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## Appeal Decisions

Hearing held on 28 April 2016

Site visit made on 23 May 2016

**by Beverley Doward BSc BTP MRTPI**

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

**Decision date: 2 December 2016**

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### **Appeal A Ref: APP/L3245/W/15/3138752**

#### **The Larches, Shawbury Road, Wem, Shropshire, SY4 5PF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Miss M Jones and F, S, P, H Ratcliff against Shropshire Council.
  - The application Ref 15/00431/OUT, is dated 28 January 2015.
  - The development proposed is described as "outline planning permission for residential development and access (all other matters reserved)."
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### **Appeal B Ref: APP/L3245/W/15/3138755**

#### **The Larches, Shawbury Road, Wem, Shropshire, SY4 5PF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Miss M Jones and F, S, P, H Ratcliff against Shropshire Council.
  - The application Ref 15/00438/OUT, is dated 29 January 2015.
  - The development proposed is described as "outline planning permission for residential development (all matters reserved)."
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## **Decisions**

### **Appeal A Ref: APP/L3245/W/15/3138752**

1. The appeal is dismissed and planning permission for residential development and access (all other matters reserved) is refused.

### **Appeal B Ref: APP/L3245/W/15/3138755**

2. The appeal is dismissed and planning permission for residential development (all matters reserved) is refused.

## **Procedural Matters**

3. The appeals relate to two adjoining fields on the north side of Shawbury Road to the south-east of Wem Town. Appeal A relates to the more southerly of the two fields which I will refer to as Site A. I will refer to the site in Appeal B which is the more northerly of the two fields as Site B.
  4. The planning applications that led to the appeals were submitted in outline form. In relation to Site A all matters other than access were reserved for future consideration whilst in relation to Site B all matters were reserved for
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future consideration. Accordingly, I have dealt with the appeals on the same basis.

5. In both cases the appeals were made on the grounds of non-determination. I have considered each proposal on its own merits. However, given that they have much in common including the same appellants and in the interests of brevity I shall deal with both appeals together. My reasoning relates to both appeals unless otherwise indicated.
6. A proposal for residential development on an area of land which included Site A was the subject of an appeal that was dismissed in May 2015<sup>1</sup>.
7. The main Hearing session on the appeals was held on 28 April 2016. However, due to the need to obtain clarification from the Council on the submitted Unilateral Undertakings (UUs) and to return to make the site visit at a later date, the Hearing remained open. It was closed in writing on 28 June 2016.
8. At the time of submitting the appeal the appellants' position was that the Council could not demonstrate a five year supply of deliverable housing land and that therefore paragraph 49 of the National Planning Policy Framework (the Framework), which states that relevant policies for the supply of housing should not be considered up-to-date if the local authority cannot demonstrate a five year supply of deliverable housing sites, was engaged. Prior to the Hearing session the appellants withdrew their evidence on housing land supply contained within the Housing Land Supply Rebuttal and Appendices and replaced it with a Housing Land Supply and Delivery Statement and Appendices dated 2 March 2016. The appellants indicated that, in the light of the findings of Inspectors on other appeals in Shropshire they were withdrawing their challenge in relation to five year land supply.
9. After the main Hearing session but before the Hearing was closed in writing the appellants submitted a copy of an appeal decision<sup>2</sup> on a site at Teal Drive, Ellesmere, Shropshire which they considered to be a material consideration in relation to the two appeals under consideration. In the Teal Drive decision the Inspector concluded that the Council could not demonstrate a five year housing land supply as required by paragraph 49 of the Framework. In the interests of fairness and natural justice the parties were given the opportunity to comment on the implications, if any, of that decision for these appeals. The Council subsequently lodged a legal challenge to the Teal Drive decision and it was quashed in the High Court on 2 November 2016. The parties were given the opportunity to comment upon whether there were any further implications for these appeals as a result of the judgment. I return to this matter below.
10. Two separate signed, dated and certified UUs relating to the provision of affordable housing were submitted before the Hearing.

### **Main Issues**

11. The main issues in this case are:

- whether the appeal proposals accord with the development strategy for the area;

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<sup>1</sup> APP/L3245/W/14/3000672

<sup>2</sup> APP/L3245/W/15/3067596

- the effect of the proposed development on the character and appearance of the area; and
- whether the proposals comprise sustainable development.

## **Reasons**

### *Development Strategy*

12. The development plan for the area comprises the Core Strategy and the Shropshire Site Allocations and Management of Development (SAMDev) Plan adopted December 2015.
13. Policy CS1 of the Core Strategy sets out the strategic approach to development in Shropshire and establishes a hierarchy which focuses development towards Shrewsbury, the Market Towns and other Key Centres.
14. Policy CS3 of the Core Strategy indicates that balanced housing and employment development will take place within the development boundaries of the Market Towns and other Key Centres and on sites allocated for development. Wem is included in the list of Market Towns and other Key Centres in the Core Strategy.
15. Policy S17.1 of the SAMDev Plan supports policy CS3 of the Core Strategy and indicates that Wem will provide a focus for modest growth of approximately 500 dwellings and 4 hectares of employment land. The explanatory text to the policy indicates that in order to maintain its role, the town will need to accommodate balanced housing and employment development within its development boundary and on sites allocated for development.
16. Both of the appeal sites lie outside the development boundary of Wem. Accordingly, they fall to be considered as within the countryside for planning policy purposes. In such areas policy CS5 of the Core Strategy indicates that new development will be strictly controlled in accordance with national planning policies protecting the countryside. It indicates that development proposals on appropriate sites which maintain and enhance countryside vitality and character will be permitted where they improve the sustainability of rural communities by bringing local economic benefits, particularly where they relate to certain identified types of development. The appeal proposals do not relate to any of the development types listed although the list is not exhaustive.
17. Policy MD7a of the SAMDev Plan further clarifies the approach to housing development in the countryside. It indicates, amongst other things, that further to Core Strategy policy CS5, new market housing will be strictly controlled outside of Shrewsbury, the Market Towns and Community Hubs and Clusters.
18. There is disagreement between the main parties as to the interpretation of policy CS5 of the Core Strategy and in particular whether it is restrictive or permissive given its deference to national planning policy. Both main parties have referred to various appeal decisions in support of their case and to which I have had regard.
19. Policy CS5 of the Core Strategy is permissive of various types of development, although as indicated above, the list of developments indicated as acceptable within the countryside is not exhaustive. However, policy MD7a of the SAMDev

- Plan further complements Core Strategy policy CS5 and is clear in indicating that new market housing will be strictly controlled within the countryside.
20. The SAMDev Plan has been found to be sound. Therefore, I am satisfied that the approach adopted within policy MD7A of the SAMDev Plan with regard to development within the countryside should be considered consistent with national policy as too should policy CS5 of the Core Strategy which it complements.
  21. The Core Strategy policies and the policies of the SAMDev Plan referred to above are broadly consistent with the Framework, specifically the advice contained at paragraph 55 that to promote sustainable development in rural areas housing should be located where it will enhance or maintain the vitality of rural communities and that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances. Policy CS5 of the Core Strategy and policy MD7a of the SAMDev Plan are also broadly consistent with the core planning principle of the Framework that planning should recognise the intrinsic character and beauty of the countryside.
  22. The appellants contend that having regard to the number of dwellings that have been completed in the first 9 years of the Core Strategy period (2006-2015) there is a need for a step-change in housing delivery in Shropshire and that the only way to meet the Core Strategy requirement of 27,500 dwellings is by exceeding the housing guideline figures in the SAMDev Plan and/or by allowing development in the countryside. Accordingly, it was put to me that the appeal site would contribute to meeting this requirement as a sustainable windfall site as envisaged by policy MD3 of the SAMDev Plan.
  23. Policy MD3 relates to the delivery of housing development. It indicates that in addition to the development of the allocated housing sites set out in the Settlement Policies S1-S18, planning permission will also be granted for other sustainable housing development subject to the policies of the Local Plan, particularly policies CS2, CS3, CS4, CS5, MD1 and MD7a. The policy goes on to indicate that the settlement housing guideline is a significant policy consideration, explaining the approach to be adopted where development would result in either more or less dwellings than the guideline figure. It indicates that where a settlement housing guideline appears unlikely to be met additional sites outside the settlement development boundaries that accord with the settlement policy may be acceptable subject to a number of factors.
  24. It seems to me therefore that whilst the policy does make provision for housing beyond the settlement development boundaries it is only where the settlement housing guideline appears unlikely to be met. That is not the case here. The Council indicates that at least 424 dwellings have been built or committed for development in Wem since 2006. Therefore, at this stage, with 10 years of the plan period remaining, I consider from the evidence before me that the housing guideline figure of 500 dwellings for Wem is likely to be achieved from sites within the settlement development boundary. Whilst the guideline figure is not a maximum it has been established and examined through the development plan process. Accordingly, it is afforded weight.
  25. The supporting text to policy MD3 of the SAMDev Plan indicates that a key component of the housing land supply is the allocated sites with related guidelines. It goes on to indicate that 'windfall' development on other sites is also important, both within settlements and in the countryside, including both

- brownfield and, where sustainable, greenfield sites, having due regard to the policies of the Local Plan.
26. I note the various appeal decisions referred to by the main parties which they contend provide support to their respective case in relation to the interpretation of policy MD3 of the SAMDev Plan. However, my reading of policy MD3 of the SAMDev Plan together with its supporting text lead me to the view that 'windfall' developments within the countryside need to be considered against the relevant Local Plan policies, namely policy CS5 of the Core Strategy and policy MD7a of the SAMDev Plan. In so far as the appeal proposals would essentially be for market housing they would not satisfy these policies and therefore, having regard to the policies of the Local Plan, as required by policy MD3, they would not be appropriate windfall housing developments.
27. The appellants refer to the spatial distribution of development set out in policy CS1 of the Core Strategy and contend that having regard to the level of completions since 2006 and the SAMDev Plan housing settlement guidelines and allocations there is a particularly heavily reliance on windfalls in North East Shropshire, which includes Wem, to deliver the figure of between 5,500 and 6,050 dwellings indicated in policy CS1 of the Core Strategy for this spatial zone. However, the Inspector examining the SAMDev Plan will have considered the effectiveness of the overall approach and strategy adopted in the SAMDev Plan including both the settlement housing guidelines and allocations and the reliance on windfalls to meeting the requirements of the Core Strategy, including the spatial distribution of development set out in policy CS1. It seems to me therefore that the settlement housing guidelines in the SAMDev Plan which take into account the differing pressures, opportunities and constraints in the area are the most appropriate against which to assess housing delivery. Furthermore, as indicated above I see no reason to conclude at this stage of the plan period that on the basis of existing housing delivery the housing settlement guideline for Wem will not be met or even exceeded from development within the settlement development boundary.
28. I note the appeal decision at West Felton<sup>3</sup> referred to by the appellants in support of their case for assessing the delivery of housing within the spatial zones. The Inspector in this appeal referred to the housing targets for the five spatial zones in his consideration of the position in relation to housing land supply. However, I am mindful that this decision pre-dates the adoption of the SAMDev Plan. Furthermore, whilst I note that policy CS10 of the Core Strategy refers to the delivery of the levels of development required in each spatial zone, this is in the context of the managed release of new housing sites identified in the SAMDev Plan.
29. Drawing together all of the above therefore, the appeal proposals for market housing within the countryside, although they would contribute some affordable housing through the provisions of the UUs, would be contrary to policies CS1, CS3 and CS5 of the Core Strategy and policies S17.1, MD3 and MD7a of the SAMDev Plan. Accordingly, they would be contrary to the overall development strategy for the area.

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<sup>3</sup> APP/L3245/W/15/3003171

*Character and appearance*

30. The appeal sites comprise two adjoining fields on the north side of Shawbury Road to the south-east of Wem Town. Site A adjoins the property known as The Larches to the south-east, beyond which are open fields. To the north are open fields and to the north-west are two fields, the nearest of which is Site B. The field beyond Site B forms part of the site allocated for employment development in the SAMDev Plan, the edge of which now forms the development boundary of the town. Beyond the employment allocation and further to the north-west is an existing employment site which serves as a large depot for a construction company.
31. There is some sporadic housing development on Shawbury Road. However, this principally comprises a small linear group of dwellings on the southern side of the road; the northern side of the road being largely defined by open, undeveloped agricultural land. The varied field pattern and absence of built development in the area contributes to a pleasant semi-rural environment and both of the appeal sites have the physical characteristics and appearance of being open countryside to which policy CS5 of the Core Strategy applies and where all development is required to be consistent with policies CS6 and CS17 which seek to protect, conserve and enhance the natural environment and make sure that development does not have an adverse visual effect on it.
32. I appreciate that employment development on the allocated site would serve to extend built development into the open countryside in the vicinity of the appeal sites. However, it would be physically and functionally connected to the existing employment site to the north-west. In contrast the appeal proposals would be separated from the main residential built form of Wem; the raised railway embankment providing both a physical and visual barrier between the main suburban residential form of Wem and the wider countryside to the east. Although there is some residential development further north which extends eastwards across the railway line, the railway in this area does not provide the same major landscape feature as it does in the vicinity of the appeal sites.
33. Residential development on Site A alone would result in an isolated pocket of residential development largely surrounded by open countryside. This would appear as a visually intrusive form of development which would conflict with the open, undeveloped character of the wider area.
34. Residential development on Site B, either alone or in combination with site A, would extend the residential built form beyond the physical barrier formed by the railway and result in an encroachment of residential development into the open countryside.
35. Notwithstanding that the proposals are in outline form, it seems to me that, due to the quantum of the development and the depth and scale of the sites, the appeal proposals, either individually or if taken together, would fail to respect the established structure and linear pattern of the existing residential development in the area. Consequently, they would appear out of keeping with the predominantly semi-rural character of the area. I appreciate that by virtue of the adjoining employment allocation there will be some change to the established structure and pattern of development in the area. However, the appeal proposals would not relate physically or functionally to the employment development and in my view this would exacerbate their appearance as an incongruous incursion of residential development into the countryside.

36. The proposals may provide the potential to enhance the distribution of tree cover across the sites. However, I am not persuaded that this would materially reduce the visual impact of the proposals so as to mitigate the harm that would be caused to the character and appearance of the area as a result of the substantial incursion of residential development into the countryside.
37. Notwithstanding that the sites do not comprise a valued landscape, having regard to all of the above I consider that the appeal proposals on Site A and Site B either separately or taken together would have a significant detrimental impact on the character and appearance of the area. Accordingly, the proposals would conflict with Core Strategy policies CS5 and CS6 which together seek to maintain and enhance the character of the countryside and to protect, conserve and enhance the natural environment. They would also conflict with the core planning principle of the Framework that planning should take account of the different roles and character of different areas and recognise the intrinsic character and beauty of the countryside.

*Other material considerations*

38. As indicated above although the appellants sought to cast some doubt over whether the housing requirement in the Core Strategy would be delivered they accepted at the Hearing session that the Council could demonstrate a five year supply of deliverable housing land based on the housing requirement set out in the Core Strategy. Following their submission of the Teal Drive appeal decision the appellants did not provide any further evidence on housing land supply save to suggest that the findings of the Inspector in that decision were a material consideration in this case. The Teal Drive decision has subsequently been quashed.
39. The latest update of the Council's Five Year Housing Land Supply Statement indicates that it is able to demonstrate a 5 year supply of deliverable housing land. Accordingly, on the basis of the evidence before me I have no reason to regard the relevant policies for the supply of housing as being not up-to-date with respect to the advice at paragraph 49 of the Framework.
40. The appellants contend that irrespective of the position in relation to the five year supply of housing land having regard to the Wychavon<sup>4</sup> case the presumption in favour of sustainable development exists outside of paragraph 14 of the Framework and therefore does not only apply where the development plan is absent, silent or relevant policies are out of date. However, the remarks of the judge in the Wychavon case on that matter were made in obiter and there is no requirement that a decision maker should follow them. The judgment of the Court of Appeal in the case of Suffolk Coastal District Council v Hopkins Homes Ltd and Richborough Estates Partnership LLP v Cheshire East<sup>5</sup> confirmed that paragraph 14 explains how the presumption in favour of development is to be applied. It follows from this, that in the context of decision taking, the presumption does not apply unless the proposal accords with the development plan or the development plan is absent, silent, or relevant policies are out of date and the adverse impacts do not significantly

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<sup>4</sup> Wychavon District Council v Secretary of State for Communities and Local Government and Crown House Developments Ltd [2016] EWHC 592 (Admin)

<sup>5</sup> Secretary of State for Communities and Local Government v Hopkins Homes Ltd; Richborough Estates Partnership LLP v Cheshire East BC also known as Suffolk Coastal District Council v Hopkins Homes Ltd Court of Appeal [2016] EWCA Civ 168; C1/2015/0583 and C1/2015/0894; High Court [2015] EWHC 132 (Admin); 2015 WL 376011

and demonstrably outweigh the benefits. This is supported by the approach advocated in the Cheshire East judgment<sup>6</sup>. As indicated above in this case I have no reason to regard the relevant policies for the supply of housing as being not up-to-date. Accordingly the presumption in favour does not apply.

*Sustainable development/Planning balance*

41. Paragraph 7 of the Framework sets out three dimensions of sustainable development, namely the economic, social and environmental roles. These dimensions are mutually dependent and should be jointly sought.
42. The appeal proposals, either separately or taken together, would provide some economic and social benefits. They would provide housing development which may provide some short term employment opportunities during the construction phase and then in the longer term would provide homes whose future occupants may contribute to the local economy and help support local services and facilities. They would also result in a Community Infrastructure Levy (CIL) payment to be spent locally on infrastructure in and around Wem, additional Council Tax receipts and a New Homes Bonus. The proposals would also contribute to the supply of market housing and provide affordable housing through the provisions of the UU to meet a recognised need.
43. In relation to the environmental role of sustainable development, I note the concerns of local residents regarding the limitations of the existing footway link from the sites to the edge of the town in so far as it is narrow, only partially lit and runs alongside a busy road. I also note that it is proposed to widen the footway adjacent to the bridge to improve access by utilising part of the highway verge. The Council's Highway's Officer confirmed at the Hearing session that this could be achieved and secured by a suitably worded condition. It seems to me therefore that the occupants of the proposed houses would be able to access the facilities and services in the centre of Wem, which is within a reasonable walking distance, by means other than the private car. Accordingly, as the Inspector found in the previous appeal proposal on the site which included Site A, I consider that the proposed development would be in a reasonably accessible location.
44. However, the appeal proposals on Site A and Site B either separately or taken together would result in the encroachment of residential development into the open countryside which would have a significant detrimental impact on the character and appearance of the area. This would be contrary to the core planning principle of the Framework that planning should take account of the character of different areas and recognise the intrinsic character and beauty of the countryside.
45. Taking all of the above into account therefore, I consider that the adverse impacts relating to the environmental role would be significant and are not outweighed by the benefits such that the appeal proposals, either separately or taken together, would not comprise sustainable development as defined in the Framework. Moreover, the development plan is not out of date and the conflict that I have identified with it above is not outweighed by any other material consideration.

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<sup>6</sup> Cheshire East BC v Secretary of State for Communities and Local Government [2016] EWHC 571 (Admin)



*Other matters*

46. The submitted UUs are signed, dated and certified. They include provision for affordable housing. However, given my conclusions on the appeals, there is no need for me to consider the matter of the UUs further.
47. Local residents have expressed concerns regarding problems with existing flooding in the area and the implications that the appeal proposals could have on adjacent land including their properties. It is clear from the evidence that in particular Site B and the land opposite floods during periods of heavy rain. However, the evidence indicates that such matters could be suitably mitigated through the imposition of appropriate conditions requiring the submission and approval of drainage details and, in the case of Site B, a full and detailed Flood Risk Assessment.
48. Both parties have referred to a number of other appeal decisions in support of their respective cases, some of which were allowed and others dismissed but all of these simply demonstrate the exercise of planning balance in the circumstances of each case. Each case is different and must be determined on its merits. I have also had regard to the legal judgments referred to by both the appellant and the Council in my consideration of the appeals.

**Conclusion**

49. To conclude therefore, both of the appeal proposals would not accord with the overall development strategy for the area as set out in the development plan and would cause significant harm to the character and appearance of the area in conflict with a number of policies of the Core Strategy as detailed above. Accordingly, they would be contrary to the development plan as a whole and would not comprise sustainable development. I have found no material considerations which would warrant making a decision other than in accordance with the development plan. Therefore, for the reasons set out above and having regard to all other matters raised, I conclude that both of the appeals should be dismissed.

*Beverley Doward*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANTS:

David Richards	The Planning Group
Martin Parish FPCS MIED	The Planning group
Helen Howie MRTPI	Berrys
John Sumner I Eng AMICE	Sumner Consultancy
Theo Osmund-Smith of Counsel	

### FOR THE LOCAL PLANNING AUTHORITY:

Tim Rogers	Area Planning Manager, Shropshire Council
Edward West MCD MRTPI	Principal Planning Officer, Shropshire Council
Adrian Cooper	Planning Policy Team Leader, Shropshire Council

### INTERESTED PERSONS:

Richard Unwin	Acting on behalf of local residents
Angus Gregory	Local resident

## **DOCUMENTS SUBMITTED AT HEARING SESSION**

1. Copy of judgment Suffolk Coastal District Council and Hopkins Homes Limited and Secretary of State for Communities and Local Government, Richborough Estates Partnership LLP and Cheshire East Borough Council and Secretary of State for Communities and Local Government [2016] EWCA Civ 168
2. Minutes of meeting of Wem Town Council on 27 March 2014
3. Table headed total supply – North East Spatial Zone
4. Plan titled Site Plan with flooding from surface water
5. Shropshire Council adopted Policies Map Extract for Wem Place Plan Area
6. Annotated plan titled Flood Alleviation Proposals
7. Further Shropshire Council Drainage comments in relation to planning application ref 15/00438/OUT

## **DOCUMENTS SUBMITTED AFTER HEARING SESSION**

1. Correspondence from Shropshire Council dated 11 May 2016 relating to proof of title and terms of UUs.
2. Correspondence from appellants dated 16 May 2016 enclosing appeal decision APP/L3245/W/15/3067596.
3. Correspondence from Shropshire Council dated 31 May 2016 relating to appeal decision APP/L3245/W/15/3067596 indicating that the Council is in the process of lodging a s288 statutory challenge against the decision.
4. Correspondence from appellants dated 2 June 2016 in response to Shropshire Council's correspondence dated 31 May 2016.
5. Correspondence from Shropshire Council dated 2 June 2016 relating to appeal decision APP/L3245/W/15/3067596.
6. Correspondence from Shropshire Council dated 8 June 2016 relating to appeal decision APP/L3245/W/15/3067596 and confirming that the Council has lodged

- a s288 statutory challenge against the decision and enclosing copies of the claim form, statement of facts and grounds and a letter from the Court.
7. Correspondence from Richard Unwin dated 12 June providing comments on implications of appeal decision APP/L3245/W/15/3067596.
  8. Correspondence from Shropshire Council dated 18 July 2016 enclosing further comments on implications of appeal decision APP/L3245/W/15/3067596.
  9. Correspondence from Shropshire Council dated 4 November 2016 enclosing a copy of the Teal Drive judgment (Shropshire Council v Secretary of State for Communities and Local Government and BDW Trading Limited Trading as David Wilson Homes (Mercia) and Others [2016] EWHC 2733 (Admin).
  10. Correspondence from appellants dated 14 November 2016 in response to Teal Drive judgment and enclosing a copy of appeal decision APP/L3245/W/15/3137161.
  11. Correspondence from Richard Unwin dated 17 November 2016 in response to Teal Drive judgment.