



# The Planning Inspectorate

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Your Ref:

Our Ref: APP/Y3940/W/21/3285428

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

30 May 2022

Dear Sir/Madam,

Town and Country Planning Act 1990  
Appeal by Terra Strategic  
Site Address: Semington Road, Melksham, SN12 6EF

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,

***Holly Dutton***

Holly Dutton

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## Appeal Decision

Inquiry Held on 1-4 March 2022

Site visit made on 8 March 2022

**by Stephen Wilkinson BA BPI DIP LA MBA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 30 May 2022**

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**Appeal Ref: APP/Y3940/W/21/3285428**

**Land west of Semington Road, Melksham**

**Grid Reference 390022, 162878**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr Richard Pitt of Terra Strategic against the decision of Wiltshire Council.
  - The application Ref: 20/07334/OUT, dated 25 August 2020, was refused by notice dated 23 April 2021.
  - The development proposed is outline planning permission for up to 50 dwellings and formation of an access with associated works.
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### Decision

1. The appeal is allowed and outline planning permission is granted for up to 50 dwellings and the formation of an access with associated works at land west of Semington Road, Melksham in accordance with the terms of the application, Ref 20/07334/OUT, dated 25 August 2020, and the plans submitted with it, subject to the following conditions included in the schedule to this decision.

### Procedural Matters

2. The application as submitted included 30% affordable housing. However, during the appeal process this was amended to 100%. This change was discussed at the Case Management Conference in January and representations sought from the Council. I have been assured that all parties who were originally consulted on the application were informed of this change in advance of the Inquiry. The Council's outstanding concerns on this matter relate only to the proposed tenure mix; this is addressed in the Unilateral Undertaking which I consider later in this decision. I am satisfied that no parties' interests have been prejudiced or infringed.
3. The application has been submitted in outline with all matters reserved apart from access. Although both parties referred to several plans during the Inquiry, I have made this decision on the basis of SLP1, Site Location Plan and CTP-18-500 SK02 which only includes details of the proposed access.
4. At the commencement of the Inquiry, I accepted 2 late documents following consultation with the appellant in respect of the Melksham Link project and housing needs.

5. The Council's decision includes 5 reasons for refusal (RfR). On receipt of additional information regarding flood risk it has decided not to defend its fourth RfR. The appeal was lodged with a draft Unilateral Undertaking (UU) and for this reason the Council did not defend its fifth RfR. I received a completed Unilateral Undertaking, dated 9 March 2022 after the Inquiry had closed. I address both of these issues later in this decision.

## **Main Issues**

6. The main issues are as follows

- Whether or not the Council is able to demonstrate a sufficient supply of housing land with specific reference to Paragraph 14 of the National Planning Policy Framework (the Framework) with respect to the Development Plan as a whole,
- The effect of the proposals on the landscape character and appearance of the area,
- Whether or not the proposed scheme would lead to increased flood risk,
- Whether or not the proposals include adequate provision of necessary infrastructure directly required by this development,
- The accessibility of the proposed scheme to local services, and
- The implications of the proposal in addressing housing need.

## **Reasons**

### ***Housing Land Supply and the Development Plan***

7. The Development Plan comprises the adopted Wiltshire Core Strategy (WCS) (2015), the Wiltshire Housing Site Allocations Plan (WHSAP) 2020 and the Joint Melksham Neighbourhood Plan (JMNP) 2021.
8. Both parties agree that the Council does not have a 5 year housing land supply (5YHLS); this currently is at 4.41 years and is based on a requirement for 10,553 units and a deliverable supply of 9,286 units<sup>1</sup>. In these circumstances the tilted balance applies in accordance with Paragraph 11d)ii and footnote 8 of the Framework.
9. Melksham benefits from an adopted Neighbourhood Plan<sup>2</sup> (2021) prepared by a steering group (the Qualifying Body). Paragraph 14 of the Framework states that the adverse impact of allowing development that conflicts with a Neighbourhood Plan is likely to significantly and demonstrably outweigh the benefits. Given the importance which the Government attaches to adopted Neighbourhood Plans the effect of this provision is to place significant weight on its policies.
10. However, there is a difference between the parties as to whether the policies of the JMNP apply in respect of Paragraph 14b), that is, whether or not it contains policies and allocations to meet its identified housing requirement. This is an important consideration given the weight that the Council places on JMNP policies 1, 6 and 17.

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<sup>1</sup> Statement of Common Ground

<sup>2</sup> Referred to as the Joint Melksham Neighbourhood Plan (JMNP)

11. The Council's Core Strategy was adopted in 2015 with a plan period up to 2026. To reconcile the plan periods of the JMNP with the adopted Core Strategy and its review, the plan period of the JMNP was reduced from 2020-2030 to 2025.
12. Both the Council and the Qualifying Bodies who prepared the JMNP, agreed that housing allocations should not include land at Melksham and Bowerhill due to the rate of past delivery<sup>3</sup> and that sites would be coming forward as part of the local plan review<sup>4</sup> which had already commenced before the adoption of the JMNP. The appeal site was dismissed as part of the site allocation process for the JMNP.
13. Although the JMNP contains housing policies, the appellant states that these are not based on policies and allocations evidenced by its housing requirement, contrary to Planning Policy Guidance (PPG)<sup>5</sup>. Instead the JMNP relies on the WCS for both its settlement boundaries and housing requirement.
14. Justification for its single housing allocation included in Policy 7, for 18 dwellings at Middle Farm in Shaw/Whitley refers to the fact that there has been no housing market or affordable development in this settlement since 2000.
15. The appellant draws a distinction between the approach adopted in the JMNP with that for the Purton Neighbourhood Plan, cited in a decision of an Inspector colleague<sup>6</sup>. In that case, 94 additional dwellings were allocated through the plan on 7 sites both within and beyond the settlement boundary, required to accommodate growth in line with the local aspirations of Purton in recognition of the settlement pressures in the area.
16. However, in the current appeal, the Council is clear that preparation of the JMNP was against a background of 'marrying' timelines with the emerging WCS. In my view this is a prudent approach given the Council's support for neighbourhood planning. This does not represent a 'missed opportunity'<sup>7</sup> as the appellant suggests. Given the short plan period it allows for the collation of evidence to substantiate further allocations being considered both within and outside the existing settlement boundary which may change. It is sufficient for the purposes of Paragraph 14b, despite my comments made later in this decision in respect of the extent of housing need.
17. Underpinning the appellant's arguments on this issue is whether the JMNP prejudices housing supply. Both parties agree that the housing requirement for Melksham and Bowerhill is 2,240 dwellings for the Core Strategy period and that 'deliverable commitments and completions' total around 2,437 dwellings exceeding the requirement by around 9% with 2 years to go of the plan period<sup>8</sup>. In this context and given the short life of the JMNP, its policies are not prejudicing housing supply despite the overall undersupply of housing across the County.
18. Finally, it is not my role to unpick the policies of the JMNP or to cast doubt on the process leading to adoption as the appellant has<sup>9</sup>. The Examining Inspector

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<sup>3</sup> Mr White PoE paragraph 4.94

<sup>4</sup> CD F5

<sup>5</sup> ID: 41-097-201190509, dated 9 May 2019

<sup>6</sup> AAP/Y3940/W18/3202551

<sup>7</sup> Appellant's closings paragraph 41

<sup>8</sup> SoCG

<sup>9</sup> Appellant closings paragraph 42

found the basic conditions to be sound due to the particular circumstances of the Council. This should not in my view be in question for this appeal.

19. I therefore conclude that all aspects of Paragraph 14 of the Framework have been satisfied and that the JMNP forms part of the Development Plan. The JMNP complies with Paragraph 14b) of the Framework with respect to the Development Plan as a whole. In the context of the tilted balance afforded by Paragraph 11d)ii and footnote 8, the policies of the JMNP are an important material consideration.

### ***Landscape character and appearance of the area***

#### *Landscape*

20. The appeal site is located on the west side of Semington Road and south of Western Way, the A350. Lying immediately beyond the north eastern edge of the appeal site is Townsend Farm comprising a large former farmhouse and outbuildings, converted into dwellings. The site is not a valued landscape as defined by Paragraph 174 of the Framework.
21. The site lies within the NCA<sup>10</sup> 117 Avon Vales, which in summary can be characterised as a gently undulating and low-lying agricultural landscape interspersed by small towns in the valley of the River Avon and its tributaries. Within this designation, the Wiltshire LCA identifies the site as falling within the Landscape Type, 12B Avon Open Clay Vale. The West Wiltshire District's LCA<sup>11</sup>, includes the site in B1 Avon River Flood Plain. However, the land east of Semington Road, lies in LCA, C2 Semington Open Clay Vale.
22. The site comprises the eastern part of an arable field which partially wraps around Townsend Farm and has a site area of 2.26ha. The site is partially contained by hedgerows interspersed with trees. These features are characteristic of both the NCA 117 and LCA B1. Of particular relevance to the appeal site in respect of the NCA are the 'forces for change' which include the protection of boundary hedgerows and how new development merges the settlement pattern. In respect of the LCA the landscape sensitivities include the retention of both the hedgerow pattern and its wide open views which are in part inherent to the area's large open field pattern.
23. The Council's objection relates to the appeal scheme's effects on landscape and its impact on closing the gap between Melksham and Berryfield.
24. The Core Strategy (CS) policies CP1, CP2, CP15, CP51 and CP57 are consistent in seeking to direct development to a hierarchy of towns. These policies seek to protect landscape character and preserve the setting of settlements. Development is required to be of high quality design. These policies are reinforced by policies 1, 6 and 17 of the JMNP.
25. Both parties agree that the site has a medium sensitivity, susceptibility and value in landscape terms. The appeal site has a rural character and includes features consistent with both the NCA and LCA.
26. I recognise that at the time of my site visit the trees were largely bare of leaves allowing views of housing in Hornbeam Crescent and Ash Grove in Melksham, just north of the A350. However, the tree belt along the roads

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<sup>10</sup> National Character Area

<sup>11</sup> Landscape Character Assessment

southern edge could still allow intermittent views during the summer when the trees are in leaf. Therefore, I do not accept that the A350 and its wooded boundary acts as an abrupt break between Melksham and the open farmland to the south and west<sup>12</sup> within which the appeal site lies.

27. Semington Road includes ribbon development which, on its eastern side extends south from the roundabout with the A350. This appears as an extension to Melksham. Development includes a mobile home park, the recently completed development by Bellway Homes and the recent permission<sup>13</sup> for residential development on a site further south. The net effect of this development is to link with the eastern edge of Berryfields and in turn to the industrial and commercial estates in Bower Hill further east.
28. Other factors affecting landscape context include the constant noise from the heavily trafficked A350, the regular bus services and street columns on Semington visible from across the appeal site from the west. Furthermore, both Westward Farm and Boundary Farm include sprawling single storey buildings, some of which are in a poor state of repair, which adversely impact on the landscape. These are factors which reflect the site's broader landscape context.
29. I do not accept the Council's argument that the appeal site requires protection from development because it forms a continuous area of land, characteristic of LCA B1. The appeal site is bounded to its west by a strong boundary hedge with mature trees which cut the site off from wide open views, west to the River Avon. Furthermore, the appeal scheme would retain existing hedgerows which could be strengthened through appropriate landscaping. This is in contrast with the views from the fields further south which are open on their boundary to Berryfield Lane affording long distance views west.
30. When taken overall, the impacts would result in the loss of part of an arable field, but it would not interrupt the field pattern being entirely contained within the hedgerow boundaries of a single field.
31. Although I have treated the site layout submitted with the appeal as indicative, the amount of development proposed could enable the creation of belts of boundary landscaping of sufficient depth to allow a transition between Melksham to the north and the open rural landscape to the south. This would not result in an incongruous settlement edge as suggested by the Council<sup>14</sup>.
32. For these reasons, the impact of development would be limited and after 15 years once boundary planting had become established the physical impacts would only be Moderately Adverse.

### *Visual*

33. Both parties agreed 8 viewpoints (VP) required for the assessment of the visual impacts of the proposed scheme. These are highly localised and reflect the site's limited visual envelope. From my site visit, the footpaths on which the viewpoints are located seemed to be little used; this diminishes their importance as receptor points.

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<sup>12</sup> Mr Hartley PoE

<sup>13</sup> 20/01938/OUT

<sup>14</sup> M Harley PoE Table 1



34. VP1, VP2 and VP3 would each have a high degree of sensitivity as the Council suggest. This results from their proximity to the site and that views towards the site would be across the fragmented hedge on its southern boundary. In the case of VP3 this would be across open fields towards the site's existing 'open' western boundary.
35. From each of VP1 and VP2 the impacts of the appeal scheme on completion would have considerable impact but these would be largely reduced after 15 years due to the potential for additional planting strengthening the southern boundary hedge. From VP3 which is towards the western end of the appeal site which does not currently benefit from existing landscaping, the impacts on completion would be Major to Moderate as the Council suggest although after 15 years once the planting has matured this would be Moderate to Minor Adverse as the appellants suggest.
36. VPs 4 and 6 are not typical of the views towards the site from along Berryfield Lane being located at gate openings in the boundary hedgerows. For this reason, I do not agree with the Council that the high level of visual impact recorded from them would in turn have a detrimental effect on a receptor's enjoyment given the extent of unmanaged hedgerows along the lane. Whilst intermittent views were available during the time of my site visit, in summer when trees would be in leaf, the appeal scheme would be further obscured apart from at the 2 VPs. For these reasons, the level of effects would be Moderate Adverse at 15 years.
37. For the same reason when viewed from VP5 located further west of Berry Lane on footpath MELW17, the appeal scheme would not be easily seen especially in the summer months. Development located beyond the site's landscaped edges would morph into the settlement pattern of existing development along the east side of Semington Road. From this viewpoint the appeal scheme would not have a definite and profound effect on the visual setting of Melksham as suggested by the Council<sup>15</sup>.
38. From VPs7 and 8, located on 2 rail bridges around 1km to the west, views of the appeal site are filtered to such an extent that the proposed scheme would not appear as a distinctive and separate area of housing. This is borne out by the main parties' conclusions which identify the landscape level of effect as low to negligible on completion. Following my site visit, I concur with the main parties' conclusions which identify the landscape level of effect as low to negligible on completion from these VPs.
39. The Council identified cyclists using NCR 403 along Semington Road as receptors. However, the site would be only be visible for cyclists travelling north given its limited frontage to Semington Road. I acknowledge, however, that they would see the proposed development given their height advantage. However, no figures were presented on the popularity of this route for cyclists which determines the relative weight to be given to this view.
40. Overall given the degree of containment arising from its treed boundaries the appeal scheme would be contained. Although the Council made reference to the impact of the scheme on 'dark skies', there is insufficient evidence to support its contention that the proposal would conflict with this aspect of Policy C51.

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<sup>15</sup> Mr Harley's PoE paragraph 4.6



### *Gap between Melksham and Berryfield*

41. The Development Plan does not include reference to a strategic gap between Melksham and Berryfield but instead relies on Policy CS51 which seeks to protect landscape character. The land in question comprises around 8 fields within which the appeal site sits, located between Berryfield Lane and Semington Road just south of the A350 where it sweeps south to its junction with Semington Road.
42. Berryfield is a settlement consisting primarily of post war housing surrounded on 3 sides by open fields. Its eastern side forms part of a continuous area of commercial and residential development which extends along both the A350 and the A365 from the Bowerhill Industrial estate. The Council's recent decision to allow further development on the east side of Semington Road south of Bowood View<sup>16</sup> further undermines Berryfields identity distinct from Melksham.
43. Policy CS16 seeks the creation of a canal link designed to connect the Kennet and Avon canal and the River Avon. An application for planning permission was submitted in 2012 but remains undetermined. The application scheme identifies the potential scope of associated development required by the scheme which would cut across the Gap. Although little weight can be given to this scheme given the time that has elapsed since submission, the Council's policy commitment remains as a material consideration to which moderate weight can be applied. Its implementation would partially erode the openness of the area.
44. The appellant does not contest the Council's assessment that the appeal scheme would reduce the Gap from the bulk of development within Berryfield by around 100m from 500m to around 400m<sup>17</sup>. Within this landscape the introduction of 50 homes located on the east side of the most northern part of the 'gap' with a short frontage to Semington Road and being partially wrapped around Townsend Farm would have only a limited impact on the erosion of this gap.
45. A clear gap along the west side of Semington Road Westwards would be retained between the appeal site and the northern edge of the ribbon development which extends from Berryfield. This would be sufficient to maintain the visual links to land to the west, retain separation between the 2 settlements, and allow some degree of transition between man made and natural landscapes as required by Policy CP51.
46. Policy CP51 and specifically point (iii) of this policy would not be undermined.

### *Conclusions on the landscape main issue*

47. 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

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<sup>16</sup> CDK1 -Application No. 20/01938/OUT

<sup>17</sup> Mr White PoE paragraph 4.119

landscape character and appearance of the area arising from the appeal scheme.

48. 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.

### ***Flood Risk***

49. The Council's fourth reason for refusal relates to an objection from the local water company to the inclusion within the proposed scheme of surface water pumping stations to manage surface water run off to reduce the risks of flooding. This solution would have been contrary to Policy CP67 and Paragraph 163 of the Framework due to the potential for mechanical failure leading to flooding both within the site and in surrounding areas.
50. Following the Council's refusal the appellant met with the Lead Local Flood Risk Authority (LLFA) and agreed that a sustainable drainage strategy could be used thereby avoiding the potential for mechanical failure. This could meet adopted guidance<sup>18</sup> and I am satisfied that this issue could be satisfactorily resolved through a planning condition requiring the submission of details as required by the LLFA.
51. Therefore I am satisfied that the proposed scheme would not lead to increased flood risk in the area.

### ***Infrastructure***

52. The appeal is accompanied by a completed Unilateral Undertaking dated 9 March 2022. The Council indicated that the obligations included in the Undertaking address its fourth reason for refusal in line with Policy CP3 and the Policy8 of the JMNP.
53. The Council has submitted a Community Infrastructure Levy (CIL) compliance statement<sup>19</sup> demonstrating how each contribution is founded in adopted policy within the Core Strategy. This includes full details of the formulae used to calculate the amounts of capital moneys requested.
54. Section 122 of the CIL Regulations together with Paragraph 57 of the Framework require planning obligations to be related to the requirements of development plan policies and are necessary, directly related and fairly and reasonably related in scale and kind to the proposed scheme.
55. Covenants would be imposed in favour of the Council include 100% affordable housing. The suggested tenure split of 60% affordable rent and 40% shared ownership, is supported by Policy CP43. This is acceptable to the Council.
56. Other covenants are included in respect of the provision of capital funding towards both early years and primary education totalling around £367,744 with investment directed towards a local primary school. This is supported by Policy CS3.
57. The Undertaking includes provision for on site equipped play area and off site facilities at the Lancaster Road playing field (£11,800). This is supported by

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<sup>18</sup> CIRIA (2004) REPORT609 and the SUDS manual CIRIA C753

<sup>19</sup> ID3

Policy CP52. I accept investment in this 'off site' facility would support other forms of outdoor recreation which cannot be accommodated on the appeal site.

58. Covenants in respect of highway improvements require the provision of additional signage to direct pedestrians travelling from the site toward the town centre. The signage would direct pedestrians away from the west side of the roundabout at the junction of Semington Road with the A350 towards its eastern side where a crossing and reserve currently exists. This measure is in the interests of highway safety given the high volumes of traffic which use the A350.
59. Other covenants include the provision of waste and recycling bins in line with Policy CP3 and Appendix 4 of the SPD<sup>20</sup>. £10,000 is committed for the provision of an air quality monitoring station linked to the high volumes of traffic along the A350 corridor. As the site will generate a modest amount of traffic, this requirement would be acceptable and is supported by Policy CP55.
60. The Undertaking includes covenants in favour of the Council for public art of £15,000. This would be located within the appeal scheme and is supported by Policy CP57.
61. Therefore I am satisfied that the proposals include adequate provision of necessary infrastructure directly required by this development and that I am satisfied that each of these covenants fall with the provisions of Regulation 122 of the CIL regulations and Paragraph 57 of the Framework.

### **Location of Development**

62. The policies of the WCS are predicated on directing growth to a hierarchy of existing centres in line with the principles of sustainable development. Melksham is identified within Policy CP1 as a market town, in the second tier of the settlement hierarchy capable of accommodating significant development. The delivery strategy disaggregates the housing requirement of 42,000 dwellings across the Community Areas included in Policy CP2 and identifies that development will not be allowed outside settlement boundaries unless enabled by other policies. The appellant accepts that the site's location is in conflict with Policy CP2 and that none of the exceptions included in these policies apply.
63. Policy JMNP1 supports development that would contribute to Wiltshire becoming carbon neutral. Given the site's location beyond the settlement boundary the proposed scheme would conflict with this. Policy 6 of the JMNP requires new development to be within the defined settlement boundaries. Although the settlement boundaries are reflected in Policy CP2 they were reviewed as part of the JMNP as the residual housing requirement for Melksham and Bowerhill village had already been met<sup>21</sup>. Again the appeal scheme conflicts with these policies.
64. Policy CP15 sets out the area strategy for the Melksham Community Area which includes Bowerhill within which the JMNP boundary sits. The Policy requires that 2,370 new homes should be developed of which 2,240 should be within Melksham. Given that this policy is predicated on adherence to CP1 the appeal scheme is in conflict with this policy also.

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<sup>20</sup> Supplementary Planning Document

<sup>21</sup> Mr White PoE paragraph 4.95

65. However, the degree of harm arising from the scheme's location would be limited. The Council agree that the size of the scheme is appropriate for Melksham as a market town<sup>22</sup>. Its location affords access to the regular X34 bus service running along Semington Road connecting Melksham from where services can be taken to Chippenham, Trowbridge and Frome. Furthermore, the Transport Assessment<sup>23</sup> indicates the site's location is accessible to the town centre for both pedestrians and cyclists.
66. Semington Road includes traffic calming which facilitate pedestrian access to the crossing point on the east side of its junction with the A350. Both parties have agreed that a new bus stop close to the appeal site could be located as part of the suggested conditions.
67. Similar issues regarding accessibility were raised in consideration of the application for planning permission for residential development on agricultural land lying further south than the appeal site on the east side of Semington Road which was granted permission in January 2021<sup>24</sup>. I acknowledge that at that time, the JMNP did not form part of the Development Plan but the site's location beyond the settlement boundary and proximity to services within the Melksham town centre were arguments identified in favour of the scheme in the officer's report. Considerable weight was accorded to the HLS position which at that time was 4.56 years, a slightly better position than the Council is currently faced with.
68. The declining position on HLS can be contrasted with the decision of an Inspector colleague who concluded that the Council's shortfall was not persistent<sup>25</sup>.
69. For these reasons, in terms of accessibility of the proposed scheme to local services I accept that the appeal scheme conflicts with Policies CP1, CP2 and CP15 and JMNP 1 and 6. However, the level of harm would be limited given its location which allows good access to services by a genuine choice of transport modes.

### **The implications of the proposal in addressing housing need**

70. The scheme includes 100% affordable housing, this is above the Council's requirement of 30% as required by Policy CP43 for a site in this area of Wiltshire. Both parties accord the inclusion of this amount of affordable housing substantial weight<sup>26</sup>; this is despite 27% (net<sup>27</sup>) of all units delivered across the authority for the period of 2009/10-2020/21 being 'affordable'<sup>28</sup>.
71. However, housing need is dynamic and a range of factors point to this growing across the Authority. For example, whilst the Core Strategy has a target of delivering around 650 affordable dwellings per annum (dpa) the Council's (SHMA)<sup>29</sup> (2017), based on its objectively assessed need (OAN) identifies a higher level of need of around 719 affordable dpa<sup>30</sup>. In contrast the Council

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<sup>22</sup> SoCG

<sup>23</sup> CD A10

<sup>24</sup> CD K1

<sup>25</sup> APP/Y3940/W/21/3278256

<sup>26</sup> SoCG

<sup>27</sup> Accounting for the loss from the affordable stock from right to buy

<sup>28</sup> Mr Stacey's PoE figure 6.2

<sup>29</sup> Strategic Housing Market Area – should this be Assessment in this context – as with dpa I would put in full in the text for ease of reading the put abbreviation in brackets and omit footnote

<sup>30</sup> Wiltshire SHMA 2016-36

continues to under deliver with on average, a net figure of 555 affordable dpa. This undersupply is an important contributory factor in the increase of the affordability ratio from around 7.5 in 2011<sup>31</sup> to 11.3<sup>32</sup> in 2020.

72. The range of market signals<sup>33</sup> are further evidence of the levels of housing stress. These signals include the high number of people accepted on the housing register (despite changes made to the local criteria) and those who are homeless. Finally, across Wiltshire, the waiting times required for families to access affordable properties<sup>34</sup> are rising. These times vary from 3.1 years to 10.7 years for 2 bed or 4 bed properties respectively.
73. Through the application of the Sedgefield approach<sup>35</sup> the appellant has calculated that to deliver against the SHMA 2017 the Council would be required to deliver around 899 affordable dpa for the period of the Core Strategy until 2025-26. Given the historical rate of under delivery it is extremely unlikely that this could be achieved given the Council's estimate of delivery for this area of Wiltshire from 2019-2024<sup>36</sup>.
74. Within the Melksham area the delivery of affordable housing has reflected the County wide trend. Within Melksham Parish and the wider Community Area 383 and 457 households respectively are in housing need. This is despite housing commitments and completions exceeding requirements.
75. Although 534 affordable dwellings have been completed between 2009/10-2020-21 and around 277 units are in the pipeline<sup>37</sup> or being delivered, the level of affordable housing need is acute. In contrast on this single issue the inclusion of just 6 affordable dwellings in the single housing allocation of the JMNP does not readily reflect the extent of housing need in the area.
76. Although the appeal scheme does not accord with the provisions of CP44 as a rural exception site, the provision of 100% affordable housing complies with Policy CP43 and the mix included in the UU complies with Policy CP 45. For this reason, the Council affords the provision of affordable housing significant weight.
77. I conclude, therefore, that there is a pressing need for affordable housing and the appeal scheme is not in conflict with Policies CP43 and CP45. As with all the other main issues this is a matter for the planning balance.

## **Other Matters**

78. There are objections concerning the amount of traffic generated by the appeal scheme and its impacts on highway safety. The appellants evidence<sup>38</sup> identifies that Semington Road carries around 2,338 vehicles during the period 0700-1900hrs each day and that the appeal scheme would generate around 237 additional trips. Critically during the morning and evening peak periods the additional traffic generated by the appeal scheme would be around 30 and 27

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<sup>31</sup> Wiltshire Community Plan 2011-2026 (2011)

<sup>32</sup> NHF Home Truths reports 2017-18 and 2019-20

<sup>33</sup> Poe Mr Stacey

<sup>34</sup> PoE Mr Stacey

<sup>35</sup> A term used to describe the concentration of housing delivery to fulfil the Local Plan's housing requirements in the last years of the plan period.

<sup>36</sup> Housing Land Supply Statement 2020

<sup>37</sup> CD H10

<sup>38</sup> CD A10 Transport Assessment

- vehicles respectively. On the evidence before me, I do not regard these figures as excessive which could cause congestion and compromise highway safety.
79. The Transport Assessment includes a Road Safety Audit which considered the safety of both the western and eastern crossing points on the A350. This concluded that despite the operation of the toucan crossing point on the eastern side, waiting times were shorter when compared to the western side due to the limited opportunities for pedestrians to cross in gaps in the traffic. However, a series of upgrades to signage were suggested by the report. I am satisfied that these would be funded by the capital monies included in the UU submitted with the appeal and that highway safety would not be compromised by the appeal scheme.
80. There is no evidence before me that noise or air pollution arising from vehicles from this site would amount to a compelling reason to dismiss additional housing in this location. The UU includes funding for the provision of air quality measuring equipment. Furthermore, the appeal is accompanied by a Travel Plan designed to encourage trip generation by sustainable modes rather than rely on private transport.
81. There are also objections about the capacity of services such as schools and doctors' surgeries to withstand further demands arising from the future occupiers of the proposed scheme. Demand for additional school places has been addressed through contributions included in the UU for the provision of additional school places. Further, there is no substantiated evidence before me which indicates that existing medical services could be overwhelmed by the needs of the new residents of the appeal scheme.
82. The site is a Grade 2 arable field and is defined as 'best and most versatile' land. An Agricultural Assessment report prepared for the withdrawn application for the development of the whole field was submitted with this application. This highlights the high proportion of Grade 2 agricultural land in Wiltshire when compared to the rest of the south-west. Whilst the loss of Grade 2 agricultural land is a factor to be considered in the planning balance it is not a matter to which I accord significant weight.
83. I have included a condition in respect of the need for archaeological investigation to be carried out in advance of buildings works commencing on the site to address the concerns raised given that this is a greenfield site in close proximity to an area of settlement.
84. The UU included with the appeal does not include a commitment to the provision of capital moneys towards the Melksham Link. However, this road scheme is an aspiration contained within adopted policies. Therefore, funding for this would not comply with the tests required for planning obligations included in Paragraph 57 of the Framework or the CIL Regulations.
85. I note the comments from the Salisbury and Wilton Swifts Group and have included a condition in respect of the requirement for appropriate measures to be included in the development.
86. Recently granted planning permissions for residential development including a scheme for 50 dwellings indicated that the area is experiencing development pressure. However, the Council does not have sufficient supply of housing land to provide the homes that are needed.



87. Melksham is a market town in tier 2 of the Council's settlement hierarchy. This means that there is a range of services which are available for residents of the proposed scheme. The scheme is of a scale commensurate with the size of Melksham and its location offers a genuine choice of transport other than private car to access these services.
88. The appeal is accompanied by a Preliminary Ecological Appraisal. I have included a condition requiring that the range of mitigation measures included in this report be completed prior to development proceeding so as to reduce the extent of its impacts.
89. I acknowledge that other matters have been raised by the parties regarding the rights of access to the rear of the Townsend Farm. However, this is a matter which falls outside the remit of my decision.

### **Planning balance and conditions**

90. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework places considerable emphasis on sustainable development and highlights the delivery of new housing as a national priority. It is an important material consideration in planning decisions.
91. Both parties recognise that there is a deficit of housing land as required by the Framework. This, together with the age of the most important policies deems that they are out of date. The tilted balance is engaged by Paragraph 11d)ii and footnote 8 which requires that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when assessed as a whole.
92. The fact that policies have to be considered as out of date does not mean that they carry no weight. To carry weight policies must be consistent with the Framework, as explained in Paragraph 219, which amongst other things, states that the closer that local policies are to policies in the Framework, the greater weight that may be given to them. As such, it is perfectly possible for policies which are deemed out of date for reason of an inadequate land supply to still carry significant weight.
93. The most important policies identified by the parties in the Statement of Common Ground are rooted in the Framework. Policies CP1, CP2 and CP15 are predicated on the principles underpinning the Framework in seeking to direct new development to sites in line with the hierarchy of existing settlements including Melksham as a market town. Furthermore, although Policy CP2 reflects a housing target which is out of date, the application of the standard method results in a similar annual requirement. I agree with the Council that these policies can only be accorded 'moderately significant weight'<sup>39</sup> given the housing land supply position but find that there is only limited conflict between them and the appeal scheme.
94. These 3 policies are consistent with JMNP1 which aims for a carbon neutral future, through amongst other matters, reducing dependency on private transport and requiring development within settlement boundaries (JMNP6).

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<sup>39</sup> Mr White PoE paragraph 4.26



- However, whilst the appeal site is located just outside the settlement boundary its proximity to the town centre allows access by a genuine choice of transport modes.
95. Policies CP51, CP 57 and JMNP17 are consistent with the settlement strategy in seeking to protect the countryside from new development. Further they require the protection of landscape, topography and ensure a transition from settlement edge to the countryside whilst maintaining the distinctive character of settlements. These policies are consistent with Paragraphs 174 and 130 of the Framework in recognising the intrinsic beauty of the countryside and requiring development to contribute to a sense of place sympathetic to its landscape setting.
96. However, given the localised and moderate level of landscape harm which would arise from the appeal scheme I accord only limited weight to the conflict between these policies and the proposed scheme. The submission of details at reserved matters stage would allow for greater consideration of landscaping. Furthermore, the loss of the site as BMV Agricultural land is not so great as to prejudice the sustainability of farming in the locality.
97. Set against the limited harm arising from the appeal scheme's location is that it would deliver an amount of affordable housing which exceeds what is required by Policy CP43 with a mix compliant with Policy CP45, reflecting the specific needs of Wiltshire. Both these policies accord with the essential thrust of Paragraph 62 of the Framework and would contribute to its social dimension. Both parties agree that substantial weight should be given to the inclusion of 100% affordable housing<sup>40</sup> in the appeal scheme.
98. Furthermore, the appeal scheme would have economic benefits both in the short term through the creation of jobs during the construction period and in the longer term through additional spend by its residents in local shops and services.
99. Despite the achievement of housing requirements for Melksham, delivering affordable housing remains a pressing need for the whole Council. The fact that the Council has specific requirements for community areas has still resulted in a need to increase substantially the supply of land for affordable housing. The Council's suggested Action Plan designed to improve management arrangements<sup>41</sup>, lacks additional resources and for this reason, is unlikely to deliver a step change in affordable housing delivery as would be required to fully address this issue.
100. I acknowledge the Council's position that a planned approach should be maintained through the emerging Local Plan. Whilst the Core Strategy review anticipates significant levels of housing growth for Melksham in a way which could integrate a revised JMNP, the Council's suggested timeline for adoption is extremely ambitious<sup>42</sup>. The suggested timelines for the commencement of the appeal scheme drawn from its own research<sup>43</sup> do not fully reflect that it would be for 100% affordable housing and not subject to the fluctuations of market conditions which can affect deliverability. The scheme could be delivered within the timeline anticipated by the Council for the completion of the plan review.

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<sup>40</sup> SoCG paragraph 4.14

<sup>41</sup> Mr White PoE

<sup>42</sup> Mr White PoE

<sup>43</sup> Delivery Statement

101. I recognise the central importance of Neighbourhood Planning to both Government and the Council. Paragraph 14 of the Framework advises that for housing schemes, the adverse impact of allowing development which conflicts with a neighbourhood plan is likely to significantly and demonstrably outweigh the benefits. I heard representations on behalf of the Parish Council on the importance of the JMNP to the community. However, the harm arising from the conflict with policies on both the settlement boundary and landscape, are clearly outweighed in this case by the pressing need for affordable housing.
102. I am aware of a decision of an Inspector colleague<sup>44</sup> who found in favour of the policies of the Development Plan which included a Neighbourhood Plan in an appeal in Farnham despite the inclusion of a higher proportion of affordable dwellings than local policy required. However, whilst I am not acquainted with all the details of that appeal or bound by such decisions that case can be distinguished from the appeal before me in that the amount of development was far larger with potentially greater impacts on landscape and that the percentage of affordable housing was only marginally above policy requirements compared to 100% in the scheme before me.
103. Although the Council has a positive HDT score<sup>45</sup> the declining housing land supply is likely to constrain future delivery undermining current targets and more importantly impacting on the delivery of affordable housing and by extension the affordability ratio.
104. I do not accept the Council's argument that a decision to allow this development would both fatally undermine the JMNP within a year of its adoption and the Government's commitment that the planning system should be a 'platform for local people to shape their surroundings'<sup>46</sup>. The benefits of a scheme which could deliver 50 affordable dwellings to address housing need in a location which affords genuine modal choice to services has to be weighed against the limited harm arising from its landscape impacts. Although the proposed scheme conflicts with the JMNP and the Development Plan as a whole such harms do not significantly and demonstrably outweigh its benefits.
105. For the above reasons, I allow the appeal and grant planning permission.

### **Conditions**

106. Following the roundtable discussion during the Inquiry I have imposed planning conditions which largely reflect those included in the Statement of Common Ground. I am satisfied each of these are supported by adopted policies.
107. I have imposed a condition specifying the plans on which this decision is based for reasons of certainty. As this is an outline application, I have imposed a condition in respect of the outstanding reserved matters and the times for submission.
108. Given that the site is a green field lying close to an existing settlement, I have imposed a condition requiring archaeological investigations to be completed in advance of the construction programme commencing.

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<sup>44</sup> APP/R3659/W/20/3262641

<sup>45</sup> Housing Delivery Test (2022)

<sup>46</sup> NPPF – Paragraph 15

109. I have imposed a series of conditions to protect local ecology. These include details of a lighting strategy specifying the extent of potential spillage and brightness, the implementation of the recommendations included in the ecological assessment, the location of bat boxes and swift blocks and the submission of an ecological method statement identifying protection zones for the trees and hedgerows around the site.
110. Following the Council's original reason for refusal related to the possibility of flooding I have imposed a condition regarding the discharge of surface water from the site in line with the advice of the LLFA in its letter dated 7 January 2022.
111. For reasons of highway safety, I have imposed a condition specifying details of sight lines at the proposed junction of the proposed access with Semington Lane with restrictions on boundary treatment to ensure that these are maintained free from obstruction.
112. To safeguard the living conditions of surrounding occupiers from the environmental issues such as dust and noise which could arise during the construction period, I have imposed a condition in respect of a construction environmental management plan.
113. To facilitate access to local centres from the site other than by private transport I have imposed a Grampian style condition requiring the installation of a new bus stop on the north bound carriageway along Semington Road. For the same reason, I have imposed a condition requiring that the Travel Plan can be commenced in advance of occupation of dwellings, and that a travel plan co-ordinator can be appointed to deliver on the plan. Finally, I have imposed a condition requiring the inclusion within the scheme of electric vehicle charging points to reduce dependency on fossil fuels.

*Stephen Wilkinson*

INSPECTOR

### **Schedule of Conditions**

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following plans: SLP1 Site Location Plan and CTP-18-500 SK02.
- 5) No development shall commence within the area of the application site until a written programme of archaeological investigation, which should include on site work and off site work such as the analysis, and publishing and archiving of results, has been submitted to and approved by the local planning authority; and the programme of archaeological work has been carried out in accordance with the approved details.
- 6) No development shall commence on site until a scheme for the discharge of surface water from the site has been submitted to and agreed in writing by the local planning authority. This should address the matters raised in the Council's letter, as LLFA dated 7 January 2022.
- 7) No development shall take place (including demolition, ground works, vegetation clearance) until a construction environmental management plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall include the following:
  - i) An introduction consisting of construction phase environmental management plan, definitions and abbreviations and project description and location
  - ii) Responsible persons and lines of communication
  - iii) A description of the construction programme
  - iv) Site working hours and a named person for residents to contact
  - v) Detailed site logistics arrangements
  - vi) Details of parking, deliveries and storage
  - vii) Details regarding dust and noise mitigation
  - viii) Details of the hours of works and other measures to mitigate the impact of construction on the amenity of the area and safety of the highway network, and
  - ix) Communication procedures during the construction programme with the LPA and local community regarding key construction issues – newsletters, fliers etc
- 8) Prior to the commencement of development, an Ecological Construction Method Statement shall be submitted to the local planning authority for approval. This will include all protection zones for trees and hedgerow protection buffers. It will also include precautionary measures to ensure that nesting birds, reptiles and small mammals are not at risk of death or

injury as a result of the construction process. The development shall be undertaken in accordance with the approved Ecological Construction Method Statement

- 9) Prior to the occupation of the first dwelling, details of the charging points infrastructure shall be submitted to and approved in writing by the local planning authority. No individual dwelling shall be occupied until the points have been installed in accordance with the approved details.
- 10) Prior to commencement of development an acoustic report shall be submitted to the local planning authority for approval in writing prior to its implementation. The report shall demonstrate that the internal and external amenity standards of BS8233:2014 Guidance on sound insulation and noise reduction for buildings (or any subsequent version) and WHO Guidelines for Community Noise (1999) can be achieved within the development. The report must include full details of any scheme of mitigation required to achieve this, which if approved, must be implemented in full and maintained in that way in perpetuity.
- 11) No residential unit shall be occupied until those parts of the Residential Travel Plan capable of being implemented prior to occupation have been implemented. Those parts identified for implementation after occupation shall be implemented in accordance with the timetable contained therein and shall continue to be implemented as long as any part of the development is occupied. The Residential Travel Plan Co-ordinator shall be appointed and carry out the identified duties to implement the Residential Travel Plan for a period from first occupation until at least 2 years following occupation of the last residential unit.
- 12) Notwithstanding the details of the development access shown on plan CTP-18-500 SK02, prior to first occupation, the access shall have been provided to the following standards:
  - a) Junction radii 7.5metres, and
  - b) Carriageway width over at least the first 10metres from the edge of Old Semington Road, 6metres.
- 13) Prior to the occupation of any dwelling hereby permitted, the main access to the site shall be provided with visibility splays with nothing to exceed the height of 0.6 metres above carriageway level between the carriageway edge and a line from a point 2.4 metres back along the centreline of the access from the carriageway edge to points on the near side carriageway 42 metres in both directions.
- 14) Prior to the occupation of the first dwelling details shall be submitted for approval to the local planning authority of a new bus stop to be provided for northbound buses located to the south of the access point to the site. The new bus stop shall include high access kerbs, improved footway surfacing at the location of the high access kerbs, and a bus stop flag sign with timetable case. The bus stop details when approved shall be implemented prior to occupation of the first dwelling.
- 15) Prior to commencement of the development a Lighting Strategy for the site shall be submitted to the local planning authority for approval. This

shall give details of lighting units proposed and shall include a lux plot that demonstrates that it will be possible to maintain a level of no more than 0.5 Lux at the canopy edge of trees and the edge of boundary hedgerows. This shall be implemented before occupation of the first dwelling.

- 16) The mitigation measures detailed in the approved ecological assessment dated July 2020 (contact No. 70) shall be carried out in full prior to the first occupation of any dwelling in the development and/or in accordance with the approved timetable detailed in the ecological assessment.
- 17) Prior to the commencement of development, a plan developed by an appropriately qualified ecologist shall be submitted to and approved in writing by the LPA of: integral bat roosting and integral Swift Bricks within buildings. The agreed Plan shall show the number, specification of the bat roosting and Swift Brick features and where they will be located, together with a commitment to being installed under the instruction of an appropriately qualified ecological consultant. All approved features shall be installed prior to first occupation of the dwelling on which they are located and retained thereafter."

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Gary Grant	of Counsel
He called	
Mr William Harley BSc (Hons) CMLI	Director of WH Landscape Consultancy
Mr Adam White MA MRTPI	Evans Jones
Mr Ruaridh O'Donohue	Solicitor

### FOR THE APPELLANT:

Ms Thea Osmund-Smith	of Counsel
She called	
Ms Katie Machin BSc PG DIP LA CMLI	Environmental Director Pegasus Group
Mr James Stacey BA (Hons) Dip TP MRTPI	Tetlow King Planning
Ms Rosie Dinnen BA (Hons) Dip TP MRTPI	Tetlow King Planning
Matthew Tucker	Solicitor, Bevan Brittan

### INTERESTED PERSONS:

Cllr Richard Wood	Melksham Town Council
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## Inquiry Documents

<b>ID1</b>	Appellant's openings
<b>ID2</b>	Council's openings
<b>ID3</b>	CIL compliance statements
<b>ID4</b>	Site visit itinerary
<b>ID5</b>	Mr Harley table Summary of Visual Effects (revised table 2 based on Ms Machin's proof)
<b>ID6</b>	Draft Unilateral Undertaking
<b>ID7</b>	Draft conditions
<b>ID8</b>	PPG extracts
<b>ID9</b>	Letter from Sovereign Housing dated 1 March 2022
<b>ID9</b>	Council's closings
<b>ID10</b>	Appellant's closings