

**TOWN AND COUNTRY PLANNING ACT 1990**

**APPEAL ON BEHALF OF GLADMAN DEVELOPMENTS LIMITED**

**APPEAL REFERENCE: APP/W1850/W/15/3051153**

**LAND AT LONGWORTH LAND, BARTESTREE, HEREFORD HR1 4BA**

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**CLOSING FOR HEREFORDSHIRE  
COUNCIL**

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**Introduction**

1. It is uncontroversial that this appeal must be determined in accordance with s. 38(6) of the Planning and Compulsory Purchase Act 2004. By this provision, there is a “presumption in favour of the development plan”.<sup>1</sup> This of course means that this appeal must be decided in accordance with the development plan unless material considerations indicate otherwise.
2. The important context in considering the application of the presumption in this matter is that there is a very recently adopted Core Strategy,<sup>2</sup> which is functioning as planned in Bartestree with Lugwardine Parish. The Core Strategy seeks to set out a spatial strategy for the county while planning positively to meet all of the county’s objectively assessed needs. In Bartestree, the Core Strategy is on track to be supplemented by a neighbourhood development plan (“NDP”).
3. It is of course the case that the Council cannot presently demonstrate a five year supply of housing (“5YHLS”), due to delays in the planned for strategic urban extensions coming forward.<sup>3</sup> This is a significant material consideration in this

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<sup>1</sup> Per Lord Hope in *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 WLR 1447 at 1450B-G.

<sup>2</sup> Adopted 16 October 2015.

<sup>3</sup> Mr Lane agreed in XXn that it was the delays with the strategic urban extensions coming forward that explained the present housing supply shortfall.

appeal, in particular by reason of what the National Planning Policy Framework (“the Framework”) requires when a local planning authority cannot demonstrate a 5YHLS.

4. Reduced to its bare bones, and while still keeping the emerging NDP in mind, the question in this case largely reduces to whether the material consideration arising from a lack of a 5YHLS outweighs what the Council asserts would be a clear breach of the development plan.

### **The development plan**

#### ***(i) Spatial strategy***

5. Consideration of the Core Strategy’s spatial strategy informs later judgments about the weight that can be given to the development plan in light of the shortfall of housing land supply. It is the Council’s submission that the Core Strategy seeks to distribute housing in the county in a carefully considered and clearly defined manner.
6. The inter-connected policies through which this spatial strategy can be seen in the context of this appeal are policies SS2, RA1 and RA2. Taking these in turn:
  - (1) Policy SS1 sets out that the “focus for new housing development” is Hereford, with the “main focus” outside of Hereford being the market towns of Bromyard, Kington, Ledbury, Leominster and Ross on Wye.
  - (2) In rural areas, a more considered approach is required, with regard needing to be had, per the policy, to a number of settlement-based criteria. It is policy SS1 that sets out the broad distribution of housing in the county, with rural areas having a minimum of 5,300 new homes of the overall total of 16,500 required during the plan period;
  - (3) Policy RA1 is entitled “Rural housing distribution”. True to its title this policy starts to deal with the finer grain of where housing will actually go in rural areas. It is made clear in this policy that housing is intended to be “broadly distributed” across the county’s rural areas, with the 5,300 total

housing number further refined to housing market areas or HMAs based upon “the different housing needs and requirements” of those HMAs.

- (4) The policy goes on to state that the “indicative housing growth targets” in each of the rural HMAs will be used as a basis for the production of neighbourhood development plans;
  - (5) The “indicative housing growth targets” referred to in the text of the last paragraph of this policy are then set out in the final column of the RA1 table. The target for the Hereford HMA in issue in this appeal is 18%. As discussed with Mr Lane in ReXn, the figures here do not add up to 100%. They are not meant to of course, since the 18% (and other figures) describe the relative increase in population in each HMA;
  - (6) Further detail regarding the distribution of housing in rural areas is then obtained from policy RA2. Of particular relevance is the second paragraph of this policy, which is directed towards how growth will be realised at individual settlements. It provides that the minimum growth target in each HMA (which Mr Lane properly agreed is the “housing growth target” in the final column of the RA1 table) “will be used to inform the level of housing growth to be delivered in the various settlements set out in figures 4.14 and 4.15” of the Core Strategy (underlining added);
  - (7) There is, then, a clear strategy which washes down to an individual settlement level, and which at this level provides for indicative minimum housing growth having regard however to particular criteria which further guide what sort of development will be acceptable.
7. Mr Lane agreed in XXn that the effect of these policies is that it is necessary to apply the percentage targets to individual settlements as indicative minima of housing growth. In ReXn, he stated that the percentage indicative housing

growth target is not instructive and simply shows the proportion of dwellings in an HMA (derived from the second column of the RA1 table).

8. But that qualified answer (i.e. the one given in ReXn) is to ignore the wording of RA2 and the reference to individual settlements. It obviously makes no sense to seek to derive a level of housing for each of the 49<sup>4</sup> identified settlements in the Hereford HMA by reference to the indicative Hereford HMA number of 1,870 dwellings. To give meaning to the text in RA2, and the considered description of “proportionate housing” development as seen in figures 4.14 and 4.15, it is necessary to apply the percentage indicative housing growth target to individual settlements.
9. There is a clear and easily appreciable logic to this strategy:
  - (1) It is consistent with the indication in RA1 to the effect that housing should be “broadly distributed” across the country’s rural areas;
  - (2) It provides an easily applied basis to calculate the amount of housing which neighbourhood development plans should aim – as a minimum – to deliver; and
  - (3) By the careful acknowledgement of “minimum” and “indicative” targets, and the reference to environmental and local factors in RA1 and the criteria in RA2, it provides the flexibility to accommodate higher levels of growth where sought and when appropriate.
10. With these matters in mind, it is possible to test the appeal scheme’s compliance with the spatial strategy of the development plan. In this regard, it was not disputed that Mr Thomas’ evidence<sup>5</sup> accurately set out the position so far as the relevant housing numbers are concerned in the Bartestree with Lugwardine Parish (“BLP”), namely:

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<sup>4</sup> That is the total number shown in figures 4.14 and 4.15 on pages 109 and 110 of the Core Strategy.

<sup>5</sup> See tables 1, 3 and 4 at paragraphs 6.6 – 6.20.

- (1) The indicative minimum for BLP is 152 dwellings to 2031;
  - (2) The large-scale and small-scale sites with planning permission have provided 145 houses five years into the plan period (146 houses if one adds the additional unit granted permission in May 2016 referred to by Ms Soilleux);
  - (3) Meaning that so far as the indicative minimum is concerned, BLP is some 6 or 7 houses short, with just 5 years of the plan period elapsed.
11. The small-scale sites that have contributed to the overall number of 146 units total 25 units. As put to Mr Lane in XXn, if that figure was multiplied over the remaining three quarters of the plan period, the number of houses to be delivered in BLP during the whole of the plan period would be approximately 220 houses.
  12. Mr Lane's answer to this point was to direct attention to the uncertain nature of further infill and windfall development, and to point out that the Council's housing trajectory only allocated 50 units per year to windfalls. With all respect to Mr Lane, but this does not answer the point being put to him, which is that BLP is comfortably on course to exceed its minimum indicative target by a very healthy margin, even allowing for a lesser number of infills and windfalls in future quarters.
  13. In respect of windfall allowance in the Core Strategy, Mr Thomas properly pointed out in his evidence (XXn) that the Council acted responsibly in anticipating a conservative amount of windfalls in its housing trajectory, which means that this figure must be looked at in this light.
  14. There is also the point that positive support is provided in the emerging NDP for windfall and infill development, as well as for rural exception sites to provide affordable housing. There is scope for the figure of 220 houses to be well exceeded even without further large-scale allocations.

15. Taken together, from a spatial strategy point of view, it is clear that BLP is performing well and meeting the objectives of the spatial strategy in its area. To foreshadow the matters to be discussed below, this is relevant to the weight to be given to the housing supply policies that apply in this matter, because they are not failing so far as BLP is concerned. As Mr Lane agreed in XXn, the area in which housing supply is falling down is in the delivery of the SUEs, which are now expected to deliver housing later in the plan period.
16. In so far as the criteria for acceptable development in rural areas is concerned (i.e. the local evidence and environmental factors in RA1 and the high quality, sustainability and landscape setting points in RA2), these are addressed in respect of the specific environmental policies LD1 – 4. Breach of these specific environmental policies leads in the Council's submission to breach of policies RA1 and RA2 also.

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

17. Mr Lane sets out in his evidence that policies LD1, LD2 and LD3 should be accorded full weight.<sup>6</sup> The Council of course agrees and further submits that policy LD4 should be also given full weight.
18. The point made in Mr Lane's evidence about the reduced weight to be given to LD4 centred on the alleged inconsistency of this policy with the Framework. He also suggested that the weight to be given to this policy should be reduced because the Core Strategy does not include a plan showing the extent of Hagley Park.<sup>7</sup> Taking these matters in turn:
  - (1) It is of course the case that the Core Strategy was assessed only very recently, with the examination inspector being satisfied that the Core

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<sup>6</sup> Paragraphs 5.2.40 – 5.2.42.

<sup>7</sup> Which was otherwise agreed (i) to be an historic park and garden designated by the Core Strategy in appendix 8d, and (ii) to cover the southern field of the appeal site.

Strategy complies with national policy except where indicated and modifications are recommended.

- (2) Those modifications included modifications to policy LD4 which were accepted by the Council (save in minor respects which do not alter the policy's meaning in any substantive way). This recent assessment of compliance with national policy is entitled to be given significant weight;<sup>8</sup>
- (3) So far as the wording of LD4 was concerned, Mr Lane accepted in XXn that the wording of the policy text of LD4 was consistent with national policy, and allowed judgements to be made both about the relative significance of a relevant heritage asset, and the degree of harm to that asset. That must be right.
- (4) The apparent concern<sup>9</sup> that LD4 does not copy out the Framework's respective tests for assessing harm does not make policy LD4 inconsistent with the Framework. Plainly a decision maker is not precluded from taking such an approach, or from (properly) having regard to the need to give considerable importance and weight to the desirability of preserving listed buildings or their settings per s. 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990;
- (5) Ultimately, Mr Lane's principal concern was explained in XXn to be that the Core Strategy applied the wrong test to assessing harm. Mr Lane was here referring to the supporting text to LD4 and to paragraph 5.3.27 in particular. The "offending" sentence, broken down to its constituent parts, says this:

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<sup>8</sup> CD/8.2. At para 79, the inspector concluded in terms that "In order to make the policies sound [the proposed modifications] update the wording to ensure that the policy considerations reflect the NPPF rather than superseded documents".

<sup>9</sup> As discussed in ReXn.

- (i) The pre-condition: “Where the loss of or substantial harm to a heritage asset or its significance is outweighed by the public benefits of a development proposal which is allowed to proceed...”
  - (ii) Pausing there, the pre-condition says nothing about how loss or substantial harm is outweighed, and only recognises that substantial harm *may* be a judgment about the degree of harm that may arise;
  - (iii) The consequence of the pre-condition being satisfied is then this: “... developers shall, in a manner proportional to its importance, record and advance understanding of the heritage asset”.
- (6) This “consequence” relates to the fourth criterion in LD4, which relates to recording and advancing understanding the understanding of heritage assets. This supporting text accordingly neither purports to be the “test” of harm as set out by Mr Lane, nor in any way constrains how a decision maker should go about assessing the degree of harm in any particular case. There is no basis for alleging inconsistency with the Framework based on this paragraph;
- (7) As to the Hagley Park plan, as agreed in XXn, the appellant has from pre-application stage been fully aware that the appeal site’s southern field forms part of the designated park and garden identified in the Core Strategy and the UDP before it as Hagley Park/Court.<sup>10</sup> Mr Lane also agreed in XXn that Hagley Park appears in the Council’s Historic Environment Record or HER;
- (8) The very late made complaint about a lack of a plan showing the extent of Hagley Park may have founded an objection to appendix 8d (where, like *all* other unregistered parks and gardens, Hagley Park is listed by a grid reference) at the Core Strategy examination, but it is not a matter that can support a claim that reduced weight should be given to this policy;

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<sup>10</sup> See both the pre-application response at CD/3, pp 12 and the screening opinion at pp 31.



- (9) The appellant's arguments in this regard are not assisted by reference to paragraph 141 of the Framework. This is a policy directing local planning authorities to share information that they hold. It is not a policy that itself directs that information shall be gathered.
19. In all the circumstances policy LD4 should be given full weight. It is consistent with national policy.

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

20. Mr Lane accepted in his evidence that there was a breach of LD4 arising from a loss of a portion of Hagley Park, this being limited however, in his view, to that part of the southern field over which houses would be built. He accepted in XXn that if this is the case, and policy LD4 is not inconsistent with the Framework, that his accepted loss would also (likely) amount to a breach of policy LD1.
21. The reason this follows is that policy LD1 provides that development proposals should "Conserve and enhance ... locally designated parks and gardens..." The loss of a material part of an undesignated park and garden does not amount to either its conservation or its enhancement.
22. While Mr Lane's acceptance of a (likely) breach of LD1 was limited to the loss of part of the southern field to housing, the Council's evidence demonstrated that the loss would extend to the whole of the southern field. The parkland identifiable at present by the majority of the relevant experts<sup>11</sup> would in Ms Lowe's and Ms Tinkler's judgment be unrecognisable as a parkland if the appeal scheme proceeded.
23. Mr Jackson accepted in XXn that there would be a "notable change" to the parkland. It would in reality be a much more significant change. As explained by Ms Lowe, "the development proposed would remove the parkland setting.

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<sup>11</sup> Mr Beardmore, Ms Lowe, Ms Tinkler, Dr Mansfield, but not Mr Jackson.

Orchards are not seen within parklands and parkland trees are not surrounded by built development, even with a small areas of grass beneath them.”<sup>12</sup>

24. Combined with the loss of the historic boundary along Longworth Lane (wall and hedgerow), there would in the Council’s submission be a clear breach of the requirement under policy LD1 to conserve and enhance Hagley Park. The parkland’s character would not be protected, and the introduction of housing, public amenity space, roads and formalised footways, would not be an appropriate use, design or management of the southern field within the appeal site.
25. There is a further breach arising under LD1 by reason of the landscape and visual harm identified by Ms Tinkler. The principal differences between Ms Tinkler’s and Mr Jackson’s assessments of landscape impacts related to the consideration of the parkland characteristics of the southern field, its historic elements, and in respect of the northern orchard field, the contribution made to value by the orchard being an “ideal”<sup>13</sup> habitat of principal importance for the noble chafer.
26. In so far as the historic and parkland elements of landscape are concerned, there is an overlap between the matters relating to the failure to conserve and enhance the parkland per the second bullet point of policy LD1, and the broader landscape and visual matters captured under the first bullet point. In terms of the broader assessment, Mr Jackson’s evidence glossed over key characteristics of the landscape that contributed greatly to its value.
27. This included both the designation of the southern field as an unregistered historic park and garden, and the elements of the parkland that demonstrate its designed history. These elements were:

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<sup>12</sup> Proof, para 12.2.3. See, also, the self-same judgment made by the Inspector in the Home Farm appeal, who also considered that the interposition of built development around parkland trees would substantially diminish their splendour: CD/11.22, page 7, para 34.

<sup>13</sup> See the Ecological Appraisal, CD/1.10, para 4.30.

- (1) the distinct and picturesque lime clumps, which on the one hand were identified as relating to a parkland but on the other hand brushed away when it came to assessing the distinct historic and parkland value of the landscape;
  - (2) the evidence<sup>14</sup> of deliberate placing of the lime clumps to frame the journey from Longworth Lane across Hagley Park to Hagley Court, together with the framed views that would have been enjoyed as a consequence; and
  - (3) the association between the parkland of the appeal site and Hagley Court, which Mr Beardmore ultimately accepted in XXn, albeit maintaining that the connection is now all but lost.
28. If these elements are properly judged, together with the other matters discussed in Ms Tinkler's evidence, it is clear that the southern field of the appeal site has a high value and that change to it in the manner proposed would result in the medium to high degree of change and so major to moderate negative effects described by Ms Tinkler.
29. There was also an inconsistency in Mr Jackson's approach to the orchard. While he was prepared to see the replacement orchard as part of the appeal scheme as beneficial in landscape terms,<sup>15</sup> he was not willing to ascribe value to the same landscape in situ. The orchard has a high quality as a habitat of principle importance, which as stated above was assessed in its present state as being an ideal habitat for the invertebrates on the orchard, which moreover is a diminishing asset and so having elements of rarity.
30. Combined with the impacts on settlement pattern, and in particular the introduction of housing in an incongruous location to the south of the A438,

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<sup>14</sup> Mr Beardmore's insistence of seeing plans to be satisfied that the parkland was designed would severely limit the ability to make judgments about the vast majority of heritage assets, which do not come with detailed specifications about their significance. Ms Tinkler's and Ms Lowe's judgements as to these matters, based on their experience, are properly able to be relied upon and given weight.

<sup>15</sup> XiC.

these matters further show that the appeal scheme will only result in a breach of policy LD1.

31. There will also be visual harm arising from the appeal scheme. In respect of users of the PROW, in particular, Mr Jackson's lower assessment of harm (medium adverse) reflected his failure, among other matters,<sup>16</sup> to properly consider the impact that the appeal scheme would have upon the designed aspects of the parkland. If considered, as Ms Tinkler has done, the assessment of harm must rise.
32. These matters also demonstrate that the appeal scheme would result in a breach of policy LD3. The appeal site's key characteristics, touched upon above, show why it should be treated as a valued landscape for the purposes of policy LD3.<sup>17</sup>
33. In so far as policy LD2 is concerned, harm will be caused to the nature conservation value of the traditional orchard and the invertebrate species inhabiting the orchard, including the noble chafer beetle.<sup>18</sup> Dr Mansfield agreed in XXn that, as set out in the Ecological Appraisal, the condition of the orchard in its present state provides "ideal conditions" for the noble chafer beetle, which delights in the presence of deadwood in fruit orchard trees.<sup>19</sup> The Ecological Appraisal concluded that these conditions meant that there was a substantial likelihood of there being a noble chafer population inhabiting the orchard.
34. Though the appellant seeks to rely upon the success of the proposed translocation of the traditional orchard, the merits of disturbing the orchard and risking both the trees themselves and the habitat for the noble chafer beetle

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<sup>16</sup> E.g. the users of the PROW including those from outside of the local community; the fact that the parkland trees would no longer be set in an attractive expanse of grassland, but would instead be seen against and in the context of nearby housing.

<sup>17</sup> It follows in the Council's submission that the appeal site would also be a valued landscape for the purposes of paragraph 109 of the Framework.

<sup>18</sup> The traditional orchard is habitat of principle importance, and the noble chafer beetle is a species of principle importance, and

<sup>19</sup> See the Ecological Appraisal, CD/1.10, para 4.30.

have not been established. As Dr Mansfield accepted in XXn, the orchard – if left untouched - will continue to provide a habitat for the noble chafer for a further period of 50 years. There is in other words a very long window of time during which a regime of management could be introduced to maintain the orchard for a longer period of time.

35. Furthermore, the proposed replacement orchard, even if able to be successfully relocated, will be significantly smaller than the current northern orchard field, and unlike the Iwade example relied upon by the appellant, will not involve the retention of *any* of the existing habitat. As Dr Mansfield agreed in XXn, that means that there is neither the safety net of being able to retain at least a portion of the existing habitat, nor the opportunity for the invertebrates on site to in effect find their own equilibrium and seek to return to the original habitat should the translocation fail.
36. As to the prospects of the translocation succeeding, despite Ms Kirk's predictions of a near complete success rate, she also accepted that there is a long list of risk factors that militate against translocation being successful. Dr Widdicombe disagreed about the success of the proposed translocation. His evidence echoes the concerns of Chris Fairs, who has over 40 years in the management of apple orchards. It is his experience that is most relevant to the trees in question, and casts significant doubt upon Ms Kirk's predictions of a high success rate.
37. When taking into account a reduced prospect of relocation, the lack of retention of any existing habitat, the greatly reduced amount of orchard to be provided, and the long period of time before succession planting provides new habitat for the noble chafer,<sup>20</sup> there is in this matter "development that would be liable to harm the nature conservation value of a site or species of local conservation interest".

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<sup>20</sup> At least 30 years, as Ms Kirk sets out in her evidence at para 5.33.

38. For the further reasons set out below, the importance of the development does not outweigh the local value of the site, habitat or physical feature that supports important species. There is also a breach of policy LD2 for this reason.
39. There would also in the Council's submission be a breach of this policy by reason of the development of the parkland in the southern field which is also a priority habitat. The introduction of built form to the parkland and public open space will sever the relationship between the trees and the grassland, resulting in a reduction of this priority habitat.
40. Policy LD4 has in part already been addressed above, in respect of the harm that will be caused to the significance Hagley Park, including by its destruction in the southern field of the appeal site. This policy is further breached by reason of the harm that will be caused to the significance of the listed buildings adjacent or near to the appeal site, namely Hagley Court, Hagley Hall and the Forge.
41. In respect of Hagley Court, there was a helpful narrowing of issues through XXn of Mr Beardmore. In particular, it was agreed that Hagley Court was designed as a country house within a rural setting, which comprised Hagley Park and so of course also the (adjacent) appeal site. Having set out in his proof that there was no clear evidence of a nexus between Hagley Court and Hagley Park, Mr Beardmore accepted that the sales particulars established this nexus.<sup>21</sup> He also ultimately agreed that none of the matters he relied upon in his proof at paragraph 3.15 disassociated Hagley Court from Hagley Park in the period up to 1886 (being the date of the relevant OS mapping).
42. It is notable that the OS mapping for 1905 and 1930 shows clear shading of an area of land around Hagley Court, including the southern field of the appeal site, which Mr Beardmore also agreed (XXn) was representative of a mapping technique to illustrate parkland. The high point of Mr Beardmore's evidence,

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<sup>21</sup> That is, the sales particulars from 1817, 1824 and 1913, referred to in Ms Lowe's evidence and submitted to the inquiry on day 1.

then, is that the incursion of the housing in Hagley Park on the eastern boundary of the appeal site (“Hagley Housing”), as well as the boundary planting that was established shortly after to screen views of Hagley Housing from Hagley Court, means that the appeal site contributes little to the significance of Hagley Court.

43. Despite relying upon Historic England’s guidance on the Setting of Heritage Assets,<sup>22</sup> Mr Beardmore’s proof of evidence set out that the matters to which he had regard when assessing setting were those relating to the section on “Views and Setting”.<sup>23</sup> This is to ignore the wider non-visual matters set out at page 9 of this guidance. While Mr Beardmore said these factors were in fact taken into account by him, his willingness to disregard the historic associations between Hagley Court and the appeal site and to emphasise visual separation matters demonstrates that he in any event failed to give them sufficient weight. That is not surprising given his omission to set out the relevant guidance in his evidence. Ms Lowe’s evidence sought to both apply the above guidance, as well as the matrix for assessing harm found in another of Historic England’s publications, *Seeing the History in the View*.<sup>24</sup> As she explained in XXn, Ms Lowe did so on the basis, as this guidance sets out, that it has “wide applicability”.<sup>25</sup> Her approach displayed no mis-application of guidance.
44. Having regard to the above matters, Ms Lowe’s assessment that the appeal site continues to make a very large contribution to the significance of Hagley Court is to preferred. Unlike Mr Beardmore, Ms Lowe furthermore properly takes account of the following matters:
- (1) Hagley Court’s original design, which was as a country house placed in a rural parkland setting, separated from the adjacent settlement;

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<sup>22</sup> CD/14.3.

<sup>23</sup> Mr Beardmore’s proof at 6.03.

<sup>24</sup> Appendix B to Ms Lowe’s proof.

<sup>25</sup> Ibid, pp 5.

- (2) The adoption and adaption of the parkland that formed Hagley Park upon the initial sale of a portion of Longworth Park in 1817;
  - (3) The adoption of parkland alone emphasises the connection between Hagley Court and the appeal site, with the appeal site forming part of the designed landscape around Hagley Court from its inception; and
  - (4) The adaptation of the parkland is evidenced by the creation of the driveway to Longworth Lane from Hagley Court, evident on all of the mapping, and the designed location of the clumps of lime trees along this route, in a way that enhances the beauty of this route.
45. Having regard to these matters as well as the visual separation that presently exists between the appeal site and Hagley Court, Ms Lowe's evidence as to the high level of harm that would be caused to the significance of Hagley Court by the appeal scheme is to be preferred.
46. In respect of Hagley Hall and the Forge, Mr Beardmore and Ms Lowe differed in their assessments in respect of the contribution made to these buildings by their present rural backdrop. That backdrop contributes to the significance of these buildings, assisting to place them in their original rural context to which they have both been historically linked. Ms Lowe's evidence is again to be preferred by reason of her assessment taking proper account of these matters.
47. These matters together demonstrate a further basis by which the appeal scheme would be in breach of LD4.

*(iv) Conclusion on compliance with the development plan and the first three main issues*

48. Taken either as a whole or individually, the above matters demonstrate that the appeal proposals are not in accordance with the development plan. This includes having applied the weighted balance in policy SS1 (which replicates paragraph 14 of the Framework), for the reasons set out in further detail below.



49. It follows that “unless material considerations indicate otherwise”, this appeal should be dismissed by reason of the conflict with the development plan. The above matters together also address the **first, second and third** main issues identified at the outset of the inquiry.

### **Other material considerations**

#### ***(i) The Framework***

50. As set out above, it is common ground that the Council cannot presently demonstrate a 5YHLS. The consequence of this position, in respect of paragraphs 14 and 49 of the Framework being engaged, are also common ground.
51. Following the approach set out in *Forest of Dean*<sup>26</sup>, in the circumstances of this case, that requires a two stage assessment:
- (1) First, consideration must be given to whether the appeal should be refused applying the straightforward balancing exercise in paragraph 134 of the Framework; and
  - (2) Second, if the appeal is not refused at the first stage, consideration must be given to whether there are adverse impacts of the appeal scheme which would significantly and demonstrably outweigh the benefits.
52. In the Council’s submission, essentially for the reasons already set out above, the appeal falls to be dismissed at the above first stage, by reason of the high level of harm that would be caused to Hagley Court. Mr Thomas confirmed in his XiC that it was harm to this heritage asset that he considered outweighed the accepted public benefits of the appeal scheme.
53. If the second stage is reached, it is again common ground that a judgment will have to be reached as to the weight to be given to the policies relevant to the supply of housing, this not being a matter that is resolved by simply

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<sup>26</sup> *Forest of Dean District Council v Secretary of State for Communities and Local Government* [2016] EWHC 421 (Admin); CD/12.12

identifying that these policies are out of date. Instead, it is necessary to judge what weight to give these policies in the particular circumstances of this case.<sup>27</sup>

54. In the Council's submission, while regard must be had to the matters identified in Mr Lane's evidence at paragraphs 5.2.8 – 5.2.34 in making this judgment, those are not determinative of the appropriate weight to be given to the relevant policies for the supply of housing in the particular circumstances of this case. This is for two reasons.
55. First, and most importantly, is that in so far as BLP is concerned, it is more than on track to accord with the spatial strategy discussed above. That is, it is more than on track to provide a proportional amount of housing that reflects the objectives of the Core Strategy for housing in rural areas.
56. The housing shortfall that exists relates to the delay in providing SUEs. It would be a marked and very substantial conflict with the spatial strategy of the Core Strategy if small rural settlements were required to redress this present delay.
57. Second, and in accordance with policy SS3 of the Core Strategy, the Council has put in place measures to seek to overcome the current housing shortfall. Initially, those measures have involved the identification of two Assistant Directors to tackle the main obstacles to the SUEs being delivered. As Mr Thomas sets out in his proof,<sup>28</sup> it is also proposed that an interim position statement will be issued utilising evidence from the SHLAA to identify additional housing land.
58. The appeal site would not come forward for housing through that process, for the reasons Mr Thomas also sets out in his paragraph 5.18. It would in particular be excluded by reason of the constraints that exist in respect of the

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<sup>27</sup> See *Suffolk Coastal District Council v Secretary of State for Communities and Local Government & ors* [2016] EWCA Civ 168, at [47 – 48], CD/12.10.

<sup>28</sup> Paragraph 4.18.

appeal site having both habitats of principle importance and an unregistered park and garden.<sup>29</sup>

59. In light of these matters, the Council's submission is that (as Mr Thomas sets out in his proof<sup>30</sup>), at least significant weight should be attached to the policies for the supply of housing (which the appellants fail to meet, for the reasons set out above). This is the Council's conclusion in respect of the **fourth** main issue.
60. Taking account of this matter, as well as the accepted benefits of the appeal scheme as set out in the statement of common ground and in Mr Thomas' proof of evidence, it is the Council's submission that the adverse impacts of granting permission (being the landscape, heritage and ecology matters already discussed), significantly and demonstrably outweigh the benefits. Accordingly, in respect of the **seventh** main issue, it is the Council's submission that the appeal scheme does not represent sustainable development.

*(ii) The emerging neighbourhood development plan*

61. The weight to be given to the emerging NDP falls to be judged by reference to the matters set out in paragraph 216 of the Framework. It is clear, having regard to these matters, that the NDP is able to attract the moderate weight judged by Mr Thomas to be appropriate.<sup>31</sup>
62. Taking the matters in turn, it is first common ground that the NDP is at a relatively advanced stage. It has passed regulation 16 consultation and has been forwarded by the Council for examination. On any view, it is a plan which has made significant progress.

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<sup>29</sup> During the course of the inquiry, the appellant has introduced SHLAA extracts that were obtained from BLP's website. It is common ground that these extracts, which provided to the Council to BLP to assist it with its neighbourhood development plan preparation: (1) were not subject to consultation, (2) were not prepared in accordance with the SHLAA methodology set out in Mr Thomas' evidence at 5.18, (3) were not published by the Council. It remains unclear in these circumstances what weight the appellant seeks be attached to the SHLAA extracts. Given that the extracts were not finalised (Herefordshire) Council documents, the Council submits that they cannot assist in the resolution of this appeal at all.

<sup>30</sup> Paragraph 4.16.

<sup>31</sup> ReXn. Mr Lane agreed in XXn that if the Secretary of State did not consider there to be significant objections to the NDP, this would be an appropriate level of weight.

63. In respect of the objections, first, from Mr Wilson and Mrs Patterson, no further submissions are made by this closing. The Council relies upon the points made by Mr Thomas in his XiC as to why these objections are not significant. Mr Thomas was not questioned about his evidence on these matters in XXn.
64. In respect of the objection from the appellant, Mr Lane agreed in XXn that the paragraphs in the appellant's representations dealing with the weight that can be given to an emerging NDP did not amount to an objection to the NDP and could be ignored.
65. As rehearsed in evidence,<sup>32</sup> the appellant's objection in numerous places otherwise stayed into suggesting that the NDP is required to address the housing requirements of the area and/or the housing needs of the Parish. It is not however the function of a NDP "to meet objectively assessed development needs across a local plan area".<sup>33</sup>
66. It is this latter reason that is advanced by the appellant as the basis of the objection to policy BL4 of the NDP, which relates to settlement boundaries. It is an unfounded objection, for the above reason.
67. As Mr Lane accepted in XXn, if the NDP were to made with policy BL4 and the settlement boundaries it describes in place, the appeal scheme would be contrary to the development plan by reason of the breach of this policy. This agreement makes the objections to the remaining policies of the NDP largely academic for the purposes of this appeal.
68. If there is found to be no significant objection to the settlement boundary policy in the NDP, and breach of this policy would amount to the appeal proposals being contrary to the development plan, whether or not the appeal scheme would fare badly or not against any of the other NDP policies does not make a substantive difference.

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<sup>32</sup> XiC – Mr Thomas, XXn – Mr Lane.

<sup>33</sup> *R (Crownhall Estates Limited) v Chichester District Council & anor* [2016] EWHC 73 (Admin).

69. It is in any event the Council's submission, and Mr Thomas' evidence, that none of the other matters contained in the appellant's objection amount to a significant objection. Of these, the policy to which most attention was given during the course of the inquiry was policy BL8. Mr Thomas expressed concern as to the wording of the first sentence of this policy, but explained that in his view it was a matter that could be overcome at examination.
70. In respect of the protection given by BL8 to inappropriate development in the area of a registered park and garden, Mr Lane agreed in XXn that it was open to a NDP to give additional protection to local areas in this manner, so long as the NDP was in general conformity with the strategic policies of the Core Strategy. Mr Thomas confirmed that in his view no conflict arose at all in respect of policy BL8 and the strategic policies of the CS.
71. Finally, in respect of the third bullet point of paragraph 216, Mr Lane agreed that when assessing consistency of an emerging NDP with the Framework, it was only necessary to have regard to the policies of the Framework that are relevant to a neighbourhood development plan. The third bullet point of paragraph 216 does not in other words provide a back door to test an emerging NDP against whether it is providing for objectively assessed housing need, when no such test would be applied at examination stage. Common sense is needed.
72. Drawing these matters together, Mr Thomas' judgment that the NDP should receive moderate weight is a balanced and fair assessment that in the Council's submission pays proper regard to the requirements of paragraph 216 of the Framework. This, then, is the Council's position in respect of the **fifth** main issue.

### **The eighth main issue – the planning balance**

73. For the reasons discussed above, the Council's submission is that the appeal scheme would result in a clear breach of the development plan. The mitigation

and compensation measures provided by the appellant do not overcome the fundamental nature of the breaches in issue.

74. Given the stage of preparation of the NDP, its lack of significant objections and its general consistency with the Framework, allowing the appeal to proceed would render the work done on the NDP irrelevant in so far as housing delivery is concerned. The conflict with the emerging NDP is a further matter weighing against the appeal scheme proceeding.
75. The appeal scheme does not otherwise represent sustainable development, even if the weighted balanced in paragraph 14 of the Framework is applied. The identified harm significantly and demonstrably outweighs the accepted benefits of the appeal scheme.

### **Conclusion**

76. For all of the above reasons, it is the Council's submission that the appeal must be dismissed.

**20 May 2016**

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