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## Appeal Decision

Inquiry Held on 27-30 June, 3 July-7 July and 5-8 September 2017

Site visit made on 19 July 2017

**by Lesley Coffey BA Hons BTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 14 December 2017**

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**Appeal Ref: APP/Y3940/W/16/3162997**

**Land to the North of Pound Lane, Semington, Wiltshire BA14 6LP**

- 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 Richborough Estates against the decision of Wiltshire Council.
  - The application Ref 16/05783/OUT, dated 13 June 2016, was refused by notice dated 7 October 2016.
  - The development proposed is the erection of 75 dwellings, including 30% affordable homes, with ancillary public open space and play areas and access from Pound Lane.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The inquiry sat for 9 days from 27 June – 30 June and 3 July - 7 July. It resumed for a further 4 days on 5 September 2017 and closed on 8 September. There was an accompanied site visit on 19 July 2017 and I carried out unaccompanied visits to the site and surrounding area at various times before and during the inquiry.
3. The description above is taken from the application form, during the course of the inquiry the appellant amended the application to increase the proportion of affordable housing to 40%. The number of bungalows to be provided was also increased. Local residents were notified of these changes and I have taken the comments received into account in reaching my decision. I am satisfied that no party would be prejudiced by this revision and I have considered the appeal on the basis of the revised proposal.
4. The appeal was heard together with an appeal by Oxford Law relating to an outline application for the erection of up to 50 dwellings, including affordable housing, with ancillary public open space and play areas at Land to the North of St Georges Road, Semington. The Inquiry heard evidence in relation to both appeals, including evidence on the effect of the two appeal schemes in combination. All of that evidence has been taken into account in both appeal decisions. Although some of the issues are common to both appeals, my findings in respect of these issues reflect the differences between the proposals and the specific circumstances of the individual sites. Oxford Law was a Rule 6 party in respect of this appeal.

5. Following the close of the inquiry a Unilateral Undertaking under s106 of the Town and Country Planning Act 1990 was submitted by the appellant. This covenants to provide affordable housing, and to make a financial contribution towards education, towpath improvements and waste and recycling. In addition, it proposes an area of public open space and a play area, together with a management company. It also undertakes to provide a minimum number of bungalows on the site. The Unilateral Undertaking was discussed at length at the inquiry, particularly in relation to the ability of the scheme to deliver the proportion of affordable dwellings proposed, the mix of dwellings and the appropriate trigger for the delivery of affordable dwellings. Following the close of the inquiry the Council and appellant agreed a compromise in relation to the trigger for the delivery of affordable housing and this is reflected in the submitted Unilateral Undertaking.
6. The appeal site is the subject of an undetermined Town and Village Green application. The Council does not put this forward as a reason for refusal, but considers that it affects the deliverability of the site.
7. Following the close of the inquiry, the Government published a follow-on consultation on proposals within the Housing White Paper "Fixing our broken housing market". On 6 November 2017 the Council published the Swindon and Wiltshire Strategic Housing Market Assessment. The parties were provided with an opportunity to comment on both of these publications and I have taken their respective views into account in reaching my decision.
8. The Semington Aqueduct lies close to the appeal site and is a Grade II listed building. The Council's reasons for refusal did not allege harm to the setting of the aqueduct, or the canal, which is an undesignated heritage asset. However, Oxford Law, a Rule 6 Party, raised these issues as a concern and I have considered them below.

### **Main Issues**

9. I consider the main issues to be :
  - The effect of the proposal on the character and appearance of Semington and the surrounding rural landscape, including the Kennet and Avon Canal;
  - The effect of the proposal on The Semington Aqueduct, a Grade II listed building – a designated heritage asset - and any undesignated Heritage Assets;
  - Whether the Council can demonstrate a five year supply of housing land;
  - Whether the proposal would be in an acceptable location and of an appropriate scale having regard to development plan and national policies; and
  - The benefits of the proposal, including affordable housing.

### **Reasons**

#### ***Development Plan and Emerging Plan***

10. The development plan includes the Wiltshire Core Strategy (adopted January 2015), the saved policies of the West Wiltshire Local Plan 2004 and the Chippenham Sites Allocation Plan (CSAP) (adopted May 2017). Although the appeal site does not come within the CSAP area, the housing allocations within

the CSAP contribute to the housing land supply for the North West Wiltshire Housing Market Area(NWWHMA) in which the appeal site is located.

11. The Wiltshire Site Allocations Development Plan Document (WHSAP) is an emerging plan and will allocate future housing sites outside of Chippenham. A Pre-submission draft was published for public consultation between July 2017 and September 2017. Given the very early stage of plan preparation and that public consultation has only just commenced I cannot afford this plan any significant weight.
12. The National Planning Policy Framework (NPPF) is a material consideration. It confirms that applications for planning permission should be determined in accordance with the development plan unless material considerations indicate otherwise. It also states that planning should be genuinely plan-led.
13. Together policies Core Policy 1 (CP1) and Core Policy 2 (CP2) of the Core Strategy set out the settlement hierarchy and delivery strategy for Wiltshire. CP1 identifies four tiers of settlements. These range from principal settlements such as Chippenham, Market Towns, Local Service Centres to Large and Small Villages. The accompanying text explains that the settlement boundaries will be reviewed as part of the Wiltshire Site Allocations DPD. At Large Villages, such as Semington, housing development is generally restricted to fewer than 10 dwellings and development outside of the boundaries is strictly controlled.
14. Policy CP2 sets out minimum housing requirements for each of the Housing Market Areas. It states that there is a presumption in favour of sustainable development at larger villages, which include Semington. Outside the defined limits of development, policy CP2 restricts development to that falling within the exception policies listed at paragraph 4.25 of the Core Strategy. Paragraph 4.26 sets out indicative housing requirements for each community area. The aim is to direct development at a strategic level to the most suitable and sustainable location. The underlying principle of the delivery strategy is to ensure that communities have a better balance of jobs, services, facilities, and homes.
15. Policy CP15 sets out the strategy for the Melksham Community Area, which includes Semington. It proposes 2,370 new homes within the Melksham Community Area over the plan period, 2,240 should be provided within Melksham with about 130 provided in the remainder of the community area.

### ***Landscape***

16. The appeal site is situated to the west of the village of Semington. It extends to about 15ha and comprises two fields divided by traditional field hedges. It adjoins the development edge of Semington to the east and Pound Lane to the south. The western boundary adjoins pasture land whilst the northern boundary abuts the towpath to the Kennet & Avon Canal.
17. The site slopes downwards from south to north allowing extensive views to the north and the west from the field access off Pound Lane. The site has no current public access apart from public footpath SEMI 1 running along the northern boundary. Pound Lane runs along the southern edge of the site and footpath SEMI 6 crosses the field immediately to the west. SEMI 38, the canal towpath and Sustrans National Cycleway runs along the opposite side of the

- canal. Bridleway SEMI 7 is slightly further west and meets the aforementioned PROWs at the canal swing bridge, just to the west of the site.
18. Core Policy 51 (CP51) of the Core Strategy requires development to protect, conserve and where possible enhance landscape character. Any negative impacts must be mitigated as far as possible through sensitive design and landscape measures. The policy sets out aspects of landscape character which should be conserved. These include the locally distinctive character of settlements and their landscape settings; the transition between man-made and natural landscapes at the urban fringe; landscape features of cultural, historic and heritage value; and tranquillity and the need to protect against intrusion from light pollution, noise, and motion. Core Policy 57 seeks a high quality of design in all new development. It sets out a number of criteria which will be taken into account when assessing proposals.
  19. The NPPF aims to take account of the different roles and character of different areas, as well as recognising the intrinsic character and beauty of the countryside. Oxford Law suggest that the appeal site is a valued landscape for the purposes of paragraph 109 of the NPPF due to its proximity to the Kennet and Avon Canal which is important due to its cultural and recreational value.
  20. The term 'valued landscape' is not defined in the Framework, but land does not have to form part of a designation to be valued in the terms of paragraph 109. The Council consider that although the site includes some valued elements, it is not a 'valued landscape' under NPPF section 11, paragraph 109.
  21. The canal corridor is an attractive and distinctive feature within the landscape. However, given the appeal site does not contain particular physical attributes that would 'take it out of the ordinary'. I agree with the Council that there are some valued elements within the landscape, however, when considered in its entirety it does not amount to a "valued landscape" within the meaning of paragraph 109 of the NPPF.
  22. Although the proposal is an outline application with only the access to be determined at this stage, the appellant submitted an illustrative layout plan and a parameters plan which together indicate how the site could be developed. The vehicular access would be from Pound Lane. The plans indicate that the dwellings would be up to 2.5 storeys high over much of the site, but with housing on more generous plots facing towards the canal. The proposal would also include a number of bungalows. The Design and Access Statement proposes three different areas, a tree lined village street, a rural edge comprising lower density development set against woodland and tree belt and village lanes which will provide a more enclosed environment. The illustrative plans show an area of planting adjacent to the north western boundary linked to a pedestrian route through the site. The area closest to the canal would include a canal side park and a play area, as well as a large attenuation pond.
  23. At the time of the application the proposal was considered by the Council's landscape officer, Ms Kenworthy, together with a number of other documents. The landscape officer supported the proposal and stated that the LVIA report was comprehensive and identified the potential landscape and visual effects. The Council's planning officers disagreed with this view and considered that the proposal would give rise to landscape harm. This concern was reported to the Committee and formed the basis of the third reason for refusal.

24. At the inquiry the Council explained that the landscape impact was originally raised prior to the submission of the application. During the course of the application the site was visited by both the case officer and subsequently by Mr Wilmott, the Head of Planning. It was these visits that informed the officer's report and recommendation.
25. The appellant considers that the committee members may have been unaware of Ms Kenworthy's views. Although the assessment of the proposal within the report did not refer to Ms Kenworthy's comments, her comments were nevertheless reported to the committee. It would seem from the committee report, that a similar approach was adopted with other consultees. I therefore do not consider that the committee were misled by the manner in which the Ms Kenworthy's comments were conveyed.
26. The appeal site was considered by the Local Plan Inspector at the West Wiltshire District Plan 1<sup>st</sup> alteration, in 2004. He found the canal to be very important to the rural setting of the Semington and the canal itself, and concluded that the site did not deserve to be included within the village policy limits. He also noted that the site did not have defensible boundaries and its development would put further pressure on adjoining land as well as destroying the rural scene. I appreciate that this view was reached in the context of the housing requirement of that plan and the prevailing national planning policy in respect of the countryside. However, the relationship of the appeal site with the village and the canal is largely unchanged, and the Local Plan Inspector's conclusions in relation to the contribution of the canal to the setting of Semington remain valid today.
27. The appeal site separates the canal from the built up area of the village. When viewed from the canal or towpath, the surrounding landscape, including the appeal site, has a tranquil and rural character. There are occasional scattered properties close the bridge on the High Street. These appear to have a functional and/or historic association with the canal.
28. The appellant acknowledges that the proposal would alter the character of the appeal site, but considers that the change would be consistent with the existing components within and on the edge of Semington. The appellant submits that whilst the proposal would move the edge of Semington north west of its current position, it would not alter the overall character of the landscape. It is submitted that housing is an intrinsic part of the landscape character and would contribute to the mosaic of land use and functions.
29. When considering the appeal site in its landscape and townscape context the appellant's LVIA categorises the change to the landscape character as moderate adverse due to the loss of the open fields. This is defined as development that would result in localised medium to long term loss of some key characteristic landscape features and the introduction of some uncharacteristic features into the landscape.
30. The appellant considers that one of the benefits of the proposal would be to improve the interface between the built edge of Semington and the canal. At present the eastern and western boundaries of the site abut the rear gardens of existing residential development within Semington. The combined length of these boundaries is about 495 metres, and they vary in terms of their quality and appearance. It is intended that the appeal proposal will face outwards towards the canal and would provide a more attractive appearance. Whilst the

boundaries to the dwellings adjoining the appeal site do not represent a positive feature, they are not experienced as a single boundary. In views from the towpath only short stretches of this boundary can be seen at any particular time. Moreover, they are a considerable distance from the towpath, with the closest part being about 80 metres away, and much of it considerably over 100 metres. Therefore in views from the towpath the boundaries of the existing dwellings give the impression of a village separated from the canal.

31. It is intended that the proposed dwellings would be set back between 45 and 65 metres from the edge of the canal. The canal side park and attenuation pond would provide a landscaped setting for the proposed dwellings. On behalf of the Council, Mr Harley accepted these measures would help to minimise the impacts of the proposal on the canal, but he nevertheless considered that the proposal would give rise to significant harm.
32. The appeal scheme would be visible in views from the swing bridge and the towpath towards the east. Even allowing for the dwellings to be set-back from the canal, suburban features in the form of a canalside park, a LEAP and surface water attenuation pond would change the existing pastoral landscape. The proposal would also be noticeable from a number of the PROW in the immediate vicinity. Particularly from SEMI 1 which runs along the southern boundary of the site, and SEMI 6 which crosses the adjacent field. The expansive views from SEMI 6 towards the canal would be lost.
33. The canal and the towpath in the vicinity of the village are well used by numerous walkers, cyclists and canal users. In views from the canal and towpath Semington is perceived as a rural village separated from the canal. The fact that dwellings on the land adjoining the appeal site do not face towards the canal contributes to this separation and the pastoral setting of the canal. The introduction of housing and the associated activity in such close proximity to the canal would fundamentally change the setting of Semington when viewed from the canal, as well as that of the canal itself. The intended design approach would introduce not only dwellings, but also roads and vehicular activity and street lights in close proximity to the canal. I consider that there would not only be significant visual changes, but also a marked loss of tranquillity that would extend far beyond the boundary of the site. Even allowing for the dwellings to be set-back from the canal, suburban features in the form of a canalside park, a LEAP and surface water attenuation features would completely change the existing agricultural/rural landscape.
34. I consider that the proposal would alter not only the character of the appeal site, but that of the surrounding landscape and the setting of Semington. The canal would no longer be viewed as passing through a predominantly rural landscape. In views from the opposite direction, the proposal would be screened to some extent by the trees along the boundary of the site. The appeal site would be adjoined on either side by open fields. With the exception of Semington Dock it would be the only significant built development along a considerable length of the canal, and would therefore be seen as a very significant intrusion to the setting of the canal. Although the open space proposed would help to maintain a green corridor adjacent to the canal, that corridor would be greatly reduced in depth and would harm the character and setting of the canal.

35. The attenuation pond would occupy almost half of the frontage to the canal. The Flood Risk Assessment suggests that it would need to accommodate up to 1017 m<sup>3</sup> of surface water. The depth of the pond is not specified, and clearly the depth of water within it will vary with rainfall. At the inquiry the appellant suggested that it would have shallow sides and would be designed to ensure that it did not present a danger to children. It is however apparent that the pond would occupy almost 50% of the area between the dwellings and the towpath. Although this area would retain an open character, the attenuation pond would be a substantial landscape feature that would not be characteristic of the existing pastoral setting of the canal. It may be possible that the pond could be designed in a manner that would integrate with the landscape, but on the basis of the submitted information, and having regard to the sloping nature of the site, I consider it may be necessary to alter the existing landform in order to accommodate an attenuation pond of the size proposed. Therefore I am not convinced that the proposed pond would satisfactorily integrate with the landscape.
36. The canal would no longer be separated from the built up area of the village, and would fail to conserve the locally distinctive character of Semington and the setting of the canal. I conclude that it would significantly harm the character and appearance of Semington and the surround rural landscape, including the Kennet and Avon Canal and would conflict with policy CP 51.

### ***Heritage***

37. The Council's reasons for refusal did not include the effect of the proposal on the historic environment. At the inquiry the Council confirmed that its position on this matter had not changed. Nonetheless, it considers the canal to be an undesignated heritage asset and that there would be some negative effects arising from the proposal which should be weighed in the overall planning balance.
38. The Kennet and Avon canal cuts through the fields to the north of Semington and is carried over Semington Brook on the Semington Aqueduct, a Grade II listed structure. The aqueduct is supported on earthen embankments which extend some considerable distance from the masonry structure. The parties disagree as to whether the embankments form part of the listed structure.
39. The aqueduct lies within more than one parish, and is the subject of two separate listings. The part within the Parish of Melksham Without was listed in February 1985, whilst that within the Parish of Semington was listed in January 1988. Both listing descriptions are similar. They confirm that the aqueduct dates from the late C18 to early C19, and is constructed from limestone ashlar. It includes swept revetment walls curving away from the canal. Neither description refers to the embankments.
40. Oxford Law submits that the embankments form part of the listed aqueduct, and as a consequence, the appeal scheme extends much closer to the listed building than acknowledged in the appellant's archaeological assessment. In support of this view Oxford Law refer to s1(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990. This confirms that for the purposes of the Act a listed building includes any object or structure fixed to the building.
41. Dr Miele, on behalf of the appellant, disputes that the embankments form part of the listed structure for a number of reasons. Firstly it is not referred to in

- the listing descriptions, moreover, he is unaware of any similar embankments being listed in this way. Whilst he accepted that the listing description is not determinative as to the extent of the listed structure he considered that the description indicates what was in the mind of the listing Inspector.
42. The function of the list is to provide local planning authorities and other interested persons with an authoritative source of information as to whether or not a particular building is listed for its special architectural or historic interest. However, as accepted by Dr Miele the list is not determinative as to the extent of the listing. I agree that the embankments are earth structures involving no special structural techniques, and differ in terms of material, character and appearance from the aqueduct.
  43. The appellant submits that the aqueduct is an example of engineering prowess, whilst the embankment is an earth structure involving no special structural techniques. Dr Miele also referred to Historic England's *Listing Selection Guide for Transport Buildings* (April 2011) which includes canals, bridges and viaducts, but does not refer to embankments or earthworks.
  44. An aqueduct is a structure for carrying water across land, and often carries canals across valleys, as in this case. I agree with the appellant that it is likely that the stone structure of the aqueduct was probably the focus for the listing Inspector and it is certainly where the main architectural interest lies. However the aqueduct is more than the masonry structure and in the absence of the embankments it would not be able to fulfil its primary purpose, namely to transport the water in the canal over Semington Brook. Therefore, on balance, having regard to s1(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I consider that the embankments form part of the listed building.
  45. It is debateable as to the length of the embankment that forms part of the listed building due to its considerable length, particularly since embankments occur elsewhere along the canal and are not necessarily associated with aqueducts bridges or other structures. I therefore consider that the extent of the listed building, is generally confined to the area close to the masonry structure of the listed aqueduct.
  46. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in considering applications which affect Listed Buildings, special regard must be had to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses. In the case of this appeal the parties agree that the proposal would not have a direct effect on the listed structure, including the embankment. Therefore the issue is the effect of the proposal on the setting of the listed building and its architectural or historic interest. The architectural interest in the aqueduct lies in its stone structure. Its significance also lies in its historic role as part of the canal, and due to its association with John Rennie.
  47. The closest part of the appeal site is located about 140 metres from the stone structure. For most people the aqueduct would be appreciated from the towpath. From this viewpoint most people would be unaware of the embankments which take the form of a continuation of the towpath. Visually the aqueduct is best appreciated from the brook on the northern side of the canal. From this vantage point the embankments are noticeable, however due to the much lower ground level the appeal site is not visible from this location.



Consequently the proposal would not have a significant impact on either the architectural or historic interest of the aqueduct including the embankments.

48. I therefore conclude that the proposal would not harm setting of the listed aqueduct, including the embankments, and would comply with Core Policy 58 (CP58) of Core Strategy which requires designated heritage assets and their settings to be conserved, and where appropriate, enhanced in a manner appropriate to their significance.

#### *Pill Box*

49. There is a WWII pill box on the appeal site situated about 350 m south of the canal. It is an undesignated heritage asset, as agreed by the parties. Paragraph 135 of the NPPF requires the effect of a proposal on the significance of a non-designated heritage asset to be taken into account. It states that a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the asset.
50. It is one of a number of such defensive structures which have been recorded within and around Semington. It was constructed as part of the GHQ Blue Stop Line of defence along the Kennet and Avon Canal to protect London and central England from a potential German invasion. Pill boxes are not especially rare with about 6,500 surviving nationally and about 400 along the Kennet and Avon Canal. The pill box has historic significance as an example of WWII defences against invasion, but is of limited architectural interest.
51. It is intended that the pill box will be converted into a bat roost. The indicative layout shows that sightlines to the swing bridge will be preserved in order that the historic relationship between the pill box, the swing bridge and the canal can continue to be appreciated.
52. The provision of interpretation and a written programme of archaeological investigation will contribute to the public understanding of the significance of the pill box. In this respect the proposal would not conflict with paragraph 135 of the NPPF and would be a benefit of the proposal.

#### *Canal*

53. The Council and Oxford Law identify the canal as an undesignated heritage asset. The glossary to the NPPF confirms that it is for the local planning authority to identify non-designated heritage assets.
54. The Kennet and Avon canal was constructed between 1794 and 1810 to connect the Avon with the Thames. It provided the first direct route from Bristol to London. It was sold to the Great Western Railway Company on 1852 and GWR continued to operate it until 1948 when the railways were nationalised. The canal has since been re-opened and both the canal and tow path are now used for predominantly recreational purposes. I consider its significance as a heritage asset derives from its role as a transport route connecting two major cities.
55. The canal is about 140 km long. It passes through some towns and other settlements, including Devizes and Bradford on Avon, but its setting is largely rural in character. Although the proposal would extend close to the canal and alter its setting, I do not consider that it would alter its historical significance.

### ***Five Year Supply of Housing Land***

56. The Framework seeks to boost significantly the supply of housing and requires local authorities to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements. Paragraph 49 of the Framework explains that the relevant policies for the supply of housing should not be considered up-to-date if a five year supply cannot be demonstrated.
57. The Core Strategy was adopted in January 2015 and identifies a minimum housing requirement of 42,000 dwellings for Wiltshire over the plan period (2006-2026). It divides Wiltshire into three Housing Market Areas (HMAs). The appeal site is located within the NWHMA, where there is a requirement for 24,740 dwellings over the period of the Core Strategy (1,237 units per annum). The parties agree that the five year housing land supply should be assessed against a base date of March 2016, but disagree as to the housing requirement and the extent of the housing supply.
58. The appellant is critical of the housing requirement on two counts, firstly that the OAN which underpins the housing requirement is out of date, and secondly that gypsy and traveller pitches should not be counted towards housing completions. The parties also disagree as to how the shortfall should be addressed and the appropriate buffer to apply to the housing requirement.

#### *The OAN*

59. The appellant submits that the assessment of housing need which underpins the Core Strategy housing requirement is out-of-date, and pre-dates the NPPF and the guidance within Planning Practice Guidance (PPG) in relation to the assessment of housing need. The appellant submitted an assessment of need based on a report prepared by Barton Willmore and considers that this represents significant new evidence in accordance with PPG paragraph ID: 3-030-20140306. The appellant's principal concerns are that the OAN underpinning the Core Strategy housing requirement did not reflect the methodology within the PPG or take account of the most recent evidence.
60. PPG sets out a methodology for the assessment of housing need. It states that the starting point should be the household projections published by the Department for Communities and Local Government. It explains that the household projection-based estimate of housing need may require adjustment to reflect factors affecting local demography and household formation rates which are not captured in past trends. In addition, it advises that household projections may need to be adjusted to take account of market signals, economic activity and migration.
61. During the course of the Core Strategy Examination the Council submitted additional evidence and proposed further modifications to the submitted Core Strategy following the Inspector's letter in December 2013. This indicated that the OAN was likely to be in the region of 44,000 homes over the plan period. Public consultation in relation to the additional evidence and proposed modifications was undertaken in April and May 2014. Consultees were also given an opportunity to comment upon the implications of the publication of

- the government's Planning Practice Guidance (PPG) which was published March 2014.<sup>1</sup>
62. The Core Strategy Inspector found the OAN to be about 44,000 dwellings over the plan period. In reaching this view he took account of a variety of evidence, including the Fordham work, the ONS population projections and a range of other evidence, such as alternative assessments of housing need produced by interested parties to identify the appropriate OAN.
63. He recognised that much of the Council's evidence pre-dated the NPPF and PPG. He noted that the submitted evidence '*incorporates data and analysis of household projections, migration, employment trends, affordability and more limited references to what the PPG and the Framework refer to as 'market signals'*'.<sup>2</sup> He observed that the PPG states that there is no single methodological approach to the assessment of development needs.
64. PPG is not policy in itself, but guidance as to how the policies within the NPPF should be implemented. It confirms that establishing housing need is not an exact science and that no single approach will provide a definitive answer. The St Modwen Judgement found that it was an aid to the interpretation of the NPPF<sup>3</sup>.
65. The Inspector was aware that the Council had not followed the PPG methodology, indeed this would have been difficult in the light of the publication date of PPG. He was nevertheless satisfied that the relevant matters had been considered to inform the OAN. Therefore the fact that the OAN was not based on the methodology within the PPG does not represent new evidence or detract from the evidence base that informed the Core Strategy.
66. The Inspector had regard to the most recent population and household projections available at the time, namely the 2011 interim projections and national statistics relating to household projections which were published in April 2013. The 2012 based and 2014 based household projections have been published since the Inspector's Report. Whilst these could potentially represent significant new evidence, in the case of Wiltshire they suggest a need for 37,500 dwellings and 38,400 dwellings respectively, compared to the need for 43,000 dwellings identified by the 2008-based ONS population and household figures. Therefore they do not justify an upwards revision of the housing requirement.
67. PPG paragraph ID: 3-030-20140306, states that housing requirement figures in up-to-date adopted Local Plans should be used as the starting point for calculating the 5 year supply. It advises that considerable weight should be given to the housing requirement figures in adopted Local Plans, which have successfully passed through the examination process, unless significant new evidence comes to light. The Core Strategy Inspector fully considered the implications of PPG and found the plan to be sound. Whilst the more recent household projections could be considered to be new evidence they do not justify an increase in the OAN or setting aside the housing requirement within the recently adopted Core Strategy.

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<sup>1</sup> IR para 4

<sup>2</sup> WCS IR para 65

<sup>3</sup> St Modwen v SSCLG [2016] EWHC 968 (Admin)

68. In September 2017 the Government published a consultation paper entitled 'Planning the right homes in the right places'. This defines a standard methodology for determining housing requirements, including transitional arrangements. It is based on three key principles, to be: simple, based on publicly available data, and realistic. Since it is a consultation document and could be subject to change, it can only be afforded limited weight at the present time.
69. Accompanying the consultation paper is an indicative assessment of annual housing need 2016-2026 based on a proposed set formula for each local authority area. For Wiltshire the figure of 2,227 dpa is suggested. This compares with the objectively assessed need identified by the Core Strategy Inspector of 44,000 homes over the 20-year period 2006-2026, equivalent to 2,200 dpa. If this figure is apportioned across the 3 housing market areas it would make a marginal difference to the number of dwellings and would not add a significant number of dwellings to the housing requirement for the NWWHMA. I am therefore satisfied that the housing requirement within the Core Strategy remains robust in the light of the consultation paper.
70. The Council recently published a joint SHMA with Swindon Borough Council. It concluded that using the CLG 2012 based household projections the OAN would be 2,824 dpa over a 25 year period, and 1,634 dpa for Wiltshire. However, the 2014 based projections have since been published and these indicate that within Wiltshire the growth would be 1,520 dpa. The figure was adjusted to take account of the need for concealed and homeless households, affordable housing, market signals, and employment trends.
71. The uplift for market signals and employment varied across the 4 different HMAs with Salisbury requiring the greatest uplift due to market signals as well as employment trends. Taken together these adjustments indicate an OAN of 43,247 for Wiltshire, compared to the 44,000 which formed the basis of the Core Strategy housing requirement. Therefore the recently published SHMA does not suggest that the housing requirement within the Core Strategy is out-of-date.
72. The appellant suggests that the SHMA methodology reduces growth in the economically active population by about 1,600 and that the Council's approach to commuting also suppresses growth. The appellant believes that taken together these factors would require a 45,440 increase in homes over the 20 year period. When an allowance for service personnel is made the figure is increased to 46,520.
73. The SHMA cautions that the OAN will need to be tested through the examination process and is not a substitute for the housing requirement in the Core Strategy. PPG provides similar advice. It is not the role of a s78 appeal to review the SHMA which will be tested during the course of the Examination process. Having regard to both the recent consultation paper and the SHMA I remain of the view that there is no significant new evidence to justify a departure from the housing requirement within the Core Strategy.
74. I have also had regard to the case law referred to by the appellant in support of the principle of putting forward OAN evidence and/or challenging a local

authority's position on OAN. The Shropshire case<sup>4</sup> concerned a pre-NPPF Local Plan with a housing requirement based on the RSS. Therefore the housing requirement within the Local Plan was not up-to-date or robust. In contrast the Wiltshire Core Strategy was subject to examination and scrutiny and was found sound by the Inspector and NPPF compliant.

75. The West Berkshire decision<sup>5</sup> concerned a plan that had been adopted in July 2012 (post NPPF), however the examination took place prior to the publication of the NPPF. Policy CS1 of that plan expressly required a NPPF compliant SHMA to be undertaken within 3 years of adoption. The appeal Inspector found that significant new evidence, including household and population projections, along with jobs growth forecast was available, and for this reason departing from the housing requirement within the Core Strategy was found to be appropriate. The appellant also referred to the Hunston<sup>6</sup> Judgement. However, this judgement related to the correct approach to establishing an OAN where there is a policy vacuum, which is not the case with the present appeal.
76. I consider the circumstances of these cases differ materially from the present appeal, where there is a recently adopted, NPPF compliant Core Strategy. I conclude that there is no significant evidence to suggest that the housing requirement within the Core Strategy should not be relied upon.

#### *Gypsy & Traveller Pitches*

77. The appeal site is located within the NWHMA, where there is a requirement for 24,740 dwellings over the period of the Core Strategy (1,237 units per annum). The parties disagree as to the extent of the residual housing requirement. The Council include 120 gypsy and traveller pitches within its completions figure, giving a residual requirement of 12,984. The appellant considers that gypsy and traveller pitches should be excluded from housing completions and that the residual requirement is 13,104 dwellings. Over a five year period this would add 60 dwellings to the housing requirement.
78. The appellant maintains that gypsy and traveller accommodation should be excluded from the completions because it was never part of the housing requirement at CP2, nor was it considered as part of the evidence base informing the Council's housing requirements. This matter was considered at both the Forest Farm Inquiry and the Lyneham Inquiry. In both cases it was found that gypsy and traveller accommodation should count towards completions. That is the Council's position in this case.
79. Strategic Objective 3 of the Core Strategy is 'to provide everyone with access to a decent affordable home'. Paragraph 6.40 states that this is perhaps the biggest contribution that can be made to addressing inequality in Wiltshire. The accompanying text to policy CP2 is found at paragraphs 4.18 – 4.34 of the plan. Paragraph 4.25 refers to 'exception policies' which seek to respond to local circumstances and national policy, and explains that these represent *additional sources of supply*. The exception policies include specialist

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<sup>4</sup> Shropshire Council v Secretary of State for Communities and Local Government & BDW Trading Limited Trading as David Wilson Homes (Mercia) & Others [2016] EWHC 2733

<sup>5</sup> **West Berkshire** District Council v SSCLG and HDD Burghfield Common Ltd [2016] EWHC 267

<sup>6</sup> Hunston Properties Ltd v SSCLG and St Albans City Council

- accommodation provision in accordance with policies CP46 (accommodation for vulnerable and older people) and CP47 (gypsy and traveller accommodation).
80. I see no reason why gypsy and traveller accommodation would fall outside of the definition of a home. If gypsy and traveller accommodation was not considered to be a home for the purposes of the Core Strategy I consider that policy CP2 would specifically exclude it and policy CP47 would not be included as one of the policies which seeks to deliver Strategic Objective 3.
81. Although CP47 sets pitch requirements for gypsies and travellers, I consider this to be a reflection of the specific accommodation requirements for this group. It does not alter the fact that the provision of such accommodation contributes to the delivery of homes within Wiltshire, in accordance with Strategic Objective 3 and policy CP2. The fact that Appendix C of the Core Strategy shows separate calculations for housing land supply and gypsy and traveller accommodation may be a reflection of the different strategies necessary to meet the housing needs for gypsies and travellers, and it does not add weight to the appellant's arguments.
82. I now turn to the evidence base. Matter 4 of the Inspector's report includes '*Is the Core Strategy's approach to housing provision sufficiently justified and consistent with national planning policy?*'. The Core Strategy Inspector's OAN assessment does not specifically refer to gypsy and traveller pitches, however, none of the other types of specialist housing, such as affordable housing, or housing for vulnerable and older people are considered in this part of the report either. His assessment of OAN took account of a range of evidence, including the 2012 Housing Topic Paper, the 2014 Addendum to the Housing Topic Paper and the Wiltshire SHMA (The Fordham Research 2011), the ONS population projections and assessments of need made by interested parties. These matters are set out at Paragraph 75 of the Inspector's Report.
83. The housing topic paper outlines the sources of information used. These include the 2001 Census and sub-national population projections 2008. The Fordham SHMA included primary data derived from a household survey, whereby households were drawn at random from the Council Tax Register and demographic data which took account of Census information and ONS statistics.
84. Gypsy and traveller households are represented within the census statistics, as well as local information in relation to births, deaths and marriages. They are not one of the special populations, such as service personnel, that have a special age structure and are therefore treated differently in census statistics. The ONS projections draw on the census and local information in relation to births, deaths and marriages. Whilst, unlike the census, the population and household projections may not identify gypsies and travellers as a distinct group, no evidence was submitted to suggest that the ONS projections were adjusted to exclude gypsies and travellers, or any other specific group within the population.
85. The household survey sent out by Fordham was sent to a random selection of families on the Council Tax Register. It is not uncommon for gypsy and traveller families to pay Council Tax and therefore there is no evidence to suggest that families paying Council Tax whilst living in caravans were excluded from this survey. It included a number of questions in relation to caravans and mobile homes, suggesting that the researchers were aware that

respondents could include gypsies and travellers, whether resident in caravans, or bricks and mortar accommodation. The addendum to the housing topic paper was published in February 2014 and sought to address issues raised by the Inspector in his letter dated 2 December 2013 rather than the OAN.

86. Therefore on the basis of the evidence submitted to the inquiry I am satisfied that gypsy and traveller accommodation forms part of the housing requirement within the Core Strategy and was taken into account in the evidence base considered by the Core Strategy Inspector.

### *The Shortfall*

87. The appellant suggests that the housing shortfall should be made up in the next five years of the plan period (the Sedgefield method), whereas the Council believes that it should be spread over the remainder of the plan period (the Liverpool method). Both the Core Strategy and the Shurnfold Inspectors accepted that the Liverpool method was appropriate in Wiltshire.
88. Paragraph ID 3-035-20140306 of PPG advises that any shortfall should be dealt with within the first five years of the plan period where possible (the Sedgefield method). Where this is not possible, it states that planning authorities will need to work with neighbouring authorities under the duty to cooperate. The Sedgefield approach is generally favoured and would be consistent with the aim of the Framework to significantly boost the supply of housing and because it deals with the issue of past delivery failures promptly over the short-term. However, the High Court in *Bloor<sup>7</sup> Homes* confirmed that neither method is prescribed, or said to be preferable to the other, in government policy in the NPPF.
89. The Core Strategy Inspector found that the measured delivery of housing over the plan period did not necessitate undue 'frontloading' in the early years of the plan. In reaching this view, he had regard to the extent of the shortfall and the Council's intention to produce a new SHMA which may revise the objectively assessed needs for the relevant HMAs and inform its plan-making processes.
90. The Shurnfold Appeal, Forest Farm Appeal, Lyneham Appeal and the Hilperton Appeal all favoured the Liverpool approach. The appellant states that since the Council is more than halfway through the plan that there is little time remaining in which to make up the shortfall. Whilst there are only 9 years of the plan period remaining, the housing land supply position is being assessed against a base date of March 2016, and the Core Strategy was only adopted in January 2015. There is little over a year between the base date and the adoption of the Core Strategy. The delivery of housing in the NWHMA is dependant on a number of large strategic sites, which the Council anticipates will be delivered towards the latter part of the five year period and beyond.
91. The appellant referred me to a recent appeal decision<sup>8</sup> where the Inspector favoured the Sedgefield approach. The Council explained that at the hearing, attended by Mr Roe, the Council did not produce any evidence in respect of the preferred method. The extent of the evidence in relation to this matter is unclear from the decision letter, and therefore in the light of the Council's

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<sup>7</sup> *Bloor Homes East Midlands Limited v SSCLG [2014] EWHC 754 (Admin)*

<sup>8</sup> APP/Y3940/W/17/3173509

undisputed evidence I afford this decision limited weight in so far as it seeks to address this issue.

92. The appellant considers that the extent of the shortfall is likely to increase in the coming year. The Wiltshire Housing Site Allocations Plan -Topic Paper 3: Housing Land Supply (June 2017) estimates that there will be 847 completions within the NWWHMA in 2016/17. However it makes clear that this figure is an estimate and those actual completions are likely to exceed the estimations. The Council drew attention to the Malmesbury Decision<sup>9</sup> where the estimated completion figure used by the Inspector was exceeded by some 458 dwellings. I therefore consider that the estimated completions figure within the Topic Paper is little more than a guide, and does not provide a reliable basis for the assessment of future shortfall. This figure will be provided within the next Housing Land Supply Statement.
93. To aim to address the shortfall in the next five years of the plan period would require the identification of many additional sites in the short term. This would undermine the plan led spatial strategy for Wiltshire which seeks to provide jobs and homes, together with supporting community facilities and infrastructure, in the most sustainable way.

#### *Buffer*

94. In addition to a five year supply of housing land, paragraph 47 of the Framework requires local planning authorities to provide an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land.
95. The appellant maintains that where there is a recently adopted development plan, it is not appropriate to measure either the shortfall or the record of persistent under-delivery against anything other than the annualised requirement in the development plan itself. Whilst I agree that the shortfall should be assessed against the adopted development plan, neither the NPPF, nor PPG state that under-delivery should be assessed against the requirements within the prevailing development plan. Indeed, PPG is clear that the approach to identifying a record of persistent under delivery of housing involves questions of judgment. It further states the factors behind persistent under-delivery may vary from place to place and, therefore, there can be no universally applicable test or definition of the term.
96. When assessed against the Core Strategy for the period up to March 2016, the annualised target was not met in 7 out of 10 years, although the shortfall in 2010/11 was only 19 dwellings. The Council calculates that about 95% of the cumulative Core Strategy target has been delivered to date, with a shortfall of 614 dwellings, against an annualised target of 1,237. This compares to 97% at the time of the Shurnhold Inquiry.
97. The Council's assessment relies on the targets within the Wiltshire and Swindon Structure Plan 2016 (published April 2006) for the period up to 2010/11. For

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<sup>9</sup> APP/Y3940/A/13/2200503



the period 2011/2012 it uses the housing requirement within the emerging Core Strategy (37,000). For the remainder of the period (2013/14 and 2014/15) it uses the higher requirement within the Core Strategy. When assessed against these requirements the Council has met the annualised targets for 4 out of the ten years. In each of the years where the delivery figure was met, there was significant over delivery. The appellant suggests that, based on the figures within Topic Paper 3 that there will be a further year of under-delivery. But as explained above, the number of completions for 2016/17 is unknown, and may well exceed that shown in Topic Paper 3. I do not consider it appropriate to take account of the completion figures for 2016/17 when assessing whether there has been a record of persistent under-delivery.

98. Whilst comparing the annualised delivery against that within the adopted development plan is a useful starting point it does not provide the complete picture. The NPPF does not require an assessment against the annualised requirement, moreover, the Core Strategy has an overall housing requirement that extends across the entire plan period rather than an annualised target. PPG takes a similar approach and advises that the assessment of a local delivery record is likely to be more robust if a longer term view is taken, since this is likely to take account of the peaks and troughs of the housing market cycle. As explained by the Shurnhold Inspector, it would be statistically possible for the total housing requirement over a given number of years to be met in circumstances where there had been a small shortfall against the annualised targets in all but one year, and a large over-delivery the other year. It is therefore legitimate to look at the overall number of dwellings delivered over a given period and to compare these against the cumulative housing requirement for that period.
99. The housing land supply statements show that for the period from 2006 up to and including March 2014, 101% of the housing requirement within the Core Strategy had been delivered. This figure takes account of the considerable fluctuations in delivery. This figure fell to 97% in March 2015 and 95% in the most recent assessment.
100. The appropriate buffer was considered by both the Core Strategy Inspector and the Inspector in respect of the Shurnhold appeal. Both concluded that there was no persistent under delivery whether assessed against the annualised requirements applied by the Council at the time, or the requirement of the adopted Core Strategy. Since the Shurnhold decision, there has been a further year of completions, and two additional years since the matter was considered by the Core Strategy Inspector. More recently the Lyneham Inspector concluded that whilst the Council's performance in housing delivery is not strong, particularly since the adoption of the Core Strategy that under-delivery had not been persistent in the context of the NPPF. The Forest Farm decision reached a similar conclusion.
101. Topic Paper 4 to the Wiltshire Housing Sites Allocation Plan, includes a reference to aiming towards a figure that includes a 20% buffer. I disagree that this implies that the Council accepts that it is a 20% authority, but as concluded by the Lyneham Inspector it represents a prudent approach to ensure that the plan is not undermined through a determination that it was persistently under-delivering.

102. Prior to 2009 Wiltshire comprised four local planning authorities, with separate development plans and emerging plans for the different areas. There have been a number of development plans and emerging development plans over the plan period. The changing housing requirements are a reflection of these plans and the changes to administrative boundaries, as well as changes to national planning policy. Therefore to assess delivery for the entire period on the basis of an administrative area that did not exist for part of that period would be an unreasonable assessment as to whether there is a persistent record of under-delivery. Moreover, any under-delivery for the period prior to 2014 would be assessed against a housing requirement that had not only not been adopted, but had not yet emerged.
103. The appellant referred to the Malmesbury decision<sup>10</sup> where the Inspector assessed the delivery rate against the adopted Core Strategy requirement over the plan period and concluded that there had been persistent under-delivery. This decision was considered at the Forest Farm Inquiry, as well as that at Lyneham and Hilperton. For the reasons given above I have adopted a different approach, which I consider to be consistent with the Cotswold judgement<sup>11</sup>. This confirms that, in assessing previous performance, a decision-maker is entitled to take the figures in the previous development plans as a measurement of what the housing requirement was in order to assess whether there has been a record of persistent under delivery of housing.
104. Although in some years the annualised targets were not met, having regard to the considerable fluctuations in delivery, as well as the changing housing requirements and administrative boundaries over the past ten years, I do not consider that there has been a persistent record of under-delivery. Therefore, on the basis of the evidence before me, a 20% buffer is not justified in this instance. In reaching this conclusion I have had regard to the various appeal decisions which have been brought to my attention. As these decisions demonstrate the judgment as to whether or not there has been a persistent under-delivery falls to be determined on the particular facts of each case having regard to the information available.
105. I conclude that a 5% buffer remains appropriate and that the Liverpool method is still an acceptable means of dealing with the shortfall. On this basis, I consider there to be a 5 year housing land requirement for 6,817 homes across the NWHMA as put forward by the Council.

#### *Land Supply*

106. The Housing Statement of Common Ground outlined the parties' respective positions with regard to the supply of housing sites. The Council stated that it had a deliverable supply of 6,821 dwellings, whilst the appellant considered that the Council is only able to deliver 6,329 dwellings. However, during the course of the inquiry the Council's position changed in respect of some of the identified sites. At the close of the inquiry the Council considered that it was able to demonstrate a housing land supply sufficient for 6,905 dwellings against a housing requirement for 6,817 (including a 5% buffer).

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<sup>10</sup> APP/Y3940/A/13/2200503

<sup>11</sup> *Cotswold District Council V SSCLG, Fay & Son Ltd* [[2013] EWHC 3719 (Admin)]

107. As a consequence, there are now five disputed sites. The appellant also questions the inclusion of the two strategic sites allocated by the CSAP, since the CSAP was not adopted until May 2017, after the base date for the assessment of housing land supply. The appellant does not dispute that these sites are capable of delivering housing in the five year period up to 2020/21, but questions whether it was appropriate to include them in the five year housing land supply, given the base date of March 2016. I shall address the CSAP sites first, and then deal with the disputed sites.
108. The Housing Land Supply Statement covers the period from April 2015 – March 2016, and was originally published in November 2016. However, following the publication of the CSAP Inspector’s Report the delivery from the two allocated sites, Rawlings Green and Rowden Park and Patterdown were included in the March 2017 update to the Housing Land Supply Statement, although the base date remained the same.
109. The Housing Land Supply Statement, published in November 2016, explains at Paragraph 5.5 that sites identified in the pre-submission draft of the CSAP and were included in the previous Housing Land Supply Statement as contributing to the deliverable supply. However the public examination for the CSAP was suspended in November 2015 to allow the Council to carry out additional work on the site selection process. As a result, the Council could not rely on the proposed allocations contributing to the deliverable supply.
110. Although these sites continued to be listed at Appendix 1 which provides a breakdown of the deliverable supply, they were shown as making no contribution to housing land supply during the plan period. Appendix 3 of the Housing Land Supply Statement provides a detailed assessment of sites contributing to the deliverable supply. Patterdown and Rowden and Rawlings Green, were both shown to be available and achievable as well as consistent with policy. However, neither site was considered to be suitable or deliverable because the CSAP Inspector’s report was awaited. The March update to the Housing Land Supply Statement did not alter the base date, but showed these sites contributing to the five year housing land supply and Appendix 3 showed that both sites were now suitable and deliverable.
111. The November 2016 Housing Land Supply Statement also made reference to these two sites at Table 3 which lists additional sites identified beyond the monitoring base date of 1 April 2016, on the basis that there had been a resolution to grant planning permission, subject to a s106 agreement/unilateral undertaking in September 2016.
112. The Council consider the inclusion of these sites within the housing land supply is justified and referred to the Wainhomes judgement<sup>12</sup>. This found that housing allocations within emerging plans are capable of being considered to be deliverable dependant on the circumstances of the case. This approach is confirmed by the advice at PPG paragraph 3-031-20140306. This explains that a planning permission or allocation in a development plan is not a prerequisite for a site being deliverable in terms of the 5-year supply. However, Local planning authorities are expected to provide robust, up to date evidence to

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<sup>12</sup> Wainhomes v SSCL[2013]EWHC 579(Admin)

support the deliverability of sites, ensuring that their judgements on deliverability are clearly and transparently set out.

113. The Wainhomes judgement acknowledged that the inclusion of a site in an emerging plan provides some evidence that a site is deliverable by a local planning authority, it stated that the weight to be attached to that inclusion can only be determined by the quality of the evidence base, the stage of progress that the draft document has reached and a knowledge of the nature and number of objections that might be outstanding. By the time of the March 2017 update, the CSAP Inspector's report had been published and the CSAP was at an advanced stage. At this stage, in accordance with paragraph 216 of the NPPF the CSAP and the allocations within it would be afforded very considerable weight.
114. Footnote 11 of the NPPF states that to be considered deliverable, sites should be available now, and offer a suitable location for development now. At the base date the CSAP had been subject to the initial hearings, and the Council had undertaken additional work in order to address the concerns of the CSAP Inspector. However, it is clear from the Council's own evidence that the site allocations proposed by the CSAP were not deliverable at April 2016. The assessment as to the deliverability of these sites extended not only to the five year period up to 2020/21, but to the end of the plan period. Appendix 1 showed the total number of dwellings each site could accommodate but did not indicate any delivery in any year.
115. The Council state that by April 2016 additional work in respect of these sites and other sites had been completed. It seems to me that the Council took an overly cautious approach within the Housing Land Supply Statement. If it genuinely considered these sites to be unsuitable I consider that they would have been removed from the housing land supply. More importantly, the Council would not have continued to promote them as part of the CSAP.
116. In relation to other sites the trajectories put forward as part of this appeal have been modified to take account of changes that have occurred since April 2016 in terms of appeal decisions and new evidence. Some of these changes have been considerable, such as Ashton Park where as a consequence of new evidence between the time of the Forest Farm Inquiry and the Lyneham Inquiry the trajectory was reduced by about 300 dwellings. It therefore seems reasonable that other changes, particularly a change as significant as the publication of the CSAP Inspector's Report, should allow for the upward provision of housing trajectories.
117. Therefore taking account of the available evidence I consider that the CSAP sites should form part of the five year housing land supply. I now turn to the disputed sites.

#### *Hunters Moon*

118. A resolution to grant planning permission for a mixed use development with up to 450 dwellings, subject to the completion of a section 106 agreement, was made in January 2014. In October 2016 the Shurnhold Inspector concluded that the site was unlikely to produce completions before the end of the monitoring year 2019/20 and that 240 dwellings should be deducted from the supply. This position was reflected in the 2016 supply statement which

indicated that only 80 dwellings would be delivered in the five year period up to 2020/21.

119. It is evident that there were concerns about the viability of the scheme and its ability to deliver an acceptable level of affordable housing. In the light of a further viability assessment, and an independent viability assessment, changes to the scheme were agreed. A further application was submitted in January 2017. This reflected the fact that it was no longer necessary to provide a primary school as part of the scheme, and the layout for Phase 1 of the site was revised. The Council state that the level of affordable housing has also been agreed following the consideration of the most recent viability evidence and resolved to grant planning permission for this recent application in June 2017. The Council's solicitor dealing with the s106 advises that the draft obligation and related discussions are at an advanced stage.
120. The Council submitted an email from Mr Kerton, the Planning Director of Bloor Homes, which outlined the intended timetable for the delivery of housing on this site. Mr Kerton's timetable (submitted in May 2017) anticipated that the application would go to committee by June 2017 and planning permission would be granted by November 2017. On this basis it was anticipated that 140 homes would be delivered by the end of 2019 and 80 dwellings a year thereafter. This would increase the number of homes by 60 compared to the Council's position in the Housing Statement of Common Ground.
121. The appellant expressed concern that the Council sought to change its position in relation to this site at the inquiry and it did not reflect the Council's position in the Statement of Common Ground. Mr Roe explained that the initial evidence had been prepared by another officer who has since left the Council and in his preparation for the inquiry, he considered the implications of the submitted emails and this caused him to revise the Council's trajectory. Whilst it is unfortunate that the Council's position changed so late in the inquiry process, all of the evidence it relied upon had been submitted with the Council's disputed sites statement. Moreover, it also changed its position with some other sites where the Council conceded a lower amount of delivery.
122. The appellant suggest that the homes to be delivered at this site should be discounted in their entirety, due to issues with the delivery and availability of the site at April 2016, these included viability concerns, objections from the County ecologist and the Council's urban designer.
123. Although there were viability concerns with the delivery of the site in April 2016, it is apparent from the committee report that both parties were seeking to resolve this matter. It would seem that the difference between the parties was the proportion and mix of affordable housing to be delivered, rather than whether the site would be delivered at all. Therefore there was no evidence to suggest that the site was unlikely to come forward within the next five years.
124. Although at April 2016 the site did not have planning permission, there was a resolution to grant planning permission, which indicates that it is in a suitable location, and there was a realistic prospect that housing on the site would be delivered in the next five years. Although there were concerns with viability, it is evident that the parties were seeking to address these. I therefore consider that the site was deliverable within the terms of footnote 11 of the NPPF.

125. The appellant also questioned the reliability of the delivery evidence provided by the developer. Reference was made to the Yate appeal decision<sup>13</sup>, where the Inspector observed that the Council appeared to have been unquestioning of delivery rates provided by housebuilders/developers who may talk up delivery rates to retain the support of the Council. PPG states that the advice of developers and local agents will be important in assessing lead-in times and build-out rates by year.<sup>14</sup> The Yate Inspector did not suggest that such advice should be disregarded and in the absence of any substantive evidence as to why the trajectory submitted by the developer was unreliable I afford it significant weight. It is evident from the committee report that viability has been independently assessed and agreed, and this is supported by the view of the Council's solicitor. On the basis of the evidence submitted to the inquiry, I consider that there is a realistic prospect that housing on the site will be delivered in accordance with Mr Kerton's trajectory.

*Land south of Bradford Road, Corsham*

126. Outline planning permission was granted in April 2015 for up to 88 dwellings. The Council's original trajectory indicated that a total of 75 dwellings would be delivered over the five year period. This comprised 15 dwellings in 2017/18, with 20 dwellings a year in the following 3 years. Since reserved matters have not yet been submitted the appellant considers that the trajectory should be pushed back by one year reducing the number of dwellings to be delivered over the 5 year period to 55. I agree with the appellant that there would seem to be little if any prospect of dwellings being delivered on this site by March 2018.

127. Hannick Homes, the owner of the site, advises that the site is in the process of being sold to a national housebuilder (Bellway). Evidence from the Council confirms that the prospective owner has engaged in pre-application discussions with the Council. Bellway's trajectory is to complete 50 dwellings in 2019/20 and the remainder in 2020/21. There is no evidence to suggest that this is not achievable and would increase the Council's original trajectory by 13 dwellings. These figures were provided in an email from Hannick Homes following verification with the prospective purchaser.

128. Given that the developer will be a national house builder and that delivery is not due to commence until 2019/20 the Council's trajectory would appear to be achievable and realistic.

*Foundry Lane/Langle Park*

129. The site is allocated in the North Wiltshire Local Plan 2011 for a mixed use development including 250 dwellings. Outline planning permission was granted in January 2017 for up to 400 dwellings, a hotel, cafe, a discount foodstore, B1, B2 & B8 floorspace and highway improvements. Full planning permission was also granted for a 69 bed hotel with cafe and 22 residential units. The parties agree that the 22 dwellings will be delivered by 2020/21. The Council advise that the majority of the conditions in relation to the full application have been discharged, and that a pre-application request for the second phase has been received.

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<sup>13</sup> APP/P0119/A/12/2186546

<sup>14</sup> Reference ID: 3-023-20140306

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131. The Council's trajectory shows 130 dwellings delivered in 2019/20 and 98 the following year providing a total of 250 dwellings for the period up to 2020/21. The appellant believes that delivery will not commence until 2020/21 and only 40 dwellings will be delivered.

132. The site is a complicated site with multiple occupants and there is also a need for remediation work on the site. The proposal is for a mixed use scheme and seeks to accommodate both existing and new businesses, and some tenants will need to be relocated. At the time of the Forest Farm Inquiry there was uncertainty regarding how the site would be marketed and the impact of this on delivery rates.

133. Details submitted by the appellants included an extract from the intended programme for construction and phasing, which would appear to be part of the Environmental Statement submitted at the time of the application. This envisaged a demolition and construction programme of about 60 months with development commencing in January 2017. It took account of the need to relocate existing occupiers and the need for remediation works on the site.

134. It proposed that the construction of phase 2 of the residential part of the site would commence in 2017. Whilst there has been some slippage, the Council suggest that the first residential completions on the balance of the site would be 2019/20.

135. The site has been allocated for a number of years and the delivery of housing has been pushed back several times. This is evidenced by the Malmesbury and Shurnhold decisions. However, matters have moved on since these decisions. Planning permission has now been granted and there is no dispute that works in relation to part of the site is imminent. The evidence suggests that the site is soon to be marketed, and the owner has appointed marketing agent. However, without a developer for the balance of the site in place the submission of reserved matters is likely to be delayed. Although remediation works will be necessary, the broad extent of such works were identified at the time of the Environmental Statement, and have been accounted for within the programme. The appellant submitted evidence to show that it can typically take 2 years from the grant of outline planning permission to the delivery of the first dwellings. On this basis I consider that the Council's trajectory, which shows the first dwellings delivered in 2019/20, to be achievable.

136. The appellant's suggested delivery rate of 40 dpa, is based on an analysis of delivery rates over a number of sites within Wiltshire. However, this is an average delivery rate and even the evidence submitted by the appellant shows that many sites exceed this average rate. Moreover, it is apparent that the average rate for individual sites often does not reflect typical annual delivery rates with many sites significantly exceeding the average rate in one or more years. Based on the evidence in the Environmental Statement the remainder of the residential accommodation would be delivered over a period of 4 years which equates to an average of about 95 dpa.

137. It is probable that delivery will fluctuate over these years. In addition, it is intended that many of the dwellings will be flats, and therefore a greater number of dwellings may be delivered at one time, and the delivery rate for

flats tends to be quicker than for houses. However, in the absence of a detailed scheme, I do not consider that there is a reasonable basis for exceeding the average delivery rates implied by the Environmental Statement. Therefore I consider that the Council's trajectory should be reduced by 38 dwellings.

*Station Road, Westbury*

138. This is a saved allocation from the West Wiltshire Local Plan for 90 dwellings. Planning permission was granted in November 2013 for 92 dwellings. The Council advise that the site has recently been sold to Newland Homes, and a planning application is due to be submitted shortly for 88 dwellings.

139. The appellant states that the site has a long history of delay and delivery on the site is frequently pushed back. Moreover, the previous developer has walked away from the scheme because the expectations of the owner were unrealistic. The Council explained that ground investigations had been carried out to inform viability prior to the submission of the most recent application. It would therefore seem that there is a realistic prospect of housing on this site being delivered in accordance with the Council's trajectory.

*Rowden Park*

140. Outline planning permission was granted in March 2017 for 1,000 dwellings on one of the main parts of the Rowden Park site which is to be developed by Crest Nicholson and Redcliffe Homes. CSAP Policy CH1 also identified a further 11 hectares of land to provide 400 additional dwellings over the plan period. This land includes Showell Nursery, owned by Taylor Woodrow.

141. The Council considers that this site will deliver 400 dwellings during 5 year period. This comprises 210 dwellings on the Crest Nicholson site and 150 dwellings on the Redcliffe site, commencing in 2018/19, together with 40 dwellings on the Showell Nursery site. The Appellant considers that the site is only likely to deliver 330 dwellings up to the end of the 5 year period, with 60 dwellings delivered on the main part of the site in 2018/19 and 120 dpa thereafter, with the Taylor Woodrow site contribution 30 dwellings. The appellant considers this approach to be justified in that reserved matters remain outstanding and the planning permission includes 41 pre-commencement conditions which still need to be discharged.

142. The difference between the parties relates to delivery in 2018/19 and the delivery on the Showells Nursery site in the final year. Evidence submitted by the appellant considered the delivery rates on sites within Wiltshire, including the time period between the grant of planning permission and the first units becoming available. This evidence suggests that on average it takes about two years from the grant of outline planning permission to the delivery of the first dwellings on the site. However, an average figure also takes account of sites where there is a significant delay in delivery, and it is evident from the submitted table that on 50% of the sites, including large sites, housing was delivered within one year of planning permission being granted.

143. The appellant also suggests that average delivery rates vary between 122dpa for large sites and 36dpa for other sites. It is however evident from the table submitted by the appellant that the larger sites, of which Rowden Park is one, generally deliver a greater number of dwellings each year.



144. The Council relies on emails from Crest Nicholson and Redcliffe Homes. At the time of the Forest Farm inquiry both developers anticipated that they would be on site later this year. As acknowledged in the Lyneham decision this appears to be increasingly unlikely and this is reflected in the Council's revised trajectory. Crest Nicholson advise that they have a full proving layout and a team working on reserved matters in place. They also state that phases 1 and 2 could commence with minimal improvements to infrastructure. Redcliffe Homes advised that it had submitted a pre-application in respect of the first phase of the scheme for 118 dwellings. Redcliffe Homes acknowledged that work was intended to commence in November/December this year, but the delivery of 30 dwellings by April 2018 'may be pushing it'. However, it confirmed that the trajectory for from 2018/19 onwards 'was ok'.
145. Although the reserved matters are yet to be submitted, it would seem that both parties are progressing matters. Even on the basis of the appellant's submitted evidence regarding lead in times, it is entirely feasible that the first dwellings could be delivered in 2018/19. The only delivery rate the appellant suggests should be adjusted is that in relation to the Showell's Nursery site where 10 dwellings have been removed to allow for the effect of competition. The appellant justifies this approach by reference to an appeal decision at Yate<sup>15</sup>, however, there is no substantive evidence to suggest that the proximity of other housing outlets is likely to reduce delivery from this site. I therefore conclude that no adjustment is necessary to the Rowden Park figures.

#### *Conclusion on Housing Land Supply*

146. For the reasons given above I consider that 38 dwellings (Foundry Lane site) should be removed from the Council's housing land supply. Therefore the Council has sufficient land to deliver 6,867 dwellings against a housing requirement for 6,817 dwellings including the 5% buffer.

#### ***Principle of Location***

147. The appeal site lies outside of the limits to built development. The appellant acknowledges that the proposal would fail to comply with policies CP1, CP2 and CP15 of the Core Strategy. However, the appellant contends that the weight to be afforded to these policies should be reduced because the settlement boundaries on which they rely are derived from a previous development plan and will need to be revised. It is also submitted that the Council does not yet have a complete development plan since the site allocations plan is still at a very early stage and that the Council does not have a five year housing land supply.
148. Policy CP2 is underpinned by an aspiration to ensure that communities have a better balance of jobs, services, facilities and homes in order to achieve a sustainable pattern of development. The settlement boundaries on which it relies have been brought forward from the previously adopted District Local Plan and were not reviewed to inform the Core Strategy. The Core Strategy Inspector considered that the efficacy of the plan was partially undermined by the absence of robust evidence to support of the identified limits for each settlement. He considered that whilst a combination of commitments, windfalls and strategic allocations may ensure a supply of development land to meet

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<sup>15</sup> APP/P0119/A/12/2186546

needs in the shorter term, the effectiveness of CP2, in combination with CP1, is dependent upon a timely review of settlement limits. He was however satisfied that this matter could be resolved by the Sites DPDs.

149. The settlement boundaries are intrinsic to the overall settlement strategy, but they are only one component of it. The strategy also relies on the settlement hierarchy, and the distribution of housing and employment land between and within the Community Areas. The strategy for the Melksham Community Area, as set out at CP15, proposes that the majority of dwellings should be situated within Melksham. It aims to improve the economic self-containment of Melksham and focus the delivery of services and infrastructure within the town.
150. Within the Melksham Community Area 1,362 dwellings were delivered in the period up to April 2016, against a requirement of 2,370 for the plan period. Of these, the majority were within Melksham. Within the remainder of the community area 83 dwellings were delivered, against a target of 130 dwellings. When development commitments for Melksham are taken into account the indicative minimum requirement is exceeded by 15%. It is therefore probable that the number of houses delivered both within Melksham and the remainder of the community area will exceed the aspirations of the policy CP15 by the end of the plan period. Accordingly there is no evidence to indicate that the settlement boundaries that underpin policy CP2 are constraining development within the Melksham Community Area. Consequently development outside of the settlement boundary is not necessary to meet the housing needs of the Melksham Community Area.
151. However, neither the overall housing requirement for Wiltshire, nor the housing target for the Melksham Community Area, represents a ceiling. Paragraph 4.30 of the Core Strategy is clear that the disaggregation of housing to Community Areas is not intended to be inflexible, but aims to clarify the Council's intentions in the knowledge of likely constraints in terms of market realism, infrastructure and environmental capacity. I therefore see no reason in principle why some additional housing could not be delivered within the Melksham Community Area to offset the shortfall within the adjoining Trowbridge Community Area. However I note that the shortfall is within Trowbridge town itself rather than the remainder of the community area where 242 dwellings have been delivered against a target of 165. Moreover, any additional housing should generally be compliant with settlement hierarchy at policy CP2 and the intention of the Core Strategy to achieve a better balance between homes and jobs. Consequently there is no pressing need for the identification of additional land at the present time.
152. The appellant suggests that the proposal would be similar in scale to development permitted in the 1970's and 1990's when the number of dwellings in the village increased by 81% and 43% respectively. These previous dwellings were permitted in a different policy context and evidence submitted by the appellant suggests that they took the form of a number of smaller developments dispersed around the village.
153. At the present time there are about 400 dwellings within the village. The appeal proposal would significantly increase the size of the village, both in terms of the number of dwellings and also the extent of built development. The 75 dwellings proposed would considerably exceed the indicative threshold

of less than ten dwellings permissible within larger villages. Whilst this figure is not a ceiling it does provide an indication of the level of development considered appropriate. The strategic objectives of the Core Strategy include modest growth, proportionate to the size of the settlement. When the dwellings proposed on the Oxford Law site are included the cumulative increase would be in excess of 30%. Consequently the proposal, whether considered by itself, or together with the Oxford Law scheme, would not represent modest growth proportionate to the size of the settlement. It would therefore conflict with the delivery strategy due not only to its location outside of the settlement boundary, but also because of the number of dwellings proposed.

154. The development plan will not be complete until the WHSAP is adopted, in that all of the land necessary to deliver the Core Strategy housing requirement has not yet been identified. However, the Core Strategy Inspector was satisfied that there would be a sufficient supply of land to meet development needs in the short term, and I have found above that the Council currently has a five year supply of housing land. Therefore there is adequate land at the present time to deliver the housing strategy within the development plan.
155. The Council are currently progressing the WHSAP and anticipate that the examination will take place in 2018, with adoption later the same year. The emerging WHSAP is at a very early stage and therefore cannot be afforded any significant weight. In Semington some minor changes to the settlement boundaries are proposed to reflect development that has already occurred, rather than to accommodate additional development. Whilst there are proposals to modify the settlement boundaries of some villages, these represent areas where either the housing needs for the plan period have not already been accommodated, or alternatively, addressed by way of neighbourhood plans. These proposals are subject to consultation, and the modification of these boundaries through a Site Allocations DPD is in accordance with policy CP2 and is consistent with the plan led process advocated by the NPPF.
156. I found above that the Council can demonstrate a five year supply of housing and therefore the relevant policies for housing are not absent silent or out- of-date at the present time. Accordingly I afford policies CP1, CP2 and CP15 significant weight.
157. Paragraph 55 of the NPPF states that within rural areas housing should be located where it will enhance or maintain the vitality of rural communities. The appellant also considers that weight should be afforded to the *Living Working Countryside The Taylor Review Of Rural Economy And Affordable Housing* published in 2008. The Council confirmed that the Taylor Review was one of a number of documents that helped to inform the *Topic Paper 3: Settlement Strategy* and *Topic Paper 4: Rural Signposting* which formed part of the evidence base for the Core Strategy.
158. The Taylor Review highlighted the importance of building affordable homes to enable people who work in rural communities to continue to live in them. It stated that in many cases just a handful of well-designed homes, kept affordable in perpetuity for local people, would make all the difference to the sustainability of the community and its services. It also referred to the need to consider the benefits of development for villages rather than focusing on the negative effects. As acknowledged by the appellant it was a precursor to the

NPPF. The housing strategy within the Core Strategy provides for some additional housing within rural villages through policies CP1 and CP2 and is consistent with the principles of the Taylor Review. Moreover, it is evident that the Council adopt a flexible approach development within villages, and have permitted schemes for in excess of 10 dwellings where the proposal would deliver significant community benefits.

159. The appellant considers that the proposal would deliver a number of benefits, including the expansion of a primary school, the delivery of affordable housing and bungalows, as well as a canalside park and children's play areas.
160. The submitted Unilateral Undertaking covenants to make a financial contribution towards the expansion of the primary school, and would fund an additional classroom. This would allow the children to be taught in 4 mixed age groups rather than 3 as at present. The purpose of the financial contribution is to mitigate the effect of the proposal since the school cannot accommodate the children from the proposed development in addition to those from the Hannick Homes Development. Evidence was submitted to the inquiry to show that the contribution is necessary to make the development acceptable in planning terms, directly related to the development, and would be fairly and reasonably related in scale and kind.
161. Although the school was rated as inadequate in the most recent Ofsted report, the reasons for this were unrelated to either the size of the school or the mixed age classes. There is no suggestion either in the recent Ofsted report, or from the school itself, that the school requires an extension in order to meet the educational needs of the pupils. Whilst there is not a need for an additional classroom at the present time, and the primary purpose of the contribution is to mitigate the impact of the proposal, there could be some benefit to the village through the provision of an additional classroom.
162. The proposal would provide up to 30 affordable dwellings, including up to 9 bungalows. The Parish Needs Survey indicated a need for 3 affordable homes. I agree with the appellant that it is likely that the Parish Needs Survey underestimated the need for affordable homes within the village due to the low response rate, the demographic, social and economic profile of the village, and also because it only sought to address needs for the period up to July 2017. At the present time there are 27 affordable dwellings within Semington, with about 2 re-lets a year. I understand that there have been no affordable housing completions in Semington for the last 7 years.
163. There is just 1 household on the housing register listing Semington as a first preference, compared to 119 for Melksham and 306 in the case of Trowbridge. On behalf of the appellant, Mr Stacey suggested that this was because there was a more realistic prospect of obtaining an affordable home within Melksham or Trowbridge. Whilst this may be the case listing Semington as a first preference does not exclude applicants from applying for homes within Melksham.
164. Whilst I agree that the need for affordable homes within Semington is likely to be greater than indicated by the Parish Needs Survey, the recently permitted Hannick Homes scheme would provide 7 affordable homes. Although I do not doubt that the delivery of affordable homes would be a significant benefit of the proposal in terms of the overall affordable housing needs in the area, I am

- area, I am not persuaded that it would be a positive benefit for the village or would add to, or maintain, the specific vitality of Semington.
165. The proposal would provide 17 bungalows. At the time of the Parish Needs Survey only 2 households sought a bungalow. For the reasons given above, the Parish Needs Survey does not provide either a complete or up-to-date assessment of the demand for bungalows and it may be higher than suggested by the survey.
166. Core Policy 46 supports the provision of housing to meet the needs of vulnerable and older people in suitable locations. Such schemes should help older people to live independently and securely in their communities. Evidence submitted by the appellant shows that the proportion of the population within Semington over 65 is similar to the rest of Wiltshire and the region as a whole. The provision of bungalows could encourage those residents wishing to downsize to move thus releasing larger properties for family use. However, the submitted evidence does not indicate that there is an undersupply of larger properties within Semington, indeed it would seem that the proportion of one and two bedroom dwellings is much lower by comparison with the remainder of the Wiltshire or the South West region. Moreover there is no substantive evidence that there is a need or demand for bungalows within Semington beyond those to be provided as part of the Hannick Homes scheme. Having regard to the range of services available within Wiltshire, and the tendency of older people to have a greater degree of reliance on services, I am not persuaded that Semington would be a suitable location for the provision of additional housing to meet the needs of older and vulnerable residents or that the proposal would comply with policy CP46.
167. The proposal would also provide a canalside park and two children's play areas. These would add to the range of recreational facilities available to residents. However, the village benefits from a good network of footpaths and PROWs, as well as children's play park, football pitch and tennis courts. Whilst there is no evidence to suggest that there is a need for a park within the village, it would nevertheless be a benefit of the proposal.
168. Whilst the delivery of affordable housing and bungalows are benefits of the proposal, it is doubtful that they would add to, or maintain, the viability of Semington. The provision of an additional classroom and the canal side park would both benefit the village to some extent, but there is no evidence to indicate that there is a need for such facilities. Accordingly I do not consider that the proposal is consistent with paragraph 55 of the NPPF.
169. Semington has a primary school, a public house, a village hall and a part time post office. In addition there are existing employment opportunities at Semington Dock, and at St Georges Road. The proposal would not provide any employment opportunities in Semington other than during the construction period. Therefore most residents in employment would need to commute out of the village to work. Balanced against this, the appeal site is not particularly remote from Melksham or Trowbridge. It lies within 3.6km of major industrial estates at Bowerhill which accommodate over 4,000 jobs. The Bowerhill employment area is accessible by a car free cycle route, and is also served by a bus route linking Semington with Melksham and Trowbridge. The service is reasonably frequent in the morning peak period, but less so during the evening.

170. Semington does not have a shop, and the mobile post office visits two mornings a week. There is no early years provision either planned or existing within Semington. Therefore nursery aged children would need to travel out of the village and residents would need to travel out of the village on a daily basis to meet most of their day-to-day needs
171. In terms of primary education there would be additional capacity within the village due to the educational contribution which would facilitate the provision of an additional classroom. Notwithstanding this, the proposal would be likely to give rise to a significant increase in the number of residents commuting out of the village to work, for shopping, education (other than for primary education), leisure and nursery/child care. The Transport Assessment suggests that there would be 40 additional journeys by car during peak hours, but the overall number of trips would be much greater. Some of these journeys would not be especially long given the proximity of Melksham and Trowbridge. Nevertheless, due to the number of dwellings proposed and the absence of any commensurate increase in employment or other facilities, the proposal would be likely to lead to an increased reliance on the use of cars to access employment, shops, services and other facilities which are regarded as reasonably necessary to modern life. It would therefore conflict with the settlement strategy of the Core Strategy which seeks to ensure that communities have a better balance of jobs, services, facilities and homes in order to achieve a sustainable pattern of development. When considered together with the Oxford Law proposal the overall number of journeys to and from the village would be even greater. Even with the additional classroom the primary school would have insufficient capacity to accommodate all of the potential primary age children from both developments, and therefore these journeys would be likely to include children travelling to and from primary school.
172. The appellant contends that the Council has adopted a more flexible approach in respect of other proposals, where it had not adhered to either the constraint of the settlement boundary or the nine dwelling limit for development within larger villages. Reference was made to the Hannick Homes decision and the Allington decision.
173. In the case of Hannick Homes the Officer's report was clear that although the proposal was contrary to the development plan because the site was located outside of the limits of development, but that other considerations weighed in favour of the proposal. These other factors included the delivery of affordable housing and allotments. The Council considered that the absence of harm to the character of the area combined with these benefits justified the grant of planning permission. The scheme at Allington included 24 dwellings, a community building and a recreation ground. This scheme followed a previous permission for 18 dwellings where the Council decided that the benefits of the scheme justified an exception to policy. In both cases the Council considered that although the schemes conflicted with the development plan, other material considerations, including the benefits of the proposals justified granting planning permission. The Council is entitled to reach this judgement which forms part of the overall planning balance. However, by their very nature the material considerations that were taken into account in these decisions will vary from scheme to scheme. Therefore these decisions do not set a precedent for further development outside of the settlement boundary, or indeed represent schemes of the scale proposed.

174. I therefore conclude that the proposal would not be in an acceptable location and of an appropriate scale having regard to development plan and national policies.

### **Affordable Housing**

175. Core Policy 43 requires at least 30% of new homes on sites of five or more dwellings within Semington to be affordable. A higher affordable housing requirement of 40% applies to some other parts of Wiltshire.

176. The scheme, as amended, proposes 40% affordable housing. At the inquiry the appellant confirmed that the delivery of these dwellings would not undermine the viability of the scheme and submitted a viability assessment to support this position. On the basis of the evidence submitted to the inquiry, I am satisfied that the appeal scheme could deliver the affordable housing proposed.

177. There can be little doubt that there is a pressing need for affordable housing both within Wiltshire and the country as a whole. The Core Strategy anticipates that 13,000 affordable homes will be delivered over the plan period. The Council does not dispute the need for affordable housing, but suggest that there is not a demonstrable need for affordable housing within Semington. It considers that Semington is the wrong location to meet the district-wide need for affordable housing and would require out commuting in order to access many services and facilities.

178. The Parish Needs Survey identified a need for three affordable homes for the period up to July 2017. The survey had a response rate of 42.4% and the majority of respondents were homeowners. However, it was clear that this was a minimum need and reflected the housing requirements of those who responded to the survey. It acknowledged that it may underestimate the total need for affordable housing within Semington and noted that at April 2014 there were 10 households on the housing register seeking affordable accommodation within Semington Parish. Therefore whilst the Parish Housing Needs Survey provides a useful snapshot of the affordable housing needs of those resident in the village at the time it was undertaken, it is possible that the does not take account of all those wishing to live in Semington or the need for affordable housing beyond 2017. Accordingly the weight to be afforded to the Parish Housing Needs Survey is limited.

179. At the present time there is one household on the register wishing to move to Semington. The affordable housing proposed is a combination of 60% affordable rent and 40% shared ownership. The need for affordable housing in Melksham and Trowbridge may well be greater than indicated by the housing register. In the light of the considerable shortfall in affordable housing and the proximity of Semington to these locations, the proposed affordable housing is likely to be attractive to many households in need of an affordable home.

180. The unilateral undertaking proposes that the scheme would provide 9 affordable bungalows. The appellant states that one third of those requiring housing support require a bungalow. This evidence is not disputed by the Council. It may be that some of the residents of Semington may wish to downsize to a bungalow either now or in the future. However, it is debateable as to how many of the older residents living within Semington would have a need for, or qualify for, affordable housing given the high proportion of

owner/occupied dwellings and low proportion of rented dwellings, particularly social rented dwellings. I agree with the Council, that it would be more appropriate to meet the affordable housing needs of the elderly within the nearby towns, or other higher order settlements where they would have access to a range of facilities and public transport.

181. Notwithstanding this, the unilateral undertaking provides sufficient flexibility for the Council to require an alternative mix to that shown within it. Consequently, whilst the provision of 9 affordable bungalows does not in itself weigh in favour of the proposal, this does not detract from the significant weight to be afforded to provision of affordable housing as part of the proposal.
182. I am also mindful that policy CP43 only requires affordable housing on sites of five or more dwellings, and consequently the reliance on settlement boundaries and the scale of development anticipated within Larger Villages such as Semington could limit the delivery of affordable housing within rural areas. However, Core Policy 44 allows for rural exception sites meet any identified need for affordable housing within rural areas. It is apparent from the Hannick Homes scheme that the Council takes a flexible approach to the delivery of such housing.
183. For the reasons given above, although I do not consider the proposal is necessary to meet the affordable housing needs of Semington, it would nonetheless help to meet the District wide need for such housing and assist with the delivery of Strategic Objective 3. Given the extent of the need for affordable housing and the shortfall in delivery, I afford significant weight to the delivery of affordable housing on this site.

### **Other Matters**

#### *Town and Village Green Application (TVGA)*

184. The application to register the appeal site land as a Village Green was lodged on 24 June 2016. The appellant suggests that the TVG was a triggered by Richborough Estates pre-application consultation with the Parish Council and the Council. As such Richborough Estates considers that it at a disadvantage due to its engagement in pre-application discussion in accordance with the policies in the NPPF. Whilst the TVGA is a material consideration in relation to the appeal, the matters which gave rise to it, or indeed the merits of the application are not.
185. The Council and Oxford Law submit that the site is not deliverable until the TVGA is resolved. Moreover, if the TVGA is granted the site cannot be developed. The appellant disagrees and contends that an unproven claim for a TVGA does not justify the refusal of planning permission. Reference was made to an appeal decision in Matlock<sup>16</sup> in support of this view. However, it would seem that in the Matlock case the Inspector did not consider the effect of the TVGA on the deliverability of the site.
186. The appellant states that the site is "available now" since at the present time it is not a TVG since the claim has not been proven. It was suggested that any other approach would require a judgement about the merits of the TVGA and

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<sup>16</sup> APP/P1045/A/14/2227116



this is not a matter for this appeal. The appellant considers that should planning permission be granted and the TVGA is subsequently proven the site would not come forward for development and would be removed from the housing land supply. Had I found that the proposal complied with the development plan I consider that there could be some merit in this approach. However, I found that the proposal would harm the character and appearance of the surrounding area, including the setting of the canal, and would fail to comply with the delivery strategy of the Core Strategy considered as a whole.

187. Applications for planning permission should be determined in accordance with the development plan unless material considerations indicate otherwise. As acknowledged by the appellant the appeal proposal is contrary to policies CP1, CP2 and CP15 of the Core Strategy. Whether the site is capable of making a contribution to the supply of market and affordable housing is a relevant material consideration.
188. The appellant is a land promoter and not a housebuilder. At the inquiry it was explained that Richborough Estates's business model was to deliver sites with planning permission to the market and these were generally developed quickly. In the case of the appeal site the uncertainty regarding the TVGA would be likely to deter prospective developers from either purchasing or committing to the site until this matter is resolved. Therefore even if the TVGA is unsuccessful, at the present time it is an impediment to the delivery of houses on the appeal site. This is a matter to be weighed in the overall planning balance.

#### *Benefits*

189. I am aware that the Canal and Rivers Trust expressed support for the proposal because it would deliver benefits such as the canalside park and potentially reduce antisocial behaviour. There is no evidence to suggest that the canal in the vicinity of Semington suffers from such problems. At the time of my visits the canal, towpath and PROWs seemed to be well used by walkers, cyclists and those using boats on the canal. In the light of the significant harm to the character and appearance of Semington and its rural setting this consideration does not add significant weight in favour of the proposal. The canalside park and play areas would deliver some benefit but this needs to be balanced against the environmental harm arising from the proposal.
190. The proposal would also deliver some environmental benefits through the creation of a wider range of habitats, including the wetland area/attenuation pond and the conversion of the pill box to a bat roost, and also from the ecological enhancements proposed. The improved access to and proposed interpretation in relation to the pill box would be a cultural and heritage benefit of the proposal.
191. The proposal would also provide economic benefits through investment and the provision of jobs during the construction period. The increase in population would add to household expenditure and economic activity within the District.

#### ***Planning Balance***

192. The proposal would deliver affordable and market housing. In the light of the current national housing shortage, and the shortfall in housing delivery within Wiltshire, these considerations add significant weight in favour of the

proposal. However, although the Government sees the provision of housing as a priority as evidenced by the recent consultations, it is also eager to ensure that housing is provided in the right place.

193. The NPPF requires development plans to be prepared with the objective of achieving sustainable development and describes Local Plans as key to delivering sustainable development. The Core Strategy seeks to deliver sustainable development. The proposal would conflict with the strategy for the delivery of housing within it and as such it would add to the existing imbalance between housing and employment and give rise to significant harm to the character and setting of Semington. It would conflict with the development plan as a whole. Therefore the conflict with the Core Strategy is a matter of considerable weight.

194. I have found that the Council does have a five year supply of housing land and although the emerging WHSAP is still at an early stage, the development plan is not absent, silent or out-of-date. Consequently paragraph 14 of the NPPF is not engaged.

195. Looked at in the round the proposal would not represent sustainable development. The benefits of the proposal and other material considerations do not outweigh the harm that would arise from the proposal, or justify a decision other than in accordance with the development plan. Therefore the appeal should be dismissed.

### **Conclusion**

196. For the reasons given above I conclude that the appeal should be dismissed.

*Lesley Coffey*

INSPECTOR

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## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Richard Humphreys QC	Of Counsel Instructed by Frank Cain Head of Legal Services
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### FOR THE APPELLANT:

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RULE 6 PARTY:

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He called

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Framptons Planning Consultants

INTERESTED PERSONS:

Councillor Morland  
Brian Smyth  
William Scott

Semington Parish Council  
Semington Parish Council

## DOCUMENTS

- 1 List of Appearances submitted by the Council
- 2 Letter notifying arrangements for the Inquiry submitted by the Council
- 3 Suggested route for site visit submitted by the Council
- 4 Draft Site Allocations Plan and associated reports submitted by the Council
- 5 Education Note submitted by Richborough Estates
- 6 LDS timetable May 2005 – Present submitted by Richborough Estates
- 7 Transcript of Councillor Morland’s submissions to Cabinet Meeting dated 20 June 2017 submitted by Richborough Estates
- 8 Appeal ref: APP/F1610/16/W/3151754 Love Lane , Cirencester submitted by Oxford Law
- 9 Marketing information for Oxford Law site
- 10 Hannick Home Officer’s Report submitted by Oxford Law
- 11 Submission on behalf of Mr Smyth on behalf of Parish Council
- 12 Extract from West Wiltshire Local Plan Inspector’s Report submitted by the Council
- 13 Unilateral Undertaking submitted by Richborough Estates
- 14 Landscape Institute Advice Note 01/11 submitted by Richborough Estates
- 15 Appeal Ref: APP/R0660/A/14/2211721 Willaston, Cheshire submitted by Richborough Estates
- 16 Canalside park and attenuation pond dimensions submitted by Richborough Estates
- 17 Open space calculations submitted by Richborough Estates
- 18 Listing information in respect of other aqueducts along Kennet and Avon canal submitted by Richborough Estates
- 19 Note in respect of attenuation pond and safety
- 20 Extract from Planning Listed Buildings and Conservation Area Act 1990 submitted by Oxford Law
- 21 Photograph of canal embankment submitted by Richborough Estates
- 22 Conservation Officer’s comment in respect of Oxford Law scheme submitted by Richborough Estates
- 23 Listing details of Embankment and Aqueduct at Brecknock and Abergavenny submitted by Oxford Law
- 24 Claim Form CO/7802/2011 for Cheshire East submitted by Richborough Estates
- 25 Objectively Assessed Housing Need Statement of Common Ground submitted by Richborough Estates
- 26 Email dated 26 May 2017 from Mr O’Donoghue submitted by Richborough Estates
- 27 Appeal Ref: APP/P1615/A/14/2228822 Land North of Ross Road, Newent submitted by Richborough Estates
- 28 Extract from Cheshire East Inspector Report submitted by Richborough Estates
- 29 Extract from PAS: Good Plan Making Guide submitted by the Council

- 30 Zurich Assurance v Winchester City Council[2014]EWHC 758 (Admin) submitted by the Council
- 31 Planning Practice Guidance Housing and Economic Land availability assessment submitted by the Council
- 32 Email dated 26 May 2017 from Mr Humphreys submitted by the Council
- 33 Sajid Javid speech to LGA Conference July 2017 submitted by Richborough Estates
- 34 Barwood Strategic Land LLP v East Staffordshire Council and SoSCLG [2017] EWCA Civ893 submitted by Richborough Estates
- 35 Montage of viewpoints B and D submitted by Richborough Estates
- 36 Distance to supermarkets in Trowbridge and Melksham submitted by Richborough Estates
- 37 Pedestrian and cycle audit by PTB submitted by Richborough Estates
- 38 Size of housing sites south of Cheltenham submitted by Richborough Estates
- 39 Appeal Ref: APP/T3725/A/14/2222868 Radford Semele submitted by Oxford Law
- 40 Landscape sensitivity plans for Radford Semele dated November 2013 and April 2014 submitted by Richborough Estates
- 41 OS Extract of Kennet and Avon canal passing through urban areas submitted by Richborough Estates
- 42 Email dated 27 June 2017 from Clare Medland submitted by Richborough Estates
- 43 SoS decision APP/K3415/A/14/2224354 Curborough, Lichfield submitted by Oxford Law
- 44 Landscape Statement of Common Ground dated 5 July 2017
- 45 Note From Mr Donagh regarding instructions submitted by Richborough Estates
- 46 Technical Note from PTB in relation to Travel to Work Data for Rural Wiltshire submitted by Richborough Estates
- 47 Extract from draft WHSAD showing Semington settlement boundary submitted by Richborough Estates
- 48 Number of jobs within Melksham and Bowerhill submitted by Richborough Estates
- 49 Officer's report land off A338 and Bourne View Allington submitted by Richborough Estates
- 50 Three Wiltshire schemes Cliff Lane has been involved with submitted by Richborough Estates
- 51 Planning Practice Guidance Rural Housing submitted by Richborough Estates
- 52 GP surgeries accepting new registrations submitted by Richborough Estates
- 53 Email dated 14 March 2017 from Ruaridh O'Donaghue submitted by Richborough Estates
- 54 West Wiltshire Local Plan extract submitted by Richborough Estates
- 55 Ofsted report St Georges Semington submitted by Richborough Estates
- 56 Letter dated 4 September 2017 from Mr Read, Chester Commercial's submitted by Richborough Estates
- 57 List of suggested conditions submitted by the Council

- 58 Email dated 6 March 2017 from Mr Roe regarding CSAP sites submitted by Richborough Estates
- 59 Letter dated 31 August 2017 from Rupert Taylor to the Council regarding Bath Road site submitted by Richborough Estates
- 60 E mail dated 7 September from Mr Hunnybun to Mr Way submitted by Richborough Estates
- 61 Appeal decision Franklin Drive
- 62 Laying the Foundations Report submitted by Richborough Estates
- 63 Chester Commercial's response dated 7 September 2017
- 64 Appeal Ref: APP/Y3940/W/17/3173509 Hilltop Way, Salisbury submitted by Richborough Estates
- 65 Consultation responses to Appellant's revised proposal submitted by Richborough Estates
- 66 Mark Carney Article in relation to housing market submitted by Richborough Estates
- 67 Examples of variation to s106 agreement
- 68 Further suggested conditions
- 69 Affordable Housing Officer comments on appeal scheme dated 29 June 2016 submitted by Richborough Estates
- 70 E mail from Clare Medland dated 8 September 2017 submitted by the Council
- 72 Bloor Homes v SoSCLG and Hinckley and Bosworth Council [2014] EWHC 754 (Admin)
- 73 Email dated 8 September from WCC Planning Solicitor
- 74 Email dated 4 September 2017 from Chesters Commercial
- 75 Letter dated 8 September 2017 from Chesters Commercial