

**STATUTORY PLANNING APPEAL PURSUANT TO SECTION 78 OF THE
TOWN AND COUNTRY PLANNING ACT 1990**

AGAINST THE DECISION BY WYCHAVON DISTRICT COUNCIL

**APPEAL BY BEECHCROFT LAND LIMITED AND HENRY BOUSKELL
C/O TRUSTEES OF THE WIMBUSH DROITWICH SETTLEMENT**

LAND TO THE NORTH OF DROITWICH SPA, DROITWICH

Inquiry opened 12 December 2022

APPEAL REFERENCE: APP/H1840/W/22/3305934

APPELLANTS CLOSING SUBMISSIONS

Introduction

1. Through this appeal the Appellants seek outline planning permission for up to 102 dwellings on land to the north of Droitwich Spa ('the Appeal Site'). All matters are reserved save for the primary access to the Site.

Law

2. In *North Wiltshire District Council v Secretary of State for the Environment* (1992) 65 P&CR 137 the Court addressed the principle of administrative consistency between appeal decisions. The Court acknowledged that where there is inconsistency on some critical aspect of the proposal, the Inspector is expected to provide reasons for reaching a different conclusion to a previous decision.
3. Here that is relevant given the previous refusal of planning permission in respect to the Site.

4. The reasons for reaching a different planning balance than the previous inspector are obvious – most critically the point that now the Council are unable to demonstrate a 5 year housing land supply.
5. The Appellants invite you Sir to *largely* adopt the reasoning of the previous inspector in respect to the harmful impacts and benefits. This is particularly the case in respect to heritage impacts, where the Council identify issues/impacts that are inconsistent with the previous inspector, who herself had a conservation background. Reasons would need to be provided to justify this change in stance.

Changes in the development proposals

6. Both Mr Potterton and Dr Hickie initially advanced the proposition that the impacts in respect to the previous scheme and the current scheme were essentially the same.
7. Both schemes were submitted in outline and thus the precise details are not fixed. However, a comparative plan for both is shown at CD 14.1. Through the imposition of a condition pertaining to the parameters plan (condition 4), one can have confidence with the current proposal as to which areas of the Site will be developed/undeveloped.
8. The most significant change obviously is the reduction in the number of units from 144 to 102. That lower quantum naturally means that the development impacts are reduced and there is a reduced area of development (1.69ha less – being a 31% reduction in the developable area).
9. Another prominent change is in respect to the ‘grazing land’. The previous proposal was suggesting development (approximately 28 houses) and formal open space in the area now identified as being the ‘grazing land’ within the s.106 agreement (i.e. the blue edged area to the north of the Site). Whilst details of what this will be comprised of will be determined through the discharge of conditions, the Appellants intention is that this area will remain grazed

pastureland with some public access through permissive paths. This is seen through the definition of the ‘Grazing Land Scheme’ within the section 106 agreement:

means the scheme to be submitted to the Council for approval setting out but not limited to the planting and footpath routes across the Grazing Land including details of delivery and timings and the period(s) of the maintenance and management thereof_ and to be provided in accordance with the provisions of Schedule 6 to this Deed;

10. Thus, the area closest to the Church and lych gate will remain undeveloped and preserved in its current form. However, unlike the present situation, members of the public will be entitled to access this area.
11. Paragraph 206 of the NPPF tells us that proposals which better reveal the significance of a heritage asset should be treated favourably. This reflects the obvious point that opening up opportunities for members of the public to experience a heritage asset, in its rural agricultural pastureland setting, is a good thing.
12. This is also a benefit when compared with this simply being open space. Indeed, grazing land is fundamentally an agricultural landscape, whereas open space’s primary function is amenity. Formal open space would envisage no grazing animals, informal recreation, it being more manicured, with benches, litter bins and perhaps informal play. Both Mr Potterton and Dr Hickie reluctantly accepted it constituted an improvement to the previous proposal in both landscape and heritage terms.
13. Thus, it is not simply a case, as Mr Potterton and Dr Hickie sought to suggest, of pulling development back from the heritage assets. But it is also the case that the intervening use remains consistent with the historical setting of these assets.
14. There is also the opportunity to restore the historical route to the Church. One can see a historical path towards the Church across the Site, which followed

through the lych gate, in the OS maps from 1885, 1903 and 1927¹. However, by 1954² this had been lost for reasons we do not know about. Thus, through having a permissive path that mirrored this route, users of this route would essentially be transported back in time to having the same experience of the Church as was the case in the late 19th Century/early 20th Century – an experience that cannot be enjoyed now. The benefits of this should not be overstated, but they are a moderate benefit as Mr Wakefield identifies. Indeed, Mr Instone accepted that he was incorrect to afford this no weight in his planning balance.

15. Further, there are opportunities to provide landscape enhancements both on site and in this grazing land. Mr Potterton had discounted any landscaping within the grazing land through his proof, on the basis that it was not permissible to have planting outside of the red line (his para 4.22, 8.2 and 9.11). However, he accepted that this was incorrect. Indeed, section 72(1)(a) of the Town and Country Planning Act 1990 does allow for this:

for regulating the development or use of any land under the control of the applicant (**whether or not it is land in respect of which the application was made**) or requiring the carrying out of works on any such land, so far as appears to the local planning authority to be expedient for the purposes of or in connection with the development authorised by the permission;

16. Ms Ede's proof sets out how having hedgerow reinforcement and enhancements around the grazing land (and across the Site generally) would be a benefit of the proposal in line with the identified landscape guidelines for the Principal Timbered Farmlands.³
17. The current proposal also has benefits through the further set back from the Forest (by the parish hall). The previous scheme saw houses 16m from this,

¹ Dr Edis Appendices 11 - 13

² Dr Edis Appendix 14

³ Ede proof pages 33 – 35 Table 4.1

whereas now it is between 80 – 100m away, with grazed land and planting intervening.

18. There are also less impacts on views along Kidderminster Road. Indeed, previously users of Kidderminster Road would have their view of the Church interrupted by housing, but now they would continue to see this across the grazing land.
19. This set back along the grazed land also provides increased openness of views from the bridleway as it comes under the railway line.
20. There is also now an increased area of green infrastructure, with it being 5.89 ha compared with 3.35ha previously, which provides opportunities for greater biodiversity net gain. Thus, the Appellants are in a position to commit to a 20% BNG condition. It is also the case that the grade 2 BMV agricultural land to the north of the Site can be retained (save for 0.06ha⁴), whereas previously 1.5ha of grade 2 land was to be lost.
21. Dr Hickie sought to suggest in his proof that the current proposal has a ‘much higher density compared with the previous illustrative layout’ which he indicated meant that there, ‘will be a significant difference in the perceived urban quality of this housing estate now’.⁵ However, when he was tested on this, he accepted that this was incorrect. Indeed, the density of the proposal is reduced now, being 10.14D/ha compared to 14.13D/ha previously⁶. This is unsurprising given the number of units is reduced. Further, Dr Hickie accepted the contents of the landscape SoCG, which made clear that an appropriate density could be secured on site.⁷
22. Further, the proposal also has more public open space to the south of the Site. During XX it became clear that Mr Potterton had not appreciated this point.

⁴ CD9.3 para 6.40

⁵ Hickie proof para 4.9

⁶ The density of the developable area is now 27.95D/ha compared with 26.97D/ha, which Dr Hickie accepted was not a material increase

⁷ Landscape SoCG CD 9.5 para 3.6

When it was pointed out to him he was dismissive of the point, saying that the area to the south was not the concern (but note how this differs from the moderate effects to the south he found).

23. This is all to say that the current proposal is an improved scheme to the previous scheme. The changes are not radical such that the harmful impacts the previous inspector found are all resolved. But, the harmful impacts could only be reduced – as opposed to being significantly increased as the Council have sought to suggest.
24. Thus, the Appellants submit that there are obvious material considerations (such as the housing shortfall) that now justify a different planning balance to the previous inspector in any event. However, the improvements to the scheme further endorse this position that there are good reasons for coming to a different conclusion.

The effect of the proposal on the character and appearance of the area having particular regard to the landscape

Development Plan Policies

25. It is common ground that there are breaches of policies SWDP 2 and SWDP 25 as a consequence of the development proposal. Further, it is also agreed⁸ that policy 2 is only breached insofar as criterion F is linked to policy SWDP 25.
26. It was also common ground that Policy SWDP 25 is only breached in respect to criterion A(ii). Thus, significantly there is no dispute that the proposal complies with the following criteria:

i. That they take into account the latest Landscape Character Assessment and its guidelines;

⁸ Potterton XX

iii. That they conserve, and where appropriate, enhance the primary characteristics defined in character assessments and important features of the Land Cover Parcel, and have taken any available opportunity to enhance the landscape.

27. It is significant here in that the development plan directs you Sir to the landscape character assessment, being the Worcestershire Landscape Character Assessment ('WLCA').

Worcestershire Landscape Character Assessment

28. During the inquiry the Council have sought to criticise the WLCA. This is remarkable given that:

- i. it is the Council's own document that underpins both their current landscape policy and the emerging policy⁹ (which equally places reliance on it);
- ii. this point was not foreshadowed in any of the written evidence and was a point first taken on day one of the inquiry out of the blue;
- iii. it was agreed in the landscape SoCG that the WLCA is the most relevant assessment for this appeal.¹⁰

29. Mr Potterton's reasons for criticising the WLCA were:

- i. *it was based on a survey in 2008 and matters have moved on since then;* However, there is no evidence to suggest that matters have moved on in this locality since the surveys were taken. Mr Potterton had no evidence of this. Ms Ede had reviewed the surrounding area since 2010 and found that they mirrored the current situation, especially given the tree belt was mature anyway so was unlikely to have grown much in the intervening period.

⁹ CD 4.3 page 133 policy 30 of the emerging plan and footnote 105

¹⁰ Landscape SoCG CD 9.5 para 2.13

ii. *the surveys were purely desk based assessments;*

That point was incorrect. There were ample field surveys that informed the WLCA. This is clear from the document which has the field survey form¹¹ and the field survey information.¹²

iii. *it lacks logical sense;*

Mr Potterton sought to suggest in XiC that it lacked logical sense on the ground to have split Areas 2C and 2F. However, when pushed on this, he abandoned this point, recognising that:

- 2F is in the strategic gap, 2C is not;
- 2F has a valley form, 2C is relatively flat and has a completely different topography;
- 2F is not in the setting of the Church, whereas 2C is (see Dr Hickie's proof p.16 identifying the Church's setting as stopping at the boundary of 2F and 2C);
- the WLCA actually recorded the differences between the two areas, describing 2C as being underlain with mudstone, notes woodland as the field origin and has a 'moderate' urban impact, whilst 2F is underlain by alluvial drift, fields and meadow in origin and predominantly pastoral and the urban impact is identified as 'None'.¹³
- the soil type, geology and landscape features of the two areas were different.

Thus, the sub-division of the Site into 2C and 2F was entirely logical based on the ground.

iv. *the surveys did not note the industrial estate.*

¹¹ CD 5.2.1 p.19 Figure 7.2

¹² See for example CD 5.2.1 page 18 para 2.2.4.2

¹³ Ms Ede proof para 3.17 p.17 - 18

This point was wrong. The surveys did explicitly note that ‘urban fringe also includes separate industrial estate and golf course’.¹⁴

30. Accordingly, none of the reasons for inviting you to depart from the WLCA withstood scrutiny. In fact, Ms Ede was able to give evidence about the WLCA, given she knows its author Stephen Warnock and was able to advise as to the fact that the methodology used for this particular WLCA has become widely used by local authorities – albeit she said the WLCA was more detailed than what a lot of authorities can achieve.
31. When Mr Potterton was tested on this point, he ultimately agreed that his arguments as to why the WLCA was not robust were not supported and that, in reality, he simply disagreed with parts of it.
32. The reality is that Mr Potterton seeks to criticise their own WLCA because it is favourable to the appeal site being an appropriate location for development.
33. Indeed, the WLCA sub-divides the Council’s administrative boundaries into different Land Cover Parcels. The Site is sub-divided between LCP MW118.2c (‘2C’), which covers the northern part of the Appeal Site, and LCP MW118.2f (‘2F’). The WLCA tells us, unsurprisingly, that these sites in a low landscape sensitivity are most able to accommodate development.¹⁵
34. 2C is identified as being in a poor landscape condition and low landscape sensitivity. Mr Potterton accepted, albeit reluctantly, that when he came to produce his evidence he did not realise this. Indeed, this is forgivable given that these appear on pages 635 – 636 of the WLCA supplementary guidance technical handbook (CD 5.2.1). In the previous appeal no one had recognised this point. It was only Ms Ede who went to the trouble to pour through the WLCA to discover what it actually says – which is important given that SWDP policy 25 A(i) directs you Sir to take it into account.

¹⁴ CD 5.2.1 p.457

¹⁵ CD 5.2.1 page 42 para 2.3.9.4

35. The WLCA also contains a flow diagram exercise that is intended to provide a practical working tool in the development control process.¹⁶ Ms Ede sets out how the flow diagram is applied to this proposal.¹⁷ Mr Potterton agreed with her assessment, such that it leads to the following conclusion: *'Yes A positive response could be considered'*. This was not before the previous inspector. It is clearly a significant point in favour of the development proposal.

Settlement pattern

36. Heavy weight was made of the adverse impact on settlement pattern with Ms Ede. However, this reliance was at odds with the WLCA.
37. The Site is within the landscape type profile of Principal Timbered Farmlands. Settlement pattern is a tertiary characteristic for such landscape profiles (see landscape SoCG para 2.18). In applying the flow diagram, consideration is given to the settlement pattern and this only acts as a reason not to give a positive recommendation where settlement pattern is identified as being a primary or secondary characteristic. Thus, the WLCA does explicitly have regard for settlement pattern and does not identify this as a point warranting anything other than a positive response.
38. Further, policy SWDP25(A)(iii) is concerned with preserving the primary characteristics in the WLCA, not tertiary characteristics.
39. It is also worth noting that despite the suggestion that settlement pattern will be compromised, it is unclear where this is meant to be appreciated from. Indeed, there is no receptor point identified by the Council as to where one is allegedly able to perceive this change in settlement pattern.

Methodology

¹⁶ CD 5.2 page 22

¹⁷ Her proof paras 6.2 – 6.8

40. The Appellants submit that the position adopted by Mr Potterton in respect to his methodology is seriously flawed.
41. Mr Potterton describes the impact on the character of the site as being identical to the impacts on Areas 2C and 2F. When this was tested, Mr Potterton accepted that this is wrong. Indeed, it is obviously wrong to suggest that areas 2C and 2F have the same sensitivity. Moreover, it is also plainly wrong to suggest that the development will have identical effects on these two land cover parcels, given that Area 2C is where the housing will go, whereas Area 2F will be used for open space.
42. It is clear that Mr Potterton did not pay much attention to this. Indeed, his own methodology requires that the sensitivity of a site is determined by ‘consideration of both the susceptibility to change and the value placed on the landscape resource’.¹⁸ Mr Potterton accepted in XX that the methodology required that a finding on susceptibility and value needed to be made and set out in writing, to ensure that the judgements were transparent (which is also required by GLVIA).
43. However, nowhere within his evidence is there any consideration of susceptibility or value. In fact, in his proof he equates susceptibility with sensitivity at paragraphs 7.3 and 7.4, failing to understand they are different.
44. Whilst Mr Potterton assured the inquiry he had considered susceptibility and value, he equally described the landscape methodology process as ‘witchcraft’. It is plain that he did not properly undertake the exercise. Indeed, the fact that he found an equal sensitivity, magnitude and significance to areas 2C and 2F demonstrates this. He also accepted in XX that he had not complied with his own methodology in not setting this out in writing. Thus, he accepted my question that both his conclusions were wrong and his workings out were not apparent.

¹⁸ His proof page 43 para 3.2

45. In opening, the Council contended that, *‘the key difference between the experts for the Appellant and the LPA is over “sensitivity” of the appeal site in landscape terms. An assessment of the “sensitivity” of a landscape combines judgments as to its susceptibility and the value attached to it’*.¹⁹
46. It is therefore telling that on the key point of difference, the Council’s evidence is entirely lacking in transparency and has been accepted as being wrong by Mr Potterton and contrary to his own methodology.
47. Thus, on the key point of difference, Ms Ede’s evidence should be preferred.

Valued Landscape

48. The Council contend that the Site is a valued landscape within the context of paragraph 174(a) of the NPPF, notwithstanding the fact that this point was never taken against the proposal during this previous appeal.
49. The Council’s justification for their change in stance is based on the production of the Landscape Institute’s Technical Guidance Note on Assessing Landscape Value (02/21 – CD 5.5). Ms Ede formed part of the working group for its production.
50. If anything, the document raises the bar for a finding of valued landscape, given it tells practitioners that:
- i. One is looking for a ‘degree of excellence’;²⁰
 - ii. ‘It would be expected that a ‘valued landscape’ would demonstrate the presence of a number of indicators of landscape value’²¹; and
 - iii. ‘The identification of landscape value needs to be applied proportionately ensuring that identification of ‘valued landscape’ is not over used’.²²

¹⁹ CD 4.10 para 9

²⁰ CD 5.5 page 41 para A4.2.6

²¹ CD 5.5 page 42 para A4.2.12

²² CD 5.5 page 43 2nd bullet point

51. It provides no proper justification for the Council now seeking to elevate the extent of the harm associated with the landscape. Nor does it change the fact that the value indicators within box 5.1 of GLVIA remain the relevant industry standard for assessing valued landscapes.
52. The Council's reasons for why the Site now constitutes a valued landscape essentially revolves around the impacts associated with designated heritage assets. Indeed, Mr Potterton accepted that without the heritage concerns the Site would not constitute a valued landscape. That is curious given that heritage was equally raised as an issue in the previous appeal.
53. Ms Ede expressed her surprise at how much reliance was being placed on a heritage impact to justify this valued landscape case. Heritage impacts are plainly relevant, but they were the lynchpin of Mr Potterton's whole valued landscape case. For the reasons below, the heritage impacts are significantly overstated by the Council and thus, if that is accepted, this heavily dilutes this valued landscape argument in any event.
54. Further, the other difficulty is that it remains entirely unclear what the physical extent of this valued landscape is. Indeed, the Site itself cannot form a valued landscape divorced from the landscape around it. The Landscape Institute technical guidance recognises this, in saying:²³

When assessing landscape value, there has been a growing consensus regarding the importance of looking at the role that a site plays in the wider landscape and not limiting the assessment to the site itself.

55. We are left to guess what this wider landscape is that forms this valued landscape. Does it include Doverdale Park and/or the industrial estate for example? Does this wider landscape demonstrate this degree of excellence that is required for a valued landscape?

²³ CD 5.5 page 45 para A5.1.7

56. Accordingly, the Appellants contend that this attempt to now argue that the Site is a valued landscape is consistent with the overall theme in the Council's evidence of:

- i. overstating the harm;
- ii. denying the improvements with the scheme;
- iii. seeking to elevate the extent of harm from the previous appeal, absent any good reason to do so.

57. However, in any event, the point does not particularly go anywhere given that ultimately the parties agree that the impacts at the Site level by year 15 are moderate, with limited impacts on the wider landscape. Paragraph 174(a) of the NPPF tells the decision maker that one should:

protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);

58. The developable area has no statutory status (given it is not subject to any landscape designations), nor does it have an identified quality in the development plan. Indeed, applying the development plan, this directs the decision maker to the WLCA, which says that a positive response can be considered in respect to the Site.

Summary

59. Ultimately it is agreed that the Site is generally well contained. Indeed, the Council do not dispute that the zone of visual influence of the Site is relatively limited and that the impact of the proposals on the wider landscape would be limited.

60. Further, the visual impacts are limited to the immediate site context and do not extend to the wider landscape. Indeed, this point was expressly agreed in respect to the previous proposal.²⁴
61. Plainly this is a material harm that weighs against the proposal. However, it is plainly not a significant and demonstrable harm as Mr Instone sought to argue.

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

Common Ground

62. It is common ground that, in accordance with the previous Inspector’s findings, there is no harm to either the fabric or immediate setting of either the grade I listed Church or grade II listed lych gate.²⁵ Moreover, it is also common ground that the development proposal would introduce development into the setting of the Church and lych gate which would be harmful. This harm is agreed to be less than substantial.
63. However, the Appellants contend that the harm is at a very low level, at the lower end of the bracket of less than substantial harm.

The Previous Appeal

64. The Council’s stance in this appeal is surprising given how dramatically it deviates from their position at the previous appeal and from the previous Inspector’s decision. This is demonstrated by the below.

	LPA’s previous position	Inspector’s conclusion	LPA’s current position
Lych Gate	No harm ²⁶	Negligible harm ²⁷	Moderate adverse at the upper end of

²⁴ CD 13.7 para 6.11

²⁵ See para 30 of previous decision at CD 7.1

²⁶ CD 13.6 page 8 para 2.13

²⁷ CD 7.1 paragraph 35

			less than substantial
Church	Lower to mid range of less than substantial ²⁸	<i>'Would have an adverse effect upon the setting of the Church and thus would harm its significance, <u>albeit this is a limited part of its significance as a whole</u>'²⁹</i>	Moderate/large adverse at the top end of the range of less than substantial – with a major proportion of the significance of the asset being harmed through its wider setting ³⁰

65. The Council advance 3 reasons as to why they have changed their position from the previous appeal:

- i. the consideration of the estate railings;
- ii. the greater knowledge we now know about Hampton Court; and
- iii. Dr Hickie's greater experience.

66. None of these points, properly considered, provide a justification for this change of stance or provide a good reason that the previous Inspector's assessment was incorrect. This is especially the case when the proposal has been amended in a positive way.

Estate Railings

²⁸ CD 13.6 para 8.3

²⁹ CD 7.1 para 33

³⁰ Dr Hickie XX

67. Dr Hickie made much of the estate railings. His point is that the only reason someone would have used them was to show off their estate and increase views across the appeal site, which speaks to heritage significance.
68. However, we have no evidence (at all) as to:
- i. who put the railings in;
 - ii. when they were put in; or
 - iii. why they were put in.
69. In fact, there is not a single reference to these estate railings in any document before the inquiry. Thus, to seek to rely on them in this way absent any evidence, particularly to justify such a stark difference in opinion, was surprising.
70. Moreover, the estate railings do not even follow the original fencing surrounding the church. Previously the Church and its historical agricultural setting were separated by what appears to be a timber fence. We can see from the Tithe and OS maps that this followed the line of what is now the lych gate. The estate railings were introduced in the early 20th Century and thus, if anything, their presence compromises the historical setting of the Church as being a more modern change to the setting of the Church.

The greater knowledge about Hampton Court

71. Historic England have provided further information about Hampton Court that was not known at the previous inquiry. However, it is difficult to see how this assists the Council's case.
72. The information we now have tells us that the setting has been further amended than was previously understood. Indeed, we now know that next to the Church was a large manor – being Hampton Court. However, through the railway being introduced in 1852, this led to this previous manor being demolished.

73. Dr Edis made the obvious point that the more a historic setting of an asset has been preserved, the greater the historic significance it can make. This is relevant in that we know that the setting of the Church has changed over the last few centuries, with:

- i. the railway in 1852 (which was plainly more than a ‘slight’ change as Dr Hickie asserted);
- ii. the growth of the Hampton Lovett Industrial Estate;
- iii. the introduction of the A442;
- iv. the development of Doverdale Park post World War 2;
- v. the properties along the Forest;
- vi. the loss of the historic footpath;
- vii. the introduction of a road leading up to the Church; and
- viii. the introduction of the estate railings.

74. Further, from the painting of the Church from 1780, we can also see the loss of the timber fence around the Church, the loss of Hampton Court and the loss of what appears to be some form of pond or topographical feature in the foreground. Thus, the setting has clearly been changed over time.

75. Thus, the knowledge now that there has been a further change to the setting, through the loss of Hampton Court, can only reduce the extent of heritage significance. Thus, the new information about this Manor, if anything, supports Dr Edis’ view. It certainly does not justify the Council’s revised position.

Dr Hickie’s greater experience and his Matrices

76. Dr Hickie made the bold assertion that his greater experience justified a change in stance from the previous inquiry. There is no basis for suggesting that there was a deficiency in expertise at the previous inquiry (the Council’s previous expert was suitably qualified see CD 13.6 page 4).

77. However, regrettably Dr Hickie’s judgements must be called seriously into question given the absolute reliance he has placed in his evidence on the various matrices in his evidence.

78. Dr Hickie has provided 4 tables that set out his methodology for assessing heritage assets.³¹
79. The first point to note is that these tables are entirely manufactured and generated by Dr Hickie. They are not reproduced, even in a distorted sense, within any other industry approved heritage guidance document or otherwise.
80. Dr Hickie indicated that the tables were derived from ICOMOS. That is wrong. Only Table 1 can be found in guidance from ICOMOS (it is still different to how it appears in Dr Hickie's proof). Tables 2 – 4 are not found in any ICOMOS document (nor are there comparable tables in ICOMOS guidance). Critically, Tables 2 – 4 are what Dr Hickie uses to apply Table 1.
81. The ICOMOS is for World Heritage Sites, ie. those designations made by the United Nations Educational, Scientific and Cultural Organization. There are only 18 such designations within England, being the Lake District, Westminster Palace, Stonehenge, the City of Bath, the Dorset Coast ...
82. This is in no way to trivialise the designated heritage assets we are concerned with in this appeal. But they are plainly worlds away from World Heritage Sites. World Heritage Sites are identified as being the top of the tree in terms of heritage value, as recognised by paragraph 189 of the NPPF, which calls them the assets 'of the highest significance'. Moreover, the PPG³² tells us explicitly that the international policies pertaining to such World Heritage Sites 'use different terminology to that in the National Planning Policy Framework'. Thus, Dr Hickie's attempt to rely on ICOMOS guidance to generate conclusions as to the NPPF is immediately flawed.

³¹ Pages 35 - 37

³² Paragraph: 031 Reference ID: 18a-031-20190723 Revision date: 23 07 2019

83. Further, it became apparent that these matrices deny any sensible decision making/judgement and instead prescribe heritage harm. Indeed, Dr Hickie accepted that even if the previous inspector is correct and the wider setting of the Church only makes a limited contribution to its significance, his matrices would still mandate a finding of less than substantial harm at the top end of the spectrum.
84. He answered positively to my question that the only aspect of actual judgement, applying these tables, that one has to make is: is the change to the setting significantly modified or is it noticeably modified? If it is significant, the harm would be the top end of less than substantial, if it is noticeably modified, it is in the upper end of less than substantial. Applying these matrices, these are the only two available conclusions apparently. Indeed, Dr Hickie said that it is not open to a decision maker to deviate from these conclusions. Critically, one does not even have to ask oneself what significance the setting makes to the asset to come to an answer on where on the spectrum of less than substantial harm.
85. In XX of Dr Edis, it was highlighted that Historic England’s own guidance notes that matrices and scoring systems ‘may assist analysis to some degree’.³³ That is true. But within the same sentence Historic England say that, ‘*they cannot provide a systematic answer*’. But that is exactly what Dr Hickie has sought to do through his manufactured matrices. Indeed, he accepted that they mandate the answer as to where one finds the less than substantial harm.
86. Moreover, in applying these specific matrices, one bypasses steps 2 – 4 of the steps Historic England say should be followed for assessing heritage impacts:³⁴

Step 1: Identify which heritage assets and their settings are affected

³³ CD 6.3 page 8

³⁴ CD 6.3 page 8

Step 2: Assess the degree to which these settings make a contribution to the significance of the heritage asset(s) or allow significance to be appreciated

Step 3: Assess the effects of the proposed development, whether beneficial or harmful, on that significance or on the ability to appreciate it

Step 4: Explore ways to maximise enhancement and avoid or minimise harm

Step 5: Make and document the decision and monitor outcomes

87. The flaws in this position were further underscored by a recent SoS decision, wherein the SoS endorsed the following view from Inspector Griffiths:³⁵

12.49 The point was not made in these terms at the Inquiry but for my part I see little between the decision of the High Court in Bedford, the Court of Appeal in Bramshill, and the PPG. Essentially, substantial harm is set at a high bar, such that a good deal (or all) of the significance of a designated heritage asset would have to be removed for it to be reached. That means that the range for a finding of less than substantial harm is very wide indeed, from a harmful impact that is hardly material, to something just below that high bar.

12.50 In cases where the impact is on the setting of a designated heritage asset, it is only the significance that asset derives from its setting that is affected. All the significance embodied in the asset itself would remain intact. In such a case, unless the asset concerned derives a major proportion of its significance from its setting, then it is very difficult to

³⁵ APP/H5390/V/21/3277137 (dated 4 July 2022) - paragraph 13 of the SoS decision endorsed this point

see how an impact on its setting can advance a long way along the scale towards substantial harm to significance.

88. Thus, taking each paragraph in turn, the SoS was endorsing the view that substantial harm means a good deal (or all) of the significance of the designated heritage asset would have to be removed. Applying that to the Church, realistically that would involve demolishing a material part of the physical fabric of the building for it to lose a good deal of its significance. Thus, a finding of less than substantial at the top end of the bracket is just shy of this sort of development. In that context, the suggestion that having housing in the Church's wider setting gives rise to this sort of harm is plainly wrong.
89. The second paragraph from Inspector Griffiths recognises this. There the Inspector was recognising that where the harm is only to the setting of the asset – as is the case here – one cannot move far along the scale of less than substantial unless a major proportion of the asset's significance is derived from the wider setting. As the previous Inspector Hill found though, the wider setting only makes a limited contribution to the Church's significance here. Thus, a finding of less than substantial harm must be at the bottom end of the scale on any view.
90. However, applying Dr Hickie's matrices denies any of these conclusions to a decision maker.
91. Thus, with the greatest respect to Dr Hickie, his experience does not assist. In reality, his matrices provide the explanation as to why the Council have adopted such a stark difference in approach here. They have regrettably relied on Dr Hickie's manufactured approach to assessing harm to heritage assets, which flies in the face of Historic England's advice, a recent SoS decision and, frankly, common sense.
92. This fundamentally flawed approach to heritage assets has infected the entirety of the Council's case, including directly informing the valued landscape

argument (per Mr Potterton) and the basis of the planning balance ie. that the heritage harm provides a clear reason to refuse permission (per Mr Instone).

Significance of the Church

93. Dr Edis provided a full assessment as to where the significance of the Church is derived from³⁶. No challenge was made to his analysis in this respect. Principally, the significance is derived from the Church's architectural fabric and immediate surrounding setting (being the courtyard). There is no functional, ownership or financial link between the Church and the Site. Nor is there any evidence of any designed views either to or from the Church.
94. However, Dr Edis still accepts that one can experience the Site and it does form the pastoral rural setting to the Church (some of which will be preserved and opened up through the Grazing Land). Thus, this supports the view that Inspector Hill was correct that the Site does only make a limited contribution to the significance of the Church and thus its development (now at a further distance and with the preservation of the Grazing Land through the s.106 agreement) only leads to a low order finding of less than substantial harm.

Public Access

95. Dr Hickie advanced the view that whether views of the appeal site were open to members of the public was an irrelevant consideration. It is correct that when one defines the setting of an asset, public access is not determinative. However, the dispute here is not about whether the Site is within the setting.
96. Whether the public can enjoy views of the Church across the appeal site is plainly material. Indeed, Historic England's guidance directs one to have regard to these points in assessing significance, by saying that a checklist of points to consider includes:³⁷

³⁶ His proof paras 3.7 – 3.10 and his figures 1 – 26 within his proof

³⁷ CD 6.3 page 11

*„ Accessibility, permeability and patterns of movement
„ Degree of interpretation or promotion to the public*

97. Again, this is a relatively common sense point that if a member of the public cannot currently enjoy a view towards a heritage asset, that tempers the degree of significance lost by that view. Indeed, it was odd that Dr Hickie was of the view that if these views were being experienced from a public right of way that ran through the Site, it would make no difference.

Historic England

98. The Council placed some reliance on Historic England’s consultation response. This is somewhat curious given that this response does not actually direct you Sir to favour either of the parties.
99. Historic England gave no indication as to what level of harm is found here. Indeed, in a paragraph that was verbatim what they said in the previous appeal, they indicated that the severity of the harm will really come down to reserved matters. Moreover, they indicated that the principle of development might be acceptable to the local authority – which would be a curious statement to make if they had a fundamental objection to the proposal. Further, they gave no indication that they disagreed with Inspector Hill’s conclusion.
100. Thus, it is hard to see how this letter really helps either party’s case, given both parties recognise harm to the Church.

Lych Gate

101. Dr Hickie accepted that there was no further evidence beyond what was available in the previous appeal in respect to the lych gate. Thus, there is no basis, at all, for deviating from the previous Inspector’s conclusion that the harm was negligible. Dr Edis raised the point that negligible sounds derisory, which is inconsistent with the considerable importance and weight that needs to be applied to assets by virtue of s.66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. Thus, he suggested that the harm be recognised as being very low, which is the position we invite you to adopt Sir.

But there is certainly no basis for concluding the harm is at the upper end of the less than substantial bracket.

102. Further, it is also worth noting that Dr Hickie in his evidence had described the lych gate as being from the mid-19th Century.³⁸ It is not, being that it is from 1885, as Dr Edis' research revealed.³⁹ This error suggests the absence of research Dr Hickie had done in respect to the asset in coming to his view.
103. It is also worth noting that:
- i. the lych gate has not been mentioned by Historic England, suggesting it is of no concern to them;
 - ii. the lych gate was not even mentioned in the putative reasons for refusal, suggesting how trivial this point was to the Council.

Whether the Council can demonstrate a five-year supply of housing land and the extent of any shortfall

104. Happily Sir, it is common ground in this appeal that the Council do not have a 5 year housing land supply. The Council contend that there is a supply of 3.68 years with a shortfall of 703 homes, whereas the Appellants contend that it is 3.52 years with a shortfall of 791 homes. The parties agreed that this can be the housing range for the purposes of this appeal, which negates the need for you to make a finding as to whether the correct approach is to apply the sub-area need or the district need. On either figure, the Council accept that this represents a significant shortfall and that consequently relevant policies are out of date.
105. This marks a significant change in circumstances with the previous appeal, wherein the Council were able to demonstrate a 5 year housing land supply.

³⁸ His para 3.16

³⁹ Dr Edis Appendix 6

106. Further, it is also common ground that the delivery of market housing and 40% affordable housing are each substantial benefits of the proposal.
107. Notwithstanding this common ground, the Council still seek to underplay the extent of their housing shortfall by making five points to ‘temper’ the weight to the benefits of housing.
108. Firstly, Mr Instone argued that the Council have over-delivered against the housing requirement in the development plan. However, the housing requirement does not reflect the current needs across the district, which are significantly greater than the development plan housing requirement (as agreed Housing SoCG para 2.10). Thus, it is a meaningless point to argue that one has exceeded a requirement that does not reflect the needs of the district.
109. Furthermore, the standard method figure is generated by having regard to the previous over-delivery. Thus, it would be double counting this point to take account of it in generating your standard method and also relying on it further to temper the weight with not meeting the standard method.
110. Moreover, this point was already dismissed against the Council in a recent appeal decision.⁴⁰
111. Secondly, Mr Instone argues that the Council have delivered well against the Housing Delivery Test (‘HDT’) for the past 3 years. However, again there is no substance in this point, given that:
- i. The HDT is almost entirely based upon the adopted housing requirement which we are agreed is significantly too low to meet housing needs.
 - ii. The HDT results have also been adjusted to take account of the effects of the pandemic on delivery and therefore provide for a significantly lower requirement than the housing requirement which itself is significantly less than the housing need.

⁴⁰ Neil Tiley Proof para 4.6

- iii. As a result, the fact that a requirement which is very significantly less than the housing need has been exceeded provides no indication that housing needs have been met. This cannot temper the weight afforded to the provision of housing.
112. Similarly, the HDT reflects the record of delivery over the previous 3 years which is already taken into account within the standard method. Thus, it would be double counting to take account of this again to temper the weight afforded to 5 year housing land supply shortfall against the standard method.
113. Thirdly, Mr Instone argues that the Council are now applying the presumption. However, again this is a bad point given that:
- i. the Council can only point to a single resolution to grant as evidence of this;
 - ii. there is no action plan;
 - iii. even with this point, the Council still accept that this will not remedy the shortfall, as the Council accept that they will be unlikely to be able to demonstrate a 5 year supply at least until the emerging plan is adopted.⁴¹
114. Fourthly, Mr Instone relies on the emerging plan. However, this is a bad point given that:
- i. the emerging plan can only be afforded limited weight as agreed;⁴²
 - ii. there is no published timetable for the emerging plan;
 - iii. the emerging plan review started in 2017 and has progressed at a glacial pace since;
 - iv. the last published timetable has been abandoned as it was not complied with;

⁴¹ Para 2.19 Housing SoCG

⁴² Planning SoCG CD 9.3 para 5.7

- v. the Regulation 19 consultation responses need to be considered – including in respect to allocations that have never been previously consulted upon;
 - vi. the emerging plan is still some time away – it took roughly 3 years for the last plan to be adopted from the date submission to the SoS given there are 3 authorities so the same could equally apply here.
115. Finally, Mr Instone relied on the affordable housing target being exceeded to date. However, the latest evidence demonstrates that there is an even greater need for affordable housing – now at 13,863 households with an unmet need for affordable homes across the plan area and a need to deliver 906 affordable homes per annum in the future, which the emerging plan will fall substantially short of delivering (by at least 6,680 affordable homes).
116. Thus, none of these arguments provide a good reason to temper the weight to the housing shortfall/benefits and indeed many point in the other direction.
117. That is significant given that this proposal can provide a meaningful contribution to the Council’s 5 year supply. This is underscored by paragraph 69 of the NPPF and the fact that the Appellants have agreed to a shorter timeframe for the submission of reserved matters (2 years) and implementation (1 year from approval of reserved matters).

Whether the site would be a sustainable location for the proposed development having regard to the development plan and national policies

118. The Appellants accept that there is some conflict with some policies within the development plan, including:
- i. Policy SWDP2 parts B and C, given the proposal is outside of the development boundary;
 - ii. Policies 2(F) and 25(A)(ii), as a consequence of the landscape harm; and
 - iii. Policies 6 and 21, as a consequence of the heritage harm.

119. Below are a few of the key points about the policies in the plan (this is not exhaustive and the contents of Mr Wakefield's proof on policy matters is not repeated here).

Policy SWDP2

120. The Appellants accept conflict with this policy, but says that this should only be limited, for the following reasons:

i. the absence of a 5 year supply;

ii. it does not reflect the housing need

This policy underpins the Council's adopted housing requirement. However, the Council now accept that the actual need is significantly greater than provided for by the development plan.⁴³ Indeed, the plan accounts for 990 homes per annum, whereas the Council need a minimum now of 1,293 homes per annum. Thus, the strategy does not cater for the Council's actual housing needs.

iii. the extent of conflict

There is conflict with the policy being that the proposal is outside of the defined boundary. However, Mr Instone accepted that the point of the strategy is to direct growth to those locations with employment, services and facilities. In this respect, he accepted that directing growth to the Site was consistent with this theme, given that there was reasonable accessibility from the Site to Droitwich (a main town), as per the previous Inspector's conclusion.⁴⁴ Thus, the extent of the conflict is tempered, given that the proposal is in accordance with the general notion of directing growth to these accessible locations.

⁴³ Housing SOCG para 2.10 CD 9.6

⁴⁴ CD 7.1 para 47

iv. *appeal decisions*

In the recent Bretforton appeal decision, it was agreed that it can only be afforded limited weight, which the Inspector accepted.⁴⁵

v. *absence of a review*

Despite questions being put to Mr Wakefield to the contrary, the parties were very clearly agreed that the absence of the review was, ‘regardless of any other consideration’, a reason the policies are out of date in the housing SoCG (paras 2.11 – 2.12 CD 9.6)

vi. *Cannot rely on policy alone*

The Council accept now that conflict with the policy alone would not now be sufficient to resist development.⁴⁶

Policy SWDP25

121. Mr Instone accepted that the development of any greenfield site would be in conflict with this policy. However, as Mr Instone accepted, the Council are reliant on greenfield sites to restore a 5 year supply.⁴⁷
122. Thus, the weight to be afforded to such policies should be tempered, given the rigid adherence to this policy would prevent the Council from restoring a 5 year supply.
123. Indeed, this point was recognised by Lord Gill in the Supreme Court judgment in *Suffolk Coastal v Hopkins Homes* [2017] UKSC 37:

79. Among the obvious constraints on housing development are development plan policies for the preservation of the greenbelt, and environmental and amenity policies and designations such as those referred to in footnote 9 of paragraph 14. The rigid enforcement of such

⁴⁵ CD 7.5 para 10 and the accompanying table of agreed benefits/harms

⁴⁶ CD 9.6 para 2.23

⁴⁷ CD 9.3 para 6.7

policies may prevent a planning authority from meeting its requirement to provide a five-years supply.

...

83. If a planning authority that was in default of the requirement of a five-years supply were to continue to apply its environmental and amenity policies with full rigour, the objective of the Framework could be frustrated.

124. The Court was making the obvious point that applying environmental policies within the development plan, such as SWDP 25, with full rigour could frustrate the delivery of housing. This is particularly the case where the breach of this policy is inevitable here to restore a 5 year supply.
125. It is also worth noting that the extent of the conflict is relatively narrow, given only one criterion within the policy is breached (which must again temper the weight to the breach).

SWDP 1

126. The Appellants rely on the tilted balance within the presumption in favour of sustainable development. Significantly, the presumption is enshrined within the development plan through policy SWDP 1. Thus, if the harm does not significantly and demonstrably outweigh the benefits, this means that the proposal conforms with the development plan when read as a whole through Policy SWDP 1. This conclusion is supported by a recent appeal in this authority in Bretforton (CD 7.5) and Mr Instone did ultimately accept that this was the proper approach to this policy.

BMV

127. The loss of BMV was not raised as a point against the previous scheme nor was it a reason for refusal. The fact that the Council have sought to draw attention to it now is consistent with their general approach of trying to take every point against the proposal.

128. The agricultural land classification report was available to the Council at the last appeal.⁴⁸ Mr Instone agreed with the conclusions within this report. The Appellants say that this should only be afforded limited weight, consistent with other appeals.⁴⁹

Constrained Authority

129. Ms Ede⁵⁰ set out how there are significant constraints around Droitwich, in terms of historic designations, green belt and the M5. This is a problem given that it is a key location for growth in the plan and it being identified as the settlement with the greatest housing needs in Wychavon.⁵¹

130. The limitations for growth are demonstrated by the fact that the Council are needing to allocate land to the east of Droitwich to meet its needs in Hadzor,⁵² a lower order settlement to Hampton Lovett.

Benefits

131. Within the context of the tilted balance, the proposal would offer a significant number of public benefits, including:

- i. the delivery of market housing to address the Council's housing shortfall;
- ii. the delivery of 40% affordable housing;
- iii. economic benefits through the construction process and through local spend - The Appellants invite you Sir to afford this significant weight, per paragraph 81 of the NPPF. The Council agreed with this in the recent Bretforton appeal (for 29 units).⁵³ It is also consistent with how paragraph 81 is intended to operate, per the Semington appeal (26 dwellings)⁵⁴ and Calne appeal (28 dwellings).⁵⁵

⁴⁸ Mr Wakefield appendix 2

⁴⁹ CD 7.7 para 27 – 30 and para 72

⁵⁰ Her pages 20 - 21

⁵¹ CD 4.1 para 29 of the plan page 18

⁵² Identified in the emerging plan at page 243 CD 4.3

⁵³ CD 7.5

⁵⁴ CD 7.3 para 59

⁵⁵ CD 7.4 para 74

- iv. new planting (contributing to identified landscape objectives for the area);
- v. the provision of public open space;
- vi. increase the vitality and vibrancy of Hampton Lovett – per the previous inspector at paragraph 49;
- vii. a minimum of 20% biodiversity net gain - The Appellants invite you to afford this substantial weight, given that the Site has limited biodiversity value now⁵⁶ and in light of the SoS appeal.⁵⁷
- viii. contributions through s.106 and CIL payments;
- ix. the opportunity to reduce flood risk in extreme rainfall events;
- x. the provision of public access through informal paths within the area to the north of the Appeal Site, allowing for a better appreciation of the named heritage assets;
- xi. enhanced pedestrian connectivity for existing residents;
- xii. the provision of housing in an accessible location relative to the main town of Droitwich.

132. These benefits are such that they do outweigh the identified heritage harm and thus this does not provide a clear reason to refuse permission. Thus, the balance must be struck within the context of the tilted balance within Policy SWDP 1. The Appellants respectfully submits that, in light of this and the changes to the proposal since the previous determination, this now warrants the proposal being granted.

133. Accordingly, having regard to the Council’s housing shortfall, the Appeal Site provides a logical location for development; the detailed work before the inquiry shows that there is no good reason to prevent it coming forward to make a contribution to meeting the area’s needs. The Appellants therefore requests that the appeal be allowed and permission be granted.

Killian Garvey

⁵⁶ SoCG para 6.27

⁵⁷ CD 7.14 para 12.204

Kings Chambers
21 December 2022

