



Department for
Communities and
Local Government

Our Ref: APP/Y3940/W/16/3150774

Chris Beaver
PlanningSphere Limited
Coworking Bath
The Guild
High Street
Bath BA1 5EB

Date: 20 July 2017

Dear Mr Beaver

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY HPH AND HAB HOUSING LIMITED
LAND AT BOREHAM ROAD, WARMINSTER, BA12 9JP
APPLICATION REF: 13/06782/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of R J Marshall, LLB DipTP MRTPI, who made a site visit on 14 September 2016, into your client's appeal against the decision of Wiltshire Council ("the Council") to refuse planning permission for your client's application for planning permission for the erection of up to 35 no. Custom Build Residential Dwellings with access details included, in accordance with application ref: 13/06782/OUT, dated 6 April 2016.
2. On 22 July 2016, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the proposal involves residential development of over 25 units in an area where a qualifying body has submitted a Neighbourhood Plan to the local authority, but the relevant plan has not yet been made.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed and planning permission granted subject to conditions.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated and agrees with this recommendation. He has decided to allow the appeal and to grant outline planning permission subject to conditions. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Matters arising since the submission of the Inspector's report to the Secretary of State

5. On 23 December 2016, the Secretary of State wrote to all the interested parties, inviting further representations on the following matters:
 - a) Any comments on the representations received by the Secretary of State after the Inquiry: an email dated 16 November 2016 by Mike Wilmott, Head of Development Management, Wiltshire Council; and an email dated 12 December 2016 by Mike Perry, Chair, Bishopstrow Village Meeting.
 - b) Any implications of the Housing Land Supply Statement published in November 2016 by Wiltshire Council – in particular the housing requirement figure to be applied in determining this case and whether there is a demonstrable five year supply of deliverable housing sites.
 - c) Any implications of the Warminster Neighbourhood Plan 2015-2026 being made on 24 November 2016.
 - d) Any other matters which the parties consider to be material to this case.
6. These representations were circulated for comment on 17 and 26 January 2017 and 9 February 2017. The Secretary of State wrote to all the interested parties again on 10 March 2017, inviting representations on the following matters:
 - a) Any comments on an email dated 10 March 2017 from Mike Wilmott, Head of Development Management, Wiltshire Council.
 - b) Any implications of the Housing Land Supply Statement published in March 2017 by Wiltshire Council – in particular the housing requirement figure to be applied in determining this case and whether there is a demonstrable five year supply of deliverable housing sites.
 - c) Any new matters which the parties consider to be material to this case.
7. Representations received were circulated to interested parties on 28 March 2017.
8. The Secretary of State wrote to all the interested parties again on 17 May 2017, inviting representations on the implications, if any, of the Supreme Court judgment on the cases of *Cheshire East BC v SSCLG* and *Suffolk Coastal DC v SSCLG*, which was handed down on Wednesday 10 May 2017. Representations received were circulated to interested parties on 6 June 2017.
9. In determining this appeal, the Secretary of State has given careful consideration to all the representations received, in addition to the Inspector's report and the evidence submitted as part of the appeal. All this material is listed at Annex B and copies may be obtained on written request to the address at the foot of the first page of this letter.

Policy and statutory considerations

10. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

11. In this case the development plan consists of the Wiltshire Core Strategy (WCS) 2015, the saved policies of the West Wiltshire Local Plan first alteration 2011 (2004); the Leisure and Recreation Development Plan Document (2009); and the Warminster Neighbourhood Plan, which was made on 24 November 2016. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR11-15.
12. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').
13. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the appeal scheme or their settings or any features of special architectural or historic interest which they may possess.
14. In accordance with section 72(1) of the LBCA, the Secretary of State has paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

Main issues

15. The Secretary of State agrees with the Inspector that the main issues are those set out at IR76.

Five year housing land supply

16. At the time the Inspector was writing his report it was common ground that there was no five year housing land supply in the North and West Housing Market Area (NWHMA), which is where the appeal site is located (IR74). However, circumstances have now changed. In November 2016, the Council published an updated Housing Land Supply Statement, which stated that the housing land supply had changed and it was considered to be 5.13 years supply against a requirement of 5.25 years. In March 2017 the Council published another updated Housing Land Supply Statement, which stated that there is now a 5.73 years' supply for the NWHMA which, even allowing for a 5% buffer, exceeds five years.
17. The Secretary of State, having sought the views of parties, considers that the Council's updated assessment of the five year supply is robust. He therefore considers that the Inspector's conclusions regarding paragraph 14 of the Framework and the housing land supply position at IR75 and elsewhere in the IR have been superceded by the revised information. He concludes that the Council can demonstrate a 5 year supply of housing land and, therefore, the fourth bullet point of paragraph 14 of the Framework is not engaged. However, he considers that this does not negate the benefits arising from the proposed development, particularly the contribution to custom built housing and affordable housing. In line with paragraph 47 of the Framework, which requires local authorities to boost significantly the supply of housing, he takes the view that the five-year requirement is a minimum and not a cap.

Development Plan

18. The Secretary of State agrees that the proposed development would be outside the development limits for Warminster and therefore contrary to CP2 (IR79). Given his

finding on housing land supply position at paragraphs 16 and 17 above, unlike the Inspector at IR79, the Secretary of State considers that CP2 attracts full weight.

19. For the reasons given at IR81-83, the Secretary of State agrees with the Inspector at IR83 that the proposed development would not be detrimental to the character and appearance of the area. He considers that this is neutral in the planning balance.
20. For the reasons set out at IR84, the Secretary of State agrees with the Inspector that the degree of physical separation of the appeal site from Bishopstrow and the level of screening that would be afforded to the proposed development would prevent any unacceptable impression of coalescence between it and Warminster. The Secretary of State also agrees with the Inspector that the proposed development would be so well removed and screened from Bishopstrow College as to have no significant impact on it and there is no reason why a sensitively designed development would have any adverse impact on Boreham Mill from which it would be well screened. He considers that this is neutral in the planning balance.
21. The Secretary of State notes that the Warminster Neighbourhood Plan has now been made, however it makes no change to the existing limits of development for Warminster shown in the WCS and makes no specific reference to the appeal site (IR15). He notes that Wiltshire Housing Site Allocations Plan is going through consultation and is not expected to be adopted until September/October 2018. Given that this Plan is still at an early stage, it attracts limited weight.
22. Overall, the Secretary of State agrees with the Inspector's conclusions at IR85 that there would be no conflict with WSC Core Policy 51 and NP Policy E5 on landscape and ensuring new development respects local character.

Heritage assets

23. The Secretary of State agrees with the Inspector at IR88 that the impact on the Bishopstrow Conservation Area would be neutral and there would be no conflict with the statutory duty on the preservation or enhancement of the character or appearance of Conservation Areas. For the reasons set out at IR89, the Secretary of State also agrees with the Inspector's conclusion that the proposed development would not result in harm to the setting of any listed buildings or harm to the Grade II listed milestone, the listed bridge and the unlisted Boreham Mill.

Land contamination/effects on health and river quality

24. For the reasons given at IR90, the Secretary of State agrees with the Inspector that the appellant has satisfactorily addressed the matter of land contamination and potential effects on health and river quality. The Secretary of State agrees with the Inspector that satisfactory mitigation could be provided and, in the absence of any objection from the Environment Agency or Natural England, he too sees no reason to come to a different view from the Council on this matter. He regards this as being neutral in the planning balance.

Flooding

25. For the reasons given at IR91, the Secretary of State agrees with the Inspector that the proposal complies with the aim of the Framework to steer new development to areas with the lowest probability of flooding and that it should not increase flood risk downstream. Like the Inspector, the Secretary of State attaches the greatest weight to the advice from

the Environment Agency, as his statutory advisor, and considers this element to be neutral in the planning balance.

Other matters generally

26. For the reasons set out at IR92, the Secretary of State agrees with Inspector's conclusions that there would be no harm to ecology and no adverse traffic and highway impact.

Benefits of the proposal

27. The Secretary of State agrees with the Inspector that the type of housing proposed, custom-built, is of a kind receiving Government support and for which there is a demand locally (IR77). The Secretary of State agrees with the Inspector (IR77) that the proposal would be beneficial in providing 30% affordable housing as required by Core Policy 43; that it would be on a site reasonably well located in relation to existing development and with accessibility to the town centre; that it would provide a New Homes Bonus and jobs during construction (IR78). The Secretary of State considers that these housing benefits carry significant weight.

Planning conditions

28. The Secretary of State has given consideration to the Inspector's analysis at IR95-97, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework and that the conditions set out at Annex A should form part of his decision.

Planning obligations

29. Having had regard to the Inspector's analysis at IR93-94, the Unilateral Undertaking dated 26 July 2016, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR94 that the obligations, with the exception of the financial contributions sought on open space, comply with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework and are necessary to make the development acceptable in planning terms, directly related to the development, and are fairly and reasonably related in scale and kind to the development. The Secretary of State agrees with the Inspector that in the absence of clear evidence on whether current needs are being met, a case has not been made out for the financial contributions sought in respect of open space provision and that this contribution should not therefore be taken into account in determining this appeal.

Planning balance and overall conclusion

30. The site is outside the development limits for Warminster and the Secretary of State considers that the appeal scheme is not in accordance with policy CP2 of the development plan, and therefore is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
31. The Secretary of State considers that the proposal would provide a number of housing benefits, including contributing to boosting the supply of housing; providing 30%

affordable housing as required by Core Policy 43; providing much needed custom build homes; and bringing economic benefits during and after the construction phase. He gives these benefits significant weight.

32. The Secretary of State finds that there would be no unacceptable harm to the character and appearance of the surrounding area and no unacceptable coalescence between Warminster and Bishopstrow. He considers that there would be no harm to matters of heritage importance and, subject to the imposition of planning conditions, public health would be safeguarded and concerns over flood risk addressed. Furthermore, he agrees that concerns on the ecological impact of the proposed development and highway safety are not supported by substantial evidence. The Secretary of State considers that this absence of harm is neutral in the planning balance.
33. Overall, given the significant benefits of the proposal set out above and the absence of any unacceptable harm, the Secretary of State concludes that material considerations indicate that the appeal should be allowed.

Formal decision

34. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants outline planning permission for the erection of up to 35 no. Custom Build Residential Dwellings with access details included, in accordance with application ref: 13/06782/OUT, dated 6 April 2016 subject to the conditions at Annex A to this letter.
35. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

36. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
37. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
38. A copy of this letter has been sent to Wiltshire Council and notification has been sent to others who asked to be informed of the decision.

Yours sincerely

Merita Lumley

Authorised by Secretary of State to sign in that behalf

Annex A: Conditions

- 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) Any reserved matter submission shall be designed in accordance with the general principles set out in the submitted "Design Principles Rev. B" document.
- 5) Prior to occupation of any dwelling hereby approved the visibility splays shown on plan no. IMA/13/071/010/A shall be provided at a height not exceeding 600mm above the carriageway level, with the exception that the proposed refuge, bollards may remain within the splays. The visibility splays shall subsequently be retained.
- 6) No development shall take place until full structural details and calculations of the culvert beneath the access road have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) No dwelling hereby permitted shall be first occupied until the vehicular and pedestrian access has been constructed in accordance with the details shown on plan no. IMA/13/071/010/A. Once constructed this shall be the sole means of vehicular and pedestrian access to the development hereby permitted
- 8) No dwelling hereby permitted shall be first occupied until the field gate access to the north-west of the proposed development has been closed and the existing lowered kerbs replaced by full height kerbs, the details of which shall have been submitted to and approved in writing by the local planning authority prior to the commencement of development.
- 9) No development shall take place until details of footway reconstruction, including its width, have been submitted to and approved in writing by the local planning authority. No dwelling hereby are permitted shall be occupied until the approved works have been undertaken.
- 10) Development shall not begin until a foul and surface water strategy, including the timetable for its implementation, has been submitted to and approved in writing, by the local planning authority. Development shall be carried out in accordance with the approved strategy. No infiltration of surface water drainage into the ground shall be permitted without the written consent of the local planning authority.
- 11) The development hereby permitted shall be carried in accordance with the Flood Risk Assessment (Hydrock, Ref. R/C08249/001.03, dated December 2013) and the following mitigation measures detailed therein: 1) limiting the surface water run-off generated by the 1 in 100 year critical storm, including a 30% allowance for climate change, so it will not exceed the run-off from the currently undeveloped site and not increase the risk of flooding off-site; 2) ground levels within Flood Zones 3 and 2 shall not be raised; and 3) finished floor levels shall be set no lower than 104.65 m above Ordnance Datum.

- 12) The proposed development shall lie only within Flood Zone 1. Irrespective of the extent of the Flood Zones there shall be no development within 8 metres of the top of the bank of the River Wylfe and no development within 4 metres of the top of the bank of the other watercourses. These gaps between development and the tops of the river banks shall be kept free to enable access for watercourse management.
- 13) Piling or other foundation designs using penetrative methods shall not be permitted other than with the written consent of the local planning authority.
- 14) No development shall take place until a Construction Environmental Management Plan, incorporating pollution prevention measures, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 15) No development shall take place until a scheme for water efficiency has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 16) None of the dwellings hereby permitted shall exceed 2 stories in height.
- 17) No development shall take place until a land contamination site investigation has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before the development begins.
- 18) If, during the course of development, any contamination is found which has not been identified in the site investigation, then additional measures for the remediation of the source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.
- 19) The development hereby permitted shall be carried out in accordance with the following approved plans:
IMA-13-071/010/A
IMA-13-071/003

Annex B: SCHEDULE OF REPRESENTATIONS

General representations

Party	Date
Mike Wilmott Head of Development Management Wiltshire Council	16 November 2016
Mike Perry, Chair Bishopstrow Village Meeting	12 December 2016

Representations received in response to the Secretary of State's reference back to parties of 23 December 2016

Party	Date
Chris Beaver PlanningSphere Limited	5 January 2017
Mike Wilmott Head of Development Management Wiltshire Council	11 January 2017
Al Wright	13 January 2017
Al Wright	24 January 2017
Mike Perry Chair, Bishopstrow Village Meeting	24 January 2017
Mike Wilmott Head of Development Management Wiltshire Council	26 January 2017
Mike Wilmott Head of Development Management Wiltshire Council	7 February 2017
Chris Beaver Director PlanningSphere Limited	7 February 2017

Representations received in response to the Secretary of State's reference back to parties on 10 March 2017

Party	Date
Mike Wilmott Head of Development Management Wiltshire Council	10 March 2017
Mike Wilmott Head of Development Management Wiltshire Council	20 March 2017
Chris Beaver PlanningSphere Limited	21 March 2017
Mike Perry Chair, Bishopstrow Village Meeting	23 March 2017
Al Wright	24 March 2017
Mike Perry Chair, Bishopstrow Village Meeting	4 April 2017

Al Wright	4 April 2017
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Representations received in response to the Secretary of State's reference back to parties on 17 May 2017

Party	Date
Mike Perry Chair, Bishopstrow Village Meeting	17 May 2017
Mike Wilmott Head of Development Management Wiltshire Council	26 May 2017
Chris Beaver PlanningSphere Limited	30 May 2017
Al Wright	31 May 2017
Al Wright	13 June 2017

Report to the Secretary of State for Communities and Local Government

by R J Marshall LLB DipTP MRTPI

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

Date: 21 November 2016

TOWN AND COUNTRY PLANNING ACT 1990

SECTION 78

WILTSHIRE COUNCIL

APPEAL BY

HPH AND HAB HOUSING LIMITED

Site visit made on 14 September 2016

Boreham Road, Warminster, BA12 9JP

File Ref(s): APP/Y3940/W/16/3150774

File Ref: APP/Y3940/W/16/3150774
Boreham Road, Warminster, BA12 9JP

- 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 HPH and Hab Housing Limited against the decision of Wiltshire Council.
- The application Ref 13/06782/OUT, dated 11 December 2013, was refused by notice dated 6 April 2016.
- The development proposed is erection of up to 35 no. Custom Build Residential Dwellings with access details included.

Summary of Recommendation: The appeal be allowed, and planning permission granted subject to conditions.

Procedural Matters/Background

1. The application was made in outline with all matters bar access reserved for later consideration. The appeal has been recovered for determination by the Secretary of State because the proposal involves one for residential development of over 25 units in an area where a qualifying body has submitted a Neighbourhood Plan (NP) to the local authority, but the relevant plan has not yet been made.
2. Permission for this development was granted by the Council in January 2015. However, the decision was quashed by the High Court on judicial review. The grounds of the challenge were wide-ranging and included claims that: the proposed development would contaminate the River Avon; the Environmental Impact Assessment (EIA) was flawed; and the Council's conclusion that there would be no harm to Heritage Assets (HA) was likewise flawed. These grounds were dismissed. However, it was found that the participation of a Councillor gave rise to an appearance of potential bias. It was on this reason alone that the decision was quashed. When the application was reconsidered by the Council permission was refused. It is this decision that is being appealed.
3. Along with the application the subject of this appeal a listed building application was submitted to re-site a listed milestone on Boreham Road in order to facilitate the proposed access. This has been permitted and was not subject to challenge in the Judicial Review.
4. After the Council had re-determined the application the appellant submitted a Unilateral Undertaking dated 26 July 2016 (UU) which: restricts the housing provided to being Custom Build; sets out a "cascade" for the sale of the market housing units; specifies that 30% of the houses will be affordable housing, and of those 80% will be for rent and 20% shared ownership; and sets out the need to provide a Landscape and Ecological Management Plan (LEMP) to cover the proposed ecological buffer zone. The UU also provides for financial contributions towards open space/sports provision and education and provides for some limited highway works to be undertaken. In the absence of evidence to the contrary I take it that it deals satisfactorily with the Council's requirements for affordable housing and on the need to mitigate the impacts of the proposed development.
5. Following my site visit I received additional information from the appellant on the Warminster Neighbourhood Plan 2015 – 2026 (NP) and the Department for Communities and Local Government (DLG) Home Building Fund (HBF). I have

taken this into account in my decision and have given the Council the opportunity of commenting on it.

6. The Council's latest Committee Report sets out the observations of key consultees on matters such as highways, flood risk, ecology and heritage. No observations made therein suggested that on these grounds permission should be refused and this is reflected in the Council's decision which does not raise these matters in its reasons for refusal.

The Site and Surroundings

7. The site is on the eastern side of Warminster, an attractive market town. It lies between the built-up limits of the town and the village of Bishopstrow. The site is open grassland. It is bordered on the south and east by the River Wylfe and to the north and west by water channels. Running alongside the northernmost water channel is the B3414 (Boreham Road) which leads in a westerly direction to Warminster town centre.
8. To the west of the appeal site, on the same side of the B3414 is a ribbon of development with open countryside to the south. This ribbon of development is followed by an open area and then a substantial residential estate. To the east of the appeal site, south of the B3414, is a largely undeveloped area in which lie a limited number of buildings. Directly north of the site is a large area of recreational open space. This is surrounded on 3 sides by substantial housing development. On the south-eastern boundary of the site lies a modestly sized house and Boreham Mill. To the south of the appeal site beyond the River Wylfe is flat low lying open countryside within which lies some scattered roadside frontage housing and a school and its extensive grounds. Moving further south is a small ribbon of development which comprises much of Bishopstrow.
9. There are no HAs on the appeal site. However, on the narrow parcel of land between the site and the B3414 is a cast-iron Grade 2 listed milestone, subject of the listed building consent referred to above. And south of Boreham Mill is a listed bridge. Bishopstrow Conservation Area covers a large part of the countryside around the village and extends close to the south-east corner of the appeal site. The River Wylfe is within the River Avon Special Area of Conservation (SAC) and is also part of the River Avon Site of Special Scientific Interest (SSSI). The site has no landscape designations, although around half a mile to the south, on the opposite side of the Warminster bypass, is the West Wiltshire and Cranborne Chase Area of Outstanding Natural Beauty (AONB).

Planning Policy

10. The development plan for the area comprises the Wiltshire Core Strategy (2015) (WCS) and saved policies from the West Wiltshire Local Plan first alteration 2011 (2004) and the Leisure and Recreation DPD (2009).
11. Those Policies on which the application was refused are Core Policy 2 and Core Policy 51 of the WCS. Core Policy 2 outlines the delivery strategy for housing in Wiltshire between 2006 and 2026. The indicative housing requirement for Warminster town is 1,920. The Policy goes on to say that within the Limits of Development, as defined on the policies map, there is a presumption in favour of sustainable development, but that outside those limits, other than in specified circumstances, development will not be permitted. However, the limits of

development may alter through the identification of sites in subsequent Site Allocations Development Planning Documents (SPDs) and Neighbourhood Plans. Core Policy 51 seeks to ensure that new development protects, conserves and where possible enhances landscape character. Amongst other things proposed developments must conserve and where possible enhance, through sensitive design, landscape mitigation and enhancement measures, the locally distinctive character of settlements and their landscape settings, the separate identity of settlements and important views and visual amenity.

12. Other WCS Policies relating to the matter at dispute between the parties are Core Policy 1 and Core Policy 31. Core Policy 1 sets out the settlement strategy and where sustainable development may take place. In this context market towns, of which Warminster is one, are some of the higher level settlements with the potential for significant development. Core Policy 31 sets out a spatial strategy for the Warminster Community Area. Of the 1,920 dwellings to be provided in Warminster 900 will be through a 900 dwelling extension to the west of Warminster.
13. Other WCS Policies referred to have a bearing on matters relating to the development and some of the third-party concerns. They are Core Policies 41 (sustainable construction and low carbon energy), 43 (providing affordable homes – 30% affordable housing is required), 50 (biodiversity and geological diversity), 51 (landscape), 52 (green structure), 57 (ensuring high quality design and place shaping), 58 (ensuring conservation of the historic environment), 60 (sustainable transport), 61 (transport and new development), 64 (demand management), 67 (flood risk) and 68 (water resources).
14. Relevant saved policies are WWLP Policy C3 on the landscape and DPD Policy LP5 on sports and recreation facilities.
15. A Neighbourhood Plan (NP) has been prepared for Warminster. It will shortly be going to referendum and is thus at a fairly advanced stage. At paragraph 4.3 it refers to the review being carried out by Wiltshire Council of settlement boundaries. The NP makes no change to the existing limits of development for Warminster shown in the WCS and makes no specific reference to the appeal site. However, it contains Policy E5 which says that: new developments should respect local character; the provision of green space that enhances its surroundings will be supported; and improvements to the natural environment, green space and biodiversity will be supported.

Relevant Planning History

16. In 1963 permission was granted for the tipping of material and excavated soil on the appeal site. This permission was implemented which resulted in ground levels across the site being raised by around 2 metres.
17. A Neighbourhood Development Order (NDO) proposal for self build housing development on the site was initiated by Wiltshire Council in 2011 with support from the Town Council and other local community groups. However, the town Council terminated the NDO process in June 2013.

The Proposal

18. The application site is an irregularly shaped parcel of land of 1.215 hectares. It is separated from the adjoining watercourses by an ecological buffer zone also in

the appellant's ownership. The proposed vehicular access would be at the north-west corner of the site onto the B3414. The proposal is for up to 35 custom build homes, of which 30% would be "affordable". An illustrative layout has been included with the application along with a Design Principles document.

The Case for the Council

The material points are:

Statement

19. The appeal site lies outside the limits of development defined for Warminster in the Wiltshire Core Strategy (WCS). It is thus in the area where Policy CP2 of that Plan only allows for residential development through the plan led process of a Site Allocations Development Plan and/or a Neighbourhood Plan. The proposal would conflict with this Policy because it has not been brought forward through these means.
20. In assessing the weight to be given to Policy C2 account must be taken of the background to the limits of development being located where they are in this part of Warminster. This can be found in the Inspector's Report on the West Wiltshire District Plan (2004) WWDP. This was the predecessor plan to the WCS from which current Core Strategy Limits of Development are drawn. At that time the Council had sought a "rural buffer" policy in this location. However, the local plan inspector recommended the deletion of this policy with reliance instead to be placed on policy limits *"being drawn tightly around the built-up area of Warminster, in order to prevent coalescence with Bishopstow and to protect open countryside"*. The WDDP was amended accordingly. The appellant's claim that that the Limits of Development were established as result of incorrect representations by the National Rivers Authority (NRA), and that in the absence of a gap Policy the Council cannot have considered the gap between Warminster and Bishopstow to be important, are thus strongly refuted.
21. Given the Inspector's observations on the WDDLP, and that the WSC is a more strategic plan, there has been no attempt to introduce a "rural buffer" policy. Instead the revision of the Limits of Development has been left to the Site Allocation DPD. And concerns on coalescence have been covered in Policy CP51 on conserving the separate identity of settlements and their landscape settings.
22. It remains the Councils view that protecting the open countryside between Bishopstow and the development limits of Warminster remains important to prevent their coalescence. The application site is one of only 2 remaining fields on this side of Bishopstow Road that separate the built-up part of Warminster from the grounds of Bishopstow College in the village. The development of this site, prominent in views from Boreham Field and the B3414, would result in a significant part of the gap between the 2 settlements being lost thus undermining their separate identities. It would also impact adversely on views of the trees to the south of the site and on the "landmark" qualities of Bishopstow College and Boreham Mill.
23. The Council has permitted the redevelopment of a former transport depot to the east of the appeal site and in the gap between Warminster and Bishopstow. However, this was to improve the appearance of the area and facilitate the removal of a use not well suited to an ecologically sensitive riverside location.

The development of this site makes it important to retain the appeal site free of development.

24. The Council acknowledges that in the relevant Housing Market Area there is no 5-year housing land supply. The absence of a 5-year housing and supply means that paragraphs 49 and 14 of the National Planning Policy Framework (the Framework) are engaged. However, as noted in case law and appeal decisions, this does not mean that policies of the development plan, such as CP2, are to be set aside. The test that applies is whether the adverse impacts of granting planning permission will outweigh the benefits when assessed against policies as a whole. Appeals can be, and are, dismissed despite acknowledged shortfalls in housing land supply.
25. In addition to 5-year housing land supply considerations the Council has acknowledged the benefits that the proposal would bring. It is accepted that there is government encouragement to custom/self build housing that will soon become a duty for the Council to meet. Financial benefits would arise through the new homes bonus. The site is in a sustainable location and would not result in development of the best and most versatile agricultural land. However, in the overall balance the severe erosion of the gap between the village and the town would significantly and demonstrably outweigh the benefits. The extent of the shortfall in housing land supply is not so pressing that consideration of revised Limits of Development for Warminster cannot wait for a properly balanced public consultation through the Site Allocations DPD.

Council response to appellants' final comments on the Neighbourhood Plan and other matters

26. Other than that the NP carries more weight at this stage it has no additional bearing on the appeal as the Limits of Development remain there as carried forward in the WCS and to be reviewed by the Site Allocation DPD. As before in the NP any alterations to the Development Limits are left to the Site Allocations DPD. The latest Ministerial Statement on self-build housing raises nothing new.
27. Since the parties' initial statements were submitted it was concluded on appeal APP/Y3940/W/15/3132915, following a 8 day public Inquiry, that in the Housing Market Area in which the appeal site lies there is a 4.25 year supply of housing land. And this was accepted by both parties on the opening of an inquiry on appeal APP/Y3940/W/15/3139183. Since the decision on the first appeal was made the Council has permitted, subject to the appellant entering a Section 106 Agreement, 203 houses on a site in the same Housing Market Area. This site was one of a number of sites capable of taking 700 dwellings and referred to by the Inspector on the first appeal as being likely to make a substantial contribution to the overall supply.

The Case for the appellant

The material points are:

Background

28. Following several discussions on developing the site it was identified in the Council's 2011SHLAA. There followed discussions between landowner, the developer and other interested groups including Warminster Town Council which led to this application being submitted.

29. Prior to the its submission Wiltshire Council initiated a Neighbourhood Development Order (NDO). This provided an opportunity to develop a community led approach to developing self build housing as an alternative to that provided by the volume sector. The Council successfully applied for a £20,000 "Frontrunner" grant from the DCLG in 2011 and the NDO process commenced with the support of Warminster Town Council. However in 2013 the Town Council unexpectedly terminated the NDO procedure.
30. However, noting the support of the local community it was determined to proceed with the proposal to develop the site. On the resubmission of the application, following the Judicial Review, it again received Officer support. It should be noted that in dealing with a costs order on the Judicial Review it was found that the claimant had "lost badly" on all the claims bar the one which was upheld. Thus allegations made against the technical aspects of the application were found to be unfounded.

Statement of Case

31. The original application was carefully formulated in response to the site being identified by the Council in its SHLAA and NDO Vanguard (Frontrunner) bid as suitable to accommodate additional housing growth in Warminster. It was informed by comprehensive technical evidence and pre-application discussions with the local community and statutory consultees. The sustainability, acceptability and positive benefits in the proposal were recognised in the Officers' report to committee and subsequent decision to grant permission in January 2015. These were found to outweigh what, at the time of that decision, was the ability of the Council at that time to demonstrate a 5-year housing land supply. In the re-determination of the application in January 2016 officers again strongly recommended that permission be granted, and this was notwithstanding various 3rd-party concerns.
32. During the course of the application there has, notwithstanding the adoption of the WSCS, been no fundamental change in the relevant planning policy context. If anything this has become more favourable with Government support for the self-build and custom-build sector. As the appeal site lies in open countryside outside, but adjacent to, the settlement boundary for Warminster it is accepted that the proposal would conflict with Policies CP1 and CP2 of the WCS. However, substantial material considerations, as shown below, indicate that residential development is acceptable in principle in this location.
33. The innovative custom build proposal applied for would assist the Council discharging its requirement under paragraph 15 of the Framework and the Housing and Planning Bill. This form of development would diversify the provision of new homes in Warminster by providing a genuine alternative to the dominance in this area of the traditional volume house-builders top-down provision and mono-allocation. Greater customer involvement and diversity and choice in housing provision would result, along with a strong sense of belonging and ownership. The proposed indicative housing types would provide a varied mix including large houses not well provided for recently in Warminster. The proposal also provides for the novel concept of custom build for affordable housing. There is a clear demand in the locality for custom-build and self-build housing as evidenced by the Council's Self-Build Register and empirical evidence obtained by Buildstore.

34. The Framework requires Councils to make provision for a wide choice of high quality homes and plan for people wishing to build their own homes. A number of ministerial speeches have reiterated this. The Housing and Planning Bill 2015 – 2016 requires that Councils have a duty to provide sufficient self- build plots with planning permission to meet the demand for such housing as specified in the Self Build Register for their district. Although secondary legislation is needed to address the precise operation of this requirement there is a clear commitment to support the expansion of housing of this kind. Letters of support have been received from various sources backing the proposed development.
35. Appeal decision APP/C1570/A/14/2223280 for 22 custom/self build-build houses in Essex shows the considerable weight that can be given to the custom-build format in allowing appeals.
36. Moreover, the appeal site is in a location highly suitable for new housing. Warminster functions as an important market for the wider hinterland and has been identified as a location for significant new strategic employment and housing growth in the emerging WCS. It has excellent road and rail connectivity. The site has reasonable non-car accessibility to the town centre and is accessible by public transport with 2 bus stops adjacent to the road and others within walking distance.
37. The Council acknowledges that it can no longer demonstrate a 5-year housing land supply. This follows the suspension of the examination of the Council's draft Chippenham Site Allocation Plan last year for it to undertake further work to address concerns on site selection procedure, sustainability, appraisal and deliverability of the proposed allocations in the Plan. Subsequent appeal decisions reinforced 5 year housing land supply concerns.
38. It is considered that the Council has no realistic possibility of demonstrating a 5-year housing land supply in the near future. There are significant local delivery issues around Warminster with housing delivery having been dominated by volume house builders. The proposed West Warminster Urban Extension (WWUE) is a strategic allocation which perpetuates this housing delivery model. It is understood that the WWUE application has become protracted by the need for an agreed master plan and significant technical issues that still need to be resolved. This means that there is insufficient time for the WWEU to be fully delivered in the current plan period to 2026 and the delivery trajectory for new housing provision in Warminster has thus been significantly reduced. This makes it all the more important that the appeal site, identified as providing part of the Council's 5-year housing land supply in its Statement of September 2015, is brought forward for development.
39. Added weight is given to this view by the fact that Policy CP2 in effect only permits development brought forward through the Site Allocations DPD or a Neighbourhood Plan. However, the Site Allocations DPD is still in the early stages of preparation with a consultation on the Pre-Submission Draft not expected until October 2016. The response of the Wiltshire Council Spatial Planning (WCSP) team on the proposed application referred to the fact that Policy CP 31 required around 1,920 new homes in Warminster over the plan period to 2026. It went on to say that the Council's latest Housing Land Supply Statement 2015, together with the draft trajectory for housing delivery in the WWUE allocation, indicated that it was likely that there would be a residual housing figure of around 320

- dwellings to find in Warminster over the remainder of the Plan period. As a result, it was said, there would be a need to allocate additional housing land at Warminster through the forthcoming Housing Site Allocations SPD and the development of land north-west of Boreham Mill could help meet this requirement. It went on to indicate the stage that the Neighbourhood Plan had reached and the fact that it did not seek to allocate land for housing.
40. With paragraphs 14 and 49 of the Framework being engaged in the absence of a 5 year housing land supply relevant Policies for the supply of housing which would, in the light of *Richborough Estates Partnership LLP v Cheshire East Borough Council and Secretary of State for Communities and Local Government*, include Policy CP2, which sets the development boundaries for Warminster, should not be considered up to date. Permission should be granted if there are no adverse impacts that would significantly and demonstrably outweigh the benefits of the proposal.
 41. Thus the Council has placed over reliance on Policy CP2 and the fact that the site is outside the development boundary. Added weight is given to this view by the fact that Policy CP2 relies on setting the boundaries carried forward from the WWLP. These boundaries were tightly drawn around existing urban areas in the context of a more restrictive national planning regime. Moreover, the appeal site was not previously allocated for housing at that time as it was erroneously believed to be on a floodplain. The Environment Agency has since confirmed that the majority of the site is not a floodplain.
 42. Turning to the effect that the proposed development would have on the gap between Warminster and Bishopstrow the Council has no specific Policy to protect the gap. Moreover, Policy CP 51 which it relies upon is restrictive of housing development and that should, in accordance with the *Richborough Estates* judgement, mean that it should not be considered up-to-date.
 43. Bishopstrow is a small, disparate settlement, of a stature that does not normally warrant protection from coalescence policies. There is sufficient green space/countryside between the site and the village core to maintain a sense of separation, aided by the River Wylfe which provides a natural boundary. Bishopstrow's identity is best encapsulated by the Bishopstrow Conservation Area which encompasses a substantial area of countryside beyond the village within which there are some isolated groups of properties. The land within the Conservation Area boundary provides the setting of the settlement. The appeal site lies outside the Conservation Area and is shielded from it by Boreham Mill. In the Judicial Review it was held at the Council was correct to have concluded that there would be no harm to Heritage Assets, which would include the setting of the Conservation Area. Had there been genuine harm through coalescence there would have been harm to the Conservation Area.
 44. On the wider visual impact of the proposal, the site, as recognised in the Officers' reports to Committee, is visually well contained from all 4 directions. It is not visible until you come upon it, due to rising ground, buildings and tree cover. The character of this part of Warminster is of a matrix of small pockets of development set within a riverine landscape with high tree and hedgerow cover. The proposed development would fit in with this character. In arriving at this view account should also be taken of the partially built up nature of the

immediate surroundings of the appeal site with housing being constructed on a previous bus depot and with the unlisted Boreham Mill to the south.

45. The appellant is committed to providing a high quality scheme in accordance with the Design Principles document attached to the planning application which can be used to inform a subsequent reserved matters application. The appellant has demonstrated a firm commitment to the sustainable development of a site that due to past tipping, and isolation from any wider agricultural unit, cannot sustain productive agricultural use.
46. In the course of the re-determination of the application numerous third-party representations, beyond the concerns of the Council, were taken into account and rebutted. The proposed development was informed by a comprehensive and updated technical evidence base and pre-application consultations with the local community and statutory consultees. Amongst other things the updated reports confirmed that: the proposed development would meet local, national and international policy guidance on habitat and wildlife protection; any potential land contamination concerns could, as agreed with the Council's Environmental Health Officer, be dealt with by condition notwithstanding third party observations; there would be no harm on archaeological grounds; and there would be no overall negative impact in terms of susceptibility to flooding or on surface drainage.
47. The purpose of the planning system is to contribute towards sustainable development. The Framework identifies 3 dimensions to such development, economic social and environmental. On the economic dimension the proposed development would generate economic activity and jobs in the construction phase and longer term would generate additional demand for existing local services in Warminster. The social dimension would be met by the provision of a wider choice of housing and affordable housing, and there would be a contribution towards leisure and community facilities. For reasons already given the environmental dimension would be met by the lack of harm to the character and appearance of the area.
48. In its decision contrary to its Officers' recommendation the Council failed to follow the advice of the Framework on development management and the need to look for solutions rather than problems and to work proactively with applicants to secure sustainable development.
49. In conclusion given the overriding sustainability credentials of the proposal, and the significant package of planning benefits it would bring to Warminster and the wider area, it represents a unique opportunity to create additional housing choice in an area for which there is a demonstrable need.

Final Comments

50. In response to concerns raised at appeal stage by Fish Legal on river pollution, and by others on land contamination generally, a thorough Geo – Environmental Assessment and Remediation Strategy was submitted and accepted by both the Environment Agency and the Council's Environment Department. Subsequent concerns of Fish Legal are addressed by detailed technical submissions from a contaminated land specialist confirming that there is confidence that the original investigation provides a reasonable characterization of the site in the context of its geo-environmental setting, and that the proposed remedial measures remain appropriate for the type of development proposed. On further concerns raised on

potential health risks from on-site contaminants an additional report produced for the appellant maintains its original stance and view that adequate remediation measures are available.

51. On flood risk a site-specific Flood Risk Assessment was undertaken in line with the Framework which concluded that: the proposed development would be appropriately located in Flood Zone 1 in which there is a low risk of flooding; safe access/egress can be maintained in extreme events; and there should be a net benefit to flood risk in the wider area by providing additional flood storage capacity in the northern ditch system with no detrimental impact on downstream flood risk. Comprehensive evidence has been supplied on the current position of the proposals concerning on and off-site flooding which rebuts recent 3rd party statements and demonstrate that the application of a sequential test is not necessary and that the Environment Agency and the Council are in agreement on this.. Concerns on flood risk and the detailed observations of Mr Wright have been rebutted by comprehensive evidence of the position regarding on and off-site flooding. On nature conservation concerns substantial evidence has been submitted at appeal and application stage which show that a thorough survey has been undertaken into nature conservation interests on the site and that the proposed development, far from having a negative impact on habitats and species, would lead to an enhancement and potential increase biodiversity. It should be noted that the site has not been managed as a water meadow since 1963.
52. In June 2016 the examiners report on the Neighbourhood Plan was received. It concluded that, subject to making modifications recommended in the report, the draft Plan met the Basic Conditions required and should proceed to referendum. The Council concurred with the recommendations and made appropriate modifications to the Neighbourhood Plan enabling it to proceed to referendum which is anticipated to be on 10 November 2016. Of particular note is the fact that the latest iteration of the Neighbourhood Plan removes the reference, present in earlier drafts, to maintaining settlement boundaries. The NP now more clearly acknowledges the overarching policies in the CS and the ongoing settlement boundary review. This further supports the view that paragraph 47 of the Framework is engaged.
53. A Ministerial Statement of 4 October 2016 further demonstrates the strong government support for the type of innovative custom and self-build development that the appeal proposal represents.

Legal judgment on the Council's initial permission of the application

54. On the grounds on which the challenge to the decision failed the following observations were made. First, on the effects of the proposed development on River Avon SAC it was held that the Council had sufficient objective information, in terms of extensive reports and agreements from the Environment Agency and Natural England and the ability to control by condition proposed methods of construction, to come to the view that the proposed development itself would not have a significant effect on the SAC. And that thus under Habitats Regulations the Council had sufficient evidence to conclude that no significant effect was likely. It was also concluded that the Council had sufficient information to determine that no Environmental Impact Assessment (EIA) was required. On Heritage Assets it was determined that notwithstanding evidence from

Conservation experts that there would be minor harm to the Bishopstrow Conservation Area, and minor adverse effects on the setting of an adjacent listed bridge, the planning officer had ample evidence before him to conclude there would be no harm to the Heritage Assets and the Conservation Area.

Written Representations

Written representations at appeal stage

Andrew Murrison MD MP

55. The MP regrets that the appeal has been lodged. He says that he is familiar with the site, the flooding that the area is prone to and its status as the last thin piece of green space between Warminster and Bishopstrow.

Bishopstrow Village Meeting

56. The Bishopstrow Village Meeting broadly refers to those concerns raised by the Council on the site being outside the development boundary and that the proposal would harm the character and appearance of the area through the coalescence of the village with Warminster. A petition signed by residents of the village accompanies its letter. A detailed statement is also provided stating that: local and national planning policies have consistently sought to prevent coalescence of small villages into towns; the WWDP and the WSC both explicitly specify that the appeal site should be excluded from the settlement area of Warminster to prevent coalescence; the site is not genuinely redundant for agriculture; the use of the NDO procedure was to circumvent the normal planning process; local opposition is substantial; the WCS identifies the number of houses required for Warminster up to 2026 and the current absence of a 5-year housing plan supply results from uncertainty caused by the Chippenham DPD examination; HaB, the appellant that specialised in custom and self-build houses no longer wishes to build on the land; and the development of the Beeline bus depot site should not act as a precedent for development of the appeal site.

Mr A Wright

57. Mr Wright makes detailed observations on flood risk saying, amongst other things, that: inaccurate details were submitted with the appellant's Flood Risk Assessment on for example water flows; the proposal would add to flooding off-site; the Sequential Test has not probably been applied; and the Environment Agencies assessment is queried. More general flood risk concerns are also held by others.

Fish Legal

58. Fish Legal represents a riverside landowner locally. As well as raising planning policy issues referred to by others it says that the appellant has not properly rebutted concerns on land contamination causing river pollution.

Others

59. In addition to concerns raised by the Council, and above, the following observations against the proposal are made. The appeal site has a history of flooding. The proposed access would be dangerous. A precedent would be created for further development along the corridor to the River Wylye which is a rare chalk stream. The appeal site is not best located to the national highway

network. There are no public benefits to the scheme. Future residents of the scheme are likely to be reliant on the private car. It has not been conclusively shown that over a period of years there will not be an adverse effect on the nearby Special Area of Conservation (SAC) and the proximity of homes to the river means that accidental pollution would be inevitable. There are many initiatives to protect the river Avon but interested parties do not appear to have been consulted. There are a number of species using the site, such as water voles and otters, which are in local and national Biodiversity Action Plans and it has not been shown that ecological objections can be overcome by mitigation. Past tipping carried out on site back in the 1960s deposited materials such as asbestos which would be a hazard to health if the site was developed. The proposal conflicts with paragraph 55 of the Framework on isolated housing in the countryside. On economic, social and environmental grounds the proposal is not sustainable development.

60. There are also some letters from self-build associations that support housing development of the kind proposed.

Written representations at application stage

61. The following observations were received from those opposed to the scheme including Bishopstrow Parish Council and Warminster Town Council. Further to points raised above the following matters were raised. An adequate number of sites are being made available for houses in Warminster. The Council has a 5-year housing land supply. The proposal offers no guarantee of affordable housing. An up-to-date Environmental Impact Assessment is required. An important wildlife corridor would be cut off. Traffic congestion and volumes in the area would worsen. There would be increased noise and light pollution. Local schools are already at capacity. Local houses would be overlooked. Landfill materials on site are a potential risk to human health if disturbed. Additional housing required by the CS can be met by windfalls and on brownfield sites.
62. As at appeal stage there was also some support for housing of the kind proposed.

Conditions and Obligation

The obligation

63. The Council's Committee report sets out the need for the developer contributions which it says are required to upgrade facilities in Warminster Park, in the absence of the provision of on-site open space, and to provide for spaces at St John's Church of England Primary School and Kingdown School to accommodate the need generated by the proposal. The Council's statement adds that contributions are also required for off-site highway works and notes that they would not exceed the 5 contributions pooling limit. As set out in paragraph 4 above a UU broadly on the above terms has been received.

Conditions

64. The Council has suggested the following conditions and they are agreed with the appellant:

Conditions 1-3

65. The standard outline conditions.

Condition 4

66. This requires any reserved matter submission to accord with the general principles in “Design Principles Rev B”.

Conditions 5 – 9 inclusive

67. These are a series of highway conditions covering/requiring visibility splays, structural details of the culvert under the proposed access road, access to be constructed in compliance with submitted plans before the proposed development is first occupied, an existing field gate to be closed and sole access to be in accordance with the submitted plans, and reconstruction of part of the frontage footpath prior to first occupation of the development.

Conditions 10 – 15 inclusive

68. These require: the submission and approval of a foul and surface water drainage strategy and its implementation; a scheme to maintain the riverside buffer; a requirement that development be only in accordance with the submitted Flood Risk Assessment; a restriction on development within specified distance of the river and watercourses; a prohibition on piling unless shown not to be a risk to groundwater; and the submission, and implementation of, a Construction Environmental Management Plan incorporating pollution measures.

Condition 16

69. This requires the submission, approval and implementation of a water efficiency scheme.

Condition 17

70. This limits development to 2 stories in height.

Condition 18

71. This sets out the approach to assessments of potential land contamination and remediation.

Condition 19

72. This sets out the plans on which development shall be undertaken.

Inspector's Appraisal

Note: Source references to the earlier paragraphs of this report are shown in brackets thus [].

Background

73. The appeal site lies on the eastern side of the attractive town of Warminster. It lies just beyond the development limits for the town defined in the West Wiltshire Local Plan first alteration 2011 (2004) (WDLP) and carried forward in the Wiltshire Core Strategy (2015) (WCS). WCS Core Policy 1 establishes that Warminster, as one of the higher level settlements, has the potential for significant development. Core Policy 31 sets out that in the Warminster Community Area around 1,920 dwellings are to be provided between 2006 and

2026, of which 900 would be through a housing extension to the west of the town. Core Policy 2 says that outside defined Limits of Development development will not be permitted other than in specified circumstances, none of which are said to apply in this case. The Policy goes on to say that the Limits of Development may alter, but only through the identification of sites in a subsequent Site Allocations DPD and in neighbourhood plans. The appeal site has not been so identified. [7,11,12]

74. As the appeal site lies outside the defined limits of development the proposal is clearly contrary to Core Policy 2. However, it is common ground that the Council has no 5 year housing land supply. The latest figure derived from the findings of a lengthy Planning Inquiry, APP/Y3940/W/15/3132915, and reaffirmed at the opening of a later Inquiry, is that there is a 4.25 year housing land supply. Albeit, that finding needs to be viewed in the light that recent planning permissions in the area are likely to make a substantial contribution to the overall supply. [19,27]
75. The absence of a 5-year housing land supply means that relevant Policies for the supply of housing should not be considered up to date according to paragraph 49 of the National Planning Policy Framework (the Framework). It has been held in *Richborough Estates Partnership LLP v Cheshire East Borough Council and Secretary of State for Communities and Local Government* that Policies for the supply of housing are those that create and constrain housing supply. Core Policy 2 constrains the supply of housing and, therefore, in light of paragraph 49 of the Framework it should not be considered up to date. Where Policies are out of date paragraph 14 of Framework says that permission should be granted unless any adverse impacts of so doing would significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole. [40]

Main considerations

76. Having regard to the above and all that I have read the main considerations in this appeal are whether the Council's concerns on the proposed development being beyond the development limits for Warminster, and the impact of the proposal on the character and appearance of the area and the gap between Warminster and Bishopstrow, constitute adverse impacts that would significantly and demonstrably outweigh the benefits of the proposal when assessed against the Policies in the Framework taken as a whole.

Benefits of the proposal

77. The proposed development would provide new housing in an area where the Council has a housing land supply shortfall. Substantial weight should be attached to this given the injunction in the Framework that Council's should boost significantly the supply of housing. Moreover, the type of housing proposed, custom-build, is of a kind that is receiving Government support and has been supported on appeal. And on this latter point, whilst I note local concerns on whether custom-build housing would be provided, a Unilateral Undertaking (UU) is in place to ensure that this is the type of housing that would be built. Such housing would diversify the choice of housing available in Warminster for which there is a demand in the locality. There would also be the potential to provide a varied mix of house sizes. In addition the proposed development would be beneficial in providing 30% affordable housing as required in Core Policy 43. [4,13,18,25,33,38]

78. The proposed development would also be beneficial in providing development in a market town with the potential for significant development. And although it would not be on the side of Warminster where most new development is to occur it would be on a site reasonably well located in relation to existing development in the town and with reasonable non-car accessibility to the town centre. In an albeit small way the proposed development would be beneficial to the economy of the town, in providing a New Homes Bonus and by providing jobs during the construction phase. [7,12,25,36,47]

Matters raised against the proposal by the Council

79. The proposed development would be outside the development limits for Warminster and thus, for the reasons outlined above, contrary to Core Policy 2. The Council attached substantial weight to this. However, the absence of a 5-year housing land supply means that this Policy, although it may not be disregarded, attracts limited weight per se. It should not, alone, stand against the proposal. [24]
80. The parties differ as to why the application site lies outside the development limits. The appellant contends that it is because of incorrect representations from the National Rivers Authority (NRA) on potential flood risk. However, whilst the NRAs views on flood risk have changed there is no substantial evidence that it was its previous stance that led to the appeal site being excluded from the Limits of Development. The Council says the limits are down to the Inspector's recommendations on the WDLP that, rather than having "rural buffers", the plan be modified with reference to Policy limits being drawn up tightly around the town preventing coalescence with Bishopstrow and protecting the open countryside. [20,41]
81. Clearly the Local Plan Inspector saw the potential for development beyond the existing settlement to detract from the character and appearance of the area and lead to coalescence with Bishopstrow. This is not to say, however, that every development in every location beyond the development limits would cause unacceptable harm in this respect and must be prevented. Not only do circumstances change over time but Core Policy 2 envisages the possibility of allocating land for development beyond the current limits. And though the Policy envisages this being done through the development plan process the absence of a 5 year housing land supply makes it reasonable to look at releasing land, where suitable, for housing when proposals come forward through planning applications.
82. Both parties, and indeed 3rd parties, have provided substantial evidence on the effect of the proposed development in terms of character and appearance generally and on coalescence between the 2 settlements. I have taken this into account along with what I saw from a comprehensive site visit. [22,23,42,43,44,56]
83. The appeal site is at a junction between the B3414 which leads into Warminster and a country lane which runs south to the village of Bishopstrow. The site is well screened by trees which, other than from rising land to the north, would substantially limit the views of the proposed development. In the winter months with less leaf cover the proposed development would be more visible from the B3414. However, viewed from this road it would be seen in the context of ribbon development to the east and west, and housing adjoining the open space to the

north. As such the proposed development would not be detrimental to the character and appearance of the area. [7,8]

84. Bishopstrow is a small and attractive village with pleasant cottages closely fronting the road. It has a notably linear format. On the south-eastern boundary of the site lies a modestly sized house and Boreham Mill. And on the opposite side of the road from these properties new housing is under construction on the site of an old bus yard. To the south of the appeal site beyond the River Wylfe is a fairly extensive area of flat low lying open countryside within which lies some scattered roadside frontage housing and a school and its extensive grounds. This countryside separates the appeal site and the development in its immediate vicinity from the main ribbon of housing in Bishopstrow. Added separation arises from the natural boundary formed by the River Wylfe to the south of the site and the trees along its banks. The degree of physical separation of the appeal site from Bishopstrow and the level of screening that would be afforded to the proposed development would prevent any unacceptable impression of coalescence between it and Warminster. The proposed development would be so well removed and screened from Bishopstrow College as to have no significant impact on it and there is no reason why a sensitively designed development would have any adverse impact on Boreham Mill from which it would be well screened. [7,22,23,42,43,44,56]

Conclusion on main consideration

85. Drawing together my views above the Council's concerns on the proposed development being beyond the development limits for Warminster, and the conflict thereby with WSC Core Policy 2, should not alone stand against the proposal. And there would be no harm to the character and appearance of the area generally or through creating unacceptable coalescence between Warminster and Bishopstrow. Thus there would be no conflict with WSC Core Policy 51 and NP Policy E5 on landscape and ensuring new development respects local character.
86. I conclude, therefore, that, the Council's concerns on the proposed development do not constitute adverse impacts that would significantly and demonstrably outweigh the benefits of the proposal when assessed against the Policies in the Framework taken as a whole.

Other matters of concern

87. Local residents and other third parties have raised objections that go beyond the concerns of the Council. Account must be taken of these also in the overall balance. I deal with the principal matters below.

Heritage assets

88. The Bishopstrow Conservation Area is extensive and covers a large area of the surrounding countryside. Given the variety of professional views given on the impact of the proposed development on the Conservation Area, ranging from no harm to some harm, I rely largely on what I saw. In the vicinity of the appeal site the Conservation Area comes up to the southern banks of the River Wylfe. This countryside provides an attractive setting for the village. However, seen from this part of the Conservation Area the proposed development would be so well screened by vegetation and Boreham Mill that the Conservation Area would not

be adversely affected by the proposed development beyond it. In effect the impact would be neutral and there would be no conflict with the statutory duty on the preservation or enhancement of the character or appearance of Conservation Areas. [9,43,52]

89. I now turn to the effect of the proposed development on the setting of listed buildings and structures. From what I have read and seen there are no listed dwellings in sufficient proximity to the appeal site for the proposed development to have any impact on the setting of such buildings. On the northern boundary of the site there is a small grade 2 listed milestone. This is required to be removed as a result of the proposed development. Listed building consent for this has already been given. Although a report produced for the appellant indicated that there would be a minor adverse effect as a result of its repositioning the Council's Conservation Officer said that its resiting would enable it to be better displayed and improve its setting. What I saw supports this view. There is a listed bridge, an attractive stone structure, over the River Wylfe close to the south-eastern boundary of the appeal site. There are conflicting professional views on the impact of the proposed development on the setting of this structure, ranging from minor adverse effect to no harm. Given the screening afforded to the proposed development, and the fact that the bridge is already located in the presence of built development, all that I saw supports the latter view. The unlisted Boreham Mill, an attractive brick structure dating from 1886, lies to the south of the appeal site. From the roadside relatively fleeting glimpses of the Mill are seen and the proposed development would be sufficiently screened from it for its setting to be preserved. [9,54]

Land contamination/effects on health and river quality

90. If past tipping on the site many years ago has left it contaminated substantial technical evidence exists to the effect that satisfactory mitigation could be provided and none of the Council's consultees has suggested otherwise. It is suggested that, due to on site contamination, developing the site would lead to contamination of the River Wylfe and thereby also to the River Avon SAC. However, the legal judgement on the Council's previous decision determined that it had sufficient information to conclude that, under the terms of the Habitats Regulations, no significant effect was likely. Concerns are again being raised on this matter. However, the appellant has addressed them in detail and in the absence of any objection from the Environment Agency or Natural England I see no reason to come to a different view from the Council. [50,51,58,59]

Flooding

91. Some land in the vicinity of the appeal site has a history of flooding and the concerns of those locally are noted. However, the majority of the appeal site does not flood because it is on raised ground. This is reflected in its Flood Zone 1 designation and the proposed development complies with the aim of the Framework which is to steer new development to areas with the lowest probability of flooding. The proposed development should not increase flood risk downstream. The Environment Agency had no objection to the scheme subject to conditions. Criticisms have been made of the evidence put to Environment Agency which would have led to this view. However, they have been rebutted by substantial evidence on which, given the professional expertise behind it, I attach the greatest weight. [6,51,57]

Other matters generally

92. Concerns that the proposed development would harm the ecology of the site have been raised generally and in some detail. However, they have been rebutted by substantial survey information and I am mindful that both Natural England and the Council's Ecologist raised no objection. Highway concerns on the proposed access and traffic generation are noted. However, nothing that I saw supported them and the County Highway Authority has no objection to the proposal. [51,59]

Conditions and Obligations

Obligation

93. In the absence of evidence to the contrary it is reasonable to assume that the UU provides for affordable housing and infrastructure payments to the Council's satisfaction. However, for them lawfully to be taken into account they must be: necessary to make the development acceptable in planning terms; directly related to it; and reasonably related to it in scale and kind.
94. The provision of 30% affordable housing accords with the WCS requirement and thereby accords with the above tests. The education contributions are clearly planning related and justified by the needs generated by the proposed development and the fact that there is a shortage of school places. This contribution would therefore meet the tests. The additional population arising from the proposed development has the potential to place additional pressure open space provision. However, in the absence of clear evidence on whether or not current needs are being met a case has not being made out for the financial contributions sought. This contribution should not therefore be taken into account in determining the appeal. [13]

Conditions

95. The Council has proposed 19 conditions in the event of the appeal being allowed, and the appellant is in agreement with them. [64-72]
96. It is recommended that the following of the above conditions should be imposed in the event of the Secretary of State allowing the appeal and granting planning permission. Conditions 1-3 are the standard outline conditions, and are therefore required. Condition 4 is necessary to ensure that the design principles as promised are manifest in any detailed scheme. Conditions 5-9 covering access and other highway matters are necessary in the interests of highway safety. Conditions 10-15 on drainage, riverside buffers, development to be in accord with the FRA, limitations on the location of houses and on piling and the need for a Construction Environmental Management Plan are necessary on flood risk and pollution grounds. Condition 16 on water efficiency is required in the interests of sustainability. Condition 17 limiting development to 2 storeys in height is required to protect the character and appearance of the area. Condition 18 on land contamination and remediation is required to protect public health. In the interests of good planning condition 19, on development in accordance with approved plans, is required. However, the list of plans should be more limited given the outline nature of the proposal.

97. I recommend that condition 10, on works to maintain and enhance the River Avon SAC, should not be imposed. This is because the SAC lies outside the application site and there is no evidence that it is otherwise in the appellant's control. Where necessary I have revised the conditions for simplicity and so that they reflect Government advice.

Overall conclusions

98. The proposed development is beyond the development limits for Warminster. It is therefore, for the reasons given above, contrary to WCS Core Policy 2 which sets out the development limits for Warminster. However, the Council has no 5-year housing land supply. This runs counter to the requirement in the Framework that Council's should seek to boost significantly the supply of housing. It also, having regard to paragraph 49 of the Framework, renders relevant Policies for the supply of housing, such as Core Policy 2, out of date. Thus, with reference to paragraph 14 of the Framework, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
99. Turning, therefore, to the benefits of the proposal there would be substantial benefits in the provision of new housing, in one of the more high level settlements, given the absence of a 5 year housing land supply. And substantial benefit also in the provision of custom-build housing of a kind supported by the Government and in the provision of affordable houses to meet the Council's requirements. There would also be minor economic benefits during and after the construction phase.
100. Turning to the Council's main concerns, the site being outside the development boundary for Warminster should not alone stand against the proposal in the absence of a 5 year housing land supply. And there would be no unacceptable harm to the character and appearance of the surrounding area and no unacceptable coalescence between Warminster and Bishopstrow. There are many local concerns that go beyond those raised by the Council. However, turning to these, there would be no harm to matters of heritage importance and, subject to the imposition of planning conditions, public health would be safeguarded and concerns over flood risk addressed. Concerns on the ecological impact of the proposed development and highway safety are not supported by substantial evidence.
101. Given the above adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Thus the proposal would be sustainable development in the terms of the Framework and one that should be permitted.

Recommendation

102. I recommend that the appeal be allowed and planning permission granted subject to the attached conditions.

R J Marshall

INSPECTOR

Recommended conditions

- 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) Any reserved matter submission shall be designed in accordance with the general principles set out in the submitted "Design Principles Rev. B" document.
- 5) Prior to occupation of any dwelling hereby approved the visibility splays shown on plan no. IMA/13/071/010/A shall be provided at a height not exceeding 600mm above the carriageway level, with the exception that the proposed refuge, bollards may remain within the splays. The visibility splays shall subsequently be retained.
- 6) No development shall take place until full structural details and calculations of the culvert beneath the access road have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) No dwelling hereby permitted shall be first occupied until the vehicular and pedestrian access has been constructed in accordance with the details shown on plan no. IMA/13/071/010/A. Once constructed this shall be the sole means of vehicular and pedestrian access to the development hereby permitted
- 8) No dwelling hereby permitted shall be first occupied until the field gate access to the north-west of the proposed development has been closed and the existing lowered kerbs replaced by full height kerbs, the details of which shall have been submitted to and approved in writing by the local planning authority prior to the commencement of development.
- 9) No development shall take place until details of footway reconstruction, including its width, have been submitted to and approved in writing by the local planning authority. No dwelling hereby are permitted shall be occupied until the approved works have been undertaken.
- 10) Development shall not begin until a foul and surface water strategy, including the timetable for its implementation, has been submitted to and approved in writing, by the local planning authority. Development shall be carried out in accordance with the approved strategy. No infiltration of surface water drainage into the ground shall be permitted without the written consent of the local planning authority.
- 11) The development hereby permitted shall be carried in accordance with the Flood Risk Assessment (Hydrock, Ref. R/C08249/001.03, dated December 2013) and the following mitigation measures detailed therein: 1) limiting the surface water run-off generated by the 1 in 100 year critical storm,

including a 30% allowance for climate change, so it will not exceed the run-off from the currently undeveloped site and not increase the risk of flooding off-site; 2) ground levels within Flood Zones 3 and 2 shall not be raised; and 3) finished floor levels shall be set no lower than 104.65 m above Ordnance Datum.

- 12) The proposed development shall lie only within Flood Zone 1. Irrespective of the extent of the Flood Zones there shall be no development within 8 metres of the top of the bank of the River Wylfe and no development within 4 metres of the top of the bank of the other watercourses. These gaps between development and the tops of the river banks shall be kept free to enable access for watercourse management.
- 13) Piling or other foundation designs using penetrative methods shall not be permitted other than with the written consent of the local planning authority.
- 14) No development shall take place until a Construction Environmental Management Plan, incorporating pollution prevention measures, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 15) No development shall take place until a scheme for water efficiency has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 16) None of the dwellings hereby permitted shall exceed 2 stories in height.
- 17) No development shall take place until a land contamination site investigation has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before the development begins.
- 18) If, during the course of development, any contamination is found which has not been identified in the site investigation, then additional measures for the remediation of the source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.
- 19) The development hereby permitted shall be carried out in accordance with the following approved plans:

IMA-13-071/010/A

IMA-13-071/003



RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.