

Planning, Design and Access Statement

supporting an

Outline Planning Application, Including Access With All Other Matters Reserved for up to Three Dwellings

on

Land Adjacent to 3 Lower Marsh Road, Warminster

“Small and medium sized sites can make an important contribution to meeting the housing requirement of an area, are essential for and Medium Enterprise housebuilders to deliver new homes, and are often built-out relatively quickly”

(NPPF ¶73)



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"In rural areas, planning [...] decisions should be responsive to local circumstances"
(NPPF ¶82)

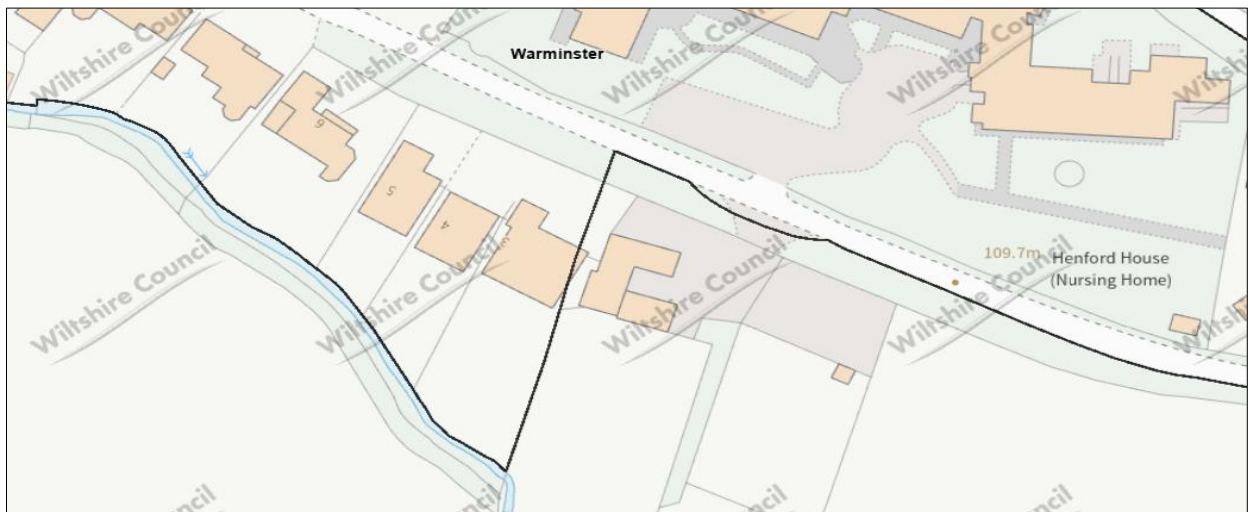


As much use as possible should be made of previously developed land for homes, giving "substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, proposals for which should be approved unless substantial harm would be caused".
(NPPF ¶124 & 125c)



1. Introduction

- 1.1 Lone Wolf Planning is pleased to submit this planning application for the development of up to three dwellings on previously developed land east of 3 Lower Marsh Road, Warminster.
- 1.2 Warminster is a Market Town in Wiltshire, described in the Core Strategy as having “*the potential for significant development that will increase the jobs and homes in each town in order to help sustain and where necessary enhance their services and facilities and promote better levels of self containment and viable sustainable communities*”.
- 1.3 The Core Strategy takes a restrictive approach to housing in the countryside outside of settlement boundaries, this policy approach has persisted since at least 1991. In this case the application site abuts the settlement boundary:



- 1.4 The plan-led approach in Wiltshire has failed to keep pace with housing need and demand and, in part, as a result of the policies of the local plans, the Council has very recently acknowledged¹ that it “*cannot demonstrate the requisite five-year housing land supply and can demonstrate a 2.03 years supply*”.
- 1.5 Therefore, the presumption in favour of sustainable development is engaged, the policies of the local plans that would have resisted development in this location are of significantly diminished weight and the benefits of contributing towards current housing supply deficiency and/or future housing land supply, on a site that the NPPF recognises² is likely to be developed out quickly, should be given significant weight in favour.
- 1.6 The NPPF is clear that “*opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making*”³. Maximising opportunities in urban areas is a very different exercise and level of expectation to maximising opportunities in rural areas, and the two should be approached proportionately and differently.
- 1.7 The NPPF is also clear that sustainable transport modes include “*Any efficient, safe and accessible means of transport with overall low impact on the environment, including walking and cycling, ultra low and zero emission vehicles, car sharing and public transport*”. Therefore,

¹ Wiltshire Council Briefing Note 24-20 dated 17th December 2024 (full version in Appendix 1)

² NPPF paragraph 73

³ NPPF paragraph 110



in a context-appropriate manner, sustainable transport opportunities can be maximised in this case by conditioning the provision of generous cycle storage and domestic electric vehicle charging infrastructure.

1.8 This recognises that:

- ✎ Where provision is made for cycle storage, it increases the likelihood of residents choosing to cycle when it suits, and that
- ✎ In rural areas (outside of cities and large towns) the majority of travel will be via the private car for many years yet to come, but that also by 2030 new sales of fossil fuels car will have been banned, and EV car ownership will be well on the way to the Governments transport decarbonisation goal of transitioning the bulk of the private transport 'fleet' to electric vehicles.

1.9 The NPPF is also clear that as much use as possible should be made of previously developed land for homes, giving *"substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, proposals for which should be approved unless substantial harm would be caused"*.

1.10 The Main Issues in this case will be:

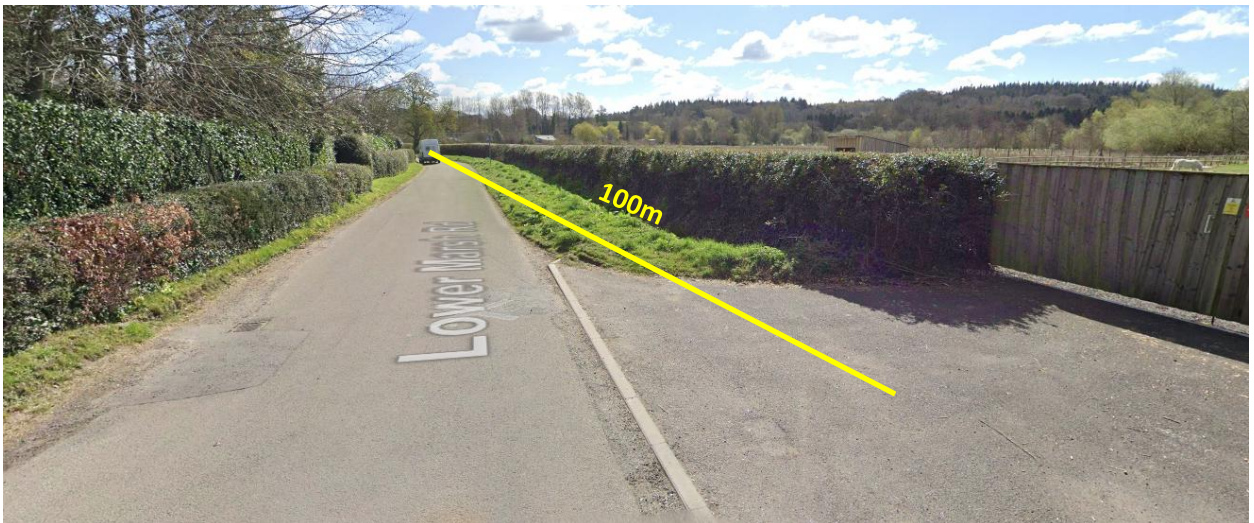
- ✎ Status and effect of the development plan
- ✎ Development plan compliance
- ✎ Material considerations
- ✎ Planning balance of harms and benefits whether flat or tilted

2. Site and Location

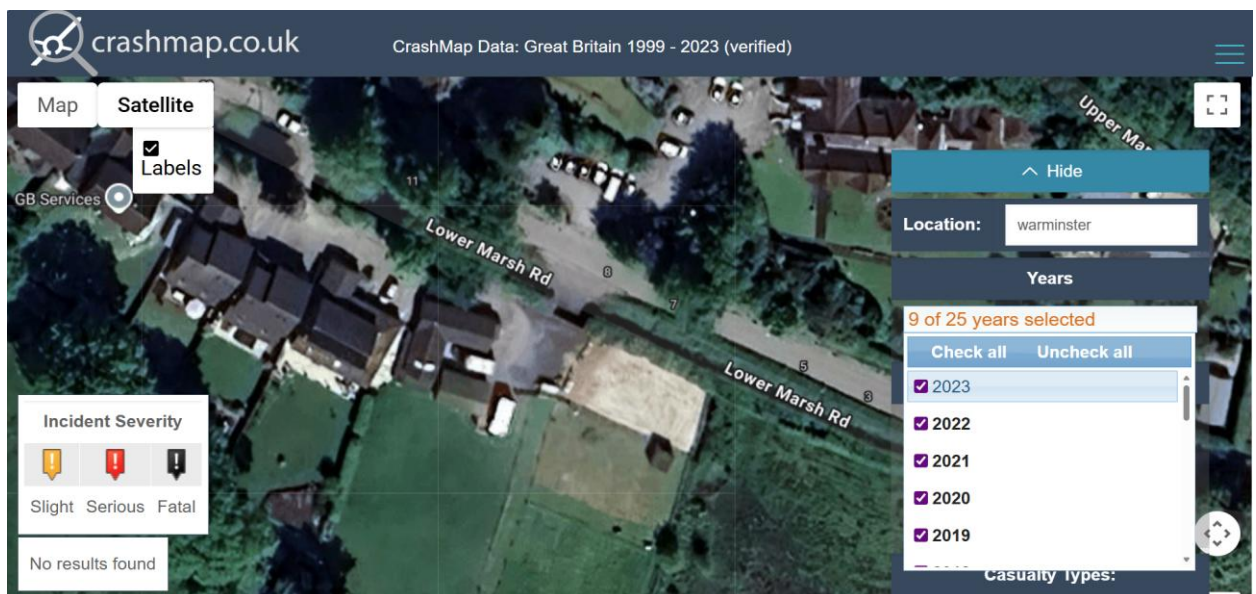
2.1 This planning application is submitted in outline with all matters reserved except for access. This means that the matters of appearance, scale, layout and landscaping will be the subject of future applications, called 'reserved matters'.

2.2 The proposal is for up to three dwellings which will utilise the existing access to the stables which has a metaled apron and clear visibility in both directions in excess of 100m from a position 2.4m back from the highway edge, in a 30mph zone:





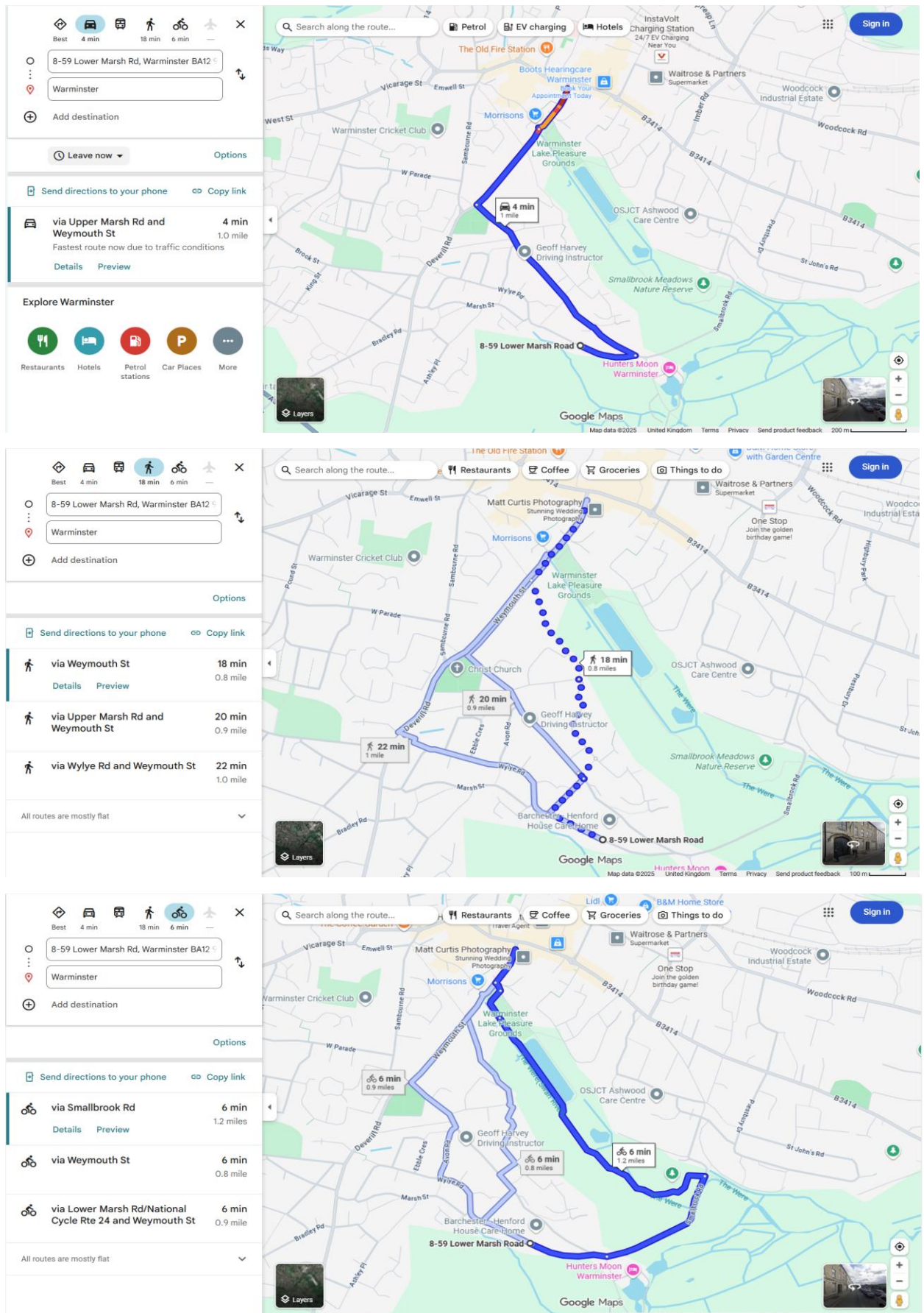
- 2.3 The existing access has been in situ for around a decade, in that time it has provided safe access onto the public highway for a range of vehicle types and sizes, and without incident:



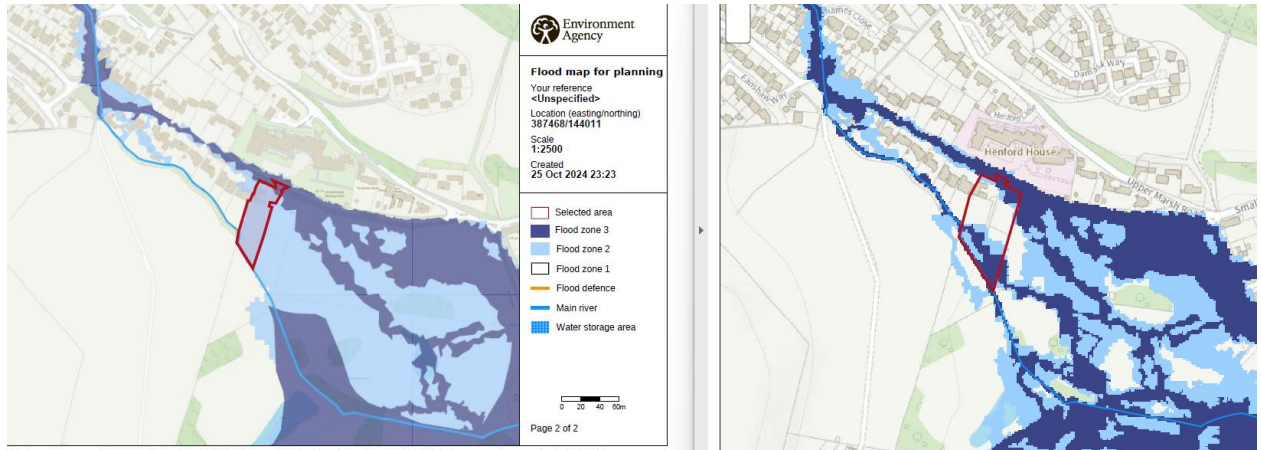
- 2.4 The site access is therefore considered both safe and suitable in relation to NPPF policy.



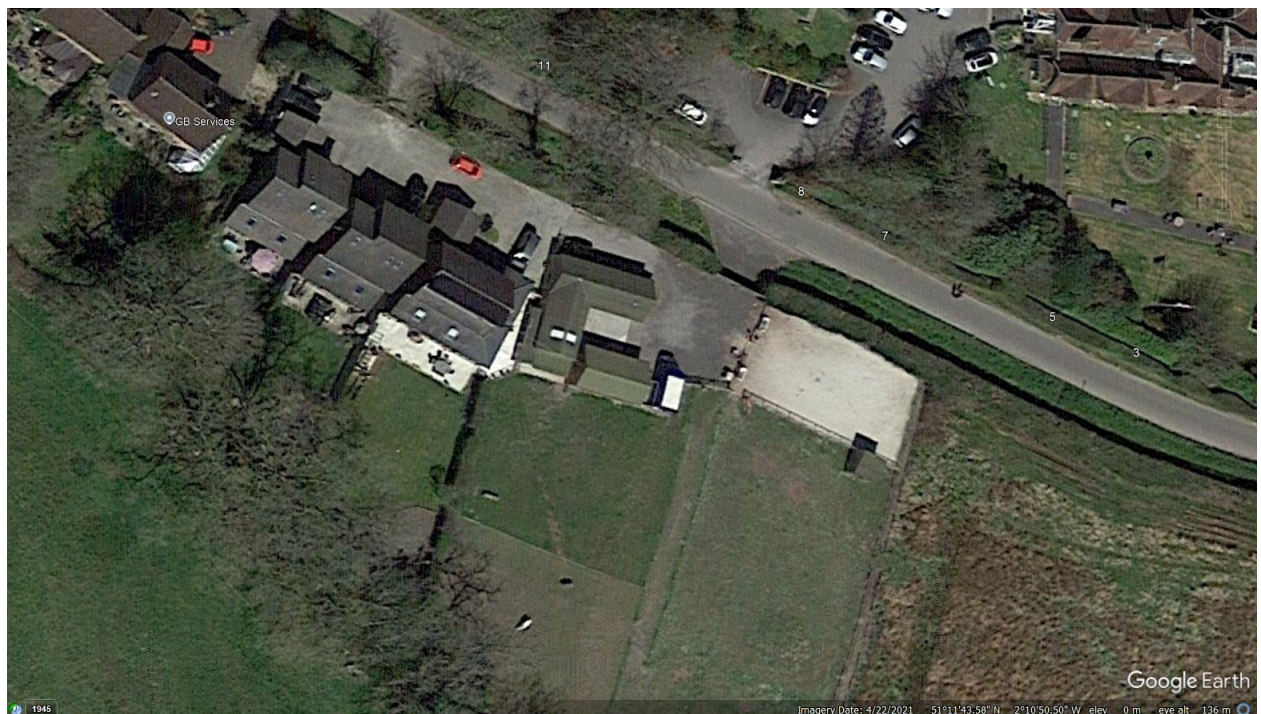
2.5 The site is 4-minute drive time, 18-minute walking time and 6-minute cycle time to the town centre:



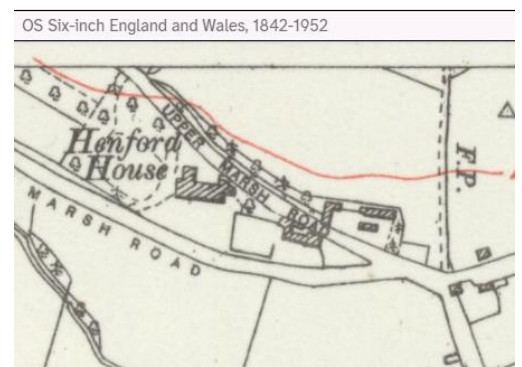
- 2.6 Recently overhauled Environment Agency mapping has seen the majority of the site removed from flood zones 2 and 3:



- 2.7 The site hosts an existing range of stables and a menage:

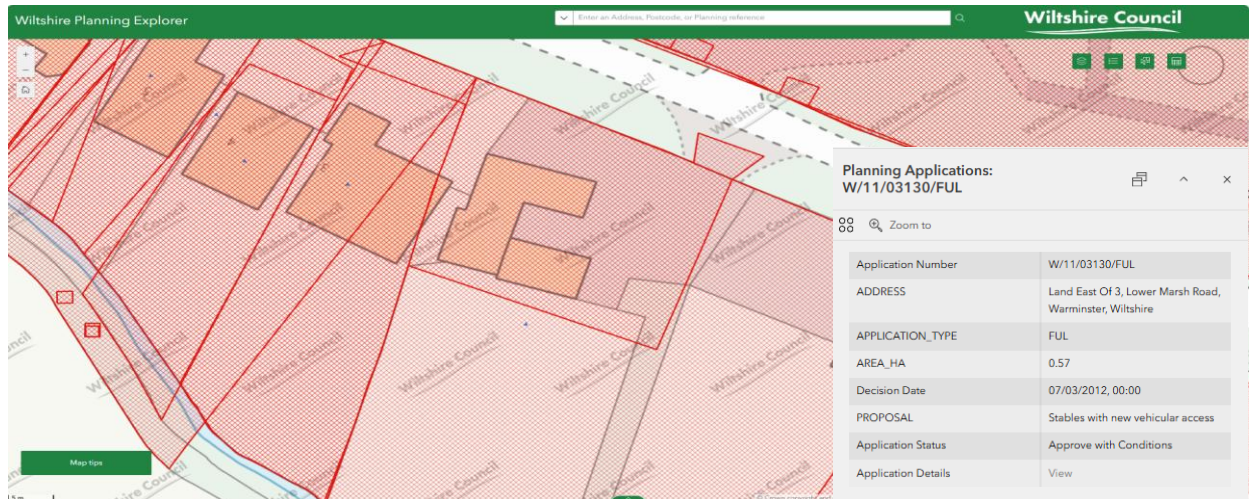


- 2.8 It is anticipated that whilst means of access will remain the same, and requires no works, the existing hardstand will provide communal parking and maneuvering, with the dwellings being built in the areas outside of the flood areas (see indicative site plan 10435/P01).
- 2.9 If three dwellings are developed, then it would be appropriate for two two-storey dwellings and a bungalow, to mark the end of the built form.
- 2.10 Historic mapping and aerial photo interrogation indicates that the site has not been developed in any way prior to the stables and menage. The risk of land contamination is very low, and this application is in outline, land contamination matters can be controlled via pre-commencement planning condition.



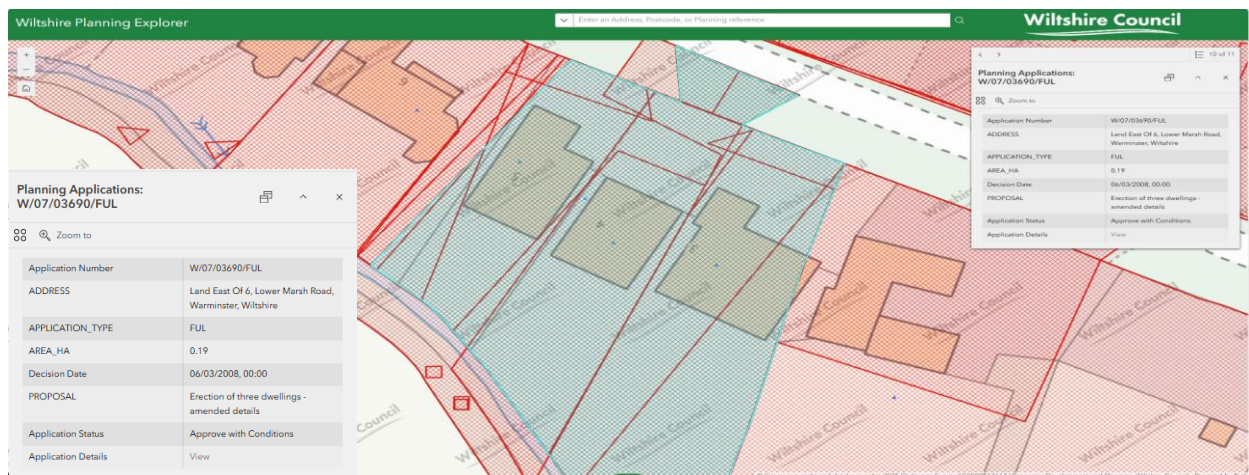
3. Planning History

3.1 The site-specific planning history includes the following records:



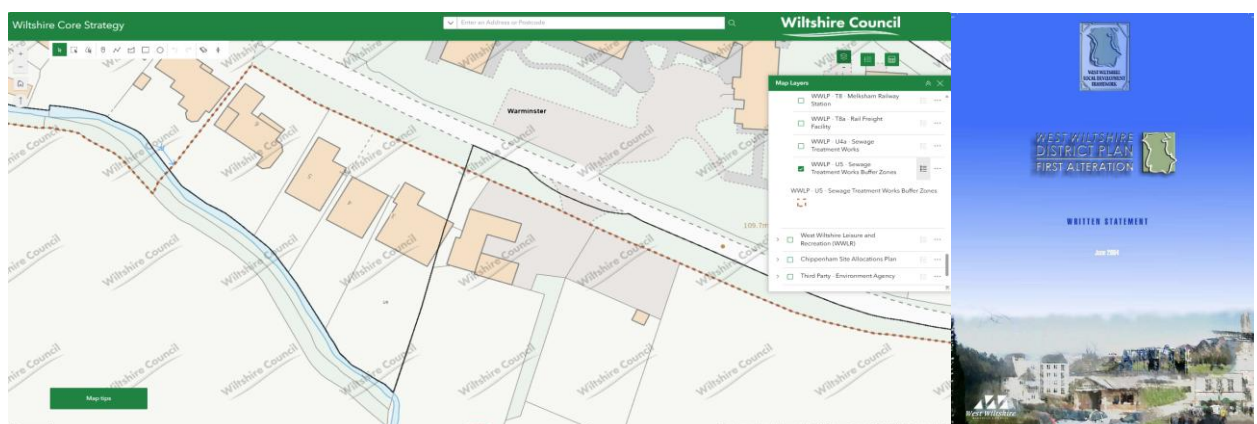
Planning Applications: W/11/03130/FUL	
Application Number	W/11/03130/FUL
ADDRESS	Land East Of 3, Lower Marsh Road, Warminster, Wiltshire
APPLICATION_TYPE	FUL
AREA_HA	0.57
Decision Date	07/03/2012, 00:00
PROPOSAL	Stables with new vehicular access
Application Status	Approve with Conditions
Application Details	View

3.2 The planning history on the adjacent land includes the following:



Planning Applications: W/07/03690/FUL	
Application Number	W/07/03690/FUL
ADDRESS	Land East Of 6, Lower Marsh Road, Warminster, Wiltshire
APPLICATION_TYPE	FUL
AREA_HA	0.19
Decision Date	06/03/2008, 00:00
PROPOSAL	Erection of three dwellings - amended details
Application Status	Approve with Conditions
Application Details	View

3.3 The Wiltshire Explorer records a saved policy area U5 Sewage Treatment Works Buffer Zone from the 2004 West Wiltshire saved local plan policies. Planning permission 07/03690 was granted regardless of that saved local plan policy, and it has not been transferred to the Core Strategy, Neighbourhood Plan or the Local Plan Review. The documents for 07/03690 are not available online, but the LPA will be able to satisfy itself on validity of policy U5 then, and now, by reference to the officer's report.




4. Development Plan Policy Context

4.1 Planning law is clear that decisions on planning applications should be made in the context of the development plan, unless material considerations indicate otherwise.

4.2 It is 2025, and in this case the development plan consists of:

- 🐾 Saved Policies of the 2004 West Wiltshire Local Plan
- 🐾 Wiltshire Core Strategy 2015
- 🐾 Warminster Neighbourhood Plan

4.3 The Council's 17th December 2024 briefing note states:

"The changes introduced on 12 December 2024 mean that the council now has a substantial shortfall in its housing land supply position (2.03 years). This alters the weight to give to housing supply when giving consideration to planning applications for residential development. This means balancing the strengthened need to boost housing supply against any adverse impacts of the proposal, considered against the development plan as whole, and any material considerations on a case-by-case basis. This will need to include consideration of what weight to assign to the most important policies."

4.4 Regarding the weight to be given to the most important policies, a recent report to planning committee⁴ stated:

"In accordance with the NPPF December 2024, a 5-year supply of housing land is required to be demonstrated by LPAs. At the present time, the Council has a 2.03year supply. This represents a significant shortfall and as such the relevant housing delivery policies of the Core Strategy must be considered out-of-date and attract very limited weight."

And

"Significant weight is attributed to the delivery of market housing given the shortfall"

4.5 In addition to the considerations about status and weight above, the policies of the Core Strategy are, by their very nature, strategic.

4.6 The NPPF is very clear on the approach taken to decision making with strategic policies, in comparison to development management or neighbourhood plan policies:

"20. Strategic policies should set out an overall strategy for the pattern, scale and design quality of places [...]"

*21. Plans should make explicit which policies are strategic policies¹³. These should be **limited to those necessary to address the strategic priorities of the area** (and any relevant cross-boundary issues), to provide a clear starting point for any non-strategic policies that are needed. **Strategic policies should not extend to detailed matters that are more appropriately***

⁴ Planning committee report to Western Area Planning Committee dated 5th February 2025 [\[Public Pack\]Agenda Document for Western Area Planning Committee, 05/02/2025 15:00](#)



dealt with through neighbourhood plans or other non-strategic policies. [...]

29. Non-strategic policies should be used by local planning authorities and communities to set out more detailed policies for specific areas, neighbourhoods or types of development. This can include allocating sites, the provision of infrastructure and community facilities at a local level, establishing design principles, conserving and enhancing the natural and historic environment and setting out other development management policies."

4.7 The following strategic development plan policies are considered potentially relevant to decision making, but the weight to be given to them must be held in the context of the significant lack of a 5 year housing land supply and the tilted balance:

- ☛ Core Policy 1 Settlement Strategy
- ☛ Core Policy 2 Delivery Strategy
- ☛ Core Policy 31 Spatial Strategy for the Warminster Community Area
- ☛ Core Policy 45 Meeting Wiltshire's Housing Needs
- ☛ Core Policy 48 Supporting Rural Life
- ☛ Core Policy 50 Biodiversity
- ☛ Core Policy 51 Landscape
- ☛ Core Policy 56 Contaminated Land
- ☛ Core Policy 57 Ensuring High Quality Design and Place Shaping
- ☛ Core Policy 58 Ensuring the Conservation of the Historic Environment
- ☛ Core Policy 60 Sustainable Transport
- ☛ Core Policy 61 Transport and Development
- ☛ Core Policy 67 Flood Risk

4.8 **Core Policy 1** concerns the local planning authority's settlement strategy. The weight to be given to the policy is "very limited". Indeed, the Council's settlement strategy has not prevented the housing supply shortfall from occurring, and it is arguable to say that it has been a contributing factor. The policy impact is therefore deemed to be **neutral**.

4.9 Warminster is a market town, providing for all day-to-day services and facilities for a wide area.

4.10 **Core Policy 2** concerns the Delivery Strategy. The policy states:

"Other than in circumstances as permitted by other policies within this plan, identified in paragraph 4.25, development will not be permitted outside the limits of development, as defined on the policies map."

4.11 Paragraph 4.25 includes Core Policy CP48 Supporting Rural Life. This planning application will help meet the housing needs of the Warminster Community Area. The NPPF is clear on the approach to rural housing:

"82. In rural areas, planning policies and decisions should be responsive to local circumstances and support housing developments that reflect local needs"

4.12 NPPF paragraph 73 is clear that "Small and medium sized sites can make an important contribution to meeting the housing requirement of an area, are essential for and Medium Enterprise housebuilders to deliver new homes, and are often built-out relatively quickly".

4.13 In the context of the current significant housing supply shortfall, we contend that the restrictive elements of Core Policy 2 are of "very limited" weight, in effect suspending the delivery strategy until such time as the council can meet its duties. The policy impact is



therefore deemed to be **neutral**.

- 4.14 **Core Policy 31** sets the spatial strategy for the Warminster Area and that it should be in accordance with the Settlement Strategy in Core Policy 1 (which is out of date). It confirms that Warminster is the market town, supporting a range of large and small villages. In the context of the housing supply shortfalls, and the failure of the settlement strategy to avoid that situation, the policy effect against Core Policy 31 is considered to be **neutral**.
- 4.15 The policy sets housing requirement figures for the period 2006 to 2026, but those figures need to be held in the context of the housing supply shortfall. The policy goes on to say that *“Development proposals in the Warminster Community Area will need to demonstrate how the relevant issues and considerations listed in paragraph 5.158 will be addressed”*.
- 4.16 Not all the matters set out in local plan paragraph 5.158 are relevant. Those that are include:
- “Warminster has limited locational opportunities for new development due to a range of environmental constraints such as the Cranborne Chase and West Wiltshire Downs AONB, a Special Landscape Area, a number of SSSIs and County Wildlife Sites”*
- “all development within the Community Area will need to conserve the designated landscape of the Cranborne Chase and West Wiltshire Downs Area of Outstanding Natural Beauty and its setting, and where possible enhance its locally distinctive characteristics”*
- “a more detailed Strategic Flood Risk Assessment (Level 2) is needed to provide a robust understanding of flood risk and inform decisions about the town’s growth and appropriate selection of sites for development”*
- 4.17 A development of up to three dwellings on the edge of Warminster, is highly unlikely to prejudice the AONB and the SFRA does need updating.

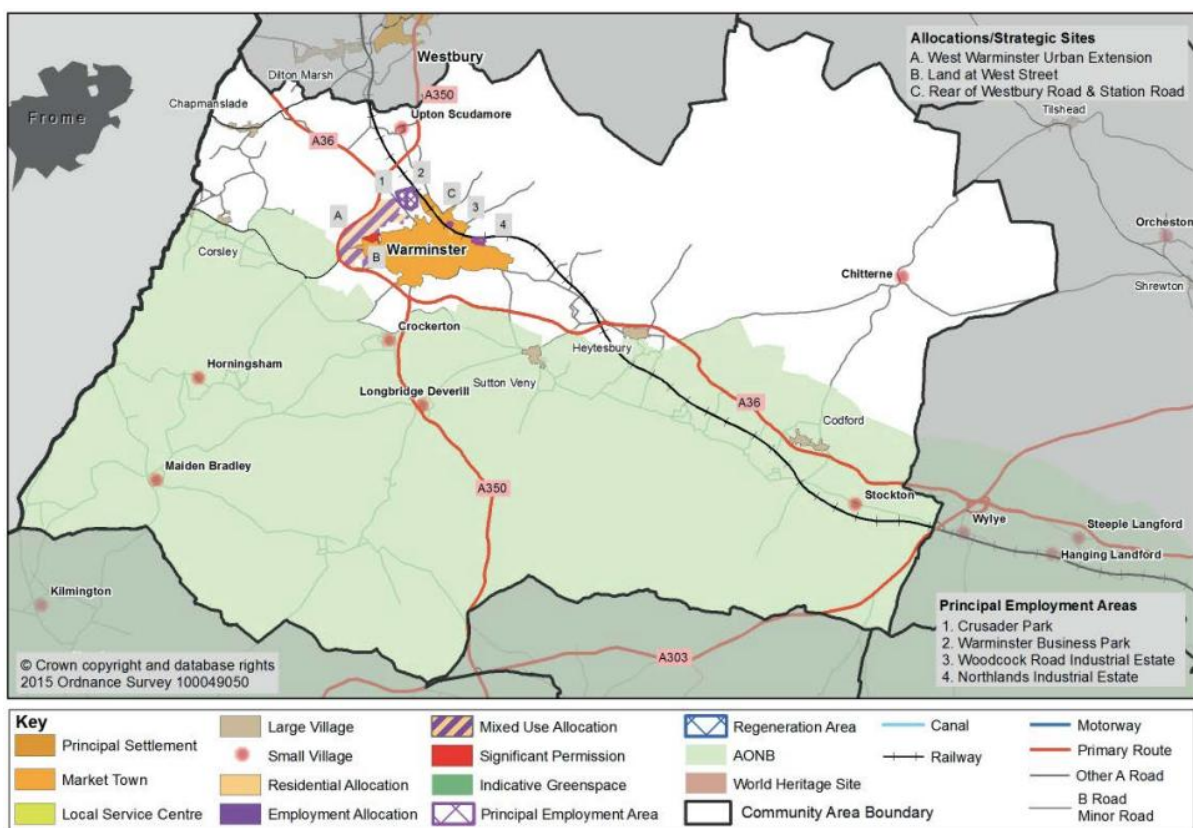


Figure 5.22 Warminster Community Area



- 4.18 **Core Policy 45** addresses meeting Wiltshire's housing needs in terms of type, mix and size. The policy is of reduced weight. There is a "*substantial shortfall in its housing land supply*" so strategic preference to make requirements of proposals should be held in abeyance until the substantial shortfall is addressed, and therefore the proposal is **neutral** with the policy.
- 4.19 **Core Policy 48** concerns Supporting Rural Life and provides a range of circumstances for when rural housing is acceptable. The restrictive elements of the policy are of very limited weight bearing in mind the "*substantial*" housing supply shortfall, so we contend that the policy impact is **neutral**.
- 4.20 **Core Policy 50** concerns biodiversity. The following ecological reports and surveys have been submitted with the planning application:
- 🦉 Preliminary Ecological Survey
 - 🦉 Bat and Protected Species Survey
 - 🦉 Biodiversity net gain assessment, Cherry Tree Ecology February 2025
- 4.21 The PEA and species survey concludes that compensation and enhancement measures should be included (controlled by planning condition) to compensate for loss of, or to enhance, habitat or species, for which a list of measures is recommended.
- 4.22 The biodiversity net gain assessment has concluded that "*the proposal will result in an increase of 0.10 (29.29%) 'area' habitat units through the creation of modified grassland and planting of individual trees. The site currently achieves the minimum legal requirement of 10% increase in biodiversity units for area habitats*".
- 4.23 The policy requires all development proposals to incorporate mitigation measures and the report is clear that can be **complied** with, and exceeded.
- 4.24 **Core Policy 51** concerns landscape. It requires development to protect and conserve landscape. This scheme will not adversely affect the landscape, in **compliance** with the policy.
- 4.25 The scheme occupies a site that is previously developed, and whilst layout and scale are reserved matters, it is reasonable to assume that the future dwellings can be stepped down in height, marking a transition between the housing on Lower Marsh Road, and the wider landscape.

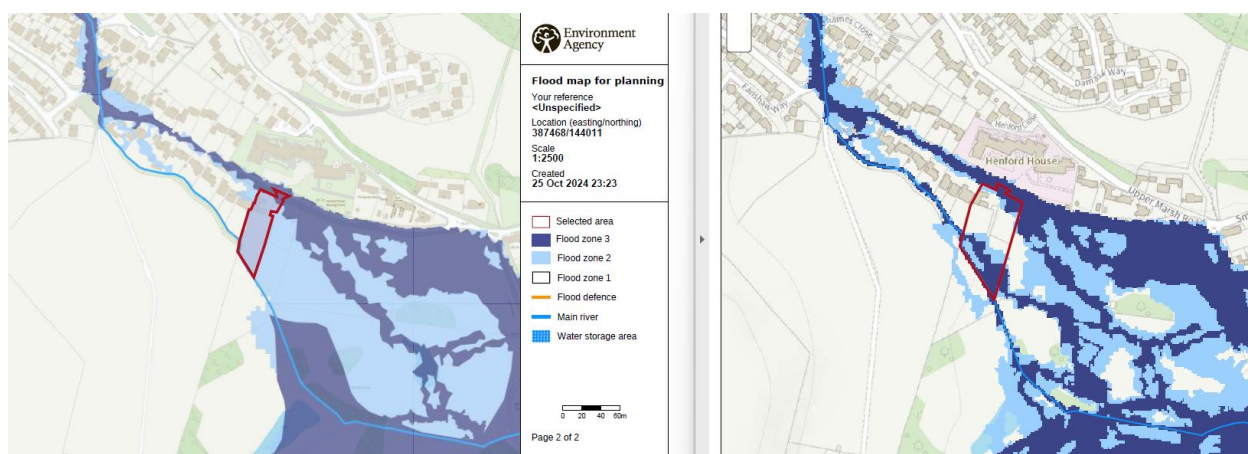


- 4.26 We find no conflict with this policy because matters concerned with development in the countryside are contained within policies on settlement strategy where a harms and benefits balance is necessary.
- 4.27 **Core Policy 56** concerns contaminated land. There is no recent planning history that indicates that the land is at risk of being contaminated. This matter can be conditioned to ensure **compliance** with the policy.
- 4.28 **Core Policy 57** sets the strategic design criteria for development across the plan area. It requires development to be of a high standard, and to create a strong sense of place through drawing on the local context.
- 4.29 We respond as follows to the policy criteria, in so far as it is possible to do so, bearing in mind that the design matters of layout, appearance and landscaping, are all reserved:
- i. The scheme follows the existing patterns of development on Lower Marsh Road.
 - ii. Opportunities to enhance natural features will be taken at the reserved matters stage. However, the site is large and opportunities to enhance landscape and biodiversity will have ample space to integrate the development and provide a defined and well-vegetated transition to the wider landscape.
 - iii. Whilst a reserved matter, there is clear scope for the future layout and design to respond positively to the townscape and landscape juncture.
 - iv. There are no historic buildings or landscapes that require conserving in this case.
 - v. The new dwellings will be built to modern building standards and will conform to the requirements for sustainable construction at the reserved matters stage.
 - vi. The proposal makes efficient use of the previously developed land and will take account of the local vernacular without compromising on either. The scheme will relate to positively to its neighbours.
 - vii. The new development will not introduce any new neighbouring use which doesn't already exist.
 - viii. The scheme will increase and thereby improve natural surveillance of the area, but be defensible of its own boundaries without causing visual harm to the street scene.
 - ix. This criterion is not relevant, there are no public realm spaces within the development.
 - x. This criterion is not relevant, there is no advertisement or signage relevant to the development.
 - xi. The scheme can be laid out, comparably with neighbouring dwellings, to provide amenity space and access to parking.
 - xii. The scheme will propose high quality building materials to complement the local vernacular.
 - xiii. This criterion is not relevant, this is not a major development.
 - xiv. The scheme is within a short cycle and drive of the town centre.
- 4.30 The proposal either **complies** with, or has a **neutral** effect on, criteria that are not yet relevant.
- 4.31 **Core Policy 58** covers ensuring the conservation of the historic environment. Grade 2 listed Turnpike Cottage is located some 200m east of the site, but it is located in the context of



modern development at the junction of Lowr and Upper Marsh Road and the Hunters Moon Holiday Park. In this context, we contend that the scheme will cause no harm to the historic environment, in **compliance** with the policy.

- 4.32 **Core Policy 60** relates to sustainable transport. **Core Policy 61** relates to transport and new development. The site is located a short cycle or drive time from the town centre. The scheme can be made more sustainable in planning terms by conditioning the provision of cycle storage and domestic EV charging equipment, emulating and complementing building regulations, and aiding in the take up of EV car ownership. Granting planning permission in this case will support local services and facilities, in **compliance** with the policy, without fundamentally undermining the vision-led approach to sustainable transport in the Core Strategy.
- 4.33 **Core Policy 67** relates to flood risk. It states that *“Development proposed in Flood Zones 2 and 3 as identified within the Strategic Flood Risk Assessment will need to refer to the Strategic Housing Land Availability Assessment when providing evidence to the local planning authority in order to apply the sequential test in line with the requirements of national policy and established best practice”*.
- 4.34 In 2025, the Environment Agency updated its Flood Map for Planning by integrating the new National Flood Risk Assessment (NaFRA2) and introducing a “Flood Zones plus climate change” layer, providing clearer, climate-informed flood risk data to support planning and development decisions. The SFRA will require updating to reflects these changes.
- 4.35 Site-specific flood risk assessments, undertaken before and after the NaFRA2 show that the central part of this has been relieved from the flood zones, and it is only the existing access onto the highway that crosses flood zones 2 and 3.



- 4.36 The NPPF is clear that the sequential test is undertaken by the local planning authority, and this is reinforced by the policy. In order to assist the local planning authority in this exercise, a shadow sequential exercise has been undertaken (Appendix 2) which concludes that of 67 sites assessed in the Warminster Area of Search, only 6 sites were found with reasonably available permissions totaling only 16 dwellings.
- 4.37 The Government has pledged to build 1.5 million homes before the end of the parliament and has issued a ‘call to arms’ to ‘build baby build’⁵. Some media reports suggest that major housebuilders might only make small increases in their build rates (potentially because they

⁵ [Housing Secretary issues 'call to arms' to 'build, baby, build' - GOV.UK](https://www.gov.uk/government/news/housing-secretary-issues-call-to-arms-to-build-baby-build)



do not wish to depress prices), so therefore it will be the SME builders who are likely to take up this challenge. The NPPF is very clear on this:

"73. Small and medium sized sites can make an important contribution to meeting the housing requirement of an area, are essential for and Medium Enterprise housebuilders to deliver new homes, and are often built-out relatively quickly".

- 4.38 Wiltshire's housing need has increased 84% from 1917 to 3525 dwellings. The large numbers of homes that are needed to address this situation will be provided in accordance with the settlement hierarchy and substantially more than 16 homes will be required in Warminster to address need, which the neighbourhood plan wishes to see (other than the western urban extension) spread around to avoid imbalance.
- 4.39 The Council finds itself with a mere 2.03 years housing supply, amidst a housing crisis.
- 4.40 Flooding is not one of the NPPF's key policies (directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes).
- 4.41 It is true that, on screen, this site is affected by some polygons. It is also true that the new homes, that are much needed, are sequentially located within the site and that (through reserved matters) they can be made safe for their lifetimes and if required, flood alert and evacuation plans can be secured by planning condition.
- 4.42 For these reasons, we acknowledge there is a policy **conflict** with the aspiration to avoid development in flood zones, however only the access is in the flood zone, the dwellings themselves are not, and no built development is proposed in the flood zones because development will be utilising the existing access. The policy conflict is on paper, and it would not, in reality, provide a strong reason for refusal.
- 4.43 The following non-strategic development plan policies are considered potentially relevant to decision making, but the weight to be given to them must be held in the context of the significant lack of a 5 year housing land supply and the tilted balance:
- 🐾 Saved policy U5
 - 🐾 Policy E5 Surrounding Environment
- 4.44 **West Wiltshire Local Plan 2004 saved policy U5** states:
- "Proposals for housing or other development which is sensitive to odour pollution will not be permitted within the sewage treatment works buffer zones, as defined on the Proposals Map, where the proposed development cannot reasonably co-exist in proximity to a sewage treatment works".*
- 4.45 As discussed in the planning history section above, the neighbouring housing scheme was approved regardless of this policy. Elsewhere in the country, and author of this statement has seen other STP buffer policies abandoned by local planning authorities, often when improvements have been made to individual treat works and the policy no longer applies. In this case, because the information is not in the public realm, it is not clear why policy U5 did not restrict development adjacent to this site, but the fact remains. On the face of the evidence, we cannot find policy U5 presents an obstruction to development, and therefore the policy effect must be **neutral**.
- 4.46 **Warminster Neighbourhood Plan policy E5** requires states that:



“New developments should respect local character. The provision of green space that enhances its surroundings will be supported. Improvements to the natural environment, green space and biodiversity will be supported”.

4.47 The scheme respects local character which is edge of settlement, and provides the opportunity to ‘finish off’ the street scene and provide a more vegetated and sensitive transition to the countryside, that will enhance the environment and biodiversity, in **compliance** with the policy.

4.48 We find the following in terms of policy performance:

Policy	Compliance, neutral or conflict	Reduced weight to policy for the distribution of housing?
Core Policy 1 Settlement Strategy	neutral	Yes
Core Policy 2 Delivery Strategy	neutral	Yes
Core Policy 31 Spatial Strategy for Warminster	neutral	Yes
Core Policy 45 Meeting Wiltshire’s Housing Needs	neutral	Yes
Core Policy 48 Supporting Rural Life	neutral	Yes
Core Policy 50 Biodiversity	complied	n/a
Core Policy 51 Landscape	compliance	n/a
Core Policy 56 Contaminated Land	compliance	n/a
Core Policy 57 Ensuring High Quality Design and Place Shaping	complies or neutral	n/a
Core Policy 58 Ensuring the Conservation of the Historic Environment	compliance	n/a
Core Policy 60 Sustainable Transport	compliance	n/a
Core Policy 61 Transport and Development	compliance	n/a
Core Policy 67 Flood Risk	conflict	n/a
Saved policy U5 Odour Pollution	neutral	n/a
Neighbourhood Plan policy E5 Local Character	compliance	n/a

4.49 We contend that, on balance, this outline planning application for three new homes, in a substantial housing supply shortfall, complies with the development plan.

5. Development Plan Balance and Planning Controls

5.1 The Court of Appeal in *Corbett v Cornwall Council* clarified that a conflict with an individual development policy (or part thereof), however strongly worded, does not automatically mean a proposal is contrary to the development plan as a whole, reaffirming that assessing accordance with the plan is ultimately a matter of planning judgment, not strict interpretation.

5.2 Our analysis of the proposal’s performance against development plan policies reveals that there are a range of compliances and neutral outcomes and a single conflict to a policy that is not an NPPF key policy.



5.3 The NPPF is clear that:

"Planning conditions and obligations

56. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

57. Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision-making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification.

58. Planning obligations must only be sought where they meet all of the following tests:

(a) necessary to make the development acceptable in planning terms;

(b) directly related to the development; and

(c) fairly and reasonably related in scale and kind to the development".

5.4 The ecology report makes recommendations for ecological mitigation and enhancement that, without them, a policy conflict would ensure. The ecology measures should be the subject of a planning condition.

5.5 To control design and materials, appropriate conditions can be applied requiring submission of further details, materials and samples.

5.6 A planning condition requiring the submission of details for cycle storage and domestic EV charging can be applied to increase the sustainably transport element of the scheme. We would suggest the following wording for such a condition:

"Prior to the first occupation of the dwelling hereby approved, details of the cycle storage and electric vehicle charging point(s) to be installed shall be submitted to and approved in writing by the Local Planning Authority. The approved storage and charging point(s) shall be installed prior to occupation and thereafter retained for the lifetime of the development."

6. Material Considerations

6.1 The NPPF supports the development of small rural housing sites:

"73. Small and medium sized sites can make an important contribution to meeting the housing requirement of an area, are essential for and Medium Enterprise housebuilders to deliver new homes, and are often built-out relatively quickly."

"83. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby."



- 6.2 The NPPF supports positive decision making, not least in the circumstances of a substantial shortfall in housing land supply:

"11. Plans and decisions should apply a presumption in favour of sustainable development.

For decision-taking this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination."

"39. Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible."

"48. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing."

- 6.3 The NPPF promotes a proportionate approach to the protection and enhancement of the countryside:

"Planning policies and decisions should contribute to and enhance the natural and local environment by:

a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);

b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;

c) maintaining the character of the undeveloped coast, while improving public access to it where appropriate;

d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures and incorporating features which support priority or threatened species such as swifts, bats and hedgehogs;



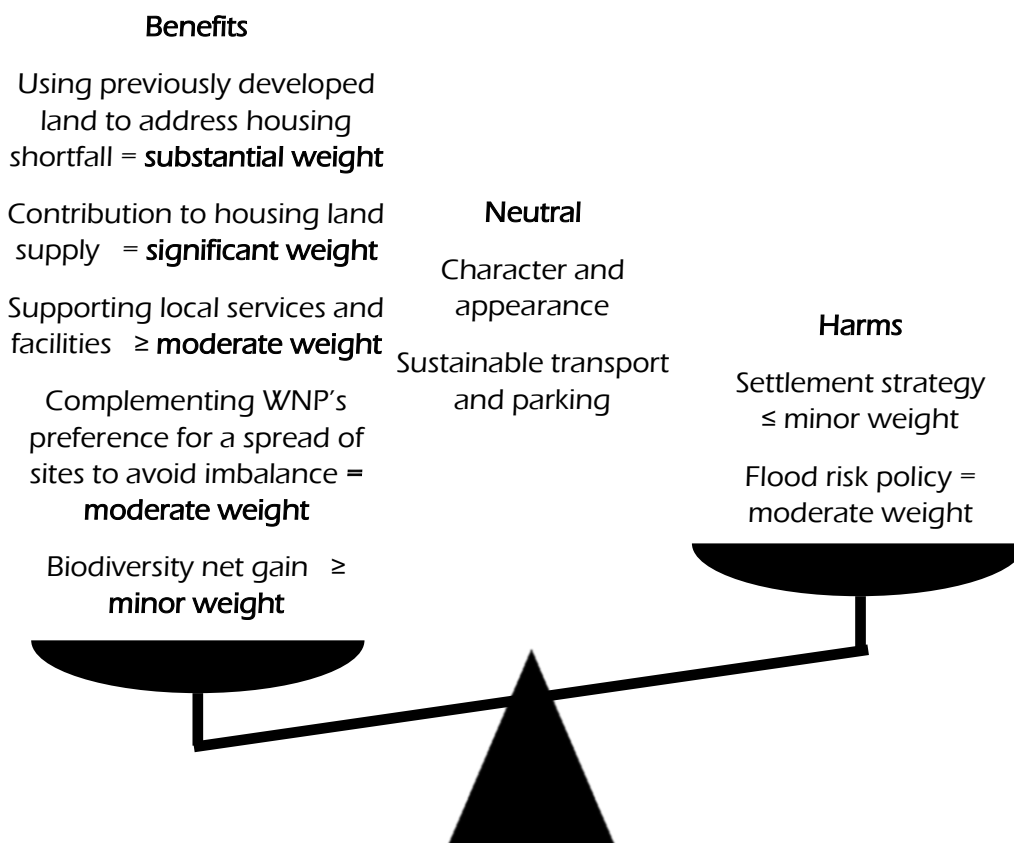
- e) *preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and*
- f) *remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate”.*

7. The Flat and Tilted Planning Balance

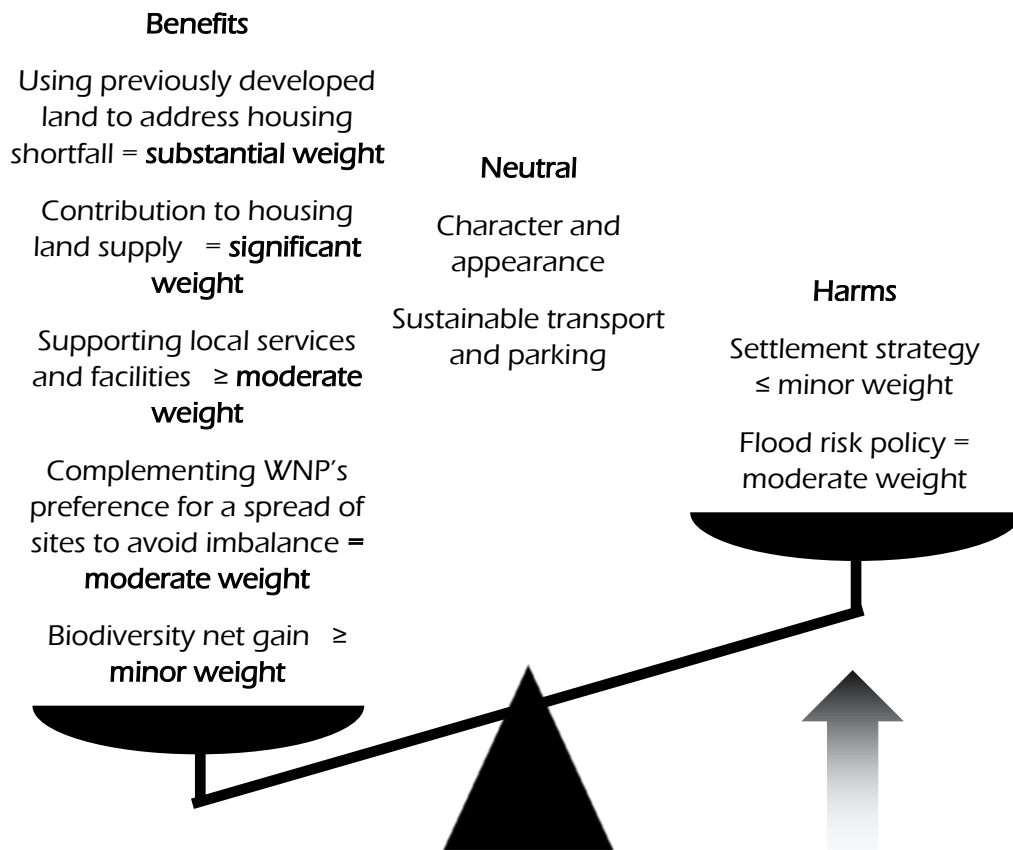
7.1 The tilted balance is triggered in this case by two separate paragraphs within the NPPF; paragraph 11 (the out-of-date policy trigger) and paragraph 125c (the brownfield first trigger) which is clear that:

*“Planning decisions should give **substantial weight** to the value of using suitable brownfield land within settlements for homes and other identified needs, **proposals for which should be approved unless substantial harm would be caused**, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land”*

- 7.2 The local planning authority is clear that the tilted balance is engaged against paragraph 11. We do not consider that any ‘Footnote 7’ policies change that circumstance.
- 7.3 Development of this site for up to three dwellings is not considered to provide a “*strong reason for refusal*” under NPPF policy, where the sequential and exception tests are passed.
- 7.4 The flat balance of harm, benefits and neutral matters is set out graphically below:



- 7.5 The tilted balance of harm, benefits and neutral matters is set out graphically below, showing a greater weighting towards the benefits:



- 7.6 We are content that on either the flat or tilted balances, the balance of benefits versus harms weighs in favour of the grant of planning permission, this is despite a flood risk policy conflict (which is not a strong reason for refusal in reality). This is because:

- No adverse impacts would significantly and demonstrably outweigh the benefits (NPPF para 11d)
- Proposals should be approved unless substantial harm would be caused (NPPF para 125c).

8. Conclusion

- 8.1 This planning application, for up to three dwellings in Warminster, had been conceived before the Council found themselves in a substantial housing supply deficit.
- 8.2 The scheme is in outline, but the following benefits are contended:
- The scheme will contribute to a serious and significant housing supply shortfall.
 - The site abuts the settlement boundary and can be regarded as sustainably located.
 - The new homes will be built out of the flood risk zones where they will be safe for their lifetimes.
 - The use of previously developed land, to contribute towards addressing and significant housing supply shortfall, can be given substantial weight in favour.



- ☛ The character and appearance of the area would not be harmed, because the site is not within any designated or valued landscape, is previously developed, and offer the opportunity to 'finish off' development on the south side of Lower Marsh Road, providing a sensitive transition to the countryside beyond.

8.3 Planning policy is clear that:

"where policies which are most important for determining the application are out-of-dates, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination"

8.4 It is not considered that Footnote 7 policies present any 'strong' reasons for refusal. Indeed, we contend that the planning balance falls squarely and clearly in favour of the grant of planning permission.

8.5 Planning policy is also clear that:

"Planning decisions should [...] give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, proposals for which should be approved unless substantial harm would be caused, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land"

8.6 No adverse impacts have been found that could realistically outweigh the benefits on both the flat and tilted balances.

8.7 We commend this valuable contribution to housing supply to the local planning authority for approval.



Lone Wolf Planning

Appendix 1



Briefing Note No. 24-20

Service: Planning
Further Enquiries to: Nic Thomas, Director - Planning
Email: nic.thomas@wiltshire.gov.uk
Date Prepared: 17 December 2024

IMPLICATIONS OF DECEMBER 2024 NATIONAL PLANNING POLICY FRAMEWORK AND REVISIONS TO THE STANDARD METHODOLOGY ON THE HOUSING LAND SUPPLY

Overview

1. On 12 December 2024 the Government issued an update to the [National Planning Policy Framework](#) (NPPF). This followed a consultation into the proposed changes in summer 2024. The changes to the NPPF included amendments to the deliverable housing land supply policies, the terms under which a buffer should be added to the housing requirement to be used in the housing land supply calculation, and the implications of not being able to meet a sufficient deliverable housing land supply.
2. On the same date the Government also issued revisions to the Planning Practice Guidance (PPG) including the standard methodology for assessing and setting Local Housing Need, and published the [2023 Housing Delivery Test results](#).
3. The revisions that are pertinent to the housing land supply calculation and its implications are summarised as follows:
 - a) Local Planning Authorities are now required to demonstrate a deliverable supply of housing sufficient to meet **five** years against their housing requirement set out in adopted strategic policies (or against their Local Housing Need where the strategic policies are more than five years old) in all circumstances. Under the previous NPPF, Wiltshire was only required to demonstrate a **four-year** housing land supply because its draft Local Plan had reached an advanced stage.

- b) Local Planning Authorities are now required to add a buffer to the housing requirement in the **five-year** housing land supply calculation in all circumstances. The buffer to apply is driven by the council's latest Housing Delivery Test results, which for Wiltshire indicates a 5% buffer to be added¹. Under the previous NPPF a buffer was only required if the council's Housing Delivery Test results indicate under-delivery of 85% or lower against the housing requirement, which was not the case for Wiltshire.
- c) The revisions to the PPG have set out a revised standard methodology for the Local Housing Need – this is the calculation that establishes the housing figure to be used in the housing land supply calculation. The revision has changed the method from being based on future household projections, to being based on the amount of existing housing stock in the local authority area. The revision has also changed the adjustment factor which is based on the affordability of housing in the local planning authority. The figure for Wiltshire has changed as follows:

Number of homes per annum under previous Local Housing Need calculation ² .	Number of homes per annum under revised Local Housing Need calculation.	Percentage change
1,917	3,525	+84%

The implications of the revised Local Housing Need calculation are set out in paragraphs 5-7 for determining planning applications and appeals, and in paragraphs 8-11 for the implications on the emerging Local Plan.

- d) The consequences of not being able to demonstrate a five-year housing land supply are that the presumption in favour of sustainable development (often referred to as the 'tilted balance') applies. This is set out in paragraph 11d of the NPPF. This paragraph has also been amended in two ways. Firstly, where there are exception policies³ that prevent the 'tilted balance' applying that these provide a 'strong' reason for refusal, rather than a 'clear' reason for refusal. Secondly, to ensure that when the planning balance is being

¹ The 2023 Housing Delivery Test results were published on 12 December 2024. These indicate that Wiltshire had delivered 135% against its housing requirement in the last three years which is the period over which housing delivery is assessed in the test. This results in a 5% buffer to be applied on the five-year requirement in the housing land supply calculation.

² Under a 2024-base dated assessment

³ Footnote 7 of the NPPF sets these out.

carried out, that particular regard is had to certain key policies in the Framework⁴ related to directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.

4. In summary, the changes to the NPPF now require Wiltshire to demonstrate a five-year housing land supply, including a 5% buffer, and must apply the revised Local Housing Need for decision-taking immediately. As the table in paragraph 3.c above shows, this results in a significant increase in the five-year housing requirement to be met from the previous calculation. When this is assessed against the housing land supply which can be delivered within five years, the recalculation shows a significant reduction in the number of years supply. The council cannot demonstrate the requisite five-year housing land supply and can demonstrate a **2.03 years supply**.

Implications for decision-taking

5. Annex 1 of the revised NPPF indicate that new provisions apply immediately for determining planning applications and appeals.
6. Prior to the publication of the revised NPPF the council was already in a position where it was unable to demonstrate the requisite housing land supply (see member Briefing note [24-18](#)) and the 'tilted balance' was applied. The same implications for determining planning applications therefore continue to apply, however with other particular factors to consider because of changes to the NPPF. Firstly, the magnitude of the shortfall in supply is now substantial and the weight to be given to improving housing supply greater compared to when the council had a more marginal supply. However, and following on from this, the presumption in favour of sustainable development now requires decision-takers to have particular regard to key policies as set out in footnote 9 of the NPPF (highlighted in paragraph 3.d above) to ensure that proposals that can help improve housing land supply are properly and thoroughly assessed against the key policies.
7. The Government's response to the NPPF consultation growth agenda reiterates its Plan for Change. This sets out a commitment to rebuilding Britain, delivering 1.5m new homes along with the critical infrastructure that underpins economic growth. It further sets out that this will

⁴ Specifically policies related to affordable housing, isolated dwellings in the countryside, town centre uses, locations which are sustainable in terms of transport, efficient use of land and density, and design. See footnote 9 of the NPPF.

be achieved in part by reforming the planning system, and radically boosting the supply of housing, while delivering homes and places that are high-quality and genuinely affordable. The approach to applying the presumption in favour of sustainable development should be seen with this national objective in mind.

Implications for the Local Plan

8. Annex 1 of the revised NPPF provides transitional arrangements for plan-making which dictate how emerging plans will be treated in regard to the revised NPPF.
9. The council submitted the Local Plan for independent examination on 28 November 2024. Under the NPPF's transitional arrangements, the Plan (and the housing requirement) will continue to be assessed under the relevant previous version of the NPPF, which in this case will be the September 2023 NPPF. The Examining Inspector will need to be satisfied that the council can demonstrate a five-year housing land supply at the point of adoption. This will be assessed against the housing requirement in the emerging Local Plan which is lower than the revised Local Housing Need.
10. However, as the housing requirement in the emerging Local Plan will meet less than 80% of the revised Local Housing Need, the council will be expected to begin work on a new Local Plan promptly, under the revised plan-making system provided for under the Levelling Up and Regeneration Act 2023 (when the relevant provisions are brought into force in 2025), in order to address the shortfall in housing need.
11. Upon adoption of the Local Plan, the five-year housing land supply will be assessed against the housing requirement in the plan (which is based on the previous Local Housing Need calculation) for a period of up to five years from adoption. However, the revised NPPF includes a clause that for authorities whose adopted housing requirement is substantially less than the revised Local Housing Need figure (which is the case for Wiltshire), they will be required to add a **20% buffer** to their five-year housing requirement from **1 July 2026** (the equivalent of a six-year housing land supply). To meet this increased buffer, the council will need to continue to approve planning applications to ensure a sufficient housing land supply can continue to be met at, and beyond, this date.

Implications for new Neighbourhood Plans

12. Where the presumption in favour of sustainable development (NPPF paragraph 11d) applies, NPPF paragraph 14 includes provisions as to how this affects Neighbourhood Plans that meet criteria related to their age and how the Neighbourhood Plan meets its identified housing requirement. These provisions in paragraph 14 are unchanged in the revised NPPF.

Summary

13. The revisions to the Local Housing Need and housing land supply aspects of the planning system are significant changes. They provide for a substantial uplift (84% plus 5% buffer) in the levels of housing that the council will need to plan for. This forms part of the Government's economic growth agenda.
14. The changes introduced on 12 December 2024 mean that the council now has a substantial shortfall in its housing land supply position (2.03 years). This alters the weight to give to housing supply when giving consideration to planning applications for residential development. This means balancing the strengthened need to boost housing supply against any adverse impacts of the proposal, considered against the development plan as whole, and any material considerations on a case-by-case basis. This will need to include consideration of what weight to assign to the most important policies.
15. The changes to the NPPF are wider than those set out above. They can be viewed via the following link, which show a comparison with the December 2023 version:
[NPPF December 2023.pdf → NPPF-December-2024.pdf - Draftable](#); which indicates moved, replaced and inserted text.

Lone Wolf Planning

Appendix 2



Sequential Assessment

Methodology

National and Local Policy & Guidance

Paragraphs 173 – 175 of the NPPF set out the background to the Sequential Test:

‘173. A sequential risk-based approach should also be taken to individual applications in areas known to be at risk now or in future from any form of flooding, by following the steps set out below.

174. Within this context the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test.

175. The sequential test should be used in areas known to be at risk now or in the future from any form of flooding, except in situations where a site-specific flood risk assessment demonstrates that no built development within the site boundary, including access or escape routes, land raising or other potentially vulnerable elements, would be located on an area that would be at risk of flooding from any source, now and in the future (having regard to potential changes in flood risk).’

Wiltshire Core Strategy Policy 67 is clear that ‘development proposed in Flood Zones 2 and 3 as identified within the Strategic Flood Risk Assessment will need to refer to the Strategic Housing Land Availability Assessment when providing evidence to the local planning authority in order to apply the sequential test in line with the requirements of national policy and established best practice.’ As noted in the following section, the 2017 Wiltshire Strategic Housing and Economic Land Availability Assessment (SHELAA) comprises one of the data sources used to inform this Sequential Test.

Further guidance is set out in the Wiltshire Council Level 1 Strategic Flood Risk Assessment (SFRA) (2024). The guidance states: ‘Developers are required to apply the Sequential Test to all development sites, unless the site is:

- a strategic allocation and the test have already been carried out by the LPA as part of preparing the local plan, or
- a change of use (except to a more vulnerable use), or
- a minor development (householder development, small non-residential extensions with a footprint of less than 250m²), or
- a development in fluvial flood zone 1 unless there are other flooding issues in the area of the development (i.e. surface water, ground water, sewer flooding’.

The application site does not meet any of the above exceptions and thus a Sequential Test is required.

Area of Search

The guidance in the SFRA adds that ‘local circumstances must be used to define the geographical scope of the Sequential Test (within which it is appropriate to identify reasonably available alternatives). To determine the appropriate search area criteria, include the catchment area for the type of development being proposed. For some sites this may be clear, e.g. school catchments, in other cases it may be identified by other Local Plan policies. For some sites, e.g. regional distribution sites, it may be suitable to widen the search area beyond LPA administrative boundaries.’

The recently amended Flood Risk and Coastal Change PPG builds on the above through stating ‘for non-major housing development’ (such as the proposed development at the application site), ‘it would not usually be appropriate for the area of search to extend beyond the specific area of a town or city in which the proposal is located, or beyond an individual village and its immediate neighbouring settlements’. In this instance the application site is located adjacent to the settlement boundary of Warminster, which is

identified as a Market Town in the Core Strategy. As per the recommendations of the PPG (which should take precedent over the Council's recommendations in the SFRA considering the PPG provides the most up to date guidance), the area of search has therefore been limited to the built-up area of Warminster.

Site Sources

The SFRA states *'the sources of information on reasonably available sites may include:*

- *Site allocations in Local Plans;*
- *Sites with planning permission but not yet built out;*
- *Strategic Housing and Economic Land Availability Assessments (SHELAA's)/five-year land supply/annual monitoring reports;*
- *Locally listed sites for sale;*
- *It may be that a number of smaller sites or part of a larger site at a lower flood risk form a suitable alternative to a development site at high flood risk'.*

In order to make the Sequential Test as robust as possible, the following data sources have been used in the assessment of sites:

- Wiltshire Brownfield Land Register 2022
- Adopted Local Plan allocations;
- Emerging Local Plan allocations;
- Warminster Neighbourhood Plan allocations;
- Warminster Town Council Neighbourhood Plan Review Site Assessments 2025;
- 2017 SHELAA;
- Wiltshire Housing Land Supply Statement (WHLSS) 2024;
- Sites granted planning permission beyond the base date stated in the WHLSS to the date of this report (1st April 2024 – 19th September 2025); and
- Sites currently available on the open market.

Identification of Reasonably Available Sites

The PPG states *'sites should be considered 'reasonably available' for the purposes of the sequential test if their location is suitable for the type of development proposed, they are able to meet the same development needs and they have a reasonable prospect of being developed at the same time as the proposal. In considering whether alternative lower-risk sites (which could, where relevant, be a series of two or more smaller sites) would be capable of accommodating the proposed development, such alternative sites do not need to be owned by the applicant to be considered 'reasonably available'.*

Consequently, in line with the above guidance, sites are only reasonably available if they are in a suitable location, are able to meet the same needs as the proposed development, and have a reasonable prospect of being developed at the same time as the proposed development.

With regard to timeframes, a delivery window of 18 months has been assumed to take into account the likely timescales of securing outline consent, disposing the site, being granted planning permission for reserved matters, and discharging any pre-commencement conditions, before commencing the development. Any sites which have been assessed to not be able to commence development until beyond this implementation window have been discounted.

The further following factors have been taken into account when assessing the alternative sites:

- Flood Risk: the Applicant's Flood Risk Assessment demonstrates that the application site's frontage is located in Flood Zone 2. Consequently, any sites which are located in Flood Zones 2 and 3 have been automatically discounted, whereas those in Flood Zone 1 are treated as being sequentially preferable (subject to further analysis).

- Disposal and commitment: sites are available where there is active marketing or owner intent to dispose now, or an unimplemented permission with a short consent pathway. Sites are not available where under construction/implemented, or where RM/phasing/conditions show a near-term in-house build-out and no released or marketed subparcel.
- Planning status: sites with planning permission or forming either an adopted or emerging allocation are more likely to be deliverable within the required timeframe. Conversely, if construction has commenced, sites are developed, or pre-commencement conditions have been discharged, then such sites have been discounted due to the clear intention to develop.
- Planning and development constraints: sites with clear constraints have been discounted e.g. access issues.
- Site size: no limits have been placed on site size due to the minor nature of the proposed scheme i.e. up to three dwellings. Sites comprising one or two dwellings could therefore be reasonably available if they make up a series of sites, whereas larger sites could potentially be available if there is the opportunity to provide an independent developable parcel for a three-dwelling scheme.

Such factors have allowed for each site to be assessed base on its suitability, availability and achievability.

Assessment of Sites

From a review of the site sources listed above, 67 sites were assessed, with the detailed findings presented in the full table below.

Of those 67 sites, six are considered to be reasonably available (as shown by the green highlighted rows in the full table found further below). All but one of these sites comprise a development of one or two dwellings, but as per the PPG these cannot be discounted given they result in a series of smaller sites. The sites that have been identified as being reasonably available are as follows:

Site No.	Location	Capacity	Commentary
006	Rear No.8 Westbury Road	2	Site has been allocated for 20 years. Two dwellings constructed following the grant of planning permission in 2014. Site negatively reviewed in 2017 SHELAA with a capacity of 0 and confirmed as not being deliverable (likely due to being landlocked following the 2014 planning permission and multiple land ownership). However, two dwellings have been approved to the rear of 8 Westbury Road in 2022. The subsequent RM app is currently pending determination, with no conditions discharged on the outline consent and the applicant not appearing to be a developer. It is therefore considered that the two dwellings are reasonably available.
009	North of Brick Hill Farm, Bath Road	9	Outline planning permission granted January 2025 for 9 dwellings, with the land currently for sale. The site is therefore reasonably available.
054	Land adjacent 4 Chapel Street	1	Outline consent for one dwelling granted March 2023. RM yet to be submitted and no pre-commencement conditions discharged.

Site No.	Location	Capacity	Commentary
			Site is therefore reasonably available for one dwelling.
063	Land rear 38 West Street	1	Permission granted for one dwelling in January 2023. Single pre-commencement condition (surface water drainage scheme) yet to be discharged but an application could be approved and development commenced in time for January 2026 expiry. Site is therefore considered reasonably available for one dwelling.
066	Mason Arms, East Street	2	Permission granted February 2025 for conversion of pub to 6 dwellings and erection of two dwellings. Pre-commencement conditions application yet to be submitted. Considering layout of approved site, the six converted units would not be severable. However, the two dwellings that are to be erected would be reasonably available.
067	Land rear 19 Market Place	1	Consent granted for conversion to one dwelling in October 2024. Application for pre-commencement conditions yet to be submitted. The site is therefore reasonably available for one dwelling.

There are therefore six sites totalling 16 dwellings that are deemed to be reasonably available. As a result, the Sequential Test has not been passed.

Discussion

While it is acknowledged that the proposed development does not pass the Sequential Test, this is not necessarily fatal to a planning application. Rather, it is a factor which must be weighed in the overall planning balance. Such a stance is reflected in the case of *Mead Realisations and Redrow Homes Ltd v Secretary of State for Levelling Up, Housing and Communities* [2024] EWHC 279, where Mr Justice Holgate confirmed (paragraphs 174, 178) that housing land supply is a ‘*matter which may, for example, reduce the weight given to a failure to meet the sequential test, or alternatively increase the weight given to factors weighing against such failure*’.

In a recent appeal decision in Yatton, Somerset, for the erection of up to 190 dwellings (Appended), a sequential test was required due to the site being located in Flood Zone 3. While the Inspector noted that there were 12 sites which were sequentially preferable to the appeal site and thus the proposed development failed the sequential test, he noted at Paragraph 175 that ‘... *the judgement in Mead makes clear that a failure to comply with the sequential test is not automatically fatal to a planning application. Other material considerations, including housing need, may outweigh such a failure...*’ Furthermore, despite finding at Paragraph 184 that ‘*significant weight should be attached to the failure of the sequential test, together with the residual [flood] risks I have identified*’, the Inspector found that this, along with conflict with the spatial strategy and landscape harm (which were both afforded limited weight), was not enough to outweigh housing need (the LPA had a 2.79 housing land supply) and the sustainability benefits of the proposal. The inspector subsequently allowed the appeal.

A further recent housing appeal decision (Appended) relates to a site in Faversham, Kent. It was a site at risk of flooding but where a site-specific FRA demonstrated the development could be made safe throughout its lifetime. In contrast to the *Yatton* appeal, no sequential test had been prepared. There was also harm identified to the landscape, the significance of heritage assets and through the loss of Best and Most Versatile Agricultural Land (BMV). The Council could only demonstrate a 3.98 year housing land supply.

The Inspector found in striking his planning balance (Paragraph 99) *‘the failure to perform a sequential test with regard to both tidal and pluvial flooding is a fundamental breach of planning policy, even if there are no real world effects as a result. The proposal also represents a departure from the adopted spatial strategy of the Council. The current housing land supply situation of the Council means that some departures from this strategy are inevitable, which lessens the weight to be applied to this conflict.’*

He went on at Paragraph 101 *‘Footnote 7 confirms that areas at risk of flooding are counted as assets of particular importance. Although the proposal has failed to perform the required sequential tests, there would be no real world effects after mitigation is taken into account. A ‘strong’ reason for refusal based on flooding must, to my mind, go beyond mere technical conflicts, even if they are important. There must be substantive risks and harms that go beyond policy. I do not, therefore, view this as a strong reason for refusing the development proposed...the tilted balance is therefore engaged’*. The appeal was allowed.

It is clear that having regard to the LPA’s woeful Five Year Housing Land Supply position (2.42 years as of June 2025) and the extremely limited nature of the flood risk on-site (that being located solely along the site’s frontage with all three dwellings and their curtilage located in Flood Zone 1, and the accompanying Flood Risk Assessment demonstrating that site would be made safe from flood risk for the lifetime of the development), that like in these appeals there would be no real world effects from approving this application. In this context it is therefore argued that the failure of the sequential test is not fatal to this planning application. Rather, the planning balance is to be struck decisively in favour of approval on the ground of limited flood risk.

Site No.	Site Name, Size & Capacity	Flood Risk	Adopted LP Allocation	Emerging LP Allocation	2017 SHELAA	HLS 2025 / Planning App Ref	NP Allocation	NP SA 2025	BLR 2022	For Sale	Commentary
001	Bore Hill Farm (4.83 ha; 80 dwellings)	FZ1; High/medium SWFR areas	H2.7	No reference provided but continued forward as allocation.	302; 1032	PL/2024/01752; PL/2023/00810; PL/2022/07120; PL/2022/00473					Original app withdrawn. Current application was submitted three years ago. Appear to be extensive issues with odour relating to the adjacent Anaerobic Digestion plant. Environment Agency maintained objection on odour grounds in April 2025. The applicant is still yet to address this issue. Site discounted due to unresolved, sustained EA objection, indicating unacceptable amenity and no realistic prospect of consent within envisaged delivery window. Separate application for 9 dwellings has come forward on north-west portion of land with reserved matters being approved October 2024 (land off Bradley Road). Development is yet to commence although a number of pre-commencement conditions have been discharged, signalling intent for development to commence shortly. Site is therefore discounted.
002	Boreham Road (1.32 ha; 35 dwellings)	Circa half site in FZ2/3.	H2.8	No reference provided but continued forward as allocation.	304	19/07647/REM; 13/06782/OUT					Development has been constructed. Site discounted.
003	West Warminster Urban Extension North (84 ha; 1,000 dwellings)	Portions of site in FZ2/3, majority in FZ1	CP2;	No reference provided but continued	277; 743	PL/2025/04323; PL/2024/03667; PL/2022/08898; PL/2022/04343 PL/2021/07207; 15/01800/OUT	No reference provided but identified				Strategic allocation with entire land owned by Persimmon Homes and is governed by a phasing plan comprising five phases. Phases 1-3 have been consented and appear to either be built out or under

Site No.	Site Name, Size & Capacity	Flood Risk	Adopted LP Allocation	Emerging LP Allocation	2017 SHELAA	HLS 2025 / Planning App Ref	NP Allocation	NP SA 2025	BLR 2022	For Sale	Commentary
				forward as allocation.			as allocation.				construction. Phase 4 is pending approval, due 31st October 2025. No application has been submitted for Phase 5 but this does not need to be submitted until December 2030 latest, and thus its commencement is likely to fall beyond the implementation window for the three unit scheme. Of the applications approved and pending to date, no self-build or custom plots have been provided i.e. there is no discrete, severable sub-parcel being openly marketed as a serviced or custom-build plot suitable for an independent 3-unit scheme. Given the agreed phasing plan, RM approvals to date, and single housebuilder control which demonstrates commitment to delivery, there is no realistic prospect of a discrete three unit commencement within the envisaged implementation window. The site is therefore not reasonably available.
004	West Warminster Urban Extension South (23 ha; 530 dwellings)	Vast majority FZ1; pockets of site high SWFR	CP2	No reference provided but continued forward as allocation.	273; 730; 791; 3084	PL/2025/01523; 17/01463/FUL; PL/2021/11051; 19/09428/FUL; 14/06562/FUL					Southern half of land owned by Redrow Homes with mast majority of approved development constructed and the remaining under construction. This portion of the site is therefore nor reasonably available and thus is discounted. Northern half of land is under control of Keepmoat Homes with RM consent granted very recently. The site is therefore not reasonably available in terms of being able to bring forward an independent three unit scheme

Site No.	Site Name, Size & Capacity	Flood Risk	Adopted LP Allocation	Emerging LP Allocation	2017 SHELAA	HLS 2025 / Planning App Ref	NP Allocation	NP SA 2025	BLR 2022	For Sale	Commentary
											within the envisaged delivery window, considering housebuilder commitment to the site. Site discounted.
005	Rear of 106 West Street (0.3 ha; 12 dwellings)	FZ1	WA03		220	W/09/00258/FUL			5/LPA/55		Site has been allocated for 20 years. Planning permission granted for 5 dwellings in 2011 but never constructed. Site negatively reviewed in 2017 SHELAA when it was put forward for just one dwelling. Likely due to ownership constraints (land appears to be in multiple ownership with access to site forming an unregistered parcel). Given the time that has passed this would indicate site is not deliverable. Furthermore, the time it would take from the landowners to enter in to a Collaboration Agreement to the point of delivery would go beyond that envisaged for the development's implementation window. Finally, the site has not been carried forward as an allocation in the Local Plan Review. Site discounted.
006	Rear of 3-12B Westbury Road (1.5 hectares; 10 dwellings)	FZ1	WA12		223	PL/2024/04959 PL/2021/09067 13/03824/FUL			5/LPA/58		Site has been allocated for 20 years. Two dwellings constructed following the grant of planning permission in 2014. Site negatively reviewed in 2017 SHELAA with a capacity of 0 and confirmed as not being deliverable (likely due to being landlocked following the 2014 planning permission and multiple land ownership). However, two dwellings have been approved to the rear of 8 Westbury Road in 2022. The

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											subsequent RM app is currently pending determination, with no conditions discharged on the outline consent and the applicant not appearing to be a developer. It is therefore considered that the two dwellings are reasonably available.
007	Land north of Fairfield Road (1.47 ha; 30 dwellings)	FZ1	WA1 9		W/02/01149/OUT						Site has been allocated for 20 years with no record a planning application being received for residential use. 2017 SHELAA indicates the site has a capacity of 0 dwellings. The site is not being taken forward as an allocation in the emerging Local Plan. Furthermore, the site comprises four commercial units each with an agreed tenancy in place. The site would therefore not be deliverable within the implementation window given the time it would take to negotiate the early termination of each lease. Consequently, the site is not reasonably available.
008	Upper Marsh Road (0.75 ha; 3 dwellings)	FZ1						Site 1			The entire site is covered by a Tree Preservation Order and also comprises deciduous woodland which is a Priority Habitat. The site is unsuitable for development.
009	North of Brick Hill Farm, Bath Road (0.72 ha; 9 dwellings)	FZ1			1030	PL/2021/10503 18/02774/FUL		Site 2		Currently for sale	Outline planning permission granted 9 th January 2025 for 9 dwellings, with the land currently for sale. The site is therefore reasonably available.
010	East of Westbury Road (2.02 ha; 77 dwellings)	FZ1			793			Site 3			Arn Hill County Wildlife Site adjoins the land and the Arn Hill woodland to the north is Priority Habitat. On-site development would likely require avoidance buffers, retained

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											woodland margins and BNG delivery, materially reducing the developable area. The 77-unit capacity cited in source documents therefore appears optimistic and, in practice, any viable scheme would be significantly smaller to avoid adverse effects on these designations. The site fronts Westbury Road (40mph, main route to the A350). There is no pedestrian footway on the site side and the nearest safe connection would require a new controlled crossing to the south (and associated S278 works) to achieve a “safe and suitable” pedestrian route. Such infrastructure is unlikely to be justified or deliverable for a minor scheme, especially as there is no other development on this side of Westbury Road to support it. In practice, a crossing of this type would only come forward as part of a major scheme, which, even if acceptable, would not commence within the envisaged Sequential Test window. Although the SHELAA records the site as “suitable,” the combined ecological designations and highway/pedestrian safety requirements mean there is no realistic prospect that a minor residential scheme could be permitted and commence within the

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											envisaged window. The scale of works needed to make access acceptable would only be proportionate to a major development, which would fall outside the window. The site is therefore discounted.
011	Land at Church Street (4.08 ha; 60 dwellings)	Circa a third of land in FZ3. Further parts of site in FZ2.			303	13/05089/FUL		Site 4			Previous application for 60 dwellings refused due to multiple reasons, including flood risk. Only area for suitable access is located in FZ3. While the site can also be accessed via Ash Walk and Dorothy Walk which is in FZ1, this access is too narrow to support increased vehicular traffic movements. It is noted the site promoter is exploring options for access via the existing church car park, but this needs to first be agreed with the church who are a third party landowner. In the absence of such an agreement in place and the time it would take for this to be negotiated, the site could not be commenced within the envisaged delivery window. The site is therefore discounted.
012	Land south of Wren Close (2.49 ha; 75 dwellings)	FZ1			275			Site 5			NP Site Assessment 2025 doc notes that Wren Close unlikely provides suitable access. While Swallow Close could provide safe access, it is unclear as to the capacity of the highway network in this location and thus a major application would not be appropriate until prior consultation with the Highway Authority is undertaken to understand highway capacity. Site

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											was not deemed to be deliverable in 2017 SHELAA. Site therefore discounted.
013	Land west of Westbury Road (New Farm) (10.45 ha; 205 dwellings)	Western half of site FZ3. Southern portion of land adjacent to railway line in area at medium and high risk of SWFR			3676	APP/Y3940/W/24 /3338217 PL/2021/09013		Site 8			Site owned by Barratt David Wilson. Application for 205 dwellings dismissed at appeal on 15 th May 2025 due to no provision of sequential test for flood risk. Although ownership is not determinative under the PPG, the objective indicators of commitment (single volume housebuilder control with a simple reason for appeal dismissal that could be overcome via an application for a reduced quantum of development considering the entire eastern half of the site is in FZ1) indicate the site is not reasonably available.
014	Land East of Damask Way (2.23 ha; 28 dwellings)	FZ1			239; 606	20/07214/REM; 17/12348/OUT		Site 10			Site owned by Backhouse Housing. Outline consent granted for up to 28 dwellings but RM withdrawn due to not being able to resolve highway issues by expiry of OPP in April 2022. According to NP SA 2025 the landowner has provided up to date access proposals which now address highways concerns. Although planning application yet to be submitted, it is clear the developer has intentions to take the site forward. The submission of a major application will not have a realistic prospect of commencement within the envisaged sequential test window, with the design very likely being committed to by the developer. The site is therefore discounted.

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015	Land north of Boreham Road (0.18 hectares; 4 dwellings)	FZ1 but area of high SWFR at site frontage						Site 11			Site is not located within nor adjacent to settlement boundary. Significant portion of site frontage at risk of SWFR. Site discounted.
016	Land south of Boreham Road (1.41 hectares; 10 dwellings)	Circa half site in FZ3, northern parcel FZ1						Site 12			Site is not located within nor adjacent to settlement boundary. River Avon SAC/SSSI is adjacent to site boundary. Site discounted.
017	Land east of The Dene (Home Farm) (10.19 ha; 135 dwellings)	Vast majority fz1 with pockets of high SWFR			603	16/10502/OUT; PL/2022/02200;		Site 13			Application for 135 dwellings withdrawn in 2016. No planning activity at the site since then other than promotion in 2025 NP CFS. Site appears to be in multiple ownership, although one parcel which fronts both Boreham Road and Grange Lane could come forward independently. However, the southern boundary is not adjacent to the settlement boundary and also comprises a boundary wall which is a non-designated heritage asset. Access and development of the site for a three unit scheme in this particular location would therefore be unsuitable. The alternative access approach from Grange Lane would be suitable given the site bounds the settlement boundary in this location. However, Grange Lane is a private road which is unregistered on the Land Registry. Development of this part of the site would introduce third party and title risks that cannot be resolved within the envisaged

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											implementation window. The site is therefore not reasonably available. A barn in the north-east corner of the site was granted consent under Class Q in May 2022 to be converted to 4 dwellings. This does not appear to have been completed and following the changes to Class Q legislation it is unclear as to whether a further Class Q application would be successful. This part of the site is also discounted.
018	Yew Tree PH (0.08 ha; 2 dwellings)	Entire site frontage FZ3. Remainder of site FZ1						Site 14			Entire site frontage along Boreham Road is located in FZ3. Site is therefore not sequentially preferable.
019	Butler's Coombe Farm (9.7 ha; 79 dwellings)	FZ1			3242; 3702; 3703; 3242			Site 15			The Site has two potential access points (Ashley Coombe & Fanshaw Way) but each is in the separate ownership of volume housebuilders (Bellway Homes and Redrow Homes) and not part of the adopted highway. Securing rights and any necessary land transfers would be subject to third party control and ransom, with no realistic prospect of resolution within the envisaged implementation window. Furthermore, the entire site lies within the sewage treatment works buffer. Residential use would require a robust odour assessment and likely mitigation to demonstrate acceptable living conditions. Notwithstanding this, the site is in relative close proximity to the

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											Anaerobic Digestion plant referred to in the commentary of Site 001. The site is therefore likely to be subject to significant odour impacts from both the AD plant and nearby sewage treatment works. In summary, access depends on third-party land outside applicant's control and odour issues present amenity constraint. There is therefore no realistic prospect of a small residential scheme commencing within the envisaged window.
020	36 Victoria Road (0.21 ha; 16 dwellings)	FZ1			W/06/00297/FUL	16/01078/VAR; 14/10302/FUL			W.16.1078 ; W17.8120		8 dwellings already constructed on northern half of site. Southern half of site occupied by veterinary surgery and convenience store on to hold basis. The site would therefore not be deliverable within the implementation window given the time it would take to negotiate the early termination of each . Consequently, the site is not reasonably available.
021	3 High Street (0.07 ha; 11 dwellings)	FZ1				PL/2024/04333; 19/04315/FUL; 17/03839/FUL			WT17.383 9		Site comprises recently demolished Grade II listed building, located adjacent to Grade II St Lawrence's Chapel, and is located in the Conservation Area. "Following commentary taken from DAS for PL/2024/04333: Planning and listed building applications for the development of the site were first approved in 2017. These applications proposed the retention and restoration of the listed frontage building. It was not possible to

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											commence construction work as the development proved financially unviable due to the considerable cost and risk associated with retaining the existing build on the site. The owners decided to try and sell the site with the benefit of the planning consents, but this also proved unsuccessful. To resolve the impasse, the owners concluded that the only option left was to demolish the existing building and redevelop the site. Planning and listed building applications for demolition and redevelopment were approved in 2019 (19/04315/FUL and 19/04826/LBC) and the owners started the marketing process again. After a significant period of marketing a developer came forward and offered to buy the site with a view to starting work. The developer was delayed in completing the purchase and time was running out on the 2019 approvals. The developer applied to renew the permissions but in the intervening period the national requirements for ecology had been significantly increased and the scheme proved no longer viable. At the end of 2023, with the building falling into significant disrepair the owners decided to submit a new scheme with a different approach. The main building would be demolished and that part of the site only would be redeveloped. The area of landscape behind the Chapel

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											would be retained and enhanced for the residents use. This is the current application scheme.” Current pending application received objection from Heritage Officer on 11th August 2025, which notes that while LPA has previously approved redevelopment of the site, the change to design and materials is unacceptable. This therefore demonstrates further redesign required before permission can be secured. The site is therefore discounted.
022	Preston House, 51 East Street (0.06 ha; 5 dwellings)	FZ1				17/0421/FUL			W17.4241		Planning permission granted for change of use from offices and beauty salon to five flats. Development already completed. Any proposed redevelopment of the site would be unsuitable considering it comprises a listed building. Site discounted.
023	Land at The Market Place/East Street (2.94 ha; 30 dwellings)	FZ1			215	PL/2024/00190 PL/2022/07245 PL/2021/05479 21/02091/FUL			5/LPA/38		The northern half of the site comprises several listed buildings. The majority of the properties on-site are leasehold and all under different ownership. Given the time it would take to negotiate the early termination of a lease, development of any of these properties would likely not commence until beyond the envisaged implementation window.

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											The south-west portion of the site comprises two car parks which are considered to have development potential (Weymouth Street and Chinns). However, Chinns can only be accessed via third party land. Securing rights and any necessary land transfers would be subject to third party control and ransom, with no realistic prospect of resolution within the envisaged implementation window. Weymouth Street, on the other hand, has direct access onto Weymouth Street and is not considered to have any constraints other than the loss of car parking spaces. However, the site is still operating as a car park and has not been deemed surplus to requirements by the council. The site has been subject to a number of planning permissions for residential development in recent years. These are assessed in turn below: PL/2024/00190 – 9 flats and erection of detached townhouse. It would be difficult to establish a severable 3 unit scheme in the permitted flat block. The townhouse plot was sold in July 2025. This

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											development is not reasonably available • PL/2022/07245 – three flats. Development has since been completed. • PL/2021/05479 – conversion to 2 dwellings and erection of 6 terraced dwellings. Development has been built out. • 21/02091/FUL – one dwelling. It is unclear from council records as to whether development has been completed or not implemented and subsequently expired (no pre-commencement nor pre-occupation conditions). Either option results in development discounted. The 2017 SHELAA also notes that the site is not achievable nor deliverable for residential development. The site is therefore not reasonably available.
024	Land south of Forage Lane (0.31 ha; 15 dwellings)	FZ1			224				5/LPA/59		Access to the site is under multiple ownership. Securing rights and any necessary land transfers would be subject to third party control and ransom, with no realistic prospect of resolution within the envisaged implementation window.

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025	Land adjacent 89 Bath Road (0.5ha; 18 dwellings)	FZ1 with portion of north-east boundary in FZ3			14/104 57/FUL	15/08374/FUL					Authorised Gypsy & traveller site. Discussions would need to be held with landowner to determine new location of replacement gypsy and traveller pitches; a process which would likely go beyond the envisaged implementation window. Access constrained to south due to width, PROW, and being in third party ownership. Securing rights and any necessary land transfers would be subject to third party control and ransom, with no realistic prospect of resolution within the envisaged implementation window. While access could be taken from Bath Road, this would need to be along the northern part of the site boundary due to the presence of FZ3 to the south-east along Bath Road. It is questionable as to whether sufficient visibility splays could be achieved from this particular location. Site therefore discounted due to the time incurred for landowner negotiations and potentially unsuitable access.
026	East of 52 Brook Street (0.6 ha; 22 dwellings)	Vast majority of site in FZ 2/3.			16/025 42/FUL; W/11/ 01746/ OUT	APP/Y3940/W/18 /3219120; 18/07940/OUT					Dismissed appeal for nine dwellings in 2019 on character and appearance grounds, lack of contribution towards affordable housing, and failure to undertake an adequate sequential test in respect of surface water flood risk. Flood mapping has since been

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											updated and the vast majority of the site is now in FZ 2/3. Site is therefore discounted.
027	Land between Portway, High Street, and The Close (0.7 ha; 16 dwellings)	Western half of site in FZ2/3.			214	PL/2022/02658; PL/2021/05066; 20/04368/FUL;					Western half of site in FZ 2/3. Two separate permissions granted in this part of the site, both of which appear to have not been implemented and thus expired. This part of the site is therefore not developable. Remaining options to the east include seeking the conversion or demolition of buildings on site. Conversion could be achievable while demolition would likely have a significant impact on viability of a three-dwelling scheme. However, all buildings are in operational use with none vacant, and thus are unlikely to be available. The only non-built area remaining (land north of 28 High Street) has been granted planning permission for six flats, which has since been implemented and thus is not reasonably available.
028	Land rear of 12 West Street (1 ha; 38 dwellings)	FZ1, albeit parts of access off West Street is in FZ3			218						No access detail indicated in SHELAA submission. In the assumption this is to be taken from West Street, the existing accesses at and between 12 and 8 West Street are in FZ3. The only remaining access point is via 14 West Street, which would likely require widening to facilitate development and provide a safe access. This would result in substantial harm to the stables of No.12 (Grade II listed) given it is highly likely it would need to be partly demolished to facilitate a

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											sufficiently wide access. Generally, development in this location is likely to adversely impact the significance of several heritage assets. The likely proposed access arrangement also posits a separate issue of multiple owners being involved (No.s 12, 14 and potentially 10 if development were to wrap round to the rear), with the land at No.12 currently being unregistered. Securing title and easements would introduce ransom and programme risk that cannot be resolved within the envisaged implementation window. The access, heritage and ownership constraints collectively demonstrate that the site is not reasonably available.
029	The Halve (0.8 ha; 10 dwellings)	Vast majority of site FZ1, northern boundary FZ2			221	17/02712/FUL; 16/07953/FUL					Development constructed. Site discounted.
030	ABRO, Imber Avenue (4.3 ha; 132 dwellings)	FZ1			226						Site owned by Secretary of Defence with majority of land under lease to defence engineering company. Only point of access from Imber Avenue which is guarded. Entire site would therefore require redevelopment in order to come forward i.e. it would be entirely inappropriate to have a minor housing scheme effectively within the grounds of a national defence asset. A major application of this scale would result in a commencement of development well beyond the envisaged implementation window. Furthermore, there is no evidence the

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											land is surplus to defence requirements and the existing lease creates third-party control and timing risk. Even in the highly unlikely event a minor residential scheme were acceptable, negotiating lease termination and securing disposal from the Crown estate would extend well beyond the envisaged implementation window. The site is not reasonably available.
031	Old Were Court (0.3ha; 10 dwellings)	FZ2/3			238						Entire site located in FZ2/3. Site discounted.
032	Land Southwest Smallbrook Road (0.44 ha; 19 dwellings)	Eastern portion of site FZ3. Majority of site FZ1			240						Site is adjacent to Smallbrook Meadows LNR and Lowland Fen irreplaceable habitat. Development has the potential to adversely impact these ecological sites. Smallbrook Road is narrow with poor eastern visibility at the existing access, and the carriageway also carries a PROW. To achieve a safe access, road widening and associated works are likely. That would in turn require diversion/alteration of the PROW by statutory order (Highways Act 1980 s119/s118 or TCPA 1990 s257). These orders require consultation and, if any objections remain, referral to the Secretary of State/Planning Inspectorate for confirmation—often by written representations or inquiry. In practice they are frequently contested, procedurally complex, and can be protracted and uncertain, especially where highway safety, land take and environmental sensitivities

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											intersect. Securing the order, land rights and a Section 278 agreement is therefore unlikely to be achieved within the envisaged implementation window.
033	Yeates Meadow (2.51ha; 95 dwellings)	Majority of Boreham Road and portions of Smallbrook Lane FZ2/3. Band of FZ2 runs across the middle of the site. Remaining parts of land FZ1.			241						Land comprises an Area of Public Open Space, currently used as a Community Orchard. While development of the site could be located in FZ1, considering the use of the site it is considered unsuitable for residential development.
034	Land rear of 44 Imber Road (0.42ha; 15 dwellings)	FZ1			242						The land to the rear of the existing dwelling, which constitutes the vast majority of the site, comprises Priority Habitat (Deciduous Woodland). Notwithstanding the significant impacts to biodiversity, adequate mitigation, likely in the form of the purchase of BNG credits, is likely to result in a significant cost which could severely impact the viability of the proposed development. A minor housing scheme in this location would therefore not be suitable.
035	Land north of Victoria Road (7.4 ha; 30 dwellings)	FZ2 along Swaledale Road			433						Vast majority of site constructed. Only viable locations for development are area of open space and land to the rear of no.s 54-66 Victoria Road. Notwithstanding the

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											unsuitable proposal of losing an area of open space which serves existing residential development, the open space and access to the land rear of no. 66 Victoria Road is controlled by Persimmon Homes, while the access to the north of no.s 54-66 Victoria Road and land rear of no. 54 is owned by Charles Church Developments. Securing access would be dependent on agreement to grant rights which would not be guaranteed and negotiations are typically protracted. There is therefore no certainty that access could be achieved at the site within the envisaged implementation window.
036	Land South of Folly Lane (2 ha; 78 dwellings)	FZ1			631						Folly Lane comprises a narrow carriageway with minimal scope to widen or provide mitigation eg passing place. Intensification of this road would likely result in highway safety issues. Notwithstanding this, the site is not immediately adjacent to the settlement boundary. The site is therefore discounted.
037	Warminster Prep School (2.26 ha; 85 dwellings)	FZ1			680						Introducing a standalone three-dwelling scheme within the school would create safeguarding and operational conflicts (pupil security, unmanaged visitor access, mixed traffic at peak hours) and would likely be resisted under policies safeguarding community/education uses. To be acceptable, housing would need its own independent access, secure separation, and

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											layout that does not prejudice the school's operation or future expansion; none of which exists here. In practice, change of use or co-location would require a comprehensive masterplan for the whole site. Achieving a compliant scheme would necessitate a major redevelopment or disposal process (trustee/charity approvals, education consultation, legal title works, new planning/s106), with timescales well beyond the envisaged implementation window. Site is therefore not reasonably available.
038	Land north of Grovelands Way (11.4ha; 55 dwellings)	Vast majority FZ2/3			1007	PL/2025/06029; PL/2025/06028; PL/2023/04318; PL/2023/00956; PU/2021/10321; PL/2021/11403; PL/2021/03889; 19/07198/VAR; 17/05360/OUT;					Outline consent was first granted at site for continuing care retirement community, which has since been varied and subsequently implemented. The site has since been phased into the following zones: A (medical centre), B (affordable extra care apartments), C (care home), D (retirement bungalows), Ea (extra care apartments) and Eb (retirement bungalows). A RM application for 39 retirement bungalows was approved in Zone D in October 2024. In Zone C, a separate application for a 62 bed care home was approved in May 2023 which has since been implemented. An RM App for the remaining zones was submitted in 2023, yet is still under consultation with the last correspondence dated August 2023. In July 2025, two further separate

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											outline applications for residential development have been submitted at Zones A & B (32 dwellings) and Ea & EB (36 dwellings). Both of these are due to be determined in October 2025. However, both applications currently have objections from Warminster Town Council on flood risk grounds with the lack of a sequential test being carried out. Until a Sequential Test is undertaken and accepted, these zones cannot be treated as demonstrably lower risk than the application site. Even if outline consent were granted in October 2025, subsequent RM applications and any pre-commencement conditions will be more onerous and time-intensive considering the major scale of both applications. There is therefore no realistic prospect of commencement of these development parcels within the envisaged window. Zones C and D are already committed and/or implemented for an alternative use to market residential dwellings, so are not available.
039	Land north of Grange Lane (0.1ha; 4 dwellings)	FZ1			1029						Grange Lane is a private road which is unregistered on the Land Registry. Development of this part of the site would introduce third party and title risks that cannot be resolved within the envisaged implementation window. The site is therefore not reasonably available

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040	Land south of Wilson Square (0.5ha; 22 dwellings)	FZ1			2072						Freehold owned by the Secretary of State for Defence. Former military depot now redundant. No evidence of land being marketed. Redevelopment is logically comprehensive not a piecemeal three-dwelling insertion. A minor parcel would risk prejudicing a masterplanned scheme and the LPA would likely have concerns regarding the remainder of the depot potentially being brought back into use, resulting in significant amenity impacts. MOD disposals proceed via formal valuation, open marketing, and disposal process with long lead-in and contractual constraints. Combined with the expected comprehensive redevelopment which would entail the submission of a major planning application, development would very likely occur beyond the envisaged implementation window.
041	Battlebury Barracks (17.5 ha; 535 dwellings)	FZ1			2073						The site comprises an operational military barracks. The site is therefore not reasonably available.
042	Battlesbury Barracks Playing Fields and Open Space (9.4ha; 286 dwellings)	FZ1			2074						The site comprises the playing fields and open space used by the occupiers of the operational military barracks. The site is therefore not reasonably available.
043	Land east of Battlesbury Barracks (10.6 ha; 273 dwellings)	Majority FZ1 with north-east portion FZ3			2075						Land can only be accessed via Battlesbury Barracks. Considering this is still operational, the site is not reasonably available.

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044	Land between Bath Road and A36 (4.3 ha; 132 dwellings)	FZ1			2091						Site is located beyond and not adjacent to settlement boundary. Site discounted.
045	Land at Lime Kiln Close (0.3ha; 5 dwellings)	FZ1			W/05/01537/FUL	W/09/02021/FUL					Development already built out.
046	Imber Court, 21 George Street (0.26ha; 40 dwellings)	Half site FZ2, remaining half FZ1			W/06/1205/FUL	W/06/01344/FUL					Development already built out.
047	Queensway Recreation Ground (0.84ha;31 dwellings)	FZ1			W/06/03523/OUT						Land comprises formal Area of Open Space. Residential development of site would not be suitable.
048	Henford House Care Home (0.7 ha; 26 dwellings)	FZ1, apart from entire site frontage being FZ3			W/07/00802/FUL						Site can only be accessed via FZ3 and thus is not sequentially preferable. In any event, land comprises operational care home with a lease not expiring until 2036 and thus is not reasonably available.
049	R & R Coaches, Bishopstrow Road (0.4ha; 10 dwellings)	Site perimeter FZ3			W/08/00242/FUL	W/11/01188/FUL					Development already built out.
050	The Malthouse, 39 Pound Street (0.37 ha; 30 dwellings)	FZ1			W/09/01829/FUL						Site predominantly comprises a Grade II* listed building. Any residential use would therefore highly likely require the conversion of the building, rather than its demolition. The site comprises an operational malthouse and it is assumed that the occupier requires the entire floorspace to fulfil its business requirements. Furthermore, embedding a minor residential scheme within an operational malthouse is likely to result in amenity issues. The site is therefore not suitable for minor residential development.

Site No.	Site Name, Size & Capacity	Flood Risk	Adopted LP Allocation	Emerging LP Allocation	2017 SHELAA	HLS 2025 / Planning App Ref	NP Allocation	NP SA 2025	BLR 2022	For Sale	Commentary
051	Land between 47 The Downlands & 51 Imber Road (0.1 ha; 1 dwelling)	FZ1			W/10/02408/FUL	PL/2024/02789; 21/00379/FUL; 13/04784					Site granted permission in 2013 for one dwelling. Permission lapsed and further permission granted 2021. Permission appears to have lapsed again with further replacement application submitted but this was subsequently withdrawn. No evidence of a material start. No evidence of intent to bring site forward again. Site is therefore not reasonably available.
052	Land south of Savernake Close (0.25ha; 6 dwellings)	Entrance to site FZ3, remainder of site FZ1			W/13/00711/FUL	W/13/00711/FUL					Development already built out.
053	Land rear of 2 Wren Close (0.1ha; 1 dwelling)	FZ1				PL/2023/03009; PL/2021/05868					Development already built out.
054	Land adjacent 4 Chapel Street (0.1ha; 1 dwelling)	FZ1				PL/2022/09847; 19/11637/OUT					Outline consent for one dwelling granted March 2023. RM yet to be submitted and no pre-commencement conditions discharged. Site is therefore reasonably available for one dwelling.
055	Land south of 84 Westleigh (0.1ha; 1 dwelling)	FZ1				PL/2023/09745 PL/2022/02858					Development has commenced and therefore not reasonably available.
056	F and S Gibbs Depot, 40 Boreham Road (0.2ha; 8 dwellings)	FZ1				17/07825/FUL					Site benefits from extant consent for eight dwellings. Three of these were constructed circa five years ago. The residual five plots have not commenced and the remainder of the land continues to operate as a depot/storage yard. No recent marketing of the site is evident. The ongoing depot operations create third party, operational constraints.

Site No.	Site Name, Size & Capacity	Flood Risk	Adopted LP Allocation	Emerging LP Allocation	2017 SHELAA	HLS 2025 / Planning App Ref	NP Allocation	NP SA 2025	BLR 2022	For Sale	Commentary
											Consequently, there is no realistic prospect that the remaining plots will be commenced within the envisaged window.
057	Land rear 63 West Street (0.1ha; 1 dwelling)	FZ1				W/08/1541					Development already built out.
058	Land rear 9 West Street (0.1ha; 1 dwelling)	FZ1				19/05968/FUL					Site was granted consent for one dwelling. Permission appears to have lapsed with no evidence of intent to bring site forward. Site is therefore not reasonably available.
059	32 Imber road (0.1 ha; 5 dwellings)	FZ1				PL/2021/03080					Development has been completed.
060	Land between 34 and 36 Boreham Road (0.1ha; 1 dwelling)	FZ1				20/02538/FUL					Development has been completed.
061	The Organ Inn, 49 High Street (0.1ha; 1 dwelling)	FZ3				PL/2021/11143					Notwithstanding that site is sequentially not preferable due to FZ3, permission granted for change of use of pub to dwelling in March 2022. Pub was closed as of February 2024 and was sold as “staff accommodation” in August 2024, although the pub has remained permanently closed. The decision notice comprised no pre-commencement nor pre-occupation conditions. Site is discounted due to development either being occupied or not implemented with “staff” attempting to reopen pub.
062	121-121A Pound Street (0.1ha; 1 dwelling)	FZ1				PL/2021/04624					Development has been completed.

Site No.	Site Name, Size & Capacity	Flood Risk	Adopted LP Allocation	Emerging LP Allocation	2017 SHELAA	HLS 2025 / Planning App Ref	NP Allocation	NP SA 2025	BLR 2022	For Sale	Commentary
063	Land rear 38 West Street (0.1ha; 1 dwelling)	FZ1				PL/2022/07460					Permission granted for one dwelling in January 2023. Single pre-commencement condition (surface water drainage scheme) yet to be discharged but an application could be approved and development commenced in time for January 2026 expiry. Site is therefore considered reasonably available for one dwelling.
064	Wiltshire Police (0.1ha; 29 dwellings)	FZ1				PL/2023/00227; PL/2023/02942					Prior approval granted under Class MA in March 2023 for eight dwellings. Development has been completed. A further application for the erection of 21 flats is due to be determined in October 2025. While typology alone is not a reason to exclude a C3 site, this proposal is an integrated flattened scheme with no severable, marketed parcel capable of independent delivery. Furthermore, site is owned by developer. (Gainsborough). Site is therefore not reasonably available.
065	Warminster Motor Company, Fairfield Road (0.1ha; 4 dwellings)	FZ1				PL/2025/00931					Permission granted to convert garage to 4 dwellings. Applicant is developer (Fairbeech) and thus site is not reasonably available.
066	Mason Arms, East Street (0.1ha; 8 dwellings)	FZ1				PL/2024/04960					Permission granted February 2025 for conversion of pub to 6 dwellings and erection of two dwellings. Pre-commencement conditions application yet to be submitted. Considering layout of approved site the six converted units would not be severable. However, the two dwellings that are to be erected would be reasonably available.

Site No.	Site Name, Size & Capacity	Flood Risk	Adopted LP Allocation	Emerging LP Allocation	2017 SHELAA	HLS 2025 / Planning App Ref	NP Allocation	NP SA 2025	BLR 2022	For Sale	Commentary
067	Land rear of 19 Market Place (0.1ha; 1 dwelling)	FZ1				PU/2022/06964					Consent granted for conversion to one dwelling in October 2024. Application for pre-commencement conditions yet to be submitted. The site is therefore reasonably available for one dwelling.



Appeal Decision

Inquiry held on 10 to 12 December 2024 and 18 to 20 March 2025

Site visit made on 12 December 2024

by O S Woodward MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th June 2025

Appeal Ref: APP/V2255/W/24/3350524

Land at Ham Road, Faversham, Kent ME13 7TX

- 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 Swale Borough Council.
 - The application Ref is 23/502113/OUT.
 - The development proposed is the erection of up to 250 dwellings, including affordable housing, public open space, landscaping, sustainable urban drainage system and vehicular access point.
-

Decision

1. The appeal is allowed, and planning permission is granted for the erection of up to 250 dwellings, including affordable housing, public open space, landscaping, sustainable urban drainage system and vehicular access point, in accordance with the terms of application Ref 23/502113/OUT, dated 12 May 2023, and subject to the conditions in the attached schedule.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) was released in December 2024, and further updated in February 2025. This, amongst other amendments, included changes related to flooding, which is one of the main issues for the appeal. The Inquiry was therefore adjourned in December 2024 and resumed in March 2025, to afford time to review the revised Framework and to submit new evidence as appropriate. I am therefore satisfied that sufficient time was provided to all parties to consider the amendments.
3. The appeal is for outline planning permission with all matters reserved apart from access, which has been applied for in full. Vehicular access would be from Ham Road, as shown on drawing Ref 17277 H-01 P6. There would also be pedestrian access from a Public Right of Way (PRoW) to the south east corner of the site. Sketch layout, illustrative open space, and development framework plans have also been submitted. I have had regard to these drawings whilst acknowledging their illustrative nature and the outline nature of the application.
4. A number of 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.

5. Because the appeal relates to a proposal that would affect the setting of listed buildings, I have had special regard to Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
6. There are three reasons for refusal. The third reason for refusal is partly in relation to the effect on local infrastructure in the absence of a completed s106 Planning Obligation. The final s106 Planning Obligation, dated 26 March 2025 (the s106) responds to these concerns and, amongst other things, it secures:
 - a healthcare contribution;
 - a sports and recreation contribution;
 - a wheelie bin contribution;
 - a community learning contribution;
 - a libraries contribution;
 - a primary education contribution;
 - a SEND contribution;
 - a secondary education contribution;
 - a secondary education land contribution;
 - a social care contribution;
 - a waste disposal contribution;
 - an integrated children's services youth and early years contribution;
 - payment of the Council and County Council's legal costs to complete the s106; and,
 - monitoring fees for the Council and County Council.
7. The Council's and the County Council's CIL Compliance Statements set out the detailed background and justification for each of the obligations as set out above. I am satisfied that the provisions of the s106 as set out above would meet the tests set out in Regulation 122 of the CIL Regulations 2010 (as amended) and the tests at Paragraph 58 of the Framework, and I have taken them into account. The elements of this reason for refusal that relate to local infrastructure are not therefore main issues for the appeal. I return to matters of weight and detail of the s106 throughout my Decision as appropriate.
8. The Faversham Neighbourhood Plan 2023 – 2038 Referendum Version 2024 (the FNP) was 'made', in December 2024. It therefore carries full weight, subject to any considerations of its consistency with the Framework, and I have had regard to the FNP as appropriate throughout my Decision.
9. It is common ground between the Council and the appellant that the Council cannot demonstrate a five-year supply of housing land. It has been set at 3.98 years, in accordance with a recent appeal decision¹ in the same Borough, and the latest Standard Method for calculating housing need. I refer to this as appropriate throughout my Decision.

¹ Ref APP/V2255/W/23/3333811

Main Issues

10. The main issues for the appeal are:
 - whether or not the proposal represents an acceptable form of development having regard to its flood zone location and the provisions of local and national planning policy;
 - the effect of the proposed development on the character and appearance of the area, including on landscape character; and,
 - 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, including with regard to Best and Most Versatile agricultural land (BMV).
11. Save Ham Farm (SHF) and Faversham Town Council (FTC) both had Rule 6 status at the Inquiry. In addition to the above, they had concerns regarding drainage, ecology, accessibility and highway safety. I must also consider the planning balance.

Reasons

Flooding

Tidal flooding

12. The appeal site is located close to the coast and therefore tidal flooding, rather than river flooding, is the most relevant consideration. Based on present day scenarios, the proposed developable area of the site is not, though, at risk of tidal flooding.
13. However, it is also necessary to consider future scenarios. In this regard, it is common ground between the main parties and the Environment Agency (EA) that the most appropriate measure to use is the 1 in 200 yrs plus 'higher central' climate change allowance undefended flood event. The use of undefended is necessary because of the likelihood that the maintenance of the embankments within the Ham Marshes frontage will cease in the medium term (2048 onwards), as confirmed by the EA. Using either the 'higher central' or 'upper end' climate change allowance makes limited difference to the flood extents in this location². The adopted 'higher central' option is supported by the EA. For the avoidance of doubt, this also includes the EA's latest flooding data³ and is based on the current accurate topography of the appeal site. I therefore agree with this approach.
14. The above approach results in a design tidal flood event depth of 5.83m AOD. In such an event⁴, there would be flooding to the area where some of the proposed built form would be located to the north west corner of main part of site and also to the south east corner, to the access road, and to parts of the proposed areas of open space.
15. Paragraph 170 of the Framework directs inappropriate development in areas at risk of flooding away from areas at highest risk. The Framework does not define inappropriate development in the context of flooding. Residential development is both intrinsically vulnerable to flooding and a more

² Confirmed under cross examination

³ NaFRA2

⁴ See Appendix H2 of the appellant's Flood Risk Assessment & Outline Surface Water Drainage Strategy, dated April 2024

vulnerable land use than the existing agricultural field⁵. I therefore consider the proposed residential development to be inappropriate development for the purposes of Paragraph 170.

16. Directing development away from areas at highest risk can be achieved, in principle, by adopting the sequential approach, ie placing inappropriate development on parts of the site not at risk of flooding. However, this is not what is being proposed because, as set out above, some of the areas for future homes and the proposed vehicular access are within areas at risk of tidal flooding. Even if the access point is largely dictated by the constraints of the site, it would have been possible to alter the proposed areas of built development to not be within the areas at risk of flooding.
17. Paragraph 174 further states that inappropriate development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. Paragraph 175 confirms that, where proposed built development is within areas at risk of flooding, the sequential test should be used. This is to establish whether or not there are reasonably available alternative sites.
18. The proposal includes changing the land levels including raising them in some areas, with the result that all areas of proposed built development would be 300mm above the design flood level, ie would not be at risk of flooding. This could be secured by condition(s). Much time was spent at the Inquiry discussing the changing land levels and whether they are occasioned by remediation works or are a direct response to the flood issues, ie a flood mitigation measure. However, such a distinction is not relevant to consideration as to whether or not a sequential test is required. Paragraph 175 clearly states that land raising, with no qualifications as to the purpose of such land raising, should not be used as a means to avoid the sequential test.
19. Annex 3 to the Framework is ambiguous as to the vulnerability classification of the access road. I do not view it as water-compatible development. It would be the only vehicular access to the site, and I view it to be either 'less' or 'more' vulnerable. I therefore consider the proposed access road to be inappropriate development for the purposes of Paragraph 170. The access road would be raised so that it could form a suitable connection to Ham Road, and its finished level would be above the design flood event and not at risk of tidal flooding. However, as with the ground remediation, the purpose of such land raising is not relevant to the necessity of the sequential test. Paragraph 175 is equally clear that access routes in areas at risk of flooding should be the subject of the test.
20. Paragraph 177 is extremely clear that an exception test can only be carried out after a sequential test has been undertaken. It starts with "Having applied the sequential test". Paragraph 172a is equally clear, stating "applying the sequential test and then, if necessary, the exception test". There is therefore no need to consider this further in terms of the obvious sequence of events. Whether or not it might be possible to compartmentalise the site is a moot point because the development is proposed as a whole and is not severable. Equally, whether or not the proposed access road would, by itself, trigger the need for a sequential test is also a moot point, because

⁵ Annex 3, the Framework

being triggered by the proposed residential development is sufficient by itself. Therefore, a sequential test is required. A sequential test has not been undertaken by the appellant. This is a clear conflict with the Framework.

Surface water flooding

21. The site is at risk of surface water flooding, as calculated based on the NaFRA2 data and the latest topography on the site⁶. This includes developable areas. Paragraph 175 is clear that the sequential test applies to any form of flooding, now or in the future. It is therefore triggered. As with tidal flooding, this has not been undertaken, and there is a conflict with the requirements of the Framework.

Harm

22. The area at risk of flooding in the design flood event is part of the main access road and future developable areas equivalent to circa 20 homes⁷. The main vehicular access is obviously an important element of the site. However, it is relevant that less than 10% of the proposed homes would be in areas at risk of future flooding. In addition, it has been demonstrated that the entire appeal site could be made safe from flooding by the land changing measures, and by raising the access road, amongst other flood resistance and resilience measures at the detailed design stage, such as small flood barriers, raised services etc⁸. It has also been confirmed that the land changing measures have already been accounted for in the visual envelope as used as the baseline for the assessment of landscape character, as considered below. This could be controlled by condition(s).
23. The reasons for the land changing measures are a material consideration as to the weight to be applied to not undertaking the sequential test. In this regard, there is a need to remediate parts of the site, which is a former quarry. However, it is not currently known to what extent this is required or what effect this would have on the land levels after the works. It has therefore not been fully substantiated by the appellant that this is the only reason for the land changing, and it would certainly be convenient if the remediation just so happened to result in the minimum level needed to avoid flood risk. Nevertheless, remediation would form part of the reason for the land works. With regard to raising the access road for access to Ham Road, it has been demonstrated that this is required to provide suitable and safe access to the road.
24. The extent of pluvial flooding risk is relatively limited. It is from ponding on the site in existing depressions and similar factors. The depth of the flooding would be relatively shallow. There is no risk related to interrupting an off-site surface water flow path, or effects on other off-site properties. It is a fairly typical existing situation on an agricultural field. As part of the design detail for the proposal at reserved matters stages, the precise land levels, drainage solutions, and landscaping would all need to be considered. Given the limited nature of the existing and future surface water flood risk, designing out the flood risk could be comfortably accommodated as part of this natural detailed design process.

⁶ See Appendix 2, Mr Lane's Rebuttal Proof of Evidence

⁷ Confirmed under cross-examination

⁸ See Paragraph 6.5, CD2.14

25. Overall, therefore, there is no real world harm from either the failure to undertake a sequential test for tidal flooding or the failure to properly undertake a sequential approach. This is because it has been satisfactorily demonstrated that mitigation measures can make the proposed development safe for its lifetime from tidal flooding. There are also reasons other than flooding that result, although likely only in part, in the land levels changing mitigation measures. There would also be no real world surface water flood risk to the finished and occupied development proposal.

Overall

26. Despite the lack of real world harm, due to the failure to undertake a sequential test or to fully apply the sequential approach for the proposed residential development and access road in areas at risk of flooding in the future, the proposal therefore represents an unacceptable form of development having regard to its flood zone location and the provisions of local and national planning policy. The conflicts with the Framework are set out above. With regard to the Development Plan, the proposal would conflict with Policy DM21(2) of the LP because inappropriate development is proposed in an area at risk of flooding before mitigation measures are taken into account, and Policy ST7(11) which cross-refers to Policy DM21. It would, though, comply with Policy FAV8 of FNP, which requires there be no significant adverse impact on risk of flooding and the including of SUDS, but does not directly relate to the requirements of the Framework.

Character and appearance

Existing

27. The appeal site is part of an agricultural field. It is relatively flat. There is limited vegetation and hedgerows, but there is an area of scrub land along the southern boundary, and a hedgerow to the western boundary. There are some scattered trees and a small group of trees to the eastern edge of the site. There is existing built form directly to the south, west and east, ie the existing built form of Faversham, which is clearly visible in the background of the site.
28. The surroundings to the site are also influenced by more rural and tranquil elements. To the north is the remainder of the field with low lying marsh and agricultural land further to the north, west and east. This low lying land has a relatively strong and distinctive character due to its marshland feel, and provides a sense of place which associates the surroundings of the site to the tributaries to the nearby Thames river ie the creek. This area is designated in the LP as an Area of High Landscape Value (AHLV) and displays some of the key characteristics of the wider NCA 81 'Greater Thames Estuary', including low lying landscape, persuasive presence of water, grazing for cattle, and feelings of remoteness. However, the appeal site itself does not particularly demonstrate these attributes and rather has the appearance of a normal agricultural field lying next to existing built form.
29. The appeal site is visible from users of Ham Road, occupiers of surrounding properties and businesses, and from several PRow, including ZF5, ZF32 and ZF23, which run both through nearby fields and alongside the creek. It is also open to the north and partly open to the east and west. It is therefore relatively visible including to sensitive receptors, in particular users of the

PRoW. However, this is only to a certain degree because the built form blocks longer views from three sides, and the very flat land to the north and east restricts visibility from those directions.

Assessment

30. It is proposed to develop a large proportion of the site for up to 250 dwellings. Vehicular access would be from a new junction onto Ham Road and this would require the removal of 12m of hedgerow and a tree. There would also be fairly extensive areas of open space, of approximately 7 ha, including alongside Ham Road and to the western part of the site. Planting is proposed to the northern boundary, and a thin line of planting is indicated to the southern boundary adjacent to the existing residential area.
31. There would be some harm to the appeal site itself because of the change from an agricultural field to an urban development. This would reduce over time as planting matured, but even the planting would be clearly of an urban form and type, trees are not characteristic of the area in any event, and the built form would still be partially visible. There would therefore remain some residual harm. However, this would be localised because of the existing built form to three sides and the relative lack of visibility from the flat marshland. It would also be seen in the context of, and would read as an extension to, Faversham. Although built form would be brought closer to the more valuable marshland type landscape to the north, west and east, it would not encroach upon it. There would therefore be limited effect on this area, although there would be some, minor, harm to its setting.
32. The FNP has designated the southern boundary of the site, where it runs alongside the existing residential extent of Faversham, as a protected linear green space. Although there would be some planting alongside this boundary, the proposal includes built development that would encroach upon this green space. However, the proposal would simply read as a natural extension to Faversham. Fairly extensive public open space would be provided to the east and west of the site. In addition, there is proposed a similar green space corridor to the northern part of the site, which would largely replicate the existing green space that the FNP seeks to protect.
33. There would be a particular effect on users of the PRoWs. However, the open countryside beyond remains, and the existing site, whilst open, is already perceived in the context of the surrounding built form. There would also be open areas within the proposal, through which the existing PRoW on the appeal site would run. Any views from further afield would be limited, for the reasons set out above.

Overall

34. The proposal would harm the character and appearance of the area, including on landscape character, as set out above. The level of harm to the appeal site would be moderate, resulting in conflict with Policies ST1, ST3, CP4 and CP7 of the LP. There would also be limited conflict with Policy FAV11 of the FNP, which requires no adverse impact on the rural setting of Faversham. There would be a conflict with Policy FAV7, which requires no adverse impact on green infrastructure including green spaces, albeit this would largely be a technical conflict rather than one of substance given my

conclusions above on the acceptability of the proposed intrusion into the green space area.

35. Policy DM24 of the LP sets out a hierarchy with regard to the protection of landscapes. The AHLV sits above, ie is more protected, than non-designated landscapes. Harm to non-designated landscapes must be minimised and mitigated. Whereas for AHLVs, harm should also be avoided and conservation and enhancement must be demonstrated. Therefore, although limited, the harm to the setting of the AHLV that I have identified therefore conflicts with this part of the policy.
36. With regard to the non-designated appeal site and nearby, mitigation is proposed. Whether or not landscape harm has been minimised is debatable. Of course, a smaller scheme would allow for greater areas of open space and less harmful positioning of built form. However, I view 'minimise' to mean within the context of what is proposed. Otherwise, there would always be a smaller development that would have lesser harm. The proposal therefore complies with that part of the policy.
37. It's important to note that the harm to landscape reflects the hierarchy of landscape protection set out in Policy DM24, ie the greater harm is to the non-designated landscape and the lesser harm to the AHLV. In addition, the second part of both parts of the policy state that it is only where significant adverse impacts remain that this need be balanced against the social and economic benefits of the proposal. The logical inverse of this is that where there are less than significant adverse impacts, as is the case for the appeal proposal, then it complies with this element of the policy. There is therefore only limited conflict with Policy DM24.
38. I consider the AHLV to be a 'valued landscape' as defined by Paragraph 187(a) of the Framework. There would therefore be conflict, although to a limited degree, with the requirement to protect and enhance 'valued landscapes' as set out in this paragraph. With regard to the appeal site itself, which is not a 'valued landscape', Paragraph 187(b) only requires proposals to recognise the intrinsic character and beauty of the countryside, and the moderate harm that I have identified coupled with the proposed mitigation measures, would comply with this requirement.

Appropriate location

Principle

39. The appeal site lies outside the Built-up Area Boundary (BuAB) as set out in the LP, and which runs along the outer extent of the existing built form of Faversham, ie directly on the southern and part of the eastern boundaries of the appeal site. The appeal site is unallocated in the LP. Policy ST3 of the LP sets out the settlement strategy for the Council. This is hierarchical, focussing development on the larger built-up areas and settlements. Faversham is the 2nd tier of settlement, out of six. Land outside BuABs, like the appeal site, is in the 6th tier. This is protected from major development and the LP is clear that such land is not needed to meet the LP housing target⁹. Therefore, there is conflict with the settlement strategy and

⁹ Paragraph 4.3.23

therefore Policy ST3 and also Policy ST1(4), which cross-refers to the settlement strategy.

40. With regard to the FNP, Policy FAV2 sets out a number of circumstances where residential development would be acceptable, none of which apply to the proposal. However, it does not explicitly exclude residential development in other locations. It is a permissive rather than a restrictive policy. FNP also sets out several site allocations, none of which include the appeal site. This does not automatically mean that proposals outside of the site allocations are unacceptable. Nevertheless, despite the lack of clear conflict with specific policies, that the site is not allocated and is not positively promoted does represent a conflict with the obvious objectives and therefore spatial strategy of the FNP.
41. However, and importantly, the LP and the FNP spatial strategies are based on a housing need target of 776 dwellings per annum (dpa)¹⁰. This is now out-of-date and the current housing need is much higher¹¹, at 1,086 dpa. Although the BuABs are to an extent based on the physical extent of existing development, the site allocations and the very restrictive approach to development outside the BuABs is based on this now out-of-date premise. A more flexible approach is therefore required, to reflect current and future housing need.
42. It was even known at the time of adoption of the LP that this target had a shelf life, with Policy ST2 committing the Council to a review of the LP to be adopted by April 2022. There is an emerging Local Plan in production, but this is currently at an early stage and submission to the Secretary of State is not due until next year. It is therefore a long way from adoption or from providing an alternative spatial strategy to which weight could be applied.
43. The out of datedness of the spatial strategy does not automatically mean that development on unallocated countryside sites should be seen as acceptable. Each case should be judged on its own merits. In that regard, the proposal would be a direct expansion of Faversham, and in-keeping with the principle of directing significant development to Faversham. It would be of an appropriate scale for development in or adjacent to Faversham. It would be relatively accessible to local goods and services, as set out below. Therefore, whilst there would be a technical conflict with the spatial strategy of the LP and the FNP, the proposal would broadly accord with the philosophy behind it of directing development to accessible locations and the larger settlements. Therefore, whilst there is some conflict with the spatial strategy, this is only to a limited degree.

Agricultural land

44. The appeal site is almost entirely agricultural land. The proposal would result in the loss of all this land, either to built form or landscaped areas of open space. Policy DM31 of the LP states that development on any agricultural land will only be permitted when there is an overriding need that cannot be met within BuABs. As set out above, the site allocations and built-up areas of the LP are now out-of-date. There is also an agreed lack of a five-year supply of housing land. An overriding need that cannot be met within BuABs

¹⁰ Paragraph 4.2.28 and Policy ST2 of the LP, and page 26 of the FNP

¹¹ Agreed by the Council under cross-examination

has therefore been demonstrated¹² and the proposal complies with this part of the policy.

45. In addition, some of the agricultural land is at grades 2 (17%), 3a (22%) and 3b (55%)¹³. Therefore, 39% of the appeal site, or 5.6 ha, is defined as BMV by the Framework, ie is within grades 2 and 3a. With regard to BMV, Policy DM31 of the LP states that its loss will not be permitted unless one of three exceptions are met. The first is that the site be allocated, which isn't the case.
46. The second is in two parts. The first part is that there is no alternative, non BMV, site. In this regard, the appellant has undertaken a sequential test¹⁴. The appellant's assessment finds one alternative site, Rushenden South, which is assessed as having potential for 850 dwellings, on the Isle of Sheppey. There is, therefore, an alternative site, even on the appellant's own evidence. Although the Council acknowledges¹⁵ that it is difficult to imagine a high growth strategy on Sheppey, it is not entirely precluded. Only a part of the 850 dwelling site would be required to accommodate the proposed 250 homes of the appeal scheme. I have therefore not seen any substantiated evidence that there is not at least one alternative location for the proposal which would result in the loss of lower value agricultural land.
47. The third is also in two parts. The first is that the loss of BMV would not result in the remainder of the agricultural holding becoming unviable. This argument is not advanced by any of the main parties. The second is that the loss would likely lead to accumulated and significant losses of BMV. In this regard, the appeal site represents a tiny proportion of the BMV in the Borough as a whole. However, the Borough-wide amount of BMV is extremely large. Any development, even a colossal site, would still represent a small fraction of the overall proportion. It is important to avoid death by a thousand cuts, in other words accumulated losses of BMV.
48. The proposal therefore fails to comply with Policy DM31 parts (2) and (3) and, by extension, Policies ST1 and ST7 of the LP which reflect and cross-refer to Policy DM31. It also fails to comply with Policy FAV7 of the FNP, which protects BMV from loss for development.

Overall

49. Therefore, both due to the conflict with the spatial strategy limited though it may be and the loss of BMV, the appeal site is not an appropriate location for development of this type, having regard to local and national planning policy and guidance, including with regard to BMV.

Other Matters

Accessibility and highway safety

50. The appeal site lies directly adjacent to Faversham. PRoW ZF5 runs through the site and provides access to Faversham town centre. In addition, there is a pedestrian exit, alongside the vehicular junction, onto Ham Road, which in turn leads towards Faversham town centre. There are lit pavements from

¹² As was also agreed by the Council under cross-examination

¹³ See Table 1, Agricultural Quality of Land off Ham Road, Faversham Report Ref 2461/1, dated 4 October 2024

¹⁴ See Appendix 6, Mr Lane's Proof of Evidence

¹⁵ See Sustainability Appraisal, dated February 2021, of the LP

Ham Road all the way to the shops and services in Faversham. These are fairly extensive, and Faversham is a 2nd tier settlement in the Borough. It also provides employment opportunities. Some of the future occupants would likely work elsewhere, or even commute to London, but there would be the option for more local employment. Faversham train station is approximately 2 km from the site. Given this, I agree with the Council and the appellant that the site is accessible to a range of goods and services by foot and by bike.

51. Whilst some of the roads on the route to the town centre, such as Priory Row, are relatively narrow and have extensive kerbside parking, there remain pavements. There is also nothing unusual about such arrangements on roads near town centres. I do not view them as dangerous or difficult to navigate either for pedestrians or cyclists. Davington Hill is relatively steep and has a narrow pavement directly next to a tall stone wall. This has the potential to be intimidating and off-putting to pedestrian users. However, there is still a pavement, albeit narrow. In addition, there is an alternative route to the town centre avoiding this road, via PRoW ZF5.
52. In addition to the above, the s106 secures a PRoW contribution, an additional PRoW contribution, sustainable transport vouchers, and a Travel Plan and associated monitoring fee. The PRoW contributions are towards the provision of ramps on the PRoW Ref ZF43 fronting Faversham Reach and Waterside Close, and also works to PRoW ZF5 and ZF32. These works would improve pedestrian facilities on the PRoWs and by extension better connect the site to both the town centre and to recreational walking along the creek and in the countryside.
53. The proposed access point to Ham Road would be on a relatively straight piece of road with good visibility in both directions. There is nothing substantive before me that the roads on the surrounding network are dangerous. Accident and injury data as provided by the appellant is at normal levels and as would be expected.
54. I am therefore satisfied that the appeal site is accessible and that the future occupants would have reasonable alternatives to use of the car to access services and facilities. I am also satisfied that the proposal would not give rise to any unacceptable effects on highway safety.

Ecology

55. The appeal site is largely an agricultural field of limited ecological importance. However, there are some areas of greater value, such as hedgerows, trees, scrub and grassland. An Ecological Impact Assessment, dated September 2023¹⁶ (EcIA) has been submitted by the appellant. This finds evidence of bats, reptiles, breeding birds and amphibians.
56. The proposal would result in the loss of virtually all the existing habitat, including most of the more valuable areas. The Arboriculture Assessment, dated March 2023¹⁷, confirms that one tree and a 12m section of hedgerow would need to be removed to create the vehicular access.

¹⁶ CD2.4

¹⁷ CD1.12

57. There is therefore the potential for harm to the populations of bats and reptiles in particular. However, it is also proposed to provide significant replacement open space. This could be conditioned to provide suitable replacement habitat. It could also be controlled by condition that suitable replacement habitat be provided prior to clearance works of the higher value land, in particular the scrub and grassland. Other mitigation measures could include avoiding carrying out works during the nesting seasons for reptiles and providing a suitable reptile receptor site nearby, as could be secured by condition. In this manner, unacceptable harm to ecology on the appeal site could be avoided.
58. The SHF and FTC provided evidence collected by local residents of the ecology on the site. This includes research using the inaturalist app. I don't doubt the authenticity of the findings. However, they must be placed in context. Such observations do not tell the story of the habitats and behaviours of the species. The EcIA provided by the appellant uses recognised methodologies and assessments and has resulted in a robust baseline understanding of the ecological value of the appeal site. I am therefore satisfied that the proposal would suitably protect the ecological value of the site and would in fact result in a betterment through the creation of the new habitat.

Drainage

On-site

59. The proposal requires drainage. The full details of this are not yet known. However, an Indicative Surface Water Drainage Strategy has been provided¹⁸. This sets out the location for an attenuation basin, the likely routes for pipework, and the AODs throughout the site and at relevant connection points. FTC raised several points of detail regarding this strategy, with the primary concern being that the pipework and attenuation tank would need to be higher than as drawn to function correctly, which would lead to raising levels across the site.
60. There are some inconsistencies between the AOD figures used by the appellant in different documents. It is possible that an acceptable drainage strategy would require the need to raise the land, at least over part of the appeal site. If this were the case, there would be knock-on effects on a number of other considerations, such as character and appearance and ecology. However, the extent of land raising could be controlled by condition. At this stage, I do not have substantiated evidence before me that a material increase in the height of the land above that already set out by the appellant would be required. At this outline stage, I do not view it as reasonable to expect this level of detail to have been established.
61. It is also important to note that the Lower Medway Internal Drainage Board has confirmed in a letter dated 26 May 2023 that the proposal is acceptable, subject to control by conditions to agree full details of the drainage strategy. Kent County Council as the Local Lead Flood Authority has also not objected to the proposal, subject to control by conditions.

¹⁸ Ref 680663 10-05 Rev P2, page 96 of the Flood Risk Assessment & Outline Surface Water Drainage Strategy, dated April 2024

Off-site

62. The drainage strategy includes discharging water from the appeal site into a drainage ditch that is in The Swale Estuary Special Protection Area (the SPA) and Ramsar sites. The extent of the works are unknown as is the likely precise water flows. However, I have seen no substantiated evidence that there would be unacceptable effects on the SPA or Ramsar from such drainage. There would also be a change from the current uncontrolled run-off into the sites to a controlled strategy. Run-off rates could be restricted as part of the drainage and SUDS strategy. The details of this could be controlled by condition(s) and other processes, such as land drainage consent. With regard to effects from construction, this could be controlled by condition(s) and other legislative processes with regard to construction practice.
63. It is appropriate to use Grampian condition(s) in this regard as it is to secure off-site works. As set out in Planning Practice Guidance¹⁹, Grampian conditions may be used unless there are no prospects at all of the associated works not being performed within the time-limit imposed by the planning permission. Although land ownership issues have been raised by FTC as well as concerns regarding the acceptability of the easements submitted to the Inquiry, none of these amount to a demonstration that there are no prospects at all of the works being able to be carried out.

Land ownership

64. The appeal site includes some land outside the ownership of the appellant. However, planning permission runs with the land, not the owner. Therefore, whilst the land ownership situation might cause some issues to the appellant in terms of being able to implement any planning permission that is granted, this is not a matter to which I give weight.

Heritage

Significance

65. Faversham Conservation Area (the CA) covers most of the centre of Faversham and also the area heading northwards either side of the creek. It is very close to the appeal site to the south east corner, either side of the industrial estate. The Faversham Creek character area is that nearest the appeal site, where landscape is an important part of character, including the water channel, mudflats, chalk streams and water features, and green spaces.
66. The grade II Listed 'Ham Farmhouse and Walls Attached'²⁰ and grade II Listed 'Barn about 30 metres North of Ham Farmhouse'²¹ both lie in the same farm complex to the east of the appeal site. The farmhouse is from the early 18th-Century and extended in the 19th-Century. The barn is from the 17th-Century or earlier. Both buildings derive their significance from a combination of their intrinsic architectural value and also from their functional association with the wider farm complex, and farmland beyond. It remains a working farm, so this association is still relatively strong.

¹⁹ Paragraph: 009 Reference ID: 21a-009-20140306

²⁰ List entry number 1240464

²¹ List entry number 1261008

67. The grade II Listed 'Pair of houses at TR 021 627'²² lie to the east of the site, beyond the farm complex. They date from c.1870. Their primary significance is due to them being an unusually early example of flat roofed, concrete construction in small domestic buildings. They were likely coastguard cottages and their functional relationship is with the creek and the coast, not the farmland, and it is therefore the visual relationship eastwards towards the creek that contributes to their significance in terms of their setting.
68. The grade II Listed 'Gate House Marsh Works'²³ and 'Proof House approximately 10 metres south south west of Gate House, Marsh Works'²⁴ lie to the west of the appeal site. The Gate House was at the former entrance and the Proof House was a storage building to a former gunpowder works. Both buildings and the surrounding works site have lost their original use and are now in residential use, including a new build development immediately surrounding the listed buildings. The works were originally deliberately opened in a remote location for safety. However, the remoteness of the location has also almost entirely been lost due to the expansion of Faversham and the immediately surrounding development. Nevertheless, there is some intervisibility with the agricultural field of the appeal site, which provides a very minor echo of this former isolation, and therefore positively contributes to the significance of the listed buildings.
69. The grade II Listed 'Oyster Bay House'²⁵ lies to the south of the appeal site. It is a warehouse from the mid-19th-Century, likely built at the same time the creek was improved in 1843. It is a prominent building that is relatively tall. It has a hoist to its north end with doorways at each floor. It derives its significance from a combination of its innate architectural and historic interest and also its relationship to the creek. The grade II Listed 'Standard House'²⁶ is also located on the creek, further south and is from roughly the same time. It derives its significance partly from its innate architectural quality, partly from its association with the creek, and partly from its historic association with a shipyard which made sailing barges of outstanding quality. Neither building has a direct visual or functional relationship with the appeal site or the wider agricultural land.
70. The grade I Listed 'The Parish Church of St Mary of Charity'²⁷ and separately grade I Listed 'Church of St Mary Magdalene'²⁸ lie within Faversham roughly to the south of the site. St Mary is from the 14th and 15th-Centuries and was restored in the 19th-Century. St Mary Magdalene is from the 12th-Century, and repaired and restored in the 19th-Century. Both churches significance derives primarily from their intrinsic architectural and historic interest. St Mary of Charity has a particularly striking main tower. They also derive significance from their settings, at the centre of the community they serve. The immediate and medium distance setting for both is the built form of Faversham. The towers in particular can also be seen from surrounding fields and PRoW, including the appeal site. However, because of the distance and the intervening built form of Faversham, the appeal site makes only a very

²² List entry number 1260995

²³ List entry number 1389586

²⁴ List entry number 1389585

²⁵ List entry number 1240318

²⁶ List entry number 1069409

²⁷ List entry number 1319973

²⁸ List entry number 1069406

minor contribution to the setting of either church. Neither church has any known current or historic relationship with the appeal site.

Assessment

71. There would be some erosion of the key elements of the character of the Faversham Creek area of the CA. However, this would only be to a limited extent because the proposal would not directly affect this area, and would be set back from the area and any proposed housing would be perceived in the context of the existing development of Faversham in the immediate background. Additionally, areas of open space are proposed along the eastern boundary of the site, providing a buffer from the proposed built form, further reducing any effect on the CA. There would, nevertheless, be some harm to the character and appearance of the CA in terms of how it is experienced in its setting, thus failing to satisfy the requirements of Paragraph 219 of the Framework. I assess the level of harm to be at the lower level of less than substantial.
72. With regard to the farmhouse and barn, the appeal site land would result in the erosion of some of the agricultural land associated with these buildings and the farm complex. However, it is set away from the farm complex with agricultural land to be retained between. A sense of openness and the direct association between the farm complex and the immediately surrounding fields would therefore remain. Nevertheless, there would be some erosion of this important relationship. This would be directly visible from the farmhouse. However, it would not be appreciable from the barn, or whilst considering the barn in its setting, due to a large intervening building. The proposal would therefore result in harm to the special interest and heritage significance of the farmhouse only, in terms of how it is experienced in its setting, thus failing to satisfy the requirements of the Act and Paragraph 210 of the Framework. I assess the level of harm to be at the lower level of less than substantial.
73. The pair of houses are largely significant because of their intrinsic architectural value from their unusual construction technique. They are not directly associated with farm and neither it nor the agricultural field of the appeal site positively contribute to their setting. The proposal would not, therefore, result in harm to the special interest and heritage significance of the listed buildings in terms of how they are experienced in their settings.
74. The Gate House and Proof House are now part of a new development on the west side of Ham Road. The significance of the buildings lies largely in their innate architectural merit. The association with the long since closed gunpowder works has largely been eroded by the residential development. The proposal would, though, partially erode the little remaining sense of isolation through the introduction of built form. However, although relatively close to the proposed built form of the appeal proposal, there would be some off-setting from a proposed area of open space. In addition, this aspect of the setting of the buildings only contributes to their significance to a very minor extent. Nevertheless, the proposal would result in harm to the special interest and heritage significance of both buildings, in terms of how they are experienced in their settings, thus failing to satisfy the requirements of the Act and Paragraph 210 of the Framework. I assess the level of harm to be at the lower level of less than substantial.

75. There would be very limited visual intervisibility between the proposal and Oyster Bay House but the proposal would be on land that is not positively associated with it. It would be set away from the creek area that defines its setting, with fairly substantial open space providing a buffer from the proposed built form to the creek and the land around it. With regard to Standard House, this would not have any intervisibility due to the intervening industrial estate. The proposal would not, therefore, result in harm to the special interest and heritage significance of the listed buildings in terms of how they are experienced in their settings.
76. There would be limited intervisibility between the proposal and either church. However, the spire/tower of the churches would be visible in views from the appeal site. This though is in the context of the existing, substantial, intervening built form of Faversham. There would be no material change to this from the proposal. In addition, the key view of the tower of St Mary of Charity is from the PRoW which would not only be retained but would be within the large area of open space to the east of the appeal site. The proposal would not, therefore, result in harm to the special interest and heritage significance of the listed buildings in terms of how they are experienced in their settings.

Air quality

77. The appeal site is not within an Air Quality Management Area. Although SHF has provided some information regarding research into air quality levels in Faversham, none of the streets claimed to be above the Country's standards are nearby to the appeal site. In addition, the full methodology behind the calculation has not been provided. There is nothing before me to suggest that the appeal site or nearby roads suffer from poor air quality.
78. However, the future residents would create additional journeys on the local transport network. The appellant's Air Quality Assessment, dated February 2023²⁹, has calculated the levels of future emissions and therefore the necessary mitigation measures. These include the provision of electric car parking spaces, travel plans, and a potential electric car club scheme. The electric spaces and travel plan could be secured by condition(s). The s106 secures mitigation measures, up to the amount needed to mitigate the harms caused by the proposal.
79. Two options are provided in the s106. I direct that option (a) should be chosen because it affords flexibility for the choice of mitigation measures to be made in the future. It is not necessary to specify that a car club scheme must be included, because it is that the air quality harms are mitigated that is necessary and reasonable, not the precise way it is achieved.

Interested parties

80. Several letters of objection have been submitted both in relation to the appeal and the application, including a petition. They raised various concerns, but these have been captured either by the Council or by the two R6 Parties at the Inquiry. I therefore consider the concerns of local residents throughout my Decision.

²⁹ CD1.14

Planning Balance

Positive

81. The provision of housing is one of the key aims of national and local planning policy. A recent Written Ministerial Statement said that the country is in an acute and entrenched housing crisis³⁰. The Council can only demonstrate a 3.98 year supply of housing land, representing 1,119 homes that have not been provided. The proposal is for a relatively large development of up to 250 homes, of which 60% would be market housing. It would make a meaningful contribution to the housing supply in the Borough. In this context, I place substantial weight on the provision of market housing.
82. The s106 secures 40% of the proposed number of dwellings to be affordable housing. This is above the Policy DM8 of the LP requirement of 35%. The precise mix of affordable housing is left to be agreed with the Council, although with a starting point of 90% to be affordable rent or social rent units, which accords with the local need for social rent housing as set out in the evidence base to the FNP. I direct that Paragraph 2.8 of Schedule 5 of the s106 is a material consideration because it provides suitable flexibility to future developers to progress affordable housing whilst securing the overall percentage and still affording the Council the opportunity to negotiate and secure a suitable mix.
83. There is a shortfall in affordable homes in the Borough and this is increasing. Practical completions last year were less than half of identified need. The current shortfall of affordable home provision in the Borough is having real world effects. For example, there are 1,684 households on the housing register, 121 of which are classified as being in urgent need of housing. Waiting times to be housed are between 12 and 28 months. Overall, I place substantial weight on the provision of affordable housing.
84. There would be short term benefits to the economy from construction of the proposal. There would also be long term benefits from expenditure in the local area by the future residents of the development. It is a reasonably large proposal. That the benefits are standard for housing development does not lessen their reality or importance. I place significant weight on this factor.
85. A Biodiversity Net Gain (BNG) Feasibility Report, dated August 2023³¹ confirms that the proposal would result in an overall BNG of 32.65% for area-based habitats, a BNG of 200.78% for hedgerows, and that trading rules will be satisfied. This exceeds the national requirements and also Policy FAV7(2) of the FNP, which requires a minimum BNG of 20% on greenfield sites such as the appeal site. I place moderate positive weight on this factor.
86. As existing, apart from the PRow, none of the appeal site is useable or accessible to the public, because it is a private field. That there used to be allotments, as stated by SHF, does not alter the current situation. Significant public open space would be provided as part of the proposal. This would be useable not only by future residents of the scheme but also by other nearby existing residents. In addition, the s106 secures upgrades to PRows both

³⁰ CD11.5

³¹ CD2.8

through and in the vicinity of the site. A children's play space would be provided, as secured by the s106. I place moderate positive weight on these factors.

87. As set out above, the pluvial flooding on the appeal site is not related to cross-site flows. The proposal would also not affect nearby areas with regard to tidal flood risk because it would not afford opportunities for tidal flood waters to spread further than if the site were left as existing. Any impact on tidal flood water volume would be a drop in the ocean (sic). In addition, it is common ground, and I see no reason to disagree, that by raising the access road as described above, a barrier would be created that would help protect The Goldings scheme to the west from tidal flooding. There would therefore be a betterment in this respect. I place moderate weight on this factor.
88. The provision of an electric car club is secured by the s106. This would have some benefits in terms of allowing both future and nearby residents to hire the cars. However, only five cars are proposed and the take-up of the club is not known at this stage. Overall, I place limited positive weight on this factor.
89. The appeal site contains contaminated land. The proposal would remediate this land. This would largely be so as to create an acceptable form of development. However, it would also likely result in a reduction of the existing risks to the underlying aquifers and reduce existing surface water infiltration rates resulting in a reduction of subsequent soil leaching into the underlying groundwater³². Paragraph 125(c) of the Framework supports opportunities to remediate contaminated land. However, the remediation works are largely to create an acceptable situation for the proposed development. I therefore place limited weight on this factor.

Negative

90. The appellant has failed to undertake a sequential assessment or to fully apply the sequential approach, both in relation to tidal and surface water flooding. However, as also set out above, there would be no real world harm as a result of the proposal, because the proposed mitigation works would mean that no areas of the proposed development in its final form would be at risk of flooding in the design flood event, or from surface water. Overall, though, and consistent with previous appeal decisions, I nevertheless place significant weight on this factor, which remains in conflict with the Framework and local policy and represents a departure from the overarching spatial planning requirement to direct inappropriate development away from areas at risk of flooding.
91. There would be a conflict with the spatial strategy of the Council. However, the weight I apply to this conflict is reduced because of the limited scope of the conflict. It is further reduced because the Council cannot demonstrate a five-year supply of housing land. Even a relatively small shortfall is still an important factor to take into consideration. In addition, it is accepted that the emerging Local Plan will either need to apply a more flexible approach to BuABs or widen them to accommodate likely future housing need. Nevertheless, a conflict with the spatial strategy is an important consideration, even if limited, because it means the proposal represents a

³² See Appendix 3, Mr Lane Proof of Evidence

departure from the plan-led system. Overall, I place significant weight on this factor.

92. There would be loss of BMV in a manner in conflict with the Development Plan. It is also important to remember that loss of BMV goes beyond technical non-compliance with a spatial strategy. There would be real world harm from the loss of the land because of the loss of productive land for agriculture and associated economic effects. However, the loss of some BMV, be it at the appeal site or elsewhere in the Borough, is inevitable if the Borough is to meet its housing need moving forward³³. There would also not be any loss of grade 1 land and relatively limited loss of grade 2 and 3a land. There is therefore likely no loss of BMV that would not inevitably occur in the near to medium future in any event. The conflict with the spatial strategy in this regard, important though it is, therefore must have reduced weight and importance, and I place moderate weight on this factor.
93. There would be moderate harm to the intrinsic character, beauty and tranquillity of the countryside by developing part of an agricultural field and limited harm to the setting of the AHLV marshland to the north. However, some harm to the appeal site and nearby countryside is an inevitable consequence of development. Importantly, the harm would be lowest to the area of highest value and subject to greater protection, ie the designated AHLV landscape. Overall, I place limited weight on this factor.
94. Although the land of ecological value to be lost, such as the trees, hedgerows and grassland, would be adequately mitigated, there is still some intrinsic harm from the loss of such habitat. Because of the relatively low existing ecological value, and that some habitat would be retained, such as many of the trees, I place limited weight on this factor.
95. Construction of the proposal would involve relatively large numbers of HGV movements. This would be increased above that of purely constructing the buildings and infrastructure due to the need to change the land levels, as detailed above. Although this could be controlled by condition(s) to minimise the effect on the local highway network, there would inevitably be some harm to the free-flow of traffic and highway safety. I place limited weight on this factor because there is no substantiated evidence before me that this harm would be to an unacceptable degree.
96. There is a path which runs from Upper Brents to Ham Road along the field edge behind the existing houses in Upper Brents and Springhead Road. Evidence has been provided that it has been informally used for a long time, perhaps over 100 years. This would be lost as part of the proposal. However, this is not a formal PRoW. It has no formal heritage designation. It runs on private land. Nevertheless, it is evidently in use by local residents and there would be some, albeit limited, harm from the loss of this footpath, to which I attach limited weight.

Heritage balance

97. In accordance with Paragraph 212 of the Framework, I place great weight on the conservation of designated heritage assets. Although at the lower level of less than substantial, I place considerable importance and weight on the

³³ Agreed by the Council under cross-examination and also as set out in its Sustainability Appraisal

harm that I have identified to the character and appearance of the CA in terms of how it is experienced in its setting, and to the special interest and heritage significance of the farmhouse, Gate House and Proof House Listed buildings in terms of how they are experienced in their settings. As set out at Paragraph 215 of the Framework, where there is less than substantial harm to designated heritage assets, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing their optimum viable use.

98. There is no contention before me, nor reason to believe, that the optimum viable use of any of the heritage assets would be affected by the proposal. With regard to the public benefits, these are substantial, as set out in the positive section of the planning balance above. These outweigh the limited and low level of harm to the farmhouse, Gate House and Proof House Listed buildings and the CA.

The balance

99. The failure to perform a sequential test with regard to both tidal and pluvial flooding is a fundamental breach of planning policy, even if there are no real world effects as a result. The proposal also represents a departure from the adopted spatial strategy of the Council. The current housing land supply situation of the Council means that some departures from this strategy are inevitable, which lessens the weight to be applied to this conflict. Nevertheless, the importance of a plan-led system is a thread which runs through planning policy. This should be respected, and the departure is an important conflict to weigh in the planning balance. In addition, as set out above, I place moderate weight on the loss of BMV, and there are further harms with regard to character and appearance, existing ecology, construction traffic, heritage and the informal footpath. Taken together, and despite the package of benefits as set out above, these harms represent a conflict with the Development Plan when read as a whole.
100. Applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise, in accordance with s38(6) of the Planning and Compulsory Purchase Act 2004. The Framework is an important material consideration. As set out above, the Council cannot demonstrate a five-year supply of housing land. Therefore, as set out at Paragraph 11d and Footnote 8 of the Framework, the 'tilted balance' as set out at Paragraph 11dii is engaged unless the application of policies in this Framework that protect areas or assets of particular importance provide a strong reason for refusing the development proposed.
101. Footnote 7 confirms that areas at risk of flooding are counted as assets of particular importance. Although the proposal has failed to perform the required sequential tests, there would be no real world effects after mitigation is taken into account. A 'strong' reason for refusal based on flooding must, to my mind, go beyond mere technical conflicts, even if they are important. There must be substantive risks and harms that go beyond policy. I do not, therefore, view this as a strong reason for refusing the development proposed. For the avoidance of doubt, I also do not view the minor harms to heritage assets as representing a strong reason for refusal, or even a reason for refusal at all, as set out in my heritage balance section above. The 'tilted balance' is therefore engaged.

102. In this regard, the benefits of the proposal are many and weighty. It would provide a reasonably substantial housing development in a Borough with a lack of a five-year supply of housing land. There would also be benefits to the economy, BNG, public open space, off-site flooding, contaminated land and an electric car club.
103. With regard to Paragraph 14 of the Framework, the FNP became part of the Development Plan within the past five years. However, it contains policies and allocations that would only meet a housing requirement that does not accurately reflect up-to-date housing need, as set out above. The conflict with the FNP is also limited to Policy FAV7 with regard to BMV which is an inevitable loss when considered in the round, and FAV2 with regard to spatial strategy but only with regard to its overarching objectives rather than specifics parts of the policy. In this circumstance, therefore, the adverse impacts of the conflicts with FNP do not significantly and demonstrably outweigh the benefits.
104. Overall, and particularly because of the importance and weight to be applied to the proposed housing, the adverse impacts of the proposal would not significantly and demonstrably outweigh the benefits of the proposal. The appeal should therefore be allowed.

Conditions

105. An agreed schedule of conditions was tabled at the Inquiry and was then discussed at a round-table session. On the basis of that discussion, and with regard to the Government's guidance on the use of conditions in planning permissions, I have amended the schedule of conditions. No parties would be prejudiced by this because it follows the discussion held at the Inquiry.
106. In addition to the standard submission of reserved matters, time limit for submission of reserved matters, and time limit for implementation conditions, a condition specifying the relevant drawings provides certainty.
107. The archaeology, reserved matters accompaniment, remediation, contamination, foul water drainage, landfill, construction environment management plan (CEMP), SUDS, Verification Report, Acoustic Design Statement (ADS), cycle parking facilities, emergency vehicle route, and water use restriction conditions are necessary to ensure compliance with these technical considerations. The water restriction is additionally a requirement of Policy DM21(9) of the LP. Foul water control is a requirement of the EA and relates to potential harm to controlled waters and is therefore necessary.
108. The reserved matters accompaniment, reserved matters plans and sections, remediation, PRow Scheme of Management, CEMP, Landscape and Ecological Management Plan (LEMP), SUDS, bollards and signage, lighting strategy, tree and shrub replanting, and unit and density restriction conditions are necessary to protect the character and appearance of the area. I view five years tree and shrub replanting as being proportionate and necessary in this regard. The PRow applies only to where they are within the appeal site, with off-site works captured by the s106. This is therefore necessary and enforceable.

109. The reserved matters accompaniment, CEMP, Construction Management Plan (CMP), ADS and piling conditions are necessary to protect the living conditions of local residents.
110. The reserved matters accompaniment condition is necessary to ensure an adequate standard of accommodation for future occupiers.
111. The reserved matters accompaniment, Reptile Mitigation Strategy, PRoW Scheme of Management, Biodiversity Method Statement, CEMP, LEMP, SUDS, Verification Report, lighting strategy, tree and shrub replanting, infiltration of surface water drainage from drainage systems, piling, and habitat monitoring survey reports submissions conditions are necessary to protect ecology.
112. The reserved matters accompaniment and reserved matters plans and sections conditions are necessary to ensure that the future occupants and users of the site would be suitably protected from tidal flooding.
113. The PRoW Scheme of Management, CEMP, CMP, bollards and signage, cycle parking facilities, emergency vehicle route, and travel plan conditions are necessary to protect highway safety and the free-flow of traffic.
114. The plans and sections condition confirms the floor levels AOD and also that the maximum heights of buildings must be within the visual envelope as assessed for the proposal. It is therefore sufficient by itself to ensure that any works and the final design, be they part of remediation or the proposed development, would be within the parameters as assessed above with regard to both flooding and character and appearance. I have seen no substantiated evidence that these could not be achieved.
115. It is, therefore, unnecessary to specify the number of storeys or building heights of individual buildings, because they would need to comply with the restrictions in the plans and sections condition in any event. In addition, there is no need to specify AOD levels in relation to contamination works, because it is the final situation which needs to be controlled regarding flooding. It is also not necessary to attach a condition in relation to flood warning and evacuation plans because the final proposal would not be at risk of flooding.
116. The Reptile Mitigation Strategy, PRoW, contamination, foul water drainage, landfill, Biodiversity Method Statement, CEMP, LEMP, CMP, and SUDS conditions are necessarily worded as pre-commencement conditions, as a later trigger for their submission and/or implementation would limit their effectiveness or the scope of measure which could be used.

Appropriate Assessment

117. The appeal site is located close to The Swale Estuary Special Protection Area (the SPA) and Ramsar. The proposal could have indirect effects on the SPA and Ramsar due to recreation from the future residents, as well as direct effects both during construction and in operation through drainage that would discharge into the sites. I therefore consider that the effects of the proposal, both on its own and in combination with other development projects, is such that it is likely to have significant effects on the integrity of the SPA. Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) therefore indicates the

requirement for an Appropriate Assessment (AA). As the Competent Authority, I have therefore undertaken an AA.

118. The SPA was designated due to it being a wetland of international importance. It provides habitat for wintering waterfowl and supports notable breeding bird populations, including several qualifying species. The SPA includes the largest remaining areas of freshwater grazing marsh in Kent. The Ramsar is an extensive complex of mudflats and saltmarsh which provide habitat for notable non-breeding, breeding and winter birds, as well as a high species diversity of plants and invertebrates, including several nationally rare species. The conservation objectives include maintaining or restoring the extent, distribution, function and structure of the habitats.
119. It is proposed to construct up to 250 homes. The layout of the development would include a green link between Faversham Creek and the Faversham Gravel Pits Country Park. This would give the future residents easy access to the Faversham Creek at the point where it flows out of Faversham. Very few SPA birds use the section of Faversham Creek that the residents of the new development would have easy access to. However, the footpath at this point continues northwards along the bank of the creek where more SPA birds can be found, especially redshank. Consequently, there could be a likely significant effect on birds including overwintering waterbird assemblage species, all due to recreational pressure.
120. There could also be a likely significant effect during construction due to the possibility of works, such as piling, resulting in contaminants that would pollute the habitats of the birds in the SPA and Ramsar sites. In addition, the drainage strategy, whilst not finalised, would result in drainage from the development being partly funnelled into a ditch to the north west corner of the appeal site, and thereby transferring contaminants from the appeal site into the estuary and other habitats in the SPA. There could also, therefore, be a likely significant effect from construction and the drainage works and strategy.
121. Mitigation is proposed with regard to increased recreational pressure. This would largely be the s106 securing contributions to the North Kent Strategic Access Management and Monitoring Strategy, which largely relates to access management measures including wardening and visitor engagement, a dog project, codes of conduct, site specific access and infrastructure enhancements and monitoring. On-site measures are also proposed through the creation of fairly substantial open space within the appeal site, which would partially divert recreation away from the SPA and Ramsar.
122. The mitigation for the drainage concerns would be by controlling the detail of the SUDS and other drainage works by condition(s) to ensure that the drainage amount and pollution would be within acceptable limits. I am confident this would be achievable because the draft information provided in this regard has already considered the requirement to protect the existing natural water supply and habitat quality within the adjacent ditch network and SPA. With regard to construction, conditions could minimise harmful effects, for example by controlling piling, noise, locations of compounds etc. Given the distance between the bulk of the construction works and the SPA and drainage ditch, there is no reason to believe that suitable mitigation measures could not be achieved.

123. With regard to in-combination effects, proposed and recently approved developments located within 5km of any part of the SPA and Ramsar site have been considered, and there are no predicted significant in-combination impacts with any other projects or plans.
124. Overall, therefore, taking into account mitigation measures, there are no adverse effects predicted on site integrity of the SPA and Ramsar site as a result of the proposed development alone or in-combination with other plans or projects. The Council agrees with this conclusion and Natural England has been consulted and has issued no comment.

Conclusion

125. For the reasons above, the appeal is allowed.

O S Woodward
INSPECTOR

ANNEX A: APPEARANCES

FOR THE APPELLANT:

Guy Williams KC. He called:

Laurie Lane MRTPI	Director, Lane Town Planning
Colin Whittingham CIWEM	Director, RSK
Ian Grimshaw CMLI MRTPI (TEP)	Technical Director, The Environment Partnership
Andy Nyul CEnv MCIEEM	Associate Director, TEP

FOR THE LOCAL PLANNING AUTHORITY:

Rowan Clapp, of Counsel. He called:

John Etchells CMLI	Director, John Etchells Consulting Ltd
Edward Hartwell MCIWEM	Principal Analyst, JBA Consulting
Martin Carpenter MRTPI	Director, Enplan
Matt Duigan	Planning Officer, Swale Borough Council

SAVE HAM FARM:

Frances Beaumont	Chair, Save Ham Farm
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FAVERSHAM TOWN COUNCIL:

Peter Cook PNL	Faversham Town Councillor, Prior Ward
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INTERESTED PARTIES:

Stephen Atkins	The Faversham Society
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ANNEX B: DOCUMENTS

- ID1 – Opening Submissions of the Appellant
- ID2 – Opening statement on behalf of Swale Borough Council
- ID3 – Comment on TEP comment on Rule 6 Proof of Evidence, by Peter Cook
- ID4 – FTC opening comments
- ID5 – SHF opening comments
- ID6 – Email dated 10 December 2024 regarding FNP being 'made'
- ID7 – Suggested Route for Inspector's Site Visit Ref ID9624.01.003
- ID8 – Update to condition schedule by Council regarding condition 17, incorporating inspector's comments
- ID9.1 – s106 Agreement Draft, as updated regarding footpath ramps
 - ID9.2 – Public Rights of Way Ramps Map 'ZF43 Faversham'
 - ID9.3 – Andrew Osborne email regarding ramps, dated 4 February 2025
 - ID9.4 – Email from Kent County Council regarding public footpath contribution, dated 11 February 2025
 - ID9.5 – Extract of the working copy of the definitive map of Public Rights of Way for the County of Kent Ref ZF43/a01992
 - ID9.6 – Planning Obligation Summary
- ID10 – Stephen Atkins Supplementary Statement
- ID11 – Flood Risk Statement of Common Ground, dated 25 February 2025
- ID12 – Council's Planning Proof of Evidence, Martin Carpenter
- ID13 – Environment Agency Comments, dated 31 January 2025
- ID14 – Updated Statement of Common Ground, dated February 2025
- ID15 – Revised Proof of Evidence following publication of NPPF in December 2024 by Peter Cook
- ID16 – Appellant's Planning Supplemental Proof of Evidence, dated February 2025
- ID17 – Appeal Decision Ref 3350855, dated 14 March 2025
- ID18 – Appeal Decision Ref 3343144, dated 18 March 2025
- ID19 – Closing submissions on behalf of Swale Borough Council
- ID20 – Closing statement by FTC including appendices
- ID21 – Final submissions of the appellant
- ID22 – Final, engrossed s106 Agreement

ANNEX C: CONDITIONS SCHEDULE

Reserved matters

- 1) Details of the appearance, landscaping, layout, and scale, "the reserved matters", shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) Prior to any Reserved Matters application, the applicant (or their agents or successors in title) shall secure and have reported a programme of archaeological field evaluation works, in accordance with a specification and written timetable which has been submitted to and approved by the Local Planning Authority.
 - A) Following completion of archaeological evaluation works, no development shall take place until the applicant or their agents or successors in title, has secured the implementation of any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording in accordance with a specification and timetable which has been submitted to and approved by the Local Planning Authority.
 - B) The archaeological safeguarding measures, investigation and recording shall be carried out in accordance with the agreed specification and timetable.
 - C) Within 6 months of the completion of archaeological works a Post-Excavation Assessment Report shall be submitted to and approved in writing by the Local Planning Authority. The Report shall be in accordance with Kent County Council's requirements and include:
 - A description and assessment of the results of all archaeological investigations that have been undertaken in that part (or parts) of the development;
 - An Updated Project Design outlining measures to analyse and publish the findings of the archaeological investigations, together with an implementation strategy and timetable for the same; and,
 - A scheme detailing the arrangements for providing and maintaining an archaeological site archive and its deposition following completion.
 - D) The measures outlined in the Report shall be implemented in full and in accordance with the agreed timings.

- 5) Reserved Matters applications shall be accompanied, as appropriate, by the following documents and/or information:
- A Design Statement that demonstrates how the proposals generally accord with the Development Framework Plan (PS9624.01.014H) and the Design and Access Statement;
 - Details of measures to minimise opportunities for crime, according with the principles of Crime Prevention Through Environmental Design;
 - Details of the siting and orientation of the proposed buildings and any relevant roads, as well as the location of any landscaped or open space areas;
 - Details of building heights and massing;
 - Details of housing mix;
 - Details of the internal layout of buildings identifying how “regard” has been had to the Nationally Described Space Standards;
 - Details of the external treatment and design of the buildings;
 - Details of finished floor levels;
 - A contextual study looking at the physical, social and economic context of the site. Evidence that the design provides a reflection of urban forms, block patterns, development to space relationships, open space typologies, local landscape character, local habitat creation and patterns of vegetation boundary treatments and architectural vernacular details that are characteristic of the locality;
 - The extent to which the proposal is consistent with the guidance on design set out in the National Design Guide;
 - Plans, drawings, sections, and specifications (including planting specification) to explain full details of the hard and soft landscaping treatment and works including; materials (size, type and colour), proposed drainage arrangements, children's play equipment, street furniture, lighting columns, private and communal areas, opens spaces, edges, boundary treatments, public rights of way and roads;
 - Tree planting details (including street trees and hedge rows) and specification of all planting in hard and soft landscaped areas, to include provision for advanced planting (in the first available planting season) to the northern and southern boundary of the site;
 - The open space details shall demonstrate that there will be no Sustainable Urban Drainage Systems located within private gardens or play areas;
 - Significant landscaping provided within the core of the site and internal streets and roads are tree lined;
 - The width and configuration of proposed carriageway layouts including any footways/foot paths and verges; a link from the proposed Neighbourhood Equipped Play Area to the existing Springhead Road Play area. The details shall show path widths, sufficient to allow pedestrians, wheelchair users, scooters, cyclists and mobility scooters, to move freely throughout the development;
 - The layout of street lighting;
 - The layout and configuration of surface water sewers, drains and outfalls serving the internal streets and footways;

- The layout and configuration of any retaining walls and highway supporting structures;
- The layout of service routes and corridors within highways;
- Street nameplates;
- Identification of any vehicle overhang margins, embankments, visibility splays, property accesses, carriageway gradients, driveway gradients, street furniture;
- Details of the programme for implementing and completing the planting; and,
- An Arboricultural Method Statement produced in accordance with BS5837 and:
 - A Tree Protection Plan showing trees that would be retained and the arrangement of temporary protection measures that would be installed prior to the commencement of development;
 - A methodology for any special construction that is required to ensure the success of proposed tree retention;
 - Detail for any temporary construction measures, products or construction methods that are specified; and,
 - Details of a proposed watching brief, monitoring or reporting.

The development shall thereafter accord with the approved details and shall be provided prior to the occupation of each dwelling to which they relate and retained for the life of the development.

- 6) Reserved Matters applications shall, as appropriate, include plans and sections, indicating the proposed ground levels, cross-sections through the streets, building heights, gradients and finished floor levels. The details shall demonstrate that:
- All finished floor levels within the proposed development at the site must be raised to a minimum of 300mm above the flood level of 5.83m AOD; and,
 - The maximum height and extent of proposed dwellings does not result in an extension of the Visual Envelope of the development identified the Landscape and Visual Appraisal ref: 8938.01.001 (March 2023) and Landscape and Visual Appraisal Addendum Note 9624.01.005 (August 2023).

Pre-commencement

- 7) Prior to commencement of development including site clearance, a detailed Reptile Mitigation Strategy for the translocation of reptiles shall be submitted to and approved in writing by the Local Planning Authority. The Strategy shall include:
- A methodology for the collection of reptiles and measures to prevent reptiles returning to the site during construction;
 - Exact location of a suitably sized receptor area within the site boundary. The minimum size of the receptor will be as shown on the Reptile Receptor Site Plan of the BNG Feasibility report, TEP, November 2023 and will include connectivity with existing northern and western boundary habitats;

- Details of how the receptor site will be established and be in a suitable condition to support the likely number of animals which will be moved, prior to any animals being captured for translocation; and,
- Details of the management of the translocation site in perpetuity.

The translocation shall be undertaken in strict accordance with the approved details and the development shall not commence until a Verification Report has been submitted to and approved in writing by the Local Planning Authority confirming that the reptiles have been removed from the site.

- 8) Prior to commencement of development, a Public Rights of Way (PRoW) Scheme of Management shall have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:
- The management of PRoW routes ZF5 and ZF1 where they fall within the appeal site during the construction period; and,
 - Details of the width, surface, signage, exit and entry points of the routes where they fall within the appeal site during the construction period.

Thereafter the construction of the development shall accord with the approved Scheme.

- 9) Prior to commencement of development, the following components of a scheme to deal with the risks associated with contamination of the site shall have been submitted to and approved in writing by the Local Planning Authority:
- A) A Preliminary Risk Assessment which has identified:
- all previous uses;
 - potential contaminants associated with those uses;
 - a conceptual model of the site indicating sources, pathways and receptors; and,
 - potentially unacceptable risks arising from contamination at the site.
- B) A Site Investigation, based on (A) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
- C) Subject to the results of (B) and if required a Remediation Method Statement (RMS) based on the Site Investigation results and the detailed risk assessment. This should give full details of an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken. The RMS shall also include a verification plan to detail the data that will be collected in order to demonstrate that the works set out in the RMS are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

- D) Subject to the need for (C), a Closure Report shall be submitted upon completion of the works. The Report shall include full verification details as set out in (C). This shall include detailed results of sampling, analysis and monitoring together with documentation certifying quantities and source/destination of any material brought onto or taken from the site and to confirm remediation has been carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met.

The Scheme shall thereafter be implemented as approved.

- 10) Prior to commencement of development, a Foul Water Drainage Strategy to deal with foul water drainage shall have been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall accord with the approved Strategy.
- 11) Prior to commencement of development, a scheme for detailing how this proposal takes the permitted landfill into account, shall have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:
- How the ongoing management and maintenance of the site and monitoring of in-waste and perimeter monitoring points will be facilitated;
 - Detail to show that monitoring points within the proposal boundary will remain accessible and in a useable condition; and
 - The potential impact on the engineered liner of the landfill from the drainage proposals.

Thereafter the development shall accord with the approved scheme.

- 12) Prior to commencement of development including site clearance, a Biodiversity Method Statement which details all precautionary mitigation methods to be implemented for the protection of protected and priority species including bats, reptiles, badger, breeding birds (including ground-nesting species), wintering birds, otter, common amphibians and hedgehog shall have been submitted to and approved in writing by the Local Planning Authority.

The approved Statement shall align with the recommendations of the Ecological Impact Assessment (EcIA), TEP, Ref: 9634.014 (September 2023) and appended protected species reports. The Statement will include, but not necessarily be limited to, the following:

- A schedule detailing seasonal timing for precautionary works and surveys;
- An update site walk-over no earlier than 3 months prior to commencement to:
 - confirm that the condition/management of the onsite habitats is consistent with that recorded during the ecological assessment, such that the potential for protected species to occur has not changed;
 - identify the presence of any additional non-native/invasive species;

- identify any badger setts. Should new setts be identified during the pre-works walk over and/or monitoring during the construction period, all required surveys and mitigation/licensing will be implemented prior to further works being undertaken in the vicinity of the sett/s;
 - update the preliminary assessment followed by close-inspection, presence/likely absence surveys and mitigation (as required) of all trees which require removal or pruning under the proposals. Mitigation for tree removal will be designed in accordance with the Bat Mitigation Guidelines, CIEEM, 2023. Where roosting bats are confirmed, all mitigation and licensing will be approved by Natural England and implemented as appropriate prior to the relevant tree works being undertaken;
- Precautionary methods for breeding birds including Schedule 1 species and measures to avoid disturbance of wintering birds;
- Precautionary measures for badger and their setts;
- Precautionary methods to avoid capture of animals within open trenches and use of temporarily stored materials as refugia; and,
- Procedure to be followed should a protected species be found within the construction area.

Thereafter the development shall strictly accord with the approved details.

- 13) Prior to commencement of development including site clearance, a Construction Environment Management Plan (CEMP) shall have been submitted to and approved in writing by the Local Planning Authority. Details will include the following:
- Purpose and objectives for the proposed works;
 - Reference to the Biodiversity Method Statement;
 - The identification of biodiversity protection zones and the use of protective fences, exclusion barriers and warning signs;
 - Detailed design(s) and/or working method(s) necessary to achieve stated objectives including (but not excluded to) all relevant measures outlined within the EcIA, Habitat Regulations Assessment, TEP, March 2023, and the Arboricultural Impact Assessment, TEP, March 2023;
 - Sensitive lighting proposals with reference to the Bat Conservation Trust's 'Guidance Note 8: Bats and Artificial Lighting 08/23';
 - Extent and location of proposed works shown on appropriate scale maps and plans for all relevant species and habitats;
 - Reference to any environmental permits required and any relevant mitigation measures;
 - A Method Statement for the removal and disposal of Schedule 9 invasive species Virginia creeper and Russian vine (and any other species identified during update site visits) in accordance with the Wildlife and Countryside Act 1981 (as amended) and with the Environmental Protection Act 1990 and the Environmental Protection Act Duty of Care Regulations 1991;
 - Timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction and landscaping;

- Persons responsible for implementing the works, including times during construction/landscaping when specialist ecologists need to be present on site to undertake / oversee works;
- Initial aftercare and reference to a long-term maintenance plan (where relevant);
- Disposal of any wastes for implementing work; and,
- Details of how surface water and storm water will be managed on the site during construction.

The works shall thereafter be carried out in accordance with the approved details and shall be retained in that manner for the duration of construction and landscaping works.

- 14) Prior to commencement of development including site clearance, a Landscape and Ecological Management Plan (LEMP) shall have been submitted to and approved in writing by the Local Planning Authority. The content of the LEMP will be based on the information submitted within the Biodiversity Net Gain Feasibility report V3.1, TEP, November 2023, Biodiversity Metric V3, TEP, November 2023 and Illustrative Masterplan, Gladman, February 2023, and will include the following:
- Description and evaluation of features to be managed;
 - Constraints on site that might influence management;
 - Mitigation measures set out in the Habitat Regulations Assessment (ref: 9624007 V4)
 - Aims and objectives of management, in alignment with the Biodiversity Net Gain habitat type and condition targets detailed within the Biodiversity Net Gain Feasibility report V3.1, TEP, November 2023 and Biodiversity Metric V3, TEP, November 2023;
 - Details of additional building-integrated, tree-mounted and free-standing biodiversity enhancements to be provided for protected and priority species including bats, red/amber list bird species, reptiles and invertebrates;
 - Measures for monitoring and control of non-native invasive species;
 - Measures to be implemented to ensure habitat connectivity for protected and priority species throughout operation, including gaps at the base of any proposed solid fencing;
 - Measures to ensure long term retention and appropriate management of hedgerows and trees bordering residential gardens, including fencing to exclude such features from residential curtilage;
 - Appropriate management prescriptions for achieving aims and objectives;
 - Information regarding remedial measures;
 - Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period, for the lifetime of the development);
 - Details of the body or organisation responsible for implementation of the plan; and,
 - Details of a long-term monitoring program for all habitats (in accordance with the BNG habitat types and targets).

The LEMP will include details of the legal and funding mechanism(s) by which the long term implementation of the plan will be secured by the developer, with details of the management body(ies) responsible for its delivery. The approved plan shall thereafter be implemented in accordance with the approved details.

- 15) Prior to commencement of development, a Construction Management Plan (CMP) shall have been submitted to and approved in writing by the Local Planning Authority. The document shall be produced in accordance with the Code of Construction Practice and BS5228 Noise Vibration and Control on Construction and Open Sites, the Control of Dust from Construction Sites (BRE DTi Feb 2003) and the Institute of Air Quality Management (IAQM) 'Guidance on the Assessment of Dust from Demolition and Construction'. The CMP shall include:
- Routing of construction and delivery vehicles to / from site;
 - Parking and turning areas for construction and delivery vehicles and site personnel;
 - Timing of deliveries;
 - Provision of wheel washing facilities;
 - Temporary traffic management / signage; and,
 - Measures to control dust.

The construction of the development shall then be carried out in accordance with the approved CMP.

- 16) Prior to commencement of development, a detailed Sustainable Urban Drainage Scheme (SUDS) for the site, shall have been submitted to and approved in writing by the Local Planning Authority. The SUDS shall be based upon principles contained within the Flood Risk Assessment and Outline Drainage Strategy report (Issue 3 05/04/2024). The submission shall also demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of without increase to flood risk on or off-site. The SUDS shall also demonstrate (with reference to published guidance):
- That silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters;
 - How it is to be maintained to include a maintenance schedule, details of ownership, and a timetable for implementation of maintenance and management of the Scheme;
 - That the operational, maintenance and access requirements for each drainage feature or component are adequate, including any proposed arrangements for future adoption by any public body or statutory undertaker; and,
 - Ongoing monitoring of the SUDS to ensure there is no pollution risk to receiving waters.

The SUDS shall thereafter be implemented in accordance with the approved details.

Pre-specific element

- 17) Prior to above ground works, a Stage 2 Acoustic Design Statement (ADS) shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall accord with the approved Stage 2 ADS.
- 18) Prior to installation of highway signage and reflective bollards, details of the bollards and signage to be used at or close to the new access to the site shall be submitted to and agreed in writing by the Local Planning Authority. Thereafter the development shall accord with the approved details.
- 19) Prior to occupation, a Sensitive Lighting Strategy for Biodiversity shall be submitted to and approved in writing by the Local Planning Authority. The Strategy shall accord with the Institute of Lighting Engineers Guidance Notes for the Reduction of Obtrusive Lighting, GN01, dated 2005 (and any subsequent revisions) and the Bat Conservation Trust's 'Guidance Note 8: Bats and Artificial Lighting 08/23'. Plans included shall show how and where all external lighting will be installed and shall include a baseline lighting assessment for the site and site boundaries.

The Strategy shall detail the expected vertical and horizontal light spill in Lux levels, so that it can be clearly demonstrated that areas to be lit will not increase lighting impacts on designated sites and the associated designated features, or impact on areas of retained vegetation, proposed landscaping (including wetland features) and biodiversity enhancement features.

The Lux contour plan should incorporate any mitigation measures proposed to reduce impacts from external and internal lighting, including shielding, sensitive positioning / recessing of internal lighting, use of cowls, and/or tinted glazing treatments.

All lighting shall be installed in accordance with the approved specifications and locations set out in the plan and be maintained thereafter.

- 20) Secure, covered cycle parking facilities shall be provided for the relevant dwelling in accordance with the Council's adopted parking standards. Areas for the parking (including garages and carports) and manoeuvring of vehicles in the development in accordance with the Council's adopted parking standards. The development shall accord with the approved details and shall be provided prior to the occupation of each dwelling to which they relate and retained for the life of the development.
- 21) Prior to the first occupation of the development the emergency vehicle route serving the development shown on drawing Ref H-01 R6 shall be surfaced and access controlled in accordance with details to be submitted to and approved in writing by the Local Planning Authority.
- 22) Prior to first occupation of the development, a Travel Plan which shall include clear objectives and modal split targets, together with a time-

bound programme of implementation, monitoring, regular review and update; and be based on the particulars contained within the approved development, shall be submitted to and approved in writing by the Local Planning Authority and thereafter operated in accordance with the agreed details.

- 23) Prior to first occupation of the development, a Verification Report, pertaining to the SUDS and prepared by a suitably competent person, shall have been submitted to and approved in writing by the Local Planning Authority. The Report shall contain evidence (including photographs) of details and locations of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and the submission of an operation and maintenance manual for the SUDS as constructed.

For observation

- 24) The development hereby permitted shall be carried out in accordance with drawing Refs 9624.01.001A and 17277 H-01 P6.
- 25) The quantum of residential units to be constructed for the development hereby approved shall be limited to a maximum of 250. Density shall not exceed 35 dwellings per hectare.
- 26) Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.
- 27) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing by the Local Planning Authority) shall be carried out until a Remediation Strategy detailing how this contamination will be dealt with has been submitted to and approved in writing by the Local Planning Authority. The Strategy shall thereafter be implemented as approved.
- 28) No infiltration of surface water drainage from drainage systems into the ground is permitted other than with the written consent of the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 29) Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated by a Piling Risk Assessment that there is no resultant unacceptable risk to groundwater. The development shall thereafter be carried out in accordance with the approved details.

- 30) Copies of the habitat monitoring survey reports will be submitted to the Local Planning Authority for written approval in years 2, 5, 10, 15, 20 and 30 (or in accordance with the timescale stated in the Biodiversity Management and Monitoring Plan if different). Details of, and a timetable for, any required remedial measures will also be provided.
- 31) The development shall be designed to achieve a water consumption rate of no more than 110 litres per person per day.

===== END OF SCHEDULE =====



Appeal Decision

Inquiry opened on 24 September 2024

Site visit made on 24 September 2024

by David Prentis BA BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th March 2025

Appeal Ref: APP/D0121/W/24/3343144

Land at Rectory Farm (North), Chescombe Road, Yatton BS49 4BZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Persimmon Homes Severn Valley against North Somerset Council.
 - The application reference is 23/P/0664/OUT.
 - The development proposed is an outline planning application for the development of up to 190no. homes (including 50% affordable homes) to include flats and semi-detached, detached and terraced houses with a maximum height of 3 storeys at an average density of no more than 20 dwellings per net acre, up to 500 sqm Class E floorspace, allotments, car parking, earthworks to facilitate sustainable drainage systems, orchards, open space comprising circa 70% of the gross area including children's play with a minimum of 1no. LEAP and 2no. LAPS, bio-diversity net gain of a minimum of 20% in habitat units and 40% in hedgerow units, and all other ancillary infrastructure and enabling works with means of access from Shiners Elms for consideration. All other matters (means of access from Chescombe Road, internal access, layout, appearance and landscaping) reserved for subsequent approval.
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Decision

1. The appeal is allowed and outline planning permission is granted for the development of up to 190no. homes (including 50% affordable homes) to include flats and semi-detached, detached and terraced houses with a maximum height of 3 storeys at an average density of no more than 20 dwellings per net acre, up to 500 sqm Class E floorspace, allotments, car parking, earthworks to facilitate sustainable drainage systems, orchards, open space comprising circa 70% of the gross area including children's play with a minimum of 1no. LEAP and 2no. LAPS, bio-diversity net gain of a minimum of 20% in habitat units and 40% in hedgerow units, and all other ancillary infrastructure and enabling works with means of access from Shiners Elms for consideration. All other matters (means of access from Chescombe Road, internal access, layout, appearance and landscaping) reserved for subsequent approval. The permission relates to Land at Rectory Farm (North), Chescombe Road, Yatton, BS49 4BZ and is in accordance with the terms of the application, Ref 23/P/0664/OUT, subject to the conditions in the attached schedule.

Applications for costs

2. Two applications for partial awards of costs were made by Persimmon Homes Severn Valley against North Somerset Council (Application A and Application B). An application for a full (or, in the alternative, partial) award of costs was made by North Somerset Council against Persimmon Homes Severn Valley (Application C). Persimmon Homes Severn Valley then made a further application against North

Somerset Council relating to the making of Application C (Application D). These applications will be the subject of separate decisions.

Preliminary matters

3. The Inquiry sat for ten days on 24 to 27 September 2024, 1 and 2 October 2024 and 7 to 10 January 2025. As described below, further matters were subsequently dealt with in writing. The Inquiry was closed in writing on 14 March 2025.
4. In agreement with the parties, I carried out an unaccompanied visit to the site and surrounding area on 24 September 2024. I carried out further unaccompanied visits to the site and to coastal defences at Woodspring Bay during the course of the Inquiry.
5. The appeal was against a failure to determine the application. The Council subsequently resolved that, had it been able to determine the application, outline planning permission would have been refused for reasons which may be summarised as follows:
 - 1) The scale of the proposed development would be contrary to the spatial strategy of the development plan which permits sites of up to around 25 dwellings adjoining the settlement boundaries of service villages;
 - 2) The site is for housing in Flood Zone 3a and the applicant's Flood Risk Sequential Test has failed to demonstrate that there are no reasonably available sites in areas with a lower flood risk where the development could be provided;
 - 3) The proposal would not adequately mitigate risks of flooding because there would not be safe access during the design flood event and there would be an increased risk of flooding to neighbouring properties; and
 - 4) the loss of a site safeguarded for a new primary school would result in the potential for there to be insufficient primary school capacity in Yatton.
6. On 16 August 2024, the Council advised the appellant that it would no longer be contesting the fourth reason for refusal.
7. At the Inquiry, the Council and the appellant jointly put forward an amendment to the description of development in relation to the Class E element of the proposal.¹ In response to a question raised by me, the amendment specified an amount of floorspace for Class E Use. This was a minor change which did not alter the substance of the appeal scheme. No party would be prejudiced by the appeal being determined on this basis. I have therefore adopted the amended description of development for this decision.
8. A section 106 Agreement dated 20 December 2024 (the Agreement) was submitted during the course of the Inquiry. The Agreement would make provision for financial contributions in connection with the following matters:
 - school transport for secondary school pupils and special educational needs transport;
 - improvement of bus stops and increased frequency of bus services;

¹ ID39 – Addendum to the statement of common ground

- improvement of the Strawberry Line pedestrian route;
 - measures to promote sustainable transport choices by future occupants;
 - a traffic regulation order;
 - improving road markings at local junctions; and
 - traffic calming measures on Mendip Road.
9. The Agreement provides that 50% of the dwellings would be delivered as affordable housing. 30% of the dwellings, described as “*policy affordable housing*”, would comprise a majority of social rented units together with some shared ownership units. The mix of dwelling types is specified. 20% of the dwellings, described as “*additional affordable housing units*”, would be delivered as shared ownership units. Again, the mix of dwelling types is specified. The Agreement makes provision for an affordable housing plan, showing the location and tenure of the affordable housing, to be submitted to and approved by the Council. There are provisions relating to phasing, transferring the affordable dwellings to a registered provider and nomination procedures.
 10. The Agreement also contains provisions relating to open space and ecological mitigation. Specifications for the open spaces would be submitted for the approval of the Council. There are provisions relating to completion of the works, inspection of the works, a procedure for remedying any defects, transfer of the open space to a management company and securing public access.
 11. The Council submitted a statement of compliance with Regulation 122 of the Community Infrastructure Levy Regulations 2010. This included references to the policy basis for the various contributions together with a commentary on each. In the main, the obligations were not controversial. At the Inquiry, no party suggested that the obligations would not accord with Regulation 122, other than in one particular respect. The Council and the appellant disagreed as to whether there should be a cascade mechanism whereby the affordable housing would be offered first to applicants with a local connection to Yatton. The Agreement is drafted in the alternative, such that this matter can be determined within this appeal decision. I shall return to this matter below. Otherwise, I see no reason to take a different view in relation to the non-controversial obligations and I have taken them into account accordingly.
 12. On Day 3 of the Inquiry, it emerged that a Position Statement submitted by the Environment Agency (EAPS) had only just come to the attention of the appellant’s team.² The EAPS relates to the third main issue, namely whether the proposal would increase the risk of flooding at neighbouring properties. In order to ensure that the evidence on flood risk could be properly examined, and to avoid procedural unfairness to the appellant, it was agreed that the evidence on flood risk should be heard at a later date. At my request, the Environment Agency (EA) agreed to provide an officer to answer questions from the appellant and from me in relation to the EAPS. This took place on Day 7 of the Inquiry (7 January 2025).
 13. When the Inquiry resumed on Day 7, the Council’s witness on flood risk (Mr Bunn) was unavailable. The Council called a consultant (Mr Cage) who adopted

² Inspector’s note – the EAPS had been submitted to the Planning Inspectorate as a written representation

Mr Bunn's proof of evidence. Mr Cage had a number of points that he wished to make. The Council and the appellant disagreed as to whether these points amounted to new evidence or were merely legitimate comment on documents already before the Inquiry.³ Following further discussion on Day 7, I made a ruling on Day 8.⁴ One of Mr Cage's points related to a flood risk assessment (FRA) by Brookbanks⁵ which, in his view, showed that the speed at which the appeal site would be inundated in a flood event would be faster than described in the appellant's evidence.

14. My ruling found that this was a new point. Moreover, it was a point which went to the effectiveness of the proposed mitigation. I considered that it was in the interests of the Inquiry that the appellant had the opportunity to produce a technical note in response to this concern. It was also in the interests of procedural fairness that the appellant should have that opportunity. It was agreed by the Council and the appellant that this specific issue could be dealt with in writing, allowing the rest of the flood risk evidence to be heard as scheduled.
15. On 12 December 2024, a new National Planning Policy Framework (the Framework) was published, together with revised Planning Practice Guidance (PPG). Amongst other matters, these documents changed the standard method by which housing requirements are to be calculated. This had the effect of increasing the requirement for North Somerset. As this change happened after the round table session on housing land supply had taken place, the parties were given the opportunity to address the changes in writing during the course of the Inquiry⁶.
16. At the Inquiry reference was made to the High Court decision in a case involving Mead Realisations Ltd (*Mead*).⁷ The appellant's evidence included Counsel's opinion on the implications of *Mead* for the interpretation of the Framework and PPG in relation to flood risk.⁸ That opinion was not disputed by the Council. I see no reason to disagree. When the Inquiry was sitting, the High Court decision was the subject of an appeal to the Court of Appeal. The decision of the Court of Appeal,⁹ handed down on 30 January 2025, upheld the High Court decision. In closing, the appellant noted that there had been no appeal against the High Court's interpretation of the Framework or PPG, therefore for present purposes it is the High Court judgment which is the relevant one.
17. It was agreed at the Inquiry that closing submissions would be delivered in writing.¹⁰ Further correspondence relating to the applications for costs was also submitted in writing. The Inquiry was closed in writing on 14 March 2025.
18. The development plan includes:
 - North Somerset Core Strategy (2006-2026) (NSCS);
 - Sites and policies plan part 1: Development Management Policies (2006-2026) (DMP);

³ Mr Cage's points are set out in ID51 and the response of Mr Mirams (the appellant's witness on flood risk) are set out in ID52

⁴ The ruling is at ID53

⁵ The Brookbanks FRA is included in ID28

⁶ Mrs Ventham (the appellant's planning witness) addressed the changes in an addendum to her proof of evidence

⁷ CD J1 – Mead Realisations Ltd v SoS LUHC [2024] EWHC 279 (Admin)

⁸ The Opinion of Lord Banner KC is at Appendix 6 to Mrs Ventham's proof of evidence (page 145)

⁹ CD J64 - Mead Realisations Ltd v SoS HCLG [2025] EWCA Civ 32

¹⁰ ID65 and ID67

- Sites and policies plan part 2: Site Allocations Plan (2006-2026) (SAP); and
 - Yatton Neighbourhood Plan (2017-2026) (YNP).
19. The Council is preparing a new local plan, which has been the subject of consultation, although it has not yet been submitted for examination. The Council announced that it is reviewing the draft plan to identify potential new locations for development, to help meet the Government's new higher housing target for North Somerset. The Council is intending to carry out consultations on the potential locations in 2025, followed by a final round of consultation later in 2025, before submitting the plan for examination. The Council and the appellant agree that the draft plan is not sufficiently advanced to carry weight as a statement of policy. However, the evidence base for the draft plan is a material consideration.

Main issues

20. The main issues are:

- whether the site is an appropriate location for housing, having regard to the spatial strategy of the development plan;
- whether the proposal would pass the flood risk sequential test set out in the National Planning Policy Framework (the Framework);
- whether the proposal would be safe from flood risk for its lifetime, and whether it would increase the risk of flooding elsewhere; and
- the nature and extent of any economic, social and environmental benefits.

Reasons

Whether the site is an appropriate location for housing, having regard to the spatial strategy of the development plan

21. The Council's first putative reason for refusal alleged conflict with the YNP. However, at a case management conference held on 18 July 2024 the Council confirmed that it was not alleging conflict with any specific policies of the YNP.
22. NSCS Policy CS13 states that the plan will secure the delivery of at least 20,985 dwellings in the period 2006-2026. The policy also states that the appropriate level of new homes would be reviewed by 2018. Policy CS14 states that Weston—super-Mare (Weston) will be the focus for new housing, including a strategic allocation at Weston Villages, and that, outside Weston, most additional development will take place at the towns of Clevedon, Nailsea and Portishead. The NSCS also makes provision for small scale development at service villages. Yatton is one of nine such villages identified in Policy CS32. This policy states that new development within or adjoining the settlement boundaries of the service villages will be supported, subject to various criteria which seek to ensure that development enhances the overall sustainability of the settlement. It goes on to say that sites outside the settlement boundaries in excess of about 25 dwellings must be brought forward as allocations through Local Plans or Neighbourhood Plans.
23. The appeal site is outside but adjacent to the settlement boundary of Yatton. It has not been allocated for development in either the SAP or the YNP. The scale of the

appeal proposal is well above the 25 dwellings contemplated for extensions to service villages that are not on allocated sites. In this respect, the proposal is in conflict with Policy CS32 and, consequently, with Policy CS14.

24. The Council and the appellant agree that Yatton has a range of shops and services, health and community facilities, pre-school and primary education provision, recreation and play spaces and local employment opportunities. There are bus services along High Street, which is about 0.5km east of the site. The Strawberry Line, which is immediately to the west of the site, provides a pedestrian route to Yatton train station. There are rail services to Weston and Bristol, amongst other destinations. The Council and the appellant agree that the site is a suitable and sustainable location in terms of accessibility and there would be no transport impacts that cannot be satisfactorily mitigated. Whilst I discuss transport matters further below, at this stage it is sufficient to note that I agree with these overall conclusions.
25. The criteria of Policy CS32 include references to design quality, local distinctiveness and the type and range of housing. As the application is in outline, these matters would not be determined until the reserved matters stage. However, the application is accompanied by a set of parameter plans and an illustrative landscape masterplan. The description of development makes reference to 70% of the gross area of the site being maintained as open space, which would include play areas, allotments, orchards and areas managed for biodiversity enhancement. The Council accepts that, if the proposal were found to be acceptable in principle, these documents would provide a sound basis for a future reserved matters application. I agree.
26. The Council does not suggest that the proposal would conflict with any of the qualitative criteria of Policy CS32. I consider that the proposal either accords with those criteria or is capable of according with them at the reserved matters stage. However, given that the limit of 25 dwellings relates to the spatial strategy of the NSCS, I consider that the proposal should be regarded as being in conflict with Policy CS32 as a whole. It is also in conflict with Policy CS14.
27. An appeal decision at Moor Road, Yatton¹¹ noted that it was common ground that the adopted NSCS does not include a Framework-compliant assessment of local housing need. For that reason, the Inspector found that Policies CS13, CS14 and CS32 were out-of-date. In this case, the Council and the appellant agree that Policies CS13, CS14 and CS32 are out-of-date, regardless of the housing land supply position. Moreover, as discussed below, the policies may be deemed out-of-date though the operation of the approach to decision making set out in paragraph 11(d) of the Framework.
28. The weight to be attached to conflict with these policies has been considered in other appeal decisions. In an appeal decision relating to Farleigh Farm, Backwell¹² the Inspector concluded that the weight to be attached to conflict with Policy CS32 should be reduced due to the housing land supply position. A decision relating to Rectory Farm, Yatton¹³ (immediately to the south of the current appeal site) found that there was a significant shortfall in housing land supply in North Somerset and,

¹¹ CD I9 - APP/D0121/W/21/3285343 (April 2022)

¹² CD I12 - APP/D0121/W/21/3285624 (March 2022)

¹³ CD I11 - APP/D0121/W/21/3286677 (June 2022)

consequently, conflict with Policies CS14 and CS32 could only be afforded limited weight.

29. At the Inquiry, the Council's planning witness was asked whether, in the event that flood risk were not to be found to justify refusing the scheme, planning permission should be refused solely due to conflict with the spatial strategy. His response was that, in those circumstances, the benefits of the scheme would outweigh the conflict with the spatial strategy.¹⁴
30. In conclusion, the proposal would conflict with the spatial strategy of the development plan. In deciding how much weight to attach to that conflict, it is important to note that the spatial strategy is out-of-date, regardless of the housing land supply position, that the site is a suitable and sustainable location in terms of accessibility and that no conflict has been identified with the qualitative criteria of Policy CS32. I therefore consider that limited weight should be attached to the conflict with Policies CS14 and CS32.

Whether the proposal would pass the flood risk sequential test set out in the Framework

31. It is common ground that the site is in Flood Zone 3a and that a Flood Risk Sequential Test (FRST) is required. NSCS Policy CS3 states that development in Flood Zone 3a will only be permitted where it is demonstrated that it complies with the sequential test set out in the Framework, except in specific circumstances which are not applicable here. For sites outside the main towns, Policy CS3 goes on to say that the area of search for alternative sites will be North Somerset-wide, unless it can be demonstrated that there is a specific need within a specific area. For this appeal, I consider that the area of search should be the whole district, in accordance with the development plan.
32. At the Inquiry, reference was made to an appeal decision relating to Lynchmead Farm, Ebdon Road, Wick St Lawrence, Weston¹⁵ (*Lynchmead Farm*). The High Court judgment referred to above (*Mead*) concerned a challenge to that appeal decision and another appeal decision elsewhere.
33. In addition to dealing with the area of search, Policy CS3 sets some criteria relating to the identification of "*reasonably available*" sites, in the context of the Framework and PPG as they were then. The *Lynchmead Farm* decision addressed the relationship between those criteria and the Framework/PPG:

"the second section of Policy CS3 is now inconsistent with the Framework. Although the wording of national planning policy on flood risk in the Framework is largely the same as it was when Policy CS3 was adopted, the interpretation of it has been clarified by more recent guidance contained in the PPG;" and

*"In this case, because of the inconsistency between the documents as to what is meant by reasonably available, I give lesser weight to the second section of Policy CS3 than I do to the newer and more up to date Framework as interpreted by the PPG."*¹⁶

¹⁴ Inspector's note – in response to questions from Lord Banner, Mr Smith said that, on balance, if there was no objection due to flood risk, approval should be granted due to the benefits of the scheme

¹⁵ CD I2 - APP/D0121/W/22/3313624 (June 2023)

¹⁶ CD I2 – paragraphs 23 and 27

Although the Inspector's approach was challenged in *Mead*, this ground of challenge was rejected by the Court.¹⁷ I consider that the situation now is essentially the same as that set out in the *Lynchmead Farm* decision and I give lesser weight to the second section of Policy CS3 than I do to the newer and more up to date Framework and PPG.

34. The Framework states that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source, and that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. PPG includes guidance on what is a “*reasonably available*” site. The differences between the Council and the appellant related to the application and/or interpretation of that guidance. The four elements underlined below are pertinent:

‘Reasonably available sites’ are those in a suitable location for the type of development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development.

These could include a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposed development. Such lower-risk sites do not need to be owned by the applicant to be considered ‘reasonably available.’¹⁸

The type of development

35. The Council considers that the type of development is residential. That approach is consistent with the *Lynchmead Farm* decision where the Inspector similarly took the view that the type of development was residential. The Inspector's approach was challenged in *Mead* but this ground of challenge was rejected by the Court. However, the Inspector's reasoning had regard to the description of development which was:

“an outline planning application (with all matters reserved except access) for a residential development of up to 75 dwellings and associated infrastructure”

The description of development for this appeal scheme (set out above) is more detailed with various elements of the scheme being quantified.

36. The *Mead* judgment discussed the need for flexibility. The Court rejected a “*highly specific*” approach whereby alternative sites would need to accommodate the proposed development in its various particulars, commenting that such an approach would render the sequential test ineffective. The Judgment states:

“A need and/or market demand case could be based on a range of factors, such as location, the mix of land uses proposed and any interdependence between them, the size of the site needed, the scale of the development, density and so on. But the decision-maker may also assess whether flexibility has been appropriately considered by the developer and by the local planning authority.”¹⁹

37. Having regard to *Mead*, I do not consider that an alternative site needs to be capable of replicating the quantified elements contained in the description of

¹⁷ CD J1 – paragraphs 141 to 144

¹⁸ PPG – Reference ID: 7-028-20220825

¹⁹ CD J1 – paragraph 103, read in context with paragraphs 96 to 102

development. It would not, for example, need to deliver 50% affordable housing or 20% bio-diversity net gain to be regarded as being of the same type of development. Nor would it need to contain every element. For example, the proposed Class E floorspace is a small element of the overall scheme. Class E is very broad and there was no further evidence about what the actual use would be and how likely it would be to materialise. To my mind this element is not an important aspect of the type of development for FRST purposes. Similarly, an alternative site would not necessarily need to offer allotments or orchards to be the same type of development.

38. Around 70% of the appeal scheme would be open uses, including sustainable drainage features, open space, orchards, allotments and woodland. The factors that contribute to this layout include:
 - the need to set development back from a network of ditches present on the site, for reasons of managing flood risk and impacts on biodiversity;
 - mitigation for loss of bat foraging and commuting habitat;
 - the need to achieve bio-diversity net gain;
 - provision of a sustainable drainage system;
 - a design decision to present a soft edge to the built form of Yatton; and
 - provision of the local play facilities required by the scheme.
39. Looking at the scheme as a whole, I consider that the proportion of open uses is mainly driven by site-specific factors. Rather than being an intrinsic feature of the type of development, the extent of open uses proposed reflects the land-use consequences of accommodating the proposed quantum of housing on this particular site, in a way that is acceptable in planning terms. That is not to say that the open uses would not bring benefits. Any such benefits should be weighed in the overall planning balance. However, for the purposes of the FRST, I do not think that alternative sites need to demonstrate 70% open uses or, indeed, any particular proportion of open uses.
40. That said, there are aspects of the appeal scheme that distinguish it from a type of development that could be described simply as residential. The description of development includes “*flats and semi-detached, detached and terraced houses with a maximum height of 3 storeys at an average density of no more than 20 dwellings per net acre*”. Whilst the mix of unit types for the market housing is not quantified, the dwelling mix for the affordable housing (which would be 50% of the scheme) is specified in the UU. There are also parameter plans which describe the general character of the development. Looking at the appeal scheme in the round, in my view it could not be regarded as the same type of development as (for example) a high density, predominantly flatted scheme.
41. For the purposes of this appeal, I would characterise the type of development as a primarily residential neighbourhood comprising a mix of housing types and tenures, including affordable housing.
42. The appellant’s FRST applied a capacity threshold of 143 dwellings for a site (or series of sites), being a margin 25% below the appeal scheme capacity of 190 to allow for flexibility. That seems to me to be a reasonable approach as a site of 143

dwellings could be expected to have scope to provide a good mix of housing types and tenures, including affordable housing. The actual mix is not yet known for many of the potential alternative site in debate. Even so, it is reasonable to assume that the Council would use its development management powers to secure an acceptable mix, in line with the NSCS objective of creating mixed and balanced communities (CS15).

43. The appellant's FRST also applies a site size threshold of 10.3ha, which is 25% below the appeal site size. As discussed above, the appeal scheme would include 70% open uses, for reasons which reflect site-specific factors. The same factors may apply to a lesser degree, or some may not apply at all, on potential alternative sites. It follows that a site smaller than 10.3ha could be well able to accommodate the type of development proposed. Whilst I have not applied a specific site size criterion in my assessment, I have considered the sites in the round to see if they would be capable of accommodating the proposed type of development.

Point in time

44. The *Lynchmead Farm* decision included the following:

*"However, 'available to be developed' means just that. It does not mean that development of an alternative site would have to follow the same timescale envisaged for the appeal scheme. It is sufficient that there is a positive indication that the land is available to be developed. The start date for development and the rate of build out may be affected by many site-specific factors, such as the need to relocate infrastructure or undertake hydraulic testing, but that does not alter the fact that the land would be available to be developed."*²⁰

45. This reasoning was challenged in *Mead*. However, the Court rejected this ground of challenge, commenting that comparison of availability between two sites involves matters of degree. It does not require precise alignment.²¹

A series of smaller sites

46. PPG says that a series of smaller sites may be a reasonably available alternative. The *Mead* judgment states that this wording connotes a relationship between sites appropriate for accommodating the type of development which the decision-maker judges should form the basis for the sequential assessment. The type of development I have characterised above would have advantages in planning terms. For example, it would contribute to the objective of creating mixed and balanced communities, consistent with NSCS Policy CS15. Creation of a residential neighbourhood would enable a cohesive approach to design, which would also contribute to place-making (subject to satisfactory detailed design, which would be controlled at reserved matters stage).
47. The Council argues that smaller sites within the same geographical area would have a sufficient relationship to be considered as a series in FRST terms. That may be so in circumstances where the type of development is simply residential. However, in this case I do not think that merely being in the same settlement would be enough to accommodate the type of development proposed. It is

²⁰ CD I2 – paragraph 31

²¹ CD J1 – paragraphs 120 and 121

necessary to consider each of the series of sites put forward in relation to the type of development as I have characterised it.

Ownership and/or control of alternative sites

48. In the *Lynchmead Farm* decision the Inspector found that:

“Sites do not need to be owned by the applicant, nor are they excluded because of an extant planning permission or resolution to grant. So long as a site is available to be developed there is no need for further evidence that they are for sale or, in the case of publicly owned land, declared to be surplus and available for purchase by private treaty.”²²

This reasoning was not challenged in *Mead*.

49. The appellant argues that for a site to be reasonably available it must be available to the appellant company. The appellant's FRSA discounts sites which are in the control of other developers. Evidence was presented to the effect that sites which are subject to option agreements or promotion agreements cannot be sold on to third parties. Whilst that may be so, there is nothing in the Framework or PPG that expressly states that alternative sites must be available to be developed by an applicant. The PPG does, however, expressly state that alternative sites do not need to be owned by the applicant.
50. Looking at paragraph 7-028 of PPG as a whole, the focus is on the location of alternative sites and the prospect that they are available to be developed. The appellant infers that this means available to be developed by this appellant. I see no basis for making that inference. I agree with the Council that a reasonably available site should be available to be developed by someone. I do not share the appellant's view that the Council's approach is overly restrictive or that it leads to an absurd result. So long as a site is available to be developed by someone, it can contribute to meeting housing needs. I have not therefore discounted sites on the basis that they are currently controlled by another developer or land promoter.

Consideration of sites - (1) sites found to be reasonably available

51. The statement of common ground included a table of 36 disputed sites, which the Council considers are sequentially preferable to the appeal site and meet the requirements of the Framework and PPG. The table uses the site numbering that was used in the appellant's 2024 FRST. I have used the same numbering in my assessment. Some of the sites were also considered in the *Lynchmead Farm* decision. However, that was a scheme for just 75 dwellings and, as discussed above, the Inspector characterised the type of development differently. Consequently, it is to be expected that some of my findings will differ from that decision.

Wolvershill Strategic Location

52. This is an allocation in the emerging local plan. As discussed above, the emerging plan will be subject to further consultation as it seeks to respond to an increased housing requirement following changes to the Framework and PPG. Whilst the emerging plan has no weight as a statement of policy, it provides an evidence base which is material to this appeal. Given that further work on the emerging plan

²² CD I2 – paragraph 36

will focus on identifying more housing sites, it seems unlikely that this strategic location would be removed.

53. Although the site was not supported in the *Lynchmead Farm* decision, the plan was at an earlier stage at the time of that Inquiry. Moreover, the Regulation 19 consultation response from Ainscough Strategic Land (ASL) states that a developer/promoter consortium is active on the site including ASL, Bloor Homes, and Wain Estates and that this consortium is working to deliver a single cohesive master plan for the strategic location.
54. For reasons given above, the involvement of land promoters does not prevent the site from being reasonably available. On the contrary, in this case the consortium approach is a positive indication that the land is available to be developed. I note that the development must be integrated effectively with the design and delivery of the Barnwell Bypass. Even so, the emerging plan does not say that no development can commence before the bypass is completed. The extract from the *Lynchmead Farm* decision quoted above referred to factors such as relocating infrastructure or undertaking hydraulic testing that may affect the start date for development. I see no reason to take a different approach to policy requirements, such as the need for master planning, which may also affect a start date. That does not alter the fact that the site is available to be developed.
55. I consider that the following sites are reasonably available:
- Sites 136 and 137 – Wolverhill Strategic Location

Parklands Village

56. As discussed below, development is underway here but there are further phases to come forward, with 555 units in the Council's five year trajectory. The appellant argues that the site will deliver a lower level of affordable housing than the appeal proposal. Even so, I have concluded above that it is not necessary for a candidate site to replicate the quantified elements in the description of development for the appeal scheme. PPG makes clear that a reasonably available site could be part of a larger site. In my view this large site could accommodate the type of development proposed at the appeal site.
57. The appellant notes that the Council agreed to reject this site at the *Lynchmead Farm* Inquiry. Nevertheless, I have been provided with evidence from both parties in the context of this Inquiry and I have formed my own view. I consider that the site is reasonably available:
- Site 143 - Parklands Village, Locking Parklands

Sites at Backwell

58. The appellant argues that Grove Farm should be rejected because it is under option to another developer. As discussed above, that is not a sufficient reason to reject a site. The appellant also argues that Moor Lane, Backwell (which, on its own, is below the capacity threshold) cannot form a series with Grove Farm because the latter is not reasonably available. The two sites are very close and, in my view, could form a series, although Grove Farm (515 dwellings) would meet the capacity criterion on its own. The following sites are capable of accommodating the type of development proposed and are reasonably available:

- Site 15 - Moor Lane, Backwell
- Site 16 - Grove Farm, Backwell

Sites under 10.3ha

59. The appellant rejected the following sites on the basis that they fall short of the site size threshold. However, I have not applied a site size threshold for reasons given above. I consider that these sites are capable of accommodating the type of development proposed and are reasonably available:

- Site 100 - Land at Poplar Farm, north of West End, Nailsea
- Site 138 - Land east of Barnwell
- Site 198 - Site at south west Bristol
- Site 26 - Cluster of sites north of Langford

Sites promoted by others

60. The following sites are being promoted by parties other than the appellant. In the case of a cluster of sites to the south of Langford, I have disregarded parcels that have been the subject of a dismissed appeal. However, the remaining sites here have more than sufficient capacity. In my view the following sites are capable of accommodating the type of development proposed and are reasonably available:

- Site 125 - Four sites on the northern fringe of Weston
- Site 25 - Cluster of sites to the south of Langford
- Site 90 - Youngwood Lane, Land south of the Uplands, Nailsea
- Site 92 - West End, Engine Lane and Netherton Wood Lane, Nailsea
- Site 93 - North West Nailsea

Consideration of sites - (2) sites found not to be reasonably available

Type of development

61. The following sites are expected to come forward as high density development with an emphasis on apartments. They would not accommodate the same type of development as the appeal site:

- Site 133 - Weston Rugby Club
- Site 134 - Dolphin Square, Weston
- Site 167 - Former TJ Hughes store, 17 High Street, Weston
- Site 97 - Weston College, Somerset Square, Nailsea

Series of smaller sites

62. The following sites within Weston are physically separated and, in any event, said to form a series with other sites (listed above) which would accommodate a different type of development. The sites within Yatton, Claverham and

Congressbury are in different settlements and, in the case of two Yatton sites, physically separated by the built form of Yatton. The sites at Langford and in the Sandford/Winscombe area are physically separated by the built form of those settlements. In each case these series of sites could not form a residential neighbourhood with a cohesive design approach. I have therefore discounted them for the purposes of this appeal:

- Site 112 - Moor Road, Yatton
- Site 113 - Land at Rectory Farm and Biddle Street, Yatton
- Site 147 - Land to the west of the M5
- Site 150 - Leighton Crescent, Weston
- Site 180 - Walliscote Place/Police Station/Magistrates Court, Weston
- Site 194 - Former Police Depot, Winterstoke Road, Weston
- Site 30 - Land to west of Wyndhurst Farm, Langford
- Site 31 - West of Ladymead Lane, Langford
- Site 36 - Four sites west of Sandford
- Site 37 - Land off Hill Road, Sandford
- Site 39 - Greenhill Lane, Sandford
- Site 43 - Sandford Batch (Broadleaze Farm), Winscombe
- Site 45 - Land adjoining Coombe Farm and Shipham Lane, Winscombe
- Site 46 - West of Hill Road, adjacent to Quarry Lane, Winscombe
- Site 52 - Brockley Way and Dunsters Way, land north of Claverham
- Sites 74 and 87 - Woodhill Nurseries and Land north of Bristol Road, Congressbury

Other sites

63. Land at Elborough has previously been discounted in the Strategic Housing Land Availability Assessment and appears somewhat disconnected from settlements. Much of the land South of Nailsea is in a strategic gap. There is not sufficient information before me for me to conclude that these sites are suitable for the proposed development. Farleigh Fields, Backwell is under construction so is not available. For the purposes of this appeal, I have discounted:

- Sites 140 and 151- Land at Elborough
- Site 91- Land south of Nailsea
- Site 17 - Farleigh Fields, Backwell

Conclusion on sequential test

64. I conclude that there are 12 sites that are sequentially preferable to the appeal site, capable of accommodating the type of development proposed and with a reasonable prospect that they would be available to be developed at the point in time envisaged for the development. There is one further site (Moor Lane, Backwell) that would also meet those criteria, if treated as a series with the adjoining site at Grove Farm. The proposal does not therefore pass the sequential test and is in conflict with NSCS Policy CS3. DMP Policy DM1 states that exceptions to national policy on flood risk will not be permitted. This policy is considered further in the conclusions to this decision.

Whether the proposal would be safe from flood risk for its lifetime, and whether it would increase the risk of flooding elsewhere

65. The appeal site forms part of The Batch, a more or less flat area of low-lying fields which are typically around 5m above ordnance datum (AOD). The site is crossed by a network of drainage ditches, known as rhynes. The eastern side of the site adjoins the edge of the built-up area of Yatton, which is located on a low ridge, such that land levels fall towards The Batch. Photographs submitted to the Inquiry showed extensive areas of standing water in parts of the site after periods of heavy rainfall. To the west, the site is bounded by the Strawberry Line, a footpath following a former railway line. The railway embankment cuts the site off from further low-lying land to the west, forming a constrained cell. Surface water is drained from this cell by culverts under the embankment.
66. The northern end of the site is around 4.5km from the coast at Woodspring Bay. The coastline is defended from tidal flooding by various defences, the highest of which is an embankment. The area between Yatton and the coast is mainly rural, with scattered settlements, and is also low-lying and crossed by numerous rhynes. The main topographical feature in this area is the M5 motorway, which runs approximately parallel to the coast.
67. High tides are often above the level of the rhynes, which means that water can only be discharged for part of the tidal cycle. The River Yeo, also known as the Congressbury Yeo, is around 1km south west of the site. It is protected by flood banks on either side and by a tidal sluice.
68. The appeal scheme would include land raising within the parcels where development would take place. Development would be set back from the rhynes, to protect both their drainage function and their ecological value, although culverting would be required where rhynes would be crossed by site roads. Shiners Elms is a cul-de-sac on the western edge of Yatton, which ends at the site boundary. The road level at the boundary is around 5.8m AOD. At the Inquiry, the appellant confirmed that there is no proposal to change the level of Shiners Elms.

Land raising and flood risk reports

69. The proposals evolved during the lifetime of the application, as a result of discussions between the appellant and the EA. The three reports that were discussed at the Inquiry were:

- Flood Risk Assessment and Hydraulic Modelling Report, dated March 2023, produced by Hydrock (Hydrock FRA)²³
- Flood Risk Assessment, dated September 2023, produced by Brookbanks (Brookbanks FRA)²⁴
- Flood Risk Technical Note, dated January 2024, produced by Rappor (Rappor TN)²⁵

70. Although the reports are from different consultancy firms, in fact there was continuity in that Mr Mirams, the appellant's flood risk witness, was involved throughout. The appellant does not seek to rely on the Brookbanks FRA, which was not submitted to the Council and was overtaken by subsequent discussions with the EA and the Rappor TN. Nevertheless, it is a material consideration in that it provides information about how the flood risk modelling and mitigation has evolved during the course of the project. Moreover, the Hydrock FRA and the Brookbanks FRA provide information about the undefended scenario which should be taken into account. The Rappor TN sets out the proposal before the Inquiry.
71. The proposed site level of 6.43m AOD was determined by two competing factors. On one hand, the EA was seeking to reduce the amount of land raising, in order to reduce the potential for increasing flood risk for existing dwellings near the site. On the other hand, the engineers designing the surface water drainage system advised that the site level should be no lower than 6.43m AOD in order to ensure that the proposed system would drain effectively.²⁶

Would the proposed dwellings be safe from tidal flooding?

72. PPG advises that, for tidal flooding, the design flood event should be an event with a 5% annual probability (a 1 in 200 year event). However, the Framework requires that development is safe for its lifetime, which requires consideration of climate change and rising sea levels. In the case of residential development, PPG states that the lifetime of the development can be assumed to be 100 years. It was agreed by the Council and the EA that the existing flood defences at Woodspring Bay would prevent tidal flooding in the design flood event, should that happen now. It was also agreed that, when rising sea levels are factored in, a 1 in 200 year event would overtop the defences, leading to flooding inland as far as the appeal site. This would be the case around 60 years from now. It is important to keep in mind that this is a statistical exercise, used to aid decision making. A 1 in 200 year event could occur at any point, perhaps multiple times, or not at all in the next 200 years.
73. The Rappor TN was based on the defended scenario with the Higher Central Climate Change Allowance (CCA). This approach assumes that the existing flood defences would remain as they are. It does not include any allowance for the defences being raised. It does allow for increased sea level due to climate change for a 100 year period. On this basis, the level of the design flood event would be 6.28m AOD. The proposal is for the site level to be raised to 6.43m AOD. Finished

²³ CD A11

²⁴ ID28

²⁵ CD B6 (also reproduced in ID28)

²⁶ Inspector's note – in answer to questions from Mr Leader, Mr Mirams said that a site level of 6.28m AOD had been considered in January 2024. However, Hydrock (the drainage engineers) advised that this would be too low for a gravity drainage solution to work. The level of 6.43m AOD was subsequently confirmed as workable by Hydrock.

floor levels (FFL) would be set at 6.88, providing a freeboard of 600mm above the design flood level. The appellant argued that, with the freeboard, the dwellings themselves would be safe from flooding.

74. The Council argued that the design event should be the undefended scenario because flood defences may be overtopped in extreme events, may be breached and may not be maintained or upgraded during the lifetime of the development. The Council also contended that the Upper End CCA should have been used. The Hydrock FRA, which modelled the undefended scenario, found that the maximum flood level would be 7.88m AOD, using the Higher Central CCA, and 8.18m AOD using the Upper End CCA.²⁷ These levels are higher than the proposed FFL and would result in the new houses being flooded to a depth of 1.0m (Higher Central CCA) or 1.3m (Upper End CCA).

What is the design event?

75. The appellant states that the use of the defended scenario (with Higher Central CCA) was agreed with the EA. The Council disputes this, arguing that the EA only sought modelling of the defended scenario as a sensitivity test, in the context of considering impacts on flood risk to adjoining land. To achieve clarity on this matter, I issued a written question to the EA. The response confirms that the EA did agree with the appellant's approach to the design event.²⁸
76. As noted above, the EA provided a written position statement to the Inquiry and Ms Challans (an officer of the EA) attended to answer questions from me and from the appellant. At the Inquiry, the EA did not dispute the appellant's use of the defended scenario in the Rappor TN. This is consistent with the EA's grounds of objection to the scheme, which were confined to off-site impacts and did not suggest that the new houses would themselves be at risk of flooding.
77. There is no prospect of the existing defences being removed. Consequently, for the purposes of this site-specific FRA, I consider that it is reasonable to take the defended scenario as the design event.
78. With regard to the CCA, the appellant draws attention to Government guidance in "*Flood and Coastal Risk Projects, schemes and Strategies: Climate Change Allowances*." This states that Higher Central should be used as the design CCA, with the Upper End CCA being used to test sensitivity to severe climate change and any required mitigation.
79. In closing submissions, the Council argued that it is government policy that flood risk management should be "*driven by*" the undefended scenario, having regard to the Higher Central CCA and the Upper End CCA. The Council sought to rely on an EA guidance document.²⁹ However, the quoted paragraph suggests that both CCAs should be taken into account. To my mind this falls well short of a policy statement that this appeal decision should be "*driven by*" the Upper End CCA.
80. The Rappor TN does not assess the Upper End CCA. Flood risk assessments, of necessity, look forward over many years. There are uncertainties related to climate change, sea level, weather events and the interactions between these factors. At the Inquiry, the respective expert witnesses for the EA, the Council and the

²⁷ CD A11 – Table 4

²⁸ My question is at ID60 and the EA response is at ID61

²⁹ Paragraph 28 of the closing submissions (ID65)

appellant all agreed that the use of a freeboard is an appropriate way of addressing uncertainty when making planning decisions.³⁰ Having regard to the information in the Hydrock FRA about Higher Central and Upper End scenarios, I consider that the proposed freeboard of 600mm would be sufficient to address any uncertainty regarding the appropriate CCA.

81. I conclude that the design event is the 1 in 200 year defended scenario with the Higher Central CCA.

Managing residual risk

82. There is a residual risk that existing defences may be breached or overtopped in an extreme event. This scenario has not been specifically modelled. Nevertheless, it is reasonable to regard the undefended scenario as a sensitivity test, in that actual flooding in the event of a breach would not be higher than the undefended scenario. In assessing how much weight to attach to the residual risk it is necessary to consider the speed of inundation and the potential for mitigation through a flood warning and evacuation plan. The scope for the existing defences to be improved is also a factor to consider.
83. Coastal modelling typically assesses four or five tidal cycles. In this case, the modelling indicates that, in the design flood event, the first high tide would not overtop the existing defences. The second high tide would overtop the defences but the flood water would not reach the M5 motorway. The third high tide would cause flood water to reach the site, after a further 14 hours. This would be around 42 hours after the first high tide. The appellant's flood risk witness described this as slow continual creep of water, following the drainage routes, rather than a sudden inundation.
84. The Council argues that because the modelling underpinning the above assessment assumed a greater amount of land raising than is now proposed, the speed of inundation would be greater. I attach limited weight to that contention because the land raising at the site would have no impact on the time it would take flood waters to reach the site in the first place. In my view the time lag between the start of the flooding event at the coast and the start of flooding at the site is an important consideration. Future residents would not be taken by surprise and would be well aware of the potential for flooding. Widespread flooding would have occurred, and no doubt widely reported in the media, well before flood waters reached the site.
85. The proposal includes a Flood Management Plan (FMP), which would include an evacuation plan and flood resilience measures. This could be secured by a condition. I take into account that future residents may include people who are unwell or have limited mobility. Nevertheless, in view of the likely timescale for a flooding event, I consider that the proposed FMP would be an appropriate way of managing the residual risk.
86. The potential for climate change to have a greater effect than the Higher Central CCA may also be regarded as a residual risk. For the reasons given above, the provision of freeboard would be an appropriate way of addressing this risk.

³⁰ Inspector's note – I asked questions of Ms Challans, Mr Cage and Mr Mirams about accounting for uncertainty and the use of freeboard and there was no disagreement on this point

Would there be a safe means of access/egress?

87. The appeal scheme would be accessed by extending Shiners Elms. There would also be an access from adjoining land to the south. This is a development site, referred to above as Site 113 - Land at Rectory Farm and Biddle Street, Yatton. The developer will be required to create an access through that scheme to the boundary of the appeal site. In the event that the road is not built, the appellant would have the benefit of step-in rights³¹ to carry out the construction. There is no dispute that, in the defended scenario, the southern access would not be flooded and would therefore provide a safe route. This is confirmed in the officer's report which states that "*safe access would be possible from the south if the planning permission reference 21/P/0236/OUT were to be completed.*"
88. In the defended scenario, Shiners End would be flooded at the peak of the event. The flood level (6.28m AOD) would be around 0.48m above the road level (5.8m AOD). The appellant's hazard mapping shows this as "*danger for some/danger for most.*" However, given the alternative route to the south, this would not preclude safe access/egress.
89. The Council's concern is that there would not be safe access in the undefended scenario. It is submitted that a flood level of 7.88m AOD would be around 2m above the level of Shiners End and 0.68m above the southern access. The hazard mapping in the Hydrock FRA indicates that the southern access would be "*danger for most*" and the Shiners End access would be "*danger for all.*"
90. The EA's position statement states that it supports the Council's concerns in relation to safe access, whilst acknowledging that it had not previously commented on this matter. Whilst I note the EA's comment, no actual evidence was provided by the EA on this matter.
91. The points discussed above in relation to the design event and managing residual risk are also applicable to the issue of safe access. For the same reasons, I regard the defended scenario as the design event, in which case there would be safe access to/from the south. The undefended scenario is a sensitivity test, which helps to assess residual risk. I consider that the FMP would be an appropriate way of managing the residual risk.

Prospects for improvements to the coastal defences

92. Shoreline Management Plans (SMP) seek to guide the long term management of the English coast. They are non-statutory but should form part of the evidence base for plan making. Woodspring Bay falls within the Severn Estuary SMP. The SMP policy for this section of coast, in the short, medium and long term, is "*Managed retreat – set back defence.*" To my mind this should not be taken as an indication that the existing defences will not be maintained. However, it does mean that any new defences would not necessarily be in the same location.
93. Given that the defences currently offer protection from a 1 in 200 year event, it is unsurprising that there are no current proposals to upgrade them. The appellant contends that it is very likely that the defences will be upgraded within the lifetime of the development. In support of that argument a cost estimate for upgrading the existing embankment was presented. I attach very little weight to that estimate

³¹ These are set out in ID48

because there has not been any feasibility study or design work. Moreover, in view of the SMP policy, it is not even known where new defences might be or what type of defences might be needed. It was suggested that a cost benefit analysis would come out strongly in support of the works. However, there was little information about the benefits side of the equation either, with uncertainty about the extent and nature of any upgrade and the number of properties that might benefit.

94. It is clear that any upgrades to the defences would likely be decades into the future. Funding mechanisms and potentially competing priorities relating to more highly populated areas, other coastal locations and/or other types of flood risk are not known. On the evidence before the Inquiry, no reliable conclusions can be drawn about the likelihood of the defences being improved during the lifetime of the development. Whilst they may well be improved, I have taken a precautionary approach for the purposes of my assessment. I have not assumed that any such improvements will take place during the lifetime of the development.

Will the proposal increase flood risk elsewhere?

95. The EA appeared at the Inquiry and maintained its objection to the appeal on the basis that the proposal would increase the risk of flooding elsewhere. Having regard to the EA's role as a statutory consultee on flood risk, this is an important consideration. The flood risk modelling indicates that, in the design flood event, the proposed land raising would result in an increased flood depth off-site of 17mm. At the Inquiry, there was much discussion about whether this represented an actual increase or whether it should be regarded as being within the tolerance of the model, and therefore insignificant. For the purposes of my assessment, I do not think I need to comment further on that point because my conclusion would be the same either way.
96. There is a group of houses close to the proposed access from Shiners End that is currently at risk of flooding. In a 1 in 200 year event, these houses would flood in the undefended scenario. In the future, the same houses would also be at risk of flooding in the defended scenario, if the existing defences are not improved, due to the effect of climate change on sea levels. The Rappor TN states that (without the development) flood depths would vary between 0.4m to 1.3m during the defended 1 in 200 year plus climate change flood event.³²
97. At the Inquiry, the Council and the EA agreed with the appellant that an additional flood depth of 17mm would not cause any additional dwellings to be flooded. Moreover, neither the Council nor the EA could point to any practical consequences of such an increase in terms of the risks faced by those affected. This is not to minimise the impacts of flooding, which I comment on further below. Nevertheless, the Framework seeks to ensure that development does not increase flood risk elsewhere. It has not been shown that an increase in depth of 17mm would materially affect flood risk in circumstances where no additional dwellings would be affected. Consequently, notwithstanding the views of the EA, I conclude that the proposal would not increase the risk of tidal flooding on adjoining land.

Consequences of flooding

98. The Council presented evidence on the consequences of flooding. These include direct risks to the lives and health of those affected, risks of longer term health

³² CD B6 – paragraph 4.13

consequences (including mental health consequences), economic losses due to damage to property and environmental costs from restoration works and replacing household items. At the Inquiry, there was no challenge to the main thrust of this evidence which is that flooding has serious social, environmental and economic impacts on the individuals and communities affected.

Other types of flooding

99. The above discussion of flood risk relates specifically to tidal flooding. However, local residents who spoke at the Inquiry, and many written representations, raised concerns about other forms of flooding. There was particular concern about fluvial flooding from the Congressbury Yeo and surface water flooding. Williams Rhyne runs between the appeal site and the adjoining houses and residents see the appeal site as a sponge that will hold floodwater if the rhyne overflows. Given that the proposed site level of 6.43m AOD would be above the existing level of Shiners Elms (5.8m), I can appreciate that residents are concerned that the land raising proposed would increase flood risks generally.
100. The Hydrock FRA assessed all forms of flood risk, including fluvial and surface water flooding. The proposal includes a sustainable drainage system, with detention basins to retain surface water so that it can be discharged to the rhyne network at a controlled rate. The detention basins would be lined to prevent the ingress of groundwater.³³ Development, and land raising, would be set back from the rhynes, such that there would be an area that could take water if they were to overflow.³⁴
101. This information has been reviewed by the Council, as Local Lead Flood Authority and as Local Planning Authority, and by the EA insofar as it is within their remit. Neither the Council nor the EA have raised any objection in terms of fluvial or surface water flooding. Subject to satisfactory detailed design of the surface water drainage system, which could be controlled by a condition, I consider that the risks of other forms of flooding have been properly assessed and would be managed appropriately.

Adequacy of modelling

102. The Council's closing submissions argue that there has been inadequate modelling, including in relation to the Upper End CCA and overtopping or breach of the flood defences. However, this allegation did not form part of the putative reasons for refusal or the Council's statement of case. Whilst the planning application was being considered, there were discussions between the appellant and the EA regarding a reduced amount of land raising. This was done with a view to reducing any impact on flood risk to adjoining land.
103. Following those discussions, the EA agreed the approach to modelling which then took place. The Council did not ask for any further modelling whilst the application was being considered. The EA has objected to the appeal on grounds set out in its Position Statement. However, those grounds do not include absence of further modelling. Drawing all this together, I do not consider that the approach to

³³ Inspector's note – in answer to my questions, Mr Mirams confirmed that parts of the detention basins would be below the water table but that they would be lined to prevent capacity being taken up by groundwater.

³⁴ Inspector's note – in answer to my questions, Mr Mirams drew attention to the maintenance easements alongside the rhynes which would be maintained. He said that the profile of the land raising would create a wider channel for the rhynes to spill into.

modelling was inadequate. There was sufficient information before the Inquiry to inform a proper consideration of flood risk.

Conclusions on flood risk

104. I conclude that the proposed houses would be safe from flooding during the lifetime of the development. The proposed means of access from the south, which could be secured by a condition, would provide a safe route to and from the site during a flood event. The proposal would not increase the risk of flooding elsewhere. There would be residual risks from a possible breach of the existing defences or overtopping in an extreme event. These risks could be mitigated by the proposed FMP, which could also be secured by a condition. Climate change above the Higher Central CCA is also form of residual risk. It could be addressed by the provision of freeboard. Nevertheless, residual risk is still a material factor in the overall planning balance, which I return to below.

The nature and extent of any economic, social and environmental benefits

Housing land supply and the delivery of market housing

105. As noted above, matters have moved on since the housing land supply round table session which took place on Day 2 of the Inquiry. An amended Framework and related PPG were published on 12 December 2024. Amongst other matters, these changes revised the standard method for calculating the housing requirement, removed provisions which previously allowed for a four year supply to be demonstrated in certain circumstances, and stipulated that a 5% buffer should be added to the requirement in all cases to allow for choice and competition. With the addition of the buffer, the five year dwelling requirement for North Somerset is 8,363.

106. There is agreement between the Council and the appellant that the period for the assessment is April 2024 to March 2029. The Council considers that it has a deliverable supply of 5,140 which would now equate to 3.07 years supply. The appellant considers that the deliverable supply is 3,890 which would equate to 2.33 years supply. The difference between the parties stems from differing assessments as to whether 10 sites meet the definition of “*deliverable*” set out in the Framework.³⁵ PPG provides some examples of what clear evidence to show that housing will be delivered on the site within five years may include.³⁶

Weston Rugby Club (182 dwellings³⁷)

107. The site has the benefit of a hybrid planning permission. There is full planning permission for a new clubhouse, a health centre and commercial floorspace, which would be the first phase, and outline planning permission for the residential element. It is expected that Phase 1 will be completed in 2026. The Council’s trajectory assumes that a reserved matters application will be submitted by November 2025. However, this is based on an exchange of emails between the Council and the architects acting for the trustees of the rugby club. There is no evidence of the involvement of a housebuilder. Nor is there evidence that anyone is actively preparing a reserved matters application, has been instructed to do so, or has undertaken other work in preparation for such an application. In my view

³⁵ The definition is in the Glossary at Annex 2.

³⁶ Reference ID: 68-007-20190722

³⁷ The figure in brackets is the Council’s projected delivery within the five year period

this falls short of the clear evidence that housing completions will begin within five years that is required to meet the Framework definition of deliverable. This results in a deduction of 182 dwellings from the Council's supply.

Mead Vale Shopping Centre (29 dwellings)

108. The site is allocated for residential development in the SAP. The Council resolved to grant outline planning permission in 2020 and a s106 Agreement was completed in 2022. I do not consider that completion of the s106 Agreement, in itself, amounts to clear evidence of progress towards delivery. In my experience most supply sites will have needed a s106 Agreement to achieve planning permission. No other evidence of progress has been identified. All 29 dwellings should therefore be deducted from the Council's supply.

Land off Anson Road, Kewstoke (70 dwellings)

109. The site is in the control of a local housebuilder. The Council resolved to grant outline planning permission in December 2022 and a s106 Agreement was completed in October 2023. As with the previous site, the work involved in completing the s106 Agreement is the only evidence of progress towards delivery that has been presented. For the same reasons, I consider that this is not sufficient to show the clear evidence of progress that is needed. All 70 dwellings should be deducted from the Council's supply.

Land at Farleigh Farm, Backwell (6 dwellings)

110. Outline planning permission was granted on appeal for up to 125 dwellings in June 2022. Reserved matters have been approved for 90 dwellings and development has commenced. The six units in dispute are self-build plots for which no reserved matters have been submitted. However, there is no requirement in PPG for reserved matters to be submitted for all parts of a site. This is a small element in a much larger site where development is already underway. The site is clearly deliverable and no adjustment should be made to the Council's supply.

Weston Villages – Locking Parklands (555 dwellings)

111. Weston Villages is a strategic allocation which the NSCS expects to deliver around 6,500 dwellings. First completions took place in 2012 and 2,462 dwellings had been completed by April 2024. The Locking Parklands parcel has a capacity of 1,450 dwellings and is in the control of St Modwen and Homes England. In addition to developing phases itself, St Modwen is obliged to make a proportion of the overall development available to other developers through a tendering process. So far 564 dwellings have been completed and there are a further 117 which have detailed approval. A reserved matters application was made by Vistry for the next two phases (totalling 229 dwellings) in August 2024. The Council's trajectory assumes delivery of 555 dwellings within the five year period. The appellant argues that 209 of those, where there is not yet a reserved matters application, should be excluded.
112. There is no doubt that housing will be delivered on this site within five years because housing has already been delivered and further units are under construction. Moreover, the appellant does not contest the Council's delivery rate. This is a strategic site where there has been significant investment in infrastructure including a spine road, a primary school, a secondary school and a medical centre.

Given that development is proceeding in a phased manner, and that there is a delivery mechanism in place to secure implementation of the remaining phases, I consider that there is clear evidence in support of the Council's trajectory.

Weston Villages – Land south of Churchland Way (465 dwellings)

113. This parcel of the strategic allocation has outline planning permission for 1,150 dwellings. Mead Realisations, the main landowner, has sold phases to other developers. Mead Realisations, Taylor Wimpey, Bellway and Wain Homes have all secured reserved matters consents. The first completions were in 2020/21. Since then, there have been 370 completions up to March 2024 with an average of 93 per annum. The Council relies on a further 465 dwellings within the five year period. The appellant seeks to discount 154 dwellings where there is not yet a reserved matters approval or application.
114. There is no doubt that housing will be delivered on this site within five years because housing has already been delivered and further units are under construction. The appellant does not contest the Council's projected delivery rate. In circumstances where the main landowner has not responded to the Council's requests for information, I consider that it is reasonable for the Council to have applied an average delivery rate for the site as a whole. This is a site that is continuing to deliver significant housing numbers with the involvement of multiple developers. Furthermore, there is sufficient time within the five year period for reserved matters approval to be obtained for the final phase (or phases) relied on by the Council. No adjustment should be made to the Council's trajectory.

Weston Villages – Winterstoke, Haywood Village (800 dwellings)

115. Haywood Village is controlled by Persimmon Homes. The first 898 dwellings were completed quickly during the period 2014/15 to 2018/19, at an average of 180 dwellings per annum. There is no dispute that the site is deliverable. The difference between the parties is the delivery rate. The Council adopts a figure of 160 dwellings per annum (dpa) whereas the appellant contends that 86 dpa would be more realistic. The Council relies on correspondence with the developer dated May 2024 whilst the appellant relies on later correspondence with the same developer dated September 2024. Due to the wide divergence between these two documents, in my view they should be treated with caution.
116. I consider that delivery in the first five years was high, due to a combination of factors. At times there were three outlets and construction of a local centre in 2018 included numerous apartments. During the five year period there will be two outlets, Persimmon and Charles Church. The latter is a Persimmon brand but is aimed at a different segment of the market. The Council considers that the figure of 160 dpa is conservative, in the light of past delivery rates and the projections for 2025 and 2026 set out in the May 2004 correspondence. Even so, I consider that the figure is likely to be on the high side because the factors influencing the earlier delivery rates have changed.
117. On the other hand, the appellant's figure seems unduly low, bearing in mind that the site delivered 77 units with just one outlet in 2023. This was an improvement on the previous year. Moreover, a second (Charles Church) outlet was opened during 2024, which no doubt reflects the developer's intention to increase sales rates further. Drawing all this together, I consider that it would be reasonable to

assume a delivery rate of 120 dpa. This would give a supply figure of 600, a reduction of 200 on the Council's trajectory.

Millcross site, Clevedon (50 dwellings)

118. The site is owned by Alliance Homes, a housing association based in North Somerset. Although allocated for 70 dwellings in the SAP, following pre-application discussions the capacity has been reduced to 50. Alliance Homes has instructed an architect to work up capacity sketches and recruit a full design team. Given that this is an allocated site for only 50 dwellings, it seems likely that the developer will submit a full application rather than an outline. The developer has submitted a timeline which appears reasonable in view of the scale of the proposal. Taken together, I consider that these factors provide clear evidence that housing completions will begin within the five year period.

North West Nailsea (150 dwellings)

119. The site was allocated in the SAP for 450 dwellings. However, subsequent flood risk modelling shows that part of the site is at risk of flooding in the future and the emerging local plan proposes a reduced site area and a reduced capacity of 225 dwellings. Where a site is allocated for development, PPG gives some examples of what clear evidence to show that housing will be delivered on the site within five years may include. One of the examples is firm progress being made towards the submission of an application. In this case that point has been reached, with an outline planning application for 150 dwellings on part of the site being submitted in November 2023. The application was made on behalf of Vistry Group. The site is within the developer's short-term delivery programme. Taken together, these factors provide clear evidence that the site is deliverable.
120. The appellant argues that there is uncertainty due to consultation responses relating to ecology, flood risk and highways. At the Inquiry, the Council stated that further technical documents had been submitted in response to the matters raised by consultees. In my experience, it is not unusual for matters of this nature to be raised, and resolved, during the lifetime of an outline application of this scale. The appellant's doubts on these matters are not sufficient to outweigh the fact that this is an allocated site where an application for planning permission has been made and is in the course of consideration. There is sufficient time within the five year period for that process to be completed and for the housing to be delivered. There should be no deduction from the Council's trajectory for this site.

Former Bournville School Site, Selworthy Road, Weston (28 dwellings)

121. The site was allocated in the SAP and subsequently acquired by Alliance Homes, a local housing association. It has been the subject of further work in relation to flood risk. The capacity has been reduced to 28 dwellings because of the need for a flood storage area. The scheme has now been agreed by the Local Lead Flood Authority and the EA. Having reached that point, the developer has confirmed a timeline for submission of an application and delivery of the scheme which appears reasonable for the scale of development proposed.
122. At the Inquiry, the appellant argued that it was not clear whether the flood risk sequential test had been addressed. That would be a matter to be considered in the context of the forthcoming application. I consider that the work that has been done to secure the agreement of the EA and Local Lead Flood Authority is

evidence of firm progress being made towards the submission of an application. In all the circumstances, I consider that the site is deliverable and that there should be no deduction from the Council's trajectory.

Conclusion on housing land supply

123. For the reasons given above, I consider that the Council's supply figure of 5,140 should be reduced by 481, which results in a supply of 4,659. This is a shortfall of 3,704 against the revised five year requirement of 8,363. It equates to 2.79 years supply.
124. The appeal scheme would deliver up to 190 dwellings, of which 50% would be market housing and 50% would be affordable housing. There is a significant shortfall in supply. The Council is seeking to allocate further housing sites through the emerging local plan to address the shortfall and meet the housing needs of the district. However, it will be some time before that process is completed and the new sites start to deliver housing. I consider that the appeal site is capable of making a useful contribution to meeting housing needs within the five year period. I also take into account the emphasis the Framework gives to boosting the supply of housing generally. For these reasons, I attach substantial weight to the delivery of up to 95 units of market housing.

Affordable housing

125. The Agreement provides for 30% of the dwellings to be "*Policy Affordable Housing*", which would be split 77% social rented units and 23% shared ownership units, and 20% to be "*Additional Affordable Housing*", which would all be shared ownership. There would be a mix of unit sizes for all affordable tenure types, as set out in Table 1 of the first schedule. NSCS Policy CS16 states that 82% of affordable housing should be provided as social rented housing and 18% as intermediate housing. Although this does not quite match the 77%/23% split set out in the Agreement, the Council and the appellant agree that this element of the affordable housing provision would be policy compliant. I see no reason to disagree. The additional affordable housing units would not bring the same level of benefit, in terms of meeting housing need, because they would not provide the mix of tenure types contemplated in Policy CS16. Nevertheless, they would meet the definition of affordable housing set out in the Framework, would be over and above the 30% of policy compliant units, and would contribute to meeting an affordable housing need.
126. The North Somerset Local Housing Needs Assessment (NSLHNA) 2023 identifies a need for 271 affordable dwellings per year over the period 2024 to 2039. This is part of the evidence base for the emerging local plan and has yet to be subject to examination. Nevertheless, it is recent evidence which provides one indication of the level of need. The housing waiting list is not an exact indicator of need³⁸ but is a relevant factor to take into account. Across North Somerset as a whole there were 2,697 households waiting for rented accommodation as of January 2024. Of these, 985 expressed a preference for Yatton. However, applicants can select multiple areas of preference and the information does not show how many identified Yatton as their first choice.³⁹ The Council submitted further data drawn

³⁸ Inspector's note – for example, some households may be applicants in more than one local authority area

³⁹ CD B8 – Appendix 2

from the register which indicates that there are 51 households seeking a home in Yatton ward who currently live or work in Yatton parish.⁴⁰

127. The appellant submitted a document entitled “*Local Housing Need Report in respect of Yatton Parish*” which concluded that there is a significant shortfall in affordable housing provision that is specific to Yatton. The shortfall is calculated by reference to affordable housing needs as defined in the Strategic Housing Land Assessment 2009. That document is somewhat dated. At the Inquiry, the appellant’s affordable housing witness accepted that the NSLHNA would have taken account of any backlog and hidden households.⁴¹ In my view the more recent document carries more weight. Moreover, the shortfall was calculated at a district wide level, then apportioned to Yatton on a pro-rata basis. I can see no justification for taking that approach.
128. A similar approach is taken to the assessment of current need, which assumes that affordable housing need per head of the district population can be applied at the level of an individual parish. To my mind that is a theoretical calculation rather than direct evidence of local need. For these reasons I attach limited weight to the appellant’s assessment of a Yatton-specific need for affordable housing. I attach greater weight to the district-wide assessment derived from the NSLHNA. I take into account that the district-wide assessment is likely to include some households already in Yatton, together with some in need of affordable housing who have a local connection to Yatton.
129. The Agreement sets out alternative criteria for determining who would qualify to be an applicant for the affordable housing. Under the first option the applicants would be people who have a local connection to the district of North Somerset as defined in the Council’s nomination policy. Under the second option, the applicants would be people who live in the parish of Yatton, or are connected to it by work or family, subject to a cascade provision if no such people are found.
130. The Agreement is drafted such that the first option will apply unless this decision states that the second option should apply instead. I conclude that the second option should not apply because there is no sound evidence base to justify any particular level of affordable housing need in Yatton. The second option would not accord with Regulation 122 of the CIL Regulations because it would not be necessary. Moreover, it could well be counter-productive in terms of meeting priority housing needs. It could result in housing being allocated to persons with a local connection, but a lower level of housing need, thereby displacing persons without a local connection with a higher level of housing need.
131. That said, there is a pressing district-wide need for affordable housing. The district-wide need will include some households who either live in Yatton or have a local connection to it. Meeting that need is an important objective of both the Framework and the NSCS. The proposal would provide 50% affordable housing, which is in excess of the minimum level set out in Policy CS16. Drawing all this together, I attach substantial weight to the delivery of up to 95 units of affordable housing.

⁴⁰ ID35

⁴¹ Inspector’s note – this was accepted by Mr Parker in answer to my questions

Economic benefits

132. The application was accompanied by an economic benefits statement, the content of which was not challenged by the Council. The proposal would support jobs in construction and in supply chains during the construction period. Once the houses were occupied, new residents would contribute to spending in the local economy. As noted above, the proposed Class E floorspace is a small element of the appeal scheme. Class E is very broad and there was no evidence before the Inquiry about what the actual use would be and how likely it would be to materialise. Consequently, I attach little weight to any economic, or indeed social, benefit arising from the Class E floorspace. Overall, taking account of the temporary nature of economic benefits during construction, I attach moderate weight to the economic benefits.

Environmental benefits

133. The effect of the scheme on bats, the Biddle Street SSSI and protected species are discussed below. In this section, I consider habitat enhancement. The existing habitats on the site include fields containing grazed grassland, an interconnected series of rhynes, and a small number of mature trees and hedgerows. As noted above, around 70% of the appeal scheme would be open uses, including sustainable drainage features, open space, orchards, allotments and woodland. The proposal includes enhancing the habitat value of grassland, together with planting new hedgerows, woodland and orchard.

134. Biodiversity net gain (BNG) has been considered using BNG matrices. Taking account of additionality,⁴² there would be a gain of around 27% in habitat units and 48% in hedgerow units. I attach moderate weight to habitat enhancement.

135. The proposal would include play areas to meet the needs of the new residents. Some of the new green infrastructure would be multi-functional. For example, the detention basins could be designed as attractive green areas that also bring biodiversity benefits. However, much of the open space would not be available for recreation, in terms of active uses, because it would include woodland, orchard and grassland being managed to meet ecological objectives. That is not to say that it would have no other benefits. No doubt paths could be created around the new habitats which would be pleasant places to walk. Subject to detailed design, the open spaces could create an attractive setting for new development. The allotments are a relatively small element of the proposal, although no doubt of benefit to the individual allotment holders. To my mind the open space would, in the main, primarily meet needs arising from the development itself, such as ecological mitigation, sustainable drainage and play areas. I therefore attach only moderate weight to the benefits of open space. Nevertheless, I consider that the proposal would improve the existing network of green infrastructure in Yatton, in accordance with Policies CS9 and DM19.

136. The appellant suggests that pedestrian routes to the Strawberry Line and increased use of public transport should be counted as benefits. However, I consider that these features of the scheme would primarily go to meeting the travel needs of the new residents. I attach limited weight to these factors.

⁴² Inspector's note – in accordance with DEFRA guidance, habitat created for mitigating or compensating impacts on a Special Area of Conservation (in this case the bat mitigation discussed below) can count towards matching the baseline score but should not be counted as additional units (ID54)

Other matters

Habitats Regulations Assessment

137. The application included information to support the assessment required by Article 6(3) of the Habitats Directive, which is implemented in the UK by the Conservation of Habitats and Species Regulations (Amendment) (EU Exit) 2019 (the Habitats Regulations). This information has been brought together in a Shadow Habitats Regulations Assessment (SHRA). The appeal site is not within or adjacent to any European sites. The SHRA identifies three sites as requiring consideration:

- North Somerset and Mendip Bats (NSMB) Special Area of Conservation (SAC);
- Mendip Limestone Grasslands SAC; and
- Severn Estuary SAC/Special Protection Area (SPA).

138. The NSMB SAC is primarily designated due to the habitats it supports, namely semi-natural dry grasslands associated with limestone habitats and Tilio-Acerion forests of slopes, screes and ravines. It is also designated due to the range of hibernation sites it contains, used by nationally important populations of Greater horseshoe bats (GHB) and Lesser horseshoe bats (LHB), together with maternity sites for GHB. The SHRA focusses on two component units of the SAC:

- King's Wood and Urchin Wood Site of Special Scientific Interest (SSSI), a large area of ancient woodland situated approximately 2.05km east of the appeal site; and
- Brockley Hall Stables SSSI, which is situated 4.6km north-east of the appeal site.

Other components of the SAC, at greater distance from the site, have also been identified and taken into consideration.

139. The Mendip Limestone Grasslands SAC is much further from the site. Whilst GHB are a qualifying feature of the site, this is essentially the same population as that described above. The site was screened out of further consideration. The Severn Estuary SAC/SPA is designated for estuarine habitats and overwintering waders. No species associated with this site are present at the appeal site. It too was screened out of further consideration.

140. The conservation objectives for the NSMB SAC are to ensure that the integrity of the site is maintained or restored and that the site contributes to achieving the favourable conservation status of its qualifying features, which include GHB and LHB. Maintaining or restoring the populations of qualifying species is one of the ways of maintaining or restoring the integrity of the site. Natural England (NE) initially objected to the application on the grounds that an adverse effect on the integrity of the SAC could not be ruled out. NE advised that a Habitats Regulations Assessment was required.

141. The SHRA identifies that the impacts of the scheme requiring assessment are loss of bat foraging habitat, fragmentation of commuting routes and cumulative impacts. The proposal includes managing an area of off-site grassland to improve its habitat value for bats. The Council has published guidance on assessing

impacts on the NSMB SAC through use of a Habitat Evaluation Procedure (HEP). The SHRA uses the HEP to assess the baseline condition of the site and the off-site land as well as the condition following development and mitigation. In the baseline condition, surveys identified moderate levels of GHB activity at the site, with parts of the site being of value for foraging and commuting. The off-site grassland was found to have low numbers of GHB, being used occasionally for foraging. The surveys identified extensive use of the site for foraging by LHB. The vegetated edges of the off-site grassland were found to be a key foraging habitat for LHB.

142. In the absence of mitigation and compensation, the SHRA concludes that there would be a direct loss of foraging habitat as well as indirect impacts from lighting. There would also be direct impacts on commuting routes through removal of sections of hedgerow and culverting sections of ditches. Lighting would have indirect impacts on commuting routes.
143. The mitigation measures include the retention of most of the existing hedgerows, enhancement of existing hedgerows to bolster existing commuting routes, and planting new hedgerows following the ditches, creating sheltered fields. Poor quality grassland within the site would be improved and new habitats would include orchard and woodland. The effects of lighting have been modelled and the SHRA includes a dark corridor plan which identifies the areas of habitat that would be excluded from the HEP calculations because the light level would preclude use by bats. The area available to bats would comprise the proposed open spaces in the western part of the site together with an east/west corridor along the northern boundary. The SHRA has responded to concerns raised by NE regarding the effects of internal lighting. A 10m buffer has been applied where housing would face mitigation habitat.
144. The HEP calculations show that at least 4.6ha of equivalent GHB foraging habitat is required to meet the Council's guidance. The scheme incorporates the equivalent of 4ha of GHB habitat within the site. There is therefore a requirement for off-site compensation. This would be provided through improving the habitat value of 2.9ha of grassland to the west of the Strawberry Line. The SHRA proposes that the land would be managed through cutting and removal of arisings, to enable the nutrients in the soil to be reduced over time. There would also be tree and shrub planting to provide shelter and improve foraging conditions. The woody vegetation and ditches associated with the Strawberry Line would provide good connectivity between the off-site land and the site itself. With the off-site compensation land taken into account, the HEP calculations indicate a minor uplift in the habitat value for GHB.
145. NE has commented that grazing would be the preferable management option for the off-site grassland. NE has suggested that a condition is attached to require the options for securing grazing to be explored further, with management by a cutting regime being a fall back option.
146. The HEP calculations show that 3.28ha of equivalent habitat value for LHB is required. The mitigation measures proposed within the site would provide a net gain in habitat value for this species without reliance on off-site compensation.
147. The SHRA has considered cumulative impacts, including in relation to likely commuting routes to and from NSMB SAC component sites. The village of Yatton

is identified as a significant barrier to dispersing bats, such that the proposal would not increase the length of existing commuting routes to/from the King's Wood and Urchin Wood SSSI.

148. The SHRA concludes that, in the absence of mitigation, the impacts would be expected to result in a decline in the conservation status of the SAC population and a potentially significant effect on the favourable conservation status of the SAC itself. In addition to the mitigation measures designed into the scheme, the SHRA recommends conditions relating to a Construction Environment Management Plan (CEMP), a Landscape and Ecological Management Plan (LEMP) and a landscape planting plan. Having considered the SHRA, NE has no objection to the scheme subject to mitigation being secured.⁴³
149. In reaching my conclusion I have had regard to the SHRA and the advice of NE, together with the supporting ecological information contained in the application documents. I conclude that avoidance, mitigation and compensation measures for the appeal scheme could be secured by planning conditions. Together, these measures would ensure that there would be no adverse effect on the conservation objectives of the NSMB SAC, either alone or in-combination with other plans or projects. Accordingly, there would be no adverse effect on the integrity of the SAC.

Biddle Street SSSI

150. The Biddle Street SSSI comprises a series of ditches to the west of the site which are designated primarily for rare aquatic vegetation and invertebrates. The site is currently in an unfavourable condition due to eutrophication, grazing pressure, and shading by scrub. The SSSI extends into the western side of the appeal site by around 6m, providing a buffer zone along the edge of a rhyme to protect the aquatic habitat. The appeal scheme proposes retention of maintenance areas alongside all the rhynes, to allow for future management. There would be an undeveloped buffer to the SSSI.
151. Landscaping proposals would include woodland planting and grassland enhancement designed to protect the rhyme from recreational pressures arising from the new open space. Cessation of farming activity may benefit the SSSI by reducing the amount of nutrients entering the watercourses. Matters such as shading of the rhynes by new planting would be addressed at the detailed landscape design stage, which would be subject to approval under planning conditions. Potential impacts during construction would be mitigated by a CEMP and future management would be covered by a LEMP. The CEMP and LEMP could be secured by conditions. The Ecological Impact Assessment submitted with the application concluded that, with these measures in place, there would be no adverse impacts on the SSSI. This conclusion has been accepted by the Council and I see no reason to disagree.

Protected species

152. Protected species surveys were undertaken for reptiles, great crested newt and water vole. These identified a low population of grass snake and slow worm on the eastern boundary. The surveys concluded that great crested newt and water vole were unlikely to be present. Other species considered included otter, badger, and nesting birds. Mitigation measures are proposed for reptiles and nesting birds.

⁴³ Inspector's note – the draft conditions were sent to NE who made no further comments

I consider that protected species have been properly assessed and that the identified mitigation measures could be secured by conditions.

Landscape impact

153. The appeal site is not subject to any landscape designations and the North Somerset Landscape Sensitivity Study assessed the area proposed for built development as being of low sensitivity. The Strawberry Line, which adjoins the western site boundary, is a popular walking and cycling route. At the Inquiry, a local resident and Councillor spoke about the value this route has for people wanting to experience nature in an accessible location that is close to Yatton. The illustrative masterplan and parameter plans show that development would take place on the eastern side of the site, where it would be more closely related to the existing built form of Yatton. The western side of the site would comprise open uses including woodland.
154. The Landscape and Visual Appraisal (LVA) submitted with the application identified a major/moderate adverse effect on the pastoral landscape of the site itself and a minor/moderate adverse effect on the landscape of the Kingston Seymour and Puxton Moors Landscape Character Area. In terms of visual effects, the LVA found that the greatest visual effect would be at Shiners Elms where there would be a moderate/major adverse effect for residents and road users. Lower levels of effect would be experienced in other nearby roads. Walkers and cyclists using the Strawberry Line would experience moderate adverse effects, reducing to moderate/minor after 10 to 15 years as new planting within the scheme matures.
155. With regards to impacts on nearby residents, I acknowledge that there would be a significant degree of change with open fields being developed for housing. However, the officer's report commented that the parameter plans and indicative material in the application provide a sound basis for future reserved matters applications. I agree. Subject to satisfactory detailed design, which could be controlled at the reserved matters stage, there is no reason to think that the proposal would result in visual impacts that would be harmful to the living conditions of neighbouring residents.
156. The appellant suggests that the creation of an improved edge to the built-up area should be regarded as a benefit. However, the existing edge is not widely visible from the Strawberry Line, with most views being filtered by intervening vegetation. To my mind the baseline situation is not harmful in visual terms. The proposal would bring built development closer to the viewer, although additional planting would increase the screening effect. Insofar as there is potential for a more coherent architectural approach, that would mainly be appreciated from within the site itself. In my view this is a factor which reduces the landscape harm rather than amounting to a freestanding benefit.
157. The conclusions of the LVA are accepted by the Council. I also accept those conclusions. Given that there would be some harm to the wider Kingston Seymour and Puxton Moors Landscape Character Area, the proposal would not accord with Policy CS5 which seeks to protect the landscape character areas within North Somerset.
158. Policy DM10 seeks to avoid unacceptable landscape impacts. It calls for appropriate landscaping and boundary treatments and the conservation and enhancement of vegetation that is characteristic of the district. Where some harm

is unavoidable, but a development is otherwise beneficial, positive mitigation measures should be secured by conditions and/or planning obligations. Having regard to the parameter plans and illustrative masterplan, together with the planning obligations relating to open space and the planning conditions, I consider that the proposal would accord with Policy DM10. Overall, I attach only limited weight to the landscape harm.

Highways impact

159. There would be two vehicular accesses to the site, one from Shiners Elms and one through an adjoining development site to the south. The application was supported by a Transport Impact Assessment. Junction modelling has been carried out and the Council is satisfied that affected junctions would still be operating within capacity. Consequently, there would be no significant harmful impact on the local highway network.
160. Pedestrian and cycle connections to the Strawberry Line would be necessary to promote active travel and convenient access to Yatton Station. As set out above, the Agreement would provide for a package of transport measures, including promoting the use of public transport, supporting school transport, mitigating additional wear and tear on the Strawberry Line and traffic calming in streets close to the site.
161. I consider that the transport impacts have been properly taken into account and that the impacts of the proposal could be mitigated through the provisions of the Agreement. The proposal would accord with Policies CS10 and DM24 which together seek to allow for a choice of modes of transport, to avoid traffic congestion and to provide for safe access.

Primary school

162. The fourth putative reason for refusal, which was not pursued at the Inquiry, concerned the loss of a site safeguarded for a new primary school. Part of the appeal site is safeguarded for a primary school under Policy SA8 of the Site Allocations Plan (SAP). Policy DM68 states that land and buildings in existing use, last used for, or proposed for use for a sporting, cultural or community facility are protected for that purpose unless the land is allocated for another purpose in another planning document. Under Policy DM68, alternative uses of sites protected for community use will only be permitted in specific circumstances, one of which being that the site is surplus to requirements for community uses.
163. After the appeal had been lodged, but before the Inquiry, the appellant submitted information on birth numbers in North Somerset, the child yield from recent developments in Yatton, spare capacity in existing schools in Yatton and the potential for expansion of existing schools. Having considered this information, the Council advised that it would no longer be pursuing this reason for refusal.
164. Based on that information, I consider that the appeal site is surplus to requirements for school use. Insofar as part of the site is allocated for a primary school, the proposal conflicts with Policy SA8. However, in the absence of need for a school, and the absence of evidence of need for an alternative community facility here, the proposal accords with Policy DM68. This is a neutral factor in the planning balance.

Planning obligations

165. The Agreement includes planning obligations which would mitigate impacts of the proposed development on transport infrastructure and facilities, open space and biodiversity. This is in accordance with Policy DM71 which seeks to ensure that appropriate mitigation is secured through such obligations.

Interested parties

166. Interested parties spoke at the Inquiry and also made written representations in response to the appeal and the application. Many of the representations related to flood risk, which has been discussed above. In the main, the other matters raised have also been covered above. Some representations referred to matters such as design and materials which would be controlled at the reserved matters stage. Some representations questioned whether 50% affordable housing would be deliverable, given the costs of land raising. However, there was no evidence on financial viability before the Inquiry. Nor had any such evidence been sought by the Council. I have determined the appeal on the basis that the Council and the appellant consider that this scheme could deliver the affordable housing provided for in the Agreement.
167. An interested party described the benefits to the mental health of Yatton residents that the Strawberry Line provides, by giving ready access to a tranquil rural environment. Whilst I acknowledge that there would be a loss of tranquillity during the construction phase, that would be temporary. The parameter plans show that there would be open space and woodland planting in those parts of the site closest to the Strawberry Line. This would restore the sense of tranquillity that currently exists.

Conditions

168. The Council and the appellant submitted an agreed schedule of suggested conditions, which I have reviewed in the light of PPG. Whilst I have made some minor changes in the interests of clarity, the conditions I have imposed are in substance those suggested by the parties.
169. Condition 4 requires development to be in accordance with the plans, in the interests of clarity and certainty. Condition 5 requires the development to be in general accordance with the Design and Access Statement, in the interests of achieving good design. Conditions 6, 7 and 8 require an assessment of contamination and, if necessary, remediation measures to be carried in the interests of managing risks of pollution. Condition 9 requires the submission of a Construction Environmental Management Plan in the interests of managing impacts on highway safety and the environment during construction.
170. Condition 10 requires submission of an external light modelling assessment; Condition 11 requires implementation of ecological mitigation measures; Condition 12 requires submission of a scheme of bat mitigation and a habitat management plan for the off-site habitat; Condition 13 requires a stand off from proposed woodland areas; Condition 14 requires the ecological surveys and mitigation measures to be reviewed if the start of development is delayed; Condition 15 requires submission of a Landscape and Ecological Management Plan; and Condition 16 requires submission of a scheme of biodiversity enhancement. These

conditions are needed in the interests of biodiversity, including (in the case of Condition 12) mitigating impacts on the North Somerset and Mendips Bats SAC.

171. Condition 17 requires submission of a landscaping scheme; Condition 18 requires replacement of new planting that fails; and Condition 19 requires tree protection measures. These conditions are necessary to protect existing trees and secure new tree planting and other landscape works in the interests of good design and in the interests of protecting and enhancing biodiversity. Condition 20 requires submission of a scheme of archaeological investigation, in the interests of protecting the archaeological potential of the site. Condition 21 requires provision of vehicular access and parking for dwellings prior to occupation, in the interests of amenity and highway safety.
172. Condition 22 requires implementation of the submitted travel plan; Condition 23 requires provision of pedestrian/cycle links to the Strawberry Line; and Condition 24 requires provision of cycle parking. These conditions are needed in the interests of sustainable transport. Condition 25 requires submission of measures to incorporate micro renewable or low carbon energy technologies, in the interests of sustainable development. Condition 26 requires compliance with the nationally described space standards and Condition 27 requires details of compliance with accessible and adaptable housing standards. These conditions are necessary in the interests of securing good living conditions and inclusive design.
173. Condition 28 requires submission of details of surface water drainage, in the interests of managing risks of pollution and flooding. Condition 29 requires submission of details of finished ground and floor levels, in the interests of managing flood risk and in the interests of the character and appearance of the area. Condition 30 requires submission of a Flood Management Plan, in the interests of mitigating flood risk. Condition 31 requires submission of details of waste and recycling storage, in the interests of sustainable development. Condition 32 requires provision of a vehicular access to the southern site boundary, in the interests of securing a safe means of access in the event of flooding.

Conclusions

Flood risk

174. I have concluded that the proposal does not pass the sequential test required by paragraph 173 of the Framework. The Framework states that the exception test may have to be applied where that test is passed. PPG states that the exception test is not a tool to justify development where there are reasonably available lower risk sites.⁴⁴ However, it is clear that the matters set out in paragraph 178 of the Framework are important material considerations in the planning balance. Those matters are:

- whether the development would provide wider sustainability benefits to the community that outweigh the flood risk; and
- whether the development would be safe for its lifetime, taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, would reduce flood risk overall.

⁴⁴ PPG – Reference ID 7-031-20220825

175. Moreover, the judgment in *Mead* makes clear that a failure to comply with the sequential test is not automatically fatal to a planning application.⁴⁵ Other material considerations, including housing need, may outweigh such a failure. It seems to me that, whether or not the exercise is described as an “exceptions test,” the matters set out in paragraph 178 need to be taken into account.

The weight to be attached to the failure of the sequential test

176. In assessing how much weight should be attached to the failure to pass the sequential test, I consider that the following factors are pertinent.

177. First, the Framework states that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. It goes on to say that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. PPG states that, initially, the presence of flood defences should be ignored. This is because long term maintenance and renewal is uncertain and because of the effect of climate change.⁴⁶ The starting point for this exercise is that the Framework and the PPG place a high priority on avoiding flood risks altogether by steering development elsewhere. Recent changes to the Framework have not altered that starting point.

178. Second, the evidence before the Inquiry indicates that it will be necessary to allocate some sites that are at risk of flooding to meet the housing needs of the district. As described above, the emerging local plan has been paused pending a fresh round of consultation on additional housing sites which are needed in response to an increased housing requirement. No weight can yet be placed on the emerging local plan as a statement of policy. However, the evidence base is a material consideration. The Council’s *Flood Risk Sequential Test of proposals within the Pre-submission Local Plan* identifies 18 proposed housing allocations which are either at risk of tidal flooding now or will be in the future.⁴⁷

179. All of the sites are in the main towns of Weston, Clevedon and Portishead, which is consistent with the spatial strategy. Of course, the sites may not all be confirmed in the final plan and no doubt many further sites will come forward. It is not for me to pre-empt the local plan process. That said, it seems likely that the current work on the emerging plan will focus on finding new sites rather than dropping sites that have already been identified as proposed allocations. The relevance of this point to the appeal is that it shows a clear likelihood that meeting the housing needs of North Somerset over the plan period will require the allocation of a number of sites that are at risk of tidal flooding.

180. I do not suggest that the appeal site is directly comparable with the 18 proposed allocations because Yatton is not one of the main towns. However, in this context, it is important to note that Yatton has a range of shops and services, community facilities, pre-school and primary education provision and local employment opportunities. The Strawberry Line provides a pedestrian route to Yatton train station where there are services to Weston and Bristol, amongst other destinations. The Council and the appellant agree that the site is a suitable and

⁴⁵ Paragraphs 173, 174 and 178 of the judgment (CD J1)

⁴⁶ PPG – Reference ID 7-024-20220825

⁴⁷ Table 2 in CD G3 – Proposed sites with large parts, or entirely, subject to flood risk

sustainable location in terms of accessibility. In my view these considerations reduce the weight to be attached to the failure of the sequential test.

181. Third, I have concluded that the proposed dwellings would not be at risk of flooding in the design flood event and that there would be a safe means of access.
182. Fourth, I have concluded that the proposal would not increase flood risk on adjoining land.
183. Fifth, there are residual risks to take into account. The potential risks associated with overtopping or a breach of the flood defences could be mitigated (although not totally eliminated) by the proposed FMP. The risk of climate change having an impact greater than the Higher Central CCA could be mitigated (although not totally eliminated) by the proposed freeboard. Moreover, in relation to the residual risks, I consider that the site location is a key factor. It is at the edge of an extensive zone of potential tidal flooding, at some distance from the coast. The modelling shows that flood waters would take 42 hours from the first high tide to reach the site. This is not a site that is at risk of sudden inundation. To my mind this factor significantly reduces the risks to people.
184. Drawing all this together, my overall assessment is that significant weight should be attached to the failure of the sequential test, together with the residual risks I have identified.

Consideration of wider sustainability benefits

185. The proposal would bring the following wider sustainability benefits, which have been described in more detail above:
- delivery of market housing, to which I attach substantial weight;
 - delivery of affordable housing, to which I attach substantial weight;
 - economic benefits, to which I attach moderate weight;
 - biodiversity enhancements, to which I attach moderate weight; and
 - open space, to which I attach moderate weight.
186. Taken together, I consider that the wider sustainability benefits outweigh the flood risk.

Flood risk – policy conclusions

187. The Framework states that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. As I have found that there are such sites, the proposal does not accord with the Framework in this regard. Nevertheless, I have found that the wider sustainability benefits outweigh the flood risk. For this reason, I conclude that the policies of the Framework relating to areas at risk of flooding do not provide a strong reason for refusing the development proposed.
188. Policy DM1 states that exceptions to national policy on flood risk will not be permitted. The proposal is therefore in conflict with this policy. I have concluded above that the proposal is also in conflict with Policy CS3.

Conclusions on the development plan

189. For the reasons given above, I consider that the proposal conflicts with the following policies of the development plan:

- CS3 - flood risk;
- CS5 - landscape;
- CS14 - spatial strategy;
- CS32 - service villages;
- DM1 - flood risk; and
- SA8 - site allocation for primary school.

190. For the reasons given above, I consider that the proposal accords with the following policies of the development plan:

- CS9 – green infrastructure;
- CS10 – transport;
- CS16 – affordable housing;
- DM10 – landscape;
- DM19 – green infrastructure;
- DM24 – transport;
- DM68 – community facilities; and
- DM71 - developer contributions.

191. Due to the conflict with the spatial strategy and policies relating to flood risk, I consider that the proposal is contrary to the development plan as a whole, notwithstanding that the scheme accords with a number of other policies. It is therefore necessary to consider whether there are other considerations that indicate a decision other than in accordance with the development plan.

Other considerations

192. The Framework is a material consideration. The approach to decision making set out in paragraph 11(d) is engaged due to the housing land supply position. With regard to footnote 7, that approach is not disengaged by flood risk considerations because flood risk does not provide a strong reason for refusing the development.

193. The most important policies for determining the application, which are those I have identified above, are therefore deemed to be out-of-date and planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole (having particular regard to the matters set out in paragraph 11(d)(ii)).

194. The adverse effects are:

- failure of the flood risk sequential test, together with the associated residual risks of flooding (after mitigation), to which I attach significant weight;
- conflict with the spatial strategy of the development plan, to which I attach limited weight; and
- landscape impact, to which I attach limited weight.

195. The benefits are the same as the wider sustainability benefits set out above in my conclusions on flood risk. I attach the same weightings to those benefits.

I conclude that the adverse effects do not significantly and demonstrably outweigh the benefits. The Framework therefore indicates that permission should be granted. This is a factor which outweighs the conflict with the development plan that I have identified.

196. My overall conclusion is that the appeal should be allowed.

David Prentis

Inspector

APPEARANCES

FOR THE APPELLANT	
Charles Banner KC	Instructed by Stantec
Kathryn Ventham BSc(Hons) MSc MRTPI	Stantec
Nicholas Paterson- Nield BA(Hons) MPhil MRTPI	Stantec
Simon Mirams CWEM CSci MCIWEM BSc(Hons)	Rappor
David Parker MSc BA(Hons) DMS FCIH	Pioneer
Nigel Jones BSc FRICS ACIARB	Chester
FOR THE COUNCIL	
Timothy Leader, Counsel	Instructed by Roger Wilmott, Head of Strategic Development, North Somerset Council
Natalie Richards	Planning Policy Team Lead, North Somerset Council
Marcus Hewlett BA(Hons)	Planning Policy Team, North Somerset Council
Max Smith MSc(Hons) MRTPI	Principal Planning Officer, North Somerset Council
Jonathan Cage	Create Consulting Engineers Limited
FOR THE ENVIRONMENT AGENCY	
Ellie Challans BA(Hons)	Planning Specialist, Environment Agency

INTERESTED PARTIES	
Cllr Steve Bridger	Ward Councillor, North Somerset Council
Richard Croucher	Local resident
Juley Howard	Local resident
Michael Hadfield	Local resident
Andy Warren	Local resident
Sarah Reakes	Local resident
Martyn Gardiner	Local resident
Cllr Wendy Griggs	Ward Councillor, North Somerset Council
Cllr Steve Humphrey	Chairman of Planning Committee, Yatton Parish Council
Dr Cooke	Local resident
Alex Pope	Local resident
Julian Stokes	Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

ID1	Appearances for the appellant
ID2	Opening statement for the appellant
ID3	Opening statement for the Council
ID4	Cllr Bridger - photographs
ID5	Cllr Bridger – statement
ID6	Richard Croucher – statement and bundle of documents
ID7	Juley Howard – statement and maps
ID8	Michael Hadfield – statement
ID9	Andy Warren - statement
ID10	Sarah Reakes – statement
ID11	Martyn Gardiner – statement
ID12	Cllr Griggs – statement
ID13	Draft S106 dated 24 September 2024
ID14	Planning Statement of Common Ground
ID15	Natural England Letter dated 24 September 2024
ID16	Email exchange between appellant and the Council's affordable housing team
ID17	Council Press Release on Local Plan
ID18	Email dated 26 September 2024 relating to FOI request
ID19	Mr Leader's list of flood risk documents
ID20	Appeal decision APP/D1265/W/23/3323727 – Marnhull, Dorset
ID21	Maps of Yatton and Weston
ID22	Environment Agency Position Statement
ID23	Richard Croucher - plans
ID24	Planning Inspectorate letter to EA dated 30 September 2024
ID25	Draft S106 dated 30 September 2024
ID26	Clarke Willmott note on S106
ID27	Updated schedule of conditions
ID28	The Council's bundle of flood risk documentation
ID29	Map and schedule of Weston Villages sites referred to in housing land supply round table session
ID30	Plan from the Council showing water flow routes and directions
ID31	Appeal decision APP/D0121/W/23/3331866 – 62 Beach Road, Weston-super-Mare
ID32	The Council's Information Governance Team response to appellant's FOI request
ID33	Inspector's adjournment note dated 3 October 2024
ID34	Clarke Willmott note on S106 dated 11 October 2024
ID35	Council's note on S106 cascade provisions dated 14 October 2024
ID36	Final draft S106 including plans dated 29 October 2024
ID37	Shoreline Management Plan
ID38	The Council's note on land ownership and control
ID39	Addendum to Statement of Common Ground (description of development)
ID40	Application for partial award of costs by the appellant (Application A)
ID41	Appeal decision APP/D0121/W/24/3344142 – Mulberry Road, Congressbury
ID42	The Council's CIL Compliance Statement

ID43	The appellant's response to the Council's note on land ownership and control
ID44	Inspector's adjournment note No 2 dated 25 November 2024
ID45	EDP Note on BNG and Public Open Space
ID46	EDP Note on Biddle Street SSSI
ID47	Max Smith email of 6 December 2024 (ownership and control)
ID48	Clarke Willmott Note on Access Rights (southern access)
ID49	GDPO Schedule 2, Part 13, Class D
ID50	The Council's response to the appellants application for a partial award of costs (Application A)
ID51	Mr Cage's Note relating to the Brookbanks FRA
ID52	Rappor Note responding to ID51
ID53	Inspector's Ruling of 8 January 2025
ID54	Agreed Note on BNG and additionality
ID55	Section 106 Agreement dated 20 December 2024
ID56	Updated schedule of suggested conditions as of 8 January 2025
ID57	OS Map extract and population data for Kingston Seymour submitted by the Council
ID58	Rappor response to Create Consulting Engineers Note (Point 1) January 2025
ID59	Create response to Rappor (ID58) 20 January 2025
ID60	Planning Inspectorate letter to the Environment Agency dated 23 January 2025
ID61	Environment Agency response to Planning Inspectorate dated 24 January 2025
ID62	Rappor response to 2nd Create Note (Point 1) January 2025
ID63	Appellant's reply to the Council's response to costs Application A and further application for a partial award of costs (Application B) dated 6 February 2025
ID64	Mead Realisations Ltd v SoS HCLG [2025] EWCA Civ 32
ID65	Closing submissions for the Council dated 6 February 2025
ID66	The Council's application for an award of costs (Application C) dated 6 February 2025
ID67	Closing submissions for the appellant dated 7 February 2025
ID68	The Council's response to costs Application B dated 13 February 2025
ID69	Email from the appellant confirming no further comments on the Council's response to Application B dated 20 February 2025
ID70	Appellant's response to Application C and a further application for costs in relation to the alleged unreasonable making of that application (Application D) dated 20 February 2025
ID71	Costs decision APP/V0510/W/21/3282449 - Land to the North East of Broad Piece, Soham
ID72	Email from the Council confirming that it has no further comments to make dated 7 March 2025.

CONDITIONS

1. Approval of the details of the access (other than from Shiners Elms), layout, scale and appearance of the buildings and the landscaping of the site (hereinafter called 'the reserved matters') shall be obtained from the Local Planning Authority in writing before any development is commenced.
2. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiry of three years from the date of this permission.
3. The development hereby permitted shall be begun before the expiration of five years from the date of this permission or before two years from the date of approval of the last reserved matters to be approved.
4. The development hereby permitted shall be carried out in accordance with the following approved plans and documents:
 - Site Location Plan (showing Bat Mitigation area) edp7842_d008b
 - Land Use Parameter ddp7842_d0004c
 - Height and Scale Parameter edp7842_d006c
 - Access and Movement Parameter edp7842_d007b
 - Character Areas Plan edp7842_d009c
 - Constraints and Opportunities Plan edp7842_d010a
 - Red Line Plan edp7842_d021
 - Proposed Site Access General Arrangement Design 23257-HYD-XX-XX-DR-TP-0201 P02
 - Arboricultural Impact Assessment (AIA) Plan D35 39 P3.2
5. The development hereby permitted shall be delivered in general accordance with the principles as set out in the Design and Access Statement.
6. No development shall take place until an assessment of the nature and extent of contamination on site has been submitted to and approved in writing by the Local Planning Authority. This assessment must be undertaken by a competent person, and shall assess any contamination on the site, whether or not it originates on the site. Moreover, it shall include:
 - (i) a survey of the extent, scale and nature of contamination;
 - (ii) an assessment of the potential risks to:
 - a) human health,
 - b) property (existing or proposed) including buildings, crops, livestock, and pets,
 - c) woodland and service lines and pipes,
 - d) adjoining land,
 - e) groundwaters and surface waters,
 - f) ecological systems, and
 - g) archaeological sites and ancient monuments.

7. Unless the Local Planning Authority confirms in writing that a remediation scheme is not required, no development shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historic environment has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria, an appraisal of remediation options, proposal of the preferred option(s), and a timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
8. The remediation scheme, if required, shall be implemented in accordance with the approved timetable of works. Within 3 months of the completion of measures identified in the approved remediation scheme, a validation report (that demonstrates the effectiveness of the remediation carried out) shall be submitted to and approved in writing by the Local Planning Authority.
9. No development shall take place, including any vegetation clearance, ground works or demolition, until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include the following:
 - a) the parking and turning of vehicles of site operatives and visitors;
 - b) loading and unloading of plant and materials;
 - c) details of HGV movements throughout the day and vehicle routing information;
 - d) storage of plant and materials used in constructing the development;
 - e) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - f) details of measures to prevent mud and other such material migrating onto the highway from construction vehicles;
 - g) measures to control the emission of dust and dirt during construction, including those measures set out in Appendix E of the Air Quality Assessment (Hydrock, March 2023);
 - h) a scheme for waste minimisation and recycling/disposing of waste resulting from the construction works;
 - i) design of construction access;
 - j) hours of construction work;
 - k) measures to control overspill of light from security lighting;
 - l) communication to the local Parish and neighbouring properties of the works being undertaken which shall include a nominated Developer/Resident Liaison Representative with an address and contact telephone number, with 24 hour response phone line, to be circulated to those residents consulted on the application by the developer's representatives. This person will act as first point of contact for residents who have any problems or questions related to the ongoing development;

- m) identification of risks with potentially damaging construction activities;
- n) identification of biodiversity protection zones and buffer zones;
- o) practical measures to avoid or reduce impacts during construction to identified protected species or habitats associated with the site (may be provided as a set of method statements);
- p) the location and timing of sensitive works to avoid harm to biodiversity features;
- q) the times during construction when specialist ecologists need to be present on site to oversee works;
- r) responsible persons, lines of communication and written notifications of operations to the Local Planning Authority;
- s) use of protective fences, exclusion barriers and warning signs; and
- t) the role and responsibilities on site of an Ecological Clerk of Works.

The approved CEMP shall be adhered to throughout the construction period.

10. The reserved matters submission shall include a light modelling assessment detailing the combined effects of internal and external light spill. No lighting shall be installed until details including:
- a) the type and location of the proposed lighting;
 - b) existing lux levels affecting the site; and
 - c) the proposed lux levels including lighting contour plans demonstrating that all proposed bat habitat will be subject to light spill at or below 0.5 lux

have been submitted to and approved in writing by the Local Planning Authority. Any external lighting shall be installed and operated in accordance with the approved details.

11. Prior to the occupation of the development hereby permitted, a report certifying that the mitigation and compensation measures identified in the Ecological Impact Assessment report dated March 2023 by Clarkson and Woods have been complied with shall be submitted to and approved in writing by the Local Planning Authority. The report shall be prepared by the Ecological Clerk of Works, shall include the results of site supervision and any remedial works undertaken and shall specify any further remedial works required. The specified further remedial works shall be carried out under the strict supervision of a professional ecologist in accordance with the timetable specified in the report.
12. No development shall take place until a final scheme for bat mitigation, in accordance with the Shadow Habitats Regulations Assessment (dated February 2024), including a timetable for its implementation which is informed by the results of the Bat Surveys, and an accompanying habitat management plan (HMP) for the off-site habitat, which avoids adverse effects from the development on the integrity of the North Somerset and Mendips Bats Special Area of Conservation, has been submitted to and approved in writing by the Local Planning Authority. The HMP for the off-site habitat shall include a procedure for seeking to secure grazing of the off-site habitat within a timescale that shall be included in the HMP. The off-site habitat shall only be managed by

a cutting regime if it is not possible to secure grazing having followed the procedure included in the HMP. The approved bat mitigation scheme and HMP shall be carried out as approved and in accordance with the approved timetable for implementation.

13. The landscape plans to be submitted with the reserved matters shall include details of a 5m stand off from the proposed woodland area.

14. If the development hereby approved does not commence (or, having commenced, is suspended for more than 12 months) within 2 years from the date of the planning consent, the approved ecological measures secured shall be reviewed and, where necessary, amended and updated. The review shall be informed by further ecological surveys commissioned to:

- a) establish if there have been any changes in habitats or the presence and/or abundance of protected species and
- b) identify any likely new ecological impacts that might arise from any changes.

The development shall not commence (or resume) until a report of the review has been submitted to and approved in writing by the Local Planning Authority.

Where the survey results indicate changes that will result in ecological impacts not previously addressed in the approved scheme, a new or amended mitigation strategy shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement (or resumption) of development. Development shall then be carried out in accordance with the new or amended ecological mitigation strategy as so approved.

15. Prior to the occupation of the development hereby permitted a Landscape and Ecological Management Plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority. The LEMP shall include the following:

- a) a description and evaluation of features to be managed;
- b) ecological considerations that might influence management;
- c) aims and objectives of management with appropriate management options for achieving them;
- d) preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
- e) details of the body or organization responsible for implementation of the plan; and
- f) on-going monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanisms by which the long-term implementation will be secured by the developer with the

management body responsible for its delivery. Should monitoring results show that aims and objectives are not being met, the plan shall also set out how contingencies and/or remedial action will be identified, agreed and implemented so that the development delivers the biodiversity objectives of the approved scheme. Development shall be carried out in accordance with the approved LEMP which shall thereafter be adhered to throughout the lifetime of the development.

16. Prior to the commencement of development, a scheme to enhance the biodiversity value of the proposed development shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include provision for nesting birds, roosting bats, native species planting and brash piles for reptiles and amphibians. Development shall be carried out in accordance with the approved scheme and shall thereafter be permanently retained as such.
17. Details to be submitted under condition 1 shall include a hard and soft landscaping scheme. This shall include details of all public and private landscaping areas; the location, equipment, and boundary fencing of play areas; all trees, hedgerows, and other planting to be retained; the proposed finished ground levels; a planting specification to show numbers, size, species and positions of all new trees and shrubs to be planted; and details of all hard surfacing together with an implementation programme. New planting in relation to the location of any retained or new below ground services such as pipes, cables, manholes and any associated easements shall also be shown. The hard and soft landscaping scheme shall be carried out in accordance with the approved details, specifications and implementation programme.
18. Trees, hedges, and plants shown in the landscaping scheme to be retained or planted which, during the development works or a period of ten years following full implementation of the landscaping scheme, are removed without prior written consent from the Local Planning Authority or die, become seriously diseased or are damaged, shall be replaced in the first available planting season with others of such species and size as the Local Planning Authority may reasonably specify.
19. No development, including site preparation or site clearance, shall commence until an Arboricultural Method Statement Report with Tree Survey and Tree Protection Plan showing the location and design of tree and hedge protection fencing has been submitted to and approved in writing by the Local Planning Authority and the agreed tree and hedge protection has been erected as approved. Unless otherwise specified, the fencing shall be as shown in Figure 2 of BS5837:2012 'Trees in relation to design, demolition and construction – Recommendations' and shall be erected to achieve root protection areas in

accordance with BS5837:2012 root protection area calculations and the location of the fencing shall be informed by the recommendations of BS5837:2012. This fencing shall remain in place during site works. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the Local Planning Authority. No fires shall be lit within 10 metres of the nearest point of the canopy of any retained tree or hedge. No equipment, machinery or structure shall be attached to or supported by a retained tree or hedge. No mixing of cement or use of other contaminating materials or substances shall take place within, or close enough to, a root protection area that seepage or displacement could cause them to enter a root protection area. The Local Planning Authority shall be advised prior to development commencing of the fact that the tree and hedge protection measures as required are in place and available for inspection.

20. No development shall commence, except archaeological investigation work, until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a Written Scheme of Investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority. The programme of archaeological work shall provide a controlled excavation of all significant deposits and features which are to be disturbed by the proposed development and shall be carried out and completed in accordance with the approved WSI. Thereafter the building work shall incorporate any building techniques and measures necessary to mitigate the loss or destruction of any further archaeological remains.
21. No building shall be occupied until the access serving the building has been completed and the relevant number of vehicular parking spaces, including electric charging point, for that building has been provided in accordance with the plans approved pursuant to condition 1.
22. No part of the development shall be occupied prior to implementation of those parts of the approved Travel Plan reference 23257-HYD-XX-XX-RP-TP-6001 dated 19/05/2023 as are capable of being implemented prior to occupation. Those parts of the approved Travel Plan that are identified therein as being capable of implementation after occupation shall be implemented in accordance with the timetable contained therein including the arrangements for monitoring and review.

23. The details to be submitted under condition 1 shall include two pedestrian/cycle routes connecting Yatton to the Strawberry Line across the site. The pedestrian/cycle routes shall be completed in accordance with the approved details and shall thereafter be retained as such.
24. No dwelling shall be occupied until secure parking facilities for bicycles have been provided for it in accordance with the plans approved pursuant to condition 1. The approved facilities shall thereafter be permanently retained and kept available for the parking of bicycles at all times.
25. The dwellings hereby approved shall not be occupied until measures to generate 15% of the ongoing energy requirements of the development through micro renewable or low carbon technologies have been installed and are fully operational. Thereafter, the approved technologies shall be permanently retained as such.
26. All dwellings shall comply with the DCLG 'Technical housing standards 2015 (as amended) - nationally described space standards'.
27. A minimum of 17% of the dwellings shall be constructed to comply with 'accessible and adaptable housing standards' contained in The Building Regulations 2010 Volume 1 M4(2) Category Two: Accessible and adaptable dwellings. No above ground work shall take place until the location of these dwellings together with details of how they will comply with the said standards has been submitted to and approved in writing by the Local Planning Authority. The approved details shall be fully implemented before these dwellings are occupied.
28. No above ground work shall take place until surface water drainage works have been implemented in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The submitted details shall provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site to greenfield run off rates and volumes, taking into account long-term storage and urban creep, and the measures taken to prevent pollution of the receiving groundwater and/or surface waters in accordance with the drainage strategy prepared by Hydrock now Stantec dated 3 September 2024 (Document

Reference: 23257-HYD-XX-XX-RP-DS-5002-P07). The details shall include a timetable for implementation.

29. The details to be submitted under condition 1 shall include the current and proposed finished ground levels (6.43m AOD) and Finished Floor Levels (6.88m AOD), in accordance with the drainage strategy prepared by Hydrock now Stantec dated 3 September 2024 (Document Reference: 23257-HYD-XX-XX-RP-DS-5002-P07) across the site together with the slab, floor and ridge levels (in accordance with the approved height and scale parameter plan) of the proposed dwellings in relation to the ridge height of at least two adjoining buildings and/or fixed datum points. The development shall be carried out in accordance with the approved details.
30. Prior to the first occupation of the development, a Flood Management Plan shall be submitted to and approved in writing by the Local Planning Authority. This shall include an evacuation plan, flood resilience measures and measures, including signage, to manage any impacts of flooding on the access from Shiners Elms. Thereafter, the development shall be carried out in accordance with the approved Flood Management Plan.
31. The details to be submitted under condition 1 shall include facilities for the separate storage and collection of waste and recycling materials. No dwelling shall be occupied until the facilities relating to that dwelling have been provided as approved. Thereafter, the facilities shall be permanently retained as such and kept available for the storage and collection of waste and recycling materials.
32. Prior to the occupation of the 150th dwelling, a vehicular access to the southern boundary of the site linking with Chescombe Road shall be constructed and open for use in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority.

End of schedule

Appeal Decision

Hearing held on 17 July 2025 & 18 July 2025 (online)

Site visits made on 16 & 17 July 2025

by H Nicholls MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 August 2025

Appeal Ref: APP/P1615/W/25/3363981

Land North East of Grove Lane, Lydney

- 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 Lantar Developments Ltd against the decision of the Forest of Dean District Council.
 - The application Ref is P1619/23/OUT.
 - The development proposed is outline application for residential development for up to 80 dwellings, including 50% affordable housing, and all associated works, with all matters reserved for future determination except for access (excluding internal roads).
-

Decision

1. The appeal is allowed and planning permission is granted for outline application for residential development for up to 80 dwellings, including 50% affordable housing, and all associated works, with all matters reserved for future determination except for access (excluding internal roads) at Land North East of Grove Lane, Lydney, in accordance with the terms of the application, Ref P1619/23/OUT, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by the appellant against the Council. This application is subject of a separate decision.

Preliminary Matters

3. The application was made in outline form with scale, layout, appearance and landscaping reserved for future consideration. In this context, I have treated the submitted layout plans as broadly indicative in nature.
4. Following the determination of the appeal application, the revised National Planning Policy Framework (the Framework) was published in December 2024. Following this, and as required by the Framework, the potential future flood risk scenarios have been considered for all areas of development and points of access. Despite the appeal site falling within Flood Zone 1 and at a low risk of flooding, the overlap of a modest number of indicatively placed dwellings on an area of increased future surface water flood risk has raised the flood risk considerations to a main issue in this appeal.
5. An agreed draft S106 planning obligation was submitted prior to and was discussed at the hearing. The final engrossed version, dated 17 July 2025, was received on the 25 July 2025.

6. The parties agreed a Statement of Common Ground (SoCG) which outline key points of agreement on the housing land supply position and affordable housing needs to which I return below.

Main Issues

7. The main issues are as follows:

- whether the development complies with the development plan in respect of its scale, nature and location;
- whether the development would be sustainably located in terms of access to facilities and services and reducing the need to travel; and
- whether the development would be safe and avoid the increased risk of flooding elsewhere.

Context

8. The appeal site is situated at the northern end of Allaston Road, between Grove Lane to the south west and Allaston Grove sawmills to the north, in the Allaston area of Lydney. The eastern boundary of the appeal site to Allaston Road is formed by a hedgerow of approximately 1 metre in height and there is an agricultural access in the vicinity of existing dwellings towards the southern end of the boundary. Public rights of way run along Grove Lane and along the outer western side of the site. There are two, single mature trees within the site and the landcover is currently grass which is used for grazing livestock.
9. The outline proposal seeks permission for up to 80 dwellings, including 50% affordable housing with all associated works. Only the single vehicular access and secondary pedestrian access from Grove Lane into the site are to be considered at this stage with internal roads reserved for future consideration. All other matters, including scale, layout, appearance and landscaping, are also reserved for future consideration. The site extends to around 5 hectares and the indicative plans show around 2.64 hectares of this would be developed, with blue and green infrastructure taking up around 2.4 hectares. On the basis of a scheme for up to the maximum number of 80 dwellings, the gross density would be 16 dwellings per hectare (dph), but the net density would be 30 dph.

Reasons

Location, scale and nature of development

10. The reason for refusal on the decision notices alleges conflict with four policies based on the site's location outside of the settlement boundary for Lydney and the reliance on private vehicles owing to the locational characteristics and limited bus, walking and cycling opportunities. These issues have been separated into two distinct main issues.
11. In respect of the first issue in terms of the principle of development, Policy CSP.5 of the *Forest of Dean District Council Core Strategy* (adopted 2012) (Core Strategy) sets a spatial strategy for the plan area based on housing targets for the period to 2026, of which Lydney was to receive the greatest proportion. CSP.5 also seeks to prohibit the release of greenfield sites unless it can be proven that land is not available from other sources, i.e. brownfield, and is needed to meet the plan's requirements. Policy CSP.4 similarly seeks to reinforce the existing

settlement pattern in a manner which reinforces the importance of the towns, especially Lydney and Cinderford where most change was forecast to take place through the application of the Core Strategy policies. It is these broader objectives of the Core Strategy that the appellant says the appeal scheme accords with.

12. However, the appellant accepts that the site is a greenfield site outside of, albeit adjoining the settlement boundary for Lydney as defined in the policies maps of the Core Strategy and *Lydney Neighbourhood Development Plan 2014 - 2024* (made 2015) (LNDP). There is therefore accepted conflict with Policies ENV1 of the LNDP and Policies CSP.1, CSP.4 and CSP.5 in this regard. Whether reduced weight should be attached to this conflict is a matter considered in the planning balance below.
13. The *Forest of Dean District Council Allocations Plan 2006 – 2026* (adopted 2018) (Allocations Plan) contains the allocations for housing growth and other strategic developments for the plan area for the plan period, including many for Lydney which remain as commitments or are currently under construction. The Allocations Plan also reaffirms the settlement boundary for Lydney. Policy AP1 of the Allocations Plan frames the need to take decisions based on whether a development is sustainable or not, having regard to the overall aim of improving the economic, social and environmental conditions of the area. I return to this below.
14. Policy AP4 of the Allocations Plan is primarily about the design of development which, save for accessibility considerations within and linking out from the site, are best considered at reserved matters stage.

Whether sustainably located

15. Policy CSP.4 of the Core Strategy refers to the need for development to improve the quality of the environment with special regard to the quality of town centres, general rural character of the district and any protected environments such as Conservation Areas. This is relevant because the general rural character of the district is evident as one travels through it and the considerations of accessibility and connectedness via walking, bus and cycling opportunities need to be taken in this context.
16. Paragraph 89 of the Framework indicates that planning decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport).
17. As agreed in the SoCG, Lydney has overtaken Cinderford and Coleford and is now the largest settlement in the District. It is the only settlement with a passenger railway station that connects to Gloucester, Cheltenham, Newport and Cardiff. Also agreed is the point that Lydney is the highest ranking settlement¹ in the District for retail, community facilities and businesses. Consequently, I equate such

¹ Under the Forest of Dean District Council Settlement Hierarchy Assessment (September 2018)

a scale of settlement and its connectivity as being able to limit the need for out-commuting or facilitating such by means other than vehicles as a realistic option.

18. In terms of the facilities in Lydney, it has a town centre with pubs, shops and cafes; a leisure centre; schools, including a secondary school; healthcare provision; supermarkets, and other spaces and buildings for recreational and community uses. It is understandable that growth has been focussed on Lydney to maximise the availability of these facilities and limit the need for residents to travel elsewhere within the rural district.
19. A variable topography is also a notable feature of the district as a whole and this is no different for Lydney. Generally, the southern extent of the settlement is on the lower elevation and it climbs uphill away from the River Severn. The appeal site is situated at the north-easternmost tip of Lydney, in Allaston. This is at the highest point of the settlement, with two main routes connecting back to the town centre; one via Albert Street/Springfield Road/Primrose Hill and Allaston Road and the other via Driffield Road and Highfield Road.
20. In terms of distances and taken in reverse order from furthest by road/footway, the appeal site edge on Grove Lane is around 4km from the train station, 3km from the Tesco store and town centre and around 3km from the secondary school. Paragraph 4.4.1 of the Manual for Streets (MfS) states that walkable neighbourhoods are typically characterised as having a range of facilities within 10 minutes walking distance (around 800m). However, it states that this is not an upper limit, and that walking offers the greatest potential to replace short car trips, particularly those under 2km. Given that the aforementioned range of facilities within the town centre and the train station are over 2km, they may be most likely to be accessed via car, particularly if shopping for bulky items is one of the purposes of the trip being made. However, it is clear that the travel distances are short and despite the incline to the appeal site for the reverse journeys, are capable of being made on foot or cycle if desired.
21. Having reviewed the evidence of the County Council as part of the Community Infrastructure Levy Statement² with reference to the document, *Travel to School for children of Compulsory school age*³, free transport would not be provided as the secondary school is not further than 3 miles (i.e. 4.8km) from anywhere within the appeal site. The 3km distance, or modestly greater if measured to the front door of dwellings further north-east into the appeal site, is walkable by ambulant pupils of secondary school age. I return to the safety and desirability considerations about the route options below.
22. Within around 2 – 2.2km are the Highfield Road bus stops (via route avoiding Driffield Road), the dentist and Lydney Practice Health Centre. Again, these routes would be modestly elongated when taken from a central point in the site rather than the closest connecting point of Grove Lane/Allaston Road. However, again, these are short journeys that whilst preferably made by foot or cycle, would involve journey lengths of a matter of minutes by vehicle.
23. The facilities which are comfortably within the 2km or 20 minute walking radius of the site include the Primrose Hill School (around 1.1km, 13 mins walk), the Butchers (1.1km, 13 minutes walking time), Severn View Inn Pub (1.3km, 15 mins

² Gloucestershire County Council – Planning Obligations (Libraries and Education Infrastructure) Compliance Statement Summary

³ DFE guidance dated January 2024

walk) and the Mesne Park (1.3km, 15 mins walk). Journeys to these facilities have the most probability of being made on foot and would not be arduous given the relatively modest topographical differences. However, notwithstanding its valued role within the community, the Butchers does not operate as a general convenience store and so its ability to limit the need to travel elsewhere for top-up shopping purpose is relatively limited. Within around 260 metres of the site is the Grove Lane Bus Stop but as it only currently offers a single weekly service, it has limited prospects of reducing the need to travel by car.

24. In terms of the nature of the walking routes to town and Highfield Bus Stop, there are footways linking the appeal site along the length of the route, even though crossing over a short section is necessary. I walked these routes as part of my site visits and found them to be suitable and my encounters with many young people moving around the area suggested that they are well used for such purposes without issue. There are also routes which meander through the residential estates that avoid some of the Allaston Road. These footways and linking cut ways are similarly suitable for walking and are alongside less trafficked roads.
25. I did not see many cyclists and cycling infrastructure around Lydney is limited, in fact notably absent at the Allaston end of the settlement. However, the roads are typical two way widths with the sections of parked cars on one side of the carriageway are not uncommon in an urban setting. With due care and attention, such features can be safely navigated by cyclists and vehicles sharing the road.
26. The Driffield Road route has largely been excluded from consideration as a walking or cycling route because it is a steeper, predominantly single width rural road, restricted to 40mph, with limited passing places and lighting. I agree that it is not the simplest route to navigate by vehicles for simultaneous two-way traffic, let alone by foot or cycle.
27. In terms of bus services, the Grove Lane bus stop offers too little a service to be meaningful and I give it little further consideration save to say that an improvement to the bus infrastructure would be beneficial and could be more useful with an enhanced service provision. The Highfield Road bus stop near the petrol filling station, around 2km from the appeal site, offers a far more regular service around hourly to two hourly, 7 days a week to places including Coleford, Chepstow and Gloucester. There is existing bus stop infrastructure in the form of a passenger shelter displaying timetables and I saw that it was used during my site visits. It is clearly a benefit to have services available from this location and the provision of cycle stands could assist with some linked trips being made. Overall, it offers some choice for journeys, or at least parts thereof, being made by public transport.
28. I have also been offered details of the Robin Demand Responsive Transport Service which could help people get around the town and wider locale based on their transport needs. It has some capacity to reduce vehicle trips if the journeys to given destinations are made by a number or group of people. However, the extent to which it can offer a shared transport service when specifically required by its users is, to an extent, unclear. As such, I place limited weight on its ability to offset vehicle trips to and from the appeal site.
29. In terms of what may be able to be improved, through the Walking, Cycling and Horse Riding Report (WCHAR) a number of improvements were proposed that would assist with promoting safe walking from the site which are outlined in the

submitted Technical Note 01: Transport Assessment⁴. These measures, including traffic calming near Grove Lane and areas of tactile paving at new dropped kerb locations, would support the implementation of the Travel Plan, of which one of the main objectives would be to encourage less reliance on the car, wherever practical, particularly for short distance journeys. The Travel Plan would form a requirement of a planning obligation with payments on a per-dwelling basis to ensure its implementation and management.

30. There is a swathe of land off Driffield Road extending down from Allaston towards the centre of Lydney which is currently undeveloped but which has allocations/permissions⁵ for predominately housing with some mixed uses. This swathe of land hosts a number of public rights of way (PROWs) and links, many of which are already well used, which, if incorporated within well-designed schemes, have potential to offer a wider variety of connecting routes for walking to facilities and services in Lydney. The fact that these schemes have not yet commenced on the ground is unfortunate and is also delaying the anticipated delivery of a community building/shop to the area. I attribute limited weight to the prospects of such outcomes being delivered in the short term, but the location and sustainability credentials of the site may be improved to a modest degree in the fullness of time.
31. I have also noted that the parties do not disagree about the vehicle movements that would be generated by the scheme which have been forecast using models reflective of the area's limited accessibility to public transport. The Highways Authority advises that the scheme would not give rise to an unacceptable impact on highway safety or a severe impact on congestion and I find no reason to disagree on this basis.
32. Drawing all of the above together, Lydney town is clearly a sustainable location but the location of the site within it is suboptimal, given the journey lengths and nature of routes to facilities and public transport stops. The site could be said to be reasonably sustainably located, not entirely reducing the need to travel but offering some choice in the way that people may choose to do so and by minimising journey lengths where travel by car is unavoidable. As such, the proposal raises a degree of conflict with, in particular, Policy CSP.4 of the Core Strategy which, amongst other things, seeks to concentrate development at the towns in a manner that relates closely to their respective intended roles and taking advantage of the individual characteristics of each.

Flood risk

33. The originally submitted site-specific Flood Risk Assessment⁶ indicates that the appeal site falls within Flood Zone 1, at low risk of fluvial, tidal and all other forms of flooding.
34. In January and March 2025, the national map showing the risks of flooding from surface water were updated to show a general increase in properties and areas 'at risk' from surface water flooding. The current surface water flood map shows that the chance of surface water flood risk on site has increased in extent since the appeal application was determined with an overall low annual probability of flooding of 1 in 1000 (or a 0.1% chance) but with a small area in the south-west of

⁴ Rappor, Dated February 2024

⁵ Consented development of c. 200 dwellings off Driffield Road, Refs 1284/13/OUT, APP/P1615/W/14/2218921 and P1591/18/APP

⁶ October 2023

the site at a medium risk annual probability of flooding from surface water of 1 in 100 (or 1%) annual probability. The future scenario for 2040-2060 worsens to a greater risk of surface water flooding (medium probability) to an area indicatively shown occupied by plot nos. 21 – 27. The Framework of December 2024 requires that the future flood risks are considered and that the sequential test is applied where any built development and accesses would overlap with areas of flood risk.

Sequential Test

35. The main parties agreed the methodology for undertaking the sequential test and identified⁷ a total of 70 sites. Of the 70 sites, 29 were found to be at a higher level of flood risk than the appeal site but 11 of those were still to be allocated for housing under the emerging Draft Local Plan with a combined predicted capacity of dwellings in the order of 2,180 dwellings. However, the parties have also identified that there are 9 sites and 5 grouped sites (combined from a further 16 total sites) which are sequentially preferable to the appeal site in flood risk terms. The combined capacity from the sequentially preferable sites is in the order of 1,413 dwellings. Thus, the appeal scheme fails the sequential test.
36. The main parties also agree in the SoCG that the Council's unmet housing needs both over the short and long term cannot be fully met by sequentially preferable alternative sites and that sites with a similar or worse flood risk will need to be developed to meet the housing needs of the District.
37. Given the nature of the flood risks, i.e. surface water, it is relevant that a site-specific Drainage Strategy, supported by percolation test results, proposes to manage surface runoff by a SUDS solution utilising infiltration basins and some reprofiling of the land. The geological conditions support this proposal, and subject to conditions, will mean that the areas of increased surface water flood risks can be fully mitigated. Whilst the development could not resolve all surface water drainage issues in the wider locale, it would provide a SUDS system to deal with any impermeable areas created by the development, with an allowance for climate change. It would avoid an increased risk of flooding elsewhere. It is also relevant to note that the submitted plans do not show a fixed layout that necessarily determines that built development shall be placed in the areas of increased future surface water flood risk. These indicative layouts have been consulted upon and represent an otherwise acceptable form of layout and density, and even if it was determined to be the most suitable layout at reserved matters stage having regard to all constraints, the development could proceed in a manner that mitigates against the increased flood risks to ensure that the development is safe throughout its design life whilst also avoiding an increase in flood risks elsewhere. These measures would ensure compliance with Policy CSP.2 of the Core Strategy and with the approach outlined in the exceptions test outlined in the Framework.
38. As such, the proposal fails the sequential test on flood risk grounds based on the future surface water flood risks for a potentially developable area of the site which raises a degree of conflict with Policy CSP.1 of the Core Strategy and the Framework. I return to this in the planning balance below.

⁷ Using sources including the Strategic Housing and Employment Land Availability Assessment (SHELAA) 2024, the adopted Development Plan3 (Allocations Plan, Cinderford Northern Quarter, Area Action Plans and any made Neighbourhood Plans), The Regulation 19 Draft Local Plan, extant planning permissions granted in the three year period between 1st March 2022 and 1st March 2025, excluding minor developments and reserved matters approvals

Other Matters

Emerging Local Plan

39. The Council has produced a Regulation 18 emerging Draft Local Plan in the summer of 2024. Since then, the updated Framework has necessitated a revisitation of the housing needs underpinning the strategy of the plan and the associated Local Development Scheme (LDS). As an illustration of this, for the 20 year period of the emerging Draft Local Plan, the need would be in the order of 12,000 dwellings using the standard method, instead of the 6,600 homes consulted on as part of the Draft Local Plan.
40. The updated LDS indicates that the Draft Local Plan would be submitted for examination by Autumn 2026, though the appellant disputes the prospect of this timeline being achievable. Nonetheless, the parties agree that, despite Lydney forming the focus for growth within the emerging Draft Local Plan, it can only carry limited weight at the present stage. I agree that limited weight should be applied.

Housing Land Supply

41. The SoCG sets out the parties' agreement that the Core Strategy is over five years old and that as a consequence, the local housing need must be calculated in accordance with the standard method, as set out in the Framework and Planning Practice Guidance. Using the standard method, the agreed annual figure rises by an additional 270 dwellings per annum over the previous need of 330 dwellings pa, to a total of 3,150 homes over the five year period with a 5% buffer included.
42. The agreed deliverable supply of housing for the period 2024 to 2029 is 1,146 dwellings as set out in the *Forest of Dean Housing Delivery Note 2023/2024*. Whilst the Council indicated that it intended to provide an updated Housing Delivery Note for 2024/2025, this was not made available to me prior to the hearing. Notwithstanding the Council's anticipation of a modestly improved position on the publication of the updated Housing Delivery Note, the parties agreed that the housing land supply position should be taken as between 1.81 and 1.93 years with related shortfalls of between 2,004 and 1,840 dwellings.
43. It is this magnitude of shortfall which allowed the parties to agree that the provision of housing should attract at least substantial weight in favour of the appeal and I find no reason to reach an alternative view.

Affordable Housing Need

44. The SoCG sets out the undisputed position that there are 1,638 households in need of affordable housing in the District, with 521 of those demonstrating a connection to Lydney – representing the highest area of need. At 50% affordable housing, the scheme would deliver more than the 40% affordable housing required by Core Strategy Policy CSP.5 and the indicative housing mix, incorporating affordable rent, shared ownership and First Homes, is appropriate and agreed with the Council's Housing Strategy and Enabling Officer.

Habitats Regulations - Wye Valley & Forest of Dean Bat Special Area of Conservation (the Bat SAC)

45. The Bat SAC is designated under the *Conservation of Habitats and Species Regulations 2017* (as amended) (the Habitats Regulations) for its Annex II

species, Greater horseshoe bat (*Rhinolophus ferrumequinum* (code S1304) and Lesser horseshoe bat (*Rhinolophus hipposideros*) (code S1303). The conservation objectives include the need to ensure the site contributes to achieving the favourable conservation status of its qualifying features, by maintaining or restoring the extent and distribution, structure and function of the habitats of qualifying species.

46. Through the potential effects on the qualifying features through both the construction and operational phases, the appeal proposal could adversely affect the integrity of the Bat SAC through losses of foraging habitat and connectivity, losses of vegetated commuting / connectivity corridors and through the impacts of external lighting and disturbance on foraging and commuting behaviours.
47. As the scheme is not directly necessary for the management of the Bat SAC and even on its own, it could cause likely significant effects, an appropriate assessment under the Habitats Regulations is necessary.
48. The submitted survey information indicates a significant level of use of the site by the relevant species, particularly around hedgerows and mature trees. These features would be retained, save for a 130 metre section of hedgerow with 15m buffer zones along the western and northern boundary hedgerows which correlate with the majority of recorded bat activity. The proposals also include replacement hedgerow and trees, sensitive lighting scheme, SuDs scheme, pond and additional landscaping for biodiversity. In addition, conditions would be required to secure a construction environmental management plan (CEMP) – biodiversity, landscape and ecological management plan and the lighting strategy with requisite monitoring.
49. Provided the measures outlined above are secured and implemented, the integrity of the Bat SAC would be conserved.

Habitat Regulations - The Severn Estuary Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar Site (the Severn Estuary Protected Sites)

50. The SAC is designated under the Habitats Regulations for a range of estuarine and mudflat habitats and wader bird species, including *Atlantic salt meadows (Glauco-Puccinellietalia maritimae)* (code 1330), Sea lamprey (*Petromyzon marinus*) (code 1095), River lamprey (*Lampetra fluviatilis*) (1099) and Twaite shad (*Alosa fallax*) (1103).
51. The conservation objectives of the SAC include the need to ensure that the site contributes to achieving the favourable conservation status of its qualifying features and the populations of qualifying species by maintaining or restoring the extent, distribution and structure and function of qualifying natural habitats and habitats of qualifying species.
52. The features for which the SPA is designated under the Habitats Regulations includes a waterbird assemblage, comprising Bewick's Swan (*Cygnus columbianus bewickii*) (Code A307), common shelduck (*Tadorna tadorna*) (code A048, Gadwall (*Anas strepera*) (code A051) Dunlin (*Calidris alpina alpina*) (code A149), Common redshank (*Tringa tetanus*) (Code A162), and greater white-fronted goose (*Anser albifrons albifrons*) (code A394).

53. The conservation objectives of the SPA include the need to maintain the integrity of the site and ensure it contributes to achieving the aims of the Wild Birds Directive by maintaining or restoring the extent, distribution, structure and function of the habitats of the qualifying features, the supporting processes on which they rely, the population of each of the qualifying features and their distribution within the site.
54. The Ramsar listing is for a number of criteria relating to estuarine habitat communities and migratory fish including: Salmon (*Salmo salar*), sea trout (*S. trutta*) and sea lamprey (*Petromyzon marinus*).
55. As the scheme is not directly necessary for the management of the Severn Estuary Protected Sites, even on its own, the proposal could cause likely significant effects through changes to the quantity, quality, timing, treatment or mitigation of emissions or discharges to air, water or soil, and through additional recreational disturbance to the Severn Estuary Protected Sites. As such, an appropriate assessment under the Habitats Regulations is necessary.
56. The appellant has agreed to opt into Forest of Dean District Council's Strategic Solution⁸ to enable planning applicants to mitigate the impacts of their development on the SAC, financial contributions can be made by applicants to help pay for the mitigation measures set out in the Strategy. The Strategy details mitigation measures (on-site e.g. rangers and signage) along with costings for these measures. The cost of the strategic mitigation contribution has been calculated at £286 (July 2023) per unit subject to indexation. This would be secured by planning obligation (S106).
57. The outline design of the proposals includes open space provision and footpath links out of the site; this will assist in reducing potential recreational impacts. However, a site specific on-site scheme including homeowners packs is considered appropriate to further help divert recreational pressures from the Severn Estuary Protected Sites. These could be secured by planning condition.
58. In terms of potential hydrological effects and pollution control measures, surface water quality and flow rates can be appropriately controlled by conditions to secure a surface water strategy (SUDS). A Construction Environmental Management Plan (CEMP) relating to biodiversity would also be required.
59. Provided the measures outlined above are secured and implemented, impacts on the integrity of the Severn Estuary Protected Sites will be maintained.

Habitats Regulations Conclusions

60. On the basis of securing the comprehensive mitigation measures by way of S106 legal agreement and agreed planning conditions, as the competent authority for the purposes of the Habitats Regulations, I conclude that there will not be adverse effects on the integrity of the Bat SAC or Severn Estuary Protected Sites taken either alone or in-combination with other proposals or projects. Though Natural England had previously commented, its updated advice has also been sought at the appeal stage and I have taken its comments into account.

⁸ Lydney Severn Estuary Recreation Strategy (2017)

Heritage Considerations

61. The submitted Built Heritage Statement⁹ outlines that the proposal has the capacity to impact upon two built heritage assets within the vicinity of the site; the Grade II listed Soilwell Manor (List Entry 1186619) and the adjacent, and separately listed at Grade II, Soilwell Farm (List Entry 1121872). These assets are around 230 metres or so from the appeal site.
62. The evidence details that the heritage significance of Soilwell Manor is primarily derived from its architectural and historic special interest as seventeenth century manor house, later farmhouse, though with several alterations, though the cessation of an agricultural role and its previously associated farm buildings has impacted the significance to a small degree, as have some changes to its built fabric. The site is considered to make a minor contribution to the heritage significance of Soilwell Manor insofar as it currently forms part of the wider agricultural landscape and rural context within which the Manor has always sat. However, other edge of settlement features and the intervening industrial estate are features that already detract from the quality of this setting.
63. The evidence details that the heritage significance of Soilwell Farm is primarily defined by its architectural and historic special interest as a former seventeenth or eighteenth century farm building once associated with Soilwell Manor, now in use as a domestic dwelling. Its position as part of the former farm complex and adjacency to Soilwell Manor result in a group value and shared setting, with the wider rural context also contributing to a lesser extent to the significance. As a smaller, yet unaltered part of the site's wider rural context, the appeal site contributes positively to the heritage significance of Soilwell Farm, albeit to a small degree.
64. Given their close proximity, group value and broadly shared setting, the effects of the appeal proposal on their significance would be similar. The introduction of dwellings, disturbance and general urbanising effects would result in the loss of part of the rural contexts to these assets. Some additional landscaping would help to minimise the degree of urbanisation and intervisibility, though not entirely mitigate against such. These effects would amount to less than substantial harm to the significance of two designated heritage assets, although in each case the degree of less than substantial harm would be at the lower end of the scale.
65. Under paragraph 215 of the Framework, less than substantial harm to the significance of a designated heritage asset or assets should be weighed against the public benefits of the proposal. The delivery of up to 80 dwellings in the context of a sizeable housing land supply shortfall, with 50% affordable housing in an area of identified need are public benefits which outweigh the lower level less than substantial harms to the significance of the identified designated heritage assets.

Best and Most Versatile (BMV) agricultural land

66. The appeal site comprises around 5 hectares of agricultural land which the Council's mapping system indicates is Grade 3 quality. The appellant has not put forward any assessment as to the actual grading of the land in terms of whether or not it constitutes BMV as Grade 3a or alternatively, Grade 3b which does not constitute BMV. Though not a matter of dispute between the parties, the loss of

⁹ RPS, Ref JAC29036, dated October 2023

potentially BMV agricultural land of around 5 hectares in area is a matter to weigh in the overall balance. I return to this below.

Character and appearance

67. In terms of overall effects on landscape character and visual amenities, the parties agree in the SoCG that the landscape and visual harm from the scheme would be limited, as would typically arise from the introduction of development on an agricultural field on the undeveloped edge of a settlement. The dwellings would be built at a low density of around 20 dwellings per hectare and compensatory hedgerow planting would be provided to offset the frontage hedgerow loss required to construct the access. Additional landscaping would also play a role in softening the effects of the scheme. The parties agree that the Indicative Masterplan shows that the site could be developed in a manner that would respect the character, scale, form and density of the surrounding area. Nonetheless, the modest landscape and visual harms attract weight against the scheme in the overall planning balance.

Self Build Housing

68. The scheme would provide 4% of the total number of dwellings as self/custom build housing as part of the S106 obligation as required by Core Strategy Policy CSP.5 and the *Council's Self-build and Custom Housebuilding Guidance Note*¹⁰. Though I have limited evidence on the number of register entries, this modest provision would help to meet the demand for this type of housing and has received support from the Council's Housing Enabling Officer.

Representations

69. I have noted the concerns in relation to the capacity of the sewerage network. However, a condition would be added to seek details of a foul drainage scheme, including pumping station details and maintenance regime, prior to commencement of development. Surface water would be treated separately of the foul flows and would be subject of a separate condition. Compliance with this pre-commencement condition would indicate that the dwellings could be served by adequate mains foul drainage infrastructure prior to any first occupation.
70. A number of objectors have highlighted that the semi-rural character of the area and its resident community would be affected by the proposal. As outlined above, the erosion of some of the area's semi-rural character weighs against the scheme.
71. The proposal is at outline stage and details about the layout suggest that a scheme could come forward without resulting in direct or materially harmful overlooking of existing dwellings or garden areas. Though harm to existing residents' wellbeing has been cited as a reason for objection, a new residential development is not incompatible with the area in terms of its character or the noise that would be generated. Light pollution would be avoided through a sensitive lighting scheme, necessary for reasons related to protected species, and construction phase impacts would be temporary in nature with appropriate controls on timing of works, dust and other protection measures. Thus, I do not envisage that the proposal would harm the living conditions of neighbouring occupiers. The

¹⁰ October 2018

extent to which any property values may be affected or views interrupted are not material planning considerations that influence my decision in this case.

72. A number of the submitted representations refer to effects on biodiversity and particular species. The submitted ecological reports cover the effects of the proposal on various species, including bats, reptiles, birds and Great Crested Newts (GCNs). In addition to the mitigation measures required in relation to the Bat SAC and Severn Estuary Protected Sites, other mitigation measures would be required to protect and enhance the biodiversity value of the site and surrounding area.
73. Further evidence suggests that GCNs may be present locally. The location of the ponds in which they have allegedly been identified is separated from the site by metalled roads which are likely to sever their connectivity. However, the recommended condition requiring precautionary working methods will avoid harm.
74. In respect of wider Biodiversity Net Gain (BNG) enhancements, the appeal proposal was submitted prior to these becoming statutorily required. The parties differ on the amount of BNG that can be secured. As ecological enhancements of some amount can be secured by a condition, I can attribute some proportionate positive weight to this aspect in the overall balance.
75. The Council's consultee on air quality indicated that there would not be harmful effects, either from the proposal or on future residents from adjacent business uses. I find no reason to disagree in this regard despite suggestions of the existence of a local pig farm, the odours from which appear to be tolerated by existing residents.
76. In terms of the potential effects on adjacent businesses, the proposal would introduce new dwellings and noise-sensitive receptors in close proximity of these noise sources. The evidence indicates that with appropriate measures, the noise environment can be made suitable for future occupiers without impacting on existing businesses and uses.
77. The lack of infrastructure such as schools, doctors and dentists has been put forward as reasons for objection. The planning obligation would secure planning contributions towards the provision of enhanced school places and healthcare provision where such have been requested by the necessary consultees where capacity and demand figures justify such. The payment of these contributions would help to ensure the necessary infrastructure were provided in a timely way to meet the needs of new residents to avoid exacerbating existing pressures.
78. A number of objectors indicate that the release of greenfield sites should be through the emerging Local Plan and that to allow the scheme would prejudice the outcomes of the plan making process. Whilst I accept that a plan-led system would be preferable, the emerging Local Plan has not yet reached an advanced stage and the scale of the scheme is not such that it would determine all outcomes for growth of Lydney or the wider plan area. Similarly, whilst I appreciate that there are large numbers of houses under development in Lydney already, these existing commitments do not meet the full housing needs of the area going forward.

S106 obligations

79. The completed S106 legal agreement, dated 17 July 2025, secures the following measures and contributions:
- 50% affordable housing with related eligibility clauses, tenure and size mix specifications and accessibility requirements;
 - 4% self and custom build housing plots;
 - The provision of open space including informal areas, community orchard space, local equipped play space, landscaped areas and attenuation features;
 - Details of management company entities and responsibilities for management of open space;
 - Primary education contributions to provide additional school places for primary school age children generated by the scheme at either the Primrose Hill CofE Primary School and/or the Lydney Primary Planning Area;
 - Primary healthcare contributions towards the new healthcare facility in Lydney, proportionate to the new residents generated by the scheme;
 - Severn Estuary Mitigation Contribution to secure environmental and ecological mitigation measures as outlined in the Appropriate Assessment;
 - Library contributions towards improving customer access and stock proportionate to the demand generated by new residents of the scheme at Lydney library; and
 - Travel Plan obligations and associated Travel Plan contributions towards implementation and monitoring responsibilities.
80. Regulation 122 of the *Community Infrastructure Levy Regulations* (2010) (CIL Regulations), as amended, and the Framework (paragraph 58) set out that planning obligations must only be sought where they meet the relevant tests, including where they are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the same. The Council and County Council have submitted CIL Compliance Statements¹¹ outlining the necessity for the various components of the S106 and the methods of calculation for the various financial contributions and the related links to policies of the development plan. Whilst the affordable housing provision exceeds that outlined in the related policy, it is an aspect which would be attributed weight in the overall balance and as such, is necessary as part of the S106.
81. I am satisfied based on the agreement between the main parties and the wording of the S106 that all of the obligations are necessary, directly related, and fairly and reasonably related in scale and kind to the development and can be taken into consideration.

¹¹ Gloucestershire County Council – Planning Obligations (Libraries and Education Infrastructure) Compliance Statement Summary P1619/23/OUT Land North East of Grove Lane (received 4 July 2025) and Justification Statement of Forest of Dean District Council in relation to proposed S106 contributions required in connection with Land North East of Grove Lane, Lydney

Planning Balance

82. Insofar as the proposal comprises a sizeable greenfield development outside of the settlement boundary for Lydney and in a specific location which does not take advantage of its individual characteristics such as to allow ease of access to facilities by non-car modes, it conflicts with the development plan.
83. Given that the Council is unable to demonstrate a five year housing land supply as required by the Framework, the provisions of paragraph 11 d) are engaged. The inability to demonstrate an adequate housing land supply also limits the weight that I attribute to Policies CSP.4 and CSP.5 of the Core Strategy and Policy ENV1 of the LNDP in relation to their affixation on development occurring only within settlement boundaries and only where it has been proven that brownfield or other non-greenfield opportunities have been first explored.
84. On the other hand, Policies CSP.4 and CSP.5 of the Core Strategy promote development within Lydney given its broader role as the most sustainable settlement within the District. Notwithstanding its locational shortcomings within the town itself, the appeal scheme aligns with this overarching objective.
85. Given that sequentially preferable sites exist, the scheme conflicts with the flood risk objectives of Policy CSP.1 of the Core Strategy. A conflict also arises with the aims of the Framework. However, the total capacity of sites in the District currently known to be available and sequentially preferable is at around 1,568 dwellings which is far short of the 12,000 needed under the standard method over the 20 year period of the Emerging Draft Local Plan and is also short of the at least 1,840 dwelling housing land supply deficit. When taken together with the nature of the flood risk and anticipated resolution of such through adequate design and SUDS measures within the development itself, although this harm attracts modest weight in the overall balance, it does not represent a strong reason for refusal under footnote 7 of the Framework. There are no other strong reasons for refusal based on either the Severn Estuary Protected Sites or Bat SAC either.
86. Though the public benefits outweigh the lower level of less than substantial harm to the significance of designated heritage assets, the fact that harm would occur still attracts some weight in the overall balance.
87. The scheme would also result in harm through the loss of around 5 hectares of potential BMV agricultural land and further harms through the effects on the character and appearance of the area. Each of these harms attracts modest weight against the scheme.
88. Turning to the benefits, the main benefit of the scheme is the delivery of housing in the order of 80 dwellings in the context of a current housing shortfall of at least 1,840 dwellings. Another key benefit is the 50% provision of affordable housing of mixed tenures which would go towards meeting a pressing identified local need for such. Each of these benefits attracts substantial weight in favour of the scheme.
89. The provision of 4% self-build plots is an aspect that attracts modest weight in favour of the scheme, widening the choice of available housing products.
90. There would be economic benefits associated with the scheme, both during the construction phase and during the lifetime of the development with future residents spending money at local shops and services in Lydney and the wider surrounding

area. The submitted extract from the House Builder's Federation (HBF) calculator¹² attempts to quantify the level of economic benefits but too little explanation is given about whether the job creation would be direct through construction, or indirect, or if the spending on leisure etc. would be an annual amount or one-off. In the absence of clearer evidence to the contrary, the economic benefits attract modest weight in favour of the scheme.

91. There would be biodiversity enhancements, though the magnitude of such is not statutorily required as BNG or quantified to an agreed level between the parties. As such, I attribute the prospect of even modest enhancement limited weight as a benefit of the scheme.
92. The provision of highway infrastructure to promote non-car modes of travel is necessary to help mitigate the impacts of the scheme but insofar as they could be used by the public at large, they also attract limited weight in favour of the scheme.
93. Under Framework paragraph 11 d) ii), consideration must be given to whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the Framework policies taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination. Having given due regard to these matters, I consider that the adverse impacts of granting permission would not significantly and demonstrably outweigh the totality of the benefits outlined above.
94. As a consequence, the presumption in favour of sustainable development is a consideration of such weight that it indicates that a decision should be made other than in strict accordance with the development plan when taken as a whole.

Conditions

95. I have considered the suggested planning conditions in the context of the Framework and Planning Practice Guidance in relation to the use of such. Where necessary I have made minor changes to ensure the enforceability of the conditions.
96. In the interests of certainty, conditions are required to specify the reserved matters and time limit for implementation of the development. A condition is needed to specify the approved plans.
97. Conditions are also needed to seek details of finished floor levels and sections as well as specify the maximum permissible two storey height of the dwellings in the interests of certainty. For similar reasons, the approved plans are also specified in a separate condition.
98. In the interests of highway safety, conditions are required to ensure all dwellings are provided with the necessary access, turning and parking areas prior to occupation.
99. To protect the character and appearance of the area, conditions are needed in respect of landscaping, including the planting of a replacement hedge inside the access visibility splays.

¹² Appellant Statement appendix 27

100. As a means to ensure the protection of the biodiversity value of the site, the details and implementation of the ecological buffer zone and ecological design strategy are required by conditions. A condition requiring the submission of and adherence to a biodiversity CEMP is also necessary. Similarly, a condition is needed to secure the submission, approval and adherence to a Landscape and Ecological Management Plan in relation to the management of landscaping and ecological enhancement areas. In the interests of maintaining the interests of the Bat SAC, a condition is required to secure a detailed Lighting Strategy.
101. In the interests of maintaining the integrity of the Severn Estuary Protected Sites, a condition is needed to secure a scheme of mitigation for potential recreational disturbance effects.
102. To maintain the character and appearance of the area, a tree and hedgerow protection condition is necessary.
103. Three specific conditions are needed in respect of highway works, one to secure and maintain the necessary visibility at the new point of access, another to secure the offsite highway works and the last to secure the footway provision extending from the new access. These measures will ensure the safety of existing and future highways for all users and promote sustainable modes of travel.
104. To promote the use of more sustainable modes of travel, adherence with the Travel Plan in accordance with the details and timetable therein will be required by condition and monitoring of such will be covered by the S106 obligations.
105. To ensure that the construction phase takes place considerately in relation to highways, a condition is required to secure a construction management plan.
106. To preserve any potentially surviving archaeological features, a condition is needed to secure the implementation of an investigation and recording scheme during the construction phase.
107. In the interests of the living conditions of future occupiers, conditions are needed to ensure that any land contamination is adequately addressed prior to occupation of any dwellings.
108. In the interests of environmental protection and to avoid the increased risk of flooding elsewhere, conditions are needed to secure the implementation of a Sustainable Urban Drainage System, management of the same and raised finished floor levels where any dwellings are shown to be at future risk of surface water flooding.
109. To maintain the capacity of the foul sewerage infrastructure, a condition is needed to prohibit any surface water drainage flows being directed to such. For similar reasons, a condition is necessary seeking details of and implementation of a foul drainage scheme.
110. A condition is needed in respect of waste and recycling storage facilities for all dwellings to ensure that these aspects are an integral and well considered part of the future scheme. In the interests of minimising waste during the construction phase, a condition is necessary seeking details of a site waste management plan.

111. In the interests of the living conditions of future occupiers without detriment to adjacent businesses, conditions are needed to ensure the noise mitigation measures are implemented and effective prior to first occupation.

Conclusion

112. For the foregoing reasons, the appeal is allowed.

H Nicholls

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Hashi Mohamed

Counsel for the appellant

Matt Tyas MSc MRTPI

Principal Planner, Zesta Planning

Tim Slater BEng (Hons) MCIHT CMILT

Associate Director, Rappor (transport)

Mr Simon Mirams

Director at Rappor, Rappor (flood risk)

FOR THE LOCAL PLANNING AUTHORITY:

Stephen Colegate BA(Hons), MRTPI

Principal Planning Officer

Lisa-Marie Robson BSc, MRTPI

Forward Planning Manager

INTERESTED PARTIES:

Martin Hillier

Campaign to Protect Rural England

Mark Howard

Local resident and local Councillor
Lydney

HEARING DOCUMENTS:

Document 1

Map showing site and Lydney services

Document 2

Lydney emerging Neighbourhood Plan

Document 3

Publica Biodiversity Specification #1

Document 4

Appellant costs app

Document 5

Email from Councillor Howard

DOCUMENTS RECEIVED AFTER THE HEARING:

Document 6

Final engrossed S106

Document 7

Amended suggested conditions

Document 8

Council's costs response

Document 9

Appellant's final costs response

SCHEDULE OF CONDITIONS

- 1)
 - a) The development for which permission is hereby granted shall not be commenced before detailed plans showing details of the access (with the exception of those details approved pursuant to condition 16) layout, scale, appearance and landscaping of the site (referred to as "the reserved matters") have been submitted to and approved by the Local Planning Authority.
 - b) Application for the approval of the reserved matters shall be made not later than the expiration of three years beginning with the date of this permission.
 - c) The development hereby permitted shall be commenced not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
- 2) The details to be submitted under Condition (1) shall include existing and proposed site and floor levels and sections through the site.
- 3) The development hereby permitted shall be carried out in accordance with the approved plans listed below:
 - Site Location Plan (Drawing No. P23-0514_DE_004_A_01)
 - Proposed Access & Visibility Assessment (Drawing No. SK01 P01)
 - Visibility Assessment (Drawing No. SK02 P01)
- 4) No building on any part of the development hereby permitted shall exceed two storey in height.
- 5) The details submitted under Condition (1) shall include provision for properly consolidated and surfaced car parking and manoeuvring facilities. Such facilities shall be provided prior to the dwellings served by them being occupied and shall be kept permanently available for such use with the car parking spaces retained for parking only and the manoeuvring facilities for manoeuvring.
- 6) The development for which permission is hereby granted shall not be commenced until the landscaping scheme submitted under condition (1) incorporating existing flora and which shall include re-planting of a hedgerow behind the visibility splay required pursuant to condition 16 has been approved by the Local Planning Authority.

Such a scheme shall be carried out in all respects in accordance with the approved scheme as per the landscape implementation phasing plan approved pursuant to condition 7.

If at any time in the five years following planting any tree, shrub or hedge shall for any reason die, be removed or felled, it shall be replaced with another tree, shrub or hedge of the same species during the next planting season to the satisfaction of the Local Planning Authority, unless the Local Planning Authority gives prior written consent to any variation.
- 7) Prior to above ground works a landscape implementation plan shall be submitted to and approved in writing by the Local Planning Authority. The

landscaping details approved pursuant to conditions 1 and 6 shall be carried out in accordance with the approved details and the timetable therein.

- 8) Prior to the commencement of the development hereby permitted, a phasing and implementation plan for the establishment and protection of the ecological buffer zone shall be submitted to and agreed in writing with the Local Planning Authority. The ecological buffer is described and shown on plans in the Lighting Impact Assessment dated June 2024 (Ref: 27676-LIGH-0401 Rev A) and includes the ecology area on the western and northern boundaries which shall extend a minimum of 15m. from the canopy edge of boundary vegetation into the site. The buffer zone hereby identified shall be excluded from all development activity, service runs (apart from works associated with SUDS construction and access paths) and any other works related to the development, apart from that required for the establishment of any buffer fencing and landscaping. The buffer zone shall be protectively fenced prior to any works on site and shall be consistent with any tree protection plan approved pursuant to condition 14 and the Construction Ecological Management Plan – Biodiversity submitted pursuant to condition 09. The buffer zone shall be implemented in accordance with the details approved pursuant to conditions 1, 10 (Ecological Design Strategy) and 11 (Landscape Ecological Management Plan) and shall be carried out in accordance with the landscaping phasing implementation plan submitted pursuant to condition 7 and shall thereafter be similarly maintained.
- 9) The details submitted under Condition (1) shall include a Construction Environmental Management Plan - Biodiversity (CEMP-B). The CEMP-B shall be in accordance with Publica Biodiversity Specification #1 “Precautionary method of working for reptiles, common toads, hedgehogs, badgers and nesting birds” and shall include, but not necessarily be limited to, the following:
 - i. Risk assessment of potentially damaging construction activities, including works related service runs and services, and any other works such as archaeological investigations;
 - ii. Identification of ‘biodiversity protection zones’;
 - iii. Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during pre-construction works, construction including services (may be provided as a set of method statements including for habitats, water environment/pollution prevention, birds, badgers, reptiles, dormice, and amphibians etc);
 - iv. The location and timing of sensitive works to avoid harm to biodiversity features (e.g. daylight working hours only starting one hour after sunrise and ceasing one hour before sunset);
 - v. Use of protective fences, exclusion barriers and warning signs, including advanced installation and maintenance during the construction period;
 - vi. The times during construction when specialist ecologists need to be present on site to oversee works;
 - vii. Responsible persons and lines of communication;
 - viii. The role and responsibilities on site of an Ecological Clerk of Works (ECoW) or similarly competent person(s);

ix. Ongoing monitoring, including compliance checks by a competent person(s) during construction and immediately post-completion of construction works.

No development shall take place (including ground works and vegetation clearance) until the CEMP-B is approved by the Local Planning Authority and it shall thereafter be implemented and adhered to in accordance with the approved details for the duration of the construction period.

- 10) No development shall take place until an ecological design strategy (EDS) addressing the design of the scheme for retained habitat and created habitat, including the SuDs scheme, created hedge and woodland habitat on the eastern boundary for mitigation and enhancement, has been submitted to and approved in writing by the Local Planning Authority.

The EDS shall include the following:

- i. Purpose and conservation objectives for the proposed works;
- ii. Review of site potential and constraints;
- iii. Detailed design(s) and/or working method(s) to achieve stated objectives, including all the road crossing, SuDs, wildlife pond, retained and created habitats;
- iv. Extent and location/area of proposed works on appropriate scale maps and plans;
- v. Type and source of materials to be used where appropriate, e.g. native species of local provenance;
- vi. Timetable for implementation demonstrating that works are aligned with the proposed phasing of development;
- vii. Persons responsible for implementing the works;
- viii. Details of initial aftercare and long-term maintenance (typically the first 5-year period);
- ix. Details for monitoring and remedial measures; and
- x. Details for disposal of any wastes arising from the works.

The EDS shall be implemented in accordance with the approved details and all features shall be retained in that manner thereafter.

- 11) Prior to above ground works, a Landscape and Ecological Management Plan (LEMP) which shall include the proposed SuDs scheme shall be submitted to, and be approved in writing by the Local Planning Authority. The content of the LEMP shall include, but not limited to the following:
- i. Description and evaluation of features to be managed;
 - ii. Landscape and ecological trends and constraints on site that might influence management;
 - iii. Aims and objectives of management (including those related to species);
 - iv. Appropriate management options for achieving aims and objectives, including appropriate enhancement measures;
 - v. Prescriptions for management actions;
 - vi. Preparation of a work schedule (including an annual work plan capable of being rolled forward over a 5-year period);

- vii. Details of the body or organisation responsible for implementation of the plan;
 - viii. Legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer;
 - ix. Ongoing monitoring and remedial measures, including for lighting monitoring (which shall be consistent with the details submitted pursuant to condition 12);
 - x. Timeframe for reviewing the plan; and
 - xi. Details of how the aims and objectives of the LEMP will be communicated to the occupiers of the development.
 - xii. The plan shall also set out where the results from monitoring show that conservation aims and objectives of the LEMP are not being met, how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.
- The approved plan shall be implemented in accordance with the approved details and similarly maintained unless results from monitoring require revisions.

- 12) Prior to above ground works details of external and internal lighting shall be submitted to and approved in writing by the Local Planning Authority. The details shall be in accordance with ILP Guidance Note 08/18 Bats and Artificial Lighting in the UK and clearly demonstrate that lighting will not cause excessive light pollution or disturb or prevent bats or other species using key corridors, buffer areas, foraging habitat features or accessing roost sites. The details shall include, but not limited to, the following:
- i. A drawing showing sensitive areas and/or dark corridor safeguarding areas and buffer zones (which shall be consistent with the parameters identified by and required to be submitted pursuant to condition 8), including all boundaries and retained and created habitats including the SuDs area and wildlife pond, new woodland and hedgerow habitat to eastern boundary;
 - ii. Technical description, design or specification of external lighting to be installed including shields, cowls or blinds where appropriate;
 - iii. A description of the luminosity of lights and their light colour;
 - iv. A drawing(s) showing the location and where appropriate the elevation and height of the light fixings;
 - v. Methods to control lighting control (e.g. timer operation, passive infrared sensor (PIR));
 - vi. Lighting contour plans both horizontal and vertical to demonstrate lighting levels on the identified dark areas (i. above) is below 0.2lux on the horizontal and 0.4lux on the vertical plane.
 - vii. Details of monitoring scheme and timescales and periods for reporting to demonstrate compliance and continued compliance with the agreed lux levels.
 - viii. Outline rectification scheme including potential measures (including the decision making process for reporting and implementation of rectification measures) for the lighting strategy and;
 - x. The legal and funding mechanism(s) by which the long-term monitoring and implementation of the plan will be secured by the developer.

All lighting shall be installed in accordance with the specifications and locations set out in the approved details. These shall be maintained thereafter in accordance with these details. Under no circumstances shall any other external lighting be installed.

- 13) An on-site scheme to avoid, cancel or mitigate recreational disturbance arising from the development on the Severn Estuary shall be submitted to and approved by the Local Planning Authority prior to above ground works. The scheme for on-site recreational disturbance mitigation shall have regard to the Lydney Severn Estuary Visitor Survey and Recreation Strategy (2017) and shall include:

- i. Aims and objectives of scheme, including but not limited to; encouraging on-site use of on-site Green Infrastructure; information on the recreational options off-site locally and; on the sensitive nature of the Severn Estuary SAC and how to avoid impacts;
- ii. Detailed design and information on; the number, locations content and wording of onsite information panels at strategic locations; homeowner information packs and leaflets in order to achieve the stated aims and objectives;
- iii. Prescriptions for actions;
- iv. Timing of actions and works;
- v. Details of the body or organisation responsible for implementation of actions;
- vi. Ongoing monitoring and remedial measures;
- vii. A management plan and identification of responsibility for future management;
- viii. A timetable for implementation;

The scheme shall also identify the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The scheme shall also set out (where the results from monitoring show that conservation aims and objectives of the scheme are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.

The approved scheme shall be implemented in accordance with the approved details and timetable therein and shall thereafter be similarly maintained.

- 14) The trees and hedgerows proposed for retention, as shown on the Arboricultural Impact Assessment and Tree Protection Plan (Drawing No: 23157.502, 28-11-23), shall be protected during construction of the approved development in accordance with section 6.2 of BS5937:2012. The alignment of protective barrier fencing as shown on the Arboricultural Impact Assessment and Tree Protection Plan (Drawing No: 23157.502, 28-11-23), shall be installed prior to work commencing and remain in situ until completion of the development.

Storage of materials, landfill, excavation, mixing of concrete/mortar, burning of materials, movement of vehicles or other such harmful activities identified in BS5837:2012 will be strictly prohibited in these areas.

Development thereafter shall be carried out in accordance with the approved details.

- 15) The vehicular access hereby permitted shall not be brought into use until the existing roadside frontage boundaries have been set back to provide visibility splays extending from a point 2.4m back along the centre of the access measured from the public road carriageway edge (the X point) to a point on the nearer carriageway edge of the public road 90.6m to the north and 89.6m to the south (the Y points). The area between those splays and the carriageway shall be reduced in level and thereafter maintained so as to provide clear visibility above 1.05m at the X point and above 0.6m at the Y point above the adjacent carriageway level.
- 16) No works shall commence on site on the development hereby permitted until further design details for the off-site improvements shown on drawing number 220138-RAP-XXXX-DR-TP-6000 in Technical Note 01 dated February 2024 have been submitted to and approved in writing by the Local Planning Authority. The approved works shall be implemented prior to the occupation of the dwellings hereby permitted and shall thereafter be similarly maintained.
- 17) No works shall commence on site on the development hereby permitted until the proposed pedestrian footway provision has been constructed broadly in accordance with drawing numbers SK01 Rev P01 and SK02 Rev P01 both part of the Transport Assessment received 5 December 2023 and no dwellings shall be occupied until the approved works have been completed and are open to the public.
- 18) The approved Travel Plan shall be implemented in accordance with the details and timetable therein, and shall be continued thereafter, unless otherwise agreed in writing by the Local Planning Authority.
- 19) No dwelling on the development shall be occupied until the carriageway(s) (including surface water drainage/disposal, vehicular turning head(s) and street lighting) providing access from the nearest public highway to that dwelling have been completed to at least binder course level and the footway(s) to surface course level.
- 20) No development shall take place, including any demolition works, until a construction management plan or construction method statement has been submitted to and approved in writing by the Local Planning Authority. The approved plan/statement shall be adhered to throughout the demolition/construction period. The plan/statement shall provide for:
 - i. 24 hour emergency contact number;
 - ii. Hours of operation;
 - iii. Parking of vehicle of site operatives and visitors (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction);
 - iv. Routes for construction traffic;

- v. Locations for loading/unloading and storage of plant, waste and construction materials;
 - vi. Method of preventing mud being carried onto the highway;
 - vii. Details of dust suppression methods to be used;
 - viii. Details of how construction noise will be controlled;
 - ix. Measures to protect vulnerable road users (cyclists and pedestrians)
 - x. Any necessary temporary traffic management measures;
 - xi. Arrangements for turning vehicles;
 - xii. Arrangements to receive abnormal loads or unusually large vehicles;
 - xiii. Methods of communicating the Construction Management Plan to staff, visitors and neighbouring residents and businesses.
- 21) No development shall take place within the application site until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the Local Planning Authority.
- 22) No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the Local Planning Authority.
- The results of the site investigation shall be made available to the Local Planning Authority before any development begins. If any significant contamination is found during the site investigation, a Remediation Scheme specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority before any development begins.
- 23) Should a Remediation Scheme be required as a consequence of the details approved pursuant to condition 22, the approved scheme shall be fully implemented in accordance with the approved timetable of works and before the development hereby permitted is first occupied. Any variation to the scheme shall be agreed in writing with the Local Planning Authority in advance of works being undertaken. On completion of the works the developer shall submit to the Local Planning Authority a Verification Report with evidence confirming that all works were completed in accordance with the agreed details.
- 24) If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this contamination shall be submitted to and approved in writing by the Local Planning Authority. The remediation of the site shall incorporate the approved additional measures.
- 25) Finished floor levels shall be set a minimum of 500mm above existing ground levels for any dwellings shown to be in areas at risk from surface water flooding both now and in the future within Technical Note – Flood Risk (Rappor, April 2025).

- 26) No development permitted shall be commenced until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the Local Planning Authority. The information submitted shall be in accordance with the principles set out in the approved drainage strategy and shall ensure that flood risk is not increased elsewhere. The submitted details shall:
- i. provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters; and
 - ii. Provide a full risk assessment for flooding during the groundworks and building phases with mitigation measures specified for identified flood risks.

The approved scheme for the surface water drainage shall be carried out in accordance with the approved details before the first occupation of the development hereby permitted with the exception of the approved scheme of measures for dealing with surface water drainage during construction which shall be implemented upon commencement of development in accordance with the approved details and maintained for the duration of the construction period.

No surface water and/or land drainage shall be allowed to connect directly or indirectly with the public sewerage network.

- 27) No dwelling hereby permitted shall be occupied until a SUDS management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime, has been submitted to and approved in writing by the Local Planning Authority. The approved SUDS maintenance plan shall be implemented in full in accordance with the agreed terms and conditions prior to the occupation of the dwellings hereby permitted and thereafter similarly maintained.
- 28) Prior to the commencement of the development hereby permitted, details of a foul drainage scheme, including any necessary pumping station and associated maintenance regimes, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out prior to the occupation of the dwellings to which they relate and shall thereafter be similarly maintained.
- 29) No below or above ground development shall commence until a detailed site waste management plan or equivalent has been submitted to and approved in writing by the Local Planning Authority. The detailed site waste management plan must identify: - the specific types and amount of waste materials forecast to be generated from the development during site preparation and demolition and construction phases; and the specific measures will be employed for dealing with this material so as to minimise its creation, maximise the amount of re-use and recycling on-site; maximise the amount of off-site recycling of any wastes that are unusable on-site; and reduce the overall amount of waste sent to landfill. In addition, the detailed

site waste management plan must also set out the proposed proportions of recycled content that will be used in construction materials.

The detailed site waste management plan shall thereafter be fully implemented as approved.

- 30) No above ground development shall commence until full details of the provision made for facilitating the management and recycling of waste generated during occupation have been submitted to and approved in writing by the Local Planning Authority. This shall include details of the appropriate and adequate space and infrastructure to allow for the separate storage of recyclable waste materials. The management of waste during occupation must be aligned with the principles of the waste hierarchy and not prejudice the local collection authority's ability to meet its waste management targets. The approved details shall be fully implemented as approved prior to the occupation of the dwellings to which they relate and thereafter similarly maintained.
- 31) The details submitted under Condition (1) shall include noise mitigation measures which shall be based on the noise survey and noise impact assessment of Environmental Noise Assessment Version 2.0 prepared by Acoustic Consultants Ltd received 4 December 2023. The approved noise mitigation measures shall be carried out in accordance with the approved details prior to the occupation of the dwellings to which they relate and shall thereafter be similarly maintained.
- 32) Prior to the occupation of any of the dwellings hereby permitted, a post-construction verification of effective sound insulation and thermal control shall be submitted to and approved in writing by the Local Planning Authority. The residential dwellings shall not be occupied until the submitted report has been approved by the Local Planning Authority.

--- ENDS ---