

ATLAS

PLANNING GROUP

STATEMENT OF CASE

PL/2025/09512

The Stables at Manor Farm House, East Grimstead, SP5 3RT

February 2026

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EXECUTIVE SUMMARY

- 1.1 Atlas Planning Group Ltd have been instructed by Mr & Mrs Mullens to provide a Statement of Case to accompany an appeal submission, following Wiltshire Council's refusal of application PL/2025/09512. The application sought full planning permission for the erection of a dwelling with associated works.
- 1.2 Wiltshire Council have a substantial shortfall resulting in the tilted balance being engaged. As a result, and in accordance with the National Planning Policy Framework, permission must be granted unless it can be proven that any adverse impacts both significantly and demonstrably outweigh the benefits of doing so. Notwithstanding Wiltshire's housing land position of 2.42 years, on balance, it was considered that the proposal's conflict with development policies regarding their spatial strategy, character of the area and amenity, would significantly and demonstrably outweigh the benefits of one dwelling.
- 1.3 This appeal has been submitted because the Local Planning Authority has failed to accept the appellant's fallback position on the site. The appeal site has extant planning permission for a large building to be erected under PL/2025/03227. The proposal subject to this appeal is of the same design, massing, scale and footprint as the extant permission. However, rather than an agricultural use, a residential use has been proposed with its associated fenestration. Parking and landscaping arrangements remain unchanged.

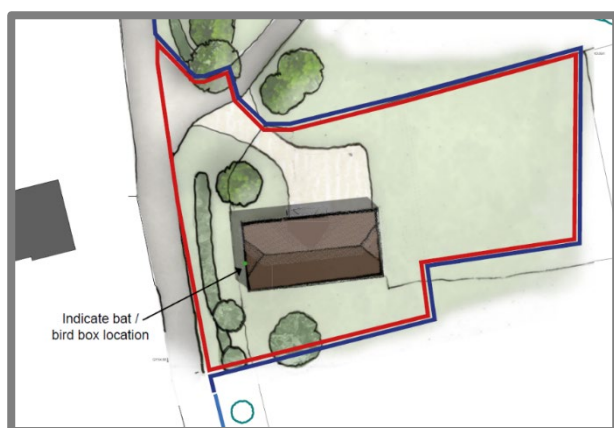


Figure 1: Approved Site Plan



Figure 2: Proposed Site Plan

- 1.4 The LPA has argued that the fallback does not exist because the site does not benefit from any Class Q permitted development rights. However, a valid fallback position does exist – there is a real prospect of the appellants erecting a building of identical size and footprint on the site. Class Q permitted development rights are irrelevant.

- 1.5 This Statement therefore demonstrates that the proposal should be approved because the proposed scheme does not give rise to any additional harm over and above the extant permission. Officers have previously accepted the design and siting of the building. Moreover, given the separation distances, orientation, screening and position of windows, there would not be any impact on amenity.
- 1.6 The proposal presents an opportunity to provide a new dwelling in a sustainable rural location that would help the housing crisis. Therefore, this Statement demonstrates that the tilted balance lies firmly in favour of granting permission.

INTRODUCTION

2.1 Application PL/2025/09512 for the erection of a dwelling with associated works was refused on 4th February 2026 by delegated decision. The Decision Notice states two reasons for refusal, namely:

1. *The application site lies outside of the limits of development in the open countryside where future occupiers would be reliant upon the private car. Under Core Policy 1 (Settlement Strategy), Core Policy 2 (Delivery Strategy), Core Policy 23 (Southern Wiltshire Community Area), Core Policy 60 (Sustainable Transport) and Core Policy 61 (Transport and Development) the development is not considered to be 'infill' development so does not comply with the Settlement and Delivery Strategies as a matter of principle. The Strategies are designed to ensure new developments satisfy the fundamental principles of sustainability, and so it follows that where a proposal such as this fails to comply with them then it will be unsustainable in this overarching context. The proposal would therefore cause unacceptable harm to the environmental and social objectives of the area and it, therefore, contrary to Core Policies 1, 2, 23, 60 and 61 of the adopted Wiltshire core Strategy and paragraphs 2,7-15, 48 and 110 of the National Planning Policy Framework (NPPF).*
2. *The application site lies within the Special Landscape Area. Saved Policy C6 of the Salisbury District Local Plan and Core Policy 51 of the Wiltshire Core Strategy require development to protect, conserve and where possible enhance landscape character. The development proposal would see the erection of a dwellinghouse upon the rural parcel of land that by way of its design and siting fails to respect the prevailing character and form of the area, is not in keeping with the surrounding pattern of residential development and would result in unacceptable harm to the residential amenity. As a consequence, the scheme would be contrary to Core Policy CP51 (Landscaping), saved policy C6 of the Salisbury District Local Plan, criteria i, ii, iii, and vi of Core Policy CP57 (Ensuring High Quality Design and Place Shaping) and the requirements of the NPPF.*

GROUNDS OF THE APPEAL

2.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states:

“If regard is to be had to the development plan for the purposes of any determination to be under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise”

2.3 Therefore, the starting point for determination must be the policies of the adopted development plan, which consists of the Wiltshire Core Strategy (2015) and saved policies from the former Salisbury District Local Plan. Regard must also be given to other material considerations such as fallback positions, relevant Case Law and Planning Appeal decisions which could justify a departure from the Development Plan.

2.4 The principal issues relating to this appeal are as follows:

- **Is the principle of development in this location acceptable?**
- **Is there an unacceptable level of harm to the character of the area?**
- **Is there an unacceptable level of harm to residential amenity?**

PRINCIPLE OF DEVELOPMENT

2.5 The first reason for refusal is concerned with the site’s location and sustainability in terms of the settlement and delivery strategy that is outlined in the WCS (CP1 and CP2).

2.6 As confirmed in paragraph 5.9 of the submitted planning statement, the Appellant agrees the site would not constitute infill development under CP2. However, the site is positioned within the small village of East Grimstead where there are many residential properties in the vicinity (to the north, to the south and west).

2.7 East Grimstead is a small village in a rural area but as paragraph 110 of the NPPF recognises, *“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”*. Therefore, the fact that the site is within a rural area should not preclude it from being developed. This is particularly because there

is the option for future residents to use sustainable modes of transport. The bus stop is approximately 50m north of the site entrance as illustrated below.



Figure 3: Source - Bing Maps

2.8 The Salisbury Reds map showing the full route and wide range of available connections to other towns and villages beyond Salisbury is included at Appendix A but as shown below route 37 connects various villages to the city centre, as well as Dean Station where there is a train station which is on the Wessex Main Line. Dean Station provides direct services to both Salisbury and Romsey, including larger destinations such as Southampton Central. Connecting services direct to London Waterloo are available in Salisbury.



Figure 4: Source – Salisbury Reds bus services

- 2.9 The frequency of bus services is included at Appendix B and the frequency of trains from West Dean is detailed in the full timetable included at Appendix C), but in summary Monday – Saturday there is one train an hour between the hours of 6am to midnight.
- 2.10 If a resident was a commuter who wanted to use the train service, then they would only need to drive 5 minutes to reach the train station. Commutes to train stations often take much longer than this in urban areas where people often drive to reach car parks and spend time in traffic, which would result in much higher emissions from cars.

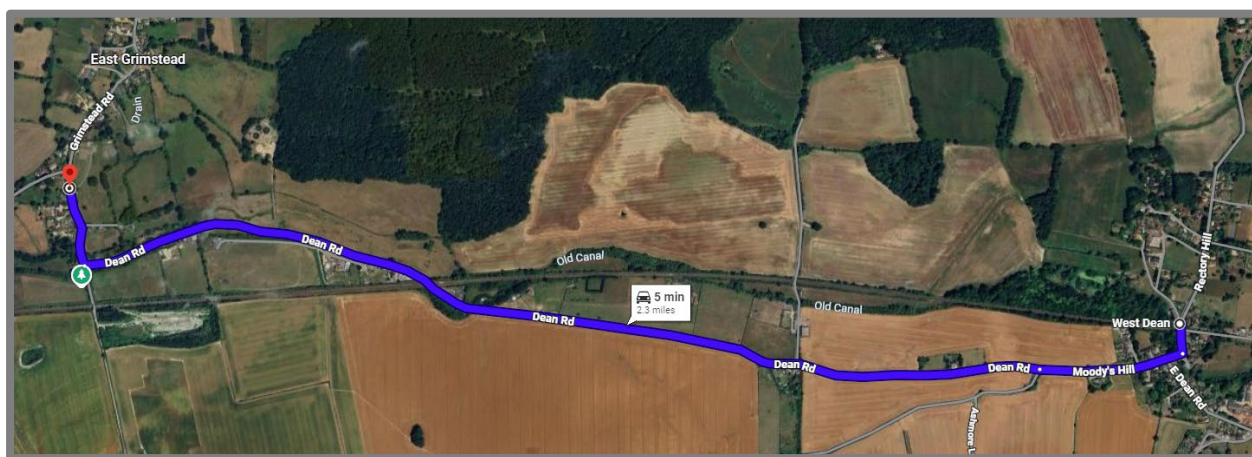


Figure 5: Route of the short drive to the train station

- 2.11 The proximity of this station along with the regular services confirms that sustainable transport options are a real possibility for future residents. The appeal site can be found a sustainable location.
- 2.12 The Appellants would also accept a condition requiring the installation of an electric car charging point. The NPPF glossary confirms that electric cars are a sustainable mode of transport. So, this would be directly encouraging sustainable modes of transport. It should also be noted that the NPPF glossary updated this definition after the appeal decision.¹ for 1 new house was dismissed nearby to the site (although no fallback existed in that case).
- 2.13 Traffic movements arising from a minor development of one house are not reasonably going to be 'severe'. This appeal concerning a minor scheme for one house has been demonstrated to be close to rail services and can benefit from bus services within 50m of the site's entrance. Within the context of a

¹ Appeal Decision - 31998976

rural county, this is considered to be acceptable in terms of providing opportunities to use sustainable transport modes.

FALLBACK

2.14 Notwithstanding this, the principle of development should also be considered acceptable because the planning balance weighs firmly in favour of the principle of 1 house on this site for the following reasons:

- 1) The lack of housing supply not only triggers the tilted balance but means the policies for the supply of housing (such as CP1 and CP2 that limit development at small villages to infill) cannot be afforded full weight. As highlighted in the Officer Report, the LPA can only demonstrate 2.42 years housing land supply, which the LPA accept is a significant shortfall. Policies CP1 and CP2 are not fit for purpose, as demonstrated by the substantial housing deficit.
- 2) Of particular importance to this case is the existence of a valid fallback position (approved planning application PL/2025/03227) which allows a new building (albeit in agricultural use) to be built in the same location as the proposed dwelling. The dwelling is proposed to be the same size and materials than that approved for the barn. The block plans below show the similarities, the only differences being fenestration which has been amended to suit residential requirements. This is discussed later in this Statement of Case with regard to whether there is adverse impact arising on the character of the area that could be severe enough to justify refusal.

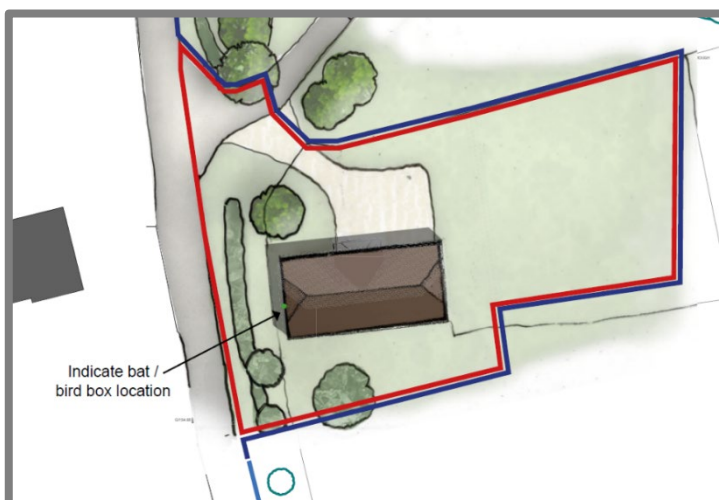


Figure 6: Approved Site Plan



Figure 7: Proposed Site Plan

2.15 The block plan comparison confirms the location of the building is the same, as is the access and parking area. The only difference is the rooflights and dormers on the south side of the building, which as confirmed later in this Statement, would not be visible or harmful to the wider area. Indeed, there is only one small window on the first floor of the west elevation, which serves an en-suite.

2.16 With regard to the Officer's report and consideration of the fallback position, they state at the top of page 10:

The crux of the matter when applying this case law judgement to this scheme is that the agricultural barn/stable block approved under PL/2025/03227 has not yet been implemented and therefore, does not benefit from any Class Q permitted development rights to be converted into a dwellinghouse. Therefore, the fallback position as argued within the planning statement does not exist.

2.17 The Officer is claiming that, as the approved building has not been implemented, the site does not benefit from a fallback position. The LPA argue that there is not a fallback because the applicant cannot implement their Class Q permitted development rights. However, the application of Class Q is not relevant in this case.

2.18 The key point is that there is a valid fallback position for the applicant to erect a building on this site that is identical in size, footprint and general design. The fact that the building is not yet under construction is not pertinent. Case Law confirms that fallback positions only need to be a '*real prospect*' and, "*for a prospect to be a real prospect, it does not have to be probably or likely; a possibility will suffice*".

2.19 They continue that, "*the real prospect will depend, for example, on planning permission having been granted for development, or there being a firm design for the alternative scheme..*" (Appendix D) ²

2.20 In this case, there is a firm alternative for an agricultural barn to be erected on site, which would have a similar impact on the character and appearance of the area. Whilst there is no fallback for the change of use of the building to residential as it is not yet built, the lack of housing as well as the overall sustainability credentials of the site are factors which weigh in favour of granting permission. Besides, it is also pertinent to highlight that if the applicants built the agricultural barn (which is a very real possibility), they could then apply for a change of use to residential after.

² *Michael Mansell v Tonbridge and Malling Borough Council 2017 EWCA Civ 1314*

2.21 Accordingly, with regard to the principle of development and the first reason for refusal, full weight cannot be afforded to the Council's delivery strategy which has not been successful in delivering the number of homes required across Wiltshire. That said, the overall aims and objectives of these policies (CP1 and CP2) are to focus development to sustainable locations, and this appeal concerns a minor scheme for one house that has been demonstrated to be close to rail services and can benefit from bus services within 50m of the site's entrance. Within the context of a rural county, this is considered to be acceptable in terms of providing opportunities to use sustainable transport modes and as such, the planning balance is in favour of granting permission.

VISUAL IMPACT OF THE PROPOSALS

2.22 The second reason for refusal claims that the proposal would be an unacceptable addition to the rural area. The LPA argue that the siting and overall design of the new dwellinghouse would fail to respect the prevailing character and form of the area.

2.23 However, this argument is not well justified given the size, siting, form and height of the building has already been deemed acceptable through the grant of PL/2025/03227 on site. Although the use of the building proposed would be residential and the fenestration would be amended, these two factors are not considered sufficient to justify the proposal as wholly unacceptable, particularly when the building is hardly visible from public vantage points.

2.24 When assessing the acceptability of the barn approved through application PL/2025/03227, the Officer's Report (included at Appendix E) states (page 9),

*"The site is within the Special Landscape Area as defined by saved policy C6 of the Salisbury District Local Plan. Given the nature of the proposal as previously outlined within the report, **it is unlikely that this scheme will have any impact on the SLA given the context of the site the proposed building is located within**".*

2.25 The Officer's report for the application subject of this appeal states at page 11,

*"Having regard for the bridleway/public rights of way known as GRIM1 and GRIM15 that runs around the southern and western boundaries of the site, whilst views of the proposed dwellinghouse would be visible from these vantage points, **there would be in officer opinion, not be any adverse impact to users of these bridleways/public rights of way to warrant refusal of planning permission**".*

2.26 However, despite concluding that the impact from surrounding PROW would not be sufficient to refuse the application (which we agree with, as the images taken from nearby vantage points show, figures 7,8 and 9), Officers go on to state that the siting of the dwelling would have a detrimental impact on the amenity of the immediate area, namely Wellmead Barn and the wider countryside setting.

2.27 The reason for refusal is therefore confusing at best, particularly, as the siting is the same as that approved, the appeal site is in a residential setting along Grimstead Road, and the site is well screened by existing vegetation.

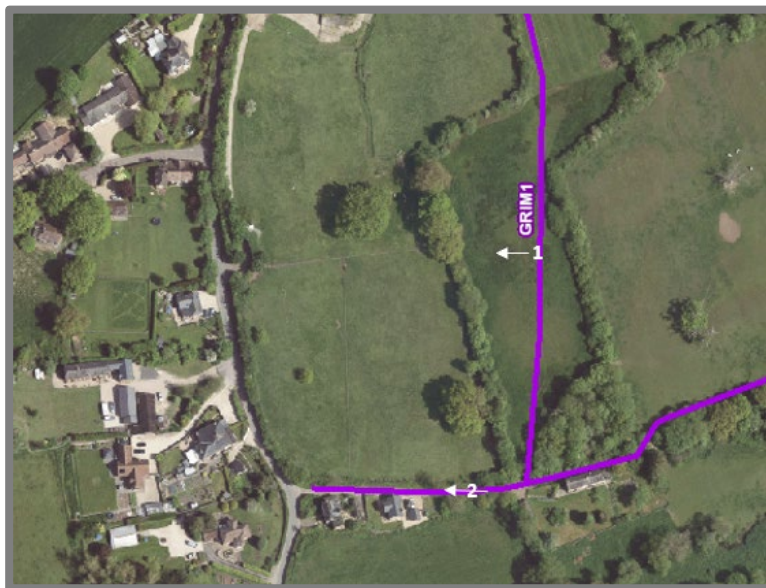


Figure 8: Viewpoint locations



Figure 9: Viewpoint 1



Figure 10: Viewpoint 2

2.28 The proposal is not considered to detrimentally impact the amenity of Wellmead House or the surrounding area. Officers have agreed that there would be no impact from surrounding PROWs and the appeal site is in a location where dwellings are not uncommon. These factors, along with the fact that the site is well screened by existing vegetation, ensures that the area would not be detrimentally impacted.



Figure 11: View towards the site from Grimstead Road

2.29 Only one gable end would be partly visible from Grimstead Road but Officers argue that *“whilst there is existing hedgerow that runs along the boundary of the site that offers a degree of shielding, this hedgerow is deciduous, the application site is elevated from the public highway and therefore, given the relationship of the neighbouring property, Wellmead Barn would have a detrimental impact on the amenity of this dwellinghouse. As a consequence, the siting and overall design of the dwellinghouse fails to respect the prevailing character and form of the area and; given the proximity of the new dwellinghouse would result in an unneighbourly relationship to Wellmead Barn.”*

2.30 The Officer Report mentions that the proposed dwellinghouse is to be sited perpendicular to the location of the previously approved barn/stable block under planning consent, PL/2025/03327. It may be that Officers have misinterpreted the plans and believe the siting to be different to that approved and therefore more harmful. However, as highlighted above, the siting, height and scale between that approved and proposed is **the same**. Therefore, the building would be no more prominent than which could occur through the extant permission. The gable end approved is not also significantly different to that proposed, as shown below.



Figure 12: Approved Elevation



Figure 13: Proposed Elevation

2.31 The Officer’s Report refers to a dismissed appeal for one dwelling close to the site (circa 60m to the south) whereby the Inspector considered domestic paraphernalia would lead to the suburbanisation of a rural setting. Although appeal decisions can be material considerations, in this case the dismissed appeal is of little relevance given there was no fallback position for a building of the same size to be located on that site. The dismissed appeal related to an undeveloped parcel of land rather than a site with extant permission.

- 2.32 Whilst Officers consider the differences between the approved barn and the proposed dwelling to be 'stark', given the screening afforded by the site, it would be difficult for those passing to decipher whether the building on site was in agricultural or residential use. The insertion of fenestration does not significantly alter the design and appearance of the building.
- 2.33 PD rights could also be removed as part of this appeal, which would prevent domestic outbuildings from being erected, although this seems unnecessary given this application must be assessed against its own landscape context. As mentioned above, only the gable end of one of the elevations would be partially visible from the street (1st floor); it would not be reasonable to say this design change alone would lead to suburbanisation, or significant harm, particularly when the only difference between the approved and proposed schemes (for the gable elevation is the inclusion of a single window to a bathroom).
- 2.34 Overall, there are existing residential properties all along Grimstead Road and the inclusion of the windows to the approved building, together with the residential use would not cause a significant level of harm to the character of the area over and above what has already been approved at the site. Therefore, the proposed development should be considered acceptable.

AMENITY IMPACT OF THE PROPOSALS

- 2.35 The Officer Report alleges that the dwelling would have a detrimental impact on Wellmead Barn which is located on the opposite side of the road to the appeal site (identified on in figure 11 below).
- 2.36 The Officer states that the proposed dwelling is in stark contrast to the design of the previously approved *"with a large degree of glazing on all elevations and roofslopes added offering views of the surrounding area and to an extent, to Wellmead Barn, that is immediately adjacent to the site."*
- 2.37 Furthermore, the Officer argues *"whilst there is existing hedgerow that runs along the boundary of the site that offers a degree of shielding, this hedgerow is deciduous, the application site is elevated from the public highway and therefore, given the relationship of the neighboring property, Wellmead Barn would have a detrimental impact on the amenity of this dwellinghouse"*.
- 2.38 However, it is a stretch to say that there is a large degree of glazing on **all** elevations. The gable end that would be closest to Wellmead Barn is limited to one window at first floor level which would serve an ensuite bathroom (so could be conditioned to be obscure glazing). Given the screening provided by the

boundary hedge and the fact that the window serves a non-habitable room, with a window likely to be obscured, there would not be a loss of privacy nor impact on amenity.



Figure 14: Elevation that would be adjacent to Grimstead Road

2.39 Officers give considerable weight to the impact on Wellmead Barn in their decision, arguing that the new dwelling by virtue of its proximity is considered to have a detrimental impact to the amenity of this property by way of the overbearing nature of the scheme. However, Wellmead Barn is set back 9.5m from the highway and is separated from the appeal site by both a road and hedge. The two sites are not immediately beside each other; the proposed dwelling is also positioned 7.3m back from the highway and over 22m from Wellmead Barn itself. The proposal is not also positioned directly opposite this neighbour. Therefore, amenity would not be unduly harmed.

2.40 Wiltshire Council Residential Design Guide states at paragraph 9.2.5 *“Where new development is proposed adjacent to and overlooking an existing private amenity space, the traditional ‘back-to-back’ separation of minimum 20m should be respected.”* Given that the proposed dwelling and Wellmead Barn are not ‘back-to-back’ and are separated by a highway and hedging and the proposed dwelling is only served by rooflights on the north elevation, the amenity of this neighbour would not be impacted.

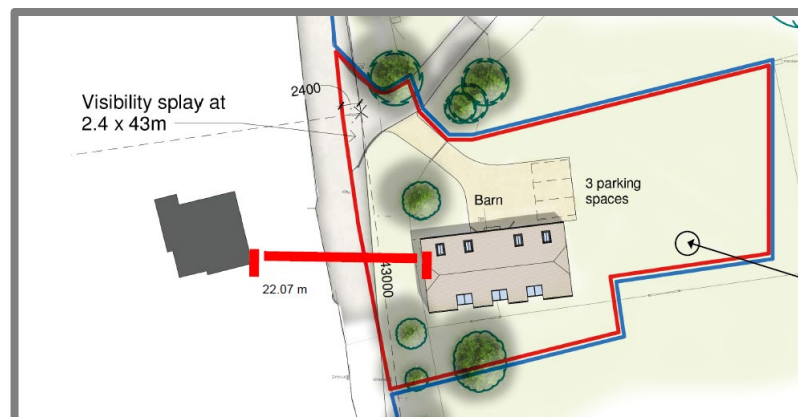


Figure 15: Block plan showing distance to Wellmead Barn

2.41 Consequently, all things considered, residential amenity impact is not considered to be either harmful or significant in the planning balance.

PLANNING BALANCE & CONCLUSIONS

- 3.1 Wiltshire Council have a substantial shortfall resulting in the tilted balance being engaged. As a result, and in accordance with the NPPF, planning permission must be granted unless it can be proven that any adverse impacts both significantly and demonstrably outweigh the benefits of doing so.
- 3.2 The LPA contend that the tilted balance does not lie in favour of granting planning permission. The LPA argue that the siting and overall design of the new dwellinghouse would fail to respect the prevailing character and form of the area and given the proximity of the new dwellinghouse would result in an unneighbourly relationship to the neighbouring property, Wellmead Barn in regard to overlooking/amenity impacts. The harm the LPA identify do not outweigh the benefits of a new dwelling.
- 3.3 However, this Statement has reiterated that the proposal, apart from fenestration and use, is identical to the building approved under application PL/2025/03227. The size, siting, materials, landscaping and parking arrangements do not differ to that which has already approved.
- 3.4 The LPA argue that a fallback does not exist, but this Statement has shown that this stance is incorrect. The key issue is whether the proposed scheme gives rise to any additional harm over and above what has been accepted at the site as part of the fallback, and if so, does it outweigh the benefit of providing a new house in the context of the worst housing crisis to ever exist in this country.
- 3.5 In environmental terms, there is no harm over and above what has already been approved. The building is the same size as that which has been approved, is no closer to neighbouring properties and BNG will be secured on land to the south of the site via condition. There is no loss of any vegetation, and the site is barely visible from public vantage points. Neighbouring amenity would also be preserved.
- 3.6 Additionally, the new home would be closer to some facilities of East Grimstead than other properties within the established built area of the village and lies in close proximity to regular bus services, which offer a realistic opportunity for future occupiers to access employment and services within the Principal Settlement of Salisbury and further afield if using the train station at Dean. In any case, the modest additional journeys generated by a single dwelling are not likely to have a significant effect on the local road network and would therefore not cause any more than very minor harm in environmental terms.

- 3.7 In social terms, the proposal would contribute to the much-needed supply of housing in the area and provide the opportunity for new residents to contribute to the vitality of a rural community. A High Court judgement (Appendix F) commented that *'a rural home could contribute to social sustainability because of its proximity to other homes'* and the future occupiers may well participate in the local community.
- 3.8 In economic terms, the proposal would provide a contribution during the construction stage, and subsequently from future occupiers using local services and participating in local employment. The proposal would also be liable for Community Infrastructure Levy (CIL) and pay council tax, providing an additional economic benefit for the area.
- 3.9 Given the lack of any significant harm over and above the fallback position, we consider the tilted balance remains in favour of granting permission.

A



B

TIMETABLE TO

Lockerley, The Deans & Salisbury

37

via The Tytherleys, The Grimsteads & Alderbury

including route 38 between West Dean & Salisbury

Mondays to Fridays except public holidays

route number 38 sch

Laverstock Schools Grounds				1605	
Salisbury Endless Street Stop D		1210	1400	1620	1805
Tollgate Road The Beeches		1214	1404	▼	▼
Alderbury Crossroads		1221	1411	1635	1816
Whaddon Post Office		1224	1414	1638	1819
West Grimstead Church Street		1227	1417	1641	1822
East Grimstead Gothic Cottage		1232	R	1646	1827
Farley Church		1237	R	1651	1832
East Grimstead Gothic Cottage		1242	R	1656	1837
West Dean Bridge	0655	1248	R	1702	1843
West Tytherley Beales Court	0703	0914	1255	R	R R
East Tytherley Cricket Club	0708	0920	1301	R	R R
Lockerley The Vicarage	0712	0923	1304	R	R R
Lockerley Green	0716	0927	1308	R	R R
East Dean Glebe Meadow	0719	0930	1311	R	R R
West Dean Village Green	0723	0725	0933	1314	
East Grimstead Gothic Cottage	0729	0732	0939	1320	
Farley Church	0734	▼	0944	▼	
East Grimstead Gothic Cottage	0740	▼	0950	▼	
West Grimstead Church Street	0745	▼	0955	1324	
Whaddon Post Office	0749	▼	0958	1327	
Alderbury Crossroads	0752	▼	1001	1330	
Tollgate Road The Beeches	▼	▼	1010	▼	
Salisbury New Canal	0806	0813	1015	1345	
Salisbury Castle Street			1019		

starts from Laverstock schools on school days only

via Pitton, Firsdown and Laverstock Schools (0800), then continues to South Wilts Grammar School

no buses on Saturdays, Sundays or public holidays

sch schooldays only

R request stop only -
please tell the driver if you want to get off

this service is provided with funding from Wiltshire Council

where to catch your bus in Salisbury City Centre



where to get on route 37
Stop D in Endless Street



information

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customer services **01202 338420**

Mondays to Fridays 0800 - 1830

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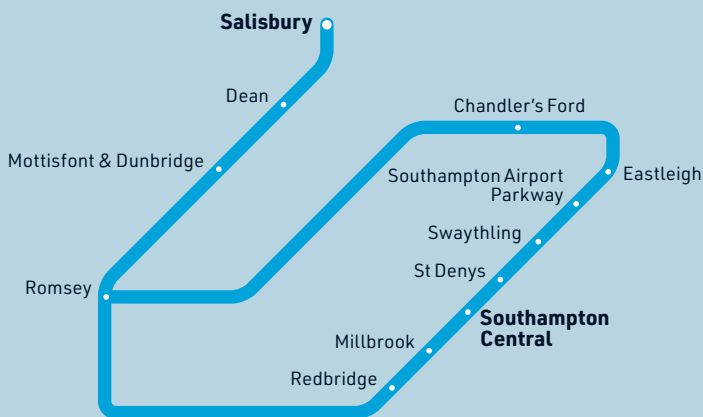


youtube.com/salisburyreds



C

25 Romsey to Salisbury via Eastleigh and Southampton Central



Train times

14 December 2025 until 16 May 2026

South Western
 Railway

Your timetable

This timetable shows services between **Romsey, Chandler's Ford, Eastleigh, Southampton Airport Parkway, Swaythling, St Denys, Southampton Central, Millbrook, Redbridge, Romsey, Mottisfont & Dunbridge, Dean and Salisbury.**

Buy a ticket before you board

You need to buy a valid ticket before you get on your train. We know that most of our passengers do this before travelling, and we have a duty to those passengers to make sure no-one travels without paying. This is why we run a penalty fares scheme across most of our network.

If you travel without a valid ticket to or from a station within the penalty fares area, you may have to pay a penalty fare. A Penalty Fare is £100 plus the price of the full single fare applicable for your intended journey. However, if it is paid within 21 days, the Penalty Fare is reduced to £50 plus the price of the single fare applicable.

We have a policy to, wherever possible, prosecute everyone who deliberately avoids paying.

Travel with Confidence

So that you can travel with confidence, we are ventilating trains to refresh air, improving information about journeys and trains, and extensively cleaning trains and stations.

Changes to train times

Network Rail need to do engineering work to maintain and improve the rail network. They do a lot of this work at weekends and during holiday periods, but they also need to do some work overnight during the week.

If we need to close rail lines so Network Rail can carry out work, buses will replace train services. We may also have to alter train services over a wider area.

Please check for any changes to train times before travelling at weekends, late in the evening or early in the morning.

Look for the 'Changes to train times' posters at stations, or visit our website at **[southwesternrailway.com](https://www.southwesternrailway.com)**.

Cycles on trains

The services in this timetable have limited room for cycles and we have to apply some restrictions. Our services have space for up to two cycles per two carriage train.

Please refer to Great Western Railway publicity for details of their cycle restrictions.

We will carry folding cycles on any train, as long as they can be folded small enough to be carried safely in the luggage rack.

Cycles are not allowed on buses that replace trains during engineering work.

No-smoking policy

For the comfort of all our customers, smoking and using e-cigarettes is not allowed on any part of our trains or stations.

You can smoke outside the station entrance or in our car parks.

Automated Delay Repay

Register for Automated Delay Repay (ADR). ADR cuts the time it takes to claim and receive compensation if your train is late.

It works for customers who have bought Advance tickets or a Touch Smartcard season ticket from our website.

Click on "Delay Repay" at the top of the homepage of our website or use the QR code above to get more details on how to register for Delay Repay or setup ADR.



MONDAY TO FRIDAY		Romsey and Chandler's Ford to Eastleigh, Southampton Central, Romsey and Salisbury																											
<i>Operator</i>	<i>Notes</i>	GW	SW a	GW	SW a	GW	GW	SW	GW	SW a	GW	SW a	GW	SW a	GW	SW a	GW	SW a	GW	SW a	GW	SW a	GW	SW a	GW	SW	GW	SW a	GW
Romsey	d		0558		0707			0807		0907		1007		1107		1207		1307		1407		1507		1607		1707		1807	
Chandler's Ford	d		0606		0714			0814		0914		1014		1114		1214		1314		1414		1514		1614		1714		1814	
London Waterloo	a		0806b		0908b			1011b		1104b		1206b		1305b		1409b		1504b		1604b		1704b		1806b		1904b		2004b	
Eastleigh	d		0612		0721			0821		0921		1021		1121		1221		1321		1421		1521		1621		1721		1821	
Southampton Airport	d		0616		0726			0825		0925		1025		1125		1225		1325		1425		1525		1625		1725		1825	
Swaythling	d		0618		0728			0827		0927		1027		1127		1227		1327		1427		1527		1627		1727		1827	
St Denys	d		0625		0731			0830		0930		1030		1130		1230		1330		1430		1530		1630		1730		1830	
Southampton Central	a		0630		0736			0835		0935		1035		1135		1235		1335		1435		1535		1635		1735		1835	
Southampton Central	d	0533	0632	0647	0738	0810	0823	0837	0911	0937	1011	1037	1110	1137	1211	1237	1311	1337	1411	1437	1511	1537	1611	1637	1711	1737	1810	1840	1911
Millbrook	d		0635		0741			0840		0940		1040		1140		1240		1340		1440		1540		1640		1740		1843	
Redbridge	d		0638		0745			0843		0943		1043		1143		1243		1343		1443		1543		1643		1743		1846	
Romsey	a	0544	0646	0658	0752	0821	0834	0851	0922	0951	1022	1051	1121	1151	1222	1251	1322	1351	1422	1451	1522	1551	1622	1651	1722	1751	1822	1854	1922
Romsey	d	0545	0646	0659	0753	0821	0835	0851	0922	0951	1023	1051	1122	1151	1222	1251	1322	1351	1422	1451	1522	1551	1622	1651	1722	1751	1823	1854	1923
Mottisfont & Dunbridge	d		0651		0758			0856		0956		1056		1156		1256		1356		1456		1556		1656		1756		1859	
Dean	d		0657		0803			0902		1002		1102		1202		1302		1402		1502		1602		1702		1802		1905	
Salisbury	a	0605	0710	0718	0816	0839	0853	0915	0940	1015	1041	1115	1140	1215	1242	1316	1340	1415	1442	1516	1541	1617	1640	1715	1740	1815	1841	1917	1941

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For guide to notes and symbols see end of timetable.

MONDAY TO FRIDAY									Romsey and Chandler's Ford to Eastleigh, Southampton Central, Romsey and Salisbury																	
<i>Operator</i>	<i>Notes</i>	SW □	GW	SW □	GW	SW □	GW	SW □	SW □																	
Romsey	d	1907		2007		2107		2207	2311																	
Chandler's Ford	d	1914		2014		2114		2214	2318																	
London Waterloo	a	2105b		2232b		2332b																				
Eastleigh	d	1921		2021		2121	2209	2222	2324																	
Southampton Airport	d	1925		2025		2125	2213	2226	2328																	
Swaythling	d	1927		2027		2127		2228	2331																	
St Denys	d	1930		2030		2130		2231	2334																	
Southampton Central	a	1935		2035		2135	2221	2236	2340																	
Southampton Central	d	1937	2011	2037	2111	2137	2222	2238	2342																	
Millbrook	d	1940		2040		2140		2240	2344																	
Redbridge	d	1943		2043		2143		2244	2348																	
Romsey	a	1951	2022	2051	2122	2151	2234	2252	2357																	
Romsey	d	1951	2023	2051	2122	2151	2235	2252	2359																	
Mottisfont & Dunbridge	d	1956		2056		2156		2257	0004																	
Dean	d	2002		2102		2202		2303	0010																	
Salisbury	a	2015	2041	2115	2140	2215	2253	2315	0024																	

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SATURDAY

Romsey and Chandler's Ford to Eastleigh, Southampton Central, Romsey and Salisbury

<i>Operator</i> <i>Notes</i>	GW	SW a	GW	SW a	GW	GW	SW a	GW	SW a	GW	SW a	GW	SW a	GW	SW a	GW	SW a	GW	SW a	GW	SW a	GW	SW a	GW	SW a	GW	SW a	GW
Romsey d		0558		0707			0807		0907		1007		1107		1207		1307		1407		1507		1607		1707		1807	
Chandler's Ford d		0606		0714			0814		0914		1014		1114		1214		1314		1414		1514		1614		1714		1814	
London Waterloo a		0805b		0904b			1004b		1106b		1209b		1306b		1404b		1504b		1604b		1704b		1804b		1904b		2004b	
Eastleigh d		0613		0721			0821		0921		1021		1121		1221		1321		1421		1521		1621		1721		1821	
Southampton Airport d		0617		0725			0825		0925		1025		1125		1225		1325		1425		1525		1625		1725		1825	
Swaythling d		0619		0727			0827		0927		1027		1127		1227		1327		1427		1527		1627		1727		1827	
St Denys d		0622		0730			0830		0930		1030		1130		1231		1330		1430		1530		1630		1730		1830	
Southampton Central a		0631		0735			0835		0935		1035		1135		1236		1335		1435		1535		1635		1735		1835	
Southampton Central d	0629	0633	0657	0737	0809	0830	0837	0910	0937	1010	1037	1110	1137	1210	1238	1310	1337	1410	1437	1510	1537	1610	1637	1710	1737	1810	1837	1910
Millbrook d		0636		0740			0840		0940		1040		1140		1240		1340		1440		1540		1640		1740		1840	
Redbridge d		0639		0743			0843		0943		1043		1143		1244		1343		1443		1543		1643		1743		1843	
Romsey a	0640	0647	0710	0751	0821	0841	0851	0921	0951	1021	1051	1121	1151	1221	1251	1321	1351	1421	1451	1521	1551	1621	1651	1721	1751	1821	1851	1921
Romsey d	0640	0647	0711	0751	0821	0841	0851	0921	0951	1022	1051	1121	1151	1221	1252	1321	1351	1421	1451	1521	1551	1621	1651	1721	1751	1821	1851	1921
Mottisfont & Dunbridge d		0652		0756			0856		0956		1056		1156		1257		1356		1456		1556		1656		1756		1856	
Dean d		0658		0802			0902		1002		1102		1202		1302		1402		1502		1602		1702		1802		1902	
Salisbury a	0658	0710	0729	0815	0839	0903	0915	0939	1015	1040	1115	1139	1215	1239	1315	1339	1414	1439	1515	1539	1615	1639	1715	1739	1815	1839	1915	1939

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SATURDAY

Romsey and Chandler's Ford to Eastleigh, Southampton Central, Romsey and Salisbury

Operator Notes	SW □	GW	SW □	GW	SW □	GW	SW □	SW □	SW □																		
Romsey d	1907		2007		2107		2207		2311																		
Chandler's Ford d	1914		2014		2114		2214		2318																		
London Waterloo a	2109b		2235b		2332b		0012b																				
Eastleigh d	1921		2021		2121	2205	2221		2324																		
Southampton Airport d	1925		2025		2125	2209	2225		2328																		
Swaythling d	1927		2027		2127		2227		2331																		
St Denys d	1930		2030		2130		2230		2334																		
Southampton Central a	1935		2035		2135	2218	2235		2339																		
Southampton Central d	1937	2010	2037	2112	2137	2223	2237		2341																		
Millbrook d	1940		2040		2140		2240		2344																		
Redbridge d	1943		2043		2143		2243		2348																		
Romsey a	1951	2021	2051	2123	2151	2234	2251		2357																		
Romsey d	1951	2021	2051	2123	2151	2234	2251	2351	2357																		
Mottisfont & Dunbridge d	1956		2056		2156		2256		0002																		
Dean d	2002		2102		2202		2302		0008																		
Salisbury a	2015	2039	2115	2141	2215	2253	2315	0009	0021																		

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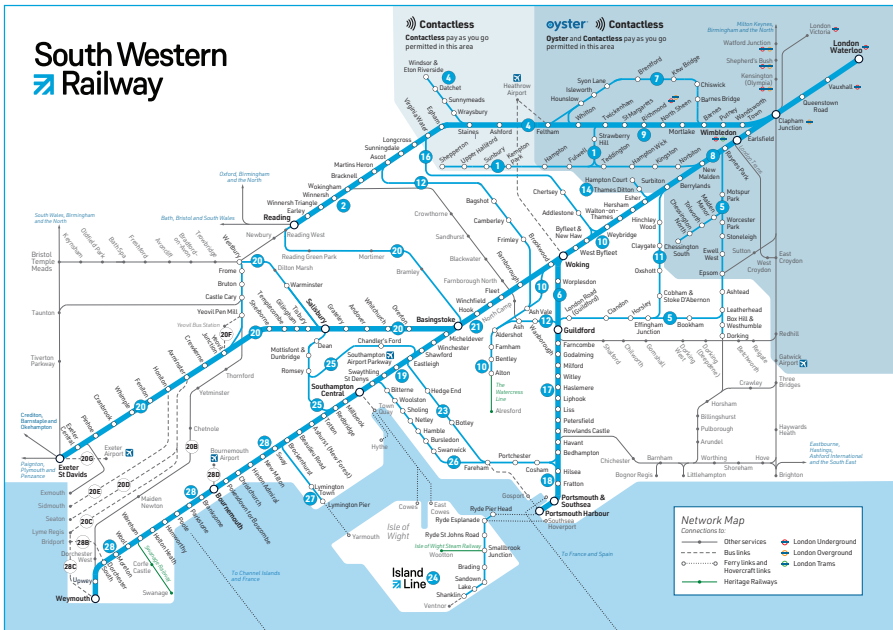
For guide to notes and symbols see end of timetable.

SUNDAY		Romsey and Chandler's Ford to Eastleigh, Southampton Central, Romsey and Salisbury																											
Operator Notes		SW □	GW	SW □	GW	SW □	GW	SW □	GW	SW □	GW	SW □	GW	SW □	GW	SW □	GW	SW □	GW	SW □	GW	SW □	GW	SW □	GW	SW □	GW	SW □	GW
Romsey	d	0835		0935		1035		1135		1235		1335		1435		1535		1635		1735		1835		1935		2035		2135	2235
	d	0842		0942		1042		1142		1242		1342		1442		1542		1642		1742		1842		1942		2042		2142	2242
London Waterloo	a	1040b		1139b		1237b		1337b		1437b		1537b		1624b		1724b		1825b		1925b		2024b		2124b		2224b		2324b	0033b
Eastleigh	d	0854		0954		1054		1154		1254		1354		1454		1554		1654		1754		1854		1954		2054		2154	2254
Southampton Airport	d	0858		0958		1058		1158		1258		1358		1458		1558		1658		1758		1858		1958		2058		2158	2258
Swaythling	d	0900		1000		1100		1200		1300		1400		1500		1600		1700		1800		1900		2000		2100		2201	2300
St Denys	d	0903		1003		1103		1203		1303		1403		1503		1603		1703		1803		1903		2003		2103		2204	2303
Southampton Central	a	0908		1008		1108		1208		1308		1408		1508		1608		1708		1808		1908		2008		2108		2209	2308
Southampton Central	d	0910	0957	1010	1057	1110	1157	1210	1257	1310	1357	1410	1457	1510	1557	1610	1657	1710	1757	1810	1857	1910	1957	2010	2059	2110	2156	2210	2310
Millbrook	d	0913		1013		1113		1213		1313		1413		1513		1613		1713		1813		1913		2013		2113		2213	2312
Redbridge	d	0916		1016		1116		1216		1316		1416		1516		1616		1716		1816		1916		2016		2116		2217	2315
Romsey	a	0924	1008	1024	1108	1124	1208	1224	1307	1324	1408	1424	1508	1524	1608	1624	1708	1724	1808	1824	1908	1924	2008	2024	2111	2124	2207	2224	2323
Romsey	d	0924	1008	1024	1108	1124	1208	1224	1308	1324	1408	1424	1508	1524	1608	1624	1708	1724	1808	1824	1908	1924	2008	2024	2112	2124	2207		2323
Mottisfont & Dunbridge	d	0929		1029		1129		1229		1329		1429		1529		1629		1729		1829		1929		2029		2129			2328
Dean	d	0935		1035		1135		1235		1335		1435		1535		1635		1735		1835		1935		2035		2135			2334
Salisbury	a	0948	1026	1048	1126	1148	1226	1248	1326	1348	1426	1448	1526	1548	1626	1648	1726	1748	1826	1848	1926	1949	2026	2048	2130	2148	2225		2351

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South Western Railway



Changing trains

Most journeys shown in this timetable are direct trains, shown in **bold type**. However, you may be able to make other journeys or reach your destination more quickly by changing trains. To help you find these alternative trains, we show them in the timetable with *light italic type*. A letter against the time will show where you need to change trains – please check the 'Notes' section for an explanation of these letters.

Please allow plenty of time to change trains. At most stations you will need to allow at least five minutes. You will need longer at some stations, and this is shown in the 'Station information' table in this timetable. For example ⑩ means you should allow 10 minutes to change trains at this station.

MONDAY TO FRIDAY		Salisbury, Romsey, Southampton Central and Eastleigh to Chandler's Ford and Romsey																											
<i>Operator</i> <i>Notes</i>	SW □	SW □	SW □ A	GW	SW □	GW	GW	SW	GW	SW □	GW	SW □	GW	SW □	GW	SW □	GW	SW □	GW	SW □	GW	SW □	GW	SW □	GW	SW □	GW	SW □	
Salisbury d	0533	0539		0618	0650	0711	0737	0750	0834	0850	0936	0956	1034	1056	1133	1156	1233	1256	1333	1356	1435	1456	1533	1556	1633	1656	1733	1756	
Dean d	0546				0702			0802		0902		1008		1108		1209		1308		1408		1508		1608		1708		1808	
Mottisfont & Dunbridged	0551		—		0708			0808		0908		1014		1114		1214		1314		1414		1514		1614		1714		1814	
Romsey a	0557	0604	0557	0636	0713	0729	0755	0813	0852	0913	0954	1019	1052	1119	1151	1219	1251	1319	1351	1419	1453	1519	1551	1619	1651	1719	1751	1819	
Romsey d	—	0604	0558	0637	0713	0730	0756	0813	0852	0914	0954	1020	1053	1120	1152	1220	1252	1320	1352	1420	1453	1520	1552	1620	1652	1720	1752	1820	
Redbridge d		0612			0724			0824		0925		1027		1127		1227		1327		1427		1527		1627		1727		1827	
Millbrook d		0615			0728			0828		0929		1031		1131		1231		1331		1431		1531		1631		1731		1831	
Southampton Central a		0618	0630	0647	0732	0740	0809	0832	0903	0932	1005	1034	1103	1134	1202	1234	1302	1334	1404	1434	1504	1534	1602	1634	1702	1734	1802	1834	
Southampton Central d		0635			0735			0835		0935		1036		1136		1236		1336		1436		1536		1636		1736		1836	
St Denys d		0640			0740			0840		0940		1041		1141		1241		1341		1441		1541		1641		1741		1841	
Swaythling d		0643			0743			0843		0943		1044		1144		1244		1344		1444		1544		1644		1744		1844	
Southampton Airport d		0647			0746			0846		0946		1047		1147		1247		1347		1447		1547		1647		1747		1847	
Eastleigh d		0651			0750			0850		0950		1051		1151		1251		1351		1451		1551		1651		1751		1851	
London Waterloo d		0530b			0630b			0735b		0808b		0909b		1009b		1109b		1209b		1309b		1409b		1509b		1609b		1709b	
Chandler's Ford d		0656			0755			0855		0955		1056		1156		1256		1356		1456		1556		1656		1756		1856	
Romsey a		0703			0803			0903		1003		1103		1203		1303		1403		1503		1603		1703		1803		1903	

MONDAY TO FRIDAY												Salisbury, Romsey, Southampton Central and Eastleigh to Chandler's Ford and Romsey																			
<i>Operator</i> <i>Notes</i>	GW	SW a	GW	SW a	GW	SW a	GW	SW a	GW	SW a	GW																				
Salisbury d	1833	1856	1935	1956	2035	2056	2137	2156	2238	2245	2303																				
Dean d		1908		2008		2108		2208		2257																					
Mottisfont & Dunbridged		1914		2014		2114		2214		2303																					
Romsey a	1851	1919	1953	2019	2053	2119	2155	2219	2256	2308	2320																				
Romsey d	1852	1920	1953	2020	2053	2120	2156	2220	2256	2308	2321																				
Redbridge d		1927		2027		2127		2227		2316																					
Millbrook d		1931		2031		2131		2231		2319																					
Southampton Central a	1903	1934	2004	2034	2104	2134	2207	2234	2307	2322	2331																				
Southampton Central d		1936		2036		2136		2236		2323																					
St Denys d		1941		2041		2141		2241		2328																					
Swaythling d		1944		2044		2144		2244		2331																					
Southampton Airport d		1947		2047		2147		2247		2334																					
Eastleigh d		1951		2051		2151		2251		2338																					
London Waterloo d		1807b		1909b		2009b		2109b																							
Chandler's Ford d		1956		2056		2156		2256		2343																					
Romsey a		2003		2103		2203		2303		2351																					

SATURDAY

Salisbury, Romsey, Southampton Central and Eastleigh to Chandler's Ford and Romsey

<i>Operator</i> <i>Notes</i>	SW □	SW □	SW □ A	GW	SW □	GW	GW	SW □	GW	SW □	GW	SW □	GW	SW □	GW	SW □	GW	SW □	GW	SW □	GW	SW □	GW	SW □	GW	SW □	GW	SW □
Salisbury d	0534			0632	0650	0717	0737	0750	0833	0856	0933	0956	1033	1056	1134	1156	1233	1256	1333	1356	1433	1456	1533	1556	1633	1656	1733	1756
Dean d	0547			0702	0702			0802		0908		1008		1108		1208		1308		1408		1508		1608		1708		1808
Mottisfont & Dunbridged	0553		—	0708	0708			0808		0914		1014		1114		1214		1314		1414		1514		1614		1714		1814
Romsey a	0558		0558	0650	0713	0735	0755	0813	0851	0919	0951	1019	1051	1119	1152	1219	1251	1319	1351	1419	1451	1519	1551	1619	1651	1719	1751	1819
Romsey d	—	0609	0558	0650	0713	0736	0755	0813	0852	0920	0951	1020	1051	1120	1153	1220	1251	1320	1351	1420	1452	1520	1552	1620	1651	1720	1751	1820
Redbridge d		0616		0721	0721			0821		0927		1027		1127		1227		1327		1427		1527		1627		1727		1827
Millbrook d		0620		0724	0724			0824		0931		1031		1131		1231		1331		1431		1531		1631		1731		1831
Southampton Central a		0623	0631	0702	0730	0746	0808	0827	0902	0934	1003	1034	1103	1134	1204	1234	1303	1334	1403	1434	1503	1534	1603	1634	1703	1734	1803	1834
Southampton Central d		0635			0736			0835		0936		1036		1136		1236		1336		1436		1536		1636		1736		1836
St Denys d		0640			0741			0840		0941		1041		1141		1241		1341		1441		1541		1641		1741		1841
Swaythling d		0643			0744			0843		0944		1044		1144		1244		1344		1444		1544		1644		1744		1844
Southampton Airport d		0646			0747			0846		0947		1047		1147		1247		1347		1447		1547		1647		1747		1847
Eastleigh d		0650			0751			0850		0951		1051		1151		1251		1351		1451		1551		1651		1751		1851
London Waterloo d					0630b			0735b		0809b		0909b		1009b		1109b		1209b		1309b		1409b		1509b		1609b		1709b
Chandler's Ford d		0655			0756			0855		0956		1056		1156		1256		1356		1456		1556		1656		1756		1856
Romsey a		0703			0803			0903		1003		1103		1203		1303		1403		1503		1603		1703		1803		1903

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SATURDAY

Salisbury, Romsey, Southampton Central and Eastleigh to Chandler's Ford and Romsey

Operator Notes	GW	SW a	GW	SW a	GW	SW a	GW	SW a	GW	SW a	GW															
Salisbury d	1833	1856	1933	1956	2033	2056	2133	2156	2235	2244	2305															
Dean d		1908		2008		2108		2208		2257																
Mottisfont & Dunbridged		1914		2014		2114		2214		2302																
Romsey a	1851	1919	1951	2019	2051	2119	2151	2219	2253	2307	2323															
Romsey d	1852	1920	1952	2020	2052	2120	2152	2220	2253	2308	2323															
Redbridge d		1927		2027		2127		2227		2315																
Millbrook d		1931		2031		2131		2231		2319																
Southampton Central a	1903	1934	2003	2034	2103	2134	2203	2234	2304	2322	2334															
Southampton Central d		1936		2036		2136		2236		2323																
St Denys d		1941		2041		2141		2241		2328																
Swaythling d		1944		2044		2144		2244		2331																
Southampton Airport d		1947		2047		2147		2247		2334																
Eastleigh d		1951		2051		2151		2251		2338																
London Waterloo d		1809b		1909b		2009b		2109b		2209b																
Chandler's Ford d		1956		2056		2156		2256		2343																
Romsey a		2003		2103		2203		2303		2351																

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SUNDAY																														
		Salisbury, Romsey, Southampton Central and Eastleigh to Chandler's Ford and Romsey																												
<i>Operator Notes</i>		SW □	SW □	SW □ A	SW □	SW □	GW	SW □	GW	SW □	GW	SW □	GW	SW □	GW	SW □	GW	SW □	GW	SW □	GW	SW □	GW	SW □	GW	SW □	GW	SW □	GW	SW □
Salisbury	d	0808	0820		0908	1008	1034	1108	1133	1208	1235	1308	1334	1408	1436	1508	1536	1608	1634	1708	1737	1808	1833	1908	1932	2008	2033	2053	2108	
Dean	d	0820			0920	1020		1120		1220		1320		1420		1520		1620		1720		1820		1920		2020		2120		
Mottisfont & Dunbridged		0826		┌	0926	1026		1126		1226		1326		1426		1526		1626		1726		1826		1926		2026		2126		
Romsey	a	0831	0838	0831	0931	1031	1052	1131	1151	1231	1253	1331	1352	1431	1454	1531	1554	1631	1652	1731	1755	1831	1851	1931	1950	2031	2051	2111	2131	
Romsey	d	└	0839	0835	0932	1032	1052	1132	1152	1232	1254	1332	1352	1432	1454	1532	1554	1632	1653	1732	1755	1832	1851	1932	1950	2032	2052	2111	2132	
Redbridge	d		0846		0939	1039		1139		1239		1339		1439		1539		1639		1739		1839		1939		2039		2139		
Millbrook	d		0850		0943	1043		1143		1243		1343		1443		1543		1643		1743		1844		1943		2043		2143		
Southampton Central	a		0852	0908	0945	1045	1103	1145	1203	1245	1304	1345	1403	1445	1505	1545	1605	1645	1703	1745	1806	1846	1902	1945	2001	2045	2102	2122	2145	
Southampton Central	d		0859		0959	1059		1159		1259		1359		1459		1559		1659		1759		1859		1959		2059		2159		
St Denys	d		0904		1004	1104		1204		1304		1404		1504		1604		1704		1804		1904		2004		2104		2204		
Swaythling	d		0907		1007	1107		1207		1307		1407		1507		1607		1707		1807		1907		2007		2107		2207		
Southampton Airport	d		0910		1010	1110		1210		1310		1410		1510		1610		1710		1810		1910		2010		2110		2210		
Eastleigh	d		0915		1015	1115		1215		1315		1415		1515		1615		1715		1815		1915		2015		2115		2215		
London Waterloo	d				0753b	0853b		0953b		1054b		1154b		1254b		1354b		1454b		1605b		1705b		1805b		1905b		2005b		
Chandler's Ford	d		0920		1020	1120		1220		1320		1420		1520		1620		1720		1820		1920		2020		2120		2220		
Romsey	a		0929		1029	1129		1229		1329		1429		1529		1629		1729		1829		1929		2029		2129		2232		

SUNDAY		Salisbury, Romsey, Southampton Central and Eastleigh to Chandler's Ford and Romsey																											
Operator	Notes	GW	SW a	GW																									
Salisbury	d	2134		2243																									
Dean	d																												
Mottisfont & Dunbridged	d																												
Romsey	a	2152		2301																									
Romsey	d	2152	2228	2301																									
Redbridge	d		2235																										
Millbrook	d		2241																										
Southampton Central	a	2203	2244	2312																									
Southampton Central	d		2305																										
St Denys	d		2310																										
Swaythling	d		2313																										
Southampton Airport	d		2316																										
Eastleigh	d		2322																										
London Waterloo	d		2150b																										
Chandler's Ford	d		2327																										
Romsey	a		2335																										

GUIDE TO NOTES AND SYMBOLS

GW Operated by Great Western Railway. Please see Great Western Railway publications for details of

- seat reservations
- cycle reservation requirements
- catering facilities.

SW Operated by South Western Railway.

A Train runs via Eastleigh.

a Arrival time.

b Change at Eastleigh.

d Departure time.

— Continued in later column.

— Continued from earlier column.

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P Car Park.

③ Minimum connection time where different from the standard five minutes.

#19 Refers to the timetable number which show additional services between these stations.

STATION INFORMATION

See notes for explanation of symbols.

Salisbury	P		
Dean			
Mottisfont & Dunbridge			
Romsey	P		
Redbridge			#19
Millbrook			#19
Southampton Central	P	⚓	#26
St Denys			#26
Swaythling	P		#19
Southampton Airport	P	✈	#19
Eastleigh	P	③	#19
Chandler's Ford	P		
London Waterloo		⑮	⊖

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Neutral Citation Number: [2017] EWCA Civ 1314

Case No: C1/2016/4488

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ADMINISTRATIVE COURT
PLANNING COURT
MR JUSTICE GARNHAM
[2016] EWHC 2832 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 September 2017

Before:

The Chancellor of the High Court
Lord Justice Lindblom
and
Lord Justice Hickinbottom

Between:

Michael Mansell

Appellant

- and -

Tonbridge and Malling Borough Council

Respondent

- and -

(1) Croudace Portland
(2) The East Malling Trust

Interested
Parties

Ms Annabel Graham Paul (instructed by **Richard Buxton Environmental and Public Law**)
for the **Appellant**

Mr Juan Lopez (instructed by **Tonbridge and Malling Borough Council Legal Services**)
for the **Respondent**

The interested parties did not appear and were not represented

Hearing date: 4 July 2017

**Judgment Approved by the court
for handing down
(subject to editorial corrections)**

Lord Justice Lindblom:

Introduction

1. Should the judge in the court below have quashed a local planning authority’s grant of planning permission for the redevelopment of the site of a large barn and a bungalow to provide four dwellings? That is what we must decide in this appeal. It is contended that the authority misdirected itself in considering a “fallback position” available to the landowner, and also that it misapplied the “presumption in favour of sustainable development” in the National Planning Policy Framework (“the NPPF”) – a question that can now be dealt with in the light of this court’s recent decision in *Barwood Strategic Land II LLP v East Staffordshire Borough Council* [2017] EWCA Civ 893.
2. The appellant, Mr Michael Mansell, appeals against the order of Garnham J., dated 10 November 2016, dismissing his claim for judicial review of the planning permission granted on 13 January 2016 by the respondent, Tonbridge and Malling Borough Council, for development proposed by the first interested party, Croudace Portland, on land owned by the second interested party, the East Malling Trust, at Rocks Farm, The Rocks Road, East Malling. The proposal was to demolish the barn and the bungalow on the land and to construct four detached dwellings, with garages and gardens. Mr Mansell lives in a neighbouring property, at 132-136 The Rocks Road – a grade II listed building. He was an objector.
3. It was common ground that the proposal was in conflict with the development plan. Rocks Farm is outside the village of East Malling to its south-east, within the “countryside” as designated in the Tonbridge and Malling Borough Core Strategy. The site of the proposed development extends to about 1.3 hectares. The barn, about 600 square metres in area, had once been used to store apples. The bungalow was lived in by a caretaker. The application for planning permission came before the council’s Area 3 Planning Committee on 7 January 2016. In his reports to committee the council’s planning officer recommended that planning permission be granted, and that recommendation was accepted by the committee. The officer guided the members on the “fallback position” that was said to arise, at least partly, through the “permitted development” rights for changes of use from the use of a building as an agricultural building to its use as a dwelling-house, under Class Q in Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the GPDO”).
4. Mr Mansell’s challenge to the planning permission attacked the officer’s approach to the “fallback position” and his assessment of the proposal on its planning merits. Garnham J. dismissed the claim for judicial review on all grounds. Permission to appeal was granted by McCombe L.J. on 21 February 2017.

The issues in the appeal

5. The appeal raises three main issues:
 - (1) whether the council correctly interpreted and lawfully applied the provisions of Class Q in the GPDO (ground 1 in the appellant’s notice);

- (2) whether the council was entitled to accept there was a real prospect of the fallback development being implemented (ground 2); and
- (3) whether the council misunderstood or misapplied the “presumption in favour of sustainable development” (ground 3).

Did the council correctly interpret and lawfully apply the provisions of Class Q?

6. When the council determined the application for planning permission the permitted development rights under Class Q were in these terms, so far is relevant here:

“Q. Permitted development

Development consisting of –

- (a) a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order; and
- (b) building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule.

Q.1 Development not permitted

Development is not permitted by Class Q if –

- ...
- (b) the cumulative floor space of the existing building or buildings changing use under Class Q within an established agricultural unit exceeds 450 square metres;
- (c) the cumulative number of separate dwellinghouses developed under Class Q within an established agricultural unit exceeds 3;
- ...
- (g) the development would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point;
- (h) the development under Class Q (together with any previous development under Class Q) would result in a building or buildings having more than 450 square metres of floor space having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order;
- ... ”

The permitted development rights under Class Q are subject to several “Conditions” in paragraph Q.2, none of them controversial here.

7. In section 6 of his main report to committee for its meeting on 7 January 2016 the officer dealt at length with the “Determining Issues”. In discussing those issues he considered the “fallback position” in paragraphs 6.14 to 6.19:

“6.14 In practical terms for this site, the new permitted development rights mean that the existing agricultural barn could be converted into three residential units. Some representations point out that only a proportion of the barn could be

converted in such a manner (up to 450sqm) but the remainder – a small proportion in terms of the overall footprint – could conceivably be left unconverted and the resultant impacts for the site in terms of the amount of residential activity would be essentially the same. The building could be physically adapted in certain ways that would allow for partial residential occupation and the extensive area of hardstanding which exists between the building and the northern boundary could be used for parking and turning facilities.

- 6.15 The existing bungalow within the site could be replaced in accordance with policy CP14 with a new residential building provided that it was not materially larger than the existing building. Such a scenario would, in effect, give rise to the site being occupied by a total of four residential units albeit of a different form and type to that proposed by this application. This provides a realistic fallback position in terms of how the site could be developed.
- 6.16 I appreciate that discussion concerning realistic ‘fallback’ positions is rather complicated but, in making an assessment of any application for development, we are bound to consider what the alternatives might be for a site: in terms of what could occur on the site without requiring any permission at all (historic use rights) or using permitted development rights for alternative forms of development.
- 6.17 In this instance a scheme confined to taking advantage of permitted development would, in my view, be to the detriment of the site as a whole in visual terms. Specifically, it would have to be developed in a contrived and piecemeal fashion in order to conform to the requirements of the permitted development rights, including the need to adhere to the restrictions on the floor space that can be converted using the permitted development rights.
- 6.18 I would also mention that should the applicant wish to convert the entire barn for residential purposes, above the permitted development thresholds, such a scheme (subject to detailed design) would wholly accord with adopted policy. Again, this provides a strong indicator as to how the site could be developed in an alternative way that would still retain the same degree of residential activity as proposed by the current application but in a more contrived manner and with a far more direct physical relationship with the nearest residential properties.
- 6.19 The current proposal therefore, in my view, offers an opportunity for a more comprehensive and coherent redevelopment of the site as opposed to a more piecemeal form of development that would arise should the applicant seek to undertake to implement permitted development rights.”
8. For Mr Mansell, Ms Annabel Graham Paul submitted to us, as she did to the judge, that the officer’s advice in those six paragraphs betrays a misunderstanding of the provisions of Class Q in the GPDO, in particular sub-paragraphs Q.1(b) and Q.1(h). She argued that the restriction to 450 square metres in sub-paragraph Q.1(b) applies to the total floor space of the agricultural building or buildings in question, not to the floor space actually “changing use”. Before the judge, though not in her submissions in this court, Ms Graham Paul sought to bolster that contention with a passage in an inspector’s decision letter

relating to a proposal for development on a site referred to by the judge as “Mannings Farm”. The inspector had observed that “[the] floor space of the existing building ... far exceeds the maximum permitted threshold, of 450 sq m, as set out in [sub-paragraph] Q.1(b)”, and that “the intention is to reduce the size of the building as part of the proposal but Q.1(b) clearly relates to existing floorspace and there is no provision in the GPDO for this to be assessed on any other basis”.

9. Garnham J. rejected Ms Graham Paul’s argument. In paragraph 30 of his judgment he said:

“30. In my judgment this construction of paragraph Q.1(b) fails because it disregards the definition section of the Order. The critical expression in subparagraph (b) is *“the existing building or buildings”*. Paragraph 2 of the Order defines *“building”* as *“any part of a building”*. Accordingly, the paragraph should be read as meaning *“the cumulative floor space of the existing building or any part of the building changing use ...”*. If that is right, it is self-evident that the limit on floor space relates only to that part of the building which is changing use.”

10. The judge found support for that conclusion in several inspectors’ decisions, one of them a decision on proposed development at Bennetts Lane, Binegar in Somerset. In correspondence in that case the Department for Communities and Local Government had pointed to the definition of a “building” in the “Interpretation” provisions in paragraph 2 of the GPDO. Because that definition included “any part of a building”, their view was that “in the case of a large agricultural building, part of it could change use ... and the rest remain in agricultural use” (paragraph 32 of the judgment). However, as was accepted on both sides in this appeal, the court must construe the provisions of the GPDO for itself, applying familiar principles of statutory interpretation.

11. In paragraph 34 of his judgment Garnham J. said this:

“34. Ms Graham Paul contends that that construction of subparagraph (b) means that it adds nothing to subparagraph (h). I can see the force of that submission and, as a matter of first principle, statutory provisions should be construed on the assumption that the draftsman was intending to add something substantive by each relevant provision. Nonetheless, giving the interpretation section its proper weight, I see no alternative to the conclusion that Class Q imposes a floor space limit on those parts of the buildings which will change use as a result of the development. In those circumstances, I reject the Claimant’s challenge to the Officer’s construction of the Class Q provisions in the 2015 Order.”

12. Ms Graham Paul submitted that this interpretation of the relevant provisions would render sub-paragraph Q.1(b) of Class Q redundant, because sub-paragraph Q.1(h) already limits the residential floor space resulting from the change of use under Class Q to a maximum of 450 square metres. The statutory provisions for permitted development rights in the GPDO ought to be interpreted consistently. The interpretation favoured by the judge, submitted Ms Graham Paul, depends on reading into sub-paragraph Q.1(b) the additional words “any part of a building” after the words “the existing building or buildings”, which, she said, is wholly unnecessary. Statutory provisions ought to be construed on the

assumption that the draftsman was intending to add something of substance in each provision. The judge's interpretation offends that principle, said Ms Graham Paul, because it would, in effect, subsume sub-paragraph Q.1(b) into sub-paragraph Q.1(h). Only her interpretation of sub-paragraph Q.1(b) would enable sub-paragraph Q.1(h) to add something of substance to the provisions of Class Q. And in principle, Ms Graham Paul argued, it makes good sense to prevent, without an express grant of planning permission, the partial conversion of large agricultural buildings to accommodate residential use, leaving other parts of the building either in active agricultural use or simply vacant.

13. Ms Graham Paul sought to reinforce these submissions by pointing to other provisions of the GPDO where similar wording is used: Class M, which provides permitted development rights for changes of use of buildings in retail or betting office or pay day loan shop use to Class C3 use, and states in sub-paragraph M.1(c) that development is not permitted if "the cumulative floor space of the existing building changing use under Class M exceeds 150 square metres"; and Class N, which provides permitted development rights for changes of use from specified sui generis uses, including use as an amusement arcade or centre, and use as a casino, to Class C3 use, and states in sub-paragraph N.1(b) that development is not permitted if "the cumulative floor space of the existing building changing use under Class N exceeds 150 square metres".
14. I cannot accept Ms Graham Paul's argument. I think the judge's understanding of Class Q was correct. The provisions of Class Q relating to the scope of permitted development rights should be given their literal meaning. When this is done, they make perfectly good sense in their statutory context and do not give rise to any duplication or redundancy.
15. The focus here is on the provisions as to development that is "not permitted" under paragraph Q.1, and in particular the provisions of sub-paragraphs Q.1(b) and Q.1(h). Sub-paragraph Q.1(b) establishes the "cumulative floor space of the existing building or buildings" that is "changing use under Class Q ...". The limit on such "cumulative floor space ..." is 450 square metres. This restriction is stated to be a restriction on the change of use, not on the size of the building or buildings in which the change of use occurs. Sub-paragraph Q.1(b) relates to a single act of development in which the building in question, or part of it, is "changing use". The floor space limit set by it relates not to the total floor space of the building or buildings concerned. It relates, as one would expect, to the permitted development rights themselves, which apply to the "cumulative" amount of floor space actually "changing use under Class Q". The use of the word "cumulative" in this context – as elsewhere in the GPDO – is perfectly clear. It connotes, in relevant circumstances, the adding together of separate elements of floor space within a building or buildings, or, again in relevant circumstances, a single element of floor space, which in either case must not exceed 450 square metres. The total floor space of the building or buildings concerned may itself be more than 450 square metres. But the cumulative amount of floor space whose use is permitted to be changed within that total floor space must not exceed 450 square metres.
16. This interpretation of sub-paragraph Q.1(b) avoids arbitrary consequences in the application of the permitted development rights under Class Q. It does not make the availability of those rights for a qualifying "agricultural building" depend on the total floor space of the building itself. It would not, therefore, create a situation in which the permitted development rights under Class Q would be available for a building whose total floor space was 450 square metres, but not for a building with a floor space of 451 square

metres or an area greater than that. If the consequence is that the permitted development rights, when fully used, would result in a building partly in use as a dwelling-house and partly still in agricultural use, that is an outcome contemplated by the GPDO. I see no difficulty in that.

17. Had the draftsman intended to confer permitted development rights under Class Q only to a building or buildings whose total floor space was not more than 450 square metres, the relevant provision would have been framed differently. There would have been no need to use the word “cumulative” or some other such word. The provision would simply have stated, for example, “the total floor space of the existing building or buildings within an established agricultural unit in which the change of use under Class Q is being undertaken does not exceed 450 square metres”. But that is not what sub-paragraph Q.1(b) says, or, in my view, what it means.
18. Nor can I see how an interpretation of sub-paragraph Q.1(b) in which the restriction of 450 square metres applies not to the floor space actually changing use but to the total floor space of the building or buildings in which the change of use is taking place can be reconciled with the definition of “building” in paragraph 2 of the GPDO as including “part of a building”. Unless one disapplies that part of the definition of a building to sub-paragraph Q.1(b), one must read that provision as meaning “the cumulative floor space of the existing building or buildings or part of a building changing use under Class Q ... exceeds 450 square metres” (my emphasis). That understanding of sub-paragraph Q.1(b) would not sit happily with the concept that the restriction of 450 square metres applies not to the floor space changing use but to the total floor space of the building itself.
19. My interpretation of sub-paragraph Q.1(b) does not leave sub-paragraph Q.1(h) redundant. Sub-paragraph Q.1(h) achieves a different purpose. It prevents, for example, a change of use as “permitted development” in an agricultural building of which part is already in Class C3 use, or an aggregation of successive changes of use through separate acts of development, that would result in more than 450 square metres of floor space in a building or buildings being in Class C3 use. Neither of those outcomes would necessarily be prevented by sub-paragraph Q.1(b).
20. Finally, there is nothing in the provisions of Class M and Class N, or in any other provision of the GPDO, to suggest a different understanding of Class Q. The provisions in sub-paragraphs M.1(c) and N.1(b) also contain the word “cumulative” in referring to the floor space “changing use”, not to the total floor space of the “existing building or buildings” in which the change of use is taking place. And in both Class M and Class N the draftsman has also included a provision – respectively in sub-paragraphs M.1(d) and N.1(c) – stating that “the development (together with any previous development under [the relevant class]) would result in more than 150 square metres of floor space in the building having changed use under [the relevant class]”. Although we are not deciding those questions, it seems to me that the same analysis would hold good for those provisions too.
21. In my view, therefore, the officer did not misrepresent the permitted development rights under Class Q in his advice to the committee on the “fallback position”. The provisions of Class Q were correctly interpreted and lawfully applied.

Was the council entitled to accept that there was a real prospect of the fallback development being implemented?

22. Garnham J. accepted that the council was entitled to conclude that there was a “realistic” fallback. In paragraphs 36 and 37 of his judgment he said:

“36. In paragraph 6.15 of the report the Officer concluded that the fall back position was “realistic”. In my judgment he was entitled so to conclude. The evidence establishes that there had been prior discussions between the Council and the Planning Agent acting for the East Malling Trust who owns the site. It was crystal clear from that contact that the Trust were intending, one way or another to develop the site. Alternative proposals had been advanced seeking the Council’s likely reaction to planning applications. It is in my view wholly unrealistic to imagine that were all such proposals to be turned down the owner of the site would not take advantage of the permitted development provided for by Class Q to the fullest extent possible.

37. It was not a precondition to the Council’s consideration of the fall back option that the interested party had made an application indicating an intention to take advantage of Class Q. There was no requirement that there be a formulated proposal to that effect. The officer was entitled to have regard to the planning history which was within his knowledge and the obvious preference of the Trust to make the most valuable use it could of the site.”

23. The judge accepted the submission of Mr Juan Lopez for the council that the committee did not have to ignore fallback development that included elements for which planning permission would be required and had not yet been granted. He noted that “[the] building could be converted, so as to provide dwelling houses limited in floor space to 450m² by the construction of internal walls without using the whole of the internal space of the barn” (paragraph 40). And he went on to say (in paragraph 41):

“41. In my judgment therefore, it would have been unrealistic to have concluded that, were the present application for permission to be rejected, the interested party would do nothing to develop this site. On the contrary it was plain that development was contemplated and that some development could have taken place pursuant to Class Q. The Council was entitled to have regard to the fact that there might be separate applications for permission in respect of some elements of the scheme and to advise that appropriate regard must be had to material planning considerations including the permitted development fall back position. Accordingly I reject the second element of the Claimant’s challenge on ground 1.”

24. Ms Graham Paul criticized the judge’s approach. She said it would enable permitted development rights under the GPDO to be relied on as a fallback even where there was no evidence that the landowner or developer would in fact resort to such development. The judge did not consider whether the council had satisfied itself that there was a “real prospect” of the fallback development being implemented (see the judgment of Sullivan L.J. in *Samuel Smith Old Brewery (Tadcaster) v Secretary of State for Communities and Local Government* [2009] J.P.L. 1326, at paragraph 21). The “real prospect”, submitted Ms Graham Paul, must relate to a particular fallback development contemplated by the

landowner or developer, not merely some general concept of development that might be possible on the site. Only a specific fallback makes it possible for a comparison to be made between the planning merits of the development proposed and the fallback development. The relevance of a fallback depends on there being a “finding of actually intended use as opposed to a mere legal or theoretical entitlement” (see the judgment of Mr Christopher Lockhart-Mummery Q.C., sitting as a deputy judge of the High Court, in *R. v Secretary of State for the Environment and Havering London Borough Council, ex parte P.F. Ahern (London) Ltd.* [1998] Env. L.R. 189, at p.196).

25. Ms Graham Paul said there was nothing before the council to show that either the East Malling Trust or Croudace Portland contemplated the site being developed in the way the officer described in his report. On the contrary, the conversion of the barn for residential use – as opposed to its demolition and replacement with new dwellings – seems to have been regarded as impracticable or uneconomic. The East Malling Trust’s planning consultant, Broadlands Planning Ltd., had submitted a “Planning Statement” to the council in December 2013, seeking the council’s advice before the submission of an application for planning permission. In that document two possible schemes for the site were referred to (at paragraph 26). Neither could have been achieved using permitted development rights. One involved the retention of the barn and its conversion to four dwelling-houses, the other a “wholesale redevelopment of the site”, perhaps with the replacement of the bungalow, to create five new dwellings. In a letter to Broadlands Planning Ltd. dated 30 January 2014 the council’s Senior Planning Officer, Ms Holland, said she was “not convinced that the proposal would result in the building being converted, but rather [that] large portions would be removed and a new building created”. And the East Malling Trust’s marketing agent, Smiths Gore, in a letter to potential developers dated 27 February 2014, suggested it was “unlikely that a developer would contemplate the conversion of the Apple Store”. There was, said Ms Graham Paul, no other contemporaneous evidence to lend substance to the fallback scheme to which the officer referred in his report, and no evidence of the council trying to find out what, if anything, was actually contemplated. The evidence did not demonstrate a “real prospect” – as opposed to a merely “theoretical” prospect – of such a development being carried out. The judge should have recognized that the fallback development referred to in the officer’s report was not a material consideration.
26. I cannot accept that argument. In my view the officer did not misunderstand any principle of law relating to a fallback development. His advice to the members was sound.
27. The status of a fallback development as a material consideration in a planning decision is not a novel concept. It is very familiar. Three things can be said about it:
 - (1) Here, as in other aspects of the law of planning, the court must resist a prescriptive or formulaic approach, and must keep in mind the scope for a lawful exercise of planning judgment by a decision-maker.
 - (2) The relevant law as to a “real prospect” of a fallback development being implemented was applied by this court in *Samuel Smith Old Brewery* (see, in particular, paragraphs 17 to 30 of Sullivan L.J.’s judgment, with which the Master of the Rolls and Toulson L.J. agreed; and the judgment of Supperstone J. in *R. (on the application of Kverndal) v London Borough of Hounslow Council* [2015] EWHC 3084 (Admin), at paragraphs 17 and 42 to 53). As

Sullivan L.J. said in his judgment in *Samuel Smith Old Brewery*, in this context a “real” prospect is the antithesis of one that is “merely theoretical” (paragraph 20). The basic principle is that “... for a prospect to be a real prospect, it does not have to be probable or likely: a possibility will suffice” (paragraph 21). Previous decisions at first instance, including *Ahern* and *Brentwood Borough Council v Secretary of State for the Environment* [1996] 72 P. & C.R. 61 must be read with care in the light of that statement of the law, and bearing in mind, as Sullivan L.J. emphasized, “... “fall back” cases tend to be very fact-specific” (ibid.). The role of planning judgment is vital. And “[it] is important ... not to constrain what is, or should be, in each case the exercise of a broad planning discretion, based on the individual circumstances of that case, by seeking to constrain appeal decisions within judicial formulations that are not enactments of general application but are themselves simply the judge’s response to the facts of the case before the court” (paragraph 22).

- (3) Therefore, when the court is considering whether a decision-maker has properly identified a “real prospect” of a fallback development being carried out should planning permission for the proposed development be refused, there is no rule of law that, in every case, the “real prospect” will depend, for example, on the site having been allocated for the alternative development in the development plan or planning permission having been granted for that development, or on there being a firm design for the alternative scheme, or on the landowner or developer having said precisely how he would make use of any permitted development rights available to him under the GPDO. In some cases that degree of clarity and commitment may be necessary; in others, not. This will always be a matter for the decision-maker’s planning judgment in the particular circumstances of the case in hand.
28. In this case, in the circumstances as they were when the application for planning permission went before the committee, it was plainly appropriate, indeed necessary, for the members to take into account the fallback available to the East Malling Trust as the owner of the land, including the permitted development rights arising under Class Q in the GPDO and the relevant provisions of the development plan, in particular policy CP14 of the core strategy. Not to have done so would have been a failure to have regard to a material consideration, and thus an error of law.
29. That the East Malling Trust was intent upon achieving the greatest possible value from the redevelopment of the site for housing had by then been made quite plain. The “Planning Statement” of December 2013 had referred to two alternative proposals for the redevelopment of the site (paragraph 26), pointing out that both “[the] redevelopment and replacement of [the] bungalow” and “[the] conversion of the existing storage and packing shed” were “permissible in principle” (paragraph 35). The firm intention of the East Malling Trust to go ahead with a residential development was entirely clear at that stage.
30. In my view it was, in the circumstances, entirely reasonable to assume that any relevant permitted development rights by which the East Malling Trust could achieve residential development value from the site would ultimately be relied upon if an application for planning permission for the construction of new dwellings were refused. That was a simple and obvious reality – whether explicitly stated by the East Malling Trust or not. It was accurately and quite properly reflected in the officer’s report to committee. It is

reinforced by evidence before the court – in the witness statement of Mr Humphrey, the council’s Director of Planning, Housing and Environmental Health, dated 18 March 2016 (in paragraphs 6 to 24), in the witness statement of Mr Wilkinson, the Land and Sales Manager of Croudace Portland, also dated 18 March 2016 (in paragraphs 4 to 7), in the first witness statement of Ms Flanagan, the Property and Commercial Director of the East Malling Trust, dated 17 March 2016 (in paragraphs 4 to 6), and in Ms Flanagan’s second witness statement, dated 17 June 2016 (in paragraphs 2 to 5).

31. As Ms Flanagan says (in paragraph 2 of her second witness statement):

“2. At paragraph 6 of my first witness statement, I state that there was no doubt that the Trust would consider alternatives to the preferred scheme. To further amplify, the Trust (as a charitable body) is tasked with obtaining best value upon the disposal of its assets. A number of alternative uses were considered for the site, including industrial uses. However the Board was aware that a residential scheme of some type would provide the best value for the application land, even were that to include a conversion of the existing agricultural building.”

Ms Flanagan goes on to refer to Smiths Gore’s letter of 27 February 2014 (in paragraphs 4 and 5):

“4. ... This letter ... states that at that time [Smith Gore’s] opinion was that it was unlikely that a scheme of conversion would be contemplated by any developer. However, this letter pre-dated the permitted development rights that subsequently came into effect in April 2014. By the time the planning application had formally been submitted, these permitted development rights were in effect.

5. Had no other scheme proven acceptable in planning terms, and if planning permission had been refused for the development the subject of the planning application, the Trust would have built out a “permitted development” scheme to the fullest extent possible in order to realise the highest value for the land, in order to thereafter seek disposal to a developer.”

32. That evidence is wholly unsurprising. And it confirms the East Malling Trust’s intentions as they were when the council made its decision to grant planning permission in January 2016, by which time the current provisions for “permitted development” under Class Q of the GPDO had come into effect. It states the East Malling Trust’s position as landowner at that stage – as opposed to the view expressed by an officer of the council, and an opinion by a marketing agent in a letter to developers, almost two years before. It is consistent with what was being said on behalf of the East Malling Trust in its dealings with the council from the outset – in effect, that the site was going to be redeveloped for housing even if this had to involve the conversion and change of use of the barn to residential use. It reflects the fiduciary duty of the trustees. And it bears out what the council’s officer said about the “fallback position” in his report to committee.

33. I do not see how it can be said that the officer’s assessment of the “fallback position”, which the committee adopted, offends any relevant principle in the case law – in particular the concept of a “real prospect” as explained by Sullivan L.J. in *Samuel Smith Old*

Brewery. It was, in my view, a faithful application of the principles in the authorities in the particular circumstances of this case. It also demonstrates common sense.

34. The officer did not simply consider the fallback in a general way, without regard to the facts. He considered it in specific terms, gauging the likelihood of its being brought about if the council were to reject the present proposal. In the end, of course, these were matters of fact and planning judgment for the committee. But the officer's advice in paragraphs 6.14 to 6.19 of his report was, I believe, impeccable. He was right to say, in paragraph 6.14, that the "new permitted development rights" – under Class Q in the GPDO – would enable the barn to be converted into three residential units; in the same paragraph, that the building "could be physically adapted in certain ways that would allow for partial residential occupation ..."; and, in paragraph 6.15, that the bungalow "could be replaced in accordance with policy CP14 with a new residential building provided that it was not materially larger than the existing building". He was also right to say, therefore, that the site could be developed for "four residential units albeit of a different form and type to that proposed by this application". All of this was factually correct, and represented what the council knew to be so. It did not overstate the position. It went no further than the least that could realistically be achieved by way of a fallback development – through the use of permitted development rights under Class Q and an application for planning permission complying with policy CP14.
35. The officer also guided the committee appropriately in what he said about the realism of the "fallback position". At the end of paragraph 6.15 of his report he said that the fallback development he had described was "a realistic fallback position in terms of how the site could be developed". He was well aware of the need to take into account only a fallback development that was truly "realistic", not merely "theoretical". He came back, in paragraph 6.16, to the question of "realistic 'fallback' positions", again reminding the members that this was what had to be considered. He went on to acknowledge, rightly, that the council had to consider what could be achieved "using permitted development rights for alternative forms of development". The context for this advice was that in his view, as he said in paragraph 6.15, he was dealing with "a realistic fallback position". He went on in paragraph 6.17 to consider what "would" happen if a scheme taking advantage of permitted development rights came forward. And in paragraph 6.18 his advice was that a redevelopment involving the conversion of "the entire barn for residential purposes, above the permitted development thresholds ... would wholly accord with adopted policy". That was a legally sound planning judgment. The same may also be said of the officer's conclusion in paragraph 6.19, where he compared the proposal before the committee with the "more piecemeal form of development that would arise should the applicant seek to undertake to implement permitted development rights".
36. In short, none of the advice given to the council's committee on the "fallback position" can, in the particular circumstances of this case, be criticized. It was, I think, unimpeachable.
37. In my view, therefore, the council was entitled to accept that there was a "real prospect" of the fallback development being implemented, and to give the weight it evidently did to that fallback as a material consideration. In doing so, it made no error of law.

Was the judge right to conclude that the council did not misunderstand or misapply the “presumption in favour of sustainable development” in the NPPF?

38. Paragraph 14 of the NPPF states:

“14. At the heart of [the NPPF] is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.

...

For decision-taking this means:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in [the NPPF] taken as a whole; or
 - specific policies in [the NPPF] indicate development should be restricted.”

39. In *Barwood v East Staffordshire Borough Council* this court stated its understanding of the policy for the “presumption in favour of sustainable development” in the NPPF, and how that presumption is intended to operate (see paragraphs 34 and 35 of my judgment). In doing so, it approved the relevant parts of the judgment of Holgate J. in *Trustees of the Barker Mill Estates v Secretary of State for Communities and Local Government* [2016] EWHC 3028 (Admin) (in particular paragraphs 126, 131, 136, and 140 to 143). Three simple points emerged (see paragraph 35 of my judgment). The first and second of those three points need not be set out again here. The third, however, is worth repeating – because it bears on the issue we are considering now. I shall emphasize the most important principle for our purposes here:

“ ...

- (3) When the section 38(6) duty is lawfully performed, a development which does not earn the “presumption in favour of sustainable development” – and does not, therefore, have the benefit of the “tilted balance” in its favour – may still merit the grant of planning permission. On the other hand, a development which does have the benefit of the “tilted balance” may still be found unacceptable, and planning permission for it refused This is the territory of planning judgment, where the court will not go except to apply the relevant principles of public law The “presumption in favour of sustainable development” is not irrebuttable. Thus, in a case where a proposal for the development of housing is in conflict with a local plan whose policies for the supply of housing are out of date, the decision-maker is left to judge, in the particular circumstances of the case in hand, how much weight should be given to that conflict. The absence of a five-year supply of housing land will not necessarily be conclusive in favour of the grant of planning permission. This is not a matter of law. It is a matter of planning judgment (see paragraphs 70 to

74 of the judgment in [*Crane v Secretary of State for Communities and Local Government* [2015] EWHC 425 (Admin)].”

40. The judgments in this court in *Barwood v East Staffordshire Borough Council* entirely supersede the corresponding parts of several judgments at first instance – including, most recently, *Reigate and Banstead Borough Council v Secretary of State for Communities and Local Government* [2017] EWHC 1562 (Admin). In those cases, judges in the Planning Court have offered various interpretations of NPPF policy for the “presumption in favour of sustainable development”, and have explained how, in their view, the presumption should work. There is no need for that to continue. After the decision of the Court of Appeal in *Barwood v East Staffordshire Borough Council*, it is no longer necessary, or appropriate, to cite to this court or to judges in the Planning Court any of the first instance judgments in which the meaning of the presumption has been considered.
41. The Planning Court – and this court too – must always be vigilant against excessive legalism infecting the planning system. A planning decision is not akin to an adjudication made by a court (see paragraph 50 of my judgment in *Barwood v East Staffordshire Borough Council*). The courts must keep in mind that the function of planning decision-making has been assigned by Parliament, not to judges, but – at local level – to elected councillors with the benefit of advice given to them by planning officers, most of whom are professional planners, and – on appeal – to the Secretary of State and his inspectors. They should remember too that the making of planning policy is not an end in itself, but a means to achieving reasonably predictable decision-making, consistent with the aims of the policy-maker. Though the interpretation of planning policy is, ultimately, a matter for the court, planning policies do not normally require intricate discussion of their meaning. A particular policy, or even a particular phrase or word in a policy, will sometimes provide planning lawyers with a “doctrinal controversy”. But even when the higher courts disagree as to the meaning of the words in dispute, and even when the policy-maker’s own understanding of the policy has not been accepted, the debate in which lawyers have engaged may turn out to have been in vain – because, when a planning decision has to be made, the effect of the relevant policies, taken together, may be exactly the same whichever construction is right (see paragraph 22 of my judgment in *Barwood v East Staffordshire Borough Council*). That of course may not always be so. One thing, however, is certain, and ought to be stressed. Planning officers and inspectors are entitled to expect that both national and local planning policy is as simply and clearly stated as it can be, and also – however well or badly a policy is expressed – that the court’s interpretation of it will be straightforward, without undue or elaborate exposition. Equally, they are entitled to expect – in every case – good sense and fairness in the court’s review of a planning decision, not the hypercritical approach the court is often urged to adopt.
42. The principles on which the court will act when criticism is made of a planning officer’s report to committee are well settled. To summarize the law as it stands:
 - (1) The essential principles are as stated by the Court of Appeal in *R. v Selby District Council, ex parte Oxton Farms* [1997] E.G.C.S. 60 (see, in particular, the judgment of Judge L.J., as he then was). They have since been confirmed several times by this court, notably by Sullivan L.J. in *R. (on the application of Siraj) v Kirklees Metropolitan Borough Council* [2010] EWCA Civ 1286, at paragraph 19, and applied in many cases at first instance (see, for example, the judgment of Hickinbottom J., as he then was, in *R. (on the application of*

Zurich Assurance Ltd., t/a Threadneedle Property Investments) v North Lincolnshire Council [2012] EWHC 3708 (Admin), at paragraph 15).

- (2) The principles are not complicated. Planning officers' reports to committee are not to be read with undue rigour, but with reasonable benevolence, and bearing in mind that they are written for councillors with local knowledge (see the judgment of Baroness Hale of Richmond in *R. (on the application of Morge) v Hampshire County Council* [2011] UKSC 2, at paragraph 36, and the judgment of Sullivan J., as he then was, in *R. v Mendip District Council, ex parte Fabre* (2000) 80 P. & C.R. 500, at p.509). Unless there is evidence to suggest otherwise, it may reasonably be assumed that, if the members followed the officer's recommendation, they did so on the basis of the advice that he or she gave (see the judgment of Lewison L.J. in *Palmer v Herefordshire Council* [2016] EWCA Civ 1061, at paragraph 7). The question for the court will always be whether, on a fair reading of the report as a whole, the officer has materially misled the members on a matter bearing upon their decision, and the error has gone uncorrected before the decision was made. Minor or inconsequential errors may be excused. It is only if the advice in the officer's report is such as to misdirect the members in a material way – so that, but for the flawed advice it was given, the committee's decision would or might have been different – that the court will be able to conclude that the decision itself was rendered unlawful by that advice.
- (3) Where the line is drawn between an officer's advice that is significantly or seriously misleading – misleading in a material way – and advice that is misleading but not significantly so will always depend on the context and circumstances in which the advice was given, and on the possible consequences of it. There will be cases in which a planning officer has inadvertently led a committee astray by making some significant error of fact (see, for example *R. (on the application of Loader) v Rother District Council* [2016] EWCA Civ 795), or has plainly misdirected the members as to the meaning of a relevant policy (see, for example, *Watermead Parish Council v Aylesbury Vale District Council* [2017] EWCA Civ 152). There will be others where the officer has simply failed to deal with a matter on which the committee ought to receive explicit advice if the local planning authority is to be seen to have performed its decision-making duties in accordance with the law (see, for example, *R. (on the application of Williams) v Powys County Council* [2017] EWCA Civ 427). But unless there is some distinct and material defect in the officer's advice, the court will not interfere.

43. Was the officer's advice to the members in this case flawed in that way? I do not think so.

44. In paragraph 6.1 of his report the officer said:

“6.1 As Members are aware, the Council in its role as Local Planning Authority is required to determine planning applications and other similar submissions in accordance with the Development Plan in force unless material considerations indicate otherwise. ... The NPPF and the associated [Planning Practice Guidance] are important material considerations.”

He went on to consider the relevant policies of the development plan, in particular policies CP11, CP12, CP13 and CP14 of the core strategy, and then advised the committee, in paragraph 6.6:

“6.6 With the above policy context in mind, it is clear that the proposal relates to new development outside the village confines (on land which is not defined as “previously developed” for the purposes of applying NPPF policy), is not part of a wider plan of farm diversification and is not intended to provide affordable housing as an exceptions site. Consequently, the proposed development falls outside of the requirements of these policies and there is an objection to the principle of the proposed development in the broad policy terms.”

and in paragraph 6.7:

“6.7 It is therefore necessary to establish whether any other material planning considerations exist that outweigh the policy objections to the scheme in these particular circumstances.”

45. In paragraph 6.8 the officer acknowledged, in the light of the relevant guidance in the Planning Practice Guidance, that “the policies contained in ... the NPPF are material considerations and must be taken into account”, and, in paragraph 6.9, that since the core strategy had been adopted in 2007 it was “necessary to establish how consistent the above policies are with the policies contained within the NPPF”. His advice in paragraphs 6.10 to 6.13 of his report was this:

“6.10 With this in mind, it must be noted that paragraph 49 of the NPPF states that applications for new housing development should be considered in the context of the presumption in favour of sustainable development. Paragraph 50 of the NPPF emphasises the importance of providing a wide choice of high quality homes, to widen opportunities for home ownership and create sustainable, inclusive and mixed communities. Paragraph 55 states that in order to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities.

6.11 These criteria all demonstrate a clear government momentum in favour of sustainable development to create new homes and drive economic development. The proposed development would create four high quality new homes on the very edge of an existing village settlement.

6.12 A further indicator of such emphasis is borne out of the recent changes to the regime of permitted development rights set out by national government by the Town and Country Planning (General Permitted Development) Order 2015. This allows for far more development to take place without the need for planning permission from Local Authorities and generally provides a steer as to government’s thinking on how to boost the country’s economy through the delivery of new homes.

6.13 Such continued emphasis from government is a material consideration that must be balanced against the policy context set out in the TMBCS.”

46. I have already referred to the officer's advice on the "fallback position" in paragraphs 6.14 to 6.19 of his report. In paragraphs 6.20 to 6.42 he considered the planning merits of the proposal and its advantages by comparison with the fallback development, drawing the committee's attention to relevant policies both in the core strategy and in the NPPF. He advised that the design and density of the proposed development were acceptable and beneficial (paragraphs 6.20 to 6.23). In paragraph 6.24 he said:

"6.24 With these considerations in mind, particularly the emphasis contained within the NPPF concerning sustainable development generally, the impetus behind the provision of new homes, the benefits of removing existing structures and the permitted development "fallback" position, it is my view that, on balance, other material considerations can weigh in favour of the grant of planning permission."

47. He concluded that the effects of the development on the settings of listed buildings and the setting of East Malling Conservation Area would not be harmful (paragraphs 6.25 to 6.30). He also found the proposed arrangements for access to the site and for car parking acceptable (paragraphs 6.31 to 6.36). He advised that "... the existing barn could be partially converted and the existing access retained for use by those units which arguably could have a greater impact on amenity in terms of activity, noise and disturbance than the proposed development simply by virtue of the greater degree of proximity to the existing residential properties" (paragraph 6.33). He told the committee that in his view it "would be counterproductive to seek affordable housing contributions as this would merely limit the ability of the Trust to recycle funds to provide wider support for the Trust" (paragraph 6.37). And the loss of Grade 2 agricultural land was "not ... a justifiable reason to refuse planning permission ..." (paragraph 6.39).

48. The final paragraph of the officer's report is paragraph 6.42, where he said this:

"6.42 In conclusion, it is important to understand that the starting point for the determination of this planning application rests with the adopted Development Plan. Against that starting point there are other material planning considerations that must be given appropriate regard, not least the requirements set out within the NPPF which is an important material consideration and the planning and design of the proposal for the site in the context of the permitted development fallback position. The weight to attribute to each of those other material planning considerations, on an individual and cumulative basis, and the overall balance is ultimately a matter of judgement for the Planning Committee. My view is that the balance can lie in favour of granting planning permission."

49. In recording the argument on this issue in the court below, Garnham J. noted Ms Graham Paul's submission that "the presumption in favour of sustainable development set out in paragraph 14 of [the NPPF] was not operative" in this case – because the development plan was in place and up-to-date and the council was able to demonstrate a five-year supply of deliverable housing sites (paragraph 43 of the judgment). Ms Graham Paul had conceded that "sustainability may be capable of being a material consideration in considering a conflict with a development plan". What the officer had done in paragraph 6.10 of his report, said the judge, had been "to invite the committee to note the effect of paragraphs 49, 50 and 55 [of the NPPF]". It was not suggested that those paragraphs of the

NPPF had been misrepresented. Nor was it suggested that the officer had failed to point out that the proposed development “fell outside the local plan”; he had done that in paragraph 6.6 of his report. In those circumstances, said the judge, “it cannot sensibly be argued that the officer misled the committee in any material respect” (paragraph 47). The judge also rejected the submission that paragraphs 49, 50 and 55 of the NPPF were irrelevant. He observed that the NPPF “provides for a presumption in favour of sustainable development which it says should be seen “as a golden thread” running through decision-taking”. He added that “[the] weight to be given to those considerations in any given case is a matter for the planning authority but it cannot, at least on facts such as the present, be said that the underlying principle is irrelevant” (paragraph 48). He rejected the submission that the officer had not justified the departure from the development plan. The officer’s report, he said, “accurately and fairly sets out the competing considerations and it was a matter for the judgment of the planning authority how those considerations were resolved” (paragraph 49).

50. In the submissions they made to us at the hearing, though not in their respective skeleton arguments, both Ms Graham Paul and Mr Lopez recast their arguments in the light of what this court has now said about the “presumption in favour of sustainable development” in *Barwood v East Staffordshire Borough Council*, including the basic point that the presumption is contained solely in paragraph 14 of the NPPF (see paragraph 35 of my judgment in that appeal). They were right to do so.
51. It was common ground before us, as it was in the court below, that the “presumption in favour of sustainable development” did not apply to the proposal. And the council’s officer did not advise the committee that it did. As Ms Graham Paul acknowledged, the only reference to the “presumption in favour of sustainable development” in the officer’s report is in the first sentence of paragraph 6.10. But, she submitted, in view of what the officer said in that paragraph of the report, and also in paragraph 6.42, we should conclude that the committee took the presumption into account as a material consideration, which it ought it not to have done. Ms Graham Paul did not submit that the proposal was given the benefit of the so called “tilted balance”. But she argued that the effect of the officer’s advice was that the “presumption in favour of sustainable development” was one of the “requirements set out within the NPPF ...”, which the officer treated as “an important material consideration” and a significant factor weighing in favour of the proposal in the planning balance.
52. I disagree. In my view the argument fails on a straightforward reading of the officer’s report, in the light of the judgments in this court in *Barwood v East Staffordshire Borough Council*. I do not accept that the officer counted the “presumption in favour of sustainable development” as a material consideration weighing in favour of planning permission being granted.
53. The reference to the “presumption in favour of sustainable development” in paragraph 6.10 of the officer’s report is a quotation of the first sentence of paragraph 49 of the NPPF, not of paragraph 14. The quotation is correct. In the same paragraph of the report the officer also referred to two other passages of policy in the NPPF, namely paragraphs 50 and 55. The policies are correctly summarized. The common factor in those three passages of NPPF policy is not the “presumption in favour of sustainable development”. It is the promotion, in national planning policy, of sustainable housing development. That this is

what the officer had in mind in this part of the report is very clear from what he went on to say in paragraphs 6.11, 6.12 and 6.13, and then in paragraph 6.24.

54. In those paragraphs the officer was not purporting to apply the “presumption in favour of sustainable development” to the proposal. Nor did he advise the committee that the presumption was engaged, or that it was, in itself, a material consideration weighing in favour of the proposal. He referred, in paragraph 6.11, to “[these] criteria” – meaning the matters to which he had referred in paragraph 6.10 – as demonstrating “a clear government momentum in favour of sustainable development to create new homes and drive economic development”; in paragraphs 6.12 and 6.13 respectively, to “such emphasis” and “[such] continued emphasis from government”; and in paragraph 6.24 to “the emphasis contained within the NPPF concerning sustainable development generally ...” (my underlining). The language in those paragraphs is very distinctly not the language one would have expected the officer to have used if he thought he was applying the “presumption in favour of sustainable development”. The intervening and subsequent assessment, culminating in his final conclusion on the planning merits of the proposal in paragraph 6.42, is concerned with its credentials and benefits – and advantages when compared with the fallback – as sustainable development.
55. Paragraph 6.42 of the officer’s report does not, in my view, betray a misunderstanding of NPPF policy for the “presumption in favour of sustainable development”. The advice given to the committee in that paragraph was not inaccurate or misleading. The officer did not undertake the planning balance in terms of the policy for “decision-taking” in paragraph 14 of the NPPF. There can be no suggestion that, contrary to his earlier conclusion and advice in paragraphs 6.6 and 6.7 of his report, he was treating this as a case in which the proposal accorded with the development plan, so that it was to be approved “without delay” under the first limb of the policy for “decision-taking” in paragraph 14. Nor can it be suggested that, contrary to the whole tenor of his assessment of the proposal in paragraphs 6.1 to 6.41, this was a case in which the development plan was “absent” or “silent” or any “relevant policies” of it were “out-of-date”, so that the second limb of the policy for “decision-taking” in paragraph 14 applied.
56. This case is clearly and materially different from *Barwood v East Staffordshire Borough Council* – a case that shows what can go wrong when a decision-maker is misled as to the meaning and effect of government policy for the “presumption in favour of sustainable development”. Here the officer did not commit an error of the kind made by the inspector – and conceded by the Secretary of State – in that case: the mistake of discerning a “presumption in favour of sustainable development” outside paragraph 14 of the NPPF and treating that wider presumption as a material consideration weighing in favour of the proposal (see paragraphs 43 to 48 of my judgment in *Barwood v East Staffordshire Borough Council*). The officer did not say, as the inspector did in *Barwood v East Staffordshire Borough Council*, that “where a proposal is contrary to the development plan [the “presumption in favour of sustainable development”] is a material consideration that should be taken into account” (paragraph 12 of the decision letter in that case). Unlike the inspector in that case (in paragraphs 37 to 41 of his decision letter), he did not bring the “presumption in favour of sustainable development” into the balancing exercise as a material consideration (see paragraphs 26 and 29 of my judgment). And, in my opinion, it cannot realistically be suggested that the members would have thought they were being invited to apply that presumption in government policy, or to give it weight as a material consideration, in their assessment of the proposal.

57. The “presumption in favour of sustainable development” did not, in fact, feature as a material consideration to which the officer gave any positive weight when undertaking the planning balance. The exercise he conducted in paragraph 6.42 of his report was an entirely conventional and lawful balance of other material considerations against the identified conflict with the development plan, as section 38(6) of the Planning and Compulsory Purchase Act 2004 requires. It was, in fact, a classic example of that provision in practice. This is not to say that in his assessment of the proposal he had to refrain from considering the extent to which it complied with relevant NPPF policies – in particular, in the specific respects to which he referred, the sustainability of the proposed development in the light of NPPF policy, as well as its compliance with relevant policies of the development plan. That was a perfectly legitimate, and necessary, part of the planning assessment in this case. Had the officer left it out, he would have been in error, because he would then have been failing to have regard to material considerations. But he did not make that mistake. He assessed the proposal comprehensively on its planning merits, exercising his planning judgment on the relevant planning issues. He took into account the sustainability of the proposed development in the light of NPPF policy, but without giving it the added impetus of the “presumption in favour of sustainable development”. I cannot fault the advice he gave.
58. Finally on this issue, I do not accept the suggestion made by Ms Graham Paul in reply that the council’s response to Mr Mansell’s solicitors’ pre-application protocol letter, in its solicitors’ letter dated 22 February 2016, can be read as conceding the error for which Ms Graham Paul contended. In fact, it squarely denied that error. Having referred to the quotation of the first sentence of paragraph 49 of the NPPF in paragraph 6.10 of the officer’s report, it acknowledged that the proposal was a “departure from the development plan” and that the development plan was not “absent” or “silent” nor were relevant policies “out-of-date”. It then said that neither the officer nor the committee had treated the “presumption in favour of sustainable development” under paragraph 14 of the NPPF as “operative” in this case. It acknowledged, therefore, that neither of the limbs of the policy for “decision-taking” in paragraph 14 of the NPPF could have applied here. And it said that the officer’s report “does not begin to suggest otherwise”. I agree.
59. It follows that this ground of appeal must also fail.

Conclusion

60. For the reasons I have give, I would dismiss this appeal.

Lord Justice Hickinbottom

61. I agree with both judgments. Without diminishing my concurrence with anything my Lords have said, I would wish expressly to endorse the observations of Lindblom L.J. in paragraphs 39-40 to the effect that, in future, reference to pre-*Barwood v East Staffordshire Borough Council* authorities on the meaning and operation of the presumption in paragraph 14 of the NPPF should be avoided; and in paragraph 41, supported by the further comments of the Chancellor, on the respective roles of planning decision-makers and the courts in planning cases.

The Chancellor of the High Court

62. I too agree with Lord Justice Lindblom's judgment, but would add a few words from a more general perspective. In the course of the argument, one could have been forgiven for thinking that the contention that the presumption in favour of sustainable development in the NPPF had been misapplied in the planning officer's report turned on a minute legalistic dissection of that report. It cannot be over-emphasised that such an approach is wrong and inappropriate. As has so often been said, planning decisions are to be made by the members of the Planning Committee advised by planning officers. In making their decisions, they must exercise their own planning judgment and the courts must give them space to undertake that process.
63. Appeals should not, in future, be mounted on the basis of a legalistic analysis of the different formulations adopted in a planning officer's report. An appeal will only succeed, as Lindblom L.J. has said, if there is some distinct and material defect in the report. Such reports are not, and should not be, written for lawyers, but for councillors who are well-versed in local affairs and local factors. Planning committees approach such reports utilising that local knowledge and much common-sense. They should be allowed to make their judgments freely and fairly without undue interference by courts or judges who have picked apart the planning officer's advice on which they relied.
64. It is also appropriate to reiterate what Lindblom L.J. said at paragraph 35 of the *East Staffordshire* case to the effect that planning decision-makers have to exercise planning judgment as much when the presumption in favour of sustainable development is applicable as they do when it is not. The presumption may be rebutted when it is applicable, and planning permission may be granted where it is not. In each case, the decision-makers must use their judgment to decide where the planning balance lies based on material considerations. It is not for the court to second guess that planning judgment once it is exercised, unless as I have said it is based on a distinct and material defect in the report.
65. I agree that this appeal should be dismissed.

E

CASE OFFICER'S REPORT

Application Reference:	PL/2025/03227
Application Type:	Full planning permission
Consultation Ends:	06/08/25
Case Officer:	Joe Richardson

Site Address:	Manor Farmhouse, East Grimstead, Wiltshire, SP5 3RT
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Proposal:	Change of use of land from agricultural to a mixed use of equestrian/agriculture and the erection of a barn/stable block
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Recommendation:	Approve with Conditions
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Site Description/Proposal:

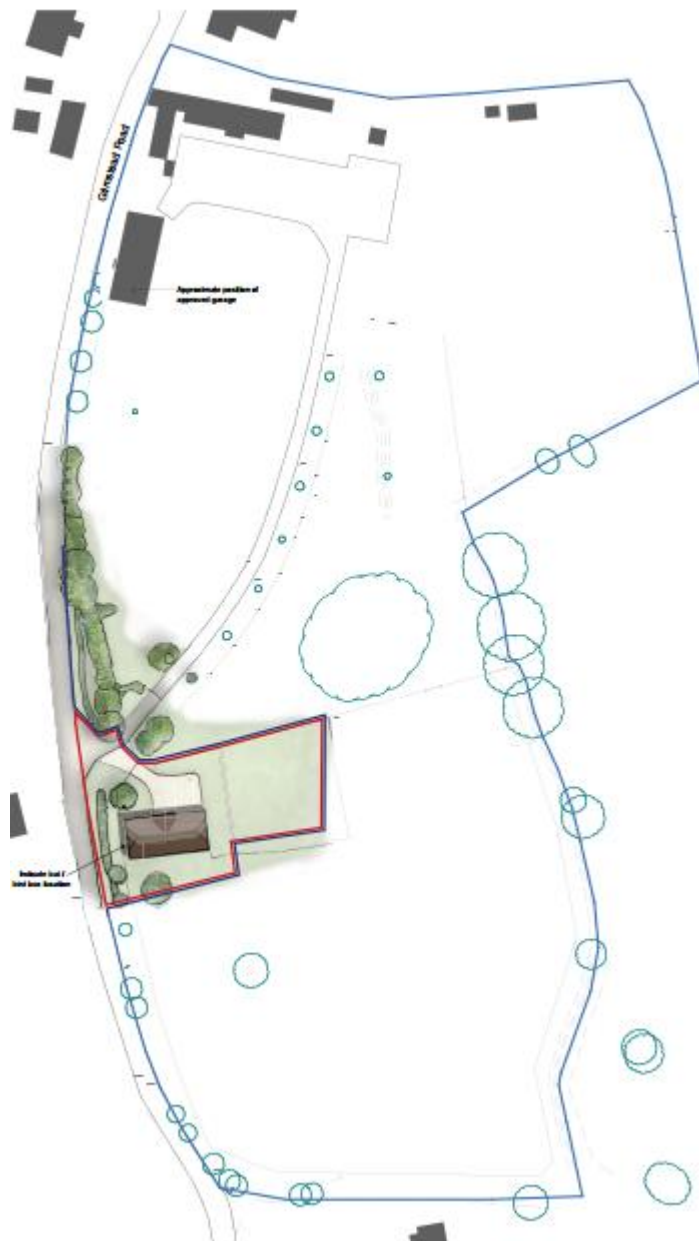
The application site relates to a large plot of land owned by the occupiers/owners of Manor Farm House that surrounds the property. Land to the south of this dwellinghouse is currently used as paddocks for the stationing of 3 horses/ponies and 4 alpacas. Other livestock such as sheep have grazed the land in the summer months. The site forms part of a large open field situated on the edge of the village of East Grimstead and lies in a slightly elevated position in relation to the public highway (Grimstead Road) that runs along the western boundary of the application site which is bounded by mature trees and hedgerow. The dwellinghouse known as Wellmead Barn is adjacent to the site entrance of the application site and other properties known as Laburnum House, Taw Cottage, Hollydene House. Oak Barn Cottage, Manor Cottage are in reasonable proximity.

An extract taken from the submitted existing location plan (DWG No: A-16-202) shows the site below with the two existing stable blocks that are to be removed by way of this proposal. To the east of the application site is the public right of way known as GRIM1. The site is within the Special Landscape Area (SLA), Flood Zone 1, in an area that is at low risk of ground water flooding, is within the River Test SAC catchment area and is within the 13.8km New Forest Recreation Zone of Influence.



Core Policies CP1 (Settlement Strategy) and CP2 (Delivery Strategy) form the settlement strategy for the Wiltshire Core Strategy (WCS). It is evident that the site subject to this planning application is outside of the defined settlement boundary of East Grimstead and therefore, for the purposes of the local plan, is within the open countryside.

Planning permission is sought for the change of use of land from agriculture to a mixed use of equestrian/agriculture and the erection of barn/stable block. An extract below taken from the proposed block plan (DWG No: A-05-202 Rev F) shows the layout of the barn/stable block with the red line and the blue line denoting the land within the applicant's ownership.



Relevant Planning History:

17/12401/OUT – Erection of detached dwelling (Access and layout only – all other matters reserved) REF 22/02/18 Dismissed on appeal 10.12.18

PL/2023/05974 – Detached garage and garden store with ancillary accommodation A.C
08.03.24

PL/2024/09349 – Single storey side extension, two storey rear extension A.C 10.12.24

PL/2025/02210 – Erection of a two bedroom annexe to serve Manor Farmhouse WTD
14.05.25

POLICIES

National Planning Policy Framework

Section 2 Achieving Sustainable Development

Section 11 Making Effective Use of Land

Section 12 Achieving Well Designed Places

Section 15 Conserving and enhancing the natural environment

Wiltshire Core Strategy

Core Policy 1 Settlement Strategy

Core Policy 2 Delivery Strategy

Core Policy 23 Southern Wiltshire Community Area

Core Policy 48 Supporting Rural Life

Core Policy 50 and 52 Biodiversity and Geodiversity

Core Policy 51 Landscaping

Core Policy 57 Ensuring high quality design and place shaping

Core Policy 61 Transport and Development

Core Policy 64 Demand Management

Supplementary Planning Documents:

Wiltshire Local Transport Plan 2015-2026: Car Parking and Cycling Strategy

Creating Places Design Guide SPD (April 2006)

National Design Guide 2021

Wiltshire Design Guide 2024

Emerging Local Plan

Salisbury District Local Plan

C6- Special Landscape Area

ISSUES

- Principle of development including design and scale;
- Amenity impacts including SLA;
- Highway safety/parking;
- Ecological Impact;
- Other matters

CONSULTATIONS/REPRESENTATIONS

Grimstead Parish Council – Objection with comments received stating:

Grimstead Parish Council objects to this application in terms of size and design, and councillors agree with the other points and issues raised by residents. This is a complex

situation, bearing in mind the planning history of the site, and the potential impact of PL/2025/02210 (now withdrawn, but which may be resubmitted). The GPC is of the opinion this application needs to be referred to the Southern Area Planning Committee for a full review, examination and officer's report to ensure the correct policies are being observed. Wiltshire Councillor Gregory Cooper has been asked to call in the application if the Planning Officer is minded to approve.

WC Highways – No objection with comments received stating:

The site benefits from sufficient off street parking for any vehicles associated with the barn and the vehicle access is adequate. Providing the intended use is agricultural, I raise no highway objection.

WC Ecology – No comments received

WC Public Protection - No comment

Third party representations – 3 x letters of objection with comments received summarised as the following:

- Environmental Health issues with increase in number of large flies and rates within the vicinity;
- The existing stables do not have any planning permission;
- The height and location of the barn;
- Overbearing impact of the proposal on amenity of nearby properties;
- Incremental development of land within a Special Landscape Area;
- Concerns over the long term use of the proposed barn;
- Proposal is not considered to complement or enhance the environment;

Following the submission of amended plans, a re-consultation has taken place to all interested parties and the following comments received are shown below:

Grimstead Parish Council – Objection with comments received stating:

Grimstead Parish Council's views have not changed, and it continues to object to this application. The revisions are modest - although the ridge height has been reduced, the environmental concerns raised (increased smell, increased number of vermin and flies) have not been addressed, and the building has not been relocated within the site. The building will have a significant impact on the street scene, in contravention of Core Policy 2 of the LDF. As far as the GPC is aware, the entire site is designated for agricultural use rather than development, and so the infilling of spaces between buildings does not apply. As a result, the GPC has again requested that this application be called into the Southern Planning Committee for determination, as it feels a thorough review and examination of the impact of this application, in addition to those previously agreed on this site, is required.

WC Highways – No objection with reference made to the previous consultation comments.

WC Ecology – No objection subject to conditions (please refer to the ecology section of this report for full comments).

Conditions to be imposed:

Compliance with submitted Preliminary Ecological Appraisal;

Details of lighting

WC Public Protection – No comments received

Third party representations – 4 x letters of objection with comments received summarised as the following:

- Increase in vermin and flies and noise from animals;
- Building height is still overbearing and will dominate the surrounding area;
- No clear indication of what has changed within the proposed barns;
- Concerns around standing water and flooding within the land and surrounding area;
- Impact on the appearance of the Special Landscape Area;
- Proposal creates linear development along the boundary of the site with the other planning approvals at Manor Farm;
- Concerns around the long term use of the building

Call-in of application:

Should officers be minded to recommend approval of this proposal, Cllr Cooper has 'called-in' the application to be determined by the Southern Area Planning Committee on the following key issues:

- Visual impact on the surround area;
- Relationship to adjoining properties;
- Design – bulk, height, general appearance;
- Environmental/highway impact

Other reasons are stated as the following:

Having looked at the site from the road, given it's already elevated position on a bank 1.5m above the road, and the height of the structure, the impact on the area and the loss of amenity (natural light) would appear significant. There is development in the immediate vicinity that required the ground level to be reduced and overall height limited. Given the comments already received, that raise further issues, this application requires a thorough examination of the impact on the immediate area and the village.

However, the call-in of this planning application has not been received within the permitted 21 day time frame as stated within the scheme of delegation and therefore the 'call-in' is not valid. The application will therefore be determined under officer delegated powers.

ASSESSMENT

Principle of development including design and scale

The Wiltshire Core Strategy (WCS) sets out a Settlement Strategy and a Delivery Strategy for the sustainable delivery of new development within the County. Applying the normal principle that applications for planning permission should be determined in accordance with the Development Plan unless material considerations indicate otherwise; proposed new development which does not comply with the Settlement and Delivery Strategies will be unsustainable, and so unacceptable as a matter of principle, in this overarching context. The WCS for the area was adopted by Wiltshire Council in January 2015.

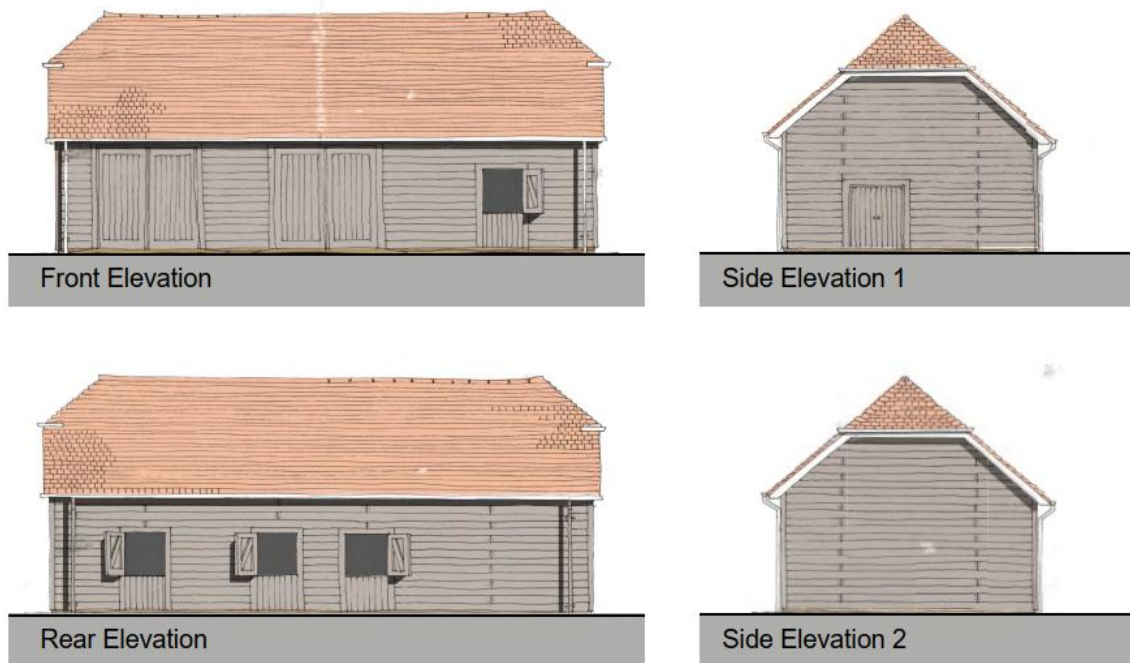
Core Policies CP1 (Settlement Strategy) and CP2 (Delivery Strategy) form the settlement strategy for the Wiltshire Core Strategy (WCS). The village of East Grimstead is identified as a small village in the WCS where the settlement boundary has been removed and therefore has no defined limits of development/settlement boundary. The site subject to this planning application is outside of the defined settlement boundary of East Grimstead and therefore, for the purposes of the local plan, is within the open countryside.

Generally there is no principle objection to new agricultural/stable block buildings in the countryside. In addition, whilst it can be stated that this site is located fairly remotely from services and facilities, it is acknowledged that the proposal is for a type of use that would be expected to be found given its location within the open countryside. The location of the site would be more appropriate within the rural setting such as this rather than within the built up parameters of a village. Whilst there are dwellinghouses within the vicinity of the site, amenity impacts of this scheme will be discussed within the next section of this report.

At a local level, WCS policy CP57 (Ensuring High Quality Design & Place Shaping), further requires a high standard of design in all new developments through, in particular, enhancing local distinctiveness; retaining and enhancing existing important landscaping and natural features; being sympathetic to and conserving historic buildings and landscapes in terms of layouts, massing, building heights and plot sizes; and making efficient use of land whilst taking into account the local context and surrounding uses.

The revised NPPF puts greater emphasis on the need for good design. Paragraph 135 sets out that developments should function well and add to the overall quality of the area; demonstrate good architecture, layout and appropriate and effective landscaping; be sympathetic to local character; and establish a sense of place. It states at Paragraph 139 that development that is not well designed should be refused.

The location of the proposed barn/stable block will be sited perpendicular to the existing mature hedgerow along the site boundary roughly upon the footprint of the existing two stable blocks that are to be removed. Following concerns from members of the public and discussions between the case officer and agent, amendments to the design of the proposed barn/stable block have been provided. The proposed revised plans are shown below and result in an overall reduction in height by approximately 60cms and change in massing through the removal of a gable end hipped extension. The ridge height of the building would be approximately 7.87 metres in height. The building would be used for the storage of agricultural machinery associated with the upkeep of land surrounding Manor Farm House and for the stabling of horses/ponies upon the land.



Materials to be used in the construction of the proposal would be dark stained feather edge timber weatherboarding, natural clay tiles with bonnet hips, cast aluminium rainwater goods in black and red brick up to DPC level. A materials schedule detailing the proposed materials has been submitted by the agent and this schedule can be imposed as a condition onto any consent. The traditional appearance and design of the proposed barn/stable block within the context of the site is in officer opinion, considered to be acceptable.

Whilst concerns have been received about its overall size/design and use, the size/design as previously alluded, has been reduced and altered. A condition can be imposed onto any consent that stipulates that the use of the barn/stable shall be used for ancillary storage and machinery only associated with the upkeep of the land shown within the blue line and there to be no residential occupation.

Noting that there are no specific policies in the WCS that relate to new agricultural buildings in the countryside, the changes in design and massing of the proposal, the scheme subject to the imposing of the suggested conditions around the use is considered to adhere to the requirements of Core Policy CP57 of the WCS

Amenity impacts including the SLA

Core Policy 57 also requires that development should ensure the impact on the amenities of existing occupants is acceptable, and ensuring that appropriate levels of amenity are achievable within the development itself, and the NPPF (paragraph 135f) states that planning decisions should 'create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.'

Also of relevance is WCS policy CP51 (Landscaping) that states: *Development should protect, conserve and where possible enhance landscape character and must not have a harmful impact upon landscape character, while any negative impacts must be mitigated as far as possible through sensitive design and landscape measures.*

The location of the application site is on the outskirts of the village of East Grimstead and therefore, for the purposes of the local plan, is within the open countryside. There are sporadic residential properties within proximity to the application site that include the dwellinghouses known as Laburnum House, Taw Cottage, Hollydene House, Oak Barn Cottage and Manor Cottage. Adjacent to the entrance to the application site, is the dwellinghouse known as Wellmead Barn. Below are extracts of the entrance to the site, Grimstead Road and Wellmead Barn obtained from Google maps dated June 2025.



The building will be sited perpendicular to the existing mature hedgerow lined along the site frontage. Concerns have been raised about the overbearing nature of the proposed barn/stable block on the surrounding area and the loss of light to this neighbouring property, Wellmead Barn. The gable end of the proposed building (side elevation 2 as shown on the proposed elevations plan) would be visible when viewed from the public highway. The site/land whilst being raised from the public highway is shielded to an extent by mature trees and shrubbery along the site frontage. Given the relationship of the proposed barn/stable block to Wellmead Barn, in that its orientation to the application site is to the west, it is therefore likely that in reality, noting the direction of the sun's travel, some early morning sun might in winter months currently experienced by Wellmead Barn will be lost/blocked by the proposal. During the rest of the day, and when the sun is higher in summer months, there would be no significant detrimental impact by way of loss of light to this dwellinghouse that in officer opinion would justify the refusal of permission.

A response of 'no comment' has been received from the Council's Public Protection Team to this proposal. As such, officers consider that the proposed barn/stable block and its use for such purposes subject to the imposing of restrictive conditions onto any consent, would not have any significant detrimental impact to this neighbouring properties in respect of noise/odour or to the wider area.

Comments received about an increase in flies, vermin and noise associated with farm animals are not a material consideration of this planning application. Matters of this nature as outlined, can be addressed under powers within Environmental Health legislation.

The site is within the Special Landscape Area (SLA) as defined by saved policy C6 of the Salisbury District Local Plan. Given the nature of the proposed as previously outlined within this report, it is unlikely that this scheme will have any impact on the SLA given the context of the site the proposed building is located within.

Materials to be used in the construction of the proposal would be dark stained feather edge timber weatherboarding, natural clay tiles with bonnet hips, cast aluminium rainwater goods in black and red brick up to DPC level. Officers have sought further clarification on the precise materials to be used and a materials schedule has been provided as below:

- Plinth brick: warm red machine made metric brick. (spec: Brickability - Autumn Red - [Autumn Red | Facing Brick](#))
- Timber cladding: dark stained Cedar clapboard cladding.
- Rainwater goods: polyester powder coated aluminium (RAL 7010 - dark grey).
- Roof tile: clay machine made ridge and roof tiles with bonnet hips (spec: Sahtas Brookhurst Mix: [Sahtas - Brookhurst handmade clay roof tiles](#))
- Doors: in cedar to match cladding.

These material details can be secured by the imposition of a planning condition to ensure the character/appearance of the Special Landscape Area, of which the site is located within, is maintained and upheld.

Highway safety/parking

The site benefits from an existing access/egress obtained from Grimstead Road and this access/egress is unaltered by this proposal.

The Council's Highways Officer has assessed this proposal and has no objection to this scheme as it is considered that there is adequate parking and manoeuvrability available within the site.

On the basis of the above and the comments received from the Highways Officer, the proposal is unlikely to have any adverse impact on highway safety or highway users that would warrant the refusal of planning permission.

Ecological Impact including BNG

CP50 and CP52 of the Wiltshire Core Strategy and the National Planning Policy Framework require that the planning authority ensures protection of important habitats and species in relation to development and seeks enhancement for the benefit of biodiversity through the planning system. It will therefore be necessary to assess the site for its potential to support habitats and species of importance to nature conservation.

The application is accompanied by an Preliminary Ecological Assessment (PEA) undertaken by Pro Vision dated March 2025 that has been assessed by the Council's Ecology Team. The applicant has also confirmed that the proposed barn/stable block will not be used for commercial livestock purposes.

Comments received from the Ecology Team state:

The site comprises two wooden stable buildings, hardstanding, hedgerow and grassland. The wider area contains further areas of grassland, woodland, and a small watercourse to the south.

Matters Considered:

River Test catchments – agricultural intensification

This development falls within the River Test catchment which drains into the Solent. This region is protected by a number of international designations and the proposal has the potential for adverse effects alone or in combination to the Solent designated sites (Solent Maritime SAC, Solent and Southampton Water Special Protection Area (SPA)) with other developments through increased nitrogen in the catchment.

A test of likely significance has been carried out by the relevant Competent Authority (Wiltshire Council) as required by Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended). This concluded that since there is no proposal to create any overnight accommodation and because the applicant has clarified the barn is not intended to be used for commercial livestock purposes, impacts on the river are considered to be de minimis. **The HRA has concluded that the application is not likely to have significant impacts on the Solent designated sites and subsequently the application is screened out of Appropriate Assessment.**

New Forest protected sites

The proposed development site lies within the 13.8km zone of influence for the New Forest internationally protected sites, which comprises the New Forest SPA, New Forest SAC and New Forest Ramsar site. Therefore, the application is screened into appropriate assessment under the Conservation of Habitats and Species Regulations 2017 (as amended) on account of its potential to cause adverse effects on the New Forest protected sites through increased recreational pressure which may occur alone and in-combination with other plans and projects. Many of the special features of the New Forest protected sites afforded protection are vulnerable to adverse effects associated with an increase in recreation as demonstrated in Natural England's supplementary advice issued for the SPA on 19 March 2019 and for the SAC on 18 March 2019. A test of likely significance has been carried out by the relevant Competent Authority (Wiltshire Council). This concluded that given the nature of the development (the proposal does not concern residential or tourism development) and with no net increase in dwellings, there would be no recreational impact on the New Forest, therefore there is no mechanism for adverse effect. The Habitat Regulation Assessment (HRA) has concluded that the application is not likely to have significant impacts on the New Forest SPA, New Forest SAC and New Forest Ramsar site and the proposal is screened out of Appropriate Assessment. Wiltshire Council's "Interim recreation mitigation strategy for the New Forest internationally protected sites" (Version 1.1, 21 March 2023) therefore does not apply to this proposal.

Other designated sites

There are two Sites of Special Scientific Interest (SSSIs) within 2km of the site: Bentley Wood (500m east) and Brickworth Down and Dean Hill (1.5km south) (statutory-designated sites). Furthermore, there are three County Wildlife Sites (CWSs) within 1km: Brookmead Meadow 280m southwest, Hazel Hill Wood 660m northwest, and Furzy Close Copse and Horse Close Copse 1km west (non-statutory designated sites). Given the nature of the proposal, the habitats to be lost, as well as the intervening distance between the site and these designated areas, it is not considered that these sites will be adversely affected by the development.

Protected species

Bats

The stable building to be removed was assessed as having negligible potential to support roosting bats (Preliminary Ecological Appraisal) due to it being open-fronted and possessing no exterior or interior potential roost features. Therefore, no further survey will be required.

There are records of numerous species of bats (Brown Long-eared, Serotine, Common and Soprano Pipistrelle) within 200m of the site, and the Mottisfont Bat SAC consultation zone is 240m east. The site is likely to be used by foraging and commuting bats. Since a small area (0.3ha) of grassland will be lost, and given the habitats present across the wider site and beyond, no comprehensive bat activity surveys will be required, but opportunities for bats should be provided via the proposed BNG habitat additions (see below), and a bat box or tube to be secured via a condition. Additionally, new lighting should be for the purposes for safe access and security and be in accordance with the appropriate Environmental Zone standards set out by the Institute of Lighting Engineers in their publication GN01:2021, 'Guidance for the Reduction of Obtrusive Light' (ILP, 2021), and Guidance note GN08-23 "Bats and artificial lighting at night", issued by the Bat Conservation Trust and Institution of Lighting Professionals. An appropriate lighting plan should be secured via a condition.

Great Crested Newts

There are seven records of Great Crested Newts (GCNs) within 500m of the site, the closest being 320m northwest. OS maps show one pond immediately adjacent to the site, though this was not noted within the Preliminary Ecological Appraisal and historic aerial imagery shows it has not been present for over two decades (if ever). The nearest pond is therefore considered to be 210m west of the site, though is separated by roads and residential properties. The next nearest pond is over 250m away. The report states that the hedgerow on site (to be retained) might provide suitable terrestrial habitat for GCN, but the grassland does not since it is a short sward and not tussocky. The report therefore concluded that the proposed development poses minimal threat to GCN, and we support this finding.

Reptiles

There are historical records of Smooth and Grass Snake in the field immediately east of the site. However, the only habitat on site suitable for use by reptiles is considered to be the hedgerow (to be retained). The Preliminary Ecological Appraisal recommends continued management of the grassland to ensure the sward remains short and thus unsuitable for use by GCN or reptiles.

Biodiversity Net Gain

Under Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021) this application is required to deliver 10% Biodiversity Net Gain (BNG). The Biodiversity Gain Plan condition will automatically apply if approval is forthcoming. A completed statutory metric calculation (Jake Purchase, 25/03/2025), map and habitat condition assessments (Jake Purchase, survey date 04/12/2024) confirming the baseline and predicted post-development biodiversity units of Site have been submitted.

The stable and hardstanding were constructed in 2022, and therefore, the baseline for the site has been assessed using historic data and satellite imagery. Prior to the construction of the stable, the site had comprised a grazed paddock since at least 2014. Information in the completed on-site baseline habitat tabs is accepted as accurate based on the information submitted. The pre-development (baseline) situation is summarised below.

On-site pre-development (baseline) biodiversity value	0.73 Habitat units
	0.10 Hedgerow units
	0.00 Watercourse units
Are there any irreplaceable habitats on-site?	No
Has any habitat degradation of occurred?	Yes – baseline taken as pre-degradation values

CONDITIONS:**Compliance with submitted documents**

The development will be carried out in strict accordance with the following documents, with particular reference to the recommendations detailed in Section 4.0 (pp. 10-11):

- *Preliminary Ecological Appraisal, Pro Vision Ecology, 03/2024*

REASON: For the avoidance of doubt and for the protection, mitigation and enhancement of biodiversity.

Lighting

Prior to commencement of development, a lighting plan that includes a Lux Plot, shall be submitted to the LPA for approval. The plan will demonstrate that bat habitat (trees, scrub and hedgerows) on the perimeter of the site will remain below 0.5 lux. All lighting provided on site shall be in accordance with the appropriate Environmental Zone standards set out by the Institute of Lighting Engineers in their publication GN01:2021, 'Guidance for the Reduction of Obtrusive Light' (ILP, 2021), and Guidance note GN08/23 "Bats and artificial lighting at night", issued by the Bat Conservation Trust and Institution of Lighting Professionals.

REASON: In the interests of the amenities of the area and to minimize impacts on biodiversity caused by light spillage to areas above and outside the development site.

Subject to the imposing of suitably worded conditions onto any consent as outlined within the comments of the Council's Ecology Team and the appropriate BNG informative, officers consider that the proposal adheres to the requirements of Core Policy CP50 of the WCS.

Other matters

Comments received regarding drainage and flooding matters are duly noted. The site is within Flood Zone 1, an area that is at low risk of ground water flooding. The comments received refer to works undertaken upon the land to alleviate any pooling of water in the wetter winter months through the installation of drainage holes and drains. This proposal is to be located upon the footprint of the two stable blocks that are to be removed and so there is a decrease in the number of buildings by way of the proposed. It also noted the design of the barn/stable block includes rainwater goods to capture rainwater runoff from the roof which could be considered as betterment to the existing arrangement. Whilst these concerns are noted about the undertaken works not making any difference to the pooling of water upon the land, this is not a material consideration of this planning application. Matters of drainage can be considered under Building Regulations if required and necessary.

Conclusion

Officers note the concerns received from the members of the public and the Parish Council to this proposal that have been carefully considered and are duly noted. Officers also note the call-in of this application by Cllr Cooper and the associated timing of it (being outside the permitted call-in timeframe). As a result, the call-in of this application has not been accepted and the application is being determined under officer delegated powers.

As alluded to previously, generally there is no principle objection to new agricultural/stable block buildings in the countryside and there are no specific policies in the Wiltshire Core Strategy (WCS) to cover this type of development.

Following amendments to the scale and design of the barn/stable block, officers consider it to be appropriate for the site and the proposal would not result in any detrimental implications for the character of the area in loss of light or any overbearing nature, specifically to the neighbouring property, Wellmead Barn. A planning condition can be imposed for the Materials

Schedule confirming the details of the materials to be used within the construction of the building and that any material resulting from the demolition of the two existing stable blocks are removed from the land in their entirety to uphold the appearance of the Special Landscape Area. A further condition can be imposed restricting the use of the barn/stable to ancillary storage and machinery associated with the upkeep of the land shown within the blue line of the application (see drawing DWG No: A-05-202 Rev F) and that there is no sub-division of the planning unit.

Therefore, for the reasons as outlined within the report, officers are of the opinion that the proposed development conforms to the objectives of Core Policies CP23, CP48, CP50, CP51, CP57, CP61 and CP64 of the Wiltshire Core Strategy, saved policy C6 of the SDLP, and the aims of the NPPF. Therefore, planning permission should be granted for the development.

RECOMMENDATION

That planning permission be granted with the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

DWG No: A-16-202 Site Location Plan and Existing Block Plan Date Received 31.03.25

DWG No: A-05-202 Rev F Proposed Block Plan Date Received 15.07.25

DWG No: A-05-210 Rev F Proposed Elevations Date Received 15.07.25

DWG No: A-05-208 Rev H Proposed Roof and Ground Floor Plans Date Received 15.07.25

DWG No: A-05-220 Rev A Proposed Section Date Received 15.07.25

Preliminary Ecological Assessment undertaken by Pro Vision Dated March 2025
Date Received 31.03.25

REASON: For the avoidance of doubt and for the protection, mitigation and enhancement of biodiversity.

3. The development works hereby approved shall be carried out in strict accordance with the submitted Materials Schedule as per the email received by the Local Planning Authority Date Received 10.09.25

REASON: In the interests of amenity and the character/wider landscape of the area.

4. Any new external light fixture or fitting to be installed within the red line application site shall be in accordance with the appropriate Environmental Zone standards set out by the Institution of Lighting Professionals (ILP) Guidance Notes on the Avoidance of Obtrusive Light (GN 01/2021) and Guidance Note GN08/23 "Bats and artificial lighting at night", issued by the Bat Conservation Trust and Institution of Lighting Professionals.

REASON: In the interests of the amenities of the area and to minimise impacts on biodiversity caused by light spillage.

5. The approved building shall be used for ancillary storage and machinery associated with the maintenance of the land (blue line) and the stabling of private horses only (red line). The building shall at no time be used for any commercial purpose in connection with equestrian tuition or leisure rides. The uses hereby approved and as shown within the red and blue lines of the approved plan DWG No: A-05-202 Rev F shall only be carried out in association with the occupation/residential use of the adjacent Manor Farmhouse (as denoted by the blue line) for the lifetime of the development. There shall be no subdivision of the planning unit.

REASON: In order to protect the living conditions of nearby residents and the rural character of the area.

6. Prior to the building hereby approved first being brought into use, all demolition materials and debris resulting from the removal of the existing stable block structures as shown on approved plan DWG No: A-16-202 shall be permanently removed from the land.

REASON: In the interests of the character and appearance of the area which is within a Special Landscape Area.

INFORMATIVE TO APPLICANT(S):

1. The effect of paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission granted for the development of land in England is deemed to have been granted subject to the condition “(the biodiversity gain condition)” that development may not begin unless:

- (a) a Biodiversity Gain Plan has been submitted to the planning authority, and
- (b) the planning authority has approved the plan.

The planning authority, for the purposes of determining whether to approve a Biodiversity Gain Plan if one is required in respect of this permission would be Wiltshire Council.

There are statutory exemptions and transitional arrangements which mean that the biodiversity gain condition does not always apply. For further information on exempt developments please refer to:

<https://www.gov.uk/guidance/biodiversity-net-gain-exempt-developments>

Based on the information available this permission is considered to be one which will require the approval of a biodiversity gain plan before development is begun because none of the statutory exemptions or transitional arrangements listed below are considered to apply.

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Case No: CO/4348/2015

Neutral Citation Number: [2016] EWHC 592 (Admin)

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

Birmingham Civil and Family Justice Centre
33 Bull Street, Birmingham B4 6DS

Date: 16 March 2016

Before:

THE HON MR JUSTICE COULSON

Between:

Wychavon District Council	<u>Claimant</u>
- and -	
Secretary of State for Communities and Local Government	<u>Defendant</u>
- and -	
Crown House Developments Ltd	<u>Interested Party</u>

Sarah Clover (instructed by **Legal Services, Wychavon DC**) for the **Claimant**
The Defendant did not appear and was not represented
Jeremy Cahill QC and Thea Osmund-Smith
(instructed by **Harrison Clark Rickerbys**) for the **Interested Party**

Hearing Date: 16 March 2016

Judgment

The Hon. Mr Justice Coulson:

1. INTRODUCTION

1. Pursuant to section 288 of the Town and Country Planning Act 1990 (“the 1990 Act”), the claimant seeks to challenge the decision of a planning inspector dated 4 August 2015 by which the inspector allowed the appeal of the Interested Party (“IP”) and granted planning permission for 32 dwellings at Walcot Meadow, Walcot Lane, Drakes Broughton, Pershore, Worcestershire. The defendant has conceded that the decision should be quashed but has chosen not to appear today and has not explained why or how he has reached that view. The IP, however, maintains that there is no basis on which the inspector’s decision should be challenged.
2. I set out the relevant facts, including passages from the Appeal Decision in **Section 2**. I set out the relevant law in **Section 3**. In **Section 4**, I identify what I consider to be the correct approach in circumstances such as these. I then deal with the criticisms of the inspector in **Section 5**. In **Section 6**, I deal with the issue of discretion, namely whether, if the inspector is found to have made a material error, whether I consider that the inspector would still have come to the same decision. There is a short summary of my conclusions at **Section 7** below. I am very grateful to both counsel for their clear and succinct submissions, which has enabled me to give judgment the same day.

2. THE RELEVANT FACTS

3. There was a relevant Local Plan, GD1. Under the heading ‘ Location Strategy for New Development’, the Plan said:

“Most new development to 2011 will be accommodated within the main built-up areas of Droitwich Spa, Evesham and Pershore, with some in the villages; in all cases it will be within defined development boundaries and/or on allocated sites.”
4. On 6 February 2014, the IP made an application for outline planning permission at the site, which lies outside the settlement boundary of Drakes Broughton (and was therefore in conflict with GD1). The claimant failed to determine that application so the IP appealed.
5. The inspector, Mr Michael Boniface, held a one day hearing on 21 July 2015, which was combined with a site visit. On 4 August 2015, he published his Decision Letter (‘DL’).
6. The inspector rightly recognised, at paragraph 4 of his DL, that the main issue was whether the site was a suitable location for the proposed residential development having regard to Policy GD1 and other considerations. At paragraph 5 the inspector noted that Policy GD1 set out a location strategy for new development in the area, which required that all development was to be within defined settlement boundaries. He noted that it was common ground that the proposed site was outside the settlement boundary for Drakes Broughton and was not an allocated site. He identified, therefore, that the proposed development was “in clear conflict with Policy GD1”.

7. At paragraph 6, the inspector noted that the IP had argued that GD1 was out of date because the specified plan period had ended in 2011. But the inspector went on to reject that submission, saying that the policy was saved by virtue of a saving direction issued in 2009. He went on:

“6. ...As such, it retains its full weight as part of the statutory development plan. Nevertheless, it is possible for the material considerations to outweigh the development plan and the policies and objectives of the National Planning Policy Framework are an important material consideration.

7. It was agreed during the Hearing that the principal of defining settlement boundaries is consistent with the Framework. I note an alliance with objectives to protect the countryside and promote sustainable patterns of development and the policy can be considered to be broadly consistent with those of the Framework. That said, it is not entirely consistent in that the boundaries and housing allocations were drawn up to address a housing need up to 2011. The Framework now seeks to boost significantly the supply of housing and this attracts substantial weight.

8. It is agreed between the parties that the Council can demonstrate a 5 year supply of deliverable housing sites as required by paragraph 47 of the Framework. Under these circumstances, the decision-taking criteria contained in paragraph 14 of the Framework are not engaged. Whilst this is so, the Framework seeks to boost significantly the supply of housing and the ability to demonstrate a 5 year housing land supply should not be seen as a maximum supply. Regardless of such a supply being available, the Framework advocates a presumption in favour of sustainable development and the application must be considered in these terms.”

8. In paragraph 11 of the DL, the inspector referred to a recent appeal decision in which the inspector had concluded that there were no material considerations “that were sufficient to outweigh the development plan in that case”. He went on:

“As I have set out above, this balancing exercise is a necessary part of the appeal process and I shall go on to make such an assessment below. Although paragraph 14 of the Framework sets out criteria for the application of development plan policies in decision taking it does not, in my view, alter the overarching presumption in favour of sustainable development.”

9. Thereafter, having considered a range of detailed matters, such as ecology, heritage assets, flooding and the like, the inspector undertook the balancing exercise required by law. At paragraphs 39-41, he dealt with the three dimensions of sustainable development (economic, social and environmental) and found benefits under each three heads. He then went on:

“42. Overall, I conclude that the proposal would constitute sustainable development having regard to the policies of the Framework taken as a whole. In this instance, the benefits of development outweigh the limited harm that has been identified and these benefits are sufficient to outweigh the conflict with Policy GD1 of the LP. Therefore the Framework’s presumption in favour of sustainable development applies.”

10. On 10 September 2015, the claimant lodged its application to quash that Appeal Decision pursuant to s.288 of the 1990 Act. As already noted, the defendant has conceded that the appeal should be allowed and has not attended. The IP resists the appeal.

3. THE RELEVANT LAW

3.1 The Proper Approach to s.288

11. The relevant part of s.288 provides as follows:

“288 Proceedings for questioning the validity of other orders, decisions and directions

(1) If any person—

(a) is aggrieved by any order to which this section applies and wishes to question the validity of that order on the grounds—

(i) that the order is not within the powers of this Act, or

(ii) that any of the relevant requirements have not been complied with in relation to that order; or

(b) is aggrieved by any action on the part of the Secretary of State to which this section applies and wishes to question the validity of that action on the grounds—

(i) that the action is not within the powers of this Act, or

(ii) that any of the relevant requirements have not been complied with in relation to that action,

he may make an application to the High Court under this section.

...

- (5) On any application under this section the High Court—
- (a) may, subject to subsection (6), by interim order suspend the operation of the order or action, the validity of which is questioned by the application, until the final determination of the proceedings;
 - (b) if satisfied that the order or action in question is not within the powers of this Act, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements in relation to it, may quash that order or action.”

12. The proper approach to such applications was set out at paragraph 19 of the judgment of Lindblom J (as he then was) in **Bloor Homes East Midland Ltd v SSCLG** [2014] EWHC 754 (Admin):

“19. The relevant law is not controversial. It comprises seven familiar principles:

- (1) Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning permission are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to “rehearse every argument relating to each matter in every paragraph” (see the judgment of Forbes J. in **Seddon Properties v Secretary of State for the Environment (1981) 42 P. & C.R. 26** , at p.28).
- (2) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the “principal important controversial issues”. An inspector's reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration (see the speech of Lord Brown of Eaton-under-Heywood in **South Bucks District Council and another v Porter (No. 2) [2004] 1 W.L.R. 1953** , at p.1964B-G).
- (3) The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court. A local planning authority determining

an application for planning permission is free, “provided that it does not lapse into *Wednesbury* irrationality” to give material considerations “whatever weight [it] thinks fit or no weight at all” (see the speech of Lord Hoffmann in **Tesco Stores Limited v Secretary of State for the Environment [1995] 1 W.L.R. 759**, at p.780F-H). And, essentially for that reason, an application under section 288 of the 1990 Act does not afford an opportunity for a review of the planning merits of an inspector's decision (see the judgment of Sullivan J., as he then was, in **Newsmith v Secretary of State for [2001] EWHC Admin 74**, at paragraph 6).

- (4) Planning policies are not statutory or contractual provisions and should not be construed as if they were. The proper interpretation of planning policy is ultimately a matter of law for the court. The application of relevant policy is for the decision-maker. But statements of policy are to be interpreted objectively by the court in accordance with the language used and in its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration (see the judgment of Lord Reed in **Tesco Stores v Dundee City Council [2012] P.T.S.R. 983**, at paragraphs 17 to 22).
- (5) When it is suggested that an inspector has failed to grasp a relevant policy one must look at what he thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood the policy in question (see the judgment of Hoffmann L.J., as he then was, **South Somerset District Council v The Secretary of State for the Environment** (1993) 66 P. & C.R. 80, at p.83E-H).
- (6) Because it is reasonable to assume that national planning policy is familiar to the Secretary of State and his inspectors, the fact that a particular policy is not mentioned in the decision letter does not necessarily mean that it has been ignored (see, for example, the judgment of Lang J. in **Sea Land Power & Energy Limited v Secretary of State for Communities and Local Government** [2012] EWHC 1419 (QB), at paragraph 58).
- (7) Consistency in decision-making is important both to developers and local planning authorities, because it serves to maintain public confidence in the operation of the development control system. But it is not a principle of law that like cases must always be decided alike. An

inspector must exercise his own judgment on this question, if it arises (see, for example, the judgment of Pill L.J. *Fox Strategic Land and Property Ltd. v Secretary of State for Communities and Local Government [2013] 1 P. & C.R. 6*, at paragraphs 12 to 14, citing the judgment of Mann L.J. in *North Wiltshire District Council v Secretary of State for the Environment [1992] 65 P. & C.R. 137*, at p.145).”

3.2 The Significance of the Development Plan

13. The significance of any development plan in the consideration of a planning proposal can be seen in section 38(6) of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”) which provides:

“(6) If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

14. Although paragraphs 11-16 inclusive of the National Planning Policy Framework (“NPPF”) are headed ‘The Presumption in Favour of Sustainable Development’, the significance of the development plan is also there restated. Thus:

“11. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

12. This National Planning Policy Framework does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved, and proposed developments that conflicts should be refused unless other material considerations indicate otherwise. It is highly desirable that local planning authorities should have an up-to-date plan in place.

13. The National Planning Policy Framework constitutes guidance for local planning authorities and decision-takers both in drawing up plans and as a material consideration in determining applications.”

15. Paragraph 14 of the NPPF states that at the heart of the NPPF “is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.” As for decision-taking, it says that this means:

- “● approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
 - 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; or
 - specific policies in this Framework indicate development should be restricted.”

The second option, sometimes referred to as Limb 2, has a footnote in which various policies that indicate a restriction on development are set out.

16. The importance of the section 38(6) decision-taking process was emphasised by Lord Clyde in **City of Edinburgh Council v Secretary of State for Scotland** [1997] 1 WLR 1447 and more recently, by the Court of Appeal in **Hampton Bishop Parish Council v Herefordshire Council and Others** [2014] EWCA Civ. 878. A decision-maker has to decide whether a proposed development is or is not in accordance with the development plan, because otherwise the plan would not be given its statutory priority.
17. Moreover, the plan means that the starting-point in any consideration must be the refusal of planning permission. As HHJ Mackie QC put it in **South Northamptonshire Council and Another v SSCLG and Another** [2013] EWHC 11 (Admin):

“I conclude from all this that the section requires not a simple weighing up of the requirement of the plan against the material considerations but an exercise that recognises that while material considerations may outweigh the requirements of a development plan, the starting point is the plan which receives priority. The scales do not start off in even balance.”

3.3 **Sustainable Development**

18. I have already referred to paragraphs 11-16 of the NPPF. There are many other parts of the NPPF dealing with sustainable development including:

- (a) The Ministerial Foreword, which includes the following:

“The purpose of planning is to help achieve sustainable development.

Sustainable means ensuring that better lives for ourselves don’t mean worse lives for future generations.

Development means growth. We must accommodate the new ways by which we will earn our living in a competitive world.

We must house a rising population, which is living longer and wants to make new choices...

Sustainable development is about change for the better, and not only in our built environment...

So sustainable development is about positive growth-making economic, environmental and social progress for this and future generations.

The planning system is about helping to make this happen.

Development that is sustainable should go ahead, without delay – a presumption in favour of sustainable development that is the basis for every plan, and every decision. This framework sets out clearly what could make a proposed plan or development unsustainable.”

(b) Paragraph 6 of the NPPF itself, which states:

“The purpose of the planning system is to contribute to the achievement of sustainable development. The policy is in paragraphs 18-219, taken as a whole, constitute the Government’s view of what sustainable development in England means in practice for the planning system;”

(c) Paragraph 7, which sets out the three dimensions to sustainable development: economic, social and environmental;

(d) Paragraph 47, which, under the heading ‘Delivery of a wide choice of high quality homes’ identifies a raft of matters which local planning authorities should do in order “to boost significantly the supply of housing”;

(e) Paragraph 49 which provides that “housing applications should be considered in the context of the presumption in favour of sustainable development”;

(f) Paragraph 197 which provides that “in assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development”.

3.4 Decision Letters

19. Decision letters are to be read in a straightforward manner without an excessively legalistic approach: see **South Bucks CC v Porter (No. 2)** [2004] 1 WLR 1953. Linked to this is the importance of ensuring that a s.288 challenge is used as an opportunity to correct a failure to take into account material considerations or the taking into account of immaterial considerations or errors of law. It is not an opportunity to rerun the planning merits of an appeal on anything other than rationality grounds: see **R (Newsmiths Stainless Steel) v SSETR** [2001] EWHC 74 (Admin).

4. THE CORRECT APPROACH

20. In my view, in the sort of circumstances that arose in the present case, the correct approach required the decision-maker to ask a number of questions in sequence.
21. First: is there is a development plan? It is only if there is a development plan that s.38(6) of the 2004 Act comes into play.
22. Second: if there is a development plan, is it absent or silent or are relevant policies out-of-date? That question needs to be asked in order to see whether the approach set out in the second bullet point of paragraph 14 comes into play.
23. Third: if there is a development plan which is not silent and/or relevant policies are not out-of-date, then the decision-maker has to decide whether or not the proposed development is in accordance with the development plan. If it is in accordance with the plan, the proposed development must be approved without delay.
24. Fourth: if the proposed development is not in accordance with the development plan then the decision-maker has to undertake the balancing exercise referred to in s.38(6). In other words, the decision-maker must start with the statutory priority of the development plan, and therefore a presumption against granting planning permission, and balance against that other material considerations that may indicate the contrary result. That is also in accordance with paragraphs 11 - 13 of the NPPF.
25. Fifth: if the development plan is silent or the relevant policies are out-of-date then the decision-maker must grant permission unless one or other of the two alternative limbs in the second bullet point in paragraph 14 of the NPPF applies.

5. THE CRITICISMS OF THE INSPECTOR

5.1 General

26. In the present case, there are a number of criticisms of the inspector, which I address in **Sections 5.2** onwards. But I should say at the outset that, in my judgment, the inspector followed the correct approach to which I have referred in the preceding paragraphs. He identified that there was a development plan, namely GD1. He rejected the argument that it was out-of-date (paragraph 6 of the DL) because he said it had been saved by virtue of a saving direction. In consequence, the inspector found that it “retained its full weight as part of the statutory development plan”.
27. Thus, because there was a development plan, and because neither it nor the relevant policies were not out-of-date, the inspector rightly decided that paragraph 14 of the NPPF was “not engaged”. Accordingly, he went on to undertake the requisite balancing act by comparing the full weight to be given to GD1 with the other material considerations. He rightly said at paragraph 6 that it was possible for those material considerations to outweigh the development plan, and he rightly said that the policies and objectives of the NPPF were an important material consideration in undertaking that balancing exercise.
28. In my view, he reached that conclusion in a way that was entirely consistent with the approach of Lindblom J (as he then was) in **Ivan Crane v SSCLG and Another** [2015] EWHC 425 (Admin). There the judge said:

- “62. Under section 70(2) of the 1990 Act and section 38(6) of the 2004 Act, government policy in the NPPF is a material consideration external to the development plan (see paragraph 23 of Kenneth Parker J.'s judgment in **Colman**). Policy in the NPPF, including the "presumption in favour of sustainable development" in paragraph 14, does not modify the statutory framework for the making of decisions on applications for planning permission. It operates within that framework – as the NPPF itself acknowledges in paragraph 12. It is for the decision-maker to decide what weight should be given to NPPF policy in so far as it is relevant to the proposal. Because this is government policy it is likely always to command significant weight. But the court will not intervene unless the weight given to it by the decision-maker can be said to be unreasonable in the *Wednesbury* sense (see paragraph 46 of my judgment in **Bloor Homes East Midlands Ltd. v Secretary of State for Communities and Local Government** [2014] EWHC 754 (Admin)).
63. Once the Secretary of State had found Mr Crane's proposal to be in conflict with the development plan – as I have held he correctly did – he had to consider whether, in the light of the other material considerations in the case, he should nevertheless grant planning permission. That involved, for him, a classic exercise in planning judgment. His task was to weigh the considerations arising in the application of relevant policy in the NPPF, and any other material considerations beyond those arising from the development plan, against the statutory presumption in favour of the development plan enshrined in section 38(6) of the 2004 Act. Indeed, that is just what the NPPF itself envisages, in paragraphs 12 and 196.
64. In my view the Secretary of State did exactly what he had to do, in a legally unassailable way.”
29. Having considered a range of matters taken from paragraphs 18-219 of the NPPF (and therefore the matters which, according to paragraph 6 of the NPPF, “constitute the Government’s view of what sustainable development in England means in practice for the planning system”), the inspector then undertook the balancing exercise at paragraphs 38-42 of the DL. Pursuant to paragraph 7 of the NPPF he identified the three dimensions of sustainable development and concluded that the benefits of the development outweighed the conflict with the development plan. Thus he concluded that the rebuttable presumption in s.38(6) had indeed been rebutted.
30. In my view, unless a legalistic or nit-picking approach is adopted to the DL (contrary to the principles set out in **Section 3.4** above) no proper criticism can be made of his decision. That said, I turn to look at the three points raised by the claimant.

5.2 Giving GD1 Less Weight Than He Should Have Done

31. This first criticism involves the suggestion that the inspector did not clearly address whether GD1 was out-of-date and so may well not have given it its full s.38(6) weight or priority. In my view, this criticism is incorrect. The inspector expressly found that there was a development plan and, at paragraph 6, he rejected the criticism made by the IP that it was out-of-date.
32. The suggestion that there was in some way some ambiguity over the inspector's approach to the plan and its age is, in my view, contrived. It is certainly right that the inspector noted at paragraph 7 that the plan was not entirely consistent with the NPPF, and he explains that observation on the basis that the housing allocations were drawn up to address a housing need up to 2011, four years before his decision. But that was a correct observation; it in no way detracts from the "full weight" that the inspector said that he gave GD1.
33. On behalf of the claimant, Ms Clover sought to rely on the decision of Beverley Lang J in Daventry (citation below). There is no analogy because in that case the inspector expressly found that the age of the plan meant that he should give it reduced weight, which is not something that occurred here.
34. I conclude that, on a fair reading of the DL as a whole, the inspector accorded GD1 "full weight" and there is no suggestion that he resiled from or modified that view because of his observations in paragraph 7 of the DL. Paragraph 42, in which he concludes the balancing exercise, does not suggest any such reduction in weight. In my view, therefore, there is nothing in this first criticism.

5.3 The Statutory Priority

35. Ms Clover's second point is that, even assuming that the inspector gave "full weight" to GD1, he nowhere said in the DL that he recognised the statutory priority under s.38(6). Accordingly she said there was legitimate doubt that the inspector had applied the right test. This is the first of the two stated grounds for the s.288 application, namely that the inspector "erred in law in failing to apply the approach to decision-taking set out in s.38(6) of the 2004 Act".
36. I agree that it might have been better if the inspector had said that what he called the "full weight" to be given to GD1 meant that the statutory priority in s.38(6) was being applied. But that is a counsel of perfection and I have no hesitation in concluding that it is not a criticism of substance. I have referred in **Section 3.4** above to the proper approach to decision letters like this. There can be no doubt that the inspector was writing to an informed audience. He would have known that, when he said that he was giving GD1 "full weight", that that was (and would be taken to be) a reference to s.38(6) of the 2004 Act. No other interpretation of "full weight" was proffered by Ms Clover: what else (one may ask rhetorically) could it mean than that the inspector was giving it the statutory priority envisaged by s.38(6)? In my view, the inspector could only have meant that, by giving GD1 full weight, he was applying that priority.
37. For that reason, I reject the claimant's second ground of challenge.

5.4 The Creation of Incorrect Presumptions

38. It is the claimant's case that the inspector created two incorrect presumptions which were central to his DL. The first was in respect of sustainable development; the second was in respect of boosting the housing supply. I deal with each in turn.
39. As to the presumption in favour of sustainable development, what the inspector had to do was to balance the statutory priority of the plan GD 1 against the other material considerations in accordance with section 38(6) and paragraphs 11-13 of the NPPF. In my view, for the reasons already noted, that is what he did.
40. On an analysis of the claimant's case on this point, my first observation is that the claimant's approach to this issue is rather confused. The second ground for the s.288 application is said to be that the inspector "failed to apply the approach to decision-taking set out in paragraph 14 of the NPPF". But it was agreed by both parties that the decision-taking route envisaged by paragraph 14 did not apply at all here, because there was a plan and the relevant policies were not out of date. On that basis, the second ground falls away and that is the end of the application.
41. But secondly, it is quite wrong to say that a presumption in favour of sustainable development does not exist in the NPPF outside paragraph 14. I have referred in **Sections 3.2 and 3.3** above to a number of the paragraphs in the NPPF which refer to the presumption in favour of sustainable development. It is the 'golden thread' running through the NPPF. The inspector properly had regard to it as an important material consideration, in the same way as the SSCLG had regard to it in **Crane**.
42. Thirdly, I consider that Ms Clover lays too much stress on the word 'means' in paragraph 14 in support of her submission that this is the only place where the presumption is defined. Paragraph 14 does not offer a true definition at all; it is instead an explanation of the *effect* of the presumption. And there are many other places in the NPPF where 'mean' or 'means' is used in the context of this presumption, such as the Foreword and paragraph 6.
43. Fourthly, and perhaps most important of all, Mr Cahill QC rightly points out that, if the claimant was right, the presumption in favour of sustainable development would only apply if the development plan was silent or absent, or if the relevant policies were out-of-date (the requirements that trigger the last part of paragraph 14). That cannot possibly be right; that would be such an important limitation on the 'golden thread' that, if such was the intention of the NPPF, it would say so in the clearest terms.
44. Where there is a conflict between a proposal and a development plan, the policies within the NPPF, including the oft-repeated presumption in favour of sustainable development, are important material considerations to be weighed against the statutory priority of the development plan. In my view, it is as simple as that.
45. As to the inspector's reference to the NPPF seeking to boost significantly the supply of housing, that is precisely what paragraph 47 of the NPPF requires local planning authorities to have regard to. Again, the inspector properly had regard to this policy within the NPPF, because it was a material consideration.
46. I note in passing that Ms Clover relied on the decision of Beverley Lang J in **Daventry District Council v SSCLG and Another** [2015] EWHC 3459 (Admin) to say that

paragraph 47 applies only to plan-making and not decision-taking. On the face of it, that appears a rather surprising distinction and I can see no justification for it in the words used in paragraph 47 or its heading. In my view, paragraph 47 of the NPPF applies to both plan-making and decision-taking.

47. In addition, I agree with Mr Cahill QC that, on a proper analysis, the inspector here had regard to paragraph 47 as a material consideration, but certainly did not use it as any sort of presumption. A fair analysis of paragraphs 38-42, where he undertook the planning balance, makes plain that he regarded this as no more than a material consideration.

5.5 **Summary**

48. In the end, I believe that the highest that it can be put on behalf of the claimant is that, having found the conflict between GD1, on the one hand, and a raft of other material considerations and benefits of the proposals, on the other, the inspector a) failed expressly to refer to the balancing exercise that he undertook as being undertaken pursuant to s.38(6) or paragraphs 11-13 of the NPPF; and b) did not say in terms that the presumption in favour of sustainable development was a material consideration but no more. As I have indicated, it may have been better if he had done so. But in my judgment, the s.38(6) test was in substance the exercise that he performed, and he gave proper weight to the presumption in favour of sustainable development as a material consideration, but not more.. Accordingly, the criticism is one of form and not substance.
49. For all these reasons, I reject the criticisms of the inspector and reiterate that, in my view, he applied the right test and took into account all relevant material considerations. There can be no question of unlawfulness or *Wednesbury* irrationality.

6. DISCRETION

50. It is of course strictly unnecessary for me to consider this aspect of the case because I have not upheld the criticisms of the inspector's approach. But, if I was wrong about that, I would have no hesitation in exercising my discretion in favour of not quashing the inspector's decision.
51. The relevant legal test is set out in the recent case of **Europa Oil and Gas Ltd v SSCLG** [2014] EWCA Civ. 825. In that case, Ouseley J was not satisfied that, without the error made by the inspector as to the interpretation of 'mineral extraction', the decision would inevitably have been the same. The Court of Appeal agreed. They held that the judge was entitled to find that the decision might have been different but for the inspector's error and thus to exercise his discretion to quash the decision.
52. As noted above, the most that can be said against the inspector in the present case is that he did not say in terms that the balancing exercise that he undertook was pursuant to s.38(6) of the 2004 Act, or say that the presumption in favour of sustainable development was simply a material consideration. The criticisms are ones of form; they are not criticisms of substance. In those circumstances, even if the inspector had worded his decision letter in a clearer way, that would have made no difference to the

outcome. I reject the invitation to quash the inspector's decision on that ground as well.

7. CONCLUSIONS

53. For the reasons set out above, I dismiss this application to quash. The inspector applied the right test; he took into account all material considerations; and he did not take into account any immaterial considerations. Furthermore, even if I was wrong about that, I am in no doubt that, even allowing for any corrections, the inspector would have reached the same decision.