

Appeal Decision

Inquiry held on 10 and 11 September 2024

Site visit made on 11 September 2024

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th September 2024

Appeal Ref: APP/Y3940/W/24/3343787

Land to the west of Semington Road, Melksham SN12 6EF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mrs Tamsin Almeida, Terra Strategic against the decision of Wiltshire Council.
 - The application Ref is PL/2022/08155.
 - The development proposed is described as an outline planning permission for up to 53 dwellings including formation of access and associated works, with all other matters reserved.
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Decision

1. The appeal is allowed and planning permission is granted for outline planning permission for up to 53 dwellings including formation of access and associated works, with all other matters reserved at land to the west of Semington Road, Melksham SN12 6EF in accordance with the terms of the application, Ref PL/2022/08155, subject to the conditions in the attached schedule.

Procedural Matters

2. The application is in outline form with all matters reserved for future consideration apart from access. I have dealt with the appeal on this basis and treated any details not to be considered at this stage as being illustrative only. The main parties confirmed that the parameter plans are for my consideration.
3. The name of the appellant on the appeal form is stated as "Terra Strategic Land". This differs from the name of the applicant, as is set out on the planning application form. I am however satisfied that the appellant has the authorisation for the appeal to proceed. As an appeal can only ordinarily proceed in the name of the applicant, it is those details which are included in the banner heading above.
4. The Council's first reason for refusal concerns the conflict of the proposal with its settlement and development strategies. To this effect, the Council produced a Proof of Evidence over related planning matters, as did the

appellant. Central to the dispute set out in those proofs was the degree of conflict with the development plan, the weight to be given to these policies and whether the Council's housing requirement and settlement boundaries were out of date with regard to the National Planning Policy Framework (Framework). This included the consideration of the implications of the evidence that was contained in each of the main parties' housing land supply Proofs of Evidence. Each side disagreed on whether the Council could demonstrate a 4 year supply of housing in accordance with the Framework and so therefore whether the presumption in favour of sustainable development was triggered. The main parties ably summarised their differences at that stage in the agreed Statement of Common Ground.

5. In the lead up to the Inquiry, the Council received an appeal decision¹ (Westbury decision) where the Inspector came to the view that the Council could only demonstrate a 3.85 year supply of housing. This caused the Council to reevaluate its position and an Addendum Statement of Common Ground was submitted. It was agreed that as a result of the shortfall against a 4 year supply the presumption was engaged and that no adverse impacts would significantly and demonstrably outweigh the benefits. Accordingly, the Council withdrew its objection on these grounds.
6. The Council also stated that an agreement under Section 106 of the Town and Country Planning Act 1990 (as amended) (S106 Agreement) would address the matters in its second reason for refusal relating to the provision of supporting infrastructure. The Inquiry proceeded on this basis and included the consideration of a final draft S106 Agreement. A completed and executed version was submitted after the close of the Inquiry.
7. On the basis of the above, the Council shares essentially the same position as the appellant on the planning merits of the proposal. There are not matters of substantive dispute between the Council and the appellant. However, Melksham Without Parish Council and other interested parties continue to take a different view. On this basis, whether the proposal would be in a suitable location for housing and if any such harm which arises would be outweighed by housing land supply remain matters for my consideration. The potential for other adverse effects and benefits is also to be considered.

Main Issues

8. Taking into account the above, the main issues are (i) whether the proposal would be in a suitable location for housing, with regard to development plan policy and national planning policy; (ii) housing land supply matters, in terms of the deliverability of sites and affordable housing provision; and (iii) if harm arises, whether this would be outweighed by the benefits of the proposal.

Reasons

Suitable Location for Housing

9. The appeal site comprises a flat, overgrown field that measures approximately 2.6 hectares (ha). The boundaries of the site are formed by trees and hedgerows, apart from where security fencing delineates the site

¹ APP/Y3940/W/24/3340811 Land off Storridge Road, Westbury BA13 4HJ

from adjacent land on which a housing site is under construction. That site has been termed 'Phase 1' and the proposal on the appeal site is known as 'Phase 2'. A compound associated with this neighbouring site extends into the appeal site. Berryfield Lane, a narrow country lane, abuts 2 sides of the site and A350 Western Way is also found close to the site, to the north. Further fields are found to the south of the site and on the opposite side of Berryfield Lane.

10. More broadly, the site lies between Melksham and Berryfield. Development extends along Semington Road to the east, which connects these settlements together. Melksham lies on the opposite side of Western Way and is a medium sized town which contains a good variety of local services. Berryfield is of a more modest size and contains limited services.
11. Core Policy 1 of the Council's Wiltshire Core Strategy (2015) (Core Strategy) sets out the settlement strategy for the Council area. It contains four tiers of settlements. Melksham is identified as a Market Town, whereas Berryfield is a Small Village. The Core Strategy defines such settlements by way of defined limits of development boundaries, as set out on the Policies Map. The site lies outside such a boundary.
12. Core Policy 2 of the Core Strategy then provides the delivery strategy, based on the settlement strategy. It sets out how these settlements will develop in future by setting an appropriate scale of growth within each settlement tier. At least 42,000 homes are to be provided between 2006 and 2026, including a minimum of 24,740 homes in the North and West Wiltshire Housing Market Area, where the site is found.
13. However, Core Policy 2 directs such development to within the limits of development. Outside of the defined limits, development will not be permitted save for exceptions that are set out in other policies of the Core Strategy. It is not in dispute that the proposal would not fall into any of these exceptions. Similarly, Policy 6 of the Joint Melksham Neighbourhood Plan 2020 to 2026 (2021) (Neighbourhood Plan) states that housing proposals are to accord with the settlement boundary provisions of Core Policy 2.
14. Core Policy 15 of the Core Strategy applies the spatial strategy to the Melksham Community Area. Development is to be in accordance with the development strategy set out in Core Policy 1. Over the plan period approximately 2,370 new homes will be provided, of which about 2,240 should occur at Melksham and approximately 130 in the rest of the Community Area.
15. Taking into account the above, the proposal would not conform with the settlement strategy under Core Policy 1 because it would be located outside of the tiered settlement hierarchy approach to accommodating development. Nor does it conform with the delivery strategy under Core Policy 2 because it would not be a type of development that is to be permitted outside of the defined limits of development and similarly by way of Policy 6. It would also be contrary to Core Policy 15 because development under this policy is to be in accordance with Core Policy 1, where I have already found conflict.

16. While the appellant has sought to demonstrate that the proposal complies with parts of these policies, its location outside of the tiered settlement hierarchy for a type of development which is not to be permitted places it at odds with this spatial strategy, and so there is overall conflict with these policies.
17. There would not be a conflict with Policy 1 of the Neighbourhood Plan over sustainable design and construction. There are satisfactory connections into Melksham for modes of transport other than the car, including by way of a signalised crossing point over Western Way to access services in Melksham in particular by utilising routes through the town. The train station is not accessible for pedestrians via Western Way, but is via the town centre. The sustainable design of the dwellings themselves could ably be addressed through reserved matters. Nonetheless, this does not satisfactorily overcome the concerns that I have expressed above over the location of the proposal in other respects.
18. The Parish Council has drawn my attention to that its emerging new Neighbourhood Plan has not brought this site forward for development because it may lead to coalescence between Melksham and Berryfield. It is understood that it would form part of a green wedge, which the appellant objects to. As this plan has not yet been the subject of examination and is the subject of objections, it carries limited weight in my decision. The Framework also advises that refusal on the grounds of prematurity will seldom be justified before the end of the local planning authority publicity period.
19. I conclude that the proposal would not be in a suitable location for housing with regard to development plan policy and so it would not comply with Core Policies 1, 2 and 15 of the Core Strategy and Policy 6 of the Neighbourhood Plan. There would not though be conflict with Policy 1 of the Neighbourhood Plan. Whether the proposal would comply with the Framework in this regard is dependent on a consideration of the matters which follow.
20. As there is conflict with what is the spatial strategy of the development plan, it is an issue which attracts significant weight against the proposal.

Housing Land Supply

Deliverability of Housing Sites

21. It is agreed between the main parties, amongst other matters on housing land supply, that for the purposes of paragraph 77 of the Framework the housing requirement should be demonstrated against local housing need. This is because the Core Strategy as the adopted strategic policies is more than 5 years old. The local housing need amounts to 1,952 homes per annum and so therefore 9,760 over the 5 year supply period for assessment between 1 April 2023 to 31 March 2028. No buffer needs to be applied.
22. There is further agreement under paragraph 77 that the Council is required to demonstrate a 4 year supply. This is because the Council has published a Regulation 19 (Town and Country Planning (Local Planning) (England) Regulations 2012) consultation in accordance with paragraph 226 of the Framework.

23. Following the Westbury decision, both main parties now agree that the Council can demonstrate a supply of deliverable sites of 3.85 years. In broad terms, the difference from the Council's previous position of 4.18 years concerns the removal of 3 sites by that Inspector and a reduced windfall allowance. The difference from the appellant's previous position of 3.51 years relates to where that Inspector agreed with the Council over sites that should be included.
24. The Council confirmed at the Inquiry there was nothing further that needed to be brought to my attention over the deliverability of the sites since the Westbury decision. The decision is itself recent, as it was issued on 30 August 2024. There is no substantive evidence that would conflict with that Inspector's conclusion over the deliverability of housing sites, and that which is now agreed between the main parties.
25. As such, I agree with the main parties that the Council's supply of deliverable sites is 3.85 years. The Council cannot therefore demonstrate a 4 year supply in accordance with the Framework.
26. The proposal would assist in reducing the shortfall against the deficit in the Council's 4 year housing land supply position, whilst also accepting that the extent of the shortfall is moderate. It would also make a contribution of up to 53 units towards the Council's minimum housing requirement figure and the Core Strategy requirement, and it would support the Government's objective under the Framework of significantly boosting the supply of homes. These are matters which attract significant weight in favour of the proposal.

Affordable Housing

27. Core Policy 43 of the Core Strategy sets out when affordable housing provision will be required. On sites of 5 dwellings or more, provision of at least 30% is to be made in the affordable housing zone where the site is located. The supporting text to the policy also sets out that it is anticipated that approximately 13,000 affordable homes will be provided over the plan period (across the plan area).
28. The proposal would make provision for 100% of the units as affordable housing. This is significantly in excess of the 30% of units that would be required under Core Policy 43.
29. The appellant set out evidence and detailed a number of studies that have been undertaken over affordable housing supply and deliverability in the Council area. This includes an accumulated shortfall of 1,322 against the Core Strategy target and 1,289 since the Wiltshire and Swindon Strategic Housing Market Assessment (2017) (SHMA).
30. There is a shortfall of a much lower figure of 23 since the Wiltshire Local Housing Needs Assessment Update (2023). This latter figure utilises a higher percentage of a household's income to be spent on housing, which could have the effect of more households not being counted in need. There is a much higher figure of 10,450 since the Wiltshire Strategic Housing Assessment (2011), albeit it was accepted by the appellant this is based on a dated assessment of need. I find that both these figures need to be treated

with caution and so I place more reliance on the Core Strategy target and the SHMA 2017.

31. Nor can delivery be measured against the Melksham and Melksham Without Housing Needs Assessment (2022), from what I was told at the Inquiry, and so evidence over how delivery has fared more locally was not before me in the same substantive form. Nevertheless, the need under this assessment is set out at 882 affordable home ownership dwellings over a 14 year period. I do not doubt that Melksham has provided good numbers of affordable homes, but there is not a ceiling to its provision.
32. It is therefore clear that with regard to the Core Strategy target and the SHMA 2017 there is a persistent shortfall in delivery against affordable housing need. This is exacerbated by affordable housing indicators that were drawn to my attention which show considerable numbers on the housing and help to buy registers, and sometimes long waiting times in order to be allocated an affordable home. A not insignificant number of households were accepted as homeless, with households placed into temporary accommodation, including those with children. The average bids for affordable homes in Melksham and Melksham Without are also shown to exceed the number of properties advertised, in some instances considerably.
33. While there may be the potential for some crossover in these indicators in that the same household may appear under more than one indicator, these figures were not contested at the Inquiry. Affordability is clearly a substantial issue for those that are in housing need and this is further compounded by that affordability ratios for ownership or renting are either at or above the national average.
34. There was some criticism that the proposal would not provide a housing mix as it was solely affordable housing and especially as 'Phase 1' is also 100% affordable housing. It is intended though that the proposal would provide shared ownership and affordable/social rented properties, and the indicative mix in the S106 agreement includes properties between 1 and 4 bed, dependant on the demonstrable need and subsidy. There can be no reasonable stigma attached to an affordable housing development. The mix does not therefore count against the proposal.
35. In conclusion, the provision of 100% of units as affordable housing would not only considerably exceed the figure set out in Core Policy 43, but it would also have the greater benefit of enabling provision for those who would not be able to obtain general market housing, as shown by the affordability indicators. It attracts significant weight in favour of the proposal.

Other Matters

Best and Most Versatile Agricultural Land

36. Paragraph 180 b) of the Framework sets out, amongst other matters, that decisions should contribute to and enhance the natural and local environment including the economic and other benefits of the best and most versatile agricultural land (BMV land).
37. Under the Agricultural Land Classification, the site falls under grade 2. It is therefore BMV land. Though the site is now overgrown, it has been used for

agricultural production purposes. Interested party representations have referred to rapeseed being grown and cultivated in the field, and either crops or animals on the land.

38. The potential for the continued use of the site for agricultural land would be lost to new housing and associated development under the proposal. The amount of land lost would be fairly modest and clearly would not prejudice the sustainability of farming in the locality as there are other large areas of farmland in the vicinity of the site. Nevertheless, it would involve the loss of good quality agricultural land.
39. Hence, there would be a harmful effect on the provision of BMV land and as a consequence there would be conflict with paragraph 180 b) of the Framework. The Council and the appellant consider that the level of effect would be, respectively, modest or limited, while the Parish Council do not wish to see the loss of such land. I consider the effect and the weight to be attributed to it to be limited, given the amount of land involved.

Landscape Character and Appearance

40. Paragraph 180 b) of the Framework also sets out that decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.
41. The open landscape character attributes of the site would be diminished by up to 53 dwellings, the internal access roads and the associated infrastructure. It would have an urbanising effect and so it would result in the loss of the site's existing countryside landscape character in this regard. The remaining field boundaries would however be retained, and so this aspect of landscape character would not be unduly impacted.
42. The visual impact that would arise from the proposal would be limited. The site, save from its boundary with 'Phase 1', is fairly well enclosed by the trees and vegetation on the rest of the remaining boundaries. There would also be the potential to further reduce visual effects through landscaping, on the basis of the submitted Parameter Plan and subject to reserved matters. Views out into the countryside from Semington Road would be notably screened by the housing associated with 'Phase 1', once this is complete, and such views would be unlikely to be lessened substantially further by the proposal.
43. I agree with the main parties that the harmful effect on landscape character and appearance would be limited, as would the weight to be attributed to it. Nevertheless, there would be conflict with paragraph 180 b) of the Framework.

Other Benefits of the Proposal

44. As well as the housing land supply and the affordable housing benefits, the proposal would benefit the economy through construction and then its occupation. The future occupiers would also support the economy through their expenditure and sustain existing services. The construction phase in particular would no doubt result in further employment. The proposal would also contribute towards broader economic growth through increased housebuilding and providing housing potentially for the local labour force.

This attracts moderate weight as a benefit given the scale of the proposal and the evidence presented.

45. Other social benefits aside from the provision of affordable housing attract limited weight. These centre on supporting strong, vibrant and healthy communities through housing, accessible services, open spaces and the pedestrian connection onto Berryfield Lane which has the potential to enhance access to the countryside. While a diversion around a local farm may be beneficial, the onus is not on the proposal to provide it.
46. As regards the environmental benefits, the Biodiversity Net Gain Assessment shows 12.69% and 23.39% net gain and this figure has not been disputed. This is well in excess of the minimum net gain level of 10%. This level would also not have been mandated at the time when the application was submitted. The Ecology Parameters Plan shows enhanced and proposed hedgerows, grassland and swales, amongst other features. There is also no substantive evidence to suggest that there would be adverse impacts on protected species. Boundary hedgerows where bats may forage would be retained and light spill has the potential to be controlled through the imposition of a planning condition. Overall, the environmental benefits attract moderate weight.

Highway Safety

47. The proposal would be accessed through 'Phase 1' utilising the approved access point for that development onto Semington Road. While I note comments about the narrowness of Semington Road, principally due to traffic calming and the proximity to a mobile home park opposite, this access point has already received approval. The proposal would clearly add to the number of movements using it and the nearby roundabout with Western Way. However, I agree with the Council that the additional impacts would be low, based on the number of predicted movements as set out in the Transport Assessment.
48. In addition, the pedestrian and cycle routes into Melksham in particular would likely ensure that some of the movements would be carried out by these modes of transport. Western Way is a busy route, but the signalised crossing point in particular, provides safe access across this road. In practice, safe access would be very similar to that which has already been permitted on Phase 1. Highways related contributions under the S106 Agreement would also be used for the provision of a safe route to a planned school at Pathfinder Way.
49. I am not persuaded that the pedestrian connection onto Berryfield Lane would lead to residents attempting to access services in Melksham in this direction. This is because there is not a footway along Western Way where it is joined by Berryfield Lane. If such a footway was provided, it would deter from what in my view would be the safer option of accessing the site from Semington Road and then using the signalised crossing over Western Way, rather than trying to negotiate a traffic island over this road.
50. On this basis, there would not be an unacceptable effect on highway safety and the free flow of traffic by way of the traffic generation. This applies to those using all transport modes.

Other Issues Raised

51. Concerns have been raised that by virtue of 'Phase 1' and 'Phase 2' being pursued separately that public open space has suffered, in particular by way of the play space provision. Yet, there is no particular contrition here as the Parameter Plan shows approximately 40% of the site would be open space and which would seem to allow for a variety of related functions to be performed. Arrangements are proposed by way of both on and off site provision. It does not appear to be a particular matter of dispute that the proposal would be policy compliant in this regard. This does not alter my conclusion.
52. Design concerns would be more ably addressed at the reserved matters stage, such as with the application of local design standards and specifications of the dwellings and internal roads, as well as the trees and incidental facilities on the site. Nonetheless, it is useful that such matters are raised at this stage as they can help inform the reserved matters. Providing more enclosure to prevent access to Western Way is also consistent with the Ecological Parameters Plan because it shows a proposed hedgerow along this boundary, along with the retention of trees. This can be addressed through a planning condition.
53. There is no compelling evidence before me that the proposal would put undue pressure on local services. Capacity is deemed to be sufficient by the Council at primary and secondary schools to accommodate pupils who may reside on the proposal. The obligations in the Section 106 Agreement also make contributions to early years education, sports facilities and open space, amongst others. With regard to concerns over air quality, this can be ably addressed through a planning condition relating to an assessment and mitigation, if required. The same applies as regards flood risk and drainage, and this would also address groundwater issues through monitoring.
54. The Parish Council has drawn my attention to what it considered where a number of inaccuracies in the appellant's documentation, some of which the appellant to its credit recognised. I acknowledge the concerns in this regard, but this ultimately does not change my decision.
55. The recent consultation on changes to the Framework is a matter which carries limited weight in my decision because it is not known what the outcome of that consultation would be at present and what changes might take place to the draft document that has been published. The Written Ministerial Statement 'Building the homes we need' (WMS) is a different matter because it is an expression of Government policy. It includes the restoration and the raising of housing targets, and delivering more affordable homes. My overall decision is consistent with how the WMS seeks for the planning system to tackle these issues.

Obligations Contained in the Section 106 Agreement

56. The obligations in the S106 Agreement bind the owner to covenants with the Council. They in part concern affordable housing and it was explained that flexibility on housing mix was sought under the respective obligation due to potential funding arrangements. The application of the nationally described space standards was included on the basis of adopted Council guidance. The

S106 was updated so that the Parish Council could, amongst other matters, manage and maintain open space and/or play area on site.

57. The contributions concern active travel, early years, public art, sport, travel plan monitoring, travel vouchers and waste facilities. The off-site open space, and play area contribution schedule was updated so that it was cross-referenced with on-site provision schedules, in order that adequate provision would be made.
58. Having regard to the evidence before me, it has been demonstrated they are all necessary to make the development acceptable in planning terms, directly related to the development, and reasonable in scale and kind. They accord with the tests that are set out in paragraph 57 of the Framework and the Community Infrastructure Levy Regulations (as amended, 2019), where they apply to each of the obligations. As a result, I have taken them into account in my decision. They address the matters that are set out in the Council's second reason for refusal.
59. Interested parties have raised that additional contributions should be made, including for canal restoration, Public Right of Way upgrade and bus shelter improvements. These are not though matters that would be needed to make the development acceptable in planning terms as they would not be necessary and so they would fail the abovementioned tests.
60. The proposal would therefore comply with Core Policy 3 of the Core Strategy which concerns infrastructure requirements and paragraph 8 of the Framework in as far as the provision of infrastructure contributes towards sustainable development objectives.

Planning Balance

61. With the conflict that I have identified with the development plan policies, the proposal conflicts with the development plan as a whole. Core Policies 1, 2 and 15 of the Core Strategy and Policy 6 of the Neighbourhood Plan are central in such a judgment because they deal with whether a proposal would be in a suitable location for housing as part of the spatial strategy of the development plan. The proposal would be in conflict with these policies. There would not be conflict with Core Policy 3 of the Core Strategy and with Policy 1 of the Neighbourhood Plan.
62. The main parties are agreed that as the Council cannot demonstrate a 4 year supply of deliverable housing sites, then the presumption in favour of sustainable development at paragraph 11 d) ii. of the Framework is engaged. This means granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
63. The Parish Council have pointed to the application of paragraph 14 of the Framework and in this regard it has support from the Inspector who determined the successful appeal² for 'Phase 1'. Paragraph 14 effectively reverses the presumption so that the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits. This is provided that

² Appeal ref: APP/Y3940/W/21/3285428

- a) the neighbourhood plan became part of the development plan five years or less before the date on which the decision is made; and b) the neighbourhood plan contains policies and allocations to meet its identified housing requirement.
64. If I were to agree that paragraph 14 applies, the adverse impacts are threefold. The proposal would not be in a suitable location for housing, there would be loss of BMV land and harm to landscape character and appearance. In overall terms, I find the weight to be given to these adverse effects is significant.
65. Set against this is the contribution to addressing the shortfall against the 4 year housing land supply, the addition of up to 53 dwellings towards the Council's minimum housing requirement figure, contributing to the Government's objective of significantly boosting the supply of homes and the provision of affordable housing. There would also be economic, social and environmental benefits. Taking these benefits together, they attract very significant weight in my decision.
66. In making an overall judgment under paragraph 14, the adverse impacts of allowing development that conflicts with the neighbourhood plan is not likely to significantly and demonstrably outweigh the benefits.
67. If I were to agree that the presumption in favour of sustainable development under paragraph 11 d) ii were to be applied, I reach this same overall conclusion. The adverse impacts would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
68. If a flat balancing exercise were to apply, this would also support the grant of planning permission. This is because the adverse impacts attract significant weight, while the benefits attract very significant weight.
69. The planning balance does therefore favour the proposal, whether the paragraph 11 d) ii), paragraph 14 or a flat balancing exercise are applied. The proposal would therefore comply with paragraphs 2 and 7 to 14 of the Framework which concern achieving sustainable development as the purpose of the planning system, the associated objectives and the application of the presumption in favour of sustainable development.
70. I also do not find any particular conflict with paragraph 15 of the Framework because whilst the planning system should be genuinely plan-led, there will be situations where permission is granted other than in accordance with the development plan. Similarly, as regards paragraph 47, there will be instances where material considerations indicate a determination other than in accordance with the development plan. This is not to lessen the importance of plan-making and neighbourhood planning, but simply reflects there will be occasions where other considerations do support the grant of permission.

Conditions

71. I have imposed conditions which concern the statutory time limit and the reserved matters. The reserved matters are to be submitted within 2 years in order to expediate the delivery of dwellings on the site, given that the

Council cannot demonstrate a supply of deliverable sites of 4 years. In the event that the proposal is not submitted as a single phase, then a phasing plan would be required.

72. In the interests of certainty, I have also imposed a condition concerning the approved plans that reflect that access is a matter before me, as well as the parameters plans. Biodiversity related documents are already adequately dealt with through the Landscape and Ecology Management Plan (LEMP) condition. For the same reason, I have imposed a condition which restricts the maximum number of dwellings, as applied for. A condition is also applied with regard to the design and layout principles in the Design and Access Statement, in the interests of character and appearance.
73. I have imposed a condition concerning drainage details in the interests of providing satisfactory drainage, reducing flood risk and groundwater matters. A LEMP condition is imposed in the interests of biodiversity. As this already incorporates the document which concerns biodiversity mitigation and enhancement measures, a separate condition concerning this is not necessary but rather the wording incorporates these measures, as appropriate. A Construction and Environmental Management Plan condition is also imposed for the duration of the construction period. This is in the interests of protecting living conditions, public health and highway safety. The condition also requires the details of any site access required for construction purposes, which is specifically included for reasons of highway safety.
74. Conditions concerning land contamination and air quality are imposed in the interests of public health. A condition concerning noise mitigation is imposed in the interests of protecting the living conditions of the future residents from noise. A condition concerning residential travel plan measures is imposed in the interests of encouraging sustainable transport modes, while a condition is also imposed regarding the implementation of the Semington Road access in the interests of highway safety. A condition is also imposed concerning the pedestrian access onto Berryfield Lane, in the interests of recreational access.
75. A condition is imposed concerning landscaping on the northern boundary in order to inform reserved matters in the interests of safety, given the proximity to Western Way. A water consumption condition is imposed in the interests of water efficiency. A condition is also imposed concerning external lighting, in the interests of biodiversity. I have excluded private gardens, as I do not consider this to be reasonable. In any event, I understand that the most sensitive parts of the site in this respect are the vegetated boundaries, and the dwellings would be set away from these, under the Parameters Plan.
76. I have not imposed a condition related to public open space provision in the development plan and associated levels. This would be a matter for the Council to consider against the development plan document when the application for the reserved matters is submitted. If ultimately public open space provision is not provided in accordance with subsequent reserved matters, it would be a matter for the Council to investigate and take action accordingly.

77. Where relevant, the conditions contain implementation and retention causes and these are necessary and reasonable. Where I have altered the wording of the remaining conditions put forward, I have done so in the interests of precision and without changing their overall meaning.

Conclusion

78. I find this is a case where there are material considerations that indicate that the appeal should be determined otherwise than in accordance with the development plan. For the reasons set out above and having regard to all matters that have been raised, the appeal should be allowed subject to the conditions.

Darren Hendley

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
- 2) An application for approval of the reserved matters specified in Condition 3 below, must be made to the Local Planning Authority before the expiration of two years from the date of this permission.
- 3) No development hereby permitted shall commence until details of the following matters (in respect of which approval is expressly reserved) have been submitted to, and approved in writing by, the Local Planning Authority:
 - (a) The scale of the development;
 - (b) The layout of the development;
 - (c) The external appearance of the development;
 - (d) The landscaping of the site.

The development shall be carried out in accordance with the approved details. The reserved matters shall be submitted as a single phase unless otherwise agreed by the Local Planning Authority through the submission of a phasing plan and the development shall be implemented in accordance with that approved plan.

- 4) The development hereby permitted shall be carried out in accordance with drawing nos: Dwg Ref: 3888 – 300 Rev A – Land Registry Plan (Location Plan), Dwg Ref: MSW-BWB-ZZ-XX-DR-YE-0001 S2 Rev P02 - Ecological Parameters Plan and Dwg Ref: 3888 - 02 Rev B – Proposed Parameters Plan.
- 5) The development hereby permitted shall make provision for up to 53 dwellings.
- 6) The development hereby permitted shall be carried out in general accordance with the design and layout principles in the Design and Access Statement dated August 2022.
- 7) The development hereby permitted shall not commence until a scheme for the discharge of surface water has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include the following details:
 - (a) a sensitivity analysis has been undertaken on the network considering surcharged outfall conditions;
 - (b) overland exceedance routes have been shown on a drainage plan for flows in excess of the 1 in 100 year plus climate change (40%) rainfall event;
 - (c) clear arrangements are in place for ownership and ongoing maintenance of Sustainable Drainage Systems over the lifetime of the development;

(d) submit calculations which demonstrate that the proposed drainage design provides a sufficient level of water treatment; and

(e) Additional groundwater monitoring to be undertaken during the winter months to establish peak seasonal levels

The development shall be carried out in accordance with the approved details prior to first occupation of the dwellings hereby approved and thereafter retained.

- 8) Prior to the start of construction of the development hereby permitted, a Landscape and Ecology Management Plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority. The LEMP will include:

(a) Long term objectives and targets in accordance with the Calculation of Biodiversity Net Gain using the Biodiversity Net Gain Assessment, Document Number: MSW-BWB-ZZ-XX-RP-LE-0004_BNGP2, Rev: P02, Date: October 2023 by BWB Consulting;

(b) Management responsibilities and maintenance schedules for each ecological feature within the development for a period of no less than 30 years from the commencement of the scheme as identified in:

- Ecological Parameters Plan, Drawing ref: MSW-BWB-ZZ-XX-DR-YE- 0001 S2 Rev P02, Date: 26.10.2023 by BWB Consulting; and

- Biodiversity Enhancement Management Plan (BEMP), Document Number: MSW-BWB-ZZ-XX-RP-LE-0003_BEMP, Rev: P02, Date: 19/10/2023 by BWB Consulting.

Biodiversity mitigation and enhancement measures whose installation shall be supervised by a professional ecologist shall be carried out in accordance with the BEMP.

(c) The mechanism for monitoring success of the management prescriptions with reference to the appropriate Biodiversity Metric target Condition Assessment Sheet(s);

(d) A procedure for review and necessary adaptive management in order to attain targets; and

(e) Timescales for implementation and details of the legal and funding mechanism(s) by which long-term implementation of the plan will be secured.

The LEMP shall be implemented in full and for the lifetime of the development in accordance with the approved details prior to first occupation of the dwellings hereby approved.

- 9) The development hereby permitted shall not commence until a Construction and Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include details of the following measures:

i. An introduction consisting of a construction phase environmental management plan, definitions and abbreviations and project description and location;

ii. A description of management responsibilities;

iii. A description of the construction programme;

- iv. Site working hours and a named person and telephone number for residents to contact;
- v. Detailed site logistics arrangements;
- vi. Details regarding parking, deliveries, and storage;
- vii. Details regarding dust mitigation;
- viii. Details of the hours of works and other measures to mitigate the impact of construction on the amenity of the area and safety of the highway network;
- ix. Communication procedures with the Local Planning Authority and local community regarding key construction issues, including newsletters and fliers;
- x. Details of how surface water quantity and quality will be managed throughout construction;
- xi. Details of the safeguarding measures to deal with the following pollution risks:
 - The use of plant and machinery;
 - Wheel washing and vehicle wash-down and disposal of resultant dirty water;
 - Oils/chemicals and materials;
 - The use and routing of heavy plant and vehicles;
 - The location and form of work and storage areas and compounds; and
 - The control and removal of spoil and wastes.
- xii. Details of safeguarding measures to highway safety to include:
 - A Traffic Management Plan (including signage drawing(s));
 - Routing Plan;
 - Details of temporary/permanent Traffic Regulation Orders;
 - Pre-condition photo survey - Highway dilapidation survey;
 - Number (daily/weekly) and size of delivery vehicles;
 - Number of staff vehicle movements; and
 - Details of any site access required for construction purposes.
- xiii. In addition, the CEMP shall provide details of the ecological avoidance, mitigation and protective measures to be implemented before and during the construction phase, including but not necessarily limited to, the following:
 - Pre-development species surveys where necessary;
 - Identification of ecological protection areas/buffer zones and tree root protection areas and details of physical means of protection, such as protection fencing;
 - Working method statements for protected/priority species, such as nesting birds, reptiles, amphibians, roosting bats, otter, water vole, badger and dormice with regular monitoring;
 - Work schedules for activities with specific timing requirements in order to avoid and reduce potential harm to ecological receptors, including details of when a licensed ecologist and/or ecological clerk of works (ECoW) shall be present on site;

- Key personnel, responsibilities and contact details (including Site Manager and ecologist/ECoW); and
- Timeframe for provision of compliance report to the Local Planning Authority; to be completed by the ecologist/ECoW and to include photographic evidence.

There shall be no burning undertaken on site at any time.

Construction hours shall be limited to 0730 to 1800 hours Monday to Friday, 0730 to 1300 hours Saturday and no working on Sundays or Public or Bank Holidays.

The development shall be implemented in accordance with the approved details of the CEMP for the duration of the construction period.

- 10) The development hereby permitted shall not commence until a Phase II Ground Investigation report has been submitted to and approved in writing by the Local Planning Authority. The report shall address the issues raised in Section 9 of the Phase I Desk Study by Georisk Management dated July 2022.

Any identified mitigation measures within the Phase II Ground Investigation report shall be carried out prior to first occupation of the dwellings hereby permitted and be retained.

- 11) Prior to the commencement of construction of the development hereby permitted, an Air Quality Assessment (AQA) or Screening Assessment must be submitted to and approved in writing by the Local Planning Authority. This must quantify the effect of the development on existing local authority air quality monitoring locations and sensitive receptors as well as the development itself. It must also identify and make adjustments for all core strategy-based development in the development's locality. Use of CUREd data in the AQA is expected along with any other currently accepted approaches to AQA.

Any identified mitigation measures shall be carried out in accordance with a timetable contained within the approved AQA or Screening Assessment and thereafter be retained.

- 12) Prior to the submission of any of the reserved matters, a scheme of noise mitigation and timetable for implementation shall be submitted to and approved in writing by the Local Planning Authority. The scheme of noise mitigation shall be in accordance with the mitigation measures detailed in Section 5 of the submitted Noise Impact Assessment by BWB dated 22nd August 2022 and maintained for the lifetime of the development.

- 13) Those parts of the Residential Travel Plan capable of being implemented shall be brought into effect as each respective dwelling on the development hereby permitted becomes occupied. Those parts identified for implementation after occupation shall be implemented in accordance with the timetable contained therein and shall continue to be implemented as long as any part of the development is occupied. The Residential Travel Plan Co-ordinator shall be appointed and carry out the identified duties to implement the Residential Travel Plan for a period from first occupation until at least 2 years following occupation of the last residential unit.

- 14) No residential unit on the development hereby permitted shall be occupied until the vehicular access to Semington Road granted approval under planning permission 20/07334/OUT has been provided to base course level including its visibility splays. The access shall have been completed to wearing course level prior to occupation of the 50th dwelling served by it.
- 15) Prior to the occupation of the 20th dwelling unit on the development hereby permitted, a walking link 2 metres wide shall be provided between the roads on the development and Berryfield Lane in accordance with Dwg Ref 3888 - 02 Rev B - Proposed Parameters Plan. The link so provided shall thereafter be maintained and kept available for use for the lifetime of the development.
- 16) The landscaping details submitted under the reserved matters for the development hereby permitted shall include intensive and impenetrable landscaping on the northern boundary.
- 17) The dwellings on the development hereby permitted shall be constructed to meet as a minimum the higher Building Regulation standard Part G for water consumption limited to 110 litres per person per day using the fittings approach.
- 18) Prior to the installation of any external lighting on the development hereby permitted, other than in private gardens, full details including height, design, location and intensity shall be submitted to and approved in writing by the Local Planning Authority. The lighting installation shall only be carried out in accordance with the approved details.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Hashi Mohamed	Counsel, instructed by Alwyn Thomas, Solicitor, Wiltshire Council
<i>He called</i> Christopher Roe MSc, MRTPI	Strategic Planning Manager, Wiltshire Council
Andrew Burgess BA (Hons), MRTPI, FRSA	Managing Director, Andrew Burgess Planning Ltd
Ruaridh O'Donoghue	Principal Planning Officer, Wiltshire Council
Alwyn Thomas	Solicitor, Wiltshire Council

FOR THE APPELLANT:

Mr Christopher Young	Kings Counsel, instructed by Jeff Richards, Senior Director, Turley
<i>He called</i> Jeff Richards BA (Hons), MTP, MRTPI	Senior Director, Turley
James Stacey BA (Hons), DipTP, MRTPI	Managing Director, Tetlow King Planning
Laura Cottam	Solicitor, Gowling WLG
Tamsin Almeida	Appellant (<i>spoke in relation to the site visit arrangements and at the site visit</i>)
Claire Hawkes	Associate Director, Turley (<i>spoke in relation to the site visit arrangements</i>)
Alfred Jata	Site Supervisor (<i>spoke on the site visit</i>)

INTERESTED PARTIES:

Councillor Edward David Pafford	Melksham Without Parish Council, Chair of the Joint Melksham Neighbourhood Plan Steering Group
Councillor Jonathon Seed	Wiltshire Council
Teresa Strange	Clerk, Melksham Without Parish Council

INQUIRY DOCUMENTS

- 1 Addendum Statement of Common Ground
- 2 Draft Case Officer's Report (containing conditions)
- 3 Planning Obligation by Deed under Section 106 of the Town and Country Planning Act 1990 relating to land west of Semington Road, Melksham, Wiltshire (final draft)
- 4 Statement of Compliance of Section 106 Agreement Obligations with Regulation 122 of the Community Infrastructure Levy Regulations 2010
- 5 Opening Statement for the Appellant
- 6 List of Appearances and Opening Remarks on Behalf of Wiltshire Council
- 7 Transcript of Councillor Pafford's comments
- 8 Closing Submission for the Appellant

DOCUMENTS SUBMITTED AFTER THE CLOSE OF THE INQUIRY

- 9 Proposed Final Conditions Following the Inquiry Conditions Roundtable
- 10 Planning Obligation by Deed under Section 106 of the Town and Country Planning Act 1990 relating to land west of Semington Road, Melksham, Wiltshire (final engrossed version)