

**APPEAL PURSUANT TO SECTION 78 OF THE TOWN AND COUNTRY
PLANNING ACT 1990 IN RELATION TO**

LAND AT ORCHARD FARM, NORTH OF DEFFORD ROAD, PERSHORE

APPEAL REF: APP/H1840/W/24/3347643

LPA REF: W/23/02112/OUT

**OPENING SUBMISSIONS ON BEHALF OF
WYCHAVON DISTRICT COUNCIL**

INTRODUCTION

1. This inquiry takes place during a period of policy turbulence which has affected how successful the Council has been viewed in delivering housing.
2. The South Worcestershire Councils – Malvern Hills District Council, Wychavon District Council and Worcester City Council – produced a joint development plan, the South Worcestershire Development Plan (“SWDP”). It was adopted in 2016 and was intended to cover the period up to 2030.
3. Policy SWDP 3 sets the total housing requirements over the plan period for the three administrative areas. However, for monitoring purposes the policy divides those three administrative areas into five sub-areas.
4. This worked well until the introduction of the standard method. Since then, the Council has not been able to balance housing requirements across the three administrative areas as the development plan intended and it has not been able to show a 5YHLS.

5. The South Worcestershire Development Plan Review (“SWDPR”) was submitted on 27 September 2023. Examination hearings are expected to commence in March 2025 with adoption anticipated by the end of 2025. By this time next year, the Council will be in a very different position.
6. Until the emerging plan is more advanced, the Council will need to rely on speculative applications. It is realistic as to the predicament that it is in. However, this does not mean that it needs to accept proposals, such as the appeal scheme. The harm that it would cause is considerable, particularly in terms of landscape and visual impact, the harm to Tiddesley Wood, and to the development plan.

MAIN ISSUES

7. In her post-CMC note, the inspector identified the likely main topic areas of the case:
 - a. Whether the proposal would be a suitable location for residential development having regard to the spatial strategy of the development plan;
 - b. The effect of the development on Tiddesley Wood, a designated Site of Special Scientific Interest (SSSI) and an Ancient Semi-Natural Woodland and whether footnote 7 of the National Planning Policy Framework is engaged.
 - c. The effect on the landscape character of the area.
 - d. The effect on highways matters with particular regard to sustainable transport options, congestion and highway safety.
 - e. Whether planning obligations are required to secure financial contributions for public open space, a mitigation package for the SSSI, formal sport and leisure, NHS CCG contributions, transport infrastructure and affordable housing.
8. In addition, RFR 3 refers to landscape harm in terms of visual impact.

Suitable location having regard to the spatial strategy

9. The appeal site is situated in open countryside beyond the settlement boundary of Pershore.
10. The relevant development plan policy that sets out the development strategy and settlement hierarchy is SWDP 2.¹ This is broadly consistent with the NPPF and sets out various principles on which the Development Strategy and site allocations are based. The appeal scheme conflicts with every relevant principle.
11. In particular, the proposed development would fail to encourage the effective use and re-use of brownfield land and it would fail to safeguard or enhance the open countryside.
12. While it is accepted that the policy is out-of-date, the Council invites the inspector to grant moderate weight to it, as other inspectors have in recent appeal decisions.

Effect on Tiddesley Wood and application of footnote 7 of the NPPF

Harm to Tiddesley Wood

13. Tiddesley Wood is both an SSSI and an ancient woodland. The Appellant's arboricultural witness, Mr Forbes-Laird argues that "harm to the SSSI and harm to the ancient woodland" are indivisible.² The Council agrees.
14. The citation of the SSSI notes a range of features of ecological importance and Natural England ("NE") cites two key features within the SSSI: Breeding Bird Assemblage and Oak and Ash Woodlands.³
15. The Appellant's Ecological Appraisal acknowledges the potential for adverse impacts to the Tiddesley Woods.⁴ Its ecological witness, the ecological witness,

¹ CD 6.1, p.44.

² Forbes-Laird Proof, §2.1.3.

³ CD 10.25.

⁴ CD 3.4; see §5.8.29 for instance.

Mr Baxter, has helpfully set out which potential effects from NE's standing advice in his Table 6.1⁵

16. Yet, the Appellant has sought to downplay the harmful impacts.
17. For instance, the Appellant is wrong to suggest that there would not be increases in disturbance to wildlife as a result of the number of people visiting the woodland.
18. Similarly, the Appellant has not given sufficient weight to the problems caused by an increase in domestic animals in the vicinity of the woodland:
 - a. The provision of dog poo bins at the entrance to Tiddesley Wood might reduce the adverse effects caused by dog fouling, but it will not resolve it. Dog fouling can lead to consequential increases in nutrients which can disturb the delicate balance within the woodland, adversely affecting ground flora in particular; and
 - b. Cat predation will have an adverse effect upon the woodland, both on the avifauna and the small mammals.
19. Lighting remains a further important issue in dispute. Whilst the Appellant has provided an External Lighting Strategy Report, dated 8 October 2024⁶, the Council has highlighted problems with these. They have not been resolved.
20. The Appellant argues that all the adverse impacts caused by the proposed development would be entirely eliminated with no residual impact upon the woodland or the species within it.
21. This position depends on it persuading the landowner, Worcestershire Wildlife Trust ("WWT") to agree to its proposed mitigation package. But as the inquiry opens, agreement has not been reached.

⁵ Table 6.1, p.22.

⁶ Baxter Proof, App AB 19.

22. Finally, the Appellant has made criticism made of the management of the WWT and has referred to continued deterioration of the woodland. While there are some improvements that could be made, this is not unusual. Overall, it is apparent that there is an annual cycle of damage in the winter which then leads to recovery in the summer. The attack on the professionalism of the WWT is unfair and unnecessary.

NPPF Footnote 7

23. Paragraph 11 d) of the NPPF states that where there are no relevant development plan policies or where the policies which are most important for determining the application, planning permission should be granted unless:

- “i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed⁷; or
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”

24. Footnote 7 clarifies the policies referred to in §§11 d) i). These include those relating to sites designated as SSSIs and irreplaceable habitats. Irreplaceable habitat is defined in Annex 2 as including ancient woodland and ancient woodland is further defined in the same place as:

“An area that has been wooded continuously since at least 1600 AD. It includes ancient semi-natural woodland and plantations on ancient woodland sites (PAWS).”

25. Natural England standing advice provides further guidance. This explains the importance of ancient woodland as a valuable natural asset important for wildlife and soils, amongst other things.⁷

⁷ CD 7.8.

26. The relevant NPPF policies are within §186 b) and c):
- “b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;
 - c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons⁶⁷ and a suitable compensation strategy exists...”
27. Footnote 67 provides examples of “wholly exceptional reasons for the purpose of §186 c):
- “⁶⁷ For example, infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills), where the public benefit would clearly outweigh the loss or deterioration of habitat.”
28. Unless the Appellant can show that it has satisfied the requirements of both §186 b) or c), these will amount to clear reasons for refusal and, in addition, the “tilted balance” under §11 d ii) would not be engaged.
29. As the development would be likely to have an adverse effect on the woodland as an SSSI and it would lead to the deterioration of the ancient woodland, the Appellant is required to carry out the balancing exercise under §186 b) and show both that there is a “wholly exceptional reason” for planning permission being granted and that a suitable compensation strategy exists for §186 c).
30. The Appellant is doing its best to present a positive case. But it cannot escape from the fact that building up to 300 houses so near to the woodland would lead

to a significant increase in the number of visitors to the woodland, both human and animal and that they would cause harm. Some of this could be mitigated through a compensation strategy, but only some of it, and there is no strategy in place.

Landscape and visual impact

31. The appeal site is an important landscape buffer between Pershore and Tiddesley Wood. In its LVIA, the Appellant suggests that despite the addition of up to 300 houses, a gap of between 100 and 165m would still retain the setting of the woodland.⁸ This cannot be right.
32. Tiddesley Wood is a valuable natural resource, whose value is recognised in its designations. A significant landscape buffer is required around the woodland.
33. The harm will impact on both the landscape character of the site and the wider landscape character of the area, which is described as Wooded Estatelands.⁹ Woodland is a key component of this and the proposed scheme will cause harm to the woodland and its setting.
34. The LVIA completed by the Appellant's landscape witness acknowledges that there would be harm to all landscape receptors/elements as is recorded in Table 1.0 of the Landscape SOCG.¹⁰ The difference between the parties is as to the level of harm.
35. As to visual impact, both short and long distance views would be affected.
36. Local residents and users of the PROW network that cross through the site highly value the long-distance views across and through the site. These will be lost as a result of the proposed scheme as is confirmed by the Appellant's own wireline diagrams.¹¹

⁸ CD 1.50 §§5.17 and 5.18.

⁹ CD 1.5, §4.29.

¹⁰ CD 11.6, pp 2-5.

¹¹ Peachey Proof, App Fig 1 5.1 vp 3.

37. As to localised views, the Appellant's LVIA acknowledges that all localised views within the site will experience major adverse effects and harm or no improvement to any view assessed, as can be seen in Table 2 of the Landscape SOCG.¹²
38. The people who live next to the site on Dowling Close currently enjoy views towards an open green hillside. These will be totally blocked with new houses and massive engineering is required in that area.
39. This is not a criticism of how the scheme is laid out. The primary harm is as a result of the change from open agriculture/pastureland to a substantial residential development.
40. The only benefits assessed are in numbers of trees and lengths of hedge planting but they come with 300 houses so are in reality, not a benefit.

Highways

41. As recorded in the Update to the Highways SOCG, the parties agree that all highway and transport matters have been satisfactorily resolved and that identified necessary mitigation and interventions can be secured by appropriately worded planning conditions or obligations.¹³

Planning obligations

42. The parties are continuing to discuss obligations and will update the inspector on outstanding areas of disagreement in the relevant roundtable session.

CONCLUSION

43. The Council's temporary 5YHLS difficulties do not justify the harm that this proposal would cause in terms of landscape and visual impact, the harm to Tiddesley Wood, and the harm to the development plan.

¹² CD 11.6, pp 6-8.

¹³ CD 11.8, §3.1.

44. The Inspector will be respectfully invited to dismiss the appeal and to refuse planning permission.

Howard Leithead

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