

REPORT FOR STRATEGIC PLANNING COMMITTEE

Date of Meeting	6 March 2024
Application Number	PL/2021/09013
Application type	OUTLINE
Site Address	Land West of Westbury Road, Warminster
Proposal	Outline application for the erection of up to 205 dwellings, community hub, public open space, access, infrastructure and associated works (access to be approved with all other matters reserved)
Applicant	Barratt Homes
Town/Parish Council	Warminster Town Council
Electoral Division	WARMINSTER NORTH & RURAL – Cllr Bill Parks
Case Officer	David Cox

1. Purpose of Report

This application is now subject to an appeal against non-determination, lodged 5 February 2024.

The purpose of this 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 published in February 2024) that have a material impact on the planning application, and to consider the recommendation that the Planning Inspectorate be advised that had Wiltshire Council remained the determining authority then it would have refused planning permission.

2. Background

On 1 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.

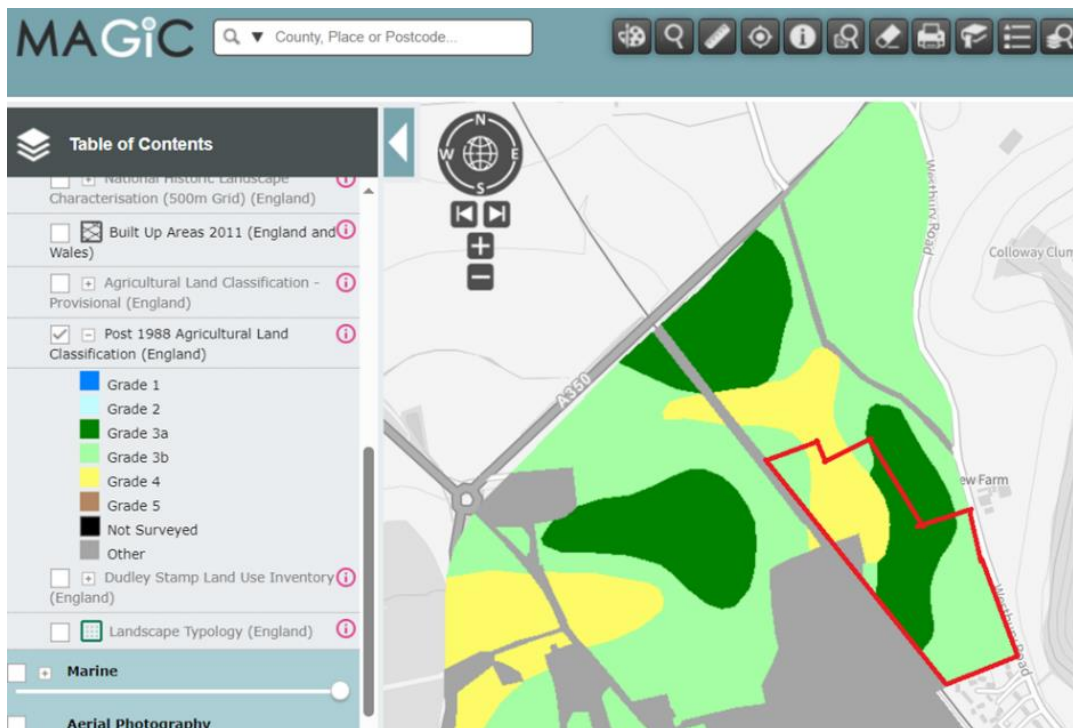
In December 2023 the government issued its revised National Planning Policy Framework (NPPF). This is a changed material consideration that must now be taken into account. The effects of the changes in relation to this planning application are summarised below and considered in greater detail in later sections of this report:

- 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 Warminster Neighbourhood Plan.

Clarifications following 1 November 2023 SPC meeting

Agricultural Land Classifications –

Further to this matter being raised by the Committee at the 1 November 2023 meeting, the fields which make up the application site are used for agricultural purposes including crop growing and for cattle grazing. According to DEFRA's 'magic map', the application site comprises a mixture of grades 3a (good), 3b (moderate) and 4 (poor) agricultural land. There is no grade 2 land.



Agricultural Land Classification

Pollution, reed bed management, etc. –

NPPF paragraph 194 states:

“The focus of planning decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively. Equally, where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities.”

For the avoidance of doubt, the Environment Agency (EA) raised no objections to the original planning application subject to conditions. The EA has a separate Environmental Permitting process for aspects of the proposal such as the waste water treatment facility, and this is the appropriate regulatory process for this rather than planning. The WC Public Protection Team have further commented that a grant of planning permission does not mean that an EA Permit will be automatically issued.

The WC Public Protection have also stated the following -

“Vermin are ubiquitous in the countryside/near to water sources etc., therefore it would not be surprising to find evidence of faecal contamination in reed beds/water sources or other locations in the vicinity; we therefore do not have particular concerns regarding this issue.”

Other ‘new’ material consideration

The application site lies within the catchment of the River Avon and, related to this, within the consultation zones for the River Avon SAC. Due to nutrient enrichment from elevated phosphate levels in the river the SAC is presently in ‘unfavourable condition’. This is complicating the delivery of planning permissions for housing, particularly where foul services discharge to waste-water treatment works which in turn discharge to the river.

For this planning application the applicant is proposing on-site wetland mitigation, and their calculations have shown that as a consequence of this there would be no additional total phosphorous being discharged from the proposed development via foul and surface waters (this because these waters would be dealt with entirely on site). These circumstances of the application have not changed – and the WC Ecologist’s and Natural England’s ‘no objection’ subject to conditions, therefore, stands.

On 20 December the Minister for Housing, Planning and Building Safety issued a letter addressing nutrient neutrality in general, and on 25 January the River Avon SAC became a designated ‘phosphorous sensitive catchment area’. The key part of the Minister’s letter states the following:

To stop pollution at source, the Levelling-up and Regeneration Act 2023 creates a new duty on water companies to upgrade wastewater treatment works (WwTW) by 1 April 2030, in catchments of Habitats Sites identified by the Secretary of State as being in an unfavourable condition due to nutrient pollution. This duty will be in effect from 26 January 2024 and the government will publish designated catchments and specific wastewater treatment works to be upgraded. The Act also requires planning decision-makers to consider these upgrades as certain for the purposes of an assessment under the Habitats Regulations. These upgrades will significantly reduce nutrient loads from WwTW in designated catchments, while also reducing the average costs of nutrient mitigation for developers. For new development connecting to WwTW subject to the upgrade duty, the reduction in costs is estimated to range between 37% to 95% for phosphorus and between 46% to 64% for nitrogen (depending on the catchment and subject to final analysis). This is alongside the continued delivery of the Natural England £30 million Nutrient Mitigation Scheme in line with the Environment Secretary’s direction of 28 July 2022.

To boost the supply of mitigation, the Chancellor has announced as part of the Autumn Statement that the Local Nutrient Mitigation Fund will spend £110 million of taxpayer money over this year and next. This will enable local authorities to boost the supply of mitigation, by bringing forward innovative mitigation schemes and providing mitigation credits. The funding will be recycled locally until nutrient mitigation is no longer needed, at which point it will be used for measures to help restore the relevant Habitats Sites. This will enable sustainable development, unlocking stalled housing delivery, whilst delivering secondary benefits like enhanced public access to nature and supporting our commitment to leave our environment in a better state than we found it.

As the application site 'washes its own face' on the issue of nutrient neutrality, the Minister's letter has no bearing on the application's re-consideration. The letter is, however, a new material consideration which the Committee is required to have regard to and note in any event.

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) (namely 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. Warminster 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 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 have effect where the neighbourhood plan became part of the development plan five years or less before the date on which a decision is made, 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; where relevant the policies of the Warminster Neighbourhood Plan should be given full weight in any event.

6. Response from the applicant

The agent acting on behalf of the applicant does not agree with the above. The following (summarised) reasons are given (full response from the agent at Annex 2):

Housing Land Supply –

- No evidence that the Reg 19 Plan is sufficiently detailed or meets the housing requirements in order for it to 'qualify' for 4-year supply status for the purposes of Paragraph 77/226 of the revised Framework. It remains questionable whether the Plan meets the necessary tests in order for the Authority to qualify for 4-year status.
- No evidence that the Council has reviewed its housing land supply since publishing a position of 4.6 years in May 2023. As this figure is already eight months old, it is highly unlikely that it is accurate, and we are mindful of evidence presented at recent appeals suggesting that in reality the Council's supply is potentially less than four years.
- In the absence of an up-to-date and publicly available calculation of housing land supply, the Council cannot rely on an assumption that its published position from May 2023 remains unchanged as the basis for returning applications to Committee with revised recommendations at this time.
- The changes to the Framework have made no difference to the presumption that Local Planning Authorities should seek to maintain at least a five-year supply of deliverable housing. Whether or not required to (or capable of) demonstrating more than four years' supply for the purposes of Paragraph 226, Wiltshire Council continues to fall significantly short of five years' supply in the context of a national housing crisis and, in particular, a marked shortfall of affordable homes. The Council has not withdrawn the Briefing Note which states that the Council will support 'speculative' applications where there are no technical objections in pursuit of a five-year supply.
- Moreover, even if a 4+ year supply could currently be demonstrated, recalling and refusing a significant number of 'speculative' proposals with extant resolutions to grant planning

permission presents a very real and immediate prospect that housing land supply will be severely depleted over the coming months, particular from April 2024, due to a lack of commitments. As such, refusing such applications at the present time is likely to be self-defeating and only likely to open opportunities for less desirable 'speculative' proposals later in the year.

Operation of the Tilted Balance –

- Wiltshire Council has stated in correspondence that, on the assumption that the Council can demonstrate in excess of four years' supply, the 'tilted balance' would not be engaged for the purposes of decision-making. Notwithstanding the exceptions of Paragraph 226, Core Policies 1 and 2 remain out-of-date in their own terms, being predicated on a non-Framework compliant assessment of housing need, as are the related settlement boundaries to which they refer, and their weight in decision-making diminished accordingly.
- Likewise, the tilted balance remains engaged in relation to these 'most important' policies independently of Paragraph 226 and housing land supply and it remains in the context Paragraph 11(d)(ii) that decision-making must still proceed.

Site-specific matters –

- There are no technical or environmental objections outstanding in relation to the proposals, nor any objection from key consultees. The original Strategic report concluded: '*...this report shows that there are no adverse impacts arising from the proposal on the wider landscape, archaeology, drainage, ecology, highways, and/or amenity. There are, however, benefits which include additional market and affordable housing; the development would also contribute to the housing choice and mix in the local area. Additionally, it would help provide economic benefits by providing work for construction professionals, increase economic activity within Warminster and make contributions to off-site infrastructure through S106 contributions and CIL*'
- The physical effects of the proposals remain wholly unchanged in the present circumstances and therefore it is plainly unreasonable that any additional harms should be identified at this time, or indeed that any additional weight should be ascribed to them.

7. Officer Response to the Applicant's Comments

The above response from the agent is based on their own judgment / legal advice. It is, therefore, an 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.

Regarding the status of the planning balance, The Wiltshire Housing Site Allocations Plan (WHSAP) was adopted February 2020. The purpose of the WHSAP is/was to revise, where necessary, the WCS settlement boundaries and allocate new sites for housing across the plan period in order to demonstrate the rolling supply. The WHSAP is not out of date, and so NPPF paragraph 11(c) is relevant for the purposes of decision-taking (not paragraph 11(d)).

Regarding the status of past Wiltshire Council 'Briefing Notes' on the status of the development plan, these (like any policy or guidance) will inevitably, and automatically, be superseded in the event of more up-to-date and different policy or guidance taking effect.

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 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.

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, Warminster 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 Warminster – 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 31 sets out a Spatial Strategy for the Warminster Community Area. The policy states that development in the Community Area should be in accordance with Core Policy 1.

The Warminster Neighbourhood Plan (WNP) was 'made' in 2016. It sets out principles for new housing and good design (Policy L1); it relies on the WCS and WHSAP to define the settlement boundary and make allocations for new development.

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 31 and NP policy 1. Proposed development which does not accord with WCS Core Policies 1, 2 and 31 and NP Policy 1 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 the 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 has been 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).

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 open fields 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 site – which is essentially, and in isolation, open fields in the countryside which would be 'lost' to the development. But then factoring in the wider circumstances of the fields and the characteristics of the locality, and the actual proposal – that is, the site's relationship with established 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 this respect, the conclusions of the Landscape and Visual Assessment which accompanies the planning application are agreed – notably the following:

The appraisal has concluded that the effects of the proposed development upon the open arable and pasture fields within the site itself would be major/moderate and negative, but that the effects on the hedgerow network would be moderate minor and negative, becoming positive once new planting establishes. The local area of the Warminster Terrace character area would experience a moderate/minor effect as a result of the proposed development, and parts of the Salisbury Plain West character area would also experience moderate/minor effects due to visibility of the proposed development. Cranborne Chase and West Wiltshire Downs would experience minor effects as a result of the proposed development, and the nature of these effects would be neutral.

In summary, whilst the proposed development would result in some higher negative landscape effects these would be localised and focused on the site itself. Effects on landscapes further from the site would be lower, partly due to the visibility of the existing settlement edge and the fact that the proposed development would not extend further than the existing industrial estate to the west of the application site.

And

The proposed development would be visible by a number of receptors within and around the site, including from elevated ground at Arn Hill Down to the east and Cley Hill, to the west. The main receptor groups which would be affected include walkers, residents and vehicle users.

The visual effects of the proposed development would be localised, with major or major moderate effects being limited to the views of walkers within and immediately adjacent to the site, and residents immediately to the south of the site. For users of footpaths outside of the site, the proposed development would be viewed in the context of the existing settlement edge, and in particular the existing prominent development at the Crusader Park industrial estate. Importantly, the proposed development would not extend further north than this existing industrial park.

Loss of Agricultural Land –

The site is made up of several fields designated as Grades 3a, 3b and 4 agricultural land (with the two grade 3's making up approximately 2/3rds); those parts that are Grade 3a are 'best and most versatile'. The overall area of land affected by the proposal – c. 10.45ha – 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 below this threshold. This said, the loss of 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 land that would be lost, it is considered that modest weight should be attributed to this point.

The Benefits –

Location of Development –

Warminster is a market town which is capable of significant growth as identified by CP1 of the WCS. As such, the quantum of development (c. 205 dwellings) can be considered proportionate in the context of the adjacent settlement (Warminster). 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 Warminster, the site does 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 –

Notwithstanding that the Council can demonstrate a sufficient supply of deliverable housing land, the proposal would provide policy compliant 30% (c. 62) affordable housing units. It is considered that significant weight should still be given to this as a benefit.

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 – 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 some '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 31 of the Wiltshire Core Strategy, as well as Warminster Neighbourhood Plan policy 1. 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.

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; Annex 3). 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 the Planning Inspectorate be advised that had Wiltshire Council remained the deciding authority for this application then it would have refused planning permission 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 Warminster 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 Warminster, 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 31 of the Wiltshire Core Strategy sets out the 'Spatial Strategy' for the Warminster Community Area in which the site lies. It states that development in the Warminster 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 205 dwellings, etc. on the application site, which is in the countryside. Under Core Policies 1, 2 and 31, 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 31 of the Wiltshire Core Strategy, Policy 1 of the Warminster 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: 1 November 2023 Committee Report

ANNEX 2: Applicant response to revised NPPF

ANNEX 3: PL/2022/09397 – appeal decision letter