

**PROOF OF EVIDENCE OF PAUL INSTONE BSc(Hons), DipTP, MRTPI**

**PLANNING APPEAL UNDER SECTION 78 OF THE TOWN AND  
COUNTRY PLANNING ACT 1990**

- Appeal Site:** Land to the north of Droitwich Spa, Droitwich, WR9 0NU
- Appeal by:** Beechcroft Land Ltd & Henry Bouskell C/O Trustees of  
the Wimbush Droitwich Settlement
- Against:** Non-determination of Outline Planning Application
- Appeal Proposal:** Outline planning application for the erection of up to 102  
dwellings, new vehicular and pedestrian access, and  
associated works. All matters reserved except for access
- LPA Ref:** W/22/00201/OUT
- PINS Ref:** APP/H1840/W/22/3305934

**CONTENTS**

1 INTRODUCTION ..... 2

2 THE APPLICATION AND THE PUTATIVE REASONS FOR REFUSAL..... 3

3 PLANNING HISTORY..... 5

4 PUTATIVE REASON FOR REFUSAL 1..... 6

5 PUTATIVE REASON FOR REFUSAL 2..... 20

6 PUTATIVE REASON FOR REFUSAL 3..... 27

7 SUMMARY PROOF OF EVIDENCE/THE PLANNING BALANCE AND  
ASSESSMENT OF WHETHER THE PROPOSAL CONSTITUTES SUSTAINABLE  
DEVELOPMENT ..... 29

## 1 INTRODUCTION

- 1.1 My name is Paul Edward Instone. I hold the qualification of BSc (Hons) in City and Regional Planning and a Diploma in City and Regional Planning from Cardiff University. I am a member of the Royal Town Planning Institute.
- 1.2 I am Director of Applied Town Planning Ltd and I have extensive experience in at planning inquiries for major residential developments. I have reviewed the appeal documentation and was subsequently commissioned by Wychavon District Council ('the Council') to present part of its case at this Inquiry. My evidence relates to matters of planning policy and I also undertake the overall planning balance for the appeal proposals.
- 1.3 My evidence should be read in conjunction with the evidence provided by the Council's other witnesses; namely:
  - Mr Charles Potterton – addressing landscape impact matters.
  - Dr David Hickie – addressing heritage matters.
- 1.4 In my evidence I will address specifically the policy justification for putative Reason for Refusals 1 and 2 and the overall planning balance.
- 1.5 In the absence of an appropriate planning obligation/agreed common ground, I also address the policy justification for the Council seeking the requested planning obligations which gives rise to putative reason for refusal 3. I do not address the specific substance of the planning obligation requirements. Officers of the Council/Worcestershire County Council will attend the Inquiry to address the Inspector on these matters, if the third putative reason for refusal has not been overcome by the time of Inquiry. The officers are also preparing a CIL compliance document.
- 1.6 The evidence I have prepared and provided for this appeal in this Proof of Evidence is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed in this proof are my true and professional opinions.

## 2 THE APPLICATION AND THE PUTATIVE REASONS FOR REFUSAL

- 2.1 The planning application was validated on 3<sup>rd</sup> February 2022. It was ascribed the Council reference number 22/00201/OUT. The description of development was as follows:

*'Outline planning application for the erection of up to 102 dwellings, new vehicular and pedestrian access, and associated works. All matters reserved except for access'.*

- 2.2 The appellant lodged an appeal against the non-determination of the planning application. The appeal was validated on 9<sup>th</sup> September 2022. The Council continued to have pro-active discussions with the appellant in the intervening period and a Delegated Officer Report was published on 19th October 2022 setting out how the Council would have determined the proposals if the Council had remained the determining authority. The Officer Report considered the proposals and advised that the Council be minded to refuse the application proposals for the following reasons:

### Reason for Refusal 1

- 1) The application site lies entirely outside the settlement boundary of Droitwich as defined under policy SWDP 2 of the South Worcestershire Development Plan 2016 (SWDP). The site is therefore defined as open countryside where development shall be strictly controlled. The proposed development fails to accord with the provisions of policy SWDP2 part C of the SWDP. The proposed development would go against the SWDP Development Strategy and the principles it is based upon (as set out under policy SWDP2) in that it would not safeguard or enhance the open countryside nor encourage the effective use or re-use of brownfield land. The proposal fails to take into account the latest Landscape Character Assessment and its guidelines. Development on this site would not be appropriate to, or integrate with, the character of the landscape setting and would impact adversely upon a valued landscape. Furthermore, the proposed development would result in adverse visual impacts in the local landscape, including in views from a promoted leisure walking route. The significant and demonstrable landscape and visual harm would not be outweighed by the benefits of the proposal contrary to the provisions of adopted South Worcestershire Development Plan (2016) Policies SWDP1, 2, and 25 as well as guidance contained in the National Planning Policy Framework (2021) including paragraph 174 (a). As such the proposal would not constitute sustainable development.

### Reason for Refusal 2

- 2) The character of Hampton Lovett is of linear development of period properties set within large plots surrounded by farmed land. Hampton

Lovett is not a nucleated village with a central core and therefore the character of the settlement is dependent upon the retention of the rural setting along the lane. It is considered that the proposal to develop the existing farmed land with dwellings would alter the character of Hampton Lovett causing harm to the setting of the Grade I listed church of St Mary and the period properties which form the settlement. This represents a less than substantial harm, which is not outweighed by public benefits. The significant and demonstrable harm identified provides a clear reason for refusing the development. The proposal fails to accord with policies SWDP6, 21 & 24 of the South Worcestershire Development Plan as well as guidance contained in Section 16 of National Planning Policy Framework. As such the proposal would not constitute sustainable development.

Reason for Refusal 3

- 3) Whilst noting the applicant's willingness to enter into a Section 106 legal agreement, no secure arrangements are currently in place to secure:
- Financial contributions towards education provision (school places);
  - Financial contributions towards off-site built leisure facilities and formal sports pitches;
  - Financial contributions towards local primary healthcare provision;
  - Financial contributions towards sustainable travel comprising expansion of lo bus services and towards community transport for the elderly and disabled;
  - The provision of on-site public open space and management; and
  - The provision of on-site affordable housing.

As such, the proposed development does not meet the objectives of sustainable development and cannot be delivered with acceptable impacts on the community and the environment. Therefore, the application is contrary to adopted South Worcestershire Development Plan Policies SWDP1, 7, 15 and SWDP 39 and guidance in the Council's Developer Contributions SPG and Affordable Housing SPG, as well guidance contained in the National Planning Policy Framework 2021.

- 2.3 The Council expect that putative Reason for Refusal 3 will be addressed by appropriate planning obligations. However at the time of writing this Proof of Evidence completed planning obligations has not been provided. If planning obligations are not agreed with the appellant, then Officers of the Council/ Worcestershire County Council will attend the Inquiry to address the Inspector on these matters.

### 3 PLANNING HISTORY

- 3.1 The application site was subject to a previous application for development under application 17/01631/OUT relating to an 'Outline planning application for the erection of up to 144 dwellings (including 58% affordable), access and associated works. Matters relating to Appearance, Landscaping, Layout and Scale are reserved for future consideration'. The application was refused permission on 18th June 2022 and a subsequent planning appeal determined by Inspector Hill was dismissed under appeal decision reference APP/H1840/W/18/3218814 on 28 January 2020 (core document 7.2).
- 3.2 In dismissing the appeal, Inspector Hill noted, amongst other matters, that:
- The proposed development, as a whole, would be harmful to the open countryside, landscape character, and upon the character of the settlement of Hampton Lovett
  - There would be harm to the Church of St Mary. In terms of the Planning (Listed Buildings and Conservation Areas) Act 1990 the proposed development would fail to preserve the setting of the Church of St Mary.
  - The benefits of the proposal, would not outweigh the harm identified
- 3.3 The current appeal proposals are for a revised scheme with built development on a smaller part of this previous appeal site, but many of the principal issues are those considered at the 2019 planning inquiry. I will therefore make reference to the previous appeal decision throughout this proof of evidence, to assess to what extent, if at all, the previous Inspector's reasons for dismissing the appeal have been overcome, changes in material considerations, and benefits and harms that have occurred. I will then apply a new planning balance exercise having regard to all material considerations.

## 4 PUTATIVE REASON FOR REFUSAL 1

- 4.1 The Council's first putative reason for refusal (PRfR1) relates to the principle of housing development in this location and that the site is open countryside in an area where, as a starting point, development is strictly controlled. PRfR1 also identifies that the site is located within a Valued Landscape and that there would be significant and demonstrable landscape and visual harm that would arise from the development which would not be outweighed by benefits and that the proposal does not comprise sustainable development. As such, the PRfR1 identifies conflict with SWDP policies SWDP1, SWDP2, SWDP25 as well as guidance contained in the NPPF including paragraph 174 (a). These matters are discussed separately below, however as the statutory starting point for the decision-making process and the planning balance, I firstly set out the Development Plan and decision-making context.

### DEVELOPMENT PLAN AND DECISION-MAKING CONTEXT

- 4.2 The Development Plan comprises the South Worcestershire Development Plan (adopted February 2016) (SWDP) (core document 4.1) and the Waste Core Strategy for Worcestershire 2012-2027(adopted November 2012) (core document 4.12) and a number of 'made' Neighbourhood Development Plans, none of which are applicable to this appeal.
- 4.3 The SWDP was adopted in February 2016, covers the plan-period from 2006 to 2030, and is a joint development plan for the administrative areas of Malvern Hills District, Worcester City and Wychavon District. In March 2021 the SWDP became more than five years old.
- 4.4 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. Section 70(2) of the Town and Country Planning Act 1990 provides that 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. This sets out the clear (and well known) legal requirement that the determination of planning applications/appeals must be made in accordance with the development plan unless material considerations indicate otherwise.
- 4.5 The SWDP is part of the development plan for the Wychavon/Malvern Hills/Worcester City Districts. The National Planning Policy Framework (NPPF) constitutes guidance as a material consideration in determining planning applications. The NPPF, however, does not change the statutory status of the development plan as the starting point for decision-making and states at paragraph 12 that:

*“Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed”.*

- 4.6 The SWDP has been prepared, found sound and adopted in the context of the NPPF. The SWDP is based upon and reflects the presumption in favour of sustainable development and its policies set out how this presumption will be applied locally, consistent with NPPF paragraph 15.
- 4.7 Moreover, Policy SWDP1 of the SWDP broadly incorporates the Presumption in Favour of Sustainable Development at paragraph 11 of the NPPF and states that where relevant policies are out of date at the time of making the decision, the planning authority will grant permission unless material indications indicate otherwise taking account of whether:
- i. any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or*
- ii. specific policies in the Framework indicate that development should be restricted.*
- 4.8 Other material policy considerations include, but are not limited to:
- The National Planning Policy Framework (NPPF) (core document 4.2)
  - Planning Practice Guidance (PPG) (core document 4.12)
  - South Worcestershire Development Plan Review: Regulation 19 Publication Document: Dated November 2022 (SWDPR) (core document 4.3)
- 4.9 The SDWPR is being consulted on for 6<sup>th</sup> weeks from 1<sup>st</sup> November 2022. The consultation of the SDWPR has been delayed from July/August 2022 and it is therefore accepted that the timescale for Independent Examination and Adoption (February to May 2023 and October 2023 respectively) as set out in the South Worcestershire Local Development Scheme 2021-2024 (January 2022 Update) (core document 4.13) will also be delayed. An updated timescale for Independent Examination and Adoption has not yet been published by the Council, but I have been advised by Officers that the Examination of the SWDPR is expected in 2023. Given the stage of the SWDPR Reg 19, the draft policies can be given some, but limited, weight in the determination of this planning application. However, it is clear that at the end of the SWDPR process (whenever that is) the development plan will set out what housing development is to be met and where.
- 4.10 Whilst the Council is firmly of the view that the proposal is contrary to the spatial strategy and housing related policies in the SWDP, it is also the case that for the purposes of this appeal only, as set out in the Housing Land Supply SoCG, the 5-year housing land with oversupply removed within Wychavon District, whether monitored jointly or individually, for the purpose of this appeal, is between 3.52 and 3.94 years.
- 4.11 I do not provide evidence or address the merits of alternative housing land supply calculation methodologies in my Proof of Evidence and my evidence is provided

on the basis that the 5-year housing land supply range of 3.52 and 3.94 is agreed between the Council and the appellant.

4.12 It is common ground that a 5-year supply of deliverable housing sites cannot currently be demonstrated. The NPPF states at paragraph 11 and footnote 8, that if a local authority cannot demonstrate that a 5-year housing land supply exists, then the policies which are most important for determining the application are deemed out of date.

4.13 Consequently, paragraph 11d of the NPPF sets out that in circumstances where the most important policies for determining an application are out of date (and this includes circumstances where the local planning authority cannot demonstrate a 5-year supply of deliverable housing sites, as is the case here) there is a presumption that planning permission 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 proposed; 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.*

4.14 The protected areas or assets of particular importance referred to at (i) above are defined in footnote 7 of the NPPF and include 'designated heritage assets' which the Annex 2 Glossary of the NPPF confirms includes 'listed buildings'.

4.15 The protected areas or assets of particular importance as defined by footnote 7 which are of relevance to this case are:

- Grade I listed Church of St Mary and its Grade II listed Lych-gate

4.16 The Council contends that the presumption in favour of development (known as the tilted balance) does not apply for the reason set out in putative reason for refusal 2; namely:

*'The character of Hampton Lovett is of linear development of period properties set within large plots surrounded by farmed land. Hampton Lovett is not a nucleated village with a central core and therefore the character of the settlement is dependent upon the retention of the rural setting along the lane. It is considered that the proposal to develop the existing farmed land with dwellings would alter the character of Hampton Lovett causing harm to the setting of the Grade I listed church of St Mary and the period properties which form the settlement. This represents a less than substantial harm, which is not outweighed by public benefits. The significant and demonstrable harm identified provides a clear reason for refusing the development. The proposal fails to accord with policies SWDP6, 21 & 24 of the South Worcestershire Development Plan as well as guidance contained in Section 16 of National Planning Policy Framework. As such the proposal would not constitute sustainable development.'*

- 4.17 Section 5 of this Proof of Evidence and the Proof of Evidence of Dr David Hickie sets out the reasons why the application of policies in the NPPF that protect designated heritage assets, which are defined as areas or assets of particular importance, provide a clear reason for refusing the appeal.
- 4.18 On this basis I consider that the ‘tilted balance’ is disapplied insofar as paragraph 11di of the NPPF is engaged. This presents a clear reason to refuse the appeal and therefore any further application of the presumption in favour of sustainable development ceases to apply, however it is still necessary for the decision maker to have regard to all other relevant considerations before determining the appeal. Similarly, criterion Dii of Policy SWDP1 is engaged as there are ‘specific policies’ in the NPPF which indicate the development should be ‘restricted’.
- 4.19 As confirmed by paragraph 12 of the NPPF, the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan, permission should not usually be granted. The decision maker may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.

#### **THE SUPPLY OF HOUSING**

- 4.20 Notwithstanding that paragraph 11di of the NPPF is engaged in this instance, factors surrounding the supply of housing are an important material consideration in the determination of this appeal. Therefore, I firstly set out the background of the adopted development strategy and the housing provision requirements.
- 4.21 The housing provision requirements are set out in the adopted development plan and specifically Policy SWDP3 of the SWDP. Criterion C sets out that housing provision will be made for 28,400 dwellings during the plan period 2006 – 2030. This requirement covers the administrative areas of Wychavon, Worcester and Malvern Hills.
- 4.22 The housing requirement, for monitoring purposes in the Development Plan is split into five sub-areas across the three administrative areas. However, in March 2021 the adopted development plan became more the 5 years old and paragraph 74 of the NPPF was therefore engaged. I do not provide evidence on housing land supply methodologies, but as set out in the Housing Land Supply SoCG, the 5-year housing land supply position for the purposes of this appeal, whether monitored jointly or individually, is between 3.52 and 3.94. This represents a shortfall of 791 dwellings Wychavon (excluding the Wider Worcestershire Sub-Area) and a shortfall of 703 dwellings for Wychavon District. I consider that this represents a current significant shortfall.
- 4.23 Notwithstanding that it is a matter of common ground that the Council cannot currently demonstrate a 5-year housing land supply, the following factors are material considerations in this appeal.

- 1) As set out in the Council's Five Year Housing Land Supply Report September 2021 (core document 4.12), from the outset of the plan period in 1 April 2006 to 31 March 2021 there have been 19,492 total dwelling completions across South Worcestershire. This is significantly above the cumulative annual requirement for completions from 2006 which amount to 16,580 dwellings. This represents an 'over-delivery' of 2,921 dwellings (17.6%) against the cumulative annual requirement. I do not provide evidence on the counting of 'over-delivery' in 5-year housing land supply methodologies but it is a material consideration in the determination of this appeal that over the plan period to 2021 there has been an 'over-delivery' of 2,921 dwellings. Put simply, these are an additional 2,921 actual homes that have been delivered and are meeting the housing needs of local people over the plan period to date.
  
- 2) With regard to more recent past delivery, the latest Housing Delivery Test measurements were published by the Department for Levelling Up, Housing and Communities on Friday 14 January 2022 (core document 10.1). This identifies that of the 3,281 homes required in the 2018-2021 period, 5,100 dwellings were delivered, giving the South Worcestershire Councils a joint HDT measurement for 2021 of 155%. This 'over-delivery' in housing within a shorter term 3 years period is also a material consideration. Actual homes have been delivered over and above the total number of homes that are required over the 3-year period and are meeting the housing needs of local people. Over both the shorter term and longer term timeframes, the number of homes delivered have exceeded the numbers required.
  
- 3) As set out in the Council's Statement of Case, the Council has recently accepted that it cannot demonstrate a five-year supply of housing sites at the current time. Planning applications for housing developments are therefore currently being determined in accordance with paragraph 11d of the NPPF within Wychavon District and across the SWDP administrative area. Planning applications have been determined in accordance with the tilted balance since 5<sup>th</sup> July 2022 as this was the date the Leigh Sinton Appeal Decision (Appeal Ref: APP/J1860/W/21/3289643) (core document 7.2) was published, and the date at which it was determined the Council did not have a 5YHLS. Each planning application must of course be determined on its own merits, but as is the intention of paragraph 11d, planning applications for residential development within Wychavon District and the SWDP administrative area, are now being approved 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 proposed
  
  - (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.

Having regard to the development plan and all material considerations in each planning application, which must be considered on its merits, this decision-making framework has contributed towards planning permissions for major

housing proposals being granted since 5<sup>th</sup> July 2022 in locations which are in conflict with Policy SWDP2 once the tilted balance is applied. For instance, at the Council's most recent planning committee on the 10<sup>th</sup> November 2022, in accordance with the Officer's recommendation in the committee report (core document 10.2) the committee resolved to permit (the draft committee minutes are provided at core document 10.3) planning application reference 21/02562/FUL for the Demolition of Outbuildings and the Development of 52 Dwellings, Public Open Space and Associated Infrastructure. This demonstrates that the members of the planning committee are in fact now responding positively to the need to apply the 'tilted balance'.

These planning permissions which are being determined in accordance with tilted balance represent an uplift in the future supply of housing over and above the spatial strategy in the adopted Development Plan. Each of these planning permissions will of course need to be subject to the 'deliverable' test in context of footnote 8 and Annex 2 of the NPPF at the appropriate time for the purposes of the Council's future Five Year Housing Land Supply Statements. However, notwithstanding this fact, these permissions will contribute to an uplift in future housing supply.

4) The SWDPR is progressing and the Regulation 19 Plan is currently subject to consultation. Emerging Policy SWDPR 02 identifies that the Standard Method Housing Requirement Output for the development plan period 2021-2041 is 25,860 dwellings and the total housing requirement is 26,360. Taking account of Outstanding Deliverable SWDP Allocations (as of March 2021), commitments (as at March 2021 with a 5% lapse rate) and contributions from Windfall Allowance, Table 1 of the SWDPR identifies an emerging Net Housing Requirement of 11,000 dwellings. Against this Net Housing Requirement, the Emerging SWDPR identifies 13,240 units of Proposed New Housing Allocations. These emerging allocations represent a surplus of 2,240 dwellings (20.4%) over and above the Total Housing Requirement up to 2041. It is accepted that the emerging SWDPR will be subject to consultations and an Examination in Public and the SWDPR and the Emerging Plan can only be afforded limited weight in the decision-making at the current time.

However, it is a material consideration in the determination of this current appeal, that there is plan-led strategy which is being positively prepared to meet, and indeed exceed, the area's objectively assessed housing needs.

5) Table P.4 in Appendix 1 at page 54 of the South Worcestershire Council's Annual Monitoring Report dated March 2021 (core document 4.17) shows the number of affordable housing completions by area in the 2019/20 period and since the start plan period 2006/07. The Table shows that there were 2,441 affordable housing completions from the start of the plan period in 2006/2007 until the 2019/2020 annual monitoring year in the Wychavon sub-area (excluding the Wychavon Wider Worcester Sub-Area). Whilst there is no annual target for the delivery of affordable housing in the adopted SWDP, if the affordable housing required in policy 4b (i) of policy SWDP 3 for Wychavon excluding the Wider Worcester Sub-Area is annualised (3,300/24) this would provide an annual 'requirement' figure of 137.5 dwellings, which over the 14

years would generate a pro-rata affordable housing 'requirement' of 1,918 dwellings. The 2,441 affordable housing completions therefore represent an 'over-delivery' of 523 affordable dwellings from the start of the plan period to the 2019-2020 monitoring year. Therefore, over the plan period, the number of affordable homes delivered have exceeded the numbers 'required'. Again, put simply, these are an additional 523 actual affordable homes that have been delivered and are meeting the housing needs of local people over the plan period to date.

- 4.24 As the Council cannot currently demonstrate a five-year housing land supply, it is the case that this application must be determined in accordance with paragraph 11 of the NPPF and Policy SWDP1 criterion D. However, I consider the 'tilted balance' is disapplied as a result of paragraph 11di of the NPPF being engaged.
- 4.25 Notwithstanding that the tilted balance is not in engaged, the provision of housing within the appeal proposals remains a benefit of the proposal. Whilst paragraph 11dii of the NPPF is not engaged, I continue to afford weight to the delivery of housing in the planning balance in the context that there is currently no 5-year housing land supply, but I also have regard to other factors.
- 4.26 Inspector Hill's previous decision on this site provides an appropriate 'starting point' for considering planning benefits and harms in this case. The previous dismissed scheme proposed up to 144 dwellings, of which 50% were affordable in excess of policy requirements, being up to 72 open market and 72 affordable dwelling. The current proposals have reduced the number of dwellings to up 102 dwellings and now propose a policy compliant 40.8% affordable units which equates to 41 dwellings. The appeal scheme therefore proposes 38 less open market units and 39 less affordable dwellings than the previous scheme.
- 4.27 At paragraph 45 of Inspector Hill's decision she concluded on the scheme for a lesser amount of dwellings that:
- 'housing and affordable housing provision are benefits to be given substantial weight. However, as in that appeal, this does not amount to over-riding weight, rather it is a matter for the planning balance' (my emphasis).*
- 4.28 In reaching this conclusion there are a number of relevant considerations set out in the appeal decision.
- At paragraph 40, Inspector Hill identifies that *'The Government seeks to significantly boost the supply of homes. This is a matter for both plan making and decision taking, but it is not at all costs'*(my emphasis). It remains the case for the context of decision-making in the current appeal that the Government remains committed to significantly boosting the supply of homes. However, the decision-making process is such that all material considerations must be considered and the provision of housing should not have over-riding weight.
  - At paragraph 41, Inspector Hill identified that the decision was made in the context that a five-year housing land supply was demonstrated at that time but it was *'accepted that the five year supply may soon fall into deficit but that is*

*not currently the case*'. In reaching her conclusions, Inspector Hill was aware that the Council's 5-year housing supply would fall into deficit and I consider it is also a material consideration in this appeal that the Council has a plan-led strategy to improve the 5-year housing land supply position with the progression of the SWDPR for which Examination is anticipated in 2023.

- The previous decision was made in January 2020 and the Inquiry was held in October 2019. As set out in the 'milestones' table at page 9 of the Local Development Scheme (core document 4.13) at that time the emerging SWDPR was at Preferred Options Regulation 18(ii) stage. The preparation of the emerging SWDPR has now progressed to Preferred Options Regulation 19 stage and the Plan is being consulted on for 6 weeks commencing 1<sup>st</sup> November 2022. The appeal site is not allocated in the Emerging SWDPR. The plan-making process has advanced since the previous appeal and although I afford policies in the Emerging SWDPR limited weight, it is a material consideration that emerging allocations are identified in the SWDPR which represent a surplus of 2,240 dwellings over and above the Total Housing Requirement up to 2041.

4.29 Taking account of all of the above, on one hand I acknowledge that the weight to be afforded to be provision of dwellings is greater than the previous application as the Council cannot currently demonstrate a 5-year housing land supply and I consider this shortfall is significant. However, tempering this weight, is the fact that:

- The current application proposes fewer open market dwellings and fewer affordable dwellings than the previous dismissed appeal.
- The Council has a strong record of over-delivery of dwellings, including affordable dwellings, in both the shorter term and longer term timeframes and the number of actual homes delivered have exceeded the number required over the plan period. This is a Council with a strong record of housing delivery so far over the plan period. It is essential that planning decisions must reflect reality and actual housing delivery outcomes which have already been delivered during the plan period and contributed to housing land supply. This previous supply and the impacts on achieving a sustainable pattern of the development in accordance with the requirements of the development plan policy must not simply be discounted.
- By virtue of the tilted balance being applied in the decision- making process, planning permissions are coming forward in circumstances where they comply with paragraph 11d of the NPPF which is boosting future supply.
- The SWDPR is progressing and emerging allocations are identified over and above the Total Housing Requirement up to 2041. This is a Council where a plan is being positively prepared to not only meet, but exceed, the objectively assessed housing needs. The SWDPR is relatively advanced and Examination in Public is anticipated in 2023.

- 4.30 For these reasons, notwithstanding that the tilted balance is not engaged in this appeal, I consider that the weight to be afforded to the supply of market housing and affordable housing provision remains consistent with the previous appeal decision. I consider that the housing and affordable housing provision are benefits to be afforded substantial weight in the decision-making process, but this does not amount to over-riding weight. This benefit of housing provision is a matter for the planning balance to be considered alongside all material considerations.

**PUTATIVE REASON FOR REFUSAL 1 AND THE PRINCIPLE OF DEVELOPMENT**

- 4.31 Turning now to the substance of the first putative Reason for Refusal in respect to the principle of development. Policy SWDP1 provides the overarching sustainable development principles for the SWDP and I refer to the non-compliance with this policy in the Planning Balance section of this Proof of Evidence taking account of all material considerations.
- 4.32 In respect to the adopted Development Strategy, the PRfR1 identifies conflict with policy SWDP2 of the SWDP in that the appeal site lies entirely outside the settlement boundary of Droitwich as defined under policy SWDP2 and the Proposals Map. The site is therefore defined as open countryside where development shall be strictly controlled. PRfR1 identifies that the proposed development fails to accord with the provisions of policy SWDP2 criterion C of the SWDP and that the proposed development would therefore conflict with the SWDP Development Strategy and the principles it is based upon (as set out under policy SWDP2 criterion A) in that it would not safeguard or enhance the open countryside nor encourage the effective use or re-use of brownfield land.
- 4.33 The Development and Spatial Strategy for the SWDP is set out in Policy SWDP2 (Development Strategy and Settlement Hierarchy) of the SWDP. Criterion A sets out the adopted Development Strategy of the SWDP, which, inter alia, is based on the following principles:
- iii. Safeguard and (wherever possible) enhance the open countryside.
  - iv. Encourage the effective use and re-use of accessible, available and environmentally acceptable brownfield land.
  - vi. Focus most development on the urban areas, where both housing needs and accessibility to lower-cost public services are greatest.
- 4.34 The South Worcestershire Settlement Hierarchy is set out in Table 2 and Droitwich Spa is identified as an 'Urban area – Main Town' and the settlement hierarchy strategic direction for the SWDP is provided in policy SWDP2 Development Strategy and Settlement Hierarchy. The strategy focusses the majority of new development to Worcester and the main towns because these are considered to be the most sustainable locations as these areas have the greatest housing needs and are considered the most sustainable. However, the Development Strategy also allows for some development to take place in some of the more sustainable villages which are classed as category 1, 2 or 3. There are therefore housing

allocations for many, but not all, of the category 1, 2 and 3 villages and the existence of an allocation depends upon both the availability and suitability of the land within and around the village.

- 4.35 It is considered that the SWDP's settlement hierarchy is robustly evidence-based. The amount of development allocated by the SWDP to each settlement, including the villages, and the way in which windfall proposals in each tier of the settlement hierarchy will be assessed, reflects the relative capacity of the settlements to support new development. The development strategy is driven by the SWDP Vision and associated objectives. It brings together land use, development and infrastructure considerations that flow from the economic, environmental and social characteristics of the area in accordance with the Presumption in Favour of Sustainable Development.
- 4.36 Part C of policy SWDP2 read alongside the Proposals Map defines land beyond a development boundary, (such as the appeal site) as open countryside. The policy is simple, clear and certain in its definition – the proximity of a site to a development boundary has no bearing on whether a site is to be deemed as lying in the open countryside or not in the context of policy SWDP2. Part C of policy SWDP2 states that development will be strictly controlled in the open countryside. Development will only be allowed if limited to specific types outlined in Part C or permitted by other policies in the SWDP.
- 4.37 The proposed development does not accord with any of the exceptions set out in Part C of policy SWDP2. Furthermore the appeal proposal is not a type of development permitted by other SWDP policies. The proposed development is therefore clearly in conflict with policy SWDP2, the adopted development plan spatial strategy and the development plan when read as a whole.
- 4.38 This conflict is not a trivial matter. SWDP2 is an important core strategic policy setting out the development strategy for South Worcestershire. Permitting development contrary to this strategy seriously undermines the approach set out in the NPPF that the statutory status of the development plan as the starting point for decision-making (para 12).
- 4.39 Policy SWDP2 is also consistent with the NPPF. In support of this contention, reference can be made to comments included in the final Inspector's Report (IR) (core document 4.16) relating to the SWDP. The IR concluded that all the SWDP policies as amended by the agreed Modifications are justified, effective and consistent with national planning policy i.e. At paragraphs 35 and 36 the IR endorses the Settlement Hierarchy approach and development strategy as set out under policy SWDP2:-

*The Plan uses development boundaries to define the extent of settlements, within which development is acceptable in general terms in accordance with SWDP 2 F. These boundaries include any contiguous development sites allocated in the Plan. It is difficult to see how effect could be given in development management decisions to the settlement hierarchy or to the national policy quoted in the previous paragraph, without defining development boundaries. They provide*

*necessary certainty so that users of the Plan can understand what is likely to be permissible in any given location.*

- 4.40 Furthermore, Paragraph 4 of the Reasoned Justification for policy SWDP2 identifies that the high quality of the open countryside is an important planning attribute of the area. Sites beyond development boundaries generally are less sustainable as access to local services and employment opportunities tends to be poorer and therefore it is appropriate that development in the open countryside is restricted to proposals which are supportive of more specific SWDP policies.
- 4.41 There are also a number of Significant Gaps shown on the Policies Map. Paragraph 8 of the Reasoned Justification for policy SWDP2 states that the purpose of maintaining these gaps, which either serve as a buffer or visual break between rural settlements and adjacent urban areas or protect the character and setting of settlements, is to provide additional protection to open land that may be subject to development pressures. The designation helps to maintain a clear separation between smaller settlements and urban areas in order to retain their individual identity.
- 4.42 The proposed development would be beyond the Significant Gap which is situated between the edge of Droitwich and the appeal site. Whilst part of a wider land parcel, the scheme would be designed to avoid that Significant Gap area and would be located beyond the Significant Gap.
- 4.43 In terms of location of the site within the open countryside beyond the defined Significant Gap, Inspector Hill concluded in the previous appeal that:
- i) The site is within reasonable proximity to Droitwich (para 47)
  - ii) [the appeal site] provides a clear rural setting and strong sense of separation from the town of Droitwich which has been the case for hundreds of years (para 29)
  - iii) development in this location would have a harmful visual impact upon the open countryside and upon the character of the settlement of Hampton Lovett (para 22)
- 4.44 It is the case that the proximity of a site to a development boundary has no bearing on whether a site is to be deemed as lying in the open countryside or not in the context of applying policy SWDP2. However, the material considerations in the determination of this appeal demonstrate that the appeal site should be considered in the context of being open countryside in proximity to Hampton Lovett – which is a settlement separated from Droitwich by the designated Significant Gap. The proximity and accessibility of the appeal site to Droitwich is a separate material consideration and I concur with Inspector Hill that the site is ‘within reasonable proximity to Droitwich’ (paragraph 47 of core document 7.1).
- 4.45 However, the current appeal is for a housing development in an area of designated open countryside in proximity to Hampton Lovett and the conflict with Policy SWDP2 must applied in this context in the decision-making process.

- 4.46 It is recognised that the development would contribute towards the supply of market and affordable housing to help meet the objectively assessed need for housing in the area. This is of particular relevance given the fact that the Council cannot currently demonstrate a 5-year deliverable supply of housing. It is the case that policy SWDP2 is currently out of date as the Council cannot demonstrate a 5-year housing land supply. However, this does not mean the policy is to be disregarded in the decision making process and it remains the starting point for decision making.
- 4.47 In conclusion, I consider that the appeal proposal conflicts with Policy SWDP2 of the SWDP which controls the distribution of new development taking account of environmental, economic and social impacts. The conflict with the strategic policy of the adopted development plan means the proposals are not in line with the development plan read as a whole, and this is the starting point for decision making. The proposed development does not meet the strategy for the distribution of new development in Wychavon and the appeal site is not an appropriate location for new development. The proposal also conflicts with Policy SWDPR3 of the emerging SWDPR which replicates the policy requirements of adopted Policy SWDP2.

#### **PUTATIVE REASON FOR REFUSAL 1 AND LANDSCAPE HARM**

- 4.48 In addition to the clear conflict with Policy SWDP2 of the SWDP insofar as the proposal goes against the development strategy and fails to safeguard and enhance the open countryside and does not encourage the effective use or re-use of brownfield land, PRfR1 also identifies that the proposal would have a significant and demonstrable landscape and visual harm in conflict with Policy SWDP25 of the SWDP and guidance within the NPPF including paragraph 174(a).
- 4.49 In respect to landscape and visual harm, PRfR1 identifies that the appeal site is a Valued Landscape in accordance with the Landscape Institute Technical Guidance Note (TGN) 02-21: Assessing Landscape Value Outside National Designations (Landscape Institute 2021). (TGN02-21) (core document 5.5). In this context, PRfR1 also identifies that the proposal fails to take into account the latest Landscape Character Assessment and its guidelines and that development on this site would not be appropriate to, or integrate with, the character of the landscape setting and would impact adversely upon a Valued Landscape. Furthermore, the proposed development would result in adverse visual impacts in the local landscape, including in views from a promoted leisure walking route. As such, PRfR1 also identifies that the appeal proposals conflict with Policy SWDP25 of the SWDP and guidance within the NPPF including paragraph 174(a).
- 4.50 I rely on the evidence of Mr Charles Potterton to explain why the appeal site is a Valued Landscape, how the proposal has failed to take into account the latest Landscape Character Assessment and its guidelines, and why the proposal would not be appropriate to, or integrate with, the character of the landscape setting and would impact adversely upon a Valued Landscape.
- 4.51 In regard to the NPPF and landscape impact, the first stage of the decision-making process is to identify whether the site is a 'Valued Landscape'. This was not a

matter which was considered by Inspector Hill in her previous decision as the previous inquiry was held prior to publication of TGN02-21. However, based upon the evidence of Charles Potterton, I consider that the appeal site is a Valued Landscape. As such, paragraph 174(a) of the NPPF directly applies to the determination of this appeal which states that planning decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes (my emphasis).

- 4.52 The evidence of Charles Potterton demonstrates that the appeal proposals fail to contribute, protect or enhance this valued landscape and indeed it is the evidence of Charles Potterton that the introduction of 102 houses with associated road and domestic paraphernalia would be a harmful urban encroachment into the open countryside and would have a major harm to the character of this landscape. As such the proposal directly conflicts with paragraph 174(a) of the NPPF.
- 4.53 Turning to the SWDP, Policy SWDP25 states that development proposals and their associated landscaping schemes must demonstrate that they take into account the latest Landscape Character Assessment and its guidelines; they are appropriate to, and integrate with, the character of the landscape setting; and that proposals conserve, and where appropriate, enhance the primary characteristics defined in character assessments and important features of the Land Cover Parcel, and have taken any available opportunity to enhance the landscape.
- 4.54 The evidence of Charles Potterton identifies that the proposal would fail to take into account the latest Landscape Character Assessment and its guidelines and it is clear that that these guidelines have not been followed (paragraph 4.10 of Charles Potteron's proof of evidence). The evidence of Charles Potterton also demonstrates that the proposed development on this site would not be appropriate to, or integrate with, the character of the landscape setting and as such would be contrary to SWDP25. The evidence of Charles Potterton indeed identifies that the effect of the proposal is substantial adverse as it degrades or diminishes the integrity of a wide range of characteristic elements and features of the landscape and substantially damage the sense of place (paragraph 6.20 of Charles Potteron's proof of evidence). The proposal is therefore in direct conflict with Policy SWDP25. Similarly the proposals are in conflict with emerging Policy SWDPR30 (Landscape Character) of the SWDPR which echoes the adopted Policy SWDP25.
- 4.55 As set out in paragraph 1 of the reasoned justification to Policy SWDP25, the distinctive landscape of south Worcestershire is an important factor in the relatively high quality of life experience by most residents and to allow inappropriate development would compromise both the general wellbeing and economic viability of south Worcestershire. The landscape harm identified by Charles Potterton should be considered in this context; not only for harm on the intrinsic beauty of the landscape but also harm of the landscape's contribution to economic and social-being. These factors were considered at paragraph 21 of Inspector Hill's decision in which she considered that the creation of development with a suburban character between the A422 and the railway line would detract from the enjoyment of the public right of way network and for those using the more

immediate area between the main road and the Church as an opportunity to get away from the urban area for short recreational breaks.

- 4.56 At paragraph 22 of Inspector Hill's decision for the previous appeal proposal she identified that:

*'I do not consider this to be appropriate to, or to integrate with, the character of the landscape setting and so I conclude that in this respect the proposal fails to accord with Policy SWDP 25'.*

- 4.57 In addition at paragraph 23, Inspector Hill concluded:

*'I do not consider that this results in compliance with Policy SWDP 25 taken in totality. Rather, I consider that the proposed development, as a whole, would be harmful to the open countryside, landscape character, and upon the character of the settlement of Hampton Lovett. In this respect, as well as being located outside the settlement boundary for Droitwich, contrary to Policy SWDP 2, there would be a failure to accord with the development plan and this would not simply be a 'technical failure' by being outside of the development boundary as put forward by the appellant.'*

- 4.58 At paragraph 60 of Inspector Hill's decision, she concluded that harm to the character and appearance of the area, including landscape harm, alongside heritage impacts was such that the appeal should fail.

- 4.59 It remains the case, that the current appeal proposals do not just give rise to a 'technical failure' by virtue of the site being in open countryside and in conflict with Policy SWDP2. This site is a Valued Landscape which benefits from intrinsic beauty and contributes to the economic and social well-being of the area. The site is visible from the PRow network which surrounds the built-up area of Droitwich, in an area which has a strong separation from the town of Droitwich and is located beyond the Strategic Gap. Alike to the previous proposals, the scheme would detract from the enjoyment of the public right of way network and for those using the more immediate area between the main road and the Church as an opportunity to get away from the urban area for short recreational breaks.

- 4.60 The landscape and visual harms identified by Charles Potterton are identified as a significant and demonstrable harm on a Valued Landscape which gives rise to a clear conflict with paragraph 174(a) of the NPPF, Policies SWDP2 and SWDP 25 of the SWDP and Policy SWDPR25 of the SWDPR. This harm must be weighed against the need for, and benefits from, the proposed development in the planning balance.

## 5 PUTATIVE REASON FOR REFUSAL 2

- 5.1 The second putative Reason for Refusal (PRfR2) identifies that the proposals would alter the character of Hampton Lovett causing harm to the setting of the Grade I listed church of St Mary and the period properties which form the settlement. The evidence of Dr David Hickie also confirms that the proposal would cause harm to the setting of the Lych-gate which is a grade II listed structure in its own right. This represents a less than substantial harm, which, in my opinion, is not outweighed by the public benefits of meeting need for market and affordable housing together with the economic and other benefits which I discuss further below. The significant and demonstrable harm identified provides a clear reason for refusing the development. As such, PRfR2 identifies that the proposed development fails to accord with policies SWDP6, 21 & 24 of the SWDP as well as guidance contained in Section 16 NPPF. The proposed development would also fail to accord with policies SWDPR 8 and 29 of the SWDPR which was approved for consultation following the publication of the officer Delegated Report. As such the proposal would not constitute sustainable development.
- 5.2 I rely on the evidence of Dr David Hickie to describe the Grade I Church of St Mary and the Grade II listed Lych-gate, their settings and the effect of the proposed development on the setting of the heritage assets.
- 5.3 The evidence of Dr David Hickie states that:
- The adverse impact upon the heritage setting of the Grade I Church of St Mary is judged to be of Moderate/large adverse significance. This is at the top end of the range of 'Less than substantial harm' to the heritage significance of a heritage asset and/or its setting.
  - The adverse impact upon the heritage setting of the Grade II Lych-gate is judged to be of Moderate adverse significance. This is at the upper end of the range of 'Less than substantial harm' to the heritage significance of a heritage asset and/or its setting.
- 5.4 The overall conclusion of Dr David Hickie is that in terms of the Planning (Listed Buildings and Conservation Areas) Act 1990 the proposed development would fail to preserve the setting of both the Church of St Mary and the Lych-gate. In terms of the NPPF, that harm would be less than substantial. Moreover, it would result in conflict with Policies SWDP 6 and 24 of the SWDP and Policies 8 and 29 of the SWDPR.
- 5.5 The conclusions on the effect of the proposed development on the Church of St Mary are consistent with Inspector Hill's conclusions on the site at paragraph 37.

It remains the case that the harm to the Grade I listed building is a matter for considerable importance and weight for the planning balance.

- 5.6 Dr David Dickie also identifies less than substantial on the Grade II listed Lychgate and this is also a matter for considerable importance and weight for the planning balance.
- 5.7 The Church of St Mary is Grade I listed and the Lychgate Grade II listed, and in accordance with the definition of designated heritage assets within Annex 2 of the NPPF, which includes listed buildings, are designated heritage assets.
- 5.8 The relevant statutory provisions are contained in Section 66 (1) of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990. This makes it a duty for a local planning authority, or, as the case may be, the Secretary of State, in considering whether to grant planning permission for development which affects a listed building or its setting, to 'have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses'. As the settings of a listed buildings would be affected by the appeal proposals, the statutory duty under s66 (1) is directly engaged in this instance.
- 5.9 The Courts have held (Ref. South Lakeland DC v Secretary of State for the Environment [1992] 2 AC 141) (core document 8.1) that 'preserving means doing no harm'. The Courts have also held (Barnwell Manor Wind Energy Ltd v. East Northamptonshire District Council, English Heritage, the National Trust and the Secretary of State for Communities and Local Government [2014] EWCA Civ 137) (core document 8.2) that decision-makers should give "considerable importance and weight" to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise (paragraph 29).
- 5.10 With regard to the presumption in favour of sustainable development, paragraph 11 of the NPPF states that planning applications should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole, or that the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed (my emphasis) (i.e. the presumption in favour of sustainable development). Policy SWDP1 of the SWDP echoes this requirement.
- 5.11 Footnote 7 of the NPPF confirms that that policies in the NPPF that protect assets of particular importance include designated heritages.
- 5.12 The policies in the NPPF that protect designated heritage assets are set out in Chapter 16 of the NPPF, and in particular paragraphs 194 to 208.
- 5.13 Dr David Hickie concludes in his proof of evidence that the overall effect is to cause less than substantial harm to the setting of the designated heritage assets.
- 5.14 Monkhill Ltd v SSHCLG [2021] EWCA Civ 74 (core document 8.3) confirms at paragraph 45 that when less than substantial harm is identified to designated

heritage assets consideration of the proposal 'falls within the reach of paragraph 11d)i' of the NPPF.

*Likewise in my view, paragraph 196 [paragraph 202 NPPF 2021], which says that "[where] a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal..." falls within the reach of paragraph 11d)i. This policy must be read together with the policy in paragraph 194 [paragraph 200 NPPF 2021] that '[any] harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification'. Like paragraphs 172 and 173 [paragraphs 176 and 177 NPPF 2021], it allows for an appropriate balancing exercise to be undertaken. It is inherent in the policy that if the harm to the heritage asset is not outweighed there may be a 'clear reason' for refusing planning permission. Here again, the policy does not prescribe the outcome of the balancing exercise in a particular case. That is for the decision-maker to resolve by applying the policy appropriately, in accordance with the relevant principles. (paragraph 45 core document 8.3).*

- 5.15 It is therefore the case that a judgement must be made as to whether policies in the NPPF that protect designated heritage assets provide a clear reason for refusing the appeal and whether paragraph 11d(i) of the NPPF is engaged before applying the planning balance in the decision-making process. This is also the requirement of Policy SWDP1 of the SWDP.
- 5.16 Therefore, turning to the NPPF policies that protect designated heritage assets, paragraph 199 of the NPPF states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance (my emphasis).
- 5.17 Paragraph 200 of the NPPF states that any harm to, or loss of, the significance of heritage assets (including from development within its setting) should require clear and convincing justification (my emphasis).
- 5.18 Paragraph 202 of the NPPF states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal (my emphasis).
- 5.19 Turning first to paragraph 200 of the NPPF, I consider that there is no clear and convincing justification for the identified less-than-substantial harm to the significance of the affected designated heritage assets. I will not repeat fully the arguments of paragraph 4.23 of my Proof of Evidence here.
- 5.20 However, it is my view that substantial weight should be afforded to the delivery of open market and affordable house in the decision-making process however this does not amount to over-riding weight. Notwithstanding that the tilted balance is

not engaged in this instance, I still consider that substantial weight should be afforded to the delivery of housing particularly in light of the Council's current 5-year housing land supply position.

- 5.21 However, as identified at paragraph 43 of the Inspector Hill's decision, the extent of supply and factors around supply can be material to the decision making process. As set out in paragraph 4.23 of my Proof of Evidence, it is evident that the Council has been robust in its housing delivery during the plan period to date and that the Council is currently determining housing applications within the decision-making framework of paragraph 11 of the NPPF which is having the effect of increasing planning permissions for residential development. Importantly, Wychavon is not a district which for instance has a contained administrative area and is reliant on adjoining authorities to delivery its housing needs, or indeed, an authority which is entirely surrounded by Green Belt or an Area of Outstanding Natural Beauty, which provides potentially significant policy constraints to the delivery of housing. By contrast, Wychavon is a District where major housing permissions have been granted by the planning authority, in circumstances that whilst there is a conflict with the development plan, the application of Paragraph 11(d) of the NPPF indicates permission should be granted. It is the case that through the submission of planning applications, alternatives greenfield sites are being identified and recommended for approval which will contribute to boosting housing supply and the development management process is doing its part to increase housing supply, having regard to the material considerations of each planning application.
- 5.22 Moreover, it is a material consideration that the SWDPR is progressing and is at Regulation 19 consultation stage and emerging allocations are identified which represent a surplus of 2,240 dwellings over and above the Total Housing Requirement up to 2041. A plan-making mechanism is in place through the SWDPR which is seek to not only meet, but exceed, the Total Housing Requirements up to 2041. These housing allocations, which do not include the appeal site, have been identified to address housing needs having regard to the consideration of alternatives through an evidence-based system taking into account the considerations of stakeholders to achieve a sustainable pattern of development. This is a case where a plan-making process is progressing to meet housing needs through an appropriate plan-led approach.
- 5.23 The harm to designated heritage assets identified by Dr David Hickie is a permanent harm and it is this permanent harm which must be considered in the planning balance. I give substantial weight to the delivery of housing particularly in light of the council's current 5-year supply position. However, the wider context must be considered, and this is a local planning authority which has over-delivered on the supply housing thus far in the plan period, is currently boosting supply through the development management decision-making process, and has a plan-making process which is progressing to exceed the Total Housing Need up to 2041.
- 5.24 In these circumstances, having regard to the factors surrounding historic, shorter-term and longer-term housing delivery, I strongly consider that there is no clear and convincing justification for the identified less than substantial harm to

designated heritage assets and the appeal proposals are contrary to paragraph 200 of the NPPF.

- 5.25 Turning next to paragraph 202 of the NPPF which states that the harm must be weighed against the public benefits of the proposal. Paragraph: 020 of the Historic Environment Section of Planning Practice Guidance (Reference ID: 18a-020-20190723) (core document 4.10) states that public benefits may follow from many developments and can be anything that delivers economic, social or environmental objectives as described in the NPPF. Public benefits should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and not just be a private benefit.
- 5.26 In this instance, there are a number of public benefits arising from the proposal. I set out the weight I afford to these benefits below.
1. **Provision of open market and affordable housing.** In the context of the current 5-year housing land supply shortfall, but also in the context of a local planning authority which has over-delivered on the supply housing thus far in the plan period, is currently boosting supply through the development management decision-making process, and has a plan-making process which is progressing to exceed the Total Housing Need up to 2041. – **I afford Substantial public benefit but this is not an over-riding benefit.**
  2. **Construction Jobs.** I agree with Inspector Hill's previous conclusions (paragraph 50) that the proposal would generate some local economic benefits. However, these are likely to be short-lived and would depend upon the employment approach of the developer. As such, **I also afford this public benefit limited weight.**
  3. **Homes for economically active people increasing spending supporting local business and services.** Taking account of the number of dwellings proposed and that this benefit is not unique to this development and would be similarly achieved by other all housing developments, including those being progressed as emerging allocations; **I afford moderate weight to this public benefit.**
  4. **Vitality and viability of the community.** I agree with Inspector Hill's previous conclusions (paragraph 49). The increase in population in Hampton Lovett could increase the vitality and viability of the community. However, it remains evident that there are some local views that the existing community is active, and functions well, and so does not need enhancing. However, there would be a likelihood of increasing the community size, mix and diversity so increasing its vitality and viability. **I consider that this public benefit is a modest where the existing community appears to be actively engaged and vibrant.**
  5. **Biodiversity Enhancements.** It remains the case that the appellant has demonstrated a biodiversity net gain and I concur with Inspector Hill's previous conclusions (paragraph 54) this represents a significant benefit to the local habitat, and I accord the factor a **moderate weight as a public benefit.**

- 5.27 Other attributes of the scheme including the provision of on-site open space, the proximity of Droitwich, and the provision of SuDS are not considered public benefits. These factors would not be of a nature or scale to be of benefit to the public at large. Neither are the payment of planning obligations public benefits as these are required to directly mitigate the impact of the proposed development.
- 5.28 On the other hand of this balance exercise, is the harm identified to designated heritage assets. The adverse impact upon the heritage setting of the Grade I Church of St Mary is judged to be of moderate/large adverse significance. This is at the top end of the range of 'less than substantial harm' to the heritage significance of a heritage asset and/or its setting. The adverse impact upon the heritage setting of the Grade II Lych-gate is judged to be of moderate adverse significance. This is at the upper end of range of 'less than substantial harm' to the heritage significance of a heritage asset and/or its setting.
- 5.29 Overall, I consider when taking account of the evidence of Dr David Hickie, that the harm identified to the heritage assets, clearly outweighs the public benefits. The harms identified to the heritage assets would amount to a permanent harm and whilst it is the case that the Council cannot currently demonstrate a 5-year housing supply, it is the case that the Council has a strong record of housing delivery and an emerging development plan is progressing which identifies allocations which exceed housing requirements up to 2041. There is no clear and convincing justification for the identified permanent harm.
- 5.30 Overall, I therefore conclude that the harm to designated heritage assets is not outweighed by the public benefits of the proposal. In addition there is no clear and convincing justification for the harm caused to the significance of the heritage assets. Great weight must be given to this consideration of the impact of the proposed development on the significance of the designated heritage assets in the decision-making process.
- 5.31 I therefore consider that the application of policies in the NPPF that protect assets of particular importance, namely designated heritage assets, provides a clear reason for refusing the development proposed and paragraph 11d(i) is engaged.
- 5.32 Turning to the adopted development plan, as set out above, under the provisions of policy SWDP1 and the over-arching sustainable development principles of the SWDP, there are heritage policies in the NPPF which indicate development should be restricted and criterion Dii of Policy SWDP1 is engaged.
- 5.33 Policy SWDP6 (Historic Environment) sets out that development proposals should conserve and enhance heritage assets, including assets of potential archaeological interest, subject to the provisions of SWDP24. Criterion A of policy SWDP6 confirms that the contribution of heritage assets to the character of the landscape or townscape should be protected in order to sustain the historic quality, sense of place, environmental quality and economic vibrancy of south Worcestershire.
- 5.34 Policy SWDP21 criterion A sets out that all development will be expected to be of a high design quality. It will need to integrate effectively with its surroundings, in

terms of form and function, reinforce local distinctiveness and conserve, and where appropriate, enhance cultural and heritage assets and their settings. Policy SWDP21 highlights a number of specific matters to be addressed.

- 5.35 Policy SWDP24 states that development proposals affecting heritage assets will be considered in accordance with the NPPF, relevant legislation and published national and local guidance.
- 5.36 In regard to the SWDPR, emerging policies SWDPR08 (Historic Environment), SWDPR26 (Design) and SWDPR29 (Management of the Historic Environment) echo the requirements of adopted policies SWDP6, 21 and 24 respectively.
- 5.37 Policies SWDP6, 21 and 24 of the SWDP and policies SWDPR8, 26 and 29 echo the heritage policies in the NPPF, and for the reasons set out above the proposal also conflict with these policies. The proposal does not conserve or enhance designated assets and there is no clear and convincing justification for the harm to the significance of the heritage assets. In accordance with paragraph 202 of the NPPF, the identified less than substantial harm to significance of designated heritage assets should be weighed against the public benefits of the proposal.
- 5.38 I consider that the conflict with adopted development plan policies SWDP6, 21 and 24 and the fact that proposal does not conserve and enhance designated heritage assets and that the harm to designated heritage assets is not outweighed by the public benefits of the proposal, is a matter which weighs significantly and demonstrably against the proposals.
- 5.39 It is the case that a judgement must be made as to whether policies in the NPPF that protect designated heritage assets provide a clear reason for refusing the appeal and whether paragraph 11d(i) of the NPPF is engaged, before applying the planning balance in the decision making process.
- 5.40 However, on the basis that paragraph 11d(i) is engaged and that policies that protect designated heritage assets provide a clear reason for refusing the appeal, I consider that the conflict with policies in NPPF that protect designated heritage assets, as well as the conflict with adopted development plan policies SWDP6, 21 and 24 weighs significantly and demonstrably against the proposals. In considering these harms, great weight must be given to the conservation of the designated heritage assets in the decision making process in accordance with the NPPF.

## 6 PUTATIVE REASON FOR REFUSAL 3

- 6.1 The third putative Reason for Refusal identifies that in the absence of completed planning obligations, the proposed development does not meet the objectives of sustainable development and cannot be delivered with acceptable impacts on the community and the environment. As such, the application is contrary to adopted SWDP policies SWDP1, 7, 15 and 39 and guidance in the Council's Developer Contributions SPG and Affordable Housing SPG, as well guidance contained in the NPPF.
- 6.2 At the time of preparing the Proof of Evidence, the required planning contributions are as follows:
- Financial contributions towards education provision (school places);
  - Financial contributions towards off-site built leisure facilities and formal sports pitches;
  - Financial contributions towards local primary healthcare provision;
  - Financial contributions towards sustainable travel comprising expansion of lo bus services and towards community transport for the elderly and disabled;
  - The provision of on-site public open space and management; and
  - The provision of on-site affordable housing
- 6.3 The substance of these contributions are set out in the Officer Report and for brevity I have not replicated the requirements here.
- 6.4 In terms of the planning policy requirements, policy SWDP7 (Infrastructure) states that development will be required to provide or contribute to towards the provision of infrastructure needed to support it and policy SWDP15 (Provision for Green Space and Outdoor Community Uses in New Development sets out the Standards of Provisions. These Policies are supplemented by Guidance in the Council's Developer Contributions Supplementary Planning Guidance (core document 4.5).
- 6.5 In regard to affordable housing, policy SWDP14 of the SWDP confirms that on sites of 15 dwellings or more on greenfield land 40% should be affordable and provided on site.
- 6.6 At the time of preparing this Proof of Evidence, discussions between the appellant, the Council and consultees are ongoing about the requested planning obligations. The Council hopes that the planning obligations will be agreed and completed ahead of the Inquiry.
- 6.7 I do not provide evidence on the substance of the planning obligations requests and consultees and officers of the Council will attend the Inquiry as necessary should matters be contested. However, by definition, the purpose of a planning obligation is to make a development which would otherwise be unacceptable

acceptable. If it is accepted that the requested obligations are necessary to make the development acceptable in planning terms, it follows that if the requested obligations are not provided the development should be refused as the necessary obligations have not been provided to make the development acceptable.

## 7 SUMMARY PROOF OF EVIDENCE/THE PLANNING BALANCE AND ASSESSMENT OF WHETHER THE PROPOSAL CONSTITUTES SUSTAINABLE DEVELOPMENT

- 7.1 In this Section I firstly consider whether this proposal constitutes sustainable development and then move on to consider the overall planning balance of the development proposals.

### **IS THE PROPOSAL SUSTAINABLE DEVELOPMENT?**

- 7.2 Paragraph 7 of the NPPF confirms that the purpose of the planning system is to contribute to sustainable development. Paragraph 8 of the NPPF states that achieving sustainable development means that the planning system has 3 overarching objectives (economic, social and environmental), which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives) (my emphasis).
- 7.3 Under this section, I consider how the appeal proposal performs against the economic, social and environmental objectives as outline in paragraph 8 of the NPPF, whether net gains are achieved across each of the objectives, and taking account of local circumstances whether the proposal constitutes sustainable development.

#### ***The Economic Objective***

- 7.4 In economic terms, it is clear that a number of benefits would flow from this development, I agree with Inspector Hill's previous conclusions that the proposal would generate some local economic benefits from the construction process. However, these are likely to be short-lived and would depend upon the employment approach of the developer. These benefits would not be unique to this development, but would flow from any new housing development of this size within the District. As such, in accordance with the findings of Inspector Hill I also afford this economic benefit from the construction process limited positive weight.
- 7.5 The proposal would also provide homes for economically active people increasing spending supporting local business and services. Taking account of the number of dwellings proposed and that this benefit is not unique to this development and would be similarly achieved by other all housing development, including those being progressed as emerging allocations; I afford moderate weight to the economic benefits arising from spend from future residents.
- 7.6 I therefore consider that the proposal provides net gains in the economic objective of sustainable development.

#### ***The Social Objective***

- 7.7 In social terms, the proposal would provide up to 62 market and 41 affordable dwellings. Taking account of a range of factors contributing to housing supply in the context of this decision, including the current 5-year housing land supply

position, I have identified in this Proof of Evidence that this is a substantial benefit of the proposal but the supply of housing does not carry over-riding weight in the decision making process.

- 7.8 In accordance with the conclusions of Inspector Hill, I also consider that the increase in population in Hampton Lovett could increase the vitality and viability of the community. I therefore afford modest weight to this social benefit.
- 7.9 I therefore consider that the proposal provides net gains in the social objective of sustainable development.

***The Environmental Objective***

- 7.10 Paragraph 8c of the NPPF state that, amongst other things, that as part of the environmental objective of sustainable development, the planning system needs to contribute to protecting and enhancing the natural, built and historic environment and, as part of this, help to improve biodiversity and use natural resources prudently.
- 7.11 I have considered these matters in detail in my Proof of Evidence. It has been demonstrated that the proposal will cause an adverse impact of moderate/large adverse significance which is at the top end of the range of less than substantial harm to the Grade I listed Church of St Mary. The proposal would also cause an adverse impact of moderate adverse significance which is at the upper end of the range of less than substantial harm to the Grade II listed Lych-gate. The proposal would also cause a major, significant and demonstrable harm to a Valued Landscape.
- 7.12 It is the Case that some enhancements to biodiversity would flow from the development and I accord moderate weight to this benefit which contributes to the environmental objective. However, I consider that overwhelmingly, the harmful impact of this proposal on the natural and built environment means that the proposal would fail to satisfy the environmental role of sustainable development and would give rise to a significant and demonstrable net harm. This weighs significantly and demonstrably against the appeal proposal and is a clear reason the appeal should be dismissed.

***Conclusions on Sustainable Development***

- 7.13 The NPPF is clear that sustainable development means that each of the three objectives should secure net gains in mutually supportive ways. In this instance, as the proposal would not only fail to achieve net gains in each objective, but indeed would cause significant and demonstrable harm to the environmental objective, the proposal does not constitute sustainable development. The appeal should be dismissed for this reason. Notwithstanding this conclusion I set out the wider decision making framework below.

## **THE OVERALL PLANNING BALANCE AND DECISION MAKING FRAMEWORK**

- 7.14 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. Section 70(2) of the Town and Country Planning Act 1990 provides that 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.
- 7.15 On the basis that the Council cannot at this time demonstrate a five year supply of deliverable housing land, the most important policies for determining the application are deemed to be out of date. However the statutory status of the development plan is not affected and nor does it mean that policies SWDP1, 2, 6, 21, 24, 26 or any other development plan policy, is to be disregarded and the development plan remains the starting point for decision making.
- 7.16 As the Council cannot at this time demonstrate a 5-year supply of deliverable housing land, in accordance with Paragraph 11 of the NPPF, the presumption in favour of sustainable development indicates that permission should be granted unless policies for protecting areas or assets of particular importance in the NPPF provide a clear reason for refusing the development proposed, or any adverse impacts of permitting the development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF as a whole.
- 7.17 Footnote 7 of the NPPF confirms that policies in the NPPF that protect areas or assets of particular importance include designated heritage assets.
- 7.18 My evidence demonstrates that the application of policies in the NPPF that protect designated heritage assets provides a clear reason for refusing the development proposed and therefore the tilted balance is not engaged.
- 7.19 The decision-making framework set out in Policy SWDP1 of the SWDP also echoes paragraph 11d of the NPPF. The application of specific policies in the NPPF which protect designated heritage assets 'indicate' and provide a clear reason why the development should be restricted and the consequently the proposal is contrary to the development plan as a whole.

### **Benefits**

- 7.20 The development would contribute towards the supply of market and affordable housing to help meet the objectively assessed need for housing in the area. This is of particular importance given the Council is currently unable to demonstrate a 5-year supply of deliverable housing sites. However, it is necessary to consider the wider housing delivery context and not just the current 5-year supply position. The Council has a strong record of over-delivery of dwellings in both the shorter term and longer term timeframes and the number of actual homes delivered have exceeded the number required so far over the plan period. This is a Council with

a strong record of housing delivery so far over the plan period. It is essential that planning decisions must reflect reality and actual housing delivery outcomes which have already been delivered during the plan period and contributed to housing land supply. This previous supply and the impacts on achieving a sustainable pattern of the development in accordance with the requirements of the development plan policy must not simply be discounted.

- 7.21 This is also a Council where the plan-making process is progressing and emerging allocations are identified in SWDPR over and above the Total Housing Requirement up to 2041 and there is an emerging plan-making strategy to exceed housing requirements up to 2041. Furthermore, by virtue of the tilted balance currently being applied in the decision-making process, planning permissions are coming forward in circumstances where they comply with paragraph 11d of the NPPF which is boosting future supply.
- 7.22 However, it is the case that the provision of 62 market and 41 affordable dwellings would make a considerable contribution towards the supply of market and affordable housing (if the appellant provides a suitable planning obligation to secure affordable housing in perpetuity in advance of the inquiry). Therefore I give substantial weight but not over-riding weight to the supply of market and affordable housing. This conclusion is consistent with paragraph 45 of Inspector Hill's decision.
- 7.23 In economic terms, it is clear that a number of benefits would flow from this development if permitted, including during the construction process. I agree with Inspector Hill's previous conclusions that the proposal would generate some local economic benefits. However, these are likely to be short-lived and would depend upon the employment approach of the developer and would be similarly achieved by other all housing development, including those being progressed as emerging allocations. As such, I also afford the economic benefits from the construction process limited weight.
- 7.24 In economic terms the proposal would also provide homes for economically active people increasing spending supporting local business and services. Taking account of the number of dwellings proposed and that this benefit is not unique to this development and would be similarly achieved by other all housing development, including those being progressed as emerging allocations; I afford moderate weight to the economic benefits arising from spend from future residents.
- 7.25 I also agree with Inspector Hill's previous conclusions (paragraph 49) that the increase in population in Hampton Lovett could increase the vitality and viability of the community. However, it remains evident that there are some local views that the existing community is active, and functions well, and so does not need enhancing. However there would be a likelihood of increasing the community size, mix and diversity so increasing its vitality and viability. This benefit though is a modest one where the existing community appears to be actively engaged and vibrant. I therefore afford modest weight to the increase in population in Hampton Lovett which in turn could increase the vitality and viability of the community.

- 7.26 The applicant has demonstrated a biodiversity net gain and I concur with Inspector Hill's previous conclusions (paragraph 54) that this represent a significant benefit to the local habitat, and I accord moderate weight to this benefit.
- 7.27 The site is within reasonable proximity to Droitwich, which is also accessible by bus. Droitwich itself provides main services and facilities and has a train station giving access to wider destinations. As with the previous scheme, the proposed Illustrative Landscape Strategy indicates a footpath/cycle link through the site with an access point close to the roundabout at the south edge of the site near the A422. This would provide for a more attractive route from The Forest as well as the appeal site when walking or cycling into Droitwich than the current route alongside the A422. Although it would be more circuitous for existing residents, it would, nonetheless be of benefit to them. I concur with Inspector Hill (paragraph 47) that the proximity to Droitwich and increased accessibility are a modest benefit of the proposed development.
- 7.28 Whilst landscape enhancement would be a benefit of the scheme it would be required, in part, to screen and to mitigate the harm of the appeal proposal, which limits the weight to accord it. The improvements to public open space in this location would be a benefit. However, there is a reasonable public rights of way network which facilitates public access to the countryside including circular walks. The requirement for open space derives from the proposed development. I therefore concur with Inspector Hill (paragraph 48) and I attach modest weight to this benefit.

### **Harms**

- 7.29 Harm arises from the conflict with development plan policies relating to the strategy for distribution of housing and policy SWDP2 of the SWDP and the Council's plan making process. These are adopted development plan policies and the starting point for decision making. Section 38(6) of the Planning and Compulsory Purchase Act 2004 makes it clear that this is the starting point for decision making and paragraph 15 of the NPPF reiterates that the planning system should be genuinely plan-led. The SWDPR Review is also progressing and the emerging plan process is moving forward with a Development Strategy which exceeds the housing requirements up to 2041. As such, I consider a significant harm arises by virtue of the conflict with the plan making process and that the proposed development does not meet the strategy for the distribution of new development in Wychavon District and the appeal site is not an appropriate location for new development.
- 7.30 The evidence of Dr David Hickie also identifies the proposal will cause an adverse impact of moderate/large adverse significance which is at the top end of the range of less than substantial harm to the Grade I listed Church of St Mary. The proposal would also cause an adverse impact of moderate adverse significance which is at the upper end of the range of less than substantial harm to the Grade II listed Lych-gate. I do not consider that these harms are outweighed by the public benefits of the proposal and there is no clear and convincing justification for these harms. Whilst the Local Planning Authority cannot currently demonstrate a 5-year supply of deliverable housing sites, the impacts on the designated heritage assets

and the application of the policies in the NPPF that protect designated heritage assets also represent a clear reason for refusing the appeal and weighs significantly and demonstrably against the proposals. Great weight must be afforded to the conservation of designated heritage assets in the decision making and planning balance processes.

- 7.31 The landscape and visual harms identified by Charles Potterton are identified as a major harm and are a significant and demonstrable harm on a Valued Landscape which gives rise to a clear conflict with paragraph 174(a) of the NPPF, Policies SWDP2 and SWDP 25 of the SWDP and Policy SWDPR25 of the SWDPR. This harm weighs significantly and demonstrably against the proposals.
- 7.32 The proposal would also result in loss of 0.06 ha of grade 2 agricultural land and 2.49 ha of grade 3a. I consider that this is a modest harm arising from the proposal.

***Harms (understood to be resolved)***

- 7.33 It is understood that appropriate planning obligations will be entered into to resolve PRfR3 and contained within a completed planning obligation with the appellant before the opening of the Inquiry. However, I consider that if the appropriate financial obligations are not secured then this is a significant harm arising from the appeal proposal as the proposal would not provide appropriate infrastructure which is necessary, directly related and fairly and reasonable related to the scale and kind of development.
- 7.34 The appellant has indicated that they are willing to provide the requested affordable housing. However, if a suitable planning obligation is not agreed this would be a matter which heavily weighs against the proposal and would significantly diminish the benefits of the proposal in contributing towards the supply of affordable housing in the area.
- 7.35 For the purposes of the planning balance exercise carried out below, I have assumed that the appellant enters into the requested planning obligations before the opening of the Inquiry and these harms set out in paragraphs 7.33 to 7.35 do not arise.

***Overall Conclusion***

- 7.36 Having regard to all the benefits and harms in this case, I consider that the overall conclusion of Inspector Hill remains valid. The amendments to the submitted scheme do not overcome the clearly identified harms of the proposal.
- 7.37 Whilst there would be some benefits from the development namely the delivery of housing and associated economic and social benefits this is a case where the tilted balance is not in play. The identified harms to designated heritage assets represents a clear reason why planning permission should be refused.
- 7.38 The landscape and visual harms are identified as a major harm and a significant and demonstrable harm on a Valued Landscape which weighs significantly and demonstrably against the proposals.

- 7.39 It is also the case that the identified harms and the conflict with the development plan point clearly towards a refusal to such an extent that, even if the presumption in favour of sustainable development were engaged, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF taken as a whole.
- 7.40 The proposals are demonstrated not to be sustainable development and I respectfully invite the Inspector to dismiss the appeal.