



**Town and Country Planning Act 1990
(as amended)**

Section 78 Appeal

Appeal by:

Mr James Herd
Hayfield Homes Construction Ltd

Location:

Land At (Os 7500 5952), Berrow Green
Road, Martley, Worcestershire

Proposal:

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)

PINS Ref: APP/J1860/W/24/3348743

LPA Ref: M/23/01711/OUT

**COUNCIL PLANNING PROOF
OF EVIDENCE**

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Development), MRTPI
Principal Planning Officer

DATE: 29 October 2024

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Summary of Proof of Evidence

1. Summary and the Planning Balance

- 1.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out a legal requirement that the determination of planning applications and appeals must be made in accordance with the development plan unless material considerations indicate otherwise. The South Worcestershire Development Plan (SWDP) forms part of the development plan for the area. As stated in paragraph 12 of the Framework, national policy does not change the statutory status of the development plan.
- 1.2. The Framework constitutes a material consideration in determining applications. However, it is not a development plan and does not carry the weight of the Development Plan Documents in the determination of applications. The SWDP has been prepared, found sound, and adopted in the context of the Framework. As such, the plan is based on and reflects the presumption in favour of sustainable development. The SWDP represents how the presumption in favour of sustainable development is to be applied locally.
- 1.3. To make a decision that is contrary to the SWDP, in respect of the locations for new housing and the policy protection afforded to the open countryside, would go against this principle, and may introduce uncertainty and inefficiency in carrying out the planning functions of South Worcestershire. Policy SWDP 2 (A) seeks to 'safeguard and (wherever possible) enhance the open countryside', as well as to 'focus most development on the urban areas, where both housing needs and accessibility to lower-cost public services are greatest'. The Appeal scheme fails to meet these strategic objectives, and the departure from the plan is a significant reason not to allow it.
- 1.4. The most recent 5YHLS calculation published in the South Worcestershire Five Year Housing Land Supply Report (ref.CD3.15). The current calculation indicates Malvern Hills to have 3.47YHLS, which is agreed by the Appellant in the Statement of Common Grounds Statement. The current shortfall compared to the 4YHLS (paragraph 126 of the Framework) would be considered as limited, rather than involves a significant shortfall.
- 1.5. In such circumstances, the presumption in favour of sustainable development set out in paragraphs 11 (d) is engaged and the SWDP policies which are most important for determining this appeal would be considered out-of-date.
- 1.6. This does not mean that they are all to be set to one side. The extent of the housing shortfall should be considered, with due weight given policies according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given), in line with paragraph 225 of the Framework.
- 1.7. A detailed assessment against the development plan and any other material considerations was undertaken as part of the consideration and determination of the original application, in light of the tilted balanced being triggered and the application refused because of the adverse impacts that would significantly and demonstrably

outweigh the benefits, when assessed against the policies in the Framework and taken as a whole.

- 1.8. For the purposes of considering the SWDP Martley is identified as a rural settlement (category 1, 2, and 3). The Appeal site is in the countryside and is stood apart from the identified development boundary. The Secondary and Primary schools being approximately 1.2km distant. The village shop and bus stop approximately 800m distant.
- 1.9. The Appeal scheme provides benefits in terms of its housing provision and would assist the Council in meeting its housing target of 28,400 dwellings over the plan period, set out in SWDP 3. However, the benefits of the scheme are tempered, not least because of the location, landscape character and heritage conflicts, whilst matters relating to policy compliance, respecting the delivery of affordable housing, biodiversity enhancement opportunities and green space provision, etc. which would be required to mitigate in favour of the proposed development and therefore would not amount to considerations that necessarily outweigh the conflict with the development plan and the significant and demonstrable adverse impacts with which the appeal site engages.
- 1.10. The adverse impacts by allowing the Appeal scheme in the identified rural location; the landscape and visual impacts, and the heritage harms would significantly and demonstrably outweigh the benefits in terms of increasing housing supply in this rural settlement location. The development would not necessarily bring benefits to the rural community in terms of sustaining local services in this rural settlement location.
- 1.11. The mitigation for infrastructure impacts afforded by the section 106 currently being completed would not be required in the absence of the Appeal proposal. The benefits of the housing development, otherwise derived from a development that complies with the development strategy, do not necessarily amount to material considerations that outweigh the development plan. They are accordingly neutral.
- 1.12. While the proposal details are illustrative it is plain that significant harm would result to the open landscape character, the visual appearance of the proposed development, and resulting setting of the heritage asset(s). These matters are dealt with in greater detail by the respective proofs covering the Landscape and Heritage concerns. The site is prominently placed and visually accessed with the presence of the public right of way that crosses the site and the many receptors who make use of the recreational grounds and the village hall locations, all of whom would be aware of the wider countryside setting of this 'edge of' location. The importance of these matters is reinforced by the advice found at paragraph 180 (b) of the Framework, which inter alia recognises the intrinsic character and beauty of the countryside and the wider benefits from natural capital and ecosystem services.
- 1.13. The significant harm that cumulatively arises from the proposal, including that associated with a decision departing from an adopted development plan is justified, and is justified in terms of the 'tilted balance' that is triggered. The matters cannot be resolved as part of a detailed Reserved Matters. No compelling case is made for

making a decision that is contrary to the provisions of the development plan and the Framework when read as a whole.

2. Qualifications and Relevant Experience

- 2.1. My name is Lee Walton. I hold a Master of Philosophy in Environmental Planning and Development from the University of Reading. I am a Chartered Member of the RTPI and have over 20 years' experience in development management across three local authorities. During that time, I have covered the full range of planning work. I am currently employed as a Planning Officer at Malvern Hills District Council, principally covering the District's Northern area.
- 2.2. This Proof of Evidence addresses the Council's refusal and objections to planning application M/23/01711/OUT, submitted by Hayfield Homes Construction Ltd.
- 2.3. In my evidence I will address specifically the policy justification for Reason for Refusal 1(RfR1) and the overall planning balance. My evidence should be read in conjunction with the evidence provided by the Council's other witnesses; namely,
 - Chris Lewis-Farley, Tree and Landscape officer for Malvern Hills District Council, addressing landscape impact matters.
 - Sarah Lowe, Senior Conservation Officer at Malvern Hills District Council addressing heritage harms.
- 2.4. In the absence of an appropriate signed planning obligation (RfR5) at the time of preparing this proof of Evidence, it appears that the Appellant accepts the proposed planning obligations that are sought by the Council, were outline planning permission to be granted. A CIL compliance Statement is being prepared by the Council and will be submitted in due course.
- 2.5. The evidence I shall give and the opinions I shall express are my true professional opinions and are given in accordance with the guidance of my professional institution.

3. Plan Policy Context

- 3.1. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that development control decisions must be made in accordance with the development plan, unless material considerations indicate otherwise.
- 3.2. The Development Plan comprises the South Worcestershire Development Plan (SWDP) (CD3.1) and the Waste Core Strategy for Worcestershire 2012-2027 (adopted November 2012) and a number of 'made' Neighbourhood Development Plans. In this case, the Martley, Knightwick, and Doddenham Neighbourhood Plan (CD3.2) is of direct relevance to this appeal.
- 3.3. The South Worcestershire Councils (Malvern Hills District Council; Wychavon District Council and Worcester City) adopted the South Worcestershire Development Plan (SWDP) on 25th February 2016 that covers the plan-period from 2006 to 2030. In March 2021 the SWDP became more than five years old. The MKDNP is also more than 5 years old.
- 3.4. The National Planning Policy Framework ('the Framework') (Dec 2023), is a material consideration in the determination of planning applications. It confirms that applications must be determined in accordance with the development plan unless material considerations would indicate otherwise, pursuant to Section 38(6) of the Planning and Compulsory Purchase Act 2004, which is to be read in conjunction with Section 70(2) of the Town and Country Planning Act 1990.
- 3.5. Section 70(2) provides that in determining applications the local planning authority shall have regard to the provisions of the development plan, so far as material to the application and to any other material considerations. Paragraph 15 of the Framework reiterates that the planning system should be genuinely planned.
- 3.6. As confirmed by paragraph 12 of the Framework: *'The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making.'*
- 3.7. Paragraph 8 of the Framework explains that achieving sustainable development means that the planning system has three overarching objectives (economic, social and environmental), which are interdependent and need to be pursued in mutually supportive ways. Paragraph 9 advises that these objectives should be delivered through the preparation and implementation of plans and the application of the policies in the Framework; they are not criteria against which every decision can or should be judged.
- 3.8. Paragraph 11 establishes a presumption in favour of sustainable development. For decision making it advocates approving development proposals that accord with an up-to-date development plan without delay. Where the development plan is absent, silent or relevant policies are out-of-date, it advocates granting

planning permission unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

- 3.9. The SWDP has been prepared, found sound and adopted in the context of the Framework. The SWDP is based on and reflects the presumption in favour of sustainable development and its policies set out how this presumption will be applied locally, consistent with paragraph 16 of the Framework.
- 3.10. Other material policy considerations include, but are not limited to:
 - The National Planning Policy framework (NPPF) core
 - Planning Practice Guidance (PPG)
 - South Worcestershire Development Plan review: Regulation 19 Publication Document: dated November 2022 (SWDPR) (CD3.11) which was submitted to the Planning Inspectorate for examination on 27 September 2023.
- 3.11. While the Council is firmly of the view that the proposal is contrary to the spatial strategy and housing related policies of the SWDP, it is also the case that the Council can only demonstrate a 3.47 years' deliverable housing land supply. This housing land supply position is common ground between the Council and the Appellant.
- 3.12. Paragraph 77 of the Framework requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide either a minimum of five years' worth of housing or a minimum of 4 years, where the provision of paragraph 226 applies.
- 3.13. Paragraph 226 of the Framework states that for decision-making purposes only, certain local planning authorities will only be required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of four year worth of housing (with a buffer, if applicable, as set out in paragraph 77) against the housing requirement set out in adopted strategic policies, or against local housing need where the strategic policies are more than five years old, instead of a minimum of five. This policy applies to those authorities which have an emerging local plan that has either been submitted for examination or has reached Regulation 18 or Regulation 19 (Town and Country Planning (Local Planning) (England) Regulations 2012) stage, including both a policies map and proposed allocations towards meeting housing need.
- 3.14. Given the current position of the SWDPR, in accordance with the provisions of the Framework, Malvern Hills is required to demonstrate 4 years' worth of housing against local housing need.

- 3.15. Paragraph 11 (d) (i) of the Framework refers to footnote 7 policies that in turn refers to designated heritage asset, although in this case (i) is not thought to be engaged.
- 3.16. Paragraph 11 (d) (ii) of the Framework, as noted above, states that planning applications should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole.
- 3.17. Notwithstanding the above, as is confirmed by paragraph 12 of the framework, the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making.

Policy Weighting:

- 3.18. Of particular relevance to this Appeal in dealing with refusal reason 1 are: SWDP 2, SWDP 5, SWDP 6, SWDP 21, SWDP 24 and SWDP 25, and MKD policies 1, 3, 4 and 6.

Policy SWDP 1 - Overarching Sustainable Development Principles

- 3.19. Policy SWDP 1 is by virtue of the plan being over 5 years old, out of date. The policy sets out that the Local Authority will take a positive approach that reflects the presumption in favour of sustainable development.

Part D of policy SWDP 1 states that where relevant policies are out of date, the Local Authority will grant permission unless material considerations indicate otherwise – taking into account whether:

- i. any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or
- ii. specific policies in the Framework indicate that development should be restricted.

The policy broadly aligns with the guidance set out in the NPPF and therefore substantial weight should be afforded to it.

Policy SWDP 2 – Development Strategy and Settlement Hierarchy

- 3.20. Policy SWDP 2 is by virtue of the plan being over 5 years old, out of date. The thrust of the development strategy outlined in the policy remains valid and accords generally with the guidance set out in the NPPF. The policy is afforded less than full weight given its age but remains an important consideration in the planning balance and cannot be disregarded.

To this end, it is notable that the Inspector for the Callow End Appeal Inquiry (Ref: APP/ J1860/ W/ 22/3295623 (CD5.2)) states in paragraph 69 of their Decision that:

“The appellant contends that there is an element of inconsistency between Policy SWDP 2 and the Framework, arguing that the Policy’s aim to ‘safeguard and (wherever possible) enhance the open countryside’ takes a more restrictive approach to development in the countryside than the Framework, which at

paragraph 174(b) seeks decisions that ‘contribute to and enhance the natural and local environment by... recognising the intrinsic character and beauty of the countryside’. Framework paragraph 219 states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework.”

Paragraph 70 went on to state:

“Whilst different language is used, both SWDP 2 and paragraph 174(b) are underpinned by a policy imperative to sustain the innate character of the countryside. Moreover, the approach in SWDP 2 aligns with paragraph 69(c) of the Framework which encourages the development of windfall sites within existing settlements. Therefore, in the context of the present appeal, I consider SWDP 2 to be broadly consistent with the Framework.”

The above Framework paragraphs were brought forward in the National Planning Policy Framework (Dec 2023) as respectively, paragraphs 180b and 225.

The policy is afforded substantial weight in terms of my assessment of this appeal.

Policy SWDP 5 – Green Infrastructure

- 3.21. Policy SWDP 5 is by virtue of the plan being over 5 years old, out of date. The thrust of the focus on the provision, maintenance, improvement and connectivity of Green Infrastructure outlined in the policy remains valid and accords generally with the guidance set out in the NPPF. The policy is afforded less than full weight given its age but remains an important consideration in the planning balance and cannot be disregarded. The policy is afforded substantial weight.

Policy SWDP 6 – Historic Environment

- 3.22. Policy SWDP 6 is by virtue of the plan being over 5 years old, out of date. The thrust of the focus on the need to conserve heritage assets outlined in the policy remains valid and accords generally with the guidance set out in the NPPF and statutory requirement. The policy is afforded less than full weight given its age but remains an important consideration in the planning balance and cannot be disregarded. The policy is afforded substantial weight.

Policy SWDP 21 – Design

- 3.23. Policy SWDP 21 is by virtue of the plan being over 5 years old, out of date. The thrust of the approach to high design quality outlined in the policy remains valid and accords generally with the guidance set out in the NPPF. The policy is afforded less than full weight given its age but remains an important consideration in the planning balance and cannot be disregarded. The policy is afforded substantial weight

SWDP 24 – Management of the Historic Environment

- 3.24. Policy SWDP 24 is by virtue of the plan being over 5 years old, out of date. The thrust of the approach to heritage assets outlined in the policy remains valid and accords generally with the guidance set out in the NPPF. The policy is afforded less than full weight given its age but remains an important consideration in the planning balance and cannot be disregarded. The policy is afforded substantial weight.

Policy SWDP 25 – Landscape Character

- 3.25. Policy SWDP 25 is by virtue of the plan being over 5 years old, out of date. The need to consider landscape character, as outlined in the policy, remains valid and accords generally with the guidance set out in the NPPF. The policy is afforded less than full weight given its age but remains an important consideration in the planning balance and cannot be disregarded. The policy is afforded substantial weight.

Martley NDP

MKD1 Landscape design Principles

- 3.26. The introductory text to Policy MKD1 sets out that to be supported development proposals protect distinctive local landscape character and settlement pattern.

MKD1 is in general conformity with the SWDP, which in turn is considered to be in general conformity with the NPPF. Whilst it does not meet the criteria in NPPF paragraph 14, it remains of some relevance to the determination of this appeal and I afford it limited weight.

MKD3 Building Design Principles

- 3.27. The introductory text to Policy MKD3 below aims to promote high quality design in new development which is appropriate to the local context. New development should enhance and reinforce the local distinctiveness of the area and proposals should show clearly how the general character, scale, mass, and layout of the site.

MKD3 is in general conformity with the SWDP, which in turn is considered as being in general conformity with the NPPF. Whilst it does not meet all four of the criteria in NPPF paragraph 14, it remains of some relevance to the determination of this appeal, and I afford it limited weight.

MKD4 Maintaining the Settlement Pattern

- 3.28. The Parishes' distinctive settlement pattern is protected in Policy MKD4: Maintaining the Settlement Pattern in Martley, Knightwick and Doddenham. New developments must be fully integrated into the existing settlement. Proposals for new build residential development must demonstrate their scale (in terms of number of dwellings) responds to local character and development history; and reinforces local distinctiveness, particularly the open spaces between buildings, and irregular layouts.

MKD4 is in general conformity with the SWDP, which in turn is considered as being in general conformity with the NPPF. Whilst it does not meet all four of the criteria in NPPF paragraph 14, it remains of some relevance to the determination of this appeal, and I afford it limited weight.

MKD6 Outside Development Boundary

- 3.29. Policy MKD6 sets out that new housing development outside of the development boundary will be strictly controlled and only be supported under certain conditions, including the following relevant conditions: (b) affordable housing on

an exception site to meet identified local need and when in accordance with SWDP policy SWDP16; or (d) it accords with other relevant policies in the KNP and the SWDP.

MKD6 is in general conformity with the SWDP, which in turn is considered as being in general conformity with the NPPF. Whilst it does not meet the criteria in NPPF paragraph 14, it remains of some relevance to the determination of this appeal, and I afford it limited weight.

4. The Application and the Reasons for Refusal:

- 4.1. The planning application was validated on the 15 January 2024. It was ascribed the Council reference number M/23/01711/OUT. The description of development was as follows:

'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)'.

- 4.2. The planning application was considered and in accordance with the Council's Scheme of Delegation and the decision notice to refuse was issued on 11 April 2024.
- 4.3. The Statement of Common Ground (SoCG) contains a description of the site and surroundings and relevant planning history that will not be repeated here.
- 4.4. The main issues, as identified in the note following the pre-inquiry Case Management Conference held on the 13 Sept 2024 were identified as being:
- i. Whether the proposal would be in a suitable location for housing with regard to local and national policies for housing, and
 - 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.

Refusal Reason 1 says:

- 4.5. *The residential development of this site would, by reason of its location, scale and prominence constitute an incongruous and visually intrusive feature when viewed from a number of publicly accessible locations, and have an unacceptably urbanising and consequently adverse impact upon the character and appearance of the area, resulting in demonstrable harm to the open and undeveloped character and appearance of the land, rather than integrating as discrete infill or 'rounding off' of the existing village.*

Furthermore, the proposal would overwhelm the Grade II listed Longstone Cottage by surrounding it with built development which would encroach upon and adversely impact its setting.

As such, the proposal would be contrary to Policy SWDP 21, SWDP 25, SWDP 6, SWDP 24, SWDP 2 and SWDP 5 of the South Worcestershire Development Plan, and policy MKD1, MKD3, MKD4 and MKD6 of the Martley, Knightwick, and Doddenham Neighbourhood Plan, and guidance contained within the National Planning Policy Framework that amongst others aim to safeguard the intrinsic character and beauty of the countryside and improve the character and quality of an area.

Reason for Refusal 5 says:

- 4.6. *No mechanism (section 106 agreement) has been entered into to secure a legal obligation to provide for a policy compliant scheme for the provision of Highways, Education, Community Infrastructure, and Health contributions, and to secure the provision of affordable housing and the management and maintenance of the public open space. Accordingly, the proposed development is contrary to Policies SWDP 7, 15, 3, 39 and 62 of the South Worcestershire Development Plan and the National Planning Policy Framework, as well as the guidance contained within the South Worcestershire Developer Contributions SPD (July 2018).*
- 4.7. Since the Appeal was lodged the council has worked with the Appellant to resolve the matters that are set out in the Statement of Common Ground that results in the two remaining reasons for refusal.

5. Amplification of the Council's Case

Reason for Refusal 1

- 5.1. The Council's first reason for refusal (RfR1) relates to the principle of housing development in this location and the site's location that lays outside and apart from the defined development boundary and thus is within designated open countryside which is a starting point, where development is to be strictly controlled (SWDP 2 C).
- 5.2. RfR1 also identifies that the proposed development does not preserve the open countryside, its character and the local distinctiveness of the area, contrary to policies SWDP 2, SWDP 5 and SWDP 25.
- 5.3. In addition, RfR1 identifies that the proposed development would have an adverse impact on the significance of the designated heritage asset of Longstone Cottage that adjoins the appeal site with the proposals that are brought forward having that site forming a key part of the setting of this Grade II Listed Building, contrary to policies SWDP 6 and SWDP 24 and Chapter 16 of the NPPF.

Settlement Strategy and the Principle of Development

5.4. It is common ground that the appeal site lays outside of and is removed from the location of the defined development boundary for Martley.

5.5. Policy SWDP 2 Part A confirms among others that the site allocations in the SWDP are based on the following principles (among others):

ii Provide for and facilitate the delivery of sufficient housing to meet objectively assessed needs to 2030...

vi. Focus development on the urban areas, where both housing needs and accessibility to lower-cost public services are greatest.'

5.6. Part C of Policy SWDP 2 states that development in the open countryside, outside development boundaries, will be strictly controlled and will be limited to the criteria of Policy SWDP 2 or development permitted under another SWDP policy. The exemptions under Part C Policy SWDP 2 to allow new buildings in the open countryside do not apply to the Appeal proposals.

5.7. MKD6 - New Housing development is also relevant and broadly aligns with Policy SWDP 2.

5.8. The supporting text to SWDP 2 C has paragraph 4 which state that:

The high quality of the open countryside is an important planning attribute of the area. Sites beyond development boundaries generally are less sustainable as access to local services and employment opportunities tends to be poorer and therefore it is appropriate that development in the open countryside is restricted to proposals which are supportive of more specific SWDP policies e.g. SWDP 12 – Employment in Rural Areas, SWDP 16 – Rural Exception Sites, SWDP 18 – Replacement Dwellings in the Open Countryside, SWDP 19 – Dwellings for Rural Workers, SWDP 27 – Renewable and Low Carbon Energy.

5.9. Part B of SWDP 2 refers to the South Worcestershire Settlement Hierarchy, against which 'windfall' proposals should be assessed. After the 'city', 'main towns' and 'other towns' categories (the urban areas), the hierarchy recognises the role of the larger villages that are identified as 'Category 1, 2, and 3 villages.' These are villages that provide a reasonable range of local services and facilities and are considered suitable for new housing at an appropriate scale to meet local needs. Their role is predominantly about meeting local housing and local needs. Among others, the approach reflects paragraph 82 of the Framework.

5.10. In terms of policy implementation, the accompanying table in Policy SWDP 2 states: 'A number of housing sites of an appropriate scale are allocated in Category 1, 2 and 3 villages to address the need for housing and support services... Infill development within the defined development boundaries is acceptable in principle subject to the more detailed Plan policies.'

- 5.11. Part F of SWDP 2 states: *‘Development proposals should be of an appropriate scale and type with regard to the size of the settlement, local landscape character... location and available infrastructure.’*
- 5.12. SWDP 59 Part B of policy says: In addition to part A which refers to housing allocations in villages, housing proposals in all villages will be permitted where they comply with SWDP 2 B and fall into one or more of the following categories:
- i. Located on land within defined development boundaries, as identified on the Policies Map, where they comply with relevant other Plan policies,
 - ii. Local initiatives including Neighbourhood Plans, Community Right to Build Orders and Neighbourhood Development Orders,
 - iii. Rural Exception Sites (see SWDP16).
- 5.13. SWDP 59 where it deals with village housing allocations provides for:

SWDP59/12	Martley	Land adjacent to the Crown	51	3.08
SWDP59k	Martley	Land adjacent to the Primary School	14	0.77

Both the above sites are built out and completed. The SWDPR’s preferred site allocation is currently being built out (ref: M/23/00863/FUL) and the Parish Council’s response notes that if allowed, 190 dwellings will have been approved, where the 2021 census shows Martley Parish having 586 households, such that the village would have seen a substantial increase in its housing over a very short time scale.

- 5.14. The Appeal Site was not promoted nor considered for allocation in the SWDPR. The Appeal Scheme therefore does not align with this emerging policy.
- 5.15. The SofCG agrees that the individual SWDP Review proposals can only be afforded limited weight at this time.
- 5.16. Martley is identified by SWDP 2 in table 2 and Annex D of the SWDP as a category 1 rural settlement. Settlements in this category have at least four key services with access to all daytime journey types.
- 5.17. A category 1 village would make it a marginally more favourable location for new housing than Category 2 or 3 villages. The Appeal proposal does not involve an allocated site; it is not identified as a preferred allocation in the SWDP Review. For these reasons, the proposed development does not align closely with the type of development envisaged for the Category 1,2 and 3 villages in Table 2 of Policy SWDP 2.
- 5.18. Paragraph 109 of the Framework seeks that the planning system should actively manage patterns of growth and that: *Significant development should be focused on locations which are or can be made sustainable, through limiting the need to*

travel and offering a genuine choice of transport modes. This recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making.

- 5.19. As is noted elsewhere. The two recent development sites approved for the village adjoin the development boundary and neither crosses the B4197 that in this location acts to differentiate one side of the road from the other. Each of these sites make subsequent contributions to the housing numbers at Martley and each is differentiated in terms of the individual planning merits engaged by the current Appeal Site rather than should serve as precedents for more development: Itself an unsustainable position to take. The SWDP Review continues to attract limited weight although its position also differs because the SWDP is now submitted with proposed hearings planned for March 2025.

The effect of the proposal on the character and appearance of the local area

- 5.20. With regard to detailed landscape matters referenced in Reason for Refusal 1, I also rely on the proof of evidence prepared by Mr Lewis-Farley, which identifies harm, including impact on landscape character, visual impact and hedgerows.
- 5.21. This includes that the Appeal Scheme is unsympathetic to both the character of the village and the surrounding countryside, having an unacceptable landscape and visual impacts and is not appropriate to and does not integrate with the landscape setting.
- 5.22. Mr Lewis-Farley identifies harm in respect of policy SWDP 5 in relation to hedgerows and impact on green infrastructure, due to the Appeal Scheme's direct negative impact on green infrastructure (hedgerow loss) and because of its location in an area where development should not take place at the expense of green infrastructure.
- 5.23. In Mr Lewis-Farley's proof of evidence, he refers to the Appeal Scheme as being development that would completely change the character of the site and that there would be clear and unfiltered views of any development that took place from the perspective of the users of the PRoW (698 (C)) and more widely in the area and that development would be to the significant detriment of these views that would be majorly adverse and permanent in nature.
- 5.24. Whilst recent developments have been approved and referenced in the Statement of Common Ground (21/02245/OUT and M/23/00863/FUL), with one site having had its development commenced and the other expected to follow. As is clear in the aerial image below, the Appeal Scheme is not infill development and would not round off the existing form of the settlement, but rather it would project the built form into the countryside beyond, away from the village development boundary and into a landscape area that is sensitive to change.



- 5.25. The approved development (21/02245/OUT) to the north is sat back from the roadside and follows through from the adjacent site's (to the east) development. The development that lies to the north with its intervening green infrastructure and the loose scattering of dwellings the other side of the narrow rural lane helps to differentiate that location from the Appeal Site.
- 5.26. With the development (M/23/00863/FUL) that is commenced and which is located south of the sports field and on the other side of the B4197 from the Appeal site – the highway in this location informing and separating the one site location from the other, with the burial ground, whose presence is permanent and open in character, and the village's sports field, itself, seen to blend seamlessly with the Appeal Site, in providing a rural setting for this part of the rural village, and a location where countless receptors are present throughout the year, aside from the users of the public rights of way that crosses the Appeal Site, there is a very substantial footfall within the immediate area which would be aware of the Appeal Site's development where it removes a vestige of the undeveloped rural surrounds that abuts the community's recreational location.
- 5.27. The Appeal site is located within a peripheral rural area that is stood apart and removed from the settlement boundary, separated by the main road and the village recreational ground where the wider rural location can be readily appreciated. The site provides a transition between the settled edge and the countryside, which includes the appeal site. The site forms an integral part of the swathe of undeveloped countryside that notwithstanding the more recent permissions there remains the visual connection with the wider rural setting where the undeveloped agricultural land comes up to the roadside.
- 5.28. Development on the Appeal Site, of the type proposed, would also be contrary to Policy MKD1 where this refers to Significant Views and identified in appendix 1 of the MKDNP.

- 5.29. Notwithstanding the presence of the Maylite Trading Estate that lays further to the south, while this adjoins the burial ground, the burial ground provides a tranquil feel, being bounded by the open countryside on two sides.
- 5.30. The proposal would significantly remove that sense of openness to the setting of this side of the village, notwithstanding the intended areas of open space that the Council's Conservation Officer also notes is not a sufficient response in terms of the setting of the listed building.
- 5.31. The loss of simple continuous roadside hedgerow and field gate access and its replacement by the need to secure the proposed technical highways access; the resulting built form and ancillary development to be brought forward would wholly remove the agricultural character of the site, as viewed from the roadside, and among others, the village recreation ground, already noted above, and would give the listed Longstone cottage a new neighbour with an assertive urban residential character.
- 5.32. The Appeal site being the last open space that removes the last vestige of undeveloped agricultural land should be viewed in terms of its cumulatively effect following the recent permissions noted above. The Appeal Site acts to effectively link up with the other developments in the area, so the resulting cumulative impact is very much to the detriment of the village itself in terms of the sense of place and distinctiveness that would be lost.
- 5.33. The development would not reinforce local distinctiveness and character of the local area nor integrate effectively with its surroundings, in terms of form and function, contrary to Part A of SWDP 21. The development is also considered to be contrary to SWDP 25, conflicts that are afforded substantial weight. There is also conflict with policy SWDP 5.

Effect on the Setting of Heritage Assets

- 5.34. With regards to the detailed heritage matters referenced in Reason for Refusal 1, I rely on the proof of evidence prepared by Ms Sarah Lowe, which identifies harm to the Designated and Non-Designated heritage assets from the changes that would come forward within their respective Settings.
- 5.35. Longstone is a 17th Century cottage Grade II listed that has had a presence in this location for centuries and which has always been associated with an open rural agricultural setting that was stood apart from the village of Martley, where Longstone Cottage lies adjacent the bend in the B4197 and its road junction with the adjacent rural lane.
- 5.35.1. The building's frontage looks out over the adjacent recreation ground and the adjacent Appeal Site is a prominent open presence and is the last remaining agricultural land that sits alongside the B4197 so far as this relates to the listed building. The loss of the Appeal Site, undoubtedly, would act to urbanise the immediate location and removes the valued contribution that the Appeal Site

makes to the Setting of the Listed Building and the Non-Designated Heritage Assets.

- 5.35.2. The Appeal Site remains undeveloped agricultural land and represents the listed building's wider rural setting that has been diminished in more recent times. The two housing developments referenced in the Statement of Common Ground would be viewed as an element of encroachment on the setting of the designated heritage asset, such that the contribution made by the last remaining agricultural land that is the Appeal Site would attract much greater weight in terms of its positive contribution that it makes to the setting and therefore the significance of the listed building as well as the non-designated heritage assets that are identified.
- 5.36. The Appeal Scheme's development would effectively link the suburbanisation that is occurring to the southeast and north, such that the setting of the heritage assets would cease to make a positive contribution to heritage significance.
- 5.37. The harm is recorded to be 'less than substantial'. In considering the listed Longstone Cottage and 110 and 111 Berrow Green Road and Row End this is given as low to moderate level.
- 5.38. The harm is not considered to be addressed by the proposed mitigation measures in relation to Longstone Cottage.
- 5.39. The Framework in paragraphs 205 and 206 provide for great weight to be given to the conservation of heritage assets and that their significance can be harmed or lost through development within its setting and any harm or loss should require clear and convincing justification.
- 5.40. Referring to non-designated heritage assets paragraph 209 says: 'a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.'
- 5.41. Paragraph 208 provides that less than substantial harm should be weighed against the public benefits of the proposal.
- 5.42. The development would fail to preserve the setting of the Grade II listed Longstone Cottage and 110 and 111 Berrow Green Road and Row End. As such, the proposal would conflict with policy SWDP 6 and SWDP 24.

Refusal Reason 5:

- 5.43. This concerns the legal obligations to secure a policy compliant scheme. The Council anticipate that RfR5 can be addressed by an appropriate planning obligation prior to the commencement of the Inquiry. However, at the time of writing this Proof of Evidence the completed planning obligation is not provided, although the Statement of Common Ground anticipates that the areas of contribution are agreed.
- 5.44. It is prudent to make clear that the Council consider the obligations (including the securing of affordable housing) to be required should permission be granted. A

CIL Compliance Statement is being prepared by the Council and will be submitted in due course.

- 5.45. Should an adequate Section 106 Agreement not be secured, the Council will maintain that the reason for refusal 5 remains valid and that planning permission should be refused accordingly.

6. Other Matters:

- 6.1. In light of the draft Affordable Housing Statement of Common Ground received from the Appellant on the 23 October 2024, the Council's position remains unchanged in terms of the very significant weight given to the housing and affordable housing elements of the proposal in response to the government's objective to boost housing supply.
- 6.2. The benefit of the housing provision is a matter for the planning balance to be considered alongside all material considerations.
- 6.3. The National Planning Policy Framework is currently out for consultation albeit that the indications are that a revised Framework will not be issued during the time that the Inquiry sits. Notwithstanding that it is anticipated that policy will change. As a consultation document at this stage very little weight is given the consultation document.
- 6.4. The benefits derived from additional Council Tax that is raised is a direct consequence of the additional demand put on local services would attract very little weight. Likewise, given the overall scale of the development to be brought forward the New Homes Bonus attracts modest weight overall.

7. Planning balance

Housing Supply and the tilted balance

- 7.1. It is agreed in the Statement of Common Ground that the Council currently has a 3.47 years' housing land supply and in consequence Paragraph 11(d) of the Framework is engaged. Paragraph 11(d) of the Framework states:

'Where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.'*

- 7.2. With regard to demonstrating a five years' land supply, the Hallam Land v. SSCLG [2018] EWCA Civ 1808 judgment (CD6.5) confirms that the extent of a housing land supply shortfall is relevant to the determination of the weight one gives to relevant policies and to the benefits of housing delivery. As such, even where there are agreed shortfalls in housing land supply, it remains relevant to consider the extent of the shortfall. This position has been further confirmed in the High Court decision, Gladman v SoS for Communities and Local Government [2019] EWHC 128 (CD6.15).
- 7.3. In light of the need to demonstrate a 4 years' supply (paragraph 226 of the Framework) the figure of 3.47 years is considered to currently not represent an overly significant shortfall.
- 7.4. The proposed development would make a meaningful contribution to the supply of both market and affordable housing, and in view of the government's objective to boost the housing supply and the policy compliant affordable housing that is anticipated to be brought forward these social benefits are afforded in the SoCG very significant weight.

Landscape

- 7.5. Unacceptable adverse harms, including impact on landscape character, hedgerows and visual impacts are engaged by the proposed development in that location.
- 7.6. Notwithstanding that the proposals are illustrative in their nature then significant weight should be given against the development in respect of the impact on landscape character. The site is prominently placed and visually easily accessed. The importance of these matters is reinforced by the advice found at paragraph 180(b) of the Framework, which inter alia recognises the intrinsic character and beauty of the countryside and the wider benefits from natural capital and ecosystem services. Further weight is afforded by the conflict with adopted Local Plan policies SWDP 2, 5(C), 21 and 25.
- 7.7. In environmental terms the proposal would have a detrimental effect on landscape character and visual impacts for this edge of rural village location.
- 7.8. Substantial harm should be given the conflict in respect of Policies SWDP 2A, SWDP 5C, SWDP 21 and SWDP 25.

Heritage

- 7.9. While the harm to the designated and non-designated assets would be less than substantial. In terms of the Framework the harms would be of considerable importance and weight. The historic significance for Longstone Cottage is lost through the resulting encroachment of the residential development on this side of the village and loss of the remaining agricultural land. With reference to

paragraph 208 relating to designated heritage assets, less than substantial harm should be weighed against the public benefits of the proposal.

- 7.10. Referring to non-designated heritage assets and NPPF paragraph 209, “a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
- 7.11. The Appellant also draws attention to the appeal decision for the housing development to the west (ref: M/21/02245/OUT), albeit the cumulative effect from the two recent housing developments cited in the Statement of Common Ground strongly suggest that rather than precedents that support the Appeal Site; as a subsequent proposal and in considering each application on its own individual planning merit, the more aggressive encroachment derived from the Appeal Site’s development would be seen to fail to sustain the historic significance of the heritage asset and its setting. Given the positive contribution made by the Appeal Site in providing an area of undeveloped agricultural land the situation would see significant weight given to the resulting harm which goes against the proposed development.

Spatial Strategy

- 7.12. The Appeal Scheme is not in-fill development and would not round off the existing form of the settlement. Rather it would move built form away from the village and into the countryside, stepped apart from the development boundary and intervening with an otherwise seamless transition into a landscape area that is the more sensitive to change.
- 7.13. The village recreation ground and sports field provide a clear transition from the suburban nature of Martley to the countryside beyond the village. The Appeal Site is part of that countryside and lays the other side of the B4197 and the Appeal Site’s development would extend and consolidates built form beyond the village of Martley, in the wrong location.
- 7.14. I consider there to be significant harm and thus conflict in respect of Policy SWDP 2, where this (A) seeks to “*safeguard and (wherever possible) enhance the open countryside*”, as well as to “*focus most development on the urban areas where both housing needs and accessibility to lower-cost public services are greatest*”. The appeal proposal fails to meet these strategic objectives given the identified rural settlement location.
- 7.15. Notwithstanding that the Appeal Site would provide reasonable access to the existing facilities in Martley, over all the site’s location is not suitable for unrestricted housing growth that must by implication see much greater use made of the private car for much day to day living.

Other Benefits

- 7.16. The Appeal scheme would provide social benefits in terms of the housing provision which would assist the Council's need in meeting its housing target. The need to boost housing supply and contribute to the housing need of the district is a key objective and one that should not be underplayed.
- 7.17. However, the benefits of the housing development that might be derived from a development that complies with the development strategy, do not amount to circumstances that would necessarily outweigh the development plan.
- 7.18. There would be economic benefits derived from the construction phase(s) and the occupation of the dwellings would provide opportunities for some support to local facilities and services that weighs moderately in favour of the proposed development.
- 7.19. Subject to the completion of a Section 106 legal obligation the appeal scheme would make provision covering financial contributions towards local infrastructure, although the contributions are necessary to make the development acceptable and fundamentally provide for appropriate provision for future occupants of the proposed development that would not be required in the absence of this development proposal and therefore might be afforded little weight
- 7.20. The biodiversity benefits that be brought forward would equate to neutral weight but at best very limited in favour of the site's development.
- 7.21. Similarly, the provision of electric car charging points that is now part of the Building Regulation requirements attracts very little weight in favour of the proposed development.

8. Conclusion and Application of the Tilted Balance

- 8.1. While there is conflict with the policies of the MKDNP, given the provisions of the Framework Paragraph 14 in respect of the MKDNP, Policy SWDP 2, takes precedence in my assessment.
- 8.2. Notwithstanding the benefits of the Appeal Scheme in terms of the additional housing, there is significant conflict with Development Plan Policy SWDP 2 in respect of its being located outside of the development boundary of Martley as well as the undoubted use that would be made of the private car.
- 8.3. SWDP 2 and paragraph 180b are underpinned by a policy imperative to sustain the innate character of the countryside. Moreover, the approach in SWDP 2 aligns with paragraph 70C which encourages the development of windfall sites within existing settlements. SWDP 2 is broadly consistent with the Framework in light of which, in considering the tilted balance moderate weight attracts against the proposed development.
- 8.4. SWDP 21 requires that all development will be expected to integrate effectively with its surroundings, in terms of form and function and reinforce local distinctiveness and conserve, and where appropriate, enhance cultural and

heritage assets and their settings. The Appeal Site's development would have the impact of making a currently undeveloped, open and rural location suburban, which would be harmful to the local distinctive rural character and visual appearance of the location. Significant harm would arise in terms of the site's contribution to landscape character and the appearance of the surrounding area to which substantial weight attracts against the proposed development that conflicts with SWDP 21 and 25.

- 8.5. The harm would be exacerbated with the Appeal Site clearly viewed from the adjacent village recreation ground and sports field, and amongst others, the users of the village hall, and those attending the burial ground.
- 8.6. The Appeal Site also offers the last vestige of the agricultural land that runs up to the roadside (B4197) at this point that would be permanently lost and whose loss would adversely harm the setting and the historic significance of the grade II Longstone Cottage listed building and the non-designated heritage assets.
- 8.7. In terms of the Framework the harms would be less than substantial but would nonetheless be of considerable importance and weight.
- 8.8. The harm is exacerbated by the cumulative loss that sees the adjacent adjoining agricultural land as well as the wider public awareness of its location. As such I would afford this substantial weight that weighs against the proposed development.
- 8.9. Paragraph 208 of the Framework establishes that any harm should be weighed against the public benefit, including the substantial weight already afforded the provision of the housing in an area with an identified shortfall.
- 8.10. Notwithstanding paragraph 70 of the Framework where this says: *Small and medium sized sites can make an important contribution to meeting the housing requirement of an area and are often built-out relatively quickly.* In this case, the harms that are engaged by the Appeal Site's development are considered to outweigh the benefits.
- 8.11. Whilst time expired the relevant policies of the SWDP are consistent with the framework. The historic environment policies within the framework also provide a clear reason for refusing the proposal, in addition to the locational and landscape concerns that have been engaged.
- 8.12. Therefore, the Appeal scheme results in a clear conflict with the development plan policies that are in general conformity with the Framework in seeking to secure sustainable development. This conflict is not outweighed by any other material considerations. The adverse impacts of allowing the proposal on the settlement hierarchy, on the scale of growth envisaged at Martley, in the location identified, including the landscape character and the impact on the significance of the heritage settings is contrary to the Council's vision and spatial strategy, as well as the Framework and the plan-led system, such that would significantly and demonstrably outweigh the benefits in terms of increasing housing supply.
- 8.13. These matters could not be satisfactorily resolved as part of a detailed Reserved Matters layout, design and landscaping proposal. No compelling case has been

made for making a decision that is contrary to the provisions of the development plan when read as a whole. In accordance with Section 38(6) of the Act.

- 8.14. As confirmed above, the 'tilted balance' is engaged. Having weighed the benefits of the Appeal Scheme against the adverse impacts, and in applying the tilted balance, I am of the view that the adverse impacts of the Appeal Scheme in terms of landscape, visual appearance, the setting of the heritage asset(s) involving development outside of the identified development boundary that impacts the spatial strategy, are so harmful as to significantly and demonstrably outweigh the benefits of granting outline planning permission for the Appeal Scheme.
- 8.15. It is my view therefore that planning permission should be refused and the Appeal dismissed.

Proof of Evidence dated: 28 October 2024.