



Appeal Decision

Hearing held on 3 September 2024

Site visit made on 3 September 2024

by Ann Veevers BA(Hons) PGDipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 October 2024

Appeal Ref: APP/H1840/W/24/3340903

Land to the rear of Stonebow Road, Drakes Broughton

Easting (y) 392591, Northing (x) 248640

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr G Parricelli and Lone Star Land against the decision of Wychavon District Council.
 - The application Ref is W/22/02744/OUT.
 - The development proposed is outline planning application for the erection of up to 30 residential dwellings and associated infrastructure (all matters reserved except for access).
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Decision

1. The appeal is allowed, and outline planning permission is granted for the erection of up to 30 residential dwellings and associated infrastructure (all matters reserved except for access) at Land to the rear of Stonebow Road, Drakes Broughton (Easting (y) 392591, Northing (x) 248640), in accordance with the terms of the application, Ref W/22/02744/OUT, subject to the conditions set out in the schedule at the end of this decision.

Applications for costs

2. An application for costs was made by Mr G Parricelli and Lone Star Land against Wychavon District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. Given no postcode for the address of the appeal site has been provided by the main parties, I have used the address provided on the application form. The easting and northing coordinates allow for precise identification of the site's location and they have been used in the Council's decision notice.
4. Outline permission is sought with all matters, except details of access, reserved for future consideration. I have assessed the appeal on the plans that have been submitted where they refer to the matters for which approval is sought, although there are also elements shown indicatively that are of relevance in reaching my decision to understand the extent and potential effects of the proposals.

Documents

5. The appellant submitted updated ecology, arboricultural and landscape statements with the appeal. The Council and interested parties have had the opportunity to comment on this information as part of the appeal process. Therefore, I am satisfied there would be no prejudice to any party by me taking them into account.
6. A number of additional documents were submitted at the hearing, as set out at the end of this decision. All parties agreed to the submission of the documentation. I am satisfied that in all cases the material was directly relevant to, and necessary for my decision and that no prejudice would be caused by taking the documents into account.

Policy and emerging guidance

7. The Council has published a South Worcestershire Development Plan Review (the Review) under Regulation 19 of the Town and Country Planning (Local Plans) (England) Regulations 2012. However, it is agreed between the parties in the Statement of Common Ground (SoCG) there are no policies in the Review of relevance to the appeal to which any weight can be given. I am not aware of the extent of unresolved objections or whether policies in the Review will be considered as consistent with the National Planning Policy Framework (the Framework). Consequently, I consider that only very limited weight should be given to the Review at the current time in relation to this appeal.
8. Since the appeal was submitted, a consultation on 'Proposed reforms to the National Planning Policy Framework and other changes to the planning system' and the 'National Planning Policy Framework: draft text for consultation' (the Framework consultation document) was published by the Government. The status of those documents, being in the consultation phase, significantly limits the weight that I afford to them. Nevertheless, together with the Secretary of State's written ministerial statement entitled 'Building the homes we need' (the WMS), which was published at the same time and to which I afford limited weight in that it sets out a clear intention of growth, they are material considerations. As such, the main parties were invited to comment on them and I have taken their subsequent submissions into account in determining the appeal.

Planning Obligation

9. A draft planning obligation under s106 of the Town and Country Planning Act 1990 was submitted prior to the hearing (s106 Agreement). This included provisions regarding biodiversity net gain (BNG), on-site open space, affordable housing and financial contributions towards infrastructure. A signed and executed version of the s106 Agreement was received after the Hearing in accordance with an agreed timetable. I have had regard to the completed s106 Agreement that has been provided.

Main Issues

10. The main issues are:

- whether the proposed development would accord with the Council's development plan strategy for the location of housing;
- the effect of the proposed development on the character and appearance of the area, with particular regard to amenity greenspace and landscape setting including traditional orchards;
- the effect of the proposal on biodiversity, with particular regard to the traditional orchard habitat; and,
- in the planning balance, whether there are any material considerations that would indicate a decision other than in accordance with the development plan.

Reasons

Location

11. The appeal site is located adjacent to, but outside the defined development boundary of Drakes Broughton, as set out in Policy SWDP 2 of the South Worcestershire Development Plan, February 2016 (SWDP). In accordance with criterion C of Policy SWDP 2, it is therefore considered to be within open countryside. The proposal would not meet any of the permitted exceptions to development in the open countryside listed in criterion C.
12. Similarly, Policy DBWP3 of the Drakes Broughton and Wadborough with Pirton Neighbourhood Plan 2015-2030, April 2017 (NP) sets out that proposals for housing development outside the development boundary for Drakes Broughton will only be supported where they meet certain circumstances, which the proposal would not. The proposal would therefore conflict with these policies.
13. However, the appeal site is located adjacent to the village boundary, behind a row of dwellings on Stonebow Road and adjacent to the car park and school playing field of St Barnabas First and Middle School. Drakes Broughton is identified as a Category 2 settlement in Policy SWDP 2 of the SWDP, which the Council confirm is characterised by having at least two key services including a shop and having access to at least daily services for employment and shopping purposes. Indeed, I observed at my site visit that Drakes Broughton contains a Pre-school, First and Middle school, a shop with post office, hot food takeaway, hairdressers, a village hall, church, public house and other commercial businesses along the B4084 (Worcester Road).
14. There are footways and streetlighting along Stonebow Road and Worcester Road which, as recognised by the Council, would allow future occupiers to access these facilities by walking or cycling. Pedestrian access to Stonebow Road from the site would be enhanced by a proposed footway to an existing Public Right of Way to the south and a footway to a newly created footpath to the north. There are also bus stops on Worcester Road, Walcot Lane, and Shrubbery Road within walking distance of the appeal site that would provide

access to services and amenities, including railway stations in nearby Pershore and Worcester. I also heard that the local community transport was good. While this would not necessarily mean that future occupants would choose not to have a car, the site's location does not make car use essential to enable occupants to reasonably carry out day-to-day activities.

15. Therefore, the development would be located so as to ensure it supports the local community and where it would provide realistic opportunities for sustainable modes of travel which would reduce the reliance on the private car. Accordingly, it would comply with the aims of the sustainable development principles of the development plan and paragraph 109 of the Framework, along with Policy SWDP 4 of the SWDP which both require, amongst other things, that development minimises demand for travel and offers genuinely sustainable travel choices.
16. Consequently, although the proposal would conflict with Policy SWDP 2 as the appeal site is located outside the defined development boundary of Drakes Broughton, the site is well located to services and facilities. In this regard it would accord with the Framework's aims of promoting sustainable development, enhancing the vitality of rural communities, promoting walking, cycling and public transport and thus limiting the need to travel.
17. The appellant argues that the development boundary for Drakes Broughton is out of date as it bears no relation to the reality on the ground. In this respect, I recognise that the site is substantially surrounded by housing development. The Council accept that housing development to the west wraps around the appeal site, although it has been pointed out that part of the northern parcel of land associated with The Orchards has been retained as public open space. Nevertheless, I consider, to all intents and purposes, that the enclosure of the appeal site to the west by the considerable amount of housing, also outside the settlement boundary, means visually, that the site would not be seen as appreciably outside the settlement but very much within it.
18. Nevertheless, whilst this would be a mitigating circumstance, it would not be a policy reason in itself for lessening the weight to the degree of conflict with Policy SWDP 2 of the SWDP.
19. I have had regard to the Council's reference to the Review, which does not include the appeal site within the revised development boundary for Drakes Broughton. However, as I have set out above, and as has been agreed in the SOCG, very limited weight can be given to the Review.
20. To conclude on this main issue, the site is located within an existing residential context, therefore further development would not appear to be anomalous or an outlier in relation to the settlement boundary. Nevertheless, the proposed dwellings would be located outside the defined settlement boundary, leading to conflict with Policy SWDP 2 of the SWDP and Policy DBWP3 of the NP, both of which seek to strictly control development.

Character and appearance

21. The appeal site comprises of former agricultural land and orchard. I heard at the Hearing that the land was last used as a market garden for growing fruit trees and vegetables to sell locally. The site is now predominantly overgrown grassland with groups of fruit trees located close to the western and south-eastern boundaries, and a small mixed group of trees, including a large oak tree, positioned centrally on the land.
22. The site is broadly rectangular in shape with a gentle descent towards the north. It is bound to the east by the gardens of properties on Stonebow Road, which include a variety of fences and dispersed vegetation. The southern boundary consists of a hedgerow and trees, beyond which is Public Right of Way (PRoW) No 538b, a school car park, school buildings and playing field. To the west, behind a hedgerow, is The Orchards, a recently constructed large housing development. The northern boundary of the site also comprises of a hedgerow with a newly constructed public footway and a small area of open space beyond.
23. The site provides a sizeable parcel of open land between development along Stonebow Road and The Orchards. The Council's reason for refusal refers to, amongst other things, the loss of this open 'greenspace' and the effect of the proposed development on the landscape setting and character of the settlement. The appellant has submitted a Landscape Statement (LS)¹ to address this matter. The LS sets out that whilst the appeal site is physically open in a landscape spatial sense, it lies between land uses that are part of the village. As such, it does not read as part of the swathe of open countryside that lies beyond the village but relates more closely to the village itself. Having visited the site, I agree.
24. The LS also suggests that the site does not meet the high quality countryside threshold identified in the supporting text to Policy SWDP 2 of the SWDP, particularly due to its urban edge location. The impact of the proposed development from a number of public vantage points was also assessed in the LS. The LS concludes that the appeal site is not representative of its host landscape type. It is also concluded that the proposed inclusion of formal and informal landscaping on the site would retain a degree of openness.
25. Evidence indicates that the site lies within the Principal Timbered Farmlands Landscape Character Type (LCT) as identified in the Worcestershire Landscape Character Assessment. This is summarised as 'a small to medium-scale wooded, agricultural landscape characterised by filtered views through densely scattered hedgerow trees. It is a complex, in places intimate, landscape of irregularly shaped woodlands, winding lanes and frequent wayside dwellings and farmsteads'. The Drakes Broughton Principal Timbered Farmlands Local Description Unit describes the settlement pattern as 'one of farmsteads and clusters of wayside dwellings associated with a moderate to high level of dispersal and a small to medium-scale field pattern. The land use is mixed farming and the tree cover a combination of relic patches of ancient woodland, often associated with densely scattered hedgerow oaks'.

¹ Statement by James Bullock in Respect of Landscape Matters, BLADE, May 2024

26. The appellant's LS advises that a series of landscape guidelines have been drawn up for each LCT. The overall strategy for the Principal Timbered Farmlands is to conserve and restore the historic, well wooded character of the landscape.
27. Whilst the proposal would introduce dwellings on part of the site and inevitably change its character, the design of the scheme seeks to minimise any potential adverse impact. It includes dedicating approximately 40% of the site area to landscape, Green Infrastructure, public open space, play and habitat proposals. These would include the retention of remnant fruit orchard trees and the establishment of new fruit trees to create a community orchard, restoration and gap planting of the boundary hedgerow structure and long-term management of landscaping, in accordance with the LCT landscape guidelines.
28. The evidence with respect to the impact on the wider landscape setting set out in the LS is largely unanswered by the Council in its defence of the appeal with limited assessment against the LCT. The position that the Council has instead taken is that the proposed development would cause further harm to the way the historic form and structure of the settlement has evolved and would further dilute its character. In my view, the fact that The Orchard development has been constructed adjacent to the appeal site, and is also outside of the settlement boundary, is a highly relevant factor in establishing the degree of harm that would be caused to the landscape setting of the settlement, because it too has a notable physical impact on the character and appearance of the area. I find the existing site does not represent the high quality open countryside experienced in the surrounding landscape that Policy SWDP 2 seeks to protect.
29. I acknowledge that the aerial images and maps submitted in support of the appeal demonstrate the gradual erosion of former traditional orchards that previously surrounded Drakes Broughton and that the built form of the village has significantly expanded over many years. It seems to me that much of the former orchard land was developed a considerable time ago for the construction of the Shrubbery Road estate and the sports pitches off Walcot Lane. Although the appeal site provides a pocket of former orchard land, the orchard trees are limited to the edges of the site, the majority of which would be retained and enhanced.
30. My site visits encompassed a number of viewpoints set out in the LS where it had been identified that the site would be visible. From the longer vantage points to the north (PRoW 537, 536 and 512) the visual impact would be negligible by the fact that the site lies at a lower level in the landscape and/or due to intervening vegetation, and because views would be taken against the existing built development surrounding the site and Drakes Broughton as a whole. The proposed development would be more apparent when glimpsed from ProW 538b along the southern boundary, but again this would be seen in the context of The Orchard development, the school buildings and against the backdrop of the existing settlement and in conjunction with the existing hedgerow and proposed orchard planting.

31. Thus, due to the presence of built development surrounding the site and the lack of intervisibility between the site and the surrounding countryside, the impact of the proposal on public views would be significantly lessened. Moreover, residential development is not uncharacteristic of the area surrounding the appeal site.
32. It was however evident from my visit that a significant impact in terms of a change to the character and appearance of the area would occur when viewed from within properties abutting the site. But, whilst sensitive from the point of view of the occupiers of those properties, these are not public views from which the overall landscape impact would be observed.
33. Evidence presented by the Council and local residents suggests that the site provides a valued 'lung' of open greenspace in the area, as well as the last remaining larger parcel of former traditional orchard land or any other form of open land within Drakes Broughton.
34. Be that as it may, the site is not formally designated as Local Green Space in the NP or the SWDP, nor is it publicly accessible. The site is unmanaged and as set out above, public views are localised to surrounding properties and footpaths to the north and south behind hedges. I also saw other, albeit smaller, areas of open greenspaces in the village such as the sports pitches, school playing field, and areas currently being created at The Orchards, including an area immediately to the north of the appeal site. Furthermore, open countryside closely surrounds the built edge to the village and can be readily accessed along PRowS.
35. Nevertheless, the appeal site is a parcel of land devoid of development containing trees and hedgerows, and in this respect, contributes to the localised pattern of vegetated gaps in and around the village. In this context, the site makes a moderate positive contribution to the overall character and appearance of the area.
36. In conclusion, the development of up to 30 dwellings on land that is currently free from development and provides an, albeit not publicly accessible, verdant and open area between existing residential development would intrinsically alter the use and appearance of the site. Whilst the impact would be lessened from some views due to topography, vegetation and the visual relationship to the existing settlement, from others there would be a more significant impact. This would include from the existing dwellings adjacent to the site boundaries. However, there would be the potential to provide better managed and enhanced landscaping and tree planting on the site than that which exists at the present time, as well as publicly accessible open space.
37. Taking all of these considerations together, whilst the proposal would not have an adverse impact on the wider landscape setting of the village or to any formal designated greenspace, there would be harm to the immediate character and appearance of the area. This harm would be limited due to the mitigating factors I have set out above. Nonetheless, for this reason the proposed development would fail to accord with Policies SWDP 2, SWDP 21 and SWDP 25 of the SWDP, insofar as these policies collectively seek to safeguard and complement the distinct identity and character of settlements.

There would also be conflict with Policy DBWP 7 of the NP which, amongst other requirements, seeks to protect landscape character and locally important views and the aims of paragraph 135c of the Framework, where it refers to local character.

Biodiversity

38. The policy referred to in the Council's reason for refusal as SWDP (Biodiversity), was confirmed at the Hearing by the Council to be Policy SWDP 22 of the SWDP. Criterion D of this policy sets out that development which would compromise the favourable condition or the favourable conservation status of a specific list of nature conservation sites, tree, woodland or species or habitats of principal importance recognised in the Worcestershire Biodiversity Action Plan 2018 (BAP), or listed under Section 41 of the Natural Environment and Rural Communities Act 2006 (NERCA), will only be permitted if the need for and the benefits of the proposed development outweigh the loss.
39. Both main parties agree that only part of the site includes a traditional orchard, a habitat of principal importance recognised in the BAP. Traditional orchards are included in the UK BAP priority habitat list and also within Section 4 of the NERCA. I have been provided with an extract of a DEFRA² map which shows the extent of the traditional orchard along the southern, western and south-eastern edges of the site. However, some of the orchard habitat in the north-western corner of the site was removed prior to the appeal submission. The remaining orchard trees are varied in their age, size and health.
40. It has been put to me by interested parties that all of the site is registered as a traditional orchard by the Peoples Trust for Endangered Species. However, I saw at my visit that much of the site is grassland and, on this basis, I have taken the DEFRA map as the more definitive guide in this respect.
41. The appellant submitted an Arboricultural Report and Tree Condition Survey at the application stage and an Arboricultural Statement (AS) with the appeal³. The AS sets out that the orchard is considered to be post 1945 planting and management of orchard trees on the site declined from 2007. As a result, the remaining orchard consists of gappy remnants of 4 rows of fruit trees to the eastern and western boundaries. The AS suggests that, due to the lack of management, dense ivy now covers many of the trees and other self-seeded tree species and brambles have grown amongst the orchard trees, which would eventually overshadow and out-compete the smaller fruit trees for moisture and light. The AS concludes that, without management, the majority of the remaining orchard trees on the site would die over the next 10 years.
42. Local residents claim many of the orchard trees still fruit, and I observed this to be the case at my visit. Nevertheless, in the absence of compelling

² Department for the Environment, Food and Rural Affairs

³ Arboricultural Report and Tree Condition Survey, Ruskins Tree Consultancy, December 2022 and Arboricultural Statement, Ruskins Tree Consultancy, May 2024

evidence to suggest otherwise, there is no certainty that, without proper maintenance and management, the existing orchard trees, which appear to have been planted a considerable time ago, would fruit for a significant number of future years.

43. The appellant indicated that the proposal would include the retention of approximately 70% of the orchard trees, the boundary hedgerows and the large single oak tree. The AS states that the indicative layout would require the removal of 10 living fruit trees and 5 dead fruit trees. It is suggested all these fruit trees could be translocated elsewhere within the site and that even the dead trees would enhance the ecological value of the site. In addition, new fruit trees and other trees would be planted and the hedgerows enhanced.
44. It was apparent at my visit that ivy, dense brambles and self-seeded trees have encroached onto the site. From the information available to me, if left unchecked, this would harm the future health of the orchard trees. Moreover, it is accepted by the Council that the orchard habitat is not formally protected as it is not part of an SSSI, Local Wildlife Site or protected through a Tree Preservation Order. As such, there would be nothing to prevent current or future owners from removing all the trees on the site.
45. To secure the future of any orchard habitat, I consider management of the existing habitat and the planting of additional fruit trees would be beneficial. Indeed, the Worcestershire Biodiversity Partnership, Traditional Orchard Habitat Action Plan 2018 (TOHAP), provided as an Appendix to the Council's statement, identifies gradual decline through neglect as one of the major threat to traditional orchard. While the Council and interested parties raise concerns about the loss of the orchard, no robust evidence has been put to me to indicate any likelihood of alternative future beneficial management of the orchard or succession planting.
46. While I heard that local residents would welcome the opportunity to purchase the site and reinstate a traditional orchard and market garden across the site as a community asset, no clear evidence has been provided to demonstrate that such an event has been secured. Even though this is an admirable aspiration, that is not the proposal before me and I am required to determine this appeal on its own merits.
47. I recognise that the scheme would offer the opportunity to retain much of the orchard, with additional scope for enhancement through additional succession fruit tree planting and future management, in mitigation for the recent orchard habitat lost in the north-west corner of the site. The resultant orchard habitat would also be accessible to local residents as part of the public open space within the development, which is currently not the case.
48. It has been suggested by residents that there are veteran orchard trees on the appeal site which are an irreplaceable habitat and that an orchard has existed on the site for over 140 years. However, both main parties agree that there are no veteran trees on the site. The Framework definition of a veteran tree is 'a tree which, because of its age, size and condition, is of exceptional biodiversity, cultural or heritage value'. The TOHAP advises that

most orchard trees are relatively short-lived (less than 100 years). In the absence of compelling evidence otherwise, I have no reason to disagree with the main parties, the Council's Tree Officer, Landscape and Natural Heritage Officer and Natural England, that there are no veteran trees on the site and the proposal would not therefore result in the loss of an irreplaceable habitat.

49. What has been acknowledged by the appellant, following a survey of 100 fruit trees on the site in 2022⁴, and comments from interested parties, was that there was a need for a further specific Noble Chafer survey of the site. This was due to the fact that many of the orchard trees contained areas of significant decay, with cavities and dead heartwood. It is these features which make the trees the ideal habitat for the Noble Chafer beetle. Noble Chafer is a Species of Principal Importance with respect to the NERC and is listed as Vulnerable and Nationally Scarce.
50. An Invertebrate Survey (IS)⁵ was carried out by an entomologist in April 2024. This highlights that Noble Chafer favour the dead or dying wood of orchard fruit trees where they occupy and develop larvae in hollows in the trunk and boughs. The survey found that many of the orchard trees were engulfed in dense bramble or covered in ivy and mistletoe, which limits the potential to support Noble Chafer, or were of too small girth to have developed a hollow. Of those trees which were considered to have potential to support Noble Chafer, more detailed inspection took place.
51. No signs of the presence of Noble Chafer were found in any of the trees examined. Only 3 apple trees were found to have trunk cavities of potentially suitable habitat, which yielded no signs of Noble Chafer or their larvae or pellets. A small proportion of trees were of sufficient girth to potentially support Noble Chafer in future, once decay had begun. The IS concludes that Noble Chafer is very probably absent from the orchard, although the site is of local importance for invertebrate conservation, with the key habitat provided by the orchard trees.
52. From the evidence provided, it is clear that, if left unmanaged, the encroaching ivy and brambles on the orchard trees, would be likely to further reduce the potential for the site to support Noble Chafer. The introduction of a regime of management, including the retention of some dead and decaying trees, would be likely to increase habitat creation to support Noble Chafer at the site.
53. In terms of the overall biodiversity value of the site, Annex B of the appellant's updated ecological statement (ES)⁶ includes a Biodiversity Impact Assessment⁷. This assesses the impacts of the proposal on the BNG value of the site utilising the Natural England Small Sites Metric (Biodiversity Metric 4.0). It considers the ecological functionality of the site as a whole, pre and post-development. The ES reports that the proposed development would result in a loss of 4.10 habitat units and 0.54 hedgerow units, taking into

⁴ Ecological Appraisal, fpcr, December 2022

⁵ Invertebrate Survey of an Orchard at Drakes Broughton, Mark Telfer, April 2024

⁶ Ecological Statement, fpcr, May 2024

⁷ DEFRA Metric, Version 4.0

account the recent removed hedgerow within the baseline assessment. In this case, as well as the planting of trees and hedgerow enhancement on-site, the provision of additional units of orchards and neutral grassland are proposed off-site in order to secure an estimated 10% BNG.

54. The Council's Natural Heritage Officer agrees that both pre and post development habitat assessments provide a realistic reflection of the condition of the habitats. While interested parties express doubt in relation to off-site provision, the BNG Metric trading rules allow such compensation. Although the application is in outline, I am satisfied that it would be possible to achieve the requirements of the mitigation hierarchy to ensure ecological functionality across the site and beyond is retained. Based on the retention of a large proportion of the remaining orchard habitat as well as the opportunity to potentially strengthen connectivity around and beyond the site, the Council are satisfied that additional BNG and habitat compensation requirements can be addressed through off-site provision. No compelling evidence has been submitted to convince me otherwise.
55. I do note however, the Council's suggestion that off-site provision should be as local as possible to the site and within the same Biodiversity Delivery Areas (BDAs). It has been suggested that this is likely to be either within Bow Brook or Forest of Feckenham BDA. This could be secured by legal agreement in the event I were to allow the appeal.
56. As this application was submitted prior to the enactment of the Environment Act on 12 February 2024 in relation to BNG, there is no legal requirement for the proposed development to provide a minimum level of 10% BNG. Nor is there a development plan requirement to do so. As such, the BNG in this case would be a benefit of the proposal.
57. Concerns have been raised by residents that the development of the site would result in the loss of a wildlife corridor and other wildlife on the site such as deer, bats, slow worm, foxes and rabbits. Indeed, the reason for refusal refers to this matter.
58. The ecological appraisals take into account the effect of the proposal on a range of wildlife including bats, badgers, reptiles, birds and other mammals. Proposed mitigation measures include retention and enhancement of hedges, the retention of a large proportion of trees, the provision of bat boxes, new planting and sensitive clearance methodologies in relation to badgers, nesting birds and reptiles. I see no reason why these measures could not be secured through conditions and at Reserved Matters stage.
59. The claim that the site includes a wildlife corridor has not been substantiated. In the absence of any robust evidence to the contrary, there are no grounds to find the appellant's ecological assessment is flawed. Therefore, given the evidence and the fact that the site is enclosed by development, I am satisfied that the proposed mitigation measures would acceptably deal with the risk of any harm to ecology including protected species and other wildlife.
60. I conclude on this main issue that, subject to legal and conditional controls were I to allow the appeal, the development would not unduly harm

biodiversity, with particular regard to traditional orchard habitat or other wildlife and that BNG can be provided. The proposed development would therefore accord with Policy SWDP 22 of the SWDP, which seeks to protect nature conservation interests in the borough, including habitats and species of principal importance. The proposal would also accord with paragraphs 180 and 186 of the Framework which recognise the importance of the natural environment, biodiversity and public access to nature.

Other Matters

61. I have given careful consideration to representations made about the proposal that have not been referred to in the Council's reason for refusal. Concerns have been raised by interested parties in relation to highway matters, which include the reliability of the traffic count information, the operation of the site access junctions at Geeson Road/Worcester Road and Pippin Walk/the site, the ability of the local road network to cope with the additional traffic volumes and parking concerns. However, no specific, factual and quantifiable evidence other than photographs was submitted to support these concerns.
62. The Framework at paragraph 115 states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impact would be severe. During the course of the planning application, the highway impact of the proposal was assessed by the Highway Authority through the submission of a transport statement. There is detailed technical evidence before me to demonstrate that there would not be harm to highway safety or to the surrounding highway network as a result of the proposed development. Proposed traffic generation, whilst adding to the local traffic, would not be significant or result in adverse highway safety concerns given the amount of development proposed. In light of this and in the absence of any objection from the Highway Authority, there is compelling evidence that the impact of the proposed development would be acceptable in highway terms.
63. In terms of congestion and inconvenience to road users during the construction phase this can be dealt with through an appropriately worded condition should I be minded to allow the appeal.
64. My attention has been drawn to instances of foul sewer surcharging and flooding in the village and photographic evidence of such instances were presented by interested parties before and at the Hearing. The site is located within flood zone 1 as defined by the Environment Agency as an area at lowest risk of flooding. The indicative plans show an attenuation basin in the north-east corner of the site. The Lead Local Flood Authority confirm that surface water from the basin would discharge at restricted flow rates (to maintain greenfield run-off rate) to an adjacent third party watercourse and have not objected to the proposed development on this basis. Subject to the imposition of appropriate conditions in relation to surface water drainage, I find no reason why the proposal would lead to an increase in flood risk to properties. Indeed, the provision of a new drainage system should ensure surface water runoff is better managed than is currently the case.

65. I understand the frustration of local residents that there have been several instances of surcharging in the village, including within property boundaries. In terms of foul water, Seven Trent as the statutory undertaker has a duty to accommodate demand for foul water disposal. While the development would increase the use of the sewerage system to a modest extent, the onus lies with the statutory undertaker rather than the developer to maintain and where necessary increase capacity to accommodate demand. Seven Trent has raised no objection to the proposal. Therefore, where surcharging has happened, regrettable though it is, it does not amount to a reason to prevent new development.
66. As the application is made in outline form, the exact relationship of proposed dwellings to existing dwellings has not been established. There would inevitably be an impact as a result of the construction of dwellings and internal footpaths on what is an open field at the current time. Nonetheless, the indicative plans indicate that a relationship could be achieved that would be appropriate so not to cause harm to the living conditions of the occupiers of those existing dwellings by reason of loss of light or privacy. The views from adjoining dwellings would change but it does not follow that the outlook would be unacceptable. Similarly, parking for occupants of the site would be considered as a Reserved Matter.
67. Concerns have been raised about pressure on local services arising from the development, such as shops, public transport, community facilities, school places and local healthcare provision. However, additional school places, community and school transport, primary care capacity and local sport pitch enhancement, if required, would be addressed via contributions secured by the planning obligation.
68. Other concerns have been raised by interested parties with regard to the potential impact upon noise, light and air pollution, renewable energy, electricity capacity, agricultural land, contamination, crime and anti-social behaviour. However, based upon the responses from the relevant consultees and upon the information available to me, there is no evidence that harm would arise with respect to these matters. Furthermore, I am satisfied that, where necessary, any additional measures required could be adequately secured by planning conditions. I see no reason why future residents could not be integrated into the community.
69. Granting planning permission does not mean that any further development in the locality is also bound to be allowed. Any proposals that come forward would need to be considered on their own merits having regard to the circumstances at the time.

Planning Obligations

70. Framework paragraph 57 and Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) confirm that planning obligations must only be sought where they meet each of the following three tests: 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.

71. The s106 Agreement would secure financial contributions towards early years, primary and secondary education places, off-site sports improvements to facilities at Pershore High School and sports pitch facilities in Drakes Broughton, health care facilities within the Pershore and Upton Primary Care network, the local community transport service and home-to-school transport. A financial contribution towards off-site public open space would be provided in the event that the full requirement of on-site public open space could not be provided.
72. The s106 Agreement also includes mechanisms to secure the phased delivery of affordable housing, the delivery of BNG and on-site landscape/habitat and public open space, along with their subsequent management and maintenance.
73. Policy SWDP 7 of the SWDP requires that development will be required to provide or contribute towards the provision of infrastructure needed to support it. The Council's CIL Compliance Statement sets out a justification for each obligation and is not disputed by the appellant.
74. The inclusion of affordable housing as part of the development is a requirement under Policy SWDP 15 of the SWDP. The amount of affordable housing required is in line with the policy and the Council accepts that the s106 Agreement would secure a mix of units that would address an identified need. There is no reason for me to disagree with the Council in these regards.
75. The contribution towards education provision reflects the cost of expansion to cater for the potential increase in the early years and school age population supported by the liable parts of the development. The contribution would be in line with the South Worcestershire Contributions Supplementary Planning Document 2018 (SPD) and based on evidence from Worcestershire Children's Services' pupil product ratio.
76. The case for planning obligations in relation to formal sports and leisure facilities and on-site open space provision refers to Policy SWDP 39 of the SWDP, which also sets out the quantitative and typology requirements for such provision. This requires that green space and outdoor community uses in new development delivers of a range of open space typologies to address needs arising from housing development. Policy SWDP 5 requires that 40% greenspace infrastructure is provided on site and effective management arrangements are in place.
77. Evidence provided by the Council on the basis of a Playing Pitches and Open Spaces Strategy, Sports Facilities Framework and Sport England Sports Facilities calculator, confirms a deficiency of a range of sports facilities within Wychavon. On this basis a contribution would be required towards indoor changing facilities at Pershore High School, also available for community use, and enhancing pitch facilities in Drakes Broughton. The development would provide 40% on-site greenspace that would incorporate a local area of play and community orchard. The proposal would create a need for extra and improved sports facilities and open spaces and so I am satisfied the planning obligations in these regards are necessary in order to mitigate the effects of the development, are fair and relate to the proposed development.

78. The justification for community and school transport relies on the aim set out in Policy SWDP 4 to maximise the use of sustainable modes of transport. It is clear from the information provided that existing community transport is appreciated by local residents. The nearest secondary school is located approximately 2 miles away and an existing home-to-school bus service operates in the village. The proposal would generate additional residents and thus additional demand for such services. The Highway Authority have set out a calculation to sustain these services. I consider these obligations meet the necessary tests, the aims of Policy SWDP 4 in relation to managing travel demand and the SPD.
79. I find the evidence on deficiencies within the primary healthcare catchment area of Drakes Broughton that has been provided by the Herefordshire and Worcestershire NHS and Integrated Care Board to be unclear. It is insufficient to simply show that a development will lead to extra demand for floorspace based on a capital cost calculation in order for contributions to be deemed necessary. There is limited evidence before me to demonstrate that local healthcare in relation to infrastructure is working at or near its capacity, in accordance with paragraph 2.6.2 of the SPD. Moreover, the s106 Agreement fails to specify where the building that would require the increased floorspace would be.
80. I cannot therefore determine if the contribution would compensate for the specific impacts resulting from the proposed development and therefore be effective. As such, the evidence fails to substantiate the health care planning obligation is needed. Thus, this obligation is not necessary to make the development acceptable in planning terms. Therefore, I have not taken it into account in reaching my decision.
81. In terms of biodiversity, the proposal would, when taking into consideration off-site enhancement, result in BNG. The planning obligation requires that no development begins until a biodiversity gain plan and habitat maintenance and management plan has been agreed with the Council. These plans would either provide an off-site receptor site with an agreed number of BNG units and/or a conservation covenant which commits to the delivery of BNG on the appeal site and/or at a nearby habitat bank, or a combination of these features. The Council indicates two specific local sites that could accommodate the type of habitat required for the off-site provision in order to make the development acceptable. This being so, adequate compensation would be provided and I am satisfied this obligation meets the necessary tests, and the aims of Policies SWDP 22 and 27 which require that development enhances biodiversity.
82. In summary, I find the planning obligations on affordable housing, education, sports provision, open space, transport and biodiversity are necessary to make the development acceptable in planning terms, directly related to the development and are fairly and reasonably related in scale and kind to the appeal development. They meet the statutory and policy tests of the CIL Regulations and the Framework and the requirements of Policy 7 of the SWDP and the SPD. I am therefore able to take them into account in my decision.

83. However, on the basis of the evidence before me, I find that the planning obligation in relation to primary healthcare provision would not be needed to make the development acceptable in planning terms. As such, it would not meet the statutory and policy tests and I am unable to take it into account in my decision.

Planning Balance and Conclusion

84. I have found that the development would conflict with the development strategy of the development plan, which seeks to direct new development towards sustainable areas within settlement boundaries. This is because the site is unallocated and, for planning purposes, lies outside the defined settlement boundary of Drakes Broughton. I have also found the development would cause harm to the character and appearance of the area, though that harm is localised and does not extend to the setting of the village. Hence, the proposal would conflict with the development plan as a whole.
85. However, it is agreed between the parties that the Council cannot currently demonstrate a 5, or even a 4 year housing land supply as required in Wychavon. Despite interested parties' concerns over the level of recent residential development in Drakes Broughton, based on the Council's evidence as of April 2024,⁸ it has a 2.78 year housing land supply. This is a considerable shortfall.
86. In light of the housing land supply situation, paragraph 11d) of the Framework is engaged. This means that where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date, 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, or specific policies in the Framework indicate development should be restricted. Policy SWDP 1 of the SWDP is consistent with the Framework in this regard.
87. Whilst the conflict with the development plan amounts to harm, the restrictions placed on housing development by the Council's settlement and development strategy set out in Policy SWDP 2 has prejudiced the present demonstration of the required housing land supply as dictated by national policy, and the development strategy is thus not in accordance with the Framework and is out of date. There is nothing substantive before me to suggest that the position on the most important policies being out of date has changed, and accordingly the tilted balance is engaged for this reason as well. Accordingly, the weight to be afforded to the conflict with the development strategy, in light of the significant housing land supply shortfall, is reduced and I attach moderate weight to the conflict in these circumstances.
88. The proposal would provide up to 30 new dwellings, which attracts significant weight in the context of the Government's aim of significantly boosting the supply of homes advocated in paragraph 60 of the Framework.

⁸ South Worcestershire Five Year Housing Land Supply Report, April 2024

It is also the clear direction of the WMS to address the housing crisis including speeding up the growth of new homes across the country.

89. Furthermore, the provision of affordable housing in its own right attracts positive weight given the need for such properties. The proposal would deliver up to 12 affordable homes, which accords with the 40% on site provision that Policy SWDP 15 of the SWDP requires. The s106 Agreement would secure the phased provision, required house-type mix and tenure split in compliance with Policies SWDP 14 and 15. The affordable homes would make a positive contribution to addressing the identified shortfall in the local area. However, as the numbers of affordable dwellings in this case would be small, I give it moderate weight.
90. There would also be jobs created during construction of the development. When complete occupiers of the development would also support local shops and facilities. As such, there would be economic benefits. There would also be social benefits through the provision of a mix of new housing types and environmental benefits including those relating to the provision of public open space and the creation of habitats and BNG. I attribute modest weight to these factors.
91. The appeal site would be viewed as being within the settlement on the ground as it abuts the settlement boundary, is contained by development on almost all sides and is in a location which has good access to shops, services, and public transport links. I therefore give modest positive weight to the site's sustainable location despite the scheme's conflict with the spatial strategy.
92. Collectively, these considerations carry significant positive weight in my assessment.
93. I have found that the proposal would not harm the wider landscape setting of the village or to any formal designated greenspace. I have also found that there would be no harm to biodiversity. These are neutral considerations in the planning balance.
94. I note that an allocation for a key new settlement and growth area at Worcestershire Parkway has been proposed in the Review. However, given that examination hearings have not begun in relation to the Review, having regard to Framework paragraph 48, this factor carries very limited weight against the proposal in the planning balance.
95. 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. Applying the tilted balance, the proposed development would result in benefits, but also cause harm. However, I conclude that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. As a result, there are material considerations in this case that indicate that this decision should be made otherwise than in accordance with the development plan.

96. Therefore, I conclude that the appeal should be allowed subject to the s106 Agreement and the conditions set out below.

Conditions

97. A schedule of suggested planning conditions was submitted prior to the Hearing. I have considered the suggested conditions having regard to the Planning Practice Guidance and paragraphs 55 and 56 of the Framework. Some conditions require matters to be approved before development commences. This is necessary either to control impacts that would arise during construction or because the details to be approved could affect the scheme in a way that would need to be resolved at an early stage. The appellant has provided written agreement to the pre-commencement conditions.
98. The conditions relating to reserved matters, time limits and specifying plans are necessary in the interests of certainty. Details of ground and finished floor levels are needed to ensure that the visual impact of the proposed development is acceptable and to ensure that there is an acceptable relationship to existing adjacent dwellings.
99. A condition relating to landscaping that will be submitted and approved at reserved matters stage is needed in the interests of the character and appearance of the area and also biodiversity. The implementation clause is necessary to ensure that the agreed scheme is delivered and maintained.
100. Conditions have been requested by the Lead Local Flood Authority to address surface water drainage matters on the site. I have included that the implications on ground water are taken into account within the drainage scheme and this was agreed between the parties in light of the concerns raised by residents in respect of flooding and drainage. A condition is also required to ensure provision is made for the disposal of foul sewerage from the site. I am therefore satisfied the conditions in relation to surface and foul water drainage are necessary in the interests of the proper drainage of the site and to ensure that the proposed development would not result in flooding on or beyond the site.
101. To help address the effects of climate change, a condition is necessary to secure details of measures to reduce carbon emissions of the predicted energy use for each dwelling by at least 10%. A Construction Management Plan is necessary to safeguard the living conditions of neighbouring occupiers.
102. In the interests of ecology and to ensure appropriate mitigation is secured, including where necessary through the provision of new habitat, conditions relating to a Construction Environmental Management Plan for Biodiversity, a Biodiversity Gain Plan, a Landscape and Ecological Management Plan, and external lighting are necessary. Such conditions would also necessarily secure ongoing arrangements for the management, maintenance and monitoring of agreed plans for landscape and ecological enhancements.
103. Conditions requiring protective fences for trees and implementation in accordance with the agreed arboricultural assessment is necessary to

safeguard trees to be retained, their health and replacement planting during the construction phase and following occupation of the dwellings. In the interests of archaeology, a condition is necessary to secure a scheme of investigation, and depending on results, carry out a programme of works.

104. To protect the living conditions of nearby residents, a condition limiting hours of clearance or construction work on the site is necessary. In the interests of highway safety, conditions relating to the provision of access and parking for each dwelling and dropped kerbs are necessary. Conditions regarding a footway connection to an existing Public Right of Way, cycle parking and a residential welcome pack for each dwelling are necessary in the interests of sustainable transport.

Conclusion

105. For the reasons given above, I conclude that the appeal should be allowed.

Ann Veevers

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Jason Tate BA(Hons) DipTP	Planning, Planning Prospects Ltd
Kurt Goodman BA(Hons) MSc MIEEM	Ecology, FPCR Environment and Design Ltd
James Bullock BA(Hons) PG Dip MLI	Landscape, Zebra Landscape Architects Ltd
Peter Wilkins BA(Hons) MArbrA MIEnSc CEnv	Arboriculture, Ruskings Tree Consultancy
Tommy Gregory HNC(Civil Eng) MCIHT	Transport, Rappor Consultants Ltd
Scott Marshall BSc MCIWEM	Drainage, Banners Gate

FOR THE LOCAL PLANNING AUTHORITY:

Mrs Alison Young PGDip Town Planning	Principal Planning Officer
Councillor Rob Adams	Ward Councillor, Wychavon DC
Councillor Liz Turier	Ward Councillor, Wychavon DC

INTERESTED PARTIES:

Allan Brown	Local resident
Ken Skillern	Local resident, Neighbourhood Plan Working Party (NPWP)
Ian Spencer	Local resident, NPWP
Viktoria Salisbury	Local resident, NPWP
Janet Butterworth	Chair, Drakes Broughton Parish Council (DBPC)
Ruth Bessant	Local resident, DBPC
Maureen Williams	Local resident, DBPC
Alistair Clarke	Local resident, DBPC
Mr Cooper	Local resident
Martin Huxley	Local resident
Melissa Godwin	Local resident
John Rhodes	Local resident

Documents Submitted at the Hearing

1. Costs rebuttal from Wychavon District Council.
2. Extract of map showing boundary of the Parkway Strategic Growth Area.
3. Photograph of access to site from The Orchards estate from local resident.
4. Bundle of OS map extracts published 1884,1905,1947,1954,1963 and 1970 and 2 x extracts of SWDP Interactive Policies Map showing appeal site in relation to settlement boundary from local resident.
5. Bundle of 28 photographs in relation to drainage concerns from local resident.

SCHEDULE OF CONDITIONS

1. Details of the layout, scale, appearance, and landscaping (hereinafter referred to as 'the reserved matters') shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
2. Application for approval of all the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission, and the development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
3. Unless where required or allowed by other conditions attached to this permission, the development hereby approved shall be carried out in accordance with the following plans – SK02 Rev C Alternative Proposed Site Access Arrangements and PA_01A – Location Plan.
4. The layout details submitted pursuant to condition 1 shall include details of the levels of the existing site and the floor slab levels of the proposed dwellings, relative to the existing development on the boundaries of the site.
5. The landscaping details submitted pursuant to condition 1 shall include:
 - a) A plan(s) showing the planting layout of proposed tree, hedge, shrub and grass areas;
 - b) A schedule of proposed planting – indicating species, size at time of planting and numbers/densities of plants;
 - c) A written specification outlining cultivation and others operations associated with plant and grass establishment; and,
 - d) A schedule of maintenance, including watering and the control of competitive weed growth, for a minimum period of five years from first planting.The landscaping shall be provided and maintained in accordance with the approved details.
6. No development shall take place until a scheme for a surface water drainage strategy for the development hereby approved has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:
 - details of surface water drainage measures, including hardstanding areas;
 - implications for ground water;
 - details of run-off treatment;and shall conform with the non-statutory technical standards for SuDS (Defra 2015), the Flood Risk Assessment Ref:ES158-TES-00-XX-DR-0663, revision P02 on 11 January 2023 and the BWB letter 'Formal response to Lead Local Flood Authority deferral request WY/22/02744/OUT' Ref:DBE-BWB-ZZ-XX-RP-CD-0001_LLFA Letter_S2-P01 dated 27 April 2023.

If a connection to a sewer system is proposed, then evidence shall be submitted to the Local Planning Authority of the in-principle approval of Severn Trent water for the connection.

Where the scheme includes communal surface water drainage assets, a scheme for dealing with the future maintenance of these assets shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include proposals for informing occupants of the development of the arrangements for maintenance of communal surface water drainage assets.

The approved surface water drainage scheme shall be implemented prior to the first occupation of the development and thereafter maintained in accordance with the agreed scheme.

7. No development shall take place until a foul water drainage scheme to serve the development hereby approved has been submitted to and approved in writing by the Local Planning Authority. The foul water drainage scheme shall be implemented in accordance with the approved details prior to first occupation of the development hereby approved and shall be retained as such thereafter.
8. No development shall take place until details of renewable and/or low carbon energy generation measures have been submitted to and approved in writing by the Local Planning Authority. The measures shall contribute to at least 10% of the predicted energy requirements of the development. The details to be submitted shall include:-
 - a) The overall predicted energy requirements of the approved development;
 - b) The predicted energy generation from the proposed renewable/low carbon energy measures; and,
 - c) An implementation timetable for the proposed measures.The development shall be carried out in accordance with the approved details and retained as such thereafter.
9. No development shall take place until a Construction Management Plan (CMP) 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) Details of any temporary construction accesses and their reinstatement.The measures set out in the approved CMP shall be carried out and complied with in full during the construction of the development hereby approved.
10. No development shall take place (including any ground works or clearance) until a Construction Environmental Management Plan for Biodiversity (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP 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, including,

- but not restricted to, detailed badger and herpetofauna 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;
 - 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; and,
 - 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.

- 11. No development shall take place, including any site clearance, until a Biodiversity Gain Plan (BGP) has been submitted to and agreed in writing by the Local Planning Authority. The BGP shall be based on baseline assessments and habitat enhancements measured through the latest Defra metric (currently Defra metric 4.0) and shall thereafter be implemented in full as approved.
- 12. No development shall take place until a Landscape and Ecological Management Plan (LEMP) has been submitted to and agreed in writing by the Local Planning Authority. The content of the LEMP shall be based on the recommendations made at section 4.0 of the Ecological Appraisal, fpcr dated December 2022, and shall be guided by the requirement to achieve the Biodiversity Net Gain scheme approved under condition 11 above and shall include the following:
 - a) Details (type and location) of wildlife boxes and refugia;
 - b) Description and evaluation of the features to be managed;
 - c) Aims and objectives of management;
 - d) Appropriate management options for achieving aims and objectives;
 - e) Prescriptions for management actions;
 - f) 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;
 - g) Details of the body or organisation responsible for implementation of the plan; and,
 - h) 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. No development shall take place until a lighting design strategy for biodiversity, including a timetable for its implementation, has been submitted to and approved in writing by the Local Planning Authority. The strategy shall:

- a) Identify those areas / features that are particularly sensitive for bats 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 bat species using their territory or having access to their breeding sites and resting places.

All lighting shall be installed in accordance with the approved implementation timetable, specifications and locations set out in the strategy, and these shall be maintained thereafter in accordance with the strategy.

- 14. No development shall take place, including site clearance, materials delivery, vehicular movement and erection of site cabins, until temporary fencing for the protection of all retained trees/hedges on site, and trees outside the site whose Root Protection Areas fall within the site, has been erected in accordance with BS 5837:2012 (Trees in Relation to Design, Demolition and Construction). 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 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.
- 15. The development hereby approved shall be carried out in accordance with the Arboricultural Report and Tree Condition Survey, Ruskins, (Ref: 0722-10084 Rev 2) dated December 2022. Unless indicated to be removed, all existing trees and hedges on the application site, or branches from trees on adjacent land that overhang the application site, shall be retained and shall not be felled or pruned or otherwise removed. If any retained tree/hedge is removed, uprooted or destroyed or dies, replacement planting shall be carried out in the first available planting season, in accordance with details to be submitted to and approved in writing by the Local Planning Authority.
- 16. 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:
 - 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;

- f) 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.

17. Clearance or construction work and deliveries to and from the site in connection with the development hereby approved shall only take place between the hours of 08.00 and 18.00hrs Monday to Friday and 08.00 and 13.00hrs on a Saturday. There shall be no clearance or construction work or deliveries to and from the site on Sundays or Bank Holidays.
18. No dwelling shall be occupied until the access and parking serving the dwelling has been provided.
19. No dwelling shall be occupied until the highway offsite works comprising the provision of 3 sets of tactiles and dropped kerbs, as shown in the Rappor Drawing Ref: SK05 titled 'Proposed Off-Site Dropped Kerb Tactile Crossing Points' has been provided.
20. No dwelling shall be occupied until a 2m wide pedestrian footway connection between the site and Public Rights of Way route 538(B), has been provided in accordance with details to be first submitted to and approved in writing by the Local Planning Authority. The footway shall be retained as approved thereafter.
21. No dwelling shall be occupied until cycle parking has been provided in accordance with details which shall first be submitted to and approved in writing by the Local Planning Authority and thereafter the approved cycle parking shall be kept available for the parking of bicycles only.
22. No dwelling shall be occupied until the details of a residential welcome pack promoting sustainable forms of access to the development has been submitted to and approved in writing by the Local Planning Authority. The pack shall be provided for each dwelling at the point of occupation.

END OF CONDITIONS



Costs Decision

Hearing held on 3 September 2024

Site visit made on 3 September 2024

by Ann Veevers BA(Hons) PGDipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 October 2024

**Costs application in relation to Appeal Ref: APP/H1840/W/24/3340903
Land to the rear of Stonebow Road, Drakes Broughton
Easting (y) 392591, Northing (x) 248640**

- 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 G Parricelli and Lone Star Land for a full award of costs against Wychavon District Council.
 - The appeal was against the refusal of planning permission for outline planning application for the erection of up to 30 residential dwellings and associated infrastructure (all matters reserved except for access).
-

Decision

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

The submissions for Mr G Parricelli and Lone Star Land

2. The application was submitted in writing and a response to the Council's rebuttal was made orally at the Hearing.
3. The application is based on the claim that the scheme was recommended for approval by officers following a detailed and considered process. The officer's report (OR) included a proper balanced understanding of the proposal, taking into account statutory and key consultation responses. The OR highlighted the weight that should be given to the lack of a 4 year housing land supply in the district.
4. Notwithstanding the officer recommendation, the planning committee gave no detailed consideration about the proposals, disregarded the consultation responses on ecology and landscape and other technical considerations. Councillor gave terse mention to the local and national need for housing, gave no meaningful weight to Wychavon's lack of housing land supply or to other benefits of the development, including the retention and management of the orchard. The perceived harms were over-stated and contrary to expert advice. A judgement was made about the development without any alternative expert evidence. It was unduly influenced by local residents and the Parish Council's misplaced concerns.
5. Overall, the planning committee did not assess the application with proper and fair consideration of the relevant impacts and benefits and failed to adequately explain why they disagreed with the recommendation for approval by officers.
6. The Applicant also highlights that in the absence of robust planning grounds or evidence to justify the decision, the Council have delayed a development which

clearly should have been permitted. There has been no meaningful regard had to the recent housing development adjacent to the site or the site's role in that context to the setting of the village. No expert evidence has been presented by landscape specialists, arboriculturalists or ecologists to justify the reason for refusal in these regards. The Council have continued to defend the out-dated development plan in terms of the development boundary and the Council's statement includes conflicting and misleading arguments.

7. The applicant orally added to the above at the Hearing stating that the proposal was not a complicated development and the Council's case is essentially based on general assumptions rather than evidence.

The response by Wychavon District Council

8. The Council's response to the application for an award of costs was made in writing. The Council highlight that it has not acted unreasonably in refusing the application on the basis that it is contrary to the development plan and have not delayed development that should have been permitted. Whilst the planning committee did not follow the officer recommendation, they considered all comments received during the planning application and refused the application based on material planning considerations as part of the democratic process, which they were entitled to do.
9. The Council contend the refusal reason is precise, clearly outlines the harm arising from the development and makes reference to the relevant policies within the development plan. A detailed assessment of landscape impact and associated landscape harm has been provided as well as the importance of the traditional orchard as a landscape feature. There is no requirement to present expert evidence and verbal discussion to further substantiate the reasons for refusal can take place at the Hearing.
10. A statement of common ground has been agreed with the Appellant within the relevant timescale and the Council's case was clarified through this agreement. Details of the proposed conditions in the event of the appeal being allowed and a Draft s106 agreement have also been agreed.

Reasons

11. 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.
12. The PPG goes on to explain that unreasonable behaviour in the context of an application for an award of costs may be either procedural – relating to the process; or, substantive – relating to the issues arising from the merits of the appeal.
13. The application for costs relates to both procedural and substantive matters in that it is claimed the Council prevented or delayed development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failed to produce evidence to substantiate the reason for refusal; made vague, generalised or inaccurate assertions about the impact of the proposal, unsupported by objective analysis; and did not review the case promptly following the lodging of the appeal.

14. The OR to the 1 February 2024 planning committee is clear, though my decision sets out why I have reached different views on some aspects even though the overall outcome is essentially the same as the recommendation. Although the recommendation of the OR was to approve the planning application, whilst I accept that it will have been frustrating to the applicant, the Council is not duty bound to follow the advice of its professional officers. However, if a different decision is reached then the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
15. The minutes of that meeting indicate that the Council raised concerns about the proposal relating to highway, drainage, wildlife and loss of a traditional orchard. Comments were also made that housing would be provided in time at a potential strategic site in the district known as Parkway. Ultimately, the Council were minded to refuse the planning application for settlement boundary, landscape, greenspace, orchard habitat and wildlife reasons.
16. All the above reasons have been set out as one lengthy reason in the Council's decision notice. In this respect it is not precise or clearly articulated, although it does refer to the relevant policies of the development plan that the proposal would be in conflict with. From the minutes of the meeting, it is clear that the Council felt that there had been enough recent house building in Drakes Broughton and there was no need for any more. Therefore, a key issue is whether the Council have provided sufficient evidence to substantiate their reason for refusal at appeal.
17. There is no obligation for the Council to provide additional support to defend an appeal. However, it is imperative that clear evidence is provided to justify the decision. Whilst the Council's hearing statement explains the reasons for refusal in more detail, there is little substance in relation to matters of landscape setting and ecology. Although the minutes of the meeting suggest that Councillors visited the site to understand the context of the proposal and matters of character and appearance are for the most part matters of planning judgement, those relating to landscape setting are able to be more objectively assessed (for example through a Landscape and Visual Impact Assessment).
18. The Council appear to have confused the effects in relation to local character and greenspace with landscape setting and have not provided any analysis against the adopted Landscape Character Assessments referred to in the development plan. Save for the provision of aerial photographs with limited corresponding explanations, the Council provided no detailed evidence to rebut the findings in the applicants' landscape report and provided only vague and generalised assertions regarding the landscape impact of the proposal. As such, I find the reference to landscape setting in the reason for refusal is unsupported by any objective analysis.
19. The Council provided details of the Traditional Orchard Habitat Action Plan in order to substantiate why the loss of the traditional orchard would be harmful to the character of the area. Nevertheless, even though the Council's statement sets out that much of the orchard would be retained as part of the proposals, no balanced assessment has been made that mitigation would be provided for the loss of part of the orchard and other habitat would be provided off-site, which is a legitimate consideration. Nor has the fact that the orchard would be accessible and formally maintained and managed been addressed. No

compelling evidence has been provided to counter the Applicant's evidence in relation to the Invertebrate Survey of Noble Chafer.

20. In relation to biodiversity, the Council's ecologist was satisfied that the proposal would provide 10% Biodiversity Net Gain (BNG). This is not, based upon the date of submission of the application, a requirement of national or local policy. This benefit has not been addressed in the Council's case. The reason relating to a wildlife corridor and harm to wildlife has not been substantiated by any evidence other than local sightings and photographs.
21. The applicant presented a thorough case in support of their proposal which addressed the above matters. It is further notable that objections were not received from those consultees aligned to landscape, tree and ecological matters. In the face of these considerations, the Council's refusal with respect to landscape setting, loss of the orchard, biodiversity and wildlife is unsubstantiated. This represents unreasonable behaviour, as set out in the PPG.
22. The Applicant claims that the relevant development strategy policy, Policy SWDP 2, is out of date. The Council has acknowledged this policy is out of date in terms of the supply of housing. Whilst no specific reference has been made in the Council's evidence to consistency with the Framework in relation to the settlement boundary, the tilted balance was engaged.
23. In terms of the overall planning balance, a brief mention of housing land supply, including affordable housing, and economic benefits, as benefits of the scheme have been referred to in the Council's statement. However, it is not evident from the minutes of the planning committee, the statement or from what I heard orally, that all the competing considerations in this case were assessed as part of a balanced judgement in the context of paragraph 11d of the Framework. Therefore, there was also unreasonable behaviour in this respect.
24. The Applicant claims that the Council did not review the case promptly following the lodging of the appeal as part of sensible on-going case management. Whilst the appellant, and I, are of a different overall view regarding the merits of the scheme, that is not to say that the Council's opposition to it was not without some basis. Therefore, whilst I accept the appellant's frustration with the process hitherto, on the balance of the evidence before me, including the local opposition to the proposal, it seems to me that a prompt review of the evidence presented to the Council would not have prevented the appeal.
25. The appeal proposal was considered against the relevant planning policies and it is fact that the site lies outside the defined settlement boundary. There are evidently matters of planning dispute at hand, rather than the proposal being one which should clearly have been permitted.
26. However, I find the Council behaved unreasonably with respect to matters in the reason for refusal relating to the wider landscape setting, loss of the orchard, and wildlife for the reasons set out above. This has resulted in the applicant incurring unnecessary and wasted expense by having to address these matters at appeal. A partial award of costs is therefore justified.

Costs Order

27. 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 and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Wychavon District Council shall pay to Mr G Parricelli and Lone Star Land, the costs of the appeal proceedings described in the heading of this decision, limited to those costs of the appeal incurred in relation to landscape setting and ecology; such costs to be assessed in the Senior Courts Costs Office if not agreed.
28. The applicant is now invited to submit to Wychavon 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.

A Veevers

INSPECTOR

Richborough