general planning issues explains that the appeal site is an irregular-shaped piece of land, comprising some 2.98 hectares to the north-east of the existing Upton Marina. It lies to the south of the A4104 and to the west of the Beeches residential estate at Holly Green and is predominantly scrubland, with mature trees and hedgerows on all site boundaries. Site access is currently taken off the A4104 by means of a road which serves the adjacent marina development. There is a second, currently unused access from the A4104 through an established haul route. Upton-upon-Severn town centre lies about 800m to the south-west of the site and is reached by the A4104, which crosses the River Severn.
10. In 2004 outline planning permission¹ was granted, subject to conditions, for an extension to the existing marina basin to accommodate boats and house boats, including the redevelopment of the marina buildings and the development of further holiday/leisure buildings in broadly the same area as the appeal site. Applications for the approval of reserved matters, to include the erection of 42 holiday lodges of up to 1½ storeys in height, were refused by the Council but were subsequently approved at appeal in 2008. This planning permission has been implemented as the marina basin has been partially excavated.
11. One of the conditions of this outline planning permission required the provision of an emergency access onto the A4104, through an existing lay-by². The location of this emergency access is the same as that sought through the current appeal proposal.

¹ Reference 02/00390/OUT

² The condition in question referred to the emergency access connecting to the A4104 by means of a lay-by, but interested persons who attended the hearing maintained that it is not a lay-by but rather a short length of service road, serving a small number of residential properties. I am satisfied that this is an appropriate and more accurate description, and have therefore used it throughout this decision.

Reasons

Access arrangements

12. The area of the appeal site where the residential units are proposed to be located lies within Flood Zone 1, and there is no objection on flood risk grounds to its development for housing. However, the proposed access road, which would link to the A4104 by following the alignment of the existing haul route, would cross land within Flood Zones 2 and 3 and would therefore be at high risk of flooding. But the general planning SoCG makes it plain that the Environment Agency (EA) has no objection to the appeal proposal, subject to an appropriate emergency access being provided. It also indicates that both the EA and the South Worcestershire Land Drainage Partnership are satisfied with the appellant's Flood Risk Assessment (FRA) and drainage strategy for the proposal.
13. There was, however, much discussion at the hearing concerning the proposed methodology for controlling access to and from the site in times of flooding. The HA has no concerns regarding the location and standard of the proposed main access, and submitted drawings show that visibility splays, appropriate for this stretch of 40mph road could be created within land controlled by the appellant. Although this was disputed by some interested persons I see no reason, based on my own observations on site, why an acceptable junction could not be provided at this location in compliance with necessary and appropriate standards.
14. However, despite being content with the proposals for the main access, the HA initially recommended that planning permission be refused as it was concerned that the location of the proposed emergency access would result in vehicles waiting within the carriageway in order to undertake turning movements, and considered this would be harmful to highway safety. It took this view because of the close proximity of the proposed emergency access to bends in the A4104, the general alignment of this road, and traffic flows along it.
15. I saw at my site visit that visibility is substandard to the west, for vehicles exiting the western end of the service road, and I can therefore appreciate the HA's initial safety concerns, regarding potential vehicle conflicts, which were echoed by many interested persons. Indeed I have noted that a triple fatal accident occurred in 2006 at this location, although I have also had regard to the agreement in the SoCG relating to transport planning and highways matters, that no clear accident pattern or trend was found in the most recent 5 year period (2008-2013) along this local stretch of the A4104.
16. Notwithstanding its earlier concerns, a Highway Position Statement submitted to the hearing makes it clear that following further discussions with the appellant the HA accepts that the secondary/emergency access could be satisfactorily controlled and would only be open when the A4104 past the main site entrance is flooded and closed to traffic. As a result the HA withdrew its objection to the proposal as it was satisfied that any vehicle wishing to enter or leave the site by this emergency access would not be in conflict with traffic travelling on the A4104.
17. However, interested persons maintained that as the existing haul road lies at a lower level than the A4104, there could be situations when the main access to the site is flooded, necessitating the use of the emergency access, but traffic is still flowing on the A4104. I can understand these concerns, especially in view of the many photographs submitted in evidence to demonstrate this point. But the appellant confirmed, at the hearing, that the primary access route would be

raised, such that no point along it would be lower than the lowest point on the A4104, meaning that this access would always be open when the A4104 is open.

18. Indeed, this is made clear in the Council Officer's report to Committee, although it is not immediately apparent from the information submitted to support the planning application. That said, it is clear from other evidence placed before me, including an email from the appellant to the HA dated 17 September 2013, copied to the Council, that the access road would be raised to run at the same level as the 1 in 100 year flood bund required for the approved marina extension. As such, this information was clearly available to the Council before it determined this application in October 2013. Accordingly, I see no reason to dispute the appellant's position on this matter, especially as the engineering details of the main access route, including levels along it, could be controlled by condition if planning permission were to be granted.
19. Raising the access road would impact upon flood storage capacity unless compensatory works were undertaken elsewhere, but the appellant explained that such compensatory works could be carried out on land to the west of the proposed residential units, but still within its control. In view of all the above points I am satisfied that there would be no need for the emergency access to be brought into use unless the A4104/main access road was closed.
20. Operation of the emergency access would be by means of a self-closing flood barrier which would be fitted across the main access road and would be activated automatically, as flood water rises to an agreed, pre-set level. At the same time, bollards at the emergency access would be lowered, using telemetry. The control system for the operation of the barrier and bollards would therefore be fully automated, with the appellant confirming that the system would require minimal maintenance, even though it may remain unused for many years at a time. No firm evidence was submitted to cause me to dispute this point, and I understand that a similar system has already been installed locally at Ledbury Rugby Club.
21. The Council and the HA are satisfied that this would be a reliable and workable system and I see no reason to doubt its effective operation, as a matter of principle. Moreover, as full details of the system, to include such matters as the positioning of the necessary equipment, the flood levels which would trigger the operation of the system, and a full maintenance regime could be controlled through the imposition of an appropriate planning condition, I am satisfied that the system would be workable in practice. As such, it would be possible to ensure that the emergency access would only be open and available for vehicular use when the main access to the site is closed.
22. I acknowledge the difficulties of guaranteeing that any such control system would be 100% reliable, but by its very nature the emergency access would only need to be brought into operation on an infrequent basis. In view of this, and because of the safeguards which could be secured through the condition referred to above, I consider that the proposed control system would be acceptably reliable and effective. Whilst interested persons pointed out that some drivers disregard "road closed" signs, such that there could still be some vehicles travelling eastwards on the A4104 past the emergency access at times of flooding, the fact that irresponsible drivers may choose to ignore warning signs is not a good reason to give weight to such matters in the overall planning balance.
23. Interested persons who attended the hearing, including a representative of Ripple Parish Council, also expressed concern that full details of this control mechanism

had not been available to Council Members at the time the planning application was considered by the Council's Development Management Committee. However, whilst this may be the case, the Officer's report made it quite clear that the access at the service road was intended to be for emergency use only, during flood events when the primary entrance road may be cut off due to flooding.

24. In any event, Members refused planning permission on the basis of the HA's recommendation, supported by their own Officers, and in my view the question of whether or not Members knew the full detail of any proposed control mechanism is not something which goes to the heart of this appeal. It remains the case that the HA has subsequently had the opportunity to consider this matter in detail, is content that the proposed system would be workable and has withdrawn its objection. Moreover, sufficient detail was available at the time of the hearing for me to be able to reach a reasoned decision on this matter.
25. I have noted the concerns of interested persons that at times of severe flooding the service road is used as a key location for vehicles to park and manoeuvre, and that it was used in the recent February 2014 flooding event as the location where the Army co-ordinated a shuttle service to get people to and from Upton. I fully accept that at such times the service road and the area around it may well become very busy and congested. However, such events are infrequent and of relatively short duration. This is not to under-estimate their impact when they do occur, but subject to careful and reasonable management I am not persuaded that they would cause unacceptable difficulties either for the use of the emergency access, or for those dealing with the consequences of flooding.
26. With regard to other highways and transport matters raised by interested persons, it is clear to me that despite concerns about the accuracy and validity of the submitted Transport Statement, it had been properly prepared in accordance with current, relevant guidance. Moreover, although I have noted the contention that an emergency access which was deemed acceptable to serve 42 holiday chalets could not also be assumed appropriate to serve up to 70 permanent dwellings, no firm evidence has been placed before me to demonstrate that a junction of this standard would not be fit for purpose for the appeal proposal. In any case, the HA has not raised an objection in this regard and I have already noted that this access would only be in use on specific, infrequent occasions. Because of this I am not persuaded that any unacceptable problems would arise.
27. As part of the proposal a route for pedestrians and cyclists would be available through the appeal site and adjacent Upton Marina, providing a largely traffic free/lightly trafficked route between the Holly Green/Ryall area and Upton-upon-Severn for such users. I acknowledge that no specific pedestrian or cyclist crossing points would be provided on the A4104 but I saw at my visit that there is an existing central refuge, providing crossing opportunities with reasonable visibility, close to the eastern end of the service road. Overall, I regard this proposed route through the development to be a clear benefit of the proposal.
28. Drawing all the above points together, I conclude on this first issue that the proposed development would provide safe and satisfactory access arrangements. Accordingly I find no conflict with Policy DS3(i) of the adopted Malvern Hills District Local Plan which, amongst other matters, requires the local road network to be capable of safely accommodating the type and scale of traffic likely to be generated by a development without undue environmental consequences. Moreover, in light of the points already referred to, I find no conflict with that part

of paragraph 32 of the Framework which requires development proposals to take account of whether or not safe and suitable access can be achieved for all people.

The unilateral undertaking

29. The Council's second reason for refusal maintained that the absence of a legal agreement to secure financial contributions, and the provision of affordable housing units in perpetuity, put the proposal at odds with various Local Plan policies, Supplementary Planning Documents and Supplementary Planning Guidance. Heads of Terms for a legal agreement had been submitted with the planning application, but no planning obligation was finalised until the day before the hearing, when a Section 106 unilateral undertaking was completed.
30. This undertaking makes provision for an Education Contribution; a Recreation Contribution or the provision of On-Site Open Space; Affordable Housing Units; a Pedestrian and Cycling Links Contribution; and a Worcester Transport Strategy (WTS) Contribution. The appellant accepts that the first 4 of these 5 contributions arise directly from the proposed development and are fairly and reasonably related in scale and kind. As such the appellant is content that they would accord with Local Plan policies DS18, CN2 and CN12 dealing respectively with Planning Obligations, Affordable Housing and Public Open Space, and also with the requirements set out in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 and paragraph 204 of the Framework. I share that view.
31. However, insofar as the contribution towards the WTS is concerned, the appellant has included it within the unilateral undertaking but has conditioned the undertaking such that this contribution will only be paid if it is shown to be justified, based upon my conclusions on this matter. In this regard the appellant has drawn attention to a recent appeal decision relating to the former Ronkswood Hospital Site in Worcester³, in which that Inspector concluded that a planning obligation to secure a contribution towards the WTS would not meet the tests in CIL Regulation 122, and that in that case there was no adopted development plan policy that would support such a contribution. The Council has challenged this decision, but no ruling on this matter is as yet available.
32. Notwithstanding this point, it seems to me that circumstances in the current appeal are somewhat different to this earlier case. Firstly, although no development plan policy relating specifically to transport was cited in the Council's reason for refusal, the supporting text to Local Plan Policy DS18, which was referred to, makes it clear that circumstances may arise where it is appropriate to seek contributions for small-scale developments, where their cumulative impact would place pressure on existing services and infrastructure. The need to work towards sustainable development is noted as being central to the Local Plan's aims, and it is further noted that the range of planning obligations sought may include measures to enable the provision of transport infrastructure and highway improvements which support the increased use of public transport, walking and cycling. To my mind this policy gives general support to the HA's approach with regards to funding for the WTS, which is a key element of the formally adopted Local Transport Plan.
33. Secondly, whilst I am not aware, in detail, of the evidence put to the Inspector in the Ronkswood Hospital case, I have found the detailed evidence put to me by the HA persuasive. In particular the "WTS Contribution Justification" (WTSCJ)

³ Reference APP/D1835/A/13/2202841

document presents a well-considered and reasoned justification for developments to help fund necessary transport measures to mitigate problems which would arise from the cumulative impact of development up to the year 2026.

34. Finding a way to deal appropriately and fairly with such cumulative impacts will always be challenging. But in my assessment the formula employed by the HA is a reasonable approach to determining an appropriate level of contribution. To this end it uses the standard and generally accepted TRICS⁴ database to calculate the likely traffic generation from developments, which is then factored on a case by case basis to determine the likely impact within the Worcester Transport Network area. In addition the WTSCJ document details a range of relatively specific highway and transport improvements, including improvements affecting Key Corridors such as the approaches to Worcester from the south, likely to be used by traffic generated by the appeal proposal.
35. For these reasons I consider that as a matter of principle, a contribution towards the WTS is CIL compliant. This matter has, however, been made unnecessarily complicated by what the HA acknowledged, at the hearing, to be a genuine mistake regarding its requested level of contribution. This has arisen because the HA has sought a contribution based on the maximum number of 70 dwellings, proposed through this proposal, whereas the correct approach should have been to provide some flexibility to accommodate the situation of a lower number of dwellings being sought at the reserved matters stage. I return to this matter later in this decision, when I discuss the matter of planning conditions.
36. Notwithstanding the detail of any contribution towards the WTS which I discuss later, I consider that the requested contributions are all justified, and that they all accord with the requirements of CIL Regulation 122 and paragraph 204 of the Framework. Accordingly the contributions can be taken into account in this appeal, satisfactorily addressing the Council's reason for refusal on this matter.

Other matters

37. I have noted the concerns expressed by interested persons that the proposed development would close the gap between Holly Green/ Ryall and Upton-upon-Severn, but it seems to me that there is no material difference in the site coverage for the current proposal and the land-take for the approved holiday chalet scheme. In fact the current proposal would not extend built form as far south as the already approved development.
38. I have also noted those comments from interested persons which argue that the site is not an appropriate location for a development of this size; that there are only limited facilities in Holly Green/Ryall to serve such a development; and that there is no local need for 40% affordable housing to be provided. However, the appeal site is within close proximity to the facilities and services within Upton-upon-Severn, and the SoCG on general planning matters makes it plain that it is considered to lie in a sustainable location, accessible by a variety of modes of transport and well located to provide sustainable growth to Upton.
39. Other points agreed in the SoCG are that the proposal would bring economic benefits to the area, delivering homes in proximity to jobs and providing short-term employment opportunities during construction. The development would also provide much needed homes including affordable homes, for which the Council

⁴ TRICS: Trip Rate Information Computer System

acknowledges there is a clear need over the district as a whole. In addition, the proposal would provide opportunities for cycle and pedestrian access through the site, promoting connectivity to the wider area. In view of these points I am satisfied that the proposal would accord with the 3 dimensions of sustainable development, detailed in paragraph 7 of the Framework.

40. I consider that concerns about flood risk and the likely impact of flooding on future occupiers of the proposed development have been satisfactorily addressed in the FRA submitted with the application and the subsequently submitted "Flood Management Strategy" dated December 2013. Although concerns were also raised regarding the effect of raising the main site access on flood flows, there is nothing before me to suggest that the EA saw this as a particular problem.
41. Furthermore, I consider that the implications of the appeal proposal for contaminated land have been satisfactorily covered in the "Ground Stability and Phase 1 Contaminated Land Desk Study" and that appropriate treatment and remediation of contaminated land encountered during construction on the site could be adequately addressed by means of a planning condition. I note that there have been no sustained objections on this topic from statutory consultees.
42. Finally, I was made aware at the hearing that many interested persons were critical of the fact that information which they had wished to consult, in preparing their cases, had not been available on the Council's website. However, I am also aware that an extension was granted to the submission date for interested persons to make their representations, and there was full opportunity at the hearing itself for interested persons to make their points of view known, and for them to participate in the proceedings. As such I consider that no-one with an interest in this case would have been unduly prejudiced by the absence of information on the Council's website.

Conclusion

43. Drawing all the above points together, my favourable findings on both main issues and on the other matters raised lead me to conclude that this proposal would amount to sustainable development, in the terms set out in the Framework. No clear disbenefits have been identified which would significantly and demonstrably outweigh the benefits of the proposal and the appeal should therefore be allowed, subject to the imposition of a number of conditions as discussed at the hearing and set out in the attached Schedule.
44. Conditions 1 and 2 are standard conditions for outline planning permissions, whilst Condition 3 is imposed for the avoidance of doubt and in the interests of proper planning. Conditions 4, 6, 7 and 8 are imposed to ensure that the development is of a satisfactory appearance and in the interests of visual amenity, with Conditions 5 and 21 being necessary to enhance biodiversity. Conditions 9 and 10 are needed in the interests of highway safety, whilst Conditions 11, 13, 25 and 26 are imposed to ensure that facilities are available and measures put in place to encourage the use of sustainable modes of travel. Condition 26 to secure a Travel Plan was not included in the list of suggested conditions discussed at the hearing, but it is clearly mentioned in the transport SoCG and was agreed as necessary between the parties.
45. Condition 12 is imposed to ensure that an adequate and acceptable means of access is available, whilst Condition 14 is needed to ensure that the emergency access is only used during extreme flood events, when the A4104 is closed to

through traffic. Conditions 15 and 16 are imposed to protect the living conditions of existing, nearby residents during the construction of the development, with Condition 15 also imposed in the interests of highway safety and to protect the natural and water environment from pollution.

46. Condition 17 will ensure that the development is provided with a satisfactory means of drainage and will also reduce the risk of creating or exacerbating a flooding problem and minimise the risk of pollution, whilst Condition 18 will ensure that sustainability measures are taken into account in the development. Condition 19 is imposed to ensure that the development meets appropriate design quality and environmental requirements, whilst Condition 20 is imposed to ensure that the development includes provision for up-to-date communication systems, thereby providing opportunities for home working in the interests of reducing car-based commuting.
47. Condition 22 will ensure that the habitat of nesting birds is not disturbed until any young have fledged, or there are no nesting birds present, before any hedgerows are removed. Condition 23 is necessary so that investigation of cultural remains can be carried out at this site of archaeological interest, whilst Condition 24 is imposed to make provision for the treatment and remediation of any contaminated land.
48. Finally, I referred earlier to the HA's acknowledgement that the request for a contribution towards the WTS should have been more flexibly worded, to cover the eventuality that approval for fewer dwellings than 70 is subsequently sought at reserved matters stage. The appellant suggested at the hearing that if I concluded that a WTS contribution would be CIL compliant, changes to the unilateral undertaking could be made by means of a deed of variation.
49. In this regard the recently published Planning Practice Guidance explains that it may be appropriate to impose a negatively worded condition to prohibit development until a specific action has been taken, such as the entering into of a planning obligation requiring the payment of a financial contribution towards the provision of supporting infrastructure. Accordingly, I have imposed Condition 27 to address this matter.
50. I have had regard to all other matters raised, both in the written representations and at the hearing, but they are not sufficient to outweigh the considerations which have led me to my conclusion.

David Wildsmith

INSPECTOR

Schedule of Conditions (27 in total)

- 1) Application for the approval of the matters reserved by conditions of this permission shall be made to the Local Planning Authority before the expiration of 3 years from the date of this permission. The development hereby permitted shall be begun not later than whichever is the latest of the following dates:-
 - (i) The expiration of 3 years from the date of this permission, or
 - (ii) The expiration of 2 years from the final approval of the reserved matters, or
 - (iii) In the case of approval on different dates, the final approval of the last such matter to be approved.
- 2) Approval of the details of the appearance, landscaping, layout and scale (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced.
- 3) The development hereby permitted shall be carried out in accordance with Drawing No 303/267/001 Rev A – Site Location Plan, 60288360_DEVPD_001 Proposed Site Access Layout and 60288360_DEVPD_002 Proposed Pedestrian, Cycle and Emergency Access Layout unless otherwise required by conditions attached to this permission.
- 4) No development shall take place until a plan showing details of the existing site levels and the slab levels of the proposed dwellings has been submitted to and approved in writing by the Local Planning Authority. These details shall include any proposed grading and mounding of land including the levels and contours to be formed. Levels and contours shall be shown at 0.2 metre intervals for a distance of 3 metres from each dwelling. The levels shown on the plan shall be related to a datum point outside the site boundary and the development shall be carried out in accordance with the approved details.
- 5) The submission of reserved matters shall be accompanied by a habitat management plan that shall include proposals for the creation of new habitats, the replacement of habitats that will be lost and the protection and enhancement of habitats to be retained, as well as proposals for the future management and maintenance of these habitats. The plan shall be approved in writing by the Local Planning Authority and shall be implemented as approved.
- 6) The landscaping scheme to be submitted in accordance with condition 2 of this permission shall include details of screen walls, fences, surface treatments to drives, cycle and footways, tree and shrub planting with provision for tree planting to be carried out concurrently with the development and completed within 1 year of substantial completion of the development. If within a period of 5 years from the date of the planting of any tree planted pursuant to condition 2 that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written approval to any variation.
- 7) The submission of reserved matters shall be accompanied by a landscape management plan that shall include long-term design objectives, management responsibilities and maintenance schedules for all areas other than domestic gardens. The plan shall be approved in writing by the Local Planning Authority and shall be implemented as approved.

- 8) No development shall take place until a plan setting out all trees, bushes and hedgerows on the site to be retained has been submitted to and approved in writing by the Local Planning Authority. The plan shall set out full details of the means by which these retained trees, bushes and hedgerows are to be protected during the construction of the development hereby approved and development shall be carried out in accordance with the approved details.
- 9) No other development (hereby permitted) shall commence until visibility splays have been provided on each side of the proposed access on a line joining a point 2.4 metres back from the nearside edge of the adjoining carriageway measured along the centreline of the access, to a point 120 metres in each direction measured along the nearside edge of the carriageway from the centre of the new access. Nothing shall be planted, erected and/or allowed to grow which exceeds a height of 0.6 metres on the triangular area of land so formed in order not to obstruct the visibility described above.
- 10) Prior to the first occupation of any dwelling hereby approved space shall be laid out within the curtilage of that dwelling for car parking and vehicular turning facilities to accord with the Council's adopted standards. The parking and turning areas shall be properly consolidated, surfaced and drained in accordance with details to be submitted to and approved in writing by the Local Planning Authority and these areas shall thereafter be kept available for the parking of vehicles.
- 11) Prior to the first occupation of any dwelling hereby approved secure parking for cycles to comply with the Council's adopted standards shall be provided within the curtilage of that dwelling and these facilities shall thereafter be retained for the parking of cycles only.
- 12) Development shall not begin until the engineering details, and specification of the main access and emergency access, to include carriageway levels, together with details of any associated flood compensation work to ensure no adverse impact on flood risk, proposed roads and highway drains, have been submitted to and approved in writing by the Local Planning Authority, and no dwelling hereby permitted shall be occupied until the accesses have been constructed in accordance with the approved details.
- 13) Prior to the commencement of the development hereby permitted engineering details of the cycleway linking the residential development to East Waterside shall be submitted to and approved in writing by the Local Planning Authority, and no dwelling shall be occupied until the scheme has been constructed in accordance with the approved details.
- 14) A) Before development commences, details of the automated bollard system to restrict the use of the emergency access by motor vehicles shall be submitted and approved in writing by the Local Planning Authority. The approved system shall be installed in accordance with the approved details before any dwelling is first occupied and thereafter retained in that approved form for the lifetime of the development.
B) The details and position of the control system to facilitate access and egress by motor vehicles shall be positioned at a location to be submitted to and approved in writing by the Local Planning Authority prior to its installation and shall be configured such that the emergency access is only open for the purposes of access and egress by motor vehicles in extreme flood events, when the A4104 is closed to through traffic.

C) When the emergency access is open to vehicular traffic, the main access shall be closed by an automatic (self-closing) barrier fitted across the primary access road in accordance with details to be submitted to and approved in writing by the Local Planning Authority before development commences. The approved system shall be installed in accordance with the approved details before the development is first occupied and thereafter retained in that approved form for the lifetime of the development.

D) Prior to the first occupation of the development, details of a proposed maintenance regime for all the elements described at A, B and C shall be submitted to and approved in writing by the Local Planning Authority.

- 15) No development shall take place until a construction environmental management plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall include:
- (i) Measures to ensure that vehicles leaving the site do not deposit mud or other detritus on the public highway;
 - (ii) Details of site operative parking areas, material storage areas and the locations of other site facilities including offices and toilets;

The measures set out in the approved construction environmental management plan shall be put in place before any development takes place, shall be retained throughout the construction of the development hereby approved and development shall be carried out in accordance with the approved details.

- 16) No demolition, ground works or construction work shall take place outside the following hours:

- (i) 07.30-18.00 hours on Mondays to Fridays;
- (ii) 08.00-13.00 hours on Saturdays;

and at no time at all on Sundays or Bank and Public Holidays.

- 17) The submission of reserved matters shall be accompanied by a sustainable drainage scheme for foul and surface water drainage. No dwelling hereby permitted shall be occupied until a sustainable drainage scheme for foul and surface water drainage from the site has been completed in accordance with the approved details. The sustainable drainage scheme shall be retained, managed and maintained for the lifetime of the development in accordance with a management and maintenance plan submitted to and approved in writing by the Local Planning Authority.
- 18) The submission of reserved matters shall be accompanied by full details of sustainability measures to be undertaken in the construction and fitting out of the dwellings. The details shall include energy conservation, waste management, recycling and water management. The development shall be carried out in accordance with the approved details.
- 19) The submission of reserved matters shall be accompanied by a lighting plan with details of the proposed street lighting lux levels at residential properties (existing and proposed). The lighting plan shall be carried out in accordance with the approved details before the dwellings are first occupied and shall remain as such thereafter.
- 20) The submission of reserved matters shall be accompanied by details of the means by which the dwellings hereby approved may be connected to the utilities to be provided on site to facilitate super-fast broadband connectivity. The development shall be carried out in accordance with the approved details before the dwellings are first occupied.

- 21) The details submitted pursuant to condition 2 shall be accompanied and informed by the results of additional survey work carried out by an appropriately qualified ecologist relating to the presence of breeding birds and badgers, in addition to further bat survey work comprising an emergent and dawn return bat activity survey during the active season. The report shall include details of any recommended mitigation measures which shall be implemented before development commences on site.
- 22) Site clearance and removal of vegetation shall not take place between March and August inclusive unless preceded by a thorough survey for nesting birds undertaken by an appropriately qualified ecologist. A report of the survey and recommendations prepared by that ecologist shall be submitted to and approved in writing by the Local Planning Authority before development commences; and any site clearance and removal of vegetation shall be carried out in accordance with the approved details.
- 23) A) 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:
- (i) The programme and methodology of site investigation and recording;
 - (ii) The programme for post investigation assessment;
 - (iii) Provision to be made for analysis of the site investigation and recording;
 - (iv) Provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - (v) Provision to be made for archive deposition of the analysis and records of the site investigation;
 - (vi) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.
- B) No demolition/development shall take place other than in accordance with the Written Scheme of Investigation approved under part (A).
- C) With a written agreed date the site investigation and post investigation assessment shall be completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition (A) and the provision made for analysis, publication and dissemination of results and archive deposition shall be secured.
- 24) A) Prior to the commencement of development, the following components of a scheme to deal with the risks associated with contamination of the site shall be submitted to and approved, in writing, by the Local Planning Authority. That scheme shall include all of the following elements unless specifically excluded, in writing, by the Local Planning Authority:
- A preliminary risk assessment/desk study identifying: All previous uses;
 - Potential contaminants associated with those uses;
 - A conceptual model of the site indicating sources, pathways and receptors;
 - Potentially unacceptable risks arising from contamination at the site.
- B) A site investigation scheme, based on (A) to provide information for an assessment of the risk to all receptors that may be affected, including those off site.

- C) The site investigation results and the detailed risk assessment (B) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
- D) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (C) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these agreed elements require the written consent of the Local Planning Authority. The scheme shall be implemented as approved.

- 25) None of the dwellings hereby approved shall be occupied until a bus stop has been provided at the entrance to the marina, in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority.
- 26) Prior to the first occupation of any dwelling hereby permitted a Residential Travel Plan for the site, together with a timetable for its implementation shall have been submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall be based on the Outline Residential Travel Plan submitted with the planning application and shall be implemented as approved, in accordance with the agreed timetable.
- 27) None of the dwellings hereby approved shall be occupied until measures have been taken to ensure that the financial contribution towards the Worcester Transport Strategy, secured by the unilateral undertaking dated 7 May 2014, has been amended using the methodology set out in the Worcester Transport Strategy Contribution Justification Briefing Note dated 7 May 2014, to reflect the actual number of dwellings sought through any subsequent reserved matters application.

APPEARANCES

FOR THE APPELLANT:

Mr S Bird QC	Counsel for the appellant
Mr S Arber	Operations Director, Tingdene Marinas Ltd
Mr J Pyatt BA MSc DipTP MRTPI	Director, Alliance Planning
Mr D Taylor BEng MSc	Consultant Engineer to Tingdene Marinas Ltd
Mr J Douch BA(Hons) DipTP MCILT	Transport Consultant to Tingdene Marinas Ltd
Mr T Willis	Partner, Shoesmiths LLP, Solicitor to Tingdene Marinas Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr S Jones BA DipTP MRTPI	Principal Planning Officer, Malvern Hills District Council
Mrs K Hanchett	Highways Development Control Manager, Worcestershire County Council

INTERESTED PERSONS:

Cllr M Ostick	Upton Town Council
Mr R Jones	Vice-Chair of Ripple Parish Council
Mrs M Baum	Local Resident
Mrs M Proffitt	Local Resident
Mr P Bennett	Local Resident
Mr C Tomkinson	Local Resident

DOCUMENTS AND PLANS SUBMITTED AT THE HEARING

Document 1	Council's letter of notification of the Hearing
Document 2(i-vi)	Bundle of 6 Application Plans, Nos 303/267/001A to 006A
Document 3	2 additional agreed conditions
Document 4(i-vii)	Bundle of Unilateral Undertaking and 6 associated documents
Document 5	Highways Position Statement, dated 29 April 2014
Document 6	Plan No L/19C – Approved Plan for the Upton Marina Holiday Village
Document 7	Flood Management Strategy for land adjacent to Upton Marina, Worcestershire, Dated December 2013
Document 8(i-iii)	Briefing Note – Worcester Transport Strategy Contribution Justification, dated 7 May 2014, together with 2 associated Appeal Decisions
Document 9	2 versions of Drg No 60288360_DEV_PD_001, showing the Proposed Site Access Visibility Splays, at A3 and A4 size
Document 10(i-ii)	MHDC Education Contributions SPD and associated Table of Charges, 2014-2015
Document 11	MHDC Open Space SPD
Document 12	Appeal Decision Ref: APP/J1860/A/13/2200044
Document 13	Statement of Common Ground relating to Transport Planning and Highways Matters
Document 14	MHDC Developer Contributions SPD
Document 15	Update to appellant's application for costs, with relevant emails