



Appeal Decision

Inquiry Held on 5, 6, 12, 13, 14, 19 November 2024

Site visit made on 24 October 2024

by K Ford MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th January 2025

Appeal Ref: APP/H1840/W/24/3347643

Land at Orchard Farm, North of Defford Road, Pershore WR10 3BY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Formula Land Limited against Wychavon District Council.
 - The application Ref W/23/02112/OUT, is dated 11 October 2023.
 - The development proposed is demolition of existing farmhouse, agricultural buildings and structures, the erection of a phased development of up to 300 residential dwellings (Use Class C3) and associated public open space, drainage, infrastructure and engineering works with all matters reserved except access.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing farmhouse, agricultural buildings and structures, the erection of a phased development of up to 300 residential dwellings (Use Class C3) and associated public open space, drainage, infrastructure and engineering works with all matters reserved except access at land at Orchard Farm, north of Defford Road, Pershore WR10 3BY subject to the conditions in the attached schedule.

Application for Costs

2. At the Inquiry an application for costs was made by Formula Land Limited against Wychavon District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The appeal is against the failure of the Council to make a decision within the prescribed period. Following the lodging of the appeal the Council has indicated that had it been in a position to do so, it would have refused the application for 5 reasons. These reasons have informed the main issues.
4. The proposal seeks outline planning permission with all matters reserved except for access. Matters of appearance, landscaping, layout and scale are reserved for future determination and are not for me to consider as part of this appeal. However, plans approved at this outline stage include a Land Use Parameter Plan, Strategic Landscape Parameter Plan and Building Heights Parameters Plan. I have taken these into account in determining the appeal.

5. A draft planning obligation in the form of an agreement made under Section 106 of the Town and Country Planning Act 1990 was submitted at the Inquiry. The obligation relates to the provision of public open space, a mitigation package for the Site of Special Scientific Interest, formal sport and leisure, education, NHS Clinical Commissioning Group contributions, transport infrastructure and affordable housing.
6. A signed and dated agreement was provided after the event. The agreement has been drafted to include alternative clauses for the length of time an Ecology Management contribution should be paid to Worcestershire Wildlife Trust and the tenure split of the proposed affordable housing. This is due to disagreement between the parties on these matters. Provisions that I consider to be unnecessary and unjustified will not take effect. I return to this matter in due course.
7. A revised National Planning Policy Framework (NPPF) was published on 12 December 2024. The parties have been given the opportunity to provide comments on the changes and I have taken those comments into consideration. Where references are made to the NPPF in this decision, they relate to the December 2024 version of the document.

Main Issues

8. Highways matters raised by the Highways Authority were resolved prior to the start of the Inquiry. A S106 agreement was also submitted during the Inquiry overcoming the issue associated with the absence of a planning obligation to secure contributions for a range of services and facilities. The main issues are therefore;
 - Whether the proposal would be a suitable location for residential development having regard to the spatial strategy of the development plan.
 - The effect on the landscape character of the area.
 - The effect of the development on Tiddesley Wood, a designated Site of Scientific Interest (SSSI) and an Ancient Semi-Natural Woodland and whether footnote 7 of the NPPF is engaged.

Reasons

Location of Development

9. The site covers some 25.82ha and comprises a number of agricultural fields, associated agricultural buildings and a farmhouse. The site is bound by agricultural land to the north, Defford Road to the south and residential development and a cemetery to the east. Tiddesley Wood, an Ancient Semi-Natural Woodland and SSSI is to the west.
10. Policy SWDP2 of the South Worcester Development Plan (Development Plan) directs development in line with a hierarchy. Pershore is identified as an 'Urban Area – other town' and so is third in the settlement hierarchy. Towns within this category are less than a third of the size of the main towns. Nonetheless, they provide a range of services and employment opportunities and act as local service centres.
11. The site is located adjacent to the southwest built up urban edge of Pershore but outside the development boundary of the settlement and so it is in open

countryside. Development in open countryside is strictly controlled and is limited to certain types of development, none of which aligns with the development proposed.

12. The scheme proposed does not accord with the provisions of Policy SWDP2 of the Development Plan. The location of the site outside the settlement boundary and the absence of compliance with any of the identified exceptions in the policy means that there is conflict with the development plan and the strategy that underpins it. The weight I attach to this is outlined below, having regard to the Council's current housing land supply position.

Landscape Character

13. The appeal site comprises pastoral fields bounded by vegetation, hedgerows and fences and is visually well contained. Land levels vary on the site with the steepest being that which sits behind Dowling Drive and Fleury Close.
14. The site falls within the Wooded Estatelands landscape character type and exhibits primary and secondary characteristic features of this landscape character type. This includes large woodland (Tiddesley Wood), mixed farming, rolling topography, hedged field pattern and medium and longer distant views. This includes views to Bredon Hill and Pershore Abbey. The site is valued by residents locally but is not an objectively valued landscape for the purposes of paragraph 187 of the NPPF. Nor is it designated an Area of Outstanding Natural Beauty or a designated green space.
15. In this part of the landscape the Landscape and Visual Impact Assessment (LVIA) identifies that green infrastructure has become fragmented, field boundaries are generally in poor condition and there is a poor representation of hedgerow trees with interrupted tree cover. This is an assessment that the Council agrees with.
16. The Council in their evidence emphasize the rural character of the site. However, the 2012 Landscape Character Assessment predates the settlement expansion of Pershore and so is out of date in this regard. The existing urban edge of Pershore, comprising Desjardins Way, Henderson Drive and Dowling Drive are visually evident across the site and as such the presence of residential development influences the experience of the site.
17. Two Public Rights of Way (PROW) run through the site. One runs east to west forming part of the Millennium Way, a 100 mile walking route between Pershore and Middleton Cheney in Northamptonshire. The other runs north to south across the site. The PROW are high sensitivity receptors. Nearby residential properties which have views onto the site are also receptors with high sensitivity.
18. The development of the site would lead to physical changes on the site with some 8.96ha of land being lost to built development. There would also be a loss of around 106 existing trees and 167 linear metres of hedgerow. The topography of the land would necessitate areas of cut and fill, the greatest extent of which would occur in the northern part of the site where the existing contours of the site are steepest. Elements of fill would also be required in the southern parts of the site. Whilst this would have an adverse effect on the topography, the overall character of the site would be retained with sloping land continuing to be a feature of the site in the long term.

19. The development would sit on land that is higher than the existing adjacent development. Nevertheless, there is little before me to support the Council's assertion that properties in the development would be 'towering above the road' when standing in Dowling Drive or Fleury Close. The highest land on the site would remain free from development. With reference to examples of nearby development at Dowling Drive and Fleury Close, the appellant's landscape witness explained that extensive retaining walls and/ or associated structures would not be necessary. The landscape mitigation proposed across the site would minimise the landscape impacts and provide visual containment. Building on sloping topography is a characteristic feature of this part of Pershore to which this development would be an extension, along with the neighbouring Holloway Road development should it be granted planning permission.
20. It is agreed between the parties that there would be no visual impacts to the west and north of the site due to rising ground and the extensive vegetation cover in these directions. It is also agreed that the greatest harms would be to internal and close range views.
21. There would be significant changes to views both in what is seen and the context within which they are viewed. Localised views within the site would experience major adverse effects, occurring in public views along the PROW, at local viewpoints and in private views for some residents in close proximity to the site. There would also be some harm at the entrance to the site from Defford Road, although the landscape masterplan shows lost hedgerow would be replaced with new planting either side of the new trees. Some existing views would be lost or screened by development. Bredon Hill and Pershore Abbey would still be visible in some views in the north east part of the site where open space is proposed. However, they would be framed differently.
22. The Council's landscape witness agrees that there would be some beneficial landscape impact to Tiddesley Wood as a result of the proposed additional tree planting. The wood is a key component of the landscape character type and the LVIA identifies that it has high sensitivity. At mid and close range the effects of the development would be evident with the context of the woodland changed by the built form. There would be a visual effect on the setting of the wood with the development reducing the existing gap between the edge of Pershore and the wood. I agree with the Council that the way in which the wood is perceived from the pathways would be adversely affected as a result of the loss of the existing open fields. However, I do not share their view that the context of the whole wood would change and that the setting of the woodland would be totally dominated by the new development given that development is proposed to one side of the wood.
23. The proposed scheme would retain a significant separation gap between the wood and the development that would be sufficient to ensure that the existing composition and character of the setting of the wood would remain apparent. I do not therefore share the view of the Council's landscape witness that the buffer zone would have no meaningful effect on the setting of the woodland, to the views to and from it or the enjoyment of those walking to or from the woodland. In the context of the layout shown in the masterplan which shows a footpath that is some 65 metres wide, the suggestion of the Council's witness that the existing pleasant walk in the countryside would be replaced with one along a narrow gap within a housing estate is overstated.

24. The extent of the landscape harms as a result of the proposals of the development would be mitigated to some degree over time. It remains the case though that there would be notable long term visual harm as a result of the development.
25. The physical development of the scale proposed would inevitably change the existing character of the area. However, whilst the Council paints a picture of 'timeless countryside' setting that is 'rural and peaceful' the site, as witnessed on my visit, is not completely rural in character. The presence of residential development gives the sense of a suburban edge rather than the rurality suggested by the Council. Whilst there would inevitably be more activity as a result of the development, the impact on tranquillity would not be as great as the Council indicates given the existing edge of settlement location. Similarly, the Council's Landscape witness acknowledges that the impact on the character of the wider landscape as a result of the street and residential lighting would be limited.

Conclusion on Landscape Character

26. Greenfield development inevitably has some adverse landscape and visual impact when assessed against the Landscape Institute's classification. In the context of this site, where the impacts would be limited and localised overall I give moderate weight to the harmful impacts on landscape character. The development would consequently conflict with the parts of Policy SWDP 21 and Policy SWDP 25 of the Development Plan which require new development to be appropriate to, and integrate with, the character of the landscape setting and reinforce local distinctiveness.

Effect on Tiddesley Wood

27. Paragraph 193b of the NPPF identifies that development that would have an adverse effect on a SSSI should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest and any broader impacts on the national network of the SSSI. Paragraph 193c goes on to say that development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists.
28. Tiddesley Wood is an Ancient Semi-Natural Woodland with historical documents showing the presence of woodland on the site since before the preparation of the Domesday Book in 1086. The site was also designated a SSSI under Section 28 of the 1981 (as amended) Wildlife and Countryside Act in 1986.
29. Both parties agree that the site was selected as a SSSI as an example of ash-maple woodland which has developed on heavy basic soils. However, there is disagreement as to whether the assemblages of breeding birds form part of the selection. I am of the view that the SSSI citation document should be read as a whole and therefore share the view of the Council that everything under the heading 'Description and Reasons for Notification' sets out the reasons for notification and therefore the features that make it of special scientific interest. As such the breeding bird assemblage does form a key feature of the designation.

30. In October 2024 the Condition Assessment Report identified the woodland as being in favourable condition and the bird assemblage as being in 'unfavourable condition – no change'. The overall assessment was 'unfavourable – no change'. Two of the species that make up the bird assemblage; marsh warbler and nightingale are locally extinct and it is unlikely that they will return. As such, the condition assessment is unlikely to improve. Bird assemblage is nevertheless a feature of the site and therefore a consideration in assessing the impact of the proposal. In any event, even if I were to find that the proposal resulted in the loss or deterioration of ancient woodland the existing condition of the ancient woodland does not alter its value as an irreplaceable habitat in line with standing advice published by Natural England and the Forestry Commission.
31. Natural England's standing advice identifies that a number of direct effects of development can cause the loss or deterioration of ancient woodland. Key areas of harm considered at the Inquiry included increased disturbance, dog related eutrophication and cat predation.

Increased Disturbance

32. It is likely that the development would increase the number of people and dogs entering the wood. It is argued that this would lead to increased noise and disturbance, trampling and the creation of informal pathways with people seeking to avoid overused paths. As a consequence it was suggested that this would displace birds from nesting and foraging and cause habitat damage.
33. The number of additional visitors to the site is unknown but the estimates of the appellant's witness were unchallenged with an alternative figure at the Inquiry. If as suggested current visitor levels doubled, this would not amount to a continuous stream of people that the Council's witness based their suppositions of harm on.
34. The Council argued that path improvements would increase visitor numbers beyond the additional trips created by the development. This is on the basis that currently some people are deterred from visiting the site when conditions are muddy. Whilst this is possible, the level to which people are currently deterred is unknown. The appellant identified that people came prepared for adverse conditions with their choice of footwear. This is something I witnessed on my site visit.
35. In terms of bird disturbance, ground nesting birds are largely absent from the wood. The Council referenced other birds that could be disturbed such as Chiffchaffs, Blackcaps and Marsh Tits. Chiffchaffs and Blackcaps nest close to the ground in thick vegetation of which there is an abundance in the wood. The appellant's witness also identified that such birds are not prone to disturbance from typically more than 2-5 metres away and so would be resilient to the use of the path network. Marsh Tits nest in tree holes several metres off the ground and there is little evidence before me that foraging birds would be unable to forage due to disturbance.
36. The proposal includes areas of greenspace. Whilst its proximity is close to the wood, it can be expected to absorb some of the recreational footfall given that it would provide 2.3km circular walks that link to offsite Public Rights of Way and associated walking routes. Additional waymarking and temporary signage to direct footfall away from sensitive areas is also proposed along with options

such as path diversions around wet lying areas, temporary or permanent path closures and path surfacing.

37. The scheme incorporates substantial buffers around the periphery of the residential development between the housing and the wood that would substantially exceed the minimum buffer zone sizes proposed by Natural England and the Forestry Commission in the standing advice¹.
38. In conclusion, I am of the view that the development would not harm the wood as a result of increased disturbance.

Dog Related Eutrophication

39. Dog excrement changes the nutrient balance within a woodland and can lead to the loss of ground flora. The appellant estimates that some 70 dogs would go into the woodland at least once a day. Even if dog walks involve entering the wood it is not the case that this would inevitably lead to significant deposits of excrement in the wood. There is a large buffer zone of green space that dogs would pass through on the way to the wood. Dog bins are proposed to be located at the entrances to the wood along with signage encouraging responsible dog ownership such as picking up after dogs and keeping pets on a lead to avoid unsighted deposits. An increased warden presence is also proposed.
40. In this case there is no evidence that eutrophication poses a threat to the extent that the features of the woodland that make it of special scientific interest or to the integrity of the woodland would be at risk.

Cat Predation

41. When discounting non cat owning households and house cats the appellant argues that around 7 cats may regularly roam in the buffer zone to the wood from the around 30 dwellings that border the green space. This is on the basis that cats are territorial and so it is unlikely that cats from the eastern and central parts of the development would cross into the western area. Even if the numbers were greater, as proffered by the Council's Ecology witness, not all cats hunt. As heard in the Inquiry, research shows that cats are more predisposed to hunting mammals than birds. The appellant referenced RSPB research that shows that cats are having little impact on bird populations in the UK, with those taken tending to be sick and weak.
42. While cat predation can be a problem where properties are next to scarce habitats such as heathland and be a threat to certain species like Cirl Buntings and Dartford Warblers on heathland, this is not the case in Tiddesley Wood.
43. There would be a substantial buffer through which cats would need to travel to access the wood along with wire backed fencing and prickly planting, once grown. In addition, other mitigation measures are proposed such as home owner packs encouraging owners to keep their cats indoors at night and to attach a bell to their collars.

¹ Natural England say an appropriately landscaped buffer zone of a minimum of 15 metres should be provided between the new development and ancient woodland. The Woodland Trust advocates a minimum 50 metres buffer should be maintained between a development and ancient woodland.

Conclusion on the Effect on Tiddesley Wood

44. Natural England has identified that the effects of the development are in principle capable of mitigation. As a statutory adviser I give this advice great weight. Natural England have identified that Worcestershire Wildlife Trust (WWT) are best placed to advise on the detail of the mitigation package and that their agreement is required for the mitigation to be effective.
45. Following ongoing discussions during the Inquiry WWT confirmed that they accept the mitigation strategy set out in document TN07, dated 18 November 2024. TN07 contains mitigation measures falling under 3 headings; embedded mitigation within the scheme, developer delivered additional mitigation and additional mitigation including measures to be delivered in the wood. Whilst WWT oppose the development, the mitigation strategy includes a package of measures that are acceptable to them and they consider it to be the best package available for limiting the harm that they consider there would be to the wood.
46. In closing the Council's barrister highlighted that the mitigation proposed in version TN07 dated 18 November 2024 was notably different to the version referred to in the Inquiry. Changes include the types of path management, removal of signage/ waymarkers, knee rails and ditch creation. There is also no reference to the temporary closure of the car park and a reduction in capital costs. Nevertheless, the requirements reflect changes requested by WWT and which they support.
47. The S106 agreement contains 2 clauses regarding the length of provision of the mitigation measures. There is little before me to demonstrate that the mitigation strategy would cease to be required after the 30 years initially proposed by the appellant or the 80 years now proposed by the appellant. I am of the view that measures to mitigate the impact of the development should be maximised and be provided for as long as possible. I therefore agree with the 125 years proposed by the Council. The clause that reflects this position in the S106 agreement should therefore be applied.
48. With appropriate mitigation measures in place increased disturbance, dog eutrophication and cat predation would not cause harm to the wood either in isolation or in combination. The development would not harm the features of the site that make it of special scientific interest and any broader impacts on the national network of SSSI. It would also not cause loss or deterioration to the ancient woodland. The development would not therefore conflict with Policy SWDP22 of the Development Plan. Amongst other things, this Policy does not support development that would have an adverse impact on a SSSI except where the benefits of the development clearly outweigh the likely impact on the features of the site that make it of special scientific interest and any broader impacts on the national network of SSSIs. The policy also prohibits development that would result in the loss or deterioration of an Ancient Woodland unless the need for and the benefits of the proposed development clearly outweigh the loss or deterioration.

Other Matters

Housing Land Supply

49. At the start of the Inquiry the Council's position was that it had a 2.78 year housing land supply. The appellant was of the view that there was a 2.53 year supply. During the Inquiry the SWDP Authorities published an updated Housing Land Supply Statement which indicates that the housing land supply is now 2.3 years. Post publication of the new NPPF the Council have not yet confirmed their 5 year position but indicate that it is anticipated to be approximately 1.1 years. Whichever figure is taken, this is not a minor undersupply of housing. At this time, and based on the evidence before me, the spatial strategy of the Council does not make sufficient provision for housing and there is uncertainty about how long this will continue. The harm I have found to the conflict with the existing spatial strategy and the location of the proposal outside a settlement boundary consequently generates limited weight.
50. The Council cannot demonstrate a 5 year housing land supply and so the NPPF deems the policies which are most important for determining the planning application to be out of date. Given my findings in relation to the impact of the development on Tiddesley Wood paragraph 11(d) of the NPPF is engaged. Paragraph 11(d) of the NPPF says that planning 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 NPPF taken as a whole. This is an important material consideration in the planning balance.

Affordable Housing

51. There are currently over 2,500 eligible households on the Council's Housing Register using the Council's eligibility criteria. The appellant suggests that there will be additional numbers in need who earn above the qualifying threshold to go onto the list but will nevertheless struggle to afford market housing in the area.
52. The scheme proposes 120 affordable dwellings, which is 40% in line with Policy SWDP15 of the Development Plan. There is dispute between the parties as to what the tenure split of those 120 dwellings should be.
53. Following the publication of the revised NPPF the Council argue that the breakdown of provision should be 70% social rented and 30% affordable home ownership products. The appellant argues that the split should be 25% First Homes, 60% social/ affordable rent and 15% shared ownership.
54. The most up to date published evidence in the Strategic Housing Market Assessment (SHMA) identifies a need for 25% First Homes, 69% social rented and 6% affordable home ownership. This reflects an acute need for social rented accommodation in the area and was the Council's preferred tenure split prior to the publication of the revised NPPF.
55. The new NPPF removes the requirement to deliver a minimum of 25% of affordable housing as First Homes. However, it states that the delivery of First Homes can continue where they meet local need. Whilst the Council has identified that the First Homes product has impacted on the delivery of other forms of affordable housing there is a lack of evidence before me to demonstrate that there is not a need for this type of housing.

56. Noting the appellants points regarding historical delivery rates, planned future provision and the evidence of need presented by both parties I am of the view, based on the information before me, that the affordable housing provision should be split 69% social rented, 25% First Homes and 6% affordable home ownership in line with the latest SHMA. This would ensure delivery of dwellings required for the rising number of people in acute housing need whilst also making provision for those not eligible to join the Council's waiting list, identified by the appellant. The clause in the S106 agreement that reflects position should therefore be applied.

Listed Buildings

57. A chapel associated with the cemetery adjacent to the site is a Grade II Listed Building. The chapel derives its significance from its architectural value as a purpose built cemetery chapel and as an expression of Victorian approaches to death and burial. There is no relationship between the appeal site and the chapel and it does not contribute to the significance of the designated asset. The development would not adversely affect the significance of the chapel.
58. Adjacent to the eastern boundary of the site is a Grade II Listed Building known as Woodman's Cottage, a timber framed cottage infilled with brick nogging and a thatched roof. The asset derives significance from its architectural value as a timber framed cottage and from its rural setting with a likely historic functional relationship with Tiddesley Wood as it was historically related to the management of the wood.
59. The rural setting of the cottage and the close association with Tiddesley Wood form key elements of the setting of this asset and contribute to its significance. Intervisibility between the cottage and the woodland would be retained and the scheme proposes a green corridor that runs along the footpath from the cottage to the wood, retaining views from the cottage. Screen planting is proposed to the south west providing some retention of a rural setting. However, the scheme would reduce the open rural setting of the cottage causing less than substantial harm.

Highways

60. Interested parties have raised concerns regarding the highway safety implications of the development as a result of increased vehicular traffic and the safety of the proposed access. The Council initially raised highways safety as a putative reason for refusal. However, during the course of the appeal matters of concern have been addressed and subject to necessary conditions the Highways Authority does not object to the proposal on highways grounds. Based on the evidence before me there is no reason for me to take a different view.

Flooding and Drainage

61. Whilst flood risk issues have been raised the illustrative masterplan identifies that all of the residential development would be located within Flood Zone 1 which has low flood risk. Drainage design proposals would lead to a reduction in existing observed surface water flooding on Defford Road. Subject to the implementation of appropriately worded planning conditions the Lead Local Flood Authority has raised no objection and I have no reason to take a different

view. Similarly, Severn Trent has not raised any objection subject to conditions to the foul drainage proposals for the scheme.

Access to Services and Facilities

62. Interested parties have raised concerns regarding the ability to access services and facilities from the site. The main town centre of Pershore is some 1.7km away and the nearest bus stop is approximately 500m from the site. The proposed scheme includes an obligation to divert a bus service through the site and extend a responsive transport service to incorporate the site. As such, residents of the development would have access to sustainable transport options that would enable them to access services and facilities in Pershore town centre. The proposal would also be subject to a planning obligation requiring financial contributions towards education, healthcare, open space and sports provision to mitigate the impact an increased population would have on services and facilities within the vicinity.

Living Conditions

63. Concern has been raised regarding the impact on the living conditions of neighbouring residents as a result of noise and light and air pollution. Whilst noting that such matters will be considered in more depth at the reserved matters stage, the illustrative masterplan demonstrates that the proposed number of dwellings can be accommodated on the site without harm to the living conditions of neighbouring residents.
64. During construction there would inevitably be an element of noise disturbance to nearby residents. The impact of this can be mitigated with appropriately worded planning conditions to restrict hours of operation. Similarly, lighting could also be controlled through a planning condition. There is nothing before me to indicate that the development would generate noise levels that would be detrimental to existing nearby residents.
65. The issue of crime has been raised. Whilst I do not doubt that the concerns raised by residents are genuine, I have no substantive evidence before me to show that the appeal scheme would result in an increase in crime. Without a reasonable evidential basis for the concern the weight I can attach to it is limited.

Planning Obligations

66. A signed Section 106 agreement was provided by the appellant after the event. The document commits the appellant to a number of planning obligations that are required in line with Policies SWDP4, SWDP7, SWDP15, SWDP21, SWDP22, SWDP37 and SWDP39 within the Development Plan. These policies seek to ensure the delivery of facilities and services that are essential for development to take place or to mitigate the impact of the development.
67. The obligations with the Council secure the provision of 40% affordable housing. In line with my findings above this would take the form of 25% First Homes, 69% social rented and 6% affordable home ownership. It includes offsite site open space provision and the maintenance of on site open space and built sports provision in the form of improvements to sports and leisure facilities at Pershore High School. There would also be a financial contribution for formal sports pitch provision to improve outdoor football pitches at Pershore High School. The S106 agreement would make provision for contributions

towards early years, primary and secondary education phases as well as to places for children and young people with Special Educational Needs and/ or Disabilities. Provision would be made for primary healthcare to address the increase demand on existing primary healthcare that would be generated by the development, biodiversity net gain and a funding package to Worcestershire Wildlife Trust to mitigate the impacts of the development on Tiddesley Wood. In line with my findings above, this should be provided for 125 years.

68. The S106 agreement would secure a Traffic Regulation Order to prohibit the use of the emergency access connecting to Mayville Close and Henderson Drive by general motor vehicles, a diverted bus route and demand responsive transport service. It would also make provision for a service for the elderly and disabled to enable access to services such as acute health. It would provide for improvements to pedestrian facilities through the provision of dropped kerb and tactile paving on Farleigh Road to promote a walkable environment along with a pedestrian wayfinding system to ensure pedestrians can safely and easily navigate between the site and the town centre. There would also be traffic signal enhancement to mitigate the predicted traffic impact of the development at the A4104 Three Springs Road/ B4084 junction and at the signalised junction of A4104 Station Road/ B4084 Worcester Road/ High Street.
69. Overall, given the policy requirements and infrastructure needs arising from the development I am satisfied that all of the obligations sought are necessary to make the development acceptable in planning terms, are directly related to the development and fairly and reasonably related in scale and kind to the development. They would accord with the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the policy tests in the NPPF. I can therefore take into account all of the obligations as part of my decision.
70. The obligations that are necessary to mitigate the impacts of the development are neutral in the planning balance. This applies in most cases. Instances where there would be positive benefits arising from the obligations need to be added to the planning balance. The proposed obligations would not cause harm and as such there would be no conflict with Policies SWDP4, SWDP7, SWDP15, SWDP21, SWDP22, SWDP37 and SWDP39 of the Development Plan in this regard.

Benefits

71. For the reasons identified there would be harm to the setting of Woodman's Cottage as a result of the proposal. The harm would be less than substantial in nature. Paragraph 215 of the NPPF requires that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset the harm should be weighed against the public benefits of the proposal.
72. For the avoidance of doubt, in ascribing weight to the benefits I have used the following scale; limited, moderate, significant and substantial.
73. The development is expected to deliver 300 dwellings and as such would make an important contribution in reducing the Council's existing housing shortfall. I give significant weight to this given that the Council is yet to adopt an up to date development plan. 40% of the proposed dwellings are to be affordable

housing. Given the high need for affordable dwellings in the District I give this substantial weight.

74. The development would generate economic benefits during construction and through resident expenditure within the local economy following occupancy. I give this moderate weight. I also give moderate weight to the provision of biodiversity net gain along with the proposed public open space and landscaping provision that exceeds policy requirements. The offsite enhancements to Tiddesley Wood would also generate moderate weight.
75. Taken together the public benefits of the scheme carry significant weight which outweighs the less than substantial harm to the setting of the listed building in the vicinity of the appeal site.

Planning Balance and Conclusion

76. I now turn to the overall planning balance. Planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. I have concluded that the development would conflict with the spatial strategy for the plan and therefore Policy SWDP2 of the Development Plan given that the proposal would be located outside the settlement boundary of Pershore and would not be appropriate development in the countryside. I give this conflict limited weight in the absence of a 5 year housing land supply.
77. I have given moderate weight to the impacts of the development on landscape character and found that there would be less than substantial harm to the setting of a heritage asset. The development would not harm the features of the site that make it of special scientific interest and any broader impacts on the national network of SSSI. It would also not cause loss or deterioration to the ancient woodland.
78. There are a number of benefits that would result from the scheme. These include the delivery of market housing which I give significant weight, the delivery of affordable housing which I give substantial weight and the economic benefits, and green infrastructure related benefits which I give moderate weight.
79. As paragraph 11(d) of the NPPF is engaged, because the Council is unable to demonstrate a 5 year housing land supply, planning permission should be granted unless the adverse impact of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.
80. I have found there to be limited harm to the proposal's conflict with the Council's spatial strategy. There is moderate harm to the landscape character of the area and there is less than substantial harm to the setting of the heritage asset. When set against the benefits of the proposal it is clear that the adverse impacts of the development would not be significantly and demonstrably outweighed by the substantial benefits of the proposal. The NPPF therefore supports the grant of planning permission. The appeal should therefore be allowed and planning permission granted subject to necessary planning conditions.

Conditions

81. A schedule of proposed draft planning conditions was submitted prior to the Inquiry event and there were subsequent revisions made to the schedule during the event. The conditions were discussed at a round table session. I have considered the suggested conditions having regard to the Planning Practice Guidance and the NPPF which states that conditions should only be imposed where they are necessary, relevant to planning and to the development permitted, enforceable, precise and reasonable in all other respects.
82. In addition to the standard time condition (1) for the submission of reserved matters and commencement of the development, a condition defining the remaining reserved matters to be approved (2) and a condition requiring the development to be carried out in accordance with the approved plans (4) are necessary in the interests of proper planning and for the avoidance of doubt. It is necessary for the development to be carried out in accordance with a Phasing Plan (3) to ensure good design and the delivery of infrastructure.

Highways

83. To ensure the suitable, safe and satisfactory delivery of highways measures within the development it is necessary to require a detailed schedule of works and design for the site access at Defford Road, the provision of visibility splays and compliance with approved highways related plans (5), (6). The implementation of a zebra crossing is necessary (30) along with a street lighting assessment and implementation of a streetlighting scheme (27). To promote and facilitate the ability of people to make sustainable transport choices and to promote sustainable travel a travel plan is required (24) along with Travel Welcome Packs (25).

Construction

84. The construction of the development would cause disruption to the surrounding roads and those living nearby. It is consequently necessary to mitigate the negative effects as far as possible by restricting working hours on the site (9). A Construction Environmental Management Plan including a Construction Traffic Management Plan is also necessary (26).

Archaeology

85. The site is known to contain heritage assets of archaeological interest. To mitigate the impact of the development on the archaeology a programme of archaeological work is necessary (29).

Character and Appearance

86. To protect the character and appearance of the area and given the topography of the site, the submission of details on existing site levels and proposed floor slab levels is necessary (7). The requirement to submit details of screen walls, fences, surface treatments, boundary treatments, and a requirement to submit a landscape scheme at Reserved Matters stage is also necessary (8), (11), (12).

Low Carbon Energy Generation

87. Details of renewable and/ or low carbon energy generation is necessary to ensure the delivery of at least 10% of predicted energy requirement of development through such means (10). The installation of Ultra Low NOx boilers is also required (28).

Ecology

88. A Construction Environmental Management Plan is necessary to ensure ecological interests are protected (13). To ensure appropriate consideration is given to securing biodiversity net gain early in the planning process a Biodiversity Gain Plan is required (14). A Landscape and Ecological Management Plan and a lighting strategy for biodiversity are also necessary to ensure that the development contributes to the conservation and enhancement of biodiversity within the site (15), (16). Details of foul water drainage systems to serve the scheme are necessary to ensure the development would not result in unacceptable risk of pollution to the environment (19). An Arboricultural Impact Assessment (22) and protection of trees and hedges during construction (23) are necessary to avoid harm.
89. The implementation of the requirements of the Visitor Access Management Plan and implementation of the measures contained in the Strategic Landscape Parameter Plan are necessary to help manage and control visitor access to Tiddesley Wood and ensure the SSSI is not adversely affected by footfall or other recreational activities (31). These measures are to be implemented in conjunction with the off-site Visitor Access Management Plan measures to be undertaken by Worcestershire Wildlife Trust, as set out at Section 4 of the Visitor Access Management Plan.

Flooding

90. To prevent flooding and to ensure the satisfactory management of sources of flooding detailed designs of a surface water drainage scheme is necessary (17) along with a Surface Water Management Plan (18) and details of the provision for the sustainable disposal of surface water within the site (20).

Demolition

91. To ensure the safe demolition of the onsite agricultural buildings and to ensure the risks from land contamination is identified and appropriately managed a risk assessment and where appropriate site investigation work, and remediation work is required (21).

K Ford

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Howard Leithead

No5 Chambers

He called:

Tom Clarkson

Clarkson and Woods Ltd.

Gillian McDermott

Wychavon and Malvern Hills District
Councils

Charles Potterton

Potterton Associates Ltd.

FOR THE APPELLANT:

Lord Charles Banner of King's Counsel

Keating Chambers

He called:

Alistair Baxter

Aspect Ecology

Michael Davies

Savills

Julian Forbes-Laird

Forbes-Laird Arboricultural
Consultancy Ltd.

Jeremy Peachey

The Pegasus Group

INQUIRY DOCUMENTS SUBMITTED AT THE EVENT

INQ 1	Appellant Opening
INQ 2	Council Opening
INQ 3	Letter from Worcestershire County Council Transport Planning and Development Management Team Leader dated 5 November 2024
INQ 4	Statement by Cllr Val Wood
INQ 5	Worcestershire Wildlife Trust Statement by Steven Bloomfield
INQ 6	Clarification note from Appellant dated 7 November 2024
INQ 7	Orchard Farm Conditions V3
INQ 8	Briefing Note Corrections to LPA's Rebuttal – Affordable Housing by Alison Meigh dated 7 November 2024
INQ 9	Email trail between appellant and Natural England between 7 October 2024 and 6 November 2024
INQ 10	Draft S106 Agreement
INQ 11	Orchard Farm Conditions V5
INQ 12	Speaking Notes by Cllr Charles Tucker
INQ 13	Email Response of Worcestershire Wildlife Trust to Proposed Mitigation Package following meeting with Sylvan, Hollybrook Homes and WWT on 25 October 2024 (dated 1 November 2024)
INQ 14	South Worcestershire Councils' 5 Year Housing Land Supply Report Published November 2024
INQ 15	Email from Worcestershire County Council Regards Safeguarded Land between Appeal Site and Holloway Scheme
INQ 16	Pinvin Planning Committee Report 7 November 2024
INQ 17	Holloway Site Layout Plan
INQ 18	Council's Response on Representation Received by Local Residents
INQ 19	Email dated 15 November 2024 confirming Council agreement to Appellant's Clarification Note of 7 November 2024
INQ 20	Orchard Farm Conditions V6, dated 15 November 2024

INQ 21	Email dated 15 November 2024 from Council regarding 5 Year Housing Land Supply Report, published in November
INQ 22	Appellant final Affordable Housing Rebuttal 15 November 2024
INQ 23	Further Appellant Clarification Note and appendix dated 15 November 2024, received 18 November 2024
INQ 24	TN07 Visitor Access Mitigation
INQ 25	Email response to questions Raised by Council in relation submission of TN07 Visitor Access Mitigation dated 18 November 2024
INQ 26	Draft revised S106 Agreement received 18 November 2024
INQ 27	Council Closing Submissions
INQ 28	Appellant Closing Submissions

DOCUMENTS SUBMITTED AFTER THE INQUIRY EVENT

Engrossed Planning Obligation dated 2 December 2024 received 3 December 2024

Applicant Application for an Award of Costs

Council Response to Appellant Costs Application

Applicant Final Comments on Costs Application

Council Response to publication of Revised NPPF

Appellant Response to Revised NPPF

SCHEDULE OF CONDITIONS

1. Application for the approval of reserved matters for the first phase of development shall be made to the Local Planning Authority before the expiration of three years from the date of this permission. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
2. Approval of the details of the appearance, landscaping, layout and scale for each phase of development (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced. The development shall be carried out in accordance with approved reserved matter details.
3. Before the commencement of development hereby permitted, a phasing plan shall be submitted to and approved in writing by the Local Planning Authority.
4. Unless where required or allowed by other conditions attached to this permission/consent, the development hereby approved shall be carried out in accordance with the information provided on the application form and the following plans/drawings/documents:
 - Proposed Emergency Access Route (ref: 227119-PD14.2 Rev A)
 - Land Use Parameter Plan (ref: P22-2506_DE_0010 Rev G)
 - Strategic Landscape Parameter Plan (ref: P22-2506_EN_0012_C_0001)
 - Building Heights Parameters Plan (ref: P22-2506_DE_0013 Rev C)
 - Demolition Plan (ref: P22-2506_DE_0020 Rev A)
5. Before Development commences, a detailed schedule of works and design for the site access works at Defford Road, including pedestrian footway provision and shared-use access path, shall be submitted to and approved in writing by, the Local Planning Authority. The development shall not be first occupied until the submitted detailed scheme, which is broadly in accordance with SLR drawings 227119_PD14-4 Rev B _Proposed Site Access – Right Turn Facility General Arrangement & Visibility Assessment, 227119_PD14 Rev A Overview Plan of Proposed Right Turn Facility, 06842-CI-D-0100-P07 Junction General Arrangement, 227119_PD14-1 Rev A Proposed Footway Alignment 50mph and 227119_PD14-3 Rev A Proposed Footway Alignment End of Shared Route, 06842-CI-D-0101-P03 Path General Arrangement subject to any minor modifications identified during the detailed design and Road Safety Audit processes, has been agreed in writing by the Local Planning Authority, in consultation with Worcestershire County Council Highways, and has been implemented in full.
6. The Development hereby approved shall not be occupied until visibility splays, as shown on SLR drawing 227119_PD14-4 Rev B Proposed Site Access - RT Facility-GA & Vis Assessment, are provided from a vertical point 1.05m above carriageway level at the centre of the site vehicular access at Defford Road and 4.5m back from the near side edge of the adjoining carriageway, (measured perpendicularly), for 160m in both directions, measured along the nearside edge of the adjoining

carriageway (vertical off set of 0.6m). Nothing shall be planted, erected and/or allowed to grow on the triangular areas of land so formed which would obstruct the visibility described above.

7. Details of the levels of the existing site and the precise floor slab levels of the approved dwellings, relative to the existing development on the boundary of the site, shall be submitted for approval as part of the reserved matters. The development shall be implemented in accordance with the approved details.
8. Details of screen walls, fences, surface treatments to drives, cycle and footways and implementation timetable shall be submitted for approval as part of the landscaping reserved matters.
9. Demolition, 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 09.00 and 18.00hrs Monday to Friday and 08.00 and 13.00hrs on a Saturday. There shall be no demolition, clearance or construction work or deliveries to and from the site on Sundays, Public or Bank Holidays.
10. Before the commencement of development hereby permitted, details of renewable and/or low carbon energy generation measures shall be 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: - the overall predicted energy requirements of the approved development; - the predicted energy generation from the proposed renewable/low carbon energy measures; and - an implementation timetable for the proposed measures. The development shall be carried out in accordance with the approved details.
11. As part of any Reserved Matters application, a landscape scheme shall be submitted for approval which 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; 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.
12. As part of any reserved matters application, a plan indicating the positions, design, materials and type of boundary treatment to be erected shall be submitted to and approved in writing by the local planning authority. The boundary treatment shall include mammal gaps to ensure permeability for small mammals and shall be completed before the first occupation of the development hereby permitted. Development shall be carried out in accordance with the approved details.
13. No development shall take place until a construction environmental management plan (CEMP: Biodiversity) 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 (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;
- 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.

14. No part of the development shall be commenced, including any site clearance, until a Biodiversity Gain Plan (BGP) has been submitted to the planning authority and until such time that this plan has been approved by the Local Planning Authority. The plan shall be based on baseline assessments and habitat enhancements measured through the latest Defra metric and shall thereafter be implemented in full as approved.
15. Prior to the first occupation of each phase of the development hereby permitted, a comprehensive lighting design strategy for biodiversity, including a timetable for its implementation, shall be submitted to and approved in writing by the local planning authority within one month of the commencement of the development hereby approved. The strategy shall be based on Figure 10 – DPA Ecology Sensitivity Map within Appendix 6596/AB19 External Lighting Report dated 08.10.24 by DPA Lighting Consultants:
 - a. Identify dark corridors and 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 commuting; 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, commuting across the site or having access to their breeding sites and resting places.All lighting shall be installed in accordance with the specifications and locations set out in the strategy, and these shall be maintained thereafter in accordance with the strategy. No other external lighting shall be installed without prior consent from the local planning authority.

16. Prior to the commencement of development (except demolition) 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 based on the recommendations made in the Ecological Appraisal, by Aspect Ecology dated September 2023, and shall be guided by the requirement to achieve the Biodiversity Net Gain scheme approved under condition 10 (above) and maintain this after implementation, and shall include the following:
- a) Description and evaluation of features to be managed.
 - b) Ecological trends and constraints on site that might influence management.
 - 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 organization responsible for implementation of the plan.
 - h) Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.

17. No works in connection with site drainage shall commence 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 Flood Risk Assessment and Drainage Strategy prepared by PJA (document reference: 06842/FRA/001_P11). 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 shall provide detailed design drawings for all drainage assets and should include run off treatment proposals for surface water drainage for each phase of development. Exceedance flows should not be directed to property or private land. 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 and thereafter maintained in accordance with the agreed scheme in accordance with the approved details and timing/phasing arrangement.

18. No works or development shall take place until a construction surface water management plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall include how surface water will be managed during the construction phase, including site clearance and soil stripping. The plan shall include drawings of any temporary drainage systems, a timeline of construction and measures to mitigate the risk of pollution (including silt) of the water environment and offsite flood risk. The plan shall detail how the approved permanent surface water drainage system shall be remediated during the construction phase. The approved construction surface water management plan shall be implemented as soon as works start on site thereafter maintained during the full duration of the construction phase.
19. No works or development shall commence until full details of all foul water drainage systems to serve the development have been submitted to and approved in writing by the Local Planning Authority. The approved drainage works shall be implemented in accordance with the approved details before the first occupation of the development hereby permitted and shall be retained thereafter.
20. No works in connection with the site access, spine road, internal street network or site drainage shall commence until details of the provision for the sustainable disposal of surface water within the site so as to prevent its discharge onto the highway have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be fully implemented and subsequently maintained, in accordance with the scheme's timing/phasing arrangements, or within any other period as may be subsequently agreed, in writing, by the local planning authority.
21. Unless otherwise agreed by the Local Planning Authority, the demolition of existing agricultural buildings on site, must not commence until points A to F have been complied with:
 - A. A preliminary risk assessment of the farmhouse and curtilage must be carried out. This study shall take the form of a Phase I desk study and site walkover and shall include the identification of previous site uses, potential contaminants that might reasonably be expected given those uses and any other relevant information. The preliminary risk assessment report shall contain a diagrammatical representation (conceptual model) based on the information above and shall include all potential contaminants, sources and receptors to determine whether a site investigation is required and this should be detailed in a report supplied to the Local Planning Authority. The risk assessment must be approved in writing before any development takes place.
 - B. Where an unacceptable risk is identified at the farmhouse and curtilage, works shall cease and a scheme for detailed site investigation must be submitted to and approved in writing by the Local Planning Authority prior to being undertaken. The scheme must be designed to assess the nature and extent of any contamination and must be led by the findings of the preliminary risk assessment. The investigation and risk assessment scheme must be compiled by competent persons and must be designed in accordance with the Environment Agency's "Land Contamination: Risk Management" guidance.
 - C. Where identified as necessary, a detailed remediation scheme related to the farmhouse and curtilage that is required to bring the site to a condition suitable for the intended use by removing unacceptable risks to identified receptors must be prepared and is subject to the approval of the Local Planning Authority in advance of

undertaking. The remediation scheme must ensure that the site will not qualify as Contaminated Land under Part 2A Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

D. The approved remediation scheme for the farmhouse and curtilage must be carried out in accordance with its terms prior to the re-commencement of any site works in the areas of suspected contamination, other than that work required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority.

E. Following completion of measures identified in the approved remediation scheme, for the farmhouse and curtilage, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval of the Local Planning Authority prior to the occupation of any buildings on site.

F. In the event that contamination is found at any time when carrying out the approved development that was not previously identified, works must cease and it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where necessary a remediation scheme must be prepared, these will be subject to the approval of the Local Planning Authority. Following the completion of any measures identified in the approved remediation scheme a validation report must be prepared, which is subject to the approval in writing of the Local Planning Authority prior to the occupation of any buildings.

22. The development hereby permitted shall be carried out in accordance with the submitted Arboricultural Impact Assessment by FLAC. Unless indicated on the approved Arboricultural Impact Assessment 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 approved in writing by the local planning authority.
23. 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 shall be erected in accordance with BS 5837:2012 (Trees in Relation to Design, Demolition and Construction) before development of any type commences, including site clearance, demolition, materials delivery, vehicular movement and erection of site huts. 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.

24. The Development hereby approved shall not be first occupied until a Travel Plan prepared in accordance with Worcestershire County Council's prevailing guidelines for residential travel plans, has been submitted to and approved in writing by the Local Planning Authority. This Plan will thereafter be implemented, monitored for a minimum of 5 years and shall be updated in agreement with Worcestershire County Council's Travel Plan Officer and thereafter implemented as updated.
25. The Development hereby approved shall not be occupied until the applicant has submitted to and had approval in writing from the Local Planning Authority a residential travel welcome pack promoting sustainable forms of access to the development, prepared in accordance with Worcestershire County Council's Guidelines for Travel Welcome Packs. The pack shall be made available for each dwelling hereby approved prior to first occupation.
26. The Development (except demolition) hereby approved shall not commence until a Construction Environmental Management Plan (CEMP) including a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the Local Planning Authority. This shall include but not be limited to the following:
- Measures to ensure that vehicles leaving the site do not deposit mud or other detritus on the public highway;
 - Details of site operative parking areas, material storage areas and the location of site operatives facilities (offices, toilets etc);
 - The hours that delivery vehicles will be permitted to arrive and depart, and arrangements for unloading and manoeuvring.
 - Details of any temporary construction accesses and their reinstatement.
- The measures set out in the approved Plan shall be carried out and complied with in full during the construction of the development hereby approved. Site operatives' parking, material storage and the positioning of operatives' facilities shall only take place on the site in locations approved by in writing by the local planning authority.
27. No works in connection with the site access, spine road or internal street network shall commence until a lighting assessment undertaken in accordance with Worcestershire County Council's Street Lighting Design Guide have been submitted to, and approved in writing by the Local Planning Authority. The lighting assessment shall take account of Appendix 6596/AB19 External Lighting Report dated 08.10.24 by DPA Lighting Consultants. The development shall not be occupied until the streetlighting scheme has been implemented in full accordance with the approved details.
28. Details shall be submitted to and approved by the local planning authority prior to the first occupation of the development for the installation of Ultra-Low NOx boilers with maximum NOx Emissions less than 40 mg/kWh. The details as approved shall be implemented prior to the first occupation of the development and shall thereafter be permanently retained.
29. A) No development (except demolition) 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:
- 1) The programme and methodology of site investigation and recording.
 - 2) The programme for post investigation assessment.
 - 3) Provision to be made for analysis of the site investigation and recording.

- 4) Provision to be made for publication and dissemination of the analysis and records of the site investigation.
- 5) Provision to be made for archive deposition of the analysis and records of the site investigation.
- 6) 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.

30. The Development hereby approved shall not be occupied until the Zebra Crossing at the A4104 Three Springs Road has been implemented, generally in accordance with SLR drawing 227119_SK09 Proposed Footway Alignment Zebra Crossing.
31. The development hereby approved shall be implemented in accordance with Sections 2 and 3 of the Visitor Access Management Plan prepared by Aspect Ecology (ref: TN07). The following measures shall be implemented in accordance with the approved Strategic Landscape Parameter Plan (ref: P22-2506_EN_0010_C_0001):
 - a) Significant buffer zones to be implemented on a phased basis;
 - b) Public Open Space (15.9 ha / 60% of site area) intended to provide local opportunities for informal recreation, and absorb potential recreational pressure that might otherwise be put on Tiddesley Wood, to be implemented on a phased basis;
 - c) Provision of two all-weather on site circular walks of 2.3km to attract users from the woodland on a phased basis;
 - d) Links to offsite PROWs and associated circular walking routes, to be implemented on a phased basis;
 - e) Phased implementation of a range of semi-natural habitat, designed to be complementary to the woodland, including new woodland planting extending Tiddesley Woods to the east, species-rich grassland, a traditional community orchard, allotments and wildlife ponds (embedded mitigation/enhancement);
 - f) Measures to assist with diverting public pressure away from Tiddesley Wood – signage, interpretation boards, dog waste bins to be implemented on a phased basis;
 - g) Prior to occupation of each dwelling, residents are to be provided with a Home Owner Pack to explain the special nature of Tiddesley Wood and its sensitives, to include advice to keep dogs on leads and pick up after them (with dog bin locations marked on site maps) as well as to keep cats inside at night and fit them with collars equipped with bells. To also include and promote alternative greenspace options and walking routes available in the area;
 - h) Prior to occupation dog-bins to be provided within the site alongside the existing PROWs and woodland entry points, and on a phased basis along the circular walks (emptying of dog bins on the site / woodland entry points would be the responsibility of the management company); and
 - i) Prior to occupation, fencing along the boundary of ownership between the development and Tiddesley Wood is to be implemented (maintenance of the fencing would be the responsibility of the management company).



Costs Decision

Inquiry Held on 5, 6, 12, 13, 14, 19 November 2024

Site visit made on 24 October 2024

by K Ford MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th January 2025

Costs application in relation to Appeal Ref: APP/H1840/W/24/3347643 Land at Orchard Farm, North of Defford Road, Pershore WR10 3BY

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Formula Land Ltd for a partial or full award of costs against Wychavon District Council.
 - The Inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the demolition of existing farmhouse, agricultural buildings and structures, the erection of a phased development of up to 300 residential dwellings (Use Class C3) and associated public open space, drainage, infrastructure and engineering works with all matters reserved except access.
-

Decision

1. The application for an award of costs is dismissed.

Reasons

2. Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The PPG sets out a number of examples where a local planning authority is at risk of an award of costs. The behaviour of parties during the time of the planning application can be taken into account in deciding whether unreasonable behaviour has occurred, although the costs themselves can only be awarded in relation to unnecessary or wasted expense at the appeal.
4. The applicant has made an application for either a full or partial award of costs that relate to procedural and substantive matters.

Failure to Provide Written Pre-application Advice

5. The applicant made a formal request for pre-application advice in January 2023 for a 430 dwelling scheme. Technical reports to support an amended 300 dwelling scheme were provided on 2 May 2023 after which time the applicant identifies that there was no further correspondence from the Council.

6. Whilst the Council say they were undertaking action after this date, such as chasing statutory consultees, it appears that this was not communicated to the applicant.
7. The applicant is particularly critical of the lack of written advice from the Council which they had paid for as part of the pre-application service. In response the Council suggests that the submission of a planning application in the interim negated the need to provide a written pre-application response.
8. Whatever the reasons for the delays and absence of a written response there is little to indicate that such a response would have avoided the need for the appeal, even if there had been some narrowing of the issues between the parties through the pre-application process.

Failure to Provide Environmental Impact Assessment (EIA) Screening Opinion in Reasonable Timescale

9. The Council acknowledge that they should have responded more quickly to the formal EIA screening request, initially submitted in March 2023. Even after requests from the Secretary of State the Council did not respond until 7 November 2023, which is excessive even when taking into account amendments to the scheme. Whilst the Council says such delays are not uncommon, it does not make them acceptable.
10. When a screening opinion was provided it confirmed that an Environmental Statement was not required. As such the delay did not ultimately have any bearing on the appeal and as such did not generate an unnecessary or wasted expense.

Non-Determination of the Planning Application

11. The applicant says that a failure to engage with the applicant led to an appeal against non-determination. However, it is clear from the evidence before me that at the time of the appeal submission there were a number of outstanding matters from interested parties including statutory consultees. Earlier determination of the application would have almost certainly been one of refusal in those circumstances. This was confirmed in the Council's putative reasons for refusal following the appeal submission.
12. The Council surmises that the applicant's decision to appeal was because they would have been in a weaker position once the examination of the emerging Local Plan had commenced. I do not agree. There is uncertainty surrounding the progress of the emerging plan and even if examination hearings do start in March 2025, it will be some time before significant weight can be given to the policies in that document.
13. On the evidence before me an appeal was inevitable, even with a narrowing of the issues on matters such as transport. Non-determination of the planning application did not therefore lead to unnecessary or wasted expense at the appeal.

Ecology Matters

14. The applicant says that the Council failed to give great weight to the advice of Natural England dated the 4 June 2024 which identified that the proposed development was capable of mitigation. If disagreeing with the position of Natural England the applicant says the Council failed to provide cogent and compelling reasons to depart from the advice.
15. Prior to the appeal being lodged the Council was unaware of the position of Natural England as they were not engaged in correspondence between the applicant and the statutory consultee. Correspondence from Natural England known to the Council was that of objection to the scheme on the basis of an absence of a lack of certainty about the package of measures to ensure that the interest features of Tiddesley Wood would not be damaged or destroyed.
16. At Inquiry the Council were aware of Natural England's comments of 4 June 2024. However, discussions regarding mitigation measures were still ongoing between the applicant and Worcestershire Wildlife Trust even during the Inquiry. Given that the Council were excluded from these discussions, I do not think the Council acted unreasonably.
17. At Inquiry the Council's witnesses provided evidence to justify their view that the development would cause harm to the woodland. It is evidence to which I did not agree but it is a view that they were entitled to take and in providing that view the witness did not act unreasonably. In forming this opinion, I disagree with the applicant's interpretation of the evidence given by the Council's witness on whether the provisions of paragraph 193 of the National Planning Policy Framework would be triggered by the death of one bird or the breaking of a single tree branch.
18. The applicant is particularly critical of the Council's Landscape and Natural Heritage Officer. Whilst the officer could have elaborated on the reasons why they agreed with the position of the views of Natural England and Worcestershire Wildlife Trust it would not have led to a different outcome. In any event the officer did provide a detailed response on the ecological implications of the scheme during the process. The fact that the Council chose to employ an external expert witness to represent them in the Inquiry is a matter for them.
19. Whilst there is criticism by the applicant of the Council's initial intention to use a representative of the Worcestershire Wildlife Trust as their expert witness ultimately this did not happen. There is nothing before me to indicate that the view of the Worcestershire Wildlife Trust on the case influenced the view of the Council or their witness at the Inquiry.
20. The representative of the Worcestershire Wildlife Trust appeared as an interested party and the applicant's advocate was able to question the representative, as they could have chosen to do with any other representor speaking at the Inquiry. There were no unnecessary costs to the applicant as a result.

Highways

21. At the time the applicant appealed against non-determination there were outstanding unresolved highways matters. During the course of the appeal

leading up to the Inquiry there was ongoing discussions between the parties which sought to narrow the areas of dispute. These discussions inevitably led to a change of position by the Highways Authority as outstanding highways related matters were resolved.

22. On the evidence before me in matters related to traffic surveys and street lighting the Council did not act unreasonably. In terms of the traffic surveys there was a change in circumstances emanating from the delay to the traffic surveys and the agreement made in the interim on mitigation to the Three Springs Road junction. The Highways Authority's changed position on the streetlighting assessment followed information gained about existing lighting provision on the relevant stretch of the A4104 Three Springs Road and Defford Road. The changed position related to the timing of the streetlighting assessment not whether it would be required.
23. The applicant states that a request to safeguard land for a cycle/ pedestrian connection to the Holloway application to the North East of the appeal site was new and not something they were previously aware of. Whilst initially sought by the Highways Authority it was not pursued when it became apparent that it would not be implementable and that the requirement was not Community Infrastructure Levy compliant. The Council's advocate raised the matter at the end of the Inquiry but it was not pursued any further when I indicated that there would be a need to hear evidence on the matter given that there was little before me up until that point. The matter was subsequently dropped by the Council and as such the applicant was not put to any additional work or expense.
24. In terms of whether a highways proof was required, it is unclear why the Council did not respond to the applicant on this matter, particularly given that there was other communication between the parties after the question had been asked by the applicant on 3 October 2024.
25. It is also unclear why the letter from the Highways Authority saying that they had no objection to the development dated 27 September 2024 was not received by the applicant until 7 October 2024, one day prior to the deadline for the submission of proofs.
26. Nevertheless, the applicant was aware of the contents of a draft Highways Statement of Common Ground on 3 October 2024 which identified that the transport reasons for refusal had been removed even though final agreement on the wording of the Statement of Common Ground was not reached until 10 October 2024.
27. In addition, there were highways objections from interested parties which needed to be addressed, irrespective of any withdrawal of objection by the Highways Authority. In this context whilst the communication between the parties was poor in this instance it does not amount to unreasonable behaviour which has resulted in the applicant incurring unnecessary or wasted expense in the appeal process.

Other Matters

28. In the cases put by the parties there is reference to matters not before me during the Inquiry and information which seeks to rehearse or further

arguments heard in the Inquiry. This should not form part of the costs application and I have disregarded it accordingly.

Conclusion

29. On the information before me, I find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated either individually or when taken together. An award of costs is not therefore justified in this case.

K Ford

INSPECTOR

Richborough