



Appeal Decisions

Inquiry held on 7-10 and 23-24 March 2023

Site visit made on 22 March 2023

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 9th May 2023

Appeal A Ref: APP/J1860/W/22/3309338

Land off Areley Common, Astley Cross, Stourport on Severn DY13 0JW

- 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 Severn Valley Sand & Gravel Co. Ltd and Gladman Developments Ltd against the decision of Malvern Hills District Council.
 - The application Ref M/22/00573/OUT, dated 3 May 2022, was refused by notice dated 17 October 2022.
 - The development proposed is the erection of up to 145 dwellings, public open space, landscaping, sustainable drainage systems, and vehicular access point.
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Appeal B Ref: APP/R1845/W/22/3309343

Land off Areley Common, Astley Cross, Stourport on Severn DY13 0JW

- 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 Severn Valley Sand & Gravel Co. Ltd and Gladman Developments Ltd against the decision of Wyre Forest District Council.
 - The application Ref 22/0315/OUT, dated 11 April 2022, was refused by notice dated 23 September 2022.
 - The development proposed is the erection of up to 145 dwellings, public open space, landscaping, sustainable drainage systems, and vehicular access point.
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Decision Appeal A

1. The appeal is allowed and planning permission is granted for the erection of up to 145 dwellings, public open space, landscaping, sustainable drainage systems, and vehicular access point at Land off Areley Common, Astley Cross, Stourport on Severn DY13 0JH in accordance with the terms of the application, Ref M/22/00573/OUT, dated 3 May 2022, subject to conditions 1 to 36 set out in Schedule 1.

Decision Appeal B

2. The appeal is allowed and planning permission is granted for the erection of up to 145 dwellings, public open space, landscaping, and sustainable drainage systems, and vehicular access point at Land off Areley Common, Astley Cross, Stourport on Severn DY13 0NL in accordance with the terms of the application, Ref 22/0315/OUT, dated 11 April 2022, subject to conditions 1 to 36 set out in Schedule 1 and conditions 37 to 40 set out in Schedule 2.

Preliminary Matters

3. The appeals site is located within two local planning authority areas of Malvern Hills District Council (MHDC) and Wyre Forest District Council (WFDC) (also referred to in my decisions as the Councils). The two appeals relate to the

same proposal. The appellants and the Councils agree that the appeals are indivisible and should either both be allowed or both be dismissed. I have assessed the appeals on that basis.

4. The original planning applications were made in outline with all matters reserved apart from access. Approval is only sought at this stage for the access points onto Areley Common, the details of which are shown on a specific plan (ref 1510/01/E). All other matters relating to access, including internal circulation, would be determined at the reserved matters stage. I have had regard to the development framework plans submitted with the applications (ref CSA/3076/108 Revs D and G) but consider that all the details shown are indicative only except for the access points.
5. A completed and executed Section 106 (S106) agreement between the appellants and the Councils dated 23 March 2023 and a completed and executed S106 agreement between the appellants and Worcestershire County Council (WCC) dated 27 March 2023 were submitted shortly after the Inquiry closed. These agreements are assessed below.

Main Issues

6. The original application in Appeal A was refused by MHDC for 7 reasons. The original application in Appeal B was refused by WFDC for 6 reasons. There were a number of overlapping reasons for refusal on the two decision notices as well as reasons specific to each Council. The case management conference summary note identified 9 main issues including whether or not MHDC could demonstrate a 5 year supply of deliverable housing sites.
7. Before and during the Inquiry, the Councils confirmed that some of the reasons for refusal and main issues have been resolved. These comprised matters relating to biodiversity and drainage in both appeals, along with matters relating to archaeology in Appeal A only. The submission of S106 agreements also resolved the Councils' concerns about the provision of necessary infrastructure. MHDC confirmed that it was no longer defending its reason for refusal relating to the loss of agricultural land, but WFDC maintained its objections. For clarity, I have assessed this issue for both appeals.
8. Shortly before the Inquiry opened, MHDC acknowledged that it could no longer demonstrate a 5 year supply of deliverable housing sites. However, MHDC and the appellants continue to disagree on the extent of the supply shortfall. All main parties agree that the MHDC housing land supply position has a bearing on both appeals.
9. Based on the above, the main issues for both appeals are as follows:
 - 1) whether the proposed development would be in a suitable location having regard to the development plan;
 - 2) the extent of the shortfall in MHDC's 5 year housing land supply;
 - 3) the effect of the proposed development on the character and appearance of the area;
 - 4) the effect of the proposed development on mineral resources; and
 - 5) the effect of the proposed development on the provision of agricultural land.

The suitability of the location

10. The site comprises undeveloped land situated on the southern edge of Stourport on Severn adjacent to the neighbourhood known as Astley Cross and the B4196 Areley Common. The WFDC part of the site covers the area immediately next to Areley Common at around 0.94 hectares (ha) of the overall 11.39ha site.
11. The site is covered by two separate development plans. The South Worcestershire Development Plan 2016 (SWDP) applies to Appeal A and the Wyre Forest Local Plan 2016-2036 (WFLP) applies to Appeal B. The Worcestershire Minerals Local Plan 2018-2036 (MLP) applies to both appeals.
12. SWDP Policy 2 sets out the development strategy and settlement hierarchy for the South Worcestershire area and looks to focus most development on the urban areas. Land beyond any development boundary is defined as open countryside by SWDP Policy 2 where development will be strictly controlled and limited to specific exceptions. The nearest settlement in the SWDP area is Astley to the south which is regarded as a Category 3 village with no development boundary.
13. WFLP Policy SP.1 contains the spatial development strategy for Wyre Forest. It directs growth towards and within the most sustainable larger settlements including Stourport on Severn. The site is located beyond any settlement boundary in the WFLP and is not designated as a site allocation. WFLP Policy SP.2 states that development of land beyond settlement boundaries will be strictly controlled and limited to specific exceptions including rural exception sites which are covered in WFLP Policy SP.11.
14. The parties agree that the site is located in the open countryside beyond any development or settlement boundary and is not allocated for housing in either the SWDP or the WFLP. They also agree that the proposal would not meet any of the exceptions for development in this location. Therefore, the development would conflict with SWDP Policy 2 and WFLP Policies SP.1, SP.2 and SP.11.
15. SWDP Policy 2 was disapplied by MHDC when the application in Appeal A was determined due to the lack of a 5 year housing land supply but was re-engaged earlier in the appeal process when MHDC considered it could demonstrate a 5 year supply. The appellants complain that MHDC has not disapplied the policy again despite the acknowledgement that a 5 year supply cannot now be demonstrated. However, there is nothing in planning law or policy that says you should disapply a policy on that basis. It is a matter of weight to be addressed in the planning balance.
16. Notwithstanding the conflict with the above policies, the site is within a reasonable walking and/or cycling distance of various services and facilities in Astley Cross and the town centre of Stourport on Severn including various shops, a primary school and medical facilities. Nearby bus stops provide frequent services throughout the week to the town centre and Kidderminster and there is no substantive evidence to show that these services are at risk. While the village of Astley to the south contains few facilities, future occupants are more likely to head north to access services and facilities given the proximity and ability to reach them by a range of transport modes. The S106 agreement between the appellants and WCC would make contributions towards various infrastructure aspects including transport to the catchment secondary

school. It has not been demonstrated that the proposed development would have an unacceptable effect on the provision of local infrastructure.

17. Immediately to the west of the site between Areley Common and Pearl Lane is a development of 57 dwellings that is currently under construction. It is an allocation in the SWDP where footnote 165 states that although the site is not adjacent to a Category 3 village it is adjacent to the town of Stourport. MHDC approved the development in 2013 prior to the site allocation and when the site was located in the open countryside. The lack of a 5 year housing land supply was a determinative factor, but MHDC also noted the accessibility of services and facilities in Astley Cross as weighing in favour of permission. Each case should be assessed on its own merits, but it is an indication that development in this location can be regarded as sustainable.
18. Concluding on the first main issue, the proposed development in both appeals would not be in a suitable location having regard to the development plan given the conflict with SWDP Policy 2 and WFLP Policies SP.1, SP.2 and SP.11. However, this conflict is tempered by the proximity and accessibility of services and facilities and will be weighed in the planning balance later.

The extent of the shortfall in MHDC's 5 year housing land supply

19. The position of MHDC at the start of the appeal was that it could demonstrate a 5 year housing land supply of 5.06 years. This was a surplus of 25 dwellings above the agreed 5 year requirement of 2,174 units. Having reviewed the appellants' evidence before the Inquiry opened, MHDC accepted the removal of 58 units from two sites resulting in a supply of 4.92 years. This is a shortfall of 33 dwellings. The appellants contend that a further reduction of 145 dwellings from four additional sites should be applied, which would result in a supply of 4.59 years and a shortfall of 178 dwellings.
20. Of the disputed sites, three relate to arguments about recent economic downturns in the housing market since the base date of 1 April 2022, where the delivery of units could be lower than previously forecast. The fourth disputed site concerns the delivery of a site with full planning permission that was granted over three years ago and just recently implemented.
21. Paragraph 11(d) of the National Planning Policy Framework (NPPF) is triggered whatever position is reached on the disputed sites as there is no 5 year supply. The difference between the parties is small at 0.33 years or 145 dwellings. In their closing submissions, the Councils state that regardless of whether their position or the appellants' position is preferred (or somewhere in-between), very little weight should be given to the shortfall. The appellants' closing submissions state that the shortfall is significant and important whether the supply is 4.59 or 4.92 years.
22. This is a matter best left to the planning balance. Therefore, it is not necessary to consider the disputed sites in any detail to reach a precise finding on the extent of the shortfall in MHDC's 5 year housing land supply.

Character and appearance

The existing context

23. The existing site can be divided into five parcels. Parcel A is an arable field in the north-west part of the site bounded by Areley Common to the west and

Redstone Lane and Summercroft to the north. Parcel B is the adjoining arable field to the east with Hillside Close and Marlborough Drive to the north. Parcel C is further east again and contains grassland with Marlborough Drive to the north. Parcel D is an area of woodland in the south-east corner of the site to the south of Parcel C. Parcel E comprises the northern part of a large arable field located to the south of Parcels A and B and to the west of Parcel D. The topography of the site falls west towards Areley Common.

24. Hedgerows separate the three field parcels (A, B and E), although there is a large gap along the boundary between Parcels B and E next to the Parcel D woodland. A bridleway runs from Marlborough Drive between Parcels B/C and D/E and continues eastwards to Larford Lane. A public right of way crosses Parcel E diagonally from the corner of the woodland to Areley Common, although this route is not visible on the ground. Instead, people walk along the field boundaries of Parcel E and beyond.
25. To the north and west of the site is the backdrop of housing on the edge of Astley Cross, including the emerging residential development between Areley Common and Pearl Lane. Arable fields continue to the south of the site, while to the east there is a substantial area of grassland associated with the restored Larford Quarry where there are numerous informal footpaths.
26. Local residents refer to the site and surrounding countryside as The Snipes. From interested party representations and my site visit observations, the bridleway and the informal footpaths are well used by walkers. The site is visible in public views from the bridleway and informal footpaths as well as from the pavement along the eastern side of Areley Common. The site can be seen in views further south, such as from Larford Lane, and further west, such as the footpath west of Pearl Lane near Sytch Cottages. Views of the site are also possible from properties to the north and west.
27. The site is located within the Sandstone Estate Lands Landscape Character Area in the Worcestershire Landscape Character Assessment 2011 (WLCA). Key characteristics of the character area include arable land use, hedgerow boundaries, planned enclosure pattern, woodland blocks, and a large-scale landscape with wide views over open farmland. The landscape guidelines in the WLCA focus on the conservation and enhancement of this character area through measures such as restoring hedgerow patterns and planting woodlands and tree belts.
28. The key characteristics outlined above may be commonplace across much of rural England and there is nothing particularly distinctive about the features within the site. Nevertheless, the site and adjoining countryside is representative of the landscape character area. It is common ground that the current field pattern within and to the south of the site is largely unchanged since the planned enclosure of common land around 200 years ago (unlike the restored quarry to the east). The location is evidently valued for its recreational purposes notwithstanding that there is only one maintained lawful public route in the form of the bridleway.
29. There are panoramic views across the countryside to the south from the bridleway through the site and along the field boundaries of Parcel E. The scenic and tranquil qualities of the landscape increase the further one moves away from the settlement edge. However, the presence of housing and roads next to the site tempers these qualities for the site itself. Overall, while the

parties agree that the site is not part of a valued landscape for the purposes of paragraph 174(a) of the National Planning Policy Framework (NPPF), it still has medium value in landscape terms.

30. Susceptibility is the ability of the landscape to accommodate the type of development proposed without undue negative consequences. Given the site's undeveloped condition and the key characteristics and guidelines contained in the WLCA, there would be adverse effects on the landscape from the proposed development. However, the WLCA is guidance and does not dictate where development should be located. Moreover, the Councils' housing land availability assessments which ruled out this site contain little or no detail relating to landscape effects. The proximity of the settlement edge with housing to the north and west means that there is some ability to accommodate the development and so the site has medium susceptibility. In combination with a medium landscape value, this results in a medium landscape sensitivity.

The effect of the proposed development

31. The indicative development framework plans show areas of housing across Parcels A to C. Existing hedgerows would be retained except for short sections removed to provide internal road and footpath connections between the parcels. There would be a vehicular access off Areley Common along with an emergency access point that could also provide a pedestrian and cycle link. Additional vegetation is shown in various locations, including along the northern and western edges of the site adjacent to existing housing and along the existing hedgerow between Parcels A/B and Parcel E.
32. The woodland in Parcel D would remain and could incorporate potential recreational routes. The route of the bridleway would not alter and is shown as a green corridor between Parcels B and C. The lawful route of the public right of way through Parcel E is shown in the indicative plans, although most of this route lies beyond the red line site boundary. Parcel E could contain a pumping station, attenuation basins, and a multi-use games area, with the remainder for public open space and planting. The southern edge of this parcel could be a timber post and rail fence with the wider countryside beyond to the south.
33. Based on the indicative plans, the proposed development would result in a substantial magnitude of change to the site with the loss of arable fields and grassland to housing. The character of Parcel E would also change from being part of a large field to a space for recreation and water management. The design of the attenuation basins and the multi-use games area could be softened through landscaping and the absence of hard structures and floodlighting, while the public open space could have a more informal vegetated appearance. Nevertheless, it would be apparent that the settlement edge has moved further south.
34. However, the new housing would be contained within the 3 parcels nearest to existing housing. The density of development could be designed to be appropriate for the site and building heights could be mostly 2 storeys with limited use of 2.5 storeys. The retention and enhancement of boundary vegetation would help to soften the new housing. The loss of short sections of hedgerow for the site access points off Areley Common and to facilitate internal road and footpath links between the parcels would be more than offset by

additional planting. Therefore, the proposed development would have no more than a moderate adverse effect on landscape character by year 15.

35. Travelling south on the bridleway from Marlborough Drive, there would be a considerable visual effect with the introduction of new housing into a currently panoramic view. The effects would gradually lessen past the woodland heading into the wider countryside. Travelling north on the bridleway, the new settlement edge would be apparent from the woodland onwards. Views from Areley Common would also change considerably with new housing in Parcel A along with the main vehicular access. There would also be medium distance views of the development from the informal footpath to the south of the site as well as from the public footpath to the west of Pearl Lane. However, all of the above views would be seen in the context of existing housing on the settlement edge. Moreover, the maturing of additional planting would reduce the visual effects over time. Thus, the overall effect on these views would be no greater than moderate adverse by year 15.
36. In terms of longer distance views from places like Larford Lane, Longmore Hill and Hartlebury Common, the development would be barely noticeable. There would be considerable effects on private views from adjoining residential properties, but it should be possible at the detailed design stage to avoid unacceptable effects on the living conditions of occupants in terms of matters such as outlook, privacy and light.
37. Concluding on this main issue, the proposed development in both appeals would have a moderate adverse effect on the character and appearance of the area. Therefore, it would not comply with SWDP Policies 21 and 25 and WFLP Policy SP.22. Amongst other things, SWDP Policy 21 requires development to integrate effectively with its surroundings, complement the character of the area, and respect the rural setting at urban edges. SWDP Policy 25 requires development to consider the WLCA, be appropriate to and integrate with the character of the landscape setting, and conserve and enhance the primary characteristics of the landscape character area. WFLP Policy SP.22 requires new development to protect and where possible enhance the character of the landscape having regard to the WLCA.
38. The proposed development would also not accord with NPPF paragraph 174(b) which seeks to recognise the intrinsic character and beauty of the countryside. The Councils contend there is conflict with NPPF paragraph 175 in terms of the site not being land with the least environmental or amenity value, but this paragraph relates to plan-making only and so is not relevant here.

Mineral resources

39. The site is located within Mineral Safeguarding Areas (MSA) for solid sand and silica sand as defined in the MLP. The parties agree that the proposed development could sterilise these mineral resources within and beyond the site boundary, although in the case of silica sand the parties concur that this is unlikely to be a significant effect.
40. MLP Policy 41 seeks to safeguard locally and nationally important mineral resources in MSA against sterilisation by non-mineral development. The policy requires technical assessments to look at the resource within and beyond site boundaries to establish how much resource would be sterilised, its economic value, and how the sterilisation would be avoided or minimised following a

sequential approach. That approach prioritises full extraction of the resource within a site first, followed by partial extraction, and finally, as a last resort, incidental recovery to utilise a portion of the resource as part of the non-mineral development. The policy explains that where extraction and/or mitigation measures are sufficient to address the potential for sterilisation, the non-mineral development will be supported. Where such measures are not sufficient, the potential for sterilisation will be weighed against the merits of the non-mineral development and the development may be refused.

41. WFLP Policy SP.34 emphasises that planning permission will not be granted for non-mineral development that would lead to the unnecessary sterilisation of mineral resources unless one of four criteria apply including demonstrating that the mineral concerned is longer of any value or future value or, where sterilisation could occur, that opportunities for extraction of the resource can be optimised before the development commences. SWDP Policy 32 contains similar wording and includes a criterion that requires the mineral to be extracted satisfactorily before development occurs.
42. These two policies are stricter than MLP Policy 41 insofar as they direct refusal of planning permission if their criteria cannot be met, whereas MLP Policy 41 only says that permission may be refused if measures are not sufficient. Section 38(5) of the Planning and Compulsory Purchase Act 2004 highlights that if policies in a development plan conflict with each other, the conflict must be resolved in favour of the policy which is contained in the latest document to be adopted. In this case, the MLP was adopted after the SWDP and WFLP and so the policy conflict must be resolved in favour of the MLP.
43. The main parties disagree on the extent of solid sand resource that might be sterilised with the appellants estimating around 717,000 tonnes and the Councils around 1.1 million tonnes. Either way, it is a significant figure in terms of the tonnage that would be lost. According to the Councils' figures, there is currently an unconstrained area of 8.9ha within the site and further south. Around 5.9ha would be sterilised by the proposed development, which would include indirect sterilisation from new housing. This is approximately 0.1% of the county-wide unconstrained solid sand resource of around 5,465ha.
44. Solid sand is abundant in Worcestershire and the market demand for it is less than sand and gravel although it has increased over the past dozen years. Solid sand is predominantly used for mortar products whereas sand and gravel has a wider range of applications. There is only one active solid sand quarry in the county and other quarries in the region do not explicitly produce solid sand products. Nevertheless, the mineral resource has economic value albeit lower than some other minerals.
45. The main parties agree that extracting all the solid sand from the site is not feasible due the constraints of nearby housing and the potentially considerable depth of the resource. However, they disagree on whether partial extraction is possible. Any such extraction is likely to be difficult to manage concurrently with house building due to the levels of disruption, while voids would be created that would need to be addressed to create suitable site levels for housing. Nevertheless, such extraction is technically feasible and could be carried out over several years before the proposed development commences even though it would significantly delay the delivery of new housing. It is also possible that the land and site levels could be suitably restored for housing.

The argument against partial extraction is based on costs and timescales rather than any absolute constraints.

46. The appellants are willing to pursue incidental recovery as the final part in the sequential approach, which can be secured by planning condition. However, this is a last resort when partial extraction is possible in this case. It would only utilise a fraction of the solid sand deposits and would sterilise potentially around 1 million tonnes of the mineral resource. Therefore, the extraction and/or mitigation measures proposed would not be sufficient.
47. Having regard to the extent of the overall unconstrained solid sand resource within Worcestershire and the lower economic value of this mineral, the proposed development in both appeals would have a moderate adverse effect on mineral resources. It would conflict with MLP Policy 41 insofar as the sequential approach is concerned. However, this adverse effect will be weighed in the planning balance to reach a conclusion on overall compliance with this policy. The development would also conflict with WFLP Policy SP.34 and SWDP Policy 32 as sterilisation would occur without optimum or satisfactory extraction.
48. There would also be conflict with NPPF paragraphs 209, 210 and 212 which seek to ensure a sufficient supply of minerals by safeguarding resources, avoiding sterilisation from non-mineral development, encouraging prior extraction of minerals where possible, and preventing future constraints on mineral working.

Agricultural land

49. The NPPF defines land in Grade 1, 2 and 3a of the Agricultural Land Classification as best and most versatile (BMV) agricultural land. Amongst other things, NPPF paragraph 174(b) highlights that decisions should recognise the economic and other benefits of such land. WFLP Policy DM.32 states that development on BMV land of higher quality grades will be resisted where the site has not been allocated and is considered worthy of protection. SWDP Policy 13 Part H states that proposals which would result in the loss of more than 2ha of BMV land will be required to demonstrate that the development cannot be reasonably accommodated on non-BMV land and the benefits of the development significantly outweigh the loss of BMV land.
50. Within the overall site area of approximately 11ha, the parties agree that 3ha is Grade 2 agricultural land and 3.9ha is Grade 3a. This is a total of 6.9ha of BMV land. This land is situated in both Council areas and would be lost to the proposed development.
51. The site is not allocated but it is unclear whether the BMV land is worthy of protection as the WFLP provides no guidance on this matter. Assuming that it is worthy of protection, then there would be conflict with WFLP Policy DM.32. There is little evidence to demonstrate that the development cannot be reasonably accommodated on non-BMV land and so there would be conflict with SWDP Policy 13 even if the benefits of the development significantly outweigh the loss of the BMV land.
52. While there would be conflict with both policies and NPPF paragraph 174(b), the amount of BMV land within the site is small when considered against the total amount of land available across the wider area (based on mapping

provided by the appellants). Therefore, the proposed development in both appeals would have no more than a moderate negative effect on the provision of agricultural land.

Other matters

53. Since the applications were refused, the appellants have carried out trial trenching evaluation across the site and discovered evidence of Romano-British settlement activity within the north-east corner of the site covered by Appeal A. The archaeological remains are considered to represent a non-designated heritage asset of medium value and I have no reason to disagree. This matter can be addressed via a suitably worded condition regarding a programme of archaeological work. Nevertheless, there will be some minor harm to the heritage asset through the removal of archaeological remains. This will need to be weighed in the planning balance for Appeal A.
54. The appellants have also conducted further ecological surveys and provided additional information following the refusal of the applications. The biodiversity constraints and opportunities plan shows how the badger sett in the middle of the development can be safeguarded through landscape buffers while the exclusion of lighting within the green space in the south of the site would assist various protected species. These and other mitigation measures can be secured via conditions. Thus, I consider that the Councils' reasons for refusal on biodiversity have been resolved.
55. The proposed surface water drainage strategy would pump water from east to west across the site which would then flow south along an outfall pipe to a watercourse near the junction between the B4194 and the B4196. Attenuation basins would also be used as part of the strategy. There would be a betterment in terms of runoff rates compared to the existing site. Only one pumping station is likely to be needed and it can be positioned to avoid any cordon sanitaire from overlapping with roads or residential properties. Any sewerage capacity issues can be addressed via a condition requiring approval of a foul drainage scheme. Based on test results reported in the Flood Risk Assessment, the risk of groundwater flooding is negligible.
56. The appellants have provided evidence of an in-principle agreement with the owner of the third party land that the outfall pipe would partly cross. On that basis, I am satisfied that the necessary works can be secured and implemented via a negatively worded condition and a planning obligation before any homes are occupied and that the Councils' drainage reasons for refusal are resolved.
57. The appellants' transport assessment has studied 6 junctions in the surrounding area including the mini roundabout to the north of the bridge over the River Severn where queues and congestion can occur on all approaches. Modelling data indicates that all junctions would continue to operate in an acceptable manner with the proposed and other new development in place (including the housing schemes west of Pearl Lane). While there have been accidents at the A451/Pearl Lane junction in the past, the speed limits have decreased and there have been no accidents recorded in the past 5 years.
58. There is a weight restriction along the entire length of Areley Common for vehicles over 7.5 tonnes which means that there should not be many lorries travelling past the proposed access point. Adequate visibility splays can be provided at the access point to account for observed traffic speeds. The

additional numbers of vehicles movements are estimated to be around 75 two-way trips in the morning and evening peaks, which is unlikely to cause significant noise, disturbance or pollution issues. Therefore, I am satisfied that the proposed development would have an acceptable effect on highway safety.

59. Notwithstanding observations that local schools are at capacity, no request for any financial contribution has been made by the local education authority. A financial contribution secured by the S106 agreement between the appellants and the Councils would address capacity issues relating to healthcare services. I have no substantive evidence to show that there would be unacceptable cumulative effects on local services and infrastructure from this and other new development nearby.
60. Brownfield sites are being developed within the local area but this does not rule out greenfield sites such as this in principle. Effects at the construction stage can be mitigated through management plans secured by condition. Effects on property values are not a planning matter, while any further development proposals would need to be assessed on their own merits.

Planning balance

Benefits

61. The proposed development would deliver up to 145 dwellings, of which around 125 dwellings would be located within MHDC's area where there is currently a shortfall in 5 year housing land supply. The parties accept that with shorter time limits for the submission of reserved matters and to commence development, some of the dwellings could be delivered within the next 5 years. In terms of how long the shortfall might last, the parties agree that the emerging SWDP Review could be adopted in around 18 months' time and by the spring of 2025, MHDC should be able to demonstrate a 5 year supply. However, MHDC has failed to successfully demonstrate such a supply since early 2021 when the standard method has been used to calculate to its housing requirement. This is a significant period of time without a 5 year supply.
62. The Councils argue that the proximity of new housing development on the WFDC side of the boundary is relevant to the situation in MHDC. WFDC can demonstrate a 9.83 year supply of deliverable housing with a surplus of 1,704 dwellings in the pipeline. This includes 882 dwellings at Stourport on Severn which the Councils estimate is around 500 more dwellings than required for the town over the next 5 years. The WFLP requires the delivery of at least 1,155 dwellings for Stourport on Severn in the plan period (2016-2036) with over 1,000 either already completed or deliverable by 2027.
63. While the above figures are not in dispute and there appears to be a very healthy supply of housing for Stourport on Severn, there is no formal arrangement between the two Councils to share housing requirements and supply. The WFLP and SWDP do not address cross-boundary issues. Someone living on the MHDC side of the boundary could have their housing needs met by moving to Stourport, but the housing requirement for WFDC is based on meeting needs within that district. The proactive approach taken by the WFLP to apply an uplift to the starting housing need figure and allocate land to deliver 20% more housing than required is admirable, but it does not affect the weight to be given to the benefit of delivering housing within MHDC.

64. Whether the 5 year supply is 4.59 or 4.92 years or somewhere in-between, it is a relatively modest shortfall. However, given the lengthy duration of the shortfall and the ability for the proposed development to start delivering dwellings within the next 5 years, significant weight can be afforded to the benefit of delivering around 125 dwellings within MHDC in Appeal A. Although there is a healthy housing land supply in WFDC, the WFDC land within the site is needed to provide the access to and unlock development in the MHDC land within the site. Therefore, significant weight can also be afforded to the delivery of housing in Appeal B.
65. The proposed development would achieve 40% affordable housing across the site. Due to viability concerns, the WFLP seeks a minimum of 90 affordable dwellings per annum (dpa) against an identified need of 158dpa across the plan period. The most recent WFDC data reveals that at least 221 affordable dwellings have been completed in the year 1 April 2022 to 31 March 2023 to the extent that the minimum target in the WFLP is being met. There is still a shortfall of over 300 affordable housing units against the identified need since the start of the plan period, but there are also over 500 affordable dwellings approved but not yet built according to WFDC. While the evidence of their likely delivery is not before me, the affordable housing position in WFDC is an improving one.
66. The parties accept that the median affordability ratio in MHDC has worsened over the past two decades and that the district is less affordable than the county, regional and national averages. The annual need for affordable housing in MHDC is 331dpa over the period 2021-2041 but only 196 dwellings were achieved in the last monitoring year, with an average of 108dpa delivered since 2006. There is little evidence that future housing delivery will meet the identified need. The emerging housing development for 57 units at Pearl Lane immediately to the west of the site within MHDC is expected to be 100% affordable. However, this will contribute towards meeting affordable housing need across the district even if it would more than satisfy local or parish need. The same would apply to the affordable housing delivery that would be secured as part of the proposed development.
67. Significant weight can thus be afforded to the delivery of affordable housing in Appeal A. Although the affordable housing position is better for WFDC, the WFDC land within the site would unlock development in the MHDC part of the site. Therefore, significant weight can also be afforded to the delivery of affordable housing in Appeal B.
68. Turning to environmental benefits, the indicative proposals would deliver biodiversity net gains of around 42% for habitats and 63% for hedgerows, which can be secured by condition. In light of no current targets in the development plans or in legislation, this benefit should be attributed moderate weight for both appeals. The indicative proposals would also provide public open space that would be accessible to all, which can be afforded moderate weight as a benefit for both appeals. While the surface water drainage proposals are primarily aimed at addressing the effect of the development, it would result in an overall betterment for the surrounding area in terms of run-off and so can be given modest weight for both appeals.
69. The economic benefits primarily relate to jobs and investment created by the construction phase and the expenditure of new residents in the local area. The

figures put forward by the appellants have not been disputed. Such benefits can be afforded moderate weight for both appeals. The financial contributions towards transport improvements are principally focused on mitigating the effect of the development to make it acceptable in planning terms. However, such improvements would benefit more than new residents and so these contributions can be given modest weight for both appeals.

Adverse effects

70. The proposed development would be contrary to the development plan taken as a whole in both appeals. It would not be in a suitable location having regard to WFLP Policies SP.1, SP.2 and SP.11 or SWDP Policy 2. The proximity and accessibility of services and facilities within Stourport on Severn tempers the weight to the policy conflict in both appeals. The lack of a 5 year housing land supply in MHDC reduces the weight further in respect of Appeal A as the spatial strategy is not currently delivering sufficient houses. The fact that the SWDP is being reviewed and potentially adopted within 18 months does not alter the fact that reduced weight should be afforded to the conflict with SWDP Policy 2. Therefore, while I afford significant weight to the locational harm and related policy conflict in terms of Appeal B, I afford moderate weight to the locational harm and related policy conflict in terms of Appeal A.
71. The development would cause harm to the character and appearance of the area, contrary to WFLP Policy SP.22 and SWDP Policies 21 and 25. The level of harm would be no greater than moderate and so the conflict with the three policies carries no more than moderate weight for both appeals.
72. The development would have an adverse effect on mineral resources and would conflict with MLP Policy 41 insofar as the sequential approach is concerned. I have given moderate weight to the adverse effect, but consider that on balance, the benefits of the proposed development in both appeals would outweigh the sterilisation of mineral resources. Therefore, there would be overall compliance with MLP Policy 41 for both appeals. The conflict with WFLP Policy SP.34 and SWDP Policy 32 would remain, given the absence of a balancing exercise, but I give limited weight to this conflict in light of the MLP policy being the most recent.
73. The development would have a negative effect on the provision of agricultural land contrary to WFLP Policy DM.32 and SWDP Policy 13, but for the reasons given above I afford this harm and the policy conflict no more than moderate weight for both appeals. There would also be minor harm in terms of the effect on a non-designated heritage asset of archaeological interest for Appeal A.

Conclusion on the planning balance

74. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission should be determined in accordance with the development plan unless material considerations indicate otherwise.
75. A single planning balance is required for both appeals given that the proposed development is indivisible despite straddling two local authority areas. However, the planning balance is more complicated because WFDC can demonstrate a 5 year housing land supply and MHDC cannot.
76. NPPF paragraph 11(d) only applies to Appeal A. This states that where there are no relevant policies, or the policies which are most important for

determining the application are out of date (including where a 5 year housing land supply cannot be demonstrated), planning permission should be granted unless one of two exceptions apply. The first exception is not relevant, but the second exception states that any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.

77. The adverse impacts of the development in Appeal A carry no more than moderate weight. In comparison, significant weight can be given to some of the benefits and moderate weight to others. The adverse impacts would not significantly and demonstrably outweigh the benefits. Consequently, the presumption in favour of sustainable development would apply in line with NPPF paragraph 11(d). Therefore, despite the conflict with SWDP Policies 2, 13, 21, 25 and 32, there are sufficient material considerations to indicate that planning permission should be granted for Appeal A in this instance.
78. The adverse impacts of the development in Appeal B include the locational harm and related policy conflict to which I have given significant weight. However, there are also significant benefits in terms of the delivery of market and affordable housing within MHDC. I have also had regard to the outcome of the exercise in NPPF paragraph 11(d) for Appeal A which indicates that planning permission should be granted for that appeal. Therefore, despite the conflict with WFLP Policies SP.1, SP.2, SP.11, SP.22, SP.34 and DM.32, there are sufficient material considerations to indicate that planning permission should be granted for Appeal B in this instance.
79. Concluding on the planning balance, when looked at individually and taken together, there are sufficient grounds to allow both appeals despite the development being contrary to the development plan in both Council areas.

Planning Obligations

80. The Affordable Housing obligation would ensure that 40% of the residential units are affordable. This would accord with SWDP Policy 15 on affordable housing and exceed the minimum target of 25% set out in WFLP Policy SP.10. The Healthcare Contribution obligation would help provide additional primary healthcare services for the local area. This would accord with SWDP Policy 37 which amongst other things seeks to provide or enhance built community facilities.
81. The Playing Pitches Contribution obligation would be used to improve and enhance built sports facilities and playing pitch investment with priority given to Stourport Rugby Football Club based on previous correspondence from Sport England. This would accord with WFLP Policy DM.8 which requires major development to make provision for sports facilities amongst other things. The Community Infrastructure Contribution obligation would be focused on civic space, allotments, formal pitches and built facilities serving the development. This would accord with SWDP Policies 37 and 39 which seek to make provision for built and outdoor community facilities.
82. The On Site Public Open Space and SUDS obligation would secure public open space, including play areas, as well as drainage within the site. This would accord with WFLP Policies SP.28, SP.32 and DM.8 which require the provision of public open space, drainage, and green infrastructure within new development. The Traffic Regulation Order Contribution obligation would go towards the costs

of securing the proposed emergency access off Areley Common. This is necessary to ensure the effective operation of this access.

83. The Bus Stop Contribution obligation would be used to improve bus stop facilities in Areley Common. The Community Transport Contribution obligation would go towards a transport service to meet the needs of elderly and disabled people living at the site. The School Transport Contribution obligation would help to provide a free transport service from the development to the catchment secondary school which is located 8 miles to the south. The Travel Plan Contribution obligation would assist with personal travel planning services for each new dwelling. These obligations are necessary to provide and enhance sustainable modes of transport.
84. Given the above, I am satisfied that all the above obligations are 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. They would accord with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and NPPF paragraph 57. Therefore, I can take all the obligations in both S106 agreements into account as part of my decisions.

Conditions

85. Conditions 1 to 36 apply to both appeals. Conditions 37 to 40 apply to Appeal B only. Conditions 7, 8, 10, 11, 12, 23, 31, 32 and 33 are pre-commencement conditions as they concern matters that need to be agreed and/or provided before works begin on site.
86. Conditions 1 and 2 are necessary to clarify the reserved matters still to be approved as well as set out the timeframe for applications to be submitted and the development implemented. The timeframe in Condition 2 is shorter than the standard amount to encourage the earlier delivery of housing. Condition 3 is necessary to specify the plans to which this decision relates. Condition 4 is required to ensure that the development is in broad accordance with the framework plan considered during the application and appeal process.
87. Condition 5 is necessary to ensure that details of internal access and circulation routes are established, as the plans specified in Condition 3 only relate to the access point onto Areley Common. Condition 6 is necessary to prevent any vehicular access to the site via Marlborough Drive.
88. Condition 7 is necessary to safeguard existing trees, while Conditions 8 to 11 are necessary to ensure adequate surface and foul water drainage including securing access across third party land. Conditions 12 and 13 are necessary to address the site's archaeological interest. Conditions 14 and 15 are necessary to deal with any land contamination issues. Condition 16 is necessary to improve emission levels and living conditions for existing and future occupiers.
89. Conditions 17 to 21 are needed to ensure adequate cycle and car parking and to encourage more sustainable modes of travel. Conditions 22 and 23 are necessary in the interests of highway safety and living conditions. Condition 24 is necessary to ensure satisfactory site levels. Conditions 25 and 26 are necessary to help reduce the consumption of water. Condition 27 is necessary to ensure adequate refuse provision while Condition 28 is necessary to safeguard the living conditions of residents in terms of noise.

90. Condition 29 is necessary to ensure accessible and adaptable dwellings and Condition 30 is necessary to support climate change measures. Condition 31 is needed to ensure that recovered minerals are used appropriately. Conditions 32 to 36 are necessary to safeguard protected species and enhance the site's biodiversity. Conditions 37 to 40 are necessary in the interests of highway safety with regard to the vehicular access onto Areley Common and off-site highway improvements.

Conclusions

91. For the above reasons, and having had regard to all other matters raised, my conclusions are that both appeals should be allowed.

Tom Gilbert-Wooldridge

INSPECTOR

Richborough Estates

Appearances

For the Appellants:

Martin Carter, Counsel, instructed by Peter Dutton of Gladman Developments Limited

He called:

Jason Tait BA (Hons) Dip TP MRTPI
Director, Planning Prospects Limited

Silke Gruner BHons (Landscape Architecture) CMLI
Director (Landscape), Icen Projects

Stephen Barry BSc MBA FRICS CGEOL FIQ
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Peter Dutton BA (Hons) MCD MRTPI
Planning Manager, Gladman Developments Limited

Dr Suzanne Mansfield BSc (Hons) Botany, PhD CIEEM CMLI
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Matt Travis BSc (Hons) MSc MCIWEM CWEM CEnv CSci
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Simon Helme BEng (Hons) MSc MCIHT
Managing Director, Ashley Helme Associated Ltd

Gail Stoten BA (Hons) MCIfA FSA
Heritage Executive Director, Pegasus Planning Group

For the Local Planning Authorities:

Hugh Richards, Counsel, instructed by Malvern Hills and Wyre Forest District Councils

He called:

John Rowley MSc
Senior Planning Policy Officer, Wychavon and Malvern Hills District Councils

Neil Furber BSc (Dual Hons) Dip LA CMLI
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Ben Horovitz BSc (Hons) MA MRTPI
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Lee Walton MPhil (Environmental Planning & Development) MRTPI
Principal Planning Officer, Malvern Hills District Council

Helen Hawkes BRS MRTPI
Planning Manager, Wyre Forest District Council

George Nock
Jacobs

Interested Parties who spoke during the Inquiry

Dr Peter King	Chairman of CPRE Worcestershire
Daisy Rudge	Local resident

Documents submitted during the Inquiry

- ID1: Letter dated 1 March 2023 from Michael Pocknell regarding surface water drainage easement through land (title number HW136307)
- ID2: Appellants' opening statement
- ID3: Councils' opening statement
- ID4: Statement from Dr Peter King
- ID5: Email dated 2 March 2023 from Aidan Smyth (Archaeology and Planning Adviser to MHDC) regarding resolution of archaeological objection
- ID6: Extract from the Inspector's Report dated 6 May 2022 regarding the Worcestershire Minerals Local Plan
- ID7: Official copy of register and title plan for HW136307 and WR115023
- ID8: Site visit itinerary
- ID9: Missing plan from Appendix 6 of Ms Gruner's proof of evidence
- ID10: Emails dated 16 February 2023 from Lee Wilson (Building Control Surveyor at South Worcestershire Building Control) and Hayley Jones (Planning Officer at MHDC) and photographs regarding commencement of development at The Royal Oak site in Tenbury Wells
- ID11: Statement from Daisy Rudge
- ID12: Latest housing completion figures in Wyre Forest for 2022/23
- ID13: Full version of the Wyre Forest Local Plan 2016-2036
- ID14: Final draft S106 agreement between the appellants and MHDC / WFDC
- ID15: Final draft S106 agreement between the appellants and WCC
- ID16: Final draft list of planning conditions
- ID17: Councils' closing submissions
- ID18: Appellants' closing submissions

Documents submitted after the Inquiry

1. Completed and executed S106 agreement dated 23 March 2023 between the appellants and MHDC / WFDC
2. Completed and executed S106 agreement dated 27 March 2023 between the appellants and WCC

Schedule 1: Conditions applicable to both Appeal A and Appeal B (1-36)

- 1) Approval of the details of the appearance, landscaping, layout and scale (hereinafter called 'the reserved matters') shall be obtained from the local planning authority in writing before any development is commenced. The development shall be carried out in accordance with the approved reserved matter details.
- 2) Application for the approval of all reserved matters shall be made to the local planning authority before the expiration of two years from the date of this permission. The development hereby permitted shall be begun before the expiration of one year from the date of approval of the last of the reserved matters to be approved.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site Location Plan CSA/3076/113 Rev B
 - Proposed Site Access 1510/01/E
- 4) The extent of the built development, open spaces & structural landscaping shall be broadly in accordance with the submitted Development Framework Plan ref: CSA/3076/108 Rev G.
- 5) No development shall commence until plans and particulars of the accessibility within the site, including circulation routes and how these fit into the surrounding access network, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 6) There shall be no vehicular access to the site via Marlborough Drive.
- 7) No demolition, site clearance or building operations of any type hereby permitted shall commence or equipment, machinery or materials be brought onto site until a scheme for the protection of trees has been submitted to and approved in writing by the local planning authority. The scheme shall include the provision of protective fencing within the site and around those trees outside the site whose Root Protection Areas (RPA) (as defined in BS5837:2012) fall within the site. The tree protection measures shall include:
 - (a) The submission of a Tree Protection Plan and appropriate working methods – the Arboricultural Method Statement in accordance BS5837:2012 Trees;
 - (b) The scheme must include details of the erection of stout protective fencing in accordance with British Standard BS5837:2012, Clause 6.2;
 - (c) Fencing shall be shown on the Tree Protection Plan and installed to the extent of the tree Root Protection Area as defined in BS5837:2012 and as agreed in writing by the local planning authority;
 - (d) No equipment, machinery or structure shall be attached to or supported by a retained tree;
 - (e) No mixing of cement or use of other contaminating materials or substances shall take place within, or close to, a root protection area that seepage or displacement could cause them to enter a root protection area;

(f) No fires shall be lit within 10 metres of the nearest point of the canopy of the retained tree within or adjacent to the site; and

(g) A phasing plan for the provision and removal of the tree/hedge protection works to take account of the commencement and completion phases of different parts of the site.

The approved scheme shall be kept in place until all parts of the development have been completed and all equipment, machinery and surplus materials have been removed from the site.

- 8) No development shall take place until a scheme for a surface water drainage strategy has been submitted to and approved in writing by the local planning authority. The scheme shall include details of surface water drainage measures, including for hardstanding areas, and shall conform with the non-statutory technical standards for SuDS (Defra 2015) and the drainage strategy submitted with the application (see Drainage response dated 18 August 2022). Discharge from the proposed attenuation storage shall be limited to the greenfield (QBAR) rate up to and including the 1 in 100 year event plus a 40% allowance for climate change and a 10% urban creep allowance. The scheme shall include a detailed water quality treatment assessment that confirms that sufficient treatment will be provided by the surface water drainage scheme in accordance with the simple index approach detailed in the SuDS manual (Ciria C753). Evidence shall be submitted of the in-principle approval for the construction of the outfall route across third party land from the site to the ultimate point of discharge (proposed as the ordinary watercourse approximately 350m to the south of the site). The approved surface water drainage scheme shall be implemented prior to the first use of the development and thereafter maintained in accordance with the agreed scheme.
- 9) Prior to the first use of the development, a management plan detailing future maintenance responsibilities for all SuDS assets shall be submitted to and approved in writing by the local planning authority. The plan should include proposals for informing future homeowners or occupiers of the arrangements for maintenance of communal assets. The approved management plan shall be implemented prior to the first use of the development and thereafter maintained.
- 10) No works or development shall take place until a construction surface water management plan has been submitted to and approved in writing by the local planning authority. The plan shall include how surface water will be managed during the construction phase, including site clearance and soil stripping. The plan shall include drawings of any temporary drainage systems, a timeline of construction and measures to mitigate the risk of pollution (including silt) of the water environment and offsite flood risk. The plan shall detail how the approved permanent surface water drainage system shall be remediated during the construction phase. The approved construction surface water management plan shall be implemented as soon as works start on site and thereafter maintained during the full duration of the construction phase.
- 11) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme for foul drainage flows to serve the residential development hereby permitted.

None of the dwellings hereby permitted shall be occupied until works for the disposal of foul water have been provided in accordance with the approved scheme. The scheme shall be retained and maintained in accordance with the approved scheme.

- 12) No development shall take place, nor the subsequent reserved matters application be determined until a programme of archaeological work, including a Written Scheme of Investigation, has been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions; and:
 - (a) The programme and methodology of site investigation and recording;
 - (b) The programme for post investigation assessment;
 - (c) Provision to be made for analysis of the site investigation and recording;
 - (d) Provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - (e) Provision to be made for archive deposition of the analysis and records of the site investigation; and
 - (f) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.
- 13) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition 12 and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.
- 14) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported immediately to the local planning authority. The developer is advised to immediately seek the advice of an independent geo-environmental consultant experienced in contaminated land risk assessment, including intrusive investigations and remediation.

No further works should be undertaken in the areas of suspected contamination until requirements (a) to (d) below have been complied with:

- (a) Detailed site investigation and risk assessment must be undertaken by competent persons in accordance with the Environment Agency's 'Land Contamination: Risk Management' guidance and a written report of the findings produced. The risk assessment must be designed to assess the nature and extent of suspected contamination and approved in writing by the local planning authority prior to any further development taking place.
- (b) Where identified as necessary, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to identified receptors must be prepared and subject to the approval in writing by the local planning authority in advance of undertaking. The remediation scheme must ensure that the site will not qualify as Contaminated Land under Part 2A Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

- (c) The approved remediation scheme must be carried out in accordance with its terms prior to the re-commencement of any site works in the areas of suspected contamination, other than that work required to carry out remediation.
- (d) Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced and subject to the approval in writing by the local planning authority prior to the occupation of any buildings on site.
- 15) 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 must be provided. 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.
- 16) Details shall be submitted to and approved in writing by the local planning authority prior to the first occupation of the development for the installation of Ultra-Low NO_x boilers with maximum NO_x Emissions less than 40 mg/kWh. The details as approved shall be implemented prior to the first occupation of the development.
- 17) Any reserved matters application relating to layout shall take into account the Public Rights of Way which are located within the site boundary and ensure they are protected and enhanced.
- 18) As part of the reserved matter application relating to layout, details of the unadopted recreational footpaths and cycleways to be provided shall be submitted to and approved in writing by the local planning authority. Such details shall include the layout, minimum width of the footpath, surfacing materials, drainage details, provision of public seating and dog waste bins and timescale for implementation. The footpaths shall then be provided in accordance with the approved details within such timescales as approved and maintained thereafter for the lifetime of the development. The footpaths shall remain fully publicly accessible.
- 19) The development shall not be brought into use until sheltered and secure cycle parking to comply with adopted cycle parking standards has been provided in accordance with details which shall first be submitted to and approved in writing by the local planning authority. Thereafter, the approved cycle parking shall be kept available for the parking of bicycles only.
- 20) The development shall not be brought into use until car parking to comply with adopted car parking standards has been provided in accordance with details which shall first be submitted to and approved in writing by the local planning authority. The car parking shall thereafter be retained in accordance with the approved details.

- 21) The development shall not be brought into use until electric vehicle charging spaces have been provided in accordance with a specification and details of implementation which shall be submitted to and approved in writing by the local planning authority. The electric charging spaces shall be implemented in accordance with the approved specification and retained thereafter.
- 22) Concurrent with the submission of a reserved matters application for layout, a Street Lighting Assessment shall be submitted to and approved in writing by the local planning authority, in discussion with the local highway authority. The assessment shall consider the following:
- (a) The need or not for additional public highway street lighting in the vicinity of the new vehicular access;
 - (b) The linking of any new public highway street lighting with adjacent lighting;
 - (c) The condition of existing adjacent public highway street lighting and any need for upgrading or replacement;
 - (d) Any proposed development lighting within the site; and
 - (e) The environmental impact of any proposed street lighting, be it on the public highway or within private land.
- The development shall be implemented in accordance with the approved assessment.
- 23) The development shall not commence until a Construction Environmental Management Plan has been submitted to and approved in writing by the local planning authority. This shall include but not be limited to the following:
- (a) Measures to ensure that vehicles leaving the site do not deposit mud or other detritus on the public highway;
 - (b) Details of site operative parking areas, material storage areas and the location of site operatives' facilities (offices, toilets etc);
 - (c) The hours that delivery vehicles will be permitted to arrive and depart, and arrangements for unloading and manoeuvring;
 - (d) Details of any temporary construction accesses and their reinstatement; and
 - (e) A highway condition survey, timescale for re-inspections, and details of any reinstatement.
- The measures set out in the approved plan shall be carried out and complied with in full during the construction of the development. Site operatives' parking, material storage and the positioning of operatives' facilities shall only take place on the site in locations approved in writing by the local planning authority.
- 24) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan showing the existing and proposed site levels. Development shall be implemented in accordance with the approved site levels.
- 25) No dwelling hereby permitted that has a rainwater downpipe shall be occupied until it has been provided with a minimum 190 litre capacity

water butt fitted with a child proof lid, connected to a downpipe and with an overflow facility connected to a drainage system or area.

- 26) A scheme that incorporates design features that will reduce water consumption shall be submitted to and approved in writing by the local planning authority, and the approved scheme shall be implemented prior to the first occupation of each dwellinghouse. The scheme shall include details on how a water efficiency standard of 110 litres per person per day can be achieved including measures to support recycling and the re-use of water.
- 27) Concurrent with the submission of a reserved matters application for appearance or layout, a Refuse Scheme shall be submitted to and approved in writing by the local planning authority, which shall include:
- (a) Location of refuse bins and recycling materials - their storage areas and waste/recycling presentation points;
 - (b) Appearance of any associated screening or/and enclosures;
 - (c) Confirmation that distances travelled by local authority refuse vehicle operatives from the location where a refuse vehicle are intended to stop to the presentation points specified do not exceed 20m each way;
 - (d) Confirmation of 26 tonne carrying capacity of all roads intended for use by local authority refuse vehicles;
 - (e) Refuse vehicle swept path analysis for all roads intended for use by local authority waste vehicles; and
 - (f) Where relevant, provision of sufficient indemnity to prevent legal action.

The development shall be implemented in accordance with the approved details prior to the first occupation of each respective unit of the development and thereafter retained.

- 28) Concurrent with the submission of a reserved matters application for appearance and layout, an updated Noise Assessment Report shall be submitted to and approved in writing by the local planning authority. The updated report shall include mitigation measures to demonstrate that the development has been designed to ensure that indoor ambient noise levels in living rooms and bedrooms meet the recommended standards within BS 8233:2014 and all outdoor amenity areas meet the 55dBA daytime WHO Community Noise Guideline Level. The development shall be undertaken in accordance with the approved mitigation measures.
- 29) Following completion of at least 50% of the dwellings within the development, an Accessible Housing Certification Table shall be submitted to and approved in writing by the local planning authority. The table shall contain full details of which and how many dwellings within the development have satisfied M4 Category 2: accessible and adaptable dwellings standards, and which and how many dwellings within the development have M4 Category 3 wheelchair accessible dwellings standard as contained within Part M Volume 1 (Approved Document) of The Building Regulations 2010, or any such Approved Document or Regulations for the time being in force, including any modification, extension or re-enactment of the same and including all instruments, orders, regulations and directions for the time being made, issued or

- given under the Approved Document or Regulations (or deriving validity from the same).
- 30) No development above dampproof course shall be carried out until details of the heating system to be used by each dwelling hereby approved has been submitted to and approved in writing by the local planning authority. The details of the heating system should be in conformity with the requirements of the adopted development plan and shall show that the development will incorporate energy from renewable or low carbon sources equivalent to at least 10% of predicted energy requirements. The preference should be for PV solar panels, air-source heat pumps and/or ground-source heat pumps, in accordance with the adopted policy requirements, unless alternative provision is fully justified as part of a submitted details. The development shall be implemented in accordance with the approved details and thereafter maintained.
- 31) Prior to the commencement of the development, an incidental recovery plan for minerals shall be submitted to and approved in writing by the local planning authority in consultation with the mineral planning authority (Worcestershire County Council). Thereafter, the development shall be carried out in accordance with the approved details. The plan shall include:
- (a) An estimation of the tonnage of on-site mineral resources of national and local importance (including sand and gravel) that will be extracted during the normal course of the development that would meet specifications for use on site;
 - (b) Details of the likely tonnage of these resources that will be used within the development and how they will be used;
 - (c) An outline of the form and content of a report to be provided annually to the local planning authority and mineral planning authority recording the amount of minerals of national and local importance extracted each calendar year, including the amount of these resources that were used on site and how they were used;
 - (d) Acknowledgement that, where the tonnage of resources used within the development under (b) is below the tonnage that was estimated to be extracted during the normal course of development under (a), consideration must be given to the sorting, storing and removal from site of those resources for recovery (in preference to disposal);
 - (e) Acknowledgement that, in the event that the tonnage of resources extracted during the normal course of the development exceeds the tonnage estimated in (a), the developer must notify the mineral planning authority of the amount and destination of the mineral resources prior to any export; and
 - (f) Acknowledgement that, if the excess tonnage in (e) arises, a separate mineral planning permission may be required if the mineral planning authority deems the amount to exceed "incidental recovery".
- 32) No development shall take place (including demolition, ground works, and vegetation clearance) until a Badger Mitigation Strategy has been submitted to and approved in writing by the local planning authority. The strategy shall demonstrate how the sett will be supported and include a scaled plan (1:100) and clearly identify the zone where construction

activity will be excluded. The strategy will look at mitigation to prevent disturbance during construction and assuring sufficient and appropriate connectivity exists between the sett and appropriate feeding habitats. The development shall be implemented strictly in accordance with the approved strategy.

- 33) No development shall take place (including demolition, ground works, vegetation clearance) until a construction environmental management plan has been submitted to and approved in writing by the local planning authority. The plan shall include the following:
- (a) Risk assessment of potentially damaging construction activities;
 - (b) Identification of "biodiversity protection zones";
 - (c) Measures to prevent the mobilisation of contaminants, with reference to measures to prevent the mobilisation of windblown particulate;
 - (d) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (this may be provided as a set of method statements and should include consideration of construction lighting);
 - (e) The location and timing of sensitive works to avoid harm to biodiversity features;
 - (f) The times during construction when specialist ecologists need to be present on site to oversee works;
 - (g) Responsible persons and lines of communication;
 - (h) The role and responsibilities on site of an ecological clerk of works or similarly competent person; and
 - (i) Use of protective fences, exclusion barriers and warning signs.

The approved plan shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

- 34) As part of the first reserved matters application, an Ecological Design Strategy (EDS) shall be submitted to and approved in writing by the local planning authority. The strategy shall be based on the findings and recommendations contained within the Ecological Appraisal report by FPCR Environment and Design Ltd, dated September 2022; the Reptile Mitigation Strategy by FPCR, dated January 2023; the Biodiversity Net Gain Excel Spreadsheet calculations by FPCR, ref. 10538 Rev G; and the illustrative framework plan, ref CSA Environmental January 2022, CSA/3076/108 G, as well as any update surveys as appropriate, and shall include the following:
- (a) Purpose and conservation objectives for the proposed works;
 - (b) Review of site potential and constraints;
 - (c) Detailed designs and working methods to achieve stated objectives, including points where ecological expertise will be employed;
 - (d) Extent and location of proposed works shown on appropriate scale maps and plans;
 - (e) Type and source of materials to be used where appropriate, e.g. native species of local provenance;

- (f) Timetable for implementation, demonstrating that works are aligned with the proposed phasing of development and the delivery of Biodiversity Net Gain and the needs of the protected species mitigation;
- (g) Persons responsible for implementing the works;
- (h) Initial aftercare;
- (i) Details for disposal of any wastes arising from works; and
- (j) Details of the creation of an ecological corridor within the south of the site to include planned attenuation ponds, meadow grassland and scattered trees to increase biodiversity on the site, control surface water run-off and provide enhanced public amenity.

The development shall be carried out in accordance with the approved EDS and all features to be retained in accordance with the approved EDS and details thereafter. On completion of the ecological mitigation and enhancement works, a statement of compliance shall be submitted to the local planning authority by the ecological clerk of works confirming that specified and consented measures have been implemented.

- 35) As part of the first reserved matters application, a landscape and ecological management plan (LEMP) which is to be prepared by a suitably qualified and experienced ecologist, shall be submitted to and approved in writing by the local planning authority. The content of the LEMP shall be guided by the Biodiversity Net Gain (BNG) Excel Spreadsheet calculations by FPCR, ref. 10538 Rev G provided and the submitted Constraints and Opportunities Plan (drg. Number Figure 12 A) requirement to achieve Biodiversity Net Gain and maintained for no less than 30 years after implementation, and shall include the following:
- (a) Description and evaluation of the features to be managed including all protected species mitigation and in particular a reptile mitigation strategy;
 - (b) Updated BNG calculation and Biodiversity Gain Plan;
 - (c) Ecological trends and constraints on site that might influence management;
 - (d) Aims and objectives of management;
 - (e) Appropriate management options for achieving aims and objectives;
 - (f) Prescriptions for management actions;
 - (g) Preparation of a work schedule, including an annual work plan capable of being rolled forward over a five-year period and for a minimum of 30 years thereafter;
 - (h) Details of the body or organisation responsible for implementation of the plan, and sustained management and delivery of the plan; and
 - (j) Ongoing monitoring and remedial measures that are reviewed by a suitably qualified ecologist and a Certificate of Compliance confirming the successful delivery of BNG and other ecological mitigation measures to be submitted to and approved in writing by Wyre Forest District Council and Malvern Hills District Council every 5 years from date of commencement of the development for a period of 30 years.

The development shall be carried out in accordance with the approved LEMP and the development shall remain in accordance with the requirements of the approved LEMP thereafter.

- 36) Concurrent with the submission of a reserved matters application relating to layout, a lighting design strategy for biodiversity shall be submitted to and approved in writing by the local planning authority. The strategy shall be informed by the bat survey information contained within the Ecological Appraisal report by FPCR Environment and Design Ltd, dated September 2022 and the Ecology Addendum letter dated 11th October 2022, and shall take into account both permanent and temporary lighting needs. The strategy will:

(a) Identify those areas/features on site that are particularly sensitive for nocturnal wildlife and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and

(b) Show how and where external lighting will be installed and impacts of internal light spill (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places. This will include the provision of dark corridor conditions (LUX levels at or below 0.4 in the vertical plane and 0.2 LUX in the horizontal plane) for all woodland edges, hedgerows and other biodiversity features.

The strategy will be accompanied with an ecological commentary from an appropriately qualified ecologist that clearly identifies that the proposed strategy will meet the above ecological needs.

Following the installation of any lighting, temporary or permanent, the lighting location will be visited by an appropriately qualified ecologist to ensure the lighting is performing in the required manner, and any amendment identified at this time implemented to ensure no harm comes to light sensitive species. The ecologist's findings shall be submitted to the local planning authority for review.

The approved lighting strategy shall include details of the phasing, location and design of all lighting to be installed within the site. All lighting shall be installed in accordance with the approved strategy and shall thereafter be retained and maintained in accordance with the approved details.

Schedule 2: Conditions applicable to Appeal B only (37-40)

- 37) The visibility splays shall be provided from a vertical point 1.05m above carriageway level at the centre of the application site access and 2.4m back from the near side edge of the adjoining carriageway (measured perpendicularly) for 119m northwards and 106m southwards, measured along the nearside edge of the adjoining carriageway (vertical off set of 0.6m), prior to the occupation of the first dwelling. Nothing shall be planted, erected and/or allowed to grow on the triangular area of land so formed which would obstruct the visibility described above.
- 38) The development shall not be brought into use until the highway improvements works as shown in general accordance with Drawing 1510/01/E have been completed to the satisfaction of the local planning

authority and approved in writing (in discussion with the local highway authority) and open to traffic. The works comprise:

- (a) New emergency/pedestrian/cycle access onto Areley Common;
 - (b) Widening of existing footway along the eastern side of the Areley Common carriageway fronting the site and connecting to existing footways to the north and south;
 - (c) Dropped kerbs and tactile paving provided at the junction of Areley Common; and
 - (d) Redstone Lane to tie in with the widened footway along Areley Common.
- 39) The development shall not commence construction until a Stage 1/2 Road Safety Audit report, together with the Designer's Response, for the detailed design of the highway improvement works have been submitted to and approved in writing by the local planning authority. Should an initial Stage 1 Road Safety Audit Report be submitted, a separate Stage 2 report would subsequently be required.
- 40) Upon completion of the new development vehicular access hereby approved, a Stage 3 Road Safety Audit report, together with the Designer's Response, for the construction of the scheme shall be submitted to and approved in writing by the local planning authority within 21 days of the first occupation.