



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/25/3371024

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 outline planning permission.
- The appeal is made by Mr C Stone against the decision of Wiltshire Council.
- The application Ref is PL/2025/03945.
- The development proposed is the erection of 3 dwellings and associated detached garages with all matters reserved except for access.

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 which relates to a permission in principle application for the erection of a minimum of 6 dwellings and a maximum of 9 dwellings. That appeal is the subject of a separate decision letter.
4. The appeal scheme relates to an outline proposal, with access to be considered at this stage, and with all other matters reserved for future consideration. I have considered the appeal accordingly. A plan has been submitted as part of the appeal which indicates how three dwellings could be accommodated on the site. I have taken this plan into account for indicative purposes only.
5. There is dispute between the parties regarding the lawful use of the site. Whilst some evidence has been submitted by the appellant, 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. Therefore, I have dealt with the appeal on the basis that the nature of the lawful use of the site is not agreed.
6. 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 application 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

¹ APP/Y3940/W/25/3371023

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

replaces the Trowbridge Bat Mitigation Strategy Supplementary Planning Document, I have had regard to it and the UU, which I shall consider later in my decision.

Main Issues

7. The main issues are; i) whether the appeal site would be a suitable location for the proposed development, having regard to local and national planning policy; ii) the effect of the development on the character and appearance of the local area, having particular regard to landscape character and the significance of heritage assets; and iii) the effect of the proposal on international and nationally designated sites of importance for biodiversity.

Reasons

Location of Development

8. 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.
9. 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.
10. 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.
11. The absence of built form and presence of grass, hedgerows and vegetation at the appeal site provides a valuable 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 appeal 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.
12. 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 designation, 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.
13. The appellant has suggested that there is support exceptionally for development in the open countryside from Policy 2 of the made Hilperton Neighbourhood Plan (HNP). However, having examined that policy, it requires such exceptional support

for development in open countryside to be for the delivery of self-build homes, eco-homes or retirement/extra-care homes. As the appeal proposal does not identify itself as any of these categories of development, noted in the application form as being market housing, I do not find that there is any support for the proposal under Policy 2 of the HNP.

14. For the above reasons, I therefore find that the appeal site would not be a suitable location for development, due to its 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.

Character and Appearance and Heritage Assets

15. 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.
16. 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.
17. 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.
18. The proposal is for 3 dwellings. Examining the submitted evidence and based on my observations at my site visit, there are two properties to the north-west of the appeal site (Cockhatch and Beechwood) which together, occupy roughly the same area of land as the appeal site. Development to the south-east of the appeal on Apsley Close, which encompasses detached dwellings with integral garages, provides around 5 dwellings on a similar area of land to the appeal site. I therefore find that the extent of development proposed would accord with the pattern of development within the area.
19. However, the topography of the appeal site is such that its ground level is notably above that of Ashton Road, such that any development on the site would be readily visible from the public realm in Ashton Road. Whilst the indicative layout submitted with the application is not determinative, it does reflect the likelihood of built development within proximity to the Ashton Road frontage of the site, with consequent likely effects of visual impact.

20. Additionally, the proposal would remove the hedge to most of the length of the Ashton Road elevation, replacing it with a high stone wall, with a grass and wildflower verge in front. The resulting combination of the loss of the hedge, its replacement with a high stone wall, and the introduction of residential dwellings seen behind and above it, would result in harmful urbanising effects.
21. Accordingly, I find that this would be detrimental to the character and appearance of the area, removing its open, rural character, and resulting in harm to the pleasant green gap distinguishing Hilperton from Trowbridge. For similar reasons, it would erode 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.
22. In relation to the CA, for the purposes of the National Planning Policy Framework (the Framework), I would assess this harm as being at the mid-point of the less than substantial harm range.
23. 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 of the proposal later in my planning balance.
24. 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.
25. 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 (NDHA), as heritage assets.
26. For the above reasons, I therefore conclude that the proposal would conflict with policies CP51 and CP58 of the WCS. These require, among other things, development to seek to preserve and reinforce the separate identity of settlements, and to conserve the historic environment.

Effect on International and Nationally Designated Sites of importance for biodiversity

27. 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 its 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.
28. 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 an additional 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.

29. 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 appeal³, as evidence that mitigation can satisfactorily be provided.
30. 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 site's southern boundary, a wildflower meadow, fruit tree planting and the introduction of a wildlife pond. It was also for a single dwelling and is therefore materially different to the current appeal proposal. Hence, it cannot be assumed that appropriate assessments undertaken for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended) (hereafter referred to as the Habitats Regulations) for different schemes, are transferable to the appeal proposal.
31. The site is substantially open grassland, with mature hedges to two sides, although a mature hedge to the frontage with Ashton Road has already been substantially removed. The proposal for the visibility splay to the revised access point would further remove this hedge and bank, replacing it with a stone wall with planting behind, though there is a small wildflower verge proposed in front of the revised boundary treatment. There are some trees within the site which are identified on the application drawings, two of which are identified as being likely to require removal to allow for the extent of development proposed, though this internal layout is indicative only.
32. In this context, the hedge and tree features are likely to be used by Bats as roosting, foraging or commuting corridors. There is no evidence submitted to establish otherwise.
33. The proposal is for 3 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 likely result in loss of habitat on the appeal site. Whilst it may be possible to mitigate these effects, I have been provided with no evidence to demonstrate the extent of mitigation required, nor how this could be achieved, 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.

³ APP/Y3940/W/23/3331278

34. 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. It therefore does not provide the necessary certainty that an adverse effect on the integrity of the SAC would be avoided.
35. 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. The proposal would therefore conflict with the Habitats Regulations, Policy CP50 of the WCS and with section 15 of the Framework, which require, among other things, development to seek to protect features of biodiversity, to minimise impacts on and provide net gains for biodiversity, and where significant harm to biodiversity cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

Other Matters

36. The Environment Act (2021) (the EA) introduced a requirement for a mandatory regime of a minimum 10% biodiversity gain from a pre-development baseline, unless it meets an exception set out in the statutory framework introduced by Schedule 7A of the Town and Country Planning Act 1990 (as amended). Whilst the application references a pre-development biodiversity value, and a BNG Metric, no such completed metric was submitted with the application or appeal evidence. However, given my concerns in relation to the main issues already outlined, this is not a matter I have pursued further with the parties, as it is unlikely to be determinative.
37. A legal opinion from Lord Banner KC has been submitted. However, this is in relation to another appeal on the same site⁴ 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 site⁵. 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.
38. In reaching my findings I have had regard to the representation received, some of which provided support for the proposal. I take account of the benefits highlighted in my overall balance.

Planning Balance

39. Both parties refer to the Council currently having a 2.42-years housing land supply, which is significantly below the 5-years supply required by the Framework.

⁴ APP/Y3940/W/25/3367873

⁵ APP/Y3940/W/23/3331278

40. 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 3 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.
41. 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.
42. 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.
43. 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 of sustainable development 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

44. For the reasons set out above, I conclude that 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