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## Appeal Decision

Inquiry held on 6-10 January 2014

Site visit made on 10 January 2014

**by Mike Fox BA (Hons) Dip TP MRTPI**

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

**Decision date: 7 February 2014**

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**Appeal Ref: APP/H1840/A/13/2203924**

**Land between Leasowes Road and Laurels Road, Offenham, Worcestershire, WR11 8RE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by David Wilson Homes (Mercia) Ltd against the decision of Wychavon District Council.
  - The application Ref W/13/00696/PN, dated 28 March 2013, was refused by notice dated 22 August 2013.
  - The development proposed is the development of 50 dwellings with 40% affordable.
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### Decision

1. The appeal is allowed and planning permission is granted for the development of 50 dwellings with 40% affordable at land between Leasowes Road and Laurels Road, Offenham, Worcestershire, WR11 8RE in accordance with the terms of the application, Ref W/13/00696/PN, dated 28 March 2013, and the plans submitted with it, subject to the conditions set out in the attached schedule below.

### Application for costs

2. At the Inquiry an application for costs was made by David Wilson Homes (Mercia) Ltd against Wychavon District Council. This application is the subject of a separate decision.

### Procedural matters

3. The appeal application was originally for 30% of the total scheme to be for affordable housing, but this was changed to 40% before its consideration by the Council, following discussions with Council officers.
4. A Section 106 Planning Obligation, dated 16 January 2014, has been signed by Wychavon District Council, Worcestershire County Council and other interested parties, to secure 40% affordable housing on the site, contributions towards a bus shelter, cycling strategy, education facilities in local schools, off-site community buildings/formal public open space/formal sports, public art and the provision of on-site public open space. I return to the Planning Obligation later in my decision.
5. Several of the drawings which comprise part of the appeal application were the subject of relatively minor amendments, primarily related to numbering, and a 'final' set of plans was presented to me at the Inquiry. I have based my

decision on this final set of plans, none of which were challenged by the Council, and I do not consider that my having done so has prejudiced the interests of any party.

6. A Statement of Common Ground (SCG), dated October 2013, sets out the issues that are not in dispute between the main parties, which can be summarised as: design matters, in terms of open market house mix, vehicular access, foul and surface water drainage and flood risk, land contamination, archaeological interest, management arrangements for the public open space and the heads of terms under a S 106 Planning Obligation. The SCG also identifies the principal areas still in dispute between the main parties, which approximate to the main issues which I set out below. I have taken account of this document in determining the appeal.
7. A significant number of planning appeal decisions, Secretary of State Decisions and High Court Judgments were drawn to my attention, both in written evidence, and during the Inquiry. In the interests of conciseness, I have been selective in those that I have specifically referred to in my decision, although I have taken all of them into consideration.
8. A formal site inspection took place after the close of the Inquiry, which covered all the vantage points as well as the site itself and which also involved visits to several neighbouring properties following individual requests to do so. In addition, I made an unaccompanied site visit to view the site in its context.

### **Main Issues**

9. The main issues are:
  - (a) Whether the Council can demonstrate a 5-year supply of deliverable housing, and the implications of that in relation to national policy and the development plan.
  - (b) Whether the proposed development can be considered sustainable, with particular regard to its connectivity to services and facilities, and open space provision within the site.
  - (c) The effect of the proposed development on the character and appearance of the site and the surrounding area.

### **Reasons**

10. The appeal site is flat, rectangular, open grazing land on the edge of the village of Offenham. It measures about 1.79ha, with a panhandle to the south, where it would access onto Laurels Road. Leasowes Road, to the north of the site, is privately owned. The site borders existing housing to the north, west and south, with more open land adjoining the site to the east. The main part of the village, including the area contained within the *Local Plan*<sup>1</sup> settlement boundary, adjoins the north and west of the site. To the east, scattered housing gives way to open countryside.

#### *5-year supply of deliverable housing*

11. At the heart of national planning policy, the Government aims to boost significantly the supply of housing, as expressed in paragraph 47 of *the*

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<sup>1</sup> *Wychavon District Local Plan*; June 2006.

*Framework*<sup>2</sup>. More recently, the Government has referred to the existence of a nationally identified housing crisis<sup>3</sup>. There was agreement by both the main parties that the need for housing in the District, both for market housing (including homes for first time buyers) and for affordable housing, were material considerations. There was also a common recognition that the provision of housing is integral to successful economic growth, and that this part of the equation was particularly important in an area where economic prospects are considered to be good.

12. As part of the national housing and planning strategy, *the Framework* (paragraph 47 [1] and [2]) requires local planning authorities to identify and update annually a supply of specific, deliverable sites sufficient to provide a five years' worth supply of housing against their objectively assessed housing requirements, with an additional 5% (moved forward from later in the plan period) to ensure choice and competition, increased to 20% where there has been persistent under-delivery of housing.
13. Although the Council accepted that its consistent under-delivery in recent years put it into the 20% category, it also submitted that it had new evidence to demonstrate a 5 years' housing land supply as required by *the Framework*. The Council stated that because of this, significant weight can be attached to its adopted *Local Plan* policy GD1, which seeks to direct most new development to land within defined development boundaries. On the basis of policy GD1, the Council argued that the proposed development (which is located outside the development boundary for Offenham<sup>4</sup>) is contrary to the provisions of the development plan.
14. *The Framework* makes it clear (paragraphs 2 and 12) that the development plan is the starting point for decision making. The revocation of the West Midlands Regional Spatial Strategy (RS) means that this can no longer be given any weight in policy considerations. The Worcestershire Structure Plan is no longer a saved plan and therefore cannot be afforded any weight either. The Council's adopted *Local Plan* is a saved Local Plan under the terms of the Secretary of State's Direction, as articulated in the Government's saving letter of 29 May 2009<sup>5</sup>. However, the letter makes it clear that the policies which are saved under this Direction are only included on the basis that they ensure continuity in the plan-led system and a stable planning framework locally, and in particular, a continual supply of land for development.
15. The letter goes on to state that: "*The exercise of extending saved policies is not an opportunity to delay DPD preparation. LPAs should make good progress with local development frameworks according to timetables in local development schemes.....where policies were adopted some time ago, it is likely that material considerations, in particular the emergence of new national...policy, and also new evidence, will be afforded considerable weight in decisions.*" It is clear therefore that where an authority has not made good progress in its development plan preparation, such as in Wychavon, especially

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<sup>2</sup> Department for Communities and Local Government: National Planning Policy Framework (*the Framework*); March 2012.

<sup>3</sup> In the House of Commons Debate on 24 October 2013, the Planning Minister, Nick Boles, reaffirmed that there is a national housing crisis (see Tetlow King Proof, paragraph 2.27).

<sup>4</sup> Extract from *Local Plan* Proposals Map for Offenham [Inquiry Document 3].

<sup>5</sup> Letter from Government Office for the West Midlands to Wychavon District Council, dated 29 May 2009 [Inquiry Document 34].

- in relation to meeting the requirements of national housing policy, that saved policies such as policy GD1, can only be afforded little weight.
16. *The Framework* states (paragraph 215) that any weight that is given to (local plan) policies will depend on the degree of consistency with *the Framework*. Paragraph 49 also states that relevant policies for the supply of housing cannot be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. In such circumstances, what little weight the *Local Plan* had would be further reduced by the fact that its plan period extended only to 2011.
  17. The emerging development plan, to replace the adopted *Local Plan*, is the Draft *South Worcestershire Development Plan* (SWDP). The SWDP is being prepared jointly by the three south Worcestershire planning authorities – Malvern Hills, Worcester City and Wychavon - for the period 2007-2030. It was submitted for examination on 23 May 2013, and the Inspector's Interim Conclusions on the Stage 1 Matters have now been made public<sup>6</sup>. These Interim Conclusions state that the basis for the three Councils' assessment of housing need in its February 2012 SHMA does not provide a reliable basis for identifying the level of housing need in South Worcestershire over the plan period. The three Councils have therefore been requested to undertake some further analysis in order to derive an objective assessment of housing need over the plan period<sup>7</sup>.
  18. *The Framework* states (paragraph 216) that decision makers may also give weight to relevant policies in emerging plans according to three criteria, the first of which relates to the stage of preparation. The third addresses the consistency with national policy, with housing clearly playing a key role. Given the early stage in the preparation of the SWDP and the fact that at the time of writing its assessment of housing need is not considered by the Examining Inspector to be reliable, I can therefore give little weight to the emerging SWDP.
  19. This means that currently there is a development plan policy vacuum in relation to housing development in Wychavon based on the revocation of the RS, the antiquity of the adopted *Local Plan*, and the early stage of the emerging SWDP.
  20. The Council's submission at the Inquiry was that it had a 5.65 years' supply of housing land<sup>8</sup>. This conclusion was based on the RS Panel dwelling needs target of 475 dwellings per annum (dpa) for Wychavon. The Council argued that these RS figures remained the most recent to have been tested at a public forum and therefore, in the absence of anything more up-to-date, should be used as the basis for calculating whether its housing land supply position was in conformity with the requirements of *the Framework*. I have some sympathy with this view, bearing in mind the policy vacuum that Wychavon finds itself in.
  21. The recent High Court Judgment (HCJ), however, in relation to Hunston Properties<sup>9</sup>, which was upheld at the Court of Appeal Judgment (CAJ)<sup>10</sup>, makes

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<sup>6</sup> Stage 1 of the Examination of the *South Worcestershire Development Plan* (SWDP): Inspector's Interim Conclusions on the Stage 1 Matters; 28 October 2013 [Appendix 18 to Fred Davies' Proof of Evidence].

<sup>7</sup> SWDP Inspector's Interim Conclusions; paragraphs 41 and 44.

<sup>8</sup> Fred Davies' Proof of Evidence, Appendix 1.

<sup>9</sup> High Court Judgment between Hunston Properties Ltd and (1) Secretary of State for Communities and Local Government (2) St Albans City and District Council; 5 September 2013 [Inquiry Document 4].

- it clear that decision makers, including Planning Inspectors, must address paragraph 47 of *the Framework* and identify full, objectively assessed housing needs, which does not include figures in revoked plans. Both the HCJ and CAJ made clear that Inspectors cannot rely on the constrained housing requirement set out in a RS. In the CAJ the judge (Sir David Keene) made it very clear when he stated that: “*I am not persuaded that the Inspector was entitled to use a housing figure derived from a revoked plan, even as a proxy for what the local plan process may produce eventually*”.
22. The CAJ also stated that the time to move away from the full and objectively assessed need to a more constrained figure was during the production of the Local Plan. In view of the emerging SWDP and its Examination, it would therefore be inappropriate for me to consider whether the housing figure for Wychavon should be constrained in relation to this appeal.
23. There are two further considerations which I consider support the Hunston Judgments in relation to the use of RS housing figures for Wychavon. Firstly, the Draft *National Planning Practice Guidance* (NPPG)<sup>11</sup> states that the household projections which formed the basis of the RS assessment of housing need are trend based and could have been suppressed by factors such as historic under-supply and worsening housing affordability. Although the Draft NPPG is currently in draft ‘beta’ format, which limits the weight I can give it, compelling evidence was provided by the appellant to demonstrate that housing under-supply and affordability are serious issues which are likely to drive up the RS target figure for Wychavon.
24. Secondly, the former West Midlands RS aimed to suppress the housing requirement in areas such as South Worcestershire (referred to in the Inquiry as the ‘central crescent’). Instead the RS aimed to target areas with significant amounts of previously developed land and in need of regeneration, such as parts of Birmingham and the other conurbations in the Region. This strategy is no longer material to the appeal following the revocation of the RS.
25. The Hunston Judgments, the Draft NPPG and the revocation of RS all change the strategic planning backdrop to this appeal and bring to the fore the need for local planning authorities to have a full understanding of housing needs in their area, as required in paragraph 159 of *the Framework*, and to meet it fully, as required in paragraph 47.
26. The Council’s evidence, although predicated on the RS target, attempts to determine its housing supply in accordance with the strategic direction set out in paragraph 47 of *the Framework*. Furthermore, the Council readily accepts that its delivery since the agreed start date of 2006 has been below the targeted level<sup>12</sup>, and that the 20% buffer should be applied, and that this should be included into its target within the first 5 years (i.e. using the Sedgefield method) rather than distributing this amount over the entire plan period (which is referred to as the Liverpool method).

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<sup>10</sup> England and Wales Court of Appeal (Civil Division) Decisions between City and District Council (Appellant) and The Queen (on the application of) Hunston Properties Limited (1<sup>st</sup> Respondent), Secretary of State for Communities and Local Government (2<sup>nd</sup> Respondent); 12 December 2013 [Inquiry Document 5].

<sup>11</sup> National Planning Practice Guidance (NPPG) Assessment of housing and economic development needs – Section 3: What methodological approach should be used? – What is the starting point to establish the need for housing? Last updated 23/08/2013.

<sup>12</sup> Fred Davies’ Proof of Evidence, Appendix 1 shows an undersupply of 1,552 dwellings since 2006.

27. I agree with the Council's general approach as set out in the table which identifies its housing land supply position at 30 November 2013<sup>13</sup>. The figures which the Council aggregated for inclusion in this table came under detailed scrutiny, both in the appellant's evidence<sup>14</sup> and during cross-examination of the housing land supply witnesses at the Inquiry. The appellant, whilst agreeing with the Council on the majority of sites included in the Council's estimate of housing supply, considered that its estimate of what is realistically deliverable comes to 1,163 units less than the Council's estimate<sup>15</sup>, i.e. sufficient to drive the total housing supply figure to below 5 years. A significant part of the Inquiry focused on the sites which accounted for the differences between the Council's figures and the discounted figures used by the appellant.
28. I accept that it is unreasonable to expect the Council to have carried out a detailed viability assessment on every large site (i.e. sites of 10 dwellings or above), and the appellant accepted that viability has not been raised as an issue. These larger sites with outline planning permission (1071 units deliverable within 5 years according to the Council compared with 631 units according to the appellant<sup>16</sup>) account for about just under 40% (440 units) of the difference between the main parties. The remainder of the 1,163 units difference between the main parties is spread out across a range of types of sites, with a difference of 295 dwellings for large sites under construction (12.3% of the Council's total); and 234 units for large sites with Draft SWDP allocation (44.5% of the Council's total).
29. Central to the debate was the interpretation of footnote 11 to paragraph 47 of *the Framework*. This states that: "*To be considered deliverable, sites should be available now...with a realistic prospect that housing will be delivered on the site within 5 years...sites with planning permission should be considered deliverable until permission expires...*" Whilst the footnote does not specifically rule out sites which do not have planning permission, there is in my view an onus on the part of the Council to demonstrate that these sites have a realistic prospect of delivery within the relevant five year period.
30. My attention was drawn to the HCJ in relation to *Wainhomes*<sup>17</sup>, which states (paragraph 35): "*in the absence of site specific evidence, the only safe assumption is that not all such sites (which do not have planning permission) are deliverable*". During the Inquiry, specific deliverability issues were raised over several of the sites in the Council's total supply. These included sites with repeated renewals of planning permission, potential highways difficulties, S106 delays and/or lack of transparent information, lack of completion data on several large sites (including two large sites totalling 663 dwellings in *Evesham*<sup>18</sup>), and at least one case where the existing user appeared to show no intention of vacating the site anytime soon. Furthermore, there was no

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<sup>13</sup> Fred Davies' Proof of Evidence, Appendix 1: Wychavon Five Year Land Supply Table - Position at 30 November 2013.

<sup>14</sup> Sian Griffiths' Proof of Evidence, and in her Appendix SG3, Volume 2A (Tables 1A-1B) and Volume 2B (Tables 2A-7B); December 2013.

<sup>15</sup> Sian Griffiths' Proof of Evidence; table at paragraph 5.132 shows a difference of 1,163 units less than the Council's estimate which the appellant regards as deliverable in Wychavon in the next 5 years.

<sup>16</sup> Sian Griffiths' Appendices SG3; table 4A.

<sup>17</sup> High Court Judgment between *Wainhomes (South West) Holdings Ltd and Secretary of State for Communities and Local Government (Defendant) and Wiltshire Council et al (Interested Parties)*; 25 March 2013 [Inquiry Document 6].

<sup>18</sup> Fred Davies' Proof of Evidence, Appendix 16.

- evidence from the Council relating to lead-in times or delivery rates, contrary to advice in the SHLAA Good Practice Guide<sup>19</sup>.
31. 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. Taking these matters into consideration, I consider that the Council's estimate of achieving the requirement for a 5 years' land supply is over optimistic.
  32. Evidence was also presented to the Inquiry<sup>20</sup>, using a combination of data which appears to follow the SWDP Inspector's advice, including the use of the latest population and household projections, employment forecasts based on pre-recessions levels of growth, and building in 40% for affordable housing. This shows a requirement for around 817 dpa for Wychavon, increased to 981 dpa if the unmet need from Malvern Hills is included. The Council's housing supply witness, Fred Davies, in cross examination, accepted that the Council had not sought to criticise any part of this analysis. Whilst these conclusions are yet to be tested at the SWDP Examination, which clearly limits the weight I can give to them, they appear to confirm the SWDP Inspector's comment that as a general guide, the objectively assessed housing need for the plan period is likely to be substantially higher than the 23,200 figure (for the entire South Worcestershire area) which was identified in the submitted plan<sup>21</sup>.
  33. There are, however, other considerations which further call into question the Council's assertion that it can demonstrate a 5 years' housing supply. Firstly, 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, which ranged from 0% to 27%, averaging 20% for the period 2006/07 to 2011/12<sup>22</sup>.
  34. Secondly, 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. These market signals, which were not robustly challenged during the Inquiry, are in line with the Draft NPPG, which states: "*The more significant constraints (as reflected in rising prices and rents, and worsening affordability ratio)...the larger the improvement in affordability needed and, therefore, the larger the additional supply response should be*"<sup>23</sup>.
  35. The Council's Housing Development Officer, commenting on the appeal proposal, refers to the "*high needs in the District, with 268 new homes needed each year*"<sup>24</sup>. This, together with the Council's completion rate of 277 new affordable homes over the period 2006/07-2011/12<sup>25</sup> (i.e. an average of 46

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<sup>19</sup> Inquiry Document 17: Paragraph 40[3].

<sup>20</sup> Cristina Howick's Proof of Evidence; in particular sections 3 and 4.

<sup>21</sup> SWDP Inspector's Interim Conclusions; paragraph 49.

<sup>22</sup> Tetlow King's Proof of Evidence, figures 4.9 and 4.10, which give both total housing and affordable housing figures for 2006/07 to 2011/12.

<sup>23</sup> NPPG: Section 3: What methodological approach should be used? How should plan makers respond to market signals? Last updated 23/08/2013.

<sup>24</sup> Appendix RT6 of Tetlow King's Proof of Evidence: Planning and Affordable Housing; December 2013.

<sup>25</sup> Tetlow King's Proof of Evidence, page 21, Figure 4.9.

dpa), confirms the appellant's conclusion that the market signals point to the need to provide more affordable housing as a matter of some urgency.

36. 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.
37. 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. Its housing supply argument, therefore, is not a compelling reason to justify dismissing the appeal. Moreover, the proposal would accord with the aims of *the Framework* to boost the supply of housing, whilst the provision of 40% of this total as affordable housing is another material consideration in support of the appeal.

#### *Sustainability*

38. The Council accepted that in some aspects, the proposed development would address the sustainability dimensions that are highlighted in paragraph 7 of *the Framework*. The main parties agree that the scheme would make a positive contribution to the economy and help meet the housing needs of present and future generations, both for market and affordable housing. In my view, these considerations carry great weight in favour of the proposed development, as they contribute significantly towards the national economic and housing agendas.
39. Whilst accepting the above benefits, the Council considered that they were outweighed by a number of social and environmental concerns. My attention was also drawn to the fact that the site is located outside the defined development boundary of the village of Offenham.
40. From a social perspective, the Council considered that the appeal site lacked connectivity to shops and other services and facilities within the village, thus discouraging pedestrian trips to these facilities. It also expressed concern that the amount of open space and landscaped areas, about 14% of the total site area, fell well short of the target figure of 40% Green Infrastructure Provision on rural housing sites in policy SWDP5 of the emerging SWDP. The Council's view in the light of these aspects was that the scheme was poorly designed. The Council also expressed concern that the proposal contained no evidence to support the biodiversity of the site, which was viewed as a missed opportunity.
41. Although the appeal site is located outside the village settlement boundary, it borders it to the west and north, as the extract from the *Local Plan* Proposals Map shows<sup>26</sup>. Furthermore, there is some existing residential development, some of it recent, to the south and south-east of the appeal site, i.e. outside

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<sup>26</sup> Local Plan Inset Map for Offenham [Inquiry Document 3].



- the settlement boundary. All this development to the east is further away from the village centre than the appeal site, whilst I note that a similar sized site, to the east of the appeal site, is included in the Draft SWDP as a proposed housing allocation<sup>27</sup>.
42. Although there is no legal right of access to the site from Leasowes Road, to the north, which would have brought most of the proposed dwellings within 200m of the nearest village shop, the proposed access from Laurels Road would mean that the distance to the shop from the centre of the site would be about 400m, whilst there are bus stops within 800m of all the proposed dwellings on both Main Street and Laurels Road. I also note that the walking distances from the centre of the site to the parish church, village hall and public house are all less than 800m, whilst the primary school would be a little over 1 kilometre away. The location of all these facilities and services in relation to the appeal site are shown clearly on one of the appellant's plans<sup>28</sup>.
43. Taking all these considerations together, I consider that the appeal site is well related to the main facilities and services within Offenham, which is designated as a Category 1 village<sup>29</sup>. Whilst little weight can be placed on the emerging SWDP, the fact that it has allocated a site for new homes some distance further away from the settlement boundary and the centre of the village calls into question the Council's view that the appeal site is unsustainably located. Furthermore, Offenham is less than two miles from Evesham, which is one of the key service and employment centres in the District. The appeal site cannot therefore be considered to be a remote or unsustainable location.
44. Regarding the target figure of 40% open space provision in policy SWDP5 of the emerging SWDP, this policy has not yet been tested at Examination and I can therefore only give it little weight. The proposed public open space would function as a village green, and it would not be inappropriately designed or located. Its size would not be unduly small or atypical of planned open spaces in recent developments. I have no reason to believe, from studying the submitted plans, that the open space would not be laid out and planted in a way which would enhance the character and appearance of the development.
45. I therefore conclude on the second main issue that the proposal would be sustainable, socially, with good access to urban facilities and services and public transport and with acceptable open space provision. Moreover, its 40% affordable housing and the proposed bus shelters to be provided under the S 106 Obligation would further increase its sustainability. The Council's concerns in relation to wildlife mitigation and possible enhancement can be addressed through an appropriate planning condition. The proposal therefore would not compromise the presumption in favour of sustainable development in *the Framework* (paragraph 14).

#### *Character and appearance*

46. The Council's concerns were that the proposed development would fail to reflect and integrate with the existing character of the village. There is a mixture of designs and house types adjoining the appeal site, and whilst these houses are not unattractive, there are no distinctive design cues other than

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<sup>27</sup> SWDP Proposals Map Extract – Offenham [Inquiry Document 36].

<sup>28</sup> Plan at Appendix ANB4, attached to Andrew Brown's Proof.

<sup>29</sup> Heather Pearson's Proof of Evidence, paragraph 59, defines a category 1 village as having at least four key services.

relatively small points of interesting historic detail on some of the properties in the neighbourhood. It also contains a mix of mainly two storey traditionally designed housing with pitched roofs and traditional external materials. There would also be some three storey dwellings and a few bungalows. The majority would be semi-detached houses, interspersed with some detached dwellings and two three-dwelling terraces. There are also several house types, resulting in a varied development which would not appear out of place in the streetscene.

47. The Council also expressed concern that there would be a cumulative impact when added to the existing recently approved development for 30 dwellings at Crabtree Leys, a short distance away to the west, towards the village centre. The Council accepts that the styles of the two developments are similar, which presumably means that the style alone would be considered acceptable to the Council, and it is the cumulative impact which is at the heart of the Council's concern. The two schemes, however, are not adjacent to each other, and are visually separated by the existing houses on Main Street.
48. Regarding the third main issue, I conclude that the proposal would not detract from the character and appearance of the streetscene. The scale and variety of house types and the traditional design and use of external materials would result in a development that would integrate with the existing streetscene. As such, it would not be contrary to the design requirements of *Local Plan* policy SUR1, or *the Framework* (section 7).

### **Section 106 Planning Obligation**

49. The Planning Obligation covers a range of financial provisions, none of which are in dispute between the main parties. The case for 40% affordable housing provision, based on the significant needs in the District, was compelling, and accords with national policy. The contributions towards education provision, cycling provision, community sports and leisure provision, recycling and sustainable transport were not contested and are linked to specific, implementable schemes which would benefit the future residents of the proposed development. These contributions would be compliant with *the Framework* (paragraph 204) and accord with Regulation 122 of the CIL Regulations 2010.
50. Although the main parties agreed to a financial contribution towards public art, I have no evidence before me to demonstrate that such a contribution is necessary to make the development acceptable in planning terms, and I am therefore unable to take this element of the Obligation into account.

### **Other considerations**

51. Many residents wrote letters against the proposal and some gave evidence at the Inquiry. In addition to the issues which I have addressed above, several other points were made in opposition to the scheme.
52. A principal concern related to flood risk, and some of the correspondence included photographs showing flooding in Leasowes Road in June 2007. The appellant has submitted a Water Management Statement. The Council's Drainage Engineer and Severn Trent Water are aware of the high water table, especially in the north-east corner of the site, but neither raised an objection to the appellant's proposals for foul and surface water drainage. I therefore

consider that, subject to conditions, the proposal would not cause material harm in relation to surface water drainage or flooding in this low flood risk area (Flood Zone 1).

53. Concerns were expressed over traffic generation and the visibility of the proposed vehicular access, together with the associated congestion and highway safety. The highway authority has not objected to the scheme subject to conditions to cover aspects such as the visibility of the access junction with Laurels Road. In my view, the scheme, subject to these conditions, would not result in material harm to pedestrian or highway safety.
54. In response to wildlife concerns, the appellant has conducted an ecological survey, and agreed to a mitigation and enhancement condition, which I consider to be appropriate. Subject to conditions addressing potential overlooking in relation to specific dwellings and slab levels, the scale, design and layout of the scheme would not harm the living conditions of neighbouring occupiers.
55. Some residents considered that the proposal was contrary to the Government's localism policy. The Government has made it clear<sup>30</sup>, however, that alongside the communities' power to plan comes the responsibility to meet the development and growth needs of communities and to deal effectively with proposals that will deliver homes, jobs and facilities. Finally, concerns related to property devaluation and loss of views are outside the remit of the appeal.

### Conditions

56. I have considered the list of conditions which was included in the SCG in the light of the discussion session at the Inquiry, subsequent correspondence from the main parties and the advice set out in Circular 11/95 *The Use of Conditions in Planning Permissions*. This has resulted in a few minor changes to the suggested wording of some of the conditions.
57. Conditions (3) and (11) are in the interests of the protecting the character and appearance of the development and the surrounding area. Conditions (4), (5), (6), (8) and (9) are in the interests of pedestrian and vehicular safety. Condition (7) is required to promote sustainable transport. Conditions (10), (13), (15), (16) and (17) are in the interests of safeguarding the living conditions of neighbouring residential occupiers. Condition (12) is in the interests of wildlife conservation. Condition (14) is to minimise the risk of flooding and pollution.

### Conclusion

58. The conflict of the proposed development with *Local Plan* policy GD1 is outweighed by the lack of compelling evidence to demonstrate that a 5 year supply of deliverable housing in Wychavon is available in relation to objectively assessed need. The proposal would make a strategic contribution towards addressing the shortfall of housing, and especially affordable housing, within the District of Wychavon.
59. I have also found that the proposal would be sustainable and would not harm the character and appearance of the surrounding area. Therefore the proposal, subject to those parts of the S106 Obligation which I have endorsed, would be

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<sup>30</sup> Housing and Growth: Ministerial Statement; 6 September 2012.

in accordance with national planning policy. Whilst my findings will disappoint many residents, the evidence leads me to conclude that the appeal should succeed. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

*Mike Fox*

INSPECTOR

Richborough Estates

## Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - Red Line Plan at scale 1:1250
  - BC/TS/334771/1 Rev A *Topographical Survey* at scale 1:500
  - 12-061/01 *Location Plan* at scale 1:1250
  - 12-061/02 Rev H *Planning Layout (indicating affordable housing mix as per S106 Agreement)* at scale 1:500
  - 12-061/03 *House Type SH29-E-5 (Plots 23 and 24)* at scale 1: 100@A2
  - 12-061/04 Rev B *House Type SH28-5 (Plots 9, 10, 42, 43, 44 and 45)* at scale 1: 100@A1
  - 12-061/06 Rev A *House Type SH39-5 (Plots 38 to 41)* at scale 1: 100 @A2
  - 12-061/08 Rev A *House Types P381 and P341 (Plots 20, 21, 49 and 50)* at scale 1: 100@A2
  - 12-061/09 Rev B *House Type P332 D5 (Plot 19)* at scale 1: 100@A2
  - 12-061/13 Rev A *House Type H451-5 (Plot 47)* at scale 1: 100@A2
  - 12-061/14 Rev A *House Type H408-5 (Plot 26)* at scale 1: 100@A2
  - 12-061/15 Rev B *House Type H469-5 (Plots 22 Handed & 37)* at scale 1: 100@A2
  - 12-061/19 Rev A *House Type H500-5 (Plots 25, 29 and 36)* at scale 1: 100@A2
  - 12-061/21 *Garage Details* at scale 1: 100@A1
  - 12-061/22 *Enclosure Details* at scale 1: 50@A3
  - 12-061/23 Rev A *Street Scene Sheet 1* at scale 1: 100@A0
  - 12-061/24 Rev B *Street Scene Sheet 2* at scale 1: 100@A0
  - 12-061/26 *1 Bed Bungalow (Plots 11 to 16)* at scale 1: 100@A2
  - 12-061/27 *House Type H486-5 (Plots I Handed & 48)* at scale 1: 100@A2
  - 12-061/28 *House Type P241-E-5 (Plots 3 to 6 and 30 to 35)* at scale 1: 100@A2
  - 12-061/30 *House Type SH27-5 (Plots 17 and 18)* at scale 1: 100@A2
  - 12-061/31 *House Type P382-EB5 (Plots 7 and 8)* at scale 1: 100@A2
  - 12-061/32 *House Type P341-D5 (Plots 28 Handed and 29)* at scale 1: 100@A2
  - 12-061/33 *House Type P341-WD5 (Plots 2 and 46)* at scale 1: 100@A2

- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) Development shall not begin until details of the junction between the proposed service road and the highway have been submitted and approved in writing by the local planning authority; and no dwellings shall be occupied until that junction, including the necessary access road works, has been constructed in accordance with the approved details.
- 5) Development shall not begin until the engineering details and specification of the proposed roads, turning heads, areas, footways, service strips and highway drains have been submitted and approved in writing by the local planning authority; and no dwellings shall be occupied until these works have been implemented in accordance with the approved details.
- 6) The dwellings hereby permitted shall not be occupied until individual vehicular accesses and entrances, turning areas and vehicle parking shown on the approved plan have been properly consolidated, surfaced, drained and otherwise 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.
- 7) Prior to the first occupation of the dwellings hereby approved, secure parking for 2 cycles to serve a 2 bedroom unit and 4 cycles to serve 3-5 bedroom units, to comply with the Council's standards, shall be provided within the curtilage of each dwelling where none benefit from the use of a garage and these facilities shall thereafter be retained for the parking of cycles only.
- 8) All roadworks shall be completed within a period of two years, or other period agreed in writing with the local planning authority, from the commencement of work on the site, or within six calendar months of the substantial completion of 75% of the 50 no. dwellings hereby approved, if this is sooner. This will entail the making good of surfacing, grassing, and landscaping in accordance with a specification submitted to and approved in writing by the local planning authority. (Nothing in this condition shall conflict with any phasing scheme, in which respect it will be interpreted as applying to the particular phase being implemented.)
- 9) Upon occupation of the first 5 dwellings hereby approved, the existing field gated vehicular access on to the adjoining highway, Laurels Road, shall be permanently closed. Details of the means of closure and reinstatement of this existing entrance and vehicular crossing to the footway shall be submitted to and approved in writing by the local planning authority prior to the commencement of work on the development hereby approved.
- 10) No development shall take place, including any associated works, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be

adhered to throughout the construction period. The Statement shall provide for:

- i) the parking of vehicles of site operatives and visitors;
  - ii) loading and unloading of plant and materials;
  - iii) storage of plant and materials used in constructing the development; and
  - iv) measures to control the emission of dust and dirt during construction.
- 11) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include:
- i) A plan (s) showing details of all existing trees and hedges on the application site. The plan should include, for each tree/hedge, the accurate position, canopy spread and species, together with an indication of any proposals for felling/pruning and any proposed changes in ground level or other works to be carried out, within the canopy spread.
  - ii) A plan (s) showing the layout of proposed tree, hedge and shrub planting and grassed areas.
  - iii) A schedule of proposed planting, indicating species, sizes at the time of planting and numbers/densities of plants.
  - iv) A written specification outlining cultivation and other operations associated with plant and grass establishment.
  - v) A schedule of maintenance, including watering and the control of competitive weed growth, for a minimum period of five years from first planting.
- Any trees or plants which, after a period of five years from the completion of the planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing with the local planning authority.
- 12) Before the development hereby approved is commenced, a detailed mitigation and enhancement strategy shall be submitted to and agreed in writing by the local planning authority, based on the recommendations contained in the summary and section 4 of the submitted Worcestershire Wildlife Consultancy Phase 1 Habitat Survey, dated December 2012, and shall include an appropriate timing for the works. The agreed measures shall thereafter be implemented in full and maintained in perpetuity, unless otherwise agreed in writing with the local planning authority.
- 13) Demolition or construction works or deliveries to and from the site in connection with the development hereby approved shall not take place outside 08:00hrs to 18:00hrs Mondays to Fridays and 08:00hrs to 13:00hrs on Saturdays, nor at any time on Sundays or Bank Holidays.
- 14) None of the dwellings hereby approved shall be occupied until the drainage plans for the disposal of surface and foul sewage works have

been submitted to and approved in writing by the local planning authority and the scheme completed in accordance with the submitted plans.

- 15) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, as amended:
  - i) No extensions shall be constructed in the rear (west facing) elevations of the proposed dwellings on plots 9 and 10.
  - ii) No additional windows shall be constructed in the side (west facing) elevations of the proposed bungalows on plots 14 and 24.
  - iii) Before the first occupation of dwellings hereby permitted at plots 43 and 50, the first floor windows shown on the approved plans in the side (south facing) elevation of the proposed dwelling on plot 43 and in the side (east facing) elevation of the proposed dwelling on plot 50 shall be fitted with obscure glass, be non-openable and shall be permanently retained in that condition.
- 16) Before the commencement of any buildings, details of the location, height and the precise specification of the proposed materials or species of planting for the boundary treatments on the site shall be submitted to and approved in writing by the local planning authority, and implemented in accordance with the approved specifications.
- 17) Before the construction of any of the dwellings hereby approved, the precise floor slab levels of each new dwelling relative to the levels of the existing development on the boundaries of the site shall be submitted to and approved in writing by the local planning authority and the development hereby approved shall be completed in accordance with the agreed slab level details.

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## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Satnam Choongh of Counsel	Instructed by the solicitor to Wychavon District Council
He called	
Mr Fred Davies	Policy Manager, Wychavon District Council
Mrs Heather Pearson	Principal Planner, Wychavon District Council

### FOR THE APPELLANT:

Mr Christopher Young of Counsel	Instructed by David Wilson Homes (Mercia) Ltd
He called	
Ms Cristina Howick	Partner, Peter Brett Associates
Mr Robin Tetlow	Chairman, Tetlow King Planning Ltd
Ms Sian Griffiths	Director, RCA Regeneration Ltd
Mr Andrew Brown	Director, Woodhall Planning and Conservation Ltd

### INTERESTED PERSONS:

Cllr Judy Pearce	Deputy Leader, Wychavon District Council
Cllr Keith Wright	Wychavon District Council
Dr David Kewley	Resident
Ms Suzy Bourke	Resident
Ms Lorraine Knight	Resident
Ms Sue Hocking	Resident
Mr Michael Hocking	Resident

### DOCUMENTS

- 1 Draft S106 Agreement between appellant, County and Borough Councils – Heads of Terms – Land between Laurels Road and Leasowes Lane, Offenham.
- 2 RCA Rebuttal Statement on behalf of appellant; December 2013.
- 3 *Wychavon District Local Plan*: Inset Map 80 Offenham.
- 4 High Court Judgment between Hunston Properties Ltd and CLG and St Albans City and District Council; 5 September 2013.
- 5 Court of Appeal Judgment between St Albans City and District Council and Hunston Properties and CLG; 12 December 2013.
- 6 High Court Judgment between Wain Homes (South West) Holdings Ltd and CLG; 11 March 2013.
- 7 Draft High Court Judgment between Cotswold District Council and Fay and Son Ltd/Hannick Homes and Development Ltd; Hearing dates 6 and 7 November 2013 [Known as the Tetbury judgment].
- 8 High Court Judgment between University of Bristol and north Somerset Council; 14 February 2014.
- 9 High Court Judgment between William Davies Lt and Jelson Ltd and CLG and North West Leicestershire District Council; dated 11 October 2013.
- 10 Appeal Decision APP/K2420/A/13/2202261: Land east of Wolvey Road, Three Pots, Burbage, Leicestershire; 3 January 2013.

- 11 Appeal Decision APP/J1860/A/13/2194904: Land off Mistletoe Row, Tenbury Wells, Worcestershire; 13 August 2013.
- 12 LPA Counter Arguments to RCA Proof of Evidence.
- 13 *Wychavon Residential Design Guide*: Supplementary Planning Document; September 2010.
- 14 Extracts from National Planning Practice Guidance (NPPG); accessed 3 January 2014.
- 15 Opening Submissions on behalf of the LPA; 7 January 2014.
- 16 Opening Statement on behalf of the Appellant David Wilson Homes; 7 January 2014.
- 17 CLG Strategic Housing Land Availability Assessment (SHLAA) - Practice Guidance; July 2007.
- 18 Record of Attendance – Day 1; 7 January 2014.
- 19 Methodology for Strategic Housing Land Availability Assessments- Exeter Housing Market Area; Revised August 2011.
- 20 Cheshire East Strategic Housing Land Availability Assessment; Update February 2013.
- 21 Unsigned and undated S106 Agreement relating to land between Laurels Road and Leasowes Lane, Offenham (Latest version).
- 22 Wychavon Five Year Land Supply Table Position at November 2013 – Revised Appendix 1 from Mr Fred Davies' Proof.
- 23 Statement from Ms Judy Pearce, Deputy Leader of Wychavon District Council
- 24 Officer Report to Wychavon Planning Committee, 15 August 2013, on the appeal application.
- 25 Record of Attendance – Day 2; 8 January 2014.
- 26 Summary of Robin Tetlow's Proof; December 2013.
- 27 Statement from Dr David Kewley.
- 28 Statement from Cllr Keith Wright.
- 29 Statement from Cllr Alasdair Adams.
- 30 Statement from Ms Lorraine Knight; 9 January 2014.
- 31 Statement from Ms Suzy Bourke; 8 January 2014.
- 32 The Village Facilities and Rural Transport Survey; December 2012.
- 33 Letter from Wragge & Co regarding pedestrian access to Leasowes Road; 9 January 2014.
- 34 Government's Saving Letter in respect of policies in the Wychavon District Local Plan; 29 May 2009.
- 35 Record of Attendance – Day 3; 9 January 2014.
- 36 Extract from the *Draft South Worcestershire Development Plan* Proposals Map – Proposed Housing Allocation: Category 1 Villages – Offenham.
- 37 Statement from Ms Sue Hocking; 9 January 2014.
- 38 List of drawings accompanying the appeal application, which the decision should be made on.
- 39 Outline planning permissions in Wychavon from January 2013 – no. of dwellings and timeframe for submission of Reserved Matters.
- 40 Closing submissions on behalf of the LPA; 10 January 2014.
- 41 Statement of Common Ground (Addendum); 2 January 2014.
- 42 Closing Statement on behalf of the Appellant; 10 January 2014.
- 43 Appeal Decision APP/J1860/A/12/2187934: Land at Green Hedges, Rushwick, Worcestershire.
- 44 Costs Decision in relation to Appeal decision APP/J1860/A/12/

- 2187934.
- 45 Appeal Decision APP/Z6815/A/11/2160990: Land at Church Road, Llanedeyrn, Cardiff.
- 46 Costs Decision in relation to Appeal decision APP/ Z6815/A/11/ 2160990.
- 47 Appeal Decision APP: Land to the south of Berrells Road, Tetbury, Gloucestershire.
- 48 Costs Decision in relation to Appeal decision APP/F1610/A/12/ 2173305.
- 49 Record of Attendance – Day 4; 10 January 2014.
- 50 E-mail from THDA to RCA Regeneration regarding flood risk at land at Laurels Road, Offenham; 10 January 2014.
- 51 Costs Application on behalf of David Wilson Homes; 10 January 2014.
- 52 Response of the LPA to the Costs Application of the Appellant; 10 January 2014.

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