

Appeal Reference: APP/J1860/W/24/3348743

LPA Ref: M/23/01711/OUT

**Appeal by Mr James Herd
Hayfield Homes Construction Ltd**

**Outline planning permission for up to 55 dwellings (with means of access to the site be
considered at this stage and all other matters reserved)**

LAND WEST OF BERROW GREEN ROAD, MARTLEY

CLOSING STATEMENT OF THE LPA

Abbreviations

For the Council: Lee Walton (“LW”); Chris Lewis-Farley (“CLF”); Sarah Louise Lowe (“SL”)

For the Appellant: Rob Bourn (“RB”); Cameron Astin-Fell (“CAF”); James Atkin (“JA”). James Stacey (“JS”).

Introduction

1. These are the Closing Submissions on behalf of Malvern Hills District Council (“the Council”) in respect of an appeal by Hayfield Homes Construction Ltd against the Council’s refusal to grant outline planning permission for up to 55 dwellings at land at Berrow Green Road, Martley (“the Site” and “the Proposed Development”).
2. As in opening, these Closing Submissions set out the Council’s case on the two main issues identified by the Inspector in the CMC Note:
 - a. whether this represents a suitable location for housing development having regard to local and national policies and

- b. the effect of the proposal on the character and appearance of the area, and the setting of the Grade II listed Longstone Cottage and other heritage assets.

Main Issue 1: Suitable location for housing development having regard to local and national policies.

3. The Council does not shrink from the fact that there is a real need for housing, and it is recognised as a benefit attracting substantial weight in this case. So too is it acknowledged that this is a case in which the “*tilted balance*” in §11 of the NPPF is engaged. The central issue is whether or not the Proposed Development is being brought forward in a location which is appropriate in landscape, heritage and spatial planning terms.

The status of the site.

4. This is not a site which has any status in the extant development plan (“SWDP”) or the Martley, Knightwick and Doddenham Neighbourhood Plan (“MKDNP”). It is also not a site which has been promoted as part of the local plan review (“SWDPR”) despite that process advancing over recent years, nor does it have any development status in the Regulation 14 version of the Neighbourhood Plan. It has no planning status whatsoever and is therefore, an entirely speculative development on a site outside of and over 100m away from the settlement boundary.
5. Those documents (the SWDP and the MKDNP) and the respective reviews of those plans set out clearly what constitutes “*sustainable development*” balancing the needs for development against the need for environmental protection. The development would undermine this plan-led approach because it lies outside, separate from, and does not abut the defined settlement boundary. It is in designated open countryside where development should be strictly controlled (SWDP 2 C).
6. As Mr Walton explains, the proposal conflicts with SWDP 2(A) which seeks to “*safeguard and enhance the open countryside*” and “*focus most development on urban*”

areas". This proposal fails to meet these strategic objectives, and the departure from the plan is a significant reason not to allow the appeal.¹

7. Not only does the appeal site sit away from the settlement boundary, but it is a particularly sensitive site given the number of important features about where it is located.
8. First, on the southern boundary, there is an open and peaceful environment of the burial ground.² There would undoubtedly be impacts upon those users of the burial ground from this location. One would experience the inevitable noise, light, traffic etc. resulting from the principle of built development on this site. That would be an inevitable consequence of building housing in this location, which would be on the long-side of the rectangle of the burial ground, in circumstances where the hedge is relatively low.³ Clearly, that will mean that the residential development is perceptible, and that would erode the quiet and peaceful environment which may have informed where the burial ground was located in this edge of settlement location in the first instance. Whilst there might not be an amenity policy basis for objecting to the scheme, it is clearly part of the suite of considerations of character and appearance when looking at whether or not development in this location is likely to be acceptable.
9. On its eastern boundary, there is the Martley Recreation Ground, which is clearly of recognised importance in both the extant and emerging neighbourhood plans. That is a location which local people use, and the views from it mean that this is a parcel of land which is sensitive to development. The significant views put forward as part of the neighbourhood plan recognise that people go there for a whole host of reasons, but the landscape setting and views out from that site are important to consider.
10. On its northern boundary, there is a developed tree belt and allotments. For this reason too the tree boundary may suggest that one was nearing a settlement edge, and the recreational users of the allotments may appreciate this Site too.

¹ §1.3 of LW Proof.

² CAF XX.

³ CAF XX.

11. Reference has been made to the comments of the Urban Design Officer and their particular concern for the need to protect views up to Berrow Hill from this location. They also recognise this as a particular consideration or concern when looking at recent developments at this Western edge of Martley.⁴ In that regard, the Urban Design Officer draws a distinction between the Western and Eastern side of the B4197 given that it is more rural and given that development on this parcel would be seen to extend the village into the open countryside. The Urban Design Officer takes issue too with the fact that the development will be placed in the foreground of the view up to Berrow Hill. The importance of that view is underscored in various references in the Parish's revised neighbourhood plan.
12. Finally, it is a sensitive location given that it forms part of the entrance sequence to the village. It does not gently introduce development to the village of Martley, nor does it feather out the built development from beyond the village into the countryside beyond.
13. This is a sensitive, prominent site for all of these reasons.⁵
14. Second, the Appeal Site itself field can be enjoyed. It is a green field with particularly special qualities, including those mentioned in respect of the permeability of the site by PRow users, as well as other more sensitive receptors moving both through it and around its perimeter. Not only is it a well-used PRow which connects to those beyond the Site, but it also contains the allotments, which plainly means that the site itself can be appreciated from within its perimeter boundary.
15. But, this is not just an area in which there is a technical breach of SWDP 2. It is more than that; it is an area recognised and appreciated by local people, and the site's landscape context is clearly important. Whilst the breach of SWDP 2 might be deemed to be acceptable in some cases (in the overall balance); in this case, that breach is more serious given the way in which the site is perceived as the first slice of open countryside on the edge of Martley.

Scale

⁴ Officer Report, page 19.

⁵ See RFR 1

16. The scale of the development (in this location) is also cited as an issue in the RFR. This is a Site where one would expect development to be petering out to a rural edge. Instead, it introduces substantial built form onto the site, at odds with that looser grain which currently exists on that edge of Martley.
17. The fact that this is an “*outline*” scheme and that the council, therefore, retains a degree of control over the layout and the scale is also no answer given that the Inspector should assume that the development will come forward in a manner broadly that which is set out in the indicative plans - and that the extent of that development will be some 55 dwellings.
18. There is no suggestion that there are going to be more set back/ reduced heights, or reduced quantum for example. That will plainly impact the receptors, sensitive to such a scale of development in this location. The subsequent design of the scheme would not address the Council’s more fundamental concerns about the development of this scale, in this location.⁶
19. CAF’s approach in EiC to suggesting that this would be consistent with the scale of development proposed elsewhere in Martley is to look at the issue simplistically. With respect, it is not the Council’s case that Martley cannot accept new development, or, in principle, this scale. It is that this scale of development in this location which is inappropriate (and the cumulative impacts have concerned the Council). Using the other developments as a proxy for what is acceptable on this site is not helpful, given that the site lies beyond those areas, and further towards the open countryside where that urban grain should be more in keeping with the surrounding areas.

Access to facilities

20. The Appellant recognises that Martley is a Category 1 village, which means that it is able to accommodate some growth. Martley as a village is spread out, and the Appellant does not point to any reason why any other location in the village which would be closer to services, or away from this rural edge in its evidence would be inappropriate. The Council accepts that there is access to facilities.

⁶ CLF RTD.

21. In his EiC, CAF suggested that residential development should be located closer to the other residential development, without providing proper justification for why a location nearer to the school, for example, was inappropriate.

“Infilling”

22. Finally, the Appellant has suggested that this represents “*infilling*”. That cannot be so. One would expect “*infilling*” to happen within the envelope of the village. As LW explained, this is of such a quantum and scale that it would not be considered infilling. Locationally, it is also not infill – that would better describe, for example, filling in a street frontage⁷ or building in a garden in an urban area. It also does not represent the “*rounding off*” of the existing settlement. Having already experienced that “*rounding off*” with the Jessup Site to the north, this would project the built form to the south of the tree belt and into the open countryside beyond. The B4197 forms the natural boundary from the east, and so does the tree belt to the north of this Site.

The “Flex” of the Development Plan Boundaries

23. The Appellant points to other developments in other locations which are outside of the settlement boundary and on green fields, as a means to justify (i) breaching the settlement boundary and (ii) building on a greenfield site.

24. In XX of LW, it was suggested that the Jessup Site was one where the Inspector had found that only limited weight could be attributed to the development boundary. But the reality is that we are away from the development boundary at this Site, and the same rationale simply cannot be deployed in the same way to justify the development of this Site.

25. First, to accept that rationale would mean that one would have development breaching a settlement boundary – and continuing to do so, again and again, because the new development would justify further development.

⁷ LW XX

26. That approach does not find support in *Richborough* which the Council accepts means that the development boundary can be of more “*limited weight*”. That same logic simply does not apply when one is further away from the settlement boundary: the same logic cannot be deployed over and over again adjacent to where there is built development. If that were the case, what would be the point of a development boundary at all?
27. The Council accepts that it is appropriate for the development boundaries to “*flex*” in an appropriate scenario.⁸ But the reality is that the boundaries have already flexed here – they have flexed at the Jessup Site, and they have flexed to accommodate development adjacent to the settlement boundary at Lioncourt. This would involve taking that analysis one step further, and flexing the boundaries of consented sites, not the settlement boundaries. CAF’s analysis on the acceptability or not of the flexing of those boundaries is clearly predicated on the suggestion that the development boundary ought to be moved or changed.
28. Second, that must be seen in the context of how this particular plan defines the settlement boundary and what is beyond. It clearly (perhaps more so than some authorities) sees development beyond the settlement boundary as being “*strictly controlled*” (emphasis added).⁹ Therefore, the fact that they have already flexed to accommodate development is a concession – that does not mean that the approach should be adopted to support this development further afield.
29. Third, unlike all of the other appeal decisions, cited, this Site is not adjacent to the settlement boundary (see CAF, all of the development boundaries relied upon are those which abut the edge).¹⁰ Drakes Broughton¹¹ was one on which CAF relies, but in that case, the development abutted the boundary and also wraps around it.¹² It is located within the existing residential context.¹³ The site would therefore be seen within the settlement.

⁸ Per *Richborough* in the Supreme Court.

⁹ SWDP 2C.

¹⁰ See CAF §5.1.20, p 33.

¹¹ CD5.17

¹² LW EiC.

¹³ CD5.17 – para 31.

30. Drakes Broughton is also useful given that it is also dealing with the village recreation space which was not in a location such as this.¹⁴
31. These appeal decisions differ from the appeal site as a matter of principle given that this site does not abut the settlement boundary. In that regard, it is relevant to note that the plan has not changed its development boundary, even whilst the plan has progressed to examination. Seeking to re-draw development boundaries through an application/appeal is therefore inappropriate.
32. Finally, that is perhaps because this Site also displays precisely the type of qualities of “open countryside”, which makes it not only a technical basis for suggesting that development should not come forward beyond the settlement boundary, in this location, but also because it forms an important backdrop to the village.
33. It is not the case that there is merely a technical breach of SWDP 2, or MKD 6.

Main Issue 2: The effect of the proposal on the character and appearance of the area and the setting of the Grade II listed Longstone Cottage and other heritage assets.

The receptors assessed

34. The Appellant's Landscape and Visual Impact Assessment (LVA) fails to fully account for several important viewpoints and receptors:
- (i) The allotments, which have over 50% occupancy and serve not just as functional spaces but as leisure areas where people enjoy both their gardening experience, and also their surroundings. People go there for leisure purposes – to enjoy the fruits of one's labour.¹⁵ Any suggestion that they are not well used or are not sensitive is refuted.

¹⁴ CD5.17.

¹⁵ CLF RTD.

- (ii) The undesigned but well-used footpath running parallel to the site boundary - a clear desire line connecting to Kingswood Lane. Whilst this is not a PROW, there are clearly users of the PROW who use this route, and it will be evident to the Inspector on site how well used that path is.
- (iii) Kingswood Lane itself - a C-category road but an important connection between the village and the wider PROW network. This is a route that CLF says that people regularly use as a connecting point between the PROW and the people who make use of the facilities.
- (iv) The burial ground - where tranquillity is an essential characteristic. There are footpaths on that location, and the Inspector will have seen that from the Site visit. There is clearly a space on that site for quiet contemplation. It is the type of location that may be affected by noise, light, heights of buildings for overlooking etc. Its tranquillity is just as an important part of its function as a burial ground.¹⁶

35. These are all receptors which are sensitive in nature¹⁷ and are comparable with PROW users.

Hedgerow harm

36. The development would result in significant hedgerow harm. The proposal requires the removal of substantial sections of long-established hedgerow, not just for access but also for visibility splays.¹⁸ While replacement planting is proposed, this would result in the loss of the original historic alignment (and any associations that may have¹⁹) It would also result in the removal of a significant proportion of it. It would also differ from the hedgerow on the Lioncourt site, which was thinner and lower. This is of a better quality, and would be a loss of Green Infrastructure.

Landscape character impacts

¹⁶ CLF RTD.

¹⁷ CLF RTD.

¹⁸ CLF RTD.

¹⁹ CLF RTD.

37. The Site lies within the "*Principal Timbered Farmlands*" landscape character type. The proposal would fundamentally alter the dispersed settlement pattern. This would include the current context features of scattered dwellings,²⁰ including the listed building in the northeastern corner and housing to the southeast. The introduction of up to 55 dwellings in this location would completely change the context of the scattered patterns and would create a suburban rather than a rural character. The development, as proposed, effectively a series of cul-de-sacs, does not replicate the rural settlement pattern of the principal timbered farmlands landscape type surrounding the village.²¹

Visual effects.

38. Even on the Appellant's evidence, there are considerable harms in terms of visual effects. The fact that we have not spent a great deal of time discussing them does not diminish the extent to which those harms need to be weighted in the overall planning balance.

39. This includes:

- (i) Users of the public footpath crossing the site, with "*major adverse*" effects noted where the path crosses through the development – even at year 15.²² These represent the highest level of visual impact identified in the assessment. Given that this is a site which is permeable by members of the public, the extent to which the rurality of the experience to those users of the public right of way is both obvious, and likely to be unmitigated to any meaningful degree. They will be affected by built form, light spill, traffic. That experience of leaving Martley and walking towards the rural edge through a publicly accessible route will be lost.

²⁰ CLF RTD.

²¹ CLF, §32.

²² Viewpoints 1 & 2, p.41

- (ii) Views from the recreation ground and sports pitches to the east, which experience "*moderate to major adverse*" effects²³ due to direct views across to the development. This would not be effectively mitigated, given that the development will be clearly seen in the viewpoint – see Viewpoint 6 of the LVA.²⁴

40. The LVA acknowledges that while these impacts are locally significant, they are largely contained to the immediate vicinity of the site due to existing vegetation and topography providing screening.²⁵ The document notes that "*visual effects are not considered to be significant overall*"²⁶ when considering the wider landscape context.

41. Plainly, when the greater number of receptors are considered (as above), then the effects, even from sensitive places, such as from the burial ground, the allotments, and from Kingswood Lane, those effects would be worse. CLF explains how the development would result in major adverse visual impacts from multiple key viewpoints. In summary, these are:

- (i) Existing allotments to the north given that they sit directly adjacent to the Proposed Development - major adverse.²⁷
- (ii) Burial ground to the south - major adverse and unassessed in LVA.

42. It is said that the impacts are partially mitigated through the retention of boundary vegetation and new landscape planting, though it will take approximately 15 years for this mitigation to become fully effective.²⁸ Moreover, as CLF explains, the proposed mitigation would be ineffective because the site topography rising east to west which limits screening potential. It would also be ineffective given that there is a loss of 70m of established hedgerow that cannot be adequately mitigated. This suburban development character would fundamentally alter the rural character, and views would remain majorly adverse even after 15 years.

²³ Viewpoint 7, p.41-42

²⁴ Viewpoint 6, p11

²⁵ Section 6.10, p.43.

²⁶ Section 6.16, p.46.

²⁷ Page 43 of Landscape Proof.

²⁸ Section 7.13, p.46.

43. In summary, the effects which CLF says would be worse can be summarised as follows:

- a. Public footpath 815(b) - major adverse, contrary to Appellant's assessment. This is because the landscape mitigation proposed would not make a marked difference to the level of impact, particularly as, when viewed from the perspective of this vantage point (from the sports pitches), the land rises east to west and the visual impacts would remain – so would stay major adverse.
- b. Public footpath 703(C) - major adverse, contrary to Appellant's own assessment where residential development will be partial views of the development. For the same reasons (land rising east to west), the visual impacts would instead remain major adverse.²⁹
- c. Views from B4197 and associated footway – major adverse. This is largely owing to loss of the hedge and established tree line in the footway with Berrow Hill as a backdrop. The introduction of housing in this view will be forever be to its detriment and would not be effectively mitigated to the extent suggested.³⁰

Recreational impact

44. The impacts on the recreational ground need very careful consideration.

45. First, the sports facilities include a cricket ground, which itself is a slower-paced sport, where one might appreciate one's surroundings more than in a fast-paced game where those playing it are more fixated on the action. Notably, there are also a host of community events which are held at this site, including large gatherings (several hundred for a cricket match). This area also includes those using the multi-use games area, the skate park and the exercise equipment.

46. The Site would result in the last open aspect of the countryside from that location being significantly eroded, given that it would introduce a substantial amount of built form into the foreground of the view from the recreation ground. Whilst the Appellant argues that the Hill will still be visible, that will only be the case when one has to look beyond

²⁹ Currently represented as figure 6, Viewpoint 8.

³⁰ See Landscape Proof, page 6.

the housing which will be perceptible. This will be a fundamental change to the rural character of the site and will result in the enclosure of what is currently an open space.

The Current and Emerging Neighbourhood Plan

47. These impacts take on greater significance when considered alongside the emerging review of the Neighbourhood Plan. While this document is still under consultation, it highlights that two significant views outside the Conservation Area have already been lost or will be lost to housing development.³¹ The cumulative erosion of these locally valued views is a material consideration.
48. As both CLF and LW explained, they considered that the neighbourhood plan clearly does consider the Site as being of particular importance in this locality given that part of the view cone of Viewpoint 2 would point across the Site.
49. However, even if the View has been eroded somewhat the Martley Playing Field are already designated as a Local Green Space under Policy MKD8 of the adopted Neighbourhood Development Plan, reflecting its special value to the community. One can note from the definition of the LGS³² that this is of particular local significance, and that can include beauty, historic significance, recreational value, tranquillity, richness of wildlife and where the green area is local in character.
50. That underscores its importance in this locality.
51. Moreover, the emerging Neighbourhood Plan review proposes to designate the Burial Ground Meadow as an additional Local Green Space,³³ recognising its evolving importance as a space for the community. While this proposed designation carries limited weight at this stage, it demonstrates the community's growing recognition of these spaces' environmental and amenity value.

³¹ Section A1.3).

³² Local Green Space: Green areas or spaces which meet the criteria set out in the NPPF, ie where the green space is in reasonably close proximity to the community it serves, where the green area is demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife, and where the green area concerned is local in character and is not an extensive tract of land.

³³ (Table 7, p.41),

52. The Neighbourhood Plan review specifically highlights these areas as demonstrably special to the local community, holding particular significance for their recreational value.³⁴ What is also notable is that they are important for maintaining the “rural aspect of the village”.³⁵

Policy conflict

53. All of this means that there is policy conflict.

54. First, there is policy conflict with SWDP 25 – whilst that introduces a procedural requirement (that is, the need to take into account the latest LCA³⁶) it also has a substantive requirement that is to be appropriate to and integrate with the character and landscape setting.³⁷ CAF accepts that to be the correct approach to the policy. Having regard to what the LCA says is not enough. Moreover, part (iii) requires that the development proposals and the landscaping scheme must 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 enhance the landscape*”.³⁸ It is obvious that the Proposed Development fails to achieve that.

55. Second, there is a conflict with SWDP 21. That obviously requires integration with surroundings in terms of form and function and should “*reinforce local distinctiveness and conserve and, where appropriate, enhance cultural and heritage assets and their setting*”. As stated in (ii) of this policy, the development proposals “*must complement the character of the area*”. This should respond to the distinctive features or qualities (see part (ii)). The distinctive identity and character of the settlement should be safeguarded (see v), and scale height and massing must be appropriate to the setting of the site and the surrounding landscape.³⁹ With respect, the Proposed Development does none of these things.

³⁴ Sections 7.1.1-7.1.3.

³⁵ §7.1.3.

³⁶ SWDP 25A(i).

³⁷ See part (ii)

³⁸ SWDP 25.

³⁹ (viii) of the policy.

56. In terms of where this takes the decision taker, the breach that the Council say arises out of SWDP 25 (including parts (ii) and (iii) of that policy) also means that there is a breach of SWDP 2F.
57. That is informed not only by SWDP 2C, but also (importantly) SWDP 2F, which in turn is informed by SWDP 25. The harms which result from the landscape impacts (SWDP 25A), result in a breach of SWDP 2F. With respect, none of the considerations that CAF puts forward which relate to the acceptability of development beyond a settlement boundary overcome that concern. There are windfalls, and there are windfalls. This is one which, to the Council is unacceptable.

Heritage Impact

58. The impact on the Grade II Listed Longstone Cottage, as a designated heritage asset, requires particularly careful consideration too. This 17th-century timber-framed cottage historically stood separate from Martley village. It originally sat within a triangular plot (now roughly square) and the historical boundary formed by diagonal trackway still visible across appeal site, encompassing pasture, arable and woodland uses.
59. Since the cottage formed a part of the management system of that landscape and in particular the appeal site, there are clear links between the history of the heritage asset and the appeal site. The 1843 tithe records show unified management under Lord William Ward,⁴⁰ and single occupancy suggests cottage and barn arrangement rather than two dwellings. There is a clear historical functional relationship with appeal site land.
60. There is also a historic separation from the village. It historically stood approximately 155m from nearest buildings. These neighbouring buildings themselves were remote from the village and were positioned as part of the agricultural landscape, not the village settlement. That historic context of the Cottage also aids our understanding of this heritage asset.

⁴⁰ Ibid, p.19.

61. It is accepted that the current setting has evolved somewhat. Recent developments have eroded, but not have eliminated that rural context. The Appeal site represents last remaining agricultural context. Its importance is increased due to the erosion of the wider rural setting; the Site maintains the agricultural function and management. The loss of this last remaining agricultural context is particularly harmful given the cumulative impact of recent developments in the area.

62. The cumulative impacts with other more recent permissions should also not be underestimated. It is has become the theme of this inquiry that there is development elsewhere, which has been repeatedly referred to suggest that this makes for an appropriate development parcel. On the contrary, that would magnify rather than diminish the importance of the appeal site. That is true of both landscape and heritage impacts. It elevates the status and importance of the appeal site given that development pressure on other sides. The permissions, including the Jessup Site make the openness all the more crucial in order to help us understand the significance of that asset.

63. Accordingly, there would be ‘less than substantial harm’ through, predominantly the loss of historic agricultural setting. There would also be the erosion of the rural context and the introduction of suburban development in its immediate setting.

64. The harm would fall in the low to moderate range. However, as established in *Barnwell Manor*, even less than substantial harm to the setting of a listed building must be given considerable importance and weight. In this case, no clear and convincing justification has been provided for this harm as required by paragraph 206 of the Framework.

65. The harm engages the statutory duty under s.66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. In accordance with well-established case law, it also requires that “great weight” be given to the asset’s conservation. The proposed mitigation fails to adequately address this harm as confirmed by the Council’s Conservation Officer.

66. The Site is also last remaining agricultural land within the immediate settings of non-designated heritage assets too.⁴¹ This includes 110 and 111 Berrow Green Road, Rose Cottage and Row End. Crucially, this is now the only location where open countryside from the west meets Berrow Green Road,⁴² giving it heightened importance in heritage terms.
67. The Proposed Development would sever these immediate visual and historical connections with its agricultural origins. While the Appellant suggests mitigation through SUDS features and a wildlife pond, these modern interventions cannot preserve the fundamental rural character that gives the cottage its significance.
68. Turning to the non-designated heritage assets, 110 and 111 Berrow Green Road comprise early-mid 19th-century cottages whose setting demonstrates their historic separation from the village. The development would eliminate this crucial aspect of their significance. Similarly, Row End, as a former threshing barn, maintains visible evidence of its agricultural origins and has a direct functional relationship with the surrounding landscape. Its setting is key to understanding its historic purpose. The development would cause less than substantial harm at the lower end of the scale to these assets, requiring a balanced judgment under paragraph 209 of the Framework.
69. This brings us to the policy framework. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be had to the desirability of preserving listed buildings and their settings. The NPPF at §205 requires “*great weight*” be given to conservation of heritage assets, with §206 demanding clear and convincing justification for any harm. The proposal conflicts with these national requirements and with local policies SWDP6 and SWDP24 by failing to conserve and enhance heritage assets and their settings.
70. The harm identified would be permanent and irreversible. It would permanently sever these heritage assets from their historic agricultural context, with proposed mitigation measures proving inadequate to address this fundamental change. The cumulative

⁴¹ SI, Section 8.

⁴² Ibid.

impact with other developments makes the preservation of this remaining agricultural setting all the more crucial.

71. In conclusion, heritage harm must be given considerable importance and weight in the planning balance. The development would fail to preserve the setting of the Grade II listed Longstone Cottage, harm the significance of non-designated heritage assets, and conflict with the statutory duty under s.66(1). However, the public benefits of the Proposed Development would outweigh these harms when weighed in the heritage balance. There is harm to be taken into account in policies SWDP6 and SWDP24. Those are harms which need to weigh against the scheme in the overall planning balance.

Benefits and Planning Balance

72. The Council acknowledges the following benefits.

Market and affordable housing.

73. Market and affordable housing provision. As LW explained in EiC, he agrees that these should be treated as separate benefits of the scheme (and that is recognised in the two SoCGs). The need for housing is evident, and that is why LW explains that he has attributed weight to it *almost* at the top end of the scale – this would be attributed significant weight.

74. By way of context, the Council highlights that it is progressing the local plan as part of the SWDPR. Martley has delivered as against both the allocated quantum in the extant and emerging local plan.⁴³ Whilst the housing need is recognised, the plan is the answer to balancing the competing considerations of delivering housing and protecting the environment.

75. The Letter from the Secretary of State in respect of the delivery of housing sets out that she believes strongly in the plan-making system and that this is the “right way” to plan

⁴³ As discussed with CAF in XX.

for growth. She recognises that development on a piecemeal basis will provide fewer guarantees that this is the best outcome for the community.

76. That is, with respect, the position that the Council takes in this appeal.⁴⁴

77. The Lioncourt development has delivered on the emerging allocation's requirement in Martley, and the Jessup Site still provides further housing beyond both the emerging and the allocated sites.

78. In terms of how that manifests itself in terms of differences with the “*new*” standard method figure. These are noted to be higher than the current approach, but the Secretary of State has been very clear that the plan-led approach is the one that should be adopted. That is reflected in the transitional provisions which enable those LPAs with plans at examination to allow them to continue (and then review if there is a gap between the plan and the new local housing need figure of more than 200). That is the trajectory that the Council are currently on.

79. In respect of affordable housing specifically, LW explains that this should be substantial⁴⁵ (JS refers to it as “very significant”). He recognises the benefits that affordable housing brings and the need for it in this location. As a point of context, LW explains how those who would be eligible via the relevant local connection test would be of the order of 20-22. Those would clearly be met with the already consented development at both Jessup (22) and Lioncourt (33). This gives a total of 55, and these are yet to be factored into the local housing need that the Delegated Officer Report provides at 22.

Economic Benefits

80. Economic benefits of construction are attributed moderate weight. The benefits in respect of §85 of the NPPF do not mandate that significant weight be given. That is a

⁴⁴ CD7.3, Letter from Angela Rayner to Local Authorities.

⁴⁵ Which he explains is the same in his view of

policy which applies to all kinds of development, including employment schemes. CAF explained that that is why the benefits are agreed to be moderate.⁴⁶

Development Plan

81. The Council accept that the tilted balance in paragraph 11(d) is engaged and is not disengaged by the heritage harm arising from the scheme as that is outweighed by public benefits.
82. However, notwithstanding this position, it is clear that there remains conflict with important development plan policies, including SWDP2 and MKD6. Of course, the weight to development boundaries can be reduced in some cases, but such a reduction to the boundaries has already been applied in this case, and that has resulted in windfall development coming forward. That does not justify a reduction of the boundaries of those development boundaries (which are not the settlement boundaries).
83. This is clearly a sensitive location in landscape terms. To comply with SWDP 25 the Proposed Development must be appropriate to and integrate with the character of the landscape setting. It must also integrate with its surroundings and reinforce local distinctiveness SWDP 21⁴⁷. They are not policies which are out of date. Its siting away from the boundary, and with a range of sensitive land uses around it mean that its assimilation into the wider landscape setting cannot be successfully achieved. It would not enhance or reinforce local distinctiveness in terms of its scale and mass, nor would it fit with the grain of the surrounding area (MKD3). The resulting harms arising from SWDP 25, mean that it also, separately breaches SWDP 2(F).
84. The siting, design and scale of the development would substantially harm the Significant Views (MKD1), and it would affect the landscape feature of the Berrow Hill.⁴⁸

⁴⁶ See also §7.18 of LW Proof.

⁴⁷ SWDP 21 A, B(i) and (ii), and (iv) are particularly relevant.

⁴⁸ MKD (5).

85. SWDP 6 and 24 are also engaged. The proposals do not conserve or enhance heritage assets, in accordance with SWDP 24, and so whilst there is a conflict with that policy which needs to be weighted in the planning balance, it does not amount to a separate RFR.

86. For all these reasons, there is conflict with the Development Plan, taken as a whole. The benefits of providing housing where there is a shortage are noted and recognised and have been appropriately weighted by LW in the balance. But this does not justify the bringing forward of development in any location.

87. Whilst §11 of the Development Plan is engaged, for all of the reasons given above, and the reasons given in evidence the harm of the development significantly and demonstrably outweigh the benefits. Accordingly, planning permission should be refused, and the appeal be dismissed.

88.

Sioned Davies
No5 Chambers
28 November 2024