



Appeal Decision

Hearing held on 25 September 2023

Site visit made on 26 September 2023

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 November 2023

Appeal Ref: APP/J1860/W/23/3323076

Land at OS 8223 5896, off Oakleigh Heath, Hallow, nr Worcester

Easting: 382273 Northing: 258944

- 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 Mr Andrew Browne (Hamelin Partnerships Limited) against the decision of Malvern Hills District Council.
 - The application Ref M/22/01646/FUL, dated 3 November 2022, was refused by notice dated 20 February 2023.
 - The development proposed is construction of 40 affordable dwellings including a mix of one, two, three and four bedroom properties and the construction of a new internal road, parking, SUDS infrastructure, and green infrastructure (including public open space).
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Decision

1. The appeal is allowed and planning permission is granted for construction of 40 affordable dwellings including a mix of one, two, three and four bedroom properties and the construction of a new internal road, parking, SUDS infrastructure, and green infrastructure (including public open space), at Land at OS 8223 5896, off Oakleigh Heath, nr Worcester Easting: 382273 Northing: 258944, in accordance with the terms of the application, Ref M/22/01646/FUL, dated 3 November 2022, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for an award of costs has been made by Mr Andrew Browne (Hamelin Partnerships Limited) against Malvern Hills District Council. This is the subject of a separate decision.

Preliminary Matter

3. Prior to the hearing, the District Council indicated that highway safety concerns set out in its fourth reason for refusal had been overcome and were no longer a matter in dispute. Therefore, I have not addressed this as a main issue.

Main Issues

4. From the evidence before me, including matters raised at the hearing, the main issues in this case are:
 - Whether the proposal would represent a suitable location for housing, having regard to relevant local and national planning policy, including

whether the proposal would address an identified local need for affordable housing;

- The effect of the proposal on the landscape character and appearance of the area;
- Whether the proposal would have an acceptable impact on local infrastructure;
- The effect of the proposal on living conditions of neighbouring occupants.

Reasons

Location for housing

5. The appeal site is an agricultural field located to the western side of the village of Hallow, adjacent to dwellings on Oakleigh Heath and Moseley Road. Hallow is listed as a Category 1 village under the settlement hierarchy of the South Worcestershire Development Plan (Adopted 2016) (the SWDP). These are settlements providing varying ranges of local services and facilities, with the larger settlements tending to provide the greatest range. Their role is predominantly to meet locally identified housing and employment needs.
6. However, the site lies outside of the settlement boundary for Hallow as established by the SWDP and is therefore in the countryside for planning purposes. Under Policy SWDP 2 Part C, development in the open countryside will be strictly controlled and limited to certain specific types, where they also meet with criteria set out in other specific policies. Of the types of development permitted under SWDP 2 Part C, the most relevant is rural exception sites, which are further addressed by Policy SWDP 16.
7. Policy SWDP 16 Part A states that affordable housing development will be permitted on small sites beyond, but reasonably adjacent to, the development boundaries of villages where three criteria are met: i) there is a proven and as yet unmet local need, having regard to the latest Worcestershire Strategic Housing Market Assessment (SHMA), the Sub-regional Choice-based Letting Scheme and other local data e.g. Neighbourhood Plan, Parish Survey or Parish Plan; ii) no other suitable and available sites exist within the development boundary of the settlement; and iii) secure arrangements exist to ensure the housing will remain affordable and available to meet the continuing needs of local people.
8. It is common ground between the main parties that Hallow is a village and that the appeal site is reasonably adjacent to it, as it abuts the edge of the built form on two sides. An initial area of dispute between the main parties was that the proposal, at 40 dwellings, is beyond what may be considered 'small' in the context of the policy. The District Council has subsequently accepted that the proposal does amount to 'small scale' development as a proportion of the number of dwellings in Hallow, following an appeal decision in *Fladbury*¹ where the Inspector found that 34 dwellings, representing around a 9% increase in the housing stock, fell within the scope of 'small sites' for the purposes of Policy SWDP 16. In this case, the proposal would represent an increase of some 6% on the existing housing stock of Hallow. On this evidence, I find the proposal would constitute a 'small site' for the purposes of Policy SWDP 16 Part A.

¹ Appeal Ref: APP/H1840/W/22/3313745, allowed 22 June 2023

9. I address local affordable housing need below, but it is common ground that no other suitable available sites exist within the settlement boundary of Hallow and the appellant has provided a Section 106 Agreement which would secure the development as affordable housing in perpetuity. Criteria ii) and iii) of Policy SWDP16 Part A would therefore be met.
10. Separately, I am satisfied that the site is located where shops and other facilities in Hallow can be reached conveniently on foot or bicycle, including bus stops providing onward travel to Worcester. Therefore, despite the appeal site being beyond the settlement boundary, the proposal would enable sustainable travel modes and would not lead to undue reliance on the private car. Consequently, the overall suitability of the site for housing in terms of the settlement strategy of the SWDP rests on whether an unmet local need for affordable housing can be demonstrated.
11. The District Council sets out that local need is that arising from the parish within which the site is located and adjoining parishes. Its evidence of need does not draw on any of the documents referred to under SWDP 16 Part A(i), but derives from its Housing for You data of households waiting for suitable housing, showing a total of 18 households registered with an address in Hallow and surrounding parishes who have a housing need. The District Council conceded that no current housing needs survey has been undertaken for the parish of Hallow. The Parish Council refers to a survey conducted in 2018 for the preparation of the Hallow Neighbourhood Development Plan (July 2021) (the HNDP) which identified a total housing need of 23 units over the following five years. The HNDP subsequently allocated a site HAL1/1 - Land at Green Hill Lane for a minimum of 40 dwellings to meet housing requirements to 2041. This site has subsequently been granted planning permission for 55 units, of which 22 are affordable units. The evidence further indicates that Hallow has seen considerable development in recent years, with some 189 units built since 2016, of which 61 are affordable.
12. Despite this significant recent delivery of market and affordable housing, there remains demand of at least that recorded on the District Council's waiting list, though this is accepted as a likely underestimate. The appellant's evidence draws a significantly larger need figure based on a number of factors, including population growth, affordability, demand from those looking to downsize and private renters looking to own or those nearing retirement who could not afford to continue renting at market rates. The appellant's evidence sets out a need for 27 social rented dwellings and 35 low cost/shared ownership units within Hallow to 2033, and a total of 439 units including the adjoining parishes.
13. The District Council has not produced any detailed rebuttal of this evidence. I recognise that recent developments in Hallow have met and exceeded needs identified in 2018, but this evidence base is no longer current. It was also based on a resident survey which had a low response rate. By comparison, the appellant's evidence is based on 2021 Census and Office of National Statistics data and, though drawing on wider trends, follows a robust methodology drawing in additional relevant and up-to-date factors affecting affordability.
14. Moreover, the District Council's 2021 SHMA identified a net imbalance of 331 affordable units per annum over the following five years, in the context of 1,177 households on the waiting list having a local connection to Malvern Hills as of December 2022. Therefore, even if housing need in Hallow is as low as

contended by the District and Parish Councils, it is clear that, on a district-wide level, there is a considerable shortfall in supply relative to demand. The District Council also concedes it cannot demonstrate an overall five year supply of deliverable housing sites, which means the shortfall in affordable housing delivery is unlikely to be rectified through policy-compliant developments on allocated sites or those already with planning permission. The parties referred at the hearing to reviews of both the SWDP and HNPD, but both are still at a stage of preparation where policies are subject to change, and as such they are of limited weight in my considerations. Therefore, at present, housing will have to be delivered on other sites beyond those allocated in the SWDP to address the needs of the district, both for market and affordable housing.

15. The large differences between the parties estimates of local need, and the lack of detailed rebuttal from the District Council, means I cannot derive a precise figure for local need in Hallow. However, much of the appellant's evidence is cogent and coupled with the stark imbalance of supply and demand for affordable housing across the district, it is reasonable to consider that the local need for Hallow, even if not fully at the level estimated by the appellant, is greater than the District Council's figure based solely on its waiting list data.
16. I accept that recent developments will have met demand previously identified, and that development such as that on allocated site HAL1/1 are delivering more than the allocated number of homes. However, the overall evidence before me indicates that demand remains, and there are presently no other potential sites within Hallow that would address this demand. I was told of a large development nearby at Broadheath for some 1,400 homes, with Phase 1 to provide 44 affordable units, but the evidence before me does not indicate that these and other sites would wholly address the projected demand for affordable housing in and around Hallow, particularly if Hallow and other settlements are required to accommodate the persistent shortfall in affordable housing provision across the district.
17. For these reasons, I conclude that the proposed 40 dwellings would address a demonstrable local affordable housing need within Hallow and surrounding parishes, which would be secured through the submitted Section 106 agreement. The site would also be accessible to local services and overall, the proposal would accord with Policy SWDP 16 Part A and in turn with the overall settlement strategy of Policy SWDP 2.

Effect on Landscape Character

18. The third reason for refusal referred to the density and urbanising impact of the development being harmful to the undeveloped setting of Hallow. At the hearing, the District Council conceded that the density was consistent with other recent developments nearby. The proposed dwellings would be laid out in a more compact arrangement than the neighbouring development on Oakleigh Heath and Moseley Road, but this in part is to enable provision of significant open space to the west and north-western parts of the site. The layout of the development would also reflect recent developments in Hallow which are suburban in character, including at Banks Close and Pinchfield Gardens.
19. The proposed area of open space to the western and north-western sides of the site would include strengthening of boundary planting and would create a substantial buffer between the dwellings and the open countryside, softening the transition between the two and generating a robust, natural edge to the

- built form. This would enable the development to assimilate into the landscape. There would be a change in character on Oakleigh Heath as the cul-de-sac is extended to access the development, but this would open up countryside views along the extended access road and across the proposed open space, which would be a positive aspect of the development.
20. Much concern raised at the hearing related to the potential effect on views from points to the north and north-west of the site, in particular from The Brum (Footpath 573b – View 23 in the HNPD). On site, I saw that the development would be well filtered by the existing tree line in the middle ground of the view and would not obscure the spires of Hallow Church and Hallow Primary School visible in the distance.
21. The proposal would bring development closer to Moseley Road, but it would be filtered by the boundary planting to the site and the undulating topography. The proposal would also be viewed against the varied tree line which extends across the landscape ridge to this side of Hallow and serves to blend the built form into the natural surroundings. Given this, and the fact that the approach along Moseley Road would still predominantly take in open, agricultural fields, the proposal would not cause demonstrable harm to the landscape setting of Hallow in these views. From other vantage points in the appellant's Landscape and Visual Impact Assessment (LVIA) the proposal would either not be visible or would be sufficiently distant or filtered that it would not have a significant effect on the landscape character of the area. My views in this respect are consistent with the appeal decision on the same site from 2018.²
22. The Parish Council is critical of the appellant's response to the Hallow Design Guide (June 2019) (the HDG), in particular with regard to the 'generic style' proposed, the inconsistency with the more spacious layout of dwellings on Oakleigh Heath, use of conflicting materials and the level of parking provision. From my observations, the layout responds well to this site, with denser development to the interior and a more spacious arrangement to the northern and western edges providing transition to the open space and wider countryside. The continuation of single storey dwellings along the access road from Oakleigh Heath would also help to integrate the new built form with the existing layout. The layout also includes a number of street trees which would add visual interest, whilst the use of red brick, with some render and different roof heights and colours would generally reflect the design approach of Banks Close and Pinchfield Gardens, and the prevailing material mix of the village.
23. I also saw the development on Banks Close incorporates tandem parking to most dwellings. Whilst acknowledging this form of parking has drawbacks in terms of manoeuvring vehicles in and out, it would serve to reduce the prominence of frontage parking within the development, which is limited to the internal parts of the site. The proposal would provide the required amount of parking and although the Parish Council raised concerns about overspill parking on Oakleigh Heath, it acknowledged that it did not have a preferred alternative approach to the parking layout.
24. Overall, I find that the design approach is consistent with the aims of the HDG, whilst the extensive open space buffer and boundary planting would integrate the development into its surroundings. Therefore, I conclude that the proposal would preserve the character and appearance of the area, and the wider

² Appeal Ref APP/J1860/W/17/3192452

landscape character of Hallow, in accordance with Policies SWDP21 and SWDP25 which require development to integrate with its surroundings.

Effect on Local Infrastructure

25. The appellant has provided a completed Section 106 agreement to address the final reason for refusal. In written evidence and at the hearing, the appellant drew attention to the blue pencil clause within the agreement which would nullify any obligation found not to be necessary to make the development acceptable in planning terms. Specifically, the appellant challenges the requirement to make contributions towards the provision of healthcare and education infrastructure, referring to the Developer Contributions Supplementary Planning Document (July 2018) (the SPD) which states that contributions will not be sought from affordable housing developments in respect of education infrastructure³ and primary healthcare infrastructure.⁴
26. The District Council does not contest that a health contribution should be secured, having regard to the SPD. The comments of the NHS Primary Care Commissioning Manager in seeking a contribution assume all residents would be new to the local healthcare system, but occupancy of the dwellings would be limited to those with a local connection, many of whom will already be resident in the area and part of the local system. Consequently, the evidence before me likely overestimates the number of additional residents and does not clearly set out a specific need arising from the proposal. Therefore, there are not sufficient grounds to justify a departure from the approach of the SPD and seek a contribution towards primary healthcare in this case.
27. In terms of education, Worcestershire County Council (WCC) points to the Education Planning Obligations Policy (EPOP), agreed by the South Worcestershire Councils in October 2021, as taking precedence over the SPD as the newer document. It is through the formula in this document that the contribution of £214,224 for primary and secondary education has been calculated. I note that the educational needs set out in the EPOP have been afforded weight at appeal, such as in the *Fladbury* decision, though I do not have full details of the evidence before the Inspector in respect of this matter.
28. At the hearing, WCC pointed to the EPOP emerging from an indicative review showing increase demand for pupil places in the district and that the document was subject to extensive consultation. However, it was conceded that the EPOP was not subject to public consultation and has been agreed at officer level, rather than formally adopted for planning decision purposes by elected members of the District Council. In contrast, the SPD has been subject to public consultation and viability testing. Moreover, the SPD has not been withdrawn or revised, a fact acknowledged by the WCC representative.
29. The development plan is the starting point for decision making. Policy SWDP 7 sets out that development will be required to provide or contribute towards the provision of infrastructure needed to support it. The District Council has laid out further associated guidance on how this will be achieved through the SPD, which is explicit in exempting contributions from affordable housing schemes for education. I do not dismiss the evidence advanced by WCC in terms of the projected demand arising from the proposed development. This is a material

³ Paragraph 2.4.14

⁴ Paragraph 2.6.18

consideration and I recognise that recent trends for majority affordable housing schemes have underpinned the change in approach from WCC.

30. However, the fact that affordable housing units may generate demand for school places is not new, but through the preparation of the SPD, including viability testing, the District Council determined that contributions should not be sought from these developments. Whilst WCC may have observed change in the level of demand arising from affordable schemes, the EPOP is not adopted for planning decision purposes and, in this regard, does not have the same weight as the SPD. On the evidence before me, the SPD makes it clear that the education contribution sought by WCC is not necessary to make the development acceptable in planning terms.
31. Therefore, I find that the contributions towards education and primary healthcare set out under Schedule 2 of the agreement do not meet with the relevant tests for planning obligations set out in the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010. Therefore, these contributions are not necessary.
32. The Section 106 agreement otherwise secures contributions towards school and community transport provision, provision of public open space and monitoring fees, which on the evidence before me meet the tests for planning obligations. Given I have found the education and health contribution is not required, it is not necessary to seek a deed of variation to the S106 agreement as requested by WCC. For these reasons, I conclude that the proposal would accord with the requirements of SWDP Policy 7 and the SPD for development to provide or contribute towards the provision of infrastructure needed to support it.

Living Conditions

33. The District Council's initial concern related to the potential for dwellings on Plots 3, 4 and 5 to overlook the rear elevations and gardens of dwellings on Oakleigh Heath. During the appeal, the appellant provided revised plans showing single storey bungalows on these plots, which represent minor changes to the scheme that would not prejudice any party were I to take them into account. Having observed the site, I am satisfied that the proposed single storey dwellings on these plots would not afford opportunities for overlooking of existing residents, due to screening by boundary planting and the separation distances and angled orientation of the respective dwellings.
34. Elsewhere, the District Council confirmed at the hearing that it was not pursuing an argument of harm to neighbours living on the eastern side of the appeal site. These dwellings would be at distances of around 30 metres, sufficient to prevent invasive overlooking or significant sense of enclosure.
35. Overall, I find that the layout would provide sufficient separation from existing dwellings around the site to preserve the living conditions of neighbouring occupants. No conflict therefore arises with Policies SWDP 21 and SWDP 25 in so far as they seek to protect residents' living conditions.

Other Matters

36. The District Council has indicated that following the appeal decision at *Kempsey*⁵ in August 2023, it accepts that it cannot demonstrate a five year

⁵ APP/J1860/W/22/3313440

supply of deliverable housing sites. The Inspector found that the supply to be around 3.7 years. No subsequent evidence has been adduced in this appeal to suggest the supply has changed since this decision. I factor this into the planning balance below.

37. As set out above, the District Council's initial concerns relating to highway safety have been addressed by the appellant and are capable of being secured via planning conditions or separately through technical approvals under S278 and S38 of the Highways Act 1980. Moreover, whilst I acknowledge the concerns of local residents with respect to parking and congestion problems in the area, this has not been argued as a concern by either the District Council or the local highway authority, and I have no compelling evidence to indicate that the proposal would cause significant adverse impacts in these respects.
38. The District Council did not identify harm in respect of any other matter, including with respect to flooding and drainage, biodiversity, loss of agricultural land and energy efficiency measures. I have had regard to these matters and other concerns raised by interested parties beyond those already addressed. Ultimately, taking account of the evidence before me, I have not identified other matters of such significance as to result in further material benefits or harms to be factored into the overall planning balance.

Planning Balance

39. On the main issues of the appeal, I have found that the proposal would accord with the development plan in terms of the site's location, its effect on the character and appearance of the area, the effect on neighbours' living conditions and the effect on local infrastructure.
40. It is common ground that the District Council is unable to demonstrate a five year supply of deliverable housing sites. From my considerations, there are no policies in the Framework that protect areas or assets of particular importance which provide a clear reason for refusing the development proposed. Therefore, pursuant to Paragraph 11(d)(ii) of the Framework, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The provisions of Paragraph 14 of the Framework do not apply as the HNBP was adopted more than two years ago.
41. I have found that the other material considerations in this case do not raise adverse impacts but conversely there would be significant benefits in terms of housing delivery in an accessible location, both in terms of affordable housing and overall, at a time when the District Council is falling well short of demonstrating a sufficient supply of deliverable housing sites. There would also be demonstrable economic benefits through the construction of the dwellings and afterwards in spending by residents in the local area. More modest benefits would arise through net gains in biodiversity, energy efficiency measures including PV panels, air source heat pumps and electric vehicle charging points.
42. In the context of Paragraph 11(d)(ii), therefore, there are no adverse impacts associated with granting planning permission which would significantly and demonstrably outweigh the benefits. Overall, therefore, the proposal accords with both the development plan for the area and the Framework.

43. However, even if one were to conclude that local affordable housing need had not been demonstrated and the proposal did not accord with SWDP Policies 2 and 16, the weight to be afforded to conflict with these policies is limited in light of the District Council's housing land supply position, and any limited harm arising from the location of housing beyond the settlement boundary would still be significantly and demonstrably outweighed by the aforementioned benefits. Therefore, the presumption in favour of sustainable development would still apply in this scenario and the appeal should succeed.

Conditions

44. I have had regard to the list of suggested conditions provided by the parties and the comments on them made at the hearing. Where necessary, I have amended their wording and to ensure they meet the relevant tests for conditions set out in the Framework. The appellant has also confirmed their agreement to those conditions which would be pre-commencement.
45. In addition to the standard time limit for implementation [1], a condition setting out the approved plans [2] is necessary to provide certainty.
46. A condition is required to secure a construction environmental management plan [3] to safeguard ecology and biodiversity which may be present on site and a construction traffic management plan [4] is necessary to mitigate the impact of works on neighbours' living conditions. A scheme of archaeological investigation [5] is required to ensure any archaeological remains are properly recorded and preserved. Details of a surface water drainage scheme [6] are required to address site drainage and flood risk. Precise details of the proposed site access [7] are required in the interest of highway safety. Each of these conditions is required to be pre-commencement as they relate to impacts that may arise from the outset of the construction phase and would be ineffective or lead to harm or loss were they required to be addressed at a later stage.
47. Further conditions are required to ensure protection of existing trees [8]; to secure details of external materials [9] and external lighting [10] to ensure a suitable appearance, and in the case of the lighting to safeguard biodiversity. It is also necessary to secure details of a landscaping scheme [11] and a landscape and ecological management plan [12] in the interests of the character and appearance of the area and long term biodiversity gain.
48. Finally, conditions are required to ensure necessary elements of the development are in place prior to occupation, including visibility splays [13], a boundary treatment for the attenuation pond [14]; garages, parking and turning areas [15]; cycle storage [16]; bin storage [17] and electric vehicle charging points [18].

Conclusion

49. For the reasons set out, therefore, I conclude that the appeal should be allowed.

K Savage

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

E001 Rev B (Location Plan)
E002 Rev A (Existing Site Plan)
E003 (Block Plan)
P003 (Proposed Site Plan)
P021 Rev A (House Type A(1) Maisonette Plans Plots 12 and 13)
P022 Rev A (House Type A(1) Maisonette Elevations Plots 12 and 13)
P023 Rev A (House Type A(2) Maisonette Plans Plots 21 and 22)
P024 Rev A (House Type A(2) Maisonette Elevations Plots 21 and 22)
P031 Rev B (Bungalow Type B(1), B(2), B(3) Plans Plots 1-3, 14, 35-38)
P032 Rev A (Bungalow Type B(1) Elevations Plots 37, 38)
P033 Rev A (Bungalow Type B(2) Elevations Plots 1 and 2)
P034 Rev B (Bungalow Type B(3) Elevations Plots 3, 14, 35 and 36)
P035 (Bungalow Type B (semi) Floorplans and Elevations Plots 4 and 5)
P041 Rev A (House Type C (1) & C(2) Plans Plots 15-18, 19, 20, 39, 40)
P042 Rev A (House Type C(2) Elevations Plots 15-18)
P044 Rev A (House Type C(1) Elevations Plots 19, 20, 39, 40)
P051 Rev A (House Type D(1) & D(2) Plans Plots 6-11, 29-34 only)
P052 Rev A (House Type D(1) Elevations Plots 10, 11, 31, 32 only)
P054 Rev B (House Type D(2) Elevations Plots 6-9, 29, 30, 33, 34)
P055 Rev A (House Type D(3) Terrace Plans Plots 23, 24, 25)
P056 Rev A (House Type D(3) Terrace Elevations Plots 23, 24, 25)
P061 Rev A (House Type F(1) Plans Plot 26)
P062 Rev A (House Type F(1) Elevations Plot 26)
P065 Rev A (House Type F(3) Plans Plots 27, 28)
P066 Rev A (House Type F(3) Elevations 27, 28)
Landscape Strategy Plan Rev B
- 3) No development shall take place (including any ground works, demolition or site clearance) until an environmental management plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP: Biodiversity shall include the following:
 - a. Risk assessment of potentially damaging construction activities;
 - b. Identification of "biodiversity protection zones";
 - c. Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
 - d. The location and timing of sensitive works to avoid harm to biodiversity features;
 - e. The times during construction when specialist ecologists need to be present on site to oversee works;
 - f. Responsible persons and lines of communication;

- g. The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
- h. Use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

- 4) The development hereby permitted shall not commence until a Construction Traffic Management Plan has been submitted to and approved in writing by the Local Planning Authority. This shall include the following details: a) measures to ensure that vehicles leaving the site do not deposit mud or other detritus on the public highway; b) the locations within the site in which parking, material storage and welfare facilities will be positioned; c) a schedule of days and hours when works will be undertaken on site, and servicing and deliveries will occur; d) measures to be taken to safeguard soil quality on site throughout the construction process; e) a highway condition survey, and timescale for re-inspections. The Construction Management Plan shall then be implemented as approved.
- 5) (A) No development shall take place until a programme of archaeological work, including a Written Scheme of Investigation, has been submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and research questions; and:
 - i) The programme and methodology of site investigation and recording.
 - ii) The programme for post investigation assessment.
 - iii) Provision to be made for analysis of the site investigation and recording.
 - iv) Provision to be made for publication and dissemination of the analysis and records of the site investigation.
 - v) Provision to be made for archive deposition of the analysis and records of the site investigation.
 - vi) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.(B) 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 (A) and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.
- 6) No works or development shall take place until a scheme for a surface water drainage strategy for the proposed development 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 (ref 22057-PL01-A Oct 2022) The submitted scheme shall give priority to achieving infiltration techniques and the scheme shall include the details and results of field percolation tests. If infiltration drainage is not possible on this site, an alternative

method of surface water disposal should be submitted for approval. If a connection to a sewer system is proposed, then evidence shall be submitted of the in principle approval of Severn Trent water for this connection. The scheme should include run off treatment proposals for surface water drainage. Where the scheme includes communal surface water drainage assets proposals for dealing with the future maintenance of these assets should be included. The scheme should include proposals for informing future homeowners or occupiers of the arrangements for maintenance of communal surface water drainage assets. 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.

- 7) Before development commences, a detailed scheme for the site access works at Oakleigh Heath, including traffic calming feature, shall be submitted to the Local Planning Authority. The development shall not be occupied or brought into use until the submitted scheme, which is broadly in accordance with drawing Site Layout Plan P003 subject to any necessary changes identified during the detailed design (including Road Safety Audit process), has been agreed in writing by the Local Planning Authority, and has been implemented in full.
- 8) The development hereby permitted shall be carried out in accordance with the Tree Protection recommendations set out within part 4, and the guidelines, including Tree Protection Plan set out within Report 19822 by Heritage Environmental Contractors. Any alternative fencing type or position not strictly in accordance with BS 5837 (2012) must be agreed in writing by the local planning authority prior to the commencement of development. This protective fencing shall remain in place until the completion of development or unless otherwise agreed in writing with the local planning authority. Nothing should be stored or placed (including soil), nor shall any ground levels be altered, within the fenced area without the previous written consent of the local planning authority. There shall be no burning of any material within 10 metres of the extent of the canopy of any retained tree/hedge.
- 9) Prior to commencement of construction above slab level of the dwellings hereby permitted, specification of the materials to be used in the construction of all external building surfaces shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be implemented in accordance with the approved specification.
- 10) No external lighting shall be installed in relation to the development hereby permitted until a lighting scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall provide technical details and identify the locations in which lighting will be installed and shall specify the way in which it will be operated, taking into account sensitivity required in relation to bats, and the occupants of nearby dwellings. The lighting shall then be installed and shall thereafter operate in accordance with the approved scheme.
- 11) Before the first use/occupation of the development hereby permitted a scheme of landscaping shall be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme 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 grass areas.
- (iii) a schedule of proposed planting - indicating species, sizes at 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.
- (vi) Boundary treatment to include hedgehog highways.

All planting and seeding/turfing shall be carried out in accordance with the approved details in the first planting and seeding/turfing seasons following the completion or first occupation/use of the development, whichever is the sooner.

The planting shall be maintained in accordance with the approved schedule of maintenance. Any trees or plants which, within 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 similar size and species.

- 12) Prior to occupation of the development hereby approved a landscape and ecological management plan (LEMP) shall be submitted to and agreed in writing by the Local Planning Authority. The content of the LEMP shall be guided by the requirement to achieve Biodiversity Net Gain and maintain this after implementation, and shall include the following:
- a. Details (type and location) of wildlife boxes and hibernacula;
 - b. Description and evaluation of the features to be managed;
 - 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;
 - i. On-going monitoring and remedial measures.

The plan shall also set out where the results of the monitoring show that conservation aims and objectives of the LEMP are not being met, how contingencies and/or remedial action identified, agreed and implemented

so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The LEMP shall be implemented in accordance with the approved details.

- 13) The development hereby permitted shall not be occupied until the side road visibility splays shown on the Site Layout drawing P003 have been provided comprising 2.4m x 25m to north and south. The splays shall at all times be kept free from obstruction exceeding a height of 0.6m above the adjacent carriageway.
- 14) The development hereby permitted shall not be occupied until a boundary treatment to enclose the attenuation pond has been installed in accordance with details first submitted to, and agreed and approved in writing by, the local planning authority. The works shall thereafter be retained for the life of the development.
- 15) No dwelling hereby permitted shall be occupied until the garages, car parking and turning spaces allocated to that property have been fully constructed and made available. The parking and turning spaces shall thereafter be retained and kept available for such uses at all times.
- 16) No dwelling hereby permitted shall be occupied until sheltered and secure cycle parking has been provided in accordance with the standards and dimensions required by Worcestershire County Council's Streetscape Design Guide.
- 17) No dwelling hereby permitted shall be occupied until refuse storage allocated to that property has been provided in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority. The refuse stores shall thereafter be retained and kept available for such uses at all times.
- 18) Appropriate cabling and an outside electrical socket must be supplied to houses with dedicated parking to enable ease of installation of an electric vehicle charging point. The wiring must comply with BS7671. The socket should comply with BS1363 and must be provided with a locking weatherproof cover if located externally to the building. The cable and switches should be installed such as they can be adapted to an EV charge point that complies with BS EN 62196 Mode 3 or 4 charging and BS EN 61851 in the future. The charging point must comply with BS EN 62196 Mode 3 or 4 charging and BS EN 61851. As a minimum, charge points should comply with Worcestershire County Council Design Guide which requires 7kw charging points for residential developments.

* * *

APPEARANCES

FOR THE APPELLANT:

Odette Chalaby	Barrister, No5 Chambers
Simon Hawley BA(Hons) MA MRTPI	Planning Director, Harris Lamb Property Consultancy
James Bullock BS Hons PGDip CMLI	Director and Partner, Zebra Landscape Architects Limited
Dan Stiff BA(Hons) M.Arch	Director, Boughton Butler Ltd
Matthew Hunt BSc (Hons) Building Surveying	Housing Executive, WP Housing

FOR THE LOCAL PLANNING AUTHORITY:

Lee Walton	Principal Planner, Malvern Hills DC
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INTERESTED PARTIES:

Colin Wilkinson MRTPI	Representing Hallow Parish Council
Cllr Hazel Kemshall	Hallow Parish Council
Cllr Dean Clarke	District Councillor, Hallow and Holt Ward
Rachel Kiernan	Group Manager, Education Sufficiency and Place Planning, Worcestershire Children First on behalf of Worcestershire County Council
Christine Neville	Local Resident

Documents Submitted at the Hearing

- Hard Copies of Data Sheets 14 and 15 of Appellant's Housing Needs Assessment Addendum
- Copy of Fladbury appeal decision – APP/H1840/W/22/3313745

Documents Submitted after the Hearing

- Appellant's response to Council's costs application rebuttal
- Copy of Kempsey appeal decision - APP/J1860/W/22/3313440
- Letter from Anthony Collins Solicitors dated 26 September on behalf of Worcestershire County Council in relation to Section 106 monitoring fee.
- Letter dated 19 October from appellant's solicitor in response to letter of 26 September.



Costs Decision

Hearing held on 25 September 2023

Site visit made on 26 September 2023

by **K Savage BA(Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 09 November 2023

Costs application in relation to Appeal Ref: APP/J1860/W/23/3323076

Land at OS 8223 5896, off Oakleigh Heath, Hallow, nr Worcester

Easting: 382273 Northing: 258944

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Andrew Browne (Hamelin Partnerships Limited) for a full award of costs against Malvern Hills District Council.
 - The appeal was against the refusal of planning permission for construction of 40 affordable dwellings including a mix of one, two, three and four bedroom properties and the construction of a new internal road, parking, SUDS infrastructure, and green infrastructure (including public open space).
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Decision

1. The application for an award of costs is partly allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The appellant contends that it prepared considerable technical evidence to address the Council's five reasons for refusal, but the Council failed to substantively address this in a Statement of Case that was just three pages long. It adds that the Council failed to revise its case following its belated acceptance that it could not demonstrate a five year supply of deliverable housing sites, particularly in respect of the weight to be afforded to any conflict with SWDP Policies 2 and 16 in the overall planning balance. It is further argued that the Council withdrew the substance of its third reason for refusal relating to density and urbanising impact and offered no cogent argument beyond the 'inevitable' harm of building on greenfield land. The appellant also points out that Reasons 4 and 5 were resolved by the time of the hearing, but that both could and should have been resolved during the application process and should not have formed reasons for refusal.
4. The Council in response states that its acceptance of the housing land supply position established in the *Kempsey* appeal was presumed to have removed the first reason for refusal, even if it did not state this explicitly. It adds that Reasons 4 and 5 required ongoing negotiation which would otherwise have been necessary as part of the application process. With respect to Reason 2, the Council argues that whether the proposal met with SWDP Policy 16, and

what weight should be afforded to it in light of the Council's housing land supply position, was a matter of judgement for the decision maker. Similarly, the Council states that the assessment of landscape impact is a subjective consideration requiring the Inspector to exercise their planning judgement.

5. The Council has acknowledged that it effectively withdrew Reason for Refusal 1 following the *Kempsey* decision, but only did so after the appellant had provided the appeal decision, and only made it clear it had done so in its costs response on 21 September, some five weeks after the decision. Prior to this, the appellant's evidence identified several appeals dating to 2021 where the Council was found not to have a five year housing land supply, all predating the *Kempsey* decision. The Council was, or should have been, aware of these appeal decisions. In particular, it accepted its supply was less than five years at appeal in March 2023¹, prior to it submitting its statement of case in July 2023, and its continued pursuit of the appeal on the basis it could demonstrate a sufficient supply was contrary to the evidence. Moreover, once it did accept its supply was less than five years, the Council failed to offer any substantive evidence, in writing or at the hearing, as to the effect of this on its overall case, particularly the implications a lack of a five year housing land supply has for application of Paragraph 11 of the National Planning Policy Framework. The District Council's actions, up to the point it made clear it had withdrawn its first reason for refusal on 21 September 2023, constitute unreasonable behaviour.
6. With respect to Reason 2, I accept that whether there is a local affordable housing need is a matter of planning judgement, but it is incumbent on the District Council to review their case upon receipt of an appeal. The District Council did not offer any substantive evidence to rebut the appellant's detailed technical evidence of affordable housing need. It was left largely to Hallow Parish Council to advance a case against the appellant at the hearing. Moreover, following its acceptance of the *Kempsey* decision, the District Council failed to review its case or provide any substantive argument as to the implications of its housing land supply position in terms of the weight to be applied to Policy SWDP 2 and SWDP 16 in the overall planning balance. I find that the District Council's failure to address these matters was unreasonable.
7. The District Council's third reason for refusal referred clearly to 'density' and 'urbanising impact' but within the Statement of Common Ground it had conceded that density, design and massing were all acceptable. The District Council also offered no argument beyond the intrinsic change from open field to developed site, and it offered no detailed rebuttal to the appellant's further evidence on landscape impact at the hearing. In this respect, I find that the District Council failed to substantiate its reason for refusal, partially withdrawing it but continuing to argue a vague 'in principle' harm unsupported by evidence to counter that advanced by the appellant. This amounts to unreasonable behaviour.
8. For clarity, I find no unreasonable behaviour with respect to the parts of the third reason for refusal relating to neighbours' living conditions, as this was a valid objection which required the appellant to submit revised plans to overcome.
9. In respect of Reason 4, highways matters were subsequently resolved prior to the hearing and did not require the appellant to dedicate time or personnel at

¹ Areley Common - APP/J1860/W/22/3309338 and APP/R1845/W/22/3309343

the event. The failure to agree these matters earlier is unfortunate, but given the objection from the local highway authority, the District Council was justified in refusing permission on this basis. Whilst I note the appellant's frustrations with a lack of correspondence from the District Council during the application, the evidence is not clear that such matters would have been resolved prior to a decision being made, such that an appeal could have been avoided. Given the District Council's subsequent efforts to reach agreement on this matter prior to the hearing, I do not find unreasonable behaviour in respect of this reason for refusal.

10. Similarly, the final reason for refusal relating to a lack of a Section 106 agreement is typical where a proposal is being otherwise refused and the time and expense of preparing a legal agreement would be in vain. Ultimately, it was necessary for the main parties to work together, either at application or appeal stage, to produce a completed legal agreement. The District Council has engaged with the appellant during the appeal process to enable a completed agreement to be before me at the hearing but given the appellant's disputing of certain contributions up to and at the hearing, it is not certain that these matters could have been fully addressed before the District Council issued its decision, and it is clear from my decision that these were matters requiring adjudication at appeal. Therefore, I do not find unreasonable behaviour in respect of this reason for refusal.
11. For these reasons, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the first, second and part of the third reason for refusal and a partial award of costs is therefore warranted.

Costs Order

12. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Malvern Hills District Council shall pay to Mr Andrew Browne (Hamelin Partnerships Limited), the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the first and second reasons for refusal, and the third reason for refusal in so far as it relates to matters of character and appearance and landscape impact; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Malvern Hills District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

K Savage

INSPECTOR