

F.A.O Ruaridh O'Donoghue

Planning Department, Wiltshire Council
County Hall,
Bythesea Rd,
Trowbridge
BA14 8JN

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Delivered via email

**APPLICATION REFERENCE: PL/2022/08155 – LAND WEST OF SEMINGTON ROAD,
MELKSHAM**

Dear Ruaridh,

This letter follows our telephone conversation on the 17th of January 2024 and confirmation via email (on 18th January '24) regarding the intention for our application at Land West of Semington Road, Melksham (LPA ref. PL/2022/08155) to be returned to the Strategic Committee, after being given a resolution to grant permission on the 29th of November 2023. It is our understanding that the reasoning behind the application returning to committee is that Wiltshire Council consider they can rely on a 4-year housing land supply following the updated December 2023 National Planning Policy Framework (NPPF), so the 'titled balance' is disengaged. Wiltshire Council now consider that this means full weight can be afforded to the relevant Plan policies, namely CP 1 and CP2. It is our understanding that this will result in the recommendation changing from granting to refusing, with this justification that substantial weight is to be attributed to the Plan policies.

For reference, the arguments put forward by Terra can be summarised as:

- ***The recommendation for refusal does not appropriately consider the acute and pressing need for affordable housing that exists within the District,***
- ***There has been no change in material considerations since the updated NPPF was published which would warrant the change in recommendation to refusal,***
- ***It has always been the case that a 5-year housing land supply position has been a minimum expectation. This remains in a 4-year scenario. This application has already been determined on its merits and it was granted permission. It is extremely short-sighted and inappropriate for the recommendation to change to one of refusal; and***
- ***The recommendation for refusal is short sighted and does not adequately account for the allowed appeal decision on the eastern half of this field.***

Terra's Response

1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that determination must be made in accordance with the Development Plan “unless material considerations indicate otherwise.”
2. Regarding compliance with Development Plan, *Cornwall Council v Corbett*, reminded us that a breach of a particular development plan policy – even a policy expressed in very trenchant terms – does not necessarily equate to a failure to accord with the development plan as a whole. It is not uncommon for development plan policies to pull in opposite directions, and it is not a mechanical or mathematical exercise in reaching a determination. Instead, the exercise calls for a series of judgments to be made, which may include determining the relative importance of the policy and the extent to which the proposal may conflict with it.
3. In this case, we not only assert that the ‘breach’ of any policies may be slight, but also that the policies are out of date. This is particularly in light of the Plan period running from 2006 – 2026, meaning there is less than two years left until the policies completely expire. In addition, there is strong support from other policies, particularly those regarding the delivery of affordable homes.
4. As outlined in Paragraph 60 of the updated NPPF, it remains “*the Government’s objective of significantly boosting the supply of homes*”. This objective was reiterated in a recent appeal decision for a 100% affordable housing site in North-East Derbyshire, (dated the 17th of January 2024)¹. The Inspector reminds us (para 54) that a five (or four) year housing land supply is not a maximum number and, in that case, the benefits of the scheme (particularly the delivery of affordable housing) was considered to outweigh the harms. **This was despite a common ground that the Council had a 6.94 year supply.**
5. We assert that there are two material considerations that indicate that planning should be granted for the application in question:
 - a) Irrespective of whether the policies in the Plan are given substantial weight, or reduced weight (such as “moderately significant weight”² as per the appeal on the adjacent site), the harms which may arise as a result of any policy conflict are “limited” and/or “modest/negligible” (as per your previous Officer’s committee report for this application and as per the appeal decision for the adjacent site).
 - b) The benefit of delivering a scheme for 100% affordable housing, in the context of Wiltshire’s substantive unmet affordable housing need, should be given substantial weight.
6. In the appeal decision for the adjacent site, as referenced in your Officer’s committee report for this site, it is identified that any conflict with Development Plan policies CPI, CP2, CPI5, CP5I and CP57 and JMNP policies 1, 6 and 17, would lead to “Modest/Negligible harm to the landscape character and appearance of the area arising from the appeal scheme”. On balance, your Officer’s report for the current application draws similar conclusions for the current application.
7. Indeed, your Officer’s report confirms that:

“... the level of harm that would arise from this scheme would not amount to significant harm that would warrant an objection under Core Policies 51 and 57 of the WCS, and to the policy of the NPPF to take account of the intrinsic value and beauty of the countryside ... As such, there is an appropriate level of details within this OUT consent to enable the ‘in-principle’ landscape matters to be considered

¹ Appeal decision 3322479, Land to the North and North West of The Homestead, Dark Lane, Calow, S44 5AD

² Paragraph 93, Appeal decision 3285428, Land west of Semington Road, Melksham

and a judgement reached that the scheme is considered to comply with the requirement of Core Policy 51 of the WCS. [Emphasis added] It should be noted that this policy allows for harm to be mitigated through robust landscaping proposals which would come forward at REM stage ...”

8. Furthermore, the appeal site has now been granted Reserved Matters approval and the developer, Living Space Housing, will be commencing on site within the next month. This will fundamentally change the context of the site from a standalone agricultural field. This is something which should appropriately be taken into account when considering the surrounding context.
9. Within your Officer’s report, the below is written under ‘harms’:

“It is clear therefore that the scheme does not conform with the development plan when taken as a whole. However, whilst these policies are predicated on the principles underpinning the Framework, the policies cannot be afforded full weight given the housing land supply position of c. 4.6 years.

Nonetheless, the level of harm against these policies is only considered to be limited [emphasis added], for the following reasons:

- *the size of the scheme is appropriate for Melksham as a market town which is capable of significant growth as identified by CPI of the WCS.*
- *although outside of the LoD, it is noted that the site is located just outside and therefore, its proximity to the town centre allows access by a genuine choice of transport modes.*

However, the conflict with the development plan is still harm which militates against the grant of planning permission.”

10. We would agree that “nonetheless” or in essence, irrespective of land supply position, the harm arising from any alleged policy conflict is “limited”.
11. Regarding agricultural land, we would continue to agree with your original Committee Report assertion that “the overall amount of land that is being lost is not significant in area (Natural England are generally concerned where areas greater than 20ha are being lost). The application site falls well below that threshold.” Furthermore, through the introduction of development in the eastern half of the same field, it would now be impractical, unfeasible and unviable to farm this piece of land in isolation. Therefore, this also only leads to a modest or limited harm when considered relative to the probability of it ever fulfilling its potential as suitable agricultural land.
12. Meanwhile, the benefit of delivering 100% affordable housing should continue to attract substantial weight, as per the appeal on the adjacent site, given that the Inspector previously noted that the affordability ratio is increasing, the number of people on the housing register is increasing, waiting times for family homes range from between **3.1 - 10.7 years**. This is not insignificant. There are 840 people with a registered unmet affordable housing need within Melksham and Melksham Without alone and there was (at the time) a negative 344 dpa differential between the number of affordable homes required to be delivered per annum and the number of affordable homes actually being delivered. Indeed, since 2021, the number of people on the housing register in Wiltshire has increased by 16%, demonstrating a worsening since the appeal was heard, such that the weight to this benefit should further increase to “very substantial”.
13. In the context of the Neighbourhood Plan, when the appeal was heard and determined for the adjacent site, the Neighbourhood Plan was still within the first 2 years of being made. Under the previous NPPF, the Inspector found that the protections of Paragraph 14 were engaged. Despite this, the Inspector still allowed the appeal due to the acute and “pressing need affordable housing” as referred to above, demonstrating the merits of the scheme. Under the context of the updated NPPF, the application of Paragraph 14 therefore remains unchanged despite the extension of the time period from 2 years to 5 years.

14. The Inspector for the adjacent scheme previously identified that it is “extremely unlikely” that this shortfall will be made up in the remaining plan period, with now (less than) 2-years left on the plan period **(and even less if this application were to be locally refused and subsequently appealed, as per our absolute intention).**
15. Furthermore, this is a position Wiltshire Council themselves accept, further to the “Final Report of the Housing Allocations Policy Task Group” presented to the “Environment Select Committee” on 7th November 2023³. The report to committee notes that, within this financial year, the Council are starting to see a more marked decrease in delivery, before setting out an intention to ensure delivery and maintain a provision of affordable homes across Wiltshire.
16. The Council are currently pursuing a Local Plan review which has reached Regulation 19 stage. The most recent Local Development Scheme for Wiltshire, published just last month, confirms the intention to submit the Plan in Q2 of this year, with adoption expected before the end of 2024.
17. Paragraph 76 of the new Framework require Councils to be able to demonstrate at least a five-year supply of specific, deliverable sites upon conclusion of the Examination. This reflects paragraph 68(a) of the previous Framework which required policies to identify a supply of ‘specific, deliverable sites for years one to five of the plan period’. As it stands, the Regulation 19 version of the emerging Local Plan for Wiltshire heavily relies on a Phased approach to the housing trajectory, with the majority of homes delayed to the later years of the Plan period. This approach has been heavily criticised through the representations submitted by the Home Builder Federation (HBF) and other representations to the Local Plan review consultation. In reflecting upon those representations and the requirements of the NPPF, should the Council wish to demonstrate a five-year supply upon the adopted of the plan, then we submit that, as identified above, this site is clearly available and capable of delivery within those first five years and, as such, can assist towards the Council supply.
18. Regardless of weight to be attached to the adopted Development Plan policies, the harms arising from any policy conflicts is limited, whilst the benefits remain substantial. Additionally, as per your original committee report, the accessibility and relative sustainability of the site has improved since the adjacent appeal. This is particularly due to the completed highway improvements. Therefore, “material considerations” plainly indicate that a departure from the Development Plan is fully justified in this instance, such that planning approval can be granted.
19. **This would be a set of circumstances clearly unique to this application and this application site, being for 100% affordable housing and within the balance of a field containing an already allowed appeal for a comparable scale of development. Therefore, this would not in any way set a detrimental precedent from the Council’s perspective.**
20. Irrespective of this being our position, it should be noted that in the appeal decision for the adjacent site, the Inspector concluded that the tilted balance was found to be engaged due to both a lack of housing land supply AND “the most important policies being out of date”. Therefore, if the policies have been found to be out of date, they must be afforded reduced weight. We would suggest “moderately significant weight” would again be appropriate as per the appeal decision for the adjacent site, particularly given there is less than 2-years remaining on the Plan period. The Plan is at least 3-years out-of-date and the Council have reviewed the Plan policies themselves and deemed it in need of a review and updating.
21. The question also remains to be answered as to whether this alone would once more be capable of engaging the tilted balance – a matter on which, for the moment, we reserve our position.

³ Update on Wiltshire Housing Development Partnership, Environment Select Committee, 7th November 2023

Planning Balance

22. Taking the above into account, we put forward the below table which represents what we consider appropriate weighting for the scheme’s harms and benefits:

	Weighting	
	Harms	Benefits
Local Plan Policies	<i>Moderately significant</i>	
Affordable housing		<i>Substantial</i>
Landscape	<i>Limited</i>	
Agricultural Land	<i>Limited</i>	
Locational Sustainability		<i>Moderate</i>
Economic benefits		<i>Moderate</i>
Financial Contributions		<i>Limited</i>
Technical	<i>Neutral</i>	

Conclusion

23. To conclude, we submit that on balance the benefits of the scheme clearly outweigh the alleged conflict with the relevant Development Plan policies. The Planning Balance clearly weighs in favour of the scheme, even without the engagement of the “tilted balance”. The recommendation to grant permission and the resolution to grant permission for the scheme should be maintained.
24. The application should be considered on its own merits. The application is for 100% affordable housing within the balance of a field which has been granted planning permission for a similar development. This application has notable benefits which would outweigh the perceived harms and would in no way set a detrimental precedent for future decisions to be made by the LPA under the guise of the updated NPPF.
25. If the application is refused, it would be our absolute intention to appeal the decision.