

15/0624/OUTL – Vale Road Car Park, Stourport-on-Severn  
Comments received from Objectors Solicitor.  
Officer Comments are provided below each point.

1. **Development Plan:** the starting point remains the allocation. At 4.11 you say that the reasoned justification *'does not carry as much weight as if it is included within the policy'*. You say this in the context of the point about retention of spaces. What s38(6) says is that decisions are to be taken in accordance with 'the plan'. You are recommending members to take a decision that is not in accordance with the plan, and the question therefore is the weight to be attached to 'other material considerations', rather than any issue as to weight in respect of the plan itself. I appreciate that there is a separation of policy and justification, but that does not go to the matter of 'weight'. The justification is an explanation of the policy. Both the policy and the justification are part of the plan. But it is the policy itself which requires any reduction to be 'fully justified'. That is an indication of the importance of the policy in its overall context.

[Officer Comment – Whilst the policy and the justification form part of the plan, in line with the judgement *R (Cherkley Campaign Ltd) v Mole Valley District and another (2014)*, the justification cannot introduce a new requirements over and above the policy and should not be read as policy. The consideration is indeed on the justification put forward as required by the Policy. It is not accepted that the proposal is not in accordance with the plan]

2. **How is the reduction justified?**
  - a. Your report, at 4.7, suggests that financial aspects *'have been challenged and defended'*; but it then goes on to say both *'This is a matter for the decision maker to attribute weight as it sees fit'*, and *'Based on the foregoing it is considered that limited weight should be afforded to the financial aspects of the case'*. I would want to be absolutely clear on this. The financial viability of the car park are not a material consideration here in any sense at all. Applying even *'limited weight'* to them would be an error of law. Evidentially, the absence of inclusion of the free-time usage means that no conclusion can be drawn on usage from the financial statistics. Your report continues to give significant prominence to the financial matters. This is an application by the council to itself. Great care needs to be taken to ensure that the planning committee looks at this matter purely on planning grounds. Unless the committee is advised that it must exclude financial considerations altogether, my advice to my clients would be that a decision to grant the permission would be legally flawed. The main reason for that advice is that the policy is one that is put forward as a highway safety and vehicle usage matter (6.14), in a part of the plan pertaining to climate change, although there is also mention of visual issues. The financial merits or viability of an existing use are not generally regarded as a material consideration; nor is the financial benefit or disbenefit to a council; in any event, there is clear evidence here that the charging regime is itself reducing the usage (as you report on page 9). It is therefore important that you make clear the need to exclude the financial issues altogether

[Officer Comment – It is agreed that the financial benefit or dis-benefit to the Council are not a material consideration. The rebuttal given by the Applicant was in response to point raised by the objectors and reference to this is included in paragraph 4.7. The considerations of the financial aspects were weighted in respect of the usage of the car park and it does not provide a full picture, hence limited weight is attached. It is appreciated some additional clarification would be helpful and this will be provided on the Addenda & Corrections Sheet.]

- b. You deal with usage, at 4.8. Your conclusion is that *'based upon the evidence available at this time, I am satisfied that the car park is underused on the majority of occasions and that there is a justifiable case to develop part of the site for housing'*. This is not the right approach at all. (But it is not a conclusion open to you on the evidence before you, since you have misstated the evidence of the November survey.) The question is not as to the evidence produced: the policy requires a proposal for reduction to be *'fully justified'*. Sufficient evidence must therefore be brought forward. Taken at its highest, you have a survey from May 2015, and a survey from November and December. None of this work can be described as being sufficient to assess the degree of usage. Both groups of survey were carried out on the basis of snapshot visits, at differing times of the days in question. You have other evidence from local people testifying to their perception of usage which directly conflicts with the statistics produced by the applicant officers. The committee must be advised that in the absence of a proper survey to assess the need for the car park throughout the year and during all parts of the day and night, or at least during the busiest times of the year, any decision that concluded that the required level of justification had been produced will be compromised. A vehicle count is not difficult to administer. The applicant officers have simply failed to do what is necessary under planning policy. The application should be refused unless and until a proper survey is carried out, at least to demonstrate usage during what the local residents have affirmed are the busiest times of the year. The contrary evidence supporting the absolute need for a broader survey includes the following general points.

[Officer Comment – It has been clarified that the survey referred to was not provided to the Council at the time the report was written. The survey data has now been combined with all the survey data available to the Council both collected by Officers and objectors, which will be provided to Members in advance of the Meeting. A correction of the data presented in 4.8 will be provided on the Addenda & Corrections Sheet. Officers have considered the usage based on the data collected and received and concluded that the applicants case is justified in line with the Policy context.]

- i. The sheer number of residents who have signed the petition or commented on the application is a demonstration of the social value of the car park. One resident reports to you that the car park is *'often full'*, another that *'on Fridays Saturdays and Sundays the car park is often full or almost full especially in the summer when Stourport has many tourists at the weekend as you know'*

[Officer Comment – It is worthy of note that the petition received by Council was in respect of Local Plan. The comments made by residents are dealt with at paragraph 4.9]

- ii. The evidence includes recognition that car parking is important to the tourist economy; but that economy is not at its most vibrant in May or October/November, so that the survey misses these important times of the year.

[Officer Comment – There is no evidence to suggest that Vale Road car park is important to the tourist economy]

- iii. The Vale Road car park remains dry when other car parks are flooded

[Officer Comment – There are a number of other car parks within Stourport that remain dry during times of flood. There is no evidence that those car parks do not provide sufficient parking at times of flood]

- iv. Some of the support comes from the business community. 6.17 of the reasoned justification to the plan affirms that car parks are a '*key component of a modern town centre economy*'. The businesses, which our clients have reported to us from their own informal consultation, which consider that the loss of the parking area would have an adverse impact are : Cutting Room; Phipps and Pritchard; CleanCall; Eric Jon (their own car park is too small they say); Tom and Ray's Pets Corner; Bentleys; All Occasions; Gough's; Holland and Barrett; Thomson's Bakery. As we understand matters they have not been formally consulted by the Council. Without formal consultation with the business community, the applicant's approach cannot be said to have shown that the proposal is '*fully justified*'

[Officer Comment – The Local Planning Authority have carried out consultation by way of direct letter notification, site notices and press notice. The matter has also been widely reported by the press. The Council have not received letters of objection from any of the businesses listed

- v. It would be surprising therefore if the business community did not value the car park provision. But the weight to be attached to that support should be significant because of this.

[Officer Comment – Again the Local Planning Authority can only attribute weight to the matters raised.

- vi. The use by parishioners at St Wulstan's church is noted as an important matter; the church is part of the social fabric of the town, and serves a widespread community, many of whom do come to it by car. The May survey picks up one Sunday morning, and shows a greater need than the intended future provision: but there is no indication as to the time of day of the only other Sunday snapshot, so nothing to confirm whether that was in fact during service times at the church.

[Officer Comment – Survey data collected was at differing periods of the day in order to get a true reflection of typical usage]

- vii. No weight has been attached to the previous decisions taken by the Council to grant permissions expressly on the basis of the level of parking available at this site.

[Officer Comment – this matter is dealt with a paragraph 4.10 of the report]

- viii. The reliance on the Tesco car park is misplaced since that car park is for customers only as well as being for only limited periods of usage.

[Officer Comment – Parking is allowed on the Tesco car park for sufficient time to be able to access the Town Centre]

- c. You conclude at 4.9 that *'the proposals do not remove the car park in its entirety, leaving a number of spaces that reflect typical usage'*, and in 4.11 that the policy is not intended to retain *'underused'* parking indefinitely; however that conclusion is not open to you, in that typical usage is not demonstrated by the evidence before you, and neither can you provide any basis for saying that the parking is *'underused'*.

[Officer Comment – The data before the Local Planning Authority shows that that car park is underused and provides average usage allowing a conclusion that the car park is underused when looking at the entire car park.]

- d. You have misreported the survey evidence. You record (4.8) that peak usage was 51 on 2<sup>nd</sup> November, but the objector's survey for that day shows that the car park was *'full'*, that is to say, there were 72 vehicles present. You also record that there were only 3 occasions when the 26 number were exceeded, but in fact the survey (which we attach for ease of reference) shows 11 such occasions. The number of occasions when the number 24 was reached or exceeded is 16, that is to say, the majority of occasions covered by the survey. We would also point to the photographs attached which demonstrate pictorially the usage; they include photographs of the church parking area, demonstrating that that was full on occasions too

[Officer Comment – As stated previously there has been no misrepresentation of data, as the survey data referred to was not provided to the Local Planning Authority previously, this will be provided to Councillors along with the other data.. Reference to the additional survey data, shows there is only one occasion when the car park has been full which was Sunday 1<sup>st</sup> November (not 2<sup>nd</sup> November as stated above).

- e. There is no basis for looking at a *'typical'* usage anyway: if as the evidence shows, there are occasions when the car park is full or almost full, or even as the objector's snapshot surveys show there were 16 occasions when the number of vehicles present exceeded 24, that is actually more important in terms of the need for the car park than any evidence at all as to *'average'* or *'typical'* use. The recommendation is based on an approach which cuts directly against the concept of being *'fully justified'*: watering down that policy requirement is unacceptable

[Officer Comment – Of the 65 occasions when data has been collected on 43 of those occasions the proposed 26 spaces would be sufficient and demonstrates a typical usage]

- f. You do not produce any evidence as to the net increase in parking in the town overall, referred to at 4.11 (and you include reference to a temporary car park as well); nor do you explain how you interpret *'any one area'*.

[Officer Comment – Adequate explanation is given within the report. The reference to *'one area'* is only within the justification and not the policy.

**3. Are there other material considerations?**

- a. You cite the presumption in favour of sustainable development. But in this instance there must be a comparison in order to assess the relevance of that presumption. The plan policies explain why car parking is itself a sustainable development, and the evidence shows why it is economically and socially important to the town and business and church going communities. No evaluation of those matters has been included.

[Officer Comment – The presumption in favour of sustainable development is set out within the National Planning Policy Framework and Adopted Wyre Forest Site Allocations and Policies Local Plan.

- b. You refer to the site as being ‘previously developed land’, but this is incorrect in that the definition which is now to be applied as per the NPPF includes only land previously occupied by a structure.

[Officer Comment – the site includes a toilet building which is a permanent structure. In addition the use of the site for car parking is identified as previously developed land within DCLG’s Land Use Change Statistics as part of the ‘other developed uses’ group, including car parks with the ‘unidentified general manmade surface’ category. On this basis Officers are entirely satisfied that that the site constitutes previously developed land.

**4. Additional points:**

- a. The table in the report at 3.8 is not the one supplied by the objectors, and information has been added to what was supplied to you, without any explanation; their table was different, and you need to ensure that this is corrected at the meeting

[Officer Comment – the table presented is that which was obtained by the Objectors and updated following a further FOI request.

- b. The points raised in my email to you of 15 December 2015 have not been included

[Officer Comment – The previous comments referred to a previous report and would not have provided clarity. The comments made were addressed in the revised report]

- c. There is actually lack of clarity as to how many spaces are to be retained: at some points the number given is 25, or 24-26, or 26, when in fact the only plan provided by the applicant shows no more than 24 spaces being retained.

[Officer Comment – the remaining space leaves only 24 of the existing spaces, however in order to maximise parking numbers it is intended to increase this number through using underused areas such as those allocated for recycling areas. A planning condition is recommended to enable a parking layout to be submitted. It is likely in excess of 24 spaces will be provided and hence the reference to 24-26.

- d. The council as applicant, comments at 3.9.5 that the decision to sell will not be revisited; that is noted, but the council should also note that any attempt to implement a decision based on such a flawed understanding of the car park income would also be challengeable.

[Officer Comment – The consideration of the planning application is based on the merits of the case and the Planning Committee is not the arena for consideration or re-consideration of a decision made by Cabinet]

- e. You refer at 3.9.3 to local member input, but we cannot trace any such matter on the public 'web based' file. What input has been made, and what impact has it had on the recommendation?

[Officer Comment – Local Members were made aware of the application through the Council's 'No Surprises' protocol. This is used for major applications or applications made by on land owned by the Council in order to keep Councillors informed of applications made.

- 5. **Conclusion:** as a result of the flawed character of the consideration given to different aspects of this case, the overall conclusion that the development is 'acceptable' and 'in conformity' with the plan is wholly flawed. The purported justification shown is not well founded. Any decision to adopt your recommendation would be flawed and would be challengeable in the Courts.

[Officer Comment – This is not accepted for the reasons set out previously]