

**APP/H1840/W/22/3305934**

*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.*  
Land North of Droitwich Spa, Worcestershire WR9 0NU

Appellants: Beechcroft Land Ltd & Henry Bouskell

Local Planning Authority: Wychavon DC (ref W/22/00201/OUT)

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OPENING STATEMENT ON BEHALF OF THE LOCAL PLANNING AUTHORITY

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Introduction

1. This is an appeal against the non-determination of a planning application. Following the submission of the appeal, the Council provided three putative reasons for refusal (“RfR”). A previous appeal for a greater amount of residential development on the appeal site was dismissed following a public inquiry in October 2019 on 28/1/20 (ref 3218814 [CD7.1])<sup>1</sup>. In effect, the Appellants say that the present proposal adequately addresses much which the previous inspector found harmful. The Council disagrees.
2. RfR1 and RfR2 are (with emphasis added):

RfR1: “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.”

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<sup>1</sup> The ‘red lines’ were not exactly the same but the totality of the land within the red/blue lines were – the two illustrative masterplans are set out side-by-side at page 16 of the SoCG [CD9.3]. The previous proposal was for up to 144 dwellings.

RfR2: “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.”

3. As agreed at the CMC, this inquiry will consider main issues relating to:
  - a. The effect on the character and appearance of the area.
  - b. The effect on designated heritage assets.
  - c. Planning policy and the planning balance.
  - d. Planning obligations.
4. An on-line documents library is available<sup>2</sup>.
5. Statements of Common Ground (“SoCG”) have been agreed. These set out:
  - a. [CD9.3] The Council’s putative reasons for refusal, main issues, site and surrounding area description, the planning history of the site, a description of the development proposed including reference to illustrative material, a list of relevant policy and other documents, details of matters agreed between the Council and the Appellant and matters which are not agreed.
  - b. [CD9.6] Matters of common ground agreed in respect of housing supply and delivery. The Council cannot demonstrate a 5YHLS. The agreed position (#2.14) is a 3.68 year supply in the District and 3.94 years across the joint plan-making area.
  - c. [CD9.5] Matters of common ground agreed between the expert witnesses of the Council and the Appellant in respect of Landscape and Visual matters. Whether or not the site is part of a “valued landscape” is in dispute.
  - d. [CD9.4] Matters of common ground agreed between the expert witnesses of the Council and the Appellant in respect of Heritage matters. Both experts agree that this case concerns “less than substantial harm” to designated heritage assets for the purpose of the NPPF.
6. Of course, these SoCG do not bind third parties, many of whom do not accept all the matters agreed by the Council. The inspector will hear and consider their objections

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<sup>2</sup> <https://www.wychavon.gov.uk/planning/appeal-inquiry>

and representations whether made at the time of the planning application [CD12.1], in writing in response to the appeal [CD11 series] or orally at the inquiry.

7. It is anticipated that the appropriate planning conditions [CD9.7] to accompany any planning permission will be agreed by the end of the inquiry (if not before). As usual, the Council's engagement and agreement on these matters is without prejudice to its case that the appeal should be dismissed.
8. So far as is relevant to this appeal, the adopted development plan is the South Worcestershire Development Plan adopted in 2016 ("the SWDP") [CD4.1]. It is currently undergoing a review and the 'Reg 19' pre-submission draft [CD4.29] is subject to statutory consultation which ends this month ("the SWDPR"). The appeal development was promoted in but rejected during the SWDPR process to date.

Main Issue 1: The effect of the proposal on the character and appearance of the area having particular regard to the landscape.

9. A review of the written evidence suggests that the key difference between the experts for the Appellant and the LPA is over the "sensitivity" of the appeal site in landscape terms. An assessment of the "sensitivity" of a landscape combines judgments as to its susceptibility to change and the value attached to it. This judgment is then considered alongside the magnitude of the landscape effects in order to arrive at a judgment as to the overall significance of the effects at a site level. The two experts also disagree on the nature of the visual impact of the proposed development.
10. The two experts are much closer on the impact on the wider landscape and longer distance views.

Main Issue 2: The effect of the proposal on heritage assets particularly the setting of the Grade I listed Church of St Mary and the Grade II listed Lych Gate

11. In respect of a listed building, the statutory test in s66(1) [CD6.4] requires a decision-taker to have "special regard to the desirability of preserving the building or its setting".
12. The two experts agree that there will be harm to designated heritage assets caused by the proposed development and it is "less than substantial" in planning policy terms. However, the Courts have held that a finding of less than substantial harm is not to be equated with a less than substantial objection to the grant of planning permission<sup>3</sup>. The starting point in this appeal is that there is a strong presumption against the grant of planning permission<sup>4</sup>. There is a dispute as to where on the scale of less than substantial harm this case lies.

Main Issue 3: Whether the site would be a sustainable location for the proposed development having regard to the development plan and national policies.

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<sup>3</sup> *Barnwell Manor* [CD8.2] at #29

<sup>4</sup> *Ibid* #28

13. The Council's case is that the development plan taken as a whole indicates that what is proposed in this location is not sustainable development. That judgment is in large part dependent on the nature of the harm that arises under main issues 1 and 2, and to the weight to be given to the benefits of the proposal.
14. The parties have produced a table attached to the SoCG [CD9.3] that sets out the competing positions on the 'benefits' issue.
15. The proposed development is contrary to the development plan read as a whole. The issue (for the purposes of s38(6)) is whether there are material considerations that indicate an outcome of this appeal other than in accordance with the development plan. The Appellant relies on the presumption in favour of sustainable development at NPPF #11d).
16. The HSoCG [CD9.6] at #2.14 records the agreement that the Council can demonstrate a 3.68 year supply in the district. It is agreed that this shortfall needs to be considered in the light of #11d) of the NPPF.
17. There are, however, disagreements as to some of the factors that will go to the weight to be given to this shortfall in the various planning balances that fall to be considered in this case.
18. The Council's case is that #11d)(ii) of the NPPF indicates that the harm to designated heritage assets is a 'clear reason' why permission ought to be refused. If that is not accepted, then #11d)(i) indicate that permission should not be granted because the adverse impacts significantly and demonstrably outweigh the benefits.

Main Issue 4: Planning Obligations.

19. RfR3 concerns the lack of a planning obligation which has now been largely addressed. However, there remain outstanding issues over whether the education and NHS contributions sought should be provided. These will be explored at the inquiry.

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