



Appeal Decision

Hearing held on 25 June 2024

Site visit made on 26 June 2024

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 July 2024

Appeal Ref: APP/P1805/W/24/3339483

Land to the rear of 1-6 Smedley Crooke Place, Hopwood B48 7TP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Cawdor Capital (Hopwood) Limited against the decision of Bromsgrove District Council.
 - The application Ref is 22/01419/FUL.
 - The development proposed is 34 affordable houses.
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Decision

1. The appeal is allowed and planning permission is granted for 34 affordable houses at land to the rear of 1-6 Smedley Crooke Place, Hopwood B48 7TP in accordance with the terms of the application, Ref 22/01419/FUL, subject to the conditions in the attached Schedule.

Application for costs

2. A full application for costs was made by the appellant against the Council. This is the subject of a separate Decision.

Preliminary Matters

3. A planning obligation in the form of a Unilateral Undertaking was presented in draft form at the Hearing. It was subsequently finalised, signed and executed as a deed, dated 8 July 2024. I have taken this into account accordingly.

Main Issues

4. The main issues are:
 - a) Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies.
 - b) Whether the proposal would support active and sustainable modes of travel.

Reasons

Site and proposal

5. Located to the southern edge of the village of Hopwood, the site is around 0.8 hectares in size. It is roughly rectangular in shape, relatively flat and comprises compacted hardcore across most of the site and open storage of cabins. There is an Existing Use Certificate which confirms the use as open storage of plant

and equipment. This use was confirmed in 1985 and is completely unrestricted in hours of use, stacking heights and types of storage.

6. To the north, the site adjoins the existing rear gardens of properties in Smedley Crooke Place. The eastern boundary abuts the rear gardens of properties on Woodpecker Close and a small field, beyond which are the grounds of the old Edwardian Sports Club. The western boundary is formed by the road and roundabout, and the whole site is surrounded by tall and well established vegetation. The existing access is located between Smedley Crooke Place and the large roundabout junction.
7. The proposal is for 34 affordable dwellings across the site, including access roads, attenuation pond and landscaping. A new access directly onto the roundabout, and the reconfiguration of the roundabout, is also proposed.

Whether the proposal would be inappropriate development in the Green Belt

8. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The construction of new buildings should be regarded as inappropriate in the Green Belt.
9. The Framework sets out that exceptions to this include limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would: not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.
10. It is agreed between both parties that the proposal would provide 100% affordable housing, meeting an identified and acute affordable housing need in the area. It is also agreed that the site is previously developed. The remaining consideration is to establish if the proposal would cause substantial harm to the openness of the Green Belt. Substantial harm is a high bar given that the exception allows for housing development, and thus there would be an anticipated, inevitable and axiomatic impact on openness.
11. At the time of my visit, the site was littered with portable cabins, some of which were stacked. Along with the hardstanding, the open storage at the site impacts upon openness spatially. Whilst I accept this is a snapshot in time, the use is unrestricted and there could be any type of storage on the site in the future, along with unrestricted comings and goings at any time. The use is permanent, and the site is completely developed.
12. Furthermore, the site is visually enclosed to a significant extent by the existing tall landscaping, with views of the storage cabins and hardstanding only possible through limited gaps in the hedge or at the access point. It is also on the edge of a village and adjoins existing development. As a result, the site could not be considered as open in any realistic sense, and the current condition of the site contributes very little, if anything to openness. This is a similar conclusion to the previous Appeal Decision¹.
13. The erection of 34 dwellings across the site would create a permanent and significant scale of development. It would also introduce a considerable level of

¹ APP/P1805/W/19/3230823

different activity to the site, given there would be daily comings and goings from new residents. The overall effect of the proposal would cause a reduction in openness.

14. However, in addition to retaining and improving the existing boundary landscaping, additional landscaping would be planted. Whilst the tops of the dwellings would remain visible, and views into the estate would be gained from the new access point, the landscaping would ameliorate the visual impact on openness to some extent. Moreover, given the existing unrestricted and previously developed nature of the site, the site conditions, and the proposed layout, it is my view that the harm to openness would be significant, but not substantial.
15. Thus, the proposal would meet the exception set out in the Framework and is not inappropriate development. This would comply with the Framework. However, it would not meet any of the policy criteria specified at Policy BDP4 of the Bromsgrove District Plan (BDP) (January 2017). This is because exception 154 g) of the Framework is not included in Policy BDP4.4. This is inconsistent with the Framework, and in this specific instance, the weight to be attributed to this policy is reduced.

Active and sustainable modes of travel

16. The Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Hopwood is a moderately sized village on the outskirts of Bromsgrove, and is identified as a 'smaller settlement' in the BDP, where there are limited opportunities for growth.
17. In terms of services, it contains a petrol filling station with convenience store, a public house/restaurant, ATM, community centre, sports pitches and park and bus stops. All are within walking distance of the site and additionally, Hopwood Services are within 1km. Additionally, off site highway improvements would provide pedestrian crossing points with dropped kerbs and tactile paving at Smedley Crooke Place and across the roundabout. This would provide suitable improvements to pedestrian infrastructure, and despite local concerns, I see no reason why these would need to be signalled crossing points.
18. For a village, Hopwood is not devoid of services and facilities. However, future residents are likely to need to access other services, such as schools, medical facilities, supermarkets and employment in larger settlements. This is likely to require access by a private car, public transport or cycling.
19. In terms of public transport, the bus infrastructure has been recently improved to provide additional daytime services. The proposal would also commit to providing a monetary contribution to increase the number of peak time services to encourage bus travel for future and existing residents. The services would run between Bromsgrove and Redditch and small settlements in the daytime, Monday to Friday. Whilst these monies would not secure the improvements on a permanent basis, they would provide improvements to the bus infrastructure to serve the future residents, having regard to the accessibility of public transport options, as required by Policy BDP1 of the BDP.
20. The bus infrastructure servicing the site is likely to encourage public transport usage. Furthermore, given the tenure would be socially rented homes for those in housing need, it is my view that these residents would be likely to use the

bus services more so than residents purchasing market housing. This is because, based on the evidence before me, they are less likely to have access to a private car. Indeed, this could secure a continued future bus services in the area as the patronage is likely to be increased. The Council's claim that the level of non-car ownership for socially rented homes would exacerbate the unsustainable location is unfounded, particularly considering the improvements being provided to the bus infrastructure.

21. In terms of cycling, the area is not of particularly challenging terrain and the roads are suitable and conducive to cycling, particularly given the relatively short distances to Alvechurch and Barnt Green. Thus, if there is a propensity to cycle, future residents would be likely to cycle to access day to day services and facilities, and employment. This is even considering inclement weather and street lighting. Future residents would also be provided with bicycle storage, which would encourage bicycle ownership. Given my findings, it would also be reasonable to conclude that the railway stations at Alvechurch and Barnt Green would also be accessible on a bicycle or by the bus. This would facilitate access to larger settlements.
22. There are no schools located in the village. However, the planning obligation would also contribute towards transport for educational purposes that would enable future occupants to access school buses. This is because the designated high schools in Bromsgrove exceed the statutory maximum walking distance of 3 miles. Additionally, the County Council have a need for community transport for elderly and disabled residents where traditional bus services cannot fully account for specialised needs. The planning obligation would also provide monies towards this.
23. Nevertheless, even with all these measures, the location of development is still likely to result in some future residents relying on a private car for some journeys. This is considering the lack of bus service at the weekends and in the evening. Yet, Building Regulations now requires dwellings to be fitted with electrical vehicle charging points. This means that future owners would be encouraged to own ultra low and zero emission vehicles, which also represents a sustainable transport mode in the Framework. A welcome pack to promote sustainable forms of transport for future residents may also go some way to reduce reliance on the private car. This would be the subject of a planning condition.
24. Therefore, the measures proposed would improve walking and cycling access and bus transport for all residents, be those disabled or school aged. The proposal would not exacerbate motor vehicle dependence, in fact, it would very clearly support active and sustainable modes of travel. This would be compliant with Policies BDP1 and BDP16. These policies encourage the use of sustainable methods of travel. There would also be compliance with the Framework, which promotes sustainable transport.

Planning obligations

25. The Unilateral Undertaking (UU) obliges to provide 34 affordable homes. These are to be delivered as socially rented units and there is an agreement in place with a local provider. Additionally, monetary contributions towards community transport services, additional healthcare requirements for nearby GP services, public transport, school transport and waste management are included. These contributions would be paid to the Council (waste management) and

Worcestershire County Council (community, public and school transport and the healthcare contribution). A monitoring fee is also included in the agreement, that would be paid to the Council.

26. The Council's Planning Obligation Statement adequately sets out sufficient justification for the affordable housing, monetary contributions and monitoring fees. Based on my findings above, and the evidence before me, all these obligations would be necessary to make the development acceptable, directly related, and fairly and reasonably related in scale and kind.

Other matters

Local residents

27. Concerns have been raised that the proposal would be 100% affordable housing and this would not create a mixed and balanced community. However, there would be no policy conflict, and there is no substantive evidence before me that the proposal would fail to deliver a suitable housing mix. Indeed, the housing typologies would meet a proven need for family homes in the district.
28. The Local Highways Authority raise no objection to the development, and despite assertions from local residents, I have no substantive evidence that the roads are unsafe, or the proposal would lead to highway safety concerns. Indeed, the existing access would be extinguished, and improvements to the roundabout junction would take place, creating a deflection which would slow cars down on approach when heading south. This is a benefit to the scheme.
29. A contribution to education was considered unnecessary by the County Council due to the tenure of the dwellings proposed. The interface distances between dwellings would be sufficient to ensure no harm to existing or future living conditions.

Ecology

30. Three ponds are present within 250 m from the site boundary. The desk study² has found the presence of great crested newts (GCN) within the wider area and the discovery of a grass snake on site confirms suitability for reptile and amphibian species. A Rapid Risk Assessment was undertaken on pond 1, which found that an offence could be likely because the development activities are of such a type, scale and location that impacts on GCN cannot be discounted.
31. For this reason, the PEA recommends a GCN method statement would be necessary to ensure works do not harm the protected species. This would ensure that all site contractors are inducted to ensure they understand working methods and legal implications surrounding GCNs, and a GCN Detection Dog will be deployed to the site. If the dog indicates any terrestrial presence of the species, all works will halt and a Natural England European Protected Species Licence applied for. If the dog does not detect any presence of newts on site, works will proceed under the supervision of a suitably qualified Ecologist.
32. The habitats on site may support other reptile species such as slow worm. The PEA recommends habitat clearance is undertaken under the supervision of a suitably qualified ecologist to ensure any species are relocated safely. The plans propose an area of landscaping to the southeastern corner of the site.

² From the Preliminary Ecological Appraisal Report (PEA) (June 2024) prepared by SEED Arboriculture Ltd

This area includes new grassland, trees, wildflower meadow and shrub mix which will be of benefit for both amphibians and reptiles. With these measures in place by a planning condition, I am satisfied that there would be no harm to protected species.

Planning balance

33. It is accepted by both main parties that the proposal would conflict with Policy H2 of the Alvechurch Parish Neighbourhood Plan (January 2019). This is because the location of development would lie outside the village envelope. There would also be conflict with Policy BDP4 of the BDP.
34. However, the Council cannot demonstrate a 5 year supply of housing. This means that paragraph 11 d) ii. of the Framework, or the tilted balance, would be engaged. Planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
35. Because of the poor housing land supply position, this indicates that the spatial strategy is not effective and therefore Policy H2 is of limited weight. Additionally, because Policy BDP4 is not consistent with the Framework, it too is of limited weight in this specific instance.
36. The proposal would deliver 34 affordable homes to people in housing need, in an area where the delivery of affordable housing has been woeful. It would also re-use previously developed land. These benefits are significant. It would also help to sustain existing community facilities, improve public transport and deliver economic benefits. These would be of benefit to the wider community and weigh heavily in favour of the proposal. Additionally, there would be off site highway improvements.
37. Taken together, the adverse effect of the policy conflicts would not significantly and demonstrably outweigh the substantial benefits of the proposal, when assessed against the policies in the Framework taken as a whole. Even on a flat balance, the benefits of the scheme would outweigh the policy conflicts.

Conditions

38. The plans are listed for certainty [condition 2]. A method statement to avoid harm to GCNs, amphibians and reptiles is necessary to protect species [condition 3]. A construction method statement is necessary to avoid harm to neighbouring living conditions and for the safety of all highway users [condition 4]. Tree protection is necessary to ensure the proper retention of trees [condition 5]. Detailed site investigation for contaminated land and remediation are necessary as the site is previously developed [conditions 6 and 7]. A timetable for implementing highway works is necessary to ensure the safety of all highway users [condition 8]. A foul and surface water drainage scheme is necessary to ensure suitable measures are put in place [condition 9].
39. Conditions 3-9 are required to be pre-commencement as it is fundamental to have these details agreed before development starts on site. The appellant has agreed to the imposition of these conditions in writing.
40. An external lighting scheme is necessary to minimise the impacts of lighting on bats [condition 10]. A noise mitigation scheme is necessary to ensure suitable

future living conditions [condition 11]. Samples of external materials are necessary to ensure the appearance of the development is suitable [condition 12]. Secure bicycle storage and a residential welcome pack are necessary to promote sustainable modes of transport [conditions 13 and 14].

41. The implementation of all highway works is necessary to ensure the development is safe for all highway users [condition 15]. A Landscape and Ecological Management Plan is necessary to ensure ongoing management of the public areas of landscaping [condition 16]. Boundary treatments are necessary to ensure suitable measures are put in place and should include details of hedgehog highways to allow for commuting throughout the site [condition 17]. Lastly, a report to demonstrate ambient indoor noise levels is necessary to ensure suitable living conditions [condition 18].
42. An electric vehicle charging point is required by Building Regulations and it would be unnecessary to impose this condition.

Conclusion

43. For the reasons set out above, the appeal is allowed.

Katie McDonald

INSPECTOR

APPEARANCES

For the Local Planning Authority:	
Paul Lester BSc(Hons) DipTP MRTPI	Principal Planning Officer, Bromsgrove District Council
For the appellants:	
Charles Robinson Btech(Hons) MPhil MRTPI	Planning Consultant, TwelveTwentyOne Planning Services Ltd
Dan Rickett BA(Hons) BArch RIBA ARB	Chartered Architect and appellant representative
James McGavin BA (Hons) MScENG FCHIT	Director, The Transportation Consultancy Ltd
Interested parties	
Cllr Charles Hotham BSc MSc PHD	Ward member

HEARING DOCUMENTS

HD1	Draft Unilateral Undertaking with Council comments, Official Title and Register
HD2	Council's suggested ecology condition
HD3	Council's ecological comments dated 26 June 2024
HD4	Confirmation on agreement to pre-commencement conditions from appellant
HD5	Finalised Unilateral Undertaking dated 8 July 2024

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby approved shall be carried out in accordance with the following plans and drawings:
 - Site Location Plan Ra_3298_S3_001
 - General Site Plan Ra_3298_S3_004 F
 - Landscape Masterplan 4202 101 Rev B
 - Planting Plan (1 of 2) 4202 201 Rev B
 - Planting Plan (2 of 2) 4202 202 Rev B
 - Housetype Ra_1 Ra_3298_S3_100 C
 - Housetype Ra_1.1 Ra_3298_S3_101 C
 - Housetype Ra_2 Ra_3298_S3_200 C
 - Housetype Ra_2.1 Ra_3298_S3_201 C
 - Housetype Ra_3&3.1 Ra_3298_S3_300 C
 - Site Access Arrangements 210672-01 Rev B
 - Proposed Pedestrian Crossings 210672-01 Rev
- 3) No site clearance, preparatory work or development shall commence, including any works of demolition until a method statement to avoid harm to Great Crested Newts, other amphibians and reptiles during construction has been submitted to and approved in writing by the local planning authority. The development shall be carried out strictly in accordance with the approved details.
- 4) No site clearance, preparatory work or development shall commence, including any works of demolition, until a Construction Method Statement (CMS) has been submitted to and approved in writing by the local planning authority. The approved CMS shall be complied with throughout the construction period for the development and shall include details of:
 - a) site management arrangements including on-site storage of materials, plant and machinery; on-site parking and turning provision for vehicles for site operatives, visitors and construction vehicles; and provision for the loading/unloading of plant and materials within the site;
 - b) a programme of works, including measures for traffic management, temporary construction access and details of temporary signage;
 - c) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
 - d) wheel washing facilities;
 - e) measures to control the emission of dust and dirt during construction; and,
 - f) delivery, demolition and construction working hours.
 - g) A highway condition survey and a timescale for re-inspection and remediation where necessary.
- 5) No site clearance, preparatory work or development shall commence, including any works of demolition, until all retained trees and hedgerows have been protected in accordance with BS5837:2012 and measures outlines in the Seed Arboricultural Impact Assessment reference number 1222- AIA-V1-C. No works of any kind shall be permitted within or through the Root Protection Areas of trees or hedges on and adjacent to the application site. The protection shall be retained in situ for the duration of the works, and only

removed once the development is complete and all machinery and works material removed from the site.

- 6) No site clearance, preparatory work or development shall commence, including any works of demolition, until a scheme for detailed site investigation to address the unacceptable land contamination risks has been submitted to and approved in writing by the local planning authority. The scheme must be designed to assess the nature and extent of any contamination and must be led by the findings of the preliminary risk assessment. The site investigation and risk assessment scheme must be compiled by competent persons and must be designed in accordance with the Environment Agency's "Land Contamination: Risk Management" guidance. The detailed site investigation and risk assessment must be undertaken in accordance with the approved scheme. A written report of the findings produced shall be submitted to and approved in writing by the local planning authority prior to any development taking place.
- 7) No development shall take place where (following the site investigation and risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out, and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development, or relevant phase of development, is occupied.
- 8) No development shall commence until a phased timetable for implementation of the layout, turning areas and parking facilities to be carried out in accordance with Drawing Ra_3298_S3_004_F, has been submitted to and approved in writing by the local planning authority. All vehicular routes shall be provided to base course level in accordance with the phased timetable for implementation and completed in full before final occupation or completion of the development, whichever occurs earlier.
- 9) No development shall commence until a surface and foul water drainage scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include:
 - a) construction ready drawings
 - b) a survey of the ditch line identified along the southern site boundary, identifying downstream connectivity.
 - c) a timetable for its implementation
 - d) a management and maintenance plan for the lifetime of the development, including any arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the effective operation of the drainage systems throughout their lifetimes.

The drainage scheme shall be carried out in accordance with the approved details, and managed and maintained in accordance with the approved management and maintenance plan.

- 10) Prior to the construction of any dwelling above slab level, a scheme for all permanent external lighting (excluding that within the curtilage of individual dwellings) across the site, including details of the lighting specification, the siting of lighting columns/posts and a timetable for implementation, shall be submitted to and approved in writing by the local planning authority. The development shall be constructed in accordance with the approved scheme and thereafter maintained and retained at all times.
- 11) Prior to the construction of any dwelling above slab level, a detailed scheme of noise mitigation for the dwellings, based on an up-to-date noise assessment, shall be submitted to and approved in writing by the local planning authority. The approved measures for each dwelling shall be provided in full before the occupation of that dwelling and shall be always retained as such thereafter.
- 12) Notwithstanding the submitted details, no development above ground floor slab level shall take place until samples of external materials to be used in the construction of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 13) Prior to the construction of any dwelling above slab level, details of secure storage facilities for bicycles for all units shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented prior to each individual residential unit being occupied.
- 14) No dwellings shall be occupied until a residential welcome pack promoting sustainable forms of transport has been submitted to and approved in writing from the local planning authority. The pack shall be provided to each household at the point of occupation.
- 15) No dwellings shall be occupied until the highway works detailed on drawing Nos 210672-01 Rev B Site Access Arrangements Sheet 1 of 13 and 210672-01 Rev Proposed Pedestrian Crossings Sheet 13 of 13 have been constructed and completed.
- 16) No dwellings shall be occupied until a Landscape and Ecological Management Plan (LEMP) including long term objectives, management responsibilities and maintenance schedules for all public landscape areas, has been submitted to and approved in writing by the local planning authority. The content of the LEMP shall include the following:
 - a) Description and evaluation of features to be managed.
 - b) Ecological trends and constraints on site that might influence management.
 - c) Aims and objectives of management.
 - d) Appropriate management options for achieving aims and objectives.
 - e) Prescriptions for management actions.
 - f) Preparation of a work schedule (including extent and location of proposed works and an annual work plan capable of being rolled forward over a 5 year period).
 - g) Details of the body or organisation responsible for implementation of the plan.
 - h) Ongoing monitoring and remedial measures.

The approved LEMP shall be implemented in accordance with the approved details. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar sizes or species.

- 17) No dwellings shall be occupied until details of the boundary treatments have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 18) No dwellings shall be occupied until a pre-completion testing report has been submitted to and approved in writing by the local planning authority. This report must show that indoor ambient noise levels in living rooms and bedrooms meet the standards within BS 8233:2014. Non-compliance will require additional mitigation measures to be incorporated into the development prior to first occupation of the development. Such measures must first be submitted to and approved in writing by the local planning authority. All approved mitigation measures which secure compliance with the terms of this condition must be implemented and retained. If any approved mitigation measure requires replacing, the replacement must perform to at least the same sound protection level as previously approved.

*****END OF CONDITIONS*****



Costs Decision

Hearing held on 25 June 2024

Site visit made on 26 June 2024

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 July 2024

Costs application in relation to Appeal Ref: APP/P1805/W/24/3339483 Land to the rear of 1-6 Smedley Croke Place, Hopwood, B48 7TP

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Cawdor Capital (Hopwood) Limited for a full award of costs against Bromsgrove District Council.
 - The appeal was against the refusal of planning permission for 34 affordable houses.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Cawdor Capital (Hopwood) Limited

2. The costs application was submitted in writing. The applicant contends that the local planning authority (LPA) has behaved unreasonably which has led directly to the appeal. The LPA's officers put forward a strong recommendation for approval following a detailed analysis and assessment of the proposals. Notwithstanding this the LPA's Planning Committee departed from this clear recommendation and cited 2 reasons for refusal. These are without basis. The LPA has fundamentally failed to substantiate the reasons for refusal.
3. The Council has compounded its unreasonableness by refusing a second and identical planning application resubmission. This second application (PA Ref: 24/00079/FUL) was submitted following the publication of the revised National Planning Policy Framework (the Framework) and, more particularly, the latest Housing Delivery Test results and Ministerial Statement – all of which occurred in December 2023. The Housing Delivery Test presents a clear and worsening position in respect of Bromsgrove leading to a continuing presumption in favour of planning permission for residential development.
4. The Ministerial Statement also reiterates that the delivery of housing remains of paramount importance and that LPAs ought to follow professional officer's advice unless there are clear and exceptional reasons why this should not be the case. Where it is determined that planning officer's recommendations should not be followed a clear and convincing case must be put forward.
5. With regard to the second application, planning officers maintained their positive recommendation in favour of the granting of planning permission in respect of the proposed development – in the full knowledge of the Council's previous overturning of the application subject to the appeal. Indeed, this second report was even more positive in its support for the proposed development noting that the delivery of housing and affordable housing in particular were "material considerations that weigh very strongly in favour of

the proposals". This greater support was such that officers concluded that "the Green Belt arguments are no longer finely balanced" and that "the benefits of the proposals now clearly outweigh the harm to the Green Belt and, consequently, very special circumstances (VSC) apply".

6. With regard to sustainability, it was further noted that neither Worcestershire County Council Highways nor officers consider the site to be in an unsustainable location. This reflects the Council's earlier conclusion in respect of the Bridge Farm application (Appellant's Statement - Appendix 2.2) and the Inspector's conclusions regarding sustainability in respect of the Ash Lane Appeal (Appellant's Statement - Appendix 2.3).
7. In rejecting this advice, it is incumbent upon the LPA to demonstrate clearly why the Planning Officer's recommendation and presumption arising from the housing delivery test are incorrect, why the VSC have not been demonstrated and why the site is in an unsustainable location.
8. The reasons for refusal must be clear and comprehensive in this regard. They fail on all counts and are based upon unsubstantiated comments regarding impact upon openness, Green Belt purposes, VSC and sustainability. Nowhere is there any specific evidence nor grounds cited. The Council has not sustained a case as to why the officer's recommendation does not constitute VSC.
9. This is particularly incumbent upon the LPA to do so given both its latest monitoring report regarding housing land supply, the delivery of affordable housing in particular (including the lack of delivery of Social Rent properties), the recent Ministerial Statement, the Green Belt assessments for this site that have been undertaken by officers and the previous Inspector, and the continuing delay to the Local Plan Review (key to Policy BDP4).
10. The Council's Statement of Case also fails to substantiate the reasons for refusal nor to make any substantive case in support of the issues noted above. Therefore, the sole conclusion that can be reached is that the Council has behaved wholly unreasonably in refusing both applications, such that the appellant has been put to wholly unnecessary and wasted expenditure regarding this appeal. Accordingly, a full award of costs is considered appropriate.

The response by Bromsgrove District Council

11. The response was made in writing. The LPA is of the opinion that there is no merit in an award of costs. The Council has not been unreasonable at any stage of the planning application consideration and determination and as such an award of costs against the Council is completely unjustified.
12. The LPA is aware of the requirement in the Framework and Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 to work with the applicant in a positive and proactive manner, seeking solutions to problems arising in relation to applications. The submission of the application followed lengthy discussions and negotiations between the appellant and the LPA.
13. The application was considered by members of the Planning Committee who considered the main published report, the updates and the views of speakers during the meeting and reached a different view than that recommended, as is

- their right. Members were not duty bound to follow the advice of their professional officers and they reached a different decision.
14. This demonstrates an informed and evidenced based analysis. The Council's statement of case substantiated their reasons for refusal. Members did not behave unreasonably in reaching their own conclusions on the application, determining that planning permission be refused.
 15. The reasons for refusal as set out in the decision notice are complete, specific and relevant to the proposal and states the policy of the Bromsgrove District Plan (BDP) (January 2017) that the proposal would be in conflict with. The committee member's reasoning regarding the conflict with policy is outlined in the minutes for the meeting. It is not considered that the Council's decision was so fundamentally flawed or without foundation as to represent unreasonable behaviour.
 16. Scrutiny should be paid to applications for awards of costs, and it is respectfully submitted that the application for award fails to meet the required conditions of the Planning Practice Guidance (PPG). For the above reasons, the Inspector is respectfully requested to dismiss the application for an award of costs against the Local Planning Authority.

Final response for Cawdor Capital (Hopwood) Limited

17. The unreasonableness on the part of the Council is not due to its planning officers but is, instead, due to the actions of Members for it is they who twice went against their professional planning officers' advice.
18. The Council's costs rebuttal contends that Members have demonstrated an informed and evidence based analysis in reaching their decision. Furthermore, it also contends that the reasons for refusal are complete, specific and relevant – defining the specific policies of the BDP with which it is considered that the proposed development is in conflict.
19. This is patently not the case as evidenced at the Hearing where no Member of the planning committee who determined the planning application attended to explain and sustain the committee's decision.
20. In terms of reason for refusal 1, the Council refers specifically to policy BDP4. However, no explanation was advanced as to why this policy remains current and not out of date, nor was any evidence presented as to how much the much higher hurdle of there being substantial harm to the openness of the Green Belt, as required by paragraph 154(g) of the Framework, was in fact conflicted. No evidence has been advanced to explain how or why this is the case nor how or why the previous Inspector's conclusions regarding openness and the site's contribution to the purposes of the Green Belt (correctly identified as a material consideration) should now be discounted.
21. The evidence from the one Member who did attend was that the site is a greenfield site and that its development would set a precedent for other greenfield sites across Bromsgrove District. When this was questioned, he then stated that he meant Green Belt not greenfield. This simply does not hold water nor credibility. If this were a genuine "slip of the tongue", it was made repeatedly by this councillor and others on the Planning Committee at both planning committee meetings and flies totally contrary to the clear statements of fact made by both the appellant and planning officers to the effect that this

site is previously developed land and not greenfield. Members, including the Ward Councillor, were fully advised that the site was not greenfield but have repeatedly chosen to completely ignore this fact and have instead determined the application as if it were a greenfield site.

22. The entirety of the first reason for refusal is thus predicated upon this contrived misunderstanding of the status of the site as well as a blind adherence to an erroneous application of an out of date policy within the BDP – to the complete disregard of other clear facts that demonstrate that there are other material considerations.
23. No credible evidence was put forward as to why the provision of affordable housing, nor how the other benefits outlined in the Council's Statement of Case on Green Belt Balance do not individually or together constitute VSC.
24. Turning to the second reason for refusal, the Council refers to policies BDP1 and BDP16. The Council put forward no evidence to sustain any suggestion of conflict with BDP1 and accepted, at the Hearing, that there is actually no conflict with BDP16. Notwithstanding this it continues to rely upon both policies in its costs rebuttal. Accordingly it is relying upon policies that it now accepts have no conflict with the proposed development.
25. In its costs rebuttal, as with its evidence to the Hearing, the Council has failed to substantiate a single aspect of its reasons for refusal. Accordingly, this is precisely the sort of illegitimate reasoning that the Ministerial Statement highlighted as being unreasonable and advised that, should planning permission be granted on appeal, then the Planning Inspectorate should consider awarding costs to the appellant.
26. In this case a full award of costs is merited. The appellant, in an attempt to avoid this appeal, presented the Council with an opportunity to reconsider and amend its earlier refusal. This opportunity was rejected, with no additional explanation nor justification, such that the appellant has had to expend considerable costs to pursue this unreasonable and unnecessary appeal.

Reasons

27. Parties in planning appeals normally meet their own expenses. However, the PPG advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
28. A LPA is at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. The applicant submits that the Council have acted unreasonably by:
 - i) failure to produce evidence to substantiate each reason for refusal on appeal, and;
 - ii) not determining similar cases in a consistent manner.
29. The Written Ministerial Statement¹ details that "The overturning of a recommendation made by a professional and specialist officer should be rare and infrequent – such that I have reminded the inspectorate that where it

¹ Dated 19 December 2023

- cannot find reasonable grounds for the committee having overturned the officer's recommendation, it should consider awarding costs to the appellant".
30. Members were presented with a recommendation made by a professional and specialist officer that the benefits of the proposal clearly outweighed the harm to the Green Belt, and consequently, VSCs existed. The officer also found that the proposal was in a suitable location with regard to sustainability. The Council's Planning Committee refused planning permission contrary to officer recommendation. The conclusion on VSCs is ultimately a matter of planning judgement, however the Committee Minutes are clear that officers strongly considered that VSCs existed and that officers did not consider the sustainability reason to be sufficient to warrant refusal. While the Council is not duty bound to follow its officer's recommendations, if a different decision is reached the Council must clearly demonstrate on planning grounds why a proposal is unacceptable and substantiate that reasoning.
31. The reasons for refusal set out the reasons why the proposal was refused and the asserted policy conflict. The Council's Statement of Case subsequently presented different sustainability findings, and a different green belt and planning balance to that in the Committee Report, finding that the other considerations did not amount to VSCs. Whilst there was no need for me to assess VSCs in the Appeal Decision, the reasoning is not overly convincing. This is perhaps because the officer who made the positive recommendation to Committee also wrote the Statement of Case and presented evidence at the Hearing defending the appeal.
32. I raised concerns at the Hearing as to whether the officer had had regard to Section 15 of the Planning Inspectorate's Procedural Guide, which explains the duty of an expert to help the Inspector. Expert evidence is evidence that is given by a person who is professionally qualified to express an opinion on a particular subject. It can be used in all appeals. This duty overrides any duty the expert may have to the party that involved them in the appeal or that is paying them. The evidence should be accurate, concise, and complete and should represent the expert's honest and objective opinion.
33. The officer considered that there was nothing in the Statement of Case or his evidence to the Hearing that contravened the Procedural Guide. I disagree. The officer's professional opinion to the Committee was that planning permission should be granted and that VSCs existed. Indeed, this was also the case for a later identical application in the full knowledge of this overturned decision.
34. To be required to defend the appeal and present a diametric professional opinion is at odds with the Procedural Guide. Critically, however it fundamentally undermines the evidence presented in the Statement of Case and at the Hearing as to why VSCs no longer exist and why the location is unsustainable. This is because there has been a failure to produce objective and honest evidence to substantiate the reasons for refusal. This behaviour is unreasonable.
35. Additionally, the Council in its reasoning, has failed to have regard to the previous Inspector's decision², which found that the site did not appear in any meaningful sense as open land and its contribution to openness of the Green Belt was very limited. This conclusion was made before any consideration of

² APP/P1805/W/19/3230823

the proposal before them, and this was a material consideration. Furthermore, the assessment of substantial harm lacked in understanding of the level of harm that could arise whilst still meeting the exception, having regard to the existing use and the site's very limited contribution to openness.

36. In relation to the sustainability conclusions, there are previous decisions³ made by the Council and at appeal which have found the location of new housing development on the edge of the village to be sustainable, and able to support active and sustainable modes of travel. The reasons and justification put forward relating to this reason for refusal were weak. Indeed, the officer could find no conflict with Policy BDP16 of the BDP when questioned at the Hearing. The only remaining conflict asserted was with Policy BDP1, which requires proposals to have regard to accessibility to public transport options. It was clear in the evidence before me that the appellant had more than regard to accessibility, the proposals included contributions to improve public transport options and the proposal complied with the relevant policies. There was a failure to substantiate this reason for refusal and a failure to determine similar cases in a consistent manner.
37. For the reasons given above, unreasonable behaviour resulting in unnecessary and wasted expense of the entire appeal has occurred and a full award of costs is therefore warranted.

Costs Order

38. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Bromsgrove District Council shall pay to Cawdor Capital (Hopwood) Limited, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

Katie McDonald

INSPECTOR

³ 21/01008/OUT – Bridge Farm, and APP/P1805/W/22/3294824 Ash Lane