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Your Ref: 16/00547/FUL

Our Ref: APP/Y3940/W/22/3295577

Wiltshire Council
Planning Appeals
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

20 September 2022

Dear Sir/Madam,

Town and Country Planning Act 1990
Appeal by Wain Homes
Site Address: Drynham Lane, Trowbridge, Wiltshire, BA14

I enclose a copy of our Inspector's decision on the above appeal(s).

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Thank you in advance for taking the time to provide us with valuable feedback.

Yours faithfully,

Leanne Palmer

Leanne Palmer

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Appeal Decision

Inquiry opened on 16 August 2022

Site visit made on 24 August 2022

by Paul Singleton BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 September 2022

Appeal Ref: APP/Y3940/W/22/3295577

Land to the west Drynham Lane and east of Eagle Park, Southview Farm, Trowbridge, Wiltshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Wain Homes (South West) Holdings Ltd against the decision of Wiltshire Council.
 - The application Ref 16/00547/FUL, dated 1 April 2016, was refused by notice dated 6 October 2021.
 - The development proposed is provision for 91 dwellings, ecological mitigation and associated infrastructure including roads/footpaths, bridge, cycleway, garages and sub-station.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As Rule 6 parties Trowbridge Town Council (TTC) and the Residents of Southview Park Committee (RSvPC) presented their own evidence and asked questions of the appellant's witnesses. The Inquiry opened on 16 August 2022 and sat on 7 days, closing on 25 August.
3. I undertook an accompanied visit to the site and the Southview Park area on 24 August 2022. I also made a number of unaccompanied visits to make my own assessment of the level and location of on-street parking and the ease of negotiating the local road network at different times of the day. I carried out an unaccompanied inspection of the access routes approved for a development of 67 dwellings at Sandhole Lane in Westbury,¹ also in Wiltshire.
4. The appealed application, as lodged in 2016, sought permission for 120 dwellings with vehicular access to be taken exclusively from Toucan Street. It was subsequently amended to reduce the number of dwellings to 91 and to extend the red line to include the land at the northern edge shown on the site layout drawing² for landscaping and part of a proposed ecological mitigation area.
5. The layout was also amended to extend the site spine road to the northern edge of the site which forms the boundary with the remainder, and main part, of the Ashton Park Urban Extension strategic site allocation in the adopted

¹ Appeal Reference APP/Y3940/W/21/3275352 dated 8 February 2022 (Appendix CMR/N to Mr Rawlinson's PoE

² Pegasus Drawing No. P18-1032_01_Rev R

Wiltshire Core Strategy (CS) (Ashton Park main site). The appellant's Adoption Plan³ indicates that that road would be constructed to adoptable standards. The Movement Plan⁴ includes an arrow at the northern end of the road, shown in the key as indicating a "*Proposed Potential Access to Future Development*".

6. The application was refused for three reasons, with Reason for Refusal (RfR) 3 concerning provision for the essential infrastructure for the development. The appellant's proposed S106 Agreement includes planning obligations in respect of affordable housing and open space provision, ecology mitigation, and financial contributions for off-site highway works, educational provision, waste collection and public art. In light of those proposed obligations the Council did not present any evidence in support of RfR 3. I deal with the S106 Agreement later in this decision.
7. A Unilateral Undertaking (UU) has also been submitted which is concerned with the potential delivery of a highway link to the Ashton Park main site. I deal with those proposed obligations later in the decision.

Main Issues

8. The main issues are:
 - i. Whether the proposal is consistent with the Ashton Park Urban Extension strategic site allocation in the Wiltshire Core Strategy (CS) and the effect on the delivery of the strategic site and its movement strategy.
 - ii. The suitability of the proposed access route for construction and development traffic and the effect on the character and amenity of the Southview Park residential area and the safety of all road users.
 - iii. The broad extent of the shortfall in the Council's 5 year housing land supply.

Reasons

Strategic site allocation

9. The site is allocated for development only insofar as it forms part of the strategic allocation for the Ashton Park Urban Extension. CS Policy CP29 identifies this as an area for strategic growth to deliver 15 hectares (ha) of employment development and 2,600 homes. As Mr White points out this is a single, site wide allocation for mixed employment and residential use. Nothing in Policies CP2, CP29 or CS Appendix A indicates that the appeal site is to be developed for housing purposes. The plan at Appendix A only identifies an area of '*indicative green space*' and an area of '*indicative mixed use*'.
10. The appellant promoted the appeal site as a separate plan allocation for housing development at the time that the CS was being prepared. Mr White's evidence and his Appendix B shows that various parcels of land in the Ashton Park area were put forward as part of that process. It seems that the owners of most of those land parcels reached an accommodation with the partnership between Ashton Park Trowbridge (APT) and Persimmon and the partnership took over the promotion of all those sites. The appellant continued to promote

³ Pegasus Drawing No .P18-1032_04_Rev C

⁴ Pegasus Drawing No. P18-1032_11_Rev C

the appeal site as a separate housing site and made submissions at the plan examination stage in support of such an allocation.

11. Those submissions found no favour either with the Council or the Examining Inspector. In his report, the Inspector fully supported the mixed use strategic allocation as it appears in the adopted CS. He considered the submissions made, including how the proposed allocation had developed over time and the alternatives considered, and concluded that the strategic allocation was capable of being brought forward to achieve the objectives of CP29. He said that this forms a key element of the strategy for Trowbridge to deliver a mix of homes, employment land and key infrastructure integrated with the existing settlement.
12. The Inspector recognised that a lot of detail would need to be agreed to move the development forward. He stated that master planning will be required to bring forward detailed proposals and that such details "*will be subject to community involvement and should maximise the potential of the site to realise a sustainable form of development, for example in relation to connectivity and transport routes*".
13. The outcome of the CS examination was abundantly clear but it is difficult to avoid the conclusion that the appellant has opted to ignore that outcome. Over the past 7 years they have sought to progress their proposals as if they had achieved a separate development plan allocation for housing use. Although they place weight on the plan-led system they also seek to disregard the outcome of a fundamental component of that system; i.e. the plan making and examination process.
14. Policy CP2 sets out the delivery strategy for achieving the development of at least 178ha of employment land and at least 42,000 new homes. It lists a small number of strategic sites including Ashton Park. The policy requires that masterplans be developed for each of the strategic sites in partnership between the local community, local planning authority (LPA) and developer and that those masterplans be approved by the Council as part of the planning application process. At mixed use sites, development is to be phased to ensure that the employment land, and its appropriate infrastructure, is brought forward during the early stages of development. CS paragraph 4.23 states that there will be a focus on ensuring an appropriate phasing so that jobs are provided in a timely manner alongside new homes. This is to be achieved through the masterplanning process and legal agreements.
15. Policy CP29 provides further detail on the Spatial Strategy for the Trowbridge Community Area including strategic growth at Ashton Park. It states that the strategic site will be brought forward through a masterplanning process agreed between the community, LPA and developer that should deliver the requirements in the development template at Appendix A to the plan. Since CP29 makes no reference to the planning application process, the appellant's assertion that there is no policy requirement for masterplanning outside of that process is incorrect. The wording of the policies is quite clear.
16. When read together, they set an unequivocal requirement that the detailed proposals for development of the strategic site be brought forward through a masterplanning process that is not only produced in collaboration with the community and the LPA but which is also agreed (my emphasis) with those

- parties. The Council's formal approval of that masterplan is then to be given as part of the planning application process.
17. Mr Bullock agreed that the purpose of requiring the preparation and approval of a masterplan is to secure the planned and co-ordinated delivery of the strategic site and its infrastructure. In the case of a mixed use allocation another main purpose is to determine which parts of the site should be developed for employment purposes and which should be used for residential development. As the policies do not indicate this, that distribution can only be determined through the preparation and subsequent approval of a masterplan.
 18. The need for a collaborative approach, involving the community and LPA, reflects the Examining Inspector's observations that the strategic site needs to deliver mixed use development and key infrastructure integrated with the existing settlement, and that the masterplanning process should maximise the potential of the site to deliver sustainable development including in relation to connectivity.
 19. CS Appendix A lists a number of requirements relating to physical, social and green infrastructure and the protection/enhancement of landscape, ecological and archaeological features. The transport infrastructure is to be provided in line with the Trowbridge Transport Strategy. That document confirms the need for delivery of the Yarnbrook and West Ashton Relief Road (YWARR) as part of the Ashton Park development and that strategic sites should provide the necessary infrastructure and services to facilitate journeys by sustainable modes of travel. Its 'Delivery Mechanism' restates the requirement for partnership working to achieve a frontloaded masterplan and states that this will guide the private sector led delivery of the site.
 20. These policy requirements are unequivocal but the appellant has also chosen to ignore them. Other than reference to a representative of the company having attended one meeting in May 2022, (after the appeal had been lodged) there is no evidence of any meaningful attempt by the appellant to engage with APT/Persimmon to discuss how the appeal site might be brought forward in a co-ordinated manner as part of the masterplan for the wider strategic site. TTC's evidence that neither the appellant nor their agents have ever engaged with the Town Council or North Bradley Parish Council in respect of the appeal proposals was not challenged. The APT/Persimmon letters of objection also confirm that the appellant has not sought to engage with them.
 21. Hence, there has been no discussion with APT/Persimmon, who control the Ashton Park main site, about the role that the appeal site could and should play in securing the required mix of housing and employment uses and an appropriate distribution of those uses; how its development might help to secure the delivery of the necessary infrastructure in the correct location and at the correct point in time; how it could assist in ensuring that employment development is delivered at an early stage; and how it should fit in with and contribute to a site-wide connectivity and movement strategy that is capable of minimising dependence on the private car and of encouraging pedestrian, cycle and other non-motorised trips.
 22. Not only has there been no engagement in a collaborative masterplanning process but the appellant has not carried out any public consultation on their proposals, either before the application was submitted or in the 5 years prior to its determination by the Council. As Mr Bullock agreed, this does not constitute

- good planning practice. It also disregards the advice at paragraph 126 of the National Planning Policy Framework (Framework) that effective engagement with local communities and the LPA is essential to achieve high quality design and sustainable development.
23. The appellant sought to characterise this as a simple appeal which focuses on the question of when rather than if the site should be developed. That analysis appears to be predicated on an, in my view, incorrect assumption that the site is allocated for housing. It also ignores the equally, if not more, important question of how the site should be brought forward. How this should be done is set out in clear terms within the adopted CS. The appellant's failure to follow that approach, which has been by choice rather than by omission, puts the appeal proposals squarely in conflict with Policies CP2 and CP29.
 24. The contention that the Council has, on repeated occasions, resolved to grant outline permission for the APT/Persimmon application Ref 15/04736/OUT without an approved masterplan for the whole strategic site is of little consequence. Neither CP2 nor CP29 stipulates that the required masterplan should cover the entire allocation identified in the CS. Given the level of detailed information within the evidence base that is likely to have been available at the time of the CS examination such a requirement would, potentially, have been impractical.
 25. As demonstrated in TTC's evidence, and in stark contrast to the appellant's approach, APT/Persimmon have proactively engaged with TTC, the neighbouring parish councils and the wider community over a considerable period of time. They have secured the broad agreement of those partners to a masterplan for the large majority part of the Ashton Park strategic site allocation. This covers the land under their control but extends beyond that, for example to include the Biss Meadows Country Park and employment land at Leap Gate, to show how their proposals fit within their wider context.
 26. Both that masterplan and the process followed in its preparation would be consistent with the requirements of CP2 and CP29 even if it made no reference to the appeal site. The final version does, however, provide a simple but clear indication of how the highway infrastructure on the main site could be extended to provide a spine road into the appeal site with a number of links off of this to access all parts of the site. This demonstrates both that the appeal site could be accessed from the wider strategic site and that the development for which APT/Persimmon seek outline permission would not prevent the appeal site being brought forward in accordance with Policies CP2 and CP29.
 27. Condition 4 of the conditions to be attached to the outline planning permission requires that the site layout be developed in broad accordance with the masterplan. This condition would be capable of safeguarding the provision of that access link. However, Mr White's evidence is that the latest version of the proposed S106 agreement between APT/Persimmon and the Council also includes an obligation to secure a safeguarded road link to within 1m of the boundary of the appeal site. The provision of that potential access can, therefore, be secured as part of the outline permission.
 28. As the appellant has not engaged in the masterplanning process it is difficult to imagine what more detail those preparing the masterplan could or should have provided. In my judgement, they have done all that they could reasonably be expected to do. I can, therefore, see no justification for the Council to withhold

outline permission on the basis that the masterplan does not show more detail in respect of the appeal site.

29. The APT/Persimmon application proposes some 2,500 dwellings on the Ashton Park main site. The Council accepts that the appeal proposal is consistent with the CS spatial strategy and settlement hierarchy and considers that the appeal site would be capable of making up most of the balance of the 2,600 units proposed in the strategic allocation. However, the masterplan shows the appeal site as 'white land' and does not specify a particular land use. In the absence of a separate development plan allocation, the Council's endorsement of the site's use for housing purposes could, in my view, only be given by means of the approval of a further iteration of that masterplan or through the grant of planning permission.
30. Given the appellant's failure to engage with APT/Persimmon, their partners and the wider community, their repeatedly stated grievance, that this masterplan does not reflect their aspirations for the site (as represented in the appeal proposal), is unfounded. Similarly, since the drawing is a masterplan and the APT/Persimmon application is in outline form, their complaint that there is no certainty as to where any new road link might meet the shared boundary is a hollow one. This matter could and should be capable of agreement through negotiations.
31. I agree that nothing in the wording of CP2, CP29 or Appendix A stipulates where access to the appeal site should be taken from. I would not expect that to be the case given that the allocation is not of the appeal site in isolation but of a strategic site expected to provide 15ha of employment land, 600 homes and for the delivery of the YAWRR as a key element of the infrastructure needed for the development.
32. The requirement for a frontloaded masterplanning process seeks to ensure the co-ordinated delivery of the development and its infrastructure and that this is done in a way that promotes connectivity and sustainable travel. As Mr Tonks said in his evidence, the site access proposals have been developed and agreed with the highway authority through the masterplanning process. By virtue of its resolutions to approve application Ref 15/04736/OUT, the Council has now given its approval both to the masterplan and its access strategy⁵. This is fully in accordance the CP2 requirement that the masterplan should be approved by the Council as part of (my emphasis) the planning application process. As the appeal proposal conflicts with that masterplan in terms of the site access strategy, it also conflicts with CP2 and CP29 for this reason.
33. The amendment to the site layout to extend the spine road to the northern boundary does not render the proposal consistent with that masterplan or with Policies CP2 and CP29. The appellant maintains that a vehicular link to the Ashton Park main site is unnecessary. Even if this was to be provided at some future date, the proposal would remain dependent on vehicular access being taken solely from Toucan Street for the foreseeable future. There is nothing in Policies CP2 or CP29 that provides any support to this part of the strategic site

⁵ The power to issue the formal grant of outline planning permission has been delegated to officers on completion of the legal agreements. I see nothing in the Committee's resolution which requires any further amendments to the masterplan. In my view this can, accordingly, be considered to represent an endorsement of the masterplan as required by Policy CP2.

- being served by a separate access or without a direct connection to the social and other infrastructure to be provided within the strategic site.
34. To allow the 91 homes on the appeal site to take vehicular access as proposed would undermine the CS connectivity and sustainability objectives with regard to the internalisation of trips within the strategic site, where all of the main destinations should be walkable. These objectives form a fundamental part of the strategic allocation and approval of the appeal proposal would be contrary both to the letter and key objectives of Policies CP2 and CP29 in this respect.
 35. If the development of the site was to be served by an access through the Ashton Park main site as indicated on the CPT/Persimmon masterplan, it would be reasonable to expect that it should contribute to the costs of the highway and services infrastructure involved in constructing the road network to the site boundary. Although the S106 includes a contribution to the YWARR, there is no provision for any contribution to this other road infrastructure in the proposed planning obligations. Neither has any explanation been given as to how the site's development would assist in the early delivery of the proposed employment development in accordance with the requirements and objectives of the CS. Notwithstanding that the proposed S106 obligations have been agreed by the Council, I find that these obligations do not satisfy all of the seemingly reasonable objections made by APT/Persimmon.
 36. For the reasons set out in my discussion of the S106 agreement later in this decision, I am not persuaded that the proposed obligations are capable of ensuring that the new schools required as part of the CS allocation would be available when needed by families moving into homes on the appeal site. This would not achieve the co-ordinated delivery of this element of infrastructure as envisaged in CP2 and CP29.
 37. If the appeal site was to be treated as a separate and stand-alone development as the appellants seek, this would bring the proposal into conflict with that part of CP29 which states that greenfield sites, in addition to the strategic site, will only be permitted once improved secondary school provision has been secured at Ashton Park. This would, therefore, give rise to an additional conflict with the development plan.
 38. The appellants contend that there is no certainty as to when a road connection to the northern boundary of the appeal site could be provided. This repeated complaint and the associated attempt to apportion blame to the Council for making the appellants wait to develop their land is a surprising line of argument.
 39. The planning system is designed to deliver planned development in the locations that it is needed rather than to enable housebuilders to develop their land at a time of their choosing. In this case the 'planned' development is that of the larger strategic site. I set out my findings as to the implications of the absence of a 5 year Housing Land Supply (HLS) below. Subject to those findings I consider that, as long as the Ashton Park Urban Extension can deliver new housing in accordance with its planned trajectory once development has commenced, it does not matter whether the appeal site is developed in the first or last phase of that trajectory. Nothing in the CS policies indicates that the appeal site should form part of a first phase of the development. Indeed, the policies clearly anticipate that the phasing proposals for the strategic site should flow from the masterplanning process.

40. The draft conditions for application Ref 15/04736/OUT include one requiring the submission and approval of a detailed phasing plan. The latest iteration of that plan indicates that the land to the north of the appeal site would be part of the land to be developed for housing as part of a larger first phase of development. This first phase might subsequently be broken down into a number of sub-phases and the phasing plan has not yet been approved. This draft plan does, nevertheless, indicate that APT/Persimmon consider that the land close to the common boundary could be brought forward in the early phases. In connection with this, I note that part of this development would share some of its highway infrastructure with Primary School 1 which needs to be delivered in the early stage of the development.
41. If the adjacent land is included in the Phase development this would enable a road connection to be provided to the boundary of the appeal site. The detailed timing for the construction of that connection would be a matter to be agreed between the appellant and developers of the main site. That is a commercial negotiation and no doubt the likelihood of early delivery of the link might be increased if the appellant agreed to fund part of that network. I do not consider that it is for the Council to use its planning powers to dictate when the road should be provided. I reject the assertion that the Council could and should have sought to impose a condition on the outline permission to this effect. I do not consider that such a condition would satisfy the Framework test of being reasonable in all respects.
42. In summary, I find that the appeal proposal conflicts with Policies CP2 and CP29 of the adopted CS. Having regard to all of the above considerations I agree with the Council that this conflict represents a serious breach of the development plan which has resulted in an ill-thought out and unacceptable planning proposal. Accordingly, I conclude that the conflict with policies CP2 and CP29 should be given very substantial weight.

Site access proposals

43. The appellant was the developer of the Southview Park estate through which access to the site is proposed. Outline planning permission⁶ was granted by the Secretary of State (SoS) in September 2006. Reserved matters approval was issued in October 2008 and Toucan Street formed part of Phase 3 of the development with the last dwellings in this part of the estate having been completed in about 2016.
44. The first application showing Toucan Street as the vehicular access to the appeal site⁷ was refused in October 2015. The site access strategy, therefore, predates the completion and occupation of the housing in Toucan Street. As Mr Bullock agreed, this strategy was neither informed nor driven by the Council's 5 year HLS position or the identification of the northern part of the site as an ecological mitigation area.
45. The highways experts agree that the outline application was determined when the main guidance for highway design comprised Design Bulletin (DB) 32 and its companion guide 'Places, Streets and Movement' but that Manual for Streets (MfS) (2007) was published before the reserved matters application was made.

⁶ Reference 04/01063/OUT

⁷ Ref No. 15/01805/FUL

That change in the relevant guidance is noted at paragraph 4.8 of the site Development Brief.

46. Regard should be had to the guidance in understanding the potential capacity and useability of Sparrow Street and Toucan Street as an access for construction and development traffic. The experts agree that this guidance should not be applied rigidly in every situation and that informed judgement should take precedence. I agree and consider that this approach is particularly appropriate in this case as I am not considering the design of a new street but whether an existing street is suitable for a new or different use. As also agreed by the main parties, it is for me as decision maker to make my own judgement as to the acceptability of the access proposals having considered the expert evidence.
47. I have reviewed the Design Statement that accompanied the outline application and the Development Brief and Design and Access Statement (DAS) submitted at reserved matters stage and considered the evidence presented by the parties. I find that the road network within Southview Park was designed, and subsequently approved by the highway authority, without any indication or expectation that it might possibly serve as an access to an additional 91 dwellings on the appeal site. No such access was indicated on any of the access plans and all the site layout/concept drawings show the site's boundary to Drynham Brook landscaped along its full length. The plan in the Design Statement indicates a sports pitch where the proposed new access would be. The only indication of any potential future link is on the Master Plan within the Development Brief but this is notated as a possible pedestrian rather than a vehicular access.
48. These documents demonstrate a consistent design intention of creating a road hierarchy with Sparrow Street as the principal route and bus route, with all other streets being of secondary or lower status, and which gives priority to pedestrians and cyclists. The DAS states that cars "*will be required to behave in a manner that is conducive to a pedestrian/cyclist friendly environment.*" They highlight the use of traffic calming measures to reduce speeds and improve safety for vulnerable users. They also set out a strategy of having higher density development along Sparrow Street and lower density towards the edges of the site. Toucan Street was designed to serve low density development and a limited number of houses.
49. The Design Statement promised an extension to the Biss Meadows Country Park to "*establish a new green edge to the urban area.*" As the land to the north, west and south west of the site had already been developed this green edge can only have been a reference to the boundary formed by Drynham Brook. When the outline application was made there appears to have been no firm intention that the appeal site should be developed, never mind that it should be accessed from within Southview Park.
50. My conclusion is that Southview Park was developed in accordance with a clear set of design intentions principally aimed at creating a safe environment for its future residents. Those intentions are both material and of considerable significance in the determination of the appeal. To ignore this context would be to put to one side the care and attention given to those objectives both by those who designed the road network and those who assessed the detailed proposals and gave them their approval.

51. Such an approach would also negate the purpose of the conditions imposed by the SoS who must have concluded that the approval of, and subsequent compliance with, a Development Brief was necessary to achieve a satisfactory development. I agree with Mr Tonks that what the appellant proposes amounts to a fundamental resetting of the original design objectives for the road network within Southview Park that conflicts with the guidance in paragraph 1.6 and Figure 3.1 of MfS.
52. The situation is not comparable with making new use of the Victorian Streets in our towns and cities since the width of those streets was not designed with the objective of accommodating moving and parked cars. The Southview Park streets comprise a recently completed network which was designed to accommodate vehicles whilst maximising the safety of pedestrians, cyclists and other vulnerable road users. They were also designed in the context of a known number of dwellings and related vehicle trips.
53. Also of importance is that these streets were designed when national and local policy sought to discourage the use of private cars by imposing maximum parking standards. Mr Walpole described this as a policy of constraining the highway layout so as to minimise car use. As noted in Mr Tonks' evidence, those policies have been proven to be ineffective in reducing car ownership⁸ and have resulted in an increased demand for on-street parking.
54. At Southview Park the failure of those policies has had an obvious negative effect because the low level of off-street provision has resulted in a very high level of demand for on-street parking. The surveys show a maximum demand of about 38% of the theoretical capacity on Toucan Street. However, I accept Mr Walpole's evidence that this is far too high in a modern residential street that was intended to give priority to pedestrians and cyclists. That some 70% of the potential parking spaces on Sparrow Street are occupied during the daytime is of particular concern given that this is the principal route and designated bus route.
55. My observations from my site visits are consistent with the evidence and photographs submitted by Mr Tonks, THaT Consultants and RSvPC. These are that on-street parking occurs at all times of the day, that it varies both in its level and location, and that the parking of cars and vans on the pavement is a regular and frequent occurrence on Sparrow Street, Toucan Street, Kingfisher Close, Kestrel Avenue and Kyte Way. I also noted that the gaps between parked vehicles are often too small to enable even a car to pull back in to their own lane. This means that passing a line of parked vehicles frequently requires a driver to travel on the wrong side of the road for some distance.
56. The level of on-street parking limits the extent to which the design objectives of giving priority to pedestrians and cyclists and allowing the residents to use the streets safely can be said to have been achieved. Two Personal Injury Accidents involving vulnerable road users, with one of these leading to a serious injury, have occurred in the short time since the estate was developed. This indicates a significant safety concern even if it can be argued not to be statistically significant. The accident on Toucan Street, involving a car and cyclist, strongly suggests that cyclists are at risk when passing parked cars.

⁸ As demonstrated in Mrs Clarke's evidence it is not unknown for a household living in a 5 bedroom dwelling to own 5 cars.

57. MfS and other relevant guidance can assist designers to create road networks that are legible, easy to negotiate and safe to use. The success of such a process can best be assessed with reference to the experience of those who are most familiar with the traffic conditions through daily use of the road network.
58. Taken together, the evidence presented by RSvPC and those residents who spoke at the Inquiry, and in a good proportion of the representations made to the application and appeal, demonstrates a high level of local concern about safety on the network with existing traffic flows and a considerable degree of fear about the effects of what the appellant proposes. This evidence includes: reports of damage to parked vehicles, repeated near misses and the difficulty that large vehicles have negotiating the local roads and passing other vehicles; and concerns about the risks to cyclists when passing parked cars and to pedestrians and young children from vehicles parking on the pavement or mounting/oversailing the footway to pass other traffic or performing turning manoeuvres.
59. Mr Eggett's evidence that Kingfisher Close and the surrounding network comprise the most awkward and ill-thought out roads that he has ever lived on ties in with Mr Walpole's description of these roads as having a tortuous layout. Having driven along Sparrow and Toucan Street on a number of occasions, my assessment is that it is necessary at all times to proceed at low speed and with the upmost caution because of the tight bends in the road and the level and location of on-street parking.
60. The guidance advises that the 5.5m general width of Toucan Street may be sufficient for two vehicles to pass. However, only very short sections of straight road are available to perform such a manoeuvre and all of these are subject to some level of on-street parking at all times of the day. Limited forward visibility is available through the bends and that visibility is seriously impaired, if not removed altogether, when vehicles are parked on the pavement at or close to those bends.
61. I accept that traffic levels on Toucan Street are low and would still be low in terms of the road's theoretical environmental capacity, even allowing for the trips generated by the development. The development traffic that would be added to the network would cause additional delay for other vehicles but I agree that this would not result in a severe impact on the road network having regard to paragraph 111 of the Framework. The proposal would, however, result in a doubling in the volume of traffic using the southernmost section of Toucan Street in the peak hour.
62. Based on my own observations of movements in the peak hours, even one additional vehicle every 90 seconds would be very noticeable in this area. This increase would have a significant adverse effect on the character and amenity of the street and its residents and would materially reduce the existing sense of tranquillity in the street. Toucan Street has been designed to operate as cul-de-sac serving a limited number of properties. I have no doubt that these features would have been taken into account by many of its residents when choosing their homes. The increased traffic on Toucan and Sparrow Streets, including significant numbers of visitors and delivery vans going to and from the homes in the new development, would also have a material impact on the safety of all road users within Southview Park.

63. Having regard to the constraints of the road geometry and other traffic-calming measures, the existence of the traffic-calming zone, the poor forward visibility through the bends, and the levels and locations of on-street parking during the working day, I find that these roads are wholly unsuitable for use as a route for construction traffic as proposed.
64. I reach that conclusion on the basis of the appellant's assurance that its use would be limited to vehicles of a maximum 11.3m in length. However, I have significant reservations as to whether that limit could be adhered to given the number of subcontractors and suppliers likely to be involved over the planned 3.5 year build programme and the nature of the heavy plant likely to be needed for the site works. Even if that vehicle size limit was written into the proposed Construction Traffic Management Plan (CTMP) it would be difficult to enforce. It seems inevitable that any enforcement would be retrospective such that any harm or damage caused by the use of larger vehicles would already have occurred. Given their recent experience of harm and damage caused by construction vehicles, even a small number of such breaches of the size limit would have a significant adverse effect on residents' amenity and peace of mind.
65. RSvPC's photographic and video evidence demonstrates that HGVs of 11.3m or less have had difficulty passing each other safely on Toucan Street and Sparrow Street and that these manoeuvres have given rise to road safety concerns. The photograph on page 27 of their evidence shows that a low-loader type vehicle would be likely to get stuck if it tried to negotiate these roads. I saw clear evidence along these roads of tyre tracks left by large vehicles on pavements and of the damage caused to kerbs and road verges by vehicles mounting and/or parking on these.
66. It is not disputed that the problems and damage recorded by RSvPC were caused by the appellant's contractors when they were carrying out minor construction/repair works rather than when constructing a new residential development. The argument that those works were not the subject of a CTMP provides little comfort. Mr Rawlinson acknowledged that the appellant's relationship with the Southview Park residents had "*broken down*". However, there was no admission that one of the main reasons for this is the appellant's apparent inability to manage these last stages of construction work without giving rise to significant amenity and safety issues and to damage to the infrastructure and landscaping already installed.
67. The daily number of construction vehicles may not be high but the introduction of this traffic on 6 days each week over a 3.5 year period would, in my judgement, cause unacceptable risks to the safety of other road users and in particular to pedestrians, cyclists and other vulnerable users. Repeated damage to footways and highway verges of the type already been experienced in the area would also cause significant detriment to the character and amenity of the residential streets.
68. The swept path drawings seek to show that HGVs of up to 11.3m length could negotiate these roads without impacting on highway safety. These drawings are of limited assistance where on-street parking is not contained in defined areas but occurs almost anywhere along the route. In practice, the drawings serve to demonstrate that, when using Toucan Street and Sparrow Street, HGVs of this size would likely have to drive on the wrong side of the road for

- considerable distances because few of the spaces between parked cars would enable them to pull in to allow another vehicle travelling in the other direction to pass. They would need to occupy most of the carriageway when travelling through the tight bends. The limited visibility at these points would make such manoeuvres dangerous for other road users and pedestrians.
69. The junction of Toucan Street and Sparrow Street presents particular challenges for HGV turning movements. A left turn into Toucan Street would necessitate that many of the vehicles are either on the wrong side of the road before starting that turn and/or are likely to oversail the pavement. Because of the tight radii, when starting that turn the driver would have no visibility of any vehicle, cyclist or pedestrian on Toucan Street approaching the junction and little if any visibility of a pedestrian who might be trying to cross the road.
70. When turning out of Toucan Street into Sparrow Street visibility to the right is constrained because of the bend in the road. That visibility is further reduced when cars are parked in this section. At times, drivers may need to commit to passing parked cars on the approach to the bend before they can see whether their exit (back to their own side of the road) is clear of approaching traffic. In the worst case scenario this could lead to an HGV having to reverse past parked cars back towards the junction. All of these problems are likely to arise from the daily use of the roads by construction traffic and would pose a general risk to other vehicles and a high risk to cyclists and pedestrians.
71. Some of the parking on Sparrow and Toucan Streets may be in breach of the advice in the Highway Code but it does occur and appears to be a consequence of the shortage of off-street parking. A Traffic Regulation Order (TRO) could be used to control such parking. However, this would increase demand for on-street parking further along the roads. This would be a particular problem on Sparrow Street because of the limited number of alternative options. Moving the parking elsewhere would also be likely to add to the difficulties for large vehicles in trying to pass groups of parked vehicles and to reduce the amenity of residents directly affected by displaced parking outside of their homes.
72. MfS guidance, that it is acceptable for one vehicle to give way and wait if two pantechnicons meet on a bend, is of limited assistance in this case. Paragraph 6.8 of MfS confirms that this advice is based on the assumption that such vehicles will require access only on a "*relatively small number*" of occasions. It does not appear to contemplate a situation in which 8 to 10 construction vehicle movements, alongside other development related traffic, would be expected on every working day for 3.5 years. Given the number of subcontractors and suppliers likely to be involved, I am sceptical as to whether arrival and departure times could be managed to avoid the likelihood of more than one vehicle using the roads at the same time. Even if that was possible, it would not reduce the likelihood of construction vehicles meeting other cars and vans or the buses that run up and down Sparrow Street throughout the day.
73. There is no evidence that the refuse vehicles servicing Southview Park, which are similar in size to the 11.3m maximum length proposed by the appellant, are regularly obstructed by parked vehicles. The evidence is that these visits occur once a week and on the same day of the week. The residents do, therefore, have advance knowledge of their arrival time which provides them with the opportunity, temporarily, to move their cars to allow the refuse vehicle

to pass. This is not comparable to the proposed use of these roads for construction traffic when the timing of those movements are likely to vary widely and will be unknown to local people. Neither do the access proposals for the Sandhole Lane site provide a comparable situation.

74. The roads to be used for construction access for that development are not as tortuous. Although on-street parking takes place there is better forward visibility past those parked cars than is available over most of the length of Toucan and Sparrow Streets. Because most of the dwellings are set back behind front gardens, much more open views along the streets are generally available compared with the situation in Southview Park.
75. I saw that most dwellings on the roads adjoining Sandhole Lane have two or more off-street spaces and that the on-street parking on the northern section of Leighton Park North appeared to be related to nearby commercial premises. This suggests that much of the current on-street parking is for reasons of convenience and that some of those car owners could choose to park elsewhere if they were concerned about possible damage to their vehicles from passing HGVs. That option does not exist for most residents in Southview Park where on-street parking is a necessity because of the minimal level of off-street provision and the relatively small size of the garages.
76. At Sandhole Lane, there are two potential routes for construction traffic using either Leighton Park Road and Rother Rise or Leighton Park North and Laverton Road. This would allow the introduction of a one-way system such that there would be no need for HGVs to meet as they travel to or from the site or, based on my observations, for them to drive on the wrong side of the road to pass most of the cars parked on the street.
77. Having walked and driven around the construction routes proposed at Sandhole Lane, I drove again along Sparrow Street and Toucan Street shortly afterwards. My clear assessment is that the two situations are not comparable. The route proposed in the appeal scheme would represent a much greater challenge for the drivers of construction vehicles and a much greater risk to the safety of other road users.
78. I find that the proposed use of the Southview Park roads for construction and development traffic would result in unacceptable impacts on highway safety and conflicts with paragraph 111 of the Framework in this regard. I have exercised my own judgement in reaching this conclusion but my conclusion is supported by the professional judgement of the Council's Highways Officer, Mr Tonks and Mr Walpole. Having regard to their views and the evidence on this matter, I also conclude that this impact could not adequately be mitigated by means of a planning condition requiring that a CTMP be agreed and adhered to during the construction period.
79. I note the findings of the two Road Safety Audits (RSA) and that the RSA commissioned by the Council expressed a preference for an alternative construction access route if one is available. There is an obvious alternative route over the adjacent fields within the Ashton Park main site. RSvPC's evidence is that this potential alternative provides a much shorter connection with the main highway network and that its use could lead to considerable sustainability benefits over the 3.5 year construction period. That evidence was not challenged by the appellant.

80. As pointed out by Mr Walpole, that route would only need to comprise a simple haul road and would not have to be constructed to full adoptable standards. It would, however, require terms for its provision and use to be negotiated and agreed with APT/Persimmon. As the appellant has declined to enter into any such negotiations there is no evidence to demonstrate that this potential alternative and, in highway safety and sustainability terms, preferable route is not available.
81. The unacceptable impacts of the construction access that I have identified would be further exacerbated by the proposals for construction of the bridge or culvert needed to provide a road connection over Drynham Brook. That work would have to be carried out before a construction compound could be established within the appeal site itself. Given that this is an obviously critical part of the construction programme, it is surprising that it was not considered in the Transport Assessment or draft CTMP and that the appellant only shared those proposals when concerns were raised by RSvPC.
82. Mr Rawlinson stated that he had been advised that this first phase of work would take approximately 8 weeks but no evidence was submitted to substantiate that estimate. Whatever their duration, those initial works would give rise to the need for HGVs delivering plant and materials to drive along, turn within and reverse on the southern section of Toucan Street and the immediately adjacent streets, performing similar manoeuvres to those HGVs recorded in the photographs and videos submitted by RSvPC.
83. In light of that evidence, which demonstrates the considerable danger to pedestrians, cyclists and other road users resulting from such manoeuvres, I regard this aspect of the proposal as unacceptable in highway safety terms. Although these works may only take a few weeks the movement and parking of HGVs and other vehicles; the establishment, use and subsequent removal of the temporary site compound; and the works themselves would have a significant adverse effect on the amenity of residents in this part of Toucan Street. Both these works and the proposed use of Toucan Street for access to the completed development would also give rise to adverse impacts on the character and amenity of the wider area.
84. Condition 10 of the outline permission for Southview Park required the provision of an extension to the Biss Meadows Country Park and that the plans submitted for reserved matters approval should define the boundary of the Country Park Extension (CPE). Condition 11 required that a landscaping scheme and programme for the implementation of these works be submitted and approved. Condition 27 required a wildlife buffer of at least 8m width adjacent to Drynham Brook and that, within that buffer zone, there should be no changes to ground levels and that no buildings or structures should subsequently be erected.
85. The Council considers that both the road link between Toucan Street and the appeal site and the temporary works compound would require land that forms part of the approved CPE. If that is the case, the S106 agreement attached to the outline permission required that the appellant transfer the ownership of that land, and of all of the other land within the approved CPE, to the Council following completion of the CPE landscaping works.
86. The appellant's attempt to cast doubt on that conclusion appears to be an exercise in muddying the waters over what should be a straightforward matter.

The plan attached to the S106 agreement shows the land as part of the CPE (shaded deep green) and the definition of the CPE says, in terms, that it comprises that land or land of an equivalent area as may be agreed with the Council. Hence, this plan shows the default position in the event that no alternative is agreed. The responsibility for submitting a plan confirming the boundary of the CPE lay firmly with the appellant. In my view, that was done in the plan submitted and approved at the reserved matters stage. That has the title '*Extension to Biss Country Park Landscape*' and clearly shows the land now proposed for the access and temporary compound as forming part of the CPE landscape works.

87. Under Condition 11 the appellant was required to submit a programme for carrying out these landscaping works and Condition 12 required that the CPE be completed by the time that 75% of the residential units had been occupied. That requirement is repeated in the S106 agreement. The subsequent service by the Council of a Practical Completion Notice is the trigger for the transfer of the land to the Council under section 5 of Schedule 4.
88. These requirements are not ambiguous and it does not seem unreasonable to expect that the appellant should know both the precise boundaries of the CPE and when this work was completed. However, the appellant failed to provide this information in response to my direct request. As the last dwellings within Southview Park were reportedly completed in 2016, the CPE landscaping works should have been completed 6 or more years ago, when 75% of the dwellings had been completed, and the land should have been transferred to the Council shortly afterwards.
89. The evidence leads me to conclude that the access and temporary works compound would require land within the approved CPE and forming part of the land to be transferred to the Council. The Council suggest that this could mean that the proposed access could not be implemented and, at best, means that the scheme would likely be delayed while the ramifications of this are fully explored. I agree with that analysis but would go further.
90. First, if any of this land forms part of the CPE the appellant might seek to suggest some variation to the S106 agreement that would amend the detailed requirements as to the transfer of that land. It would be for the Council to decide whether to agree to any variation but it would be necessary for it to be mindful that the permission was granted by the SoS on the basis that the S106 agreement had been willingly entered into by the appellant and signed by both parties. The SoS must have deemed the planning obligations to be necessary to render the development acceptable in planning terms. I would, therefore, be concerned about any variation to the agreement that had the effect of permanently reducing the area of land within the CPE.
91. Secondly, it is difficult to see how a temporary compound could be established without removing a substantial area of the woodland planting and other landscaping that has been undertaken. In my experience even the temporary removal of trees, shrubs and other landscaping would be likely to reduce the prospect of these becoming established as part of the landscape setting for Southview Park and delay their coming to maturity. The use of the land by heavy vehicles and plant might also result in compaction of the sub and topsoil put in as part of the landscaping works.

92. If the CPE works had been completed 6 or more years ago in accordance with Condition 12, that should by now have resulted in a fully established landscape which has passed out of its 5 year maintenance period and is starting to mature. My observations are that this has not yet been achieved. In those circumstances, I find that the temporary removal of part of that landscaping to facilitate the construction of the proposed culvert or bridge would cause significant harm to the character and appearance of the Southview Park estate.
93. It seems likely also that the culvert or bridge would need to be sited within the 6m wide wildlife buffer zone required by Condition 27A. The construction of such a structure could, therefore, involve a breach of the requirement that no new buildings or structures should be erected within this buffer zone. This issue does not appear to have been addressed and I have seen no evidence to suggest that the potential effects of these works on the wildlife value of that buffer zone have been assessed. These matters could also present a potential obstacle to the implementation of the appeal scheme.
94. The DAS for Southview Park identified legibility as a key design objective, stating an intention to create an urban environment that is easily understood. My observations support Mr White's evidence that Toucan Street, Kingfisher Close and the other streets running off of Sparrow Street have been designed as 'lower order' streets to accommodate lower levels of traffic and to serve a smaller number of homes. This has had a distinct effect on the legibility of the road layout, in particular in terms of how the road hierarchy would be understood by someone visiting for the first time or on an infrequent basis.
95. Rather than acting as a local landmark, the larger building block at the junction of Toucan Street and Sparrow Street contains the width of Toucan Street and restricts views down the street when approaching on Sparrow Street. In combination with the tight junction radii, this means that Toucan Street is not readily perceived as forming a major link within the road hierarchy. Having entered Toucan Street, the view ahead is foreshortened by the bend to the left and one gets the sense that this section of road might end in a cul-de-sac at that point. That sense is even stronger when entering the next section of the street. This affords only a short view to the first of the two 90° bends, with that view being cut off by the buildings on that bend. That section also reads as if it might end in a cul-de-sac, suggesting that there is little or no housing development beyond that point.
96. The future occupiers of the homes proposed on the appeal site would, over time, become familiar with the route to and from their properties. However, I agree that, for infrequent visitors, tradespeople and those making deliveries to the new homes, Toucan Street would not provide a legible access to a 91 unit development on the appeal site.
97. For the reasons set out above, I find that the appeal proposal would have an unacceptable impact on highway safety and conflict with paragraph 111 of the Framework in that respect. It also conflicts with paragraph 110 which states that safe and suitable access should be achieved for all users. I also find conflict with CS Policy CP61 ii. which requires that development should be capable of being served by safe access to the highway network. In view of the implications for highway safety very substantial weight must be given to these policy conflicts.

98. I find that the site access proposals would cause significant detriment to the character and amenity of the streets within Southview Park and the amenity of its residents. That harm would be exacerbated by the temporary removal and, in respect of the proposed access road, permanent loss of parts of the landscape setting which the SoS found to be necessary to achieve a satisfactory development. Accordingly, I find that the proposal conflicts with part vi of CP57 which requires that new development should form an effective relationship with the site's setting and the wider character of the area. The proposal would achieve neither of these objectives and would cause significant harm to the character of Southview Park.
99. I conclude that the proposal conflicts with part vii of CP57 insofar as this seeks to protect the amenity of existing residents. It also conflicts with part ix of the policy in that it would fail to protect existing public realm, would adversely impact on the safety and legibility of the existing highway network and reduce accessibility for vulnerable users in this part of Trowbridge. In combination, these conflicts with the development plan should be given very significant weight.

5 year HLS

100. The Council is unable to demonstrate a 5 year HLS as required by the Framework and this situation has existed since early 2020. Paragraph 11d of the Framework is triggered and the appeal falls to be considered with regard to the 'tilted balance' set out in sub-paragraph (ii) of that section.
101. Evidence has been submitted in the respect of the HLS within the North and West Wiltshire Housing Market Area (HMA) and the parties agree that there is an insufficient supply within this HMA to meet the minimum need identified in the CS. However, the position with regard to the 5 year supply should be assessed on a district-wide basis, for Wiltshire as a whole. Against this requirement the Council asserts that the land supply equates to a supply of 4.7 years and the appellant maintains that it equates to a supply of 4.28 years. The difference is not substantial and I do not consider it necessary to interrogate how that difference has been arrived at.
102. The CS plan period is 2006-2026. Policy CP2 identifies a minimum requirement for 42,000 new homes, giving an annualised average requirement of 2,100. The latest Housing Land Supply Statement (base date April 2021) shows that, although there have been shortfalls in housing delivery in the first 15 years of the plan period in two of the three HMAs that make up the district, these have been relatively modest. In the North and West Wiltshire HMA there was a shortfall of 537 units against an anticipated completions figure of 18,555. In the South Wiltshire HMA the shortfall was 73 against an anticipated completions figure of 7,815. In the third HMA (East Wiltshire) completions exceeded the anticipated figure by +408.
103. As TTC pointed out, actual completions over the past 5 years have exceeded the annualised average requirement in both the North and West Wiltshire HMA and in Wiltshire as a whole (Table 1 in the Housing Land Supply Statement). These figures do not suggest a persistent issue of undersupply or that the shortfall is getting significantly worse. The shortfall identified in the first 15 years has been carried forward as part of the current 5 year requirement such that this is to be addressed within the remaining part of the plan period.

104. Mr Morland observed in that the Council's method of calculating the 5 year HLS does not take account of greenfield windfalls which he says have made a material contribution to housing completions in the district. The Council only includes an assumption based on windfalls on brownfield or previously developed sites. As noted at paragraph A2 of Appendix 5 to the Supply Statement, the Framework definition of 'windfall sites' no longer indicates that these normally comprise previously developed sites.
105. The definition was amended in the 2019 and 2021 versions of the Framework to read "*Sites not specifically identified in the development plan.*" The windfall allowance within the 5 year HLS calculation could, therefore, be said to be conservative, particularly given that there have been 15 planning appeals for major residential development sites in the district since February 2021. Whilst this does not change the reported supply figures it could go some way to offset the appellant's concerns about the brownfield windfall allowance that has been included in the identified land supply.
106. The Council has taken positive steps to address the shortfall by adopting a policy of supporting applications for housing on non-allocated sites where there is no major policy objection. The appellant argued that this had not yet had an impact on the future land supply but it would be unlikely to have done so at this stage. I consider that the Council's approach shows a willingness to engage with the shortfall and to find a practical solution.
107. Even accepting the appellant's assessment that there is a 4.28 years' supply, I find the shortfall to be relatively modest and that the Council is taking positive steps to address this. For this reason, I agree with the Inspector who determined the Land North of Bath Road, Pickwick appeal⁹ that the shortfall should be afforded only moderate weight.
108. There is a significant affordable housing need across Wiltshire with 414 households on the register having stated a preference for a dwelling in Trowbridge. This has led to unacceptable waiting times for affordable homes and can be said to represent an affordable housing crisis. I accept that Wiltshire is not the only local authority to be experiencing such a problem. However, at least over the short to medium term, the provision of new affordable homes is likely to be dependent on housebuilders delivering these alongside market housing within their new developments.
109. The 5 year HLS does not assume any completions on the Ashton Park strategic site. The implication of this is that the HLS now expects that the first completions there may not occur within the plan period as was expected when the CS was adopted in 2015. I agree that this represents a significant slippage in the delivery of those homes but, since the homes form part of a much larger strategic allocation, I do not accept that this means that the CS has failed.
110. The June 2022 officer report on the APT/Persimmon application advised that the terms of the S106 agreements required are substantially agreed and the work still to be completed is principally administrative. Having regard to that advice to the elected members, the revised deadline of 31 January 2023 for the legal agreements to be signed indicates a good degree of confidence on the Council's part that this will be achieved.

⁹ APP/Y3940/W/21/3276908 referred to at page 3 of the Housing Land Supply Note at Appendix A to Mr White's POE.

111. As the largest development allocation within the CS and a strategic site the proposal comprises a large and potentially complex development. However, given that APT/Persimmon and their partners have been working on the proposals for 7 or more years, the appellant's assessment of the likely delivery timescales is overly pessimistic. The Council has produced the latest iteration of the proposed phasing plan and confirmed that APT/Persimmon are already in discussion with officers about the first reserved matters application. That application is expected to be submitted shortly after the outline planning permission is issued.
112. The first resolution to approve the outline application in April 2018 will, no doubt, have given APT/Persimmon confidence that the outline permission will be secured. In those circumstances, I would expect APT/Persimmon to have used the intervening period to progress their detailed proposals and carry out preparatory work on the first detailed submissions. In my experience it is common practice, in such a situation, for discussions with officers about the submissions for reserved matters and discharge of the conditions precedent to take place before the outline permission is actually issued. Hence, I see no reason to question the timescales indicated by the Council for the making of the first reserved matters application.
113. I have considered the Lichfield 'Start to Finish' report appended to Mr Bullock's evidence but note that this is intended to fill the information gap for local authorities where there is no local evidence of the delivery of housing sites. As Mr White points out in his rebuttal evidence, this is not the case in Wiltshire where the local evidence base indicates reserved matters approvals being achieved within one year of an outline permission and first completions following on within 2 years of the outline approval.
114. The Lichfield report does not appear to take into account the time period between a resolution to grant and the issue of the outline permission and the opportunity that this provides for the developer to work up their proposals and prepare the first reserved matters application. For these reasons I consider that the Council's evidence (at Appendix D to Mr White's proof) as to the prospect of an anticipated start on site in March 2024 is to be preferred. In this case there appears to be an added incentive to commence development as soon as possible because the Homes England forward funding grant to assist in the delivery of the YWARR is subject to 'use by' deadlines.
115. Based on that evidence there is a reasonable prospect of the first homes being delivered before the end of the CS plan period with about 35 homes completed in 2024/25, 60 in 2025/26 and about 120 per year in each of the subsequent 2 years. On the appeal site it would be reasonable to expect a small number of homes to be completed in 2023/24, about 35 units in each of the subsequent two years, and about 15 units in 2026/27 in accordance with the table within Appendix D to Mr White's proof.
116. The appeal scheme would, therefore, be capable of delivering a small number of dwellings before any completions on the Ashton Park main site although the annual rate of delivery would subsequently be much greater on the main site. The appellant proposes a 2 year time limit for commencement of development to confirm their intention to make an early start on the development. However, their ability to achieve that objective could possibly be hampered if they are under an obligation to transfer some of the land needed for the site

access and temporary compound to the Council as part of the approved CPE. Having regard to all of the above considerations, I conclude that the delivery of the market and affordable housing within the appeal scheme should be afforded very significant rather than substantial weight.

Other Matters

Noise impacts

117. It is apparent on site that the landscaped, Acoustic Buffer Zone within the Southview Park development required under Condition 14 of the outline permission has not been provided. The Council confirmed that there has been no application either to amend that condition or to carry out the development without complying with it and I remain unclear as to how that situation has arisen. RSvPC presented evidence concerning the inadequacy of the noise insulation to the homes backing onto the railway and that upgrading works recommended in 2019 have not yet been carried out. That evidence was not challenged.

118. No report was submitted by the appellant or requested by the Council to assess what the noise effects of the construction and development traffic might be. Based on my experience of other development proposals, my judgement is that the projected increase in traffic flows would not be expected to result in a material increase in noise levels on Toucan Street. Given their experience of the noise from passing trains, some residents may have an increased sensitivity to noise and may be anxious about these potential effects of the scheme. However, I do not think that those concerns justify a refusal of permission on these grounds.

Appropriate Assessment

119. The development was identified as having the potential for significant effects on the Bath and Bradford on Avon Bats Special Area of Conservation (SAC) and that it lies within the consultation zone for Bechstein's bats. The Council has carried out an appropriate assessment under Regulation 68 of The Conservation of Habitats and Species Regulations 2017 (Habitats Regulations). That concluded that the proposal will not lead to adverse effects on the integrity of the SAC, either alone or in combination with other identified plans and projects, provided that conditions and planning obligations are secured as set out in section 6 of the assessment.

120. The Council's assessment has been reviewed by Natural England who have confirmed that they concur with that assessment and its conclusions provided that all necessary mitigation is secured. I have reviewed the assessment and Natural England's comments and am satisfied that the appropriate assessment is robust and has been carried out in accordance with the Habitats Regulations.

121. On that basis I adopt the Council's assessment and its findings in my determination of the appeal. I conclude that the development would not lead to adverse effects on the integrity of the Bath and Bradford on Avon Bats SAC provided that appropriate mitigation is secured through the planning conditions and heads of terms of the S106 agreement.

Unilateral Undertaking

122. The UU sets out a possible means of connecting the appeal site spine road to the road network on the Ashton Park main site. If and when that link is secured, it proposes that the Council could make a TRO to downgrade the access from Toucan Street to an access only for use by pedestrians, cyclists and other non-motorised users.
123. The developer would be obliged to construct the 'Development Road' to adoptable standards prior to the occupation of the 85th dwelling completed on the site. This would extend the site spine road to within 1m of the common boundary with the Ashton Park main site. Once that construction has occurred and the TRO has been confirmed, the UU would enable the Council to enter onto the land to construct a vehicular link to the Ashton Park main site. This would avoid the situation where there is a vehicular link between development on the Ashton Park main site and Toucan Street and overcome the concerns about the effects of that development traffic passing through Southview Park.
124. The UU does not, however, address my concerns about the unacceptable impact on highway safety caused by the use of Southview Park for construction and development access or the adverse effects on the character and amenity of the residential area. These effects would not be mitigated by the use of those roads for development traffic only for an interim period, particularly as there is no certainty as to how long that interim situation might persist. I also think that the Southview Park residents are right to be concerned about whether a TRO to downgrade the Toucan Street access would ever be made given the need for consultation on such an order, including with any new residents who have moved into homes on the appeal site in that interim period.
125. Finally, if I was to allow the appeal on the basis of the appellant's contention that no vehicular access to the Ashton Park main site is required, I would also have to conclude that the UU is not necessary to render the proposal acceptable in planning terms and could not give it any weight in my decision.

S106 Agreement

126. The responses to my Pre-Inquiry Note have addressed my concerns about the justification of the financial contribution toward YWARR but I still have reservations concerning the proposed educational contributions. I accept that the position with regard to the availability of school places will have changed since the application was first consulted upon and do not disagree with the Council's policy of allocating school places in the order of when the planning applications were made.
127. Mr Corbin's email seeks to provide reassurance on this matter but confirms that the Education Authority's position is as set out in their email dated 5 March 2021. That, in turn, cross refers to a response of 20 November 2020 which advises that the secondary places needed would be at the secondary school to be provided as part of the Ashton Park development. Having considered that information, I am not reassured that the school places for children in families moving into the proposed new homes would be available when they are needed. A co-ordinated delivery of the homes and school places needed for them could be secured if the appeal site was to be developed as part of the larger strategic site. However, I am not convinced that this would be achieved through the payment of financial contributions alone.

128. With that exception, I am satisfied that the other obligations set out in the S106 agreement meet the relevant tests in paragraph 57 of the Framework and that the obligations relating to affordable housing provision are capable of securing that policy compliant benefit of the proposals. However, I find that the S106 would not secure all of the infrastructure needs generated by the development. This conclusion gives rise to a conflict with Policy CP3 as set out in the Council's RfR 3.

Conclusions on Development Plan

129. The failure to bring the development proposal forward as part of the collaborative masterplanning process for the larger strategic site puts the proposal squarely in conflict with CS Policies CP2 and CP29. The significant adverse effects on highway safety and on the character and amenity of the Southview Park and its residents bring the proposal in conflict with Policies CP57 and CP61. The uncertainty re the provision of sufficient school places to meet the needs of the families expected to move into the development gives rise to a conflict with CP3. In the absence of a 5 year HLS, footnote 8 to the Framework requires that these most important policies for the determination of the appeal should be deemed to be out of date but does not prescribe the weight to be given to them.

130. As the site forms part of a strategic site allocation, there is no 'in-principle' objection to its development and, as noted above, the Council has accepted that it is suitable for housing use. In those circumstances, I agree that the weight to be given to Policies CP2 and CP29 is not diminished by virtue of the absence of a 5 year HLS. Policies CP3, CP57 and CP61 are development management policies that are not specific to the delivery of new housing and I see no reason why they should not be given full weight. Hence, I attach very substantial weight to the conflict with CP2, 29 and 61 and very significant weight to the conflict with Policies CP3 and 57.

131. The proposal would provide new market and affordable housing and would contribute to meeting the current shortfall in that provision. The site occupies a sustainable location in one of the Principal Settlements identified in the CS and the proposal complies with Policy CP1 in this regard. The 30% affordable housing provision is policy compliant. For the reasons already set out these benefits should be given very significant weight. I do not consider that these amount to material considerations that indicate that the appeal should be determined other than in accordance with the development plan. My overall conclusion is that the proposal conflicts with the development plan as a whole.

The Planning Balance

132. The adverse impacts of granting permission for the appeal scheme include the harm to highway safety, harm to the character and amenity of the Southview Park residential area and its residents, and the harm resulting from the conflict with the development plan. For the reasons set out above, I attach very substantial weight to the harm to highway safety and to the conflict with the development plan and the Framework in this regard. I attach very significant weight to the other harms and development plan conflict that I have identified. On the opposite side of the balance, I attach very significant weight to the delivery of additional market and affordable housing and moderate weight to the economic benefits of the proposals in accordance with the table on page 30 of Mr Bullock's proof of evidence.

133. I acknowledge that the delivery of new housing would support the Government's policy of boosting the supply of housing as set out at paragraph 60 of the Framework. However, having regard to the above considerations and the Framework policies which weigh both for and against the proposal, I conclude that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. The proposal does not, therefore, benefit from the presumption in favour of granting planning permission under paragraph 11 d) ii. There are no other material considerations that indicate that planning permission should be granted notwithstanding the conflict with the development plan.

Conclusion

134. For the reasons set out above I conclude that the appeal should fail.

Paul Singleton

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Zack Simons and Isabella Buono, both of Counsel, instructed by Alexander Bullock of AECOM

They called:

Eurling Craig Rawlinson BEng (Hons) CEng MCIHT CMILT - Senior Director at Pegasus Group

Alexander Bullock MRTPI – Associate Director at AECOM

FOR THE COUNCIL:

Gary A Grant of Counsel, instructed by Vicky Roberts, Senior Solicitor with the Legal Unit at Wiltshire Council

He called:

Carl John Tonks BSc MSc FCILT MCIHT FIHE – Director of Carl Tonks Consulting and Managing Director of cTc

Adam Lee White MRTPI – evans jones

FOR TROWBRIDGE TOWN COUNCIL:

Lance Allan FSLCC - Chief Executive Officer

Councillor Stephen Cooper

FOR RESIDENTS SOUTHVIEW PARK COMMITTEE:

Steven Daniels

Jody Hawkes

David Walpole BSc MCIHT - Director of Transport, Highways and Traffic Consultants

INTERESTED PERSONS

Mary Huntley - resident of Southview Park

Beverlee Clarke – resident of Southview Park

Graham Eggett - resident of Southview Park

Francis Morland - resident of Chapmanslade and member of North Bradley Parish Council

INQUIRY DOCUMENTS

- ID01 Concept Plan for Southview Park development
- ID02 Pegasus Tracking Plan for Large Car
- ID03 cTc email to Road Safety Auditor dated 25 July 2022
- ID04 Draft Planning Conditions agreed between the Council and Appellant
- ID05 Text of Mr Eggett's statement to the Inquiry
- ID06 Education Department's Consultation Responses
- ID07 Documents and correspondence relating to the Appropriate Assessment undertaken by Wiltshire Council
- ID08 RSvPC email re Inspector's Site Visit
- ID09 RSvPC comments on draft Conditions and proposed additional Conditions
- ID10 Council's Position Statement on Appellant's Proposed Unilateral Undertaking
- ID11 Appellant and Council joint response to Inspector's Pre-Inquiry Note
- ID12 Secretary of State Decision Letter and Inspector's Report for Called in Application Ref No 04/01063/Out dated 13 September 2006 (Southview Park)
- ID13 S106 Agreement in relation to Planning Permission Ref No 04/01063/Out dated 24 May 2006
- ID14 West Wiltshire Council approval of Reserved Matters in respect of Planning Permission Ref No 04/01063/Out dated 13 October 2008
- ID15 Wiltshire Council's Discharge of Conditions Letter dated 13 September 2017
- ID16 Council's Note to Inspector re S106 Educational Contributions proposed in draft 106 Agreement for appeal scheme
- ID17 Opening Statement by Appellant
- ID18 Closing Statement by Appellant
- ID19 Opening Statement by the Council
- ID20 Closing Statement by the Council
- ID21 Closing Statement by Trowbridge Town Council
- ID22 Opening Statement by Residents Southview Park Committee
- ID23 Closing Statement by Residents Southview Park Committee