
Appeal Decision

Inquiry held on 28 to the 31 March and the 4 April 2017

Site visit made on 4 April 2017

by A Jordan BA Hons MRTPI

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

Decision date: 14 June 2017

Appeal Ref: APP/D0121/W/16/3151600

Land off Wrington Lane, Congresbury, BS49 5BJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Gladman Development Limited against North Somerset Council.
 - The application Ref 15/P/2828/O, is dated 27 November 2015.
 - The development proposed is an outline planning application for the erection of up to 50 residential dwellings (including up to 30% affordable housing), structural planting and landscaping, informal public open space, surface water attenuation, vehicular access point from Wrington Lane and associated ancillary works. All matters reserved with the exception of the main site access point.
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Decision

1. The appeal is dismissed and planning permission is refused.

Procedural Matters

2. The proposal has been screened under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 [ID12]. The Council are satisfied that the proposal does not constitute development that requires an Environmental Impact Assessment.
 3. The application is made in outline form, with all matters other than access reserved for later approval. The submission is supported by plan ref 1465/01C which shows access arrangements to the site. It is also supported by an illustrative layout plan Ref 6587-L-02H which shows broad parameters for the location of development, and the areas of the site intended for landscaping and to be left open. The Council have dealt with this plan on the basis that it provides broad parameters for how reserved matters should be dealt with and I have therefore treated the plan in the same way, with layout, scale, appearance and landscaping as matters reserved for future consideration.
 4. Following the submission of the appeal the appellant submitted a subsequent identical application, which was the subject of ongoing negotiation in relation to the means of access and the form of highways improvements along Wrington Lane. These were subject to public consultation which the Council undertook in relation to both the appeal proposal and the subsequent planning application Ref 16/P/1521/O. I am therefore satisfied that although the revised plans post-dated the submission of the appeal, interested parties would have been
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aware of them and would not be prejudiced by my taking them into account in the determination of the appeal.

5. The site was included as a site in the proposed *Sites and Policies Plan Part 2* on Tuesday the 7th of February. On Wednesday the 8th of February the Council also resolved to approve application ref 16/P1521/O for which permission was subsequently granted on Friday 24th March. The main parties agree that other than the mechanism for delivering affordable housing, the approved scheme and the scheme which is subject to this appeal are identical.
6. A completed legal agreement under Section 106 of the Planning Act (S106) has been submitted in support of the proposal. This takes the form of a unilateral undertaking on the part of the site owners to provide financial contributions for education, the provision of public rights of way, a travel plan contribution, a contribution towards the implementation of a Traffic Regulation Order, a contribution towards sports and leisure, a contribution towards the provision of sports pitches and a contribution towards youth education. Arrangements are also provided for the transfer and maintenance of open space within the development.
7. Two signed Statements of Common Ground (SoCG) have been submitted by the 2 main parties, one relating specifically to highways matters. This identified the issues of dispute to be the extent of any shortfall in the 5 year housing land supply, and whether the affordable housing provision should be secured by way of a planning obligation or a planning condition. During the Inquiry Congresbury Residents Action Group (CRAG) appeared as a Rule 6 Party. They identified a number of concerns from residents which were not shared by the council.
8. After the Inquiry closed the Supreme Court reached a decision in relation to *Suffolk Coastal District Council v Hopkins Homes Ltd and SSLG, Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council*, concerning the interpretation of paragraph 49 of the *National Planning Policy Framework* (the Framework) and its relationship with paragraph 14 of the Framework. I gave the parties the opportunity to provide further comments on the matter and have taken these representations into account in determining the appeal.

Main Issues

9. Based on the evidence put to me, I consider the main issues for the appeal to be:
 - Whether there is a 5 year supply of housing land in the district;
 - The effect the proposal would have on the character and appearance of the village;
 - Whether the appeal site is an appropriate location for housing having regard to national and local policies which seek to reduce reliance on the private car;
 - The effect of the proposal on highway safety, including the safety of pedestrians, and

- Whether the proposal would make acceptable provision for affordable housing.

Reasons

Policy Background

10. The development plan for the district is made up of the *North Somerset Core Strategy 2012* (CS) which was re-adopted in January 2017 following re-examination, and the *Development Management Policies Part 1* (DMP) which was adopted in July 2016. The *Sites and Policies Plan Part 2* (SPP) has recently been submitted for examination.
11. Policy DM10 of the DMP seeks to ensure that new development does not have an adverse impact on landscape character and responds to the local character. Policy CS32 of the CS relates to new development within Service Villages, including Congresbury. It states that developments which support the overall sustainability of the settlement will be supported provided they meet a number of criteria aimed at ensuring proposals enhance the overall sustainability of the settlement. These include ensuring that new development respects and enhances the local character, contributes to local distinctiveness, and can be readily assimilated into the village and its landscape setting. The location of development should maximise opportunities to reduce the need to travel and to ensure that new development demonstrates safe and attractive pedestrian routes to facilities within the settlement within reasonable walking distance. New development should not result in significant adverse cumulative impacts such as highway impacts.
12. The Policy also states that sites outside the settlement boundaries in excess of about 25 dwellings must be brought forward as allocations through Local or Neighbourhood Plans. The supporting text to the policy states that *"larger sites must be brought forward as site allocations to ensure they are brought forward through the plan-led system, subject to appropriate consultation, and infrastructure planning."* It goes on to state *"the cumulative impact of development will be a significant consideration and a succession of piecemeal developments which individually or taken together have an adverse effect on any individual village are unlikely to be supported."* In seeking to control the scale of development in rural areas, the policies reflect guidance in the Framework, which recognises the intrinsic character and beauty of the countryside and supports thriving rural communities within it. I also accept the appellant's view that neither policy CS32 nor DM10 is out of date. I therefore attribute full weight to them.
13. Policy CS16 of the CS relates to affordable housing. It requires that a benchmark of 30% of the total number of housing units on new residential development sites be provided and maintained as affordable housing. It requires that the contribution will be provided as built units on the site and that the mix, size, type and tenure of affordable homes meets local housing needs and shall comprise a mix of social rented and intermediate housing. The Affordable Housing Supplementary Planning Document (SPD) sets out more detailed criteria for how such provision should be approached.
14. In seeking to ensure an adequate supply of affordable units in the district for which there is an identified need the policy reflects guidance in paragraph 50 of the Framework which directs that where affordable housing is needed, local

authorities should set policies for meeting this need on site, unless provision of broadly equivalent value can be robustly justified. The Framework also advises that such policies should be sufficiently flexible to take account of changing market conditions over time. I therefore attribute full weight to it.

15. Policy CS10 of the CS encourages development proposals which allow for a wide choice of modes of transport as a means of access to jobs, homes and services. Policy DM24 of the DMP states that development will be permitted provided it does not prejudice highway safety. It also states that development giving rise to a significant number of traffic movements will only be refused on transport grounds if it is likely to have a severe residual cumulative impact on traffic congestion or on the character and function of the surrounding area. It also states that where a proposal would be acceptable apart from deficiencies in highways and transport infrastructure and services, which may be off-site, planning permission may be granted subject to the applicant entering into an appropriate legal agreement to fund improvements sought. The policies reflect guidance in the Framework which aims to provide safe and suitable access to the site for all people and states that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. I therefore give the policy full weight.
16. Policy CS4 of the CS seeks to ensure that new development maximises benefits to biodiversity by incorporating safeguarding and enhancing natural habitats and adding to them where possible. This reflects guidance in the Framework which amongst other things seeks to ensure that new development minimises impacts on biodiversity. Policy CS5 of the CS seeks to conserve the historic environment by ensuring that development proposals have regard to the significance of heritage assets such as listed buildings, conservation areas and archaeology. This reflects guidance in the Framework which seeks to ensure heritage assets are conserved in a manner appropriate to their significance. I therefore attribute full weight to these policies.

Housing Land Supply

17. During the Inquiry I was advised that the contribution the site would make to housing land supply had already been accounted for by the inclusion of permission ref 16/P/1521/O within the housing land supply figures. The decision on the appeal before me would not alter these figures. Nevertheless, the matter of housing land supply is relevant in relation to paragraphs 49 and 14 of the Framework, and whether the "tilted balance" should be applied in this case.
18. The main parties dispute whether a 5 year housing land supply can be demonstrated in the district. Policy CS13 of the CS sets the housing requirement at 20,985 dwellings over the period 2006-2026. The Council consider that a 5.05 year supply can be demonstrated. The appellant considers that supply can more accurately be described to be in the region of 2.77 years. The difference stems firstly from whether a buffer of 5 or 20% should be applied, arising from whether there has been persistent under-delivery of housing (PUD) in the district.
19. At the Inquiry the approach of previous S78 Inspectors¹ and the Local Plans Inspector in relation to the remitted Core Strategy were discussed in detail.

¹ APP/D0121/W/15/3138816 and APP/D0121/W/15/3139633

Both S78 Inspectors have concluded that there had been persistent under-delivery, whilst the Local Plan Inspector, who post-dated these decisions, found there had not. The Framework does not identify a specified period in which PUD should be judged, although *Planning Practice Guidance* (PPG) advises that a period of time which takes account of the housing market cycle can take account of peaks and troughs. I also take into account LPEG² guidance which recommends assessment for a minimum of a 10 year period, and considers a figure of around 65% (two thirds) of years to represent a benchmark for PUD. This is based on the relevant housing requirement that applied at that period. I have also considered it relevant to take account of the extent of undersupply that has occurred.

20. The Council have provided figures that extend back to 1996. These are based on the relevant development plan requirement in place at the time. I have also relied on the figure in the Adopted CS of 1049 for the years 2013/14 and 2014/15. This shows under provision in 8 of the last 10 years, 8 of the last 15 years, and 13 of the last 20 years. Within the last 10 year period it includes 2007/2008, a peak where completions exceeded the target by almost 50% and 2011/12, at the nadir of the recession where completions were at a low for the 20 year period. The last 10 years therefore appears to show extremes of fluctuation consistent with the peaks and troughs of the wider housing market and I consider it a sufficiently diverse period to give an adequate reflection of housing supply in the district.
21. In the last 10 years completions have failed to meet the development plan target in 8 of the 10 years, with a cumulative shortfall which equates to 16% of the overall requirement. I note the Council's comments, that the last 10 years includes the recent economic downturn. However, this time period also includes the peak of 2008. Furthermore, the last 4 years indicate an increasing level of under-supply during a period which saw the introduction of the Framework, with its objective of significantly boosting the supply of housing. These factors lead me to the view that the underlying pattern of housing supply in the district is one of persistent under-delivery, and a 20% buffer should be applied.
22. The parties agree that if a 20% buffer is necessary, then the Council cannot demonstrate a 5 year supply of housing land. I concur that on the basis of my findings above, a five year supply of housing land has not been demonstrated. There are other points of contention between the parties, including whether sites which come into the supply since the base date can legitimately be counted towards supply, and differences on the contribution various elements of supply can legitimately make. However, as I have already found that a 5 year supply cannot be demonstrated it is not necessary to explore these any further. As such, paragraph 49 of the Framework is engaged and relevant policies for the supply of housing must be considered out-of-date. Paragraph 14 of the Framework advises that where the relevant development plan policies are out-of-date permission should be granted, unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

² ID3

Character and Appearance

23. The site lies within the Natural England's *National Character Area 118 – Bristol Avon Valleys and Ridges*, and within Landscape Character Type J2 "River Yeo, Rolling Valley Farmland" set out in the *North Somerset Landscape Character Assessment Supplementary Planning Document (SPD)*. This is described as being gently rolling with a strong valley feel, with enclosure given by rising wooded limestone ridges to the north and south. It is characterised by irregular medium sized fields with full hedgerows and frequent hedgerow trees. Scattered farmsteads and large villages found along major routes. The guidance seeks to conserve the rural, pastoral character of the area, to limit village infill, and to strengthen areas of weaker character.
24. The site comprises open fields on the edge of the settlement. It is edged to the north by the residential dwellings which sit to the north side of Wrington Lane, and to the west by both the rear of properties along Cobthorn Way, and by the open fields occupied by the Cobthorn Trust. To the east and south the site is adjoined by open fields. The land rises towards the north and west with the isolated knoll known locally as Mansbury Mound sitting within the site to the east. The rising topography to the north provides open views of the site from the direction of the River Yeo. From the elevated position of land to the north, from Cadbury Hill, the pattern of how the village has evolved is clearly evident. The built form of the village, along with the dispersed pattern of outlying dwellings and groups of farm buildings, some of which are relatively large in scale, are clearly evident in the wider landscape. This, along with the extent to which the landform breaks up long range views, provides some capacity within the landscape to absorb further built form without significantly altering the established character of the landscape.
25. The application was accompanied by a landscape and visual impact assessment which examined views of the site from 18 viewpoints. In close range views in and around the site, in viewpoints 1 -7 the visual impact of the proposal would be severe. For residential occupiers who back onto the site, the character of the area will change from open countryside to suburban development. This will diminish the quality of views available from the rear of properties on Cobthorn Way, and on those properties on Wrington Lane which look onto the site. It will also significantly harm the open character of the countryside for those users of the public footpath which crosses the site. Even from viewpoints 1, and 3, which would face away from the built proportion of the site, the new dwellings would be an unescapably urban presence which would alter the route from a country footpath to a suburban one.
26. The proposal would also open up a section of the existing site boundary which would have an urbanising effect on this part of Wrington Lane. The Lane is narrow and enclosed by mature trees and the new access arrangements along with the views of housing on the adjoining field would harm the existing rural character. These effects would be severe and although relatively localised would be only partly ameliorated as boundary planting and other landscaping became established. The proposal would also lead to an increase in vehicular traffic levels along the lane, which is most likely to be noticeable during peak commuting times, and this would lead to a small additional erosion of rural character.

27. In views from outside the site, predominantly from the south, the rising topography would result in the new development being a visible feature on the edge of the settlement. However, although the development would reduce openness, its effects would be moderated by the proximity of other existing residential developments in shared views. I take into account existing development at Cobthorn Way, and to the rear of Verlands, South Side and Well Park. I also note the elevated ribbon of development along Wrington Lane, which sits above the site and is prominently visible in views from the south. This existing development would be visible in shared views from viewpoints 17, 15, 8, 9 and 10, and in sustained views from public footpaths on the approach from the south. However, although the loss of a green field would erode openness, the new development would, when established, be viewed as an extension of the existing built form, which would become more settled over time.
28. I have also considered whether the topography of the site would be a factor in the likely effect of the proposal. The layout, scale and appearance of development are reserved matters which are not before me. Nevertheless, the proposed masterplan gives an indication of the parameters for development, and shows the provision of an open area to the west, along with a relatively low density layout across the east of the site. The appellant has stated that the existing mound is to be levelled, and that this would reduce any potential visual impact development at an elevated level might cause. Provided the site was regraded, or development was directed away from the higher section of the site, I see no reason why the existing site topography should preclude redevelopment in principle.
29. The parties agreed at the Inquiry that the development would not be visible from some of the wider ranging views, from the direction of Yatton, and from Sandford. In this regard, the impact of the proposal would be largely confined to views within 1km of the site. I am therefore satisfied that the proposal would have a very limited effect on the character of the wider landscape.
30. Nevertheless, the proposal would have a severe adverse impact on the character and appearance of the countryside in short range views and a moderately harmful effect in mid-range views. It would therefore fail to respect the character of the local area. It follows that it would conflict with Policy CS32 of the CS which seeks new development that respects and enhances the local character, and can be readily assimilated into the village and its landscape setting, and with policy DM10, which has similar aims. The policies reflect similar guidance in the Framework. This weighs against an approval in the planning balance.

Sustainable Location

31. The site is located on the edge of the village. During the Inquiry there was much debate over the relative distances of the range of services within Congresbury from the site and whether they could be accessed on foot. I noted during my site visits that the nearest amenity, the Tesco Metro on Bristol Road, was around a 5 minute walk from the site. It was being well used when I visited and whilst it was unlikely to meet all the retail needs of most residents, it provided a good range of essential items. To travel into the village residents on Wrington Lane can either walk along Cobthorn Way, Weetwood Road and Southlands Way arriving at Kent Road, or walk along Wrington Lane

directly to Kent Road. Although the first route involves a number of road crossings, it follows quiet suburban roads and would not be tortuous for a local resident familiar with the route. By either route the walk to the junction of Bristol Road and High Street where the doctors' surgery and chemist are located takes around 15 minutes. St Andrews school on Station Road and the shops at Brinsea Road are both around a further 5 to 10 minutes away.

32. Apart from the Tesco Metro, most of the services identified fall beyond the desirable walking distances set out in *Manual for Streets* (MfS) and the Institute for Highways and Transportation Guidance. Whilst residents of the proposed development would be able to access local services on foot, it appears to me to be equally likely that many will use the private car, especially in inclement weather. Furthermore, many existing residents commute out to other settlements for work. Although some local bus services are available, it appears likely that some new residents will choose to drive.
33. Nevertheless, for a village, Congresbury has a good range of services, including pubs and restaurants. There are some genuine opportunities to access these services by sustainable means and even if residents choose to drive into the village, the distance of the trip would be relatively short. Therefore, although future residents would be dependent upon the private car to some extent for employment and higher order services outside the settlement, I am satisfied that residents would be able to meet at least some of their daily needs by sustainable means and in this regard could contribute to their viability. This factor would limit the extent to which the development would increase the number of sustainable journeys made.
34. At the Inquiry my attention was drawn to an appeal decision at Brinsea Road³ where the Inspector concluded that the distance from the village and the quality of the route was likely to deter future residents from accessing local services by foot. I take into account that some local services are located further from the existing appeal site than the Brinsea Road site. Nevertheless, it appears to me that the quality of the route was also a determining factor in the Brinsea Road decision. This proposal includes an upgrading of the existing footpath route to Kents Road, and future residents have the choice of more than one route into the village. I also take into account the proximity of the Tesco Metro to the site. I therefore consider the site to differ significantly from Brinsea Road.
35. With regard to accessibility, the proposal would not conflict with Policy CS32 of the CS insofar as it states that new development should maximise opportunities to reduce the need to travel and demonstrate safe and attractive pedestrian routes to facilities within the settlement within reasonable walking distance. It would also not conflict with guidance in the Framework, which seeks to minimise journey lengths for services and to focus significant development in locations which can be made sustainable. I therefore consider the accessibility of the proposal to be a neutral factor in the planning balance. Having regard to the scale of development proposed in relation to the size of the village, and the likely contribution residents could make to additional demand, I also attribute some limited weight to the economic effect of potential additional trade for local shops and services.

³ APP/D0121/W/15/3000788

Highway Safety

36. Wrington Lane runs from the junction with Wrington Road in the east to the junction with Kent Road to the west. The area in the vicinity of the site, and further to the east, is single track without a footpath and lined with high banked hedgerows. The part of the lane which links the site with Kents Road and the village is lined with dwellings and is more suburban in character. However parts of this route are relatively narrow and some parts have no footpath. The Council and the appellant agree that the proposal will increase pedestrian and vehicular traffic using the lane and with this in mind they also agree that a continuous footpath should be provided from the appeal site to the junction with Kent Road. This is proposed to be achieved by way of a Grampian condition.
37. Local residents have strong objections to the scheme. At the Inquiry I heard the views of local residents and the evidence of the highway consultant appointed by CRAG. In addition to concerns regarding the accessibility of the site which I have dealt with above, he also identified a number of highways concerns which I deal with below in turn.
38. The first relates to the proposed access into the site from Wrington Lane. This would involve an opening up of the site and change of priority so that those entering or leaving the appeal site would have priority over those travelling west from the direction of Wrington Road. I note the concerns of CRAG concerning relating to forward visibility for users approaching the access from the east, particularly at night, the effects of the proposed deviation of Wrington Lane and the potential for conflict with users of the accesses to Nos 25 and 27 Wrington Lane. However, I also note that the details, shown on plan ref 1465/01C are considered by the Council's highways consultant to be acceptable, and that the plans form part of approval Ref 16/P/1521/O. I share the view that taking into account the relatively low number of users likely to be approaching from the east including farm vehicles, the access arrangements proposed will safely accommodate traffic entering and leaving the site without adversely affecting the operation of Wrington Lane or the adjoining accesses.
39. Concerns have also been expressed regarding the operation of the junction at Kent Road. It is proposed that a footpath be installed along the approach to the junction, but due to land ownership restrictions this does not link with Kent Road. Pedestrians and vehicles will therefore share a short stretch of carriageway at the junction, with the potential to create vehicular and pedestrian conflicts. This was identified in the Road Safety Audit carried out in March 2017, which suggested a link between the proposed footpath and the footpath along Bristol Road. I am not aware that this is possible within highway land, and note that the area in question forms part of an informal access to the rear of No 1 Wrington Lane. I consider this to be a shortcoming of the proposal. However, even taking into account a likely increase in traffic using the junction, the proposal would still represent an improvement on the existing situation. I noted on site that pedestrians currently tended to walk straight across Kent Road and up the centre of Wrington Lane. Therefore, despite this shortcoming, I do not consider that it represents a significant impediment to highway safety.
40. The footpath installation at this junction would require a narrowing of the carriageway. I note the concerns regarding the stability of the wall to No 1 and

am satisfied that this matter could be resolved during the implementation of the footpath. CRAG have expressed reservations that forward visibility is restricted along this stretch of road and that westbound vehicles will fail to give way, causing backing back onto Kent Road. The Road Safety Audit also identifies this as an issue. I noted on site that the existing carriageway is bounded by a high stone wall to one side and its restricted width would in practice make it likely that cars would not sensibly attempt to pass at present, particularly if pedestrians were present. It therefore seems to me that the proposed arrangement would not in practice represent a significant worsening of the existing situation. Even taking account of projected increases in traffic at peak times, the likely instances of conflict or queueing would not be so frequent or severe as to represent a significant impediment to the free flow of traffic or a material impact on highway safety.

41. The impact of the traffic from the proposal on other junctions, including the cumulative effect of the proposal alongside the Sunley's development was also a concern for residents. However, I have no convincing evidence that the additional traffic at the A370/High Street and A370/Smallway junctions would lead to a significant impediment to the free flow of traffic.
42. The adequacy of the proposed footpath was also discussed at the hearing. This is intended to provide a continuous link from the site to Kent Road of a minimum width of 1.2m. Residents are concerned that this would be of insufficient width to allow 2 pedestrians to pass. Having regard to guidance quoted from *Manual for Streets* (MfS) I note that only relatively short sections of the proposed footpath would be 1.2m wide, which would allow an adult and a child to walk side by side. Taking account of the relatively low pedestrian flows predicted for the lane instances when 2 parties wished to pass would be relatively infrequent and in such cases I consider it likely that one party would make way for the other rather than pedestrians being forced into the path of on-coming traffic. I therefore do not accept that the width of the footpath is substandard for the nature of the road.
43. Lastly, in relation to the implementation of the footpath. I heard evidence at the Inquiry as to the status of sections of the route of the proposed footpath. The Council and the appellant are firmly of the view that the proposed route would fall within highway land, as it is shown on the Council's register. This is disputed by some adjoining residents. I noted on site that parts of the proposed route appeared to be at significantly higher levels and to be contiguous with the adjoining gardens. I also heard evidence that sections of the route were shown as garden land on Land Registry plans. However, I am mindful that as a point of law ownership by a private individual does not preclude land from also being highways land.
44. Furthermore, even if I were to accept that there was an error in the Council's records and sections of the route fell outside of the remit of the Council as highway's authority, I cannot be certain that a voluntary arrangement for the land to be sold to a developer would not be arrived at. In this regard, I cannot assume that there is no reasonable prospect of the improvements being made, or that in this regard, a Grampian condition requiring their implementation is unreasonable.
45. This leads me to the view that taking all factors into account the proposal would not be detrimental to the safety of pedestrians or other road users.

Although there would be an increase in the number of vehicles using Wrington Lane, which would alter the character of the lane, the implementation of a footpath would mitigate any effect increased numbers of vehicles would have on pedestrian safety. In this regard the proposal would not conflict with Policy DM24 of the DMP which states that development giving rise to a significant number of traffic movements will only be refused on transport grounds if it is likely to have a severe residual cumulative impact on traffic congestion or on the character and function of the surrounding area. The policy reflects guidance in the Framework, which has similar aims. As the implementation of the footpath would be made in mitigation of the effects of the likely increase in vehicular traffic I do not consider it to be a benefit of the proposal which weighs in favour of the proposal, but is rather a neutral factor in the planning balance.

Affordable Housing

46. The existing permission ref 16/P/1521/O represents a fallback position for the appellant. It provides affordable housing by means of a Unilateral Undertaking dated 24 March 2017 at a level of 30%. The appeal proposal is not supported by a planning obligation to secure affordable housing and instead a planning condition is proposed. The proposed condition and the Undertaking have the same wording in relation to the amount and proportions of affordable housing to be provided. The parties do not dispute the amount or form of affordable housing proposed is necessary. Neither have I any reason to believe that the obligation relating to the recently issued approval is not capable of being implemented, or that the existing permission is invalid.
47. Policy CS16 of the CS is an up to date policy which I consider carries full weight. It requires that a benchmark of 30% of the total number of housing units on new residential development sites be provided and maintained as affordable housing, but it does not specify how this should be secured. The *Affordable Housing* and *Development Contributions* SPDs specify the use of a planning obligation, and is a material consideration in the determination of the appeal.
48. Whether a condition is an appropriate alternative to an obligation in order to deliver affordable housing is in essence the matter of dispute between the 2 main parties. A planning obligation would require the consent of both the Council and the appellant for it to be varied or supplemented within the first 5 years of its existence. In this regard both main parties recognise that in the case of a dispute, a simply constructed condition, for which an application can be made to enable variation, would in most cases comprise a more expedient route for altering the form of affordable housing to be provided on site. Paragraph 203 of the Framework states that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.
49. *Planning Practice Guidance* (PPG) advises that a negatively worded condition, limiting the development that can take place until a planning obligation or other agreement has been entered into, is unlikely to be appropriate in the majority of cases. Although the appellant has advised that a legal agreement will not be required in this case, and that affordable housing can be delivered without one, I take into account that the appellant in this case will not be the

developer and will only facilitate a planning permission. The appellant has no current legal interest in the land and does not intend to have any interest in the future. The appellant has not advised me of who the future owner or developer would be, or even if this is known, and so I can give no more than very limited weight to their view that future affordable housing provision will be provided without a planning obligation or other legal agreement at a later stage.

50. In particular, a mechanism would be required to ensure that the provision was affordable for first and subsequent occupiers which would require control over rent or sale prices. Furthermore, the parties would require certainty as to what stages in the development the affordable housing would be constructed and then transferred to the registered provider. A condition cannot provide such precision or certainty. Therefore, although it is in theory possible that affordable housing could take place without a legal agreement, it is unlikely in practice to obviate the need for a planning obligation or other agreement at a later stage. The guidance is clear that in such circumstances *"ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. It is important in the interests of maintaining transparency⁴."*
51. I take into account that the PPG also advises that in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk. However, I have been provided with no convincing evidence that these circumstances exist in this case.
52. The appellant considers that a condition obligation provides a more straightforward option to reflect potential changes in policy or market conditions, such as the proportions of rented accommodation to shared ownership, and so would be advantageous in preventing unnecessary delays. However, I have been provided with no firm evidence of why, within the appellant's anticipated window of 18 months, the affordable housing requirement on which the existing approval is based should alter and so I give this argument limited weight. The Council considers that the use of a condition would allow future developers an easier avenue for reducing future affordable housing provision. In support of their case they have drawn my attention to their experience at another site in the district. I concur with the view that in practice, if the affordable housing is proposed to be altered, it will be often be with the aim of reducing provision on site. I therefore have some sympathy for their wish for a firmer commitment at the outset.
53. I have taken into account the appellant's view that it would be open to the Council to refuse an application to vary the affordable housing scheme if an altered scheme of provision were to be in any way unacceptable or unjustified. But I am also mindful that in this case the appellant is not going to be the developer, and whilst I have no evidence that development of the site as proposed is unviable, and I am aware that the buyer will have full knowledge of the site's planning requirements, if the land value fails to adequately reflect

⁴ Paragraph: 010 Reference ID: 21a-010-20140306

these, there is an inherent risk that the permission would in effect commit the eventual developer to obligations which the scheme would be unable to deliver. In such circumstances, the use of a condition, without a firm basis for concluding that it can be met, reduces any certainty on the part of the local community that the scheme will be implemented in the form that is being advanced.

54. Therefore, although I take into account that planning conditions are successfully used to secure affordable housing in some instances, in this case I am nonetheless persuaded by the Council's concerns in relation to what is in essence a speculative scheme. I consider the lack of any evidence as to the viability of the scheme, and the constraints that the site carries, to be sufficient grounds for the Council to seek some certainty that the development will take place as proposed and in accordance with the kind of timing and structure that have been written into the existing Unilateral Undertaking. So, whilst I have had regard to the guidance in paragraph 203 of the Framework, the circumstances of this appeal, namely the complexities arising from ownership of the land, and the potential for abnormal costs associated with development suggest that a condition would be an entirely uncertain means of securing affordable housing in this case. Taking into account that the anticipated 30% affordable housing provision is a matter which is to be weighed in the planning balance, to proceed without certainty lacks transparency and reduces confidence that the development will deliver the anticipated benefits on which the scheme has been advanced. Therefore having regard to the circumstances of the case I give greater weight to the aims of adopted policy CS16, which carries full weight, and guidance in the PPG. I also take into account guidance in both the adopted SPDs.
55. This brings me to the view that to use a condition to secure affordable housing in this case would not be justified and that a planning obligation is necessary to secure the affordable housing. In the absence of such an agreement the proposal is contrary to Policies CS16 of the Core Strategy, and DM34 and DM42 of the Sites and Policies Plan Part I. It would also conflict with guidance in the Framework, which seeks to not only significantly boost the supply of housing, but to ensure that the full objectively assessed need for both market and affordable housing within the housing market area is met and to create sustainable, inclusive and mixed communities. This harm must carry substantial weight in the planning balance.

Other Matters

Heritage Assets

56. During the Inquiry the matter of the effect of the proposal on listed buildings was also brought to my attention. S16(2) and S66(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* require special regard to be had to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. S72(1) of the Act requires special attention to be had to the desirability of preserving or enhancing the character and appearance of that area. The Framework also advises that the significance of a heritage asset can be harmed as a result of development within its setting. The application was accompanied by a built heritage statement which considered the potential effects of the proposal on the historic built environment.

57. St Andrew's Church is a Grade I listed building which is located within Congresbury around 900m south west of the site. The significance of the asset lies in its antiquity, and as an attractive and striking example of ecclesiastical architecture which has been altered over time. Its immediate setting is formed of the surrounding churchyard and adjacent dwellings. The appeal site is not visible from the church but the west spire of the church is visible in long range views on the approach to the village from a variety of directions and it is visible across the appeal site as part of the wider settlement. It has been put to me that a channelled view of the asset could be provided as part of a future layout and that this could be seen as a benefit of the scheme. As the layout has yet to be determined I cannot be assured that such a view would be achieved. Nevertheless, taking into account the very wide ranging views of the asset that are available, and the very limited extent to which the proposal would alter the context in which the asset would be viewed, the effect of the proposal on the setting of this asset would be negligible.
58. Urchinwood Manor is a Grade II* listed Manor House with an associated Grade II listed barn which lie around 400m south east of the site. The buildings are significant due to their antiquity and the preservation of some of their original features and as a result of their juxtaposition and original function they each contribute to the others significance. The original holding would have been relatively modest and the open fields around it would have contributed to its setting.
59. However, the site has more recently been in use as an equestrian centre, with a number of modern buildings and structures now intruding on the buildings' original setting. These are at odds with the historic character of the site and both disrupt long range views of the assets and intrude upon those available views of the buildings.
60. Some views of the roofs of the buildings are available from the appeal site, and the extent to which these would remain would be reduced by the intervening development of the appeal proposal. However, as these existing views also include the surrounding structures, they make a very limited contribution to the historic appreciation of the asset. Furthermore, due to the distance of the proposal from the assets, the limited extent to which it forms part of the assets' wider setting and presence of other existing intervening structures, I am satisfied that the proposal would have a negligible impact on the historic significance of the assets or their setting.
61. The Birches is a Grade II listed building around 600m south of the site. It was originally constructed as a residence and has since been sub-divided into 3 dwellings. Intervening residential development lies between the asset and the appeal site and whilst it is possible to identify the listed building in wider views from the site, the distance, the nature of intervening development and the limited extent to which either the site or the asset have any association lead me to the view that the proposal would have a negligible impact on the historic significance of the listed building or its setting. Congresbury Conservation Area is located within the village centre. Although some views of buildings within it are available from the appeal site it is functionally and visually separated by intervening development, vegetation and topography and so the development would have a negligible impact in shared views.

62. Therefore, having regard to the significance of the identified assets and the nature of the development proposed, I am of the view that the proposal would have a negligible effect on the setting of Urchinwood Manor and Barn, St Andrews Church and The Birches and upon the setting of the Congresbury Conservation Area and so would not cause harm to the special interest of these assets or their significance. I have also considered the other assets identified in the submitted Heritage Statement and share the view that having regard to the very limited shared views of these assets and the appeal site, or their very contained setting, the proposal is unlikely to have any discernible effect on their significance as heritage assets. It follows that the proposal would comply with national policy outlined in the Framework.
63. I have also considered the effects of the proposal on the archaeology of the site. As part of the application the appellant has submitted an archaeological assessment which found that the site contains some archaeological remains in the form of kilns and furnaces around the Mansbury Mound. A number of residents have also expressed concerns that the site may have Roman or pre-historic archaeological remains. The Council and appellant agree that a condition requiring a written scheme of investigation would be a suitable means of ensuring that an evaluation of the importance of the site takes place and would enable any mitigation to be carried out. I am also mindful of guidance within *Planning Practice Guidance* which suggests that only a very small proportion of sites will require detailed assessment.
64. Based on the information before me I am unable to determine the importance of the remains or their significance as a non-designated heritage asset. Nevertheless, I take into account that approval is sought for "up to" 50 dwellings, and that the layout of the proposal has not been determined. As such, even if the remains were found to be of national importance, their presence would not preclude the development of the site as they could potentially be preserved in situ. I therefore find no conflict with the guidance in the Framework, which seeks to conserve heritage assets in a manner appropriate to their significance. This is therefore a neutral factor in the planning balance.

Flooding

65. Local residents have expressed concern in relation to the effects of the proposal in relation to flooding. The site does not lie within Flood Zones 2 or 3, although residents have reported that parts of the site suffer from poor drainage, and that localised flooding has occurred along Wrington Lane. The main parties are satisfied that subject to conditions requiring the implementation of a scheme of drainage works which includes works at the site entrance, and Sustainable Urban Drainage Systems (SUDs), the development could be adequately drained, and would not increase the risk of flooding elsewhere. Furthermore, the implementation of drainage works at the proposed site entrance would bring some localised benefit to users of Wrington Lane. Based on the evidence put to me at the Inquiry I see no reason to dispute this view. I therefore find no conflict with policy CS3 of the CS, which seeks to direct development away from areas of flooding, or with the Framework, which has similar aims.
66. As a result of the access works the proposal would reduce localised flooding at the site entrance. As well as enabling the site to be safely accessed, this would

also benefit other users of the road network and as such carries some limited weight in favour of the proposal in the planning balance.

Protected Species

67. The site lies close to Kings Wood and Urchin Wood SSSI, which form part of the North Somerset and Mendip Bats Special Area of Conservation (SAC). The proposal has been subject to a *Habitat Regulations Screening Assessment* (HRA) which was produced by the appellant in consultation with the Council's ecologist and Natural England.
68. The site provides potential foraging for bats in the area, although the part of the site of highest value is that to the west of the site, which is intended for retention as grazing. Furthermore, the site is separated from the nearest parts of the SAC by roads and existing development. The HRA advises that provided measures are included with the proposal which were intended to avoid any adverse effects and where necessary mitigate them, significant effects on protected species are unlikely to occur, including effects on the foraging grounds and bat flight corridors of Lesser and Greater Horseshoe Bats, either alone or in combination.
69. The measures outlined include securing a long term grazing regime to provide appropriate long term management of the proposed open area intended as a bat corridor, as shown on the management plan. Other proposed measures are provision of a lighting regime with low or no UV lighting and implementation of a construction environmental management plan to prevent adverse effects during construction. The proposal will also provide new woodland, which provides linkages for commuting bats. The main parties agree that these measures can effectively be secured by planning conditions.
70. At the Inquiry I heard the evidence of CRAG and other local residents who expressed concerns that the proposal would cause harm to local wildlife, including bats. Based on all that was put to me I have no convincing evidence that this would be the case. Although I note that some of the bat surveys had periods where monitoring did not occur, I take into account the view of Natural England that the measures proposed are sufficient to mitigate against any potential harm. Furthermore, although I note the comments of some with regard to the potential for Great Crested Newts in the locality, based on the evidence before me I have no convincing evidence that the species are on or close to the site, or that the development would lead to harm to this species. I therefore find no conflict with policy CS4 or with the Framework, which has similar aims. The outlined measures would mitigate the potential adverse effects of the proposal. I therefore do not accept that they represent a benefit of the scheme and consider the matter to be a neutral factor in the planning balance.

The Effect on Nearby Occupiers

71. The effect of the proposal on the operation of the Cobthorn Trust was a concern for many residents. I heard during the Inquiry of the work of the Trust which supports the breeding of rare breeds of sheep, cattle and fowl. The operators and supporters are concerned that the proximity of new residential development, when considered in tandem with approved development at Cobthorn Way⁵ will detract from the operation of the Trust and impact upon its future sustainability. The Trust occupies fields to the south of the appeal site.

⁵ 15/P/0519/O

During my visit I noted various small animal pens and sheds, some cattle in the open field, and various fowl in small enclosures.

72. The public footpath crossed part of the site and the operators of the Trust fear that new residential occupiers using the public footpaths will interfere with the well-being of the livestock. I see no reason why this should be the case. At present occupiers of the adjoining housing estate can pass through the site without impediment. I was told at the hearing that the footpaths in the area were not intensively used as they became muddy in inclement weather, however even if users of the footpath increased in number, I have no evidence that incomers would act irresponsibly or that their presence would represent a significant impediment to breeding. The cattle are bred using artificial insemination. Furthermore, even if I were to accept that the breeding habits of some of the birds were susceptible to disturbance, I do not consider that the development would lead to a significant increase in intrusion on the site.
73. I have also taken into account whether the activities of the Trust would be intrusive to new occupiers. It appears to me that the operation has a relatively benign effect in relation to noise, much as one would expect in a rural area, and so I do not consider that new residential occupiers would have any reasonable grounds for preventing the Trust from operating. Therefore, whilst I have no doubt of the value of the Cobthorn Trust and the respect local residents have for it, I do not consider that the proposal would cause any significant harm to its future operation.
74. A number of adjoining occupiers have objected to the proposal, in relation to the effects it would have on living conditions, loss of a view and loss of outlook. During the site visit I viewed the site from a number of properties in close proximity to the site. I noted that clear elevated views of the site were available from Longlands and 12 Wrington Road, which backs onto Wrington Lane. In these views Wrington Lane was below the level of the gardens although, the depth of the gardens and the width of the lane provided some distance between the properties and the appeal site. From the rear garden of 8 Cobthorn Way I had an open view of the site over the low stone wall and I noted that other properties along the road had similar unimpeded views, including the summerhouse at No 1 Wrington Way.
75. It is clear that if the site is developed adjoining occupiers would lose a very attractive and open view. However, the loss of the view in itself is not a planning matter. The application is made in outline form, the exact layout and scale of development to be determined as a reserved matter. I am satisfied that an appropriate layout could be accommodated on the site and so I have no reason to consider that the effects of the development would be overbearing, would lead to a significant loss of privacy, or that the proximity of the proposed development would in principal cause a diminution in living conditions.

Loss of Agricultural Land

76. Some residents have expressed concerns regarding the loss of part of the site from agricultural production. The site is currently used as grazing land. Although an assessment of the agricultural quality of the land has not been provided I am satisfied that due to the limited size of the site, even if it was to comprise Grade I Agricultural Land, its loss from production would not be significant.

Fallback

77. I take into account that the appellant has a valid permission for the site which I have no evidence cannot be delivered. If implemented it would provide for affordable housing through a legal agreement and so would not be subject to the issues identified above. Therefore, although the permission represents a valid fallback for the appellant, it is nonetheless materially different to the scheme before me. I therefore do not consider that the fallback alters my consideration of the proposal before me.

Economic Benefits of the Proposal

78. The construction of new houses would provide employment during the construction period, which would bring benefits to the wider economy which carries limited weight in favour of the proposal.

The Planning Balance

79. Weighing against the proposal is the harm to the character and appearance of the area, contrary to policy CS32 of the CS and DM10 of the DMP, to which I attribute significant weight. The proposal would also exceed 25 dwellings and so would be contrary to the limits explicit in policy CS32 of the CS. The proposal has now been included in the emerging Sites and Policies Plan Part 2. I also take into account that the harm arising in relation to character and appearance is in part due to the scale of the proposal and has already been weighed against the proposal. I have therefore not attributed any further weight to this factor in the planning balance.
80. Subject to the proposed improvements to footpaths along Wrington Lane it would not be prejudicial to highway safety, including the safety of pedestrians and be a neutral factor in the planning balance. The absence of harm relating to the accessibility of the proposal is also a neutral factor in the planning balance. The proposal would not give rise to the risk of flooding and effects on local services including education would be mitigated. The proposal would also have a broadly neutral effect on protected species and on heritage assets, including potential archaeological interests. The proposal would not have a significantly harmful effect on the living conditions of nearby residential occupiers, or the operation of the Cobthorn Trust. These are all neutral factors in the consideration of the scheme.
81. Bearing in mind the objective of significantly boosting the supply of housing explicit in the Framework, the provision of up to 50 houses in an area with no five year housing land supply ordinarily carries substantial weight. However, the proposal would also fail to give adequate assurances that the necessary amount of affordable housing would be provided on site. Therefore even if I accept that the scale of underprovision is of the extent put to me by the appellant, taking into account the identified need for affordable homes in the district, the potential failure to provide for it severely undermines the contribution the proposal would make to meeting local housing needs. I therefore attribute no more than moderate weight to the benefit arising from housing supply in this case.
82. The proposal would bring some benefits by way of mitigating localised flooding along Wrington Lane. It would also bring some economic benefits through construction jobs and through potential additional trade for local businesses.

Together these benefits carry some further limited weight in favour of the proposal.

Conclusion

83. When assessed without any assurances that affordable housing can be delivered on site, the harm arising from this scheme would significantly and demonstrably outweigh the identified benefits. The proposal must therefore be considered to fail to comply with the presumption in favour of sustainable development and the appeal is dismissed.

Anne Jordan

INSPECTOR

APPEARANCES

For the LOCAL PLANNING AUTHORITY

Timothy Leader of Counsel	Instructed by North Somerset Council
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He called:

Natalie Richards	North Somerset Council
Andrew Stevenson	North Somerset Council

For the APPELLANT

John Barrett of Counsel	Instructed by Diana Richardson of Gladman Developments Ltd
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He called:

Benjamin Jackson	Ashley Helme Ltd
Simon Fitton	Alder King
Matthew Travis	Enzygo Limited
Gary Holliday	FPCR Environment and Design
Diana Richardson	Gladman Developments Ltd

For the RULE 6 PARTY: Congresbury Residents Action Group (CRAG)

Peter Walton	For CRAG
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He called:

Mark Baker	Mark Baker Consultancy Ltd
Councillor Leimdorfer	CRAG
Di Hassan	CRAG
Jo Williams	CRAG
Susan Hibberd	CRAG
Nick Green	CRAG
Clive Burlton	CRAG

INTERESTED PERSONS

Mary Engeldow Walton	Local Resident
Judy Ashley	Local Resident
Joanne Parry	Local Resident

John Ballard	Local Resident
Brigadier (Retd) CJR Day	Local Resident
Mr Lovesey	YACWAG (Yatton and Congresbury Wildlife Action Group)
Georgie Bigg	Council for the Protection of Rural England
Dr Moya Wilson	Local Resident
Mr Vince Russett	YCCCART (Yatton, Congresbury, Clavenham and Cleeve Archaeological Research Team)
Jonquil Brooks	Local Resident
Geraldine Sills	Local Resident
Michael Sills	Local Resident
Clive Burlton	Local Resident
Max Grieve	Local Resident
AJ Sheppy	Cobthorn Trust
Nicholas Green	Cobthorn Trust
Justin Mills	Local Resident
Helen Mills	Local Resident

PLANS AND DOCUMENTS SUBMITTED AT THE INQUIRY

ID1	Letter from Wendy Burden (Inspector) regarding the soundness of the North Somerset Site Allocations Plan
ID2	HLS Performance against adopted targets (superseded by ID33)
ID3	LPEG Local Plans Report to Government Appendix 13 Approach to Calculating 5 Year Housing Land Supply
ID4	Proposed further amendments to the Oct 2016 Site Allocations Plan Publication version following consideration of responses received
ID5	2011 Census Profile
ID6	Opening Statement on behalf of the Appellant
ID7	Opening Statement by the Local Planning Authority
ID8	Opening Statement by CRAG Rule 6 Party
ID9	Statement by Mary Engledow-Walton
ID10	Statement by Judy Ashley
ID11	Statement by Joanne Parry
ID12	Screening Opinion under The Town & Country Planning (Environmental Impact Assessment) Regulations 2011 Decision No 04/05 DE 232 Ref 15/P/2827/EIA1
ID13	Note from North Somerset Council regarding consultation for additional highway plan 1465/10
ID14	Statement by John Ballard
ID15	Statement by Chris Day
ID16	Statement by Graham Lovesey
ID17	Letter from Brandon Lewis MP to Simon Ridley PINS - "Landscape character and prematurity in planning decisions"
ID18	Secretary of State Residential Call-in and Recovered Appeals since Publication of the NPPF
ID19	Statement by Georgie Bigg Chair CPRE Avonside
ID20	Statement by Dr Moya Wilson
ID21	Was Congresbury the meeting place of the Hundred of Congresbury?
ID22	YCCART Mansbury "island" and its archaeology

ID23	Statement of Jonquil Brooks
ID24	Statement by Geraldine Sills
ID25	Statement by Michael Sills
ID26	Statement by Clive Burlton
ID27	Statement by Max Grieve
ID27A	Extract from Highways Adoption Plan ref Pan A
ID28	Plan from CPRE regarding potential additional viewpoints
ID29	Note of clarification p38 Ashley Helme Report regarding walk distances
ID30	Statement from AJ Sheppy Cobthorn Trust
ID31	Statement from Nicholas Green Cobthorn Trust
ID32	Note on highways ownership and related issues by third parties at the Inquiry – North Somerset Council
ID33	HLS Performance against adopted targets
ID33A	HLS Performance against adopted targets including figures against the adopted Core Strategy
ID34	Statement from Dr John Day
ID35	Statement from Ian Morton
ID36	Appeal decisions mentioned in the statement by Georgie Bigg
ID37	Statement of Justin and Helen Mills
ID38	Map of Congresbury PRow
ID39	Location of proposed stiles on PRowS
ID40	Unilateral undertaking relating to the south side of Wrington Lane Congresbury certified 30 March 2017
ID41	Closing statement North Somerset Council
ID42	Closing statement Congresbury Residents Action Group
ID43	Closing statement Gladman Development Limited