

APPEAL BY

FORMULA LAND LIMITED ("THE APPELLANT")

AGAINST THE NON-DETERMINATION BY WYCHAVON DISTRICT
("THE COUNCIL") OF AN APPLICATION FOR OUTLINE PLANNING
PERMISSION FOR:

300 HOMES AND ASSOCIATED DEVELOPMENT AT ORCHARD FARM,
PERSHORE ("THE APPEAL SITE")

APPELLANT'S OPENING STATEMENT

1. Wychavon district is an area where the national housing crisis is being felt particularly acutely.
2. The ageing development plan, the South Worcestershire Development Plan ("SWDP"), the evidence base for which is well over a decade old, has long been in the process of renewal, but due to significant and potentially show-stopping issues relating to infrastructure, its replacement has stalled at examination. The future timescale for a new up-to-date SWDP is, at best, uncertain.
3. In the meantime, the planning system here is conspicuously failing the people whose needs it ought to be serving.
4. On the Council's own figures, the housing land supply ("HLS") currently stands at a woeful 2.78 years *at best* (the Appellant's view is that this is an overestimate). This makes Wychavon the third worst performing (in HLS terms) LPA across the entire West Midlands.
5. If the recently consulted-upon changes to the NPPF and standard method are adopted prior to your decision, which seems likely, the Council's HLS will drop to below 1.4 years - which must surely place it as one of the

worst-performing LPAs in terms of HLS *nationally* – and on a par with those Districts and Boroughs which (unlike Wychavon) have the Green Belt washed over them like nearby Bromsgrove and Solihull.

6. Urgent action to address this is absolutely necessary.
7. The Planning Statement of Common Ground rightly recognises (at para. 10.4) that this will inevitably involve the grant of permissions for unallocated developments on greenfield sites in advance of the adoption of a new, up-to-date, SWDP at some indeterminate point in the future.
8. It follows that an absolutist approach to SWDP Policy SWDP2 – which precludes significant residential development outside settlement boundaries – has to give way to a more pragmatic approach which allows appropriate greenfield developments to come forward even if they are outside the settlement boundary and unallocated.¹ The alternative is a moratorium which will just mean that the severe HLS shortfall gets worse and worse – to the detriment of the real people in need of market and affordable housing, whom the planning system should be urgently striving to serve, not to downplay.
9. The same applies to landscape and visual impacts. As the Landscape Statement of Common Ground rightly notes (at para. 3.1, 4th bullet), all greenfield developments will inevitably have some adverse landscape and visual impact, applying a GLVIA3-consistent methodology. An omelette can't be made without breaking eggs. The focus can't be on avoiding all adverse impacts, but steering development away from designated and valued landscapes, and focusing on sites where, with appropriate mitigation, the impacts are mainly localised.

¹ This is required both by para. 11 of the NPPF and by Policy SWDP1 which enshrines the presumption in favour of sustainable development into the SWDP itself (thus providing an internal tilted balance within the development plan in the event of a sub-5YHLS, which is capable of overriding conflict with other policies of the SWDP).

10. This is one such site. The Council's landscape objection is replete with hyperbole and observations that would be applicable to any number of greenfield sites that will have to come forward to turn around the crippling HLS shortfall in the District.
11. That leaves the most significant battleground in this appeal, namely ecology. The key dividing line in this respect appears to be the extreme stance of the Council and the Worcestershire Wildlife Trust ("WWT") that the alleged recreational/disturbance impacts of the proposed development on Tiddesley Wood SSSI cannot possibly be mitigated (irrespective of the nature of the proposed mitigation). The relationship in this case between the Council, as decision-maker, and WWT, as landowner and consultee, has been troublingly cosy – it speaks volumes that FOI requests to establish the extent of that relationship have been denied, and resulted in the Council quickly ditching its nascent plan to call WWT's Steve Bloomfield as its ecology witness.
12. The proper analysis, for the reasons given by Mr Forbes-Laird and Mr Baxter on behalf of the Appellant, is that the proposed development would not have an adverse impact – and certainly not one that is incapable of mitigation – on the SSSI, bearing in mind in particular the separation between the proposed housing and the wood, the significant buffers between them (extending to 80-165m) and Green Infrastructure enhancements that would be delivered in those locations, and also having regard to the surviving features for which the SSSI is designated (marsh warbler and nightingale now being locally extinct) and the scope for enhanced visitor access management of the wood which would mitigate current and future potential disturbance pressures on it e.g. from footfall, and secure its future through long term funding.

13. For these outline reasons, as well as the fuller reasons in the Appellant's proofs of evidence and rebuttals, and as shall be elaborated during the inquiry, the appeal scheme should be allowed. There are no NPPF para. 11(d)(i) "clear reasons" for refusing permission, and the tilted balance under both NPPF para. 11(d)(ii) and SWDP Policy SWDP1 are overwhelmingly in favour of allowing this much needed development to proceed.

CHARLES BANNER K.C.

**Keating Chambers
15 Essex Street
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5th November 2024