The Planning Inspectorate

Appeal Decision

Inquiry Held on 1-4 March, 8 and 9 March 2022
Site visit made on 13 April 2022

by Harold Stephens BA MPhil Dip TP MRTPI FRSA

an Inspector appointed by the Secretary of State

Decision date: 15th June 2022

Appeal Ref: APP/D0121/W/21/3286677
Rectory Farm, Chescombe Road, Yatton, Bristol BS49 4EU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mead Realisations Ltd against the decision of North Somerset Council.
- The application Ref 21/P/0236/OUT, dated 22 January 2021, was refused by notice dated 12 May 2021.
- The development proposed is outline planning application for a residential development of up to 100no. dwellings and associated infrastructure following demolition of existing buildings on site, with access for approval and all other matters for subsequent approval.

Decision

1. The appeal is allowed and planning permission is granted for an outline planning application for a residential development of up to 100no. dwellings and associated infrastructure following demolition of existing buildings on site, with access for approval and all other matters for subsequent approval at Rectory Farm, Chescombe Road, Yatton, Bristol BS49 4EU in accordance with the terms of the application, Ref 21/P/0236/OUT, dated 22 January 2021, and the plans submitted with it, subject to the conditions set out in the Schedule attached to this decision.

Procedural Matters

2. The following Statements of Common Ground (SoCG) were submitted to the Inquiry:

    - Five Year Housing Land Supply SoCG;
    - Highways and Transport SoCG;
    - General SoCG and
    - Biodiversity Net Gain SoCG

3. The application was supported by a number of plans, reports, and technical information. A full list of the drawings and supporting documents which accompanied the application is set out at paragraph 1.2 of the General SoCG. Further, it was agreed at the Inquiry that the plans on which the appeal is to be determined are as follows:

    - Site Location Plan - Reference number 1037-PL03A

- Topographical Survey Drawing Number 14730-TS01
- 14730-HYD-XX-XX-DR-TP-0201-P05 Site Access General Arrangement Priority Cross-Roads and Pedestrian Access
- 14730-HYD-XX-XX-DR-TP-0303-P01 Swept Path Analysis of Refuse Vehicles
- 14730-HYD-XX-XX-DR-TP-0304-P01 Swept Path Analysis of Large Car
- 14730-HYD-XX-XX-DR-TP-0305-P01 Swept Path Analysis of Fire Tender
- Travel Plan – Reference number 14730-HYD-XX-XX-RP-TP-6001 Rev P01

It was also agreed that Site Masterplan Drawing Number 1037-PL01/A was submitted for illustrative purposes.

4. I held a Case Management Conference (CMC) online on 13 January 2022. At the CMC the main issues were identified, how the evidence would be dealt with at the Inquiry, conditions, planning obligations, core documents, plans, the timetable for submission of documents and other procedural matters. I prepared and distributed a summary note of the proceedings.

5. At the CMC I indicated that the fourth reason for refusal (RfR) relating to highways would be considered as a main issue. However, since then, a Highways and Transport SoCG was agreed between the main parties which indicates that there are no residual matters in dispute in relation to highways, transport and travel and therefore this matter is no longer being pursued by the Council subject to agreement on planning conditions and obligations.

6. At the Inquiry a Planning Obligation was submitted.[1] The Planning Obligation is made by an Agreement between the Appellant, North Somerset Council (NSC), the First and Second Owners of the land, and Lloyds Bank PLC under s106 of the TCPA 1990. The s106 Agreement secures a number of planning obligations that are required to make the appeal proposal acceptable. The s106 Agreement is signed and dated 22 March 2022 and is a material consideration in this case. A Community Infrastructure Levy (CIL) Compliance Statement[2] was also submitted in support of the Planning Obligation.

7. A separate s106 Unilateral Undertaking (UU) was submitted by the Appellant.[3] As a result of additional recreational pressure on the Biddle Street SSI, the UU secures contributions for the provision of waste bins, litter picking and bin emptying on the Strawberry Line, to mitigate the impact from littering and dog fouling. The UU is signed and dated 22 March 2022 and is a material consideration in this case. The contributions in the UU are justified in a separate document.[4] I return to both the Planning Obligation and the UU later in this decision.

8. The appeal proposal was screened for Environmental Impact Assessment (EIA) by the Council, and it was determined that EIA was not required. I agree with the negative screening that was undertaken by the Council.

[1] APP5
[2] LPA2
[3] APP6
[4] APP7

Main Issues

9. In the light of the above I consider the main issues are:

(i) Whether the Council can demonstrate a five year housing land supply and the extent of any shortfall;

(ii) Whether the scale and location of the proposed development is acceptable in principle in the light of the Council's Spatial Strategy;

(iii) The impact of the proposed development on Ecology and Biodiversity;

(iv) The effect of the proposed development on the character and appearance of the area;

Reasons

Planning Policy context

10. The appeal site comprises some 4.15 hectares of land including a residential dwelling, a complex of agricultural buildings and areas of outdoor storage and hardstanding to the north and undeveloped land to the south. The site is located to the south-west of Yatton directly adjacent to the settlement boundary and to the east of the Strawberry Line. Existing residential development lies to the east with pasture and fields adjoining the remaining boundaries.

11. The appeal proposal seeks outline planning permission for residential development comprising up to 100 dwellings and associated infrastructure. All matters are reserved for future consideration except for access, details of which form part of the appeal proposal. The proposal includes a main vehicular access to the site off Chescombe Road to the northern and southern parcels. The Illustrative Site Masterplan demonstrates how internal access to individual plots could be achieved.

12. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the appeal must be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of this appeal, the development plan comprises the following documents:

- North Somerset Core Strategy (2017) (CS)
- Sites and Policies Part 1: Development Management Policies (2016) (DMP)
- Sites and Policies Plan Part 2: Site Allocations Plan (2018) (SAP)
- Yatton Neighbourhood Plan (2019) (YNP).

13. The development plan policies that are relevant to this appeal are agreed by the main parties and are set out in the General SoCG.[5] The most important policies for determining the appeal are set out in the Notice of Decision, save for Policy DM8, which is plainly relevant and important but appears to have been omitted from the latter category by mistake. The most important policies are: CS4, CS5, CS9, CS14, CS32, DM8, DM9, DM10, DM24 and DM25. Policy

[5] Paragraph 3.2

CS13 is agreed not to be one of the most important policies in this appeal. There is no need for me to repeat these policies here.

14. The Council is preparing a new Local Plan, which will include strategic and non-strategic policies, for the period 2023-2038. A Regulation 18 'Preferred Options' document is expected to be agreed for consultation in 2022. The Local Development Scheme indicates that the Regulation 19 Pre-submission document will be approved in late 2022, followed by submission for examination in early 2023 and adoption by the end of 2023. Limited weight can be afforded to the policies and proposals of the draft plan at this time.

15. The Council refers to the YNP in the first RfR. The YNP was made in July 2019 and covers the period 2017-2026. The YNP sets out a number of business, environment, transport and housing objectives which I have taken into account in this case. In relation to housing objectives the Plan includes one small allocation on a brownfield site under policy HP1. The YNP does not contain policies and allocations to meet its identified housing requirement.

16. The Supplementary Planning Documents relevant to this appeal are agreed by the parties and are set out in the General SoCG.[6] I have considered these documents and taken them into account in coming to my decision in this case.

17. Case law has determined that it is the basket of most important policies as a whole that is the relevant consideration. As to whether the basket of most important policies as a whole is out-of-date in the context of paragraph 11 d) of the NPPF and the weight that should be attached to each policy are matters that I shall return to later in this decision.

First Issue - Whether the Council can demonstrate a five year housing land supply and the extent of any shortfall

18. Paragraph 74 of the NPPF sets the requirement for Local Planning Authorities to identity and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies or against their local housing need where the strategic policies are more than five years old.

19. For the purpose of this appeal it is agreed that the period for consideration of the 5YHLS is from 1 April 2021 to 31 March 2026. According to Policy CS13 of the Core Strategy the current adopted housing requirement is 20,985 dwellings for the plan period 2006-2026. On the basis that more than 5 years have passed since adoption of the Core Strategy and in accordance with paragraph 74 of the NPPF, the 5YHLS position should be assessed against the local housing need figure, calculated using the standard method. The standard method housing requirement of 1,323 dwellings per annum applies.

20. Since the Council published their Five-Year Housing Land Supply Initial Findings Statement (April 2021),[7] the fourth Housing Delivery Test results were published on the 14 January 2022. The Council reported that it delivered 2,563 dwellings against a requirement of 2,877 in the 3-year period 2018-21. This was 89% of the requirement which means that a 5% buffer should now be applied. Including a 5% buffer the annual requirement is 1,389 dwellings per annum (6,946 over 5 years).

[6] Paragraph 3.4
[7] CD51

21. At the outset of the Inquiry a Five Year Housing Land Supply SoCG was provided. The table attached at Appendix 3 of the SoCG provides the Council's and the Appellant's position in relation to the supply and identifies those sites which are disputed by the Appellant. The Council considers that the evidence listed at Section 2 of this SoCG provides clear evidence that the disputed sites are deliverable in accordance with the definition of `deliverable' contained at Annex 2 of the NPPF. The table at paragraph 1 of the SoCG indicates the respective positions of the Council (5.6 years) and the Appellant (3.2 years) at the outset of the Inquiry.

22. The Council accepts that in recent years it has struggled to secure a 5YHLS. Reference is made to the difficulties stemming from reliance that is placed on large, predominantly brownfield sites within the Weston Urban Area and the Weston Villages, which account for 30% and 31% respectively of the land allocated to meet the requirements of Policy CS13.[8] Whilst this may be so, it is clear from the Council's latest AMR (2020) and the Residential Land Survey Headline Findings April 2021 that in the period from 2006/07 to 2020/21 the Council only delivered 12,273 dwellings against the annualised Core Strategy requirement of 15,735 dwellings; a shortfall of 3,462 dwellings.[9] Even up to the point of the Council's determination of the appeal proposal at application stage, the Council accepted that it did not have a 5YHLS.[10]

23. The Council's poor track record resulted in a series of appeal decisions all of which confirmed the absence of a 5YHLS,[11] and have required it to produce an action plan each year since 2019. The North Somerset Housing Delivery Test Action Plan July 2021 includes a table of past performance which establishes the failure to achieve the required delivery in any of the years back to 2010/11.[12] There are no specific targets or timescales set out in the Action Plan and Mr Jewson was clear that he was not aware of any evidence that it has resulted in an increase in the supply of housing over and above what would have occurred anyway.[13]

24. Moreover, since the Action Plan was first prepared in 2019, the preparation of a new local plan has been delayed.[14] Though there was a re-examination of the Core Strategy during which Policies CS28, CS31 and CS32 were amended to provide flexibility to help boost the supply of housing by allowing development outside certain settlement boundaries, including the Service Villages, Mr Jewson confirmed that very few sites have been approved by the Council under these circumstances;[15] he noted just two – one for 56 dwellings and one for 24 dwellings.[16]

25. Following the 5YHLS Roundtable Session on day one of this Inquiry, the parties' witnesses compiled a Scott Schedule[17] and a Final 5YHLS Position Statement[18] setting out their most up-to-date positions. The parties disagreed about the supply of deliverable sites.

[8] LPA4 paragraph 13
[9] Paragraph 4.8 and Table 1, 5YHLS PoE of Ian Jewson
[10] Paragraph 4.9, 5YHLS PoE of Ian Jewson
[11] Paragraph 4.10, 5YHLS PoE of Ian Jewson
[12] Page 3, CD50
[13] Paragraph 4.15, 5YHLS PoE of Ian Jewson. EIC and XX of Ian Jewson
[14] Paragraph 4.14, 5YHLS PoE of Ian Jewson
[15] Paragraph 4.16, 5YHLS PoE of Ian Jewson
[16] In XX
[17] APP10
[18] APP9

26. The definition of 'deliverable' is set out within Annex 2 of the NPPF, which states:

> *"Deliverable: To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:*
>
> *(a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).*
>
> *(b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years".*

27. The PPG guidance on `Housing supply and delivery' provides guidance as to what constitutes a 'deliverable' housing site in the context of plan-making and decision-taking and notes[19] that "*to demonstrate 5 years' worth of deliverable housing sites, robust, up to date evidence needs to be available to support the preparation of strategic policies and planning decisions.*" The PPG is clear on what is required. It provides examples of what clear evidence "*may include,*" namely:

- *current planning status – for example, on larger scale sites with outline or hybrid permission how much progress has been made towards approving reserved matters, or whether these link to a planning performance agreement that sets out the timescale for approval of reserved matters applications and discharge of conditions;*
- *firm progress being made towards the submission of an application – for example, a written agreement between the local planning authority and the site developer(s) which confirms the developers' delivery intentions and anticipated start and build-out rates;*
- *firm progress with site assessment work; or*
- *clear relevant information about site viability, ownership constraints or infrastructure provision, such as successful participation in bids for large-scale infrastructure funding or other similar projects.*

28. The burden of including in the supply sites other than those which do not involve major development and have planning permission, or have detailed planning permission, is placed on the Council who must provide the clear evidence to meet the realistic prospect test. The Scott Schedule[20] and the Final 5YHLS Position Statement[21] helpfully set out the main sites where the parties differ. I have assessed the respective positions in light of the

[19] Paragraph 007 Reference ID: 68-007-20190722
[20] Ibid
[21] Ibid

definition of 'deliverable' as set out within Annex 2 of the NPPF and the PPG guidance as to what constitutes a `deliverable' housing site.

29. With regard to Land north of Youngwood Lane, Nailsea (Site Ref: 4/596), outline permission for the whole site was granted on appeal for 450 dwellings in 2019 and Reserved Matters for 168 dwellings was granted in 2021 but included under Site Ref: 4/596a. In relation to the remaining 282 dwellings the Council has provided no clear evidence of delivery in relation to the planning status, firm progress towards a detailed planning application/site assessment or site constraints which would justify inclusion in the 5YHLS. I accept that the detailed alignment of the link road has now been confirmed. However, there is no detailed permission for the 200 units in Phase 2 and the delivery rate of 100dpa is not based on any evidence. In my view 200 dwellings should be deducted from the Council's estimate.

30. With regard to Weston Villages, Locking Parklands (Site Ref: 4/558a-c), the Council has provided no clear evidence of delivery in relation to planning status, firm progress towards planning application, site assessment or site constraints which would justify inclusion of all the dwellings included in the 5YHLS. A total of 559 dwellings (309+250) out of a total of 1,450 have detailed permission of which 467 have been completed leaving 92 left to complete. In addition, 124 dwellings are likely to be delivered from the Curo Homes Reserved Matters application. In total 216 dwellings can be included in 5YHLS. There is no clear evidence to support further delivery at this time so 424 dwellings should be deducted (640-216=424).

31. With regard to Weston Villages, Land south of Churchland Way (Site Ref: 4/558d) again the Council has provided no clear evidence of delivery in relation to planning status, firm progress towards planning application, site assessment or site constraints which would justify the Council's 5YHLS assumptions. Outline planning permission for 1,150 dwellings was granted in April 2015. This site is linked to Weston Villages, Parklands, Mead Fields, south of Wolvershill Road, (Site Ref: 4/558g) where an outline for up to 250 dwellings was granted in October 2017. A total of 674 (586+88) dwellings has detailed consent across both sites and 91 of those have been completed leaving 583 to be constructed. Up to date build rates are provided by Bellway Homes and Taylor Wimpey and are used in the Appellant's figures. Taylor Wimpey have detailed consent for 88 dwellings on Site Ref: 4/558g but these will be constructed in one phase with one outlet so are included in this supply source. The remaining dwellings in Site Ref: 4/558g do not have detailed consent and there is no clear evidence of delivery. As such 508 units (258+250) should be deducted from the Council's trajectory for the two sites when taken together.

32. With regard to Weston Villages – Winterstoke, Haywood Village (Site Ref: 4/568) the Council has provided no clear evidence of delivery in relation to planning status, firm progress towards planning application, site assessment or site constraints which would justify inclusion of the remaining dwellings within the 5YHLS. Outline planning permission for up to 900 dwellings was granted in August 2012 and 898 dwellings approved at Reserved Matters stage. A further outline consent was approved in January 2018 for 1,650 dwellings and 729 dwellings approved at Reserved Matters stage. Persimmon have provided an up-to-date trajectory including explanation of no dual branding and this has been used in the Appellant's figures. It follows that 371

dwellings are assumed in the 5YHLS as Persimmon figures are based on their year-end rather than April start date. The Council relies on a much higher build rate to justify its future assumptions. However, based on information provided by the developer the number of dwellings that will be delivered from this site should be reduced by 710 dwellings from the Council's trajectory.

33. With regard to Station Gateway, Weston-super-Mare (Site Ref: 4/645) the Council has provided no clear evidence of delivery in relation to planning status, firm progress towards planning application, site assessment or site constraints which would justify inclusion in the 5YHLS. The site is allocated for 300 dwellings in the SAP. The proposal requires a flood risk and sequential test assessment. I accept that this is a key site which the Council wishes to bring forward and is in the process of acquiring. However, no details of constraints, planning application process or Network Rail consultation are provided. The Council refers to a Commissioning Plan for the procurement of a developer, but this can be a slow and complicated process. No developer has been identified and land acquisition has yet to be completed. In my view 200 dwellings should be deducted from the Council's estimate.

34. It is not necessary for me to go through all of the disputed sites in paragraph 3 of the Final 5YHLS Position Statement[22] and the Scott Schedule.[23] I am satisfied that the Council's supply evidence is conspicuously weak and severely lacking in substance. There is no clear evidence before me that would suggest that the Council's assumptions would deliver the completions suggested in its trajectory in the next five years and meet the realistic prospect test. Much of the Council's evidence constitutes mere assertions and does not come anywhere close to what is envisaged by the PPG.

35. At paragraph 4 of the Final 5HLS Position there is an up-to-date table of the deliverable supply which replaces that at paragraph 5.1 of the Housing Land Supply SoCG. The difference between the main parties now comes down to the Council's position that it has a 5.5 year supply of deliverable housing sites and the Appellant's position that instead it is a 3.2 years' supply. The updated 5YHLS figures include four scenarios which include different reductions from the small sites source. However, in reality, these reductions make little difference to the final position calculations. Plainly, from all the evidence that is before me, the Appellant's position is preferred. Although the Council maintains there is a 5.5 years' land supply, in my view, there is only a housing land supply equivalent to **3.2 years.**

36. In the absence of being able to demonstrate a 5YHLS, the most important policies for determining the application are irrefutably deemed to be out of date under paragraph 11(d) of the NPPF and the tilted balance applies subject to any protective policies in the NPPF which provide a clear reason for refusal. The YNP does not alter this position, firstly, because there is no conflict with it (and no specific policy conflict is even alleged) and secondly, because it does not seek to meet an identified housing requirement through its sole allocation.

37. If no 5YHLS exists, case law suggests that it is important to gauge how large it is at least in broad terms. The Council agreed that extent of the shortfall is relevant to weight.[24] In Hallam Land Management Ltd v Secretary of State for

[22] APP9
[23] APP10
[24] Neil Underhay in XX

Communities and Local Government [2018] EWCA Civ 1808,[25] the Court made plain that the extent of any such shortfall will bear directly on the weight to be given to the benefits or disbenefits of the proposed development. In a 5YHLS shortfall scenario two things are relevant; (i) the extent of the shortfall and (ii) retrievability i.e., how likely or quickly it will be made up. I return to these legal consequences in the planning balance later in this decision. I conclude on the first issue that the Council cannot demonstrate a five year housing land supply and that the extent of the shortfall is significant.

Second issue - Whether the scale and location of the proposed development is acceptable in principle in the light of the Council's Spatial Strategy

38. This issue relates to RfR1 and the Council's assertion that the appeal proposal would deliver a scale of development that conflicts with the spatial strategy of the development plan. The Council states in RfR1 that the proposed development would be contrary to policies CS14 and CS32 of the Core Strategy and the made YNP.

39. However, at the Inquiry, the Council seemed to abandon the position taken in RfR1 that the development is not in accordance with the YNP. In cross examination Mr Underhay confirmed that there was in fact no conflict with any specific YNP policy. He argued that the scale and location of the proposal would be in conflict with the environmental objectives of the YNP. However, he accepted that the development plan is made up of its policies and the supporting text cannot impose criteria which are not contained in the polices themselves.[26] He also confirmed that the Inspector is not looking at a three-year threshold for housing land supply because there is no conflict with the YNP and therefore NPPF paragraph 14 is not engaged here. I agree that there is no conflict with the YNP.

40. Policies CS14 and CS32 are agreed to be most important policies for the purpose of determining this appeal.[27] Based on the minimum housing requirement set out in Policy CS13 of the Core Strategy, Policy CS14 provides for a broad distribution of housing based on an identified settlement hierarchy which includes nine Services Villages. `Service' villages include a wider range of services and facilities than the smaller `infill' villages, but significantly less than smaller towns. The appeal site is in Yatton, one of the nine `Service' villages in North Somerset. There are no development plan limits for the number of new dwellings at individual service villages. Policy CS32 of the Core Strategy seeks to guide new development "*within or adjoining the settlement boundaries of the Service Villages.*"

41. The appeal site adjoins the Yatton settlement boundary. It is not allocated for development in the SAP or YNP. Policy CS14 supports small-scale development within or abutting service village settlement boundaries. However, it does not place a complete bar on development beyond the settlement boundary of Yatton. Development outside the settlement boundaries will only be acceptable where a site is allocated in a Local Plan or where it comprises sustainable development which, in the case of Yatton,

[25] CD69
[26] R (Cherkley Campaign Ltd) v Mole Valley District Council [2014] EWCA Civ 567
[27] Paragraph 3.2, General SoCG

accords with Policy CS32. That policy confirms that "*sites outside the settlement boundaries in excess of about 25 dwellings must be brought forward as allocations through Local Plans or Neighbourhood Plans*". Mr Underhay confirmed[28] that the policy objection which really founds RfR1 is that the proposed development would be outside the settlement boundary and above 25 dwellings thus not plan led.

42. Plainly, as most important policies, where there is no 5YHLS, neither Policy CS14 nor CS32 can be given full weight. Mr Underhay argued that at least significant weight is appropriate, noting the policy purpose to direct housing to more sustainable settlements according to the hierarchy which in his view remained a "*sound principle to uphold.*"[29] However, in my view, only limited weight can be afforded to these policies given that there is no 5YHLS and the extent of the shortfall is significant at 3.2 years.

43. Moreover, I note that there is nothing in Policy CS32 that would prevent, subject to appropriate compliance with the bullet points therein, four schemes of 25 units coming forward over time. There is "*no numerical target to aim for or be constrained by*" in Policy CS32 as to the number of 25 dwelling schemes which might be granted permission,[30] and the policy applies to individual applications such that there could be a series of applications coming forward.[31] At the Inquiry Mr Underhay acknowledged[32] that if there is a need for 100 units somewhere in Yatton, in principle one single scheme may cause less harm and deliver more cumulative benefits than four scattered ones. Although the correct approach would be to pursue these proposals through the Local Plan process, Mr Underhay agreed[33] that if there is no 5YHLS there may be more scope in terms of numbers to be permitted in a scheme pursuant to Policy CS32.

44. It must also be relevant that the appeal proposal performs well against the rest of the criteria set out in Policy CS32. It:

- includes an Illustrative Site Masterplan and Design and Access Statement which demonstrates how the form, design and scale of development respects and enhances the local character, contributes to place making and reinforces local distinctiveness. The Council did not raise concerns in relation to general design matters;
- includes a range of dwellings to meet local needs. The Council did not raise concerns in relation to the size, type, tenure or overall range of housing;
- would not cause significant adverse impacts on services and infrastructure and the local infrastructure is sufficient to accommodate the demands of the development. Where necessary planning obligations will be secured via a legal agreement to provide necessary contributions and infrastructure;
- would result in a high-quality sustainable scheme which is appropriate to its context and would make a positive contribution to the local environment and landscape setting;

[28] In XX
[29] In EIC
[30] Neil Underhay in EIC
[31] Neil Underhay in XX
[32] In XX – depending on the cumulative effects and merits of the case
[33] In EIC

- would not result in significant adverse cumulative impacts (such as highway impacts) likely to arise from existing and proposed development within the wider area;
- maximises opportunities to reduce the need to travel and encourages active travel modes and public transport;
- and demonstrates safe and attractive pedestrian routes to facilities within the settlement within reasonable walking distance.[34]

45. The Council also accepted that subject to agreement on conditions and obligations proximity to services was probably not an objection. Mr Hutcheson gave unchallenged evidence as how there is a good connectivity to and from the site by different modes of transport.[35] The Council also accepted that if there is only about 3.2 years' supply, then that would be regarded as a significant shortfall and probably the balance weighs in favour of the scheme.

46. Drawing these threads together it is clear to me that the appeal proposal of up to 100 dwellings would deliver a scale of development that is in conflict with the spatial strategy of the development plan which permits sites of up to around 25 dwellings adjoining the settlement edges of services villages. The proposed development is therefore contrary to Policies CS14 and CS32 of the Core Strategy. There is no conflict with YNP policies. However, there is no 5YHLS in this case and indeed there is a significant shortfall and therefore Policies CS14 and CS32 cannot be given full weight - rather these policies can only be afforded limited weight. It must also be relevant that the appeal proposal performs well against the rest of the criteria set out in Policy CS32. I need to assess the Council's concerns in terms of ecology and landscape in the third and fourth issues before assessing the overall planning balance. On the second issue I conclude that the scale and location of the development would be in conflict with the Council's Spatial Strategy.

Third Issue - The impact of the proposed development on Ecology and Biodiversity

47. RfR2 indicates that the proposed development would have a significant effect on the North Somerset and Mendip Bats SAC and result in operational impacts and increased recreational pressure on the Biddle Street SSSI. It also alleges that the proposed development fails to demonstrate that a biodiversity net gain (BNG) can be achieved on site and the proposal is contrary to Policies CS4 and DM8, the North Somerset and Mendip Bats SAC SPD and the NPPF.[36]

The SSI and Reptiles

48. With regard to the impacts of the proposed development upon the Biddle Street SSSI it is clear that these have been considered by Mr Clarkson. Though the development has potential to contribute towards increased levels of pressure upon the Strawberry Line, positive and appropriate measures are proposed to both help manage the existing and increased levels of

[34] Paragraph 7.5 of PoE of Ian Jewson
[35] See revised TA at Appendix A to his PoE
[36] In RfR2 reference is made to paragraphs 175 and 177 of the NPPF. The current references for these paragraphs are 180 and 182 of the NPPF 2021

recreational impact such that adequate protection of the SSSI could be maintained during both the construction and operation of the development.[37]

49. The Council agreed that the risks to the SSSI could probably be tackled by condition.[38] Additional measures, including the installation of bins and litter picking, have been proposed and would be secured via the Appellant's UU. The Council also confirmed that planning conditions could avoid any risk to protected species such as slow worms, grass snakes and badgers.[39] There is no mention in RfR2,[40] which deals with ecological concerns, of any alleged impact on these considerations.

Biodiversity Net Gain (BNG)

50. Since the experts provided their proofs on ecology matters, further common ground was reached as set out in the BNG SoCG. That makes clear that the fundamental difference of approach between the Council and Appellant is now how the habitats required to compensate for impacts on bats are used in contributing to a net gain calculation.[41]

51. The Appellant's view is that all BNG provided within the bat mitigation area can be used against the whole development to a point of no net loss with the urban habitats (and others not accessible to bats) providing net gain.[42] Indeed, their BNG assessment demonstrates how the proposal would deliver a substantial gain (103% gain in area-based habitats and a 56% gain for linear habitats – considerably more than what is required by law or policy).[43]

52. The Council disagrees and considers that biodiversity gain secured within the bat mitigation habitats should be discounted. Even if the Council is right, the Appellant argued that the appeal scheme remains consistent with paragraph 180c of the NPPF (which, unlike the Environment Act 2021, which does not apply to this appeal, does not require a particular percentage BNG).

53. As I perceive it, BNG can be dealt with either by conditions or within the s106 obligations. That is agreed between the parties, as confirmed in the Council's opening.[44] The difference between the parties is essentially one of methodology. If the Council is right, the Appellant could overcome the issue by providing BNG off site under the terms of a planning condition.[45] Accordingly, BNG no longer amounts to a reason to dismiss this appeal.

Habitats

54. Given the above position, the Council accepted in opening that its principal ecological issue is the impact of the development on bats.[46] It was the Council's position at the opening of the Inquiry that development on the scale

[37] Paragraphs 4 and 7, Summary PoE of Tom Clarkson.
[38] Paragraph 8, Council's Opening, LPA 1 and Dr Carpenter PoE paragraphs 4.2.17 and 4.2.18
[39] Paragraph 8, Council's Opening, LPA 1
[40] Accepted by Dr Carpenter in XX
[41] See paragraph 11, BNG SoCG
[42] See paragraph 12, BNG SoCG
[43] Paragraph 4.1.71, PoE of Tom Clarkson and Policy CS4 2 in CD1
[44] Paragraph 7, Council's Opening, LPA1
[45] Paragraph 7, Council's Opening, LPA1
[46] Paragraph 9, Council's Opening, LPA1

that is proposed would amount to a clear RfR in terms of such resultant impact.[47] However, matters moved on during the Inquiry.

55. The Appellant argued that there were no obstacles under the Habitat Regulations which prevented the grant of planning permission, rather, the proposals represented an "*exemplar*" of how ecological impact assessment could be used to identify, safeguard and enhance key ecological habitats.[48] The Council maintained that the proposed development, due to its close proximity to the North Somerset and Mendip Bats SAC, would have a significant effect on this habitat site, a European protected site. Moreover, it is argued that the survey evidence and consultation with Natural England (NE) suggest that SAC bats would be adversely affected by the development. It is also claimed that the proposed mitigation measures do not prioritise on-site mitigation and that the proposed off-site mitigation is unsuitable.

The Habitats Regulations

56. Regulation 63 of the Conservation of Habitats and Species Regulations 2017 requires a competent authority – in this case the Inspector – before deciding to give planning permission for a project which is "*likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects)*" and "*is not directly connected with or necessary to the management of that site*" to make an appropriate assessment of the implications of the project for that site in view of that site's conservation objectives. Regulation 63(6) is clear that "*in considering whether a plan or project will adversely affect the integrity of the site, the competent authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given".*

57. Regulation 70 deals with the grant of planning permission and at (3) states that "*where the assessment provisions apply, outline planning permission must not be granted unless the competent authority is satisfied (whether by reason of the conditions and limitations to which the outline planning permission is to be made subject, or otherwise) that no development likely adversely to affect the integrity of a European site or a European offshore marine site could be carried out under the permission, whether before or after obtaining approval of any reserved matters".*

58. Accordingly, the real issue between the parties is whether or not, subject to conditions, adverse effects on the integrity of the North Somerset and Mendip Bats SAC can be ruled out.

The Imposition of a Grampian Condition

59. Before carrying out the Habitats Regulation Assessment (HRA) it is important to consider relevant case law cited in evidence by the Appellant which refers to the imposition of a Grampian Condition. The Abbotskerswell Parish Council v Secretary of State for Housing, Communities and Local Government and others [2021] EWHC 555 (Admin)[49] is a helpful authority in assessing the extent to which detailed information is required at outline stage to comply

[47] Paragraph 9, Council's Opening, LPA1
[48] Paragraph 8.1.5, PoE of Tom Clarkson
[49] APP3

with Regulation 70(3).[50] The Court was clear that any suggestion that all details of matters which could affect site integrity has to be provided at outline stage is a misunderstanding of the Regulations. Paragraphs 152 and 159 of the Judgment, in particular, are noteworthy.[51]

60. The Council relied on paragraph 99 of Circular 06/05.[52] However, it seems to me that this must be read through the lens of paragraph 98. Circular 06/05 is intended to provide guidance on how to comply with the legal obligations under Habitats Regulations, as opposed to providing additional hurdles that go above and beyond (or 'gold plate') the tests under the Regulations. The Council did not challenge this interpretation. Under the subheading 'Purpose of the Circular,[53] it sets out that "*this Circular provides administrative guidance on the application of the law relating to planning and nature conservation as it applies in England*". It goes on to set out that law, as it stood at the date of the Circular, in the Introduction and Context section at paragraph 3.[54] Were it the intention of the Circular to supplement or add to the statutory position, it would be clearly stated as a purpose or in the introductory paragraphs.

61. This is critical because Dr Carpenter agreed that: (a) a condition such as Condition 18[55] could ensure that adverse effects on site integrity could be ruled out – because it would provide for only two options: no development commencing, or development commencing in accordance with a survey-informed mitigation plan which would avoid adverse effects on site integrity; (b) such a condition would therefore ensure that the Habitats Regulations test is met; and (c) there would be at least some prospect of it being discharged during the lifetime of the permission which would satisfy the PPG test for a Grampian Condition. Therefore there is no tenable basis for saying that

[50] See Ground 5 from paragraph 148 of the Judgment, APP3
[51] "152. *In my judgment, it was apparent from the way in which the Claimant presented its submissions that essentially its case was that all details of matters which could affect site integrity had to be provided at outline stage. I accept the Secretary of State's submission in response that the Claimant has misunderstood regulation 70(3) of the Habitats Regulations 2017 as it expressly provides that the role of conditions and limitations in contributing to the avoidance of adverse effects to integrity can be taken into account when considering applications for outline planning permission. The approach contended for by the Claimant, whereby all details of matters which may affect site integrity have to be assessed at the outline stage, would effectively require an application for a full planning permission. This would render the role of outline planning permissions in relation to development requiring appropriate assessment nugatory and would mean that the wording in regulation 70(3) is meaningless.*
159. *The Secretary of State's decision imposed a framework of planning conditions relating to GHBs (condition 6 (Masterplan and Design Code), condition 7 (ecological mitigation strategy), and condition 12 (lighting)) which set out clearly defined parameters for the approval of reserved matters, which enabled the Secretary of State to conclude, with sufficient certainty, that the proposed development would not adversely affect the integrity of the SAC. The GHB Mitigation Plan was tied to the Masterplan and Design Code and the ecological mitigation strategy, which would require approval prior to the submission of reserved matters and/or prior to any development taking place. Under condition 6, the Masterplan and Design Code was to be formulated broadly in accordance with the submitted Design and Access Statement and Illustrative Masterplan, and specific requirements were set out at (a) to (k). The careful way in which the conditions were drafted ensured that all developers at all phases would have to comply with the Masterplan and Design Code and the ecological mitigation strategy. Under condition 15, the Construction Environment Management Plan (CEMP) and Ecological Construction Method Statement protected GHB corridors and minimised light spill during the construction phases".*
[52] APP2
[53] See paragraph 1, page 4, APP2
[54] On page 5, APP2. Text states: *The UK is bound by the terms of the EC Birds and Habitats Directives5 and the Ramsar Convention6. The Conservation (Natural Habitats &c.) Regulations 19947 (the 'Habitats Regulations') provide for the protection of 'European sites'8 , which are candidate Special Areas of Conservation (cSACs) and Special Areas of Conservation (SACs) designated pursuant to the Habitats Directive, and Special Protection Areas (SPAs) classified under the Birds Directive. The Regulations apply specific provisions of the Habitats Directive to cSACs, SACs and SPAs which require special considerations to be taken in respect of such sites.*
[55] LPA3

Circular 06/05 would prohibit such a condition. The Circular adds nothing to the Habitats Regulations test, which would be met.

62. The wording of paragraph 99 is clear that: (a) it only relates to the extent to which protected species may be affected by the proposed development and not their habitats. There is no suggestion in this case of any direct harm being caused to any protected species; (b) even ignoring that, the first sentence requires two things to be established before planning permission is granted – whether there are protected species present on site (the answer to that is known to be yes here) and the extent to which they may be affected by the development (the answer to that is also known here even if Dr Carpenter's view about the need for more survey is accepted: Condition 18 would have the effect of ensuring that no development may happen unless the survey-informed mitigation plan demonstrates that adverse effects on site integrity can be ruled out). Even if some details of *how* that will be achieved are left over for submission and approval under the condition, there is nothing unlawful about that: as the judgment in ***Abbotskerswell***[56] makes clear having regard to Regulation 70(3) of the Habitats Regulations, what matters at the outline stage is certainty of outcome not certainty of details.

Habitats Regulations Assessment (HRA)

Assessment of Likely Significant Effects

63. There are no European Sites that lie within or adjacent to the appeal site. The North Somerset and Mendip Bats SAC is located within 1.87kms of the appeal site at its nearest point and has been identified by the Appellant as requiring consideration under this HRA.[57]

64. The conservation objectives of the European sites identified by the Appellant are available on the Natural England (NE) website at the following link:

http://publications.naturalengland.org.uk/publication/6252034999189504?category=5374002071601152

I have had regard to these objectives in undertaking my duties in accordance with the Conservation of Habitats and Species Regulations 2017.

65. The Appellant acknowledges that the appeal site is of `Regional' level importance for *Greater Horseshoe Bats* and *Lesser Horseshoe Bats*. Its particular attraction to these Annex 1 species arises from its proximity to the King's Wood and Urchin Wood SSSI, which forms a component part of the SAC. I note that the appeal site lies within the Consultation Zone B of the North Somerset and Mendip Bats SAC SPD reflecting the likely importance of the area to SAC bats. As such the development may result in adverse impacts on the SAC Annex 1 species through the loss of foraging habitat on the site, the fragmentation of commuting routes and cumulative impacts.

66. Bat surveys were undertaken by the Appellant on both fields and the farmyard which cover the wider site between April and October 2020. This included undertaking static detector surveys to meet the minimum survey standards

[56] APP3
[57] Tom Clarkson's PoE, Appendix B: Shadow HRA Assessment page 62

set out in the North Somerset and Mendip Bats Special Area of Conservation (SAC) Guidance on Development.[58]

67. With regard to *Greater Horseshoe Bats* the static detector surveys recorded high levels of activity for this species which indicates portions of the appeal site are of significant value to foraging and commuting greater horseshoe bats particularly during the maternity season. Overall across all detectors and all months the survey recorded a total of 991 passes by greater horseshoe bats accounting for 2% of the total bat calls recorded from all detectors.[59] With regard to *Lesser Horseshoe Bats* the automated static bat detector surveys undertaken recorded a total of 1,834 passes by lesser horseshoe bats representing 3.7% of the overall calls recorded by the static detectors. High levels of activity from lesser horseshoe were recorded particularly along the southern hedgerows of the southern field which indicates portions of the site are of value to foraging and commuting lesser horseshoe bats particularly during the late summer and autumn months. The site appears to be of significant value to lesser horseshoe bats.[60]

68. Generally, recorded horseshoe bat activity was the highest on the south-western boundary which bounds the Biddle Street SSSI and Strawberry Line (H4) and south-eastern hedgerow (H3) across all of the surveys completed to date. These hedgerows have the best structure and are likely to be sheltered from the prevailing winds. They are considered to be the most important hedgerows for horseshoe bats within the appeal site.[61]

69. The survey data suggests that H4 forms part of an important commuting route for both greater and lesser horseshoe bats, with static detector and bat activity data suggesting that the hedgerow is used consistently throughout the year. This consistent use suggests it forms a key commuting route for horseshoe bats moving from north to south in the local area. This hedgerow contributes to a corridor which links the King's Wood and Urchin Wood portion of the SAC and suitable foraging habitat to the north and east of Yatton and the Strawberry Line.

70. *Greater Horseshoe Bats* are likely to utilise the grazed pasture that sits in between the ditches associated with the Biddle Street SSSI for invertebrates including dung beetles. *Lesser Horseshoe Bats* are likely to utilise the ditches themselves to forage for emerging aquatic invertebrates. Both species also forage within the appeal site, with H3 and H4 appearing to support the most foraging activity. Generally, all of the hedgerows supported at least low levels of activity by greater and lesser horseshoe bats, and together, they are likely to significantly contribute to the connectivity of the local landscape for commuting bats.

71. The appeal proposal comprises up to 100 dwellings and associated infrastructure. The scheme would remove a large area of the improved grassland from both the northern and southern fields and result in the removal of all of the farmyard buildings of Rectory Farm, Yatton and the hardstanding areas associated with the farmyard to facilitate construction.

[58] See CD7, Tom Clarkson's PoE Appendix B Shadow HRA Assessment page 65 and CD22
[59] Tom Clarkson's PoE Appendix B: Shadow HRA Assessment page 66
[60] Tom Clarkson's PoE Appendix B: Shadow HRA Assessment pages 66-67
[61] Ibid

Hedgerows and ditches would largely be retained and protected; although some impacts from lighting on these features are anticipated. The layout of the access road and buildings' orientations have been designed to reduce light spill onto retained mitigation habitats as far as is possible.

72. Short sections of hedgerows would require removal from H1, H5, H6 and H9 to create safe visibility surrounding the access road. The ditch to the north of H1 may require removal and recreation to allow the access road to be constructed. The Landscaping Masterplan shows the proposed wildlife mitigation, and a Phase 1 habitat plan shows the hedgerows affected.[62] It is acknowledged that the scheme has the potential to result in likely significant effects which are summarised in the Shadow HRA Assessment.[63]

73. The Appellant has proposed mitigation designed to fulfil the requirements of the North Somerset and Mendip Bat Habitat Evaluation Procedure (HEP), the details of which are provided within the Ecological Impact Assessment Report[64] to address the likely significant effects from the proposals. However, the *People Over Wind* judgment established that the assessment of likely significant effects on the European sites cannot take into account measures to avoid or reduce the effects of a proposed development. Therefore, it is necessary for the competent authority (the Inspector) to undertake an Appropriate Assessment (AA) under the Habitats Regulations.[65]

Appropriate Assessment

74. The AA is necessary to comply with Regulation 63 (1) of the Conservation of Habitats and Species Regulations 2017. In undertaking the AA, I must be certain that the proposed development would not result in adverse effects to the integrity of the relevant European site.

75. Several measures are included within the design of the scheme to ensure that impacts associated with *fragmentation and the loss of flight lines* for horseshoe bats would be avoided and mitigated as far as possible. These measures include: supplementary planting to bolster the structure of currently utilised flight lines and to create new suitable commuting routes; the implementation of protective measures during the construction phase to ensure that valuable habitats are not inadvertently damaged during site clearance/construction; and the design of a sensitive *lighting* scheme, which would seek to protect all boundary features and bat mitigation habitats from artificial light spill. In view of the above measures and the careful design of the site layout, I conclude that the development, when considered in isolation, would not have any residual adverse impacts upon flight lines or commuting bats. The risk of adverse effect on the integrity of the SAC can be ruled out, applying the precautionary principle.

76. The Shadow HRA Assessment indicates that the appeal proposal has been carefully designed to avoid the majority of potential impacts. With regard to the *reduction in foraging habitat area,* as can be seen from the HEP, at least 1.02ha of optimal greater horseshoe bat foraging habitat is required to ensure

[62] Tom Clarkson's Shadow HRA Assessment page 58
[63] Tom Clarkson's PoE Appendix B: Shadow HRA Assessment page 68
[64] CD22
[65] Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017

the scheme remains compliant with the SPD. The appeal site also requires this mitigation to provide 0.72ha of optimal foraging habitat for lesser horseshoe bats to achieve foraging equivalence. The appeal scheme has incorporated the equivalent of at least 0.70ha of greater horseshoe bat habitat and 0.71ha of suitable lesser horseshoe bat habitat.

77. This is below what is required to be compliant with the guidance. For greater horseshoe bats the loss of habitat value within the appeal site is equivalent to 0.32ha or 31.38% loss of habitat value within the red line boundary. For lesser horseshoe bats this was a loss of 0.01ha or 1.39% of the foraging value within the red line boundary. Mr Clarkson stated that the mitigation habitat provided was as large in area and of as high a value as was practical to provide within the constraints presented by the appeal proposal. Habitat retention has prioritised the most valuable areas of habitat to horseshoe bats and has preserved the most valuable foraging and commuting features.

78. To offset the shortfall in habitat value (particularly for greater horseshoe bats) *off-site compensation habitat* has been secured. The development proposes to compensate the shortfall by enhancing suitable off-site land to increase its value to foraging horseshoe bats. A field has been identified within 500m of the red line boundary to the north-east which could be enhanced to fulfil this purpose.[66] This land also sits within Band B of the consultation zone making it suitable for use as off-site compensation being of broadly equivalent distance from the same known SAC sites. Full details of the off-site compensation land are set out in the Shadow HRA.[67] The area of compensation habitat proposed is 0.95ha in area and would be managed through low intensity grazing, cessation of the use of inorganic fertilisers and, if necessary, seeding to establish a botanically diverse wet neutral pasture. The diversification of the flora of the grassland would increase the diversity of invertebrates available to foraging bats and substantially increase its foraging value.

79. Connectivity between the habitats within the red line boundary and the off-site compensation land is excellent with the woody vegetation and ditches associated with the Strawberry Line directly connecting the two land parcels. Taking into account the existing value of the habitat (0.3 for greater horseshoe bats and 0.24 for lesser horseshoe bats) this would provide an additional 0.375ha of equivalent habitat for greater horseshoe bats and 0.21ha of equivalent habitat for lesser horseshoe bats. The quantum of habitat to be provided would thus represent a minor enhancement of the provision of foraging habitats for both lesser and greater horseshoe bats locally. The layout and habitat types of the proposed mitigation within the red line boundary are shown in Mr Clarkson's evidence.[68] I conclude that the development, when considered in isolation, would not have any residual adverse impact upon foraging bats. The risk of adverse effect on the integrity of the SAC can be ruled out, applying the precautionary principle.

80. An assessment of *in-combination effects* with other plans and projects is also provided within the Shadow HRA. When considering the loss of foraging habitat extent at both a local level (within 2km of the SAC components) and more of a landscape level (within 10km of the SAC components), the

[66] Tom Clarkson's PoE Appendix C Figure 2
[67] Tom Clarkson's PoE Appendix B pages 75-76
[68] Tom Clarkson's PoE Appendix C Figure 3

proposed development, in combination with other planning applications and allocated sites would result in the loss of under 1% of the total potential foraging habitat at both geographic scales. This cumulative loss is not significant in the context of the remaining available area of foraging habitat. Applying the precautionary principle, no likely significant effects are anticipated when this assessment is considered alongside other nearby developments. It can similarly be concluded, beyond reasonable scientific doubt, that there would be no adverse effect on the integrity of the SAC.

81. The proposed mitigation measures would minimise any residual adverse impacts and safeguard the favourable conservation status of the population of horseshoe bats recorded on the appeal site. This would be achieved by means of a Construction Environment Management Plan (CEMP); a Landscape and Ecological Management Plan (LEMP) and a Landscape Planting Plan.[69] Additionally, sufficient habitat is to be created in accordance with the HEP guidance to mitigate for proposed foraging habitat losses. The provision of replacement foraging habitat both within the appeal site and habitat in close proximity to the appeal site would maintain foraging capacity of the local area for horseshoe bats. Furthermore, with the implementation of the Planning Obligations and relevant planning conditions and their respective monitoring programmes, it can safely be concluded, applying the precautionary principle, that the risk of adverse effect upon the North Somerset and Mendip Bats SAC can be ruled out beyond reasonable scientific doubt.

82. Plainly, the effect of the wording of Condition 18 would ensure that details of the required mitigation (more bat surveys, final scheme for bat mitigation and habitat management plan for the off-site habitat) would avoid adverse effects from the development on the integrity of the SAC thereby securing compliance with the Habitats Regulations (and thus with Circular 06/05). Development either does not come forward if insufficient surveys are provided, or none at all, and does if the requirement is satisfactorily met.

83. Once it is appreciated that the requirements of the Habitats Regulations are met and in particular that the proposed development would not cause any harm to the SAC, then the mitigation hierarchy in paragraph 180(a) of the NPPF adds nothing for three reasons. Firstly, paragraph 180(a) does not provide that where adverse effects on SAC integrity are avoided through off-site mitigation, permission should still be refused if on-site mitigation could be provided (in either case, mitigation would be needed and once provided would avoid adverse effects on SAC integrity). The Council reads in a requirement which is simply not there. If it were there, the NPPF would be gold-plating the Habitats Regulations by imposing a significantly more onerous test.

84. Secondly, this is a scheme for 100 dwellings, and it is common ground that a scheme for 100 dwellings cannot provide 100% mitigation on-site. Thirdly, comparing it to a scheme for 75 dwellings is illegitimate in this context as a 75-unit scheme is a different scheme altogether. Paragraph 180(a) requires a judgment to be made about this particular development, not a comparison against some alternative materially different development.

85. Fourthly, a 100-unit scheme incorporating some off-site mitigation would have the following material advantages over a 75-unit scheme with 100% on site

[69] Tom Clarkson's PoE Appendix B pages 92-93

mitigation: (i) a materially higher amount of much needed market and affordable housing; (ii) as Mr Clarkson explained the provision of a combination of on-site and off-site mitigation would lead to advantages beyond what could be achieved from on-site only mitigation by providing a greater diversity of additional habitats; for example, by being able to include grazing, which is difficult to create on-site, particularly alongside residential development.[70] The evidence on this point was not challenged.

86. At the Inquiry there was discussion as to whether the imposition of a Grampian condition to deal with any remaining concerns was necessary. Plainly, survey work has already been completed consistent with the SPD guidance which has shown the use of the site by greater horseshoe bats and lesser horseshoe bats.[71] The identified ecological impacts would be mitigated as far as possible within the site, with further appropriate compensatory habitat provision to fully address impacts to horseshoe bats.[72] About two thirds of the required mitigation would be provided on- site.[73] That is as much as is possible to provide and therefore the mitigation hierarchy in the SPD has been followed. That does require the remainder to be provided off-site.

87. I accept that there is flexibility within the blue edged line of the additional land to provide further compensatory habitat if required. I also accept that in calculating the amount of compensatory habitat required, the Appellant has adopted a *worst-case scenario.*[74] This means that whether or not further surveys were to indicate that bats already use the proposed off-site mitigation land, the Appellant is already proposing a sufficient quantity of land to address this. If further surveys indicate that they do, the amount provided is enough, and if they were to find that no bats use it, the Appellant would be over providing which would be a benefit. The Appellant has calculated on the basis of bats foraging, and applied a multiplier which, if they are not, would not have needed to be applied reducing the amount of land required thus further demonstrating the robustness of the mitigation provision. I appreciate that there is an acknowledged risk associated with off-site habitat provision – things may not grow as expected – so a Grampian condition is required.

88. The Council questioned whether or not bats could actually get to the mitigation land and whether or not they might exhibit *territorial behaviour* preventing bats from accessing. It is agreed that the Strawberry Line is a key foraging commuting route for greater and lesser horseshoe bats. Horseshoe bats have been recorded in Mr Clarkson's survey results[75] and his evidence was that recording them is difficult due to directionality such that there is likely to be more present than is recorded. The off-site mitigation is proposed right next to this and is plainly close enough to the appeal site to be a candidate for replacement mitigation. I note that the issue of territoriality is already factored into the SPD multiplier. It is possible to increase habitat and thus increase headroom to combat territoriality. As to other concerns with

[70] EIC of Tom Clarkson. Note too paragraph 4.7 of the SPD at CD7
[71] Paragraph 5, Summary PoE of Tom Clarkson.
[72] Paragraph 8.1.5, PoE of Tom Clarkson.
[73] EIC of Tom Clarkson
[74] Terminology used in EIC
[75] See Appendix B to his PoE – Shadow HRA Assessment. In particular pages 66 to 69. See also the Bat Transect Map in the EIA at page 28, CD22.

regard to access, for example potential climate differences,[76] this has been considered in the design by incorporating a shelter belt.[77]

89. I note the requirement to consult and have regard to NE's representations as the appropriate nature conservation body, where an AA is being carried out. On 28 April 2022 a consultation with NE was undertaken in accordance with the Conservation of Habitats and Species Regulations 2017. The response from NE dated 25 May 2022 confirmed their concerns about the proposal as previously set out in their letter of 10 March 2021.[78] NE, supported by the Council, do not consider that off-site mitigation is appropriate for this proposal due to the significant importance of the site to contributing to the favourable conservation status of the SAC bat populations, largely due to its location. Furthermore, NE do not consider that the off-site mitigation demonstrates any additionality in terms of foraging habitat enhancements and sufficient survey information has not been provided to ascertain if the site is appropriate for off-site habitat enhancements.

90. I have had regard to the representations from NE and taken into account the additional points made by the parties notably the Appellant's letter dated 6 June 2022.[79] I have given weight to NE's views as the statutory nature conservation body, but NE's views do not appear to be a formal objection to the proposal. Importantly, NE's evidence has not been tested by cross examination and therefore it cannot be given greater weight than Mr Clarkson's evidence which was tested at the Inquiry. Moreover, NE's representations must be considered in the context of the Shadow HRA and the detailed evidence provided by Mr Clarkson to the Inquiry which I found to be both cogent and compelling.[80]

91. With regard to NE's views the following points are noteworthy. Firstly, the effect of the prevailing winds in the area would be to blow insects away from the site rather than towards the site. Secondly, the mitigation hierarchy has sought to maintain as much of the bat mitigation habitat on site as possible in the context of housing need. Thirdly, the basis of Mr Clarkson's calculations that the productivity of the off-site habitat would be enhanced to deliver a better foraging habitat to that currently present, accords with the Council's SPD methodology. Fourthly, the off-site compensation land is accessible to horseshoe bats and the need for more survey information on this land can be dealt with via a Grampian style condition. Finally, NE's response fails to grapple with the SPD guidance[81] or the potential use of a Grampian condition.

92. Drawing all of these threads together, the evidence before me demonstrates that sufficient mitigation would be provided such that the development would not be likely to adversely affect the integrity of the SAC with a Grampian condition attached. The conservation objectives of the SAC would not be undermined. Accordingly I conclude on this issue that the proposed development would not have a significant effect on the North Somerset and Mendip Bats SAC, nor would it have unacceptable impacts on the Biddle Street SSSI. The appeal proposal would not conflict with Policies CS4 and DM8, the

[76] Though Tom Clarkson was XX on lighting preventing access, this did not form part of the Council's case prior to XX.
[77] In EIC
[78] CD43
[79] APP12
[80] See Appendix B to his PoE
[81] CD7

North Somerset and Mendip Bats SAC SPD and the NPPF. Moreover, in this case, there would be no departure from the policy expectation in the first sentence of paragraph 99 of Circular 06/2005 and therefore no requirement for 'exceptional circumstances' to justify that departure in the manner referred to in the second sentence. Even if there were, the significant shortfall in the 5YHLS would be capable of amounting to exceptional circumstances.

Fourth Issue - The effect of the proposed development on the character and appearance of the area

93. This fourth issue relates to RfR3 which alleges that the proposed development, by reason of its protrusion in an area of high landscape sensitivity in close proximity to the Strawberry Line, does not accord with the linear form of the village and would appear as an incongruous projection into open countryside. Further, that it would cause unacceptable harm to the amenity value of the Strawberry Line. The Council's landscape policies include CS5 and CS9 of the Core Strategy,[82] and Policy DM10 of the Sites and Policies Plan Part 1 – Development Management Policies.[83]

94. Policy CS9 seeks to safeguard, improve and enhance the existing network of green infrastructure through "*further provision, linking into existing provision where appropriate, ensuring it is a multifunctional, accessible network which promotes healthy lifestyles, maintains and improves biodiversity and landscape character and contributes to climate change objectives*."

95. Policies CS5 and DM10 deal with landscape.[84] It is noteworthy that Policy CS5 looks to protect and enhance the character, distinctiveness, diversity and quality of North Somerset's landscape and townscape. However, its focus is on both the national character areas and those in the North Somerset Landscape Character Assessment (LCA). It does not look to protect and enhance every individual development site. Provided the landscape and townscape is protected and enhanced, there is policy compliance and that can be so even where there is landscape harm.

96. Policy DM10 links with Policy CS5 on Landscape. It is the policy that relates specifically to development proposals. In the first bullet point it refers to having an "*unacceptable adverse impact*" rather than no adverse impact at all. Neither Policy CS5 nor Policy DM10 are zero harm policies. The litmus test is therefore whether or not there is an unacceptable degree of harm.[85]

97. A Landscape and Visual Appraisal (LVA) was submitted with the application. Figure L3 to Mr Evers' proof of evidence illustrates the published landscape character areas applicable to the site and surrounding area. It is common ground that the North Somerset LCA SPD 2018[86] is the most relevant for this appeal. The site is located in the National Character Area Somerset Levels and Moors character area (No142). At the local level, the appeal site falls within Landscape Type A: Moors and LCA A1: Kingston Seymour and Puxton Moors. The overall character of the LCA is considered to be `strong' and in `good

[82] CD1
[83] CD2
[84] And the historic environment in respect of CS5.
[85] Confirmed by Kevin Carlton in XX
[86] CD5

condition.' The landscape strategy for the LCA is to `conserve' the existing landscape. The appeal site is on the edge of the LCA.[87]

98. The positive significant features of the LCA are set out on page 31 of the SPD and are not restated here. I note that these relate to all of the Landscape Type: Moors and not just to LCA A1, the positive characteristics of which are set out elsewhere.[88] LCA A1 is distinguished from the other Moors LCAs.[89]

99. In terms of landscape sensitivity, the Council relies heavily on the North Somerset Landscape Sensitivity Assessment 2018[90] (LSA). This document has not been consulted on externally[91] and should be tempered on that basis. It is a high-level assessment and on a more granular analysis it was agreed that when looking at individual areas of land there would be variations.

100. Map 3 of the LSA[92] shows that the southern part of the site falls within an extensive area around Yatton which is assessed as having high sensitivity, the top level of three levels of susceptibility to change and landscape value used. The LSA defines **High sensitivity** as:

> *"Land with a high susceptibility to change and/or which is of high value, e.g. land adjacent to or visually prominent from the AONB, land outside of the settlement pattern, land which has high visual prominence, land which contributes to heritage or ecological assets."*[93]

101. Plainly the northern part of the site falls within an area which is assessed in the LSA as having low sensitivity. The LSA defines **Low sensitivity** as

> "*Land with a low susceptibility to change and/or which is of low value, e.g. land within the settlement pattern, land with low visual prominence, land which has no or very limited contribution to heritage or ecological assets.*"[94]

102. Mr Carlton contends that the appeal site is within the open countryside.[95] He sought to suggest[96] that the Appellant agrees with him, pointing to the LVA[97] and the SoCG. However, the LVA does not say that the site is in countryside plainly using the word '*beyond*'. Mr Carlton accepted, when challenged, that this is not the same as saying that the site is in open countryside. The SoCG is a general SoCG, not a landscape one, and the meaning of open countryside in policy terms is not necessarily the same as in landscape terms.

103. At my site visit I saw that the northern part of the appeal site is dominated by development, consisting of the various single storey and large agricultural buildings that comprise the farm complex and the housing off-site to the east, giving it an urban character,[98] whereas the southern field has a more open, rural character.[99] It was not a matter of dispute at the Inquiry that some

[87] CD5 pages 39-40
[88] See pages 36 to 37 of the document
[89] Nigel Evers PoE paragraph 3.9.6
[90] CD6
[91] See paragraphs 3.9.8-3.9.9, PoE of Nigel Evers
[92] CD6
[93] Paragraph 4.1.13, CD6
[94] Paragraph 4.1.13, CD6
[95] See his paragraph 2.1, PoE of Neil Underhay. Confirmed this was the basis for his assessment in XX
[96] In EIC
[97] In particular paragraph 3.1.2, CD30.
[98] Paragraphs 3.9.17 and 3.9.20 and Viewpoints 1 and 2 in Appendix B, PoE of Nigel Evers
[99] Paragraph 3.9.18 and Viewpoints 3 and 4 in Appendix B, PoE of Nigel Evers

development could take place on the northern part of the appeal site. The focus of the Council's evidence was development on the southern field.

104. Nonetheless, as I saw on my site visit, the southern field is not as sensitive as the Council suggests and, in my view, Mr Carlton's assessment of the baseline is plainly overstated. It is influenced by the poorly resolved edge of Yatton which, combined with the farm buildings, the Strawberry Line and the intermittent belt of trees along the southern boundary, separating it from the wider countryside, and giving it an enclosed, semi-rural character.[100] The embankment and the trees and hedgerows along the Strawberry Line provide a strong boundary, separating the site and its context to the north-west and south-east from the wider Levels landscape to the west.[101]

105. Turning to the landscape and visual effects of the proposed development both landscape witnesses agreed that impacts would be localised only, in the context of a non-designated, non-valued landscape which is part previously developed land. Although the development would change the character of the site from open, grassed fields to houses and gardens with open space areas, there are no particular features of particular value within the site. The effect on the wider landscape would not be significant. The scale of the development is such that it is unlikely to have a discernible effect on the extensive national character area. There would be no significant effects on LCA A1; Kingston Seymour and Puxton Moors LCA, with a negligible magnitude of effect.

106. I accept that there would be an adverse effect of moderate significance on the landscape character of the site. There would be change from open, grassed fields to houses and gardens with open space areas. Existing boundary hedges and trees would be supplemented with new planting and water features on the open spaces within the context of existing development along the eastern boundary and within the north-western part of the site. As a result, there would be a moderate and adverse effect over all time periods, but this would be on the site itself and not the wider landscape. For trees and hedges on the site, so few would be removed for construction that the effects during the construction period and on completion would not be significant with an overall magnitude of negligible. However, with the maturing of the landscape scheme and implementation of the management plan, there would be a moderate beneficial effect.

107. The Council refers to a change in landscape character along Chescombe Road/Biddle Street which it says is a valued link to open countryside. It points to the cutting back or reduction in the height of hedgerows at the new junctions (for visibility) and the installation of footways north and south which would require hedgerow and tree removal. The total figures estimated for widening of the accesses north and south, new paths and visibility splays are set out in document APP8. From the evidence submitted, the total length of hedge removed (49m) would be more than compensated by the net hedge increase (601m) and the total number of trees removed (13) needs to be viewed in the context of the overall net tree increase (61).

108. With regard to visual impacts, there are not many views from which the appeal site can be seen and those that exist are short-range, hence the localised nature of any impacts. Even in that context, though Mr Carlton

[100] Paragraph 3.9.20, PoE of Nigel Evers
[101] Paragraph 3.9.19 and Viewpoint 3 in Appendix B, PoE of Nigel Evers

suggested that Viewpoints 3-5 of the Appellant's LVA[102] were particularly relevant, he relied heavily[103] on Viewpoint 5. He focused on year one.[104] However, Summer of Year 15 is usually taken as representing the longer term `average' residual effect, although in practice new planting will not be fully mature until sometime after Year 15.

109. From Viewpoint 3, the new houses and their gardens would be prominent in the view, with those to the west being set back further from Chescombe Road beyond an area of open space. The roadside hedgerow would be strengthened with new tree planting and hedgerow shrubs. Here the overall effects would be of major magnitude with an adverse effect of moderate significance on completion reducing to minor significance after 15 years.

110. As a result of the closeness to the site, Viewpoints 4 and 5, would be of major magnitude, with an adverse effect of major significance which would reduce to moderate significance after 15 years. However, I note that Viewpoint 5 is taken from the Strawberry Line, about 10m from the site boundary, looking north-east across the southern field. Views are filtered and though the new houses would be prominent in the view, they would be set back behind a narrow area of open space and filtered by new tree planting with the effects reduced at Year 15.[105]

111. Mr Carlton accepted that by Year 15 someone walking the Strawberry Line would not have at the forefront of their mind that they had walked past the development. He also accepted that the proposed landscape mitigation measures were realistic and achievable. At my site visit I saw that there would be benefits that would flow from the development in respect of the northern field. That would include the replacement of farm buildings and clutter which I consider would be an improvement.

112. The Council argued that the proposed development would not accord with the *linear development* and form of the village. It claimed that one of the foundation stones of the case is that Yatton is a linear settlement; though Mr Carlton clarified that it is "*predominantly linear,*"[106] acknowledging that it widens to the north where the industrial units sit. But the Council's assertion that the development would not accord with the linear form of the village goes nowhere because the settlement is not in a linear form.

113. That assessment is plainly wrong when one looks at Plan L3 of the LVA[107] which makes clear that there is not a straight line to the development edge but rather it is jagged. To describe the form of Yatton as linear is an oversimplification of the way the settlement has developed and how it is at present.[108] It seems to me from Figure L2 in the LVA[109] the Conservation Area, representing the historic core of the village, is arranged along the B3133 towards the south-eastern edge of modern Yatton.[110] When further development occurred, it has largely comprised housing estates, laid out

[102] Appendix B, CD30
[103] In EIC
[104] Appendix B, CD30
[105] Paragraph 3.10.19, PoE Nigel Evers
[106] Clarified by Kevin Carlton in XX when taken to paragraphs 4.5 and 8.2 of his PoE
[107] CD30
[108] Paragraph 4.3.1, PoE of Nigel Evers
[109] CD30. See also Appendix 1, PoE of Nigel Evers
[110] Even the Conservation Area extends to the south which, before the village grew beyond its historic core, could have been regarded as a projection into open countryside – see paragraph 4.3.2, PoE of Nigel Evers

unimaginatively and without attention to integration or mitigation such that the historic core was completely separated from its rural setting.[111] Plan L2 shows this further where one can see cul-de-sacs and circular drives.

114. Mr Carlton contended[112] that what you see on the linear edge is a consequence of the topography which has influenced how development has come forward. However, he agreed that much of modern Yatton, including on the appeal site side of the settlement, is within the 5-10m contour range when looking at Plan L1 of the LVA[113] as is the appeal site.[114]

115. Importantly, it is not only current development that should be considered but also the land that has been allocated further north and east for housing and, north of the site, for a school shown by way of the purple-coloured plot on Plan L2. If those developments come forward this would only further undermine any suggestion of a linear edge. Plainly there is nothing special about the development pattern, and it is replicated all across the district and the country.[115] It is the quality of a development that is important and how it presents itself such as if it is set back behind appropriate planting, not just if it is in a straight line. The Council said that the existing Titan Ladders development[116] is an acceptable development edge. To my mind that is an undoubtedly prominent development which is entirely insensitive to its surroundings and very different to that proposed at the appeal site.

116. The Council claims that the proposed development would cause unacceptable harm to the amenity value of the *Strawberry Line* making it more suburbanised and less tranquil. I disagree. In my view, its sensitivity is overstated. In the LSA, its only sensitivity arises from its ecological designations; there is no mention of its setting as a concern or limit to development, nor does the Local Plan introduce such a concept.[117] Whilst it is part of National Cycle Route 26, its sensitivity can only be reasonably described as medium adjacent to the appeal site given the value of the views in this part and the consistent presence of the edge of Yatton.[118] The evidence of the Appellant in this regard was not challenged at the Inquiry.

117. The appeal proposal would result in development along part of the southern side of Chescombe Road with extensive open space proposed along the interface with the Strawberry Line and a broad verge either side of Chescombe Road with reinforced hedges and new tree planting. This means that the approach would change to a more developed character. Although there would be development partly on both sides, the overall impression would be of a wide, green lane with dwellings set back on either side.[119] It is also a fact that when considering the impact on the Strawberry Line that it largely follows the route of a disused railway. Given its length, inevitably the experience of using the line is dependent upon the part one uses.

118. At my site visit I saw that in the vicinity of the appeal site, that the views to the west across the open, flat moors are a much more rewarding experience

[111] Paragraph 4.3.2, PoE of Nigel Evers
[112] See 4.5 of his PoE
[113] Appendix B, CD30
[114] He said 'largely' in XX
[115] Paragraph 4.3.25 PoE of Nigel Evers
[116] See Viewpoint 1, Appendix B, CD30
[117] Paragraphs 3.9.16 and 4.4.24, PoE of Nigel Evers
[118] Paragraph 3.10.5, PoE of Nigel Evers
[119] Paragraph 4.4.2, PoE of Nigel Evers

than those across the fields and the relatively short distance to Yatton. As can be seen from the Strawberry Line Figures SL2 to SL7 submitted by the Appellant, much of the view from the route is blocked by lineside vegetation, and where there are views towards Yatton, the site is not always visible.[120] It is only when one travels further south, where lineside vegetation is sparser, that the views across the moors are more open.[121]

119. There are much better views to be seen further along the Strawberry Line from the appeal site; for example, where it runs across part of LCA A4 Locking and Banwell Moors.[122] Mr Carlton accepted that perceiving development is a fundamental part of the Strawberry Line experience - the line passing a number of settlements. Figure L10 shows the route passing along nearly 2km of almost continuous development directly abutting it to the east, as it approaches and passes through Winscombe.[123]

120. Mr Evers sets out the most striking experiences of the Strawberry Line in his evidence,[124] and Mr Carlton did not disagree with his view. Unsurprisingly, views of the appeal site do not make the cut. Given that part of the site is already developed (and land to the north is allocated for a school) and that existing development is visible a single field depth away, the importance of the site to the experience of the Strawberry Line is negligible.[125]

121. The appeal proposal would extend the developed edge of Yatton nearer to the Strawberry Line, but the extensive open space and landscape treatment would integrate the development into its setting.[126] The Strawberry Line would still function as an important route through the Somerset countryside, with glimpsed and more open views either side, across its length and changes to the site would not significantly change the setting to the Strawberry Line.

122. On the fourth issue I consider that the proposed development would have some localised and limited landscape and visual effects. Any harm would be limited to a small area, and significant effects would be limited to the site and its immediate setting. The adverse effects of the proposed development would be localised and limited on a site which is a non-designated, non-valued landscape and part previously developed land. They would be minimised by the implementation of the landscape proposals. There would be a limited degree of conflict with Policies CS5, DM10 and the North Somerset LCA SPD. However, the proposal would be in compliance with other policies including Policies CS9, DM25 and paragraphs 130 (c) and 174 (b) of the NPPF. In my view there would be no conflict with the policies in the YNP. I conclude on the fourth issue that the proposed development would not cause unacceptable harm to the character and appearance of the area.

Planning Obligations

123. The NPPF indicates that planning obligations must only be sought where they meet all of the following tests: (a) necessary to make the development

[120] Paragraph 4.4.9, PoE of Nigel Evers
[121] Paragraph 4.4.10, PoE of Nigel Evers
[122] Paragraph 4.4.12, PoE of Nigel Evers
[123] See SL15, SL16 and SL18
[124] Paragraph 4.4.20, PoE of Nigel Evers
[125] Paragraph 4.4.22, PoE of Nigel Evers
[126] Paragraph 4.4.23, PoE of Nigel Evers

acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development.[127]

124. The s106 Agreement secures a number of planning obligations that are required to make the appeal proposal acceptable in planning terms. They include: Public Transport Contributions; a Secondary School Transport Contribution; a Sustainable Travel Contribution; Footpaths and Public Rights of Way Contributions; a Fire Hydrant Maintenance Contribution; 30% affordable housing units on site; provisions relating to Neighbourhood Open Space and Play Space. The CIL Compliance Statement[128] sets out the terms of the planning obligations (including the costs) and the planning policies underpinning them. It then assesses the requirements against the CIL tests for planning obligations set out in Regulation 122 of the CIL Regulations and provides a detailed justification for each obligation.

125. In my view, all of the obligations in the s106 Agreement are necessary to make the development acceptable in planning terms; are directly related to the development; and fairly and reasonably related in scale and kind to the development. Therefore, they all meet the tests within Regulation 122 of the CIL Regulations. As such I have taken them into account in the decision.

126. A separate s106 Unilateral Undertaking (UU) was submitted by the Appellant.[129] In this Deed the owner covenants with the Council to pay the sum of £16,000 as the Waste Bin and Litter Collection Contribution.[130] This is required as a result of the additional recreational pressure on the Biddle Street SSI. The UU secures contributions for the provision of waste bins, litter picking and bin emptying on the Strawberry Line, to mitigate the impact from littering and dog fouling.

127. In my view, the covenants within the UU are also necessary to make the development acceptable in planning terms; are directly related to the development; and fairly and reasonably related in scale and kind to the development. Therefore, they all meet the tests within Regulation 122 of the CIL Regulations. As such they are a consideration material to the determination of this appeal. I have taken them into account in the decision.

Other Matters

128. I have taken into account all other matters raised including the concerns raised on behalf of Yatton Parish Council, Yatton and Congresbury Wildlife Action Group (YACWAG) and the representations made by interested persons who provided written submissions. Many of the matters raised such as the scale of the proposed development, the impact on ecology, biodiversity and landscape are points which I have already dealt with under the main issues.

129. Yatton Parish Council (YPC) opposed the appeal proposals due to concerns relating to development in the countryside; the impact of the development on the Strawberry Line and the Biddle Street SSSI; the sustainability of development in Yatton and the increased traffic generation along Chescombe

[127] NPPF paragraph 57 and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010
[128] LPA2
[129] APP6
[130] The Waste Bin and Litter Collection Contribution means the sum of £16,000 being comprised of £1,000 for installation of 2 bins on the Strawberry Line in the vicinity of the development and £500 per year for 30 years for litter picking and bin emptying in the vicinity of the development.

Road and Mendip Road.[131] I have already addressed matters relating to landscape and ecology in the main issues.

130. YPC and a number of representations suggest that Yatton is not a sustainable location and cannot support the level of development proposed. As a result, it is alleged that the proposal would place a strain on local services. As Mr Hutcheson's evidence explains, Yatton is a sustainable location. Furthermore, the potential effects on local services are to be mitigated through the provision of planning obligations set out in the s106 Agreement and through the Council's Community Infrastructure Levy.

131. With regard to concerns raised about increased traffic and highway safety, including construction traffic, this is no longer a matter in dispute.[132] The Council has accepted that the further evidence presented as part of the appeal demonstrates that an appropriate and suitable access can be provided.[133] The proposal is acceptable in highway and transport terms. It complies with Policy DM24 and paragraph 110 and 111 of the NPPF.

132. YACWAG raise concerns about the detrimental impact of the proposal on the landscape, nature conservation and protected species. It is argued that the Ecological Impact Assessment and the off-site mitigation are inadequate.[134] I have already dealt with these matters in the main issues. Yatton Local History Society raised concerns regarding impacts of potential increase in footfall along the medieval Gang Wall. The Gang Wall was considered as part of the Historic Environment Assessment submitted with the proposal and it was considered of low significance. There is no evidence to suggest that the appeal proposal would adversely affect this local feature which is protected as a Local Green Space in the YNP. No objections were raised by the Council's Heritage Officer or Historic England. The Council accepts that the appeal proposal would not result in any heritage harm. I agree.

133. With regard to concerns about flood risk and drainage, I note that the proposals are supported by a flood risk assessment and drainage strategy which demonstrate that the appeal proposal is acceptable in relation to flood risk and drainage. Notably, there are no objections from the Environment Agency or other drainage consultees and the Council did not include these matters in its RfR.

134. With regard to the noise impact of the proposed development during the construction process, these effects would be temporary in nature and would be controlled via planning condition to ensure that local amenity is not unduly affected. No objections were raised by statutory consultees in relation to noise impact and the Council does not raise the matter in its RfR.

135. It has been suggested that the development would not be able to accommodate sufficient parking. These matters would be addressed at the reserved matters stage although I note that the illustrative layout does demonstrate that an appropriate layout can be achieved to accommodate the proposed level of development.

[131] IP2 Statement by Chris Jackson
[132] Paragraph 6.1, General SoCG
[133] Paragraph 5.1.2, PoE of Luke Hutcheson. See Highways SoCG particularly sections 2 and 3.
[134] IP1 Statement by Tony Moulin

136. A number of previous appeal decisions were submitted by the parties. I have taken these into account in coming to my decision in this case. None of the previous appeal decisions submitted were sufficiently closely related to this appeal case. With regard to the Moor Lane, Backwell decision[135] this was a proposal for 9 open market dwellings, separated from the settlement boundary, and assessed under Policy C33 rather than Policy C32 of the Core Strategy. Moreover, the housing land supply was assessed at 4.2 years.

137. With regard to the Former Weston Trade Centre, Knightcott Road, Banwell decision[136] this was a proposal for 47 dwellings situated some distance from the settlement boundary in the open countryside and therefore was assessed under Policy C33 of the Core Strategy unlike the appeal site which adjoins the Yatton settlement boundary. The Banwell decision would have caused unacceptable harm to the character and appearance of the area and was not sustainable development.

138. With regard to the Stowey Road, Yatton decision[137] this was a proposal for up to 60 dwellings which adjoins the settlement boundary. However, the site was recognised as playing an important role in the setting of Yatton and the transition from moorland to village which is perceived most clearly from Cadbury Hill. The appeal before me would have some localised landscape impacts but limited visibility from the wider landscape including Cadbury Hill.

139. Importantly in the current appeal there is a significant housing land supply shortfall equivalent to only 3.2 years. The appeal scheme of up to 100 dwellings would deliver significant social, economic and environmental benefits and would boost the supply of housing. The development would also be located in a sustainable location with regard to services and facilities. There are also material differences between the current appeal site and other appeal decisions in terms of my findings on ecology and the HRA.

Planning Balance

140. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. The appeal proposal for up to 100 dwellings would deliver a scale of development that is in conflict with the spatial strategy of the development plan which permits sites of up to around 25 dwellings adjoining the settlement edges of services villages. The proposed development is contrary to Policies CS14 and CS32 of the Core Strategy. However, there is no 5YHLS in this case and indeed there is a significant shortfall. Policies CS14 and CS32 are most important policies but they cannot be given full weight. These policies are out-of-date and can only be afforded limited weight.[138] From the evidence that is before me I cannot agree with the Council's suggestion that significant or moderate weight be given to these policies.

141. Taking the landscape and ecological impacts together, there is no evidence which indicates that any significant harm would arise from the appeal proposal. In truth, very little harm would arise from the appeal proposal.[139] There is no clear ecology reason to refuse the development as any adverse

[135] APP/D0121/W/21/3266596
[136] APP/D0121/W/18/3206914
[137] APP/D0121/W/17/3170103
[138] Paragraph 9.12, Planning PoE of Ian Jewson
[139] Paragraph 9.13, Planning PoE of Ian Jewson

impacts on site integrity can be ruled out with the ability to resolve the same via a Grampian condition.

142. The only alleged harm which can be said to remain on the Council's case is landscape harm. I have found that the proposed development would only have some localised and limited landscape and visual effects. Any harm would be limited to a small area, and significant effects would be limited to the site and its immediate setting. The adverse effects of the proposed development would be localised and limited on a site which is a non-designated, non-valued landscape and part previously developed land. They would be minimised by the implementation of the landscape proposals. There would be a limited degree of conflict with Policies CS5, DM10 and the North Somerset LCA SPD.

143. On the basis of the conflict with Policies CS14 and CS32 and the limited conflict with the landscape policies CS5 and DM10, I conclude that the proposals would be in overall conflict with the development plan. However, I have found that the Council cannot demonstrate a 5YHLS and that paragraph 11 d) of the NPPF is engaged. There is a housing land supply equivalent to 3.2 years. The implications of not having a 5YHLS are significant. Not only is there a shortfall of some 2,536 dwellings, but it also means the basket of policies which are the most important for determining the application are out-of-date and the tilted balance applies. Given that there are no policies in the NPPF which, if applied, would provide a "clear reason for refusing the development" under paragraph 11 d), it follows from the "out-of-date" nature of the most important policies that the tilted balance applies.[140]

144. The Appellant argues that the appeal proposals constitute sustainable development and would deliver significant social, economic and environmental benefits and would boost the supply of housing. It is claimed that the significant social, economic and environmental benefits should collectively be weighed against any limited harm that may be identified. I consider these matters in turn.

145. With regard to the delivery of **market housing**, it is clear to me that the Council has a very poor record of housing delivery and has consistently failed to demonstrate a 5YHLS. The shortfall is significant and should be given **very significant** weight.[141] As I perceive it, the Council is not taking any urgent or effective action to address this, and a review of the housing requirement and Local Plan as a whole is now overdue and is unlikely to be completed for the foreseeable future.[142] From the evidence that is before me it is unlikely that the shortfall would be made up quickly.

146. These significant material considerations provide clear justification for reducing the weight to be applied to Policies CS14 and CS32. The appeal proposals would make a significant contribution to addressing that shortfall. It was Mr Jewson's evidence that the delivery of new market housing should be given **significant weight.**[143] Mr Underhay agreed that **very significant weight**[144] should apply where there is no 5YHLS. I have no doubt from the evidence of Mr Jewson that if permission is granted, the appeal scheme would be able to come forward promptly and contribute to the 5YHLS.

[140] APP9 Page 3
[141] Paragraph 6.5, HLS PoE of Ian Jewson
[142] Paragraph 9.5, Planning PoE of Ian Jewson
[143] Paragraph 9.7, Planning PoE of Ian Jewson.
[144] He responded "yes probably" in XX

147. Plainly, **affordable housing** should be properly considered its own standalone benefit separate to market housing provision.[145] The Council accepted that there is a "*significant demonstrable need for further affordable housing in North Somerset including Yatton.*"[146] That is the case whether or not there is a 5YHLS. Clearly the appeal proposals would greatly assist by delivering 30% affordable housing in accordance with Policy CS16 of the adopted North Somerset Core Strategy with a range of dwelling sizes, types and tenures. In cross examination Mr Underhay agreed that **very significant weight**[147] should apply to this consideration irrespective of a 5YHLS.

148. To the extent that the Council seek to maintain Mr Underhay's initial argument that the weight to be applied to market and affordable housing could be reduced due to the development being contrary to the Local Plan, that is plainly double counting. In Gladman Developments Ltd v SSHCLG & Corby BC & Uttlesford DC [2021] EWCA Civ 104 the Court accepted that one can include conflict to policy when considering the tilted balance. Therefore, as harm flowing from policy conflict is already being considered on the harm side of the balance, to also use it to reduce the benefits before carrying out the balance would be putting the adverse effects of the scheme on both sides.

149. The proposed development would be situated in a sustainable location; the Council's suggestion that it is not is policy based only and they did not seek to challenge any of Mr Hutcheson's evidence as to the connectivity of the site in highways terms. Section 106 contributions are agreed, the agreed contributions would deliver a series of benefits with the scheme. The proposal would also deliver significant economic benefits both during construction and as a result of increased spending from new residents, which should be given **significant weight.**[148] This is supported by paragraph 81 of the NPPF which directs that "*significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.*"[149] I note that this is not qualified i.e., only applicable where a benefit is permanent.[150]

150. It is also noteworthy that paragraph 81 of the NPPF does not direct that significant weight should be placed on a particular contribution towards economic growth or productivity no matter how large or small.[151] This does not mean that it allows for less weight to be applied to different contributions. That would be a clear misreading of the paragraph. The NPPF is unequivocal in telling decision makers what weight to apply. The weight to be applied is prescribed and the same; but it is being applied to a bigger or smaller benefit. Just as when great weight is applied to heritage harm, the weight is the same but the level of harm to which it is applied may not be.

151. In any event, even if discretion were to be applied, there is no justification for reducing weight simply because some benefit may be temporary. Mr Underhay agreed[152] that the construction industry plays an important role in

[145] Neil Underhay agreed with this approach in XX
[146] Paragraph 10.5, PoE of Neil Underhay
[147] He responded "yes probably" in XX
[148] Paragraph 9.9, Planning PoE of Ian Jewson.
[149] And which Neil Underhay acknowledged in XX
[150] Neil Underhay acknowledged this in XX
[151] Put by Timothy Leader to Neil Underhay in re-examination
[152] In XX

the UK economy, that it is continually reliant upon a pipeline of projects and that they are therefore all temporary.

152. With regard to the environmental benefits, the illustrative Masterplan has been prepared to demonstrate that known constraints have been taken into account. The proposal includes biodiversity enhancements which would make a positive, permanent contribution to local biodiversity including the provision of significant areas of green infrastructure and open space which incorporate specific bat mitigation areas which should all be given **significant weight.**[153]

153. It is noteworthy that on Mr Clarkson's BNG assessment, there would be a 103% gain in area-based habitats and a 56% gain for linear habitats which is a significant enhancement in terms of biodiversity value achieving the NPPF standard of delivering measurable net gain and the Local Planning Authority's policy standard of requiring developments to avoid a net loss and deliver a net gain in biodiversity where possible.[154]

Balance

154. Taking all of the above into consideration, applying the tilted balance pursuant to paragraph 11d of the NPPF, the adverse impacts of granting permission plainly would not significantly and demonstrably outweigh the benefits of doing so. The Council cannot demonstrate a 5YHLS and the overall benefits of the appeal proposals clearly outweigh the harm.

Planning Conditions

155. The Council submitted a list of conditions which I have considered in the light of the advice in paragraphs 55 and 56 of the NPPF and the Government's PPG on the Use of Planning Conditions. The Appellant has agreed to all of the suggested conditions. Conditions 1-3 are necessary as the proposal is submitted in outline and approval of reserved matters is required within time limits. Conditions 4 and 5 are necessary for the avoidance of doubt and in the interests of proper planning. Condition 6 is required to reduce environmental impacts and to safeguard the living conditions of nearby residents. Condition 7 is required in the interests of visual amenity. Conditions 8 and 9 are required to reduce the risk of flooding. Conditions 10 and 11 are required in the interests of highway and pedestrian safety. Condition 12 is required to ensure adequate car parking. Condition 13 is required to ensure that electric vehicle charging is provided. Conditions 14 and 15 are necessary to ensure the development is assimilated into its surroundings. Conditions 16 and 17 are necessary to safeguard the trees which are visually important on the site.

156. Condition 18 is necessary to ensure compliance with the Conservation of Habitats and Species Regulations 2017, the Wildlife and Countryside Act 1981 (as amended), Policy CS4 of the North Somerset Core Strategy and Policy DM8 of the North Somerset Sites and Policies Plan (Part 1). Condition 19 is necessary to protect the appearance of the area, the environment and wildlife from light pollution. Condition 20 is necessary to ensure that the biodiversity value of the site is not adversely affected. Conditions 21 and 22 are required to safeguard heritage assets of archaeological interest. Conditions 23-25 are required to ensure that the land is suitable for the intended uses. Condition 26

[153] Paragraph 9.11, Planning PoE of Ian Jewson
[154] See paragraphs 4.1.70-4.1.72 and Appendix A, PoE of Tom Clarkson

is required to secure a high level of energy saving by reducing carbon emissions. Condition 27 is necessary in the interests of promoting good design and sustainable construction. Condition 28 is required to ensure that the dwellings provide acceptable standards of accommodation. Condition 29 is necessary to ensure that sufficient accessible housing is provided. Condition 30 is necessary in the interests of protecting the living conditions of neighbouring residents. Condition 31 is necessary to ensure that dwellings are sited outside Flood Zones 2 and 3 which currently affect some outer edges of the site. I have added Condition 32. This is necessary to enable the statutory nature conservation body (NE) to consider any further action.

Overall conclusion

157. Having considered these and all other matters raised I find nothing of sufficient materiality to lead me to a different conclusion. The appeal is therefore allowed subject to the conditions set out in the attached Schedule.

Harold Stephens

INSPECTOR

SCHEDULE OF PLANNING CONDITIONS (1-32)

Outline Conditions

1) Approval of the details of the layout, scale, appearance of the building(s) and the landscaping of the site (hereinafter called 'the reserved matters') shall be obtained from the Local Planning Authority, in writing before any development is commenced.

2) Any application for the approval of reserved matters made pursuant to this planning permission shall be made to the Local Planning Authority before the expiration of 3 years from the date of this permission.

3) The development hereby permitted shall be begun before the expiry of two years from the date of approval of the last of the reserved matters to be approved.

4) The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

- Site Location Plan - Reference number 1037-PL03A
- Topographical Survey Drawing Number 14730-TS01
- 14730-HYD-XX-XX-DR-TP-0201-P05 Site Access General Arrangement Priority Cross-Roads and Pedestrian Access
- 14730-HYD-XX-XX-DR-TP-0303-P01 Swept Path Analysis of Refuse Vehicles
- 14730-HYD-XX-XX-DR-TP-0304-P01 Swept Path Analysis of Large Car
- 14730-HYD-XX-XX-DR-TP-0305-P01 Swept Path Analysis of Fire Tender
- Travel Plan – Reference number 14730-HYD-XX-XX-RP-TP-6001 Rev P01.

5) The development hereby permitted shall be carried out in broad accordance with the following plans and documents:

- Design and Access Statement Date 23.12.2020
- Transport Assessment 14730-HYD-XX-XX-RP-5001
- Road Safety Audit and associated submissions
- Flood Risk Assessment - 14730-HYD-PH1-XX-RP-FR-0001 Rev PO2
- Drainage Strategy - 14730-HYD-XX-XX-RP-D-0002 Rev PO1
- Landscape and Visual Appraisal – January 2021
- Ecological Impact Assessment - December 2020
- Tree Survey - 05476 TCP 04.08.20
- Tree Constraints Plan - 05476 TCP 4.8.2020

- Arboricultural Impact Assessment Report 05476 RECTORY FARM AIA 02.02.21
- Tree Removal/Retention Plan (Sheet 1-4) Phase 1 Ground Conditions Study (Part 1 - 4) 14730-HYD-XX-XX-RP-GE-1000 S2 P1
- Affordable Housing Statement – January 2021
- Historic Environment Assessment - ACW1271/1/1
- Energy Statement December 2020
- Preliminary Lighting Assessment (Part 1 & 2) Preliminary adoptable and non-adoptable lighting 179-01-S38-201125-CD-LI-A
- Energy and Sustainability Statement December 2020
- Indicative Species List
- Desk Study Report 14730-HYD-XX-XX-RP-GE-1000 S2 P2 1037- PL01A
- Shadow HRA
- Illustrative Site Masterplan Drawing Number PL01/A

Construction Environmental Management Plan

6) No phase or component of development shall be commenced, including site preparation or site clearance works, until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include:

(a) the location where site operatives and visitor vehicle parking will take place on the site

(b) the location of the site compound for the loading, unloading and storage of plant and materials including waste materials, and temporary site offices

(c) the erection and maintenance of security hoarding

(d) the means to reduce mud and debris from the site being deposited on the road network, including details of road cleaning and/or wheel wash facilities

(e) measures to control the emission of dust and dirt during construction

(f) measures to control noise from works on the site

(g) managing complaints

(h) Any formal parking restrictions/and or traffic management to enable the works to be carried out

(i) details of measures to avoid harm to protected species and their habitats during construction. This shall include the following:

(i) Risk assessment of potentially damaging construction activities

(ii) Identification of "biodiversity protection zones"

(iii) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements)

(iv) The location and timing of sensitive works to avoid harm to biodiversity features

(v) The times during construction when specialist ecologists need to be present on site to oversee works

(vi) Responsible persons and lines of communication

(vii) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person

(viii) Use of protective fences, exclusion barriers and warning signs.

The development shall be carried out in accordance with the approved CEMP.

Finished Levels

7) Details to be submitted under Condition 1 shall include the finished ground levels, finished site slab levels, finished floor levels and the ridge height of the proposed dwellings in relation to existing ground levels within the site, fixed datum points outside the site and the ridge heights of at least two adjoining dwellings. The development shall be carried out in accordance with the approved details.

Flood Prevention/Drainage

8) No above groundwork shall take place until surface water drainage works have been implemented in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. Before these details are submitted, an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in the National Planning Policy Framework, associated Planning Practice Guidance and the non-statutory technical standards for sustainable drainage systems, and the results of the assessment provided to the Local Planning Authority.

Where a sustainable drainage scheme is to be provided, the system shall be designed such that there is no surcharging for a 1 in 30-year event and no internal property flooding for a 1 in 100-year event + 40% allowance for climate change. The submitted details shall:

(i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site to greenfield run off rates and volumes, taking into account long-term storage, and urban creep and the measures taken to prevent pollution of the receiving groundwater and/or surface waters; and

(ii) include a timetable for its implementation.

9) No above groundwork shall take place until details of the implementation, maintenance and management of the approved sustainable drainage scheme have been submitted to and approved, in writing, by the Local Planning Authority. The scheme shall be implemented and thereafter managed and

maintained in accordance with the approved details. The details to be submitted shall include:

(i) a timetable for its implementation and maintenance during construction and handover; and

(ii) a management and maintenance plan for the lifetime of the development which shall include details of land ownership; maintenance responsibilities/arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable urban drainage scheme throughout its lifetime; together with a description of the system, the identification of individual assets, services and access requirements and details of routine and periodic maintenance activities.

Highway Works

10) The highway works shown in the approved drawings list at Condition 4 and as outlined in the Road Safety Audit and associated submissions shall be completed in accordance with the details therein before any dwelling hereby approved is occupied.

Visibility Splays

11) The approved visibility splays to the new vehicle accesses hereby granted shall be constructed in accordance with the approved details before any dwelling is occupied. Thereafter, no structure, erection or planting exceeding 600mm in height above ground level shall be placed within the visibility splays.

Access, Parking and Refuse Facilities

12) No dwelling shall be occupied until pedestrian and vehicle access to it, together with vehicle and cycle parking and refuse storage facilities serving that dwelling, have been constructed in accordance with details to be approved. Once provided the said elements shall be retained for their intended purpose thereafter.

Electric Vehicle Parking

13) No dwellings shall be occupied until one electric vehicle charging point per dwelling has been installed in accordance with details to be submitted to and approved in writing by the Local Planning Authority. This shall include a plan showing the location of each charging point. Charging points shall be 'Office for Low Emission Vehicles' (OLEV) compliant with a minimum of 7kW / 32 amps power capacity. Once installed the approved charging points shall be retained and kept in working order is perpetuity.

Landscaping

14) Details to be submitted under Condition 1 shall include a hard and soft landscaping scheme. This shall include details of all public and private landscaping areas, details of the location, equipment and boundary fencing of any play area to be provided at the site, details of all trees, hedgerows, and other planting to be retained; the proposed finished ground levels; a planting specification to show numbers, size, species and positions of all new trees and shrubs to be planted, and details of all hard surfacing. New planting in relation

to the location of any retained or new below ground services such as pipes, cables, manholes and any associated easements shall also be shown. The hard and soft landscaping scheme shall be carried out in accordance with the approved details, specifications, and a programme of implementation.

15) All works comprised in the approved details of soft landscaping shall be carried out in accordance with the approved details during the months of October to March inclusive following occupation of the building or completion of the development, whichever is the sooner.

16) Trees, hedges, and plants shown in the landscaping scheme to be retained or planted which, during the development works or a period of ten years following full implementation of the landscaping scheme, are removed without prior written consent from the Local Planning Authority or die, become seriously diseased or are damaged, shall be replaced in the first available planting season with others of such species and size as the Authority may reasonably specify.

17) No development, including site preparation or site clearance shall commence until a plan showing the location and design of tree and hedge protection fencing has been submitted to and agreed in writing by the Local Planning Authority and the agreed tree and hedge protection has been erected around existing trees and hedges to be retained.

Unless otherwise specified, the fencing shall be as shown in Figure 2 of BS5837:2012 'Trees in relation to design, demolition and construction – Recommendations' and shall be erected to achieve root protection areas in accordance with BS5837:2012 root protection area calculations and the location of the fencing shall be informed by the recommendations of BS5837:2012.

This fencing shall remain in place during site works. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the Local Planning Authority.

No fires shall be lit within 10 metres of the nearest point of the canopy of any retained tree or hedge. No equipment, machinery or structure shall be attached to or supported by a retained tree or hedge. No mixing of cement or use of other contaminating materials or substances shall take place within, or close enough to, a root protection area that seepage or displacement could cause them to enter a root protection area.

The Local Planning Authority is to be advised prior to development commencing of the fact that the tree and hedge protection measures as required are in place and available for inspection.

Biodiversity

18) No development shall take place until bat surveys of the proposed off-site bat mitigation land, which is outlined in blue on the plan (Drawing number 6830 Figure 1), have been carried out, in accordance with the requirements set in the North Somerset and Mendip Bats SAC SPD. Following this, no development shall take place until a final scheme for bat mitigation including a timetable for its implementation which is informed by the results of the Bat Surveys, and an accompanying habitat management plan for the offsite

habitat, which avoids adverse effects from the development on the integrity of the North Somerset and Mendips Bats SAC, has been submitted to and approved in writing by the Local Planning Authority. The approved bat mitigation scheme and habitat management plan shall be carried out in accordance with the approved details.

External Lighting

19) No external lighting shall be installed within the site, including external lighting on the outside walls of dwellings or other domestic buildings, or other lighting elsewhere in the site, until a 'lighting design strategy for biodiversity' has been submitted to and approved in writing by the Local Planning Authority. The strategy shall identify:

(i) the type, location, and height of the proposed lighting;

(ii) existing lux levels affecting the site;

(iii) the proposed lux levels as a result of the light; and

(iv) lighting contour plans.

All external lighting shall be installed and operated in accordance with the approved details.

Landscape and Ecological Management Plan (LEMP)

20) No development, including site preparation or site clearance shall commence until a landscape and ecological management plan (LEMP) has been submitted to, and approved in writing by, the Local Planning Authority. The content of the LEMP shall include the following:

(a) Description and evaluation of features to be managed, management responsibilities and maintenance schedules for all landscape areas, other than small, privately owned, domestic gardens;

(b) Ecological trends and constraints on site that might influence management;

(c) Aims and objectives of the management plan;

(d) Appropriate management options for achieving aims and objectives;

(e) Prescriptions for management actions;

(f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);

(g) Details of the body or organization responsible for implementation of the plan; and

(h) Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body/bodies responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed with the Local

Planning Authority, and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.

Archaeology

21) No demolition or development below ground level shall take place until a programme of archaeological work including a Written Scheme of Investigation has been submitted to and approved by the Local Planning Authority in writing. The scheme shall include an assessment of significance and research questions; and:

(i) The programme and methodology of site investigation and recording

(ii) The programme for post investigation assessment

(iii) Provision to be made for analysis of the site investigation and recording

(iv) Provision to be made for publication and dissemination of the analysis and records of the site investigation

(v) Provision to be made for archive deposition of the analysis and site investigation

(vi) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

No demolition or development shall take place other than in accordance with the Written Scheme of Investigation approved under this condition.

22) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under the previous condition, and the provision made for analysis, publication and dissemination of the results and archive deposition has been secured.

Potential Ground Contamination

23) No phase or component of development below ground level shall take place until an assessment of the nature and extent of contamination on that site has been submitted to and approved in writing by the Local Planning Authority. This assessment must be undertaken by a competent person, and shall assess any contamination on the site, whether, or not, it originates on the site. Moreover, it must include:

(i) a survey of the extent, scale, and nature of contamination;

(ii) an assessment of the potential risks to: human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, and archaeological sites and ancient monuments.

24) Unless the Local Planning Authority confirms in writing that a remediation scheme is not required, no phase or element of development shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been

submitted to and approved in writing by the Local Planning Authority. The scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria, an appraisal of remedial options, and proposal of the preferred option(s), and a timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The development shall take place in accordance with the approved remediation scheme.

25) Within 3 months of the completion of measures identified in the approved remediation scheme as set out in Condition 24, a validation report (that demonstrates the effectiveness of the remediation carried out) shall be submitted to the Local Planning Authority.

Renewable Energy

26) The dwellings hereby permitted shall not be occupied until measures to generate 15% of the energy required in the use of the development (measured in kilowatt hours) through micro renewable or low carbon technologies have been installed on site and are fully operational in accordance with details that have been first submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved technologies shall be permanently retained unless otherwise first agreed in writing by the Local Planning Authority.

Code for Sustainable Homes

27) All residential units hereby approved shall be constructed to comply with, as a minimum, the equivalent of the requirements of Code Level 4 of the Code for Sustainable Homes. This equates to a 19% improvement on Part L of the Building Regulations. Unless otherwise first agreed in writing by the Local Planning Authority, and prior to the commencement of the development of any dwelling hereby approved, a copy of a Design Stage SAP Assessment for each dwelling, issued by a suitably qualified and accredited energy expert (SAP Assessor), shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, each dwelling shall be constructed in accordance with the approved Design Stage SAP Assessment unless a revised Assessment has first been submitted to and approved in writing by the Local Planning Authority.

Technical Housing Standards

28) All dwellings shall comply with the DCLG 'Technical housing standards 2015 (as amended) - nationally described space standards', unless otherwise authorised by the Local Planning Authority.

Accessible Homes

29) A minimum of 17% of the dwellings shall be constructed to comply with 'accessible and adaptable housing standards' contained in The Building Regulations 2010 Volume 1 M4(2) Category Two: Accessible and adaptable dwellings. The location of these dwellings shall be provided together with details of how they will comply with the said standards. The approved details shall be fully implemented before these dwellings are occupied.

Permitted Development

30) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 or any Order revoking and re-enacting that Order, no electricity sub-station or gas governor shall be erected on any part of the development site hereby permitted, without the prior written permission of the Local Planning Authority.

Flood Prevention

31) The area of the site within which dwellings are to be developed, that is dwelling houses, private gardens, and residential outbuildings, shall fall wholly on land that is within Flood Zone 1 of the Council's Strategic Flood Risk Assessment.

Notification to SNCB

32) The development to which this planning permission relates shall not commence until 21 days after the date of the decision.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Timothy Leader of Counsel	Instructed by Richard Kent, North Somerset Council
He called:	
Natalie Richards	Principal Planning Policy Technical Officer
Kevin Carlton BA (Hons) Dip LA	S106 and Landscape Officer
Dan Carpenter BSc (Hons) Phd MIEnvSc CEnv	Associate Director of Ethos Environmental Planning
Neil Underhay MA	Principal Planning Officer

FOR THE APPELLANT:

Charles Banner QC Leanne Buckley-Thomson of Counsel	Instructed by Walsingham Planning
They called	
Ian Jewson BA (Hons) Dip TP MRTPI	Planning Consultant
Luke Hutcheson BSc (Hons) MSc CIHT	Principal Transport Consultant with Hydrock Consultants Ltd
Nigel Evers Dip LA CMLI	Director of Viridian Landscape Planning Ltd
Tom Clarkson BSc MSc MCIEEM	Managing Director of Clarkson and Woods, Ecological Consultant

Interested Persons

Tony Moulin	Chair of Yatton and Congresbury Wildlife Action Group
Chris Jackson	Vice Chair of Yatton Parish Council

DOCUMENTS SUBMITTED AT THE INQUIRY:

Local Planning Authority's Documents

LPA1 Opening Statement
LPA2 CIL Compliance Statement
LPA3 Draft Planning Conditions
LPA4 Closing Submissions

Appellant's Documents

APP1 Opening Statement
APP2 ODPM Circular 06/2005
APP3 Abbotskerswell Parish Council v Secretary of State for Housing, Communities and Local Government and others [2021] EWHC 555 (Admin) and SoS decision
APP4 Email from Mr Jewson with copy of sign from the Strawberry Line
APP5 Section 106 Agreement
APP6 Section 106 Unilateral Undertaking
APP7 Justification for Ecology Obligations
APP8 Mr Evers' document 7/3/2022 `Effects of Road Layout on trees and hedges'
APP9 Final HLS Position Statement
APP10 HLS Scott Schedule
APP11 Closing Submissions
APP12 Review of Natural England response dated 25.05.22 by Clarkson & Woods

Interested Persons Documents

IP1 Statement by Tony Moulin
IP2 Statement by Chris Jackson