



# Appeal Statement of Case

Appeal against Non- determination of Planning Application 20/03072/S73

Relating to Application 18/03349/S73 granted on 15/03/2019 - Variation of Condition 2 (Approved Plans) to facilitate relocation of parking at plots 5 and 6, change of external material at plot 5 and variations to the dwelling type, scale and appearance of plots 3 and 8.

The Gables High Street Barley Royston Hertfordshire SG8 8HY

Local Planning Authority: North Herts District Council

Local Planning Authority Reference: 20/03072/S73

March 2021

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## Section 1: Introduction

- 1.1 This Appeal Statement of Case is prepared by Pelham Structures on behalf of Mr and Mrs Winstanley (the appellant) in relation to an appeal against non-determination of North Hertfordshire District Council (NHDC) in accordance with Section 78 (2) of the Town & Country Planning Act 1990.
- 1.2 This appeal has been prepared in accordance with the PINS procedural guidance February 2021.
- 1.3 As an application under section 73 of the Town and Country Planning Act the Principle of development on the site has already been established and the application was therefore only submitted with a short covering letter, as such additional detail is provided within this Statement of Case. The application can be summarised as changes to Plots 3 and 8 to bespoke designs for individuals wishing to build their own homes, a correction of an inaccurate plan of an existing garage, and the relocation of parking so that all plots have on plot parking so that EV charging points can be provided accordingly.
- 1.4 The application was validated 24<sup>th</sup> December 2020 the validation letter confirmed that the determination deadline for the application was 18<sup>th</sup> February 2021, which has now passed without the Council making a decision.
- 1.5 An email was received from the Case Officer, 16<sup>th</sup> February 2021, stating that he didn't support the application and that it would need to go to planning committee and therefore suggested that the application should be withdrawn or an extension of time granted. The Appellant has subsequently approached the Officer for clarification of the principal issues but no clarification has been provided and the Council remain entrenched in their position, and this has left the Appellant with no choice but to appeal for non-determination.
- 1.6 It should also be noted that no public letters of objection have been lodged against this application and *"Barley Parish Council has no objections to this application"*<sup>1</sup>

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<sup>1</sup> Consultation response 05 Feb 2021

## Section 2: Site and Surrounding

- 2.1 The application site is located towards the north-western edge of the village of Barley. The main portion of the site is made up of the large rear garden of the residential property 'The Gables' and the adjoining paddock land immediately to the north of this. This land sits behind properties along the west side of the High Street (B1368), including the Barley GP Surgery and the 'White Posts' Grade II Listed Building. Under the currently adopted plan North Hertfordshire District Local Plan No.2 with alterations 1996, the site is located just outside, on the edge the selected village boundary (Policy 7) and so lies within the rural area beyond the Green Belt (Policy 6). The Emerging Local Plan 2011-2031 shows that the land within the curtilage of The Gables would be included within the village boundary, which accounts for approximately one half of the main part of the site.
- 2.2 The site is within the Barley Conservation Area, which was designated in 1969 with revisions to the boundaries being made in 1979 and 1980. A map showing the extent of the Conservation Area is in Appendix A. There are no listed buildings within the defined boundary of the application site.

## Section 3: Planning History

- 3.1 The principle of residential development was established on 30 May 2018 when Committee resolved to grant approval of application 17/02316/1 for eight dwellings on the site. Since this approval further variations have been granted to this number of units, including 18/03349/S73, which this application seeks to amend. The approvals and how they differ from the appeal proposals are set out later in this document.
- 3.2 Amendment A) 18/03349/S73 Approval was granted by Committee on 15 March 2019. The overall number of units remains as eight dwellings. In summary the approved amendment A is for
- Reduction in the size of the two proposed affordable houses (Plots 1 and 2) in line with discussions with a Housing Association;
  - Amendment to the design and layout of Plot 3;
  - Addition of a single storey rear extension to Plot 8;
  - To transpose the scheme so that instead of one single detached unit (Plot 7 of approved scheme) being to the rear of The Gables, this is relocated to Plot 4 and a group of three terraced units are located here (New plots 4-7). In the approved scheme there were a similar group of three units to Plots 4-6; and
  - To amend the design of Plot 4 from a barn style dwelling to a traditional house design.
- 3.3 Amendment B) 19/00003/S73 was also granted consent at Committee held on 15 March 2019. In summary this variation was again to retain the number of units as eight:

- Reduce the size of the two proposed affordable houses (Plots 1 and 2) in line with discussions with a Housing Association;
- Amend the design and layout of Plot 3;
- To add a single storey rear extension to Plot 8; and
- To amend the design of Plot 7 from a barn style of dwelling to a traditional house design.

3.4 Amendment's A and B were submitted as alternatives for each other as the Appellant wished to build one of the properties for themselves to move into, however, the Council suggested the location the Appellant desired was not acceptable. The Appellant therefore submitted two amendments; one for what the Council suggested would be acceptable and one for what they wanted, the Council subsequently approved both and the appellant therefore intends to build out the scheme approved under 18/03349/S73, which this proposal seeks to amend.

3.5 It is also important to understand the site constraints that have to date delayed the development of the site but that are now resolved but will affect the phasing of development. There is an existing high voltage power line over the site that means plots 1-3 cannot be constructed until after it is relocated. UKPN have quoted that this will take 12 months. These relocation works also include the sub-station, which is a condition of the extant planning permission:

*“No more than 4 of the 8 dwellings hereby approved shall be occupied until all of the car parking at the Doctors surgery has been properly formed and laid out and is available for use and the electricity sub-station has been relocated in accordance with drawing 396.700.”*

3.6 As stated in the condition above only four houses can be occupied prior to the substation relocation. It is, therefore, the appellants intention to commence work on the construction of Plot 4 early April, at the same time Pelham Structures will be constructing the infrastructure and Plots 5-7. Meaning the other four plots will not be constructed until the substation is relocated. Plots 1 and 2 are affordable housing and are in the process of being sold to a housing association. Plots 3 and 8 are now intended to be built by self-builders and the redesign of these plots is the principal reason for this variation to the original permission.



4.2 The changes proposed are as follows:

#### **Chadwick Garage**

4.3 A survey of the existing garage shows that it has a lower ridge than shown on the approved plan 396 x 30b. The plan has therefore been updated to reflect the existing garage; the scale of the approved extension is unchanged.

#### **Parking Layout**

4.4 Condition 21 of the planning permission states that *“Prior to occupation, each of the 8 residential properties shall incorporate an Electric Vehicle (EV) ready domestic charging point.”* However, plots 5 & 6 as approved do not have on plot parking, which means that this would be challenging to achieve. The revised plans therefore propose to create on plot parking for both of these, on the ample verge between the properties and the access road. This also has the added benefit that the three parking spaces on the open space can be removed, which will enhance the openness of this area.

#### **Plots 5-7**

4.5 On the approved drawings plots 5-7 are shown as being render. It is now proposed to construct plot 5 in brick, which is also a vernacular material appropriate to its context.

#### **Plots 3 & 8**

4.6 As referenced above the amendments proposed to plots 3 and 8 are to the design requirements of the self-builders who are buying the plots.

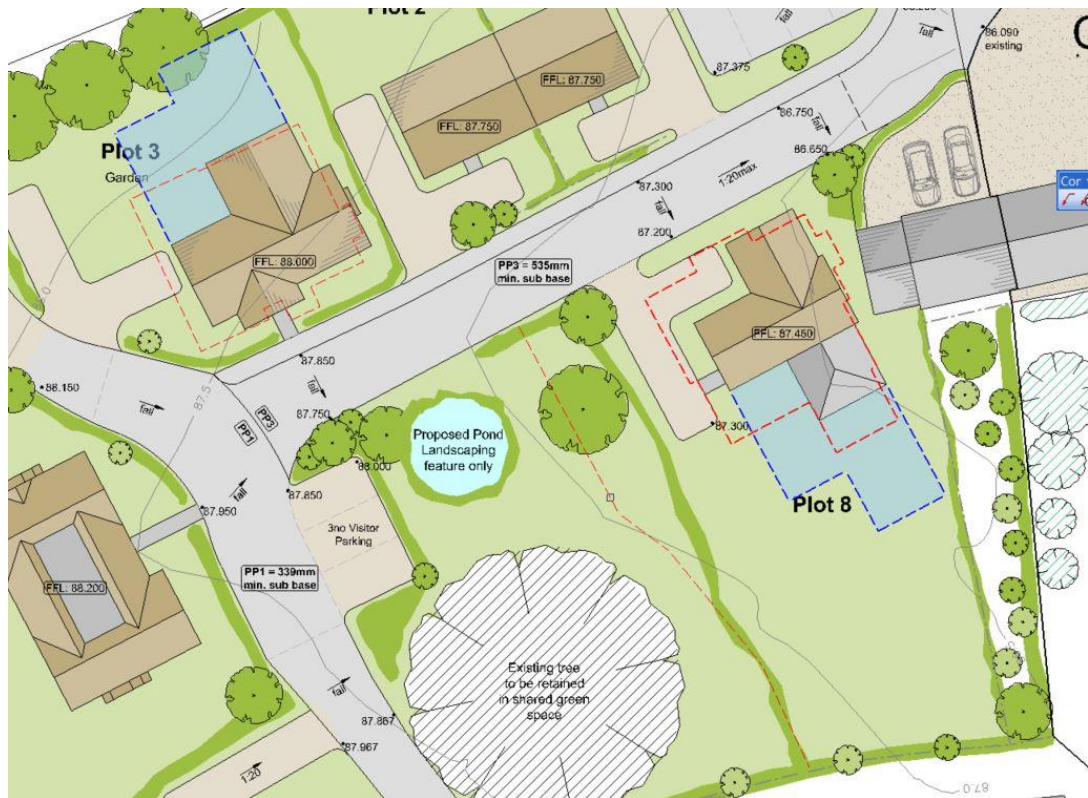
##### *Plot 3:*

4.7 The approved plot 3 was proposed to be a rendered property with a central gable, and a clay peg tile roof. The revised house has a similar material treatment, but the gable has been moved to one side. The internal layout has also been designed to the client’s brief, particularly their requirement for a home office, an open plan kitchen diner and four bedrooms.

4.8 As the street scene below show’s the bulk of the house is reduced from that previously approved, with the width marginal increased.



4.9 An overlay of the site plan is also provided below, which shows dotted in red the outline of the proposed house, and in blue the size of single storey extension that could be constructed under Permitted Development Rights once the dwelling is complete. As shown the footprint of the proposed is fairly similar to the approved, with the exception of the north west corner, which is an area that is barely visible from any viewpoints outside of the plot.



Approved Site Plan 18/03349/S73, with proposed overlay

*Plot 8:*

4.10 Like with plot 3, the external materials proposed are similar, with the only change that the future occupier has specifically requested the addition of external boarding. This is considered to still be a vernacular material and doesn't materially affect the



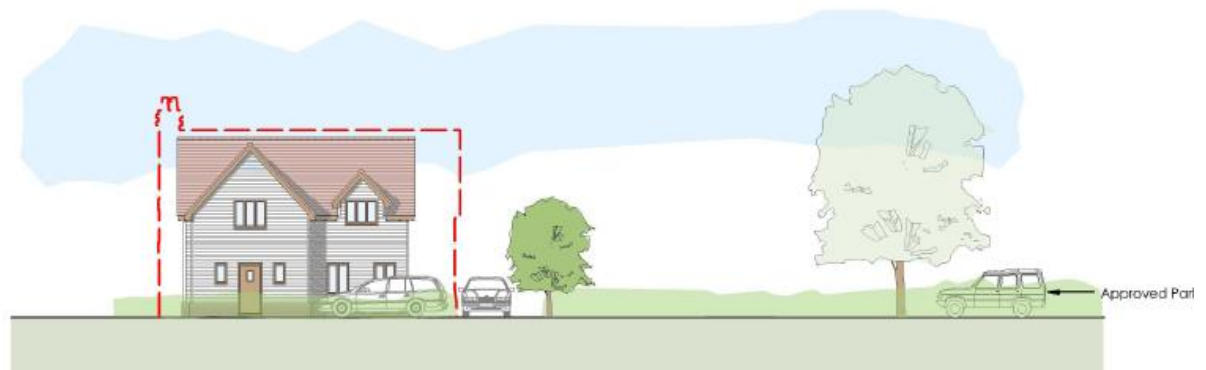
character of the property. The approved has an off-centre gable, whereas the revised proposes to centralise it. Again, this isn't considered to materially affect the character.

4.11 A chimney has also been added as it was considered that the lack of one on the approved detracted from the vernacular style of the property. The street scene below shows at the top the proposed plot 8, with the redline of the approved over it, and with the bottom shows the approved with the proposed outlined in red.

4.12 As the street scene below shows the approved house is of limited architectural merit and although vernacular in style, it isn't as traditional in appearance as the proposed, which has proportions that are more in line with historic construction methods. Most notably the gable on the approved is a width that could not have historically been spanned by available timbers, whereas the propose proportions of the gable and dormers are in keeping with historic buildings. Further it is considered that the addition of a chimney reinforces the traditional vernacular style the self-builder aspires for.



Plot 8 Proposed Elevation



Plot 8 Approved Elevation

4.13 Re floor plans: again, the future occupier specifically requested a home office and open plan kitchen dinner. They have also requested a downstairs shower room as they have a disabled relative who often stays with them and they therefore want to be able to accommodate them.

## Section 5: The Councils Position

- 5.1 Although no formal response has been provided by the Councils Conservation Officer and email from the planning officer dated 16<sup>th</sup> February 2021, provided at appendix b, included the following paragraph:

*“Plots 3 and 8 under the original scheme included two modest 2-bedroom detached dwellings. These were increased in size under the previous variation to two 3-bed houses. Under the current proposal, you are now proposing two large four bedroom properties, with the addition of a single garage to Plot 3 and a large double garage to Plot 8 (although it is not indicated where this would be located on the proposed site plan?). In addition, Plot 8 would be increased in area, reducing the central open space and would include a larger driveway (several plots would include larger driveways, increasing hardstanding and reducing green space and landscaping).”*

- 5.2 The appellant’s agent, being particular surprised by the Council’s position responded, full email provided at appendix C, with the following comments:

- *““Two large four bedroom properties”, as you are probably aware the majority of demand for custom build housing is ‘four bedrooms’ the two properties subject of this application have been designed for individuals who intend to occupy them. Paragraph 61 of the NPPF supports the provision of plots for “people wishing to commission or build their own homes, and the Self Build and Custom Build Act requires LPA to grant permission for sufficient plots. We would be happy to accept a condition that both these plots are sold to the purchasers prior to the construction of their foundations? Further, as set out in the CL the houses are vernacular in design and sensitively design to their surroundings. Specifically I would note that the revised design of plot 8, its proportions and detailing are more vernacular than that previously approved. I would appreciate as part of any further discussion clarity as to what your specific concerns with these properties is?*
- *Plot 3 Garage: We’d put this in the location shown, as we felt it would have no impact given its location between plot 4 garage and the house means that it would be practically invisible from most directions. However, I am happy to discuss further if you feel an alternative would be preferable.*
- *Plot 8 Garage: Apologies for this we were at one point exploring a garage on plot 8 but the client decided against it, so this drawing needs revising and reissuing with the garage removed.*
- *Plot 8 Increased width. The plot at the rear is the same width as before, plot at the front 13m is 3m wider than approved, e.g. the width of a parking space. However, the removal of the 3 visitor parking spaces has increases it by 6m for the same length on the western side, which means the green space is larger than it was before.*

- *Larger drive ways: the driveway for plot 3 (excluding the garage) is 2m<sup>2</sup> larger than approved. The driveway for Plot 8 is actually 1m<sup>2</sup> smaller than approved. Plot 4s driveway is increase but if this is an issue we can reduce it to what was approved? In terms of the spaces in front of plots 5-7 these are the 3 visitor spaces relocated. So there is no net increase in hardstanding resulting from these. These also provide on plot parking which enables the provision of EV charging points and will reduce the likelihood that people park on the road. This then frees up the spaces to the east of plot 7 to be visitor spaces.”*

5.3 This email was followed up by a call with the officer, who subsequently responded to both, see email 26<sup>th</sup> February appendix D, with the following comments:

*“As mentioned, I have now discussed this s73 application with my manager and I have also discussed it with the Council’s Senior Conservation Officer. We are all of the view that the current application is not acceptable and I will therefore be recommending it for refusal. As I have mentioned previously, the original approval was on balance/ marginal and the previous variation was certainly not preferable but it was decided it did not quite justify a refusal. However, in this instance, the significant increase in scale to that which was originally approved would tip the balance, when weighing the harm to the heritage assets against the public benefits (the public benefits would not be increased and yet the harm would be increased). The built mass would be significantly increased, reducing the open, loose-knit nature of the proposals, which we had worked hard on to achieve and thus the proposals would not be in keeping with the context and character of the Barley CA.”*

5.4 The appellant’s agent responded again to this in detail, setting out the clear policy support for self-build at national level. However, the Officer has chosen to ignore this and sent the following unhelpful and obstructive email:

*“I am afraid I must be short and rather blunt (please understand that this is more out of necessity at this time). We at NHDC Planning department have found ourselves rather suddenly and unexpectedly short on staff and caseloads (which were already high) and now very high. I have already taken the time to discuss this application with my manager and the Councils Conservation Officer and I have provided you with our view and our stance on this matter. Given the amount of officer time and effort already spent on this site (particularly with regard to previous applications) I cannot spend any further time on this going back-and-forth with you debating the various matters/ merits.”*

5.5 Although the appellant has the utmost sympathy with the Council’s resourcing issues, it doesn’t justify the Officers uncooperative position, which has ultimately created additional work for all parties involved.

5.6 The response received from the Officer would be a clear justification for costs, should the appellant wish to submit an application. As it clearly demonstrates a lack of co-operation from the council, which is an example of unreasonable behaviour that may result in an award of costs, see PPG Paragraph 047 Reference ID: 16-047-20140306. However, given the financial pressure currently on Local Authorities the appellant has elected not to submit an application for costs.

## Section 6: Policy Context

### National Policy

- 6.1 Since the application was refused a new NPPF has been issued in February 2019 and therefore this appeal statement has been prepared using the update policy guidance. There are no significant changes to the heritage provisions of Section 16 of the NPPF. Measures have been added to try and resolve the challenges in negotiating the number of affordable homes through the viability process. There is a stronger emphasis in Section 12 on place making, design and digital technology, as well as renewed recognition of the role of planning in creating healthy and safe communities.
- 6.2 The National Design Guide (2019) is the most recent piece of design guidance and is more up to date than the Councils adopted policies. The proposal compliance with this is considered in more detail in section 8.
- 6.3 The provisions in Section 2A of the Self-Build and Custom Housebuilding Act 2015 (as amended) requires the Council to grant planning permission for enough serviced plots of land to meet the demand for self-build and custom housebuilding in the District which arises in each base period.
- 6.4 The policy support for self-build is set out in the NPPF at Paragraph 61, is as follows:

*“Within this context, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to, those who require affordable housing, families with children, older people, students, people with disabilities, service families, travellers<sup>25</sup>, people who rent their homes and people wishing to commission or build their own homes<sup>26</sup>). [emphasis added]”*

### Local Policy

- 6.5 At the time of writing this statement the adopted Local Plan remains North Hertfordshire District Local Plan No.2 with alterations (1996). The emerging Plan North Hertfordshire Draft Local Plan 2011-2031 has been subject of an Examination In Public Consultation took place between January 3rd – March 4th 2019 on the Main Modifications to the Plan and additional hearing sessions were held in February 2021. There are still unresolved objections to the policies in the plan relating to housing allocations and the Council have failed the housing delivery test for 2017- 2020 having delivered only 44% of their housing requirement, meaning that for the purpose of decision making NPPF Paragraph 11 d is invoked.
- 6.6 The extract from the Local Plan Main Modification document, at 4.109 sets out the councils proposed stance on Self Build:

*“Self-build provides another route to home ownership. Small developments, often delivered by local builders and companies, have historically made a valuable contribution to housing land supply in North Hertfordshire. These include schemes designed by individuals for their own use. We will continue to support small windfall schemes where they are compatible with the policy framework of this plan. Government guidance also encourages us to facilitate further opportunities for people to self-build through Local Plan policies and other measures. On five of our strategic sites, 1% of plots will be reserved and marketed for those people with a local connection who wish to build their own home reflecting demand recorded on the Council’s Self-Build Register. No specific self-build targets have been set on Local Housing Allocation sites and local demand will be considered on a site-by-site basis having regards to the Council’s self-build register. Self build may additionally be an issue that local communities wish to explore through Neighbourhood Plans.”*

## Section 7: Heritage Impact

- 7.1 The Heritage Statement submitted with the original permission 17/02316/1, concluded that *“The proposals are considered to result in either no or less than substantial harm to the setting of the two listed buildings identified which are close to the site and thus the potential impact on their setting has been assessed.”* And *“The proposals have been assessed as resulting in less than substantial harm to the character and appearance of the conservation area in which the site is located. The Conservation Officer has concurred with the assessment of this level of harm. It is considered that the development will result in a level of harm to the lower end of the spectrum within this category. This level of harm, following the guidance of paragraph 134 of the NPPF should be weighed against the public benefits resulting from the proposed development. This balancing process is set out in the Planning Statement accompanying the application.”*
- 7.2 An addendum to the original statement has been prepared by the same author for this appeal, which concludes that “no additional harm will be caused to the identified heritage assets by the proposed amendments to the scheme”, the balancing process is considered in detail below.

## Section 8: The Planning Balance

### **The Principle of Development**

- 8.1 As set out above, planning permission has already been granted on the site under 17/02316/1, as amended under 18/03349/S73. The planning permission is extant and it’s construction is due to commence shortly and will be advanced by the date of the inspectors site visit. The acceptability of this proposal therefore rests on whether additional harm is caused and whether there are additional benefits that way in favour of this applications approval.
- 8.2 The appellant’s position is that the amendments cause no additional harm, to either the countryside or the conservation area. Further, it considered that the revised scheme is of a higher quality and performs well when considered against the National Design Guide.

### **The National Design Guide 2019**

#### *Context*

- 8.3 The site is set within a semi-rural location on the edge of the village of Barley. The site does not from part of any important views into the conservation area. The approved scheme is a low density that is appropriate for its edge of settlement location and this is not changed from the approved.

#### *Identity*

- 8.4 The design of the approved scheme and particularly the amendments to plots 3 & 8 are designed in a way that follows the vernacular tradition of the area. The bulk and mass of plots 3 & 8 is broken down by the use of gables and dormer elements. This use of traditional domestic features which are common to the locality was supported in a recent appeal in Wicken Bonhunt (APP/C1570/W/19/324193) see Appendix E, In the decision letter dated 20 February 2020 attention is drawn to the emphasis the Inspector gives to good quality design in paragraph 9. It should be noted that the Wicken Bonhunt houses referenced were designed by the same architect.

*Built Form*

- 8.5 Similarly, to the comments above re vernacular the properties 1.5 storey design means that the bulk of the properties is minimal and their appearance is sensitive and appropriate for the area.

*Nature*

- 8.6 The original application was supported by an ecology survey that confirmed no protected species and a number of biodiversity enhancements were proposed, which remain part of this proposal.

*Lifespan*

- 8.7 All the properties are proposed to be built using modern methods of construction, formed by a panelised timber frame system. The quality of the structures will mean that they are likely to last several centuries provided they are maintained appropriately. The high insulation standards will minimise the energy consumption of the properties and it is anticipated that both will achieve Energy Performance Certificate A ratings.

*Summary*

- 8.8 This analysis above demonstrates that the proposed amendments accord with Section 12 of the NPPF. They are visually attractive because of good architecture, layout and appropriate and effective landscaping.

**Additional Benefits resulting from the amendments.**

- 8.9 As set out above Councils have an obligation to the provisions in Section 2A of the Self-Build and Custom Housebuilding Act 2015 (as amended) requires the Council to grant planning permission for enough serviced plots of land to meet the demand for self-build and custom housebuilding in the District which arises in each base period.
- 8.10 The policy support for self-build is set out in the NPPF at Paragraph 61, which is provided below:

*“Within this context, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to, those who require affordable housing, families with children, older people, students, people with disabilities, service families,*



*travellers<sup>25</sup>, people who rent their homes and **people wishing to commission or build their own homes<sup>26</sup>**). [emphasis added]*

8.11 It should be noted that this paragraph categorises self-build in the same way as affordable housing, which means that that its provision should be treated as an additional benefit above conventional open market housing in the same way that affordable housing is.

8.12 This position is confirmed by the Inspector in the Doritwich appeal decision that confirms at paragraph 51, provided in full at appendix F:

*“In view of the importance attached to provision for self-build housing in the NPPF and PPG, I do not accept the Council’s view that it should be treated simply as a component of general market housing. The tilted balance is therefore engaged in this case. The forthcoming review of the plan does address self-build housing but is at an early stage and carries very little weight at this time.” [emphasis added]*

8.13 As set at paragraph 6.6 above the Councils own draft policy acknowledges the benefit that self- build provides. The appellant therefore disputes that Officers statement that *“the public benefits would not be increased”*.

8.14 Both plots 3 and 8 are bespoke designs to fit the requirements of the respective self-builders. They are ‘forever homes’ where the self builders intend to reside for the foreseeable and are therefore more likely to invest in the community.

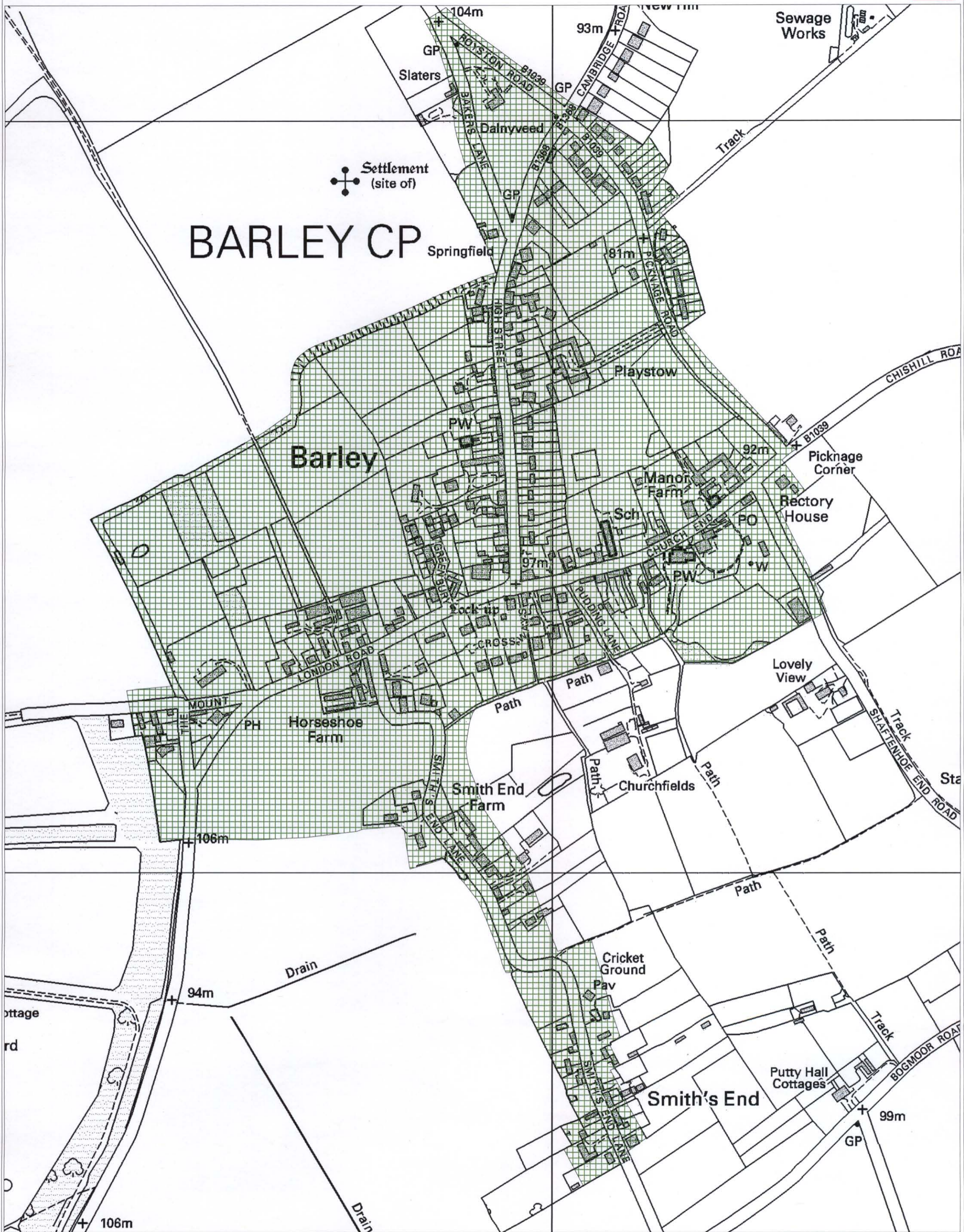
### **The Planning Balance**

8.15 As set out above the principle of development has already been established on the site. The proposed amendments subject of this appeal are minor in nature, are appropriately designed to their context and as set out in the accompanying heritage assessment cause no additional harm to the Conservation Area or the nearest Listed Buildings. For this reason alone, there is no reason why planning permission should not be forthcoming for this section 73 planning application.

8.16 Notwithstanding this the application also provides additional benefits in the form of two self-build properties, which are a tangible and meaningful benefit that ways in favour of the proposal.

8.17 Therefore, the appellant contends that the benefits of these amendments and the lack of harm mean that planning permission should have been supported by the local authority and that this planning appeal should be allowed accordingly.

## Appendix A: Map of the Conservation Area



Settlement  
(site of)

BARLEY CP  
Springfield

Barley

Smith's End



## Appendix B: Emails 16<sup>th</sup> Feb 2021

Hi Sam,

Sorry I missed your calls, however I have been in various meetings this afternoon and I am on leave tomorrow. I can call you on Thursday or Friday to discuss if you wish.

However, whichever way the application is recommended, it will still need to go to Planning Committee and as explained, this will likely be in April. As such, in the meantime I would be grateful if you could agree to extend the deadline to 16<sup>th</sup> April?

Regards,

Tom

Tom Allington  
[Principal Planning Officer – Strategic Sites](#)  
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**From:** Samuel Bampton <[s.bampton@pelham-structures.co.uk](mailto:s.bampton@pelham-structures.co.uk)>

**Sent:** 16 February 2021 15:20

**To:** Tom Allington <[Tom.Allington@north-herts.gov.uk](mailto:Tom.Allington@north-herts.gov.uk)>

**Subject:** RE: 20/03072/S73 | Relating to Application 18/03349/S73 granted on 15/03/2019 - Variation of Condition 2 (Approved Plans) to facilitate relocation of parking at plots 5 and 6, change of external material at plot 5 and variations to the dwelling type, scal

Hi Tom,

Thanks for your email, please can you give me a call to discuss.

I fully appreciate and support the principle of paragraph 130, however, I do consider that the proposal submitted is in line with the principle. As the amendments proposed are high quality in design and seek to improve the scheme not decrease its quality.

In terms of your comments below and prior to any further discussion I thought it would be helpful to clarify the following:

- “Two large four bedroom properties”, as you are probably aware the majority of demand for custom build housing is ‘four bedrooms’ the two properties subject of this application have been designed for individuals who intend to occupy them. Paragraph 61 of the NPPF supports the provision of plots for “people wishing to commission or build their own homes, and the Self Build and Custom Build Act requires LPA to grant permission for sufficient plots. We would be happy to accept a condition that both these plots are sold to the purchasers prior to the construction of their foundations? Further, as set out in the CL the houses are vernacular in design and sensitively design to their surroundings. Specifically I would note that the revised design of plot 8, its proportions and detailing are more vernacular than that previously approved. I would appreciate as part of any further discussion clarity as to what your specific concerns with these properties is?
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Hopefully the above is helpful for further discussion and I would appreciate if you could give me a call when convenient.

Kind regards  
Samuel Bampton



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**From:** Tom Allington <[Tom.Allington@north-herts.gov.uk](mailto:Tom.Allington@north-herts.gov.uk)>

**Sent:** 16 February 2021 13:31

**To:** Samuel Bampton <[s.bampton@pelham-structures.co.uk](mailto:s.bampton@pelham-structures.co.uk)>

**Subject:** RE: 20/03072/S73 | Relating to Application 18/03349/S73 granted on 15/03/2019 - Variation of Condition 2 (Approved Plans) to facilitate relocation of parking at plots 5 and 6, change of external material at plot 5 and variations to the dwelling type, scal

Dear Sam,

Thank you for your email and my apologies for the delay of my reply (unfortunately it has been a difficult few weeks at NHDC).

As with all of the previous applications for this site, this application will need to go before our Planning Control Committee and I cannot determine it under delegated powers (our scheme of delegation/ constitution requires that housing sites of 0.5ha or more go before committee). Due to a high case load and a backlog of committee items (due to committees being via Zoom, these are shorter meetings with fewer cases per meeting), I am not likely to get this item before committee until the meeting on 14<sup>th</sup> April (the agendas for February and March are already full). As such, I would be grateful if you could please provide your written agreement to extend the deadline until Friday 16<sup>th</sup> April 2021?

With regard to the application itself, I note that paragraph 130 of the NPPF states the following:

*'Local planning authorities should also seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme'*

I consider that the original approval under ref. 17/02316/1 was a marginal, on balance decision, whereby harm was identified to the Barley Conservation Area but public benefits outweighed this. The variation to this under application 18/03349/S73 reduced the quality of the design but not quite to the extent that it could be refused. You are now seeking to vary the existing variation, straying yet further from the original design, which I and the Council's Conservation Officer worked extensively on, together with Chris Hennem, to get a suitable scheme.

Plots 3 and 8 under the original scheme included two modest 2-bedroom detached dwellings. These were increased in size under the previous variation to two 3-bed houses. Under the current proposal, you are now proposing two large four bedroom properties, with the addition of a single garage to Plot 3 and a large double garage to Plot 8 (although it is not indicated where this would be located on the proposed site plan?). In addition, Plot 8 would be increased in area, reducing the central open space and would include a larger driveway (several plots would include larger driveways, increasing hardstanding and reducing green space and landscaping).

In light of the above, I do have concerns regarding the current proposals and in line with the para.130 of the NPPF, it is likely that I will be recommending it for refusal (although as

mentioned above, the decision would be made by Planning Committee). It is therefore my recommendation that you seek to implement the variation approved under ref. 18/03349/S73 and that this application be withdrawn.

If you do choose to withdraw this application, please confirm this in writing before 12pm on Thursday 18<sup>th</sup> February 2021?

I look forward to hearing from you as to how you wish to proceed with this application (either withdraw or extend to April?).

Regards,

Tom

Tom Allington  
Principal Planning Officer – Strategic Sites  
Direct Dial: 01462 474508

North Hertfordshire District Council  
Council Offices, Gernon Road  
Letchworth Garden City  
Hertfordshire  
SG6 3JF

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## Appendix C: Emails 26<sup>th</sup> Feb 2021

Hi Sam,

Thank you for the update regarding the affordable unit at Plot 1. Having discussed this site with my manager yesterday, we do not have a preference whether it is reverted to a 2 bed or you can make an NMA application to slightly extend it to accommodate a 3 bed unit (on the basis it would be just 0.2m additional depth?).

If you wish to revert it to a 2 bed, I think it would be best to re-submit details under Condition 4 (schedule of affordable housing) and to submit an NMA to this effect (in terms of the variation to the application and floorplan).

As mentioned, I have now discussed this s73 application with my manager and I have also discussed it with the Council's Senior Conservation Officer. We are all of the view that the current application is not acceptable and I will therefore be recommending it for refusal. As I have mentioned previously, the original approval was on balance/ marginal and the previous variation was certainly not preferable but it was decided it did not quite justify a refusal. However, in this instance, the significant increase in scale to that which was originally approved would tip the balance, when weighing the harm to the heritage assets against the public benefits (the public benefits would not be increased and yet the harm would be increased). The built mass would be significantly increased, reducing the open, loose-knit nature of the proposals, which we had worked hard on to achieve and thus the proposals would not be in keeping with the context and character of the Barley CA.

You have suggested that the dwelling proposed at plot 8 could be moved back within the plot. However, both myself and the Conservation Officer are of the view that this would likely result in further harm, y encroaching into the outlook from the Grade II listed White posts and so we can not support this amendment.

Having checked again with my manager, the earlier we could get this to committee is in April and so I would be grateful if you could please agree to an extension of time to 16<sup>th</sup> April 2021? Alternatively, I understand you may wish to appeal a non-determination.

Regards,

Tom

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**From:** Samuel Bampton <[s.bampton@pelham-structures.co.uk](mailto:s.bampton@pelham-structures.co.uk)>  
**Sent:** 26 February 2021 09:27  
**To:** Tom Allington <[Tom.Allington@north-herts.gov.uk](mailto:Tom.Allington@north-herts.gov.uk)>  
**Subject:** S.73 18/03349/S73 Affordable Housing, Land at The Gables, Barley

Hi Tom,

Just to keep you updated I had a meeting with Hastoe yesterday, who are likely to take on the affordable units on this site, and they voiced a preference for them being a 1 x 2bed and 1 x 3bed, which suits the size of units granted. Would the Council be open to this? If so how would you like us to address the affordable housing statement and layout of unit 1?

If you'd like to discuss further please don't hesitate to contact me.

Kind regards  
Samuel Bampton



Unit 3 Brices Yard, Butts Green, Langley Upper Green, Saffron Walden, Essex. CB11 4RT  
Tel: 01799 551 261 ext 215 Mobile: 07792 057 538 E-mail: [s.bampton@pelham-structures.co.uk](mailto:s.bampton@pelham-structures.co.uk) Website: [www.pelham-structures.co.uk](http://www.pelham-structures.co.uk)

## Appendix D: Email Chain with Officer 26<sup>th</sup> Feb- 02<sup>nd</sup> March 2021

Dear Sam,

Thank you for your lengthy email.

I am afraid I must be short and rather blunt (please understand that this is more out of necessity at this time). We at NHDC Planning department have found ourselves rather suddenly and unexpectedly short on staff and caseloads (which were already high) and now very high. I have already taken the time to discuss this application with my manager and the Councils Conservation Officer and I have provided you with our view and our stance on this matter. Given the amount of officer time and effort already spent on this site (particularly with regard to previous applications) I cannot spend any further time on this going back-and-forth with you debating the various matters/ merits.

I outlined previously, you can either extend the deadline until April, to take it to the April Committee meeting, or I understand that you may wish to appeal against a non-determination.

Regards,

Tom

Tom Allington  
[Principal Planning Officer – Strategic Sites](#)  
Direct Dial: 01462 474508

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**From:** Samuel Bampton <[s.bampton@pelham-structures.co.uk](mailto:s.bampton@pelham-structures.co.uk)>

**Sent:** 26 February 2021 13:25

**To:** Tom Allington <[Tom.Allington@north-herts.gov.uk](mailto:Tom.Allington@north-herts.gov.uk)>

**Cc:** Chris Hennem <[c.hennem@pelham-structures.co.uk](mailto:c.hennem@pelham-structures.co.uk)>

**Subject:** RE: S.73 18/03349/S73 Affordable Housing, Land at The Gables, Barley

Hi Tom,

Thanks for your email, if you have five minutes please could you give me a call to discuss.

In summary I would like to discuss the following:

**Affordable units:**

On the basis that the Housing Association would prefer a 2 and a 3 bed, I think we will proceed on this basis. If we were to find an agreeable way forward on the s.73 would you be happy for us to provide the amended plans and affordable statement as part of this? If not we will put in a NMA as you have suggested.

**Plots 3 and 8:**

In regard your conversation with the Conservation Officer were you in possession of the street scenes I sent on Wednesday when you were discussing, as I think these are a very useful aid that I apologies for not providing previously?

I ask this because as mentioned before I think any perceived impact from plots 3 and 8 are very much different. In this regard, are you able to comment whether the changes to plot 3 are acceptable or not? If they are I would propose that subject to your agreement that we progress the current s.73 with amended plans for the changes excluding plot 8 but including layout change to plot 1. In this scenario we would look to submit a further application for the changes to plot 8, which we would appeal if refused.

Turning to specifics of Plot 8, in terms of your comment re shifting back plot 8, did you also consider the suggestion for tandem parking to the side? This would enable the amendments to plot 8, without widening the plot. Chris has prepared a quick birds eye overlay of the plot, which, show the proposed dotted in red over the approved. He has also shown the area in blue that the house could be extended under PDR once finished, which shows that both properties could be extended substantially to the rear once complete. As shown the widening of plot 8 is only required to achieve side by side parking and tandem parking would provide sufficient parking without eroding the green space.

In response to your comment, re harm: *“the significant increase in scale to that which was originally approved would tip the balance, when weighing the harm to the heritage assets against the public benefits (the public benefits would not be increased and yet the harm would be increased).”*

I would very much disagree with this statement, as set out previously I don't think that any additional harm will occur as a result of the proposed amendments, and consider that a robust defence to this can be made, due to the improved quality of unit design and relocation of the parking spaces. Putting this aside though, and focusing on the 'public benefits' point, it is not in my mind credible to suggest that there are no 'additional benefits'. We are proposing that both these dwellings are going to be constructed as self-build, which is a tangible benefit that should be weighed in favour of the proposal.

The provisions in Section 2A of the Self-Build and Custom Housebuilding Act 2015 (as amended) requires the Council to grant planning permission for enough serviced plots of land to meet the demand for self-build and custom housebuilding in the District which arises in each base period.

The policy support for self-build is set out in the NPPF at Paragraph 61, which is provided below:

*“Within this context, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to, those who require affordable housing, families with children, older people, students, people with disabilities, service families, travellers<sup>25</sup>, people who rent their homes and **people wishing to commission or build their own homes**<sup>26</sup>). [emphasis added]*

It should be noted that this paragraph categorises self-build in the same way as affordable housing, which means that that its provision should be treated as an additional benefit in the same way as affordable housing is. For this reason I consider that this is a significant benefit that should be weighed in favour of the proposal. We are happy for it to be conditioned that the properties should be sold prior to construction of foundations. I can even provide a UU to this if it would please the Council.

It is recognised that self-builders generally build to a higher standard and are more likely to stay longer and invest more in the community, it is for this reason that the government have included support for it in the NPPF.

I have attached for your consideration the Doritwich appeal decision that confirms this position at Para 51:

*“In view of the importance attached to provision for self-build housing in the NPPF and PPG, I do not accept the Council’s view that it should be treated simply as a component of general market housing. The tilted balance is therefore engaged in this case. The forthcoming review of the plan does address self-build housing but is at an early stage and carries very little weight at this time.” [emphasis added]*

I have also provided below sections from a recent planning statement we prepared that refer to a number of different planning appeals, which provide similar support for the provision of Self Build. I should also note that we are currently the preferred contractor on the 22 self build scheme at St Edmunds Lane and I would be happy to shown what is going on and how the process is working if you’d like to visit site at an appropriate time.

Once you’ve had a chance to assimilate all this information I would very much appreciate if you can give me a call to discuss the way forward, as I would prefer to agree a pragmatic that minimises additional work for both sides.

- 1.1 The matter of self- and custom-build housing has been the subject of a number of appeal decisions, as this is a relatively new concept in planning terms. These decisions aid in the assessment of subsequent self-build proposals, and relevant examples are cited below:

**A planning appeal for the development of 22 self-build units St Edmunds Lane, Great Dunmow, was allowed in May 2015 (refs. UTT/14/0472/OP (14/00066/REF). In allowing the appeal, the Inspector noted that (Appendix B):**

“83.....The Local Plan does not make any provision for meeting the needs of people wishing to build their own homes, contrary to the guidance in Paragraph 50 of The Framework. Indeed, the Council accepted at the Inquiry that the Local Plan is absent or silent on this issue. Furthermore, I note the Local Plan Inspector’s comments in his fuller conclusions relating to Major Modifications to address the need to encourage site availability for self-builders, amongst other things.” .....

85. From the evidence before me it is apparent that there has been little opportunity for self-builders in recent years within the District. The Government has made a commitment to the provision of 100,000 custom/self-build homes over the next 10 years. The appellants consider that this would equate to around 214 custom build homes per local authority in England, with around 107 dwellings to be constructed in the next 5 years. It was clear, from the views expressed by third parties at the Inquiry and the responses to the appellants’ public consultation exercise, that a latent demand exists for custom/self-build development opportunities within the District. Indeed, I acknowledge the responses already received to the custom/self-build housing register set up by the Council recently.”

86.....Although I acknowledge that some windfall sites may come forward for custom/self-build housing in the next 5 years, given the current local policy vacuum in relation to custom/self-build developments within the District, it is unlikely that such provision alone would be sufficient to satisfy the existing demand. The proposed development would provide the opportunity for 22 custom/self-builders in the District to build their own home, which would go some way towards meeting the needs of this sector within the area. I have therefore, afforded the provision of custom/self-build housing significant weight in my consideration of this appeal.”

**APP/C1570/W/18/3205544 - Adare, Beaumont Hill, Great Dunmow - '4 new dwellings with parking and access road' – appeal allowed 7 June 2019 [Inherent in the proposal was that they would be custom/self-build dwellings] (Appendix C)**

1.2 At paragraph 21, in weighing the planning merits, the Inspector noted that *“the proposal would also provide for people wishing to commission or build their own homes. This is a benefit of moderate weight given the number of people on the Council’s self-build register”*. In footnotes the Inspector noted that the submitted planning obligation to ensure that the units would be self-build was necessary given the weight that he had attached to this benefit in the planning balance.

1.3 It should be noted that UDC self-build plot shortfall isn’t as severe as South Cambridgeshire District council, as they only have a 215 plot shortfall, opposed to the 652 house shortfall that South Cambridge District Council.

**Appeal Refs: APP/G2435/W/18/3214451 & APP/G2435/Q/18/3214498 - Land off Hepworth Road, Woodville DE11 7DW - self and custom build residential development consisting of 30 plots with a new access and supporting infrastructure (outline – access and layout included) – allowed 25 June 2019 (Appendix D)**

1.4 This was described as undeveloped scrubland and grassland “outside the Limits to Development as defined in the adopted Local Plan”. Similar to this proposal, the position and size of each plot was to be fixed but the siting of the dwellings on each plot would be subject to separate reserved matters applications. These RMs would adhere to a Design Code which set out the broad parameters and design principles that would guide the development.

1.5 In its case, the Council referred to 133 permissions that it had granted for single dwellings, arguing that this met demand. However, the Inspector stated that:

*“22....the Council has not provided any information to suggest that there are provisions in place to ensure that any of the 133 single dwelling permissions would be developed in a manner that accords with the legal definition of self-build and custom housebuilding in the Self-Build and Custom Housebuilding 2015 (as amended).”*

1.6 This was described as undeveloped scrubland and grassland “outside the Limits to Development as defined in the adopted Local Plan”. Similar to this proposal, the position and size of each plot was to be fixed but the siting of the dwellings on each plot would be subject to separate reserved matters applications. These RMs would adhere to a Design Code which set out the broad parameters and design principles that would guide the development.

1.7 In its case, the Council referred to 133 permissions that it had granted for single dwellings, arguing that this met demand. However, the Inspector stated that:

*“22...the Council has not provided any information to suggest that there are provisions in place to ensure that any of the 133 single dwelling permissions would be developed in a manner that accords with the legal definition of self-build and custom housebuilding in the Self-Build and Custom Housebuilding 2015 (as amended).*

*23. To my mind this raises considerable doubts as to whether any of the single dwelling permissions would count towards the number of planning permissions the Council has granted for serviced plots and thus whether these consents would actually contribute towards the delivery of self-build and custom housebuilding in the District. Importantly, the S.106 Agreement submitted with the appeal proposal contains provisions to ensure that the proposed dwellings on the appeal site would meet the definition of self-build and custom housebuilding. There is no evidence before me of a similar mechanism which would secure the delivery of self-build and custom housebuilding on the plots referred to in Appendix 3 of the Council’s Statement. I consider it would be unreasonable to include any of the single dwelling permissions within the calculation of self-build and custom housebuilding permissions granted in the District”.*

- 1.8 The Inspector proceeded to reason that the Council had not granted planning permission for enough serviced plots to meet the demand arising for base period 1 (the deadline being 30 October 2019) let alone any of the subsequent base periods (2, 3 and 4), and the Inspector found that this “is a material consideration that weighs strongly in favour of the appeal proposal”.
- 1.9 Similar to this proposal, the site was on rural land, and the Inspector noted that, whilst the Council referred to the need for the planning system to protect and enhance valued landscapes, it had “*provided no evidence to demonstrate there are physical attributes associated with the appeal site and its immediate setting that elevate it above **ordinary countryside**.*” In that context, the Inspector found that the land did not represent a valued landscape in the context of paragraph 170 of the NPPF. The same would apply in this case.
- 1.10 In the planning balance, the Inspector found that “*the appeal proposal does not represent unnecessary development because it would greatly assist NWLDC to meet its statutory obligations with respect to providing serviced plots for self-build and custom-build housing*”, and this was found to be a social benefit of weight. Conflict with local plan policy was outweighed by the various benefits of sustainable development.

**APP/W0530/W/19/3230103 - Green End / Heath Road, Gamlingay - self-build/custom build development for up to 9 dwellings – appeal allowed 23 September 2019 (Appendix E)**

- 1.11 This appeal is particularly relevant to this site as it is in the same district and was of a similar scale in a comparable edge of settlement location.

1.12 At paragraph 11 of the decision, the Inspector noted that:

*“The DP policies, whilst controlling the location of new housing, are silent on the matter of self-build housing strategy. Despite the LPA ability to demonstrate a five-year housing land supply, this must be recognised as a minimum figure in light of the National Planning Policy Framework (the Framework), which encourages significantly boosting the supply of new homes”.*

1.13 In this context the Inspector also confirmed that:

*“This shortfall is significant. The Parish Council confirm there is demand within the village for this type of development. I therefore give significant weight to this factor.”*

Kind regards  
Samuel Bampton



Unit 3 Brices Yard, Butts Green, Langley Upper Green, Saffron Walden, Essex. CB11 4RT  
Tel: 01799 551 261 ext 215 Mobile: 07792 057 538 E-mail: [s.bampton@pelham-structures.co.uk](mailto:s.bampton@pelham-structures.co.uk) Website: [www.pelham-structures.co.uk](http://www.pelham-structures.co.uk)

**From:** Tom Allington <[Tom.Allington@north-herts.gov.uk](mailto:Tom.Allington@north-herts.gov.uk)>  
**Sent:** 26 February 2021 09:45  
**To:** Samuel Bampton <[s.bampton@pelham-structures.co.uk](mailto:s.bampton@pelham-structures.co.uk)>  
**Subject:** RE: S.73 18/03349/S73 Affordable Housing, Land at The Gables, Barley

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refusal. However, in this instance, the significant increase in scale to that which was originally approved would tip the balance, when weighing the harm to the heritage assets against the public benefits (the public benefits would not be increased and yet the harm would be increased). The built mass would be significantly increased, reducing the open, loose-knit nature of the proposals, which we had worked hard on to achieve and thus the proposals would not be in keeping with the context and character of the Barley CA.

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**Subject:** S.73 18/03349/S73 Affordable Housing, Land at The Gables, Barley

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If you'd like to discuss further please don't hesitate to contact me.

Kind regards  
Samuel Bampton



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Appendix E: Wicken Bonhunt Appeal Decision  
(APP/C1570/W/19/324193)



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## Appeal Decision

Site visit made on 21 January 2020

by **Peter Mark Sturgess BSc (Hons), MBA, MRTPI**

an Inspector appointed by the Secretary of State.

**Decision date: Thursday, 20 February 2020**

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**Appeal Ref: APP/C1570/W/19/3241983**

**Ashcroft, Wicken Road, Wicken Bonhunt, Essex, CB11 3UL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Ms Joan Bull against the decision of Uttlesford District Council.
  - The application Ref UTT/19/1381/FUL, dated 5 June 2019, was refused by notice dated 7 August 2019.
  - The development proposed is erection of 3no detached dwellings with associated landscaping and cartlodge parking and new vehicular access at Ashcroft, Wicken Bonhunt, Essex, CB11 3UL.
- 

### Decision

1. The appeal is allowed, and planning permission granted for the erection of 3no detached dwellings with associated landscaping and cartlodge parking and new vehicular access at Ashcroft, Wicken Bonhunt, Essex, CB11 3UL in accordance with planning application UTT/19/1381/FUL, subject to the following conditions:
  - 1) The development hereby permitted shall begin no later than 3 years from the date of this decision.
  - 2) The development hereby permitted shall be completed in accordance with the details shown on plans numbered: 563x01(January 2019);563x02 (January 2019);563x03 (January 2019); 563x04(January 2019); 563x05(January 2019);563x06(January 2019).
  - 3) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
  - 4) Prior to the commencement of the development, full details of all the hard and soft landscaping (including planting, hard surfaces and boundary treatment) shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
  - 5) All planting, seeding or turfing and soil preparation approved by the local planning authority as complying with condition 3, shall be carried out in the first planting and seeding seasons following the completion of the dwellings and before the occupation of the final dwelling. Any plants

which, within a period of five years from completion of the dwellings die, are removed or become damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless otherwise agreed, in writing, by the local planning authority. All landscaping work shall be carried out in accordance with the guidance contained in British Standards, unless otherwise agreed in writing by the local planning authority.

- 6) Prior to the commencement of the development hereby approved details of the materials to be used in the construction of the buildings (including the proposed cartlodge garaging) shall be submitted to and approved in writing by the local planning authority. The development shall be constructed using the approved materials, unless otherwise agreed in writing by the local planning authority.
- 7) Before the installation of any external lighting within the development site, a lighting design scheme for biodiversity shall be submitted to and approved in writing by the local planning authority. The scheme shall identify those features on the site that are particularly sensitive for bats and that are likely to cause disturbance along routes used for foraging and show how and where external lighting will be installed (through the provision of technical specification) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats from using their territory. All external lighting shall be installed in accordance with the specifications and locations set out in the approved scheme and maintained thereafter in accordance with the scheme. No external lighting, other than that in the approved scheme, shall be installed on the site without the prior written approval of the local planning authority.

### **Main Issue**

2. The effect of the development on the character and appearance of the area.

### **Reasons**

3. The development plan for the area is the Uttlesford Local Plan (ULP) adopted in 2005. The plan was adopted prior to the introduction of the current National Planning Policy Framework (the Framework).
4. The Council rely on saved Policies S7 and Gen2 of the ULP to support the refusal of the appeal proposal. In 2012 the ULP was assessed to see if it was compliant with the then version of the Framework. This found that S7 was partly compliant with the 2012 version of the Framework.
5. Policy S7 seeks to guide development to appropriate locations in villages and sets out what sorts of development might be appropriate in the countryside. Its overall aim is to enhance the countryside of the district and protect its character and appearance.
6. In these respects, I consider that Policy S7 would be consistent with the 2019 version of the Framework, as it contains policies which seek similar objectives, when read as a whole. I can therefore give Policy S7 some weight in the determination of this appeal, due to its partial consistency with the 2019 Framework.

7. The appeal proposal lies in the countryside as defined by Policy S7. There are no reasons advanced by the appellant as to why the development requires a countryside location. I therefore find the appeal proposal is in conflict with Policy S7 of the ULP.
8. The general setting of the site is rural, as is the whole of Wicken Bonhunt. However, whilst the site is in the countryside as defined by the ULP, I do not consider the site to be in open countryside. It is surrounded by houses and their gardens and two roads. Any development on this site would be seen as a continuation of the existing pattern of development in the immediate area, that of large houses standing in substantial grounds. The development of the site in accordance with the appeal proposal would reflect the character and appearance of its immediate surroundings, rather than the tighter grain of the development to the east or the open countryside further west. For these reasons, despite the conflict with Policy S7, I consider the harm that would be caused to the character and appearance of this part of the countryside would be minimal.
9. From my site visit and from viewing the plans, I am of the opinion that due to the elevated nature of the site, the substantial tree and hedge growth around the site (that would be retained as part of the development) and the presence of other dwellings in relatively close proximity to the site, the proposed houses would be no more dominant or intrusive than existing development in the area. The houses themselves are well designed. Their bulk and massing are, to a large extent, broken up by the use of dormer windows, setbacks, projections and varied ridge lines, therefore would not appear dominant in the location. Houses around the appeal site display domestic elements such as children's play equipment and garden buildings. I do not consider that the buildings or their surroundings would be especially dominant in this location.
10. The parties accept that the Council does not have a 5-year supply of deliverable housing sites in the District. The Council's latest assessment shows a 3.29-year supply of deliverable housing sites. I therefore have to regard Policy S7 as out of date for the purposes of the appeal and apply paragraph 11 of the Framework, to assess whether the appeal proposal constitutes sustainable development.
11. Paragraph 11, d), ii) requires that I grant planning permission 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.
12. The adverse impact of the development on the character and appearance of the locality would be minimal and would amount to the introduction of built form into a countryside location which would be in conflict with the development plan. However, I give limited weight to this as the development has a low impact on the character and appearance of its specific location. In my view the adverse impact of granting planning permission would not significantly and demonstrably outweigh the benefits of the proposal, such as the contribution it would make to the vitality of the village and the 5-year supply of deliverable housing sites in the District.
13. I find that any adverse impacts of allowing the appeal do not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

14. S38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. I find that the proposal is in conflict with the development plan. However, I also find that the weight to be given to the material considerations in this case, indicate that the appeal should be allowed, and planning permission granted.

### **Other Matters**

15. Reference has been made to a previous dismissed appeal for a single dwelling on part of this site<sup>1</sup>. There are material differences between that case and this which have led me to a different conclusion. These are: lack of a 5-year supply of deliverable housing sites at the current time, and more details regarding the design of the proposed dwellings<sup>2</sup> being available, so I am better able to assess the impact of the proposed development on the character and appearance of the area, than the Inspector at the previous appeal.

### **Conditions**

16. In addition to the standard time limits and referencing the approved plans I have imposed other conditions for the reasons given below.
17. It is important, given the countryside location of the appeal proposal, that landscaping of the site is dealt with thoroughly and implemented at the appropriate time. In the interests of clarity, I have separated out some of the matters covered by the Council's landscaping conditions into separate conditions.
18. In view of the elevated nature of the site, above Wicken Road, I consider it is important that final floor levels of the buildings are controlled to ensure that the development integrates properly with its surroundings.
19. Control of materials is important to maintaining the character and appearance of the locality. I have imposed a condition requiring the approval of materials to ensure the final finishes of the buildings are acceptable.
20. There is a need to control external lighting, in this rural location, in order to minimise the effect of the development upon bats and to comply with the relevant provisions of nature conservation legislation. I have imposed a condition to seek to deliver this.
21. Finally, I have not imposed a condition suggested by the Council relating to part M4(2) of the Building Regulations 2010 as this matter is capable of being dealt with at the building regulations approval stage of the development.

### **Conclusion**

22. I find that having regard to all matters before me, including the policies of the development plan, when taken as a whole, the appeal should be allowed, and planning permission granted.

*Peter Mark Sturgess*

INSPECTOR

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<sup>1</sup> APP/C1570/W/15/3135166

<sup>2</sup> The previous application was in outline with appearance, landscaping and scale reserved for future consideration

Appendix F: Doritwich appeal Decision  
(APP/H1840/W/19/3241879)





## Appeal Decision

Hearing Held on 29 June 2020

Site visit made on 1 July 2020

by **David Richards BSocSci DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 July 2020

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**Appeal Ref: APP/H1840/W/19/3241879**

**Corner Mead, Newland Lane, Droitwich Spa, Worcestershire WR9 7JH**

- 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 Build 1 against the decision of Wychavon District Council.
  - The application Ref 19/01679/OUT, dated 22 July 2019, was refused by notice dated 25 September 2019.
  - The development proposed is up to 9 self-build dwellings including new means of access off Newland Lane.
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### Decision

1. The appeal is allowed and planning permission is granted for up to 9 self-build dwellings at Corner Mead, Newland Lane, Droitwich Spa, Worcestershire WR9 7JH in accordance with the terms of the application, Ref 19/01679/OUT, dated 22 July 2019, subject to the conditions set out in the attached Schedule.

### Application for costs

2. At the Hearing an application for costs was made by the Appellant against the Council. This application is the subject of a separate Decision.

### Main Issues

3. The main issues are the effect on the character and appearance of the surrounding area, and whether the Council has made adequate provision for the delivery of self-build dwellings in accordance with the requirements of the Self Build and Custom Housebuilding Act 2015 (The Act).

### Reasons

4. The application was made in outline and included provision of a new access, with matters relating to appearance, landscaping, layout and scale reserved.
5. The development plan includes the South Worcestershire Development Plan (SWDP) which was adopted in February 2016. Policy SWDP2 is concerned with the Development Strategy and Settlement Hierarchy. The development strategy and site allocations are based on a number of principles, including provision for and facilitation of the delivery of objectively assessed needs to 2030, safeguarding of the open countryside, the effective use and reuse of brownfield land. Most development is focussed on urban areas, which include Droitwich Spa. Under criterion C, the open countryside is defined as land

beyond any development boundary, where development will be strictly controlled and limited to a number of defined categories, none of which include the construction of self-build housing. It is common ground that the appeal proposal conflicts with Policy SWDP2 C as it is located outside of the defined development boundary.

6. The SWDP is under review (SWDPR). However, as it is at an early stage of preparation, it carries very little weight.
7. Section 5 of the NPPF sets out the Government's objective of significantly boosting the supply of homes and states that it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay. The size, type and tenure of housing for different groups in the community should be assessed and reflected in planning policies, including people who wish to commission or build their own homes. Footnote 26 sets out the requirements of the Self Build and Custom Housebuilding Act 2015 which are also explained in Planning Practice Guidance (PPG).
8. Paragraph 023 of the PPG provides that relevant authorities must give suitable development permission to enough suitable serviced plots of land to meet the demand for self-build and custom housebuilding in their area. The level of demand is established by reference to the number of entries added to an authority's register during a base period. The first base period begins on the day on which the register is established and ends on 30 October 2016. Each subsequent base period is the period of 12 months beginning immediately after the end of the previous base period. At the end of each base period, relevant local authorities have 3 years in which to permission an equivalent number of plots of land, which are suitable for self-build and custom housebuilding, as there are entries for that base period.

#### **Effect on character and appearance of the area**

9. The appeal site lies in the countryside on the outskirts of Droitwich Spa, beyond the development boundary defined in the SWDP and detached from it by a gap of some 110 metres. It is located in the Parish of Salwarpe but is more closely related to the town of Droitwich Spa. The SWDP made provision for a large urban extension (site allocation SWDP49/2) which is currently well under construction and lies 110m from the appeal site
10. The site extends to about 0.68 hectares. It is bounded to the south by Newland Lane and to the west by Newland Road. It is currently occupied by a dwelling and part of the site is garden land, the remainder having last been in agricultural or grazing use. Development in the immediate vicinity is sporadic in nature and the area retains a rural character, albeit one that is now very close to, and influenced by, the urban edge created by the new development. Neither the Council's refusal reason nor statement of case address the impact on the character of the countryside in any detail.
11. The Council refers to the suburban appearance of the indicative layout but notes that layout, scale and appearance are reserved matters, and suggests means by which greater variety might be achieved to reflect the more organic pattern of the area. With regard to effects on the landscape, the committee report recorded no objection on landscape or visual impact grounds, subject to

the attachment of conditions addressing tree and hedgerow retention, new planting and protection during construction. There are established trees and planting which could provide effective screening, particularly on the Newland Road frontage.

12. I accept that the development would lead to an intensification of built development in an urban fringe location. I also agree that the site cannot properly be described as adjacent to the settlement, (given the normal meaning of 'adjacent' as adjoining or next to) as there are other low-density properties and small fields intervening. However, while the area currently has a pleasant semi-rural character, the countryside is very close to the urban edge, and is not covered by any relevant landscape policy designation, nor does it lie within the Green Belt, which lies to the south of Newland Lane. I conclude the actual harm to the countryside setting of the current urban area of Droitwich Spa would be very limited, and could be mitigated by careful design and landscaping.

**Whether the council has made adequate provision for self-build dwellings in accordance with the provisions of the Self Build and Custom Housebuilding Act 2015.**

13. The Council's position is that the development is in conflict with an up-to date development plan (the SWDP). It considers that the SWDP policies are not 'absent' or 'silent' on the appeal proposal, which in the Council's view entails open market residential development in the open countryside, beyond the development boundary.
14. The Appellant does not dispute that the Council can demonstrate a 5 year Housing Land Supply (5YHLS). Footnote 7 to Paragraph 11 of the NPPF states that policies for the provision of housing should not be considered up-to-date if the local planning authority cannot demonstrate a 5YHLS. On this basis, the Council considers that all SWDP policies concerning the provision of housing are to be afforded full weight, and the appeal should be determined in accordance with the Development Plan.
15. The Appellant accepts that the proposal conflicts with Policy SWDP2 C, but considers this is no more than a technical breach of one criterion of one policy. In the Appellant's submission the proposal accords with the strategic objectives and spirit of Policy SWDP2 and the development plan as a whole, and there are significant material planning considerations which indicate that permission should be granted. The Appellant believes that the provision of self-build and custom housebuilding in what is a location with good accessibility to shops and facilities is a fundamental material planning consideration which is clearly capable of outweighing the technical conflict with the development plan.
16. This is so because the Appellant believes that the Council have not complied with their duty under the 2015 Act to permit sufficient self-build and custom housebuilding plots to meet the need as stipulated on the register.
17. The Council publishes an annual progress report for self-build and custom housebuilding. The first base period for the local planning authority is 1 April 2016 – 31 Oct 2016. Data from the council's Annual Progress Reports<sup>1</sup> gives the number of entries for each base period as follows:

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<sup>1</sup> Wychavon District Council Self Build and Custom Housebuilding Progress Reports December 2017, December 2018 and December 2019

<b>Base Period</b>	<b>Part 1 Entries</b>	<b>Part 2 Entries</b>	<b>Total Entries</b>
1 April 2016 – 31 Oct 2016			51
31 Oct 2016 – 31 Oct 2017	35	13	48
31 Oct 2017 – 31 Oct 2018	41	26	67
31 Oct 2018 – 31 Oct 2019	50	37	87

18. The Council’s position is that they have granted sufficient permissions to meet the demand on the self-build register and that there are no exceptional circumstances to justify determining the appeal other than in accordance with the development plan.
19. In support of its position the Council referred to the SWDP Examination, where the Inspector took the view that self-build and custom build should not be specifically identified in housing allocations as they were considered to represent another form of market housing which could come forward on the numerous small sites allocated in villages for under 10 dwellings, or smaller policy compliant sites that were ruled out as too small to meet the allocation threshold of +5 dwellings. The Council cited a number of appeal decisions which supported this approach<sup>2</sup>.
20. In the committee report and at the hearing, the Council referred to an alternative requirement for the first base period of 11 dwellings. This is not taken from the progress reports, which appear to be the only relevant publicly available documents. It was explained at the hearing that the Council had applied eligibility criteria to the gross figure. People who were on the register were contacted and asked to provide details of local eligibility, to avoid a situation where people interested in self-build could put themselves on a number of different registers, thus potentially inflating overall demand for self-build sites. Those who didn’t respond were not taken off the register but retained in Part 2.
21. The Self-build and Custom Housebuilding Act 2015 was amended by the Housing and Planning Act 2016 to enable local authorities to include up to two optional local eligibility tests, only to be applied by local authorities where there is strong justification for doing so. A local connection test should only be applied in response to a recognised local issue. If a local authority chooses to set a local eligibility test it is required to have two parts to the Register. Individuals or Associations of individuals who apply for eligibility criteria must be entered on Part 1. Those who meet all eligibility criteria except for a local connection test must be entered on Part 2 of the Register. Only Part 1 entries count towards the number of suitable serviced plots that they must grant development permission for.
22. The Council’s states that the Register was established on 1 April 2016, but went through an update period during May and June 2017 when the local connection test was introduced. During this period, individuals already on the Register were asked to provide an update to remain on the Register, and were

<sup>2</sup> APP/H1840/W/17/3185471; APP/H1840/W/16/3151822;

- automatically placed on Part 1 if such an update was provided irrespective of whether or not they could meet the local connection test. During the update period, a number of entries were removed from the Register if an update was not provided. There were originally 51 entries on the Register during the first base period, however, this figure dropped to 11 as only 11 of these provided an update.
23. The Appellant says there is no justification for applying the local eligibility criteria retrospectively to the first base period. Authority to split the register into two parts was only introduced in 2016 through the Housing and Planning Act and brought into force through the Self-build and Custom Housebuilding Regulations 2016. The commencement date for these provisions was 31 October 2016 and the relevant Planning Practice Guidance was not updated in 2017 in this respect.
  24. In view of the need for transparency in such matters I share the Appellant's concern that the reduction of the numbers on the register from 51 to 11 is lacking in clear justification. There has been no opportunity to scrutinise the further consultation undertaken by the Council, or whether people on the register were aware of the implications of not establishing local eligibility in relation to the Council's duties in respect of granting planning permissions relating to the first base period. No explanation of the need for eligibility criteria to be applied in Wychavon was given or any indication of a recognised local issue to justify it. A further 23 entrants were included in Part 1 of the register in the second base period (01/11/16 – 31/10/17) according to the table in the Council's statement. It seems at least possible that some of these were people included in the first base period who failed initially to respond to the Council's call for further information and so were excluded.
  25. With regard to the supply of sites for self-build, the Council provides evidence of planning permissions granted for 11 serviced plots in the period 1 April 2016 to 31 October 2019. All refer to self-build dwellings as part of the description of development and supported by additional evidence in the form of references to self-build in Design and Access or Planning Statements or self-build exemption CIL claim forms. The Council considers that this provides clear evidence for enough serviced plots to meet the demand in the District for the first base period.
  26. The Appellant disagrees and submits that a legal mechanism is required to ensure that the permissions would be developed in a manner that accords with the legal definition of self-build and custom housebuilding, as set out in the 2015 Act. The Appellant refers to the 'I'm Your Man' case to support the proposition that the Council cannot rely on the description of development to secure self-build homes. On this basis, it would be necessary for an express condition or a s106 legal obligation to ensure that a permission is restricted to self-build. I agree with the Council that this would be too restrictive and would include situations such as infill plots where there would be no reason to insist on an s106 obligation, for example policy compliant infill plots or developments on small housing allocations which could be considered to satisfy a demand for self-build if developed accordingly. The duties do not require a level of completions to be achieved in a particular time frame.
  27. In response to the Appellant's claim that the Councils approach is 'overly optimistic' the Council refers to an additional 27 planning permission which

have been granted in the period between 1 April 2016 to 31 October 2019 for a total of 35 new dwellings where the planning application has been submitted with a signed Community Infrastructure Levy Form Self Build Exemption Claim Form (CIL Exemption Form), as detailed in latest Progress Report (December 2019). The Council contend that each of these can also be counted towards meeting the requirement as the CIL Exemption Form is a legally binding agreement whereby the applicant is required to declare that the project meets the definition of self-build and will occupy the dwelling for at least three years after its completion.

28. The Appellant cites a relevant recent Appeal Decision, dated 25 June 2019 concerning land off Hepworth Road, Woodville DE11 7DW<sup>3</sup>. The application was for self and custom build residential development consisting of 30 plots with a new access and supporting infrastructure. The site was outside the defined limits to development as defined in the relevant Local Plan. As regards the Council's duties under the 2015 Act the Inspector had this to say:

*22. The Council confirms that as at April 2019, there are 54 individuals on the Council's Self-Build and Custom Housebuilding Register and that as of April 2019, it has permitted 4 plots in the period since 31 October 2016. Since 31 October 2016 the Council has permitted an additional 133 single plot dwellings which have been distributed across the District. However, the Council has not provided any information to suggest that there are provisions in place to ensure that any of the 133 single dwelling permissions would be developed in a manner that accords with the legal definition of self-build and custom housebuilding in the Self-Build and Custom Housebuilding 2015 (as amended).*

*23. To my mind this raises considerable doubts as to whether any of the single dwelling permissions would count towards the number of planning permissions the Council has granted for serviced plots and thus whether these consents would actually contribute towards the delivery of self-build and custom housebuilding in the District. Importantly, the S.106 Agreement submitted with the appeal proposal contains provisions to ensure that the proposed dwellings on the appeal site would meet the definition of self-build and custom housebuilding. There is no evidence before me of a similar mechanism which would secure the delivery of self-build and custom housebuilding on the plots referred to in Appendix 3 of the Council's Statement. I consider it would be unreasonable to include any of the single dwelling permissions within the calculation of self-build and custom housebuilding permissions granted in the District.*

29. The Inspector found in that case that only 4 plots identified by the Council appeared to comply with the definition of self-build and custom build housing in the 2015 Act. He discounted sites that were not subject to a planning condition or a planning obligation requiring a self-build or custom build house to be built on the site that accords with the statutory definition. He concluded on the evidence available that there was a shortfall of permissions for at least 5 serviced plots to meet the demand identified from the first base period and found that the ability of the appeal proposal to address the unmet demand for serviced plots that arose in base period 1, base period 2 and part of base period 3 in a comprehensively planned manner is a material consideration that weighs strongly in favour of the appeal proposal, and that the appeal proposal

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<sup>3</sup> APP/G2435/W/18/3214451

was necessary to enable the Council to meet its statutory obligations with respect to the duty under Section 2A of the 2015 Act (as amended), given that there appeared to be an inadequate supply of serviced plots coming forward for development in the District.

30. Notwithstanding the conclusions of this Inspector, I do not consider that only those permissions subject to an express condition or s.106 obligation should be counted towards meeting the Section 2A requirement, for reasons set out above. To my mind his would be too onerous a requirement, and could lead to the exclusion of self-build sites within development boundaries ever being counted towards meeting Section 2A, which appears to me to conflict with the objective of promoting self-build as a means of meeting identified housing need, and in a wide range of circumstances. Both the Woodville site and the site under consideration in this appeal were promoted as exceptions sites, where such an arrangement would be necessary to justify making the exception to the policies in an otherwise up-to-date development plan.
31. Nevertheless I do not consider that the evidence provided by the Council is sufficiently reliable for me to conclude that the Council has met its duty under Section 2A. To my mind, some further analysis of the raw data is necessary, which as a minimum relates permissions granted to meeting the needs of named individuals or groups identified in part 1 of the Register. It is not sufficient to rely on CIL exemption forms without this type of further analysis, which is lacking in the Council's evidence. I conclude that the Council has not satisfactorily demonstrated that it has granted enough permissions for serviced plots to meet the demand for self-build and custom build plots in the first base period.

### **Other matters**

32. The parties agree that the site has a reasonable degree of accessibility to the facilities and services available in the wider area of Droitwich Spa, and that the site is locationally sustainable in this respect.
33. Local residents raised a number of issues in their representations, and at the hearing. There was concern regarding the traffic impact of the proposal, and the effect of the new access arrangements on road safety. The Appellant argued that there would be a clear safety benefit, as the existing sub-standard access would be replaced by a designed access that met all the relevant visibility standards. A resident considered that this would be outweighed by the significant increase in vehicle movements arising from 9 dwellings as opposed to one. It was also stated that Newland Drive carried a lot of heavy traffic, though it was acknowledged that some of this was temporary, being attributable to the construction of the urban extension.
34. I note that the Highways consultee asked for a deferral of the application for further information. However, a previous application, to which the consultee had no objection, proposed a similar access arrangement<sup>4</sup>. The previous application was for 10 dwellings, while this is for up to 9, with the existing dwelling retained. However the difference is not material.
35. I acknowledge that extra traffic would be unwelcome to existing residents. However, I do not consider that the increased number of trips would be

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<sup>4</sup> 18/00906/OUT - Outline application for up to 10 self-build dwellings including a new means of access off Newland Lane - Refused 7 August 2018.

significant in the context of existing usage of the local road network, and I conclude that the proposed arrangement would be acceptable in terms of traffic safety and effect on the living conditions of neighbours.

36. Residents were also concerned about the effect of development on their living conditions, during the construction period and thereafter. Layout and appearance are reserved matters, so that the detailed design of the new development could ensure reasonable separation distances between the new dwellings and neighbouring properties to protect the living conditions of existing residents. With respect to the construction period, a site management plan is proposed to address such concerns and in my view would be effective in minimising potential noise and other disturbance to residents. In the event of the appeal being allowed, this could be secured by a condition. I accept that further disturbance would be unwelcome, particularly at a time when work on the urban extension may be drawing to a close. However, I do not consider these concerns would be sufficient to stand in the way of allowing the appeal in the absence of other convincing reasons.
37. Another resident raised concerns with local flood risk, particularly on Newland Road at its lowest point, which is reported to flood after heavy rain. The Council's drainage engineer commented at application stage that the site is in flood zone 1 and in an area at low risk of surface water flooding. Surface water drainage is proposed via soakaways and areas of hard standing will make use of permeable materials or, if grounds conditions are unsuitable, an alternative sustainable solution will be required. The principle of sustainable drainage is that surface water is intercepted so that flows are no greater from a site as a result of development than the current situation. Having regard to the drainage engineer's comments, there is no reason to suppose that an acceptable drainage system cannot be achieved.

### **Conditions**

38. A schedule of agreed conditions was included in the Statement of Common Ground (SOCG). The Appellant expressly agreed to the inclusion of the suggested pre-commencement conditions at the hearing. The application was made in outline (except for the access arrangements) so reserved matters conditions are necessary to ensure the development achieves a satisfactory appearance, landscaping, layout and scale (Conditions 1, 2, 3, 5, 18, 20 and 23). Condition 4 is necessary to protect trees to be retained from damage during construction. Condition 6 is necessary to avoid any risk of surface water flooding. Conditions 7 and 11 are necessary to ensure satisfactory visibility in the interests of highway safety. Conditions 8 and 9 are necessary to ensure appropriate provision for cars and cycle parking. Conditions 10 and 12 are necessary to encourage the use of sustainable transport, including provision for the charging of electric vehicles. Condition 13 is necessary to protect the living conditions of neighbours during construction and in the interests of highway safety. Condition 14 is necessary to secure a programme of archaeological work to ensure that any archaeological interest is investigated and appropriately recorded.
39. Condition 15 sets out a requirement for a Construction Environment Management Plan for Biodiversity (CEMP: Biodiversity) and is necessary to ensure that areas of sensitive ecological importance are appropriately managed and protected from damage during construction. Condition 16 requires the



preparation and implementation of a Biodiversity Enhancement Strategy, and is necessary to ensure that biodiversity objectives for the development are met. Condition 17 requires preparation of a Landscape and Ecological Management Plan (LEMP) to identify responsibilities for on-going management of features of landscape and ecological importance. I have amended the parties' wording as it is not within the Appellants' control to secure the agreement of the local planning authority within one month of the commencement of the development. As this condition is concerned with ongoing management, I consider it acceptable that the LEMP should be approved prior to first occupation of the first dwelling. I have made other minor changes to the wording in the interests of clarity.

40. Condition 19 (slab levels) is necessary to ensure that the development sits well within the landscape and surroundings. Condition 21 is necessary to ensure appropriate provision for refuse storage. Condition 22 is necessary to secure a reduction in carbon emissions from the development.
41. Subject to the amendments I have made I consider these conditions to meet the tests set out in the NPPF and PPG.

### **S106 obligation**

42. The Appellants submitted a final signed version of a unilateral undertaking (UU) dated 9 July 2020. The main provisions are: 1. The owners covenant that each residential unit shall be constructed as a self-build dwelling; 2. The first occupation of each unit shall be by a person or persons who had a primary input into design and layout and who intends to live in it for at least 3 years and who is included in Part 1 of the Register. 3. The Council shall be notified of the persons who intend to take up first occupation at least two months prior to first occupation.
43. Schedule 2 of the UU addresses an off-site affordable housing contribution of £143,966.25 to be paid prior to the first occupation of the first dwelling.
44. The Council does not dispute the contribution figure but expressed a preference for an on-site discount market self-build dwelling on site, in accordance with Policy SWDP15, which requires that on sites of 5 – 9 dwellings, 20% of units should be affordable and provided on site.
45. I note that in its appeal statement the Council did not take issue with the Appellant's approach of providing a commuted sum for off-site provision, but introduced the request for on-site provision at a later stage. The policy allows for the acceptance of off-site-contributions where a robust justification exists.
46. While I acknowledge the preference for on-site provision, I consider that the provision of an agreed sum as a contribution to off-site provision would satisfactorily address affordable housing provision in the circumstances of the case. I note the difficulties encountered in reaching an agreed form of wording in the context of a UU where it is not appropriate to place a requirement on the Council to exercise its powers in a particular way, for example in respect of nomination rights or marketing strategies. The site lies close to Droitwich Spa where there are opportunities to address affordable needs arising in the neighbouring parish of Salwarpe, in which the appeal site lies.
47. The 2015 Act and the NPPF/PPG guidance support provision for self-build as a means of diversifying access to the housing market and allowing for self-

builders to contribute their skills and labour to reduce the costs of entry into the market. In the circumstances, where the UU secures an appropriate off-site contribution for affordable housing, I do not consider that the failure to make on-site provision outweighs the benefits that would arise from the grant of permission.

48. With regard to the CIL regulations, I conclude that the final UU is necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related to the development in scale and kind.

### **Planning balance and conclusion**

49. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. It is not disputed that the proposed development would conflict with Policy SWDP2 C as it lies outside the defined development boundary and within an area identified as open countryside.
50. I have found that the harm to the character and appearance of the area would be very limited, and capable of mitigation by careful design and landscaping. Although other matters of concern were raised by residents, these would not be of sufficient weight to stand in the way of granting permission. I consider the effects on highway safety would be broadly neutral when balancing the increase in trip generation against the improvement in visibility and geometry. The parties agreed that, but for the conflict with the development plan, the location is sustainable for the type of development proposed, having good accessibility to a range of facilities.
51. While there is no dispute that the Council can demonstrate a 5-year supply of housing land, I consider that the Development Plan is out-of-date in respect of self-build housing. There is no reference to self-build housing within Policy SWDP2. Policy SWDP14 addresses the mix and type of market housing to ensure that a range of household demand and needs continue to be accommodated, but does not say anything substantive about self-build housing. In view of the importance attached to provision for self-build housing in the NPPF and PPG, I do not accept the Council's view that it should be treated simply as a component of general market housing. The tilted balance is therefore engaged in this case. The forthcoming review of the plan does address self-build housing but is at an early stage and carries very little weight at this time.
52. With regard to meeting the Council's duty under the 2015 Act I have found that the Council has not satisfactorily demonstrated that it has granted enough permissions to meet the need identified in the first base period, for the reasons set out above. The proposed development would make a significant contribution to the supply of sites for self-build housing in Wychavon in accordance with Section 5 of the NPPF and the associated PPG. There would be an economic benefit during construction and from on-going support for local facilities, and significant social benefit in terms of the diversity of housing type which would contribute to meeting the Council's duty under the 2015 Act. I attach substantial weight to this benefit and conclude that the adverse impacts of granting planning permission in this case would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. This is a material consideration of sufficient weight to

indicate that the appeal should be determined otherwise than in accordance with the development plan.

53. I therefore conclude that planning permission should be granted subject to the conditions set out in the attached schedule.

*David Richards*

INSPECTOR

## APPEARANCES

For the Appellant

Neal Pearce	Director, Avon Planning Services
Mark Donald	Director, H2 Land
Chris Hughes	Commercial Director, H2 Land
Jack Smyth	of Counsel

For Wychavon District Council

Emma Worley	Development Manager (North)
Denise Duggan	Senior Planning Officer (Policy)

Interested Person

Mr Chris Everton	Local resident
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**Appeal Ref: APP/H1840/W/19/3241879**

**Schedule of conditions:**

- 1) Application for the approval of reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
- 2) Approval of the details of the appearance, landscaping, layout and scale (hereinafter called "the reserved matters") shall be obtained from the local planning authority in writing before any development is commenced. The development shall be carried out in accordance with approved reserved matter details.
- 3) The following details shall be submitted for approval as part of the landscaping reserved matters: -
  1. Survey information of all existing trees and hedges on the application site, and branches from trees on adjacent land that overhang the site. The survey shall include for each tree/hedge:
    - a) the accurate position, canopy spread and species plotted on a plan;
    - b) an assessment of its general health and stability;
    - c) an indication of any proposals for felling or pruning;
    - d) details of any proposed changes in ground level, or other works to be carried out, within the canopy spread.
  2. A landscape scheme which shall include:
    - a) a plan(s) showing the planting layout of proposed tree, hedge, shrub and grass areas;
    - b) a schedule of proposed planting – indicating species, size at time of planting and numbers/densities of plants;
    - c) a written specification outlining cultivation and others operations associated with plant and grass establishment;
    - d) a schedule of maintenance, including watering and the control of competitive weed growth, for a minimum period of five years from first planting.

The landscaping shall be provided and maintained in accordance with the approved details within the first planting season following completion of the development hereby permitted.
- 4) Temporary fencing for the protection of all retained trees/hedges on site and trees outside the site whose Root Protection Areas fall within the site shall be erected in accordance with BS 5837: 2012 (Trees in Relation to Design, Demolition and Construction) before development of any type commences, including site clearance, demolition, materials delivery, vehicular movement and erection of site huts. Any alternative fencing type or position not strictly in accordance with BS 5837 (2012) must be agreed in writing by the local planning authority prior to the commencement of development.

Protective fencing shall remain in place until the completion of development unless otherwise agreed in writing with the local planning authority. Nothing should be stored or placed (including soil), nor shall any ground levels be altered, within the fenced area without the previous written consent of the local planning authority. There shall be no burning of any material within 10 metres of the extent of the canopy of any retained tree/hedge.

- 5) Details of any walls, fences, surface treatments to drives, cycle and footways and an implementation timetable shall be submitted for approval as part of the landscaping reserved matters.
- 6) Prior to the first use/occupation of each plot hereby permitted, the details set out in the submitted Water Management Statement shall be fully implemented and retained thereafter.
- 7) Notwithstanding the approved plans no part of the development shall be occupied until visibility splays have been provided from a point 0.6m above carriageway level at the centre of the footway / cycleway access to the application site and 2.0 metres back from the near side edge of the adjoining carriageway, (measured perpendicularly), for a distance of 25 metres in each direction measured along the nearside edge of the adjoining carriageway and offset a distance of 0.6m from the edge of the carriageway. Nothing shall be planted, erected and/or allowed to grow on the triangular area of land so formed which would obstruct the visibility described above.
- 8) No dwelling shall be occupied until an area has been laid out within the curtilage of that dwelling for the parking of cars in accordance with County standards. The parking area shall thereafter be retained for the purpose of vehicle parking only.
- 9) No dwelling shall be occupied until sheltered and secure cycle parking to comply with the Council's standards has been provided for that dwelling in accordance with details which shall be submitted to and approved in writing by the local planning authority and thereafter the approved cycle parking shall be kept available for the parking of bicycles only.
- 10) Appropriate cabling and an outside electrical socket must be supplied for each property to enable ease of installation of an electric vehicle charging point (houses with dedicated parking). The charging point must comply with BS7671. The socket should comply with BS1363, and must be provided with a locking weatherproof cover if located externally to the building. As a minimum, charge points should comply with Worcestershire County Council Design Guide which requires 7kw charging points for residential developments.
- 11) The development hereby approved shall not commence until drawings of the site access works comprising:
  - The vehicular site access to Newland Lane, and
  - The footway / cycleway access to Newland Road

generally in accordance with, but not limited in detail to, the application drawings have been submitted to and approved in writing by the local planning authority and no part of the development shall be occupied until those works have been constructed in accordance with the approved details.

- 12) Each dwelling hereby approved shall not be occupied until the applicant has submitted in writing to and had approval in writing from the local planning authority a residential welcome pack promoting sustainable forms of access to the development. The approved pack shall be delivered to each dwelling upon its first occupation.
- 13) The development hereby approved shall not commence until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in 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
  - Details of any site boundary hoarding / fencing set back clear of visibility splays.

The measures set out in the approved CEMP 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 by in writing by the local planning authority.

- 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) 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 clause (A) of this condition and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

- 15) No development shall take place (including any site clearance, ground works or demolition) until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP: Biodiversity shall be based on

the findings of the Tree Survey, Preliminary Ecological Appraisal and Reptile Survey submitted with the outline application as well as the findings of an updated Preliminary Ecological Appraisal include the following:

- a. Risk assessment of potentially damaging construction activities;
- b. Identification of "biodiversity protection zones";
- c. Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements and should include details of appropriate protective fencing of retained trees' root protection zone);
- d. The location and timing of sensitive works to avoid harm to biodiversity features;
- e. The times during construction when specialist ecologists need to be present;
- f. Responsible persons and lines of communication;
- g. The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
- h. Use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

- 16) No development shall take place until a Biodiversity Enhancement Strategy (BES) has been submitted to and approved in writing by the local planning authority. The strategy shall include the following:
- a. Purpose and conservation objectives for the proposed works;
  - b. Review of site potential and constraints;
  - c. Detailed designs and working methods to achieve stated objectives (including, where relevant, type and source of materials to be used);
  - d. Extent and location of proposed works shown on appropriate scale maps and plans;
  - e. Timetable for implementation, demonstrating that works are aligned with the proposed phasing of development;
  - f. Persons responsible for implementing the works;
  - g. Initial aftercare;
  - h. Details for disposal of any wastes arising from works.

The BES shall be implemented in accordance with the approved details and all features be retained in that manner thereafter. On completion of the ecological mitigation and enhancement works, a statement of compliance shall be submitted to the local planning authority by the Ecological Clerk of Works (or similarly competent person) confirming that specified and consented measures have been implemented.

- 17) A Landscape and Ecological Management Plan (LEMP) shall be submitted to and be approved in writing by the local planning authority before the first occupation of the first dwelling. The content of the LEMP shall include the following:
- a. Description and evaluation of the features to be managed;
  - b. Ecological trends and constraints on site that might influence management.
  - c. Aims and objectives of management;



- d. Appropriate management options for achieving aims and objectives;
- e. Prescriptions for management actions;
- f. Preparation of a work schedule, including an annual work plan capable of being rolled forward over a five-year period and longer term thereafter;
- g. Details of the body or organisation responsible for implementation of the plan;
- h. Ongoing monitoring and remedial measures.

The plan shall also set out how contingencies and/or remedial action shall be identified, agreed and implemented where the results of the monitoring show that conservation aims and objectives of the LEMP are not being met, so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The LEMP shall be implemented as approved.

- 18) Details of any external lighting to be provided in association with the development shall be submitted with each reserved matters application. Only external lighting in accordance with approved details shall be provided on the application site. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order with or without modification) there shall be no other external lighting provided on the application site.
- 19) The construction work on the buildings hereby approved shall not be commenced until the precise floor slab levels of each new building, relative to the existing development on the boundary of the application site have been submitted to and approved in writing by the local planning authority. Thereafter the new buildings shall be constructed at the approved floor slab levels.
- 20) Each reserved matters application relating to appearance shall include details of the materials to be used in the construction of the external surfaces of any building. Development shall be carried out in accordance with the approved details.
- 21) Each reserved matters application relating to the appearance and layout of the development shall include details of the facilities for the storage of refuse for all proposed dwellings. No individual dwelling shall be occupied until refuse storage facilities to serve that dwelling have been constructed in accordance with approved details. The facilities shall thereafter be retained.
- 22) Prior to the first occupation of any dwelling hereby approved, the renewable energy generating facilities set out in the Energy Assessment by Reports4Planning dated July 2019 to be incorporated as part of the development shall be fully implemented. The renewable energy generating facilities shall provide at least 10% of the predicted energy requirements of the development and shall remain operational for the lifetime of the development.
- 23) Each reserved matters application relating to the appearance, scale and layout shall be broadly in accordance with the principles of the Design & Access Statement (dated 11 July 2019) submitted as part of the

application. All reserved matters applications shall include a statement providing an explanation as to how the design of the development responds to the details submitted as part of the outline application.