



Appeal Decision

Inquiry opened on 12 August 2025

Site visit made on 14 August 2025

by M Chalk BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th September 2025

Appeal Ref: APP/E3335/W/25/3363055

Land off Packsaddle Way, Frome 377760 149137

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by LiveWest against the decision of Somerset Council.
 - The application Ref is 2023/0864/FUL.
 - The development proposed is erection of 74 dwellings and a children with disabilities home, including means of access, drainage, landscaping and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The council reviewed its reason for refusal prior to the Inquiry and withdrew its opposition to the proposed development on the grounds of its location outside the settlement boundary and its effect on character and appearance. It maintained its opposition to the proposed development on the grounds of loss of open space.
3. The Rule 6 party, People for Packsaddle, maintained its opposition in line with the council's full reason for refusal. It also pursued additional grounds including whether the appeal proposal made sufficient provision for affordable housing, renewable energy generation and its effect on biodiversity.
4. A case management conference was held before the Inquiry at which the main issues were agreed with the parties.

Main Issues

5. The main issues are therefore:
 - The effect of the proposed development on the availability of public open space,
 - Whether the development would be in an appropriate location, having regard to local and national policies,
 - The effect on the character and appearance of the area,
 - The effect on biodiversity,
 - Whether it would make acceptable provision for affordable housing; and,
 - Whether it would make acceptable provision for the generation of renewable energy.

Reasons

Open space

6. Policy DP16 of the Mendip District Local Plan Part 1 (the Part 1 Plan) states, amongst other things, that development resulting in the loss of existing open, sport or recreational space, including allotments will not be permitted unless suitable alternative recreational or open space, which is adjudged to be of equal or greater benefit to the community as compared with the space which is to be lost, is provided in an accessible location.
7. Extensive evidence was presented by the parties on the applicability of policy DP16 to the appeal proposal. The supporting text to the policy¹ states that the open spaces of which the council is aware are shown on the Policies Map, and that the policy will also apply to new space that comes forward. Following a merging of local authorities the council is now both the landowner and the local planning authority for the site, whereas when the Part 1 Plan was adopted the landowner was the former Somerset County Council which had intentions to develop the site.
8. This is a significant change in circumstances as the landowner does not now seek to preserve the site for a future development. It recognises that the site has recreational value for residents. Therefore, policy DP16 applies to the site as it is a new site that has come forward due to this change. That a sale has been agreed for the site does not change my position on this point as that is a private rather than a planning matter.
9. It is common ground between the parties that the development cannot provide an equivalent quantity of open space if the entire site were to be counted as open space. The appellant instead contends that only that area lawfully accessible by the public should be considered, in which case the proposed open space would only need to provide a benefit equal to or greater than that provided by the public right of way (the PROW) and permissive path that cross the site.
10. I heard considerable evidence during the inquiry about the actual and lawful use of the site since it was acquired by Somerset County Council. Whilst it is not for me to give a view on the lawfulness of the use, whether in terms of private rights or in planning terms, I heard during the inquiry that the site can be enjoyed actively and passively. The former involves passing and repassing over the site. Taking in this instance the appellant's view that only that area to which the public has a lawful right of access should be counted I do not find that there would be any harm on this point. The development would effectively make permanent a path across the site from Packsaddle Way to the public footpath. At present this path is permissive only and access could be revoked at any time by the landowner although there was no indication given of this being likely and the site has been accessible to the public now for several decades.
11. However, the effect on the passive enjoyment of the site would be substantial and harmful. The site is an indentation in the built-up area of Frome, neither urban nor countryside in its character. The appeal proposal would very substantially reduce the extent of open space that could be enjoyed on site, replacing it with 74 homes and the associated infrastructure.

¹ Paragraph 6.149

12. I heard the testimonies of many residents during the inquiry, together with the written submissions, about the benefits that they derive from the site as an attractive, peaceful, open and undeveloped space to take exercise, form social connections and experience nature close to their homes. I also heard that the nearest comparable open space, other than a children's play area on Packsaddle Way, is approximately fifteen minutes' walk from the site and that it is not of comparable quality to the appeal site. The appeal site is regarded as a safe and well-used place, and it is clear both from the evidence given at the inquiry and in writing that the space is used by all ages. As I heard at the inquiry and saw for myself much of the site is impassable due to the extent of established vegetation including hedgerows and tall grass. A great deal of the benefit of the site must therefore derive from the passive enjoyment of it as much of it cannot be actively used.
13. The appeal proposal would deliver improvements in terms of permanence and accessibility along the proposed footpaths as well as new landscaping. It would provide 0.8 hectares of public open space that could be actively and passively used by residents. This is twice what is required for a development of this scale. However, it would be a very substantial reduction in the quantity of space at the site. The space that would be provided would be close to the proposed houses. The permissive path runs broadly across the centre of the site and at present is separated by a significant distance from any houses, with the intervening mature planting providing further visual separation. Given the specific character of the site, even the proposed provision of public open space would be a significant reduction in benefit provided to residents given the loss of this separation.
14. The development would not affect the views towards the countryside from the PROW, and therefore the passive enjoyment of that aspect would be unaffected. The proposed community orchard would provide a space for existing and future residents to meet and enjoy the space and views towards the countryside. However, the reduced space would limit the sense of openness which is a key characteristic of the site in its present state and therefore limit the benefit that the orchard would provide.
15. There is a fallback position for the landowner to erect fencing which could restrict passive enjoyment of the site. However, there is no evidence of any intention to do so. While post and rail fencing was erected on the site in 2007² I have no evidence to suggest that this would have affected the passive enjoyment of the site. No evidence was presented to suggest that the council as landowner would erect more substantial and solid fencing on the site. To do so would conflict with its listing of the site as an Asset of Community Value. This possibility therefore attracts very little weight in my determination of this appeal.
16. The appeal proposal would therefore fail to provide alternative recreational or open space that would be of equal or greater benefit to the community than the space which would be lost. Consequently, it conflicts with the identified requirements of policy DP16 of the Part 1 Plan.
17. The National Planning Policy Framework (the Framework) states that access to a network of high quality open spaces and opportunities for sport and physical activity is important for the health and well-being of communities. It further states

² Statement of Mr Charles Field, Appendix 1 to the proof of evidence of Mr Dunlop

that existing open space should not be built on unless the open space is surplus to requirements, it would be replaced by an equivalent or better provision, or the development is for alternative sports and recreational provision.

18. The June 2012 Open Space Study³ is the most recent assessment of open space in the former Mendip district. This found that while in the College ward of Frome there was an overall surplus of more than 18 hectares of all open space in the ward when including play spaces and playing field/pitch provision, there was a deficit of other open space. The appeal site is not a play space or playing field/pitch. Consequently, these figures show a deficit of the sort of space that the appeal site provides, without the appeal site being counted. The appeal proposal would provide 0.8 hectares of open space, against a shortfall of more than 1 hectare. For the purposes of the Framework, therefore, the appeal site is not surplus to requirements as there is a need for more open space in the ward, it would not be replaced by an equivalent or better provision, and the development is not for alternative sports and recreational provision. Conflict therefore exists with the Framework's aim of promoting healthy and safe communities.
19. Policy DP16 is consistent with the Framework in its aim of protecting open space. Conflict with the policy attracts full weight in my determination of the appeal.

Location

20. The appeal site lies outside the settlement boundary of Frome, which is defined as one of Mendip district's principal settlements in Core Policies 1 and 2 of the Part 1 Local Plan. Core Policy 2 directs new housing development to sites within settlements, or to allocated sites. Core Policy 1 states that development outside the settlement limits must be at the most sustainable locations on the edge of the identified settlements, will be strictly controlled and will only be permitted where it benefits economic activity or extends the range of facilities available to the local communities.
21. The appeal proposal therefore conflicts with the identified requirements of Core Policies 1 and 2.
22. The appeal site is immediately next to the settlement boundary of Frome and is surrounded on 3 sides by existing housing. I heard during the Inquiry that the site is in a sustainable location, and due to the site's indented nature it is plainly as close to services and facilities as the surrounding houses. I heard that the nutrient neutrality issues limiting development in the other principal settlements are being addressed on a case-by-case basis. However, there is currently no overarching solution that makes the other settlements suitable in principle for development. It follows that Frome is currently the most sustainable location in the former Mendip district for new housing development. There is therefore no more than a technical conflict with Core Policies 1 and 2 given the site's location. This conflict attracts negligible weight in the overall balance.

Character and appearance

23. The appeal site lies on the edge of Frome and is enclosed on three sides by the surrounding estate. I have addressed the recreational value of the open space above, but the site also contributes to the overall character of the wider area

³ Core document 9.20

beyond the site by providing a sense of openness between the properties that back onto it. That contribution to the wider character is mostly experienced only by the occupiers of the immediately surrounding houses as the site is so enclosed views onto it from the wider estate are limited.

24. The remaining northern edge of the site is enclosed by a mature hedgerow which restricts views into the site from the outside. The appeal proposal in this context would have limited visual impact beyond its immediate setting. It would appear as an infill development, in keeping with its surroundings with only limited views from the north.
25. There would therefore be moderate harm to the character and appearance of the area from the proposed development. It would conflict with the aims of policy DP1 of the Part 1 Plan. This seeks, amongst other things, that developments contribute positively to the maintenance and enhancement of local identity and distinctiveness across the district.
26. The policy further states that where development would adversely affect or result in the loss of features or scenes recognised as being distinctive a balanced judgement against the wider benefits of the proposal will be carried out. To avoid repetition of discussion of these benefits I return to this point in my Planning Balance section below.

Biodiversity

27. The application the subject of the appeal was submitted before the national requirement for a 10% biodiversity net gain was introduced. However, as proposed the development would deliver an overall net gain both in habitat units and hedgerow units through measures that could be secured by conditions.
28. The development would also secure offsite mitigation measures to offset the likely significant effects on the Mells Valley Special Area of Conservation. This was designated primarily for its breeding population of Greater Horseshoe Bats. I heard during the Inquiry that the mitigation measures had been agreed with Natural England, and no evidence was presented to contradict this. I therefore see no reason to doubt that this is correct.
29. The proposed Section 106 agreement requires that provision of the mitigation be made prior to occupation of any of the approved dwellings, and that the mitigation land be managed and maintained in perpetuity. The Rule 6 party queried whether the bat mitigation land could be secured based on the information provided. However, no evidence was presented to indicate that the proposal could not be relied upon. In the absence of any detailed evidence to contradict this, I am satisfied that the proposed mitigation land could be secured and maintained.
30. Given these considerations I am satisfied that the appeal proposal would have an acceptable effect on biodiversity. It would accord with policies DP5 and DP6 of the Part 1 Plan. Taken together these require, amongst other things, that the planning process protect, enhance and restore Somerset's Ecological Network and that where necessary impacts to priority sites be offset or compensated for.

Affordable housing

31. The application the subject of this appeal was supported by a Financial Viability Assessment. The finances of the proposed development were independently

reviewed and the council and appellant agreed on a proposal that would provide a mix of affordable housing comprising 22% of the units. While less than the 30% sought under policy DP11 of the Part 1 Plan, that policy does allow for negotiation where proposals cannot viably deliver a fully compliant scheme.

32. The Rule 6 party contends that the development finances have not been subject to further independent review, as recommended during the application in the event of an appeal. However, the appellant has provided an updated Assessment with the appeal to show that the financial costs associated with the development are expected to be higher than previously projected. While not independently reviewed, no competing technical evidence has been presented to show that this latest evidence is incorrect. Furthermore, the appellant does not contend that the worsening financial position should result in a lessening of their commitment to provide affordable housing on the site.
33. The proposal would therefore make acceptable provision for affordable housing, so would accord with policy DP11 of the Part 1 Plan.

Renewable energy

34. Policy DP7 of the Part 1 Plan requires, amongst other things, that development maximise opportunities for renewable energy generation on site. The proposal would make provision for 17 of the 74 private homes to be fitted with solar panels and air source heat pumps prior to occupation.
35. While this is a low proportion of the total development, the policy does not require that every new home be fitted with such measures. Rather, the requirement to maximise opportunities is necessarily a matter of judgement. In the context of a development that cannot provide the 30% contribution of affordable housing it is inevitable that other financial constraints will exist as well. In this instance, the proposal would ensure renewable energy generation for most of the affordable housing units, including all the social rent units.
36. All of the units to be built on site would be built to the same standard, meeting the Building Regulations requirements for new homes. Those built without the panels or pumps would have the capacity to have them added later. As those provided with the equipment would remain within the appellant's control they would be able to ensure that it would remain in place and provide benefits as part of the development.
37. On balance, therefore, the development would make acceptable provision for renewable energy in accordance with the identified requirement of policy DP7.

Other Matters

38. The Grade II listed Selwood Cottage lies on the PROW that crosses the appeal site. In accordance with section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 I have paid special regard to the desirability of preserving the building or its setting. The council and appellant agree that any effect to the significance of the property would be negligible, and I heard no evidence to suggest otherwise. The appeal site is separated from the setting of the listed building both by distance and by intervening development. I therefore see no reason to disagree with this conclusion.

39. A section 106 agreement was submitted by the appellant and was the subject of discussion during the Inquiry. An updated version responding to points raised during those discussions was circulated after the Inquiry closed. As I am dismissing the appeal on other grounds it is not necessary for me to conclude on whether the individual contributions would meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010. However, for the purposes of determining this appeal I have assumed that they would, and that the development would deliver all the works and benefits identified in the agreement.
40. Submissions made in response to this appeal referred to the management of the site, as well as to the council's handling of its proposed sale. For the sake of clarity these matters do not form part of my determination of this appeal.

Planning Balance

41. The Framework states the government objective of significantly boosting the supply of homes. This objective has been echoed in ministerial statements recognising the national need for homes.
42. It is common ground between the parties that the council cannot demonstrate a 5 year supply of deliverable housing land. Its most up-to-date position⁴ is that it has a 2.8 year supply. The council has also failed to meet its housing delivery target, and therefore a 20% buffer is applied to the council's housing land supply. Housing delivery within the former Mendip district is also constrained by nutrient neutrality issues, with Frome the only one of the principal settlements identified in Core Policy 1 not affected. Further to this the council has an urgent need to provide more affordable housing, with a historic undersupply resulting in a large and growing waiting list. Within this context there is a dire local need for new housing development. The presumption in favour of sustainable development set out at paragraph 11d) of the Framework is therefore engaged, and planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
43. Policy DP1 requires a balanced judgement of any harm to character and appearance against the wider benefits which would arise from the proposal. The harm in this case would be from the development of an area of predominantly enclosed open space with an infill scheme that would not extend beyond the existing edge of the built-up area of Frome. As noted above, for the purposes of this decision I have assessed this harm only in terms of the site's contribution to the character and appearance of the wider area beyond it.
44. The benefits in this case include the delivery of market and affordable housing on a site that is available, and which could be developed quickly. This attracts very significant weight in the overall balance given the scale of development and the established local need for both market and affordable housing. The development would generate short-term economic benefits during construction and long-term benefits once occupied, as well as financial contributions towards health and education provision. These attract limited additional weight. The proposed development would also deliver a short stay respite home for children with disabilities, adding to the council's provision of care. As there is an identified need

⁴ Set out in inquiry document 4, Somerset East Area (former Mendip District LPA) Statement on Five Year Housing Land Supply July 2025

for these facilities in Somerset this attracts moderate additional weight in the balance. Biodiversity net gain would also be delivered as part of the development, and this attracts limited weight. The inclusion of additional sources of renewable energy generation as part of the development and the provision of electric vehicle charging points to each home also carries moderate positive weight.

45. Given the scale of these benefits I find they would outweigh the harm to the character and appearance of the wider area. There would therefore be no conflict with policy DP1 overall. For the sake of clarity, the benefits would also outweigh any harm arising from the technical conflict with Core Policies 1 and 2.
46. I heard during the Inquiry accounts of the benefits experienced by residents from use of the appeal site at all times of year and all times of day. Many others attested to their positive experiences of visiting the site in writing in response to the application and the appeal. These accounts span several decades, with testimonials from teenagers through to those who have been visiting the site since the 1970s. Plainly some of that enjoyment has derived from the active use of the informal paths around the site which exist without the landowner's consent. For the sake of clarity this aspect carries negligible weight in my determination.
47. However, there is a permissive path across the site, as well as the PROW. I heard no evidence to indicate any intention to remove the permissive path. Users of the site can therefore derive both active and passive enjoyment from the site, and a considerable number of submissions made by residents attested to the passive enjoyment of the site in its current undeveloped form.
48. Any consideration of the effect of the appeal proposal must consider the net effect on open space. While it would reduce the identified deficit of other open space identified in the Open Space Study, it would not wholly offset it. Furthermore, the development would not provide open space of equal or greater benefit to the community. While the active enjoyment of the site would not be harmed by the proposed changes it would become a less open, less peaceful and less attractive space, of substantially diminished value to residents notwithstanding the community orchard, proposed landscaping and the securing of a permanent footpath across the appeal site in addition to the PROW.
49. The value attached to the recreational enjoyment of the existing open space by residents is such that this harm arising from the development would in this instance significantly and demonstrably outweigh the very significant benefits that it would deliver.
50. Accordingly, the proposed development would conflict with the development plan, taken as a whole. There are no material considerations, including the Framework, to indicate that a decision should be taken otherwise than in accordance with it.

Conclusion

51. For the reasons set out above the appeal is dismissed.

M Chalk

INSPECTOR

Appearances

For the appellant:

Giles Cannock KC, who called:

Claire Foxford	Foxford Landscape Consultants
Andrew Paley	Bean Design
Daniel Rich	Avison Young
Richard Pash	GE Consulting
Des Dunlop	Managing Director, D2 Planning
Tom Ewings	Solicitor, Ashfords LLP

For the council:

Killian Garvey and Elana Kaymer, who called

Thomas Jones	Area Manager – Development Management, Somerset Council
Martin Adams	Solicitor, Somerset Council
Brian Conbery	Solicitor

For the Rule 6 Party, People for Packsaddle:

Harley Ronan, who called:

John Dingle	Jon Dingle Ltd
Tim Taylor	Client

Interested parties

Nicola Cretney	Resident
Beki Arthurs	Resident
Leonda Vanderhof	Resident
Nicky Gardiner	Resident
Jackie Platt	Resident
Andrew Gardiner	Resident
Chris Owen	Resident
Jenny Exall	Resident
Jackie Wheeler	Resident
Tom Kemp	Resident
Janet Hague	Resident
Toby Culff	Resident
Janew Llewellyn	Frome Town Council
Fletcher Robinson	CPRE Somerset
Keith Wheeler	Resident

Documents submitted to the Inquiry

ID1 Biodiversity net gain and local nature recovery strategies dated 15 October 2019
ID2 Opening submission for appellant
ID3 Opening submission for Somerset Council
ID4 Somerset East Area (former Mendip District LPA) Statement on Five Year Housing Land Supply July 2025
ID5 Opening submission for People for Packsaddle
ID6 Closing submissions on behalf of People for Packsaddle by Harley Ronan

ID7 Closing submissions on behalf of Somerset Council by Killian Garvey and Elana Kaymer

ID8 Closing submissions on behalf of the appellant by Giles Cannock

ID9 Opening submissions from interested parties

Documents submitted after the Inquiry

Section 106 agreement received 22 August 2025