

APPEAL BY LIONCOURT STRATEGIC LAND LIMITED

REFUSAL OF OUTLINE PERMISSION FOR RESIDENTIAL DEVELOPMENT OF 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.

LPA REF: W/23/01323/OUT

PINS REF: APP/H1840/W/24/3346731

LAND AT DILMORE LANE, FERNHILL HEATH

OPENING STATEMENT

OF THE LOCAL PLANNING AUTHORITY

Introduction

1. This appeal concerns an application for development at Land at Dilmore Lane, Fernhill Heath (“the Site”) for:

“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.” (“the Proposed Development”)

2. Two reasons for refusal (“RFRs”) were issued by Wychavon District Council’s (“the Council’s”) planning committee.¹ However, only the first of those remain in issue before this Inspector:

“The application site lies outside of a defined development boundary and is therefore classed as being open countryside where development is strictly controlled. The proposal does not meet the criteria for the development to be considered as an exception to Policy SWDP2 of the South Worcestershire Development Plan and it does

¹ CD3, Decision Notice

not preserve and enhance the open countryside and character of the area, contrary to Policies SWDP2 and SWDP25 of the South Worcestershire Development Plan.

The proposed development would lead to a significant loss of Best and Most Versatile agricultural land contrary to Policy SWDP13 of the South Worcestershire Development Plan.

The proposed development would have an adverse impact on the designated heritage asset of Tappenhill Farmhouse, with part of the application site forming a key part of the setting of this Grade II Listed Building, contrary to Policies SWDP6 and SWDP24 of the South Worcestershire Development Plan and Chapter 16 of the National Planning Policy Framework.

The benefits of the proposal are not considered to outweigh the adverse impacts that would arise to the open countryside, the loss of Best and Most Versatile agricultural land, and the setting of Tappenhill Farmhouse and therefore in the application of Paragraph 11(d) of the National Planning Policy Framework the proposal does not represent sustainable development.”²

3. In accordance with its duty to proactively review its position, the Council now agrees that the second and third parts of the RFR can be overcome. In summary:
 - a. the Proposed Development would lead to a loss of Best and Most Versatile Agricultural Land (and this is a harm which weighs in the planning balance). However, the Council have concluded that whilst there are notable areas of poorer-grade agricultural land in the District, these are predominantly in more rural locations, some distance from existing settlements. There are clear reasons why the Council would not want to direct residential development to these locations, and though it is harm which weighs against the scheme, it is not sufficient to amount to a RFR.³
 - b. The proposed Development would cause a low level of less than Substantial Harm (“LSH”) to the Grade II-listed Tappenhill Farmhouse through development in its setting. However, this, too, is not sufficient to warrant a RFR, given that public benefits outweigh the harm - see NPPF §208. This still attracts some negative weight to the overall planning balance.

² The Second RFR says: In the absence of a signed Section 106 legal agreement no arrangements are in place to secure the required provision of affordable housing; education contributions; public open space; primary healthcare contributions; highway contributions towards footway improvements, community transport and public bus service enhancements; and contributions towards formal sports and leisure. As such, the proposed development does not meet sustainable development objectives and cannot be delivered with acceptable impacts on the community. Therefore, the proposed development is contrary to Policies SWDP1, SWDP4, SWDP5, SWDP7, SWDP15 and SWDP39 of the South Worcestershire Development Plan. This has since been overcome and will be the subject of further discussion during the conditions and obligations session.

³ §3.86 of Instone Proof of Evidence.

4. There are, however, a range of reasons why this continues to be an unacceptable development.
5. First, this Site lies outside, but adjacent to, the Defined Development boundary of Fernhill Heath, as defined in the South Worcestershire Development Plan (“SWDP”). It is common ground that there is conflict with SWDP2, as it is a proposal in the “*open countryside*” where development is “*strictly controlled*”.⁴ In that regard, it fails to respect one of the core tenets of the Spatial Strategy.
6. The SWDP clearly defines the sustainable growth levels for each settlement. The strategy focuses the majority of the new development on Worcester and the main towns (Droitwich Spa, Evesham, and Malvern)⁵. That is because they are the settlements most appropriate for meeting SWDP’s housing need. Developing in these locations is essential to achieving sustainable development and delivering economic prosperity.
7. This is not a settlement which is sitting back when it comes to development. Through the local plan, 120 homes were allocated; these have now been delivered⁶. Through the SWDP Review (which has now been submitted for examination), a further 40 houses have been allocated.⁷ Those are already subject to an application for planning permission. There is also a further Proposed 39 dwellings allocated in the North Claines Neighbourhood Plan (“the NP”) at Sling Lane/ Old Drive.⁸
8. This Proposal (together with the two allocated Sites) would mean that Fernhill Heath would deliver over five times the level of growth that was envisaged in the SWDP Review. This is not only a technical breach of SWDP 2, but results in a serious conflict with the spatial strategy, which, in part, seeks to safeguard and (wherever possible) enhance the open countryside. It is also delivering significantly more than any other settlement of the same category. That is clearly harmful.
9. Second, the Appellant will refer to the Council’s Housing Land Supply position and the proposed changes to the NPPF arising out of the July 2024 consultation. However, those do not justify the proposed level of growth. The SWDP Review will mean that the Council will meet

⁴ See Instone §3.36

⁵ SWDP 2.

⁶ See the TW Homes Site to the South.

⁷ William Davis Homes site to the South West of the Appeal Site (North West of the settlement).

⁸ CD14.

the entirety of its LHN though allocations.⁹ In addition, the draft changes to the NPPF are just that – they are draft changes.

10. Even if the changes proposed are introduced, the Consultation version contains important transitional arrangements. The Secretary of State has been at pains to point out that plans at examination will be expected to continue¹⁰ and that a review will then be expected. That will not render the SWDP Review out of date on adoption.
11. Third, this is an area in which there has been clear over-delivery to date. The SWDP has delivered an additional 3,799 dwellings thus far in the plan period, which indicates that the spatial strategy policy has been successful to date. There has not been a delivery failure through the lifetime of the plan, and there is, quite clearly, a plan-led answer to how much development ought to come forward in a settlement of this size.
12. Fourth, there are landscape and visual harms, which will be discussed with Mr Friend in the Roundtable discussion.
 - a. The development would result in a significant erosion of the current pastoral character and introduce urban development, which will extend the current urban fringe further to the north within the fields.¹¹
 - b. It would extend development to the site's unconstrained northern boundary towards Lower Town. This will be very clearly noticeable in the landscape, even when mitigation measures have been established due to the extension of built form into the pastoral landscape.¹²
 - c. There will also be visual changes for those using footpaths¹³. The visual change will be worsened due to its unconstrained northern boundary, which follows no rational route of existing field boundaries or features and crosses open sections of the existing agricultural fields.¹⁴

⁹ allocations are already identified to exceed the 26,360 (subject to EIP). If all allocations come forward this scheme would deliver in excess of 26,360 requirement

¹⁰ See CD11 – Written Ministerial Statement.

¹¹ See John-Paul Friend §4.1.6

¹² See John-Paul Friend §6.1.4

¹³ Footpaths 548(C), 547(C) and 549(B) and sections of Kennels Lane and Dilmore Lane. Users of footpath 535(C) will experience a perceptible change from a section near to Tappenhall Farm where it meets Dilmore Lane.

¹⁴ See John-Paul Friend §6.1.8.

13. The Proposed Development will result in substantial harm to the characteristics of the landscape and visual amenity of the area. As Mr Friend will explain, the LVA underestimates both the landscape and visual impacts of the development and fails to demonstrate compliance with key local planning policies.¹⁵ The mitigation measures proposed are inadequate to address the scale of change that the development would introduce.
14. Fifth, the Council will show that the benefits of the Proposed Development have been overblown, particularly with regard to market and affordable housing, self-build housing, and the economic benefits of the Proposed Development.
15. Finally, the Council will show that this is a Proposed Development that conflicts with the Development Plan and that there are no material considerations justifying why planning permission should be granted. Though it is common ground that §11(d) NPPF is engaged, the harms arising from the conflict with the spatial strategy and from the landscape and visual harms significantly and demonstrably outweigh the benefits.
16. Accordingly, and in due course, the Inspector will be invited to dismiss the appeal.

Sioned Davies

No5 Chambers

21 October 2024.

¹⁵ See John-Paul Friend §6.1.12.

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**SCHEDULE OF APPEARANCES FOR THE
LOCAL PLANNING AUTHORITY**

Sioned Davies, Counsel

instructed by Heather Peachey, Head of Legal Services at Wychavon District

She will call:

John Paul-Friend

HND (LGD) BA Hons Dip LA CMLI

Director LVA Ltd

Paul Instone

BSc(Hons), DipTP, MRTPI

Director, Applied Town Planning Ltd