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## Appeal Decision

Inquiry opened on 2 December 2014

Site visit made on 15 December 2014

**by B J Sims BSc(Hons) CEng MICE MRTPI**

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

**Decision date: 13 January 2015**

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**Appeal Ref: APP/H1840/A/14/2217607**

**Land off Cheltenham Road, Bredon, Tewkesbury, Worcestershire  
GL20 7ND**

- 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 Knaresboro Homes Limited against the decision of Wychavon District Council.
  - The application Ref W/13/01150/OU, dated 23 May 2013, was refused by notice dated 21 October 2013.
  - The development proposed is the erection of 33 dwellings (including 13 affordable homes) including means of access.
  - The Inquiry sat for 5 days on 2 to 5 and 16 December 2014.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. Although the application and appeal were made in outline, the matter of access is for detailed consideration at this stage on the basis of an illustrative site layout shown on Plan Ref 13.11.101CB.
3. The formal accompanied site visit on 15 December 2014 included the appeal site and its immediate surroundings, Kemerton Wood and Lake and a walk over pedestrian routes to Bredon village centre, noting its community facilities. In addition, unaccompanied visits were made to view the wider area and to observe vehicular and pedestrian traffic to the village primary school between 08.30 and 09.00 am on 16 December 2014.
4. Bredon and Bredon's Norton Parish Council (BPC) was accorded Rule 6(6) party status and adduced evidence accordingly in objection to the appeal.
5. Knaresboro Homes Limited (KHL) have provided a Planning Obligation Deed under section 106 of the Act as amended [ID.4]. By this Deed it is agreed between KHL, the landowners and Wychavon District Council (WDC) that, in the event that the proposed development proceeds to implementation, KHL will provide 40 per cent of the proposed dwellings as affordable housing as well as financial contributions towards: education facilities; cycling and transport strategies; bus shelters; off-site open space and sports facilities; and recycling. There is no dispute that these contributions are necessary and directly, fairly

and reasonably related in scale and kind to the proposed development in terms of Section 122 of the Community Infrastructure Regulations 2010, as amended, and required to meet adopted local planning policy requirements cited in the fifth reason for the refusal of the application. The Planning Obligation is therefore taken into account as a planning interest material to the appeal.

6. The application was refused by WDC against the recommendation of its officers and in the absence of any timely response from its Landscape Officer. However, these factors are not themselves relevant to this fresh appraisal of the planning issues arising in the case, on the basis of the landscape and other evidence adduced at the Inquiry, having regard to currently prevailing circumstances.

### **Main Issues**

7. The main issues for consideration are:
  - 7.1 the principle of the residential development of the appeal site with respect to adopted and emerging local planning policy for the distribution of housing development;
  - 7.2 the District housing land requirement in the light of the latest emerging evidence of need, calculated five year housing land supply (HLS) and the implications of any shortfall;
  - 7.3 the visual effect of the proposed development on the landscape;
  - 7.4 the potential effects of the proposed development on local nature conservation interests and protected species and, in particular, the adequacy of the evidence supporting the appeal in this respect;
  - 7.5 the implications of the proposed development for safeguarding mineral interests identified in adopted local policy; and
  - 7.6 the connectivity of the site with the built settlement of Bredon and its community facilities and the degree to which this affects the sustainability of the appeal proposal.

### **Reasons**

#### ***Principle of Development***

8. The undisputed legal starting point for this decision is that, under section 38(6) of the Act, the appeal is to be determined in accordance with the development plan unless material considerations indicate otherwise.
9. Material considerations include the National Planning Policy Framework (NPPF). The NPPF at paragraphs 7 and 14 (NPPF 7 and 14) establishes a presumption in favour of sustainable development, in its interrelated economic, social and environmental roles, and provides that, when relevant development plan policies are out of date, permission should be granted unless adverse impacts would significantly and demonstrably outweigh the benefits of the proposal. NPPF 215 states that weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF.
10. The component of the development plan relevant to this appeal comprises policies of the adopted Wychavon District Local Plan (WDLP) of 2006, saved by

Direction of the Secretary of State (SoS) in 2009. Saved WDLP Policy GD1 generally resists development outside defined boundaries of settlements and provides for development within them, including housing sites allocated by Policy SR1.

11. KHL argued, with reference to the judgment in the case of *Colman*<sup>1</sup>, that Policy GD1 should be disregarded because, in its terms, it does not acknowledge the “cost-benefit” approach of NPPF 7 in balancing socio-economic benefit against environmental harm. WDC countered that, in the subsequent judgment in the case of *Bloor*<sup>2</sup>, it was held that this matter will depend on the specific terms of the policy concerned, read with the corresponding parts of the NPPF.
12. For KHL it was also argued that, as the WDLP was intended to guide development up to 2011 and almost all of its housing allocations have been developed or permitted, Policy GD1 is time-expired and unfit for purpose in any event and should carry no weight. This was contended with reference to two recent appeal decisions, also in Wychavon, for mixed developments, including several hundred dwellings at Pulley Lane, Droitwich Spa<sup>3</sup>, where the SoS set aside Policy GD1 on those grounds.
13. On the other hand, it was submitted for WDC that the Droitwich Spa decisions are to be regarded as determinations of specific appeals on their individual merits and cannot be taken to mean that Policy GD1 can never again be applicable. WDC claims support for this view in the judgment in the *Bugbrooke*<sup>4</sup> case, where it was confirmed that the NPPF cannot alter the statutory provision of Section 38 of the Act that gives primacy to the development plan. WDC also relied upon more recent appeal decisions for 350 dwellings at Shutterton Lane, Dawlish<sup>5</sup>, wherein the SoS concluded that a settlement limit set by a saved policy should not be regarded as out of date until a new local plan was in place; and for 135 dwellings at Burbage in Leicestershire<sup>6</sup> where the SoS considered that a policy could be brought up to date by the identification of additional building land.
14. KHL made the distinction that the Droitwich Spa decision dealt with the same disputed Policy GD1 and yet WDC had not taken the opportunity to challenge it. That is, as compared with the cases cited by WDC which occurred in other Districts and are not directly related. KHL also reminded the Inquiry of the judgment in the *Dunster*<sup>7</sup> case which, with reference to many other judgments, established that like cases should be determined in a like manner. KHL also sought to distinguish the Dawlish decision in that its settlement policy was not expressly time limited, whereas Policy GD1 alludes to the 2011 time horizon of the WDLP; and the Burbage decision on grounds that the relevant local plan was still current. KHL also pointed out that the Saving Direction for the WDLP in 2009 predated the end of its plan period in 2011 and expressly was not intended as a long-term substitute for a new adopted local plan.
15. The fact that WDC did not challenge the Droitwich Spa decision is of no consequence, other than to preserve its status as a material consideration to

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<sup>1</sup> *Colman v SSCLG* [2013] EWHC 1138 (Admin)

<sup>2</sup> *Bloor Homes E Midland Ltd v SSCLG and Hinckley and Bosworth BC* [2014] EWHC 754 (Admin)

<sup>3</sup> APP/H1840/A/13/2199085 and 2199426

<sup>4</sup> *S Northants Council v SSCLG* [2013] EWHC 4377

<sup>5</sup> APP/P1133/A/12/2188938

<sup>6</sup> APP/K2420/A/13/2208318

<sup>7</sup> *Dunster Properties Ltd v First SoS &Anr* [2007] EWCA Civ 236

be taken into account. However, it is not a directive and the *Dunster* judgment is qualified in that it places no preclusion on a finding contrary to a previous planning decision, provided regard is had to the importance of consistency and reasons for the departure are given. The fact that Policy GD1 includes the original end date of the WDLP is of no great distinction, as any policy of an adopted development plan is tied to its defined plan period.

16. Notwithstanding that the local plan in the Burbage case was still current and the WDLP Saving Direction was intended as a short-term measure, review of the foregoing recent case law and SoS decisions reveals no pattern or basis for setting aside saved Policy GD1 at the outset. On the contrary, the *Bugbrooke* judgment and the Dawlish decision, in particular, lead to a conclusion that the broadly more consistent approach is to regard the Droitwich Spa decisions as individual determinations of specific appeals on merit that set no precedent. Policy GD1 should therefore remain the starting point for the location of development in Wychavon.
17. The fact that Policy GD1 is part of a dated local plan that is due to be replaced is a material consideration to be taken into account in the overall planning balance, including consideration of the requisite "cost-benefit" analysis of NPPF 7. There is merit in the submission of WDC that individual policies can be tested for conformity and those parts which are consistent given weight and those which are not rejected. The underlying aim of Policy GD1 to direct most development to sustainable urban locations is itself consistent with the thrust of the NPPF read correctly as a whole.
18. With respect to Bredon and the appeal site, the land lies outside the southern development boundary of Bredon adjacent to the Orchard Way<sup>8</sup> development which has extended the built settlement beyond the limit defined in the WDLP. Accordingly, the proposal is strictly contrary to Policy GD1 to the extent that it relates to the distribution of development. It is also noted that, although still under examination and carrying limited weight, the emerging South Worcestershire Development Plan (SWDP) also does not allocate the site of the current appeal for development. The appeal proposal would therefore require overriding material considerations in its favour to justify planning permission, unless Policy GD1 were otherwise found to be out of date with respect to housing land supply.

### ***District Housing Need, Requirement and Five Year Supply***

#### *Policy*

19. NPPF 47 seeks to boost significantly the supply of housing. This is to be achieved by ensuring that local plans meet the full, objectively assessed needs for market and affordable housing in the housing market area, with an identified five year supply of deliverable sites against their housing requirements, plus a premium of 20 per cent where there is a record of persistent under delivery. NPPF 49 states that relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five year supply of deliverable sites.

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<sup>8</sup> Also referred to as Orchard Crescent

### *Need and Requirement*

20. In this case, it is not disputed that the currently adopted housing land requirement of 7,450 units stated in Policy SR1 of the WDLP is out of date and should be disregarded.
21. It is common ground that the objectively assessed housing need (OAHN) for Wychavon has now been determined by the Inspector conducting the ongoing Examination of the SWDP. In his Further Interim Conclusions on Outstanding Stage 1 Matters, dated 31 March 2013, the Inspector sets down figures of OAHN for each of the three constituent authorities of the SWDP of 8,590 for Malvern Hills, 9,830 for Worcester City and 9,950 for Wychavon, a total of 28,370 dwellings for the 24 year plan period 2006 to 2030.
22. It is important that these are independent figures for each authority, determined by way of housing market assessment, public consultation and independent appraisal in Stage 1 of the Examination and do not represent an apportionment of the total; rather that the South Worcestershire total is a summation of the component figures. Moreover, the OAHN figures represent the need before any upward or downward adjustment to take account of policy constraints or to enable one authority to provide for any unmet need of another. That is to say the "policy off" figure.
23. It is now well established in recent case law that the OAHN "policy off" figure must be established before any adjustment is made to determine the net requirement, or "policy on" figure, for each authority. This case law was rehearsed at the Inquiry, including the cases of *Hunston*<sup>9</sup> and *Galagher v Solihull*<sup>10</sup> (the latter having been upheld in a judgment of the Court of Appeal after the close of the Inquiry).
24. It is evidently accepted by the SWDP authorities that neither Worcester City nor Malvern Hills may be able to meet their full OAHN and that Wychavon may ultimately need to increase its plan requirement to cater for unmet need elsewhere in the SWDP area. In recognition of this, WDC has concluded that, in practice, it may provide for up to an additional 650 dwellings and has proposed a change to the SWDP to set a housing requirement of 10,600 dwellings. Since that figure was published, new evidence has emerged that Malvern Hills may allocate additional sites to reduce its unmet need. Accordingly, the Wychavon requirement in the SWDP, once adopted, may be lower than 10,600.
25. There is also evidence that Wychavon could be called upon to accommodate an additional 900 units of unmet housing need from the Wider Worcestershire Area (WWA), taking its putative requirement to 11,500 dwellings but this factor was not substantially pursued at the Inquiry.
26. Crucially moreover, whilst the "policy off" OAHN of 9,950 units is now beyond debate, the "policy on" figure is yet subject to public consultation in Stage 2 of the SWDP Examination, scheduled for later in 2015, and there is currently no independently assessed housing land requirement for adoption in Wychavon.
27. KHL argue that the latest proposed requirement figure of 10,600 is the proper and best evidential basis for calculating the five year housing land supply (HLS)

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<sup>9</sup> *Hunston Properties Ltd and Anr v St Albans City and District Council* [2013] EWCA Civ 1610

<sup>10</sup> *Gallagher Estates Ltd and anr v SolihullMBC* [2014] EWHC 1283 (Admin)

in terms of NPPF 47, on grounds that the NPPF does not recognise a district OAHN as such and to reapportion the OAHN figures between the three authorities without altering the plan total of 28,370 would not by itself prejudice the OAHN being met overall. KHL claim support for this approach in an appeal decision for 95 houses in Oundle, Northamptonshire<sup>11</sup> where the Inspector regarded the apportionment of OAHN between authorities in accordance with extant development distribution policies as compliant with the *Hunston* judgment. In the case of the SWDP area, however, such distribution policies are not in evidence and the apportionment remains wide open for debate. Moreover, in the judgment of *Gallagher and Solihull* a re-distribution between authorities under the duty to co-operate<sup>12</sup> is treated as a “policy on” matter. That is, in any event, a logical approach in this case, where any identified unmet need in the other two authority areas, or from the WWA, must necessarily arise from policy constraints on housing allocations.

28. Whilst NPPF 47 is set out in terms of meeting plan requirements after assessing OAHN, it is established, for example in the judgment in the case of *Bloor*, that a robust calculation of five year HLS is essential in view of its significance to the application of government policy in the NPPF; and that where the ability to show a five year supply depends on several decisive variables, clarity and precision is vital.
29. This is borne out in national Planning Practice Guidance (PPG) in support of the NPPF, which includes the statements that “considerable weight should be given to the housing requirement figures in adopted Local Plans, which have successfully passed through the examination process” and “where evidence in Local Plans has become outdated and policies in emerging plans are not yet capable of carrying sufficient weight, information provided in the latest full assessment of housing needs should be considered”<sup>13</sup>. Taken with the *Bloor* judgment, this supports the view that the OAHN figure of 9,950 units, as the latest full assessment, is the proper basis for calculating the five year HLS in connection with this appeal. That is because there is currently no housing requirement figure in an adopted local plan which has been through the examination process and no emerging requirement figure is yet capable of carrying sufficient weight to be considered.

#### *Five Year Supply*

30. Case law and prior appeal decisions clearly establish that the assessment of five year HLS, in terms of the deliverability of sites as defined in Footnote 11 of the NPPF, is an imprecise and subjective process. This justifies a realistic judgement, on the balance of probabilities, that sites will come forward and provide the requisite number of dwellings within five years. This approach is supported in the judgment in the case of *Wainhomes*<sup>14</sup>, where it was held that too high a test of deliverability had been applied, as well as in the recent appeal decision for 320 dwellings at Ashflats Lane, Stafford<sup>15</sup>, albeit the detailed circumstances were different.

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<sup>11</sup> APP/G2815/A/13/2209113

<sup>12</sup> Planning and Compensation Act 2004 as amended Section 33A

<sup>13</sup> PPG Paragraph: 030 Reference ID: 3-030-20140306

<sup>14</sup> *Wainhomes (SW) Holdings Ltd v SSCLG* [2013] EWHC 597 (Admin)

<sup>15</sup> APP/Y3425/A/14/2217578

31. In contrast, KHL rely on the appeal decision in July 2014 for mixed development including 380 dwellings at Long Marston, Pebworth, Wychavon<sup>16</sup>. In that case, the SoS granted permission having found that WDC had not, at that time, demonstrated “unequivocally” that it had a five year HLS. The term “unequivocally” may well have been the parlance used and accepted in the Pebworth Inquiry and subsequent Report to the SoS. However, this could be interpreted as applying a higher test than required by NPPF 49, which merely requires an authority to “demonstrate” a five year HLS, without qualification.
32. KHL also cite the appeal decision for 131 dwellings at Mengham, Hayling Island<sup>17</sup> where the term “equivocal” arose in relation to the five year HLS; but it was merely used to describe the quality of the HLS evidence and there does not appear to be a direct parallel with either the Pebworth decision or the present appeal.
33. Notwithstanding that WDC has not challenged the Pebworth decision, the qualification “unequivocally” is unreflective of the terms of national guidance and case law and cannot be taken as a test applicable outside the confines of the particular decisions cited. Judgement as to whether a five year supply is demonstrated is properly to be reached on the balance of probabilities.
34. The OAHN figure of 9,950 represents an annual plan target of 415 dwellings, or 2,075 for five years. It is common ground that total dwelling completions of 2,753 since 2006 show an undersupply of 567 to be added to the five year target. It is also common ground that the housing land supply calculation should include the 20% buffer of NPPF 47 due to previous under delivery of housing in Wychavon. On that basis, the current five year HLS target amounts to 3,170 units, equivalent to 634 per annum.
35. Taking account of concessions made at the Inquiry, WDC calculates the five year supply to be 3,485 units [*ID.15 Appendix 3*], representing approximately 5.5 years supply, whilst KHL considers it to be some 781 fewer at 2,704 units, indicating approximately 4.3 years supply. [*ID.25 Tables 1 and 2*]<sup>18</sup>.
36. Disagreement over the five year supply relates to the deliverability of certain sites and the appropriate lapse rate to be applied to planning permissions. The individual sites in dispute are considered in turn below.
37. Sites already having planning permission:
  - 37.1 At Leedons Residential Park, although delivery of park homes has been slow in the past, there are currently some 68 individual concrete plinths under construction, a new pool and social complex has been completed and the site is regularly advertised. It is therefore reasonable to expect that the 80 units predicted by WDC to come forward will be delivered within the five year supply period.
  - 37.2 At Stonepit Lane, Inkberrow, although there is some disagreement between the developer and WDC regarding the dwelling mix of the 60 per cent market component of the 100 unit development, there is recent approval of reserved matters and evidence that the outstanding issues

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<sup>16</sup> APP/H1840/A/13/2202364

<sup>17</sup> APP/X1735/A/13/2192777

<sup>18</sup> These figures are taken from Tables 1 and 2 of ID.25 which sets out the latest differences in estimated deliverability site by site between WDC and KHL but the total of Table 1 does not appear to be carried forward to the overall supply calculation Table 3 which is therefore disregarded but this is in favour of the KHL case.

can be resolved. Even though this might require a fresh permission, the difference between the parties does not appear to amount to an impediment to the site coming forward within five years.

- 37.3 At Copcut Lane, Salwarpe, there is full planning permission for some 344 dwellings, including 100 extra care apartments. The latter appear likely to come forward within five years whilst it is predicted by the developer that some 193 market units will be completed at an increasing rate up to 56 per annum in year 5. Production would be divided between three house builders. However, but there is no specific reason to suppose that this would necessarily involve delay to commencement due, for example, to renegotiation of house types. On balance, it is reasonable to include the 293 units in the five year supply.
38. Allocations brought forward from the WDLP:
- 38.1 Both the Garage and the Garage Court at Pershore are long-standing WDLP allocations without planning permission. Active and specific interest from developers with a good record of delivery indicates that they are now likely to come forward within five years for some 60 units in all, in excess of the 33 allocated. In the circumstances, their delivery appears less certain than the foregoing permitted sites but it is realistic to assume a five year contribution of the originally allocated 33 units.
39. Sites allocated in the draft SWDP:
- 39.1 At Wyre Road, North of Pershore, there has been recent progress toward implementation of Site A for 120 dwellings, with a WDC resolution to grant permission and continuing negotiations on a Section 106 agreement. Site B already benefits from a resolution to grant permission for a further 64 units. Overall, delivery of the total of 184 units seems realistic.
- 39.2 On further land north of Pershore (identified by application Ref W14/00219/OU), a proposal for 168 dwellings has only outline permission and a section 106 planning obligation, although agreed, is yet to be signed. The prospect of this site coming forward in five years must therefore be viewed with caution but the developer has a good record of delivery locally and an assumption of a contribution of 140 units in five years appears realistic.
- 39.3 Land west of Leamington Road, Broadway, is currently subject to appeal but an alternative application for 56 dwelling is favoured by the Council with good prospect of implementation within five years.
- 39.4 Land south of the B4084 at Drakes Broughton is the subject of an outline application for 90 dwellings with reasonable prospect of 50 units being delivered in five years.
- 39.5 At Dilmore Lane, Station Road, Fernhill Heath, there is a resolution to grant permission for 120 dwellings with a section 106 agreement awaiting signature and reasonable prospect of implementation in the five year supply period.
- 39.6 On WDC-owned land to the rear of Hawthorn Rise Tibberton, heads of terms for a proposal for 14 affordable houses and a new village hall are

agreed and, despite no formal application yet having been submitted, in the circumstances the delivery of the site within five years is reasonably to be anticipated.

- 39.7 A further six, relatively small sites with a total capacity of some 63 units remain in dispute because they are put forward solely on the basis of pre-application discussions or with an application yet to be formally considered. The evidence for these sites coming forward is therefore conjectural. These 63 units should be deleted from the five year supply.
40. With respect to the lapse rate, KHL maintains that 10 per cent should be deducted from the total of units yet to be commenced to allow for lapses in planning permission. Whilst that approach is widely favoured, in this instance site deliverability has been subject to detailed and relatively cautious assessment. WDC points out that lapse rates in practice turn out to be substantially less than 5 per cent. In the circumstances, the lapse rate of 5 per cent adopted by WDC is appropriate.
41. Overall, aside from the 63 units from small SWDP sites to be deducted, the WDC evidence of site deliverability appears to be realistically based on the criteria of NPPF Footnote 11, indicating a probable five year supply of 3,422 dwellings, equivalent to over 5.3 years, against the annual target of 634.
42. As a result, for the purposes of this appeal, the housing policies of the WDLP, including saved Policy GD1, are not to be regarded as out of date in terms of NPPF 49. Therefore NPPF 14 is not engaged and Policy GD1 continues to carry the weight of the statutory development plan with respect to the distribution of housing development in this case.
43. That said, the putative District requirement of 10,600 dwellings remains a material consideration to be taken into account, as does the fact that WDC is currently unable to meet more than a fraction of its identified affordable housing need, albeit there is no requirement in the NPPF to provide separately for a five year affordable housing supply.

## **Landscape**

### *Policy and Guidance*

44. WDLP Policy GD2 permits sustainable development that accords with Policy GD1 where it would not adversely affect the character or appearance of the landscape, among other interests. WDLP Policy ENV1 requires development to be informed by, respect and integrate with the landscape character of the area and states that proposals that would adversely affect landscape character will not normally be approved.
45. As was submitted in connection with WDP Policy GD1, it is argued by KHL that Policy ENV1 should be disregarded on grounds that it is prohibitive of development in its terms without reference to the "cost-benefit" approach of NPPF 7. However, Policy ENV1 is, in part, permissive and, despite being accorded limited weight in the Droitwich Spa decision, stands to be assessed in this appeal on the same basis as Policy GD1. The underlying aims of Policy ENV1 are consistent with the thrust of NPPF 7 and NPPF 17 to protect the natural environment and to recognise the intrinsic character and beauty of the countryside. It is also consistent with NPPF 109 to protect valued landscapes. Furthermore, the "cost-benefit" balance of NPPF 7 remains to be applied in the

ultimate planning balance. Policy ENV1 is therefore the appropriate statutory policy against which to assess the visual effect of the proposed development on the landscape.

46. The application was supported by a specialist Landscape Visual Appraisal (LVA) prepared in May 2013 with reference to Guidelines for Landscape and Visual Impact Assessment Second Edition (GLVIA2) published by the Landscape Institute and the Institute of Environmental Management. Notwithstanding that this guidance has since been superseded by a Third Edition, there is no dispute that it was the appropriate source of guidance at the time, together with other acknowledged guidance cited within the LVA.
47. WDC put forward no site-specific landscape assessment of its own but adduced evidence at the Inquiry with reference to respected data sources, in particular the National Character Area (NCA) Profile: 106 Severn and Avon Vales 2012 of the nationwide Landscape Character Assessment. WDC also referred to Landscape Character Assessment Supplementary Guidance 2012 adopted by Worcestershire County Council (WCC) as well as the Bredon Village Design Statement of 2011 (BVDS). The latter document does not enjoy the status of a statutory neighbourhood plan but is adopted by WDC following public consultation as a Local Information Source and accordingly carries limited but material weight.

#### *Visual Effect*

48. The appeal site is an area of former and existing plum orchard which now also includes some grassland and an area of allotments. The allotments contain a typical collection of sheds and the general paraphernalia associated with that use. The remaining orchard trees are in arboriculturally poor condition but subject to a Tree Preservation Order principally for their ecological value.
49. The Severn and Avon Vales NCA Profile recognises the visual and cultural importance of traditional orchards. It highlights the fact that they are declining, particularly at the fringes of settlements, and supports their enhancement. In the WCC supplementary guidance, it is noted that the characteristic local nucleated settlement pattern lends itself to modern housing development within settlement boundaries. The guidance seeks to conserve old orchards around villages as a distinctive feature of the landscape type. These landscape characteristics are clearly locally valued, as confirmed by the BVDS and in the oral and written representations of local residents. In the absence of any definition of that term in NPPF 109, this consideration carries some weight.
50. The appeal site is not subject to any protective landscape designation and long distance views of the proposed development would be limited. The LVA submitted by KHL therefore concludes that the appeal site is of low landscape value with medium visual sensitivity to change.
51. The LVA recommends mitigation measures to be incorporated into the appeal proposal. These include: an improved footway and verges to Cheltenham Road at the site entrance; additional planting of fruit trees at the eastern end of the site, facing Cheltenham Road; a central landscaped area also incorporating retained and additional fruit trees; and a substantial landscape buffer of native trees along the southern boundary. The LVA identifies these measures as an opportunity to enhance the local landscape in conjunction with the proposed

development. Whilst plan Ref 13.11.101.CB is merely illustrative, there is no substantial reason to doubt that the recommendations of the LVA could be implemented within a detailed scheme, despite the expressed misgivings of WDC in this regard.

52. The appeal site is known to have accommodated fruit trees for over 90 years and is reasonably to be considered as having comprised traditional orchard. Whether, in its latterly declining state, it is still to be regarded as such is a matter of some dispute in this case. Irrespective whether parts of the site meet the strict definition of traditional orchard, it still contributes to the recognised local landscape character and reflects other areas of orchard at the fringe of Bredon, including at Upstones on the opposite side of Cheltenham Road.
53. The current built boundary of Bredon immediately north of the appeal site is clearly established with a band of woodland planting, yet to be completed under a planning condition, partly screening and softening much of the Orchard Way housing. This creates a visible entrance to the village along Cheltenham Road.
54. The proposed development would be seen to project obtrusively outside the village into the relatively open countryside with its traditional orchard character. The development frontage would appear to merge with the currently outlying dwellings south of the appeal site. In so doing, the development would partially erode the gap between Bredon and the settlement of Kinsham. This is some 700 metres to the south and is visible from parts of the appeal site. The proposed mitigation measures would no doubt soften the visual impact of the development, with increased planting in gardens adjacent to Cheltenham Road and stronger screening to the new southern built boundary than exists along Orchard Way at present. Even so, no matter the extent of new tree planting in gardens and public areas within the development, it could neither replicate nor enhance the remaining characteristic mature orchard that would be lost.
55. The development would therefore be out of keeping with the characteristic nucleated settlement pattern of the area and unacceptably harmful to its landscape character. This would be perceived in the local and wider community, and visibly evident particularly in passing views from the Cheltenham Road approach to the village.
56. On a balance of judgement, the LVA undervalues the local landscape and, despite the mitigation measures to soften the appearance of the development and increase the level of fruit tree and other planting on the site, the overall visual impact on the landscape would be unacceptably adverse. The development would therefore be in conflict with WDLP Policy ENV1 as well as NPPF 7, 17 and 109.

### ***Nature Conservation***

#### *Policy, Legislation and Guidance*

57. WDLP Policies ENV5 and ENV6 respectively protect sites of regional or local wildlife importance and safeguard protected species. Policy ENV7 protects wider biodiversity by requiring professional ecological assessments of development proposals; the Policy only permits development that would have

an adverse impact on natural habitats where there are overriding reasons for it and no alternative site for the development exists. These policies are consistent with NPPF 109 and carry full weight.

58. Legislation to protect wildlife, habitats and species listed in the UK Biodiversity Action Plan is well established. Circular 06/2005 highlights that potential effects of development on these interests are capable of being material planning considerations where harm is likely to result. Most relevant to the present case is paragraph A99 which states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected, are established before permission is granted, leaving coverage of the need for ecological surveys to planning conditions only in exceptional circumstances. However, the same paragraph goes on to say that, bearing in mind the delay and cost involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood that they are present and affected by the development. Consistent with this advice, British Standard 42020:2013 makes clear that survey work required should be proportionate to the predicted degree of risk.

#### *Appraisal of Effects on Nature Conservation*

59. KHL put forward with the application an ecological appraisal following a walk-over survey. This concluded that no habitats of international, national or county importance would be directly or indirectly affected subject to certain precautionary measures, with no protected species recorded. KHL subsequently put forward, at the request of WDC, further reports including a specialist invertebrate assessment related to the live and moribund orchard trees on the site.
60. It is common ground that there is no evidence of protected species on the site itself and that the only sightings of interest are of common frog and toad. However, it appears to be accepted that foraging bats fly over the site between Kemerton Wood to the east and Benshams Wood to the west, where in both locations bat boxes are occupied. Otters have been sighted at Kemerton Lake and it is probable that they only gain access to and from the Lake via the outwash stream, which passes some 60 metres to the south of the appeal site. There is conflicting evidence as to the potential for rare and protected invertebrates to occupy the moribund and dead fruit trees on the site. Great Crested Newts (GCNs) are known to be present near Kemerton Lake in the Kemerton Local Wildlife Site and there is suitable habitat where they are likely to occur closer to the appeal site near Upstones Orchard. There has been no assessment of wild birds on or near the site.
61. In addition to the new built development itself with associated artificial lighting, the proposed development would bring about an increase in general human activity and could result in a greater presence of domestic dogs and cats closer to these potential habitats, with implications for their protection. The extent of impact on bats is uncertain. Severe impact on otters seems unlikely due in part to their relatively large size. There is conflicting evidence as to the potential for rare invertebrates to exist on the site, with acknowledged expert views that such potential exists. It is also disputed whether suitable invertebrate habitat could be retained or recreated by the proposed retention of dead trees and the enhancement of those in a moribund condition. There is uncertainty regarding the vulnerability of GCNs and any listed wild birds due to

the development. It is also unclear to what extent the proposed southern boundary planting would create an appropriate wildlife corridor in compensation for any disturbance to the site.

62. It is argued by KHL that the intervening Cheltenham Road, although not of trunk status, acts as a protective barrier unlikely to be crossed by protected species or predators. That was the view taken in the previous appeal decision<sup>19</sup> to allow the Orchard Way development but the same evidence does not appear to have been before the Inspector in that case and the matter remains open for debate.
63. On balance, there appears to be a reasonable likelihood of protected species of at least bats and invertebrates being affected by the development. However, the initial ecological survey was undertaken without being informed by available local information sources as to the existence of listed species on the site and in the surrounding area. This did not accord with recommended good practice. Even taking into account the subsequent assessments submitted by KHL, it appears that the surveys were undertaken without an adequate appreciation of what was being sought.
64. As a result, as in the case of *Bagshaw*<sup>20</sup>, there is no adequate basis to make the essential judgement required by Circular 06/2005 as to whether, and crucially to what extent, any protected species or habitats might be affected by the development. Therefore it cannot be assessed whether any such effect would be properly mitigated in order to achieve compliance with saved WDLP Policies ENV5-7 prior to the grant of any permission. This factor counts against the appeal.

### ***Mineral Safeguarding***

65. The appeal site overlies long-recognised deposits of sand and gravel identified as a key resource in evidence supporting the emerging Worcestershire Minerals Local Plan. It also lies within a Minerals Safeguarding Area in the draft SWDP. This resource is already substantially constrained and the proposed development would sterilise a further portion by requiring any necessary amenity buffer zone or bunding to be moved correspondingly further south.
66. However, there are already several properties that would potentially be affected by mineral extraction from the site and no evidence of a shortage of the mineral concerned, such as might result in the requisite overriding need to compulsorily purchase these properties to facilitate its extraction.
67. Despite seeking additional information from KHL, which was not forthcoming, WCC as mineral planning authority raised no formal objection to the appeal on mineral safeguarding grounds. On the evidence, there is no substantial objection to the proposal, including with respect to the relevant provision of NPPF 144 to avoid development constraining potential use of minerals in safeguarding areas.

### ***Connectivity and Sustainability***

68. There would be no direct pedestrian link from the appeal site to Orchard Way. As a result, residents of the proposed development would be obliged to make

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<sup>19</sup> APP/H1840/A/10/2127303 – referred to in that decision as Orchard Close

<sup>20</sup> Andrew Bagshaw and Shirley Carroll v Wyre BC and Mrs E Nickson [2014] EWHC 508 (Admin)

their way to the village centre initially through the new site entrance and along Cheltenham Road before being able to choose a route via the residential streets of Pippins Road or Blenheim Drive to Kemerton Road. On reaching the village facilities further along Kemerton Road and in Church Street, in particular the village school, pedestrians already experience traffic congestion due to on-street parking, especially at the beginning and end of the school day. This is exacerbated by several sections of footway of severely substandard width, as well as by the awkward right turn for vehicles between Kemerton Road and Church Street.

69. The overall walking distances from the appeal site to the village school, village shop and other community facilities are not in themselves unreasonable by whatever route is chosen. However, the nature of the route along Kemerton Road and Church Street is such that new residents would be likely to undertake the journey by car, making traffic conditions worse at peak times. BPC makes the credible assertion that residents, even now, are choosing to drive to alternative shops some distance away, in preference to attempting to park in Bredon for their daily needs.
70. BPC also highlights the fact that the school is at capacity, with very limited space for expansion. It is therefore unlikely that any additional education provision required to serve the appeal development would be made in Bredon itself, further implying that the development would give rise to additional regular car journeys.
71. For these reasons, the appeal proposal would be in some degree of conflict with saved WDLP Policy SR5 which seeks to minimise car dependency.
72. On a District-wide basis, Bredon is recognised as one of the most sustainable village development locations in Wychavon both in terms of its level of community facilities and its location with respect to travel needs. However, the foregoing considerations diminish the sustainability credentials of the appeal proposals, including by comparison with a draft SWDP housing allocation at the end of Oak Lane, much closer to the village centre, which BPC cites as a more acceptable and sustainable contribution to District HLS.

### ***Other Considerations***

73. This decision takes into account every matter raised for and against the proposed development, including a written submission for an interested person that the Cheltenham Road boundary hedge could not legally be removed with reference to the Enclosure Act. However, that is not strictly a planning matter and there is evidence that the original hedge has been replaced in any event. No other matter is of sufficient importance to affect the overall balance of planning considerations in the case.

### ***Overall Balance of Planning Considerations***

74. It is necessary to balance the planning considerations for and against the development proposed in this case, in the light of the presumption of NPPF 14 in favour of sustainable development, as defined in NPPF 7 with reference to its social, economic and environmental roles.
75. WDC demonstrates that, in terms of NPPF 49, the District currently has a five year HLS, including the requisite 20% premium of NPPF 47. That is based on a realistic assessment of site deliverability against the most robust available

- evidence of OAHN for market and affordable housing. Accordingly, the proposed development, outside the present built boundary of Bredon, would be contrary to saved WDLP Policy GD1, which continues to carry the weight of the adopted development plan. There is, moreover, nothing to indicate that the appeal land might be allocated for development in the SWDP once adopted.
76. Due to adverse visual impact on the landscape outside the village there would, in addition, be conflict with saved Policy ENV1 of the WDLP. This policy also carries the weight of the adopted development plan, being essentially consistent with the NPPF.
  77. Furthermore, the development would be in some conflict with saved Policy SR5 in relation to the potential for residents of the proposed development to depend on the use of private cars.
  78. The uncertainty in relation to the impact on nature conservation interests and resultant potential conflict with saved Policies ENV5-7 also adds weight to the case against the appeal.
  79. For these reasons the proposed development should not be allowed unless material considerations in its favour indicate otherwise.
  80. The current existence of a five year HLS does not alone warrant dismissing the appeal and there is a range of considerations that militate in favour of granting permission. It must be borne in mind that Policy GD1, its statutory weight notwithstanding, was saved beyond the original 2011 end date of the WDLP for which replacement by the SWDP is overdue. Further, the evidence of housing need must be viewed with caution because the housing requirement of the emerging SWDP, once adopted, may be elevated above the established OAHN to accommodate unmet need from elsewhere in the housing market area; albeit that is an open question yet to be addressed in the ongoing examination of the Plan.
  81. It is also material that the development would bring clear socio-economic benefits to the District, in terms of adopted local policy requirements, in providing 33 new dwellings. That is in general accord with the thrust of the NPPF in favour of boosting the supply of housing and supporting economic growth. It is also important that 13 of those dwellings would be secured by the completed planning obligation as affordable units and would contribute to the acknowledged serious District shortfall in affordable housing provision. The substantial financial contributions, also secured by the planning obligation, would ensure that, on a District-wide basis, education and other community infrastructure could be maintained in line with the needs arising from the new development.
  82. Moreover, although the conflict of the proposal with Policy SR5 diminishes the sustainability credentials of the appeal proposal, the development would be attached to Bredon as one of the most sustainable village development locations in Wychavon.
  83. However, judged overall on current evidence the several socio-economic and planning benefits of the development summarised above would together be significantly and demonstrably outweighed by the environmental harm this proposal would cause, even disregarding the uncertainty regarding the effect

on nature conservation and despite the presumption in favour of sustainable development running through decision-taking.

84. If the proposal had been acceptable in every other respect, it would have been in the interests of good planning to allow time for a further ecological study to be undertaken, based on a comprehensive understanding of local data and expert opinion as to the likelihood of the presence of protected species, so that the extent of the effect on them could be clearly assessed. In view of the foregoing conclusion, such a measure would serve no purpose in the face of the other overriding planning objections.
85. For the reasons given above therefore, the appeal fails.

*B J Sims*

Inspector

## APPEARANCES

### FOR WYCHAVON DISTRICT COUNCIL:

Sarah Clover	of Counsel
She called:	
Eileen Marshal	Landscape Officer
BSc(SpHons) DipLA MA	Wychavon District Council
MCIHort	
Cllr Adrian Darby OBE	Member
	Wychavon District Council
Fred Davies	Policy Manager
MRTPI	Wychavon District Council
Timothy Roberts	Director
BA(Hons) MRTPI	DLP Consulting Group
Heather Pearson	Principal Planner
DipTP MRTPI	Wychavon District Council

### FOR KNARSEBORO HOMES LIMITED:

Charles Banner	of Counsel
He called:	
Alan Beaumont	Director
MSc(Hons) MCIEEM	AA Environmental Limited
Andrew Winstone	Principle Associate
DipTP MRTPI	RPS Planning
Paul Harris	Managing Director
BA DipLA CMLI	MHP Design Limited

### FOR BREDON PARISH COUNCIL:

Nina Pindham	of Counsel
She called:	
Cllr Alison Palmer	Member
	Bredon Parish Council

### INTERESTED PERSONS:

Kate Aubury	Support Co-ordinator
	Kemerton Conservation Trust
Paul Whitehead	Entomologist and Landscape Consultant
Jen Miles-Kingston	Local Resident
Shona Robb	Local Resident
Phil Handy	Local Resident

## **APPLICATION PLANS**

KHL/001/2013 Site Location

13.11.101.CB Illustrative Site Layout and Indicative Landscape Proposals

## **INQUIRY DOCUMENTS**

### **General**

- ID 1 Inquiry Attendance and Customer Survey Sheets
- ID 2 Letter of Notification and Circulation List
- ID 3 Letters from Interested Persons
- ID 4 Planning Obligation Deed
- ID 5 Tree Preservation Order and related Committee Report
- ID 6 Kemerton Wood and Lake Accompanied Site Visit Route Map
- ID 7 Part-agreed Suggested Conditions

### **Wychavon District Council Evidence**

- ID 8 Opening Submissions
- ID 9 Closing Submissions
- ID 10 Eileen Marshall – Proof, Appendices and Supplement
- ID 11 Cllr Darby – Proof and Appendices
- ID 12 Fred Davies – Main Proof and Appendices
- ID 13 Fred Davies – Supplementary Proof
- ID 14 Timothy Roberts – Main Proof and Appendices
- ID 15 Timothy Roberts – Rebuttal Proof and Appendices
- ID 16 Heather Pearson – Proof and Appendices

### **Knaresboro Homes Limited Evidence**

- ID 17 Opening Submissions
- ID 18 Closing Submissions
- ID 19 Alan Beaumont - Main Proof and Appendices
- ID 20 Alan Beaumont - Rebuttal Rebuttal Proof and Appendices
- ID 21 Andrew Winstone – Main Proof
- ID 22 Andrew Winstone – Main Appendices
- ID 23 Andrew Winstone – Rebuttal Proof - Housing
- ID 24 Andrew Winstone – Rebuttal Proof - Planning
- ID 25 Andrew Winstone – Counter Rebuttal Proof - Housing
- ID 26 Paul Harris – Proof and Appendices

### **Bredon Parish Council Evidence**

- ID 27 Opening Submissions
- ID 28 Closing Submissions
- ID 29 Cllr Alison Palmer Proof, Appendices and Statement of Case

### **Interested Persons Evidence**

- ID 30 Kate Aubury - Proof and Appendices
- ID 31 Paul Whitehead - Proof and Appendices
- ID 32 Phil Handy – Quoted Extract

**CORE DOCUMENTS**

**CD 1 - National Planning Policy Documents**

CD 1.1	National Planning Policy Framework (March 2012)
CD 1.2	Planning Practice Guidance (March 2014), including the following sections:
	<ul style="list-style-type: none"> <li>• Appeals</li> <li>• Natural Environment</li> <li>• Conserving and enhancing the historic environment</li> <li>• Design</li> <li>• Determining a planning application</li> <li>• Housing and economic land availability assessment</li> <li>• Travel plans, transport assessments and statements in decision-taking</li> </ul>

**CD 2 – Local Planning Policy Documents**

CD 2.1	Wychavon District Local Plan (June 2006)
CD 2.2	Developer Contributions for Education Facilities Supplementary Planning Document (April 2007)
CD 2.3	Affordable Housing Supplementary Planning Guidance (November 2002)
CD 2.4	Developer Contributions Towards Service Infrastructure Supplementary Planning Guidance (October 2003)
CD 2.5	Wychavon Residential Design Guide Supplementary Planning Document (September 2010)
CD 2.6	Bredon Village Design Statement 2011
CD 2.7	South Worcestershire Development Plan Proposed Submission Document (January 2013)
CD 2.8	<p>South Worcestershire Development Plan Examination: Schedule of ERRATA to Schedule of Proposed Modifications South Worcestershire Councils - Version considered by South Worcestershire Councils on 30th September 2014, including:</p> <p>SWDP Proposed Modifications - Cover Reports  Appendix 1 - Schedule of Proposed Modifications (October 2014)  Appendix 2 - Sites not carried forward as Proposed Modifications  Appendix 3 - Proposed Consultation Programme</p>

CD 2.9	Stage 1 of the Examination of the South Worcestershire Development Plan: Inspector's Interim Conclusions on the Stage 1 Matters (October 2013)
CD 2.10	Stage 1 of the Examination of the South Worcestershire Development Plan: Inspector's Further Interim Conclusions on the Outstanding Stage 1 Matters (31st March 2014)
CD 2.11	Wychavon Local Development Scheme 2014-17 (30 <sup>th</sup> September 2014)
CD 2.12	Wychavon Five Year Housing Land Supply (July 2014)
CD 2.13	Review of Wychavon Five Year Housing Land Supply - DLP Consultants (July 2014)
CD 2.14	Droitwich Spa Local Housing Market Assessment (February 2013) GL Hearn
CD 2.15	Wychavon Planning Committee Report 9 October 2014
CD 2.16	Progress Report on Wychavon Five Year Housing Land Supply (October 2014)
CD 2.17	South Worcestershire Councils South Worcestershire Development Plan Objective Assessment of Housing Need January 2014, Amion Consulting Limited
CD 2.18	Village Facilities and Rural Transport Study (December 2012)
CD 2.19	Wychavon District Local Plan Saving Letter (May 2009)
CD 2.20	Hereford and Worcester Minerals Local Plan (relevant policies)
CD 2.21	Natural England: National Character Area Profile 106: Severn and Avon Vales 2012
CD 2.22	Worcestershire County Council Landscape Character Assessment Supplementary Guidance (August 2012)
CD 2.23	Guidelines for Landscape and Visual Impact Assessment (second edition). - The Landscape Institute and Institute of Environmental Management and Assessment

### **CD 3 – Appeal Decisions / High Court Judgements**

CD 3.1	Appeal Decision - Land between Leasowes Road and Laurels Road, Offenham (Appeal Ref: APP/H1840/A/13/2203924)
CD 3.2	Appeal Decision – Land at Stonebow Road, Drakes Broughton (Appeal ref APP/H1840/A/14/2218149)
CD 3.3	Court Judgement – Anita Colman v S of S et al (May 2013)

CD 3.4	Court Judgement – Wainhomes v S of S et al (March 2013)
CD 3.5	Appeal Decision – Site at land east of Bloxham Road, Banbury (Appeal ref APP/C3105/A/12/2178521)
CD 3.6	Court Judgement – Stratford on Avon DC v S of S et al (July 2013)
CD 3.7	Court Judgement – Tewkesbury BC v S of S et al (February 2013)
CD 3.8	Court Judgement – Hunston Properties Ltd. and another v St Albans City and District Council (December 2013)
CD 3.9	Court Judgement – The Queen (on the application of Hampton Bishop Parish Council & Herefordshire Council (July 2014)
CD 3.10	Court Judgement – Lark Energy Limited v (1) Secretary of State for Communities and Local Government (2) Waveney District Council
CD 3.11	Court Judgement – South Northamptonshire Council v Secretary of State for Communities and Local Government and Barwood Land and Estates Limited (March 2014)
CD 3.12	Court Judgement – South Northamptonshire Council v Secretary of State for Communities and Local Government and Barwood Homes Limited (March 2014)
CD 3.13	Court Judgement – South Northamptonshire Council v Secretary of State for Communities and Local Government (December 2013)
CD 3.14	Court Judgement – Bloor Homes East Midlands Limited v Secretary of State for Communities & Local Government & Hinckley & Bosworth Borough Council (March 2014)
CD 3.15	Court Judgement – Andrew Bagshaw & Shirley Carroll v Wyre Borough Council (February 2014)
CD 3.16	Court Judgement – R (on the application of Tesco Stores Ltd) v Forest of Dean District Council (October 2014)
CD 3.17	Court Judgement - William Davis Ltd. and another v Secretary of State for Communities and Local Governments and another (October 2013)
CD 3.18	Court Judgement – Gallagher Estates Ltd. and another v Solihull Metropolitan Borough Council (April 2014)
CD 3.19	Court Judgement – R (on the application of Ash Parish Council) v Guildford Borough Council (November 2014)
CD 3.20	Court Judgement Dartford Borough Council v (1) Secretary of State for Communities and Local Government (2) Landhold Capital Limited (June 2014)
CD 3.21	Appeal Decision – Land to the south of Mallory Road, Bishops Tachbrook, Warwickshire (Appeal Ref: APP/T3725/A/14/2216200)
CD 3.22	Court Judgement – R (on the application of Cheshire East Council) v Secretary of State for Communities and Local Government
CD 3.23	Appeal Decision - Land surrounding Sketchley House, Watling Street, Burbage, Leicestershire (Appeal Ref: APP/K2420/A/13/2208318)
CD 3.24	Appeal Decision – Land between Ashflats Lane and A449 Mossdit, Stafford (Appeal Ref: APP/Y3425/A/14/2217578)

#### **CD4 – Application Documents**

CD 4.1	Application Plans
CD 4.2	Application Documents
CD 4.3	Planning Committee Report dated October 2013 and Committee Update Report

#### **CD5 – Other CDs**

CD 5.1	Statement of Common Ground
CD 5.2	Wychavon Committee Reports (2014)
CD 5.3	Housing and Growth – Ministerial Statement (September 2012)
CD 5.4	Laying the Foundations – A Housing Strategy for England (November 2011)
CD 5.5	Standing Advice Species Sheet – Bats – Natural England
CD 5.6	Standing Advice Species Sheet – Great Crested Newts – Natural England
CD 5.7	Standing Advice Species Sheet – Eurasian Otter/Great Crested Newts – Natural England
CD 5.8	Schedule of Species
CD 5.9	Water Management SPD
CD 5.10	Species Record within 1Km
CD 5.11	
CD 5.12	Wychavon Sub Area Housing Trajectory
CD 5.13	
CD 5.14	Priority Habitat Descriptions and Locations