



# Appeal Decision

Inquiry held on 22, 23 & 24 October 2024

Site visits made on 21 & 22 October 2024

**by H Nicholls FdA MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25<sup>th</sup> November 2024**

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## **Appeal Ref: APP/H1840/W/24/3346731**

### **Land at Dilmore Lane, Fernhill Heath WR3 7SY**

- 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 Lioncourt Strategic Land Limited against the decision of Wychavon District Council.
  - The application Ref is W/23/01323/OUT.
  - The development proposed is residential development for up to 130 dwellings (Use Class C3), including vehicular access from Dilmore Lane, pedestrian and cycle links, public open space, car parking, drainage, landscaping and other associated infrastructure. All matters reserved except for access.
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### **Decision**

1. The appeal is allowed and planning permission is granted for residential development for up to 130 dwellings (Use Class C3), including vehicular access from Dilmore Lane, pedestrian and cycle links, public open space, car parking, drainage, landscaping and other associated infrastructure. All matters reserved except for access, at Land at Dilmore Lane, Fernhill Heath, WR3 7SY, in accordance with the terms of the application, Ref W/23/01323/OUT, subject to the conditions in the attached schedule.

### **Preliminary Matters**

2. As the appeal proposal is in outline with all matters save for access reserved, I have treated the layout and parameter plans as indicative.
3. A case management conference (CMC) was held with representatives of the Appellant and the Council on 29 August 2024. Procedural matters including the main issues and the format of the inquiry were discussed and clarified during the CMC, but the merits of the proposal were not discussed.
4. Following the submission of the appeal and prior to the CMC, the Council reviewed its case and modified its concerns contained in the first reason for refusal (RfR) on the loss of Best and Most Versatile (BMV) land and the effects of the proposal on the Grade II listed building, Tappenhill Farmhouse. These matters were also addressed through the Statements of Common Ground<sup>1</sup> (SoCGs) and the written evidence. Whilst it was agreed that these harms should still be factored into the overall balance, expert witnesses were not required to give further oral evidence on these matters during the inquiry.

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<sup>1</sup> CD45 and CD46

5. The second RfR concerns the absence of a planning obligation which was overcome through the agreement and submission of such. The completed S106 planning obligation dated 5 November 2024 was received on the same date.

### **Main Issues**

6. The main issues in the appeal are:
  - the effect of the proposal on the character and appearance of the area;
  - whether the site is suitable for the proposed development, having regard to the Council's settlement strategy; and
  - the effects of the proposal on the significance of the Grade II listed building, Tappenhill Farmhouse.

### **Reasons**

#### *Character and appearance*

7. The site extends to around 8 hectares of agricultural land adjoining the north of the settlement of Fernhill Heath and directly adjoining the recently completed development of 120 dwellings known as 'Suffolk Way'. The site is undulating but has no significant topographical features. Hedgerows and tree cover is relatively sparse, limited to small tree clusters and some hedgerow boundaries, including along the access road, Dilmore Lane. The northern boundary of the site does not follow an existing hedgerow feature, and a new northern boundary would need to be created between the site edge and the agricultural land from which it would be subdivided.
8. The site falls within the 'Settled Farmlands with Pastoral Land Use' Landscape Character Type (LCT) as defined in the Worcestershire Landscape Character Assessment (2012)<sup>2</sup>. This LCT is described as a settled agricultural landscape. Fernhill Heath, the nearby hamlet of Lower Town and the sizeable farm complex associated with Tappenhill Farmhouse are evidence of the settled nature of this landscape. The agricultural land in between, including the site and the network of adjoining fields, has a relatively open character giving a high degree of intervisibility between the settled areas.
9. The site is not a valued landscape but has intrinsic value as part of the countryside. In my view it has a medium sensitivity to change, influenced by the recent development of Suffolk Way and its relationship to the built edge of Fernhill Heath. The introduction of a sizeable development of up to 130 dwellings, each of up to around 10.5 metres in height, and associated infrastructure would inevitably and irreversibly change the landscape character. Given the scale and permanence of the change proposed, I am of the view that the effects on landscape character would be of a moderate to highly adverse nature. These effects could diminish to a moderate effect with the establishment of landscaping, but I am mindful of the time that this would take given the absence of a northern boundary enclosure at the present time. My view on this magnitude of harm exceeds the agreed position of the parties that the effects would be of moderate adverse nature at most, diminishing to a slight/minimal adverse landscape character effect by year 15.

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<sup>2</sup> CD6

10. In terms of visual effects, there would be more limited effects from distant viewpoints due to the topographical containment of the settlement and intervening hedges and trees, which appear more substantial away from the site. My view is that the visual effects of the proposal from the wider settlement area in both northern and southerly directions would be minor adverse in nature, reducing to a minimal effect by the residual phase, i.e. 15 years post-establishment of landscaping.
11. Closer to the site there are viewpoints from various Public Rights of Way (PROWs) on the edges of the settlement of Fernhill Heath, Lower Town and running alongside Tappenhill Farmhouse. The footpath from Kennels Lane adjoins existing residential dwellings on one side and takes in parts of the Suffolk Way development in views towards Tappenhill Farmhouse and Lower Town. Due to the sensitivity of receptors using the PROWs for recreational purposes and the extent of the change, my view is that the visual effects on this receptor group would be at least moderately adverse. In time, these effects would reduce to a low-moderate magnitude.
12. The highest magnitude of visual harm would be experienced by users of the footpaths that cross the adjoining field or follow field margins towards/from Lower Town and along its southern edge that look towards the site. The settlement edge of Fernhill Heath would be brought in the region of 200 metres closer and would be particularly apparent for a considerable period of time. Suffolk Way is a relatively new development of a similar scale to the proposal. It has a visually permeable northern boundary owing to the limited established landscaping. Having had regard to these factors, I consider that the effects would be of a major adverse nature, diminishing only modestly over time to a moderate-major degree of harm.
13. Due in part to the greater distance from the site and intervening landscape features, users of the PROW near Tappenhall Farm (Footpath 535(c)) would, in my view, experience moderate adverse visual effects until the eventual establishment of landscaping. By the 15 year period, the visual effects will have reduced to a minor adverse nature, particularly as much emphasis has been placed in the Parameter Plan on large extents of vegetation and orchard planting from this viewpoint to mitigate effects on the setting of Tappenhall Farm. Whilst this is dependent on the eventual form of the development, there would inevitably be some benefit of landscaping on the edge of the development to supplement intervening hedgerows and trees seen in these views.
14. Lastly, the final group of receptors considered are those on Dilmore Lane from where the site would take its access. Whilst road users would experience the change more fleetingly, the road also doubles as a well-used cycle way (Monarch's Way) and so is also used for recreational purposes. In the vicinity of the site, the road has a transitional character between settlement edge and rural surroundings. Extending the settlement edge along the road, would generate harm through the removal of some hedgerow and the addition of features such as the engineered highway access point and opening up views through to the development. This would be the case even though the scheme would assimilate well with the adjoining Suffolk Way development. My view is that the effects here would be of a major adverse nature, reducing to moderate adverse through the establishment of landscaping. Whilst the Council's witness downgraded the effects on this viewpoint during the inquiry round table

discussion, my judgement is that the development, taken individually and cumulatively with Suffolk Way, would result in a majorly adverse change for the initial years of the development.

15. For the above reasons, the proposal would harm the character and appearance of the area, in conflict with Policy 25 of the South Worcestershire Development Plan (2016) (Local Plan) which seeks to ensure that development is appropriate to, and integrates with, the character of the landscape setting, conserving and where appropriate, enhancing its primary characteristics and important features.

#### *Location of site*

16. The spatial strategy under Policy SWPD2 of the Local Plan largely seeks to focus development within the Plan period on the city of Worcester in the first instance, then direct greater proportions of growth to the 'Main Towns' of Droitwich Spa, Evesham and Malvern thereafter. Between the Main Towns and 'Rural Area' is a layer of 'Other Towns' defined within the Policy as having fewer high-level services but still providing a range of services and employment opportunities as local service centres. The towns falling into this category which can support some growth includes Tenbury Wells, Upton-upon-Severn and Pershore.
17. The site is on the edge of Fernhill Heath which is defined as a Category 2 village within the defined Rural Area of the district under Policy SWDP2 of the Local Plan. The hierarchy of villages is based on their varying range of local services and facilities with the larger villages containing the greater number. The role of the villages is explained as being predominantly based on meeting locally identified housing and employment needs.
18. Based in part on its level of facilities and services, the village of Fernhill Heath has previously received an allocation of 120 dwellings (Suffolk Way) and, under Policy NCH1B of the North Claines Neighbourhood Plan (2017) (NCNP), another more modest scale development of 39 dwellings at Sling Lane/Old Drive. Both schemes have been built out. There are no further unspent allocations for Fernhill Heath, though another allocation is proposed under the emerging Regulation 19 South West Development Plan Review (SWDPR) for 40 dwellings on land west of Dilmore Lane. An application for this draft allocation site is already under consideration.
19. The open countryside is defined in Local Plan Policy SWDP2 as land beyond any development boundary where development will be strictly controlled. The site falls within the open countryside and thus, the development is contrary to Policy SWDP2. NCNP Policy NCH1A states that additional new housing provision within the existing development boundary of Fernhill Heath will be allowed provided that it accords with other relevant policies of the NCNP and the SWDP. It is also explained that proposals beyond the existing development boundaries of Worcester and Fernhill Heath will be resisted, unless it is demonstrated that there is no five year supply of deliverable housing sites; a point to which I return later in this decision.
20. It is not the Council's case that Fernhill Heath is unsuitable to accommodate the development in terms of social cohesion or that it is unsustainable, based on its facilities and services. However, I am of the view that the scale and location of the proposal bring it into conflict with the spatial strategy set out in

Policy SWDP2 of the Local Plan and the main objectives of Policy NCH1A of the NCNP to contain development to within the settlement boundaries. Whilst the relatively short distance from the site to either Worcester and Droitwich Spa and good public transport connectivity to said settlements result in the site being sustainably located overall, this does not alter the fact that the scheme conflicts with the locational policies of the development plan.

### *Effects on Tappenhill Farmhouse*

21. The designated heritage asset, Tappenhill Farmhouse, a Grade II listed building, (List Entry Number: 1350170), is an early/mid-C18 farmhouse with mid-C19 alterations and additions. It is constructed of brick with hipped, plain tiled roof and large brick stacks to its rear main range. The listing description refers to its two storeys, attic with dormers and cellar, three bay width and mid-C19 three storey addition adjoining the full length of its rear elevation. Other finer details of interest are its 3-course band above both main storeys, dentilled eaves, moulded architraves and cambered heads around the predominantly 16-pane sash windows. The central panelled door with segmental fanlight above, and gabled dormer in the south side elevation also get a mention in the listing description, though no internal features were recorded or inspected.
22. The significance of the designated heritage asset is principally embodied in its physical fabric, which has architectural, artistic and historic interest. However, its setting contributes to its significance in a lesser way. As a farmhouse, the immediate setting includes the complex of farm buildings, and this contributes to significance by giving context to its agricultural origins. Its wider setting includes the garden area and agricultural land either currently or historically associated with it which contribute to significance in a small way for the same reasons.
23. The garden area and immediate farm complex of the asset are the areas from where the architectural and historic interest can be best understood. The principal façade looks in a westerly direction and views back towards it are available from a PROW based to the west (PROW 535(c)). Areas from Dilmore Lane to the east afford partial views of the rear of the building beyond the farm complex and some of the wider surrounding associated agricultural land visible from the asset and co-visible with it afford similar views.
24. As a part of the wider historically associated agricultural land, the site is considered to make a minor contribution to the significance of the asset through its setting. Some views are also available from the site towards the rear of the asset within its farm complex.
25. The proposal would not disrupt the immediate setting of the asset but would erode the agricultural land that includes wider setting through the introduction of significant built development.
26. The indicative Parameter Plan<sup>3</sup> shows that the majority of the built form within the scheme could be set back from the western edge of the site, which is closest to the asset. This would still require an engineered access point being provided from Dilmore Lane, but the effects of such would at least be softened by vegetation after establishment, including an orchard planted to one side.

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<sup>3</sup> Reference 8924\_APP003A

Whilst the Parameter Plan is indicative in nature, a condition could require any eventual development to broadly accord with these established parameters and would help to mitigate the effects of the development.

27. As set out in the SoCG<sup>4</sup>, the main parties agreed that the effects of the proposal on the significance of the asset would conflict with Policies SWDP6 and SWDP24 of the Local Plan, but that considered under the terms of paragraph 208 of the National Planning Policy Framework (2023) (the Framework), such harm to significance would be of a less than substantial magnitude, and at the lower level of such a scale. The main parties also agreed that the public benefits of the scheme, principally from the contribution of c. 130 mixed market and affordable houses, would be sufficient to outweigh the identified low level of less than substantial harm to significance.
28. My view is that there would be a degree of harm to the setting of the asset, which would partly erode its significance and bring the scheme into conflict with Policy SWDP6 of the Local Plan which seeks for development to conserve and enhance heritage assets. However, Policy SWDP6 is subject to the application of Policy SWDP24 which states that the assessment of proposals affecting heritage assets should be undertaken in accordance with the Framework.
29. I have also independently reached the view that the scale of harm would be of a less than substantial nature when considered under the terms of the Framework, and of a low-to moderate end of such a scale. Given that the scheme would deliver in the order of 130 dwellings, it is my professional judgement that the public benefits are capable of outweighing the less than substantial harm to the significance of this particular heritage asset. Thus, the application of the development plan and Framework indicate that permission should be granted despite the less than substantial harm to the significance of the asset. I return to this in the planning balance below.

### **Other Matters**

30. As the Council are progressing the SWDPR and it has reached Regulation 19 Stage, paragraph 226 of the Framework is relevant. The Council is required to demonstrate a housing land supply equivalent to four years' worth. However, the parties agreed in the SoCG that the Council can only demonstrate a 2.78 year supply<sup>5</sup>. The Council is in this position despite achieving 145% delivery against the Housing Delivery Test (published 2023)<sup>6</sup> and over-delivering against the Local Plan housing target, albeit that that target became out of date when the Plan reached five years old.
31. A consultation on a potential revision to the Framework concluded recently. The main parties agree that if a new Framework included the consultation revisions that the housing requirement for the Plan area would materially increase. However, both parties were mindful that the Council is progressing the SWDPR based on a housing target that exceeds the objectively assessed needs for the plan period and that the changes to the Framework and implications for the SWDPR are uncertain in any event. I attribute limited weight to the consultation version of the Framework as a direction of travel and consider that

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<sup>4</sup> CD46

<sup>5</sup> CD45

<sup>6</sup> CD61

the current Framework serves as the most relevant tool for decision making at the present time.

32. I note that the site formed a part of a larger site considered for a housing allocation under the SWDPR which was discounted<sup>7</sup>. The SWDPR has received a number of objections, including based on the omission of the appeal site. However, whilst the SWDPR may be being positively prepared, it is not my role to determine its suitability. My focus is on the merits of the appeal case before me, which, due to its scale, would not undermine or result in prematurity implications for the emerging plan in any event.
33. A number of concerns were raised by local residents, a number of which are addressed in the main issues above.
34. The comments concerning the housing mix, impacts on views and privacy are matters that can be addressed at reserved matters stage. The loss of habitats and wildlife are not matters that are supported by the evidence<sup>8</sup> which suggests that there would be more than a 10% net gain in biodiversity terms if the development were to go ahead. This is a benefit of the scheme given that it was submitted before the mandatory requirement for such took effect.
35. In terms of the assertions of the site being prone to flooding, the scheme is supported by the necessary Flood Risk Assessment, Drainage Strategy & Water Management Statement<sup>9</sup> which indicates that an acceptable drainage scheme can be devised for any future scheme without putting occupants at risk of flooding or exacerbating flooding elsewhere.
36. The concern that there would be insufficient capacity in local schools, refuse collections and other infrastructure providers could be addressed through contributions sought by the relevant authorities via planning obligation.
37. Another concern raised about disruption from construction activities could be allayed, in part, by the use of conditions to restrict construction working hours and to secure details that limit the impacts on neighbouring occupiers. In any event, construction activities would be for a temporary duration.
38. Some of the key concerns raised relate to the suitability of the site and surrounding highway network to accommodate the vehicle, cycle and pedestrian movements that would be created by the development. The appeal application was submitted with a Transport Assessment and Residential Travel Plan<sup>10</sup>. I have noted the proposed access arrangement, the varying road widths along Dilmore Lane and the way in which it serves the Suffolk Way development. I note that the continuous footway along Dilmore Lane from the Suffolk Way scheme is incomplete but understand that its completion is an outstanding obligation under the Suffolk Way scheme. I have also noted the absence of an objection on grounds of either highway safety or capacity from the Highway Authority and, taking all matters into account, do not find a reason to reach an alternative conclusion.
39. Furthermore, I have noted the availability of public transport in the vicinity of the site and the proposed provision of covered cycle storage adjacent to the

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<sup>7</sup> CD64

<sup>8</sup> CD26

<sup>9</sup> CD27

<sup>10</sup> CD22

Droitwich Road A38 bus stops to facilitate multi-modal trips. I also note the contribution secured through the planning obligation that would be paid to enhance the local bus service. Taking these together with pedestrian crossing enhancements and the connectivity of the site to the wider surroundings, I am of the view that future residents would have genuine options on a range of travel modes to access facilities and employment opportunities in the wider area.

### **Planning Obligation**

40. The S106 planning obligation provides for the following:

- 40% affordable housing with a split between 69% social rent, 25% First Homes and 6% shared ownership and eligibility clauses relating to the same. Affordable housing is a requirement of Local Plan Policy SWDP15;
- A contribution from any market homes based on bedroom sizes towards formal sports provision under Policy SWDP39 of the Local Plan;
- A fixed contribution per dwelling of £756 towards built leisure facilities, also under the requirements of Local Plan Policy SWDP39;
- The provision of on-site public open space (POS), including a play area, as required by Local Plan Policy SWDP39;
- A primary school contribution to be used for the provision of additional education facilities at Claines CE Primary School based on the number of additional school places needed, as required under Local Plan Policy SWDP7;
- A secondary school contribution to be used for the provision of additional education facilities at Tudor Grange Academy Secondary School, as required under Policy SWDP7;
- A Special Educational Needs and Disabilities (SEND) contribution to fund additional provision for children with SEND, either within existing mainstream or specialist schools, or in the creation of a new school, as required under Local Plan Policy SWDP7;
- A primary healthcare contribution towards new and additional premises or infrastructure, extension to existing premises, and / or improved digital infrastructure and telehealth facilities within Worcester City Primary Care Network and Droitwich Ombersley and The Rurals Primary Care Network, as required under Local Plan Policy SWDP7;
- Bus service enhancement contribution towards bus service enhancements to improve access to facilities and services to the site as required under Local Plan Policy SWDP4;
- A community transport contribution towards the provision of transport services for elderly and disabled residents where no suitable bus service exists otherwise, also required under Local Plan Policy SWDP4;
- A footway improvements contribution towards the provision of dropped kerbs and tactile paving at the junctions of Firlands Close /Station Road, Rosendale Close/Station Road, Shrawley Close/Station Road and Station Road/Droitwich Road;

- A Traffic Regulation Order contribution towards the processing of an Order to amend the speed limit on Dilmore Lane, extending the 30mph restriction and relocating the national speed limit sign; and
  - 5% of the total number of dwellings to be provided as Self and Custom Build Plots and eligibility clauses relating to the same. These provisions, whilst required under the Council's statutory duties<sup>11</sup> to meet the identified need of 121 units<sup>12</sup>, also align with the emerging requirements under the SWDPR.
41. In addition to the above, the S106 provides for monitoring fees to be paid specifically to the County Council to allow for the monitoring and enforcement, if necessary, of obligations relating to the education and highway related contributions. The amount required for the monitoring fees by the respective services, of £690 and £4,660, appear proportionate in scale to the development.
42. Regulation 122 of the Community Infrastructure Levy Regulations (2010), as amended (CIL Regulations and the Framework (paragraph 57) set out that planning obligations must only be sought where they meet the relevant tests, including where they are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the same.
43. The Council has provided a CIL Regulation Compliance Statement, as has both Herefordshire and Worcestershire Integrated Care Board and Worcestershire County Council. These Statements provide the rationale behind each obligation, the justification for any specified contribution or calculation formula and the purpose to which any contribution would be put. I am satisfied based on the Statements, the agreements between the main parties and the way in which the S106 fully records these aspects, that each of the obligations is necessary, directly related, and fairly and reasonably related in scale and kind to the development. As such, I am able to take the S106 into account in reaching my decision.

### **Planning Balance**

44. For reasons relating to its conflict with the spatial strategy, harm to the character and appearance of the area and loss of BMV agricultural land, the proposal conflicts with the development plan. Despite the absence of a policy conflict, the harm to the significance of a designated heritage asset also weighs against the proposal.
45. The parties agree that, in light of the 2.78 year supply of housing, the presumption in favour of sustainable development, or the 'tilted balance' as set out in paragraph 11 d) of the Framework, is engaged. As the public benefits of the scheme outweigh the less than substantial harm to the significance of Tappenhill Farmhouse as a designated heritage asset, there are no policies that protect assets or areas of importance that disengage the tilted balance.
46. The public benefits include the delivery of c. 130 dwellings in the context of a shortfall that exceeds 1,000 dwellings at the present time. The total number of dwellings would include market dwellings and much-needed affordable

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<sup>11</sup> Under the Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016)

<sup>12</sup> CD53 – Wychavon District Self Build and Custom Build Housebuilding Register Progress Report – Apr 2024

dwellings. There is also an identified need for self- and custom build housing plots. Therefore, the delivery of a mixed housing scheme of the scale proposed and in a sustainable location would be a public benefit which attracts substantial weight.

47. There would be economic benefits throughout the construction phase and longer term through dependence by additional residents on local facilities and services. The former would be time limited in nature. I attach moderate weight to these benefits. I also attach limited weight to the delivery of biodiversity net gain of the scale envisaged as this is to an extent dependant on the precise detail of any future reserved matters scheme/s.
48. Collectively these benefits attract substantial weight in favour of the scheme. My view is that the identified harms do not significantly and demonstrably outweigh the public benefits of the scheme.
49. Local Plan Policy SWDP1 and NCNP Policy NCH1A apply when the Council is unable to demonstrate a five year housing land supply and both incorporate either the wording of paragraph 11 d) of the Framework or a similar balancing exercise. On the basis that there is an identified housing land supply deficit now, these policies support the granting of permission when the development plan is taken as a whole. However, even if there were a conflict with the development plan when read as a whole, the outcome of the tilted balancing exercise would form an overriding consideration, sufficient to indicate that planning permission should be granted in any event.

### **Planning Conditions**

50. I have considered the list of planning conditions agreed between the main parties in the context of the Framework's requirements for conditions to be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
51. As the proposal is in outline form, conditions are required to specify what the reserved matters are and the time limit for seeking their approval. Similarly, a condition is necessary to specify the time limit for commencement of the development.
52. In the interests of certainty, conditions are needed to specify the maximum permissible number of dwellings, specify the approved plans and seek details of a phasing plan and slab levels as part of the future reserved matters application/s. For similar reasons, details are required in relation to the final housing mix as part of the reserved matters applications and to ensure that the reserved matters application/s come forward in line with the submitted Parameter Plan. This will ensure that the final scheme/s come forward with a minimum amount of 40% green infrastructure and broadly in the form devised collaboratively with the Council to promote integration with the surrounding built context and minimise the effects on the Tappenhill Farmhouse.
53. In the interests of the character and appearance of the area, conditions are necessary in relation to the landscaping details sought as part of the reserved matters application. For similar reasons, conditions are necessary to secure and require the implementation of a landscape and ecological management plan and tree protection measures.

54. To protect the living conditions of neighbouring occupiers during the construction stage, conditions are necessary to specify construction working hours.
55. In the interests of the environmental effects of the proposal, a condition is necessary to secure details of the energy efficiency and renewable energy measures proposed as part of the reserved matters scheme. For similar environmental reasons, conditions are required in relation to the construction phase drainage scheme, final surface water drainage scheme and foul water drainage scheme. For related reasons but also in the interests of human health, a condition is necessary to secure ground contamination investigation and remedial works if necessary.
56. In the interests of the protection of biodiversity, a construction phase ecological management plan is required by way of condition. For similar reasons, a lighting strategy and a separate street lighting assessment are necessary to secure by conditions.
57. In relation to highway safety, a condition is required to specify the nature of the access works as this is the detailed aspect of the scheme. Conditions are also necessary to secure the provision of visibility splays and for them to be maintained as free of obstruction.
58. In order to promote sustainable travel, conditions are required to seek the provision of cycle parking, a travel plan and necessary highway and footway improvements. For similar highway reasons, a condition is required to seek details of construction phase highway measures to minimise the effects on other road users.
59. To ensure that any archaeological features of interest are recorded, a condition is necessary to secure archaeological investigative work and means of recording if relevant.

### **Conclusion**

60. For the foregoing reasons, the appeal is allowed.

*H Nicholls*

INSPECTOR

**APPEARANCES**

<b>For the Appellant:</b>	
Satnam Choongh, Counsel	Instructed by instructed by Lioncourt Strategic Land
Paul Lishman MLPM MSc CMLI	Director, LDA Design - Landscape
Mike Glaze LLB (Hons) Eng Tech FIHE	Director, Cotswolds Transport Planning
Jason Tait BA (Hons) Dip TP, MRTPI	Director, Planning Prospects Ltd
Vicky Bilton MRTPI	Senior Strategic Land Manager, Lioncourt Strategic Land
<b>For the Council:</b>	
Sioned Davies, Counsel	Instructed by Wychavon District Council
John-Paul Friend HND (LGD) BA Hons Dip LA CMLI	Director, LVA Ltd
Paul Instone BSc (Hons) DipTP MRTPI	Director, Applied Town Planning Ltd
Rosalind Andrews	Solicitor, HCR Legal
<b>Interested parties:</b>	
Councillor Daniel Birch	Ward Member for North Claines & Salwarpe
Miss Rachel Lister	Local resident
Mr Malcolm Sykes	Local resident

**INQUIRY DOCUMENTS:**

ID1	Basingstoke and Deane BC v SoSLUHC and Bewley [2024] EWHC 1916 (Admin)
ID2	Appellant opening statement
ID3	Council opening statement
ID4	Proposed vegetation loss, retention and creation plan
ID5	CIL Compliance Statement – Worcestershire County Council
ID6	Updated suggested planning conditions
ID7	Tewkesbury BC v SoSHCLG [2021] EWHC 2782 (Admin)
ID8	Council closing submissions
ID9	Phides Estates (Overseas Ltd) v SoSCLG and Others [2015] EWHC 827 (Admin)
ID10	Appellant closing submissions

**DOCUMENTS SUBMITTED AFTER THE INQUIRY:**

ID11	Completed S106 Planning Obligation
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## **SCHEDULE OF CONDITIONS**

1. An application for the approval of all reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
2. Approval of the details of the appearance, landscaping, layout and scale (hereinafter called 'the reserved matters') shall be obtained from the Local Planning Authority in writing before any development is commenced. The development shall be carried out in accordance with approved reserved matter details.
3. The development hereby permitted shall provide no more than 130 dwellings.
4. The first Reserved Matters submitted pursuant to Conditions 1 and 2 shall include a Phasing Plan for the development which shall set out the details of the Phased delivery of the development including the proposed Self Build serviced plots for the written approval of the Local Planning Authority. Thereafter the development shall be undertaken in accordance with the approved Phasing Plan.
5. Unless where required or allowed by other conditions attached to this permission/consent, the development hereby approved shall be carried out in accordance with the information provided on the application form and the following plans/drawings/documents:
  - Site location – 8924\_APP001
  - Proposed Junction Arrangements - Site Access - 230133-RAP-XX-XX-DR-TP- 3202/P1
6. The first Reserved Matters application submitted pursuant to Condition 1 shall include the submission of a Market Housing Mix Statement to the Local Planning Authority for its written approval setting out how an appropriate mix of dwelling sizes will be provided in order to contribute to a mixed and balanced community. The mix will be informed by the latest Strategic Housing Market Assessment, or other local data available for the area at the time of the submission of the relevant reserved matters. The development shall be implemented in accordance with the approved Housing Mix Statement.
7. The Reserved Matters to be submitted pursuant to Conditions 1 and 2 shall generally accord with the parameters for the development as set out on Parameter Plan Drawing Reference 8924\_APP003A and shall include no less than 40% of the site as Green Infrastructure.
8. Details of the levels of the existing site and the precise floor slab levels of the approved dwelling(s), relative to the existing development on the boundary of the site, shall be submitted for approval as part of the reserved matters. Thereafter, the development shall be undertaken in accordance with the approved levels.
9. Details of screen walls, fences, surface treatments to drives, cycle and footways and implementation timetable shall be submitted for approval as

part of the landscaping reserved matters for the written approval of the Local Planning Authority. Thereafter, the development shall be undertaken in accordance with the approved details.

10. Clearance or construction work and deliveries to and from the site in connection with the development hereby approved shall only take place between the hours of 08:00 and 18.00 hrs Monday to Friday and 08.00 and 13.00 hrs on a Saturday. There shall be no clearance or construction work or deliveries to and from the site on Sundays or Bank Holidays.

11. Before the commencement of development hereby permitted, details of renewable and/or low carbon energy generation measures shall be submitted to and approved in writing by the Local Planning Authority. The measures shall contribute to at least 10% of the predicted energy requirements of the development. The details to be submitted shall include:

- the overall predicted energy requirements of the approved development;
- the predicted energy generation from the proposed renewable/low carbon energy measures; and
- an implementation timetable for the proposed measures.

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

12. The following details shall be submitted for approval as part of the landscaping reserved matters application(s):

- a) a plan(s) showing the planting layout of proposed tree, hedge, shrub and grass areas;
- b) a schedule of proposed planting – indicating species, size at time of planting and
- c) numbers/densities of plants;
- d) a written specification outlining cultivation and others operations associated with plant and grass establishment;
- e) a schedule of maintenance, including watering and the control of competitive weed growth, for a minimum period of five years from first planting.

The landscaping shall be provided and maintained in accordance with the approved details.

13. No development shall take place (including any ground works, demolition or site clearance) until a construction environmental management plan (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The CEMP (Biodiversity) shall be based on appropriate up-to-date surveys, and include the following:

- a) Risk assessment of potentially damaging construction activities;
- b) Identification of "biodiversity protection zones";
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);

- d) Detailed reptile mitigation strategy;
- e) The location and timing of sensitive works to avoid harm to biodiversity features;
- f) The times during construction when specialist ecologists need to be present on site to oversee works;
- g) Responsible persons and lines of communication;
- h) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
- i) Use of protective fences, exclusion barriers and warning signs.

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

14. Prior to the commencement of development hereby approved a Landscape and Ecological Management Plan (LEMP) shall be submitted to and agreed in writing by the Local Planning Authority. The content of the LEMP shall be based on the approved Landscape Scheme and shall be guided by the requirement to achieve Biodiversity Net Gain and maintain this after implementation, and shall include the following:

- a) Details (type and location) of wildlife boxes and hibernacula;
- b) Description and evaluation of the features to be managed;
- c) Ecological trends and constraints on site that might influence management;
- d) Aims and objectives of management;
- e) Appropriate management options for achieving aims and objectives;
- f) Prescriptions for management actions;
- g) Preparation of a work schedule, including an annual work plan capable of being rolled forward over a five-year period and for a minimum of 30 years thereafter;
- h) Details of the body or organisation responsible for implementation of the plan;
- i) On-going monitoring and remedial measures.

The plan shall also set out where the results of the monitoring show that conservation aims and objectives of the LEMP are not being met, how contingencies and/or remedial action identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The LEMP will be implemented in accordance with the approved details.

15. A "lighting design strategy for biodiversity" shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The strategy shall include the following:

- a) Identification of dark corridors and areas/features on site that are particularly sensitive for bats and that are likely to cause disturbance in or

around their breeding sites and resting places, or along important routes used to access key areas of their territory, for example, for foraging; and

- b) Show how and where external lighting will be installed (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 bats using their territory or having access to their breeding sites and resting places.

All external lighting (other than domestic on plot lighting) shall be installed in accordance with the specifications and locations set out in the strategy, and these shall be maintained thereafter in accordance with the strategy. Under no circumstances should any other external lighting be installed without prior consent from the Local Planning Authority.

16. Temporary fencing for the protection of all retained trees/hedges on site and trees outside the site whose Root Protection Areas fall within the site shall be erected in accordance with BS 5837:2012 (Trees in Relation to Design, Demolition and Construction) before development of any type commences, including site clearance, demolition, materials delivery, vehicular movement and erection of site huts.

Any alternative fencing type or position not strictly in accordance with BS 5837 (2012) must be agreed in writing by the Local Planning Authority prior to the commencement of development.

This protective fencing shall remain in place until the completion of development or unless otherwise agreed in writing with the Local Planning Authority. Nothing should be stored or placed (including soil), nor shall any ground levels altered within the fenced area without the previous written consent of the Local Planning Authority. There shall be no burning of any material within 10 metres of the extent of the canopy of any retained tree/hedge.

17. No works in connection with site drainage shall commence until a scheme for a surface water drainage strategy for the proposed development has been submitted to and approved in writing by the Local Planning Authority. The strategy shall include details of surface water drainage measures, including for hardstanding areas, and shall conform with the non-statutory technical standards for SuDS (Defra 2015) and the Flood Risk Assessment, Drainage Strategy & Water Management Statement (23-0133 revision 3). The scheme shall provide detailed design drawings for all drainage assets and should include run off treatment proposals for surface water drainage. Exceedance flows should not be directed to property or private land. Where the scheme includes communal surface water drainage assets, proposals for dealing with the future maintenance of these assets should be included. The scheme should include proposals for informing future homeowners or occupiers of the arrangements for maintenance of communal surface water drainage assets. The approved surface water drainage scheme shall be implemented prior to the first use of the development and thereafter maintained in accordance with the agreed scheme.
18. No works or development shall take place until a construction surface water management plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall include how surface water will be managed

during the construction phase, including site clearance and soil stripping. The plan shall include drawings of any temporary drainage systems, a timeline of construction and measures to mitigate the risk of pollution (including silt) of the water environment and offsite flood risk. The plan shall detail how the approved permanent surface water drainage system shall be remediated during the construction phase. The approved construction surface water management plan shall be implemented as soon as works start on site thereafter maintained during the full duration of the construction phase.

19. Prior to the commencement of the development, full details of a scheme for the provision of foul drainage for the site shall be submitted to and approved in writing by the Local Planning Authority. These details shall:

- Include the design of all on and off-site foul sewerage infrastructure, the diameters of proposed pipes and the capacity of any on or off-site storage;
- Include a timetable and programme for the provision of the foul sewerage infrastructure; and
- Demonstrate that, where connection to a public sewer is proposed, the additional foul sewerage discharge can be accommodated within the public sewer system without increasing the risk of flooding or backing up of the existing system on the site or elsewhere. The development shall be carried out in accordance with the approved details and the approved timetable and programme.

20. Other than that required to be carried out as part of an approved scheme of remediation, the development hereby approved must not commence until conditions 1 to 5 have been complied with:

1. As proposed by Georisk Management report no:23011/1 (January 2023) a scheme for detailed site investigation must be submitted to and approved in writing by the Local Planning Authority prior to being undertaken. The scheme must be designed to assess the nature and extent of any contamination and must be led by the findings of the preliminary risk assessment. The investigation and risk assessment scheme must be compiled by competent persons and must be designed in accordance with the Environment Agency's "Land Contamination: Risk Management" guidance.
2. Detailed site investigation and risk assessment must be undertaken and a written report of the findings produced. This report must be approved by the Local Planning Authority prior to any development taking place. The investigation and risk assessment must be undertaken by competent persons and must be conducted in accordance with the Environment Agency's "Land Contamination: Risk Management" guidance.
3. Where identified as necessary a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to identified receptors must be prepared and is subject to the approval of the Local Planning Authority in advance of undertaking. The remediation scheme must ensure that the site will not qualify as Contaminated Land under Part 2A Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
4. The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development, other than that

- required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority.
5. Following the completion of the measures identified in the approved remediation scheme a validation report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval of the Local Planning Authority prior to the occupation of any buildings.
  6. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where necessary a remediation scheme must be prepared, these will be subject to the approval of the Local Planning Authority. Following the completion of any measures identified in the approved remediation scheme a validation report must be prepared, which is subject to the approval in writing of the Local Planning Authority prior to the occupation of any buildings.
21. No dwelling hereby approved shall be occupied until the vehicular access has been provided as shown on the Rappor Drawing No. 230133-RAP-XX-XX- DR-TP-3202/P01.
  22. Development shall not begin until visibility splays are provided from a vertical point 1.05m above carriageway level at the centre of the application main site access and 2.4m back from the near side edge of the adjoining carriageway, (measured perpendicularly), for 89.4m northwards and 90.5m southwards, respectively, measured along the nearside edge of the adjoining carriageway (vertical off set of 0.6m). Nothing shall be planted, erected and/or allowed to grow on the triangular areas of land so formed which would obstruct the visibility described above.
  23. The development hereby approved shall not be brought into use until sheltered and secure cycle parking to comply with the Council's adopted cycle parking standards have been submitted to and approved in writing by the Local Planning Authority. Cycle parking shall be provided prior to first occupation of each dwelling and thereafter the approved cycle parking shall be kept available for the parking of bicycles only.
  24. The development hereby approved shall not be occupied until a Travel Plan has been submitted in accordance with the County Council guidelines that promotes sustainable forms of access to the development site and has been approved in writing by the Local Planning Authority. This plan will thereafter be implemented, monitored for a minimum of 5 years and shall be updated in agreement with Worcestershire County Council's Travel Plan Officer and thereafter implemented as updated.
  25. The development hereby approved shall not be occupied until a residential Travel Welcome Pack promoting sustainable forms of access to the development has been submitted to and approved in writing by the Local Planning Authority. The pack shall be provided to each resident at the point of occupation.
  26. The dwellings hereby approved shall not be occupied until the following highway improvements works have been completed to the satisfaction of the Local Planning Authority and approved in writing and open to traffic:

- A new 3.5m footway/cycleway 'active travel corridor' on east side of Dilmore Lane from the new site access southwards to Suffolk Way.
- Relocation of existing 30mph speed limit with agreed associated road markings on Dilmore Lane.
- Extension of existing street lighting On Dilmore Lane.
- New village gateway feature (details to be agreed) on Dilmore Lane verge.
- New cycling parking with associated hardstanding at westbound bus stop on A38 Droitwich Road, located west of Dilmore Lane.

27. The development hereby approved shall not commence until a Street Lighting Assessment report has been submitted to and approved in writing by the Local Planning Authority. The Assessment shall consider the following:

- The need or not for additional public highway street lighting in the vicinity of the new vehicular access.
- The linking of any new public highway street lighting with adjacent lighting.
- Condition of existing adjacent public highway street lighting and any need for upgrading or replacement.
- Any proposed development lighting within the site and its justification.
- The environmental impact of any proposed street lighting, be it on the public highway or within private land.
- A timescale for implementation if street lighting is proposed.

The development shall be implemented in accordance with the approved Street Lighting Assessment.

28. 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:

- Measures to ensure that vehicles leaving the site do not deposit mud or other detritus on the public highway.
- Details of site operative parking areas, material storage areas and the location of site operatives' facilities (offices, toilets etc).
- The hours that delivery vehicles will be permitted to arrive and depart, and arrangements for unloading and manoeuvring.
- Details of any temporary construction accesses and their reinstatement.
- A highway condition survey, timescale for re-inspections, and details of any reinstatement.

The measures set out in the approved plan shall be carried out and complied with in full during the construction of the development hereby approved. Site operatives' parking, material storage and the positioning of operatives' facilities shall only take place on the site in locations approved by in writing by the Local Planning Authority.

29. (A) The reserved matters application shall not be determined until a programme of archaeological work, including a Written Scheme of

Investigation, has been submitted to and approved by the Local Planning Authority in writing. The scheme shall include an assessment of significance and research questions; and:

1. The programme and methodology of site investigation and recording.
2. The programme for post investigation assessment.
3. Provision to be made for analysis of the site investigation and recording.
4. Provision to be made for publication and dissemination of the analysis and records of the site investigation.
5. Provision to be made for archive deposition of the analysis and records of the site investigation.
6. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

(B) The development shall not be commenced until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition (A) and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

----- End of Schedule -----