
Appeal Decision

Inquiry held on 19, 20 and 22 January 2016

Site visit made on 21 January 2016

by Anne Napier BA(Hons) MRTPI AIEMA

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

Decision date: 24 February 2016

Appeal Ref: APP/W1850/W/15/3006428

Land off Rosemary Lane, Leintwardine, Herefordshire SY7 0LR

- 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 LWD Developments LLP against the decision of Herefordshire Council.
 - The application Ref P142215/O, dated 18 July 2014, was refused by notice dated 5 February 2015.
 - The development proposed is residential development of up to 45 dwellings (Use Class C3) means of access and associated works (with all other matters relating to appearance, landscaping, layout and scale reserved).
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Decision

1. The appeal is allowed and planning permission is granted for residential development of up to 45 dwellings (Use Class C3) means of access and associated works (with all other matters relating to appearance, landscaping, layout and scale reserved) at Land off Rosemary Lane, Leintwardine, Herefordshire SY7 0LR in accordance with the terms of the application, Ref P142215/O, dated 18 July 2014, subject to the conditions in the attached Annex.

Preliminary Matters

2. The details before me indicate that the planning application that is the subject of this appeal originally proposed the development of up to 57 dwellings on the site. However, as part of the application process, the proposal was amended to a scheme of up to 45 dwellings and, following consultation, the Council determined the application on this basis. As a result, I am satisfied that my intention to consider the appeal on the basis of the proposal as amended will not prejudice the interests of any party. For clarity, this reduction in the number of dwellings proposed is reflected in both the heading and the formal decision above.
 3. The planning application was submitted in outline, with all matters except access and associated works reserved. A plan showing the position of the proposed site access, Ref 1649-SK-001 H, was submitted as part of the application process and was taken into consideration by the Council in its determination of the proposal. I shall do the same. In addition, an illustrative masterplan and overlay site layout, a development framework plan and an illustrative accommodation schedule also formed part of the application. These
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details were confirmed to be illustrative only and I intend to consider the appeal accordingly.

4. The Council's decision notice refers to a number of policies from the *Herefordshire Unitary Development Plan* (UDP) in relation to the proposal. Since the application was determined, the Council has adopted the *Herefordshire Local Plan Core Strategy 2011-2031 (October 2015)* (CS). The parties are in agreement that, in respect of this appeal, the UDP policies have been superseded by those of the CS and a list of those CS policies considered to be of relevance in this appeal has been provided. There is nothing before me that leads me to an alternative view in this respect and, as a result, I intend to consider the appeal in light of those CS policies.
5. Although Dr Edis attended the Inquiry to give evidence on behalf of the appellant on heritage matters, he was not called. As a result, I intend to consider the appeal on the basis of his written evidence as submitted, together with the other evidence available to me.

Main Issues

6. The Council refused the application for two reasons, the second of which concerned the potential impact of the proposal on local services and facilities. Since the application was determined and prior to the opening of the Inquiry, a completed legal agreement was provided to address such impacts and the Council confirmed that it no longer wished to maintain an objection to the proposal for that particular reason. As a result, although it will be necessary for me to consider this matter, given the Council's revised position, the main issues in this appeal are:
 - Whether or not the relevant policies of the development plan for the supply of housing are out-of-date, having regard to whether the Council can demonstrate a five-year supply of deliverable housing land;
 - The effect of the proposal on the character and appearance of the area and the surrounding landscape, with particular regard to its effect on the setting and significance of nearby heritage assets; and
 - Whether, considered overall, the proposal would amount to sustainable development.

Reasons

Development plan policy

Spatial strategy for housing development

7. The Council's recently adopted CS Policy SS2 seeks to focus housing development within Hereford and market towns, and to carefully control that taking place in the wider rural areas. However, the county is predominantly rural and, to meet its housing need, the CS supports the delivery of a minimum of 5,300 new dwellings across the county's rural areas. CS Policy RA1 identifies seven rural Housing Market Areas (HMAs) within the county, together with the proportion of new housing each HMA is expected to accommodate within the timeframe of the plan. The village of Leintwardine falls within the rural part of the Leominster HMA and is identified as a settlement that is

intended to be the main focus of proportionate housing development in the rural part of the HMA.¹

8. The Leominster HMA has an indicative housing growth target of some 14% of rural housing growth during the lifetime of the plan.² However, the CS does not identify particular rural housing allocations within the HMA. Furthermore, the relative proportion of housing to be accommodated within the HMA identified within the CS is not settlement specific and the overall amount of housing growth required is expressed as a minimum figure, not a ceiling. As such, notwithstanding other housing permissions or development that has taken place within the village, the appeal proposal would generally accord with the CS Policies SS2 and RA1 approach to housing development within the area.
9. The settlement boundary identified for Leintwardine formed part of the previous UDP and it is not a matter of contention that this is no longer material in respect of this appeal. The CS is clear that within the HMAs the identification of appropriate mechanisms, including the allocation of particular housing sites, to meet the identified housing need for the local area should be undertaken as part of a coordinated Neighbourhood Development Plan (NDP) process.³
10. At the time of the Inquiry, a period of consultation was taking place on a draft of the NDP for the Leintwardine Group Parish Council area.⁴ Given the stage reached in the process, I am mindful that the policies and proposals within this emerging document may be liable to change. Having regard to paragraph 216 of the National Planning Policy Framework (the Framework), I see no reason to disagree with the views of the parties in this respect, including those of the Group Parish Council, that very little weight should be given to this emerging NDP in this appeal.
11. The appeal site was identified as a potential housing site within the Council's *Strategic Housing Land Availability Assessment 2012* (SHLAA), which formed part of the evidence base for the CS. I understand that a number of concerns were expressed about the identification of the site within the SHLAA and that an alternative site has been identified within the emerging NDP. However, for the reasons given above, although I note the proposals of the NDP, I do not regard the potential allocation of an alternative site as a compelling reason to find against the proposal in this case.
12. Consequently, I consider CS Policy RA2 to be of particular relevance for this appeal, as it is intended to provide immediate guidance as to where new housing may be appropriate. This policy supports sustainable housing growth in or adjacent to identified settlements, including Leintwardine. It establishes a number of criteria for rural housing proposals, including the requirement for the proposal to be assessed in relation to the main built form of the settlement.

Five year housing requirement

13. It was a matter of agreement between the parties that the figure of 16,500 dwellings identified in the CS represents an appropriate assessment of the amount of new housing required within the Council area over the plan period. There is nothing before me that would lead me to disagree with this position.

¹ CS Figure 4.14

² CS Policy RA1

³ CS Policy RA2

⁴ Leintwardine Group Neighbourhood Development Plan, Public Consultation Draft, 2015

14. The CS incorporates a stepped approach to the supply of housing, reflecting an expectation of greater growth towards the latter part of the plan period. As a result, the CS identifies a requirement for 600 dwellings per annum (dpa) from 2011-2016, rising to 850dpa in 2016-2021, then 900dpa between 2021-2026 and 950dpa for 2026-2031.
15. The agreed Statement of Common Ground (SoCG) between the appellant and the Council indicates that the agreed housing requirement figure of 16,500 dwellings equates to 825dpa over the plan period. This figure would, on the face of it, result in a current five year housing requirement of some 4,125 dwellings. However, at the Inquiry, the Council disputed this method for the calculation of the five year requirement figure and referred to the CS stepped approach to housing delivery, which is also repeated within the SoCG.
16. The Council published its *Five Year Housing Land Supply (2015- 2020) Position Statement at 1 April 2015* (HLS Assessment) in January 2016, shortly before the Inquiry opened. This identifies a five year housing requirement of 4000 dwellings from April 2015.⁵ The methodology used for this calculation reflects the stepped approach used in the CS. This stepped approach is a considered position, which has been the subject of detailed examination and reflects the particular circumstances of the area in relation to the provision of housing for the lifetime of the plan. As such, for the purposes of this appeal, I am not persuaded that the higher figure of 4,125 dwellings is preferable to the figure derived from the methodology within the adopted CS. Consequently, I consider the appropriate figure for the five year housing requirement to be 4,000 dwellings in this case.
17. It is not a matter of dispute that this figure should be increased to reflect the shortfall in housing provision since 2011 and that this shortfall should be met within the next five years. The recent HLS Assessment provides a shortfall figure of some 752 dwellings, which has not been disputed by the appellant. In addition, it is a matter of agreement that a buffer of 20% should be added to the housing requirement plus the shortfall figure, to reflect the persistent under-delivery of housing, equating to an additional 950 dwellings. Having regard to the evidence provided, there is nothing before me that would lead me to an alternative conclusion in any of these respects.
18. Consequently, taking all these matters into account, I find the overall five year housing requirement for Herefordshire to be 5,702 dwellings.⁶

Supply of deliverable housing sites

19. The Council considers that it can demonstrate an overall supply of 5,722 sites for housing that are deliverable in the next five years, resulting in a supply of 5.01 years. In contrast to this marginal and somewhat delicate position, the appellant contends that only 4,918 houses will be deliverable within the next five years, some 784 units below the five year requirement figure. An agreed respective position statement between the main parties was prepared in advance of the Inquiry and I intend to consider the appeal on the basis of this document, together with the other evidence provided.
20. The evidence before me demonstrates that this issue was thoroughly considered as part of the recent CS process and the Inspector concerned was

⁵ 600dpa in year 2015/16, plus 850dpa in each of the four years 2016/17-2019/20

⁶ 4000+752+950=5702

satisfied that, at that time, the Council could demonstrate a five-year supply of deliverable housing sites. The CS has been produced very recently and, as such, it is reasonable to consider that its supporting evidence base remains highly relevant. Nonetheless, I am mindful that circumstances in relation to housing supply can alter, even over a relatively short period. In this particular case, the appellant contends that the position in respect of a number of identified housing sites has changed materially since the matter was considered as part of the CS process. Whilst other sites were also referred to, the main area of dispute between the parties principally concerns eight strategic housing allocation sites, none of which had planning permission at the time of the Inquiry.

21. Footnote 11 of the National Planning Policy Framework (the Framework) defines what constitutes a 'deliverable site' in the context of housing policy. The appellant argued that, in the absence of planning permission, the disputed identified sites cannot be considered to be 'available now' and therefore should be regarded as 'developable' rather than deliverable.⁷ However, I am mindful of the advice within the Planning Practice Guidance (PPG) on this matter.⁸ The sites in dispute are allocated in the development plan. As such, in accordance with the Framework policy and PPG advice, they should be considered deliverable, unless there is clear evidence that the schemes will not be implemented within five years.
22. Having regard to the advice within the PPG in this respect, and notwithstanding the reference to 'plan makers' rather than 'decision takers', it seems to me that, as part of the consideration of whether an allocated site can be implemented within five years, it is appropriate to assess the time it may take to commence development on site and the build-out rates. Such an approach provides a robust assessment of the amount of housing that is reasonably likely to be delivered within this timeframe, by taking an appropriately realistic view of individual circumstances, particularly on larger sites. Furthermore, this approach is reflected in the evidence provided by both the main parties.
23. A comparison of the CS housing delivery trajectory with the more recently produced trajectory included in the HLS Assessment indicates slippage in the expected date of commencement on site for several of the disputed strategic sites. However, in respect of some of the sites concerned, the anticipated build-out rates for delivery have increased.⁹
24. It was confirmed that the Council has taken the advice of developers and local agents to carry out this recent assessment of deliverability of these sites. I note that the adoption of the CS may provide greater certainty for developers and the amount of housing completions has increased recently, which may be a reflection of this, along with the improvement in economic conditions. However, whilst recognising that these matters were subject to close scrutiny as part of the CS process, there was no independent evidence provided for this appeal to support the anticipated increases in build-out rates in the more recent update to this assessment.
25. In addition, most of the sites identified have estimated first completion dates that are part of the way through the year concerned. Within the trajectory

⁷ Footnote 12 of the Framework

⁸ PPG, ID 3-031-2140306

⁹ Appellant's Housing Land Supply Rebuttal Statement, Table 1, p6

produced by the Council, this is not reflected in a reduced build-out rate for that particular year for all the sites identified. The appellant contends that, as a result, the Council has over-estimated the amount of housing that would be delivered on these sites within the next five years. However, the Council suggested that a reduction in housing numbers could be avoided by increasing the build-out rates for the remaining years within the five year period.

26. Whilst recognising that a compensatory increase in the estimated rate of delivery for these sites may be possible in theory, there is no substantive evidence before me to demonstrate that such an approach would be feasible in practice, or that this flexibility is supported by up-to-date and sound evidence from potential developers of these sites. Accordingly, although accepting that firm predictions are difficult, I am not persuaded that such a possible increase would provide an appropriately realistic assessment of housing delivery. As a result, even if the disputed lead-in times provided within the Council's trajectory are accepted, the anticipated mid-year timing of the first completions calls into question the Council's predicted extent of housing delivery on some of the strategic allocations within the next five years.
27. In relation to the Three Elms site, the Council's trajectory estimates a date for first completions of September 2017, but a build out rate of 100 dwellings in that year, in common with the subsequent two full years, giving a total of 300 dwellings to be delivered on the site in the next five years. If the numbers of dwellings are reduced proportionally to reflect the mid-year first completion date, this would result in some 58 dwellings being delivered in the year 2017/18, some 42 dwellings less than the Council's trajectory figure.
28. A very similar situation arises with regards to the Lower Bullingham site, which also has an estimated first completion date of September 2017 and a build out rate of 100 dwellings in that year, which matches that of the following two full years. The City Centre Urban Village site has an estimated first completion date of June 2017, with no proportional reduction in the estimated build out rate of 70 dwellings for that year. Carrying out a similar exercise to that above for these two sites would result in respective reduction of 42 dwellings and 12 dwellings in the year 2017/18 on these other sites.¹⁰
29. The Bromyard site has a first completion date of June 2017, with an estimated build out rate of 55 dwellings for that year and the two full years thereafter. However, in that case, the Council indicated that this could be achieved by way of a hybrid planning application on the site. Nevertheless, even if this delivery estimate is accepted, I find that on the evidence available to me the Council has materially over-estimated the likely build-out rates and, thus, the number of dwellings reasonably likely to be delivered within the next five years, on the other three sites above. Applying a proportional reduction in the build-out rate to reflect the anticipated mid-year first completion dates on these sites would result in a cumulative reduction in housing numbers of some 96 dwellings.
30. As such, this reduces the Council's identified overall supply of housing that is deliverable in the next five years from 5,722 to 5,626 dwellings. Therefore, given my findings above, that the overall five year housing requirement for Herefordshire Council is 5,702 dwellings, I conclude that, on the evidence available to me, the Council is unable to demonstrate a robust five-year supply

¹⁰ Proportional calculation = total number of dwellings for year ÷ 12 x remaining months within year to March 2018 from estimated first completion date

of deliverable housing sufficient to meet its identified needs. Furthermore, having reached this conclusion, it is not necessary for me to examine the remaining disputed issues in relation to housing supply in detail as, even if the Council's evidence were accepted in all other respects, this would not alter my findings on this issue.

Overall conclusion on housing policy

31. The parties are in agreement that CS Policies SS2, RA1 and RA2 are relevant policies for the supply of housing and I see no reason to disagree with this position. For the reasons given above, the appeal scheme would accord with the overall strategy of CS Policies SS2 and RA1 for housing development in Herefordshire. Furthermore, the appeal scheme would not conflict with the approach in CS Policy RA2 to the delivery of housing in rural areas, subject to meeting the criteria of this policy. However, having regard to my overall findings above in relation to both housing requirement and housing supply and to paragraphs 47-49 of the Framework, I conclude that these policies are out-of-date, and therefore of limited weight, and find paragraph 14 of the Framework to be engaged.
32. Where the relevant policies of the development plan are out-of-date, paragraph 14 of the Framework and CS Policy SS1 require permission to be granted 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. Furthermore, in relation to the final phrase of paragraph 14, it has not been suggested, nor do I consider having regard to the evidence provided, that there are specific policies within the Framework that indicate that development should be restricted.

Character and appearance

33. Leintwardine is a highly attractive village that includes a number of designated heritage assets, including many listed buildings, a Conservation Area and a Scheduled Monument. I am mindful of my statutory and other duties in these respects. Individually and collectively, these heritage assets are of great value to the historic environment, which is reflected in their various designations. From the details available to me, I consider that the overall significance of these various heritage assets is largely drawn from their age and historic importance, providing a valuable reflection of the evolution of the settlement over time. In addition, the form, fabric and architectural features of individual buildings and the settings of the heritage assets, including their contextual relationship to the buildings and spaces between and around them, are also important to their significance.
34. The appeal site comprises two open fields that are situated immediately adjacent to existing housing on the edge of the settlement. Boundary trees and hedges enclose and separate these two fields, which slope down to the south and east, towards the nearby River Teme. The appeal site forms part of the wider rural landscape that envelopes Leintwardine and, as such, the two fields concerned form part of the rural setting of the village. Two public footpaths cross the appeal site and there are several public footpaths in the area, including a national trail.
35. The housing adjacent to the appeal site is more recent than that within the historic core of the village and these dwellings and their rear garden boundary

treatments are highly visible from within the surrounding landscape. The layout, siting and overall design of this existing development results in a hard and rather stark edge to the settlement in this location, particularly in comparison with other development further to the north, the wider impact of which is softened by established planting, as well as the local topography.

36. The Council confirmed, during the Inquiry, that it considered that any development of the appeal site would be unacceptable, due to its importance to the pastoral setting of the village. Particular importance was given to the role of the open pasture fields and hedgerows in contributing to the historic context for the village within the local landscape. However, it was also confirmed, in cross-examination, that the Council was not suggesting that the appeal development would have a direct effect on the significance or setting of the identified heritage assets, which include the church. Whilst strong concerns have been raised locally on this matter, including by the Group Parish Council, I note that no objections were raised by Historic England¹¹ or the Council's specialist historic building and archaeology officers in this regard.
37. Taking into account the type of development proposed, the distances involved and the context of the site, including its separation from these various heritage assets by intervening development, I consider that the proposal would have a very limited impact on the overall perception of these heritage assets. In light of evidence provided, including the comments made by national and local specialist advisers in this matter, as well as the specialist technical evidence submitted, including in relation to archaeology, I am satisfied that the appeal proposal would not be harmful to the setting or significance of these heritage assets.
38. The appeal scheme would extend the built form of the settlement into its pastoral setting and, in common with other greenfield development, would plainly result in a significant change to the appearance of the currently largely open site. The development of this site would alter certain views of the adjacent settlement, from a distance as well as from close to it, and have some affect on the landscape character of the area. In these respects, the appellant provided a *Landscape and Visual Assessment* (LVA) to support the application, with an additional *Landscape and Visual Impact Assessment Baseline and Methodology* (LVIA) submitted as part of the appeal process. This latter document was prepared, in part, to narrow the areas of dispute between the appellant and the Council in respect of this issue. As such, this document and the agreed respective position statement on this matter submitted at the Inquiry provide helpful additions to the evidence provided.
39. The main parties were in agreement about the baseline assessment and methodology used within the LVIA. The proposal was assessed in terms of its effect on landscape character and from a number of identified visual receptors, using this agreed methodology. Broadly, the site and surrounding rural landscape were generally considered to be of high value, with a medium susceptibility to change, giving an overall high sensitivity level. In addition, certain identified visual receptors were also regarded as highly sensitive, with others of medium sensitivity. There is nothing before me that leads me to different conclusions in these respects.

¹¹ Commenting as English Heritage, dated 28 October 2014

40. Nonetheless, whilst these matters have been agreed, the overall effect of the proposal on the landscape character of the area, together with the potential for this change to be adequately addressed by mitigation, remains a principal area of dispute between the main parties. In addition, there is conflicting expert evidence before me regarding the effect of the proposal on visual receptors at certain identified locations.
41. During and immediately following the development of the site as proposed, it is not disputed that the proposal would have an adverse impact. Whilst there is some difference between the parties in this respect, these differences are relatively limited in their extent and, to my mind, the respective overall position of the parties for these scenarios can be regarded as broadly similar. As such, the main area of dispute between the parties concerns the magnitude of change (or effect) of the proposal in the longer-term on landscape character and on certain identified visual receptors, as well as the effectiveness of mitigation. In these respects, the agreed LVIA methodology assesses the impact at Year 15 after construction, at a time when it is generally accepted that the landscaping and planting proposed would be well-established.
42. Concerns have been expressed that the development of the appeal site, including the proposed removal of some hedgerows, would be unacceptably harmful, due to the unique importance of this land to the historic field pattern around the settlement, reflecting its agrarian roots. However, notwithstanding the aerial photograph and other landscape evidence provided, I am not satisfied that it has been adequately demonstrated that no development of these fields should take place for this reason, or that these two fields have particularly rare or distinctive elements, which result in them having more than local importance to the landscape character of the area. Accordingly, whilst the site contributes to the pastoral setting of the village, particularly given the location of these fields on the edge of the settlement, I consider that they nonetheless form a relatively small element of the much larger identified landscape areas of which they form a part.
43. The illustrative layout for the appeal scheme proposes development that would reflect the changing levels within the site and include a generous area of open space and a significant landscape buffer. I consider that these aspects of the proposal, together with the indicative scale and siting of the development proposed, would materially contribute to the appropriate integration of the proposal into its surroundings. Furthermore, the hedgerows to the eastern and northern boundaries of the site, some of which are very sparse, are proposed to be retained and supplemented as part of the development proposed.
44. Whilst acknowledging that the proposal is in outline, there are effective mechanisms to control these matters and, given the relatively low density of development proposed, there is nothing before me to suggest that these elements, including the significant areas of landscaping and open space, would not form part of a detailed scheme for the site. In addition, although some improvement to the existing settlement edge could potentially be undertaken independently of the appeal proposal, there is nothing before me to suggest that this is reasonably likely to occur within the foreseeable future.
45. As a result, whilst the appeal proposal would permanently extend development into the countryside, provided the layout, scale and siting of development proposed generally follow that of the illustrative layout, it would effectively

screen the existing hard edge of the settlement and, taking into account the local topography, the proposed substantial areas of open space and landscaping to the north and east of the site would provide an area of transition between the built development and the open countryside beyond. Furthermore, in later years, when the planting is more established, the proposal would provide a significantly softer new edge to the settlement when viewed from the east, which would materially contribute to reducing its impact on the overall character of the surrounding landscape.

46. Having regard to the LVIA methodology, I consider that, in the longer-term, the overall impact of the proposal on the setting of Leintwardine would be acceptable and the scale of change to the existing landscape and its features would be relatively modest. For the above reasons, I find that the proposal would relate positively to its context and reinforce local distinctiveness. The scale and extent of development would not be disproportionate to that of the settlement as a whole. It would complement the existing built development adjacent to the site and would sit comfortably within the surrounding landscape. As such, it would make a positive contribution to the local environment and the landscape setting of Leintwardine.
47. Whilst I understand that the landscape of which the appeal site forms a part is regarded as important to many people living in and visiting the area, it is not disputed that it is not specifically designated. As such and having regard to my findings above, I consider that in this particular case, it would not be appropriate to regard this landscape as valued in the context of paragraph 109 of the Framework. Nonetheless, even if it were to be considered as such, I have found above that the proposal would have some benefits to the overall character of the wider landscape.
48. For similar reasons, I find that at Year 15 the proposal would have a minor beneficial effect on the visual receptors at viewpoints No's 05 and 06, as well as on those at the particularly sensitive and elevated viewpoint No 04, on Church Hill. In addition, having regard to the proximity of the existing development to the footpath at viewpoint No 08, the detailed design of the proposal may have some potential to improve the experience of users of this path.
49. The loss of the existing hedge on the southern boundary, which would be required to provide access into the site, would have a significant visual impact on Rosemary Lane, adjacent to the site. However, notwithstanding the concerns expressed in the written submissions and at the Inquiry, I am satisfied that the proposed new access arrangement, as shown in drawing Ref 1649-SK-001 H, would not preclude the provision of an appropriate replacement hedge, as well as a footway adjacent to the carriageway.
50. Accordingly, over time, this adverse visual impact would be significantly reduced by the replacement planting proposed. Furthermore, whilst not underestimating the value of the hedge and the appearance of the road as existing to the rural character of the area, I consider that the effect of the changes proposed would be localised in their impact. As such, overall, I find that the proposal at Year 15 would have a minor adverse visual impact on viewpoint No 11 and, taking into account the landscaping proposed within the site and its effect on views of the settlement edge, a minor beneficial effect on viewpoint No 12.

51. The development would retain the public footpaths within the site. However, given the illustrative layout proposed, the appeal scheme would significantly change the views available for the users of the path within the site at viewpoint No 01, as well as those of adjacent residential occupiers, at viewpoints No's 01 and 10. The main parties are in agreement that the proposal would have a major adverse effect at Year 15 for the identified adjacent receptors in Middle Wardens and Rosemary, and they identify a moderate or major adverse effect on walkers at viewpoint No 1. There is nothing before me that would lead me to a different overall conclusion in these regards and, as a result, I find that this is a matter that counts against the proposal. However, this localised longer-term harm to adjacent residential occupiers and users of the footpath, together with the wider harm in the shorter-term, must be balanced against the other identified impacts of the proposal on the character and appearance of the wider area and the surrounding landscape.
52. For the reasons given above, I conclude that the longer-term wider benefits of the proposal would outweigh the localised and shorter-term adverse impacts. Consequently, overall, the proposal would not be harmful, but would have an acceptable effect on the character and appearance of the local area and its surrounding landscape. It would not conflict with CS Policies SS6, LD1, LD3 and LD4, which collectively seek to protect local character and appearance, including in relation to landscape and the historic environment. It would also meet the aims of paragraph 17 of the Framework, to achieve high quality design, take account of the different roles and character of different areas, recognising the intrinsic character and beauty of the countryside, and to conserve heritage assets in a manner appropriate to their significance.
53. The main parties were in disagreement on whether or not CS Policies SS6 and LD1 should be considered to be relevant policies for the supply of housing, in relation to paragraphs 47-49 of the Framework. It was argued, by the Council, that these policies principally seek to protect specific areas, particular landscape features or other attributes of the local area and, as a result, they should not be regarded as ones that significantly restrict the supply of housing. However, given that I have found that the proposal would be in accordance with these policies and in light of my earlier findings in relation to the supply of housing and the engagement of paragraph 14 of the Framework, it is not necessary for me to reach a conclusion on this particular matter.

Sustainable development

54. Paragraphs 6-9 of the Framework indicate that 'sustainability' should not be interpreted narrowly. The three dimensions of sustainable development cannot be undertaken in isolation but should be sought jointly and simultaneously. Sustainable development also includes 'seeking positive improvements in the quality of the built and natural environment as well as in people's quality of life'.

The social and economic roles

55. Whilst some local concerns have been raised about the need for the proposal, it is not generally disputed that the scheme would have a number of benefits, including its contribution to the local housing stock and the supply of housing. In light of my findings above and the encouragement within the Framework for such development, I consider that this represents a significant benefit in support of the proposal, to which I give great weight. In addition, the proposal

would also result in the provision of a significant area of open space, which would provide opportunities for informal recreation and, having regard to paragraph 69 of the Framework, this also represents a benefit of the scheme.

56. Furthermore, it is also proposed that a financial contribution would be made towards the provision of off-site affordable housing or, alternatively, the appellant has suggested that a condition could be applied that would require a proportion of the dwellings on-site to be affordable. The evidence before me demonstrates a need for affordable housing within the area and, having regard to paragraph 50 of the Framework, including its aims to deliver a wide choice of high quality homes, create inclusive, mixed communities, and plan for a mix of housing based on the needs of different groups in the community, this adds significant further weight to these benefits.
57. In addition, the proposal would also have some economic benefits, including support for local services, both during construction and following occupation. Local concerns have been expressed about access to and availability of local employment opportunities and the impact of the proposal on local services, such as the doctors' surgery, and local utilities. However, limited evidence has been provided of existing problems in these respects and, notwithstanding my findings above about local housing policies, I am mindful that the CS considers Leintwardine to be appropriate for new housing growth. Consequently, in this case, I am satisfied that these concerns do not represent an appropriate reason to find against the proposal. Therefore, overall, I consider that the resulting economic benefits of the scheme are matters that also weigh in its favour and reflect the aims of paragraph 55 of the Framework, for housing in rural areas to enhance or maintain the vitality of rural communities.

The environmental role

58. I have found above that, overall, the proposal would not have a harmful effect on the character and appearance of the area and the local landscape and would have some longer-term benefits in these respects. As such, this is also a matter that weighs in favour of the proposal.
59. The site is located within comfortable walking distance of a range of local services and facilities, and in relatively close proximity to bus stops, which provide services to larger settlements nearby. As such, notwithstanding the local concerns regarding employment, the location of the site is such that potential future occupiers of the appeal dwellings would have access to several of the facilities reasonably likely to meet their day-to-day needs, without necessarily being reliant on the use of private motor vehicles. Given the encouragement within paragraph 17 of the Framework, to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, this also weighs in favour of the proposal.
60. The site is located within reasonably close proximity to a Site of Special Scientific Interest (SSSI) and Special Area of Conservation (SAC). Having regard to the comments of Natural England in respect of the SSSI, those of the Council's ecologist in relation to the SSSI and the SAC, and the respective relationship of the appeal site to these protected sites, I am satisfied that the proposal would not have an adverse effect on the SAC or the special interest features of the SSSI.

61. Furthermore, having regard to the comments of the Council's ecologist, the appellant's Extended Phase 1 Habitat Survey and specific reports on newts and bats, including the mitigation measures proposed, I am satisfied that it is unlikely that protected species are present on the site or would be adversely effected by the scheme proposed. As such, I consider overall that its impact on biodiversity would not be unacceptable. In addition, the potential opportunities that would exist for enhancement measures as part of the proposal could be regarded as a benefit.
62. Strong local concerns have been raised in relation to drainage and flood risk, including in relation to cumulative surface water run-off from the site and nearby land, and the impact of the proposal on the nearby sewage treatment works. The site is almost wholly within Flood Risk Zone 1, with a small area in its south-east corner in Flood Risk Zone 3. To this end, the supporting documents submitted by the appellant provide an assessment of flood risk and a surface water drainage strategy. The proposal has also been subject to consultation with the local water companies, the Environment Agency and the Lead Local Flood Authority. None of these specialist consultations has resulted in objections to the proposal in these respects. Consequently, on the balance of the evidence provided and taking into account the illustrative layout, including the absence of development outside Flood Risk Zone 1, I am satisfied that the proposal would not be unacceptable in these respects and consider that these issues could be appropriately addressed as part of the detailed design of the scheme.
63. Local concerns were also expressed about the proximity of the proposal to the nearby industrial estate and sewage treatment works and their potential effects on future occupiers of the proposed development. However, there is nothing before me to suggest that the local water company or the Council's environmental health officer have raised concerns in these regards. As such, I am satisfied that any specific issue in relation to the detailed design of the scheme in this respect would be able to be addressed as part of the reserved matters stage of the planning process.
64. A number of concerns have been raised locally about the potential impact of the proposal on highway safety, capacity and convenience for other road users, including pedestrians, cyclists and horse riders. This matter was also the subject of detailed technical reports and assessment as part of the application process. Considered overall, having regard to the evidence provided, including these concerns, the conditions and configuration of the local highway network, the Council's officer assessment of this issue within the committee report and the absence of an objection in principle to the proposal from the highway authority, and subject to the application of appropriate conditions on any permission granted, I am satisfied that the proposal would not be unacceptable in this regard. Accordingly, neither this issue nor any of those other issues referred to above represent appropriate reasons to find against the proposal in this particular case.

Section 106 agreement

65. The Council has identified a requirement for the proposal to make a contribution towards affordable housing and social infrastructure, to mitigate the impacts of the development. A completed planning obligation has been submitted in this regard, which would make provision for the long-term

- management of the open space facilities and financial contributions towards the off-site provision of affordable housing, improvements to existing education facilities and the provision of bins for refuse and recycling.
66. The legal agreement also makes provision for a financial contribution towards transport infrastructure within the area. However, at the Inquiry, the Council confirmed that this particular obligation did not meet the 'pooled contributions' tests of regulation 123 of the Community Infrastructure Levy Regulations 2010 (the CIL Regulations). As a result, it is not a matter that I am able to take into account in support of the proposal.
67. In respect of the other obligations, the appellant is clearly willing to make them and there is nothing before me to suggest that they would threaten the viability of the scheme. However, notwithstanding the agreement between the parties on this matter, it is necessary for me to consider whether they would meet the statutory tests of regulations 122 and 123 of the CIL Regulations and the policy tests of the Framework.
68. The Council has confirmed that the education contribution would meet the regulation 123 test for pooled contributions. Having received appropriate assurances in this respect and with regard to the Council's revised position concerning the proposed transport contribution, there is nothing before me that would lead me to question the Council's position on this matter. The provision of individual bins for the proposed new dwellings would be specific to the development proposed and, having regard to the guidance in the PPG with regards to affordable housing, I am satisfied that the regulations regarding pooled contributions do not apply to this particular obligation.¹²
69. In relation to the tests of regulation 122 and the policy tests of the Framework, the CS Policy ID1 refers to the need for development to make appropriate provision for local infrastructure and the Council's *Planning Obligations Supplementary Planning Document 2008* (SPD) provides more detailed guidance in this respect.
70. On the basis of the evidence available to me, including the consultation responses on the planning application, I am satisfied that the education contribution would be required to address identified issues of capacity at the local primary school within Leintwardine and at the closest secondary school to the village. Furthermore, the SPD provides a detailed methodology for the calculation of this contribution and the *Statement of Compliance with the 'CIL Regs'* (CIL statement), which was agreed between the main parties and submitted at the Inquiry, confirms that the contribution was calculated using the approach set out in the SPD. As such, overall, I am satisfied that this obligation would meet the relevant tests and it is appropriate for me to take it into account in support of the proposal, as it would be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related to it in scale and kind.
71. Furthermore, I have no doubt that the contribution for bin provision is both necessary and directly related to the development proposed. Whilst the SPD does not specify the precise sum required, I understand that the figure of £80 per dwelling is a standard sum used by the Council and would provide for two bins per dwelling. This provision would be appropriate in scale and kind and

¹² PPG, ID: 25-099-20140612

the sum concerned does not appear to me to be excessive. As such, I consider it to be fairly and reasonably related to the proposal. Moreover, in terms of the precise sums involved, further comfort is provided in this regard by the clause in the agreement requiring any monies not spent by the Council on the specified provisions to be returned to the appellant. As such, I am satisfied that this obligation would also meet the relevant statutory and policy tests concerned and, as such, I also intend to take it into account.

72. CS Policy H1 identifies an expectation for new housing development on sites of more than 10 dwellings to make provision for affordable housing. The evidence available to me, including the CIL statement and the Council's *Local Market Housing Assessment*, clearly identifies a need for affordable housing within the Leominster HMA. In this case, the legal agreement provides for a commuted sum payment, in lieu of on-site provision, for the provision of affordable housing within the wider Leominster HMA, which would contribute to meeting this identified need. However, the CIL statement confirms that the methodology used for the calculation of the sum concerned does not follow that within the SPD, but is based on a calculation relating to the difference in the value of the appeal site with and without the provision of affordable housing.
73. Whilst I understand that this approach reflects that of the Council's emerging policy on this issue, the detailed evidence available to me regarding this alternative methodology is very limited, including in respect of the details of the valuations concerned. In addition, I note that SPD states that the use of a commuted payment for off-site provision will only be considered in very exceptional circumstances.¹³
74. I understand that a number of affordable houses have recently been constructed in the village and, as a result, the Council considers that there is not a need locally for such provision, which is a position also reflected in other representations. Nonetheless, whilst I have no reason to doubt that these dwellings have been provided, there is an absence of robust and fully quantified evidence before me to demonstrate that they have fully addressed any identified need for affordable housing within the village. Furthermore, I consider that the details available to me are also not sufficient to satisfactorily explain why the provision of affordable housing on the appeal site could not address the identified need for such housing within the wider HMA.
75. As such, it is not clear to me that the financial contribution for the provision of off-site affordable housing as proposed would appropriately meet the policy requirements or the advice of the SPD in this regard. Furthermore, I am not satisfied that it has been adequately demonstrated that the scale of the financial contribution proposed would be fairly and reasonably related to the proposed development, or that in this case the provision of affordable housing elsewhere within the wider HMA would be appropriately directly related to the appeal development. Accordingly, I find that this planning obligation would not meet the statutory and policy tests and, as a result, I am unable to take it into account in this appeal. However, notwithstanding this conclusion and for reasons outlined below, I consider that the need for the appropriate provision of affordable housing in relation to the proposal is a matter that could be adequately addressed by condition in this case.

¹³ SPD, p3.2.19

76. Given the importance of the open space element to the successful development of the site as a whole, it is clearly necessary to ensure that appropriate measures exist for the long-term management of this open space and this provision is clearly directly related to the proposal and the measures concerned are fair and reasonable. As such I am satisfied that this obligation meets the relevant tests and, as such, is a reason for granting permission for the proposal.

Other considerations

77. Beyond the concerns raised regarding the adverse visual impact of the proposal on adjacent occupiers in relation to the character and appearance of the area, concerns have also been raised about its potential impact on the living conditions of neighbouring occupiers. However, whilst recognising these rights to respect for privacy and family life, and for the protection of property, and taking the personal circumstances of nearby occupiers into account, it is nevertheless necessary to balance the fundamental rights of the individual against the legitimate interests of other individuals and the wider community or public interest. Given the outline nature of the scheme, I am satisfied that these matters could be adequately addressed by appropriate conditions to control the detailed design of the development, including matters relating to neighbouring living conditions, such as outlook and privacy. As such, I consider that any interference in these respects would be insufficient to give rise to a violation of rights under the Human Rights Act 1998. As such, these concerns do not represent compelling reasons to find against the scheme in this case.

Conclusion on sustainability and the planning balance

78. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The Framework is such a material consideration.
79. The proposal would not conflict with CS Policies SS2, SS6, RA1, RA2, LD1, LD3 and LD4. With the application of an appropriate condition, it would achieve a proportion of affordable housing, in accordance with CS Policy H1 and I am satisfied that, subject to conditions, other impacts of the scheme could be adequately addressed, so that the overall design of the proposal, and its potential effect on the local environment, infrastructure and neighbouring occupiers, would not be contrary to the development plan in these regards.
80. The three roles of sustainable development are mutually dependent. I have found above that the proposal would deliver significant social as well as economic benefits, and the development would be in a location that is within a reasonable distance of some local services and facilities. For the reasons given, the proposal would not result in unacceptable harm to the local landscape and visual amenities, but would have some benefits to the overall character and appearance of the area. As such, I conclude that any harm resulting from the proposal would be significantly and demonstrably outweighed by the overall benefits of the scheme when assessed against the policies in the Framework taken as a whole. Consequently, the proposal would be sustainable development that would meet the aims of paragraphs 47-49 and 14 of the Framework.

81. A number of other appeal decisions have been drawn to my attention. However, from the relatively limited details available to me in these respects, these examples relate to proposals in various other locations elsewhere and, whilst many of the issues raised may be similar, I am not satisfied that the particular circumstances of these other cases are directly comparable to those of the appeal before me, which I have considered on its merits and in light of all representations made.
82. It has been suggested that a development with similar benefits could take place on an alternative site with lesser environmental impacts. However, whilst other development sites may come forward in the future, these sites are not before me as part of this appeal. In any event, I have found that the environmental impact of the proposal would not be harmful. As such, this matter does not lead me to alter my findings above.

Conditions

83. I have considered the Council's suggested conditions in the light of the Planning Practice Guidance (PPG). For clarity, to ensure compliance with the Guidance, and in light of discussion between the parties at the Inquiry, I have amended some of the suggested wordings.
84. As an outline application, it is necessary to specify and secure the submission of reserved matters. In view of the likely impact of the proposal on trees and hedges within the site and the importance of landscaping to the development proposed, it is also appropriate to control details of the protection of trees and hedges to be retained during construction and to make reference to the extent of soft landscaping details required. Taking into account the importance of the illustrative layout to the integration of the proposal within the local landscape and in relation to other matters, such as biodiversity and flood risk, it is also appropriate to require the reserved matters to be in substantial accordance with the submitted illustrative development framework drawing.
85. It is necessary to control the number of dwellings to be developed on the site, with the maximum number not to exceed 45, and to limit the number of storeys to no more than two, in order that the scope of the permission is consistent with the submitted details. It is also necessary to require the access arrangements to be carried out in accordance with the submitted details, to provide certainty, and to require the approval of further details in relation to roads, highway drainage and parking provision, in the interests of highway safety and the convenience of other highway users within the area.
86. In the interests of the character and appearance of the area, including the surrounding landscape, and neighbouring living conditions, and having regard to the topography of the site, it is necessary to control details of land levels and the relationship of the proposed dwellings with other land and development nearby. Given the nature of these details, it is essential to require their approval before development takes place on site.
87. To ensure the long-term retention of the landscaping on site, which is necessary in the interests of the character and appearance of the local area, it is necessary to control and secure details of its management. Having regard to the recommendations of the Extended Phase 1 Habitat Survey, it is reasonable to require details of measures to provide habitat enhancement and biodiversity mitigation on the site and secure the implementation of these measures.

Given the nature of these details, it is essential to require their approval before development takes place on site.

88. I am mindful of the guidance within the PPG regarding the use of conditions to secure affordable housing provision. On the basis of the evidence provided, I am satisfied that, without the provision of affordable housing, the proposal would be unacceptable. Consequently, in the absence of an appropriate planning obligation to secure this necessary provision, I consider that the delivery of housing development on the site would be at serious risk. As such, notwithstanding the scale of the proposal, but in light of my findings above regarding housing delivery, I consider that in this case there are exceptional reasons to apply a condition requiring the provision of a scheme for affordable housing, in accordance with CS Policy H1 and the SPD. A suggested condition was provided by the appellant in this respect and, with some amendments, I am satisfied that the wording used would meet the relevant tests of the PPG and the Framework. In order to control details of the scheme and secure its implementation, it is essential to require the approval of these details before development takes place.
89. To protect neighbouring living conditions and to prevent pollution and flooding, it is necessary to control details of foul and surface water drainage for the site and secure their implementation. To protect biodiversity on the site and in the interests of the living conditions of neighbouring occupiers, it is reasonable to require the management of site clearance, the provision of a site waste and construction management plan and to specify the hours of work on the site during the construction phase of the development, including in relation to deliveries.

Conclusion

90. For the above reasons and having regard to all other matters raised, I conclude that the appeal should be allowed.

Anne Napier

INSPECTOR

Annex

Conditions

- 1) Details of the appearance, layout, scale and landscaping, including details of all trees and hedges to be retained, measures for their protection during construction, planting specifications and timing (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

- 4) The reserved matters shall be in substantial accordance with the submitted Development Framework Plan, Ref BMD.14.006.DR.003A.
- 5) The number of dwellings hereby permitted to be constructed on the site shall not exceed 45 and no dwelling shall be more than two storeys high.
- 6) The site access arrangements shall be carried out in accordance with drawing, Ref 1649-SK-001 H, and none of the dwellings hereby permitted shall be occupied until the access has been constructed, surfaced and drained in accordance with details that shall have been submitted to and approved in writing by the local planning authority.
- 7) No development in relation to the provision of roads and drainage infrastructure shall take place until details of the engineering and specification of the roads and highway drains have been submitted to and approved in writing by the local planning authority. None of the dwellings hereby permitted shall be occupied until the development has been carried out in full accordance with the details as approved.
- 8) None of the dwellings hereby permitted shall be occupied until an associated area for car parking has been provided, consolidated, surfaced and drained, in accordance with details that shall have been submitted to and approved in writing by the local planning authority. The parking areas so provided shall not thereafter be used for any other purpose than the parking of vehicles.
- 9) No development shall take place until details of the existing levels of the site and the proposed slab levels of the dwellings hereby permitted in relation to a datum point outside the site have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the details as approved.
- 10) None of the dwellings hereby permitted shall be occupied until a landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than privately owned domestic gardens, has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the landscape management plan as approved.
- 11) No development shall take place until details of habitat enhancement and biodiversity mitigation measures within the site have been submitted to and approved in writing by the local planning authority. These details shall follow the recommendations within the Extended Phase 1 Habitat Survey, be integrated with the landscaping proposed on site and include a timetable for their implementation. The development shall be carried out in accordance with the details as approved.
- 12) No development shall take place until a scheme for the provision of affordable housing as part of the development shall have been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2: Glossary of the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:

- i. the numbers, type, tenure, size and location on the site of the affordable housing provision to be made which shall consist of not less than 40% of housing units;
- ii. the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
- iii. 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);
- iv. the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
- v. 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.

The affordable housing shall be retained in accordance with the approved scheme.

- 13) None of the dwellings hereby permitted shall be occupied until a scheme for the drainage of surface water, including surface water run-off, and works for the disposal of foul sewage have been provided on site, in accordance with details that shall have been first submitted to and approved in writing by the local planning authority.
- 14) No works shall take place on site until a Site Waste and Construction Management Plan has been submitted to and approved in writing by the local planning authority. The Plan shall include details of the management of any site clearance, which shall follow the recommendations in the Extended Phase 1 Habitat Survey, site waste and construction works, including details of parking arrangements for any vehicles associated with the development. The development shall be carried out in accordance with the Plan as approved.
- 15) During the construction phase of the development hereby permitted, the operation of machinery, the carrying out of any process and the taking or despatching of deliveries, including the delivery of materials, shall take place only between 07.00-18.00 Monday to Friday and 08.00-13.00 on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Andrew Byass of Counsel	Instructed by the Solicitor for Herefordshire Council
He called	
Ms Carly Tinkler CMLI	Consultant Landscape Architect
Dr David Nicholson BSc PhD MRTPI	Director, DJN Planning Ltd
Ms Siobhan Riddle	Senior Planning Officer, Herefordshire Council
Mr Andrew Banks	Principal Planning Officer, Herefordshire Council

FOR THE APPELLANT:

Mr Anthony Crean, QC	Instructed by Framptons
He called	
Ms Laura Bradley BA(Hons) PgDip CMLI	Managing Director, Bradley Murphy Design Ltd
Ms Louise Steele BSc (Hons) MA (TP) MRTPI	Associate, Framptons

INTERESTED PERSONS:

Mr Michael Collins	Chair of Leintwardine Group Parish Council
Cllr Roger Phillips	Local Councillor
Mr Timothy Hopkins	Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 South Northamptonshire Council v SSCLG, Barwood Land and Estates Limited [2014] EWHC 573 (Admin)
 - 2 Cheshire East Borough Council v SSCLG & Richborough Estates Partnerships LLP [2015] EWHC 410 (Admin)
 - 3 Stroud District Council v SSCLG v Gladman Developments Limited [2015] EWHC 488 (Admin)
 - 4 The appellant's assessment of the Council's five year land supply at 825 dwellings per annum
 - 5 Opening statement on behalf of the appellant
 - 6 Opening statement on behalf of the Council
 - 7 The agreed respective position statement on the Landscape and Visual Impact Assessment
 - 8 Appeal decisions, Ref APP/T2405/A/13/2193758 & 2193761
 - 9 Corrected submission by Leintwardine Group Parish Council
 - 10 The agreed Statement of Compliance with the CIL Regulations 2010
 - 11 The appellant's suggested condition on affordable housing provision
 - 12 Closing submission on behalf of the Council
 - 13 Wainhomes (South West) Holdings Limited v SSCLG v Wiltshire Council & Christopher Ralph Cornell and Sarah Cecilia Cornell [2013] EWHC 597 (Admin)
 - 14 Closing submission on behalf of the appellant
 - 15 Dartford Borough Council v SSCLG and Landhold Capital Limited [2014] EWHC 2636 (Admin)
-