
Appeal Decision

Site visit made on 28 August 2025

by **Laura Cuthbert BA(Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 October 2025

Appeal Ref: APP/D1835/W/25/3359985

Land off Darwin Avenue, Worcester

- 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 Tustin Holdings Ltd against the decision of Worcester City Council.
 - The application Ref is 24/00008/OUT.
 - The development proposed is Outline application with all matters reserved except access for the erection of up to 28 affordable dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for Outline application with all matters reserved except access for the erection of up to 28 affordable dwellings at Land off Darwin Avenue, Worcester in accordance with the terms of the application, Ref 24/00008/OUT, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Tustin Holdings Ltd against Worcester City Council. This application is the subject of a separate Decision.

Preliminary Matters

3. Outline planning permission is sought, but with only details of access to be considered at this stage. Accordingly, I have taken any indication of appearance, layout, scale and landscaping shown on the submitted drawings to be illustrative.
4. Since the application was determined, a revised National Planning Policy Framework (the Framework) was published on 12 December 2024. I have taken the revised Framework into account as part of the determination of this appeal.
5. The address in the banner heading above has been taken from the Council's decision notice and the appellant's appeal form for clarity purposes.
6. Both parties refer to the relevant planning history related to the appeal site. This includes an earlier appeal¹ for the 'demolition of three existing dwellings and erection of 50 dwellings for affordable housing, access, public open space and associated development including re-routing of public footpath'. It related to a larger parcel of land than that before me now and was dismissed. I have had regard to this decision insofar as it is relevant to the development before me.

¹ Appeal Reference APP/D1835/W/21/328719

7. Two signed Unilateral Undertakings have been submitted, dated 13 August 2025 and 9 October 2025. These have secured the following on-site and off-site infrastructure:
- the provision of 100% affordable housing;
 - a contribution towards the NHS;
 - an Open Space contribution;
 - a Highways contribution; and
 - an Education Contribution.
8. I am satisfied that the provisions of the submitted agreements that relate to on-site and off-site infrastructure would meet the tests set out in Regulation 122 of the CIL Regulations 2010 and Paragraph 58 of the Framework.

Main Issues

9. The main issues for this appeal are:
- the effect of the proposed development on the character and appearance of the area, including the effect on the designated Green Space, the trees protected by a Tree Preservation Order and the effect of the proposed access;
 - whether the proposal provides satisfactory living conditions for future occupants, in particular regard to external amenity space;
 - the effect of the proposal on the living conditions of the existing occupants of No 16 and 17 Darwin Avenue, in regard to noise from vehicular movements; and
 - the effect on protected species and integrity of the Lyppard Grange Ponds Special Area of Conservation (SAC).

Reasons

Character and Appearance

10. The appeal site consists of part of a former golf course. Indicative of its former use, the site comprises undulating grassland, enclosed with mature hedgerows to the south and east boundaries. It has a sloping topography, declining from the northeast to the southeast. There are also a number of existing trees throughout, which are subject to a site wide Tree Preservation Order (TPO) with a group of trees running central through the appeal site in a linear formation. The area immediately adjacent to the north is an area of locally designated Green Space, noting that the appeal site itself is not within the Green Space designation as defined by SWDP 38 of the South Worcestershire Development Plan (SWDP) (adopted 2016).
11. The site forms part of a larger allocation for housing within the SWDP, under reference SWDP 43/1 (Land South of Leopard Hill). The allocation is for an overall

indicative number of 100 dwellings and to date, planning permission has been approved for 61 dwellings² to the east of the appeal site.

12. The appeal site is boarded to the south by the existing residential area of Darwin Avenue and Chasterton Gardens, as well as Latimer Court Care Home and Meadow Court flats. To the east are the recently constructed houses known as Oakmont and Augusta Drive which are within the same housing allocation and visible from the appeal site. The residential character is a mixture of semi-detached, detached and short terraces of dwellings, as well as a block of flats and the substantial care home building. Therefore, whilst the appeal site in its current open and undeveloped form contributes positively to the character and appearance of the area, the context of the site is a variety of modern housing development adjacent to the locally designated Green Space.
13. There are a number of Public Rights of Ways (PROW's) across the appeal site and within its vicinity, providing access to the green space, some of which would be diverted under the proposal. Presently, a PROW runs to the west of 15-17 Darwin Avenue leading to the appeal site and the green space beyond.
14. In regard to the ability of the site to accommodate the proposed 28 dwellings in a satisfactory manner, I note the wording of the allocation, which is of 100 dwellings over a site area of 3.29 hectares. This would provide an overall dwelling density of 30.3 dwellings per hectare.
15. The indicative layout of 28 units would achieve 30.1 dwellings per hectare. When the proposal is read alongside the first section of the allocation for 61 units to the east, the overall site density between the two sites would be 27 dwellings per hectare. This would broadly correspond with the indicative density of the allocation. Furthermore, the appellant has noted that the development to the west of the appeal site has a density of roughly 30 dwellings per hectare. Therefore, the indicative layout demonstrates that the appeal site has the ability to sensitively accommodate 28 dwellings at an appropriate density. The density would be similar to the prevailing density for the immediate surrounding area, without being overdeveloped or cramped, and respectful of its character.

Green Space

16. The appeal site in its current form contributes to the visual interest of the landscape of the local area, positively contributing to its character and appearance. However, the context of the site is of modern housing development adjacent to a locally designated Green Space. The setting of the Green Space is already heavily influenced by the views from and towards the nearby residential built form. I observed the recently constructed development to the east and the associated buffer. The dwellings are clearly visible from the buffer and wider Green Space beyond, with the frontages of some of the dwellings facing the buffer, without comprising the setting or use of the Green Space. This results in residential built form having a clear and close relationship with the buffer and wider Green Space.
17. Although matters relating to scale, layout, appearance, and landscaping have yet to be fixed, the indicative layout demonstrates that a softened development edge could be secured as part of the reserved matters, in regard to the relationship of the northern edge with the Green Space.

² Planning Application Ref P18Q0226

18. The softened edge might not be as large as that of the buffer of the development to the east. However, this does not automatically make it unacceptable. The softened edge would result in a similar interrelationship with the Green Space, with residential dwellings seen in its immediate context. It would enable the development to integrate with its surroundings in terms of its form and function, and transition effectively into the green space beyond, safeguarding the character of the settlement and respecting the site's setting. In addition, I have been provided with no evidence which requires a buffer of a certain size to be included.
19. The earlier appeal³ was dismissed on the basis that it would conflict with Policy SWDP 38 which protects locally designated Green Space. However, as accepted by the Council, the proposal would now retain the Green Space designation to the north, as defined by SWDP 38, and the appeal proposal has not been refused against this policy, which is a notable difference between the 2 schemes.
20. Local residents have expressed the loss of green space 'as a well-used community asset'. I also recognise that the PROW's in the area are well used. However, there would still be links through the proposal, with the diverted PROW's allowing for access to the designated Green Space. This would allow for the Green Space to still be used by the wider community.
21. Therefore, based on the indicative layout, there is no reason to suggest that an appropriate scheme in terms of scale, appearance and layout could not be secured at reserved matters stage which respects the Green Space. Suitable landscaping could also be secured at the reserved matters stage to help to reinforce the softened edge between the site and Green Space. Thus, the proposal would not harm the character or appearance, nor the setting, of the designated Green Space.

Trees

22. As briefly mentioned, the appeal site is subject to a site wide TPO. As set out in the appellant's 'Arboricultural Survey and Impact Assessment' (AIA) (November 2024), the tree stock is made-up of 59 trees, 8 groups and 2 hedgerows (69 in total). This includes 2 Category 'A', 27 Category 'B' and 40 Category 'C' items. The AIA continues to set out that the 'trees on the site are predominantly made up of early-mature and mature black pine, Leyland cypress and aspen trees planted in rows which would have historically matched the fairways of the golf course. Historic remnants of the land use previous to the golf course are notable within the large oak trees on the southern boundary of the site, and the oak sapling regeneration across the site. However, the landscape is dominated by the maturing golf course trees'. This is broadly what I observed on my site visit.
23. The AIA confirms that of the 69 trees, groups of trees and hedgerows within the site, the development as indicatively shown would only require the removal of 16 vegetation items. Only 2 of the 16 vegetated items would be classified as category B items with the remaining items classified as category C. No category A items would be removed. I also note that the 2 Category 'B' items that would be removed, the Leyland cypress trees T39 and T40, have been identified in the AIA as being "marginal" due to their species, their limited wildlife benefit and limited landscape amenity benefits but have been defined as 'moderate amenity value' category due to their size and stature'.

³ Appeal Reference APP/D1835/W/21/328719

24. I acknowledge that the trees on the site make a positive contribution to the character and appearance of the appeal site as a former golf course and also the character of the wider area. I also recognise that even though category C trees 'still provide cumulative amenity, biodiversity, and screening value, particularly when lost in groups', as alleged by the Council. However, based on the evidence before me, and as a result of my observations on my site visit, it appears that the trees on the site are of varying physical condition and characteristics. Therefore, I consider that there would be scope for some vegetation to be removed and for works to be undertaken.
25. The indicative layout has already been amended during the original application process which retained additional trees and reconfigured a number of the plots. A substantial number of trees would be retained which would ensure that the positive contribution the trees make are incorporated into the proposal. The indicative layout has also retained the more central linear band of trees which once formed part of the boundary vegetation to the golf fairway. This would be sympathetic to the site's former use and would also assist in linking the linear vegetation through to the greenspace to the north. However, the Council remain concerned that it has not been demonstrated that the number of units can be satisfactory accommodated taking account of the protected trees.
26. Nevertheless, based on the evidence before me, I am satisfied that an acceptable layout and landscaping scheme, in particular regard to the protected trees, would be achievable at reserved matters stage. Further matters in regard to the effect on trees, including the position of the car parking and some of the dwellings in relation to the RPA's of the protected trees, any protection measures, the use of no-dig construction techniques, as well as any further revisions to the layout and landscaping are all matters that can reasonably be addressed at the reserved matters stage. I also note that one of the Council's suggested conditions is that an updated AIA is submitted with the reserved matters applications in respect to layout and landscaping. This would ensure that the effect on the protected trees would be acceptable. I note that the appellant has not objected to undertake a further AIA as part of this suggested condition.
27. There is reference to an ongoing enforcement case in regard to works to protected trees. However, it is not for me, under a Section 78 appeal, to determine whether any of these works are unauthorised or not. The Council have the powers to pursue enforcement action but that is a matter for the Council, and not for me.
28. Therefore, the proposal would not harm the character and appearance of the area, in regard to the trees protected by the TPO. The indicative layout ensures that existing trees are retained wherever possible and I am satisfied that further detailed information regarding the trees can be provided as part of the reserved matters applications.

Effect of proposed access

29. The PROW which runs to the west of 15-17 Darwin Avenue would be widened to form the vehicular access to the proposal. This would involve the loss of the mature hedgerow and associated landscaping which currently runs to the west of the PROW, forming the boundary with the car parking associated with Latimer Court Care Home.

30. The Council have drawn my attention to the importance of the mature hedge, noting that it was secured as part of a landscaping plan when the care home was approved. The contribution this hedgerow, alongside the small area of grass and a handful of small trees, makes to the character of the streetscene is acknowledged.
31. However, the prevailing character of Darwin Avenue is of a residential cul-de-sac with various spur roads leading off it to serve Chesterton Gardens, the care home and Meadow Court flats. These all in themselves have an engineered appearance and already form part of the established character of the area. I also observed examples of 'harder' boundary treatments within the cul-de-sac, including fences and walls. The entrance to the care home is currently dominated by 2 large oak trees to the south of the access. However, the appellant states that 'aside from these two trees', the green infrastructure at this section of Darwin Avenue is a mixture of low level estate planting, grass verge and small/young trees'. This is reflective of my observations on site.
32. The proposed access would clearly have a greater visual impact than the existing PROW and I note the amenity value currently afforded by the PROW as a recreational route for its users. However, when it is considered in the prevailing character, the access would not be uncharacteristic to the context of the site and would not be seen as having an 'overly engineered approach'. Some lower level shrub beds would be introduced in lieu of the hedge, alongside some small tree and/or large shrub species. This would sufficiently soften the visual impact of the proposed access so that it would be an acceptable addition to the cul-de-sac, sympathetic to the character of the area and comparable to other spur roads along Darwin Avenue. As landscaping is a reserved matter, further details can be secured as part of the reserved matters application.
33. Furthermore, whilst I note the existing landscaping forms part of the outlook for the care home residents, the context of the care home is that it is in a predominantly residential area. Therefore, whilst the removal of the hedge would open up views towards the wider cul-de-sac, the visibility of residential dwellings would not be harmful or incongruous to their outlook. Furthermore, they would still have the outlook over the more important open green space to the north, immediately adjacent to the appeal site.
34. The PROW would continue alongside the new access on a new footpath, before continuing through the proposed residential cul-de-sac out to the green space beyond. The PROW already runs through Darwin Avenue before reaching the appeal site. Therefore, whilst the proposal would change the context for the users of the PROW for a short section, it would be seen in the context of the existing built form already visible from the footpath and would therefore not be materially incongruous. The PROW would continue to offer a recreational route for its users, and I am satisfied that the proposal would not harm the overall quality or character of the view from the PROW currently enjoyed by users.
35. Therefore, for the reasons set out above, the proposed access, including the loss of the established hedgerow and other landscaping running alongside the care home, would not harm the character and appearance of the area.

Conclusion on Character and Appearance

36. In view of my findings above, I am satisfied that the proposal, including the principles set out on the indicative layout, demonstrates that up to 28 dwellings

could be accommodated on site without adversely impacting on matters of importance and without harming the character and appearance of the area. Notably, the proposal would not harm the locally designated green space, nor would the removal of the hedge and associated landscaping adjacent to Latimer Court Care Home cause harm to the character and appearance of the area. I am also satisfied that the protected trees would not be harmed.

37. Furthermore, as the development is for outline permission, there would still be scope to control the layout, scale, appearance, and any associated landscaping to mitigate the effect of the development.
38. The proposal would therefore be in accordance with Policy SWDP 21 of the SWDP which sets out the principles to ensure that all development will be of a high quality design. It requires development to complement the character of the area, to integrate effectively with its surroundings in terms of its form and function, and to respond to the distinctive features that contribute to the visual interest of the landscape quality of the local area, as well as safeguarding the distinct identity and character of settlements.
39. It would also be in accordance with paragraphs 135 and 136 of the Framework. In combination, these seek to ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting. The Framework recognises that trees make an important contribution to the character and quality of urban environments and that planning decisions should ensure that existing trees are retained wherever possible.

Living conditions for future occupants

40. The South Worcestershire Design Guide Supplementary Planning Document (the SPD) (adopted 2018) provides some principles to follow to successfully integrate private amenity space. The SPD recognises that the type and level of provision of outdoor space will vary according to the characteristics of the development, the site and its context. As the majority of the proposed house types are maisonettes, the garden areas are predominately shared spaces.
41. In regard to the Council's concern that the external amenity space of a handful of plots would be overshadowed by either trees or hedges, the SPD identifies that where there are existing hedges and walls, these should be retained as far as possible to contribute to the character and sustain the biodiversity of the site. Despite the retention of the hedges and trees in and around the site on a number of the plots, the amenity spaces would still be useable. They would meet the recreational and domestic needs of the future occupants, whilst allowing the hedges and trees to continue to contribute to the character of the area.
42. In regard to the alleged limited size and shape of the external amenity space for a handful of plots⁴, I have not been provided with any minimum requirement in regard to the size for shared amenity space. Whilst the size and shape of some of the amenity spaces are acknowledged, I am satisfied that the quality and amount of amenity space proposed would be sufficient and would be satisfactory to allow for these shared garden areas to be useable. Additionally, the development would also include larger areas of public open space and future occupants would have convenient access to the adjacent designated Green Space.

⁴ The Council have cited plots 9-10 and plots 21-22.

43. Nevertheless, in making my comments above, I recognise that the submitted site layout is indicative and that the layout at the reserved matters stage would fix further details in regard to the external amenity spaces. However, I am satisfied that the indicative layout demonstrates that the proposed 28 dwellings could deliver a satisfactory standard and level of amenity space for the future occupants.
44. It would be in accordance with Policy SWDP 21 of the SWDP which requires development to be of a high design quality, as well as being in accordance with Paragraph 137 of the Framework which requires developments to create places with a high standard of amenity for future users.

Living conditions of the existing occupants of No 16 and 17 Darwin Avenue

45. As the new access would run to the west of 15-17 Darwin Avenue, the Council are concerned in regard to the impact of the access, in terms of noise and disturbance of vehicles passing by in close proximity to these dwellings, notably No 17, the closest property to the new access. The Transport Statement predicts approximately 117 two way trips per day, albeit the Council notes that this does not include service or delivery vehicles.
46. To address this concern, the appellant has submitted a Noise Assessment with the appeal submission⁵. This determined that the noise climate at the site was dominated by noise from the surrounding local road networks. The conclusion of the assessment found that the proposed access would be negligible in terms of scale and are assessed to have none or not significant impacts at the nearest residential Noise Sensitive Receptor (NSR) of 17 Darwin Avenue. The assessment found that Daytime average noise levels are expected to be below the WHO/BS 8233:2014 criteria of 50 dBA for external amenity areas. Expected internal day and night-time noise levels with a partially open window have also been assessed with BS 8233:2014 criteria for indoor ambient noise levels and are also within the specified levels. Overall, the report finds that the risk of adverse noise impacts from the proposed new access road at the nearest NSR (No 17) would be low.
47. The Council, whilst they have not specifically disputed the findings of the noise assessment, still have concerns in regard to the mitigation that might be required, including the imposition of a 20 mph speed limit and alterations to the boundary treatment of No 17. However, I note that these recommended mitigation strategies set out in the assessment are not actually required in order to make the proposed access acceptable – these were simply options which could be considered to reduce the impact further. Therefore, whilst I appreciate the Council's comments in regard to these mitigation suggestions, I consider that they are not essential in order to generate an acceptable noise environment for both Nos 16 and 17. I have no substantial evidence before me to suggest that the resultant noise levels and disturbances arising from the access road would result in undue harm to the living conditions of adjacent occupants, notably those of the occupants of Nos 16 and 17.
48. Whilst it is noted that No 17 has not been designed with specific 'acoustic properties to safeguard residents from noise', the rear garden of No 17 is already enclosed with a 1.8 high wall and fence, which would offer some attenuation to the resultant road noise. There would also be a new footway introduced immediately alongside the boundary with No 17, giving some separation between the access road and No 17. Furthermore, as the transport statement shows, the likely volume

⁵ Prepared by Walnut Acoustics, dated 8 November 2024

and speed of traffic is predicted to be low at this location and the potential for adverse noise impacts on the existing occupants at both Nos 16 and 17 in this context would be minimal.

49. The Council have also raised concerns that in addition to the physical noise, there would also be disturbance related to the impact of vehicle lights and a significant increased activity of users. The proposed access would not be introducing cars into an environment which is currently completely devoid of vehicular movements as there are already existing car movements within the residential area. Whilst the proposal would introduce additional movements, closer to No 17, the existing boundary alongside No 17 would sufficiently mitigate any light spillage associated with the additional vehicles.
50. Therefore, my findings above lead me to conclude that the proposed development would not harm the living conditions of the existing occupants of No 16 and 17 Darwin Avenue, in regard to noise from vehicular movements. It would be in accordance with Policy SWDP 21 of the SWDP which requires development to provide an adequate level of neighbouring amenity. It would also be in accordance with Paragraph 137 of the Framework which requires developments to create places with a high standard of amenity for existing users.

Special Area of Conservation (SAC)

51. The Lyppard Grange Ponds Special Area of Conservation (SAC) is situated approximately 0.5km to the northeast of the appeal site. The primary reason for its designation as a SAC is due to its significant breeding population of Great Crested Newts (GCNs). The Council originally had concerns that the appeal proposal did not provide sufficient evidence that the development would not harm the GCNs, and by extension the metapopulation of Lyppard Grange SAC.
52. However, the appellant in the appeal submission has clarified that by using the site checker function on the Governments multi-agency website, 'Magic', this has confirmed that when the details of the proposal are entered, it states that there is no need to consult Natural England on the proposed development at this location. It continues to state that the impact risk zones for Sites of Special Scientific Interest (SSSI) indicate that at the location selected, the proposed development is unlikely to have a harmful effect on terrestrial SSSI and the SAC, Special Protection Areas or Ramsar Sites that they underpin.
53. Furthermore, I note that a Great Crested Newt Impact Assessment has been submitted with the appeal. The assessment concluded that 'the impact from the proposed development on GCNs is assessed as very low – negligible and the risk of committing an offence is negligible. Therefore, it is considered that further survey work to inform the planning application at the site is not necessary as the impact of the development on this protected species can be adequately predicted.'
54. I note that on the basis of this additional information, the Council have now confirmed that 'the proposed development is unlikely to significantly impact on the great crested newt population or qualifying features of Lyppard Grange Ponds SAC. I see no reason, nor do I have any evidence to warrant coming to a different conclusion on these matters. Consequently, I am satisfied that the proposal would not lead to adverse effects on the integrity of the SAC, nor would any protected species be harmed.'

55. The proposal would comply with the objectives of Chapter 15 of the Framework which requires development to promote the conservation, restoration and enhancement of priority habitats. Development on land within or outside a SSSI, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted.

Other Matters

56. My attention has been drawn to the emerging SWDP Review. I have been advised that following the dismissal of the earlier appeal on the appeal site, the decision was taken to remove SWDP NEW 7 from the SWDP Review and to also deallocate the remaining undeveloped area of SWDP 43/1 at the Regulation 19 consultation stage. At the time of the decision, in its delegated decision report associated with the appeal application, the Council advised that whilst the SWDP review had been submitted to the Secretary of State, it had yet to be examined and so only limited weight can be applied to the status of the site as a proposed deallocation.
57. I have not been advised of any further progress with the SWDP review examination process, nor have I been advised that greater weight should now be applied to the deallocation status of the site. However, as things stand today, even if the SWDP has progressed, it still hasn't been adopted and so I continue to apply only limited weight to the deallocation of the site at this stage. Accordingly, despite the views of the residents, the appeal site presently forms part of a housing allocation in an adopted plan.
58. Whilst I note the outcome of the earlier appeal, this related to a larger site and included land which was part of the locally designated Green Space. It was dismissed on the basis that exceptional circumstances had not been demonstrated to justify the development on the designated Green Space and was considered to conflict with Policy SWDP 38. However, as already noted, the proposal before me now does not involve the loss of Green Space and Policy SWDP 38 was not cited as a reason for refusal. Therefore, this is a notable difference between the previously dismissed appeal and the scheme before me now.
59. Local residents have expressed a wide range of concerns including the impact on trees, drainage and flooding, loss of green space and biodiversity and impact on ecology. However, having considered the technical evidence before me and the views of the relevant statutory consultees and that of the Council, I consider that these matters can be controlled and maintained by appropriately worded conditions or can be suitably resolved at the reserved matters stage.
60. Furthermore, interested parties have also raised concerns in regard to the impact of the proposals on parking, access, highway safety and road congestion. However, again, having considered the technical evidence before me, it is considered that with suitably worded conditions attached, the proposal would not result in a severe impact on either highway safety or on the road network.
61. The lack of any market housing would not, in itself, be a reason to refuse the application. Whilst interested parties have alleged that the Council have already met its affordable housing targets, the evidence before me, including that from the Council's Housing Enabling Officer, indicates otherwise, suggesting that there is in fact a great need for affordable housing in the area.

62. The concerns of existing occupiers of the neighbouring properties with regards to property values is purely of private interest and would not be a consideration which I could give any weight to. The concerns raised in regard to the area of the public consultation is an administrative matter to take up with the Council. It does not materially affect my consideration of the planning merits of the appeal proposal.
63. The Council's Archaeology and Planning Advisor have advised that to the south of the appeal site, there is a possible Civil War ditch (WCM99212) and thus the proposed development may affect heritage assets of known archaeological significance. However, they state that given the scale of the development, and the possible archaeological potential, the likely impact on the historic environment caused by this development may be offset by the implementation of a conditional programme of archaeological works. I note that one of the suggested conditions is for a programme of archaeological work to be submitted and approved prior to the commencement of development. Therefore, with a suitably worded condition as suggested, I am satisfied that the significance of the heritage asset of known archaeological significance would be preserved. I also note the Council did not raise any concerns in regard to this matter.
64. It is agreed between the main parties that the application was submitted prior to the advent of the mandatory 10% Biodiversity Net Gain. Nevertheless, the Framework states that planning decisions should minimise impact on and provide for net gains for biodiversity. The Council's biodiversity officer has commented that whilst 'the site itself is likely capable of delivering a biodiversity net gain with appropriate design of green infrastructure, the submitted metric contains multiple errors.....and fails to demonstrate that net gain can be achieved by the submitted proposals'. They continue and state that 'it is unlikely to be feasible for a net gain to be delivered on-site considering the number of dwellings currently proposed without considerable design revisions'. Nevertheless, as both the layout and landscaping are reserved matters, the matter of net gains for biodiversity can be adequately addressed at the reserved matters stage once these matters are fixed.

Conditions

65. The conditions set out in the accompanying schedule are based on those suggested by the Council. These conditions have been considered against the tests of the Framework and advice provided by the Planning Practice Guidance (PPG) on conditions. I have undertaken some minor editing and rationalisation in the interests of precision and clarity. Those included in the schedule are found to be reasonable and necessary in the circumstances of this case. I have deleted the suggested condition 18 as this is a repetition of condition 17.
66. I have attached conditions 1, 2 and 3 relating to the submission of reserved matters and the time limits associated with this. This includes details of appearance, landscaping, scale and layout. I have included condition 4 specifying the relevant plans as this provides certainty. However, I have removed the reference to the 'Garden Area Schedule' as some of the figures in the schedule may change due to the layout not yet being fixed.
67. Conditions 5, 6 and 7 are attached to ensure that the reserved matters applications include the relevant details and presented in an appropriate manner, including that satisfactory tree retention and replacement are provided within the relevant

reserved matters applications and ensuring that the development is properly drained, avoiding flood risk and pollution.

68. The need for condition 8, which requires a programme of archaeological work, has already been alluded to, in the interests of preserving archaeological interests. Condition 10 further ensures that the site investigation and post investigation assessment has been completed in accordance with the programme approved under condition 8. Condition 9 is required to ensure that the living conditions of the occupants of the surrounding residential uses are not harmed, as well as in the interests of highway safety.
69. Likewise, in the interests of highway safety, condition 11 has been attached. Conditions 12 and 14 have been attached in order to promote more sustainable forms of transport, as well as to ensure the development complies with the Council's cycle parking standards. Condition 13 would be required in the interests of highway and public safety.
70. To ensure the development supports the delivery of low carbon/renewable energy and safeguards natural resources, condition 15 has been included. Condition 16 is necessary to ensure the development complies with the Council's parking standards.
71. Condition 17 is included to ensure the proposal incorporates satisfactory telecommunication facilities and finally condition 18 is necessary to preserve the living conditions of those living nearby.

Conclusion

72. For the reasons set out above, having considered all other matters raised, I conclude that the appeal is allowed.

Laura Cuthbert

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 2) 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) Details of the appearance, landscaping, layout, and scale (hereinafter called "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.
- 4) The development hereby permitted shall be carried out in accordance with drawing nos:

Drawings

- Site Location Plan
- Site Layout Plan (Drawing No: 102-563/(P)001N) (With regards to the proposed access only)

Documents:

- Great Crested Newt Impact Assessment Report (Produced by Focus Environmental Consultants. Dated: 29 November 2024).
- Transport Statement
- Flood Risk Assessment
- Noise Impact Assessment (Produced by Walnut Acoustics. Dated: 8 November 2024)
- BNG Assessment
- Preliminary Ecological Appraisal
- Historic Environment Desk Based Assessment except where otherwise stipulated by conditions attached to this permission

- 5) Pursuant to conditions 1 and 3 above, the Reserved Matters application(s) in respect of scale, layout and landscaping shall be in accordance with the principles of the illustrative masterplan (reference Site Layout Plan (Drawing No: 102-563/(P)001N) and shall include details of the following:

- planting along the access drive from Darwin Avenue;
- a landscape buffer, within the redline, between the development and locally designated green space to the north of the site; and
- compliance with recommendation of the submitted Noise Impact Assessment (Produced by Walnut Acoustics. Dated: 8 November 2024).and Great Crested Newt Impact Assessment Report (Produced by Focus Environmental Consultants. Dated: 29 November 2024).

- 6) Pursuant to conditions 1 and 3 above, the Reserved Matters application(s) in respect of layout and/or landscaping shall be accompanied by a detailed foul and surface water drainage strategy, that shall include:

- details of surface water drainage measures, including for hardstanding areas, and shall include the results of an assessment into the potential of disposing of surface water by means of a sustainable drainage system (SuDS) and Flood Risk Assessment & Water Management Statement;
- priority to achieving infiltration techniques and the scheme shall include the details and results of field percolation tests. If infiltration drainage is not possible on this site, an alternative method of surface water disposal should be submitted for approval;
- evidence of the in principle approval of Severn Trent Water Ltd for any proposed connection to a sewer system;
- detailed design drawings for all drainage assets and should include run off treatment proposals for surface water drainage.
- confirmation that exceedance flows should not be directed to property or private land; and
- proposals for dealing with the future maintenance of any/all communal surface water drainage assets.

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

7) Pursuant to conditions 1 and 3 above, the Reserved Matters application(s) in respect of layout and/or landscaping shall be accompanied by an updated Arboricultural Impact Assessment and Tree Survey and Report.

8) No development shall take place until a programme of archaeological work, including a Written Scheme of Investigation, has been submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and research questions; and:

- i. The programme and methodology of site investigation and recording.
- ii. The programme for post investigation assessment.
- iii. Provision to be made for analysis of the site investigation and recording.
- iv. Provision to be made for publication and dissemination of the analysis and records of the site investigation.
- v. Provision to be made for archive deposition of the analysis and records of the site investigation.
- vi. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

9) The Development hereby approved shall not commence until a Construction Environmental Management Plan has been submitted to and approved in writing by the local planning authority. This shall include but not be limited to the following:

- a) measures to ensure that vehicles leaving the site do not deposit mud or other detritus on the public highway;
- b) details of site operative parking areas, material storage areas and the location of site operatives facilities as required;

- c) the hours that delivery vehicles will be permitted to arrive and depart, and arrangements for unloading and manoeuvring;
- d) traffic management measures for construction vehicles on Darwin Avenue to include temporary signage by agreement with Highways and the use of a banksman to oversee all vehicular manoeuvres, if necessary avoiding peak pedestrian times;
- e) measures to demonstrate that those immediately affected by the construction works will be kept informed and due consideration and courtesy will be shown to the local community;
- f) construction hours (including maintenance of plant and equipment);
- g) details of any temporary contractors buildings (offices, toilets etc), plant, storage of materials and parking for site operatives;
- h) measures to control noise, vibration and the emission of dust and dirt;
- i) the recycling/disposing of waste resulting from excavation and construction works;
- j) the operation of plant and machinery (including silencing and sound attenuation) associated with engineering operations; and
- k) measures to enable the monitoring, reporting and auditing of compliance and mechanism for corrective action;

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.

10) 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 (8) and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

11) Prior to the first occupation of any of the dwellings hereby granted the highway extension and access works shall have been constructed and completed in accordance with the approved Site Layout Plan (Drawing No: 102-563/(P)001N), and thereafter maintained in accordance with the approved plan.

12) The Development hereby approved shall not be occupied until a residential Travel Information 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 to each resident at the point of occupation.

13) No works that would obstruct Public Rights of Way (footpaths) WN-659, WN-660 and WN-661 should take place until the Public Path Order (Town and Country Planning Act 1981 Section 257 application), required to divert the Public Rights of Way has been granted Confirmed Order status.

14) No dwelling shall be occupied until a scheme for the provision of sheltered, secure and easily accessible cycle parking has been submitted to and approved in writing by the local planning authority, and that scheme implemented. The scheme must comply with the Council's adopted cycle parking standards. The approved cycle parking shall thereafter be kept available for the storage of bicycles.

15) No development shall commence until details of renewable and/or low carbon energy generation measures for dwellings 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 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) c) an implementation timetable for the proposed measures.

The development shall be carried out in accordance with the approved details.

16) Prior to the occupation of the dwelling to which the parking relates spaces compliant with the Worcestershire County Council Streetscapes Design Guide, in terms of the number and dimensions shall be provided and thereafter retained at all times for such use.

17) Prior to the first occupation of any of the dwellings hereby approved, details of superfast broadband facilities or alternative solutions to serve the dwellings hereby approved shall be submitted to and approved in writing by the local planning authority. The submitted details shall include a timetable for implementation. The facilities shall be provided in accordance with the approved details.

18) During the construction phase no machinery shall be operated, no process shall be carried out and no deliveries taken at or despatched from the site outside the following times: Monday-Friday 7.00 am - 6.00 pm, Saturday 8.00 am -1.00 pm nor at any time on Sundays, Bank or Public Holidays.

Costs Decision

Site visit made on 28 August 2025

by **Laura Cuthbert BA(Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 October 2025

Costs application in relation to Appeal Ref: APP/D1835/W/25/3359985

Land off Darwin Avenue, Worcester

- 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 Tustin Holdings Ltd for a full award of costs against Worcester City Council.
 - The appeal was against the refusal of planning permission for Outline application with all matters reserved except access for the erection of up to 28 affordable dwellings.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. In regard to the further statements that have been prepared, I note that in some cases earlier versions of these reports were submitted during the application process. However, I consider that the Council had reasonable concerns about the impact of the proposed development which justified its decision, based on the information before them at the time. The submission of additional information to rebut the refusal reasons does not, in itself, demonstrate that the Council's judgement on these matters was unreasonable.
4. Whilst I have found in favour of the applicant on the matters referred to in refusal reasons 1 and 2, it was a reasonable judgement of the Council to come to a different conclusion. The Council provided sufficient evidence to substantiate their reasons for refusal in regard to these matters, providing an objective and comprehensive analysis of the proposal's impact. Accordingly, even though I have come to a different conclusion to that of the Council, it used its own judgement on these matters, which was neither generalised nor unfounded. They have not behaved unreasonably, and no unnecessary costs or wasted expense have been incurred in the appeal process in regard to these matters.
5. Consequently, the Council, having applied its own judgement and based on the information before them at the time of the decision, have not prevented or delayed development which should clearly be permitted.
6. Therefore, in conclusion, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Laura Cuthbert

INSPECTOR

Richborough