



Appeal Decision

Site visit made on 29 July 2025

by **U P Han BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 October 2025

Appeal Ref: APP/E3335/W/25/3362623

Land at Mill Lane, Lopen, Somerset, Grid Ref Easting: 342728 Grid Ref Northing: 114269

- 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 Lopen LVA LLP against the decision of Somerset Council.
 - The application Ref is 20/03160/OUT.
 - The development proposed is the erection of 9 dwellings including the creation of a new access point and the demolition of existing buildings with all matters reserved except access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was submitted in outline with all matters reserved except for access. I have had regard to the submitted plans, including the Illustrative Layout¹, which shows how the site might be developed but have treated each element of the drawings as indicative, apart from the details of the access when considering the likely impact of the proposal on the matters set out in the main issues. I have removed wording from the description of development in the banner heading above which does not relate to acts of development.
3. The Council's Decision Notice and Officer Report refer to the Grade II listed buildings known as Ballarat Farmhouse and Shores Farmhouse but does not refer to the Grade II listed building known as Apple Hay. The appellant's own Historic Environment Assessment (dated September 2020) (the HEA) acknowledges that the proposed development would result in less than substantial harm to Apple Hay as a result of the proposed development within its setting. Accordingly, I have considered Apple Hay under the first main issue, and as the appeal site is proximate to listed buildings, I have had special regard to the statutory duties set out under Sections 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
4. The appeal site is also adjacent to a designated conservation area, and the proposal would result in the loss of a non-designated heritage asset. Accordingly, I have taken into account both relevant local and national planning policies in my assessment.
5. The appeal site is located within the hydrological catchment of the Somerset Levels and Moors Special Protection Area (SPA) and Ramsar Site. The

¹ 241005_L_02_01

Conservation of Habitat and Species Regulations 2017 (the Regulations) require that, where a project is likely to have a significant effect on a European site, either alone or in combination with other projects, the competent authority must make an appropriate assessment of the project's implications in view of the relevant site's conservation objectives. As the competent authority, I am required to carry out an Appropriate Assessment pursuant to the Regulations. Accordingly, I have consulted Natural England and taken their comments into account. The appellant has had an opportunity to respond to Natural England's comments, and I have also taken the appellant's response into account. While not specified as a reason for refusal in the Decision Notice, I have considered the effect of the proposed development on the integrity of the Somerset Levels and Moors SPA and Ramsar site as a main issue in the Decision, and I am satisfied this would not prejudice any parties.

6. During the appeal, the Council updated its five year housing land supply position. The appellant was consulted on the updated position paper, and I have taken their comments into account in reaching my Decision.
7. A revised National Planning Policy Framework (the Framework) was published in December 2024, which I have had regard to as a material consideration in my decision making. In this instance, the issues most relevant to the appeal remain unaffected by the revisions to the Framework. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework, and that no party would be disadvantaged by this.

Main Issues

8. Accordingly, the main issues are:
 - the effect of the proposed development on the settings and thereby significance of Lopen Conservation Area (the CA) and Grade II listed buildings known as Ballarat Farmhouse, Apple Hay and Shores Farmhouse;
 - whether sufficient justification has been provided for the proposed loss of the non-designated heritage asset known as the Bleaching House; and
 - the effect of the proposed development on the integrity of the Somerset Levels and Moors Special Protection Area (SPA) and Ramsar site.

Reasons

The CA and listed buildings

Significance and settings of the heritage assets

9. The appeal site is outside of, but adjacent to the CA. The CA covers the majority of Lopen and contains a concentration of listed buildings and other historic buildings which form a cohesive aesthetic due to their preserved craftsmanship, architectural detailing and historical origins. A large proportion of the buildings in Lopen are built from local ham stone which adds to the distinctive and unified character of the CA and the village and enhances its appearance as a historic rural settlement that has evolved over many centuries. The surrounding landscape of agricultural fields contributes to the rural character and setting of the CA and the village, including the appeal site itself, which comprises part of a grassed agricultural field located on the southern edge of Lopen near the entrance into the

village and is highly visible along Holloway, thereby contributing the significance of the CA.

10. The Grade II listed buildings of Ballarat Farmhouse, Apple Hay and Shores Farmhouse are situated on the western side of Holloway with a bungalow on the corner of Frog Street and Holloway between the appeal site and the listed buildings.
11. Ballarat Farmhouse dates from early 18th century and is constructed from ham stone coursed rubble with ashlar dressings and topped with a clay tiled roof. Its classical design and traditional building materials contribute to its special architectural and historic interest as well as to the local vernacular character of Lopen. Its immediate setting comprises the cluster of buildings in Frog Street and the open field to the south of the listed building. However, the HEA acknowledges that its wider rural landscape setting is a moderate contributor to its significance. Given that Ballarat Farmhouse is appreciable from the wider landscape, including the appeal site, but separated from it by Holloway and the aforementioned bungalow, I concur with the HEA's assessment of the appeal site being a moderate contributor to the significance of Ballarat Farmhouse.
12. Apple Hay is a detached two storey farmhouse constructed in 1747 of ham stone ashlar under a Welsh slate roof, featuring traditional brick end chimneys. Its significance is derived largely from its historical and architectural qualities, representing a well-preserved rural dwelling typifying the vernacular of the village. The setting of Apple Hay largely comprises the buildings in Frog Street with fields to the southeast. Apple Hay and its immediate setting are separated from the appeal site by Holloway, Ballarat Farmhouse and the aforementioned bungalow.
13. Shores Farmhouse is situated at the corner of Frog Street and Holloway. The listed building dates back to the mid-17th century and is of plastered cob and rubble construction with a thatched roof. Its cob construction, and traditional fenestration adds to its distinct vernacular charm and contributes to its historic and architectural significance. Its setting comprises the cluster of buildings in Frog Street, the residential dwellings located on the opposite side of Holloway and the rural landscape to the south and east. The HEA recognises the setting is mixed and contributes moderately to the significance of Shores Farmhouse. Based on my site observations and the information before me, I have no basis to disagree.

Effect of the proposal on the settings and significance of the heritage assets

14. I recognise that the agricultural nature of the appeal site contributes to the CA's landscape setting. I accept that matters of layout, scale, appearance and landscaping are all reserved for future consideration and thus the extent to which the proposal would impinge upon and erode the character of the site remains uncertain. However, despite the proposal being in outline and limited to nine dwellings, this amount of development would likely diminish the open agricultural character of the site and thereby its contribution to the setting of the CA. Given the site's location within a larger field and the extent of fields and agricultural land around the village, I judge the harm that would be caused to the setting and significance of the CA would be less than substantial in the terms of the Framework.
15. In light of the separation distance and the presence of an intervening road and building between the appeal site and both Ballarat Farmhouse and Apple Hay, I

agree with the HEA's assessment that the proposed development would result in less than substantial harm to the significance of those heritage assets due to its impact on their settings.

16. The HEA finds that the proposed development would have no harm on the significance of Shores Farmhouse due to the distance between it and the appeal site, as well as limited views of the site from Shores Farmhouse. However, given that Shores Farmhouse is closer to the appeal site than Apple Hay (where the HEA has identified some harm to that building) and can be viewed together with the appeal site along Holloway, it would follow that the proposal would cause some harm to Shores Farmhouse due to the impact of development within its setting.
17. The HEA suggests that the level of less than substantial harm to Ballarat Farmhouse and Apple Hay could be mitigated through appropriate layout, design, landscaping and screening options. However, as definitive details regarding these matters are not before me but reserved for future consideration, I cannot conclude that the harm I have identified would be mitigated.
18. Notwithstanding this, given the separation distance between the appeal site and the said listed buildings, along with the presence of an intervening road and building, the degree of harm would fall at the lower end of the less than substantial spectrum.
19. The appellant has drawn my attention to the Council's Heritage Advisor comments, in particular those indicating that they have 'no objection to the principle of a small sensitive development within the proposed site provided it avoids a suburban appearance and takes greater reference from the agrarian landscape setting and the immediacy of the various listed farmhouses, so as to better respond to the wider and historic setting.' While the development may, in principle, be supported, it does not mean that the proposal would not have the potential to harm the settings of the CA and listed buildings. Indeed, the appellant's own HEA concluded that the proposal would result in less than substantial harm to the significance of Ballarat Farmhouse and Apple Hay.
20. While the Council's Officer Report summarised the Council's Heritage Advisor's comments as 'No Objections', their detailed comments highlight concerns regarding the impact of development on the settings of nearby heritage assets and emphasise the site's prominent gateway location into the CA.
21. Even if the dwellings would be 1.5 to 2 storeys, they could nevertheless cause less than substantial harm to the significance of the above heritage assets as a result of development within their settings.
22. For the reasons given, due to its adverse effects on their settings, the proposed development would harm the significance of the CA and the Grade II listed buildings known as Ballarat Farmhouse, Apple Hay and Shores Farmhouse, albeit the harm would be less than substantial in the terms of the Framework.
23. Nevertheless, the proposed development would not accord with Policy EQ3 of the South Somerset Local Plan (2006-2028) (the SSLP) insofar as it requires development proposals to safeguard, or where appropriate, enhance the significance, character, setting and local distinctiveness of heritage assets.

24. Paragraph 214 of the Framework requires development proposals which lead to less than less than substantial harm to the significance of a designated heritage asset be weighed against the public benefits of the proposal, which I shall return to within my Heritage Balance below.

The Bleaching House

25. Paragraph 216 of the Framework indicates that the effect of a proposal on the significance of a non-designated heritage asset should be taken into account and in weighing proposals that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
26. It is not disputed by the main parties that the Bleaching House is a non-designated heritage asset. While the site location plan upon which the HEA is based excludes the Bleaching House, the HEA draws on information from the Historic Environment Record and analysis of historic maps, which indicate that the building existed from 1822.
27. Based on my site observations, the small single storey flat roofed utilitarian-looking building is constructed from similar stone to other historic buildings in the CA. However, sections of breeze block and corrugated metal roofing appear to have been added to the building in more recent times. The building is in a visibly dilapidated state with rust on its metal roof, open apertures, damaged doors and vegetation colonisation. Furthermore, the above alterations and its adjacency to modern agricultural buildings detracts from its historic character and undermines its significance. Nonetheless, the Bleaching House retains a degree of heritage significance due to its age and the survival of original materials.
28. As I understand it, the Council's objection relates not to the loss of the Bleaching House itself but to the lack of justification for its removal. The appellant has provided a brief justification for the loss of the Bleaching House in its appeal statement. Although brief, I find the justification to be clearly grounded and well-supported by what I observed on site. This includes the Bleaching House's degraded state and diminutive scale, which makes conversion for realistic alternative use economically and functionally impractical. I also agree that the modern agricultural buildings currently adjacent to the Bleaching House diminishes its heritage significance. Furthermore, the unsympathetic alterations to the building have eroded its original character.
29. The proposed development would, nevertheless, harm the limited significance of the Bleaching House through its total loss. As such, there is conflict with Policy EQ3 of the SLP insofar as it requires development proposals to safeguard or where appropriate enhance the significance, character, setting and local distinctiveness of heritage assets

Heritage Balance

30. The proposal would not preserve the settings and significance of Ballarat Farmhouse, Apple Hay and Shores Farmhouse for the reasons set out above. There would also be harm to the setting and thereby significance of the CA. Furthermore, the proposal would result in the total loss of the non-designated heritage asset known as the Bleaching House and its associated significance, albeit limited in my assessment.

31. In terms of the Framework, the harms identified to the heritage assets in question would be less than substantial. Nevertheless, paragraph 212 of the Framework establishes that great weight should be given to the conservation of heritage assets irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 215 of the Framework requires development proposals which lead to less than substantial harm to the significance of a designated heritage asset to be weighed against the public benefits of the proposal. Paragraph 216 requires a balanced judgement when the significance of a non-designated heritage asset is harmed.
32. The proposal would deliver nine additional dwellings within the relevant planning area where the Council's latest housing land supply position is significantly below the level required, at only 2.22 years. Even if the five year housing supply were closer to 2.07 years, as argued by the appellant, the Council's current housing supply position, nevertheless, represents a significant shortfall.
33. In such circumstances, nine additional homes would make an important and meaningful contribution to the housing supply in the area, representing a clear public benefit that attracts significant weight in the heritage balance.
34. Three of the proposed dwellings would be delivered as affordable housing. In light of the shortfall in affordable housing provision within the area, this contribution represents a substantial public benefit that should be afforded significant weight.
35. There would also be economic benefits during construction and long term social and economic benefits as future occupiers make use of local services and facilities. Given the scale of the development, these public benefits would be modest and carry moderate weight.
36. Together, the public benefits of the proposal carry significant weight. Although, I have afforded great weight to the conservation of the designated heritage assets, because the harm identified would be at the lower end of the spectrum of less than substantial, the public benefits are considered to outweigh the harm caused to the settings and significance of the CA, Ballarat Farmhouse, Apple Hay and Shores Farmhouse. For similar reasons to that given above, the stated benefits would outweigh the harm to the Bleaching House.

Somerset Levels and Moors SPA and Ramsar Site.

37. The appeal site is located within the hydrological catchment of the Somerset Levels and Moors SPA and Ramsar Site. The SPA is designated for its internationally important waterbird communities, while the Ramsar Site is designated for its internationally significant wetland features, including the floristic and invertebrate diversity and the species found in its ditches.
38. Having regard to the site's location and the nature of the proposed development, I consider that there is potential for likely significant effects to arise in combination with other plans or projects, notably through increased nutrient loading. Accordingly, an Appropriate Assessment is required, so I have consulted Natural England.
39. Natural England has confirmed that, in relation to the SPA, additional nutrients from the proposal is unlikely, either alone or in combination, to have a likely significant effect on the SPA.

40. However, with regard to the Ramsar, Natural England has advised that due to its current unfavourable condition, as a result of excessive levels of phosphorus, any new development within the Ramsar's catchment may contribute to additional phosphorus loads. Consequently, this would likely have a significant effect upon the wetland features of the Ramsar either on its own or cumulatively with other similar development, without avoidance measures.
41. The conservation objectives of the Ramsar seek to ensure it is maintained or restored as appropriate, and that it contributes to achieving the wise use of wetlands across the UK.
42. The appellant has submitted a Nutrient Neutrality Assessment and Mitigation Strategy (dated 23 March 2023) (the NNAMS) which indicates that currently there are high nutrient inputs into the water environment of the Ramsar with evidence that this is causing eutrophication at the designated sites. These nutrient inputs are currently thought to arise predominantly from wastewater from existing housing development (as well as agricultural and other sources), contributing towards adverse impacts on the Ramsar.
43. A nutrient budget assessment has been undertaken in accordance with Natural England guidance (2020) as part of the NNAMS. This shows the proposed development would give rise to a phosphate surplus of 0.68kg/year and therefore mitigation is required to achieve phosphate neutrality.
44. As set out in the NNAMS, mitigation for the proposed development is to be provided by replacing septic tank on land at Manor Farm Cottage with a new package treatment plant (PTP). The phosphate effluent concentration would reduce to 1.6 mg/l after being replaced by the new PTP, giving a phosphate budget of 0.15 kg/year. The NNAMS concludes that with the mitigation in place at Manor Farm Cottage, the phosphate budget arising from the proposed development would be offset and therefore there would be no adverse effects on the Ramsar. However, the phosphate mitigation strategy set out in the NNAMS is based on agreement from Albion Water to adopt the PTP.
45. Agreement to adopt the PTP, in principle, was provided by Albion Water in November 2022. However, in light of changes to Albion Water's policy regarding PTPs and small scale developments, updated confirmation from Albion Water or other OFWAT regulated sewage company is critical to the acceptability of the scheme, as advised by Natural England.
46. Confirmation from Albion Water or an alternative water and sewerage undertaker regarding the adoption of the PTP has not been provided. As such, I cannot be certain that the phosphate mitigation strategy set out in the NNAMS can be delivered. Consequently, without the mitigation outlined in the NNAMS, the proposed development would have the potential to adversely affect the integrity of the Ramsar, either alone or in combination with other plans or projects.
47. A signed UU has been submitted to secure the necessary phosphate mitigation strategy which includes obligations for the new PTP. The PTP obligations require an agreement under section 104 of the Water Industry Act to be entered relating to the adoption of the PTP by Albion Water prior to the occupation of any dwelling, or if Albion Water is not able or are unwilling to adopt the PTP, the undertaking of paragraphs 1.3 to 1.6 in the UU. However, paragraphs 1.3 to 1.6 of the UU relate to the maintenance and monitoring of the operation of the PTP for the duration of

the management period in accordance with the NNAMS, which as previously outlined, is based on agreement from Albion Water to adopt the PTP, which has not been confirmed.

48. The appellant has submitted an alternative phosphate mitigation solution during the appeal which includes the fallowing of off-site agricultural land. The procedural guide for planning appeals advises that the appeal process should not be used to evolve a scheme as it is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the local planning authority and by interested parties at the application stage. The phosphate mitigation strategy is a material matter affecting the determination of the appeal. Therefore, taking into account the alternative phosphate solution proposed by the appellant without it having been subject to proper consultation, would result in procedural unfairness.
49. Even if I were to accept the alternative phosphate mitigation strategy, there is no mechanism before me, such as a Section 106 agreement or UU, to secure the management and maintenance of the proposed fallowed land. As such, there would be no certainty that the alternative phosphate mitigation strategy could be delivered. The appellant has suggested that a Grampian condition could be imposed such that the matter is finalised alongside any reserved matters application. However, Planning Practice Guidance (PPG) advises that negatively worded conditions requiring the completion of a planning obligation or other agreement before development can commence are unlikely to be appropriate in the majority of cases, and only acceptable in exceptional circumstances. In this case, no such exceptional circumstances have been demonstrated.
50. The appellant has drawn to my attention an appeal decision² relating to a site in Keinton, Somerset where the Inspector allowed the appeal scheme subject to a Grampian style condition requiring the provision of a planning obligation to secure the relevant phosphate mitigation. However, in that case the Inspector was satisfied that exceptional circumstances had been demonstrated to allow for the use of such a condition, in line with the advice in PPG. Furthermore, Natural England had endorsed the phosphate mitigation strategy, including the mechanism to secure it. In this case, I have no such confirmation from Natural England that the alternative phosphate mitigation strategy would be acceptable.
51. For the avoidance of doubt, I have determined the appeal on the proposal and plans that the Council determined the application on.
52. The appellant has also drawn my attention to a letter from Natural England relating to an appeal in Shepton Mallet. The letter suggests the use of phosphorus credits, in that case, could mitigate the phosphate impacts of the proposed development. The appellant contends that the use of phosphorus credits constitutes a fallback position. However, I do not have the full details of that appeal scheme and so cannot be certain the circumstances are the same. Furthermore, no detailed information has been submitted in relation to a specific phosphate credit scheme for the appeal site. In any event, I have considered the appeal proposal on its own merits.

² Ref. APP/E3335/W/24/3357931.

53. In the absence of a fully secured phosphate mitigation strategy as outlined in the NNAMS, the proposed development is likely to adversely affect the integrity of the Ramsar site, thus conflicting with the expectations of the Regulations.

Other Matters

54. The Council has indicated that, on the basis the UU secures the required affordable housing obligation, it considers this matter would have been appropriately dealt with to their satisfaction. I have no basis to disagree with the Council's position on this. The submitted UU secures the required affordable housing obligation. In light of this, I find no identifiable conflict with Policies SS2, HG3 and HG5 of the SSLP insofar as it relates to meeting identified housing need, particularly for affordable housing and achieving a mix of market housing.
55. In relation to part two of Policy SS2, the Council has indicated that the proposal for nine dwellings would not be out of scale with what might be expected in an SS2 rural settlement such as Lopen. Having reviewed the available evidence, I see no basis for disagreement.
56. While not specified as a reason for refusal in the Decision Notice, the Council's Officer Report indicates that the proposal conflicts with part 3 of Policy SS2 of the SSLP due to lack of support from the local community and lack of pre-application engagement. Policy SS2 of the SSLP includes the requirement that 'Proposals should be consistent with relevant community led plans, and should generally have the support of the local community following robust engagement and consultation.'
57. The SSLP does not define the level of 'support' required to meet the above policy criterion. There are numerous objections to the proposal before me, which may be interpreted as a lack of community support. However, I give conflict with this element of Policy SS2 limited weight as it would effectively prevent development that was otherwise sustainable on the basis of local opposition alone, making the development plan undeliverable. As set out in the Framework (a material consideration of significant weight), the purpose of the planning system is to contribute to the achievement of sustainable development and one of its key objectives is to boost the supply of housing. A policy requiring community support as a condition of approval would be inconsistent with the Framework.
58. The SSLP does not define the term 'robust engagement and consultation' nor details when, how and with whom consultation should be undertaken. Furthermore, Policy SS2 does not specifically refer to a requirement for pre-application consultation or engagement.
59. The Officer Report suggests that the appellant was encouraged to undertake pre-application engagement with the community. However, PPG makes clear that that pre-application engagement with the community is only mandatory for planning applications for certain types of development, which this proposal does not fall within. Therefore, I give very limited weight to the Council's argument that the proposal does not comply with the part of Policy SS2 that relates to engagement and consultation.
60. The Council has indicated that part 4 of Policy SS2, which requires development proposals to have access to two or more key services, as listed in paragraph 5.4.1 of the SSLP, is considered out of date due to its inconsistency with the Framework. I have no basis to take an alternative view and would have therefore

given any conflict with part 4 of Policy SS2 limited weight. In any event, Lopen contains two or more of the services listed in paragraph 5.4.1 of the SSLP, so no conflict with part 4 of Policy SS2 arises.

Planning Balance

61. As set out in my Heritage Balance, I have found that the public benefits associated with the proposed development outweigh the harm identified to the CA, Ballarat Farmhouse, Apple Hay, Shores Farmhouse and the Bleaching House.
62. The proposed development conflicts with the criterion in Policy SS2 of the SSLP which requires that proposals have the support of the local community following engagement and consultation. However, I attach limited weight to that conflict due to its inconsistency with the Framework and PPG.
63. Compliance with the development plan in relation to drainage, highways, landscape and living conditions are expectations for all development that would weigh neither for nor against the proposal and is therefore considered neutral in the planning balance.
64. The Council cannot currently demonstrate a five-year supply of deliverable housing sites. In such circumstances, paragraph 11 d) indicates that permission should be granted unless the application of Framework policies that protect areas or assets of particular importance (as defined in Footnote 7 of the Framework) provide a strong reason for refusing the development proposed, or, any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
65. Footnote 7 of the Framework refers to habitat sites and those listed in paragraph 194 of the Framework, which includes listed or proposed Ramsar sites.
66. On the basis that the proposed development would adversely affect the integrity of the Ramsar, there is a strong reason to refuse the development proposed. Accordingly, in line with paragraph 195 of the Framework, the presumption in favour of sustainable development does not apply in this case.
67. The provision of nine dwellings, including affordable housing, would provide an important contribution to the supply and mix of housing in the area, particularly in light of the significant shortfall in supply. The Framework supports an increased supply of homes. These matters are afforded significant weight. However, as the proposed development would adversely affect the integrity of the Ramsar, there is a strong reason for refusing the proposed development. The Habitats Regulations also indicate that permission cannot be granted in this case.

Conclusion

68. The proposal conflicts with the development plan and the material considerations, including the Framework and stated benefits, do not indicate that the appeal should be decided other than in accordance with the development plan. For the reasons given above, the appeal should be dismissed.

U P Han

INSPECTOR