

STATEMENT OF COMMON GROUND

APPEAL REFERENCE: APP/H1840/W/24/3346731

DATE OF INQUIRY: 22/23/24/25th October 2024

SITE ADDRESS AND DESCRIPTION OF THE DEVELOPMENT:

Land At (Os 8666 5944) Dilmore Lane Fernhill Heath

Residential development for up to 130 dwellings (Use Class C3), including vehicular access from Dilmore Lane, pedestrian and cycle links, public open space, car parking, drainage, landscaping and other associated infrastructure. All matters reserved except for access.

APPELLANT: Lioncourt Strategic Land Limited

LOCAL PLANNING AUTHORITY: Wychavon District Council

This statement addresses the following areas of common ground:

1. Description of the site and surrounding area
2. Relevant planning history
3. Planning policy context
4. Description of the proposal
5. Appeal documents, drawing numbers and plans
6. Areas of common ground
7. Points of disagreement
8. List of suggested conditions and S106

1. Description of the Site and Surrounding Area

The Site extends to approximately 7.94ha of land and is located to the east of Dilmore Lane, Fernhill Heath, Worcestershire. The Site comprises agricultural land, principally bounded by existing hedgerows with some trees. The topography of the Site is gently undulating with no pronounced or distinctive topographical features.

To the south, the site adjoins a recent new residential development. Dilmore Lane encloses the site to the west beyond which is a farm complex of buildings which includes the Grade II listed Tappenhill Farmhouse. Existing established housing adjoins the site to the east. Open countryside is to the north.

There is a new pedestrian cycle link which extends through and from the eastern end of the site through to Station Road.

There are no Public Rights of Way within the Site however there are three PROWs in proximity of the site, details of which will be addressed in the respective evidence.

2. Relevant Planning History

There is no planning history for the application site itself

The following planning history is of relevance and relates to nearby sites including the recent residential development just being completed to the south.

- Land to the south of the Site was granted planning permission under reference W/14/00367/OU 'Land off Dilmore Lane, Fernhill Heath'. The development was constructed over recent years by Taylor Wimpey comprising 120 new homes, and is now largely complete with only the top wearing course of the roads to be completed and then adopted by County Highways. Similar to this application, that development provided for a cul de sac development with access from Dilmore Lane, areas proposed for green infrastructure and public open space. It created the pedestrian cycle link to Firlands close to the east and onwards to Station Road, improving connectivity of the site to other areas of Fernhill Heath.

Permission for this site was given in 2015 and the planning application was determined under the previous Wychavon Local Plan where it was not allocated for development and was outside of the development boundary. At that time, the Council could demonstrate a 5 year supply, however its policies for housing were judged out of date. At the time the site was also a draft allocation in the then emerging South Worcestershire Development Plan which was subsequently adopted in 2016.

- W/15/02736/RM. Submission of reserved matters (internal access, appearance, landscaping, layout, and scale) pursuant to planning permission W/14/00367/OU for the construction of 120 dwellings. Land Off, Dilmore Lane, Fernhill Heath. Approved March 4th 2016.
- Land to the south-east of the Site has a pending planning application under reference 21/02974/FUL 'Land at (Os 8623 5933) Dilmore Lane Fernhill Heath'. The development of that land has been proposed by William Davis Homes for a scheme of 42 dwellings, including 40% affordable homes, and associated access, drainage, and green infrastructure.

This is a draft allocated site (SWDP60/16) in the emerging South Worcestershire Development Plan Review. It was presented to Planning Committee on the 28th March 2024, recommended for planning approval, but was deferred at Committee for reasons related mainly to detailed design.

3. Planning Policy Context - Development Plan, Emerging Development Plan Review and Supplementary Planning Documents.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise.

The documents of the Development Plan relevant for this appeal comprise:

- South Worcestershire Development Plan (adopted 25 February 2016) (SWDP)
- North Claines Neighbourhood Plan (made April 2017) (NCNP)

The Development Plan also includes the Waste Core Strategy for Worcestershire Adopted Waste Local Plan 2012-2027 (Adopted 2012) but both parties agree there are no policies within that plan of any relevance to the determination of this appeal.

South Worcestershire Development Plan (SWDP)

The most important (bold) and other relevant policies including those referred to in the decision notice are below;

SWDP1 – Sustainable Development Principles

SWDP2 – Development Strategy and Settlement Hierarchy

SWDP3 – Employment, Housing and Retail Provision Requirement and Delivery

SWDP4 – Moving Around South Worcestershire

SWDP5 – Green Infrastructure

SWDP6 – Historic Environment

SWDP7 – Infrastructure

SWDP13 – Effective Use of Lane

SWDP14 – Market Housing Mix

SWDP15 – Meeting Affordable Housing Needs

SWDP21 – Design

SWDP22 – Biodiversity and Geodiversity

SWDP24 – Management of the Historic Environment

SWDP25 – Landscape Character

SWDP27- Renewable and Low Carbon Energy

SWDP28- Management of Flood Risk

SWDP29- Sustainable Drainage Systems

SWDP30- Water Resources. Efficiency and Treatment

SWDP33- Waste

SWDP39 – Provision for Green Space and Outdoor Community Uses in New Development

SWDP59 – New Housing for Villages

North Claines Neighbourhood Plan 2015-2030

The most important (bold) and other relevant policies are below;

NCH1A- New Residential Development

NCH2 - New Housing Infrastructure

NCH3 - Housing Mix

NCT1 - Transport and Development

NCLE1A - Connections with the Countryside – Landscape

NCLE6 - Trees and Woodland and Development

NCD1 - Development and Design Principles

NCD3 - Sustainable Design
NCC1 - Community Infrastructure
NCC3 - Healthy Communities

Supplementary Planning Documents (SPD)

The Council have the following SPD of relevance to the appeal;

- Affordable Housing SPD – October 2016
- Planning for Health SPD – September 2017
- South Worcestershire Design Guide SPD - March 2018
- Revised Developer Contributions SPD – July 2018
- Water Management and Flooding SPD – July 2018
- Renewable and Low Carbon Energy SPD – July 2018

Emerging South Worcestershire Development Plan Review (SWDPR)

The South Worcestershire Councils began a review of the SWDP in late 2017. It has been through its various stages of consultation including a Regulation 19 consultation in December 2022. It was submitted for Examination in September 2023. As yet, no dates have been set for the examination Hearing sessions.

Whilst the emerging Plan has been submitted for Examination, due to the stage of preparation and extent of unresolved objections, the parties agree that the SWDPR can only be attributed limited weight in the determination of this appeal.

The appeal site is not allocated for housing in the emerging SWDPR. The appellant has duly made objections to the plan including in respect of the site specifically as well as more generally the need and requirement for housing in the emerging Plan.

4. Description of the proposal

The proposal is for a residential development for up to 130 dwellings (Use Class C3), including vehicular access from Dilmore Lane, pedestrian and cycle links, public open space, car parking, drainage, landscaping and other associated infrastructure. All matters reserved except for access (from Dilmore Lane).

During the course of the application determination at the request of the Ward Councillors the applicant agreed to offer some land within the site to be dedicated for a potential future village hall. Such provision of land was not viewed by the Council to be compliant with CIL Regulations and the offer was reported as such to Members. The application was not amended to seek planning permission for a village hall within the scheme and any such arrangement for such land would be outside of these proposals and are not a matter for this appeal.

The planning application originally comprised the following:

- The planning application form;

- The appropriate Certificate of Ownership;
- CIL Form
- Application drawings which are submitted for approval as follows:
 1. Site Location Plan (reference 8924-APP001)
 2. Parameter Plan (reference 8924-APP003)
 3. Proposed Junction Arrangement – Site Access (reference 230133-RAP-XX-XX-DR-TP-3202-P01)
 4. Topographical Survey (references 23108-J - 1 and 2 of 2)
 5. Illustrative Masterplan (reference 8924-APP002)

- Supporting Reports/Documents:
 1. Design and Access Statement
 2. Planning Statement (including Affordable Housing, Health Impact Statement and S106 Heads of Terms)
 3. Transport Assessment and Residential Travel Plan
 4. Agricultural Land Classification and Considerations Report
 5. Archaeological Desk Based Assessment and Heritage Statement
 6. Archaeological Geo-physical Survey Report
 7. Ecology Appraisal
 8. Flood Risk Assessment, Drainage Strategy & Water Management Statement
 9. Landscape and Visual Appraisal
 10. Phase I Desk Study
 11. Statement of Community Involvement
 12. Sustainable Energy Statement
 13. Arboriculture Impact Assessment and Tree Protection Scheme
 14. Bat Report

- Additional Supporting Reports and Information, Post Submission comprising;
 - a) Archaeological Evaluation Report, January 2024
 - b) Heritage Statement (12/12/2023 ref P23-2622)
 - c) Highways Technical Note
 - d) Flood Risk Assessment, Drainage Strategy & Water Management Statement (Rev 3)
 - e) Ecological Appraisal (29.11.23) and BNG Calculations
 - f) Green Infrastructure Note (April 2024)
 - g) Updated Design and Access Statement (December 2023)
 1. Updated Parameter Plan (reference 8924-APP003A)
 - h) Updated Illustrative Masterplan (drawing reference 8924-APP02A)
 - i) Potential Land for Village Hall (drawing reference 8924_009A)

The planning application for the proposed development was received valid by the Council on the 1st August 2023 (application ref: W/23/01323/OUT). The application was recommended for planning approval by officers at planning committee but was refused

planning permission on the 19th June 2024.

5. Appeal Documents Drawing Numbers and Plans

The appeal drawings are:

1. Site Location Plan (reference 8924-APP001)
2. Proposed Junction Arrangement – Site Access (reference 230133-RAP-XX-XX-DR-TP-3202-P01)

In addition, submitted with the application were the following;

2. Parameter Plan (reference 8924-APP003A)
3. Updated Illustrative Masterplan (drawing reference 8924-APP02A)
4. Potential Land for Village Hall (drawing reference 8924_009A)

The Illustrative Masterplans and Parameter Plan were included in the application in order to guide future Reserved Matters applications. The Potential Land for Village Hall was submitted as an offer by the Applicant but was not considered to be CIL compliant by the Council, the application wasn't formally amended to include a village hall and the continued offer of such land is a matter for the appellant, separate to the appeal.

6. Areas of Common Ground

The following matters are agreed between the Appellants and the Council.

Environmental Impact Assessment

The proposals do not represent EIA development.

Principle of Development

Fernhill Heath is defined as a Category 2 Village in the settlement hierarchy in the SWDP. Policy SWDP 2 states the role of Category 2 villages is predominantly aimed at meeting locally identified housing and employment needs. The settlement is therefore an appropriate location for some new housing development in principle, and it is agreed the site is accessible to a range of services and facilities

The appeal site is not allocated for development and falls outside the defined development boundary for Fernhill Heath and therefore constitutes open countryside in planning policy terms. The proposed development is contrary to Policy SWDP 2 in this regard.

Policy NCH1A: New Residential Development of the Neighbourhood Plan resists new residential development outside development boundaries unless it is demonstrated that there is no 5-year supply of deliverable housing sites and that no other policies within the NCNP and SWDP would preclude development on the site such as Green Belt, Local Green Space or locations at risk of flooding.

Policy SWDP 1 states that where relevant policies are out of date, the Local Authority will grant planning permission taking into account whether 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

Housing Land Supply, The Presumption in favour of Sustainable Development NPPF Paragraph 11 and Footnote 7 policies

In accordance with the provisions of paragraph 11d and footnote 8 of the NPPF 2023 (noting paragraph 226 of the Framework and where the SWDPR has been submitted for Examination), the Council is required to demonstrate a four-year supply of deliverable housing sites.

The Council can demonstrate a **2.78** year supply and are therefore unable to demonstrate an appropriate housing land supply for the purposes of paragraph 77 of the NPPF.

It is agreed that the only NPPF footnote 7 policy to be considered in this appeal is impact on designated heritage assets. It is agreed that whilst the parties afford different weight to the public benefits of the proposal, both parties agree that the public benefits of the appeal proposal outweigh the less than substantial harm to the designated heritage asset.

It is agreed that the policies in the NPPF relating to designated heritage assets do not provide a clear reason for refusing the development proposed.

It is agreed that that the presumption in favour of sustainable development (paragraph 11 d) ii. (the “tilted” balance) is engaged in this case.

Heritage

Heritage is addressed in a separate SoCG. The parties are however agreed that the development proposal would give rise to less than substantial harm, towards the lower end of the range, to the following designated heritage asset:

- The Grade II Tapenhill Farm House

There are no other designated or non-designated heritage assets affected by the appeal proposals.

Landscape and Visual Effects

Landscape and visual effects is addressed in a separate SoCG. The parties are however agreed on the following matters:

1. The Site is not subject to any landscape designations;
2. The Site is not a valued landscape as per paragraph 180(a) of the NPPF

Best and Most Versatile Land

The planning application was supported by an Agricultural Land Classification and Considerations Report (ALR) dated June 2023 prepared by Kernon Countryside Consultants Limited.

It is agreed that the ALR identifies that the proposals would result in the loss of 5.5ha of Best and Most Versatile (BMV) agricultural land of which 2.2ha is grade 2 and 3.3ha sub-grade 3a. The proposal would also result in the loss of 2.4ha of subgrade 3b agricultural land.

It is also agreed that the loss of this agricultural land would not fragment any farm holding, nor unduly affect the viable operation of any farm.

It is agreed that the loss of this BMV in the circumstances of this Site would not in itself be a reason to refuse planning permission, but is a matter that should be weighed in the overall planning balance.

Affordable Housing

It is agreed that the appeal proposal is capable of providing a policy compliant level of affordable housing (40%) through a completed s106 legal agreement, in accordance with Policy SWDP15.

Housing Mix

It is agreed that the proposals could provide for an appropriate mix of house types, sizes and tenures in line with Policy SWDP 14. This can be agreed at a later stage and it is agreed that, should the appeal be allowed, that a planning condition should be imposed on the outline permission requiring the submission of a Market Housing Mix Statement.

Access and Highways

A new access to the site is proposed from Dilmore Lane. The proposed access design is described in the submitted Transport Statement and accords to recognised highway standards. The access requires the adjustment to the location of the 30mph speed limit entrance into the village at this point and includes a new footpath connection to the existing footpath to the south along Dilmore Lane.

The proposals would not have a severe residual adverse impact on the local highway network for the purposes of paragraph 115 of the NPPF.

It is agreed there is no reason to refuse the appeal proposal on highways safety grounds having regard to Policy SWDP 4 of the SWDP and Paragraph 115 of the NPPF.

Flood Risk and Drainage

The site is in Flood Zone 1 and there are no flood risk or site drainage issues which would prevent the development of the site as proposed and which cannot be resolved or addressed by planning condition

Residential Amenity

In relation to impacts on neighbouring living conditions, at this stage the development proposed is outline with all matters reserved other than access from Dilmore Lane. Therefore, the height, design and siting of the proposed dwellings, as well as any landscaping, can be negotiated between the Council and Appellants at Reserved Matters stage to ensure living conditions of neighbours are taken into consideration

There is likely to be some noise and disturbance during the construction phase, however a condition can be applied requiring a construction management plan to manage these matters.

Design, Layout and Appearance

It is agreed that the planning application was submitted in outline with (besides access to the site from Dilmore Lane), layout, appearance, scale and landscaping of the development reserved for future consideration.

It is agreed that the detailed design and layout of the scheme is capable of being addressed at the Reserved Matters stage.



7. Points of Disagreement:

1. Whether the site is suitable for the proposed development, having regard to the Council's settlement strategy in so far as the site is located outside the defined Development Boundary;
2. The effect of the proposal on the character and appearance of the area;
3. The planning balance – whether in granting planning permission the adverse impacts of doing so would significantly and demonstrably outweigh the benefits

8. List of Suggested Conditions and S106

Both parties will be working towards the completion of a planning obligation either by way of a unilateral or bilateral agreement to present before the Inspector prior to the Inquiry which should allow the Council to remove reason for refusal 2 which refers to the absence of such an obligation.

Both parties will be working towards compiling an agreed list of conditions to be presented at the Inquiry should the Inspector be minded to allow the appeal.

<p>Signed on behalf of Appellant</p>  <p>Jason Tait</p>	<p>Signed on behalf of Local Planning Authority</p>  <p>Paul Instone</p>
<p>Date: 24th September 2024</p>	<p>Date: 24th September 2024</p>
<p>Position: Director, MRTPI Planning Prospects Ltd.</p>	<p>Position: Director, MRTPI Applied Town Planning Ltd</p>