



Appeal Decision

Site visit made on 27 November 2023

by Neil Pope BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 December 2023

Appeal Ref: APP/R3325/W/22/3313410

Land South Of Tintinhull Road, Chilthorne Domer, Yeovil, Somerset, BA22 8RA.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Land Allocation Ltd against South Somerset District Council.
 - The application ref. 20/02047/OUT, is dated 7 July 2020.
 - The development proposed is residential development for up to 73 dwellings, including access, with all other matters reserved.
-

Decision

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

Preliminary Matters

2. Other than the means of access, all other matters of detail have been reserved for subsequent consideration. I have treated the plans showing a proposed layout and landscaping as being illustrative only.
3. On 1 April 2023, South Somerset District Council was replaced by the new unitary Somerset County Council (the LPA).
4. The LPA has informed me that had it determined the application it would have refused outline planning permission for the following reasons:
 1. *The size and scale of the proposed development (of up to 73 no. dwellings) would not be commensurate with the scale and character of the existing rural settlement of Chilthorne Domer, contrary to policy SS2 of the South Somerset Local Plan.*
 2. *The proposed development of up to 73 residential properties would cause significant harm to the character of the area and would be at odds with the development pattern of the existing settlement of Chilthorne Domer. There would be physical harm through the loss of two significant lengths of existing hedgerow on the northern boundary of the site where the new vehicular access is proposed, and on the boundary between the two fields. The proposals for residential development would have a harmful visual impact, primarily to those areas and viewpoints closest to the proposed development, including neighbouring residential properties. The proposals would fail to preserve, enhance or promote local distinctiveness, and preserve or enhance the character and appearance of the district, contrary to policies SS2, EQ2, EQ5 of the South Somerset Local Plan and paragraphs 124, 130 and 174 b) of the National Planning Policy Framework.*

3. *Insufficient information has been submitted to assess whether the proposal would result in an unacceptable impact upon the Favourable Conservation Status of protected species and therefore whether the proposal is compliant with the Conservation of Habitats and Species Regulations 2017 (as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019). Furthermore, the development conflicts with Policy EQ4 Biodiversity of the Somerset Council (Area South Council Local Plan & Part 15 of the National Planning Policy Framework 2021.*
4. *Insufficient information has been submitted to satisfy the LPA that the impacts on the Somerset Levels and Moors Ramsar from the development have been sufficiently taken into account and, as such, satisfactory mitigation measures and evidence of their intended implementation have not been provided, in line with the Conservation of Habitats and Species Regulations 2017 and The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 and in accordance with the Somerset Council Area South Local Plan - Policy EQ4 Biodiversity. Therefore, as evidence (in this case purchase of a sufficient number of credits, or a comprehensive wetland design) has not been forthcoming, SES can only derive to the conclusions that the proposal would result in an unacceptable increase in phosphate levels within the foul water discharge affecting the current unfavourable status of the Somerset Levels and Moors Ramsar site and as such fails Regulation 63 of the Habitat Regulations 2017. Furthermore, the development therefore conflicts with Somerset Councils (sic) Policy EQ4 as well as Part 15 of the National Planning Policy Framework 2021.*
5. The appeal site lies within the settings of various designated heritage assets¹. These include the grade I listed Montecute House (approximately 2.75km from the appeal site), the grade II listed Tower on St. Michael's Hill (approx. 3.5km south west of the appeal site), the grade II listed parish boundary stone adjacent to the north western corner of the appeal site, the grade II listed house known as 'Glyncote' (approx. 200 metres to the north west), the grade II listed Lower Vagg Farmhouse (approx. 300m to the north east), the grade I Registered Park and Garden at Montacute House (the nearest part is approx. 2km from the site) and Montacute Castle Scheduled Monument (SM) approximately 3.5km south west.
6. As part of the appeal, the appellant has submitted a Unilateral Undertaking (UU) under the provisions of section 106 of the Town and Country Planning Act 1990 (as amended). Amongst other things, the UU includes provision for: 35% of the proposed dwellings to be made affordable; a local area of children's play (LAP) and a local equipped area of children's play (LEAP); financial contributions towards the costs of off-site open space provision and playing pitches; a Travel Plan and; a commitment to enter an EnTrade scheme or, provide alternative off-site wetland mitigation. These matters would need to be considered having regard, amongst other things, to the provisions of paragraphs 55 and 57 of the National Planning Policy Framework (the Framework) before any planning permission could be granted.

¹ The provisions of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 are engaged. However, the site lies beyond the settings of the Thorne Coffin Conservation Area, as shown within the Thorne Conservation Area Appraisal 2010, and the various grade II listed buildings within the grounds of Montacute House

7. The LPA accepts that it is unable to demonstrate a five year housing land supply².
8. Although the postal address for the appeal site is Chilthorne Dormer, I understand that the site lies within Brympton Parish.

Main Issues

9. The four main issues are: firstly, the weight to be given to the benefits of the proposed development; secondly, the likely effect upon the character and appearance of the area, including the settlement of Chilthorne Dormer; thirdly, the effect upon the settings of the above noted designated heritage assets and; fourthly, the effect upon nature conservation interests, including the Somerset Levels and Moors Ramsar Site and Special Protection Area³ (SPA).

Reasons

Planning Policy

10. The development plan includes the South Somerset Local Plan 2006-2023 (LP). The most important policies to the determination of this appeal are: SD1 (sustainable development), SS1 (settlement strategy⁴), SS2 (development in rural settlements), SS5 (delivering new housing growth), EQ2 (general development), EQ3 (historic environment), EQ4 (biodiversity) and EQ5 (green infrastructure). Given the housing land supply position and the provisions of the Framework, I attach only limited weight to LP policies SS1, SS2 and SS5.
11. In determining this appeal, I have also had regard to the Written Ministerial Statement dated 20 July 2022, 'Statement on Improving Water Quality and Tackling Nutrient Pollution' by the Secretary of State for Environment, Food and Rural Affairs.

First Main Issue - Weight to be given to the Benefits of the Proposals

12. The proposed development would help to address the shortfall⁵ in supply of housing within Somerset. It would accord with the provisions of LP policy HG5 by providing a mix of housing and would increase the choice of residential accommodation within the local area. In addition, 35% of the proposed dwellings would be affordable, as required by LP policy HG3. This would assist in meeting the housing needs of the local community. The proposal would accord with the thrust of the Government's objective for significantly boosting the supply of housing. I afford these benefits considerable weight.
13. Occupiers of the proposed dwellings would be likely to support local businesses, services and facilities and, in so doing, help to maintain the vitality of the local area. There would also be economic benefits during the construction phase and an increase in Council Tax revenue when the new homes are occupied. I afford these benefits moderate weight.
14. I note from the appellant's Flood Risk Assessment (FRA) that the proposed Sustainable Drainage System, which would form part of the reserved matters,

² I note from the appellant's Statement that the latest figures indicate only about 4.55 years supply.

³ This extends to about 6,388 ha and is situated approximately 7.6km north west of the appeal site at its closest point. The SPA is underpinned by numerous Sites of Special Scientific Interest (SSSI).

⁴ Chilthorne Dormer is not a named village under this policy and is accordingly categorised as a Rural Settlement.

⁵ This in itself adds much weight to the appellant's argument for granting permission.

would have the potential to result in some very modest land drainage (flood mitigation) betterment. I afford this benefit some limited weight.

Second Main Issue - Character and Appearance

15. This 3.5 ha appeal site forms part of the countryside to the south of the village of Chilthorne Dormer and to the north of the settlement of Thorne Coffin. It comprises two fields with boundary hedgerows⁶ and some trees. A public footpath runs along much of the western boundary of the site. Tintinhull Road and the junction with Main Street lie immediately to the north of the site, with the Carpenter's Arms public house to the north east⁷. A narrow country lane runs along the eastern and southern eastern boundaries of the site. The northern edge of Yeovil is approximately 1km to the south. The Monarch's Way and Leland Trail are approximately 2km to the west.
16. The appeal site lies within the 'northern escarpments dip slopes and foothills central' landscape zone/type, as defined within the 'The Landscape of South Somerset – A Landscape Assessment of the Scenery of south Somerset'⁸ (1993). As I noted during my visit, the site lies within a landscape that, in the main, comprises rolling, mixed farmland with hedgerows (including some hedgerow trees) and scattered farms. I note from the appellant's Landscape and Visual Appraisal that this is a landscape of 'medium' sensitivity.
17. Notwithstanding the close proximity to the southern edge of Chilthorne Dormer, the appeal site, lying on the opposite side of Tintinhull Road⁹, forms an integral part of the undulating rural landscape in this part of south Somerset. As I saw during my visit, the unspoilt open qualities of the appeal site and its hedgerows and hedgerow trees, which contribute to the local pattern of fields, form part of the distinctive qualities of the local environment. These make a very pleasing and important contribution to the rural setting of the village and to the character and appearance of the local area.
18. When walking along the footway between Main Street and the Carpenter's Arms, the appeal site provides attractive views across the countryside to the minor escarpment to the east and to the countryside to the south and west. I agree with the appellant that motor traffic along Tintinhull Road is a detracting element of these views. However, the traffic is intermittent and some of those using this section of highway, such as walkers and cyclists, would be people experiencing and deriving enjoyment from the amenity of the countryside. These people can be considered as 'high sensitivity' receptors.
19. Such receptors would also be making use of the well-worn public footpath along much of the western edge of the site, as well as the users of the narrow lane to the east and those walking the more distant footpaths that bisect the landscape to the west¹⁰ and south west. As I found during my visit, the footpath through the site affords a pleasing experience of this area of gently undulating Somerset countryside, including a vista south west of Montacute House and St. Michael's Tower. From the west and south west, the site forms

⁶ On behalf of the appellant, five sections of these hedgerows, including much of the hedgerow growing along the boundary with Tintinhull Road, have been identified as 'important' under the Hedgerows Regulations 1997.

⁷ I note that outline permission exists for 28 dwellings on land to the west of Vagg Lane (ref. 17/02659/OUT) with a reserved matters application (ref. 21/03414/REM) yet to be determined.

⁸ Published by the former South Somerset District Council, this document carries limited weight.

⁹ This road very clearly demarcates the southern limit of Chilthorne Dormer, with the hedgerow along the northern boundary of the appeal site and the land beyond forming open countryside.

¹⁰ From here, there are glimpsed views of the appeal site.

part of a wide expanse of attractive countryside to the south of Chilthorne Dormer, this also includes the backdrop of the minor escarpment to the east of the settlement. When viewed from the narrow lane to the east and south east, there are limited, but nevertheless, attractive countryside views across the site.

20. The proposed dwellings, access, estate roads, other hard surfaced areas and external lighting would markedly change the character of the appeal site. Sections of hedgerow would be removed¹¹, eroding the local (distinctive) pattern of fields, and the unspoilt open qualities of the site would be almost entirely lost. The agricultural use and rural character of the site would be supplanted by a sizeable residential estate with its associated paraphernalia and increased activity and vehicular movements. The development would considerably extend the settlement limits of Chilthorne Dormer into the countryside to the south. Notwithstanding new planting, the proposal would be a very discordant addition to this landscape of rolling, mixed farmland with hedgerows and scattered farms. It would be an uncomfortable fit.
21. The development would be separated from Yeovil and Thorne Coffin by sizeable tracts of countryside and would not result in any settlement coalescence. However, in 'leapfrogging' Tintinhull Road, the proposal would considerably detract from the landscape setting of Chilthorne Dormer. The impact that I have identified above would result in an unwelcome finger of development protruding into this part of the countryside and a harmful extension of the settlement limits. I disagree with the appellant that the proposal would result in only 'minor to moderate adverse' effects on the landscape character of the area. The effects would be at the lower end of 'high adverse'.
22. If permitted, the development would be readily visible from Tintinhull Road, the footpath along the western boundary of the site and the narrow lane to the east. In all probability, the upper parts of some of the new buildings and the effects of external lighting would also be apparent in some distant views from the west and south west. Seeing a development does not in itself amount to a harmful impact. However, in this instance, the impact would be considerable.
23. Notwithstanding the likely setting back of new buildings from the highway and the new planting, when seen from Tintinhull Road the proposed dwellings would block some views of the minor escarpment to the east of the village and interrupt some other views of the countryside to the south and west. Instead of looking across attractive open countryside, these views would be dominated by buildings and a sizeable new access road and associated highway works. In future, walking/travelling along this section of Tintinhull Road would be akin to passing through a suburban corridor with buildings on either side. The proposal would seriously detract from the appearance of the area.
24. From the footpath within the site, the experience would change from that of walking through unspoilt open countryside with open views of the minor escarpment to the east, to that of a narrow channel at the side of a housing estate. This would considerably detract from the amenity of this popular public right of way. From the east and south east, the new buildings would be prominent and would obscure open views across the site. There would be a high magnitude of change and for walkers and/or cyclists experiencing this part of the countryside the impact would be 'major adverse'.

¹¹ This includes the hedgerow growing within the centre of the site and part of the hedgerow growing along the northern boundary.

25. In some more distant views¹² from the west and south west, the ensuing encroachment of the extended settlement limits of Chilthorne Dormer into the surrounding countryside would be apparent. From these locations, the development would contrast awkwardly with the appearance of the rural landscape and detract from the quality of views. It would appear as one element of these wider views across the landscape. I consider that the magnitude of change from these areas would be 'medium' and the effect upon the quality of views would be 'moderate adverse'. In views between 2-4km from the site, the magnitude of change would be 'low' and the effect 'minor'.
26. I conclude on the second main issue that the proposal would erode the distinctive qualities of the local environment and seriously harm the character and appearance of the area, including the setting of Chilthorne Dormer. In so doing, there would be conflict with the provisions of LP policies SS2, EQ2 and EQ5. This harm weighs very heavily against granting planning permission.

Third Main Issue - Settings of Designated Heritage Assets

Montecute House

27. The heritage interest (significance) of this grade I listed circa 1590-1601 country house (remodelled in the late 18th century) is derived primarily from its Elizabethan Renaissance architecture and design¹³, as well as its historic qualities as a symbol of power and wealth¹⁴ within Somerset.
28. This very important designated heritage asset has an extensive setting. This comprises the surrounding garden, parkland and countryside. These elements reflect the grandeur of this house and the historical influence exerted by this building (and its previous occupants) within the local landscape. As noted within a 2009 report¹⁵ prepared on behalf of The National Trust, some views across the landscape, as well as some views from Montacute house, are also important in understanding the heritage interest of this grade I listed building.
29. Over time, there have been many changes within the setting of Montacute House. The appeal site, which forms a very small element of the surroundings in which this heritage asset is experienced, is an integral part of the historic and attractive (rural) landscape setting of this country house. The unspoilt open qualities of the site make a very small, but nevertheless, positive contribution to the ability to appreciate the significance of Montacute House.
30. During my site visit, I was unable to identify the appeal site from the Long Gallery within Montacute House or from its surrounding garden. I note from the supplementary information provided by the appellant's heritage consultant that due to intervening trees and hedgerows the site cannot be seen from these locations. I also viewed Montacute House from some of the major axial views identified within the Study that was produced on behalf of the National Trust. There is no cogent evidence¹⁶ to demonstrate that the proposed development would affect the significance of Montacute House when viewed

¹² Those within the appellant's 2km Study Area.

¹³ This includes its 'H' shaped plan, the symmetry of its principal (east) façade with towering Ham stone ashlar walls of glass, Dutch style gables, Welsh slate roof with open balustrated parapets, as well as internal features such as the flamboyant Long Gallery.

¹⁴ Associated with the Phelips family, but now owned by The National Trust.

¹⁵ 'Montacute Setting Study' (Nicholas Pearson Associates).

¹⁶ Other than the photo locations shown within the appellant's historic environment assessment, no other party identified/pinpointed any specific location within the Long Gallery or any other part of Montacute House.

from inside this listed country house, or from within its garden, or from any major axial views. There would also be no harm to the significance of Montacute House when viewed from the public right way that runs along part of the western edge of the appeal site.

31. However, the proposal would be likely to disrupt views of Montacute House from within part¹⁷ of the appeal site. Whilst these are not public views, they afford distant views of this listed building from within the countryside and afford an appreciation and understanding of its grandeur and historic landscape setting. Other similar views of this listed building from elsewhere would remain unaffected. As a consequence, the extent of harm would be towards the lower end of the category of less than substantial harm, as set out within the Framework. (I note that the LPA's conservation officer found that there would be a low level of less than substantial harm to the significance of this listed building.) The proposal would conflict with the provisions of LP policy EQ3.
32. Great weight must be given to a designated heritage asset's conservation when considering the impact of a proposed development and any harm to the significance of such an asset, including development within its setting, weighs heavily against granting planning permission. However, unlike LP policy EQ3¹⁸, the Framework also requires any less than substantial harm to the significance of a designated heritage asset to be weighed against the public benefits of the proposal. When this heritage balance is undertaken, I find that the benefits would outweigh the less than substantial harm to the heritage interest of Montacute House. It would appear from the LPA's deemed 'reasons for refusal' that it reached a similar finding in respect of this designated heritage asset.

Tower on St. Michael's Hill

33. The significance of this 18th century folly is primarily derived from its historic qualities as a 12m tall signal tower to Newton Surmaville (approximately 7.5 km east), as well as its architectural qualities as an 'eye-catcher' for Montacute House, its circular plan, Ham stone ashlar walls and 3 slit-light windows. Built on the summit of St. Michael's Hill, this listed tower has an extensive setting with wide ranging views across the Somerset landscape.
34. Over time, there have been very many changes within the setting of this grade II listed building, including the construction of the A3088. The appeal site forms a very small element of the surroundings in which the Tower on St. Michael's Hill is experienced. Nevertheless, as I noted during my visit up the tower¹⁹, the appeal site is an integral part of the historic and mainly rural landscape setting of this listed building. The unspoilt open qualities of the site make a very small, positive contribution to the ability to appreciate the significance of this listed building.
35. The proposed development would be seen in a view from near the top of the Tower on St. Michael's Hill and would comprise an additional 'urban' element that would further erode the historic, rural landscape setting of this grade II listed building. This would conflict with the provisions of LP policy EQ3. However, this would be a distant view. The proposal would not be prominent or occupy anything other than a very minor part of a wide panorama that

¹⁷ The northern section of the western field.

¹⁸ This policy pre-dates the latest version of the Framework.

¹⁹ The tower is currently closed as it is in need of repair works. However, access was arranged for my visit.

exists from the tower and the area immediately alongside. The development would not intrude into views towards Newton Surmaville or affect the function of the tower as an 'eye-catcher'.

36. The extent of harm to the significance of this listed building would be towards the very lower end of the category of less than substantial harm. When undertaking the heritage balance, this harm would be outweighed by the public benefits of the proposal.

Boundary Stone

37. The significance of this small circa 18th century Ham stone pillar is derived primarily from its historic qualities as a parish boundary marker. The setting of this grade II listed structure is limited to the section of highway within which it sits. This includes the southern end of Main Street, the northern edge of the appeal site and a strip of land on the northern side of Tintinhull Road.
38. Over time, there have been changes within the setting of this designated heritage asset. These include works to the highway and some development along the northern side of the junction with Main Street. The hedgerow growing along the northern edge of the appeal site denotes part of the parish boundary and makes a positive contribution to the historic interest and significance of this listed boundary stone. I disagree with the appellant's assessment that the appeal site makes no contribution to the significance of this designated heritage asset.
39. The proposed development would entail the removal of sections of 'important' hedgerow to the east of the listed boundary stone. Whilst the proposed footway widening alongside the bus stop would include replacement hedgerow planting, it is by no means certain that this would maintain the line of the parish boundary and preserve the setting and historic significance of the boundary stone. Even if there was no disruption as a result of these works, the proposed vehicular access onto Tintinhull Road, including its associated entrance radii and visibility splays, would diminish the integrity of the roadside hedge (and erode the line of the parish boundary). In so doing, this would detract from an appreciation and understanding of the significance of this listed boundary marker. There would be conflict with the provisions of LP policy EQ3.
40. In the context of the Framework, there would be a moderate amount of less than substantial harm to the heritage interest of this listed structure. This harm would be outweighed by the public benefits of the proposals.

'Glyncote'

41. The significance of this detached house, which dates from the 18th century, is primarily derived from its architectural qualities, which include its brick and Ham stone walls, Welsh slate roof, brick and stone chimneys, 18th century sash windows and 19th century casement windows, as well as its historic interest as a vernacular building within the Somerset countryside.
42. The setting of this listed building includes the surrounding countryside (of which the appeal site forms part) and assists in affording an appreciation and understanding of the historic landscape setting and interest of this rural dwelling. Whilst over time there have been some changes within the setting, the unspoilt open qualities of the appeal site make a small, positive contribution to an appreciation of the historic interest of this listed structure.

43. The proposed development would entail the loss of a very small part of the historic rural landscape setting of 'Glyncote'. This would, to a very limited extent, detract from the ability to appreciate the significance of this rural dwelling and would conflict with the provisions of LP policy EQ3. The extent of the less than substantial harm to the significance of this listed building would be towards the very low end of this category of harm. This harm would be outweighed by the public benefits of the proposal.

Lower Vagg Farmhouse

44. The significance of this 18th century farmhouse is primarily derived from its architectural qualities, which include its Ham stone cut and squared walls with ashlar dressings, clay tiled roof with coped gables, chimneys and mullioned windows, as well as its historic qualities as a traditional farmhouse within this part of the Somerset countryside.
45. The setting of this listed building includes the surrounding countryside (of which the appeal site forms part) and assists in affording an appreciation and understanding of the historic landscape setting and interest of this farmhouse. Whilst over time there have been some changes within the setting, the unspoilt open qualities of the appeal site make a small, positive contribution to an appreciation of the historic interest of this listed structure.
46. The proposals would entail the loss of a very small part of the historic rural landscape setting of Lower Vagg Farmhouse. This would, to a very limited extent, detract from the ability to appreciate the significance of this 18th century farmhouse and would conflict with the provisions of LP policy EQ3. The extent of the less than substantial harm to the significance of this listed building would also be towards the very low end of this category of harm. This harm would be outweighed by the public benefits of the proposal.

Registered Park and Garden at Montacute House

47. The significance of this 110 ha grade I listed park and garden is primarily derived from the historic landscape interest of the mid-19th century formal gardens²⁰ and pleasure grounds, as well as the surrounding 18th and 19th century parkland²¹ and ornamental plantations.
48. The setting of this designated heritage asset is extensive and includes surroundings areas of countryside, of which the appeal site forms a very small part. Over time, there have been many changes within the setting of this registered park and garden. Nevertheless, the unspoilt open qualities of the appeal site make a very small, positive contribution to an appreciation of the historic interest of this heritage asset.
49. The proposed development would entail the loss of a very small part of the historic rural landscape setting of this registered park and garden. Due to intervening landform, trees and vegetation this would have an almost imperceptible effect upon the ability to appreciate the significance of this designated heritage asset²². There would be a modicum of conflict with the provisions of LP policy EQ3. The extent of less than substantial harm to the significance of this designated heritage asset would be towards the very low

²⁰ Within a framework of late 16th century formal gardens.

²¹ With medieval and 16th century origins.

²² I note that the Gardens Trust was unconcerned by the proposals.

end of this category of harm. This harm would be outweighed by the public benefits of the proposal.

Montacute Castle SM

50. The significance of this motte and bailey castle, which is mentioned in the Domesday Book, is primarily derived from its historic interest as a Norman fortification and from its archaeological remains. Formed from a natural conical hill, this very important designated heritage asset has an extensive setting. This includes the above noted registered park and garden and other swathes of the surrounding countryside. The largely unspoilt open qualities of the countryside, of which the appeal site forms a very small part, assists in affording an appreciation of the strategic importance and historic landscape setting of this SM.
51. The proposed development would entail the loss of a very small part of the historic rural landscape setting of this SM. Given the distance from the site, intervening landform, trees and vegetation this would have an almost imperceptible effect upon the ability to appreciate the significance of this designated heritage asset. There would be a modicum of conflict with the provisions of LP policy EQ3. The extent of less than substantial harm to the significance of this SM would be towards the very low end of this category of harm. This harm would be outweighed by the public benefits of the proposal.
52. I conclude on the third main issue that the proposed development would fail to preserve the settings of five listed buildings and would result in less than substantial harm to the significance of seven designated heritage assets. However, in each case, this harm would be outweighed by the public benefits of the proposals.

Fourth Main Issue - Nature Conservation Interests

Protected Species

53. Amongst other things, the development plan and the Framework recognise the importance of protecting and enhancing biodiversity and habitats. In this regard, and in support of the application, the appellant submitted a Preliminary Ecological Appraisal²³ (PEA). Amongst other things, this identified the site's potential (habitat) for providing shelter, foraging and nesting / hibernation / roosting opportunities for local bird species, Great Crested Newts (GCN)²⁴ and bats. In addition to species protection measures, the PEA recommended either further survey work be undertaken in respect of GCN or registration via the District Level Licensing route, as well as further survey work in respect of bats.
54. I note that the appellant subsequently pursued the licensing route for GCN and confirmed that trees growing within the site, that had been identified as affording a moderate potential for bat roosts, would be retained. The appellant also agreed with the LPA's ecologist that a lighting scheme would be submitted as part of a future Landscape Ecological Management Plan for the appeal site, so as to avoid any harmful disturbance to bats. As a consequence, the LPA accepted that there would be no further requirement for survey works.

²³ This comprises a Phase 1 Habitat Survey and protected species assessment, which was completed in April 2020.

²⁴ The Appraisal also notes that some nearby off-site ponds could support populations of Great Crested Newts.

55. The LPA has drawn my attention to guidance published by the Chartered Institute of Ecology and Environmental Management²⁵ which, in effect, advises that ecological reports/surveys that are over three years old are unlikely to still be valid and are likely to need updating. I note the appellant's argument that the CIEEM advice is guidance only and that there is unlikely to have been any change to the baseline position over the intervening period.
56. Given the delay in determining this application and mindful of the need to avoid increasing the costs of the appeal, I have some sympathy for the appellant on this matter. However, a considerable period of time has lapsed since the PEA was undertaken during which, there could have been changes to the baseline position in respect of protected species that are known to exist within the area.
57. The appellant could have provided an update to the PEA as part of the appeal. I am also mindful of other guidance²⁶ which, in effect, advises that a planning condition (attached to a permission) that requires ecological survey work to be undertaken should only be used in exceptional circumstances. There are no such circumstances before me. Whilst my decision does not turn on this matter, in the absence of an update regarding protected species, there is a risk that the proposal could harm important nature conservation interests.

Protected Sites

58. The appeal site lies within the hydrological/fluvial catchment and the Impact Risk Zone of the Somerset Levels and Moors Ramsar Site and SPA. Amongst other things, this extensive area of lowland wet grassland supports an assemblage of rare aquatic invertebrates. Natural England (NE) has advised that poor water quality, due to nutrient enrichment from elevated levels of phosphorus, has resulted in a loss of biodiversity²⁷ within these protected areas and has led to them being in an 'unfavourable condition'.
59. On behalf of the appellant, it is accepted that without a suitable and effective mitigation package, the proposed development would result in an increase in the total phosphate load leaving the appeal site²⁸. The appellant also accepts that this has the potential, when considered alone and in-combinations with other developments, for a likely significant effect upon invertebrate species and supporting habitat within the Ramsar Site and SPA.
60. The evidence before me indicates that the proposed development would result in a significant adverse effect upon the integrity of these protected sites. In the circumstances, permission could only be granted if, after undertaking an Appropriate Assessment²⁹, it was found that adequate mitigation would occur so as to avoid this adverse effect. This presents a high bar to securing planning permission.
61. When consulted on the planning application, NE advised that the proposed development would generate a phosphate budget of 18.31 kg/P/yr. I understand that Wessex Water has informed the appellant that there are no

²⁵ CIEEM Advice Note 'The Lifespan of Ecological Reports & Surveys' (2019).

²⁶ Circular 06/225 'Biodiversity and Ecological Conservation – statutory obligations and their impact within the planning system'.

²⁷ I understand that, amongst other things, aquatic invertebrate communities are suffering the effects of hyper-eutrophication, caused by excessive levels of phosphates.

²⁸ From waste water via sewage treatment works discharges. I understand that foul water from the development would drain into the waste water recycling centre at Vagg Lane.

²⁹ Under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).

investment plans related to phosphorous removal at the local waste water works³⁰. As noted above, in an attempt to avoid this significant increase in potential nutrient load into the protected sites, the appellant is proposing via the UU, to enter into an EnTrade Nutrient Mitigation (credit) Scheme that has/is being developed by NE, or provide an alternative off-site wetland³¹.

62. I am aware that Nutrient Mitigation Schemes have been used elsewhere within the country to meet the Government's aims of enabling housebuilding whilst also securing pollution mitigation and nature recovery. However, it is unclear to me if such a scheme is operating within the hydrological/fluvial catchment of the above noted protected sites, or if it has capacity to include the appeal scheme/is available to the appellant during the lifetime of a permission.
63. It is also unclear to me whether (and where in the same river catchment) the appellant's alternative wetland mitigation could be provided prior to the first homes being occupied. Furthermore, it is very far from certain that any such mitigation could be secured in perpetuity. I note from NE's consultation response that further details were required on this matter.
64. The appellant's suggestion of attaching a 'Grampian' style condition to a planning permission is unlikely to be sound. If I was to adopt this approach it would, in effect, result in a permission being created but would then pass the responsibility of undertaking an Appropriate Assessment onto another competent authority.
65. There is much uncertainty on the matter of wetland mitigation/credits. On the basis of the limited information before me, I am unable to find that the adverse effects upon the integrity of the protected sites could be ruled out beyond all reasonable scientific doubt. Although the proposal has the potential to result in some very modest biodiversity enhancement (via new planting and green infrastructure links) overall, it would be likely to harm nature conservation interests. The development would conflict with the provisions of LP policy EQ4.

Other Matters

66. The proposal would be at odds with the settlement strategy provided for under LP policy SS1. It would contribute towards meeting the housing requirement figure specified within LP policy SS5. However, this sizeable 'greenfield' development would be located within the countryside and beyond the settlement limits of Chilthorne Dormer. It would conflict with the objective of LP policy SS5 of maintaining the established settlement hierarchy.
67. The appeal site lies within the setting of the non-designated heritage asset known as 'Chilthrow' which lies adjacent to the site. The significance of this heritage asset appears to be primarily derived from its historic associations with agricultural activity within the local area. I understand that this building has a historic functional relationship with part of the appeal site. Whilst this house is now in separate ownership, the proposed loss of agricultural land would markedly erode its historic functional relationship with the appeal site and, in so doing, diminish the heritage interest of 'Chilthrow'. In taking a balanced judgement in respect of this heritage asset, the harm that I have identified would be very clearly outweighed by the benefits of the proposal.

³⁰ I note the provisions of the Levelling-up and Regeneration Act 2023, that requires sewerage undertakers to upgrade sewage treatment works/plants by 2030.

³¹ The appellant has calculated that an area of about 5.175 ha would be required.

68. I note the findings of the Inspector who dismissed an appeal for 60 dwellings on a site at Templecombe (ref. APP/R3325/W/20/3265558). However, each case must be determined on its own merits and the circumstances of that case (including the close proximity of a grade II* listed manor house and the site's location on a high point within a different landscape) are materially different to the situation before me. Whilst I note that the shortfall in housing land supply was greater than what has been relayed to me, that decision is dated July 2021. It does not set a precedent that I am bound to follow.
69. I have had regard to the numerous representations made by interested parties. These include concerns expressed by both Brympton and Chilthorne Dormer Parish Councils, as well as detailed representations made by the Residents of Chilthorne Dormer and Thorne Coffin Action Group. In respect of matters such as traffic and land drainage, there is more cogent evidence from the LPA's highway officers, the Local Lead Flood Authority and the appellant's transport consultant and FRA to demonstrate that the proposal would be unlikely to compromise highway safety interests or result in any increased risk of flooding. There would be no conflict with LP transport policy TA5 or the flood risk aspects of LP policy EQ1. Whilst I have found harm in respect of some other matters raised by interested parties, the extent of local opposition to the proposal does not in itself justify withholding permission.

Planning Balance/Overall Conclusion

70. I recognise that some greenfield land around some rural settlements would need to be released if the LPA is to meet its housing requirement and address the shortfall in supply. However, releasing the appeal site would result in unacceptable harm to the character and appearance of the local area. Even if adequate mitigation is available to address the likely impact upon nature conservation interests (and could be dealt with by way of a UU or planning conditions), when the proposal is assessed against the policies in the Framework taken as a whole, the adverse impacts that I have found in respect of the second and third main issues would significantly and demonstrably outweigh the benefits. There would be conflict with LP policy SD1.
71. The proposal would be at odds with the environmental objective of the Framework and would not comprise sustainable development. Although there is some limited policy support for aspects of the proposal, the appeal scheme would conflict with the overall provisions of the development plan.
72. Given all of the above, and having regard to all other matters raised, I conclude that the appeal should not succeed.

Neil Pope

Inspector