



Appeal Decisions

Hearing Held on 10 November 2020

Site visit made on 12 November 2020

by G Rollings BA (Hons) MAUD MRTPI

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

Decision date: 4th January 2021

Appeal A Ref: APP/H1840/W/19/3244074

Land to the Rear of Barlwyth Cottage, Hill Furze, Fladbury, Worcestershire, WR10 2NB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Rob Newman against the decision of Wychavon District Council.
 - The application Ref 19/01058/FUL, dated 1 May 2019, was refused by notice dated 4 July 2019.
 - The development proposed is conversion of existing former transport haulage buildings into 1 No. 2 bedroom dwelling and 2 No. 3 bedroom dwellings and the erection of a new self-build live/work unit together with ancillary works.
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Appeal B Ref: APP/H1840/W/20/3257218

Land to the Rear of Barlwyth Cottage, Hill Furze, Fladbury, WR10 2NB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Rob Newman against the decision of Wychavon District Council.
 - The application Ref 20/00767/FUL, dated 20 April 2020, was refused by notice dated 18 June 2020.
 - The development proposed is conversion of existing former transport haulage buildings into 1 No. 2 bedroom dwelling and 2 No. 3 bedroom dwellings, new garages and ancillary works.
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Decisions

1. **Appeal A** is allowed and planning permission is granted for conversion of existing former transport haulage buildings into 1 No. 2 bedroom dwelling and 2 No. 3 bedroom dwellings and the erection of a new self-build live-work unit together with ancillary works at Land to the Rear of Barlwyth Cottage, Hill Furze, Fladbury, Worcestershire, WR10 2NB in accordance with the terms of the application, Ref 19/01058/FUL, dated 1 May 2019, subject to the conditions listed in Annex 1, attached to this letter.
2. **Appeal B** is dismissed.

Application for Costs

3. Prior to the Hearing, an application for costs was made by Mr Rob Newman against Wychavon District Council. This application is the subject of a separate Decision.

Procedural Matter

4. The Local Plan is at an early stage of review and consequently I have given the emerging policies limited weight in my decision.

Background and Main Issues

5. The wholly residential elements of the two appeal schemes are similar in nature, including their layout, siting and appearances. Appeal A incorporates a live-work building proposed as a self-build scheme. Appeal B substitutes garages in place of the live-work building, together with alterations to the site layout in terms of parking arrangements. Different reasons were given by the Council in its refusals of both schemes.
6. The main issues are:
 - In respect of Appeal A only, whether the proposal would be appropriately located, with particular regard to its proximity to facilities and services;
 - In respect of Appeal A only, the effect of the proposed development on the local supply of self-building housing;
 - In respect of both appeals, whether appropriate provision has been made for the change of use, with particular regard to marketing of the site for employment uses;
 - In respect of both appeals, the effect of the proposals on protected species.

Reasons

Location

7. The site of the appeals is in a rural location in open countryside, outside defined settlement boundaries, but is amongst a small cluster of dwellings. Although mostly unused in recent years, the site previously operated as a haulage depot and is previously developed land, and the proposals would reuse existing buildings. As such, the Council has not objected to the 'in principle' redevelopment of the site for the purposes of housing, with regard to its location. The reason for refusal corresponding with this main issue is limited to the live-work element of the proposal, and is therefore only relevant to Appeal A.
8. Planning policy within Wychavon is directed by the joint *South Worcestershire Development Plan* (2016) (SWDP), of which Policy SWDP 4 requires proposals to demonstrate that development will minimise demand for travel and offer sustainable travel choices, amongst other considerations. Considering the site's location relevant to the nearest main settlements and the routes thereto, it is not sustainably located for reasonable access to local shops and services for any mode other than private vehicles. As such, the proposal would not offer sustainable travel choices in accordance with Policy SWDP 4.
9. The proposed live-work use would have four staff working on site, of which two already work at the adjacent cottage where the proposed occupier is presently based, with the others to work on a part-time basis. Around four visitors a week would be expected to visit the site, on pre-booked visits. The proposed dwellings, of which two would be large enough to house families, would generate their own traffic and as such the proposed number of new trips

generated by the live-work element of the proposal would represent only a modest proportion of overall journeys to and from the site. As such, the harm generated solely by the live-work element of the Appeal would be limited.

10. Whilst the previous use of the site could have generated more numerous and heavier vehicle movements, this ceased some years ago with the site since remaining disused, and I am not persuaded that there would be a realistic prospect of such a use resuming were the appeal to fail. Accordingly, I have given only limited weight to this consideration.
11. Nonetheless, the appeal proposal would conflict with Policy SWDP 4, and I therefore conclude that in respect of Appeal A, the proposed development would not be appropriately located, with particular regard to its proximity to facilities and services.

Self-build housing

12. The live-work building, part of Appeal A only, is proposed as a self-build structure. The Council does not have any adopted policies relating to self-build development. The Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016) places a responsibility on Local Planning Authorities to provide enough permissions to meet the demand for self-build and custom housing.
13. In a recent appeal decision¹, the Inspector found that notwithstanding the Council's methodology in calculating the self-build register entries, there was insufficient supply to meet the demand for this form of development. The Council has revised its methodology and, since the determination of that appeal, we have moved into the next base period. Although there remains some disagreement between the main parties over the number of entries on the Council's self-build register, the discrepancy is minor and the cumulative demand from the first two base periods is between 44 and 48 plots.
14. The Council's November 2020 *Self-Build and Custom Housebuilding Register Progress Report* indicates that it has granted permission for 25 self-build and custom housebuilding plots. These are mostly part of larger permissions, but there is clearly some unmet demand for plots. The single plot that would be provided as part of the Appeal A proposal would have only a small impact on the shortfall but would nonetheless be beneficial in assisting the Council to meet its provision responsibility.
15. A completed Unilateral Undertaking has been provided by the appellant to bind the construction of the live-work unit as a self-build structure. This complies with the statutory tests and I am satisfied that it would provide sufficient assurance in binding the self-build method of construction.
16. I therefore conclude that in respect of Appeal A, the proposed development would have a positive effect on the local supply of self-build housing.

Marketing

17. As an existing (or former) employment site, Local Plan Policy SWDP 12 is relevant. Criterion B requires proposals to change the use of such sites from employment-generating purposes to undergo marketing for at least twelve

¹ Appeal Ref: APP/H1840/W/19/3241879; Decision date: 23 July 2020.

months, with more specific requirements set out in Annex F of the Plan. These requirements relate to both Appeals, and I shall examine the criteria in turn.

18. At the time of its decision on the Appeal A application, the Council considered that the required period of marketing had not been fulfilled, amongst other concerns. However, the period had been completed at the time of the decision on the Appeal B application. Given that the marketing period for the property spanned both the assessment period of the both applications, I am satisfied that the time compliance requirements have now been met.
19. I acknowledge the appellant's point that potential rental prices were flexible and offered potential for negotiation. This is against a background of competition for ex-employment sites within the area and the access constraints of the appeals site. However, in the absence of specific information, I am not able to assess the compliance with criterion B of Annex F.
20. Marketing information in compliance with criterion C has been provided. I have taken into account the advice of Annex F that a flexible approach to the marketing exercise can be undertaken by the decision-maker, given the local conditions. I appreciate that the aforementioned factors, together with the poor condition of the existing buildings and constraints on their conversion for a commercial return, limits their attractiveness to occupiers. Nonetheless, the Council's requirements are clear and I share its concerns regarding the offer of a high fixed 'whole property' price and an absence of information setting out information such as rent relief, for example.
21. Despite the shortcomings of the marketing exercise, the Appeal A proposal would remain an employment-generating capability, and as such, I place only limited weight on the need for the exercise. The absence of such a retained use within the Appeal B leads me to a different conclusion.
22. I therefore conclude, in respect of Appeal A, that appropriate provision has been made for the change of use, and that there is no conflict with SWDP Policies SWDP 2 and SWDP 12. Together, these require appropriate retention and development of employment sites in open countryside, amongst other considerations.
23. In respect of Appeal B, I conclude that appropriate provision has not been made for the change of use, with particular regard to marketing of the site for employment uses, and that the proposal conflicts with SWDP Policies SWDP 2 and SWDP 12.

Protected species

24. In both of its decisions, the Council provided different reasons for refusal relating to the developments' impacts on protected species. Additional survey work was undertaken since the Council's refusal of the first application, and this main issue relates to Appeal A and Appeal B.
25. Two bat species were identified as having daytime roosting and feeding habitats in the existing brick barn. Circular 06/2005² requires me to have regard to three tests considered by Natural England with regard to species licensing.

² Office of the Deputy Prime Minister Circular 06/2005: *Biodiversity and geological conservation – statutory obligations and their impact within the planning system*, 16 August 2005.

26. The conversion of the single-storey brick barn would ensure the future use of the building, which is in a poor state and likely subject to further habitat degradation if remaining undeveloped. The proposed conversion would result in disturbance to the roosts. Although there is no evidence to suggest that the species were present in the building when it was previously occupied, it is possible that any 'bad neighbour' use generating noise and disturbance, such as that which previously operated from the site, could also lead to degradation. A potential commercial occupier could consider occupation of the building by bats as a constraint, and given the site's limitations as set out in the previous section, I acknowledge that the addition of a cohabitation requirement may have further decreased viability for any possible occupier. The alternative 'do nothing' approach of allowing the building to continue to degrade and eventually fail is not preferable to providing an assured, secure habitat. The requirements of the first and second tests are satisfied.
27. The provision of alternative habitat within the proposed live-work or garage buildings in Appeals A and B respectively would provide satisfactory spaces and separation from the uses to be appropriate. Appropriate replacement nesting and breeding sites for the swallows and other birds observed during the biodiversity surveys will also be provided. The action proposed would not be detrimental to the maintenance of the species, and the requirements of the third test are satisfied.
28. Although appropriate surveys have been undertaken for the purposes of planning permission, their age may require further work to be undertaken in preparation for European Protected Species Licensing. Nonetheless, regarding this main issue, I find that in respect of both Appeals, the effects of the proposals on protected species would not result in unreasonable harm. There would be no conflict with SWDP Policy SWDP 22, which requires development to have regard to protected species and mitigate against any loss of favourable conditions, amongst other considerations.

Other issues

29. Several matters were raised by other interested parties. I acknowledge the concerns put to me, particularly with the potential for additional traffic, noise and disturbance, site drainage and road conditions. Considering the previous use of the site and any potential commercial replacement use, the impacts from the proposals in these appeals would be lesser in scale. Any other potentially detrimental impacts can be mitigated through planning conditions.
30. Examples of previous appeal decisions were provided by both main parties and I have considered these where the circumstances of the particular case were of suitable relevance to the appeals before me.

Planning Balance

31. I shall examine the merits of each of the Appeals in turn.
32. The Council does not currently have adopted policies regulating the provision of self-build housing, which is a component of Appeal A. I have had regard to the paragraph 11d requirement of the *National Planning Policy Framework* (2019) (the Framework) in granting permission where there are no relevant development plan policies, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against

the Framework as a whole. I found that there would be some harm with regard to the proposal's location in the countryside, although this would be limited, and that there would be an absence of harm with regard to the change of use. The new building would provide some biodiversity benefits in providing an assured future habitat for protected species, but this is countered by the disturbance that would occur to the current bat roosts and is therefore a neutral factor in my balance.

33. A further consideration is the condition of the existing buildings, which is not considered as part of the main issues, but was discussed at the Hearing. Residential conversion secures an assured future use for the existing buildings. The viability of conversion for potential business uses is unknown, but given market rental values, is likely to be lower than that of residential uses, and thus an assured future for the buildings is not guaranteed. The retention of a business use within the Appeal A proposal is also a factor of beneficial weight.
34. The provision of one self-build unit would be of some beneficial value, albeit minimal, but would nonetheless assist the Council in reconciling the supply shortfall for self-build housing. In balancing the total benefits against the harm with regard to the location of the development, this harm is not significantly and demonstrably outweighed by the benefits. Appeal A therefore succeeds.
35. In the absence of a self-build component in Appeal B, the balancing requirement of Framework paragraph 11d is not engaged. The benefits from the retention of the buildings, together with an absence of harm in regard to biodiversity, are similar to those of Appeal A. However, as a wholly residential proposal, I have found that appropriate provision has not been made with regard to the change of use, and moreover the change of use of this employment site would result in harm which is not outweighed by the benefits of the scheme. Accordingly, Appeal B does not succeed.

Conditions

36. Conditions were agreed by the main parties in the Statement of Common Ground, with the exception of Condition No. 14 as listed in Annex 1, which was suggested by the parties at the Hearing. I have assessed them against the tests set out in the Planning Practice Guidance (PPG)³. Condition No. 2 is included for the absence of doubt, and Nos. 3 and 15 to both protect the living conditions of nearby occupiers and in the interests of highway safety. Nos. 4 and 17 are necessary to ensure that the proposed development contributes to the conservation and enhancement of biodiversity at the site and in the wider area. No. 5 has been applied to ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other off-site receptors.
37. Condition Nos. 6, 8, 9, 12 and 16 are included in the interests of preserving the character and appearance of the area, and additionally for reasons of biodiversity (No. 8) and highway safety (No. 9). No. 7 is included to preserve highway safety. Nos. 10, 13 and 14 are required to ensure that the development is environmentally sustainable, with No. 13 also applied for the acceptable management of drainage and waste water. Conditions 16 and 17

³ PPG reference ID: 21a-003-20190723; revision date: 23 07 2019.

include permitted development restrictions, but taking into account the floorspace ratio of the live-work unit and the biodiversity considerations, these exceptional circumstances warrant their inclusion.

38. A Unilateral Undertaking has been provided to provide a covenant for the construction of the live-work unit as a self-build dwelling, together with its initial occupation. The suggested condition requiring similar is therefore unnecessary and has not been applied.

Conclusion

39. For the reasons given above I conclude that **Appeal A** should be allowed.

40. For the reasons given above I conclude that **Appeal B** should be dismissed.

G Rollings

INSPECTOR

(Annexes follow.)

ANNEX 1 – LIST OF CONDITIONS, APPEAL A.

- 1) The development hereby permitted shall begin no later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 993 01; 993 07; 993 08; 993 09; 993 15; 993 16b; 993 17b.
- 3) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - a) measures to ensure that vehicles leaving the site do not deposit mud or other detritus on the public highway;
 - b) details of site operative parking areas, material storage areas and the location of site operatives' facilities (offices, toilets etc);
 - c) the hours that delivery vehicles will be permitted to arrive and depart, and arrangements for unloading and manoeuvring which must be accommodated within the site;
 - d) details of any temporary construction accesses and their reinstatement; and
 - e) details of any boundary hoarding which must be set back clear of visibility splays.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 4) No development shall take place until a detailed ecological mitigation and enhancement scheme, which shall be based on the conclusions and recommendations set out in section 5 of the Countryside Consultants Ltd Bat Survey dated October 2019, has been submitted to and approved in writing by the Local Planning Authority. The measures so approved shall be carried out thereafter and retained on site.
- 5) Unless otherwise agreed by the Local Planning Authority development, other than that required to be carried out as part of an approved scheme of remediation, must not commence until the following parts a) to f) have been complied with:
 - a) A preliminary risk assessment must be carried out. This study shall take the form of a Phase I desk study and site walkover and shall include the identification of previous site uses, potential contaminants that might reasonably be expected given those uses and any other relevant information. The preliminary risk assessment report shall contain a diagrammatical representation (conceptual model) based on the information above and shall include all potential contaminants, sources and receptors to determine whether a site investigation is required and this should be detailed in a report supplied to the Local Planning Authority. The risk assessment must be approved in writing before any development takes place.
 - b) Where an unacceptable risk is identified a scheme for detailed site investigation must be submitted to and approved in writing by the Local Planning Authority prior to being undertaken. The scheme must be designed to assess the nature and extent of any contamination and must be led by the findings of the preliminary risk assessment. The investigation and risk

assessment scheme must be compiled by competent persons and must be designed in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Contaminated Land, CLR11".

c) Detailed site investigation and risk assessment must be undertaken and a written report of the findings produced. This report must be approved in writing by the Local Planning Authority prior to any development taking place. The investigation and risk assessment must be undertaken by competent persons and must be conducted in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Contaminated Land, CLR11".

d) Where identified as necessary, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to identified receptors shall be submitted to and approved in writing by the Local Planning Authority in advance of undertaking. The remediation scheme must ensure that the site will not qualify as Contaminated Land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

e) The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development, other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority.

f) Following the completion of the measures identified in the approved remediation scheme, a validation report that demonstrates the effectiveness of the remediation carried out shall be submitted to and approved in writing of the Local Planning Authority prior to the occupation of any buildings.

In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where necessary a remediation scheme must be prepared, each of which will be subject to the approval in writing by the Local Planning Authority. Following the completion of any measures identified in the approved remediation scheme, a validation report shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of any buildings.

- 6) No building operations shall commence until details of the materials to be used in the conversion of the barns or construction of the external surfaces of the live-work unit hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The details to be submitted shall include:

a) type, colour, texture, size, coursing, finish, jointing and pointing of brickwork/stonework;

b) type, colour, texture, size and design of roofing materials; and

c) details of external doors and windows including information on finish.

The development shall be carried out using the materials as approved and retained in that form thereafter.

- 7) The development hereby approved shall not be occupied until an area has been laid out within the curtilage of each dwelling for the parking and turning

of cars in accordance with County standards. The parking and turning areas shall thereafter be retained for the purpose of vehicle parking only.

- 8) Before the first use/occupation of the development hereby permitted a scheme of landscaping shall be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall include:
- a) a plan(s) showing details of all existing trees and hedges on the application site. The plan should include, for each tree/hedge, the accurate position, canopy spread and species, together with an indication of any proposals for felling/pruning and any proposed changes in ground level, or other works to be carried out, within the canopy spread.
 - b) a plan(s) showing the layout of proposed tree, hedge and shrub planting and grass areas.
 - c) a schedule of proposed planting - indicating species, sizes at time of planting and numbers/densities of plants.
 - d) a written specification outlining cultivation and other operations associated with plant and grass establishment.
 - e) a schedule of maintenance, including watering and the control of competitive weed growth, for a minimum period of five years from first planting.

All planting and seeding/turfing shall be carried out in accordance with the approved details in the first planting and seeding/turfing seasons following the completion or first occupation/use of the development, whichever is the sooner. The planting shall be maintained in accordance with the approved schedule of maintenance.

Any trees or plants which, within a period of five years from the completion of the planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 9) The development hereby permitted shall not be occupied/first used until details of a precise specification of the proposed materials for the hard landscaping of the site (including roads, paths, parking areas and other hard surfaces) are submitted to and approved in writing by the Local Planning Authority. The hard landscaping of the site shall be completed before the first use/occupation of the development hereby permitted. Development shall be carried out in accordance with the approved details.
- 10) Prior to the occupation of the live-work unit hereby permitted, details of renewable or low carbon energy generating facilities to be incorporated as part of the live-work building shall be submitted to and approved in writing by the Local Planning Authority. The details shall demonstrate that at least 10% of the predicted energy requirements of the development will be met through the use of renewable/low carbon energy generating facilities. The approved facilities shall be provided prior to any part of the development hereby permitted being first occupied, or in accordance with a timetable submitted to and approved by the Local Planning Authority as part of the details required by this condition.
- 11) The work element floorspace of the live-work unit hereby permitted shall be finished ready for occupation before the residential floorspace is occupied and the residential use shall not precede commencement of the business use. The

business floorspace of the live-work unit shall not be used for the sale of goods to visiting members of the public or for any use falling within Use Classes A3, A4, A5, B2, C1 or C2 as defined under the Town and Country Planning (Use Classes) Order 2015, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification. The residential floorspace of the live-work unit shall not be occupied other than by a person solely or mainly employed, or last employed in the business occupying the business floorspace of the associated unit, a widow or widower of such a person, or any resident dependants.

- 12) The development hereby permitted shall not be occupied/first used until details of the facilities for the storage of refuse for it has been submitted to and approved in writing by the Local Planning Authority. The storage facilities so approved shall be retained thereafter.
- 13) The development hereby permitted shall not be occupied/first used until full details of all foul and surface water drainage systems to serve the development have been submitted to and approved in writing by the Local Planning Authority. The approved drainage works shall be implemented in accordance with the approved details before the first occupation/use of the development hereby permitted and shall be retained thereafter.
- 14) The development hereby permitted shall not be occupied/first used until written and illustrative details of the number, type and location of electric vehicle charging points have been submitted to and approved in writing by the Local Planning Authority. The charging points shall be maintained and kept in good working order thereafter.
- 15) Demolition, clearance or construction work and deliveries to and from the site in connection with the development hereby approved shall only take place between the hours of 08.00 and 18.00 Monday to Friday and 08.00 and 13.00 on a Saturday. There shall be no demolition, clearance or construction work or deliveries to and from the site on Sundays or Bank Holidays.
- 16) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any order revoking, re-enacting, substituting, amending, extending, consolidating, replacing or modifying that Order), no additions, extensions or external alterations, new windows or other openings, building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwelling house other than those expressly authorised by this permission shall be constructed/carried out on the application site following the completion/first use of the development hereby permitted.
- 17) Before the development hereby permitted is first occupied/used, details of any external lighting to be provided in association with the development shall be submitted to and approved in writing by the Local Planning Authority. The details shall include times when the external lighting will not be switched on. Only external lighting in accordance with approved details shall be provided on the application site. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order with or without modification) there shall be no other external lighting provided on the application site.

ANNEX 2 – APPEARANCES

FOR THE APPELLANT:

Rob Newman	Appellant
Lesley Newman	

Neil Pearce BA(Hons) DipTP MRTPI	Agent
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FOR THE LOCAL PLANNING AUTHORITY:

Gavin Greenhow BA MA MRTPI	Development Control
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Denise Duggan BSc MRTPI	Planning Policy
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Reiss Sadler BSc MA	Planning Policy
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ANNEX 3 – DOCUMENTS SUBMITTED AT THE HEARING

- 1: *SWDP Authorities Monitoring Report*, December 2019.
- 2: Wychavon Self-Build and Custom Housebuilding Register form letters dated 30 May 2017 and 15 June 2017.
3. Email discussion between the main parties referring to self-build housing supply.
4. *Wychavon District Self-Build and Custom Housebuilding Register Progress Report(s)* dated December 2019, December 2019 (August 2020 minor update), and November 2020.