4th September 2024

Our Ref: SWLC.LPC.5666
Your Ref: APP/Y3940/W/24/3345527

The Planning Inspectorate
Room 3D
Temple Quay House
2 The Square
Bristol
BS1 6PN

Dear Sir/Madam,

Town and Country Planning Act 1990
Appeal by Mr & Mrs H Gravell
Site Address: Land at West Street, Great Somerford, Chippenham, Wiltshire, SN15 5EH

Thank you for your letter dated 22 August 2024 enclosing both the LPA Statement and comments from Third Parties. Accordingly, please find set out below the Appellant's Final Comments.

LPA Statement

For ease of reference, I have set out my comments below under the relevant headings taken from the LPA's Statement.

Wiltshire Core Strategy (2015) NPPF (2023) and the 'planning balance'

In response to the Council's comments regarding its strategic housing policies set out within Core Policies 1 and 2, I wish to re-iterate my position (expressed in my main Statement of Case) that whilst there may be a policy-conflict due to this site being just outside of the settlement boundary, it is considered that the Council's housing policies are no longer 'up to date'. The Core Strategy was adopted in 2015 and since then later versions of the NPPF have been published, which requires policies and spatial development strategies to be reviewed every five years.

In the absence of any such review having recently taken place, it is suggested that a more pragmatic approach be taken to this appeal, having regard to the current version of the NPPF as the more recent policy document, particularly paragraphs 83 and 84 of the Framework (in terms of identifying opportunities for villages to grow and maintain vitality). Additionally, I wish to make reference to paragraph 180 of the Framework, which whilst acknowledging the intrinsic beauty of the countryside, does not set out an in-principle objection to the provision of housing in countryside locations. This is a point that has recently been accepted by this Council under cross-examination and reduces the weight that can be given to the conflict with the spatial strategy (see paragraph 23 of Appeal Decision APP/Y3940/W/24/3340811

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at Land off Storridge Road, Westbury, BA13 4HJ provided at **Appendix 1** of this letter.

Current housing land supply position and consequences for the 'planning balance'

In terms of the Council's housing land supply position, they make reference to the current provisions within the NPPF, stating that they are a 'paragraph 77 authority' and as a result need only to demonstrate a 4 year housing land supply. Whilst this is not disputed, it seems to me that they have been quick to dismiss any transitional arrangements (as highlighted in my Statement of Case) in relation to planning applications submitted before the publication of the NPPF in December 2023. Notwithstanding this, it is noted that the Council's Statement makes reference to their most recent Housing Land Supply Statement and that they can demonstrate a 4.2 year housing land supply. They then state at paragraph 3.2 that:

"Accordingly, this appeal is significantly affected by the changes set out in paragraphs 76, 77 and 226 to the revised NPPF. The Council can demonstrate a more than 4-year supply of housing land supply and is at Regulation 19 stage of its local plan review. The tilted balance set out in paragraph 11(d) of the NPPF is not engaged due to the shortage of a sufficient housing land supply."

However, in response to the above I wish to draw the Inspector's attention to appeal decision APP/Y3940/W/24/3340811 dated 30th August 2024 (provided at Appendix 1 of this letter) where the Appellant Gladman Developments Ltd sought to challenge the Councill's housing supply with regard to its windfall contribution. The Inspector's assessment of the 'Disputed Sites' is set out in paragraphs 90 – 111 of the Decision Letter, culminating in the Inspector's conclusions at paragraph 112 as follows:

"Calculation and conclusion

112. The Council's position is that it can demonstrate a 4.2 year supply of housing land, through 8,193 homes versus the target of 9,760. As set out above, based on the evidence before me, I deduct 477 dwellings from the windfall allowance and a further 187 homes from the disputed supply sites. This results in a supply of 7,529 homes, which equates to 3.85 years."

This means that paragraph 11(d) of the Framework is re-engaged and to use the Council's own words, the course of this appeal is significantly affected. Indeed, the ''Planning balance' is now tilted in favour of granting planning permission and it is quite likely that the Council would have granted Planning permission in Principle for this development had the current NPPF not been introduced prior to the decision being made. The fact is that a 3.85 year supply represents a significant shortfall in the context of a national housing undersupply. Of course, the contribution of two dwellings is small, but it is not insignificant and is considered to be appropriate for the size of the village. Moreover, the economic and social benefits of these two houses adding to the critical mass of the village and widening the choice and availability of housing in this area are clear benefits that outweigh the policy-conflict.

Self-Build and Custom Housebuilding

With regard to self-build plots, it is accepted that there is no means for this to be controlled by condition or section 106 agreement with an application for Permission in Principle. However, I would point out that this would apply for all other forms of application for planning permission. The only form of ensuring a dwelling is legitimately a self-build is via the CIL self-build exemption process. As CIL does not apply to PIP applications, this could only take effect at the technical details consent stage. Nevertheless, the potential for these to be self-build plots should be given positive weight given that Paragraph 63 of the NPPF states that the type of housing for different groups in the community should be assessed and reflected in planning policies which includes people wishing to commission or build their own homes. Footnote 29 also states that:

"Under section 1 of the Self Build and Custom Housebuilding Act 2015, local authorities are required to keep a register of those seeking to acquire serviced plots in the area for their own self-build and custom house building. They are also subject to duties under sections 2 and 2A of the Act to have regard to this and to give enough suitable development permissions to meet the identified demand. Self and custom-build properties could provide market or affordable housing."

Therefore, as well as having less than a four year housing land supply, the Council has an acknowledged unmet need of self-build dwellings within the county. To my mind, the lack of a housing supply in general, the lack of self-build dwellings and the engagement of the tilted balance are three separate but interlinked material planning considerations that weigh in favour of the appeal and outweigh the policy-conflict.

Reforms to the NPPF

With respect to the new consultation version of the NPPF the Council's comments are noted. However, even though this is only a consultation this clearly shows an obvious direction of travel that the new government are seeking to go in and this seeks to boost housing supply wherever possible. Moreover, I refer to appeal decision APP/Y3940/W/24/3340811 that is appended to this letter. This states at paragraph 5 that:

"5. On 30 July 2024, the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Proposed Framework) and other changes to the planning system. I provided the main parties with the opportunity to comment. The Proposed Framework and other changes to the planning system are draft and therefore may be subject to change before being adopted. They therefore carry limited weight but are nonetheless material planning considerations to which I refer as appropriate throughout my Decision".

The new Framework is therefore a material planning consideration and should be given due weight. In my opinion, since the beginning of this year, the Council have been very negative in its decision-making resulting in many refusals for housing applications. This has resulted in a housing supply dropping from close to 5 years in 2023 to now 3.85 years. If this continues it will be below 3 years which is exactly the opposite of what the new Framework is seeking to achieve.

Wiltshire Emerging Local Plan

The Council's comments are duly noted.

Third Party Comments

The Third Party Comments are duly noted and are considered to come under the following headings:

Harm to the Conservation Area & wider landscape

In relation to matters concerning the Conservation Area and open countryside, this has been considered and addressed within my Statement of Case. This is an elongated village with a distinct character of linear housing development along the main road running from east to west. Although in this part of the village the housing is of a lower density and a little more sporadic, the appeal site is nevertheless set within the context of existing built development on either side. Therefore, two new dwellings would not appear alien or overtly prominent within the overall street scene. Furthermore, all that is being considered at this stage is the principle, and this means that there is more to be done to make sure that the new buildings are sympathetic. It is possible that this has not been fully appreciated by Third Parties. Indeed, through the technical details consent stage, the Council have the ability to influence the design, detailing, siting, scale and landscaping of the scheme to their satisfaction and can of course refuse such an application if they do not consider it to be of sufficient design quality. For these reasons it is considered that third party comments on this matter have been addressed.

Flooding of the road

Surface water drainage issues our technical matters that are not part of the planning permission in principle considerations. The issue of flooding has not been provided as a reason for refusal and therefore this has not been addressed as part of the appellant's statement of case.

Too many houses in the village

This refers back to the main body of these final comments in response to the council's objections in terms of strategic planning policy. As mentioned, the Council now have a recognised undersupply of housing, and the tilted balance is engaged.

Unsuitable access on bend & narrow dangerous road

These are technical matters that are not parts of the planning permission in principle process. No such reason for refusal has been provided.

Unsuitable footpath into the village/inaccessible

The points raised by third parties are noted and it is acknowledged that there is not a dedicated footpath all the way along the road into the main part of the village. However, this site is within a reasonable distance of local facilities. Furthermore, it

seems to me that the main objective of Core Policies 60 and 61 are to seek to reduce the reliance on the private car and encourage other sustainable forms of travel. This could mean walking, but it would equally apply to cycling which would not require a footpath at all. Overall therefore, when considering the objective of reducing the need to rely on the car for small journeys, and encouraging opportunities for other more sustainable forms of travel, it is considered that the location of this site achieves this. Of course, as is recognised in the NPPF at paragraph 109, in rural areas there are always going to be situations where pedestrian facilities are different to urban or suburban areas and that this should be recognised in decision-making.

This is a wildlife corridor

These technical matters do not form part of the planning permission in principle process. Furthermore, this is not a matter that has been raised by the Council in their reasons for refusal.

Conclusions

In conclusion, these final comments raise the important point that the council can no longer demonstrate an up-to-date 4 year housing land supply. This represents a significant change in the overall context of this appeal given that the tilted balance is now engaged, which was not the case when this application was refused. This means that the council's strategic housing policy's now carry limited weight as well.

Comments from third parties are noted. However, with respect to the Conservation Area and wider landscape setting, these are matters that are primarily relevant to the technical details consent stage. Other technical matters relating to drainage ecology and highway safety are also more relevant to the technical detail stage and in any case have not been raised by the Council in their reasons for refusal. Lastly, the site is well related to the main part of the village and would result in less reliance on the private car than in more remote rural locations.

Yours faithfully

[redacted]

Simon Chambers
Director

Enc –

Appendix 1 – Appeal Decision APP/Y3940/W/24/3340811 at Land off Storridge Road, Westbury, BA13 4HJ

The Planning Inspectorate

Appeal Decision

Inquiry held on 9 to 12 and 16 to 18 July 2024

Site visit made on 18 July 2024

by O S Woodwards MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th August 2024

Appeal Ref: APP/Y3940/W/24/3340811
Land off Storridge Road, Westbury, BA13 4HJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
- The appeal is made by Gladman Developments Ltd against the decision of Wiltshire Council.
- The application Ref is PL/2022/09842.
- The development proposed is the demolition of number 13 and 14 Storridge Road and the erection of up to 200 dwellings (including affordable housing), with public open space, structural planting, landscaping, sustainable drainage system and vehicular access point.

DECISION

1. The appeal is dismissed.

PRELIMINARY MATTERS

Documents and Drawings

2. The appeal is for outline planning permission with all matters reserved except for access, which is applied for in full. An Indicative Development Framework Plan[1] (DFP) and an Illustrative Masterplan[2] were submitted with the application the subject of the appeal. I refer to these documents as appropriate throughout my Decision, whilst acknowledging their illustrative nature.

3. A number of other submissions were received prior to, during and after the Inquiry, as set out in Annex B. I am satisfied that in all cases the material was directly relevant to, and necessary for, my Decision. All parties were given opportunities to comment as required and there would be no prejudice to any party from my consideration of these documents. The appeal is therefore determined on the basis of the revised and additional documents and drawings.

Policy

4. The adopted Development Plan includes the Wiltshire Core Strategy 2015 (the CS) and the Wiltshire Housing Sites Allocation Plan 2020 (the WHSAP). The Council began work on its emerging Local Plan (the eLP) in 2017. A Regulation 19 draft of the eLP was consulted upon between September and

[1] Ref CSA/2974/116 Rev B
[2] Ref G.W2.PSS.01

November 2023. The current timetable is for the eLP to be submitted for examination towards the end of this year, with adoption in 2025. Because the eLP has not yet undergone its examination, it is likely that it will be the subject of modifications. It is common ground, and I agree, that it therefore carries limited weight. I refer to the eLP as appropriate throughout my Decision.

5. On 30 July 2024, the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Proposed Framework) and other changes to the planning system. I provided the main parties with the opportunity to comment. The Proposed Framework and other changes to the planning system are draft and therefore may be subject to change before being adopted. They therefore carry limited weight but are nonetheless material planning considerations to which I refer as appropriate throughout my Decision.

Adjacent Site Planning Application

6. On land to the north of the appeal site, known as 'Glenmore Farm', a planning application[3] for up to 145 dwellings and associated works was refused permission on 11 March 2024. I refer to this application as appropriate throughout my Decision.

Flood Risk and Drainage

7. The fourth reason for refusal is in relation to flood risk and drainage. However, additional information has since been submitted and further discussions held between the main parties and the Local Lead Flood Authority. In light of this, and as set out in the Drainage Statement of Common Ground May 2024, the Council did not pursue this reason for refusal.

Affordable Housing

8. The Council agreed through the Statement of Common Ground that the level of proposed affordable housing is acceptable. Additionally, under cross-examination the Council agreed that the revised proposed affordable housing mix[4] meets the Council's requirements as set out in its Planning Consultation Response dated 6 November 2023[5], and that it could be satisfactorily accommodated within the proposal. This element of the second reason for refusal is not, therefore, in dispute.

Character and Appearance

9. The DFP indicates the extent of built development that could come forward. Based on an assumption of 38 dwellings per hectare (dph), the site could accommodate up to 200 dwellings within this land. The Council confirmed during cross-examination that it has no concerns with the character and appearance of the proposal so long as it is not more than 38 dph and is within the areas allocated for built development. The extent of built form and the allowable dph could both be controlled by condition. In this context,

[3] Ref PL/2021/03749
[4] See Appendix 3, Mr Lee's Proof of Evidence
[5] CD3.24

there is no dispute regarding the character and appearance of the proposal and this element of the second reason for refusal has therefore fallen away.

10. There is, however, remaining dispute regarding whether or not the proposed areas allocated for built development would be acceptable with regard to ecological and noise concerns, which I deal with as appropriate throughout my Decision.

Local Infrastructure

11. The seventh reason for refusal is in relation to the effect on local infrastructure in the absence of a completed s106 Planning Obligation. The final s106 Planning Obligation, dated 30 July 2024 (the s106), secures:
- a contribution towards early years education;
- a contribution towards strengthening the rail underbridge on Station Road;
- a landscaping plan, including open space of not less than 6,986 sq m and a play area of at least 354 sq m, and the management and maintenance of the open space and play area by a management company;
- a monitoring fee for the Council;
- a contribution towards primary healthcare;
- a contribution towards community sports facilities;
- a contribution towards mitigating the recreational impact arising from the future occupants of the proposal on the Pickett and Langer Site of Special Scientific Interest (SSSI);
- a contribution towards mitigating the loss of bat habitat in the Trowbridge Community Area as a result of the proposal;
- a contribution towards the provision of waste and recycling containers for the proposed residential units; and,
- the provision of at least 40% of the proposed residential units to be for affordable housing, with a split of 60% affordable rented units, 15% shared ownership units and 25% First Homes, with a mix as set out in Schedule 3 of the s106.

12. The contribution towards strengthening the rail underbridge is necessary because the bridge cannot currently bear busses. It is related to the appeal proposal with regard to the accessibility of the site. The likely costings have been estimated and the contribution is a proportionate percentage of this cost. The s106 allocates the contribution for the works to the bridge, and has provisions ensuring that the money is spent as stated or is returned if not used within 10 years. It therefore meets the tests set out in Regulation 122 of the CIL Regulations 2010 (the CIL Regs) and at Paragraph 57 of the National Planning Policy Framework 2023 (the Framework).

13. The proposal would create demand for the use of primary healthcare facilities by the future occupants of the proposed dwellings. The NHS has confirmed[6] that there is not sufficient capacity in existing primary healthcare facilities to accommodate the increased demand. The NHS has therefore requested a contribution towards the delivery of additional primary care floorspace, proportionate to the number of expected new residents. This has been reflected in the s106. However, the responsibility of allocating and funding primary healthcare falls to the NHS, not the Council, and is outwith

[6] CD3.30

the planning system. The NHS has not identified specific works that the funding would go towards.

14. Therefore, it has not been demonstrated that the primary healthcare contribution is necessary to make the development acceptable in planning terms and it fails to meet the tests for a planning obligation. In accordance with Paragraph 3.4 of the s106, this obligation therefore carries no weight and is not enforceable. Otherwise, the Council's CIL Compliance Statement sets out the detailed background and justification for each of the obligations, and I am satisfied that the provisions of the submitted agreement that relate to the effect of the proposal on local infrastructure would meet the tests set out in the CIL Regs and the Framework, and I have taken them into account. The seventh reason for refusal is not, therefore, a main issue for the appeal.

15. I assess the obligations in relation to ecology later in my Decision. In general, I return to matters of weight and detail of the s106 throughout my Decision as appropriate.

Biodiversity Net Gain

16. The sixth reason for refusal is in relation to Biodiversity Net Gain (BNG). However, additional details have been submitted by the appellant, as set out in detail in the Ecology Statement of Common Ground dated 18 June 2024. The Council has reviewed the information and has confirmed that it has been adequately demonstrated that there would be no net loss of biodiversity and that the proposal can deliver a degree of BNG. The Council did not, therefore, pursue this reason for refusal.

MAIN ISSUES

17. The main issues are:
    - whether or not the appeal site is an appropriate location for development of this type, having regard to local and national planning policy and guidance;
    - whether or not the proposed development would provide satisfactory living conditions for future occupiers, with particular regard to noise from the West Wiltshire Trading Estate (WWTE), and the capacity of the site to accommodate proposed noise mitigation works;
    - whether or not the proposed development would create potential future risks to the operation of the WWTE, with particular regard to the 'agent of change' principle and noise; and,
    - the effect of the proposal on ecology, including on the integrity of the Bath and Bradford on Avon Bat Special Area of Conservation (SAC) particularly with regard to bat mitigation, and the capacity of the site to accommodate proposed ecological works.

18. In addition to the above, housing land supply (HLS) is a disputed issue and I will, of course, need to consider the overall planning balance.

REASONS

Principle

19. The appeal site is located adjacent to, but outside of, the defined settlement boundary (SB) for Westbury, a second-tier settlement 'market town' in Wiltshire's settlement hierarchy. It is not allocated for development in the CS

or in the WHSAP. It is common ground, and I agree, that the site is therefore in the 'countryside' in planning policy terms.

20. Core Policy 1 of the CS sets out the settlement strategy for the Council. It states that market towns have the potential for significant development to sustain and enhance their services and facilities. Core Policy 2 of the CS sets out the delivery strategy for the Council, with a distribution strategy for new homes. In particular, it states that development will not be permitted outside SBs, unless permitted by other policies within the CS as set out at Paragraph 4.25. None of the other policies are relevant to the appeal proposal.

21. Core Policy 32 of the CS relates to development in the Westbury Community Area, within which the appeal site sits. This allocates housing to the Westbury area but does not allocate the appeal site for any of this housing. In addition, approximately 115 homes are expected to be accommodated on unallocated sites in the area. However, this should be read in the context of Core Policy 2, which states that development will not be permitted outside SBs.

22. There is no cap on the provision of housing. The size of the proposal, whilst not insignificant, is not to such a degree that by itself it would materially distort the spatial distribution of housing in the Council as a whole. Nevertheless, the three policies taken together set out the spatial strategy for housing development in Wiltshire as it relates to the appeal proposal. It is clear that development on the appeal site conflicts with the spatial strategy, because it is not within the SB, nor is it allocated, and nor does it meet any of the special exemptions set out.

23. There is some conflict between the Council's spatial strategy and Paragraph 180 of the Framework, which recognises the intrinsic character and beauty of the countryside but does not set out an in-principle objection to the provision of housing in countryside locations. This was agreed by the Council under cross-examination. This reduces the weight I attach to the conflict with the spatial strategy that I have identified above.

24. However, the Council has adopted the WHSAP and the appeal site remains outside the SB and unallocated. The WHSAP was adopted in the context of the Framework. In addition, the evidence base for the eLP includes a site selection process[7] regarding the potential site allocations in and nearby to Westbury. The site selection process is thorough and considers the potential sites against the key place shaping priorities for the eLP. The appeal site has not been allocated. I acknowledge that this is part of the emerging evidence base and that the eLP has limited weight. However, it still provides an indication of the possible spatial strategy moving forward. Therefore, whilst I reduce the weight to be applied to the conflict with the spatial strategy, this is only to a limited degree.

25. Overall, therefore, the appeal site is not an appropriate location for development of this type, having regard to local and national planning policy and guidance. Although not full weight, I place significant weight on this conflict with the spatial strategy that I have identified, including the conflict with Core Policies CP1, CP2 and CP32 of the CS and the WHSAP.

[7] Planning for Westbury, dated July 2023

Living Conditions

Existing

26. The appeal site is located close to the WWTE, which lies to the west. There is a buffer of woodland along the western border of the site which provides some protection from noise from the WWTE to the southern part of the appeal site. However, to the northern element, and particularly where it dog-legs around the top of the existing woodland, the appeal site is subject to noise pollution from the various activities on the WWTE. The appellant's Noise Assessment by Sharps Acoustics, dated October 2023, shows that this noise is at least 43 dB across this top part of the site in daytime and at least 38 dB at nighttime.

27. There are other noise sources, including road traffic. However, the primary point of dispute is regarding noise pollution from the WWTE. This is because the noise levels from the WWTE are higher than those from road traffic and other sources and also because of the nature of the noise. The WWTE creates specific noise from the operation of the various commercial premises on the estate. This is of a different character to the anonymous, relatively consistent background noise created by road traffic.

28. Within the WWTE is the Venom nightclub. This is licensed to operate internally until 05:00 every day of the year. It can also hold up to three outside events including marquees per year, as set out in its licensing restrictions[8]. This is a further source of noise from within the WWTE that I need to consider.

Methodology

29. The aim of Wiltshire Council's Planning Consultation Guidance Note Noise and Vibration 2023 (the Guidance Note) document is to avoid likely significant adverse effects (SOAEL) and where there would likely be lowest adverse effects (LOAEL) to seek to minimise and mitigate against them. The same approach is broadly adopted through national and international policy and guidance and is set out in the Statement of Common Ground. I therefore agree this is a suitable framework for assessing the effect of noise on the living conditions of the future occupiers of the proposal.

30. The World Health Organisation Guidelines for Community Noise 1999 (the WHO Guidelines) set out[9] that noise levels of 35 dB would generate moderate annoyance in the daytime, and 30 dB would create sleep disturbance in bedrooms at nighttime. This is reflected in the guidance at Table 4 of BS8233:2014. As these are the levels where beyond which annoyance would be more than moderate or where sleep disturbance would occur, they can be sensibly used as guidance for being the threshold above which noise levels move from LOAEL to SOAEL.

31. With regard to the WWTE, there are clear impulsive and tonal elements to the noise. BS4142:2014+A1:2019 (BS4142) sets the penalty at up to 6 dB for tonality and up to 9 dB for impulsivity. BS4142 additionally states that these penalties can be additional to one another but only if the characteristics are both present without one being dominant. As

[8] CD7.34
[9] See Table 4.1, CD7.02

acknowledged by BS4142, attributing the correct penalty is a subjective exercise, albeit based on careful consideration of the nature of the noise source. It is not clear if one or the other is dominant from the WWTE. A penalty for each element should therefore be applied additional to one another.

32. The appellant has adopted this approach, albeit whilst disputing its necessity, and used a penalty of 4 dB for tonality and a further 3 dB for impulsivity. This is a reasonable approach based on the nature of the noise from the WWTE, eg vehicle turning alarms or the operation of plant and machinery, and that neither characteristic is dominant. I therefore adopt the 7 dB penalty applied by the appellant. In addition, it is common ground, and I agree, that the typical noise reduction from even a partially open window is 13 db.

33. Based on this, ie the addition of 7 dB and the subtraction of 13 dB from the WHO/BS8233 baselines, the appropriate LOAEL thresholds are 28 dB during the daytime and 23 dB at nighttime for internal noise for the proposed dwellings, and 43 dB within the gardens at anytime. The external noise at the elevation is 41 dB daytime and 36 dB nighttime.

Assessment

34. The appellant has used the DFP layout to provide an assessment of the noise levels that would be experienced by the future residents of the proposal. The proposal is in outline. However, the proposed DFP provides a reasonable expectation of the likely final layout based on the density being applied for and the developable areas as set out on the drawings. I therefore view this assessment as robust and use it, along with all other relevant evidence, as the basis for my assessment.

35. The Guidance Note sets out a hierarchy of approaches to seeking to mitigate noise effects, as follows: 1. Control noise at source; 2. Site layout and design; 3. Dwelling layout and orientation; 4. Planning restrictions; 5. Building envelope for mitigation. Planning Practice Guidance[10] (PPG) sets out mitigation types, including avoiding noisy locations in the first place, design of the development, mitigation through noise barriers and other measures, and then optimising sound insulation within the building envelope. PPG does not specifically use a hierarchy. However, the list of measures is provided in order. The Council's Guidance Note adopts the same factors and broadly reflects PPG. I therefore assess the proposals using this framework as a guide, and broadly considering it as a hierarchy but whilst considering all the factors, and other relevant material considerations, in the round.

Noise source

36. The WWTE operates with very few restrictions on noise. The over-arching planning permissions for the WWTE[11] include no restrictions on noise emissions or hours or nature of operations on the estate. The Copart unit has controls on operating hours and the location and direction of a hydraulic crusher, Welton Bibby Baron has a requirement for an acoustic bund and noise restrictions, and SPC has noise restrictions. The other units on the estate have no restrictions. It is, by its nature, a largely unrestricted

[10] Paragraph 010 Reference ID: 30-010-20190722, dated 22 July 2019
[11] Refs W/89/01395/OUT, W/94/01067/OUT and 4/01431/OUT

industrial estate. This is one of the defining features of the WWTE and is integral to its operation and character. It is not, therefore, possible or desirable to meaningfully restrict the WWTE with regard to noise pollution.

Site layout and design

37. It is proposed to construct residential homes throughout the appeal site, within the defined developable areas. This includes areas within the dog-leg of the site that is most affected by noise from the WWTE. An acoustic bund is proposed along the two boundaries with the WWTE. The appellant has stated that all private gardens could be surrounded by a 1.8m high fence or other screen. These features could be secured by condition. Subject to this, it is common ground, and I agree, that acceptable noise levels would be achieved within gardens.

38. It has been demonstrated that the appeal site has the capacity to accommodate the proposed acoustic mitigation measures, for example the noise bund. However, the proposal includes homes across the majority of the appeal site, including the areas most affected by noise from the WWTE. Alternative layout options include moving the proposed build area further eastwards but still within the northern section of the appeal site. However, this would likely have limited effect on reducing noise at the facades of the proposed residential buildings because the noise levels only fall by approximately 2 dB across the appeal site. There will always need to be a barrier block, ie the first one that receives the noise from the WWTE.

39. A further alternative layout to that as proposed would be to restrict the proposed built form to the southern part of the site, to the east of the existing woodland buffer to WWTE. This would remove nearly all the properties affected by noise above the LOAEL threshold from the proposal. However, this is not before me.

Dwelling layout and orientation

40. There could be further refinement of the layout of the homes within the proposed buildings to ensure that as many as possible retained at least one façade not materially affected by noise from the WWTE. However, this has already been considered by the appellant and it is unlikely that any significant improvement could be made on the illustrative layout whilst maintain the density as proposed.

Building envelope for mitigation

41. It is common ground, and I agree, that acceptable, ie below LOAEL, internal noise levels could be achieved within all proposed residential properties with windows closed, subject to control of the specification of the windows by condition. However, an area in dispute between the main parties is whether or not expecting the residents of some of the proposed properties to need to close their windows in order to achieve this suitable noise environment, ie to minimise and mitigate the noise above the LOAEL thresholds in accordance with policy and guidance, is an acceptable approach.

42. The Guidance Note is inconsistent in that it sometimes states that a strategy relying on closed windows is unacceptable and in other places it states that closed windows could be considered depending on how often it is necessary to close them, or that applications relying on closed windows will only

normally, but not always, be refused. The Wiltshire Design Guide 2024 (the WDG) states, at Paragraph 9.1.3, that noise levels within habitable rooms should always be assessed on the assumption that windows are open. PPG acknowledges[12] that any strategy that requires closing windows is an important consideration, but it does not explicitly seek to prevent such a strategy. Core Policy 57 of the CS requires proposals to achieve appropriate levels of amenity for future occupiers but does not have specific guidance regarding closed windows.

43. It is therefore clear that policy and guidance, whilst not always supportive, does not explicitly prevent the use of closed windows as part of the mitigation strategy relating to noise pollution. However, the effect such a strategy might have on the living conditions of future occupants must be carefully considered. For example, the number of closed windows and affected rooms and dwellings, how long and the frequency that they need to be closed, and the general feeling of airlessness that it could create.

44. In this regard, the appellant's assessment finds that, with windows open, all the facades along the properties closest to the north west boundary of the site, and some of those facing northwards, would not be able to achieve 41 dB at the elevation during the daytime. At nighttime, all those facades and several further ones on properties further to the east would not be able to achieve 36 dB at the elevation at nighttime. It is not possible at this stage to have precise figures for the numbers of affected properties, but the appellant's own evidence finds 91 bedroom windows and 12 living room windows would be affected. 21 of those bedroom windows would be at least 43 dB (nighttime). Overall, it is common ground that approximately 70 units, ie 35%, would need to have at least one window closed for at least some of the time to achieve an acceptable internal environment.

45. This is a relatively high proportion. I acknowledge that in all cases there would be at least one façade that would not require closed windows but it is likely that several individual rooms, including bedrooms at nighttime and living rooms in the daytime, would require closed windows. Because of the largely unrestricted nature of the operation of the WWTE, including at night, this is likely to require closed windows for significant periods of time.

46. This would have a significant effect on the living conditions of a relatively large proportion of the future occupiers for a relatively large proportion of the time that they occupy the homes. Although mechanical ventilation would be provided there would still be a perception of airlessness. It would create a feeling of not being able to fully enjoy their own property without restrictions on how they use it. It is an acknowledgment that a sub-optimal solution to the creation of acceptable internal living conditions within the propose homes needs to be adopted to mitigate a factor that could have been designed out entirely by adopting a more restricted are of built development for the site layout, as set out above. The approach adopted by the appellant has designed-in the requirement for a mitigation measure that causes a meaningful reduction in the quality of accommodation that can be provided.

[12] Paragraph 006 Ref ID 30-006-20190722

Venom nightclub

47. Indoor events at the nightclub do not result in harmful levels of noise above background noise levels on the appeal site. The outdoor events could cause some level of harmful noise pollution, particularly because loud music can be particularly harmful to well being through, for example, bass music and its particular location in the octave range. However, this is strictly controlled to up to three events per year. In addition, the nightclub's licensing restrictions control the noise from the nightclub and, in effect, provide the Council with the ability to prevent the nightclub creating any more noise than it does from its current operations. Therefore, whilst there could be some harm to the living conditions of the future occupiers, this would be extremely limited due to the infrequency of the events.

Existing residents

48. The nearest existing residents are those on Hawkeridge Park, to the east of the appeal site. This is located up the hill from the appeal site and is further away from the WWTE. It is common ground, and I agree, that the current noise levels experienced by the residents on Hawkeridge Park with properties facing the WWTE are typically 41 dB in the daytime within their gardens and 38 dB at nighttime on bedroom windows. This is similar to or worse than the expected noise conditions for many of the proposed properties. However, this does not mitigate the poor quality of living conditions that would be created for the future residents of the appeal proposal, which I must consider on its own merits.

Glenmore Farm

49. At Glenmore Farm, the nearest dwellings were pulled back away from the industrial estate and are more than 100m further from the boundary with the WWTE than the proposed dwellings at the appeal site. The sound environment is also different at the Glenmore Farm site, which is at a different angle to the WWTE. In addition to this, traffic noise has a greater impact on the background at Glenmore Farm because of the proximity to the B3097. In any event, I must consider the appeal proposal on its own merits.

Context

50. The appeal site is a green field but it is sandwiched between the existing residential areas of Westbury and the WWTE. Future residents would have some expectation of noise from surrounding sources and would not be expecting to move into a rural location. Nevertheless, there would be a reasonable expectation from residents that they would be able to open their windows without experiencing unacceptably high noise pollution for significant periods of time.

Overall

51. It has been demonstrated that the appeal site has the capacity to accommodate the proposed noise mitigation works in the sense of the noise bunds and other physical requirements within the layout. However, as set out above, the proposed development proposes residential units on parts of the appeal site where noise from the WWTE would require closed windows to create an acceptable internal environment. This would create unacceptable internal living conditions for future occupiers.

52. The proposal therefore conflicts with Core Policy 57 of the CS which requires proposals to achieve appropriate levels of amenity. It also fails to comply with Paragraph 135 of the Framework which requires developments to provide a high standard of amenity for future users. Core Policy 32 of the CS is referenced on the decision notice. However, the policy relates to the spatial strategy for the Westbury Community Area and does not relate to living conditions. It is not, therefore, relevant to this main issue.

Agent of Change

53. As set out above, the proposal would create a significant proportion of dwellings where the residents would be required to close some of their windows for significant periods of time to achieve a satisfactory internal noise environment and by extension satisfactory living conditions. There would therefore be a very real risk that the proposal would give rise to complaints by the future residents regarding operations on the WWTE.

54. In addition, the assessment of noise from the WWTE provided by the appellant includes assumed expansion of the WWTE, based on interviews with the existing businesses on their operational plans, and on assumptions on the increases in activities and noise that might occur. The appellant therefore contends that its modelling is in relation to the maximum feasible levels of noise pollution from the WWTE. However, the future use of the WWTE could include new businesses locating on the estate. On many of the plots, they would be completely unrestricted. Also, although the appellant has interviewed the current occupiers regarding likely future expansion plans, it is feasible and realistic that the plans of the companies might change over time. None of these factors have been captured by the noise assessment.

55. There would be some restrictions on the noise that could be generated by the WWTE in the future because the Council has duties and powers through Part III of the Environmental Protection Act 1990 to investigate and act to prevent statutory nuisances due to noise. Therefore, a significant adverse noise impact would be stopped, if it was to occur. However, a statutory nuisance is a greater effect on living conditions than that relating to the LOAEL and SOAEL thresholds.

56. In addition, there are existing residents at Hawkeridge Park that also act as a constraint on excessive noise from the WWTE. However, the noise experienced by residents at Hawkedridge Park is not the same as that as would be experienced by some of the future residents on the appeal site, which would be much nearer the WWTE, and therefore potentially more affected, if not by absolute dB levels then by tonality or other factors.

57. It has not therefore been satisfactorily demonstrated that the proposal would not create potential future risks to the operation of the WWTE with regard to noise pollution and the agent of change principle. The proposal therefore conflicts with Core Policy 57 of the CS which expects proposals to be compatible with adjoining buildings and uses, and Core Policy 35 of the CS which safeguards the contribution of Principal Employment Areas[13] to the Wiltshire economy. It also fails to comply with Paragraph 191 of the Framework which requires new development to be appropriate with regard

[13] Which Core Policy 32 confirms applies to the WWTE

to the wider area and the impacts that could arise, and Paragraph 193 which requires that new development integrate effectively with existing businesses and that they should not have unreasonable restrictions placed on them as a result of the development permitted.

Ecology

Appropriate Assessment - Bath and Bradford on Avon Bat SAC

Responsibilities

58. The appeal site is within the consultation area for the Bath & Bradford on Avon Bats Special Area of Conservation (the Bat SAC), located 10.25 km to the north. Therefore, Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regs) indicates the requirement for an Appropriate Assessment (AA). As the Competent Authority, I have therefore undertaken an AA.

The species and habitats

59. The conservation objectives for the SAC, as set out by Natural England (NE), are to maintain or restore the habitat for qualifying species and the populations and the distribution of qualifying species within the SAC. The qualifying species are the lesser horseshoe bat, greater horseshoe bat, and the Bechstein's bat. Bechstein's bats, in particular, are of exceptional importance and their rarity contributes towards their importance, as agreed by the appellant in cross-examination.

60. The SAC itself comprises extensive networks of caves, mines and man-made tunnels which are used by bats for hibernation, mating and as a staging post prior to dispersal. It also includes areas of calcareous grassland, scrub and woodland which are used as feeding and commuting habitat by the bats.

61. The Westbury Leigh Core Roost for greater horseshoe bats has a 4 km buffer that washes over the appeal site, as set out in the Bat Special Areas of Conservation Planning Guidance for Wiltshire 2015 (the Guidance). The appellant's ecological surveys found regular recordings of greater horseshoe bats on the appeal site.

62. There is also a core roost for Bechstein's in the Picket and Clanger Wood SSSI, also within the SAC. The Guidance identifies a 1.5 km wide core area for this roost, which are the areas regularly used for foraging and commuting. This covers the northern part of the appeal site. The mist trapping and other survey work did not definitively find presence of Bechstein's on the appeal site. However, Bechstein's can sometimes commute beyond core sustenance zones and it is very difficult to distinguish Bechstein's bats from general myotis bats, which were regularly recorded in the surveys. Given their rarity and importance it is therefore appropriate to assume that Bechstein's bats use the appeal site for foraging and commuting.

63. The appeal site includes hedgerows with semi-mature trees along its boundaries to the western and northern boundaries. H1 and H2[14] are relatively mature and deep. H3 is relatively thick and includes lots of trees.

[14] References taken from the Ecological Parameters Plan – Core Bat Habitat Buffers & Enhancements Ref 7289-E-03

H4 is slightly gappy and quite thin even where not a gap. H5 less so and relatively thick. Overall, although with some areas of limited habitat, the hedgerows provide navigational and foraging habitat for the bats, as demonstrated by the fact that bats were recorded along the hedgerows in the surveys.

64. The hedgerows and trees provide connectivity to suitable nearby habitat, in particular the woodland to the west and the semi-mature woodland by the north east. The habitat then links onwards via an integrated network of commuting roots and foraging areas to the core roosts for the bats for which the Bat SAC has been designated, as set out in the Ecology Statement of Common Ground. The appeal site therefore provides functionally linked habitat for bats.

65. Outside of the hedgerows, the majority of the appeal site, ie the agricultural field, provides limited suitable habitat. However, there is an area of grassland to the northeastern part of the site. This provides opportunities for bat foraging.

Would there be a likely significant effect (LSE), either alone or in-combination

66. It is proposed to introduce built form to much of the appeal site, primarily through residential development and associated access roads and works. The appeal site is over 10km away from the SAC. However, the proposal has the potential to affect the integrity of the SAC either by recreation pressures on the SAC itself generated by the future residents or with regard to how the proposed works on the site would affect foraging areas and commuting corridors within the functionally linked habitat, which both NE and the main parties have confirmed are vital in supporting the bats associated with the SAC, and therefore to protecting its integrity.

67. In addition, the northernmost part of the appeal site is within the Trowbridge Bat Mitigation Strategy SPD 2020 (the TBMS) and 'Yellow Zone', where there is a medium risk of negative impact on bat populations based both on impact of habitat and due to increased recreational pressure associated with the Bechstein's core roost.

68. There is, therefore, a likely significant effect on the integrity of the SAC from the proposal, both from the proposed works to the appeal site and in-combination with other developments with regard to recreational pressure on the SAC.

Mitigation

Directly on the SAC

69. The s106 secures a contribution towards mitigating the loss of bat habitat in the Trowbridge Community Area as a result of the proposal. The contributions from this would be adequate to purchase, plant up and maintain an amount of habitat in proportion to the effect of the proposed development on this habitat. The future residents of the proposal would likely result in an increase in dog walking in the Picket & Clanger Wood SSSI within the SAC, which could cause harm to the habitat within the SAC. The s106 secures a contribution towards mitigating this recreational impact. It is

therefore common ground, and I agree, that these contributions adequately mitigate the effect of the proposal in these regards.

The appeal site

70. Although the proposal is in outline, save for access, an Ecological Parameters Plan[15] (EPP) and TBMS Compliance Plan[16] have been submitted which provide details regarding the proposed approach to matters affecting the bats and therefore the integrity of the SAC.

71. The habitat of most value to bats, ie the hedgerows, would be retained and enhanced through more tree and other planting to add structure, diversity and depth to the hedgerows. Buffer zones with no no or very low lighting would also be provided. These areas would comprise retained and enhanced hedgerows, greenspace buffers and general landscaping including trees and grassland within the appeal scheme.

72. It is common ground, and I agree, that all the proposed works would be an enhancement on the existing situation, where there is an arable field directly abutting the relatively narrow hedgerows. It is also common ground, and I agree, that all the works would also meet the requirements of The Guidance, as set out in Chapter 5 of that document. These include that foraging areas and commuting corridors be created with associated dark corridors, to maintain and extend the quality of habitats for foraging and commuting, and that such land should be within public areas and to be maintained and managed in the future as is secured in the s106.

73. In addition, within the wide buffer to the north western boundary, ie H2 and beyond, the proposed drainage features would sometimes flood but this would attract insects that would provide a source of nourishment for the bats. The allotments would provide some activity from the users of them, but this would be relatively limited. These are also both outside the primary hedgerow buffer zone of 15m. The grassland area would also be within this area. The specific detail of the grassland could be controlled by condition to ensure that the habitat provided enhanced that by the existing grassland in this area.

74. However, whilst The Guidance does not specify specific widths for the foraging and commuting corridors and associated dark corridors, within the Yellow Area to the northern part of the appeal site, the TBMS provides specific guidance. This is that a commuting and foraging area of a minimum width of 15m is provided and, adjacent to this, a further 15m minimum width dark corridor is provided, with a maximum light level of 1 Lux.

75. Although a 15m wide commuting and foraging area is proposed, the adjacent dark corridor area is not consistently achieved by the proposal. There are pinch points where there would be Lux levels in excess of 1, in places significantly in excess of 1. As set out above, there are also areas within the wide swathe of land to the north west boundary where there would be some interventions, such as allotments, that would slightly compromise the buffer zone.

[15] Ref 7289-E-03, dated 6 June 2024
[16] Ref 7289-E-05, dated 6 June 2024

76. However, the TBMS states that the most important principle is that wide swathes of land be provided for bat commuting and foraging. These are provided along the northern and western boundaries as is agreed by the main parties, even if in places the swathes do not quite meet the specific widths set out in the document. The TBMS also states that development is expected to result in no net loss of habitat, which is proposed, and that core bat habitat must remain connected to the wider habitat network and be adequately buffered, which is also proposed. The relatively minor pinch points would not prevent the proposal meeting the over-arching principles of the TBMS.

77. There are other boundary areas where the swathe would not meet TBMS standards but these are outside the Yellow Zone and therefore the TBMS standards are not applicable. Whilst I recognise that bats don't fly to lines drawn on a plan, the Yellow Zone has been drawn for a reason. Outside, it is reasonable to expect a relaxation in standards as long as suitable habitat is provided ensuring there would be no likely significant effects on the integrity of the SAC.

78. The proposed noise bund would result in a physical barrier. However, it could be controlled by condition to provide suitable planting that would aid commuting and foraging for bats, and provide suitable habitat for the insects that the bats feed upon. It might require bats to expend energy to fly over or around the bund, but the overall effect of the bund would be positive with regard to bats.

79. I acknowledge that allocated sites in the Development Plan are required to meet, in full, the standards set out in the TBMS. However, I must assess the proposal before me, which I have found to be acceptable in this regard.

Conclusion

80. The proposal would meet the Guidelines in full. It would represent a demonstrable improvement and enhancement on the existing habitat and wide swathes of suitable bat habitat would be provided. The improvements to bat habitat would enhance the functional linkages of bats to the core roosts within the Bat SAC. The proposal would fail to comply with the TBMS with regard to the specific widths of the dark corridors but would comply with the over-arching principles of the document. As set out above, the s106 secures adequate mitigation for the effect of the proposal with regard to recreational pressure on the SAC itself and wider bat habitat within the Trowbridge Community Area.

81. Overall, therefore, the proposal would not harm the integrity of the Bat SAC, either alone or in-combination with other projects. It is therefore also demonstrated that the appeal site has the capacity to accommodate the proposed ecological works. The proposal therefore complies with Core Policy 50 of the CS, which seeks to maintain ecological value and to secure the integrity of local ecological networks. It also complies with Paragraph 180 of the Framework which seeks to protect and enhance sites of biodiversity value, and Paragraph 185 which states that development on land outside of a SSSI that is likely to have an adverse effect on it should not normally be permitted.

OTHER MATTERS

S52 Agreement

82. There is an historic agreement under s52 of the Town and Country Planning Act 1971 which affects part of the appeal site and prevents development on much of it. If the appeal is allowed, then prior to implementation of the proposal, the s52 would need to be revoked. This would be a parallel process. The legal test to be considered is whether or not the s52 continues to serve a useful planning purpose. The granting of a planning permission for development over all the s52 land would, in itself, prove that the land is appropriate for development and would therefore demonstrate that the s52 no longer serves a useful planning purpose. I therefore agree with the main parties that the s52, whilst a material planning consideration, has limited weight because it no longer serves a useful planning purpose.

Housing Land Supply

Need

83. It is common ground, and I agree, that, in accordance with Paragraph 226 of the Framework, the Council only needs to demonstrate a four year supply of housing land because its eLP has reached Regulation 19 stage including a policies map and proposed allocations towards meeting housing need.

84. It is also common ground, and I agree, that because the Council's strategic policies are more than five years old the supply should be measured against the local housing need as calculated using the Standard Method (SM). No buffer is required because there has not been a significant under delivery of housing over the previous three years. This is as set out at Paragraph 77 and Footnotes 42 and 43 of the Framework. The SM calculated local housing need is 1,952 dwellings per annum (dpa), ie total dwellings over five years of 9,760.

Supply

Windfall

85. The Council's windfall allowance is 1,369 dwellings, comprising 710 on small brownfield sites, 408 on small greenfield sites, and 251 on large brownfield sites. As required by Paragraph 72 of the Framework, where windfall sites are to be relied upon, there must be compelling evidence that they will provide a reliable source of supply. In this regard it is common ground, and I agree, that the 251 dwellings on large brownfield sites have been justified through compelling evidence.

86. For the small sites, the historic delivery rates in the Council area from 2006 to 2023 have been 250 dpa on small brownfield sites and 110 dpa on small greenfield sites, ie 360 dpa in total for small sites. Various factors can influence windfall trends, including but not limited to macro-economic conditions, both local and national politics, and both local and national planning policy. Predicting where this might go in the future is extremely difficult. I have seen no compelling evidence that the future delivery of small windfall sites would be materially different to the aggregate delivery of small sites in the period 2006 to 2023. In addition, the Council has stated that sites in its Strategic Housing and Economic Land Availability Assessment

have historically made a very low contribution towards windfall development[17].

87. The calculation should relate to the delivery of homes, not planning permissions which do not necessarily translate into homes on the ground. It is also possible that more than one planning permission is granted on the same site, only one of which would be built out, therefore leading to over-counting if basing the windfall allowance at least partially on planning permissions.

88. Occasionally, large unallocated greenfield sites will come forward. However, they will almost certainly be in conflict with the spatial strategy of the Development Plan and will have been granted permission because material considerations indicate otherwise, most likely because of a lack of a suitable supply of housing land and the application of the 'tilted balance'. That does not mean the houses are not built, of course. However, including an allowance for such sites would, in effect, elevate the calculation of housing land supply to helping dictate the spatial strategy of the Council. Therefore, the greenfield allowance should not be raised to include delivery on large unallocated greenfield sites. I note that this is consistent with the position adopted by the Inspector for a recent appeal[18].

89. The Council's small sites windfall contribution should therefore be 1,800 dwellings, ie 360 x 5, to reflect the long term historic trend. 1,159 of these are already accounted for from deliverable small sites with planning permission. 641 dwellings are therefore to come from a small site windfall allowance. This is in addition to the 251 dwellings from large brownfield sites, leading to an overall windfall dwelling contribution of 892. This is a reduction of 477 dwellings compared to the Council's position.

Disputed sites

90. The Glossary to the Framework defines deliverable sites as those with a realistic prospect that housing will be delivered within five years. The realistic prospect needs to be considered in the context of the further parts to the definition. Part a) states that all sites with extant detailed planning permission should be considered deliverable unless there is clear evidence otherwise. Part b) states that where a site has outline planning permission, is allocated in a Development Plan, has a Permission in Principle, or is in a brownfield register, it should only be considered deliverable where there is clear evidence that completions will begin within five years.

91. I set out below my assessment of the disputed sites, under these two broad categorisations. The site references are taken from the submitted Scott Schedule[19].

Part a) sites

92. Site 1 - Sales data and Council Tax data do not directly relate to completions. The email from the developer dated 5 December 2022 regarding a pending slowdown is fairly old and has no meaningful evidence, justification, or assessment of a slowdown. I place limited weight on this.

[17] See A28, Housing Land Supply Statement June 2024
[18] Ref APP/Y3940/W/23/3315432, dated 21 July 2023
[19] ID06

The build out rate of 65 dpa adopted by the Council is based on a pro rata calculation from the first year's delivery. This is a reasonable basis for the calculation and no clear evidence has been provided otherwise. The dwellings should therefore remain in the supply.

93. Site 2 – The build out rate based on comparators in Devizes should be 38 dpa. But, based on a comparator of the developer of this site, Linden Homes, it could be up to 72 dpa. Both are relevant considerations. The build out rate adopted by the Council of 55 dpa falls between them and is, therefore, a reasonable position to adopt. The dwellings should therefore remain in the supply.

94. Site 4 – This is an office to residential conversion that has been granted prior approval, although it has since been confirmed that prior approval is not required[20]. The expiry of the most recent prior approval in July 2024 is not therefore an impediment to delivery of the dwellings. I acknowledge that two previous prior approvals were not implemented. However, photographic evidence has been provided that works have begun on site. The dwellings should therefore remain in the supply.

95. Site 5 – It is common ground that this has been completed. Whether or not this was prior to 1 April 2023, ie the base date, is ambiguous. I have evidence from March 2022 that it was not complete and from July 2024 that it was complete. However, in the context that this is a site where I require clear evidence otherwise on deliverability, the dwellings should remain in the supply.

96. Site 6 – It has been shown through Land Registry records that 10 dwellings were completed prior to the base date. However, this has not been accounted for in the Council's completions data. They therefore need to remain in the housing land supply otherwise they would be lost from both delivery and supply calculations. The dwellings should therefore remain in the supply.

97. Sites 9 and 10 – The dispute for these sites goes to the same point as Site 6 regarding the completions data. For the same reasons, the dwellings should therefore remain in the supply.

98. Site 17 – It was agreed at the Inquiry, and I concur, that this is a permission for 11 net dwellings. The Council's supply allocated 12 dwellings to the site and therefore one dwelling should be removed from the supply.

99. Site 18 – It is common ground, and I agree, that the proposed seven dwellings, as pro-rata'd to take account of their C2 use class, will not be delivered within five years. The seven dwellings should therefore be removed from the supply. The existing care home is now vacant but the bedrooms nevertheless remain in the existing supply, in much the same way that an existing but vacant house would not be subtracted from the supply. Therefore, the 13 dwellings, as pro rata'd from the 24 use class C2 bedrooms, should remain in the supply.

100. Site 19 – It is common ground, and I agree, that this site was included in the Council's supply twice and that there was a mis-calculation with regard

[20] Ref PL/2021/07628, dated 23 November 2021

to the net increase in dwellings. Therefore, 12 of the 16 dwellings in the Council's original calculations should be removed from the supply.

Part b) sites

101. Site 3 – A full planning application was approved subject to completion of a s106 Agreement in March 2024. The s106 has not yet been signed. In April 2024, the only remaining disputed elements of the s106 were a relatively small discrepancy in the Nitrogen Mitigation Contribution and other minor technical matters. Nevertheless, it has not yet been signed and no evidence has been provided regarding this delay. I also am conscious that the original outline planning permission for this site was granted in December 2017 and progress towards gaining a full permission has been very slow. There is not, therefore, clear evidence that the full application will be granted and subsequently delivery will commence within five years. The 24 dwellings should therefore be removed from the supply.

102. Site 7 – The developer has confirmed there are issues which are currently preventing implementation of the outline planning permission, although not what these issues are. There is clear intent to progress, including the submission of a reserved matters application. I acknowledge that a national housebuilder is progressing the site, which indicates a willingness to deliver. However, that the site sits adjacent to and nearby to sites from rival national housebuilders does not indicate either a speedy or a slow build out rate. There are various competing commercial pressures which might lead the housebuilder to either try to compete or to try and stagger sales in this context. In addition, I cannot have confidence regarding deliverability without understanding the issues delaying progress on the site. I also am conscious that the reserved matters application is the subject of objections from the landscape, urban design and tree officers at the Council. These might be resolvable, but I have no clear evidence at this stage if this will be achieved and/or how long it might take. There is not, therefore, clear evidence that delivery will commence within five years. The 70 dwellings should therefore be removed from the supply.

103. Site 8 – Phases 1 and 2 have full permission for 145 and 168 dwellings respectively. Phase 3, for 193 dwellings, is the subject of a reserved matters application that has not yet been approved. However, it was only submitted in May 2024 and there is no reason to believe, given the progress on Phases 1 and 2, that approval will not be forthcoming. The developer set out in December 2023 an anticipated build out rate across all the phases of 90 dpa. I see no reason to deviate from the developers predicted build out rates, given that it made them recently. As a sense check, the same developer has achieved 91 dpa on a large multi-phased site in Trowbridge, which is a reasonable comparator. The dwellings should therefore remain in the supply.

104. Site 11 – Outline planning permission was granted at appeal, subject to shorter than usual timescales for the submission of reserved matters applications at one year from the permission and commencement of development at one year from approval of the last reserved matters. The subsequent reserved matters application was submitted on time but is not yet determined. It is currently subject to objections with regard to urban design and highways. However, there is no indication that there are fundamental concerns with the proposal that cannot be overcome. The speed

of the submission of the reserved matters application and the special conditions requiring quick delivery point to a proposal that will likely come forward quickly. This is clear evidence of deliverability within five years and the dwellings should therefore remain in the supply.

105. Site 12 – This is in a very similar position to Site 11. In addition, the housebuilder has provided forecast build out rates and the Council's adopted position is slightly less than this, on a precautionary basis. Therefore, there is clear evidence of deliverability within five years and the dwellings should therefore remain in the supply.

106. Site 13 – This is in a similar position to Site 12. However, this site is being promoted by a strategic land company, rather than a housebuilder. The submitted but not determined reserved matters application was likely submitted to keep the outline permission alive and is the subject of holding objections pending the submission of further material. There is therefore doubt regarding the timing, or even the principle, of approval of the reserved matters submission. In addition, even if granted, then the timing of delivery of housing is in doubt because the site would need to be sold to a housebuilder. There is not, therefore, clear evidence that delivery will commence within five years. The 71 dwellings should therefore be removed from the supply.

107. Site 14 – This is a large multi-phased site, some of which has full planning permission and some of which is in outline only. The delivery adopted by the Council is based on recent, January 2024, forecasts by the housebuilders. In the context of such a complex site, I view the use of the developers' recent data as clear evidence of delivery. The dwellings should therefore remain in the supply.

108. Site 15 – The site has had a full planning application with a resolution to grant permission since April 2022. The delay has been due to agreeing nutrient neutrality mitigation. This is now agreed. The final s106 Agreement is imminent. The developer, a housebuilder, provided likely build out rates in November 2023. This has been adopted by the Council. The build out rates were based on the s106 being signed in January 2024. However, there is sufficient float in the predicted delivery that, even with this delay and any likely further delay in signing the s106, all the 86 dwellings can be delivered within five years. This is clear evidence of delivery and the dwellings should therefore remain in the supply.

109. Site 16 – The development gained full permission in August 2023, after the agreed base date of 1 April 2023. It should, therefore, be included in the list of Part b) sites. However, I am entitled to consider evidence from after the base date. In this regard, the site has full permission and the development was commenced in April 2024. This constitutes clear evidence that the dwellings will come forward within the five years and should therefore remain in the supply.

110. Site 20 – It is common ground, and I agree, that the two dwellings at this site should be removed from the supply because the permission lapsed before the base date. Therefore, the two dwellings should be removed from the supply.

111. Site 21 – This site has a resolution to grant full planning permission, dating from August 2022. The delay in securing permission is related to nutrient neutrality. Because of the delays, further information and amendments to the proposal are required. Material in this regard has been submitted. There remain unresolved objections but the principles of the proposal have been agreed. Full permission is therefore likely to be forthcoming in a relatively timely manner. The housebuilder is the same as for the adjacent Phase 1 of the same scheme. This constitutes clear evidence that the dwellings will come forward within the five years and should therefore remain in the supply.

Calculation and conclusion

112. The Council's position is that it can demonstrate a 4.2 year supply of housing land, through 8,193 homes versus the target of 9,760. As set out above, based on the evidence before me, I deduct 477 dwellings from the windfall allowance and a further 187 homes from the disputed supply sites. This results in a supply of 7,529 homes, which equates to 3.85 years.

PLANNING BALANCE

Positive

Market housing

113. The proposals are for up to 200 homes, of which 60% would be for market housing. The Council can only demonstrate a 3.85 year supply of housing land, below its target of four years. I would not expect the homes to be delivered within five years, because even if allowed this appeal is in outline and the site is being promoted by a strategic land company not a developer. However, there is no reason to believe they would not be forthcoming in a reasonable timescale if permission were granted. The provision of housing is a key part of national and local planning policy, as has recently been re-enforced by a Written Ministerial Statement[21].

114. It is also common ground, and I agree, that the appeal site is in an accessible location, within walking distance of the large employment centre of WWTE and the services and facilities of Westbury, as well as its particularly well served train station.

115. Overall, therefore, I place substantial positive weight on the proposed market housing.

Affordable housing

116. The proposal would deliver 40% affordable housing, therefore up to 80 dwellings. This is above the adopted policy requirement of 30% for Westbury, as set out in Core Policy 43 of the CS. The Council currently has a shortfall of 936 affordable homes against its target in the CS. This is a significant shortfall, as agreed by the Council under cross-examination. There are 4,270 households on the housing register, a 76% increase since 2017. I therefore place substantial positive weight on the proposed affordable housing.

[21] Made by Angela Raynor, Deputy Prime Minister and Secretary of State for Housing Communities and Local Government, on 30 July 2024, titled "Building the Homes We Need".

Economic

117. The proposal would generate short term economic benefits during construction. It would also generate long term economic benefits from the expenditure on local goods and services by the future occupants of the proposal. The proposal is relatively large and the benefits would therefore be relatively large as well. I place significant positive weight on these benefits.

Biodiversity

118. As set out in the Ecology Statement of Common Ground, the proposal could achieve a BNG of 14% both for habitat and hedgerow units. This could be secured by condition. The level of BNG goes beyond the requirement for a biodiversity net gain, but without specific targets, as set out at Paragraph 180 of the Framework. I therefore place moderate positive weight on the proposed BNG.

Open space

119. The proposal includes significant areas of formal and informal open space, including an equipped play area and allotments. These facilities would be useable both by future residents of the proposal and by existing residents and visitors to the area. I therefore place moderate positive weight on these elements of the proposal.

Highways

120. The proposal includes improvements to the footway in the vicinity of the site along Storridge Road, a contribution towards strengthening a rail underbridge so that it could accommodate busses, and upgrading existing zebra crossings to puffin crossings on The Ham and Station Road as they run into the roundabout to the east of the appeal site. All these works would enhance highway safety and accessibility both for the future occupants of the proposal and for existing residents and users of the highway. I place limited positive weight on these elements.

Ecology

121. The proposal would represent a demonstrable improvement and enhancement on the existing habitat and wide swathes of suitable bat habitat would be provided. However, the enhancements would be relatively limited and there would be areas where lightspill, in particular, moderate the benefits of the proposed wide swathes of land. I therefore place limited positive weight on this factor.

Neutral

Local infrastructure

122. The contributions and other obligations in the s106 that would mitigate the effect of the proposal on local infrastructure, other than those otherwise assessed in this section of my Decision, would not give rise to any benefit beyond mitigation. These therefore weigh neutrally in the planning balance.

Ecology

123. The site falls within the Zone of Influence for the Salisbury Plain Special Protection Area and Special Area of Conservation (the Salisbury SPA and SAC). It is common ground, and I agree, that the effect of the proposal on these sites, in-combination with other developments, would be appropriately mitigated by the provision of on-site open space that would help deflect recreational pressure away from the sites. The appeal site also falls within the Zone of Influence for the River Avon Special Area of Conservation (the River Avon SAC). However, there would be no likely significant effects on this site because of the intervening distance between the appeal site and the SAC and the lack of a hydrological linkage.

124. The s106 secures a contribution towards mitigating the recreational impact arising from the future occupants of the proposal on the Pickett and Langer SSSI and a further contribution to mitigate the loss of bat habitat in the Trowbridge Community Area as a result of the proposal.

125. The above ecological factors weigh neutrally in the planning balance.

Negative

Principle

126. The proposal does not comply with Core Policies 1, 2 and 32 and the WHSAP, which are the key policies dealing with the principle of development in this location and setting out the spatial strategy of the Council. Whilst I reduce the weight I apply to this conflict, for the reasons set out above, it still carries significant negative weight.

Noise

127. The proposal would create unacceptable living conditions for the future occupiers of some of the proposed homes, through requiring that many of the windows be kept closed to avoid unacceptably harmful levels of noise pollution. This would apply to approximately 35% of the proposed properties for significant periods of time, including at nighttime and to bedrooms and living rooms. The quality of the proposed accommodation would not, therefore, be acceptable. This is a fundamental issue with the proposed development. I place significant negative weight on this factor.

Agent of change

128. It has not been satisfactorily demonstrated that the proposal would not create potential future risks to the operation of the WWTE with regard to noise pollution and the agent of change principle. This is particularly important because of the size and economic importance of the WWTE. I place moderate negative weight on this factor.

Character and appearance

129. Although character and appearance is not a disputed issue, it is common ground, and I agree, that the development of a field into a housing development would cause some intrinsic harm to the character and appearance of the appeal site. Because of the amount of open space proposed the harm would be limited. In addition, because of the surrounding

built form and other screening the harm to the wider landscape would be very limited. Overall, I place limited negative weight on this harm.

Construction

130. There would be some harm to the living conditions of nearby occupiers and to the free-flow of traffic and highway safety during the construction period for the proposal. However, this could be controlled by condition to limit the disruption. I place limited negative weight on this factor.

The Balance

131. The proposal fails to comply with the spatial strategy for the Council, and there are also significant adverse effects regarding the living conditions of the future occupiers of the development with regard to noise. In addition, it has not been satisfactorily demonstrated that the proposal would not create potential future risks to the operation of the WWTE, there would be limited harm to the character and appearance of the area, and limited short term harm to living conditions of nearby occupiers during construction. The proposal therefore fails to comply with the Development Plan, when considered as a whole.

132. The Framework is an important material consideration. There is only limited inconsistency between the spatial strategy and the Framework. The Proposed Framework has not been adopted and might be the subject of modification. It also does not fundamentally alter the approach with regard to the spatial strategy as it relates to the appeal proposal. Therefore, in accordance with Paragraph 225 of the Framework, I do not consider the policies to be out-of-date with regard to consistency with the Framework.

133. I have been directed to the Haygate Road appeal decision[22], where the Inspector concluded that the inconformity between the Framework's approach to development in the countryside and the greater restrictions in the spatial strategy policies was in itself reason to consider the policies out-of-date. However, the precise wording of the policies are not before me and I am unable to consider how similar the policies are to those under consideration for this appeal. In addition, the decision was over eight years ago, was in a different local authority with a much older Development Plan adopted prior to the Framework and had a spatial strategy based on out-of-date housing figure, all of which are different to the situation for Wiltshire Council.

134. However, the Council can only demonstrate a 3.85 year supply of housing land. None of the provisions of Paragraph 11di apply. Therefore, in accordance with Paragraph 11dii and Footnote 8 of the Framework, the 'tilted balance' is engaged.

135. I acknowledge that the Council stated under cross-examination that if I found no harm against ecology and a tilted balance, then the appeal should be allowed. However, I do not agree. The adverse impacts of the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. This is primarily because of the conflict with the spatial strategy of the Council and the poor quality of accommodation that would be provided because of the design

[22] Ref APP/C3240/W/15/3025042, dated 15 April 2016

approach that has ensured that a significant proportion of the proposed dwellings would require closed windows for significant periods of time to create adequate living conditions.

APPROPRIATE ASSESSMENTS

136. The site falls within the Zone of Influence for the Salisbury Plain SAC and SPA and the River Avon SAC. Had the proposal been acceptable in planning terms, it would have been necessary for me to have undertaken an AA relating to each site as the competent authority. However, the Conservation of Habitats and Species Regulations 2017 indicates the requirement for an AA is only necessary where the competent authority is minded to approve planning permission, so I have therefore not undertaken the AAs.

FUTURE RESIDENTS

137. Clause 7.4 of the s106 was discussed at the Inquiry, relating to whether or not future occupants of the proposal should be bound to the agreement. This is not a material planning consideration and is instead a legal matter. Because I am not minded to grant planning permission, I do not need to consider this matter further.

REVISED DRAWING

138. During the Inquiry the appellant submitted a revised Development Framework Plan[23]. The revised plan reduced the area of proposed built development from 5.04 hectares (ha) to 4.74 ha, by bringing the proposed built up areas back from the north west and north east boundaries of the site. This change reduced the proposed residential development to up to 180 dwellings. However, although I accepted the document during the Inquiry and it was discussed throughout, it was only submitted as a potential alternative approach with regard to ecology and it was confirmed by the appellant that it would not make a material difference to the main issue regarding noise and living conditions. As set out above, I have found the original proposal to be acceptable in this regard. I do not, therefore, refer to the revised Plan in my Decision.

CONCLUSION

139. For the reasons above, the appeal is dismissed.

O S Woodwards
INSPECTOR

[23] Ref CSA/2974/119

ANNEX A: APPEARANCES

FOR THE APPELLANT:
Mr Richard Kimblin KC – No.5 Chambers
Dr Suzanne Mansfield PhD MCIEEM CMLI – Senior Ecology Director, FPCR Environment & Design Ltd
Mr Clive Bentley CIEH MIEnvSc MIOA CEnv CSci – Acoustic Consultant and Partner, Sharps Acoustics
Mr Barry Redman – Consultant, Silcock Dawson and Partners Ltd
Mr Ben Pycroft MRTPI – Director, Emery Planning
Mr Christien Lee MRTPI – Planning Director, Gladman Developments Ltd

FOR THE LOCAL PLANNING AUTHORITY:
Mr Gary A Grant, of Counsel – Kings Chambers
Mrs Elizabeth Burrows CIEEM – Senior Ecology Officer, Wiltshire Council
Mrs Vicky Brown CIEH – Senior Environmental Health Officer, Wiltshire Council
Mr Chris Roe MRTPI – Strategic Planning Manager, Wiltshire Council
Mr Andrew Burgess MRTPI FRSA – Managing Director, Andrew Burgess Planning Ltd
Christopher Mead - Highways Officer, Wiltshire Council

INTERESTED PARTIES:
Mr Francis Morland – Local resident
Mr David Jenkins – Local resident

ANNEX B: DOCUMENTS SUBMITTED DURING AND AFTER THE INQUIRY

DOCUMENTS

ID1: Housing Land Supply – Rebuttal Statement, by Wiltshire Council (inc appendices)
ID2: Appellant's Appearances
ID3: Draft Conditions Schedule
ID4: Appellant's Opening Statement, by Richard Kimblin KC, dated 9 July 2024
ID5: Opening on behalf of the LPA, by G.A.Grant, dated 9 July 2024
ID6: Scott Schedule of Disputed Sites
ID7: Site Notice Locations and Photographs
ID8: List of Appearances for LPA
ID9: Draft Conditions Schedule (inspector comments)
ID10: s106 Draft (inspector comments)
ID12.1: s106 Agreement Version A
ID12.2: s106 Agreement Version B
ID12.3: Note on S106 Agreement Version A and Version B
ID12.4: S. 106 Note on Non-Enforcement Clause
ID14.1: Email from Mr Jenkins, dated 16 July 2024
ID14.2: Letter from Environment Agency to Mr Jenkins, dated 19 June 2024
ID15.1: Email from appellant, dated 16 July 2024, regarding off-site highways works
ID15.2: Note on Proposed Highways Improvements
ID16: Email from Mr Morland regarding the s52 agreement, dated 16 July 2024
ID17.1: Draft Conditions Schedule Appellant Comments
ID17.2: GDL proposed condition amends
ID18: Procedure for the assessment of low frequency noise complaints, Revision 1 December 2011 Contract to NANR45
ID19: s106 Agreement, dated 17 July 2024
ID20.1: s106 Agreement, dated 29 February 2024, relating to Land at Mount Royal, 46 Lymington Bottom, Four Marks, Alton, Hampshire, GU34 5AH
ID20.2: s106 Agreement, dated 15 June 2023, relating to Land off Melksham Road, Holt
ID20.3: s106 Agreement, dated 17 June 2024, relating to Land on the south side of Elm Close, Wells, Somerset
ID20.4: s106 Agreement, dated 3 August 2023, relating to Land south of London Road, Newington, Kent
ID20.5: s106 Agreement, dated 14 May 2021, relating to Land at Green Farm, Chippenham Road, Lyneham, Chippenham SN15 4PA
ID21.1: Appeal Decision Ref APP/Y3950/W/23/3315432, dated 21 July 2023
ID21.2: Appeal Decision Ref APP/Y3940/W/22/3290305, dated 31 October 2022
ID21.3: Appeal Decision Ref APP/Y3940/W/22/3309170, dated 5 May 2023
ID21.4: Appeal Decision Ref APP/Y3940/W/20/3253204, dated 22 November 2021
ID22: Closing on behalf of the LPA, by G.A.Grant, dated 18 July 2024
ID23: Closing submissions on behalf of the appellant, by Richard Kimblin KC, dated 18 July 2024
ID24: Appellant response to the WMS and Consultation Draft of the NPPF
ID25: Council response to the WMS and Consultation Draft of the NPPF, in email dated 1 August 2024
ID26: Signed and engrossed s106 Agreement, dated 30 July 2024

PLANS

ID11.1: Development Framework Plan Ref CSA/2974/119, dated July 2024

ID11.2: Trowbridge Bat Mitigation Strategy (TBMS) Compliance Plan Figure 5 Ref 7289-E-05, dated 15 July 2024
ID11.3: Ecological Parameters Plan 2. – Habitat Creation & Enhancement Figure 4a Ref 7289-E-18, dated 15 July 2024
ID11.4: Ecological Parameters Plan – Core Bat Habitat Buffers and Enhancements Figure 4 Ref 7289-E-04, dated 15 July 2024
ID13: Proposed Waling Route & Points of Interest Ref 2019-048 301
ID15.3: Proposed Upgrade of Zebra Crossings to Puffin Crossings Ref P22036-002