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## Appeal Decision

Inquiry opened on 24 September 2024

Site visit made on 24 September 2024

by **David Prentis BA BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18<sup>th</sup> March 2025

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### Appeal Ref: APP/D0121/W/24/3343144

#### Land at Rectory Farm (North), Chescombe Road, Yatton BS49 4BZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Persimmon Homes Severn Valley against North Somerset Council.
  - The application reference is 23/P/0664/OUT.
  - The development proposed is an outline planning application for the development of up to 190no. homes (including 50% affordable homes) to include flats and semi-detached, detached and terraced houses with a maximum height of 3 storeys at an average density of no more than 20 dwellings per net acre, up to 500 sqm Class E floorspace, allotments, car parking, earthworks to facilitate sustainable drainage systems, orchards, open space comprising circa 70% of the gross area including children's play with a minimum of 1no. LEAP and 2no. LAPS, bio-diversity net gain of a minimum of 20% in habitat units and 40% in hedgerow units, and all other ancillary infrastructure and enabling works with means of access from Shiners Elms for consideration. All other matters (means of access from Chescombe Road, internal access, layout, appearance and landscaping) reserved for subsequent approval.
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### Decision

1. The appeal is allowed and outline planning permission is granted for the development of up to 190no. homes (including 50% affordable homes) to include flats and semi-detached, detached and terraced houses with a maximum height of 3 storeys at an average density of no more than 20 dwellings per net acre, up to 500 sqm Class E floorspace, allotments, car parking, earthworks to facilitate sustainable drainage systems, orchards, open space comprising circa 70% of the gross area including children's play with a minimum of 1no. LEAP and 2no. LAPS, bio-diversity net gain of a minimum of 20% in habitat units and 40% in hedgerow units, and all other ancillary infrastructure and enabling works with means of access from Shiners Elms for consideration. All other matters (means of access from Chescombe Road, internal access, layout, appearance and landscaping) reserved for subsequent approval. The permission relates to Land at Rectory Farm (North), Chescombe Road, Yatton, BS49 4BZ and is in accordance with the terms of the application, Ref 23/P/0664/OUT, subject to the conditions in the attached schedule.

### Applications for costs

2. Two applications for partial awards of costs were made by Persimmon Homes Severn Valley against North Somerset Council (Application A and Application B). An application for a full (or, in the alternative, partial) award of costs was made by North Somerset Council against Persimmon Homes Severn Valley (Application C). Persimmon Homes Severn Valley then made a further application against North

Somerset Council relating to the making of Application C (Application D). These applications will be the subject of separate decisions.

### **Preliminary matters**

3. The Inquiry sat for ten days on 24 to 27 September 2024, 1 and 2 October 2024 and 7 to 10 January 2025. As described below, further matters were subsequently dealt with in writing. The Inquiry was closed in writing on 14 March 2025.
4. In agreement with the parties, I carried out an unaccompanied visit to the site and surrounding area on 24 September 2024. I carried out further unaccompanied visits to the site and to coastal defences at Woodspring Bay during the course of the Inquiry.
5. The appeal was against a failure to determine the application. The Council subsequently resolved that, had it been able to determine the application, outline planning permission would have been refused for reasons which may be summarised as follows:
  - 1) The scale of the proposed development would be contrary to the spatial strategy of the development plan which permits sites of up to around 25 dwellings adjoining the settlement boundaries of service villages;
  - 2) The site is for housing in Flood Zone 3a and the applicant's Flood Risk Sequential Test has failed to demonstrate that there are no reasonably available sites in areas with a lower flood risk where the development could be provided;
  - 3) The proposal would not adequately mitigate risks of flooding because there would not be safe access during the design flood event and there would be an increased risk of flooding to neighbouring properties; and
  - 4) the loss of a site safeguarded for a new primary school would result in the potential for there to be insufficient primary school capacity in Yatton.
6. On 16 August 2024, the Council advised the appellant that it would no longer be contesting the fourth reason for refusal.
7. At the Inquiry, the Council and the appellant jointly put forward an amendment to the description of development in relation to the Class E element of the proposal.<sup>1</sup> In response to a question raised by me, the amendment specified an amount of floorspace for Class E Use. This was a minor change which did not alter the substance of the appeal scheme. No party would be prejudiced by the appeal being determined on this basis. I have therefore adopted the amended description of development for this decision.
8. A section 106 Agreement dated 20 December 2024 (the Agreement) was submitted during the course of the Inquiry. The Agreement would make provision for financial contributions in connection with the following matters:
  - school transport for secondary school pupils and special educational needs transport;
  - improvement of bus stops and increased frequency of bus services;

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<sup>1</sup> ID39 – Addendum to the statement of common ground

- improvement of the Strawberry Line pedestrian route;
  - measures to promote sustainable transport choices by future occupants;
  - a traffic regulation order;
  - improving road markings at local junctions; and
  - traffic calming measures on Mendip Road.
9. The Agreement provides that 50% of the dwellings would be delivered as affordable housing. 30% of the dwellings, described as “*policy affordable housing*”, would comprise a majority of social rented units together with some shared ownership units. The mix of dwelling types is specified. 20% of the dwellings, described as “*additional affordable housing units*”, would be delivered as shared ownership units. Again, the mix of dwelling types is specified. The Agreement makes provision for an affordable housing plan, showing the location and tenure of the affordable housing, to be submitted to and approved by the Council. There are provisions relating to phasing, transferring the affordable dwellings to a registered provider and nomination procedures.
10. The Agreement also contains provisions relating to open space and ecological mitigation. Specifications for the open spaces would be submitted for the approval of the Council. There are provisions relating to completion of the works, inspection of the works, a procedure for remedying any defects, transfer of the open space to a management company and securing public access.
11. The Council submitted a statement of compliance with Regulation 122 of the Community Infrastructure Levy Regulations 2010. This included references to the policy basis for the various contributions together with a commentary on each. In the main, the obligations were not controversial. At the Inquiry, no party suggested that the obligations would not accord with Regulation 122, other than in one particular respect. The Council and the appellant disagreed as to whether there should be a cascade mechanism whereby the affordable housing would be offered first to applicants with a local connection to Yatton. The Agreement is drafted in the alternative, such that this matter can be determined within this appeal decision. I shall return to this matter below. Otherwise, I see no reason to take a different view in relation to the non-controversial obligations and I have taken them into account accordingly.
12. On Day 3 of the Inquiry, it emerged that a Position Statement submitted by the Environment Agency (EAPS) had only just come to the attention of the appellant’s team.<sup>2</sup> The EAPS relates to the third main issue, namely whether the proposal would increase the risk of flooding at neighbouring properties. In order to ensure that the evidence on flood risk could be properly examined, and to avoid procedural unfairness to the appellant, it was agreed that the evidence on flood risk should be heard at a later date. At my request, the Environment Agency (EA) agreed to provide an officer to answer questions from the appellant and from me in relation to the EAPS. This took place on Day 7 of the Inquiry (7 January 2025).
13. When the Inquiry resumed on Day 7, the Council’s witness on flood risk (Mr Bunn) was unavailable. The Council called a consultant (Mr Cage) who adopted

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<sup>2</sup> Inspector’s note – the EAPS had been submitted to the Planning Inspectorate as a written representation

Mr Bunn's proof of evidence. Mr Cage had a number of points that he wished to make. The Council and the appellant disagreed as to whether these points amounted to new evidence or were merely legitimate comment on documents already before the Inquiry.<sup>3</sup> Following further discussion on Day 7, I made a ruling on Day 8.<sup>4</sup> One of Mr Cage's points related to a flood risk assessment (FRA) by Brookbanks<sup>5</sup> which, in his view, showed that the speed at which the appeal site would be inundated in a flood event would be faster than described in the appellant's evidence.

14. My ruling found that this was a new point. Moreover, it was a point which went to the effectiveness of the proposed mitigation. I considered that it was in the interests of the Inquiry that the appellant had the opportunity to produce a technical note in response to this concern. It was also in the interests of procedural fairness that the appellant should have that opportunity. It was agreed by the Council and the appellant that this specific issue could be dealt with in writing, allowing the rest of the flood risk evidence to be heard as scheduled.
15. On 12 December 2024, a new National Planning Policy Framework (the Framework) was published, together with revised Planning Practice Guidance (PPG). Amongst other matters, these documents changed the standard method by which housing requirements are to be calculated. This had the effect of increasing the requirement for North Somerset. As this change happened after the round table session on housing land supply had taken place, the parties were given the opportunity to address the changes in writing during the course of the Inquiry<sup>6</sup>.
16. At the Inquiry reference was made to the High Court decision in a case involving Mead Realisations Ltd (*Mead*).<sup>7</sup> The appellant's evidence included Counsel's opinion on the implications of *Mead* for the interpretation of the Framework and PPG in relation to flood risk.<sup>8</sup> That opinion was not disputed by the Council. I see no reason to disagree. When the Inquiry was sitting, the High Court decision was the subject of an appeal to the Court of Appeal. The decision of the Court of Appeal,<sup>9</sup> handed down on 30 January 2025, upheld the High Court decision. In closing, the appellant noted that there had been no appeal against the High Court's interpretation of the Framework or PPG, therefore for present purposes it is the High Court judgment which is the relevant one.
17. It was agreed at the Inquiry that closing submissions would be delivered in writing.<sup>10</sup> Further correspondence relating to the applications for costs was also submitted in writing. The Inquiry was closed in writing on 14 March 2025.
18. The development plan includes:
  - North Somerset Core Strategy (2006-2026) (NSCS);
  - Sites and policies plan part 1: Development Management Policies (2006-2026) (DMP);

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<sup>3</sup> Mr Cage's points are set out in ID51 and the response of Mr Mirams (the appellant's witness on flood risk) are set out in ID52

<sup>4</sup> The ruling is at ID53

<sup>5</sup> The Brookbanks FRA is included in ID28

<sup>6</sup> Mrs Ventham (the appellant's planning witness) addressed the changes in an addendum to her proof of evidence

<sup>7</sup> CD J1 – Mead Realisations Ltd v SoS LUHC [2024] EWHC 279 (Admin)

<sup>8</sup> The Opinion of Lord Banner KC is at Appendix 6 to Mrs Ventham's proof of evidence (page 145)

<sup>9</sup> CD J64 - Mead Realisations Ltd v SoS HCLG [2025] EWCA Civ 32

<sup>10</sup> ID65 and ID67

- Sites and policies plan part 2: Site Allocations Plan (2006-2026) (SAP); and
  - Yatton Neighbourhood Plan (2017-2026) (YNP).
19. The Council is preparing a new local plan, which has been the subject of consultation, although it has not yet been submitted for examination. The Council announced that it is reviewing the draft plan to identify potential new locations for development, to help meet the Government's new higher housing target for North Somerset. The Council is intending to carry out consultations on the potential locations in 2025, followed by a final round of consultation later in 2025, before submitting the plan for examination. The Council and the appellant agree that the draft plan is not sufficiently advanced to carry weight as a statement of policy. However, the evidence base for the draft plan is a material consideration.

### **Main issues**

20. The main issues are:
- whether the site is an appropriate location for housing, having regard to the spatial strategy of the development plan;
  - whether the proposal would pass the flood risk sequential test set out in the National Planning Policy Framework (the Framework);
  - whether the proposal would be safe from flood risk for its lifetime, and whether it would increase the risk of flooding elsewhere; and
  - the nature and extent of any economic, social and environmental benefits.

### **Reasons**

#### ***Whether the site is an appropriate location for housing, having regard to the spatial strategy of the development plan***

21. The Council's first putative reason for refusal alleged conflict with the YNP. However, at a case management conference held on 18 July 2024 the Council confirmed that it was not alleging conflict with any specific policies of the YNP.
22. NSCS Policy CS13 states that the plan will secure the delivery of at least 20,985 dwellings in the period 2006-2026. The policy also states that the appropriate level of new homes would be reviewed by 2018. Policy CS14 states that Weston–super-Mare (Weston) will be the focus for new housing, including a strategic allocation at Weston Villages, and that, outside Weston, most additional development will take place at the towns of Clevedon, Nailsea and Portishead. The NSCS also makes provision for small scale development at service villages. Yatton is one of nine such villages identified in Policy CS32. This policy states that new development within or adjoining the settlement boundaries of the service villages will be supported, subject to various criteria which seek to ensure that development enhances the overall sustainability of the settlement. It goes on to say that sites outside the settlement boundaries in excess of about 25 dwellings must be brought forward as allocations through Local Plans or Neighbourhood Plans.
23. The appeal site is outside but adjacent to the settlement boundary of Yatton. It has not been allocated for development in either the SAP or the YNP. The scale of the

appeal proposal is well above the 25 dwellings contemplated for extensions to service villages that are not on allocated sites. In this respect, the proposal is in conflict with Policy CS32 and, consequently, with Policy CS14.

24. The Council and the appellant agree that Yatton has a range of shops and services, health and community facilities, pre-school and primary education provision, recreation and play spaces and local employment opportunities. There are bus services along High Street, which is about 0.5km east of the site. The Strawberry Line, which is immediately to the west of the site, provides a pedestrian route to Yatton train station. There are rail services to Weston and Bristol, amongst other destinations. The Council and the appellant agree that the site is a suitable and sustainable location in terms of accessibility and there would be no transport impacts that cannot be satisfactorily mitigated. Whilst I discuss transport matters further below, at this stage it is sufficient to note that I agree with these overall conclusions.
25. The criteria of Policy CS32 include references to design quality, local distinctiveness and the type and range of housing. As the application is in outline, these matters would not be determined until the reserved matters stage. However, the application is accompanied by a set of parameter plans and an illustrative landscape masterplan. The description of development makes reference to 70% of the gross area of the site being maintained as open space, which would include play areas, allotments, orchards and areas managed for biodiversity enhancement. The Council accepts that, if the proposal were found to be acceptable in principle, these documents would provide a sound basis for a future reserved matters application. I agree.
26. The Council does not suggest that the proposal would conflict with any of the qualitative criteria of Policy CS32. I consider that the proposal either accords with those criteria or is capable of according with them at the reserved matters stage. However, given that the limit of 25 dwellings relates to the spatial strategy of the NSCS, I consider that the proposal should be regarded as being in conflict with Policy CS32 as a whole. It is also in conflict with Policy CS14.
27. An appeal decision at Moor Road, Yatton<sup>11</sup> noted that it was common ground that the adopted NSCS does not include a Framework-compliant assessment of local housing need. For that reason, the Inspector found that Policies CS13, CS14 and CS32 were out-of-date. In this case, the Council and the appellant agree that Policies CS13, CS14 and CS32 are out-of-date, regardless of the housing land supply position. Moreover, as discussed below, the policies may be deemed out-of-date though the operation of the approach to decision making set out in paragraph 11(d) of the Framework.
28. The weight to be attached to conflict with these policies has been considered in other appeal decisions. In an appeal decision relating to Farleigh Farm, Backwell<sup>12</sup> the Inspector concluded that the weight to be attached to conflict with Policy CS32 should be reduced due to the housing land supply position. A decision relating to Rectory Farm, Yatton<sup>13</sup> (immediately to the south of the current appeal site) found that there was a significant shortfall in housing land supply in North Somerset and,

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<sup>11</sup> CD I9 - APP/D0121/W/21/3285343 (April 2022)

<sup>12</sup> CD I12 - APP/D0121/W/21/3285624 (March 2022)

<sup>13</sup> CD I11 - APP/D0121/W/21/3286677 (June 2022)

consequently, conflict with Policies CS14 and CS32 could only be afforded limited weight.

29. At the Inquiry, the Council's planning witness was asked whether, in the event that flood risk were not to be found to justify refusing the scheme, planning permission should be refused solely due to conflict with the spatial strategy. His response was that, in those circumstances, the benefits of the scheme would outweigh the conflict with the spatial strategy.<sup>14</sup>
30. In conclusion, the proposal would conflict with the spatial strategy of the development plan. In deciding how much weight to attach to that conflict, it is important to note that the spatial strategy is out-of-date, regardless of the housing land supply position, that the site is a suitable and sustainable location in terms of accessibility and that no conflict has been identified with the qualitative criteria of Policy CS32. I therefore consider that limited weight should be attached to the conflict with Policies CS14 and CS32.

### ***Whether the proposal would pass the flood risk sequential test set out in the Framework***

31. It is common ground that the site is in Flood Zone 3a and that a Flood Risk Sequential Test (FRST) is required. NSCS Policy CS3 states that development in Flood Zone 3a will only be permitted where it is demonstrated that it complies with the sequential test set out in the Framework, except in specific circumstances which are not applicable here. For sites outside the main towns, Policy CS3 goes on to say that the area of search for alternative sites will be North Somerset-wide, unless it can be demonstrated that there is a specific need within a specific area. For this appeal, I consider that the area of search should be the whole district, in accordance with the development plan.
32. At the Inquiry, reference was made to an appeal decision relating to Lynchmead Farm, Ebdon Road, Wick St Lawrence, Weston<sup>15</sup> (*Lynchmead Farm*). The High Court judgment referred to above (*Mead*) concerned a challenge to that appeal decision and another appeal decision elsewhere.
33. In addition to dealing with the area of search, Policy CS3 sets some criteria relating to the identification of "*reasonably available*" sites, in the context of the Framework and PPG as they were then. The *Lynchmead Farm* decision addressed the relationship between those criteria and the Framework/PPG:

*"the second section of Policy CS3 is now inconsistent with the Framework. Although the wording of national planning policy on flood risk in the Framework is largely the same as it was when Policy CS3 was adopted, the interpretation of it has been clarified by more recent guidance contained in the PPG;"* and

*"In this case, because of the inconsistency between the documents as to what is meant by reasonably available, I give lesser weight to the second section of Policy CS3 than I do to the newer and more up to date Framework as interpreted by the PPG."*<sup>16</sup>

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<sup>14</sup> Inspector's note – in response to questions from Lord Banner, Mr Smith said that, on balance, if there was no objection due to flood risk, approval should be granted due to the benefits of the scheme

<sup>15</sup> CD I2 - APP/D0121/W/22/3313624 (June 2023)

<sup>16</sup> CD I2 – paragraphs 23 and 27

Although the Inspector's approach was challenged in *Mead*, this ground of challenge was rejected by the Court.<sup>17</sup> I consider that the situation now is essentially the same as that set out in the *Lynchmead Farm* decision and I give lesser weight to the second section of Policy CS3 than I do to the newer and more up to date Framework and PPG.

34. The Framework states that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source, and that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. PPG includes guidance on what is a "reasonably available" site. The differences between the Council and the appellant related to the application and/or interpretation of that guidance. The four elements underlined below are pertinent:

*'Reasonably available sites' are those in a suitable location for the type of development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development.*

*These could include a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposed development. Such lower-risk sites do not need to be owned by the applicant to be considered 'reasonably available.'<sup>18</sup>*

#### *The type of development*

35. The Council considers that the type of development is residential. That approach is consistent with the *Lynchmead Farm* decision where the Inspector similarly took the view that the type of development was residential. The Inspector's approach was challenged in *Mead* but this ground of challenge was rejected by the Court. However, the Inspector's reasoning had regard to the description of development which was:

*"an outline planning application (with all matters reserved except access) for a residential development of up to 75 dwellings and associated infrastructure"*

The description of development for this appeal scheme (set out above) is more detailed with various elements of the scheme being quantified.

36. The *Mead* judgment discussed the need for flexibility. The Court rejected a "highly specific" approach whereby alternative sites would need to accommodate the proposed development in its various particulars, commenting that such an approach would render the sequential test ineffective. The Judgment states:

*"A need and/or market demand case could be based on a range of factors, such as location, the mix of land uses proposed and any interdependence between them, the size of the site needed, the scale of the development, density and so on. But the decision-maker may also assess whether flexibility has been appropriately considered by the developer and by the local planning authority."<sup>19</sup>*

37. Having regard to *Mead*, I do not consider that an alternative site needs to be capable of replicating the quantified elements contained in the description of

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<sup>17</sup> CD J1 – paragraphs 141 to 144

<sup>18</sup> PPG – Reference ID: 7-028-20220825

<sup>19</sup> CD J1 – paragraph 103, read in context with paragraphs 96 to 102



development. It would not, for example, need to deliver 50% affordable housing or 20% bio-diversity net gain to be regarded as being of the same type of development. Nor would it need to contain every element. For example, the proposed Class E floorspace is a small element of the overall scheme. Class E is very broad and there was no further evidence about what the actual use would be and how likely it would be to materialise. To my mind this element is not an important aspect of the type of development for FRST purposes. Similarly, an alternative site would not necessarily need to offer allotments or orchards to be the same type of development.

38. Around 70% of the appeal scheme would be open uses, including sustainable drainage features, open space, orchards, allotments and woodland. The factors that contribute to this layout include:
- the need to set development back from a network of ditches present on the site, for reasons of managing flood risk and impacts on biodiversity;
  - mitigation for loss of bat foraging and commuting habitat;
  - the need to achieve bio-diversity net gain;
  - provision of a sustainable drainage system;
  - a design decision to present a soft edge to the built form of Yatton; and
  - provision of the local play facilities required by the scheme.
39. Looking at the scheme as a whole, I consider that the proportion of open uses is mainly driven by site-specific factors. Rather than being an intrinsic feature of the type of development, the extent of open uses proposed reflects the land-use consequences of accommodating the proposed quantum of housing on this particular site, in a way that is acceptable in planning terms. That is not to say that the open uses would not bring benefits. Any such benefits should be weighed in the overall planning balance. However, for the purposes of the FRST, I do not think that alternative sites need to demonstrate 70% open uses or, indeed, any particular proportion of open uses.
40. That said, there are aspects of the appeal scheme that distinguish it from a type of development that could be described simply as residential. The description of development includes “*flats and semi-detached, detached and terraced houses with a maximum height of 3 storeys at an average density of no more than 20 dwellings per net acre*”. Whilst the mix of unit types for the market housing is not quantified, the dwelling mix for the affordable housing (which would be 50% of the scheme) is specified in the UU. There are also parameter plans which describe the general character of the development. Looking at the appeal scheme in the round, in my view it could not be regarded as the same type of development as (for example) a high density, predominantly flatted scheme.
41. For the purposes of this appeal, I would characterise the type of development as a primarily residential neighbourhood comprising a mix of housing types and tenures, including affordable housing.
42. The appellant’s FRST applied a capacity threshold of 143 dwellings for a site (or series of sites), being a margin 25% below the appeal scheme capacity of 190 to allow for flexibility. That seems to me to be a reasonable approach as a site of 143

dwellings could be expected to have scope to provide a good mix of housing types and tenures, including affordable housing. The actual mix is not yet known for many of the potential alternative site in debate. Even so, it is reasonable to assume that the Council would use its development management powers to secure an acceptable mix, in line with the NSCS objective of creating mixed and balanced communities (CS15).

43. The appellant's FRST also applies a site size threshold of 10.3ha, which is 25% below the appeal site size. As discussed above, the appeal scheme would include 70% open uses, for reasons which reflect site-specific factors. The same factors may apply to a lesser degree, or some may not apply at all, on potential alternative sites. It follows that a site smaller than 10.3ha could be well able to accommodate the type of development proposed. Whilst I have not applied a specific site size criterion in my assessment, I have considered the sites in the round to see if they would be capable of accommodating the proposed type of development.

#### *Point in time*

44. The *Lynchmead Farm* decision included the following:

*"However, 'available to be developed' means just that. It does not mean that development of an alternative site would have to follow the same timescale envisaged for the appeal scheme. It is sufficient that there is a positive indication that the land is available to be developed. The start date for development and the rate of build out may be affected by many site-specific factors, such as the need to relocate infrastructure or undertake hydraulic testing, but that does not alter the fact that the land would be available to be developed."*<sup>20</sup>

45. This reasoning was challenged in *Mead*. However, the Court rejected this ground of challenge, commenting that comparison of availability between two sites involves matters of degree. It does not require precise alignment.<sup>21</sup>

#### *A series of smaller sites*

46. PPG says that a series of smaller sites may be a reasonably available alternative. The *Mead* judgment states that this wording connotes a relationship between sites appropriate for accommodating the type of development which the decision-maker judges should form the basis for the sequential assessment. The type of development I have characterised above would have advantages in planning terms. For example, it would contribute to the objective of creating mixed and balanced communities, consistent with NSCS Policy CS15. Creation of a residential neighbourhood would enable a cohesive approach to design, which would also contribute to place-making (subject to satisfactory detailed design, which would be controlled at reserved matters stage).
47. The Council argues that smaller sites within the same geographical area would have a sufficient relationship to be considered as a series in FRST terms. That may be so in circumstances where the type of development is simply residential. However, in this case I do not think that merely being in the same settlement would be enough to accommodate the type of development proposed. It is

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<sup>20</sup> CD I2 – paragraph 31

<sup>21</sup> CD J1 – paragraphs 120 and 121

necessary to consider each of the series of sites put forward in relation to the type of development as I have characterised it.

*Ownership and/or control of alternative sites*

48. In the *Lynchmead Farm* decision the Inspector found that:

*“Sites do not need to be owned by the applicant, nor are they excluded because of an extant planning permission or resolution to grant. So long as a site is available to be developed there is no need for further evidence that they are for sale or, in the case of publicly owned land, declared to be surplus and available for purchase by private treaty.”<sup>22</sup>*

This reasoning was not challenged in *Mead*.

49. The appellant argues that for a site to be reasonably available it must be available to the appellant company. The appellant’s FRSA discounts sites which are in the control of other developers. Evidence was presented to the effect that sites which are subject to option agreements or promotion agreements cannot be sold on to third parties. Whilst that may be so, there is nothing in the Framework or PPG that expressly states that alternative sites must be available to be developed by an applicant. The PPG does, however, expressly state that alternative sites do not need to be owned by the applicant.

50. Looking at paragraph 7-028 of PPG as a whole, the focus is on the location of alternative sites and the prospect that they are available to be developed. The appellant infers that this means available to be developed by this appellant. I see no basis for making that inference. I agree with the Council that a reasonably available site should be available to be developed by someone. I do not share the appellant’s view that the Council’s approach is overly restrictive or that it leads to an absurd result. So long as a site is available to be developed by someone, it can contribute to meeting housing needs. I have not therefore discounted sites on the basis that they are currently controlled by another developer or land promoter.

*Consideration of sites - (1) sites found to be reasonably available*

51. The statement of common ground included a table of 36 disputed sites, which the Council considers are sequentially preferable to the appeal site and meet the requirements of the Framework and PPG. The table uses the site numbering that was used in the appellant’s 2024 FRST. I have used the same numbering in my assessment. Some of the sites were also considered in the *Lynchmead Farm* decision. However, that was a scheme for just 75 dwellings and, as discussed above, the Inspector characterised the type of development differently. Consequently, it is to be expected that some of my findings will differ from that decision.

Wolvershill Strategic Location

52. This is an allocation in the emerging local plan. As discussed above, the emerging plan will be subject to further consultation as it seeks to respond to an increased housing requirement following changes to the Framework and PPG. Whilst the emerging plan has no weight as a statement of policy, it provides an evidence base which is material to this appeal. Given that further work on the emerging plan

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<sup>22</sup> CD I2 – paragraph 36

will focus on identifying more housing sites, it seems unlikely that this strategic location would be removed.

53. Although the site was not supported in the *Lynchmead Farm* decision, the plan was at an earlier stage at the time of that Inquiry. Moreover, the Regulation 19 consultation response from Ainscough Strategic Land (ASL) states that a developer/promoter consortium is active on the site including ASL, Bloor Homes, and Wain Estates and that this consortium is working to deliver a single cohesive master plan for the strategic location.
54. For reasons given above, the involvement of land promoters does not prevent the site from being reasonably available. On the contrary, in this case the consortium approach is a positive indication that the land is available to be developed. I note that the development must be integrated effectively with the design and delivery of the Barnwell Bypass. Even so, the emerging plan does not say that no development can commence before the bypass is completed. The extract from the *Lynchmead Farm* decision quoted above referred to factors such as relocating infrastructure or undertaking hydraulic testing that may affect the start date for development. I see no reason to take a different approach to policy requirements, such as the need for master planning, which may also affect a start date. That does not alter the fact that the site is available to be developed.
55. I consider that the following sites are reasonably available:

- Sites 136 and 137 – Wolverhill Strategic Location

#### Parklands Village

56. As discussed below, development is underway here but there are further phases to come forward, with 555 units in the Council's five year trajectory. The appellant argues that the site will deliver a lower level of affordable housing than the appeal proposal. Even so, I have concluded above that it is not necessary for a candidate site to replicate the quantified elements in the description of development for the appeal scheme. PPG makes clear that a reasonably available site could be part of a larger site. In my view this large site could accommodate the type of development proposed at the appeal site.
57. The appellant notes that the Council agreed to reject this site at the *Lynchmead Farm* Inquiry. Nevertheless, I have been provided with evidence from both parties in the context of this Inquiry and I have formed my own view. I consider that the site is reasonably available:

- Site 143 - Parklands Village, Locking Parklands

#### Sites at Backwell

58. The appellant argues that Grove Farm should be rejected because it is under option to another developer. As discussed above, that is not a sufficient reason to reject a site. The appellant also argues that Moor Lane, Backwell (which, on its own, is below the capacity threshold) cannot form a series with Grove Farm because the latter is not reasonably available. The two sites are very close and, in my view, could form a series, although Grove Farm (515 dwellings) would meet the capacity criterion on its own. The following sites are capable of accommodating the type of development proposed and are reasonably available:

- Site 15 - Moor Lane, Backwell
- Site 16 - Grove Farm, Backwell

#### Sites under 10.3ha

59. The appellant rejected the following sites on the basis that they fall short of the site size threshold. However, I have not applied a site size threshold for reasons given above. I consider that these sites are capable of accommodating the type of development proposed and are reasonably available:

- Site 100 - Land at Poplar Farm, north of West End, Nailsea
- Site 138 - Land east of Barnwell
- Site 198 - Site at south west Bristol
- Site 26 - Cluster of sites north of Langford

#### Sites promoted by others

60. The following sites are being promoted by parties other than the appellant. In the case of a cluster of sites to the south of Langford, I have disregarded parcels that have been the subject of a dismissed appeal. However, the remaining sites here have more than sufficient capacity. In my view the following sites are capable of accommodating the type of development proposed and are reasonably available:

- Site 125 - Four sites on the northern fringe of Weston
- Site 25 - Cluster of sites to the south of Langford
- Site 90 - Youngwood Lane, Land south of the Uplands, Nailsea
- Site 92 - West End, Engine Lane and Nether-ton Wood Lane, Nailsea
- Site 93 - North West Nailsea

#### *Consideration of sites - (2) sites found not to be reasonably available*

##### Type of development

61. The following sites are expected to come forward as high density development with an emphasis on apartments. They would not accommodate the same type of development as the appeal site:

- Site 133 - Weston Rugby Club
- Site 134 - Dolphin Square, Weston
- Site 167 - Former TJ Hughes store, 17 High Street, Weston
- Site 97 - Weston College, Somerset Square, Nailsea

##### Series of smaller sites

62. The following sites within Weston are physically separated and, in any event, said to form a series with other sites (listed above) which would accommodate a different type of development. The sites within Yatton, Claverham and

Congressbury are in different settlements and, in the case of two Yatton sites, physically separated by the built form of Yatton. The sites at Langford and in the Sandford/Winscombe area are physically separated by the built form of those settlements. In each case these series of sites could not form a residential neighbourhood with a cohesive design approach. I have therefore discounted them for the purposes of this appeal:

- Site 112 - Moor Road, Yatton
- Site 113 - Land at Rectory Farm and Biddle Street, Yatton
- Site 147 - Land to the west of the M5
- Site 150 - Leighton Crescent, Weston
- Site 180 - Walliscote Place/Police Station/Magistrates Court, Weston
- Site 194 - Former Police Depot, Winterstoke Road, Weston
- Site 30 - Land to west of Wyndhurst Farm, Langford
- Site 31 - West of Ladymead Lane, Langford
- Site 36 - Four sites west of Sandford
- Site 37 - Land off Hill Road, Sandford
- Site 39 - Greenhill Lane, Sandford
- Site 43 - Sandford Batch (Broadleaze Farm), Winscombe
- Site 45 - Land adjoining Coombe Farm and Shipham Lane, Winscombe
- Site 46 - West of Hill Road, adjacent to Quarry Lane, Winscombe
- Site 52 - Brockley Way and Dunsters Way, land north of Claverham
- Sites 74 and 87 - Woodhill Nurseries and Land north of Bristol Road, Congressbury

#### Other sites

63. Land at Elborough has previously been discounted in the Strategic Housing Land Availability Assessment and appears somewhat disconnected from settlements. Much of the land South of Nailsea is in a strategic gap. There is not sufficient information before me for me to conclude that these sites are suitable for the proposed development. Farleigh Fields, Backwell is under construction so is not available. For the purposes of this appeal, I have discounted:

- Sites 140 and 151- Land at Elborough
- Site 91- Land south of Nailsea
- Site 17 - Farleigh Fields, Backwell

### *Conclusion on sequential test*

64. I conclude that there are 12 sites that are sequentially preferable to the appeal site, capable of accommodating the type of development proposed and with a reasonable prospect that they would be available to be developed at the point in time envisaged for the development. There is one further site (Moor Lane, Backwell) that would also meet those criteria, if treated as a series with the adjoining site at Grove Farm. The proposal does not therefore pass the sequential test and is in conflict with NSCS Policy CS3. DMP Policy DM1 states that exceptions to national policy on flood risk will not be permitted. This policy is considered further in the conclusions to this decision.

### ***Whether the proposal would be safe from flood risk for its lifetime, and whether it would increase the risk of flooding elsewhere***

65. The appeal site forms part of The Batch, a more or less flat area of low-lying fields which are typically around 5m above ordnance datum (AOD). The site is crossed by a network of drainage ditches, known as rhynes. The eastern side of the site adjoins the edge of the built-up area of Yatton, which is located on a low ridge, such that land levels fall towards The Batch. Photographs submitted to the Inquiry showed extensive areas of standing water in parts of the site after periods of heavy rainfall. To the west, the site is bounded by the Strawberry Line, a footpath following a former railway line. The railway embankment cuts the site off from further low-lying land to the west, forming a constrained cell. Surface water is drained from this cell by culverts under the embankment.
66. The northern end of the site is around 4.5km from the coast at Woodspring Bay. The coastline is defended from tidal flooding by various defences, the highest of which is an embankment. The area between Yatton and the coast is mainly rural, with scattered settlements, and is also low-lying and crossed by numerous rhynes. The main topographical feature in this area is the M5 motorway, which runs approximately parallel to the coast.
67. High tides are often above the level of the rhynes, which means that water can only be discharged for part of the tidal cycle. The River Yeo, also known as the Congressbury Yeo, is around 1km south west of the site. It is protected by flood banks on either side and by a tidal sluice.
68. The appeal scheme would include land raising within the parcels where development would take place. Development would be set back from the rhynes, to protect both their drainage function and their ecological value, although culverting would be required where rhynes would be crossed by site roads. Shiners Elms is a cul-de-sac on the western edge of Yatton, which ends at the site boundary. The road level at the boundary is around 5.8m AOD. At the Inquiry, the appellant confirmed that there is no proposal to change the level of Shiners Elms.

### *Land raising and flood risk reports*

69. The proposals evolved during the lifetime of the application, as a result of discussions between the appellant and the EA. The three reports that were discussed at the Inquiry were:

- Flood Risk Assessment and Hydraulic Modelling Report, dated March 2023, produced by Hydrock (Hydrock FRA)<sup>23</sup>
  - Flood Risk Assessment, dated September 2023, produced by Brookbanks (Brookbanks FRA)<sup>24</sup>
  - Flood Risk Technical Note, dated January 2024, produced by Rappor (Rappor TN)<sup>25</sup>
70. Although the reports are from different consultancy firms, in fact there was continuity in that Mr Mirams, the appellant's flood risk witness, was involved throughout. The appellant does not seek to rely on the Brookbanks FRA, which was not submitted to the Council and was overtaken by subsequent discussions with the EA and the Rappor TN. Nevertheless, it is a material consideration in that it provides information about how the flood risk modelling and mitigation has evolved during the course of the project. Moreover, the Hydrock FRA and the Brookbanks FRA provide information about the undefended scenario which should be taken into account. The Rappor TN sets out the proposal before the Inquiry.
71. The proposed site level of 6.43m AOD was determined by two competing factors. On one hand, the EA was seeking to reduce the amount of land raising, in order to reduce the potential for increasing flood risk for existing dwellings near the site. On the other hand, the engineers designing the surface water drainage system advised that the site level should be no lower than 6.43m AOD in order to ensure that the proposed system would drain effectively.<sup>26</sup>

*Would the proposed dwellings be safe from tidal flooding?*

72. PPG advises that, for tidal flooding, the design flood event should be an event with a 5% annual probability (a 1 in 200 year event). However, the Framework requires that development is safe for its lifetime, which requires consideration of climate change and rising sea levels. In the case of residential development, PPG states that the lifetime of the development can be assumed to be 100 years. It was agreed by the Council and the EA that the existing flood defences at Woodspring Bay would prevent tidal flooding in the design flood event, should that happen now. It was also agreed that, when rising sea levels are factored in, a 1 in 200 year event would overtop the defences, leading to flooding inland as far as the appeal site. This would be the case around 60 years from now. It is important to keep in mind that this is a statistical exercise, used to aid decision making. A 1 in 200 year event could occur at any point, perhaps multiple times, or not at all in the next 200 years.
73. The Rappor TN was based on the defended scenario with the Higher Central Climate Change Allowance (CCA). This approach assumes that the existing flood defences would remain as they are. It does not include any allowance for the defences being raised. It does allow for increased sea level due to climate change for a 100 year period. On this basis, the level of the design flood event would be 6.28m AOD. The proposal is for the site level to be raised to 6.43m AOD. Finished

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<sup>23</sup> CD A11

<sup>24</sup> ID28

<sup>25</sup> CD B6 (also reproduced in ID28)

<sup>26</sup> Inspector's note – in answer to questions from Mr Leader, Mr Mirams said that a site level of 6.28m AOD had been considered in January 2024. However, Hydrock (the drainage engineers) advised that this would be too low for a gravity drainage solution to work. The level of 6.43m AOD was subsequently confirmed as workable by Hydrock.



floor levels (FFL) would be set at 6.88, providing a freeboard of 600mm above the design flood level. The appellant argued that, with the freeboard, the dwellings themselves would be safe from flooding.

74. The Council argued that the design event should be the undefended scenario because flood defences may be overtopped in extreme events, may be breached and may not be maintained or upgraded during the lifetime of the development. The Council also contended that the Upper End CCA should have been used. The Hydrock FRA, which modelled the undefended scenario, found that the maximum flood level would be 7.88m AOD, using the Higher Central CCA, and 8.18m AOD using the Upper End CCA.<sup>27</sup> These levels are higher than the proposed FFL and would result in the new houses being flooded to a depth of 1.0m (Higher Central CCA) or 1.3m (Upper End CCA).

#### What is the design event?

75. The appellant states that the use of the defended scenario (with Higher Central CCA) was agreed with the EA. The Council disputes this, arguing that the EA only sought modelling of the defended scenario as a sensitivity test, in the context of considering impacts on flood risk to adjoining land. To achieve clarity on this matter, I issued a written question to the EA. The response confirms that the EA did agree with the appellant's approach to the design event.<sup>28</sup>
76. As noted above, the EA provided a written position statement to the Inquiry and Ms Challans (an officer of the EA) attended to answer questions from me and from the appellant. At the Inquiry, the EA did not dispute the appellant's use of the defended scenario in the Rappor TN. This is consistent with the EA's grounds of objection to the scheme, which were confined to off-site impacts and did not suggest that the new houses would themselves be at risk of flooding.
77. There is no prospect of the existing defences being removed. Consequently, for the purposes of this site-specific FRA, I consider that it is reasonable to take the defended scenario as the design event.
78. With regard to the CCA, the appellant draws attention to Government guidance in "*Flood and Coastal Risk Projects, schemes and Strategies: Climate Change Allowances.*" This states that Higher Central should be used as the design CCA, with the Upper End CCA being used to test sensitivity to severe climate change and any required mitigation.
79. In closing submissions, the Council argued that it is government policy that flood risk management should be "*driven by*" the undefended scenario, having regard to the Higher Central CCA and the Upper End CCA. The Council sought to rely on an EA guidance document.<sup>29</sup> However, the quoted paragraph suggests that both CCAs should be taken into account. To my mind this falls well short of a policy statement that this appeal decision should be "*driven by*" the Upper End CCA.
80. The Rappor TN does not assess the Upper End CCA. Flood risk assessments, of necessity, look forward over many years. There are uncertainties related to climate change, sea level, weather events and the interactions between these factors. At the Inquiry, the respective expert witnesses for the EA, the Council and the

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<sup>27</sup> CD A11 – Table 4

<sup>28</sup> My question is at ID60 and the EA response is at ID61

<sup>29</sup> Paragraph 28 of the closing submissions (ID65)

appellant all agreed that the use of a freeboard is an appropriate way of addressing uncertainty when making planning decisions.<sup>30</sup> Having regard to the information in the Hydrock FRA about Higher Central and Upper End scenarios, I consider that the proposed freeboard of 600mm would be sufficient to address any uncertainty regarding the appropriate CCA.

81. I conclude that the design event is the 1 in 200 year defended scenario with the Higher Central CCA.

Managing residual risk

82. There is a residual risk that existing defences may be breached or overtopped in an extreme event. This scenario has not been specifically modelled. Nevertheless, it is reasonable to regard the undefended scenario as a sensitivity test, in that actual flooding in the event of a breach would not be higher than the undefended scenario. In assessing how much weight to attach to the residual risk it is necessary to consider the speed of inundation and the potential for mitigation through a flood warning and evacuation plan. The scope for the existing defences to be improved is also a factor to consider.
83. Coastal modelling typically assesses four or five tidal cycles. In this case, the modelling indicates that, in the design flood event, the first high tide would not overtop the existing defences. The second high tide would overtop the defences but the flood water would not reach the M5 motorway. The third high tide would cause flood water to reach the site, after a further 14 hours. This would be around 42 hours after the first high tide. The appellant's flood risk witness described this as slow continual creep of water, following the drainage routes, rather than a sudden inundation.
84. The Council argues that because the modelling underpinning the above assessment assumed a greater amount of land raising than is now proposed, the speed of inundation would be greater. I attach limited weight to that contention because the land raising at the site would have no impact on the time it would take flood waters to reach the site in the first place. In my view the time lag between the start of the flooding event at the coast and the start of flooding at the site is an important consideration. Future residents would not be taken by surprise and would be well aware of the potential for flooding. Widespread flooding would have occurred, and no doubt widely reported in the media, well before flood waters reached the site.
85. The proposal includes a Flood Management Plan (FMP), which would include an evacuation plan and flood resilience measures. This could be secured by a condition. I take into account that future residents may include people who are unwell or have limited mobility. Nevertheless, in view of the likely timescale for a flooding event, I consider that the proposed FMP would be an appropriate way of managing the residual risk.
86. The potential for climate change to have a greater effect than the Higher Central CCA may also be regarded as a residual risk. For the reasons given above, the provision of freeboard would be an appropriate way of addressing this risk.

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<sup>30</sup> Inspector's note – I asked questions of Ms Challans, Mr Cage and Mr Mirams about accounting for uncertainty and the use of freeboard and there was no disagreement on this point

*Would there be a safe means of access/egress?*

87. The appeal scheme would be accessed by extending Shiners Elms. There would also be an access from adjoining land to the south. This is a development site, referred to above as Site 113 - Land at Rectory Farm and Biddle Street, Yatton. The developer will be required to create an access through that scheme to the boundary of the appeal site. In the event that the road is not built, the appellant would have the benefit of step-in rights<sup>31</sup> to carry out the construction. There is no dispute that, in the defended scenario, the southern access would not be flooded and would therefore provide a safe route. This is confirmed in the officer's report which states that "*safe access would be possible from the south if the planning permission reference 21/P/0236/OUT were to be completed.*"
88. In the defended scenario, Shiners End would be flooded at the peak of the event. The flood level (6.28m AOD) would be around 0.48m above the road level (5.8m AOD). The appellant's hazard mapping shows this as "*danger for some/danger for most.*" However, given the alternative route to the south, this would not preclude safe access/egress.
89. The Council's concern is that there would not be safe access in the undefended scenario. It is submitted that a flood level of 7.88m AOD would be around 2m above the level of Shiners End and 0.68m above the southern access. The hazard mapping in the Hydrock FRA indicates that the southern access would be "*danger for most*" and the Shiners End access would be "*danger for all.*"
90. The EA's position statement states that it supports the Council's concerns in relation to safe access, whilst acknowledging that it had not previously commented on this matter. Whilst I note the EA's comment, no actual evidence was provided by the EA on this matter.
91. The points discussed above in relation to the design event and managing residual risk are also applicable to the issue of safe access. For the same reasons, I regard the defended scenario as the design event, in which case there would be safe access to/from the south. The undefended scenario is a sensitivity test, which helps to assess residual risk. I consider that the FMP would be an appropriate way of managing the residual risk.

*Prospects for improvements to the coastal defences*

92. Shoreline Management Plans (SMP) seek to guide the long term management of the English coast. They are non-statutory but should form part of the evidence base for plan making. Woodspring Bay falls within the Severn Estuary SMP. The SMP policy for this section of coast, in the short, medium and long term, is "*Managed retreat – set back defence.*" To my mind this should not be taken as an indication that the existing defences will not be maintained. However, it does mean that any new defences would not necessarily be in the same location.
93. Given that the defences currently offer protection from a 1 in 200 year event, it is unsurprising that there are no current proposals to upgrade them. The appellant contends that it is very likely that the defences will be upgraded within the lifetime of the development. In support of that argument a cost estimate for upgrading the existing embankment was presented. I attach very little weight to that estimate

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<sup>31</sup> These are set out in ID48

because there has not been any feasibility study or design work. Moreover, in view of the SMP policy, it is not even known where new defences might be or what type of defences might be needed. It was suggested that a cost benefit analysis would come out strongly in support of the works. However, there was little information about the benefits side of the equation either, with uncertainty about the extent and nature of any upgrade and the number of properties that might benefit.

94. It is clear that any upgrades to the defences would likely be decades into the future. Funding mechanisms and potentially competing priorities relating to more highly populated areas, other coastal locations and/or other types of flood risk are not known. On the evidence before the Inquiry, no reliable conclusions can be drawn about the likelihood of the defences being improved during the lifetime of the development. Whilst they may well be improved, I have taken a precautionary approach for the purposes of my assessment. I have not assumed that any such improvements will take place during the lifetime of the development.

*Will the proposal increase flood risk elsewhere?*

95. The EA appeared at the Inquiry and maintained its objection to the appeal on the basis that the proposal would increase the risk of flooding elsewhere. Having regard to the EA's role as a statutory consultee on flood risk, this is an important consideration. The flood risk modelling indicates that, in the design flood event, the proposed land raising would result in an increased flood depth off-site of 17mm. At the Inquiry, there was much discussion about whether this represented an actual increase or whether it should be regarded as being within the tolerance of the model, and therefore insignificant. For the purposes of my assessment, I do not think I need to comment further on that point because my conclusion would be the same either way.
96. There is a group of houses close to the proposed access from Shiners End that is currently at risk of flooding. In a 1 in 200 year event, these houses would flood in the undefended scenario. In the future, the same houses would also be at risk of flooding in the defended scenario, if the existing defences are not improved, due to the effect of climate change on sea levels. The Rappor TN states that (without the development) flood depths would vary between 0.4m to 1.3m during the defended 1 in 200 year plus climate change flood event.<sup>32</sup>
97. At the Inquiry, the Council and the EA agreed with the appellant that an additional flood depth of 17mm would not cause any additional dwellings to be flooded. Moreover, neither the Council nor the EA could point to any practical consequences of such an increase in terms of the risks faced by those affected. This is not to minimise the impacts of flooding, which I comment on further below. Nevertheless, the Framework seeks to ensure that development does not increase flood risk elsewhere. It has not been shown that an increase in depth of 17mm would materially affect flood risk in circumstances where no additional dwellings would be affected. Consequently, notwithstanding the views of the EA, I conclude that the proposal would not increase the risk of tidal flooding on adjoining land.

*Consequences of flooding*

98. The Council presented evidence on the consequences of flooding. These include direct risks to the lives and health of those affected, risks of longer term health

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<sup>32</sup> CD B6 – paragraph 4.13

consequences (including mental health consequences), economic losses due to damage to property and environmental costs from restoration works and replacing household items. At the Inquiry, there was no challenge to the main thrust of this evidence which is that flooding has serious social, environmental and economic impacts on the individuals and communities affected.

### *Other types of flooding*

99. The above discussion of flood risk relates specifically to tidal flooding. However, local residents who spoke at the Inquiry, and many written representations, raised concerns about other forms of flooding. There was particular concern about fluvial flooding from the Congressbury Yeo and surface water flooding. Williams Rhyne runs between the appeal site and the adjoining houses and residents see the appeal site as a sponge that will hold floodwater if the rhyne overflows. Given that the proposed site level of 6.43m AOD would be above the existing level of Shiners Elms (5.8m), I can appreciate that residents are concerned that the land raising proposed would increase flood risks generally.
100. The Hydrock FRA assessed all forms of flood risk, including fluvial and surface water flooding. The proposal includes a sustainable drainage system, with detention basins to retain surface water so that it can be discharged to the rhyne network at a controlled rate. The detention basins would be lined to prevent the ingress of groundwater.<sup>33</sup> Development, and land raising, would be set back from the rhyne, such that there would be an area that could take water if they were to overflow.<sup>34</sup>
101. This information has been reviewed by the Council, as Local Lead Flood Authority and as Local Planning Authority, and by the EA insofar as it is within their remit. Neither the Council nor the EA have raised any objection in terms of fluvial or surface water flooding. Subject to satisfactory detailed design of the surface water drainage system, which could be controlled by a condition, I consider that the risks of other forms of flooding have been properly assessed and would be managed appropriately.

### *Adequacy of modelling*

102. The Council's closing submissions argue that there has been inadequate modelling, including in relation to the Upper End CCA and overtopping or breach of the flood defences. However, this allegation did not form part of the putative reasons for refusal or the Council's statement of case. Whilst the planning application was being considered, there were discussions between the appellant and the EA regarding a reduced amount of land raising. This was done with a view to reducing any impact on flood risk to adjoining land.
103. Following those discussions, the EA agreed the approach to modelling which then took place. The Council did not ask for any further modelling whilst the application was being considered. The EA has objected to the appeal on grounds set out in its Position Statement. However, those grounds do not include absence of further modelling. Drawing all this together, I do not consider that the approach to

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<sup>33</sup> Inspector's note – in answer to my questions, Mr Mirams confirmed that parts of the detention basins would be below the water table but that they would be lined to prevent capacity being taken up by groundwater.

<sup>34</sup> Inspector's note – in answer to my questions, Mr Mirams drew attention to the maintenance easements alongside the rhyne which would be maintained. He said that the profile of the land raising would create a wider channel for the rhyne to spill into.

modelling was inadequate. There was sufficient information before the Inquiry to inform a proper consideration of flood risk.

### *Conclusions on flood risk*

104. I conclude that the proposed houses would be safe from flooding during the lifetime of the development. The proposed means of access from the south, which could be secured by a condition, would provide a safe route to and from the site during a flood event. The proposal would not increase the risk of flooding elsewhere. There would be residual risks from a possible breach of the existing defences or overtopping in an extreme event. These risks could be mitigated by the proposed FMP, which could also be secured by a condition. Climate change above the Higher Central CCA is also form of residual risk. It could be addressed by the provision of freeboard. Nevertheless, residual risk is still a material factor in the overall planning balance, which I return to below.

### ***The nature and extent of any economic, social and environmental benefits***

#### *Housing land supply and the delivery of market housing*

105. As noted above, matters have moved on since the housing land supply round table session which took place on Day 2 of the Inquiry. An amended Framework and related PPG were published on 12 December 2024. Amongst other matters, these changes revised the standard method for calculating the housing requirement, removed provisions which previously allowed for a four year supply to be demonstrated in certain circumstances, and stipulated that a 5% buffer should be added to the requirement in all cases to allow for choice and competition. With the addition of the buffer, the five year dwelling requirement for North Somerset is 8,363.

106. There is agreement between the Council and the appellant that the period for the assessment is April 2024 to March 2029. The Council considers that it has a deliverable supply of 5,140 which would now equate to 3.07 years supply. The appellant considers that the deliverable supply is 3,890 which would equate to 2.33 years supply. The difference between the parties stems from differing assessments as to whether 10 sites meet the definition of “*deliverable*” set out in the Framework.<sup>35</sup> PPG provides some examples of what clear evidence to show that housing will be delivered on the site within five years may include.<sup>36</sup>

#### Weston Rugby Club (182 dwellings<sup>37</sup>)

107. The site has the benefit of a hybrid planning permission. There is full planning permission for a new clubhouse, a health centre and commercial floorspace, which would be the first phase, and outline planning permission for the residential element. It is expected that Phase 1 will be completed in 2026. The Council’s trajectory assumes that a reserved matters application will be submitted by November 2025. However, this is based on an exchange of emails between the Council and the architects acting for the trustees of the rugby club. There is no evidence of the involvement of a housebuilder. Nor is there evidence that anyone is actively preparing a reserved matters application, has been instructed to do so, or has undertaken other work in preparation for such an application. In my view

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<sup>35</sup> The definition is in the Glossary at Annex 2.

<sup>36</sup> Reference ID: 68-007-20190722

<sup>37</sup> The figure in brackets is the Council’s projected delivery within the five year period

this falls short of the clear evidence that housing completions will begin within five years that is required to meet the Framework definition of deliverable. This results in a deduction of 182 dwellings from the Council's supply.

Mead Vale Shopping Centre (29 dwellings)

108. The site is allocated for residential development in the SAP. The Council resolved to grant outline planning permission in 2020 and a s106 Agreement was completed in 2022. I do not consider that completion of the s106 Agreement, in itself, amounts to clear evidence of progress towards delivery. In my experience most supply sites will have needed a s106 Agreement to achieve planning permission. No other evidence of progress has been identified. All 29 dwellings should therefore be deducted from the Council's supply.

Land off Anson Road, Kewstoke (70 dwellings)

109. The site is in the control of a local housebuilder. The Council resolved to grant outline planning permission in December 2022 and a s106 Agreement was completed in October 2023. As with the previous site, the work involved in completing the s106 Agreement is the only evidence of progress towards delivery that has been presented. For the same reasons, I consider that this is not sufficient to show the clear evidence of progress that is needed. All 70 dwellings should be deducted from the Council's supply.

Land at Farleigh Farm, Backwell (6 dwellings)

110. Outline planning permission was granted on appeal for up to 125 dwellings in June 2022. Reserved matters have been approved for 90 dwellings and development has commenced. The six units in dispute are self-build plots for which no reserved matters have been submitted. However, there is no requirement in PPG for reserved matters to be submitted for all parts of a site. This is a small element in a much larger site where development is already underway. The site is clearly deliverable and no adjustment should be made to the Council's supply.

Weston Villages – Locking Parklands (555 dwellings)

111. Weston Villages is a strategic allocation which the NSCS expects to deliver around 6,500 dwellings. First completions took place in 2012 and 2,462 dwellings had been completed by April 2024. The Locking Parklands parcel has a capacity of 1,450 dwellings and is in the control of St Modwen and Homes England. In addition to developing phases itself, St Modwen is obliged to make a proportion of the overall development available to other developers through a tendering process. So far 564 dwellings have been completed and there are a further 117 which have detailed approval. A reserved matters application was made by Vistry for the next two phases (totalling 229 dwellings) in August 2024. The Council's trajectory assumes delivery of 555 dwellings within the five year period. The appellant argues that 209 of those, where there is not yet a reserved matters application, should be excluded.

112. There is no doubt that housing will be delivered on this site within five years because housing has already been delivered and further units are under construction. Moreover, the appellant does not contest the Council's delivery rate. This is a strategic site where there has been significant investment in infrastructure including a spine road, a primary school, a secondary school and a medical centre.

Given that development is proceeding in a phased manner, and that there is a delivery mechanism in place to secure implementation of the remaining phases, I consider that there is clear evidence in support of the Council's trajectory.

Weston Villages – Land south of Churchland Way (465 dwellings)

113. This parcel of the strategic allocation has outline planning permission for 1,150 dwellings. Mead Realisations, the main landowner, has sold phases to other developers. Mead Realisations, Taylor Wimpey, Bellway and Wain Homes have all secured reserved matters consents. The first completions were in 2020/21. Since then, there have been 370 completions up to March 2024 with an average of 93 per annum. The Council relies on a further 465 dwellings within the five year period. The appellant seeks to discount 154 dwellings where there is not yet a reserved matters approval or application.
114. There is no doubt that housing will be delivered on this site within five years because housing has already been delivered and further units are under construction. The appellant does not contest the Council's projected delivery rate. In circumstances where the main landowner has not responded to the Council's requests for information, I consider that it is reasonable for the Council to have applied an average delivery rate for the site as a whole. This is a site that is continuing to deliver significant housing numbers with the involvement of multiple developers. Furthermore, there is sufficient time within the five year period for reserved matters approval to be obtained for the final phase (or phases) relied on by the Council. No adjustment should be made to the Council's trajectory.

Weston Villages – Winterstoke, Haywood Village (800 dwellings)

115. Haywood Village is controlled by Persimmon Homes. The first 898 dwellings were completed quickly during the period 2014/15 to 2018/19, at an average of 180 dwellings per annum. There is no dispute that the site is deliverable. The difference between the parties is the delivery rate. The Council adopts a figure of 160 dwellings per annum (dpa) whereas the appellant contends that 86 dpa would be more realistic. The Council relies on correspondence with the developer dated May 2024 whilst the appellant relies on later correspondence with the same developer dated September 2024. Due to the wide divergence between these two documents, in my view they should be treated with caution.
116. I consider that delivery in the first five years was high, due to a combination of factors. At times there were three outlets and construction of a local centre in 2018 included numerous apartments. During the five year period there will be two outlets, Persimmon and Charles Church. The latter is a Persimmon brand but is aimed at a different segment of the market. The Council considers that the figure of 160 dpa is conservative, in the light of past delivery rates and the projections for 2025 and 2026 set out in the May 2004 correspondence. Even so, I consider that the figure is likely to be on the high side because the factors influencing the earlier delivery rates have changed.
117. On the other hand, the appellant's figure seems unduly low, bearing in mind that the site delivered 77 units with just one outlet in 2023. This was an improvement on the previous year. Moreover, a second (Charles Church) outlet was opened during 2024, which no doubt reflects the developer's intention to increase sales rates further. Drawing all this together, I consider that it would be reasonable to



assume a delivery rate of 120 dpa. This would give a supply figure of 600, a reduction of 200 on the Council's trajectory.

Millcross site, Clevedon (50 dwellings)

118. The site is owned by Alliance Homes, a housing association based in North Somerset. Although allocated for 70 dwellings in the SAP, following pre-application discussions the capacity has been reduced to 50. Alliance Homes has instructed an architect to work up capacity sketches and recruit a full design team. Given that this is an allocated site for only 50 dwellings, it seems likely that the developer will submit a full application rather than an outline. The developer has submitted a timeline which appears reasonable in view of the scale of the proposal. Taken together, I consider that these factors provide clear evidence that housing completions will begin within the five year period.

North West Nailsea (150 dwellings)

119. The site was allocated in the SAP for 450 dwellings. However, subsequent flood risk modelling shows that part of the site is at risk of flooding in the future and the emerging local plan proposes a reduced site area and a reduced capacity of 225 dwellings. Where a site is allocated for development, PPG gives some examples of what clear evidence to show that housing will be delivered on the site within five years may include. One of the examples is firm progress being made towards the submission of an application. In this case that point has been reached, with an outline planning application for 150 dwellings on part of the site being submitted in November 2023. The application was made on behalf of Vistry Group. The site is within the developer's short-term delivery programme. Taken together, these factors provide clear evidence that the site is deliverable.

120. The appellant argues that there is uncertainty due to consultation responses relating to ecology, flood risk and highways. At the Inquiry, the Council stated that further technical documents had been submitted in response to the matters raised by consultees. In my experience, it is not unusual for matters of this nature to be raised, and resolved, during the lifetime of an outline application of this scale. The appellant's doubts on these matters are not sufficient to outweigh the fact that this is an allocated site where an application for planning permission has been made and is in the course of consideration. There is sufficient time within the five year period for that process to be completed and for the housing to be delivered. There should be no deduction from the Council's trajectory for this site.

Former Bournville School Site, Selworthy Road, Weston (28 dwellings)

121. The site was allocated in the SAP and subsequently acquired by Alliance Homes, a local housing association. It has been the subject of further work in relation to flood risk. The capacity has been reduced to 28 dwellings because of the need for a flood storage area. The scheme has now been agreed by the Local Lead Flood Authority and the EA. Having reached that point, the developer has confirmed a timeline for submission of an application and delivery of the scheme which appears reasonable for the scale of development proposed.

122. At the Inquiry, the appellant argued that it was not clear whether the flood risk sequential test had been addressed. That would be a matter to be considered in the context of the forthcoming application. I consider that the work that has been done to secure the agreement of the EA and Local Lead Flood Authority is

evidence of firm progress being made towards the submission of an application. In all the circumstances, I consider that the site is deliverable and that there should be no deduction from the Council's trajectory.

### *Conclusion on housing land supply*

123. For the reasons given above, I consider that the Council's supply figure of 5,140 should be reduced by 481, which results in a supply of 4,659. This is a shortfall of 3,704 against the revised five year requirement of 8,363. It equates to 2.79 years supply.
124. The appeal scheme would deliver up to 190 dwellings, of which 50% would be market housing and 50% would be affordable housing. There is a significant shortfall in supply. The Council is seeking to allocate further housing sites through the emerging local plan to address the shortfall and meet the housing needs of the district. However, it will be some time before that process is completed and the new sites start to deliver housing. I consider that the appeal site is capable of making a useful contribution to meeting housing needs within the five year period. I also take into account the emphasis the Framework gives to boosting the supply of housing generally. For these reasons, I attach substantial weight to the delivery of up to 95 units of market housing.

### *Affordable housing*

125. The Agreement provides for 30% of the dwellings to be "*Policy Affordable Housing*", which would be split 77% social rented units and 23% shared ownership units, and 20% to be "*Additional Affordable Housing*", which would all be shared ownership. There would be a mix of unit sizes for all affordable tenure types, as set out in Table 1 of the first schedule. NSCS Policy CS16 states that 82% of affordable housing should be provided as social rented housing and 18% as intermediate housing. Although this does not quite match the 77%/23% split set out in the Agreement, the Council and the appellant agree that this element of the affordable housing provision would be policy compliant. I see no reason to disagree. The additional affordable housing units would not bring the same level of benefit, in terms of meeting housing need, because they would not provide the mix of tenure types contemplated in Policy CS16. Nevertheless, they would meet the definition of affordable housing set out in the Framework, would be over and above the 30% of policy compliant units, and would contribute to meeting an affordable housing need.
126. The North Somerset Local Housing Needs Assessment (NSLHNA) 2023 identifies a need for 271 affordable dwellings per year over the period 2024 to 2039. This is part of the evidence base for the emerging local plan and has yet to be subject to examination. Nevertheless, it is recent evidence which provides one indication of the level of need. The housing waiting list is not an exact indicator of need<sup>38</sup> but is a relevant factor to take into account. Across North Somerset as a whole there were 2,697 households waiting for rented accommodation as of January 2024. Of these, 985 expressed a preference for Yatton. However, applicants can select multiple areas of preference and the information does not show how many identified Yatton as their first choice.<sup>39</sup> The Council submitted further data drawn

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<sup>38</sup> Inspector's note – for example, some households may be applicants in more than one local authority area

<sup>39</sup> CD B8 – Appendix 2

from the register which indicates that there are 51 households seeking a home in Yatton ward who currently live or work in Yatton parish.<sup>40</sup>

127. The appellant submitted a document entitled “*Local Housing Need Report in respect of Yatton Parish*” which concluded that there is a significant shortfall in affordable housing provision that is specific to Yatton. The shortfall is calculated by reference to affordable housing needs as defined in the Strategic Housing Land Assessment 2009. That document is somewhat dated. At the Inquiry, the appellant’s affordable housing witness accepted that the NSLHNA would have taken account of any backlog and hidden households.<sup>41</sup> In my view the more recent document carries more weight. Moreover, the shortfall was calculated at a district wide level, then apportioned to Yatton on a pro-rata basis. I can see no justification for taking that approach.
128. A similar approach is taken to the assessment of current need, which assumes that affordable housing need per head of the district population can be applied at the level of an individual parish. To my mind that is a theoretical calculation rather than direct evidence of local need. For these reasons I attach limited weight to the appellant’s assessment of a Yatton-specific need for affordable housing. I attach greater weight to the district-wide assessment derived from the NSLHNA. I take into account that the district-wide assessment is likely to include some households already in Yatton, together with some in need of affordable housing who have a local connection to Yatton.
129. The Agreement sets out alternative criteria for determining who would qualify to be an applicant for the affordable housing. Under the first option the applicants would be people who have a local connection to the district of North Somerset as defined in the Council’s nomination policy. Under the second option, the applicants would be people who live in the parish of Yatton, or are connected to it by work or family, subject to a cascade provision if no such people are found.
130. The Agreement is drafted such that the first option will apply unless this decision states that the second option should apply instead. I conclude that the second option should not apply because there is no sound evidence base to justify any particular level of affordable housing need in Yatton. The second option would not accord with Regulation 122 of the CIL Regulations because it would not be necessary. Moreover, it could well be counter-productive in terms of meeting priority housing needs. It could result in housing being allocated to persons with a local connection, but a lower level of housing need, thereby displacing persons without a local connection with a higher level of housing need.
131. That said, there is a pressing district-wide need for affordable housing. The district-wide need will include some households who either live in Yatton or have a local connection to it. Meeting that need is an important objective of both the Framework and the NSCS. The proposal would provide 50% affordable housing, which is in excess of the minimum level set out in Policy CS16. Drawing all this together, I attach substantial weight to the delivery of up to 95 units of affordable housing.

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<sup>40</sup> ID35

<sup>41</sup> Inspector’s note – this was accepted by Mr Parker in answer to my questions

### *Economic benefits*

132. The application was accompanied by an economic benefits statement, the content of which was not challenged by the Council. The proposal would support jobs in construction and in supply chains during the construction period. Once the houses were occupied, new residents would contribute to spending in the local economy. As noted above, the proposed Class E floorspace is a small element of the appeal scheme. Class E is very broad and there was no evidence before the Inquiry about what the actual use would be and how likely it would be to materialise. Consequently, I attach little weight to any economic, or indeed social, benefit arising from the Class E floorspace. Overall, taking account of the temporary nature of economic benefits during construction, I attach moderate weight to the economic benefits.

### *Environmental benefits*

133. The effect of the scheme on bats, the Biddle Street SSSI and protected species are discussed below. In this section, I consider habitat enhancement. The existing habitats on the site include fields containing grazed grassland, an interconnected series of rhynes, and a small number of mature trees and hedgerows. As noted above, around 70% of the appeal scheme would be open uses, including sustainable drainage features, open space, orchards, allotments and woodland. The proposal includes enhancing the habitat value of grassland, together with planting new hedgerows, woodland and orchard.

134. Biodiversity net gain (BNG) has been considered using BNG matrices. Taking account of additionality,<sup>42</sup> there would be a gain of around 27% in habitat units and 48% in hedgerow units. I attach moderate weight to habitat enhancement.

135. The proposal would include play areas to meet the needs of the new residents. Some of the new green infrastructure would be multi-functional. For example, the detention basins could be designed as attractive green areas that also bring biodiversity benefits. However, much of the open space would not be available for recreation, in terms of active uses, because it would include woodland, orchard and grassland being managed to meet ecological objectives. That is not to say that it would have no other benefits. No doubt paths could be created around the new habitats which would be pleasant places to walk. Subject to detailed design, the open spaces could create an attractive setting for new development. The allotments are a relatively small element of the proposal, although no doubt of benefit to the individual allotment holders. To my mind the open space would, in the main, primarily meet needs arising from the development itself, such as ecological mitigation, sustainable drainage and play areas. I therefore attach only moderate weight to the benefits of open space. Nevertheless, I consider that the proposal would improve the existing network of green infrastructure in Yatton, in accordance with Policies CS9 and DM19.

136. The appellant suggests that pedestrian routes to the Strawberry Line and increased use of public transport should be counted as benefits. However, I consider that these features of the scheme would primarily go to meeting the travel needs of the new residents. I attach limited weight to these factors.

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<sup>42</sup> Inspector's note – in accordance with DEFRA guidance, habitat created for mitigating or compensating impacts on a Special Area of Conservation (in this case the bat mitigation discussed below) can count towards matching the baseline score but should not be counted as additional units (ID54)

## **Other matters**

### *Habitats Regulations Assessment*

137. The application included information to support the assessment required by Article 6(3) of the Habitats Directive, which is implemented in the UK by the Conservation of Habitats and Species Regulations (Amendment) (EU Exit) 2019 (the Habitats Regulations). This information has been brought together in a Shadow Habitats Regulations Assessment (SHRA). The appeal site is not within or adjacent to any European sites. The SHRA identifies three sites as requiring consideration:

- North Somerset and Mendip Bats (NSMB) Special Area of Conservation (SAC);
- Mendip Limestone Grasslands SAC; and
- Severn Estuary SAC/Special Protection Area (SPA).

138. The NSMB SAC is primarily designated due to the habitats it supports, namely semi-natural dry grasslands associated with limestone habitats and Tilio-Acerion forests of slopes, screes and ravines. It is also designated due to the range of hibernation sites it contains, used by nationally important populations of Greater horseshoe bats (GHB) and Lesser horseshoe bats (LHB), together with maternity sites for GHB. The SHRA focusses on two component units of the SAC:

- King's Wood and Urchin Wood Site of Special Scientific Interest (SSSI), a large area of ancient woodland situated approximately 2.05km east of the appeal site; and
- Brockley Hall Stables SSSI, which is situated 4.6km north-east of the appeal site.

Other components of the SAC, at greater distance from the site, have also been identified and taken into consideration.

139. The Mendip Limestone Grasslands SAC is much further from the site. Whilst GHB are a qualifying feature of the site, this is essentially the same population as that described above. The site was screened out of further consideration. The Severn Estuary SAC/SPA is designated for estuarine habitats and overwintering waders. No species associated with this site are present at the appeal site. It too was screened out of further consideration.

140. The conservation objectives for the NSMB SAC are to ensure that the integrity of the site is maintained or restored and that the site contributes to achieving the favourable conservation status of its qualifying features, which include GHB and LHB. Maintaining or restoring the populations of qualifying species is one of the ways of maintaining or restoring the integrity of the site. Natural England (NE) initially objected to the application on the grounds that an adverse effect on the integrity of the SAC could not be ruled out. NE advised that a Habitats Regulations Assessment was required.

141. The SHRA identifies that the impacts of the scheme requiring assessment are loss of bat foraging habitat, fragmentation of commuting routes and cumulative impacts. The proposal includes managing an area of off-site grassland to improve its habitat value for bats. The Council has published guidance on assessing

impacts on the NSMB SAC through use of a Habitat Evaluation Procedure (HEP). The SHRA uses the HEP to assess the baseline condition of the site and the off-site land as well as the condition following development and mitigation. In the baseline condition, surveys identified moderate levels of GHB activity at the site, with parts of the site being of value for foraging and commuting. The off-site grassland was found to have low numbers of GHB, being used occasionally for foraging. The surveys identified extensive use of the site for foraging by LHB. The vegetated edges of the off-site grassland were found to be a key foraging habitat for LHB.

142. In the absence of mitigation and compensation, the SHRA concludes that there would be a direct loss of foraging habitat as well as indirect impacts from lighting. There would also be direct impacts on commuting routes through removal of sections of hedgerow and culverting sections of ditches. Lighting would have indirect impacts on commuting routes.
143. The mitigation measures include the retention of most of the existing hedgerows, enhancement of existing hedgerows to bolster existing commuting routes, and planting new hedgerows following the ditches, creating sheltered fields. Poor quality grassland within the site would be improved and new habitats would include orchard and woodland. The effects of lighting have been modelled and the SHRA includes a dark corridor plan which identifies the areas of habitat that would be excluded from the HEP calculations because the light level would preclude use by bats. The area available to bats would comprise the proposed open spaces in the western part of the site together with an east/west corridor along the northern boundary. The SHRA has responded to concerns raised by NE regarding the effects of internal lighting. A 10m buffer has been applied where housing would face mitigation habitat.
144. The HEP calculations show that at least 4.6ha of equivalent GHB foraging habitat is required to meet the Council's guidance. The scheme incorporates the equivalent of 4ha of GHB habitat within the site. There is therefore a requirement for off-site compensation. This would be provided through improving the habitat value of 2.9ha of grassland to the west of the Strawberry Line. The SHRA proposes that the land would be managed through cutting and removal of arisings, to enable the nutrients in the soil to be reduced over time. There would also be tree and shrub planting to provide shelter and improve foraging conditions. The woody vegetation and ditches associated with the Strawberry Line would provide good connectivity between the off-site land and the site itself. With the off-site compensation land taken into account, the HEP calculations indicate a minor uplift in the habitat value for GHB.
145. NE has commented that grazing would be the preferable management option for the off-site grassland. NE has suggested that a condition is attached to require the options for securing grazing to be explored further, with management by a cutting regime being a fall back option.
146. The HEP calculations show that 3.28ha of equivalent habitat value for LHB is required. The mitigation measures proposed within the site would provide a net gain in habitat value for this species without reliance on off-site compensation.
147. The SHRA has considered cumulative impacts, including in relation to likely commuting routes to and from NSMB SAC component sites. The village of Yatton

is identified as a significant barrier to dispersing bats, such that the proposal would not increase the length of existing commuting routes to/from the King's Wood and Urchin Wood SSSI.

148. The SHRA concludes that, in the absence of mitigation, the impacts would be expected to result in a decline in the conservation status of the SAC population and a potentially significant effect on the favourable conservation status of the SAC itself. In addition to the mitigation measures designed into the scheme, the SHRA recommends conditions relating to a Construction Environment Management Plan (CEMP), a Landscape and Ecological Management Plan (LEMP) and a landscape planting plan. Having considered the SHRA, NE has no objection to the scheme subject to mitigation being secured.<sup>43</sup>
149. In reaching my conclusion I have had regard to the SHRA and the advice of NE, together with the supporting ecological information contained in the application documents. I conclude that avoidance, mitigation and compensation measures for the appeal scheme could be secured by planning conditions. Together, these measures would ensure that there would be no adverse effect on the conservation objectives of the NSMB SAC, either alone or in-combination with other plans or projects. Accordingly, there would be no adverse effect on the integrity of the SAC.

#### *Biddle Street SSSI*

150. The Biddle Street SSSI comprises a series of ditches to the west of the site which are designated primarily for rare aquatic vegetation and invertebrates. The site is currently in an unfavourable condition due to eutrophication, grazing pressure, and shading by scrub. The SSSI extends into the western side of the appeal site by around 6m, providing a buffer zone along the edge of a rhyne to protect the aquatic habitat. The appeal scheme proposes retention of maintenance areas alongside all the rhyne, to allow for future management. There would be an undeveloped buffer to the SSSI.
151. Landscaping proposals would include woodland planting and grassland enhancement designed to protect the rhyne from recreational pressures arising from the new open space. Cessation of farming activity may benefit the SSSI by reducing the amount of nutrients entering the watercourses. Matters such as shading of the rhyne by new planting would be addressed at the detailed landscape design stage, which would be subject to approval under planning conditions. Potential impacts during construction would be mitigated by a CEMP and future management would be covered by a LEMP. The CEMP and LEMP could be secured by conditions. The Ecological Impact Assessment submitted with the application concluded that, with these measures in place, there would be no adverse impacts on the SSSI. This conclusion has been accepted by the Council and I see no reason to disagree.

#### *Protected species*

152. Protected species surveys were undertaken for reptiles, great crested newt and water vole. These identified a low population of grass snake and slow worm on the eastern boundary. The surveys concluded that great crested newt and water vole were unlikely to be present. Other species considered included otter, badger, and nesting birds. Mitigation measures are proposed for reptiles and nesting birds.

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<sup>43</sup> Inspector's note – the draft conditions were sent to NE who made no further comments

I consider that protected species have been properly assessed and that the identified mitigation measures could be secured by conditions.

*Landscape impact*

153. The appeal site is not subject to any landscape designations and the North Somerset Landscape Sensitivity Study assessed the area proposed for built development as being of low sensitivity. The Strawberry Line, which adjoins the western site boundary, is a popular walking and cycling route. At the Inquiry, a local resident and Councillor spoke about the value this route has for people wanting to experience nature in an accessible location that is close to Yatton. The illustrative masterplan and parameter plans show that development would take place on the eastern side of the site, where it would be more closely related to the existing built form of Yatton. The western side of the site would comprise open uses including woodland.
154. The Landscape and Visual Appraisal (LVA) submitted with the application identified a major/moderate adverse effect on the pastoral landscape of the site itself and a minor/moderate adverse effect on the landscape of the Kingston Seymour and Puxton Moors Landscape Character Area. In terms of visual effects, the LVA found that the greatest visual effect would be at Shiners Elms where there would be a moderate/major adverse effect for residents and road users. Lower levels of effect would be experienced in other nearby roads. Walkers and cyclists using the Strawberry Line would experience moderate adverse effects, reducing to moderate/minor after 10 to 15 years as new planting within the scheme matures.
155. With regards to impacts on nearby residents, I acknowledge that there would be a significant degree of change with open fields being developed for housing. However, the officer's report commented that the parameter plans and indicative material in the application provide a sound basis for future reserved matters applications. I agree. Subject to satisfactory detailed design, which could be controlled at the reserved matters stage, there is no reason to think that the proposal would result in visual impacts that would be harmful to the living conditions of neighbouring residents.
156. The appellant suggests that the creation of an improved edge to the built-up area should be regarded as a benefit. However, the existing edge is not widely visible from the Strawberry Line, with most views being filtered by intervening vegetation. To my mind the baseline situation is not harmful in visual terms. The proposal would bring built development closer to the viewer, although additional planting would increase the screening effect. Insofar as there is potential for a more coherent architectural approach, that would mainly be appreciated from within the site itself. In my view this is a factor which reduces the landscape harm rather than amounting to a freestanding benefit.
157. The conclusions of the LVA are accepted by the Council. I also accept those conclusions. Given that there would be some harm to the wider Kingston Seymour and Puxton Moors Landscape Character Area, the proposal would not accord with Policy CS5 which seeks to protect the landscape character areas within North Somerset.
158. Policy DM10 seeks to avoid unacceptable landscape impacts. It calls for appropriate landscaping and boundary treatments and the conservation and enhancement of vegetation that is characteristic of the district. Where some harm



is unavoidable, but a development is otherwise beneficial, positive mitigation measures should be secured by conditions and/or planning obligations. Having regard to the parameter plans and illustrative masterplan, together with the planning obligations relating to open space and the planning conditions, I consider that the proposal would accord with Policy DM10. Overall, I attach only limited weight to the landscape harm.

### *Highways impact*

159. There would be two vehicular accesses to the site, one from Shiners Elms and one through an adjoining development site to the south. The application was supported by a Transport Impact Assessment. Junction modelling has been carried out and the Council is satisfied that affected junctions would still be operating within capacity. Consequently, there would be no significant harmful impact on the local highway network.
160. Pedestrian and cycle connections to the Strawberry Line would be necessary to promote active travel and convenient access to Yatton Station. As set out above, the Agreement would provide for a package of transport measures, including promoting the use of public transport, supporting school transport, mitigating additional wear and tear on the Strawberry Line and traffic calming in streets close to the site.
161. I consider that the transport impacts have been properly taken into account and that the impacts of the proposal could be mitigated through the provisions of the Agreement. The proposal would accord with Policies CS10 and DM24 which together seek to allow for a choice of modes of transport, to avoid traffic congestion and to provide for safe access.

### *Primary school*

162. The fourth putative reason for refusal, which was not pursued at the Inquiry, concerned the loss of a site safeguarded for a new primary school. Part of the appeal site is safeguarded for a primary school under Policy SA8 of the Site Allocations Plan (SAP). Policy DM68 states that land and buildings in existing use, last used for, or proposed for use for a sporting, cultural or community facility are protected for that purpose unless the land is allocated for another purpose in another planning document. Under Policy DM68, alternative uses of sites protected for community use will only be permitted in specific circumstances, one of which being that the site is surplus to requirements for community uses.
163. After the appeal had been lodged, but before the Inquiry, the appellant submitted information on birth numbers in North Somerset, the child yield from recent developments in Yatton, spare capacity in existing schools in Yatton and the potential for expansion of existing schools. Having considered this information, the Council advised that it would no longer be pursuing this reason for refusal.
164. Based on that information, I consider that the appeal site is surplus to requirements for school use. Insofar as part of the site is allocated for a primary school, the proposal conflicts with Policy SA8. However, in the absence of need for a school, and the absence of evidence of need for an alternative community facility here, the proposal accords with Policy DM68. This is a neutral factor in the planning balance.

### *Planning obligations*

165. The Agreement includes planning obligations which would mitigate impacts of the proposed development on transport infrastructure and facilities, open space and biodiversity. This is in accordance with Policy DM71 which seeks to ensure that appropriate mitigation is secured through such obligations.

### *Interested parties*

166. Interested parties spoke at the Inquiry and also made written representations in response to the appeal and the application. Many of the representations related to flood risk, which has been discussed above. In the main, the other matters raised have also been covered above. Some representations referred to matters such as design and materials which would be controlled at the reserved matters stage. Some representations questioned whether 50% affordable housing would be deliverable, given the costs of land raising. However, there was no evidence on financial viability before the Inquiry. Nor had any such evidence been sought by the Council. I have determined the appeal on the basis that the Council and the appellant consider that this scheme could deliver the affordable housing provided for in the Agreement.

167. An interested party described the benefits to the mental health of Yatton residents that the Strawberry Line provides, by giving ready access to a tranquil rural environment. Whilst I acknowledge that there would be a loss of tranquillity during the construction phase, that would be temporary. The parameter plans show that there would be open space and woodland planting in those parts of the site closest to the Strawberry Line. This would restore the sense of tranquillity that currently exists.

### **Conditions**

168. The Council and the appellant submitted an agreed schedule of suggested conditions, which I have reviewed in the light of PPG. Whilst I have made some minor changes in the interests of clarity, the conditions I have imposed are in substance those suggested by the parties.

169. Condition 4 requires development to be in accordance with the plans, in the interests of clarity and certainty. Condition 5 requires the development to be in general accordance with the Design and Access Statement, in the interests of achieving good design. Conditions 6, 7 and 8 require an assessment of contamination and, if necessary, remediation measures to be carried in the interests of managing risks of pollution. Condition 9 requires the submission of a Construction Environmental Management Plan in the interests of managing impacts on highway safety and the environment during construction.

170. Condition 10 requires submission of an external light modelling assessment; Condition 11 requires implementation of ecological mitigation measures; Condition 12 requires submission of a scheme of bat mitigation and a habitat management plan for the off-site habitat; Condition 13 requires a stand off from proposed woodland areas; Condition 14 requires the ecological surveys and mitigation measures to be reviewed if the start of development is delayed; Condition 15 requires submission of a Landscape and Ecological Management Plan; and Condition 16 requires submission of a scheme of biodiversity enhancement. These

conditions are needed in the interests of biodiversity, including (in the case of Condition 12) mitigating impacts on the North Somerset and Mendips Bats SAC.

171. Condition 17 requires submission of a landscaping scheme; Condition 18 requires replacement of new planting that fails; and Condition 19 requires tree protection measures. These conditions are necessary to protect existing trees and secure new tree planting and other landscape works in the interests of good design and in the interests of protecting and enhancing biodiversity. Condition 20 requires submission of a scheme of archaeological investigation, in the interests of protecting the archaeological potential of the site. Condition 21 requires provision of vehicular access and parking for dwellings prior to occupation, in the interests of amenity and highway safety.
172. Condition 22 requires implementation of the submitted travel plan; Condition 23 requires provision of pedestrian/cycle links to the Strawberry Line; and Condition 24 requires provision of cycle parking. These conditions are needed in the interests of sustainable transport. Condition 25 requires submission of measures to incorporate micro renewable or low carbon energy technologies, in the interests of sustainable development. Condition 26 requires compliance with the nationally described space standards and Condition 27 requires details of compliance with accessible and adaptable housing standards. These conditions are necessary in the interests of securing good living conditions and inclusive design.
173. Condition 28 requires submission of details of surface water drainage, in the interests of managing risks of pollution and flooding. Condition 29 requires submission of details of finished ground and floor levels, in the interests of managing flood risk and in the interests of the character and appearance of the area. Condition 30 requires submission of a Flood Management Plan, in the interests of mitigating flood risk. Condition 31 requires submission of details of waste and recycling storage, in the interests of sustainable development. Condition 32 requires provision of a vehicular access to the southern site boundary, in the interests of securing a safe means of access in the event of flooding.

## Conclusions

### *Flood risk*

174. I have concluded that the proposal does not pass the sequential test required by paragraph 173 of the Framework. The Framework states that the exception test may have to be applied where that test is passed. PPG states that the exception test is not a tool to justify development where there are reasonably available lower risk sites.<sup>44</sup> However, it is clear that the matters set out in paragraph 178 of the Framework are important material considerations in the planning balance. Those matters are:

- whether the development would provide wider sustainability benefits to the community that outweigh the flood risk; and
- whether the development would be safe for its lifetime, taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, would reduce flood risk overall.

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<sup>44</sup> PPG – Reference ID 7-031-20220825

175. Moreover, the judgment in *Mead* makes clear that a failure to comply with the sequential test is not automatically fatal to a planning application.<sup>45</sup> Other material considerations, including housing need, may outweigh such a failure. It seems to me that, whether or not the exercise is described as an “*exceptions test*,” the matters set out in paragraph 178 need to be taken into account.

The weight to be attached to the failure of the sequential test

176. In assessing how much weight should be attached to the failure to pass the sequential test, I consider that the following factors are pertinent.

177. First, the Framework states that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. It goes on to say that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. PPG states that, initially, the presence of flood defences should be ignored. This is because long term maintenance and renewal is uncertain and because of the effect of climate change.<sup>46</sup> The starting point for this exercise is that the Framework and the PPG place a high priority on avoiding flood risks altogether by steering development elsewhere. Recent changes to the Framework have not altered that starting point.

178. Second, the evidence before the Inquiry indicates that it will be necessary to allocate some sites that are at risk of flooding to meet the housing needs of the district. As described above, the emerging local plan has been paused pending a fresh round of consultation on additional housing sites which are needed in response to an increased housing requirement. No weight can yet be placed on the emerging local plan as a statement of policy. However, the evidence base is a material consideration. The Council’s *Flood Risk Sequential Test of proposals within the Pre-submission Local Plan* identifies 18 proposed housing allocations which are either at risk of tidal flooding now or will be in the future.<sup>47</sup>

179. All of the sites are in the main towns of Weston, Clevedon and Portishead, which is consistent with the spatial strategy. Of course, the sites may not all be confirmed in the final plan and no doubt many further sites will come forward. It is not for me to pre-empt the local plan process. That said, it seems likely that the current work on the emerging plan will focus on finding new sites rather than dropping sites that have already been identified as proposed allocations. The relevance of this point to the appeal is that it shows a clear likelihood that meeting the housing needs of North Somerset over the plan period will require the allocation of a number of sites that are at risk of tidal flooding.

180. I do not suggest that the appeal site is directly comparable with the 18 proposed allocations because Yatton is not one of the main towns. However, in this context, it is important to note that Yatton has a range of shops and services, community facilities, pre-school and primary education provision and local employment opportunities. The Strawberry Line provides a pedestrian route to Yatton train station where there are services to Weston and Bristol, amongst other destinations. The Council and the appellant agree that the site is a suitable and

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<sup>45</sup> Paragraphs 173, 174 and 178 of the judgment (CD J1)

<sup>46</sup> PPG – Reference ID 7-024-20220825

<sup>47</sup> Table 2 in CD G3 – Proposed sites with large parts, or entirely, subject to flood risk

sustainable location in terms of accessibility. In my view these considerations reduce the weight to be attached to the failure of the sequential test.

181. Third, I have concluded that the proposed dwellings would not be at risk of flooding in the design flood event and that there would be a safe means of access.
182. Fourth, I have concluded that the proposal would not increase flood risk on adjoining land.
183. Fifth, there are residual risks to take into account. The potential risks associated with overtopping or a breach of the flood defences could be mitigated (although not totally eliminated) by the proposed FMP. The risk of climate change having an impact greater than the Higher Central CCA could be mitigated (although not totally eliminated) by the proposed freeboard. Moreover, in relation to the residual risks, I consider that the site location is a key factor. It is at the edge of an extensive zone of potential tidal flooding, at some distance from the coast. The modelling shows that flood waters would take 42 hours from the first high tide to reach the site. This is not a site that is at risk of sudden inundation. To my mind this factor significantly reduces the risks to people.
184. Drawing all this together, my overall assessment is that significant weight should be attached to the failure of the sequential test, together with the residual risks I have identified.

#### Consideration of wider sustainability benefits

185. The proposal would bring the following wider sustainability benefits, which have been described in more detail above:
- delivery of market housing, to which I attach substantial weight;
  - delivery of affordable housing, to which I attach substantial weight;
  - economic benefits, to which I attach moderate weight;
  - biodiversity enhancements, to which I attach moderate weight; and
  - open space, to which I attach moderate weight.
186. Taken together, I consider that the wider sustainability benefits outweigh the flood risk.

#### Flood risk – policy conclusions

187. The Framework states that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. As I have found that there are such sites, the proposal does not accord with the Framework in this regard. Nevertheless, I have found that the wider sustainability benefits outweigh the flood risk. For this reason, I conclude that the policies of the Framework relating to areas at risk of flooding do not provide a strong reason for refusing the development proposed.
188. Policy DM1 states that exceptions to national policy on flood risk will not be permitted. The proposal is therefore in conflict with this policy. I have concluded above that the proposal is also in conflict with Policy CS3.

### Conclusions on the development plan

189. For the reasons given above, I consider that the proposal conflicts with the following policies of the development plan:

- CS3 - flood risk;
- CS5 - landscape;
- CS14 - spatial strategy;
- CS32 - service villages;
- DM1 - flood risk; and
- SA8 - site allocation for primary school.

190. For the reasons given above, I consider that the proposal accords with the following policies of the development plan:

- CS9 – green infrastructure;
- CS10 – transport;
- CS16 – affordable housing;
- DM10 – landscape;
- DM19 – green infrastructure;
- DM24 – transport;
- DM68 – community facilities; and
- DM71 - developer contributions.

191. Due to the conflict with the spatial strategy and policies relating to flood risk, I consider that the proposal is contrary to the development plan as a whole, notwithstanding that the scheme accords with a number of other policies. It is therefore necessary to consider whether there are other considerations that indicate a decision other than in accordance with the development plan.

### Other considerations

192. The Framework is a material consideration. The approach to decision making set out in paragraph 11(d) is engaged due to the housing land supply position. With regard to footnote 7, that approach is not disengaged by flood risk considerations because flood risk does not provide a strong reason for refusing the development.

193. The most important policies for determining the application, which are those I have identified above, are therefore deemed to be out-of-date and planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole (having particular regard to the matters set out in paragraph 11(d)(ii) ).

194. The adverse effects are:

- failure of the flood risk sequential test, together with the associated residual risks of flooding (after mitigation), to which I attach significant weight;
- conflict with the spatial strategy of the development plan, to which I attach limited weight; and
- landscape impact, to which I attach limited weight.

195. The benefits are the same as the wider sustainability benefits set out above in my conclusions on flood risk. I attach the same weightings to those benefits.

I conclude that the adverse effects do not significantly and demonstrably outweigh the benefits. The Framework therefore indicates that permission should be granted. This is a factor which outweighs the conflict with the development plan that I have identified.

196. My overall conclusion is that the appeal should be allowed.

*David Prentis*

Inspector

## APPEARANCES

FOR THE APPELLANT	
Charles Banner KC	Instructed by Stantec
Kathryn Ventham BSc(Hons) MSc MRTPI	Stantec
Nicholas Paterson- Nield BA(Hons) MPhil MRTPI	Stantec
Simon Mirams CWEM CSci MCIWEM BSc(Hons)	Rappor
David Parker MSc BA(Hons) DMS FCIH	Pioneer
Nigel Jones BSc FRICS ACIARB	Chester
FOR THE COUNCIL	
Timothy Leader, Counsel	Instructed by Roger Wilmott, Head of Strategic Development, North Somerset Council
Natalie Richards	Planning Policy Team Lead, North Somerset Council
Marcus Hewlett BA(Hons)	Planning Policy Team, North Somerset Council
Max Smith MSc(Hons) MRTPI	Principal Planning Officer, North Somerset Council
Jonathan Cage	Create Consulting Engineers Limited
FOR THE ENVIRONMENT AGENCY	
Ellie Challans BA(Hons)	Planning Specialist, Environment Agency



INTERESTED PARTIES	
Cllr Steve Bridger	Ward Councillor, North Somerset Council
Richard Croucher	Local resident
Juley Howard	Local resident
Michael Hadfield	Local resident
Andy Warren	Local resident
Sarah Reakes	Local resident
Martyn Gardiner	Local resident
Cllr Wendy Griggs	Ward Councillor, North Somerset Council
Cllr Steve Humphrey	Chairman of Planning Committee, Yatton Parish Council
Dr Cooke	Local resident
Alex Pope	Local resident
Julian Stokes	Local resident

**DOCUMENTS SUBMITTED AT THE INQUIRY**

ID1	Appearances for the appellant
ID2	Opening statement for the appellant
ID3	Opening statement for the Council
ID4	Cllr Bridger - photographs
ID5	Cllr Bridger – statement
ID6	Richard Croucher – statement and bundle of documents
ID7	Juley Howard – statement and maps
ID8	Michael Hadfield – statement
ID9	Andy Warren - statement
ID10	Sarah Reakes – statement
ID11	Martyn Gardiner – statement
ID12	Cllr Griggs – statement
ID13	Draft S106 dated 24 September 2024
ID14	Planning Statement of Common Ground
ID15	Natural England Letter dated 24 September 2024
ID16	Email exchange between appellant and the Council’s affordable housing team
ID17	Council Press Release on Local Plan
ID18	Email dated 26 September 2024 relating to FOI request
ID19	Mr Leader’s list of flood risk documents
ID20	Appeal decision APP/D1265/W/23/3323727 – Marnhull, Dorset
ID21	Maps of Yatton and Weston
ID22	Environment Agency Position Statement
ID23	Richard Croucher - plans
ID24	Planning Inspectorate letter to EA dated 30 September 2024
ID25	Draft S106 dated 30 September 2024
ID26	Clarke Willmott note on S106
ID27	Updated schedule of conditions
ID28	The Council’s bundle of flood risk documentation
ID29	Map and schedule of Weston Villages sites referred to in housing land supply round table session
ID30	Plan from the Council showing water flow routes and directions
ID31	Appeal decision APP/D0121/W/23/3331866 – 62 Beach Road, Weston-super-Mare
ID32	The Council’s Information Governance Team response to appellant’s FOI request
ID33	Inspector's adjournment note dated 3 October 2024
ID34	Clarke Willmott note on S106 dated 11 October 2024
ID35	Council’s note on S106 cascade provisions dated 14 October 2024
ID36	Final draft S106 including plans dated 29 October 2024
ID37	Shoreline Management Plan
ID38	The Council’s note on land ownership and control
ID39	Addendum to Statement of Common Ground (description of development)
ID40	Application for partial award of costs by the appellant (Application A)
ID41	Appeal decision APP/D0121/W/24/3344142 – Mulberry Road, Congressbury
ID42	The Council’s CIL Compliance Statement

ID43	The appellant's response to the Council's note on land ownership and control
ID44	Inspector's adjournment note No 2 dated 25 November 2024
ID45	EDP Note on BNG and Public Open Space
ID46	EDP Note on Biddle Street SSSI
ID47	Max Smith email of 6 December 2024 (ownership and control)
ID48	Clarke Willmott Note on Access Rights (southern access)
ID49	GDPO Schedule 2, Part 13, Class D
ID50	The Council's response to the appellants application for a partial award of costs (Application A)
ID51	Mr Cage's Note relating to the Brookbanks FRA
ID52	Rappor Note responding to ID51
ID53	Inspector's Ruling of 8 January 2025
ID54	Agreed Note on BNG and additionality
ID55	Section 106 Agreement dated 20 December 2024
ID56	Updated schedule of suggested conditions as of 8 January 2025
ID57	OS Map extract and population data for Kingston Seymour submitted by the Council
ID58	Rappor response to Create Consulting Engineers Note (Point 1) January 2025
ID59	Create response to Rappor (ID58) 20 January 2025
ID60	Planning Inspectorate letter to the Environment Agency dated 23 January 2025
ID61	Environment Agency response to Planning Inspectorate dated 24 January 2025
ID62	Rappor response to 2nd Create Note (Point 1) January 2025
ID63	Appellant's reply to the Council's response to costs Application A and further application for a partial award of costs (Application B) dated 6 February 2025
ID64	Mead Realisations Ltd v SoS HCLG [2025] EWCA Civ 32
ID65	Closing submissions for the Council dated 6 February 2025
ID66	The Council's application for an award of costs (Application C) dated 6 February 2025
ID67	Closing submissions for the appellant dated 7 February 2025
ID68	The Council's response to costs Application B dated 13 February 2025
ID69	Email from the appellant confirming no further comments on the Council's response to Application B dated 20 February 2025
ID70	Appellant's response to Application C and a further application for costs in relation to the alleged unreasonable making of that application (Application D) dated 20 February 2025
ID71	Costs decision APP/V0510/W/21/3282449 - Land to the North East of Broad Piece, Soham
ID72	Email from the Council confirming that it has no further comments to make dated 7 March 2025.

## CONDITIONS

1. Approval of the details of the access (other than from Shiners Elms), layout, scale and appearance of the buildings 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. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiry of three years from the date of this permission.
3. The development hereby permitted shall be begun before the expiration of five years from the date of this permission or before two years from the date of approval of the last 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 (showing Bat Mitigation area) edp7842\_d008b
  - Land Use Parameter ddp7842\_d0004c
  - Height and Scale Parameter edp7842\_d006c
  - Access and Movement Parameter edp7842\_d007b
  - Character Areas Plan edp7842\_d009c
  - Constraints and Opportunities Plan edp7842\_d010a
  - Red Line Plan edp7842\_d021
  - Proposed Site Access General Arrangement Design 23257-HYD-XX-XX-DR-TP-0201 P02
  - Arboricultural Impact Assessment (AIA) Plan D35 39 P3.2
5. The development hereby permitted shall be delivered in general accordance with the principles as set out in the Design and Access Statement.
6. No development shall take place until an assessment of the nature and extent of contamination on 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 shall include:
  - (i) a survey of the extent, scale and nature of contamination;
  - (ii) an assessment of the potential risks to:
    - a) human health,
    - b) property (existing or proposed) including buildings, crops, livestock, and pets,
    - c) woodland and service lines and pipes,
    - d) adjoining land,
    - e) groundwaters and surface waters,
    - f) ecological systems, and
    - g) archaeological sites and ancient monuments.

7. Unless the Local Planning Authority confirms in writing that a remediation scheme is not required, no 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 historic 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 remediation options, 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.
8. The remediation scheme, if required, shall be implemented in accordance with the approved timetable of works. Within 3 months of the completion of measures identified in the approved remediation scheme, a validation report (that demonstrates the effectiveness of the remediation carried out) shall be submitted to and approved in writing by the Local Planning Authority.
9. No development shall take place, including any vegetation clearance, ground works or demolition, until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include the following:
  - a) the parking and turning of vehicles of site operatives and visitors;
  - b) loading and unloading of plant and materials;
  - c) details of HGV movements throughout the day and vehicle routing information;
  - d) storage of plant and materials used in constructing the development;
  - e) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - f) details of measures to prevent mud and other such material migrating onto the highway from construction vehicles;
  - g) measures to control the emission of dust and dirt during construction, including those measures set out in Appendix E of the Air Quality Assessment (Hydrock, March 2023);
  - h) a scheme for waste minimisation and recycling/disposing of waste resulting from the construction works;
  - i) design of construction access;
  - j) hours of construction work;
  - k) measures to control overspill of light from security lighting;
  - l) communication to the local Parish and neighbouring properties of the works being undertaken which shall include a nominated Developer/Resident Liaison Representative with an address and contact telephone number, with 24 hour response phone line, to be circulated to those residents consulted on the application by the developer's representatives. This person will act as first point of contact for residents who have any problems or questions related to the ongoing development;

- m) identification of risks with potentially damaging construction activities;
- n) identification of biodiversity protection zones and buffer zones;
- o) practical measures to avoid or reduce impacts during construction to identified protected species or habitats associated with the site (may be provided as a set of method statements);
- p) the location and timing of sensitive works to avoid harm to biodiversity features;
- q) the times during construction when specialist ecologists need to be present on site to oversee works;
- r) responsible persons, lines of communication and written notifications of operations to the Local Planning Authority;
- s) use of protective fences, exclusion barriers and warning signs; and
- t) the role and responsibilities on site of an Ecological Clerk of Works.

The approved CEMP shall be adhered to throughout the construction period.

10. The reserved matters submission shall include a light modelling assessment detailing the combined effects of internal and external light spill. No lighting shall be installed until details including:

- a) the type and location of the proposed lighting;
- b) existing lux levels affecting the site; and
- c) the proposed lux levels including lighting contour plans demonstrating that all proposed bat habitat will be subject to light spill at or below 0.5 lux

have been submitted to and approved in writing by the Local Planning Authority. Any external lighting shall be installed and operated in accordance with the approved details.

11. Prior to the occupation of the development hereby permitted, a report certifying that the mitigation and compensation measures identified in the Ecological Impact Assessment report dated March 2023 by Clarkson and Woods have been complied with shall be submitted to and approved in writing by the Local Planning Authority. The report shall be prepared by the Ecological Clerk of Works, shall include the results of site supervision and any remedial works undertaken and shall specify any further remedial works required. The specified further remedial works shall be carried out under the strict supervision of a professional ecologist in accordance with the timetable specified in the report.
12. No development shall take place until a final scheme for bat mitigation, in accordance with the Shadow Habitats Regulations Assessment (dated February 2024), including a timetable for its implementation which is informed by the results of the Bat Surveys, and an accompanying habitat management plan (HMP) for the off-site habitat, which avoids adverse effects from the development on the integrity of the North Somerset and Mendips Bats Special Area of Conservation, has been submitted to and approved in writing by the Local Planning Authority. The HMP for the off-site habitat shall include a procedure for seeking to secure grazing of the off-site habitat within a timescale that shall be included in the HMP. The off-site habitat shall only be managed by

a cutting regime if it is not possible to secure grazing having followed the procedure included in the HMP. The approved bat mitigation scheme and HMP shall be carried out as approved and in accordance with the approved timetable for implementation.

13. The landscape plans to be submitted with the reserved matters shall include details of a 5m stand off from the proposed woodland area.
  
14. If the development hereby approved does not commence (or, having commenced, is suspended for more than 12 months) within 2 years from the date of the planning consent, the approved ecological measures secured shall be reviewed and, where necessary, amended and updated. The review shall be informed by further ecological surveys commissioned to:
  - a) establish if there have been any changes in habitats or the presence and/or abundance of protected species and
  - b) identify any likely new ecological impacts that might arise from any changes.

The development shall not commence (or resume) until a report of the review has been submitted to and approved in writing by the Local Planning Authority.

Where the survey results indicate changes that will result in ecological impacts not previously addressed in the approved scheme, a new or amended mitigation strategy shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement (or resumption) of development. Development shall then be carried out in accordance with the new or amended ecological mitigation strategy as so approved.

15. Prior to the occupation of the development hereby permitted a Landscape and Ecological Management Plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority. The LEMP shall include the following:
  - a) a description and evaluation of features to be managed;
  - b) ecological considerations that might influence management;
  - c) aims and objectives of management with appropriate management options for achieving them;
  - d) preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
  - e) details of the body or organization responsible for implementation of the plan; and
  - f) on-going monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanisms by which the long-term implementation will be secured by the developer with the

management body responsible for its delivery. Should monitoring results show that aims and objectives are not being met, the plan shall also set out how contingencies and/or remedial action will be identified, agreed and implemented so that the development delivers the biodiversity objectives of the approved scheme. Development shall be carried out in accordance with the approved LEMP which shall thereafter be adhered to throughout the lifetime of the development.

16. Prior to the commencement of development, a scheme to enhance the biodiversity value of the proposed development shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include provision for nesting birds, roosting bats, native species planting and brash piles for reptiles and amphibians. Development shall be carried out in accordance with the approved scheme and shall thereafter be permanently retained as such.
  
17. 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; the location, equipment, and boundary fencing of play areas; 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 together with an implementation programme. 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 implementation programme.
  
18. 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 Local Planning Authority may reasonably specify.
  
19. No development, including site preparation or site clearance, shall commence until an Arboricultural Method Statement Report with Tree Survey and Tree Protection Plan showing the location and design of tree and hedge protection fencing has been submitted to and approved in writing by the Local Planning Authority and the agreed tree and hedge protection has been erected as approved. 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 shall 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.

20. No development shall commence, except archaeological investigation work, until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a Written Scheme of Investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority. The programme of archaeological work shall provide a controlled excavation of all significant deposits and features which are to be disturbed by the proposed development and shall be carried out and completed in accordance with the approved WSI. Thereafter the building work shall incorporate any building techniques and measures necessary to mitigate the loss or destruction of any further archaeological remains.
  
21. No building shall be occupied until the access serving the building has been completed and the relevant number of vehicular parking spaces, including electric charging point, for that building has been provided in accordance with the plans approved pursuant to condition 1.
  
22. No part of the development shall be occupied prior to implementation of those parts of the approved Travel Plan reference 23257-HYD-XX-XX-RP-TP-6001 dated 19/05/2023 as are capable of being implemented prior to occupation. Those parts of the approved Travel Plan that are identified therein as being capable of implementation after occupation shall be implemented in accordance with the timetable contained therein including the arrangements for monitoring and review.

23. The details to be submitted under condition 1 shall include two pedestrian/cycle routes connecting Yatton to the Strawberry Line across the site. The pedestrian/cycle routes shall be completed in accordance with the approved details and shall thereafter be retained as such.
  
24. No dwelling shall be occupied until secure parking facilities for bicycles have been provided for it in accordance with the plans approved pursuant to condition 1. The approved facilities shall thereafter be permanently retained and kept available for the parking of bicycles at all times.
  
25. The dwellings hereby approved shall not be occupied until measures to generate 15% of the ongoing energy requirements of the development through micro renewable or low carbon technologies have been installed and are fully operational. Thereafter, the approved technologies shall be permanently retained as such.
  
26. All dwellings shall comply with the DCLG 'Technical housing standards 2015 (as amended) - nationally described space standards'.
  
27. 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. No above ground work shall take place until the location of these dwellings together with details of how they will comply with the said standards has been submitted to and approved in writing by the Local Planning Authority. The approved details shall be fully implemented before these dwellings are occupied.
  
28. No above ground work 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. The submitted details shall 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 in accordance with the drainage strategy prepared by Hydrock now Stantec dated 3 September 2024 (Document

Reference: 23257-HYD-XX-XX-RP-DS-5002-P07). The details shall include a timetable for implementation.

29. The details to be submitted under condition 1 shall include the current and proposed finished ground levels (6.43m AOD) and Finished Floor Levels (6.88m AOD), in accordance with the drainage strategy prepared by Hydrock now Stantec dated 3 September 2024 (Document Reference: 23257-HYD-XX-XX-RP-DS-5002-P07) across the site together with the slab, floor and ridge levels (in accordance with the approved height and scale parameter plan) of the proposed dwellings in relation to the ridge height of at least two adjoining buildings and/or fixed datum points. The development shall be carried out in accordance with the approved details.
  
30. Prior to the first occupation of the development, a Flood Management Plan shall be submitted to and approved in writing by the Local Planning Authority. This shall include an evacuation plan, flood resilience measures and measures, including signage, to manage any impacts of flooding on the access from Shiners Elms. Thereafter, the development shall be carried out in accordance with the approved Flood Management Plan.
  
31. The details to be submitted under condition 1 shall include facilities for the separate storage and collection of waste and recycling materials. No dwelling shall be occupied until the facilities relating to that dwelling have been provided as approved. Thereafter, the facilities shall be permanently retained as such and kept available for the storage and collection of waste and recycling materials.
  
32. Prior to the occupation of the 150th dwelling, a vehicular access to the southern boundary of the site linking with Chescombe Road shall be constructed and open for use in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority.

*End of schedule*