
Appeal Decisions

Inquiry Held on 12-15 and 20-22 July 2022

Site visit made on 21 July 2022

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 26 September 2022

Appeal A Ref: APP/Y3940/W/21/3286853

Land off Park Road, Malmesbury, Wiltshire SN16 0QW

- 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 Stonewater Housing Association and White Lion Land (Malmesbury) Ltd against the decision of Wiltshire Council.
 - The application Ref 19/05898/OUT, dated 5 June 2019, was refused by notice dated 16 September 2021.
 - The development proposed is up to 50 residential units, internal road, parking, open space and associated works.
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Appeal B Ref: APP/Y3940/W/21/3289757

Land south west of Park Road, Malmesbury, Wiltshire

- 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 Hannick Homes & Developments Ltd against the decision of Wiltshire Council.
 - The application Ref 20/08341/OUT, dated 18 September 2020, was refused by notice dated 1 December 2021.
 - The development proposed is up to 26 dwellings, public open space, landscaping and associated engineering works.
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Decisions

1. Appeal A is allowed and outline planning permission is granted for up to 50 residential units, internal road, parking, open space and associated works at Land off Park Road, Malmesbury, Wiltshire SN16 0QW in accordance with the terms of the application, Ref 19/05898/OUT, dated 5 June 2019, subject to the conditions in the schedule attached to this decision letter.
2. Appeal B is allowed and outline planning permission is granted for up to 26 dwellings, public open space, landscaping and associated engineering works at Land south west of Park Road, Malmesbury, Wiltshire in accordance with the terms of the application, Ref 20/08341/OUT, dated 18 September 2020, subject to the conditions in the schedule attached to this decision letter.

Preliminary Matters

3. Both planning applications were made in outline, both including the matter of access for consideration. Matters of appearance, landscaping, layout and scale are reserved for future determination in both cases. I have treated any details of those reserved matters shown on drawings as indicative.

4. I have dealt with each appeal on its own individual merits although given similarities in circumstances, to avoid duplication, I have dealt with some aspects together in my reasoning where appropriate.
5. Both planning applications were refused on grounds that the developments did not make provision for affordable housing and certain infrastructure. However, planning obligations have been provided in respect of both developments which would deliver commitments and contributions such that the Council are satisfied and no longer defended those refusal reasons in either appeal.
6. The Appeal B development was also refused on grounds that access including in emergencies at times of flooding on Park Road would be unsatisfactory. The Council subsequently withdrew their objection on these grounds and did not seek to defend that reason for refusal at appeal. However, Malmesbury Town Council maintained an objection in respect of flooding with regard to both sites and I have considered this as an Other Matter relating to both appeals.

Main Issues

7. The main issues raised by both appeals are therefore:
 - the effects the developments would have on the character and appearance of the area, including landscape and visual effects; and,
 - whether the sites would be a suitable location for residential development having regard to planning policy.

Reasons

Character and appearance

8. The appeal sites are located on the north-western fringe of Malmesbury and slope down from an existing built up edge of the settlement to Park Road, beyond which is the Tetbury Branch of the River Avon. Both sites have the character and appearance of countryside being undeveloped, green, partially bounded by trees and hedges, and adjoining other areas of countryside. As such they form part of a wider countryside setting of the town. Appeal site A has the character and appearance of pasture whilst appeal site B that of unkempt scrub. Park Road changes in character from an urban street to a quiet country lane in the vicinity of the sites.
9. However, neither site is devoid of the urbanising influences of existing development. The dominant line of houses on higher ground on White Lion Park bounds one side of site A. They are prominent due to their relative elevation and form the local skyline to one side from much of Park Road. Those closest to the boundary of site A create an urbanising intrusion into the landscape including when viewed from Park Lane, Park Road and, where seen as it climbs up the hill, Brokenborough Road.
10. This effect continues along the boundary of site B which is enclosed on a second side by the rear of houses on Park Close and partly enclosed by the Buildbase building and compound directly opposite on Park Road. This context makes site B feel as much, if not more, within the built up area as without it. Although site A has a more rural character it is one with a distinctly urban edge influence.
11. Hedges alongside Park Road screen both sites to a considerable degree close to and farther afield where their situation on the gently sloping side of the Tetbury

Avon valley renders them relatively discreet components of the wider landscape. Consequently, neither site plays a significant role in the character or appearance of the wider landscape due to their particular situations, enclosure, topography and existing natural features and neither site can be considered as having high sensitivity in that context.

12. Intervening trees and hedges mean that neither site is particularly visible from longer distance views from Brokenborough Road and public footpaths beyond. From such unfolding views, even when trees are not in leaf, neither development would be particularly visually intrusive nor perceived to have a notable effect on the area's landscape character. The location of sites means that from Brokenborough Road existing properties at White Lion Park are likely to remain as the urbanising influence in such views rather than the proposed development.
13. Even from Park Lane, from where the upper parts of new dwellings on site A would be seen, the rising topography of the land between, and the distance from it, would limit the degree to which those new houses would be intrusive. Again, some existing dwellings on White Lion Park would be closer to view points on, and beyond, Park Lane.
14. Beyond the Buildbase depot Park Road rapidly takes on the character of a narrow rural lane by virtue of the enclosing hedges, limited intrusive features on either side and, as one moves farther to the north-west, glimpses and then views of the Tetbury Avon in its valley. Urbanising influences are not, however, absent with these views and glimpses of the White Lion Park housing estate along the crest of the rising land which includes site A. There is not a single 'gateway' point between the rural and built character along the Road but a relatively short area of transition.
15. This transitional part of Park Road would be moved further to the north-west as a result of each development. However, with the development of site B this would be very limited. The creation of the new access and the perception of development through existing and new landscaping would be evident for some time until it matures. This would nevertheless only extend an urbanising effect a very short way along Park Road, particularly given the enclosing effect that properties on Park Close, White Lion Park and Buildbase have on that part of Park Road coupled with the urban fringe character and appearance of the allotment site next to Buildbase which can be glimpsed through hedges.
16. The development of site A would extend this transition area farther along Park Road. Although the proposed change in road geometry at the site entrance would go some way to demarking the rural area more definitively, again perceptions of a housing estate would remain through glimpses in or over hedges farther up Park Road.
17. However, this would be relatively limited and a considerable length of Park Road would retain its existing rural character. Indeed, over time when landscaping alongside the site A development and the adjoining field matures, views of new buildings would have a reduced influence from both existing and proposed housing such that the potential exists to enhance Park Road's country and tranquil feeling.
18. Although not designated or identified on its own, the valley of the Tetbury Avon nearby creates a distinctive element in the landscape including on the setting

of this part of the town. On the appeal sites side of the river, the valley rises closer to the river but to an apparently lower elevation. White Lion Park, where it can be seen, forms a distinct built up ridge from the valley floor and sides. The north side of the valley rises higher. Development on that side, including the Backridge Farm development currently under construction, has a marked influence on its character and appearance.

19. Neither proposed development would immediately adjoin the river. Even at the point where it runs alongside Park Road, appeal site A is set far enough away that a sizeable undeveloped area would remain between any new dwellings and the river. Added to this is the dense vegetation between the Road and the river which would maintain a distinct buffer between the two. This would prevent the site A development from harmfully intruding into the valley and the river setting, retaining an undeveloped corridor. The floodplain of the river would remain unaffected, and the intervening vegetation and relatively low rise of both appeal sites would effectively avoid harmful visual intrusion into the valley component of the town's landscape setting.
20. It is notable that the north western extent of the development on site A more or less corresponds to that of the Backridge Farm housing allocation on the other side of the river. The effect would mean that, in combination, there would be very limited intrusion into the valley component of the wider landscape character and the setting of the Town by either site. That from site B would be even more limited given the partial intervening building and compound at Buildbase.
21. Encroachment into the valley would therefore be limited in its effect on character and extremely minor in terms of change in visual aspects. Whilst both Backridge Farm and the proposed developments would narrow the undeveloped part of the valley sides to a degree, these effects would be so minor as to avoid any change to the perception of Malmesbury as a town within its countryside setting nor to the setting of the Tetbury Avon. There would not be cumulatively harmful effects of either, or both, proposals considered in the context of the Backridge Farm development.
22. From Park Lane there would be glimpses through the hedge or in the gate opening of the site A development until the proposed landscaping matures. However, the existing properties on White Lion Park are already relatively prominent along the side of the site and those closer to vantage points on Park Lane. In the short term any new buildings on the development site are unlikely to markedly add to this intrusion, particularly in light of the topography of the intervening land and distance from Park Lane. As landscaping matures this will help to screen or break up views of both the proposed development and, as a result of planting reinforcing field boundaries, those existing properties.
23. In the absence of development on the appeal B site, development on site A would be set away from Park Close. However, given the existing level of enclosure and containment of site B, were site A to be developed in isolation this would not exacerbate any harmful effects.
24. For these reasons the development of neither site would have a materially harmful effect on the setting of the town or the perception of the town being set within attractive countryside surroundings including the Tetbury Avon valley.

25. Although layout, scale and landscaping remain reserved matters, the scope exists for existing hedges around site B to be enhanced and managed. New boundary planting would be introduced as well as an undeveloped area to be provided alongside Park Road. This would have the potential to considerably mitigate any visual intrusion the new development would cause as well as retaining landscape features which, whilst not making up for the loss of a modest area of countryside, would nevertheless retain a degree of character.
26. Indicative plans for both sites show most landscaping around the perimeter of the sites. However, I am not persuaded that this will necessarily preclude an appropriate layout and landscape schemes coming forward that could provide tree planting within the sites to further break up future development taking account of the sloping nature of the sites as they rise up from Park Road.
27. The landscaping will take some time to mature however and, particularly in the case of development on site A, would mean that where it abuts a new countryside edge the new development has the potential for visual intrusion to be apparent for many years. However, given that the locations from which such intrusion would be perceptible from would be so limited the actual harm would itself be very limited. Appeal site B has the benefit of existing mature hedges of some height with the effect that screening from outside those boundaries will have a degree of immediacy in its effect.
28. The effect on views from those existing properties adjoining the sites would change considerably albeit that for many this will be more noticeable from upper floor windows given existing boundary treatments and intervening outbuildings. Whilst I do not underestimate the degree of change existing occupiers might experience to the rear of their homes, as receptors of landscape change their number is limited. Furthermore, in these limited circumstances the loss or interruption of any views from those properties is a not a planning consideration that can carry any material weight.
29. The proposed change in alignment of Park Road where it would sweep into site would only have a very limited effect on the character of Park Road. Although the change in geometry at that point would become more suburban in character it would not significantly change the strong linear delineation of Park Road formed by trees and hedges on both sides of the Road and either side of that site.
30. Overall, the development of site B would have extremely limited adverse effects on the character and appearance of the area, the landscape and the landscape setting of the town. The development of site A would have a slightly more marked effect but still only result in limited harm and this would reduce over time as landscaping matures.
31. Both developments would mitigate any negative landscape aspects as far as possible and avoid conflict with the criteria of Wiltshire Core Strategy, 2015 (WCS) Core Policy (CP) 51. Nevertheless, notwithstanding its provision for mitigation, CP 51 also requires an unqualified avoidance of any harmful effect on landscape character. Even though the harm would be limited or extremely limited, both developments would conflict with the policy for that reason. However, such conflict would carry only limited weight in both cases.
32. WCS CP 57 deals with high quality design and place shaping. To the extent to which it is relevant to these outline schemes with design matters largely

reserved, neither proposal would give rise to any conflict. Indeed, both proposals would accord with its criteria of retaining and enhancing existing important landscaping and natural features such as trees and hedges, and in taking account of the characteristics of the sites and local context effectively relating to their immediate setting and wider character of the area. Whilst views into, within and out of the sites might not be retained, none of those views can reasonably be considered to be important ones thus avoiding conflict with criterion i. of that policy.

33. Although not explicitly referenced in the Council's reasons for refusal, Malmesbury Neighbourhood Plan, 2015 (MNP) Policy 13 seeks development to respect the character of the town and surroundings by reference to its Design Guide. That Guide's objective of ensuring a positive relationship between town and countryside would be met as would its subsequent Task 8.4 which requires development proposals sited on the edge of the town to maintain visual connections with the countryside which both developments would to a degree.
34. In the longer term the effect of development on site A would enhance visual impact of new development on the countryside by virtue of the landscaping alongside existing and proposed development, and around the adjoining field. For reasons explored above site B would have such a limited effect on visual impact of new development on the countryside, and on views from the countryside, that whether enhancing or not would not be contrary to this Task. Therefore, albeit that the route through tasks, objective, Design Guide and the Policy is a convoluted one, neither development would be contrary to the MLP in this respect.
35. The National Planning Policy Framework (the Framework) requires, at paragraph 174, decisions to recognise the intrinsic character and beauty of the countryside amongst other criteria. This does not necessarily prevent development within the countryside. Given my findings on the effect each development would have on the landscape character and appearance of the countryside, both would recognise its intrinsic qualities and neither development would conflict with this Framework Policy.

Location of development

36. The development plan at WCS CP 1 provides that Market Towns such as Malmesbury have the potential for significant development that will increase homes and promote better levels of self-containment. Market Towns are the second tier in the Settlement Strategy's hierarchy after the three Principal Settlements. In principle the developments would accord with the WCS CP1 Settlement Strategy which does not include any detailed requirements about the location of development including in relation to any settlement boundaries.
37. Both sites would be outside but immediately abutting the settlement boundary set out in the Wiltshire Housing Site Allocations Plan, 2020 (WHSAP). Site A abuts it along one side and site B bounds it entirely on two and partially along a third side.
38. The MNP allocates housing sites outside the WHSAP settlement boundary which it considers would meet the towns housing needs but is otherwise silent on the boundary. It does not explicitly restrict other housing development outside the boundary nor provide any policy under which the suitability of housing not on allocated sites might be considered. As such there is no conflict with the MNP in

this regard. I note that the Inspector in the Filands Road appeals¹ made a similar finding in this respect.

39. Nevertheless, the developments would conflict with the WCS delivery strategy in its CP 2 which does not permit development outside limits of development except in defined circumstances which neither development would satisfy. Similarly, both developments would be contrary to saved North Wiltshire Local Plan, 2011 (NWLP) Policy H4 which restricts new dwellings in the open countryside except for rural needs homes and certain replacement dwellings.
40. Although WCS CP 13's Spatial Strategy for the Malmesbury Community Area (MCA) does not put a limit on the number of homes anticipated it does set out that growth in the MCA over the plan period may consist of a range of sites in accordance with WCS CP 1 and CP 2. Given the conflict with WCS CP 2 consequently neither development would accord with this aspect of WCS CP 13.
41. WCS CP 2's housing requirements for the plan period are established as minimums and it follows that those for the Malmesbury Community Area in WCS CP 13 are too and not maximum figures. The principle of exceeding the WCS requirements cannot be contrary to the development plan. I note similar approaches were taken in appeal decisions at Corsham, Semington, Broad Town, Calne and Lyneham².
42. WCS CP 2 identifies a minimum requirement for Housing Market Areas which are an important consideration as being the areas within which the majority of household moves occur. There is currently an insufficient supply of homes in the North and West Wiltshire Housing Market Area (NWWHMA) in which the sites are located and the majority of the plan period shortfall is within the NWWHMA. The main parties agree that it is most appropriate to respond to the Wiltshire -wide shortfall within the NWWHMA to accord with the WCS's spatial strategy.
43. Unlike other 'second tier' towns in the NWWHMA, Malmesbury is the only one which the WCS identifies as experiencing net in-commuting. The WCS states that reducing out-commuting is a specific issue to be addressed. The developments would provide some opportunities for those currently commuting to move closer to their places of work. There is no convincing evidence that the homes likely to be provided would not be attractive to some who currently commute into the town or those wishing to relocate freeing up other homes.
44. Whilst not a formal policy, the Council have set out its approach to restoring a five-year housing land supply in a series of briefing notes³. Amongst other actions, the most recent one includes an action to "positively consider speculative applications where there are no major policy obstacles material to the decision other than a site being outside settlement boundaries or unallocated"⁴.
45. In light of my findings above that any conflict with policies in terms of character and appearance would carry only limited weight this cannot be

¹ Appeal Decisions APP/Y3940/W/21/3278256, ...3278923 and ...3282365.

² APP/Y3940/A/14/2222641, APP/Y3940/W/16/3164255, APP/Y3940/W/20/3249284, APP/Y3940/W/21/3275477 and APP/Y3940/W/20/3253204 respectively.

³ Including Briefing Note on Housing land Supply No 20-20, June 2020, and 5 Year Housing Land Supply and Housing Delivery Test Briefing Note No 22-09, 4 April 2022.

⁴ This was expressed in the June 2020 Note as "Grant permission for speculative applications where there are no major policy obstacles (which would not be possible to defend at appeal)".

considered as a major policy obstacle. Whilst there would be conflict with WCS CP 2, CP 13 and NWLP Policy H 4, again given the circumstances this cannot reasonably be considered as a major policy obstacle. This is particularly given that the Council's approach to restoring housing supply relies on developing sites which would inevitably breach WCS CP 2's restrictive approach to building outside limits of development. To do otherwise would be a self-defeating approach. Given how well related to the existing settlement boundaries and built-up area the sites are, they would appear to be a logical fit with the Council's approach and is a consideration that weighs in favour of both schemes.

46. I can appreciate the Town Council's position having, along with the community, put considerable effort into a Neighbourhood Plan that pro-actively allocated housing sites to meet the requirements set out in the WCS. However, those allocations were in response to the situation at the time of its drafting and, read in a straightforward way, the MNP is silent by way of any approach to additional new housing outside settlement boundaries. Although I understand that these sites were considered, but not taken forward, as part of the plan-making process that has not equated to any restrictive policy in their regard in the MNP. So even if there were to be an "implicit conflict with the MNP's aspirations" as found by the Inspector in the Filands Road appeals⁵, this does not equate to a policy conflict nor a conflict with the MNP overall.
47. In any event I am not persuaded that the development of these sites would set aside the provisions of the MNP nor undermine its policies. I cannot conceive how the development of either of these sites would seriously undermine public confidence in the MNP as has been alleged, assuming that any such existing confidence in the plan is based on its actual content, provisions and policies.
48. A proposed policy 14 in the emerging Malmesbury Neighbourhood Plan Draft Revision, 2022 (MNPDR) seeks, amongst other criteria, a general presumption against housing proposals outside the settlement boundary that would not represent sustainable development. It is not clear from this wording whether this is a blanket restriction on new housing in such a location or just that which would not be considered as sustainable development. Based on my findings both proposals could be considered sustainable development particularly in terms of their location. However, even if the developments were considered contrary to this emerging policy, bearing in mind the stage of preparation of the MNPDR, and the scope of the review of the plan given its dependency in part on the Local Plan review, any conflict in this respect would only carry extremely limited weight.
49. For similar reasons, and noting the Framework's specific approach to Neighbourhood Plans at paragraphs 49 and 50, this is not a circumstance where permission should be withheld on grounds of prematurity. In any event neither development would necessarily prejudice the outcome of the plan making process given the circumstances.
50. All things considered, both sites would be suitable locations for residential development, albeit that there would be some limited conflict with the development plan.

⁵ Appeal Decisions APP/Y3940/W/21/3278256, ...3278923 and ...3282365.

Other Matters

Drainage and flooding

51. Indicative layouts show that the proposed homes on both sites would be on the upper parts of the sites set back from Park Road and as such not at risk from flooding from the river. However, the vehicular access to both developments would be from a section of Park Road which is within flood zone 3 and 2, a designation that extends into those parts of the sites closest to Park Road. The consequence of this is that there is a risk that the main vehicular accesses could flood and potential become impassable at times.
52. Neither scheme requires a general evacuation route for occupiers during flood events as their homes would be outside the high risk flood zones and there is no evidence that occupiers or their homes would be at direct risk from flooding such as to necessitate evacuation. Provision has been made for an alternative emergency access and egress route into and out of Site B via White Lion Park. This will enable emergency vehicles to reach occupiers of the proposed housing estate should occupiers require it and an alternative pedestrian, cycle, and potentially vehicular, route should Park Road be impassable. A considerably longer route linking appeal site A with Park Lane would serve a similar role.
53. The details of how both routes are designed, implemented and managed will need to be confirmed as will ensuring that during prolonged heavy rainfall or flood events surface water does not render those routes unsuitable when they are required. However, on the evidence before me, the management and construction arrangements would not be so exceptional as to require detailed solutions for each to be finalised at outline stage, and planning conditions can ensure that such matters are appropriately considered. This can include the detailed considerations of various emergency scenarios and management responsibilities.
54. Environment Agency maps show that a small part of site A and a slightly more extensive part of site B are at a low risk of surface water flooding. These areas roughly correspond to routes surface water from farther afield may flow across the sites and down onto Park Road and the valley floor. However, the development of both sites would create a system of new roads and hard surfaces that can be properly drained and the water subsequently attenuated on site. This will ensure that run off is not accelerated across the sites.
55. This will not only avoid surface water run off from, or via, the sites, making matters worse on Park Road but should improve the situation by introducing a positive drainage system in between surface water flows and adjoining properties and Park Road. Whilst I can appreciate concerns that the receiving drainage features for both sites would be in an area liable to flooding, by attenuating surface water on both sites this can only improve matters compared to the current situation where water could enter any flooded area at an unrestricted rate and speed. On site attenuation can also be designed to ensure that any water stored on and subsequently leaving the sites is of a quality to avoid pollution and harm to species and habitats.
56. I am conscious that the Buildbase depot has experienced flooding, as one may expect given its location within zone 3. However, again the attenuation of surface water from both sites would be an improvement and certainly unlikely make matters worse. Any existing landform features on Site B would inevitably

be regraded as part of development and the proposed arrangement of hard surfaces and drainage would then be likely to define any flows across the site.

57. Further work will be necessary in designing drainage, attenuation and management systems for the sites, including ensuring that the offsite arrangements for surface water from site A are robustly investigated. However, the designers will have the benefit of the comments of the various consultees as well as any surface water information provided as part of the appeals.
58. Even with the confines of topography on both sites, this means that it is unlikely that appropriate drainage schemes could not be designed to satisfy conditions and influence reserved matters particularly in respect of layout and landscaping. I am conscious that in their representations to both planning applications drainage consultees did not explicitly object to the developments. Notwithstanding his reservations, the Town Council's expert drainage witness confirmed that the sites were not incapable of development in principle in light of drainage conditions.
59. Neither development would consequently conflict with the WCS or Framework's policies which seek to avoid development in flood risk areas and ensure flood risk elsewhere is not increased.
60. Nevertheless, it remains a less than ideal situation to have the main access to new estates of homes taken from a route in a high risk flood zone which is known to flood. As safe access and egress can be secured through conditions and risk of flooding elsewhere would not be increased, this is most likely to manifest itself as an inconvenience, albeit a fairly major one for those experiencing it, rather than a hazard or danger to future residents should the adjacent part of Park Road become impassable during flood events. As such I am not convinced that this amounts to a design failure to any extent that would conflict with Framework paragraph 130.

Highways and access

61. Although the accesses to both sites would slope up from Park Road there is no substantial evidence that the resulting inclines would be so steep as to cause a hazard for users. Given the size of both sites, the increase in vehicles using Park Road both from each site and in combination would not be so great as to either significantly alter the character of the Road beyond site A nor be raised to an amount or frequency to have a harmful effect on pedestrians and cyclists using the Road. Similarly, the evidence does not suggest that there would be a markedly harmful effect in terms of any vehicles from both developments travelling through Brokenborough.
62. The access point to site B would be offset from that opposite which serves the Buildbase depot. It would appear that vehicles visiting and servicing the depot may temporarily impinge on Park Road when manoeuvring in and out. However, there is no substantive evidence that this arrangement would result in any material increase in any hazard that may occur to road users. Nor would the increase in domestic traffic on Park Road from either, or both, developments be to an extent that would unacceptably impede the use of the depot. I note that the County Highways team did not object to either development.

Community infrastructure

63. I have noted concerns about the effect the developments may have on the capacity of local schools, doctors' surgeries and other services. As detailed below, financial contributions towards education infrastructure would be secured in respect of both developments, supported by the Council's guidance and views of education consultees. I have not been directed to similar specific requests from health providers in this regard. In the absence of compelling evidence to the contrary it has not been demonstrated that either development, considered individually or in combination, would have such an effect on local health services that would make either unacceptable or require mitigation.
64. There is no evidence that new occupiers would be unlikely to become part of the local community nor that the number of residents from either development, or in combination, would undermine the quality of life in the town.

Planning Obligations

65. Completed planning agreements between the Council and each appellant would make provision for a number of obligations were each appeal to succeed. They would: ensure that both developments deliver 40% affordable housing, some of which would be accessibility adaptable in the case of Appeal A; provide open space on the sites with provision for their management along with that of sustainable drainage systems; make financial contributions towards early years, primary and secondary education, for off-site open, play and recreational space, and to waste and recycling facilities; and, in the case of Appeal A, air quality mitigation⁶.
66. The Town Council referred to an apparent failure of previous attempts to deliver infrastructure to expand school places. However, there is insufficient compelling information for me to consider that the mitigation proposed in these two cases would not be effective in that regard. The education provisions secured by the obligations would go some way at least to addressing interested parties concerns about the effect of the developments in light of the current situation within the town in terms of school places.
67. The Council have provided detailed CIL⁷ Compliance Statement/Section 106 Justification Statements (CIL Statements), which provide their justification for seeking the obligations and the relevant policies and guidance which support their view. I have considered the Planning Obligations in light of Regulation 122 of The Community Infrastructure Levy Regulations 2010 (as amended), the Framework and the Planning Practice Guidance on the use of planning obligations. On the basis of the evidence before me, I am satisfied that the obligations in respect of both developments are necessary to accord with the development plan policies set out in the CIL Statement. Overall, I am satisfied that all of those obligations are directly related to both the proposed developments, fairly and reasonably related to them and necessary to make them acceptable in planning terms. I have therefore taken them into account.

⁶ The scale of the site and development triggering that requirement on Site A.

⁷ Community Infrastructure Levy.

Planning Balance

68. The majority of provisions of those obligations would mitigate the effects of each development and ensure that they comply with policies. Consequently, most of them would weigh neutrally in the balance. However, the securing of the land to the north west of site A would as an area of open space would be a benefit of that development to all who might use it even if it is currently informally used by dog walkers.

New homes

69. The Council cannot demonstrate a five year supply of deliverable housing sites, and although there is a dispute between the parties as to the extent of the shortfall, these are circumstances that trigger the Framework's presumption in favour of sustainable development. The Council consider they currently have an authority wide level supply of 4.7 years and both appellants 4.28 years. Within the more relevant NWHMA, where the sites are located, the actual shortfall in house numbers is an undersupply of 1,216 homes according to the Council's figures⁸. Even taking their figure this cannot reasonably be considered a modest shortfall.

70. As the Council point out the shortfall has remained broadly stable over the past two or so years. On the one hand this shows that, despite recent challenges including the pandemic, contributions to supply have been maintained to an extent. On the other hand, an overall shortfall has nevertheless persisted over that time.

71. The Inspector in the Filands Road appeal decisions⁹ found that the shortfall in terms of years' supply at that time was relatively modest and did not consider the shortfall to be persistent as of January this year. The Inspector in the North Bradley¹⁰ appeal found that shortfall to be modest albeit no context was provided in that case. However, in the more recent Purton Road¹¹ decision, the Inspector found that the shortfall in the NWHMA was likely to be persistent.

72. A considerable number of homes have been provided over the plan period in response to the requirements for such a large unitary district. The Council have not been ignoring the situation and the steps taken to address it have been explored above. Nevertheless, on the basis of the evidence before me as well as having persisted for over two years (acknowledging that covered the pandemic period) and the actual amount of the shortfall, there is no indication that that the situation is likely to be reversed in the near future.

73. Whilst the Council's shortfall figure in terms of duration might appear modest at 0.3 years district wide and 0.86 years in the NWHMA, for the same reason the actual shortfall in terms of numbers of dwellings needed is far from insignificant, even on the Council's figures. Whilst each proposal would only address a modest part of the shortfall in each case, this emphasises the importance of delivering more homes to meet the need. The Filands Road decisions differed from other conclusions in appeal decisions^{12,13} where, not necessarily couched in exactly the same terms and with differing figures

⁸ Updated Statement of Common Ground on Housing Need and Supply.

⁹ Appeal Decisions APP/Y3940/W/21/3278256, ...3278923 and ...3282365.

¹⁰ APP/Y3940/W/21/3275194.

¹¹ APP/Y3940/W/21/3275053.

¹² Summary note: Weight attributed to housing matters in recent Wiltshire appeal decisions.

¹³ Appendices to Mr Wood's evidence.

between parties, Inspectors tended to give substantial or considerable weight to the provision of housing.

74. Therefore, even taking the Council's current position as a best-case scenario the shortfall would be marked, likely to persist for some time and currently the Council's approach to improving housing supply relies in part on sites such as these coming forward.
75. Consequently, and in light of the Framework's expression of support to the Government's objective of significantly boosting the supply of homes, all this leads me to consider that the delivery of homes on each site, acknowledging their different scales, would be a substantial benefit.
76. Despite the Town Council's scepticism that either site could be delivered as swiftly as the appellants contend, in part due to complexities of drainage design, the evidence does not point to compliance with suggested conditions or reserved matters as being so complex that it would be impossible to meet the swifter delivery anticipated in both cases. Consequently, this does not materially reduce the weight that the new homes in each case would carry.

Affordable housing

77. The Council consider there to be a pressing need for affordable homes in both Malmesbury and the wider Wiltshire area. Even though the percentage of affordable units in each scheme meets that required to be policy compliant, there are nevertheless social and economic benefits arising from the provision of affordable housing. Although the housing allocations within the MNP and other permissions would appear to be delivering the MNP's anticipated amount of housing, the MNP does not propose a maximum level of affordable homes. These developments would deliver additional affordable housing for which the Council and the appellants agree that there is a clear need considered against the minimum housing requirement of the WCS. Previous or committed delivery of affordable homes in the town would not reduce the weight that the affordable homes delivered by either scheme would carry.
78. The MNP seeks a mix of tenures of affordable housing of around two thirds intermediate and one third rent. However, MNP Policies 4 and 5 requires new housing to be tested or assessed against current evidence in light of demand at the time of assessment. Given that caveat, the Council's and appellants' evidence indicate that the proposed tenure and proportion would fit with current requirements. Therefore, although the planning obligations would secure a different mix to that anticipated in the MNP (40% intermediate in the form of shared ownership and 60% affordable rent), that would not reduce the benefit that such housing would provide. The delivery of affordable homes carries substantial weight in respect of each development.

Overall findings

79. The adverse impacts arising from either development would be limited, including harm arising from conflict with the development plan. Those impacts would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The Framework indicates that planning permission should be granted in these circumstances. Neither development would accord with the development plan, but the harm arising from this conflict would be limited and material considerations, including

the Framework, indicate that decisions should be taken contrary to the development plan in these particular circumstances.

Conditions

80. I have considered the main parties' conditions suggested without prejudice and other parties' views. I have made adjustments in light of the discussion at the Inquiry and guidance in the PPG in the interests of clarity and precision. Given the similarity in location, effects and mitigation requirements of the two developments the reasons for attaching many conditions will be identical. Therefore, unless otherwise stated, the numbering and reasons apply to conditions attached to both permissions.
81. Both developments have been advanced on the basis that they can be implemented swiftly and I have taken this into consideration in my balance of the issues. It is therefore necessary to require that the approval of reserved matters and commencement would be shorter than usual (conditions 2 & 3).
82. It is necessary to specify the approved drawings and documents, and specify the maximum number of homes, as this provides certainty to all (4 & 5). Given the sloping nature of both sites it is necessary for levels to be approved in the interests of character and appearance and existing and future occupiers' living conditions (6).
83. It is necessary to require that developments are carried out in accordance with landscape and ecology management measures and a plan to protect ecological interests during construction and avoid light intrusion, which in the case of site B specifically cater for a bat corridor and the effective measures for protecting and translocating protected species (7, 8 & 13, and additionally 21 & 22 in Appeal B). These requirements will ensure that the necessity for swift and bat bricks can be effectively considered and influence any reserved matters details as appropriate, rather than needing separate conditions. These conditions will in effect ensure that any effects on species and habitats raised by interested parties would be mitigated against.
84. To preserve their ecological and landscape contribution it is necessary to protect retained trees from construction (9). As explored above it is necessary to require sustainable drainage system details to be approved with the detail required reflecting that already submitted in relation to the respective schemes, along with details of floor levels and emergency access provisions (10, 11 & 12). To ensure that new homes have fit for purpose access during ongoing construction, circulation and parking needs to be in place (17). To ensure that the safety of all road users will be protected, it is necessary that detailed design of roads including visibility splays are approved and their provisions implemented (14 & 15). Adherence to construction management statements will help minimise disruption on the roads, disturbance to nearby residents and harm to the environment (16). Together these conditions should address objectors' concerns in these respects.
85. Making sure that occupiers and visitors have information to support a choice of transport modes will be ensured by requiring travel information packs (18). The environmental advantages of limiting water use will be ensured by designing water efficiency into dwellings (19). Although the details will be considered as a reserved matter, in order to ensure the character and appearance of the area is

maintained and effects of the development mitigated, it is necessary to specify the implementation requirements for landscaping (20).

Conditions not attached

86. It is not necessary to specify a maximum height or number of storeys as a parameter at outline stage. This will more appropriately be dealt with at reserved matters stage when considering scale and appearance, and that would not preclude factors such as the topography and built surroundings of the sites being taken into account.
87. Although the sites adjoin both schemes can be developed independently of one another and the acceptability of neither is dependent on the other being developed. As I have found each to be acceptable on their own merits it is not necessary to require that both sites are amalgamated in a single design, share an access nor brought forward at exactly the same time.
88. It is not necessary nor reasonable to impose a condition requiring Ultra Low Energy Vehicle infrastructure in light of the Building Regulations requirement¹⁴ that came into force in June this year requiring the installation of electric vehicle charge points in new homes.

Conclusions

89. For the above reasons both developments would be suitably located and any harm to the character and appearance of the area in landscape and visual effects would be limited, localised and largely capable of being further reduced through mitigation. Both the developments themselves and existing development would be safe from the effects of flooding subject to conditions and suitable details coming forward at reserved matters stages.
90. Whilst both developments would be contrary to the development plan, the harm of such conflict would be limited and material considerations in both appeals indicate that decisions should be taken contrary to the development plan in these cases. Appeals A and B are therefore allowed.

Geoff Underwood

INSPECTOR

¹⁴ The Building Regulations etc. (Amendment) (England) (No. 2) Regulations 2021 and Requirement S1 and regulation 44D: Electric vehicle charging provisions for new residential buildings.

APPEARANCES

FOR THE APPELLANT (Appeal A)

Mr Guy Williams of Counsel instructed by Montagu Evans
He called:

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Neil Tiley¹⁵ BSc (Hons) AssocRTPI
Edward Ledwidge BA PGDipT&CP MRTPI

Associate Director, EDP
Senior Director, Pegasus Group
Partner, Montagu Evans

FOR THE APPELLANT (Appeal B)

Mr Killian Garvey of Counsel, instructed by David Hutchinson, Pegasus Group
He called:

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Neil Tiley BSc (Hons) AssocRTPI
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Glen Godwin DipTP

Director, MHP Design
Senior Director, Pegasus Group
Consultant, PFA Consulting
Executive Director, Pegasus Group
Consultant, Hannick Homes

FOR THE LOCAL PLANNING AUTHORITY

Mr Hashi Mohamed of Counsel, instructed by Dorcas Ephraim and Natalie Bryant,
Wiltshire Council

He called:

Peter Radmall MA BPhil CMLI
Christopher Roe MSc MRTPI
Mark Wood BA (Hons) BTP MSc PGDip MRTPI MCILT
Lee Burnham BA PGDip MRTPI
Natalie Bryant Solicitor

Principal, Peter Radmall Associates
Spatial Planning Manager, Wiltshire Council
MWA Planning Development Management Area Team Leader (North), Wiltshire Council
Solicitor, Wiltshire Council

FOR MALMESBURY TOWN COUNCIL (Rule 6 party)

Councillor Kim Power
Councillor Gavin Grant
Councillor Campbell Ritchie
Dr Chris Whitlow BSc PhD

Mayor of Malmesbury
Deputy Mayor of Malmesbury,
Chair of HEALS¹⁶
Town Councillor
Director, Edenvale Young Associates

INTERESTED PERSONS

Councillor John Bartholomew

Brokenborough Parish Council

¹⁵ Called jointly by both appellants' advocates.

¹⁶ Malmesbury Help Empowerment And Local Support.

DOCUMENTS SUBMITTED AT THE INQUIRY

- ID01 List of appearances on behalf of Hannick Homes.
 - ID02 Appellant's opening submissions – Appeal A.
 - ID03 Opening submissions on behalf of Hannick Homes.
 - ID04 List of appearances and opening remarks on behalf of Wiltshire Council.
 - ID05 Opening statement on behalf of Malmesbury Town Council.
 - ID06 Councillor Bartholomew's speaking notes.
 - ID07 Letter from Richard Hague, [Buildbase] Huws Gray Property Manager.
 - ID08 Appeal decision letter, Land at Purton Road, Swindon,
Ref: APP/Y3940/W/21/3275053, 22 July 2022.
 - ID09 Minutes of the Strategic Planning Committee Meeting, 27 May 2020
 - ID10 Suggested Conditions with comments in respect of Appeal A.
 - ID11 Suggested Conditions with comments in respect of Appeal B.
 - ID12 Closing statement on behalf of Malmesbury Town Council.
 - ID13 Closing remarks on behalf of Wiltshire Council.
 - ID14 Joint Closing submissions for both Appeals A and B.
 - ID15 Appellant's Final Submissions, Part 2: Site A specific issues and planning balance.
 - ID16 Closing submissions on behalf of Hannick Homes.
- Submitted shortly after the Inquiry closed within an agreed timescale*
- ID17 Completed Planning Obligation in respect of Appeal A¹⁷.
 - ID18 Completed Planning Obligation in respect of Appeal B.

Appeal A – Schedule of Conditions

Appeal Ref: APP/Y3940/W/21/3286853, application Ref: 19/05898/OUT

- 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 takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than one year from the date of this permission.
- 3) The development hereby permitted shall take place not later than one year from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans unless otherwise varied by details submitted to and approved in writing by the local planning authority in accordance with the conditions of this planning permission:
 - Drawing No 17021(90) 200 Rev B, Site Location Plan, received 11 February 2021.
 - Drawing No 17021 (90) 201 Rev A, Land Use Parameter Plan, dated may 2019.
 - Drawing No WLMALMESBURY.2/01 Rev P1 Proposed Highway Improvements, received 11 February 2021.
- 5) Notwithstanding the details set out in the description of development, the development hereby permitted shall comprise no more than 50 dwellings.
- 6) No development hereby permitted shall commence until full details of the proposed site levels (above ordnance datum), together with the finished floor slab levels of the proposed buildings and structures (including roads and footpaths), in relation to existing ground levels have been submitted to, and approved in writing by, the local planning authority. The development shall be carried out in accordance with the approved details.
- 7) Prior to the submission of the first reserved matters application a Landscape and Ecological Management Plan (LEMP) shall be submitted to, and approved in writing by, the local planning authority. The content of the LEMP shall include, but not necessarily be limited to, the following:
 - i. Description and evaluation of features to be managed;
 - ii. Landscape and ecological trends and constraints on site that might influence management;
 - iii. Aims and objectives of management, including long term objectives to ensure biodiversity net gain and management in perpetuity on land outlined in red and blue on boundary plan 17021(90) 200 Rev B;
 - iv. Appropriate management options for achieving aims and objectives as set out in points i.-iii. above;
 - v. Prescriptions for management actions for the site outlined in red and blue on plan 17021(90) 200 Rev B;
 - vi. Preparation of a work schedule (including an annual work plan capable of being rolled forward over a 5 year period);
 - vii. Details of the body or organisation responsible for implementation of the plan;

- viii. Ongoing monitoring and remedial measures which shall include measurable targets;
- ix. Details of how the aims and objectives of the LEMP will be communicated to future occupiers of the development;
- x. Details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body/ies responsible for its delivery, and;
- xi. In the circumstances where the results from monitoring show that the conservation aims and objectives of the LEMP are not being met, details of how contingencies and/or remedial action will be identified, agreed and implemented.

The development shall thereafter be carried out in accordance with the approved LEMP. A report shall be submitted to the local planning authority annually for a period of 5 years from commencement of the work schedule detailing the works undertaken and performance against the targets set.

- 8) No development hereby permitted shall first commence (including demolition, ground works and vegetation clearance associated with the provision and improvements in Park Road) until a Construction Ecological Management Plan (CECoMP) has been submitted to, and approved in writing by, the local planning authority. The CECoMP shall include, but not necessarily be limited to, the following:
- i. Risk assessment of potentially damaging construction activities;
 - ii. Identification of 'biodiversity and tree protection zones';
 - iii. Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
 - iv. The location and timing of sensitive works to avoid harm to biodiversity features;
 - v. The times during construction when specialist ecologists need to be present on site to oversee works;
 - vi. Responsible persons and lines of communication;
 - vii. The role and responsibilities on site of an ecological clerk of works or similarly competent person(s);
 - viii. Use of protective fences, exclusion barriers and warning signs, and;
 - ix. Ongoing monitoring, including compliance checks by a competent person(s) during construction and immediately post-completion of construction works.

The approved CECoMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

- 9) No demolition, site clearance or development hereby permitted shall commence on site until an Arboricultural Method Statement (AMS) prepared by an arboricultural consultant providing comprehensive details of construction works in relation to trees has been submitted to, and approved in writing by, the local planning authority. All works shall subsequently be carried out in strict accordance with the approved AMS. In particular, the AMS must provide the following:
- i. A specification for protective fencing to trees during both demolition and construction phases for all development associated

with the development hereby approved, including the trees and hedges in Park Road, which complies with British Standard BS 5837:2012 Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) and a plan indicating the alignment of the protective fencing;

- ii. A specification for scaffolding and ground protection within tree protection zones in accordance with BS 5837:2012 (or in an equivalent British Standard if replaced);
- iii. A schedule of tree works conforming to British Standard BS 3998:2010 Tree work - Recommendations (or an equivalent British Standard if replaced);
- iv. Details of general arboricultural matters such as the area for storage of materials, concrete mixing and use of fires;
- v. Plans and particulars showing the siting of the service and piping infrastructure;
- vi. A full specification for the construction of any arboriculturally sensitive structures and sections through them, including the installation of boundary treatment works, the method of construction of the access driveway including details of any no-dig specification and extent of the areas of any driveways to be constructed using a no-dig specification;
- vii. Details of the works requiring arboricultural supervision to be carried out by an arboricultural consultant, including details of the frequency of supervisory visits and procedure for notifying the local planning authority of the findings of the supervisory visits; and
- viii. Details of all other activities, which have implications for trees on or adjacent to the site and works that form part of the development hereby permitted.

Subsequently, and until the completion of all site works, site visits should be carried out on a monthly basis by an arboricultural consultant. A report detailing the results of site supervision and any necessary remedial works undertaken or required should then be submitted to, and approved in writing by, the local planning authority on a monthly basis. Any approved remedial works shall subsequently be carried out under strict supervision by the arboricultural consultant in accordance with the approved details.

- 10) No development hereby permitted shall commence on site until a Scheme for the discharge of surface water from the site including Sustainable Drainage Systems (SuDS) has been submitted to, and approved in writing by, the local planning authority. The Scheme details shall include any required off-site capacity improvements needed to allow the site to be served, and to include a programme allowing sufficient time for the delivery of any required improvements. The drainage strategy must include the following information:
 - i. A clearly labelled drainage layout plan showing the pipe networks and any SuDS features. The plan should show any pipe node numbers referred to within drainage calculations;
 - ii. A plan showing the cross sections and design of any SuDS features and its components;
 - iii. Justification for exemption from drainage hierarchy;

- iv. CCTV survey of proposed connection point to the outfall point of that system;
- v. Hydraulic Modelling of the system, and evidence that the proposed limited connection rate would not cause surcharge or capacity issues downstream;
- vi. A schedule of works for repairs to downstream system to ensure capacity, and/or upsizing of existing system to accept flows if surcharging occurs in model (and evidence that the upsizing will cure the issue);
- vii. Evidence that the surface water drainage system is designed in accordance with national and local policy and guidance, specifically CIRIA C753 (The SuDS Manual), the Non-statutory Technical Standards for SuDS and Wiltshire Council's Surface Water Soakaway Guidance;
- viii. Pre and post development surface water discharge rates;
- ix. Measures to prevent pollution of the receiving groundwater and/or surface waters;
- x. Details of how any surface water from outside the site and likely to flow across it will be taken into account;
- xi. Calculations and drawings for the drainage system design showing designated holding areas and conveyance routes based on no flooding on site for a 1 in 30 year rainfall event;
- xii. Calculations and drawings for the drainage system design showing designated holding areas and conveyance routes based on no flooding on site for a 1 in 100 year plus climate change rainfall event in respect to a building (including basement) or utility plant susceptible to water within the development;
- xiii. Drawings showing conveyance routes for flows exceeding the 1 in 100 year plus climate change rainfall event that minimise the risk to people and property;
- xiv. The proposed ownership details of the drainage infrastructure;
- xv. A Management and Maintenance Plan specifying the maintenance programme and ongoing maintenance responsibilities of the drainage infrastructure and any other arrangements to secure the operation of the scheme throughout its lifetime;
- xvi. Detailed landscaping proposals of the Scheme;
- xvii. Any third party agreements for discharge to their system (temporary and permanent);
- xviii. The construction phasing plan, and;
- xix. Geotechnical factual and interpretive reports, including infiltration tests in accordance with British Research Establishment Digest 365 – Soakaway Design.

The development shall be carried out strictly in accordance with the approved Scheme. No dwelling hereby permitted shall be occupied until the approved SuDS and the approved Surface Water Drainage Strategy to serve that dwelling has been completed in accordance with the approved details. The SuDS shall thereafter be managed and maintained in accordance with the approved details.

- 11) No development hereby permitted shall commence until a Scheme to ensure the following has been submitted to, and approved in writing by, the local planning authority.

- i. There is no raising of ground levels within the current or future flood zones 2 and 3, or that any raising is suitably compensated for a level for level basis, and;
- ii. Finished floor levels are set no lower than 600mm above the 1 in 100 year design flood level, plus an appropriate allowance for climate change.

The development shall thereafter be carried out in accordance with the approved Scheme which shall be fully implemented and subsequently maintained in accordance with the Scheme's timing and phasing arrangements

- 12) No development hereby permitted shall commence on site until an Flooding Emergency Access and Egress Management Plan (the Management Plan), taking account of guidance in the Planning Practice Guidance on how to ensure safe access and egress to and from the development and including details of any gates or similar between the development and the access/egress point on Park Lane and the arrangements for their access by the emergency services, has been submitted to, and approved in writing by, the local planning authority. The access and egress provisions from the approved Management Plan shall be implemented prior to the first occupation of any dwelling on the site and emergency access and egress shall be maintained in accordance with the approved Management Plan thereafter.
- 13) Prior to the installation of any lighting a Lighting Design Strategy for Biodiversity shall be submitted to, and approved in writing by, the local planning authority. The Strategy will cover both construction and operation phase and shall:
- i. Identify those features/routes that are important to light sensitive/nocturnal species such as bats, badgers and hedgehog and to be retained within dark corridors, and;
 - ii. Show full details of proposed construction and operational lighting, including lux plots to show there is no lighting impact to the features/routes identified. Lux plots should be presented on a scaled site drawing and the light levels must be shown at ground level and at 2m above the ground (horseshoe bats fly typically within this range). The light levels should also be shown as "from new", not as normally calculated levels after some months or years of use.

All external lighting shall be installed in accordance with the specifications and locations set out in the approved Strategy, and these shall be maintained thereafter in accordance with the Strategy. Under no circumstances should any lighting not set out in the approved Strategy be installed without the prior written consent of the local planning authority.

- 14) No development hereby permitted shall commence until full engineering details of the highway improvement works to Park Road and the realignment of the carriageway into the development site in accordance with approved drawing WLMALMESBURY.2/01 Rev P1, have been submitted to, and approved in writing by, the local planning authority. The development shall then be carried out in accordance with the approved details. No dwelling hereby permitted shall be first occupied, until the visibility splays shown on the approved plans at the junction of

Park Road with the site access road have been provided with no obstruction to visibility at or above a height of 900mm above the nearside carriageway level. The visibility splays shall be maintained free of obstruction thereafter.

- 15) No development hereby permitted shall commence until details of the internal estate roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car parking and street furniture, including the timetable for provision of such works, have been submitted to, and approved in writing by, the local planning authority. The works shall be implemented in accordance with the approved details and timetable.
- 16) No development hereby permitted shall commence (including demolition, site clearance, ground works and vegetation clearance associated with provision and improvements in Park Road) until a Construction Management Statement, has been submitted to, and approved in writing by, the local planning authority. The Statement shall include details of the following:
 - i. Inclusion of and reference to a site plan;
 - ii. The parking of vehicles of site operatives and visitors;
 - iii. Loading and unloading of plant and materials;
 - iv. Storage of plant and materials used in constructing the development;
 - v. The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - vi. Wheel washing facilities;
 - vii. Measures to control the emission of dust and dirt during construction;
 - viii. A scheme for recycling/disposing of waste resulting from demolition and construction works;
 - ix. Measures for the protection of the natural environment;
 - x. Hours of construction, including deliveries;
 - xi. Pre-condition photo survey;
 - xii. Routing plan;
 - xiii. Traffic Management Plan (including signage drawing(s));
 - xiv. Estimated Number (daily/weekly) and size of delivery vehicles;
 - xv. Estimated Number of contractor/staff vehicle movements;
 - xvi. Details of temporary/permanent Traffic Regulation Orders; and;
 - xvii. Phases plan.

The development shall not be carried out otherwise than in accordance with the approved Statement without the prior written approval of the local planning authority. The approved Statement shall be adhered to throughout the construction period.

- 17) No individual dwelling hereby permitted shall be first occupied until the access to base course level, turning area and parking spaces serving that dwelling have been completed in accordance with the details shown on the approved plans. The areas shall be maintained for those purposes at all times thereafter.

- 18) No development hereby permitted shall commence until a scheme providing for a Residential Travel Information Pack has been submitted to, and approved in writing by, the local planning authority. No dwelling shall be first occupied until the approved scheme has been implemented.
- 19) No dwelling hereby permitted shall be occupied until the Building Regulations Optional requirement of a maximum water use of 110 litres per person per day specified in Regulation 36(2)(b) to the Building Regulations 2010 (as amended) (or any Regulations revoking and re-enacting those Regulations or requirements with or without modification), has been complied with and written confirmation of such provided to the local planning authority.
- 20) All soft landscaping comprised in the approved details of landscaping, as required by the reserved matters applications and details required by conditions attached to this decision notice, shall be carried out in the first planting and seeding season within or following the first occupation of the dwellings hereby permitted or the completion of the development, whichever is the sooner.

All hard landscaping comprised in the approved details of landscaping, as required by the reserved matters applications and details required by conditions attached to this decision notice, shall be carried out prior to the first occupation of the dwellings hereby permitted they serve, or the completion of the development, whichever is the sooner.

All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority.

*** End of Appeal A Schedule of Conditions ***

Appeal B – Schedule of Conditions

Appeal Ref: APP/Y3940/W/21/3289757, application Ref: 20/08341/OUT

- 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 takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than one year from the date of this permission.
- 3) The development hereby permitted shall take place not later than one year from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans unless otherwise varied by details submitted to and approved in writing by the local planning authority in accordance with the conditions of this planning permission:
 - Drawing No 2718 001, Site Location Plan, dated August 2020.
 - Drawing No H656/02 Rev F, Site Access Arrangements, dated 19 February 2021.
 - Drawing No H656/03 Rev E, Emergency/Pedestrian and Cycle Access Arrangements, dated 19 February 2021.
- 5) Notwithstanding the details set out in the description of development, the development hereby permitted shall comprise of no more than 26 dwellings.
- 6) No development hereby permitted shall commence until full details of the proposed site levels (above ordnance datum), together with the finished floor slab levels of the proposed buildings and structures (including roads and footpaths), in relation to existing ground levels have been submitted to, and approved in writing by, the local planning authority. The development shall be carried out in accordance with the approved details.
- 7) Prior to the submission of the first reserved matters application a Landscape and Ecological Management Plan (LEMP) shall be submitted to, and approved in writing by, the local planning authority. The content of the LEMP shall include, but not necessarily be limited to, the following:
 - i. Description and evaluation of features to be managed;
 - ii. Landscape and ecological trends and constraints on site that might influence management;
 - iii. Aims and objectives of management, including long term objectives to ensure biodiversity net gain and management in perpetuity on the development site;
 - iv. Appropriate management options for achieving aims and objectives as set out in points i.-iii. above;
 - v. Prescriptions for management actions on the development site;
 - vi. Preparation of a work schedule (including an annual work plan capable of being rolled forward over a 5 year period;
 - vii. Details of the body or organisation responsible for implementation of the plan;
 - viii. Ongoing monitoring and remedial measures which shall include measurable targets;

- ix. Details of how the aims and objectives of the LEMP will be communicated to future occupiers of the development.
- x. Details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body/ies responsible for its delivery, and;
- xi. In the circumstances where the results from monitoring show that the conservation aims and objectives of the LEMP are not being met, details of how contingencies and/or remedial action will be identified, agreed and implemented.

The development shall thereafter be carried out in accordance with the approved LEMP. A report shall be submitted to the local planning authority annually for a period of 5 years from commencement of the work schedule detailing the works undertaken and performance against the targets set.

- 8) No development hereby permitted shall commence (including demolition, ground works and vegetation clearance associated with the provision and improvements in Park Road) until a Construction Ecological Management Plan (CECoMP) has been submitted to, and approved in writing by, the local planning authority. The CECoMP shall include, but not necessarily be limited to, the following:

- i. Risk assessment of potentially damaging construction activities;
- ii. Identification of 'biodiversity and tree protection zones';
- iii. Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
- iv. The location and timing of sensitive works to avoid harm to biodiversity features;
- v. The times during construction when specialist ecologists need to be present on site to oversee works;
- vi. Responsible persons and lines of communication;
- vii. The role and responsibilities on site of an ecological clerk of works or similarly competent person(s);
- viii. Use of protective fences, exclusion barriers and warning signs, and;
- ix. Ongoing monitoring, including compliance checks by a competent person(s) during construction and immediately post-completion of construction works.

The approved CECoMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

- 9) No demolition, site clearance or development hereby permitted shall commence on site until an Arboricultural Method Statement (AMS) prepared by an arboricultural consultant providing comprehensive details of construction works in relation to trees has been submitted to, and approved in writing by, the local planning authority. All works shall subsequently be carried out in strict accordance with the approved AMS. In particular, the AMS must provide the following:

- i. A specification for protective fencing to trees during both demolition and construction phases for all development associated with the development hereby approved, including the trees and hedges in Park Road, which complies with British Standard

- BS 5837:2012 Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) and a plan indicating the alignment of the protective fencing;
- ii. A specification for scaffolding and ground protection within tree protection zones in accordance with BS 5837:2012 (or in an equivalent British Standard if replaced);
 - iii. A schedule of tree works conforming to British Standard BS 3998:2010 Tree work - Recommendations (or an equivalent British Standard if replaced);
 - iv. Details of general arboricultural matters such as the area for storage of materials, concrete mixing and use of fires;
 - v. Plans and particulars showing the siting of the service and piping infrastructure;
 - vi. A full specification for the construction of any arboriculturally sensitive structures and sections through them, including the installation of boundary treatment works, the method of construction of the access driveway including details of any no-dig specification and extent of the areas of any driveways to be constructed using a no-dig specification;
 - vii. Details of the works requiring arboricultural supervision to be carried out by an arboricultural consultant, including details of the frequency of supervisory visits and procedure for notifying the local planning authority of the findings of the supervisory visits; and
 - viii. Details of all other activities, which have implications for trees on or adjacent to the site and works that form part of the development hereby permitted.

Subsequently, and until the completion of all site works, site visits should be carried out on a monthly basis by an arboricultural consultant. A report detailing the results of site supervision and any necessary remedial works undertaken or required should then be submitted to, and approved in writing by, the local planning authority on a monthly basis. Any approved remedial works shall subsequently be carried out under strict supervision by the arboricultural consultant in accordance with the approved details.

- 10) No development hereby permitted shall commence on site until a Scheme for the discharge of surface water from the site, including Sustainable Drainage Systems (SuDS) and all third party approvals, based on the approved Flood Risk Assessment (Land South West of Park Road. Malmesbury, Wiltshire, Flood Risk Assessment – Hannick Homes, September 2020, prepared by PFA Consulting) and the Surface Water Drainage Strategy contained within it, has been submitted to, and approved in writing by, the local planning authority.

The Scheme details shall include any required off-site capacity improvements needed to allow the site to be served, and to include a programme allowing sufficient time for the delivery of any required improvements. The Scheme shall include details of how any surface water from outside the site and likely to flow across it will be taken into account. The Scheme shall ensure that there is no surface water drainage from the site, directly or indirectly, to the public foul sewer.

The development shall be carried out strictly in accordance with the approved Scheme. No dwelling hereby permitted shall be occupied until the approved SuDS and the approved Surface Water Drainage Strategy to serve that dwelling has been completed in accordance with the approved details. The SuDS shall thereafter be managed and maintained thereafter in accordance with the approved details.

- 11) No development hereby permitted shall commence until a Scheme to ensure the following has been submitted to, and approved in writing by, the local planning authority:
- i. There is no raising of ground levels within the current or future flood zones 2 and 3, or that any raising is suitably compensated for a level for level basis, and;
 - ii. Finished floor levels are set no lower than 600mm above the 1 in 100 year design flood level, plus and appropriate allowance for climate change.

The development shall thereafter be carried out in accordance with the approved Scheme which shall be fully implemented and subsequently maintained in accordance with the Scheme's timing and phasing arrangements

- 12) No development shall commence on site until a Flooding Emergency Access and Egress Management Plan (the Management Plan), taking account of guidance in the Planning Practice Guidance on how to ensure safe access and egress to and from the development and including details of the lockable bollards as shown on approved drawing No H656/03 Rev E and the arrangements for their access by the emergency services, has been submitted to, and approved in writing by, the local planning authority. The access and egress provisions from the approved Management Plan shall be implemented prior to the first occupation of any dwelling on the site and emergency access and egress shall be maintained in accordance with the approved Management Plan thereafter.
- 13) Prior to the installation of any lighting a Lighting Design Strategy for Biodiversity shall be submitted to, and approved in writing by, the local planning authority. The Strategy will cover both construction and operation phase and shall:
- i. Identify those features/routes that are important to light sensitive/nocturnal species such as bats, badgers and hedgehogs and to be retained within dark corridors, and;
 - ii. Show full details of proposed construction and operational lighting, including lux plots to show there is no lighting impact to the features/routes identified. Lux plots should be presented on a scaled site drawing and the light levels must be shown at ground level and at 2m above the ground (horseshoe bats fly typically within this range). The light levels should also be shown as "from new", not as normally calculated levels after some months or years of use.

All external lighting shall be installed in accordance with the specifications and locations set out in the approved Strategy, and these shall be maintained thereafter in accordance with the Strategy. Under no circumstances should any lighting not set out in the approved Strategy be installed without the prior written consent of the local planning authority.

- 14) No development hereby permitted shall commence until full engineering details of the highway improvement works to Park Road and the realignment of the carriageway into the development site in accordance with approved drawing H656/02 Rev.F, have been submitted to, and approved in writing by, the local planning authority. The development shall then be carried out in accordance with the approved details. No dwelling hereby permitted shall be first occupied, until the visibility splays shown on the approved plans at the junction of Park Road with the site access road have been provided with no obstruction to visibility at or above a height of 900mm above the nearside carriageway level. The visibility splays shall be maintained free of obstruction thereafter.
- 15) No development hereby permitted shall commence until details of the internal estate roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car parking and street furniture, including the timetable for provision of such works, have been submitted to, and approved in writing by, the local planning authority. The works shall be implemented in accordance with the approved details and timetable.
- 16) No development hereby permitted shall commence (including demolition, site clearance, ground works and vegetation clearance associated with provision and improvements in Park Road) until a Construction Management Statement, has been submitted to, and approved in writing by, the local planning authority. The Statement shall include details of the following:
 - i. Inclusion of and reference to a site plan;
 - ii. The parking of vehicles of site operatives and visitors;
 - iii. Loading and unloading of plant and materials;
 - iv. storage of plant and materials used in constructing the development;
 - v. The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - vi. Wheel washing facilities;
 - vii. Measures to control the emission of dust and dirt during construction;
 - viii. A scheme for recycling/disposing of waste resulting from demolition and construction works;
 - ix. Measures for the protection of the natural environment;
 - x. Hours of construction, including deliveries;
 - xi. Pre-condition photo survey;
 - xii. Routing plan;
 - xiii. Traffic Management Plan (including signage drawing(s));
 - xiv. Estimated Number (daily/weekly) and size of delivery vehicles;
 - xv. Estimated Number of contractor/staff vehicle movements;
 - xvi. Details of temporary/permanent Traffic Regulation Orders; and;
 - xvii. Phases plan.

The development shall not be carried out otherwise than in accordance with the approved construction method statement without the prior

written approval of the local planning authority. The approved Statement shall be adhered to throughout the construction period.

- 17) No individual dwelling hereby permitted shall be first occupied until the access to base course level, turning area and parking spaces serving that dwelling have been completed in accordance with the details shown on the approved plans. The areas shall be maintained for those purposes at all times thereafter.
- 18) No development hereby permitted shall commence until a scheme proving for a Residential Travel Information Pack has been submitted to, and approved in writing by, the local planning authority. No dwelling shall be first occupied until the approved scheme has been implemented.
- 19) No dwelling hereby permitted shall be occupied until the Building Regulations Optional requirement of a maximum water use of 110 litres per person per day specified in Regulation 36(2)(b) to the Building Regulations 2010 (as amended) (or any Regulations revoking and re-enacting those Regulations or requirements with or without modification), has been complied with and written confirmation of such provided to the local planning authority.
- 20) All soft landscaping comprised in the approved details of landscaping, as required by the reserved matters applications and details required by conditions attached to this decision notice shall be carried out in the first planting and seeding season within or following the first occupation of the dwellings hereby permitted or the completion of the development, whichever is the sooner.

All hard landscaping comprised in the approved details of landscaping, as required by the reserved matters applications and details required by conditions attached to this decision notice shall be carried out prior to the first occupation of the dwellings hereby permitted they serve, or the completion of the development, whichever is the sooner.

All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority.

- 21) Notwithstanding the submitted Ecological Parameters Plan (Ecology Solutions, Rev A, September 2021), no development hereby permitted shall commence until a Revised Ecological Parameters Plan has been submitted to, and approved in writing by, the local planning authority. The Revised Ecological Parameters Plan shall show a buffer, forming a dark corridor for bats adjacent to the north-west boundary of the site.

This dark corridor shall be a minimum of 3-5m wide, measured from the edge boundary line of the existing hedge on/adjacent to this boundary (as illustrated on the submitted Ecological Parameters Plan). This minimum will be required to allow suitable access for maintenance and to protect tree roots as well as to protect foraging and commuting bats including lesser horseshoe and Barbastelle species.

The dark corridor shall be provided in accordance with the approved Revised Ecological Parameters Plan and shall remain at all times

thereafter outside of the approved housing development area, including any part of any house garden. Other than on the boundary line with the adjacent housing development, no fences or other means of enclosure shall be erected in the dark corridor, and no lighting shall be installed in the dark corridor. The dark corridor shall be retained as such in perpetuity thereafter.

- 22) No development hereby permitted shall commence until a strategy for the translocation of reptiles from the application site has been submitted to, and approved in writing by, the local planning authority. The strategy shall provide:
- i. details of a suitable receptor site for the reptiles;
 - ii. details of the baseline survey that informed the suitability of the receptor site;
 - iii. details of any enhancements that will be required in advance of the translocation, informed by the baseline survey;
 - iv. the a timescale for any enhancements to be carried out;
 - v. a detailed of the methodology by which the reptiles will be translocated to the receptor site, and;
 - vi. a detailed timetable of the translocation.

The provision of the translocation site and the translocation of the reptiles shall take place entirely in accordance with the approved strategy. No development (including any demolition, ground works or vegetation clearance) shall commence until the strategy has been complied with.

*** End of Appeal B Schedule of Conditions ***