

Town and Country Planning Act 1990 (as amended)

Section 78 Appeal at Public Inquiry

Local Authority Ref: W/23/02112/OUT

Planning Inspectorate Ref: APP/H1840/W/24/3347643

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.

Location: Orchard Farm, Defford Road, Pershore, WR10 3BX

Rebuttal Proof - Planning

Gillian McDermott, BSc(Hons) MA TP, MRTPI

Principal Planning Officer

Wychavon and Malvern Hills District Councils

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- 1.1 I have set out points of rebuttal below in respect of the appellant's Planning Proof of Evidence from Mr Michael Davies. These are not the only points of difference between the appellant's planning witness but are set out for the benefit of the Inspector.

Policy SWDP 2 – Development Strategy and Settlement Hierarchy

- 1.2 The application of limited weight applied to Policy SWDP 2 as referred to in Para 4.7 is not agreed with.
- 1.3 The following recent appeal decisions show that Inspectors have attached moderate weight to the weight attached to Policy SWDP 2.

Appeal 1

- 1.4 Appeal APP/H1840/W/23/3333144 (23/01773/PIP), dated 25.09.24 - Purshall Green Farm, Purshall Green Road, Elmbridge, Droitwich WR9 0NL. Permission in principle for the use of buildings as 2 dwellings – appeal dismissed.

Para 16 states the following:

I reduce the weight attached to the conflict with Policies SWDP2 and SWDP4 of the SWDP to moderate, because they are deemed to be out-of-date as a consequence of the under-supply of housing land.

Appeal 2

- 1.5 APP/H1840/W/23/3333122 (W/22/02070/OUT), dated 16.08.24 - Land to the East of Main Street, Bishampton WR10 2NL. outline application for up to 3 self-build homes. All matters reserved except for access – appeal dismissed.

Para 9 states the following:

I therefore conclude that the proposed development would be located in the open countryside, where Policy SWDP 2 of the SWDP seeks to strictly control development. Consequently, the appeal site is not an appropriate location for the proposed development having regard to the settlement strategy and therefore conflicts with Policy SWDP 2 for the reasons set out above.

The Planning Balance, Para 28 states:

I have found that contrary to the relevant policies of the development plan, the appeal site would not be a suitable location for residential development and would have an unacceptably harmful impact on the character and appearance of the area. As a result, the proposal would conflict with the development plan and the Framework as a whole. I have

afforded these matters moderate and significant weight respectively, which collectively I afford very significant weight.

- 1.6 There are also appeal decisions which have been allowed including:

Appeal 3

- 1.7 Appeal Ref: APP/H1840/W/22/3299691, dated 25.10.22- for up to 100 new dwellings at Land east of Tagwell Road, Droitwich – appeal allowed.

Para 9 states

The appeal site is allocated for housing in the Councils review of the SWDP. However, this document is at a very early stage of preparation and therefore I attach only minimal weight to its contents. Consequently, the proposal would be in conflict with Policy SWDP2.

- 1.8 The Inspector in this case did not specify the weight of conflict with Policy SWDP 2 within the decision, but the Inspector found in Para 45 that the provision of 100 dwellings attracted significant weight and that the appeal should be allowed.

Appeal 4

- 1.9 Appeal Ref: APP/J1860/W/24/3339553, dated 02.10.24 for up to 28 dwellings. Land at Martley Road, Lower Broadheath – appeal allowed.

Para 27 sets out the following:

I have afforded some matters weight as outlined above and I afford the totality of the benefits significant weight in the determination of the appeal. On the other hand, I have found that the proposal would diminish the open character of the appeal site and would thereby conflict with Policy SWDP 2 of the SWDP. However, for the reasons set out above I have afforded that issue limited weight.

Conclusion on Policy SWDP 2

- 1.10 The Inspector in the decision included as CD14.4 (Appeal 9 below) considered that Policy SWDP 2 was out of date due to the countryside being relied upon for housing delivery. This was also the case in the appeal decision at Callow End CD14.5, Para 68. The Inspector went on to consider that SWDP 2 to be broadly consistent with the NPPF and afforded the conflict with Policy SWDP 2 to be moderate. WDC maintains its view that the conflict with Policy SWDP 2 can be afforded moderate weight in this appeal case.

Policy SWDP 21 – Design and Policy SWDP 25 – Landscape Character

- 1.11 The application of moderate weight applied to Policy SWDP 21 as referred to in Table 1 on page 34 in the Proof of Evidence of Mr Michael Davies is not agreed with. Further, the application of limited weight applied to Policy SWDP 25 as referred to in Para 4.28 is also not agreed with.
- 1.12 Several recent appeal decisions refer to these two policies as set out below:

Appeal 5

- 1.13 APP/H1840/W/24/3339724 (W/23/02074/PIP) dated 25.09.24 – land to the rear of Kenosha, Foredraught Lane, Tibberton, WR9 7NQ. s Permission in Principle for up to 8 self/custom build dwellings (including demolition of existing dwelling) – appeal dismissed.

Paras 49 and 51 states the following:

Policies SWDP 1, SWDP 2, SWDP 4, SWDP 21 and SWDP 25 of the SWDP are the most relevant in considering the proposal. Paragraph 225 of the Framework confirms that existing policies should not be considered out of date simply because they were adopted or made prior to the publication of the Framework. Furthermore, policies are not automatically out-of-date due to their age.

I have given the conflict with the local policies, in regard to the effect on the character and appearance of the area, significant weight in this appeal. Consequently, the proposed development would conflict with the development plan as a whole.

Appeal 6

- 1.14 APP/H1840/W/24/3340097 (W/23/01574/PIP) dated 13.09.24 – land at Willersley Road, Badsey, WR11 7HD. The erection of one self-build single storey dwelling – appeal dismissed.

Para 16 states the following:

The Framework seeks to ensure that development adds to the overall quality of the area and be sympathetic to local character. As such the conflict DP Policies SWDP 21 and SWDP 25 should be given significant weight in this appeal. The Framework supports the efficient use of land. Nevertheless, given the conflict identified above, the development would conflict with the development plan as a whole.

Appeal 7

- 1.15 APP/J1860/W/24/3340042 (M/23/01799/PIP) dated 22.08.24 - Permission in Principle for the construction of up to 4no. self-build dwellings. Brookfield, Shoulton Lane, Hallow, Worcester WR2 6PU – appeal dismissed.

Para 25 states the following:

The SWDP dates from 2016 but the weight to be attached to it does not hinge on its age. Paragraph 225 of the Framework makes it clear that due weight should be given to existing policies according to their degree of consistency with the Framework. The need for sustainable transport and safe and suitable access for all users is recognised in the Framework which also recognises the intrinsic character and beauty of the countryside. Therefore, the conflict with SWDP 2, SWDP4, SWDP 21 and SWDP 25 should be given significant weight in this appeal.

Appeal 8

- 1.16 APP/H1840/W/23/3332817 (W/23/01637/PIP) - Land To The Rear Of Old Chequers Inn, Crowle Green, Crowle WR7 4AA. Permission in Principle for the construction of 1no. dwelling W/23/01637/PIP – appeal dismissed.

Para 19 states the following:

The Framework does not change the statutory status of the development plan as the starting point for decision making. The proposal is not in accordance with Policies SWDP2, SWDP21 and SWDP25 insofar as it would result in development in the countryside which would harm its character and in this regard these policies are consistent with the Framework. Consequently, I attach substantial weight to the conflict with these policies.

Appeal 9 (CD14.4)

- 1.17 APP/H1840/W/23/3320041 (W/22/01565/OUT) dated 15.09.23 – land at Evelench Lane, Tibberton, WR9 7QN. outline planning application with all matters reserved except for access for a development of up to 100 dwellings (Use Class C3), green infrastructure, car parking, drainage works, and other associated infrastructure works – appeal dismissed.

Paras 24 and 26 state:

As sites in the countryside are being relied upon to deliver the housing needed in the District, it leads me to consider that Policy SWDP 2 is out-of-date.

I conclude, in respect of this issue, that the proposed development would not accord with the Development Strategy of the development plan, having regard to the size of Tibberton, local character, location and the availability of infrastructure. The material harm arising from the conflict with Policies SWDP 2, 21 and 25 would be substantial. SWDP Policy 2 seeks, among other things, to deliver residential development in accordance with the Development Strategy and Settlement Hierarchy, except for specific exceptions. Proposals should also be of an appropriate scale, having regard to the size of the settlement, local landscape character (SWLP Policy 25), location and the availability of infrastructure. Policy SWDP 21 seeks development to integrate effectively with its surroundings, in terms of form and function, and reinforce local distinctiveness, and this policy is consistent with the Framework.

- 1.18 In dismissing the appeal, the Inspector considered that Policy SWDP 2 was out of date. Further, the proposals' benefits were acknowledged, and it was considered at Para 51 that notwithstanding the housing supply position, that housing development is *"permitted in the right place and of the right scale for that location. It is not a case of development at all costs."*

Appeal 10

- 1.19 APP/J1860/W/23/3326243 (M/22/00321/OUT) dated 7.12.23 – land at Apsostles Oak, Abberley. Outline application for construction of up to 14 entry level affordable dwellings. – appeal dismissed.

The scheme was found to conflict with Policies SWDP 21 and SWDP 25, which were noted to be consistent with the NPPF. Para 28 states:

Even in the context of a housing supply shortfall, I apportion significant weight to these identified policy conflicts and to the associated harm that would be caused to the character and appearance of the area having regard to the scheme's landscape and visual effects.

- 1.20 The Inspector acknowledged that the scheme's benefits would be considerable and attract significant weight. However, it was concluded in Para 33 that *"the harm that would be caused in a character and appearance sense would be at a substantial level sufficient, in my judgement, to significantly and demonstrably outweigh the scheme's benefits when assessed against the Framework's policies taken as a whole. This is even whilst acknowledging that some landscape/visual harm would be fairly anticipated to arise from any rural exception scheme."*

Conclusion on Policies SWDP 21 and SWDP 25.

- 1.21 WDC maintains its view that both of these policies can be afforded full weight due to their consistency with the NPPF and the conflict with Policies SWDP 21 and SWDP 25 are very significant in this appeal case.

The most important policies

- 1.22 The contents of Par 5.25 that the requirements of test 1 under para 11d have been satisfied as the most important policies are out of date is not agreed with. Para 49 of Appeal Decision APP/H1840/W/24/3338664, Land and Barn east of Clayfield Road, Bretforton, Evesham WR11 7HS dated 10.10.24, the Inspector considered the following:

Policies SWDP 2, SWDP 4, SWDP 21 and SWDP 25 of the SWDP are the most relevant in considering the proposal. Paragraph 225 of the Framework confirms that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Furthermore, policies are not automatically out-of-date due to their age.

Housing Land Supply and Affordable Housing

- 1.23 Within the Housing Land Supply Position Statement submitted by WDC, it is accepted as a matter of agreement that the deliverable supply is within the range of 2.53 – 2.78 years and represents a significant shortfall. It is accepted that the provision of up to 120 affordable dwellings would attribute significant benefit.

Draft NPPF

- 1.24 It is stated within Para 5.36 of Mr Michael Davies Proof of Evidence that the Draft NPPF indicates the Government's likely direction of travel in regard to the provision of housing. However, the Draft NPPF is currently a consultation document and it is uncertain at this current time as to how it will be finalised.
- 1.25 Para 47 of Appeal Ref: APP/B1930/W/23/3325998 Land Adjacent 55 Bucknalls Drive, Bricket Wood, Hertfordshire AL2 3XJ dated 23.09.24 illustrates this point as follows:

I have sought the views of the parties as to what weight I should give to the consultation draft of the Framework issued in July 2024. The consultation does indicate a direction of travel towards supporting increased housing delivery. It also proposes a new type of development that would be not inappropriate in the Green Belt. However, I cannot be certain that the Framework will be finalised in its current form.

Furthermore, the proposal would not comply with all of the requirements with respect to proposals on grey belt land.

- 1.26 It is noted that there are no changes proposed to Paras 180 nor 186 as part of the Draft NPPF.

Interested Party Representations

- 1.27 It is noted that that within Table 2 on page 46, the representation by M Bogaard states Wychavon is already taking 80% of new building in South Worcestershire. This is incorrect in that between the start of the current plan period and the most recent monitoring year, approximately 49% of housing delivered across the SWCs has been in Wychavon. This is shown within Table 8 on page 22 of the South Worcestershire Development Plan Authorities Monitoring Report 2023 attached as Appendix I.

Highways matters

- 1.28 The LHA (Worcestershire County Council) has continued to work with the appellant in order to resolve any outstanding highways and transport matters prior to the start of the Inquiry. Their position statement dated 22.10.24 sets out their current considerations. One element of the on-going discussions is whether a part of the site in the north-east can be secured for a shared cycle/footpath connection to the adjacent Holloway Phase 2 site. Unless there is assurance from the appellant that would avoid the development of a ransom strip, a lack of agreement to safeguard the land would prevent an active travel connection between Holloway Phase 2 and Henderson Close. The potential obstruction of active travel connections would not be in the interests of promoting opportunities for walking and cycling in regard to Para 108 of the NPPF.

Planning balance and conclusion

- 1.29 It is not agreed with Para 13.8 that the only harm remaining is the localised landscape impacts on a greenfield site. I have set out in Paras 12.9 – 12.16 of my Proof of Evidence, the policy weighting, level of policy conflict, harms and adverse effects and the reasons why planning permission should be refused in this case.