

REPORT FOR STRATEGIC PLANNING COMMITTEE

Date of Meeting	6 March 2023
Application Number	PL/2022/08155
Site Address	Land to the West of Semington Road, Melksham, Wiltshire
Proposal	Outline planning permission for up to 53 dwellings including formation of access and associated works, with all other matters reserved.
Applicant	Terra Strategic
Town/Parish Council	Melksham Without CP
Electoral Division	Melksham Without West & Rural (Cllr Jonathan Seed)
Type of application	Outline Planning
Case Officer	Ruaridh O'Donoghue

1. Purpose of Report

The purpose of the report is to update the committee on changes that have occurred following publication of the revised NPPF in December 2023 (and related revised Planning Practice Guidance) that have a material impact on this planning application, and to consider the recommendation that the application now be refused planning permission.

2. Background

On 29 November 2023 the Strategic Planning Committee resolved to grant planning permission for this application subject to the applicant first entering into a S106 legal agreement (committee report attached as annex 1). Work commenced on the legal agreement, although it has not been completed and so the planning permission has not been given. In making its decision to approve subject to the legal agreement the Committee took account of all matters relevant at the time. These included the development plan policies and national legislation/guidance.

In the broadest terms, planning law requires the local planning authority in dealing with a planning application to have regard to the development plan and all material considerations. Where the issuing of a decision is delayed between the point in time at which the authority resolves to make the decision and when the decision notice is actually issued, and if during this 'gap' the authority becomes aware of new, or changed, material considerations, then the relevant law requires the authority to have regard to these considerations before finally determining the application.

In December 2023 the government issued its revised National Planning Policy Framework (NPPF). This is a changed material consideration that must be taken into account. The effects of the changes in relation to this planning application are set out below:

- The principle of development (namely conflict with Core Policies 1 and 2 of the Wiltshire Core Strategy and the weighting to be given to these policies);
- Related to the above, does the revised NPPF change the planning balance?
- Are there now any restrictive Wiltshire Core Strategy policies that have become more relevant on the balance?
- Implications for the Joint Melksham Neighbourhood Plan ('made' July 2021)

3. Housing land supply and delivery

The December 2023 NPPF contains two important amended/new paragraphs concerning housing supply and delivery, as follows –

76. *Local planning authorities are not required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing for decision making purposes if the following criteria are met:*
- a) their adopted plan is less than five years old; and*
 - b) that adopted plan identified at least a five year supply of specific, deliverable sites at the time that its examination concluded.*
77. *In all other circumstances, local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide either a minimum of five years' worth of housing, or a minimum of four years' worth of housing if the provisions in paragraph 226 apply. The supply should be demonstrated against either the housing requirement set out in adopted strategic policies, or against the local housing need where the strategic policies are more than five years old. Where there has been significant under delivery of housing over the previous three years, the supply of specific deliverable sites should in addition include a buffer of 20% (moved forward from later in the plan period). National planning guidance provides further information on calculating the housing land supply, including the circumstances in which past shortfalls or over-supply can be addressed.*

Paragraph 226 referred to in paragraph 77 states the following –

226. *From the date of publication of this revision of the Framework, for decision-making purposes only, certain local planning authorities will only be required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of four years' worth of housing (with a buffer, if applicable, as set out in paragraph 77) against the housing requirement set out in adopted strategic policies, or against local housing need where the strategic policies are more than five years old, instead of a minimum of five years as set out in paragraph 77 of this Framework. This policy applies to those authorities which have an emerging local plan that has either been submitted for examination or has reached Regulation 18 or Regulation 19 (Town and Country Planning (Local Planning) (England) Regulations 2012) stage, including both a policies map and proposed allocations towards meeting housing need. This provision does not apply to authorities who are not required to demonstrate a housing land supply, as set out in paragraph 76. These arrangements will apply for a period of two years from the publication date of this revision of the Framework.*

For the purposes of the revised NPPF Wiltshire Council is a 'paragraph 77 authority'; and, because Wiltshire Council has an emerging local plan that has now passed the Regulation 19 stage of the plan-making process – with both a policies map and proposed allocations towards

meeting housing need – it is now only required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of four years' worth of housing.

4. Current housing land supply position and consequences for the 'planning balance'

The Council's most recent Housing Land Supply Statement (published May 2023; base date April 2022) sets out the number of years supply against local housing need as 4.60 years. In subsequent appeals this figure has been reassessed to be 4.59 years. These figures exceed the 4-year threshold now relevant to Wiltshire, and for the planning balance this means that it is now starting from a 'level' position rather than 'tilted'. In terms of paragraph 11 of the NPPF, for decision making part 11(c) is now relevant.

With a level balance, and with full/substantial weight now being given to the strategic housing delivery policies of the Wiltshire Core Strategy (WCS) (particularly Core Policies 1 and 2), it follows that planning applications which conflict with the policies should not normally be granted – that is, unless other policies or material considerations indicate that the housing delivery policies should not be followed – and other restrictive policies may have increased relevance. The weight to now be given to the policies and to the other material considerations is addressed below.

5. Joint Melksham Neighbourhood Plan

An additional change to the NPPF is paragraph 14. This relates to situations where planning applications for housing are being determined in areas that have neighbourhood plans in place (less than five years old) and where those neighbourhood plans contain policies and allocations to meet that area's housing requirement. Where this situation applies, the 'tilted' balance will not apply, meaning that speculative housing planning applications are less likely to be recommended for approval where there is conflict with the neighbourhood plan. Because the Wiltshire Core Strategy is now not subject to a tilted balance, the changed paragraph 14 is not relevant; the policies of the Joint Melksham Neighbourhood Plan should be given full weight in any event.

6. Response from Applicant

The agent acting on behalf of the applicant considers that paragraph 226 should not be applied in the way set out above. The following reasons are given (full response on behalf of the applicant at Annex 2):

- The updated NPPF does not state that the process of identifying sites for four years' worth of housing is required to be undertaken during the processing of a planning application and, in this case, following an initial resolution to approve. Rather the requirement is to identify and update the Council's annual Housing Land Supply Statement (HLSS).
- The Council is required to identify its four-year housing requirement over a four-year period and not a five-year period.
- Additionally, the Council's May 2023 HLSS records an under delivery for 2019/20, 2020/21 and 2021/22. The Council needs to, therefore, consider if a further 20% buffer is required by operation of paragraph 77.
- An attempt to hastily transpose the five-year housing requirement would represent a misinterpretation of paragraph 226 of the NPPF and would be a potentially challengeable decision.

The applicant concludes that it would be perverse and irrational to not await the publication of a revised HLSS before issuing planning permission for the site where a resolution to grant has already been determined.

Separately the applicant states that this development would provide 100% affordable housing, and their remains a pressing need for such housing across the county.

7. Officer Response to the Applicant's Comments

The above response from the applicant is based on their own Counsel's opinion. It is, therefore, a legal opinion rather than law, and, of course, one that they are entitled to express. The Local Planning Authority's opinion is that it has interpreted paragraph 226 correctly and, therefore, does benefit from only having to demonstrate a 4-year housing land supply (HLS) over a 5-year period, which it can; (this approach has subsequently been conformed as correct in updated Planning Practice Guidance). This applies to the determination of this application and to any application that is in the same position. The Local Planning Authority also maintains that past housing delivery rates are such that the buffer need no longer apply to the county's HLS.

It is clear that the Local Planning Authority's position on the matter differs from that of the applicant. The committee is advised to consider the application based on the advice the Local Planning Authority has received, but with due regard to the applicant's position – this in view of there being no qualifying statements, guidance or case law relating to the updated NPPF at this time. It is in view of this situation that it is perhaps not surprising to find the LPA's opinion differing to that of the applicant.

The above said, there is one point in the applicant's response that is agreed, and that is the need for affordable housing. Despite the changes in the NPPF, and the LPA having now to demonstrate a 4-year HLS, there remains a need for affordable housing within the Melksham Community Area and more widely across the county. A proposal that would provide 100% (53 units) affordable housing would be of benefit to the Council in addressing this need.

8. Applying the planning balance to this case

The 'harms' –

Principle – Housing delivery policies –

WCS Core Policy 1 addresses the Settlement Strategy and identifies four tiers of settlement – 'Principal Settlements', 'Market Towns', 'Local Service Centres', and 'Large and Small Villages'. Within the Settlement Strategy, Melksham is defined as a Market Town. Principal Settlements, Market Towns, Local Service Centres and Large Villages have defined limits of development. Beyond these limits is countryside. Because the application site lies beyond the limits of development, it is within the countryside. Paragraph 180 of the NPPF states that planning policies and decisions should contribute to and enhance the natural and local environment by "... recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services".

WCS Core Policy 2 addresses the Delivery Strategy. It sets out a presumption in favour of new residential development within the Limits of Development of the settlements – including Melksham – and further states that housing should not be permitted outside the limits except in the few circumstances explained in the policy, none of which apply in this case. Core Policy 2 continues that the limits of development may only be altered through the identification of sites through a site allocations DPD or a neighbourhood development plan. This application

site is not allocated in either the Wiltshire Core Strategy or any site allocations DPD or Neighbourhood Plan.

WCS Core Policy 15 sets out a Spatial Strategy for the Melksham Community Area. The policy states that development in the Community Area should be in accordance with Core Policy 1.

Policy 6 ('Housing in Defined Settlements') of the Joint Melksham Neighbourhood Plan (NP) states that proposals for sustainable housing will be supported where they accord with the settlement boundary provisions of the WCS Core Policy 2 (and the WHSAP). Policy 1 ('Sustainable Design and Construction') is concerned with sustainability in general.

Therefore, as the site lies outside of the limits of development (and so is in the countryside), and as none of the exception policies apply, the proposal does not accord with WCS Core Policies 1, 2 and 15 and NP policies 1 and 6. Proposed development which does not accord with Core Policies 1, 2 and 15 and NP policies 1 and 6 is considered to be unsustainable in the overarching context of the Wiltshire Core Strategy and the NPPF. In view of the revised NPPF, substantial weight must now be given to this 'in principle' conflict with these housing delivery policies and, by association, that part of paragraph 180 of the NPPF which requires regard to be given to the intrinsic character of the countryside.

Landscape Impact –

Core Policy 51 ('Landscape') is a restrictive policy rather than a housing delivery policy. It is a policy which is intended to restrict development that would not protect, conserve and where possible enhance landscape character, or that could not be mitigated as far as possible through sensitive design and landscape measures. Core Policy 57 ('Ensuring high quality design and place shaping') has related criteria.

Under the circumstances of the 'tilted' planning balance (and in general), the weight to be given to landscape effects was in most cases outweighed by the significant weight required to be given to the housing land supply shortfall. This application is evidence of this – when considered by the Strategic Planning Committee in November 2023 the effects of the planned development on landscape were not considered to be sufficiently significant to tip the tilted balance and so amount to a landscape reason for refusal (or, in terms of paragraph 11(d) of the NPPF, any adverse effects did not "significantly and demonstrably" outweigh the benefits of granting planning permission for housing). In reaching this conclusion the Committee had regard to the housing land supply shortfall and the specific circumstances of the proposal (in terms of its detailed design and layout and its proposed measures to mitigate its effects on the landscape), and the earlier appeal decision relating to adjoining land where similar conclusions were reached on this point.

However, now that there is a level planning balance, restrictive planning policies – notably here, CP51 (and the related parts of CP57) – are now more relevant because significant weight is no longer to be given to the housing land supply shortfall. This increased relevance does not mean that the restrictive policies can, or should, be given more weight – the weight they can, or should, be given is the same as before (because the landscape effects of the proposed development have not changed); rather it is the effect of this same weight and its consequences for the planning balance that are material.

For this application, and as a starting point, the landscape effects of developing this open field in 'countryside' to accommodate housing that is now not required to address a housing land supply shortfall is considered to be deserving of modest weight. This is when taking account of the baseline assessment of the field – which is essentially, and in isolation, an open field in the countryside which would be 'lost' to the development. But then factoring in the wider

circumstances of the field and the characteristics of the locality, and the actual proposal – that is, the site’s relationship with established and approved developments, the nature of existing established landscaping, and the landscape mitigation measures presented in the proposal, these effects and the modest weight to be attributed to them are not considered to amount to a sustainable reason for refusing planning permission in any event. In accordance with CP51, and as demonstrated in the planning application, the modest ‘negative impacts’ can be mitigated through sensitive design and landscape mitigation appropriate for the locality.

In allowing the appeal for the site adjoining this application site the Inspector had regard to CP51 (and the related parts of CP57), this in the context of landscape effects being an original reason for refusal in that case. Notwithstanding that part of the context of this earlier appeal decision was at the time the housing land supply shortfall, the Inspector stated the following:

*“The appeal scheme conflicts with Development Plan policies. Policies CP1, CP2, CP15, CP51 and CP57 and JMNP policies 1, 6 and 17 are consistent in seeking to resist development beyond settlement boundaries and the protection of the countryside. However, **although I find conflict between the appeal scheme with these policies, the level of harm arising would be localised by its relationship to surrounding development, the configuration of the site, its limited extension west within the main field boundary and the strength of existing boundary hedgerows which could allow the base for effective landscape mitigation.** I therefore conclude that there would be Modest/Negligible harm to the landscape character and appearance of the area arising from the appeal scheme”.*

More specifically with regard to the ‘gap’ between Melksham and Berryfield, the Inspector stated the following:

“Furthermore, there are no specific Development Plan policies which seek to protect the Gap between Melksham and Berryfield and the proposed development would not significantly erode it.”

These conclusions in relation to the appeal site which immediately adjoins the application site confirm that the level of harm and conflict with CP51 (and relevant parts of CP57), although deserving of modest weight, would not amount to a justifiable reason for refusing the planning application now. The proximity of the appeal site to the planning application site is such that this must be treated as a significant material consideration.

Loss of Agricultural Land –

The site is an arable field designated as Grade 2 agricultural land, and is, therefore, ‘best and most versatile’. The overall area of land affected by the proposal – c. 2.6ha – has not changed and so continues to be relatively modest. Natural England is generally concerned where areas greater than 20ha are being lost and the application site falls well below this threshold. This said, the loss of Grade 2 agricultural land is a factor to be considered on the planning balance, and with the change to the housing land supply position, this is a material consideration now of increased relevance. In the light of the limited size of the field that would be lost, it is considered that modest weight should be attributed to this point.

The benefits –

Location of Development –

Melksham is a market town which is capable of significant growth as identified by CP1 of the WCS. As such, the quantum of development (53 dwellings) can be considered proportionate in the context of the adjacent settlement (Melksham). Very modest weight can be attributed to this.

The original committee report refers to the site as being a reasonably sustainable (accessible) location, albeit in the countryside. Although outside of the limits of development of Melksham, the site does more or adjoin, and therefore, its proximity to the town centre allows access by a genuine choice of transport modes. Modest weight can be attributed to this accessibility.

Provision of affordable housing (AH) –

Given the shortage of affordable housing both locally and nationally, and the provision of a 100% AH scheme comprising 53 units, this is a matter which must be given significant weight. Noting this is different weighting to what was set out in the original report to committee, the committee's attention is drawn to a scheme for 210 dwellings more recently allowed on appeal on Land South of Western Way, Melksham (ref: PL/2022/08504). This scheme will deliver up to 63 units of AH.

Expenditure on construction and investment in the area / creation of construction jobs –

Paragraph 81 of the NPPF states that:

“Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.”

In the light of this – and bearing in mind the size of the scheme (53 units is not a large site) – moderate weight should be attributed to this benefit. The development would provide a boost to the economy through the provision of construction jobs associated with a housing development. It is of note that the construction industry has been highlighted by the government as one of the key areas for growth post pandemic and more generally. The same weighting can be attributed to the expenditure from future occupants of the development within the local economy.

Lack of any other technical objections –

As noted previously, the scheme has not been the subject of any technical objections from consultees. Only limited weight can be afforded to this point.

9. Conclusion

Whilst the landscape effects and the loss of 'best and most versatile' agricultural land continue to be negative consequences, the level of harm arising is not considered to be of such magnitude or significance to amount to a sustainable reason for refusing planning permission. Nevertheless, harm is still harm, and so this must be factored on the planning balance.

There is, however, significant harm generated by the conflict with the development plan housing delivery policies – CP 1, 2 and 15 of the Wiltshire Core Strategy, as well as Melksham Neighbourhood Plan policies 1 and 6. This attracts substantial weight which, in isolation, is capable of forming a reason for refusal against the principle of the proposal.

The 'in principle' objection identified above is not outweighed by the benefits that would arise from the development (notably, the provision of 100% affordable housing and the economic benefits identified).

It is, therefore, concluded that, in light of the changes to the NPPF, there now arises a level of conflict with the development plan sufficient to justify refusing the application.

Recent appeal decision –

On 9 February 2024 an appeal relating to a proposal for up to 30 dwellings on a windfall (unallocated) site at Land south of Pound Lane, Semington was dismissed (ref. PL/2022/09397). In dismissing the appeal the Inspector noted the following –

6. *As confirmed through its Statement of Case, the Council initially reviewed its position at appeal stage and decided, following legal advice and subsequent internal discussions, not to defend any of its three reasons for refusing planning permission. However, following the publication of the revised Framework, which has implications for identifying and updating a supply of deliverable housing sites and the engagement of the presumption in favour of sustainable development, it has resurrected its opposition to the scheme in view of identifiable conflict with its strategic housing delivery policies. I shall formulate the appeal's main issue on this basis*

Planning Balance

15. *It is the appellant's view that the presumption in favour of sustainable development, as set out at paragraph 11 of the Framework, is engaged on the basis that the policies most important for determining the proposal are out-of-date. The most important policies are, as agreed by the main parties, Policies CP1, CP2, CP3 and CP15 of the CS, which set out settlement and delivery strategies (including specifically for the Melksham Community Area) as well as adopted infrastructure requirements.*
16. *The appellant has accepted that the Council is able to demonstrate more than a four-year supply of deliverable housing sites, which, for a period of two years from the revised Framework's publication, is the relevant requirement in view of the LPR having reached Regulation 19 stage and being inclusive of a policies map and proposed allocations towards meeting housing need. However, it has been asserted that development plan policies that restrict housing development should be considered out-of-date in any event. This position is based on the level of housing supply achieved across the plan period when assessed against the minimum housing requirement of the CS.*
17. *The plan period of the CS is 2006 to 2026, and the delivery strategy presented at Policy CP2 sets out that at least 42,000 homes shall be developed in sustainable locations in conformity with a distribution that indicates a minimum housing requirement of 24,740 dwellings across the relevant North and West Wiltshire Housing Market Area (the HMA).*
18. *My attention has been drawn to the overall housing requirement being 2,000 homes less than the objectively assessed need identified by the CS's examining Inspector. However, notwithstanding the absence of an early review, the CS was found sound based on a 42,000 minimum figure across the plan period, and this remains the adopted housing requirement.*
19. *The main parties anticipate that at the end of the plan period a shortfall of between 199 and 590 homes measured against the minimum 42,000 requirement shall be evident, and that a shortfall of between 318 and 560 homes shall avail across the HMA. Indeed, the Council has acknowledged that by the end of the plan period the existing development plan shall not have met its overall housing requirement, nor the housing requirement of the HMA.*
20. *However, the situation just described does not automatically render the most important policies for deciding this case out-of-date. Instead, this is a matter of planning judgement to be informed by the specific circumstances to hand. It is pertinent that, taken in the context of the overall number of houses required and the length of the plan period (which has yet to expire), the anticipated shortfalls are relatively minor.*

21. *Furthermore, of key relevance is the Council's current Framework-compliant housing supply position (applicable to the HMA in isolation, and in overall terms), which has been assessed against local housing need using the standard method, as well as its recent housing delivery record. These measurements, notwithstanding any historic shortfalls, offer clear current indications that the Council's strategic housing policies are not placing undue constraints on housing development.*
22. *Moreover, the restrictions placed on housing development by the Council's settlement and delivery strategies have not prejudiced the present demonstration of the required housing land supply as dictated by national policy, and the spatial strategy is in accordance with the Framework. Thus, in my view, the basket of most important policies for determining the proposal cannot be fairly considered out-of-date for the purposes of applying paragraph 11 of the Framework. Thus, in view of identified conflict with the development plan, the presumption in favour of sustainable development is not engaged. As such, a straight planning balance of scheme benefits against identified adverse impacts is necessitated.*
28. *The proposal would conflict with the Council's spatial strategy and therefore the development plan when read as a whole. In cumulative terms, the scheme would deliver significant benefits. However, in my judgement, these material considerations would be insufficient to outweigh the conflict I have identified.*

This very recent appeal decision – relating to a site elsewhere in Wiltshire – aligns with the Local Planning Authority's interpretation of the updated NPPF and how it should now be applied in cases such as this. As in the appeal case, the proposal conflicts with the Council's Spatial Strategy and development plan as a whole; this conflict – and the fact that the planning balance is now level – is not outweighed by any other material considerations.

RECOMMENDATION:

That planning permission be refused for the following reasons:

1. Principle of Development

Core Policy 1 of the Wiltshire Core Strategy sets out the 'Settlement Strategy' for the County, and in doing so identifies four tiers of settlement - Principal Settlement, Market Town, Local Service Centre, and Large and Small Village. Within the Settlement Strategy Melksham is defined as a Large Village. The Principal Settlements, Market Towns, Local Service Centres and Large Villages have defined boundaries, or 'limits of development'. Beyond the limits of development is countryside. The application site lies beyond / outside the limits of development of Melksham, and so is in the countryside.

Core Policy 2 of the Wiltshire Core Strategy sets out the 'Delivery Strategy'. It identifies the scale of growth appropriate within each settlement tier. The policy states that within the limits of development of those settlements with defined limits there is a presumption in favour of sustainable development; but outside the defined limits – that is, in the countryside – other in circumstances as permitted by other policies of the Plan, development will not be permitted, and that the limits of development may only be altered through identification of sites for development through subsequent Site Allocations Development Plan Documents and Neighbourhood Plans.

Core Policy 15 of the Wiltshire Core Strategy sets out the 'Spatial Strategy' for the Melksham Community Area in which the site lies. It states that development in the Melksham Community Area should be in accordance with the Settlement Strategy set out in Core Policy 1.

The proposal is for outline planning permission to erect up to 53 dwellings, etc. on the application site, which is in the countryside. Under Core Policies 1, 2 and 15, this does not comply with the Settlement and Delivery Strategies as a matter of principle. The Strategies are designed to ensure new developments satisfy the fundamental principles of sustainability, and so it follows that where a proposal such as this fails to comply with them then it will be unsustainable in this overarching context. The application site is not identified for development in a Site Allocations Development Plan Document, and it is not allocated in a Neighbourhood Plan document. Furthermore, there are no material considerations or exceptional circumstances, including set out in other policies of the Plan, which override the core policy's position. The proposal is, therefore, contrary to Core Policies 1, 2 and 15 of the Wiltshire Core Strategy, Policies 1 and 6 of the Melksham Neighbourhood Plan and paragraphs 2, 7-15, 47 and 180(b) of the National Planning Policy Framework (NPPF), comprising unsustainable development.

2. Lack of a signed Legal Agreement

The proposed development fails to provide and/or secure adequate provision for necessary on-site and, where appropriate, off-site infrastructure to make the application proposal acceptable in planning terms. The application is therefore contrary to policy CP3 of the adopted Wiltshire Core Strategy, and the National Planning Policy Framework, specifically the central social and environment sustainable development objectives enshrined within paragraph 8.

INFORMATIVE TO APPLICANT:

Reason for refusal 2 relates to the failure of the applicant to secure affordable housing and other financial contributions for the site. In the event of an appeal it may be possible to address this through a suitably worded Planning Obligation.

ANNEX 1: 29 November 2023 Committee Report

ANNEX 2: Applicant response to revised NPPF