

**LAND SOUTH OF GREEN LANE,
CHESTERTON**

**APPEAL REFERENCE
APP/C3105/W/23/3331122**

**APPENDICES TO PROOF OF EVIDENCE OF
ASHER ROSS MRTPI**

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Appendix A – Summary of Experience

SUMMARY OF EXPERIENCE OF ASHER ROSS MRTPI

I have been / am involved in the following relevant and recent projects (inter alia):

Examinations in Public

Promotion of Green Belt site for residential development in London Borough of Croydon. Appeared at Croydon's EiP (2018) and at London Plan EiP (2019).

Promotion of employment site on greenfield site in Horley. Appeared at the RBBC DMP EiP.

Promotion of greenfield site for 250 homes near West Malling. Appeared at the Tonbridge and Malling EiP sessions in 2020.

Promotion of greenfield sites in Mid Sussex for housing development. EiP in June 2021.

Promotion of greenfield sites in Waverley. EiP in July 2022.

Promotion of land in Maidstone for employment and residential uses. EiP in September 2022.

Public Inquiries

Land at Waverley Lane, Farnham - appearance as planning witness in SoS recovered appeal for 157 new homes on the edge of Farnham. Inspector recommended appeal be allowed with full costs, but SoS disagreed. Revised scheme appealed and granted consent in 2023.

Land at former Government Offices, Hook Rise South, Tolworth – appearance as planning witness in SoS recovered appeal for 705 new homes on brownfield site in Tolworth. SoS agreed with the planning case, but appeal dismissed on S106 / affordable housing matters. Revised application now permitted.

Land east of Lindfield – appeared as planning witness for a 200-unit scheme on greenfield land. Appeal recovered by SoS and allowed in 2018.

215 Tunnel Avenue, London – appeared in relation to a Hazardous Substance Continuation application called-in by the Secretary of State. Consent granted.

Westferry Printworks, London – appeared as planning witness on behalf of Tower Hamlets Council in relation to development of circa 1,500 new homes. SoS decision quashed and subsequently dismissed.

Land west of Winterfield Lane, East Malling – appeared at public inquiry for up to 250 homes on greenfield site adjacent to settlement. Provided evidence on planning and housing land supply. Appeal allowed in 2021.

Land east of Station Road, Oakley – appeared at public inquiry for up to 110 homes on greenfield site adjacent to settlement. Provided evidence on planning and housing land supply. Appeal allowed in 2021.

Land at Appledore Road, Tenterden – appeared at public inquiry for 141 homes on greenfield site adjacent to settlement. Provided evidence on planning and public right of way. Appeal allowed in 2021. A legal challenge to the decision was refused consent by the High Court.

Land at South Road, Wivelsfield – appeared at a public inquiry for 45 homes on greenfield site adjacent to settlement. Appealed allowed in 2022.

Land at The Street, Bramley – appeared at public inquiry for 140 homes on greenfield site. Appeal allowed in 2023.

Other Projects

- Advising in relation to a residential scheme adjacent to the settlement of Billingshurst
- Advising in relation of a Regulation 18 allocation in Canterbury
- Generally advising on development of numerous residential sites across Surrey, Sussex, and Kent
- Advising in relation to a CPO matter in Huntingdonshire

Appendix B –
APP/V0510/W/21/3282449 Decision



Appeal Decision

Inquiry held on 11-14 January 2022

Site visit made on 14 January 2022

by Michael Boniface MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th February 2022

Appeal Ref: APP/V0510/W/21/3282449

Land to the North East of Broad Piece, Soham

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Persimmon Homes East Midlands against the decision of East Cambridgeshire District Council.
 - The application Ref 19/00717/OUM, dated 16 May 2019, was refused by notice dated 8 March 2021.
 - The development proposed is up to 175 dwellings and associated infrastructure.
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Decision

1. The appeal is allowed and planning permission is granted for up to 175 dwellings and associated infrastructure at Land to the North East of Broad Piece, Soham in accordance with the terms of the application, Ref 19/00717/OUM, dated 16 May 2019, subject to the conditions contained in the attached Schedule.

Applications for costs

2. At the Inquiry applications for costs were made by East Cambridgeshire District Council against Persimmon Homes East Midlands and by Persimmon Homes East Midlands against East Cambridgeshire District Council. These applications are the subject of separate Decisions.

Preliminary Matters

3. The application is submitted in outline with all matters reserved for subsequent consideration except for the access into the site. This is the basis upon which I have considered the appeal.
4. Before the exchange of evidence, the Council confirmed that it no longer had concerns about transport and highways; flooding and drainage; or the effect on the character and appearance of the area. As such, it did not provide evidence on these topics and opted not to defend its second, third and fourth reasons for refusal.
5. At the case management conference preceding the Inquiry, the main issue in this case was identified. However, in addition to addressing this matter, the appellant provided written evidence dealing with affordable housing; custom/self-build; design; drainage; and transport. Witnesses were made available at the Inquiry by the appellant but none of this evidence was challenged by the Council and it did not seek to cross examine on these topics,

nor did any interested parties opt to ask questions. As such, it was not necessary to call these witnesses for oral evidence and the unchallenged written evidence has been taken into account.

6. The Government published its 2021 Housing Delivery Test (HDT) results on 14 January 2022, to be applied from the following day. As these results had not been known before the Inquiry closed, the parties were given the opportunity to comment in writing and their responses have been taken into account.
7. A signed and executed version of the S106 agreement securing planning obligations was received after the Inquiry, in accordance with an agreed timetable. I deal with this later in my decision.

Main Issue

8. The main issue is whether the site is a suitable location for the proposed residential development, having regard to planning policy.

Reasons

9. The development plan, so far as it is relevant to the appeal proposal, comprises the East Cambridgeshire Local Plan (April 2015) (ECLP) and the Cambridgeshire and Peterborough Minerals and Waste Local Plan (July 2021) (M&WLP). Policy GROWTH 1 of the ECLP expects the delivery of some 11,500 dwellings in East Cambridgeshire during the plan period, with the balance of the need (some 1,500) being met by neighbouring authorities under the duty to cooperate.
10. ECLP Policy GROWTH 2 provides the locational strategy for delivering the expected growth in the district. The majority of development is to be focused on the market towns of Ely, Soham and Littleport. Development is supported within defined development envelopes and strictly controlled outside of these envelopes, having regard to the need to protect the countryside and setting of towns and villages.
11. Policy GROWTH 4 of the ECLP explains that sites will be allocated for the delivery of approximately 6,500 dwellings on the edge of towns and villages and includes a list of allocations for Soham. The supporting text refers to broad locations on the edge of key settlements as potential sources of housing supply. These are identified in a key diagram and there is no disagreement between the parties that the appeal site falls within one such area.
12. Although broad locations are said to be indicative, supply is anticipated from these areas in the later part of the plan period. Indeed, some 1,800 dwellings contributing to the supply identified in the ECLP is expected at the broad locations. Therefore, the supporting text is an important consideration in this case that assists with interpretation of the policy. It is intended that the specific site boundaries will be identified through the next Local Plan review but this is yet to occur and the Council abandoned its last attempt to prepare a new Local Plan during the latter part of the examination process.
13. It is agreed between the parties that policy GROWTH 1 is out of date since the plan is now more than five years old and the identified housing requirement can no longer be relied upon. The Council is now pursuing a Single Issue

Review of the ECLP but this is at a relatively early stage of preparation and the Council accepts that it should attract very little weight at this time.

14. There was much debate during the Inquiry as to whether policies GROWTH 2 and GROWTH 4 should also be considered out of date for the purposes of this appeal. Based on the evidence put to me there is little doubt in my mind that they should. Policy GROWTH 2 is a locational strategy predicated on delivering the housing requirement contained in out-of-date policy GROWTH 1. This requirement cannot be relied upon and the amount of housing now needed in the district within this plan period to 2031 is uncertain, as is the question of whether the need can be accommodated within existing settlement envelopes and/or whether sufficient housing allocations exist. The Council's planning witness accepted during cross examination that it would be wrong to assume what the locational strategy should be without knowing the new housing requirement and I agree.
15. What is known, is that the balance of the need identified at the plan making stage will no longer be accommodated by adjoining authorities. In addition to that balance of 1,500 homes that the plan does not seek to deliver, there has been a significant shortfall against the ECLP housing requirement to date, meaning that the plan cannot be said to have been effective in delivering the anticipated housing need to date.
16. Whilst there is no dispute that for the purposes of calculating housing land supply, the standard method should now be used and that this seeks to address past shortfalls, that does not make the hefty shortfalls against the ECLP requirement immaterial. It is, in my view, an important indication that the ECLP has not been effective in meeting housing needs since the beginning of the plan period and casts further doubt as to whether the Council's locational strategy can be relied upon to significantly boost housing delivery in line with the National Planning Policy Framework (the Framework). The latest HDT results, whilst showing an improved position in the district, still indicate that sufficient housing has not been delivered over the past three years, as has been the case in this district against previous HDT results published by the Government.
17. Continued strict application of policy GROWTH 2 would be likely to worsen this situation. Whilst the general objectives of the policy to manage patterns of growth and protect the setting of towns and villages are good ones that are consistent with the Framework, the policy can no longer be considered up to date because it can no longer be said that sufficient housing can and will be accommodated within the defined settlement envelopes. This is particularly so when the plan itself anticipated that development outside of the envelopes would at some point be needed within the plan period, at the broad locations identified. This must reduce the amount of weight that is placed on conflict with the policy.
18. Similarly, policy GROWTH 4 only makes allocations with the objective of delivering against the out-of-date housing requirement. The past shortfalls in delivery against the plan requirement are indicative that the allocations are not meeting housing needs and may be insufficient. Even if the Council can currently demonstrate a deliverable housing land supply in the region it suggests against its Local Housing Need, that does not make the long-term strategy of the ECLP any more reliable when it comes to housing delivery.

19. The parties agree that there are a large number of policies relevant to this appeal but there is great disparity about which policies are most important for determining the application, or the appeal in this case. There is, in my view, an important distinction between a policy being relevant and a policy being 'most important' in the context of the Framework.
20. In this case, there are a number of general policies in the development plan that are applicable to proposals involving housing and that should be taken into account. However, the real question in this case is whether the proposed housing development is acceptable in principle. That is a question that can only be answered by reference to the policies discussed above, albeit within the context of considering the development plan as a whole, with its many other relevant policies. For this particular proposal, policies GROWTH 1, GROWTH 2 and GROWTH 4 are the most important for determining the case in that they together set out the amount and locational strategy for the delivery of housing, including restricting development outside settlement envelopes. They are all out of date for the reasons I have set out and so the Framework's presumption in favour of sustainable development applies.
21. I recognise that previous Inspectors have concluded differently, finding that policies GROWTH 2 and GROWTH 4 are not out of date. I have no doubt that this was the case at the time they considered them and in the context of the cases they were dealing with, which were not at a market town. However, the decisions highlighted by the parties were now some time ago and I must consider circumstances as I find them now¹. I do not know what evidence was presented to the Inspectors in those cases but it can be expected that the pertinent issues were tested to a greater degree through this Inquiry than would have been the case as part of the hearings procedure followed there. In this case, I have been presented with evidence from the appellant seeking to persuade me to take a different view, including detail of the very small number of houses granted planning permission as exceptions to Policy GROWTH 2 in recent years. Based on the evidence that I have seen and having considered this appeal proposal on its own merits, a different conclusion is now warranted.
22. The only policy with which the Council suggests a conflict is GROWTH 2 and the appellant accepts that to be the case. There can be no other conclusion, given that the appeal site is located outside of the development envelope and the proposed housing scheme does not fall within the defined list of exceptions. I will come on to consider this policy conflict in the round, later in this decision.

Other Matters

Housing land supply

23. Much time was taken up at the Inquiry discussing the potential contribution of individual sites to the Council's housing land supply but given the small deficit identified by the appellant against the requisite five-year requirement it is not necessary for me to consider more than a couple of matters in my decision.
24. I do not accept the appellants argument that a windfall allowance should only be made at years four and five of the Council's supply. The evidence available to the Inquiry clearly demonstrates a healthy past provision of windfall sites in the district, far exceeding the 50dpa that the Council seeks to include at years

¹ APP/V0510/W/20/3245551, APP/V0510/W/18/3213834 and APP/V0510/W/19/3227487

three, four and five². No provision is made for years one and two so as to avoid double counting, given that any schemes likely to deliver in those years would likely already have planning permission and be included in the supply on that basis. The evidence suggests that further sites could well be identified and begin to deliver by year 3 and does not indicate any likelihood of the number of windfall sites diminishing. As such, it seems to me that the windfall allowance suggested by the Council is a realistic, reasonable and robust one.

25. One of the sites in dispute between the parties is at Stanford Park, Burwell (Ref. 50028) and involves a scheme for up to 91 mobile homes. The Council expects that 64 of these will be delivered in the five-year period. The development has detailed planning permission and so, in accordance with the Framework, should be considered deliverable unless there is clear evidence that homes will not be delivered within five years. In this case, there has been clear progress on site in implementing the planning permission with works to construct an internal road. There is also up to date evidence from the developer which the Council has had regard to in concluding on the likely supply from this site. Although the developer has identified some supply issues resulting from the pandemic and acknowledges that mobile homes are generally slower to sell than traditional housing, this is allowed for in the Council's modest trajectory. Having commenced development, there is more than a realistic prospect that 64 units can be delivered in the five-year period and there is no clear evidence before me to indicate otherwise.
26. My conclusion in relation to these two matters means that 114 units should be added to the supply suggested by the appellant. Consequently, the Council can demonstrate a deliverable five-year housing land supply, whichever of the calculations put to me are applied, noting that there was some disagreement on the correct inputs. For the purposes of this appeal, it is not necessary for me to determine the exact housing land supply figure beyond the requisite five years.

Other considerations

27. Many local people raised concerns about the potential impact of the development on local highways. This is a topic addressed extensively in written evidence, including in a comprehensive Transport Assessment. It has been demonstrated that the scheme can be accommodated without material harm to highway safety or capacity, with a range of highway improvements and mitigation proposed as part of the development. As part of the works, a section of Broad Piece would be widened within the highway boundary. This would result in the loss of a small strip of land currently used by some residents for parking but would not materially impact on highway safety. Residents would continue to have sufficient space to pull clear of the carriageway and greater opportunities for on-street parking are also likely to be available after road widening. No conflict with policies COM 7 or COM 8 of the ECLP would result in so far as they seek to avoid highway safety and capacity issues.
28. I have had careful regard to concerns about flooding and drainage. The submitted Flood Risk Assessment demonstrates that the scheme can be accommodated without increasing flood risk to surrounding properties. I acknowledge the reservations of some interested parties and the past issues

² Five Year Land Supply Report

that have been experienced, but that does not mean that a suitable scheme cannot be achieved. Indeed, appropriate drainage provision that controls surface water run-off may assist in improving the current situation. The scheme is currently in outline with much of the detail yet to be designed. What is clear, having regard to the evidence submitted and the comments from the Lead Local Flood Authority, is that a suitable drainage scheme can be achieved and the subsequent detail can be secured by planning condition. The scheme would accord with policy ENV 8 of the ECLP.

29. A Landscape and Visual Impact Assessment considers the likely landscape and visual effects of the scheme and concludes that no significant harm would result. Although there would be an inherent loss of agricultural land and countryside, the site is very well contained by existing built form and I concur that the effects on the character and appearance of the area would be very small indeed. There would be no conflict with ECLP policy ENV 1.
30. The site would be close to a sewage treatment works, though the indicative masterplan indicates that houses could be sited away from this area, with intervening open space. An Odour Assessment determines that suitable living conditions would be achieved for future residents. There would be no conflict with Policy 16 of the M&WLP or ENV 9 of the ECLP.
31. Generally, as a ploughed field, there would be limited impact on biodiversity resulting from the scheme and it has been demonstrated that an overall biodiversity net gain would result from the measures to be incorporated into the scheme. The submitted wildlife surveys identify the presence of a bat in the garage building to be demolished for access to the site but improvements to hedgerows and new greens spaces would be likely to provide some mitigation for this loss of habitat. A protected species licence will need to be obtained from Natural England before any disturbance takes place.
32. Some noise and disturbance would be likely to result from the development, affecting neighbouring occupants. However, this would be a relatively short-term impact during construction. Once complete, the residential development would be compatible with the surrounding, predominantly residential land uses. Given the outline nature of the scheme the ultimate layout of the proposed houses is not yet known but it is clear from the indicative details provided that a suitable scheme could be achieved that would not unacceptably impact on neighbours living conditions.
33. Concerns that local facilities and infrastructure cannot accommodate the future residents of the proposed scheme are noted but I am mindful of the detailed evidence provided by the Council and other service providers in this regard. Subject to appropriate developer contributions, there is no evidence before me that any services or facilities would exceed their capacity. On the other hand, the additional population of the development would be likely to support local businesses and facilities through increased expenditure.
34. As set out above, the appellant submitted evidence on a range of topics and demonstrated that the proposal would contribute towards the local need for affordable housing and custom/self-build housing. It was also clear that the scheme was capable of delivering a high-quality design that would contribute positively to the character and appearance of the area. Other benefits were identified, including economic benefits during construction. Together, these matters weigh significantly in favour of the proposal, as does the delivery of

additional market housing in the context of the Framework's objective to significantly boost supply. The scheme, subject to reserved matters approval, could provide a suitable housing mix and density, as well as delivering affordable housing in accordance with policies HOU 1, HOU 2, HOU 3.

Conditions

35. The parties agreed a list of conditions considered necessary in the event that planning permission is granted. These have been attached without significant alteration but have been amended to improve their precision and otherwise ensure compliance with the appropriate tests. The conditions and the reason for imposing them are contained in the attached Schedule.
36. Condition 27 requires that works the subject of another planning permission are completed prior to any dwelling approved as part of the appeal scheme being occupied. The scheme involves the surfacing of a short section of footpath to the north of the site. Having discussed the suitability of such a condition during the condition's session, it was clarified that the works are to be carried out by the appellant and are deliverable in line with the trigger incorporated into the condition. Therefore, I am satisfied that the condition is reasonable and would ensure that suitable pedestrian access is provided to the north of the site, where a school is currently located.

Planning Obligations

37. A S106 agreement would secure a range of planning obligations to make the development acceptable in planning terms and mitigate the impact of the development on local infrastructure. The obligations include financial contributions towards local education provision, libraries, wheeled bins, necessary highway improvements and a contribution towards mitigating the impacts of the development on Soham Common. It would also secure a policy compliant provision of self and custom build housing, and the provision of a sustainable urban drainage system with future maintenance arrangements.
38. The Council provided a CIL Compliance Statement demonstrating how these obligations meet the tests contained in Regulation 122 of the Community Infrastructure Levy Regulations 2010. The appellant accepts that these obligations are necessary and otherwise in accordance with the tests. I agree with this conclusion and have taken the obligations into account.
39. I also agree that 30% affordable housing is a necessary and CIL compliant obligation having regard to ECLP policy HOU 3 and have taken this into account. The appellant refers to an enhanced affordable housing offer equating to 36% provision. Whilst additional provision is undoubtedly a good thing, particularly given the need in the district, the additional provision is not necessary to make the development acceptable in planning terms and cannot constitute a reason for granting planning permission. As such, I have not attached additional weight in favour of the proposal for provision beyond the policy requirement.

Planning Balance and Conclusion

40. I have found a conflict with a single policy of the development plan, in that the appeal site falls outside of the development envelope for Soham defined by policy GROWTH 2. That is a policy which I have determined to be out of date and for the reasons set out, reduces the weight that I attach to the conflict.

41. It is very apparent that the scheme otherwise accords with the development plan. GROWTH 2 seeks to direct housing development to Soham, one of three market towns that are a focus for development. Furthermore, the appeal site falls within a broad location specifically identified and expected to deliver a significant quantum of development during the later part of the plan period. The Council does not dispute that Soham is a sustainable location for development and made no argument that the development would cause unacceptable harm to the setting of the town, a stated purpose of policy GROWTH 2.
42. Even if the Council can currently demonstrate a housing land supply in the region it suggests (more than 6.5 years), there has been significant under delivery against the development plan requirement to date and there can be no certainty that the strategy contained in the ECLP will deliver sufficient housing in the long-term of the plan period. In fact, the evidence before me suggests that it will not. There has been a persistent failure to meet housing requirements in the area based upon published HDT results and it seems likely that the strict application of out-of-date policies is a relevant factor.
43. Despite a conflict with one important but out of date policy, I have found overwhelming compliance with other relevant policies of the development plan. Overall, I find that the appeal proposal would be in accordance with the development plan taken as a whole and material considerations indicate firmly in favour of the proposal. There would be very few adverse impacts arising from the development but so far as harm would result, for example from the loss of agricultural land or changes to the character of this previously undeveloped countryside, it is far outweighed by the significant benefits of the scheme.
44. The Council itself accepts that planning permission should be granted if the tilted balance applies, as I have determined to be the case.
45. In light of the above, the appeal is allowed.

Michael Boniface

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Jack Smyth of Counsel

He called:

Richard Kay BA (Hons) Strategic Planning Manager
DipTP MA

Barbara Greengrass BSc Planning Team Leader
(Hons) MSc MRTPI

FOR THE APPELLANT:

Charlie Banner QC

He called:

Cameron Austin-Fell Planning Director, RPS Consulting Services Ltd
BA (Hons) MSC MRTPI

Paul Hill BA (Hons) Senior Director, RPS Planning and Development
MRTPI

James Stacey BA (Hons) Senior Director, Tetlow King Planning
DipTP MRTPI

Andy Moger BA (Hons) Tetlow King Planning
MA MRTPI

Jonathan Reynolds BA Technical Director, SLR Consulting Ltd
(Hons) DipTP MA MRTPI

Simon Parfitt MSc BA Director, David Tucker Associates
MCILT

Rob Hill BSc MCIHT Director, Infrastructure Design Ltd
GMICE

INTERESTED PERSONS:

Councillor Warner
Mike Rose
Judith Carballo

Soham Town Council
Local resident
Cambridgeshire County Council

DOCUMENTS SUBMITTED DURING THE INQUIRY

- 1 Appellant's opening submissions
- 2 Council's opening submissions
- 3 Speaking notes of Cllr Warner and Mr Rose, with attachments
- 4 Transport response to Mr Rose from the appellant
- 5 Drainage response to interested parties from the appellant
- 6 Draft conditions
- 7 CIL Compliance Statement
- 8 Court judgement – Dignity Funerals v Breckland District Council...
- 9 Updated 5YHLS Position Statement
- 10 Written costs application from Council
- 11 Revised affordable housing figures from appellant
- 12 Updated CIL Compliance Statement
- 13 Final draft of S106 agreement
- 14 Revised conditions, clean version and tracked changes version
- 15 Note on condition 26 from the appellant
- 16 Appellant's costs response and application against the Council
- 17 Site visit meeting place
- 18 Closing submission of the Council
- 19 Closing submissions of the appellant

DOCUMENTS SUBMITTED AFTER THE INQUIRY

- 1 Council's submission on 2021 HDT results
- 2 Appellant's submission on 2021 HDT results
- 3 Completed S106 agreement

SCHEDULE OF CONDITIONS

- 1) Save for the details of vehicular access into the site from Broad Piece, details of the access, appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.

Reason: To comply with Section 92 of the Town and Country Planning Act 1990, as amended.

- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 2 years from the date of this permission.

Reason: In accordance with the timescale agreed between the parties to ensure prompt delivery, and to comply with Section 92 of the Town and Country Planning Act 1990, as amended.

- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.

Reason: To comply with Section 92 of the Town and Country Planning Act 1990, as amended.

- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: SSS/LP/001 Rev B, 18409-02 Rev E, 18409-08 Rev O, 18409-08-1 Rev O, 18409-08-2 Rev O, 18409-08-3 Rev O and 18409-12-2 Rev B.

Reason: In the interests of certainty and to define the terms of the permission.

- 5) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The statement shall provide for but not be limited to:

- (i) The parking of vehicles of site operatives and visitors;
- (ii) Loading and unloading of plant and materials;
- (iii) Storage of plant and materials and site facilities;
- (iv) A dust management plan;
- (v) Measures to control the emission of noise;
- (vi) Wheel washing facilities;
- (vii) Surface, storm and waste water management and disposal including any pollution to surface and ground water bodies; and
- (viii) Lighting during construction phase.

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

Reason: To safeguard the living conditions of neighbouring occupiers in accordance with policy ENV 2 of the East Cambridgeshire Local Plan.

- 6) No above ground construction shall take place until a Foul Water Strategy has been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied until the works have been carried out to serve that dwelling, in accordance with the Foul Water Strategy so approved, unless otherwise approved in writing by the Local Planning Authority.

Reason: To protect the environment and prevent flooding in accordance with policies ENV 2 and ENV 8 of the East Cambridgeshire Local Plan.

- 7) No above ground works shall commence until a Surface Water Drainage Scheme for the site, based on sustainable drainage principles, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the approved details before development is completed. The scheme shall be based upon the principles within the submitted Flood Risk Assessment prepared by Amazi Consulting Ltd (ref: AMA743 Rev A) dated 23 April 2019 and the Drainage Feasibility Layout prepared by Infrastructure Design Limited (ref: 971-00-01 Rev B) dated December 2019 and shall include:

- (i) Full calculations detailing the existing surface water runoff rates for the QBAR, 3.3% Annual Exceedance Probability (AEP) (1 in 30) and 1% AEP (1 in 100) storm events;
- (ii) Full results of the proposed drainage system modelling in the above-referenced storm events (as well as 1% AEP plus climate change), inclusive of all collection, conveyance, storage, flow control and disposal elements and including an allowance for urban creep, together with an assessment of system performance;
- (iii) Detailed drawings of the entire proposed surface water drainage system, including levels, gradients, dimensions and pipe reference numbers;
- (iv) Full details of the proposed attenuation and flow control measures;
- (v) Details of overland flood flow routes in the event of system exceedance, with demonstration that such flows can be appropriately managed on site without increasing flood risk to occupants;
- (vi) Full details of the maintenance/adoption of the surface water drainage system;
- (vii) Measures taken to prevent pollution of the receiving groundwater and/or surface water;
- (viii) Full details of measures taken to reduce the existing surface water flood risk to adjacent areas from the site.

The drainage scheme must adhere to the hierarchy of drainage options as outlined in the National Planning Policy Framework and Planning Practice Guidance.

Reason: To prevent the risk of flooding, to improve and protect water quality, and improve habitat and amenity in accordance with the policies ENV 2 and ENV 8 of the East Cambridgeshire Local Plan.

- 8) Details of long-term maintenance arrangements for the surface water drainage system (including all SuDS features) shall be submitted to and approved in writing by the Local Planning Authority prior to the first

occupation of any of the dwellings hereby approved. The submitted details should identify run-off sub-catchments, SuDS components, control structures, flow routes and outfalls. In addition, the plan must clarify the access that is required to each surface water management component for maintenance purposes. Thereafter, maintenance shall be undertaken in accordance with the approved maintenance plan.

Reason: To ensure the satisfactory maintenance of drainage systems that are not publicly adopted and to prevent the increased risk of flooding, protect water quality and improve habitat in accordance with policies ENV 2 and ENV 8 of the East Cambridgeshire Local Plan.

- 9) As part of the first reserved matters application, an Energy and Sustainability Strategy for the development, including details of any on site renewable energy technology and energy efficiency measures, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved strategy.

Reason: To ensure a sustainable development in accordance with policy ENV 4 of the East Cambridgeshire Local Plan.

- 10) No development shall take place until a Phase 2 Intrusive Site Investigation and Risk Assessment of the nature and extent of any contamination on the site, whether or not it originates on the site, has been undertaken. The investigation and risk assessment must be undertaken by competent persons, and a written report of the findings must be submitted to and approved in writing by the Local Planning Authority. The report of the findings must include:

- (i) A survey of the extent, scale and nature of contamination;
- (ii) An assessment of the potential risks to: human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes; adjoining land; groundwaters and surface waters; ecological systems; archaeological sites and ancient monuments;
- (iii) An appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. Any remediation works proposed shall be carried out in accordance with the approved details and timeframe as agreed in writing by the Local Planning Authority.

Reason: To minimise the risks from land contamination to the users of the land and neighbouring land, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors, in accordance with policy ENV 9 of the East Cambridgeshire Local Plan.

- 11) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported to the Local Planning Authority within 48 hours. No further works shall take place within the area concerned until an investigation and risk assessment has been undertaken and submitted to and

approved in writing by the Local Planning Authority. Where remediation is necessary, a remediation scheme must be submitted to and approved in writing by the Local Planning Authority. The necessary remediation works shall be undertaken and following completion of measures identified in the approved remediation scheme a verification report must be prepared and approved in writing by the Local Planning Authority.

Reason: To minimise the risks from land contamination to the users of the land and neighbouring land, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors, in accordance with policy ENV 9 of the East Cambridgeshire Local Plan.

- 12) No development shall take place within the area indicated until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority. No development shall take place on land within the WSI area other than in accordance with the approved WSI which shall include:
- (i) The statement of significance and research objectives;
 - (ii) The programme and methodology of site investigation and recording;
 - (iii) The nomination of a competent person(s) or organisation to undertake the agreed works.
 - (iv) The programme for post-excavation assessment and subsequent analysis, reporting, publication and dissemination, and deposition of the resulting archive.

Reason: To ensure that any archaeological remains are suitably recorded in accordance with policy ENV 14 of the East Cambridgeshire Local Plan.

- 13) Construction times and deliveries, with the exception of fit-out, shall be limited to the following hours: 07:30 – 18:00 each day Monday – Friday; 07:30 – 13:00 on Saturdays; and none on Sundays, Public Holidays or Bank Holidays.

Reason: To protect neighbours living conditions in accordance with policy ENV 2 of the East Cambridgeshire Local Plan.

- 14) As part of the first reserved matters application, a Landscape and Ecology Management Plan, setting out details of mitigation, habitat creation and long term management to achieve the target conditions for created habitats, in line with the Biodiversity Impact Assessment calculator (as set out in Appendix 2 to the Natural Environment Statement Rev B – Jan 2021), shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the agreed Management Plan and maintained in perpetuity thereafter.

Reason: To protect and enhance species in accordance with policies ENV 1, ENV 2 and ENV 7 of the East Cambridgeshire Local Plan and the Natural Environment SPD.

- 15) The recommendations made within Section 5 of the Ecological Impact Assessment (May 2019), shall be adhered to at all times throughout the construction and operational phase of the development.
- Reason: To protect and enhance species in accordance with policies ENV 1, ENV 2 and ENV 7 of the East Cambridgeshire Local Plan and the Natural Environment SPD.
- 16) Prior to occupation of the first dwelling, the provision and implementation of a Travel Plan shall be agreed in writing with the Local Planning Authority. The Plan shall include the provision of cycle discount vouchers and/or bus taster tickets and shall be provided to new occupiers of the development. The Plan is to be monitored annually, with all measures reviewed to ensure targets are met.
- Reason: To encourage sustainable modes of transport in accordance with Policy COM 7 of the East Cambridgeshire Local Plan.
- 17) Prior to the occupation of any dwelling the road(s), footway(s) and cycleway(s) required to access that dwelling shall be constructed to at least binder course surfacing level from the dwelling to the adjoining County road in accordance with details which shall have been submitted to and approved in writing by the Local Planning Authority.
- Reason: In the interests of highway safety and in accordance with policies COM 7 and COM 8 of the East Cambridgeshire Local Plan.
- 18) Prior to occupation of the first dwelling, the new access junction shall have been constructed in accordance with approved plan 18409-02-Rev E. The junction shall thereafter be retained in that form.
- Reason: In the interests of highway safety and in accordance with policies COM 7 and COM 8 of the East Cambridgeshire Local Plan.
- 19) Prior to occupation of the first dwelling, the visibility splays shall be provided each side of the vehicular access in full accordance with the details indicated on the submitted plan 18409-02- Rev E. The splays shall thereafter be maintained free from any obstruction exceeding 0.6m above the level of the adjacent highway carriageway.
- Reason: In the interests of highway safety and in accordance with policies COM 7 and COM 8 of the East Cambridgeshire Local Plan.
- 20) Prior to occupation of the first dwelling, details of the proposed arrangements for future management and maintenance of the proposed streets within the development shall have been submitted to and approved in writing by the Local Planning Authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details.
- Reason: To ensure that estate roads are managed and maintained to a suitable and safe standard in accordance with policy COM 7 of the East Cambridgeshire Local Plan.
- 21) In the event that any piling is required, a report/method statement detailing the type of piling and mitigation measures to be taken to protect local residents from noise and/or vibration shall have first been submitted to and approved in writing by the Local Planning Authority. Noise and

vibration control on the development shall be carried out in accordance with the approved details.

Reason: To safeguard neighbours living conditions in accordance with policy ENV 2 of the East Cambridgeshire Local Plan.

- 22) As part of any reserved matters application, details of the number, type and location of electric vehicle charging points (EVCP) to be installed, shall be submitted to and approved in writing by the Local Planning Authority. The EVCP shall be installed as approved prior to occupation of the dwelling to which it relates and retained thereafter.

Reason: To encourage and facilitate sustainable modes of transport in accordance with Policy COM 7 of the East Cambridgeshire Local Plan.

- 23) No development shall take place until a detailed Arboricultural Method Statement (AMS) compliant with BS 5837:2012 'Trees in relation to design, demolition and construction' has been submitted to and approved in writing by the Local Planning Authority. The AMS shall include justification and mitigation for any tree removal proposed and details of how trees will be protected at all stages of the development. Recommendations for tree surgery works and details of any tree surgery works necessary to implement the permission are required, as is the method and location of tree protection measures, the phasing of protection methods where demolition or construction activities are essential within root protection areas and design solutions for all problems encountered that could adversely impact trees (e.g. hand digging or thrust-boring trenches, porous hard surfaces, use of geotextiles, location of site compounds, office, parking, site access, storage etc.). All works shall be carried out in accordance with the agreed AMS.

Reason: To ensure that the trees on site are adequately protected so as to maintain the character and appearance of the area in accordance with policies ENV 1 and ENV 2 of the East Cambridgeshire Local Plan.

- 24) As part of the first reserved matters application, a Noise Mitigation Scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall:
- (i) Identify noise levels from adjoining features such as the adjoining potato store, rail and public highways;
 - (ii) Demonstrate how the proposed layout and dwellings have been designed so as to ensure that non-noise sensitive frontages or rooms face noise creating areas or sources so as to achieve acceptable internal noise levels with windows open;
 - (iii) Demonstrate that private amenity space meets acceptable noise levels.

The Noise Mitigation Scheme shall be implemented as approved.

Reason: To ensure acceptable living conditions in accordance with policy ENV 2 of the East Cambridgeshire Local Plan.

- 25) Prior to the approval of reserved matters, details of a Design Code shall have been submitted to and approved in writing by the Local Planning Authority. The Design Code shall demonstrate how the objectives of the Design and Access Statement and illustrative masterplan will be met. Any

reserved matters application shall demonstrate compliance with the approved Design Code. The Design Code shall include the following:

- (i) principles for built-form strategies to include density and massing, street grain and permeability, street enclosure and active frontages, type and form of buildings including relationship to plots and vistas;
- (ii) a strategy for a hierarchy of streets and spaces;
- (iii) design principles for the public realm, areas of public open space including planted areas, and area for play, including principles for biodiversity enhancements and conservation of flora and fauna interests;
- (iv) design principles for hard and soft landscaping including the inclusion of trees and hedgerows;
- (v) design principles for sustainable drainage systems (SuDS);
- (vi) principles for determining quality, colour and texture of external materials and facing finishes for roofing and walls of buildings and structures including sustainable design and construction of the buildings;
- (vii) principles for accessibility to buildings and public spaces for those with impaired mobility;
- (viii) design principles for structures including street lighting, boundary treatments including walling, street furniture, signage, public art, and play equipment;
- (ix) principles for the alignment, width, and surface materials (quality, colour and texture) proposed for all footways, cycleways, highways and other vehicular accesses within the site and including site access proposals;
- (x) principles for on-street and off-street residential vehicular parking, including principles to discourage casual parking and to encourage parking in designated spaces;
- (xi) principles for cycle parking and storage; and
- (xii) the principles for integrating strategic utility requirements, landscaping and highway design.

Reason: To ensure high quality design in accordance with Policy ENV 2 of the East Cambridgeshire Local Plan and the Design Guide SPD.

- 26) The development hereby approved shall include 20% of the dwellings built to Lifetime Homes standard (or equivalent).

Reason: To ensure dwellings are suitable or easily adaptable for occupation by the elderly or people with disabilities in accordance with Policy HOU 1 of the East Cambridgeshire Local Plan.

- 27) Prior to the first occupation of any dwelling in the development hereby approved, the footway improvement works as detailed in planning permission reference 19/01729/FUL (or any equivalent subsequent planning permission for the same works) shall have been completed in accordance with the approved details.

Reason: To ensure safe and convenient pedestrian access to nearby facilities in accordance with Policy COM 7 of the East Cambridgeshire Local Plan.

- 28) Prior to the first occupation of any dwelling hereby approved, the offsite highway works to be carried out within the public highway and as detailed in drawing nos. 18409-08 Rev O, 18409-08-1 Rev O, 18409-08-2 Rev O, 18409-08-3 Rev O and 18409-12-2B shall have been completed in accordance with the approved details.

Reason: In the interests of highway safety and in accordance with Policy COM 7 of the East Cambridgeshire Local Plan.

Appendix C -
APP/D0121/W/21/3286677 Decision



Appeal Decision

Inquiry Held on 1-4 March, 8 and 9 March 2022

Site visit made on 13 April 2022

by Harold Stephens BA MPhil Dip TP MRTPI FRSA

an Inspector appointed by the Secretary of State

Decision date: 15th June 2022

Appeal Ref: APP/D0121/W/21/3286677

Rectory Farm, Chescombe Road, Yatton, Bristol BS49 4EU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mead Realisations Ltd against the decision of North Somerset Council.
 - The application Ref 21/P/0236/OUT, dated 22 January 2021, was refused by notice dated 12 May 2021.
 - The development proposed is outline planning application for a residential development of up to 100no. dwellings and associated infrastructure following demolition of existing buildings on site, with access for approval and all other matters for subsequent approval.
-

Decision

1. The appeal is allowed and planning permission is granted for an outline planning application for a residential development of up to 100no. dwellings and associated infrastructure following demolition of existing buildings on site, with access for approval and all other matters for subsequent approval at Rectory Farm, Chescombe Road, Yatton, Bristol BS49 4EU in accordance with the terms of the application, Ref 21/P/0236/OUT, dated 22 January 2021, and the plans submitted with it, subject to the conditions set out in the Schedule attached to this decision.

Procedural Matters

2. The following Statements of Common Ground (SoCG) were submitted to the Inquiry:
 - Five Year Housing Land Supply SoCG;
 - Highways and Transport SoCG;
 - General SoCG and
 - Biodiversity Net Gain SoCG
3. The application was supported by a number of plans, reports, and technical information. A full list of the drawings and supporting documents which accompanied the application is set out at paragraph 1.2 of the General SoCG. Further, it was agreed at the Inquiry that the plans on which the appeal is to be determined are as follows:
 - Site Location Plan - Reference number 1037-PL03A

- Topographical Survey Drawing Number 14730-TS01
- 14730-HYD-XX-XX-DR-TP-0201-P05 Site Access General Arrangement Priority Cross-Roads and Pedestrian Access
- 14730-HYD-XX-XX-DR-TP-0303-P01 Swept Path Analysis of Refuse Vehicles
- 14730-HYD-XX-XX-DR-TP-0304-P01 Swept Path Analysis of Large Car
- 14730-HYD-XX-XX-DR-TP-0305-P01 Swept Path Analysis of Fire Tender
- Travel Plan – Reference number 14730-HYD-XX-XX-RP-TP-6001 Rev P01

It was also agreed that Site Masterplan Drawing Number 1037-PL01/A was submitted for illustrative purposes.

4. I held a Case Management Conference (CMC) online on 13 January 2022. At the CMC the main issues were identified, how the evidence would be dealt with at the Inquiry, conditions, planning obligations, core documents, plans, the timetable for submission of documents and other procedural matters. I prepared and distributed a summary note of the proceedings.
5. At the CMC I indicated that the fourth reason for refusal (RfR) relating to highways would be considered as a main issue. However, since then, a Highways and Transport SoCG was agreed between the main parties which indicates that there are no residual matters in dispute in relation to highways, transport and travel and therefore this matter is no longer being pursued by the Council subject to agreement on planning conditions and obligations.
6. At the Inquiry a Planning Obligation was submitted.¹ The Planning Obligation is made by an Agreement between the Appellant, North Somerset Council (NSC), the First and Second Owners of the land, and Lloyds Bank PLC under s106 of the TCPA 1990. The s106 Agreement secures a number of planning obligations that are required to make the appeal proposal acceptable. The s106 Agreement is signed and dated 22 March 2022 and is a material consideration in this case. A Community Infrastructure Levy (CIL) Compliance Statement² was also submitted in support of the Planning Obligation.
7. A separate s106 Unilateral Undertaking (UU) was submitted by the Appellant.³ As a result of additional recreational pressure on the Biddle Street SSI, the UU secures contributions for the provision of waste bins, litter picking and bin emptying on the Strawberry Line, to mitigate the impact from littering and dog fouling. The UU is signed and dated 22 March 2022 and is a material consideration in this case. The contributions in the UU are justified in a separate document.⁴ I return to both the Planning Obligation and the UU later in this decision.
8. The appeal proposal was screened for Environmental Impact Assessment (EIA) by the Council, and it was determined that EIA was not required. I agree with the negative screening that was undertaken by the Council.

¹ APP5

² LPA2

³ APP6

⁴ APP7

Main Issues

9. In the light of the above I consider the main issues are:
- (i) *Whether the Council can demonstrate a five year housing land supply and the extent of any shortfall;*
 - (ii) *Whether the scale and location of the proposed development is acceptable in principle in the light of the Council's Spatial Strategy;*
 - (iii) *The impact of the proposed development on Ecology and Biodiversity;*
 - (iv) *The effect of the proposed development on the character and appearance of the area;*

Reasons

Planning Policy context

10. The appeal site comprises some 4.15 hectares of land including a residential dwelling, a complex of agricultural buildings and areas of outdoor storage and hardstanding to the north and undeveloped land to the south. The site is located to the south-west of Yatton directly adjacent to the settlement boundary and to the east of the Strawberry Line. Existing residential development lies to the east with pasture and fields adjoining the remaining boundaries.
11. The appeal proposal seeks outline planning permission for residential development comprising up to 100 dwellings and associated infrastructure. All matters are reserved for future consideration except for access, details of which form part of the appeal proposal. The proposal includes a main vehicular access to the site off Chescombe Road to the northern and southern parcels. The Illustrative Site Masterplan demonstrates how internal access to individual plots could be achieved.
12. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the appeal must be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of this appeal, the development plan comprises the following documents:
- North Somerset Core Strategy (2017) (CS)
 - Sites and Policies Part 1: Development Management Policies (2016) (DMP)
 - Sites and Policies Plan Part 2: Site Allocations Plan (2018) (SAP)
 - Yatton Neighbourhood Plan (2019) (YNP).
13. The development plan policies that are relevant to this appeal are agreed by the main parties and are set out in the General SoCG.⁵ The most important policies for determining the appeal are set out in the Notice of Decision, save for Policy DM8, which is plainly relevant and important but appears to have been omitted from the latter category by mistake. The most important policies are: CS4, CS5, CS9, CS14, CS32, DM8, DM9, DM10, DM24 and DM25. Policy

⁵ Paragraph 3.2

CS13 is agreed not to be one of the most important policies in this appeal. There is no need for me to repeat these policies here.

14. The Council is preparing a new Local Plan, which will include strategic and non-strategic policies, for the period 2023-2038. A Regulation 18 'Preferred Options' document is expected to be agreed for consultation in 2022. The Local Development Scheme indicates that the Regulation 19 Pre-submission document will be approved in late 2022, followed by submission for examination in early 2023 and adoption by the end of 2023. Limited weight can be afforded to the policies and proposals of the draft plan at this time.
15. The Council refers to the YNP in the first RfR. The YNP was made in July 2019 and covers the period 2017-2026. The YNP sets out a number of business, environment, transport and housing objectives which I have taken into account in this case. In relation to housing objectives the Plan includes one small allocation on a brownfield site under policy HP1. The YNP does not contain policies and allocations to meet its identified housing requirement.
16. The Supplementary Planning Documents relevant to this appeal are agreed by the parties and are set out in the General SoCG.⁶ I have considered these documents and taken them into account in coming to my decision in this case.
17. Case law has determined that it is the basket of most important policies as a whole that is the relevant consideration. As to whether the basket of most important policies as a whole is out-of-date in the context of paragraph 11 d) of the NPPF and the weight that should be attached to each policy are matters that I shall return to later in this decision.

First Issue - Whether the Council can demonstrate a five year housing land supply and the extent of any shortfall

18. Paragraph 74 of the NPPF sets the requirement for Local Planning Authorities to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies or against their local housing need where the strategic policies are more than five years old.
19. For the purpose of this appeal it is agreed that the period for consideration of the 5YHLS is from 1 April 2021 to 31 March 2026. According to Policy CS13 of the Core Strategy the current adopted housing requirement is 20,985 dwellings for the plan period 2006-2026. On the basis that more than 5 years have passed since adoption of the Core Strategy and in accordance with paragraph 74 of the NPPF, the 5YHLS position should be assessed against the local housing need figure, calculated using the standard method. The standard method housing requirement of 1,323 dwellings per annum applies.
20. Since the Council published their Five-Year Housing Land Supply Initial Findings Statement (April 2021),⁷ the fourth Housing Delivery Test results were published on the 14 January 2022. The Council reported that it delivered 2,563 dwellings against a requirement of 2,877 in the 3-year period 2018-21. This was 89% of the requirement which means that a 5% buffer should now be applied. Including a 5% buffer the annual requirement is 1,389 dwellings per annum (6,946 over 5 years).

⁶ Paragraph 3.4

⁷ CD51

21. At the outset of the Inquiry a Five Year Housing Land Supply SoCG was provided. The table attached at Appendix 3 of the SoCG provides the Council's and the Appellant's position in relation to the supply and identifies those sites which are disputed by the Appellant. The Council considers that the evidence listed at Section 2 of this SoCG provides clear evidence that the disputed sites are deliverable in accordance with the definition of 'deliverable' contained at Annex 2 of the NPPF. The table at paragraph 1 of the SoCG indicates the respective positions of the Council (5.6 years) and the Appellant (3.2 years) at the outset of the Inquiry.
22. The Council accepts that in recent years it has struggled to secure a 5YHLS. Reference is made to the difficulties stemming from reliance that is placed on large, predominantly brownfield sites within the Weston Urban Area and the Weston Villages, which account for 30% and 31% respectively of the land allocated to meet the requirements of Policy CS13.⁸ Whilst this may be so, it is clear from the Council's latest AMR (2020) and the Residential Land Survey Headline Findings April 2021 that in the period from 2006/07 to 2020/21 the Council only delivered 12,273 dwellings against the annualised Core Strategy requirement of 15,735 dwellings; a shortfall of 3,462 dwellings.⁹ Even up to the point of the Council's determination of the appeal proposal at application stage, the Council accepted that it did not have a 5YHLS.¹⁰
23. The Council's poor track record resulted in a series of appeal decisions all of which confirmed the absence of a 5YHLS,¹¹ and have required it to produce an action plan each year since 2019. The North Somerset Housing Delivery Test Action Plan July 2021 includes a table of past performance which establishes the failure to achieve the required delivery in any of the years back to 2010/11.¹² There are no specific targets or timescales set out in the Action Plan and Mr Jewson was clear that he was not aware of any evidence that it has resulted in an increase in the supply of housing over and above what would have occurred anyway.¹³
24. Moreover, since the Action Plan was first prepared in 2019, the preparation of a new local plan has been delayed.¹⁴ Though there was a re-examination of the Core Strategy during which Policies CS28, CS31 and CS32 were amended to provide flexibility to help boost the supply of housing by allowing development outside certain settlement boundaries, including the Service Villages, Mr Jewson confirmed that very few sites have been approved by the Council under these circumstances;¹⁵ he noted just two – one for 56 dwellings and one for 24 dwellings.¹⁶
25. Following the 5YHLS Roundtable Session on day one of this Inquiry, the parties' witnesses compiled a Scott Schedule¹⁷ and a Final 5YHLS Position Statement¹⁸ setting out their most up-to-date positions. The parties disagreed about the supply of deliverable sites.

⁸ LPA4 paragraph 13

⁹ Paragraph 4.8 and Table 1, 5YHLS PoE of Ian Jewson

¹⁰ Paragraph 4.9, 5YHLS PoE of Ian Jewson

¹¹ Paragraph 4.10, 5YHLS PoE of Ian Jewson

¹² Page 3, CD50

¹³ Paragraph 4.15, 5YHLS PoE of Ian Jewson. EIC and XX of Ian Jewson

¹⁴ Paragraph 4.14, 5YHLS PoE of Ian Jewson

¹⁵ Paragraph 4.16, 5YHLS PoE of Ian Jewson

¹⁶ In XX

¹⁷ APP10

¹⁸ APP9

26. The definition of 'deliverable' is set out within Annex 2 of the NPPF, which states:

"Deliverable: To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:

- (a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).*
- (b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years".*

27. The PPG guidance on 'Housing supply and delivery' provides guidance as to what constitutes a 'deliverable' housing site in the context of plan-making and decision-taking and notes¹⁹ that "to demonstrate 5 years' worth of deliverable housing sites, robust, up to date evidence needs to be available to support the preparation of strategic policies and planning decisions." The PPG is clear on what is required. It provides examples of what clear evidence "may include," namely:

- *current planning status – for example, on larger scale sites with outline or hybrid permission how much progress has been made towards approving reserved matters, or whether these link to a planning performance agreement that sets out the timescale for approval of reserved matters applications and discharge of conditions;*
- *firm progress being made towards the submission of an application – for example, a written agreement between the local planning authority and the site developer(s) which confirms the developers' delivery intentions and anticipated start and build-out rates;*
- *firm progress with site assessment work; or*
- *clear relevant information about site viability, ownership constraints or infrastructure provision, such as successful participation in bids for large-scale infrastructure funding or other similar projects.*

28. The burden of including in the supply sites other than those which do not involve major development and have planning permission, or have detailed planning permission, is placed on the Council who must provide the clear evidence to meet the realistic prospect test. The Scott Schedule²⁰ and the Final 5YHLS Position Statement²¹ helpfully set out the main sites where the parties differ. I have assessed the respective positions in light of the

¹⁹ Paragraph 007 Reference ID: 68-007-20190722

²⁰ Ibid

²¹ Ibid

definition of 'deliverable' as set out within Annex 2 of the NPPF and the PPG guidance as to what constitutes a 'deliverable' housing site.

29. With regard to Land north of Youngwood Lane, Nailsea (Site Ref: 4/596), outline permission for the whole site was granted on appeal for 450 dwellings in 2019 and Reserved Matters for 168 dwellings was granted in 2021 but included under Site Ref: 4/596a. In relation to the remaining 282 dwellings the Council has provided no clear evidence of delivery in relation to the planning status, firm progress towards a detailed planning application/site assessment or site constraints which would justify inclusion in the 5YHLS. I accept that the detailed alignment of the link road has now been confirmed. However, there is no detailed permission for the 200 units in Phase 2 and the delivery rate of 100dpa is not based on any evidence. In my view 200 dwellings should be deducted from the Council's estimate.
30. With regard to Weston Villages, Locking Parklands (Site Ref: 4/558a-c), the Council has provided no clear evidence of delivery in relation to planning status, firm progress towards planning application, site assessment or site constraints which would justify inclusion of all the dwellings included in the 5YHLS. A total of 559 dwellings (309+250) out of a total of 1,450 have detailed permission of which 467 have been completed leaving 92 left to complete. In addition, 124 dwellings are likely to be delivered from the Curo Homes Reserved Matters application. In total 216 dwellings can be included in 5YHLS. There is no clear evidence to support further delivery at this time so 424 dwellings should be deducted (640-216=424).
31. With regard to Weston Villages, Land south of Churchland Way (Site Ref: 4/558d) again the Council has provided no clear evidence of delivery in relation to planning status, firm progress towards planning application, site assessment or site constraints which would justify the Council's 5YHLS assumptions. Outline planning permission for 1,150 dwellings was granted in April 2015. This site is linked to Weston Villages, Parklands, Mead Fields, south of Wolverhill Road, (Site Ref: 4/558g) where an outline for up to 250 dwellings was granted in October 2017. A total of 674 (586+88) dwellings has detailed consent across both sites and 91 of those have been completed leaving 583 to be constructed. Up to date build rates are provided by Bellway Homes and Taylor Wimpey and are used in the Appellant's figures. Taylor Wimpey have detailed consent for 88 dwellings on Site Ref: 4/558g but these will be constructed in one phase with one outlet so are included in this supply source. The remaining dwellings in Site Ref: 4/558g do not have detailed consent and there is no clear evidence of delivery. As such 508 units (258+250) should be deducted from the Council's trajectory for the two sites when taken together.
32. With regard to Weston Villages – Winterstoke, Haywood Village (Site Ref: 4/568) the Council has provided no clear evidence of delivery in relation to planning status, firm progress towards planning application, site assessment or site constraints which would justify inclusion of the remaining dwellings within the 5YHLS. Outline planning permission for up to 900 dwellings was granted in August 2012 and 898 dwellings approved at Reserved Matters stage. A further outline consent was approved in January 2018 for 1,650 dwellings and 729 dwellings approved at Reserved Matters stage. Persimmon have provided an up-to-date trajectory including explanation of no dual branding and this has been used in the Appellant's figures. It follows that 371

- dwellings are assumed in the 5YHLS as Persimmon figures are based on their year-end rather than April start date. The Council relies on a much higher build rate to justify its future assumptions. However, based on information provided by the developer the number of dwellings that will be delivered from this site should be reduced by 710 dwellings from the Council's trajectory.
33. With regard to Station Gateway, Weston-super-Mare (Site Ref: 4/645) the Council has provided no clear evidence of delivery in relation to planning status, firm progress towards planning application, site assessment or site constraints which would justify inclusion in the 5YHLS. The site is allocated for 300 dwellings in the SAP. The proposal requires a flood risk and sequential test assessment. I accept that this is a key site which the Council wishes to bring forward and is in the process of acquiring. However, no details of constraints, planning application process or Network Rail consultation are provided. The Council refers to a Commissioning Plan for the procurement of a developer, but this can be a slow and complicated process. No developer has been identified and land acquisition has yet to be completed. In my view 200 dwellings should be deducted from the Council's estimate.
34. It is not necessary for me to go through all of the disputed sites in paragraph 3 of the Final 5YHLS Position Statement²² and the Scott Schedule.²³ I am satisfied that the Council's supply evidence is conspicuously weak and severely lacking in substance. There is no clear evidence before me that would suggest that the Council's assumptions would deliver the completions suggested in its trajectory in the next five years and meet the realistic prospect test. Much of the Council's evidence constitutes mere assertions and does not come anywhere close to what is envisaged by the PPG.
35. At paragraph 4 of the Final 5HLS Position there is an up-to-date table of the deliverable supply which replaces that at paragraph 5.1 of the Housing Land Supply SoCG. The difference between the main parties now comes down to the Council's position that it has a 5.5 year supply of deliverable housing sites and the Appellant's position that instead it is a 3.2 years' supply. The updated 5YHLS figures include four scenarios which include different reductions from the small sites source. However, in reality, these reductions make little difference to the final position calculations. Plainly, from all the evidence that is before me, the Appellant's position is preferred. Although the Council maintains there is a 5.5 years' land supply, in my view, there is only a housing land supply equivalent to **3.2 years**.
36. In the absence of being able to demonstrate a 5YHLS, the most important policies for determining the application are irrefutably deemed to be out of date under paragraph 11(d) of the NPPF and the tilted balance applies subject to any protective policies in the NPPF which provide a clear reason for refusal. The YNP does not alter this position, firstly, because there is no conflict with it (and no specific policy conflict is even alleged) and secondly, because it does not seek to meet an identified housing requirement through its sole allocation.
37. If no 5YHLS exists, case law suggests that it is important to gauge how large it is at least in broad terms. The Council agreed that extent of the shortfall is relevant to weight.²⁴ In *Hallam Land Management Ltd v Secretary of State for*

²² APP9

²³ APP10

²⁴ Neil Underhay in XX

Communities and Local Government [2018] EWCA Civ 1808,²⁵ the Court made plain that the extent of any such shortfall will bear directly on the weight to be given to the benefits or disbenefits of the proposed development. In a 5YHLS shortfall scenario two things are relevant; (i) the extent of the shortfall and (ii) retrievability i.e., how likely or quickly it will be made up. I return to these legal consequences in the planning balance later in this decision. I conclude on the first issue that the Council cannot demonstrate a five year housing land supply and that the extent of the shortfall is significant.

Second issue - Whether the scale and location of the proposed development is acceptable in principle in the light of the Council's Spatial Strategy

38. This issue relates to RfR1 and the Council's assertion that the appeal proposal would deliver a scale of development that conflicts with the spatial strategy of the development plan. The Council states in RfR1 that the proposed development would be contrary to policies CS14 and CS32 of the Core Strategy and the made YNP.
39. However, at the Inquiry, the Council seemed to abandon the position taken in RfR1 that the development is not in accordance with the YNP. In cross examination Mr Underhay confirmed that there was in fact no conflict with any specific YNP policy. He argued that the scale and location of the proposal would be in conflict with the environmental objectives of the YNP. However, he accepted that the development plan is made up of its policies and the supporting text cannot impose criteria which are not contained in the policies themselves.²⁶ He also confirmed that the Inspector is not looking at a three-year threshold for housing land supply because there is no conflict with the YNP and therefore NPPF paragraph 14 is not engaged here. I agree that there is no conflict with the YNP.
40. Policies CS14 and CS32 are agreed to be most important policies for the purpose of determining this appeal.²⁷ Based on the minimum housing requirement set out in Policy CS13 of the Core Strategy, Policy CS14 provides for a broad distribution of housing based on an identified settlement hierarchy which includes nine Services Villages. 'Service' villages include a wider range of services and facilities than the smaller 'infill' villages, but significantly less than smaller towns. The appeal site is in Yatton, one of the nine 'Service' villages in North Somerset. There are no development plan limits for the number of new dwellings at individual service villages. Policy CS32 of the Core Strategy seeks to guide new development "*within or adjoining the settlement boundaries of the Service Villages.*"
41. The appeal site adjoins the Yatton settlement boundary. It is not allocated for development in the SAP or YNP. Policy CS14 supports small-scale development within or abutting service village settlement boundaries. However, it does not place a complete bar on development beyond the settlement boundary of Yatton. Development outside the settlement boundaries will only be acceptable where a site is allocated in a Local Plan or where it comprises sustainable development which, in the case of Yatton,

²⁵ CD69

²⁶ R (Cherkley Campaign Ltd) v Mole Valley District Council [2014] EWCA Civ 567

²⁷ Paragraph 3.2, General SoCG

accords with Policy CS32. That policy confirms that “*sites outside the settlement boundaries in excess of about 25 dwellings must be brought forward as allocations through Local Plans or Neighbourhood Plans*”. Mr Underhay confirmed²⁸ that the policy objection which really founds RfR1 is that the proposed development would be outside the settlement boundary and above 25 dwellings thus not plan led.

42. Plainly, as most important policies, where there is no 5YHLS, neither Policy CS14 nor CS32 can be given full weight. Mr Underhay argued that at least significant weight is appropriate, noting the policy purpose to direct housing to more sustainable settlements according to the hierarchy which in his view remained a “*sound principle to uphold.*”²⁹ However, in my view, only limited weight can be afforded to these policies given that there is no 5YHLS and the extent of the shortfall is significant at 3.2 years.
43. Moreover, I note that there is nothing in Policy CS32 that would prevent, subject to appropriate compliance with the bullet points therein, four schemes of 25 units coming forward over time. There is “*no numerical target to aim for or be constrained by*” in Policy CS32 as to the number of 25 dwelling schemes which might be granted permission,³⁰ and the policy applies to individual applications such that there could be a series of applications coming forward.³¹ At the Inquiry Mr Underhay acknowledged³² that if there is a need for 100 units somewhere in Yatton, in principle one single scheme may cause less harm and deliver more cumulative benefits than four scattered ones. Although the correct approach would be to pursue these proposals through the Local Plan process, Mr Underhay agreed³³ that if there is no 5YHLS there may be more scope in terms of numbers to be permitted in a scheme pursuant to Policy CS32.
44. It must also be relevant that the appeal proposal performs well against the rest of the criteria set out in Policy CS32. It:
 - includes an Illustrative Site Masterplan and Design and Access Statement which demonstrates how the form, design and scale of development respects and enhances the local character, contributes to place making and reinforces local distinctiveness. The Council did not raise concerns in relation to general design matters;
 - includes a range of dwellings to meet local needs. The Council did not raise concerns in relation to the size, type, tenure or overall range of housing;
 - would not cause significant adverse impacts on services and infrastructure and the local infrastructure is sufficient to accommodate the demands of the development. Where necessary planning obligations will be secured via a legal agreement to provide necessary contributions and infrastructure;
 - would result in a high-quality sustainable scheme which is appropriate to its context and would make a positive contribution to the local environment and landscape setting;

²⁸ In XX

²⁹ In EIC

³⁰ Neil Underhay in EIC

³¹ Neil Underhay in XX

³² In XX – depending on the cumulative effects and merits of the case

³³ In EIC

- would not result in significant adverse cumulative impacts (such as highway impacts) likely to arise from existing and proposed development within the wider area;
 - maximises opportunities to reduce the need to travel and encourages active travel modes and public transport;
 - and demonstrates safe and attractive pedestrian routes to facilities within the settlement within reasonable walking distance.³⁴
45. The Council also accepted that subject to agreement on conditions and obligations proximity to services was probably not an objection. Mr Hutcheson gave unchallenged evidence as how there is a good connectivity to and from the site by different modes of transport.³⁵ The Council also accepted that if there is only about 3.2 years' supply, then that would be regarded as a significant shortfall and probably the balance weighs in favour of the scheme.
46. Drawing these threads together it is clear to me that the appeal proposal of up to 100 dwellings would deliver a scale of development that is in conflict with the spatial strategy of the development plan which permits sites of up to around 25 dwellings adjoining the settlement edges of services villages. The proposed development is therefore contrary to Policies CS14 and CS32 of the Core Strategy. There is no conflict with YNP policies. However, there is no 5YHLS in this case and indeed there is a significant shortfall and therefore Policies CS14 and CS32 cannot be given full weight - rather these policies can only be afforded limited weight. It must also be relevant that the appeal proposal performs well against the rest of the criteria set out in Policy CS32. I need to assess the Council's concerns in terms of ecology and landscape in the third and fourth issues before assessing the overall planning balance. On the second issue I conclude that the scale and location of the development would be in conflict with the Council's Spatial Strategy.

Third Issue - The impact of the proposed development on Ecology and Biodiversity

47. RfR2 indicates that the proposed development would have a significant effect on the North Somerset and Mendip Bats SAC and result in operational impacts and increased recreational pressure on the Biddle Street SSSI. It also alleges that the proposed development fails to demonstrate that a biodiversity net gain (BNG) can be achieved on site and the proposal is contrary to Policies CS4 and DM8, the North Somerset and Mendip Bats SAC SPD and the NPPF.³⁶

The SSI and Reptiles

48. With regard to the impacts of the proposed development upon the Biddle Street SSSI it is clear that these have been considered by Mr Clarkson. Though the development has potential to contribute towards increased levels of pressure upon the Strawberry Line, positive and appropriate measures are proposed to both help manage the existing and increased levels of

³⁴ Paragraph 7.5 of PoE of Ian Jewson

³⁵ See revised TA at Appendix A to his PoE

³⁶ In RfR2 reference is made to paragraphs 175 and 177 of the NPPF. The current references for these paragraphs are 180 and 182 of the NPPF 2021

recreational impact such that adequate protection of the SSSI could be maintained during both the construction and operation of the development.³⁷

49. The Council agreed that the risks to the SSSI could probably be tackled by condition.³⁸ Additional measures, including the installation of bins and litter picking, have been proposed and would be secured via the Appellant's UU. The Council also confirmed that planning conditions could avoid any risk to protected species such as slow worms, grass snakes and badgers.³⁹ There is no mention in RfR2,⁴⁰ which deals with ecological concerns, of any alleged impact on these considerations.

Biodiversity Net Gain (BNG)

50. Since the experts provided their proofs on ecology matters, further common ground was reached as set out in the BNG SoCG. That makes clear that the fundamental difference of approach between the Council and Appellant is now how the habitats required to compensate for impacts on bats are used in contributing to a net gain calculation.⁴¹
51. The Appellant's view is that all BNG provided within the bat mitigation area can be used against the whole development to a point of no net loss with the urban habitats (and others not accessible to bats) providing net gain.⁴² Indeed, their BNG assessment demonstrates how the proposal would deliver a substantial gain (103% gain in area-based habitats and a 56% gain for linear habitats – considerably more than what is required by law or policy).⁴³
52. The Council disagrees and considers that biodiversity gain secured within the bat mitigation habitats should be discounted. Even if the Council is right, the Appellant argued that the appeal scheme remains consistent with paragraph 180c of the NPPF (which, unlike the Environment Act 2021, which does not apply to this appeal, does not require a particular percentage BNG).
53. As I perceive it, BNG can be dealt with either by conditions or within the s106 obligations. That is agreed between the parties, as confirmed in the Council's opening.⁴⁴ The difference between the parties is essentially one of methodology. If the Council is right, the Appellant could overcome the issue by providing BNG off site under the terms of a planning condition.⁴⁵ Accordingly, BNG no longer amounts to a reason to dismiss this appeal.

Habitats

54. Given the above position, the Council accepted in opening that its principal ecological issue is the impact of the development on bats.⁴⁶ It was the Council's position at the opening of the Inquiry that development on the scale

³⁷ Paragraphs 4 and 7, Summary PoE of Tom Clarkson.

³⁸ Paragraph 8, Council's Opening, LPA 1 and Dr Carpenter PoE paragraphs 4.2.17 and 4.2.18

³⁹ Paragraph 8, Council's Opening, LPA 1

⁴⁰ Accepted by Dr Carpenter in XX

⁴¹ See paragraph 11, BNG SoCG

⁴² See paragraph 12, BNG SoCG

⁴³ Paragraph 4.1.71, PoE of Tom Clarkson and Policy CS4 2 in CD1

⁴⁴ Paragraph 7, Council's Opening, LPA1

⁴⁵ Paragraph 7, Council's Opening, LPA1

⁴⁶ Paragraph 9, Council's Opening, LPA1

that is proposed would amount to a clear RfR in terms of such resultant impact.⁴⁷ However, matters moved on during the Inquiry.

55. The Appellant argued that there were no obstacles under the Habitat Regulations which prevented the grant of planning permission, rather, the proposals represented an “*exemplar*” of how ecological impact assessment could be used to identify, safeguard and enhance key ecological habitats.⁴⁸ The Council maintained that the proposed development, due to its close proximity to the North Somerset and Mendip Bats SAC, would have a significant effect on this habitat site, a European protected site. Moreover, it is argued that the survey evidence and consultation with Natural England (NE) suggest that SAC bats would be adversely affected by the development. It is also claimed that the proposed mitigation measures do not prioritise on-site mitigation and that the proposed off-site mitigation is unsuitable.

The Habitats Regulations

56. Regulation 63 of the Conservation of Habitats and Species Regulations 2017 requires a competent authority – in this case the Inspector – before deciding to give planning permission for a project which is “*likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects)*” and “*is not directly connected with or necessary to the management of that site*” to make an appropriate assessment of the implications of the project for that site in view of that site’s conservation objectives. Regulation 63(6) is clear that “*in considering whether a plan or project will adversely affect the integrity of the site, the competent authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given*”.
57. Regulation 70 deals with the grant of planning permission and at (3) states that “*where the assessment provisions apply, outline planning permission must not be granted unless the competent authority is satisfied (whether by reason of the conditions and limitations to which the outline planning permission is to be made subject, or otherwise) that no development likely adversely to affect the integrity of a European site or a European offshore marine site could be carried out under the permission, whether before or after obtaining approval of any reserved matters*”.
58. Accordingly, the real issue between the parties is whether or not, subject to conditions, adverse effects on the integrity of the North Somerset and Mendip Bats SAC can be ruled out.

The Imposition of a Grampian Condition

59. Before carrying out the Habitats Regulation Assessment (HRA) it is important to consider relevant case law cited in evidence by the Appellant which refers to the imposition of a Grampian Condition. The Abbotskerswell Parish Council v Secretary of State for Housing, Communities and Local Government and others [2021] EWHC 555 (Admin)⁴⁹ is a helpful authority in assessing the extent to which detailed information is required at outline stage to comply

⁴⁷ Paragraph 9, Council’s Opening, LPA1

⁴⁸ Paragraph 8.1.5, PoE of Tom Clarkson

⁴⁹ APP3

with Regulation 70(3).⁵⁰ The Court was clear that any suggestion that all details of matters which could affect site integrity has to be provided at outline stage is a misunderstanding of the Regulations. Paragraphs 152 and 159 of the Judgment, in particular, are noteworthy.⁵¹

60. The Council relied on paragraph 99 of Circular 06/05.⁵² However, it seems to me that this must be read through the lens of paragraph 98. Circular 06/05 is intended to provide guidance on how to comply with the legal obligations under Habitats Regulations, as opposed to providing additional hurdles that go above and beyond (or 'gold plate') the tests under the Regulations. The Council did not challenge this interpretation. Under the subheading 'Purpose of the Circular',⁵³ it sets out that "*this Circular provides administrative guidance on the application of the law relating to planning and nature conservation as it applies in England*". It goes on to set out that law, as it stood at the date of the Circular, in the Introduction and Context section at paragraph 3.⁵⁴ Were it the intention of the Circular to supplement or add to the statutory position, it would be clearly stated as a purpose or in the introductory paragraphs.
61. This is critical because Dr Carpenter agreed that: (a) a condition such as Condition 18⁵⁵ could ensure that adverse effects on site integrity could be ruled out – because it would provide for only two options: no development commencing, or development commencing in accordance with a survey-informed mitigation plan which would avoid adverse effects on site integrity; (b) such a condition would therefore ensure that the Habitats Regulations test is met; and (c) there would be at least some prospect of it being discharged during the lifetime of the permission which would satisfy the PPG test for a Grampian Condition. Therefore there is no tenable basis for saying that

⁵⁰ See Ground 5 from paragraph 148 of the Judgment, APP3

⁵¹ "152. In my judgment, it was apparent from the way in which the Claimant presented its submissions that essentially its case was that all details of matters which could affect site integrity had to be provided at outline stage. I accept the Secretary of State's submission in response that the Claimant has misunderstood regulation 70(3) of the Habitats Regulations 2017 as it expressly provides that the role of conditions and limitations in contributing to the avoidance of adverse effects to integrity can be taken into account when considering applications for outline planning permission. The approach contended for by the Claimant, whereby all details of matters which may affect site integrity have to be assessed at the outline stage, would effectively require an application for a full planning permission. This would render the role of outline planning permissions in relation to development requiring appropriate assessment nugatory and would mean that the wording in regulation 70(3) is meaningless.

159. The Secretary of State's decision imposed a framework of planning conditions relating to GHBs (condition 6 (Masterplan and Design Code), condition 7 (ecological mitigation strategy), and condition 12 (lighting)) which set out clearly defined parameters for the approval of reserved matters, which enabled the Secretary of State to conclude, with sufficient certainty, that the proposed development would not adversely affect the integrity of the SAC. The GHB Mitigation Plan was tied to the Masterplan and Design Code and the ecological mitigation strategy, which would require approval prior to the submission of reserved matters and/or prior to any development taking place. Under condition 6, the Masterplan and Design Code was to be formulated broadly in accordance with the submitted Design and Access Statement and Illustrative Masterplan, and specific requirements were set out at (a) to (k). The careful way in which the conditions were drafted ensured that all developers at all phases would have to comply with the Masterplan and Design Code and the ecological mitigation strategy. Under condition 15, the Construction Environment Management Plan (CEMP) and Ecological Construction Method Statement protected GHB corridors and minimised light spill during the construction phases".

⁵² APP2

⁵³ See paragraph 1, page 4, APP2

⁵⁴ On page 5, APP2. Text states: *The UK is bound by the terms of the EC Birds and Habitats Directives⁵ and the Ramsar Convention⁶. The Conservation (Natural Habitats &c.) Regulations 1994⁷ (the 'Habitats Regulations') provide for the protection of 'European sites'⁸, which are candidate Special Areas of Conservation (cSACs) and Special Areas of Conservation (SACs) designated pursuant to the Habitats Directive, and Special Protection Areas (SPAs) classified under the Birds Directive. The Regulations apply specific provisions of the Habitats Directive to cSACs, SACs and SPAs which require special considerations to be taken in respect of such sites.*

⁵⁵ LPA3

Circular 06/05 would prohibit such a condition. The Circular adds nothing to the Habitats Regulations test, which would be met.

62. The wording of paragraph 99 is clear that: (a) it only relates to the extent to which protected species may be affected by the proposed development and not their habitats. There is no suggestion in this case of any direct harm being caused to any protected species; (b) even ignoring that, the first sentence requires two things to be established before planning permission is granted – whether there are protected species present on site (the answer to that is known to be yes here) and the extent to which they may be affected by the development (the answer to that is also known here even if Dr Carpenter’s view about the need for more survey is accepted: Condition 18 would have the effect of ensuring that no development may happen unless the survey-informed mitigation plan demonstrates that adverse effects on site integrity can be ruled out). Even if some details of *how* that will be achieved are left over for submission and approval under the condition, there is nothing unlawful about that: as the judgment in **Abbotskerswell**⁵⁶ makes clear having regard to Regulation 70(3) of the Habitats Regulations, what matters at the outline stage is certainty of outcome not certainty of details.

Habitats Regulations Assessment (HRA)

Assessment of Likely Significant Effects

63. There are no European Sites that lie within or adjacent to the appeal site. The North Somerset and Mendip Bats SAC is located within 1.87kms of the appeal site at its nearest point and has been identified by the Appellant as requiring consideration under this HRA.⁵⁷
64. The conservation objectives of the European sites identified by the Appellant are available on the Natural England (NE) website at the following link:

<http://publications.naturalengland.org.uk/publication/6252034999189504?category=5374002071601152>

I have had regard to these objectives in undertaking my duties in accordance with the Conservation of Habitats and Species Regulations 2017.

65. The Appellant acknowledges that the appeal site is of ‘Regional’ level importance for *Greater Horseshoe Bats* and *Lesser Horseshoe Bats*. Its particular attraction to these Annex 1 species arises from its proximity to the King’s Wood and Urchin Wood SSSI, which forms a component part of the SAC. I note that the appeal site lies within the Consultation Zone B of the North Somerset and Mendip Bats SAC SPD reflecting the likely importance of the area to SAC bats. As such the development may result in adverse impacts on the SAC Annex 1 species through the loss of foraging habitat on the site, the fragmentation of commuting routes and cumulative impacts.
66. Bat surveys were undertaken by the Appellant on both fields and the farmyard which cover the wider site between April and October 2020. This included undertaking static detector surveys to meet the minimum survey standards

⁵⁶ APP3

⁵⁷ Tom Clarkson’s PoE, Appendix B: Shadow HRA Assessment page 62

set out in the North Somerset and Mendip Bats Special Area of Conservation (SAC) Guidance on Development.⁵⁸

67. With regard to *Greater Horseshoe Bats* the static detector surveys recorded high levels of activity for this species which indicates portions of the appeal site are of significant value to foraging and commuting greater horseshoe bats particularly during the maternity season. Overall across all detectors and all months the survey recorded a total of 991 passes by greater horseshoe bats accounting for 2% of the total bat calls recorded from all detectors.⁵⁹ With regard to *Lesser Horseshoe Bats* the automated static bat detector surveys undertaken recorded a total of 1,834 passes by lesser horseshoe bats representing 3.7% of the overall calls recorded by the static detectors. High levels of activity from lesser horseshoe were recorded particularly along the southern hedgerows of the southern field which indicates portions of the site are of value to foraging and commuting lesser horseshoe bats particularly during the late summer and autumn months. The site appears to be of significant value to lesser horseshoe bats.⁶⁰
68. Generally, recorded horseshoe bat activity was the highest on the south-western boundary which bounds the Biddle Street SSSI and Strawberry Line (H4) and south-eastern hedgerow (H3) across all of the surveys completed to date. These hedgerows have the best structure and are likely to be sheltered from the prevailing winds. They are considered to be the most important hedgerows for horseshoe bats within the appeal site.⁶¹
69. The survey data suggests that H4 forms part of an important commuting route for both greater and lesser horseshoe bats, with static detector and bat activity data suggesting that the hedgerow is used consistently throughout the year. This consistent use suggests it forms a key commuting route for horseshoe bats moving from north to south in the local area. This hedgerow contributes to a corridor which links the King's Wood and Urchin Wood portion of the SAC and suitable foraging habitat to the north and east of Yatton and the Strawberry Line.
70. *Greater Horseshoe Bats* are likely to utilise the grazed pasture that sits in between the ditches associated with the Biddle Street SSSI for invertebrates including dung beetles. *Lesser Horseshoe Bats* are likely to utilise the ditches themselves to forage for emerging aquatic invertebrates. Both species also forage within the appeal site, with H3 and H4 appearing to support the most foraging activity. Generally, all of the hedgerows supported at least low levels of activity by greater and lesser horseshoe bats, and together, they are likely to significantly contribute to the connectivity of the local landscape for commuting bats.
71. The appeal proposal comprises up to 100 dwellings and associated infrastructure. The scheme would remove a large area of the improved grassland from both the northern and southern fields and result in the removal of all of the farmyard buildings of Rectory Farm, Yatton and the hardstanding areas associated with the farmyard to facilitate construction.

⁵⁸ See CD7, Tom Clarkson's PoE Appendix B Shadow HRA Assessment page 65 and CD22

⁵⁹ Tom Clarkson's PoE Appendix B: Shadow HRA Assessment page 66

⁶⁰ Tom Clarkson's PoE Appendix B: Shadow HRA Assessment pages 66-67

⁶¹ Ibid

Hedgerows and ditches would largely be retained and protected; although some impacts from lighting on these features are anticipated. The layout of the access road and buildings' orientations have been designed to reduce light spill onto retained mitigation habitats as far as is possible.

72. Short sections of hedgerows would require removal from H1, H5, H6 and H9 to create safe visibility surrounding the access road. The ditch to the north of H1 may require removal and recreation to allow the access road to be constructed. The Landscaping Masterplan shows the proposed wildlife mitigation, and a Phase 1 habitat plan shows the hedgerows affected.⁶² It is acknowledged that the scheme has the potential to result in likely significant effects which are summarised in the Shadow HRA Assessment.⁶³
73. The Appellant has proposed mitigation designed to fulfil the requirements of the North Somerset and Mendip Bat Habitat Evaluation Procedure (HEP), the details of which are provided within the Ecological Impact Assessment Report⁶⁴ to address the likely significant effects from the proposals. However, the *People Over Wind* judgment established that the assessment of likely significant effects on the European sites cannot take into account measures to avoid or reduce the effects of a proposed development. Therefore, it is necessary for the competent authority (the Inspector) to undertake an Appropriate Assessment (AA) under the Habitats Regulations.⁶⁵

Appropriate Assessment

74. The AA is necessary to comply with Regulation 63 (1) of the Conservation of Habitats and Species Regulations 2017. In undertaking the AA, I must be certain that the proposed development would not result in adverse effects to the integrity of the relevant European site.
75. Several measures are included within the design of the scheme to ensure that impacts associated with *fragmentation and the loss of flight lines* for horseshoe bats would be avoided and mitigated as far as possible. These measures include: supplementary planting to bolster the structure of currently utilised flight lines and to create new suitable commuting routes; the implementation of protective measures during the construction phase to ensure that valuable habitats are not inadvertently damaged during site clearance/construction; and the design of a sensitive *lighting* scheme, which would seek to protect all boundary features and bat mitigation habitats from artificial light spill. In view of the above measures and the careful design of the site layout, I conclude that the development, when considered in isolation, would not have any residual adverse impacts upon flight lines or commuting bats. The risk of adverse effect on the integrity of the SAC can be ruled out, applying the precautionary principle.
76. The Shadow HRA Assessment indicates that the appeal proposal has been carefully designed to avoid the majority of potential impacts. With regard to the *reduction in foraging habitat area*, as can be seen from the HEP, at least 1.02ha of optimal greater horseshoe bat foraging habitat is required to ensure

⁶² Tom Clarkson's Shadow HRA Assessment page 58

⁶³ Tom Clarkson's PoE Appendix B: Shadow HRA Assessment page 68

⁶⁴ CD22

⁶⁵ Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017

the scheme remains compliant with the SPD. The appeal site also requires this mitigation to provide 0.72ha of optimal foraging habitat for lesser horseshoe bats to achieve foraging equivalence. The appeal scheme has incorporated the equivalent of at least 0.70ha of greater horseshoe bat habitat and 0.71ha of suitable lesser horseshoe bat habitat.

77. This is below what is required to be compliant with the guidance. For greater horseshoe bats the loss of habitat value within the appeal site is equivalent to 0.32ha or 31.38% loss of habitat value within the red line boundary. For lesser horseshoe bats this was a loss of 0.01ha or 1.39% of the foraging value within the red line boundary. Mr Clarkson stated that the mitigation habitat provided was as large in area and of as high a value as was practical to provide within the constraints presented by the appeal proposal. Habitat retention has prioritised the most valuable areas of habitat to horseshoe bats and has preserved the most valuable foraging and commuting features.
78. To offset the shortfall in habitat value (particularly for greater horseshoe bats) *off-site compensation habitat* has been secured. The development proposes to compensate the shortfall by enhancing suitable off-site land to increase its value to foraging horseshoe bats. A field has been identified within 500m of the red line boundary to the north-east which could be enhanced to fulfil this purpose.⁶⁶ This land also sits within Band B of the consultation zone making it suitable for use as off-site compensation being of broadly equivalent distance from the same known SAC sites. Full details of the off-site compensation land are set out in the Shadow HRA.⁶⁷ The area of compensation habitat proposed is 0.95ha in area and would be managed through low intensity grazing, cessation of the use of inorganic fertilisers and, if necessary, seeding to establish a botanically diverse wet neutral pasture. The diversification of the flora of the grassland would increase the diversity of invertebrates available to foraging bats and substantially increase its foraging value.
79. Connectivity between the habitats within the red line boundary and the off-site compensation land is excellent with the woody vegetation and ditches associated with the Strawberry Line directly connecting the two land parcels. Taking into account the existing value of the habitat (0.3 for greater horseshoe bats and 0.24 for lesser horseshoe bats) this would provide an additional 0.375ha of equivalent habitat for greater horseshoe bats and 0.21ha of equivalent habitat for lesser horseshoe bats. The quantum of habitat to be provided would thus represent a minor enhancement of the provision of foraging habitats for both lesser and greater horseshoe bats locally. The layout and habitat types of the proposed mitigation within the red line boundary are shown in Mr Clarkson's evidence.⁶⁸ I conclude that the development, when considered in isolation, would not have any residual adverse impact upon foraging bats. The risk of adverse effect on the integrity of the SAC can be ruled out, applying the precautionary principle.
80. An assessment of *in-combination effects* with other plans and projects is also provided within the Shadow HRA. When considering the loss of foraging habitat extent at both a local level (within 2km of the SAC components) and more of a landscape level (within 10km of the SAC components), the

⁶⁶ Tom Clarkson's PoE Appendix C Figure 2

⁶⁷ Tom Clarkson's PoE Appendix B pages 75-76

⁶⁸ Tom Clarkson's PoE Appendix C Figure 3

proposed development, in combination with other planning applications and allocated sites would result in the loss of under 1% of the total potential foraging habitat at both geographic scales. This cumulative loss is not significant in the context of the remaining available area of foraging habitat. Applying the precautionary principle, no likely significant effects are anticipated when this assessment is considered alongside other nearby developments. It can similarly be concluded, beyond reasonable scientific doubt, that there would be no adverse effect on the integrity of the SAC.

81. The proposed mitigation measures would minimise any residual adverse impacts and safeguard the favourable conservation status of the population of horseshoe bats recorded on the appeal site. This would be achieved by means of a Construction Environment Management Plan (CEMP); a Landscape and Ecological Management Plan (LEMP) and a Landscape Planting Plan.⁶⁹ Additionally, sufficient habitat is to be created in accordance with the HEP guidance to mitigate for proposed foraging habitat losses. The provision of replacement foraging habitat both within the appeal site and habitat in close proximity to the appeal site would maintain foraging capacity of the local area for horseshoe bats. Furthermore, with the implementation of the Planning Obligations and relevant planning conditions and their respective monitoring programmes, it can safely be concluded, applying the precautionary principle, that the risk of adverse effect upon the North Somerset and Mendip Bats SAC can be ruled out beyond reasonable scientific doubt.
82. Plainly, the effect of the wording of Condition 18 would ensure that details of the required mitigation (more bat surveys, final scheme for bat mitigation and habitat management plan for the off-site habitat) would avoid adverse effects from the development on the integrity of the SAC thereby securing compliance with the Habitats Regulations (and thus with Circular 06/05). Development either does not come forward if insufficient surveys are provided, or none at all, and does if the requirement is satisfactorily met.
83. Once it is appreciated that the requirements of the Habitats Regulations are met and in particular that the proposed development would not cause any harm to the SAC, then the mitigation hierarchy in paragraph 180(a) of the NPPF adds nothing for three reasons. Firstly, paragraph 180(a) does not provide that where adverse effects on SAC integrity are avoided through off-site mitigation, permission should still be refused if on-site mitigation could be provided (in either case, mitigation would be needed and once provided would avoid adverse effects on SAC integrity). The Council reads in a requirement which is simply not there. If it were there, the NPPF would be gold-plating the Habitats Regulations by imposing a significantly more onerous test.
84. Secondly, this is a scheme for 100 dwellings, and it is common ground that a scheme for 100 dwellings cannot provide 100% mitigation on-site. Thirdly, comparing it to a scheme for 75 dwellings is illegitimate in this context as a 75-unit scheme is a different scheme altogether. Paragraph 180(a) requires a judgment to be made about this particular development, not a comparison against some alternative materially different development.
85. Fourthly, a 100-unit scheme incorporating some off-site mitigation would have the following material advantages over a 75-unit scheme with 100% on site

⁶⁹ Tom Clarkson's PoE Appendix B pages 92-93

mitigation: (i) a materially higher amount of much needed market and affordable housing; (ii) as Mr Clarkson explained the provision of a combination of on-site and off-site mitigation would lead to advantages beyond what could be achieved from on-site only mitigation by providing a greater diversity of additional habitats; for example, by being able to include grazing, which is difficult to create on-site, particularly alongside residential development.⁷⁰ The evidence on this point was not challenged.

86. At the Inquiry there was discussion as to whether the imposition of a Grampian condition to deal with any remaining concerns was necessary. Plainly, survey work has already been completed consistent with the SPD guidance which has shown the use of the site by greater horseshoe bats and lesser horseshoe bats.⁷¹ The identified ecological impacts would be mitigated as far as possible within the site, with further appropriate compensatory habitat provision to fully address impacts to horseshoe bats.⁷² About two thirds of the required mitigation would be provided on-site.⁷³ That is as much as is possible to provide and therefore the mitigation hierarchy in the SPD has been followed. That does require the remainder to be provided off-site.
87. I accept that there is flexibility within the blue edged line of the additional land to provide further compensatory habitat if required. I also accept that in calculating the amount of compensatory habitat required, the Appellant has adopted a *worst-case scenario*.⁷⁴ This means that whether or not further surveys were to indicate that bats already use the proposed off-site mitigation land, the Appellant is already proposing a sufficient quantity of land to address this. If further surveys indicate that they do, the amount provided is enough, and if they were to find that no bats use it, the Appellant would be over providing which would be a benefit. The Appellant has calculated on the basis of bats foraging, and applied a multiplier which, if they are not, would not have needed to be applied reducing the amount of land required thus further demonstrating the robustness of the mitigation provision. I appreciate that there is an acknowledged risk associated with off-site habitat provision – things may not grow as expected – so a Grampian condition is required.
88. The Council questioned whether or not bats could actually get to the mitigation land and whether or not they might exhibit *territorial behaviour* preventing bats from accessing. It is agreed that the Strawberry Line is a key foraging commuting route for greater and lesser horseshoe bats. Horseshoe bats have been recorded in Mr Clarkson's survey results⁷⁵ and his evidence was that recording them is difficult due to directionality such that there is likely to be more present than is recorded. The off-site mitigation is proposed right next to this and is plainly close enough to the appeal site to be a candidate for replacement mitigation. I note that the issue of territoriality is already factored into the SPD multiplier. It is possible to increase habitat and thus increase headroom to combat territoriality. As to other concerns with

⁷⁰ EIC of Tom Clarkson. Note too paragraph 4.7 of the SPD at CD7

⁷¹ Paragraph 5, Summary PoE of Tom Clarkson.

⁷² Paragraph 8.1.5, PoE of Tom Clarkson.

⁷³ EIC of Tom Clarkson

⁷⁴ Terminology used in EIC

⁷⁵ See Appendix B to his PoE – Shadow HRA Assessment. In particular pages 66 to 69. See also the Bat Transect Map in the EIA at page 28, CD22.

regard to access, for example potential climate differences,⁷⁶ this has been considered in the design by incorporating a shelter belt.⁷⁷

89. I note the requirement to consult and have regard to NE's representations as the appropriate nature conservation body, where an AA is being carried out. On 28 April 2022 a consultation with NE was undertaken in accordance with the Conservation of Habitats and Species Regulations 2017. The response from NE dated 25 May 2022 confirmed their concerns about the proposal as previously set out in their letter of 10 March 2021.⁷⁸ NE, supported by the Council, do not consider that off-site mitigation is appropriate for this proposal due to the significant importance of the site to contributing to the favourable conservation status of the SAC bat populations, largely due to its location. Furthermore, NE do not consider that the off-site mitigation demonstrates any additionality in terms of foraging habitat enhancements and sufficient survey information has not been provided to ascertain if the site is appropriate for off-site habitat enhancements.
90. I have had regard to the representations from NE and taken into account the additional points made by the parties notably the Appellant's letter dated 6 June 2022.⁷⁹ I have given weight to NE's views as the statutory nature conservation body, but NE's views do not appear to be a formal objection to the proposal. Importantly, NE's evidence has not been tested by cross examination and therefore it cannot be given greater weight than Mr Clarkson's evidence which was tested at the Inquiry. Moreover, NE's representations must be considered in the context of the Shadow HRA and the detailed evidence provided by Mr Clarkson to the Inquiry which I found to be both cogent and compelling.⁸⁰
91. With regard to NE's views the following points are noteworthy. Firstly, the effect of the prevailing winds in the area would be to blow insects away from the site rather than towards the site. Secondly, the mitigation hierarchy has sought to maintain as much of the bat mitigation habitat on site as possible in the context of housing need. Thirdly, the basis of Mr Clarkson's calculations that the productivity of the off-site habitat would be enhanced to deliver a better foraging habitat to that currently present, accords with the Council's SPD methodology. Fourthly, the off-site compensation land is accessible to horseshoe bats and the need for more survey information on this land can be dealt with via a Grampian style condition. Finally, NE's response fails to grapple with the SPD guidance⁸¹ or the potential use of a Grampian condition.
92. Drawing all of these threads together, the evidence before me demonstrates that sufficient mitigation would be provided such that the development would not be likely to adversely affect the integrity of the SAC with a Grampian condition attached. The conservation objectives of the SAC would not be undermined. Accordingly I conclude on this issue that the proposed development would not have a significant effect on the North Somerset and Mendip Bats SAC, nor would it have unacceptable impacts on the Biddle Street SSSI. The appeal proposal would not conflict with Policies CS4 and DM8, the

⁷⁶ Though Tom Clarkson was XX on lighting preventing access, this did not form part of the Council's case prior to XX.

⁷⁷ In EIC

⁷⁸ CD43

⁷⁹ APP12

⁸⁰ See Appendix B to his PoE

⁸¹ CD7

North Somerset and Mendip Bats SAC SPD and the NPPF. Moreover, in this case, there would be no departure from the policy expectation in the first sentence of paragraph 99 of Circular 06/2005 and therefore no requirement for 'exceptional circumstances' to justify that departure in the manner referred to in the second sentence. Even if there were, the significant shortfall in the 5YHLS would be capable of amounting to exceptional circumstances.

Fourth Issue - The effect of the proposed development on the character and appearance of the area

93. This fourth issue relates to RfR3 which alleges that the proposed development, by reason of its protrusion in an area of high landscape sensitivity in close proximity to the Strawberry Line, does not accord with the linear form of the village and would appear as an incongruous projection into open countryside. Further, that it would cause unacceptable harm to the amenity value of the Strawberry Line. The Council's landscape policies include CS5 and CS9 of the Core Strategy,⁸² and Policy DM10 of the Sites and Policies Plan Part 1 – Development Management Policies.⁸³
94. Policy CS9 seeks to safeguard, improve and enhance the existing network of green infrastructure through "*further provision, linking into existing provision where appropriate, ensuring it is a multifunctional, accessible network which promotes healthy lifestyles, maintains and improves biodiversity and landscape character and contributes to climate change objectives.*"
95. Policies CS5 and DM10 deal with landscape.⁸⁴ It is noteworthy that Policy CS5 looks to protect and enhance the character, distinctiveness, diversity and quality of North Somerset's landscape and townscape. However, its focus is on both the national character areas and those in the North Somerset Landscape Character Assessment (LCA). It does not look to protect and enhance every individual development site. Provided the landscape and townscape is protected and enhanced, there is policy compliance and that can be so even where there is landscape harm.
96. Policy DM10 links with Policy CS5 on Landscape. It is the policy that relates specifically to development proposals. In the first bullet point it refers to having an "*unacceptable adverse impact*" rather than no adverse impact at all. Neither Policy CS5 nor Policy DM10 are zero harm policies. The litmus test is therefore whether or not there is an unacceptable degree of harm.⁸⁵
97. A Landscape and Visual Appraisal (LVA) was submitted with the application. Figure L3 to Mr Evers' proof of evidence illustrates the published landscape character areas applicable to the site and surrounding area. It is common ground that the North Somerset LCA SPD 2018⁸⁶ is the most relevant for this appeal. The site is located in the National Character Area Somerset Levels and Moors character area (No142). At the local level, the appeal site falls within Landscape Type A: Moors and LCA A1: Kingston Seymour and Puxton Moors. The overall character of the LCA is considered to be 'strong' and in 'good

⁸² CD1

⁸³ CD2

⁸⁴ And the historic environment in respect of CS5.

⁸⁵ Confirmed by Kevin Carlton in XX

⁸⁶ CD5

condition.' The landscape strategy for the LCA is to 'conserve' the existing landscape. The appeal site is on the edge of the LCA.⁸⁷

98. The positive significant features of the LCA are set out on page 31 of the SPD and are not restated here. I note that these relate to all of the Landscape Type: Moors and not just to LCA A1, the positive characteristics of which are set out elsewhere.⁸⁸ LCA A1 is distinguished from the other Moors LCAs.⁸⁹

99. In terms of landscape sensitivity, the Council relies heavily on the North Somerset Landscape Sensitivity Assessment 2018⁹⁰ (LSA). This document has not been consulted on externally⁹¹ and should be tempered on that basis. It is a high-level assessment and on a more granular analysis it was agreed that when looking at individual areas of land there would be variations.

100. Map 3 of the LSA⁹² shows that the southern part of the site falls within an extensive area around Yatton which is assessed as having high sensitivity, the top level of three levels of susceptibility to change and landscape value used. The LSA defines **High sensitivity** as:

*"Land with a high susceptibility to change and/or which is of high value, e.g. land adjacent to or visually prominent from the AONB, land outside of the settlement pattern, land which has high visual prominence, land which contributes to heritage or ecological assets."*⁹³

101. Plainly the northern part of the site falls within an area which is assessed in the LSA as having low sensitivity. The LSA defines **Low sensitivity** as

*"Land with a low susceptibility to change and/or which is of low value, e.g. land within the settlement pattern, land with low visual prominence, land which has no or very limited contribution to heritage or ecological assets."*⁹⁴

102. Mr Carlton contends that the appeal site is within the open countryside.⁹⁵ He sought to suggest⁹⁶ that the Appellant agrees with him, pointing to the LVA⁹⁷ and the SoCG. However, the LVA does not say that the site is in countryside plainly using the word 'beyond'. Mr Carlton accepted, when challenged, that this is not the same as saying that the site is in open countryside. The SoCG is a general SoCG, not a landscape one, and the meaning of open countryside in policy terms is not necessarily the same as in landscape terms.

103. At my site visit I saw that the northern part of the appeal site is dominated by development, consisting of the various single storey and large agricultural buildings that comprise the farm complex and the housing off-site to the east, giving it an urban character,⁹⁸ whereas the southern field has a more open, rural character.⁹⁹ It was not a matter of dispute at the Inquiry that some

⁸⁷ CD5 pages 39-40

⁸⁸ See pages 36 to 37 of the document

⁸⁹ Nigel Evers PoE paragraph 3.9.6

⁹⁰ CD6

⁹¹ See paragraphs 3.9.8-3.9.9, PoE of Nigel Evers

⁹² CD6

⁹³ Paragraph 4.1.13, CD6

⁹⁴ Paragraph 4.1.13, CD6

⁹⁵ See his paragraph 2.1, PoE of Neil Underhay. Confirmed this was the basis for his assessment in XX

⁹⁶ In EIC

⁹⁷ In particular paragraph 3.1.2, CD30.

⁹⁸ Paragraphs 3.9.17 and 3.9.20 and Viewpoints 1 and 2 in Appendix B, PoE of Nigel Evers

⁹⁹ Paragraph 3.9.18 and Viewpoints 3 and 4 in Appendix B, PoE of Nigel Evers

development could take place on the northern part of the appeal site. The focus of the Council's evidence was development on the southern field.

104. Nonetheless, as I saw on my site visit, the southern field is not as sensitive as the Council suggests and, in my view, Mr Carlton's assessment of the baseline is plainly overstated. It is influenced by the poorly resolved edge of Yatton which, combined with the farm buildings, the Strawberry Line and the intermittent belt of trees along the southern boundary, separating it from the wider countryside, and giving it an enclosed, semi-rural character.¹⁰⁰ The embankment and the trees and hedgerows along the Strawberry Line provide a strong boundary, separating the site and its context to the north-west and south-east from the wider Levels landscape to the west.¹⁰¹
105. Turning to the landscape and visual effects of the proposed development both landscape witnesses agreed that impacts would be localised only, in the context of a non-designated, non-valued landscape which is part previously developed land. Although the development would change the character of the site from open, grassed fields to houses and gardens with open space areas, there are no particular features of particular value within the site. The effect on the wider landscape would not be significant. The scale of the development is such that it is unlikely to have a discernible effect on the extensive national character area. There would be no significant effects on LCA A1; Kingston Seymour and Puxton Moors LCA, with a negligible magnitude of effect.
106. I accept that there would be an adverse effect of moderate significance on the landscape character of the site. There would be change from open, grassed fields to houses and gardens with open space areas. Existing boundary hedges and trees would be supplemented with new planting and water features on the open spaces within the context of existing development along the eastern boundary and within the north-western part of the site. As a result, there would be a moderate and adverse effect over all time periods, but this would be on the site itself and not the wider landscape. For trees and hedges on the site, so few would be removed for construction that the effects during the construction period and on completion would not be significant with an overall magnitude of negligible. However, with the maturing of the landscape scheme and implementation of the management plan, there would be a moderate beneficial effect.
107. The Council refers to a change in landscape character along Chescombe Road/Biddle Street which it says is a valued link to open countryside. It points to the cutting back or reduction in the height of hedgerows at the new junctions (for visibility) and the installation of footways north and south which would require hedgerow and tree removal. The total figures estimated for widening of the accesses north and south, new paths and visibility splays are set out in document APP8. From the evidence submitted, the total length of hedge removed (49m) would be more than compensated by the net hedge increase (601m) and the total number of trees removed (13) needs to be viewed in the context of the overall net tree increase (61).
108. With regard to visual impacts, there are not many views from which the appeal site can be seen and those that exist are short-range, hence the localised nature of any impacts. Even in that context, though Mr Carlton

¹⁰⁰ Paragraph 3.9.20, PoE of Nigel Evers

¹⁰¹ Paragraph 3.9.19 and Viewpoint 3 in Appendix B, PoE of Nigel Evers

suggested that Viewpoints 3-5 of the Appellant's LVA¹⁰² were particularly relevant, he relied heavily¹⁰³ on Viewpoint 5. He focused on year one.¹⁰⁴ However, Summer of Year 15 is usually taken as representing the longer term 'average' residual effect, although in practice new planting will not be fully mature until sometime after Year 15.

109. From Viewpoint 3, the new houses and their gardens would be prominent in the view, with those to the west being set back further from Chescombe Road beyond an area of open space. The roadside hedgerow would be strengthened with new tree planting and hedgerow shrubs. Here the overall effects would be of major magnitude with an adverse effect of moderate significance on completion reducing to minor significance after 15 years.
110. As a result of the closeness to the site, Viewpoints 4 and 5, would be of major magnitude, with an adverse effect of major significance which would reduce to moderate significance after 15 years. However, I note that Viewpoint 5 is taken from the Strawberry Line, about 10m from the site boundary, looking north-east across the southern field. Views are filtered and though the new houses would be prominent in the view, they would be set back behind a narrow area of open space and filtered by new tree planting with the effects reduced at Year 15.¹⁰⁵
111. Mr Carlton accepted that by Year 15 someone walking the Strawberry Line would not have at the forefront of their mind that they had walked past the development. He also accepted that the proposed landscape mitigation measures were realistic and achievable. At my site visit I saw that there would be benefits that would flow from the development in respect of the northern field. That would include the replacement of farm buildings and clutter which I consider would be an improvement.
112. The Council argued that the proposed development would not accord with the *linear development* and form of the village. It claimed that one of the foundation stones of the case is that Yatton is a linear settlement; though Mr Carlton clarified that it is "*predominantly linear*,"¹⁰⁶ acknowledging that it widens to the north where the industrial units sit. But the Council's assertion that the development would not accord with the linear form of the village goes nowhere because the settlement is not in a linear form.
113. That assessment is plainly wrong when one looks at Plan L3 of the LVA¹⁰⁷ which makes clear that there is not a straight line to the development edge but rather it is jagged. To describe the form of Yatton as linear is an oversimplification of the way the settlement has developed and how it is at present.¹⁰⁸ It seems to me from Figure L2 in the LVA¹⁰⁹ the Conservation Area, representing the historic core of the village, is arranged along the B3133 towards the south-eastern edge of modern Yatton.¹¹⁰ When further development occurred, it has largely comprised housing estates, laid out

¹⁰² Appendix B, CD30

¹⁰³ In EIC

¹⁰⁴ Appendix B, CD30

¹⁰⁵ Paragraph 3.10.19, PoE Nigel Evers

¹⁰⁶ Clarified by Kevin Carlton in XX when taken to paragraphs 4.5 and 8.2 of his PoE

¹⁰⁷ CD30

¹⁰⁸ Paragraph 4.3.1, PoE of Nigel Evers

¹⁰⁹ CD30. See also Appendix 1, PoE of Nigel Evers

¹¹⁰ Even the Conservation Area extends to the south which, before the village grew beyond its historic core, could have been regarded as a projection into open countryside – see paragraph 4.3.2, PoE of Nigel Evers

- unimaginatively and without attention to integration or mitigation such that the historic core was completely separated from its rural setting.¹¹¹ Plan L2 shows this further where one can see cul-de-sacs and circular drives.
114. Mr Carlton contended¹¹² that what you see on the linear edge is a consequence of the topography which has influenced how development has come forward. However, he agreed that much of modern Yatton, including on the appeal site side of the settlement, is within the 5-10m contour range when looking at Plan L1 of the LVA¹¹³ as is the appeal site.¹¹⁴
115. Importantly, it is not only current development that should be considered but also the land that has been allocated further north and east for housing and, north of the site, for a school shown by way of the purple-coloured plot on Plan L2. If those developments come forward this would only further undermine any suggestion of a linear edge. Plainly there is nothing special about the development pattern, and it is replicated all across the district and the country.¹¹⁵ It is the quality of a development that is important and how it presents itself such as if it is set back behind appropriate planting, not just if it is in a straight line. The Council said that the existing Titan Ladders development¹¹⁶ is an acceptable development edge. To my mind that is an undoubtedly prominent development which is entirely insensitive to its surroundings and very different to that proposed at the appeal site.
116. The Council claims that the proposed development would cause unacceptable harm to the amenity value of the *Strawberry Line* making it more suburbanised and less tranquil. I disagree. In my view, its sensitivity is overstated. In the LSA, its only sensitivity arises from its ecological designations; there is no mention of its setting as a concern or limit to development, nor does the Local Plan introduce such a concept.¹¹⁷ Whilst it is part of National Cycle Route 26, its sensitivity can only be reasonably described as medium adjacent to the appeal site given the value of the views in this part and the consistent presence of the edge of Yatton.¹¹⁸ The evidence of the Appellant in this regard was not challenged at the Inquiry.
117. The appeal proposal would result in development along part of the southern side of Chescombe Road with extensive open space proposed along the interface with the Strawberry Line and a broad verge either side of Chescombe Road with reinforced hedges and new tree planting. This means that the approach would change to a more developed character. Although there would be development partly on both sides, the overall impression would be of a wide, green lane with dwellings set back on either side.¹¹⁹ It is also a fact that when considering the impact on the Strawberry Line that it largely follows the route of a disused railway. Given its length, inevitably the experience of using the line is dependent upon the part one uses.
118. At my site visit I saw that in the vicinity of the appeal site, that the views to the west across the open, flat moors are a much more rewarding experience

¹¹¹ Paragraph 4.3.2, PoE of Nigel Evers

¹¹² See 4.5 of his PoE

¹¹³ Appendix B, CD30

¹¹⁴ He said 'largely' in XX

¹¹⁵ Paragraph 4.3.25 PoE of Nigel Evers

¹¹⁶ See Viewpoint 1, Appendix B, CD30

¹¹⁷ Paragraphs 3.9.16 and 4.4.24, PoE of Nigel Evers

¹¹⁸ Paragraph 3.10.5, PoE of Nigel Evers

¹¹⁹ Paragraph 4.4.2, PoE of Nigel Evers

than those across the fields and the relatively short distance to Yatton. As can be seen from the Strawberry Line Figures SL2 to SL7 submitted by the Appellant, much of the view from the route is blocked by lineside vegetation, and where there are views towards Yatton, the site is not always visible.¹²⁰ It is only when one travels further south, where lineside vegetation is sparser, that the views across the moors are more open.¹²¹

119. There are much better views to be seen further along the Strawberry Line from the appeal site; for example, where it runs across part of LCA A4 Locking and Banwell Moors.¹²² Mr Carlton accepted that perceiving development is a fundamental part of the Strawberry Line experience - the line passing a number of settlements. Figure L10 shows the route passing along nearly 2km of almost continuous development directly abutting it to the east, as it approaches and passes through Winscombe.¹²³
120. Mr Evers sets out the most striking experiences of the Strawberry Line in his evidence,¹²⁴ and Mr Carlton did not disagree with his view. Unsurprisingly, views of the appeal site do not make the cut. Given that part of the site is already developed (and land to the north is allocated for a school) and that existing development is visible a single field depth away, the importance of the site to the experience of the Strawberry Line is negligible.¹²⁵
121. The appeal proposal would extend the developed edge of Yatton nearer to the Strawberry Line, but the extensive open space and landscape treatment would integrate the development into its setting.¹²⁶ The Strawberry Line would still function as an important route through the Somerset countryside, with glimpsed and more open views either side, across its length and changes to the site would not significantly change the setting to the Strawberry Line.
122. On the fourth issue I consider that the proposed development would have some localised and limited landscape and visual effects. Any harm would be limited to a small area, and significant effects would be limited to the site and its immediate setting. The adverse effects of the proposed development would be localised and limited on a site which is a non-designated, non-valued landscape and part previously developed land. They would be minimised by the implementation of the landscape proposals. There would be a limited degree of conflict with Policies CS5, DM10 and the North Somerset LCA SPD. However, the proposal would be in compliance with other policies including Policies CS9, DM25 and paragraphs 130 (c) and 174 (b) of the NPPF. In my view there would be no conflict with the policies in the YNP. I conclude on the fourth issue that the proposed development would not cause unacceptable harm to the character and appearance of the area.

Planning Obligations

123. The NPPF indicates that planning obligations must only be sought where they meet all of the following tests: (a) necessary to make the development

¹²⁰ Paragraph 4.4.9, PoE of Nigel Evers

¹²¹ Paragraph 4.4.10, PoE of Nigel Evers

¹²² Paragraph 4.4.12, PoE of Nigel Evers

¹²³ See SL15, SL16 and SL18

¹²⁴ Paragraph 4.4.20, PoE of Nigel Evers

¹²⁵ Paragraph 4.4.22, PoE of Nigel Evers

¹²⁶ Paragraph 4.4.23, PoE of Nigel Evers

acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development.¹²⁷

124. The s106 Agreement secures a number of planning obligations that are required to make the appeal proposal acceptable in planning terms. They include: Public Transport Contributions; a Secondary School Transport Contribution; a Sustainable Travel Contribution; Footpaths and Public Rights of Way Contributions; a Fire Hydrant Maintenance Contribution; 30% affordable housing units on site; provisions relating to Neighbourhood Open Space and Play Space. The CIL Compliance Statement¹²⁸ sets out the terms of the planning obligations (including the costs) and the planning policies underpinning them. It then assesses the requirements against the CIL tests for planning obligations set out in Regulation 122 of the CIL Regulations and provides a detailed justification for each obligation.
125. In my view, all of the obligations in the s106 Agreement are necessary to make the development acceptable in planning terms; are directly related to the development; and fairly and reasonably related in scale and kind to the development. Therefore, they all meet the tests within Regulation 122 of the CIL Regulations. As such I have taken them into account in the decision.
126. A separate s106 Unilateral Undertaking (UU) was submitted by the Appellant.¹²⁹ In this Deed the owner covenants with the Council to pay the sum of £16,000 as the Waste Bin and Litter Collection Contribution.¹³⁰ This is required as a result of the additional recreational pressure on the Biddle Street SSI. The UU secures contributions for the provision of waste bins, litter picking and bin emptying on the Strawberry Line, to mitigate the impact from littering and dog fouling.
127. In my view, the covenants within the UU are also necessary to make the development acceptable in planning terms; are directly related to the development; and fairly and reasonably related in scale and kind to the development. Therefore, they all meet the tests within Regulation 122 of the CIL Regulations. As such they are a consideration material to the determination of this appeal. I have taken them into account in the decision.

Other Matters

128. I have taken into account all other matters raised including the concerns raised on behalf of Yatton Parish Council, Yatton and Congresbury Wildlife Action Group (YACWAG) and the representations made by interested persons who provided written submissions. Many of the matters raised such as the scale of the proposed development, the impact on ecology, biodiversity and landscape are points which I have already dealt with under the main issues.
129. Yatton Parish Council (YPC) opposed the appeal proposals due to concerns relating to development in the countryside; the impact of the development on the Strawberry Line and the Biddle Street SSSI; the sustainability of development in Yatton and the increased traffic generation along Chescombe

¹²⁷ NPPF paragraph 57 and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010

¹²⁸ LPA2

¹²⁹ APP6

¹³⁰ The Waste Bin and Litter Collection Contribution means the sum of £16,000 being comprised of £1,000 for installation of 2 bins on the Strawberry Line in the vicinity of the development and £500 per year for 30 years for litter picking and bin emptying in the vicinity of the development.

Road and Mendip Road.¹³¹ I have already addressed matters relating to landscape and ecology in the main issues.

130. YPC and a number of representations suggest that Yatton is not a sustainable location and cannot support the level of development proposed. As a result, it is alleged that the proposal would place a strain on local services. As Mr Hutcheson's evidence explains, Yatton is a sustainable location. Furthermore, the potential effects on local services are to be mitigated through the provision of planning obligations set out in the s106 Agreement and through the Council's Community Infrastructure Levy.
131. With regard to concerns raised about increased traffic and highway safety, including construction traffic, this is no longer a matter in dispute.¹³² The Council has accepted that the further evidence presented as part of the appeal demonstrates that an appropriate and suitable access can be provided.¹³³ The proposal is acceptable in highway and transport terms. It complies with Policy DM24 and paragraph 110 and 111 of the NPPF.
132. YACWAG raise concerns about the detrimental impact of the proposal on the landscape, nature conservation and protected species. It is argued that the Ecological Impact Assessment and the off-site mitigation are inadequate.¹³⁴ I have already dealt with these matters in the main issues. Yatton Local History Society raised concerns regarding impacts of potential increase in footfall along the medieval Gang Wall. The Gang Wall was considered as part of the Historic Environment Assessment submitted with the proposal and it was considered of low significance. There is no evidence to suggest that the appeal proposal would adversely affect this local feature which is protected as a Local Green Space in the YNP. No objections were raised by the Council's Heritage Officer or Historic England. The Council accepts that the appeal proposal would not result in any heritage harm. I agree.
133. With regard to concerns about flood risk and drainage, I note that the proposals are supported by a flood risk assessment and drainage strategy which demonstrate that the appeal proposal is acceptable in relation to flood risk and drainage. Notably, there are no objections from the Environment Agency or other drainage consultees and the Council did not include these matters in its RfR.
134. With regard to the noise impact of the proposed development during the construction process, these effects would be temporary in nature and would be controlled via planning condition to ensure that local amenity is not unduly affected. No objections were raised by statutory consultees in relation to noise impact and the Council does not raise the matter in its RfR.
135. It has been suggested that the development would not be able to accommodate sufficient parking. These matters would be addressed at the reserved matters stage although I note that the illustrative layout does demonstrate that an appropriate layout can be achieved to accommodate the proposed level of development.

¹³¹ IP2 Statement by Chris Jackson

¹³² Paragraph 6.1, General SoCG

¹³³ Paragraph 5.1.2, PoE of Luke Hutcheson. See Highways SoCG particularly sections 2 and 3.

¹³⁴ IP1 Statement by Tony Moulin

136. A number of previous appeal decisions were submitted by the parties. I have taken these into account in coming to my decision in this case. None of the previous appeal decisions submitted were sufficiently closely related to this appeal case. With regard to the Moor Lane, Backwell decision¹³⁵ this was a proposal for 9 open market dwellings, separated from the settlement boundary, and assessed under Policy C33 rather than Policy C32 of the Core Strategy. Moreover, the housing land supply was assessed at 4.2 years.
137. With regard to the Former Weston Trade Centre, Knightcott Road, Banwell decision¹³⁶ this was a proposal for 47 dwellings situated some distance from the settlement boundary in the open countryside and therefore was assessed under Policy C33 of the Core Strategy unlike the appeal site which adjoins the Yatton settlement boundary. The Banwell decision would have caused unacceptable harm to the character and appearance of the area and was not sustainable development.
138. With regard to the Stowey Road, Yatton decision¹³⁷ this was a proposal for up to 60 dwellings which adjoins the settlement boundary. However, the site was recognised as playing an important role in the setting of Yatton and the transition from moorland to village which is perceived most clearly from Cadbury Hill. The appeal before me would have some localised landscape impacts but limited visibility from the wider landscape including Cadbury Hill.
139. Importantly in the current appeal there is a significant housing land supply shortfall equivalent to only 3.2 years. The appeal scheme of up to 100 dwellings would deliver significant social, economic and environmental benefits and would boost the supply of housing. The development would also be located in a sustainable location with regard to services and facilities. There are also material differences between the current appeal site and other appeal decisions in terms of my findings on ecology and the HRA.

Planning Balance

140. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. The appeal proposal for up to 100 dwellings would deliver a scale of development that is in conflict with the spatial strategy of the development plan which permits sites of up to around 25 dwellings adjoining the settlement edges of services villages. The proposed development is contrary to Policies CS14 and CS32 of the Core Strategy. However, there is no 5YHLS in this case and indeed there is a significant shortfall. Policies CS14 and CS32 are most important policies but they cannot be given full weight. These policies are out-of-date and can only be afforded limited weight.¹³⁸ From the evidence that is before me I cannot agree with the Council's suggestion that significant or moderate weight be given to these policies.
141. Taking the landscape and ecological impacts together, there is no evidence which indicates that any significant harm would arise from the appeal proposal. In truth, very little harm would arise from the appeal proposal.¹³⁹ There is no clear ecology reason to refuse the development as any adverse

¹³⁵ APP/D0121/W/21/3266596

¹³⁶ APP/D0121/W/18/3206914

¹³⁷ APP/D0121/W/17/3170103

¹³⁸ Paragraph 9.12, Planning PoE of Ian Jewson

¹³⁹ Paragraph 9.13, Planning PoE of Ian Jewson

- impacts on site integrity can be ruled out with the ability to resolve the same via a Grampian condition.
142. The only alleged harm which can be said to remain on the Council's case is landscape harm. I have found that the proposed development would only have some localised and limited landscape and visual effects. Any harm would be limited to a small area, and significant effects would be limited to the site and its immediate setting. The adverse effects of the proposed development would be localised and limited on a site which is a non-designated, non-valued landscape and part previously developed land. They would be minimised by the implementation of the landscape proposals. There would be a limited degree of conflict with Policies CS5, DM10 and the North Somerset LCA SPD.
143. On the basis of the conflict with Policies CS14 and CS32 and the limited conflict with the landscape policies CS5 and DM10, I conclude that the proposals would be in overall conflict with the development plan. However, I have found that the Council cannot demonstrate a 5YHLS and that paragraph 11 d) of the NPPF is engaged. There is a housing land supply equivalent to 3.2 years. The implications of not having a 5YHLS are significant. Not only is there a shortfall of some 2,536 dwellings, but it also means the basket of policies which are the most important for determining the application are out-of-date and the tilted balance applies. Given that there are no policies in the NPPF which, if applied, would provide a "clear reason for refusing the development" under paragraph 11 d), it follows from the "out-of-date" nature of the most important policies that the tilted balance applies.¹⁴⁰
144. The Appellant argues that the appeal proposals constitute sustainable development and would deliver significant social, economic and environmental benefits and would boost the supply of housing. It is claimed that the significant social, economic and environmental benefits should collectively be weighed against any limited harm that may be identified. I consider these matters in turn.
145. With regard to the delivery of **market housing**, it is clear to me that the Council has a very poor record of housing delivery and has consistently failed to demonstrate a 5YHLS. The shortfall is significant and should be given **very significant** weight.¹⁴¹ As I perceive it, the Council is not taking any urgent or effective action to address this, and a review of the housing requirement and Local Plan as a whole is now overdue and is unlikely to be completed for the foreseeable future.¹⁴² From the evidence that is before me it is unlikely that the shortfall would be made up quickly.
146. These significant material considerations provide clear justification for reducing the weight to be applied to Policies CS14 and CS32. The appeal proposals would make a significant contribution to addressing that shortfall. It was Mr Jewson's evidence that the delivery of new market housing should be given **significant weight**.¹⁴³ Mr Underhay agreed that **very significant weight**¹⁴⁴ should apply where there is no 5YHLS. I have no doubt from the evidence of Mr Jewson that if permission is granted, the appeal scheme would be able to come forward promptly and contribute to the 5YHLS.

¹⁴⁰ APP9 Page 3

¹⁴¹ Paragraph 6.5, HLS PoE of Ian Jewson

¹⁴² Paragraph 9.5, Planning PoE of Ian Jewson

¹⁴³ Paragraph 9.7, Planning PoE of Ian Jewson.

¹⁴⁴ He responded "yes probably" in XX

147. Plainly, **affordable housing** should be properly considered its own standalone benefit separate to market housing provision.¹⁴⁵ The Council accepted that there is a “*significant demonstrable need for further affordable housing in North Somerset including Yatton.*”¹⁴⁶ That is the case whether or not there is a 5YHLS. Clearly the appeal proposals would greatly assist by delivering 30% affordable housing in accordance with Policy CS16 of the adopted North Somerset Core Strategy with a range of dwelling sizes, types and tenures. In cross examination Mr Underhay agreed that **very significant weight**¹⁴⁷ should apply to this consideration irrespective of a 5YHLS.
148. To the extent that the Council seek to maintain Mr Underhay’s initial argument that the weight to be applied to market and affordable housing could be reduced due to the development being contrary to the Local Plan, that is plainly double counting. In [Gladman Developments Ltd v SSHCLG & Corby BC & Uttlesford DC \[2021\] EWCA Civ 104](#) the Court accepted that one can include conflict to policy when considering the tilted balance. Therefore, as harm flowing from policy conflict is already being considered on the harm side of the balance, to also use it to reduce the benefits before carrying out the balance would be putting the adverse effects of the scheme on both sides.
149. The proposed development would be situated in a sustainable location; the Council’s suggestion that it is not is policy based only and they did not seek to challenge any of Mr Hutcheson’s evidence as to the connectivity of the site in highways terms. Section 106 contributions are agreed, the agreed contributions would deliver a series of benefits with the scheme. The proposal would also deliver significant economic benefits both during construction and as a result of increased spending from new residents, which should be given **significant weight**.¹⁴⁸ This is supported by paragraph 81 of the NPPF which directs 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.*”¹⁴⁹ I note that this is not qualified i.e., only applicable where a benefit is permanent.¹⁵⁰
150. It is also noteworthy that paragraph 81 of the NPPF does not direct that significant weight should be placed on a particular contribution towards economic growth or productivity no matter how large or small.¹⁵¹ This does not mean that it allows for less weight to be applied to different contributions. That would be a clear misreading of the paragraph. The NPPF is unequivocal in telling decision makers what weight to apply. The weight to be applied is prescribed and the same; but it is being applied to a bigger or smaller benefit. Just as when great weight is applied to heritage harm, the weight is the same but the level of harm to which it is applied may not be.
151. In any event, even if discretion were to be applied, there is no justification for reducing weight simply because some benefit may be temporary. Mr Underhay agreed¹⁵² that the construction industry plays an important role in

¹⁴⁵ Neil Underhay agreed with this approach in XX

¹⁴⁶ Paragraph 10.5, PoE of Neil Underhay

¹⁴⁷ He responded “yes probably” in XX

¹⁴⁸ Paragraph 9.9, Planning PoE of Ian Jewson.

¹⁴⁹ And which Neil Underhay acknowledged in XX

¹⁵⁰ Neil Underhay acknowledged this in XX

¹⁵¹ Put by Timothy Leader to Neil Underhay in re-examination

¹⁵² In XX

the UK economy, that it is continually reliant upon a pipeline of projects and that they are therefore all temporary.

152. With regard to the environmental benefits, the illustrative Masterplan has been prepared to demonstrate that known constraints have been taken into account. The proposal includes biodiversity enhancements which would make a positive, permanent contribution to local biodiversity including the provision of significant areas of green infrastructure and open space which incorporate specific bat mitigation areas which should all be given **significant weight**.¹⁵³
153. It is noteworthy that on Mr Clarkson's BNG assessment, there would be a 103% gain in area-based habitats and a 56% gain for linear habitats which is a significant enhancement in terms of biodiversity value achieving the NPPF standard of delivering measurable net gain and the Local Planning Authority's policy standard of requiring developments to avoid a net loss and deliver a net gain in biodiversity where possible.¹⁵⁴

Balance

154. Taking all of the above into consideration, applying the tilted balance pursuant to paragraph 11d of the NPPF, the adverse impacts of granting permission plainly would not significantly and demonstrably outweigh the benefits of doing so. The Council cannot demonstrate a 5YHLS and the overall benefits of the appeal proposals clearly outweigh the harm.

Planning Conditions

155. The Council submitted a list of conditions which I have considered in the light of the advice in paragraphs 55 and 56 of the NPPF and the Government's PPG on the Use of Planning Conditions. The Appellant has agreed to all of the suggested conditions. Conditions 1-3 are necessary as the proposal is submitted in outline and approval of reserved matters is required within time limits. Conditions 4 and 5 are necessary for the avoidance of doubt and in the interests of proper planning. Condition 6 is required to reduce environmental impacts and to safeguard the living conditions of nearby residents. Condition 7 is required in the interests of visual amenity. Conditions 8 and 9 are required to reduce the risk of flooding. Conditions 10 and 11 are required in the interests of highway and pedestrian safety. Condition 12 is required to ensure adequate car parking. Condition 13 is required to ensure that electric vehicle charging is provided. Conditions 14 and 15 are necessary to ensure the development is assimilated into its surroundings. Conditions 16 and 17 are necessary to safeguard the trees which are visually important on the site.
156. Condition 18 is necessary to ensure compliance with the Conservation of Habitats and Species Regulations 2017, the Wildlife and Countryside Act 1981 (as amended), Policy CS4 of the North Somerset Core Strategy and Policy DM8 of the North Somerset Sites and Policies Plan (Part 1). Condition 19 is necessary to protect the appearance of the area, the environment and wildlife from light pollution. Condition 20 is necessary to ensure that the biodiversity value of the site is not adversely affected. Conditions 21 and 22 are required to safeguard heritage assets of archaeological interest. Conditions 23-25 are required to ensure that the land is suitable for the intended uses. Condition 26

¹⁵³ Paragraph 9.11, Planning PoE of Ian Jewson

¹⁵⁴ See paragraphs 4.1.70-4.1.72 and Appendix A, PoE of Tom Clarkson

is required to secure a high level of energy saving by reducing carbon emissions. Condition 27 is necessary in the interests of promoting good design and sustainable construction. Condition 28 is required to ensure that the dwellings provide acceptable standards of accommodation. Condition 29 is necessary to ensure that sufficient accessible housing is provided. Condition 30 is necessary in the interests of protecting the living conditions of neighbouring residents. Condition 31 is necessary to ensure that dwellings are sited outside Flood Zones 2 and 3 which currently affect some outer edges of the site. I have added Condition 32. This is necessary to enable the statutory nature conservation body (NE) to consider any further action.

Overall conclusion

157. Having considered these and all other matters raised I find nothing of sufficient materiality to lead me to a different conclusion. The appeal is therefore allowed subject to the conditions set out in the attached Schedule.

Harold Stephens

INSPECTOR

SCHEDULE OF PLANNING CONDITIONS (1-32)

Outline Conditions

- 1) Approval of the details of the layout, scale, appearance of the building(s) and the landscaping of the site (hereinafter called 'the reserved matters') shall be obtained from the Local Planning Authority, in writing before any development is commenced.
- 2) Any application for the approval of reserved matters made pursuant to this planning permission shall be made to the Local Planning Authority before the expiration of 3 years from the date of this permission.
- 3) The development hereby permitted shall be begun before the expiry of two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans and documents:
 - Site Location Plan - Reference number 1037-PL03A
 - Topographical Survey Drawing Number 14730-TS01
 - 14730-HYD-XX-XX-DR-TP-0201-P05 Site Access General Arrangement Priority Cross-Roads and Pedestrian Access
 - 14730-HYD-XX-XX-DR-TP-0303-P01 Swept Path Analysis of Refuse Vehicles
 - 14730-HYD-XX-XX-DR-TP-0304-P01 Swept Path Analysis of Large Car
 - 14730-HYD-XX-XX-DR-TP-0305-P01 Swept Path Analysis of Fire Tender
 - Travel Plan – Reference number 14730-HYD-XX-XX-RP-TP-6001 Rev P01.
- 5) The development hereby permitted shall be carried out in broad accordance with the following plans and documents:
 - Design and Access Statement Date 23.12.2020
 - Transport Assessment 14730-HYD-XX-XX-RP-5001
 - Road Safety Audit and associated submissions
 - Flood Risk Assessment - 14730-HYD-PH1-XX-RP-FR-0001 Rev PO2
 - Drainage Strategy - 14730-HYD-XX-XX-RP-D-0002 Rev PO1
 - Landscape and Visual Appraisal – January 2021
 - Ecological Impact Assessment - December 2020
 - Tree Survey - 05476 TCP 04.08.20
 - Tree Constraints Plan - 05476 TCP 4.8.2020

- Arboricultural Impact Assessment Report 05476 RECTORY FARM AIA 02.02.21
- Tree Removal/Retention Plan (Sheet 1-4) Phase 1 Ground Conditions Study (Part 1 - 4) 14730-HYD-XX-XX-RP-GE-1000 S2 P1
- Affordable Housing Statement – January 2021
- Historic Environment Assessment - ACW1271/1/1
- Energy Statement December 2020
- Preliminary Lighting Assessment (Part 1 & 2) Preliminary adoptable and non-adoptable lighting 179-01-S38-201125-CD-LI-A
- Energy and Sustainability Statement December 2020
- Indicative Species List
- Desk Study Report 14730-HYD-XX-XX-RP-GE-1000 S2 P2 1037- PL01A
- Shadow HRA
- Illustrative Site Masterplan Drawing Number PL01/A

Construction Environmental Management Plan

- 6) No phase or component of development shall be commenced, including site preparation or site clearance works, until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include:
- (a) the location where site operatives and visitor vehicle parking will take place on the site
 - (b) the location of the site compound for the loading, unloading and storage of plant and materials including waste materials, and temporary site offices
 - (c) the erection and maintenance of security hoarding
 - (d) the means to reduce mud and debris from the site being deposited on the road network, including details of road cleaning and/or wheel wash facilities
 - (e) measures to control the emission of dust and dirt during construction
 - (f) measures to control noise from works on the site
 - (g) managing complaints
 - (h) Any formal parking restrictions/and or traffic management to enable the works to be carried out
 - (i) details of measures to avoid harm to protected species and their habitats during construction. This shall include the following:
 - (i) Risk assessment of potentially damaging construction activities
 - (ii) Identification of “biodiversity protection zones”

- (iii) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements)
- (iv) The location and timing of sensitive works to avoid harm to biodiversity features
- (v) The times during construction when specialist ecologists need to be present on site to oversee works
- (vi) Responsible persons and lines of communication
- (vii) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person
- (viii) Use of protective fences, exclusion barriers and warning signs.

The development shall be carried out in accordance with the approved CEMP.

Finished Levels

- 7) Details to be submitted under Condition 1 shall include the finished ground levels, finished site slab levels, finished floor levels and the ridge height of the proposed dwellings in relation to existing ground levels within the site, fixed datum points outside the site and the ridge heights of at least two adjoining dwellings. The development shall be carried out in accordance with the approved details.

Flood Prevention/Drainage

- 8) No above groundwork shall take place until surface water drainage works have been implemented in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. Before these details are submitted, an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in the National Planning Policy Framework, associated Planning Practice Guidance and the non-statutory technical standards for sustainable drainage systems, and the results of the assessment provided to the Local Planning Authority.

Where a sustainable drainage scheme is to be provided, the system shall be designed such that there is no surcharging for a 1 in 30-year event and no internal property flooding for a 1 in 100-year event + 40% allowance for climate change. The submitted details shall:

- (i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site to greenfield run off rates and volumes, taking into account long-term storage, and urban creep and the measures taken to prevent pollution of the receiving groundwater and/or surface waters; and
 - (ii) include a timetable for its implementation.
- 9) No above groundwork shall take place until details of the implementation, maintenance and management of the approved sustainable drainage scheme have been submitted to and approved, in writing, by the Local Planning Authority. The scheme shall be implemented and thereafter managed and

maintained in accordance with the approved details. The details to be submitted shall include:

- (i) a timetable for its implementation and maintenance during construction and handover; and
- (ii) a management and maintenance plan for the lifetime of the development which shall include details of land ownership; maintenance responsibilities/arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable urban drainage scheme throughout its lifetime; together with a description of the system, the identification of individual assets, services and access requirements and details of routine and periodic maintenance activities.

Highway Works

- 10) The highway works shown in the approved drawings list at Condition 4 and as outlined in the Road Safety Audit and associated submissions shall be completed in accordance with the details therein before any dwelling hereby approved is occupied.

Visibility Splays

- 11) The approved visibility splays to the new vehicle accesses hereby granted shall be constructed in accordance with the approved details before any dwelling is occupied. Thereafter, no structure, erection or planting exceeding 600mm in height above ground level shall be placed within the visibility splays.

Access, Parking and Refuse Facilities

- 12) No dwelling shall be occupied until pedestrian and vehicle access to it, together with vehicle and cycle parking and refuse storage facilities serving that dwelling, have been constructed in accordance with details to be approved. Once provided the said elements shall be retained for their intended purpose thereafter.

Electric Vehicle Parking

- 13) No dwellings shall be occupied until one electric vehicle charging point per dwelling has been installed in accordance with details to be submitted to and approved in writing by the Local Planning Authority. This shall include a plan showing the location of each charging point. Charging points shall be 'Office for Low Emission Vehicles' (OLEV) compliant with a minimum of 7kW / 32 amps power capacity. Once installed the approved charging points shall be retained and kept in working order is perpetuity.

Landscaping

- 14) Details to be submitted under Condition 1 shall include a hard and soft landscaping scheme. This shall include details of all public and private landscaping areas, details of the location, equipment and boundary fencing of any play area to be provided at the site, details of all trees, hedgerows, and other planting to be retained; the proposed finished ground levels; a planting specification to show numbers, size, species and positions of all new trees and shrubs to be planted, and details of all hard surfacing. New planting in relation

to the location of any retained or new below ground services such as pipes, cables, manholes and any associated easements shall also be shown. The hard and soft landscaping scheme shall be carried out in accordance with the approved details, specifications, and a programme of implementation.

- 15) All works comprised in the approved details of soft landscaping shall be carried out in accordance with the approved details during the months of October to March inclusive following occupation of the building or completion of the development, whichever is the sooner.
- 16) Trees, hedges, and plants shown in the landscaping scheme to be retained or planted which, during the development works or a period of ten years following full implementation of the landscaping scheme, are removed without prior written consent from the Local Planning Authority or die, become seriously diseased or are damaged, shall be replaced in the first available planting season with others of such species and size as the Authority may reasonably specify.
- 17) No development, including site preparation or site clearance shall commence until a plan showing the location and design of tree and hedge protection fencing has been submitted to and agreed in writing by the Local Planning Authority and the agreed tree and hedge protection has been erected around existing trees and hedges to be retained.

Unless otherwise specified, the fencing shall be as shown in Figure 2 of BS5837:2012 'Trees in relation to design, demolition and construction – Recommendations' and shall be erected to achieve root protection areas in accordance with BS5837:2012 root protection area calculations and the location of the fencing shall be informed by the recommendations of BS5837:2012.

This fencing shall remain in place during site works. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the Local Planning Authority.

No fires shall be lit within 10 metres of the nearest point of the canopy of any retained tree or hedge. No equipment, machinery or structure shall be attached to or supported by a retained tree or hedge. No mixing of cement or use of other contaminating materials or substances shall take place within, or close enough to, a root protection area that seepage or displacement could cause them to enter a root protection area.

The Local Planning Authority is to be advised prior to development commencing of the fact that the tree and hedge protection measures as required are in place and available for inspection.

Biodiversity

- 18) No development shall take place until bat surveys of the proposed off-site bat mitigation land, which is outlined in blue on the plan (Drawing number 6830 Figure 1), have been carried out, in accordance with the requirements set in the North Somerset and Mendip Bats SAC SPD. Following this, no development shall take place until a final scheme for bat mitigation including a timetable for its implementation which is informed by the results of the Bat Surveys, and an accompanying habitat management plan for the offsite

habitat, which avoids adverse effects from the development on the integrity of the North Somerset and Mendips Bats SAC, has been submitted to and approved in writing by the Local Planning Authority. The approved bat mitigation scheme and habitat management plan shall be carried out in accordance with the approved details.

External Lighting

19) No external lighting shall be installed within the site, including external lighting on the outside walls of dwellings or other domestic buildings, or other lighting elsewhere in the site, until a 'lighting design strategy for biodiversity' has been submitted to and approved in writing by the Local Planning Authority. The strategy shall identify:

- (i) the type, location, and height of the proposed lighting;
- (ii) existing lux levels affecting the site;
- (iii) the proposed lux levels as a result of the light; and
- (iv) lighting contour plans.

All external lighting shall be installed and operated in accordance with the approved details.

Landscape and Ecological Management Plan (LEMP)

20) No development, including site preparation or site clearance shall commence until a landscape and ecological management plan (LEMP) has been submitted to, and approved in writing by, the Local Planning Authority. The content of the LEMP shall include the following:

- (a) Description and evaluation of features to be managed, management responsibilities and maintenance schedules for all landscape areas, other than small, privately owned, domestic gardens;
- (b) Ecological trends and constraints on site that might influence management;
- (c) Aims and objectives of the management plan;
- (d) Appropriate management options for achieving aims and objectives;
- (e) Prescriptions for management actions;
- (f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
- (g) Details of the body or organization responsible for implementation of the plan; and
- (h) Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body/bodies responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed with the Local

Planning Authority, and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.

Archaeology

- 21) No demolition or development below ground level shall take place until a programme of archaeological work including a Written Scheme of Investigation has been submitted to and approved by the Local Planning Authority in writing. The scheme shall include an assessment of significance and research questions; and:
- (i) The programme and methodology of site investigation and recording
 - (ii) The programme for post investigation assessment
 - (iii) Provision to be made for analysis of the site investigation and recording
 - (iv) Provision to be made for publication and dissemination of the analysis and records of the site investigation
 - (v) Provision to be made for archive deposition of the analysis and site investigation
 - (vi) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

No demolition or development shall take place other than in accordance with the Written Scheme of Investigation approved under this condition.

- 22) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under the previous condition, and the provision made for analysis, publication and dissemination of the results and archive deposition has been secured.

Potential Ground Contamination

- 23) No phase or component of development below ground level shall take place until an assessment of the nature and extent of contamination on that site has been submitted to and approved in writing by the Local Planning Authority. This assessment must be undertaken by a competent person, and shall assess any contamination on the site, whether, or not, it originates on the site. Moreover, it must include:
- (i) a survey of the extent, scale, and nature of contamination;
 - (ii) an assessment of the potential risks to: human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, and archaeological sites and ancient monuments.
- 24) Unless the Local Planning Authority confirms in writing that a remediation scheme is not required, no phase or element of development shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been

submitted to and approved in writing by the Local Planning Authority. The scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria, an appraisal of remedial options, and proposal of the preferred option(s), and a timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The development shall take place in accordance with the approved remediation scheme.

- 25) Within 3 months of the completion of measures identified in the approved remediation scheme as set out in Condition 24, a validation report (that demonstrates the effectiveness of the remediation carried out) shall be submitted to the Local Planning Authority.

Renewable Energy

- 26) The dwellings hereby permitted shall not be occupied until measures to generate 15% of the energy required in the use of the development (measured in kilowatt hours) through micro renewable or low carbon technologies have been installed on site and are fully operational in accordance with details that have been first submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved technologies shall be permanently retained unless otherwise first agreed in writing by the Local Planning Authority.

Code for Sustainable Homes

- 27) All residential units hereby approved shall be constructed to comply with, as a minimum, the equivalent of the requirements of Code Level 4 of the Code for Sustainable Homes. This equates to a 19% improvement on Part L of the Building Regulations. Unless otherwise first agreed in writing by the Local Planning Authority, and prior to the commencement of the development of any dwelling hereby approved, a copy of a Design Stage SAP Assessment for each dwelling, issued by a suitably qualified and accredited energy expert (SAP Assessor), shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, each dwelling shall be constructed in accordance with the approved Design Stage SAP Assessment unless a revised Assessment has first been submitted to and approved in writing by the Local Planning Authority.

Technical Housing Standards

- 28) All dwellings shall comply with the DCLG 'Technical housing standards 2015 (as amended) - nationally described space standards', unless otherwise authorised by the Local Planning Authority.

Accessible Homes

- 29) A minimum of 17% of the dwellings shall be constructed to comply with 'accessible and adaptable housing standards' contained in The Building Regulations 2010 Volume 1 M4(2) Category Two: Accessible and adaptable dwellings. The location of these dwellings shall be provided together with details of how they will comply with the said standards. The approved details shall be fully implemented before these dwellings are occupied.

Permitted Development

- 30) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 or any Order revoking and re-enacting that Order, no electricity sub-station or gas governor shall be erected on any part of the development site hereby permitted, without the prior written permission of the Local Planning Authority.

Flood Prevention

- 31) The area of the site within which dwellings are to be developed, that is dwelling houses, private gardens, and residential outbuildings, shall fall wholly on land that is within Flood Zone 1 of the Council's Strategic Flood Risk Assessment.

Notification to SNCB

- 32) The development to which this planning permission relates shall not commence until 21 days after the date of the decision.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Timothy Leader of Counsel

Instructed by Richard Kent, North Somerset Council

He called:

Natalie Richards

Principal Planning Policy Technical Officer

Kevin Carlton BA (Hons) Dip LA

S106 and Landscape Officer

Dan Carpenter BSc (Hons) Phd MEnvSc
CEnv

Associate Director of Ethos Environmental Planning

Neil Underhay MA

Principal Planning Officer

FOR THE APPELLANT:

Charles Banner QC
Leanne Buckley-Thomson of Counsel

Instructed by Walsingham Planning

They called

Ian Jewson BA (Hons) Dip TP MRTPI

Planning Consultant

Luke Hutcheson BSc (Hons) MSc CIHT

Principal Transport Consultant with Hydrock Consultants Ltd

Nigel Evers Dip LA CMLI

Director of Viridian Landscape Planning Ltd

Tom Clarkson BSc MSc MCIEEM

Managing Director of Clarkson and Woods, Ecological Consultant

Interested Persons

Tony Moulin

Chair of Yatton and Congresbury Wildlife Action Group

Chris Jackson

Vice Chair of Yatton Parish Council

DOCUMENTS SUBMITTED AT THE INQUIRY:

Local Planning Authority's Documents

LPA1 Opening Statement
LPA2 CIL Compliance Statement
LPA3 Draft Planning Conditions
LPA4 Closing Submissions

Appellant's Documents

- APP1 Opening Statement
- APP2 ODPM Circular 06/2005
- APP3 Abbotskerswell Parish Council v Secretary of State for Housing, Communities and Local Government and others [2021] EWHC 555 (Admin) and SoS decision
- APP4 Email from Mr Jewson with copy of sign from the Strawberry Line
- APP5 Section 106 Agreement
- APP6 Section 106 Unilateral Undertaking
- APP7 Justification for Ecology Obligations
- APP8 Mr Evers' document 7/3/2022 'Effects of Road Layout on trees and hedges'
- APP9 Final HLS Position Statement
- APP10 HLS Scott Schedule
- APP11 Closing Submissions
- APP12 Review of Natural England response dated 25.05.22 by Clarkson & Woods

Interested Persons Documents

- IP1 Statement by Tony Moulin
- IP2 Statement by Chris Jackson

Appendix D -
APP/L3815/W/22/3291160 Decision



Appeal Decision

Inquiry opened on 14 June 2022 and closed on 11 July 2022

Site visits made on 13 and 17 June 2022

by Martin Whitehead LLB BSc(Hons) CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 19 August 2022

Appeal Ref: APP/L3815/W/22/3291160

Land south of Clappers Lane, Earnley, West Sussex, PO20 7JJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Seaward Properties Ltd and David Rusbridge against the decision of Chichester District Council.
 - The application Ref E/20/03125/OUT, dated 19 November 2020, was refused by notice dated 23 July 2021.
 - The development proposed is described on the application as: '*creation of approximately 100 dwellings, 30% affordable housing, public open space, landscaping and access.*'
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Decision

1. The appeal is allowed, and outline planning permission is granted for the erection of up to 100 dwellings with associated access, landscaping and public open space on land south of Clappers Lane, Earnley, West Sussex, PO20 7JJ in accordance with the terms of the application, Ref E/20/03125/OUT, subject to the conditions in the attached annex.

Preliminary and Procedural Matters

2. The application was submitted in outline form with all matters of detail, except access, reserved for later consideration. The description given on the Decision Notice is: '*Outline Application for the erection of up to 100 dwellings with associated access, landscaping and public open space. All matters reserved other than access.*' This has been agreed as the description for the development proposed, as confirmed in the Statement of Common Ground. I have therefore based my decision on this description of the development proposed. The appellant has provided illustrative plans of the proposed layout and landscaping, which I have used to give an indication of the proposal in my determination of this appeal.
3. The Inquiry opened on 14 June and sat for 4 days at Bracklesham Barn, with an accompanied site visit on 17 June during an adjournment. The Inquiry was resumed virtually on 28 June when it sat for half a day and resumed virtually on 11 July when it closed.

Main Issues

4. Following the refusal of planning permission, the Council has provided evidence to demonstrate a 5 year housing land supply (HLS), which the appellant has contested. At the Inquiry, the Council accepted that the section 106

Agreement includes the necessary planning obligations to overcome its fourth reason for refusal on the grounds of infrastructure and confirmed that its first reason for refusal regarding the integrity of protected sites has been addressed by additional information provided following refusal. Therefore, the main issues are the effect of the proposal on the character and appearance of the area, including the settlement gap between Bracklesham and Earnley; its effect on pollution in the area, with particular regard to flooding due to foul sewage; and whether the Council can demonstrate a 5 year HLS. In addition, as the 'Competent Authority', I have undertaken an 'Appropriate Assessment' on the integrity of protected wildlife sites, in accordance with Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended).

Reasons

5. Chichester Local Plan 2014-2029 Key Policies (CLP) was adopted by the Council on 14 July 2015 and now forms part of the statutory development plan for the parts of the District outside of the South Downs National Park (SDNP). The appeal proposal would be contrary to policies 2 and 45 in that it would be outside the nearest settlement boundary. However, the Council has accepted that CLP Policy 4, which sets the overall housing requirement, is out of date. As the housing requirement has not been reviewed within the last 5 years, as required by the CLP, the Council has also accepted that policies 2 and 45 cannot be considered to be up-to-date, especially as Policy 2 is derived from settlement boundaries which are based on an out-of-date housing requirement. Therefore, I have given CLP policies 2, 4 and 45 limited weight.
6. The other most important policies in my determination of this appeal are CLP policies 33 and 48. CLP Policy 33 requires new development to be in keeping with the character of the surrounding area and its setting in the landscape. CLP Policy 48 seeks to ensure that new development does not have an adverse impact on the 'tranquil and rural character of the area' in criterion 1, and requires that the individual identity of settlements, actual or perceived, is maintained and the integrity of predominantly open and undeveloped land between settlements is not undermined, in criterion 5. I am satisfied that these policies are consistent with policies in the Framework and therefore I have given them significant weight.
7. The Council has brought forward an Interim Position Statement (IPS) for Housing Development, which it claims sets out proactive measures to build the supply of housing, and to encourage appropriate housing schemes, in response to it being unable to demonstrate a 5 year HLS. I have been informed that the draft IPS has been in use in assessing relevant planning applications since 3 June 2020 and has been subject to public consultation but not independent examination. The final IPS was approved on 3 November 2020 and is now in effect. The appellant has referred to a legal opinion that was used at the recent Earnley Concourse appeal¹ to demonstrate that the IPS carries very limited weight. In the absence of any legal opinion to show the contrary, I have given it limited weight in terms of any new policy that it introduces, as relevant regulations and procedures relating to new policy formulation were not followed.

¹ Appeal Ref APP/L3815/W/20/3255383, Earnley Concourse, dated 30 May 2022

Character and Appearance

8. The appeal site is mainly in use as an arable field which at the time of my site visit had a rape seed crop. It is not in an Area of Outstanding Natural Beauty (AONB) and is not subject to any particular landscape designation. Adjacent to the western edge of the site is a substantial hedgeline that separates it from the recent residential development at 'The Beeches', which the Council has acknowledged forms a new settlement boundary to Bracklesham. Clappers Lane runs to the north of the site and, near to the site, gives the appearance of a rural lane with no footways or street lighting along it.
9. To the east of the site is Earnley Rife and the relatively dense vegetation along that feature which separates the site from the Grade 2 listed Earnley Grange and the small settlement of Earnley to the northeast. There are existing public rights of way (PROWs) along the east site boundary and part-way along the south boundary, referred to as footpaths 2.2 and 2.1. These are screened from the site by dense vegetation that includes hedgerows and trees.
10. The West Sussex Landscape Character Assessment (2003) identifies the appeal site as being within 'Character Area' SC2: Manhood Peninsula. The appeal site meets some of the characteristics given in the description for this 'Character Area', in that it consists of a mainly flat open arable field with very few trees or hedgerow cover along its boundary with Clappers Lane. It lies between the traditional small settlement of Earnley and the larger suburban settlement of Bracklesham. There appears to me to be an area of unimproved vegetation along Earnley Rife to the east, together with land that is used for grazing, some of which forms a floodplain.
11. The Landscape Capacity Study Extension (2011) identifies the appeal site as lying to the far east of Sub-area 144: Bracklesham Coastal Plain, much of which has subsequently been developed, including Pebble Reach and The Beeches to the west of the site. A Landscape Capacity Study (March 2019) which has been prepared to inform the evidence base for the emerging Chichester Local Plan Review, identifies the appeal site as the last remaining piece of Sub-area 144. It concludes that Sub-area 144 continues to have a 'High' capacity due to its close relationship with and influence of East Wittering and Bracklesham and recognises the development at The Beeches. The Study accepts change within, and adjacent to, Earnley Conservation Area (CA) *'subject to the protection of existing heritage assets and the settlement pattern, along with avoiding the full coalescence of Bracklesham and Earnley'*.
12. The Council's Housing and Economic Land Availability Assessment (HELAA) 2021 supports the conclusions of the Landscape Capacity Study, listing the appeal site as Site HE002. Under a heading of achievability, it states that *'there are no known constraints that would make development unachievable in principle, however the current and future flood risk significantly constrains the developable area.'* The appeal site is annotated as 'Developable' on the assessments associated plan for East Wittering and Bracklesham.

Settlement Gap

13. One of the main reasons that the Council has given for refusal is that the appeal site comprises the last remaining undeveloped field / greenspace between the current eastern boundary of the settlement of Bracklesham and the western edge of the settlement of Earnley. The Council considers that it is

vital to retain the undeveloped nature of the site in order to maintain the separate identities of Bracklesham and Earnley, which have contrasting characters. In this regard, I accept that the proposal would reduce the gap between the historic development in Earnley and the more modern suburban development in Bracklesham and that there are no natural boundaries within the site to act as a development boundary.

14. The Landscape Gap Assessment for Chichester Local Plan Review 2035 explores areas which may be appropriate for local gaps in principle, as part of the evidence base for the emerging Chichester Local Plan Review. No evidence has been provided to show that the appeal site is currently, or proposed to be, designated as a local gap.
15. The entry or exit point for Bracklesham is at the northwest corner of the appeal site, and the point of entering / leaving Earnley is at the white timber fencing which has a sign on it marked 'Earnley' to the northeast of the site. I acknowledge that these points provide distinct 'gateways' along Clappers Lane to these individual settlements and that the appeal site plays an important role in providing a separation between them. However, the settlements of Bracklesham and Earnley are linked to the north of Clappers Lane by residential dwellings fronting the north of the lane near to Earnley, and Holdens Caravan Park that is set behind a small area of grassland. Also, Earnley Rife separates the appeal site from the settlement of Earnley. There is currently a separation distance of about 325m between the centre of the western boundary of the site and Earnley CA.
16. The appeal proposal on the illustrative plans shows built development confined to a semi-circular shaped area consisting of about a third of the site adjacent to the western boundary with The Beeches development. The remaining area of the site would be managed and maintained as amenity parkland. The appellant has measured a separation distance of some 120m between the edge of the proposed built development and the edge of Earnley.
17. The proposal would replace the development boundary up to the mature hedgeline to the eastern side of The Beeches with a new development boundary of 2 storey housing fronting out onto parkland. Whilst this would result in the loss of the openness of the current arable field between the two settlements, it would add additional hedgerows and tree planting along Clappers Lane and would retain a noticeable area of land between Bracklesham and Earnley that would not have built development on it. There is nothing to prevent the Earnley 'gateway' being retained as it currently is and a new gateway into Bracklesham being provided to the east of the proposed access into the site but still retaining a significant separation distance between gateways, with the set back of the houses from the lane behind a large area of planting adding to the existing planting along the Rife.
18. For the above reasons, I find that the proposal would continue to separate the settlements of Bracklesham and Earnley by an area of undeveloped land. Whilst there would be an increased level of public access to the parkland from that which is available to the arable field and this would alter the nature of the area, I cannot see any reason why it would not be able to make a contribution to the visual and perceived separation between built development in the two settlements.

19. I am therefore satisfied that the perception of a gap between settlements would remain when travelling along Clappers Lane. Views from the appeal site to the buildings at Earnley are limited, and would continue to be limited, due to the intervening vegetation. The eastern edge of Bracklesham would be brought forward in the view, heading west from Earnley, filtered by the proposed planting, with parkland in the foreground. After about 15 years, with the establishment of the hedgerow and tree planting along Clappers Lane, the perception of a separation between settlements would be increased.

Landscape Effect

20. I accept that the stretch of Clappers Lane forming the extent of the northern boundary of the site is characterised by its rural appearance, because of the appeal site being in agricultural use, the relatively narrow lane and there being no footways or street lighting. However, it is near to an area where there are footways along it to the west adjacent to The Beeches and I understand that a footway will be provided on the north side under the planning permission for the Earnley Concourse development. Furthermore, there are dwellings abutting the lane to the northeast near Earnley and a caravan park is visible from it to the north.
21. The appeal proposal would add a significant amount of built development to the western part of the site and would provide an access onto Clappers Lane which would have a footway link on the southern side of the lane to the west. Whilst the illustrative plan shows that the built development would be set back from the highway behind new hedgerows and tree planting, it would stand out in views looking south, especially along the access road. As such, the proposal would have a harmful impact on the rural character and appearance of Clappers Lane, particularly on the west side of the appeal site.
22. At the Inquiry, a local resident presented night time photographs of the area indicating that in views along Clappers Lane near to the appeal site, there is very little light pollution and that any light spillage from the surrounding development in Bracklesham is not apparent. I accept that the proposal would add to the level of light pollution in an area that currently has very little. However, the proposal would not introduce any streetlights along Clappers Lane, the new external lighting would be controlled by planning condition, and the built development would be set back from most of the road behind an area of planting. I am satisfied that these factors would ensure that there would continue to be very little light pollution along most of Clappers Lane with the development occupied, especially towards the east.
23. Earnley Parish Council has expressed concern that reflective bollards would be required along the side of Clappers Lane where there is a drainage ditch, similar to those installed along Clappers Lane near to The Beeches following a Stage 3 Road Safety Audit. The appeal proposal does not include any such bollards and no written evidence has been submitted by the local highway authority to indicate that any bollards would be required. Although the Parish Council has suggested that it could require about 60 bollards to be installed which I accept would detract from the rural character of the lane, I do not give this any great weight due to the limited supporting evidence to show that the circumstances of the appeal proposal would be the same as those at The Beeches that resulted in the need for these reflective bollards.

24. Moving east along Clappers Lane and nearer to Earnley, the built development would be located an increasing distance from the highway behind an area of parkland and would be at least 100m away from the eastern boundary of the site. The residential development would be at a density of about 25 dwellings per hectare but would only cover about a third of the appeal site, the remainder being used for parkland and planting. It would appear as a new urban fringe adjacent to the residential development at The Beeches. I consider that there would be sufficient land left without built development on it, and the proposed buildings would be far enough away from the built development in Earnley and Clappers Lane to the east, to ensure that a sizeable area of land between Earnley and Bracklesham would retain a rural character and appearance, especially after 15 years when the new planting would have matured.
25. The Council has agreed that the appeal site is not a 'valued landscape'. The appellant's Landscape and Visual Impact Assessment (LVIA) has assessed the landscape impacts of the appeal proposal. It does not identify any significant effects on the Manhood Peninsula Landscape Character Area. It concludes that, as with any greenfield site, there would be an adverse effect on landscape character, which it does not identify as significant but as a minor adverse effect due to the contribution of the agricultural field to the field pattern. It also suggests that there would be some beneficial outcomes. Whilst I accept that some beneficial effects on the landscape have been identified, such as the introduction of new hedgerow and tree planting, overall, I consider that the proposal would have a medium adverse effect on landscape character due to the extent of the built development that would harm the rural character and appearance of the area.

Visual Effect

26. The LVIA has identified important viewpoints when carrying out a visual impact assessment of the proposed development. The appellant has included Verified Visual Montages (VVMs) at other viewpoints that it considers give a realistic view of the proposal. Whilst the VVMs are not necessarily taken at the same points as the LVIA viewpoints and not at some of the views from where the development would have the greatest visual impact, I am satisfied that they do provide a reasonable indication of how the development would appear. I accept that the panoramic views could provide a distorted view, but I have also been provided with other views at similar locations and have observed these views on the site. The appellant has confirmed at the Inquiry that the montages take account of the level differences that have been identified in the Flood Risk Assessment (FRA).
27. The level of visual effect would be particularly evident to receptors walking, driving or riding along Clappers Lane. At my site visit I observed the appeal site from the identified viewpoints and looking at the VVMs. From LVIA Viewpoint 03, which is near to the house fronting Clappers Lane to the northwest of the site, the proposed buildings would clearly be visible, but this would be against the existing close views of rooftops in The Beeches.
28. VVM2, which is a panoramic view from a layby along Clappers Lane, provides a view along the access to the development. This view would be suburban, with tree and hedgerow planting either side of the access road. The proposal would dramatically change the appearance of that part of the site, which is to be

- expected given that it is at the entrance to the development. However, there are currently distant views of the rooftops at The Beeches to the west and houses to the north at this location.
29. VVM3, which is a panoramic view from Clappers Lane about half way between Bracklesham and Earnley, shows that the proposed buildings would be less apparent than in VVM2 as they would be set back further from the highway behind hedgerows and parkland. Whilst the buildings would be closer than those that are visible at The Beeches, there would be a noticeable gap of undeveloped land between these buildings and Earnley.
 30. Views from the edge of Earnley at its 'Gateway' include housing to the north of Clappers Lane and the rooftops of housing in Bracklesham above the vegetation on the horizon to the south and west. VVM4, which is at this location, shows the proposed buildings set forward from the existing built development but the existing planting and the proposed new planting would soften their appearance. I am satisfied that this would ensure that the verdant views at this location would not be significantly harmed by the proposal.
 31. Views from within Earnley CA, which include VVM5, would not be significantly affected as the proposed development on the appeal site would mainly be hidden at this location. The views of the trees and vegetation as well as the surrounding buildings in the CA would be retained. There would be distant views of the proposed development from LVIA Viewpoint 7, near to Medmerry Royal Society for the Protection of Birds (RSPB) car park, but this would be set against what I observed to be views of the buildings at the edge of Bracklesham and on the north side of Clappers Lane.
 32. The development would be mainly screened from views at locations on footpaths 2-1 and 2-2 where the boundary vegetation prevents any clear views into the appeal site. The proposal would enable gaps in the vegetation to be filled and the buildings would be far enough away to not have any significant visual effect on those using these PROWs.
 33. Based on the above observations at my site visit and the montages of the proposed development, I find that most of the views from public vantage points around the site would not be significantly affected by the proposal. Any harmful effect to the views would be very local to the development and mainly confined to those areas nearest to Bracklesham and at the proposed access from Clappers Lane.

Effect on Earnley CA

34. The appeal site is not in a CA, the nearest CA being in Earnley. Earnley Parish Council has argued that the site's agricultural use contributes to the setting of Earnley CA. Although Earnley has historical connections with agriculture, including some of the buildings within the CA, this is not noted in the Character Appraisal and Management Proposals (CAMP) for Earnley CA as contributing to its significance. The CAMP refer to the Earnley Townscape Analysis Map which identifies an adopted view from within the CA from where I viewed the appeal site at my visit. I observed that this view is interrupted by mature hedgerows and immature tree growth along the northern field boundary which would significantly restrict views of the new development.

35. I have noted the concerns of Earnley Parish Council and local residents that the proposal would result in an increase in traffic travelling through the CA, which would harm its 'tranquil' nature. The traffic distribution used within the appellant's Transport Assessment (TA) has been agreed with West Sussex County Council (WSCC), as the local highway authority, and is consistent with the distribution used for other local development sites. Whilst the route via Earnley may be shorter in length, Googlemaps directs traffic via Bracklesham Lane, indicating that it has determined that that route is more attractive. Having driven along the alternative routes, I found the route via Earnley to be on narrower and more windy roads than the route directly onto Bracklesham Lane via Clappers Lane.
36. The results of the turning count survey relied upon by the appellant indicate that the route via Bookers Lane is not currently typically used by traffic travelling between Bracklesham and Chichester during peak periods when traffic on Bracklesham Lane is at its highest. This suggests that Bookers Lane is not used as a 'rat run'. Furthermore, the appellant's modelling of the Clappers Lane / Bracklesham Lane junction indicates that it operates well within capacity with minimal queuing and delay. Therefore, I am satisfied that most of the residents of the proposed development travelling by car would use the Clappers Lane junction with Bracklesham Lane, rather than Bookers Lane and Earnley CA.
37. Earnley Parish Council has referred to evidence provided by HCC Environmental Services, as part of their objection to the expansion of the Medmerry Park Holiday Village which refers to the impact of increased traffic on the CA. At my site visit, which was carried out at about 1700 hours, I noticed some traffic travelling through Earnley CA. Although the appellant's TA indicates that there would be very little traffic increase in Earnley as a result of the development, even using the higher traffic figures put forward by the Parish Council's expert, the proposal would result in about one additional vehicle every 2 minutes at peak times. As such, I find that there would be an insufficient increase in traffic through Earnley CA to result in any material harm to its significance as a heritage asset.
38. I have considered all the evidence presented by Earnley Parish Council regarding the effect of the proposal on the CA. However, it is not supported by any heritage expert evidence and the Council has not refused the proposal on these grounds. The appellant's heritage expert has submitted written evidence that largely supports the views of the Council's Conservation and Design Officer (CDO).
39. The CDO has suggested that a slight increase in traffic volume would not have an appreciable effect on the character and appearance of the CA; and that less than substantial harm would not be caused to a heritage asset by virtue of the distance the development would be from the CA, the preservation of a significant band of open space, the lack of open views on that side of the CA and the additional mitigation that would easily be achievable. I agree with the CDO and am satisfied that the proposal would preserve the character and appearance of Earnley CA and would not cause any material harm to its significance, in accordance with the Framework and CLP Policy 47.

Conclusions

40. For the reasons given above, I find that the proposal would preserve the character and appearance of Earnley CA and it would not result in the coalescence of Earnley with Bracklesham as it would retain an actual and perceived gap between development in these settlements. However, the proposal would have an adverse effect on the character and appearance of the area due to the extent of built development that would be visible from Clappers Lane, especially at the proposed access. It would therefore fail to accord with CLP policies 33 and 48, due to the harm that it would cause to the rural character of the area.

Pollution and Foul Drainage

41. The proposed area of built development is shown illustratively as being confined to the west and northwest parts of the site in Flood Zone 1. Parts of the site to the south and east are within flood zones 2 and 3 which are not shown to be subject to built development. A FRA has been carried out which, subject to measures being taken, has satisfied the Environment Agency (EA) that there would not be any unacceptable risk from flooding.
42. The Council's reason for refusal is regarding flooding due to problems with foul sewage drainage. This issue has been supported by letters of objection that have identified recent problems, especially due to the capacity of the pumping stations. The appeal proposal would drain to Sidlesham Wastewater Treatment Works (WwTW), and the Council confirmed at the Inquiry that it has no issue with the capacity of this WwTW.
43. The Council identified its issues as relating to the right for the proposed development to connect into the public sewer network under section 106 of the Water Industry Act, and the effect that this would have on the need for improvements to pumping stations and pipework to provide the required capacity. It has suggested that the network needs to be improved because of hydraulic overload and development growth on the Peninsula and has identified developments totalling 160 homes south of Clappers Lane in Bracklesham that were connected to the network without any improvement to it.
44. Southern Water (SW), as the statutory undertaker, has an obligation to provide the necessary network reinforcements and upgrades downstream of the practical point of connection to the foul sewer network imposed under section 94 of the Water Industry Act 1991. Should SW fail to meet its obligations under the Act, the industry regulator, OFWAT, is obliged to take appropriate action.
45. In its response to the planning application, SW refers to a likely period of at least 24 months from the grant of any planning permission to survey, design, and construct any necessary improvements. It has also indicated in its response in February 2022 that a connection in Clappers Lane would not have the capacity without improvements to the foul sewer network. However, the appellant has suggested 2 other connection points at Elcombe Close and Woodborough Close. A recent letter from SW, dated 13 May 2022, regarding a 'Level 1 Capacity Check' for the proposed connections to manholes at these locations, states that, following a reassessment, there is currently adequate capacity to accommodate foul flows of 0.73 l/s and 0.9 l/s at the respective manholes.

46. I have not been provided with any evidence to show that these connections would not be feasible, particularly as it is normal to have connections from development in the public highway and there have been no objections from the local highway authority. Therefore, in the absence of any substantive evidence to show otherwise, I have accepted that the connections would be capable of providing the necessary capacity for the foul sewage that would be generated by the proposed development.
47. I have taken account of the concerns expressed by local residents and owners / managers of caravan and camping sites regarding problems that have been encountered as a result of the capacity of the foul sewer network, and in particular the local pumping station at East Bracklesham Drive. In this respect, SW's Drainage and Wastewater Management Plan (DWMP) should ultimately address any issues. The latest DWMP is in draft form, and I have been informed at the Inquiry that consultation would be starting on Monday 20 June. SW is required to provide any necessary upgrades to ensure that the foul sewer network would cope otherwise it would be in breach of its statutory duties. This position is supported in paragraph 188 of the Framework, which states that planning decisions should assume that the pollution control regimes will operate effectively.
48. The Council has referred to a Supreme Court ruling² which states: '*...the planning authority has the power, which the sewerage undertaker lacks, of preventing a developer from overloading a sewerage system before the undertaker has taken steps to upgrade the system to cope with the additional load*'. However, this involves a case in Wales where I understand there are different legal powers. I have determined this appeal based on the regime provided by the current legislation and the latest government guidance that is applicable to England.
49. I have considered the previous appeal decisions³ referred to by the Council in support of this reason for refusal. All three of these decisions pre-date the introduction of the Framework, and state that the statutory undertaker has objected to the proposal. The current appeal involves significantly different circumstances from these other appeals, and in particular there being no objection from the statutory undertaker, SW.
50. Based on the above, I find no valid reason to refuse planning permission for the proposed development due to pollution or foul sewage drainage issues. However, taking a precautionary approach based on existing reported problems with flooding and foul drainage, I have imposed a planning condition that would prevent occupation of the development until SW has confirmed in writing that there is sufficient capacity in its network. I am satisfied that such a 'Grampian' condition would meet the test of whether there is no prospect of the condition being discharged. Therefore, in conclusion on this main issue, the proposal would not result in any unacceptable pollution from flooding in the area due to the disposal of foul sewage and it would comply with paragraphs 174 e) and 185 of the Framework in this respect.

² Barratt Homes v Welsh Water [2009] PTSR 651 at [42]

³ Appeal Decisions Ref APP/V3120/A/08/2080488, Botley, dated 12 November 2008; APP/D3125/A/05/1190988, Stanton Harcourt, dated 11 January 2006; and APP/W1850/A/04/1142871, Ross-on-Wye, dated 12 October 2004

Housing Land Supply (HLS)

51. The Council's current 5 year HLS position statement covers the 5 year period 2021 to 2026 and forms the basis of the Council's position in respect of the 5 year HLS.

Housing Requirement

52. The Local Plan Inspector in 2015 agreed that for a period of 5 years from the date of the Plan being adopted the Council could rely on a suppressed housing delivery target of 435 dwellings per annum (dpa) because of acknowledged strategic constraints in relation to transport capacity issues on the A27 and foul drainage capacity issues. This 5 year period has now passed and therefore the Council has agreed that the housing requirement given in the CLP is no longer up-to-date.
53. As the housing requirement within the plan is out of date, in accordance with the Framework, the Standard Method for Calculating Housing Need, as set out in the Planning Practice Guidance (PPG) is the appropriate method for calculating the housing need within Chichester District. This results in a housing need of 763 dpa in the District, including the SDNP area, when a 5% buffer is applied. The appropriate buffer is set by the annual Housing Delivery Test (HDT). The most recent HDT (2021) showed that Chichester delivered 1,682 homes against a requirement of 1,238 over the previous 3 year period. This gives a HDT measurement of 136%, resulting in a 5% buffer being applied to the baseline requirement.
54. An adjustment should be applied to the housing need figure to account for the part of the Chichester District which is within the SDNP Planning Area. The Objectively Assessed Housing Need (OAN) in the SDNP as a whole is 447 dpa. Of this need, 28% arises in the Chichester District part of the SDNP equivalent to 125 dpa. The Council has adjusted its housing requirement by removing this figure from its overall requirement to avoid double counting. This results in a 5 year housing requirement of 3,350 dwellings, which is 670 dpa, after applying a 5% buffer. This approach has been applied in recent appeal decisions and the appellant has accepted it for the purposes of the current appeal. Based on the evidence provided for this appeal, I therefore accept this as the 5 year housing requirement.

Housing Supply

55. The Council and appellant disagree on the extent of windfall development that should contribute towards the HLS. The Council has made an allowance of 71 dpa in years 4 and 5 of the assessment period, for minor windfalls, by removing the highest and lowest completion years from the past 10 years. It has also allowed up to 140 dpa in years 4 to 5 of the assessment period for major windfalls. The appellant has argued that the 280 dwellings allowed for major windfall development should be removed entirely and the windfall allowance for minor development should also be reduced to 122 to reflect the likely effect of the recent changes to Natural England's water neutrality advice and nutrient neutrality advice.
56. Paragraph 71 of the Framework states that, where an allowance is to be made for windfall sites as part of anticipated supply, there should be compelling evidence that they will provide a reliable source of supply and that any

allowance should be realistic having regard to the Strategic Housing Land Availability Assessment (SHLAA), historic windfall delivery rates and expected future trends. I find that the Council has provided clear robust evidence to demonstrate that the number of minor windfall permissions has not waned in recent years. The Council has demonstrated that its approach taken in the assessment of windfalls has considered its recent SHLAA, historic windfall rates and possible future trends.

57. The evidence provided by the Council has shown that windfall rates in Chichester District have been consistently very high. In terms of the effect of this supply on the status of the 5 year HLS or Local Plan, table 12 in the Critical Friend paper's windfall assessment, shows that in the years following those when there was no 5 year HLS, or the Plan was still being prepared there is no marked uptake in windfall delivery. With regard to actual windfall delivery rates in Chichester, between 2011/12 and 2020/21 the average annual windfall completion rate was 335 dwellings and in only two years was the actual completion level similar to, or below, the windfall allowance. Also, I am satisfied that the Council's stepped approach to the consideration of expected trends is appropriate.
58. The Council has indicated that it has relied upon the windfall allowance to make up 13% of the supply and that it would be in years 4 and 5 of the 5 year HLS assessment period. Taking account of the evidence provided by the Council, I find that this is a realistic level of windfall, and that by only including it in years 4 and 5, there is some allowance for delays due to issues such as water or nutrient neutrality. I have therefore included the full amount of the Council's windfall allowance of 280 dwellings on major sites and 142 on minor sites.
59. The appellant considers that, applying an assumed lapse rate of 20% to minor development sites (9 dwellings or less), a minimum of 63 units should be removed from the supply. However, there is very little evidence base to support this and there is no need to make an adjustment, given that a buffer is applied to the housing requirement.
60. The appellant has also disputed the position on some of the major sites that have been included. The Framework defines a 'deliverable' site as being *'...available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years.'* In terms of those sites with full planning permission, paragraph a) indicates that to be excluded it is necessary for there to be clear evidence that the housing would not be delivered in the 5-year period. In paragraph b) of the definition, it covers, amongst other things, sites with outline planning permission or that have been allocated in a development plan. It states that such sites *'...should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.'*
61. The Council has accepted the removal of 178 dwellings on Tangmere SDL from its stated HLS at the time of the appeal. It has also accepted that full permission for 50 dwellings on land at Highgrove Farm expired in January 2022. Whilst it is an allocated site and I understand that a planning application for 300 dwellings has been submitted, there is no certainty that permission will be granted and that 50 dwellings would be delivered on the site within the 5 year period.

62. Of the 193 dwellings allowed for on land east of Manor Road, 119 have full permission and the 74 remaining dwellings have outstanding pre-commencement conditions. The Council has suggested that the site is owned by Persimmon Homes, one of the largest volume housebuilders in England, with capacity to complete the development in the next 5 years. The housebuilder is currently building the detailed element of the hybrid application and there are conditions discharged for the outline element. I therefore consider that the Council has provided clear evidence that the site would be deliverable for the full 193 dwellings in the 5 year period.
63. The 24 dwellings on land south of Loxwood Farm Place and 130 dwellings on land north of Cooks Lane both have outline permissions, placing them within paragraph b) of the Framework definition of deliverable sites. The Loxwood site is in an area affected by a water neutrality issue and the Cooks Lane site is in an area affected by nutrient neutrality issues, both of which are issues that Natural England has recently changed its advice on. The appellant has indicated that it has allowed for an adjustment to 80 dwellings on the latter site, due to the nutrient neutrality issue and the projected build-out rates being too optimistic, and has removed the 24 dwellings at the Loxwood site from the HLS.
64. Whilst the Council has identified an approach to previous sites that has been taken to address the nutrient neutrality issue, it appears to me to be at a relatively early stage in formulating an approach to the water neutrality issue. Therefore, based on this and the evidence that has been provided at the Inquiry, I am not satisfied that the Council has provided clear evidence that there would be a strategic solution to the water or nutrient neutrality issue within sufficient time to allow the number of housing completions that it has relied upon beginning on these sites with outline permission within five years. I therefore agree with the appellant's figures of no dwellings at the Loxwood site and 80 at the Cooks Lane site, even though the Council has indicated that the latter site involves Bloor Homes, which is a national housebuilder.
65. At the Inquiry the Council demonstrated a 5 year HLS of 3,356 dwellings, which is 5.01 years based on its housing requirement. The appellant has calculated that it would be 2,795 dwellings, which is a 4.17 year supply, based on the agreed 5 year requirement. Whilst I have not accepted all the appellant's reasons for reducing the 5 year supply, those that I have agreed reduce the figure to 3,232 dwellings, which is about a 4.8 year supply. The Council's calculated 5 year HLS supply is only 6 dwellings over the requirement so that even if I accept a small reduction in delivery due to delays as a result of the water and/or nutrient neutrality issues, which seems likely, there would not be a 5 year HLS.
66. I have considered the findings of the Inspectors in other recent appeal decisions⁴ that have been brought to my notice regarding the Council's 5 year HLS. The Raughmere Drive appeal Inspector arrived at a 5.039 year HLS, the Church Road appeal Inspector concluded that the identified supply for the period 2021-2016 would leave the supply at 3,049 dwellings or around 4.6 years, and the Westhampnett appeal Inspector calculated the supply of deliverable dwellings to be 2,774 dwellings or a 5 year HLS of some 4.17 years.

⁴ In particular Appeal Decisions APP/L3815/W/21/3284653, Raughmere Drive, dated 11 April 2022, APP/L3815/W/21/3286315, Church Road, dated 22 April 2022, and APP/L3815/W/21/3270721, Westhampnett, dated 27 May 2022

Whilst I have agreed with some of the reasons given for those calculated HLSs, I have based my findings on the most recent evidence that has been submitted to, and discussed at, the current Inquiry. However, I note that two of these other Inspectors have concluded that the Council cannot demonstrate a 5 year HLS.

Other Matters

67. I have considered all the relevant concerns expressed by those objecting to the proposed development both in writing and orally at the Inquiry. Many of these concerns are related to the main issues that I have dealt with above and in particular the effect on the separation gap and foul drainage. The other issues that have been raised, are mentioned below and / or have been addressed in the planning obligations or planning conditions that I have attached to the permission. In the case of the loss of productive agricultural land, I have given this weight as an adverse effect in the planning balance.

Integrity of Protected Wildlife Sites

68. The site lies within the zones of influence of Bracklesham Bay Site of Special Scientific Interest (SSSI), Chichester Harbour SSSI, Chichester and Langstone Harbours SPA, SSSI and RAMSAR site, Pagham Harbour Special Protection Area (SPA) and the Medmerry Solent SPA and Special Area of Conservation (SAC). These are all protected wildlife sites. Therefore, under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) I am required as the 'Competent Authority' to undertake an 'Appropriate Assessment' of the proposal on the basis of its likely significant effects on Protected Sites.
69. The Council undertook an Appropriate Assessment as the Competent Authority, and consulted Natural England, when determining the planning application. At that time, it was the advice of Natural England that it is not possible to ascertain that the proposal would not result in adverse effects on the integrity of the sites in question. This was based on the site being in a highly sensitive location environmentally and there not being appropriate mitigation to guard against the potential negative impacts on protected species and in particular the feeding of over wintering birds in terms of recreational pressure from the residents of the proposed development both individually and cumulatively in-combination with other residential developments. As such, the Council concluded that the proposal would be contrary to Regulation 63 of the Conservation of Habitats and Species Regulations 2017 and CLP Policy 51.
70. Following the Council's Appropriate Assessment, the appellant has provided results of further winter bird surveys carried out in the winter of 2021/22. The Council has agreed with the appellant that these results confirm beyond reasonable scientific doubt that the site does not support qualifying species of Pagham Harbour SPA or Medmerry Compensatory Habitat. Based on this, I am satisfied that the surveys that have been carried out on wintering birds demonstrate that the site does not comprise functionally linked habitat and there would be no potential for a resulting significant effect on the integrity of any Habitats Site to occur.
71. I agree with the Council that any likely significant effects with regard to recreational disturbance during occupation individually and cumulatively in-combination with other residential developments would be suitably mitigated

- through established strategic approaches agreed with Natural England which avoid any adverse effect on the wildlife integrity of the protected sites.
72. Based on the new evidence submitted since the application, the Council has confirmed in the Statement of Common Ground that, if it was the Competent Authority for the purposes of the Habitat Regulations, it would conclude that there will be no adverse effect on the integrity of any European site subject to the development securing the required mitigation as detailed in the section 106 Agreement.
73. With regard to the effects as a result of wastewater discharge, the proposal would discharge to the Sidlesham WwTW, which has been removed from the Solent Maritime SAC catchment area. Therefore, there is no potential for likely significant effects from nutrient outputs from foul or surface water as the site lies outside the catchment for nutrient neutrality identified by Natural England, based on its guidance on the matter of nutrient neutrality, dated 20 April 2022.
74. Some objectors have expressed concern about spillages from the Sidlesham WwTW into Pagham Harbour, where a draft report for Natural England by JBA consulting indicates that seagrass beds are in an unfavourable condition due to elevated nutrient levels. However, Natural England has not changed the conservation status of the Pagham Harbour site from it being in a favourable condition or objected to the appeal proposal on this basis. Furthermore, this matter has not been raised by the Council as a reason for refusal.
75. After the Inquiry closed, the Council has provided details of the information that it has relied upon to reach its decision regarding the Appropriate Assessment. Following the submission of these documents to Natural England, I have received a response, dated 9 August, which indicates that Natural England has no objection subject to appropriate mitigation being secured. In terms of this mitigation, a Construction Environmental Management Plan (CEMP) would be secured by a planning condition; and financial contributions to the Solent recreation Mitigation Strategy (Chichester and Langstone Harbours) and for Strategic Access Management and Monitoring at Medmerry Compensatory Habitat would be secured through section 106 planning obligations.
76. On the basis of the above evidence, I conclude that, provided suitable financial contributions for recreational disturbance effects are appropriately secured, the proposed development would result in no significant adverse effect on the integrity of any of the protected Habitats sites. In this respect, it would accord with CLP policies 49, 50, 51 and 52 and Paragraph 180 of the Framework.

Traffic and highway safety

77. No collisions were recorded on Bookers Lane itself throughout the five year study period, which indicates that there are no existing road safety issues regarding the current layout and condition of Bookers Lane. I am aware that there are horse riding stables on Bookers Lane and the lane is used by cyclists, pedestrians and horses. However, even allowing for peak time flows forecast by Earnley Parish Council's expert, the traffic increase on that lane due to the development would not be sufficient to cause any additional risks to these more vulnerable road users, given the highway safety record and that the traffic would be significantly less outside peak hours. As such, and taking the forecast increase in traffic through Earnley CA, I am satisfied that any increase

in traffic associated with the development would not give rise to a potential road safety issue.

Facilities and Services

78. Some objectors have expressed concerns about the lack of facilities and services to support local residents and about the availability of jobs locally. In this respect, Bracklesham is identified in the CLP as a second Tier 'Hub' settlement. It is therefore recognised as being able to serve local residents both in the settlement and within the wider rural parts of the Manhood Peninsula. Furthermore, the Council has accepted that the site is sustainably located with good access to services and facilities. I have been given insufficient evidence to come to a different opinion.

Other Appeal Decisions

79. A significant number of appeal decisions have been referred to in relation to issues raised. I have addressed some of these decisions with regard to foul drainage and 5 year HLS under those topics. The Council has referred to recent appeals at Raughmere Drive⁵ and Earnley Concourse⁶. The Raughmere Drive appeal involves significantly different circumstances from those of the current appeal, which have been identified by the appellant. In particular, its relationship to the existing settlements and the SDNP, the capacity rating given in the Council's 2019 Landscape Capacity Study, its designation as a Local Gap in the adopted Neighbourhood Plan and the consideration of the site in the HELAA. The Earnley Concourse appeal was allowed but involves a significantly different policy context from the current appeal, being considered to be previously developed land. Whilst I have noted the points raised, no direct comparisons can be made with the current appeal.

Planning Obligations

80. Following the closure of the Inquiry, the appellant has submitted an engrossed section 106 Agreement between the appellant, WSCC and the Council, dated 12 July 2022, based on that discussed at the Inquiry. I have considered the information given in the Community Infrastructure Levy Regulations 2010 (CIL) compliance statement provided by the Council in support of the planning obligations.
81. An obligation to secure provision of 30% Affordable Housing on site, together with the tenure, is necessary to ensure compliance with CLP Policy 34 and the Council's Planning Obligations & Affordable Housing Supplementary Planning Document (SPD).
82. A contribution payable towards the cost of carrying out junction improvement works to the A27 Chichester Bypass Strategic Road Network, as requested by Highways England, is necessary to mitigate the impact of additional traffic on the highway network, given that the TA has shown that the proposal would be likely to generate additional traffic using the A27 Chichester Bypass junctions. I am satisfied that the level of contribution of £3,248 per dwelling is reasonable and proportionate as it derives from 'The A27 Chichester Bypass Developers Contribution Analysis for Strategic Development Options and Sustainable Transport Measures (2015)', which sets out a detailed methodology to calculate

⁵ Appeal Ref APP/L3815/W/21/3284653

⁶ Appeal Ref APP/L3815/W/20/3255383, 30 May 2022

- contributions from each development location towards the A27 mitigation package. Such a contribution would ensure compliance with CLP Policy 8.
83. An obligation to include management and maintenance is necessary to be set up to maintain the public open space, which would be provided on the appeal site to enhance green infrastructure in the local area, to serve the future residents of the development and to retain a green gap between Bracklesham and Earnley. This obligation is based on the Open Space, Sport and Recreational Facilities Study 2012, which evidenced the Council's Planning Obligations & Affordable Housing SPD, adopted July 2016. This SPD sets out a proportionate approach to setting standards for new development based on the scale, typology and location of proposals.
84. Financial contributions to mitigate the impact of the proposed development on protected European sites in respect of recreational disturbance are necessary as the appeal site is within the 5.6 km of the 'zone of influence' of some of these sites. Without the contributions, the proposal would have an adverse impact on the integrity of the protected European Sites. The contributions accord with CLP Policy 50 and have been derived from the Solent Recreation Mitigation Strategy, which provides a framework that has been agreed with Natural England to mitigate the impact on the Solent SPAs of increased visitor pressure arising from housebuilding through a costed programme of mitigation measures.
85. A contribution to the Pagham Joint Scheme of Mitigation is necessary because the site is close to Medmerry Compensatory Habitat and the Council has suggested that it is treated in planning terms as if it is an SPA/SAC. The contribution is required to mitigate, through an additional payment to the RSPB as site manager for Medmerry, under the Pagham Joint Scheme of Mitigation. Without this additional contribution only the impact on Chichester Harbour would be addressed and not the impact on Medmerry.
86. The provision of, and funding for, a travel plan, including its preparation and implementation, the appointment of a co-ordinator and its monitoring for a period of 3 years is necessary to promote the use of sustainable modes of transport to mitigate the effect of the occupiers of the development on the need to travel in the area. It would ensure that the proposal would accord with CLP policies 7, 8, 13, and 39.
87. I have examined the evidence provided by the Council regarding the need for the above obligations and compliance with CIL Regulation 122. Based on this, and for the reasons given above, I am satisfied that the planning obligations in the Agreement would be necessary to mitigate the effects of the development and they meet the tests in CIL Regulation 122 and paragraph 56 of the Framework. I have therefore taken them into account in my determination of this appeal.

Planning Balance

88. As I have found that the Council cannot demonstrate a 5 year HLS in accordance with the Framework, the presumption in favour of sustainable development, as set out in paragraph 11(d) of the Framework will apply.
89. In terms of the benefits, the provision of market housing carries substantial weight. The proposal would assist in achieving the Government's objective

given in the Framework of significantly boosting the supply of homes. The weight that I have given this is not reliant upon the Council not demonstrating a 5 year HLS, given that this is not a ceiling and that there is a continuing need for new housing.

90. The proposal would provide 30% affordable housing, secured by the section 106 Agreement, which would meet the requirement of CLP Policy 34. The appellant has demonstrated that there is an acute and growing need for more affordable housing in the District. The latest evidence in the Council's Housing and Economic Development Needs Assessment (HEDNA) 2022 shows a net need for 278 new Social/Affordable Rented Homes per annum, of which the largest proportion of need (76 per annum) occurs on the Manhood Peninsula. Table 17 in the Council's latest Annual Monitoring report 2020-21 shows that affordable housing completions have never exceeded 167 per year. The Council has accepted that current affordable housing needs are not being met. I have therefore attached substantial weight to this provision even though it would not exceed the policy requirement.
91. The appellant has provided evidence to demonstrate that the proposal would result in a significant increase in habitat and a net gain for biodiversity. A Biodiversity Net Gain Assessment report by Lizard undertaken for the appellant has calculated using Natural England's Biodiversity Metric 3.0 that the proposal would be capable of a net gain of 44.23% for habitats, 23.83% for hedgerows and 19.04% for river units. There is no other substantive evidence to show otherwise.
92. The appellant has therefore demonstrated that the proposal would be capable of delivering a net gain for biodiversity of above 10%. Whilst a net gain would be expected from the replacement of an agricultural use by parkland, it would meet the requirements given in paragraphs 174(d) and 180(d) of the Framework which do not specify a minimum level. Planning conditions would ensure that the necessary measures would be implemented to achieve a biodiversity net gain but not ensure that it would be at least 10%. As such, I have attached moderate weight to this benefit.
93. The illustrative plans identify that the proposal would provide open space and provision for play and a community garden and orchard. I accept that this would go beyond the requirements of CLP policies 52 and 54 and that the facilities would be likely to be used by local residents and visitors to the area. However, the appellant has not demonstrated that there is a need for the additional play space, given that nearby land in Bracklesham provides a community centre and accompanying open space and play areas. I have therefore attached moderate positive weight to these provisions.
94. Whilst the appeal scheme is in outline, it is common ground with the Council that there is no reason the development cannot present the highest standards of design. However, this is expected in the Framework, in which paragraph 134 indicates that development that is not well designed should be refused. I have therefore attached little weight to this provision.
95. There would be economic benefits through construction employment, and through expenditure by future occupants in the area. Paragraph 81 of the Framework indicates that significant weight should be placed on the need to support economic growth and productivity. The appellant has given an indication of the significant input into the local economy that the development

- would make. Therefore, even though the economic benefits associated with the construction would only be short term and most residential development would result in additional expenditure in the local area, I have given significant weight to the resulting support to economic growth and productivity from the development.
96. The adverse effects of the proposal would be as a result of the loss of an open rural landscape, which would be contrary to development plan policies. I have given this substantial weight. It would also result in the loss of an area of land currently used for agriculture. Based on the importance the Framework attaches to retaining 'the best and most versatile agricultural land' and the London & South East Region 1:250,000 Series Agricultural Land Classification maps indicating the site to be Grade 3 (good to moderate), I attach significant weight to the harm arising from this loss of agricultural land.
97. The proposal would also result in an increase in traffic due to additional car journeys that would be generated by the residents. However, the Council has accepted that the site is in a sustainable location, it would provide pedestrian and cycle links to Bracklesham and the use of the car would be reduced by measures to encourage the use of sustainable means of travel, including a travel plan. As such, this carries moderate weight as an adverse effect.
98. I have found non-compliance with some of the most important policies in the CLP in the determination of this appeal, namely policies 33 and 48. As such, I find that the proposal would not accord with the development plan as a whole, even though I have reduced the weight that I have given these policies due to the lack of a 5 year HLS.
99. Turning to paragraph 11(d)(ii) of the Framework, when the above considerations are taken together and weighed in the balance, I find that the adverse impacts would not significantly and demonstrably outweigh the benefits that I have identified, when assessed against the policies in the Framework taken as a whole. I conclude that a presumption in favour of sustainable development has been established for the proposed development. This is a material consideration in favour of the appeal proposal.

Planning Conditions

100. I have considered the suggested conditions should the appeal be allowed that formed the basis of discussions at the Inquiry. It is necessary to impose the conditions regarding the time scale for commencement of the development and the submission of reserved matters⁷ to ensure that development would be carried out expediently. A condition referring to the plans⁸ is necessary for reasons of clarity and to ensure that access would be completed in accordance with the approved development.
101. A condition to secure and implement a CEMP⁹, including the control of hours of working, is necessary to safeguard the environment, public amenity and highway safety during construction and to address some of the concerns of Natural England. A condition to control ground levels¹⁰ is necessary to protect

⁷ Conditions 1, 2 and 3

⁸ Condition 4

⁹ Condition 5

¹⁰ Condition 6

the appearance of the surrounding area. A condition regarding contamination¹¹ is in the interests of health and safety. A condition to secure a scheme of archaeological investigation¹² is necessary to protect the potential archaeological significance of the site, given the evidence from the Council's database and historical records.

102. Conditions regarding drainage¹³ and to ensure compliance with measures given in the flood risk assessment¹⁴ are necessary to prevent pollution and/or flooding and to protect the environment. Conditions to secure the installation of electric vehicle charging points¹⁵, and the implementation of a Sustainable Design and Construction statement¹⁶, including measures to control water consumption, are in the interests of promoting sustainable development. A condition to control external lighting¹⁷ is necessary to protect the environment, the appearance of the area, residential amenity and protected species, including bats.
103. Conditions regarding the construction of the access and protection of visibility splays¹⁸ and pedestrian access¹⁹ are necessary for highway safety reasons. A condition to secure car parking²⁰ is necessary to protect residential amenity and highway safety. A condition to secure cycle parking²¹ is in the interests of promoting sustainable transport. A condition to ensure the provision of landscaping²², in accordance with the areas shown on the submitted Parameter Plan, is necessary to protect the character and appearance of the area. A condition to ensure the implementation of a Landscape and Ecological Management Plan (LEMP)²³ is necessary in the interests of biodiversity.
104. A condition to secure mitigation regarding the effect on badgers²⁴ is in the interests of the protection of a wildlife species, given that they have been noted as being present on site. A condition to ensure that adequate foul drainage is provided before the dwellings are occupied²⁵ is necessary to protect the area from pollution due to flooding from foul sewage, given the concerns that have been expressed at the Inquiry. I am satisfied that the condition suggested by the appellant is appropriate as the evidence indicates that there is very little likelihood that the necessary foul drainage measures would not be carried out within a reasonable timescale.
105. Following the discussions at the Inquiry, I have amended and/or combined some of the suggested conditions. A condition regarding the provision of fire hydrants is unnecessary as it is covered by other legislation. A condition to secure the provision of a travel plan is unnecessary as this would be adequately dealt with under a section 106 planning obligation. A condition

¹¹ Condition 7

¹² Condition 8

¹³ Conditions 9 and 11

¹⁴ Condition 10

¹⁵ Condition 12

¹⁶ Condition 13

¹⁷ Condition 14

¹⁸ Condition 15

¹⁹ Condition 17

²⁰ Condition 16

²¹ Condition 18

²² Condition 19

²³ Condition 20

²⁴ Condition 21

²⁵ Condition 22

suggested by Earnley Parish Council to control the turning movements at the proposed access is not justified as being necessary based on the evidence provided at the Inquiry, including the response from WSCC as the local highway authority.

106. I am satisfied that all the conditions that I have included are reasonable and necessary, meet the tests given in the Framework and reflect the advice in the PPG.

Overall Conclusions

107. In applying section 38(6) of the Planning and Compulsory Purchase Act (2004), I have found that the proposal would not accord with the development plan as a whole. However, I find that the presumption in favour of sustainable development is a material consideration that indicates that the decision should be taken otherwise than in accordance with the development plan. Therefore, for the reasons given and having regard to all relevant matters raised, I conclude that the appeal should succeed.

M J Whitehead

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Andrew Parkinson, of Counsel He called Tom Day Pieter Montyn MSc	instructed by Chichester District Council Video link for ecology round table session County Councillor for the Witterings Electoral Division of West Sussex County Council for the foul drainage round table session
David Webster BSc MSc MA CMLI Jeremy Bushell BA(Hons) DipTp MRTPI Alex Roberts BSc(Hons) AMRTPI	Senior Landscape Architect, Huskisson Brown Associates Principal Planning Officer, Development Management Service, Chichester District Council Director, Lambert Smith Hampton, Planning, Development and Regeneration team, video link for housing land supply round table session

FOR THE APPELLANT:

Charles Banner QC He called Paul Cranley BA(Hons) CMILT David West MENV SCI(Hons) CENV MCIEEM Daniel Allum-Rooney BSc(Hons) MSc GradCIWEM	instructed by Tetra Tech Limited Divisional Director, Pell Frischmann Associate Ecologist, Tetra Tech Limited for ecology round table session Drainage and Flood Risk Technical Director, Pell Frischmann for the foul drainage round table session
Nicholas Billington BA(Hons) MSc MRTPI Andrew Smith BSc(Hons) MSc CMLI	Associate Director in Planning, Tetra Tech Limited fabrik limited

FOR THE RULE 6 PARTY (EARNLEY PARISH COUNCIL):

Robert Carey He called Graham Bellamy BSc CEng MICE Keith Martin Robert Carey BA (Hons) MA	Earnley Parish Councillor Partner, Bellamy Roberts Chair, Earnley Parish Council Earnley Parish Councillor
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INTERESTED PERSONS:

Dr Linda Stanley Julia Tyrrell Melissa Smith Lance Stevens Louise Pratt	Resident of Clappers Lane Resident of Clappers Lane Clappers Lane Residents Group Resident of Clappers Lane Local Camping and caravan Sites, including Holden's Caravan Site
Rachel Dadds	Resident of Earnley Manor Close

Claire Smith
George Thomas
Julia Bowering
Brian Reeves

Dr Jill Sutcliffe CIEEM
Councillor Pieter Montyn
Sherrie Streetley

Resident of Earnley
Resident of Bracklesham
Resident of Earnley
Chair of East Wittering and Bracklesham Parish
Council
Manhood Wildlife and Heritage Group
West Sussex County Councillor
Bracklesham Caravan and Boat Club

DOCUMENTS SUBMITTED AFTER OPENING THE INQUIRY

- 1 Notification letter and list of those notified, submitted by the Council on 14 June
- 2 Draft section 106 Planning Agreement, submitted by the Council on 14 June
- 3 Appellant's opening statement, submitted by the appellant on 14 June
- 4 Opening comments on behalf of Chichester District Council, submitted by the Council on 14 June
- 5 Opening Statement- Earnley Parish Council, submitted by Councillor Carey on 14 June
- 6 Statement of Dr Linda Stanley, submitted by Dr Linda Stanley on 14 June
- 7 Statement and attachments of Julia Tyrrell, submitted by Julia Tyrrell on 14 June
- 8 Statement of Melissa Smith on behalf of Clappers Lane Residents Group, submitted by Melissa Smith on 14 June
- 9 Statement of Lance Stevens, submitted by Lance Stevens on 14 June
- 10 Statement of Rachel Dadds, submitted by Rachel Dadds on 14 June
- 11 Statement of Claire Smith, submitted by Claire Smith on 14 June
- 12 Statement of Julia Bowering and photographs, submitted by Julia Bowering on 14 June
- 13 Statement of George Thomas, submitted by George Thomas on 14 June
- 14 Statement of Manhood Wildlife and Heritage Group, submitted by Dr Jill Sutcliffe on 14 June
- 15 Statement and attachments of Councillor Pieter Montyn, submitted by Councillor Pieter Montyn on 14 June
- 16 Statement of East Wittering and Bracklesham Parish Council, submitted by Brian Reeves on 14 June
- 17 Map of photo viewpoints, submitted by Julia Bowering on 14 June
- 18 A3 Clappers Lane Local Area Street Plan, submitted by Councillor Carey for Earnley Parish Council on 14 June
- 19 Circular 11/95: Use of Conditions and letter dated 25 November 2002, submitted by the Council on 15 June
- 20 Map of sewerage in the area of Clappers Lane, submitted by the Council on 15 June
- 21 Map of the adopted highway, submitted by the Council on 15 June
- 22 Extract from JBA report on Pagham Harbour Condition Final Assessment: Conclusion, submitted by the appellant on 15 June
- 23 Extract from JBA report on Pagham Harbour Condition Final Assessment: Summary of Conservation Objectives, attributes and targets, submitted by the appellant on 15 June
- 24 Photograph of 3D model of development, submitted by the Council on 16 June
- 25 Extract from Historic England Advice Note 1 (Second Edition): Conservation Area Appraisal, Designation and Management, submitted by Keith Martin for Earnley Parish Council on 16 June
- 26 Further photographs by Julia Bowering, submitted by Julia Bowering on 17 June
- 27 Copy of Planning Appeal Ref 3286677, Yatton, submitted by the appellant on 17 June
- 28 Copy of updated draft of section 106 Planning Agreement, submitted by the appellant on 17 June
- 29 Amended Planning Condition 26, submitted by the appellant on 17 June
- 30 Comments by Mrs Victoria Arnott-Ridel, received on 17 June

- 31 Comments by Mrs Michelle Dunderdale, received on 17 June
- 32 Comments by Mr Mark Dunderdale, received on 17 June
- 33 Comments by Ms Janet Holding, received on 17 June
- 34 Comments by Mrs Tracey Ellis, received on 20 June
- 35 Earnley Parish Council Rule 6 Party Closing Statement, received on 8 July
- 36 Closings on behalf of the Council, submitted by the Council on 11 July
- 37 Appellant's Closing Statement, submitted by the appellant on 11 July
- 38 Engrossed section 106 Planning Agreement, received on 13 July
- 39 Letter, dated 13 July from the Council and attached documents regarding the Habitats Regulation Assessment, received on 13 July
- 40 Letter, dated 9 August 2022, from Natural England to the Planning Inspectorate regarding the Habitats Regulation Assessment, received on 10 August

ANNEX: SCHEDULE OF CONDITIONS

- 1) Details of the layout, scale, appearance and landscaping (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before development commences, and the development shall be carried out as approved.
- 2) Application for approval of reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development approved shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 17002/S102 Rev A (Location Plan); 17002/C03; 103859-T001 Rev E (Access Plan); 103859-T-005 Rev B (Footway Connection Plan).
- 5) No development shall commence including any works of demolition, until a Construction and Environmental Management Plan (CEMP) comprising a schedule of works and accompanying plans for each construction phase has been submitted to and approved in writing by the local planning authority. Thereafter the approved CEMP shall be implemented and adhered to throughout the entire construction period. The CEMP shall include details of the times of working, the phasing, public engagement, and the control of dust, dirt and noise.
- 6) No development shall commence until plans of the site showing details of the existing and proposed ground levels, proposed finished floor levels, levels of any paths, drives, garages and parking areas and the proposed completed height of the development and any retaining walls have been submitted to and approved in writing by the local planning authority. The development thereafter shall be carried out in accordance with the approved details.
- 7) In the event that contamination is found at any time when carrying out the development hereby permitted that was not previously identified it shall be reported in writing immediately to the local planning authority. The development shall not be first occupied until:
 - i) An investigation and risk assessment has been undertaken in accordance with a scheme that shall first have been submitted to and approved in writing by the local planning authority; and
 - ii) where remediation is necessary a remediation scheme shall be submitted to and approved in writing by the local planning authority. Any remediation shall be fully implemented in accordance with the approved scheme before the development is first occupied; and
 - iii) a verification report for the remediation shall be submitted in writing to the local planning authority before the development is first occupied.
- 8) No development shall commence on the site until a written scheme of archaeological investigation of the site, has been submitted to and approved in writing by the local planning authority. The scheme shall include proposals for an initial trial investigation and mitigation of damage through development to deposits of importance thus identified; and a schedule for the investigation, and the recording of findings and subsequent publication of results. Thereafter the scheme shall be undertaken fully in accordance with the approved details.

- 9) No development shall commence until details of an overall site wide surface water drainage scheme have been submitted to and approved in writing by the local planning authority. The details shall include the discharge of any flows to a watercourse and the scheme shall follow the hierarchy of preference for different types of surface water drainage disposal as set out in Approved Document H of the Building Regulations and the Sustainable Drainage System (SUDS) Manual produced by CIRIA. Winter ground water monitoring to establish highest annual ground water levels and Percolation testing to BRE 365, or similar approved, will be required to support the design of any Infiltration drainage. The surface water drainage scheme shall be implemented as approved. No building shall be occupied until the complete surface water drainage system serving that property has been implemented in accordance with the approved surface water drainage scheme.
- 10) No development shall commence until a flood alleviation scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include the mitigation measures in the submitted flood risk assessment (ref The Civil Engineering Practice, March 2021), the provision of fluvial floodplain storage with details of land raising and lowering and timing/phasing arrangements. The mitigation measures shall detail:
- Finished floor levels for all living accommodation set no lower than 4.86 metres above Ordnance Datum (AOD); and
 - Finished floor levels for sleeping accommodation set no lower than 5.16 metres AOD.
- The scheme shall be fully implemented and subsequently maintained, in accordance with the scheme's timing/phasing arrangements, or within any other period as may subsequently be agreed in writing by the local planning authority.
- 11) No work shall commence on any Sustainable Drainage System (SUDS) until a site-specific maintenance manual setting out full details of the maintenance and management of the SUDS has been submitted to and approved in writing by the local planning authority. The manual shall include arrangements for the replacement of major components at the end of the manufacturer's recommended design life. The SUDS system, shall thereafter be maintained and managed strictly in accordance with the manual.
- 12) No development shall commence above ground level until there has been submitted to the local planning authority for approval in writing details of the provision of Electric Vehicle charging facilities to accord with the West Sussex County Council: Guidance on Parking at New Developments (September 2020 or any superseding document). The development shall be carried out in accordance with the approved details.
- 13) A detailed Sustainable Design and Construction Statement (SDCS) shall be submitted with the first application for reserved matters and any subsequent applications for reserved matters and shall demonstrate how the proposal complies with the approved details. The SDCS shall include details of CO2 emission saving measures and water consumption saving measures. The development thereafter shall be carried out in accordance with the approved details.
- 14) No dwelling hereby permitted shall be first occupied until details of any proposed external lighting of the site have been submitted to and approved in

writing by the local planning authority. The details shall include a layout plan with beam orientation and schedule of equipment in the design (luminaire type, mounting height, aiming angles and luminaire profiles). The lighting shall be installed, maintained and operated in accordance with the approved details.

- 15) No part of the development hereby permitted shall be first occupied until such time as the vehicular access and associated works serving the development has been constructed in accordance with the details shown on the drawing titled 'Proposed Site Access Arrangement and Footway Proposals' (by Pell Frischmann) with visibility splay and vehicle swept path analysis and numbered 103859-T-001 Rev E. Once provided the visibility splays shall thereafter be maintained and kept free of all obstructions over a height of 0.6 metres above adjoining carriageway level.
- 16) No dwelling hereby permitted shall be first occupied until the car parking space(s) and any associated turning space serving that dwelling have been constructed, surfaced and drained in accordance with plans and details that shall have been submitted to and approved in writing by the local planning authority. The parking space(s) and any associated turning space shall thereafter be retained at all times for their designated purpose.
- 17) No dwelling hereby permitted shall be first occupied until such time as the pedestrian access serving the development has been constructed in accordance with the details shown on the drawing titled 'Proposed Footway Connection' and numbered 103859-T-005 Rev B.
- 18) No dwelling hereby permitted shall be occupied until covered and secure cycle storage provision for that dwelling has been provided in accordance with details to be first submitted to and approved in writing by the local planning authority. Such provision shall thereafter be retained for the stated purpose.
- 19) Notwithstanding the illustrative landscaping details submitted, a detailed scheme of hard and soft landscaping for the whole site shall be submitted to the local planning authority for approval as part of reserved matters. The scheme shall demonstrate compliance with the areas of landscaping and built development detailed on the Parameter Plan (ref. 17002/C03) and shall include details of pedestrian permeability through the site, a planting plan and schedule of plants noting species, plant sizes and numbers/densities, and a programme/timetable for the provision of the hard and soft landscaping. All existing trees and hedgerows on the land shall be indicated including details of any to be retained, together with measures for their protection during the course of development. The hard landscaping shall include the proposed finished levels or contours, pedestrian access and circulation areas, and details and samples of the hard surfacing materials. The works shall be carried out in accordance with the approved details and planting timetable and in accordance with the recommendations of the appropriate British Standards or other recognised codes of good practice. Any trees or plants which, within a period of 5 years after planting, are removed, die or become seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others of species, size and number as originally approved unless otherwise first agreed in writing by the local planning authority.
- 20) Notwithstanding any details submitted, no dwelling hereby permitted shall be constructed above damp proof course level until a Landscape and Ecological Management Plan (LEMP), setting out measures to ensure the delivery of

long-term management of open spaces and ecological mitigation, including a timetable for implementation, has been submitted to and approved in writing by the local planning authority. The LEMP shall be prepared in accordance with the Ecological Impact Assessment by Lizard Landscape Design and Ecology (17 November 2020 ref: LLD1902). The LEMP shall include for:

- Any trees removed to be replaced at a ratio of 2:1.
- New linear features such as hedgerows and treelines to be created or existing features strengthened to improve connectivity between areas of suitable roosting and foraging habitat within the site and the wider area to increase opportunities for commuting bats.
- Filling in gaps in tree lines or hedgerow with native species.
- Wetland area for the benefit of water voles and great crested newts.
- High quality amphibian terrestrial habitat created within the open space.
- Long-term integrity of new and retained habitats through inclusion within a long-term managed strategy.
- Bat and bird boxes installed on site.
- Grassland areas managed to benefit reptiles.
- Log piles on-site.
- Wildflower meadow planting.
- Gaps included at the bottom of fences to allow movement of small mammals across the site.
- Hedgehog nesting boxes included on the site.

Thereafter the strategy shall be implemented fully in accordance with the approved details and implementation timetable.

- 21) No development shall commence until updated badger surveys have been undertaken to confirm the status of badgers on site and inform any need for avoidance, mitigation and licensing measures. The surveys and an avoidance, mitigation and licensing strategy shall be submitted to and approved in writing by the local planning authority in accordance with a timetable that shall have been agreed in writing by the local planning prior to the commencement of development. Thereafter the strategy shall be implemented fully in accordance with the approved details.
- 22) No dwelling hereby permitted shall be occupied until the off-site foul drainage infrastructure necessary to serve the development is operational and it is confirmed in writing by the sewerage undertaker that sufficient sewage capacity exists within the network to accommodate the development.

End of Schedule

Appendix E – Turley Economic Infographic

Economic Benefits Infographic

PROPOSED DEVELOPMENT: 147 residential dwellings

SITE: Land south of Green Lane, Chesterton, Cherwell

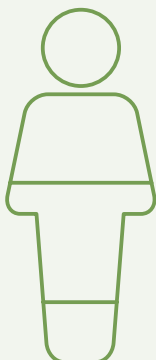
Construction Phase



£25.8 million

Investment

in the scheme's construction



35 gross direct jobs

FTE (Full-Time Equivalent) jobs on average during construction (4 years)

25 net direct jobs

FTE in Oxfordshire, including 20 in Cherwell

10 net indirect / induced jobs

FTE in Oxfordshire, including 5 in Cherwell



£2.4 million

Productivity boost

GVA¹ economic output uplift during construction, including £1.5m in Cherwell

Operational Phase



147

New homes

In a range of house sizes to help meet local needs



185

Employed residents

Working age economically active and employed residents living at the scheme



£5 million

Gross annual income

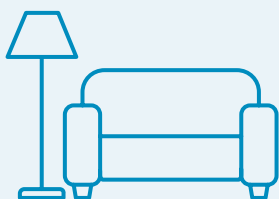
Annually for residents, contributing to local expenditure²



£350,000

Council Tax

Collected annually by Cherwell District Council



£700,000

First occupation expenditure

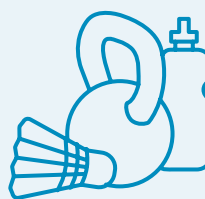
To make a 'house feel like home'



£1.9 million

Retail expenditure

Annually by residents, supporting local businesses



£1 million

Leisure expenditure

Annually by residents, supporting local businesses



20

Retail and leisure jobs

Supported by resident expenditure

¹ GVA (Gross Value Added) measure the value of output created (i.e. turnover) net of inputs used to produce a good or service (i.e. production of outputs). It provides a key measure of economic productivity. Put simply the GVA is the total of all revenue into businesses, which is used to fund wages, profits and taxes.

² Note that this is based on median South East incomes for the average overall occupational profile in Cherwell, and therefore wages earned by residents could, for example, be higher than this figure if residents work in higher-paid jobs than the average for their occupation in the region and/or if the resident profile is weighted more towards professional occupations than the district average. This figure also does not include other sources of income, such as those derived from investments or social security benefits.

Appendix F – Note from BSG regarding BNG

Our ref: Lands South of Green Lane, Chesterton - Rivers

09 January 2024

Asher Ross
Director of Planning
Wates Developments

By email only

Dear Asher

Re: Land South of Green Lane, Chesterton – Net gain of river habitats

Background

We understand that Wates are bringing an Appeal (APP/C3105/W/23/3331122) against the decision to refuse planning permission to the Land South of Green Lane, Chesterton site (hereafter referred to as 'the Site'). The planning application (23/00173/OUT) was supported by an Ecological Appraisal Report (BSG Ecology, 2022) which sets out the baseline and impact assessment as well as recommendations for mitigation and enhancement. We also understand that, though the refusal was not on the grounds of ecology, there is a wish to ensure that a net gain for "Rivers" (as defined in the metric) is delivered. Currently, as assessed by the metric submitted in support of the planning application, the proposals for the Site deliver a net gain for Habitats and Hedgerows, whereas a small loss for Rivers (0.01 Units or 0.37%) will occur. This is due to the fact that a small section of the existing Ditch in Poor condition is to be culverted. Though no new ditches or rivers, as defined by the metric are being created, new drainage features (swales) are proposed, but as these are included in the Habitats section of the metric and not captured under the same section as ditches (which are under Rivers), they do not offset the small loss due to the culvert being created as far as the metric is concerned.

Solution

In order to deliver a net gain for Rivers, new ditches would need to be created. As requested, I have drafted alternative metrics for scenarios where new ditches could be included in the proposals.

The first version of the revisions to the metric shows that a gain for Rivers can be achieved by creating 5 m of Ditch in "Poor condition". This would result in an overall gain of 0.01 Units and an overall gain of 0.92%.

The second version of the metric shows that a gain of over 10% for Rivers could be achieved by creating 50 m of Ditch in "Poor condition". This delivers a gain of 0.18 Units or 12.61%.

It is our understanding that there is scope to easily create 5 m or up to 50 m of new ditch within the development in open spaces. This could be accommodated in the eastern part of the Site where extensive open space is proposed. This would need to be confirmed via an updated assessment of the finalised landscaping proposals using a biodiversity metric, however a net gain for Rivers (as well as Habitats and Hedgerows) can be achieved.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'John Baker', with a stylized flourish at the end.

John Baker
Principal Ecologist
For and on behalf of BSG Ecology

Appendix G – Plan of decisions in Chesterton

Land to the east of M40 and south of A4095, Chesterton, Bicester, Oxfordshire (known as 'Great Wolf') - ALLOWED

erection of up to 45 dwellings served via a new vehicular and pedestrian access; public open space and associated earthworks to facilitate surface water drainage; and all other ancillary and enabling works. The Paddocks, Chesterton – PERMITTED

Land north of Green Lane and east of The Hale, Chesterton - DISMISSED

The Tudor Jones Building, Bicester Sports Association, Akeman Street, Chesterton OX26 1TH - ALLOWED.

Land to the west and south of no's 7-26 The Green, Chesterton. Erection of 44 dwellings, village hall/sports pavilion and associated car parking, enlarged playing pitches, new children's play area, access, and landscaping – PERMITTED.

Land to the west of Number 28 The Green and adjacent to Vespasian Way – PERMITTED

Erection of up to 26 dwellings including creation of a new access, associated landscaping, open space and drainage infrastructure. Land to the West of Northampton Road, Weston on the Green – DISMISSED

Permission for Siemens R&D complex with associated facilities. Land South West of Grange Farm Street Through Little Chesterton, Chesterton – PERMITTED