



Appeal Decision

Site visit made on 2 December 2025

by **D R Kay BA Dip.Arch RIBA**

an Inspector appointed by the Secretary of State

Decision date: 3 March 2026

Appeal Ref: APP/Y3940/W/25/3371023

Land off Ashton Road, Hilperton, Wiltshire BA14 7QY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant permission in principle.
 - The appeal is made by Mr C Stone against the decision of Wiltshire Council.
 - The application Ref is PL/2025/04001.
 - The development proposed is the erection of a minimum of 6 and a maximum of 9 dwellings.
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Decision

1. The appeal is dismissed.

Applications for Costs

2. Applications for costs were made by Mr C Stone against Wiltshire Council and by Wiltshire Council against Mr C Stone. These applications are the subject of separate decisions.

Preliminary Matters

3. There is another appeal¹ on the same site, relating to an outline planning application for the erection of 3 dwellings and associated detached garages with all matters reserved except for access. That appeal is the subject of a separate decision letter.
4. The proposal is for permission in principle. The Planning Practice Guidance (PPG) advises that this is an alternative way of obtaining planning permission for housing-led development. The permission in principle consent route has two stages: the first establishes whether a site is suitable in-principle and the second (technical details consent - TDC) is when the detailed development proposals are assessed. This appeal relates to the first of these two stages.
5. The scope of the considerations for permission in principle is limited to location, land use and the amount of development permitted. All other matters would be considered in a subsequent TDC application, if permission in principle is granted.
6. There is dispute between the parties regarding the lawful use of the site. Whilst some evidence has been submitted by the appellants, it is not within my remit in an appeal under section 78 of the Act², to determine the lawful use of the site. This would more appropriately be established through an application for a certificate of lawfulness of existing use or development. Accordingly, I have dealt with the appeal on the basis that the lawful use of the site is not agreed.

¹ APP/Y3940/W/25/3371024

² The Town and Country Planning Act 1990 (as amended)

7. Since the Council issued its decision, it has adopted and submitted with the appeal the Trowbridge and Westbury Bat Mitigation Strategy (TWBMS). The appellants have had the opportunity to comment on the effects of the TWBMS to the appeal and have submitted a unilateral undertaking (UU) under s106 of the Act to make a financial contribution towards strategic habitat mitigation. As the TWBMS replaces the Trowbridge Bat Mitigation Strategy Supplementary Planning Document, I have had regard to it and the UU, which I will consider later in my decision.

Procedural Issues

8. Certain types of development are excluded from the grant of permission in principle. Habitat development is one such exclusion³ which is defined by Article 5B(5) of the Town and Country Planning (Permission in Principle) Order 2017 (as amended) (hereafter referred to as the Order) as including development, which discounting mitigation measures, is likely to have a significant effect on a qualifying European site under the Conservation of Habitats and Species Regulations 2017 (as amended) (hereafter referred to as the Habitats Regulations).
9. Having regard to my duties as competent authority under the Habitats Regulations, for the purposes of this appeal, an appropriate assessment should be undertaken at the outset to establish whether the development would adversely affect the integrity of the protected site. If the outcome of the appropriate assessment is unfavourable, it would preclude the grant of permission in principle.
10. The appeal site is within the buffer zone of the Bath and Bradford on Avon Bats Special Area of Conservation (SAC). It is also within the yellow medium risk zone for Bat Habitat Sensitivity, and within the grey hatched Bat Sensitivity Zone for Recreational Pressure of the TWBMS. The SAC covers a wide area of the Bath and North-East Somerset and Wiltshire Unitary Authority/County areas. The Habitat site is recognised for national and international importance for nature conservation. Its qualifying features are its protected priority habitats and species including important populations of Bechstein's Bats, Greater Horseshoe Bats, of which the SAC supports 15% of the UK population, together with Lesser Horseshoe Bats.
11. The TWBMS requires proposals for development within the yellow medium risk zone to provide site specific on-site mitigation, tailored to the extent of development proposals, together with a separate financial contribution to off-site habitat mitigation. To evidence the specific mitigation proposed, the TWBMS requires details of a Bat survey to be submitted with the application (carried out for a full season April to October), to establish the presence of, species, numbers and pattern of use of the site by Bats, together with a completed statutory biodiversity metric, and a masterplan to demonstrate that the housing numbers proposed are compatible with the mitigation constraints.
12. The evidence does not contain any Bat survey or baseline ecological metric of the appeal site to demonstrate the presence of, use by, or type of protected species which may be affected by the proposals. No mitigation strategy or proposals were submitted with the application or have subsequently been submitted with the appeal. The appellant has referred to consultation with Natural England (NE) on a detailed application scheme for 1 dwelling on the same site, which was the subject of a separate appeal⁴, as evidence that mitigation can satisfactorily be provided.

³ Article 5B(1)(b) of the Town and Country Planning (Permission in Principle) Order 2017 (as amended).

⁴ APP/Y3940/W/23/3331278

13. However, the detailed mitigation agreed with NE on that scheme, required significant areas of the site to be set aside for habitat retention and enhancement to mitigate the effects of a single dwelling, including a 15m wide dark corridor to the full length of the southern boundary, a wildflower meadow, fruit tree planting and a wildlife pond.
14. The site is substantially open grassland, with mature hedges to two sides, although a mature hedge to the frontage with Ashton Road has been removed. There are some trees within the site, though they are not identified on the application drawings, and which due to their position, would probably require removal to allow for the extent of development proposed. In this context, such features are likely to be used by Bats as roosting, foraging or commuting corridors, and there is no evidence submitted to establish otherwise.
15. The permission in principle application is for a range of between 6 to 9 new dwellings within the site, which would lead to the introduction of new built form, and the potential for domestic paraphernalia, gardens and vehicular movements, together with increased light levels and disturbance. The density of proposed development would result in further loss of habitat on the appeal site. Given the area of site required for mitigation of the effects of 1 dwelling, this leads me to the conclusion that the density of proposed development would result in insufficient remaining site area to satisfactorily mitigate its effects on protected species. I have been provided with no evidence to the contrary, which would allow me to rule out, beyond reasonable scientific doubt, that there would be no adverse effects on the integrity of the SAC and its qualifying features.
16. The appellant has submitted a UU with the appeal documentation, relating to securing a financial contribution towards off-site mitigation as part of the TWBMS. However, this is undated and therefore would not take effect. Neither is it demonstrated, in the absence of the title deed, that the UU relates to all necessary parties with an interest in the land. In addition, the UU only relates to the provision of a financial contribution to the off-site mitigation, it would therefore not in isolation, satisfy the full requirements of the TWBMS or the Habitats Regulations.
17. For the above reasons, I conclude that the appeal proposal has not demonstrated that it would not have, either alone, or in combination with other development, likely significant adverse effects on the SAC and its qualifying features. No mitigation measures have been included with the application, which would seek to mitigate any such likely significant effects. Accordingly, in accordance with Article 5B(5) of the Order, I find the proposal would represent habitats development.
18. Therefore, having carried out an appropriate assessment under Regulation 63(1) of the Habitats Regulations, I have found the proposal would have a likely significant effect on the Bath and Bradford on Avon Bats SAC and its qualifying features. I have also found that the proposal would represent habitats development. Therefore, in accordance with Article 5B(1)(b) of the Order, the appeal should be dismissed and permission in principle should be refused.
19. Whilst the appeal should be dismissed for this reason alone, I shall, for completeness, continue with the assessment of the other main issues of the appeal proposal.

Main Issue

20. The main issue is whether the site is suitable for residential development, having regard to its location, the proposed land use and the amount of development. This includes having regard in relation to those factors to the spatial strategy of the development plan, landscape character, the effect on the significance of heritage assets and protected species.

Reasons

Spatial Strategy

21. Policies CP1 and CP2 of the Wiltshire Core Strategy (2015) (WCS) outline the hierarchical spatial strategy for accommodating new housing in Wiltshire, with development focused on principal settlements, then market towns, then local service centres, then large villages and finally small villages. The first four of these settlement categories have defined settlement boundaries.
22. The appeal site is situated outside the defined settlement boundary of Hilperton, which is identified in the WCS as a large village. It also sits outside the settlement boundary of Trowbridge, which is defined in the WCS as a principal settlement. It is therefore classified as being within open countryside.
23. Policy CP2 of the WCS sets out the Council's housing delivery strategy and states that, unless permitted by other policies within the WCS, as set out in paragraph 4.25, development will not be permitted outside the limits of development, defined by the settlement boundaries. As the appeal site is not located within a village, it would not benefit from assessment as to whether it would constitute infill development under Policy CP2 of the WCS.
24. The absence of built form and presence of grass, hedgerows and vegetation at the appeal site means it provides a green gap in the constrained space between the principal settlement of Trowbridge and the large village of Hilperton. Policy CP29 of the WCS and specifically paragraph 5.150, defines that to maintain the identities of the large villages, such as Hilperton, open countryside should be maintained between Trowbridge and the surrounding villages to prevent coalescence. Development of the site, would result in the loss of the green gap, resulting in coalescence of the two settlements and damage to the separate identity of Hilperton.
25. Whilst there is disagreement between the parties as to the legal land use of the appeal site. Notwithstanding the appellants assertion that it has a residential land use, due to it formerly being within the garden curtilage of an adjacent property, the land is clearly defined as being outside the settlement boundaries of either Hilperton or Trowbridge. It is, therefore, in planning terms, designated as open countryside, irrespective of its legal land use designation.
26. For the above reasons, I therefore find that the appeal site would not be an appropriate location for development, due to the conflict with Policies CP1, CP2 and CP29 of the WCS. These require, among other things, development to be in accordance with the spatial hierarchy of the WCS, and for open countryside to be maintained between settlements to prevent coalescence.

Landscape Character & Heritage Assets

27. The appeal site sits outside of Area 1 of the Hilperton Conservation Area (CA). However, its boundary with Ashton Road is the boundary of the CA at its southern end. The CA derives its significance, insofar as it relates to this appeal, from Hilperton's origins as a rural village with cottages dating from the eighteenth and nineteenth centuries, together with larger houses set back from the road behind stone walls and mature hedges. There are several Listed Buildings within the CA, together with some non-designated heritage assets (NDHA's), one of which, 'The Grange' is located immediately opposite the appeal site on Ashton Road.
28. The Grange is a large Victorian house sitting within extensive landscaped grounds, which form the south-eastern extremity of the CA. The property derives its significance partly from its historical association with the Rood Ashton Manor estate and the Long family, and partly from the quality of its architectural detail and its setting within its mature landscaped grounds, including its grand stone gated entrance and walls, through which the property is seen. The property makes a positive contribution to the setting of the CA, and the way in which it is experienced at this location.
29. The appeal site is an open, undeveloped area of grassland, enclosed by mature hedges and with isolated trees. It makes a positive contribution both to the separation of Trowbridge from Hilperton as settlements in landscape terms, and to the rural character of the CA and how it is experienced at this location. The undeveloped rural nature of the site also positively contributes to the rural setting of The Grange as a NDHA, and thereby to its significance.
30. To accommodate 6 dwellings on the site, their size would need to be significantly smaller than the immediately surrounding properties and would likely need to be closely spaced. To accommodate 9 dwellings, it is likely that the dwellings would need to be executed in a continuous terrace, or two shorter terraces, possibly 2.5-storeys in height. In either case, I conclude that the form of the development would not be likely to follow the pattern of surrounding development, with likely detrimental effects on the character and appearance of the area.
31. As a result of the amount of development, the proposal would introduce significant levels of physical built volume onto a site which presently has an open, verdant character free from built form. Coupled with likely associated lighting, boundary treatments, parked vehicles, activity and domestic paraphernalia, it would dramatically and harmfully change the character of the land, eroding its rural qualities. Moreover, because of its topography, such changes would be highly visible within the surrounding area.
32. Accordingly, I find that this would be harmful to the landscape character which at present contributes to a pleasant green gap distinguishing Hilperton from Trowbridge. For similar reasons, it would result in harm to the rural setting of the CA and the way in which it is experienced from the public realm, thereby undermining its overall significance. It would also detrimentally affect the setting and significance of The Grange as an NDHA.
33. In relation to the CA, in the parlance of the National Planning Policy Framework (the Framework), given the amount of development proposed, I would assess this harm as being at the mid-point of the less than substantial harm range.

34. Where harm to designated heritage assets has been found to be less than substantial, paragraph 215 of the Framework requires that this harm is weighed against the public benefits of the proposal. I will weigh this harm to the CA against the public benefits later in the planning balance section.
35. In relation to NDHA, paragraph 216 of the Framework requires a balanced judgement to be made, having regard to the scale of harm and the significance of the heritage asset. I shall take account of the moderate harm to the significance of the NDHA in the overall planning balance.
36. Having examined the evidence from Cotswold Archaeology, I find that it does not fully consider the positive contribution that the open countryside nature of the appeal site makes to the significance and setting of the heritage assets in this case. Further, it does not give sufficient weight to the detrimental effect that development, whilst being outside the CA, can have on the setting and thereby the significance of the CA and The Grange as heritage assets.
37. For the above reasons, I therefore find that the amount of development would result in conflict with Policies CP51, CP57 and CP58 of the WCS. These require, among other things, development to seek to preserve and reinforce the separate identity of settlements, enhance local distinctiveness and conserve the historic environment.

Protected Species

38. As indicated in the procedural part of my decision the proposal would have a likely significant effect on the SAC. The SAC relates to species of bats, all of which are protected species. The appeal site lies in an area recognised as providing habitat that supports the foraging behaviour of the bats. The absence of built form, lighting and presence of natural features at the appeal site mean it is likely to contribute positively to such habitat. Hence, in the absence of evidence to show otherwise, the built form, activity and lighting likely associated with the proposal would be harmful to protected species. This would be contrary to policy CP50 of the WCS which, amongst other things, seeks development with appropriate measures to avoid and reduce disturbance of sensitive wildlife species and habitats throughout the lifetime of the development.

Other Matters

39. My attention has been drawn to several previous planning appeal and planning application decisions⁵. Having examined these cases, I find that they do not provide support for the appeal proposal. They either differ in their application type relative to the appeal proposal, are not in a CA, or are not in proximity to Heritage assets. The other permission in principle application importantly, relies on being classed as infill development in accordance with Policy CP2 of the WCS. In addition, it is for self-build housing, a further acknowledged shortfall in the Council's housing land supply. The site is also not within a strategically important location providing green open space, preventing coalescence of adjacent settlements.
40. A legal opinion from Lord Banner KC has been submitted. However, this is in relation to another appeal on the same site⁶ for a full application for a single dwelling. This opinion was expressly limited to comparison of that appeal proposal with a further previous full application for a single dwelling on the same site.

⁵ APP/Y3940/W/23/3331278; APP/Y3940/W/25/3367873; PL/2025/03764.

⁶ APP/Y3940/W/25/3367873

Nevertheless, I concur with the broad principle cited that each appeal, as a matter of law, should be determined on its own merits. Therefore, as this appeal is for a different form of application, for a different extent of development, as a matter of law, it should be dealt with on its own merits.

41. In reaching my findings I have had regard to the representations received, some of which provided support for the proposal. I take account of the benefits highlighted in my overall balance.

Planning Balance

42. Both parties refer to the Council currently having 2.42 years housing land supply, which is significantly below the 5-years supply required by the Framework.
43. In accordance with the Framework, the less than substantial harm to the designated heritage asset (the CA) must be weighed against the public benefits of the proposal. It would provide between 6 and 9 new dwellings, which in the context of the Council's serious 5YHLS deficit, would make a valuable but moderate contribution. There would be similar moderate public benefits from the contribution to the local economy during construction, and to the support for local services from future occupiers. The proposal would be in a sustainable transport location, and the likely speed of build-out of such a smaller site is acknowledged in the Framework.
44. Cumulatively, the public benefits of the proposal are moderate. They are therefore insufficient to provide the clear and convincing justification to override the less than substantial harm to the CA, which the Framework requires me to assign great weight to its conservation.
45. Given the shortfall in housing land supply there is no dispute that, owing to footnote 8, paragraph 11(d) of the Framework is engaged. Paragraph 11(d)(i) indicates that permission should be granted unless the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed. Footnote 7 of the Framework lists protected Habitats sites and designated heritage assets as such assets of importance.
46. I have concluded that the proposal would result in likely significant harmful effect to a protected European Habitat site, which on its own, provides a strong reason for refusing the development. Paragraph 195 of the Framework confirms that the presumption in favour does not apply in these circumstances. Having undertaken the necessary heritage balance, I have also found the proposal would cause unjustified harm to the significance of the CA, as a result of development within its setting. Hence the proposal would conflict with national policy to protect designated heritage assets. This provides a further strong reason for refusal of the proposal. Consequently, irrespective of the level of the Council's 5-YHLS shortfall, paragraph 11(d)(ii) is not engaged, and the proposal does not benefit from the presumption in favour of sustainable development in this instance.

Conclusion

47. For the reasons set out above, I conclude that the proposal is habitats development and as such, permission in principle cannot be granted on procedural grounds. In addition, the appeal proposal would be contrary to the development plan, read as a whole, and that the material considerations I outline above, including policies in the Framework, would not outweigh that conflict. Therefore, the appeal is dismissed.

D R Kay

INSPECTOR