LAND OFF PARK ROAD, MALMESBURY

APPEAL PURSUANT TO SECTION 78 (2) OF THE TOWN AND COUNTRY PLANNING ACT 1990

APPELLANT'S STATEMENT OF CASE

MARCH 2025

Contents

1.0	Introduction	1
2.0	The Appeal Site and the Appeal Scheme	2
3.0	Wilshire Council's Consideration of the Application	3
4.0	Outline of the Appellant's Case	5
5.0	Conclusion	8

Appendices

Appendix 1	Outline Permission Approved Documents
Appendix 2	Section 106 Agreement
Appendix 3	Appellant's Statement of Compliance

1.0 Introduction

1.1 This Statement of Case relates to an appeal following the failure of Wiltshire Council to determine planning application PL/2023/07797. The planning application seeks reserved matters approval for appearance, landscaping, layout and scale pursuant to outline permission 19/05898/OUT. Permission 19/05898/OUT was allowed at appeal in September 2022 (ref: APP/Y3940/W/21/3286853).

1.2 The Appeal relates to land off Park Road in Malmesbury.

1.3 The Appellant is Lagan Homes and White Lion Land (Malmesbury) Limited and the Local Planning Authority is Wiltshire Council.

1.4 The Appellant has prepared a Statement of Common Ground (SoCG) with the Council to identify the matters of agreement between the parties. Notably the SoCG confirms that there are no matters of dispute and the Council does not intend to defend the appeal as the Council's case is presented in its Committee Reports, where in both instances the Officer recommendation was to approve the application.

1.5 We draw upon the matters of common ground in this Statement where relevant. On this basis the Council's position is categorical and consistent with the Appellant's case in making this planning appeal.

2.0 The Appeal Site and the Appeal Scheme

The Appeal Site

2.1 The Appeal Site consists of approximately 1.2 hectares and comprises part of an open field which extends westwards. Vehicular access is provided along the Site's northern boundary from Park Road.

2.2 The Site includes hedgerow on its southern, eastern and northern boundaries. The Site is neighboured to the south by residential dwellings located on White Lion Park. The Site slopes up from Park Road towards the southern part of the Site.

The Appeal Scheme

2.3 The Appeal Scheme is described thus:

> *"Reserved Matters Application pursuant of Outline Permission 19/05898/OUT (Outline application for up to 50 residential units, internal road, parking, open space and associated works, with all matters reserved other than access) relating to Appearance, Landscaping, Layout and Scale."*

2.4 The Appellant proposes that this Appeal is dealt with following the written representations procedure.

2.5 Notably the reserved matters scheme is for 40 dwellings, which falls within the maximum consented quantum of up to 50 homes as per the outline consent. This followed extensive analysis by the Appellant in consultation with the Council as part of the reserved matters application having regard to site layout and detailed design matters including the size, mix and layout of homes alongside the necessary open space, private gardens and drainage and the objective of delivering a holistic and high quality scheme.

3.0 Wiltshire Council's Consideration of the Application

Overview of the Proposals

3.1 The reserved matters application for the Site was validated by the Council on 12th September 2023 pursuant to outline planning consent 19/05890/OUT that was granted in September 2022.

3.2 The outline consent granted in principle approval for the development of the Site including the delivery of up to 50 new dwellings, landscaping and car parking. Full details of access were approved under the outline consent and as such are not a reserved matter.

3.3 The **Outline Permission** and approved documents are attached within **Appendix 1**. These are:

- Drawing No 17021(90) 200 Rev B, Site Location Plan;
- Drawing No MALMWMCB-ZZ-ZZ-DR-A-0050-S3-P1, Land Use Parameter Plan[1]; and
- Drawing No WLMALMESBURY.2/01 Rev P1 Proposed Highway Improvements.

3.4 Condition 2 of the outline consent required an application for approval of reserved matters to be made within 1 year of the date of the permission. Condition 3 requires implementation of the approved reserved matters scheme within 1 year. Notably the Inspector afforded weight to the consequential benefit of the homes being delivered materially earlier than if the permission was granted subject to the standard time limit conditions. We comment on the Council's housing land supply under Section 4.0, which is currently at 2.03 years (stated at Paragraph 1.7 of the SoCG).

3.5 There is an associated **Section 106 Agreement** dated 21st July 2022 which secures planning obligations relating to affordable housing, financial contributions to the Council, open space, landscaping and highway works. This is attached within **Appendix 2**.

3.6 The application sought reserved matters approval for appearance, landscaping, layout and scale.

3.7 The **Appellant's Statement of Compliance** is enclosed at **Appendix 3**. This demonstrates that the reserved matters application accords with the parameters of the Outline Planning Permission and those aspects of the Development Plan that are relevant to the reserved matters.

Consideration of the Application at Planning Committee

3.8 The SoCG explains how the Appeal Scheme was considered by the Council at Northern Area Planning Committee on two occasions, each time with an Officer recommendation for approval.

3.9 The Council first considered the reserved matters application at Planning Committee on 20th November 2024. The Appeal Scheme was recommended for approval in the **Planning Officer Committee Report** which is appended to the SoCG.

3.10 At that meeting the Committee resolved that the application was deferred to a subsequent Planning Committee. In making this decision Members concluded that the deferral was necessary so that Members could receive legal guidance from Officers as to the Committee's role in relation to the discharge of conditions relating to access and flooding.

[1] As approved by NMA ref: PL/2024/08362 on 11th October 2024

3.11 Following the November committee the Appellant provided further information to Officers to clarify on this matter so that the application could be brought back to Committee. Legal advice was also provided by the Council's legal officer.

3.12 The Appellant expected that the categorical advice from Counsel and the Council's own officer would have removed any ambiguity such that Members endorsed the Officer recommendation.

3.13 Despite this, Members resolved to defer the reserved matters scheme on a second occasion from the Northern Area Planning Committee on 18th December 2024. The reason given by Members was to seek legal advice regarding the S106 agreement.

3.14 The content of the S106 agreement was assessed by the Inspector as part of its consideration of appeal 3286853. Given the Inspector allowed the appeal, explicitly the decision maker was satisfied that the obligations met the statutory tests[2] such that the development was acceptable in planning terms. Members also expressed a preference for the reserved matters application to be determined by the Secretary of State (see Paragraph 2.19 of the SoCG).

3.15 In these circumstances the Appellant has decided to submit a non-determination appeal to the Planning Inspectorate.

[2] Regulation 122(2) of the Community infrastructure Levy Regulations 2010

4.0 Outline of the Appellant's Case

Planning Policy

4.1 The Appellant accepts that the site lies in the countryside outside of a defined settlement boundary and is not allocated for development under the adopted Local Plan.

4.2 Notwithstanding, the Site benefits from an extant Outline Permission that was granted at appeal in September 2022. The reserved matters application has been submitted in accordance with the parameters established by the Outline Permission and policies of the Development Plan and NPPF regarding the outstanding matters of detail.

4.3 As evidenced by the submitted Statement of Compliance, the Appeal Scheme addresses and accords with the aims of the Local Plan and NPPF, which is also the conclusion reached by the Council in its Committee Report. This is common ground with the Council (refer to Paragraph 4.13 and Paragraph 4.14 of the SoCG).

Outline of the Appellant's Case

4.4 Below we outline the Appellant's case in making this appeal. Where relevant we refer to matters of common ground with the Council:

1. The outline permission is the effective grant of permission, and a planning authority is not able to determine reserved matters on grounds going to the principle of development itself. The determination of the Appeal Scheme must solely be focused on those matters for which approval is sought within the parameters that have already been approved under the outline planning permission. In this respect the Appellant relies on advice from Counsel (included within SoCG Appendix 4).

2. It is not appropriate for the decision maker to conflate matters relevant to the discharge of planning conditions as this is clearly separate from the approval of reserved matters. In any event the Appellant has submitted the necessary details for all planning conditions that were submitted for approval under application PL/2023/08583 (refer to Paragraph 2.9 of the SoCG).

3. The S106 entered into by the Appellant is plainly sufficient to mitigate the impacts of the development. This agreement is binding and enforceable such that its obligations would be met by the Appellant.

4. The reserved matters application is in accordance with the development parameters and conditions attached to the decision notice of the Outline Planning Permission (19/05898/OUT) and the relevant requirements of the Local Plan and the NPPF. This is set out clearly within the **Appellant's Statement of Compliance** (Appendix 3) and it is common ground with the Council (refer to Paragraphs 4.13 and 4.14 of the SoCG). These matters include:

    a. Appearance – the Appeal Scheme is wholly in accordance with the illustrative design presented as part of the outline planning application and is appropriate to the site and its context. It is common ground with the Council that the scheme is of an acceptable design.
    b. Landscaping – the detailed landscape design also complies with the illustrative design from the outline stage and includes communal open space and play space. This provision is appropriate to the site and its context.

c. Layout – the proposed layout is wholly compliant with the Land Use Parameter Plan to ensure the approved masterplan principles are delivered by the reserved matters scheme.
d. Scale – the scale of the proposed units are two storeys. This is consistent with the scale of development presented in the illustrative material submitted at outline stage and is appropriate to the site and its context.

5. The reserved matters scheme is entirely compliant with Drawing No WLMALMESBURY.2/01 Rev P1 Proposed Highway Improvements that was approved in detail under the Outline Planning Permission.

4.5 On both occasions that the Appeal Scheme was presented to Northern Area Planning Committee there were no objections from statutory consultees or from Planning Officers as confirmed by the Council's Committee Reports.

4.6 On this basis it is the Appellant's case that reserved matters and all other matters of detail submitted should be approved. This is also the Council's case as confirmed by the SoCG.

The Appellant's Evidence

4.7 The Appellant is reliant of the following evidence in respect of the appeal:

- Outline Planning Permission and associated documents, including the S106 agreement (Appendix 1 and 2);
- Appellant's Statement of Compliance (Appendix 3);
- SoCG between the Appellant and the Council.

4.8 It is common ground that the Council supports the Appellant's case such that it will not attempt to defend the appeal. On this basis we understand that the Council will not prepare a supplementary Statement of Case and will instead rely on the Committee Reports and SoCG. The Appellant reserves the right to prepare any additional evidence that may be necessary at the request of the Inspector.

Housing Considerations

4.9 On publication of the revised NPPF (2024) a Written Ministerial Statement was made on 12th December 2024 reiterating the Government's target of delivering 1.5 million homes over the term of Parliament. To help achieve this, the Government published a new housing method to determine the housing requirement for all planning authorities. Under the now imposed standard method, the annual target for Wilshire has increased from 1,917 to 3,525 homes.

4.10 Whilst the Appellant accepts that under the transitional provisions the Council's emerging Plan is required to deliver 36,740 homes (equivalent to 2,041 homes a year) over the Plan period of 2020 to 2038, plainly the Council faces substantial housing pressures. Against the current housing requirements, the Council cannot demonstrate a five year housing land supply. It is common ground that the Council is only able to sustain a supply of 2.03 years of housing at the time of making this appeal, which is a substantial shortfall.

4.11 In this context, the Appellant submitted the reserved matters application to assist the Council with offsetting its significant housing land supply shortfall, where there is no Plan-led solution to address the situation. This is common ground with the Council for the purposes of this appeal (see Paragraph 1.7 of the submitted SoCG).

4.12 Subject to reserved matters approval the Appellant's clear intention is to deliver the scheme, which would make a meaningful contribution to the Council's housing supply, as well as delivering much needed affordable housing and a mix of 2, 3 and 4 bedroom homes. As we have explained, the prompt delivery of housing on the Site was one of the reasons why the outline application was allowed at appeal.

4.13 Notably the Appeal Site is included as a deliverable site in the Council's own published Housing Land Supply Statement (July 2024), with 50 units to be constructed by 2027/28. On this basis it is perverse for the Council to fail to grant reserved matters consent for the Appeal Scheme in these circumstances, particularly where Officers recommended the application for approval on two occasions, where there are no objections from statutory consultees.

Conditions and Obligations

4.14 The Appeal Scheme that was reported to the November 2024 and December 2024 Northern Area Planning Committee sessions included a series of planning conditions. The Appellant accepts that these planning conditions meet the six tests set out at Paragraph 57 of the NPPF (2024). The list of conditions are common ground with the Council (refer to Appendix 7 of the SoCG).

4.15 In respect of obligations, the S106 package of contributions have already been established in the granting of the outline consent (Appendix 2).

5.0 Conclusion

5.1 The Appellant submits this non-determination appeal following the Council's inability to determine the reserved matters application for 40 homes.

5.2 The Appeal Scheme has been prepared in compliance with the principles for development established under the outline consent, which was allowed at appeal on 26th September 2022. The Appeal Scheme comprises a development that is entirely consistent with the development parameters permitted by the Council (as amended by NMA PL/2024/08362). The scheme represents high quality design and provides all necessary details in respect of appearance, landscaping, layout and scale.

5.3 In recognition of the pressing housing issues in Wiltshire, the Appellant committed to early delivery of the scheme and accepted planning conditions requiring approval of reserved matters from 1 year of the date of the outline permission, followed by implementation of the approved reserved matters scheme within 1 year. The reserved matters application was submitted in accordance with this timeline and Lagan Homes remain committed to constructing the scheme subject to the appeal being allowed.

5.4 Despite these intentions the Council has failed to determine the reserved matters scheme, despite the application being presented at two consecutive planning committees with a recommendation for approval. This is despite Wiltshire acknowledging that is has a deliverable housing land supply of only 2.03 years which the Council accepts is a significant shortfall and that there is no Plan-led solution to address this pressing issue.

5.5 The accompanying SoCG confirms that there are no matters of dispute between the Appellant and the Council and that the Council does not intend to defend the appeal. On two occasions Members of the Council have chosen not to make a resolution at planning committee, instead concluding that the decision should be made by the Secretary of State as the outline consent was allowed at appeal. The Appellant has sought to work constructively with the Council but is now reliant on seeking approval of the reserved matters via submitting this appeal.

5.6 We reiterate that Officers have agreed as common ground that there are no planning reasons why the appeal should not be allowed (SoCG Paragraph 4.13) and there are no matters in dispute (SoCG Paragraph 5.1).

5.7 The Appellant, therefore, respectfully invites the Inspector to allow the appeal so that the much needed housing can be delivered by the Appellant, which will assist the Council with addressing its substantial housing shortfall.