



Appeal Decision

Inquiry Held on 10 – 13 May 2022

Site visits made on 9 and 13 May 2022

by R Norman BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th July 2022

Appeal Ref: APP/J1860/W/21/3289643

Land at Leigh Sinton Farms, Leigh Sinton Road (B4503), Leigh Sinton, Malvern

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Lone Star Land and Mr W Beard against the decision of Malvern Hills District Council.
 - The application Ref 21/01287/OUT, dated 1 July 2021, was refused by notice dated 16 December 2021.
 - The development proposed is an outline application for up to 45 residential units including 12 self/custom build units and associated infrastructure (all matters reserved except access).
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Decision

1. The appeal is allowed and planning permission is granted for up to 45 residential units including 12 self/custom build units and associated infrastructure (all matters reserved except access) at Land at Leigh Sinton Farms, Leigh Sinton Road (B4503), Leigh Sinton, Malvern in accordance with the terms of the application, Ref 21/01287/OUT, dated 1 July 2021, subject to the conditions in the attached schedule.

Application for costs

2. At the Inquiry an application for costs was made by Lone Star Land and Mr W Beard against Malvern Hills District Council. This application will be the subject of a separate Decision.

Procedural Matters

3. The planning decision included five reasons for refusal. The Council confirmed that reason for refusal 4, safe and suitable access to and from the site, and reason for refusal 5, the need for a legal agreement, are no longer in dispute.
4. The application was submitted in outline, with all matters except access reserved for subsequent approval. Indicative drawings have been submitted with the application to show how the site might be developed and I have reached my decision on that basis.

5. A Section 106 Agreement¹ and a Unilateral Undertaking² has been submitted. I return to these below.
6. In addition to the accompanied site visit carried out after the Inquiry closed, I viewed the appeal site from public vantages to familiarise myself with it and the surrounding area prior to the Inquiry.
7. An appeal decision³ was brought to my attention after the Inquiry. I will return to this later on.

Main Issues

8. The main issues are:
 - The effect of the development on the open character and function of the Significant Gap;
 - The effect of the development in the open countryside, on landscape character and its visual effects; and
 - Housing land supply, its calculation and resulting policy consequences.

Reasons

Significant Gap

9. The appeal site is located within the Significant Gap of Leigh Sinton which is located between Leigh Sinton and Malvern. The principal function of a Significant Gap is to keep land open in order to prevent neighbouring settlements from coalescing and to provide an appropriate setting for settlements⁴. Policy SWDP2 Part D of the South Worcestershire Development Plan (2016) (SWDP) states that development proposals should ensure the retention of the open character of the Significant Gaps. Paragraph 8 of the supporting text explains that the purpose of maintaining the gaps, which either serve as a buffer or a visual break between rural settlements and adjacent urban areas or protect the character and setting of settlements, is to provide additional protection to open land that that may be subject to development pressures.
10. It is agreed between the parties that the appeal site falls within the Significant Gap and therefore the development of the site would result in a degree of conflict with the Development Plan in this regard.
11. Whilst the proposed development would extend the settlement into the Significant Gap, it would only occupy a small area of the wider gap which extends a considerable distance between Leigh Sinton and Malvern. The appeal site adjoins the existing built form of Leigh Sinton. There is a new development, Bluebell Walk, as well as properties on Lynn Close, Somers Close, Kiln Lane and Spruce Close which are visible from the appeal site.

¹ Section 106 Agreement between (1) Malvern Hills District Council, (2) Walter John David Beard, (3) Lone Star Land Limited and (4) Worcestershire County Council dated 20 May 2022

² Section 106 Unilateral Undertaking between Walter John Beard, Lone Star Limited to Malvern Hills District Council, received 10 May 2022 – ID6

³ APP/H1840/W/21/3289569 Land off Morris Road, Broadway (Wychavon District Council)

⁴ South Worcestershire Development Plan Review (SWDPR) Preferred Options: Significant Gaps Appraisal (CD8)

12. The Significant Gap Appraisal⁵ states the purpose of this particular significant gap is to separate Leigh Sinton from Malvern. It highlights that there could be a limited reduction in it on the Southern edge of Leigh Sinton whilst retaining its purpose.⁶ The overall recommendation is to retain with the possible exception of a few discrete land parcels on the edge of Leigh Sinton should they be needed i.e., allocations in either the SWDPR or Leigh Sinton Neighbourhood Plan.
13. I acknowledge that the appeal site does not form part of an allocation, nevertheless the Significant Gap Appraisal does give scope for some limited reduction resulting from the development of some discrete parcels of land. Bearing in mind the overall purpose of the Significant Gap to keep the settlements of Leigh Sinton and Malvern separate, and the distance that would remain between the settlements I find that the development would not be unduly harmful to, nor undermine the function and purpose of the Significant Gap in this instance.
14. Turning to the openness of the Significant Gap, its purpose is to maintain the openness of the land and secure the quality of life benefits of having open land close by. The layout at this stage is illustrative only, but indicates the dwellings being sited alongside the existing built form. I accept that the introduction of dwellings would have an impact on the outlook from the existing properties lining the appeal site, however, matters of the siting, design, height and scale of the proposed dwellings could be managed at Reserved Matters Stage to ensure the impacts on the nearby residents were not harmful.
15. The introduction of dwellings into the appeal site would lead to a loss of openness by virtue of the loss of a piece of open land. However, I find it necessary to consider this in the context of the openness of the Significant Gap as a wider area. The indicative plans suggest that the proposed dwellings will be located towards the existing built form of Lynn Close, Somers Close and Kiln Lane. The front most part of the appeal site would incorporate areas of open space, play areas and new planting and vegetation. Similarly, along the proposed access there would be landscaping. As such, I find that the proposed development would be seen in the context of the existing dwellings which would form a backdrop and the planting and landscaping would serve to mitigate against the loss of openness.
16. Consequently, I find that although there would be a loss of openness by the very reason that open land would be built upon, this would be fairly limited and would not unduly harm the purpose of the Significant Gap to protect the openness as a result of the extent of open land that would remain. Accordingly, I give this loss of openness limited weight.
17. Paragraph 8 of the supporting text of SWDP2 lists development proposals which may be acceptable within a Significant Gap which may include the reuse of rural buildings, agricultural and forestry related development, playing fields, other open land uses and minor extensions to existing dwellings. It is accepted that the proposed development doesn't constitute 'minor' development and does not fall within the listed categories. However, I have had regard to the wording of the Policy and supporting text which states 'may include' and I

⁵ South Worcestershire Development Plan Review (SWDPR) Preferred Options: Significant Gaps Appraisal (Nov 2019) – CD8

⁶ Page 5

therefore find that it is not wholly prohibitive of developments that are not included in the list.

18. The Council have raised concerns in relation to a precedent being set that would lead to cumulative encroachment into, and loss of, the Significant Gap. However, I return to the comments in the Significant Gap Appraisal relating to discrete parcels being able to be developed. I consider that the development of the appeal site with up to 45 units would represent the development of a small, and discrete, area of land relative to the overall size of the Gap. Furthermore, any additional development proposals would be assessed against the policies based on their own merits and this proposal, of itself, wouldn't lead to a widespread erosion of the Significant Gap and its purpose.
19. In conclusion on this matter, I accept that there would be a degree of conflict with Policy SWDP2 of the SWDP in this instance as a result of the location of the proposed development outside of the settlement of Leigh Sinton and within the Significant Gap. Nevertheless, I find the harms associated with this conflict to be relatively restrained. I therefore give this conflict only moderate weight.

Open Countryside, Landscape Character and Visual Impacts

20. The appeal site is located within the Principal Timbered Farmlands⁷ which is characterised by notable patterns of hedgerow trees, hedgerow boundaries to fields and ancient wooded character amongst other secondary and tertiary characteristics. However, I note that many of these key features within the site have been eroded. The site itself currently forms part of a wider area of land used for the commercial growing of Christmas Trees.
21. Within Policy SWDP2 of the SWDP Leigh Sinton is a Category 2 village, which provide varying ranges of local services and facilities and where infill development within the defined development boundaries is acceptable in principle. I note that it has been proposed to downgrade Leigh Sinton to a Category 3 village as detailed in the Village Facilities and Rural Transport Study 2019⁸. However, this has not been formally changed yet.
22. The appeal site falls outside of, but adjoining, the settlement boundary of Leigh Sinton. This is common ground between the parties, as is that the proposed development does not fall within any of the categories of development listed in Policy SWDP2C of the SWDP which seeks to strictly control development in the open countryside.
23. In relation to the loss of countryside with permanent built form I agree with the Council that this would not safeguard the countryside and therefore there would be some harm to which weight must be given. However, I have had regard to the amount of land to be lost and the potential siting of the dwellings. In addition, the development would incorporate areas of new planting, including new hedgerows and woodland which would replace some of the natural features that have been lost and bolster the remaining landscaping and would afford a degree of mitigation.

⁷ Defined within the Worcestershire County Council Landscape Character Assessment Supplementary Guidance – August 2012 (CD4)

⁸ CD44

24. The Landscape and Visual Sensitivity Study⁹ highlights the capacity for land parcel M09, which includes the appeal site, to accommodate residential development of between 1 – 5 hectares to the south of Leigh Sinton with a medium/low sensitivity. The appeal site is around 4.05 hectares in size¹⁰. It is not a matter of dispute that the appeal site is not situated within any designated landscapes and that the landscape value is local.
25. Given the sensitivity and susceptibility of the appeal site and immediate surroundings, derived from its location adjacent to the existing built form, I find that the proposed development would therefore not be harmful to the landscape value or character. The dwellings would sit alongside and against the backdrop of the existing properties and a sensitive planting scheme would reinstate and enhance the soft boundaries, ensuring that a suitable transition between the built settlement and the countryside would remain.
26. The proposed access is committed at this stage and would run off Leigh Sinton Road. There is a strip of new planting across the frontage of the appeal site where the access would be located which previously provided an access to the Bluebell Walk development during construction. The boundary with Leigh Sinton Road is currently bounded with mature and dense hedging, with the exception of the newer planting which currently allows views into the site and the wider area.
27. The existing hedgerow is a predominant feature of the rural roadway running away from the built-up form of Leigh Sinton. It is elevated up on a grass bank in places. It is undeniable that the removal of an extensive stretch of this hedgerow would change the rural character of this part of Leigh Sinton Road and would have somewhat of an urbanising effect.
28. However, I find the effects of this would be highly localised. Although the access would be partially discernible from along the road, as indicated in the submitted visualisations and viewed on site, after only a short distance it would not be readily apparent, and the hedge would remain the dominant visual feature. When approaching the appeal site from the rural area along Leigh Sinton Road the access would be viewed in the context of the built form along Malvern Road and the associated driveways. I also find that it would be viewed along with the junction with Lower Howsell Road. Coming from Leigh Sinton itself, again the access would be in proximity to the existing settlement and the amount of hedgerow remaining would still indicate the transition into the rural area. From both directions there are also road signs, which are to be relocated as part of the proposed development, signifying the transition from urban to rural and vice versa.
29. Concerns have been raised in relation to the excavation works and 'battering back' of the existing bank in order to construct the proposed access and the potential for damage that would occur to the roots of the remaining hedgerow. However, the Appellant has provided information and evidence of a possible method of stabilising the bank, Flex MSE Vegetated Wall System¹¹, which could also be seeded on completion to provide a green approach to the access point.

⁹ Malvern Hills AONB Environs – Landscape and Visual Sensitivity Study (2019)

¹⁰ Application Form Part 5 – Site Area

¹¹ Arboricultural Statement of Case on the Vegetation – Ruskins Tree Consultancy April 2022 – Appendix 10 Proof of Evidence: Landscape and Visual Matters – Robert Hughes BSc (Hons) PgDipLA CMLI

Based on the information provided I am satisfied that a suitable method for carrying out the works to facilitate the access could be achieved.

30. The access itself would provide clear views into the appeal site and views of the proposed development would be unavoidable, however with a sensitive planting scheme and positioning of the dwellings, I consider this would not be unduly harmful.
31. The proposed development would include areas of open space and planting which would be secured by conditions. The Appellant has highlighted that the Guidelines for the Principal Timbered Farmlands LCT¹² identifies a pattern of hedgerows however some of these have been lost over time. The proposed development would incorporate new hedgerow planting and replenish these hedgerows and would accord with the 'Opportunities for Landscape Gain' in the Landscape Type Advice Sheet¹³.
32. I have had regard to the other accesses along Leigh Sinton Road. Whilst I accept that these are some distance away, they nevertheless result in sporadic punctuations of the hedgerow and in some cases, such as the Nicholson & Co site, are very wide access points. The proposed development would be likely to result in greater vehicle movements as it would serve a residential estate rather than commercial premises like some of the other accesses, however it is located in proximity to the existing estates and therefore would not appear visually incongruous.
33. Given the above considerations, I find that although the removal of the hedging would alter the visual and rural character of the area, this would not be unduly harmful and its effects would be localised in the main. The appeal site is well related to the existing settlement and viewed in the context of the existing built edge. As such, I find in regard to this issue that the proposal would not conflict with the requirements of Policy SWDP21 of the SWDP, which seeks to ensure that development integrates effectively with its surroundings, reinforces local distinctiveness, provides high quality hard and soft landscaping, and safeguards distinct identity and character of local settlements, amongst other things. It would accord with the aims of Policy SWDP25 as the development proposals have taken into account the Landscape Character Assessment and guidelines, would sufficiently integrate with the character of the landscape setting and will take the opportunity to enhance the landscape through a sensitive and suitable landscaping scheme. I also find that the proposal would not conflict with Paragraph 174 of the National Planning Policy Framework (2021) (the Framework) which seeks to ensure that planning decisions should contribute to and enhance the natural environment by recognising the intrinsic character and beauty of the countryside, amongst other things.
34. The proposal would, however, conflict with Policy SWDP2 of the SWDP as a result of its location outside of the defined settlement and as it would not be any of the development types listed in SWDP2 C.

Housing Land Supply

35. The main areas of dispute in relation to the Council's five-year housing land supply relates to the two issues of geography and oversupply. Namely, which

¹² Worcestershire Landscape Character Assessment Chapter 10.7

¹³ Landscapes of Worcestershire Landscape Type Advice Sheet – Planning and Development: Principal Timbered Farmlands

- area should the housing land supply calculations cover – whether it be individually or jointly between Malvern Hills, Wychavon and Worcester - and should the Council's oversupply be factored into the supply calculations.
36. It is a matter of agreement between the parties that the correct approach is the use of the Standard Method as the Development Plan is over five years old and a 5% buffer should be applied¹⁴. This means that the latest position in relation to the SWDP is that the housing requirement figures set out in Policy SWDP3 of the SWDP are out of date. In addition, this resulted in a change to the monitoring of the housing land supply from the five sub areas, moving to the three districts of Worcester City, Wychavon District and Malvern Hills.
37. The Council have identified that they have had an oversupply of 1,620 dwellings, calculated with a reduction with the Liverpool approach applied¹⁵ and that this should be factored into the forward projecting housing land supply as the homes have been delivered on the ground and therefore the Council have provided more dwellings to date than it should have. The South Worcestershire Five Year Housing Land Supply Report, September 2021¹⁶ establishes that any shortfall in delivery, or indeed substantial oversupply, against the annualised requirement is factored into the five-year supply calculation (paragraph 4.1). Furthermore, it identifies that rather than reducing the target by the full oversupply in the first five years, the Councils have adopted a cautious approach and spread the oversupply over the remaining plan period (paragraph 5.1).
38. The Appellant has produced a table of scenarios¹⁷ which show differing housing land supplies ranging from a 2.82 year supply in the case of Malvern only and no oversupply included, to 5.76 which comprises the SWDP area and the inclusion of the oversupply. This latter figure is the Council's current position. The Appellant contends that only 2 of the 8 scenarios (excluding the SWDP area scenarios) result in a housing land supply above 5 years. These are taking Malvern only and applying the inverse Sedgfield method (scenario 5) and the Malvern All Supply with the Inverse Liverpool method (scenario 6). It is the Appellant's view that the Council needs to be correct on both matters of geography and oversupply in order to be able to demonstrate a five-year housing land supply.
39. Paragraph 74 of the Framework states that 'local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies or against the local housing need where the strategic policies are more than five years old'. Footnote 39 makes reference to the use of the Standard Method in relation to this paragraph.
40. In relation to the matter of oversupply, I accept that this means that there have been homes provided on the ground for local people over and above the identified need. Nevertheless, I do not understand the 5-year housing land supply to be a ceiling figure, which is suggested in the PPG which states that the standard method for calculating local housing need provides a *minimum*

¹⁴ Topic Specific Statement of Common Ground on 5-Year Housing Land Supply

¹⁵ South Worcestershire Five Year Housing Land Supply Report, September 2021 – Table at Paragraph 12 (CD5)

¹⁶ CD5

¹⁷ Proof of Evidence of Cameron Austin-Fell (April 2022) Appendix B – Housing Requirement Scenarios

number of homes to be planned for¹⁸. Taking into consideration the content of the Framework and the PPG and the evidence before me, which are largely silent on the matter, I feel that there is no clear steer that would lead me to conclude that the oversupply should be included in forward projections for housing delivery.

41. In addition to the matter of oversupply, the Council assert that this area has a unique set of constraints and considerations which calls for the housing need to be balanced over the wider area due to the severe land constraints for Worcester City. The South Worcestershire Five Year Housing Land Supply Report, September 2021 has been carried out over the wider geographical area rather than individual districts. The PPG includes guidance on how to monitor five year housing land supply where there is a joint plan¹⁹ and states that the approach to using individual or combined housing requirement figures will be established through the plan-making process, before going on to state that where the 5 year housing land supply is to be measured on a single authority basis, annual housing requirement figures for the joint planning area will need to be apportioned to each area in the plan. If the area is monitored jointly, any policy consequence of under-delivery of lack of 5-year housing land supply will also apply jointly.
42. I have been presented with references to the specific wording used of 'local planning authorities', 'authority' and 'their', suggesting that this makes it clear that this indicates that *individual* authorities are required to monitor their housing land supply. However I do not read the Framework in this context. It does not specifically refer to 'each individual authority' and therefore I cannot conclude that this was the intention behind the wording in this instance.
43. My attention was also drawn to the wording of the Glossary of the Framework in relation to the Housing Delivery Test²⁰ which refers to a local authority area but allows for joint monitoring as evidenced in the letter from the Housing and Planning Services across the three Councils to the Secretary of State outlining the intention to calculate the HDT based on a single SWDP figure²¹. I find however, that the ability to monitor the HDT jointly does not automatically mean that five-year housing land supply could be considered on the same area as the two processes, although linked to a certain degree, are still separate processes with one being backwards looking and the other forward looking.
44. I accept that the Council are in a relatively unique position in that there are a limited number of joint Development Plans, and I consider that this may be a contributing factor to why such situations are not explicitly referred to in the Framework. I also acknowledge the reference to the High Court²² which logically highlights that the PPG does not cover every possible situation. However, based on the evidence before me I cannot conclude that it has been demonstrated that the joint approach, nor the individual approach, should be followed given the absence of these being tested at examination or through a position statement.

¹⁸ Paragraph:001 Reference ID: 68-001-20190722

¹⁹ Paragraph: 028 Reference ID: 68-028-20190722

²⁰ Page 67 of the National Planning Policy Framework (2021)

²¹ Letter Reference CW/LM-L/9.5.18 (CD68)

²² Tewkesbury Borough Council v SSHCLG [2021] EWHC 2782 (Admin) (CD46)

45. In addition to the above, there were five disputed sites²³ which resulted in an overall difference of 222 units. However, it was suggested that in any event the inclusion or exclusion of these particular sites would not have a significant bearing on the Council's five-year housing land supply. Accordingly, it is not necessary for me to reach a finding on each individual site given my considerations above.
46. My attention has been drawn to a number of other appeal decisions which also considered the matter of the five-year housing land supply. The first of these is Claphill Lane, Rushwick²⁴ where the Inspector highlighted that the matter of distribution of housing requirement amongst the Councils is one for the plan-making process (paragraph 37). In this instance the Inspector, based on the evidence before him, did not conclude that the Housing Land Supply should be calculated on a cross-boundary basis.
47. The 'Fiddington' appeal decision²⁵ also considered oversupply, which the Inspector found was meeting the needs of local people, should be deducted from the housing requirement and credited against the requirement (the 'reverse' Sedgefield approach). However, this particular Council could not demonstrate a five-year supply regardless of oversupply. Notwithstanding these points, I am not persuaded that oversupply should be factored in.
48. Turning to the Bransford Road²⁶ appeal decision, I note that the Council's position was that the housing land supply figure calculated against the local housing need using the Standard Method had not been carried out at that stage and therefore it was accepted that in the absence of this the Council could not demonstrate a five year supply which differs from the evidence presented to me in this inquiry where the Council contend that they have a supply of 5.76 years.
49. I have been provided with a copy of a recent appeal decision for Morris Road, Broadway²⁷ which is within the district of Wychavon, which forms one of the joint councils. The Inspector in this case reached the conclusion that the NPG is a forward-looking snapshot at a given point in time and that it would therefore be inconsistent to adjust the need figure derived from the standard method to reflect past delivery²⁸. The Inspector however did not find it necessary to reach a conclusion on the 'geography' of the supply²⁹. Having regard to the content of this appeal decision I see little to lead me to conclude differently on the matters highlighted.
50. I have considered the implications of both the Council's and the Appellant's approaches in terms of both the oversupply and the 'geography' of the housing land supply calculation, but I consider that in any event, both approaches are a departure from the Development Plan and would need to be tested at Local Plan examination stage, or an annual position statement, rather than through a Section 78 Inquiry.

²³ Disputed Sites in Malvern Hills District (as at April 2021) 2021 – 2026 Date: 12.04.2022

²⁴ APP/H1860/W/21/3267054 – Land off Claphill Lane, Rushwick (CD10)

²⁵ APP/G1630/W/21/3283839 – Land to the North West of Fiddington, Ashchurch, Tewkesbury (CD42)

²⁶ APP/J1860/W/19/3242098 – Land South of Bransford Road, Rushwick (CD9)

²⁷ APP/H1840/W/21/3289569 – Land Off Morris Road, Broadway

²⁸ Paragraph 50

²⁹ Paragraph 53

Other Matters

51. The Malvern Hills AONB is visible in the distance as a backdrop to the appeal site and from North Hill the settlements of Leigh Sinton and Malvern are discernible, with the open land between apparent. The Statement of Common Ground on Landscape and Significant Gap Matters highlights that in the Malvern Hills AONB Environs Landscape and Visual Sensitivity Study (May 2019) the land parcel M09 south of Leigh Sinton has the capacity to accommodate residential development³⁰. It goes on to state that the proposed development would not result in any significant impact on views from the northern end of the Malvern Hills³¹ and would not have a detrimental impact on the natural beauty of the Malvern Hills AONB³². I have not been presented with any evidence to lead me to conclude otherwise. In terms of views from the Malvern Hills, the development would be visible but firmly in the context of the existing built form and would not adversely impact the views. The development of the site, based on the indicative layout would similarly be viewed in the context of the existing built form and would not harm or significantly alter views of the Malvern Hills from Leigh Sinton Road and the surrounding area.
52. The Council have provided the Examiners Letter for the Leigh and Bransford Neighbourhood Development Plan (NDP)³³ as well as details of a development scheme for 52 dwellings at Leigh Sinton³⁴ which Ward Members have indicated can be approved subject to the completion of a Section 106 Agreement. I note the progress of the NDP, nevertheless understand that there are still outstanding matters and therefore I do not conclude that this carries any additional weight from when it was considered at the Inquiry itself. In relation to the pending approval for 52 dwellings, I have limited information before me, however, note that the application referred to is in outline also and no indication of the progress of the Section 106 has been put forward. In addition, I have not been presented with evidence to suggest that if these 52 dwellings came forward they would represent a ceiling for development in Leigh Sinton. I therefore find that this does not have any bearing on the merits of this case that is before me.

Other matters

53. In terms of the matters of lack of infrastructure it was noted at the Inquiry that it was not the position of the parties that there are insufficient facilities to serve additional dwellings in Leigh Sinton and I have little evidence before me that public facilities are at capacity or in relation to the availability of jobs.
54. The Local Highway Authority were given the opportunity to consider the proposed access and volumes of traffic and the application was accompanied by a speed survey, Road Safety Audit Stage 1 (RSA) and revised Transport Assessment following their initial comments. A Highways Statement of Common Ground confirms agreement on the provision of the access, visibility splays and findings of the speed survey and confirms that the development would provide safe and suitable access for all users and that there would not be severe or unacceptable highway safety impact on the local highway network. I note the levels of public transport available in the area and in order to mitigate

³⁰ Page 25 and Paragraph 17 Statement of Common Ground on Landscape and Significant Gap Matters

³¹ Paragraph 32 Statement of Common Ground on Landscape and Significant Gap Matters

³² Paragraph 33 Statement of Common Ground on Landscape and Significant Gap Matters

³³ Email from Council dated 20 June 2022

³⁴ M/22/00187/OUT

- this the development would be required to contribute to transport facilities which would be secured by legal agreement.
55. Turning to matters relating to precedent and other preferable sites, I have limited information in relation to other sites available and the development of this site would not automatically set a precedent for further development which would need to be considered in relation to its own set of circumstances.
56. The Council's Ecologist has considered the information supplied and raises no concerns subject to the imposition of conditions. This was agreed within the Landscape and Significant Gap Matters Statement of Common Ground³⁵. Conditions can be imposed to secure any necessary protection and mitigation.
57. In relation to impacts on neighbouring living conditions, at this stage the development proposed is outline with only access committed. Therefore, whilst I accept the outlook for the occupiers of the properties along the site boundaries will change, the height, design and siting of the proposed dwellings, as well as any landscaping, can be negotiated between the Council and Appellant at Reserved Matters stage to ensure living conditions of neighbours are taken into consideration. There is likely to be some noise and disturbance during the construction phase, however a condition can be applied requiring a construction management plan to manage these matters.
58. Similarly, at Reserved Matters stage the specific lighting details can be secured and I have little evidence before me that would suggest pollution levels arising from the development would be at an unacceptable level given the scale of the development and the type of buildings proposed. The Worcestershire Regulatory Services raised no objections in terms of air quality subject to conditions.
59. The appeal site is located within Flood Zone 1 which is a low-risk category. Furthermore, Severn Trent Water considered the application in relation to wastewater and raised no objections subject to conditions to agree the disposal of waste and surface water flows to avoid exacerbating any flooding issues and minimise the risk of pollution. The Lead Local Flood Authority also raised no objection subject to conditions.
60. My attention has been drawn to an appeal decision for Droitwich Spa³⁶ which considered whether the Council (Wychavon) had made adequate provision for self-build dwellings and concluded that insufficient information had been provided to demonstrate that the Council had met its duty to deliver these types of plots. I note that Policy SWDP2 does not provide for self or custom-build plots, nor does Policy SWDP14. I return to the weight I give to the provision of self and custom build plots in the planning balance below.
61. A Section 106 Unilateral Undertaking³⁷ has been provided which makes provision for a financial contribution to the Herefordshire and Worcestershire Clinical Commissioning Group. The Council position is that the request for this contribution is not CIL compliant. The request for the funding is to cover a revenue funding gap rather than for any infrastructure required to mitigate the impacts on the health and access to care for the local population as a result of the development. I also note that the methodology for the calculation of this

³⁵ Report No 1010 R05 Dated 09.05.2022

³⁶ APP/H1840/W/19/3241879 – Corner Mead, Newland Lane, Droitwich Spa, Worcestershire WR9 7JH (ID3)

³⁷ Section 106 Unilateral Undertaking (1) Walter John Beard, (2) Lone Star Land to Malvern Hills District Council

- contribution is not considered to be robust, has not been through the plan-making process and is not supported specifically by the Policies of the SWDP.
62. A signed Section 106 Agreement dated 20 May 2022 has also been provided which makes provision for on-site affordable housing of 40% and provision of First Homes, and contributions towards: community transport education (determined by the mix of dwellings proposed at Reserved Matters Stage) Highways (community transport, scholar transport, personalised travel planning and traffic regulation order), off-site public open space, off-site formal sports, and on site public open space. The Section 106 Agreement also secures the provision of Self and Custom Build plots in Schedule 6.
63. The Council have provided CIL Compliance Statement³⁸ (May 2022) which provides a thorough justification for each of the requested obligations to demonstrate that each is necessary and reasonably related in scale and kind to the development. I have considered this and the content of the legal agreements and agree that they are necessary and that the documents are legally sound and enforceable. Accordingly, I accept the content of the Section 106 Agreement in this case however for the above reasons I find that the contribution requested by the Herefordshire and Worcestershire Clinical Commissioning Group forming the Unilateral Undertaking has not been justified.

Planning Balance

64. Turning to the overall planning balance, I have found conflict with Policy SWDP2 of the development plan in relation to matters of Significant Gap and the location of the site in the countryside and therefore the development plan as a whole. I give this weight in the planning balance. However, I have found no conflict with the development plan in terms of the landscape and visual character of the area.
65. I have balanced this policy conflict with the benefits of the proposed development, comprising the provision of affordable housing, self and custom build plots, economic benefits including through employment during the construction phase and contributions to the local economy through additional local expenditure, plus the New Homes Bonus and CIL Contributions, provision of new public open space and new planting and improvements to infrastructure.
66. Although policy compliant I still consider the provision of affordable housing to be a significant benefit and the Appellant has provided evidence of the affordability of properties within the area. In addition, I have been presented with evidence as to the need and provision to date of self and custom build homes³⁹ which shows an under delivery of these types of plots. I have had regard to the level of outstanding requirement for self and custom build plots, as well as the Droitwich Spa appeal decision referred to above, and I therefore give considerable weight to the provision of these types of plots.
67. In relation to the economic benefits, I accept that the employment during the construction phase would be temporary, nevertheless this would still be a benefit. The development would generate additional expenditure in the local

³⁸ ID7

³⁹ November 2021 Progress Update Report

area also. Collectively I find the economic benefits to weigh moderately in favour of the development.

68. I have addressed the provision of open space and new planting above and find that these would help to mitigate against the visual impacts of the development and would go some way to replicating the historic landscape patterns in this area. Given the loss of the hedgerow, I give the new planting a limited amount of weight overall.
69. Taking all of the benefits into consideration, when balanced with the limited harm that would arise from the proposed development, I find that these harms would be significantly and demonstrably outweighed by the benefits in this instance. Accordingly, whether I was to find that the Council does or does not have a five-year housing land supply would not alter my conclusions in this regard. As such, the conflict with the Policies of the SWDP identified above and as such, the Development Plan as a whole, are outweighed by the benefits and accordingly the proposed development would be acceptable.

Conditions

70. In addition to the standard time limit and reserved matters conditions for outline applications, I have imposed a condition listing the approved plans as this provides certainty.
71. I have imposed a condition limiting the number of dwellings as it is not sufficient to rely on the description of development alone to control this.
72. Conditions 5, 6, 7 and 8 are necessary in the interests of ensuring the development is appropriately landscaped and in the interests of the visual character of the area. Condition 9 is necessary to ensure that any archaeological remains on site are identified and suitably dealt with. It is necessary to impose conditions 10 and 11 in order to provide suitable provisions for future occupiers to be able to use alternative methods of transport. Conditions 12 and 16 are necessary in order to ensure the development of the site does not harm the living conditions of nearby residents and is carried out in a responsible way. I have included conditions 13, 15 and 17 to ensure the energy and water efficiency of the development and protect the air quality of the area. Condition 14 is necessary to provide suitable broadband connections for future occupiers of the development.
73. Conditions 18, 19, 20, 21 and 22 are necessary in order to protect the biodiversity and habitats within and around the appeal site. I have imposed condition 23 as it is fundamental to have suitable and functional drainage for each phase of the development. Conditions 24 and 25 are necessary to ensure that the new access is constructed correctly and does not impact on highway safety.
74. The Council suggested two additional conditions during the course of the Inquiry, which the Appellant has had chance to consider and raises no objections to. These conditions related to the requirement for a statement of conformity to notify the Council that the landscaping works have been carried out in accordance with the approved plans/scheme and that the first residents are provided with a Landscape Welcome Pack which identifies the public landscaped areas, their maintenance schedule and responsible company. I have considered both conditions against the tests however I do not find these

to be necessary to make the development acceptable. I consider that the initially suggested landscaping conditions would be sufficient to secure the delivery and retention of the agreed planting and the residents could contact the developer or Council if there were any queries or concerns about the communal areas and planting throughout the development. I have therefore not imposed these conditions.

75. Conditions 10, 13, 14, 19, 20, 21 and 25 are pre-commencement conditions as it is fundamental to have these matters agreed prior to any works commencing on site. The Appellant has indicated agreement to these conditions.

Conclusion

76. For the reasons given above, and having had regard to all matters raised, I conclude that the appeal should be allowed.

R Norman

INSPECTOR

Schedule of Conditions

- 1) 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.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 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.
- 3) The reserved matters pursuant to conditions 1 and 2 shall be submitted in accordance with a Phasing Plan for the development which shall set out the details of the Phased delivery of the development including the proposed Self and Custom Build serviced plots.
- 4) Unless where required or allowed by any other conditions attached to this permission, the development hereby approved shall be carried out in accordance with the information provided on the application form and the following plans, drawings and documents:
 - Site Location Plan (reference 294 LO1)
 - Site Plan (Wider Ownership Plan) (reference 294 LO2)
 - Constraints and Opportunities Plan (reference 294 P01)
 - Land Use and Parameter Plan (reference 294 P02)
 - Access and Movement Parameter Plan (reference 294 P03)
 - Building Heights Parameter Plan (reference 294 P04)
 - Landscape and Open Space Parameter Plan (reference 294 P05)
 - Topographical Survey Plan (reference 1755-00)
 - Flood Risk Assessment, including Drainage Assessment (ES115- TES-00-XX-DR-0663 June 2021)
 - Access Drawings ES115- TES-00-XX-DR-C-0505-S2-P05 and ES115- TES-00-XX-DR-C-0506-S2-P02
- 5) The Reserved Matters pursuant to condition 2 hereof shall ensure a minimum site wide provision of 40% green infrastructure on site.
- 6) The development hereby permitted shall be limited to a maximum of 45 dwellings.
- 7) Details of the levels of the existing site, proposed finished levels or contours and the precise slab levels of the approved dwellings, relative to a fixed datum point outside of the boundary of the site, shall be submitted for approval for each phase as part of the reserved matters pursuant to Condition 2 hereof.
- 8) The details of 'landscaping' for each phase to be submitted in accordance with condition 2 hereof shall make specific provision for the following:

- a) Details of any trees and hedgerows to be retained including the hedge fronting to the B4503, together with measures for their protection in the course of development;
- b) Schedule of proposed planting (indicating species, sizes at time of planting and numbers/densities of plants);
- c) Written specification outlining cultivation and other operations associated with plant establishment;
- d) Finished levels or contours;
- e) Details of boundary treatments;
- f) Hard surfacing specification and materials; and
- g) A schedule of maintenance for a minimum period of five years from first planting

The approved landscaping scheme for each phase shall be carried out concurrently with the development and be completed within one calendar year of the substantial completion of the last dwelling to be constructed in that phase. If within a period of 5 years from the date of planting of any tree or hedgerow planted or retained pursuant to this condition that tree or hedgerow, or any tree or hedgerow planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or hedgerow of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written approval to any variation.

- 9) Before the first occupation of any phase of the development a schedule of landscape maintenance for the lifetime of the development shall be submitted to and approved in writing by the local planning authority. The schedule shall include details of the arrangements for its implementation, long-term objectives, management responsibilities and maintenance schedules for all communal landscape areas (excluding domestic gardens). The approved landscape maintenance schedule shall be fully implemented.
- 10) (A) Prior to the submission of a reserved matters application for any phase of the development a programme of archaeological work is required, including a Written Scheme of Investigation, to be submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and research questions:
 - 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 Statement 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 part (A) and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

- 11) Details of the location, type of rack, spacing, numbers, method of installation and access to cycle parking shall be submitted to and approved in writing by the local planning authority for each phase prior to the first occupation of the dwellings within that phase. The cycle parking provision shall be installed in accordance with the approved plans for each phase before the dwellings in that phase are first occupied.
- 12) Appropriate cabling and an outside electrical socket must be supplied for each property to enable ease of installation of an electric vehicle charging point (houses with dedicated parking). The charging point must comply with BS7671. The socket should comply with BS1363 and must be provided with a locking weatherproof cover if located externally to the building.

For developments with unallocated parking, i.e., flats/apartments, 1 EV charging point per 10 spaces (as a minimum) should be provided by the developer to be operational at commencement of development. The charging point must comply with BS EN 62196 Mode 3 or 4 charging and BS EN 61851. As a minimum, charge points should comply with Worcestershire County Council Design Guide which required 7kw charging points for residential developments.

- 13) No development or site assembly for any phase shall begin until a Construction Environment Management Plan (CEMP) for that phase has been submitted to and approved in writing by the local planning authority. The CEMP shall be adhered to throughout the construction of each phase and shall include the following details:
 - a) Details of measures to minimise the impacts arising from construction, demolition, and site clearance activities and the traffic associated with this development, including a scheme for vehicle wheel cleaning and other 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 operative facilities, including offices and toilets;
 - c) A management strategy and proposals for the minimisation of construction waste; and
 - d) 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 in writing by the local planning authority.

- 14) Prior to the commencement of the development of each phase, details of renewable and/or low carbon energy generation measures for that phase 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:
- a) The overall predicted energy requirements of the approved development;
 - b) The predicted energy generation from the proposed renewable/low carbon energy measures; and
 - c) An implementation timetable for the proposed measures.

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

- 15) Prior to the first occupation of any of the dwellings within each phase, details of connections to facilitate superfast broadband facilities or alternative solutions to serve the dwellings within the phase shall be submitted to and approved in writing by the local planning authority. The submitted details shall include an implementation programme. The facilities shall be provided in accordance with the approved details.
- 16) Prior to the commencement of above ground works within each phase, a Water Management Statement for that phase, setting out water efficiency measures and confirming that the daily non-recycled water use per person will not exceed 110 litres per day, shall be submitted to, and approved in writing by, the local planning authority. The measures for each phase shall be implemented in accordance with the approved details before occupation of the respective dwelling in that phase and retained thereafter.
- 17) 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 0800 and 1800hrs Monday to Friday and 0800 and 1300hrs on a Saturday. There shall be no demolition, clearance or construction work or deliveries to and from the site on Sundays or Bank and Public Holidays.
- 18) Details shall be submitted to and approved in writing by the local planning authority prior to the commencement of above-ground works within each phase for the installation of Ultra-Low NOx boilers with maximum NOx Emissions less than 40 mg/kWh. The boilers for each phase shall be implemented in accordance with the approved details before occupation of the respective dwelling in that phase and retained thereafter.
- 19) No development of any phase shall take place (including demolition, ground works, vegetation clearance) until a Construction Environmental Management Plan for Biodiversity (CEMP:Biodiversity) for that phase has been submitted to and approved in writing by the local planning authority. The CEMP:Biodiversity shall include the following:
- a) Risk assessment of potentially damaging construction activities;
 - b) Identification of "biodiversity protection zones";

- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction. These may be provided as a set of method statements for reptiles and amphibians, birds, badgers, bats (lighting during construction);
- d) The location and timing of sensitive works to avoid harm to biodiversity features
- e) The times during construction when specialist ecologists need to be present on site to oversee works;
- f) Responsible persons and lines of communication;
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person; and
- h) Use of protective fences, exclusion barriers and warning signs.

The approved CEMP:Biodiversity 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.

- 20) No development shall take place until an Ecological Design Strategy (EDS) addressing biodiversity compensation and enhancement measures for that phase has been submitted to and approved in writing by the local planning authority. The EDS shall include the following:
- a) Purpose and conservation objectives for the proposed works;
 - b) Review of site potential and constraints;
 - c) Detailed design(s) and/or working method(s) to achieve stated objectives;
 - d) Extent and location/area of proposed works on appropriate scale maps and plans;
 - e) Type and source of materials to be used where appropriate e.g., native species of local provenance;
 - f) Timetable for implementation demonstrating that works are aligned with the proposed phasing of development;
 - g) Persons responsible for implementing the works;
 - h) Details of initial aftercare and long-term maintenance;
 - i) Details for monitoring and remedial measures; and
 - j) Details for disposal of any wastes arising from works.

The EDS shall be implemented in accordance with the approved details and all features shall be retained in that manner thereafter.

- 21) A Landscape and Ecological Management Plan (LEMP) for each phase of the development shall be submitted to and approved in writing by the local planning authority prior to the commencement of that phase of the development. The content of the LEMP 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 minimum five-year period);
- g) Details of the body or organisation responsible for implementation of the plan; and
- 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.

- 22) Prior to the first occupation of each phase, a lighting design strategy for biodiversity for that phase shall be submitted to and approved in writing by the local planning authority. The strategy shall:
- a) Identify those areas/features on site that are particularly sensitive for bats and other nocturnal wildlife and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example for foraging; and
 - b) Show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.

All external lighting for each phase 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. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority.

- 23) Prior to the first occupation of each phase, the phase of the development shall be inspected by a qualified ecologist and a statement of conformity shall be submitted to the local planning authority to confirm the mitigation, compensation and enhancement measures for biodiversity have been successfully implemented in accordance with the details approved under this condition. The development of each phase shall not be occupied until these details have been approved.
- 24) No works in connection with site drainage for each phase shall commence until a SuDS management plan for that phase, which will include details on future management responsibilities, along with maintenance schedules

for all SuDS features and associated pipework has been submitted to and approved in writing by the local planning authority. This plan shall detail the strategy that will be followed to facilitate the optimal functionality and performance of the SuDS scheme throughout its lifetime. The approved SuDS management plan shall be implemented in full in accordance with the agreed terms and conditions and shall be managed and maintained in accordance with the approved maintenance plan and thereafter.

No works in connection with site drainage for each phase shall take place until an exceedance flow routing plan for flows above the 1 in 100+40% event has been submitted to and approved in writing by the local planning authority. The proposed scheme shall identify exceedance flow routes through the development based on proposed topography with flows being directed to highways and areas of POS. Flow routes through gardens and other areas in private ownership will not be permitted. The approved details for each phase shall be implemented in full prior to the first occupation of the phase.

Notwithstanding the submitted Drainage Strategy, no development shall commence in each phase until detailed design drawings for surface water drainage and disposal of foul waters for that phase have been submitted to and approved in writing by the local planning authority. Thereafter the development of the phase shall be carried out in accordance with the approved details.

- 25) Prior to the commencement of development, a detailed scheme for the site access works at Leigh Sinton Road, including the location and extent of the Traffic Regulation Order related to the proposed access, shall be submitted to the local planning authority (and Worcestershire County Council Highways). The development shall not be occupied or brought into use until the submitted scheme, which is broadly in accordance with drawings ES115-TES-00-XX-DR-C-0505-S2-P05 and ES115-TES-00-XX-DR-C-0506-S2-P02, has been agreed in writing by the local planning authority, in consultation with Worcestershire County Council Highways, and has been implemented in full.
- 26) The development hereby approved shall not be occupied until the visibility splays shown on drawings ES115-TES-00-XX-DR-C-0505-S2-P05 and ES115-TES-00-XX-DR-C-0506-S2-P02 have been provided. The splays shall at all times be maintained free of level obstruction exceeding a height of 0.6m above the adjacent carriageway.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Richard Kimblin QC of No5 Chambers instructed by Penelope James, Solicitor at Malvern Hills District Council and Wychavon District Council Joint Legal Team

He called
Christopher Lewis-Farley Tree and Landscape Officer, Malvern Hills District
MLArch HND Arb Council
Richard Pestell BSc Director, Stantec UK Limited
MPhil MRTPI
Edward Buckingham BA Senior Associate, Stantec UK Limited
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FOR THE APPELLANT:

Satnam Choongh No 5 Chambers instructed by Reuban Bellamy BA(Hons) DipTP MPRTI, Planning Director at Lone Star Land

He called
Jason Tait BA(Hons) Director, Planning Prospects Ltd
DipTP MRTPI
Cameron Austin-Fell Director, RPS Consulting Services Ltd
BA(Hons) MSc MRTPI
Robert Hughes Director, Incola Landscape Planning
BSc(Hons) PdDipLA
CMLI

DOCUMENTS SUBMITTED AT THE INQUIRY

- ID1 Appellant's Opening Submissions
- ID2 Council's Opening Submissions
- ID3 Appeal Decision APP/H1840/W/19/3241847 – Corner Mead, Newland Lane, Droitwich Spa, Worcestershire WR9 7JH
- ID4 3267054 Appellant's Closing Submissions
- ID5 3267054 Council's Closing Submissions
- ID6 Amended Unilateral Undertaking
- ID7 CIL Compliance Statement
- ID8 Appellant's Costs Application
- ID9 Email dated 12 May 2022 with two additional suggested conditions
- ID10 Correction of paragraph 4.19 of the Proof of Evidence of Mr Austin-Fell
- ID11 Council's Closing Submissions
- ID12 Appellant's Closing Submissions
- ID13 Council's Costs Response

DOCUMENTS SUBMITTED AFTER THE INQUIRY

1. Appeal Decision APP/H1840/W/21/3289569 - Land off Morris Road, Broadway
2. Email from Council dated 20.06.22 including Leigh and Bransford NDP Examiner's Letter and details of planning application M/22/00187/OUT
3. Email from Appellant dated 21.06.22 in response to Council's email of 20.06.22