The Planning Inspectorate

Appeal Decision

Inquiry held on 2-4 August 2016
Site visit made on 4 August 2016

by Paul Singleton BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 September 2016

Appeal Ref: APP/Q3305/W/15/3135345
Land off Garsdale, Saxonvale, Frome, Somerset BA11 1PR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Terramond Properties LLP against the decision of Mendip District Council.
- The application Ref 2014/1224/OTS, dated 19 June 2014, was refused by notice dated 27 March 2015.
- The development proposed is the demolition of existing building and development of up to 60 residential dwellings, new access, landscaping and all associated infrastructure.

Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing building and development of up to 60 residential dwellings, new access, landscaping and all associated infrastructure at Land off Garsdale, Saxonvale, Frome, Somerset BA11 1PR in accordance with the terms of the application, Ref 2014/1224/OTS, dated 19 June 2014 and the documents submitted with it subject to the conditions set out in the attached schedule.

Procedural Matters

2. The appeal was elevated from the written representations to be dealt with by way of a Hearing. The Inspector who reviewed the papers at that stage ruled that it would more appropriately be dealt with by the Public Inquiry procedure.

3. Updated ecological information was submitted to the Council in April 2016 which demonstrated that adequate mitigation in relation to bats roosting on the site could be provided and the Council accepted that this could be secured by means of a planning condition. Reason 4 was withdrawn on that basis.

4. The terms of a Unilateral Undertaking (UU) including planning obligations in relation to affordable housing, education, recreational open space, highway improvements and a travel plan have been agreed following the refusal of the application. The Council accepted that the submission of signed and completed UU by the appellant would overcome Reason 5. A certified copy of the completed UU was submitted in accordance with the agreed timescale.

5. The Council's Conservation Officer's evidence was heard and was subject to cross examination at the Inquiry but the Council subsequently withdrew both that evidence and that part of Reason 2 concerning heritage matters. I have not taken that evidence into account in reaching my decision.

6. The application was submitted in outline with all matters other than access reserved for subsequent approval. Indicative site layout, street scenes and sections were prepared and detailed plans showing the site access and a pedestrian link to Vicarage Street were submitted prior to the Council's determination of the application.

7. A Site Parameters Plan (Drawing 494 08 P2) submitted with the appeal was not before the Council at the time of its decision. The Council objected to its submission on the grounds that it introduced a material change to the application, specifically in respect of the point of pedestrian access indicated at the north east corner of the site. In my view that objection is not well founded given the pre-application discussions, the content of the application and the outline form of the proposal.

8. The sketch layout, used in the initial pre-application discussions with the Council, clearly shows a pedestrian link through a wide gap between the houses and the then proposed McCarthy & Stone development (AT Appendix A). Mr Trower's evidence was that this represented a simplified form of development from that in the Resolution to Grant (RTG) scheme but that the general structure of the layout and points of access were retained.

9. At the Council's request the illustrative layout submitted with the application took account of the proposed supermarket and service yard on the land to the north and indicated a change in levels along much of the northern boundary to provide a satisfactory relationship between the two uses. Beyond the eastern limit of that retaining wall, the gap in the north east corner was shown as an area of open space fronting onto the access road and footpath envisaged in the Frontier Estates (Frontier) application which the Design and Access Statement described as providing a potential green link to the river which could deliver a direct route to a proposed riverside park. That potential relationship and opportunity for a link to the river is also seen in the context plans relating to the RTG scheme and Frontier proposals (AT Appendices E and H). The subsequent iterations of the indicative site layout all appear to have safeguarded that option.

10. Against that background the Site Parameters Plan does no more than confirm the points of access around the site perimeter which had been identified in earlier indicative plans and discussions. All versions of the indicative layout had taken account of the likely presence of a supermarket and service yard on the adjacent land and it would have been undesirable to show pedestrian links into the service yard or along the rear of a large supermarket building. That proposal has now fallen away and, given the uncertainty as to what form of development might take place, the Parameters Plan is a helpful confirmation of the appellant's intention to make the site accessible on all its boundaries. The indication on that plan of a maximum 3 storey height is consistent with the Design and Access Statement and indicative street scenes although the Council does not consider that restriction necessary.

11. Having considered the parties' submissions I find that the plan does not introduce new proposals nor alter the application. The Council's objectives of securing such connections are supported by many of the third parties who had commented on the application and nobody's interests are prejudiced given that the detail of the pedestrian links can be dealt with at reserved matters stage. I therefore conclude that the submission of the Site Parameters Plan does not result in a substantially different scheme and that my acceptance of it would not breach the principles established in the Wheatcroft case.[1]

Main Issues

12. With Reasons 4 and 5 having been resolved the main issues in the appeal are:
    i) The status of and weight to be given to the Saxonvale (Garsdale) Planning Brief;
    ii) The effect on the Council's ability to meet its development plan aspirations with regard to the delivery of new employment accommodation, specifically flexible office and studio space, in the town centre;
    iii) The effect on the character and appearance of the site and its surroundings having regard to the likely design quality of the proposal;
    iv) The effect on the significance and setting of the heritage assets comprised in the Old Vicarage (St John's Vicarage), the Warehouse and the Frome Conservation Area; and
    v) Whether the proposal would provide for satisfactory living conditions for the future occupiers of the proposed dwellings in terms of noise and disturbance.

Reasons

Saxonvale (Garsdale) Planning Brief and Codes

13. The Revised Planning Brief and Codes: Garsdale Frome (2005) covers both the Saxonvale area and land off of Garston Road; the appeal site forms part of the Saxonvale area. Both the Decision Notice and the Council's evidence refer to the Brief as the Saxonvale Planning Brief (SPB) and I have adopted that title. The SPB had been substantially completed before the new development plans system was introduced and the Government Office advice, that it should be treated as non-statutory Supplementary Planning Guidance, may have been appropriate in 2005. However, a number of subsequent changes call into question its continued status as supplementary guidance.

14. The SPB was not prepared or subjected to public consultation in the manner required for it to be treated as a Supplementary Planning Document (SPD) having regard to the Town and Country Planning (Local Planning) (England) Regulations 2012. In addition, it was prepared as supplementary guidance to a Local Plan (the 2002 Mendip District Local Plan) and a Policy (F5) which no longer form part of the development plan.

[1] Bernard Wheatcroft Ltd V SoSE and Another Queen's Bench Division (1982) 43 P.& C.R. 233

15. Neither the new Mendip District Local Plan 2006-2029 - Part 1: Strategies and Policies (MDLP) nor Policy CP6, relating to the Frome Town Strategy, includes any mention of or reference to the SPB. There is also some degree of inconsistency between the two in that the SPB is much more prescriptive than Policy CP6 with regard to land uses and the form of development envisaged within the town centre. Hence, insofar as the SPB might be said to comprise supplementary guidance, it is not to the adopted MDLP but to a local plan and policy that no longer exist. The SPB remains as a material consideration even with that reduced status but I have significant concerns as to its age and the basis of its adoption.

16. The statement within the SPB that "*in any development scenario, the Brief should be reviewed within three years of its formal adoption in order to keep it up to date*" is a clear recognition of the need for periodic review and updating to reflect changes in planning policy and economic conditions. However, it has never been the subject of a major review or scrutiny or to any viability assessment of its proposals. The SPB was re-endorsed in June 2009 but the officer report to the Planning Board stated that a major review and reworking of the document "*is not justified at this stage in terms of resources, time or value*".

17. Given that statement it is significant that the Board also resolved that the status and validity (my emphasis) of the document should be reviewed in 2 years time. That resolution can reasonably be interpreted as a recognition that the document's value as supplementary guidance was likely to be time limited and as a qualification on the Council's re-endorsement of the SPB. As no subsequent review has been carried out there is, in my view, a question as to whether that re-endorsement remains valid.

18. Very significant changes have taken place since 2009 in national planning policy, in particular through the publication of the National Planning Policy Framework (Framework), and in the economic conditions that affect development viability. The development proposals that were in front of the Council at that time have been stalled since 2010 and no permission for a comprehensive scheme has been issued. That lack of progress and the subsequent submission of separate applications for different parts of the site strongly suggest that there is now a very limited prospect of any new comprehensive scheme being brought forward.

19. I accept that paragraph 215 of the Framework is not directly applicable to supplementary guidance. However the Framework's policies concerning delivery and viability, in paragraphs 153 and 173, are relevant considerations and the Council acknowledges that there is no robust or credible evidence that the requirements of the SPB would ensure the viability of the redevelopment of the Saxonvale site. It is of considerable concern that the SPB has not been subject to any major review or revision in order to make it consistent with the Framework and the MDLP and to reflect the changed economic conditions in which development proposals are likely to be brought forward. The failure, contrary to the recommendation of those who produced the SPB and a specific Council resolution to carry out such a review, can only serve to reduce its value as planning guidance and significantly reduce the weight that can be given to the SPB.

20. The Frome Town Design Statement (FTDS), adopted as an SPD in October 2015, notes the adoption of the SPB in 2005 as a "material consideration" (paragraph 115) but makes no reference to its re-endorsement or the related resolution that it should be reviewed within 2 years. It cross references the SPD but does not require compliance with it and I do not accept that it has been 'incorporated' into that guidance. The content and requirements of the SPB were not consulted upon as part the preparation of the FTDS and, in the absence of any review and updating, that cross reference does not, in my view, give the SPB an extended life as planning guidance contrary to a specific Council resolution that its status and validity should have been reviewed some 4 years previously.

21. The FTDS sets out a number of design guidelines applicable to the Saxonvale Character Zone that could be used in considering development proposals within that zone. Insofar as the SPB is cross referenced as providing zone specific guidance its application must have regard to its reduced status and shortcomings due to its age and lack of revision.

22. I accept that the Inspector who determined the McCarthy & Stone appeal (APP/Q33305/W/14/3001729) in May 2015, did give weight to the SPB in reaching his decision. However, I see nothing in that decision to suggest that the status of the SPB was seriously challenged or that that Inspector had the same evidence which is before me concerning the SPB's preparation, adoption and re-endorsement. I note, however, that the Inspector found that the SPB should not be adhered to slavishly.

23. The report of the Examining Inspector on the Frome Neighbourhood Local Plan reveals her significant concerns as to the viability of development on the Saxonvale site and that the SPB had not been updated or revised (paragraphs 125 and 129 of her report). The report states that she had no robust and credible evidence that the requirements of the Brief, together with those of (proposed) Policy TC5, would ensure the viability of the site's redevelopment. That statement must be read in the context of her reference to the Framework (paragraph 173) requirement that sites should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened.

24. The Inspector's comments on the applicability of the SPB as supplementary guidance do no more than recite how its status is described within the document itself (paragraph 125) and it is on this understanding that she indicates that it has to be attributed some weight. Although she seems not to have had the same evidence that is before me, her comments support my own concerns as to the dated nature of the SPB and its consistency with key policies in the Framework.

25. I therefore find that, although a material consideration as local planning guidance adopted by the Council, the SPB should attract only limited weight in the appeal.

Development Plan

26. The MDLP, adopted in December 2014, covers the period 2006-2029; it is an up to date plan and its policies of relevance to the appeal proposal must be given full weight. The question of how Policy CP6 is to be interpreted and applied to the proposal is central to the determination of the appeal.

27. MDLP paragraphs 4.62 and 4.63 explain how employment land needs have been established and that considerations around the levels of new floorspace and land to be allocated are summarised in Table 10. That table includes a figure of 11,850 square metres (sq m) of accommodation for Town Centre Uses excluding retail. Paragraph 4.63 explains that Table 10 shows a broad disaggregation of the types of employment space to give some understanding of the likely accommodation needs; hence the 11,850 sq m figure is indicative of the likely level of need rather than a specific target.

28. 'Town Centre Uses' include "*uses such as offices, hospitality, shops and leisure uses which, with appropriate design, can be readily integrated into most urban settings"* with that definition serving to distinguish these from traditional employment land and commercial uses which are defined elsewhere in the supporting text. The words 'such as' indicate that this is not a closed list and that this group could include other employment generating uses which would be appropriate within and be likely to seek a town centre location. On a simple reading of Table 10, retail uses are not included within the indicative requirement of 11,850 sq m although the Council was unable to explain the reason for that exclusion. On that same simple reading it follows that the 11,850 sq m figure embraces all other town centre uses including, for example, hotels, food and drink outlets and other leisure facilities.

29. The wording of the third bullet of Policy CP6 clearly relates to all town centre redevelopment proposals that might come forward over the plan period and not just to Saxonvale and the Westway Centre. It is also clear that the third bullet contains a series of sub clauses, each of which is controlled by the introductory statement. Accordingly, what is stated in the bullet is that development proposals brought forward in the town centre should collectively deliver (my emphasis) the types and indicative quantum of development listed in the policy. The only specific proposal identified in the policy for the Saxonvale area is for a permanent home for Frome Education and Training Enterprise (FETE).

30. The policy states that town centre redevelopments should deliver "*at least half of the 11,500 sq m of flexible office/studio space requirement (see Table 10)".* Having regard to the evidence presented on this matter, I find that there is no sound basis, by reference to Policy CP6 or other parts of the MDLP, on which to discern what that part of the policy actually requires in relation to the Saxonvale area or the appeal site. My reasons for reaching that conclusion can be summarised as follows:

    i) The figure of 11,500 sq m does not appear in Table 10 and can only be assumed to be an erroneous translation of the 11,850 sq m indicative space requirement for town centre uses.

    ii) The 11,850 sq m figure in Table 10 relates to all town centre uses excluding retail and not solely to office and studio accommodation. There is no further disaggregation of that figure in Table 10 or the supporting text and no basis on which the quantum of any specific requirement for office/ studio space can be indentified.

    iii) Neither Table 10 nor the related text includes any reference to 'flexible office/studio' space. I can only assume that this is also an erroneous reference in the policy.

iv) No definition of this term is given in the glossary to MDLP and I know of no other definition than that given by Mr Read; i.e. managed or serviced office accommodation that provides a range of support services. Paragraph 5.8 states a need in Frome for smaller sites which can offer office and studio space but there is nothing in Table 10 or its related text that identifies a specific requirement for flexible office accommodation.

v) Even if a specific requirement for and a known quantum of flexible or any other form of office/ studio accommodation could be identified from the MDLP, Policy CP6 provides no basis on which I am able to determine either what the fair apportionment of that requirement between Saxonvale and other town centre redevelopments would be or what contribution to that provision the appeal site should reasonably be expected to make.

31. I accept that the Saxonvale and Westway Centre sites are identified on the related Policies Map as the only two Town Centre Development Areas and that this might suggest that the majority of town centre redevelopment is expected to be accommodated within these areas. However, the Council's assertion that each development proposal coming forward in Saxonvale is required to provide its requisite share of office/ studio space is not borne out on a fair reading of Policy CP6. Indeed, if that is what the policy does require, that requirement would also apply to the other proposed developments listed under the third bullet, including food and non food retail and residential uses. As the appellant points out, that is not how the Council has applied the policy in its determination of the McCarthy & Stone and Westway Centre proposals.

32. The proposals listed in the five bullet points are introduced by the words "*The following developments are proposed*" and are aspirational in the way that might be expected in a Part I: Strategy and Policies Development Plan Document (DPD) where, as is the case here, the Council proposes to follow that Part I Plan up with a Part II: Site Allocations DPD. Paragraph 1.6 of MDLP states that Part I makes the big decisions about the broad scale of new development needed and where that growth should be located. The list of proposals achieves that aim but Policy CP6 does not provide a clear basis on which the indicative level of need for Town Centre Uses can be apportioned between the various development areas and individual sites. The difference of view between the Planning Officers as to its requirements, which was evident at the Inquiry, serves to demonstrate the lack of clarity within the policy wording.

33. For these reasons I find that Policy CP6 does not provide a suitable basis for making those decisions and contains no requirement that the appeal site should include either a mix of uses or a proportion of the office and studio space that the Council wishes to see developed in the town centre. However, by making a significant contribution to the delivery of the 1,700 homes envisaged on brownfield sites, and to the overall target of 2,300 new homes within Frome, the proposal is both consistent with and derives positive support from the policy. I note that compliance with that part of the policy is dependent upon the proposal respecting and enhancing the town's character as defined in the FTDS. That would be a matter for consideration

at reserved matters stage but no conflict with the FTDS has been alleged in the reasons for refusal or in the Council's evidence to the Inquiry.

34. The Council accepts that the office development would not be viable as part of the appeal scheme; any requirement that the appeal proposal should provide such accommodation would therefore be contrary to paragraph 173 of the Framework with regard to development viability. However, the Council contends that it has not been demonstrated that offices could not be delivered through the development of the wider Saxonvale site as a whole.

35. Although Mr Read accepted that a comprehensive development could possibly result in some economies of scale, his evidence as to the very low demand for offices and resultant low values that would be achieved for such space was not challenged. He also stated that, because of the slow market and low demand, any office space provided would be likely to remain vacant for some time and that the void periods and holding costs that would need to be built into any development appraisal could adversely affect the viability of a larger scheme and increase the funding risks for such a development. The Council produced no evidence to counter that expert view.

36. I accept the important role that employment development will need to play in achieving the Town Strategy objectives of creating 2,700 jobs and improving Frome's self containment. However, those objectives can only be achieved if employment space can be provided in a viable way and is occupied on completion. The viability evidence strongly suggests that this cannot be achieved at the present time even if the wider area was developed as one larger scheme. In addition, even on the Council's assessment, that outcome could be achieved only through a comprehensive development and there is no requirement in Policy CP6, or within the SPB, that the Saxonvale site should be developed by means of a comprehensive scheme. That might remain the Council's preferred option but all the evidence suggests that there is also no realistic prospect of such a proposal coming forward in the short to medium term.

37. The omission of office development from the proposal might mean that such accommodation is not delivered as early as the Council might wish but no benefit would flow from the provision of offices that cannot be let. The indicative level of floorspace for town centre uses is to be achieved over the plan period to 2029 and use of the appeal site solely for residential use would not prevent offices being developed on other sites within Saxonvale and the town centre if it proves viable to do so. It would be also be open to the Council to allocate a specific site for office development in its Part II Local Plan if it wishes to safeguard land for such use.

38. For these reasons I conclude that the contention, as set out in the first reason for refusal, that the appeal proposal would risk non-provision of the required office/studio space is not borne out by the evidence. The proposal would not conflict with MDLP Policy CP6 in this regard and would otherwise be consistent with that policy.

Character and appearance and quality of design

39. The Council's objections mainly concern the consistency of the proposal with the SPB and, in considering this issue, it is important to be mindful that the proposal is in outline form with details of layout, scale, design and

landscaping all reserved for subsequent approval. The Council and other consultees have made detailed comments on the illustrative plans but the appellant has consistently made it clear that these plans are indicative only and are not for approval at this stage.

40. Many of the claimed conflicts are with the Strategic Plan and, in particular, relate to the absence of a mix of retail, residential and employment uses within that part of the site identified as Block GTVL. As the document itself makes clear, the Strategic Plan is intended only to show how the development principles set out in the Brief can be applied and to present a schematic interpretation of the Brief and Codes. Not only does the SPB not require that the Strategic Plan should be followed in a slavish manner but its application in such a prescriptive way would be inconsistent with Policy CP6 which contains no requirement for a mix of uses on the appeal site.

41. In my view the Strategic Plan reflects the stated preference for a comprehensive development of the Saxonvale site although the SPB acknowledges that individual applications may come forward. In those circumstances applicants should demonstrate that they have worked with adjacent landowners, that individual applications provide their share of the required obligations, and that proposals respond to the guidance set out in the Guiding Principles, Strategic Plan and Design Codes. It is clear that the appellant has had extensive discussions with adjacent landowners and there is no suggestion that the proposal would not provide its fair share of the required obligations. The only issue is how the proposed development would respond to the guiding principles and design codes.

42. There are no objections to the proposal on the grounds of highway safety and the Council accepts that the site is in a sustainable location which would enable the future occupiers of the proposed dwellings to access local shops, services and public transport facilities by sustainable means of transport.

43. At the Inquiry the Council sought to argue that full details of vehicular and pedestrian access should be provided although this appears not to have been of concern prior to the determination of the application. There is a degree of overlap within the definitions of access and layout set out in the Town and Country Planning (Development Management Procedure) Order 2015 and Planning Practice Guidance (PPG) and, in my experience, it is common practice for details of the internal road layout to be reserved where the position and geometry of the site access junction is approved as part of an outline permission. Drawing No. 0560 001 includes sufficient details of the access junction for these to be approved at this stage.

44. The proposed pedestrian access to Vicarage Street is entirely within the appellant's land ownership and its location and design would be unaffected by the detailed layout of the proposed houses. Hence, it is also appropriate that the details shown on drawing No 0560 005 be approved as part of any outline permission.

45. The other points of pedestrian access shown on the Site Parameters Plan have previously been identified and put in front of the Council but the details of their alignment, level and gradient are likely to be affected by the layout of the internal roads and footways, the detailed arrangement of the proposed dwellings and other details of the development. It is appropriate

that such details should be dealt with at reserved matters stage and the reasons for reserving those details are particularly strong in this case.

46. The illustrative layout and context drawings show how the proposed development might have related to the Frontier scheme had it been approved and taken forward. In view of the considerable uncertainty as to when and in what form that adjoining land might be developed the postponement of decisions on the detailed location and form of pedestrian accesses that would connect with that land is suitably pragmatic; it is also in the best interests of the appellant and the Council in seeking to ensure maximum connectivity. Hence, it is both appropriate and desirable that these details are reserved and that the general positions of those remaining pedestrian access points should be approved by reference to the Site Parameters Plan.

47. The provision of pedestrian access points to the north, south, east and west forms the basis for the development to achieve a good level of connectivity with any future development on adjacent sites and with the town centre. The RTG context plan demonstrates how these routes could connect to a riverside park and with any new retail or commercial development to the west and north west. The appellant can only control what is within the red line area and it is for the Council, through its negotiations with adjacent landowners and developers, to seek provision of the necessary linkages and connections beyond the site boundary.

48. Mr Trower agreed that the significant fall in ground level across the site from south to north means that any detailed layout for the site is likely to include an east-west access spine road with housing blocks to the north and south. My observations on my site visit support the wisdom of that approach and I note that this is accordance with the guidelines in Appendix E of the SPB which proposes an almost identical solution in order to achieve acceptable gradients on the access road. That appendix also notes the need for a stepped pedestrian route from Vicarage Street through the site to connect with other parts of the Saxonvale area to the north. Given the consistency of the proposed approach with those guidelines it is surprising that the Council should complain that it would be presented with a 'fait accompli' at a reserved matters application stage and I reject that criticism.

49. Details of landscaping, layout, scale and design are reserved but nothing in the indicative layout or other illustrative drawings suggests that a satisfactory quality of design, appropriate to the site's location adjacent to the town centre and conservation area, could not be achieved. The indicative layout shows how dwellings could front onto the access road and be grouped around a courtyard within the southern part of the site, thereby achieving an appropriate level of overlooking of those public spaces. The illustrative street scenes show the potential for variations in the design and materials and for a varying roofscape to add visual interest. These approaches would be in keeping with the guiding principles in the SPB and its design codes with regard to public realm and built form. The provision of a new square in the location as indicated in the RTG scheme would be of very limited value had the Frontier proposals gone ahead but this provision could be revisited at reserved matters stage if a more compatible scheme is proposed on the land to the north.

50. Although the Council describes the proposal as suburban, both the density (at around 45 dwellings per hectare) and the use of 2 and 3 storey town houses as the main dwelling types would be appropriate for the site's urban setting. The developments referred to in Dr Massey's evidence provide examples of good quality urban housing combining traditional and innovative materials and design and I see no reason why this should not be achieved within the appeal proposal. The Council would have ample opportunity in its consideration of a reserved matters application to ensure that the detailed proposals meet the design principles set out in the FTDS.

51. Some retaining structures may be required in order to manage the significant fall across the site but the form and positions of these do not need to be fixed at this stage. The retaining wall shown on the illustrative site layout plans does not reflect any existing structures or a significant change in level at the northern boundary and was put forward in response to the Frontier application. The alternative layout within Mr Trower's proof shows that the houses on the northern boundary could be developed with an outward facing aspect but that would be desirable only if compatible uses are proposed on the adjacent land. The details of the siting and aspect of those dwellings is therefore also best left to be considered at reserved matters stage.

52. The appeal site is currently derelict and overgrown and can rightly be described as an eyesore which has had a detrimental effect on the character and appearance of the wider site and its surroundings for many years. That detriment would be removed by the demolition of the remaining structures and the clearance of the site and its redevelopment with an appropriately designed residential scheme which would have a significant positive effect on the character and appearance of the wider area.

53. Having regard to these considerations and to the outline nature of the proposal, there are no grounds to conclude that the proposal would not be of an acceptable quality of design and I find that it would have a positive effect on the character and appearance of the site and its surroundings. The proposal would therefore comply with MDLP Policies DP7, which states that the Council will support high quality design which results in usable, durable, sustainable and attractive places, and DP9, which requires that development proposals should demonstrate how they will improve or maximise the use of sustainable forms of transport.

Heritage assets

54. I accept Dr Massey's evidence that the setting of the Grade II* listed Old Vicarage (St John's Vicarage) is limited to the curtilage enclosed by its high perimeter wall and gates and its relationship with the church to the west. The appeal site is not within that setting and has no historic, functional or visual connection with the Old Vicarage. No harm would be caused to the setting of the Old Vicarage or to its significance as a designated heritage asset.

55. I was advised the former Cooper Bussman building which occupied part of the appeal site was of early 19th Century construction and had some group value with the Grade II listed Warehouse, (now part of the Old Silk Mill) to the west. Following the demolition of that building the appeal site remains within the setting of the listed Warehouse although it is separated from it by

the unlisted element of the Old Silk Mill. In its current state and condition it has a detrimental effect on the setting of the listed building and that setting would be enhanced by the demolition of the remaining structures and the clearance of the extensive debris and vegetation. Subject to a satisfactory relationship being achieved through the detailed siting and design of the dwellings proposed in the western part of the site, the proposal has the potential to secure a significant enhancement to that setting and could assist in enabling the Warehouse to be better revealed and understood, in accordance with paragraph 137 of the Framework; the successful completion of that enhancement would, however, also require sympathetic proposals to come forward on the land to the west.

56. A small part of the appeal site is within the Frome Conservation Area and other parts are within the setting of the Conservation Area. Following the demolition of the Cooper Bussman building there is some uncertainty as to the continued role of its site as part of the Conservation Area. What is clear, however, is that the appeal site currently makes a wholly negative contribution to the significance of the Conservation Area and to its setting. The clearance of the remaining structures and of the site generally would provide some immediate enhancement in the appearance of the Conservation Area and the site's sensitive redevelopment for residential use would be capable of securing an enhancement of its character as well.

57. Accordingly I conclude that no harm would be caused to any designated heritage asset and that the proposal provides an opportunity for some enhancement to the setting of the Warehouse and to the character and appearance of the Conservation Area and its setting. The proposal would comply with MDLP Policy DP3 which seeks the conservation of heritage assets and with the policies in section 12 of the Framework.

Living Conditions

58. Reason 3 raises concerns that the proposed dwellings would be in close proximity to the supermarket and its service yard proposed in the Frontier application but that application was recommended for refusal and was withdrawn. Whatever discussions may subsequently have taken place there is no new application or live proposal for a supermarket or any other form of development on the adjacent land.

59. Policy CP6 lists a medium scale food outlet as one of the things that town centre redevelopments should collectively deliver but the proposal is not specific to the Saxonvale area; this is acknowledged in the officer report on the Frontier application (PR Appendix 2). Similarly, the 2,300 new homes proposed in CP6 are not all to be provided through town centre redevelopments although there is a requirement that 1,700 of these should be on brownfield land.

60. The SPB indicates that residential should be the major land use in the Saxonvale area and, hence, other commercial or retail uses will need to co-exist with those new homes. Although the SPB and Strategic Plan proposes a significant scale of residential development on the appeal site they neither contemplate nor make provision for the medium scale food store envisaged in the MDLP. As the appellant points out, it is difficult to understand how the scale and likely form of such a development would be consistent with the

development density and relatively small, mixed block structure envisioned in the Strategic Plan.

61. It is for the Council to resolve this apparent tension between the MDLP and the SPB and for the Council and any developer of the adjacent land to ensure that proposals brought forward are compatible with the residential use that the Council wishes to see on the appeal site. In the absence of any planning permission or firm proposal on that land it would be unreasonable to refuse planning permission on the grounds that its future use might adversely affect living conditions within the dwellings proposed on the appeal site.

62. There is minimal risk of noise or disturbance from the use of the Old Silk Mill as an artist's studio and gallery. The Council has granted an entertainment licence for the premises but any entertainment events would need to be ancillary to the lawful use of the site and the granting of that licence suggests no history of noise disturbance to the Old Vicarage or other nearby houses.

63. The potential for disturbance is a material consideration but the available information suggests that the risk is small. If the intervening building were to be demolished, the screening that it provides would be removed but there are no proposals for its demolition. As both the 2008 Terramond and the more recent Frontier applications envisaged the partial retention of that building and/or new buildings on its site it seems likely that any future development proposals would take a similar approach.

64. I saw on my site visit that the part of the Old Silk Mill used as a function space is accessed by a door in its western elevation and that both this entrance and the open courtyard area is screened to the east by part of the listed structure. Because of that arrangement, in conjunction with the distance of some 40 metres or more from that part of the Old Silk Mill to the nearest dwellings on the appeal site and the likelihood that there would be some new or existing buildings in between, I consider that the risk of unacceptable noise and disturbance would be very small. Hence, there would be no conflict with MDLP Policy DP8 which requires that development should not give rise to unacceptable impacts in terms of noise levels. Neither would the proposal conflict with paragraph 123 of the Framework in this respect.

Other Matters

65. Mr Swales' concerns relate solely to the potential effect on the level of privacy and security at his home which might result from the pedestrian link to Vicarage Street. However, there is sufficient room to provide landscaping treatment which would afford an appropriate level of protection and this is a matter which can be dealt with by means of a planning condition.

66. Councillor Falle's suggestion that the site be developed for low cost housing and work and training space for young people appears not to be fully aligned either with the MDLP, which proposes market residential as a major component of town centre redevelopment, or the SPB which envisages residential being the major land use in the Saxonvale area. There is no policy requirement that the site should be developed in whole or in part for employment uses but the proposal would provide 18 affordable homes.

67. Having reviewed the relevant information I am satisfied that adequate mitigation could be provided in relation to bats and that this mitigation could be secured by a planning condition. No conflict would therefore arise with MDLP Policies DP5 and DP6 which relate to biodiversity and the protection of bats.

68. The proposal would provide up to 60 new homes and make a significant contribution to the identified need for market housing and affordable homes in Frome. Substantial economic benefits would be generated through the construction expenditure and employment, New Homes Bonus, and expenditure by the future occupiers of the proposed homes in the local area. The proposal would also result in the regeneration of a long term derelict, brownfield site which, as the Council accepts, contributes nothing to Frome in its current state and condition. These benefits of the appeal proposal should be given substantial weight.

Conditions

69. A suggested schedule of conditions was discussed at the Inquiry and I have considered these having regard to the tests set out in the Framework.

70. Conditions 1-3 are standard conditions applicable to an outline permission and condition 4 is needed to clarify that some aspects of access are reserved for subsequent approval. Condition 5, requiring that the reserved matters application(s) be in general accordance with the Site Parameter Plan, is needed to confirm the location of those access points, the area of proposed open space, and the trees to be retained; the proposed maximum height of buildings indicated on that plan is not, however, approved as part of this permission. Condition 5 also sets out other key details to be submitted as part of the reserved matters in order to secure a satisfactory standard of development in the context of the site's location and setting.

71. Condition 6 is needed to confirm the plans approved as part of the outline permission and conditions 7, requiring the submission and approval of a schedule and samples of external materials, and 8, relating to a scheme of hard and soft landscaping works, are needed to ensure a high quality of development which is commensurate with the site's location. Conditions 8 and 9 are needed to ensure that these works are completed at an appropriate stage in the development.

72. Condition 10 is needed as no drainage details were submitted with the application and Condition 11 is required because of the previous use of the site and adjoining land and the dated nature of the available information on ground conditions. In view of the site's location relative to the local highway network and nearby residential properties Condition 12, requiring the submission of a Construction Method Statement is necessary to minimise disruption to the highway and the risk of disturbance to nearby residents during the construction works.

73. Condition 13 is required because of the likely presence within the site of features of archaeological interest. The findings and recommendations of the Ecological Survey Report and Bat Survey identify the need for replacement bat roosts to be provided on the site and recommend a series of measures in relation to other species. Conditions 14 and 15 are required to ensure that these measures are carried out as recommended. The

discharge of Conditions 7, 8, and 11-14 is required prior to the commencement of development in order to ensure that a satisfactory and safe standard of residential development is obtained and to minimise the risk of potentially abortive work.

74. Condition 16 is needed to ensure that the site access junction is completed in accordance with the approved details and that this incorporates a safe crossing point for pedestrians in the interests of highway safety. Conditions 17 and 18 are necessary to ensure that all necessary works relating to the provision of roads, footpaths, driveways and turning areas and for the provision of areas for the storage of refuse bins that are needed to serve each of the dwellings within the development are completed before those dwellings are occupied.

75. The Council had put forward a condition requiring the submission of details of many other aspects of the development but I consider that most of these are already covered by the requirements of Condition 1 with regard to the submission of reserved matters.

Section 106 Obligations

76. Paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Regulations require that planning obligations should only be sought, and that weight be attached to their provisions, where they are: necessary to make the development acceptable in planning terms; directly related to the development proposed; and are fairly and reasonably related to the proposed development. The UU that has been submitted includes a number of obligations agreed with the Council.

77. The proposed development generates a need for affordable housing in accordance with Policy CP11 of MDLP and the 18 affordable dwellings proposed on the site will meet the 30% target set out in that policy. The obligation is necessary to secure that provision and the terms under which it will be made available and managed over the long term. Although some open space would be provided on site, the level of provision would not meet the Council's normal planning standards and there is a requirement for financial contributions, in accordance with MDLP Policy DP19, for the provision and/or enhancement of public open space elsewhere in Frome.

78. The development would generate a need for 9 additional primary school places. As none of the first schools in closest proximity are projected to have spare capacity when these places are likely to be needed it is reasonable that financial contributions be made to increase capacity. The contributions set out in the UU accord with the County Council's costing formula for the provision of additional school places.

79. The parties agree that the additional traffic generated would have some effect on the operation of nearby road junctions and that contributions should be made towards the costs of modelling works and improvements to those junctions. In accordance with MDLP Policies DP9 and DP10 a development of the scale proposed would also generate the need for a Travel Plan in order to encourage the use of sustainable transport options and discourage the making of journeys by private car. Obligations are therefore required in relation to the costs incurred in the preparation and monitoring of the Travel Plan.

80. I am satisfied that the obligations set out in the UU are necessary to make the development acceptable in planning terms and that they are directly related to the development proposed. I also find that the scale of the obligations is fairly and reasonably related to the development. I have therefore afforded significant weight to these obligations in reaching my decision.

Conclusions

81. For the reasons set out above I conclude that the proposal would comply with the development plan as a whole and that, although there may be a small degree of conflict with the provisions of the SPB, that guidance should be given only limited weight. The economic, social and environmental benefits of the proposal are of substantial weight and combine to demonstrate that the proposal would constitute sustainable development having regard to the provisions of the Framework. In accordance with the third bullet of paragraph 14 the proposal should be approved without further delay.

82. The appeal is allowed.

Paul Singleton

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr T Sheppard	of Counsel
	Instructed by Head of Legal Services Mendip District Council

He called:

Ms Jane Boldy BA (Hons) MSc ConsHistBuild	Conservation Officer
Mr O Marigold BSc Dip TP MRTPI	Principal Planning Officer

FOR THE APPELLANT:

Miss T Osmund-Smith	of Counsel
	Instructed by Mr P Roberts, Barton Wilmore LLP

She called:

Dr Richard Massey PhD MA MIFA	Senior Heritage Consultant, Cotswold Archaeology
Mr J Read BSc Hons MSc MRICS	Surveyor, Chesters Commercial
Mr A Trower Dip Surv CIAT	Director, Trower Davis Limited
Mr P Roberts BSc (Hons) MA MRTPI	Associate, Barton Wilmore LLP

INTERESTED PERSONS

Mr S Swales	Local Resident
Councillor Stina Falle	Ward Councillor

DOCUMENTS PUT IN AT THE INQUIRY

1. Notification letters of the change of procedure and the date, time and venue for the Inquiry
2. Signed Statement of Common Ground
3. Community Infrastructure Levy Compliance Note by Mendip District Council
4. Copy of letter from Clarkson & Woods Ecological Consultants to the Council dated 18 April 2016

5. Appellant's Opening Submissions and list of witnesses
6. Extract from Planning Practice Guidance relating to viability issues
7. Council's Opening Submissions
8. Statement by Mr Swales
9. Note from Councillor Falle
10. Statement by Councillor Falle
11. Land Registry document and plan relating to right of way across part of the Old Silk Mill site
12. Extract from Town and Country Planning (Development Management Procedure) (England) Order 2012
13. Extract from Appeal Decision and Inspector's Report concerning land at Kidnapper's Lane, Leckhampton, Cheltenham (APP/B1605/W/14/3001717)
14. Appeal Decision concerning land at New Street, Weedon Bec, Northamptonshire (APP/Y2810/A/14/2228921)
15. Frome Town Design Statement Supplementary Planning Document (October 2015)
16. MDLP Policies Map: Inset 2 Frome Town
17. Council's Closing Submissions
18. Appellant's Closing Submissions

DOCUMENTS PUT IN AFTER THE CLOSE OF THE INQUIRY

Certified Copy of signed Unilateral Undertaking dated 10 August 2016 and copy of Power of Attorney relating to Lloyds Bank PLC

PLANS

494 SLP P2	Site Location Plan
494 02 P3	Revised Context Plan (Frontier)
494 03 P3	Revised Context Plan (Resolution to Grant)
494 04 P2	Revised Sections and Street Scenes
494 05 P1	Buildings to be Demolished
494 06 P5	Revised Site Layout Plan
494 08 P2	Site Parameters Plan
0560 001	Proposed Site Access Junction
0560 005	Proposed Pedestrian Access from Vicarage Street

0560 006	Vehicle Swept Path Analysis
0560 007	Vehicle Swept Path Analysis
0560 008	Vehicle Swept Path Analysis

Schedule of Conditions for Appeal ref: APP/ Q3305/W/15/3135345

1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.

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

3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

4) Notwithstanding that access is not reserved, all internal roads and arrangements for pedestrian accesses, other than the pedestrian route to Vicarage Street, shall be reserved as constituting aspects of the site layout.

5) The reserved matters application(s) shall be in general accordance with the principles set out in Drawing No 494 08 P2-Site Parameter Plan- except in respect of the maximum building height indicated on that plan- and shall include full details of:
   i) The position, alignment and construction of all internal roads, footpaths and driveways and associated visibility splays;
   ii) The pedestrian links to the site boundary at the west, north west and north east corners of the site as indicated in Drawing No: 494 08 P2
   iii) The finished floor levels of the proposed dwellings;
   iv) The position, dimensions and means of construction of all retaining structures;
   v) The size, scale, floorspace and design of all dwellings
   vi) The provision to be made for the storage and collection of refuse and waste recycling bins;
   vii) The provision to be made for the garaging and parking of vehicles within the site;
   viii) The space to be provided for the loading, unloading and turning of vehicles within the site; and
   ix) The proposed parking strategy and arrangements for the management of all unallocated parking spaces.

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

494 SLP P2	Site Location Plan
494 05 P1	Buildings to be Demolished
0560 001	Site Access Junction
0560 005	Proposed Pedestrian Access from Vicarage Street

7) No development shall take place until schedules and samples of the materials to be used in the construction of the external surfaces of the dwellings and other buildings hereby permitted have been submitted to

and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

8) No development shall take place until a scheme of both hard and soft landscape works has been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. The scheme shall include: details of the size, species an position of new trees and plants; existing trees and vegetation to be retained; planting proposals within the land adjoining the proposed pedestrian access from Vicarage Street; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; and minor artefacts and structures. All hard landscaping works shall be completed prior to the occupation of any of the dwellings hereby approved or in accordance with a programme approved in writing by the local planning authority.

9) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of any of the dwellings herby approved or the completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.

10) Development of the dwellings hereby approved shall not begin until foul, surface water and highway drainage works have been carried out in accordance with details that have been previously submitted to and approved in writing by the local planning authority.

11) No development, other than that required as part of an approved scheme of remediation, shall take place out until parts i) to iii) of this condition have been complied with:

i) An investigation and risk assessment has been completed, in accordance with a scheme approved in writing by the local planning authority, to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The investigation and risk assessment must be undertaken by a competent person and a written report produced for submission and approval by the local planning authority. The report of findings shall include:

(a) a survey of the extent, scale and nature of any contamination;

(b) an assessment of the potential risks to human health, property (existing or proposed);

(c) An appraisal of options for any remediation required and identification of any preferred options.

The investigation and risk assessment shall be carried out in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination CLR 11'.

ii) If required by the findings of the site investigation, a detailed remediation scheme to bring the site into a suitable condition for the intended use by removing unacceptable risks to human health, buildings, other property and the natural and historic environment

shall be submitted to and approved in writing by the local planning authority. The scheme should include all works to be undertaken, proposed remediation objectives and criteria, a programme of works and site management procedures. The scheme must ensure that the site would not qualify as contaminated land under Part 2A of the Environmental Protection Act 1980 in relation to the intended use after remediation has been completed.

iii) The approved remediation scheme must be carried out in accordance with its agreed terms before development, other than development required to carry out the remediation, is commenced or in accordance with a programme approved in writing by the local planning authority. Two weeks notice of the commencement of the remediation scheme must be given in writing to the local planning authority. Following completion of the measures identified in the approved scheme a written verification report that demonstrates the effectiveness of those measures must be submitted to the local planning authority. No dwelling hereby approved shall be occupied until the local planning authority has issued a written acceptance of the verification or verification report.

iv) In the event that any new contamination, not identified in the initial site investigation, is found during the remediation works or the construction of the development it shall immediately be reported in writing to the local planning authority. An investigation and risk assessment must be carried out in relation to such new contamination in accordance with part i) of this condition which shall be submitted to the local planning authority for its approval in writing. Any additional remediation measures required must be completed in accordance with a scheme and programme of works approved in writing by the local planning authority.

v) If unexpected contamination is found during the construction of the development construction works shall be suspended on that part of the site affected by the contamination until the requirements of part iv) of this condition have been complied with.

12) No development shall take place, including any works of demolition and remediation, until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

i) the routing of construction and delivery vehicles to and from the site;

ii) the anticipated number of vehicle movements;

iii) parking of vehicles of site operatives and visitors

iv) loading and unloading of plant and materials;

v) hours of working during the construction programme;

vi) delivery hours for deliveries to and removal of waste from the site;

vii) storage of plant and materials used in constructing the development;

viii) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;

ix) wheel washing facilities;
x) measures to control the emission of dust and dirt during construction
xi) a scheme for recycling/disposing of waste resulting from demolition and construction works;
xii) measures to mitigate construction impacts in pursuance of the Environmental Code of Construction Practice; and
xiii) A scheme to encourage the use of public transport by contractors.

13) No development, other than works required to comply with this condition, shall take place until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been previously submitted to and approved in writing by the local planning authority.

14) No development shall take place until an Ecological Design Strategy (EDS), addressing the installation of a replacement bat roost has been submitted to and approved in writing by the local planning authority. The EDS shall be undertaken in accordance with the findings of updated surveys that shall have been carried out to confirm the presence of roosting bats within the existing retaining wall that runs through the site. The replacement roost shall be designed to support at least the number and species of bats detailed within the Clarkson and Woods Ltd Bat Survey Report, Garsdale, Frome dated July 2014 and the EDS shall include the following:
i) The purpose and conservation objectives for the proposed works;
ii) A review of the site potential and constraints;
iii) Detailed design and working methods to achieve the stated objectives;
iv) The location of the replacement roost on appropriately scaled maps and plans;
v) Evidence that the roost can be installed and maintained in the long term;
vi) Roost design specifications including dimensions and the materials to be used;
vii) A programme for the installation of the roost that demonstrates that the works are in alignment with the proposed construction programme;
viii) Details of the persons or company responsible for implementing the works;
ix) Details of initial aftercare and long term maintenance; and
x) Details for monitoring and remedial measures.
The EDS shall be implemented in accordance with the approved details and programme and all features shall be retained in that manner thereafter.

15) The development hereby approved shall be carried out in accordance with the recommendations of the protected species survey and report dated July 2014 in respect of reptiles, birds and protected species other than bats.

16) The site access junction, incorporating a pedestrian crossing point across the site access road and a footway on the south side of the access road

shall be provided in accordance with the details shown on Drawing No 0560 01. These works shall be completed before any part of the development is occupied.

17) No dwelling hereby approved shall be occupied until the roads, footpaths, driveways and turnings spaces needed to provide safe and satisfactory access to that dwelling have been constructed at least to base course level in accordance with the details approved under condition No 1.

18) No dwelling hereby approved shall be occupied until provision for the storage of refuse and waste recycling bins to serve that dwelling has been provided in accordance with details that shall have been submitted to and approved in writing by the local planning authority. The facilities provided for the storage of waste and recycling bins shall thereafter be retained exclusive for that purpose.

End of Schedule of Conditions