



Appeal Decisions

Inquiry held on 12 to 15 and 19 & 20 December 2023

Site visit made on 11 January 2024

by Beverley Wilders BA (Hons) PgDURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th February 2024

Appeal A Ref: APP/U3935/W/23/3323873

Plot 3, Symmetry Park, Swindon SN3 4DB

- 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 Tritax Symmetry Limited against Swindon Borough Council.
- The application Ref S/OUT/23/0171, is dated 22 February 2023.
- The development proposed is described as outline application for employment (B1, B2, B8) use.

Appeal B Ref: APP/U3935/W/23/3315191

Marston Farm, Shrivenham Road, South Marston, Swindon SN3 4RS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Tritax Symmetry Limited against the decision of Swindon Borough Council.
- The application Ref S/22/1251/PEEG, dated 12 August 2022, was refused by notice dated 15 November 2022.
- The application sought planning permission for Outline application for employment development including B1b (research and development/light industrial), B1c (light industrial), B2 (general industrial) and B8 (warehouse and distribution), new landscaping and junction to A420 (means of access not reserved) without complying with a condition attached to planning permission Ref S/OUT/14/0253/KICO, dated 3 June 2015.
- The condition in dispute is No 19 which states that: "No development shall commence within the application site indicated on plan no. BMD.193.DR.101 Rev. A, until an agreed management plan is submitted and approved in writing by the Local Planning Authority. The management plan shall include the preservation, appropriate land management and maintenance of:
 - The agreed area for preservation in situ of archaeological remains (covering a minimum of 1.5 hectares, shown as 'Retained Pasture Land' on plan no. BMD.193.DR.101 Rev. A), including appropriate boundary treatment of this area; and
 - The route of the former canal that runs through the application site.The area for preservation in situ of archaeological remains covering a minimum of 1.5 hectares (shown as 'Retained Pasture Land' on plan no. BMD.193.DR.101 Rev. A) shall remain undeveloped. Preservation shall be carried out in accordance with the approved details in the management plan prior to the commencement of any development within Development Area A. The approved management plan shall be implemented and carried out thereafter".
- The reason given for the condition is: "To enable the long term preservation of the archaeological remains and former canal line".

Decisions

Appeal A Ref: APP/U3935/W/23/3323873

The appeal is dismissed, and planning permission is refused.

Appeal B Ref: APP/U3935/W/23/3315191

The appeal is dismissed.

Background and Preliminary Matters

1. Following the submission of the appeals, two revisions have been made to the National Planning Policy Framework (the Framework), one published on 5 September 2023 before the Inquiry opened, and a more recent one during the Inquiry on 19 December 2023. The parties have had the opportunity to comment on the revisions made to the Framework and in determining the appeals, I have had regard to the relevant revisions and any comments received.
2. Appeal A is a proposal for outline planning permission with all matters reserved except for access. Scale parameters are set out within the submitted Design & Access Statement and two site layout options (Option 4 & Option 5) have been submitted. In reaching my decision on Appeal A I have had regard to these.
3. In respect of Appeal A, the Council did not issue a decision within the prescribed period or within an agreed extension of time. The appellant exercised their right to appeal against the failure of the Council, as the local planning authority, to determine the application.
4. The Council's Statement of Case sets out a number of putative reasons for refusal in relation to Appeal A. However, a Statement of Common Ground (SOCG), signed by both parties during the Inquiry, confirms that the parties have reached agreement on matters relating to the neighbouring road network, the site access, flood risk, the Great Western Community Forest and green infrastructure. The Council therefore no longer wishes to defend these putative reasons for refusal subject to the imposition of suitably worded conditions where necessary. I have determined the appeal accordingly.
5. In 2015 outline planning permission was granted for employment development on the Symmetry Park site (Ref S/OUT/14/0253/KICO). Condition 19 of the permission required the submission of an archaeological management plan to be submitted and agreed by the Council prior to the commencement of development. The condition specifies that the plan should include the preservation, appropriate land management and maintenance of the agreed area for preservation in situ of archaeological remains (covering a minimum area of 1.5 hectares) and that the area for preservation in situ should remain undeveloped. The appellant states that despite disagreement between the parties about the importance of the archaeological remains on Plot 3, at the time the condition was accepted in order to enable development to take place on the wider Symmetry Park site and to capitalise on a strong market and existing demands for the development.
6. An archaeological management plan was subsequently submitted and approved by the Council and employment development has taken place on the wider Symmetry Park site. The agreed area for preservation in situ (now referred to

as Plot 3 by the appellant) is currently undeveloped. However, outline planning permission is being sought for employment development on Plot 3 (Appeal A). The appellant is therefore seeking the removal of condition 19 and its replacement with alternative wording which would allow for further investigation of the remains to be carried out in order to determine their significance and to record if necessary.

7. A proposed Written Scheme of Investigation for Archaeological Mitigation (WSI) dated August 2022 was submitted to support the s73 application that is the subject of Appeal B. This sets out that full excavation of the site would take place and that should any remains of greater than anticipated significance be discovered during excavation, works may be temporarily halted to allow for discussion between the parties as to the most appropriate way to proceed. The WSI forms an appendix to the Environmental Statement (ES) that was submitted with the s73 application.

Main Issues

8. Having regard to the background to the applications and the imposition of condition 19, the main issues are:

For Appeals A & B

- The effect of the proposals on the significance of any archaeological remains on the site.

For Appeal A

- The effect of the proposal on protected species and biodiversity;
- The effect of the proposal on the significance of the Grade II Listed Lock Keepers Cottage;
- The effect of the proposal on the character and appearance of the area.

Reasons

Archaeology

9. Plot 3 and the wider Symmetry Park site have been the subject of various archaeological investigations including geophysical surveys carried out in 2006, 2008, 2013 and 2015 and a trial trench evaluation in 2014. The 2014 outline planning application was supported by an ES which included a chapter on archaeology and cultural heritage.
10. The Council's committee report relating to the 2014 outline application states that the evidence showed that archaeological remains were present within the wider Symmetry Park site and that the most prolific and well-preserved of these are in the north-west corner of the site. At the time the Council considered the remains in the north-west part of the site (Plot 3) to be of high significance warranting their preservation in situ and this was controlled by condition 19 of S/OUT/14/0253/KICO.
11. Following the grant of outline approval in 2015, archaeological excavation was carried out on the wider Symmetry Park site, excluding Plot 3, in accordance with an agreed WSI. No further archaeological investigations have taken place on Plot 3 since 2015 and at the Inquiry, Ms Pomeroy-Kellinger stated that she

was satisfied that the Council had sufficient archaeological information to determine the applications the subject of the appeals.

12. There is agreement between the parties that no archaeological remains on Plot 3 are scheduled monuments and that they are non-designated heritage assets. However, footnote 72 of the Framework (formerly footnote 68) states that non-designated heritage assets of archaeological interest, which are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets. The Council considers that footnote 72 applies in this case as it considers that the remains have the potential to be of national importance, a view it says is supported by Historic England (HE).
13. Paragraph 041 of the National Planning Practice Guidance (PPG) provides guidance on non-designated heritage assets and states, amongst other things, that there are three types of those that are demonstrably of equivalent significance to scheduled monuments. This includes those that have yet to be formally assessed for designation which the Council state is the type on Plot 3. It is not clear why HE has not been asked to consider scheduling the remains at any point, but the Council refer to the fact that the remains are currently protected by condition 19.
14. The PPG also states that judging whether sites fall into this category of non-designated heritage assets may be assisted by reference to the criteria for scheduling monuments. Though not explicitly referred to in paragraph 041 of the PPG, it appears that the parties agree that the criteria for scheduling monuments is as set out in Historic England's Settlement Sites to 1500 Scheduling Selection Guide July 2018 (HE SSG).
15. The HE SSG is guidance and not policy and its use is not mandatory when judging whether non-designated heritage assets are demonstrably of equivalent significance to scheduled monuments. Nevertheless, in the absence of any formal assessment by HE of the archaeological remains on Plot 3, it provides useful and relevant guidance and in reaching my decision I have had regard to it.
16. HE SSG acknowledges that each case will require independent assessment and the deployment of professional judgement both as to whether remains are reckoned to be of national importance, and if so whether scheduling is the most appropriate management solution. It is clear from the guidance that for the purpose of footnote 72, archaeological remains need to be considered to be of national importance to be of equivalent significance to scheduled monuments.
17. HE SSG sets out a list of non-statutory criteria to be used alongside other relevant considerations when determining which sites are deemed to be nationally important. These include period, rarity and representativity, group value, survival and condition and archaeological potential. With regard to the latter, the guide states that one of the key purposes of scheduling is to offer protection to high-quality archaeological remains which have the potential to yield information about the site and its period and that true significance is not always readily apparent. In relation to the Roman period, the guide states that where they retain reasonable archaeological potential, Roman settlement sites will be deemed to have national importance but that in some areas certain types of settlement are sufficiently common to require discrimination in terms of scheduling recommendations.

18. In this case, the appellant considers that the evidence does not show that the remains on Plot 3 are demonstrably of equivalent significance to scheduled monuments but rather that the Council's own case is that the site has potential or hints of evidence that there may be remains of national importance.
19. As stated, numerous geophysical surveys and a trial trench evaluation have been carried out on the Symmetry Park site and these have included Plot 3. It is common ground between the parties that there are archaeological earthworks and remains within Plot 3 and that these are of Roman date. The geophysical surveys revealed a number of geophysical anomalies within Plot 3 appearing as a grid-like series of enclosures, boundaries and associated pits, acknowledged by Mr Morley in his evidence as being suggestive of comparatively dense settlement activity. However, I acknowledge that geophysical anomalies are not archaeological features but rather are indications of the presence, morphology and extent of possible underlying archaeological activity.
20. Mr Morley's evidence compares the geophysical anomalies identified in 2015 with extant linear features shown on a 1970s aerial photograph noting some similarities. He suggests that this together with the fact that the 2015 survey was done after trial trenching, means that the geophysical anomalies should be viewed with caution and that the area of genuine Roman interest is likely to be smaller and less densely concentrated than is suggested by the geophysical surveys. However, Ms Pomeroy-Kellinger's evidence was that the trial trenches were backfilled quickly after 2014 and that when visiting the site on numerous occasions, she has seen no evidence of truncation or degradation of features resulting from the presence of drainage channels.
21. Having heard the evidence of the parties and having examined Plates 1 and 2 in Mr Morley's evidence, I am not convinced that there is clear evidence of significant correlation between the geophysical anomalies and existing drainage features and/or trial trench locations on Plot 3. Consequently, there is no compelling evidence to suggest that the findings of the geophysical surveys cannot be relied upon. Similarly, whilst it appears that the remains are at a reasonably shallow depth and that there is some evidence of them being affected by previous agricultural activity, it does not appear from the evidence that this has resulted in significant damage or loss.
22. In any event, the 2014 trial trench evaluation included 12 trenches wholly or partially within Plot 3 with remains being identified in 11 of the trenches. The evaluation concludes that it revealed a wide range of archaeological deposits in the western portion of the Symmetry Park site and that more deposits were identified than had been indicated by the previous geophysical survey. It further states that most of the deposits are dated to Middle Roman times and appear to show deposits associated with a large settlement, and contained masonry elements for corn driers or buildings, along with the more usual pits, postholes, ditches and gullies. The evaluation further concludes that large amounts of pottery, much of it domestic wares, along with two small areas of metalworking are both suggestive of a settlement with some small industrial works.
23. Although some of these conclusions may relate to the wider site and not just to Plot 3, it is clear from the evidence that the area in and around Plot 3 is the area with the highest density of archaeological remains.

24. The 2014 evaluation has been reviewed by Mr Morley following which he concludes that the features found are of a common type, are unexceptional in terms of their scale, density and complexity and date to a period that is well represented within the archaeological record. He considers that the artefacts recovered are comparatively few and largely homogenous and are in notably poor condition. Whilst he acknowledges the discovery of smithing activity, he notes that this is modest, appears localised around one trench and that HE guidance¹ notes that iron smithing slags are routinely discovered on almost all Roman sites. Mr Morley proceeds to assess the archaeological remains against HE SSG concluding that they do not satisfy the relevant criteria for national importance.
25. Reference has been made by Mr Morley to the findings of the specialist reports relating to brick and tile and industrial debris and metalworking and to the evidence relating to post holes and walls and artefacts. I acknowledge the points made in relation to these aspects of the remains, some of which were acknowledged and accepted by Ms Pomeroy-Kellinger. I also note Ms Pomeroy-Kellinger's point that the trial trenching was affected by bad weather meaning that not all features were sampled.
26. I have had regard to the written and oral evidence of Mr Morley and Ms Pomeroy-Kellinger. I acknowledge that the available evidence in relation to the archaeological remains on Plot 3 is not wholly conclusive in terms of whether the site is of national importance. I also acknowledge that not all of the remains are considered to be of particular significance. However, when taken as a whole, I nevertheless consider that the evidence that is available at present indicates that Plot 3 retains reasonable archaeological potential. As such, having regard to the advice in HE SSG, it is deemed to have national importance. Though I note the appellant's point that period is one of a number of factors to be considered, these factors form part of the consideration as to whether reasonable potential exists on Roman settlement sites and thus form part of the overall assessment. I also note that the approach that I have taken is consistent with that of HE as is set out within its consultation responses.
27. Whilst HE SSG states that in some areas certain types of settlement are sufficiently common to require discrimination in terms of scheduling recommendations, and whilst I note HE's comment regarding it being one of many such sites in the area², there is no substantive evidence before me to suggest that the site would be excluded from scheduling on this basis, particularly given its proximity and possible link to the scheduled Roman Town of Durocornovium (Wanborough).
28. Reference has been made by the parties to the other nearby Roman settlements at Wanborough and Manor Farm. It seems from the evidence that Wanborough is a much larger settlement that has been subject to open excavation and is therefore not a useful comparison. Manor Farm appears to be a much smaller, scheduled rural settlement demonstrating that such settlements can be deemed to be of national importance. Whilst it seems that more extensive evidence was found at Manor Farm after fewer investigations, I heard evidence that the geology of Manor Farm is different to that at the appeal site meaning that geophysical surveys were more effective at Manor Farm and allowed for more targeted trial trenching. Taking the above matters

¹ Historic England Archaeometallurgy Guidelines for Best Practice April 2015

² HE Consultation response dated 29 March 2023

into consideration, comparisons with Wanborough and Manor Farm do not undermine the evidence relating to the appeal site.

29. In concluding that the archaeological remains should be considered subject to the policies for designated heritage assets, I acknowledge that this high level of protection is only warranted for the most significant remains. I concur with Mr Morley that it would not be appropriate for any archaeological remains that have not been fully excavated to be considered to be potentially of national importance and therefore subject to this higher level of protection. However, in this case a significant amount of archaeological investigation has taken place, and this indicates that Plot 3 is the likely location of a Roman settlement with some small industrial works. Whilst it appears that further investigations in the form of additional trial trenching informed by further survey work including resistivity surveys would be useful in order to obtain a fuller picture of the archaeology on site, in the absence of this, I am satisfied that based on the evidence before me, the required reasonable archaeological potential has been demonstrated.
30. I do not consider the fact that the site is not shown on the Swindon Borough Local Plan 2026 adopted March 2015 (LP) Policies Map as a "other known significant archaeology site" or as such within the Green Infrastructure SPD³ is significant. Moreover, I note that it was shown on the Council's previous emerging Local Plan as a "significant unscheduled archaeological feature" but that the emerging Plan was withdrawn and not progressed. Nevertheless the previous emerging Plan indicates the Council's intentions in this regard.
31. Similarly reference within various documents by various bodies to the remains being non-designated heritage assets does not alter my finding in relation to this matter. This is because until such time that the remains are scheduled, they are non-designated but for the reasons stated above, subject to the policies for designated heritage assets. There is no evidence before me to corroborate the assertion that Ms Pomeroy-Kellinger gave verbal advice that the remains are not of national importance and that they would not be suitable for scheduling and in any event, that was not the evidence that she gave to the Inquiry. It is not clear why HE did not direct the Council towards the Framework paragraphs relating to designated heritage assets given its comments in relation to the relevant tests and the site's potential national importance. Nevertheless, this is not determinative in this case for the reasons outlined above.
32. In response to the Council's concern in relation to the remains, at the Inquiry the appellant stated a willingness to accept a condition requiring the WSI to include further investigatory works, for example Resistivity and Ground Penetrating Radar surveys, before any physical works are undertaken. Should finds of national importance be found, then provision would be made within the WSI for liaison between all stakeholders and agreement of a new way forward. Whilst I accept that it is likely that most WSIs will include a clause dealing with unexpected finds, in this case, given the available evidence I consider that the discovery of significant remains is highly likely and is more than a residual possibility. Under these circumstances, such a condition would not be reasonable and would not meet the tests for conditions set out in the Framework and PPG.

³ New Eastern Villages Green Infrastructure Supplementary Planning Document July 2017

33. The parties agree that the proposed excavation of the buried archaeological remains on Plot 3 would result in their truncation/removal and that this would result in the total loss of their significance⁴.

Heritage Balance

34. The Framework anticipates that once a finding of harm to the significance of a heritage asset, such as archaeological remains, has been reached, then the magnitude of that harm should be assessed. In this case, I conclude that the proposals would cause substantial harm to the significance of the archaeological remains, a point accepted by the parties in the SOCG.
35. Paragraph 205 of the Framework states that when considering the impact of a proposal on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Paragraph 206 states that any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification. Substantial harm to or loss of, amongst other things, scheduled monuments should be wholly exceptional. Finally paragraph 207 states that consent should be refused for proposals that lead to substantial harm (or total loss of significance of) a designated heritage asset unless the harm/loss is necessary to achieve substantial public benefits that outweigh that harm or loss. The parties agree that none of criteria a) to d) of paragraph 207 apply in this case.
36. A number of public benefits have been put forward by the appellant in support of the proposals some of which relate to heritage matters and others that relate to more general matters.
37. In terms of heritage benefits, the appellant acknowledges that the previously approved WSI includes a number of requirements regarding the production of archaeological information. However, it is stated that approval of the proposals would provide the opportunity for additional heritage-derived public benefits over and above those already secured via the 2015 outline permission. These are identified by Mr Morley as including public dissemination, a heritage trail, canal interpretation and management and collaboration and management. I note that the provision of interpretation panels is required by the approved Archaeological Management Plan dated 23 February 2016, submitted in order to discharge the requirements of condition 19 of S/OUT/14/0253/KICO, though to date it does not appear that any have been provided.
38. Although I acknowledge that none of the heritage benefits are dependent on development taking place on Plot 3, other than the addition of any additional information that might be gleaned from excavating the site, I heard evidence from the appellant that they would not occur without permission being granted. I have seen nothing to indicate that this is not the case and noting this and the additional heritage benefits that would be derived over and above those previously secured, I attach moderate weight to these benefits.
39. Other, non-heritage related public benefits are stated to result from the development of Plot 3. These are economic benefits resulting from short term and long term jobs and associated local expenditure, the provision of additional employment land in the area, synergies with BMW/Honda, further development of logistics and contribution to a balanced and diverse economy. There are also

⁴ Signed Statement of Common Ground ID4

purported social benefits arising from opportunities to live and work in the area and the provision of vibrancy in the area as well as purported environmental benefits through biodiversity net gain and environmental improvement.

40. As stated, Appeal A relates to an outline application for employment use with all matters reserved except for access. Indicative scale parameters have been provided but as discussed during the Inquiry, the application is effectively seeking permission for the principle of employment development on the site. The scale of the proposal is not fixed. Consequently, in the absence of detail at this stage, the level of alleged economic, social and environmental benefits is far from certain, and this affects the weight that they attract.
41. With regard to economic benefits, the appellant considers that all of these attract significant weight. Reference is made to paragraph 85 of the Framework which states, amongst other things, that significant weight should be placed on the need to support economic growth and productivity. However, whilst noting this, in my view this does not mean that all economic benefits associated with proposed development, whatever its scale, need to be afforded significant weight. In this case, economic development on the appeal site would provide short and long term jobs, associated expenditure, additional employment land, a contribution to a balanced and diverse economy and potential synergies with BMW/Honda and further development of logistics.
42. The appeal site forms part of the New Eastern Villages (NEV) allocation where LP Policy NC3 requires about 40 hectares of employment land in B use classes, 30 hectares of which within the B8 use-class. Not all of the employment land within the NEV, a key strategic site, has been provided with employment sites only anticipated at Symmetry Park and within the District Centre. At the Inquiry Mr Moss accepted that it is unusual for B8 uses to be located within District Centres, so this seems unlikely in the NEV.
43. I heard evidence regarding employment land both in terms of demand and supply with reference made to the Employment Land Review⁵, to a Council document entitled 'Vacant Employment Land and Buildings in Swindon at Oct-23' and the parties have also referred to HCED⁶ regarding job creation. I have had regard to these documents and the evidence of the parties in relation to them. Irrespective of the current position in terms of employment land supply, it is clear that the NEV is an important employment site in the Borough and that there is general support for employment uses in the right locations in the LP
44. However, noting in particular the lack of certainty regarding the scale and form of any future development, whilst the proposed use of the site for employment development would inevitably result in some economic benefits including job creation, the level of these benefits cannot be quantified at this stage. I therefore attach no more than moderate weight to each of them.
45. The social benefits referred to are those arising from opportunities to live and work in the area and the provision of vibrancy in the area. These are terms referred to in the explanatory text of LP Policy NC3 and are not part of the policy itself. Noting this and the fact that these matters are stated as

⁵ NLP Swindon Employment Land Review Final Report March 2017

⁶ Homes & Communities Agency Employment Density Guide 2015 (Appendix 8)

supporting long term economic and job growth, that is supporting economic benefits, I attach limited weight to them as social benefits.

46. The Planning Benefits Table⁷ produced during the Inquiry included BNG⁸/Environmental Improvements with the appellant stating that these environmental benefits attract moderate weight. During the round table discussion on protected species and biodiversity, Mr Partridge accepted that there is no BNG scheme before me and suggested that the matter could be addressed by the imposition of a condition. At this stage it is not clear how, where and what amount of BNG might be provided and under these circumstances, I attach no weight to this purported benefit of the proposal. Reference is made to environmental improvements in the table but in the absence of any further details of what this might include, no weight is given to this purported benefit.
47. There is no clear and convincing justification for the total loss of significance of the archaeological remains proposed. When taken together, the public benefits of the proposal are not substantial and do not outweigh the loss. The proposals therefore conflict with the Framework insofar as, amongst other things, it requires heritage assets to be conserved in a manner appropriate to their significance. For the same reasons, there is conflict with Policy EN10 of the LP. The policy, amongst other things, states that the Borough's historic environment including archaeology shall be sustained, that any loss of a heritage asset must be justified and that scheduled monuments and other nationally important archaeological sites will be preserved in situ.
48. In reaching my decision I consider the archaeological remains to be designated heritage assets for the reasons stated. However, even if I were to take the appellant's view that they should be treated as non-designated heritage assets and that paragraph 209 of the Framework applies, the total loss of archaeological remains of some significance, albeit lesser than of national importance, would not be acceptable when balanced against any benefits of the proposals. In addition, the proposals would remain contrary to LP Policy EN10 (d) which states that development proposals affecting archaeological remains of less than national importance will be conserved in a manner appropriate to their significance. Paragraph 4.396 suggests that preservation in situ should take place for archaeological remains not defined on the policies map unless that is neither practical nor desirable and that has not been demonstrated here. The parties agree that LP Policy EN10 is consistent with the Framework.

Protected Species and Biodiversity

49. The appeal site is located within the wider Symmetry Park employment site. At the time that the outline application was before the Council, prior to the appeal being submitted, the only ecological information provided was a chapter relating to Flora, Fauna and Nature Conservation from the ES submitted with the 2014 outline application. Though somewhat dated, this states that wildlife habitats and protected species are present on the wider Symmetry Park site. Under the agreed Landscape Masterplan for the Symmetry Park development, the appeal site is to be retained and planted with species-rich grassland and

⁷ Document ID6

⁸ Biodiversity Net Gain

wildflower and it appears from the evidence that wildflower mix has been sown on the site.

50. During the course of the appeal, additional ecological information has been provided by the appellant in the form of a Preliminary Ecological Appraisal dated 28 November 2023 (PEA) and a note from SLR Consulting Ltd (the authors of the PEA) dated 13 December 2023 in response to the comments on the PEA made by the Council's Ecologist Mr Hobson dated 8 December 2023. In reaching my decision I have had regard to this additional evidence which was discussed during the relevant round table discussion.
51. Firstly, with regard to protected species, the Council had requested an ecological impact assessment from the appellant. However, what has been submitted is a PEA which by its very nature is a preliminary assessment and the PEA states that the detailed assessment of impacts resulting from the proposed development and detailed development of mitigation measures if required, are beyond the scope of the report (paragraph 1.3). Moreover, the PEA was undertaken in November 2023, acknowledged by its author as being a sub-optimal time of the year for a botanical survey, a view which is shared by Mr Hobson.
52. No up to date protected species surveys have been carried out despite the PEA acknowledging that the presence of species such as reptiles, nesting birds and bats cannot be ruled out. In addition, notwithstanding the findings of the PEA regarding Great Crested Newts, having regard to the evidence of Mr Hobson, it seems likely that they too could be affected by the proposal, particularly given the nature of the ground cover, the presence of ponds and a newt hibernaculum nearby and the lack of barriers to movement across the site and within the wider area. I do not share the appellant's view that the appeal site is isolated in environmental terms as whilst it is located close to built development and roads, it is also near to open fields and landscaping providing pathways and connectivity for wildlife.
53. Based on the evidence before me, it seems reasonably likely that protected species, including European protected species, are present on the appeal site and would be affected by the proposal. At the round table discussion, Mr Partridge acknowledged that the recent ecological evidence indicates that the appeal site has a greater ecological potential than previously thought.
54. Whilst my attention has been drawn to the fact that no concerns were raised in relation to protected species when the Council considered a number of other applications for development nearby (Iceland Reserved Matters, Phase 6 Reserved Matters, Amazon Full Application), two of these applications related to reserved matters where the principle of development had already been established. In addition, Mr Hobson advised that at the time of these decisions, newt barriers were in place on the wider site but that these had been removed by April 2021. There has clearly therefore been a significant change in circumstances in this regard.
55. The appellant considers that the matter of protected species can be adequately addressed by the imposition of suitably worded conditions requiring the submission of, amongst other things, an ecological impact assessment and protected species surveys as necessary prior to the commencement of

development. However, having regard to Circular 06/2005⁹, in particular paragraphs 98 and 99, the presence of protected species is a material consideration, and it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted. The need to ensure that ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances.

56. The appellant considers that exceptional circumstances are present here citing the fact that the site has had extensive investigatory works over recent years and that there has been no ecological reason preventing development coming forward on the wider site. Reference is also made to the timing of requests from the Council and the late submission of the note from the Council in respect of outstanding ecology matters.
57. However, as stated, circumstances on site are now significantly different to when previous surveys and assessments were carried out. Moreover I note from the evidence that Mr Hobson's note of 8 December 2023 in response to the PEA followed previous detailed advice to the appellant regarding the need for further evidence in respect of ecology and protected species. Although it appears that Mr Hobson's consultation response of July 2023 was not seen by the appellant, a letter sent to the appellant dated 3 October 2023 set out the need for an ecological impact assessment and it appears that this was discussed at a meeting attended by Mr Partridge on 6 October 2023. Notwithstanding this, a PEA was submitted and not until the end of November 2023. Noting the above, I do not consider that exceptional circumstances exist in this case.
58. With regard to BNG, at the round table discussion it was accepted by the parties that in order to comply with national and local planning policy requirements, BNG is required and that any level of gain would satisfy the relevant requirements. The PEA states that BNG cannot be provided on the appeal site, irrespective of the amount required which has yet to be agreed by the parties. From the evidence, it therefore appears that the required BNG would need to be provided off-site. There is no scheme for the off-site provision of BNG before me. Nevertheless, my attention has been drawn by the appellant to a condition used by another Council (Stroud) in situations where BNG is required but a scheme has not been agreed. Similar wording is suggested for the appeal scheme.
59. I note that the wording of the suggested condition makes reference to appropriate legal agreements and the purchase of biodiversity credits. At this stage it is unclear how the required BNG will be secured, though given the findings of the PEA it seems unlikely that it will be provided on-site. In the absence of a scheme detailing the off-site provision of BNG, there is no level of certainty as to how and where it would be provided and how it would be managed. The suggested condition sets out a series of options, the first one of which seems unachievable, the second one of which is likely to require a legal agreement and a third one that would require a payment.
60. Noting advice regarding the use of planning conditions set out in the PPG, a negatively worded condition limiting the development that can take place until

⁹ Office for the Deputy Prime Minister Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within the Planning System.

a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Such condition should only be used in exceptional circumstances where there is clear evidence that the delivery of the development would otherwise be at serious risk (this may apply in the case of particularly complex development schemes). This is not the case here. Conditions cannot lawfully require the payment of money and any legal agreement required to address such payments would be caught by the need for exceptional circumstances. I do not therefore consider that the matter of BNG can be addressed by the suggested condition.

61. Taking the above matters into consideration, it has not been demonstrated that the proposal would not have an adverse effect on protected species or that BNG can be provided. The proposal is therefore contrary to Policy EN4 of the LP, relevant paragraphs of the Framework, in particular paragraph 186(a), relevant guidance in Circular 06/2005 and relevant sections of the Environment Act 2021. These policies, this guidance and legislation seek, amongst other things, to ensure that development protects and enhances biodiversity and provides net local biodiversity gain.

Lock Keepers Cottage

62. Lock Keepers Cottage (LKC) is included on the statutory list at Grade II. It was listed in 1979 and is described on the list description as Early C19. On former Wilts and Berks Canal. Two storeys. Rubble and Brick. Pebbledash. Hipped slate roof. Three windows, glazing bar sashes, right hand bay casements. Modern central lean-to, south end angled. Taller tiled 2 window extension of later date to north. Included for historical and socio-economic interest.
63. There is agreement between the parties that the appeal site forms part of the setting of LKC but disagreement about the contribution that this part of the setting makes to the significance of the listed building.
64. LKC was constructed in the first half of the nineteenth century and is first shown on the 1840's Tithe Map. It was constructed alongside the Wilts and Berks Canal which the evidence suggests opened in 1810, was abandoned in 1914 and backfilled from the 1930s onwards. South Marston Locks and the connecting lengths of canal either side are stated to have been backfilled between the 1940s and 1970s. LKC has been extended and much altered over the years but retains an angled southern gable feature, deliberately outward facing towards the canal, a characteristic of toll houses generally. It is now in use as two dwellings but retains its original garden setting, though it appears that the original plot has been extended.
65. The parties agree that there are a number of features of LKC itself, including the angled southern gable, that are physical features of the building's historical and socio-economic interest and that these contribute to its significance. There is also agreement that the buried archaeological remains of the canal, lock and footbridge form part of the setting of LKC and contribute positively to its significance as does a historical association with local poet Alfred Williams.
66. With regard to the appeal site, it appears that prior to the 2014 outline application¹⁰, it and the wider Symmetry Park site were in agricultural use. The appeal site and surrounding land was not historically in the same ownership as

¹⁰ S/OUT/14/0253/KICO

LKC and the canal and was not used in association with it. The parties agree that the appeal site is now a meadow, required to be retained as grassland under the terms of the 2015 outline planning permission.

67. The appeal site is located to the south of LKC, separated from it by the buried remains of the canal appearing as a grassed/planted mound and a path/cycle way which approximates to the line of the former canal towpath to the south of the lock. The southern garden boundary of LKC is currently marked by a solid timber fence with existing landscaping, some of which is substantial in height, positioned both within the garden of LKC and to the south of the boundary fence. A public footpath crosses the appeal site and at the north is accessed off the path/cycle way.
68. The relative position of the appeal site and LKC and its garden together with intervening fencing and landscaping means that there is limited intervisibility between the two sites with only glimpses of the upper part of LKC from the northern part of the appeal site closest to the listed building. I visited the appeal site and surrounding area in December and January, times of the year when landscaping is at its most sparse but even then, views of LKC from the appeal site were very limited with no discernible above ground evidence of its former connection with the adjacent canal. Whilst glimpses of the upper part of the angled gable can be seen, this is most apparent from the adjacent path/cycle way and the appeal site does not provide any meaningful ability to appreciate the architectural or historic significance of LKC. Taking these matters into consideration, in visual terms, whilst within the setting of LKC, the appeal site makes no contribution to its significance nor to the ability to appreciate its significance.
69. With regard to how the appeal site affects how LKC is experienced, at present it is an undeveloped meadow containing grassland, dissected by a public footpath. It is adjacent to the existing path/cycle way which extends to the east around Symmetry Park. Large scale commercial development exists to the south and east of the appeal site and LKC, accessed via the busy A420 to the north of LKC and the relatively recently constructed Laines Way to the west, one of the main spine roads for Symmetry Park and the NEV which has yet to be fully developed. As a result of existing surrounding development, LKC and its immediate environs likely experience a significant amount of noise, disturbance, lights and smells from vehicles. These baseline conditions within its setting affect how the listed building is experienced and, in this context, as an undeveloped piece of land, the appeal site has a neutral effect on how it is experienced and its significance.
70. I note the Council's view that the appeal site is one of the last remaining elements of the wider historic rural landscape that originally surrounded LKC and the canal. However, be that as it may, there was and is no meaningful connection between the appeal site and adjacent land and LKC and the canal either in terms of function or ownership. Whilst it may have historically enabled the significance of the heritage assets to be appreciated, circumstances surrounding LKC have significantly altered such that the appeal site no longer contributes to or enables an appreciation of significance. I note reference made by the Council to HE Guidance¹¹ and to the severance of the last link to the

¹¹ HE Managing Significance (CDL-3) and HE Setting of Heritage Assets (CDL-4)

history of an asset or between the asset and its original setting. However, for the reasons stated, I do not consider that to be the case here.

71. The proposal is for outline planning permission with all matters reserved except for access which is to be taken from the south of the appeal site, away from LKC. Scale parameters and two site layout options have been submitted and these indicate a building of a similar scale and appearance to the adjacent Iceland building. During the Inquiry, the Council accepted that whilst some indicative details of scale, siting and appearance have been provided, that should outline planning permission be granted, then there would be scope for these to be varied at reserved matters stage. I have determined the appeal accordingly.
72. Given my findings in relation to the contribution that the appeal site as part of the setting of LKC makes to its significance, I consider that the principle of employment development is acceptable and need not be harmful to the significance of LKC. Commercial development already exists nearby and this together with activity associated with nearby roads means that subject to the imposition of necessary and suitable controls over the use and development which could be controlled either by condition or as part of a reserved matters permission, the introduction of employment development on the appeal site would not adversely affect the significance of LKC.
73. In reaching my conclusion on this issue I note that the effect of development on LKC was considered in relation to the 2014 outline application and that a finding of slight adverse harm was cited in the supporting ES and that the Council's Conservation Officer found less than substantial harm. However, whilst noted, these assessments were made some time ago and at a time when there was no development on the Symmetry Park site. Circumstances are now materially different such that the previous findings do not preclude me from making a different assessment now.
74. Taking the above matters into consideration, I conclude that the proposal will not have a harmful effect on the significance of the Grade II Listed Lock Keepers Cottage. It therefore accords with Policy EN10 of the LP and relevant paragraphs of the Framework insofar as they relate to the listed building. It also accords with the duties under s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Though not referred to within the putative reason for refusal relating to LKC, I consider that the proposal also accords with LP policies DE1, EN5 and NC3 insofar as they are relevant to this issue. These policies seek, amongst other things, to ensure that development has a high standard of design that respects context and character, the surrounding landscape and that the historic environment including listed buildings is protected.

Character and Appearance

75. The appeal site forms part of the NEV strategic allocation, the details of which are set out in Policy NC3 of the LP. The allocation provides for housing, employment, retail, education, health and community facilities. The NEV is also shown on the LP Policies Map and a NEV Masterplan forms part of the NEV Planning Obligations SPD October 2016¹². The Policies Map shows the appeal site as being within a mixed use area and the Planning Obligations SPD and

¹² New Eastern Villages Planning Obligations Supplementary Planning Document October 2016

Green Infrastructure SPD¹³, adopted in 2016 and 2017 respectively, after the 2015 outline permission for Symmetry Park, shows it as green infrastructure.

76. In evidence and during the round table discussion, the Council expressed concerns regarding the quality of information submitted with the application and the indicative schemes put forward which identify a proposed building of a similar scale and appearance to the adjacent Iceland building. However, during discussions the parties agreed that the purpose of outline applications such as the one that is the subject of this appeal, that is where most matters including scale, layout, appearance and landscaping are reserved, is to seek approval for the principle of the development. The Council stated that it has no objection to the principle of B1/B8 use on the site. Whilst the Design & Access Statement submitted is brief, the application was nevertheless registered by the Council, and I consider that I have sufficient information on which to assess the proposal and to make a decision.
77. The appeal site is located in a prominent position adjacent to Laines Way, one of the main spine roads for Symmetry Park and the NEV. It is close to one of the main northern access points off the A420 to the larger part of the NEV, south of the A420 (referred to by the Council as a gateway). As stated, on the LP Policies Map, the appeal site is shown as forming part of a mixed use area including employment. However, following the 2015 outline permission for Symmetry Park where it was conditioned to be undeveloped in order to preserve archaeological remains, it is identified as green infrastructure in the Planning Obligations and Green Infrastructure SPDs.
78. The adjacent site to the east comprises a purpose built, large scale commercial building (Iceland) with associated parking and loading areas and a larger scale commercial building (Amazon) is positioned to the south. LKC, a smaller scale residential building is located to the north, separated from the appeal site by a path/cycle way and existing landscaping. At present, land to the west of the appeal site, on the opposite side of Laines Way, is undeveloped agricultural fields. However, this land is part of the NEV allocation and is shown on the NEV masterplan as a district centre comprising various use classes. Whilst the NEV masterplan shows some narrow areas of green infrastructure to the west of Laines Way, this is a relatively narrow strip when compared with the shape and size of the appeal site. To the far south of the appeal site, is the local landmark of Liddington Hill and North Wessex Downs National Landscape.
79. Built development on the site would inevitably lead to some loss of openness adjacent to Laines Way and would reduce the existing gap between the Iceland development and proposed development within the District Centre. Whilst I note the concerns raised by the Council in relation to the development as shown on the two site layout options proposed, any concerns regarding the scale, layout, appearance and landscaping of the site could legitimately be addressed at the reserved matters stage. There is an existing area of strategic landscaping to the west of the appeal site between it and Laines Way and this would be unaffected by the proposal. Consequently, any development on the site would be set back from the road and existing landscaping together with any proposed landscaping would help to mitigate the impact of any new development and associated activity. In any event, the appeal site is located in an area already containing large commercial buildings and associated parking

¹³ New Eastern Villages Green Infrastructure Supplementary Planning Document July 2017

and loading areas with additional development within the NEV allocation of varying scale and form likely to be forthcoming in the future. In this context and subject to the approval of an appropriate scheme at reserved matters stage, I consider the principle of employment development as proposed to be acceptable without detriment to the character and appearance of the area.

80. Whilst I acknowledge that this would not be in accordance with the SPD masterplans, I note that the Green Infrastructure masterplan is marked as indicative and as was discussed at the round table discussion, masterplans can change over time. The appellant also referred me to numerous examples where planning permission has been granted for development that is not strictly in accordance with the masterplans and this was not disputed by the Council, though the point was made that these applications were supported by more detailed information. In any event, whilst the masterplans form part of adopted SPDs and are therefore material considerations, they are not policy, and the site is shown as a mixed use area on the LP Policies Map.
81. Taking the above matters into consideration, I conclude that the proposal would not have an adverse effect on the character and appearance of the area, including on the gateway entrance to the NEV. It therefore accords with LP policies SD1, DE1 and EN5 and with paragraph 135 of the Framework. These policies seek, amongst other things, to ensure that development is well designed and is sympathetic to the surrounding landscape. Whilst the proposal does not fully accord with the NEV masterplan, for the reasons stated, it is considered to be acceptable and not harmful to the character and appearance of the area. I am also satisfied that the proposal, in outline form with all matters reserved except for access, is not in conflict with the National Design Guide 2021.

Other Matters

82. The Council's decision notice relating to the s73 application (Appeal B) contains a second reason for refusal relating to the lack of a deed of variation to the S106 agreement associated with the 2015 outline planning permission. The Council's primary concern relates to the requirements included in the S106 to ensure connectivity between land parcels which it says need to be carried over into any new permission granted. Although I heard detailed evidence at the Inquiry regarding whether such a deed of variation is required, as I am dismissing Appeal B based on my findings in relation to the main issue relating to archaeology, there is no need for me to consider this matter further as it would not alter the outcome of the appeal and I am not granting an alternative permission.

Conclusion

83. The proposal which is the subject of Appeal A would not harm the significance of Lock Keepers Cottage, a Grade II Listed Building nor would it harm the character and appearance of the area. However, the proposals would lead to the total loss of a non-designated heritage asset, the equivalent of a designated heritage asset under the terms of paragraph 72 of the Framework. This loss is not outweighed by substantial public benefits. In addition, with regard to Appeal A, it has not been demonstrated that the proposal would not have an adverse effect on protected species or that BNG can be provided.

84. I have addressed the purported benefits of the proposals in the heritage balance above and note that these do not outweigh the heritage harm. Similarly, they do not outweigh the totality of harm resulting from heritage harm and the likely harm to protected species and biodiversity.
85. The proposals conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which indicate a decision otherwise than in accordance with it.
86. For the above reasons and having regard to all matters raised, I conclude that the appeals should be dismissed and that in respect of Appeal A, planning permission is refused.

Beverley Wilders

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Sioned Davies	Counsel for the appellant
Instructed by Tim Partridge	
Tim Partridge	Savills
Christopher Morley	SLR Consulting

FOR THE LOCAL PLANNING AUTHORITY

Jonathan Darby	Counsel for the Council
Instructed by Swindon Borough Council	
Ronald Moss	Swindon BC
Melanie Pomeroy-Kellinger	Swindon BC
Elizabeth Smith-Gibbons	Swindon BC
Peter Garitsis	Swindon BC
Andrew Norris	Swindon BC
Des Hobson	Swindon BC

INQUIRY DOCUMENTS

ID1 – Manor Farm List Description and Supporting Document Extracts

ID2 – Opening Statement on behalf of the Appellant

ID3 – Opening Statement on behalf of the Council

ID4 – Signed Copy of Statement of Common Ground

ID5 – SLR Ecology Note

ID6 – Benefits Table

ID7 – S106 Agreement dated 2 June 2015 (S/OUT/14/0253/KICO)

ID8 – Ecologist Details

ID9 – Closing Submissions on behalf of the Council

ID10 – Closing Submissions on behalf of the Appellant