



## Appeal Decision

Inquiry held on 18 – 20 and 25 April 2023

Site visit made on 19 April 2023

**by Andrew McGlone BSc MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 24<sup>th</sup> May 2023**

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### **Appeal Ref: APP/Y3940/W/22/3312268**

#### **Land off Coate Road, Devizes SN10 3LU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Robert Hitchins Limited against the decision of Wiltshire Council.
  - The application Ref PL/2021/04774, dated 28 April 2021, was refused by notice dated 4 November 2022.
  - The development proposed is residential development (up to 200 dwellings), a local centre of 0.3ha (0.75 acres) (comprising commercial business and service uses (Use Class E), drinking establishment and hot food takeaway (Sui Generis) with a GIA limit of 1,000 sqm of which no more than 725 sqm (GIA) shall be used for retail (Class E(a)). No single retail (Class E(a)) unit shall comprise of more than 325 sqm (GIA)). Associated works, infrastructure, ancillary facilities, open space and landscaping. Vehicular access from Windsor Drive with the western end of Coate Road re-aligned to form the minor arm of a junction with the site access road.
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#### **Decision**

1. The appeal is allowed and outline planning permission is granted for residential development (up to 200 dwellings), a local centre of 0.3ha (0.75 acres) (comprising commercial business and service uses (Use Class E), drinking establishment and hot food takeaway (Sui Generis) with a GIA limit of 1,000 sqm of which no more than 725 sqm (GIA) shall be used for retail (Class E(a)). No single retail (Class E(a)) unit shall comprise of more than 325 sqm (GIA)). Associated works, infrastructure, ancillary facilities, open space and landscaping. Vehicular access from Windsor Drive with the western end of Coate Road re-aligned to form the minor arm of a junction with the site access road at land off Coate Road, Devizes, Wiltshire SN10 3LU in accordance with the terms of the application, Ref PL/2021/04774, dated 28 April 2021, subject to the conditions in the attached schedule.

#### **Preliminary Matters**

2. The application submitted is in outline form with all matters reserved for future consideration, so whilst an illustrative masterplan has been submitted, I have considered this as a potential way that the appeal site could be developed for the development proposed.
3. A signed and complete s106 planning agreement (s106 agreement) was submitted by the appellant shortly after the Inquiry closed. The main parties agree that the s106 agreement addresses reason for refusal 3. I will consider the planning obligations and the s106 agreement later in my decision.
4. After the Inquiry closed, I accepted two appeal decisions for sites in Wiltshire that had been issued subsequently. I did not invite comments from either party in the interests of fairness. I have had regard to the decisions where necessary.

## Background

5. A scheme for 350 dwellings was considered at appeal in 2016<sup>1</sup> (the 2016 decision). This scheme included the appeal site but also land to the south of Coate Road. The Secretary of State (SoS) agreed with the conclusions and recommendation of the Inspector and dismissed the appeal and refused planning permission. The Statement of Common Ground<sup>2</sup> sets out the headline points from the SoS's decision letter.
6. The proposal before me is for a lower amount of development and on a site less than half the size of the site relating to the 2016 decision and confined to land to the north of Coate Road. The appeal site is also further away from the North Wessex Downs Area of Outstanding Natural Beauty (AONB).
7. Development plan policies have not changed since 2016, but the North Wessex Downs Area of Outstanding Natural Beauty Management Plan 2019-2024 (Management Plan) and the North Wessex Downs AONB Position Statement on Setting (Position Statement) have both been published. Paragraph 176 of the National Planning Policy Framework (the Framework) also says that development within the setting of AONB's should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas. However, Sections 82(1) and 85(1) of the Countryside and Rights of Way Act 2000 (as amended) (CROW Act) have not changed.
8. The SoS did not raise concern with regards to the harm to the setting of the AONB<sup>3</sup> and it was held that the development would be visually intrusive to no more than a localised degree. I note these points, and whilst the 2016 decision is a relevant consideration, I am not bound by its findings. I have determined the proposal on its own merits based on the evidence before me.

## Main Issues

9. Due to the evidence given at the Inquiry, the main issues are: a) whether the proposed development accords with the spatial strategy of the development plan; b) the effect of the proposed development on the character and appearance of the area, including the countryside; and c) whether the proposal would make adequate provision for affordable housing, open space/play area, education, waste and recycling, sport and leisure and highway works and highway and access improvements.

## Reasons

### *Spatial strategy for development*

10. The appeal site is located outside of the defined limits of development for the Market Town of Devizes set by the Wiltshire Core Strategy (CS) and the Devizes Area Neighbourhood Plan (NP). As such, the site lies within the countryside. Devizes is in the second tier of the Settlement Strategy found in CS Core Policy 1. This policy also sets the scale of development that is appropriate at different levels of the settlement hierarchy.
11. Market Towns are settlements that have the ability to support sustainable patterns of living through their current levels of facilities, services and employment opportunities and development will sustain and promote better levels of self-containment and viable sustainable communities.

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<sup>1</sup> Core Document E2

<sup>2</sup> Statement of Common Ground, Paragraph 6.4

<sup>3</sup> Landscape SoCG, Paragraph 2.12

12. CS Core Policy 2 sets out how the Settlement Strategy is to be delivered in line with the defined limits of development. The policy states that at least 42,000 new homes will be required, with a minimum housing requirement disaggregated into three Housing Market Areas (HMAs). These indicative requirements were established to ensure an appropriate distribution of housing across Wiltshire. The appeal site lies within the East Wiltshire HMA (EHMA) with a requirement of 5,940 dwellings.
13. Development in the Devizes Community Area should accord with the Settlement Strategy in CS Core Policy 1 according to CS Core Policy 12. The latter sets out that approximately 2,010 new homes should occur in Devizes over the plan period (2006 to 2026). The NP reinforces this approach and the quantum of development in the Devizes Area. NP Policy H1 states that the area within the boundary will provide sufficient land capacity to accommodate the housing growth projected for the plan period, and enable development to take place in a coherent manner, maintaining the structure and form of the existing settlement geography.
14. As the proposal will be outside the limits of development, and none of the exceptions set out in CS Core Policy 2 apply, the appeal scheme conflicts with CS Core Policy 2 and NP Policy H1. There is also resultant conflict with CS Core Policies 1 and 12 as these policies should be read together, not in isolation, given that they jointly set the spatial strategy for how sustainable communities and sustainable patterns of living will be achieved in Wiltshire, namely the delivery of new homes and employment. This is explained in paragraphs 4.13 to 4.17 and 4.19 of the CS. The 2016 decision also took this approach in finding conflict with all those policies.
15. However, the CS policies are now more than five years old, and they will not be reviewed until around the end of the plan period through the Wiltshire Local Plan Review Development Plan Document (DPD). The DPD will provide strategic context for development up to at least 2038 and determine the level and direction of future growth. The Council intends to submit the DPD for examination in quarter 2 in 2024 with adoption by the end of 2024. There is not yet any document to give any weight to and the timeline for the DPD is overly optimistic; a point recognised in cross examination by the Council's witness. The anticipated timeframe would be very quick given the size of the plan, the likely upward additional need for new homes in Wiltshire and bearing in mind the time it took for the CS to be examined and then adopted.
16. The CS was found to be sound based on a housing requirement figure below the objectively assessed need figure of around 44,000 homes over the plan period. This was because housing need was to be reassessed and met through an early review of the CS. This review has not taken place.
17. The shortfall of between 701 and 1,407 homes against the minimum housing requirement over the plan period for Wiltshire needs to be looked at through the lens of it being a minimum figure and that being at least the number of new homes that the CS would need to deliver over the plan period.
18. So, whilst the Council says that homes have been built in the plan period just over the EHMA's minimum housing requirement and that just over a five-year supply can be demonstrated (5.29 years +66 homes), the housing requirement in CS Core Policy 2 is a minimum not a maximum. The appellant's view about there being a shortfall against that minimum requirement and a supply below five years only supports a need for houses in the EHMA if correct.

19. In Devizes, the parties agree that 2,097 homes will be built, 87 homes or 4.3% above the indicative housing requirement in CS Core Policy 12.
20. Given this context, for decision making purposes in the meantime, the main parties agree that the Council is not currently able to demonstrate a deliverable five-year housing land supply in accordance with Framework paragraph 74. This is against Wiltshire's minimum local housing need. A range on the extent of the supply has been agreed. The appellant claims a 4.37 year supply (a shortfall of 1,326 homes) and the Council asserts a 4.70 year supply (a shortfall of 618 homes).
21. To restore the Council's five-year housing land supply and the minimum housing requirement over the plan period, given that the development plan policies will not be able to do so alone, the Council has produced briefing notes<sup>4</sup>. These confirm that it will positively consider speculative applications where there are no major policy obstacles material to the decision other than a site being outside settlement boundaries or unallocated. Hence, a site being outside of the settlement boundaries is not a bar to development.
22. Taking this approach, the proposal would be next to the defined limit of development for Devizes. Developing the site would extend the built envelope of Devizes beyond the Kennet and Avon canal (the canal) and Windsor Drive, which provide physical boundaries to the settlement. However, the proposal would not give rise to issues of self-containment, and over the passage of time, development on the appeal site would be seen and recognised as being part of Devizes. Notably, the Council's witnesses accepted through cross examination that they had no in principle objection to the development of the site, it was a question of whether the proposal is the right development for the site.
23. Notwithstanding the briefing notes, the Council does not have a plan-led approach to addressing the housing shortfalls which have been below the minimum level of supply since April 2018. This will not change until the DPD is adopted, which, on the Council's case will continue for another 19 months.
24. Whilst there is considerable benefit in maintaining a plan-led system, and the objectives of the CS reconcile with the sustainable development objectives of the Framework, there are considerations in this case relating to the Council's ability to deliver its strategy and the required new homes. So, although I conclude that the proposed development would not accord with the spatial strategy of the development plan in respect of CS Core Policies 1, 2 and 12 and NP Policy H1, these policies are deemed to be out-of-date due to the housing land supply position and carry limited weight. The material harm arising from that conflict would be minor. These policies jointly seek, among other things, to deliver sustainable communities and sustainable patterns of living in Wiltshire.

#### *Character and appearance*

##### *The context*

25. The site comprises two fields laid to pasture bound by native hedgerows and trees. The ground is fairly level, though there is a raised bank along the site's northern boundary with the canal, a non-designated heritage asset and County Wildlife Site. Trees and hedgerows line this bank along with overhead power lines, though there are gaps, a common theme in the other site boundaries.
26. The residential development of the former Le Marchant Barracks is to the north

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<sup>4</sup> CD F2 and F3

of the canal. Development continues along the northern side of the canal towards Withers Ground beyond Devizes Marina. Coate Road forms the site's southern boundary. It connects to Windsor Drive and Coate Road bridge. Residential development is to the west of Windsor Drive. Farmland is to the south and east of the appeal site.

27. The appeal site does not contain any rare or unusual landscape features and is ordinary and unremarkable agricultural land. However, it is in a sensitive location on the edge of Devizes, next to the canal and within the setting of the AONB, despite the AONB being some 125 metres away at its closest point. The Position Statement explains that the surroundings of the AONB and the AONB itself add value to each other as the landscape and landforms link visually and functionally, joining the surroundings to the AONB.
28. The AONB extends across Wiltshire, West Berkshire, parts of Hampshire and the southern extents of Swindon and Oxfordshire. The purpose of the AONB designation is to conserve and enhance the natural beauty of the area<sup>5</sup>. I have a duty to have regard to this purpose in exercising or performing any functions in relation to, or so as to affect land in the AONB.
29. The closest part of the AONB is to the north and east of Devizes and it comprises the high chalk upland of the Salisbury Plain and the low-lying Vale of Pewsey. It is the latter Landscape Character Type that the appeal site lies within. This extends into the AONB, and it is recognised as an icon of the AONB<sup>6</sup>. The special qualities of the AONB are set out in the Management Plan<sup>7</sup>.
30. The Vale of Pewsey forms a broad, low-lying area of landscape between two main chalk upland blocks of the Marlborough Downs and Salisbury Plain. These chalk scarps contain and enclose this Greensand vale. Intensive agriculture dominates, and the area is characterised by a mixed pattern of farmland, woodland and hedgerows. The appeal site is characterised by a vale floor pasture and enclosed farmland of weak structure. There is a weak hedgerow structure with a few hedgerow trees and boundaries replaced by fencing.
31. The canal is a historic linear feature that extends through Devizes, past the site and into the AONB. The canal joins the Rivers Avon and Kennet. The canal is a key characteristic of the Vale of Pewsey and it is green-blue infrastructure that provides off-road, active travel routes from the site to the centre of Devizes and to the open countryside for recreational purposes. The canal lies below ground levels on the appeal site, though the difference varies. User experience of the towpaths on one or both sides of the canal is typically of a landscaped waterway which affords a quiet space to enjoy. However, next to and near to the appeal site, users are not far away from residential development, and activities associated with that use.
32. The appeal site is visible from several locations in the surrounding landscape, but vegetation on field boundaries screens views. When the site is visible, it is generally viewed in conjunction with the established settlement of Devizes. Nonetheless, the landscape character of the site is complimentary to the AONB, and it sits between the urban area of Devizes and the AONB, and essentially forms an outlier before crossing the AONB boundary.
33. The appellant's Landscape and Visual Impact Assessment considers that the appeal site and its immediate surroundings outside of the AONB are of a

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<sup>5</sup> Section 82(1) of the Countryside and Rights of Way Act 2000 (as amended)

<sup>6</sup> North Wessex Downs Area of Outstanding Natural Beauty Management Plan 2019-2024, Page 9

<sup>7</sup> Landscape Statement of Common Ground, Paragraph 2.9



district/medium value. The Council disagree and suggest a medium/high landscape value would be suitable. Regardless, the site and its immediate surroundings are not a nationally valued landscape. However, that does not mean that it has no value, but given the evidence before me and my own observations on site, I prefer the appellant's judgement on landscape value.

CS Core Policy 51

34. It is a matter of common ground<sup>8</sup> that this policy is a 'nil detriment' policy that requires development to protect, conserve and, where possible, enhance landscape character. I agree. Therefore, if the appeal scheme causes any harm, the proposal would conflict with CS Core Policy 51. Although the policy goes on to say that any negative impacts must be mitigated as far as possible through sensitive design and landscape measures, that does not avoid the policy conflict as it requires there to be no harm at all.
35. This policy approach places an absolute on development not having a harmful impact upon landscape character. This is inconsistent with the Framework which seeks development to be sensitively located and designed to avoid or minimise adverse impacts on designated areas. Added to this, the Framework does not automatically prohibit development in the countryside, the setting of an AONB or on greenfield sites. Furthermore, the purpose set out in Section 85(1) of the CROW Act does not contain an absolute against development, unlike CS Core Policy 51. Lastly, the Council's briefing notes, which accept development will be needed on unallocated greenfield sites, is at odds with a nil detriment policy.

The proposal's effect

36. Although the Council does not object to development on the site as a matter of principle, the built form of Devizes would be extended into an undeveloped site in the countryside beyond the limit of development. It would be a permanent change that would harm the character and appearance of the countryside.
37. Building on the site with the scale of development proposed would harm the character of the site, its contribution to the Vale of Pewsey, and the setting of the AONB. However, the effect of this change would be localised given the site's containment by two existing roads, the canal and landscaped boundaries. In many respects, developing the site could reflect the existing sudden change from built form within the limits of development to the countryside outside it in the vicinity of the appeal site.
38. I saw the housing development to the north-east of the site which has come forward within the setting of the AONB, but this does not alter my view about the proposal's conflict with CS Core Policy 51. Nor does the Council's assessment of potential sites to take forward as part of the DPD<sup>9</sup>. Although this assessment does not rule out this site on landscape grounds, it does not alter or outweigh the proposal's conflict with CS Core Policy 51 particularly as there are further stages to go through before the DPD is potentially adopted.
39. Despite the identified harm, the appellant proposes a range of mitigation measures<sup>10</sup> to mitigate the effect of the proposal over time. The precise details of these are for future consideration given the nature of the application. Hence, the illustrative masterplan may not be the only way the appeal scheme could

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<sup>8</sup> Statement of Common Ground, Paragraph 7.33

<sup>9</sup> Core Document D10

<sup>10</sup> Mr Harris Proof of Evidence, Paragraph 4.6

be delivered, though it is a helpful indicator that the appellant has put time and resource into, and it evolved before the Council refused planning permission. The Council raises several areas of concern regarding the proposed mitigation.

#### Landscape buffers

40. The proposal would likely result in the removal of some of the existing trees and hedgerows on the northern and eastern boundaries to facilitate access and the works along the canal corridor. But they would be, along with the trees and hedgerows on the eastern boundary, retained as far as possible given their value and positive contribution to the landscape's character. However, these boundaries could be strengthened with new planting, so that they continue to positively relate to the landscape and enhance the existing wildlife and recreational corridors, particularly in respect of the canal and Coate Road.
41. A structural landscape buffer of varying width is shown on the illustrative masterplan along the site's southern and eastern edges. The potential width of the buffers is not fixed, with a range of depths shown on the illustrative cross sections. However, the evidence before me suggests that landscape buffers along both boundaries could facilitate high quality structural planting and provide a multi-functional use with an accessible pedestrian/cycle route from Coate Road to the canal. The pedestrian/cycle route may run through the buffer, but its location is not fixed and could be moved to allow new planting to fill existing gaps, to replace species affected by Dutch Elm disease, or to deliver a strong structural edge to the site. Hence, a satisfactory transition between the proposed built form, the countryside and the AONB could be achieved and an abrupt change to the landscape's character avoided.
42. Although comparisons are drawn to the scheme subject of the 2016 decision, the Horton Road development, and the scheme for industrial units<sup>11</sup>, they do not change my view about the potential of landscape buffers to manage the transition to the countryside and the AONB.
43. Closing a section of Coate Road near to Windsor Drive would require vehicular traffic to enter and leave the appeal site to move between Coate Road and Windsor Drive, but other road users may not need to do this to move between Devizes and the countryside based on the illustrative masterplan.

#### The canal corridor

44. The precise siting and layout of any buildings, and details of landscaping would be considered at a later date but placing buildings alongside the canal could replicate the relationship between the canal and the built form to the north. Whether or not buildings are set back the 15 metres shown on the illustrative masterplan remains to be seen, but by adding to the existing vegetation with new planting, a strong green edge could be kept with the canal. Achieving this rests with the ability to underground and re-routing of the overhead powerline, but also with achieving satisfactory ground levels so that the scale and massing of any development is not imposing whilst also allowing for new planting to be added, and for satisfactory ground levels to the canal formed. I see no reason why these matters cannot be achieved so that the proposal delivers a strong, noncompeting edge to the sensitive canal corridor, whilst ensuring the tranquillity, leisure, recreation, and ecological value of the canal is retained.
45. The most practical location for any direct pedestrian/cycle link between the appeal site and the towpath would be at the north-eastern end of the site due

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<sup>11</sup> Council Refs: 13/01243/OUT and PL/2022/00977

to the ground levels. A link could be achieved at grade here so that an accessible connection is formed for all. Conversely, the difference in levels between the footpath on Coate Road bridge and the canal towpath is greater, and the current access via the steps is not suitable for everyone. Any change to make this access accessible for all would require around 100 metres of towpath. Even so, I consider that there is sufficient scope to accommodate this and ensure the landscaped edge to the canal remains.

#### Public open space

46. An accessible link to the canal from Coate Road bridge may have a knock-on effect on the size of the public open space envisaged at the site's north-western corner. However, with access, layout and landscaping details to be determined, a satisfactory usable space near to existing and proposed residents, contributing to their health and wellbeing, whilst supplementing the canal corridor and its biodiversity value could be created.
47. Further areas of public open space are envisaged in the north-east corner of the site, including a children's play area which would be secured by the s106 agreement. As such, a play area of suitable quality can be delivered for use, and it could be made accessible and safe using passive surveillance with housing suitably sited. Similarly, a scheme could be designed so that the potential attenuation area earmarked next to the play area is accessible, subject to natural surveillance, and so that it encourages social interaction. If this area is delivered in the location suggested, users of the local centre are unlikely to make use of it. However, a link to and from the canal could facilitate the social interaction the Council is concerned about, as the towpath is already well used, and pedestrians and cyclists could well wish to make use of the potential off-road route available using the canal to link to Coate Road and vice versa. So, if the attenuation area is supplemented by planting, and the pedestrian and cycle link is incorporated into and around that area, it could be an attractive place for people to use and enjoy whether it is wet or dry as part of a multifunctional approach to public open space.

#### Loss of tranquillity

48. Traffic movement and noise are already present near to the site. It is common ground that the proposal would not give rise to noise, highway, or access issues, and whilst extra traffic movement would occur, the focal point for that would be the likely access onto Windsor Drive and near to where the local centre is. Further, given that traffic movement already occurs on Coate Road, there would not be a loss of tranquillity here from traffic movement. Planning conditions could limit the effect of noise from the operation of the local centre so that there is no loss of tranquillity.
49. It is logical that the proposal could add to light pollution in the area, but there is no substantive evidence to suggest that it would be materially harmful and cause an adverse effect on the setting of the AONB, considering the intended green infrastructure and with light pollution already part of the AONB's setting.

#### Quantum of development

50. Although I have not shared the Council's concerns about the intended mitigation measures, if the Council are correct about the need for deeper landscape buffers to the north, south and eastern boundaries, less land would be available for the quantity of development proposed. Whilst reference was made by the appellant to off-site planting outside the site edged red within the



appellant's control, there is no mechanism before me to secure this. Hence, the appeal site would need to be able to accommodate the proposed development if deeper landscape buffers were needed.

51. It is conceivable that a development could come forward on the site with a number of dwellings up to 200. A lower number of dwellings would likely require less land to develop. That said, based on the upper limit of development proposed, the housing mix could be altered without affecting the proposed affordable housing mix and without needing to rely on the use of apartments to achieve the quantity of dwellings proposed whilst widening the landscape buffers and increasing the amount of public open space. Also, by reducing the number of four and five bedroom units and increasing the number of three bedroom units, for instance, the proposal could respond to the analysis on the size of housing needed in Wiltshire<sup>12</sup>. Therefore, even if I were to agree with the Council's concerns about the mitigation measures, the proposal could mitigate its negative effects as far as possible on the appeal site to minimise its adverse impacts and conserve the AONB.

#### Conclusion of the main issue

52. The proposal would conflict with CS Core Policy 51 as the proposed development would harm the character and appearance of the area in the setting of the AONB, despite my findings about the mitigation measures. Nevertheless, I afford this policy conflict limited weight for the reasons explained earlier as it is inconsistent with the Framework.
53. However, the proposal would accord with CS Core Policies 52 and 57 as the proposed development could create a strong sense of place drawing on local context and be complimentary to the locality, including the natural and built environment, and take opportunities to enhance biodiversity and recreation corridors. Further, the proposal would accord with NP Policy ESD1 as the development could maintain a visual context with the countryside, consistent with the objectives of the Wiltshire Landscape Character Assessment and minimise views from the countryside of the development.
54. The proposal would also accord with Framework paragraphs 134 and 176 as the development could come forward taking into account of local design policies and Government guidance on design whilst being sensitively located within the setting of the AONB and designed to avoid or minimise adverse impacts on the designated areas. As such, the proposal would accord with Section 85(1) of the CROW Act.

#### *Planning contributions*

55. The s106 agreement would provide:

- 30% affordable housing on site, with 60% affordable rented homes (36 homes) and 40% as shared ownership (24 homes). The affordable rented homes would be a mix of two, three, four, five and seven person houses, with the shared ownership a mix of two bed four person homes and three bed five person homes. Three of the affordable rented one bed two person flats would be accessible and adaptable dwellings.
- a mix of equipped play space and casual play space on the appeal site, together with future management arrangements to ensure their maintenance thereafter.

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<sup>12</sup> Core Document F4, Table 9.5 and Paragraph 10.18

- £403,006 towards new and additional places in early years education settings within a safe two mile walking distance of the appeal site.
  - £101 per residential unit towards the provision of waste and recycling equipment for each residential unit.
  - £93,800 targeted at providing and/or upgrading playing pitch and ancillary services at the public sports facilities at Green Lane, Devizes Sports Club and Devizes School.
  - highway works to secure the closure of a section of Coate Road and the provision of a Coate Road diversion.
  - £170,000 towards the improvement of the Hopton/London Road roundabout.
  - £152,000 towards an improved local walking and cycling route along Windsor Drive and £5,000 towards improved signage for pedestrians and cyclists in the area around the appeal site.
  - £500,000 towards funding works to the canal towpath adjacent to the appeal site to provide and/or improve accessibility for pedestrians and cyclists. The Canal and River Trust have confirmed<sup>13</sup> that a contribution of £500,000, revised upwards due to the economic changes since their original assessment of the project, would be sufficient to undertake the proposed towpath improvement works. Should any part of the contribution not be required, then it would be repaid to the appellant.
56. With regard to the Community Infrastructure Levy (CIL) Compliance Statement, 20 April 2023, sufficient justification has been set out in respect of the obligations found in the s106 agreement. Hence, they would satisfy the tests in CIL Regulation 122, and Framework paragraph 57, namely that they are all necessary to make the development acceptable, directly related and fairly and reasonably related in scale and kind. As such, the proposal would accord with CS Core Policies 3, 12, 52, 55, 60, 61, 62 and 63 as well as NP Policies E1 and H2. The obligations in the s106 agreement are material considerations in this appeal.
57. Although the s106 agreement would provide a policy compliant level and mix of affordable housing, this needs to be viewed in the context of an identified and long-term pressing need for affordable housing in Wiltshire. The proposal could be delivered within the next five years based on the evidence before me, and I consider the delivery of affordable homes carries substantial weight given the need and the site's location on the edge of Devizes.
58. The improvements to the canal towpath will be localised to the appeal site's frontage, and detailed designs would need to be agreed. But the benefits of this would not be limited to future occupants of the appeal site as the improved towpath would be used by others and it is part of a long-distance path network, positively contributing to the recreation and leisure offer of the canal, its links to Devizes or the countryside, and to the wellbeing of users. Hence, the towpath improvement carries significant positive weight.
59. There would also be limited benefits to existing residents from the playing pitch and ancillary service provision near to the site and the public open space on the appeal site. The benefit would be over and above the mitigation that these obligations chiefly seek to achieve.

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<sup>13</sup> Inquiry Document 9

60. The remaining provisions in the s106 agreement would all mitigate the effects of the proposed development and make it acceptable, but they are matters of neutral weight in the planning balance.

*Future liability*

61. The s106 agreement excludes purchasers, tenants and occupiers or mortgagees from liability to satisfy the various obligations. The Council initially objected to that clause as it can be difficult to pursue enforcement of the obligations once the dwellings have been sold. Including the clause could therefore focus a developer's mind to ensure that the obligations are fulfilled. However, the Council conceded at the Inquiry that such a clause would not be necessary in this case as the contributions are all pre-commencement of development. I conclude, therefore, that to include such a clause is not necessary and thus to include one would be unreasonable.

**Other Matters**

*The Kennet and Avon Canal – a non-designated heritage asset*

62. The historic significance of the canal, which was built in 1790-1810, includes its use by the military as the 'GHQ Line Blue'. The canal was to be used as part of a defence line in the event of a successful German invasion. Pillboxes and anti-tank obstacles feature along its course. Anti-tank features are on the bridge 400 metres to the west, whilst a pillbox and slots in the ground to take girders are at the bridge 800 metres to the east of the site.
63. The historic importance of the canal is not obvious, and the World War Two features would remain, and at a distance from any development. However, the proposed development could be designed to positively respond to the canal, and its function as a valued part of the area's green-blue infrastructure through the siting, design, appearance and layout of buildings, but also landscaping to respond to its setting. Links to the canal towpath from the site alongside an interpretive board would better reveal the heritage significance of the canal. On this basis, I consider that the proposal would have a neutral effect on the significance of the canal.

*Points raised by interested parties*

64. The proposal would increase traffic levels in the area, but there is no substantive evidence before me that leads me to a different conclusion to that in the Transport Assessment or that reached by the Highway Authority. It is also relevant that no highway issues were found to be harmful in the 2016 appeal decision, which was for a larger number of dwellings.
65. I share the Council's assessment of the proposal's effect on air quality, the loss of agricultural land, flood risk and drainage, public rights of way, heritage, archaeology, noise, contamination, and ecology, subject to planning conditions. I have taken the representations from the local population who oppose the proposed development into account, but considered the appeal based on its planning merits alone. In this regard, there have been changes since the NP was made, and I must determine this appeal based on the circumstances as I find them. So, whilst I have concluded against the NP, there are material considerations relevant in this case that I must also consider. It is not therefore the case that the NP is being undermined; the consequences of the housing land supply position affect the decision-making approach.

66. I am not aware of any other development proposals that present similar circumstances to those before me, and any scheme would, in any event, need to be considered on its own merits having regard to the policy and circumstances presented at that time.

#### Other appeal decisions

67. A considerable number of other appeal decisions were submitted by the main parties, and I have had regard to them where necessary. But the circumstances in this case are different to those in the other submitted appeal decisions, and it remains the case that I have considered this appeal on its own merits.

### **Planning Balance**

#### The Development Plan

68. The proposal would conflict with CS Core Policies 1, 2 and 12 together with NP Policy H1 based on the site's location outside of the defined limits of development. That harm is minor. Limited conflict would also arise with CS Core Policy 51 due to the landscape harm, but there would be no conflict with CS Core Policies 52 and 57 and NP Policy ESD1.
69. The s106 agreement secures contributions required by CS Core Policies 3, 12, 52, 55, 60, 61, 62 and 63 as well as NP Policies E1 and H2. Some of the obligations would provide the local community with affordable homes and recreation, leisure and wellbeing benefits that weigh in favour of the appeal scheme. The remaining contributions would mitigate the effect of the development, so they do not weigh in favour or against the proposal.
70. Taking these matters in the round, I find that the appeal scheme would be contrary to the development plan when taken as a whole. However, even if I am wrong about CS Core Policies 1, 2 and 12 being read together, the proposal would still conflict with the development plan as a whole, given the conflict with CS Core Policy 2 and NP Policy H1. Any compliance with CS Core Policies 1 and 12 would carry neutral weight. The consequence for decision making purposes due to the housing land supply position would remain the same in any event.

#### The benefits of the appeal scheme

71. I have outlined the appeal scheme's benefits insofar as affordable housing, the canal towpath improvements, the public open space and the playing pitch and ancillary service provision near to the site. I also attach limited positive weight to the interpretive boards which would be secured through a planning condition to better reveal the heritage significance of the canal.
72. The proposal would help boost the Council's supply of deliverable housing sites through a mix of market units next to a second-tier settlement that offers accessible facilities and services. The proposed units could be delivered in the short term, and they would help address the persistent shortfall of housing in Wiltshire when there is not a plan-led mechanism to address this until the DPD is potentially adopted. Against this backdrop, I do not consider the shortfall to be modest, regardless of the number of permissions which the Council have granted and the Council's performance on the Housing Delivery Test. The extent of the shortfall has largely been flat in recent times despite the Council's briefing notes. I therefore attach substantial weight to this social benefit in the context of the Framework's aim to significantly boost the supply of housing.
73. Economically, the appeal scheme would give rise to expenditure on

development and construction, the creation of 213 direct and indirect construction related jobs, a new local centre that would offer permanent jobs and contribute to the local economy, and new residents who would spend within the local economy helping to support Devizes. These would provide a mix of time-limited and permanent economic benefits, but I consider that they jointly carry moderate weight given the scale of the proposed development.

74. New native planting and biodiversity enhancements on the appeal site would see a habitat unit increase of around 17% and a hedgerow unit increase of roughly 48%. This would represent a net biodiversity gain that would enhance the natural environment. I give this benefit moderate weight.

### **Conclusion on the Planning Balance**

75. I consider that the most important policies for determining this appeal, namely CS Core Policies 1, 2 and 12 and NP Policy H1, are deemed out-of-date for reasons set out in my first main issue. There is also policy conflict with CS Core Policy 51, but this carries limited weight due to its inconsistency with the Framework and the CROW Act. There is, however, no conflict with the policies relating to the obligations found in the s106 agreement.
76. Despite the conflict with CS Core Policy 51, the proposal would accord with Framework paragraphs 134 and 176 and Section 85(1) of the CROW Act. This is because the development could come forward taking into account local design policies and Government guidance on design whilst being sensitively located within the setting of the AONB and designed to avoid or minimise adverse impacts on the designated area so as to conserve it. Even so, due to the lack of a five-year supply of deliverable housing sites, the tilted balance as set out in Framework paragraph 11d)ii) is to be applied.
77. The proposed development would result in benefits, but also cause harm. However, the minor harm arising from the site's location and the limited harm from the proposal's effect on landscape character means that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Therefore, in this case, the material considerations indicate that this decision should be made otherwise than in accordance with the development plan. It follows that I conclude that the appeal should be allowed subject to the conditions set out below.

### **Conditions**

78. In imposing planning conditions, I am mindful of the six tests in Framework paragraph 55. Beyond the standard conditions [1, 2 and 3], I have imposed a plans condition in the interests of certainty [4]. To inform future reserved matters applications a condition is necessary in relation to the principles set out in documents submitted at this stage [7]. A condition in respect of a phasing plan is necessary to ensure that the site is satisfactorily developed. [8].
79. In the interests of archaeology, a condition is needed for archaeological investigation and recording [9]. To ensure that the construction of the development does not bring about adverse impacts in terms of ecology, highway safety and the amenities of the area, conditions to secure a construction method statement and a construction environmental management plan are necessary [10 and 11].
80. Conditions to secure soft landscaping, an arboricultural method statement,



ecological mitigation and enhancement, functional ecological habitat and biodiversity net gain are all necessary in the interests of biodiversity and the character and appearance of the area [5, 6, 13, 21 and 23]. In the interests of flood prevention, pollution control and environmental protection, conditions are necessary to secure surface water and foul sewage drainage details [12 and 15]. To prevent pollution and to secure satisfactory living conditions of existing and future occupiers, conditions are necessary for: acoustic assessments arising from the operation of any refrigeration/extraction/air conditioning equipment; details of any ventilation and filtration equipment; details of the hours of operation; and details of the hours of delivery [14, 16, 19 and 22].

81. To encourage means of transportation other than the private car, a travel plan condition is necessary [17]. To ensure that the site can be accessed safely, and the continued operation of the surrounding highway network, a condition is necessary to obtain details of a bollarded emergency vehicle access between the roads on the development and Coate Road at the south-western corner of the site [18]. A condition relating to an interpretive board explaining the heritage significance of the canal as a GHQ Blue Defence Line during World War 2 is necessary in the interests of better revealing its significance for the benefit of existing and future generations [20].

### **Conclusion**

82. For the reasons given above, I conclude that the appeal should be allowed.

*Andrew McGlone*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Paul Tucker KC and Constanze Bell Counsel, instructed by David Hutchinson of Pegasus Group

They called:

David Hutchinson BSc (Hons), DipTP, MRTPI Executive Planning Director, Pegasus Group

Paul Harris BA, DipLA, CMLI Director, MHP Design Ltd

Neil Tiley BSc (Hons), AssocRTPI Senior Director, Pegasus Group

### **FOR THE LOCAL PLANNING AUTHORITY:**

Philip Robson Counsel, instructed by Sarah Hickey, Wiltshire Council Legal Services

He called:

Andrew Burgess BA (Hons) MRTPI, FRSA Managing Director, Andrew Burgess Planning Ltd

Paul Robertson BA (Hons), DipLA, MSc, CMLI Landscape Officer, Wiltshire Council

Chris Roe MSc, MRTPI Spatial Planning Manager, Wiltshire Council

### **INTERESTED PARTIES:**

Councillor Ian Wallis, Devizes Town Council  
Councillor Philip Whitehead, Wiltshire Council  
William Butterworth

## INQUIRY DOCUMENTS

- 1 Appellant response to Inspector's housing land supply questions
- 2 Council response to Inspector's housing land supply questions
- 3 Statement of Councillor Wallis
- 4 Landscape masterplan – Low Wood
- 5 Appellant opening statement
- 6 Council opening statement
- 7 Version 9 s106 agreement
- 8 CIL Compliance Statement, version 3
- 9 Canal and River Trust email
- 10 Council closing submissions
- 11 Appellant closing submissions
- 12 Corbett v Cornwall [2020] EWCA Civ 508

## CORE DOCUMENTS

Found in the List of Core Documents, dated 28.03.23.

## DOCUMENTS SUBMITTED AFTER THE CLOSE OF THE INQUIRY

- 1 Land at Brynards Hill Appeal Decision, Ref: APP/Y3940/W/22/3309354
- 2 Land off the B4069 East of Barrow Farm Appeal Decision, Ref:  
APP/Y3940/W/22/3309170

## SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

### *Reserved matters and approved plan*

- 2) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 3) Application for the approval of all of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.
- 4) The development hereby permitted shall be carried out in accordance with the following approved drawing: Location Plan 326.P.2 Rev. E.
- 5) Applications for the approval of reserved matters should have regard to the Ecological Parameters Plan (ref. ECOL11 Rev.A) and the Proposed Habitats Plan (Ref. BNG1 Rev.B) to the extent that there is no diminution of functional habitat areas, particularly for bats.
- 6) Reserved matters applications shall be supported by plans and calculations to demonstrate that the development of the site as a whole will achieve a net biodiversity gain. Calculations must be based upon the most recent version of the Natural England Biodiversity Metric and the plans will detail habitat creation and enhancements demonstrating the extent and area of each habitat in relation to the development footprint.

### *Pre-commencement*

- 7) Applications for the approval of the reserved matters shall be in general accordance with the principles described and illustrated in the Design and Access Statement Addendum (RHL, 326.UD.11B, April 2022), and the principles indicated within the Indicative Masterplan (RHL, Devizes.UD.05 Rev B, dated 5<sup>th</sup> April 2022). A Design Compliance Statement shall be submitted with each reserved matters application which demonstrates this by way of comparison.
- 8) No development shall commence until a phasing plan identifying the sequencing of the proposed development (including the local centre and play and amenity areas) has been submitted to and approved in writing by the local planning authority. The development shall not be carried out other than in accordance with the approved phasing plan.
- 9) No development shall commence within the fields comprised within the site (including works of excavation or laying or re-routing of services) until a written programme of archaeological investigation and mitigation, which should include proposals for the analysis, publishing and archiving of the results, has been submitted to and approved by the local planning authority. The approved programme of archaeological work shall then be carried out in accordance with the approved details.
- 10) i) No development shall commence on site until a Construction Method Statement (CMS) has been submitted to and approved in writing by the local planning authority. The CMS shall include details of the measures that will be taken to reduce and manage the emission of noise, vibration and dust during the demolition

and/or construction phase of the development and it shall include details of the following:

- a) an introduction consisting of definitions and abbreviations and project description and location,
- b) a description of management responsibilities,
- c) a description of the construction programme,
- d) construction vehicle routeing,
- e) construction staff and visitor vehicle parking areas within the site,
- f) local road cleaning arrangements,
- g) measures to prevent excessive mud and dust being deposited on the public highway,
- h) site working hours and a named person for residents to contact,
- i) site logistics arrangements,
- j) details regarding deliveries and storage; including delivery hours, and welfare facilities on site,
- k) details regarding dust and noise mitigation,
- l) the recycling of waste materials,
- m) the loading and unloading of equipment, plant and materials,
- n) the location and use of any generators or other fixed plant,
- o) where piling is required this must be continuous flight auger piling wherever practicable to minimise impacts,
- p) the erection and maintenance of security hoarding/ fencing, and
- q) measures to prevent pollution of watercourses and the adjoining canal.

ii) The construction/demolition phase of the development will be carried out in accordance with the approved CMS.

11) Prior to the commencement of works, including demolition, ground works / excavation, site clearance, vegetation clearance and boundary treatment works, a Construction Environmental Management Plan (CEMP) shall have been submitted to and approved in writing by the local planning authority. The CEMP shall provide details of the avoidance, mitigation and protective measures to be implemented before and during the construction phase, including but not necessarily limited to, the following:

- a) identification of ecological protection areas/buffer zones and tree root protection areas and details of physical means of protection, e.g. exclusion fencing.
- b) working method statements for protected/priority species, such as nesting birds and reptiles.
- c) mitigation strategies already agreed with the local planning authority prior to determination, such as for great crested newts, dormice or bats; this should comprise the pre-construction/construction related elements of strategies only.
- d) work schedules for activities with specific timing requirements to avoid/reduce potential harm to ecological receptors; including details of when a licensed ecologist and/or ecological clerk of works (ECoW) shall be present on site.
- e) key personnel, responsibilities and contact details (including Site Manager and ecologist/ECoW).
- f) timeframe for provision of compliance report to the local planning authority; to be completed by the ecologist/ECoW and to include photographic evidence.

Development shall be carried out in accordance with the approved CEMP.

12) No development shall commence on site until a scheme for the discharge of surface water from the site based upon the principles and hierarchy of sustainable drainage and the Flood Risk Assessment & Drainage Strategy prepared by Phoenix Design partnership dated 31<sup>st</sup> March 2021) has been submitted to and approved in writing



by the local planning authority. The scheme shall include details for its phased implementation. The development shall be carried out in accordance with the approved scheme.

- 13) No demolition, site clearance, or preparatory laying of services or formation or alteration of a means of access shall commence on site, and; no equipment, machinery or materials shall be brought on to site for the purpose of development, until there has been submitted to and approved in writing by the local planning authority an Arboricultural Method Statement prepared in accordance with BS5837: 2012: "Trees in Relation to Design, Demolition and Construction – Recommendations". The development shall be carried out in accordance with the approved details.

*Pre-occupation*

- 14) i) Prior to the first occupation of any unit in the Local Centre, there shall have been submitted to and approved in writing by the local planning authority an assessment of the acoustic impact arising from the operation of any refrigeration/extraction/air conditioning equipment to be installed in that unit which shall have been undertaken in accordance with BS 4142:2014+A1:2019, together with a Scheme of attenuation measures to demonstrate an acceptable noise level. Background levels are to be taken as a 15 minute LA90 at the boundary of the proposed nearest residential noise-sensitive receptors.
- ii) The details as approved shall be implemented in full prior to occupation of that unit. Details to be submitted under part (i) of this condition are typically expected to demonstrate operational noise levels 5dB below the existing background noise level.
- iii) A post-installation acoustic assessment for the relevant unit within the Local Centre shall be submitted to the local planning authority within 4 months of completion of that unit for approval in writing. The assessment will need to confirm compliance with the noise criteria and identify any additional measures required to achieve compliance and a timescale for the full implementation of any such additional measures.
- iv) The development shall not be carried out other than in accordance with the approved assessment and scheme including any additional measures identified by the post-installation acoustic assessment referred to in (iii) above and shall thereafter be permanently retained.
- 15) There shall be no occupation of any building until foul water drainage for that building has been implemented in accordance with Foul Drainage Strategy as detailed in the approved Flood Risk Assessment & Drainage Strategy prepared by Phoenix Design partnership dated 31<sup>st</sup> March 2021).
- 16) i) Full details of ventilation and filtration equipment to suppress and disperse any fumes and/or odours from cooking operations in the local centre shall be submitted to and approved in writing by the local planning authority prior to the commencement of any commercial cooking operations within the local centre. The details to be submitted shall include maintenance requirements.
- ii) The approved equipment shall be installed in accordance with EMAQ technical guidance for the "Control of Odour and Noise from Commercial Kitchen Exhaust Systems" DEFRA 05.09.2019.
- iii) All such equipment shall be installed in full accordance with the approved details prior to the commencement of any commercial cooking or food preparation use, and shall be maintained in effective working order at all times so as to control the emission of odours and fumes.

- 17) i) No residential unit shall be occupied until those parts of the Residential Travel Plan capable of being implemented prior to occupation have been implemented.  
ii) Those parts identified for implementation after occupation shall be implemented in accordance with the timetable contained therein, and shall continue to be implemented as long as any part of the development is occupied.  
iii) The Residential Travel Plan Co-ordinator shall be appointed and carry out the identified duties to implement the Residential Travel Plan for a period from first occupation until at least 2 years following occupation of the last residential unit.
- 18) Details of a bollarded emergency vehicle access incorporating a 3 metre wide cycle route between the roads on the development and Coate Road at the south-east corner of the development including the timing of its provision shall be submitted and approved by the local planning authority prior to the first occupation of any building. The development shall be carried out in accordance with the approved details.
- 19) Prior to the first occupation of any non-residential unit hereby approved details of the operating hours of that unit shall be submitted to and approved in writing by the local planning authority. That unit shall not operate otherwise than in accordance with the approved details.
- 20) Prior to first occupation of any building details shall be submitted to and approved in writing by the local planning authority of a scheme for the installation of an interpretive board, which better reveals the heritage significance of the canal, including its function as a GHQ Blue Defence Line during World War 2. The details shall include the proposed location of the board in the vicinity of the canal and a timetable for installation. The board shall be installed in accordance with the approved details.

*Post-occupation and management*

- 21) i) All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the building(s) or the substantial completion of the development whichever is the sooner, or otherwise in accordance with such phasing as may be approved the condition above.  
ii) All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock.  
iii) Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority.  
iv) All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the local planning authority.
- 22) Deliveries to and from the commercial premises, shall only take place between the hours of 07:00 to 23:00 Monday to Saturday and 09:00 to 21:00 Sundays and Bank/Public Holidays.
- 23) The development will be carried out in accordance with the mitigation and enhancements identified in the Ecological Assessment (Ecology Solutions, March 2021).

END OF SCHEDULE