

# PLANNING PROOF OF EVIDENCE

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Section 78 Appeal by Robert Hitchins Ltd

## LAND OFF THE B4069 EAST OF BARROW FARM, LANGLEY BURRELL, CHIPPENHAM

Date: 7<sup>th</sup> February 2023 | Pegasus Ref: P21-2956

PINS Ref. APP/Y3940/W/22/3309170

### Proposal

Residential development (up to 230 dwellings), a local centre (comprising commercial business and service uses (Use Class E), drinking establishment and hot food takeaway (Sui Generis) with a GIA limit of 675 sq m of which no more than 200 sq m (GIA) shall be used for retail (Class E(a)) drinking establishment and hot food takeaway (Sui Generis)), associated works and infrastructure, ancillary facilities, open space, landscaping with vehicular access from the B4069.





## Document Management.

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# 1. PERSONAL BACKGROUND

- 1.1. My name is David Hutchison. I hold a Bachelor of Science Degree and Diploma in Town Planning from Cardiff University.
- 1.2. I am a Chartered Town Planner and I am employed as a Planning Consultant at the firm of Pegasus Group. I currently hold the position of Executive Director and I am based in the Cirencester Office.
- 1.3. I have worked in the private sector as a Planning Consultant since 1999 (over 23 years). Prior to my appointment at Pegasus (when the company was first established in 2003), I worked for Chapman Warren and the RPS Group.
- 1.4. I have a wide range of experience in all aspects of Town Planning, dealing with both Development Control and Planning Policy. I now work primarily for residential and commercial developers/land promoters and I am responsible for all aspects of their work ranging from site promotion through the Development Plan process to preparing and submitting planning applications for various scales of development, including large scale strategic urban extensions.
- 1.5. As well as dealing with outline applications for larger developments I am also involved in negotiations on a day to day basis in relation to reserved matter applications on behalf of developers.
- 1.6. I represent clients at appeals, and I have presented evidence on their behalf at numerous Public Inquiries and Informal Hearings. It is relevant to note that I have in recent years presented evidence on behalf of various clients at Public Inquiries and Informal Hearings in Wiltshire including land at Malmesbury, Calne, Semington and Broad Town. I am therefore familiar with the longstanding difficulties in delivering housing in this area.
- 1.7. With regards to the current appeal scheme I was not directly involved with the original planning application. However, I did provide advice about appealing the previous application. This led to that application being withdrawn so that the scheme could be revised and improved. The revised application was then submitted with the intention that it would be appealed at the earliest opportunity, because it was anticipated that the LPA was not likely to grant planning permission.
- 1.8. The evidence that I have prepared and provide for this appeal (PINS Ref APP/Y3940/W/22/3309170) is true and has been prepared and is given in accordance with the guidance of my professional institution, irrespective of by whom I am instructed. I can confirm that the opinions expressed are my true and professional opinions.



## 2. INTRODUCTION

2.1. My Proof of Evidence has been prepared on behalf of Robert Hitchins Limited (the Appellant). It relates to a Planning Appeal made pursuant to Section 78 of the Town and Country Planning Act 1990, in respect of land off the B4069 East of Barrow Farm, Langley Burrell, Chippenham (the Appeal Site).

2.2. This appeal follows the failure of Wiltshire Council (the Local Planning Authority or “LPA”) to determine an application for outline planning permission (with all matters reserved) within the statutory 16 week period (LPA ref. PL/2022/04681). The application related to a proposed development comprising:-

**“Residential Development (Up To 230 Dwellings), a Local Centre (comprising Commercial Business and Service Uses (Use Class E), Drinking Establishment and Hot Food Takeaway (Sui Generis) with A GIA Limit of 675 Sqm of which no more than 200 Sqm (GIA) shall be used for Retail (Class E(A)) Drinking Establishment and Hot Food Takeaway (Sui Generis)), associated works and Infrastructure, ancillary facilities, open space, landscaping with vehicular access from the B4069.”**

2.3. The application was never reported to Committee and no decision notice was ever issued. The LPA has however prepared a Delegated Report which identifies 3no. Putative Reasons for Refusal (PRfR). They read as follows:-

**“1 The proposed development, by reason of its location outside of any defined settlement Boundary within the open countryside, would be contrary Core Policies 1, 2, & 10 of the Wiltshire Core Strategy adopted 2015, ‘saved’ Policy H4 of the North Wiltshire Local Plan 2011 as well as the principles set out within the National Planning Policy Framework para. 8 & 12. The proposed development is deemed to be unsustainable as it would conflict with the Council’s plan-led approach to sustainable development and is unacceptable in principle.**

**2. The proposal, including the new vehicular access and associated new highway lighting, will urbanise and harmfully impact the rural character and tranquillity of countryside, the rural approach to Chippenham and the relationship between Chippenham and the adjacent countryside. In addition, the proposal would have an unacceptable impact upon the distinctive rural character of Langley Burrell and the landscape setting of this historic settlement. The proposal would also be harmful to the rural separation between Chippenham and Langley Burrell. The proposal is therefore contrary to the provisions of policies CP51 (ii, (iii), (vi), CP52 (v) and CP57 (i), (ii), (iii), (iv), (v) of the Wiltshire Core Strategy 2015; policies PB1, LP1 (i), (ii), (iv), (v) & (vi) and NE2 of the Langley Burrell Parish Neighbourhood Development Plan 2016–2026 Made October 2017, as well as the principles set out within the National Planning Policy Framework, para 174.**

**3. The proposed development fails to provide and/or secure adequate provision for necessary on site and, where appropriate, off-site infrastructure. Such infrastructure shall include (but not be limited to) affordable housing, educational facilities, public open space, play equipment and footpath connections to the town, sustainable public transport provision, waste collection. The application is therefore contrary to Core Policy CP3 of the Wiltshire Core Strategy adopted 2015.”**

## **The Updated Position on the Reasons for Refusal**

- 2.4. To assist the Inspector, I set out below a brief update on the PRfR to explain how the issues in dispute have narrowed on some matters.

### **Affordable housing, community infrastructure and Public Open Space [RfR 3]**

- 2.5. It is not necessary for me to present evidence on Affordable Housing as this will be addressed through s.106 Planning Obligations. The proposals would provide for policy compliant levels of affordable housing (40%) in an LPA area where there has been substantial under delivery.
- 2.6. Similarly, financial contributions towards educational facilities, public open space, play equipment and footpath connections to the town, sustainable public transport provision, and waste collection will also be dealt with through Planning Obligations. I do not therefore present evidence on these matters.
- 2.7. The issues highlighted in the 3<sup>rd</sup> PRfR are therefore capable of being resolved by such a planning obligation being completed.

## **My Evidence**

- 2.8. My Proof of Evidence deals with the planning policy matters raised in the PRfR and the objections from third parties. It focuses in particular on the issues set out in PRfR 1 which relate to the principle of residential development in this location. I also deal with the overall planning balance which draws together the technical evidence presented by other witnesses on behalf of the Appellant.
- 2.9. I reserve the right to add to or amend my evidence on receipt of the evidence submitted by the LPA and other parties.

## **Other Proofs of Evidence submitted on behalf of the Appellant**

- 2.10. My evidence should be read alongside the other Proofs of Evidence that have been prepared on behalf of the Appellant. This includes:-



- a. Mr Neil Tiley – Housing Need and Supply
- b. Mr Paul Harris – Landscape and Visual Impact
- c. Miss Hannah Armstrong – Heritage

## **Statements of Common Ground**

2.11. My evidence should also be read in conjunction with the following Statements of Common Ground (SoCG):-

- a. Planning (including heritage)
- b. Housing Land Supply
- c. Landscape and Visual Impact

### **3. THE APPEAL SITE LOCATION AND DESCRIPTION**

- 3.1. A description of the appeal site and its surroundings is set out in section 2 of the SoCG. To avoid unnecessary duplication, I do not intend to repeat it again in full here.
- 3.2. In summary, the site is located at Chippenham which is identified as a Principal Settlement in the adopted Wiltshire Core Strategy (WCS). The site is located on the northern edge of the town and it adjoins a recent urban extension known as North Cheltenham.
- 3.3. The site itself is approximately 10.8 ha in size, and it comprises an irregular shaped agricultural field.
- 3.4. The site is not located within the Green Belt, an Area of Outstanding Natural Beauty (AONB) or any other landscape designation. It is also not designated for any ecological or heritage purposes and the entire site falls within Flood Zone 1 (the zone with the lowest risk of flooding).



## 4. THE APPEAL PROPOSALS

4.1. The planning application that is now the subject of this appeal was validated by Wiltshire Council on 17th June 2022 [LPA ref.PL/2022/O4681].

4.2. The description of development as set out on the application forms reads as follows:-

**“Residential Development (Up To 230 Dwellings), a Local Centre (comprising Commercial Business and Service Uses (Use Class E), Drinking Establishment and Hot Food Takeaway (Sui Generis) with A GIA Limit of 675 Sqm of which no more than 200 Sqm (GIA) shall be used for Retail (Class E(A)) Drinking Establishment and Hot Food Takeaway (Sui Generis)), associated works and Infrastructure, ancillary facilities, open space, landscaping with vehicular access from the B4069.”**

4.3. The application was submitted in outline with all matters of detail reserved for subsequent determination and approval.

### The Indicative Planning layout

4.4. Although the application was submitted in outline, a Concept Masterplan was provided to demonstrate how the site could deliver the scale of development proposed.

4.5. The Concept Masterplan shows how the development might be laid out to respond to constraints and opportunities of the site, including those identified in the technical reports submitted as part of the planning application.

### Plans for Approval

4.6. For the avoidance of doubt, the plans that would be approved if the appeal is allowed would be as follows:-

<u>Drawing Title</u>	<u>Drawing Reference</u>	<u>Revision</u>
1. Location Plan	CH.CAP.2	C
2. EIA Parameters Plan	P20-1508-06	E

4.7. All other plans and documents should be treated as being illustrative or providing supporting information and would not need to be listed as being approved.

## 5. PLANNING HISTORY

- 5.1. The planning history that is of most relevance to this appeal is set out in Section 6 of the SoCG.
- 5.2. Whilst the SoCG identifies the previous applications and appeals, some further amplification is necessary with regards to the previous appeal, as it forms part of the background to the current appeal. The Inspector at the CMC also asked that some further explanation be provided by the Appellant.
- 5.3. For the avoidance of doubt, I should highlight that I was not involved with the previous appeal.

### The previous appeal decision [CD.E2]

- 5.4. The appeal site (and other adjoining land to the north and west that is no longer included) was the subject of an earlier appeal in connection with a proposed development comprising:-

**“The development proposed is residential development of up to 500 dwellings (C3), new roundabout access and ancillary emergency access from the B4069 Maud Heath’s Causeway/Swindon Road, a 2 form entry primary school (D1), up to 2500m<sup>2</sup> of employment (B1), up to 200m<sup>2</sup> assembly and leisure (D2), up to 200m<sup>2</sup> retail uses (A1), play areas, open space, landscaping, drainage works and ancillary works.”**  
(emphasis added)

- 5.5. The appeal was dismissed by Inspector Major on 4<sup>th</sup> November 2016.

### The Consent Order to quash the decision [CD.E3]

- 5.6. The appeal decision was later quashed by a Court Order dated 11<sup>th</sup> January 2017. It was held (with the agreement of the SoS) that the Inspector had fallen into error in his approach to the planning balance.
- 5.7. At the time of the decision there was significant competing jurisprudence as to the correct approach when considering the tilted balance in paragraph 14 of NPPF (2012). From paragraphs 6 and 7 of the Court Order it can be seen that the SoS agreed that the Court should quash the decision on the basis that the Inspector had erred in at least one of both of the following respects:-

**“(i) In finding at AD 57 that the weighted balance will only apply where it is first concluded that development is sustainable within the meaning of the NPPF, despite the fact that this is a case where the development plan is out of date (or treated as being so because of the absence of a 5YHLS). This finding is contrary to the recent judgement of *Cheshire East BC v SSCLG [2016] EWHC 571 (Admin) East Staffordshire BC v***

***SSCLG [2016] EWHC 2973 (Admin)*** which rejected the approach taken by the inspector as was set out in the judgement of *Wychavon DC v SSCLG [2016] EWHC 592 (Admin)*

(ii) In finding at AD 61 that the weighted balance does not apply because this is a case where a restrictive policy, para 134 of the NPPF, applies, notwithstanding that the policy does not require refusal in and of itself. This finding is contrary to the cases of *R (Watermead) v Aylesbury Vale DC [2016] EWHC 624 (Admin)* and *Telford and Wrekin BC v SSCLG [2016] EWHC 3073* in which it was found that the mere fact that para 134 is in play, but does not require refusal, is not a reason to supply the weight balance in para 14.

## **Events following the quashing of the appeal decision**

- 5.8. Normally a quashed appeal decision would be redetermined. However, in this case that never happened. That is because the Appellant took the decision at that time to withdraw the appeal before the inquiry re-opened.
- 5.9. There had been a material change in circumstances since the time of the original inquiry, which led to the quashed decision. At that time the position was as follows:-
- a. It was agreed that the LPA could not demonstrate a 5YRHLS [CD.E2 §3]
  - b. It was agreed that the policies for the supply of housing were out of date [§3]
  - c. The then emerging Chippenham Sites Allocations Plan was at an advanced stage but was still the subject of unresolved objections and this limited the weight to be attached to it [§6]
  - d. The Langley Burrell Neighbourhood Plan (NP) was in preparation, but it was at an early stage and only carried limited weight [§46]
- 5.10. After the decision was quashed a new inquiry date was set and it was due to reopen on 8<sup>th</sup> August 2017. I am advised by the Appellant company that the appeal was withdrawn by email dated 13<sup>th</sup> July 2017 because of a combination of the following changed factors:-
- a. The LPA had published a Housing Land Supply Statement in March 2017 claiming that it could now demonstrate a 5YRHLS. (5.73yrs).
  - b. The Chippenham Site Allocations Plan was adopted and had become part of the Development Plan in May 2017.

- c. The NP had been submitted to Wiltshire Council and had been the subject of consultation between February and March 2017. The Examiner was appointed in May 2017 and his Report was issued on 4<sup>th</sup> July 2017. It concluded that the draft NP met all the necessary legal requirements and should proceed to referendum. The NP was later made October 2017.

- 5.11. These changes obviously altered the planning policy framework for considering unallocated greenfield sites and so the decision was made to withdraw the appeal. The Appellant therefore decided to wait to bring the site forward for development at a future time either through the plan making process or with an early planning application if the housing land supply position were to deteriorate, as has in fact occurred.

### **The relevance of the previous appeal decision**

- 5.12. The current appeal should be considered on its own individual merits and in the context of the planning policy framework that exists now.
- 5.13. The Inspector is not bound by the content of the quashed decision, but those parts of the decision which involve planning judgments which were not part of the decision to quash may be material considerations for subsequent decision makers. Those parts of the decision where the Inspector was found to have erred are to be disregarded.

### **The main differences between the two appeal schemes**

- 5.14. Whilst I accept that parts of the quashed decision may be material to the current appeal it is important to recognise that the current appeal scheme (and the planning policy context) is materially different. A high degree of caution is required when interpreting Inspector Major's findings, because:-
  - a. The current appeal site is much smaller (10.8ha vs 24.2ha as it was then).
  - b. The scale of development is very different. The current scheme has less than half of the number of dwellings of the previous scheme (230 dwellings vs 500).
  - c. The primary school and employment land are also omitted from the current appeal scheme.
  - d. The northern part of the original site which Inspector Major found to be more sensitive does not form any part of the current scheme. 13.4ha of land has been removed from what was the northern part of the original appeal site.

- e. The spatial relationship between the proposed development parcels and the relevant designated heritage assets is now materially different.
- f. The relationship with Langley Burrell is also different.
- g. Even where there is overlap between the red line boundaries of the two appeal schemes, the distribution of development and open spaces within those parcels is different (particularly to the west and in the southern corner).
- h. The character and appearance of the surrounding area has changed significantly with the build out of the North Chippenham urban extension and its associated link road.
- i. Time has also moved on with regards to plan making. Instead of waiting for emerging plans to be adopted, those plans are now in place and judgements can be made about how effective they have been in meeting identified housing needs and requirements.

5.15. My list is not intended to be exhaustive, but it gives an indication of the difficulties that might arise if one were to simply carry over findings in the previous decision letter to the current appeal. I have included the illustrative Masterplans for each of the schemes below for the purposes of comparison. A copy of the Design and Access Statement for the previous scheme is also included in the list of Core Documents to assist the Inspector in understanding the differences [CD.II].





## 6. PLANNING POLICY

- 6.1. The Development Plan policies and the National Planning policies that are of most relevance to this appeal are identified in section 7 of the Planning SoCG.
- 6.2. I refer to relevant policies and guidance and the weight that ought to be afforded to them in the Case for the Appellant (Section 7) and in the Overall Planning Balance (Section 8).

### **The Development Plan**

- 6.3. In summary the Development Plan for the area currently comprises the following:-
- Wiltshire Core Strategy (WCS) [CD.D3]
  - Saved Policies in the North Wiltshire Local Plan (NWLP) [CD.D4]
  - Chippenham Site Allocations Plan (CASP) [CD.D5]
  - Langley Burrell Neighbourhood Plan (LBNP) [CD.D6]
  - Wiltshire Housing Site Allocations Plan (WHSAP) [CD.D17]

## 7. CASE FOR THE APPELLANT

7.1. In this section of my evidence, I will explain why I consider that the appeal proposals represent sustainable development, and I will demonstrate that there are compelling reasons that justify the grant of planning permission.

### Background Context

7.2. The housing land supply position is of importance in this case because it has a direct effect on the way that this appeal should be determined. The LPA already accepts that:-

- a. It cannot demonstrate a five year supply of housing land (5YRHLS), as required by the NPPF [SoCG §8.13].
- b. Heritage does not provide a clear reason for refusal [SoCG. §8.51] and there are no other footnote 7 policies in play.
- c. The tilted balance is engaged (and not disengaged) and the most important policies are out of date [SoCG §8.14].
- d. The additional protections for NP areas set out in NPPF paragraph 14 do not apply in this case [SoCG §8.15].
- e. Other than the existing development plan which provides for the current shortfall, there are no further plan led mechanisms in place which can rectify the position now [HSoCG §2.14], and
- f. It will be necessary to support development proposals through the development management process that do not strictly accord with the Development Plan [HSoCG §2.15]

7.3. The parties do not agree on the precise extent of the 5YRHLS shortfall, but they have been able to agree a range. It is agreed that the LPA is able to demonstrate between a 4.36 year land supply with **a shortfall of 1,555 homes** and a 4.70 year land supply with **a shortfall of 618 homes** against the minimum local housing need across Wiltshire [HSoCG 2.26]. Both shortfalls are significant and there is a need for additional homes to be consented now.

7.4. There is also an acute shortfall in affordable housing provision where the number of households registered in need of affordable housing has increased year on year since 2015 and there are now 3,947 such households in Wiltshire. At a more local level there is a need for 2,643 affordable homes within Chippenham over the period 2016–36, the largest proportion in the County. There are also shortfalls in terms of plan period supply, supply

within the housing market area (HMA) and against the minimum requirement that has been set for Chippenham that will also be important material considerations.

- 7.5. There is no imminent development plan review to address this immediate need for market and affordable housing, which is therefore left to the development management system to resolve.
- 7.6. The onus therefore rests with the LPA (or other interested parties) to demonstrate that any residual adverse impacts would significantly and demonstrably outweigh the benefits of granting planning permission.<sup>1</sup>

### **The Putative Reasons for Refusal**

- 7.1. My evidence will concentrate on the planning policy issues raised in PRfR no.1. The main strands of the LPA's objections can be summarised as follows:-
- a. The proposal is outside of a defined settlement boundary and so it is located in the open countryside.
  - b. The proposal is considered to be unsustainable as it would conflict with the Council's plan-led approach to sustainable development.
  - c. Consequent on such matters, it is contrary to Development Plan policies 1, 2, & 10 of the Wiltshire Core Strategy adopted 2015 and 'saved' Policy H4 of the North Wiltshire Local Plan 2011.
  - d. The adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.
- 7.2. Mr Harris will present the substantive evidence on landscape and visual impact. Miss Armstrong will do the same for heritage. Their evidence will address PRfR no.2. I will then draw upon their evidence when dealing with the planning balance.
- 7.3. It is agreed that PRfR 3 can be addressed through Planning Obligations and so it is not necessary to present evidence on this matter [SoCG §5.3].

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<sup>1</sup> NPPF Paragraph 11d (ii)

## The Main Planning Policy Issues

7.4. The Inspector identified the first main issue as being, whether the site is suitable for the proposed development, having regard to the Council's settlement strategy. I agree with this construction but to make my evidence more manageable I have broken it down as follows:

- |                |   |
|----------------|---|
| <b>Issue 1</b> | <b>The principle of residential development at Chippenham</b>                                       |
| <b>Issue 2</b> | <b>The acceptability of development on unallocated sites beyond the defined settlement boundary</b> |
| <b>Issue 3</b> | <b>Other matters including third party objections</b>   |

7.5. In Section 8, I will deal with the overall planning balance. I will identify the main benefits and other considerations that weigh in favour of the proposal and will attribute weight to each of these. The same will be done for any potential adverse effects.

### **Issue 1 – The principle of residential development at Chippenham**

7.6. The starting point for the determination of any planning application or appeal is the Development Plan. The planning system is “plan led” and requires that applications for planning permission be determined in accordance with the Development Plan, unless other material considerations indicate otherwise.

7.7. I accept that the appeal proposals conflict with the Development Plan when read as a whole. Notwithstanding this, I consider that providing additional homes at Chippenham would still be in general accordance with the settlement strategy of the Development Plan.

## The Settlement Strategy

7.8. WCS Policy CPI sets out the Settlement Strategy for Wiltshire. It explains that the settlement strategy identifies the settlements where sustainable development will take place, to improve the lives of all those who live and work in Wiltshire.

7.9. The 1st tier Principal Settlements are Chippenham, Trowbridge and Salisbury. The 2nd tier settlements are the Market Towns. Beneath the Market Towns are the Larger Villages, which are then followed by the Smaller Villages.

7.10. Core Policy 1 sets out the scale of development that will be appropriate at the different tiers of the settlement hierarchy. The policy identifies Chippenham as a Principal Settlement. The policy defines Principal Settlements as follows:-

### "Principal Settlements

Wiltshire's Principal Settlements are strategically important centres and the primary focus for development. This will safeguard and enhance their strategic roles as employment and service centres.

They will provide significant levels of jobs and homes, together with supporting community facilities and infrastructure, meeting their economic potential in the most sustainable way to support better self containment.

The Principal Settlements are: Chippenham, Trowbridge and Salisbury"  
(my emphasis)

- 7.11. It can be seen that:-
- a. Chippenham is a 1<sup>st</sup> tier Principal Settlement that sits at the top of the settlement hierarchy.
  - b. Principal Settlements including Chippenham are strategically important centres.
  - c. They are the primary focus for development.
  - d. They will provide significant levels of jobs and homes
  - e. Development at Chippenham would be meeting needs in the most sustainable way to support better self-containment.
- 7.12. By proposing additional homes at Chippenham, the appeal proposals would therefore accord with the overarching settlement strategy for Wiltshire. I note that the site is presently in the countryside in policy terms, however, once constructed, the appeal site will obviously become an integral part of the built-up area of Chippenham.
- 7.13. I have noted that the LPA's SoC seeks to draw attention to the fact that Langley Burrell is identified as a Small Village and at the bottom of the settlement hierarchy, and that is of course true [CD.C5 para 6.3]. I do not anticipate that the LPA is making the suggestion that the site should be assessed to be a proposed extension to the village of Langley Burrell, but for the avoidance of all doubt – there is no doubt that the appeal proposals comprise an extension to Chippenham, and any contrary argument is palpably wrong.

## **The Strategic Housing Requirement for Wiltshire**

- 7.14. WCS Policy CP2 establishes a minimum housing requirement of 42,000 dwellings for the plan period 2006–26.

## The Housing Market Area Housing Requirement (HMA)

- 7.15. Policy CP2 also identifies how the strategic housing requirement is to be distributed across Wiltshire. It requires that a minimum of 24,740 dwellings is provided within the North and West Housing Market Area (HMA), of which Chippenham forms part.
- 7.16. It was the intention that sites would be identified through subsequent Site Allocations DPDs and through neighbourhood planning. Those plans are now in place in Chippenham, but they have not been effective in delivering a sufficient number of homes so as to maintain a 5YRHLS across Wiltshire or the HMA.

## The Chippenham Housing Requirement

- 7.17. In addition to the Wiltshire wide and HMA wide minimum housing requirements, there is also a minimum housing requirement for the town of Chippenham itself. Chippenham is unique in this regard. No other settlement has been given a minimum housing requirement<sup>2</sup>.
- 7.18. The Chippenham town requirement for at least 4,510 dwellings by 2026.
- 7.19. Bringing this all together, it can be seen that the appeal proposals would make a contribution towards meeting the identified minimum housing requirements for all of the following (in descending order):-
- a. Wiltshire,
  - b. North and West HMA, and
  - c. Chippenham
- 7.20. As confirmed in the HSoCG, the LPA accepts that it is currently in shortfall against all of these indices.

## Core Policy 10 – Chippenham Community Area

- 7.21. The town of Chippenham is located within the Chippenham Community Area. Policy CP 10 requires that development in the Chippenham Community Area should be in accordance with the Settlement Strategy set out in Core Policy 1. That would include focusing development at the Principal Settlement of Chippenham.

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<sup>2</sup> WCS §4.28 confirms that this minimum requirement is an exception to the indicative housing requirements for the other Principal Settlements



7.22. As noted above, Chippenham has its own minimum housing requirement. The relevant part of Policy CP10 reads as follows:-

**“Over the plan period (2006 to 2026), 26.5 ha of new employment land (in addition to that already provided or committed at April 2011)<sup>32</sup> and approximately 5,090 new homes will be provided. At least 4,510 should occur at Chippenham.”** (my emphasis)

7.23. Policy CP 10 explains that allocations at Chippenham will be identified in the Chippenham Site Allocations Development Plan Document (CADPD) and will accommodate amongst other things, at least 2,625 new homes.

7.24. The Chippenham Site Allocations DPD has since been prepared. It is now an adopted part of the Development Plan and it does allocate sites. However, those sites will not deliver in time to address the above described need.

7.25. It is agreed that there is currently **a shortfall of 1,326 to 1,366 homes** at Chippenham compared to the minimum housing requirement over the plan period [HSoCG 2.21].

7.26. Other sites are therefore required to supplement housing supply for Wiltshire, the HMA and Chippenham. If additional housing is provided at Chippenham it would help to avoid a distortion of the settlement strategy and ensure that development is directed to Chippenham as was originally intended.

## **The Langley Burrell Neighbourhood Plan**

7.27. The Langley Burrell Neighbourhood Plan Neighbourhood Plan was made in October 2017.

7.28. There is no policy (or anything else for that matter) that says that further housing at Chippenham should be precluded as a matter of principle.

## **Chippenham as a sustainable location for development**

7.29. The principle of focusing development at Chippenham is well established through the Development Plan. No party suggests that it is an unsustainable location for development and so it is not necessary to go into too much detail.

7.30. In summary, Chippenham is one of the largest centres in Wiltshire, with a population of around 36,000. The town provides for wide range of shops, services and community facilities including schools. It also offers a range of employment opportunities all of which would assist with self-containment.

7.31. According to the CSAP, Chippenham has excellent transport links, being in close proximity to the M4, the A350 and is located on the main Bristol to London railway route (Great Western Railway). This locational strength is said to be a distinct reason for the town's important economic position. It is a focus for growth capitalising on the towns access to the M4 corridor, London and wider markets. [CD.D5 para 2.2]

## The Emerging Local Plan

- 7.32. The emerging Local Plan is still at a very early stage and there are no policies to which weight can be attached.
- 7.33. The evidence base is however a material consideration to which weight can be attached. In particular I would draw attention to the following documents:-
- a. The emerging Spatial Strategy (eSS) [CD.D9],
  - b. Planning for Chippenham (PfC) [CD.D10] and
  - c. Chippenham Site Selection Report (CSSR) [CD.D11]
- 7.34. These provide a useful insight about the direction of travel for the emerging Local Plan (eLP) and clearly show that the LPA intends to continue focusing large scale development at Chippenham.
- 7.35. The table at p.3 of the eSS, identifies Chippenham as one of 3no. Principal Settlements which will continue to be the primary focus for future development.
- 7.36. This is mirrored in paragraph 2.1 of the eSS which identifies that in order to address climate change, growth will be focused on the main settlements namely Chippenham, Trowbridge and Salisbury. This is similarly set out in para 3.37.
- 7.37. The eLP is proceeding on the basis of new HMAs, including a Chippenham HMA which consists of Chippenham, Malmesbury, Corsham, Calne, Devizes and part of Melksham CA as illustrated on page 6 of the eSS. Paragraph 2.15 identifies that this is the area within which the majority of the local population live and work.
- 7.38. At para 2.17, it is identified that the need for housing has been calculated on two bases, namely the minimum provided by the standard method and an assessment which takes account of economic forecasts (as required by national policy and guidance). Para 2.17 acknowledges that the latter will be necessary to support jobs and avoid net in-commuting.
- 7.39. In the table following para 2.17 of the eSS it is identified that there is a need for 20,400 homes in Chippenham HMA, which is significantly greater than the 17,410 homes which would arise from the application of the standard method alone. It is identified that Chippenham HMA has by far the largest additional housing need, and that the existing settlements have sufficient capacity to meet this (ie without the need for a new settlement) [para 3.27]. It is recognised that the Chippenham Expanded Community performed clearly best in the SA and as such the eLPR has a strong focus on growth at Chippenham [para 3.30].



- 7.40. In light of all of these considerations, the eSS proposes a housing requirement for 9,225 homes at Chippenham, including 5,100 of which have yet to be identified in the table following para 3.47. This is similarly picked up in paras 9 and 11 of Pfc [CD.D10].
- 7.41. This then leaves the obvious question about where those additional homes will be delivered and the extent to which the LPA will continue to be reliant upon greenfield sites that currently lie beyond the defined settlement boundary. I will deal with such matters under issue 2.
- 7.42. What is clear is that current the direction of travel with the emerging Local Plan is that Chippenham will continue to be a focus for large scale development to meet the needs of development in the most sustainable way.

### **The LPA's Reasons for Refusal**

- 7.43. There is nothing in the LPA's stated reasons for refusal that in any way suggests that Chippenham is an unsustainable location for further residential development of the type or scale that is being proposed.
- 7.44. Instead, the LPA's only in-principle objection (leaving aside landscape and heritage matters) is that the site lies beyond a defined settlement boundary. I will deal with that issue later in my evidence.

### **Summary**

- 7.45. To summarise on the principle of further housing at Chippenham:-
1. Insofar as the principle of development is concerned, this is the right development at the right location and at the right time.
  2. Chippenham is one of the largest centres in Wiltshire. The town provides for wide range of shops, services and community facilities including schools. It also offers a range of employment opportunities all of which would assist with self containment.
  3. Chippenham is identified in the WCS as one of the 1st tier Principal Settlements. Policy CPI defines Principal Settlements as strategically important centres, the primary focus for development, providing significant levels of jobs and homes and able to meet needs in the most sustainable way to support better self-containment.
  4. WCS Core Policy 2 establishes a minimum housing requirement of 42,000 dwellings for the plan period 2006-26. A minimum of 24,740 dwellings are to be provided within the North and West Housing Market Area, of which Chippenham forms part.
  5. Chippenham is unique in that it is the only town that has its own minimum housing requirement. It must deliver at least 4,510 dwellings by 2026.
  6. The appeal proposals would therefore contribute towards meeting the identified minimum housing requirements for (i) Wiltshire (ii) the North and West HMA and (iii) Chippenham.

7. The Neighbourhood Plan does not preclude further development at Chippenham.
8. The emerging Local Plan evidence base documents show that the LPA continues to identify Chippenham as one of 3no. Principal Settlements and therefore a primary focus for future development. The eSS proposes a housing requirement for 9,225 homes at Chippenham, including 5,100 homes which have yet to be identified.
9. There is nothing in the LPA's stated reasons for refusal that in any way suggests that Chippenham is an unsustainable location for further residential development.

## **Issue 2 – The acceptability of development on unallocated sites beyond the settlement boundary**

- 7.46. I recognise and accept that the appeal site is located beyond the defined limits of development for Chippenham (ie. beyond the defined settlement boundary). I also recognise that the site is not allocated for housing or any other form of development in the Development Plan.
- 7.47. However, there continues to be persistent shortfalls in both market and affordable housing. Mr Tiley explains that the LPA has been unable to demonstrate a 5YLS since January 2020 (at which point the standard method became applicable). He also explains that the evidence which is currently available strongly suggests that the Council will remain unable to demonstrate a 5YRHLS against the minimum local housing need or the minimum housing requirement for as long as the trajectory of the Council allows any analysis to be undertaken.
- 7.48. There is currently no-plan led solution to the shortfalls and this all indicates that the Development Plan is failing to meet its identified needs and objectives. The settlement strategy and the defined limits of development have been ineffective and are not working as was intended.
- 7.49. The LPA's position at this inquiry is both confused and contradictory. It states in PRfR no.1 that:-
- “..... The proposed development is deemed to be unsustainable as it would conflict with the Council's plan-led approach to sustainable development and is unacceptable in principle.”**
- 7.50. As I will explain, development beyond the settlement boundary is necessary and sustainable. The LPA does not have a plan-led solution. That is common ground [HSoCG 2.14].
- 7.51. Moreover, the LPA accepts that in order to restore a 5YRHLS and meet the minimum housing requirement over the plan period it will be “necessary” to support the development of unallocated greenfield sites outside of settlement boundaries” [HSoCG 2.37].

7.52. That should be the end of the matter. I will however address the point in further detail for completeness.

## **Core Policy CP2**

7.53. WCS Policy CP2 takes a very restrictive approach to residential development beyond settlement boundaries. The relevant part of the policy reads as follows:-

### **“Core Policy 2 – Delivery Strategy**

.....

#### **Outside defined limits if development**

**Other than in circumstances as permitted by other policies within this plan, identified in paragraph 4.25, development will not be permitted outside the limits of development, as defined on the policies map. The limits of development may only be altered through the identification of sites for development through subsequent Site Allocations Development Plan Documents and neighbourhood plans.”** (my emphasis)

7.54. I accept that the appeal proposals would not accord with this part of Core Policy 2 because it says that development will not be permitted outside the defined limits of development. It would also not accord with any of the exceptions listed in paragraph WCS 4.25.

7.55. In general terms, the strategy of the WCS for housing is that the limits of development define where housing development will be acceptable (ie. within the boundary) and in turn, where development will not be permitted (ie. outside the boundary).

7.56. However, it is agreed that:-

- a. The LPA cannot demonstrate a 5YRHLS, or a plan period supply
- b. All of the most important policies are out of date, including Policy CP2.
- c. Windfall development on unallocated greenfield sites is necessary.

7.57. If Policy CP2 was to be applied with full vigour it would prevent the LPA from being able to restore a 5YRHLS or achieving the minimum housing requirement of the WCS. There is no evidence that this can be achieved without land beyond settlement boundaries. Indeed, that is why the LPA’s own “Action Plan” does not treat a breach of the settlement boundaries as a bar to development. Instead, it only seeks to resist development if there is another major policy obstacle(s).

7.58. There is no mechanism that would allow additional housing to come forward in a plan led way (aside from a replacement Local Plan which is years away from adoption). The Chippenham Site Allocations Plan and the Wiltshire Housing Site Allocations Plan are already in place, as is a made Neighbourhood Plan. The Development Plan is therefore effectively “complete” in

this part of Wiltshire. The emerging Local Plan is still at a very early stage and cannot be afforded any weight [SoCG §7.43]. It will not produce allocations in an adopted plan for some considerable time.

- 7.59. I am aware of other Local Plans, such as West Oxfordshire for example, that allow housing to come forward outside settlement boundaries if there is evidence that it is needed or when there is a 5YRHLS shortfall. There is no such contingency mechanism in the WCS policies.
- 7.60. Policy CP2 does not allow for any balance of competing considerations. It simply says “no” to general housing development in areas defined as countryside. The NPPF does not seek to protect the countryside for its own sake, and it does not preclude housing on greenfield sites outside settlements as a matter of principle. It takes a more nuanced approach.
- 7.61. In these circumstances, the part of Policy CP2 that precludes development beyond settlement boundaries cannot be afforded full or even significant weight in my opinion. I consider that any conflict with the policy can only be afforded limited weight at most in the current circumstances.

## Other WCS Policies

- 7.62. PRfR no.1 states that the proposed development by reason of its location outside of any settlement boundary would also be contrary to policies CP1 and CP10.
- 7.63. I do not agree. There are no other policies in the WCS apart from CP2 that preclude housing beyond settlement boundaries.
- 7.64. Core Policy 1 does not reference any requirement for development having to be within defined settlements boundaries. I made this point at the recent Park Road, Malmesbury inquiry and the Inspector agreed with me:-

**“36. .... In principle the developments would accord with the WCS CP1 Settlement Strategy which does not include any detailed requirements about the location of development including in relation to any settlement boundaries.”** (my emphasis)

- 7.65. Similarly, Policy CP10 makes no reference at all to settlement boundaries, and so there can be no conflict with that policy either in this regard. Neither policy is breached in my opinion.

## The Langley Burrell Neighbourhood Plan (NP)

- 7.66. There are no policies in the NP that would preclude development beyond the settlement boundary of Chippenham. In fairness, the LPA does not identify any conflict with the NP in PRfR 1.



## North Wiltshire Local Plan Policy H4

- 7.67. Saved Policy H4 of the North Wiltshire Local Plan is another policy that the LPA frequently uses to restrict residential development in the countryside.
- 7.68. Policy H4 is actually a permissive policy that identifies certain types of housing that will be acceptable in the countryside. It does not identify the types of development that will be resisted or refused.
- 7.69. I do however accept that general market housing is not included in the list and it gains no support from the policy. Even if it is to be read as a restrictive policy, then I do not believe the policy adds anything to Policy CP2 in any event.
- 7.70. Furthermore, it is a policy that was adopted over 16 years ago and 6 years prior to the NPPF (which as the Courts have held, represented a major shift in national policy in 2012 when it was introduced). I recognise that paragraph 219 of the NPPF says that, “existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework.” However, the age of policy H4 is relevant insofar as it was drafted as part of a “time expired” plan [SoCG §7.35] to respond to a different housing requirement for a different plan period and it relied upon settlement boundaries which do not reflect those that we see today.
- 7.71. I therefore afford no more than very limited weight, to any implied conflict with Policy H4.

## The relationship between the site and the settlement boundary

- 7.72. The LPA in its SoC seeks to argue that the weight to be afforded to the conflict with CP1 and CP2 is dependent upon the relationship that the site has with the settlement boundary. The LPA states:-

**“6.14 In the recent appeal decision relating to Land off Park Road in Malmesbury, at para. 45 (APP/Y3940YW/21/3286853 – decision issued in September 2022 Document 5), in addition to the matters relating to the character and appearance of the area, the inspector considered how well related the site would be to the settlement boundary and the existing built-up area when determining how much weight to attribute to the conflict with WCS CP1 & CP2. It is clear that the site-specific circumstances in simple physical and spatial terms, needs to be taken into account.”** (my emphasis)

- 7.73. Before I deal with the LPA’s main point it is important to recognise that the sites that were allocated through the Chippenham Sites Allocations Plan were not included within the defined settlement framework (including North Chippenham which already had planning permission at the time of adoption and was therefore treated as a commitment). This should not be allowed to confuse matters.

7.74. Whilst the site does not adjoin the settlement framework in the Development Plan the reality on the ground is that it unarguably adjoins the new built-up area of Chippenham at its southern boundary. The LPA acknowledges this at paragraph 6.15 of its SoC. There can therefore be no suggestion that the site is detached and isolated from Chippenham for the purposes of Policy CP1.

7.75. With regards to Policy CP2, the LPA has misunderstood the findings of Inspector Underwood in the Park Road, Malmesbury appeals. He states that:-

**"45 In light of my findings above that any conflict with policies in terms of character and appearance would carry only limited weight this cannot be considered as a major policy obstacle. Whilst there would be conflict with WCS CP2, CP13 and NWLP Policy H4, again given the circumstances this cannot reasonably be considered as a major policy obstacle. This is particularly given that the Council's approach to restoring housing supply relies on developing sites which would inevitably breach WCS CP 2's restrictive approach to building outside limits of development. To do otherwise would be a self-defeating approach. Given how well related to the existing settlement boundaries and built-up area the sites are, they would appear to be a logical fit with the Council's approach and is a consideration that weighs in favour of both schemes."**

7.76. I respond as follows:-

- a. At no stage does Inspector Underwood say he reduces weight to the conflict with Policy CP2 due to how well related the sites were to the settlement boundary.
- b. His observation was that the proposals were a logical fit with the LPA's Action Plan that he referred to in the preceding para 44 and that this was something that weighed in favour of the scheme.
- c. Note that Inspector Underwood says nothing at all about the conflict with Policy CP1. That is because he had already concluded at paragraph 36 that the proposals would accord with Policy CP1.
- d. Having been part of that inquiry I can confirm that it was no part of the LPA's case that the weight to be afforded to the conflict with Policy CP2 was reduced due to its close relationship with the settlement boundary.

## **How other appeal decisions have dealt with housing beyond settlement boundaries**

7.77. There has been a significant number of appeal decisions in recent years in Wiltshire that have considered whether or not the LPA should be resisting development on greenfield sites adjacent to sustainable settlements (in the context of 5YRHLS shortfalls).

7.78. Obviously, every case must be judged on its merits, but it is fair to say that Inspectors have consistently found against the LPA on this particular issue.

7.79. In the case of **Westwells Road, Corsham** [CD.E13], Inspector Woodward found Policy CP2 to be overly restrictive. He states that:-

**“21. The proposal also fails to comply with Policy CP2 of the CS. .... this policy is inconsistent with the Framework by being overly restrictive for development outside of defined limits. Paragraph 170 of the Framework recognises the intrinsic character and beauty of the countryside but does not provide a blanket prohibition on development outside of settlements.”** (my emphasis)

7.80. He says that Policy CP2 is inconsistent with the NPFF because of its overly restrictive approach and this affected the weight that he afforded to the policy conflict:-

**“59. In addition, Policy CP2 is inconsistent with the Framework by being too restrictive for development outside of defined limits. I therefore place limited weight on the conflict with these policies.”** (my emphasis)

7.81. In the recent **Filands Road, Malmesbury** appeal [CD.E7], Inspector Woodward states that:-

**“86.....Nevertheless, development of either housing or a nursery outside of a defined Settlement Boundary conflicts with Policies CP1, CP2 and CP13 of the CS, and Saved Policy H4 of the LP. I place limited negative weight on this conflict. In addition, Saved Policy H4 of the LP, only carries limited weight because it is inconsistent with the Framework given the in-principle restrictions the policy places upon development in the countryside.....”** (my emphasis)

7.82. The Inspector then went on to state that:-

**“89. For Appeal C, the only conflict with the Development Plan I have found is with the locational policies as detailed above. Whilst these policies are the most important policies for determining the appeal, they are out-of-date which diminishes the weight that I apply to the conflict.....”** (my emphasis)

7.83. In the case of **Chilvester Hill, Calne** [CD.E9], Inspector McDonald refers to the persistent shortfall in housing and the absence of any remedy. She also explains that the settlement strategy and limits of development are not working effectively:-

**“85. The persistent shortfall in market housing is not insignificant and there is a substantial shortfall in affordable housing. There is no obvious remedy to the shortfall and this overall position indicates that the development plan is failing to meet its strategic challenges. Thus, its settlement strategy and limits of development are not working effectively. These policies are therefore of limited weight, as is the conflict with them.”** (my emphasis)

7.84. In the case of **Sandleaze Farm, Worton** [CD.E8], Inspector Longmuir comments that insufficient land has been brought forward and this undermines the appropriateness of overly

restrictive policies. He also notes that the emerging plan will take some considerable time to remedy the gap:-

**"59 Insufficient housing land has been found in large settlements to meet the area's needs, which undermines the development plan housing policies and the appropriateness of overly limiting the size of housing growth on otherwise suitable sites in large villages.**

**60. The proposed development of up to 26 houses would be an important contribution to housing land supply. Whilst the Core Strategy is currently under review, it will take considerable time to remedy this gap....." (my emphasis)**

7.85. In the case of St Georges Road, Semington [CD.E12]:-

**"52. Drawing all these matters together, due to the Council's housing supply situation, the location of the site outside the settlement area and the size of the proposal is not definitive in this case..... I therefore attribute the conflict with the locational policies of the Core Strategy, in particular Policies CP1, CP2 and CP15 of the Core Strategy, limited weight." (my emphasis)**

7.86. As noted earlier the Park Road, Malmesbury the Inspector did not consider conflict with WCS policies CP2 and NWLP Policy H4 to be a major policy obstacle and he observed that it would be self-defeating to treat conflict with these policies as a major policy obstacle when the Action Plan relies on developing sites in breach of Policy CP2:-

**"Whilst there would be conflict with WCS CP2, CP13 and NWLP Policy H4, again given the circumstances this cannot reasonably be considered as a major policy obstacle. This is particularly given that the Council's approach to restoring housing supply relies on developing sites which would inevitably breach WCS CP 2's restrictive approach to building outside limits of development. To do otherwise would be a self-defeating approach." (my emphasis)**

7.87. He also went on to state at paragraph 79 that:-

**"The adverse impacts arising from either development would be limited, including harm arising from conflict with the development plan." (my emphasis)**

7.88. It can be seen that the LPA raises the same objections in all these appeals, and they are consistently rejected. It persists in doing the same thing over and over and is expecting different results, despite no material change in circumstances.

7.89. Obviously, future Inspectors are not bound by the decisions in earlier cases. However, consistency in decision making is an important material consideration. What we can see from these appeal decisions is:-

- a. An ongoing shortfall in housing supply which renders the most important policies out of date.

- b. Conflict with Policy CP2 and H4 not being given determinative weight in the overall planning balance.
- c. Generally, limited weight being afforded to any conflict with policies that restrict development beyond settlement boundaries.
- d. No Inspector in similar cases supporting the proposition that is being put to our inquiry, that such policy conflicts should attract significant adverse weight in the planning balance [SoC 7.8].
- e. Planning appeals consistently being allowed on greenfield sites beyond settlement boundaries where the harms do not significantly or demonstrably outweigh the benefits (or where other policies do not direct a refusal), and
- f. Development even being permitted at lower order settlements in this HMA because of a failure to deliver in sufficient quantities at the higher order settlements.

## **The LPA's Action Plan to address housing land supply problems in Wiltshire**

7.90. The LPA claims to have put an Action Plan into place to address the housing land supply position. Part of the plan to restore a five year housing land supply is to:-

**“grant permission for speculative applications where there are no major policy obstacles (which would not be possible to defend at appeal)”** (my emphasis)

7.91. As far as I am aware, there is no adopted Action Plan as such, nor does the Action Plan conform with an Action Plan as envisaged by the Planning Practice Guidance. I am advised by the LPA that it first appeared as a Member Briefing note 20-20 following the Purton Road appeal decision in April 2020 [CD.E4]. It was later provided in a briefing note that went out with the 2021 Housing Land Supply Statement.

7.92. In my opinion the appeal site is exactly the type of site that the Action Plan should have been aiming to release for development. It can make a significant contribution towards reducing housing shortfalls where the settlement hierarchy directs development, and it can be achieved without unacceptable harm.

7.93. The LPA's application of its own Action Plan in this case is also confused and contradictory. In the LPA SOC, it is said that:-

**“6.13 The Council' action plan towards restoring a five-year housing land supply, in part, involves approving sites which may conflict with CP2 Delivery Strategy but where there are no major policy concerns in a tilted balance scenario. This means that in considering applications outside the limits of development, a conflict with CP1 & CP2 in principle.”**

**at this time, does not automatically translate to refusal of the application.** (my emphasis)

7.94. I would invite the Inspector to compare that statement with the LPA's contradictory position in its SoC at paragraph 6.16:-

**"6.16 The proposal quite clearly conflicts with the Council's spatial strategy for the location of housing and undermines the plan-led approach to sustainable development and would therefore conflict with the principle aims of the NPPF. As such, when also considering the housing shortfall is modest, the weight to be afforded to the conflict with the development plan housing policies is considered to be significant and warrants refusal of the application."** (my emphasis)

7.95. We are therefore told that a conflict with Policy CPI & CP2 in principle, at this time, does not automatically translate to refusal of the application, yet the LPA does exactly the opposite only two paragraphs later. Without any consideration of the other issues in this case, the LPA says that the conflict with the Development Plan warrants the refusal of the application. We are also told that that the proposal undermines the plan led approach even though there is currently no plan led remedy to the housing problems in Wiltshire, this HMA or Chippenham.

### **If not here, then where?**

7.96. The LPA cannot demonstrate a 5YRHLS across Wiltshire or this HMA, a plan period supply or meet the minimum housing requirement for Chippenham. By definition, that means that the LPA is unable to point to any other deliverable site(s) that can come forward for development in a more suitable location now.

7.97. It is also means that there is an undeniable need for the development. This appeal cannot be viewed in isolation from the wider housing problems in Wiltshire. There is a pressing need to find solutions now.

7.98. Mr Tiley explains that there have been chronic problems with housing delivery at the 1st tier settlements including Chippenham. He explains that there is no prospect that the shortfalls will be addressed in the plan period.

7.99. It is simple planning logic that if development cannot be delivered on allocated sites at Chippenham then other unallocated sites at Chippenham should be considered more favourably, such as the appeal site if the LPA is to deliver on its own settlement strategy.

7.100. If permissions are not granted at Chippenham, then it will inevitably put pressure on the Market Towns where there has in many cases been development in excess of the indicative Community Area housing requirements and at the villages that are inherently less sustainable in relative terms. Those concerns must be a material consideration when a site comes forward for development at Chippenham.



- 7.101. It is evident that the LPA has been unsuccessful in resisting a number of recent appeals at lower tier settlements including the Large and Small Villages. These include amongst others, Lyneham (up to 200 dwellings), Semington (26 dwellings), Worton (26 dwellings), Sutton Lane, Sutton Benger (21 dwellings), Church View Sutton Benger (24 dwellings), Westwells (81 dwellings) and Broad Town (10 dwellings).
- 7.102. I have been involved in some of those appeals. I have listened to the LPA repeatedly argue that these settlements are not well suited to receiving further housing for a variety of reasons (including an alleged distortion of the spatial strategy and harm to self-containment) and how such development should be redirected to more sustainable higher order settlements, such as Chippenham. It is therefore difficult to see why this scheme too is being resisted on an 'in principle' basis.
- 7.103. Accordingly, the LPA's position must be put into practice. The solution cannot just be to continue refusing applications and resisting appeals, wherever they arise. It also requires permissions to be granted in a manner which is consistent with the strategy of the Development Plan. Out of necessity this will involve development on unallocated sites at the more sustainable locations (like here) because the allocated sites have not come forward in sufficient numbers to meet the minimum housing requirement.

### **The emerging Local Plan**

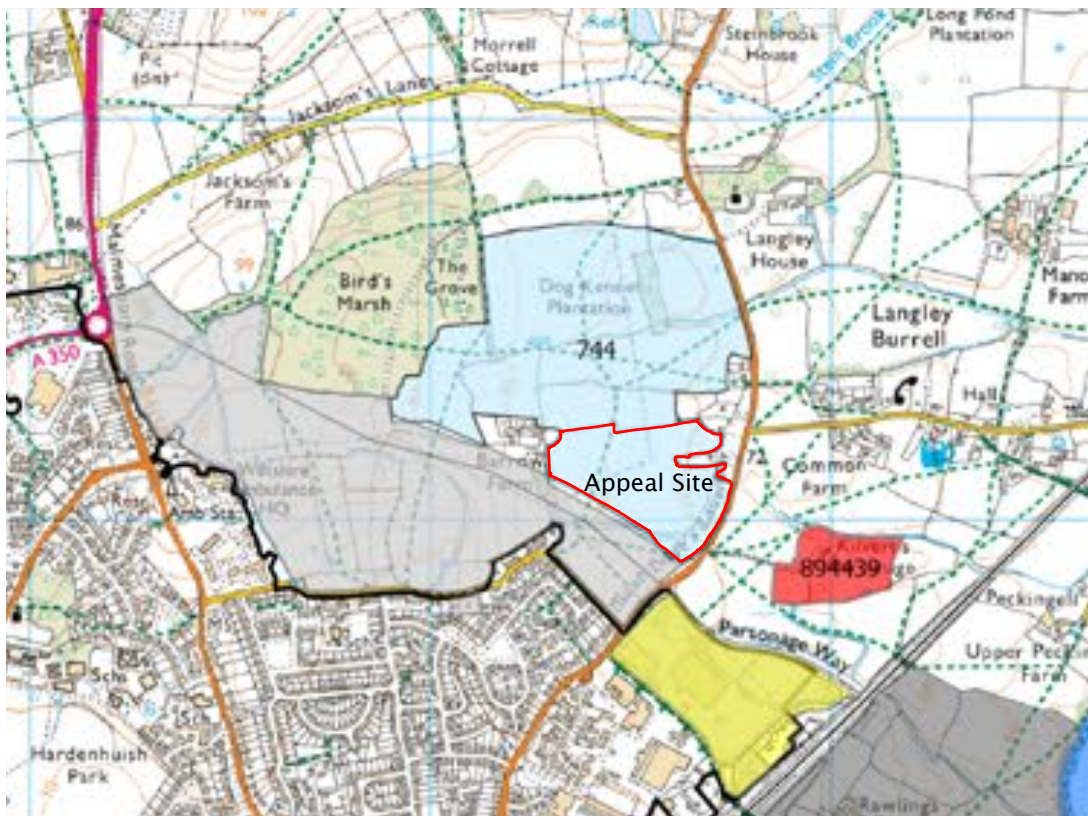
- 7.104. As I have already explained under my issue 1, the eSS proposes a housing requirement of 9,225 homes at Chippenham, including 5,100 homes which have yet to be identified [CD.D9 – see table following para 3.47]. This is similarly picked up in paras 9 and 11 of PfC [CD.D10].
- 7.105. There is insufficient capacity to deliver this scale of housing within the existing settlement boundaries or on previously developed land. In para 13 of PfC, a target of 240 homes on brownfield sites is identified for Chippenham. That leaves a need for 4,860 homes on greenfield sites.
- 7.106. Para 3.38 acknowledges that given the scale of need in Chippenham, there will be a need for a large urban extension and paragraph 3.44 similarly acknowledges the need for greenfield allocations at Chippenham. Again at para 28 of PfC identifies a need for significant greenfield sites to be identified.
- 7.107. Therefore, not only is there a need to release sites beyond the settlement boundary now to meet the immediate housing needs and requirements, but further releases are inevitable as part of the emerging Local Plan. Furthermore, in both instances the sense is to consider the release of sites closest to larger order settlements such as Chippenham in preference to lower order settlements.

7.108. There is no legal or policy requirement to consider alternative sites as part of this s.78 appeal. However, it is relevant to note that the LPA regards the appeal site as a potential site allocation in its Local Plan Review evidence base.

7.109. I would make the following observations:-

- a. The CSSR, identifies site ref: 744 (which includes the appeal site) as being appropriate to take forward for further consideration.
- b. The site scores amber against each of the criteria (Accessibility, Flood Risk, Heritage, Landscape and Traffic)
- c. It concludes no major adverse effects (where mitigation is considered unachievable) are likely [p.42].

7.110. Of particular importance is the fact that the site area that the LPA proposes to carry forward as part of this process with no major adverse effects is in fact the much larger area of land which was the subject of the previous appeal, including the land to the north as can be seen from the map extract below:-



7.111. Once this is understood it puts the amber scoring into a different perspective. Whilst already favourable, the scoring is likely to be even more supportive if it was just considering the

appeal site. I would make the following observations against the scoring criteria in light of the more granular evidence that is available to our section 78 inquiry:-

- a. Accessibility is not a RfR and it is agreed that the appeal proposals would be acceptable in this regard subject to conditions and s.106 [SoCG §8.22]
- b. There is no objection from the LPA on grounds relating to flood risk [see SoCG 8.57 to 8.58].
- c. There is no objection from the LPA or statutory consultees with regards to traffic [SoCG §8.27]
- d. It is agreed that the heritage impacts of the appeal proposals do not warrant refusal. There would be lesser impacts with the smaller scheme [SoCG §8.51]
- e. The LPA's position is inconsistent on landscape. The larger scheme is considered acceptable as part of the eLP site selection process yet the smaller appeal scheme that omits the more sensitive land to the north is not.
- f. Indeed, the LPA's position is inconsistent taking all matters together, in that the larger scheme is being carried forward as part of the eLP yet the smaller scheme which by any logic would have reduced impacts, is being resisted now, despite the immediate need for additional housing.

7.112. In short, the eLP acknowledges that there is a need for additional housing at Chippenham on a significant scale, most of which will need to be met on greenfield land beyond the current settlement boundaries. The Appeal site (and more sensitive land to the north) remains a candidate site with no major adverse effects.

7.113. Despite all of this, the LPA objects to housing development beyond the settlement boundary as a matter of principle. That is illogical and inconsistent.

## Summary

7.114. To summarise on the issue of development beyond the settlement boundary that underpins PRfR no.1:-

1. I accept that the appeal site is located beyond the defined limits of development for Chippenham (ie. beyond the defined settlement boundary). I also recognise that the site is not allocated for housing or any other form of development in the Development Plan. The proposals therefore conflict with WCS Policy CP2.
2. However, it is agreed that the most important policies including Policy CP2 are out of date. The Development Plan is failing to meet its identified needs and objectives. The settlement strategy and the defined limits of development have been ineffective and are not working as was intended.

3. Development beyond the settlement boundary is not in principle unsustainable. It is necessary especially in the context of an immediate need. The LPA does not have a plan-led solution that can remedy the situation now (or anytime soon). The LPA's Action Plan even relies in part on approving sites which may conflict with CP2.
4. Contrary to PRfR1, the LPA accepts that in order to restore a 5YRHLS and meet the minimum housing requirement over the plan period it will be "necessary to support the development of unallocated greenfield sites outside of settlement boundaries" [HSoCG 2.37]. That should be the end of the matter.
5. Policy CP2 does not allow for any balance of competing considerations. It simply says "no" to general housing development in areas defined as countryside. The NPPF does not seek to protect the countryside for its own sake. It takes a more nuanced approach.
6. In these circumstances, the part of Policy CP2 that precludes development beyond settlement boundaries cannot be afforded full or even significant weight in my opinion. I consider that any conflict with the policy can only be afforded limited weight in the current circumstances.
7. There are no other policies in the WCS that preclude housing beyond settlement boundaries. Such development would not conflict with Policy CP1 as confirmed in the recent Malmesbury appeal decision [CD.E1 §36]. There would also be no conflict with Policy CP10 in this regard.
8. There are no policies in the NP that would preclude development beyond the settlement boundary of Chippenham. No such policies are identified in PRfR 1.
9. I accept that the proposals gain no support from saved Policy H4 of the time expired Local Plan. Even if there was an implied conflict with Policy H4, it adds nothing to Policy CP2 in any event.
10. Planning appeals are consistently being allowed in Wiltshire on greenfield sites beyond settlement boundaries where the harms do not significantly or demonstrably outweigh the benefits (or where other policies do not direct a refusal) even at lower tier settlements.
11. In those other appeal decisions, generally only limited weight has been afforded to any conflict with policies that restrict development beyond settlement boundaries. No Inspector has supported the proposition that such policy conflicts should attract significant adverse weight in the planning balance in similar circumstances.
12. If not here, then where? The LPA repeatedly resists applications and appeals (with only limited success) at the lower tier settlements on the grounds of self-containment, exceedance of community area housing requirements and an alleged distortion of the settlement strategy. Chippenham is a 1<sup>st</sup> tier settlement with substantial shortfalls against its minimum housing requirement.
13. The eLP acknowledges that there is a need for additional housing at Chippenham on a significant scale, most of which will need to be met on greenfield land beyond the current settlement boundaries. The Appeal site (and more sensitive land to the north) remains a candidate site with no major adverse effects according to the LPA.

### **Issue 3 – Other Matters including third party objections**

7.115. I would refer the Inspector to the Planning SoCG. From this, it can be seen that there is general agreement about policy compliance on a wide range of issues including those listed below, such that none of these represent major policy obstacles insofar as the principal parties are concerned.

- a. Highways and Access
- b. Master Planning
- c. Impact on Residential Amenity
- d. Housing Mix
- e. Affordable Housing
- f. Public Rights of Way
- g. Ecology
- h. Archaeology
- i. Contamination
- j. Infrastructure
- k. Flood Risk and Drainage
- l. Foul Water
- m. Air Quality
- n. Noise
- o. Agricultural Land Quality

7.116. The areas that remain in dispute between the Appellant and the LPA are relatively narrow and they relate to the effect of the proposals on the character and appearance of the area and the heritage significance of designated and non-designated heritage assets. I defer to Mr Harris and Miss Armstrong on those matters, but I will address their findings as part of the planning balance at section 8 of my evidence.

7.117. I will now deal briefly with the other objections raised by third parties.

#### **The development is not needed at Langley Burrell**

7.118. The Parish Council object on the basis that the proposals fall within the Parish of Langley Burrell (not Chippenham) and that the settlement of Langley Burrell is classified as a small village that is unable to accept further development. This, the Parish Council claims, leads to a fundamental conflict with planning policies.

7.119. This objection is mis-placed. Firstly, the settlement strategy of the WCS is based on defined settlements. It is not based on administrative parish boundaries. They are irrelevant to this appeal.

7.120. Secondly, the appeal proposals respond to a need for development at Chippenham in accordance with the adopted Settlement Strategy (WCS Policy CP1). The site adjoins the built-up area of the town. It is not intended to meet the needs of Langley Burrell. The

proposed development is purposefully separated from the village both spatially and visually, even if it lies within the Parish Area.

## Traffic and highway safety

7.121. The Parish Council says that the proposals would result in a significant increase in traffic levels creating highway safety dangers and nuisance.

7.122. I accept that the proposals would lead to some increase traffic levels if the appeal is allowed but that would be the case with any such development. It is not a reason to dismiss this appeal.

7.123. NPPF paragraph 111 states that:-

**Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”** (my emphasis)

7.124. There is no evidence to suggest that there would be an unacceptable impact on highway safety or that the residual cumulative impacts on the road network would come anywhere close to being “severe.”

7.125. The planning application was supported by a Transport Assessment which demonstrated that the proposals would be acceptable. The statement of common ground also confirms that the LPA does not raise any objection on traffic or transportation grounds subject to planning obligations and conditions.

7.126. Similarly, the Highways Authority, as the relevant statutory consultee for such matters, is not pursuing any objections at this inquiry.

## Precedent for further development

7.127. There is not a valid reason for objection.

7.128. Every planning application must be treated on its own individual merits and in the context of the planning policy framework prevailing at that time. It is not for this inquiry to speculate on what may or may not happen in the future.

## The previous appeal was rejected

7.129. The previous appeal was not rejected. The Inspector’s decision letter was legally flawed, and it was quashed by the Courts for that reason. It was never redetermined because the appeal was withdrawn.

7.130. I won’t repeat all of my earlier evidence on this matter (see section 5) but the current appeal scheme is materially different from the previous appeal. It must now be considered on its own merits, and in the context of the current planning policy framework.



## Lack of local support

- 7.131. Planning decisions must be made upon the land use merits of the particular case, rather than local popular opinion.
- 7.132. I note that the Delegated Report identifies that there were 67 no. letters of objection to the application [CD.C5 App.1 para 8.2]. By contrast Chippenham has a population of 36,000. In my experience 67 letters of objection is a relatively small number.
- 7.133. It's not uncommon for local residents to oppose development proposals in their area. However, the planning system operates in the wider public interest. That includes those people that are in need of housing (particularly affordable housing) whose voice unfortunately, is rarely heard at public inquiries.

## Development should be on brownfield land

- 7.134. The LPA does support development of brownfield sites. However, there is no evidence to suggest that the immediate need for housing can be met on brownfield sites alone. The WCS itself even acknowledges that there are limited opportunities within the urban area [CD.D3 para 4.28].
- 7.135. The Development Plan itself is heavily reliant on greenfield sites and the LPA's Action Plan recognises that greenfield development is necessary [HSoCG para 2.37].

## Ecology

- 7.136. The application is supported by an Environmental Impact Assessment which included a comprehensive chapter on biodiversity. The conclusions were as follows:-

**"5.7.38 As a result of the Proposed Development, there will be no adverse effect on the integrity of any statutory designated sites, and that there will be no residual effects that would exacerbate any impacts, it can be concluded that there would be no in- combination effects arising from the Proposed Development.**

**5.7.39 Where it is considered that there is a reduction in potential habitat for protected species, the development proposals will ensure that these are compensated for by replacement habitat of equal size and greater quality.**

**5.7.40 Following mitigation and enhancement measures, overall effects are considered to be beneficial at the site to Site-European / international level of minor- moderate significance and will ensure a net gain in biodiversity terms.** (my emphasis)

- 7.137. The LPA was aware of the objections from local residents and these were addressed in the Delegated Report as follows:-

**"105 The public objection in regard to ecology concerns is noted. There is clearly a great deal of concern in this regard. However, the**



**submissions have been through a consultation with the Council's Ecologist and great weight is attached to their views. They have determined to raise no objection subject to a number of conditions."**  
(my emphasis)

7.138. There is no PRfR relating to ecology. There are in fact significant biodiversity net gains and the LPA does not object on these grounds as confirmed in the SoCG at paragraphs 8.40 to 8.41.

### **Prematurity and the emerging Local Plan**

7.139. There is no emerging Local Plan in terms of a document which identifies planning policies which can be afforded any weight in this appeal.

7.140. National policy in NPPF paragraphs 49 and 50 identifies particular tests for when prematurity may justify refusal of planning permission. Those tests are not met in this case.

7.141. The LPA agrees that the proposals are not premature [SoCG §8.24].

### **Summary**

7.142. To summarise on the third party objections:-

1. Many of the third party objections have already been addressed earlier in my evidence or in the evidence of Mr Harris and Miss Armstrong.
2. On other technical matters, the planning application provided the necessary information to enable these to be properly considered.
3. There are no outstanding objections from the LPA or statutory consultees relating to those matters.
4. In view of the above and in the absence of any robust technical evidence to the contrary, there is no reason why planning permission should be withheld on these grounds.

## 8. THE OVERALL PLANNING BALANCE

8.1. The planning balance is ultimately a matter of judgement for the decision maker. The Inspector will obviously need to reach her own conclusions, but I will now explain how I believe that the Inspector should approach the determination of this appeal.

### The Decision Making Framework

8.2. I do not seek to argue that the appeal proposals accord with the Development Plan when read as a whole such that this appeal should be determined in the context of NPPF paragraph 11c.<sup>3</sup>

8.3. Instead, I consider this to be a case where NPPF paragraph 11d applies.<sup>4</sup> That said, I consider that the proposals are in general accordance with the overarching settlement strategy of the Development Plan.

8.4. It is agreed that the LPA is unable to demonstrate a 5 Year Housing Land Supply as required by the NPPF [SoCG. §8.13]. As a consequence, footnote 8 of the NPPF is engaged, the most important policies for determining the application are deemed out-of-date and the appeal must be determined in the tilted balance [SoCG. §8.14].

8.5. It is also agreed that there are no NPPF footnote 7 policies that provide a clear reason for refusal in this case for the purposes of NPPF paragraph 11d(i) and so it is agreed that there is no reason why the tilted balance should be dis-applied in this case. Furthermore, it is agreed that the additional protections afforded to NP areas through NPPF paragraph 14 do not apply in this case [SoCG §8.15].

8.6. It is not necessary for me to identify multiple routes into the tilted balance, but should the LPA seek to change its position on 5YRHLS, I will explain that the most important policies are out of date in any event.

8.7. I accept that the tilted balance does not change the statutory presumption in favour of the Development Plan set out in Section 38(6) of The Planning & Compulsory Purchase Act 2004. It does however mean that some policies may need to be afforded reduced weight in accordance with the Suffolk Coastal Supreme Court judgement. Otherwise, if restrictive policies are rigorously applied they will continue to block and frustrate the national imperative to significantly boost the supply of housing.

8.8. Once paragraph 11d(ii) is engaged, the decision maker must consider whether any adverse impacts arising from granting planning permission would significantly and demonstrably

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<sup>3</sup> Approving development proposals that accord with an up-to-date development plan without delay

<sup>4</sup> The “tilted balance”

outweigh the benefits. The Suffolk Coastal judgement indicates that the decision maker must then consider in the context of Section 38(6) of the 2004 Act whether these amount to “other material considerations” that justify the grant of planning permission.

## Benefits that weigh in favour of permission

8.9. I consider that the appeal proposals if allowed, would secure a range of important benefits that would respond to all three of the Government’s overarching objectives for sustainable development (social, economic and environmental).<sup>5</sup> I have outlined the benefits of the appeal proposals below.<sup>6</sup>

### The Social Benefits

8.10. I consider that substantial weight should be afforded to the provision of **additional open market homes**. My weighting of “substantial” reflects amongst other things:-

- a. The need for housing and the scale of the 5YRHLS shortfall in real terms.
- b. The contribution that this site would make to reducing the shortfalls
- c. The inability of the LPA to demonstrate a plan period supply against the housing requirement,
- d. The scale of shortfall against the objectively assessed need identified by the examining Inspector in 2014.
- e. The shortfall being almost entirely attributable entirely to the North and West HMA,
- f. The shortfalls against the minimum housing requirement for Chippenham.
- g. The absence of a plan led mechanism to remedy this anytime soon.

8.11. The Government openly recognises that the country is in the middle of a housing crisis<sup>7</sup> and it is a national policy imperative to significantly boost the supply of housing.

8.12. The SoS and Appeal Inspectors have consistently applied similar weight to this in other appeals, recognising the inadequate levels of house building in recent years, which is affecting the availability and affordability of housing across the country. We also have recent

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<sup>5</sup> NPPF paragraph 8

<sup>6</sup> For the avoidance of doubt, the weightings that I will apply are as follows:- Very Limited, Limited, Moderate, Significant and Substantial.

<sup>7</sup> Housing White Paper, Fixing our Broken Housing Market (February 2017)

appeal decisions in Wiltshire where Inspectors have been highlighted the importance to be attached to additional housing.

#### Plan Period shortfalls

- 8.13. The Housing SoCG identifies a **plan period shortfall of between 701 and 1,407 homes** against the minimum housing requirement over the plan period, and a **shortfall of between 2,701 and 3,407 homes** against the objectively assessed need identified by the examining Inspector in 2014 covering the plan period [HSoCG para 2.13].
- 8.14. It is agreed there is a **shortfall in the North and West HMA of between 880 and 1,219 homes** against the minimum housing requirement over the plan period [2.19]
- 8.15. It is agreed there is a **shortfall at Chippenham of 1,326 to 1,366 homes** compared to the minimum housing requirement over the plan period [2.21]

#### Five Year Housing Land Supply Shortfalls

- 8.16. It is agreed that the Council is able to demonstrate between a 4.36 year land supply with a **shortfall of 1,555 homes** and a 4.70 year land supply with a **shortfall of 618 homes** against the minimum local housing need across Wiltshire. [2.26].
- 8.17. It is agreed that the Council is able to demonstrate between a 3.90 year land supply with a **shortfall of 1,555 homes** and a 4.14 year land supply with a **shortfall of 1,216 homes** in this HMA against the minimum housing requirement [2.31].

#### The LPA's position

- 8.18. The LPA seeks to downplay the extent of the housing shortfalls and wrongly characterises them as "modest." [CD.C5 para 6.16]. I cannot agree. I consider that all of the indices that I refer to above highlight serious and substantial shortfalls even based on the LPA's own figures. It is important to remember that a five year supply is not a target, rather it is a minimum requirement of national policy.
- 8.19. In an LPA area as large as Wiltshire it is also important to look at the actual number of households that are not being provided for rather than the number of years of supply.
- 8.20. The LPA pursued the same arguments at the recent Park Road, Malmesbury inquiry [CD.E1]. The Inspector rejected those arguments based on identical supply figures from the LPA. He concluded that:-

**"69 ..... The Council consider they currently have an authority wide level supply of 4.7 years and both appellants 4.28 years. Within the more relevant NWHMA, where the sites are located, the actual shortfall in house numbers is an undersupply of 1,216 homes according to the Council's figures<sup>9</sup>. Even taking their figure this cannot reasonably be considered a modest shortfall."**

.....

72. The Council have not been ignoring the situation and the steps taken to address it have been explored above. Nevertheless, on the basis of the evidence before me as well as having persisted for over two years (acknowledging that covered the pandemic period) and the actual amount of the shortfall, there is no indication that that the situation is likely to be reversed in the near future." (my emphasis)

8.21. He went on to pick up the point with regards to the actual number of households again at paragraph 73:-

**"73 Whilst the Council's shortfall figure in terms of duration might appear modest at 0.3 years district wide and 0.86 years in the NWHMA, for the same reason the actual shortfall in terms of numbers of dwellings needed is far from insignificant, even on the Council's figures....."** (my emphasis)

8.22. Whilst weight is obviously a matter for the decision maker, I consider that the LPA's position is simply not credible. The LPA SoC states at paragraph 7.9 that:-

**"7.9 ..... the weight to be afforded to this benefit for new housing in a location contrary to the development plan housing delivery policies is considered to be a modest benefit only."** (my emphasis)

8.23. At the Park Road, Malmesbury inquiry the Inspector was provided with summary notes of previous appeal decisions from both parties and he observed that Inspectors in other appeals in Wiltshire:-

**"73 ..... tended to give substantial or considerable weight to the provision of housing."** (my emphasis)

8.24. The Malmesbury Inspector, consistent with these findings concluded that:-

**"75 Consequently, and in light of the Framework's expression of support to the Government's objective of significantly boosting the supply of homes, all this leads me to consider that the delivery of homes on each site, acknowledging their different scales, would be a substantial benefit."** (my emphasis)

8.25. In light of this evidence and given the fact that the Malmesbury appeal related to a much smaller scheme of just 26 homes, I fail to see how the LPA could reach the conclusion that a much larger scheme of 230 homes should be afforded less weight and only considered to be a modest benefit. Even in that case, the LPA afforded substantial weight to 26 homes in the Officer Report and significant weight in the evidence of its planning witness [CD.E17 and CD.E18 respectively].

8.26. Not only is the LPA being inconsistent and ignoring the conclusions of Inspector Underwood (and others), it would seem that the LPA has also fallen in to error because it has tempered the weight to be attached to the benefit of housing because it says that it would be "contrary to the development plan housing delivery policies." That is double counting, because it can

be seen later that the LPA brings the conflict with the plan back into the planning balance as a separate harm (and attaches significant adverse weight) [CD.C5 para 7.9].

- 8.27. As well as double counting it fails to recognise that the LPA's own Action Plan relies upon developing sites that would inevitably breach the restrictive approach to building outside limits of development. It is the same "self-defeating approach" that Inspector Underwood warned against at paragraph 45 of the Malmesbury appeal decision [CD.E1].
- 8.28. As well as increasing the availability of open market housing, the proposals would make provision for a meaningful number of **new affordable homes (92no. homes)**. The provision of additional affordable housing should also be afforded substantial weight in my opinion.
- 8.29. Mr Tiley in his evidence refers to the long-acknowledged pressing need for affordable housing in Wiltshire. He identifies recent appeal decisions that have consistently found that there is a pressing need for additional affordable housing, with almost 4,000 households currently registered in need.
- 8.30. Furthermore, at a more local level, AECOM has assessed the need for affordable housing in Chippenham Town on behalf of the Town Council (CD.H6). This assessment concludes in paragraph 103 that there is a need for 2,643 homes within the town alone over the period 2016-36.
- 8.31. It was common ground at the Malmesbury inquiry that there is a pressing need for affordable housing in the wider Wiltshire Area and the Inspector afforded the delivery of affordable homes substantial weight [CD.E1]. The St Georges Road, Semington Inspector also afforded substantial weight to affordable housing on a scheme of just 26 dwellings [CD.E12 paras 54 and 57].
- 8.32. It is generally true that the planning system is often perceived to have a somewhat technocratic character which requires abstract policy to be applied to objective evidence usually expressed in statistical terms. Occasionally however, a human face emerges. This is particularly true when considering the real problems facing real people in need of affordable housing.
- 8.33. The evidence of affordable housing shortfalls brings the seriousness of this issue into sharp focus. There is a growing body of evidence including work undertaken by the charity Shelter which provides a direct evidential link between inadequate housing conditions and human health problems, poor educational attainment and its long-term effects on the life chances of children [CD.I2]. It is not just any other material consideration, and this helps explain why it warrants substantial weight in the overall planning balance.

## The Economic Benefits

- 8.34. The LPA in the Delegated Report gives the various economic benefits of the scheme limited weight [paras 7.11 to 7.13]. I cannot agree with this.

- 8.35. The NPPF at paragraph 81 specifies that “significant weight” should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. Consistent with national policy I attach significant weight to **expenditure on construction and investment**.
- 8.36. A summary of the likely economic benefits of the scheme was provided as an Appendix to the original Planning Statement [CD.A2 Appendix 2] and I continue to rely upon this. The headline figures can be summarised as follows:-
- a. **Development costs – £29.8m**
  - b. **Direct and indirect job creation during construction – 358 jobs**
  - c. **GVA – £79.2m during the construction phase**
  - d. **Annual Household expenditure £7.7m pa**
- 8.37. New development has a significant role to play in supporting economic growth. Following the last recession, the Government placed a major emphasis on the construction industry to ‘kick start’ the economy. There has been a clear push on planning for growth through national policy initiatives including the NPPF which were intended to stimulate growth in the economy. More recently we have been faced with the legacy of the severe economic impact of the Covid 19 pandemic and we now have the cost of living crisis with spiralling inflation which threatens a deepening downturn in the economy.
- 8.38. The construction industry itself is also reliant upon a constant stream of new sites to keep people employed and to maintain delivery rates. The housing requirement for Wiltshire requires construction activity to be maintained across the plan period, meaning that **new construction jobs** will be created locally. Moderate weight should be afforded to the creation of construction jobs (recognising that they are temporary in nature for any given site).
- 8.39. The proposed **new Local Centre** would bring both social and economic benefits. It would act as a focal point for new and existing residents in the area. It would also generate permanent jobs on site. It is estimated that it could contribute up to £13.6m in economic output over 10 years. I would afford this moderate weight.
- 8.40. The proposals would deliver homes for economically active people to support the economic role of Chippenham, ensuring that local businesses and service providers have the supply of labour that they need to sustain themselves and to grow (estimated at 318 economically active and employed residents that would live in the new houses). New residents can also help to sustain local facilities and services including public transport, by bringing additional expenditure to the area on a day to day basis. I would afford this moderate weight.



- 8.41. The appeal proposals will provide **financial contributions towards off-site community infrastructure**. I recognise that these payments are essentially required to mitigate the impact of the development, however, they do still represent new investment in community infrastructure which otherwise would not happen and which will also be used by existing residents living in the surrounding area. This should be afforded limited weight as a benefit.
- 8.42. Overall, it can be seen that the proposal derives considerable weight in support of the economic role of sustainable development.

## **Environmental Benefits**

- 8.43. The proposals provide for additional **public open space**. I accept that this would be primarily to meet the needs of new residents but it would also be available for existing residents in the area. I would afford this limited weight.
- 8.44. The appeal proposals would deliver **other green infrastructure and biodiversity enhancements through new planting** as explained in the evidence of Mr Harris. He refers to a moderate beneficial effect as assessed for existing hedgerows and trees which will be conserved, restored and brought into long term landscape management.
- 8.45. The biodiversity on-site net gain calculation in the ES identified a 24.51% net gain for Habitat units and a 40.39% net gain for Hedgerow units [CD.A12K Technical Appendix 5.1 Annex 5.3].
- 8.46. Overall, I would afford these benefits moderate weight in this case

## **The Adverse Effects to be Weighed in the Planning Balance**

- 8.47. I accept that there would also be adverse effects that ought to be weighed in the planning balance.

### **Conflict with the Development Plan (Policy CP2) and harm to the plan-led process**

- 8.48. I accept that there would be a **conflict with the Development Plan** as the site has not been allocated for housing in an adopted plan and it is located beyond the settlement boundary (WCS Policy CP2).
- 8.49. However, it is agreed that the LPA cannot demonstrate a 5YRHLS, or a plan period supply and the most important policies are all out of date.
- 8.50. The Development Plan policies have self-evidently been ineffective at delivering the number of homes that are required and needed and they offer no plan-led solutions that can remedy the situation now. There is no contingency mechanism that allows greenfield sites beyond settlement boundaries to come forward when supply is failing. The LPA says that it has an Action Plan but this obviously relies upon granting planning permissions on sites that do not accord with the Development Plan.

- 8.51. The importance of the plan led system is not in dispute, but it comes with a responsibility to keep plans up to date and that has not happened in this case. The LPA can have no complaints that this is not plan-led development.
- 8.52. In circumstances where the plan-led system has failed, it is necessary to allow the Development Management process to intervene. That is manifestly the intended purpose of the “tilted balance” in paragraph 11d of the NPPF. Where an LPA is unable to demonstrate a 5YRHL, Footnote 8 of the NPPF is triggered and the most important policies will be deemed out of date. As per the Suffolk Coastal judgement some policies will need to be afforded reduced weight to allow much needed housing to come forward.
- 8.53. It is also important to recognise that whilst there would be conflict with Policy CP2, the proposals are still in general accordance with the adopted settlement strategy. This is not a site that is located in deep rural countryside or at a village with no facilities such that it is completely at odds with the settlement strategy of the plan. Instead, this is a site which is located where the WCS seeks to focus development; at a 1<sup>st</sup> tier Principal Settlement.
- 8.54. I would afford no more than limited weight to the conflict with Policy CP2 and any perceived harm to the plan-led process.

#### **Impact on the character and appearance of the area**

##### Loss of countryside

- 8.55. The proposals would involve development on a greenfield site that would give rise to a loss of countryside. However, this LPA is highly dependent upon greenfield sites and such losses are inevitable and unavoidable if housing needs are to be met.
- 8.56. There is no evidence that the LPA can redress the housing land supply shortfalls without the loss of some greenfield sites, which are well located to higher order settlements. As noted earlier, it is agreed that in order to restore a 5YLS and meet the minimum housing requirement over the plan period it will be necessary to support the development of unallocated greenfield sites outside of settlement boundaries [HSoCG 2.37].

##### Landscape and visual impact

- 8.57. The evidence of Mr Harris considers the landscape and visual impact of the proposed development and he explains that the proposals were tested by an LVIA that formed part of the Environmental Statement submitted with the original application [CD.A12M].
- 8.58. With regards to **landscape character**, Mr Harris explains that the baseline landscape is undesignated and is not a valued landscape. I would highlight that Inspector Major reached the same conclusion in paragraph 24 of the previous appeal decision [CD.E2] where he stated that:-

**“Paragraph 109 of the NPPF seeks to protect and enhance valued landscapes, though offers no definition of what such a landscape is.**

**That it is valued by local people could apply almost anywhere, and would not be a suitable definition. But such circumstances may form a part of any definition of value. In this case I accept the value of the land to local people but cannot conclude that the land in itself should fall within the NPPF definition of valued landscape." (my emphasis)**

- 8.59. Mr Harris explains that the construction of the new link road and residential area south of the road has changed the southern boundary of the appeal site, creating an open aspect with the new settlement edge of Chippenham. This has introduced urbanising influences on the landscape of the appeal site, reducing sensitivity to further potential changes.
- 8.60. Existing landscape assessment including the Landscape Setting Assessment has confirmed that the appeal site is without key views or important local features and was identified to have capacity for development.
- 8.61. The Appellant's LVIA identifies that landscape effects are generally contained to the immediate context of the appeal site. The development of the new link road and settlement edge allows the appeal proposals to form a logical extension of the existing urban settlement with lesser magnitude of change due to the lower sensitivity created by the extension of the present settlement edge and new link road.
- 8.62. Landscape enhancements will include strengthening of the well treed character along the B4069 highway corridor and a softer interface of the settlement area with the wider countryside. Residual landscape effects have generally been identified to fall below a threshold of significant harm.
- 8.63. With regards to **visual effects**, Mr Harris explains that visual effects are generally contained to visual receptors within and immediately adjoining the site.
- 8.64. The appeal site already has strong visual connectivity with the existing settlement edge, reducing the potential sensitivity of visual receptors to change. Views of the existing urban settlement edge are experienced from the B4069 and local public rights of way within the appeal site and within the wider landscape east and north of the site. Whilst visual harm will arise from the loss of agricultural openness from the development of the appeal site, this harm has been identified to be limited and contained. Residual visual harm has generally been identified to fall below a threshold of significant harm.
- 8.65. The predicted impact of the appeal proposals on the rural character and **tranquillity** of the countryside is limited and the predicted impact of the appeal proposals on the **rural approach to Chippenham** is also identified to be limited.
- 8.66. The impact on the character and **setting of Langley Burrell** has been assessed to be limited because of the extent of the landscape that separates the village from the B4069 and the intervening landcover that lies between the village and the appeal site. Although these features would not in themselves fully screen views of new built form, the proposed

mitigation along the western margin of the B4069 will provide this mitigation. In addition, this mitigation will screen the existing views of the open and harsh main settlement edge, so reducing views of built form from what is presently experienced. This would provide an enhancement to views experienced from the east of the B4069.

8.67. Overall Mr Harris concludes that the proposed development will have some limited and localised landscape and visual effects. Based on his conclusions I am of the view that the proposals will not result in an unacceptable level of harm to the local or wider landscape character or appearance including the wider rural setting of Chippenham and the setting of Langley Burrell. Any such impact is clearly and decisively outweighed by the considerable benefits of the appeal proposals.

8.68. I rely upon the evidence of Mr Harris, and I agree with it. In light of his findings, I would afford no more than moderate weight to the identified harms (including loss of countryside) and any related conflicts with the Development Plan that arise from them.

#### **Impact on the heritage significance of nearby designated heritage assets**

8.69. Miss Armstrong presents the evidence for the Appellant on heritage matters. I rely upon her evidence, and I agree with it.

8.70. Miss Armstrong correctly observes that the LPA does not identify harm to heritage assets in its PRfR. Notwithstanding this, her evidence identifies that there would be some harm that would arise from the appeal proposals that needs to be considered in the planning balance, and in particular weighed in the internal heritage balance against public benefits.

#### **Designated heritage assets**

8.71. In her professional opinion the only designated heritage assets that would adversely affected would be:-

- Grade II Listed Barrow Farmhouse and
- Grade II Listed Barrow Cottage.

8.72. In both cases the level of harm would be “less than substantial” in NPPF terms. The harm to Barrow Farmhouse would be low to moderate in the spectrum of less than substantial harm and in the case of Barrow Cottage it would be at the low end of the spectrum.

8.73. That harm must be weighed against the public benefits as per national policy in NPPF paragraph 202. In both cases I conclude (as does the LPA in the SoCG) that such harms are outweighed by the public benefits of the proposals.

8.74. Miss Armstrong identifies no harm to the heritage significance of the other Grade II Listed assets identified in the SoCG [§8.42] as requiring assessment, namely The Pound, The Old School or Pound House.

#### Non designated heritage assets

- 8.75. The NPPF at paragraph 203 states that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
- 8.76. Miss Armstrong has reservations about the heritage significance of Langley Common and she concludes that the land identified in Policy HP3 of the NP can be considered to be of very low local value, at most. She then goes on to find that the appeal proposals would result in at most, only a very minor degree of harm to any heritage significance that Langley Common may be deemed to hold, as a whole.

#### Weight to be attached to the identified heritage harms

- 8.77. I recognise the imperative to give considerable weight and importance to harm to the heritage significance of designated heritage assets, but as was held in Palmer [CD.F9] and reiterated and quoted in Bramshill [CD.E22 paragraph 75] the weight to be afforded to the desirability of preserving the asset or its setting is not uniform:-

**“75 .....that the imperative of giving “considerable weight” to harm to the setting of a listed building does not mean that the weight to be given to the desirability of preserving it or its setting is “uniform”. That will depend on the “extent of the assessed harm and the heritage value of the asset in question”. These are questions for the decision-maker, heeding the basic principles in the case law.” (my emphasis)**

- 8.78. I have applied the following weightings to the harm to the settings of the affected designated heritage assets:-

- Grade II Listed Barrow Farmhouse – Moderate weight
- Grade II Listed Barrow Cottage – Moderate weight

- 8.79. Given the very minor harm (at most) to a non designated heritage asset of very low local value (at most) my weighting is as follows:-

- Langley Common (non-designated HA) – Very limited weight.

- 8.80. I note that the LPA identifies “less than substantial’ harm to the settings of four listed buildings Barrow Farm, Barrow Cottage, The Old School, The Pound, and harm to a non-designated heritage asset ‘Langley Common.” Paragraph 7.6 of the LPA SoC deals with the weight to be attached to that cumulative harm and it states that:-

**“The proposal would not protect, conserve or enhance the historic environment and this weighs moderately against the proposal.”**

8.81. It can be seen that there is very little between the parties on the weight to be attached the identified heritage harms. If anything, my weightings are more precautionary.

8.82. The LPA also accepts that even on its own case, the public benefits would still outweigh the alleged harm to designated heritage assets for the purposes of NPPF paragraph 202 [SoCG §8.48]. I agree.

**Compliance with the Development Plan**

8.83. I accept that the appeal proposals do not accord with the Development Plan when it is read as a whole. However, given the housing land supply position all of the most important policies are out of date in any event, and it will be necessary to afford reduced weight to some policies.

8.84. There would be no conflict with **WCS Policy CP1**. The policy sets out the settlement strategy of the WCS and identifies the settlements where sustainable development will take place. Chippenham is identified as a Principal Settlement and the proposals are therefore consistent with the settlement strategy. The policy says nothing about settlement boundaries.

8.85. I do however accept that there would be a conflict with **Policy CP2**. The appeal site is not allocated for development and it lies outside the settlement boundary of Chippenham. Policy CP2 precludes development outside the defined settlement limits without any further assessment (unless it is one of the exceptions at paragraph 4.25, none of which apply to this case). The proposals therefore conflict with this part of Policy CP2. There would however be compliance with other parts of the policy in terms of contributing towards the overall housing requirement and the separate requirement for the North and West HMA, all in a sustainable manner.

8.86. The proposals gain no support from **Local Plan Policy H4** which identifies specific types of housing that will be permitted in the countryside. Even if this was taken to be a policy conflict it adds nothing to the conflict with Policy CP2.

8.87. There would be no conflict with **WCS Policy 10**. The policy requires development in the Chippenham Community Area to be in accordance with the Settlement Strategy set out in Core Policy 1, which I have already confirmed to be the case. The proposals would also contribute to meeting the minimum housing requirement of 4,510 homes that is identified in the policy.

8.88. **WCS Policy CP 51** deals with landscape matters and this policy requires careful consideration. Policy 51 states inter alia that:-

**“Development should protect, conserve and where possible enhance landscape character.”** (my emphasis)

8.89. It also goes on to say that it:-

**“... must not have a harmful impact upon landscape character.....”** (my emphasis)

8.90. Read on its face, these could be interpreted as “nil detriment” or “no harm” policy requirements. Given that the evidence of Mr Harris considers that the proposals meet the general objectives of criteria ii, iii & vi (which the LPA alleges breaches) the arguments in favour of there being no conflict with this policy are as follows:-

- a. The Development Plan must be read as a whole.
- b. The WCS requires amongst other things the delivery of at least 42,000 houses
- c. The supporting text at para 6.79 talks about the competing challenge to allow for appropriate development and it must be assumed that this can be achieved without conflict with Policy 51.
- d. We know that this is an LPA that is heavily reliant upon greenfield sites.
- e. If the localised impact of turning a greenfield site into a developed site represents a conflict with Policy 51 then the vast majority of sites including allocated sites would be incompatible with the policy and that would undermine the whole strategy. That cannot be right or be the intention of the authors of the policy.
- f. The first limb of the policy also talks about mitigation and how any negative impacts must be mitigated as far as possible. This would imply that there can be harm, but it should be minimised to an acceptable level.
- g. Not all of the recent appeal decisions involving development on greenfield sites in Wiltshire have found there to be a material conflict with this policy.

8.91. However, I anticipate that the LPA may seek to counter those arguments with an alternative reading of the of the policy:-

- a. The policy says that a proposal must preserve, conserve and not have a harmful impact on landscape character. These are very high bars and require demonstration of no residual harm at all. Any such harm (including unavoidable harm from building on a greenfield site) results in a policy conflict.
- b. Reliance cannot be placed on the part that refers to negative impacts being mitigated as far as possible because that is incompatible with the earlier requirements of the policy for there to be no harm.

8.92. If the policy is to be interpreted as a “no harm” policy, then I would have to accept that there would be an unavoidable conflict with Policy 51 (as with most if not all greenfield sites in



Wiltshire). I would however say that the policy should be afforded reduced weight in those circumstances for the following reasons:-

- a. The policy would be inconsistent with the NPPF.
- b. The first limb of the policy fails to reflect the nuances between NPPF paragraphs 174a and 174b. The policy requirement to protect and enhance applies to valued landscapes. The appeal site is not a valued landscape and instead the NPPF policy requirement in this case is to “recognise the intrinsic character and beauty” which is absent from the policy.
- c. The NPPF does not as a matter of principle preclude development on greenfield land for landscape or any other reasons and NPPF paragraph 174b is not incompatible with the provision of housing on greenfield land.
- d. Taking a strict reading, virtually every greenfield site would conflict with the policy and as noted earlier the WCS relies heavily on greenfield land.
- e. The LPA’s Action Plan assumes the need for development on unallocated greenfield sites and so a nil detriment policy can’t be applied with full vigour otherwise it will frustrate the Action Plan.

8.93. If the policy is applied in the spirit of the NPPF then there would be compliance. If it is applied as a no harm policy then it is inconsistent with the NPPF and the policy conflict would only attract limited weight.

8.94. Even if there is some conflict with Policy CP51, taking a precautionary approach, Mr Harris says that the harm is limited and localised.

8.95. I adopted this same position at the Park Road, Malmesbury inquiry. The Inspector agreed with me [CD.E1 para 31]:-

**“31. Both developments would mitigate any negative landscape aspects as far as possible and avoid conflict with the criteria of Wiltshire Core Strategy, 2015 (WCS) Core Policy (CP) 51. Nevertheless, notwithstanding its provision for mitigation, CP 51 also requires an unqualified avoidance of any harmful effect on landscape character. Even though the harm would be limited or extremely limited, both developments would conflict with the policy for that reason. However, such conflict would carry only limited weight in both cases.”** (my emphasis)

8.96. Mr Harris deals with **WCS Policy 52 (v)** he is satisfied that the objectives contained in CP52 (v) are embedded within the appeal proposals and that with regard to landscape and visual matters, the proposals do not conflict with that part of the policy.

- 8.97. **WCS Policy CP57** deals with design. This is an outline application and so many of the matters can only be addressed at the RM stage such as layout, mass, scale, plot sizes, elevational treatments etc. However, I know some previous appeal Inspectors have concluded that parts of the policy can also apply to outline applications also.
- 8.98. Insofar as it is relevant to this appeal, and reading the stated reasons for refusal, Mr Harris is content that the scheme is capable of being in compliance with this policy. I agree with him and rely upon his evidence.
- 8.99. Read on its face the proposals would seem to conflict with **WPC Policy 58** in relation to designated heritage assets because, there is acceptance that there would be some harm, yet:-
- a. The policy is a nil detriment policy in that it requires protection, conservation and where possible enhancement, and
  - b. It does not allow for the balance of harm against public benefits with regards to designated heritage assets as per NPPF paragraph 202.
- 8.100. Policy 58 was considered in the case of *Wiltshire Council v Secretary of State for Housing Communities and Local Government & Anor [2022] EWHC 36 (Admin)* [CD.E20]. The judgement cross refers to the earlier judgement of *Bramshill* [CD.E22] which had held that:-
- “89 The absence of an explicit reference to striking a balance between “harm” and “public benefits” in the local plan policies does not put them into conflict with the NPPF, or with the duty in section 66(1). Both local and national policies are congruent with the statutory duty. The local plan policies are not in the same form as those for “designated heritage assets” in the NPPF. They do not provide for a balancing exercise of the kind described in paragraphs 193 to 196 of the NPPF, in which “public benefits” are set against “harm”. But they do not preclude a balancing exercise as part of the decision-making process, whenever such an exercise is appropriate. They do not override the NPPF policies or prevent the decision-maker from adopting the approach indicated in them. They are directed to the same basic objective of preservation.**
- 8.101. The relevant part of the *Wiltshire* judgement reads as follows:-
- 45. Mr Easton accepts that the inspector in the present case carried out such a balancing exercise, but submits that he did so by applying NPPF 196 which expressly permits such an exercise, rather than by applying CP58 as required by section 38(6) of the 2004 Act. Had he done so, he should and would have applied great weight to the conflict of the proposal with that policy. That is of significance given that the inspector found that the harm and the public benefit of the proposal was finely balanced.**
- 46. In my judgment, the inspector in this case carried out a similar exercise to that carried out in Bramshill, and also referred to the**

statutory duty in paragraph 58 of the decision letter, saying that he had "given considerable weight to the statutory duty to preserve" the church. There is an element of circularity in Mr Easton's argument. If, as he submits, the inspector should have carried out the exercise under CP58, and if, as he submits, it is permissible to have regard to benefits under that policy, then the matter of what weight to give to the conflict with the policy having regard to the fact that on its terms it does not provide for balance exercising, would remain a matter for the planning judgment for the inspector. It is clear from paragraph 89 of the judgment in Bramshill that the inspector was entitled to acknowledge that lack.

- 8.102. If Policy 58 is to be applied as being consistent with NPPF paragraph 202 (allowing for a balance with benefits) then there would be no conflict with the policy because the parties agree that the public benefits outweigh the harm [SoCG §8.48].
- 8.103. If the policy is applied as being inconsistent with NPPF paragraph 202, then as a matter of judgement I would afford no material weight to the conflict with Policy 58. To do otherwise would be double counting the harm.
- 8.104. I would take a similar approach with regards to the non-designated heritage asset that is Langley Common. I would not afford additional weight over and above the weight that I afford to the harm itself. That harm should be considered as per NPPF paragraph 203.
- 8.105. There would be no conflict with the policies of the **Langley Burrell Parish Neighbourhood Plan (NP)** insofar as the principle of development is concerned (as reflected in the absence of any alleged conflict within PRfR 1).
- 8.106. PRfR 2 however alleges conflict with NP Policies PB1, LP1 parts i, ii, v, vi as well as NE2. Mr Harris addresses these policies in his evidence (which should be read in full as his conclusions are qualified and I don't repeat all of his qualifications here).
- 8.107. Mr Harris concludes that the proposals would be fully in accordance with **NP policy PB1** which relates to development proposals at the urban fringe
- 8.108. He considers that the appeal proposals to be sensitive to the grain and layout of the landscape and its rural and settled features so as to not be in conflict with **NP Policy LP1 (i)**.
- 8.109. **NP Policy LP1 (ii)** requires new development to retain and not diminish the physical separation between Langley Burrell and Chippenham. Mr Harris accepts that the appeal proposals will conflict with policy LP1 part ii but does not accept that this conflict will result in harm to the character or setting of the village.
- 8.110. **Policy LP1 (v)** requires development to retain the tranquillity of the rural landscape in particular where public footpaths allow access for recreation. Mr Harris considers that the appeal proposals would (through the development of the appeal site) conflict in part with policy LP1 (v) but would do so in the context of the background existing lower levels of tranquillity, this conflict is limited to the appeal site itself.

- 8.111. **Policy LP1 (vi)** requires development not to diminish the significant views across open countryside (as shown in Figure 6 of the NP). Mr Harris accepts that the proposals would conflict with this part of the policy due to the changes to View 4 but explains that this conflict should not be assessed to result in unacceptable harm because the view has been changed by the development of the new link road, highway changes to the B4069 and new settlement edge. The view is not of the pastoral setting of the Parish as stated in the opening paragraph of policy LP1 but now comprises a view dominated by foreground highway activity and a damaged and declining landscape and new settlement edge.
- 8.112. **Policy NE2** promotes countryside amenity and the rural footpath network. Mr Harris is satisfied that the appeal proposals do not conflict with this policy.
- 8.113. NP Heritage **Policy 1 (HP1)** is a general heritage policy (without provision for a public benefits balance) and I would treat this policy in the same way as WCS Policy CP58.
- 8.114. NP Heritage **Policy 3 (HP3)** – relates to the preservation of Langley Common. The location and design of new development must have “appropriate regard” for the significance of this asset and the setting it provides for listed buildings and the village. This issue is addressed in the evidence of Miss Armstrong and there would be no conflict with this policy. I note that there is no reference to any conflict with this Policy in the PRfR.
- 8.115. Various other policies are identified in PRfR 3. It is agreed that appropriate planning obligations are capable of satisfying the LPA’s PRfR [SoCG §5.3] and so it must follow that in doing so the proposals would comply with the requirements of these policies.
- 8.116. The proposals would also accord with a wide range of **other policies** in the Development Plan relating to matters such as highways, transport, ecology, flood risk etc. It is unnecessary to rehearse them all again here because there are no conflicts. If the LPA has not identified those policies in its PRfR then it can be assumed that there is no conflict with them<sup>8</sup>. The SoCG also covers off these issues for the avoidance of doubt.
- 8.117. Following this analysis, my conclusion is that whilst the proposals would (unavoidably) conflict with the Development Plan, they would still be in general accordance with the settlement strategy and other important development management policies. There is some conflict with landscape policies, but those harms are accounted for in the planning balance.
- Other considerations**
- 8.118. There are no other grounds to resist development on this site which cannot be avoided, mitigated, or controlled through planning conditions and/or obligations.

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<sup>8</sup> See Article 35 of the DMPO

## My Overall Conclusion on the Planning Balance

- 8.119. The appeal proposals do not accord with the Development Plan when it is read as a whole. However, it can be demonstrated that they are still in general accordance with the overarching strategy of the Development Plan which seeks to focus growth at sustainable settlements like Chippenham.
- 8.120. When the tilted balance in NPPF Paragraph 11d(ii) is applied to the appeal proposals, I find that the residual adverse impacts of granting planning permission would not significantly and demonstrably outweigh the identified benefits of the development. This represents a very important material consideration which should override the conflict with the Development Plan.
- 8.121. To summarise on the overall planning balance:-
1. Although there would be a conflict with the Development Plan the most important policies are out of date and the proposals would still be in in general accordance with the adopted settlement strategy.
  2. The tilted balance is engaged and there are no NPPF footnote 7 policies that indicate that it should be dis-applied in this case.
  3. The proposals would deliver a range of social, economic and environmental benefits which can be afforded varying levels of weight as identified below:-
    - a. Provision of Open Market Housing – Substantial
    - b. Provision of Affordable Housing – Substantial
    - c. Expenditure on construction/investment – Significant
    - d. Creation of construction jobs – Moderate
    - e. New local centre including permanent jobs – Moderate
    - f. Providing homes for economically active people – Moderate
    - g. Financial contributions towards off site infrastructure – Limited
    - h. Public open space – Limited
    - i. Other green infrastructure and biodiversity enhancements – Moderate
  4. The potential residual adverse impacts have been identified and these should also be afforded varying degrees of weight as follows:
    - a. Conflict with Development Plan/harm to the plan-led process – Limited
    - b. Landscape and visual impact (including loss of countryside) – Moderate



- c. Harm to the settings of designated Heritage assets
    - i. Grade II Listed Barrow Farmhouse – Moderate
    - ii. Grade II Listed Barrow Cottage – Moderate
  - d. Harm to non-designated Heritage assets
    - i. Langley Common (non-designated HA) – Very Limited
5. All other identified impacts can be mitigated through planning conditions, obligations or through reserved matter applications.
  6. Overall, the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits and this is a material consideration that outweighs the conflict with the Development Plan.
  7. As such the proposals represent sustainable development in the context of NPPF paragraph 11d and the appeal should be allowed.



## **9. PLANNING CONDITIONS AND OBLIGATIONS**

- 9.1. The Appellant will present deeds pursuant to Section 106 of the Town & County Planning Act 1990, before the close of the public inquiry to deal with PRfR 3.
- 9.2. Grampian conditions and other suitably worded conditions will also be used as necessary and an agreed list of conditions will be provided before the start of the inquiry.



## 10. SUMMARY & CONCLUSIONS

10.1. My Proof of Evidence has been prepared on behalf of Robert Hitchins Limited (the Appellant). It relates to a Planning Appeal made pursuant to Section 78 of the Town and Country Planning Act 1990, in respect of land off the B4069 East of Barrow Farm, Langley Burrell, Chippenham (the Appeal Site).

10.2. The Appeal follows the failure of Wiltshire Council (the Local Planning Authority) to determine an application for outline planning permission (with all matters reserved) for a proposed development comprising:-

**“Residential Development (Up To 230 Dwellings), a Local Centre (comprising Commercial Business and Service Uses (Use Class E), Drinking Establishment and Hot Food Takeaway (Sui Generis) with A GIA Limit of 675 Sqm of which no more than 200 Sqm (GIA) shall be used for Retail (Class E(A)) Drinking Establishment and Hot Food Takeaway (Sui Generis)), associated works and Infrastructure, ancillary facilities, open space, landscaping with vehicular access from the B4069.”**

10.3. I present the planning policy evidence and it concentrates on the following issues:-

- |                |   |
|----------------|---|
| <b>Issue 1</b> | <b>The principle of residential development at Chippenham</b>                                       |
| <b>Issue 2</b> | <b>The acceptability of development on unallocated sites beyond the defined settlement boundary</b> |
| <b>Issue 3</b> | <b>Other matters including third party objections</b>   |
|                | <b>The Overall Planning Balance</b>   |

10.4. My main findings can be summarised as follows:-

### **Issue 1 – The principle of residential development at Chippenham**

1. Insofar as the principle of development is concerned, this is the right development at the right location and at the right time.
2. Chippenham is one of the largest centres in Wiltshire. The town provides for wide range of shops, services and community facilities including schools. It also offers a range of employment opportunities all of which would assist with self-containment.
3. Chippenham is identified in the WCS as one of the 1st tier Principal Settlements. Policy CP1 defines Principal Settlements as strategically important centres, the primary focus for development, providing significant levels of jobs and homes and able to meet needs in the most sustainable way to support better self-containment.

4. WCS Core Policy 2 establishes a minimum housing requirement of 42,000 dwellings for the plan period 2006–26. A minimum of 24,740 dwellings are to be provided within the North and West Housing Market Area, of which Chippenham forms part.
5. Chippenham is unique in that it is the only town that has its own minimum housing requirement. It must deliver at least 4,510 dwellings by 2026.
6. The appeal proposals would therefore contribute towards meeting the identified minimum housing requirements for (i) Wiltshire (ii) the North and West HMA and (iii) Chippenham.
7. The Neighbourhood Plan does not preclude further development at Chippenham.
8. The emerging Local Plan evidence base documents show that the LPA continues to identify Chippenham as one of 3no. Principal Settlements and therefore a primary focus for future development. The eSS proposes a housing requirement for 9,225 homes at Chippenham, including 5,100 homes which have yet to be identified.
9. There is nothing in the LPA's stated reasons for refusal that in any way suggests that Chippenham is an unsustainable location for further residential development.

## **Issue 2 – The acceptability of development on unallocated sites beyond the defined settlement boundary**

10. I accept that the appeal site is located beyond the defined limits of development for Chippenham (ie. beyond the defined settlement boundary). I also recognise that the site is not allocated for housing or any other form of development in the Development Plan. The proposals therefore conflict with WCS Policy CP2.
11. However, it is agreed that the most important policies including Policy CP2 are out of date. The Development Plan is failing to meet its identified needs and objectives. The settlement strategy and the defined limits of development have been ineffective and are not working as was intended.
12. Development beyond the settlement boundary is not in principle unsustainable. It is necessary especially in the context of an immediate need. The LPA does not have a plan-led solution that can remedy the situation now (or anytime soon). The LPA's Action Plan even relies in part on approving sites which may conflict with CP2.
13. Contrary to PRfR1, the LPA accepts that in order to restore a 5YRHLS and meet the minimum housing requirement over the plan period it will be "necessary to support the development of unallocated greenfield sites outside of settlement boundaries" [HSoCG 2.37]. That should be the end of the matter.
14. Policy CP2 does not allow for any balance of competing considerations. It simply says "no" to general housing development in areas defined as countryside. The NPPF does not seek to protect the countryside for its own sake. It takes a more nuanced approach.
15. In these circumstances, the part of Policy CP2 that precludes development beyond settlement boundaries cannot be afforded full or even significant weight in my opinion.

I consider that any conflict with the policy can only be afforded limited weight in the current circumstances.

16. There are no other policies in the WCS that preclude housing beyond settlement boundaries. Such development would not conflict with Policy CP1 as confirmed in the recent Malmesbury appeal decision [CD.E1 §36]. There would also be no conflict with Policy CP10 in this regard.
17. There are no policies in the NP that would preclude development beyond the settlement boundary of Chippenham. No such policies are identified in PRfR 1.
18. I accept that the proposals gain no support from saved Policy H4 of the time expired Local Plan. Even if there was an implied conflict with Policy H4, it adds nothing to Policy CP2 in any event.
19. Planning appeals are consistently being allowed in Wiltshire on greenfield sites beyond settlement boundaries where the harms do not significantly or demonstrably outweigh the benefits (or where other policies do not direct a refusal) even at lower tier settlements.
20. In those other appeal decisions, generally only limited weight has been afforded to any conflict with policies that restrict development beyond settlement boundaries. No Inspector has supported the proposition that such policy conflicts should attract significant adverse weight in the planning balance in similar circumstances.
21. If not here, then where? The LPA repeatedly resists applications and appeals (with only limited success) at the lower tier settlements on the grounds of self-containment, exceedance of community area housing requirements and an alleged distortion of the settlement strategy. Chippenham is a 1<sup>st</sup> tier settlement with substantial shortfalls against its minimum housing requirement.
22. The eLP acknowledges that there is a need for additional housing at Chippenham on a significant scale, most of which will need to be met on greenfield land beyond the current settlement boundaries. The Appeal site (and more sensitive land to the north) remains a candidate site with no major adverse effects according to the LPA.

### **Issue 3 - Other matters including third party objections**

23. Many of the third party objections have already been addressed earlier in my evidence or in the evidence of Mr Harris and Miss Armstrong.
24. On other technical matters, the planning application provided the necessary information to enable these to be properly considered.
25. There are no outstanding objections from the LPA or statutory consultees relating to those matters.
26. In view of the above and in the absence of any robust technical evidence to the contrary, there is no reason why planning permission should be withheld on these grounds.

## The Overall Planning Balance

27. Although there would be a conflict with the Development Plan the most important policies are out of date and the proposals would still be in general accordance with the adopted settlement strategy.
28. The tilted balance is engaged and there are no NPPF footnote 7 policies that indicate that it should be dis-applied in this case.
29. The proposals would deliver a range of social, economic and environmental benefits which can be afforded varying levels of weight as identified below:-
  - a. Provision of Open Market Housing – Substantial
  - b. Provision of Affordable Housing – Substantial
  - c. Expenditure on construction/investment – Significant
  - d. Creation of construction jobs – Moderate
  - e. New local centre including permanent jobs – Moderate
  - f. Providing homes for economically active people – Moderate
  - g. Financial contributions towards off site infrastructure – Limited
  - h. Public open space – Limited
  - i. Other green infrastructure and biodiversity enhancements – Moderate
30. The potential residual adverse impacts have been identified and these should also be afforded varying degrees of weight as follows:
  - a. Conflict with Development Plan/harm to the plan-led process – Limited
  - b. Landscape and visual impact (including loss of countryside) – Moderate
  - c. Harm to the settings of designated Heritage assets
    - i. Grade II Listed Barrow Farmhouse – Moderate
    - ii. Grade II Listed Barrow Cottage – Moderate
  - d. Harm to non-designated Heritage assets
    - iii. Langley Common (non-designated HA) – Very Limited
31. All other identified impacts can be mitigated through planning conditions, obligations or through reserved matter applications.



32. Overall, the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits and this is a material consideration that outweighs the conflict with the Development Plan.

33. As such the proposals represent sustainable development in the context of NPPF paragraph 11d and the appeal should be allowed.

## **Concluding Comments**

- 10.5. Having undertaken a planning balance in the way that has been outlined, the Applicant reaches the conclusion that the proposals represent a suitable and sustainable form of development in this location and that there are compelling reasons that justify the grant of planning permission.
- 10.6. In view of the foregoing, the LPA is respectfully requested to grant outline planning permission, subject to any necessary conditions and planning obligations.

Town & Country Planning Act 1990 (as amended)  
Planning and Compulsory Purchase Act 2004

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