Department for Communities and Local Government

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Birmingham
B16 8SP

Our Ref: APP/H1840/A/13/2199085
Your Ref: P484

Mr Chris May
Pegasus Group
5 The Priory
Old London Road
Canwell
Sutton Coldfield
West Midlands
B75 5SH

Our Ref: APP/H1840/A/13/2199426
Your ref: Bir.3689

02 July 2014

Richborough Estates

Dear Sirs,

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY BARBERRY DROITWICH LIMITED
SITE AT LAND AT PULLEY LANE, NEWLAND ROAD AND PRIMSLAND WAY, DROITWICH SPA, (WYCHAVON DC)
APPLICATION REF: W/11/01073/OU;
and
APPEAL BY PERSIMMON HOMES LIMITED AND PROWTING PROJECTS LIMITED
SITE AT LAND NORTH OF PULLEY LANE AND NEWLAND LANE, NEWLAND, DROITWICH SPA, (WYCHAVON DC)
APPLICATION REF: W/12/02336/OU

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Harold Stephens BA MPhil DipTP MRTPI FRSA, who held a public local inquiry between 28 January and 14 February 2014 into your respective clients' appeals against decisions by Wychavon District Council ("the Council"):

   Appeal A: to refuse outline planning permission for the development of land for up to 500 dwellings (Class C3); up to 200 unit care facility (Class C2); provision of mixed use local centre to include shop (Class A1); financial & professional services (Class A2); restaurants & café (Class A3); drinking establishment (Class A4); hot food takeaway (Class A5); offices (Class B1a) and police post; indoor bowls facility; means of access and estate roads; public open space; landscaping and infrastructure at Pulley Lane, Newland Road and Primsland Way, in accordance with application Ref: W/11/01073/OU; and

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Appeal B: to refuse outline planning permission for the construction of a maximum of 265 dwellings with associated car parking, access, infrastructure provision and open space at land north of Pulley Lane and Newland Lane, Newland, in accordance with application Ref: W/12/02336/OU.

2. On 26 June 2013, both appeals were recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because they involve proposals over 150 units on sites of more than 5 ha which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable mixed and inclusive communities.

Inspector's recommendation and summary of the decisions

3. The Inspector recommended that both appeals be allowed and outline planning permission granted. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendations. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

4. In respect of Appeal B, the applications for costs by Barberry Droitwich Ltd and by Persimmon Homes & Prowting Projects Ltd are the subjects of decision letters being issued separately by the Secretary of State.
5. The Secretary of State notes (IR1.21) that, although the development did not require an Environmental Impact Assessment, an Environmental Statement was prepared to support the outline planning applications.
6. The Planning Inspectorate wrote to interested parties on 11 March 2014, following the publication of new planning guidance on 6 March, inviting representations on any implications for these cases. The representations received were forwarded to the Inspector who has taken them into account in writing his report.

Policy considerations

7. In deciding these appeals, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan consists of the saved policies of the Wychavon District Local Plan 2006 (WDLP) as well as the Worcestershire Waste Core Strategy (November 2012).
8. Other material considerations which the Secretary of State has taken into account include the *National Planning Policy Framework* (The Framework); the planning guidance referred to in paragraph 6 above; and the *Community Infrastructure Levy (CIL) Regulations 2010* as amended.
9. The Council is also working jointly with Malvern Hills DC and Worcester City Council to prepare a South Worcestershire Development Plan (SWDP) (IR1.26-1.29). However, as work is still proceeding on that emerging plan and there are a number of

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uncertainties outstanding (see paragraph 13 below), the Secretary of State gives it very little weight.

Main issues

10. The Secretary of State agrees with the Inspector that the main issues in these appeals are those set out at IR1.4.

APPEAL A

Consistency with development plan and sustainability of development

11. The Secretary of State notes (IR8.10) that the reasons for refusal did not allege breach of WDLP policies and both main parties accept that bringing forward housing development in the context of the district's housing needs inescapably creates tension in particular with WDLP policies SR1 and GD1. He also agrees with the Inspector at IR8.14 that, for the reasons at IR8.12-8.14, policies GD1 and SR1 are out of date and paragraph 14 of the Framework applies, triggering the presumption in favour of sustainable development. Furthermore, for the reasons given at IR8.15-8.18, the Secretary of State agrees with the Inspector that only limited weight can be given to policy ENV1 (IR8.15) He also agrees that the appeal scheme would not conflict with ENV8 (IR8.18).

12. Turning to the question as to whether the development is sustainable in terms of the definition in paragraph 14 of the Framework, the Secretary of State notes the arguments described at IR8.19-8.20, but agrees with the Inspector at IR8.21-88.24 that the evidence before them both demonstrates that the Appeal A scheme is sustainable in terms of economic, environmental and social benefits so that the presumption in its favour applies.

Prematurity

13. Having regard to the arguments set out at IR8.25-8.30, the Secretary of State agrees with the Inspector that, for the reasons given at IR8.30-8.36, granting permission for these appeal schemes cannot be seen as being likely to prejudice a local plan and so cannot be regarded as premature. In particular, the Secretary of State has taken account of the fact that the Council are proposing at least an extra 3,000 homes and have not yet decided where these should be located (IR8.30); that there are unresolved objections to the SWDP which dramatically reduce the weight that can be given to it (IR8.31); and that the appeal site has previously been under active consideration as a location for development (IR8.34).

Whether the appeal proposal is necessary to meet housing needs

14. For the reasons given at IR8.38-8.55, the Secretary of State agrees with the Inspector's conclusions at IR8.56-8.58 that the Council cannot demonstrate a 5-year housing land supply, so that the test in paragraph 14 of the Framework applies.

Character and appearance of the area

15. For the reasons given at IR8.59-8.72, the Secretary of State agrees with the Inspector that the proposed development would not significantly harm the character and

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appearance of the area and that the countervailing environmental benefits more than outweigh the limited harm caused by the loss of green field land. He therefore also agrees that the proposal would comply with the environmental policies of the WDLP and the emerging SWDP and with the relevant provisions of the Framework.

Effect on local highway infrastructure

16. Having carefully considered the Inspector's arguments at IR8.74-8.80, the Secretary of State agrees with him that the location of the appeal site, with good access to the centre by cycle and foot, would minimise the highways impact which any substantial development inevitably brings (IR8.81); so that it would not give rise to highway safety or the free-flow of traffic in accordance with the relevant development plan policy . (IR8.82).

Brine Run

17. For the reasons given at IR8.83, the Secretary of State agrees with the Inspector that there is no sound and robust evidence to suggest that the Brine Run could have any adverse implications for the appeal scheme so long as appropriate engineering measures to mitigate the risk of damage were agreed via the Council's Building Control Department in advance of any development.

Conditions

18. The Secretary of State has considered the proposed conditions and the Inspector's reasoning and conclusions thereon in respect of Appeal A (IR8.84-8.87), and he is satisfied that the conditions as proposed by the Inspector and set out at Annex A to this letter are reasonable, necessary and would meet the tests of paragraph 206 of the Framework and the planning guidance. However, he also agrees with the Inspector (IR8.87) that it would not be appropriate to attach a planning condition regarding a Brine Run Monitoring Report (IR8.87) since this is a matter covered through the Building Control regime.

Section 106 obligation

19. The Secretary of State has also considered the S106 Planning Agreement in respect of Appeal A submitted by the main parties at the inquiry (IR8.88) and, like the Inspector, he is satisfied that the provisions can be considered to be compliant with CIL Regulation 122 and paragraph 204 of the Framework and that full weight in support of the appeal proposal can therefore be given to the obligations.

Conclusion

20. For the reasons given at IR8.89, the Secretary of State agrees with the Inspector that, although the proposal would not be consistent with a strict interpretation of Policy GD1 of the WDLP, little weight can be afforded to that or to the other development plan policies relied on by the Council because they are clearly out of date and significantly outweighed by the inability of the Council to demonstrate a 5-year housing land supply. Similarly, the Secretary of State agrees with the Inspector at IR8.90 that the proposed development would not significantly harm the character and appearance of

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the area, with the countervailing environmental benefits more than outweighing the limited landscape harm caused by the loss of green field land. Overall, therefore, the Secretary of State agrees with the Inspector that the benefits of the Appeal A scheme are not significantly and demonstrably outweighed by the alleged disadvantages.

APPEAL B

Consistency with development plan and sustainability of development

21. For the reasons given at IR8.91-8.96, the Secretary of State agrees with the Inspector at IR8.96 that WDLP Policy GD1 is no longer fit for purpose and would not help the Council to meet its housing requirements in 2014 because land beyond the settlement boundary needs to be released for development in a manner which reflects the housing needs of the area and the terms of the Framework. The Secretary of State also agrees with the Inspector (IR8.97) that, as WDLP policy SR1 is out of date, paragraph 14 of the Framework applies, thereby triggering the presumption in favour of sustainable development. He further agrees with the Inspector (IR9.98) that the application of a Special Landscape Area (SLA) designation to the appeal site (IR8.98) has been superseded. Overall, therefore, the Secretary of State agrees with the Inspector (IR8.99-8.100) that the situation represented by the out-dated WDLP has dramatically changed, and the appeal scheme needs to be considered against the up-to-date provisions of the Framework.

Prematurity

22. Having regard to the arguments set out at IR8.101-8.110, the Secretary of State agrees with the Inspector's conclusion at IR8.111 that the Council's reliance upon prematurity as a reason for refusal cannot stand as it is contrary to the weight of guidance, policy and judicial decisions and with no relevant precedent.

Whether the appeal proposal is necessary to meet housing needs

23. For the reasons given at IR8.112-8.126, the Secretary of State agrees with the Inspector's conclusion at IR8.127 that the Council does not have a 5-year supply of housing land and the appeal scheme is necessary to meet the housing needs of the district, including the need for affordable housing.

Character and appearance of the area

24. Having carefully considered the Inspector's arguments as set out at IR8.128-8.137, the Secretary of State agrees with his conclusions at IR8.138 including his summary that these conclusions demonstrate that there is no logical basis to refuse the Appeal B scheme on the basis of landscape impact. The Secretary of State also agrees with the Inspector at IR8.139 that, if both schemes were to be approved, the additional impact of the Appeal B scheme in landscape terms would be *de minimis*; and that the substantial provision of green infrastructure in connection with both schemes would mean that the overall result of the proposals would bring benefits to clearly off-set the initial impact of the development. He also agrees with the Inspector's conclusion at IR8.140 that, although there would be changes to the visual effect of the development, there would be no significant harm to the character and appearance of the area and the scheme would comply with the pertinent WDLP and emerging SWDP policies.

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Effect on local highway infrastructure

25. For the reasons given at IR8.141-8.143, the Secretary of State agrees with the Inspector that the proposed development would not give rise to harm to highway safety or to the free flow of traffic, and that relevant WDLP policies would not be offended in this respect.

Conditions

26. The Secretary of State has considered the proposed conditions and the Inspector's reasoning and conclusions thereon in respect of Appeal B (IR8.144-8.147); and he is satisfied that the conditions as proposed by the Inspector and set out at Annex B to this letter are reasonable, necessary and would meet the tests of paragraph 206 of the Framework and the planning guidance.

Section 106 obligation

27. The Secretary of State has also considered the S106 Planning Agreement submitted by the main parties at the inquiry in respect of Appeal B and the Inspector's comments on it (IR8.148-8.153). Like the Inspector, he is satisfied that the provisions can be considered to be compliant with CIL Regulation 122 and paragraph 204 of the Framework and that full weight in support of the appeal proposal can therefore be given to the obligations in the Agreement.

Planning balance and conclusion

28. For the reasons given at IR8.154-8.158, the Secretary of State agrees with the Inspector's conclusions (IR8.159-8.161) that there is a need for the Appeal B site,wx which is suitable for the proposed development and which would bring about substantial and tangible benefits. The Secretary of State also agrees that there is no overall conflict with the development plan or the emerging SWDP or with the Framework. Instead, there is a strong positive case for the development of the Appeal B site to provide not only market housing but also much needed affordable housing.

Overall Conclusions

29. Overall, the Secretary of State is satisfied that the adverse impacts of granting planning permission for both the Appeal A scheme and the Appeal B scheme would not significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole, and he does not consider that there are any material considerations of sufficient weight to justify refusing planning permission for either scheme.

Formal Decision

30. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendations he hereby allows your respective clients' appeals and grants outline planning permission for:

> **Appeal A:** the development of land for up to 500 dwellings (Class C3); up to 200 unit care facility (Class C2); provision of mixed use local centre to include shop (Class A1); financial & professional services (Class A2); restaurants & café (Class A3); drinking establishment (Class A4); hot food takeaway (Class A5); offices

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(Class B1a) and police post; indoor bowls facility; means of access and estate roads; public open space; landscaping and infrastructure, subject to the conditions set out at Annex A to this letter, at Pulley Lane, Newland Road and Primsland Way, in accordance with application Ref: W/11/01073/OU; and

Appeal B: the construction of a maximum of 265 dwellings with associated car parking, access, infrastructure provision and open space, subject to the conditions set out at Annex A to this letter, at land north of Pulley Lane and Newland Lane, Newland, in accordance with application Ref: W/12/02336/OU.

31. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

32. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

33. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

34. A copy of this letter has been sent to the Council. A notification e-mail / letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

JEAN NOWAK
Authorised by Secretary of State to sign in that behalf

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ANNEX A

CONDITIONS

APPEAL A - Appeal Ref: APP/H1840/A/13/2199085

Commencement and Phasing of Development

1) Application for approval of reserved matters for phase 1 (which will include a minimum of 200 dwellings) shall be made to the Local Planning Authority before the expiration of 12 months from the date of this outline permission. The development hereby permitted shall be begun before the expiration of 12 months from the date of approval of the first reserved matters application.

2) No development shall take place within any phase of the development without the prior approval of the details of the siting, design and external appearance of the building(s), the means of access thereto (save for the details of vehicular access into the site from Primsland Way and Pulley Lane) and the landscaping, including the provision of the on-site recreation/open play space, of the site (hereinafter called "the reserved matters") which shall be obtained from the Local Planning Authority in writing before any development is commenced.

3) No development shall take place until a Phasing Plan for the development hereby permitted has been submitted to and approved in writing by the Local Planning Authority. The Phasing Plan shall include details of:

   i) the timing of the provision of infrastructure to serve the proposed development (including road improvements and drainage facilities) in relation to the provision of any new residential units;
   ii) the timing of biodiversity, SUDS and strategic landscaping features;
   iii) the timing of the provision of on-site recreation/open play space in relation to the provision of any new residential units; and
   iv) the timing of the provision of the local centre, bowls and sports facilities and the care home.

   The development shall be carried out in accordance with the approved Phasing Plan.

Drawings and Plans

4) The development hereby permitted shall be carried out in accordance with the following approved plans and associated documents:

   - 9004 Rev C - Red line site location plan, reference no. (June 2012)
   - 9308 Rev H - Concept Masterplan, reference (June 2012)
   - 10154-63 – Proposed Improvements at Martin Hussingtree
   - 10154-64 – Newlands Road / Primsland Way Access
   - 10154-68 – A38 / Pulley Lane Improvement
   - 10154-69 – Pulley Lane Road Improvements Section 2
   - 10154-70 – Pulley Lane Road Improvements Section 3
   - 10154-71 – Pulley Lane Road Improvements Section 4
   - 10154-72 – Pulley Lane Road Improvements Section 5

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- 10154-73 – Pulley Lane Road Improvements Section 6
- 10154-74 – Pulley Lane Road Improvements Section 6
- 5090327/HWY/001 Rev C – Newland Road Bus Link Preliminary Design
- P0371-DR5-0-010 Rev C – Illustrative Landscape Masterplan
- P0152-DR5-010-012 Rev A – Newland Road Trees / Embankment Appraisal
- P0152-DR-5-020-023 Rev A – Newland Road Cross sections
- P0371-5-01-05 – Newland Road cross sections
- Design and Access Statement (May 2011)
- Design and Access Statement and Addendum (July 2012)
- Supporting Planning Statement and Addendum (July 2012)
- Drainage Strategy (May 2011)
- Water Management Strategy (May 2011)
- Environmental Statement and Non-Technical Summary (May 2011)
- Flood Risk Assessment (May 2011)
- Sustainability Appraisal (May 2011)
- Transportation Assessment (May 2011) and Addendum (July 2012)
- Technical note on water treatment matters by Atkins (July 2012)

5) All future applications for the approval of reserved matters shall be broadly in accordance with:

i) the principles and parameters described and illustrated in the Design & Access Statement dated May 2011 and July 2012 addendum with regard to the general areas of development and approximate floor areas;
ii) amended Parameter Plan 3: Building Heights - Revision E dated December 2013; and
iii) the Landscape Design Strategy – Revision B dated July 2012 and drawing no. P0152 attached therein.

All reserved matters applications shall include a statement providing an explanation as to how the design of the development responds to the details submitted as part of the outline application.

Roads, Parking and Travel

6) No development, other than the proposed highway works listed below, shall take place until details of:

i) the improvements, including the widening to 5.5m, to Pulley Lane (as indicated on DTA Drawings 10154-69/70/71/72 and 73) have been submitted to and approved in writing by the Local Planning Authority, and fully implemented in accordance with those approved details;

ii) the improvements to the Pulley Lane/A38 junction (as indicated on DTA Drawing 10154-68) have been submitted to and approved in writing by the Local Planning Authority, and fully implemented in accordance with those approved details prior to the occupation of the 1st dwelling;

iii) the bus, walk and cycle link to Primsland Way together with junction improvements on Primsland Way (as indicated on DTA Drawing 10154-64) have been submitted to and approved in writing by the Local

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Planning Authority, and fully implemented prior to the occupation of the 100th dwelling in accordance with those approved details; and

iv) the improvements to the A38/A4538 junction at Martin Hussingtree (as indicated on DTA Drawing 10154-63) have been submitted to and approved in writing by the Local Planning Authority, and fully implemented prior to the occupation of the 100th dwelling in accordance with those approved details.

7) No development shall take place within each reserved matter until the engineering details and specification of the proposed residential roads, cycle ways, footways, footpaths and highway drains have been submitted to and approved in writing by the Local Planning Authority. The dwellings shall not be occupied until the road works necessary to provide access from the publicly maintained highway to those dwellings have been completed in accordance with the approved details.

8) No development shall take place until a revised travel plan, including targets for modal shift, has been submitted to and approved in writing by the Local Planning Authority. The revised travel plan should contain targets for mode share shifts in order to reduce car travel and increase travel by more sustainable transport modes. Such target must be achieved within 5 years of the first occupation of any property hereby approved. In the event of failing to meet these targets at the end of the 5 year period, a revised residential travel plan shall be submitted to and approved in writing by the Local Planning Authority to address any shortfalls, and where necessary make provision for and promote improved sustainable forms of access to the site. The residential travel plan thereafter shall be implemented and updated in agreement with the Local Planning Authority.

9) The development hereby permitted shall not be occupied until the individual vehicular accesses, entrance, turning areas and driveways/parking spaces have been constructed in accordance with details to be submitted to and approved in writing by the Local Planning Authority and these areas shall thereafter be retained and kept available for those uses at all times.

10) No development shall take place within any phase until a scheme for the provision of secure cycle parking for the apartments, commercial premises, leisure and care facility hereby approved has been submitted to and approved in writing by the Local Planning Authority and thereafter shall be fully implemented in accordance with those approved details prior to the first occupation of those uses and maintained thereafter in perpetuity.

Noise and Construction Management

11) No development shall take place until a noise mitigation scheme designed to minimise the impact from road traffic such that the noise levels within the gardens of the proposed dwellings do not exceed the recommendations set out in BS8223:1999 Sound Insulation and Noise Reduction for Buildings has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details.

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12) No development shall take place within the phase of the development which contains the proposed local centre until a scheme for sound attenuation has been submitted to and approved in writing by the Local Planning Authority. The approved sound attenuation scheme shall be fully implemented in accordance with those approved details prior to the first occupation of any of the commercial uses contained within the local centre.

13) No development, including demolition or construction activities, shall take place until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The plan should include the following:

i) details of how to minimise the impact of noise, vibration and dust etc. from construction and demolition activities and the traffic associated with this development, including a scheme for wheel cleaning;
ii) details of how to restrict the means of vehicular access for site operatives and construction traffic to the development from A38 and Pulley Lane only;
iii) details in relation to the prevention of pollution of waterways;
iv) the provision of temporary drainage measures;
v) details of all temporary contractors buildings, plant, storage of materials and parking for site operatives;
vi) delivery times; and
vii) restrictions on burning.

The development hereby permitted shall be carried out in accordance with the approved measures.

Contaminated Land

14) No development shall take place on any phase of the development until that phase has been subject to a detailed scheme for investigation and recording of contamination of the land and risks to the development, its future uses and surrounding environment. A detailed written report on the findings including proposals and a programme for the remediation of any contaminated areas and protective measures to be incorporated into the buildings shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include proposals for the disposal of surface water during remediation. The remediation works shall be carried out and a validation report shall be submitted to and approved in writing by the Local Planning Authority in accordance with the approved proposals and programme. If during the course of the development further evidence of any type relating to other contamination is revealed, work at the location will cease until such contamination is investigated and remediation measures, approved in writing by the Local Planning Authority have been implemented.

15) No development shall take place until full details of any soil or soil forming materials brought on to the site for use in garden areas, soft landscaping, filling and level raising have been submitted to and approved in writing by the Local Planning Authority. Where the donor site is unknown or is brownfield the material must be tested for contamination and suitability for use on site. Full donor site details, proposals for contamination testing including testing

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schedules, sampling frequencies and allowable contaminant concentrations (as determined by appropriate risk assessment) must be submitted to and approved in writing by the Local Planning Authority prior to import on to the site. The approved testing must then be carried out and validatory evidence (such as laboratory certificates) submitted to and approved in writing by the Local Planning Authority prior to any soil or soil forming materials being brought on to site.

Archaeology

16) No development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.

Landscaping, Trees and Nature Conservation

17) Each application for reserved matters shall include:

a) An Arboricultural Impact Assessment in accordance with BS5837 and an Arboricultural Method Statement for the protection of trees and hedges during construction; and

b) A landscape scheme which shall include:

i) a plan(s) showing the planting layout of proposed tree, hedge, shrub and grass areas;
ii) a schedule of proposed planting - indicating species, size at time of planting and numbers/densities of plants;
iii) a written specification for root barriers and other measures to be used to ensure planting as outlined in the landscape strategy is achievable in relation to proposed built form;
iv) a written specification outlining cultivation and others operations associated with plant and grass establishment. This shall include details of soil crates for the planting of semi-mature street trees, or any tree planted in a location where its root run will be restricted;
v) proposed finished levels or contours;
vi) means of enclosure and boundary treatments; and
vii) a schedule of maintenance, including watering and the control of competitive weed growth, for a minimum period of five years from first planting.

18) No development shall take place until full details of an Ecological Mitigation and Enhancement Strategy based on up-to-date survey information is submitted to and approved in writing by the Local Planning Authority. The details shall include:

i) updated ecological surveys including a dedicated bat survey;
ii) a review of the site's ecological constraints and potential;
iii) a description of target habitats and range of species appropriate for the site;

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iv) extent and location of proposed works;
v) details of precautionary and protection measures to ensure protected species and retained habitats are not harmed during and after construction;
vi) appropriate strategies for creating/restoring target habitats or introducing target species;
vii) method statement for site preparation and establishment of target features;
viii) sources of habitat materials (e.g. plant stock); and
ix) timing of the works.

The Ecological Mitigation and Enhancement Strategy shall be implemented in accordance with the Nature Conservation Management Plan.

19) No development shall take place until a Nature Conservation Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall include:

i) description and evaluation of features to be managed;
ii) ecological trends and constraints on site that may influence management;
iii) aims and objectives of management;
iv) appropriate management options for achieving aims and objectives;
v) prescriptions of management actions;
vi) preparation of work schedule, including a 5 yearly project register, an annual work plan and the means by which the plan will be rolled forward over a 25 year period;
vii) personnel responsible for implementation of the plan; and
viii) monitoring and remedial/contingency measures triggered by monitoring.

The plan shall be carried out fully in accordance with the approved details.

20) 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) an appropriate scale plan showing 'ecological protection zones' where construction activities are restricted and where protective measures will be installed or implemented;
ii) details of protective measures (both physical measures and sensitive working practices) to avoid impacts during construction;
iii) a Methodology Statement to demonstrate construction activities will be undertaken so as to avoid impact on those parts of the site subject to periods of the year when activities could be harmful, such as the bird nesting and other wildlife breeding or hibernation seasons in accordance with the Nature Conservation Management Plan; and
iv) persons/contractors responsible for:

(a) compliance with legal consents relating to nature conservation;
(b) compliance with planning conditions relating to nature conservation;
(c) installation of physical protection measures during construction;

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(d) implementation of sensitive working practices during construction;
(e) regular inspection and maintenance of physical protection measures and monitoring of working practices during construction;
(f) provision of training and information about the importance of 'Ecological Protection Zones' to all construction personnel on site.

The Construction Environmental Management Plan shall be carried out fully in accordance with the approved details.

Renewable Energy

21) Notwithstanding the information submitted with the application, no development shall take place until the following details have been submitted to and approved in writing by the Local Planning Authority:

i) details on how renewable energy measures are to be incorporated into the proposed development;
ii) details of measures to conserve and recycle water to be incorporated into the proposed development;
iii) details of energy efficiency measures to be incorporated into the proposed development; and
iv) details of construction materials to be used in the proposed development with the aim of minimising the use of primary non-sustainable materials.

The approved measures shall be implemented and incorporated into the approved development in line with an implementation timetable to be submitted and approved in writing by the Local Planning Authority prior to the commencement of development.

Lighting

22) No development shall take place until details of a lighting scheme to serve the proposed development have been submitted to and approved by the Local Planning Authority. The lighting scheme shall be designed to reduce effects upon sensitive habitats to be retained/created on the site. The details shall include an implementation timetable and the approved lighting scheme shall be provided in accordance with the approved details in perpetuity and agreed implementation timetable.

Floor Space

23) The total retail uses (A1, A2, A3, A4, A5) and B1 (a) office floor space shall not exceed 2,500 sq. metres.

Drainage and Flood Risk

24) No development shall take place until a phased drainage scheme incorporating sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development in relation to the disposal of surface water and foul sewage has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in

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accordance with the approved details before development is first brought into use.

25) Each application for reserved matters shall include for the approval by the Local Planning Authority details of proposed surfacing materials and surface water drainage including:

i) a plan showing proposed layout and types of surfacing, including permeable paving in appropriate locations as an integrated part of an overall Sustainable Urban Drainage System (SUDS) for the development. The surfacing materials selected shall be of a design and quality appropriate to the location;
ii) a written specification of proposed surfacing materials and operations;
iii) the range of SUDS components to be used at source, site and regional control levels. These should be used comprehensively and appropriately in accordance with best practice as laid out in the CIRIA Guidance manuals, with consideration given in the first instance to utilising water management through soft features and at ground level;
iv) mechanisms to integrate the SUDS scheme with the Green Infrastructure proposals to maximise the potential for improved biodiversity, visual amenity and water quality; and
v) methods for the protection of SUDS and Green Infrastructure during each phase of construction to ensure that 'soft SUDS' are adequately established prior to bringing into beneficial use.

26) There must be no new buildings, structures (including gates, walls and fences) or raised ground levels within 8 metres of the top of any bank of watercourse and/or of any side of an existing culverted watercourse either inside or along the boundary of the site.

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ANNEX B

CONDITIONS

APPEAL B - Appeal Ref: APP/H1840/A/13/2199426

Commencement and Phasing of Development

1) Application for approval of reserved matters for phase 1 (which will include a minimum of 150 dwellings) shall be made to the Local Planning Authority before the expiration of 12 months from the date of this outline permission. The development hereby permitted shall be begun before the expiration of 12 months from the date of approval of the first reserved matters application.

2) No development shall take place within any phase of the development without prior approval of the details of the siting, design and external appearance of the building(s), the means of access thereto (save for the details of vehicular access into the site from Newland Lane) and the landscaping, including the provision of the on-site recreation/open play space, of the site (hereinafter called "the reserved matters") which shall be obtained from the Local Planning Authority in writing before any development is commenced.

3) No development shall take place until a Phasing Plan including details of phasing for the approved development has been submitted to and approved in writing by the Local Planning Authority. The Phasing Plan shall include details of:

   i) the timing of the provision of infrastructure to serve the proposed development (including road improvements and drainage facilities) in relation to the provision of any new residential units;
   ii) the timing of biodiversity, SUDS and strategic landscaping features; and
   iii) the timing of the provision of on-site recreation/open play space in relation to the provision of any new residential units.

   The development shall be carried out in accordance with the approved Phasing Plan.

Drawings and Plans

4) The development hereby permitted shall be carried out in accordance with the following approved plans and associated documents:

- Drawing no. P.0742_08 - Site Location Plan
- Drawing no. P.0742_01D - Illustrative Sketch Masterplan
- Planning Statement prepared by Pegasus Group (October 2012)
- Design and Access Statement prepared by Pegasus Group (October 2012)
- Landscape and Visual Appraisal prepared by Pegasus Group (October 2012)
- Energy Statement/Carbon Analysis Report prepared by FES (October 2012)
- Ecological Report prepared by Betts Ecology (November 2011)
- Arboricultural Survey prepared by Betts Ecology (November 2011)
- Heritage Assessment prepared by Cotswold Archaeology (December 2011)
- Ground Conditions Report prepared by GRM (December 2011)
- Noise Report prepared by Hoare Lea (October 2012)
- Transport Assessment prepared by Travis Baker (November 2012)
- Travel Plan prepared by Travis Baker (November 2012)
- Flood Risk Assessment, including Drainage Strategy prepared by Travis Baker (November 2012)

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5) All future applications for the approval of reserved matters shall be broadly in accordance with the principles and parameters described and illustrated in the Design & Access Statement dated October 2012 with regard to:

i) the general areas of development as outlined in the Indicative Masterplan;
ii) the Buildings Heights Plan; and
iii) the Landscape and Green Infrastructure Strategy Plan.

All reserved matters applications shall include a statement providing an explanation as to how the design of the development responds to the details submitted as part of the outline application.

Roads, Parking and Travel

6) No more than 200 of the dwellings hereby approved shall be occupied until details of means to form a secondary emergency vehicular access to the development have been submitted to and approved in writing by the Local Planning Authority, and the scheme has been constructed in accordance with the approved details.

7) No development, other than the proposed highway works listed below, shall take place until details of:

i) the improvements, including the widening to 5.5m, to Pulley Lane have been submitted to and approved in writing by the Local Planning Authority, and fully implemented in accordance with those approved details;

ii) the improvements to the Pulley Lane/A38 junction have been submitted to and approved in writing by the Local Planning Authority, and fully implemented in accordance with those approved details prior to the occupation of the 1st dwelling; and

iii) the improvements to provide pedestrian links between the eastern boundary of the development site through Nightingale Close and Jackdaw Lane to Tagwell Road have been submitted to and approved in writing by the Local Planning Authority, and fully implemented prior to the occupation of the 75th dwelling in accordance with those approved details.

8) No development shall take place until the engineering details and specification of the proposed residential roads, cycle ways, footways, footpaths and highway drains have been submitted to and approved in writing by the Local Planning Authority. The dwellings shall not be occupied until the road works necessary to provide access from the publicly maintained highway to those dwellings have been completed in accordance with the details submitted to and approved in writing by the Local Planning Authority.

9) The Residential Travel Plan (RTP) hereby approved, dated November 2012 and produced by Travis Baker, shall be implemented and monitored in accordance with the regime contained within the RTP. The targets for mode share shifts set out in the RTP, in order to reduce car travel and increase travel by more sustainable transport modes, must be achieved within 5 years of the first occupation of any property hereby approved. In the event of failing to meet these targets at the end of the 5 year period, a revised RTP shall be submitted to and be approved in writing by the Local Planning Authority to address any shortfalls, and where necessary make provision for and promote improved sustainable forms of access to the site. The RTP thereafter shall be implemented and updated in agreement with the Local Planning Authority.

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10) The development hereby permitted shall not be occupied until the individual vehicular accesses, entrance, turning areas and driveways/parking spaces have been constructed in accordance with details to be submitted to and approved in writing by the Local Planning Authority and these areas shall thereafter be retained and kept available for those uses at all times.

Noise and Construction Management Plan

11) No development shall take place until a noise mitigation scheme designed to minimise the impact from road traffic such that the noise levels within the gardens of the dwellings do not exceed the recommendations set out in *BS8223:1999 Sound Insulation and Noise Reduction for Buildings* has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details.

12) No development, including demolition or construction activities, shall take place until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The plan should include the following:

i) details of how to minimise the impact of noise, vibration and dust etc. from construction and demolition activities and the traffic associated with this development, including a scheme for wheel cleaning;
ii) details of how to restrict the means of vehicular access for site operatives and construction traffic to the development from A38 and Pulley Lane only;
iii) details in relation to the prevention of pollution of waterways;
iv) the provision of temporary drainage measures;
v) details of all temporary contractors buildings, plant, storage of materials and parking for site operatives;
vi) delivery times; and
vii) restrictions on burning.

The development hereby permitted shall be carried out in accordance with the approved measures.

Contaminated Land

13) No development shall take place on any phase of the development until that phase has been subject to a detailed scheme for investigation and recording of contamination of the land and risks to the development, its future uses and surrounding environment. A detailed written report on the findings including proposals and a programme for the remediation of any contaminated areas and protective measures to be incorporated into the buildings shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include proposals for the disposal of surface water during remediation. The remediation works shall be carried out and a validation report shall be submitted to and approved in writing by the Local Planning Authority in accordance with the approved proposals and programme. If during the course of the development further evidence of any type relating to other contamination is revealed, work at the location will cease until such contamination is investigated and remediation measures, approved in writing by the Local Planning Authority have been implemented.

14) No development shall take place until full details of any soil or soil forming materials brought on to the site for use in garden areas, soft landscaping, filling and level raising have been submitted to and approved in writing by the Local Planning Authority. Where the donor site is unknown or is brownfield the material must be tested for contamination and suitability for use on site. Full donor site details, proposals for contamination testing

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including testing schedules, sampling frequencies and allowable contaminant concentrations (as determined by appropriate risk assessment) must be submitted to and approved in writing by the Local Planning Authority prior to import on to the site. The approved testing must then be carried out and validatory evidence (such as laboratory certificates) submitted to and approved in writing by the Local Planning Authority prior to any soil or soil forming materials being brought on to site.

Archaeology

15) No development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.

Landscaping, Trees and Nature Conservation

16) Each application for reserved matters shall include:

a) An Arboricultural Impact Assessment in accordance with BS5837 and an Arboricultural Method Statement for the protection of trees and hedges during construction; and

b) A landscape scheme which shall include:

i) a plan(s) showing the planting layout of proposed tree, hedge, shrub and grass areas;
ii) a schedule of proposed planting - indicating species, size at time of planting and numbers/densities of plants;
iii) a written specification for root barriers and other measures to be used to ensure planting as outlined in the landscape strategy is achievable in relation to proposed built form;
iv) a written specification outlining cultivation and others operations associated with plant and grass establishment. This shall include details of soil crates for the planting of semi-mature street trees, or any tree planted in a location where its root run will be restricted;
v) proposed finished levels or contours;
vi) means of enclosure and boundary treatments; and
vii) a schedule of maintenance, including watering and the control of competitive weed growth, for a minimum period of five years from first planting.

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17) No development shall take place until full details of an Ecological Mitigation and Enhancement Strategy based on up-to-date survey information is submitted to and approved in writing by the Local Planning Authority. The details shall include:

i) updated ecological surveys including a dedicated bat survey;
ii) a review of the site's ecological constraints and potential;
iii) a description of target habitats and range of species appropriate for the site;
iv) extent and location of proposed works;
v) details of precautionary and protection measures to ensure protected species and retained habitats are not harmed during and after construction;
vi) appropriate strategies for creating/restoring target habitats or introducing target species;
vii) method statement for site preparation and establishment of target features;
viii) sources of habitat materials (e.g. plant stock); and
ix) timing of the works.

The Ecological Mitigation and Enhancement Strategy shall be implemented in accordance with the Nature Conservation Management Plan.

18) No development shall take place until a Nature Conservation Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Plan shall include:

i) description and evaluation of features to be managed;
ii) ecological trends and constraints on site that may influence management;
iii) aims and objectives of management;
iv) appropriate management options for achieving aims and objectives;
v) prescriptions of management actions;
vi) preparation of work schedule, including a 5 yearly project register, an annual work plan and the means by which the plan will be rolled forward over a 25 year period;
vii) personnel responsible for implementation of the plan; and
viii) monitoring and remedial/contingency measures triggered by monitoring.

The plan shall be carried out fully in accordance with the approved details.

19) 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) an appropriate scale plan showing 'ecological protection zones' where construction activities are restricted and where protective measures will be installed or implemented;
ii) details of protective measures (both physical measures and sensitive working practices) to avoid impacts during construction;
iii) a Methodology Statement to demonstrate construction activities will be undertaken so as to avoid impact on those parts of the site subject to periods of the year when activities could be harmful, such as the bird nesting and other wildlife breeding or hibernation seasons in accordance with the Nature Conservation Management Plan; and
iv) persons/contractors responsible for:

(a) compliance with legal consents relating to nature conservation;
(b) compliance with planning conditions relating to nature conservation;
(c) installation of physical protection measures during construction;
(d) implementation of sensitive working practices during construction;
(e) regular inspection and maintenance of physical protection measures and monitoring of working practices during construction;
(f) provision of training and information about the importance of 'Ecological Protection Zones' to all construction personnel on site.

The Construction Environmental Management Plan shall be carried out fully in accordance with the approved details.

Renewable Energy

20) Notwithstanding the information submitted with the application, no development shall take place until the following details have been submitted to and approved in writing by the Local Planning Authority:

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i) details on how renewable energy measures are to be incorporated into the proposed development;
ii) details of measures to conserve and recycle water to be incorporated into the proposed development;
iii) details of energy efficiency measures to be incorporated into the proposed development; and
iv) details of construction materials to be used in the proposed development with the aim of minimising the use of primary non-sustainable materials.

The approved measures shall be implemented and incorporated into the approved development in line with an implementation timetable to be submitted and approved in writing by the Local Planning Authority prior to the commencement of development.

External Lighting

21) No development shall take place until details of a lighting scheme to serve the proposed development have been submitted to and approved in writing by the Local Planning Authority. The lighting scheme shall be designed to reduce effects upon sensitive habitats to be retained/created on the site. The details shall include an implementation timetable and the approved lighting scheme shall be provided in accordance with the approved details in perpetuity and implementation timetable.

Drainage and Flood Risk

22) No development shall take place until a drainage scheme incorporating sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development in relation to the disposal of surface water and foul sewage has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before development is first brought into use.

23) Each application for reserved matters shall include for the approval by the Local Planning Authority details of proposed surfacing materials and surface water drainage including:

i) a plan showing proposed layout and types of surfacing, including permeable paving in appropriate locations as an integrated part of an overall Sustainable Urban Drainage System (SUDS) for the development. The surfacing materials selected shall be of a design and quality appropriate to the location;
ii) a written specification of proposed surfacing materials and operations;
iii) the range of SUDS components to be used at source, site and regional control levels. These should be used comprehensively and appropriately in accordance with best practice as laid out in the CIRIA Guidance manuals, with consideration given in the first instance to utilising water management through soft features and at ground level;
iv) mechanisms to integrate the SUDS scheme with the Green Infrastructure proposals to maximise the potential for improved biodiversity, visual amenity and water quality; and
v) methods for the protection of SUDS and Green Infrastructure during each phase of construction to ensure that 'soft SUDS' are adequately established prior to bringing into beneficial use.

24) There must be no new buildings, structures (including gates, walls and fences) or raised ground levels within 8 metres of the top of any bank of watercourse and/or of any side of an existing culverted watercourse either inside or along the boundary of the site.

Peterborough Estates

The Planning Inspectorate

Report to the Secretary of State for Communities and Local Government

by Harold Stephens BA MPhil Dip TP MRTPI FRSA

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

Date: 6 June 2014

Richborough Estates

Town and Country Planning Act 1990

Appeal by Barberry Droitwich Ltd (Appeal A)

Appeal by Persimmon Homes Limited & Prowting Projects Ltd (Appeal B)

Wychavon District Council

Inquiry held on 28-31 January, 4–7 and 13-14 February 2014
Land at Pulley Lane, Newland Road and Primsland Way, Droitwich Spa (Appeal A)
Land north of Pulley Lane and Newland Lane, Newland, Droitwich Spa (Appeal B)

File Refs: APP/H1840/A/13/2199085 & APP/H1840/A/13/2199426

Inspector's Report

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File Ref: APP/H1840/A/13/2199085 (APPEAL A)
Land at Pulley Lane, Newland Road and Primsland Way, Droitwich Spa

- 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 Barberry Droitwich Limited against the decision of Wychavon District Council.
- The application Ref W/11/01073/OU, dated 14 August 2012, was refused by notice dated 30 May 2013
- The development proposed is an outline planning application for the development of land for up to 500 dwellings (Class C3); up to 200 unit care facility (Class C2); provision of mixed use local centre to include shop (Class A1); financial & professional services (Class A2); restaurants & café (Class A3); drinking establishment (Class A4); hot food takeaway (Class A5); offices (Class B1a) and police post; indoor bowls facility; means of access and estate roads; public open space; landscaping and infrastructure at Pulley Lane, Newland Road and Primsland Way.

Summary of Recommendation: That the appeal be allowed and planning permission be granted subject to conditions

File Ref: APP/H1840/A/13/2199426 (APPEAL B)
Land north of Pulley Lane and Newland Lane, Newland, Droitwich Spa

- 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 Persimmon Homes Limited and Prowting Projects Limited against the decision of Wychavon District Council.
- The application Ref W/12/02336/OU is dated 19 October 2012.
- The development proposed is an outline application for the construction of a maximum of 265 dwellings with associated car parking, access, infrastructure provision and open space.

Summary of Recommendation: That the appeal be allowed and planning permission be granted subject to conditions.

BACKGROUND AND PROCEDURAL MATTERS

1.1 At the Inquiry an application for costs was made by Barberry Droitwich Ltd and by Persimmon Homes and Prowting Projects Ltd against the Wychavon District Council. These applications are the subject of separate Reports.

1.2 The Inquiry was held at the Chateau Impney Hotel, Droitwich Spa into these two appeals on 28-31 January, 4–7 and 13-14 February 2014. I made accompanied site visits on 12 and 25 February 2014 to the appeal sites and other sites. I also visited other sites on an unaccompanied basis. I held a Pre Inquiry Meeting in connection with this Inquiry to discuss procedural and administrative arrangements. The Pre Inquiry Meeting was held at the Chateau Impney Hotel, Droitwich Spa on 6 November 2013.

1.3 The appeals were recovered by the Secretary of State (SoS) by a direction, made under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, on 26 June 2013. The reason for this direction is that the appeals involve proposals for residential development of over 150 units or on sites over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

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1.4 On the information available at the time of making the direction, the statements of case and the evidence submitted to the Inquiry, the following are the matters on which the SoS needs to be informed for the purpose of his consideration of these appeals:

(*i*) *The extent to which the proposed development is consistent with the development plan for the area and would deliver a sustainable form of development;*

(ii) Whether the proposed development is premature in the light of the emerging SWDP and national guidance;

(iii) Whether the proposed development is necessary to meet the housing needs of the district bearing in mind the housing land supply position;

(iv) The effect of the proposed development on the character and appearance of the area;

(v) The effect of the proposals on local highway infrastructure;

(vi) Whether any permission should be subject to any conditions and, if so, the form these should take; and

(vii) Whether any planning permission granted should be accompanied by any planning obligations under section 106 of the 1990 Act and, if so, whether the proposed terms of such obligations are acceptable.

1.5 There are two Statements of Common Ground (SoCG); one of these records the agreed position between Barberry Droitwich Ltd, Persimmon Homes and Prowting Projects and Wychavon District Council (WDC) on general planning matters[1] and the other sets out the agreed position between Worcestershire County Council (WCC) and the Appellants on highway and transport matters.[2] There are two Section 106 Planning Obligation Agreements,[3] and a List of Suggested Conditions for each appeal.[4] The Appellants, the Council and other parties have also provided a separate list of documents which each submitted to the Inquiry. Copies of all the proofs of evidence, appendices and summaries have been supplied to the SoS. The document lists are at the end of this Report.

1.6 On 6 March 2014 DCLG's new Planning Practice Guidance (PPG) was issued. This guidance supersedes the `beta mode' emerging guidance published for consultation on 28 August 2013. The guidance was launched via a Written Ministerial Statement on local planning by Nick Boles.[5] Also on 6 March 2014 DCLG cancelled the previous planning guidance documents that are replaced by the new guidance. The parties were invited to make comments in respect of the implications of the PPG on these appeals. I received responses from WDC, Harris Lamb and Pegasus Group. These are grouped together under the reference INQ4. I have taken into account the PPG as a material consideration

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[1] INQ3
[2] BDL10
[3] BDL5 and C3
[4] C7 and C8
[5] Parliamentary Under Secretary of State for Planning

in these appeals together with the additional comments submitted by the parties in INQ4.

The Sites and Surroundings

1.7 The appeal sites are located to the south of Droitwich Spa, the largest town in Wychavon District by population, in an area known locally as Yew Tree Hill. A plan (drawing ref: P.0742.09) showing the relationship of the appeal sites to one another and their location in the context of the built up edge of Droitwich Spa can be found in Core Document E3.

The main points for each site are:

1.8 **Appeal Site A** is outside, but adjacent to, the development boundary of Droitwich Spa. The site abuts residential development on its eastern, northern and western boundaries. There is also some sporadic development to the south of the site along Newland Lane. The southern boundary adjoins Pulley Lane and Appeal Site B. The red line plan submitted with the application shows the extent of the site boundary and this can be found at Core Document L20.

1.9 The appeal site consists of 34.63 hectares of greenfield land which is predominantly in agricultural and equine use. The site is divided up into a number of parcels of land which are dissected by hedgerows, private tracks and public rights of way. Newland Road dissects the site on a north south axis. It was previously opened to two way traffic and provided a link to Droitwich Spa town centre. It is now untrafficked (by way of a Traffic Regulation Order which came into force in 1993) between the property known as Casa Colina and the junction with Primsland Way but it is open for pedestrians and cyclists.

1.10 The topography of the site is undulating. The existing residential development to the north of the site is significantly lower than the appeal site but is separated by open space. The existing residential development to the east of the site is up to 76m AOD. The eastern parcel of Appeal Site A has ground levels that generally fall in a southerly direction towards the existing ditch and hedgeline which forms the common boundary with the Persimmon Homes site (Appeal Site B). Newland Road in places is set in a cutting due to the higher levels of the adjoining residential gardens, fields and land form. The highest part of the overall site is the land adjacent to the water tower. The parcel of land to the west of Newland Road is undulating with ground levels falling away to the north, west and south.

1.11 Land to the south of Newland Lane and Pulley Lane, excluding the carriageways, is located in the Green Belt. The proposal includes works to sections of carriageway which involves land in the Green Belt. These works are relatively minor and can be undertaken on land within the Appellant's control. They would not have any adverse impact on the openness of the Green Belt. No other development is proposed in the Green Belt. The appeal site is not constrained by any other nationally recognised designations such as Schedule Ancient Monuments, Conservation Area, Registered Parks and Gardens, Sites of Special Scientific Interest or Area of Outstanding Natural Beauty. The nearest listed building is a Grade II cottage in Hadzor which is about 480m to the east of the appeal site and along the eastern side of the M5. There is a

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collection of listed buildings approximately 640m from the northern most part of the appeal site. The listed buildings would not be affected by the proposal.

1.12 **Appeal Site B** lies outside the development boundary of Droitwich Spa. A site location plan is included at Core Document M15. The site abuts existing residential development on its eastern boundary, separated here by a narrow belt of public open space. Planning permission was recently granted by WDC for 39 dwellings on an adjoining site within the development boundary known as Newland Hurst (to the south-east of the site) which brings residential properties to the south eastern boundary of the appeal site. Newland Hurst is currently under construction. There is sporadic development to the south of the site along Newland Lane. A short section of the western boundary is defined by Newland Road. The northern boundary is well defined by a hedgerow and ditch, and the remaining boundaries are defined by hedges to the large gardens of adjoining properties.

1.13 The appeal site consists of 12.3ha of greenfield land which is currently in agricultural and equestrian use. The site is divided up into two parcels of land which are bisected by a hedgerow. Newland Road runs to the west of the site and Newland Lane bounds the southern tip of the site. The site falls from the southeast to the northwest corner of the site, thus making the site entrance from Newland Lane the highest point of the site.

1.14 The appeal site is not constrained by any nationally recognised designations such as Scheduled Ancient Monuments, Conservation Area, Registered Parks and Gardens, Site of Special Scientific Interest, Green Belt or Area of Outstanding Natural Beauty. The nearest listed building is a Grade II cottage in Hadzor which is about 480m to the east of the appeal site and on the eastern side of the M5.

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The Proposals

1.15 With regard to **Appeal A** the planning application was submitted in outline form with all matters reserved except for access. A schedule of the application documents and plans on which the SoS is requested to determine the proposal is at BDL 13. The reader should note that the most helpful plan in this schedule is the Indicative Masterplan. The proposed development is described as including the following components:

- Up to 500 dwellings of which 40% (200 dwellings) will be affordable
- A care facility (Class C2) comprising 200 units
- A local centre comprising of a potential mix of uses including a shop (Class A1), financial and professional services (Class A2), restaurant and café (Class A3), drinking establishment (Class A4), hot food takeaway (Class A5) and offices (Class B1 (a))
- A police post
- An indoor bowls facility
- Public open space including sports pitches and equipped children's play areas; and
- Associated infrastructure

1.16 The proposed access arrangements include the following:

- A new priority junction providing primary access into the site from Pulley Lane
- Widening of the north south section of Newland Road to create a improved pedestrian and cycle route with a new bus and emergency vehicle access
- New signalised junction on Newland Road/Primsland Way including pedestrian crossing with cycle priority
- New signalised junction on Pulley Lane/A38 by the Copcut Elm Public House including pedestrian crossing with cycle priority; and
- Works to Pulley Lane comprising road widening and realigned in parts

1.17 It is envisaged that all off-site works would be carried out under a Section 278 Agreement in consultation and agreement with the Highways Authority. The proposal includes the principles of a landscape framework and landscape design strategy.

1.18 With regard to **Appeal B** the planning application was submitted in outline form with all matters reserved except for access. A schedule of the application documents and plans on which the SoS is requested to determine the proposal is at P1. The reader should note that the most helpful plan in this schedule is the Indicative Masterplan. The development comprises the erection of a maximum of 265 dwellings of which 40% (106 dwellings) will be affordable, public open space and equipped children's play together with associated infrastructure.

1.19 The proposed accessing arrangements include the following:

- A new junction providing primary access into the site from Newland Lane;
- Provision of a secondary emergency access off Newland Road; and,
- New signalised crossing on Pulley Lane/A38 by the Copcut Elm public house including pedestrian crossing with cycle priority.

1.20 All off site works would be carried out under a Section 278 Agreement in consultation and agreement with the Highways Authority. An illustrative Landscape Masterplan is also proposed for the development.

Environmental Impact Assessment (EIA)

1.21 The overall development falls within the description at paragraph 10(b) of Schedule 2 of the 2011 Regulations,[6] being an urban development project on a site exceeding 0.5ha. A Screening Opinion was issued by the LPA to the effect the development would be unlikely to have significant impacts on the environment and therefore did not require an EIA. The SoS considered the matter and having taken into account the criteria in Schedule 3 to the above Regulations came to the same view that the proposed development would not be likely to have a significant effect on the environment by virtue of factors such as its nature, size or location. I agree that the proposed development is not EIA development and therefore it does not require the submission of an Environmental Statement. Notwithstanding this decision, an Environmental

[6] The Town and Country Planning (Environmental Impact Assessment) Regulations 2011

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Statement was prepared for the development in order to support the outline planning applications and to help inform the environmental design and mitigation for the development.

Planning Policy

1.22 The parties refer to national legislation and to a number of national planning policy documents which are listed at paragraph 4.2 of the SoCG.[7] Of particular note is the **National Planning Policy Framework (NPPF) (2012).** This has the presumption in favour of sustainable development at its heart and this has three dimensions: economic, social and environmental. It is confirmed that applications should be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is one such material consideration. Paragraph 215 makes it quite clear that the NPPF can override development plan policy that is not consistent with its provisions. Paragraph 49 of the NPPF indicates that relevant policies for the supply of housing will not be considered up-to-date if the Council is unable to demonstrate a five-year supply of deliverable housing sites. Paragraph 14 of the NPPF indicates that where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF as a whole or unless specific NPPF policies indicate development should be restricted.

1.23 The development plan for the area includes the saved policies of the **Wychavon District Local Plan** (WDLP) (June 2006). The following saved policies are considered relevant to these appeals:

- GD1 – Location Strategy for New Development
- GD2 – General Development Control
- GD3 – Planning Obligations
- SR5 – Minimising Car Dependency
- SR7 – Green Belts
- ENV1 – Landscape Character
- ENV4 – Sites of Special Scientific Interest
- ENV5 – Sites of Regional or Local Wildlife Importance
- ENV6 – Protected Species
- ENV7 – Protection of Wider Biodiversity
- ENV8 – Protection of Hedgerows, Trees and Woodland
- ENV18 – Development of Low to Medium Flood Risk
- ENV19 – Surface Water Run Off
- COM1 – Mix of Dwellings
- COM2 – Affordable Housing
- COM10 – Provision of Rural Community Facilities
- COM12 – Provision of Public Open Space
- SUR1 – Design
- SUR2 – Landscape Design
- SUR3 – Parking Provision

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[7] INQ3

1.24 Copies of all of these policies are set out in Core Document A6 and there is no need for me to repeat them here.

1.25 The **Regional Spatial Strategy for the West Midlands** (WMRSS) (January 2008) formed part of the development plan at the time of the determination of both planning applications. It was, however, revoked on 20 May 2013. Whilst the RSSWM no longer forms part of the development plan, the policies in the RSS Phase 2 Revision Draft Preferred Options document, and the accompanying Panel Report and its evidence base are material considerations in the determination of planning applications and appeals.

1.26 Wychavon District Council is currently participating in the preparation of the **South Worcestershire Development Plan** (SWDP). The SWDP is being prepared by WDC, Malvern Hills District and Worcester City to form a joint Local Plan for the area. The SWDP has been submitted to the SoS for examination. The SWDP Inspector has decided to examine the SWDP in two stages. The stage one hearing sessions, where matters in relation to the proposed level of employment, housing and retail provision set out in the SWDP, were considered in October 2013.

1.27 The SWDP Proposed Submission Document January 2013[8] seeks to allocate most new development in locations where there is good access to local services and where transport choice is maximised. The spatial strategy for residential development in the SWDP is outlined in Policy SWDP2 which identifies Droitwich Spa as a main town providing a comprehensive range of local services and employment opportunities and will consequently continue to be the focus of balanced growth.

1.28 For residential development, the SWDP proposes 6 allocations within the existing Droitwich town boundary indicatively totalling 226 dwellings (Policy SWDP48. Policy SWDP49/1 seeks to allocate land at Copcut Lane for approximately 740 dwellings, 3.5ha of employment uses and a local neighbourhood centre incorporating a range of facilities. This site was granted outline planning permission in January 2013. Neither of the appeal sites is allocated for development in the latest iteration of the SWDP. Other policies in the SWDP include Policy SWDP5: Green Infrastructure; Policy SWDP25: Landscape Character and Policy SWDP29: Sustainable Drainage Systems.

1.29 The Inspector has now published his Interim Conclusions on Stage 1. Whilst the Inspector has advised that the SHMA's underlying methodology is essentially sound the three authorities have been advised that the housing target in the SWDP is subject to 'three fundamental shortcomings'[9] and is likely to be 'substantially' higher than the 23,200 dwelling figures proposed by the Submission SWDP.[10] The Inspector sets out his view as to the method for deriving an objective assessment of housing needs in South Worcestershire and each of the three authorities therein.[11] The Councils have commissioned

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[8] A9
[9] CD A10 paragraph 15
[10] CD A10 paragraph 40
[11] CD A10 paragraphs 44-48

further work to establish a revised housing requirement to inform the SWDP. The draft SWDP and its evidence based documents, including the Inspector's initial findings, are material considerations in the determination of the appeals.

Supplementary Planning Documents

1.30 The Council has issued a number of Supplementary Planning Documents (SPD) that are of relevance. These include: the Wychavon District Council Affordable Housing SPG (2002); the Wychavon District Council Developer Contributions towards Service Infrastructure SPG (2003); the Wychavon District Council Developer Contributions for Education Facilities SPG (2007); the Wychavon District Council Planning and Wildlife SPD (2008); the Wychavon District Council Water Management SPD (2009); the Wychavon District Council Water Recycling Strategy SPD (2010); the Wychavon District Council Residential Design Guide SPD (2010); and the Wychavon District Council Landscape Proposals – A guide for Developers 2005.

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2. THE CASE FOR WYCHAVON DISTRICT COUNCIL (WDC) (Both Appeals)

2.1 In May 2013, the Planning Committee of WDC refused planning applications by Barberry Droitwich Limited and Persimmon Homes Limited and Prowting Projects Limited on land north of Pulley Lane and Newland Lane, Droitwich Spa. A Special Meeting of the Planning Committee was arranged specifically to consider the two applications. This meeting, on the 16h May 2013, commenced at 1400 hours and finished at 1735 hours.

2.2 Each application was refused by the Planning Committee with the voting being 12 votes for refusal, 0 against and 1 abstention. In refusing the applications, Members of the Planning Committee exercised their own judgement on the merits of each individual case. A healthy and proper public debate was had for both applications. At the heart of the Committee's consideration was the advice and guidance contained in the NPPF together with other material factors and considerations which were presented before them. The Council's ability to demonstrate a robust supply of housing land for five years in accordance with the NPPF, together with the appropriate buffer (20%) was a significant and materially determining factor. The Planning Committee felt that the Council had the ability to demonstrate such a robust supply.

2.3 The development plan currently comprises only the saved policies of the WDLP, the details of which are set out in the SoCG.[12] On the Proposals Map, both of the Appeal Sites lie outside the defined boundary of Droitwich Spa and therefore policies for the open countryside apply. The strategy of the WDLP is to concentrate most development on existing settlements in the District to further sustainability objectives, to reduce the need to travel and to safeguard the countryside for its own sake. Policy GD1 is not out of date. Policy SR1 of the WDLP sets a target for housing provision up to March 2011 and allocates sites for that purpose. Four of the allocated sites which remain undeveloped are being carried forward in the emerging SWDP. In this respect it is still

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therefore a relevant policy. Policy ENV1 and ENV8 of the WDLP relate to protection and enhancement of the landscape and are also relevant. None of these policies are out of date. They are consistent with the NPPF.

2.4 The NPPF identifies three dimensions to sustainable development – economic, social and environmental. Appeal A contains very little by way of employment creating land uses. Appeal B does not provide any employment creating land uses. There is an economic dimension, albeit not as much as might be generated by a truly mixed use development. There is a social dimension by the provision of jobs, the provision of housing, particularly affordable housing and by the provision of care facilities. As far as the environmental dimension is concerned, there would be some enhancement in terms of bio-diversity but on balance the impact upon the landscape overall is negative. It is clear that in 2012, the Council was unable to demonstrate a 5-year supply of housing land. In those circumstances some WDLP policies were considered to be out of date and considerable weight was given to the benefits arising from development. The position has changed significantly in the last 18 months.

2.5 The NPPF identifies 12 core planning principles of the planning system which should underpin both plan making and decision making. The appeal proposals are not in accord with the development plan nor the emerging SWDP and therefore both appeals are in conflict with the first bullet point which requires that planning should be genuinely plan led. The impact on the landscape is such that the proposed development would not enhance the place in which people currently live. The proposals would deliver homes. However, they would not deliver sufficient business and industrial opportunities such as to proactively drive and support sustainable economic development. Appeal A would not promote truly mixed use development and Appeal B contains no uses other than residential.

2.6 Neither of the Appeal Sites is well located in respect of walking or public transport and for that reason the location is not sustainable. An attempt has been made with Appeal A to make it more sustainable by introducing a bus route and an indication of bus services but it would not be viable in the long term. Appeal A also includes a proposal for a local centre to provide a focus and to improve sustainability but it fails to achieve that objective. Both appeals conflict with many of the core planning principles set out in the NPPF.

2.7 The SWDP has been submitted to the SoS and the Examination in Public has commenced and is therefore at an advanced stage. The Local Plan Inspector published some initial findings in which he has sought additional information from the LPAs and indicated that the housing land requirement may need to be increased substantially. The LPAs have indicated that they will respond to the Local Plan Inspector and it will then be for the Inspector to assess whether the modified proposals satisfy his concerns and to fix the housing land requirement. The Council's intention to maintain the current spatial strategy would not necessarily require a significant increase in the level of housing in Droitwich Spa. Granting planning permission for either or both of these Appeals would defeat the plan led system. To allow either of the Appeals would pre-judge the outcome of the Examination in Public, particularly with regard to scale location and phasing of development.

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2.8 In light of this, the good progress of the emerging SWDP, the substantial scale of the proposed development and the sensitivity of the local landscape to such significant change, the Planning Committee felt justified in refusing the applications. Influencing this judgement was the fact that the Council had worked, and continues to work, tirelessly towards approving suitable and sustainable forms of housing development where such sites would not prejudice the strategy of the SWDP. Since the Lioncourt Homes (Honeybourne) decision APP/H1840/A/12/2171339 was published in August 2012, the Council has listened to and acted upon the advice of the Inspector. Numerous housing proposals beyond the WDLP development boundaries have been approved. Details of these are contained within Mr Brown's evidence.

2.9 Evidence has been submitted about the status and journey of the emerging development plan which will replace the WDLP and provide a plan led approach to the south Worcestershire authorities of Malvern Hills, Worcester City and Wychavon. It is unusual for an emerging development plan to have a completely smooth and seamless journey through its various stages of preparation to adoption, particularly where it is a joint plan. The SWDP is no different in that regard. The Inspector has not found the plan unsound. He has merely requested additional information which the South Worcestershire Councils have duly provided. The Examination in Public reconvened on 13 March 2014. The housing requirement for the district is as yet undetermined and the precise outcome cannot be predicted – these are matters for the local plan process. The Council draws attention to the recent appeal decision at Kentford, Newmarket (November 2013) where the Inspector concluded that the proposal would be premature. That appeal was for a much smaller scale of development than Appeal Site B, the site was in a sustainable location and there was only 3.15 years supply of housing land.

2.10 It is agreed amongst all parties that it is not a matter for these Section 78 appeals to determine what the appropriate housing target is for the SWDP. The Council's position is set out in a statement [13] submitted to this Inquiry. During the course of this Inquiry the Council has cooperated with both Appellants in an effort to agree various positions of common ground, including housing land supply, which it is believed will assist the Inspector in formulating his recommendations to the SoS.

2.11 It is a matter of fact that the Council has demonstrated that with permissions, commitments and the inclusion of emerging sites, which are coming forward now so cannot be entirely discounted as suggested by the Appellants, it can demonstrate a 5-year supply of housing land with the relevant buffer. The evidence is set out in Mr Brown's supplementary proof and Appendix A. In the light of the Court of Appeal's recent decision in the Hunston Properties case, the Council accepts that reliance on the WMRSS Phase 2 Panel figures in relation to the objective assessment of need is no longer appropriate, even though they remain the last publicly tested figures.

2.12 The housing figure relied on for the purposes of these appeals, is derived from the 2008 household projections, as in the Council's view these represent the

[13] C11

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most robust credible figures. Tested against these figures, the Council can demonstrate a 5-year supply of housing land recognising that there is a lapse rate built into the supply calculations. Against a total requirement of 10,133 dwellings, equivalent to 422 dwellings per annum, the Council can demonstrate 6.76 years' housing supply as set out at Appendix A of Mr Brown's Supplementary Proof of Evidence. This includes a 2.6% vacancy rate and a 0.8% allowance for second homes. Previously against an annual requirement of 475 dwellings, set out in the WMRSS Panel Report, 5.65 years' housing supply could be demonstrated. The Council has provided clear evidence to demonstrate that each of the components is `deliverable' within the context of footnote 11 of paragraph 47 of the NPPF. It also supports the decision of Lang J in *William Davis and others v Secretary of State for Communities and Local Government and others* and her interpretation of paragraph 14 of the NPPF.

2.13 The PPG at paragraph: 031Reference ID: 3-031-20140306 provides advice on what constitutes a 'deliverable site' in the context of housing policy. This advice is clear in that planning permission or allocation in a development plan is not a prerequisite for a site being deliverable in terms of the 5-year supply. If there are no significant constraints to overcome (for example infrastructure) sites not allocated within a development plan or without planning permission can be considered capable of being delivered within a five year time frame. The Council also relies on the results of a deliverability questionnaire sent out to all the promoters of the SWDP sites the response to which was positive.[14]

2.14 As is now commonplace with housing appeals, the Appellants have attempted to discount various sites and label them as undeliverable for a variety of reasons. However, none of the Appellants' evidence demonstrates significant constraints to development on identified housing sites. Indeed the Council has omitted from its evidence sites where significant constraints exist. None of the sites presented to the Inspector in support of 5-year land supply have significant infrastructure or other constraints.

2.15 Both appeal sites lie in open countryside, outside the defined settlement boundary, as set out in the Development Plan and are contrary to the development strategy of the WDLP Policy GD1. The impact of Appeal Site A is particularly significant in terms of harm to character and appearance of the area but also in visual terms. The existing openness would be eroded and the development, on elevated land, straddling the land to the east and west of Newland Road, would significantly encroach into the open countryside, which currently provides an attractive contrast to the urban built form of Droitwich Spa, lying to the north and east. The proposed development on Appeal Site A would be visually intrusive and have major/moderate adverse impacts on landscape character and in terms of visual impact, on a permanent basis, despite the mitigation proposed.

2.16 The proposals for Newland Road would be particularly damaging and would turn a rural lane into an engineered, urbanised bus route, detracting significantly from the existing character and causing significant adverse visual

[14] See MDB17 and MDB18

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impact to those living nearby and those using the lane. The proposed open space areas within the scheme (Appeal A) needs to be considered in the context of a significant scale of housing development, arranged in blocks around the site, including development on the higher parts of it. The mitigation planting, whilst seeking to ameliorate the impact of the development, would not in the Council's view, alter the fact that a very substantial development is being placed on the site, with the effect that Droitwich Spa would extend southwards, and one of the last remaining sections of this character type in this location (settled farmlands) would disappear. The adverse impacts on public rights of way would also be very significant indeed.

2.17 Taken in isolation, the scheme for Appeal Site B, would have less impact than Appeal Site A, but it is still considered to be harmful, lying as it does close to the interface between two Landscape Character Areas (as set out in Ms Illman's evidence), and clearly impacting on both. It would also give rise to significant adverse visual impacts (including the public rights of way), which are assessed as major/moderate adverse in the long term. The cumulative effect of both schemes in landscape character and visual terms would be manifestly significant and harmful.

2.18 The Council acknowledges the Leasowes Road and Laurels Road, Offenham appeal decision - APP/H1840/A/13/2203924 - which was published during this Inquiry. Whilst that decision concludes that Wychavon does not have a sufficiently robust 5 year housing land supply, it also, typically, does not give any indication as to what level of supply the Council does have. The appeal decision does not set out what target the Council should be working to. It is important to note that it does not conclude that there is a chronic shortage of housing in the district, as is often read in appeal decisions across the country. The decision does recognise at paragraph 33 the fact that there has been an upturn in completions since 2009/10.

2.19 It is a fact that the Offenham decision is a material consideration in the determination of this appeal. However, it is also a fact that this Inspector has heard different submissions from different witnesses on a matter which seemingly changes on a weekly basis. It is therefore apparent that the Inspector is entitled to make an independent judgement on these appeals based on the evidence he has heard and he is not bound by the decision at Offenham.

2.20 The Council also referred to the recent decision by the SoS at Forest Road, Branston, Burton-on-Trent. It highlighted a number of points which distinguished the case from the appeals before this Inquiry. These included: (i) the appeal involved a different context in a different area; (ii) it involved 300 dwellings; (iii) work on the new East Staffordshire Local Plan had just commenced whereas the SWDP had progressed further (iv) the absence of a five-year housing land supply was common ground (v) landscape and visual harm formed the core of the Council's case and the SoS agreed that any major adverse effects of the appeal proposal would be confined to the short term, in the long term, it would not have significant adverse effects on landscape character or visual amenity. The situation at Yew Tree Hill was very different. Overall the Council argued that very little weight should be given to this East Staffordshire decision.

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2.21 Turning to the planning balance, it is submitted that should the Inspector find that the Council has a robust supply of housing land sufficient for 5 years, with the additional buffer, then the paragraph 14 presumption in the NPPF does not apply. Consequently, the weight attributed to the saved policies of the WDLP would be significant and these appeals, being contrary to those saved policies and recognised as causing significant and demonstrable harm to the local landscape character, should be dismissed.

2.22 The Council invites the Inspector to come to this conclusion and recommend to the SoS that both appeals be dismissed.

3. THE CASE FOR BARBERRY DROITWICH LTD (APPEAL A)

3.1 These submissions are structured around the main matters set out by the Inspector at the Pre-Inquiry Meeting on 6 November 2013. Before addressing each in turn, it is important to set out the context for these appeals.

(i) The Honeybourne Appeal

3.2 On 24 August 2012 the Planning Inspectorate issued an appeal decision on land between Station Road and Dudley Road, Honeybourne.[15] That decision involved this same LPA. It was made after the publication of the NPPF. The following key conclusions need to be taken from it: (a) the Sedgefield approach should be used in relation to this LPA; (b) this LPA is a 20% authority in relation to buffers; (c) a 10% lapse rate was appropriate; (d) the windfalls figure presented by the Council was not based on 'compelling evidence' the appropriate figure should be between 55 and 58 dwellings pa;(e) the Council did not have a 5-year supply. They could demonstrate between 1.9 and 2.76 years supply and 'the Council has serious housing land supply problems'; (f) full weight could not be given to the saved policies of the Local Plan, any weight given would be dependent on their consistency with the NPPF, in accordance with paragraphs 214 and 215 NPPF; and (g) the policies relating to housing provision were time expired and out of date so limited weight could be given to them.[16]

3.3 Quite properly, the decision in Honeybourne affected the officer's advice in his report to Committee. He stated:

'…members will be aware of recent appeal decisions in Honeybourne such as APP/H1840/A/12/2171339 in which the Inspector concluded that in respect of paragraphs 214 and 215 of the Framework full weight cannot be given to the saved policies of the Local Plan because the plan was not adopted in accordance with the Planning and Compulsory Purchase Act 2004 and any weight that is given will depend on the degree of consistency with the framework. The Inspector further concluded that the housing provision policies outlined in the Local Plan were out of date so limited weight could be given to them.'[17]

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[15] Land between Station Road and Dudley Road, Honeybourne, APP/H1840/A/12/2172588, CD D12.
[16] *Ibid.* paragraphs 19, 24, 36, 37, 41, 42
[17] Officer's Report to Committee, CD H1, under heading 'Wychavon District Local Plan' (WDLP).

3.4 BDL invites the Inspector to give significant weight to the findings of the Inspector in the Honeybourne appeal decision which remains relevant to this Inquiry and especially in relation to main matter (iii).

(ii) The recommendation and reasons for refusal (RFR)

3.5 The planning officer for WDC recommended approval of both schemes which have been considered at this Inquiry.[18] Importantly, in relation to the Barberry scheme he reached the following conclusions:

'it is advised that for the purposes of directing the location of new housing, saved Policy GD1 is out of date and should therefore be given limited weight in the decision making process.'

'However, it remains so that the Council cannot currently demonstrate a 5 year supply of housing land with the 20% buffer imposed by the Inspectorate and taking into account the need to meet the historical undersupply within the first 5 years (the Sedgefield Approach) against the WMRSS Panel Report or the Council's Strategic Housing Market Assessment.'

With regard to the 25 April 2012 Report on Wychavon's Housing Land Supply it stated: '*The report shows a shortfall of approximately 1.66 years against the WMRSS figure and 0.07 years against the SHMA figure.*

Consequently, significant weight must be given to paragraph 49 of the Framework and the Council's lack of 5 year supply and the need to promote sustainable development in accordance with paragraph 14 and 7 of the Framework.'

'…in this instance the grant of planning permission would clearly impact on decisions to be made about the scale and location of development in and around Droitwich, but it does not have wider ramifications for the overall Development Plan process. On this basis it would be difficult for the Council to "demonstrate clearly how the grant of permission for the development concerned would prejudice the outcome of the DPD process"'

'It should be borne in mind that in the planning balance and having regard to the principle of the development in planning policy terms, the harm to the landscape – bearing in mind the lack of any national designation or emerging local designation – is outweighed by the wider benefits of increased housing in the district and the contribution this proposal would make towards meeting the housing land supply requirement imposed by the Framework.'

3.6 The officer's report concluded:

'Overall, the proposed development is considered to achieve an economic, social and environmental role and therefore the proposal can be considered sustainable in line with paragraph 14.

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[18] CD H1

All other material planning considerations relevant to the proposed development have been carefully judged with the overall conclusion that on balance there would be no significant and demonstrable adverse harm to landscape, heritage assets, highway safety, residential amenity, nature conservation, flooding and drainage. Any harm acknowledged in this report would be outweighed by the benefits of the scheme in assisting to meet identified housing need.'[19]

3.7 Despite the officer's advice, the Committee refused planning permission for BDL's scheme and gave four reasons for so doing. First, on the basis of prematurity. The second contended that Wychavon could not support the Sedgefield method of calculation and without it the LPA could demonstrate a 5-year supply. The third was an amalgamation of landscape impacts, prematurity and housing need. The final reason was given on the basis of the lack of a s106 Agreement.

3.8 Under Article 31(1)(b) of the Town and Country Planning (Development Management Procedure) (England) Order 2010 when refusing planning permission the Local Authority must ensure that the Decision Notice states '*clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision*.' It is noted that the Council has not included any Local Plan policies in any of its non-section 106 related RFR. As such, it can be concluded that in so far as the Council has relied at this Inquiry on the alleged contravention of certain local plan policies by the proposal, this is an *ex post facto* exercise which did not form the basis for the original refusal.

3.9 Indeed, the refusal reasons should be afforded even less weight following the insight which Cllr Jennings gave as to why these reasons were chosen. He stated that the reasons were drafted in outline prior to the Planning Committee meeting 'in case they were needed'[20] Under cross-examination it became clear that the Council had chosen the reasons on the basis that 'they could be defended at appeal.'[21] It seems that the reasons do not reflect what appeared to be the genuine concerns of the Council as stated by Cllr Morris: the capacity of a local sewage plant, health infrastructure, access, drainage and adequate education facilities. None of these issues have been raised by the Council at this Inquiry.

(ii) The Local Plan Context

3.10 Under s38(6) of the Planning and Compulsory Purchase Act 2004 this decision must be taken in accordance with the development plan unless material considerations indicate otherwise. The NPPF reinforces this approach and highlights that the planning system is 'plan-led'.[22] The starting point therefore, is the Council's development plan. The policies should be individually scrutinised in order to assess what weight can be afforded to each in

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[19] *Ibid*, section 7
[20] Cllr Jennings cross-examination, 6 February 2013
[21] *Ibid*
[22] NPPF paragraph 196.

accordance with whether they are 'out-of-date' and/or consistent or inconsistent with the NPPF.[23]

3.11 It is material that the WDLP was only intended to run up until 2011. Further, the Saving Letter (written on 29 May 2009) made it clear that policies were being saved in the expectation that they would be replaced '*promptly'.*[24] It also stated:

'Following 23 June 2009 the saved policies should be read in context. Where policies were originally adopted some time ago, it is likely that material considerations, in particular the emergence of new national and regional policy and also new evidence will be afforded considerable weight in decisions. In particular, we would draw your attention to the importance of reflecting policy in Planning Policy Statement 3 Housing and Strategic Housing Land Availability Assessments in relevant decisions.'[25]

3.12 Moreover, weight can only be given to each of the policies depending upon their consistency with the NPPF'.[26] The Inspector in the Honeybourne appeal decision recognised this on 24 August 2012 stating:

'the policies relating to housing provision are time expired and are out of date so limited weight can be given to these policies. Any interpretation of policies within the WDLP which sought to restrict a ready supply of housing and therefore adversely impact on the NPPF requirement to "boost significantly the supply of housing" would clearly conflict with the NPPF.' [27]

3.13 During this Inquiry the Council has admitted that Policy SR1 is out of date.[28] The Council also admitted that this, along with a lack of a 5-year supply, gives rise to the application of paragraph 14 NPPF.[29] It is submitted that Policy GD1 is also out of date. As stated by Chris May[30] in evidence two factors lead to this conclusion: the strategic context for this policy has disappeared and the policy clearly contains a date within it: it seeks to direct development only up to 2011. It is therefore 'out of date' on its own terms.

3.14 The prematurity reason for refusal relies upon the Council's emerging plan, the SWDP formed jointly with Malvern Hills and Worcester City. This plan is in a state of disarray. The Interim Conclusions of Inspector Clews have often been referred to during this Inquiry. They state:

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[23] NPPF paragraphs 14, 49 and 215
[24] 'Saving Letter', 29 May 2009, CD A16
[25] *Ibid*
[26] NPPF paragraph 215 and *Anita Coleman v Secretary of State for Communities and Local Government and North Devon District Council and other* [2013] EWHC 1138 (Admin) CD C4
[27] Land between Station Road and Dudley Road, Honeybourne APP/H1840/A/12/2171339
[28] Malcolm Brown Cross-examination 28 January 2014
[29] *Ibid*
[30] Examination-in-Chief, 6 February 2014

'the analysis in the February 2012 SHMA does not provide a reliable basis for identifying the level of housing need in South Worcestershire over the Plan period.'[31]

They concluded:

'...it appears from the evidence before me so far that the objectively assessed housing need figure for the Plan period is likely to be substantially higher than the 23,200.'[32]

3.15 During this Inquiry, the Council has submitted another figure to the Examination Inspector (between 26,700 and 27,343 dwellings for the SWDP area.[33] Anthony Bateman has provided a note to this Inquiry which highlights that the Council has not done what the EiP Inspector asked them to[34] and raises concerns namely: that the Council has declined to use the previously produced SHMA which the Inspector considered had a sound methodology, the employment forecasts are not based on the 2011 household projections as required by the Inspector and the 2006 starting figure is not robust.

3.16 The re-submitted figures will now have to be examined by the Inspector. This, together with the rest of the Local Plan process will involve:

(a) Assessment of the approach and new figures offered to the Inspector by the Council together with the consideration of objectors' comments therein and alternative approaches;
(b) The confirmation of an adequate housing figure;
(c) A political 'sign-off' process by the SWDP Local Authorities whereby each agrees to accept additional amounts of development;
(d) A future site search process to find where to place the additional housing;
(e) Public consultation on those sites;
(f) Strategic and Environmental Impact assessments of the sites;
(g) An examination of the new sites by the Inspector;
(h) If these are found to be sound, implementation of the plan.[35]

It is inevitable that this plan will take a lot longer to come to fruition than is currently projected. Mr Brown accepts that the SWDP will not be adopted until 2015: it may be longer than that. Clearly, the SWDP can be given very little weight in this s78 appeal.

3.17 Finally, in relation to the plan which has been submitted, the Inspector is also asked to note the following:

(a) The SWDP allocates sites outside of settlement boundaries – offending Policy GD1;

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[31] Malcolm Brown Proof of Evidence, Appendix 5, paragraph 41
[32] *Ibid* paragraph 49
[33] Amion Consulting , January 2014, CD C6 page 25
[34] Note by A C Bateman 4 February 2014, BDL 19
[35] Chris May, Examination in Chief, 6 February 2014.

(b) Worcester City and Malvern Hills (with whom this Council is entering into a joint plan) are both severely constrained in terms of where they can accept development. It is BDL's case that `Wychavon will end up having to take the lion's share of the additional housing[36]
(c) Current and proposed policy in Wychavon steers housing direction to Droitwich, Evesham and Pershore. There is no longer any priority afforded to Evesham over Droitwich;
(d) By reason of (a)-(c) above Droitwich is a prime candidate for future selection and the appeal site is one of the few unrestricted areas available.

Main matter (i): The extent to which the proposed development is consistent with the development plan for the area and would deliver a sustainable form of development;

A. Consistency with the development plan

3.18 As noted above, the reasons for refusal did not allege the breach of any local plan policies as a result of this proposal. During this Inquiry, in an *ex post facto* effort, the Council has relied upon Policies SR1, GD1, ENV1 and ENV8. Each policy is addressed below. It is acknowledged that bringing forward housing required by the 5 year supply obligation inescapably creates tension with Policy SR1 and Policy GD1. However, these policies ought to be considered out-of-date and afforded limited weight in this decision in accordance with the terms of the Saving Letter.

3.19 This development falls to be considered under paragraph 14 of the NPPF by virtue of two reasons. First, it is BDL's case that the Council cannot demonstrate a 5-year supply (this is dealt with under Main Matter 3). Accordingly, paragraph 49 of the NPPF applies. It states:

'Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.'

As such, the Council's policies which are relevant for the supply of housing should not be considered up-to-date. It is contended that these must include Policy SR1, Policy GD1 and Policy ENV1 as will be considered further below.

3.20 Secondly, paragraph 14 applies because 'relevant policies are out-of-date.' The most important out-of-date policies would be those relating to housing provisions: there are none for the period post 2011. As paragraph 14 states:

*'At the heart of the National Planning Policy Framework is a **presumption in favour of sustainable development**, which should be seen as a golden thread running through both plan-making and decision taking.*
...

[36] Put to Malcolm Brown in Cross Examination, 28 January 2014

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*For **decision-taking** this means:*

- *approving development proposals that accord with the development plan without delay; and*
- *where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:*
  - *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or*
  - *specific policies in this Framework indicate development should be restricted.*

Policies SR1 and GD1

3.21 The LPA has admitted that Policy SR1 is out-of-date.[37] BDL's case is that Policy GD1 is also out of date. The LPA has misunderstood the concept of a policy being out-of-date and so rely upon the fact that Inspector Stephens afforded some (if limited) weight to that policy at Honeybourne.[38] This argument is based on a false reading of paragraph 14 of the NPPF. The statutory requirement in s38(6) PCPA 2004 obliges the decision maker to address the development plan. This requirement is found in various places in the NPPF. The task for the decision maker is to assess each policy, determine the extent to which it is out-of-date and then weigh it accordingly. As such, the Planning Committee report, and the decisions in Honeybourne and Offenham are completely reconcilable.

3.22 In order to assess the extent to which the relevant policies are out-of-date one has to understand the following:

(a) The basis upon which these policies were saved;
(b) The extent to which the planning context has changed since they were adopted/saved;
(c) Whether they are time-expired on their face; and
(d) How far they are consistent with NPPF policies.

3.23 First, it has been highlighted above that the relevant Local Plan policies were only saved on the basis that they would be replaced 'promptly'[39]. Further, the Local Plan was adopted pursuant to PPG3, following which PPS3 represented a step-change towards the delivery of housing. This change is continued in the relevant provisions of the NPPF. Clearly, the LPA's reliance on Policy GD1 which seeks to constrain development within 2005 boundaries is not listening to what the Saving Letter has said. That letter also stated that the LPA should have regard to more up to date advice. This is consistent with the NPPF's paragraph 215 requirement that Local Plan policies should be weighed in accordance with their consistency with that document. As the Inspector said at Honeybourne *'it*

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[37] Malcolm Brown Cross Examination, 28 January 2014
[38] Land between Station Road and Dudley Road, Honeybourne, APP/H1840/A/12/2172588, CD D12.
[39] 'Saving Letter', 29 May 2009, CD A16

is simply not good enough to regard saved policies as an opportunity to refuse rather than grant planning permission.'[40]

Policy ENV1

3.24 In order to understand whether policies are consistent with the NPPF, one has to understand the purpose/purposes of the policies. Indeed, some Local Plan policies have more than one purpose. In so far as it seeks to protect the countryside, Policy ENV1 can be said to be consistent with the NPPF. However, in so far as it seeks to halt necessary development, it cannot be said to be consistent. This much is clear from the case of *Anita Colman v Secretary of State for Communities and Local Government and others.*[41] In that case the court considered restrictive landscape policies similar to Policy ENV1. The judge concluded:

'These policies are, in my view, on their own express terms very far removed from the "cost/benefit" approach of the NPPF. The policies as such do not permit any countervailing economic or similar benefit to be weighed in the scales. A submission that such benefits may be implicitly taken into account would be immediately rejected as running directly contrary to both the language and rationale of the relevant policies.'[42]

3.25 The cost/benefit approach of the NPPF is evident from the three-strand nature of sustainable development: economic, social and environmental.[43] As paragraph 8 of the NPPF makes clear:

'*[T]hese roles should not be undertaken in isolation, because they are mutually dependent…Therefore, to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system. The planning system should play an active role in guiding development to sustainable solutions.'*[44]

3.26 As in the *Anita Colman* case, where Policy ENV1 is used to restrict housing, it cannot be seen to be consistent with the cost/benefit approach of the NPPF. As such it must be afforded limited or no weight in this decision-making process.

Policy ENV8

3.27 Policy ENV8, however, is more flexible and can be considered as consistent with the cost/benefit approach in the NPPF. It states:

'Development proposals requiring planning permission will not be permitted where they would have an adverse impact on hedgerows, trees or woodland, their setting or their wider habitat, where such features are considered to be important for their visual, historic or ecological value of the area.

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[40] Honeybourne CD D12 paragraph.31
[41] [2013] EWHC 1138 (Admin), CD C4
[42] [2013] EWHC 1138 (Admin) *per* Parker J at paragraph.22, CD C4
[43] NPPF, paragraph 7
[44] NPPF, paragraph 8

Removal of hedgerows, trees or woodland will only be permitted where it can be demonstrated that the proposal will benefit the visual, historic or ecological value of the area. All proposals affecting trees, hedgerows or woodland will need to be accompanied by an assessment that justifies the approach taken.'

3.28 It is BDL's contention that this proposal does not conflict with Policy ENV8. The proposal brings a net positive gain of 1,385 metres of hedgerow.[45] There would be a net positive gain of 2 hectares of scrub and woodland mosaic[46] and 0.9 hectare of orchards.[47]

B. Is the Development Sustainable?

3.29 This development falls to be considered under paragraph 14 of the NPPF. The Inquiry has heard argument from the Council that a strained interpretation of the paragraph 14 presumption should be applied. The Council has stated that it will rely upon the judgement of Mrs Justice Lang in *William Davis and others v Secretary of State for Communities and Local Government and others*[48] where the judge added an extra 'gloss' on paragraph 14 NPPF. At paragraph 37 of that judgement she ruled that a development must be found to be sustainable before the presumption applies. It states:

'In my judgement, the Inspector and the Secretary of State directed themselves correctly by asking the question whether the proposed development was "sustainable development". At the Inquiry, the Claimants did not dissent from the Inspector's analysis that the fourth main issue was "whether the appeal scheme represents sustainable development, to which the Framework's "presumption in favour" should apply" (paragraph 317)…I accept Mr Maurici's submission that paragraph 14 NPPF only applies to a scheme which has been found to be sustainable development. It would be contrary to the fundamental principles of NPPF if the presumption in favour of development in paragraph 14 applied equally to sustainable and non-sustainable development.'

3.30 It is submitted that this is an incorrect interpretation of that paragraph. First, the wording of paragraph 14 itself does not support this view. The paragraph states:

'*where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless;*

- *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or*
- *specific policies in this Framework indicate development should be restricted*.'

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[45] Patrick Downes, Proof of Evidence, Appendix 6
[46] *Ibid*
[47] *Ibid*
[48] [2013] EWHC 3058 (Admin), CD C6

The paragraph clearly relates to all 'development proposals' it does not qualify this with an extra test of sustainability. It is therefore wrong to read such a test into the paragraph. The test also ignores the balancing exercise in paragraph 14. It is that exercise which determines whether or not development is sustainable. In the 'Lang' interpretation there is no identified means by which sustainability can be assessed.

3.31 Secondly, the weight of High Court authority runs contrary to Lang J's view. Three judgements from Mr Justice Hickinbottom at Stratford[49], Mr Justice Males at Tewkesbury[50] and Mr Justice Parker in North Devon[51] demonstrate the correct reading of paragraph 14. In the Stratford case Mr Justice Hickinbottom stated at paragraph 12:

'If the authority cannot demonstrate a five-year plus buffer supply of housing land at the time of a planning application for housing development, then that weighs in favour of a grant of permission. In particular, in those circumstances, (i) relevant housing policies are to be regarded as out-of-date, and hence of potentially restricted weight; and (ii) there is a presumption of granting permission unless the adverse impacts of granting permission significantly and demonstrably outweigh the benefits, or other NPPF policies indicate that development should be restricted in any event.'

3.32 In the Tewkesbury case Mr Justice Males agreed, stating at paragraph 20:

'*Accordingly both before and after the issue of the NPPF, the need to ensure a five year supply of housing land was of significant importance. Before the NPPF the absence of such a supply would result in favourable consideration of planning applications, albeit taking account also of other matters such as the spatial vision for the area concerned. After the NPPF, if such a supply could not be demonstrated, relevant policies would be regarded as out of date, and therefore of little weight, and there would be a rebuttable presumption in favour of the grant of planning permission. All of this would have been well understood by local planning authorities. An authority which was not in a position to demonstrate a five year supply of hsouing land, would have recognised, or ought to have recognised, that on any appeal to the Secretary of State from a refusal of permission there would be at least a real risk that an appeal would succeed and permission would be granted.'*

Further, at paragraph 49:

'…(2) the need for a five year housing supply was a material (and in fact the most important material) consideration; (3) Tewkesbury was unable to demonstrate such a supply in this case; (4) accordingly a presumption in favour of granting permission applied…'

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[49] *Stratford on Avon District Council v Secretary of State for Communities and Local Government* [2013] EWHC 2074 (Admin) CD C2 at paragraph 12

[50] *Tewkesbury Borough Council v Secretary of State for Communities and Local Government and others* [2013] EWHC 286 (Admin) **CD C3** at paragraphs 20 and 49

[51] *Anita Colman v Secretary of State for Communities and Local Government and others* [2013] EWHC 1138 (Admin) CD C4

3.33 In North Devon (the case of Anita Colman) Mr Justice Parker also agreed, at paragraph 5:

'Paragraph 14 of the NPPF refers to a presumption in favour of "sustainable development" as a central feature of the NPPF in relation to both plan-making and decision-taking. In the context of decision-taking, the presumption in favour of sustainable development is given expression in two ways. The first is by approving development proposals that accord with the development plan. The second is to grant permission where the development plan is absent, silent or where relevant policies are "out-of-date" unless any adverse impacts of granting permission for the proposed development "would significantly and demonstrably outweigh the benefits, when assessed against policies in the [NPPF] taken as a whole".'

3.34 Thus, three High Court judges have disagreed with Lang J. Given this, together with the clear wording of paragraph 14, it is submitted that this Inspector should prefer the view that there is no extra test of sustainability included in paragraph 14, not least because the other three judges' interpretation enables sustainable development to be measured within the balance of paragraph 14.

3.35 In any event, even if one followed Lang J's interpretation of the paragraph 14 test, it is submitted that this scheme is indeed sustainable. Mr Downes' proof of evidence and also his Appendix 6 demonstrates this. In summary:

(a) The scheme offers a number of economic benefits foremost among these is the amount of jobs the scheme would create. In terms of house building the evidence states that for every new home built two new jobs would be provided for a year.[52] It is expected that there would be 190 construction personnel on site at any one time.[53] The Care Facility would also provide jobs, not only in construction but also in order to run the centre. Patrick Downes estimates this to be between 105 and 125 jobs.[54] Finally, it is expected that the local centre would provide 40 jobs.[55]

(b) The scheme also offers a number of environmental benefits. The development has been landscape-led and affects no international or national designations. There would be a net positive gain in terms of hedgerows, field margins, ponds, broadleaf woodland, scrub, orchards and wetland.[56] These habitats would lead to a net positive gain in invertebrates, amphibians, reptiles, farmland birds and bats.[57] The only species resulting in a neutral/minor negative effect is the badger. However, mitigation measures can be provided to create replacement setts in order to minimise the potential impact.[58]

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[52]'Laying the Foundations: A Housing Strategy for England', November 2011, Executive Summary paragraph.11, CD A3
[53] Economic Statement, paragraph 5.7.5, CD L17
[54] Patrick Downes, Proof of Evidence, para.7.93
[55] Economic Statement paragraph 5.7.5, CD L17
[56] Patrick Downes, Proof of Evidence, Appendix 6
[57] *Ibid*
[58] *Ibid*

(c) The proposal offers a number of social benefits. These include: the provision of the local centre and the bowls facility which has been requested by the Council. The provision of the care facility would also meet an existing need in the district. The Worcestershire Extra Care Housing Strategy details that there is a need for 2,600 units.[59] Finally, the contribution of this scheme to meet some of the affordable housing deficit in the area cannot be underestimated. The importance of this will be dealt with in detail under Main matter 3.

(d) In conclusion on main matter (i), it is significant that no development plan policy was referred to in the reasons for refusal as such the Council did not at the time of the refusal take the view that this scheme offended any Local Plan policies. Secondly, the policies as they relate to the supply of housing land are out of date, both because Wychavon cannot demonstrate a 5-year supply and because the policies are time limited to 2011 and are being applied in a manner inconsistent with the NPPF. As such the paragraph 14 presumption applies to this scheme. The scheme is indeed sustainable as all of the aforementioned factors demonstrate.

Main matter (ii): Whether the proposed development is premature in the light of the emerging SWDP and national guidance;

3.36 The starting point in approaching a prematurity argument is the guidance contained in 'The Planning System: General Principles'.[60] The relevant parts state:

'*In some circumstances, it may be justifiable to refuse planning permission on grounds of prematurity where a DPD is being prepared or is under review, but it has not yet been adopted. This may be appropriate where a proposed development is so substantial, or where the cumulative effect would be so significant, that granting permission could prejudice the DPD by predetermining decisions about the scale, location or phasing of new development which are being addressed in the policy in the DPD. A proposal for development which has an impact on only a small area would rarely come into this category. Where there is a phasing policy, it may be necessary to refuse planning permission on grounds of prematurity if the policy is to have effect.*'[61]

'Otherwise, refusal of planning permission on grounds of prematurity will not usually be justified. Planning applications should continue to be considered in the light of current policies. However, account can also be taken of policies in emerging DPDs. The weight to be attached to such policies depends upon the stage of preparation or review, increasing as successive stages are reached. For example:

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[59] EiP Inspector Interim Conclusions, Malcolm Brown Proof of Evidence, Appendix 5, paragraph 73
[60] Office of the Deputy Prime Minister, 'The Planning System: General Principles', paragraphs 17-19
[61] *Ibid.* Paragraph 17

- *Where a DPD is at the consultation stage, with no early prospect of submission for examination, then refusal on prematurity grounds would seldom be justified because of the delay which this would impose in determining the future use of the land in question.*

- *Where a DPD has been submitted for examination but no representations have been made in respect of relevant policies, then considerable weight may be attached to those policies because of the strong possibility that they will be adopted. The converse may apply if there have been representations which oppose the policy. However, much will depend on the nature of those representations and whether there are representations in support of particular policies.'*[62]

3.37 Finally, it states:

'Where planning permission is refused on grounds of prematurity, the planning authority will need to demonstrate clearly how the grant of permission for the development concerned would prejudice the outcome of the DPD process.'[63]

3.38 The NPPF confirms the 'General Principles'. Paragraph 216 states:

'From the day of publication, decision-takers may also give weight to relevant policies in emerging plans according to:

- *the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);*

- *the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and*

- *the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).'*

3.39 The Beta Guidance takes a very similar stance. It states:

'While emerging plans may acquire weight during the plan-making process, in the context of the National Planning Policy Framework – and in particular the presumption in favour of sustainable development – arguments that an application is premature are unlikely to justify a refusal of planning permission other than in exceptional circumstances (where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account). Such circumstances are likely to be limited to situations where both:

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[62] *Ibid.* Paragraph 18
[63] *Ibid* paragraph 19

(a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or neighbourhood plan; and

(b) the emerging plan is at an advanced stage but has not yet been adopted.'[64]

3.40 Two High Court decisions last year have also provided guidance as to how a prematurity reason is to be approached. The cases demonstrate that very substantial development can be permitted within the exercise of planning judgement without falling foul of the prematurity principle. In *Tewkesbury Borough Council v Secretary of State for Communities and Local Government and others*[65] the judge considered two developments amounting to one thousand homes in total. In that decision Males J decided that the SoS's conclusion that developments were not premature was correct and gave the following guidance on prematurity arguments. At paragraph 64 he concluded that the Framework does not:

'cast any doubt on the fact that, pending the adoption of local development plans, individual planning applications will continue to be dealt with, where appropriate by the Secretary of State, applying existing principles.'

3.41 At paragraph 69 he confirmed that the Localism Act has done nothing to change the long-recognised principles of prematurity. He stated:

'But quite apart from the fact that no such conclusion can be drawn from the generalised policy statements on which he relies, such a case would amount, apparently for the first time in English planning law, to laying down as a rule of law a requirement as to the weight to be given to the views of the local authority rather than leaving such matters to the planning judgement of the Secretary of State or his inspector. This would contradict what Lord Hoffmann described as a fundamental principle of planning law (see [50] above). The Localism Act contains nothing which could be regarded as enacting such a radical change and in my judgment it is inconceivable that any such change was intended to be brought about by the policy statements which accompanied the Act.'

3.42 The case of *Bloor Homes v Secretary of State for the Communities and Local Government and Stratford District Council*[66] is also instructive. Mr Justice Hickinbottom considered the SoS's decision in respect of a development of up to 800 dwellings at Shottery. He rejected the prematurity argument raised by those seeking to challenge the decision and in doing so stated:

'The mere fact that a change is proposed to the development plan of course does not mean that all applications for development have to be put on hold. Given the propensity for change in policy and plans, that would bring the

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[64] National Planning Practice Guidance (Beta format), 'Determining a planning application' as at 9 February 2014
[65] [2013] EWHC 286 (Admin), CD C3
[66] [2013] EWHC 2074 (Admin), CD C5

entire planning system to an effective halt. As the Inspector put it (in paragraph 505 of his report), whilst acknowledging the consultation obligations in European law, "…it is important to avoid unreasonable holding up proposals on the basis of conflict with another process which has an uncertain outcome". A planning decision is therefore still required; but that has to be put into the balance with all other material considerations. That balancing exercise, so well-known in European law, is how the planning regime deals with the tension which I have described.'[67]

He went on to state, at paragraph 64 that paragraphs 17-19 of the 'Planning System General Principles' set out the correct approach to approaching a prematurity argument.

3.43 It is now necessary to apply the above guidance, policy and judicial decisions to the facts of this case. The Inspector is asked to note the following factors:

(a) When the Planning Committee refused the application in question they did so on the basis that they wrongly believed they had a 5-year supply. This erroneous belief was arrived at principally through ignoring the officer's advice as to the Sedgefield approach and rejecting what Inspector Stephens had said about it in relation to Wychavon in 2012.[68]

(b) Reliance upon prematurity as a reason for refusal is completely untenable in a situation where the Examination Inspector's Interim Conclusions have said that the figure of 22,300 dwellings is not enough and that substantially more will be required.[69] The Council is now proposing at least an extra three thousand homes.[70] The Council has no idea where these are going to be located. Therefore allowing permission for this scheme cannot prejudice a Local Plan in relation to which there is not even a preferred option identified where the additional development might go.

(c) On top of the concession that an extra three thousand houses are required, there are unresolved objections to the Emerging Plan. Paragraph 216 of the NPPF dictates that 'unresolved objections' should result in less weight being given to the Emerging Plan. This much was admitted by Mr Brown in cross examination.[71] As such, the objections dramatically reduce the weight which can be given to the assertion that the development will prejudice the Emerging Plan.

(d) The Council must 'clearly demonstrate' the harm which this development would cause to the emerging development plan. The Council has neither asserted nor demonstrated any harm during this Inquiry. Instead, it has merely prayed in aid two cases whose facts

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[67] *Ibid.* paragraph .63
[68] Land between Station Road and Dudley Road, Honeybourne, APP/H1840/A/12/2172588, paragraph 36
[69] Malcolm Brown, Proof of Evidence, Appendix 5, paragraph 49
[70] Report by Amion Consulting, January 2014, C6 ES11
[71] Malcolm Brown, Cross-examination, 28 January 2014

are completely at odds with the development before this Inquiry. The decision in Moreton-in-Marsh[72] concerned one of nine major settlements in the Cotswold District where Cirencester was the main town and principal target for growth (accepting 63% of development[73]). That left 37% to be located at the other nine principal settlements.[74] If the proposal in question had been approved, Moreton-in-Marsh would have been accepting a quarter of this.[75] In these circumstances a conclusion that the Emerging Plan would be prejudiced was not unreasonable. Further, the Inspector is asked to note that this decision was made pre-Framework and also prior to the decisions in *Shottery* and *Tewkesbury.* It cannot be guaranteed that the same conclusion would be reached on the same facts today.

(e) Similarly, the decision relating to Kentford in Newmarket involved development at a primary village.[76] It had a very poor range of services.[77] Those decisions are incomparable to the situation here. As addressed above, Droitwich is one of the three main towns in Wychavon. It is a specified as a suitable location for development both in the Local Plan and in the emerging SWDP.

(f) Indeed, it is impossible for the Council to demonstrate harm. Even on its own account there are over three thousand additional homes to be found. The EiP Inspector has found that Worcester City and Malvern Hills are constrained.[78] This means that Wychavon is a prime candidate for locating the extra development. Within Wychavon, Droitwich along with Evesham is the obvious place for the development to go. Evesham has already accepted a disproportionate amount of development and therefore it is time for Droitwich to play its part in contributing to the district's housing supply.[79] Further, the evidence base for the Emerging Plan has shown that the appeal site has been under active consideration as a location for development. Most significantly in 2005 when it was only left out of the plan in favour of Copcut Lane. Now that Copcut Lane has been allocated and granted permission Yew Tree Hill is an obvious next choice for necessary housing development.[80]

(g) The Council has erroneously advanced its prematurity reason for refusal on the apparent premise that it is necessary for BDL to show that the Council in its Emerging Plan would inevitably choose the appeal site. No such test exists. Paragraph 14 of the NPPF requires a

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[72] Todenham Road, Moreton in Marsh, Gloucestershire, APP/F1610/A/10/2130320, CD D7
[73] *Ibid.* paragraph 202
[74] *Ibid.*
[75] *Ibid* and paragraph 17
[76]Malcolm Brown, Proof of Evidence, Appendix 8, Extract from decision in Land at Bury Road, Kentford, Newmarket, APP/H3510/A/13/2197077, para.37.
[77] *Ibid.* para.38
[78] Malcolm Brown, Proof of Evidence, Appendix 5, paras 82 and 84.
[79] Malcolm Brown, Cross Examination, 28 January 2013 and Patrick Downes, Proof of Evidence, p.58, table 7.1.
[80] Extract from the Inspector's Report in respect of Yew Tree Hill, October 2005 CD A7

planning balance to be performed. The development plan pedigree of the site alongside the evidence that the Inspector has heard here demonstrates that this site is a good choice for development.

(h) Finally, this application has been considered at a 10 day inquiry. The Council's case and that of objectors in relation to this site has been given a full airing. Clearly, this long process is far longer than would be afforded to this site during the Examination process. There can be no complaint that this site has not properly been scrutinised and the public afforded a full opportunity to express its views about the development of the appeal site.

(i) Clearly, for all of the reasons outlined above, the Council's reliance upon prematurity as a reason for refusal cannot stand. It is contrary to the weight of guidance, policy and judicial decisions and no relevant precedent has been provided for it. It is noteworthy that Cllrs Jennings and Pearce did not obtain any legal advice to see whether the decision to reject the officer's advice on prematurity was justified or even defensible. Had they done so they would have been told the officer's advice was sound. The failure to revisit the reliance upon prematurity after the rejection of the housing figures at the EiP is completely indefensible and unreasonable.

Main matter (iii): Whether proposed development is necessary to meet the housing needs of the district bearing in mind the housing land supply position (Note to reader: the submissions on Main matter 3 are joint submissions made by BDL and Persimmon and Prowting Projects Limited).

3.44 As a preliminary matter, the Inspector is requested to note the very recent decision of Inspector Fox in a planning appeal at Offenham.[81] In relation to Wychavon's five-year supply, the Inspector concluded the following:

(a) 'It was therefore clear from the detailed discussion and questioning of evidence during the Inquiry that several of the sites without planning permission which were advanced by the Council to be available and deliverable within five years were not supported by robust evidence to that effect.'[82]

(b) 'the Council's track record shows that it has failed consistently to meet the RS required average requirement of 475dpa, despite an upturn in completions since 2009/10. This is compounded by the relatively low percentages of affordable housing provision during this period…'[83]

(c) 'the appellant's evidence shows conclusively that the recent significant increase in Wychavon's average house prices and relatively small

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[81] Land between Leasowes Road and Laurels Road, Offenham, Worcestershire, APP/H1840/A/13/2203924 C13
[82] *Ibid.* para.31
[83] *Ibid.* para.33

proportion of rented properties and low delivery of affordable housing have resulted in an increasingly unaffordable local housing market.'[84]

(d) 'Taking into account all the above considerations, it is my view that the Council's case, that it has just over 5 years' housing land, is unconvincing in the light of: (i) the revocation of the RS as a basis for assessing housing need; (ii) the likelihood of an increased housing requirement for Wychavon to emerge during the SWDP Examination; (iii) the over optimism of some of the Council's assumptions of deliverable housing supply over the next 5 years; (iv) the Council's ambitious housing targets in relation to its track record; and (v) the evidence of current market signals in relation to housing under provision and inaffordability.'[85]

(e) 'I therefore conclude, in relation to the first main issue, that although the proposal is contrary to *Local Plan* Policy GD1, this has little weight for the reasons stated and it is significantly outweighed by the inability of the Council to robustly demonstrate a 5 years' housing land supply for Wychavon.'[86]

3.45 The rejection of the Council's case on the existence of a 5-year land supply on the bases of: insufficient target, unrealistic delivery assumptions and its poor past track record could not be clearer. The Council, through its Deputy Leader Cllr Pearce, was invited to revise its reason for refusal based on an alleged 5-year supply.[87] Cllr Pearce refused to do so. This serves to demonstrate the Council's continuing stubborn unreasonable refusal to face the facts in relation to its 5-year supply position. It is further irrefutable evidence of an inability to accept the independent adjudication of the Planning Inspectorate.

3.46 Turning now to the evidence which has been heard by this Inquiry in relation to these schemes, these submissions are divided into two parts. First, the correct target figure for Wychavon and, secondly, the supply figure.

Requirement

3.47 Under paragraph 47 of the NPPF, in order to boost significantly the supply of housing LPAs should 'use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area.' Wychavon's Local Plan does not contain any figure within it.

3.48 Paragraph 159 of the NPPF requires LPAs to:

'have a clear understanding of housing needs in their area. They should:

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[84] *Ibid.* para.34
[85] *Ibid.* para.36
[86] *Ibid.* para.37
[87] Cllr Pearce, Cross-examination, 13 February 2014.

- *prepare a Strategic Housing Market Assessment to assess their full housing needs…The Strategic Housing Market Assessment should identify the scale and mix of housing and the range of tenures that the local population is likely to need over the plan period which:*
  - *meets household and population projections, taking account of migration and demographic change;*
  - *addresses the need for all types of housing…*
  - *caters for housing demand and the scale of housing supply necessary to meet this demand;*
- *prepare a Strategic Housing Land Availability Assessment to establish realistic assumptions about the availability, suitability and the likely economic viability of land to meet the identified need for housing over the plan period.'*

3.49 Paragraph 218 of the NPPF demonstrates that the RSS phase II review figure is an appropriate starting point for assessing the housing needs of an area but that this should be 'supplemented as needed by an up-to-date, robust local evidence.'[88]

3.50 The most recent objectively assessed evidence is that contained within the recent 2011 Interim Sub National Household Projections (SNHP).[89] These state that they should be used for a 10-year period, but beyond that there is a need to determine whether household formation trends are likely to continue.[90] After the ten year period, following the advice of the EiP Inspector, and reflecting the need to revise household representations rates (HRR) due to an improving economy, the more optimistic 2008 SNHP HRRs should be used.[91] This approach accords with the Holman Paper, the conclusions of the Inspector in relation to the Lichfield Core Strategy[92] and also current planning policy which aims to 'plan for growth'.[93] This is the approach Mr Bateman has followed.

3.51 However, the Council seeks to use and defend the 2008 figures for the entire plan period. These are out-of-date. This is made clear in the last sentence of the 2011 projections which state that they replace the 2008 projections from November 2010.[94] Given the chronology of the production of the figures this is hardly surprising. Indeed, this is echoed by the EiP Inspector who has asked the LPA to calculate the supply figure using the latest population projections combined with Nathanial Lichfield and Partners' approach.[95]

3.52 When calculating the appropriate target figure it is also crucial to start with the correct base date population figure. The Council has used the figure of 49,000

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[88] NPPF, pargraph.218
[89] Anthony Bateman, Proof of Evidence para.6.12
[90] *Ibid* page 19
[91] Malcolm Brown, Proof of Evidence, Appendix 5.
[92] CD I2, Local Plan Inspector's Report, Lichfield District Council Local Plan Examination
[93] The Plan for Growth, 2011, CD A11
[94] Anthony Bateman, Proof of Evidence, Appendix 1
[95] Malcolm Brown, Proof of Evidence, Appendix 5, paragraph 44

for 2006.[96] The SHMA demonstrates that this is incorrect. At page 135 it demonstrates that the correct figure is 47,322[97] as argued for by Mr Bateman.

3.53 The *Hunston*[98] judgement is concerned with the proper understanding of how to determine full objectively assessed need in circumstances where, as here, there is a policy vacuum. It requires the identification of a "policy off" figure. Policy is the "varnish" which the Court of Appeal refers to: the application of "varnish" is what happens in the forward planning process but is an exercise which cannot be assessed in the context of a s78 appeal. The Council's contention that "unvarnished" means arriving at a figure which doesn't take into account migration or economic considerations is neither consistent with the judgment, nor is it consistent with planning practice for deriving a figure for objectively assessed need to which constraint policies are then applied.[99] Their approach is clearly wrong. The only mention of the word 'unvarnished' in the Court of Appeal's judgement is in paragraph 29 of that judgement, it states:

'But there may be other factors as well. One of those is the planning context in which that shortfall is to be seen. The context may be that the district in question is subject on a considerable scale to policies protecting much or most of the undeveloped land from development in exceptional or very special circumstances, whether because such land is in an Area of Outstanding Natural Beauty, National Park or Green Belt. If that is the case, then it may be wholly unsurprising that there is not a five year supply of housing land when measured against the unvarnished figures of household projections. A decision-maker would then be entitled to conclude, if such were the planning judgement that some degree of shortfall in housing land supply, as measured simply by household formation rates, was inevitable.'[100]

3.54 Clearly, where the judgement refers to 'unvarnished' figures it means environmental or other policy constraints. There is nothing in this judgement which suggests that it is not perfectly proper to take into account migration, economic considerations, second homes and vacancies. Indeed, this is what the EiP Inspector has asked for.[101]

3.55 It is also clear that the 20% buffer should be applied to the entire five-year requirement (including the historic shortfall). Mr Brown, could not point to any provision in policy or previous decisions which supports his contention that the 20% should not apply to the historic shortfall.[102] It is instructive to note that the Council itself has been calculating its five-year supply by adding the 20% to the whole figure. This is clear from the Council's report to Committee dated 10 October 2013 included in Mr Brown's own evidence.[103]

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[96] Malcolm Brown, Proof of Evidence, paragraph 2.1
[97] SHMA, CD B10, page 135.
[98] *Hunston Properties Ltd v Secretary of State for Communities and Local Government and St Albans City and District Council* [2013] EWHC 2678 (Admin) CD C1
[99] Malcolm Brown, Cross Examination, 29 January 2014
[100] *Hunston Properties*, CD C1, paragraph 29
[101] Malcolm Brown, Proof of Evidence, Appendix 5, paragraphs 45-46
[102] Malcolm Brown, Cross Examination, 29 January 2014
[103] Malcolm Brown, Proof of Evidence, Appendix 9

3.56 The Inspector is asked to take particular note of the affordable housing need which exists in Wychavon. Under cross examination Mr Brown admitted that substantial weight should be given by the Inspector to the affordable housing to be provided by this proposal.[104] The weight of the issue in Wychavon is severe. Some 1,153 households are currently on the waiting list for an affordable home in Wychavon.[105] Further, Droitwich is the most unaffordable place for housing in Wychavon.[106] The LPA is drastically underperforming in terms of supplying affordable housing. The 2009 Annual Monitoring Report demonstrates that from 2005-07 only 182 affordable units were produced and only 47 from 2008 to 2009.[107] The LPA provided no affordable units in 2009-10 and only 57 in 2010-11.[108] Indeed, under cross-examination Mr Brown admitted that the LPA had failed to deliver even ¼ of the 268 affordable dwellings per annum that is required of it during the last 8 years.[109]

3.57 For all of the aforementioned reasons the LPA has not undertaken a robust calculation in order to arrive at its housing requirement for this Inquiry. This is in stark contrast to the methodology used by Mr Bateman which is robust and well justified. As such, Mr Bateman's figure for a requirement of 14,263 dwellings between 2006 and 2030 should be preferred.[110]

3.58 Before moving on to supply, the Inspector is asked to note that in its recent submission to the EiP, the Council has neglected to do what was asked of it by the Inspector. Even on the method the Council has chosen to use the Council accepts a need for an extra 3-4,000 houses which will be required during the plan period.[111] As will be demonstrated at the EiP, the Council's approach is flawed because:

(a) it has not used the 2011 projections;
(b) it has not based its calculations on the correct starting point; and
(c) questions remain as to the economic activity rates used.[112]

As such, the figure as submitted does not appear to be robust and very little weight can be given to it in these appeals. In a choice between the Council's figure and Mr Bateman's of about 14,000, it is clear for reasons set out above that it has been demonstrated that Mr Bateman's figure is to be preferred.

Supply

3.59 As for the supply figure it is necessary to address here a number of points of principle.

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[104] Malcolm Brown, Cross Examination, 28 January 2014
[105] Worcestershire Strategic Housing Market Assessment, 2012, CD B10 paragraph 5.74
[106] CD B10 figure 5.31, page123
[107] Wychavon DC Annual Monitoring Report 2009, CD B20 page19
[108] CD B20 page 79 paragraph 7.55
[109] Malcolm Brown, Cross Examination 29 January 2014
[110] Anthony Bateman, Proof of Evidence, paragraph 7.71
[111] Report by AMION Consulting dated January 2014, C6
[112] Note by A C Bateman 4/2/14, BDL 19

3.60 The LPA includes within its supply a number of sites which have permission but are very unlikely to come forward within five years. For example, Land off Banks Lane, Badsey. BDL's evidence shows that this site is not in the hands of a developer and that there is no evidence of viability.[113] The Inspector is invited to note other examples included in the 'Housing Land Supply Position Statement – Difference between Wychavon District Council and the Appellants'. It is not intended to address them all here. However, the Inspector's observations in the Offenham appeal are relevant to these considerations.

3.61 The LPA relies upon a Certificate of Lawful Use for the use of land as a touring caravan and camping site. Under cross-examination it became clear that the LPA were not clear of the basis for planning permission. As the Inspector pointed out these are likely to have a 'seasonal occupancy condition'[114] and therefore cannot be considered as dwellings to count towards the LPA's five year supply. The Council has produced no additional material to clarify this position.

3.62 The LPA seeks to include all of its SWDP allocated sites. The only safe conclusion using the authority of *Wainhomes*[115] is that not all of them will be deliverable. Each case must be assessed on a fact sensitive basis. Objections to each site must be taken into account as must the fact that most are outside existing development boundaries – one of the reasons the Council has rejected the development of these sites according to its evidence to the Inquiry. In the context of paragraph 216 of the NPPF only limited weight can be given to sites in respect of which there are unresolved objections. It is also relevant that the SWDP is now in a state of disarray. As already highlighted, it will be a long time before the non-strategic sites will actually be allocated at Stage two of the Examination process if and when the SWDP is eventually brought into force. Clearly their inclusion in a Local Plan in disarray cannot lead to a robust conclusion that they are deliverable.

3.63 In order for the LPA to include windfalls in its supply there has to be compelling evidence that such sites have consistently become available.[116] This evidence has not been made available to the Inquiry. Indeed, most recently, the EiP Inspector concluded that the large level of windfalls currently proposed should not be accepted and that there is a need for further information.[117] The Inspector is invited to accept Mr Bateman's evidence on this matter and conclude that his figure of 43 dwellings based on completions of 82 per annum, and allowing for windfalls which already have permission, is robust.[118]

3.64 The LPA also seeks to rely on C2 care units as adding to the 5-year supply. These cannot be included in the supply. These units have a range of communal indoor facilities, including communal dining. The institutional form and also the

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[113] Housing Land Supply Position Statement, Table 1
[114] Malcolm Brown, Cross Examination, 29 January 2014
[115] *Wain Homes (South West) Holdings Limited v Secretary of State for Communities and local Government and Wiltshire Council and other* [2013] EWHC 597 (Admin) CD C7
[116] NPPF, paragraph 48
[117] Anthony Bateman, Proof of Evidence, paragraph 8.29
[118] Anthony Bateman, Proof of Evidence, paragraph 8.36

occupational age limit renders them unsuitable for being included as 'dwellings' in the housing land supply. Indeed, it is telling that developers are not asked to make an affordable housing contribution on these units (as can be seen from BDL's application). As such, it is clear that Council policy is not to treat them as 'dwellings'.

3.65 A 10% lapse rate should be applied to the Council's supply. This approach is supported by the *'Housing Land Availability'* paper by Roger Tym and Partners.[119] The approach was accepted by the Inspectors at Moreton in Marsh,[120] Moat House Farm,[121] Honeybourne[122] and Tetbury.[123] A 10% lapse rate was affirmed in the High Court decision at Tetbury.[124] Given the previous shortfalls of delivery in this Local Authority, a 10% lapse rate is entirely reasonable and should be applied here in order to ensure a robust 5-year supply figure.

3.66 Taking all of the above points of principle into account, it is clear that based upon the expert evidence of Mr Bateman and Mr Downes, WDC cannot demonstrate a 5 year supply. If the Appellants' case is accepted on both requirement (i.e. Chelmer with employment') and supply the figure will only 1.83 year's supply.[125] This can be seen from Mr Bateman's table below.[126] Even if the Council's supply figures are used the supply is between 2.83 and 3.76 years (with or without the SWDP sites).

Wychavon Housing Requirement 1st April 2013	**District**			
	1. 2011 SNHP	**2. Chelmer with employment**	**3. SWDP**	**4. RS Panel Report**
Annual requirement (from Table 4)	**744**	**1,083**	**516**	**779**
5year requirement (annual x 5)	3,720	5,415	2,580	3,897
20% NPPF Buffer	4,464	6,498	3,096	4,676
Annual requirement	**893**	**1,300**	**619**	**935**

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[119] Roger Tym and Partners, *Housing Land Availability* DOE, Planning and Research Program Paper, 1995 cited in Anthony Bateman Proof of Evidence at paragraph 8.13
[120] CD D7, paragraph 178
[121] CD D35, paragraph 8
[122] CD D13, paragraph 49
[123] CD D36
[124] CD C5
[125] Anthony Bateman Proof of Evidence paragraph 11.14
[126] Anthony Bateman, Proof of Evidence, table 6

Appellant Supply	2,374		2,374		2,374		2,374	
Years Supply	**3.19**		**2.19**		**4.60**		**3.04**	
Shortfall	1,346		3,041		206		1,523	
Shortfall (5 years + 20%)	2,090		4,124		722		2,302	
Years Supply 5yr + 20%	**2.66**		**1.83**		**3.83**		**2.54**	
LA Supply	+SWDP	-SWDP	+SWDP	-SWDP	+SWDP	-SWDP	+SWDP	-SWDP
	4,886	3,682	4,886	3,682	4,886	3,682	4,886	3,682
Years Supply	**6.56**	**4.95**	**4.51**	**3.4**	**9.47**	**7.13**	**6.27**	**4.73**
Shortfall	-	38	529	1,733	-	-	-	215
Shortfall (5 years + 20%)	-	782	1,612	2,816	-	-	-	994
Years Supply 5yr + 20%	**5.47**	**4.12**	**3.76**	**2.83**	**7.89**	**5.95**	**5.23**	**3.94**

The Consequence of No 5-Year Supply

3.67 In conclusion, it is crystal clear that the LPA does not have a 5-year supply. This Inquiry has demonstrated this to be the case and the recent Offenham decision serves as a useful consideration of this deficit.

3.68 If there is no 5-year supply then Policy GD1 and Policy SR1 must be considered to be out of date as they are policies relevant to the supply of housing.[127] This means that the paragraph 14 NPPF test must be applied to these applications. The contention that the absence of a 5-year supply renders settlement boundary policies out of date is further reinforced by the very recent decision of the SoS at Forest Road, Burton on Trent.

3.69 However, in the unlikely event that this Inspector concludes that Wychavon can demonstrate a 5-year supply, the paragraph 14 test still applies. This is because relevant policies are out-of-date. As explained above the housing supply policies are time-limited, were saved on a basis that was subject to the caveats in the Saving Letter. The old Local Plan was drawn up against the background of an entirely different national policy context. All extant policies should therefore be afforded little weight in these appeals and the paragraph 14 presumption should be applied.

[127] See Lewis J in Cotswold District Council v Secretary of State for Communities and Local Government and other [2013] EWHC 3719 (Admin) at paragraph 72 CD C5

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3.70 It may be contended on the basis of the case of William Davis v SoS [2013] EWHC 3058 (Admin) that Policy GD1 is not a housing policy and that therefore it is not out of date by virtue of paragraph 49 of the NPPF. There is now, of course, conflicting authority to this decision in the form of the judgment of Lewis J in Cotswold DC v SoS [2013] EWHC 3719. The issue arises as to which interpretation of the NPPF is to be preferred. The Appellant contends that it is beyond a peradventure that the interpretation of Lewis J is correct. Quite apart from the fact that it is consistent with the approach of many Inspectors' decisions the interpretation accords with a common sense, purposive application of the policy for the following reasons.

3.71 If the only policies which were out of date, triggering the application of the presumption in favour of sustainable development, were those containing a housing requirement, and the settlement boundary or other constraint policies were of continuing validity how would the mischief to be addressed by the provisions of paragraph 49 of the NPPF, namely insufficient housing, be cured? The answer is that it would not and therefore the interpretation is absurd. The correct interpretation is that in the absence of a 5-year supply of housing the policies (other than those contained in Footnote 9) which are constraining the supply of housing like settlement boundaries and SLA's are out of date and in order to deal with the shortfall of housing land the planning balance needs to be shifted firmly in favour of the grant of consent in accordance with provisions of paragraph 14 of the NPPF.

3.72 In this case the evidence on this issue is clear. The Council does not have, and has not had, a 5-year supply for a very substantial period of time. No amount of conjuring with the figures or resolute denial in the teeth of the overwhelming factual material can gainsay this. It has to face both a planning balance which clearly favours the grant of consent in this appeal alongside an undisputable need for further provision for housing to be made.

Main matter (iv): The effect of the proposed development on the character and appearance of the area

3.73 This scheme has been 'landscape-led' from its inception. The site has been thoroughly investigated over four years.[128] This process has included detailed meetings with people at all levels at the Council.[129] The meetings also included a site visit with Planning Officer Eileen Marshall on 21 June 2010.[130]

3.74 Indeed, the Council was fully supportive of the scheme and its officers had no issue with it and stated:

> '*…there would be no significant and demonstrable adverse harm to the landscape, heritage assets, highway safety, residential amenity, nature conservation, flooding and drainage.'*[131]

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[128] Alison Potterton, Proof of Evidence, paragraph 9.2.1
[129] Appendix 3, Alison Potterton, Proof of Evidence
[130] Appendix 3, Alison Potterton, Proof of Evidence
[131] Planning Committee Report, Chapter 7 CD H1

3.75 They concluded:

- *'the indicative layout shown on the proposed masterplan would represent an acceptable form of development*
- *the proposed development would not have an adverse impact on the amenities of other residences to justify refusal*
- *subject to implementation of a suitable landscaping scheme the development can enhance the bio-diversity value of the site*
- *the proposed development will include satisfactory drainage facilities to deal with surface water run-off and will not therefore exacerbate flood risk*
- *the proposed development will not cause demonstrable harm to the character/appearance of the landscape.'*[132]

3.76 It is therefore somewhat surprising that this Inquiry has had to consider a landscape reason for refusal. However, the minutes of the Committee Meeting of 16 May 2013 and the evidence in chief of Cllr Jennings give some insight into why this reason was given.[133] The meeting minutes do not refer to any discussion on landscape. They state that discussion centred upon the expectation that that development at Droitwich would be either at Copcut Lane or at Yew Tree Hill. As Copcut Lane has now been permitted it seemed, in Cllr Jennings' view, justifiable to refuse this application. Indeed, Cllr Jennings who had made that argument before the Committee stated in cross examination that he had the reasons for refusal drafted prior to the Committee meeting.[134] The reasons were drafted on the basis that they could be defended at appeal.[135] Indeed, that there was no discussion of landscape matters at the Committee, and no landscape policies were cited in the reasons for refusal, this reason appears to be a 'straw-clutching attempt' to ensure no more development at Droitwich. It will also be noted that reason for refusal three has three parts of which landscape is only one third and as has been demonstrated above, the other two are unjustified.

3.77 The Council has sought to defend the landscape reason for refusal through the evidence of Sue Illman. Ms Illman's evidence is somewhat tainted by events which took place in 2012. As Ms Potterton explains in her proof of evidence,[136] Ms Illman's first assessment of the LVIA was based upon incomplete information. She was missing the table which assessed in detail the landscape and visual effects of the scheme.[137] Indeed, the damning nature of her opinion drew some surprise from the Council's Landscape Officer.[138] Once provided with the full information, Ms Illman failed to correct a number of the errors in her report. Indeed, it is submitted that those errors and assumptions have bled into her evidence before this Inquiry.

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[132] Planning Committee Report, Conclusion CD H1
[133] Minutes of Planning Committee Meeting, 16 May 2013, CD H4
[134] Cllr Jennings, Cross-Examination, 6 February 2014
[135] *Ibid*
[136] Alison Potterton, Proof of Evidence, paragraphs 7.3.1 - 7.3.14
[137] Alison Potterton, Evidence in Chief, 31 January 2014
[138] Email from Eileen Marshall to Neil Pierce, 17 October 2012, Alison Potterton, Proof of Evidence, Appendix 5

3.78 The Inspector is asked to note that despite the damning initial view of Sue Illman, which was based upon incomplete evidence, she nevertheless wrote to Planning Officers Neil Pearce and Eileen Marshall stating:

'*If the scheme went to appeal, then I think I would spend a lot of time discussing semantics over the lack of a good LVIA, but then conceding that the scheme was actually ok in the main.'*[139]

Ms Illman's evidence has indeed been 'semantic' as promised and the Inspector is invited to agree with her initial impression that the '*scheme is actually ok in the main'.*

3.79 Ms Illman's evidence has relied very strongly upon her use of the Landscape Character Area (LCA) flowchart. This approach is clearly nonsense for the following reasons. First, the Council itself has not followed that approach. The LPA has allocated and given consent to the development at Copcut Lane which lies in the same LCA as Yew Tree Hill. If the LCA was the litmus test which Ms Illman suggests it is, then permission would not have been granted.

3.80 Clearly, the Council is not purporting to use the flowchart in the way that Ms Illman states it should be used. Under cross-examination Ms Illman attempted to explain this and claimed that the chart is used in a different way when you are looking at allocations rather than applications.[140] Ms Illman effectively suggested that a review of all potential sites should be done before developing in this LCA.[141] However, it is noted that she could not point to any requirement in the NPPF for undertaking this process. Indeed this requirement does not exist in either legislation or policy and should be regarded as nonsense.

3.81 Secondly, the document itself does not purport to use the landscape character flowchart as an absolute bar to development. It states:

'*The emphasis on the appropriateness of a development in a landscape, and the landscape's resilience to change (or ability to accept that development without undue harm) can only be partially assessed through the LCA. Site visits and the need for detailed visual assessments are also a vital part of both strategic land use planning and development control.'*[142]

Indeed, this was admitted by Ms Illman in cross examination.[143]

3.82 As stated above, the assessment of the appropriateness of development at Yew Tree Hill has been assisted by detailed visual assessments and site visits. Further, the scheme itself has been designed so as to enhance consistency with the Landscape Character Parcel. This can be seen through the use of linear woodland, the bolstering of hedgerows and the provision of orchards.[144]

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[139] Alison Potterton, Proof of Evidence, Appendix 5
[140] Sue Illman Cross-Examination, 29 January 2014
[141] *Ibid*
[142] Landscape Character Assessment Supplementary Guidance, paragraph 5.3.12 CD J2
[143] Sue Illman Cross Examination 30 January 2014
[144] Alison Potterton Examination in Chief 31 January 2014

3.83 Ms Illman has also made much of her use of Zones of Theoretical Visibility (ZTV). However, in response to the Inspector's question as to whether when Ms Illman stated that the developments would be visible, whether she meant 'partially' or 'entirely', she responded '[*W]e can't be that sophisticated, you would see some of it.*'[145] Ms Illman also admitted that landscaping proposals had not been taken into account as part of her assessment.[146] Any landscape appraisal which fails to take account of mitigation planting is clearly deficient. Any suggestion that the ZTVs are somehow superior to Ms Potterton's LVIA must be rejected. Even if they were superior, they are only aids to understanding which are subservient to what the Inspector will have seen for himself on the site visits.

3.84 The differences between Ms Illman and Ms Potterton in terms of the LVIA are essentially matters of judgement. It is the case that only Ms Potterton has provided a full LVIA, Ms Illman's evidence is but an assessment of Ms Potterton's work. The Inspector is asked to note that the test of acceptability cannot be either: (i) the visibility of the development or (ii) its effect on openness. As this Inquiry has heard, it is inevitable that any substantial new development at Droitwich would have to be on the periphery. It is therefore inevitable that it would be visible, because any new development would be visible. Further, it is also inevitable that any new development would be on greenfield land. The Emerging Plan makes it clear that the area has exhausted its supply of previously developed land.[147] This development cannot therefore be criticised on that basis.

3.85 The Inspector is also asked to take particular note of the development constraints which exist at Droitwich. Yew Tree Hill is one of the few locations where the development required to meet housing and affordable housing need is capable of being accommodated. Further, although Yew Tree Hill was subject to a Special Landscape Area (SLA) designation, it is not proposed to continue this designation forward into the Emerging SWDP and it can be afforded little weight.[148]

3.86 The Inspector is also invited to note the substantial environmental advantages that this development offers. These are set out clearly in Appendix 6 to Patrick Downes' proof of evidence. They include: a net positive gain of 1,385m of hedgerows, a net positive gain of 1,598m^2 of field margins, 2 hectares of scrub/woodland, 0.9 hectare of orchards and new park/open space areas. All of these would serve as suitable habitats for wildlife.

3.87 Even if the Inspector's conclusion is that this development would give rise to a significant adverse effect, he is asked to note the SoS's decision in Burgess Farm, Worsley[149] which demonstrates that even clearly harmful development can represent sustainable development when it is weighed against a substantial shortfall of housing land.[150]

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[145] Sue Illman, Examination in Chief, 29 January 2014
[146] *Ibid*
[147] South Worcestershire Development Plan Submission Document, May 2013, CD A9a, paragraph 30
[148] *Ibid*
[149] Land at Burgess Farm, Hilton Lane, Worsley, Manchester, APP/U4230/A/11/2157433, CD D2
[150] *Ibid* paragraph 21

3.88 Finally, the Inspector will note the complete failure of Ms Illman's evidence to acknowledge that the environmental role is but one of three roles. She steadfastly and erroneously failed to acknowledge that her conclusions which argued for dismissal on the grounds of adverse environmental impact alone is completely at odds with the requirement in paragraph 8 of the NPPF to consider all three strands together. She simply could not understand that absent consideration of the economic and social roles she could not recommend refusal of planning permission.

Main matter (v): The effect of the proposals on local highway infrastructure

3.89 The effect of the proposals on local highway infrastructure does not represent a reason to recommend the refusal of this planning appeal. For a refusal to be justified on this basis, any problems associated with the development must be 'severe'.[151] Further, it is common sense that the traffic proposals should be safe. Having identified the correct tests this Inquiry should be clear that the tests are not, amongst others: changes in terms of traffic patterns or an increase in traffic along a particular road.

3.90 Road safety is primarily the responsibility of the Highway Authority. It has carefully considered these proposals over a long period of time[152] and has no objection to them. The proposals cannot be regarded as potentially having an adverse impact on the trunk road/motorway network as the HA's formal position is one of non-objection. As planning authority, Wychavon has a responsibility to ask itself whether the development is safe and has concluded that it is. Highways and transport did not form the basis/part of any reason for refusal.

3.91 It is against the aforementioned background that the objections raised by SOGOS have to be considered. It also worth bearing in mind that Mr Pettitt has not considered himself constrained by paragraph 187 of the NPPF: the duty to look for solutions and not problems. The approach of SOGOS has been entirely the opposite. The late delivery of the expert evidence from Messrs Pettitt and Stoney was clearly unprofessional and apparently deliberately delayed to inconvenience the Appellant.

3.92 As for forward visibility and side roads, the critical issue between the Appellant and SOGOS is whether Manual for Streets (MfS) or Design Manual for Roads and Bridges (DMRB) should be used. Mr Pettitt argues for DMRB for entirely self-serving reasons which are not supported by MfS. It is correct that at one location the major road distance is 59m.[153] The evidence of Simon Tucker and Philip Jones explains why this is sufficient.[154] Their views are consistent with table 7.1 of MfS1, one can even go below that figure if one uses MfS2. Indeed it is true that the risk of accidents is not necessarily heightened by a shortened visibility distance.[155] It is clear that there no unacceptable risk associated with either junctions or forward visibility. It is worth noting that when this scheme

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[151] NPPF paragraph 32
[152] Transportation Statement of Common Ground, BDL 10 paragraph 1.1
[153] Simon Tucker, Examination in Chief, 4 February 2014
[154] Simon Tucker, Examination in Chief, 4 February 2014, Phil Jones, Examination in Chief, 6 February 2014
[155] Manual for Streets 2 (2010) CD B4, page 77

gets to the detailed design stage design features would be used to reduced speed such as signage/gateway features.

3.93 This scheme would bring benefits to the Pulley Lane/A38 junction. The junction would become a two lane signalled junction. This measure needs to be set against the additional traffic which would be generated by the development. In any event, some queuing at traffic lights is part of everyday suburban life and this cannot be considered a 'severe' problem in the context of paragraph 32 of the NPPF.

3.94 As for Newland Road, up until 1993 it was a two-way road with houses on either side. Any objection based on disruption to this road has to be considered with the road's history in mind. The route has been carefully considered by the Appellant's highway engineers.[156] Clearly, there is no need for a gabion wall which would encroach on third party land. Mr Tucker has demonstrated that it would be possible to use sheet piling without the risk of trespass. Once engineered, the route would become a very attractive walk and cycle route for most of the day with the occasional bus. Indeed, the bus element would be of benefit to both new and existing residents not well served by existing services.

3.95 SOGOS' complaints regarding fire engines and buses on Primsland Way is pure mischief making. Neither of these vehicles would need to turn left or right. The fire engines would be going straight ahead as indeed would the buses. If, on the off chance, an emergency vehicle did need to turn, then it could cut over the white lines with its sirens blazing.

3.96 Inevitably, any substantial development would bring about highway impacts. The location of this site with good access to the centre by cycle and foot would minimise its adverse effects. None of the highway effects of this development can be said to be 'severe' in terms of paragraph 32 NPPF.

Main matters (vi) and (vii) – Conditions and S106:

3.97 Appropriate conditions and s106 contributions were dealt with on day nine of the Inquiry (13 February 2014). BDL confirms that it is happy with the conditions as agreed with the Council. It also takes no issue with the s106 obligations and accepts the Council's CIL Compliance Statement.

Other – Brine Run

3.98 The Appellant relies upon the notes provided to the Inquiry, the evidence of Mr Williams and the fact that WDC does not object to the proposal on this basis. WDC has a long history of familiarity with dealing with problems created by Brine Runs and there is no reason to believe that this development would not be similarly controlled. All the statutory consultees support the development.[157] There is no sound and robust evidence to the contrary. Experience suggests

[156] Atkins drawings, Alison Potterton Proof of Evidence Appendix 1
[157] See CD F1-F14

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that similar development to that proposed in this appeal has taken place by experienced developers within Zone A in the past.

Conclusion

3.99 This proposal cannot be tested against an up-to-date Local Plan. The development plan system in Wychavon has failed to make adequate housing provision despite the warning of the Saving Letter some 5 years ago. The Emerging Plan has far to go before its adoption after making an uncertain start.

3.100 It is clear, even to the LPA, that thousands more homes than are catered for in the SWDP – as presently cast - are required. This should have led the LPA to accept that its objection to this site on grounds of 5-year supply and prematurity are completely indefensible.

3.101 The presumption in favour of a grant of planning permission applies in this case for a variety of reasons:

(a) the inadequacy of the 5-year supply;
(b) 'absent' provision in saved Local Plan policies for provision of housing post-2011; and
(c) out-of-date policies.

Only one door needs to open into paragraph 14 for the presumption in favour of development to apply.

3.102 Once the inappropriate reasons for refusal relating to prematurity and 5-year supply are put to one side only the Council's case on landscape effect stands between the Appellant and a grant of planning permission. Issues raised by SOGOS have all been properly addressed by statutory consultees whose conclusions have not been demonstrated to be wrong at this Inquiry. Indeed the evidence has demonstrated the opportunistic nature of the objections. Any residual matters of detail would be adequately controlled by the imposition of conditions and/or the reserved matters application process.

3.103 The exercise of the paragraph 14 balance demonstrates that the benefits of the scheme are not 'significantly and demonstrably' outweighed by the alleged disadvantages not least because, stripped of the untenable prematurity and 5-year supply arguments, there is only landscape impact on the debit side of the equation. Any fair-minded person can see that this balance can only have one result.

3.104 We invite the Inspector to recommend the grant of planning permission to the SoS. The LPA must be told again that it has no 5-year supply and that even if it did the presumption in favour of granting planning permission will continue to apply until such time as it adopts its new SWDP.

3.105 One final word of thanks to the residents who oppose this scheme: they have listened patiently and politely to all the evidence for and against the scheme. The Appellants are grateful to them for this.

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4. THE CASE FOR PERSIMMON HOMES LTD (APPEAL B)

4.1 This Inquiry has provided a forum in which the objectors to these proposals have been able to fully ventilate their concerns in relation to the development proposals. That process has done nothing more than expose those concerns as being utterly without substance. The Inquiry has also afforded the opportunity for the validity of the objections to be tested. Upon testing, they have been established to be illusory, assertive, inchoate and unsupported by evidence. The longer the Inquiry went on, the clearer that that picture has become.

4.2 The evidence which is before the Inquiry shows that the old guidance represented by the 2006 Local Plan which expired in 2011 can no longer hold. The emerging SWDP requirements are very substantial and reveal how redundant the old 2006 Local Plan has become.

4.3 The RFR stated that the Council could demonstrate a 5 year supply of housing land. However, it has become painfully apparent in this Inquiry that the Council is unable to provide a robust evidential basis for this assertion. The Council has not progressed matters since Inspector Clews' Interim Conclusions on the emerging SWDP.[158] The latest work which has recently been published is taking the Plan preparation process backwards rather than forwards as the material does not properly engage with the task that the Inspector set.[159] We are no wiser than we were in October 2013 when he concluded that the requirement is likely to be substantially greater than the Council's estimate of 23,000 as the SHMA had fundamental shortcomings.[160] Those shortcomings have not been remedied and the Council cannot enjoy a 5 year land supply.[161]

4.4 The housing land supply position in Wychavon is critically short, and the NPPF requires the identification of deliverable sites. The Council's delivery record is *"very poor"*[162] and there is no sensible justification for such failure. The Framework requires that objectively assessed needs are met as one of the facets of sustainable development, and the fact that it may be challenging is not identified as an excuse. The failure to release suitable and deliverable sites in these circumstances cannot therefore be justified.

4.5 It has become obvious that the Council was well-advised by its Officers that it would be difficult to sustain plausible reasons for refusing permission, and that the benefits which it would bring in terms of employment opportunities, improved accessibility, landscape enhancement, whilst releasing a site to meet an urgent and significant shortfall in market and affordable housing, are not significantly or demonstrably outweighed by any harm caused by the proposal.

4.6 The approach to applications under section 38(6) in the context of the NPPF was set out by the High Court in the case *of R(oao Hampton Bishop Parish*

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[158] CD A9
[159] Mr May, Examination in Chief; and Supplementary Note from Mr Bateman
[160] CD A9, paragraph 49
[161] CD C13, Inspector's Decision: Land between Leasowes Road and Laurels Road, Offenham, Worcestershire, 7 February 2014, paragraphs 31, 36, 37 and 58
[162] CD D13, Inspector's Decision: Land between Station Road and Dudley Road, Honeybourne, Worcestershire, 24 August 2012, paragraph 32

Council) v Herefordshire Council[163]: development plan policies are not to be read in isolation, but rather through the prism of the NPPF which is a sophisticated exercise.

4.7 Against that background the main issues which were raised at the Pre-Inquiry meeting will be canvassed, and then against that analysis, examine how the planning balance should be struck in this case.

Main matter (i): The extent to which the proposed development is consistent with the development plan for the area and would deliver a sustainable form of development

4.8 In addressing this issue, namely the question of compliance with the development plan, it is important to focus upon those policies which it is claimed that the development may be contrary to. The development plan consists solely of the WDLP, adopted in 2006 and in place until 2011. In substance, only four policies are relied upon by the Council and the objectors within the development plan as giving rise to issues of consistency. These are Policies GD1, SR1, ENV1 and ENV8.

4.9 Policy GD1 expressly and unconditionally applies to "*new development to 2011*"[164]. It was plainly not designed to meet housing needs in 2014 and is redundant in today's changed policy, economic and legal context. Despite the unequivocal wording in Policy GD1, the Council has persisted in arguing that significant weight should be afforded to it. Closer examination illustrates why that is absurd.

4.10 Reference to the *"sequential approach… to the re-use of previously developed land and buildings"*[165] implements a previous sequential policy from the RSS and the old PPG/PPS3; it is not replicated in the NPPF or the emerging SWDP in connection with sustainable development.[166] Further, the prioritizing of Evesham in the wording of Policy GD1 does not survive the SWDP.[167] These changes reflect a deliberate shift in policy to loosen restrictions on urban extensions and greenfield land.

4.11 The Saving Letter[168] made clear that the preservation of the policies was intended to be temporary, that there was a clear requirement to press on with the preparation of the replacement plan and that in the meantime the old policies should be approached bearing in mind new policy material in national Government advice. There has been a great deal of water under the bridge since then. An instructive lesson on the impact of the policies of the NPPF is to be obtained from the Honeybourne decision, in which the Inspector noted that using the old WDLP policies was not good enough and that the housing provision policies were out of date.[169] But perhaps most tellingly, when

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[163] CD P4, *R(oao Hampton Bishop Parish Council) v Herefordshire Council* [2013] EWHC 3947 (Admin)
[164] CD A6, Wychavon District Local Plan, wording used in Policy GD1, page 9
[165] Ibid, 2nd paragraph
[166] CD A9, Track Changed Version of the Proposed Submission Document, South Worcestershire Development Plan, SWDP1, page 32
[167] Ibid, SWDP2, page 35
[168] CD A16, WDLP 2006- "Saving" letter, 29th May 2013
[169] CD D13, paragraphs 31, 24

examined in August 2012, the policies were found to be *"time expired and out of date so limited weight can be given…*"

4.12 In paragraph 31, the Inspector wrote: *"It seems to me that the "Saving Letters" make clear the contingent basis upon which the policies were saved, namely the requirement in the decision making process to have regard to up-to-date policies, such as the former PPS3, which required 5 year land supply. These "material considerations" now include the NPPF, which means that it is simply not good enough to regard saved policies as an opportunity to refuse rather than grant planning permission. The Council's approach is at odds with the requirement in the Saving Letters. Relevant policies in the WCSP and the WDLP must be viewed in the context of paragraph 215 of the NPPF*."[170] A similar approach can be found in the Bishops Cleeve decision in which the SoS further reinforced that Localism required local communities and Councils to face up to the hard choices in relation to the provision of development and if they did not and they failed to make provision for necessary development then decisions would inevitably need to be taken to provide it on appeal.[171]

4.13 Policy GD1 is no longer fit for purpose. It was formulated in a world and in a context very different to one we find ourselves in today. It is not based on the full objectively assessed needs in 2014.[172] Applying the restraints in Policy GD1 will not help the Council meet its housing requirements because land beyond the settlement boundary needs to be released for development: a sequential approach will not deliver the urgently needed housing in Wychavon and it is not consistent with the NPPF. This was further identified in the Inspector's decision at Humberstone, endorsed by the SoS.[173]

4.14 Mr Brown's refusal, against this evidence, to accept that Policy GD1 is out of date is simply untenable. The Council's argument collapses further in light of the contradiction at the heart of their case: that Policy SR1 was out of date, but Policy GD1 was not. Mr Brown's acceptance that the two policies should be read together on the one hand, but that one is out of date and the other not, indicates the convoluted nature of the Council's inconsistent and indefensible position.[174]

4.15 Whatever view one takes of the policies, as it is accepted that Policy SR1 is out of date, paragraph 14 of the NPPF applies thereby triggering the presumption in favour of sustainable development.

4.16 The other policy is ENV1, which applies a Special Landscape Area (SLA) designation to the site. The Inspector in the Tenbury appeal concluded that Policy ENV1 was also a housing supply policy which should be set aside absent a 5 year supply.[175] This again triggers the paragraph 14 presumption.

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[170] Ibid, paragraph 31
[171] CD D3, Ministerial Appeal Decision: Land at Bishops Cleeve, Gloucestershire, 16 July 2012
[172] CD D41, Inspector's Decision: Cheltenham Road, Evesham, Worcestershire, 24 July 2013, paragraph 8
[173] CD D 37, Ministerial Decision: Land South of Humberston Avenue, NE Lincolnshire, 28 November 2013; and Inspector's Report, 4 November 2013
[174] Mr Brown, XX
[175] CD D41, Inspector's Decision: Land of Cheltenham Road, Evesham, 24 July 2013, paragraph 11

4.17 The wording of Policy ENV1[176] demonstrates that the SLA designations are not determinative and that the policy must be read in the context of other policy documents. These include the 2011 Landscape Character Assessment (LCA) (as anticipated in the reasoned justification of Policy ENV1), which becomes a new yardstick by which to measure landscape impact. The policy is therefore no more than a general policy in relation to protection of the landscape, and the SLA designation has, in accordance with the provisions of the Plan, been superseded by the publication of the 2011 LCA (if not by earlier such documents).

4.18 Other relevant policy includes "A New Look at Landscape of Worcestershire" in 2004 and "Planning for Landscape in Worcestershire, 2008".[177] But it is agreed that the 2011 LCA prevails over the SLA designations, the origin of and justification for which is now lost in the mists of time.

4.19 On any reading, the Council relies on an out of date plan, evidenced primarily by the express wording of the old policies, previous Inspector's findings, and underlying it all, the fact that the evidence and policy context for the old WDLP has dramatically changed and can no longer be a sound basis for any meaningful application to this proposal. By way of default the NPPF applies.

4.20 It follows from this that whilst as a bald fact the proposals are contrary to Policy GD1, once the exercise required by the High Court decision in *Hampton Bishop* is undertaken and the policy is viewed through the prism of up to date consideration and in particular the NPPF little weight indeed can be attached to that fact. For the reasons set out below the proposals comply with Policy ENV1 and the other policies relating to landscape resources. Given its antiquity the development plan in reality has little to say which will be determinative of this appeal.

Main matter (ii): Whether the proposed development is premature in the light of the emerging SWDP and national guidance

4.21 The relevant policy framework to determining this issue is set out in *The Planning System: General Principles*, 2005 and relates to the scale of proposals, where we are in the plan-making process and the significance of alternative options.

4.22 It should also be noted that in two High Court decisions, prematurity arguments identical to the ones in this appeal failed.[178] Those judgments made clear that there was nothing in the Localism Agenda which required the plan making process to be completed before decisions could be made.

4.23 On the first point of where we are in the plan-making process, it is clear that the SWDP process has been stalled: the methodology for the housing calculation has been found in no uncertain terms to be *"unreliable"* not providing a sound basis for the planning of housing provision in the area, with

[176] CD A6, Wychavon District Local Plan, page 38, paragraph 4.2.3
[177] Mr Peachey's Proof of Evidence, paragraph 5.7; and CD J2
[178] CD C2, *Stratford on Avon DC v SOSCLG* ("Shottery Expansion") [2013]EWHC 2074 (Admin); CD C3 *Tewkesbury BC v SOSCLG* ("Bishops Cleeve") [2013] EWHC 286 (Admin);

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"three fundamental shortcomings",[179] resulting in an order that further analysis be undertaken to derive an objective assessment of housing need.[180]

4.24 Mr May correctly maintained that the SWDP was in a "parlous state"[181] in light of the extensive work still required. There will be a need for further assessment of future allocations and subsequent consultation (to be supported by a SEA). This needs to be settled by 3 authorities at a time when there is clearly no political appetite for further housing provision anywhere.[182] Consequently, there is little hope that the process will be completed before 2015.[183]

4.25 Despite the Council's submission of additional information on housing at this Inquiry, there is still no new housing requirement figure. Indeed, the SWDP appears to be going backwards rather than forwards. We are not at an advanced stage of the plan. We are in fact at a state where further land is likely to be required. There are correctly doubts in the Council's mind as to the integrity of the plan making process at present in the light of the fact that the Inspector in March 2014 will not have any proposed modifications containing an alternative figure before him. How therefore the future progress of the plan is to be handled even procedurally is a mystery at present.

4.26 Mr Brown argued prematurity in terms of location and phasing but not in terms of scale.[184] This is misconceived because the three elements cannot be disaggregated, especially in light of the status in the extant and emerging plan that Droitwich Spa enjoys as one of the higher tier settlements.[185] The fact is that the scale of both proposals is not such as to prejudice decisions about distribution of development: as the Report to Committee pointed out, taken together, the proposals represent a mere 16.9% increase in households in the parish of Droitwich Spa over the plan period.[186]

4.27 The Council further relies on the appeal at Kentford.[187] But in that case Kentford's Village status was a primary village with a poor range of services-completely different to Droitwich Spa, which has a full range of facilities and sufficient infrastructure for further development.

4.28 The Council's stance on prematurity is even more difficult to understand in light of its decision to grant permission for 740 dwellings at Copcut Lane. Yet again, another contradiction which fatally undermines the Council's argument.

4.29 The weakness in the Council's position on RFR 1 and prematurity is patently clear on any analysis. It should never have been put forward as a RFR and does not withstand scrutiny. The Council's own officer observed that it would

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[179] CD A10, Inspector's Interim Conclusions, 28th October 2013, paragraph 15
[180] Ibid, paragraph 44
[181] Mr May, in XiC
[182] Cllr Jennings, XX
[183] Mr May, XiC, XX and Re-X
[184] Mr Brown's Proof of Evidence, paragraph 6.12
[185] Mr May, XiC, XX
[186] CD H2, Planning Officer's Report to Planning Committee, 8 May 2013, Section 7
[187] Mr Brown's Proof of Evidence, tab 8, page 8, paragraph 37

be "*difficult for the council to demonstrate clearly how the grant of planning permission would prejudice the outcome of the DPD process.*"[188]

4.30 Once the status of Droitwich Spa in the hierarchy is acknowledged the simple fact is that in Droitwich Spa there are few if any alternative options which have not already been deployed in the SWDP.[189] The reality is that Yew Tree Farm was only rejected because the Committee preferred Copcut Lane. That option no longer exists. Droitwich Spa is a sustainable settlement and at the top of the settlement hierarchy in SWDP48.[190] Within Droitwich Spa, being constrained by the greenbelt, floodplain and historic environment, Yew Tree Farm is the only option left without imperiling those critical environmental constraints. There is no evidence, let alone any appetite, which would justify the contention that development needs should be met in that way.

Main matter (iii): Whether the proposed development is necessary to meet the housing needs of the district bearing in mind the housing land supply position

4.31 The short answer to this question is yes. The Council officers are agreed that the Council does not enjoy a 5 year land supply and therefore cannot satisfy the requirement of paragraph 47 of the NPPF. In accordance with an approach previously outlined to the Inquiry detailed joint submissions in respect of this issue will be made in the closing submissions on behalf of Appeal A. (See paragraphs 3.44 – 3.72 above). What follows are points of further context.

4.32 The first point to observe is that part and parcel of the 5 year land supply calculation is that the Council has failed for a considerable period of time to deliver their housing requirement. That leads to their acceptance that in this case a 20% buffer is appropriate in relation to the housing land supply assessment.[191] The evidence therefore demonstrates that there is a long-standing chronic problem with housing delivery in South Worcestershire and Wychavon. The same was noted in the Interim Conclusions.[192]

4.33 The position is far worse than the Council's assessment thus far has suggested. The SWDP Inspector made no bones about the *"three fundamental shortcomings"* in the SHMA used by the Council to calculate housing need. These were: firstly, the failure to use household representative rates (HRR) drawn from the 2008-based DCLG projections or any other official population or household statistics;[193] secondly, the Council's use of the unreliable Cambridge Economics as a basis for predicting job growth and resultant household growth[194]; and thirdly, the lack of evidence to support the assumed increased in older peoples' economic activity, based on unclear assumptions.[195]

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[188] CD H2, Report to Planning Committee, Persimmon, 8 May 2013, Section 7 "Officer Appraisal"
[189] Mr May's Proof of Evidence, Appendix 5
[190] CD A9, page 181
[191] CD H2, Report to Committee,8 May 2013 Section 7
[192] CD A10
[193] Ibid, paragraphs 16, 17
[194] Ibid, paragraph 19
[195] Ibid, paragraph 21

4.34 The Inspector therefore concluded that the objectively assessed housing need figure for the plan period "*is likely to be substantially higher than the 23,200 figure identified in the submitted plan*" and that further work was required to rectify this calculation.[196]

4.35 He advised that this further work should be combined with the NLP "index" approach and should be carried out using the latest official population projections to translate those projections into future household numbers.[197]

4.36 One is able to take an educated guess as to the region of how much higher the additional housing need is likely to be. The range canvassed by the Inspector included the following: 34,000 (Barton Wilmore, not supported by the Inspector);[198] 32,000 (by NLP, assessed as methodically sound, albeit caveated);[199] 26,800 (PSL, considered to be "illuminating", but the adjustments were insufficiently reliable);[200] and between 23,700-27,000, with a mid-point of 25,850 (by Pegasus, the mid-point found to be insufficient because it did not include the employment adjustments).[201]

4.37 Thus a housing requirement of substantially more than 23,200, and most probably in the region of 34,000 seems likely. This is, in the main, because unless the new figure is in this region, there are unlikely to be unresolved objections, a key factor affecting the weight to be attached to the emerging plan, as paragraph 216 of the NPPF makes clear. This represents an additional need for a minimum of 8,800 dwellings.

4.38 The question which then arises is as to the likely location of the additional housing. 8,800 homes, as a joint figure for the 3 authorities to meet, must be distributed. The evidence overwhelmingly proves that Wychavon is the least constrained authority: Worcester City's built-up area is tightly contained inside its boundaries and there is insufficient space in the City's administrative area to meet all its needs for development, especially housing;[202] Malvern Hills has limited ability to accept new development due to its natural and environmental constraints.[203] This leaves Wychavon, with fewer constraints than Worcester City or Malvern Hills, as the natural destination for the lion's share of the additional 8,800 homes bearing in mind in particular the duty to co-operate. Mr Brown sought to dispute this on the basis that constraints are not fixed but it is difficult to see how the AONB in Malvern Hills might change in the future, for example.[204]

4.39 Zooming in further to identify the best location within Wychavon, one cannot ignore that Droitwich Spa is the prime candidate town, when compared against Evesham or Pershore. Growth in Droitwich Spa, between 2006 and 2013, was the smallest of all 3 towns, with a population increase of only 5.6% in this

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[196] Ibid, paragraphs 44, 49
[197] Ibid, paragraph 44
[198] Ibid, paragraph 36
[199] Ibid, paragraph 33
[200] Ibid, paragraph 39
[201] Ibid, paragraph 37
[202] Ibid, paragraph 82
[203] Ibid, paragraph 84
[204] Mr Brown, XX

period.[205] Some 750 homes would represent an increase from 5.6 to 8.9%. With Copcut Lane, that increases to 12%, still less than the % increases seen in Pershore or Evesham.[206]

4.40 The Council's approach of directing development outside the conurbation boundaries no longer passes muster in the changed policy context of the NPPF and the presumption in favour of sustainable development. The sea-change brought about by the NPPF recognises that development outside conurbations is appropriate in today's climate of an under-supplied housing market.

4.41 The simple fact is that there is a serious need for additional homes. Within Droitwich Spa, Copcut Lane is insufficient on its own to meet those needs and Yew Tree Hill is the logical next step.

4.42 If the position in relation to the overall supply of housing demonstrated a general district-wide requirement for further housing, that requirement becomes critical and the need overriding in relation to the provision of affordable housing. The most recent analysis in the SHMA (found to be a sound assessment of affordable housing needs[207]) demonstrates a desperate picture bearing hallmarks of overcrowding, barriers to getting onto the housing ladder and families in crisis. There are nearly 5,000 households on the waiting list,[208] 35% of whom are families with children. Over a fifth of those have a local connection and are in priority need.[209] The SHMA indisputably records that affordability is at crisis point.[210] Without adequate provision of affordable housing, these acute housing needs will be incapable of being met. In terms of the NPPF's requirement to create inclusive and mixed communities in paragraph 50, this is a disaster of catastrophic proportions. Needless to say these socially disadvantaged people are unrepresented at the Inquiry, and require the objectivity of the planning appeal to acquire a voice and for that to be heard. Addressing the needs of the homeless and over-crowded families and children in the District is surely an imperative of any civilized planning system.

4.43 These bleak and desperate conclusions are thrown into even sharper focus by an examination of the current circumstances in Wychavon itself. Over the whole of the District's area there is presently a need for 268 homes pa.[211] These are real people in real need now.

4.44 Worryingly, there is no early prospect of any resolution to this problem. Firstly, the 2009 AMR recognizes that between 2005 and 2009, a woeful 229 affordable homes were delivered, an average of 55 pa.[212] Over the following 8 year period, between 2009 and 2013, some 501 were delivered, or an average

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[205] Mr Downes' Proof of Evidence, Table 7,1, page 58
[206] Accepted by Mr Brown, XX
[207] CD A10, paragraph 50
[208] CD B10, Worcestershire SHMA (2012), page 41, paragraph 3.32; and pp 109-110
[209] Ibid, page112
[210] Ibid, page 244, paragraphs 9.32 and 9.33; and page 123
[211] Ibid, page 183, paragraph 7.30
[212] CD B20, Wychavon DC Annual Monitoring Report 2009, page19

of 62 p.a. over a whole economic cycle.[213] One would be forgiven for characterizing the Council's approach to this key issue as complacent.

4.45 Secondly, although SWDP15 (and supporting text) [214] notes that 657 dwellings are needed over the next 5 years, a solution still remains a relatively distant prospect given the state that the forward-planning process finds itself in at present.[215]

4.46 The information shows that the delivery of affordable housing in Wychavon has been pitiful.[216] There are no allocations for housing purposes which would begin to address the significant housing crisis in Wychavon. Furthermore, none of the permissions identified are capable of addressing the need. There is thus no solution identified by the Council to even begin to address the crisis in housing provision for the substantial number of households living with housing need which the Council can identify. And as the map made clear, those living in Droitwich Spa are amongst the unluckiest as it is one of the most unaffordable places for housing.[217]

4.47 Mr Brown has almost totally ignored the affordable housing need in his evidence. He also overlooked the paltry delivery record by the Council. His planning balance is struck without any apparent consideration being given to one of the most important reasons why housing in Droitwich Spa is needed. This is inexcusable. This Inquiry has brought the facts to light and they must attract very significant weight in any proper exercise of the planning balance.

Main matter (iv): The effect of the proposed development on the character and appearance of the area

4.48 It is important to recall the benefits of the landscape-led approach to the masterplan. It proposes several benefits and was endorsed by the Council officers. The strategy retains the elevated southern part of the site as open space and development is proposed to be restricted to at or below the 73.5m contour generally with planting proposed to the elevated southern part of the site to provide a vegetated backdrop to the development when viewed from the north. Proposed development is concentrated on the central and northern part of the site where there is a greater degree of visual containment but set back from the public footpath to the north to create a green corridor which also incorporates provision for SUDS.[218]

4.49 Perimeter hedgerows/trees and the existing hedgerow that subdivides the site are to be retained and new hedgerows introduced to create a series of development "cells". This network of hedgerows is intended to reflect the local landscape character and provide elements of visual containment.[219]

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[213] CD B21,WDC AMR 2010, page 79; CD B22, SW Housing Lane Monitor, April 2011; Mr Bateman's Proof of Evidence, page 63
[214] CD A9, page 91, paragraph 3
[215] CD B10, SHMA, p112, paragraphs 5.72, 5.69, 5.74, 5.23
[216] Mr Bateman's Proof of Evidence, page 63
[217] CD B10, SHMA, figure 5.31, page 123
[218] Mr Peachey's Proof of Evidence, Appendices 2 and 3; CD H2, Planning Officer's Report to Planning Committee, 8th May 2013
[219] CD P2, Green Infrastructure Analysis, Persimmon

4.50 There are two aspects to the Council's case in relation to landscape effects and the impact on the visual amenity of the area. The first is the question of policy context and the second concerns the assessments.

4.51 The historical context of the SLA needs to be borne in mind when assessing the weight to be given to it. The 1993 Local Plan Inspector concluded that this parcel of land should be excluded from the Green Belt and that the shallow valley of the appeal site should be examined as a plausible candidate for future development. This was reiterated in the 1995 PTP Report with the note that Pulley Lane and Newland Lane should form the boundary of the Green Belt and provide a firm boundary in the long term for the settlement.[220] By delineating a boundary in this way, allowance was being made for future development needs. Even in 1993 and 1995, this site was identified as a potential area for development.

4.52 As housing needs increased, one can catalogue the evolution of development in the area.[221] Although Ms Illman asserted that nothing has changed since the 1995 Report[222] the facts indicate that significant elements of development have occurred around the site: additional housing to the east and the Bellway Homes site have clearly changed the immediate context of the site. Furthermore, nothing has been done to advance any proposal for a country park, which was in reality a pipe-dream.[223]

4.53 This is the context from which the SLA designation emerged and thus its application must be caveated: the conclusions would only hold until 2011 or else no option for Droitwich to expand would be available;[224] and the SLA was to be integrated into the LCA as set out above.[225]

4.54 The Purple Book[226] further indicates that special landscape designations are to carry less weight in the context of LCAs. As such the LCA prevails over the SLA and is incorporated into the plan.

4.55 However, it is not good enough to assume that the LCA is determinative. Further assessment must be carried out to properly determine the landscape impact of the scheme on the site. It is a starting point, as set out in the Purple Book, which seeks to move away from the mechanical approach or applying perfunctory assessments. Similarly, the flowchart relied on by Ms Illman has no support in the Purple Book as the assessment method of landscape impact. Rather, it is a tool that provides some perspective.[227] The document itself observes that having considered the flow-chart one should then undertake the necessary site work required to formulate a proper assessment of the detailed character of the landscape of a site and the effects upon it.

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[220] CD B32, page 52, 53, paragraph 6.3.1
[221] Mr Peachey's Proof of Evidence, Figure 4
[222] Ms Illman's Proof of Evidence, page 17, paragraph 2.8.2
[223] Ibid, page 18, paragraph 2.8.4
[224] CD A7, Inspector's Local Plan Report, pp 18-19, paragraphs 38.14.23
[225] CD A6, Local Plan explanatory text, page 38, paragraph 4.2.3
[226] CD B7, Guidelines for Landscape and Visual Impact Assessment, 3rd Edition, 2013
[227] Ibid, page 83, paragraph 5.27; and Ms Illman's Proof of Evidence, page 15, paragraph 2.7.3; and page 16

4.56 That approach is reflected in the fact that notwithstanding the Settled Farmlands with Pastoral Use description, the Bellway Homes and Copcut Lane developments are both within this designation.[228] Had the approach that Ms Illman advocates been applied to those proposals, they would have probably been refused.

4.57 Reading the LCA as a whole, one observes that landscape is only one aspect of decision-making;[229] and that meeting the need for sustainable development on the edge of sustainable settlements is also an important factor. All this is important context which is unfortunately absent from Ms Illman's proof.

4.58 Droitwich Spa has at its edge either Settled Farmlands with Pastoral Use or Principal Timbered Farmlands,[230] the latter being less suitable for development than the former in terms of resilience to development, and the lower lying land contained therein.[231] Therefore, the Landscape Character Area in which the site is located is the best option for Droitwich Spa in landscape character terms measured against the LCA.

4.59 Turning to the quality of the assessment carried out it is apparent from Ms Illman's initial Illman Young Report[232] that she was not instructed to provide any assessment of the site of Appeal B. Why that is has not been explained.[233] What is clear is that the assessment of the Council's own landscape expert was supportive of the scheme which had been designed and did not conclude that the landscape impacts were unacceptable.[234]

4.60 That lack of thoroughness is exemplified further in the absence in her evidence of any explanation of the methodology carried out to reach her conclusions. Nowhere does she set out any calibration, any analysis or any rationale for her judgments. Contrasted with Mr Peachey, whose evidence follows a logical flow and describes in detail how and why he reached his conclusions on the landscape impact, the difference is stark.[235] The same can be said about Ms Illman's assessment of the visual effects of the scheme. Her starting point has been to obtain a ZTV but this approach was exposed as painting a misleading picture of the visibility of the site.[236] Ms Illman's Table C[237] fails to make the connection between her observations and her conclusions: nowhere is there a description or definition of the significance of change and the magnitude of impact; nowhere is there any description of the individual effects, leaving this Inquiry in the dark as to her understanding of terms such as "large" and "major" when describing the impact.

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[228] Mr Peachey's Proof of Evidence, Appendix 2, Figure 4
[229] CD J2, Worcestershire Landscape Character Assessment (LCA, November 2011), page 29
[230] Ibid, Fig 11, map; and page 42, Figure 9; CD P3
[231] Ibid, page 24, paragraph 4.3.2; and page 29
[232] CD J5
[233] Ms Illman, XX
[234] Mr Peachey's Proof of Evidence, Appendix 3
[235] Mr Peachey's Proof of Evidence, page 32 onwards
[236] Mr Peachey, XX; for example, Ms Illman's Figure 7, Target 3, SE quadrant Appeal B suggests areas of visibility with obstructions but Figure 8C Target 3 Appeal A & B show that the site is less visible
[237] Ms Illman's Proof of Evidence, page 41

4.61 The conclusions to be reached in relation to this issue on the evidence are as follows. Given the scale of the overall Landscape Character Area of this type the effect of the proposals are not significant. When one examines the more local Landscape Description Unit (LDU) it is clear that the character of the landscape has had its rurality eroded by the recent development in the vicinity. As a result the impact on the LDU landscape character will also be acceptable. Turning to the issue of visual effects there are very limited views of the site from the wider landscape.[238] Whilst there will be some change to very local views firstly, these are views in which the urban form of Droitwich Spa is already evident and, secondly, as a result of the careful siting of the development on the lower lying land the extent of visual effect is minimised. In summary, there is no sensible basis to refuse the proposals on the basis of landscape impact.

4.62 It is necessary to consider the potential impacts in the event that both schemes were to be approved. In reality the additional impact of Appeal B in landscape terms if Appeal A is approved is de minimis. Mr Peachey and the other landscape witnesses have approached this issue on the basis of considering the effect of both sites together as a single entity. Again, as the rigorous and transparent evidence of Mr Peachey demonstrates whilst the impact on landscape character and visual effect would be greater, again it would not amount to a basis for refusing the schemes. The proposals sit within the same LCA and LDU, and the assessment of the LDU shows that it is relatively resilient to change. Coupled with the substantial provision of green infrastructure the overall result of the proposals would bring benefits to clearly off-set the initial impact of the development.

4.63 There would be changes to the visual effect of the development but still no impact upon the wider landscape. More development would be seen from the closer views but again the magnitude of change, given the existence of views of development already in these views moderates the possible extent of the impact and demonstrates that the development, akin to the other recent developments around the sites, can be properly assimilated into views back towards Droitwich Spa from the wider countryside.

Main matter (v): The effect of the proposals on local highway infrastructure

4.64 The proposal before the Inquiry, as explained by Mr Jones,[239] includes provisions for public transport and road widening which would enhance the accessibility of the site both by slow modes and by public transport. These provisions have been accepted not only by WCC but have passed an independent safety audit providing the necessary assurance that the site would be safe and accessible.[240] Whilst points have been made in relation to the present position of the site in terms of the impact on traffic flows, those fall away in light of the fact that the flows used have been derived from an independent model and Pulley Lane has an adequate design and capacity to

[238] Mr Peachey's Proof of Evidence, Appendix 2, Figure 8 site sections
[239] Mr May's Proof of Evidence, Appendix 8 (Statement from Mr Jones); and CD P7, Additional Calculations from Mr Jones
[240] Travis Baker Transport Assessment,

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cope with the additional flows.[241] The use of percentages is obviously misleading when the existing flows on this link are so low. The forecast flows are well within the design capacity of the road and pose no difficulty in engineering terms.

4.65 With regard to the site access works, Mr Jones explained in his calculations that the point about the visibility splay is based on using a standard of deceleration from trunk roads and motorways to a road which would be residential in character.[242] Using realistic speeds and deceleration rates the visibility splay would be acceptable, a point endorsed by WCC and the safety audit. Using Manual for Streets and after speeds have been managed as a result of the Section 278 works, the visibility splay would function. There is no accident history of safety problems on this highway network.[243]

4.66 The extent of the public transport contribution would secure a long term future for the bus service. It is to be noted that Messrs Tucker and Jones and WCC have designed the bus service to pick up a number of residential areas in addition to serving the site so as to provide ridership and support for the revenue stream generated by the service. The bus service would necessarily improve the current service and provide a strong linkage both to the town centre and appeal site, providing therefore an appropriate and sustainable alternative to the use of the private car. These proposals would therefore bring about a wider public benefit to the existing community in the form of enhanced public transport.[244]

4.67 It is further important to reinforce that the junction arrangements at Pulley Lane/A38 which are proposed would not only assist in resolving existing highway safety issues but also in terms of providing an acceptable design solution.

Main matter (vi): Whether any permission should be subject to any conditions and, if so, the form these should take

4.68 Appropriate conditions have been agreed after discussion between the parties. SOGOS' enthusiasm for the Brine Run does not extend to Appeal Site B. There is no basis on which to restrict development on Appeal Site B. Even development on Zone A is a matter which is principally to do with foundations and therefore a matter for Building Regulations not planning.

Main matter (vii): Whether any planning permission granted should be accompanied by any planning obligations under section 106 of the 1990 Act and, if so, whether the proposed terms of such obligations are acceptable

4.69 The Appellant and the Council have entered into a s106 Agreement by virtue of which £207,529.45 is payable as the "Worcester Transport Strategy Contribution."[245]

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[241] Mr Jones, XiC and XX
[242] CD P7
[243] Mr Jones, XiC and XX
[244] Mr Tucker, XiC and XX
[245] Planning Obligation Deed, 11th February 2014, Schedule 4

4.70 Pursuant to clause 5.3 of the Deed, the obligation *"shall not apply and shall not be enforceable by the Council and the County Council if the person appointed to determine the Appeal states clearly in the decision letter granting Planning Permission that such obligations, or any of them, are unnecessary or otherwise fail to meet the statutory tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 PROVIDED THAT if any obligations are determined by the decision maker to be unnecessary or otherwise fail to meet the statutory tests it shall not affect the lawfulness of the balance of covenants and obligations in this Deed which continue to be enforceable."* It is submitted that Schedule 4 is not compliant with the legal tests in light of the clear conclusions in the Appeal Decision at Ronkswood Hospital[246] and that, pursuant to clause 5.3, Schedule 4 is unenforceable.

4.71 In that appeal, where the main issue was the compliance of the s106 Transport contribution with the Regulation, the Inspector scrutinised the Worcester Transport Strategy (WTS) as the policy basis for the contribution.[247]

4.72 In order to be "CIL-compliant", Regulation 122 requires that an obligation be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.

4.73 The Inspector concluded that the WTS, which consists of a package of infrastructure and service schemes, was too general and there had been no evidence to demonstrate how any of those schemes directly related to the development.[248] In those circumstances, and unsupported by any development plan policy, the contribution calculated by reference to the WTS was not CIL-compliant.

4.74 The same applies in this appeal. Firstly, the WTS still includes a very general list of schemes with no direct relation to this proposal. Secondly, the contribution has been calculated using the WTS Technical Note, which gives a total WTS cost of £145.5million and equates to £689.7 per additional SWDP trip (using the SWDP household figures). This is then multiplied by the TRICS figure for the number of daily trips per residential unit, and the resulting figure has been negotiated down as a result of the reduced travel demand due to the Travel Plan.[249] However, as was the case in Ronkswood, this Technical Note has not been subjected to public consultation and the SWDP figures are subject to almost certain change through the Examination process. On that basis therefore, little weight can be afforded to them and the contribution sought through the obligation cannot be fairly and reasonably related in scale and kind to the development.

4.75 The contribution in this instance has been calculated on exactly the same basis as in Ronkswood and there has since been no change in policy or data to remedy the failings identified by the Inspector.

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[246] CD D42, Inspector's Decision: Former Ronkswood Hospital, Newtown Road, Worcester, 10 January 2014
[247] Ibid, paragraphs 20-26
[248] Ibid, paragraphs 24-26
[249] Planning Obligation Compliance Statement "Folder", Appendix 7, "Yew Tree Village WTS Briefing Note", 21st January 2014

PLANNING BALANCE

4.76 In the light of the conclusions reached earlier it is necessary to draw the factors together and feed them into the equation provided by paragraph 14 of the NPPF in circumstances where the principal policies are out of date. The effect of applying the presumption is that the fulcrum of the planning balance shifts in favour of the grant of consent. Only if the Council is able to demonstrate harm which "significantly and demonstrably" outweighs the benefits of the development should consent be refused. Thus harm simpliciter will not do; harm must be of sufficient gravity to significantly and demonstrably outweigh the benefits. The reason for that significant shift in the fulcrum of the planning balance is that it is a key policy objective of the NPPF under paragraph 47 to ensure that a 5 year supply of housing land is in place and that old plans with outdated constraints are not deployed to frustrate development.

4.77 That exercise requires one to start with a careful examination of the benefits of the proposal. Unfortunately there is little, if any, evidence in the proof of Mr Brown, and none in that submitted by third parties, to indicate an understanding of the significant benefits which this scheme would deliver.

4.78 Obviously, firstly there is the 5 year housing land supply requirement which needs to be met. The requirement figure is not set but we know that it is greater than 23,200 and is likely to be an additional 8,800. It is the position of both Appellants that the Council cannot demonstrate a deliverable 5 years supply.

4.79 Jobs would be created by the development. Government Guidance in Laying the Foundations[250] and the Honeybourne decision[251] both acknowledge the direct and indirect employment flowing from housing construction. Not only would approximately 190 personnel be employed in construction on site[252] but that figure would increase to 120-205 general personnel.[253] Both appeals together would provide 40 jobs at the retail centre and between 105-205 jobs at the extra care facility.[254] Mr Brown struggled to dispute these numbers to any significant degree.[255] His quibble in respect of the rates of development depended on the GL Hearn Report which itself shows that higher rates of development (up to 170 per annum) are capable of sustaining in Droitwich Spa more than one outlet, at the Copcut Lane site as well as outlets at the appeal sites. He was unable to explain GL Hearn's conclusion in the light of their own empirical evidence.[256]

4.80 The development would make a positive contribution to the social dimension of sustainable development, particularly through the provision of new homes to address the significant affordable housing needs. Droitwich Spa is a very

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[250] CD A3, Laying the Foundations, Executive Summary, paragraphs 2, 11
[251] CD D13, paragraph 44
[252] Appeal B, Transport Assessment, L12, Page 31,para 5,7.5,
[253] Ibid, page 50, paragraph 6.2.23
[254] Mr Downes' Proof of Evidence, paragraph 7.9.3; and page 69
[255] Mr Brown, XX
[256] Mr Brown, XX

sustainable settlement and a good location for new development with a full range of facilities, services and public transport connections. The site location is sustainable with the ability for high quality footpath and cycleway connections to be made to adjoining residential areas and to bus services there and to the adjoining Appeal Site A.

4.81 The proposals would involve change in relation to the loss of fields in agricultural and equestrian use and the development of areas of land currently undeveloped. Off-setting environmental benefits in the form of accessible open space, landscaping and habitat creation would mitigate this change and the proposal has been carefully considered to minimize the impact on the landscape. The area of open space on the eastern boundary of the proposal would connect well to the adjoining, existing informal open space and provide connections for existing residential communities to Newland Lane and Newland Road and wider footpath and cycleway networks.

4.82 To the extent that harm has been identified, it is limited. It is focused on landscape issues in circumstances where the sites are essentially the only candidates for expansion in Droitwich Spa and the detailed evidence demonstrates that landscape and visual effects are in substance limited to the sites themselves and their immediate surroundings. It raises allegations of prematurity when the SWDP is going backwards rather than forwards, its housing requirement is going up rather than down, and there is an acceptance that further sustainable sites would be required. Any harm is certainly not of a degree of significance so as to outweigh the clear benefits in relation to sustainable development the proposals would provide either substantially or demonstrably or at all.

CONCLUSION

4.83 Having examined the evidence before the Inquiry it is clear that the Council's officers were absolutely correct in recommending to members on 8 May 2013 that planning permission should be granted for the appeal proposals. The officers' independent endorsement of the need for this site and its suitability as set out above carries significant weight in the consideration of this appeal.

4.84 Measured against the fact that the proposal would bring about substantial and tangible benefits, the Council's case is incoherent and has been motivated by the objections of local residents to a large extent. The lack of substantive evidence put forward by SOGOS or the third parties only highlights that fact. The democratic process is not just about popularity. The rule of law applies in planning cases to ensure that they are determined properly and independently. Overall, the Council's case lacks any reasoning.

4.85 There is on analysis no substance in the reasons for refusal which the members imposed. Instead there is a strong positive case for development of the appeal site and one which would bring about significant benefits in terms of addressing housing requirements for all people in South Worcestershire and Wychavon. That is not simply in relation to the need for market housing but the development also addresses the needs of those who are unable through their own socio-economic circumstances to meet their housing requirements and are currently forced to live in unsuitable and unsatisfactory homes. The

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proposals would assist in providing jobs. In the light of the material before the Inquiry, there is no sensible basis to do other than recommend to the SoS that planning permission should be granted.

5. THE CASE FOR SAVE OUR GREEN OPEN SPACES (SOGOS)

Introduction

5.1 It is necessary to explain the presence of SOGOS at this Inquiry. SOGOS is giving evidence at this Inquiry as its objections to these appeals are only partially mirrored in the Council's case. It should be pointed out that SOGOS fully supports the Council's case on the unacceptable adverse landscape and visual effects of the proposed developments and agrees with the Council that the cumulative scale of the proposed appeals would prejudice the emerging SWDP. However, the concerns about the unacceptable transport impact, the uncertainty as to the surface drainage of the sites, and the simple fact that the Appellants' own consultants have labelled a large portion of one of the sites as "undevelopable" compelled SOGOS and its representatives to attend in order to seek answers to these points which go to the very heart of the principle of developing these sites.

5.2 It cannot be ignored that the local highways authority, WCC, does not object to the appeals. However, the information on which WCC based its decision has been demonstrated by SOGOS to have dramatically underestimated the actual transport impacts of the developments. In addition, elements of the proposals relied on by the Appellants have been demonstrated to be wrong through the very simple exercise of looking at a map showing property boundaries. The fact that neither WCC nor the Appellants had picked this very basic fact up is highly indicative of the lack of care applied to these proposed developments.

5.3 It is also clear from the decision in Waddington Road, Clitheroe (SOGOS/3) that highways authorities can get it very badly wrong, and that when this occurs - even in the context of a highly sustainable site, no landscape concerns, no 5 year housing land supply and no objections by the Council - an Inspector is free to depart from the statutory consultee's opinion when transport concerns have not been adequately dealt with. It should be noted that this approach was later fully endorsed by the SoS in his decision. It was not the lack of a Road Safety Audit which led to the Inspector's recommendation: it is clear from paragraph 247 that his decision was based on the (as stated in paragraph 244) "hideous geometry" of the junction alone, which the Inspector judged for himself led to a severe transport risk when considered with the proposed development. The Inspector is invited to compare the junction shown in SOGOS/4 with the blind bend along Pulley Lane: it is pointed out that the only mitigation proposed for this equally "hideous" stretch of road is signage.

5.4 The evidence from SOGOS is structured as follows. Firstly, the general planning principles which are applicable in these cases are examined. Secondly, the evidence submitted by both Appellants in support of their contention that the appeals satisfy these principles will be examined. Finally, the evidence supporting these principles will be examined to demonstrate that

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the Appellants are unable to establish that their proposals meet these requirements on any basis.

General Planning Principles

5.5 Paragraph 17 of the NPPF brings localism to the forefront of the planning process: the planning system should facilitate local people's ability to shape their surroundings. This includes input into the decision-making process, for the very sensible reason that they know the circumstances and the land about which the decision will be made far better than anyone else. Planning decisions should also improve and enhance peoples' lives: rather than merely coping with immediate problems it should seek creative, long-term and holistic solutions with future generations in mind.

5.6 How decision-makers are to put the above principles into practice is succinctly phrased in paragraph 9:

> "9. Pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people's quality of life, including (but not limited to):
> ...
> ● improving the conditions in which people live, work, travel and take leisure"

Transport Impacts Must Not Be Severe

5.7 Paragraph 10 of the NPPF says that decision-makers need to take local circumstances into account. This is reflected in paragraph 32, which places an obligation on decision-makers to consider the impacts of the proposed development on the local transport network:

> "...decisions should take account of whether:
> ● the opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure;
> ● safe and suitable access to the site can be achieved for all people; and
> ● improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe."

Developments Must Be Deliverable: Certainty as to Surface Drainage

5.8 This is important not only as a point of general principle – that permission should only be granted for developments that are deliverable, a point which Mr Downes agreed with in cross-examination – but also because the unique nature of these sites means that particular care must be applied to considering their development.

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5.9 It cannot be denied that the sites are elevated – the very name of the combined sites, Yew Tree Hill, belies any arguments to the contrary, as does any glance at a topographic map. This is a concern in terms of landscape impact, which was covered by Ms Illman for the Council. It is also a concern in terms of drainage as the steep slopes mean the site is not conducive to on-site storage during extreme weather events. The situation is compounded due to the impermeable nature of the sites – the latter being agreed by the Appellants' consultant, Mr Engledow. This means that on-site storage in the form of ditches, swales, and underground attenuation systems on their own is simply impossible. Yet this is precisely what is still being proposed for the requisite on-site storage and the only answer provided was that a solution would be "engineered".

5.10 This is simply not good enough in this context. The evidence from Mr Brass' video of the flooding on Isaacs Way and his photographs of his son kayaking along the lane show precisely what can happen if drainage is not comprehensively thought through prior to allowing development to take place. This serial deferral of considered solutions – a theme in both appeals - incorporates inherent risks into the proposed development and cumulatively these risks have the potential to pose much greater problems in time.

Developments Must Be Deliverable: Ground Conditions & Subsidence

5.11 A further unique feature of the area is its geology in respect of the local brine runs, where there is geotechnical evidence in Persimmon's own documents based on research conducted by the recognised experts on this issue which states that based on current evidence a large proportion of Appeal Site A cannot be developed.

5.12 Zone A is the area at the highest risk of significant subsidence, which all parties agree runs roughly through the centre of the combined development site, as set out in the brine map (CD/B29) and the GRM Phase 1 Appraisal (CD/M10). The evidence set out in Appendix H to CD/M10, the Johnson Poole and Bloomer report, demonstrates that this area has regularised its rate of subsidence following cessation of brine pumping to a rate of 1 metre subsidence over 60 years and a 1:57 maximum tilt over the same time period (CD/M10, Appendix H, paragraph 5.6).

5.13 Of further concern is the fact that at the margins of Zone A there is the greatest risk of significant subsidence (CD/M10, Appendix H, paragraph 4.4.4). As Zone B is at a much lower risk of subsidence (CD/M10, Appendix H, paragraph 4.4.5) the resultant differential subsidence rates carries the risk that infrastructure spanning both zones is, over time, at risk of rupture.

5.14 The Appellants have put forward three arguments in response to these concerns: first, that the risk can be adequately dealt with through construction techniques; secondly, that this is a building control matter and thirdly, they rely on the fact that the Council has already permitted development in Zone A.

5.15 The first point relied on by the Appellants is shortly answered. No pipe can withstand a short-distance 1:57 tilt, or a 1 metre drop, which is the predicted effect of the subsidence over 60 years by the acknowledged experts in this

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field. The only answers provided to the Inspector were that this would be studied and, yet again, a solution would be "engineered".

5.16 In response to the second point, this is of course true. But we are concerned here today with the principle of developing these sites and whether or not they can be constructed at all is obviously relevant to the Inspector's recommendation. The experts are very clear on this point: they themselves use the phrase "undevelopable" (CD/M10, page 9). If the site is not deliverable, it should not be sterilised in perpetuity through a useless planning permission. Permission should not be granted until it is certain that the proposed residential use can even take place on Appeal Site A.

5.17 Finally, in response to the third point, this is obviously a great concern that thankfully does not trouble us much today, though it may be very troubling to members of the public who live in this area. The Appellants did not put forward any evidence that demonstrated that the Council had arguments based on the underlying brine run and risk of subsidence before them when they granted permission for development elsewhere in Zone A other than referring to Johnson Poole and Bloomer's annual reporting to the Council on the status of the brine run. What is clear and what is before the present Inquiry, however, is the fact that the relevant studies (commissioned in 2009 and 2011) which considered Zone A for development had the fact that earlier development had proceeded in Zone A fully in mind yet went on to state that, nonetheless, Zone A was undevelopable. What is also clear is that the subsidence timeframe is long-term – the rate was characterised as "slow" and "consistent", at a rate of mere millimetres per year. The development in Zone A has only been there since the late 1990's. It is too early and we simply do not know enough to draw any conclusions at all from the existing development in Zone A.

The Impact on Transport & Highways Must Not Be Severe

5.18 It is evident that there are serious issues with the mitigation measures proposed by the Appellants, as demonstrated by the evidence of Mr Richard Pettitt. Mr Pettitt identified a number of crucial deficiencies in the Appellants' cases both in the Transport Assessment dated May 2011 (CD/L17), the Addendum dated July 2012 (CD/L22) and Appeal B's Transport Assessment and Travel Plan dated November 2012 (CD/M12).

5.19 In contrast to the Appellants' evidence, Mr Pettitt – using the Appellant's own data – demonstrated that traffic rates would increase 873% along this narrow country road. Notably Mr Tucker did not put forward any explanation for the figures used in his Transport Assessment and instead pointed to a third study, that which Halcrow prepared for WCC (CD/L17, Appendix L). However, this document is of extremely limited use as it itself recognises it can only be used for indicative purposes (paragraph 2.7), that further detailed analysis was necessary (paragraph 5.18), and failed to reach a conclusion of the actual impact on the most critical junction it purportedly studied, that of the A38 and Pulley Lane (Table 4). We must turn to the Halcrow models found at CD/L17, Appendix M, scenarios 3 and 4 to learn that this junction would become oversaturated under certain conditions. Therefore it is clear is that there is no margin of error and calculations have to be precise, accurate, and prudent.

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5.20 The same is true of Pulley Lane, presently a narrow country road. Yet the only mitigation proposed is regularisation to its current maximum width of 5.5 m and widening some visibility splays. As demonstrated by Mr Pettitt, these proposals are not in accordance with applicable design standards and lead to significant safety concerns, particularly at the bend.

5.21 Mr Jones for Appellant B acknowledged that the design manual which was used, MfS2 (CD/B4) is designed for urban areas. SOGOS submits that this is wholly inappropriate when considering that these are rural country roads to start with. It cannot be right that highways can be designed backwards, based on what would be developed. One must take the roads as one finds them, and design mitigation measures accordingly. This means the DMRB ought to have been used to ensure the proposed mitigation measures are safe and appropriate for these roads. It is clear that they are not.

5.22 The most concerning consequence of using the wrong guidance is the access proposed to both sites, but particularly to Appeal B's site. Evidence was given by both transport witnesses that reduced visibility splays actually increase driver safety as justification for not meeting the design standards (in the case of Appeal A, for failing to meet even the minimum applicable (the erroneous drawing 10154-74)). It is only the heightened awareness of risk that makes this true. Drivers coming down a crested hill are not going to expect that the only access point to a major development lies at the foot of the hill. Simply put, the access proposed for Appeal B is not safe. In these appeals issues regarding access are not reserved matters and thus cannot be engineered away down the line.

5.23 Further, the Appellants' over-optimistic figures also give rise to serious concern that the already congested roads would become unusable, leading to significant rat running along wholly inappropriate rural country lanes, one of which includes a narrow humpbacked canal bridge which leads down straight into a 90 degree blind turn.

5.24 In addition to having misjudged the boundary lines along Newland Road, Appellant A has assumed that when open to traffic in the past this road carried similar levels of traffic to Pulley Lane (see Simon Tucker's proof of evidence, paragraph 5.3). It is clear from the evidence of Mr Bowler that this was never the case as is clear from his proof of evidence, paragraph 1.3.1.

5.25 In any event, the steep slopes along Newland Road would require some form of retaining wall. The most visually, acoustically and environmentally favourable option, gabion walls, would significantly intrude into private gardens. Nor – even if this widening was possible using sheet piling – would bus or emergency vehicles be able to safely access the road from any direction other than straight across the junction with Primsland Way due to the narrowness of the turning radius.

5.26 The sustainability proposals put forward by the Appellants are wholly without merit. The re-routing proposal for cyclists has them negotiating a five-armed roundabout. The main pedestrian re-routing proposal is along an isolated, fenced in, and unwelcoming stretch of woods which users simply would not use in the dark or when they are alone. The alternative is through a modern

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residential estate or the overcrowded and dangerous Pulley Lane. Neither of these proposals can be considered a genuine benefit in terms of the amenity of the user nor the sustainability credential of the sites.

Planning Balance

5.27 Allowing these appeals would have significant effects on the local economy. That is beyond dispute. However, SOGOS disputes the extent to which these effects can be categorised as positive. Appended to the proof of evidence of Mr Stephen Stoney was a letter from E.S. Hill & Sons, an important local employer who has been farming over 242 hectares of the area for three generations. Their landholdings are bisected by the A38 and they rely on Pulley Lane to access the site adjacent to the recently approved Copcut development. It is clear on any view that an increase in traffic of 873% is incompatible with the farm traffic which currently uses this road.

5.28 Further, there are two equestrian facilities which currently use these quiet country lanes for horse riding: this activity would be rendered incompatible with the vast increase in traffic as well.

5.29 The proposed developments would impede the ability to carry on his business to such a severe degree that Mr Hill states that he is concerned for his farm's economic future. It is clear that being unable to safely ride out beyond the stables themselves would considerably reduce the attractiveness of these facilities and thus have an adverse economic impact.

5.30 In contrast, the only benefits to the local economy which the Appellants put forward are the jobs provided through construction, the care facility and the employment facilities. Firstly, there is no doubt that this quantum of housing would have to be provided within South Worcestershire over the plan period in any event. Therefore, refusal of these appeals would only mean that construction jobs are relocated. They would not be lost. Secondly, again, there is no doubt that further care facilities are needed. There is doubt that they need to be located on greenfield land with a subsidising development of 500 homes. Moreover, refusal of Appeal A only means the facility would be located to a more appropriate location. Finally, no evidence has been offered to the Inquiry which demonstrates that a facility located 1.2 to 1.5 miles distant from the town centre would be economically viable.

5.31 It follows that only very limited weight ought to be given to the Appellants' arguments that the developments represent sustainable economic development.

5.32 Having regard to environmental sustainability, the letters appended to Mr Stoney's proof of evidence and the evidence provided by third parties demonstrates the importance of the greenfield use of the sites for the amenity of existing residents, the protection of which is a core planning principle in paragraph 17 of the NPPF. In this case the amenity of local residents does not limit itself only to the existing use and appearance of the land itself: the rural nature of the area and the agricultural use of the sites contribute to peaceful enjoyment of the local road network for pedestrians, cyclists and horse riders. These uses would be severely hindered if not rendered impossible if these sites

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were to be developed. It is not merely that a pleasant walk and lovely views would be destroyed: local residents simply would not be able to live their daily lives in the manner which they have enjoyed to date if these developments proceed. Therefore, in addition to the landscape impacts identified by Ms Illman, the significant impacts to residential amenity mean great weight should be afforded to arguments that the developments are not environmentally or socially sustainable.

5.33 Further, and overlapping with environmental considerations, the sites are clearly not sustainable in transport terms. This decreases the accessibility of local services and does not support the health, social and cultural well-being of the community. The sites are between 1.2 and 1.5 miles distant from the town centre, with an incline on any return journey. It is clear that for the sites to be sustainable public transport must be provided. Yet the sites are not well integrated into the public transport network and each site would only be served by a single bus route. The proposed benefit in terms of the enhancement of public transport options put forward by the Appellants is not sufficient to make either development truly sustainable, and thus the developments are not sustainable in transport terms. This reduces any weight to be given to the socially sustainable element of these appeals.

Opposition to the Developments

5.34 The strength of local opposition to these proposals is demonstrated in a number of ways. There is the evidence of the vote of the Planning Committee itself: it is significant that, despite the officer's report recommending approval of the applications, every single member of the Committee who voted, voted against the proposals. Then there is the petition signed by over 3,470 local residents who oppose the development of these sites (SOGOS/1). The criteria for signing this petition were rigorous and signatures were carefully monitored for duplication. There can be no doubt that 3,470 is an accurate figure. Therefore, at all stages where a democratic process prevailed the response was unanimously against both proposals.

5.35 Though the concept of the common good is ever-narrowing, people's ability to shape their surroundings remains an unshakable core principle within the democratic process. This is recognised by the NPPF, though so too is the need to find a solution to the nation's housing problems. Decision-making in a democracy is messy and goals cannot be achieved with laser-like precision. We do not live in a dictatorship. There can be no doubt that if these appeals are allowed this is because they have been imposed on the residents of Droitwich Spa in the face of an astonishing level of local opposition. Even if the significant issues with the appeal sites are disregarded, it is simply unacceptable that the need for new housing can outweigh this level of local opposition.

Conclusion

5.36 SOGOS was not formed merely to turn up to planning inquiries to voice objections to all development in Droitwich Spa. SOGOS fully supports development, provided it is sustainable. In order to demonstrate that both Appeal A and Appeal B are not sustainable, SOGOS has raised funds for two

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consultants who have demonstrated that SOGOS' concerns are fully warranted.

5.37 There remains unacceptable uncertainty as to drainage and subsidence issues, and the local road network is not capable of absorbing this cumulative quantum of development. There are serious safety and congestion issues in relation to both sites, and SOGOS has provided cogent evidence that the proposed mitigation measures would not alleviate these concerns. Plainly, from the site visit, this is a special area of land significantly elevated above the rest of the developed area which is well-used and much loved by local residents. Local knowledge is an essential supplement to the evidence of expert consultants when making planning decisions if they are to be made properly and this local knowledge demonstrates without doubt that these sites are simply not appropriate locations for such a scale of residential development.

5.38 It is not the role of this Inquiry to investigate whether other sites are better suited to meet the identified housing need of the Council: it is clear the Council is addressing this through the progression of the joint development plan. The role of this Inquiry is to interrogate the suitability of these sites for these developments. It is clear from carrying out a thorough planning balance that the developments do not represent sustainable development and that the adverse impacts of granting permission significantly and demonstrably outweigh the benefits. This is enough to warrant dismissal of the appeals in its own right, but there is much more which must be considered as, even if permission is granted, there is no certainty that the developments are deliverable as both sites must await the final results of the brine run surveys. Appeal B has commenced this work (P8), but the final results for the full site are not due for another 18 months. Appeal A has yet to even commence this work and as it stands, a large proportion of this site is in Zone A. There is no information other that normal development in Zone A is prohibited for all but specialist buildings (CD/M10, Appendix H, paragraph 5.7).

5.39 Further, even if the Inspector was not minded to recommend that the significant and demonstrable harm outweighs the benefits of allowing the appeals, and even if the Inspector determined that SOGOS' arguments on the certainty of the deliverability of these developments does not demonstrate that these concerns ought not to be left to the reserved matters stage, there is clear and cogent evidence that the appeals are independently unacceptable in planning terms due to the severity of their impact on the transport network.

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6. INTERESTED PERSONS WHO APPEARED AT THE INQUIRY

6.1 **Mr Richard Giugno**, a local resident, made a number of points in relation to housing demand in Wychavon. These are briefly summarised below but the reader should also refer to his statement at IP1. The ONS sub national population projections 2011 (published April 2013) show a material dependency on Net International Migration for Wychavon over the next 10 years of 300 p.a. The mid-2012 population data published in August 2013 shows a net 191 international migrants into Wychavon for 2012. Previous DCLG housing forecasts have been shown to be too optimistic with current household forecasts now downgraded by 10% to 384 units p.a.

6.2 The latest updated objective assessment report submitted to the Inspector reviewing the SWDP indicates an average annual housing need of 416 for 2012-2030 which includes a catch-up from 2006 spread over the next 18 years. Some 66% of the assumed growth is not local to the district. Almost all the growth (97%) is non local for Wychavon with almost half from international migration. Previous year projections of 2011 households for Wychavon have been slightly over optimistic. The international migration projection is a net 300 p.a. Household forecasts are expected to be lower. Wychavon's forecast housing needs are projected down 10.5% with run rates forecasted at 384 p.a.

6.3 **Mr Mike Bowler**, a local resident, has lived at 49 Yew Tree Hill, Droitwich since May 1989. Mr Bowler explained the history of the development of his property and how it was built sideways on to Newland Road where Yew Tree Hill itself bends towards the lane. He submitted evidence and provided various plans to explain the history and evolution of development at Newland Road from 1947-2014. He provided comments on the statements made by the developers in their proofs of evidence suggesting that the daily use of Newland Road when it was open to traffic was about 12-15 vehicles per day.

6.4 He referred to bus usage pointing out that WCC are currently in the process of consulting the population of the County with a view to cutting bus services, including the 19A/19C routes, and the S1/S2 routes to the Blessed Edward School which run along Primsland Way. He argued that the proposed road width where Newland Road meets Primsland Way is only some 4.50 m wide with limited visibility. As buses could easily be meeting head on when crossing Primsland Way, he suggested that this was too narrow and far too dangerous to mix buses with cyclists and pedestrians.

6.5 He referred to DTA's Transport Assessment Addendum, diagram TP2, which shows a green line indicating a proposed East-West cycle route. He said that Pulley Lane itself is barely wide enough today to allow a car to pass a cycle so two-way traffic would not be able to flow along this lane if cyclists use it as they do today. He highlighted that as well as cyclists, there have been several accidents on the Copcut Roundabout which would suggest that this five arm roundabout is dangerous without the possibility of adding a cumulative more 3,000 cars from the Copcut Lane and Yew Tree developments. He disagreed with Mr Tucker's evidence when he said that Pulley Lane would not be used for much in the way of HGV traffic. He considered the proposed development would be detrimental to residential amenity as buses running alongside the back gardens would be an intrusion of privacy.[257]

6.6 **Mr Tony Miller** is a District Councillor and County Councillor.[258] He has resided in the area from a schoolboy to living in his present location for 34 years. He is opposed to the development for several reasons. He said that the Council started looking at the suggested development sites 5 years ago. Yew Tree Hill was one site and Copcut Lane was the other site in this location. It was obvious that the infrastructure could not support both locations. The Yew Tree site has very poor access and Pulley Lane is not wide enough to support

[257] IP2
[258] IP3

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the amount of vehicle movements and neither can it support a footpath. This is without looking at all the known problems in this location with movement in the land due to the brine run.

6.7 The land required for the alterations to Pulley Lane is not in the ownership of the developers and the owner Mr Price has informed him that he is not going to give this land away. The Copcut Lane site was severely limited with Copcut Lane being too narrow even though it has a footpath. It was decided that the only way this site could be served was to have the main entrance off the A38. The Council was aware of the impact this development would have on peak hour traffic flows. Around 700 houses could mean 1,400 cars coming from Yew Tree village.

6.8 He said that there were foul water sewage problems at the Ladywood STW because it could not cope with the present capacity. When there is excessive rainfall, Severn Trent is allowed to discharge partially untreated sewage into the River Salwarpe which enters the River Severn. In times of flood this foul sewage water flows into the residential properties alongside the River Severn. Furthermore, he argued that the impact on the health system of 1,500 houses from these two locations would be daunting. There would be implications on the local hospitals where problems already exist coping with the amount of people using the facilities e. g. there are not enough midwives. The WCC is cutting bus subsidies, so he wanted to know how many years the developers would maintain the bus route. Finally, he wanted to know where the children would be going to go to school.

6.9 **Mr Ken Jennings** is a Town Councillor for Droitwich Tagwell Ward in which ward the majority of appeal sites is located.[259] He is leader of the majority group on Droitwich Spa Town Council. He is also a District Councillor and he represents Droitwich South East on WDC. This is the ward in which both of the appeal sites are located. He is Vice-Chairman of the District Council's Planning Committee. In addition to speaking on his own behalf as a Town and District Councillor, he was appointed to represent and speak on behalf of the Droitwich Spa Town Council. He registered both his own and the Town Council's objections to these planning applications and he requested that both of the appeals be dismissed.

6.10 He said that the draft SWDP, produced in partnership between WDC, Worcester City Council and Malvern Hills District Council has now been submitted to the SoS and is undergoing public examination. It is the hope of everyone that the plan will be approved by the Inspector, Roger Clews, and that WDC will be in a position to adopt it early in 2015. Once that plan is in place there would be no need for debate on speculative planning applications such as these. He said that the planning process in this country is plan led.

6.11 Until such time as the SWDP is formally adopted, he considered that paragraph 17 of The Planning System General Principles applies in determining these applications. This has been supported by a statement made by Planning Minister, Nick Boles, in the House of Commons on 8th January 2013.

[259] IP4

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6.12 When the SWDP was first being drafted, it was accepted, albeit reluctantly by the people of Droitwich, that to meet the town's anticipated local growth needs in the period to 2030, an urban extension would be required. There were two candidates for the siting of such an extension, Copcut Lane and Yew Tree Hill. Whilst not happy about either choice, the people of Droitwich agreed with the selection of the Copcut Lane option as being the least worst alternative. Outline planning permission has already been granted on this site for 750 houses and 14,000 sq ms of industrial space. He said the town's planned urban extension needs for the next 17 years have already been met.

6.13 The people of Droitwich were promised categorically that only one site would be required to meet all the needs of the town. It was an 'either or' situation. Clearly, however, this has not stopped those behind the Yew Tree Hill proposal submitting these speculative planning applications. These have nothing to do with the future needs of Droitwich, or Wychavon, or the SWDP. Rather predictably it comes down to money. One projection he has heard is that the joint developed value of these two sites is somewhere north of £300 million. Clearly, the Yew Tree Hill proposers were not going to take their rejection lightly. These applications are not in accordance with the draft SWDP. These are not preferred development sites. These applications are clearly premature and are so substantial as to prejudice the SWDP and paragraph 17 clearly applies in this case.

6.14 The Town Council has heard many times that the District Council must approve planning applications as it needs to demonstrate the provision of a 5 year housing land supply due the requirements of the NPPF. In calculating our 5 year land supply position when the planning applications were considered and refused by the Wychavon Planning Committee, Councillor Jennings took the view that the West Midlands RSS Panel Report was given too much weight in decision making. He explained to the Committee that the RSS had been revoked and that the data behind the plan was becoming increasingly out of date. He considered the data to be unreliable. His preference was for reliance on the locally assessed figures set out in the Council's own draft SWDP – a figure which was based from data in the up-to-date SHMA.

6.15 However, he appreciated that since the decision to refuse these planning applications, the world has moved on and an initial assessment of the SWDP housing figure has been made by the Examination Inspector, Mr Clews. He has asked for further information. In addition there has been an important Court of Appeal decision (St Albans v Hunston Properties Ltd) which goes to the heart of the issue as to what evidence should be used to assess a Council's 5 year land supply position. Further to this, the Council has made significant improvements in its land supply position. As set out in the evidence submitted by the Council, the Court of Appeal has made it clear that it would not be appropriate to use the RSS figures – given that the plan has been revoked and that the policies within these plans do not necessarily represent 'an objective assessment of housing need'. The Council has set out in its statement that the decision from the Court of Appeal means that it would be wrong for a planning appeal Inspector "to use a housing requirement figure derived from a revoked plan (such as the WMRSS) even as a proxy for what the local plan process may produce eventually".

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6.16 He said that on this basis the Council has set out a position which confirms that for the purposes of calculating the Council's 5 year land supply the most appropriate figure to use would be from the DCLG's 2008-based SNHPs (2010). He understood that this equates to a figure of 10,133 dwellings in Wychavon or 422 dwellings p.a. Against this target the Council can demonstrate 6.76 years' housing supply. In fact, if the out of date RSS figures were used, he understood that with an annual requirement of 475 dwellings, the Council would still have 5.65 years' housing land supply. This shows that the Council has taken difficult decisions to grant planning permissions for new housing development where the benefits of the scheme outweigh the harm. Whilst the Council may wish to continue to improve this position and ensure robustness, it is in a position to consider this balance very carefully and does not have to approve all housing developments which come before it. He said WDC had fully discharged its duty to provide a 5 year housing land supply.

6.17 He also said that the Town Council has no doubts about the weight that can be given to an emerging development plan such as the SWDP, when planning applications are to be determined. Given that the new SWDP is already under inspection, the WDC, as the decision makers in this case, must surely give it substantial weight in its decision making. WDC, Worcester City Council and Malvern Hills District Council have spent a lot of time, effort and Council Taxpayers' money in producing a plan that would guide the development of all three Districts for the better part of the next 20 years. The draft SWDP therefore must undoubtedly carry great weight in decision making.

6.18 He pointed out that the NPPF makes great play on the need for sustainability and therefore serious consideration needs to be given to the sustainability of the proposed developments. Paragraph 7 of the NPPF advises that there are three dimensions to sustainability - economic, social and environmental. He argued that the proposals were isolated developments on the edge of town which were not environmentally sustainable. Much of the appeal sites were in an area prone to major settlement. Moreover, siting so many houses off what is basically a cul de sac and the small rural farm track that is Pulley Lane, should surely have raised some concerns among highways officers. He also referred to the Clitheroe case where the SoS agreed with the Inspector and dismissed the appeal on highway grounds.

6.19 **Mr Richard Morris** is a Droitwich South East Ward Member along with Cllr Jennings. He made the following points in relation to both appeals. Cllr Morris was unable to attend in person, but his statement to the Inquiry was read out by Cllr Jennings.[260] He urged careful assessment of the arguments. He said both appeals should be seen as essentially one proposal as the same arguments exist for both. He said that SOGOS had been formed to "Save Yew Tree Hill" and has operated terrifically over time. SOGOS has completed two petitions with over 2,500 signatures on each and petitions have also been handed over to the Council from Droitwich Spa High School youngsters and High Street traders. The view that this is not the right site for development comes from right across Droitwich. Droitwich does not want this site to be developed.

[260] IP5

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6.20 In the SWDP the Yew Tree Hill site was rejected as less sustainable with more landscape and other issues than the development at Copcut Lane nearby which has been approved. If the SoS now approved the Yew Tree proposals, which combined is such a large site outside the SWDP, it would upset the balance of what the policies in the SWDP are trying to achieve and in effect would make a mockery of our local plan and decision making.

6.21 In Nick Boles' letter to the Droitwich Planning Chairman, Cllr Roy Murphy (22.4.13) he said:

"The Government has always been clear that proper consideration should be given in the planning process to emerging local plans....it is for the decision-taker to decide how much weight to give to an emerging plan."

6.22 Surely it is clear from this that the SWDP should be the main source to determine our local requirement especially when Nick Boles MP also says:

"I am pleased to report that the Government has taken the decision to revoke the Regional Strategy for West Midlands and we will lay an order to this effect in Parliament shortly after the Easter recess".

6.23 This means that the top down figures have now effectively gone as Nick Boles says:

"This Government does not set top-down Whitehall housing targets".

6.24 Mr Boles also said that we must ensure "sustainable development" and that we can refuse on the grounds of cumulative development and the lack of sustainability.

"The Framework is also clear that the cumulative impact of development, alongside the need for infrastructure to support development, can be material considerations in deciding whether development is appropriate."

6.25 With a development of 720 houses already approved at Copcut Lane and also in the south of Droitwich and both Yew Tree applications contributing a further 965 (including a 200 bed care facility), this would have a massive impact on local infrastructure. With other developments already underway there is over a 12% increase in the town's population which amounts to a massive effect on local services such as doctors, dentists, schools and police. The SWDP has a sustainable plan so why do we need these two developments outside of the plan?

6.26 There is potential for cumulative impact with the Copcut Lane development on roads and the transport network. Cllr Morris questioned whether the transport study was carried out during peak hours. He said it is during peak hours that the Copcut roundabout had endless queues and the aggregate impact, with the 720 house Copcut development, would cause gridlock.

6.27 He also referred to the issue of Pulley Lane access. He said that any development would necessitate Pulley Lane being widened and straightened. It would therefore no longer appear as a country lane. He

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said the highways report seems to lack depth in considering some of the key issues around this area. Brine runs, and potential subsidence are other issues with these sites. We already have a retainer wall at Rebekah Gardens which had to belatedly be included in the last development to protect housing. The report says that some of the land is affected by brine runs. Local experience says that much of the planned area is affected by brine runs and who knows the level of vulnerability of this land running over fluid brine runs.

6.28 Cllr Morris quoted from a British Geological Survey paper from 2001 which urged caution with the ending of most near surface mining and brine extraction in the area as the hydrological system has or is in the process of rebalancing itself and subsidence problems may occur.

6.29 He considered that these developments would create a detached satellite village at the far south of the town cut off from the Droitwich centre. They would not help the economy of Droitwich town centre. Traders have said the developments would be in the wrong place. The report says the plan would support the wider economy but certainly not the town economy as the land is over 1.5 miles from the Droitwich centre. The Worcester suburb of Warndon and Worcester City Centre would prove better propositions. He said that development nearer Droitwich town centre was needed.

6.30 He said that the Yew Tree development would not be sustainable. The size of these developments would be devastating for Droitwich. The Regional Spatial Strategy (RSS) is top down whilst the SWDP is local and sustainable. He preferred the proposals in the emerging SWDP. He noted that the Coalition Government espouses Localism but is forcing LPAs to plan for national figures. He said that the proposals would destroy Droitwich on the basis of the NPPF which could be so different tomorrow. He said we cannot tear concrete up and recreate natural habitats and green fields. He urged the SoS to refuse these appeals which were from opportunist developers. The proposals would do nothing for Droitwich

6.31 **Barbara Meddings** is chairman of the Hindlip, Martin Hussingtree & Salwarpe Parish Council.[261] The Parish Council (PC) represents the residents in the rural community of Salwarpe Parish. She said the proposals in these appeals do not recognise or consider the role of Salwarpe Rural Parish; its local character and history that reflect the identity of the local community. The fundamental issues are as follows: (i) the developments on both sites would extend beyond the Droitwich Town development boundary. It is perceived as unacceptable that the proposals are not able to be accommodated within the defined development boundary and would require expansion into the open countryside.

6.32 She said that the Parish of Salwarpe already has to accommodate the permitted urban extension at Copcut Lane less than 1 km to the west after extensive public consultation. These appeals set out to establish a second urban extension duplicating many facilities with the main access points outside

[261] IP6

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the town boundary. The character and integrity of the network of rural lanes and their settings within the landscape are considered of value to local people.

6.33 Beyond the urbanisation of Droitwich, the rural character of the parish community with patterns of dispersed settlements has evolved through gradual change. Pulley Lane is the main connecting route for the rural community to access the village of Salwarpe. Within the southern approaches of the parish, there is a distinct clear transition from town to countryside and a robust physical limit to the spread of Droitwich Town.

6.34 She said that Pulley Lane has changed little since the earliest Ordnance Survey map of 1883; and its existence under the original name of 'Pullheye' can be traced back to 1274. The road boundary hedges and hedgerow trees remain intact. Pulley Lane and its southern boundaries define both the parish and Green Belt boundaries. To provide vehicular routes for both appeal sites would require the removal of sections of historic, ancient hedgerow on the southern side of Pulley Lane and Newland Road.

6.35 She stated that of greatest significance is the immediate setting of the entrance to Appeal Site A and the creation of a new junction. This would result in the removal of hedgerows and re-alignments of the lane thus diverting Pulley Lane into the site, effectively cutting off the historic local route. The widening of the lane and re-aligning of the bends would severely compromise Pulley Lane. The entrance into Appeal Site A due to the natural topography would be a major visible feature in the landscape. This would be particularly noticeable during winter months. The entrance to Appeal Site A would impact on the visual features of the historic Oakley Woods. Egress from Appeal Site B would create a permanent opening onto Newland Lane to access the surrounding rural lane network. There would be potential dangers from the increase in traffic for the wide range of people who enjoy rural pursuits, as well as those living and working in the vicinity of both appeals sites.

6.36 With regard to safeguarding the historic character of the area she said that the parish of Salwarpe consists of dispersed settlements and clusters of housing with working farms and equine establishments. These are surrounded by agricultural and pastoral fields whose primary characteristics are strong hedgerow patterns. The Hedgerow Regulations 1997 protects ancient and important hedgerows and are designed to reduce direct damage. The important features of the Pulley Lane hedgerows in relation to these Regulations are: (i) they mark the boundary of a parish; (ii) they form an integral part of the Green Belt boundary; (iii) they run alongside a road used as a public path; (iv) they have banks supporting the hedgerow; (v) they visibly relate to features such as the historic Oakley Woods and the SSSI site of Oakley Pool; (vi) they have a number of connections with other hedgerows, woodlands or ponds and (vii) they run alongside a footpath or bridleway.

6.37 Concerns were also expressed about surface water drainage from Appeal Site A, to be piped under Pulley Lane and directed onto the SSI site of Oakley Pool, potentially overwhelming the natural balance of the pool.

6.38 In conclusion it is argued that proposals for Appeal Sites A and B must: (i) safeguard the natural character of the rural lane; (ii) relate to the sensitivity of

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the surrounding open countryside in a wider context; (iii) recognise that removal of the hedgerows would destroy their visual historic and ecological value; (iv) recognise that the cumulative effects of the changes to the rural lane along with access proposals of both Appeal Sites A and B should not overwhelm and destroy the distinct inherent character of the rural Parish of Salwarpe; (v) be aware that the process that should be adhered to in respect of changes in the parish boundary have not been adhered to by the developers or its agents in respect of diversion of Pulley Lane into Appeal Site A and in respect of alterations to the boundary along sections of Pulley Lane.

6.39 **Mrs Judy Pearce** is Deputy Leader of WDC and Executive Board Member for Housing, Planning and Infrastructure. The Ward she represents is Wychbold and she is well aware of the sites which are subject to these planning appeals. A full site visit of both the appeal sites was carried out by the Committee.

6.40 She said that one of the Council's long-standing mottos is 'Team Wychavon' whereby members and officers working closely together. The Planning Committee works closely with officers to improve the 5 year land supply in Wychavon. Against considerable opposition from local residents and parish councils numerous applications have been approved and followed officer recommendations in all but a handful of cases. As a result, even if other parties try to argue we don't have a 5 year land supply, we would maintain that we do. Nevertheless, because it is such a difficult figure to nail down with any certainty, we have followed officer advice and continue to grant permission to any applications before us where we can see no demonstrable harm greater than the benefit of granting permission. She said that officer advice is honest, measured and cautious and the reason that sites are approved is to improve the robustness of the figures.

6.41 She said that national appeal decisions are followed closely by officers and the implications of significant decisions are explained by officers without delay. The Committee has a half hour training session before regular planning meeting which permits a regular 'slot' for any such updates. When it comes to the calculation of the 5 year land supply, we receive regular updates at intervals of no more than three months. These are published as public reports in the Planning Committee agenda papers. Starts and completions on major sites are monitored closely. WDC officers are in regular contact with developers to ascertain progress and the ability to satisfy delivery within 5 years. Building start and completion numbers in the last 12 months are as high as they have been for many years. More affordable housing is being delivered through market sites than all the other districts in Worcestershire put together. From the information submitted to the Government in respect of New Homes Bonus a total of 221 affordable homes are recorded in the year up to October 2013. Tight time implementation conditions are imposed on the full and outline planning applications which are granted to encourage developers to get on site. In short, everything possible is done to boost significantly the supply of housing. WDC can approve applications as fast as possible, but it cannot physically build houses for the developers.

6.42 Cllr Pearce referred to her notes of the Planning Committee meeting of the 16 May 2013. The meeting commenced at 1400 hours and concluded at 1735 hours as recorded in the minutes. Only the two planning applications subject

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to these appeals were considered at this meeting. An extensive officer report was published prior to the meeting and a further written update was made available in advance of the meeting. The officers presented the two planning applications as separate items. The Committee received two officer presentations, two separate public speaking sections and had two separate discussions on the merits of the individual items. The first application for Barberry did take longer than the second to consider but that is not surprising given that some things were common to both sites and fully debated on the first application. Representatives from both developers were there and raised no objections or queries about the way the decisions were taken following the meeting. Both planning applications were given extensive consideration by the Planning Committee. Both applications were refused; voting was 12 votes for refusal, 0 against and 1 abstention. The conditions imposed were similar, but not identical, to reflect the different identities of the two sites.

6.43 Regarding the prematurity refusal reason, the Planning Committee felt that two approvals for such a vast site alongside the Copcut site, which was proposed to be allocated in the SWDP and where outline planning permission for 740 dwellings, local facilities and an employment land allocation had been granted on 8 January 3103, would have been detrimental to the strategic thrust of the SWDP. One of the prime aims of this is to strengthen Worcester's position as a vibrant centre, so it can compete with other large towns in the area, hence the need to allocate a good deal of housing in the City and its immediate environs. After that development is to be directed to the main towns, then the more sustainable villages. The SWDP was about to be submitted to the Inspectorate after considerable public consultation and engagement on the location of development. The Committee felt that the size of these proposals would prejudice the SWDP by predetermining the scale and location of development. At the time of the determination of the applications, the proposed allocations within the SWDP were sufficient to meet what was considered then to be our housing needs. These sites were not needed.

6.44 The Planning Committee, however, continues to give approvals on sites which only a few years ago would not have been considered small even if they have not been allocated in the SWDP, so long as they are satisfied that they could be successfully integrated socially, economically and environmentally into the surrounding neighbourhoods. Some villages have already seen numerous applications which will increase their size by over 20% or more in the next 5 years or so – Badsey, Wychbold and Honeybourne for instance. The Planning Committee felt that one huge monolithic site at Droitwich, especially with another very large site so near with outline planning permission was unacceptable and contrary to the SWDP. It was on this basis that the prematurity reason for refusal was included in relation to these two applications. The Council considers that a wide variety of smaller sites across the whole district would not prejudice the overall SWDP strategy.

6.45 In relation to the 5 year land supply, the Council is not in the position of Tewkesbury Borough at Bishops Cleeve or Stratford District at Shottery. At the time of the determination of the planning applications and in fact up until (1) receiving the Examination in Public Inspector's report following the first part of Stage 1 and then (2) an understanding of the implications of the Court of Appeal judgement in relation to Hunston, the Council has been using both

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the West Midlands RSS report as well as the housing level set out in the pre-submission SWDP as a target to measure our 5 year land supply. The Committee felt that progress was being made against these targets and that it was reasonable to give this progress weight. Cllr Pearce shared the view of the Committee that the Sedgefield approach does not necessarily mean that such a level of housing can physically be delivered, but she accepted that the need to adopt a Sedgefield approach has been repeatedly endorsed by the Inspectorate in order to boost significantly the supply of housing and that officers have been using the Sedgefield approach in their calculations.

6.46 Cllr Pearce fully supported the landscape reason for refusal. She recognised that the Copcut and Yew Tree Hill sites have the same technical land character designation. But it is also obvious that the topographical differences of the two sites cannot be ignored. One, Copcut, is fairly gently undulating, whilst Yew Tree Hill, as its name implies, is just that, and presents significant challenges by way of changes in elevation. This is obvious, for instance, from the proposed 'potential attenuation area' on the Pulley Lane side of Appeal Site B, where the gradient is so steep that it is suitable only for cheese rolling or grass skiing and consequently has never been designated as POS. She considered that the landscape impact of the development would be so detrimental as to significantly outweigh any benefits of the development.

6.47 Since the determination of the planning applications Cllr Pearce's initial concerns about the development expressed within the reasons for refusal have grown. She has spent a number of hours listening to the points made at the Inquiry and she echoed some of those matters. Her main concerns are based on highways, the visual impact of the proposed solution for the sides of the northern end of Newland Road serving the bus access and finally about the delivery of the sites and their contribution towards the 5 year land supply.

6.48 The Committee had significant concerns about the highway accesses to the site, but reluctantly followed the officer advice that without an objection from the Highways Authority, it would be difficult to sustain a highways refusal reason at appeal. Cllr Pearce's personal concerns on highways remain, and she was most grateful that the Inspector has chosen to make highways one of his 7 areas of investigation at this Inquiry. At the Committee site visit there was considerable difficulty negotiating Pulley Lane in the small coach because of oncoming traffic. She realised that it has not yet been improved to 5.5m in width along its whole length, but there are obviously challenges which go beyond width improvements. There are two almost right angle bends, where the proposals show that visibility would not be anything like up to full standard. Cllr Pearce listened to the evidence presented on highways matters and kept thinking that there must be a limit to where a 5.5m wide road with no pavements or cycle lanes and a 40 mph speed limit, can try to slow traffic down to make things safer, and where pure danger and volume of traffic kick in to make the situation downright perilous rather than safe.

6.49 She referred to an email[262] which she had recently received in response to an enquiry about an application in Evesham which was appearing on the next

[262] See IP7 Appendix 1

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Planning Committee agenda of 30 January 2014, in which it is stated that a width of 5.5m is only suitable to serve up to 300 houses. At Committee she questioned the WCC highways officer, who confirmed that this advice was taken from the County Council's recommendations in its own design manual. She questioned whether it could really be sensible, satisfactory or sustainable for a road to be at more than double its recommended capacity at the outset, before even considering the present traffic flows along it.

6.50 The proposed entrances to both sites are counter-intuitive, being on the southern side of Appeal Site A and the eastern side of Appeal Site B, both make getting to the centre of Droitwich Spa for shopping, the station, the health centres and other facilities more long winded and less sustainable. The proposed bus service may or may not help, but for the weekly supermarket shop and getting to the doctors if you are ill, it won't. As yet it is unclear which first school children might attend, but the bus service would not help at all, whichever present one might be designated, whether St Peter's or Chawson. Parking is already a problem at both. Widening and improving Pulley Lane would entail encroachment into the Green Belt. The Council was advised by an independent consultant's study of Green Belt of the South Worcestershire Districts for the SWDP that no boundary changes were necessary and paragraph 7 of the NPPF specifically mentions safeguarding it.

6.51 Because of these capacity issues, and the almost grid lock conditions along the A38 at peak times, especially regularly on the A38 south of the site towards Martin Hussingtree, many residents could be tempted to take the route through Tibberton to reach Worcester and Junction 6 of the M5. The built up area of Tibberton, with cars parked along the road and a very narrow hump backed canal bridge on a right angle bend make this rural route unsuitable for any more rat running. The Inspector should examine the proposal and the capacity of Pulley Lane very carefully during his site visit, and respectfully suggest travelling the route through Tibberton may be instructive, as would trying to get to M5 Junction 6 via the A38 and Pershore Lane at peak times. The Highways Agency has placed a further holding direction on the present two live re-applications for both appeal sites on traffic density grounds. This has prevented any further consideration of the applications.

6.52 There has been considerable discussion about the challenges presented by the proposed bus and emergency access through Newland Road at the north of the site. It seems to have been agreed that profiled piling along the bank sides is the only way of dealing with this to achieve the required width without third party land. Cllr Pearce questioned whether this was the right solution in an edge of town suburban situation. She suggested it would be more suitable for an inner city canal embankment or motorway cutting. Aesthetically it would be a terrible solution for this rural location and would have a drastically harmful effect on the immediate environment by totally destroying all biodiversity in its path and preventing any reforming.

6.53 It would considerably reduce the amenity of nearby houses by providing hard surfaces which would magnify rather than absorb any noise as the earth banks do now. The pile driving would shake nearby houses to their very foundations. In short it would be a sinister, unsustainable intrusion. Development of this kind on Yew Tree Hill would change the face of Droitwich irreparably and for

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ever. Any development having to resort to such solutions cannot be considered sustainable. Many parts of the combined sites would also be visually intrusive from distant views. Since social and economic factors in the way expressed in the NPPF are almost givens, the environmental factor must be the one which plays the deciding role most prominently in most cases, and definitely in this one, but social harm to amenity as outlined must also be given significant weight in this instance.

6.54 In the officer's report to the Planning Committee, the Appellants stated delivery rates were considered 'optimistic'. There are two issues here of concern. First, housing on the appeal sites would be likely to be competing with the already approved urban extension at Copcut Lane. It is known that any housing market area can only sell so many houses a year, and she has seen on other large sites in the District that developers are still only building when a purchaser has been signed up. Very little speculative building is taking place, except on small windfall sites. By approving these applications permission would be given for a far greater number of houses than would ever be built out in 5 years.

6.55 When the inevitable delay that monitoring the brine runs would entail is factored in, Cllr Pearce started wondering how giving permission for two such large sites would actually boost **significantly** the delivery of housing at all in the district in the first 5 years, or even boost the 5 year land supply. For the first 3 years it may well be that nothing would be delivered. She had experience of brine runs in Wychbold. Seventeen houses on part of the Bloor Estate at Junction 5 were held up for nearly 10 years, primarily for the monitoring of brine run A. The Wychbold Hall Site has also suffered delays of about 3 years. This site is over both A and B brine runs.

6.56 In conclusion Cllr Pearce said that it was not often that the Committee disagrees with the officers' recommendations. The Committee knows that in doing so, reasonable grounds for taking the decisions need to be set out and those grounds must be defendable. Whilst there was considerable opposition from local residents, she believed that the Committee made the decision based on the facts presented by these planning applications. The cases raised specific issues of concern and the Committee felt that the size of the schemes would be prejudicial to the SWDP. It is reasonable to recognise the improvements in the 5 year land supply. Members were well aware that a scheme needs to be 'sustainable' and that a planning balance needs to be made by weighing up the harm and benefits. The Committee were well aware that the absence of a 5 year land supply and a development's contribution to reducing it is a very weighty benefit. The Committee was fully aware too that in refusing the application, the 'harm' was capable respectably of significantly and demonstrably outweighing the benefits of a scheme. These are articulated in the reasons for refusal. Cllr Pearce's view is that these areas of harm are sufficient to justify the Committee's concerns and their decisions.

6.57 **Mr John Brass** said that he and his family live at 16 Isaacs Way, Droitwich. He has lived at this address for more than 12 years. As a local resident who would be directly affected by the proposals to build a foul water sewer less than 1m from his lounge, he was deeply worried by these plans. His knowledge as a chartered engineer serves to strengthen his worries. In his

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view the proposals for a new sewer adjacent to his house would neither be safe nor sustainable.

6.58 Within the planning application documents for Appeal Site A, there is a document entitled "Drainage Strategy". On page 14 in section 5.1.2 there is a proposal for a foul sewer connection in Isaacs Way designed to pass between numbers 14 and 16 on the south side of Isaacs Way "along an existing footpath with agreement of the landowner". On the Severn Trent Water website there is an advice document titled "The Consequences of a Water or Sewerage Undertaker's Assets Passing Through Land". According to this document they require a minimum 5.0m "Protected Width Strip" for access and maintenance to buried sewers. In fact, an easement of this width was completed on the directly opposite (north) side of Isaacs Way when the houses were originally built.

6.59 Mr Brass has taken his own measurements of the width available at the footpath between numbers 14 and 16 Isaacs Way and they are as follows: (a) building to building about 4.17m; (b) boundary to boundary about 1.30m. It is therefore apparent that there is insufficient width between numbers 14 and 16 Isaacs Way for this sewer proposal; firstly to allow working space to construct a sewer without encroaching on private land; and secondly to provide sufficient easement for Severn Trent to maintain the sewer without encroaching on private land. No approach has been made to him by the developers for permission to encroach on his land.

6.60 In document BDL3, three possible alternatives to a foul water outfall into Isaacs Way are offered, and two of them involve a pumping station. Without prejudice to the outcome of this Inquiry, he wondered if a condition could be applied such that there are sufficient measures at the pumping station to prevent overflow during a period of breakdown until repairs were completed. He said that if foul water overflow does occur at this north-west corner of the proposed development, then the foul water may drain away by gravity towards Isaacs Way along the footpath between numbers 14 and 16 in the same way that surface water currently does. Without prejudice to the outcome of this Inquiry, he wondered if a condition could also be applied to mitigate the noise from the pumping station, especially during night-time pumping.

6.61 Within the planning application documents for Appeal Site B, there is a document entitled "Phase 1 Appraisal". On page 106 of the PDF file there is a drawing derived from the British Geological Survey with the title "Ground Dissolution Soluble Rocks Map (BGS)". This map shows that the house at 16 Isaacs Way and the proposed foul sewer route adjacent to it are in an area of brine run risk where "construction work may cause subsidence". Document BDL2, on page two, claims that this phrase is misleading. The phrase is taken directly from the map on PDF page 106 of the "Phase 1 Appraisal" report which forms part of the Persimmon planning application.

6.62 Within the conveyance documents for his house Mr Brass has a letter from Johnson Poole and Bloomer dated Oct 2000 which confirms that 16 Isaacs Way is within Zone B of the brine run risk area.

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6.63 On page 119 of the PDF file, the "Phase 1 Appraisal" document there is a report from Johnson Poole and Bloomer which in section 5.8 discusses foundation design for Zone B. Section 5.8 c) recommends "reinforced semi-raft or ring beam type foundations" with a minimum span of 3m.

6.64 Mr Brass said that the existing foundations at 16 Isaacs Way were not designed or built with this future sewer in mind, and that the construction of the proposed sewer between 0.9m and 1.3m from the foundations of his house would damage those foundations. His foundations were specially designed for Zone B, and not for a future drainage trench parallel to a main structural wall and within such close proximity. He also submitted that such a sewer, buried into the unstable ground of Zone B, would be at a higher risk of fracture and create a potential maintenance, leakage, and public health problem for the neighbourhood. BDL2 points out that measured Zone B ground movements are "only minor", but he questioned why Zone B is defined at all unless there is a higher risk than in non-zoned areas.

6.65 Given these facts Mr Brass submitted that a new foul water sewer (or a surface water drain) in this location between numbers 14 and 16 Isaacs Way would not be safe or sustainable, and that its construction should not even be attempted. Mr Brass also referred in his statement to the site visit locations and what was seen at these locations.

6.66 **Mr Patrick Davies** presented a statement on behalf of Droitwich Spa Civic Society.[263] He said the Society is committed to the improvement of the town, including the protection and preservation of its historic core. The Society is not anti-development as this facilitates economic growth and can create new jobs and homes. The Society strongly believes that these proposals would not meet the Society's aspirations for the town. The objections are as follows: (i) The proposals are considered premature, since the need for housing in this location has not been established. The site was ruled out as an allocation in the SWDP and nothing has changed since that decision. (ii) The shape of the Green Belt around Droitwich influences its pattern of growth in a southerly direction and does not create sustainable communities. The development proposals are some 2.6 miles from the town centre and would not underpin the town's economy. Residents of any new homes would be drawn to Warndon and Worcester with its higher order shopping facilities. The proposals therefore fail the tests of sustainability. (iii) The proposals would exacerbate major infrastructure problems particularly in the south going to Worcester and the motorway network. There would be significantly increased traffic through the village of Tibberton and on the narrow country lane leading to the motorway through Newland Common, Smite and Offerton. (iv) The site currently offers a highly valued recreational asset to the town providing a range of habitat for wildlife as well as spectacular views of the surrounding Worcestershire countryside providing intrinsic beauty and character. The proposed development would destroy this.

6.67 **Mr Robert Brewer** is a student at Droitwich Spa High School's Sixth Form Centre and a resident of Droitwich. He is the Wychavon member on

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Worcestershire's Youth Cabinet. In this elected role it is his responsibility to represent the views of local young people on a wide range of issues that affect them, specifically to decision makers. He values the green open space provided by the Yew Tree Villages site. He said that the south of Droitwich has already seen much development and consists of 3 major housing developments – The Ridings, The Primsland Estate and Tagwell Heights. There is no need for further housing at the expense of Yew Tree Hill green space.

6.68 He said there would be problems with accessibility and transport which makes Yew Tree Hill unsuitable for development, particularly when considering the needs of young people most of whom are unable to drive. It would be difficult to walk to the services in the town centre including shops, health centre and library therefore any trade brought in by the development would be lost to out of town centres. He highlighted that the town has only one high school and two middle schools in its three tiered education system. The closest of these, Witton Middle School is around a 30 minute walk from the edge of the development site. The high school is about an hours walk away from the edge of the site, a journey of some 2.7 miles. This would mean reliance on cars and public transport which is unsustainable. The development could generate some 850 extra cars on the roads in the vicinity of the site. The Council has already approved one large scale development at Copcut Lane and that is a better option than the appeal sites. There are also many brownfield sites available closer to the town centre. The Yew Tree Hill development is largely unnecessary and unsuitable as a site. It should be adopted as a country park.

6.69 **Mr Neil Franks** is a local resident and a sustainability consultant in the construction industry. He is opposed to the development and he highlighted his concerns in his statement.[264] He referred to the poor quality Sustainability Appraisal and the fact that there was no commitment to a sustainability certification standard. He was critical of the ES in terms of biodiversity and ecology, sustainable drainage, secure and accessible cycle storage, secure design and affordable housing. He raised numerous dwelling specific issues, for example in relation to day lighting, sound insulation and disability access. He was also critical of the Carbon Analysis Report which gives details on how energy and carbon efficient the proposed dwellings would be. In his view the development would not be sustainable.

6.70 **Mr Christopher Hartwright** is chairman of Tibberton Parish Council. He said that Tibberton was situated about 4 miles south of Droitwich but only about 3 miles from the proposed development at Yew Tree Hill. His concern related to the likely traffic increase using Tibberton as a "rat run" to Worcester, Worcester Royal Hospital, Junction 6 of the M5, Pershore and Evesham. He stated that the approach to Tibberton from Droitwich was by no more than a country lane and negotiation of a difficult canal bridge, which despite having weight restrictions placed upon it to protect the Listed Building status, regularly suffers damage from vehicles.

6.71 He said that the road through the village has experienced increases in traffic most noticeably in recent years by the expansion of housing developments

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locally and by the increase in motorway use. In 2008 a survey was taken which showed an increase of up to 2,000 vehicles per day. It is feared that the proposed development at Droitwich would create an unacceptable increase in vehicle movements in the village because the access onto the A38 would be unable to cope with commuter traffic at peak times causing the obvious alternative route through Tibberton to be used. The development of the Worcester Technology Park in Tibberton Parish would also encourage Droitwich residents to use this route to go to work.

6.72 He said that the road through Tibberton is the only way to reach the very well supported First School, with many pupils sourced from Droitwich and Warndon all brought by car. The proposed increase in traffic would therefore present added danger to schoolchildren. The well used village shop is also on this busy road and the danger to customers, particularly the elderly having to cross the road from retirement bungalows on Hawthorn Rise, is evident.

6.73 **Mr Philip Powell** is a local resident. He was concerned about the proposed traffic increase on Pulley Lane and Newland Lane. He said that there used to be a footpath on Newland Lane and he would like to see footpaths on both of these roads so that local people could enjoy the beautiful scenery. Without footpaths it would be dangerous for children to walk to schools. It would also be dangerous for horse riding. He said that Pulley Lane and Newland Lane would not be wide enough to cater for the development.

WRITTEN REPRESENTATIONS

7.1 There were objections by local residents at both the application and appeal stages.[265] Generally the same points have been made to those that have been recorded above and these will not be repeated. Additional points include:

- A lack of infrastructure including doctors, dentists, schools and hospitals to support further housing.
- Disruption from construction activity.
- The area is used by local residents as a recreational area and provides homes for many species of wildlife.
- Effect on the living conditions of nearby residents including loss of privacy and noise from additional traffic.
- The loss of a greenfield site when there are other brownfield sites that could be built upon. A very large number of premises on the Berry Hill Industrial Estate are vacant. Some of this land could be developed for housing.
- Noise and light pollution are areas of concern.
- Concern about tanker lorries parking on Pulley Lane to make deliveries.
- Residents would need to travel a considerable distance to do a `main shop' either to Blackpole or Warndon in Worcester or to Droitwich Spa.
- Walkers, joggers, cyclists and horse riders regularly use Newland Lane and Pulley Lane.
- Change in semi-rural character of Droitwich - an important feature of its history and tradition.

[265] See CDH1, CDH2 and INQ2

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8. CONCLUSIONS

[In this section the numbers in superscript refer to the earlier paragraph numbers of relevance to my conclusions.]

8.1 Main matters (i) to (v) set out at paragraph 1.4 above relate to issues about which the SoS needs to be informed and cover the main considerations of prime significance in these appeals. The conclusions that follow are structured to address each of the main matters (i) to (v) in turn. I then proceed to examine conditions in main matter (vi) that might be imposed should the SoS determine that planning permission should be granted and then the issue of planning obligations under s106 of the 1990 Act in main matter (vii) before giving my overall conclusions and recommendations. [1.4]

Introduction

8.2 **Appeal Site A** relates to land to the south of Droitwich Spa - the largest town in Wychavon by population – and is locally known as Yew Tree Hill. The site lies outside the development boundary of the town as defined in the adopted local plan but is contiguous with it. Consequently, the site abuts residential development on the eastern, northern and western boundaries. There is also a ribbon of development to the south of the site along Newland Lane. The southern boundary adjoins Pulley Lane and Appeal Site B.[1.8]

8.3 The site consists of 34.63 hectares of greenfield land which is predominantly in agricultural and equine use. The site is divided up into a number of parcels of land which are dissected by hedgerows, private tracks and public rights of way. Newland Road dissects the site on a north south axis. It was previously opened to two way traffic and provided a link to Droitwich Spa town centre. It is now untrafficked (by way of a Traffic Regulation Order which came into force in 1993) between the property known as Casa Colina and the junction with Primsland Way but it is open for pedestrians and cyclists. [1.9]

8.4 The topography of the site is undulating. The existing residential development to the north of the site is significantly lower than the appeal site but is separated by open space. The existing residential development to the east of the site is up to 76m AOD. The eastern parcel of Appeal Site A has ground levels that generally fall in a southerly direction towards the existing ditch and hedgeline which forms the common boundary with the Persimmon Homes site (Appeal Site B). The highest part of the overall site is the land adjacent to the water tower. The parcel of land to the west of Newland Road is undulating with ground levels falling away to the north, west and south.[1.10]

8.5 The planning application was submitted in outline form with all matters reserved except for access. The Indicative Masterplan shows that the proposed development would comprise the following components: up to 500 dwellings of which 40% (200 dwellings) would be affordable; a care facility (Class C2) comprising 200 units; a local centre comprising of a potential mix of uses including a shop (Class A1), financial and professional services (Class A2), restaurant and café (Class A3), drinking establishment (Class A4), hot food takeaway (Class A5) and offices (Class B1 (a); a police post; an indoor bowls facility; public open space including sports pitches and equipped children's play areas; and associated infrastructure. The development involves a list of

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proposed highway works including the widening of Pulley Lane to 5.5m and improvements to the Pulley Lane/A38 junction.[1.15-1.16]

8.6 **Appeal Site B** also lies outside the development boundary of Droitwich Spa. The site abuts existing residential development on its eastern boundary, separated here by a narrow belt of public open space. Planning permission was recently granted by WDC for 39 dwellings on an adjoining site within the development boundary known as Newland Hurst (to the south-east of the site) which brings residential properties to the south eastern boundary of the appeal site. Newland Hurst is currently under construction. There is sporadic development to the south of the site along Newland Lane. A short section of the western boundary is defined by Newland Road. The northern boundary is well defined by a hedgerow and ditch, and the remaining boundaries are defined by hedges to the large gardens of adjoining properties.[1.12]

8.7 The appeal site consists of 12.3 hectares of greenfield land which is currently in agricultural and equestrian use. The site is divided up into two parcels of land which are bisected by a hedgerow. Newland Road runs to the west of the site and Newland Lane bounds the southern tip of the site. The site falls from the southeast to the northwest corner of the site, thus making the site entrance from Newland Lane the highest point of the site.[1.13]

8.8 The planning application was submitted in outline form with all matters reserved except for access. The Indicative Masterplan shows that the proposed development would comprise the following components: the erection of a maximum of 265 dwellings of which 40% (106 dwellings) would be affordable, public open space and equipped children's play together with associated infrastructure. The development involves a list of proposed highway works including a new junction providing primary access from Newland Lane and secondary emergency access off Newland Road.[1.18,1.19]

8.9. Both appeals have to be considered independently. However, as Appeal A has a common boundary with Appeal Site B particular regard must be given to the need to achieve a holistic approach to the development. Where issues are common to both appeals, such as housing land supply, I deal with those matters jointly. I also deal with the cumulative impact of the development on various receptors, for example landscape, highways and drainage and the way in which each proposal interacts with each other. I start with Appeal A and then later I deal with Appeal B.

Appeal A - Land at Pulley Lane, Newland Road and Primsland Way, Droitwich Spa

Main matter (i) The extent to which the proposed development is consistent with the development plan for the area and would deliver a sustainable form of development;

8.10 The development plan for the area includes the saved Policies of the Wychavon District Local Plan (WDLP) (June 2006). The Council relies upon Policies SR1, GD1, ENV1 and ENV8 of the WDLP. However, it is noteworthy that the reasons for refusal did not allege breach of any of these WDLP policies as a result of this proposal. Both main parties accepted that bringing forward housing

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development in the context of the district's housing needs inescapably creates tension in particular with Policy SR1 and Policy GD1 of the WDLP.[1.23, 2.3, 3.18]

8.11 Policy GD1 of the WDLP defines development boundaries for settlements within the district. Whilst the appeal site lies outside the defined development boundary of the town it lies contiguous with it. Policy GD1 sets out the location strategy for new development to 2011 within the district and states that most new development will be accommodated within the main built up areas. The policy focuses development on the three main towns in the district and sets out a sequential preference first, to the re-use of brownfield sites, second to urban greenfield land (with no significant recreational/amenity use) and third to land, but only at Evesham, adjacent to the development plan boundary. Policy SR1 sets out housing land supply provision within the district in the period April 1996 and March 2011. The Council argues that the proposal is contrary to the development strategy of the WDLP Policy GD1 as it lies outside the defined settlement boundary.[2.3, 2.15]

8.12 Whilst I accept that the appeal site is beyond the settlement boundary it is clear to me that Policy GD1 applies to new development to 2011. Plainly it was not designed to meet housing needs in 2014. It is out of date on its own terms and in the context of today's changed policy, economic and legal context. It is not based on the full objectively assessed needs in 2014. It cannot therefore be afforded weight in the context of this case because it is no longer fit for purpose. In my view it should be given very little weight.[3.23]

8.13 The Council accepted that Policy SR1 was time expired and out-of-date but argued that limited weight could be afforded to Policy GD1 based on the Honeybourne decision. The Council's acceptance that the two policies should be read together on the one hand, but that one was out of date and the other not, indicates an inconsistent and untenable position. It seems to me that paragraph 14 of the NPPF applies here because relevant policies (Policy GD1 and Policy SR1) are out-of-date. Plainly, the most important policies are those relating to housing supply but there are none for the period post 2011.[2.3, 3.21]

8.14 The SoS should be aware of the context here. First, it is clear that the relevant WDLP policies were only saved on the basis that they would be replaced 'promptly'. Secondly, the WDLP was adopted pursuant to PPG3, following which PPS3 represented a step-change towards the delivery of housing. Thirdly, the Council's reliance on Policy GD1 which seeks to constrain development within 2005 boundaries is not listening to what the Saving Letter has said. That letter also stated that the Council should have regard to more up-to-date advice. This is consistent with the NPPF's paragraph 215 requirement that Local Plan policies should be weighed in accordance with their consistency with that document. As was made clear in the Honeybourne case it is simply not good enough to regard saved policies as an opportunity to refuse rather than grant planning permission. Policy GD1 and Policy SR1 are out of date and paragraph 14 of the NPPF applies triggering the presumption in favour of sustainable development.[3.23]

8.15 In terms of Policy ENV1, in so far as it seeks to protect the countryside, this policy can be said to be consistent with the NPPF. However, in so far as it seeks to halt necessary development, it cannot be said to be consistent. This is

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clear from the case of *Anita Colman v Secretary of State for Communities and Local Government and others.* In that case the Court considered restrictive landscape policies similar to Policy ENV1. The judge concluded that these policies were very far removed from the "cost/benefit" approach of the NPPF. They do not permit any countervailing economic or similar benefit to be weighed in the scales. The cost/benefit approach of the NPPF is evident from the three-strand nature of sustainable development: economic, social and environmental. In my view, where Policy ENV1 is used to restrict housing, it cannot be seen to consistent with the cost/benefit approach of the NPPF. Therefore only limited weight can be given to Policy ENV1 in this case.[3.24-3.26]

8.16 Policy ENV1 applies a Special Landscape Area (SLA) designation to the site. The Inspector in the Tenbury appeal concluded that Policy ENV1 was a housing supply policy which could be set aside absent a 5 year supply. Policy ENV1 indicates that proposals for development must demonstrate that they are informed by and sympathetic to landscape character. The policy also confirms that development proposals that would adversely affect the landscape character of an area will not normally be allowed. The policy is a general policy in relation to protection of the landscape, and the SLA designation has, in accordance with the provisions of the Plan, been superseded by the publication of the 201l Landscape Character Assessment (LCA). I assess the impact of the development on the landscape under main matter (iv) below.[1.23, 2.3, 2.15]

8.17 Policy ENV8 is more flexible and can be considered as consistent with the cost/benefit approach in the NPPF. It states:

'Development proposals requiring planning permission will not be permitted where they would have an adverse impact on hedgerows, trees or woodland, their setting or their wider habitat, where such features are considered to be important for their visual, historic or ecological value of the area.

Removal of hedgerows, trees or woodland will only be permitted where it can be demonstrated that the proposal will benefit the visual, historic or ecological value of the area. All proposals affecting trees, hedgerows or woodland will need to be accompanied by an assessment that justifies the approach taken.' [2.3, 3.27]

8.18 I consider this proposal does not conflict with Policy ENV8. It would bring a net positive gain of 1,385 m of hedgerow. There would be a net positive gain of 2 ha of scrub and woodland mosaic and 0.9 hectare of orchards.[3.28]

8.19 Turning to the question as to whether the development is sustainable, given that Policies SR1 and GD1 are out of date and time expired I consider this development falls to be considered under paragraph 14 of the NPPF. The Inquiry heard argument from the Council that a strained interpretation of the paragraph 14 presumption should be applied. The Council stated that it relied upon the judgement of Mrs Justice Lang in *William Davis and others v Secretary of State for Communities and Local Government and others* where the judge added an extra 'gloss' on paragraph 14 NPPF. At paragraph 37 of that judgement she ruled that a development must be found to be sustainable before the presumption applies.[2.3, 2.12, 3.29]

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8.20 In my view this is an incorrect interpretation of that paragraph. First, the wording of paragraph 14 does not support this view. The paragraph clearly relates to all 'development proposals' it does not qualify this with an extra test of sustainability. It is therefore wrong to read such a test into the paragraph. The test also ignores the balancing exercise in paragraph 14. It is that exercise which determines whether or not development is sustainable. In the 'Lang' interpretation there is no identified means by which sustainability can be assessed. Secondly, the weight of High Court authority runs contrary to Lang J's view. The judgements at Stratford, Tewkesbury and North Devon demonstrate the correct reading of paragraph 14. Three High Court judges have disagreed with Lang J. Given this and the clear wording of paragraph 14, I consider that there is no extra test of sustainability included in paragraph 14, not least because the other three judges' interpretation enables sustainable development to be measured within the balance of paragraph 14.[3.30-3.34]

8.21 The Council, SOGOS and others consider that the proposed development would not be sustainable and that the benefits claimed would not outweigh the adverse impacts associated with proposals that are not plan-led. However, from the evidence that is before me this scheme is indeed sustainable. Plainly, the scheme would offer a number of *economic benefits* foremost among these is the amount of jobs the scheme would create. In terms of house building the evidence states that for every new home built two new jobs would be provided for a year. It is expected that there would be 190 construction personnel on site at any one time. The Care Facility would also provide jobs, not only in construction but also in order to run the centre. Mr Downes estimates this to be between 105 and 125 jobs. Finally, it is expected that the local centre would provide 40 jobs.[1.22, 2.4-2.6, 3.35, 5.27-5.35, 6.18, 6.20, 6.69]

8.22 The scheme would also offer a number of *environmental* benefits. The development has been landscape-led and would affect no international or national designations. There would be a net positive gain in terms of hedgerows, field margins, ponds, broadleaf woodland, scrub, orchards and wetland. These habitats would lead to a net positive gain in invertebrates, amphibians, reptiles, farmland birds and bats. The only species resulting in a neutral/minor negative effect is the badger. However, mitigation measures could be provided to create replacement setts in order to minimise the potential impact.[1.22, 2.4, 3.35, 5.32, 6.20]

8.23 The proposal would offer a number of *social* benefits. These include: the provision of the local centre and the bowls facility which has been requested by the Council. The provision of the Care Facility would also meet an existing need in the district. The Worcestershire Extra Care Housing Strategy details that there is a need for 2,600 units. Finally, the contribution of this scheme to meet some of the affordable housing deficit in the area cannot be underestimated. I deal with this under Main matter (iii).[1.22, 2.4, 3.35, 5.30, 6.18]

8.24 In relation to main matter (i), I conclude that no development plan policy is referred to in the reasons for refusal and as such the Council did not at the time of the refusal take the view that this scheme offended any Local Plan policies. Secondly, the policies as they relate to the supply of housing land are out of date, both because the policies are time limited to 2011 and are being applied in a manner inconsistent with the NPPF. As such the paragraph 14

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presumption applies to this scheme. The scheme is indeed sustainable as all of the aforementioned factors demonstrate. I have to consider the proposal in the context of the other main matters which have been identified before coming to an overall conclusion in relation to the development plan.[2.4-2.6, 3.35, 5.27-5.33, 6.18]

Main matter (ii) Whether the proposed development is premature in the light of the emerging SWDP and national guidance;

8.25 The Council argued that granting permission for this proposal now would significantly prejudice the strategy of the SWDP. Councillors Jennings and Pearce together with Patrick Davies supported that view claiming that two approvals of such a vast site alongside the Copcut Lane site would be detrimental to the strategic thrust of the SWDP. It was argued that the size of these proposals would prejudice the SWDP by predetermining the scale and location of development and that these sites were not needed. Several written representations endorsed this view. The Appellant submitted evidence in relation to prematurity in the guidance contained in 'The Planning System: General Principles' and the Beta Guidance. However, that guidance has been cancelled by the PPG issued on 6 March 2014. The Appellant also referred to recent case law where prematurity was at issue. [2.7-2.9, 6.17, 6.43, 6.66]

8.26 Paragraph 216 of the NPPF states:

'From the day of publication, decision-takers may also give weight to relevant policies in emerging plans according to:

- *the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);*

- *the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and*

- *the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).'* [1.22]

8.27 Paragraph 14 of the PPG takes a very similar stance to the NPPF. It states:

"Annex 1 of the National Planning Policy Framework explains how weight may be given to policies in emerging plans. However, in the context of the Framework and in particular the presumption in favour of sustainable development – arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. Such circumstances are likely, but not exclusively, to be limited to situations where both:

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a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or Neighbourhood Planning; and

b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.

Refusal of planning permission on grounds of prematurity will seldom be justified where a draft Local Plan has yet to be submitted for examination, or in the case of a Neighbourhood Plan, before the end of the local planning authority publicity period. Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how the grant of permission for the development would prejudice the outcome of the plan-making process" [1.6]

8.28 It is noteworthy that two High Court decisions last year have also provided guidance as to how a prematurity reason is to be approached. The cases demonstrate that very substantial development can be permitted within the exercise of planning judgement without falling foul of the prematurity principle. In *Tewkesbury Borough Council v Secretary of State for Communities and Local Government and others* the judge considered two developments amounting to one thousand homes in total. In that decision Males J decided that the SoS's conclusion that developments were not premature was correct. At paragraph 64 of the judgment he concluded that the NPPF does not cast any doubt on the fact that, pending the adoption of local development plans, individual planning applications will continue to be dealt with, where appropriate by the SoS applying existing principles. At paragraph 69 he also confirmed that the Localism Act has done nothing to change the long-recognised principles of prematurity.[2.7-2.9, 3.40-3.41]

8.29 Furthermore, the case of *Bloor Homes v Secretary of State for the Communities and Local Government and Stratford District Council* is also instructive. Mr Justice Hickinbottom considered the SoS's decision in respect of a development of up to 800 dwellings at Shottery. He rejected the prematurity argument raised by those seeking to challenge the decision. He indicated that the mere fact that a change is proposed to the development plan does not mean that all applications for development have to be put on hold. Given the propensity for change in policy and plans, he argued that approach would bring the entire planning system to an effective halt.[2.7-2.9, 3.42]

8.30 Bearing in mind the above guidance, policy and judicial decisions it is plain to me that when the Planning Committee refused the application in question they did so on the basis that they wrongly believed they had a 5-year supply. This erroneous belief was arrived at principally through ignoring the officer's advice as to the Sedgefield approach and rejecting what had been said in the Honeybourne decision in relation to Wychavon in 2012. Reliance upon prematurity as a reason for refusal is completely untenable in a situation where the Examination Inspector's Interim Conclusions have said that the figure of 22,300 dwellings is not enough and that substantially more will be required. At the Inquiry the Council's position is to propose at least an extra

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3,000 homes. The Council has no idea where these are going to be located. Therefore allowing permission for this scheme cannot prejudice a Local Plan in relation to which there is not even a preferred option identified where the additional development might go.[2.7-2.9, 3.43]

8.31 Moreover, on top of the concession that an extra 3,000 homes are required, there are unresolved objections to the emerging SWDP. Paragraph 216 of the NPPF dictates that 'unresolved objections' should result in less weight being given to the emerging SWDP. This much was agreed by the Council. As such, the objections dramatically reduce the weight which can be given to the assertion that the development would prejudice the emerging SWDP.[2.7-2.9, 3.43]

8.32 The Council must 'clearly demonstrate' the harm which this development would cause to the emerging development plan. The Council has neither asserted nor demonstrated any harm during this Inquiry. Instead, it cited support from two cases whose facts are completely at odds with the development before this Inquiry. The decision in Moreton-in-Marsh concerned one of nine major settlements in the Cotswold District where Cirencester was the main town and principal target for growth (accepting 63% of development). That left 37% to be located at the other nine principal settlements. If the proposal in question had been approved, Moreton-in-Marsh would have been accepting a quarter of this. In these circumstances a conclusion that the emerging plan would be prejudiced was not unreasonable. The SoS should note that this decision was made pre-NPPF and also prior to the decisions in *Shottery* and *Tewkesbury.* It cannot be guaranteed that the same conclusion would be reached on the same facts today.[2.7-2.9, 3.43]

8.33 Similarly, the decision relating to Kentford in Newmarket involved development at a primary village. It had a very poor range of services. Those decisions are incomparable to the situation here. As addressed above, Droitwich is one of the three main towns in Wychavon. It is a specified as a suitable location for development both in the Local Plan and in the emerging SWDP.[2.9-2.10, 3.43]

8.34 Indeed, it is impossible for the Council to demonstrate harm. Even on its own account there are over 3,000 additional homes to be found. The SWDP Examination Inspector has found that Worcester City and Malvern Hills are constrained. This means that Wychavon is a prime candidate for locating the extra development. Within Wychavon, Droitwich along with Evesham is the obvious place for the development to go. Evesham has already accepted a disproportionate amount of development and therefore it is time for Droitwich to play its part in contributing to the district's housing supply. Further, the evidence base for the emerging SWDP has shown that the appeal site has been under active consideration as a location for development. Most significantly in 2005 when it was only left out of the plan in favour of Copcut Lane. Now that Copcut Lane has been allocated and granted permission Yew Tree Hill is an obvious next choice for necessary housing development. [2.7-2.9, 3.43]

8.35 The Council has erroneously advanced its prematurity reason for refusal on the apparent premise that it is necessary for the Appellant to show that the Council in the emerging SWDP would inevitably choose the appeal site. No such test exists. Paragraph 14 of the NPPF requires a planning balance to be performed. The development plan pedigree of the site alongside the evidence

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submitted to the Inquiry demonstrates that this site is a good choice for development.[2.7-2.9, 3.43]

8.36 Finally, the proposed development has been considered at a 10 day Inquiry. The Council's case and that of objectors in relation to this site has been given a full airing. Clearly, this long process is far longer than would be afforded to this site during the Examination process. There can be no complaint that this site has not properly been scrutinised and the public afforded a full opportunity to express its views about the development of the appeal site.[3.43]

8.37 On main matter (ii) I conclude that, for all of the reasons outlined above, the Council's reliance upon prematurity as a reason for refusal cannot stand. It is contrary to the weight of guidance, policy and judicial decisions and no relevant precedent has been provided for it.

Main matter (iii) Whether the proposed development is necessary to meet the housing needs of the district bearing in mind the housing land supply position;

8.38 At the outset on this matter the SoS should be aware of the recent planning appeal decision at Offenham (dated 7 February 2014) as it relates to Wychavon's 5-year housing land supply. The SoS should note that the Inspector concluded:

(a) "It was clear therefore from the detailed discussion and questioning of evidence during the Inquiry that several of the sites without planning permission which were advanced by the Council to be available and deliverable within five years were not supported by robust evidence to that effect."

(b) "… the Council's track record shows that it has failed consistently to meet the RS required average requirement of 475dpa, despite an upturn in completions since 2009/10. This is compounded by the relatively low percentages of affordable housing provision during this period."

(c) "the Appellant's evidence shows conclusively that the recent significant increase in Wychavon's average house prices and relatively small proportion of rented properties and low delivery of affordable housing have resulted in an increasingly unaffordable local housing market."

(d) "taking into account all the above considerations, it is my view that the Council's case, that it has just over 5 years' housing land, is unconvincing in the light of: (i) the revocation of the RS as a basis for assessing housing need; (ii) the likelihood of an increased housing requirement for Wychavon to emerge during the SWDP Examination; (iii) the over optimism of some of the Council's assumptions of deliverable housing supply over the next 5 years; (iv) the Council's ambitious housing targets in relation to its track record; and (v) the evidence of current market signals in relation to housing under provision and inaffordability."

(e) "I therefore conclude, in relation to the first main issue, that although the proposal is contrary to *Local Plan* Policy GD1, this has little weight for the

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reasons stated and it is significantly outweighed by the inability of the Council to robustly demonstrate a 5 years' housing land supply for Wychavon."

As a preliminary matter therefore it is very clear to me that as recently as February 2014 the Council's case on the existence of a 5-year land supply was firmly rejected by an Inspector on the bases of: insufficient target, unrealistic delivery assumptions and its poor past track record. [3.44]

8.39 I turn first to the question of the housing requirement. Paragraph 47 of the NPPF states that in order to boost significantly the supply of housing LPAs should 'use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area.' The WDLP does not contain any figure within it.[3.47]

8.40 Paragraph 159 of the NPPF requires LPAs to have a clear understanding of housing needs in their area. They should prepare a Strategic Housing Market Assessment (SHMA) to assess their full housing needs. The SHMA should identify the scale and mix of housing and the range of tenures that the local population is likely to need over the plan period which meets household and population projections, taking account of migration and demographic change; addresses the need for all types of housing; and caters for housing demand and the scale of housing supply necessary to meet this demand. They should also prepare a Strategic Housing Land Availability Assessment (SHLAA) to establish realistic assumptions about the availability, suitability and the likely economic viability of land to meet the identified need for housing over the plan period.[3.48]

8.41 Paragraph 218 of the NPPF states that LPAs can continue to draw on evidence that informed the preparation of the RS as a starting point for assessing the housing needs of an area but that this should be supplemented as needed by an up-to-date, robust local evidence.[3.49]

8.42 As I perceive it the most recent objectively assessed evidence is that contained within the recent 2011 Interim Sub National Household Projections (SNHP). These state that they should be used for a 10-year period, but beyond that there is a need to determine whether household formation trends are likely to continue. After the 10-year period, following the advice of the SWDP Examination Inspector, and reflecting the need to revise Household Representations Rates (HRR) due to an improving economy, the more optimistic 2008 SNHP HRRs should be used. This approach accords with the Holman Paper, the conclusions of the Inspector in relation to the Lichfield Core Strategy and also current planning policy which aims to 'plan for growth'. I note that this is the approach Mr Bateman has followed.[3.50, 6.1-6.2]

8.43 However, the Council and others, seek to use and defend the 2008 figures for the entire plan period. In my view these are out-of-date. This is made clear in the last sentence of the 2011 projections which state that they replace the 2008 projections from November 2010. Given the chronology of the production of the figures this is hardly surprising. Indeed, this is echoed by the SWDP Examination Inspector who has asked the LPA to calculate the supply figure using the latest population projections combined with Nathanial Lichfield and Partners' approach.[2.12, 3.51, 6.16, 6.45]

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8.44 When calculating the appropriate target figure it is also crucial to start with the correct base date population figure. The Council has used the figure of 49,000 for 2006. The SHMA demonstrates that this is incorrect. At page 135 it demonstrates that the correct figure is 47,322.[3.52]

8.45 At the Inquiry there was some debate about the *Hunston* judgement. In my view it is concerned with a proper understanding of how to determine full objectively assessed need in circumstances where, as here, there is a policy vacuum. It requires the identification of a "policy off" figure. Policy is the "varnish" which the Court of Appeal refers to: the application of "varnish" is what happens in the forward planning process but is an exercise which cannot be assessed in the context of a s78 appeal. The Council's case that "unvarnished" means arriving at a figure which doesn't take into account migration or economic considerations is neither consistent with the judgment, nor is it consistent with planning practice for deriving a figure for objectively assessed need to which constraint policies are then applied. Plainly the Council's approach is incorrect. Clearly, where the judgement refers to 'unvarnished' figures (paragraph 29) it means environmental or other policy constraints. There is nothing in the judgement which suggests that it is not perfectly proper to take into account migration, economic considerations, second homes and vacancies.[2.11, 3.53]

8.46 It is also clear that the 20% buffer should be applied to the entire 5-year requirement (including the historic shortfall). The Council could not point to any provision in policy or previous decisions which supports the contention that the 20% should not apply to the historic shortfall. It is instructive to note that the Council itself has been calculating its 5-year supply by adding the 20% to the whole figure. This is clear from the Council's report to Committee dated 10 October 2013 included in Mr Brown's evidence.[2.11, 2.21, 3.55]

8.47 From the evidence that was submitted to the Inquiry the SoS should take particular note of the affordable housing need which exists in Wychavon. The Council accepted that substantial weight should be given to the affordable housing to be provided by this proposal. The weight of the issue in Wychavon is severe. Some 1,153 households are currently on the waiting list for an affordable home in Wychavon. Furthermore, Droitwich is the most unaffordable place for housing in Wychavon. The Council is seriously underperforming in terms of supplying affordable housing. The 2009 Annual Monitoring Report demonstrates that from 2005-07 only 182 affordable units were produced and only 47 from 2008 to 2009. The Council provided no affordable units in 2009-10 and only 57 in 2010-11. Indeed, Mr Brown admitted that the Council had failed to deliver even ¼ of the 268 affordable dwellings per annum that is required of it during the last 8 years.[2.4, 3.56]

8.48 For all of the aforementioned reasons it is clear to me that the Council has not undertaken a robust calculation in order to arrive at its housing requirement for this Inquiry. The only robust evidence that is before me is the methodology used by Mr Bateman. This is clear, well reasoned and well justified. As such, Mr Bateman's figure for a requirement of about 14,263 dwellings between 2006 and 2030 should be preferred.[2.12, 3.57]

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8.49 In its recent submission to the SWDP Examination, the Council accepts the need for an extra 3-4,000 houses would be required during the plan period. However, I note that the Council has not used the 2011 projections; it has not based its calculations on the correct starting point; and questions remain as to the economic activity rates used. As such, the figure as submitted does not appear to be robust and very little weight can be given to it in these appeals. In a choice between the Council's figure and Mr Bateman's of about 14,000, it is clear for reasons set out above that it has been demonstrated that Mr Bateman's figure is to be preferred.[2.12, 3.58]

8.50 Before considering the mathematical calculation relating to supply, it is noteworthy that the Government is particularly concerned to ensure that there is a real supply of housing to meet local needs, both in terms of general housing and also in terms of affordable housing. The absence of a continuing supply of housing land has significant consequences in relation to people finding homes and is in direct opposition to the thrust of the NPPF, which is that everyone should have the opportunity of a wider choice of housing. Housing land supply is not just related to a mathematical equation, it is about ensuring that land comes forward early enough to meet real needs.[1.22]

8.51 The Council includes within its supply a number of sites which have permission but are very unlikely to come forward within 5 years. For example, Land off Banks Lane, Badsey. The Appellant's evidence shows that this site is not in the hands of a developer and that there is no evidence of viability. Other examples included are included in Document C10. The Leedons Residential Park, Broadway is included among the large site commitments. Here the Council relies upon a Certificate of Lawful Use for the use of land as a touring caravan and camping site. At the Inquiry the Council was not clear about the basis of this planning permission. It is likely that a seasonal occupancy condition applies. It follows that the number of dwellings suggested by the Council cannot be considered as dwellings to count towards the 5-year supply. The Council has produced no robust evidence to clarify the position.[2.12-2.13, 3.60]

8.52 The Council seeks to include all of its SWDP allocated sites. The only safe conclusion using the authority of *Wainhomes* is that not all of these will be deliverable. Each case must be assessed on a fact sensitive basis. Objections to each site must be taken into account as must the fact that most are outside existing development boundaries – one of the reasons the Council has rejected the development of the appeal sites according to its evidence to the Inquiry. In the context of paragraph 216 of the NPPF only limited weight can be given to sites in respect of which there are unresolved objections. It is also relevant to note that it will be a long time before the non-strategic sites will actually be allocated at Stage Two of the Examination process if and when the SWDP is eventually brought into force. Clearly their inclusion in the SWDP cannot lead to a robust conclusion that they are deliverable. In coming to this view I have considered the results of the deliverability questionnaire sent out by the Council to all the promoters of the SWDP sites. [2.12-2.13,3.62]

8.53 The NPPF allows the use of windfall sites in a 5-year calculation if there is compelling evidence that such sites have consistently become available and will continue to provide a reliable source of supply. This evidence has not been made available to the Inquiry. Indeed, most recently, the SWDP Inspector

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concluded that the large level of windfalls currently proposed should not be accepted and that there is a need for further information. The Council's figures for windfalls are not robust and involve double counting with permissions on small sites. The Appellant's evidence on this matter is compelling and the figure of 43 dwellings based on completions of 82 per annum, and allowing for windfalls which already have permission, is robust.[2.12, 3.63]

8.54 The Council also seeks to rely on C2 care units as adding to the 5 year supply. These cannot be included in the supply. These units have a range of communal indoor facilities, including communal dining. The institutional form and also the occupational age limit render them unsuitable for being included as 'dwellings' in the housing land supply. Indeed, it is telling that developers are not asked to make an affordable housing contribution on these units. As such, it is clear to me that Council policy is not to treat them as 'dwellings'.[2.12, 3.64]

8.55 Plainly, a 10% lapse rate should be applied to the Council's supply. This approach is supported by the *'Housing Land Availability'* paper by Roger Tym and Partners. The approach was accepted by the Inspectors at Moreton in Marsh, Marston Green, Honeybourne and Tetbury. A 10% lapse rate was affirmed in the High Court decision at Tetbury. Given the previous shortfalls of delivery within this LPA, a 10% lapse rate is entirely reasonable and should be applied here in order to ensure a robust 5-year supply figure.[2.12,3.65]

8.56 Overall it is very clear to me that that the Council cannot demonstrate a 5-year supply. If the Appellant's case is accepted on both requirement (Chelmer with employment) and supply the figure would only be 1.83 year's supply. Even if the Council's supply figures are used the supply would be between 2.83 and 3.76 years, with or without the SWDP sites.[2.12, 3.66]

8.57 I conclude on main matter (iii) that the Council does not have a 5-year supply. This Inquiry has demonstrated this to be the case and the recent Offenham decision serves as a useful consideration of this deficit. If there is no 5-year supply then Policy GD1 and Policy SR1 must be considered out of date as they are policies relevant to the supply of housing. This means that the paragraph 14 NPPF test must be applied to these appeals. The contention that the absence of a 5-year supply renders settlement boundary policies out of date is reinforced by the SoS's decision at Forest Road, Burton on Trent.[2.3, 3.67-3.68]

8.58 However, if the SoS concludes that Wychavon can demonstrate a 5-year supply, then the paragraph 14 NPPF test still applies. This is because relevant policies are out-of-date. As explained above the housing supply policies are time-limited, were saved on a basis that was subject to the caveats in the Saving Letter. The WDLP was drawn up against the background of an entirely different national policy context. All extant policies should therefore be afforded little weight in this appeal and the paragraph 14 presumption should be applied. The Council contended on the basis of the case of William Davies v SoS [2013] EWHC 3058 (Admin) that Policy GD1 is not a housing policy and that therefore it is not out of date by virtue of paragraph 49 of the NPPF. However, there is now conflicting authority to this decision in the form of the judgment of Lewis J in Cotswold DC v SoS [2013] EWHC 3719. The issue arises as to which interpretation of the NPPF is to be preferred. For the reasons given above I consider that the interpretation of Lewis J is correct. [2.12, 3.70]

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Main matter (iv) The effect of the proposed development on the character and appearance of the area;

8.59 At the outset on this matter the SoS should be aware that land to the south of Newland Lane and Pulley Lane, excluding the carriageways, lies within the Green Belt. Given that two areas of highway improvement involve the acquisition of land to the south of the existing carriageway, technically a small part of the operational development falls within the Green Belt as shown on BDL14. Paragraph 90 of the NPPF confirms that engineering operations are not inappropriate development in the Green Belt provided they preserve the openness of the Green Belt. The proposed realignment of the Pulley Lane carriageway is not considered to be an engineering operation that would lead to loss of openness. The new roadside hedge planting would also assist in preserving the visual amenity of the Green Belt.[1.11]

8.60 The proposed development did not require an EIA. A Landscape and Visual Impact Assessment (LVIA) was required and this formed a chapter of the EIA volunteered by the Appellant. A second LVIA was prepared using the Landscape Institute 3rd edition guidelines. This included an assessment of both the landscape and visual effects of the scheme. In my view the site has been carefully and thoroughly assessed over a four year period. Comprehensive consultation was held throughout the development of the LVIA and development of the scheme. It is clear to me that the scheme has been 'landscape-led' from its inception.[1.21, 3.73]

8.61 Policy ENV1 confirms that development proposals that would adversely affect the landscape character of an area will not normally be allowed. The site does not fall within a nationally recognised landscape area. However, it is covered by a local designation known as the Droitwich Special Landscape Area (SLA) and is identified as such on the WDLP Proposals Map. The site is elevated from the adjoining landform and is therefore relatively prominent in the local landscape. The water tower, which stands at 33.5m tall, is sited at the highest point on Yew Tree Hill and is therefore visible from long distances. The Council and others consider that the landscape impact would significantly and demonstrably outweigh the benefits creating an unsustainable development contrary to paragraphs 7 and 14 of the NPPF. [1.10-1.11, 2.15, 2.1, 6.31-6.38, 6.46, 6.66, 7.1]

8.62 I note that the NPPF does not expressly recognise local landscape designations but instead provides advice at paragraph 109. It says that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, geological conservation interests and soils. Paragraph 113 of the NPPF indicates that LPAs should set criteria based policies against which proposals for any development on or affecting protected wildlife or geodiversity sites or landscapes areas will be judged. Paragraph 170 of the NPPF advises that where appropriate, landscape character assessments should also be prepared, integrated with assessment of historic landscape character, and for areas where there are major expansion options assessments of landscape sensitivity.[1.22]

8.63 Nationally, the site lies within the Severn and Avon Vales Character Area. Locally the landscape character of the site and its context fall into the Landscape Character Type of `Settled Farmlands with Pastoral Land Use'.

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These are small-scale rolling lowland, settled agricultural landscapes with a dominant pastoral land use, defined by their hedged fields. These landscape types are further broke down into Landscape Description Units (LDUs) and Land Cover Parcels (LCPs). It is important for the SoS to note that although Yew Tree Hill is covered by a SLA designation, it is not proposed to continue this designation forward into the emerging SWDP and therefore it can be afforded little weight in this case.[2.16, 6.36]

8.64 It is also noteworthy that the Council's officers had no issue with the scheme. In the Planning Committee Report it is clear to me that they came to the overall conclusion that on balance there would be no significant and demonstrable adverse harm to the landscape, heritage assets, highway safety, residential amenity, nature conservation, flooding and drainage. Moreover, there was no discussion of landscape matters at the Planning Committee meeting and no landscape policies were cited in the reasons for refusal.[3.74]

8.65 The Council sought to defend the landscape reason for refusal through the evidence of Ms Illman. However, this evidence was somewhat affected by events which took place in 2012. Ms Illman's first assessment of the LVIA was based upon incomplete information. She was missing the table which assessed in detail the landscape and visual effects of the scheme. Once provided with the full information, she did not correct a number of the errors in her report. Indeed, those errors and assumptions appear to have influenced her evidence to the Inquiry. [3.77]

8.66 The Council's evidence relied heavily upon the use of the LCA flowchart. In my view there are problems with this approach for the following reasons. First, the Council itself has not followed that approach. The LPA has allocated and given consent for the development at Copcut Lane which lies within in the same Landscape Character Area as Yew Tree Hill. If the LCA was the litmus test which Ms Illman suggests it is, then permission would not have been granted for the Copcut Lane development.[3.79]

8.67 Clearly, the Council is not purporting to use the flowchart in the way that Ms Illman states it should be used. At the Inquiry the Council attempted to explain this and claimed that the chart is used in a different way when you are looking at allocations rather than applications. The Council effectively suggested that a review of all potential sites should be done before development is contemplated in this Landscape Character Area. However, there is no requirement in the NPPF for undertaking this process. This requirement does not exist in either legislation or policy guidance.[3.80]

8.68 Secondly, the document itself does not purport to use the LCA flowchart as an absolute bar to development. It says that the emphasis on the appropriateness of a development in a landscape, and the landscape's resilience to change (or ability to accept that development without undue harm) can only be partially assessed through the LCA. Site visits and the need for detailed visual assessments are also a vital part of both strategic land use planning and development control. The Council agreed with this at the Inquiry.[3.81]

8.69 I am aware that the assessment of the appropriateness of development at Yew Tree Hill has been assisted by detailed visual assessments and site visits.

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Furthermore, the scheme has been designed using an iterative process to enhance consistency with the LCP. This is evidenced through the use of linear woodland, the bolstering of hedgerows and the provision of orchards. [3.82]

8.70 The Council also referred to the use of ZTVs. However, these are not critical in my view to the assessment of landscape impact because they are not sophisticated enough to answer the question whether the development would be visible, either partially or entirely. Ms Illman accepted that landscaping proposals had not been taken into account as part of her assessment. Any landscape appraisal which fails to take account of mitigation planting is clearly deficient. In my view ZTVs are only an aid to understanding whereas the Appellant's LVIA approach is comprehensive and to be preferred. This, together with the evidence which I saw on my site visits, enables a well-considered and detailed assessment. [3.83]

8.71 The differences between the two landscape witnesses in terms of the LVIA are essentially matters of judgement. It is the case that only the Appellant has provided a full LVIA, and the Council's evidence is but an assessment of the Appellant's work. In my view, the test of acceptability cannot be either: (i) the visibility of the development or (ii) its effect on openness. It is inevitable that any substantial new development at Droitwich would have to be on the periphery. It is therefore inevitable that it would be visible, because any new development would be visible. Furthermore, it is also inevitable that any new development would be on greenfield land. The emerging SWDP makes it clear that the area has exhausted its supply of previously developed land. This appeal proposal cannot therefore be criticised on that basis.[3.84]

8.72 The Appellant highlighted the development constraints which exist at Droitwich. From the evidence that is before me it is clear that Yew Tree Hill is one of the few locations where the development required to meet housing and affordable housing need is capable of being accommodated. Moreover, I am aware that this development offers substantial environmental advantages. These are set out clearly in Appendix 6 to Patrick Downes' proof of evidence. They include: a net positive gain of 1,385m of hedgerows, a net positive gain of 1,598m^2 of field margins, 2 hectares of scrub/woodland, 0.9 hectare of orchards and new park/open space areas. All of these would serve as suitable habitats for wildlife.[3.85-3.86]

8.73 For all above reasons on main matter (iv) I conclude that the proposed development would not significantly harm the character and appearance of the area. The countervailing environmental benefits more than outweigh the limited landscape harm caused by the loss of green field land. The proposal would comply with aforementioned development plan and emerging plan policies including in particular Policy ENV1 and Policy ENV8 of the WDLP. It would also comply with the relevant provisions of the NPPF. If the SoS disagrees he is asked to note the decision in Burgess Farm, Worsley which demonstrates that even clearly harmful development can represent sustainable development when it is weighed against a substantial shortfall of housing land. It is important to note that there are three dimensions to sustainable development - economic, social and environmental. As paragraph 8 of the NPPF makes clear these roles should not be undertaken in isolation because they are mutually dependent.

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Main matter (v): The effect of the proposals on local highway infrastructure

8.74 Paragraph 32 of the NPPF requires all developments which generate significant amounts of movement to be supported by a Transport Assessment (TA). The appeal proposal is supported by both a TA and a Residential Travel Plan. Read together these demonstrate that the proposed development would take up the opportunities for sustainable transport modes, safe and suitable access to the site could be achieved and improvements are capable of being undertaken which would limit the significant impacts of the proposed development.[1.5]

8.75 It is important for the SoS to note that the effect of the proposals on local highway infrastructure was not a reason for refusal of this planning appeal. Paragraph 32 of the NPPF also makes clear that development should only be refused on transport grounds where the residual cumulative impacts of development are 'severe'. Furthermore, it is common sense that the traffic proposals should be safe. Having identified the correct tests, it is clear to me that the tests are not amongst others: changes in terms of traffic patterns or an increase in traffic along a particular road.[3.89, 5.2, 5.7]

8.76 Road safety is primarily the responsibility of the Highway Authority. The Highway Authority has scrutinised the submitted evidence. They have carefully considered these proposals over a long period of time and have no objection to them. The proposals cannot be regarded as potentially having an adverse impact on the trunk road/motorway network as the Highway Agency's formal position is one of non-objection. As LPA, WDC has a responsibility to ask itself whether the development is safe and it has concluded that it is. Highways and transport did not form the basis or indeed part of any reason for refusal. It is against the aforementioned background that the objections raised by SOGOS have to be considered. It also worth bearing in mind that paragraph 187 of the NPPF encourages LPAs to look for solutions and not problems and decision-takers at every level should seek to approve applications for sustainable development where possible.[3.90-3.91, 5.3]

8.77 As I perceive it, the critical issue between the Appellant and SOGOS relates to forward visibility and side roads, and whether Manual for Streets (MfS) or Design Manual for Roads and Bridges (DMRB) should be used. Mr Pettitt argues for DMRB which are not supported by MfS. It is correct that at one location the major road distance is 59m. The evidence of Simon Tucker and Philip Jones explains why this is sufficient. Their views are consistent with table 7.1 of MfS1. I am aware that forward visibility can even go below that figure if one uses MfS2. Indeed, from the evidence submitted, it is true that the risk of accidents is not necessarily heightened by a shortened visibility distance. It is clear to me that there no unacceptable risk associated with either junctions or forward visibility. It is worth noting that when this scheme gets to the detailed design stage design features would be used to reduced speed such as signage/gateway features.[3.92, 5.18- 5.26 6.5, 6.7, 6.18, 6.26-6.27,6.48-6.51, 6.66, 6.70, 6.73]

8.78 SOGOS and others argue that Pulley Lane is presently a narrow country lane and the proposals would lead to significant safety concerns particularly at the bend. However, the regularisation to its current width of 5.5m and the widening of some visibility splays would be beneficial. Furthermore, the

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scheme would bring benefits to the Pulley Lane/A38 junction. The junction would become a two lane signalled junction. This measure needs to be set against the additional traffic which would be generated by the development. In any event, some queuing at traffic lights is part of everyday suburban life and this cannot be considered a 'severe' problem in the context of paragraph 32 of the NPPF.[3.93, 5.18-5.26 6.5, 6.7, 6.18, 6.26-6.27, 6.48-6.51, 6.66-6.70, 6.73]

8.79 As for Newland Road, up until 1993 it was a two-way road with houses on either side. Any objection based on disruption to this road has to be considered with the road's history in mind. The route has been carefully considered by the Appellant's highway engineers. Clearly, there is no need for a gabion wall which would encroach on third party land. Mr Tucker has demonstrated that it would be possible to use sheet piling without the risk of trespass. Once engineered, the route would become a very attractive walk and cycle route for most of the day with the occasional bus. Indeed, the bus element would be of benefit to both new and existing residents not well served by existing services. [2.16, 3.94, 5.18-5.26, 6.3-6.5, 6.7, 6.18, 6.26-6.27, 6.48-6.51, 6.66-6.70, 6.73]

8.80 SOGOS' complaints regarding fire engines and buses on Primsland Way were not substantiated. Neither of these vehicles would need to turn left or right. The fire engines would be going straight ahead as indeed would the buses. If, on the off chance, an emergency vehicle did need to turn, then it could cut over the white lines with its sirens blazing.[3.95, 5.18-5.26]

8.81 Inevitably, any substantial development would bring about highway impacts. The location of this site with good access to the centre by cycle and foot minimises its adverse effects. None of the highway effects of this development can be said to be 'severe' in terms of paragraph 32 NPPF. [3.97, 5.18-5.26]

8.82 I conclude on main matter (v) that the proposed development would not give rise to harm to highway safety or the free flow of traffic and that relevant development plan policy in the WDLP would not be offended in this respect.

Other Matters – Brine Run

8.83 Evidence was provided to the Inquiry by the Appellant on the Brine Run and its implications on the proposed development. It is the case that there is a considerable body of knowledge about the implications of the Brine Run on development as a result of the Johnson Poole and Bloomer work commissioned by the Council and the situation is summarised in the officer's report to the Planning Committee. Suffice it to say that the presence of the Brine Run has not prevented development of housing areas to the north east and west of the site during the 1990s or within other areas of the town. Engineering measures to mitigate the risk of damage caused by ongoing ground movements would be agreed via the Council's Building Control Department in advance of any development. The Council does not object to the proposal on this basis. The Council has a long history of familiarity with dealing with problems created by Brine Runs and there is no reason to believe that this development would not be similarly controlled. All the statutory consultees support the development. There is no sound and robust evidence to the contrary. Experience suggests that similar development to that proposed in this appeal has taken place by experienced developers within Zone A in the past.[3.98, 5.8-5.17, 5.36-5.39, 6.55, 6.57-6.65]

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Main matter (vi) Conditions:

8.84 There is an agreed list of conditions which were discussed in detail at the Inquiry (Document C7). The conditions have been considered having regard to this discussion, advice in the Appendix A (model conditions) to Circular 11/95 and also the advice in the PPG. The comments in this section and the condition numbers referred to below support and reflect the list produced in the Annex of this Report.[3.97]

8.85 The scheme is being put forward on the basis that it would make a useful contribution to short term housing needs. It is therefore reasonable to shorten the time period for approval of reserved matters for phase 1. Conditions 1 and 2 otherwise broadly reflect the wording in Appendix A of the Circular. Condition 3 is necessary to ensure the proposed development is constructed in such a way that any new units provided are adequately served by infrastructure and recreation facilities and to promote biodiversity on the site. Conditions 4 and 5 are necessary for the avoidance of doubt and to ensure the proposed development is carried out in accordance with the approved plans, principles and parameters contained within the submitted documents. Conditions 6-10 relate to roads, parking and travel. They are required in the interests of highway safety and sustainable travel. I have deleted the suggested alternative wording to Condition 6 ii) so that the improvements to Pulley Lane/A38 junction are approved and implemented prior to the occupation of the 1st dwelling (and not prior to the occupation of the 100th or 50th dwelling) to ensure the safe and free flow of traffic on the highway.[3.97]

8.86 Conditions 11-13 relate to noise and construction management and are required to protect the amenities of existing and future occupiers of adjoining properties. Conditions 14 and 15 relate to contaminated land and are necessary to ensure that risks from land contamination to the future users of the land and neighbouring land, controlled waters, property and ecological systems are minimised. Condition 16 is necessary to ensure the proposed development does not cause avoidable harm to any features of archaeological interest. Conditions 17-20 relate to landscaping, trees and nature conservation. They are required to preserve and enhance the visual amenities of the area and to conserve and enhance the natural environment. Condition 21 relates to renewable energy and is required to ensure the prudent use of natural resources. Condition 22 relates to lighting and is necessary to ensure the development does not cause unacceptable levels of light pollution. Condition 23 relates to limits on floorspace and is necessary to safeguard the vitality and viability of Droitwich Spa town centre. Conditions 24-26 relate to drainage and flood risk. They are necessary to reduce the risk of flooding and pollution, to ensure the provision of an adequate and sustainable drainage system and to maintain access to existing watercourses.[3.97]

8.87 Condition 27 relates to the submission and approval of a Brine Run Monitoring Report. However, the PPG makes it clear that conditions requiring compliance with other regulatory regimes will not meet the tests of necessity and may not be relevant to planning. In the context of this guidance it would not be appropriate to attach a planning condition regarding the Brine Run since this is a matter covered through Building Control regime. I have deleted this condition.[3.97]

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Main matter (vii) Planning Obligation:

8.88 A S106 obligation (BDL5) was submitted at the Inquiry and is agreed by the main parties. It was discussed in detail at the Inquiry. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (CIL) indicates that any planning obligation entered into must meet the following tests: (a) necessary to make the development acceptable in planning terms; (b) directly related to the development and (c) fairly and reasonably related in scale and kind to the development. I was also provided with an agreed statement of compliance with the CIL Regulations 2010 (C2). From all the evidence that is before me I consider that the provisions of the S106 Agreement complies with paragraph 204 of the NPPF and meets the 3 tests of Regulation 122 of the CIL Regulations 2010. I accord the S106 Agreement significant weight and I have had regard to it as a material consideration in my conclusions. I conclude that the Appellant has made adequate provision for mitigating any adverse impact that the proposal would have upon local services and infrastructure. [3.97]

CONCLUSION

8.89 Having examined all the evidence before the Inquiry I consider that the proposal would not be consistent with a strict interpretation of Policy GD1 of the WDLP but little weight can be afforded to this because the policy is clearly out of date. Other housing supply policies such as Policy SR1 and ENV1 are similarly out of date and can be given little weight. I consider there is no overall conflict with the development plan. Any development plan conflict is significantly outweighed by the inability of the Council to robustly demonstrate a 5 year housing land supply. The Council has failed to make adequate housing provision despite the warning of the Saving Letter some 5 years ago. The emerging SWDP has far to go before its adoption after making an uncertain start and clearly many thousands more homes than are catered for in the draft SWDP will be required. The presumption in favour of a grant of planning permission applies in this case for a variety of reasons: (a) the inadequacy of the 5-year supply; (b) 'absent' provision in saved Local Plan policies for provision of housing post-2011; and (c) out-of-date policies.

8.90 With regard to landscape impact I found that the proposed development would not significantly harm the character and appearance of the area. The countervailing environmental benefits more than outweigh the limited landscape harm caused by the loss of green field land. Issues raised by SOGOS and others in relation to local highway infrastructure have all been properly addressed by statutory consultees whose conclusions have not been demonstrated to be wrong at this Inquiry. Any residual matters of detail would be adequately controlled by the imposition of conditions and/or the reserved matters application process. The exercise of the paragraph 14 balance demonstrates that the benefits of the scheme are not 'significantly and demonstrably' outweighed by the alleged disadvantages. Overall I recommend the SoS to grant planning permission for the proposed development of Appeal A subject to the imposition of conditions.

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Appeal B – Land north of Pulley Lane and Newland Lane, Droitwich Spa

Main matter (i) The extent to which the proposed development is consistent with the development plan for the area and would deliver a sustainable form of development

8.91 The Council argues that Appeal Site B lies outside the defined boundary of Droitwich Spa and that policies for the open countryside apply. It is claimed that Policy GD1 is not out of date and that the strategy of the WDLP to concentrate most development on existing settlements is still relevant. Other policies including Policy SR1, Policy ENV1 and Policy ENV 8 of the WDLP are also claimed to be still relevant and consistent with the NPPF. The Council says the proposal is contrary to the development strategy of the WDLP. It accepts that the development plan consists solely of the WDLP which was adopted in 2006 and in place until 2011. In substance, only 4 policies within the WDLP are relied upon by the Council and the objectors as giving rise to inconsistency. These are Policy GD1, Policy SR1, ENV1 and Policy ENV8. [2.3, 2.15, 4.8]

8.92 It is noteworthy that Policy GD1 expressly and unconditionally applies to `new development to 2011'. It was plainly not designed to meet housing needs in 2014 and is redundant in today's changed policy, economic and legal context. Despite the unequivocal wording in Policy GD1, the Council maintained that significant weight should be afforded to it. Closer examination illustrates why that is ill advised.[2.3, 2.15, 4.9]

8.93 The second paragraph of Policy GD1 includes a reference to the `sequential preference will be given first, to the re-use of previously developed land and buildings'. This implements a previous sequential policy from the RSS and the old PPG/PPS3; it is not replicated in the NPPF or in the emerging SWDP in connection with sustainable development. Further, the prioritizing of Evesham in the wording of Policy GD1 does not survive the emerging SWDP. These changes reflect a deliberate shift in policy to loosen restrictions on urban extensions and greenfield land.[2.3, 2.15, 4.10]

8.94 The SoS will be aware that the Saving Letter made clear that the preservation of the policies was intended to be temporary, that there was a clear requirement to press on with the preparation of the replacement plan and that in the meantime the old policies should be approached bearing in mind new policy material in Government advice. Furthermore, it was noted in the Honeybourne decision, that using the old WDLP policies was not good enough and that the housing provision policies were out of date. When examined in August 2012, the policies were found to be time expired and out of date so limited weight could be given to them.[2.3, 4.11]

8.95 A similar approach can be found in the Bishops Cleeve decision in which the SoS further reinforced that Localism required local communities and Councils to face up to the hard choices in relation to the provision of development and if they did not and they failed to make provision for necessary development then decisions would inevitably need to be taken to provide it on appeal.[2.3, 4.12]

8.96 Plainly Policy GD1 is no longer fit for purpose. It was formulated in a world and in a context very different to one we find ourselves in today. It is not based on the full objectively assessed needs, referred to in paragraph 47 of the NPPF.

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Applying the restraints outlined in Policy GD1 would not help the Council meet its housing requirements in 2014 because land beyond the settlement boundary needs to be released for development: a sequential approach would not deliver the urgently needed housing in Wychavon and it is not consistent with the NPPF. This was further identified in the Inspector's decision at Humberstone, endorsed by the SoS in November 2013.[2.3, 2.15, 4.13]

8.97 The Council did not accept that Policy GD1 is out of date but it ultimately accepted that Policy SR1 was out of date. The Council argued that the two policies should be read together but that one is out of date and the other is not. In my view that is an inconsistent and indefensible position. Notwithstanding this and in so far as the Council readily accepted that Policy SR1 is out of date, paragraph 14 of the NPPF applies thereby triggering the presumption in favour of sustainable development.[2.3, 2.15, 4.14-4.15]

8.98 Policy ENV1 applies a Special Landscape Area (SLA) designation to the site. However, I note that the Inspector in the Tenbury appeal concluded that Policy ENV1 was also a housing supply policy which should be set aside absent a 5 year supply. It is the evidence of the Appellant that the wording of Policy ENV1 demonstrates that the SLA designations are not determinative and that the policy must be read in the context of other policy documents. Logically these include the 2011 Landscape Character Assessment (LCA) which becomes a new yardstick by which to measure landscape impact. I recognize that Policy ENV1 is a general policy in relation to protection of the landscape and the SLA designation has, in accordance with the provisions of the WDLP, been superseded by the publication of the 2011 LCA. Other relevant policy includes "A New Look at Landscape of Worcestershire" in 2004 and "Planning for Landscape in Worcestershire, 2008". The Council accepted that the 2011 LCA prevails over the SLA designations.[2.21, 4.16-4.18]

8.99 Drawing the above points together, the evidence demonstrates that the Council relies on an out of date plan, primarily through the express wording of the old policies, previous Inspector's findings, and underlying it all, the fact that the evidence and policy context for the old WDLP has dramatically changed and can no longer be a sound basis for any meaningful application to this proposal. By way of default the NPPF applies.[2.3, 4.19]

8.100 Following on from that whilst as a bald fact the proposals are contrary to Policy GD1, once the exercise required by the High Court decision in *Hampton Bishop* is undertaken and the policy is viewed through the prism of up to date consideration and in particular the NPPF, little weight indeed can be attached to that fact. I have to consider the proposal in the context of the other main matters which have been identified before coming to an overall conclusion in relation to the development plan.[4.6]

Main matter (ii) Whether the proposed development is premature in the light of the emerging SWDP and national guidance

8.101 In the context of prematurity, the Council contends that given the good progress on the emerging SWDP, the substantial scale of the proposed development and the sensitivity of the local landscape to such significant change warrants refusal of the proposed development. It is argued that the proposal is counter to the strategy of the emerging SWDP. The position of the

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Council at the close of the Inquiry was that the emerging SWDP may not yet be adopted but it has advanced to Examination stage and therefore carries greater weight than a pre-submission plan. Furthermore, it is pointed out that there is no suggestion that the underlying strategy of directing development to existing settlements is unsound. The Council, supported by local Councillors and other local objectors claimed that the proposal would significantly prejudice the strategy of the emerging SWDP and undermine the pattern of growth set out therein, by allowing large scale development, which would cause significant harm to the character of the area.[2.7-2.9, 6.17, 6.20, 6.43, 6.66]

8.102 The Appellant submitted evidence in relation to prematurity in the guidance contained in 'The Planning System: General Principles'. However, that guidance has been cancelled by the PPG issued on 6 March 2014. I have already set out relevant guidance from the NPPF (paragraph 216) and the PPG (paragraph 14) at paragraphs 8.26 and 8.27 of this Report so there is no need to repeat it here.[4.21]

8.103 The SoS should also be aware that in two High Court decisions, prematurity arguments identical to the ones in this appeal failed. Those judgments made clear that there was nothing in the Localism Agenda which required the plan making process to be completed before decisions could be made. [2.7-2.9, 4.22]

8.104 With regard to the plan-making process, it is clear to me that the SWDP process has been significantly delayed: the methodology for the housing calculation has been found in no uncertain terms to be *"unreliable"* not providing a sound basis for the planning of housing provision in the area, with *"three fundamental shortcomings"*, resulting in an order that further analysis be undertaken to derive an objective assessment of housing need.[2.7-2.9, 4.23]

8.105 The position of the Appellant is that the emerging SWDP is in a "parlous state" in light of the extensive work that was still required. I accept that there will be a need for further assessment of future allocations and subsequent consultation (to be supported by a SEA). This needs to be settled by all 3 authorities at a time when there is clearly no political appetite for further housing provision anywhere. Consequently, there is little hope that the process would be completed before 2015. [2.7-2.9, 4.24]

8.106 Despite the Council's submission of additional information on housing at the Inquiry, at the close of this Inquiry there is still no new housing requirement figure. Whilst the SWDP may have been submitted for Examination, I consider this is not an advanced stage of the Plan. We are in fact at a state where further land is likely to be required. There are correctly doubts in the Council's mind as to the integrity of the plan making process at present in the light of the fact that the Inspector in March 2014 will not have any proposed modifications containing an alternative figure before him. How therefore the future progress of the Plan is to be handled procedurally has yet to be decided. [2.7-2.9, 4.25]

8.107 The Council argued prematurity in terms of location and phasing but not in terms of scale as the proposal for up to 265 dwellings was less than Appeal Site A. This is misconceived because the three elements cannot be disaggregated, especially in light of the status in the extant and emerging plan that Droitwich Spa enjoys as one of the higher tier settlements. The fact is that

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the scale of both proposals is not such as to prejudice decisions about distribution of development: as the Report to Committee pointed out, taken together, the proposals represent a mere 16.9% increase in households in the parish of Droitwich Spa over the plan period.[2.7-2.9, 4.26]

8.108 The Council further relies on the appeal at Kentford. However, it is clear in that case Kentford's Village status was a primary village with a poor range of services - completely different to Droitwich Spa, which has a full range of facilities and sufficient infrastructure for further development.[2.9, 4.27]

8.109 The Council's stance on prematurity is even more difficult to understand in light of its decision to grant permission for 740 dwellings at Copcut Lane. I consider this inconsistency undermines the Council's argument. The weakness in the Council's position on RFR1 and prematurity is patently clear on any analysis. In my view this was an unreasonable RFR and does not withstand scrutiny. The Council's own officer observed that it would be difficult for the Council to demonstrate clearly how the grant of planning permission would prejudice the outcome of the DPD process.[2.7-2.9, 4.28-4.29]

8.110 In my view once the status of Droitwich Spa in the hierarchy is acknowledged the simple fact is that in Droitwich Spa there are few if any alternative options which have not already been deployed in the SWDP. The reality is that Yew Tree Hill was only rejected because the Committee preferred Copcut Lane. That option no longer exists. Droitwich Spa is a sustainable settlement and at the top of the settlement hierarchy in SWDP48. Within Droitwich Spa, being constrained by the greenbelt, floodplain and historic environment, Yew Tree Hill is the only option left without imperiling those critical environmental constraints. There is no evidence, let alone any appetite, which would justify the contention that development needs should be met in that way.[4.30]

8.111 On main matter (ii) I conclude that, for all of the reasons outlined above, the Council's reliance upon prematurity as a reason for refusal cannot stand. It is contrary to the weight of guidance, policy and judicial decisions and no relevant precedent has been provided for it.

Main matter (iii): Whether the proposed development is necessary to meet the housing needs of the district bearing in mind the housing land supply position

8.112 The Council's evidence is that it can demonstrate a 5-year supply of housing land. It maintains that since the Honeybourne decision (August 2012) it has granted permission for a significant number of additional homes on several sites, where such development is regarded as sustainable and meets the other objectives of the NPPF. The Council's position is that against a total requirement of 10,133 dwellings, equivalent to 422 dwellings per annum, it can demonstrate 6.76 years housing supply. This includes a 2.6% vacancy rate and a 0.8% allowance for second homes. The Council maintains that it has provided clear evidence to demonstrate that the sites in question are "deliverable" in the context of Footnote 11 of the NPPF and the advice contained in the PPG.[2.8-2.14]

8.113 Furthermore, the Council argues that at the present time the precise outcome in respect of housing figures cannot be predicted albeit the SWDP Inspector

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has indicated in his Interim Conclusions that it may be significantly higher than the current figure. In the Council's view the decision as to the quantum and spatial distribution of any additional housing requirement can only be made through the local plan process, where the constraints can and will be considered. However, the question of a 5-year housing land supply is disputed by the Appellant.[2.9]

8.114 As a preliminary matter the SoS should note that the Council officers are agreed that the Council does not enjoy a 5-year land supply and therefore cannot satisfy the requirement of paragraph 47 of the NPPF. In addition, the reader's attention is drawn to paragraphs 8.40-8.60 of my Report above and in particular to paragraphs 8.58 and 8.59 where I have concluded in relation to Appeal A that the Council does not have a 5-year supply. There is no need to repeat the detail of the various components of housing needs and supply within Wychavon in relation to Appeal B as they have already been set out in my Report for Appeal A. However, there are several additional points which were raised in evidence and which need to be highlighted.[4.31]

8.115 The first point to note is that part and parcel of the 5-year land supply calculation is that the Council has failed for a considerable period of time to deliver its housing requirement. That leads to the acceptance that in this case a 20% buffer is appropriate in relation to the housing land supply assessment. The evidence therefore demonstrates that there is a long-standing chronic problem with housing delivery in South Worcestershire and Wychavon. The same was noted in the Inspector Clews' Interim Conclusions.[2.8-2.14, 4.32]

8.116 In this case the position is far worse than the Council's assessment thus far has suggested. The SWDP Inspector has made clear that there were *"three fundamental shortcomings"* in the SHMA used by the Council to calculate housing need. These were: firstly, the failure to use household representative rates (HRR) drawn from the 2008-based DCLG projections or any other official population or household statistics; secondly, the Council's use of the unreliable Cambridge Economics as a basis for predicting job growth and resultant household growth; and thirdly, the lack of evidence to support the assumed increased in older peoples' economic activity, based on unclear assumptions. [4.33]

8.117 The Inspector therefore concluded that the objectively assessed housing need figure for the plan period "is likely to be substantially higher than the 23,200 figure identified in the submitted plan" and that further work was required to rectify this calculation. He advised that this further work should be combined with the NLP "index" approach and should be carried out using the latest official population projections to translate those projections into future household numbers. The range of the additional housing need canvassed by the Inspector included the following: 34,000 (Barton Wilmore, not supported by the Inspector); 32,000 (by NLP, assessed as methodically sound, albeit caveated); 26,800 (PSL, considered to be "illuminating", but the adjustments were insufficiently unreliable); and between 23,700-27,000, with a mid-point of 25,850 (by Pegasus, the mid-point found to be insufficient because it did not include the employment adjustments).[4.34- 4.36]

8.118 Therefore at the close of the Inquiry a housing requirement of substantially more than 23,200 and possibly up to 34,000 seems likely. This is, in the main,

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because unless the new figure is in this region, there are unlikely to be unresolved objections, a key factor affecting the weight to be attached to the emerging SWDP, as paragraph 216 of the NPPF makes clear. The Appellant estimates that there is an additional need for a minimum of 8,800 dwellings. All parties are agreed that it is not for me determine what the precise figure should be. That is beyond the remit of these appeals and is a matter for the local planning process. Suffice it to say that significant number of additional dwellings will have to be provided for over and above the figure indicated in the submitted version of the SWDP.[2.8-2.14, 4.37]

8.119 The question which then arises is as to the likely location of the additional housing. The evidence overwhelmingly proves that Wychavon is the least constrained authority: Worcester City's built-up area is tightly contained inside its boundaries and there is insufficient space in the City's administrative area to meet all its needs for development, especially housing; Malvern Hills has limited ability to accept new development due to its natural and environmental constraints. This leaves Wychavon, with fewer constraints than Worcester City or Malvern Hills, as the natural destination for the lion's share of the additional housing requirement bearing in mind in particular the duty to co-operate. Mr Brown sought to dispute this on the basis that constraints are not fixed but it is difficult to see how the AONB in Malvern Hills might change in the future, for example.[2.8-2.14, 4.38]

8.120 From the evidence that is before me the best location within Wychavon is clearly Droitwich Spa when compared against Evesham or Pershore. Growth in Droitwich Spa, between 2006 and 2013, was the smallest of all 3 towns, with a population increase of only 5.6% in this period. Some 750 homes would represent an increase from 5.6 to 8.9%. With Copcut Lane, that increases to 12%, still less than the % increases seen in Pershore or Evesham.[2.8-2.14, 4.39]

8.121 In my view, the Council's approach of directing development outside the conurbation boundaries is no longer tenable in the changed policy context of the NPPF and the presumption in favour of sustainable development. The sea-change brought about by the NPPF recognises that development outside conurbations is appropriate in today's climate of an under-supplied housing market. The simple fact is that there is a serious need for additional homes. Within Droitwich Spa, Copcut Lane is insufficient on its own to meet those needs and Yew Tree Hill is the logical next step.[2.8-2.14, 4.40]

8.122 The SoS should be aware that a major plank of the Appellant's evidence is the significant under provision of affordable housing set against the established need figure and the urgent need to provide affordable housing in Wychavon. If the position in relation to the overall supply of housing demonstrated a general district-wide requirement for further housing, that requirement becomes critical and the need overriding in relation to the provision of affordable housing. The most recent analysis in the SHMA (found to be a sound assessment of affordable housing needs) demonstrates a desperate picture bearing hallmarks of overcrowding, barriers to getting onto the housing ladder and families in crisis.[4.42]

8.123 There are nearly 5,000 households on the waiting list, 35% of whom are families with children. Over a fifth of those have a local connection and are in priority need. The SHMA indisputably records that affordability is at crisis

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point. Without adequate provision of affordable housing, these acute housing needs will be incapable of being met. In terms of the NPPF's requirement to create inclusive and mixed communities in paragraph 50, this is a very serious matter. Needless to say these socially disadvantaged people were unrepresented at the Inquiry.[4.42]

8.124 These bleak and desperate conclusions are thrown into even sharper focus by an examination of the current circumstances in Wychavon itself. Over the whole of the District's area there is presently a need for 268 homes per annum. These are real people in real need now. Unfortunately, there appears to be no early prospect of any resolution to this problem. Firstly, the 2009 AMR recognizes that between 2005 and 2009, only 229 affordable homes were delivered, an average of some 55 per annum. Over the following 8 year period, between 2009 and 2013, some 501 were delivered, or an average of 62 per annum over a whole economic cycle. Given the continuing shortfall in affordable housing within the District, I consider the provision of affordable housing as part of the proposed development is a clear material consideration of significant weight that mitigates in favour of the site being granted planning permission.[4.43- 4.44]

8.125 Secondly, although SWDP15 (and supporting text) notes that 657 dwellings are needed over the next 5 years, a solution still remains a relatively distant prospect given the state that the forward-planning process finds itself in at present. The information shows that the delivery of affordable housing in Wychavon has been very poor. There are no allocations for housing purposes which would begin to address the significant housing crisis in Wychavon. Furthermore, none of the permissions identified are capable of addressing the need. There is thus no solution identified by the Council to begin to address the crisis in housing provision for the substantial number of households living with housing need which the Council can identify. And as the map made clear, those living in Droitwich Spa are amongst the unluckiest as it is one of the most unaffordable places for housing.[4.46]

8.126 It seems to me that the Council has largely ignored the affordable housing need in its evidence. The poor delivery record of the Council has also been largely overlooked. The Council's planning balance is struck without any apparent consideration being given to one of the most important reasons why housing in Droitwich Spa is needed. From all evidence that is before me the provision of affordable housing must attract very significant weight in any proper exercise of the planning balance.[4.47]

8.127 On main matter (iii) I conclude that the Council does not have a 5-year supply and the proposed development is necessary to meet the housing needs of the district.

Main matter (iv): The effect of the proposed development on the character and appearance of the area

8.128 The Council, supported by local objectors, maintains that the proposed development would give rise to demonstrable adverse impacts to the overall landscape, including character and in terms of visual effects, thereby failing to achieve the environmental objectives of sustainable development. In the overall balancing exercise it is claimed, that the adverse impacts would be

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significant enough to outweigh the benefits of the scheme and permission should therefore be refused. The Council accepts that taken in isolation Appeal B would have less impact than Appeal A but it is still considered harmful lying as it does close to the interface between two Landscape Character Areas and clearly impacting on both. It is argued that Appeal B gives rise to significant visual impacts, including public rights of way, which are assessed as major/moderate adverse in the long term.[2.15-2.17, 6.18, 6.30, 6.31-6.38, 6.46, 6.66, 7.1]

8.129 However, it is important for the SoS to note the benefits of the landscape-led approach to the masterplan. It proposes several benefits and was endorsed by the Council officers. The strategy retains the elevated southern part of the site as open space and development is proposed to be restricted to at or below the 73.5m contour generally with planting proposed to the elevated southern part of the site to provide a vegetated backdrop to the development when viewed from the north. Plainly the proposed development would be concentrated on the central and northern part of the site where there is a greater degree of visual containment but set back from the public footpath to the north to create a green corridor which also incorporates provision for SUDS. [2.15-2.17, 4.48]

8.130 Furthermore, perimeter hedgerows/trees and the existing hedgerow that subdivides the site are to be retained and new hedgerows introduced to create a series of development "cells". This network of hedgerows is intended to reflect the local landscape character and provide elements of visual containment.[2.15-2.17, 4.49]

8.131 The position of the Appellant is that there are two aspects to the Council's case in relation to landscape effects and the impact on the visual amenity of the area. The first is the question of policy context and the second concerns the assessments. I agree that the historical context of the SLA needs to be borne in mind when assessing the weight to be given to it. The 1993 Local Plan Inspector concluded that this parcel of land should be excluded from the Green Belt and that the shallow valley of the appeal site should be examined as a plausible candidate for future development. I am aware that this was reiterated in the 1995 PTP Report with the note that Pulley Lane and Newland Lane should form the boundary of the Green Belt and provide a firm boundary in the long term for the settlement. By delineating a boundary in this way, allowance was being made for future development needs. It is clear to me that even in 1993 and 1995 this site was identified as a potential area for development.[4.50-4.51]

8.132 As housing needs increased, development in the area has evolved. Although the Council asserted that nothing has changed since the 1995 Report the facts indicate that significant elements of development have occurred around the site: additional housing to the east and the Bellway Homes site have clearly changed the immediate context of the site. Furthermore, nothing has been done to advance any proposal for a country park. This is the context from which the SLA designation emerged and thus its application must be caveated: the conclusions would only hold until 2011 or else no option for Droitwich to expand would be available; and the SLA was to be integrated into the Landscape Character Assessment as set out at paragraph 8.98 above.[4.52-4.53]

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8.133 The Guidelines for Landscape and Visual Impact Assessment 3rd Edition (Purple Book) further indicates that special landscape designations are to carry less weight in the context of Landscape Character Assessments. As such the LCA prevails over the SLA and is incorporated into the plan. However, it is clear to me that it is not good enough to assume that the LCA is determinative. Further assessment must be carried out to properly determine the landscape impact of the scheme on the site. It is a starting point, as set out in the Purple Book, which seeks to move away from the mechanical approach or applying perfunctory assessments. Similarly, the flowchart relied on by the Council has no support in the Purple Book as the assessment method of landscape impact. Rather, it is a tool that provides some perspective. The document itself observes that having considered the flow-chart one should then undertake the necessary site work required to formulate a proper assessment of the detailed character of the landscape of a site and the effects upon it. [2.15-2.17, 4.54-4.56]

8.134 That approach is reflected in the fact that notwithstanding the Settled Farmlands with Pastoral Use description, the Bellway Homes and Copcut Lane developments are both within this designation. Had the approach that Ms Illman advocates been applied to those proposals, they would have probably been refused. To my mind these decisions comprise a very clear inconsistency in the Council's case.[2.15-2.17, 4.56]

8.135 As I perceive it reading the LCA as a whole, it is clear that landscape is only one aspect of decision-making; and that meeting the need for sustainable development on the edge of sustainable settlements is also an important factor. This is an important context which is missing from the evidence provided by the Council. Droitwich Spa has at its edge either Settled Farmlands with Pastoral Use or Principal Timbered Farmlands, the latter being less suitable for development than the former in terms of resilience to development, and the lower lying land contained therein. Therefore, the Landscape Character Area in which the site is located is the best option for Droitwich Spa in landscape character terms measured against the LCA. [2.15-2.17, 4.57-4.58]

8.136 Turning to the quality of the assessment carried out it is apparent from the initial Illman Young Report that there was no instruction to provide any assessment of Appeal Site B. Why that is has not been explained. What is clear is that the assessment of the Council's own landscape expert was supportive of the scheme which had been designed and did not conclude that the landscape impacts were unacceptable.[2.15-2.17, 4.59]

8.137 The Council considers the impact of the proposed development on the landscape resource and visually would be sufficiently adverse to warrant dismissal of this appeal. I disagree for several reasons. First, there is an absence in the evidence of any explanation of the methodology carried out to reach those conclusions. Nowhere does the Council set out any calibration, any analysis or any rationale for those judgments. Secondly, by way of contrast, the Appellant's evidence follows a logical flow and describes in detail how and why the conclusions on landscape impact are reached. Thirdly, the same can be said about the Council's assessment of the visual effects of the scheme. Reliance is placed on obtaining a ZTV but this approach was exposed as painting a misleading picture of the visibility of the site. Table C in the Council's evidence fails to make the connection between observations and

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conclusions: nowhere is there a description or definition of the significance of change and the magnitude of impact; nowhere is there any description of the individual effects, leaving the Inquiry in the dark as to what is meant by terms such as "large" and "major" when describing the impact.[2.21, 4.60]

8.138 Drawing together the above points it seems clear to me from the evidence submitted that the conclusions to be reached in relation to this issue are as follows. Given the scale of the overall Landscape Character Area of this type the effect of the proposals are not significant. When the more local LDU is examined it is clear that the character of the landscape has had its rurality eroded by the recent development in the vicinity. As a result the impact on the LDU landscape character would also be acceptable. Turning to the issue of visual effects there are very limited views of the site from the wider landscape. Whilst there would be some change to very local views firstly, these are views in which the urban form of Droitwich Spa is already evident and, secondly, as a result of the careful siting of the development on the lower lying land the extent of visual effect would be minimised. My site visits confirmed these conclusions. In summary, there is no logical basis to refuse the proposals on the basis of landscape impact.[2.21, 4.61]

8.139 It is necessary to consider the potential impacts in the event that both schemes were to be approved. In reality the additional impact of Appeal B in landscape terms if Appeal A is approved is de minimis. The Appellant has approached this issue on the basis of considering the effect of both sites together as a single entity and this demonstrates whilst the impact on landscape character and visual effect would be greater, again it would not amount to a basis for refusing the schemes. The proposals sit within the same Landscape Character Area and LDU, and the assessment of the LDU shows that it is relatively resilient to change. Coupled with the substantial provision of green infrastructure the overall result of the proposals would bring benefits to clearly off-set the initial impact of the development.[4.62]

8.140 There would be changes to the visual effect of the development but still no impact upon the wider landscape. More development would be seen from the closer views but again the magnitude of change, given the existence of views of development already in these views moderates the possible extent of the impact and demonstrates that the development, akin to the other recent developments around the sites, can be properly assimilated into views back towards Droitwich Spa from the wider countryside. For all above reasons on main matter (iv) I conclude that the proposed development would not significantly harm the character and appearance of the area and the scheme would comply with pertinent development and emerging plan policies including in particular Policy ENV1 and Policy ENV8 of the WDLP and the relevant provisions of the NPPF.[4.63]

Main matter (v): The effect of the proposals on local highway infrastructure

8.141 On this issue I have already set out the relevant NPPF advice above at paragraph 8.75 and 8.76. The SoS should also be aware that there was no RFR on highway or transport grounds. The proposal before the Inquiry includes provisions for public transport and road widening which would enhance the

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accessibility of the site both by slow modes and by public transport. These provisions have been accepted not only by WCC but have passed an independent safety audit providing the necessary assurance that the site would be safe and accessible. SOGOS and other local objectors have made points in relation to the present position of the site in terms of the impact on traffic flows. However, those fall away in light of the fact that the flows used have been derived from an independent model and Pulley Lane has an adequate design and capacity to cope with the additional flows. SOGOS also refers to significant increases in traffic flows on Pulley Lane but the use of percentages is obviously misleading when the existing flows on this link are so low. The forecast flows are well within the design capacity of the road and in my view would pose no difficulty in engineering terms. [4.64, 5.2-5.3, 5.7, 5.18,-5.26, 6.5, 6.7, 6.186.27, 6.35, 6.48-52, 6.70-6.72]

8.142 With regard to the site access concerns, the Appellant explained in evidence that the point about the visibility splay is based on using a standard of deceleration from trunk roads and motorways to a road which would be residential in character. Using realistic speeds and deceleration rates the visibility splay would be acceptable, a point endorsed by WCC and the safety audit. Using Manual for Streets and after speeds have been managed as a result of the Section 278 works the visibility splay functions. There is no accident history of safety problems on this highway network.[4.65]

8.143 It is noteworthy that the extent of the public transport contribution would secure a long term future for the bus service. Messrs Tucker, Jones and WCC have designed the bus service to pick up a number of residential areas in addition to serving the site so as to provide ridership and support for the revenue stream generated by the service. The bus service would necessarily improve the current service and provide a strong linkage both to the town centre and the appeal site, providing therefore an appropriate and sustainable alternative to the use of the private car. These proposals therefore would bring about a wider public benefit to the existing community in the form of enhanced public transport. It is further important to reinforce that the junction arrangements at Pulley Lane/A38 which are proposed would not only assist in resolving existing highway safety issues but also in terms of providing an acceptable design solution. I conclude on main matter (v) that the proposed development would not give rise to harm to highway safety or to the free flow of traffic and that relevant development plan policies in the WDLP would not be offended in this respect.

Main matter (vi): Whether any permission should be subject to any conditions and, if so, the form these should take

8.144 There is an agreed list of conditions which were discussed in detail at the Inquiry (Document C8). The conditions have been considered having regard to this discussion, advice in the Appendix A (model conditions) to Circular 11/95 and also the advice in the PPG. The comments in this section and the condition numbers referred to below support and reflect the list produced in the Annex of this Report.[4.68]

8.145 The scheme is being put forward on the basis that it would make a useful contribution to short term housing needs. It is therefore reasonable to shorten the time period for approval of reserved matters for phase 1. Conditions 1 and

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2 otherwise broadly reflect the wording in Appendix A of the Circular. Condition 3 is necessary to ensure the proposed development is constructed in such a way that any new units provided are adequately served by infrastructure and recreation facilities and to promote biodiversity on the site. Conditions 4 and 5 are necessary for the avoidance of doubt and to ensure the proposed development is carried out in accordance with the approved plans, principles and parameters contained within the submitted documents.[4.68]

8.146 Conditions 6-10 relate to roads, parking and travel. They are required in the interests of highway safety and sustainable travel. I have deleted the suggested alternative wording to Condition 7 ii) so that the improvements to Pulley Lane/A38 junction are approved and implemented prior to the occupation of the 1st dwelling (and not prior to the occupation of the 100th or 50th dwelling) to ensure the safe and free flow of traffic on the highway. Conditions 11 and 12 relate to noise and construction management and are required to protect the amenities of existing and future occupiers of adjoining properties.[4.68]

8.147 Conditions 13 and 14 relate to contaminated land and are necessary to ensure that risks from land contamination to the future users of the land and neighbouring land, controlled waters, property and ecological systems are minimised. Condition 15 is necessary to ensure the proposed development does not cause avoidable harm to any features of archaeological interest. Conditions 16-19 relate to landscaping, trees and nature conservation. They are required to preserve and enhance the visual amenities of the area and to conserve and enhance the natural environment. Condition 20 relates to renewable energy and is required to ensure the prudent use of natural resources. Condition 21 relates to lighting and is necessary to ensure the proposed development does not cause unacceptable levels of light pollution. Conditions 22-24 relate to drainage and flood risk. They are necessary to reduce the risk of flooding and pollution, to ensure the provision of an adequate and sustainable drainage system and to maintain access to existing watercourses. There is no need to attach a planning condition regarding the Brine Run since it does not extend to Appeal Site B. It is principally to do with foundations and is therefore a matter for Building Regulations and not planning. [4.68]

Main matter (vii): Whether any planning permission granted should be accompanied by any planning obligations under section 106 of the 1990 Act and, if so, whether the proposed terms of such obligations are acceptable

8.148 Document C3 is a signed and completed s106 Planning Obligation Agreement, dated 11 February 2014 between the Appellant, the LPA and WCC. The Appellant and the Council have entered into a s106 Agreement by virtue of which £207,529.45 is payable as the "Worcester Transport Strategy Contribution." Document C3 also contains a statement which provides a summary of the obligations contained in the Agreement and how each complies with the legal tests of Regulation 122 of the CIL Regulations 2010. [4.69]

8.149 The Appellant maintains that Schedule 4 of the s106 Agreement is not compliant with the legal tests in light of the conclusions in the Appeal Decision

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at Ronkswood Hospital and that, pursuant to clause 5.3, Schedule 4 is unenforceable. In that appeal, where the main issue was the compliance of the s106 Transport contribution with the Regulation, the Inspector scrutinised the Worcester Transport Strategy (WTS) as the policy basis for the contribution. The Inspector concluded that the WTS, which consists of a package of infrastructure and service schemes, was too general and there had been no evidence to demonstrate how any of those schemes directly related to the development. He concluded that the contribution calculated by reference to the WTS was not CIL-compliant.[4.70-4.75]

8.150 In order to be "CIL-compliant", Regulation 122 requires that an obligation be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. The Worcester transport network is congested and subject to poor performance. Development projected in the emerging SWDP will create additional traffic, cumulatively causing severe network performance deterioration as shown by the Worcester Transport Model (WTM). The WTS will support the emerging SWDP by improving network performance. As 14.2% development traffic will route to congested sections of the Worcester network (allowing for travel measures), the impact of development traffic forms part of the cumulative impacts shown by the WTM, so mitigation secured by the s106 Planning Obligation is required to make the development acceptable. This is consistent with the approach used for the Copcut Lane development.

8.151 The WTS will mitigate the cumulative impacts, of which this development's traffic forms a part, and the specific locations the contribution is to be dedicated to is that most used by development traffic routing to Worcester, so the Planning Obligation is directly linked to the development. The SoS should be aware that it is acceptable to the Council to dedicate the WTS contribution to improvements to the A38, Hurst Lane and Cotswold Way corridors as the element of the network most affected by the development traffic.

8.152 The WTS contribution is proportionately calculated according to the amount of development traffic routing to the Worcester network so is reasonably related in scale. An original calculation was made, but following revision of this to cater for the 14.2% traffic routing to the WTS area the contribution was reduced to £207,529.45. The emerging SWDP Policies SWDP04 and 07 provide for development to contribute to infrastructure requirements. In my view that is consistent with the NPPF and should carry weight. The proposed contribution is therefore in conformity with the emerging policy. The contribution is also in conformity with the Local Transport Plan (LTP3) policies providing for development to contribute to infrastructure requirements and this is a material consideration of some weight in this case. I consider that there are material differences with the Ronkswood case and the WTS contribution sought in this appeal is more robustly and precisely justified. The WTS contribution complies with the requirements of Regulation 122 of CIL Regulations 2010.

8.153 Overall I consider that the s106 Agreement meets the 3 tests of Regulation 122 of the CIL Regulations 2010 and the criteria in paragraph 204 of the NPPF. I accord the s106 Agreement significant weight and I have had regard to it as a material consideration in my conclusions.

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PLANNING BALANCE

8.154 In the light of my conclusions on the main matters it is necessary to draw the factors together and feed them into the equation provided by paragraph 14 of the NPPF in circumstances where the main policies are out of date. The effect of applying the presumption is that the planning balance shifts in favour of the grant of consent. Only if the Council is able to demonstrate harm which "significantly and demonstrably" outweighs the benefits of the development should consent be refused. The harm must be of sufficient gravity to significantly and demonstrably outweigh the benefits. The reason for that significant shift in the planning balance is that it is a key policy objective of the NPPF under paragraph 47 to ensure that a 5 year supply of housing land is in place and that old plans with outdated constraints are not deployed to frustrate development.[4.76]

8.155 That exercise requires one to start with a careful examination of the benefits of the proposal. There is little, if any, evidence in the Council's evidence, and none in that submitted by interested persons, to indicate any acknowledgement of the significant benefits which this scheme would deliver. First, there is the 5 year housing land supply requirement which needs to be met. The requirement figure is not set but it is recognized by all parties that it is greater than 23,200 and it could be an additional 8,800. It is the position of both Appellants that the Council cannot demonstrate a deliverable 5 year supply.[4.77-4.78]

8.156 Secondly, jobs would be created by the proposed development. Government Guidance in Laying the Foundations and the Honeybourne decision both acknowledge the direct and indirect employment flowing from housing construction. Not only would about 190 personnel be employed in construction on site but that figure would increase to 120-205 general personnel. Both appeals together would provide some 40 jobs at the retail centre and between 105-205 jobs at the extra care facility. The Council could not dispute these numbers to any significant degree at the Inquiry. The Council's concern in respect of the rates of development depended on the GL Hearn Report which itself shows that higher rates of development (up to 170 per annum) are capable of sustaining in Droitwich Spa more than one outlet, at the Copcut Lane site as well as outlets at the appeal sites. The Council was unable to explain GL Hearn's conclusion in the light of the empirical evidence.[4.79]

8.157 Thirdly, the development would make a positive contribution to the social dimension of sustainable development, particularly through the provision of new homes to address the significant affordable housing needs. Droitwich Spa is a very sustainable settlement and a good location for new development with a full range of facilities, services and public transport connections. The site location is sustainable with the ability for high quality footpath and cycleway connections to be made to adjoining residential areas and to bus services there and to the adjoining Appeal Site A.[4.80]

8.158 Fourthly, the proposals would involve change in relation to the loss of fields in agricultural and equestrian use and the development of areas of land currently undeveloped. Off-setting environmental benefits in the form of accessible open space, landscaping and habitat creation would mitigate this change and the

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proposal has been carefully considered to minimize the impact on the landscape. The area of open space on the eastern boundary of the proposal would connect well to the adjoining, existing informal open space and provide connections for existing residential communities to Newland Lane and Newland Road and wider footpath and cycleway networks.[4.81]

8.159 To the extent that harm has been identified by the Council and by many local residents, it would be limited. It is focused on landscape issues in circumstances where the sites are essentially the only candidates for expansion in Droitwich Spa and the detailed evidence demonstrates that landscape and visual effects would, in substance, be limited to the sites themselves and their immediate surroundings. The proposed development may not be consistent with a strict interpretation of Policy GD1. However, due to its accordance with all other policies, I conclude there is no overall conflict with the development plan or the emerging SWDP or with relevant provisions of the NPPF. The proposal raises allegations of prematurity but the emerging SWDP is in a state of disarray at the close of this Inquiry, its housing requirement is going up rather than down, and there is an acceptance that further sustainable sites will be required. Any harm is certainly not of a degree of significance so as to outweigh the clear benefits in relation to sustainable development, which the proposals would provide, either substantially or demonstrably or at all.[4.82]

CONCLUSION

8.160 Having examined the evidence before the Inquiry it is my view that planning permission should be granted for the appeal proposal. The evidence before me shows the need for this site and its suitability. Measured against the fact that the proposal would bring about substantial and tangible benefits, the Council's case is not well made and it has been bolstered by the objections of local residents to a large extent. The lack of substantive evidence put forward by SOGOS or by other local objectors only highlights that fact.

8.161 The evidence put forward by the Council was substantive but not persuasive. In my view upon analysis the Council's evidence did not support the RFR which the members imposed. Instead there is a strong positive case for development of the appeal site and one which would bring about significant benefits in terms of addressing housing requirements for all people in South Worcestershire and Wychavon. That is not simply in relation to the need for market housing but the development also addresses the needs of those who are unable through their own socio-economic circumstances to meet their housing requirements and are currently forced to live in unsuitable and unsatisfactory homes. The proposals would assist in providing jobs. Overall in the light of the evidence before the Inquiry, I recommend the SoS to grant planning permission for Appeal Site B subject to the imposition of conditions.

RECOMMENDATIONS

9.1 I recommend that Appeal A be allowed and planning permission be granted subject to conditions.

9.2 I recommend that Appeal B be allowed and planning permission be granted subject to conditions.

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APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Miss Nadia Sharif of Counsel	Instructed and assisted by Ian Marshall Solicitor to Wychavon District Council
She called	Malcolm Brown FRICS MRTPI Sue Illman BA DipLA Grad Dip (Cons) AA and PLI HonFSE Heather Peachey – Projects & Development Officer WDC Pritpal Singh-Swarn - Solicitor - Wright Hassall Karen Hanchett - Worcestershire County Council

FOR APPELLANT A:

Mr Jeremy Cahill QC Assisted by Victoria Hutton	Instructed by Patrick Downes, Harris Lamb
He called	Anthony Bateman BA (Hons) TP MRICS MRTPI MCMI MIOD FRSA Alison Potterton BA DipLA CMLI Simon Tucker BSc (Hons) MCIHT Patrick Downes BSc (Hons) MRICS Richard Engledow I Eng ACIWEM Mark Williams BSc (Hons) CEng MIMMM

FOR APPELLANT B:

Mr Ian Dove QC Assisted by Suella Fernandes	Instructed by Chris May, Pegasus Group
He called	Jeremy Peachey BSc (Hons) M.LD CMLI Philip Jones BSc (Hons) CEng MICE MCHIT MITE FIHE Chris May BA (Hons) MRTPI

FOR SAVE OUR GREEN OPEN SPACES (SOGOS)

Miss Nina Pindham of Counsel	Instructed by SOGOS
She called	Richard Pettitt BSc CEng CWEM FICE FCIHT MCIWEM Stephen Stoney BA (Hons) MRTPI

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INTERESTED PERSONS:

Mr Richard Giugno	Local Resident
Mr Mike Bowler	Local Resident
Mr Tony Miller	District Councillor and Ward Member
Mr Ken Jennings	District Councillor and Ward Member
Mr Richard Morris	District Councillor[266]
Barbara Meddings	Salwarpe Parish Council
Mrs Judy Pearce	District Councillor and Deputy Leader of WDC
Mr John Brass	Local Resident
Mr Patrick Davies	Droitwich Spa Civic Society
Mr Robert Brewer	Worcestershire's Youth Cabinet
Mr Neil Franks	Local Resident
Mr Christopher Hartwright	Tibberton Parish Council
Mr Philip Powell	Local Resident

INQUIRY DOCUMENTS

INQ1 Notification Letter
INQ2 Written representations submitted following the issue of the SoS's Direction to recover the applications
INQ3 Statement of Common Ground on General Planning Matters
INQ4 Additional comments received from WDC, Harris Lamb and Pegasus Group following the issue of DCLG's new Planning Practice Guidance on 6 March 2014

ADDITIONAL DOCUMENTS SUBMITTED ON BEHALF OF WYCHAVON DISTRICT COUNCIL

C1 Opening Statement
C2 CIL Compliance Statement (Appeal A)
C3 CIL Compliance Statement (Appeal B) including s106 Agreement final signed version dated 11 February 2014
C4 Site visit route plans
C4a Site visit itinerary
C5 Letter to Inspector Clews dated 31 January 2014 (SWDP additional information)
C6 Report by AMION Consulting dated January 2014 (SWDP additional information)
C7 Suggested Conditions (Appeal A)
C8 Suggested Conditions (Appeal B)
C9 South Worcestershire Development Plan – Droitwich Spa Proposals Map January 2013
C10 Housing Land Supply Position Statement between Wychavon District Council, Barberry (Appellant A) and Persimmon Homes (Appellant B)
C11 SWDP Position Statement
C12 Costs Rebuttal
C13 Leasowes Road and Laurels Road, Offenham Appeal Decision (Ref: 2203924) dated 7 February 2014

[266] Councillor Morris was unable to attend the Inquiry so his statement was read out by Councillor Jennings

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C14 List of attendees at site visit (Part 1) on 12 February 2014
C15 Closing Submissions

ADDITIONAL DOCUMENTS SUBMITTED ON BEHALF OF THE APPELLANTS

Appeal A – Barberry Droitwich Ltd

BDL1 Ecological update by Countryside Consultants Limited
BDL2 Brine Run letter by Atkins dated 27 January 2014
BDL3 Foul Water letter from Adkins dated 24 January 2014
BDL4 Archaeology letter from Adkins dated 27 January 2014
BDL5 Section 106 final signed version dated 14 February 2014
BDL6 Schedule of Application Documents and Plans
BDL7 Addendum Proof of Evidence from Simon Tucker
BDL8 Opening Statement
BDL9 Letter to PINS dated 28 May 2013 regarding the SWDP EiP submission
BDL10 Transportation Statement of Common Ground
BDL11 Extract from Worcestershire County Council Landscape Character Assessment – Primsland Settled Farmlands with Pastoral Land Use
BDL12 Droitwich Spa Walking and Cycling Map
BDL13 Schedule of Plans submitted with the application
BDL14 Green Belt Plan in relation to the appeal site
BDL15 Hybrid Masterplan (for use during site visit)
BDL16 Note from Mr Bateman in response to Mr Giugno's evidence on population statistics/projections
BDL17 Distribution of development proposed by the SWDP
BDL18 List of allocations in the SWDP – relationship to Local Plan settlement boundary
BDL19 Note from Mr Bateman responding to Interested Person's comments on housing demand and Wychavon District Council's C5 and C6 documents
BDL20 Costs Application
BDL21 Closing Submissions
BDL22 Atkins witness details

Appeal B - Persimmon Homes Ltd

P1 List of plans and documents submitted with the planning application
P1a List of plans and documents submitted after the planning application
P2 Green Infrastructure analysis
P3 Landscape character areas document
P4 Hampton Bishop Parish Council High Court decision
P5 Opening Submissions
P6 Section 106 final version dated 11 February 2014
P7 Calculations in respect of safe stopping distances
P8 Letter dated 30 January from GRM Development Solutions regarding Brine Runs
P9 Appeal decision and cost decision from East Staffordshire Borough Council (ref: 2193657) dated 12 February 2014
P10 Costs Application
P11 Closing Submissions
P12 Joint Closing Submissions on Main Matter 3

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ADDITIONAL DOCUMENTS SUBMITTED BY SOGOS

SOGOS1	Petition with 3,470 signatures
SOGOS2	Opening Submissions
SOGOS3	Clitheroe Appeal Decision dated 23 January 2014
SOGOS4	Photographs and map of highway junction in relation to the Clitheroe Appeal Decision
SOGOS5	Calculation of major road stopping sight distances inc. plan
SOGOS6	Letter of instruction for Stephen Stoney
SOGOS7	Letter from PINS confirming agreed deadline for submission of statements
SOGOS8	Letter of instruction for Richard Pettitt
SOGOS9	Table of housing permissions since appeal proposed submitted
SOGOS10	Closing Submissions

INTERESTED PERSONS' DOCUMENTS

IP1	Statement/presentation by Mr Giugno
IP2	Statement by Mr Bowler
IP3	Statement by Councillor Miller
IP4	Statement by Councillor Jennings
IP5	Statement by Councillor Morris (read by Councillor Jennings at the Inquiry)
IP6	Statement by Barbara Meddings, Salwarpe Parish Council
IP7	Statement by Councillor Mrs Pearce
IP8	Statement by Mr Brass
IP9	Statement by Mr Davies, Droitwich Spa Civic Society
IP10	Statement by Mr Brewer
IP11	Statement by Mr Franks
IP12	Statement by Mr Hartwright, Tibberton Parish Council

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ANNEX - RECOMMENDED CONDITIONS

APPEAL A - Appeal Ref: APP/H1840/A/13/2199085

Commencement and Phasing of Development

1) Application for approval of reserved matters for phase 1 (which will include a minimum of 200 dwellings) shall be made to the Local Planning Authority before the expiration of 12 months from the date of this outline permission. The development hereby permitted shall be begun before the expiration of 12 months from the date of approval of the first reserved matters application.

2) No development shall take place within any phase of the development without the prior approval of the details of the siting, design and external appearance of the building(s), the means of access thereto (save for the details of vehicular access into the site from Primsland Way and Pulley Lane) and the landscaping, including the provision of the on-site recreation/open play space, of the site (hereinafter called "the reserved matters") which shall be obtained from the Local Planning Authority in writing before any development is commenced.

3) No development shall take place until a Phasing Plan for the development hereby permitted has been submitted to and approved in writing by the Local Planning Authority. The Phasing Plan shall include details of:

   i) the timing of the provision of infrastructure to serve the proposed development (including road improvements and drainage facilities) in relation to the provision of any new residential units;
   ii) the timing of biodiversity, SUDS and strategic landscaping features;
   iii) the timing of the provision of on-site recreation/open play space in relation to the provision of any new residential units; and
   iv) the timing of the provision of the local centre, bowls and sports facilities and the care home.

   The development shall be carried out in accordance with the approved Phasing Plan.

Drawings and Plans

4) The development hereby permitted shall be carried out in accordance with the following approved plans and associated documents:

   - 9004 Rev C - Red line site location plan, reference no. (June 2012)
   - 9308 Rev H - Concept Masterplan, reference (June 2012)
   - 10154-63 – Proposed Improvements at Martin Hussingtree
   - 10154-64 – Newlands Road / Primsland Way Access
   - 10154-68 – A38 / Pulley Lane Improvement
   - 10154-69 – Pulley Lane Road Improvements Section 2
   - 10154-70 – Pulley Lane Road Improvements Section 3
   - 10154-71 – Pulley Lane Road Improvements Section 4
   - 10154-72 – Pulley Lane Road Improvements Section 5
   - 10154-73 – Pulley Lane Road Improvements Section 6

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- 10154-74 – Pulley Lane Road Improvements Section 6
- 5090327/HWY/001 Rev C – Newland Road Bus Link Preliminary Design
- P0371-DR5-0-010 Rev C – Illustrative Landscape Masterplan
- P0152-DR5-010-012 Rev A – Newland Road Trees / Embankment Appraisal
- P0152-DR-5-020-023 Rev A – Newland Road Cross sections
- P0371-5-01-05 – Newland Road cross sections
- Design and Access Statement (May 2011)
- Design and Access Statement and Addendum (July 2012)
- Supporting Planning Statement and Addendum (July 2012)
- Drainage Strategy (May 2011)
- Water Management Strategy (May 2011)
- Environmental Statement and Non-Technical Summary (May 2011)
- Flood Risk Assessment (May 2011)
- Sustainability Appraisal (May 2011)
- Transportation Assessment (May 2011) and Addendum (July 2012)
- Technical note on water treatment matters by Atkins (July 2012)

5) All future applications for the approval of reserved matters shall be broadly in accordance with:

i) the principles and parameters described and illustrated in the Design & Access Statement dated May 2011 and July 2012 addendum with regard to the general areas of development and approximate floor areas;
ii) amended Parameter Plan 3: Building Heights - Revision E dated December 2013; and
iii) the Landscape Design Strategy – Revision B dated July 2012 and drawing no. P0152 attached therein.

All reserved matters applications shall include a statement providing an explanation as to how the design of the development responds to the details submitted as part of the outline application.

Roads, Parking and Travel

6) No development, other than the proposed highway works listed below, shall take place until details of:

i) the improvements, including the widening to 5.5m, to Pulley Lane (as indicated on DTA Drawings 10154-69/70/71/72 and 73) have been submitted to and approved in writing by the Local Planning Authority, and fully implemented in accordance with those approved details;

ii) the improvements to the Pulley Lane/A38 junction (as indicated on DTA Drawing 10154-68) have been submitted to and approved in writing by the Local Planning Authority, and fully implemented in accordance with those approved details prior to the occupation of the 1st dwelling;

iii) the bus, walk and cycle link to Primsland Way together with junction improvements on Primsland Way (as indicated on DTA Drawing 10154-64) have been submitted to and approved in writing by the Local Planning Authority, and fully implemented prior to the occupation of the 100th dwelling in accordance with those approved details; and

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iv) the improvements to the A38/A4538 junction at Martin Hussingtree (as indicated on DTA Drawing 10154-63) have been submitted to and approved in writing by the Local Planning Authority, and fully implemented prior to the occupation of the 100th dwelling in accordance with those approved details.

7) No development shall take place within each reserved matter until the engineering details and specification of the proposed residential roads, cycle ways, footways, footpaths and highway drains have been submitted to and approved in writing by the Local Planning Authority. The dwellings shall not be occupied until the road works necessary to provide access from the publicly maintained highway to those dwellings have been completed in accordance with the approved details.

8) No development shall take place until a revised travel plan, including targets for modal shift, has been submitted to and approved in writing by the Local Planning Authority. The revised travel plan should contain targets for mode share shifts in order to reduce car travel and increase travel by more sustainable transport modes. Such target must be achieved within 5 years of the first occupation of any property hereby approved. In the event of failing to meet these targets at the end of the 5 year period, a revised residential travel plan shall be submitted to and approved in writing by the Local Planning Authority to address any shortfalls, and where necessary make provision for and promote improved sustainable forms of access to the site. The residential travel plan thereafter shall be implemented and updated in agreement with the Local Planning Authority.

9) The development hereby permitted shall not be occupied until the individual vehicular accesses, entrance, turning areas and driveways/parking spaces have been constructed in accordance with details to be submitted to and approved in writing by the Local Planning Authority and these areas shall thereafter be retained and kept available for those uses at all times.

10) No development shall take place within any phase until a scheme for the provision of secure cycle parking for the apartments, commercial premises, leisure and care facility hereby approved has been submitted to and approved in writing by the Local Planning Authority and thereafter shall be fully implemented in accordance with those approved details prior to the first occupation of those uses and maintained thereafter in perpetuity.

Noise and Construction Management

11) No development shall take place until a noise mitigation scheme designed to minimise the impact from road traffic such that the noise levels within the gardens of the proposed dwellings do not exceed the recommendations set out in BS8223:1999 Sound Insulation and Noise Reduction for Buildings has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details.

12) No development shall take place within the phase of the development which contains the proposed local centre until a scheme for sound attenuation has

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been submitted to and approved in writing by the Local Planning Authority. The approved sound attenuation scheme shall be fully implemented in accordance with those approved details prior to the first occupation of any of the commercial uses contained within the local centre.

13) No development, including demolition or construction activities, shall take place until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The plan should include the following:

i) details of how to minimise the impact of noise, vibration and dust etc. from construction and demolition activities and the traffic associated with this development, including a scheme for wheel cleaning;
ii) details of how to restrict the means of vehicular access for site operatives and construction traffic to the development from A38 and Pulley Lane only;
iii) details in relation to the prevention of pollution of waterways;
iv) the provision of temporary drainage measures;
v) details of all temporary contractors buildings, plant, storage of materials and parking for site operatives;
vi) delivery times; and
vii) restrictions on burning.

The development hereby permitted shall be carried out in accordance with the approved measures.

Contaminated Land

14) No development shall take place on any phase of the development until that phase has been subject to a detailed scheme for investigation and recording of contamination of the land and risks to the development, its future uses and surrounding environment. A detailed written report on the findings including proposals and a programme for the remediation of any contaminated areas and protective measures to be incorporated into the buildings shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include proposals for the disposal of surface water during remediation. The remediation works shall be carried out and a validation report shall be submitted to and approved in writing by the Local Planning Authority in accordance with the approved proposals and programme. If during the course of the development further evidence of any type relating to other contamination is revealed, work at the location will cease until such contamination is investigated and remediation measures, approved in writing by the Local Planning Authority have been implemented.

15) No development shall take place until full details of any soil or soil forming materials brought on to the site for use in garden areas, soft landscaping, filling and level raising have been submitted to and approved in writing by the Local Planning Authority. Where the donor site is unknown or is brownfield the material must be tested for contamination and suitability for use on site. Full donor site details, proposals for contamination testing including testing schedules, sampling frequencies and allowable contaminant concentrations (as determined by appropriate risk assessment) must be submitted to and

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approved in writing by the Local Planning Authority prior to import on to the site. The approved testing must then be carried out and validatory evidence (such as laboratory certificates) submitted to and approved in writing by the Local Planning Authority prior to any soil or soil forming materials being brought on to site.

Archaeology

16) No development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.

Landscaping, Trees and Nature Conservation

17) Each application for reserved matters shall include:

a) An Arboricultural Impact Assessment in accordance with BS5837 and an Arboricultural Method Statement for the protection of trees and hedges during construction; and

b) A landscape scheme which shall include:

i) a plan(s) showing the planting layout of proposed tree, hedge, shrub and grass areas;
ii) a schedule of proposed planting - indicating species, size at time of planting and numbers/densities of plants;
iii) a written specification for root barriers and other measures to be used to ensure planting as outlined in the landscape strategy is achievable in relation to proposed built form;
iv) a written specification outlining cultivation and others operations associated with plant and grass establishment. This shall include details of soil crates for the planting of semi-mature street trees, or any tree planted in a location where its root run will be restricted;
v) proposed finished levels or contours;
vi) means of enclosure and boundary treatments; and
vii) a schedule of maintenance, including watering and the control of competitive weed growth, for a minimum period of five years from first planting.

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18) No development shall take place until full details of an Ecological Mitigation and Enhancement Strategy based on up-to-date survey information is submitted to and approved in writing by the Local Planning Authority. The details shall include:

i) updated ecological surveys including a dedicated bat survey;
ii) a review of the site's ecological constraints and potential;
iii) a description of target habitats and range of species appropriate for the site;
iv) extent and location of proposed works;

v) details of precautionary and protection measures to ensure protected species and retained habitats are not harmed during and after construction;
vi) appropriate strategies for creating/restoring target habitats or introducing target species;
vii) method statement for site preparation and establishment of target features;
viii) sources of habitat materials (e.g. plant stock); and
ix) timing of the works.

The Ecological Mitigation and Enhancement Strategy shall be implemented in accordance with the Nature Conservation Management Plan.

19) No development shall take place until a Nature Conservation Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall include:

i) description and evaluation of features to be managed;
ii) ecological trends and constraints on site that may influence management;
iii) aims and objectives of management;
iv) appropriate management options for achieving aims and objectives;
v) prescriptions of management actions;
vi) preparation of work schedule, including a 5 yearly project register, an annual work plan and the means by which the plan will be rolled forward over a 25 year period;
vii) personnel responsible for implementation of the plan; and
viii) monitoring and remedial/contingency measures triggered by monitoring.

The plan shall be carried out fully in accordance with the approved details.

20) 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) an appropriate scale plan showing 'ecological protection zones' where construction activities are restricted and where protective measures will be installed or implemented;
ii) details of protective measures (both physical measures and sensitive working practices) to avoid impacts during construction;
iii) a Methodology Statement to demonstrate construction activities will be undertaken so as to avoid impact on those parts of the site subject to periods of the year when activities could be harmful, such as the bird nesting and other wildlife breeding or hibernation seasons in accordance with the Nature Conservation Management Plan; and
iv) persons/contractors responsible for:

(a) compliance with legal consents relating to nature conservation;
(b) compliance with planning conditions relating to nature conservation;
(c) installation of physical protection measures during construction;

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(d) implementation of sensitive working practices during construction;
(e) regular inspection and maintenance of physical protection measures and monitoring of working practices during construction;
(f) provision of training and information about the importance of 'Ecological Protection Zones' to all construction personnel on site.

The Construction Environmental Management Plan shall be carried out fully in accordance with the approved details.

Renewable Energy

21) Notwithstanding the information submitted with the application, no development shall take place until the following details have been submitted to and approved in writing by the Local Planning Authority:

i) details on how renewable energy measures are to be incorporated into the proposed development;
ii) details of measures to conserve and recycle water to be incorporated into the proposed development;
iii) details of energy efficiency measures to be incorporated into the proposed development; and
iv) details of construction materials to be used in the proposed development with the aim of minimising the use of primary non-sustainable materials.

The approved measures shall be implemented and incorporated into the approved development in line with an implementation timetable to be submitted and approved in writing by the Local Planning Authority prior to the commencement of development.

Lighting

22) No development shall take place until details of a lighting scheme to serve the proposed development have been submitted to and approved by the Local Planning Authority. The lighting scheme shall be designed to reduce effects upon sensitive habitats to be retained/created on the site. The details shall include an implementation timetable and the approved lighting scheme shall be provided in accordance with the approved details in perpetuity and agreed implementation timetable.

Floor Space

23) The total retail uses (A1, A2, A3, A4, A5) and B1 (a) office floor space shall not exceed 2,500 sq. metres.

Drainage and Flood Risk

24) No development shall take place until a phased drainage scheme incorporating sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development in relation to the disposal of

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surface water and foul sewage has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before development is first brought into use.

25) Each application for reserved matters shall include for the approval by the Local Planning Authority details of proposed surfacing materials and surface water drainage including:

i) a plan showing proposed layout and types of surfacing, including permeable paving in appropriate locations as an integrated part of an overall Sustainable Urban Drainage System (SUDS) for the development. The surfacing materials selected shall be of a design and quality appropriate to the location;
ii) a written specification of proposed surfacing materials and operations;
iii) the range of SUDS components to be used at source, site and regional control levels. These should be used comprehensively and appropriately in accordance with best practice as laid out in the CIRIA Guidance manuals, with consideration given in the first instance to utilising water management through soft features and at ground level;
iv) mechanisms to integrate the SUDS scheme with the Green Infrastructure proposals to maximise the potential for improved biodiversity, visual amenity and water quality; and
v) methods for the protection of SUDS and Green Infrastructure during each phase of construction to ensure that 'soft SUDS' are adequately established prior to bringing into beneficial use.

26) There must be no new buildings, structures (including gates, walls and fences) or raised ground levels within 8 metres of the top of any bank of watercourse and/or of any side of an existing culverted watercourse either inside or along the boundary of the site.

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RECOMMENDED CONDITIONS

APPEAL B - Appeal Ref: APP/H1840/A/13/2199426

Commencement and Phasing of Development

1) Application for approval of reserved matters for phase 1 (which will include a minimum of 150 dwellings) shall be made to the Local Planning Authority before the expiration of 12 months from the date of this outline permission. The development hereby permitted shall be begun before the expiration of 12 months from the date of approval of the first reserved matters application.

2) No development shall take place within any phase of the development without prior approval of the details of the siting, design and external appearance of the building(s), the means of access thereto (save for the details of vehicular access into the site from Newland Lane) and the landscaping, including the provision of the on-site recreation/open play space, of the site (hereinafter called "the reserved matters") which shall be obtained from the Local Planning Authority in writing before any development is commenced.

3) No development shall take place until a Phasing Plan including details of phasing for the approved development has been submitted to and approved in writing by the Local Planning Authority. The Phasing Plan shall include details of:

   i) the timing of the provision of infrastructure to serve the proposed development (including road improvements and drainage facilities) in relation to the provision of any new residential units;
   ii) the timing of biodiversity, SUDS and strategic landscaping features; and
   iii) the timing of the provision of on-site recreation/open play space in relation to the provision of any new residential units.

   The development shall be carried out in accordance with the approved Phasing Plan.

Drawings and Plans

4) The development hereby permitted shall be carried out in accordance with the following approved plans and associated documents:

   - Drawing no. P.0742_08 - Site Location Plan
   - Drawing no. P.0742_01D - Illustrative Sketch Masterplan
   - Planning Statement prepared by Pegasus Group (October 2012)
   - Design and Access Statement prepared by Pegasus Group (October 2012)
   - Landscape and Visual Appraisal prepared by Pegasus Group (October 2012)
   - Energy Statement/Carbon Analysis Report prepared by FES (October 2012)
   - Ecological Report prepared by Betts Ecology (November 2011)
   - Arboricultural Survey prepared by Betts Ecology (November 2011)
   - Heritage Assessment prepared by Cotswold Archaeology (December 2011)
   - Ground Conditions Report prepared by GRM (December 2011)
   - Noise Report prepared by Hoare Lea (October 2012)
   - Transport Assessment prepared by Travis Baker (November 2012)

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- Travel Plan prepared by Travis Baker (November 2012)
- Flood Risk Assessment, including Drainage Strategy prepared by Travis Baker (November 2012)

5) All future applications for the approval of reserved matters shall be broadly in accordance with the principles and parameters described and illustrated in the Design & Access Statement dated October 2012 with regard to:

i) the general areas of development as outlined in the Indicative Masterplan;
ii) the Buildings Heights Plan; and
iii) the Landscape and Green Infrastructure Strategy Plan.

All reserved matters applications shall include a statement providing an explanation as to how the design of the development responds to the details submitted as part of the outline application.

Roads, Parking and Travel

6) No more than 200 of the dwellings hereby approved shall be occupied until details of means to form a secondary emergency vehicular access to the development have been submitted to and approved in writing by the Local Planning Authority, and the scheme has been constructed in accordance with the approved details.

7) No development, other than the proposed highway works listed below, shall take place until details of:

i) the improvements, including the widening to 5.5m, to Pulley Lane have been submitted to and approved in writing by the Local Planning Authority, and fully implemented in accordance with those approved details;

ii) the improvements to the Pulley Lane/A38 junction have been submitted to and approved in writing by the Local Planning Authority, and fully implemented in accordance with those approved details prior to the occupation of the 1st dwelling; and

iii) the improvements to provide pedestrian links between the eastern boundary of the development site through Nightingale Close and Jackdaw Lane to Tagwell Road have been submitted to and approved in writing by the Local Planning Authority, and fully implemented prior to the occupation of the 75th dwelling in accordance with those approved details.

8) No development shall take place until the engineering details and specification of the proposed residential roads, cycle ways, footways, footpaths and highway drains have been submitted to and approved in writing by the Local Planning Authority. The dwellings shall not be occupied until the road works necessary to provide access from the publicly maintained highway to those dwellings have been completed in accordance with the details submitted to and approved in writing by the Local Planning Authority.

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9) The Residential Travel Plan (RTP) hereby approved, dated November 2012 and produced by Travis Baker, shall be implemented and monitored in accordance with the regime contained within the RTP. The targets for mode share shifts set out in the RTP, in order to reduce car travel and increase travel by more sustainable transport modes, must be achieved within 5 years of the first occupation of any property hereby approved. In the event of failing to meet these targets at the end of the 5 year period, a revised RTP shall be submitted to and be approved in writing by the Local Planning Authority to address any shortfalls, and where necessary make provision for and promote improved sustainable forms of access to the site. The RTP thereafter shall be implemented and updated in agreement with the Local Planning Authority.

10) The development hereby permitted shall not be occupied until the individual vehicular accesses, entrance, turning areas and driveways/parking spaces have been constructed in accordance with details to be submitted to and approved in writing by the Local Planning Authority and these areas shall thereafter be retained and kept available for those uses at all times.

Noise and Construction Management Plan

11) No development shall take place until a noise mitigation scheme designed to minimise the impact from road traffic such that the noise levels within the gardens of the dwellings do not exceed the recommendations set out in *BS8223:1999 Sound Insulation and Noise Reduction for Buildings* has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details.

12) No development, including demolition or construction activities, shall take place until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The plan should include the following:

i) details of how to minimise the impact of noise, vibration and dust etc. from construction and demolition activities and the traffic associated with this development, including a scheme for wheel cleaning;
ii) details of how to restrict the means of vehicular access for site operatives and construction traffic to the development from A38 and Pulley Lane only;
iii) details in relation to the prevention of pollution of waterways;
iv) the provision of temporary drainage measures;
v) details of all temporary contractors buildings, plant, storage of materials and parking for site operatives;
vi) delivery times; and
vii) restrictions on burning.

The development hereby permitted shall be carried out in accordance with the approved measures.

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Contaminated Land

13) No development shall take place on any phase of the development until that phase has been subject to a detailed scheme for investigation and recording of contamination of the land and risks to the development, its future uses and surrounding environment. A detailed written report on the findings including proposals and a programme for the remediation of any contaminated areas and protective measures to be incorporated into the buildings shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include proposals for the disposal of surface water during remediation. The remediation works shall be carried out and a validation report shall be submitted to and approved in writing by the Local Planning Authority in accordance with the approved proposals and programme. If during the course of the development further evidence of any type relating to other contamination is revealed, work at the location will cease until such contamination is investigated and remediation measures, approved in writing by the Local Planning Authority have been implemented.

14) No development shall take place until full details of any soil or soil forming materials brought on to the site for use in garden areas, soft landscaping, filling and level raising have been submitted to and approved in writing by the Local Planning Authority. Where the donor site is unknown or is brownfield the material must be tested for contamination and suitability for use on site. Full donor site details, proposals for contamination testing including testing schedules, sampling frequencies and allowable contaminant concentrations (as determined by appropriate risk assessment) must be submitted to and approved in writing by the Local Planning Authority prior to import on to the site. The approved testing must then be carried out and validatory evidence (such as laboratory certificates) submitted to and approved in writing by the Local Planning Authority prior to any soil or soil forming materials being brought on to site.

Archaeology

15) No development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.

Landscaping, Trees and Nature Conservation

16) Each application for reserved matters shall include:

a) An Arboricultural Impact Assessment in accordance with BS5837 and an Arboricultural Method Statement for the protection of trees and hedges during construction; and

b) A landscape scheme which shall include:

i) a plan(s) showing the planting layout of proposed tree, hedge, shrub and grass areas;

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ii) a schedule of proposed planting - indicating species, size at time of planting and numbers/densities of plants;
iii) a written specification for root barriers and other measures to be used to ensure planting as outlined in the landscape strategy is achievable in relation to proposed built form;
iv) a written specification outlining cultivation and others operations associated with plant and grass establishment. This shall include details of soil crates for the planting of semi-mature street trees, or any tree planted in a location where its root run will be restricted;
v) proposed finished levels or contours;
vi) means of enclosure and boundary treatments; and
vii) a schedule of maintenance, including watering and the control of competitive weed growth, for a minimum period of five years from first planting.

17) No development shall take place until full details of an Ecological Mitigation and Enhancement Strategy based on up-to-date survey information is submitted to and approved in writing by the Local Planning Authority. The details shall include:

i) updated ecological surveys including a dedicated bat survey;
ii) a review of the site's ecological constraints and potential;
iii) a description of target habitats and range of species appropriate for the site;
iv) extent and location of proposed works;
v) details of precautionary and protection measures to ensure protected species and retained habitats are not harmed during and after construction;
vi) appropriate strategies for creating/restoring target habitats or introducing target species;
vii) method statement for site preparation and establishment of target features;
viii) sources of habitat materials (e.g. plant stock); and
ix) timing of the works.

The Ecological Mitigation and Enhancement Strategy shall be implemented in accordance with the Nature Conservation Management Plan.

18) No development shall take place until a Nature Conservation Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Plan shall include:

i) description and evaluation of features to be managed;
ii) ecological trends and constraints on site that may influence management;
iii) aims and objectives of management;
iv) appropriate management options for achieving aims and objectives;
v) prescriptions of management actions;
vi) preparation of work schedule, including a 5 yearly project register, an annual work plan and the means by which the plan will be rolled forward over a 25 year period;

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vii) personnel responsible for implementation of the plan; and
viii) monitoring and remedial/contingency measures triggered by monitoring.

The plan shall be carried out fully in accordance with the approved details.

19) 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) an appropriate scale plan showing 'ecological protection zones' where construction activities are restricted and where protective measures will be installed or implemented;
ii) details of protective measures (both physical measures and sensitive working practices) to avoid impacts during construction;
iii) a Methodology Statement to demonstrate construction activities will be undertaken so as to avoid impact on those parts of the site subject to periods of the year when activities could be harmful, such as the bird nesting and other wildlife breeding or hibernation seasons in accordance with the Nature Conservation Management Plan; and
iv) persons/contractors responsible for:

(a) compliance with legal consents relating to nature conservation;
(b) compliance with planning conditions relating to nature conservation;
(c) installation of physical protection measures during construction;
(d) implementation of sensitive working practices during construction;
(e) regular inspection and maintenance of physical protection measures and monitoring of working practices during construction;
(f) provision of training and information about the importance of 'Ecological Protection Zones' to all construction personnel on site.

The Construction Environmental Management Plan shall be carried out fully in accordance with the approved details.

Renewable Energy

20) Notwithstanding the information submitted with the application, no development shall take place until the following details have been submitted to and approved in writing by the Local Planning Authority:

i) details on how renewable energy measures are to be incorporated into the proposed development;
ii) details of measures to conserve and recycle water to be incorporated into the proposed development;
iii) details of energy efficiency measures to be incorporated into the proposed development; and
iv) details of construction materials to be used in the proposed development with the aim of minimising the use of primary non-sustainable materials.

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The approved measures shall be implemented and incorporated into the approved development in line with an implementation timetable to be submitted and approved in writing by the Local Planning Authority prior to the commencement of development.

External Lighting

21) No development shall take place until details of a lighting scheme to serve the proposed development have been submitted to and approved in writing by the Local Planning Authority. The lighting scheme shall be designed to reduce effects upon sensitive habitats to be retained/created on the site. The details shall include an implementation timetable and the approved lighting scheme shall be provided in accordance with the approved details in perpetuity and implementation timetable.

Drainage and Flood Risk

22) No development shall take place until a drainage scheme incorporating sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development in relation to the disposal of surface water and foul sewage has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before development is first brought into use.

23) Each application for reserved matters shall include for the approval by the Local Planning Authority details of proposed surfacing materials and surface water drainage including:

i) a plan showing proposed layout and types of surfacing, including permeable paving in appropriate locations as an integrated part of an overall Sustainable Urban Drainage System (SUDS) for the development. The surfacing materials selected shall be of a design and quality appropriate to the location;
ii) a written specification of proposed surfacing materials and operations;
iii) the range of SUDS components to be used at source, site and regional control levels. These should be used comprehensively and appropriately in accordance with best practice as laid out in the CIRIA Guidance manuals, with consideration given in the first instance to utilising water management through soft features and at ground level;
iv) mechanisms to integrate the SUDS scheme with the Green Infrastructure proposals to maximise the potential for improved biodiversity, visual amenity and water quality; and
v) methods for the protection of SUDS and Green Infrastructure during each phase of construction to ensure that 'soft SUDS' are adequately established prior to bringing into beneficial use.

24) There must be no new buildings, structures (including gates, walls and fences) or raised ground levels within 8 metres of the top of any bank of watercourse and/or of any side of an existing culverted watercourse either inside or along the boundary of the site.

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Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;
The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

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