



Department for  
Communities and  
Local Government

Mr L Lane  
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Our Ref: APP/W1850/W/15/3051153

26 October 2016

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPLICATION MADE BY GLADMAN DEVELOPMENTS LTD  
LAND AT LONGWORTH LANE, BARTESTREE, HEREFORD  
APPLICATION REF: 143771**

1. I am directed by the Secretary of State to say that consideration has been given to the report of David Wildsmith BSc (Hons) MSc CEng MICE FCIHT MRTPI, who held a public local inquiry for 8 days between 10-20 May 2016 into your appeal against the decision of the local authority to refuse planning permission for the development of up to 100 dwellings, with associated open space and community orchard, in accordance with application ref: 143771, dated 19 December 2014.
2. On 21 April 2016, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involves a proposal for residential development of over 10 units in an area where a qualifying body has submitted a neighbourhood plan proposal to the local planning authority.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be dismissed. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. He has decided to dismiss the appeal and refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

## **Matters arising since the close of the inquiry**

4. The Secretary of State is in receipt of an email from the Council dated 22 August 2016, with an attached report of the Independent Examiner of the Bartestree with Lugwardine Neighbourhood Development Plan (BLNDP) 2011-2031, dated 17 August 2016. This was received too late to be considered by the Inspector. The Secretary of State wrote to the main interested parties on 22 September 2016, inviting them to comment on the implications of the email and attached report. A representation was received from the appellants on 12 October 2016, which was then circulated for comment on 13 October 2016. Comments were received from the Council on 14 October 2016 and from local resident Daniel Forrest on 19 October, these comments were then circulated on 20 October 2016.
5. The Secretary of State has carefully considered and taken into account all the representations he has received since the close of the inquiry. Copies are not attached to this letter, but can be provided on written request to the address shown at the foot of the first page of this letter.

## **Policy and statutory considerations**

6. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
7. In this case the development plan consists of the Herefordshire LPCS, adopted in October 2015, together with some saved policies of the Herefordshire UDP. The parties agree that none of the UDP's saved policies are relevant to the appeal proposal. The Secretary of State considers that the development plan policies of most relevance to this case are SS1-4 & SS6, RA1-3, H1 & H3, OS1-2, LD1-4, SD1, ID1 and MT1 as set out in paragraph 4.2.7 of the Statement of Common Ground (IR21). There is agreement between the parties that the Council is currently only able to demonstrate a housing land supply of 3.63 years (IR18). Policies SS2, SS3, RA1, RA2 and RA3 are agreed to be relevant policies for the supply of housing and therefore the Secretary of State agrees with the Inspector that in accordance with paragraph 49 of the Framework, they cannot be considered up-to-date (IR21).
8. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as the Community Infrastructure Levy (CIL) Regulations 2010 as amended.
9. The Secretary of State has also had regard to the Supplementary Planning Guidance/Documents listed at IR24.
10. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the appeal scheme or their settings or any features of special architectural or historic interest which they may possess.

### *Emerging plan*

11. The emerging plan comprises the BLNDP for 2011-2031. The Secretary of State considers that the emerging policies of most relevance to this case include policies BL1, BL3-5, BL7 (described in the IR as BL8, prior to the deletion of an earlier policy BL8), 10 & 13 (IR23). The BLNDP proposes settlement boundaries for both Bartestree and Lugwardine, which excludes the appeal site. Policies BL3, BL4, BL5 and BL7 are agreed to be relevant policies for the supply of housing and therefore cannot be considered up-to-date (IR23).
12. Paragraph 216 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. The BLNDP has been prepared on the basis that it needs to make provision for the minimum indicative housing growth target of 152 dwellings for the period 2011 to 2031, as set out in the LPCS (IR421). Although the LPCS housing supply policies are not up-to-date, the Secretary of State agrees with the Inspector that there is nothing to suggest that the basic spatial strategy being pursued through the LPCS is inappropriate, unreasonable or unrealistic (IR426 & 415). Like the Inspector, the Secretary of State is satisfied that the preparation of the emerging BLNDP has been undertaken with full regard to the requirements of the LPCS and the Framework (IR432). The Inspector gives the emerging plan moderate weight (IR432). However, since the report of the Inspector, the plan has been through independent examination and the Examiner recommends that the plan can proceed to referendum. Therefore, as the BLNDP is now at an advanced stage, the Secretary of State attributes significant weight to the plan.

### **Main issues**

13. The Secretary of State agrees with the Inspector that the main issues are those set out at IR300.

### ***The effect on the settings of designated heritage assets and on non-designated heritage assets***

14. The Secretary of State agrees with the Inspector's assessment at IR301-308. He agrees that LPCS Policy LD4 is consistent with the Framework and can be given full weight (IR303). He also notes that there is general agreement that the appeal proposal would not have a direct impact on any of the three listed buildings and that it is the impact upon the buildings' settings which needs to be assessed (IR305).

### *The Forge and Hagley Hall*

15. For the reasons given at IR309-312, the Secretary of State agrees with the Inspector's conclusion at IR312 & 322 that the appeal proposal would not have any material impact on the significance of The Forge. Like the Inspector, he considers that the presence of two new dwellings means that overall the appeal site would not form any meaningful part of the setting of The Forge (IR311).
16. With regard to Hagley Hall, the Secretary of State agrees with the Inspector's reasoning and conclusions at IR313-321. He agrees that the northern part of the appeal site should be seen as forming part of the setting of Hagley Hall and the curtilage listed barn, and that the matter which then needs to be established is what level of harm this would cause

to the significance of these heritage assets (IR315). In agreement with the Inspector, he concludes that when the level of harm is assessed against all aspects of significance of the asset and when the existing permission for the two dwellings on land to the west of Hagley Hall is also considered, the level of harm would be towards the bottom end of the 'less than substantial' scale (IR321).

#### *Hagley Court and the Unregistered Park and Garden (UPG)*

17. The Secretary of State agrees with the Inspector's assessment at IR323-337. Like the Inspector, he considers that Hagley Court is rather 'inward looking' and largely disassociated from its former surrounding parkland, including the appeal site (IR334). He agrees with the Inspector's conclusion that the southern part of the appeal site currently plays only a limited role as part of the setting of Hagley Court (IR336) and when the level of harm is assessed against all aspects of significance of the asset, the level of harm is towards the bottom end of 'less than substantial' in terms of impact on overall significance (IR337).
18. In terms of the Hagley Park/Court UPG itself, the Secretary of State agrees with the Inspector's reasoning and conclusions at IR338-345. He agrees that the UPG should be seen to be just of modest significance because of its uncertain size and intrusions such as the Hagley Park cul-de-sac (IR344). As the appeal site only comprises a part of the overall UPG, the Secretary of State concurs with the Inspector that the impact of the appeal proposal could best be described as having a moderate adverse impact on the significance of the UPG (IR345).
19. The Secretary of State agrees with the Inspector's summary conclusion on the effect of the development on the settings of these heritage assets (IR346) and his assessment of the conflict with LPCS Policies LD1 and LD4 (IR347).

#### ***The effect on the character and appearance of the surrounding area***

20. The Secretary of State has considered the Inspector's assessment at IR348-362. He notes the agreement at the inquiry that the UPG and the appeal site do not constitute or are not subject to any national or local landscape designations (IR358). The Secretary of State shares this view. He also agrees with the parties that the appeal proposal would give rise to no undue impact on the Herefordshire Lowlands National Character Area (NCA), nor directly affect the Wye Valley Area of Outstanding Natural Beauty (AONB) (IR359).
21. With regards to the impacts from viewpoints, the Secretary of State agrees with the Inspector's reasoning and conclusions at IR363-376. He notes that the appeal site is currently relatively well-contained in the wider landscape by topography, built form and vegetation (IR363). Like the Inspector, he is satisfied that from distant viewpoints the proposed development would blend into the existing settlement form and would not be unduly noticeable or prominent (IR364). However, in terms of viewpoints within or close to the site, the Secretary of State agrees with the Inspector that the proposed development would bring about a significant change to the appearance of both the northern and southern parts of the appeal site (IR373), and that the greatest impact of the proposed development would be experienced by users of the Public Right of Way (PROW) which crosses the southern part of the site (IR369), in that the character of this PROW would change significantly from having quite a rural feel, to a distinctly more suburban feel (IR375).

22. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR377-383. He agrees that the UPG designation and the site's well-protected tranquil nature can reasonably lead to a conclusion that this area should be considered a valued landscape (IR380) for which protection is offered under paragraph 109 of the Framework (IR383). Like the Inspector, the Secretary of State is of the view that the proposed development would not conserve and enhance Bartestree's settlement pattern, as required by LPCS Policy SS6 (IR381), and that the presence of adjoining development cannot be used as strong justification to add more housing to a greenfield site (IR382). He agrees with the Inspector's conclusion that the proposed development would have an adverse impact on the character and appearance of the appeal site, the southern part of which would be largely unrecognisable as traditional parkland. Accordingly the appeal proposal would be at odds with the relevant parts of LPCS Policies SS1, SS6, LD1 and LD3.

***The effect on areas of ecological or nature conservation interest***

23. The Secretary of State notes the agreement between the parties at IR384 regarding the local populations of birds, badgers, hedgehog, great crested newts, reptiles and bats and notes that there is no firm evidence to indicate that any impacts of the proposed development upon these species should be a cause for concern. He also agrees with the Inspector that the removal of the damaged Scots Pine tree as part of the proposed development should not weigh against the appeal proposal (IR385).
24. With regard to the three Habitats of Principal Importance (HPIs), the Secretary of State agrees with the Inspector's reasoning and conclusions at IR387-407. He is satisfied that the proposed translocation of the orchard trees could be undertaken successfully and the translocation would provide for on-going management and after-care for longer-term habitat protection (IR397). However, like the Inspector he considers the loss of the traditional orchard HPI would be a disbenefit if the translocation proved to be unsuccessful and the noble chafer beetle could not seek to return there (IR405). Therefore, the Secretary of State agrees with the Inspector that there remains a risk with the proposal (IR405).
25. With regards to the wood-pasture and parkland HPI, the Secretary of State agrees with the Inspector that the opportunities to introduce a management regime to look after the HPI would be a benefit, but this has to be offset against the significantly reduced area of this HPI, its generally changed character (IR406), and the likely increased use of footpaths and the area in general as a result of the locally increased population (IR402). Turning to the hedgerow HPI, the Secretary of State, in agreement with the Inspector, considers that there is no firm evidence that the loss of some sections of the HPI and the introduction of new hedgerows would, on balance, result in any direct material benefit of the scheme (IR406).
26. Overall, the Secretary of State agrees that the appeal proposal would be more or less neutral in ecology and biodiversity terms, although this would change to a clear disbenefit if the proposed translocation of trees did not prove successful (IR406). The Secretary of State also notes the potential conflict with LPCS Policy LD2 and paragraph 118 of the Framework (IR407).

***The weight to be given to policies for the supply of housing***

27. The Secretary of State agrees with the Inspector's assessment at IR409-419 and agrees that the shortfall at 3.63 year supply is significant (IR414). The parties are in agreement

that the shortfall has arisen because of delays in housing delivery from planned Strategic Urban Extensions (IR18). Hence, the Secretary of State is satisfied that poor delivery of housing is the root cause of the shortfall but that this could be addressed through existing policies (IR419). Like the Inspector, he concludes that although Policies SS2, SS3, RA1, RA2 and RA3 have to be considered out-of-date, they can still carry a high degree of weight in this appeal (IR419). He agrees with the Inspector that the appeal proposal would be at odds with LPCS Policies RA1 and RA2 (IR484).

### ***Other matters***

28. For the reasons given by the Inspector at IR434-438, the Secretary of State agrees with the Inspector's conclusions at IR439 regarding the effect on the safety and convenience of highway users. Like the Inspector, he considers that there would not be any severe transport impacts arising from the appeal scheme in accordance with paragraph 32 of the Framework and therefore the matters raised should not weigh materially against the appeal (IR439).
29. With regard to the effect on the living conditions of nearby residents, the Secretary of State agrees with the Inspector's reasoning and conclusions at IR440-445. Like the Inspector, he is satisfied that the living conditions of the residents along the driveway would not be unacceptably affected by the proposed development (IR443), but that the appeal scheme would have an effect on the living conditions of the residents of Field End Cottage on Longworth Lane (IR445). He agrees with the Inspector, that this matter should carry some limited weight against the appeal proposal (IR445).
30. The Secretary of State agrees with the Inspector's assessment at IR446, that although the loss of 0.8 ha of Best and Most Versatile (BMV) agricultural land is a negative aspect of the scheme, it carries minimal weight in the overall planning balance as it has not been raised as a disbenefit.
31. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR447 regarding public transport provision.
32. With regards to sustainable drainage, the Secretary of State agrees with the Inspector's conclusions at IR448, that it is a matter which could be satisfactorily addressed by the proposed planning conditions.

### ***Whether the appeal proposal would represent sustainable development in the terms of the Framework***

33. The Secretary of State agrees with the Inspector's assessment at IR451-453, that a number of real economic benefits would flow from the appeal proposal, thus satisfying the economic role of sustainable development (IR453). He agrees with the Inspector that the economic benefits should be attributed significant weight in accordance with paragraph 19 of the Framework (IR453).
34. With regard to the social role, the Secretary of State agrees with the Inspector's reasoning and conclusions at IR454-461 & 464-466. He notes that the appeal would deliver much needed market and affordable housing and that the parties agree that the delivery of affordable housing, without subsidy, should be given significant weight (IR454). However, like the Inspector, he considers that a development of this size and scale would not represent an appropriate level of growth proposed for such rural settlements through the adopted spatial strategy (IR458) and it would therefore fail to

support the settlement's health, social and cultural well-being, as required by the Framework (IR461). The Secretary of State agrees with the Inspector that these considerations weigh significantly against the appeal proposal (IR458 & 461).

35. The Secretary of State has also had regard to the fact that the appeal scheme would run counter to the expressed wishes of the local community as set out in the emerging BLNDP (IR462) and would be at odds with one of the Framework's core principles that planning should be genuinely plan-led, empowering local people to shape their surroundings (IR463). He shares the Inspector's view that this point weighs heavily against the appeal proposal (IR463), in particular noting that the BLNDP is at a more advanced stage than it was at the time of the inquiry. While the Secretary of State agrees that the social benefits listed at IR465 warrant a moderate to high weight, he concurs with the Inspector's overall conclusion that the social benefits would not outweigh the disbenefits and therefore the proposed development would fail to satisfy the social role of sustainable development, and that this should weigh significantly against the appeal proposal (IR466).
36. With regard to the environmental dimension of sustainable development, the Secretary of State agrees with the Inspector's assessment at IR467-475. He agrees that the proposed development would have an adverse impact on the character and appearance of the appeal site, and would be more or less neutral in ecology and biodiversity terms; although there would be a disbenefit should the impacted trees not be translocated successfully. He agrees with the Inspector's conclusion that notwithstanding the great weight given to the conservation of the designated assets, the public benefits would outweigh the low level of 'less than substantial' harm which would be caused to these assets (IR473). The Secretary of State is also in agreement with the Inspector at IR474 concerning non-designated heritage assets. However, having regard to all the environmental considerations, he agrees with the Inspector's conclusion that the proposed development would fail to satisfy the environmental role of sustainable development, despite the favourable findings on the 'paragraph 134' heritage balance, and this weighs heavily against the proposal (IR475).

### **Planning conditions**

37. The Secretary of State has given consideration to the Inspector's assessment at IR487, the recommended conditions set out at Appendix C of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal.

### **Planning obligations**

38. Having had regard to the planning obligation dated 20 May 2016, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the conclusion at IR296 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework and is necessary to make the development acceptable in planning terms, directly related to the development, and is fairly and reasonably related in scale and kind to the development. However, the Secretary of State does not consider that the obligation overcomes his reasons for deciding that the appeal should be dismissed.

## **Planning balance and overall conclusion**

39. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policies LD1 to LD4, SD1, SS1, SS6, RA1 and RA2, and not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
40. Given that policies for the supply of housing are out of date, the Secretary of State considers that paragraph 14 of the Framework is engaged. He has therefore considered whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the Framework policies as a whole.
41. Weighting in favour of the proposal, the Secretary of State attaches significant weight to the economic benefits (listed at IR470) of the scheme and to the social benefit in terms of providing much needed market and affordable housing (IR470-471). He gives further moderate to high weight to the provision of a community orchard, public amenity space, play area, new footpaths and footways (IR471).
42. However, against this, the Secretary of State gives significant weight to the adverse impact of the proposal on the character and appearance of the surrounding area (IR477). Further significant weight is given to the proposal's failure to protect or enhance what the Secretary of State considers to be a valued landscape and as such would be at odds with paragraph 109 of the Framework (IR477). He also gives significant weight to the inappropriate level of growth the scale of the proposed development would impose on this settlement and would fail to support the settlement's health and well-being (IR479). The Secretary of State gives further significant weight to the conflict with the emerging BLNDP which is at an advanced stage. He also attributes significant weight to the fact that the scheme would not satisfy the environmental role of sustainable development (IR478). In addition to these significant disbenefits, the Secretary of State gives limited weight to the harm to both designated and non-designated heritage assets (IR478). He also affords minimal weight to the loss of BMV land and limited weight as a result of the worsened living conditions which the occupiers of Field End Cottage would experience.
43. With regard to the assessment of the proposal under paragraph 14 of the Framework, the Secretary of State agrees with the Inspector's assessment and overall conclusions (IR476-479 & 481-486). He concludes that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework, taken as a whole (IR482).
44. The Secretary of State's overall conclusion is that the proposal is not compliant with the development plan as a whole and cannot be considered sustainable development. The appeal should therefore be dismissed.

## **Formal decision**

45. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your appeal and refuses planning permission for the development of up to 100 dwellings, with associated open space and community orchard, in accordance with application ref: 143771, dated 19 December 2014.

## **Right to challenge the decision**

46. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
47. A copy of this letter has been sent to Herefordshire Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Philip Barber*

Authorised by Secretary of State to sign in that behalf

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# Report to the Secretary of State for Communities and Local Government

by David Wildsmith BSc(Hons) MSc CEng MICE FCIHT MRTPI

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

Date 29 June 2016

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**TOWN AND COUNTRY PLANNING ACT 1990**

**HEREFORDSHIRE COUNCIL**

**APPEAL BY**

**GLADMAN DEVELOPMENTS LTD**

Inquiry opened on 10 May 2016

Land at Longworth Lane, Bartestree, Hereford

File Ref: APP/W1850/W/15/3051153

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**File Ref: APP/W1850/W/15/3051153**

**Land at Longworth Lane, Bartestree, Hereford**

- 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 Gladman Developments Ltd against the decision of Herefordshire Council.
- The application Ref 143771, dated 19 December 2014, was refused by notice dated 31 March 2015.
- The development proposed is development of up to 100 dwellings, with associated open space and community orchard.
- The inquiry sat for 8 days on 10 to 13 and 17 to 20 May 2016.

**Summary of Recommendation: That the appeal be dismissed.**

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**Procedural Matters**

1. The application was submitted in outline, with only access to be determined at this stage. The proposed development was refused planning permission in March 2015 for 5 reasons as set out in Core Document (CD) 5.2. However, in October 2015 the Council adopted the Herefordshire Local Plan Core Strategy (LPCS) 2011-2031<sup>1</sup>, thereby superseding the Herefordshire Unitary Development Plan (UDP) policies referred to in the reasons for refusal. The Council subsequently indicated, by email, the equivalent LPCS policies<sup>2</sup>.
2. Furthermore, the appellant continued to discuss matters with the Council's Highways Department and reached an agreement regarding footway improvements and amendments to the originally proposed access. As a result, the Council indicated that it would not defend the third reason for refusal dealing with such matters. The appellant also made some minor amendments to the Illustrative Development Framework Plan and consulted with occupiers of properties in the vicinity of the appeal site regarding all these proposed amendments<sup>3</sup>. A list of people consulted is set out in Appendix 4 to the Statement of Common Ground<sup>4</sup> (SOCG).
3. In a Supplemental SOCG<sup>5</sup> the Council and appellant agree that this consultation exercise had been proportionate and sufficient to ensure no interested party would be unacceptably prejudiced. I share that view and consider that there are no reasons why the appeal should not be determined on the basis of these updated plans, as detailed in Appendix D to this Report.
4. The appeal was lodged on 28 May 2015 and was subsequently recovered for determination by the Secretary of State (SoS) for Communities and Local Government by letter dated 21 April 2016. The reason given for recovery is that the appeal involves a proposal for residential development of over 10 units in an area where a qualifying body has submitted a neighbourhood plan proposal to the local planning authority. The SoS did not identify any specific matters upon which he particularly wishes to be informed, so my Report concentrates on matters which flow from the Council's reasons for refusal. Accordingly, I consider the main considerations in this case to be:

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<sup>1</sup> CD 7.1

<sup>2</sup> CD 6.3

<sup>3</sup> Details of the consultation letter and responses can be seen at CD 17.1 to CD 17.6

<sup>4</sup> Document (Doc) 1

<sup>5</sup> Doc 3

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- The effect of the proposed development on the settings of designated heritage assets and on any non-designated heritage assets;
  - Its effect on the character and appearance of the surrounding area;
  - Its effect on areas of ecological or nature conservation interest;
  - The weight which should be given to policies for the supply of housing, in light of the Council's position regarding its 5 year supply of housing land;
  - The weight which should be given to policies in the emerging Bartestree with Lugwardine Neighbourhood Development Plan (BLNDP);
  - Whether the submitted planning obligation would satisfactorily address the impact of the proposed development on local infrastructure.
  - Whether the appeal proposal should be seen as representing sustainable development, in the terms of the Framework; and
  - How the planning balance, involving the benefits and disbenefits of the proposed development, should be assessed.
5. I also address some other matters raised specifically by interested persons, such as highway and access concerns and the effect on living conditions of nearby residents<sup>6</sup>.
6. The SOCG confirms that the proposal is not EIA development and that an Environmental Statement was therefore not required<sup>7</sup>.
7. The Council's fifth reason for refusal related to the absence of a completed planning obligation, and the consequent absence of any legal mechanism by which the Council could require the payment of necessary financial contributions. However, during the course of the inquiry the appellant submitted a unilateral undertaking made under Section 106 (S106) of the Town and Country Planning Act 1990, as amended, which addresses all the Council's concerns in this regard.
8. On 9 May 2016 I visited the locality of the appeal site on an unaccompanied basis. I also visited the northern part of the appeal site on 10 May 2016, and the full site and surrounding area on 16 May 2016, with both of these visits being in the company of representatives of the appellant and the Council, and a number of interested persons. At this latter visit I was asked (and agreed) to view the surrounding area from the roof of Hagley Court. In addition, I undertook a further unaccompanied visit on 17 May, to view the appeal site from a suggested location within the Wye Valley Area of Outstanding Natural Beauty (AONB).

### **The Site and Surroundings**

9. The appeal site lies to the south of the A438 distributor road and to the west of the C1130 Longworth Lane, which meets the A438 at a cross-roads junction to the north-east of the appeal site. The site comprises some 5.42 hectares (ha), made up of 2 distinct parcels of land separated by a field hedge.
10. The southern parcel is part of an Unregistered Park and Garden (UPG) and is also a wood-pasture and parkland 'Habitat of Principal Importance' (HPI) for the conservation of biodiversity, as listed in the Natural Environment and Rural Communities (NERC) Act 2006. The parkland is listed on the Council's Heritage Environment Record (HER) database as Hagley Park/Court Landscape Park, with the Grade II listed Hagley Court lying just beyond the site's western boundary. This part of the site comprises a pastoral agricultural field with several individual and groups of trees, some of which are covered by Tree Preservation Orders (TPOs).

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<sup>6</sup> Docs 22 to 30

<sup>7</sup> CD 3.4 and CD 3.5

11. The northern parcel comprises an old orchard, also designated as a HPI (Traditional Orchard), with a narrow part of the site linking the orchard to the A438. This strip of land currently provides access to the Grade II listed Hagley Hall, which faces the A438, and its associated barn (currently being converted to a dwelling). These properties lie to the east of this access, whilst planning permission exists for the erection of 2 detached dwellings on land to the immediate west. Under the appeal proposals this existing access would provide a pedestrian/cycle and emergency access to the development. A further Grade II listed building, The Forge, lies a little further to the west, also facing the A438.
12. The site's north-western boundary comprises a mature hedgerow behind the rear gardens of properties which face the A438, whilst the north-eastern and eastern boundaries are defined by rear and side gardens of existing residential properties at Malvern Place, Longworth Lane and Hagley Park. This latter development is a 1960s housing cul-de-sac that protrudes westward from Longworth Lane for some 100 metres towards the appeal site. The boundaries between all these properties and the appeal site comprise a mixture of fencing, shrubs and hedgerows.
13. The southern part of the eastern boundary which abuts Longworth Lane comprises a mature hedgerow which overtops an old stone wall and which also contains some mature hedgerow trees. This is where the vehicular access to the site is proposed to be located. The southern and western boundaries are also defined by mature hedgerows, with individual and small groups of trees delineating the boundary edge.
14. Public Right of Way (PROW) LU13 runs from the appeal site's south-eastern corner, adjacent to Sunset Cottages, to its north-western corner adjacent to Hagley Court, where it meets PROW LU29 which runs north to the A438. Further details of the site and its surroundings can be found in Section 2 of the SOCG.

## **Planning Policy**

15. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the appeal be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise. One such material consideration is the National Planning Policy Framework (the Framework), which can override development plan policy if it is not consistent with the Framework's provisions. I therefore summarise the national planning context first.

### *National Planning Guidance*

16. Paragraph 14 of the Framework explains that there is a presumption in favour of sustainable development at the heart of the Framework, and that this should be seen as a golden thread running through both plan-making and decision-taking. It goes on to indicate that where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole; or unless specific policies in the Framework indicate that development should be restricted.
17. Of particular relevance is Framework paragraph 49 which indicates that relevant policies for the supply of housing should not be considered up-to-date if the Council is unable to demonstrate a 5-year supply of deliverable housing sites. At the time the proposal was determined, under delegated powers, the Council acknowledged that it was unable to demonstrate a 5-year housing land supply, but refused

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planning permission because it considered there to be conflict with development plan policies and specific paragraphs within the Framework<sup>8</sup>.

18. Matters have moved on somewhat since the Council's Decision Notice was issued, but notwithstanding the fact that the LPCS was adopted as recently as October 2015, there is agreement between the parties that, the Council is currently only able to demonstrate a housing land supply of 3.63 years<sup>9</sup>. It is further agreed that the shortfall has arisen because of delays in housing delivery from planned Strategic Urban Extensions (SUEs)<sup>10</sup>.
19. Whilst the Framework has to be considered as a whole, Sections 11 and 12, dealing respectively with conserving and enhancing the natural and historic environments are of particular relevance in this case. Also directly relevant is paragraph 216, which explains matters that decision-takers should have regard to when considering the weight to be given to relevant policies in emerging plans.
20. In addition, the Planning Practice Guidance (PPG) initially published in 2014, is a material consideration in the determination of this appeal.

### *The Development Plan*

21. The development plan comprises the Herefordshire LPCS, adopted in October 2015, together with some saved policies of the Herefordshire UDP, although the parties agree that none of the UDP's saved policies are relevant to the appeal proposal<sup>11</sup>. As noted above, the Decision Notice for this proposal was issued prior to the adoption of the LPCS, and therefore refers to policies in the UDP, which have now been superseded. This matter is acknowledged and addressed in the SOCG which lists, in its paragraph 4.2.7, the LPCS policies relevant to the appeal proposal. Details of these policies can be found in full in CD 7.1. Policies SS2, SS3, RA1, RA2 and RA3 are agreed to be relevant policies for the supply of housing and, in accordance with paragraph 49 of the Framework, cannot be considered up-to-date.
22. Also of relevance is the emerging BLNDP for 2011-2031. The Bartestree with Lugwardine Neighbourhood Area was designated by the Council in September 2012 and the draft BLNDP has been the subject of public consultation in accordance with both Regulation 14 and Regulation 16. This latter period of consultation closed in early May 2016, just prior to the opening of this inquiry, and whilst the inquiry was sitting the Council issued a Regulation 17 decision confirming that the draft BLNDP can be forwarded for independent examination. The Submission Version of the plan has the following core objectives:
  - promote sustainable development and accommodate at least 152 new properties in a manner that is appropriate to the character of the village and its countryside setting;
  - control development to avoid expansion into surrounding countryside;
  - provide housing which meets the needs of the diverse and growing community;
  - maintain and develop existing local leisure facilities and amenities in tandem with any new housing development;
  - improve employment opportunities which provide 'added value' for the

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<sup>8</sup> CD 5.2

<sup>9</sup> Section 6.4 of Doc 1

<sup>10</sup> Paragraph 3.19 of CD 7.1 and paragraph 3 of Doc 40

<sup>11</sup> Paragraph 4.3.2 of Doc 1

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- community;
  - improve traffic management in tandem with new housing development;
  - preserve important existing green spaces and create new green space for the community;
  - support householders applications which make use of renewable energy technology to reduce their impact on the environment;
  - maintain the historic separation of the settlements of Bartestree and Lugwardine;
  - maintain the character and surroundings of all heritage assets and preserve historic parklands.

23. Although the UDP did contain settlement boundaries for villages such as Bartestree, these were not saved and there is currently no settlement boundary for the village in the adopted development plan. The BLNDP seeks to address this and has proposed settlement boundaries for both Bartestree and Lugwardine, based largely on the former boundaries contained within the UDP, but re-drawn to encompass a number of housing areas which have recently been granted planning permission (see later). The proposed settlement boundary excludes the appeal site. Paragraph 5.4.5 of the SOCG sets out the emerging BLNDP policies considered relevant to the appeal proposal. Details of these draft policies can be found in full in CD 10.9. Policies BL3, BL4, BL5 and BL8 are agreed to be relevant policies for the supply of housing and, as already explained above, cannot therefore be considered up-to-date.

#### *Supplementary Planning Guidance/Documents*

24. The parties agree that the following documents are relevant to the appeal<sup>12</sup>:
- Landscape Character Assessment Supplementary Planning Guidance (SPG) (2004 updated 2009)<sup>13</sup>
  - Biodiversity SPG (2004)<sup>14</sup>
  - Planning Obligations Supplementary Planning Document (SPD) (2008)<sup>15</sup>

#### **Planning History**

25. No previous planning applications relating directly to the appeal site have been identified, although the SOCG does provide details of applications in the vicinity of the site, and a number of applications elsewhere in Bartestree, all of which are considered to be of relevance to the appeal proposal. Full details are provided in Sections 3.1 and 3.2 of the SOCG, but in summary these include the following:
- Full planning permission for 2 detached dwellings on land to the west of Hagley Hall, together with the conversion of the existing barn, as already referred to above, approved in June 2011<sup>16</sup>.
  - Outline planning permission for the erection of 40 dwellings (including 14 affordable houses) together with the change of use of land to form community open space on land south of the A438 a short distance to the north-west of the appeal site. This was approved in July 2015, following submission of a similar proposal for 60 dwellings which was refused planning permission and appealed, but the appeal was withdrawn upon the grant of

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<sup>12</sup> Sections 5.2 and 5.3 of Doc 1

<sup>13</sup> CD 9.4

<sup>14</sup> CD 9.6

<sup>15</sup> CD 9.5

<sup>16</sup> CD 16.13 to CD 16.16

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- planning permission for the 40 dwelling scheme<sup>17</sup>.
  - Full planning permission for the demolition of redundant buildings and the erection of 3 dwellings, new vehicular access and driveways, on land adjacent to Gateway Nursery, Longworth Lane, Bartestree, approved in February 2014<sup>18</sup>.
  - Outline planning permission for the erection of 30 dwellings (including 10 affordable houses), on land at Quarry Field, Cotts Lane, Lugwardine. This application was refused by the Council and subsequently approved on appeal, in February 2015<sup>19</sup>.
  - Full planning permission for the erection of 50 dwellings (including 18 affordable houses), on land at William's Mead, Bartestree. This application was refused by the Council and subsequently dismissed on appeal in March 2015<sup>20</sup>.
  - Outline planning permission for the erection of 51 dwellings (including 18 affordable houses), on land east of Church House and west of A438, Bartestree. This application was refused by the Council and subsequently approved on appeal, in July 2015<sup>21</sup>.
26. The SOCG also makes it clear that the appellant requested and received pre-application advice from the Council regarding the appeal proposal<sup>22</sup>, and undertook community consultation for the proposal<sup>23</sup>. In addition, the appellant submitted a second planning application for the appeal site in January 2016, but the Council exercised its powers under Section 70B of the Town and Country Planning Act 1990 and declined to determine the application, in view of the pending appeal of the first application and the similarity between the 2 schemes.

### The Appeal Proposal

27. Full details of the proposed development are set out in the appellant's Planning Statement<sup>24</sup> and Design and Access Statement<sup>25</sup>, although there have subsequently been some minor amendments to the proposed access and footpath arrangements, as can be seen on the updated plans<sup>26</sup>. In summary the application relates to an outline proposal for up to 100 dwellings, of which up to 35 would be affordable.
28. The sole vehicular access would be from Longworth Lane, just to the south of the Hagley Park cul-de-sac. The Illustrative Development Framework Plan<sup>27</sup> suggests that the whole of the northern parcel of the appeal site would be developed with medium density housing, whilst only about half of the southern part would be developed, with medium density housing wrapping round the Hagley Park cul-de-sac and sitting to the south of the proposed access road, and lower density housing along part of the site's southern boundary. The western side of the southern field would not be developed, but would provide a buffer of some 50m-70m wide and about 200m long, between the proposed housing and Hagley Court.

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<sup>17</sup> CD 16.17 to CD 16.20

<sup>18</sup> CD 16.21 to CD 16.22

<sup>19</sup> CD 16.23 to CD 16.25

<sup>20</sup> CD 16.26 to CD 16.28

<sup>21</sup> CD 16.29 to CD 16.31

<sup>22</sup> CD 3.3

<sup>23</sup> CD 1.21

<sup>24</sup> CD 1.23

<sup>25</sup> CD 1.6

<sup>26</sup> Drawing No C14298/005 Rev P11

<sup>27</sup> Drawing No 6122-L-02 Rev T

29. The overall development would provide in excess of 2.0 ha of green infrastructure, to include existing mature trees and boundary vegetation, open space, and sustainable drainage, along with a Local Equipped Area For Play (LEAP) and a community orchard. This latter feature would be created by translocating 36 living and dead trees from the northern parcel of land into the southern parcel, to the west of the Hagley Park cul-de-sac, and supplementing them with some 29 new fruit trees.
30. The existing PROW which crosses the site would be re-routed close to the site's southern and western boundaries, with new footpath links also proposed, including to the northern site access to the A438, which would be available for pedestrians and cyclists, and would also serve as an emergency access to the overall development. Off-site improvements, agreed with the Council as local highway authority, include the provision of a stretch of footway on the southern side of the A438, extending an existing footway to the village shop, and provision of some lengths of footway on the western side of Longworth Lane.

### **Other Agreed Facts, and Matters not Agreed**

31. In addition to the matters outlined above, the main SOCG also confirms that agreement has been reached between the appellant and the Council under the following broad headings: settlement sustainability, site status and designations; affordable housing; design, indicative layout and residential amenity; heritage, archaeology; flood risk and drainage; landscape; trees; ecology; agricultural land; economic benefits; and land contamination.
32. Further areas of agreement on highways and transport matters are set out in the SOCG made between the appellant and the Council as highway authority<sup>28</sup>. These cover such topics as the transport assessment and its study area; existing highway infrastructure; traffic surveys; existing public transport provision; the proposed site access arrangements; on-site car parking provision; the extent of accessibility of the proposed development by sustainable transport; and traffic impact analysis for the proposed development. There is also general agreement on the form of a Residential Travel Plan aimed at encouraging residents of the proposed development to travel by means other than the private car.
33. The main SOCG also sets out the principal matters on which the parties do not agree<sup>29</sup> and these are explored under the main considerations, later in this Report.

### **Cases of the Parties**

#### ***The Case for the Council***

The material points were:

#### *Introduction*

34. It is uncontroversial that this appeal must be determined in accordance with the development plan unless material considerations indicate otherwise. Importantly, there is a very recently adopted LPCS, which is functioning as planned in Bartestree with Lugwardine Parish (BLP). The LPCS seeks to set out a spatial strategy for the County while planning positively to meet all of the County's objectively assessed needs (OAN). In BLP, the LPCS is on track to be supplemented by the BLNDP.

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<sup>28</sup> Doc 2

<sup>29</sup> Section 8 in Doc 1

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35. The Council accepts that it cannot currently demonstrate a 5-year housing land supply (5YHLS), due to delays in the planned for SUEs coming forward. This is a significant material consideration in this appeal, especially in view of what the Framework requires when a local planning authority cannot demonstrate a 5YHLS. While still keeping the emerging BLNDP in mind, the question in this case largely reduces to whether the material consideration arising from a lack of a 5YHLS outweighs what the Council asserts would be a clear breach of the development plan.

### The Development Plan

#### *(i) Spatial strategy*

36. Consideration of the LPCS's spatial strategy informs later judgments about the weight that can be given to the development plan in light of the shortfall of housing land supply. It is the Council's submission that the LPCS seeks to distribute housing in the County in a carefully considered and clearly defined manner. The inter-connected policies through which this spatial strategy can be seen, in the context of this appeal, are policies SS2, RA1 and RA2.
37. Policy SS2 sets out that the 'focus for new housing development' is Hereford, with the 'main focus' outside of Hereford being the market towns of Bromyard, Kington, Ledbury, Leominster and Ross on Wye. In rural areas, a more considered approach is required, with regard needing to be had, in accordance with the policy, to a number of settlement-based criteria. It is policy SS2 that sets out the broad distribution of housing in the County, with rural areas having a minimum of 5,300 new homes of the overall total of 16,500 required during the plan period.
38. Policy RA1, entitled 'Rural housing distribution', deals with the finer grain of where housing will actually go in rural areas. It is made clear in this policy that housing is intended to be 'broadly distributed' across the County's rural areas, with the 5,300 total housing number further refined to housing market areas (HMAs) based upon 'the different housing needs and requirements' of those HMAs. The policy goes on to state that the 'indicative housing growth targets' in each of the rural HMAs will be used as a basis for the production of neighbourhood development plans (NDPs).
39. These 'indicative housing growth targets' are then set out in the table which accompanies Policy RA1. This shows that approximately 1,870 dwellings need to be provided within the Hereford HMA over the plan period, amounting to an indicative housing growth target of 18%. The figures in this table are not meant to add up to 100%, but rather describe the relative increase in population sought in each HMA.
40. Further detail regarding the distribution of housing in rural areas is then obtained from policy RA2. Of particular relevance is the second paragraph of this policy, which is directed towards how growth will be realised at individual settlements. It provides that the minimum growth target in each HMA 'will be used to inform the level of housing growth to be delivered in the various settlements set out in figures 4.14 and 4.15' of the LPCS. The supporting text refers to 'sensitive and appropriate housing growth' for these settlements.
41. This shows that there is a clear strategy which washes down to an individual settlement level, and which at this level provides for indicative minimum housing growth having regard however to particular criteria, which further guide what sort of development will be acceptable. To give meaning to the text in RA2, and the considered description of 'proportionate housing' development as seen in figures

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4.14 and 4.15, it is necessary to apply the percentage indicative housing growth target to individual settlements as indicative minima of housing growth.

42. To adopt this approach would be consistent with the indication in RA1 that housing should be 'broadly distributed' across the country's rural areas, and it also provides an easily applied basis to calculate the amount of housing which NDPs should aim – as a minimum – to deliver. Moreover, by the careful acknowledgement of 'minimum' and 'indicative' targets, and the reference to environmental and local factors in RA1 and the criteria in RA2, it provides the flexibility to accommodate higher levels of growth where sought and when appropriate. Policy RA3 sets out criteria which need to be met by housing proposals in rural locations outside of settlements as to be defined by NDPs, or by the Rural Areas Sites Allocation DPD.
43. With these matters in mind, it is possible to test the appeal scheme's compliance with the development plan's spatial strategy. In this regard, there is no dispute that the indicative minimum for the BLP is 152<sup>30</sup> dwellings to 2031, and that the large-scale and small-scale sites with planning permission have provided for 146<sup>31</sup> houses to date. This means that BLP is only some 6 houses short of the indicative minimum figure, with just 5 years of the plan period elapsed. If the appeal proposal was to be allowed, it would mean that at least 246 dwellings would be provided within the settlement, representing about a 29% increase compared to the existing number of households, well in excess of the 18% indicative minimum target<sup>32</sup>. In this regard the fourth reason for refusal contends, in essence, that further, large scale unplanned growth would be unnecessary, would not promote a healthy, inclusive community and would undermine the quality of life and community cohesion.
44. The small-scale sites that have contributed to the overall number of 146 units amount to 25 units, and if similar small-scale permissions were to be achieved over the remaining three-quarters of the plan period, approximately 220 houses would be delivered in BLP during the whole of the plan period. Although the appellant points out that the nature of further infill and windfall development is uncertain, and that the Council's housing trajectory only allocates 50 units per year to windfalls<sup>33</sup>, the fact remains that BLP is comfortably on course to exceed its minimum indicative target by a very healthy margin. This would be the case even allowing for a lesser number of infills and windfalls in future quarters, and notwithstanding the fact that the Council has acted responsibly in anticipating a conservative amount of windfalls in its housing trajectory.
45. Furthermore, positive support is provided in the emerging BLNDP for windfall and infill development, as well as for rural exception sites to provide affordable housing, reinforcing the fact that there is scope for the figure of 220 houses to be well exceeded without further large-scale allocations.
46. Taken together, from a spatial strategy point of view, it is clear that BLP is performing well and meeting the objectives of the spatial strategy in its area. This is relevant to the weight to be given to the housing supply policies that apply in this matter, because they are not failing so far as BLP is concerned. Rather, the area in which housing supply is falling down is in the delivery of the SUEs, which are now expected to deliver housing later in the plan period.

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<sup>30</sup> 18% of the current number of households in the parish - 846

<sup>31</sup> See Tables 1, 3 and 4 in Doc HC/1/P, updated orally by Mrs Soilleux's evidence to the inquiry that a further dwelling was granted planning permission in May 2016

<sup>32</sup> Paragraph 6.22 of Doc HC/1/P (noted as 245 dwellings rather than the 246 subsequently agreed at the inquiry)

<sup>33</sup> Doc 36

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47. Insofar as the criteria for acceptable development in rural areas is concerned (ie the local evidence and environmental factors referred to in Policy RA1, and the high quality, sustainability and landscape setting points set out in Policy RA2), these are addressed in respect of the specific environmental Policies LD1–4. Breach of these specific environmental policies leads, in the Council's submission, to breach of Policies RA1 and RA2 also.

*(ii) Weight to be given to the environmental quality and local distinctiveness policies*

48. The Council agrees with the appellant that LPCS Policies LD1, LD2 and LD3 should be accorded full weight<sup>34</sup>, but contends that Policy LD4 should be also given full weight. The appellant's argument for Policy LD4 carrying reduced weight centres on what it sees to be an inconsistency of this policy with the Framework. The appellant also suggests that the weight to be given to this policy should be reduced because the LPCS does not include a plan showing the extent of Hagley Park<sup>35</sup>.
49. However, it is the case that the LPCS was assessed only very recently, with the examination Inspector being satisfied that it complies with national policy except where indicated, and where modifications were recommended. Those modifications included changes to Policy LD4 which were accepted by the Council (save in minor respects which do not alter the policy's meaning in any substantive way). This recent assessment of compliance with national policy is entitled to be given significant weight<sup>36</sup>. Furthermore, the appellant's planning witness, Mr Lane, accepted that the wording of the policy text of LD4 is consistent with national policy, and allows judgements to be made both about the relative significance of a relevant heritage asset, and the degree of harm to that asset.
50. The apparent concern that Policy LD4 does not copy out the Framework's respective tests for assessing harm does not make this policy inconsistent with the Framework. Plainly, a decision maker is not precluded from taking such an approach, or from (properly) having regard to the need to give considerable importance and weight to the desirability of preserving listed buildings or their settings, in accordance with section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
51. Ultimately, the appellant's principal concern was its view that in the supporting text to Policy LD4, in the third sentence in paragraph 5.3.27 in particular, the LPCS applies the wrong test to assessing harm. However, this sentence says nothing about how loss or substantial harm to a heritage asset or its significance is outweighed, and simply recognises that substantial harm may be a judgment about the degree of harm that may arise. In these circumstances the supporting text states that developers shall, in a manner proportional to its importance, record and advance understanding of the heritage asset.
52. This relates to the fourth criterion in Policy LD4, which refers to recording and advancing the understanding of heritage assets. Accordingly, this supporting text neither purports to be the 'test' of harm as contended by the appellant, nor in any way constrains how a decision taker should go about assessing the degree of harm in any particular case. There is therefore no reason for alleging inconsistency with the Framework on the basis of this paragraph.

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<sup>34</sup> Paragraphs 5.2.40 – 5.2.42 in Doc GDL/1/PA

<sup>35</sup> Which was otherwise agreed (i) to be an historic park and garden designated by the LPCS in appendix 8d, and (ii) to cover the southern field of the appeal site

<sup>36</sup> See Paragraph 79 of CD 8.2

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53. As to the Hagley Park plan, from the pre-application stage the appellant has been fully aware that the appeal site's southern field forms part of the designated park and garden identified in the LPCS (and previously in the UDP), as Hagley Park/Court<sup>37</sup>. The appellant also acknowledges that Hagley Park appears in the Council's HER.
54. The appellant's very late made complaint about a lack of a plan showing the extent of Hagley Park may have been the basis for an objection to the LPCS's Appendix 8d (where, like all other UPGs, Hagley Park is listed by a grid reference) at the LPCS examination, but it is not a matter that can now support a claim that reduced weight should be given to this policy. Moreover, the appellant's arguments in this regard are not assisted by reference to paragraph 141 of the Framework, as this is simply a policy directing local planning authorities to share information they hold. It is not a policy that directs that information shall be gathered. In all these circumstances policy LD4 should be given full weight. It is consistent with national policy.

*(iii) Breach of the environmental quality and local distinctiveness policies*

55. The appellant accepts that the proposed development would give rise to a breach of Policy LD4, arising from a loss of a portion of Hagley Park, but argues that this would be limited to that part of the southern field on which houses would be built. The appellant further accepts that in these circumstances, and if Policy LD4 is not considered to be inconsistent with the Framework, then this loss would also be likely to amount to a breach of Policy LD1. This is because this latter policy provides that development proposals should 'conserve and enhance ... locally designated parks and gardens...', and the loss of a material part of a non-designated park and garden does not amount to either its conservation or its enhancement.
56. However, the Council maintains that the parkland loss arising from the appeal proposal would extend to the whole of the southern field, as orchards are not seen within parklands and parkland trees are not surrounded by built development, even with small areas of grass beneath them<sup>38</sup>. As such, the parkland identifiable at present by the majority of the relevant experts<sup>39</sup> would be unrecognisable as parkland if the appeal scheme were to proceed.
57. Combined with the loss of the historic boundary along Longworth Lane (wall and hedgerow), there would be a clear breach of the requirement under Policy LD1 to conserve and enhance Hagley Park. The parkland's character would not be protected, and the introduction of housing, public amenity space, roads and formalised footways, would not be an appropriate use, design or management of this southern field.
58. In the Council's view there would also be a further breach arising under Policy LD1 by reason of landscape and visual harm. The Landscape and Visual Impact Assessment<sup>40</sup> (LVIA) submitted with the application sets out the appellant's assessment on the landscape and visual effects of the appeal proposal, and comes to the overall conclusion that it could successfully integrate into the local surroundings without any unacceptable landscape or visual effects<sup>41</sup>.

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<sup>37</sup> Page 12 of CD 3, and page 2 of CD 3.5

<sup>38</sup> Paragraph 12.2.3 in Doc HC/4/PA, and paragraph 34 in CD 11.22

<sup>39</sup> A point accepted at the inquiry by Mr Beardmore, Ms Lowe, Ms Tinkler, Dr Mansfield, but not by Mr Jackson

<sup>40</sup> Doc 1.7

<sup>41</sup> Section 9 of CD 1.7

59. However, the Council's landscape witness, Ms Tinkler takes a different view insofar as the impact on the County level landscape character type (LCT) 'Principal Settled Farmlands' is concerned<sup>42</sup>, pointing out that the SPG<sup>43</sup> notes that for this LCT, additional housing in hamlets and villages should be modest in size in order to preserve the character of the original settlement. She also takes a different view regarding the impact of the proposed development from a number of the identified viewpoints, where she concludes that the level of effect would be higher than assessed by the appellant<sup>44</sup>. Overall she maintains that the proposed development would give rise to permanent adverse effects on all of the landscape and visual receptors identified in the studies.
60. The principal differences between the Council's and appellant's assessments of landscape impacts relates to the consideration of the parkland characteristics of the southern field, its historic elements, and in respect of the northern orchard field, the contribution made to value by the orchard being an 'ideal' HPI for the noble chafer beetle<sup>45</sup>.
61. Insofar as the historic and parkland elements of landscape are concerned, there is an overlap between the matters relating to the failure to conserve and enhance the parkland in accordance with the second bullet point of Policy LD1, and the broader landscape and visual matters captured under the first bullet point. In terms of the broader assessment, the appellant's evidence glosses over key characteristics of the landscape that contribute greatly to its value. This includes both the designation of the southern field as an historic UPG, and the elements of the parkland that demonstrate its designed history.
62. These elements are the distinct and picturesque Lime clumps, identified as relating to a parkland; the evidence of deliberate placing of the Lime clumps to frame the journey from Longworth Lane across Hagley Park to Hagley Court, together with the framed views that would have been enjoyed as a consequence; and the association between the parkland of the appeal site and Hagley Court. These elements, when properly judged, and taken together with the other matters discussed in the Council's landscape evidence, make it clear that the southern field of the appeal site has a high value. Because of this, the changes proposed would result in the medium to high degree of change and so major to moderate negative effects described by Ms Tinkler.
63. With regard to the orchard in the northern field, the appellant's approach is inconsistent, as while the appellant is prepared to see the replacement orchard as part of the appeal scheme as beneficial in landscape terms, it does not ascribe value to the same landscape in situ. The traditional orchard is a diminishing asset and has a high quality as a HPI, which has been assessed in its present state as being an ideal habitat for the invertebrates on the orchard. Combined with the impacts on settlement pattern, and in particular the introduction of housing in an incongruous location to the south of the A438, these matters further show that the appeal scheme would result in a breach of Policy LD1.
64. There would also be visual harm arising from the appeal scheme, including the fact that the parkland trees would no longer be set in an attractive expanse of grassland, but would instead be seen against and in the context of nearby housing. This harm

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<sup>42</sup> Paragraphs 7.4.14 to 7.4.26 of Doc HC/3/PA

<sup>43</sup> CD 9.4 - Landscape Character Assessment SPG – 2004, updated 2009

<sup>44</sup> Section 7.8 of Doc HC/3/PA

<sup>45</sup> See Paragraph 4.30 of CD 1.10

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would be particularly experienced by users of the PROW, who include users from outside of the local community, such as long-distance walkers who may use Longworth Lane and the PROW across the site as an alternative to some sections of the Three Choirs Way. The appellant's lower assessment of harm (stated to be medium adverse), reflects its failure to properly consider the impact that the appeal scheme would have upon the designed aspects of the parkland.

65. The Council considers that if properly assessed, the level of harm would be higher, and further considers that these matters demonstrate that the appeal scheme would result in a breach of Policy LD3. The appeal site's key characteristics, touched upon above, show why it should be treated as a valued landscape for the purposes of Policy LD3, and should also be treated as a valued landscape for the purposes of paragraph 109 of the Framework.
66. Insofar as Policy LD2 is concerned, harm would be caused to the nature conservation value of the traditional orchard and the invertebrate species inhabiting the orchard, including the noble chafer beetle. The appellant accepts, as set out in the Ecological Appraisal<sup>46</sup> (EA), that the orchard in its present state provides 'ideal conditions' for the noble chafer beetle, which delights in the presence of deadwood in fruit orchard trees<sup>47</sup>. The EA indicates that the orchard contains 35 trees, 12 of which are dead, with many of the remainder having significant deadwood and being moribund, and concludes that these conditions mean that there is a substantial likelihood of there being a noble chafer population inhabiting the orchard. In addition, the 2014 Invertebrate Survey<sup>48</sup> confirmed the biodiversity value of the orchard area to invertebrates especially saproxylic (wood loving) feeders, documenting 68 species of invertebrate of which 7 were found to be of rare or scarce occurrence.
67. Though the appellant seeks to rely upon the success of the proposed translocation of the traditional orchard, the merits of disturbing the orchard and risking both the trees themselves and the habitat for the noble chafer beetle have not been established. If left untouched the orchard is likely to continue to provide a habitat for the noble chafer beetle for a further 50 years or so. There is, therefore, a very long window of time during which a regime of management could be introduced to maintain the orchard for a longer period of time.
68. Furthermore, the proposed replacement orchard, even if able to be successfully relocated, would be significantly smaller than the current northern orchard field, and unlike the Iwade example relied upon by the appellant<sup>49</sup>, would not involve the retention of any of the existing habitat. This means that there would neither be the safety net of being able to retain at least a portion of the existing habitat, nor the opportunity for the invertebrates on site to in effect find their own equilibrium and seek to return to the original habitat should the translocation fail. Furthermore, there would be a long period of time before succession planting would provide new habitat for the noble chafer beetle<sup>50</sup>.
69. As to the prospects of the translocation succeeding, despite the appellant's predictions of a near complete success rate, the Council's ecology witness, Dr Widdicombe, detailed a long list of risk factors that militate against translocation

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<sup>46</sup> CD 1.10

<sup>47</sup> Paragraph 4.30 of CD 1.10

<sup>48</sup> CD 1.14

<sup>49</sup> Section 4 in Doc GDL/3/P and paragraphs 6.11 to 6.27 in Doc GDL/4/P

<sup>50</sup> At least 30 years, as Ms Kirk sets out in her evidence at paragraph 5.33

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being successful<sup>51</sup>. He also noted that some of the trees on the appeal site are significantly larger than the plum trees moved at Iwade. Overall, the Council disagrees about the success of the proposed translocation, and cites the concerns of Chris Fairs<sup>52</sup>, who has over 40 years in the management of apple orchards. It is his experience that is most relevant to the trees in question, and casts significant doubt upon the appellant's predictions of a high success rate.

70. Having regard to the above points, it is clear that the appeal proposal would be 'development that would be liable to harm the nature conservation value of a site or species of local conservation interest', as referred to in part 1(c) of Policy LD2. The Council maintains that the importance of the development would not outweigh the local value of the site, habitat or physical feature that supports important species, and there is a breach of Policy LD2 for this reason.
71. There would also be a breach of this policy by reason of the development of the parkland in the southern field which is also a HPI. Such areas are the product of distinctive, historical land management systems, typically comprising large, open-grown trees in grazed grassland and providing valuable habitat for fungi, lichens and invertebrates. The introduction of built form and public open space into this parkland area would sever the relationship between the trees and the grassland, resulting in a permanent and substantial loss of some 50% of this wood pasture habitat.
72. There would also be harm to the hedgerow HPI through a loss of some 60m of hedgerow on Longworth Lane, in order to maintain sight lines at the proposed access, and there would also be a loss of some 10-15m of hedgerow internal to the site to allow the internal road to pass into the northern field. Moreover, hedgerow removal on Longworth Lane has the potential to significantly impinge upon the root protection area of a TPO protected European Lime tree, listed as T24 in the Arboricultural Assessment and assessed as a 'Category B' tree for retention<sup>53</sup>.
73. In addition to the conflict with Policy LD4 already detailed above, this policy is further breached by reason of the harm that would be caused to the significance of the listed buildings adjacent to or near to the appeal site, namely Hagley Court, Hagley Hall and The Forge.
74. In respect of Hagley Court, there was a helpful narrowing of issues at the inquiry through the cross-examination of the appellant's heritage witness, Mr Beardmore. In particular, it was agreed that Hagley Court was designed as a country house within a rural setting, which comprised Hagley Park, including the adjacent appeal site. The appellant accepted that the sales particulars from 1817, 1824 and 1913 established a nexus between Hagley Court and Hagley Park<sup>54</sup>, and also accepted that the matters set out in Mr Beardmore's proof of evidence<sup>55</sup> did not disassociate Hagley Court from Hagley Park in the period up to 1886 (being the date of the relevant Ordnance Survey (OS) mapping).
75. The OS mapping for 1905 and 1930 shows clear shading of an area of land around Hagley Court, including the southern field of the appeal site, which the appellant agreed was representative of a mapping technique to illustrate parkland. The high

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<sup>51</sup> Paragraphs 4.2.6 to 4.2.8 of Doc HC/2/PA

<sup>52</sup> Appendix F to Doc HC/2/PA. Chris Fairs is a former Grower's Advisory and Contracts Manager with over 40 years service with the cider makers Bulmers of Hereford

<sup>53</sup> CD 1.15

<sup>54</sup> Docs 7, 8 and 9

<sup>55</sup> Paragraph 3.15 in Doc GDL/2/PA

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point of the appellant's case on this matter is that the incursion of the housing in the Hagley Park cul-de-sac, as well as the boundary planting that was established shortly after to screen views of this housing from Hagley Court, means that the appeal site contributes little to the significance of Hagley Court.

76. Despite relying upon the Historic England (HE) guidance on the 'Setting of Heritage Assets'<sup>56</sup>, the appellant has ignored the wider non-visual matters set out at page 9 of this guidance. Although Mr Beardmore maintained that he had taken these factors into account, his willingness to disregard the historic associations between Hagley Court and the appeal site and to emphasise visual separation matters demonstrates that he had, in any event, failed to give them sufficient weight.
77. In contrast, the Council's heritage witness, Ms Lowe, not only applied the above guidance, but also applied the matrix for assessing harm from the English Heritage<sup>57</sup> publication, 'Seeing the History in the View'<sup>58</sup>, as this guidance is stated to have 'wide applicability'<sup>59</sup>. Ms Lowe has made particular use of Table 1 'Value/Importance of Individual Heritage Assets Identified within the View'; Table 2 'The Magnitude of the Cumulative Impact of Proposals on Heritage'; and Table 5 'Magnitude of Impact against Value'. On this basis the Council's case is that the appeal site continues to make a very large contribution to the significance of Hagley Court.
78. This assessment has taken account of the fact that following the sale of a portion of Longworth Park in 1817, Hagley Court was designed for a landscape that was partly natural but also partly existing designed parkland. It was positioned to take advantage of high ground and the local topography to capture 180° views to the Malvern Hills in the east, to the Black Mountains in the west, to the River Lugg in the south-west and on to the Wye Valley AONB. The ability to enjoy these views was enhanced by the construction of a promenade walk to a promontory to the south of Hagley Court<sup>60</sup>. Hagley Court's original design, therefore, was as a country house placed in a rural parkland setting and separated from the adjacent settlement.
79. With the new house in place the parkland was then further developed to enhance the views to and from Hagley Court. The adoption of parkland, alone, emphasises the connection between Hagley Court and the appeal site, with the appeal site forming part of the designed landscape around Hagley Court from its inception. Furthermore, the adaptation of the parkland is evidenced by the creation of the driveway to Longworth Lane from Hagley Court, evident on all of the mapping and apparent on the LIDAR image, and the designed location of the clumps of Lime trees along this route, in a way that enhances its beauty.
80. This driveway would have enabled a shorter route to church and to Ledbury, and research suggests that the clumps of common Lime were planted soon after the building of the house in about 1825<sup>61</sup>, with Ms Tinkler's evidence referring to them as ornamental 'eye-catchers', planted to frame views to and from Hagley Court along the driveway through the parkland<sup>62</sup>. The 1839 Tithe map<sup>63</sup> indicates that this section of the park was called the Sheepwalk, and the pastoral scene would have

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<sup>56</sup> CD 14.3

<sup>57</sup> Now Historic England

<sup>58</sup> Appendix B to Doc HC/4/PA

<sup>59</sup> Page 5 of Appendix 2 to Doc HC/4/PA

<sup>60</sup> Paragraph 9.1.11 to Doc HC/4/PA

<sup>61</sup> Section 9 of Appendix 1 to Doc HC/4/PA

<sup>62</sup> Paragraph 5.3.17 to Doc HC/3/PA

<sup>63</sup> Doc 14

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likely been sheep, or cattle as was common, grazing the land with trees strategically placed to guide the eye to views near and far.

81. Also of note is the fact that the boundary with Longworth Lane consists of a mixed species hedge which for at least part of its length is atop an historic dry stone wall. This wall is acting as a retaining wall as the parkland is at a height of at least a metre above Longworth Lane. The need for the wall may have resulted from a deliberate increase in the parkland land level, to give a sense of status to those within the parkland compared with those on the turnpike, and to maintain the views towards the Malvern Hills from the driveway.
82. Using the 'Seeing the History in the View' methodology, it is the Council's case that Hagley Court should attract medium significance as a heritage asset, with the impact of the proposed development being high adverse, leading to an overall major adverse effect on significance. This would place the level of harm towards the high end of the 'less than substantial' scale, in Framework terms<sup>64</sup>.
83. For the UPG, and taking the Sheepwalk as the main area of interest, as well as having regard to the other important features detailed above, the Council considers that it should be categorised as having medium significance. The proposed development would have a high adverse magnitude of impact on this UPG as a result of the substantial loss of open parkland and the loss of the hedgerow and stone wall, together with the destruction to the character of the parkland by the installation of a new access road, visibility splays and realigned hedging. There would also be an adverse impact on the setting of this area of parkland due to the proposals to build on the traditional orchard, and by inappropriately providing the community orchard within the remaining parkland area. Overall this would result in a major adverse effect on the significance of the UPG.
84. In respect of Hagley Hall and The Forge, the Council considers that the present, rural backdrop contributes to the significance of both of these buildings, helping to place them in their original rural context to which they have both been historically linked. Hagley Hall Barn is positioned at the rear of the main plot, adjacent to the orchard which comprises the northern part of the appeal site, and is marked on the historic maps as belonging to Hagley Hall. Recent research has shown that the barn may originally have had workers' accommodation on the upper floor, with stabling and the storage of wheeled vehicles below.
85. Whether these vehicles were carriages or agricultural wagons is not known, but as Hagley Hall had a reasonable acreage of orchard it is natural to assume that at least one wagon would have been required. During the second half of the 19th century records do not indicate that the occupiers of Hagley Hall had a main business involving the orchard, although it is known that latterly, 2 families ran coal merchant businesses from the site. It is likely therefore that coal wagons would have been stored in the barn, but their focus would have been the main road to the north not the orchard to the south. Nevertheless, the proximity of the barn to the orchard is clearly of significance to this curtilage listed heritage asset.
86. The significance of Hagley Hall is a central focus of views from the A438 and the curtilage barn is within that view but does not form the main focus. Using the 'Seeing the History in the View' methodology these assets are considered to be of medium value and the magnitude of impact of the development on them is considered to be in the medium adverse category. This is due to the loss of the

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<sup>64</sup> Paragraphs 9.3.6 to 9.3.9 of Doc/HC/4/PA

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direct connection with the agricultural landscape and its replacement with built development. Combining a medium value with a medium magnitude of impact leads to an overall impact of moderate adverse.

87. The significance of The Forge does not just arise from the fabric and construction of the building itself, or the fact the forge and bellows are still in place. The connection between the business and rural life, including the road to the front and the orchards and fields to the rear, are also important as they provide the historic social context and reinforce the strong link between the business and its source of work.
88. Using the same 'Seeing the History in the View' methodology, The Forge is a central focus of views from the A438, and this asset is considered to be of medium value. The proposed development would remove the fundamental and historic link between the working forge, the rural working landscape and day-to-day work provided by the latter to the former, and again would be in the medium adverse category, leading to an overall moderate adverse impact.
89. For both Hagley Hall and The Forge, the harm which would arise from the appeal proposal would be towards the centre to higher end of the 'less than substantial' scale in the terms set out in paragraph 134 of the Framework. This demonstrates a further basis by which the proposed development would conflict with Policy LD4.

*(iv) Conclusion on compliance with the development plan*

90. Taken either as a whole or individually, the above matters demonstrate that the appeal proposals are not in accordance with the development plan. This includes having applied the weighted balance in Policy SS1 (which replicates paragraph 14 of the Framework), for the reasons set out in further detail below. It follows that unless material considerations indicate otherwise, this appeal should be dismissed by reason of the conflict with the development plan.

*Other material considerations*

*(i) The Framework*

91. As already noted, it is common ground that the Council cannot presently demonstrate a 5YHLS. The SOCG explains that the 5 year housing requirement is 5,704 dwellings, equating to 1,141 dwellings a year, but the Council can currently only demonstrate a deliverable supply of 4,140 dwellings, amounting to a 3.63 year supply. This means that paragraphs 14 and 49 of the Framework are engaged. Following the approach set out in the Forest of Dean judgement<sup>65</sup>, in the particular circumstances of this case, a 2-stage assessment is required. First, consideration must be given to whether the appeal should be refused applying the straightforward balancing exercise in paragraph 134 of the Framework; and second, if the appeal is not refused at this first stage, consideration must be given to whether there are adverse impacts of the appeal scheme which would significantly and demonstrably outweigh the benefits.
92. In the Council's submission, essentially for the reasons already detailed, the appeal falls to be dismissed at the above first stage, by reason of the high level of harm that would be caused to Hagley Court. It is the harm to this heritage asset that the Council considers outweighs the accepted public benefits of the proposed development. But if the second stage is reached, a judgment will have to be made

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<sup>65</sup> CD 12.12 - Forest of Dean District Council v Secretary of State for Communities and Local Government [2016] EWHC 421 (Admin)

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as to the weight to be given to the policies relevant to the supply of housing. This not being a matter that is resolved by simply identifying that these policies are out of date. Instead, it is necessary to judge what weight to give these policies in the particular circumstances of this case<sup>66</sup>.

93. Regard must be had to matters such as the extent of the 5YHLS shortfall; the length of time this shortfall is likely to persist; the steps the Council could readily take to reduce it; and how much of the deficit the proposed development would meet<sup>67</sup>. But these matters are not determinative of the appropriate weight to be given to the relevant policies for the supply of housing in the particular circumstances of this case. This is for 2 reasons.
94. First, and most importantly, is that insofar as BLP is concerned, it is more than on track to accord with the spatial strategy discussed above. That is, it is more than on track to provide a proportional amount of housing that reflects the objectives of the LPCS for housing in rural areas. The housing shortfall that exists relates to the delay in providing the SUEs. It would be a marked and very substantial conflict with the spatial strategy of the LPCS if small rural settlements were required to redress this present delay.
95. Second, and in accordance with LPCS Policy SS3, the Council has put in place measures to seek to overcome the current housing shortfall. Initially, those measures have involved the identification of 2 Assistant Directors to tackle the main obstacles to the SUEs being delivered. It is also proposed that an interim position statement will be issued utilising evidence from the Strategic Housing Land Availability Assessment (SHLAA) to identify additional housing land<sup>68</sup>.
96. The appeal site would not come forward for housing through that process as, under the current methodology, sites which are considered to have 'no potential', include Historic Parks and Gardens (both registered and unregistered) and UK BAP habitat and Priority Inventory Habitat sites, now subsumed into the HPI regime. Moreover, sites categorised as having 'low potential' include those where development is likely to adversely affect the setting of designated sites and features of historic importance such as listed buildings and registered and unregistered parks and gardens.
97. In light of these matters, the Council's submission is that at least significant weight should be attached to the policies for the supply of housing.
98. During the course of the inquiry, the appellant introduced SHLAA extracts that were obtained from the Bartestree with Lugwardine Parish Council (BLPC or 'the Parish Council') website<sup>69</sup>. However, these extracts, which were provided by the Council to BLPC to assist it with its BLNDP preparation were not subject to consultation, nor published by the Council. Moreover, they were not prepared in accordance with the Council's current SHLAA methodology<sup>70</sup>. In these circumstances the Council submits that these SHLAA extracts cannot assist in the resolution of this appeal.
99. Having regard to the above points, and notwithstanding the accepted benefits of the appeal proposal, as set out in the SOCG, the Council maintains that the adverse impacts of granting permission (being the landscape, heritage and ecology matters

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<sup>66</sup> CD 12.10 - Suffolk Coastal District Council v Secretary of State for Communities and Local Government & ors [2016] EWCA Civ 168, at [47 – 48]

<sup>67</sup> Paragraphs 5.2.8 to 5.2.34 in Doc GDL/1/PA

<sup>68</sup> Paragraph 4.18 in Doc HC/1/P

<sup>69</sup> Doc 6

<sup>70</sup> Paragraph 5.18 in Doc HC/1/P

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already discussed), significantly and demonstrably outweigh the benefits. Accordingly, the Council's submission is that the appeal scheme does not represent sustainable development.

*(ii) The emerging neighbourhood development plan*

100. The BLNDP is at a relatively advanced stage, having passed its Regulation 16 consultation and been forwarded by the Council for examination. On any view, it is a plan which has made significant progress. Whilst 3 sets of objections were made at Regulation 16 stage, the Council considers those made by Councillor Mike Wilson and by CR Planning Solutions on behalf of Mrs D Patterson<sup>71</sup> to be less than significant objections to the BLNDP as a whole. In respect of the objection from the appellant<sup>72</sup>, those paragraphs which deal with the weight that can be given to an emerging NDP do not amount to an objection to the BLNDP, and can be ignored.
101. Moreover, in numerous places the appellant's objection strays into suggesting that the BLNDP is required to address the housing requirements of the area and/or the housing needs of the Parish. It is not however the function of a NDP 'to meet objectively assessed development needs across a local plan area'<sup>73</sup>. This latter reason is advanced by the appellant as the basis of the objection to policy BL4 of the BLNDP, which relates to settlement boundaries, but this objection is unfounded, for the reason just given.
102. The appellant accepts that if the BLNDP were to be made with Policy BL4, and the settlement boundaries it describes were in place, the appeal proposal would be contrary to the development plan by reason of the breach of this policy. This acceptance makes the objections to the remaining policies of the BLNDP largely academic for the purposes of this appeal. In such circumstances, how the appeal proposal would fare against any of the other BLNDP policies would not make a substantive difference.
103. It is in any event the Council's submission that none of the other matters contained in the appellant's representation amount to a significant objection. Of these, the policy to which most attention was given during the course of the inquiry was Policy BL8 'Conserving Historic Character'. The Council's planning witness, Mr Thomas, did express concern as to the wording of the first sentence of this policy, but considered that this was a matter that could be overcome at examination.
104. In respect of the protection given by Policy BL8 to inappropriate development in the area of an UPG, the appellant agreed that it was open to a NDP to give additional protection to local areas in this manner, so long as the BLNDP was in general conformity with the strategic policies of the LPCS. The Council maintains that no conflict arises in respect of Policy BL8 and the strategic policies of the LPCS.
105. The weight to be given to this emerging BLNDP falls to be judged by reference to the matters set out in paragraph 216 of the Framework. In respect of the third bullet point of this paragraph, the appellant agreed that when assessing consistency of an emerging NDP with the Framework, it is only necessary to have regard to the policies of the Framework that are relevant to a NDP. In other words, this third bullet point does not provide a back door to test an emerging NDP against whether it is providing for objectively assessed housing need, when no such test would be applied at

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<sup>71</sup> Docs 11 and 12 respectively

<sup>72</sup> Doc 10

<sup>73</sup> R (Crownhall Estates Limited) v Chichester District Council & anor [2016] EWHC 73 (Admin)

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examination stage. Having regard to these matters, the Council maintains that the emerging BLNDP is able to attract moderate weight.

### The planning balance

106. For the reasons discussed above, the Council's submission is that the appeal proposal would result in a clear breach of the development plan and that the mitigation and compensation measures proposed by the appellant would not overcome the fundamental nature of the breaches in issue.
107. Moreover, given the stage of preparation of the BLNDP, its lack of significant objections and its general consistency with the Framework, allowing the appeal to proceed would render the work done on the BLNDP irrelevant in so far as housing delivery is concerned. The conflict with the emerging BLNDP is a further matter weighing against the appeal proposal proceeding.
108. Finally, the appeal proposal does not otherwise represent sustainable development, even if the weighted balanced in paragraph 14 of the Framework is applied. The identified harm would significantly and demonstrably outweigh the accepted benefits of the proposed development.

### Conclusion

109. For all of the above reasons the appeal should be dismissed.

### ***The Case for the appellant***

The material points were:

#### Introduction

110. The appellant's case addresses the main matters identified by the Inspector, together with other matters which have been raised in evidence, and about which the SoS may wish to be informed.

#### The effect of the proposed development upon the setting of designated and non-designated heritage assets

111. It became apparent at the inquiry that at determination stage the Council had approached this case on the basis that substantial harm to designated heritage assets was being alleged. However, it now considers that less than substantial harm would be caused to these assets, such that paragraph 134 of the Framework is relevant to any assessment of harm. It is also of note that the Framework refers to 'conservation' not as meaning preservation or the prevention of change, but the process of maintaining and managing change so as sustain and, where appropriate, enhance significance.
112. The Framework's definition of setting expressly recognises that the setting of a heritage asset is not fixed, can change over time, and that elements of an asset's setting may make a positive or negative contribution to the asset's significance. The Council's case fails to pay adequate attention to this potentially changing nature of an asset's setting over time.
113. Ultimately, the key consideration is the significance of a heritage asset. That means the heritage interest which it derives from all aspects of its importance, whether archaeological, architectural, artistic and/or historic. Setting may contribute to the asset's significance, but setting is not itself an asset nor is the test in the Framework

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about safeguarding the setting for its own sake, but safeguarding the contribution that setting makes to significance.

114. Through its heritage witness, Ms Lowe, the Council has used the guidance 'Seeing the History in the View' as a means of assessing the heritage impacts of the appeal scheme. The very first stage of the assessment process dealt with by this guidance is the identification of important views. Only then does one consider which assets are in that view and how their significance would be affected by the development proposed. The guidance's recommendations for assessing the value of an asset have to be seen in that context.
115. That context is also important when considering the utility of the guidance's assessment of the magnitude of change. Each of the categories of magnitude addresses itself to the magnitude of change to a view or to the significance of an asset in the view which was assessed as being important at stage 1 of the baseline exercise. The guidance's descriptions of value and magnitude cannot be divorced from their context, as the Council has done.
116. Even though the guidance states it may be of wider application, the way in which the Council has used it causes 2 particular problems. Firstly, it has led the Council to ascribe equivalent descriptions of value, magnitude and significance of impact to both listed buildings and the UPG and so fails to recognise the different status of designated and non-designated assets. Secondly, it is not clear whether the ultimate judgments the Council expresses are about the impact of the appeal scheme upon the overall significance of the assets, or merely upon that component of significance which the assets derive from their setting or even from its impact upon views.

#### Hagley Hall and its barn

117. Hagley Hall is a Grade II listed building originally built in the 17th century and remodelled in the 18th century so as to provide Georgian style gentrification at its frontage. The structure of the building is such that both of these phases of construction and remodelling can be seen. The Georgian remodelling is apparent externally and the original structure is apparent internally<sup>74</sup>. The barn at the rear of the Hall is listed by virtue of it being a pre-1948 curtilage building.
118. Both of these assets derive a considerable proportion of their significance from their own physical properties: the Hall from its architectural history and observable phases of building and re-building and the barn from its wooden constructional detail. The Hall may also derive significance from its mass and scale compared to buildings nearby which are contemporary with it, but that relationship has already undergone significant change by the introduction of later buildings of different scale and mass proximate to it, such as the development across the A438. All of the significance which these buildings derive from these aspects would be entirely unaffected by the appeal scheme.
119. The Council has seen fit to grant planning permission and listed building consent for the conversion of the barn and for the erection of 2 dwellings to the west of the access to the barn. The barn conversion has taken place and the planning permission for the 2 new dwellings is therefore extant. The barn conversion is and the new dwellings will be accompanied by detached garages. There will be a new access road with turning areas. The proposed dwelling nearest the A438 will be

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<sup>74</sup> Figure 6 on page 20 of Doc HC/4/PA

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6.75m high and 5.75m wide and will be just 15m from Hagley Hall and 11m from The Forge, whereas the second dwelling will be 20m from the barn<sup>75</sup>.

120. For the Council to have allowed development in such close proximity to the Hall, its barn and The Forge, it must have concluded that the effect upon these assets' significance was acceptable, even having regard to the duty set out in section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. That decision can only sensibly be explained by the Council having formed a judgment that these assets had confined settings or that their settings did not provide much contribution to their significance, or both.
121. Hagley Hall's principal setting is its relationship to the A438, as it is in this direction that the replacement Georgian frontage presents itself. There is little evidence to justify the contention that its significance is contributed to in any meaningful way by its relationship to the northern part of the appeal site comprising the orchard. This contention depends upon establishing an historic link between the barn and the orchard and thus between the Hall and the orchard. The Council's evidence for doing so is thin, as it rests upon the contention that the barn contained storage for wheeled vehicles, but it is not clear that those vehicles were agricultural as opposed to passenger-carrying. In any event, even if they were for goods the Council has pointed out that the owners at one time were coal merchants<sup>76</sup>.
122. Moreover, any suggestion that a connection between the Hall and barn and orchard is supported by ownership details on the 1839 Tithe Map can carry little weight, as this evidence relates to freehold ownership not to tenants or occupiers, and the freehold owner who owned both the barn and the orchard also owned large swathes of Bartestree at that time<sup>77</sup>. The ownership details provide no evidence of a functional connection between the occupiers of the Hall and the occupiers of the orchard. Nor does Mrs Parry's discovery of what appears to be cidermaking equipment when she bought Hagley Hall clearly establish a historic link between the Hall, or its barn, and the orchard. Those items could have been brought onto the land at any time prior to her purchasing the property.
123. The Council's approach places too much weight upon the past setting of the Hall and barn as compared to its setting now, and underplays the presence of the adjacent telephone exchange, the development at Hagley Park and the development at Malvern Place. It also pays little regard to the erection of a garage between the Hall and barn, as well as the extant planning permission for the 2 new dwellings.
124. Further, the assessment of impact, using the methodology of 'Seeing the History in the View' leads the Council to a judgment of a moderate adverse effect. But that cannot sensibly be the overall effect upon the significance of the assets, because it is expressly said to be one based on views<sup>78</sup>. Far from being an assessment of the impact of the appeal scheme upon the overall significance of the assets, it must be a contention about the impact upon that part of the asset's significance which it derives not even from its setting, but from its setting as perceived in a specific view.
125. The Council's contention that the harm would be at the centre to higher end of the 'less than substantial spectrum'<sup>79</sup> is demonstrably flawed. Indeed the Council's

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<sup>75</sup> CD 16.14, page 2

<sup>76</sup> Paragraph 10.1.11 of Doc HC/4/PA

<sup>77</sup> Doc 14

<sup>78</sup> Paragraph 10.3.5 of Doc HC/4/PA

<sup>79</sup> Paragraph 10.3.8 of Doc HC/4/PA

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planning witness, Mr Thomas, took the view that the impact upon Hagley Hall and its barn would not, of itself, outweigh the benefits of the proposal. The appellant's approach on this matter is to be preferred. The Hall and its barn now derive no significance from their physical relationship to the appeal site, and development of the appeal site would therefore cause no adverse impact upon the significance of the Hall or its barn.

### The Forge

126. The appellant takes a very similar view insofar as The Forge is concerned. This, too, is a Grade II listed building which derives much of its significance not from its setting, but from its own physical attributes and because of its age, wattle and daub construction and the survival of its forge and bellows. The focus of that building's setting is also towards the A438, and it is from there that its trade would have been drawn. It has greater separation from the appeal site than is the case with Hagley Hall and its barn, as there is a paddock between it and the appeal site, and there is no proven past functional connection between The Forge and the appeal site. The highest that the Council's case goes is to make a generalised and romanticised connection between The Forge and the appeal site as some reminder of the past sorts of rural businesses from which The Forge would have drawn its trade.
127. As with Hagley Hall and barn, the application of the Council's methodology does not result in an assessment of the appeal proposal upon all aspects of the significance of the asset. Instead, it is an assessment of the impact of the appeal scheme upon that part of the significance of the asset which it draws from its appearance in one view obtained of it in its setting, namely the view obtained down the Hagley Hall access<sup>80</sup>.
128. It is simply impossible to construe the assessment of a moderate adverse effect<sup>81</sup> as relating to the effect of the appeal scheme upon the overall significance of The Forge, especially when the changes to the setting of the Hall and its barn which were addressed above, are taken into account. Again, the appellant's view, that The Forge derives no part of its significance from the appeal site and the appeal scheme would have no harmful effect upon the significance of this designated heritage, is to be preferred.

### Hagley Court and the Parkland

129. Hagley Court is a Grade II listed building, whilst the park is an UPG and so a non-designated asset for the purposes of the Framework. The evidence at the inquiry dealt with these 2 assets in a connected way, and it is therefore most efficient to deal with these assets together. However, in doing so it must not be thought that the appellant is accepting that there is an ongoing close connection between Hagley Court and the remnant parkland, of the sort contended for by the Council.
130. This application and appeal process has brought to light more information about the history of Hagley Court, but the question is whether or not this new historical detail adds to the significance of Hagley Court. What is now apparent is that the listing description is wrong in giving a late 18th century date for Hagley Court's construction. Mr Whitehead's researches have produced the 1817 sales particulars<sup>82</sup> which do not mention the presence of a building within the Lots sold, and the Council accepts that if the Court had existed in 1817 it would have been mentioned.

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<sup>80</sup> Paragraph 11.3.2 in Doc HC/4/PA

<sup>81</sup> Paragraph 11.3.5 in Doc HC/4/PA

<sup>82</sup> Doc 7

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Further, the 1824 sales particulars<sup>83</sup> mention the presence of a stone built villa which was not complete. That can only sensibly be a reference to Hagley Court.

131. Moreover, both sets of sales details refer to the lands being sold as 'well timbered' and that the trees were upward of 30 years old. That evidence fits with the 1815 OS map<sup>84</sup> which shows a parkland with a northern point marked by an avenue of trees which ran broadly east-west-south from Longworth Lane. The fact that this parkland with trees was in existence in 1815 clearly shows that it pre-dates Hagley Court. That matter is now agreed, but this has serious implications for the Council's case.
132. The Council assessed the application on the basis that the parkland was a designed landscape to accommodate Hagley Court, as was made clear by the way the consultation response to the application was worded<sup>85</sup>. That cannot be right, however, as the evidence clearly shows that Hagley Court was erected within an already existing emparked landscape. There is no evidence to show that this landscape was specifically designed as a setting for Hagley Court, and any suggestions to this effect are just speculation. On this matter, and others, the appellant maintains that the Council has an inappropriate tendency to draw inferences from the general and apply them to the particular.
133. This tendency is particularly prevalent when it comes to the Council's assertions about the southern part of the appeal site. Here, the Council has taken the existence of the Lime clumps, planted in groups of 7, and the evidence of a feature running in a broadly north-west to south-east direction, separate from the definitive footpath, and has asserted that there was a carriageway to and from the house which the occupants designed as a short cut for access to and from the east. The Council further asserted that the planting was created to provide a scenic way to and from the Court for occupants and visitors, and even suggested that the access was deliberately higher than the footpath so that the vehicle-borne occupants would be at a higher level than the workers going to church on the footpath. This is unjustified speculation which stretches the available evidence too far. The principal entrance was clearly that to the north which follows a fairly sinuous path to what is now the A438, at a point to the north-west of the Court.
134. The appellant considers that there is an alternative, at least as likely explanation of these features, which is more prosaic. The way could have been a secondary or 'tradesman's' entrance to the Court and the tree clumps could have been for animal shelter. That accords with the evidence produced by Mr Whitehead who establishes that the southern part of the appeal site was used for keeping sheep and also for fattening cattle<sup>86</sup>. The Lime clumps do not and did not 'frame' views of anything. Instead, they sit in a straight line which runs along a different raised feature which the LIDAR image<sup>87</sup> reveals, and which is discernible on site.
135. The Council is equally guilty of inappropriate speculation about the low wall running along part of the boundary of the appeal site at Longworth Lane. That wall is seized upon by the Council as evidence of deliberate land raising within the park, so as to increase the privacy of the occupants. But there is no evidence to support that contention. It is at least as likely to be the product of the relationship of natural land levels at the appeal site and to its east, or the result of the need to accommodate a

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<sup>83</sup> Doc 8

<sup>84</sup> Within CD 14.5

<sup>85</sup> CD 4.12

<sup>86</sup> Section 7 in Appendix 1 to Doc HC/4/PA

<sup>87</sup> Doc 15 – LIDAR: 'Light Detection and Ranging' – a technique which uses a laser beam to map the terrain

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level road at Longworth Lane, or both. The Council's stance regarding the wall is a very clear example of its case being founded on baseless speculation.

136. The Council also speculates about design intentions in another way, asserting that Longworth Lane is a critical location for the 'picture creation' of a 'country house in parkland' in respect of Hagley Court<sup>88</sup>. However, this view is simply not supported by any evidence, and in any case conflicts with the available evidence, namely the orientation and principal outlook of Hagley Court as is still observable. The focus of the building is clearly to the west and south.
137. The Council's landscape witness, Ms Tinkler, also sought to emphasise the importance of the history of Hagley Court by drawing attention to a 180-degree panoramic view from the southern frontage of Hagley Court. However, the clear focus of the views from Hagley Court was and is to the south and west. The orientation of the Court, the location of its principal western frontage and its relationship to the open views down the valleys to its south and west demonstrates this beyond doubt. Any views across the appeal site would have been at the margins of any such panorama. Moreover, despite the Council's contentions, the Malvern Hills are not particularly obvious in views from ground level at the Court or on the appeal site, and whatever the position in the past, views of and across the appeal site are not obtainable from the Court at ground level nor even from its roof.
138. In addition, the relationship of Hagley Court to the appeal site has undergone significant change since the Court's erection as a result of a number of factors<sup>89</sup>. These include the fact that the Court has been subdivided into more than one dwelling and is in separate ownership to the appeal site; there is no longer any functional relationship between the Court and the appeal site; and the 1839 Tithe Map<sup>90</sup> shows that the land was enclosed, suggesting that its parkland status was changing even then. In addition, the 1886 OS map<sup>91</sup> shows that the Court had a kitchen garden on its east side, suggesting that the east side was not a principal outward-looking focus of the property.
139. There is also a significant belt of trees and planting to the east of Hagley Court and to the west of the appeal site which almost completely severs the visual relationship between the appeal site and the Court. That planting was bolstered in the late 20<sup>th</sup> century, apparently to screen views of the development of the Hagley Park cul-de-sac, but the 1886 OS map also seems to show some feature along the eastern boundary of Hagley Court even then. There is thus a history of different landowners deliberately limiting the relationship of the Court to the land to its east. All of this has made the current Hagley Court essentially 'inward looking' in terms of its setting.
140. Moreover, the east-west avenue shown on the 1815 map no longer exists, and if a secondary way did exist to Hagley Court across the southern field, it has now gone and is barely discernible on the ground. It makes no contribution to the significance that the asset draws from its setting and there is no justification to contend, as the Parish Council do, that it was once a toll road or that it may deserve the status of a scheduled ancient monument. But perhaps the most significant change is the 20<sup>th</sup> century development of Hagley Place cul-de-sac, which has intruded into the parkland, thereby altering its character. All of these matters serve to reduce the

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<sup>88</sup> Paragraph 9.2.6 -9.2.7 of Doc HC/4/PA

<sup>89</sup> Paragraph 34 of Doc 41

<sup>90</sup> Within CD 14.5

<sup>91</sup> Within CD 14.5

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contribution that the appeal site now makes to that aspect of the Court's significance which derives from its setting.

141. Some reference was made at the inquiry to the potential removal of the planting to the east of Hagley Court, but the only real evidence to this effect is contained in a letter from Mr and Mrs Bohn<sup>92</sup>. However, Mr and Mrs Bohn did not attend the inquiry to explain their position, and the letter is capable of being interpreted in more than one way. It could be read as a statement of a fixed intent to remove the planting, but this has not manifested itself in any action, despite the letter having been written some 6 months ago. No woodland removal seems to have taken place.
142. Alternatively, the letter could be read as an intimation of a potential desire to remove the woodland planting, giving Mr and Mrs Mayne an opportunity to purchase the southern part of the woodland to prevent its threatened removal. But this interpretation would not support a contention that the woodland is to be removed. On the evidence of the letter, combined with the lack of woodland removal since December 2015, it is not possible to conclude that the woodland will be removed; or that it is likely to be removed; or even that there is a real risk of its removal. No weight should therefore be attached to the contention that the planting strip east of Hagley Court will be removed.
143. In summary, the current setting of Hagley Court is not as it may have existed in the past, as the listed building is hardly experienced from the appeal site and even when glimpses of its roof can be seen, the asset is not capable of proper appreciation from those points. The contribution to the building's significance which derives from its setting would be unaltered by the appeal proposal, as would any significance that the building derives otherwise than from its setting.
144. The appeal proposal would not put Hagley Court within the envelope of the village, nor would it join Hagley Court to built form, as contended by the Council. Overall, the Council's case on impact is exaggerated, and its position on this point betrays the unrealistic stance that the Council adopts.
145. Furthermore, the Council's use of the methodology from 'Seeing the History in the View', which specifically addresses the magnitude of change by reference to views, makes it impossible for the Council to claim with any conviction that this is an assessment of the magnitude of change upon significance in all its aspects<sup>93</sup>. It has to be a judgment about the effect upon that part of the asset's significance which is drawn from its setting and directly related to views. To add to the confusion, the Council's assessment does not make it clear which views are being considered, or why they are important.
146. Turning to the UPG, the appellant maintains that it has an insecure evidence base. It is accepted that the southern portion of the appeal site lies within a historic park, but the full extent of the historic park is not reflected in the planning policy documents before the inquiry. Prior to 1817, the site was part of Longworth Park, and after this date it was part of the parkland known as Hagley Park. The LPCS, like the UDP before it, fails to relate the unregistered park to any area of land, merely giving a spot grid reference, which is located to the west of Hagley Court. The BLNDP Map C<sup>94</sup> does show an area for the park, but the basis for its boundaries does not accord with the evidence before the inquiry.

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<sup>92</sup> Doc 32

<sup>93</sup> Paragraph 9.3.7 in Doc HC/4/PA

<sup>94</sup> CD 10.10

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147. The reference to the 3 Lots in the 1817 sales particulars shows that the park extended considerably further south and west than the BLNDP map shows<sup>95</sup>, and this is material insofar as it affects the proportion of the historic park which the appeal scheme would impact upon. Although a simple numerical or percentage approach to loss of a parkland did not find favour with Inspector Pope, who determined the Home Farm appeal<sup>96</sup>, it is submitted that the effect of the appeal scheme upon the remnant park as a whole is a relevant matter to consider. The larger the park, the less the impact would be to the park as an asset as a whole.
148. The fact that the park is not registered affects the weight to be given to any impact upon it. The lack of registration can be equated with it not meeting the criteria for registration. The assertion by Mr Whitehead that the park would make a good candidate for registration<sup>97</sup> is not supported by any evidence which tests the park's characteristics, significance or value against the relevant criteria. The Council does not invite a conclusion that the park is fit for registration and the contention that it may meet the criteria for registration ought to be afforded no weight.
149. In summary, it is clearly the case that the proposed development would involve built form on the UPG, but the significance of this asset is only modest as it has been much altered and is, in any case, a relatively minor non-designated asset, reflected in its lack of registration. The impact of the proposed development on the UPG's significance would be negligible. The park is a pale shadow of what it once was and the appeal scheme gives the chance to provide a more sympathetic relationship between built form and the park than currently exists around the cul-de-sac development at Hagley Park, along with the scope for introducing management and succession planting in the remaining parkland.
150. In view of all the above points, the appellant invites the conclusion that the appeal scheme would cause no harm to designated assets and limited harm to the UPG.

*The effect of the proposed development upon the character and appearance of the surrounding area*

151. The Council's reasons for refusal show that the landscape and visual objection to the appeal scheme is very closely connected to the historic landscape. A significant problem with the Council's approach is that it rests too heavily on the landscape as it was in past history, not how it is now with its historic character as it appears at present. These points have already been addressed in the heritage section, above.
152. The landscape of and around the appeal site has no landscape designation. It is now agreed between the parties that the UPG is not a local landscape designation, but that it should be seen as a feature in the landscape. Whilst a landscape does not need to have a designation for it to have the status of a 'valued landscape' for the purposes of the Framework, the absence of a designation is a good indication that past, objective, assessment of the landscape has not caused anyone to conclude that it has particular value which needs to be marked out.
153. The appellant's assessment of the value of the landscape has been undertaken with reference to Box 5.1 of the Guidelines for Landscape and Visual Impact Assessment, Third edition<sup>98</sup> (GLVIA3). The relevant factors have been assessed in an appropriate

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<sup>95</sup> Doc 14

<sup>96</sup> CD 11.22

<sup>97</sup> Section 5 in Appendix 1 to Doc HC/4/PA

<sup>98</sup> CD 15.1

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and robust way, with appropriate weight being given to the historic aspects of the landscape, rather than attributing them too much weight based on an unrealistic assessment of how the landscape used to be, not how it now is. Parklands and traditional orchards are recognised to be assets with a diminishing presence in the landscape, and the assessment of the landscape's value takes that into account. Overall, the appellant's landscape witness, Mr Jackson, assesses the site landscape to be of medium value.

154. In contrast, the Council's assessment of the landscape's quality fails to recognise that GLVIA3 refers to this as being related to its condition, as is made clear both in Box 5.1 itself and the glossary. The orchard is of ecological importance, but that is not a weighty factor in assessing its quality through condition. As the ecological interest of an orchard increases for the noble chafer beetle with increasing dead wood in live trees, or for deadwood-loving invertebrates, the chances are that the rise in that ecological interest will be inversely proportional to its condition.
155. Overall, there is no reason to question the approach the appellant has adopted in determining the value of the appeal site, and the appellant invites a finding that the appeal site does not constitute a valued landscape for the purposes of the Framework. Even if it were to be concluded that it does form part of a valued landscape, this is not a restriction on granting planning permission, for the purposes of footnote 9 of the Framework. The pre-weighted decision-making test in the first limb of the last part of paragraph 14 of the Framework would not be dis-applied.
156. The Council's judgment is that the appeal scheme would have a moderate-major to moderate impact upon local landscape character. This can be compared to the appellant's assessment, which is that the scheme would result in a minor significance of effect. Even if the Council's judgment were to be accepted, this is not a serious condemnation of the landscape merits of the appeal scheme, particularly given the decision-making test which applies in the absence of a 5YHLS. The Council's case needs to be seen in that context.
157. The appeal site lies within National Character Area (NCA) 100 'Herefordshire Lowlands', and both parties agree that the character effects of the proposal upon NCA100 would be negligible, and that there would be no direct impact on the AONB. The parties disagree, however, about the effect upon the 'Principal Settled Farmlands' LCT, when assessed by reference to the County-level assessment. For the Council, Ms Tinkler contends that the character effects would be of moderate significance. Such an opinion would be understandable if her view was that the effects, whilst localised, were of such significance that they were of County importance. But this was not how she explained this judgment at the inquiry, where she made it clear that she was, indeed, relating her assessment to the geographic extent of the impact. That judgment is irreconcilable with her opinion, which the appellant shares, that the 'geographical extent of the effects of the proposed development on landscape character is relatively localised'<sup>99</sup>.
158. Insofar as the likely effect on the local landscape is concerned, the differences between the parties are explained by the differing judgments about the value and susceptibility of the landscape and the magnitude of effects. The appellant maintains that the existing site landscape is strongly influenced by the surrounding residential properties and settlement edge, particularly on its eastern side, where the site already adjoins modern built development at Malvern Place and the Hagley Park

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<sup>99</sup> Paragraph 7.4.32 in Doc HC/3/PA

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cul-de-sac, with the permitted 40 unit scheme to the north-west also close by. As such, it is the appellant's view that the appeal scheme would not adversely affect the settlement pattern of Bartestree, nor introduce a new form of development into an area currently unaffected by modern housing.

159. The landscape character effects of the appeal scheme would be confined largely to the site itself, with the site's containment limiting the extent of the area across which the changed character would be perceived. Whilst the northern part of the site would change from a remnant orchard to built form, this part of the site is well-contained and there is no reason to conclude that the change on that area would be particularly harmful. Even the southern parcel is relatively enclosed and the effects of the change there would only be perceived over a limited area.
160. Turning to the visual effects of the appeal proposal, the differences between the parties have been set out in a clarification note and schedule prepared by Mr Jackson<sup>100</sup>. The viewpoints from the LVIA about which the landscape witnesses disagree on likely impact are all in close proximity to the appeal site. There are no medium or long distance views where impacts are of concern to the Council. Furthermore, the levels of impact Ms Tinkler attributes to various viewpoints are not very adverse to the appellant's case. For example, for viewpoints 12 and 13 the high point of her concern is that impacts would be of moderate significance, although it became apparent at the inquiry that this assessment had taken into account the past presence of walls and built form on the land to the west of Hagley Hall, whereas the baseline has to be the current situation.
161. With regard to impact on users of the site itself, PROW users would still enter the site from Longworth Lane at its south-east corner, where the nearest new houses would be set back beyond public open space and a conserved grouping of mature trees. The footpath would be retained as part of the proposed development and would present a pleasant and open route into the site, with the PROW then passing through an open landscape corridor of at least 15m width and incorporating a further grouping of mature trees, before leading to the western side of the site where it would pass through the proposed community orchard and further open pasture. Further footpaths would offer a number of alternative routes for users to access the public open space and connect through to the A438 to the north of the site.
162. On this point, the Council's assertion that long distance walkers using the Three Choirs Way would use this PROW is overplayed, as the PROW on the appeal site is not part of that route and the public house in Lugwardine is accessible on the long distance route itself. Moreover, there is no evidence of walkers' propensity to use the appeal site instead of the Three Choirs Way and, even if there were, the appeal scheme would introduce change to the experience of only some 250m of the length of the route, given the visual containment of the appeal site.
163. Whilst the views from this PROW clearly would change, the effect of new housing within this southern part of the site would be moderated by the presence of the existing houses which immediately surround the site. It would also be mitigated by the conservation of the existing framework of mature trees and hedgerows and the large proportion of public open space and new green infrastructure. In any case, this localised effect would further lessen over time with the maturing and management of the conserved and new planting and landscape areas<sup>101</sup>.

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<sup>100</sup> Doc 4

<sup>101</sup> Paragraphs 6.30 to 6.36 of Doc GDL/5/P

164. Furthermore, although the appeal scheme would involve the loss of remnant parkland to development, it would leave over half of the southern portion of the appeal site free from built form, and would present the opportunity to provide a better relationship between housing and parkland than the cul-de-sac at Hagley Park currently creates. In addition, it would not merely retain the parkland trees, but would provide for their management and succession planting in a way which, on the evidence, would otherwise not occur. It would also translocate, supplement and manage the orchard; and introduce management for the grassland in the parkland. This would not have to entail an inappropriately 'manicured' approach but could allow for species diversification and increased biodiversity, through a Landscape and Ecological Management Plan (LEMP) (see later).
165. The scheme would also provide a net increase in hedgerow length of 60m, after allowing for the loss to accommodate the external and internal site accesses; would create a new wetland habitat; would provide additional footpaths with an appropriately attractive route through the parkland areas, and would create an appropriate and sympathetic play area. In view of all these points, there is no reason why an attractive landscape and visual environment could not be created with the proposed development.

*The effect of the appeal scheme upon ecological or nature conservation interests*

166. The remnant traditional orchard is a HPI, with the evidence showing that the ecological interest derives from the fruit trees and the habitat they provide for the noble chafer beetle and other invertebrates which favour dead or dying wood. Information in the EA<sup>102</sup> has been updated by the evidence of the appellant's arboriculture witness, Ms Kirk, who indicates that the orchard contains a total of 36 trees, comprising apple and pear trees in 2 species, with the species of some of the dead trees unable to be determined. Overall 25 of the trees were recorded as living, with the remaining 11 dead.
167. Despite the Council's contrary assertion, the evidence in the EA is that the grassland in the orchard is species poor and not of significant ecological value. The Council produced no evidence to support its contrary view, and it follows that if the trees can be successfully translocated, the ecological interest of the orchard would be preserved. It is whether or not the proposed translocation would be successful that is the principal ecological issue between the parties. The Council maintains that the translocation would be likely to fail, with its ecology witness, Dr Widdicombe, quantifying failure as the loss of a single live tree. However, the Council produced no evidence, as opposed to assertion, to back up this stance.
168. The evidence is that there are techniques available which can secure the movement of trees of the size of the fruit trees. Indeed, trees much larger than this can be successfully moved<sup>103</sup>. Ms Kirk, has gained a thorough understanding of each tree's condition and has identified what risks each tree faces and how to guard against them. She recognises that transplantation shock is a risk and has identified the measures which can be taken to minimise the risk to an acceptable level. She has had assistance and advice, on site, from Civic Trees/Glendale, a company with very considerable experience in the field and who hold the patent to the Newman Frame method of moving trees.

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<sup>102</sup> CD 1.10

<sup>103</sup> Appendix C in Doc GDL/3/A

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169. She has explained why the question of whether the trees are grafted stock or seedling stock is immaterial to the prospects of their move, and has also recognised the risk of weakened structural integrity and identified measures to minimise any risk. The trees' health and condition is known and has been taken into account<sup>104</sup>. An appropriate aftercare regime has been identified and can be put in place. The risk of too severe crown reduction is known about and can be guarded against and modest crown reduction will improve, not reduce, the trees' prospects of survival.
170. Whilst no example of translocating apple or pear trees has been found, the Iwade study shows that plum trees can be moved with success. That case study does show a rate of failure with the trees, but the trees were supported in the new location in a rudimentary way and it appears that no monitoring, aftercare or maintenance regime was in place. If a translocation scheme conducted in that fairly basic fashion can succeed to the degree it has, then the prospects for the trees in this case must be much greater<sup>105</sup>. Furthermore, the successful translocation of a large crab-apple in Newton Aycliffe and of a Mulberry in Cambridge show that large fruiting trees can be moved successfully. In particular, the mulberry clearly had structural weakness of some kind, because it was propped during and after it was moved<sup>106</sup>.
171. Although the Council asserts that the moving of orchard trees gives the trees a very low chance of survival and that the moving of such trees has been shown to be rarely successful<sup>107</sup>, no evidence has been provided to support these contentions. Moreover, a paper from Manchester City Council<sup>108</sup> only goes so far as to say that tree moving is costly with no guarantees of success. The appellant does not contend that the procedure is risk-free, but maintains that the risks can be appropriately managed to an acceptable level.
172. Nor does the email from Mr Fairs of Bulmers support the Council's case on the degree of risk, but merely points out that the process is difficult. Mr Fairs' experience of tree translocation is not clear and he has never seen the trees on the appeal site. The high point of the Council's case is to identify potential risks and then assert that they are too high. But it is not enough for the Council to simply identify risks. It has to show why the risks are too high, but it has not been able to do this. There is no evidential basis for rejecting Ms Kirk's assessment of the prospects of successfully translocating the trees as being 95% or greater.
173. Furthermore, the evidence from Mr Mason at Wyevale Trees<sup>109</sup>, produced by Mr Watts, simply indicates that the chance of successful translocation is zero unless measures, very like the ones the appellant proposes, are taken. The appeal scheme would allow for appropriate time for preparatory work to be conducted. The location of the orchard at the point furthest from the vehicular access lends itself to a situation where the development could be phased so that the orchard only had to be disturbed towards the end of the build phase.
174. The purposes of this translocation must also be borne in mind. This is not a translocation proposed for the purpose of moving champion trees of considerable amenity value. Their ecological value arises because they contain dead and dying

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<sup>104</sup> Appendix B in Doc GDL/3/A

<sup>105</sup> Section 4 in Doc GDL/3/P and Appendix A in Doc GDL/3/A

<sup>106</sup> Appendix D in Doc GDL/3/A

<sup>107</sup> Paragraph 4.27 in Doc HC/2/PA

<sup>108</sup> Appendix E in Doc HC/2/PA

<sup>109</sup> Attachments to Doc 28

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wood. Even if a tree or trees were to fall into poor condition, that that would actually potentially assist in providing habitat for the noble chafer beetle.

175. If this translocation does not occur, there is no evidence that any management of the trees would take place. There is no reliable evidence that the landowners would be able to make a successful claim on an Agri-Environmental scheme, as referred to by the Council, even if they were inclined to. In time, the habitat in the orchard would fade away, as it has in so many other places. The appeal scheme provides a valuable opportunity to demonstrate, in one of the main locations for orchards in England, that translocation can work and that preserving the ecological interest of traditional orchards and providing development need not be in irreconcilable tension. Given the fact that the orchard trees could have lawfully been removed by now and could be removed by a more unsympathetic landowner in the future, the Council should have embraced this opportunity, rather than pessimistically rejecting it.
176. Insofar as the wood pasture and parkland HPI in the southern field is concerned, the appellant's ecology witness, Dr Mansfield, stated that one of the reasons for the decline of this habitat type is through a lack of planting of younger cohorts of trees to provide the next generation of parkland trees. Because of this, the absence of management will result in the loss of the trees as they age and die, albeit that this may take place over a long period of time. In addition, the underlying grassland will remain species-poor and of low ecological value in the absence of any specific management to enhance its botanical diversity.
177. To address this, the appeal proposal would seek to provide a mechanism within a LEMP, which could be secured through a planning condition and the unilateral undertaking, to provide specific habitat creation and management measures. These could include long-term sympathetic management of the mature and veteran trees; the planting of new specimen parkland trees; and to sympathetically manage the retained grassland and increase the species diversity by such measures as over-seeding or wildflower plug-planting<sup>110</sup>.
178. The remaining aspects of the Council's ecological objections have fallen away at the inquiry. The Council has not pursued the reason for refusal alleging a threat to the viability of parkland trees, save to the limited extent of querying the effect of hedgerow removal upon tree T24, the Lime in the south-eastern part of the site, close to the proposed vehicular access. This hedgerow could be removed by hand, using an air spade if necessary, so as to avoid harming the tree's root system. Alternatively the hedgerow's roots could be treated with an appropriate herbicide. The remaining trees could be safeguarded using the appropriate root protection measures.
179. Dr Widdicombe also raised queries about bats, badgers, reptiles and amphibians and secondary effects in his proof of evidence, although these matters were not referred to in the reasons for refusal, nor were they pursued to any meaningful extent at the inquiry. It transpired that his concerns were more with the planning system itself, and should be set aside in the context of this appeal.
180. The successful translocation of the fruit trees and the introduction of new fruit and parkland trees, with management, together with the other Green Infrastructure including the planting of new hedgerows (giving an overall increase in hedgerow length of some 60m) and new pond habitat, means that the appeal scheme would

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<sup>110</sup> Paragraphs 6.1 to 6.3 of Doc GDL/4/P

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not just mitigate its impacts but would create important ecological benefits. As such there would be compliance with LPCS Policy LD2.

*The weight to be given to policies for the supply of housing.*

181. The SOCG identifies that LPCS policies for the supply of housing comprise Policies SS2, SS3, RA1, RA2 and RA3<sup>111</sup>. It also identifies that policies BL3, BL4, BL5, and BL8 in the emerging BLNDP are similarly to be treated as policies for the supply of housing<sup>112</sup>. The Suffolk Coastal case<sup>113</sup> makes it clear that the weight to be afforded to policies which are out of date by reason of there being no deliverable 5YHLS is a matter of planning judgment for the decision maker. The judgment of Lindblom LJ at paragraph 47 of this Suffolk Coastal case identifies examples, not an exclusive list, of matters which decision makers may wish to consider when exercising their planning judgment. They are the extent of the shortfall; the prospects of the shortfall being addressed; and the purpose of the policies being addressed.
182. In this case the agreed position is that the Council can only demonstrate a housing land supply of 3.63 years, a degree of shortfall which can properly be described as significant. It is of note that this lack of supply exists in a context where the LPCS was formulated to have a stepped and increasing housing requirement over time, specifically to allow the SUEs to have the appropriate lead-in times to start to deliver. The LPCS is failing to deliver sufficient housing even though the requirement was not spread evenly across the plan period but rises as time passes<sup>114</sup>.
183. The evidence does not give confidence that the shortfall will be removed any time soon. LPCS Policy SS3 identifies 3 means of tackling a shortfall in supply: a plan review, a new DPD or an interim statement. The trigger for taking this corrective action is a shortfall of completions in any one monitoring period, so the trigger event has occurred. The Council is promoting an interim protocol/position statement, but this cannot have the status of the development plan and will not carry the same weight. Its contents are unknown; the time of its 'adoption' is unknown; and when and if it would succeed in eliminating the backlog is similarly unknown.
184. The Council has also formed a Working Group, consisting of 2 very senior officers. Again, however, there is no indication of when that Group's action might make a practical improvement to supply. Nor is there any detail about what projects the Group is involved in, what they are doing, or why that work would unlock sites when previous attempts at delivery have failed.
185. Policy SS2 cannot be breached by the appeal scheme, or any housing scheme, because although the policy apportions housing growth to various types of settlement, it does not do so in a way which creates a sequential test. It is therefore not possible to interpret the policy as meaning that the appeal should be dismissed because there might be a site available in Hereford or in a market town. Furthermore, the figures are all minima, so cannot be breached. Policy SS3 imposes an obligation on the Council to prioritise increasing delivery if completions are too low. An application cannot be in breach of that policy, given its subject matter.

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<sup>111</sup> Paragraph 4.2.11 of Doc 1

<sup>112</sup> Paragraph 5.4.8 of Doc 1

<sup>113</sup> CD 12.10 - Suffolk Coastal DC v Hopkins Homes and SoSCLG; Cheshire East BC v SoSCLG and Richborough Estates [2016] EWCA Civ 168

<sup>114</sup> Appendix 3 to Doc GDL/1/PA notes that between March 2015 and January 2016 the Council reduced its estimates of delivery from the SUEs from 2,265 dwellings to 1,910 dwellings for the 5 year period to 2019/20, and now accepts that only 970 dwellings from SUEs should form part of the current 5YHLS

186. Policy RA1 is not breached by the appeal scheme. Its figure of 5,300 dwellings to be provided in the rural areas is also a minimum. The mathematical apportionment of 18% growth in the Hereford HMA in the table within the policy is not of itself, determinative about the acceptability of a proposal because a figure higher than the minimum cannot, for that reason alone, be said to be unacceptable or unsustainable. Moreover, the policy is clear that the amount of development which a settlement can accommodate is not determined by any numerical issues, but by local evidence and environmental factors. This must be a reference to factors relating to the settlement in question, not to any specific site proposed for development.
187. In any case, Policy RA2 permits development within or adjacent to the identified settlements, which include Bartestree/Lugwardine. The only allegation of breach of this policy is related to criterion 3, which refers to high quality, sustainable schemes which are appropriate to their context and make a positive contribution to the surrounding environment and its landscape setting. For the reasons set out earlier, this aspect of the policy is not offended, when the merits of the scheme as a whole are considered.
188. The policies for the supply of housing are not infringed and so the question of how much weight to give them is not critical to the success of the appellant's case. However, the weight to be given to them must be reduced as these are the policies whose application is failing to deliver a 5YHLS. The policies do not establish a numerical requirement and the testing of supply on a settlement by settlement basis. The only reason Mr Thomas gives for attaching 'significant, if not full weight'<sup>115</sup> to them is that Bartestree/Lugwardine has nearly provided its minimum target of 152 dwellings over the plan period.
189. However, that is an unsound argument for a number of reasons. Firstly, there is no policy of the development plan which imposes a precise requirement for the settlement of 152 dwellings; secondly, even if there were, it would be a minimum figure and exceeding it would not cause harm of itself; and thirdly, it would be bizarre to attribute full or significant weight to the policies which comprise the very strategy which have failed to deliver a 5YHLS. The appellant's contention that these LPCS policies should be afforded reduced weight should therefore be preferred.

*The weight to be given to the emerging BLNDP.*

190. It is common ground that the weight to be given to the draft policies in the emerging BLNDP should be determined in accordance with paragraph 216 of the Framework. This plan is fairly advanced through its statutory processes but has not yet been subject to examination and it therefore cannot be assumed that the plan's policies will remain as they are, especially given the defects which the scrutiny they have been given at the inquiry has revealed.
191. It is no part of the Council's case to argue that the appeal scheme is premature to the BLNDP, even though in cross-examination of the appellant's planning witness, Mr Lane, reference was made to the prematurity guidance of the PPG<sup>116</sup>. If the intention of this cross-examination was to plant the idea in the SoS's mind that he might want to refuse planning permission on prematurity grounds, despite the Council's position, then that approach ought not be taken as there has been no exploration of whether allowing the appeal would prejudice the plan process, still less any demonstration that that would be the case, as the PPG requires.

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<sup>115</sup> Paragraph 4.16 in Doc HC/1/P

<sup>116</sup> CD 16.7

192. Furthermore, significant objections have been made to the BLNDP. In this regard the Council misunderstands the principle set out at paragraph 29(v) of the Crownhall Estates judgment<sup>117</sup>. That passage is saying that it is not incumbent on a body making a NDP to meet the OAN across a plan area. In other words, it is not for the Parish Council to establish the OAN for Herefordshire if no up to date figure is available, and plan to meet their share of that figure. But that is not the appellant's point. The appellant's point is that as the Council has adopted a plan with a series of minimum figures for housing requirement, it is not open to the Parish to adopt an approach which has the practical effect of turning that minimum figure into a maximum figure to work to. But that is what the BLNDP's approach effectively does.
193. If every neighbourhood planning body took the BLPC's approach, the minimum figure across the County, in Hereford, in the market towns and in the rural HMAs would, at a stroke, be transformed into a maximum figure and growth above it could be restricted. That is why the approach in the draft BLNDP is not in general conformity with the strategic aspects of the Core Strategy. The appellant has a significant point which needs to be considered by the BLNDP Examiner and which has the effect of reducing the weight to be given to the plan's policies.
194. Draft Policy BL4 establishes settlement boundaries which are closely tied to an approach which does, in practical terms, treat the 152 figure as a maximum. Indeed, the plan proceeds on the basis that:
- 'The Local Plan requires Bartestree with Lugwardine to provide at least 152 new homes between 2011 and 2031. The Local Plan provides a policy specific to Bartestree with Lugwardine.'*<sup>118</sup>
195. Both sentences are incorrect, further demonstrating the tension between the emerging BLNDP and the LPCS's strategic elements. The appellant considers that this draft policy should be significantly reworded<sup>119</sup>. There are also clear tensions between the BLNDP's policies and the Framework, putting them at odds with the last test in paragraph 216 of the Framework.
196. Emerging Policy BL8 suffers from a number of defects. Firstly, it seeks to prohibit development in a conservation area except in exceptional circumstances. Not only does that fly in the face of the heritage chapter of the Framework, it is also at odds with section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Secondly, an approach which says that development which 'could' have a detrimental effect upon all heritage assets will not be permitted conflicts with the Framework and applies to all assets a test which is stricter than even the Framework's test in paragraph 133 for assessing the acceptability of substantial harm to a designated asset.
197. A third problem is that a policy test which protects the UPG from 'inappropriate development' is vague. Insofar as the supporting text provides any clarity, it seems that any development is inappropriate because the text above the policy says that 'no development should take place upon' unregistered parkland. Finally, the geographic extent of the UPG which contains the appeal site is not supported by evidence and indeed is incorrect, based on the evidence before the inquiry.

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<sup>117</sup> Doc 19 - R (Crownhall Estates Ltd) v Chichester DC and Loxwood PC [2016] EWHC 73 (Admin)

<sup>118</sup> Section 1.3, fifth paragraph of CD 10.9,

<sup>119</sup> Paragraphs 4.6.7 to 4.6.9 of Doc 10

198. As the policy is currently written, UPG designation covers the Hagley Park cul-de-sac, meaning that any proposal to extend a home on Hagley Park, which would require an express grant of planning permission, would need to be refused. That is either unintended by the BLPC, or else a clear demonstration of how inappropriate this policy approach is.
199. In addition, criterion 3 of Policy BL13, which is relevant to the BLPC's highway concerns about the appeal scheme, conflicts with the Framework because it requires development not to lead to significant increase in traffic volumes. That is at odds with paragraph 32 of the Framework which requires residual effects of schemes to be 'severe', if planning permission is to be refused. Creating more traffic, without much more, is not a proper reason to withhold planning permission.
200. There are other reasons to attach reduced weight to the policies of the draft plan. It is now clear that paragraph 49 of the Framework applies to policies in NDPs and to draft policies<sup>120</sup>. Those which are policies for the supply of housing would restrict the achievement of a proper contribution to 5YHLS. That is particularly true of draft Policies BL4 and BL5. Further, the settlement boundaries have not been arrived at through a 'clean sheet' assessment, but by considering where the UDP boundaries needed to be changed as a result of new development having been permitted.
201. Consideration of the draft BLNDP also threw up some recent SHLAA proformas<sup>121</sup>. Accepting that they are not published by the Council, and were not prepared in accordance with the latest methodology, their content, which was prepared by the Council, does stand sharply at odds with the Council's case at the inquiry. The northern parcel is said to be capable of integrating well with existing housing and the southern part was assessed as suitable, available and achievable.

### The Proposed Planning Obligation

202. Aside from the matters covered by the Council's first, second and fourth reasons for refusal there are no other potential adverse effects which cannot be appropriately mitigated by the provisions set out in the planning obligation<sup>122</sup>. There is no issue about the compliance of the obligations with Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 or with the pooling restriction set out in Regulation 123<sup>123</sup>. As such, the unilateral undertaking addresses the concerns the Council expressed in its fifth reason for refusal.

### Other Matters

203. Although the Council took a point about social cohesion, there is no evidence to support that allegation, of the kind that the Inspector at Drakes Broughton said she would expect to see<sup>124</sup>. Furthermore, an allegation of harm to social cohesion was convincingly rejected by the Inspector who considered the appeal on the land east of Church House, Bartestree<sup>125</sup> in June 2015. There is no reason to take a different approach here, and there is no outstanding allegation of harm to infrastructure which cannot be addressed.

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<sup>120</sup> CD 12.13 - Woodcock Holdings v SoSCLG [2015] EWHC 1173 (Admin)

<sup>121</sup> Doc 6

<sup>122</sup> Doc 38

<sup>123</sup> Doc 39

<sup>124</sup> Paragraph 25 of CD 11.18

<sup>125</sup> Paragraphs 21 to 23 of CD 16.31

204. Local people have raised concerns about the highways impacts of the proposals, and there has even been mention of the Council's 'error' in not objecting on highways grounds<sup>126</sup>. But the Council did object, and reason for refusal 3 was attached to the decision notice. However, further discussions took place and minor amendments to the scheme were put forward, which satisfied the Council who subsequently withdrew this reason for refusal. In any case, there is a comprehensive Highways and Transport SOCG<sup>127</sup> which shows that all relevant highways and transportation issues have been properly addressed, so far as the highway authority is concerned. There is no reason to reach a conclusion which is at odds with that SOCG.
205. Mrs Parry raised some concerns about the extent of bus service provision in Bartestree, but the fact is that the Council's Rural Settlement Hierarchy Paper of 2010<sup>128</sup> considered such matters on a comparative basis for the settlements within the County. This methodology showed that Bartestree is one of the settlements which achieved the maximum score for public transport accessibility.
206. A further matter of note is that the appellant has properly weighed the loss of about 0.8 ha of best and most versatile (BMV) agricultural land in the planning balance, even though the Council does not see that as an issue and no participant at the inquiry raised it. The Council's case, and that of Mr Whitehead do, however, make reference to likely geological impacts of the appeal scheme. However, the Silurian rocks in the Hagley Dome formation do not outcrop on the site and there is no reason to conclude that developing the appeal site would cause any damage to underlying geology which ought to weigh against the appeal scheme.
207. Residential amenity is not in issue between the Council and the appellant, but some interested persons have contended that the proposed development would have an adverse effect on their living conditions, with both Mrs Parry and Mr Targett raising such matters at the inquiry. Mrs Parry is concerned about loss of privacy and reduced security as a result of pedestrian and cyclist traffic on the proposed link from the appeal site to the A438, whilst Mr Targett is concerned about loss of privacy and light intrusion from vehicle headlights.
208. However, Mrs Parry's property already fronts onto a busy highway, with pedestrian traffic, and there is no reason to think that the appeal scheme would cause any particular problem for her. Moreover, the Design Officer at West Mercia Police did not object to the application on security grounds<sup>129</sup>. Mr Targett's property would have a relationship to the development which is very common across the country. The situation would change, but not so as to unacceptably harm his amenity. In view of these points, the appellant maintains that these matters should not weigh against the appeal scheme.

### Proposed Planning Conditions

209. If planning permission was to be granted, the appellant considers that the list of conditions which have been agreed with the Council should be imposed<sup>130</sup>. There are no outstanding issues between the parties as to their compliance with the tests for conditions, or their drafting.

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<sup>126</sup> Doc 24

<sup>127</sup> Doc 2

<sup>128</sup> Paragraph 6.2 and Appendix 5 of CD 9.10,

<sup>129</sup> CD 4.10

<sup>130</sup> Appendix C to this Report

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The Planning Balance

210. The starting point is the development plan, in accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004. In this case, a particularly important development plan policy is LPCS Policy SS1, which mirrors the presumption in favour of sustainable development found in the Framework. The absence of a 5YHLS is therefore not just a matter which engages paragraphs 49 and 14 of the Framework, it also triggers the pre-weighted decision-making test in Policy SS1. That is important, because when policies of the development plan require the absence of harm in order for a proposal to be acceptable then, subject to the application of paragraph 134 of the Framework, permission is not to be refused unless harm significantly and demonstrably outweighs the benefits.
211. The proposed development would not conflict with LPCS Policy SS6, given the limited landscape impact and the opportunity to introduce management and maintenance of ecological and landscape features on the site. Biodiversity would be enhanced and there would be no harm to the settlement pattern. There would be no harm to designated heritage assets and whilst there would be some harm to the UPG, the overall position as regards Policy SS6 is one of compliance, not breach.
212. The appeal scheme has been positively influenced by the landscape, and so the first bullet point of LPCS Policy LD1 is not offended. Overall, the appeal scheme would conserve and enhance the natural historic and scenic beauty of important features. The second bullet point does not require the testing of the appeal scheme's effects on the significance of the UPG - that is Policy LD4's remit. The requirement is to test the effect on the unregistered park's beauty. LPCS Policy LD2 has already been dealt with, earlier, and the appeal scheme would not result in a breach of Policy LD3. The site is not a valued landscape, and the scheme would enhance Green Infrastructure and would integrate with its surrounding network.
213. There would be a breach of LPCS Policy LD4 because of the appeal proposal's effect upon the UPG. But the fact of breach is not a true test of the acceptability of the appeal scheme because this policy does not prescribe a development management test and so paragraph 134 or 135 of the Framework, as the case may be, has to be considered.
214. In light of the above points it is the appellant's case that the appeal proposal complies with the development plan taken as whole.
215. Having regard to the decision in *Forest of Dean DC v SoSCLG and Gladman Developments Limited* [2016] EWHC 421 (Admin)<sup>131</sup>, it is important for a decision maker to demonstrate that a proposal which engages heritage issues has been tested in the light of paragraph 134 of the Framework, as well as paragraph 14. The appellant therefore submits that the correct approach is to first consider whether less than substantial harm to designated assets would be caused by the appeal scheme. For the reasons given, it is the appellant's contention that it would not. However, if it is concluded that such harm would be caused, this heritage harm needs to be balanced against the public benefits of the proposal, on a non-weighted basis.
216. If heritage harm outweighs benefits, then subject to other material considerations, permission ought to be refused. Of course, that is not the appellant's case. If benefits outweigh heritage harm, as the appellant contends, then the pre-weighted decision making test in paragraph 14 of the Framework (and policy SS1 of the LPCS)

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<sup>131</sup> CD 12.12

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would be re-engaged. All harm should then be weighed against all benefits, with permission only being refused if the harm significantly and demonstrably outweighs the benefits.

217. Given the lower status of a non-designated asset, and the non-application of section 66 of the Planning (Conservation Areas and Listed Buildings) Act 1990 to such assets, it is submitted that paragraph 135 does not amount to a policy restricting the grant of planning permission for the purposes of Framework footnote 9. But if it does, the decision making process would still be the same.

*Whether the proposals amount to sustainable development*

218. This question is to be answered by considering whether the harm the appeal scheme would cause would significantly and demonstrably outweigh the benefits. That is the definition of sustainable development when a plan is absent or silent or when, as here, relevant policies are out of date. The harm to be weighed is limited to the following: localised landscape and visual impact; the impact upon the unregistered parkland; and the loss of a small area of BMV.

219. This limited harm is to be set against the following, considerable benefits of the scheme:

- a) The provision of much needed market housing, given the absence of a 5YHLS and the lack of any reason to consider that the deficit will be removed soon;
- b) The provision of affordable housing. It is agreed that there is a total need for 3,457 affordable homes across the County, amounting to some 369 dwellings a year if the deficit is to be eliminated over the plan period, or 691 units a year if the backlog is to be reduced over 5 years<sup>132</sup>. Neither figure is being achieved and the affordable housing position must be getting worse, not better. The appeal scheme could provide at the requisite rate of 35%, which will not be the case with all sites, as they may not be large enough to require provision<sup>133</sup> or may have viability concerns. The lack of affordable housing supply is therefore a particular risk of the BLPC's favoured approach of permitting small sites in the group parishes. The affordable housing benefit of the appeal scheme is agreed to attract significant weight<sup>134</sup>;
- c) The appeal scheme could be built out in full within 5 years and a shorter time limit condition is proposed to accelerate delivery;
- d) Public open space would not just meet the needs of the new residents but would be available to nearby residents;
- e) There would be ecological benefits which are addressed earlier;
- f) There would be new Green Infrastructure and management of existing landscape features;
- g) New footpaths would be provided through the parkland;
- h) New footways alongside highways would be provided, to the benefit of all road users;
- i) The orchard would be open to public access to aid understanding and appreciation of traditional orchards;

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<sup>132</sup> Section 6.5 of Doc 1

<sup>133</sup> LPCS Policy H1 adopts a threshold of 10 units before a contribution towards affordable housing needs to be provided

<sup>134</sup> Paragraph 6.6.5 of Doc 1

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- j) The present unhappy relationship of the back of the Hagley Park cul-de-sac's properties to the park could be addressed;
  - k) Construction spend of £11.1m supporting 98 FTE jobs a year over the build period would arise<sup>135</sup>;
  - l) £0.95 million New Homes Bonus would be payable over 6 years and there would also be additional Council Tax receipts of up to £1.2 million over 10 years;
  - m) The development would introduce some 112 new, economically active people into the village;
  - n) About £3.15m annual spend in Herefordshire would be generated, some of which would be spent locally, supporting existing and new local businesses and services.

220. Even if it were concluded that less than substantial harm to designated assets would be caused, and even affording the preservation of the setting of listed buildings considerable importance and weight and acknowledging that less than substantial harm creates a strong presumption against the grant of permission, it is submitted that the benefits of the proposal would nevertheless outweigh the heritage harm to designated assets which the Council's case suggests. However, the appellant's case is that this test does not arise because of the absence of harm to listed buildings.

221. If it is appropriate to weigh the heritage harm to the UPG against the benefits in an unweighted way, then the balance clearly comes down in favour of permission, given the status of the non-designated asset, its condition and the limited harm. The pre-weighted decision-making test, even on the Council's case on heritage harm would be re-engaged. When all harm is weighed against all benefits, the harm does not significantly and demonstrably outweigh benefits. The proposal is thus sustainable development and ought to be allowed to proceed in the public interest.

### Conclusion

222. Having regard to all the above points, the Inspector is invited to recommend, and the SoS to determine, that the appeal should be allowed.

### **The Cases for Interested Persons Opposing the Proposal**

223. Several of the interested persons who spoke at the inquiry raised similar topics. In the interests of clarity and efficiency I have not repeated all such matters for each individual objector in the summaries of their cases, below, but instead have concentrated on the main matters unique to each objector. That said, full details of all matters raised can be seen in the appropriate inquiry document, referenced to each individual speaker. The material points were:

224. **Mrs Wendy Soilleux, Chair of Bartestree with Lugwardine Group Parish Council**<sup>136</sup>. The policies of the emerging BLNDP have been drawn up in the spirit of localism, to reflect the wishes of local people whilst planning and providing for the BLP's proportionate increase in housing, as required by the LPCS and the Framework. Insofar as housing proposals are concerned, parishioners consider that there has been an abundance of large-scale development in the past, but that a moderate rate of development in the future would still be acceptable. The draft policies therefore seek to allow for infilling to provide for limited and controlled expansion, by supporting small developments on preferably brown-field sites, but

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<sup>135</sup> CD 1.22

<sup>136</sup> Full details of this objector's case can be found in Doc 23

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also green-field sites, within settlement boundaries. To date, infill and windfall applications have produced an average of 4 dwellings a year.

225. The BLPC accepts that the appeal proposal's additional housing would provide affordable units and may support local businesses, but considers there to be overriding conflicts in respect of environmental policies, including those aimed at protecting the parish's countryside, and particularly its stock of unregistered historic parkland. It is the BLPC's contention that the appeal proposal would be at odds with a number of the draft policies, notably BL1, BL4, BL5, BL8 and BL13. Concerns on a number of discrete topics are summarised below.
226. Heritage. The appeal proposal would be a large development on greenfield land outside the proposed settlement boundaries, which comprises unregistered historic parkland and traditional orchard associated with Hagley Court. There is also evidence of a raised 'track' across the southern field. This track dries out disproportionately in dry weather and is of both historical and archaeological interest, as it could be either a carriageway to Hagley Court or the old Toll Road from Ledbury, as it can be seen on the LIDAR image to continue to the west<sup>137</sup>. Whether or not this appeal is upheld or dismissed, this interesting historic feature should be thoroughly investigated in case it is worthy of scheduled ancient monument status.
227. The boundary of the appeal site with Longworth Lane is marked by an old low-level, dry-stone wall. If the development were to go ahead, the visibility splay required would almost certainly require the relocation and rebuilding of this wall further back from its current position. This wall would need to be repaired and restored as an important heritage feature and component of the historic parkland, retaining it at a higher level than its surroundings. Furthermore, the proposed 'flag on edge' barrier to retain the bank along the north-eastern edge of the Hagley Park cul-de-sac would be out of keeping with the stone walls adjacent and opposite, and should be replaced by a stone retaining wall with due care given to the roots of the nearby oak tree. A similar barrier would be required on the south-eastern edge of this junction.
228. Valued Landscape. The appeal site is much valued by local people, who are very anxious to preserve the surviving orchard and parkland and their views over local countryside. The southern field is traversed by PROW LU13 and is an area over which local people enjoy walking in pleasant, peaceful surroundings that provide an oasis of calm away from the noise and fumes of traffic on the busy A438. The effects of the tranquillity and sanctuary of such historic landscapes cannot be monitored by a measuring device but can be likened to the feelings captured by poets and writers in their narratives to convey to those people unable to have the experience firsthand. We in Bartestree do not want to lose this tranquil place.
229. By replacing the existing characteristics of the appeal site with a modern housing estate the effects on the character of the area and users of the public footpath would be severe. Draft BLNDP Policy BL8 seeks to resist inappropriate development in such areas, and this approach to protecting land that is valued to residents on historic and environmental grounds is wholly consistent with the Framework and the LPCS, and acts to give the community and developers alike, certainty in moving forward.
230. Environment. The loss of traditional orchard would be contrary to the emerging BLNDP as the proposal to relocate mature orchard trees is unsound. According to the Royal Horticultural Society (RHS): *'A tree taller than 2.5m may be difficult to establish in a new position. Large trees may need to be transplanted by a specialist*

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<sup>137</sup> Doc 15

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*arborist. Preparation would need to start a year in advance of the move. Once transplanted, the crown would need to be reduced by 25-30% to minimise water loss.* The very, very mature orchard trees, at least 7m or 8m tall with a girth of at least 1.5m, would be unlikely to survive such an ordeal. Even with the most experienced and dedicated arboriculturist carrying out the process, we are sceptical of the success of the relocation of such large, mature trees.

231. The old, partially decaying orchard trees provide a habitat for the noble chafer beetle, and whilst these trees are also to be translocated, they would have a very slim chance of survival. In terms of valued landscape and priority habitats, building on this site could not be called sustainable development.
232. Highways and Traffic. Traffic from the proposed development would have its access on to Longworth Lane, a narrow, poor quality 'C' category road, opposite and very close to Field End Cottage, whose occupants would experience car headlights glaring into both ground and first floor windows. This would be intolerable and unacceptable and severely reduce their privacy and quality of life. The 146 new dwellings already approved for the settlement will increase the volume of traffic by at least 200 and possibly as many as 300 more vehicles on local roads on a daily basis. The cumulative effect of vehicles from up to another 100 homes from the appeal proposal could mean a total increase of 400 or more vehicles daily. This would cause queuing problems at the Longworth Lane junction with the A438.
233. In addition, the recent amendments to the scheme, to provide a footway along the south side of the A438 from the shop, in an easterly direction, past Mill Cottage and The Forge would reduce the width of the A438 to 6.75m. As the maximum width of a heavy goods vehicle in the UK is 2.55m, 2 such vehicles passing could total 5.10m in width, leaving only 1.65m available for the 3 essential gaps between footways and vehicles and between the vehicles themselves. This gives rise to great concern as the A438 is used by very large commercial and agricultural vehicles on frequent occasions.
234. Community Facilities. These 2 villages have only limited community facilities, namely a church, a Catholic secondary school and a public house in Lugwardine, whilst Bartestree has a primary school, a village shop and a hairdresser. The nearest doctor's surgery and pharmacy are 2.7 km away and are not accessible by public transport. There is no permanent Post Office. The primary school has no further scope for building extension and the secondary school is the designated one for Catholic children throughout the whole of Herefordshire, and would not be able to provide the places needed. It might be possible for these facilities to cope with 146 new families over a 5-year period or so, but an additional 100 families would put an enormous strain on them. In terms of available community facilities, this development is not sustainable.
235. Housing Requirements and Cumulative Effect. To date, 146 new dwellings, including 3 large-scale developments of 30, 40 and 51 dwellings have been approved for the BLP. Together with these existing approvals the appeal proposal, if allowed, would result in over 200 new dwellings in Bartestree alone. BLPC maintains that such growth in such a concentrated period of time cannot be described as proportionate. There should now be a pause to allow the 146 dwellings already approved to be built; for their inhabitants to be successfully absorbed into village life; and for the local infrastructure and services to be allowed to develop and be extended to cope with those 146 new dwellings. To allow the building of up to another 100 houses, as the appeal scheme proposes, would not be sustainable development.

236. Should this development go ahead, the BLP would have achieved 90 dwellings above its minimum target and yet be only a quarter of the way through the plan period. Taken in conjunction with reasonable windfall rates, such a rapid rate of development would not be sustainable development, and would in itself devalue the painstaking work that has, over the course of 36 months, gone into the responsible formulation of the emerging BLNDP.
237. Summary. The BLPC is not against development – it has supported applications to build 63 of the proposed new dwellings in the BLP since April 2011, an average of 12 per annum, and 3 other large-scale applications have also been approved. All of these sites have been clearly recognised and accepted as forming part of the revised settlement boundary within the emerging BLNDP.
238. However, with 146 dwellings already approved, a lower average of 3 or 4 windfall applications a year would ensure that the BLP more than adequately plays its part in helping to deliver its proportion of Herefordshire's housing supply. There is every indication that this average will easily be maintained as applications for small numbers of new dwellings continue to be submitted at a steady rate.
239. Numerous consultations confirm that parishioners welcome applications for small developments but feel that the BLP has already been subjected to enough large ones. Thus the BLPC is in favour of small developments but very much against any more large ones as it considers these to be unsustainable in the many respects stated. The appeal proposal falls into this category and is particularly unacceptable as it involves land of high environmental sensitivity in the local context. The Inspector is asked to support the local community in the work undertaken to date, and recommend to the SoS that due weight be given to the emerging BLNDP.
240. To ignore the emerging BLNDP would be contrary to one of the founding principles on which both the Framework and the LPCS are built, namely that planning should be genuinely NDP led, empowering local people to shape their surroundings, with succinct NDPs setting out a positive vision for the future of the area. It is the BLPC's firm belief that it has, at every stage, acted positively in shaping its collective vision for the future growth of the parish. Allowing the appeal would be severely prejudicial to all that has gone before.
241. **Cllr Dave Greenow, District Councillor for Hagley Ward**<sup>138</sup>. BLPC's decision to adopt Neighbourhood Planning powers in 2012 was a pro-active move by a Parish Council with a track-record for community-led planning, including the publication of 2 Parish Plans. The decision was taken well before the appellant submitted its pre-application approach to the Council and well in advance of any of the other large-scale applications that have been recently received and determined. It has become a 46 month process which is nearing the end. BLPC has not objected to small-scale housing proposals, and has supported a large-scale proposal on land adjoining the appeal site's western boundary where it could see public benefits. The emerging BLNDP is not seeking to prevent or frustrate sustainable development.
242. The LPCS and BLNDP plan periods run until 2031 and whilst the current lack of housing land supply is acknowledged, this is a situation that varies and fluctuates. Decisions taken to address what may be a short-term position are rarely good decisions. Moreover, it cannot be the Government's intention that rural settlements such as Bartestree, with their limited services and intrinsic rural character, should bear the responsibility of demonstrating a housing-land supply for the County. It

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<sup>138</sup> Full details of this objector's case can be found in Doc 22

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should be enough that BLPC is demonstrating, through its emerging NDP, a commitment to meet and exceed the indicative growth target for the parish. This has almost been met with 15 years of the plan period unexpired. However, the presumption to approve planning applications applies only to sustainable development - not just to any development.

243. The appeal site is a valuable and irreplaceable part of the historic landscape. If developed, the parkland and traditional orchard would be gone forever. Any compensation from this development could not be to the same value as the appeal site as it stands. Such losses are not sustainable, particularly when there is no compelling need to release sensitive sites such as this for development. If the BLPC was put to finding a site for more housing, it would not be this one.
244. The appellant has made representations objecting to the NDP, as is its right. However, the local peoples' interest in the appeal site extends beyond financial interest, and it is the local people who would suffer the consequences of approval of this development, not the Council, nor the developer.
245. In conclusion, loss of this valuable local landscape, well-used and loved by local people, would be unacceptable. The Inspector is asked to support BLPC's position and reinforce rather than undermine the belief that NDPs can be powerful tools. Otherwise, the hard work that has gone into the process is, to all intents and purposes, irrelevant and a waste of hundreds of hours over a period of 46 months of input by steering group members and a wider community who have demonstrated significant interest in the process and its outcomes. In simple terms, the appeal site is not appropriate and the appeal should be dismissed.
246. **Mr Daniel Forrest**<sup>139</sup>. Mr Forrest is a local resident, living on Longworth Lane. The appellant's transport evidence, that 100 dwellings would create 61 new traffic movements during the morning rush hour, with these trips having no adverse effect on Longworth Lane or the junction with the A438, is flawed. The Transport Assessment<sup>140</sup> (TA) shows that trip generation rates are based on data from 'edge of town or suburban areas'. This is not appropriate for Bartestree, and actual car usage would be far greater than the appellant's figures suggest. In any case, 61 additional traffic movements at this junction at peak times would have a severe impact. The TA also states that the Longworth Lane/A438 junction has spare capacity, but this is clearly not the case given the photographic evidence, which shows up to 5 vehicles waiting on Longworth Lane at this junction<sup>141</sup>. The junction does not operate as the TA says, so the TA is clearly inaccurate and cannot be relied on.
247. The proposed access would be at the narrowest part of Longworth Lane, where cars regularly park opposite in the barn conversions, and would be substandard as it would not provide the necessary 60m visibility splays. There is a very real risk of an accident between a car travelling south on Longworth Lane, passing a parked car, and one leaving this site. In order to provide visibility splays most of the mature hedge would need to be removed, but removal of this hedge is not included within the description of the proposed development.
248. Longworth Lane also has rainwater drainage issues, with flooding often half way across the lane. It is quite clear that any vehicle leaving the site needing to travel towards Ledbury would travel down the unclassified lane to cut out the A438 junction

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<sup>139</sup> Full details of this objector's case can be found in Docs 24 and 37

<sup>140</sup> See pages 4-6 of Appendix F to CD 1.8

<sup>141</sup> Appendices A and E to Doc 24

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and flood, but the TA shows no traffic leaving the site turning south down Longworth Lane. This is truly unbelievable as many vehicles from the existing Hagley Park cul-de-sac already turn right to access the likes of Ross-on-Wye, the M50, the Rotherwas Industrial estate and the enterprise zone (the largest employment areas in Hereford) along with other facilities.

249. The historic parkland is an important area of tranquillity, and whilst such spaces do not have their own 'special designation', valued landscapes and areas of tranquillity are still afforded protection by the Framework. The appeal site is a sensitive and valued landscape and the loss of this open and tranquil space, along with the greatly increased traffic and danger at the junction with the A438, would undoubtedly affect the wellbeing of everyone locally. The appeal should therefore be dismissed
250. **Mr Jonathan Snowdon**<sup>142</sup>. Mr Snowdon runs a small farming and equine business from Stalls Farm, on the west side of Hagley Court. Dealing first with matters of access, the vehicle access would be directly opposite existing properties that are right on the eastern edge of the narrow Longworth Lane. These residents would suffer noise as vehicles brake, change gear and accelerate away, and after dark, headlight beams would come through the windows and sweep like searchlights as the vehicles turn. To the south of the appeal site Longworth Lane narrows considerably, to around 4m or less in many places, and could not cope with a significant increase in traffic. As there are already queues at busy times to the north of the proposed access, at the crossroads with the A438, many people would be tempted to turn south from the appeal site onto Longworth Lane, and thence onto other narrow lanes. This would be dangerous for horse riders, cyclists and walkers.
251. The applicant's traffic survey was carried out at a time when Longworth Lane had been closed at its southern end for many weeks for road works. As a result traffic flows will have been significantly understated. Moreover, the assumed level of traffic generation from the proposed development is also likely to have been understated as national averages appear to have been used, with no allowance for the lack of employment in the village and its limited bus service which leaves most households reliant on car journeys.
252. There would also be a loss of village character. Historically, Bartestree/Lugwardine has contained a number of large houses, with associated parklands, orchards & farms, all of which have a major bearing on village character. The historic Hagley Parkland had stunning views to surrounding hills – Malverns, Woolhope Dome, Black Mountains – and down the valley to the Frome, Lugg and Wye beyond. These views were enhanced by selective tree planting within the park, and these landscape views and many mature parkland trees can still be enjoyed today. If this development was to go ahead, much of this true village character would be lost forever. Although the re-routed footpath would pass some mature trees and green space, it would be hemmed in by a large, modern housing estate.
253. There seems to be a suggestion that because the village character has been eroded in places (particularly north of the A438 with the development of the former Wilcroft Park, and adjacent to the appeal site by the Hagley Park cul-de-sac) that these set a precedent to allow the further destruction of the historic Hagley Park. The opposite should be the case, as the past destruction makes preserving what remains all the more important. Protecting the historic parkland is the right thing to do and it is hoped that this inquiry will come to the same conclusion.

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<sup>142</sup> Full details of this objector's case can be found in Doc 25

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254. **Mrs Lin Hoppé, Tree Warden and Footpaths Officer for BLPC**<sup>143</sup>. One of the joys of living in the countryside is the ability to walk freely and embrace fresh air, peace and quiet, trees, hedgerows and wildlife. This ancient parkland provides this in abundance and it is a pleasure to walk through, whatever the weather. Its historic association with Hagley Court and its contribution to the wider landscape setting and important landscape features, make this a very special and valuable landscape.
255. It is a tranquil part of the village which would be lost if the appeal scheme was to proceed. The existing PROW would be re-routed around the housing development and would result in a path through houses, many of which would have tall fences to enclose their gardens. Walkers would be forced to walk through a tunnel of fences which would not be good for well-being. Moreover, with all the developments in the village, including this appeal proposal, the length of 'urban' or 'suburban' PROWs would increase from about 0.63km (1 mile) to about 1.03km (1.64 miles), an overall increase of 'urban' or 'suburban' walking from 12% to 20.5%. This would be a high figure for a village environment.
256. In addition to the PROW LU13 which runs across this parkland, there is another PROW on the OS maps of 1885 and 1905, which runs from Longworth Lane to the junction with LU13/LU29 and LU14. This path was still in existence when the Hagley Park cul-de-sac was built in the 1950s, as the Council built a footpath alongside No 11 Hagley Park and also installed a stile in the corner of the parkland, allowing people to walk across the parkland to join with LU13/LU29/LU14. This footpath is still very much used by the community and, as such, BLPC has applied to have this PROW reinstated and appear on the Definitive Map.
257. It is known that owls and bats commonly fly in this parkland, and it is home to rabbits, mice and other invertebrates. In addition there are numerous potential bat roost features throughout the site, including the dividing Hawthorne hedge, which appears to be the relatively rare Midland Hawthorne. These would be lost forever. The Lesser Horseshoe Bat, referred to in the appellant's Bat Survey, is reliant on deciduous woodland and mature hedgerows for foraging, and careful management of foraging habitats is important. The structure of the parkland open space, old trees and boundary hedgerows provide the required foraging habitat, and this would be lost if the appeal proposal were to proceed.
258. There are 4 ancient trees with TPOs on them, and 3 groups of trees with TPOs. Two of these groups of ancient Lime trees, known locally as the 'Seven Brothers and Seven Sisters', are part of the original parkland for Hagley Court. A TPO was not made on 5 pear trees in the ancient orchard as they are not dominant in the landscape, but this does not remove the fact that they are very old orchard trees and should be preserved in one form or another for invertebrate habitat. Uprooting and replanting them would be catastrophic for trees of this age, and valuable habitat would be lost. If the proposed development is prepared to supply a new orchard, it should be created around the existing traditional orchard habitat so as to not risk losing the fragile habitat provided by the old fruit trees.
259. One Scots Pine, which has been earmarked for removal, is actually one of the most important trees in the parkland. There is sound evidence of Woodpecker holes, it has clear flight lines and would benefit from an aerial inspection for potential bat roost features.

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<sup>143</sup> Full details of this objector's case can be found in Doc 26

260. The proposed development access road would run alongside 2 of the major groups of Lime trees which would have originally formed part of the drive to Hagley Court. Any root disturbance adjacent to these trees is likely to cause terminal harm, but the proposed access road is likely to cut through the root structure of both groups of TPO protected Lime trees. There is also medium density housing proposed along the entrance road, which would impact upon the root systems of these Lime trees.
261. There is also a well established Oak tree on the corner of the Hagley Park cul-de-sac, which would be seriously compromised if the suggested footpath along Longworth Lane was to be built. The BLPC has taken steps to have this tree protected with a TPO in order to ensure its future. Moreover, it is unclear who would maintain all the trees and hedgerows if the development was to proceed. Medium density housing would abut the Midland Hawthorne hedgerow, and if this was incorporated into the gardens of those houses it would be subject to individual treatment and possible removal by new homeowners. This hedgerow should be protected.
262. In summary, BLP does not want or need housing on this scale, and certainly not on a site of such high environmental sensitivity. The appeal should be dismissed.
263. **Mr Andrew Targett**<sup>144</sup>. Mr Targett lives at Field End Cottage on Longworth Lane, immediately opposite the development's proposed vehicle access. There is a significant difference in levels between the appeal site and Longworth Lane, such that if the proposed development was to be granted planning permission the site access road would be level with the first floor windows of Field End Cottage. Cars leaving the site would be just about 6m away from and directly facing the ground and first floor windows of this property, and people inside these vehicles would have a direct view into the bedroom of Mr Targett's young daughter.
264. This problem would be compounded at night, as car headlights would glare and shine directly into this bedroom and other rooms. This would result in a significant loss of privacy, especially for Mr Targett's daughter, who would have to have her curtains closed for most of the time she is in her room.
265. There is a pinch point on Longworth Lane in the vicinity of Field End Cottage, with the road being too narrow to allow 2 cars to pass one another. This means that cars, horse boxes and large agricultural machinery travelling south down Longworth Lane are forced to take avoiding action and regularly cut across the property boundary of Field End Cottage, causing erosion and damage to both sides of the property's driveway. This damage would be exacerbated with the substantial increase in traffic flows on Longworth Lane if the development is allowed to proceed.
266. In summary, the proposed development would have an adverse impact on the living conditions of occupiers of Field End Cottage, and the appeal should therefore be dismissed.
267. **Mr Geoffrey Watts**<sup>145</sup>. Mr Watts is a resident of Hagley House in Bartestree. His main concern is the quality of the research in the appellant's Ecological Report. While a site visit has been made, it appears to have concentrated solely upon the orchard and the trees, and relies upon desk research for most of its input. Things are always changing in the countryside – species come and go through sickness, old age or predation and then new creatures move in and the balance will sometimes

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<sup>144</sup> Full details of this objector's case can be found in Doc 27

<sup>145</sup> Full details of this objector's case can be found in Doc 28

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change. The appellant has put forward little evidence to support its conclusions regarding the presence or otherwise of various species.

268. There is no pond on the appeal site, but great crested newts have been recorded at ponds in Lower Bartestree, Hagley Court and Mr Watts' own garden. Whilst great crested newts only spend a short period of time in ponds, they do need an essential corridor of grassland between ponds, as described by Dr Widdicombe. The appeal site falls exactly on the route between the ponds.
269. The importance of the grass and wild flowers beneath the trees in the old orchard has been underplayed by the appellant. These form an important habitat for the insects which pollinate the flowers of the fruit trees and so must be regarded as of equal importance. The habitat of the noble chafer beetle also has to be seriously considered. This beetle relies upon rotting apple wood, but modern farming practice has meant that old trees which are its habitat are declining dramatically, as they are grubbed out to be replaced with higher cropping varieties that are more easily harvested. This beetle is now listed as 'vulnerable' and should be protected.
270. The appellant's proposal to move these trees should not be considered as viable, as the evidence it gives to support translocation flies in the face of the advice from experts and appears to rely upon translocating species entirely different to apples and pears. New tree planting would serve no purpose in protecting the beetle since it is the rotting wood on live trees that feeds the grubs. Moreover, leaving dead trees as suggested in the EA would serve no useful purpose, as the tree needs to be living to support the young grubs and need to be at least 50 years old before suitable habitat is created. The harm which would be done to this beetle by any attempt to translocate trees should be classed as significant, as any failure would result in the total extermination of this species and its habitat at this important site.
271. Another major concern is the effect the proposed development would have on ground water levels, when taken in conjunction with the adjacent approved development for 40 houses, south of the A438. There are a number of properties adjacent to these sites that rely solely on well water for their domestic supply and any lowering of the ground water below its current level is likely to materially affect these wells particularly in extended dry spells. It is of concern that no suitable sustainable drainage system (SUDS) that would protect the water table has been proposed, and it is hard to see how any solution to this problem could be found even if only 50% of the site was to be developed. Any lowering of the water table is also likely to have an adverse effect on the viability of important trees on the appeal site.
272. In addition, the idea of using balancing ponds to contain the surface water has to be questioned. Standing water without an ecosystem to protect it is an ideal breeding ground for mosquitoes. Warmer weather and the frequency of international travel could well introduce the malaria carrying mosquito, not to mention Zika virus.
273. This is an ill-conceived proposal, in many instances poorly supported with outdated and ill-considered evidence. If the appeal scheme were to go ahead, this unwanted and totally unsustainable development proposal would have a harmful effect on residents' water supply, the ecology of the site, and the environment.
274. **Mrs Elizabeth Parry**<sup>146</sup>. Mrs Parry and her husband are residents of Hagley Hall, adjacent to the northern part of the appeal site. This Grade II listed building was in a very poor condition, both internally and externally before it was purchased in 2012.

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<sup>146</sup> Full details of this objector's case can be found in Doc 29

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It has now been made habitable, with the restoration planned to be completed in late 2017. Immediately to the south of Hagley Hall is an associated barn, listed by reason of it being within the Hagley Hall curtilage. The barn is currently being converted to a residential use. A variety of broken cider making equipment was found on the site between the Hall and the barn, and it is contended that this demonstrates that the barn and associated outbuildings (now demolished), were used for cider making, in conjunction with the adjoining orchard.

275. There is also an extant planning permission for 2 Border Oak dwellings to the west of this overall plot, with a central driveway intended to serve all 4 properties. Construction has not yet started on these further 2 dwellings, but in due course each of the 4 dwellings will have an associated open-fronted garage, served from the central driveway. All 4 properties have the same pedestrian and vehicular rights of access over this driveway with parking within each garden. The ownership of the driveway is retained by the landowner, who has similar rights of access to Mr and Mrs Parry, but it is only this original owner who has the right to gain access through the boundary gate to the orchard.
276. This drive is not a public footpath, with the 1999 Register of Title stating that access is for the agricultural land beyond. Shared use with 3 other dwellings is considered to be acceptable, but a totally different situation would arise if this was to become the adopted pedestrian access to the whole development site for a further 100 houses. There could be hundreds of footfalls every day, resulting in a loss of privacy as the Hagley Hall kitchen window is only 2.2m away from the boundary, with a further 1m grassed strip to the driveway's edge. From the driveway people would be able to look straight into the Hagley Hall kitchen and dining area.
277. Moreover, there would be no privacy in any part of the garden, and this loss of privacy would also apply to Hagley Hall Barn. There would also be security concerns as the garages have to remain open-fronted. Every item would have to be under lock and key and the house permanently bolted.
278. There would also be a legal complication as to whether or not users of the appeal scheme would have a responsibility to contribute towards the shared maintenance of the surface of the driveway and the service media below ground. This driveway would be 4.5m wide, and would provide for the vehicle turning areas for each of the 4 dwellings. To have a footpath cutting through this area would be dangerous, especially if cyclists are to be permitted to use this route as well. Safety has to be a major consideration and this disregards it completely. Children and cars do not mix.
279. The 2 new houses would respect the architectural character of their neighbours, including the nearby listed Forge Cottage and would be just 1½ storeys in height. This would avoid an over-dominant ridge height and ensure that the new dwellings would be subordinate to the adjacent listed buildings and sympathetic to this part of Bartestree. But it is questionable whether the proposed new dwellings as part of the appeal scheme would also be subordinate in height to the existing listed buildings, and be of a sympathetic design which would fit into the local building pattern.
280. Bartestree does have a bus service to Hereford/Ledbury during weekdays, but evening services after 2000 hours are limited to Friday and Saturday only, meaning that many journeys have to be made by car. In addition, there are limited services and facilities in the village, and there is also pressure on class sizes at the local primary school.

281. Mr and Mrs Parry are not seeking to live in splendid isolation. It is acknowledged that Hagley Hall sits next to the main road and that the adjacent telephone exchange on the eastern side of Hagley Hall is in 24 hour use, with vehicles coming and going throughout the day. It is also the case that children pass on their way to school and nursery, and the village hall and playing fields attract the children after school. However, as a village, Bartestree has already virtually fulfilled its housing quota with the dwellings which have already received planning permission. Because of this, and for the other reasons given above, this appeal should be dismissed.
282. **Dr Richard Williams, on behalf of Herefordshire Campaign to Protect Rural England<sup>147</sup> (HCPRE)**. HCPRE does not oppose sustainable development of an appropriate scale and design quality and in appropriate locations (or on appropriate sites). But such sites should be selected by a proper process, allowing public consultation, and should fully embrace the spirit of the Localism Act, allowing communities to shape their places. The appeal site is quite inappropriate for development for a number of reasons, as summarised below.
283. Firstly, it is the case that at the present time, approval has been granted for 146 dwellings since the beginning of the LPCS plan period in 2011. Thus the parish is already very close to achieving its target for the entire 20 year period. Approval of any more large developments, such as the appeal proposal, would result in a grossly disproportionate housing allocation for this parish and consequently significantly detract from its rural character and distort the settlement configuration.
284. Secondly, the BLNDP is at an advanced stage, having passed Regulation 16. The appeal site is not included as a potential development site and is outside the proposed settlement boundaries in the emerging plan. The accompanying consultation statement indicates significant engagement of local people and strong support for the plan. 973 responses were received to a questionnaire used to inform the BLNDP, which represents about 60% of the adult population and 76% of households. 88% of respondents were opposed to large housing estates, with only 7% in favour. Moreover, 89% of respondents were opposed to accepting more than the 18% allocation of new homes. In addition, the BLNDP Steering Group has held a number of very well attended events in order to effect a comprehensive consultation. This contrasts with the lack of public engagement by the appellant and the lack of support for the appeal proposal.
285. Whilst acknowledging that the BLNDP is not yet made, it is submitted that its advanced stage means that it should be given considerable weight. In support of this view, it is noted that great emphasis is placed on NDPs in paragraph 17(1) of the Framework. Which states that *'...Planning should be genuinely plan-led, empowering local people to shape their surroundings..'*. In addition, paragraph 58 states that *'...Planning policies and decisions should aim to ensure developments will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development; should establish a strong sense of place'*; and paragraph 69 states *'.. Local planning authorities should create a shared vision with communities of the residential environment and facilities they wish to see'*.
286. As already noted, the BLPC has gone to very great lengths to successfully engage many local people in order to produce a truly democratic vision for development to 2031. The appeal proposal is wholly and demonstrably discordant with the wishes of local people. Should this appeal be allowed, it would set a precedent for even more

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<sup>147</sup> Full details of this objector's case can be found in Doc 30

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development, given that it would signal a comprehensive disregard for the LPCS, the emerging BLNDP and indeed the principle of Localism enshrined in the Localism Act 2011 and embedded in the Framework as the first of the Core Planning Principles.

287. In addition to the above points, HCPRE objects to the appeal proposal on grounds of a lack of services and facilities in Bartestree, and concerns about sustainability. With regard to the first of these points, the appellant asserts that *'Bartestree/Lugwardine has significantly more services and facilities than the majority of main villages, and is within close proximity to Hereford'*<sup>148</sup>. However, of the 23 villages in the Hereford HMA identified in the LPCS as the main foci for proportionate development (under Policy RA1) 15 have regular bus services; 3 have cycleways; 15 have a primary school; 11 have preschools; 12 have a village shop; 20 have at least one pub; 9 have a post office; 21 have a church; 20 have a village hall and 13 have playing fields. Two have a doctor's surgery and 4 have nursing homes.
288. Bartestree does not have a post office, a pub (although Lugwardine has one approximately 1.98Km from the proposed site), nursing homes nor cycleways. Bartestree does have a hospice, but in the context of this planning application it can hardly be accorded the status of a village amenity. So, in reality, Bartestree has no more services or facilities than the majority of main villages. Because of this, it should not be required to accept a completely disproportionate housing allocation. Should this appeal be allowed, the total approval for housing in the BLP would represent a 29% increase since 2011 against a target of 18% specified in the LPCS, whilst only 5 years into the 20 year Plan Strategy.
289. Regarding the question of whether the appeal scheme would amount to sustainable development, paragraph 9 of the Framework explains that *'Pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people's quality of life, including (but not limited to): making it easier for jobs to be created in cities, towns and villages; moving from a net loss of bio-diversity to achieving net gains for nature; and improving the conditions in which people live, work, travel and take leisure'*.
290. Judged against these criteria HCPRE argues that the appeal proposal would not represent sustainable development as it would give rise to issues covered in the Council's and the BLPC's evidence relating to landscape; historic buildings and parkland and their settings; traditional orchards and biodiversity; public amenity value of the land, including footpaths; transport especially with regard to access to Longworth Lane from the site and from Longworth lane onto the A438; distortion of settlement pattern and conversion of village into a suburban landscape; and lack of any positive or imaginative contribution to the life of the settlement.
291. For all the above reasons, HCPRE strongly supports the Council's decision to refuse planning permission, and respectfully requests that the appeal be dismissed.
292. **Mr David Whitehead**, also spoke at the inquiry, as the Hon Secretary of the Woolhope Naturalists Field Club, and on behalf of the Hereford and Worcester Gardens Trust. However, he raised no materially different matters to those which were included in his paper, appended to Ms Lowe's proof of evidence<sup>149</sup>. The matters raised, which deal primarily with the history of Hagley Court and the surrounding area, can be seen in full in that document and are therefore not repeated here.

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<sup>148</sup> In the appellant's Statement of Case

<sup>149</sup> Appendix 1 to Doc HC/4/PA – 'Land at Longworth Lane, Bartestree - A Research Paper carried out for the Woolhope Naturalists Field Club and the Hereford and Worcester Gardens Trust.

## Written Representations

293. A large number of letters opposing the appeal proposal were submitted at appeal stage, with a larger number having been submitted at application stage. I have had regard to these representations, but in the main they raise no materially different points to those raised by the interested persons who spoke at the inquiry, and by the Council. Many of the matters raised relate to matters upon which the Council and appellant have reached agreement in the various SOCGs<sup>150</sup>, with all other areas of concern capable of being addressed either by the obligations in the S106 Unilateral Undertaking or by the suggested, agreed conditions, referred to below.

## Conditions

294. A schedule of 20 agreed conditions to be imposed should planning permission be granted, together with stated reasons why each condition is considered necessary, is set out at Appendix C to this Report.

## Planning Obligation

295. As noted above, the Council's fifth reason for refusal related to the absence of a completed planning obligation, and the consequent absence of any legal mechanism by which the Council could require the payment of necessary financial contributions. However, this matter was addressed by means of a completed S106 unilateral undertaking submitted by the appellant<sup>151</sup>. In brief, its obligations cover the following:

- a) The transfer of open space to a Management Company;
- b) A primary education contribution; and
- c) An off-site recreation contribution.

296. Should planning permission be granted, the Council considers that this obligation would make proper provision for planning contributions arising from the appeal development and would meet the requirements of paragraph 204 of the Framework, and Regulations 122 and 123 of the CIL Regulations 2010<sup>152</sup>.

*My conclusions begin on the next page*

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<sup>150</sup> Docs 1, 2 and 3

<sup>151</sup> Doc 39

<sup>152</sup> See Doc 38

## Conclusions<sup>153</sup>

297. The Council originally refused planning permission for 5 reasons<sup>[1]</sup>. However, following further investigations and discussions between the appellant and the Council's Highways Department, and the submission and acceptance of some slightly amended plans, the Council indicated that it would not defend the third reason for refusal, relating to various cycle/footway and general access matters<sup>[2]</sup>.
298. I consider that the changes to the overall scheme arising from these amended plans would be minor, and would not alter the form or scale of the proposal to any meaningful extent. In any case, I am satisfied that the consultation exercise undertaken by the appellant to publicise and seek comments on the amended plans has given all those likely to be directly affected by the appeal proposal the appropriate opportunity to make representations, which I have considered<sup>[3,30]</sup>.
299. Furthermore, during the course of the inquiry the appellant submitted a planning obligation, in the form of a S106 unilateral undertaking, aimed at addressing the Council's concerns raised in its fifth reason for refusal. The Council agrees that this undertaking would satisfactorily deal with the subject matter of this reason for refusal, and has also confirmed that in its view the undertaking complies with CIL Regulations 122 and 123. I share that view, and also consider that the undertaking would accord with the requirements of paragraph 204 of the Framework as its obligations would be (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development<sup>[7,295]</sup>.
300. Accordingly, at the inquiry the Council only maintained its first, second and fourth reasons for refusal. As a result, I have concluded that the main considerations in this appeal are:
- a) The effect of the proposed development on the settings of designated heritage assets and on any non-designated heritage assets;
  - b) Its effect on the character and appearance of the surrounding area;
  - c) Its effect on areas of ecological or nature conservation interest;
  - d) The weight which should be given to policies for the supply of housing, in light of the Council's position regarding its 5 year supply of housing land;
  - e) The weight which should be given to policies in the emerging BLNDP;
  - f) Other matters raised by interested persons, including the effect of the proposed development on the safety and convenience of users of the nearby highways, and its effect on the living conditions of nearby residents;
  - g) Whether the appeal proposal should be seen as representing sustainable development, in the terms of the Framework; and
  - h) How the planning balance, involving the benefits and disbenefits of the proposed development, should be assessed.

### ***The effect on the settings of designated heritage assets and on non-designated heritage assets***

301. The Council's first reason for refusal contends that the proposed development would adversely affect the settings of 3 Grade II listed buildings, and would also result in the loss of part of an UPG associated with Hagley Park/Court. As such, the Council alleges conflict with LPCS Policies LD1 and LD4. The first of these requires

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<sup>153</sup> References in superscript square brackets are to preceding paragraphs in this Report, upon which my conclusions draw.

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development proposals to, amongst other things, conserve and enhance the natural, historic and scenic beauty of important landscapes and features, including Areas of Outstanding Natural Beauty, nationally and locally designated parks and gardens and conservation areas; through the protection of the area's character and by enabling appropriate uses, design and management.

302. Policy LD4 sets out a number of criteria that development proposals affecting heritage assets and the wider historic environment should comply with. These include that they should protect, conserve, and where possible enhance heritage assets and their settings in a manner appropriate to their significance through appropriate management, uses and sympathetic design, in particular emphasising the original form and function where possible. A further criterion is that development proposals should, where appropriate, improve the understanding of and public access to the heritage asset. The policy also makes it clear that the scope of the works required to protect, conserve and enhance heritage assets and their settings should be proportionate to their significance.
303. The appellant is content that Policy LD1 should carry full weight, but argues that LD4 should be given reduced weight because of an alleged inconsistency with the Framework<sup>[213]</sup>. However, as I see it the drawback with Policy LD4 is simply that it does not explicitly indicate what action a decision-maker should take, if harm to a heritage asset or its setting is found. It is therefore unclear how the policy is intended to be applied in practice, and requires a decision-maker to also refer to the Framework to establish the correct 'next steps'. That is the process I have adopted here, and whilst not ideal, I do not believe that it inhibits a decision-maker, or renders Policy LD4 inconsistent with the Framework. I have noted the appellant's concern about the wording of paragraph 5.3.27 in the supporting text to this policy<sup>[51-52]</sup>, but do not consider that it attempts to present an alternative test, nor does it alter my view that this policy is consistent with the Framework and can be given full weight.
304. The Framework indicates that heritage assets are an irreplaceable resource and that they should be conserved in a manner appropriate to their significance. The Glossary explains that in the context of heritage policies, 'significance' is the value of a heritage asset to this and future generations because of its heritage interest. It goes on to state that that interest may be archaeological, architectural, artistic or historic, and that significance derives not only from a heritage asset's physical presence, but also from its setting.
305. In this case there is general agreement that the appeal proposal would not have a direct impact on any of these 3 listed buildings so, as is stated in the reason for refusal, it is the impact upon the buildings' settings which needs to be assessed. The setting of a heritage asset is defined in the Framework as *'the surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral'*.
306. The Framework also makes it plain that applicants for planning permission should describe the significance of any heritage assets affected by the development proposal, including any contribution made by their setting; and that the local planning authority itself should identify and assess the particular significance of any heritage asset that may be affected by a proposal, including by development affecting its setting.

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307. The HE document 'The Setting of Heritage Assets', sets out a 5-step process for assessing the impact of a development proposal on the setting of a heritage asset. It also makes it clear that setting is not a heritage asset nor a heritage designation, but that its importance lies in what it contributes to the significance of the heritage asset. The heritage witnesses for both the Council and the appellant have generally followed this guidance, but have come to different views about what contribution setting makes to the significance of the various listed buildings, and hence have reached different conclusions regarding the impact of the proposed development on that significance.
308. I deal first with the 3 designated heritage assets, namely Hagley Hall, The Forge, and Hagley Court, and in so doing I have paid special regard to the desirability of preserving the buildings or their settings, or any features of special architectural or historic interest which they possess. This is in line with the general duty under Section 66 of the Planning (Listed Building and Conservation Areas) Act 1990.

#### *The Forge and Hagley Hall*

309. In the case of both The Forge and Hagley Hall I have noted the Council's contention that the rural backdrop, seen down the driveway which serves Hagley Hall and its curtilage listed barn, forms part of their setting and is an important element of their significance, providing a link to the past, rural life of the village<sup>[87]</sup>. However, whilst the photographs in the LVIA are helpful in this regard, they only tell part of the story as they do not (and cannot) show the situation following the construction of the 2 dwellings on land adjacent to The Forge, for which planning permission already exists<sup>[11]</sup>. Indeed, observations made at the site visit have to be interpreted with care for the same reason.
310. With these points in mind, and having examined the layout plan for the 2 approved dwellings, it seems to me that there would be very few views of The Forge, if any, which at the same time include any meaningful view of the appeal site. I acknowledge that without development on the appeal site there would still be open, rural land to the south, although I also note that The Forge and appeal site are separated from one another by a paddock, which would be unaffected by the appeal proposal<sup>[126]</sup>. Furthermore, any visual connection between The Forge and the open land of the appeal site would, in my assessment, be limited to just the upper parts of trees and hedgerows, seen in the gaps between The Forge and the new dwellings.
311. Moreover, despite being of just 1½ storeys in height, the 2 approved dwellings would be noticeable and prominent features in any views of The Forge from the A438. The presence of these new dwellings, which has obviously been assessed as acceptable by the Council, means that overall, the appeal site would not form any meaningful part of the setting of The Forge. In this regard I am also mindful of the appellant's comment that there is no proven past functional connection between The Forge and the appeal site<sup>[126]</sup>.
312. I further note the appellant's view that the focus of The Forge's setting is towards the A438, and that it is from there that its trade would have been drawn, with its significance being mainly derived from its own physical attributes and because of its age, type of construction and the survival of its forge and bellows<sup>[126]</sup>. These seem to me to be reasonable assertions, which have not been countered by any firm evidence from the Council. Because of this it is my conclusion that the appeal proposal would not have any material impact on the significance of The Forge.

313. I do, however, consider that a slightly different situation exists in the case of Hagley Hall and its associated barn. In my view the main element of Hagley Hall's setting arises from its siting adjacent to and facing the main A438, as its size and design set it apart from other buildings in the vicinity. Despite the existence of the 20<sup>th</sup> century Telephone Exchange to its east, it still has a certain presence in the street scene, which speaks of its former (and current) status as a large, stylish dwelling.
314. The fact that Hagley Hall has a barn-like structure to its rear, with open land beyond can, however, be seen and appreciated in views southwards along the driveway which serves these buildings. The basic form and design of the barn is being retained as part of its conversion to a dwelling such that, to my mind, the former association between these 2 buildings is not completely broken. Moreover, I acknowledge that there may well have been some historic connection between the barn and the orchard to the south, and in this regard I have noted the references to the storage of vehicles in the barn<sup>[84-85]</sup> and the presence of cidermaking equipment in the grounds of the Hall, although none of this conclusively proves a link in my opinion.
315. Nevertheless, with these points in mind, it seems reasonable to me that the northern part of the appeal site should be seen as forming part of the setting of Hagley Hall and the curtilage listed barn, and that this would be affected by the appeal proposal. The matter which then needs to be established is what level of harm this would cause to the significance of these heritage assets.
316. As part of its assessment process, the Council has made use of the EH<sup>154</sup> guidance 'Seeing the History in the View', particularly Table 5 to produce its assessment of the overall level of harm<sup>[77]</sup>. However, I note the appellant's concerns that despite the guidance's note to the effect that this methodology has wide applicability, it has principally been designed to assess specific views that have been recognised as being important<sup>[114]</sup>. As such, it has to be used with caution in situations, as here, where no specific and widely accepted views of importance of the assets concerned have been identified.
317. The Council has referred to certain views, such as the view southwards down the driveway, in which Hagley Hall, the barn and part of the appeal site can be seen<sup>[86]</sup>. But this is only one view of these heritage assets, and no strong evidence has been put forward to indicate why this view should be considered of materially greater importance than, say, LVIA Viewpoints 12 or 14, which primarily show Hagley Hall in its context alongside the main road. Furthermore, the current, fairly open view down the driveway towards the appeal site would be noticeably restricted by the presence of the aforementioned pair of new dwellings on land to the west, once built.
318. It is also the case that there is no firm indication at present of what form the housing layout in the northern part of the appeal site would take, because of the outline nature of the proposal. However, it is clearly likely that some built form would be visible on the site from along the driveway, but as Viewpoint 12 in the LVIA shows, built form in Malvern Place can already be seen to the south of Hagley Hall and the barn, and it has to be assumed that the Council considered this situation acceptable prior to approving the Malvern Place development.
319. Using the 'Seeing the History in the View' methodology, the Council has assessed that there would be an overall medium adverse effect on heritage significance which,

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<sup>154</sup> English Heritage now Historic England

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in Framework terms, it equates to harm towards the centre to higher end of the 'less than substantial' scale, detailed in paragraph 134 of the Framework<sup>[86,89]</sup>.

320. However, it would be difficult to reach a similar conclusion regarding impact in the context of the aforementioned LVIA Viewpoints 12 and 14, as the appeal site cannot be seen in such views, so the significance of the asset deriving from its appearance and location alongside the main road would be unaffected by development on the appeal site. Moreover, there is no indication in the Council's evidence that the effect of the extant planning permission for 2 dwellings on land to the west of Hagley Hall, as just noted, has been taken into account in its assessment of impact. To my mind, the presence of these dwellings would serve to reduce the level of impact of the appeal proposal, as there would now be other features in this view to attract the eye.
321. Having regard to all the above points, I have to conclude that the Council's method of assessment has inflated the likely level of harm, and that the impact would be lower if all aspects of the significance of the asset had been considered. I do not attempt to quantify this in the terms of 'Seeing the History in the View', as I am not persuaded that this is an appropriate methodology in this case, for reasons already given. However, when assessed against all aspects of significance, and when account is taken of the existing permission for the 2 dwellings, I consider that the level of harm would be towards the bottom end of the 'less than substantial' scale.
322. For completeness on this topic I note that the Council's methodology results in the same 'centre to higher end of the less than substantial' scale level of harm in respect of the appeal proposal's impact on The Forge<sup>[88-89]</sup>, but repeat my view that there would be no material impact on the significance of this heritage asset.

*Hagley Court and the Unregistered Park and Garden (UPG)*

323. Whilst acknowledging that the appellant disputes whether or not there is an ongoing close connection between Hagley Court and what it refers to as the remnant parkland<sup>[129]</sup>, it is a fact that these 2 assets were largely dealt with together at the inquiry. I therefore consider it convenient to do the same in these conclusions.
324. The wording of the Council's first reason for refusal shows a clear inter-connection between heritage and landscape matters and, to some extent, also ecology matters. However, it was agreed at the inquiry that the identification of the southern part of the appeal site as part of an UPG associated with Hagley Park/Court does not constitute a landscape designation, but rather that the UPG should be seen as a feature in the landscape<sup>[152]</sup>. I return to this matter later in these conclusions. Whilst Hagley Court is clearly a designated heritage asset, being Grade II listed, the parkland is unregistered, meaning that it has the status of a non-designated asset for the purposes of the Framework<sup>[129]</sup>.
325. Much helpful information has come to light regarding the history of Hagley Court through this application and appeal process. Not least, it can now quite clearly be shown that the statutory listing description for Hagley Court, which refers to the building as an early 18th century house, is in error. Sales particulars from 1817 seeking to dispose of some 85 acres (34.4 ha) of land which was formerly part of the Longworth Estate, and which included the appeal site and the site of Hagley Court, make no mention of a dwelling existing at that time<sup>[74]</sup>.
326. Rather, the land is described as containing 'as beautiful a spot to build upon as any in the County', and subsequent sales particulars from 1824 indicate that that suggestion appeared to have been acted upon, as at that time the land is described

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as containing 'a newly-erected stone-built villa, not yet completed'. Firm indications, therefore, are that Hagley Court dated from around the 1817 to 1824 period<sup>[130]</sup>. Both sets of sales particulars refer to this land as being well-timbered, with the 1817 particulars noting that some of the areas of tree planting comprise upwards of 30 year's growth<sup>[131]</sup>.

327. These points are accepted by the parties, and seem to be generally confirmed by the 1815 OS map, which shows that there was a large expanse of parkland extending northwards from Longworth Hall (which lies some distance to the south), stretching to the east of Longworth Lane and incorporating the southern part of the appeal site. This parkland appeared to terminate in the north at a treed avenue, which extended westwards from Longworth Lane, more or less in the area where the present-day Hagley Park cul-de-sac lies<sup>[131]</sup>.
328. The parties also agree, as is clearly the case from the 1886 OS map and the sales details from 1913, that subsequent to the erection of Hagley Court a main entrance to this property was constructed to the north, to join the A438, with a further driveway or promenade shown heading southwards from the building to end at a field boundary<sup>[78]</sup>. These maps also show a further path, in addition to the marked footpath, running from the northern side of Hagley Court to a position on Longworth Lane close to the appeal site's south-eastern corner<sup>[79,133]</sup>. However, against this agreed background the parties have taken different positions regarding the level of connection and design influence that can be demonstrated between Hagley Court and its surrounding parkland.
329. The Council makes reference to Hagley Court being designed for a landscape that was partly natural, but also partly designed parkland, and claims that with a new house in place, the parkland was then further developed to enhance the view to and from Hagley Court<sup>[78]</sup>. In this regard it further claims that Hagley Court was positioned to take advantage of high ground and the local topography to capture 180° views to the Malvern Hills to the east; the Black Mountains in the west; and the River Lugg in the south, and then on to the Wye Valley AONB<sup>[78]</sup>.
330. The Council also states that the LIDAR image shows the old route of a driveway from the turnpike corner, by the Lodge to Longworth, across the parkland to the Hagley Court complex<sup>[79]</sup>. However, whilst possibly a reasonable suggestion, there is no firm evidence to support the Council's view that this was used to provide a shorter route to church and to Ledbury<sup>[80]</sup>, nor to support the Parish Council's suggestion that it might be the line of a former turnpike road<sup>[226]</sup>. Moreover, there is no firm evidence to support Mr Whitehead's view that the 2 clumps of 7 Lime trees in the southern part of the appeal site were 'planted soon after the building of the house in about 1825'<sup>[80]</sup>; or the view expressed by Ms Tinkler for the Council that these clumps 'were clearly planted as ornamental eye-catchers and to frame views to and from Hagley Court along the driveway through the parkland'<sup>[80]</sup>.
331. In short, there is nothing in the evidence before me to cause me to give more credence to the Council's assertions that the parkland in this southern part of the appeal site was deliberately designed for Hagley Court, than the appellant's assertion that it is simply former parkland associated with Longworth Hall. The appellant also provides a more prosaic suggestion regarding the apparent former driveway across the southern field and the clumps of trees, namely that the route could simply have served as a secondary or 'tradesman's' entrance, and that the tree clumps could have been planted to provide shelter for animals, rather than to frame views<sup>[134]</sup>. Indeed the appellant maintains that the Lime clumps do not and did not 'frame'

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anything, but rather sit on a straight line which runs along a different raised feature which the LIDAR image reveals<sup>[134]</sup>.

332. However, I am not persuaded that it is necessary to come to a definitive view on this matter. There is a clear historical association between Hagley Court and the appeal site, stemming from the sale of land from Longworth Hall back in 1817, and on the basis of the evidence before me, which includes some shaded OS maps from 1905 and 1930<sup>[75]</sup>, I consider that the appeal site parkland may well have formed a meaningful part of Hagley Court's setting in the past. But time has moved on, and together with changes in land ownership it seems to me that the setting of Hagley Court has changed significantly, with it now being very difficult to experience Hagley Court from within the appeal site.
333. As a result, and despite their close physical proximity, I consider that the southern part of the appeal site can now only be seen as comprising part of Hagley Court's setting to a modest extent. The tall, dense planting along the western side of the appeal site/eastern side of Hagley Court means that there is only limited inter-visibility between Hagley Court and the appeal site, and I saw at my site visit that only glimpsed views of the Hagley Court building are possible from the PROW which crosses the appeal site<sup>[143]</sup>.
334. Moreover, I also saw at my site visit that dense planting around the promenade which extends southwards from the building means that views out from the Hagley Court site, certainly eastwards towards the appeal site, are severely restricted. I consider that inter-visibility between the appeal site and the Hagley Court grounds may improve somewhat in winter, when some of the foliage would not be as dense, but to my mind this would not materially alter the fact that as the appellant has said, the current Hagley Court is rather 'inward looking' and largely disassociated from its former surrounding parkland, including the appeal site<sup>[139]</sup>.
335. I accept that more distant views may well have been possible from the Hagley Court grounds in the past. Indeed, the sales particulars for 1817 refer to 'extensive, picturesque and very pleasing views' being available, albeit from the south-western part of the overall land for sale, and my visit to the roof of Hagley Court revealed that if the existing vegetation was absent, extensive views could still be obtained today. However, the plain fact is that such views are not available now, and despite a rather unsubstantiated suggestion at the inquiry that some of the trees along the eastern boundary of Hagley Court could be removed in the future, there is no firm evidence before me to suggest that this situation is likely to change any time soon<sup>[141-142]</sup>.
336. All of the above leads me to conclude that the southern part of the appeal site currently plays only a limited role as part of the setting of Hagley Court. I do give some weight to the Council's argument that the appeal site serves to separate Hagley Court from the built-up area of Bartestree, thereby retaining its 'country house in parkland' appearance<sup>[78]</sup>. But I consider that this would largely be addressed by the proposed setting-back of development to the east, to give a buffer of some 50m-70m wide by about 200m long between the proposed housing and the boundary of Hagley Court<sup>[28]</sup>. That said, it appears from the Illustrative Development Framework Plan that there would be a lesser separation between the Hagley Court grounds and the proposed development in the northern field.
337. Using its 'Seeing the History in the View' methodology, the Council argues that Hagley Court should attract medium significance as a heritage asset, with the impact

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of the proposed development being high adverse, leading to an overall major adverse effect on significance. It further maintains that this would place the level of harm towards the high end of the 'less than substantial' scale, in Framework terms<sup>[82]</sup>. However, for the same reasons as given earlier, I consider that this inflates the level of impact as it only relates to one aspect of the asset's significance, and is in relation to views in which the asset itself is not clearly visible. Once again it seems to me that a level of harm towards the bottom end of the 'less than substantial' scale would be a more reasonable assessment in terms of impact on overall significance.

338. I turn finally to consider the impact on the Hagley Park/Court UPG itself. This does not have the status of a designated asset, and therefore is not given any protection by the Planning (Listed Building and Conservation Areas) Act 1990, but falls to be considered as a non-designated heritage asset under paragraph 135 of the Framework<sup>[213,217]</sup>. This explains that in cases where a development proposal would directly or indirectly affect a non-designated heritage asset, a balanced judgement will be required, having regard to the scale of any harm or loss, and the significance of the heritage asset.
339. In itself, these requirements to consider the scale of any harm and the significance of the asset give rise to problems, as no definitive plan has been submitted which shows the full extent of this UPG. Appendix 8d of the LPCS only defines it by means of a point grid reference which lies in open land to the south-west of Hagley Court. In addition, the evidence before me contains details of 3 alternative areas, namely the 85 acres (34.4 ha) which formed the subject of the 1817 and 1824 sales; a smaller area shown shaded on the 1905 and 1930-31 OS maps; and the area shown on Map C of the BLNDP<sup>[146]</sup>. There is nothing to say which, if any, of these is correct. It is clearly difficult to establish the significance of an asset when the extent of that asset is not known.
340. The Council has attempted to address this by focussing on the Sheepwalk, which is a large field identified on the 1839 Tithe Map as covering the whole extent of the southern part of the appeal site, as well as the area now occupied by the Hagley Park cul-de-sac and an area to the north of Hagley Court<sup>[80]</sup>. The Council also maintains that another important feature of the UPG is the fact that it is raised above the level of Longworth Lane by about 1m, with this boundary comprising an 'historic hedgerow' which overtops an 'historic dry stone wall'<sup>[81]</sup>. Using its 'Seeing the History in the View' methodology, and taking this Sheepwalk as the main area of interest, the Council considers that the UPG should be categorised as having medium significance<sup>[83]</sup>.
341. It then argues that the proposed development would have a high adverse magnitude of impact on the UPG, as a result of the substantial loss of open parkland, historic hedgerow and stonewalling, plus the destruction to the character of the parkland by the installation of a new access road, visibility splays and realigned hedging<sup>[83]</sup>. In addition it maintains that there would be an adverse impact on the setting of this area of parkland due to the proposals to build on the traditional orchard, and by inappropriately providing the community orchard within the remaining parkland area. Combining these points, the Council considers that there would be an overall major adverse effect on the significance of the UPG<sup>[83]</sup>.
342. In contrast, the appellant considers that the significance of the UPG is only modest, as it is much altered from its former state and is, in any case, only a relatively minor non-designated asset<sup>[149]</sup>. In terms of the appeal proposal's impact, the appellant

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accepts that with regards to that part of the UPG which lies within the appeal site boundary, some of the parkland would clearly be lost to built development, whilst the remainder would have its setting changed by the presence of the new housing. But insofar as the surviving parkland outside the appeal site is concerned (whatever its actual extent may be), the appellant contends that the impact of the development on it would be negligible<sup>[149]</sup>.

343. For my part, it is clear that on the basis of any of the 3 alternative areas for the UPG detailed above, the southern part of the appeal site only comprises a smallish part of the overall UPG. Furthermore, some significant changes have occurred to the UPG in more recent times, such as the construction of the Hagley Park cul-de-sac in the middle of the 20th century<sup>[75,139]</sup>. Both of these matters have to reduce the value of this part of the appeal site in any assessment of the overall significance of the UPG.
344. That said, I do acknowledge that the appeal site constitutes the only part of the UPG to which the public has any direct access, by means of the PROW which crosses it. This area is also clearly known and accepted locally as parkland associated with Hagley Court, and indeed is shown as such on one of the BLNDP maps<sup>[146]</sup>. Moreover, whilst I have already commented on the low level of inter-visibility between the appeal site and Hagley Court, some glimpsed views of Hagley Court can be seen from the appeal site and, as noted, these views may increase somewhat in winter months when less foliage is around. Together, I consider that these points serve to raise the importance of the UPG and arguably, therefore, its significance. But on balance because of its uncertain size and intrusions such as the Hagley Park cul-de-sac, I consider that the UPG should be seen to be just of modest significance.
345. In terms of impact, I share the appellant's view that for those parts of the UPG outside of the appeal site, the effect of the appeal scheme would be negligible. Furthermore, as there is no clear, documented evidence regarding the function or age of the stone wall on Longworth Lane, I am not persuaded that the need to realign this wall and the hedge to provide access to the site would be unacceptably harmful. However, for the appeal site itself it seems to me that notwithstanding the fact that some 50% of the southern field would remain undeveloped, the nature of this remaining parkland would be appreciably changed in character, including by taking up a relatively large part of it with the proposed community orchard and the access road<sup>[83]</sup>. On balance, and recognising that the appeal site only comprises a part of the overall UPG, I consider that the impact of the appeal proposal could best be described as having a moderate adverse impact on the significance of the UPG.
346. In summary, I conclude that the proposed development would result in less than substantial harm to the significance of both Hagley Hall and Hagley Court, with this harm being towards the bottom end of this scale for both of these assets. In accordance with paragraph 134 of the Framework, this harm will need to be weighed against the public benefits of the proposal, which I do later in this Report. I further conclude that the proposed development would have no material impact on the significance of the third designated heritage asset, The Forge. For the non-designated UPG I conclude that the appeal scheme would have a moderate adverse impact on its significance. This harm needs to be weighed in the overall planning balance, which I also undertake later in this Report.
347. Accordingly, the appeal proposal would be at odds with a plain reading of some elements of LPCS Policies LD1 and LD4, but the extent of this conflict will be dependent on the outcome of the balancing exercises, just indicated.

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***The effect on the character and appearance of the surrounding area***

348. This matter is covered by the first reason for refusal in which the Council makes several allegations concerning the appeal proposal's impact on character and appearance, many of which have overlaps with the heritage matters just discussed. Firstly, it maintains that the proposed development would result in the irrevocable loss of an important element of the designed historic landscape associated with the Grade II listed Hagley Court which, amongst other things, is characterised by a number of individual and groups of mature, specimen trees with high amenity value in their own right. It also maintains that the development would destroy the open setting for the Hagley Court complex and would fundamentally disrupt the interrelationship between the house and its surrounding parkland and threaten the long-term viability of the parkland trees in a manner that conflicts with the integrity of the designated heritage asset's setting.
349. A further allegation is that the effects on landscape character would be compounded by the loss of traditional orchard from the northern parcel of the appeal site and its proposed relocation into the southern parcel where, along with the proposed housing it would detract from the historic structure, character and appearance of the parkland. Finally, the Council alleges that large-scale development in this location would fundamentally change the character and appearance of this edge-of-village location to a more suburban character in a manner that is also prejudicial to the surviving historic landscape character.
350. As already noted this first reason for refusal touches on heritage and ecology/biodiversity matters as well, and so conflict with a number of LPCS policies is alleged, not all of which relate to this character and appearance topic. That said, it seems to me that the policies with which the Council maintains there is a conflict in this matter are SD1, SS6, LD1 and LD3.
351. Amongst other things, Policy SD1 requires development proposals to make efficient use of land - taking into account the local context and site characteristics; to make a positive contribution to the character of the area; and to ensure that distinctive features of existing buildings and their setting are safeguarded and where appropriate, restored. Policy SS6 is a strategic policy which states that development proposals should conserve and enhance those environmental assets that contribute towards the County's distinctiveness, and makes specific reference to settlement pattern and landscape.
352. Under Policy LD1, development proposals need to demonstrate that features such as scale and site selection have been positively influenced by the character of the landscape and townscape, and that regard has also been had to the protection and enhancement of the setting of settlements. Development proposals should also conserve and enhance the natural, historic and scenic beauty of important landscapes and features, including locally designated parks and gardens; and should incorporate new landscape schemes and their management to ensure development integrates appropriately into its surroundings.
353. In addition, proposals should maintain and extend tree cover where important to amenity, through the retention of important trees, appropriate replacement of trees lost through development, and new planting to support green infrastructure. Green infrastructure is also covered by Policy LD3, which requires development proposals to protect, manage and plan for the preservation of existing and delivery of new green infrastructure; and to protect valued landscapes, trees and hedgerows. Proposals

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will be supported where the provision of green infrastructure enhances the network and integrates with, and connects to the surrounding green infrastructure network.

354. Also relevant is section 11 of the Framework, which deals with conserving and enhancing the natural environment. Of particular note in this regard is paragraph 109 which states, amongst other matters, that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes. I return to this matter shortly.
355. In considering the likely impact of the proposed development I have had regard to the appellant's LVIA, submitted to support the planning application<sup>[58,160]</sup>. In summary, this argues that the proposed development has the potential to successfully integrate into the local surroundings without any unacceptable landscape or visual effects<sup>[58]</sup>. I have also had regard to the evidence of the appellant's landscape witness, Mr Jackson, which is in broad agreement with the overall assessment of effects set out in the LVIA, but does differ a little on some individual judgements relating to landscape character, and for specific receptors.
356. I have also had regard to the contrary position put forward at the inquiry for the Council by Ms Tinkler. In summary, the Council defends its reasons for refusal and alleges that the proposed development would give rise to permanent adverse effects on all of the landscape and visual receptors identified in the studies, with a level of effect which would be higher than claimed by the appellant<sup>[59]</sup>. As such it is the Council's case that the appeal proposal would not protect, conserve or enhance what it considers to be a valued and locally designated landscape, and therefore would be at odds with the development plan policies cited.
357. The differences between the various assessments have been set out in a helpful comparative schedule, although in considering this I have noted that slightly different assessment criteria have been used by the 2 witnesses, such that a direct comparison between their assessments cannot necessarily be made<sup>[160]</sup>.
358. Dealing first with the effect on landscape character, it was agreed at the inquiry that the identification of the southern part of the appeal site as part of an UPG associated with Hagley Park/Court does not constitute a landscape designation, but means rather that the UPG should be seen as a feature in the landscape to which regard needs to be paid<sup>[152]</sup>. It was further agreed that the appeal site is not subject to any national or local landscape designations<sup>[152]</sup>.
359. The evidence before me shows that at the national level the appeal site lies within the Herefordshire Lowlands National Character Area (NCA) 100, and that the Wye Valley AONB lies some 2.3km to the south-east of the appeal site at its closest point. Both parties agree that the appeal proposal would give rise to no undue impact on this NCA, nor directly affect the AONB<sup>[157]</sup>, and I share that view.
360. There was, however, a difference of opinion between the parties regarding landscape impact at the County level, where the Council's SPG on Landscape Character Assessment categorises the LCT of the area within which the site lies as 'Principal Settled Farmlands'. This LCT is noted as being characterised as the rolling lowland area of Central Herefordshire, comprising a settled agricultural landscape of dispersed scattered farms, relic commons, small villages and hamlets<sup>[59]</sup>.
361. I note that neither Mr Jackson nor the LVIA make any reference to the 'Forces for Landscape Change' and 'Settlement Pattern' sections of the SPG, both of which are referred to by the Council<sup>[59]</sup>. Together, these explain that development pressure in

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many areas within this LCT has resulted in a distinctly nucleated or clustered settlement pattern which is contrary to the landscape character, noting further that additional housing in hamlets and villages should be modest in size in order to preserve the character of the original settlement.

362. I accept that this SPG only provides guidance at a broad scale and is not a replacement for a detailed site and scheme specific LVIA. However, as the submitted LVIA does not specifically mention and address concerns set out in the SPG which can have a bearing on an assessment, and can help to focus the assessment on particular issues, as detailed above, it calls its rigour into question somewhat.
363. Turning to likely visual effects, there is general agreement between the parties that the appeal site is currently relatively well-contained in the wider landscape by topography, built form and vegetation. As such, the majority of views of the site are restricted to encircling viewpoints at relatively close quarters, apart from some longer-distance views to the south and south east.
364. Insofar as these more distant viewpoints are concerned I visited a suggested location within the AONB<sup>155</sup> to make observations towards the appeal site. I share the appellant's view that from this, and no doubt from similar, distant locations, Bartestree appears as a small settlement within a mature landscape setting, with the site itself being barely discernible<sup>[8,157]</sup>. From such viewpoints the proposed development would blend into the existing settlement form and would not be unduly noticeable or prominent<sup>[160]</sup>. As a result I am not persuaded that the appeal proposal would result in any materially adverse visual impact from such locations.
365. With regard to the impacts from viewpoints within or close to the site, it is clear that any visual change is only likely to be experienced by occupiers and users of the immediate surroundings, and the site itself. The first of these groups covers pedestrian and vehicular users of Longworth Lane and a section of the A438, together with residential occupiers of some properties in Longworth Lane, Hagley Park and Malvern Court and, to a limited extent, the A438. The second group covers users of the PROW which crosses the southern part of the appeal site.
366. As noted earlier, the schedule prepared by the appellant sets out the differences between the parties. These differences cover the 2 groups of receptors detailed above, and relate to a discrete number of viewpoints, namely Viewpoints 3 and 4, representing views along Longworth Lane; 5 and 6, representing views on the PROW across the southern part of the site; and 12 and 13, representing views from the A438, in the vicinity of Hagley Hall and The Forge<sup>[160]</sup>.
367. For Viewpoints 3 and 4 the Council argues that the resultant significance of effect to the proposed development on completion would be 'moderate to major negative', whilst the appellant assess the impact as 'minor adverse' for road users and 'minor/moderate adverse' for residents. For Viewpoints 5 and 6, the Council considers the impact would be 'moderate to major negative' and goes as far as to say it could even be 'major negative'. The appellant's position is that the impact should be seen as 'moderate adverse'. Finally, for Viewpoints 12 and 13 the Council assesses the impact to be 'moderate adverse', whereas the appellant argues that it would be 'minor adverse'<sup>[160]</sup>.
368. Such assessments are, of course, largely subjective, and therefore whilst I have borne in mind the differing views expressed by the 2 landscape witnesses, I also

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<sup>155</sup> Similar to Viewpoint 16 in the LVIA

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made my own assessments on site with the assistance of the photo-viewpoints and the material contained in the Illustrative Development Framework Plan and the Design and Access Statement.

369. In my assessment, by far the greatest impact of the proposed development would be experienced by users of the PROW which crosses the southern part of the site. I have noted the Council's contention that this PROW is used by long-distance walkers as well as by local people<sup>[64]</sup>, but as no firm evidence has been submitted to support this claim, I can only give it very limited weight.
370. The appellant acknowledge that the appeal scheme would result in some notable visual changes for users of this PROW, but comments that this footpath would be retained as part of the proposed development and would be sited within the public open space and green infrastructure area that stretches throughout the southern and western part of the site<sup>[161]</sup>. The appellant further comments that from Longworth Lane, PROW users would still enter the site from its south-east corner, where the nearest new houses would be set back beyond public open space and a conserved grouping of mature trees<sup>[161]</sup>.
371. This, it is argued, would present a pleasant and open route into the site, with the PROW then passing through an open landscape corridor of at least 15m width and incorporating a further grouping of mature trees, before leading to the western side of the site where it would pass through the proposed community orchard and further open pasture. In addition, the appellant points out that further footpaths would offer a number of alternative routes for users to access the public open space and connect through to the A438 to the north of the site<sup>[161]</sup>.
372. In summary the appellant maintains that whilst new housing within this southern part of the site would have an adverse effect, this would be moderated by the presence of the existing houses immediately surrounding the site and would be mitigated by the conservation of the existing framework of mature trees and hedgerows and the large area of public open space and new green infrastructure<sup>[163]</sup>. Overall it is the appellant's view that with high quality new dwellings fronting onto these conserved green areas, the visual effects upon the PROW users passing through the site would be no more than moderate adverse. Moreover, it is claimed that this localised effect would further lessen over time with the maturing and management of the conserved and new planting and landscape areas<sup>[163]</sup>.
373. However for my part I consider that the proposed development would bring about a significant change to the appearance of both the northern and southern parts of the appeal site. Impact on the northern part would, in purely visual terms, be less of an issue, as there is currently no public access to this area. I accept that development on this northern part would be visible to occupiers of a number of residential properties which back onto this part of the appeal site, but with careful use of appropriate boundary treatment I do not consider that this should count materially against the appeal proposal.
374. But in my assessment, the impact upon the southern field would be quite a different matter. I acknowledge that the clumps of Lime trees would be retained, but their context would be significantly changed as they would no longer be trees in open parkland, but would be seen as being more visually constrained, within a residential area. In addition, whilst I accept that the footpath would be diverted through public open space, it would pass much closer to areas of domestic activity than is the case at present, passing close to the proposed LEAP and the front and/or rear gardens of

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residential properties and would therefore not provide the tranquil environment it does currently.

375. Moreover, there would be many more houses visible to users of this route, and the proposed community orchard could also introduce further activity into this area. Taken together, these matters lead me to conclude that the character of this PROW would change significantly from having quite a rural feel, to a distinctly more suburban feel, and in my opinion this would significantly change the nature and experience of walking this route. Overall, it seems to me that an area which is clearly valued locally for its tranquillity would be materially impacted for the worse.
376. That said, the fact that the existing Hagley Park cul-de-sac clearly intrudes into this remnant parkland area cannot be ignored. It is visible to users of the footpath and its presence and the rather unsightly nature of some of rear garden boundaries does somewhat diminish the rural character of this route. However, despite its size, in practical terms it only takes up the north-eastern portion of this southern field, with the rest of the area having a decidedly rural feel. Because of this I am not persuaded that the presence of this existing housing can be used to argue that further residential development would be acceptable.
377. There was some discussion at the inquiry as to whether the appeal site, and particularly the southern field, should be considered a valued landscape in terms of Framework paragraph 109, with the appellant arguing strongly that it should not<sup>[152-155]</sup>. In support of this position the appellant referred to other appeal decisions and judgements, and also to guidance in GLVIA3, particularly in its section dealing with 'undesigned landscapes', and Box 5.1 entitled 'Range of factors that can help in the identification of valued landscapes'. The appellant has considered each of the factors in Box 5.1 and has come to the view that the landscape of the site is of medium value<sup>[153]</sup>.
378. However, whilst the appellant does acknowledge that the southern part of the site comprises unregistered parkland, this point is not explored any further in landscape terms, even though the 'conservation interest' factor in Box 5.1 makes it clear that amongst other things the presence of features of historical interest can add to the value of the landscape, as well as having value in their own right. I have noted the appellant's position on the extent, form and value of the UPG, under the previous consideration, but the fact remains that the land is identified as a UPG, and there are clear historical connections between Hagley Court and this land, even if that association is somewhat diminished nowadays. To my mind, this has to be seen as an indication that this feature of the landscape is valued locally.
379. Moreover, I note that under the heading of 'Perceptual aspects' for Box 5.1, the appellant states that the appeal site is not a tranquil landscape, yet that is the very word used by many of the interested persons who spoke at the inquiry, to describe the southern field<sup>[153]</sup>. In addition, 'tranquillity' is a quality of the site which the Parish Council and others considers would be lost if the development was to proceed<sup>[228,249,255]</sup>. From my site visit I saw how this PROW across the southern field provides a relatively secluded walk, away from traffic on the A438, such that I do not think the description of the site as a tranquil area is inappropriate.
380. These points lead me to conclude that the question of whether or not the appeal site, and especially the southern part of it, should be considered to be a valued landscape, is not as clear-cut as the appellant suggests. On balance I consider that the UPG

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designation and the site's well-professed tranquil nature can reasonably lead to a conclusion that this area should be considered a valued landscape.

381. In addition, it is clear to me that the proposed development would serve to consolidate built form on this southern side of the A438, and extend it much further southwards than is currently the case, even allowing for the recently approved scheme for 40 dwellings on land to the north-west of the appeal site, adjacent to the A438<sup>[25]</sup>. Whilst this depth of development would only be seen from the public highway in glimpsed views from the A438 along the Hagley Hall Barn driveway, and to some extent along the site access itself, it would certainly be experienced by users of the PROW, who would be aware of a more or less continuous area of development stretching up to the A438. As such the appeal proposal would not conserve and enhance Bartestree's settlement pattern, as required by LPCS Policy SS6.
382. Finally, although I have noted the appellant's contention that appeal scheme has been positively influenced by the landscape, such that the first bullet point of LPCS Policy LD1 is not offended<sup>[212]</sup>, I do not share that view. It seems to me that the appellant's main basis for taking this stance is its comment, made several times by Mr Jackson in evidence, that the existing site landscape is strongly influenced by the surrounding properties, particularly on the eastern edge<sup>[158]</sup>. Whilst it is a fact that some existing housing does abut some parts of the site, there seem to me to clearly be other strong influences as well, such as the undeveloped, largely rural nature and appearance of much of the site, of which lesser account appears to have been taken. Because of this I am not persuaded that the presence of adjoining development can be used as strong justification to add more housing to a greenfield site.
383. In view of all the foregoing points I conclude that the proposed development would have an adverse impact on the character and appearance of the appeal site, the southern part of which would be largely unrecognisable as traditional parkland if the appeal scheme was to proceed. Accordingly the appeal proposal would be at odds with the relevant parts of LPCS Policies SS1, SD6, LD1 and LD3 to which I have already referred. Moreover, for reasons already given I further conclude that despite its relatively small size, the appeal site could reasonably be considered to be a valued landscape for which protection is offered under paragraph 109 of the Framework. This is a matter which will weigh against the proposal in the planning balance, which I carry out later.

### ***The effect on areas of ecological or nature conservation interest***

384. At the outset, under this consideration, I note that the SOCG records agreement between the parties that impacts upon local populations of birds, badgers, hedgehog, great crested newts, reptiles and bats could potentially be adequately mitigated using standard approaches which could be secured through condition. As such, even though some concerns on these topics were raised by interested persons, including assertions that insufficient field survey work had been undertaken<sup>[267,273]</sup>, there is no firm evidence before me to indicate that any impacts of the proposed development upon these species should be a cause for concern.
385. I have also noted Mrs Hoppe's comment regarding the value of the Scots Pine, T19<sup>[259]</sup>. But as the Arboricultural Assessment indicates that this tree has suffered a lightning strike, or similar damage, and is unfit for retention, I am not persuaded that the fact that this tree would be removed as part of the proposed development should weigh against the appeal proposal.

386. There are, however, some areas of disagreement between the parties on this topic, relating to the 3 HPis which the appeal site contains, namely the traditional orchard located within the northern part of the site; the wood-pasture and parkland present as the southern part of the site; and the hedgerows dominated by native species.
387. Dealing first with the northern field, the EA describes this as an old, traditional orchard, unmanaged since the 1990s, with areas of dense bramble scrub which has encroached into the site from the western boundary hedge, together with species-poor, semi-improved neutral grassland. This description accords with my impression of this part of the site from my 2 site visits. The EA further comments that the orchard contains 35 trees, 12 of which are dead, with many of the remainder having significant deadwood and being moribund<sup>[66]</sup>. This information has been updated by the evidence of the appellant's arboriculture witness, Ms Kirk, who records a total of 36 trees, comprising apple and pear trees in 2 species, with the species of some of the dead trees unable to be determined. Overall 25 of the trees were recorded as living, with the remaining 11 dead<sup>[166]</sup>.
388. Many of the trees contain areas of significant decay, with cavities and dead heartwood, and it is these features which make the trees the ideal habitat for the noble chafer beetle. The appellant's 2014 invertebrate survey confirmed the biodiversity value of the orchard area to invertebrates especially saproxylic (wood loving) feeders, documenting 68 species of invertebrate of which 7 were found to be of rare or scarce occurrence within the orchard area<sup>[66]</sup>. Of the orchard trees, 5 were considered to be of singular suitability in habitat for noble chafer beetle.
389. With these points in mind, there would be some clear biodiversity benefits of retaining the orchard trees in their original locations within this northern field, as this would avoid any disruption to the existing habitat, thereby ensuring that any interaction in habitat terms between the trees and the grassland could continue. As the Council pointed out, if left untouched the orchard could continue to provide a habitat for the noble chafer beetle for a further 50 years or so, allowing ample time for some future management regime to be put in place<sup>[67]</sup>. Potentially, this represents a weighty argument against the appeal proposal.
390. However, no firm evidence has been put before me to suggest any likelihood of future beneficial management of the orchard area, for example by succession planting. Indeed, the opposite could well be the case because, as was accepted by both parties, the orchard currently benefits from no form of protection and there would be nothing to prevent the current or future owners from removing the trees<sup>[175]</sup>. In these circumstances there is clear merit in considering whether the biodiversity interests would be better served through the appeal proposal.
391. The Council has raised a number of concerns relating to the loss of the orchard HPI, but its principal fears relate to the proposed translocation of all the orchard trees to a new location within the proposed community orchard, and its contention that this could not be carried out successfully<sup>[69]</sup>. I understand these concerns and can appreciate why the Council raises them, although it has not been able to back them up with any firm evidence.
392. Dr Widdicombe, the Council's ecology witness, has no direct, personal experience of tree translocation, and although he has consulted Mr Fairs, a very experienced former orcharding manager from the cider-making industry, it appears that Mr Fairs only has limited personal experience of tree translocations. Mr Fairs has not visited the appeal site to view the trees in question, but does not seem to be of the view that a

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successful translocation could not be achieved. Rather, he highlights that there would be problems and difficulties with such a proposal, which would require careful preparatory work<sup>[69,172]</sup>.

393. These points are echoed by advice submitted by Mr Watts, which he had obtained from personnel at the RHS and Wyevale Nurseries<sup>[270]</sup>. This expert advice, albeit again from people who had not visited the appeal site to see the trees in question, raises significant doubts as to the success of any such proposal, but does not rule it out. Indeed it sets out details for what is referred to as a very expensive long term project lasting over a 3 autumn period, which it comments might give the trees a 'remote chance of survival'<sup>[270]</sup>. This would not be too dissimilar to the methodology I understand is proposed by the appellant.
394. In many ways the fact that there is a lack of direct experience regarding the translocation of orchard trees is not surprising, as comparable examples appear to be virtually non-existent. Indeed the only example of a similar project submitted to the inquiry relates to Iwade in Kent, where around 40 plum trees had been translocated in 2011 as part of a Community Orchard Project<sup>[170]</sup>. As some of the trees comprised habitat for the noble chafer beetle, this is a useful comparator for the appeal proposal, although I have noted Dr Widdicombe's comment that some of the trees on the appeal site are significantly larger than the general form of the Iwade plum trees<sup>[69]</sup>. I also understand that in the Iwade case, some of the existing habitat was retained, such that there was the opportunity for the invertebrates to seek to return to their original habitat if the translocation and/or the establishment of new habitat was to fail<sup>[68]</sup>.
395. Notwithstanding these points, the evidence before me, which includes first-hand information from Ms Kirk who has visited this Iwade project, is that many of the translocated trees continue to exist as living trees in their new positions, and continue to provide suitable breeding habitat for the noble chafer beetle. This is not to suggest that the project has been without its problems, as some of the translocated trees have died, although Ms Kirk has pointed out that there has been very little in the way of post-translocation support or after-care management at Iwade<sup>[170]</sup>. Nevertheless, and despite the problems just outlined, the project is generally considered to have been a success.
396. For the appeal proposal itself, I understand that Ms Kirk has visited the appeal site with representatives of the established company Civic Trees/Glendale, who are described as 'UK and Globally recognised leaders in tree moving'<sup>[168]</sup>. I further understand that discussions have taken place to establish the most appropriate method of moving each of the trees<sup>[168-169]</sup>. Ms Kirk has also undertaken a detailed study of each individual tree to establish any structural defects or weaknesses they may have, and a methodology has been considered for preparing the trees for translocation by such recognised techniques as crown reduction<sup>[169]</sup>. All such matters could be controlled by condition, along with a reasonable timetable for all necessary preparatory work, if planning permission was to be granted.
397. Having regard to all the above points, the weight of the evidence before me leads me to believe that the proposed translocation of the orchard trees could be undertaken successfully. It would clearly be a difficult and undoubtedly costly exercise, which would have to be undertaken with great care in accordance with a detailed and well-considered timetable. Moreover, it could not be considered risk-free, and could not guarantee the long-term survival of habitat suitable for the noble chafer beetle<sup>[171]</sup>. It would however, provide for appropriate management and after-

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care, to include succession planting, and in those respects it would represent a positive approach to longer-term habitat protection<sup>[174]</sup>.

398. Insofar as the wood-pasture and parkland in the southern field is concerned, the Council comments that such areas are the product of distinctive, historical land management systems, typically comprising large, open-grown trees in grazed grassland and providing valuable habitat for fungi, lichens and invertebrates<sup>[71]</sup>. In this case the attributes of parkland are the isolated trees and the 2 clumps of mature Lime trees set in grassland which, as the EA makes clear, is species-poor<sup>[176]</sup>. The Council also points out that this is a declining habitat, a matter accepted by the appellant, and although the western part of the site would be retained as open space, it maintains that the area of this habitat loss would be substantial<sup>[71]</sup>.
399. One of the reasons for the decline of this habitat type is through a lack of planting of younger cohorts of trees to provide the next generation of parkland trees. In this regard the appellant points out that eventually, albeit over a long period of time, the absence of management will result in the loss of the trees as they age and die, whilst the grassland will remain species-poor and of low ecological value in the absence of any specific management to enhance its botanical diversity<sup>[176]</sup>.
400. In the appellant's view the ecological value of this area would be best improved through the appeal proposal, which would provide a LEMP (through a planning condition and the unilateral undertaking), to secure long-term sympathetic management of the mature and veteran trees; the planting of new specimen parkland trees; and to sympathetically manage the retained grassland and increase the species diversity by such measures as over-seeding or wildflower plug-planting<sup>[177]</sup>.
401. However, whilst these measures would undoubtedly provide some benefit to the open areas which would remain in this southern field, I am mindful of the Council's point that at the same time there would be an overall loss of some 50% of this wood pasture habitat to development<sup>[71]</sup>. Furthermore, much of the area which would remain would be of a changed character, not only as a result of the introduction of the proposed community orchard and the LEAP, but also by the fact that areas of development would be brought much closer to the clumps of Lime trees than is currently the case. In addition, footpaths would be brought closer to the Lime clumps and further footpaths would also open up the western side of the site to more pedestrian activity than currently.
402. Taken together, it seems to me that the significantly reduced parkland area, its changed character and the likely increased use of footpaths and the area in general as a result of the locally increased population, would all serve to have an impact on the ecological value of the remaining open areas, in a manner which is not easy to predict. Overall, I am therefore not persuaded that the appeal proposal would necessarily bring about the type or scale of improvements to the botanical diversity of this parkland area claimed by the appellant.
403. With regard to the hedgerow HPI, the appeal proposal's main impact would be as a result of the break in the Longworth Lane hedgerow necessary to provide the vehicular access into the site, where about 60m of hedgerow would need to be removed to create visibility splays at the junction<sup>[72]</sup>. That said, a replacement, native species hedgerow would be planted at this junction, behind the visibility splay. In addition, a 10m-15m section of the internal hedgerow which currently lines the southern side of the orchard would need to be removed to allow for the internal road

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which would pass from the southern field into the northern part of the site<sup>[72]</sup>. However, new hedgerows would also be planted on site, such that overall there would be about a 60m increase in hedgerow length<sup>[165]</sup>.

404. The Council made no great point about the loss of these relatively small lengths of hedgerow in habitat terms, although concern was expressed regarding the likely impact of hedgerow root removal on the rooting system of the protected tree referred to as T24, sited just behind the visibility splay on Longworth Lane<sup>[72]</sup>. On this point, however, I consider that the appellant's explanation that the roots could either be carefully removed with an air spade, or could simply be left in place and killed off, would ensure that no undue harm would be caused to T24<sup>[178]</sup>.
405. Drawing all the above points together, I find it difficult to conclude that there would be any clear, overall benefits in ecology or biodiversity terms arising from the appeal proposal. The loss of the traditional orchard HPI would be a disbenefit, although this would be tempered by the translocated trees and the opportunity it would give for on-going management of the noble chafer beetle's habitat. But as the existing habitat in the northern field would be lost, such that the noble chafer beetle could not seek to return there if the translocation proved to be unsuccessful (contrary to the situation with the Iwade project), there remains a number of risks with the appeal proposal.
406. Furthermore, the opportunities to introduce a management regime to look after the wood-pasture and parkland HPI would be a benefit, but this has to be offset against the significantly reduced area of this HPI and its generally changed nature. Finally, I see no firm evidence that the loss of some sections of hedgerow HPI and the introduction of new hedgerows would, on balance, result in any direct, material benefit of the scheme. Overall, it seems to me that the appeal proposal would be more or less neutral in ecology and biodiversity terms, although this would change to a clear disbenefit if the proposed translocation of trees did not prove successful.
407. As such, and depending on the overall importance of the proposed development (to be established later in the planning balance), there could be a conflict with LPCS Policy LD2. Amongst other things, this indicates that development that would be liable to harm the nature conservation value of a site or species of local nature conservation interest will only be permitted if the importance of the development outweighs the local value of the site, habitat or physical feature that supports important species. There could also be conflict with guidance in paragraph 118 of the Framework, which indicates that when determining planning applications, local planning authorities should aim to conserve and enhance biodiversity, and if significant harm resulting from a development cannot be adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

### ***The weight to be given to policies for the supply of housing***

408. It is agreed that the Council cannot currently demonstrate a deliverable 5YHLS. The SOCG explains that the Council's 5 year housing requirement is 5,704 dwellings, equating to 1,141 dwellings a year, but that it can currently only demonstrate a deliverable supply of 4,140 dwellings, which amounts to a 3.63 year supply<sup>[18,91]</sup>. As a result, and in accordance with paragraph 49 of the Framework, relevant policies for the supply of housing should not be considered up-to-date. Insofar as the LPCS is concerned, the SOCG confirms that Policies SS2, SS3, RA1, RA2 and RA3 all fall into this category.

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409. This further means that the appeal proposal falls to be assessed against the fourth bullet point of the Framework's paragraph 14, which states that planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole; or unless specific policies in the Framework indicate that development should be restricted.
410. In essence, Policy SS2 explains that the main focus for new housing is to be Hereford; outside of Hereford the main focus will be the main market towns; and in the rural areas new housing development will be acceptable if it meets a number of settlement-based criteria<sup>[37]</sup>. The broad distribution of new dwellings will be a minimum of 6,500 focussed on Hereford; a minimum of 4,700 for the named market towns; and a minimum of 5,300 for the rural settlements. This amounts to at least 16,500 new dwellings in the County as a whole, over the plan period to 2031. If new housing completions slip below the required figure in a 12 month monitoring period, Policy SS3 sets out a number of steps which the Council will take to maintain an appropriate supply of housing<sup>[95]</sup>.
411. Policy RA1 explains that for the rural areas, the minimum figure of 5,300 dwellings will broadly be distributed across the County on the basis of the 7 HMAs, with indicative housing growth targets for each of these HMAs set out in a table, and to be used as the basis for the production of NDPs. Local evidence and environmental factors will be used to determine the appropriate scale of development. The table indicates that a minimum of 1,870 dwellings will need to be provided in the Hereford HMA, with an indicative housing target of 18%<sup>[39]</sup>.
412. The various rural settlements where sustainable housing growth will be supported are identified in Policy RA2. This policy explains that the minimum growth target in each HMA will be used to inform the level of housing growth to be delivered in the various identified settlements, and also sets out a number of criteria which housing proposals would be expected to meet<sup>[40]</sup>. The supporting text refers to 'sensitive and appropriate housing growth' for these settlements. Finally, Policy RA3 sets out criteria which need to be met by proposals for housing development in rural locations outside of settlements as to be defined by NDPs, or by the Rural Areas Sites Allocation DPD<sup>[42]</sup>.
413. Returning to the shortfall in the 5YHLS, the appellant has made reference to a Suffolk Coastal case where a similar shortfall situation existed. The judgement given in that case indicated that the weight to be given to policies which are out-of-date in this manner is a matter of planning judgement for the decision maker. I have noted that whilst not intended to be a definitive list, matters such as the extent of the shortfall; the prospects of the shortfall being addressed; and the purpose of the policies being addressed are all things which it is suggested a decision maker may wish to consider when exercising their planning judgement<sup>[181]</sup>.
414. In this case, with the Council currently only able to demonstrate a 3.63 year supply, the extent of the shortfall has to be considered significant. As such, it needs to be addressed as a matter of urgency, particularly in light of the Government's requirement, set out in the Framework, that local planning authorities boost significantly the supply of housing. It is, however, important to understand the causes of the shortfall in order to ensure that appropriate action is taken. The submitted evidence indicates that the shortfall has arisen largely as a result of revisions to the estimates of housing delivery from a number of SUEs. Indeed, between March 2015 and January 2016 the Council reduced its estimates of delivery

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from these SUEs from 2,265 dwellings to 1,910 dwellings for the 5 year period to 2019/20, and now accepts that only 970 dwellings from SUEs should form part of the current 5YHLS<sup>[182]</sup>.

415. However, this does not lead me to believe that there is anything fundamentally wrong or flawed with the Council's spatial strategy. Rather, it appears that there is a straight-forward, but serious, housing delivery issue from the SUEs probably, in part, arising from over-optimistic assumptions at the time the LPCS was being developed. There seems to me to be no logical or evidential, basis for altering the spatial strategy to address this current problem which, in my opinion, should instead be addressed by the Council taking measures to improve delivery in line with the existing spatial strategy. This leads on to the second point outlined above, namely the prospects of the shortfall being addressed.
416. The Council has recognised the seriousness of this matter, and at the inquiry it indicated that it has begun to take action, in line with LPCS Policy SS3, by setting up a working group of 2 Assistant Directors who have been tasked with identifying and tackling the main obstacles to the delivery of these SUEs. It also intends to issue an interim position statement, utilising evidence from the most recent SHLAA, to identify additional housing land<sup>[95]</sup>. Whilst this indicates a clear indication of intent, I note the appellant's point that the Council could not provide any firm information about the types of projects which would be pursued, likely timescales and, most importantly, their likely success in significantly improving housing delivery<sup>[183-184]</sup>. Nevertheless, for reasons already given, I do not see this as a reason to give less weight to the Council's spatial strategy policies.
417. Insofar as making use of evidence from the SHLAA is concerned, I have had regard to the SHLAA extracts covering the appeal site which the appellant had obtained from the BLPC's website. However, as these are of somewhat uncertain provenance, and have not been published by the Council or been the subject of consultation I give them very little weight, especially as they would not come forward for housing through the SHLAA methodology the Council currently uses<sup>[96]</sup>.
418. The third of the points identified in the Suffolk Coastal case is a consideration of the purpose of the policies being addressed. In this regard I have already outlined, above, how the policies in question set out the spatial strategy for the County which the Council is seeking to pursue through the LPCS, and have indicated that I consider it to be a sensible and reasonable strategy. Clearly, it must also have found favour with the Inspector who examined the LPCS as recently as 2015. Moreover, no evidence has been put before me to suggest that the strategy is not appropriate for the County as a whole, and should not be pursued.
419. To repeat, it is clearly the case that poor delivery of housing is the root cause of the shortfall, but I see no good reason why this should not be capable of being addressed through the existing policies detailed above. In these circumstances I conclude that although the policies have to be considered out-of-date, they can still carry a high degree of weight in this appeal.

### ***The weight to be given to policies in the emerging BLNDP***

420. The BLNDP has reached a fairly advanced stage of preparation as its Regulation 16 consultation period ended on 3 May 2016, shortly before the opening of this inquiry. Evidence from the BLPC explains that parishioners consider there has been an abundance of large-scale housing development in the past, but that a moderate rate of housing development in the future would still be acceptable. The policies of the

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emerging plan have therefore been drawn up to reflect the wishes of local people whilst planning and providing for the BLP's proportionate increase in housing, as required by the LPCS and the Framework. As such, the draft policies support small developments on preferably brown-field sites, but also green-field sites, within settlement boundaries<sup>[224]</sup>.

421. The plan has been prepared on the basis that it needs to make provision for the minimum indicative housing growth target of 152 dwellings for the period 2011 to 2031, as set out in the LPCS<sup>[22,43]</sup>. Whilst the Parish Council and its parishioners favour small-scale development, it is nevertheless the case that a number of larger housing developments have been permitted in recent years, some on appeal, such that a total of 121 new dwellings are provided for on 3 relatively large sites<sup>[25,235]</sup>. The settlement boundaries put forward in the plan incorporate these 3 housing sites and also, in the plan's words, 'will allow for infilling ..... to allow for limited and controlled expansion'<sup>[224]</sup>. Up-to-date information submitted to the inquiry shows that a further 25 dwellings have been granted planning permission since 2011 on small sites, bringing the total to date to 146, 6 short of the indicative minimum target<sup>[43-44]</sup>.
422. The submission version of the BLNDP contains 13 policies (BL1 to BL13), with the SOCG confirming that draft Policies BL3, BL4, BL5 and BL8 are relevant policies for the supply of housing and therefore are out-of-date<sup>[23]</sup>. However, the SOCG goes on to clarify that weight may still be attributed to these policies, with the degree of weight a matter for the decision taker, including having regard to paragraph 216 of the Framework. This paragraph sets out 3 considerations to be borne in mind in this regard which, in summary, relate to the stage of preparation of the emerging plan; the extent to which there are unresolved objections to relevant policies; and the degree of consistency of the emerging plan policies to policies in the Framework<sup>[19,105,190]</sup>.
423. Three sets of objections were lodged at this Regulation 16 stage, including from the appellant, and these were discussed at the inquiry. Not surprisingly, the parties took different positions on these objections. Put simply the Council maintained that none of the objections amounted to a significant objection to the BLNDP as a whole, whereas the appellant maintained that the plan is inconsistent with a number of the basic conditions with which NDPs are required to comply<sup>[100-103,190-201]</sup>. The appellant further maintains that the plan, in its current form, is distinctly anti-growth and attempts to resist any further growth through a number of policies which seek to constrain the ability of new, sustainable development opportunities coming forward, outside of those sites which have been identified<sup>[192-194]</sup>.
424. In particular, with regard to draft Policy BL4, the appellant objects to the inclusion of a settlement boundary which it maintains would act to contain the physical growth of the settlement with no flexibility, and no regard to the housing needs of the wider area. It argues that this approach does not accord with the ethos of the Framework and the presumption in favour of sustainable development, nor is it consistent with the Government's national growth imperative which seeks to significantly boost the supply of housing. It suggests an alternative wording for this policy which, as I understand it, would not define specific settlement boundaries, but rather would look favourably on sustainable development proposals adjacent to the existing settlement, provided that the adverse impacts do not significantly and demonstrably outweigh the benefits of development<sup>[195]</sup>.

425. However, it is not my role to resolve these detailed differences between the parties. Rather, I need to consider what weight the BLNDP policies should attract, in light of all relevant matters. Therefore, whilst I have had regard to the points raised by the appellant, I have also noted that during the period the inquiry was sitting, the Council moved to send the plan for examination under Regulation 17, with this decision being taken on 12 May 2016<sup>[22]</sup>. In so doing, the Council has taken the view that the emerging BLNDP has met the necessary requirements for NDP preparation, and is capable of meeting the required minimum proportional growth necessary to contribute towards the deliverability of the LPCS.
426. In this regard I have already concluded that although the LPCS housing supply policies are not up-to-date, there is nothing to suggest that the basic spatial strategy being pursued through the LPCS is inappropriate, unreasonable or unrealistic. Accordingly, there is no firm evidence before me to suggest that the indicative minimum housing growth target of 152 dwellings for the BLP area should, in itself, be considered out-of-date. It is, after all, a minimum target.
427. Moreover, whilst I acknowledge that the appellant's objections to the plan are fairly wide-ranging, it does seem to me that the objections to draft Policy BL4 which seeks to establish settlement boundaries are central to the appellant's case in this appeal. In this regard I have noted the appellant's reference to the Crownhall Estates judgment, and its contention that the BLPC's approach, in effect, turns the indicative minimum figure into a maximum figure to work to<sup>[192]</sup>. However, I do not agree. The supporting text to the LPCS's rural housing policies makes it quite clear that where appropriate, settlement boundaries for the settlements listed in Policy RA2 will be defined in NDPs or the Rural Areas Sites Allocation DPD<sup>[42]</sup>. Furthermore, in arguing that the proposed settlement boundaries would act to contain the physical growth of the settlement, with no regard to the housing needs of the wider area, it seems to me that the appellant is failing to acknowledge that these settlement boundaries do make provision for a substantial amount of post-2011 growth<sup>[23]</sup>.
428. I fully accept that the BLNDP contains no specific housing allocations, and also note that the BLPC opposed 2 of the 3 large housing developments which now have planning permission. But the fact remains that, as currently proposed, the settlement boundaries allow for 3 fairly large housing areas and also allow for windfalls and other small infill development within these settlement boundaries, totalling some 146 dwellings to date. Whilst the level of future windfall and infill applications clearly cannot be known for certain, or relied upon, the submission version of the BLNDP states that such applications have produced, on average 4 dwellings a year<sup>[224]</sup>. With this in mind, I see no good reason why the currently proposed settlement boundaries would prevent the indicative minimum target from being met and exceeded.
429. I also consider it quite reasonable for the BLPC to have drawn its proposed settlement boundaries to exclude the appeal site, in view of the status of both the northern and southern parts as HPis, and the UPG designation on the southern field. Notwithstanding the fact that both of these areas are shown as having housing potential in the SHLAA extracts submitted by the appellant<sup>[98,201]</sup>, I have already indicated that because of their uncertain provenance, and conflict with the Council's current methodology for identifying potential sites, I give these extracts very little weight.
430. I do acknowledge that there are some areas where the current wording of the draft policies does not fully accord with policy in the Framework, notably insofar as traffic

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and heritage matters are concerned. On the first of these points, there is a clear tension between draft Policy BL13's requirement that development proposals should not lead to a significant increase in traffic volumes and speeds, and Framework paragraph 32 which indicates that planning permission should only be refused if the residual effects of schemes would be 'severe'<sup>[199]</sup>.

431. There is also a clear difference between the way in which the Framework indicates that non-designated heritage assets should be dealt with, and the way that draft Policy BL8 seeks to protect UPGs<sup>[103-104,196-198]</sup>. These matters will have to be explored and addressed at the examination stage, and do have a bearing on the weight which can be given to these policies at this stage, as maintained by the appellant. However, these draft policies have not been determinative in my assessment of this proposal, for which I have relied on the LPCS policies and Framework guidance.
432. In summary, it seems to me that the preparation of the emerging BLNDP has been undertaken with full regard to the requirements of the LPCS and (subject to the points just outlined above), the Framework. Some further matters will need to be addressed at the examination stage, including the 3 objections already referred to and the specific policy conflicts outlined above, but notwithstanding these points, for reasons already given, and having regard to paragraph 216 of the Framework, I conclude that its policies, including its proposed settlement boundaries, should attract moderate weight in this appeal.

### ***Other matters***

433. Some other matters were raised by interested persons, which were either not covered by the Council's reasons for refusal, or were not at issue between the Council and the appellant. As I consider them to be relevant matters, I discuss and assess them in the following paragraphs.
434. The effect on the safety and convenience of highway users. Highway and transport concerns were raised by a number of interested persons, and principally at the inquiry by Mrs Soilleux for the Parish Council, and Mr Forrest and Mr Snowdon<sup>[232-233,246-249,250-251]</sup>. The concerns covered 3 main matters, namely the reliability of the traffic count information and the operation of the Longworth Lane/A438 junction and the site access junction; the ability of the local road network to cope with the additional traffic volumes – particularly the narrow sections of road south of the site access; and safety issues arising from the proposed new footway on the A438, west of the appeal site. However, no specific, factual and quantifiable evidence was submitted by these objectors to support their cases.
435. To set against these objections I have to have regard to the TA which was submitted to support the planning application; the subsequent amended plans dealing with the site access and footway provision; and the highways SOCG which confirms that there are no outstanding highways or transport issues between the main parties<sup>[32,204]</sup>. With these matters in mind, I note that both the A438/Longworth Lane junction and the site access junction are predicted to operate well within capacity, with very low ratios of flow to capacity, and that the site access could provide satisfactory visibility. Trip generation rates have been agreed, and whilst I note the concerns raised by Mr Forrest and Mr Snowdon<sup>[246,251]</sup>, there is no firm evidence before me to indicate that the agreed figures are not acceptable and reliable.
436. Although Mr Forrest objected to the fact that the site access junction is now different to the one originally applied for<sup>[247]</sup>, I am satisfied that the minor amendments

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shown on the latest drawings have not fundamentally changed the nature of the scheme, or the form of the junction. As they have been adequately publicised I believe it is quite acceptable for the scheme to proceed on this basis. Moreover, I am not persuaded that the photographs submitted by Mr Forrest, which show some minimal queuing at the A438/Longworth Lane junction, demonstrate any significant highway problem<sup>[246]</sup>.

437. I do acknowledge that there is limited highway width on Longworth Lane to the south of the appeal site, and on the minor road link to the A438 to the east, and agree that traffic levels could well increase on these roads if the appeal scheme was to proceed. However, the traffic generation rates and likely distribution of traffic from the proposed development have been agreed between the main parties, such that it seems to me that there would be relatively modest traffic increases on these roads. In any case there is no detailed evidence or accident information before me to demonstrate that unacceptable problems would arise.
438. Finally, whilst I appreciate the Parish Council's concerns regarding the proposed footway on the A438, close to the village shop, I saw at my site visit that there is already an edge-of-carriageway marking on this westbound stretch of road<sup>[233]</sup>. This appears to delineate the area of carriageway currently in general use, and because of this I am not persuaded that the introduction of a formal footway at this location would, in practice, lead to any material reduction in carriageway width. As such, I do not consider that this element of the proposed development would result in any significant highway or safety problems.
439. The guiding principle for consideration of matters such as those detailed above is set out in paragraph 32 of the Framework, which explains that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe<sup>[199]</sup>. In light of the matters covered in the TA and the highways SOCG I do not consider that there would be any such severe transport impacts arising from the appeal scheme, and I therefore conclude that the matters raised by interested persons on this topic should not weigh materially against the appeal proposal.
440. The effect on the living conditions of nearby residents. Two principal areas of concern were raised under this heading. The first was from Mrs Parry, who argued that that part of the appeal proposal which seeks to provide pedestrian and cycle access to and from the proposed development, along the driveway past Hagley Hall and Hagley Hall Barn, would severely impact on her privacy and also give rise to security problems<sup>[277]</sup>. I do appreciate these concerns, and it seems clear that a significantly greater number of pedestrians and cyclists would use this route if the appeal proposal was to proceed, compared to the current situation where this driveway would only serve a maximum of 4 dwellings.
441. However, whilst the shared driveway would pass closer to Hagley Hall than does the footway alongside the A438, I am mindful of the fact that this property does already front onto a busy highway, with pedestrian traffic. I also note that the approved plans for the conversion of the barn and the construction of the 2 further dwellings show that native species hedgerows are intended to provide the boundary treatment for the garden areas of each of these 4 dwellings, and it seems to me that these should be capable of providing adequate screening to properties and garden areas.
442. I have noted Mrs Parry's comment that safety should be a major consideration and this children and cars do not mix<sup>[278]</sup>, but as the driveway has been approved as a

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shared surface, albeit only to provide vehicular access for 4 dwellings, I do not consider that any undue safety problems would arise. I have also noted Mrs Parry's concerns about the rights of others to use this route to access the appeal site, and whether or not they would be required to make a contribution towards the maintenance of the driveway<sup>275,278]</sup>. But I do not see these as planning matters, and they are not therefore topics upon which I need to comment.

443. I appreciate the concerns being raised about security, especially as I understand that the garages are required to be open-fronted<sup>[277]</sup>. But having said this, I also understand that the Design Officer at West Mercia Police did not object to the application on security grounds<sup>[208]</sup>. In light of these matters, I do not consider that the living conditions of Mr and Mrs Parry, or other residents of this small, approved development, would be unacceptably affected by the proposed development.
444. The second matter under this heading was raised by Mr Targett who lives at Field End Cottage on Longworth Lane, directly opposite the proposed site access junction. I have noted Mr Targett's contention that cars leaving the proposed development would be just about 6m away from, and directly facing the ground and first floor windows of his property, and that people inside these vehicles would have a direct view into the first floor bedroom of his young daughter<sup>[263-264]</sup>. He also contends that this problem would be compounded at night, as car headlights would glare and shine directly into this bedroom and other rooms. Overall he considers that the appeal scheme would result in worsened living conditions and a loss of privacy<sup>[266]</sup>.
445. I have some sympathy with these concerns, as it seems to me that the proximity of Mr Targett's property to Longworth Lane and the proposed junction would result in a rather cramped arrangement. I accept that this type of relationship between roadside properties and road junctions is not uncommon – indeed there is a similar relationship shown on the Illustrative Development Framework Plan for the dwellings approved opposite the Hagley Park cul-de-sac. However, there is a difference, as the junction for the appeal scheme would have to serve up to 100 dwellings, whereas there are only some 20 or so properties in Hagley Park. Because of this I do consider, on balance, that this matter should carry some limited weight against the appeal proposal.
446. Loss of BMV agricultural land. It is a fact, highlighted by the appellant, that the appeal proposal would result in the loss of about 0.8 ha of BMV agricultural land<sup>[206]</sup>. Although this is clearly a negative aspect of the scheme as a whole, it has not been raised as a disbenefit by the Council, nor was it raised by any other participant at the inquiry. As such, I regard this matter as having minimal weight in the overall planning balance.
447. Public transport provision. I have noted Mrs Parry's concerns regarding the extent of regular public transport provision serving Bartestree/Lugwardine after 2000 hours on weekdays, and her contention that this means that many journeys made after that time have to be made by private car and that the appeal proposal could not be considered sustainable<sup>[280]</sup>. However, this seems to me to be an inevitable consequence of the Council's preferred spatial strategy, as the evidence before me is that Bartestree/Lugwardine is one of the settlements which achieved the maximum score for public transport provision in the Council's Rural Settlement Hierarchy Paper of 2010<sup>[205]</sup>. As such, any development in the rural areas is likely to have the same criticisms levelled at it, but it is presumably a matter the Council has considered to be acceptable, in developing the LPCS.

448. Sustainable drainage. Mr Watts and other interested persons raised various concerns about drainage of the site and standing water<sup>[271-272]</sup>. However, I am satisfied that such matters could be satisfactorily addressed by the proposed planning conditions, which would require the necessary drainage works to accord with the relevant LPCS policies dealing with sustainable water management and water resources.
449. Unilateral Undertaking. A further matter to note is that the Council's fifth reason for refusal related to the absence of a completed planning obligation, and that as a result, there was no legal mechanism by which the Council could require the payment of necessary financial contributions<sup>[7]</sup>. However, this was addressed during the course of the inquiry as the appellant submitted a S106 unilateral undertaking, which deals with the transfer of open space to a Management Company; a primary education contribution; and an off-site recreation contribution. I consider that this obligation would make proper provision for planning contributions arising from the appeal development and would meet the requirements of paragraph 204 of the Framework, and Regulations 122 and 123 of the CIL Regulations 2010<sup>[295-296]</sup>.

***Whether the appeal proposal would represent sustainable development in the terms of the Framework***

450. The Framework makes it plain that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 7 explains that there are 3 dimensions to this - economic, social and environmental – and that these give rise to the need for the planning system to perform a number of mutually dependent roles. In other words, to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system. I explore how the appeal proposal would perform against each of these roles in the following paragraphs, and what weight this should carry in my overall assessment. Then, as the development plan policies for the supply of housing are out-of-date, I assess the proposal in accordance with the fourth bullet point of paragraph 14 of the Framework, to determine whether or not the appeal proposal can be considered to be sustainable development.

The economic role

451. The Council does not dispute that a number of economic benefits would flow from this development, if permitted. Indeed, the SOCG acknowledges that in accordance with paragraphs 54 and 55 of the Framework, up to 100 new market and affordable dwellings would contribute to the vitality of the area and would help support economic activity and growth. There would also be construction spend benefits of about £11.1 million, supporting some 98 full-time equivalent construction jobs spread over a 3 year build period, together with an additional 107 full-time equivalent indirect jobs in associated industries<sup>[219]</sup>.
452. In addition, the development of up to 100 dwellings would be likely to accommodate around 230 residents, with about 112 expected to be economically active and in employment. The scheme would therefore directly contribute to the availability of local labour, and residents of the new development would generate annual household expenditure of some £3.15 million, some of which would be spent locally, supporting existing and new local businesses and services<sup>[219]</sup>. Furthermore, the Council would receive an estimated New Homes Bonus of about £0.95 million over a 6 year period, plus additional Council Tax receipts of up to £1.2 million over a 10 year period<sup>[219]</sup>.

453. The matters detailed above would amount to real, tangible benefits to the local and District-wide economy and there is agreement in the SOCG that in accordance with paragraph 19 of the Framework, significant weight should be attributed to the economic benefits of the proposal. I share that view. I have, however, also noted the comment from the Council that that these benefits would not be unique to this development, but would flow from any new housing development within the District, and to some extent this is clearly correct. But this does not detract from the fact that the appeal proposal would give rise to these real economic benefits, and for this reason I consider that it should be regarded as satisfying the economic role of sustainable development, and that this should weigh heavily in the appeal proposal's favour.

#### The social role

454. A key strand of the social role is the provision of housing to meet the needs of present and future generations, and as already noted, the appeal scheme would deliver much needed market and affordable housing with up to 100 market units and up to 35 affordable homes<sup>[219]</sup>. The SOCG confirms that there is a significant need for affordable housing in Herefordshire, amounting to some 3,457 affordable homes across the County over the 2012-17 period, equivalent to 691 homes a year. It is agreed that if the backlog need is addressed over the plan period up to 2031, the annual net housing need would be 369 homes a year<sup>[219]</sup>. It is further agreed that the delivery of affordable housing, without subsidy, should be given significant weight.

455. However, it seems to me that benefits in this regard need to be tempered somewhat in this case, because whilst there is a clear need for affordable housing in the County as a whole, there is no evidence before me to show a pressing need for affordable housing in the Bartestree/Lugwardine area, over and above that which would be provided by the 3 large developments already permitted. Moreover, the Framework makes it clear that the social role of sustainable development embraces more than simply housing numbers – whether market or affordable homes. It requires the supply of housing to reflect the community's needs, and support its health, social and cultural well-being.

456. In this regard I have noted the agreement, set out in the SOCG, that Bartestree/Lugwardine is a sustainable settlement with a range of shops, services and community facilities. The parties also agree that it is in a location which could accommodate additional housing development to contribute towards meeting the market and affordable housing needs of Herefordshire, and that an increase in the number of houses would also support local services and businesses<sup>[31]</sup>.

457. However, the Council made it clear at the inquiry that whilst it endorsed these points in recognition of the fact that the indicative housing growth for the settlement is only expressed as a minimum, this agreement in the SOCG should not be taken to signal its acceptance that further development of up to 100 dwellings, as proposed here, would be acceptable. This does not seem to me to be an unreasonable position for the Council to take. Indeed, it is these concerns which led it to impose its fourth reason for refusal, which it maintained at the inquiry, although it did retract its call for proportionate increases in the likes of local services and amenities.

458. To support its position, the Council commented that even without any further windfall or infill development, the appeal proposal would result in a total of 246 dwellings for the parish since 2011, against the indicative minimum target of 152<sup>[43]</sup>. Compared to the existing number of households in the parish, this would amount to

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about a 29% increase, well in excess of the 18% set out in the LPCS<sup>[43]</sup>. It seems to me that such an increase would not represent the 'sensitive and appropriate housing growth' referred to in the supporting text to the LPCS rural housing policies<sup>[40]</sup>. Rather, I consider that a development of this size and scale, especially when considered alongside the other large housing developments already permitted for the BLP, would be at odds with the more limited level of growth proposed for such rural settlements through the adopted spatial strategy. I consider that this has to weigh significantly against the appeal proposal.

459. Amongst other matters, the Council argues that further large scale development in the settlement, in addition to the housing schemes already approved, would not promote a healthy, inclusive community and would undermine the quality of life and community cohesion<sup>[43]</sup>. On this point I note that a similar argument regarding community or social cohesion was raised by the Council at the written representations appeal in July 2015, for the 51 dwelling scheme on land east of Church House in Bartestree, but that this was not supported by the Inspector in that case. Moreover, the appellant drew attention to another appeal in a different local authority area, where similar matters had again been raised, but rejected by that Inspector on the grounds of a lack of any firm evidence<sup>[203]</sup>.
460. The appellant maintains that as no firm evidence has been submitted to support the Council's position in the current case, there is no reason to take a different approach to that taken by the Church House Inspector. However, there do seem to be some clear differences between that case and the matter before me. In particular, that Inspector appears to have considered the cumulative impact of a number of housing developments within the BLP, but then found the situation acceptable as even with the 51 dwellings from that scheme, the total number permitted would just be 129 - below the LPCS figure which at that time was quoted as 142 dwellings during the plan period<sup>[203]</sup>.
461. This clearly differs from the current situation, as granting planning permission for the appeal proposal would result in almost twice the number of dwellings which were considered acceptable in the Church House case, and almost 100 dwellings in excess of the current, minimum LPCS figure. I accept that consideration of the implications of this is a subjective matter, but in light of the points set out above, it is my assessment that the appeal proposal would not represent an appropriate scale of development for this settlement, as sought through the LPCS's rural housing policies referred to earlier. It would therefore fail to support the settlement's health, social and cultural well-being, as required by the Framework. This weighs heavily against the appeal proposal.
462. It would also clearly run counter to the expressed wishes of the local community set out in the emerging BLNDP which is at a fairly advanced stage. The submission version of the plan states that its vision and core objectives are based on key issues raised by local people, and include a wish to promote sustainable development and accommodate at least 152 new properties in a manner that is appropriate to the character of the village and its countryside setting; to control development to avoid expansion into surrounding countryside; to provide housing which meets the needs of the diverse and growing community; to preserve important existing green spaces and create new green space for the community; and to maintain the character and surroundings of all heritage assets and preserve historic parklands<sup>[22]</sup>.
463. Whilst I have already noted that this plan may need to undergo some modification before it becomes a formal part of the development plan, its 'direction of travel' is

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clear, and the submission version of the BLNDP appears to be well on course to make the necessary minimum provision for housing during the plan period required of it by the LPCS. In these circumstances, I consider that the appeal scheme would be at odds with one of the Framework's core principles, namely that planning should be genuinely plan-led, empowering local people to shape their surroundings<sup>[285]</sup>. Again, I consider that this point weighs heavily against the appeal proposal.

464. In coming to this view I have also had regard to the evidence submitted by Dr Williams on behalf of HCPRE, which maintains that Bartestree/Lugwardine has no more services or facilities than the majority of main villages, and indeed less than some, yet is being asked to take a disproportionate amount of new housing, whilst still only 5 years into a 20 year plan period<sup>[288]</sup>. These comments seem valid to me, on the basis of the details provided, and serve to emphasise the inappropriateness of proposed housing growth of this scale in this settlement.
465. I acknowledge that the development would provide a LEAP, a community orchard, new publicly accessible amenity green space and new footpaths through the parkland on a site which currently has no general public access (beyond the route of the PROW). This would result in benefits in terms of the recreational value of the site, and these benefits would not just be available to occupiers of the new houses, but would be generally available to other nearby residents. I also acknowledge that social and safety benefits would arise for all users, not just future residents of the proposed development, as a result of the sections of new footway to be provided both on Longworth Lane and the A438. I consider that these benefits warrant a moderate to high weight.
466. But notwithstanding these latter points, when all the above matters are taken into account I consider that the social benefits would not outweigh the appreciable disbenefits I have identified. My overall conclusion, therefore, is that the proposed development would fail to satisfy the social role of sustainable development, and that this should weigh significantly against the appeal proposal.

#### The environmental role

467. Paragraph 7 of the Framework indicates that as part of the environmental role of sustainable development, the planning system needs to contribute to protecting and enhancing the natural, built and historic environment. Sections 11 and 12 of the Framework provide more information on these matters, and I have already considered them in detail under the first 3 main considerations, above. In this regard I have concluded that the proposed development would have an adverse impact on the character and appearance of the appeal site, and would be more or less neutral in ecology and biodiversity terms, although this would change to a clear disbenefit if the proposed translocation of trees did not prove successful.
468. Insofar as the impact of the proposed development on the historic environment is concerned, I have already concluded that there would be less than substantial harm to the significance of both Hagley Hall and Hagley Court, with this harm being towards the bottom end of the 'less than substantial' range. I have also concluded that there would be a moderate adverse impact on the significance of the Hagley Park/Court UPG.
469. I need to consider whether this 'less than substantial' harm to the designated heritage assets would be outweighed by the public benefits of the proposal, in accordance with paragraph 134 of the Framework. I undertake this balance in the context of the guidance in paragraph 132 of the Framework, which explains that

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when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

470. To be set against this harm, as already noted, there would be public benefits arising from the construction of up to 100 new homes, of which up to 35 would be affordable dwellings. Moreover, new residents would be anticipated to generate annual household expenditure of about £3.15 million, benefiting existing and new local businesses and services, and the Council would receive an estimated New Homes Bonus of about £0.95 million and additional Council Tax receipts of up to about £1.2. I attach significant weight to these economic benefits.
471. The affordable homes would also constitute a social benefit, of significant weight, although as noted above, I consider that this weight does need to be tempered somewhat in view of the absence of any clear evidence of a need for affordable housing within BLP, over and above that which would be satisfied by the already approved developments. Further social benefits would arise in the form of the LEAP, the community orchard, new publicly accessible amenity green space and new footpaths through the parkland, all of which would increase the recreational value of the site. Social and safety benefits would also arise as a result of the sections of new footway to be provided both on Longworth Lane and the A438, with many of the above providing benefits for all users, not just future residents of the proposed development. I give moderate to high weight to these benefits.
472. There would be some ecological and biodiversity benefits arising from the introduction of new hedgerows and the community orchard; and opportunities to introduce a management regime to look after the wood-pasture and parkland HPI, together with potential benefits in terms of preserving the habitat of the noble chafer beetle, although this would not be without risks.
473. Overall, in carrying out the necessary balance, my assessment is that notwithstanding the great weight which I give to the conservation of the designated assets, the public benefits outline above would outweigh the low level of 'less than substantial' harm which I have identified would be caused to these assets. In other words the appeal proposal passes the 'paragraph 134' test.
474. My reading of the Framework's guidance concerning non-designated heritage assets is that a similar balance against public benefits is not required, and that any harm to such assets is simply weighed in the overall balance, which I undertake shortly. However, if I am wrong on this point, and a similar 'public benefit' weighing exercise is required for non-designated assets, then I confirm that if the harm to the significance of the Hagley Park/Court UPG is added to the harm to the significance of the designated heritage assets, then this overall harm would still have been outweighed by the public benefits of the proposal, albeit by a narrower margin.
475. Having regard to all the above points, and notwithstanding my favourable finding on the 'paragraph 134' heritage balance, I conclude that the proposed development would fail to satisfy the environmental role of sustainable development. This weighs heavily against the appeal proposal.

#### Assessment under paragraph 14 of the Framework

476. Having concluded that the specific heritage policies of the Framework do not indicate that planning permission should be refused, I now turn to the balancing exercise which needs to be undertaken under the fourth bullet point of paragraph 14 of the Framework. To repeat, this indicates that planning permission should be granted

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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.

477. In the preceding paragraphs I have outlined the benefits which I consider would arise from this proposed development, with the fact that the appeal scheme would satisfy the economic role of sustainable development weighing heavily in the appeal proposal's favour. However, from the conclusions I have already reached on the main considerations it is my assessment that there would also be a number of significant disbenefits. My reasoning is set out fully in the appropriate paragraphs, above, but in summary there would be an adverse impact on the character and appearance of the surrounding area and conflict with LPCS Policies SD1, SS1, LD1 and LD3. The proposal would also fail to protect or enhance what I consider to be a valued landscape and, as such, would be at odds with paragraph 109 of the Framework.
478. In ecological and biodiversity terms there would be disbenefits from the loss of the traditional orchard HPI; from the reduced size of the wood-pasture and parkland HPI and its changed nature; and also from the small loss of hedgerow HPI. Notwithstanding the 'paragraph 134' balancing exercise already carried out above, the disbenefits in terms of the harm to both designated and non-designated heritage assets, albeit limited, also weigh against the proposed development in the overall balance. The fact that the appeal scheme would not satisfy the environmental role of sustainable development carries significant weight against the appeal proposal.
479. There would also be significant disbenefits in terms of the social dimension of sustainable development, arising from what I consider to be a level of housing growth which would not be of a sensitive and appropriate scale of development for this settlement, and which would therefore fail to support the settlement's health, social and cultural well-being. This weighs significantly against the proposed development. As such, I conclude that the appeal proposal would be at odds with the objectives of LPCS Policies RA1 and RA2.
480. Whilst acknowledging that policies in the emerging BLNDP can only carry moderate weight at this time, it is clear that the proposed development would be at odds with the expressed wishes of the local community regarding the broad 'direction of travel' of the emerging plan, and would specifically conflict with draft Policy BL4, which seeks to establish a settlement boundary<sup>[102,225]</sup>. As the emerging BLNDP is at a fairly advanced stage, this has to amount to a further disbenefit of the appeal proposal.
481. Although very modest in nature, there would also be a disbenefit arising from the loss of some 0.8 ha of BMV agricultural land. Finally, there would also be a disbenefit, albeit relatively modest, as a result of the worsened living conditions which the occupiers of Field End Cottage would experience.
482. In my assessment the adverse impacts of the proposed development set out above would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework, taken as a whole. Because of this I conclude that the appeal proposal cannot be considered to be sustainable development. This means that it does not benefit from the presumption in favour of such development, set out in LPCS Policy SS1, and described in the Framework as the golden thread running through both plan-making and decision-taking. This is a material consideration in the overall planning balance, which I undertake below.

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## Planning balance and overall conclusions

483. In accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004 I am required to assess this proposal in accordance with the development plan, unless material considerations (which include the Framework), indicate otherwise. Some of the relevant development plan policies are up-to-date and should carry full weight. This applies to Policies LD1 to LD3, which deal with various matters of local distinctiveness and, as noted above, I find that the appeal proposal would be in conflict with some elements of these policies. I have also found conflict with some parts of Policies SD1 and SS6.
484. In light of the above points I do not consider that the importance of the proposed development outweighs the local value of the site, and I therefore also conclude that the appeal proposal would be at odds with LPCS Policy LD2. In addition, I have concluded that Policy LD4 should carry full weight, and the appeal proposal would be at odds with this policy, although as I have also found that the Framework paragraph 134 test is satisfied, this conflict with Policy LD4 would not be fatal on its own. Furthermore, although the development plan policies for the supply of housing are out-of-date, I have concluded that they should still carry a high degree of weight, in terms of the spatial strategy being pursued. As such, I consider that the appeal proposal would be at odds with LPCS Policies RA1 and RA2.
485. I have had regard to all the other matters raised by interested persons, both in their submissions to the inquiry and in their written representations both at application and appeal stages, and have clearly not been able to address every point mentioned. However, I am satisfied that the principal matters upon which this appeal should turn have been addressed either under the discussion of the main considerations set out above, or in the discussion of other matters. Some other concerns would be dealt with through the provisions of the unilateral undertaking or the suggested conditions, if planning permission was to be granted. Points not covered do not, in my opinion, go to the heart of the matters in this appeal and would not, therefore, cause me to reach a different conclusion.
486. Taking account of all the above points, and having regard to my findings on all of the main considerations, my overall conclusion is that the appeal scheme would be in conflict with the development plan and would not be sustainable development. The adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits which would arise from this development and I therefore conclude that this proposal should be dismissed.

## Conditions

487. For the reasons given above, I do not consider that the appeal should be allowed. However, if the SoS takes a contrary view, and decides to grant planning permission for the scheme, then the conditions set out in Appendix C to this Report should be imposed. These conditions and the reasons for their imposition have been agreed between the parties. They are appropriate to the development proposed and all meet the relevant tests set out in the PPG.

## Recommendation

488. I recommend that the appeal be dismissed

*David Wildsmith*

INSPECTOR



## **APPENDIX B - DOCUMENTS**

### **CORE DOCUMENTS**

<b>No</b>	<b>Document</b>
	<b>Planning Application Documents</b>
1.1	Application Forms and Certificates and Planning Application Letter
1.2	Site Location Plan, Ref: 6122-L-04 Rev A
1.3	Access Strategy, Drawing Number: C14298/001 Rev P2
1.4	Footpath Arrangement, Drawing Number: C14298/002 Rev P4
1.5	Development Framework Plan, Ref: 6122-L-02 Rev K
1.6	Design & Access Statement, December 2014
1.7	Landscape and Visual Impact Assessment, December 2014
1.8	Transport Assessment, Hydrock Ref: R/C14298/003
1.9	Framework Travel Plan, Hydrock Ref: R/C14298.004
1.10	Ecological Appraisal, December 2014
1.11	Bat Survey Report, December 2014
1.12	GCN Report, December 2014
1.13	Reptile Survey Report, December 2014
1.14	Invertebrate Survey, November 2014 Ref: 6122E
1.15	Arboricultural Assessment, December 2014
1.16	Ground Conditions Desk Study, Hydrock Ref: R/14298/001
1.17	Flood Risk Assessment, Hydrock Ref: R/14298/F002
1.18	Air Quality Screening Report, 28th November 2014
1.19	Noise Screening Report, 28th November 2014
1.20	Foul Drainage Analysis, December 2014
1.21	Statement of Community Involvement, December 2014
1.22	Socio Economic Report, December 2014
1.23	Planning Statement, December 2014
1.24	Heritage Statement, Beardmore Urban
1.25	Archaeology Desk Based Assessment, December 2014
	<b>Post Submission Documents</b>
2.1	15-03-26 Hydrock Access Arrangement Rev P4
2.2	15-03-26 Hydrock Technical Response
2.3	15-01-28 Arboricultural Report
	<b>Correspondence with the Local Planning Authority</b>
3.1	14-05-21 Pre Application Advice request
3.2	14-05-28 Pre Application Acknowledgment from Herefordshire Council
3.3	14-06-23 Pre Application Advice
3.4	14-12-03 EIA Screening Opinion letter
3.5	14-12-17 EIA Screening Opinion response
3.6	15-01-17 Email from landowner confirming that Tree Preservation Order received from Herefordshire Council
3.7	15-01-16 Formal Tree Preservation Order Notice received from Herefordshire Council
3.8	15-01-21 FPCR objection letter sent to Herefordshire Council
3.9	15-02-26 Correspondence between Hydrock and Area Engineer
3.10	15-03-12 Footpath Proposals (Hydrock to Area Engineer)
	<b>Relevant Consultation Responses</b>
4.1	15-01-08 PROW Officer Report

- 4.2 15-01-19 The Ramblers Association
- 4.3 15-01-20 Hereford Civic Society
- 4.4 15-01-20 Conservation Manager Email
- 4.5 15-01-22 Environmental Health
- 4.6 15-01-27 Archaeological Advisor
- 4.7 15-01-27 Woolhope Naturalists Field Club
- 4.8 15-02-02 Herefordshire CPRE
- 4.9 15-02-02 Welsh Water Response
- 4.10 15-02-03 West Mercia Police Response
- 4.11 15-02-11 Highways
- 4.12 15-02-12 Conservation Manager Response
- 4.13 15-02-12 Bartestree and Lugwardine Parish Council
- 4.14 15-02-26 Housing Partnership
- 4.15 15-03-10 Ecology Response
- 4.16 Land Drainage Consultant (not dated)
- 4.17 Landscape Officer (not dated)

#### **Committee Report and Decision Notice**

- 5.1 Delegated Officer Report
- 5.2 Decision Notice

#### **Relevant Correspondence Post Appeal Submission**

- 6.1 Email from Ed Thomas withdrawing reason for refusal 3
- 6.2 Email from Ed Thomas confirming 3.63 years housing land supply
- 6.3 Email from Ed Thomas confirming relevant Core Strategy policies

#### **The Development Plan**

- 7.1 Herefordshire Local Plan Core Strategy 2011-2031
- 7.2 Herefordshire Council Policies Map

#### **Local Plan Core Strategy EIP Documents**

- 8.1 Gladman Core Strategy Hearing Statement Representation - Extracts  
Inspector's Report to Herefordshire Council, Inspector Christine Thorby (29  
8.2 September  
2015)

#### **Development Plan Evidence Base**

- 9.1 Herefordshire Five Year Housing Land Supply Jan 2016
- 9.2 Hereford Five Year Housing Land Supply Update (Mar 2015)
- 9.3 Green Infrastructure Strategy (Feb 2010) - Extracts
- 9.4 Landscape Character Assessment SPG 2004 (updated 2009)
- 9.5 Planning Obligations SPD
- 9.6 Biodiversity - Supplementary Planning Guidance (2004)
- 9.7 Herefordshire Local Housing Requirements Study Update (Sept 2014)
- 9.8 Not used
- 9.9 Rural Housing Background Paper March 2013
- 9.10 Rural Settlement Hierarchy Paper November 2010
- 9.11 Bartestree SHLAA Assessment 2009
- 9.12 Bartestree SHLAA Map 2009

#### **The Neighbourhood Plan**

- 10.1 Bartestree with Lugwardine Parish policies map
- 10.2 Bartestree Village Policies Map
- 10.3 Lugwardine Village Policies Map
- 10.4 Environmental report March 2016
- 10.5 Habitats regulations assessment addendum March 2016

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- 10.6 Consultation Statement Text
  - 10.7 Consultation Statement Appendices
  - 10.8 Basic Conditions Statement
  - 10.9 NP Submission Plan Version
  - 10.10 NP Maps A, B and C
  - 10.11 Gladman Bartestree Reg 14 Repts
  - 10.12 NPPG Extracts Para's 07 & 083
  - 10.13 Gladman email to Parish Council
- Relevant Appeal Decisions**
- 11.1 APP/V0510/A/14/2224671 - Land off Field End, Witchford, Cambridgeshire
  - 11.2 APP/A0665/A/14/2224763 - Land Adjacent and to rear of 13 Holly Tree Drive, Nether Peover, Cheshire
  - 11.3 APP/A0665/A/14/2214400 - Land at Well Meadow, Malpas, Cheshire
  - 11.4 APP/H1840/A/13/2203924 - Land between Leasowes Road and Laurels Road, Offenham, Worcestershire
  - 11.5 APP/W0530/A/13/2207961 - Land to the west of Cody Road, Waterbeach
  - 11.6 APP/C3105/A/13/2201339 - Land north of Gaveston Gardens and Rear of Manor Farm, Banbury Road, Deddington, Oxfordshire
  - 11.7 APP/F1610/A/13/2196383 - Land off Station Road, Bourton-on-the-Water, Gloucestershire
  - 11.8 APP/H1840/A/13/2199085 & APP/H1840/A/13/2199426 - Land at Pulley Lane, Droitwich, Wychavon
  - 11.9 APP/P0240/A/14/2228154 - Land to the east of Station Road, Langford, Bedfordshire
  - 11.10 APP/F1610/A/11/2165778 - Land at Highfield Farm, Tetbury, Gloucestershire
  - 11.11 APP/D0840/A/13/2209757 - Land north of Upper Chapel, Launceston
  - 11.12 APP/A0665/A/14/2226994 - Land at Fountain Lane, Davenham, Cheshire
  - 11.13 APP/A0665/W/14/3000528 - Land at Hill Top Farm, By-Pass Road, Northwich, Cheshire
  - 11.14 APP/F1610/A/14/2228762 - Land to the east of Broad Marston Road, Mickleton, Gloucestershire
  - 11.15 APP/Y2810/A/14/2225722 - Salisbury Landscapes Ltd, Boughton Road, Moulton, Northampton
  - 11.16 APP/W1850/W/15/3006428 - Land off Rosemary Lane, Leintwardine, Herefordshire
  - 11.17 APP/W1850/W/15/3009456 Land south of Leadon Way, Ledbury, Herefordshire
  - 11.18 APP/H1840/W/15/3008340 Land off Worcester Road, Drakes Broughton, Worcestershire
  - 11.19 APP/W1850/W/15/3131690 Plot adjoining The Highlands, Hay Lane, Kimbolton, Herefordshire
  - 11.20 APP/X0360/2209286 Land west of Beech Hill Road, Spencers Wood, Berkshire
  - 11.21 APP/F1610/W/15/3131716 Land at Broadway Farm, Down Ampney, Gloucestershire
  - 11.22 APP/W1850/A/13/219246 Home Farm, Belmont, Hereford, HR2 9RX
  - 11.23 APP/W1850/A/14/2227072 Land at Aylestone Hill, Hereford, HR1 1JJ
  - 11.24 APP/H1705/A/13/2205929 Land at Razors Farm, Chineham, Basingstoke
  - 11.25 APP/Y2430/A/13/2191290 Former Asfordby mine, Asfordby Business Park

### **Relevant Judgements**

- 12.1 St Albans City and District Council v Hunston Properties Limited and Secretary of State for Communities and Local Government [2013] EWCA Civ 1610
- 12.2 Hunston Properties Limited v SoS for Communities and Local Government and St Albans City and District Council EWHC 2678 (Admin)
- 12.3 South Northamptonshire Council and the Secretary of State for Communities and Local Government and Barwood Homes Limited Neutral Citation Number [2014] EWHC 570
- 12.4 South Northamptonshire Council and the Secretary of State for Communities and Local Government and Barwood Land and Estates Limited Neutral Citation Number [2014] EWHC 573
- 12.5 Gallagher Homes Limited and (2) Lioncourt Homes Limited v Solihull Metropolitan Borough Council [2014] EWHC 1283
- 12.6 Solihull Metropolitan Borough Council v Gallagher Homes and Lioncourt Homes; Ref: [2014] EWCA Civ 1610 (17 December 2014)
- 12.7 Neutral Citation Number: [2013] EWHC 597 (Admin) Case Number: CO/12207/2012
- 12.8 Secretary of State for Communities and Local Government and Harborough District Council v Ivan Crane (Neutral Citation Number: [2015] EWHC 425 (Admin))
- 12.9 Secretary of State for Communities and Local Government and Shepway District Council and Plumstead v Phides Estates (Overseas) Ltd (Neutral Citation Number: [2015] EWHC 827 (Admin))
- 12.10 Suffolk Coastal District Council v Hopkins Homes Ltd & Anor (2016) EWCA Civ 168 (17 March 2016)
- 12.11 Stroud District Council v SSE & Gladman Developments (Neutral Citation Number: [2015] EWHC 488 (Admin))
- 12.12 Forest of Dean DC and Secretary of State for Communities and Local Government and Gladman Developments (Neutral Citation Number: [2016] EWHC 421)(Admin)
- 12.13 Woodcock and Secretary of State for Communities and Local Government and Mid Sussex Council (Neutral Citation No> [2015] EWHC 1173 (Admin))
- 12.14 Barnwell Manor Wind Ltd and East Northants District Council Neutral Citation Number: [2014] EWCA Civ 137
- 12.15 Colman and Secretary of State for Communities and Local Government and North Devon DC and RWE Renewables Neutral Citation Number: [2013] EWHC 1138 (Admin)
- 12.16 Mordue and Secretary of State for Communities and Local Government and Jones and South Northants Council Neutral Citation Number: [2015] EWHC 539 (Admin)

### **Ecology and Arboricultural Documents**

- 13.1 Biodiversity 2020 A strategy for England's Wildlife and Ecosystem services
- 13.2 Building Biodiversity into Herefordshire's Local Development Framework December 2009
- 13.3 Government Circular Biodiversity and Geological Conservation - Statutory Obligations
- 13.4 Herefordshire Biodiversity Action Plan - Lowland Wood Pasture and Parkland
- 13.5 Herefordshire Biodiversity Action Plan - noble chafer beetle
- 13.6 Herefordshire Biodiversity Action Plan - orchards

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- 13.7 Herefordshire Notable Chafer Beetle Distribution & Records
  - 13.8 MAGIC Traditional Orchard
  - 13.9 MAGIC Wood Pasture
  - 13.10 Natural Environment and Rural Communities (NERC) Act 2006
  - 13.11 Natural England Report 2011
  - 13.12 Noble Chafer Survey Report Iwade
  - 13.13 The Mitigation Strategy for Iwade Site
  - 13.14 Random Sample Orchard Monitoring Keith Alexander final draft
  - 13.15 TPO 575 Confirmed subject to Modifications 29 July 2015
  - 13.16 TPO 575 Plan

#### **Heritage Documents**

- 14.1 Conservation Principles Policies and Guidance Apr 2008
- 14.2 Managing Significance in Decision Taking in the Historic Environment
- 14.3 The Setting of Heritage Assets Historic England
- 14.4 Historic Parks & Gardens in Herefordshire
- 14.5 Historic Mapping 1-10,000
- 14.6 Historic Mapping 1-2500
- 14.7 Hagley Court Listing Entry
- 14.8 Hagley Hall Listing Entry
- 14.9 The Forge Listing Entry

#### **Landscape Documents**

- 15.1 Guidelines for Landscape and Visual Impact Assessment 3rd Edition
- 15.2 Herefordshire Lowlands NCA Profile 100
- 15.3 Topic Paper 6 Techniques and Criteria for Capacity and Sensitivity
- 15.4 Landscape Character Assessment Approach

#### **Other Documents**

- 16.1 Development Framework 6122 Rev T
- 16.2 Highways Plan C14298\_005\_P11
- 16.3 Highways Plan C14298-006-P2
- 16.4 UDP Extracts
- 16.5 UDP Proposals Map
- 16.6 Manual for Streets - Extract
- 16.7 NPPG Prematurity Document
- 16.8 Written Ministerial Document - Planning for Growth
- 16.9 Keep the Country Building Article - March 2015
- 16.10 George Osborne - Rural Communities August 2015
- 16.11 Annexe M - Planning Procedural Guide
- 16.12 Bartestree and Lugwardine Plan April 2016
- 16.13 111124 Hagley Hall Approved Plan
- 16.14 111124 Hagley Hall Officers Report
- 16.15 111124 Hagley Hall Decision Notice
- 16.16 142867 Hagley Hall Amendment Decision Notice
- 16.17 140926 South of A438 Committee Report 60 unit
- 16.18 140926 South of A438 Decision Notice 60 unit
- 16.19 143720 South of A438 Committee Report 40 unit
- 16.20 143720 South of A438 Decision Notice 40 unit
- 16.21 133115 Gateway Nursery Committee Report
- 16.22 133115 Gateway Nursery Decision Notice
- 16.23 140531 Quarry Field Committee Report
- 16.24 140531 Quarry Field Decision Notice
- 16.25 140531 Quarry Field Appeal Decision

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- 16.26 132536 William's Mead Committee Report
  - 16.27 132536 William's Mead Decision Notice
  - 16.28 132536 William's Mead Appeal Decision
  - 16.29 140757 Church House Committee Report
  - 16.30 140757 Church House Decision Notice
  - 16.31 140757 Church House Appeal Decision
  - 16.32 Hereford Agricultural Land Classification Map
  - 16.33 Hereford Five Year Housing Land Supply Update (Mar 2015)
  - 16.34 SHLAA Rural Report November 2015
  - 16.35 Fig 4 Hedgerow Removal For New Access Plan Rev A
  - 16.36 Fig 5 Hedgerow Proposed For New Access Plan

#### **Re-consultation Documents**

- 17.1 Re-consultation Letter
- 17.2 Consultation Addresses
- 17.3 Loveday Consultation Response
- 17.4 Hall Consultation Response
- 17.5 Parry Consultation Response
- 17.6 Email to PINs with details of re-consultation

#### **COUNCIL'S PROOFS OF EVIDENCE**

- |          |         |   |
|----------|---------|---|
| Document | HC/1/P  | Proof of Evidence by Edward Thomas                    |
| Document | HC/2/PA | Proof of Evidence and Appendices by Dr Rob Widdicombe |
| Document | HC/3/PA | Proof of Evidence and Appendices by Carly Tinkler     |
| Document | HC/4/PA | Proof of Evidence and Appendices by Sarah Lowe        |

#### **APPELLANT'S PROOFS OF EVIDENCE**

- |          |          |  |
|----------|----------|--|
| Document | GDL/1/PA | Proof of Evidence and Appendices by Laurie Lane        |
| Document | GDL/2/PA | Proof of Evidence and Appendices by David Beardmore    |
| Document | GDL/3/P  | Proof of Evidence by Helen Kirk                        |
| Document | GDL/3/A  | Appendices to Helen Kirk's Proof of Evidence           |
| Document | GDL/4/P  | Proof of Evidence by Dr Suzanne Mansfield              |
| Document | GDL/4/A  | Appendices to Dr Suzanne Mansfield's Proof of Evidence |
| Document | GDL/5/P  | Proof of Evidence by Timothy Jackson                   |
| Document | GDL/5/A  | Appendices to Timothy Jackson's Proof of Evidence      |

#### **DOCUMENTS AND PLANS SUBMITTED SHORTLY BEFORE THE INQUIRY OPENED, AND AT THE INQUIRY**

- |          |   |   |
|----------|---|---|
| Document | 1 | Signed and dated Statement of Common Ground between the Council and the appellant, relating to planning and other matters   |
| Document | 2 | Signed and dated Statement of Common Ground between the Council and the appellant, relating to highways and transport matters   |
| Document | 3 | Signed and dated Supplemental Statement of Common Ground between the Council and the appellant, relating to amended access plans, proposed footway improvements and other minor matters |

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Document	4	Clarification Note in relation to Landscape and Visual Matters, prepared by Mr Jackson, submitted by the appellant
Document	5	Opening statement on behalf of the appellant
Document	6	Bartestree & Lugwardine SHLAA site assessments and maps covering the northern and southern parts of the appeal site, submitted by the appellant
Document	7	Sales details relating to Hagley Park Estate from 1817, submitted by the Council
Document	8	Sales details relating to Hagley Park Estate from 1824, submitted by the Council
Document	9	Sales details relating to Hagley Park Estate from 1913, submitted by the Council
Document	10	Regulation 16 Representation made by the appellant to the Bartestree with Lugwardine Neighbourhood Development Plan
Document	11	Regulation 16 Representation made by Parish Councillor Mike Wilson to the Bartestree with Lugwardine Neighbourhood Development Plan, submitted by the Council
Document	12	Regulation 16 Representation made on behalf of Mrs D Patterson to the Bartestree with Lugwardine Neighbourhood Development Plan, submitted by the Council
Document	13	Aerial photograph of Bartestree and the appeal site, submitted by the Council
Document	14	Bundle of 2 Tithe Maps of 1839, submitted by the Council
Document	15	'LIDAR' image of the appeal site, submitted by the Council
Document	16	Photographs of Hagley Hall Barn prior to conversion, and drawings of the proposed conversion, submitted by the Council
Document	17	Google Streetview image, showing land adjacent to Hagley Hall with old walls in place, submitted by the appellant
Document	18	Schedule 4B 'Process for Making of Neighbourhood Development Orders', submitted by the appellant
Document	19	High Court Judgment – Crownhall Estates Limited and Chichester District Council and Loxwood Parish Council [2016] EWHC 73 (Admin) Case No CO/1812/2015 and CO/2669/2015
Document	20	Decision dated 12 May 2016, under Regulation 17 of the Neighbourhood Planning (General) Regulations 2012, to progress to appoint an examiner for the Bartestree with Lugwardine Neighbourhood Development Plan, submitted by the Council
Document	21	Correspondence relating to the boundary treatment approved at Hagley Hall Barn, submitted by the Council
Document	22	Statement by Cllr Dave Greenow
Document	23	Statement by Mrs Wendy Soilleux, with appendices
Document	24	Statement by Mr Daniel Forrest DipDEA, with appendices
Document	25	Statement by Mr Jonathan Snowdon
Document	26	Statement by Mrs Lin Hoppé
Document	27	Statement by Mr Andrew Targett
Document	28	Statement by Mr Geoffrey Watts, with attachments
Document	29	Statement by Mrs Elizabeth Parry with attachment
Document	30	Statement by Dr Richard Williams with attachment
Document	31	Plan showing the extent of adopted highway at Longworth Lane etc, submitted by the appellant
Document	32	Letter and plan from Mr and Mrs V F Bohn, submitted by Mr King-Salter

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Document	33	Aerial photograph showing the location of the Hagley Park/Court grid reference from Appendix 8d of the Herefordshire Local Plan Core Strategy, submitted by the appellant
Document	34	Table showing Herefordshire Neighbourhood Planning Timeframes, submitted by the appellant
Document	35	Extract from the Planning Practice Guidance (Paragraph 053 Reference ID: 41-053-20140306), dealing with Neighbourhood Planning, submitted by the appellant
Document	36	Detailed Annualised Housing Trajectory from the Herefordshire Local Plan Core Strategy, submitted by the Council
Document	37	Letter from Mr Daniel Forrest DipDEA, dated 20 May 2016
Document	38	Certified copy of the signed and completed Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990, as amended
Document	39	Statement of Compliance with the Community Infrastructure Levy (CIL) Regulations, submitted by the Council
Document	40	Closing submissions on behalf of the Council
Document	41	Closing submissions on behalf of the appellant

### **APPENDIX C - CONDITIONS TO BE IMPOSED IF PLANNING PERMISSION IS GRANTED**

1. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of two years from the date of this permission.

**Reason:** Required to be imposed by Section 92 of the Town and Country Planning Act 1990.

2. The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of the approval of the last reserved matters to be approved, whichever is the later.

**Reason:** Required to be imposed by Section 92 of the Town and Country Planning Act 1990.

3. Approval of the details of the layout, scale, appearance and hard and soft landscaping (hereinafter called 'the reserved matters') shall be obtained from the Local Planning Authority in writing before any development is commenced.

**Reason:** To enable the Local Planning Authority to exercise proper control over these aspects of the development and to secure compliance with Policies SD1, LD1 and LD3 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

4. The development hereby approved shall be for no more than 100 dwellings.

**Reason:** To define the terms of the permission and to comply with Policy SD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

5. With the exception of any site clearance, development shall not commence until a scheme for the provision of 35% affordable housing (up to 35 dwellings) as part

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of the development on the site, has been submitted to and approved in writing by the Local Planning Authority. The affordable housing shall be provided in accordance with the approved scheme which shall include.

- a) The numbers, type, tenure and location on the site of the affordable housing provision to be made;
- b) The arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing, if no Registered Social Landlord is involved;
- c) The arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
- d) The occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

**Reason:** To secure satisfactory affordable housing provision in accordance with Policy H1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

6. Before any works hereby approved are commenced, visibility splays shall be provided from a point 0.6 metres above ground level at the centre of the access to the application site and 2.4 metres back from the nearside edge of the adjoining carriageway (measured perpendicularly) for a distance of 60 metres in each direction along the nearside edge of the adjoining 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.

**Reason:** In the interests of highway safety and to confirm to the requirements of Policy MT1 of the Herefordshire Local Plan – Core Strategy.

7. The shared pedestrian/footway link, hatched on the approved access arrangements plan drawing no. C14298-005-P11 and footway extending westwards along the A438 as shown on the same drawing, shall be constructed in accordance with a scheme to be submitted to and agreed in writing by the Local Planning Authority. The work shall be completed and the route available for use prior to the first occupation of any of the dwellings hereby approved.

**Reason:** In the interests of highway safety and to conform to the requirements of Policy MT1 of Herefordshire Local Plan – Core Strategy.

8. The proposed footway links along the western edge of the C1130 Longworth Lane carriageway shall be constructed in accordance with a scheme to be submitted to and agreed in writing by the Local Planning Authority; that scheme being in general conformity with the access arrangements drawing C14298-005-P11 and shall include an arboricultural working method statement for works within the Root Protection Area of the oak tree at the junction of Hagley Park and Longworth Lane. The work shall be completed and the route available for use prior to the first occupation of any of the dwellings hereby approved.

**Reason:** In the interests of highway safety and to conform to the requirements of Policy MT1 of Herefordshire Local Plan – Core Strategy.

9. Development shall not begin in relation to the provision of road and highway drainage infrastructure until the engineering details and specification of the proposed roads and highway drains have been submitted to and approved in

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writing by the Local Planning Authority. No dwelling may be occupied until the road and highway drain serving the dwelling has been completed.

**Reason:** To ensure an adequate and acceptable means of access is available before any dwelling is occupied and to conform to the requirements of Policy MT1 of Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

10. No development shall commence until a Construction Management Plan (CMP) has been submitted to and approved in writing by the Local Planning Authority. The plan shall include the following details:
- a) Wheel cleaning apparatus which shall be operated and maintained during construction of the development hereby approved.
  - b) Parking for site operatives and visitors which shall be retained and kept available during construction of the development.
  - c) A noise management plan including a scheme for the monitoring of construction noise.
  - d) Details of working hours and hours for deliveries
  - e) A scheme for the control of dust arising from building and site works
  - f) A scheme for the management of all waste arising from the site
  - g) A travel plan for employees

The agreed details of the CMP shall be implemented throughout the construction period.

**Reason:** In the interests of the residential amenity of properties within the locality and of highway safety in accordance with Policies SD1 and MT1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

11. Prior to the first occupation of any of the dwellings hereby approved a scheme for the provision of covered and secure cycle parking within the curtilage of each dwelling shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details. The cycle parking shall be installed and made available for use prior to occupation of the dwelling to which it relates and shall be retained for the purpose of cycle parking in perpetuity.

**Reason:** To ensure that there is adequate provision for secure cycle accommodation within the application site, encouraging alternative modes of transport in accordance with both local and national planning policy and to conform to the requirements of Policy MT1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

12. Prior to the first occupation of any of the dwellings hereby approved a Travel Plan which contains measures to promote alternative sustainable means of transport for residents and visitors with respect to the development hereby permitted shall be submitted to and be approved in writing by the Local Planning Authority. The Travel Plan shall be implemented, in accordance with the approved details, on the first occupation of the first dwelling. A detailed written record shall be kept of the measures undertaken to promote sustainable transport initiatives and a review of the Travel Plan shall be undertaken annually by the appointed Travel Plan co-ordinator. All relevant documentation shall be made available for inspection by the Local Planning Authority upon reasonable request.

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**Reason:** In order to ensure that the development is carried out in combination with a scheme aimed at promoting the use of a range of sustainable transport initiatives and to conform to the requirements of Policy MT1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

13. No development (including any site clearance) shall commence until an Ecological Management Plan incorporating habitat enhancement as set out in the Ecological Appraisal from fpcr dated December 2014 has been submitted to, and be approved in writing by the Local Planning Authority and thereafter the work shall be implemented as approved. An appropriately qualified and experienced ecological clerk of works should be appointed (or consultant engaged in that capacity) to oversee the ecological mitigation work.

**Reason:** To ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010 and Policy LD2 of the Herefordshire Local Plan – Core Strategy, and to comply with Policy LD2 in relation to Nature Conservation and Biodiversity and to meet the requirements of the National Planning Policy Framework and the NERC Act 2006.

14. The developer shall afford access at all reasonable times to any archaeologist nominated by the Local Planning Authority, and shall allow him/her to observe the excavations and record items of interest and finds. A minimum of 5 days' written notice of the commencement date of any works shall be given in writing to the County Archaeology Service.

**Reason:** To allow the potential archaeological interest of the site to be investigated and recorded and to comply with the requirements of Policy LD4 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

15. In this condition 'retained tree/hedgerow' means an existing tree/hedgerow that is to be retained in accordance with the approved plans and particulars.

No development, including demolition works shall be commenced on site or site huts, machinery or materials brought onto the site, before adequate measures have been taken to prevent damage to retained trees/hedgerows. Measures to protect retained trees/hedgerows must include:

- a) Root Protection Areas for each retained tree/hedgerow must be defined in accordance with BS5837/2012 – Tree Work - Recommendations, shown on the site layout drawing and approved by the Local Planning Authority.
- b) Temporary protective fencing, of a type and form agreed in writing with the Local Planning Authority must be erected around each retained tree/. The fencing must be at least 1.25 metres high and erected to encompass the whole of the Root Protection Areas for each retained tree/hedgerow.
- c) No excavations, site works or trenching shall take place, no soil, waste or deleterious materials shall be deposited and no site huts, vehicles, machinery, fuel, construction materials or equipment shall be sited within the Root Protection Areas for any retained tree/hedgerow without the prior written consent of the Local Planning Authority.

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- d) No burning of any materials shall take place within 10 metres of the furthest extent of any retained hedgerow or the crown spread of any retained tree.
  - e) There shall be no alteration of soil levels or planting within the Root Protection Areas of any retained tree/hedgerow with the exception of T24 as shown on the Tree Survey Plan (Drawing No. 6122-A-02) in the Arboricultural Assessment dated January 2015. Any work within the Root Protection Area of T24 shall be subject to the approval in writing by the Local Planning Authority of an arboricultural working method statement and implemented as approved.

**Reason:** To safeguard the amenity of the area and to ensure that the development conforms to Policies SD1, LD1 and LD3 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

16. No development shall commence until the Developer has prepared a scheme for the collection and discharge of surface water and land drainage which has first been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved scheme.

**Reason:** To ensure that effective surface water drainage facilities are provided for the proposed development and to comply with Policies SD3 and SD4 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

17. Foul water and surface water discharges must be drained separately from the site. No surface water shall be allowed to connect (either directly or indirectly) to the public sewerage system.

**Reason:** To protect the integrity of the public sewerage system and to prevent hydraulic overloading in accordance with Policies SD3 and SD4 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

18. No development shall commence until a detailed plan, showing the levels of the existing site, the proposed slab levels of the dwellings approved and a datum point outside of the site, has been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

**Reason:** In the absence of sufficient detailed information, the clarification of slab levels is a necessary initial requirement before any groundworks are undertaken so as to define the permission and ensure that the development is of a scale and height appropriate to the locality and to comply with Policy SD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

19. Prior to the commencement of development, details for the provision of one interpretive board recording the features of interest of the Unregistered Parkland and how this relates to the wider area of Bartestree and Longworth, shall be submitted to and approved in writing by the Local Authority. The details shall identify a suitable and publicly accessible location for the siting of the boards, which shall then be installed prior to the occupation of 75% of the dwellings.

**Reason:** To record in a manner proportionate to its importance any features of interest of the Unregistered Parkland in the southern field of the Appeal Site that will be lost to development, in accordance with Policies LD3 (paragraph 5.3.22) and LD4 (paragraph 5.3.27) of the Local Plan Core Strategy.

20. Prior to the commencement of development, a scheme for the translocation of 36 existing orchard trees, from the northern field to the southern field, as shown on the Orchard Tree Survey Plan (Appendix B – Figure 1 of the proof of evidence of Helen Kirk), shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include.
- a) details of the proposed transplantation method for each tree
  - b) a timetable for the translocation works which will include works for the pruning of the existing trees, other preparatory works and post translocation treatments
  - c) preparatory site works at the recipient site
  - d) details of proposed supplementary orchard tree planting of mixed variety and age fruit trees, to include apple, pear, plum and cherry; also details of propagation of existing orchard trees
  - e) details of boundary fencing and 1 No. information board
  - f) details and timeframes for community use
  - g) details of general and ecological management for the period up to the occupation of 75% of the dwellings.

Development shall be carried out in accordance with the approved scheme

**Reason:** To ensure correct identification of the orchard trees to be translocated and to establish a timetable and details of the the necessary works to be carried out for each tree to be so translocated.

#### **APPENDIX D - SCHEME PLANS**

No.	Drawing No.	Title
1	6122-L-04 A	Location Plan
2	C14298/005 Rev P11	Access Arrangement and Footway Improvements
3	C14298/006 Rev P2	Footpath Arrangement and cross-section (illustrative)
4	6122-L-02 Rev T	Development Framework Plan (illustrative)

#### **APPENDIX E - LIST OF ABBREVIATIONS**

AONB	Area of Outstanding Natural Beauty
BLP	Bartestree with Lugwardine Parish
BLPC	Bartestree with Lugwardine Parish Council
BLNDP	Bartestree with Lugwardine Neighbourhood Development Plan
BMV	Best and Most Versatile (agricultural land)
CD	Core Document
CIL	Community Infrastructure Levy
EA	Ecological Appraisal
EH	English Heritage
EIA	Environmental Impact Assessment

Framework	National Planning Policy Framework
GLVIA3	Guidelines for Landscape and Visual Impact Assessment, Third edition
ha	hectare
HCPRE	Herefordshire Campaign to Protect Rural England
HE	Historic England
HMA	Housing Market Area
LCT	Landscape Character Type
LEAP	Local Equipped Area For Play
LPCS	Local Plan Core Strategy
LVIA	Landscape and Visual Impact Assessment
m	metre
NCA	National Character Area
NDP	Neighbourhood Development Plan
OAN	Objectively Assessed Need
OS	Ordnance Survey
Parish Council	Bartestree with Lugwardine Parish Council
PPG	Planning Policy Guidance
PROW	Public Right of Way
RHS	Royal Horticultural Society
S106	Section 106
SHLAA	Strategic Housing Land Availability Assessment
SOCG	Statement of Common Ground
SoS	Secretary of State
SPD	Supplementary Planning Document
SPG	Supplementary Planning Guidance
SUDS	Sustainable Drainage System
SUE	Strategic Urban Extensions
TA	Transport Assessment
The Council	Herefordshire Council
TPO	Tree Preservation Order
UDP	Unitary Development Plan
UPG	Unregistered Park and Garden



## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.