

**Appeal by Formula Land Ltd**

**Location: Orchard Farm, Defford Road, Pershore**

**Proposal: Planning application for the demolition of existing farmhouse, agricultural buildings and structures, the erection of a phased development of up to 300 residential dwellings (Use Class C3) and associated public open space, drainage, infrastructure and engineering works with all matters reserved except access.**

**PINS Ref: APP/H1840/W/24/3347643**

**LPA ref: W/23/02112/OUT**

## **Statement of Case**

**Town and Country Planning Act 1990 (as amended) Section 78 Appeal**

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## 1.0 Introduction

- 1.1 This is an appeal against the non-determination of application W/23/02112/OUT, an outline application for the demolition of existing farmhouse, agricultural buildings and structures, the erection of a phased development of up to 300 residential dwellings (Use Class C3) and associated public open space, drainage, infrastructure and engineering works with all matters reserved except access.

## 2.0 Site description and details of proposal

- 2.1 The appeal description is:

*the demolition of existing farmhouse, agricultural buildings and structures, the erection of a phased development of up to 300 residential dwellings (Use Class C3) and associated public open space, drainage, infrastructure and engineering works with all matters reserved except access.*

- 2.2 The appeal site comprises 25.3 ha of predominantly agricultural land of grazing pasture field enclosures which are bounded by mature hedgerows and trees. An Agricultural Land Classification Report is submitted as part of the application and identifies that the site is under permanent pasture. The Report concludes that the land is Grade 3b by slope and interactive limitation of soil wetness and is therefore not classed as best and most versatile agricultural land. The site lies between the south west of Pershore and Tiddesley Wood to the west, which is designated as a Site of Special Scientific Interest (SSSI) and area of Ancient Semi-Natural Woodland (ASNW). The south-west part of the site lies adjacent to the Tiddesley Wood Local Wildlife Site and the designated SSSI. Defford Road forms the south boundary of the site and to the north is undeveloped land with the SSSI partly wrapping around the northern boundary.

- 2.3 A bridleway (forming part of the promoted leisure walking route, Millennium Way) runs in an east- west alignment through the site connecting to Tiddesley Wood and a Public Rights of Way, which goes to the north through the middle of the site from the bridleway. A Grade II listed building, 'Woodmans Cottage' lies along the bridleway and adjoins the site along its eastern boundary. A further Grade II listed

building in the vicinity of the site is the Pershore Cemetery Chapel.

#### Surrounding area

- 2.4 To the east of the site, there is existing residential development, which has been constructed over the last decade. Beyond part of this recent development to the east, is a cemetery and a chapel, a Grade II listed building.
- 2.5 To the south on the opposite side of Defford Road, is the River Avon and associated Local Wildlife Site. A Public Right of Way runs along the river (known as Millenium Way) and there are connecting PROWs from this to Defford Road towards the application site.

### **3.0 Refusal reasons**

3.1 WDC puts forward the following putative reasons for this appeal.

#### 3.2 Refusal Reason 1

*The site is not allocated for housing in the South Worcestershire Development Plan (SWDP) and falls wholly outside the Development Boundary for Pershore and is therefore considered to be in the open countryside. Policy SWDP2 seeks to strictly control development within the open countryside and the provision of dwellings in this location is therefore contrary to the locational strategy of the development plan. Furthermore, the proposal does not meet any of the exceptions as set out in Policy SWDP2 C. The scheme fails to represent an acceptable form of development as allowed under policy SWDP2, insofar as it: - represents development in defined open countryside that is not promoted by the SWDP;- fails to safeguard or enhance the open countryside; and does not encourage the reuse of brownfield land.*

*Whilst it is accepted that the Council cannot demonstrate a four- or five-year housing land supply, the site directly adjoins Tiddesley Wood, an irreplaceable habitat, which is a designated Site of Special Scientific Interest (SSSI) and an Ancient Semi-Natural Woodland, both assets of*

*particular importance in respect of Paragraph 11d (i) of the NPPF. Footnote 7 of Paragraph 11 d i does apply and the development would adversely affect and fail to protect the adjoining SSSI and ASNW and with the tilted balance not being engaged, provides a clear reasons for refusal.*

### 3.3 Refusal reason 2

*The application site directly adjoins Tiddesley Wood, a designated Site of Special Scientific Interest (SSSI) and Ancient Semi-Natural Woodland (ASNW) and the development would result in the built developed edge of Pershore being significantly closer to Tiddesley Wood. Further, the development would facilitate increased access to the wood from the rest of Pershore due to enhancements to the Public Rights of Way (PROW) network and easier parking, which could not be controlled. Consequently, the development would result in adverse impacts upon the SSSI and ASNW from future residents of the development, from further visitors to Tiddesley Wood which would be enabled by the proposal, along with their associated domestic pets, would result in incremental harm over time to the SSSI / ASNW and fail to accommodate effective dark corridors for light averse bat species. Further, the buffer zone and buffer planting would be inadequate in preventing visitors and residents, along with associated domestic pets accessing Tiddesley Wood, resulting in increased pressure and harm to the ASNW and SSSI habitats and wildlife.*

*Taken together these harms would lead to deterioration and loss within the ASNW and SSSI on a long term and permanent basis, contrary to policy and legislation.*

*The development would therefore be contrary to Policy SWDP 22 of the South Worcestershire Development Plan, and the NPPF, in particular, Paragraphs 180 and 186 along with 11 d i which provides a clear reason for refusal.*

### 3.4 Refusal reason 3

*The proposal would adversely impact on this landscape character type due to the introduction of built form into an identified wooded agricultural landscape, affecting the setting of the significant landscape feature of Tiddesley Wood (an SSSI and semi-ancient natural woodland). Further, the proposal would result in adverse impacts on local and wider views due to the site consisting of rising ground and would visibly and unacceptably expand Pershore away from its urban core into the open countryside. The development would result in a significantly adverse impact upon the landscape character of the area, fail to take into account the County Landscape Character Assessment, would not be appropriate nor integrate with the character of the landscape setting and therefore would be contrary to Policies SWDP 21 and SWDP 25 and the NPPF, in particular paragraph 180.*

### 3.5 Refusal reason 4

*The proposal fails to demonstrate that the development proposals offer a genuine choice of sustainable transport modes, would result in a severe congestion and unacceptable highway safety impact on the surrounding local highway network, particularly at the junction of the A4104 Three Springs Road and B4084 Worcester Road, or that the proposals would be served by safe and suitable access for all users, contrary to Policies SWDP 4 and SWDP 21 of the South Worcestershire Development Plan and paragraphs 114 and 115 of the NPPF*

### 3.6 Refusal reason 5.

*In the absence of a S106 legal agreement to secure financial contributions for public open space, mitigation package for the SSSI, formal sport and leisure, NHS CCG contributions, transport infrastructure, and affordable housing, the proposal would be contrary to Policies SWDP 7, SWDP 15 and Policy SWDP 39 of the South Worcestershire Development Plan and Paragraphs 65, 92 and 93 of the NPPF.*

3.7 The Council has considered the benefits of the proposed development and

afforded weight to these under the relevant Development Plan policies. However, in the final planning balance, the Council's assessment is that the provision of 300 dwellings including affordable dwellings and associated social and economic benefits, would not attract such weight to outweigh the conflict with strategic planning policy, harm to the character of the area, adverse impact upon the SSSI and ASNW and in regard to highway safety and impacts upon the local road network. Further, the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for dismissing the appeal in this case.

- 3.8 This Statement of Case sets out matters which the Council will rely on in advancing its case through the evidence to be presented by witnesses. A Landscape witness will identify the landscape harms in regard to the landscape character type, setting of the Tiddesley Wood, an SSSI and ASNW, and local and wider views. Ecology witnesses will identify harms from the recreational and urbanising impacts upon Tiddesley Wood along with resulting harm to the SSSI and ASNW habitats and wildlife. A Highways witness will identify the highway impacts upon the local highway network. A Planning witness will address the weight given to the benefits, deal with other material planning considerations and set out the reasons for the Council's assessment of the final planning balance.

#### SWDP 2 and Footnote 7 of Paragraph 11 d i of the NPPF

- 3.9 The appeal site lies outside of the development boundary of Pershore, which is located approximately 540 m from the development boundary along the northeast side of Defford Road. The nearest part of the appeal site to the north-east to the development boundary of Pershore is approximately 100 m away and at the junction of Defford Road with the B4536, is approximately 340 m away. WDC maintains that the appeal site is located in the open countryside. Policy SWDP2C seeks to strictly control development within the open countryside and the provision of dwellings in this location is therefore contrary to the locational strategy of the development plan. Furthermore, the proposal does not meet any of the exceptions as set out in Policy SWDP2 C.
- 3.10 WDC will refer to Policy SWDP 2, which sets out the development strategy for South Worcestershire and the principles upon which it is based. One of these

principles is to “safeguard and (wherever possible) enhance the open countryside.”

- 3.11 A further principle of Policy SWDP 2 is to “encourage the effective use and re-use of accessible, available and environmentally acceptable brownfield land.”
- 3.12 WDC accepts that at this time, it cannot demonstrate a five year or four year supply of deliverable housing land and that the Council’s policies for the provision of housing should not be considered up-to-date in accordance with footnote 7 of the NPPF and in accordance with Paragraph 11d of the NPPF the presumption in favour of sustainable development (the ‘tilted balance’) applies. However, the Council points to Paragraph 11di of the NPPF, which identifies that the application of policies in the Framework that protect assets of particular importance can provide a clear reason for refusing the development. The appeal site directly adjoins Tiddesley Wood, an irreplaceable habitat, which is a designated Site of Special Scientific Interest (SSSI) and an Ancient Semi-Natural Woodland, both assets of particular importance in respect of Paragraph 11d (i) of the NPPF. *Ecology, SSSI and Semi-Natural Ancient Woodland*
- 3.13 Reference will be made to Section 40(2A) of the Natural Environment and Rural Communities Act, 2006 (as amended), Section 28G of the Wildlife and Countryside Act 1981 (as amended) and the Environment Act, 2021.
- 3.14 WDC will refer to Policy SWDP 22 which seeks to conserve biodiversity and refers specifically to development impacts upon Sites of Special Scientific Interest (SSSI) and which result in the loss or deterioration of Ancient Woodlands.
- 3.15 WDC will also rely on the relevant paragraphs of the NPPF, in particular, Paragraph 11 d) i) which references areas or assets of particular importance, Paragraph 180, which refers to sites of biodiversity or geological value and minimising impacts on and providing net gains for biodiversity, and Paragraph 186 which references impacts within or outside a SSSI, harm to biodiversity, loss or deterioration of irreplaceable habitats (such as ancient woodland).



## Ecology, SSSI and ASNW impacts

- 3.16 The Council will show through its Ecology witnesses, that the recreational and urbanisation effects of the development on Tiddesley Wood, (a designated SSSI and ASNW) directly adjoining the appeal site, would be harmful and fail to accord with Policy SWDP 22. Reference will be made to Paragraph 186b of the NPPF which stresses the importance of protecting SSSIs from the development, which has an adverse impact and applies to both development within and outside an SSSI. Further, the Council will point to Paragraph 186c of the NPPF, which states that development schemes which will result in the loss or deterioration of ancient woodland, are to be refused unless there are wholly exceptional (note 67) reasons and a suitable compensation strategy exists. Note 67 provides examples of exceptional reasons, such as infrastructure projects, but does not apply to this appeal.
- 3.17 WDC will argue that the proposed open space buffer, shown on the illustrative masterplan, DWG ref, P22-2506\_DE\_0008 Rev M, will not be effective in mitigating impacts of the proposed development upon the SSSI and ASNW. The illustrative masterplan includes the retention of Public Rights of Way (PROW) which cross the site directly into Tiddesley Wood. WDC will also identify the difficulties associated with maintaining the effectiveness of dark corridors for light averse European protected bat species.
- 3.18 Additional information was submitted by the appellant during the consideration of the application, including case studies which purport to demonstrate successful implementation of development in similar circumstances to the current appeal proposal. However, WDC will show that the case studies have not responded to in-combination effects of harm, or the likely effectiveness of mitigation measures.
- 3.19 A further issue relates to the proposed cut and fill across the site as provided in Appendix D of the Flood Risk Assessment, Surface Water Drainage Strategy and Foul Drainage Strategy. The cut and fill requirements are significant and WDC will show that these would have ramifications for the maintenance of effective dark corridors within the green infrastructure areas across the appeal site.

## Landscape impacts

- 3.20 WDC will refer to Policy SWDP 21 which requires development to integrate successfully with its surroundings, to complement the character of the area and to ensure that prominent views are maintained. In addition, WDC will refer to Policy SWDP 25, which requires development to take account of the latest Landscape Character Assessment and demonstrate that development is appropriate to, and would integrate with, the character of the landscape setting. Further, WDC will point to views which will be negatively impacted by the development and refer to Paragraph 180 of the NPPF which requires valued landscapes to be protected and enhanced and recognises the intrinsic character and beauty of the countryside.
- 3.21 Reference will also be made to the latest Worcestershire County Council Landscape Character Assessment, which identifies that the appeal site is located within the Landscape type Wooded Estatelands, a large scale landscape of farm land and woodland. This landscape type relies heavily upon its woodland as the critical component in defining its character. WDC will show that the appeal proposal would adversely impact on this landscape character type due to the introduction of built form.
- 3.22 WDC will also show, through its Landscape witness, that the site is highly visible in the local landscape, and due to the Public Rights of Way (PROW), from Dowling Drive, Defford Road and from the south, the site is visible in the wider landscape due to its elevated, prominent position. The PROWs include the Millennium Way, which crosses the site and is a leisure route which joins the River Avon Corridor with Tiddesley Wood. By reason of this context, WDC will argue that the appeal proposal would adversely affect the setting of the significant landscape feature of Tiddesley Wood, an SSSI and ASNW.
- 3.23 WDC will also point to the visual effects of the appeal proposal in regard to the encroachment and expansion of Pershore into the open countryside away from its urban core. This is compounded by the significant difference in the levels of the site, with it consisting of rising ground and therefore being visible from both local and wider views. WDC will refer to the site's prominence in the local landscape, and in regard to wider views, and show that the appeal proposal

would negatively impact on these views contrary to Policies SWDP 21 and SWDP 25.

### Highway safety

- 3.24 WDC will refer to Policy SWDP 4 whereby proposals are required to demonstrate that they address road safety, minimise the demand for travel and offer genuinely sustainable travel choices. In addition, WDC will refer to Policy SWDP 21 which requires developments to maximise opportunities for pedestrian and cycle linkages to the surrounding area and local services and ensure sufficient capacity on the road network to safely accommodate the type and volume of traffic generated by the development.
- 3.25 WDC will also rely on the relevant paragraphs of the NPPF, namely, 114 which requires that appropriate opportunities to promote sustainable transport modes have been taken up given the type and location of development, safe and suitable access can be achieved for all users, and whether significant impacts in terms of congestion, capacity and highway safety can be cost effectively mitigated. Further, WDC will point to Paragraph 115 in regard to any unacceptable impacts on highway safety and/or severe residual cumulative impacts of the development on the surrounding local road network. Reference may also be made to the Transport Act 1985, the Design Manual for Roads and Bridges, the Worcestershire Street Lighting Design Guide and the Worcestershire Streetscape Design Guide
- 3.26 At the time that the Appellant notified WDC of their intention to appeal against non-determination, Worcestershire County Council (WCC) in its role as Local Highway Authority (LHA) and Statutory Consultee had provided its first substantive planning response and recommendation to WDC, following review of the Transport Assessment (TA) submitted in support of the planning application, prepared by Vectos (dated September 2023). In its first substantive response dated 17th April 2024, the LHA outlined that insufficient information had been provided within the TA and associated plans and drawings to enable WCC Highways to determine the impact of the development proposals on the local highway and transport network and for the LHA to conclude that the proposals would not result in a severe congestion or unacceptable highway safety impact.

In particular it was explained that:

- Without further information regarding the use of the TRICS trip rate database, in particular that the site selection criteria was comparable to the proposed development and that surveys had been selected outside of the Covid-19 Pandemic, and the donor site survey forming the 'sensitivity assessment', the LHA could not be satisfied that the forecast vehicular trip generation of both the core and sensitivity scenario were reasonable and robust;
- That the traffic surveys provided within the TA, underpinning the traffic impact and capacity assessment, were undertaken at such a time that the LHA could be confident that the 'typical' daily traffic volumes, queues and delays on the surrounding network had been captured;
- That the traffic modelling assumptions were fit for purpose; and
- That the traffic models provided were fit for purpose for testing the capacity impact of the development proposals on the surrounding local highway network.

3.27 The LHA's first response also requested further information in respect of the design of the proposed vehicular and pedestrian access arrangement, particularly that the proposed gradients were designed in accordance with Worcestershire's Streetscape Design Guide. The LHA is now satisfied that the proposed accesses at Defford Road have been designed to an acceptable gradient.

3.28 In its first response the LHA requested that a streetlighting assessment was undertaken at planning application stage. This is because a number of highway features are proposed which may need to be lit, including the vehicular access and Zebra crossing on Three Springs Road. However, if the requirement for streetlighting is found to have an unacceptable impact on nearby protected and light averse species, the proposed highway schemes may be undeliverable as proposed. On this basis, it is not appropriate for a lighting assessment to be secured by planning condition to be undertaken following any consent which may be granted.

- 3.29 A Travel Plan was not submitted in support of the planning application, contrary to NPPF (2023) paragraph 117.
- 3.30 The Appellant provided additional information in response to the LHA's first substantive planning recommendation on 14<sup>th</sup> May 2024. This included a Paramics microsimulation of the A4104 Three Springs Road/B4084 Worcester Road junction and A4104 Station Road/B4084 High Street Road signalised junction (base model and forecast scenarios). The Paramics base model required auditing and review by specialist transport modellers familiar with the software to determine the model was adequately calibrated and validated and provided a suitable platform for testing the impact of the proposed development. Updated standalone junction models had also been provided by the Appellant, also requiring audit to enable the LHA to confirm that the models were fit for purpose.
- 3.31 The LHA's second response (1<sup>st</sup> July 2024), submitted to WDC after the Appellant had notified WDC of their intention to appeal against non-determination, explained that further information was required in respect of the development of both the standalone junction models and Paramics base model to be able to determine whether the models were fit for purpose for development impact testing. In particular, it was unclear how the suggested reassignment of traffic from the A4104 Three Springs Road to Holloway and Rebecca Road had been calculated and modelled and why, subsequently, vehicle queues and delays at the A4104 Three Springs Road/B4084 Worcester Road junction in the forecast 2030 'with development' scenario had reduced compared to the 2030 'without development' scenario. In addition, the Appellant is yet to provide the LHA with both core and sensitivity model scenarios. The further information and clarification requested by the LHA in respect of the transport modelling remains outstanding.
- 3.32 In its second response, the LHA also re-emphasised its initial request for the Appellant to confirm any streetlighting proposals and undertake a streetlighting assessment at planning application stage, in accordance with Worcestershire's Street Lighting Design Guide. This included the request to understand any lighting requirements and potential deliverability constraints (should any required

streetlighting unacceptably impact on surrounding light averse and protected species) associated with the 'indicatively' proposed Zebra Crossing on the A4104 Three Springs Road and the vehicle access at Defford Road. The streetlighting assessment remains outstanding.

3.33 In both its first and second response, the LHA raised the request that the main spine road serving the proposed development connects to the site's northern boundary and Holloway Phase 2 (planning application reference 24/00270/FUL) to enhance connectivity and accessibility. The LHA now accepts that there are a number of engineering constraints, including level differences, which would prevent the delivery of a cost-effective and viable spine road connection to Holloway Phase 2, without adverse impacts on wider masterplanning and place-making. The LHA therefore concedes that a spine road connection to Holloway Phase 2 is not required to make the development proposals acceptable in highway and transport terms.

3.34 The LHA remains committed to working with the Appellant to resolve as many outstanding highway and transport matters as possible prior to the start of the Inquiry, with the intention of preparing a further transport-focussed Statement of Common Ground outlining where the Appellant and County Council are in agreement and any remaining areas of dispute.

#### Absence of S106 legal agreement

3.35 The fifth putative reason references the absence of a S106 planning obligation for the financial contributions for off-site provision for open space, mitigation package for the SSSI, formal sports and leisure, primary health care, school transport and the requirements for affordable housing in respect of the appeal proposal would be:

#### Agreement of the following principles for affordable housing:

- 40% affordable housing comprising 69% social, rent, 25% first homes and 6% shared ownership.
- range of property types to meet local housing need need which is to be agreed in writing with the Council prior to commencement of the

Development, in the form of a comprehensive affordable housing scheme.

#### Open space

- Based on the delivery of 300 dwellings (estimated at 2.36 persons per dwelling equating to approximately 708 population) = £257,386.00.

#### Dedicated mitigation package for Tiddesley Wood to be confirmed

#### Formal sports and leisure

- Built sports – off site contribution of £202,119 for improvements to sports and leisure facilities at Pershore High School.
- Formal sport contribution– as there is no housing mix the contribution is expected to be between £276,734 and £692,730.

#### Herefordshire and Worcestershire CCG

- £196,800 towards primary health care.

#### Education services

- Early years £730,026
- First School - £1,614,906
- SEND - £508,768

#### Transport infrastructure

- Provision of a diverted bus service through the development - £113,068.80
- Community transport contribution to ensure the elderly and disabled residents have access to essential services - £4,573
- Traffic Regulation Order to prevent prohibited general vehicular access at the Emergency Access at Henderson Drive - £4,500 to be retained for 10 years post first occupation.
- Demand Responsive Transport service to complement the bus service

provision and ensure adequate access by non-car modes is available - £58,500.

- Provision of dropped kerb and tactile paving at Farleigh Road - £3,000.
- Provision of signage to direct pedestrians from the site to the town centre facilities - £5,000.
- Traffic signal enhancement at the signalised junction of Worcester Road/Station Road/High Street - £15,000.

3.36 The amounts are pursuant to Policy SWDP 39 and based on the formula set out at Section 2.2 of the Developer Contributions SPD. As a consequence of the development failing to make on-site provision for the range of open space typologies the contribution is compliant with the CIL Regulation 122 tests. WDC will continue to work with the appellant in the drafting of a S106 legal agreement during this appeal.

#### **4.0 Policy context**

4.1 The South Worcestershire development Plan (SWDP) was adopted in February 5 2016. Together with the County Council's Waste Core Strategy (2012) it forms the relevant development plan for this appeal.

4.2 On Wednesday 29 September 2023, following the Regulation 19 consultation in November and December 2022, the south Worcestershire Councils have formally submitted the South Worcestershire Development Plan Review (SWDPR) and associated evidence base documents to the Secretary of State for independent examination.

4.3 The appeal site is very similar to a site that was included in the SWDP Review Preferred Options (Regulation 18) as a suggested housing allocation for 450 dwellings (SWDP New 115/CFS0350sc) but which was not carried forward to the Publication (Regulation 19) version, predominantly because of the substantial objections received, including from the statutory consultee Natural England and Worcestershire Wildlife Trust about the impact on the SSSI and ancient woodland at Tiddesley Wood.



4.4 To the north-east of the appeal site, is a proposed housing allocation in the emerging SWDPR for 112 dwellings (policies SWDPR 22, 23, and 24) within the Regulation 19 pre-submission plan. There is a current planning application for the southern part of the draft allocation which is pending consideration, ref, W/24/00270/FUL for 120 dwellings, associated vehicular and pedestrian access, open space, landscaping, drainage and associated works. The remaining northern part was granted full planning permission for 28 dwellings, ref, W/22/00658/FUL.

4.5 The Development Plan policies and Supplementary Planning Documents (SPD's) most relevant to the putative reason for objection in this appeal are as follows:

SWDP1 – Overarching Sustainable Development Principles

SWDP2 – Development Strategy and Settlement Hierarchy

SWDP3 – Employment, Housing and Retail Provision Requirement and Delivery

SWDP4 – Moving Around South Worcestershire

SWDP6 – Historic Environment

SWDP7 – Infrastructure

SWDP13 – Effective use of land

SWDP14 – Market Housing Mix

SWDP15 – Meeting Affordable Housing Needs

SWDP20 – Housing to Meet the Needs of Older People

SWDP21 – Design

SWDP22 – Biodiversity and Geodiversity

SWDP24 – Management of the Historic Environment

SWDP25 – Landscape Character

SWDP27 – Renewable and Low Carbon Energy

SWDP28 – Management of Flood Risk

SWDP29 – Sustainable Drainage Systems

SWDP30 – Water Resources, Efficiency and Treatment

SWDP31 – Pollution and Land Instability

SWDP39 – Provision for Green Space and Outdoor Community Uses in New Development

SWDP62 - Implementation

South Worcestershire Design Guide SPD (March 2018)

South Worcestershire Developer Contributions SPD (July 2018)

South Worcestershire Affordable Housing SPD (October 2016)  
South Worcestershire Renewable and Low Carbon Energy SPD (July 2018)  
Planning for Health SPD (September, 2017)  
Water Management and Flooding SPD (July 2018)  
Worcestershire Local Transport Plan 4 – Streetscape Design Guide  
Strategic Housing Land Availability Assessment  
Worcestershire Strategic Housing Market Assessment  
Worcestershire Local Transport Plan 4 – Streetscape Design Guide  
Worcestershire County Council Landscape Character Assessment  
Worcestershire County Council Landscape Character Assessment  
Worcestershire Minerals Local Plan (adopted 2022)

- 4.6 The putative reasons for refusal refer to the relevant policies from the Development Plan that are to be relied upon by the Council. Copies of these policies have already been provided to the Planning Inspectorate and appellants as attachments to the appeal questionnaire. The Council will present evidence on the weight to be attributed to these policies in the determination of the appeal.
- 4.7 The Council will rely upon and may refer to the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG) in support of its case.
- 4.9 The Council may refer to other legislation which is pertinent to this case.
- 4.11 All the appeal documentation can be viewed at the Civic Centre, Queen Elizabeth Drive, Pershore, Worcs., WR10 1PT and is also viewable on the Council's website at [www.wychavon.gov.uk](http://www.wychavon.gov.uk).

## **5.0 Post submission consultation and engagement**

- 5.1 WDC has engaged with the appellant during the consideration of the application with meetings, email exchanges and telephone calls. It is also noted that discussions were held separately with Natural England and the Worcestershire Wildlife Trust in March and April 2024 and with the County Highway Authority.
- 5.2 In order to attempt to address consultee objections and deferral by the County

Highway Authority, revised and additional technical documents were submitted to WDC on 14<sup>th</sup> May 2024. A further re-consultation period was carried out on 15<sup>th</sup> May 2024 and a further extension of time requested until 26<sup>th</sup> July 2024. This was thought to be a reasonable time period to receive the required consultee responses and to allow time for further assessment of the issues given their complexity, with a view to making a recommendation. However, the extension of time request was not agreed to.

- 5.3 On 21<sup>st</sup> May, a response was received from the Landscape Officer on the submitted Landscape and Visual Impact Assessment Addendum (LVIA Addendum) dated 19<sup>th</sup> April 2024
- 5.3 On 10<sup>th</sup> June 2024 the appellant notified WDC of their intention to appeal against non-determination.
- 5.4 On 11<sup>th</sup> June 2024, consultees were requested to respond to the revised and technical documents submitted on 14<sup>th</sup> May 2024 and circulated for re-consultation on 15<sup>th</sup> May 2024.
- 5.5 It became evident that one of the documents in the 14<sup>th</sup> May 2024 submission had not been received, namely, the letter to Natural England which referred to Case Studies. This was subsequently submitted 18<sup>th</sup> June 2024 with the relevant consultees being notified.
- 5.6 On 24<sup>th</sup> June 2024, Worcestershire County Council Highways emailed the transport consultant directly with queries regarding the transport modelling.
- 5.7 On 25<sup>th</sup> June, a further response was received by the Council's Landscape and Natural Heritage Officer and on 28<sup>th</sup> June 2024, by Worcestershire Wildlife Trust, maintaining their objection to the appeal proposal.
- 5.8 On 1<sup>st</sup> July 2024, a further deferral response was received by the County Highway Authority.
- 5.9 On 2<sup>nd</sup> July, a further response was received by the Council's Landscape Officer.

5.10 On 18<sup>th</sup> July, 2024, a start letter from the Planning Inspectorate was received.

5.11 On 29<sup>th</sup> July, a further response was received from Natural England in regard to the shadow Habitat Regulations Assessment.

5.12 The above demonstrates that WDC has engaged with the appellant during the consideration of the application and since being served notice of the intention to appeal. This has been undertaken in an attempt to narrow down the issues and to work positively and proactively with the applicant, as required by the NPPF.

## **6.0 Conclusion and Planning Balance**

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out a clear legal requirement that the determination of planning applications must be made in accordance with the development plan unless material considerations indicate otherwise. The South Worcestershire Development Plan (SWDP) forms the key part of the development plan for the area and this appeal. Section 70(2) provides that in determining applications the local planning authority "shall have regard to the provisions of the Development Plan, so far as material to the application and to any other material considerations.

6.2 The SWDP has been prepared, found sound and adopted in the context of the Framework. As such, the plan is based upon and reflects the presumption in favour of sustainable development, with policies that guide how the presumption will be applied locally.

6.3 At present the Council cannot demonstrate a five or four-year supply of deliverable housing sites as required by the NPPF. In light of this, when considering applications for the provision of housing the policies which are most important for determining the application are deemed to be out of date in accordance with footnote 8 of the NPPF and in accordance with Paragraph 11d of the NPPF the presumption in favour of sustainable development (the 'tilted balance') applies. Paragraph 11d of the NPPF states that where policies which are most important

for determining the application are out of date, permission should be granted unless:

- d) i. the application of policies in the Framework that protect assets of particular importance provides a clear reason for refusing the development; or
- ii). any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

- 6.4 In this case, the site directly adjoins a designated SSSI and ancient semi-natural woodland, which are both assets of particular importance in respect of d) i above. *Footnote 7 of Paragraph 11 d i does apply and the development would adversely affect and fail to protect the adjoining SSSI and ASNW and with the tilted balance not being engaged, provides a clear reason for refusal in this case.*
- 6.5 The application site lies wholly outside of a development boundary, as defined by SWDP2C and is not allocated for housing in the South Worcestershire Development Plan - as such it is considered to fall within the open countryside. The proposed development does not fall within any of the exceptions listed in SWDP2C and its associated footnote 3. On that basis, it is entirely inconsistent with one of the main strategic policies of the SWDP and the SWDP Development Strategy as a whole.
- 6.6 The scheme fails to represent an acceptable form of development as allowed under policy SWDP2, insofar as it:- represents development in defined open countryside that is not promoted by the SWDP;- fails to safeguard or enhance the open countryside; and does not encourage the reuse of brownfield land.
- 6.7 It is acknowledged that the appeal proposal would contribute towards significant economic objectives in terms of short-term construction jobs and longer terms gains associated with residents contributing to the local economy. There would be further significant social and economic benefits from the provision of 300 dwellings including affordable dwellings, which would contribute to the current housing shortfall.

- 6.8 In regard to the environmental objective, the site directly adjoins a designated SSSI which is an asset of particular importance in respect of Paragraph 11d (i) of the NPPF and is also an Ancient Semi-Natural Woodland (ASNW), an irreplaceable habitat as referred to in the NPPF. The development would result in significantly adverse impacts upon the SSSI and ASNW and upon the landscape character of the area, contrary to Policies SWDP 22 and SWP 25 of the South Worcestershire Development Plan.
- 6.9 Further, insufficient information has been provided to demonstrate that the proposals would offer a genuine choice sustainable transport modes, would not result in severe congestion or unacceptable highway safety impacts on the local surrounding local highway network and that proposals would be served by safe and suitable access for all users, contrary to Policies SWDP 4 and SWDP 21.
- 6.10 In terms of social objectives and in the absence of a S106 legal agreement, the appeal proposal would fail to contribute to local affordable housing need as required by Policy SWDP 15, open space, formal sport and leisure as required by Policy SWDP 7 and 39, primary health care, and education services.
- 6.11 When weighing the material considerations in the planning balance, the significant benefits in the provision of 300 dwellings including affordable dwellings and associated social and economic benefits, would not attract such weight to outweigh the conflict with strategic planning policy, harm to the character of the area, adverse impact upon the SSSI and ASNW and in regard to highway safety and impacts upon the local road network. Further, the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for dismissing the appeal in this case.