



## Appeal Decision

Hearing held on 8 June 2022

Site visit made on 8 June 2022

by Mr S Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20<sup>th</sup> September 2022

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Appeal Ref: APP/H1840/W/21/3266573

Land at and adjacent to No. 1 and The Neuk No. 3 Bretforton Road, Badsey, Worcestershire, WR11 7XG, 406902, 243663.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Greystoke Land Limited against the decision of Wychavon District Council.
  - The application Ref 20/00724/OUT, dated 9 April 2020, was refused by notice dated 15 July 2020.
  - The development proposed is for a residential development of up to 100 no. dwellings with associated access roads and car parking, public open space, landscaping, drainage and other associated infrastructure, following demolition of no.1 Bretforton Road.
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### Decision

1. The appeal is allowed and outline planning permission is granted for the residential development of up to 100 no. dwellings with associated access roads and car parking, public open space, landscaping, drainage and other associated infrastructure, following demolition of no.1 Bretforton Road, at land at and adjacent to No. 1 and The Neuk No. 3 Bretforton Road, Badsey, WR11 7XG in accordance with the terms of the application, Ref 20/00724/OUT, dated 9 April 2020, subject to the conditions set out in the attached schedule.

### Applications for costs

2. An application for costs is made by Greystoke Land Limited against Wychavon District Council. This costs application is subject to a separate decision.

### Preliminary and Procedural Matters

3. The proposal is for a residential development, though the application is in outline with all matters reserved. In so far as there has been plan details of the proposals submitted I have generally considered these as illustrative only.
4. A matter discussed at length at the Hearing was whether the Council could demonstrate a sufficient housing land supply, as required by the National Planning Policy Framework (the Framework). At the time of the Hearing the Council stated it could demonstrate more than five years of housing land supply, calculated together with the other South Worcestershire Councils (namely Malvern Hills District Council and Worcester City Council). This was based on the use of the Standard Method but included previous years of oversupply of housing into the calculations. The appellant contested the use of

- previous years housing development oversupply as part of the calculations towards the housing land supply figure.
5. Subsequent to the Hearing for this appeal and prior to this decision there has been two other appeal decisions issued, one for Land off Morris Road, Broadway (ref: APP/H1840/W/21/3289569) and Land at Leigh Sinton Farms, Leigh Sinton, Malvern (ref: APP/J1860/W/21/3289643). Both decisions were for sites within the South Worcestershire area and concluded that oversupply should not be included in calculating housing land supply using the standard method.
  6. Following consideration of these other appeal decisions the Council accepted that, without oversupply the three Councils cannot demonstrate a five-year land supply. Without factoring in the oversupply from previous years, the Council stated that the Wychavon supply, on a joint basis, is 4.4 years.
  7. There was also the **Council's Five Year HLS Report published on 30 August 2022**. However, an error has been identified in this report and so this has now been withdrawn. Again, the Council now accepts that a 5-year Housing Land Supply cannot be demonstrated for the joint South Worcestershire Council area.
  8. On this basis I shall not be considering housing land supply as part of the main issues within this decision, as the parties have agreed there is a shortfall. Given the lack of a five year housing land supply, paragraph 11 d) of the Framework **the 'tilted balance'** is engaged. I shall return to this matter with the planning balance.
  9. Furthermore, a Draft S106 has been submitted, which has been agreed by the Council. Therefore, this **addresses the Council's third reason** for refusal in full. However, due to probate reasons this legal agreement cannot be executed. I shall come back to this matter later in this decision.

## Main Issues

10. The main issues are as follows:

- Whether the principle of the proposed residential development in this location is appropriate.
- The effect on the character and appearance of the area, particularly regarding the density of the proposed development.
- Whether the proposal would provide sufficiently towards affordable housing need and other elements of community infrastructure, to address relevant impacts of the residential development.

## Reasons

### *Principle of Development*

11. The proposal for up to 100 dwellings is set within open fields to the northern edge of the village. The site is clearly outside of the built up area of the village, albeit adjacent to existing housing to the southern and western boundaries.
12. Policy SWDP2 of the South Worcestershire Development Plan (SWDP) sets out a development strategy for South Worcestershire. One of the principles of this

policy is to encourage the effective use and re-use of accessible, available and environmentally acceptable brownfield land. Under paragraph C of this policy it states that the open countryside is defined as land beyond any development boundary, where development will be strictly controlled to limited circumstances. The open countryside is also to be safeguarded.

13. In this case, the proposed residential development would be on what is mostly **an undeveloped 'greenfield' site**. Furthermore, it is outside the defined development boundary of Badsey (apart from the area of the two dwellings at the proposed access) and so it is mainly within the countryside for planning policy purposes. The site proposals for predominantly market dwellings would not meet any of the exception criteria set out in policy SWDP2. It is, therefore, in clear conflict with this policy. As this proposal does not accord with this policy in the SWDP and not being in accordance with the plan led approach to the development strategy for this area then the proposal also conflicts with SWDP1, which requires that planning applications accord with the policies in the SWDP.
14. However, as set out above the Council cannot demonstrate a sufficient housing land supply and so the presumption in favour of sustainable development is engaged.

#### *Character and Appearance - Density*

15. If allowed, this scheme could include the maximum proposed number of 100 dwellings and so it is this number I have based my assessment of this issue on. On a site of this size the appellant has calculated an approximate net density of 40 dwellings per hectare (dph).
16. At this outline stage there is only an illustrative masterplan. The issue at this stage is whether an appropriate density of housing can be achieved on this site at the Reserved Matters stage.
17. The Council has drawn my attention to policy SWDP 5, which requires 40% of a development site (when over 1ha in gross size) to be used for green infrastructure. With the inclusion of green infrastructure, the Council argue that the density would be above 40dph.
18. Policy SWDP 13 of the Local Plan (Effective use of land) considers housing density amongst other things. This policy states that within villages (such as Badsey) the average net density should be provided at 30dph. However, this figure is stated within the policy to be **a 'broad indication' only**. The policy also states that housing density will be greater on sites with a high level of accessibility.
19. Whilst not in a town or city, the site has relatively good connections to services and facilities, being generally accessible. Furthermore, the nearby housing areas are not all low density. The nearby recent residential development adjacent to Sladden Close and other similar developments in this part of Badsey are of a relatively high density. The density therefore varies in this part of the village.
20. In the context of this site, the higher density of 40dph or more (as the Council have suggested) is possible without it appearing out of context with the village. There is no substantive reason to conclude at this outline stage that the proposed density would have harmful visual impacts or other adverse effects

such as through noise and disturbance, loss of privacy, difficult traffic movements or parking pressures, for example. The higher density would also make a more effective and efficient use of the land for housing (as also required by policy SWDP 13), helping to meet the aforementioned housing shortfall.

21. In general character and appearance terms, the proposal would develop a rural and undeveloped site. This would change the character of the site and have a visual impact, especially when viewed from adjacent public rights of way. However, the site is well contained and views of the development would often be against the backdrop of existing residential areas of the village. The visual impacts of the development would not have a significant adverse effect, especially with further landscaping and green infrastructure within the development. Further consideration of this issue will be necessary with the reserved matters application with the final layout and appearance proposals.
22. The proposal, based on the evidence at this outline stage, would not be harmful to the character and appearance of the site or its wider landscape setting. Furthermore, in considering the site setting and the requirement to make an efficient use of land, the proposal for up to 100 dwellings on this site would be in broad accordance with policy SWDP13. Furthermore, the proposal, based on the indicative plans submitted, would be in accordance with policy SWDP 21, which requires development to integrate effectively with its surroundings, for example.
23. The fact that there have been previous proposals for less dwelling numbers on this site is acknowledged, but I have made my assessment based on the proposals and housing numbers before me with this appeal.
24. However, this is an outline proposal with the layout reserved. The final layout and detailed scheme proposal would still be for the Council to consider as to its acceptability at reserved matters stage.

#### Planning Obligations

25. There has been submitted a draft S106 legal agreement. However, this has not been signed. This is due to probate issues involving one of the landowner parties. Unfortunately, this will take some time, maybe months, to finalise. The agreement cannot be signed until such time.
26. Both main parties agree that the way forward is to impose a condition if the appeal is allowed requiring a legal agreement based on the draft submitted, prior to the commencement of any development. The Planning Practice Guidance (PPG) states that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. However, the PPG also states that in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk.
27. In this case, there is no practical way that the agreement can be signed and completed at this time. It does not seem possible to know when this could happen. Nonetheless, the heads of terms have been agreed, along with the

wording of the legal agreement in full. Furthermore, there is no objection from either of the main parties as to this approach. Given the need for housing, including affordable housing, for the area, the use of a condition would allow a possible start to development soon after the agreement is signed. Therefore, the delivery of the housing would likely be significantly sooner than if this appeal was dismissed due to this matter. It could even be possible that the housing would not be delivered due to some changing circumstance. I would regard that for these reasons this is an exceptional circumstance. I therefore agree that a condition can be used in this particular case.

28. Furthermore, the condition would meet the tests set out in paragraphs 56 of the Framework and 21a-003-20190723 of the Planning Practice Guidance (PPG). The need for the obligations means that the condition is necessary and is the only means to secure the agreement. It is relevant to planning and proportionate to the development proposed. It would be enforceable, reasonable in all respects, with the condition as imposed precise.
29. The draft legal agreement includes an obligation that a minimum of 40% of the dwellings and their plots are to be provided as Affordable Housing. There would also be an 'Off Site Formal Sports Contribution' and '**Built Leisure Contribution**', going towards identified projects such as improvements to drainage at sports pitches within Badsey and enhancements to Badsey Sports and Recreation Club. An education contribution has been included to support additional provision, such as at Badsey First School and related on-site early years provision. A public open space contribution has been included, if there is any shortfall in on-site provision of any of the other Public Open Space types as set out under policy SWDP39.
30. Related to transport, there is an obligation requiring a contribution towards bus stops (public transport), school transport for secondary schools in the area, community transport and for a residential Travel Plan.
31. All these obligations have been supported by evidence and relevant Development Plan policies. After considering the draft legal agreement, which includes all the above, I regard the obligations are necessary given development plan policies and other adopted planning documents. They are directly related to the development proposed and would be fairly and reasonably related to the scale of development proposed. They therefore all pass the statutory tests within the CIL regulations and the Framework. The matters required by these obligations would be additional to any CIL contributions and there would be no overlap to my knowledge. Finally, I am satisfied that the obligations contained in the draft S106 would be effective in delivering the policy outcomes sought and the existence of a S106 planning obligation agreement, albeit in draft form, is a material consideration in this case.
32. I am aware of the submission by the Worcestershire Acute Hospitals NHS Trust relating to financial contributions from the developer as a result of the proposed development. However, there is no development plan policy relating to this issue. Furthermore, there is not a sufficient level of detail before me to demonstrate that the proposed housing would be unacceptable if the contribution was not obtained. As such, it is my conclusion that such an obligation in this case would not pass the statutory tests within the CIL

regulations. As such, this is not a planning obligation required to make the development acceptable in planning terms.

33. Overall, the draft agreement and obligations, required by condition, would mean that the policy requirements for affordable housing and providing other contributions to appropriately address relevant impacts of the residential development would be met in accordance with policies SWDP 1, 7, 15 and 39. These policies require development to bring forward the appropriate and proportionate infrastructure, and to contribute to the provision of affordable housing, amongst other things.

#### Other Matters

34. The proposal would introduce up to 100 new dwellings to Badsey. Whilst there are limited services and facilities within Badsey these are sufficient to support the level of housing proposed with this development. There is no substantive evidence to suggest that the proposed development would overwhelm services and facilities in the area. As set out with the planning obligation section above, there would be contributions towards education, for example, to assist the scale of development to be acceptable in these circumstances. There is no substantive evidence that there is no need for houses in the village or the wider area, even with other developments built in recent years.
35. There are Conservation Areas at both Badsey and Aldington but both are a significant distance from the site. Even with any distanced views of the site from the Conservation Areas there would not be any detriment to the setting of these heritage assets, due to the separation distances and with the proposed development adjacent to existing housing of the village, for example.
36. In terms of highways impacts, a development of up to 100 dwellings would have the potential to increase traffic significantly in this part of the village. However, I am aware that the Council and its Highways Authority have not objected to the proposal. A single access with safe junction can be formed. Furthermore, I have no substantive evidence before me that the level of traffic generated by the development would result in significant additional congestion to the local road network. Nor would it result in safety or pollution issues.
37. The development would result in the loss of some agricultural land. It is not clear whether this is particularly high grade agricultural land and I do not have detailed evidence to demonstrate that the development of this site would have significant consequences due to the loss of these fields.
38. The proposed development is in outline form only at this stage, but there is no reason why the dwellings cannot be positioned and designed on site to ensure there would be no significant impact to the living conditions of existing neighbours to the site.
39. The evidence submitted demonstrates that the site lies in an area of low flood risk (Flood Zone 1) and in an area predominantly at low risk of surface water flooding. Full drainage details will still be required, but at this stage the evidence suggests that flood risk can be avoided and an appropriate drainage scheme incorporated into a final layout.
40. The appellant has submitted an ecological impact assessment amongst other ecological information. This evidence considered the site for its habitats and species. It found that the site area is considered to be of low value in ecological

terms, but still made a number of recommendations and suggested precautionary mitigation measures with enhancements. On this basis, there would be no ecological reason to dismiss this appeal.

41. There are a number of other issues raised by interested parties and consultees which have all been taken into consideration but neither alone nor in combination do they amount to a reason to dismiss the appeal. Conditions can be **imposed to address a number of issues as set out in the 'conditions' section** below.

#### Planning Balance

42. Paragraph 11 of the Framework sets out that decisions should apply a presumption in favour of sustainable development and that, under criterion d) where the policies which are most important for determining the application are out of date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Given the lack of a five year housing land supply, paragraph 11 d) of the Framework is engaged.
43. In the context of the Development Plan, I have found that the proposed development would be contrary to policies SWDP1 and SWDP2 of the South Worcestershire Development Plan. This is due to the site being outside of the development boundary of Badsey and would therefore be a residential development in the open countryside. However, in the absence of a demonstrable five year housing land supply the strategic policies are not providing the required housing developments needed to be delivered.
44. This differs from the situation with the previous appeal for the site in 2018, reference APP/H1840/W/17/3192134, where the Inspector commented that the Council could demonstrate a 5 year supply of deliverable housing sites at that time.
45. There would also be a visual impact with the proposed development on this undeveloped site, but such an impact would be limited and mitigated by landscaping, as explained above.
46. There is a housing shortfall to be addressed. This matter may in the future improve, but currently there is this shortfall. The provision of up to 100 dwellings potentially on this site would be a significant addition to local housing supply and it would importantly also help towards the Government intention to boost housing delivery in what I would consider to be a reasonably accessible and sustainable location. There is also the substantial contribution to the provision of affordable housing for the village and the wider District to benefit from
47. There are also significant other benefits. The development would benefit the local/District wider economy during its construction phase and thereafter through the use of services and facilities in the area by its future occupants. The site is immediately adjacent to the village and should therefore allow future occupants to integrate with the village community.
48. Overall, I give significant weight to these benefits. For the reasons set out above, whilst the site is outside of a defined development boundary on what is

a 'greenfield' site, the adverse impacts would not significantly or demonstrably outweigh the benefits.

#### Conditions

49. I have considered the conditions put forward by the Council and appellant as agreed conditions, against the requirements of the PPG and the Framework. The conditions I have included from the recommended list have been subject to some alterations to improve clarity and ensure consistency with the Framework and PPG.
50. I have attached the standard outline time limit and reserved matters conditions and a plans condition as these provide certainty.
51. A surface water drainage scheme, based on sustainable drainage principles, is required by condition in the interests of safeguarding against flood risk for example.
52. In the interests of highway safety and providing a suitable access into the development the final detailed access proposals shall be submitted to and agreed by the Council and then developed as shown on the approved plans. Also, in the interests of highway safety, an assessment of the existing guard railing on Bretforton Road shall be undertaken followed by any necessary remediation works. In the interests of sustainable transport a condition requiring electric vehicle charging points and also the distribution of welcome packs promoting sustainable forms of transport to access the new housing is imposed.
53. A construction environmental management plan is required, especially considering the close proximity of existing dwellings and the large size of site/development with substantial numbers of construction vehicles likely. There is also a condition to restrict times of construction, in the interests of neighbour living conditions for example.
54. In the interest of safeguarding and enhancing local ecology there is a condition requiring an ecological mitigation and enhancement scheme with implementation timetable imposed.
55. In the interests of minimising the effect of the development on climate change, a condition requiring details of low carbon or renewable energy generating facilities is to be imposed.
56. Due to possible archaeology at the site, a programme of archaeological works is required by condition.
57. There is also a condition requiring the submission of a legal agreement relating to the planning obligations necessary, as explained above in this decision.
58. Conditions requiring details of materials and landscaping have not been included as such details should be submitted with the relevant reserved matters. I also do not consider it reasonable or necessary for conditions limiting the height of dwellings to two storeys or for there to be a housing mix statement. Full details of the house design and appearance, together with the mix of housing, should be apparent with the reserved matters and for the consideration by the Council at that time.



## Conclusion

59. In my view, the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework, taken as a whole. The proposal would therefore be the sustainable development for which Paragraph 11 d) ii indicates a presumption in favour.
60. This is a material consideration which outweighs the harm and conflict with the development plan that I have identified. It indicates to me a decision should be made other than in accordance with the development plan. There are no other material considerations that indicate permission should be withheld.
61. For the reasons given above I conclude that the appeal should be allowed, subject to the conditions in the following schedule.

*Mr S Rennie*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

Mr Philip Smith – Pegasus Group  
Mr Neil Tiley – Pegasus Group  
Mr David Hutchison – Pegasus Group  
Mr Ian Ponter – Kings Chambers

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Richard Pestell – Stantec  
Mr Gavin Greenhow – Wychavon District Council – Planning Officer  
Mr Adam Bennett – Planning Policy

### INTERESTED PARTIES:

Dr R Knight – Local Resident  
Mr Simon Watkins – Local Resident  
Mr James Love – Local Resident

## Schedule – Planning Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the approved plan: Pegasus Design 1:500 scale Site Location Plan (number P18-2318\_05 Rev A)
- 5) No building hereby permitted shall be occupied until details of the design, implementation, maintenance and management of sustainable urban drainage/surface water drainage works have been submitted to and approved in writing by the local planning authority. The submitted details shall:
  1. provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
  2. include a timetable for its implementation; and
  3. provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The development shall be carried out, and the drainage maintained/managed, in accordance with the approved details.
- 6) Reserved matters applications submitted pursuant to conditions 1 and 2 in relation to access shall include full details of the main access junction into the site and these shall be in general accordance with drawing 18196-02 rev D contained in the David Tucker Associates Transport Assessment. No dwelling shall be occupied until the access junction has been fully implemented in accordance with the approved plans.
- 7) Prior to commencement of development, a Guard Railing Assessment shall be undertaken, in collaboration with the Local Planning Authority and Local Highway Authority, to review the impact of existing guard railing on Bretforton Road on visibility splays from the proposed site access. Following the agreement of findings from the Guard Railing Assessment, any necessary remedial works will be completed prior to first occupation and retained as such thereafter.

- 8) The development hereby permitted shall not be first occupied until the proposed dwellings have been fitted with an electric vehicle charging point. The charging points shall comply with BS EN 62196 Mode 3 or 4 charging and BS EN 61851 and the Worcestershire County Council Streetscape Design Guide. The electric vehicle charging points shall be retained for the lifetime of the development unless they need to be replaced in which case the replacement charging point(s) shall be of the same specification or a higher specification in terms of charging performance.
- 9) Before the development hereby approved is first occupied, a residential welcome pack promoting sustainable forms of access to the development shall be submitted to and approved in writing by the Local Planning Authority. The pack shall be provided to each resident at the point of occupation.
- 10) The development hereby approved shall not commence until a Construction Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. This shall include but not be limited to the following:
- **Measures to ensure that vehicles leaving the site do not deposit mud or other detritus on the public highway;**
  - **Details of site operative parking areas, material storage areas and the location of site operatives facilities (offices, toilets etc);**
  - **The hours that delivery vehicles will be permitted to arrive and depart, and arrangements for unloading and manoeuvring;**
  - **Details of any temporary construction accesses and their reinstatement;** and
  - **A highway condition survey, timescale for re-inspections, and details of any reinstatement.**
- The measures set out in the approved Plan shall be carried out and complied with in full during the construction of the development hereby approved. Site operatives' parking, material storage and the positioning of operatives' facilities shall only take place on the site in locations approved in writing by the Local Planning Authority.
- 11) Demolition, clearance or construction work and deliveries to and from the site in connection with the development hereby approved shall only take place between the hours of 08.00 and 18.00 Monday to Friday and 08.00 and 13.00 on a Saturday. There shall be no demolition, clearance or construction work or deliveries to and from the site on Sundays or Bank Holidays.
- 12) Prior to the occupation of any part of the development hereby permitted, details of renewable or low carbon energy generating facilities to be incorporated as part of the development shall be submitted to and approved in writing by the Local Planning Authority. The details shall demonstrate that at least 10% of the predicted energy requirements of the development will be met through the use of renewable/low carbon energy generating facilities. The approved facilities shall be provided prior to any part of the development hereby permitted being first occupied or

in accordance with a timetable submitted to and approved by the Local Planning Authority as part of the details required by this condition.

- 13) Before the commencement of development hereby permitted, an ecological mitigation and enhancement scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be based on the recommendations contained within the Ecological Impact Assessment by Grassroots Ecology dated April 2020 and shall include an implementation timetable. The works shall thereafter be carried out in accordance with the approved details and timetable.
- 14) (A) No development shall take place until a programme of archaeological work, including a Written Scheme of Investigation, has been submitted to and approved by the Local Planning Authority in writing. The scheme shall include an assessment of significance and research questions; and:
  - 1) The programme and methodology of site investigation and recording.
  - 2) The programme for post investigation assessment.
  - 3) Provision to be made for analysis of the site investigation and recording.
  - 4) Provision to be made for publication and dissemination of the analysis and records of the site investigation.
  - 5) Provision to be made for archive deposition of the analysis and records of the site investigation.
  - 6) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

(B) Furthermore, the development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under part A of this condition and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.
- 15) No part of the development hereby permitted shall commence until a legal agreement in the same terms as the draft agreement **entitled 'Draft Section 106 Agreement'**, submitted 16 June 2022 (reference 68194490.1)' has been completed and executed, or a Unilateral Undertaking containing the same terms and binding all legal estates and interests comprised in the planning site, has been submitted to and approved in writing by the Local Planning Authority.

END OF CONDITIONS