

## RE: LAND AT BERROW GREEN ROAD, MARTLEY

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### CLOSING SUBMISSION OF THE APPELLANT

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#### INTRODUCTION

1. The context for this appeal is the national imperative to boost significantly the supply of housing (NPPF 60). There has been a longstanding recognition from Government that the planning system has simply failed to deliver sufficient homes for a protracted period of time and this can no longer be tolerated.<sup>1</sup> The housing crisis, exacerbated by inflation, repeated rises in interest rates and the cost of living (a daily news story), has been succinctly expressed by Rt Hon Angela Rayner MP (SoS HCLG and Deputy PM):<sup>2</sup>

*“We are in the middle of the most acute housing crisis in living memory. Home ownership is out of reach for too many; the shortage of houses drives high rents; and too many are left without access to a safe and secure home.”*

2. This is a national imperative which has a clear local expression.<sup>3</sup> This LPA claims a **mere 3.47 years supply** (and the Appellant has not tested it further). The LPA has failed to meet even the (reduced) *minimum* requirement of national policy (to deliver a 4 year supply) against a *minimum* LHN requirement. Considered properly, the HLS position is dire. Further, there will be a very significant housing shortfall of 1,216 homes at the end of the Plan period (2030). The evidence demonstrates

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<sup>1</sup> CAF at 4.1.1 *et seq*

<sup>2</sup> See Written Ministerial Statement, dated 30th July 2024

<sup>3</sup> See evidence of CAF and SoCG

that the LPA's strategic allocations and spatial strategy have failed and will fail to 2030.

3. The need for Affordable Housing (AH) is equally acute. The SHMA (2021 update) identifies that there is a need for 331 AH/pa (2021/22 to 2030/31), when there has been delivery of just 110 AH/pa (2006 to 2023). 1,026 households are unable to afford to rent or buy and have been placed on the Housing Register (2024). 285 have specified Martley Parish as their preferred location (2024). Further, the median/lower quartile ratio of house prices to workplace-based incomes is over 9.9/9.2. This is 20% higher than national averages. It is clear that even modest housing has become unaffordable in this area for vast swathes of the local population.
4. In that context, Malvern Hills DC (MHDC) are significantly dependent on greenfield sites, outside the settlement boundaries of sustainable settlements, to meet their urgent need for more market and affordable housing (both now and in the next Plan period). This is a proposal which delivers the significant benefits of more market and affordable homes, with substantial economic benefits, on an accessible site immediately adjacent to a sustainable settlement (Martley).

### **THE APPEAL PROPOSAL**

5. This appeal concerns an outline application for up to 55 homes (of which 40% will be affordable). There will be 33 market homes and 22 affordable homes. The affordable housing will include a mix of social rented (69%), first homes (25%) and shared ownership homes (6%). The application also provides for public open space, including an area for play, landscaping (40% GI), sustainable urban drainage system and 10% BNG, with vehicular access off the B4197 (Berrow Green Road) (see further s.3

Planning Statement (CD 1.41)). All matters are reserved except for means of access.<sup>4</sup>

6. The proposal does not comprise EIA development. The plans for determination are agreed (s.2.1 SOCG). The Appellant has provided masterplans which show one way in which the scheme could be acceptably brought forward. However, such plans are not for determination. They are illustrative (s.2.2 SoCG).

7. At the time of the determination, there were no outstanding requests for further information and no technical issues which could not be addressed by conditions and/or a s.106 planning obligation. Nonetheless, the application was refused for 5 reasons:<sup>5</sup>

- (i) Impact to the character and appearance of the area, including the heritage impact to the Grade II Listed Longstone Cottage;
- (ii) Loss of BMV agricultural land;
- (iii) Failure to demonstrate a safe access;
- (iv) Failure to address local flood issues;
- (v) Failure to provide a s.106 addressing contributions for highways, education, community infrastructure and health.

8. However, since the determination, progress has been made with the LPA to narrow the scope of disagreement:

- **RFR 2** (BMV land) - the Council has been provided with an Agricultural Land Assessment (CD 1.39). The assessment demonstrates that the quantum of BMV land is less than 2ha. Accordingly, it is agreed that the

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<sup>4</sup> This means the points of access and not the internal road layout, which remains a reserved matter.

<sup>5</sup> Section 6 SoCG (CD 4.4)

proposal complies with Policy SWDP 13(H). **The LPA do not seek to defend RFR 2** (CD 4.4 at 7.3).

- **RFR 3 (Highways)** - WCC (the LHA) initially recommended deferral of the application, whilst waiting further information on a slight discrepancy on the plans (CD 2.17). On 21st March 2024, prior to determination, the LHA were provided with 3 updated plans (CD 1.3, CD 1.4 and CD 1.13), which resolved the discrepancy, and an updated Travel Plan (CD 1.38).<sup>6</sup> The LPA acknowledged the information in their consultation response which offered **no objection** (CD 2.16). The consultation response was received by the LPA on the same day as the RFR, which did not address the LHA's latest position. The HSoCG (CD 4.5) agrees that the proposed access is safe and suitable to serve the development (2.12 *et seq*). **Accordingly, the LPA does not defend RFR 3** (CD 4.2).
- **RFR 4 (Drainage)** - the delegated report (CD 2.1) notes that the LLFA had issued a holding objection (dated 6th February 2024), claiming insufficient details had been submitted on the proposed surface water drainage strategy. Following receipt of their response, the Appellant has worked closely with the LLFA to resolve their concerns, including additional surveys.<sup>7</sup> A SoCG on flooding/drainage has been agreed (CD 4.6). All drainage comments have been resolved and there is no objection from the LLFA or LPA. **Accordingly, the LPA does not defend RFR 4** (CD 4.2).
- **RFR 5 (Section 106 Contributions)** - the Appellant has prepared a s.106 planning obligation which addresses RFR 5. It addresses all of the required Heads of Terms (see CAF at 2.1.23). Agreement has been now been

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<sup>6</sup> CAF at 3.1.6

<sup>7</sup> CAF at 3.1.10

reached on the contested contributions (health and education).

**Accordingly, the s.106 is agreed and there is no basis for RFR 5.**

9. It follows that **only RFR 1 remains in issue.**

### **MAIN ISSUES**

10. The Main Issues reflect the RFR 1 (see CMC Note at CD 4.3):
- (i) Whether the proposal would be in a suitable location for housing with regard to local and national policies for housing;
  - (ii) The effect of the proposal on the character and appearance of the site and surrounding area and the setting of the Grade II Listed Building (Longstone Cottage);
  - (iii) Whether (on balance) the proposal comprises sustainable development.

### **THE STATUTORY TEST**

11. This appeal falls to be determined in accordance with the Development Plan (DP), unless material considerations indicate otherwise (s.38(6) P&CPA 2004). So far as relevant, the development plan comprises:
- The South Worcestershire Development Plan (SWDP), adopted in February 2016 (CD 3.1); and
  - The Martley, Knightwick and Doddenham Neighbourhood Plan (MKD NDP), adopted in January 2018 (CD 3.2).
12. The Development Plans are more than 5 years old. The strategic policies have not been reviewed and found not to require updating. Accordingly, the Standard Method is agreed to form the basis for the calculation of 4/5YHLS (NPPF (77) and Fn 42).

13. Art 35(1) DMPO 2015 requires the RFR to be full. The LPA's witnesses cannot (and do not) seek to expand the resolved position of the LPA. The LPA alleges conflict in RFR 1 with (CD 2.2):
- **SWDP 2, SWDP 5, SWDP 6, SWDP 21, SWDP 24, SWDP 25** South Worcestershire Development Plan (2016);
  - **MKD 1, MKD 3, MKD 4 and MKD 6** of the NDP (2018).
14. The **decision-making matrix** is not in dispute (XX of LW). It is contained in s.38(6) and NPPF (11). It is, however, quite clear that the LPA have failed to follow the correct approach (XX of LW).
15. Firstly, development proposals that accord with the development plan should be consented *without delay*. It is perfectly usual for policies in a development plan to pull in different directions (the need for housing vs environmental protection). Accordingly, a judgment is required on whether the proposal accords with the plan read as a whole, taking into account such factors as the relative importance of the policies and the relative extent of that compliance or conflict (per Supreme Court *Tesco v Dundee* [2012] PTSR 983 at [34]). Any conflict with SWDP 2C and MKD 6 (as a result of the location outside an out of date settlement boundary) needs to be balanced against compliance with all the other policies of the development plan (including the housing requirement). In reaching such a judgment, where a spatial policy (such as SWDP 2C and MKD 6) has limited weight because it is out of date, it is legally unimpeachable, logical and consistent with the policy to take into account the out-of-datedness of the spatial strategy in: (i) deciding whether the proposal accords with the development plan as a whole and (ii) the application of the tilted balance (per Holgate J in *Bewley Homes*).

16. Secondly, if (which is denied) there is a conflict with the development plan as a whole, the proposal falls to be determined against the tilted balance:
- (i) The most important policies are SWDP 2, SWDP 3 and MKD 6. It is entirely unclear what the LPA's position is. The correct approach did not appear to be understood (XX of LW);
  - (ii) Policies can be out of date in two ways: (a) for the reasons set out in FN 8; and (b) for other general planning reasons (per SC in *Richborough Estates* CD 6.3 at 55);
  - (iii) It is agreed that there is not a 4YHLS (SoCG HLS);
  - (iv) Applying FN 8, **it is agreed that the most important policies are all out of date;**
  - (v) **The tilted balance is engaged.** The balance is tilted in favour of the grant of permission to remedy the lack of a 4/5YHLS (*ibid*);
  - (vi) It is not displaced by heritage impacts (NPPF 208 and Fn 8);
  - (vi) Adverse impacts must significantly and demonstrably outweigh the benefits. Any conflict with an out of date policy must be weighed in the tilted balance;
  - (vii) In considering *the weight* to be attached to an out of date policy (as a matter of planning judgment), it is appropriate to consider: (a) *why* the policy is out of date; (ii) the nature of the restrictive policies; (iii) the interests they protect; (iv) consistency with the NPPF; (v) the extent of the housing shortfall (this is not limited to the shortfall against the 4YHLS); and (vi) any action being taken by the LPA to remedy the shortfall and when it may be effective (per Lindblom LJ in *Hallam Land* (CD 6.5 para 47));
  - (viii) If the tilted balance is passed, there is compliance with national policy, which is material consideration which would outweigh any conflict with the development plan.

17. It must be noted that, whilst this approach was expressly endorsed by LW, it is not the approach he has taken at all. In XX, he conceded that his approach was simply to: (i) reduce the weight to be attached to policies in the SWDP because they are more than 5 years old (the wrong approach applying NPPF (225)); but (ii) afford them substantial weight because they are consistent with the NPPF. He afforded all of the policies in the NDP "limited weight" without coherent explanation. Such an approach is legally incoherent and demonstrably flawed. **No weight can be attached to the LPA's assessment.**
18. By contrast, the approach of CAF is unimpeachable and consistent with previous decisions of PINS. For the avoidance of doubt, the Appellant submits that the most important policies are out of date because:
- It is agreed there is not a 4YHLS (Fn 8); but also
  - The spatial strategy has failed to deliver enough housing to date (due to the failure of the strategic allocations in WWA (MH); and
  - The spatial strategy will fail to deliver enough housing at the end of the Plan period; and
  - Greenfield sites outside settlement boundaries are needed to meet the minimum housing land requirements and form part of the existing HLS because they have been consented by the LPA (e.g. Lioncourt) and on appeal (e.g. Jessups).
19. It follows that any conflict with SWDP 2C and MKD 6, which simply restrict housing outside a very out of date settlement boundary in Martley (see CD 3.17), can only be afforded limited weight, as the LPA (LW) expressly agreed at the Jessups Appeal (CD 5.14 DL 21). Further, reduced weight must attach to policies of environmental and amenity protection, such as SWDP 5 and 25 (per SC in *Richborough Estates* at 55, 79 and 83).

20. These points are explained in further detail (below). It is, however, quite clear from that the LPA has failed to take such highly material points into consideration and reached a flawed decision as a result.

### **HOUSING LAND SUPPLY ASSESSMENT (5YHLSA)**

21. The social role of sustainable development includes a requirement to boost significantly the supply of housing (NPPF 60). This requires LPA's to provide (as a minimum) for the objectively assessed needs (OAN) for market and affordable housing and to plan to meet them (NPPF 11(b), 23 and 35(a)).
22. The requirement for the LPA to demonstrate a 4YHLS is the very *minimum requirement* of national policy (NPPF 77), set against a *minimum housing requirement* (NPPF 60).
23. In that context, it is agreed (XX of LW) that:
- The relevant 5 year period is **1/4/23 to 31/3/28**;
  - It is agreed that the 4 year requirement should be calculated using the **standard methodology (386 d/pa) supra**;
  - The **deliverable supply is 1,339 dwellings**;
  - This is a supply of just **3.47 years**;
  - That is a shortfall of 205 dwellings (4 year supply) or 591 dwellings (5 year supply).
  - On the basis of the submitted evidence, **it is agreed that the LPA does not have the minimum requirement of a 4YHLS**;
  - **There is a serious and significant shortfall of homes against the *minimum* requirement of national policy, which needs to be remedied urgently.**

24. It follows *inter alia* that: (i) the most important policies are out of date; (ii) the tilted balance is engaged; and (iii) *significant weight* should attach to the need to deliver more housing *now* (see Jessups DL CD 5.14 DL 76).
25. It is in this context that the Development Plan policies can be considered.

## **THE DEVELOPMENT PLAN**

### **Development Strategy**

26. The SWDP was adopted in Feb 2016. It has not been reviewed and updated by 2021 (contrary to Reg 10A LPR (2012) and NPPF (33)). Rather, a review has concluded that a new Local Plan (Part 1 and 2) will be produced to meet the existing standard method, which the Government has stated has failed to deliver enough housing and will be replaced (see WMS July 2024).
27. **Policy SWDP 3C** sets out a housing requirement for 28,400 homes between 2006 and 2030. The definition of Policy Sub-Areas is central to the Plan's development strategy to meet the housing requirement (see EiP IR at CD 7.6 IR 40-42). An important factor in the 3 Council's decision to prepare a joint SWDP was that Worcester City's built up area is tightly constrained (see Constraints Plan - Fig 1 SWDP). There was insufficient space in the City's administrative area to meet all of its objectively assessed needs for development, especially housing. Accordingly, SWDP 3 allocated a substantial share of Worcester's housing need to urban extensions outside and abutting the City's administrative boundary in MHDC and Wychavon DC. The Wider Worcester Sub-Area comprises Worcester City and the proposed urban extensions around it: (a) WWA (Worcester City); (b) WWA (Malvern Hills); and (iii) WWA (Wychavon).
28. The Malvern Hills Sub-Area was also considered to have a limited ability to accommodate new development (at that time). Accordingly, the Plan

manually redistributes housing need from Worcester City and Malvern Hills into 2 WWA Sub-Areas (see CAF at Table 5.1): (a) one in Malvern Hills (WWA MH); and (ii) one in Wychavon (WWA W). The Plan confirms that 2,950 homes were redistributed from MHDC into the WWA (MH) sub-area (SWDP at p.62 (9)). It follows that if the WWA (MH) fails to deliver as planned, MHDC's minimum housing requirement is not being met (and neither is the OAN of Worcester City<sup>8</sup>).

29. The Plan sought to meet the housing requirement in Policy SWDP 3C through *inter alia* allocating 3,102 dwellings (CAF at 5.1.12), in accordance with the following spatial strategy (which reflected the settlement hierarchy):

- Towns - 1,595 (51%);
- Other Towns - 300 (10%); and
- Category 1, 2 and 3 Villages - 1,207 (39%).

30. It follows that Category 1 villages were (and remain) sustainable locations for housing development (see SoCG at 9.4).

31. SWDP 3 Table 4d sets out how the housing requirement was to be met in WWA (MH) through *inter alia* a limited windfall allowance (644 or 27 pa), limited urban extensions in WC (80) but significant urban extensions (4500) in WWA (MH). In MH (excluding WWA) there was a windfall allowance of just 372 but urban extensions of 800 and village allocations of 346 (of which 65 were in Martley). Total provision was 29,189 to meet 28,400. This is headroom of just 800 units across 3 LPA's over 24 years. It has not been adequate.

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<sup>8</sup> >3,000 homes of the unmet need of Worcester City is to be met in the WWA (MH)

32. LW agreed that this spatial strategy was examined and found sound. The other policies were formulated on the premise that this strategy would meet the need for housing. Indeed, **SWDP 2A** explains that the development strategy was based on a number of principles: (ii) sufficient housing will be provided to meet the OAN to 2030 and (iii) the Open Countryside will be safeguarded and enhanced. There can be no conflict with SWDP 2A because it is not a development control policy (XX of LW). Rather, it explains the principles which underpin the failed development strategy (EiC and ReX of CAF).
33. **SWDP 2B** sets out that windfall proposals (such as this) will be assessed in accordance with the spatial hierarchy. As a Category 1 village, Martley is a sustainable settlement to meet identified housing needs. There is no alleged conflict with this part of the policy (EiC and XX of LW) because it is agreed the site lies in an accessible location adjacent to a sustainable settlement (SoCG and XX of LW).
34. LW agrees that the settlement boundaries (**SWDP 2C**) were drawn on the basis of the housing requirement (28,400) and the spatial strategy to meet it (SWDP 2 and 3). The settlement boundaries were drawn tightly around the existing settlements and the proposed allocations in the WWA. The purpose of the settlement boundaries is therefore two-fold: (i) to provide an area inside of which housing is in principle acceptable to meet the need for housing to 2030; and (ii) to provide an area outside of which housing is strictly controlled because it is not needed to meet the housing requirement and to protect the countryside from development (XX of LW).
35. PPS 7 sought to protect the OC for its own sake. This is not the approach of the NPPF. Accordingly, LW agreed that SWDP 2C can only be consistent with the NPPF on the basis that areas outside the settlement boundaries were *not needed* to meet the housing requirement.

36. It is agreed that the site simply lies outside the out of date settlement boundary of Martley. There is conflict with SWDP 2C. However, no land use planning harm flows from the location outside the settlement boundary. For the same reasons (simple location outside a settlement boundary) there is conflict with MKD 6.
37. The proposal complies with **SWDP 2F**. It is the scale and type of the "development proposal" which should be appropriate to the "size of the village". The Jessups development (52 units) was of an appropriate scale and type to the size of Martley. Lioncourt (83 homes) was an appropriate scale/type to the size of Martley (as expanded by 52 homes). This proposal *must* therefore be of an appropriate scale and type to the size of the settlement (as expanded by Jessups and Lioncourt). There is no identified physical or social infrastructure constraint (individually or cumulatively) which cannot be addressed by condition/s.106. There is no objection from statutory consultees. It follows that this proposal complies with SWDP 2 when applied as a whole.
38. It is agreed (XX of LW) that **SWDP 5** is the logical obverse of the settlement boundary policy. Everything outside the urban areas is either: *protect and enhance* or *protect and restore*. It is an environmental policy which reflects the strict control in the OC. The policy seeks to avoid detrimental impacts to "important GI attributes". LW conceded no such attributes had been identified. So far as the hedgerow is concerned, there is replacement. The proposal delivers 40% GI and there is no material conflict with this policy. LW agreed it cannot be interpreted and applied as a *no harm* or no greenfield development policy. In truth, it is difficult to understand the alleged conflict.

### **Performance of the Plan**

39. Between 2006 and 2030, **Policy SWDP 3C** plans for (a) 5,650 homes in Malvern Hills (excluding the Wider Worcester Area (WWA)); and (b) 4,450 in the WWA(MH)). That is a total of 10,100 in MHDC (2006 to 2030).
40. There is a **current shortfall of 122 homes** against the housing requirement in MHDC (HLS SoCG). This is explained by a significant failure to deliver enough homes in the WWA (MH), where there is a shortfall of 1,533 homes.<sup>9</sup> The need in MHDC which was allocated to the WWA (MH) is manifestly not being met. This is because there have been significant delays in delivering 2 SUE's (CAF at 5.1.32). Further, as the boundaries of the WWA (MH) were drawn tightly around the allocations, there is no ability to remedy the shortfall. Any shortfall will have to be remedied in MHDC (XX of LW).
41. More homes have been delivered in MH (excluding WWA). However, as LW accepted:
- This is due to the consent of a large number of windfall sites (CAF at table 5.4). 1660 or 39% (out of 4278 completions) were windfalls, which is more than the 811 planned. LW accepted that planned development had failed to deliver enough homes;
  - 70% of completions were greenfield. LW agreed this LPA was significantly dependent on greenfield sites;
  - Further, 745 (17.4%) out of the 4278 were outside settlement boundaries (CAF Tables 5.7 and 5.8). Without them, the current shortfall would rise

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<sup>9</sup> See CAF Table 5.2

from 122 to 867. 50% of such consents (339 out of 745) were in category 1 villages.<sup>10</sup>

- LW conceded that settlement boundaries had been applied with flexibility to meet the housing need.

42. 5,857 homes have been completed in MHDC (a shortfall of 122 against the Plan requirement). There are 3,027 completions predicted between 2023 and 2030. Accordingly, 8,884 dwellings will be completed by the end of the Plan period. Even with a significant number of completions on greenfield sites outside settlement boundaries, LW conceded there will be **a significant shortfall of 1,216 homes by the end of the Plan period.**<sup>11</sup> The Plan's strategy has failed, despite a large number of homes being consented on greenfield sites outside settlement boundaries.

43. There has, therefore, been a failure of the spatial strategy to deliver: either (a) a 4 YHLS; or (b) the housing requirement of an out of date development plan, which is not consistent with the standard methodology. It follows that, on any sensible view, there needs to be a step change in the delivery of housing *now* to address (i) the absence of a 4 YHLS; and (ii) a failure to meet the housing requirement by the end of the Plan period.

44. In that context, LW further agreed (in summary) that: (i) the OAN of MHDC had been redistributed to WWA; (ii) WWA (MH) had failed significantly to deliver against the Plan's requirements; (iii) the WWA has been tightly drawn and can't resolve the shortfall; (iv) delivery in MHDC has been significantly dependent on greenfield sites outside settlement boundaries (including Category 1 villages); (v) significant housing has been consented on greenfield sites outside settlement boundaries; (vi)

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<sup>10</sup> CAF at 5.1.49

<sup>11</sup> 10,100 - 8,884 = 1,216

which strongly suggests the spatial approach is too restrictive; and (vii) means the weight to be attached to SWDP 2 and MKD 6 must be reduced.

45. LW accepted this was not a controversial conclusion (see e.g. Drakes Broughton decision at DL 87). It meant environmental policies could not be applied with "full rigour" (*Richborough Estates* at CD 6.3 paras 59, 79 and 83/84). Indeed, **LW agreed at the Jessups Appeal that "limited weight" should attach to conflict with such policies**, even with a healthier HLS (CD 5.14 at DL 21). This previous decision is a material consideration of significant weight because there should be consistency of administrative decision making. Whilst the site attributes may be (marginally) different, there has not been a material change in circumstances which affects the *weight* to be attached to SWDP 2C, SWDP 5 and MKD 6 (cf ReX of LW).
46. **In such circumstances, LW expressly conceded that, on the LPA's own evidence, there is not a 4YHLS and the Plan will fail to deliver enough homes by 2030. This can only be remedied by greenfield sites outside settlement boundaries, on accessible sites adjacent to sustainable settlements. If the shortfall is to be made up by 2030, consents must be granted now.**
47. **It is common ground that: (i) the site lies in a location which is accessible to services and facilities by sustainable modes of transport;<sup>12</sup> and (ii) Martley is a sustainable settlement for more housing development.<sup>13</sup>** Indeed, no other conclusion can be reached in the light of the recent consents on adjacent sites (Jessups and Lionscourt) and the evidence base to the emerging Local Plan. Accordingly, the proposal lies in a sustainable location and complies with the Plan's spatial

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<sup>12</sup> CD 4.5 at 2.11 and CD 4.4 at 9.16

<sup>13</sup> CD 4.4 at 9.4

distribution of housing, which recognises that Martley is the most sustainable Category 1 Village in MHDC.

48. Reduced weight must be attached to conflict with Policies SWDP 2C and MKD 6 in the tilted balance because the settlement boundary is out of date. Firstly, the settlement boundaries place a restriction on housing development which has resulted in the absence of a *minimum* 4 year supply (see NPPF (11)(d)(ii) and Fn 8). That is not a contentious conclusion. It has been reached by a number of Inspectors in Malvern Hills and Wychavon (see e.g. CD 5.17 at DL 85). Secondly, the settlement boundary in Martley is out of date as a matter of fact around the location of the appeal site, given the recent consents at Jessups and Lioncourt.
49. **It follows that the site lies in an accessible and sustainable location to meet the significant unmet need for more market and affordable housing.**
50. It is a significant failing of the LPA's evidence that it fails to engage (adequately or at all) with any of this highly relevant evidence (per Lindblom LJ in *Hallam Land*). Indeed, such a failing is mystifying given LW's evidence at the Jessups Appeal (*supra*). The LPA's case is deeply flawed.

#### **Other Plan Policies**

51. With regards to landscape policy, **Policy SWDP 25** requires housing development *inter alia* (i) to integrate with the character of the landscape setting (if any); and (ii) to conserve the primary characteristics defined in character assessments and important features of the Land Cover Parcel. Accordingly, the LVIA should include proposals to protect and conserve key landscape features. This cannot rationally be interpreted as being a *nil harm* policy. If it were, then it would act to prevent the development of

any greenfield site, regardless of its sustainability. Instead, it must be permissive of development which causes landscape harm, provided key landscape features are conserved and any harm is outweighed by the benefits of the scheme (consistent with the NPPF).

52. **Policies SWDP 6 and 24** (Historic Environment) must be interpreted and applied together, in a manner which is consistent with NPPF (see SWDP 24(A)). The requirement in SWDP 6 to conserve the historic environment must be read in conjunction with the the balancing exercise at NPPF (208), which permits development which causes less than substantial harm to heritage assets, provided those harms are outweighed by the public benefits of the scheme.
53. **It follows that the tilted balance in SWDP 1 and NPPF (11)(d) is engaged. Planning permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits (*supra*) to which very significant weight must attach (individually and cumulatively). This is an intentionally high evidential/policy threshold because the policy mechanism seeks to restore a 4YHLS (as a minimum).**

## **A. SOCIAL ROLE**

### **The Need for Market Housing**

54. At the national level, the need for more market housing is "*acute*" and longstanding (from 2021 when the Plan became 5 years old). At the local level, there is a significant shortfall against the minimum plan requirement and a 3.47 YHLS. On that basis, LW agreed that the delivery of more market homes is a benefit of *significant weight*, consistent with the Jessups DL, when the HLS was 800 units healthier (CD 5.14 at DL 76).

### **The Need for Affordable Housing (AH)**

55. At the national level, it is common ground that there is an acute national housing crisis (CD 4.7 at 8.2). It is agreed this site will deliver 40% AH for 22 households. For those families in need of a home *now*, these are not abstract benefits. They are tangible, real and very significant.
56. The SHMA 2012 identified a need for 131 AH/pa (2012/2016). The SHMA 2021 identifies a need for 331 AH/pa (2021/2031) or 3,310 homes. The need for AH has increased by over 250% in the Plan period. By contrast, net delivery has been 105 AH/pa in the Plan period. Between 2012/2016, the shortfall was 317 AH (63 pa). Between 2021 and 2023, there has been a shortfall of 344 AH. Less than 50% of the identified need has been delivered. To meet the unmet need in the next 5 years, there must be 400 AH/pa. There can be no doubt that the need for AH is rising exponentially, as a result of this LPA's failure to deliver an adequate supply of AH.
57. Indeed, the Council's latest evidence base has identified that there are 1,026 households on the Housing Register (285 with a preference for Martley). 15 households are in temporary accommodation (at significant cost to the local taxpayer). Most concerning, 156 households are homeless and require accommodation, whilst 83 households are threatened with homelessness. Self-evidently, there is a need for a fundamental step change in the delivery of affordable housing (and market housing to facilitate it), to achieve the minimum levels of AH now and in the future (see evidence of JS).
58. Further, Malvern Hills has a serious affordability problem. Median/LQ rents have increased 24%/30% since 2013/14. With median/LQ house prices 9 times median/LQ earnings, housing is no longer affordable for a significant proportion of the population. Rents are equally unaffordable.

This has been recognised by MHDC and the new Government, who have pledged to boost the supply of housing to address issues of acute undersupply of AH and affordability (see latest Written Ministerial Statement and Statement to the House of Commons). It is not, however, enough to talk about. Remedial action must be taken and consents must be granted.

59. There has been no AH delivery in the Parish for the last 7 years. The evidence of a need for 22 homes in Martley has not been disclosed or verified by JS. It is, however, clear that the average number of bids per property in Martley (April 2023 - March 2024) has been between 41 and 91 (JS at 6.17, Fig 6.3). 55AH will be completed at Jessups and Lioncourt. However, the future supply across the Borough is 91 AH/pa (assuming 34% delivery from the agreed supply of 1339). An additional 55 AH would increase that to 118 AH/pa over the next 5 years. That is still significantly short of the required 331 AH/pa (or 400 AH/pa to meet the existing shortfall).
60. It is agreed that the delivery of 22 market homes is a benefit of **very significant weight** for real people in real need *now*. It is an Inquiry truism that such people do not attend Inquiries, whilst existing homeowners do. It is very difficult to understand how such needs are significantly and demonstrably outweighed by the visual impact to existing local residents watching and playing cricket (which is the essence of the planning balance undertaken by LW for the LPA).

#### **Accessibility and Highway Impacts**

61. It is agreed (XX of LW) *inter alia* that: (i) Martley is a sustainable settlement/location for future housing development (see CD 4.4 at 9.4); and (ii) the site lies in a reasonably accessible/sustainable location (CD 4.4

at 9.16 and CD 4.5 2.11), consistent with the allocations in the Plan and consents on adjacent sites.

### **Impact on Infrastructure**

62. It is common ground that there will not be any impact on physical or social infrastructure, which cannot be addressed by condition or s.106 agreement.
63. **It follows that very significant weight must attach (individually or collectively) to the social role of sustainable development.**

### **B. ECONOMIC ROLE**

64. Furthermore, the application has demonstrated the socio-economic benefits of the proposals (CAF App F). Such benefits can be summarised as including:
- Significant private capital investment in construction;
  - 59 FTE construction jobs;
  - 112 indirect and induced FTE jobs over the construction phase;
  - There will be £3.5m GVA (the contribution to local economic output);
  - Economically active residents spending £1.4m p.a.;
  - A New Homes Bonus of £695,000.
65. These economic benefits are an important material consideration in support of the proposal. Consistent with previous decisions and the NPPF (85), they should be afforded **moderate weight**, especially in the context of the £22bn black hole in public finances (XX of LW and CAF at 6.1.25).
66. **It follows that the proposal derives very significant support from the social and economic roles of sustainable development.**

### **C. ENVIRONMENTAL ROLE**

67. There will be a 10% BNG, to which **moderate weight** should attach. It is indeed noteworthy that, should consent be granted, there will be a beneficial impact on biodiversity.
68. Further, the appellant is Hayfield Homes, who have won awards for the design of their homes (a 5 star builder of A-rated homes). Their standard house type delivers 25% reductions in CO2 over current Buildings Regs. Further, they commit to EPC A for market and affordable housing. As these are not secured by the permission they are not weighed in the balance.

### **IMPACT TO HERITAGE ASSETS**

69. This is a modest proposal which, on any fair analysis will result in a limited impact to the significance of Longstone Cottage (as a result of development in its setting). At the time of determination, it was agreed in the Officer Report (CD 2.1 p.19) that there would be less than substantial harm at the lower end of the scale. Such an agreed position needs to be weighed in the tilted planning balance (as there is compliance with NPPF 208).
70. The approach to heritage impact assessment is agreed:<sup>14</sup>
- Section 66 P(LB&CA) Act 1990 requires the Inspector to have special regard to the desirability of preserving the LB or its setting or any features of special architectural or historic interest which it possesses;
  - The test in s.66 is to “*preserve*”. This means “*to do no harm*”. It does not mean “*not to change*”;
  - This is “no harm” to the significance of the Listed Buildings (as assessed);

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<sup>14</sup> Such propositions were set out in Opening and have not been contested

- The "setting" is not a designated heritage asset. It is relevant because of the contribution the setting makes to the significance of the LB;
- It is agreed there is less than substantial harm to Longstone Cottage through harm to its wider setting (alone). NPPF 208 is therefore engaged;
- NPPF 208 requires the heritage harm (alone) to be weighed against the public benefits;
- If there is harm, the Inspector should attach “considerable importance and weight” or “great weight” to the principle of the asset’s conservation (per *Barnwell Manor* and the NPPF 205);
- However, the fact that the harm may be limited or negligible will plainly go to *the weight* to be given to it in the planning balance (*R (James Hall and Co.) v City of Bradford MDC* [2019] EWHC 2899);
- All things being equal: (i) an impact to an asset of lesser significance will be afforded less weight (Grade II cf Grade 1); and (ii) a lesser impact (development in the wider setting) will be afforded less weight than a greater impact (partial destruction) to the same heritage asset.

71. The relevant national and local policy, guidance (NPPG and HE) and approach to assessment<sup>15</sup> is all agreed.

**(a) Longstone Cottage (LC)**

72. The significance of LC is agreed.<sup>16</sup> It derives from its architectural and historic interest, which is derived from its 17C timber framing, built fabric, red brick noggings, clay tile roof and simple historic form, which are all key in terms of understanding the vernacular character and historic usage of the building. The form, structure, material and detailing all contribute to the historic and architectural significance of the building (RB at 6.23 and

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<sup>15</sup> Both heritage experts use the 5 steps identified in HE GPA 3 (RB at 2.23)

<sup>16</sup> See RB at 4.10

SL at p.18). Further it has been a feature on Berrow Green Road since 17C, when it was set in the countryside outside Martley.

73. Some limited additional historic interest is derived from a historic ownership connection between the appeal site and the cottage (RB at 4.11). However, such a historic connection has long since been severed (*ibid*).
74. It is agreed that the principal significance<sup>17</sup> resides in its architectural significance, derived from its built fabric (RB at 4.10).
75. The immediate setting of the LB is the historic garden plot. It is from within the front garden that the significance of the building is best experienced. The immediate setting makes a strong contribution to the significance of the cottage (RB at 4.13). The wider setting of cottage has changed significantly over time, with the development of housing on Kingswood Lane, the Recreation Ground (and ancillary buildings) and the Ryecroft and Jessups housing development. It is no longer<sup>18</sup> remote from the settlement.
76. The appeal site forms part of the wider setting. It is divorced from the curtilage of the cottage by thick evergreen planting. It is not possible to experience the significance of the building from the appeal site. There is no intervisibility (RB at 4.16). Accordingly, the site (as part of the setting) only makes a contribution to the significance of the cottage, when standing on the B4197 immediately in front of the cottage, when the site is seen as part of the original rural context (RB at 4.16). This is a short length of road, at a kinetic viewpoint outside the plot of LC. It is not a location at

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<sup>17</sup> The "vast majority" - RB in the RTS

<sup>18</sup> Either now or when Jessups is fully developed

which one would seek to appreciate the significance of the LB. The appeal site makes (at best) a minor positive contribution to significance.

77. There is no direct harm to the fabric of the LB. There is no direct harm to any curtilage structures, the curtilage of the Cottage or the immediate setting of the LB. There is no impact to the principal architectural and historic significance (*supra*). There is no impact to the former historic connection with the site, as such a link has long been severed and cannot be appreciated on site.
78. Rather, it is agreed that there is LTSH as a result of housing development in part of the wider setting, when standing on the B4197, looking towards the cottage and the site. In that viewpoint, the historic rural context would be lost. However, the development has mitigated the impact (so far as practicable) by a significant 30m set back, with planting, which will give the cottage open space adjacent to it.
79. There is no difference in analysis between the experts, save on the calibration of impact. As the impact is to no more than part of a changed wider rural setting, and the built fabric can still be fully appreciated from the immediate setting, the impact must be at the lowest end of the LTSH bracket (as set out in the Officer Report CD 2.1 p.19).
80. In EiC, LW conceded he had got "carried away" and (on reflection) now attaches "moderate weight" to heritage harm. This matter is now agreed. In any event, attaching great weight to the assets' conservation, **it is agreed (EIC of LW) that the impact to the significance of Longstone Cottage is clearly outweighed by the public benefits of the development. There is compliance with Policies SWDP 6 and 24 and NPPF 208** (read together). As the test in NPPF 208 is passed, the tilted balance is not displaced (NPPF (11) and Fn 8).

### **(b) Non-Designated Heritage Assests**

81. In the light of SL's evidence at the HRTS, impact to Barley Cove Cottage, Rose Cottage and Rose End can be addressed briefly:

- None of the NDHA's are locally listed;
- None of them meet the threshold for local listing (not "locally listable" - SL);
- Barley Cove Cottage (110) has been significantly altered ("virtually rebuilt");
- RB's analysis is that whilst there will be built development in the wider agricultural setting, there will be no material harm to the significance of the NDHA's (see CD 1.22 at 6.19 and 6.23);
- RB's analysis in the HDBA is not contested (CD 1.22 at 6.19 and 6.23);
- SL agreed that the significance of the NDHA's "*may not be harmed directly*". Rather, the issue was the contribution which the NDHA's made to an understanding of "*how Martley worked*";
- At its highest, that does not disclose an impact to the significance of the NDHA's. There is, therefore, no relevant impact in terms of NPPF (209) and nothing to weigh in the planning balance;
- There may be a (non-heritage) point about urban form or morphology of the settlement. That is difficult to understand in the context of the recent housing developments (Jessups and Lioncourt). It is addressed further below.

### **IMPACT TO THE CHARACTER AND APPEARANCE OF THE AREA**

#### **(i) Methodology and Adequacy of Assessment**

82. Landscape and visual impacts are separate but related impacts. LVIA should be undertaken in accordance with standard guidelines in GLVIA 3, which sets out a series of non-prescriptive methodologies. The assessment

requires a subjective judgment which can be expressed against a series of objective criteria, derived from GLVIA 3, such as sensitivity, magnitude of change, impact, mitigation, enhancement and residual impact. The purpose of such an approach is to improve the quality, consistency and transparency of decision making. There has been no criticism of the methodology of the LVIA. CLF has raised a number of additional viewpoints, which can be considered. It is not accepted that an informal desire line across private land is a publicly accessible viewpoint. In any event, the viewpoints selected provide a robust and proportionate basis for a consideration of visual impact (consistent with Guidance). It is accepted that the site will change from a greenfield to a housing development. That is the inevitable impact of any/all greenfield development. It will always be visible from the immediate boundaries of the site and the immediate locality. The identification of additional viewpoints on or immediately adjacent to the site does not add materially to that conclusion. Accordingly, it is submitted that the LVIA and evidence of JA is a robust basis for assessment (and the LPA agreed).

**(ii) Development of Martley**

83. The historic, recent and future (consented) development of Martley is critical to understand the baseline context of the site, against which this proposal must be assessed.
84. The settlement boundary of Martley is in 3 parts (CD 3.17): (a) an area around the store, pub and garage; (b) an area around the conservation area, excluding the schools and leisure centre; and (c) a much larger area comprising the architecturally undistinguished 1960's and 1970's housing estate. Since then: (i) a modern housing estate has been developed at Ryecroft Way; (ii) a modern housing estate is under construction by Lioncourt; (iii) a modern housing estate has been consented for Jessups; (iv) the burial ground has been created (2018); and a new pavilion has

been built. It follows that modern (post war) housing estates exist to the north, north east, east and south east of the site (see CD 1.42h). Martley is expanding west (around the recreation ground). There is no logical expansion site to the east of the settlement.

85. CLF complains that the proposal will not respect the "*dispersed settlement pattern*" of the Principal Timbered Farmlands LT. That proposition is multiply flawed. Firstly, it is the settlements which are dispersed, not the housing within the settlements. Coalescence of settlements should be avoided (quite rightly). Secondly, the LCA assessment is not promoting the development of settlements in which housing is dispersed. That is completely inconsistent with decades of national policy seeking to make efficient use of land and the optimisation of housing density (currently in NPPF Ch.11). Thirdly, it is clear (see CD 1.42h) that the prevailing pattern of housing adjacent to the site is modern estate housing. The proposal is demonstrably consistent with the pattern and urban grain of the existing and proposed housing adjacent to the site (see CD 1.42i).

**(iii) The Proposals**

86. All matters are reserved save for access. The detail of the access is acceptable. Any proposed landscaping in and around the access is a RM. The proposal will not result in the permanent removal of ~70m of mature hedgerow as claimed (although this explains a significant difference between the parties). An access will be created, which will result in a gap in the hedgerow of ~10m (JA(r) App A). High quality housing will be visible along the access towards Berrow Hill (see CD 1.42g and VVI at CD 1.42i). The existing hedgerow will be removed along the visibility splay and replaced ~1m into the site with native species, on Grade 1 and 2 agricultural land. Its replanting and future maintenance will be secured by condition. There is no evidential basis on which to conclude that it will fail. The difference will not be material (if perceptible). The landscaping

will be high quality and the impact of the access is no more than would be anticipated from any greenfield settlement expansion. Indeed, such proposals were acceptable at Lioncourt and the burial ground. This cannot be a meaningful objection to the proposal.

**(iv) The Landscape Impact**

87. It is agreed that the site is not the subject of any international, national or local landscape designation. The site is not and does not form part of a valued landscape having regard to NPPF paragraph 180a (SoCG CD 4.4 at 3.8). The site is not "protected" in national policy terms. Rather, it is agreed to be a landscape of "medium sensitivity".
88. The site is bound by built/consented development on 3 sides (see CD 1.42h):
- **To the north** - there are allotments, existing housing and 52 dwellings granted OPP (March 2023) and RMA (June 2024) ("the Jessups development");
  - **To the east** - there is the existing settlement of Martley beyond the cricket ground and Lioncourt site, which is under construction for 83 dwellings;
  - **To the south** - there is the burial ground (an urban/suburban use) beyond which lies the substantial Industrial Estate.
89. It follows that the settlement boundary of Martley is considerably out of date, immediately surrounding the Appeal site (as LW accepted). If the settlement boundaries were updated, the site would be surrounded by settlement on 3 sides (or 2 sides on the LPA's analysis). In either case, the site is an obvious infill<sup>19</sup>/expansion site to meet the need for more market and affordable housing in a sustainable settlement (CD 1.42h). The

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<sup>19</sup> This is not used in any technical sense. It simply reflects the site being contained on 3 sides by built form and suburban uses

development does not extend any further west than (a) the Jessups development; (b) existing housing to the north; and (c) the extent of the Industrial Estate. The proposal will sit comfortably and acceptably in that context (CD 1.42i). If, which is not accepted, there is any conflict with SWDP 25, it must be weighed in the tilted planning balance.

90. There will be a significant change from a greenfield to a housing site. However, this is no more than the *inevitable* or *axiomatic* change which results from all greenfield development, which (i) is not precluded by national/local policy; and (ii) is needed by this LPA *now*. It cannot rationally justify refusal. Further, because of the urban/suburban uses on 3 sides of the site, the extent of the landscape impact is very geographically contained (even on the LPA's analysis) which means that this site is very well located (in landscape terms) to meet the identified need. Indeed, in EiC LW considered that the landscape impact was "*more localised*" and "*more modest in weight*". Such a landscape impact cannot significantly and demonstrably outweigh the benefits to which significant weight must attach. reasonably justify refusal on the basis of the evidence.

**(v) The Visual Impact**

91. This means that the central plank of RFR 1 is the visual impact of this proposal. In reality (EiC of LW), this centres on the visual impact from the Recreation Ground.
92. It is accepted that housing will be visible on the site. There is no national or local policy which requires the housing to be rendered invisible by landscaping. However, any and all housing development will be visible to receptors on and immediately adjacent to the site.
93. Like a large number of sites adjacent to settlement areas, the site is crossed by a footpath. This will be retained (but re-directed) by the appeal

proposal. Additional new paths will be created around the north and west of the proposed housing. It is accepted that there will be harm to the visual experience of the users of the existing footpath. However, the visual impact is to <300m of the footpath across the site. The point at which the walker will enter the countryside will move. But the recreational experience will not change materially at all.

94. The view from the allotments will also change. However, local residents have stated that they are not well used.
  
95. The view from the Recreation Ground will change adversely. However, this is not identified in the NDP as a significant view (Map 12). Rather, the significant views were to the Lioncourt and Jessups developments. Both were consented. After specific consideration by local residents, there is no policy protecting the view from the recreation ground (there is no conflict with MKD 1). Further, by definition, viewers will be engaged in recreation. Their recreational experience will not change at all. You will be able to watch/play cricket and go to the skatepark. The recreation ground will remain a wide open space, with views to elevated countryside around. The view to Berrow Hill will remain. The view towards the site will change but the housing will be set back (25-30m) behind native contextually appropriate landscaping. The recreation ground will remain an attractive place to meet, play and watch sport. It will become the centre of new high quality part of the settlement which will be a fantastic location for much needed family accommodation (EiC of CAF).
  
96. The housing is likely to be visible from the Burial Ground. The importance of the impact has been considerably overstated, given the very limited use of the site. CD 1.42k shows 3 homes 15m-20m from the boundary. There is no reason to expect noise generation in front of such homes, beyond the odd car movement (considerably less than traffic on the

B4197). There will be boundary planting. Assuming a standard eaves height of 5m, tree planting (10m at 10 years) will mean: (i) the housing will not breach the skyline; and (ii) it will be significantly screened (depending on the final landscape plan required by the LPA). The remainder of the boundary is the village green open space. There is no reason to expect noise (and there is no arguable conflict with national/local policy). Views to Berrow Hill and the OC will remain. It is impossible to conclude that the proposal had an acceptable impact on the Burial Ground but the proposal is (somehow) unacceptable (see CD 1.42k).

97. In reality, the visual envelope is contained and any impact will be geographically limited (as will be readily apparent from the photomontages and a site visit). The view to Berrow Hill can be maintained along the green corridor (see CD 1.42l).
98. Further, high quality interfaces can be created with the open countryside to the west, the burial ground to the south and Berrow green Road. 40% of the site will be GI (in compliance with SWDP 5).
99. In all the circumstances, therefore, it is accepted the site will change from an agricultural field to a housing development. Such changes are the inevitable consequence of this LPA's urgent need for greenfield housing sites. The inevitable impacts of such greenfield housing development cannot rationally result in the refusal of schemes, or else the need for housing will never be met. Further, this is not the approach of local or national policy. It has not been the approach of numerous Inspectors who have granted consent for greenfield sites outside settlement boundaries in the area (see CAF at 5.1.20). The level of landscape and visual harm is acceptable. There is compliance with the landscape policies (SWDP 24 and NPPF (180)). Such impacts do not significantly and demonstrably outweigh benefits to which very significant weight attaches.

**CONCLUSION**

100. It follows that the proposal complies with the development plan and should be granted consent *without delay* (NPPF 11). Material considerations further support the grant of consent. Claimed harms of the proposal do not remotely outweigh (significantly and demonstrably) the benefits of the scheme, to which very significant weight must attach.
101. It is, therefore, the Appellant's case that planning permission should be granted subject to conditions and a s.106 obligation.

**GILES CANNOCK KC**

**Kings Chambers**

28th November 2024