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## Appeal Decision

Inquiry Held on 9 - 11 and 18 January 2024

Site visit made on 8 January 2024<sup>1</sup>

**by David M H Rose BA(Hons) MRTPI**

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

**Decision date: 14 Feb. 2024**

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### **Appeal Reference: APP/W3330/W/23/3329488** **Land at North End, Creech St Michael, Somerset**

- 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 Gladman Developments Ltd against the decision of Somerset Council.
  - The application Reference 14/23/0002, dated 21 December 2022, was refused by notice dated 15 August 2023.
  - The development proposed is: 'The erection of up to 100 dwellings with public open space, landscaping, sustainable drainage system (SuDS), and vehicular access point. All matters reserved except for means of access'.
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### **Decision**

1. The appeal is allowed, and outline planning permission is granted, for 'The erection of up to 100 dwellings with public open space, landscaping, sustainable drainage system (SuDS), and vehicular access point. All matters reserved except for means of access' on land at North End, Creech St Michael, Somerset in accordance with the application Reference 14/23/0002, dated 21 December 2022 subject to the conditions set out in the Schedule to this decision.

### **Application for costs**

2. At the Inquiry, an application for a partial award of costs was made by Gladman Developments Ltd against Somerset Council. This application is the subject of a separate Decision.

### **Preliminary Matters**

#### **(i) The application**

3. The application is made in outline with all matters, except for means of access, reserved for subsequent approval. Other than the site location plan, the only drawing for approval is the site access drawing (P22064-001A<sup>2</sup>). This latter drawing, submitted during the Inquiry, is a non-material amendment by way of correction.
4. The Design and Access Statement and the Development Framework Plan illustrate how the site might be developed.

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<sup>1</sup> I made a further unaccompanied visit to the locality of the appeal site on 12 January 2024

<sup>2</sup> ID9 – North End Footway Correction

5. The Council's decision to refuse planning permission sets out five reasons for refusal which in short are:
  - 1) the location of the site outside the settlement boundary for Creech St Michael and adverse impacts on the green wedge;
  - 2) harm to the character and appearance of the area;
  - 3) the absence of any mechanism to secure affordable housing and other infrastructure contributions;
  - 4) potential effects arising from increased phosphates and the absence of nutrient neutrality mitigation; and
  - 5) highway and transport implications.
6. The Council has confirmed that reasons three, four and five are no longer pursued as appropriate mitigation would be secured, either by condition, or through the planning obligations within the bilateral agreement with the Council under section 106 of the Town and Country Planning Act 1990 (as amended) (the section 106 Agreement).

**(ii) The section 106 Agreement**
7. The section 106 Agreement, dated 9 February 2024, was submitted after the close of the Inquiry in accordance with the timetable specified by the Inspector<sup>3</sup>. The parties to the Agreement are Somerset Council, the owners of the site, the Mortgagee and the Appellant.
8. The Agreement provides, in short:
  - 1) a formula and stage-based education contribution (early years, primary, secondary and special needs) (Schedule 3);
  - 2) the provision of open space including a local equipped area for play, allotments and SuDS; and subsequent maintenance and management provision (Schedule 4);
  - 3) a highways financial contribution (Traffic Regulation Order Contribution; Footpath Contribution<sup>4</sup>; and Public Right of Way (PROW) Contribution<sup>5</sup>; (Schedule 5);
  - 4) a travel plan (Schedule 6);
  - 5) Public Rights of Way (shared footpath and cycleway route) (Schedule 7);
  - 6) the phosphate mitigation and related Fallow Land Management Plan and Nutrient Neutrality Assessment and Mitigation Strategy (Schedule 8); and
  - 7) an obligation to allocate 25% of the dwellings as affordable housing (Schedule 9).

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<sup>3</sup> ID24

<sup>4</sup> 'the Footpath Contribution' means the sum of £50,000 (fifty thousand pounds) to be used as a contribution towards the costs and expenses incurred or to be incurred in connection with the delivery of active travel routes set out in the 'Connecting our Garden Communities Plan' (Feb 2023)

<sup>5</sup> 'PROW Contribution' means the sum of £50,000 (fifty thousand pounds) to be used as a contribution towards the costs and expenses incurred or to be incurred in connection with re-connecting public footpath T10/23 under the M5

9. There is a disputed matter in the Agreement, which I have to determine, namely Schedule 7: Public Rights of Way (paragraph 1.1). This is whether or not the Appellant/subsequent developer should either be responsible for obtaining a Diversion Order for a short length of public right of way running close and parallel to the proposed new shared footpath/cycleway route or to make a 'footpath contribution' of £10,000, payable towards the costs of the Council in obtaining the necessary Order, prior to commencing development.
10. In this case, the new shared footpath/cycleway route is integral to the proposed development and can be secured as part of the obligation (paragraphs 1.2 and 1.3). That is not in dispute.
11. However, the implication is that there could be overlap and/or duplication with a short stretch of the existing public right of way and a related maintenance burden. It is said that '*two parallel paths ..... would not be acceptable in planning terms*<sup>6</sup>. As such the Council would wish the Appellant/developer to seek a Diversion Order, or at least contribute towards the Council's costs.
12. Whilst an interested person has said that the existing footpath is maintainable at public expense, the evidential basis and practical implications are insufficient to demonstrate that the obligation, in either of its constituent parts, is necessary to make the development acceptable in planning terms. As such, paragraph 1.1 of Schedule 7 does not constitute a reason for granting planning permission<sup>7</sup>. Neither provision shall be enforceable pursuant to the Deed and shall cease to have effect.
13. The section 106 Agreement is supported by a comprehensive Community Infrastructure Levy Compliance Statement and a supporting Education Statement. With the exception of Schedule 7 paragraph 1.1, I am satisfied that each of the obligations within the Agreement has policy justification, a planning purpose, is directly related to the development and is fairly and reasonably related in scale and kind to the development. Accordingly, each may be taken into account in my consideration of the appeal.

### **Main Issues**

14. The main issues identified are:
  - 1) the effect of the proposal on the character and appearance of the area and its relationship with adjacent and nearby residential properties;
  - 2) whether the Council can demonstrate a five-year supply of deliverable housing sites and, if not, the degree and implications of any shortfall;
  - 3) whether, or to what extent, the proposed development complies with the development plan when read as a whole, having particular regard to its spatial strategy; and
  - 4) whether or not the tilted balance under paragraph 11 d) of the National Planning Policy Framework (the Framework) is engaged; and the determination of the resultant planning balance, in light of all material considerations.

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<sup>6</sup> ID22 paragraph 3.5.15

<sup>7</sup> Regulation 122(2) of the Community Infrastructure Levy Regulations 2010

## Reasons

### Issue One:

#### **The effect of the proposal on the character and appearance of the area and its relationship with adjacent and nearby residential properties**

15. The Taunton Deane Landscape Character Assessment includes the appeal site within Landscape Type 1: Farmed and Settled Low Vale and Character Area 1a: Vale of Taunton Deane. Key elements of the landscape type include: *'a wide, flat to gently undulating vale landscape ..... the vale landscape type is very clearly shaped by the hand of humans with urban areas and major transport corridors (road and rail) creating a marked contrast to the agricultural landscape and resulting in areas with a strong urban-fringe character .....'*
16. In turn, the character area is defined by the following key features including: *'a low-lying vale landscape ..... a flat to gently undulating terrain ..... strong sense of being in a vale ..... strong hedgerow network ..... limited woodland cover ..... notable rural-urban fringe character around the main towns ..... the A38 and M5 motorway have a visual and aural influence on many parts of the vale'*.
17. The appeal site forms part of a larger agricultural field on the northern edge of Creech St Michael with housing development along its southern boundary and most of its eastern border. It has a rising domed landform, generally, south-east to north-west.
18. The character of the area is influenced by the elongated settlement edge of the village, including Hopkins Field and Hyde Lane, extending towards the M5 motorway, the presence of the motorway itself and the urban extension at Monkton Heathfield on the opposite side of the motorway.
19. The Creech St Michael Neighbourhood Development Plan (Policy CSM 10) identifies the land to the north-west of the village, running alongside the motorway, over North End and embracing the land to the west and north of Creech Heathfield as a Local Green Wedge.
20. Although the Council does not contend that the designation is synonymous with a 'valued landscape', within the meaning of paragraph 180 a) of the Framework, it claims that the designation is supportive and that the site and its wider context fulfils a number of roles of importance to the character and appearance of the area and its resident community.
21. For my part, the appeal site in particular has the distinct characteristics of a settlement edge that is heavily influenced by the motorway. Its recreational value is limited to the presence of two public rights of way peripheral to the area proposed for development; the perception of walking in the countryside is eroded by the proximity of the settlement edge and sight and sound of the motorway; the landscape does not exhibit rarity, distinctiveness, cultural associations or strong physical or functional links. On balance, I do not regard the site and its context to be a 'valued landscape'.
22. In common with the Inspector's findings in the previous appeal decision<sup>8</sup>, relating to the appeal site and the land to the west now proposed as fallow land management, the proposed development would be clearly seen from a number of local viewpoints.

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<sup>8</sup> APP/D3315/W/18/3205705

23. Looking at these in broad terms, there is no doubt that the proposal before me would similarly transform a greenfield site into a housing scheme. Immediacy to the wider countryside would be eroded and the presence of houses on rising, open, domed ground to the north of dwellings, some single storey, in West View and Cooks Close would be particularly apparent. The character of North End in the vicinity of the site entrance would also be changed by the formation of an engineered access road and loss of some vegetation.
24. In terms of the existing public rights of way, as noted by the previous Inspector, vistas across an open field would become dominated by new housing and informal surfaces would give way to defined hard-surfaced shared routes, with lighting, for pedestrians and cyclists. The indicative plans also show a surface water attenuation basin and new landscaping.
25. The Statement of Common Ground on landscape and visual matters records the respective positions of the Council and the Appellant on the overall level of visual effects on a number of visual receptors. There are some locations where the Council identify a higher effect than the Appellant, seemingly on the basis of the inability to effectively screen the development as a result of site topography. In my opinion, taking account of the illustrative areas for intended landscaping, the Appellant's assessment is more balanced.
26. In this regard, the adverse effects would be localised and less extensive than those of the previous scheme in relation to linkages and association with the wider countryside. Nearby residents would inevitably have a substantially changed outlook, with initial effects identified as moderate/major adverse, but intervening landscaping and the indicative offset of the developable area would ensure a reasonable degree of mitigation.
27. In terms of the approach over the M5 in the direction of Creech St Michael, the spread of the southern part of the village towards the motorway is readily apparent. Whilst the proposal, with its associated roadside infrastructure and loss of vegetation, would draw the settlement closer to North End, the proposed housing would be well contained by the backdrop of the existing settlement edge. In addition, the intended landscaped area along the western edge of the site would limit adverse impacts.
28. Turning to the Local Green Wedge within the Neighbourhood Plan, now formalised since the previous appeal, and attracting full weight, the policy confirms that development proposals will be resisted where they conflict with its identified five purposes.
29. First, in relation to coalescence and maintaining a sense of place and identity for neighbourhoods, a substantial green buffer would remain between the area proposed for development and the motorway. It would, in turn, be complemented by green infrastructure associated with the development of Monkton Heathfield. This would not, in my opinion, amount to material coalescence either in physical or perceptual terms and the separate identity of the respective settlements would not be undermined.
30. The Appellant accepts that the open character of the Local Green Wedge would be eroded, and the Council acknowledges that the scheme would provide accessible recreation areas and valuable wildlife corridors and habitat.

31. Finally, from my earlier analysis and conclusion that the site does not form part of a valued landscape, building on an open field would inevitably result in some loss of visual amenity.
32. In summary, drawing on the conclusions of the previous appeal decision, I also find that the proposal would have some adverse effects on landscape character and the appearance of the area. In terms of the wider landscape and the coalescence of settlements, these impacts would be limited.
33. Taking note that the previous appeal decision identified the more localised impacts to be substantial, the scheme before me has been significantly reduced in scale. As such, the extent of localised impacts would not be so acute in general terms. However, I acknowledge that immediate residential properties, and users of the public right of way across the site, would experience moderate/major adverse effects on completion of the development reducing to moderate adverse effects at year fifteen with the benefit of effective landscaping.

**Issue Two:**

**Whether the Council can demonstrate a five-year supply of deliverable housing sites and, if not, the degree and implications of any shortfall**

**Nutrient Neutrality and housing delivery**

34. By way of background, in August 2020 all planning authorities in Somerset received an advice note from Natural England concerning the unacceptable levels of phosphates in the Somerset Levels and Moors Ramsar Site. As a result, all planning applications for residential development, amongst others, were required to demonstrate phosphate neutrality. Some 70 planning authorities in England were impacted by the measures curtailing the construction of thousands of new homes.
35. Somerset Council identified a range of measures that developers could explore to provide nutrient mitigation measures to offset their phosphate load. In partnership with the Environment Agency and Natural England, guidance was published in September 2022 with the aim of unlocking smaller scale developments.
36. The former Somerset West and Taunton Council also approved interim measures in October 2021 to help release impacted developments within the river Tone catchment through the purchase of phosphate mitigation measures (P-Credits). Some applications also progressed on the basis of developers providing their own approved mitigation solutions<sup>9</sup>.
37. The Government's Autumn Statement 2023 and the Levelling Up and Regeneration Act has provided greater certainty around government policy on nutrient neutrality and its commitment to make rapid progress to unlock homes. This includes a new duty on water companies to upgrade waste water treatment works by 1 April 2030<sup>10</sup> and additional funding to enable local authorities to boost the supply of mitigation. Somerset Council has been awarded up to £9.6m. The Council also reports that further third-party credit schemes have recently become available<sup>11</sup>.

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<sup>9</sup> Overall P-Credits and bespoke mitigation subject to Appropriate Assessment/Habitats Regulations Assessment

<sup>10</sup> With effect from 26 January 2024

<sup>11</sup> ID1



### **Planning policy and guidance**

38. The Glossary to the Framework defines 'Deliverable' in the following terms:

*'To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:*

*a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).*

*b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years'.*

39. In turn, the Planning Practice Guidance advises:

*'In order to demonstrate 5 years' worth of deliverable housing sites, robust, up to date evidence needs to be available ..... Such evidence, to demonstrate deliverability, may include:*

- current planning status – for example, on larger scale sites with outline or hybrid permission how much progress has been made towards approving reserved matters, or whether these link to a planning performance agreement that sets out the timescale for approval of reserved matters applications and discharge of conditions;*
- firm progress being made towards the submission of an application – for example, a written agreement between the local planning authority and the site developer(s) which confirms the developers' delivery intentions and anticipated start and build-out rates;*
- firm progress with site assessment work; or*
- clear relevant information about site viability, ownership constraints or infrastructure provision, such as successful participation in bids for large-scale infrastructure funding or other similar projects'.*

### **The Statement of Common Ground on Housing Land Supply**

40. The Statement of Common Ground on Housing Land Supply<sup>12</sup> (SoCG) confirms that the five-year housing land supply for the former Taunton Deane area is relevant to this appeal. The base date is 1 April 2023, and the relevant five-year period is to 31 March 2028.

41. The SoCG confirms that the five-year housing land supply should be measured against the local housing need calculated using the standard method, namely 593.45 (594) dwellings per annum. The five-year requirement is 2,967.25 (2,967) dwellings.

42. The Strategic Housing and Economic Land Availability Assessment (SHELAA) sets out that the Taunton Deane area has a deliverable supply of 3,221 dwellings at 1 April 2023 (5.16 years).

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<sup>12</sup> Dated 20 December 2023

43. The Council's proof of evidence<sup>13</sup> '*provides the most up-to-date position and evidence*' claiming 5.18 years deliverable supply. In turn, the rebuttal proof of evidence<sup>14</sup> up-dates the Council's position to 3,690 dwellings amounting to a deliverable supply of 6.22 years.
44. The Appellant's evidenced position, recorded in the Statement of Common Ground, disputes the inclusion of 2,180 dwellings in the assessment, resulting in an overall supply of 1,510 dwellings at 1 April 2023 (2.54 years).
45. A revised list of disputed sites<sup>15</sup>, arising from the round table discussion on housing land supply, sets out the Council's position of a five-year supply of 3,660 dwellings at 1 April 2023 (6.17 years) and the Appellant's assessment of 1,548 dwellings (2.61 years). This equates to a claimed over supply of 693 dwellings, and an alleged undersupply of 1,419 dwellings, respectively against the five-year requirement.

**(i) Small sites**

46. The Council includes 548 units in its five-year supply comprising a windfall allowance of 94 units per annum (years three, four and five), amounting to 282 units; small sites with planning permission delivering 60 units per annum (years one and two) amounting to 120 units; and 146 dwellings on small sites held back by the phosphates issue<sup>16</sup>. This would represent an average of 110 dwellings per year.
47. Looking at the past delivery of windfall completions on small sites, the Council's eighteen-year average is 94 units per annum, whereas the Appellant takes the most recent five-year period showing 67 dwellings per annum. Inevitably, year on year there are fluctuations. However, to my mind the longer-term average is preferable here as the years relied on by the Appellant include the hindering effects of the Covid pandemic, post-Brexit implications and the phosphates moratorium.
48. In terms of small sites with planning permission, the 60 units per annum is a derived three-year figure with a lapse rate and a simple average to produce a two-year figure. I take no point on this as the outcome is below either the Appellant's or the Council's windfall average.
49. As to the small sites held back by the phosphates issue, with the range of potential mitigation measures that have transpired, it would not be unreasonable to assume that a number of constrained sites will be unlocked to boost housing completions within the five-year period. In my opinion, this is likely to inflate housing delivery and compensate for lost units that might otherwise have been delivered.
50. With regard to the Appellant's contention of these sources representing double or even triple counting, I regard each to be a separate element combining to form a credible five-year supply. Indeed, the resultant average of 110 units per annum, based on the long-term average and the constrained sites likely to be released, supports the Council's figure of 548 units. However, as the Appellant points out, five of the units within this total were where an application was made after the base date and should be excluded from the five-year supply as calculated at 1 April 2023.

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<sup>13</sup> Dated 7 December 2023

<sup>14</sup> Dated 21 December 2023

<sup>15</sup> ID14

<sup>16</sup> Includes one dwelling for discharge of conditions



**(ii) Large sites which were not deliverable in the SHELAA<sup>17</sup> at 1 April 2023**

**Introduction**

51. The purpose of the SHELAA is to provide a definitive and transparent assessment of deliverable housing sites for the ensuing five-year period. At the same time, it is important that planning decisions are taken using the *'latest available evidence .....'*<sup>18</sup>. In this regard, the Council has been open and fair in reducing the anticipated delivery of some sites where the initial assumptions have been overtaken by events. At the same time, it is legitimate to consider subsequent information which supports enhanced delivery on sites within the SHELAA.
52. Whilst the Council confirms that it has not *'shifted the base date in its assessment'*<sup>19</sup>, and acknowledging that it *'..... would typically agree with the proposition that sites that have only become deliverable after the base date should not be included .....'*<sup>20</sup>, it is claimed that the phosphates issue gives rise to a novel situation which amends this position.
53. It is said that there is nothing in guidance or otherwise that suggests that a site not included in the SHELAA cannot subsequently be included. In my opinion, whilst it would have been open to the Council to publish a new, comprehensive housing land supply assessment with a new base date that also takes account of completions, losses and sites where planning permission has expired, ad hoc adjustment in the manner advocated by the Council would otherwise distort the supply.
54. On this basis, Ford Farm; South of Pyrland Farm; land north of Taunton Road, Longforth Park; Beech Acre and Steps Water; and Golden Hill Brewery should be deleted from the claimed supply resulting in a combined loss of 471 dwellings. I will, however, assess the specific case for each site as a matter of prudence.

**Ford Farm**

55. Ford Farm is an allocated site with acknowledged constraints including the delivery of a relief road, phosphate mitigation, flood relief infrastructure, a complex foundation solution and significant on-site earth works. A hybrid planning application for full planning permission for 92 dwellings and outline approval for 308 dwellings has been pending determination since July 2021.
56. The Council has been heavily involved in seeking to progress the site, and the developer has confirmed timetables for certain infrastructure. However, the masterplan is not yet fixed and the planning performance agreement, seemingly agreed, remains in draft. Whilst the Council is privy to information that it cannot share, there is no clear evidence before me to support the claimed prospects for this site and the Case Officer's anticipation of presentation to Planning Committee in April 2024.

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<sup>17</sup> Strategic Housing and Economic Land Availability Assessment

<sup>18</sup> Planning Practice Guidance Housing supply and delivery paragraph 004

<sup>19</sup> ID21

<sup>20</sup> ID19 paragraph 42

**South of Pyrland Farm**

57. This is an allocated site, primarily constrained by the nutrient neutrality issue, on which significant additional information has arisen since 1 April 2023. Nonetheless, in my view, the combination of outstanding matters on this full application for 292 dwellings, the absence of detail and the lack of a convincing timeline for determination and subsequent housing delivery, confirms that this site has not reached a threshold to be considered deliverable.

**Land north of Taunton Road, Longforth Park**

58. Although this site is identified for employment use, residential development as part of a land swap within this major allocation is acceptable. An outline application is under consideration; the targeted Committee date has not been met and a further Committee date has passed without a decision. The site does not have a defined phosphates solution and there may be issues of viability. Significantly, to my mind, the anticipated submission of reserved matters and completion of first homes does not have robust support. I do not consider this site to be deliverable, irrespective of the role of the site in providing access for the new Wellington railway station and transport hub which has an approved business case and related funding.

**Beech Acre and Steps Water**

59. This is a brownfield windfall site the subject of an outline planning application dating from July 2022. Although the principal issue relates to phosphate mitigation, which the Council says is now resolvable through the purchase of P-Credits, the matter does not appear to have progressed beyond the completion of a P-Credit Survey. Although the Case Officer is reported as having said that the proposal is acceptable in principle, the outcome relies on planning conditions and a multi-schedule section 106 Agreement and a date yet to be fixed for determination. Accordingly, I regard the site to be not deliverable.

**Golden Hill Brewery**

60. A full application has been under consideration since July 2022 for the redevelopment of this brownfield site. The site awaits a formal phosphates solution, seemingly through P-Credits. Discussions on other matters remain on-going and an updated bat survey, to be secured by condition, is required. Although a planning permission is expected within six months, I am not convinced that there is clear evidence to support inclusion of the proposal.

**(iii) Large sites under construction**

**Land at Killams Drive**

61. This dispute concerns four dwellings within phase one (94 dwellings<sup>21</sup>). The Council's original proof recorded the phase as complete before the base date as does the SHELAA. Its rebuttal proof undertakes an overall calculation across the original and later phases identifying total approvals and completions with 96 dwellings to be built out. The apparent omission of the four dwellings from the historic completions data, and the current position that 92 dwellings within phase three remain to be constructed, indicates the removal of four dwellings from the supply.

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<sup>21</sup> ID13 - Comprising 92 dwellings and a subsequent variation of condition providing two additional dwellings

**(iv) Sites with prior approval**

**Michael Paul House**

62. This project comprises 57 units with prior approval and a further 12 dwellings the subject of a pending full application. The 57 units were completed before the base date, albeit not recorded as complete in the absence of confirmation through NHBC/Building Regulations. In my opinion, it would be anomalous to discount these units from the supply, notwithstanding the 'technical' infringement of the prior approval process.
63. As to the 12 units, these were not identified by the SHELAA as deliverable. Despite the apparent progress of the planning application, save for the completion of a section 106 Agreement, these units should be discounted.

**(v) Sites without planning permission**

**Former Livestock Market**

64. The Council's published position of 108 units has been uplifted to 160 units underpinned by a Masterplan, with parameters and landscaping elements, which was adopted in March 2023. According to the Council, there is an agreed phosphate mitigation strategy and some £10.7 million has been spent on infrastructure and enabling works. Negotiations are on-going with a national developer and with Plymouth University and Musgrove Park Hospital for key worker/student accommodation. The site is identified by Homes England as a priority site in the South West.
65. Despite a planning performance agreement and timetables for the determination of the first full application, commencement and building programmes, and acknowledging the restrictions imposed by confidentiality, the uplifted trajectory for deliverability appears to be aspirational rather than evidence based. There is undoubtedly impetus to get this project underway but, with all of the outstanding hurdles and the lack of clear evidence, it would be wise to anticipate potential slippage in the overall programme, delaying delivery by one year and removing 90 units.

**Land at Staplegrove East**

66. The SHELAA identifies delivery of 161 dwellings on this allocated site. The Council's revised position is 337 dwellings contributing towards the five-year supply. Again, confidentiality restricts the information that could be shared by the Council.
67. The site has a long history in gestation. Notwithstanding a resolution to grant outline planning permission for 915 dwellings, the related section 106 Agreement has been pending since 2017. The site is owned under a promotion agreement and consultants have been engaged to review the position and to progress the submission of further information. It is notable that significant additional contributions are being sought for health and education provision.
68. Whilst £14.2 million has been awarded by the Housing Infrastructure Fund to support the delivery of infrastructure, there is no clear evidence to support the claimed deliverability, absent firm evidence of intended submission and approval programmes, developer involvement and verified build-rates. Even though the bulk of the claimed deliverability would be within years four and five, 337 units should be deleted.

**Land between Langaller and Walford Cross**

69. This is an allocated site on which the SHELAA anticipated the deliverability of 80 dwellings. The Council's stated position before the Inquiry of 150 units was subsequently reduced to 120 dwellings<sup>22</sup>.
70. By way of background, the hybrid application, submitted in 2021, was recommended for refusal based on a number of identified deficiencies. It remains undetermined to allow negotiations, returning to Committee on two subsequent occasions, with a view to securing an acceptable scheme.
71. Further work remains and the anticipation of reconsideration by Committee has slipped. Despite monthly technical meetings, a planning performance agreement, and a clear ambition to resolve matters, there is an insufficient basis to infer with confidence that the site would be capable of contributing to the five-year supply, especially as all 120 units are allotted to year five. A balance of caution leads to deletion.

**Land east of West Villas, Cotford St Luke**

72. This allocated site has an application under consideration, originally for 52 dwellings but recently revised to 47 dwellings in light of earlier objections. Whilst reservations remain, notably from the Placemaking Officer, the Council believes, as a matter of planning balance, that the site is deliverable and firm evidence of intention had been provided by the developer. Even if negotiations remain protracted, I consider that there is sufficient flexibility within the trajectory to anticipate delivery within the five-year period.

**Butts Way, Milverton**

73. An application for 24 dwellings on this allocated site has been pending for some 18 months as a result of the phosphates embargo, landscape and design considerations and the exact design of drainage infrastructure. The Council is working with the developer and anticipates that outstanding matters are resolvable. In my opinion, the trajectory of delivery in year three leaves considerable headroom for resolution and the site should remain part of the five-year supply.

**East of Oake**

74. East of Oake, the subject of an undetermined full application, submitted in January 2018, for 18 dwellings was recommended for approval in August 2020 subject to the completion of a section 106 Agreement to secure phosphate mitigation. A recent revised shadow Habitats Regulation Assessment is indicative of a move to resolve the outstanding matter through Round Two P-Credits. The developer's timetable to commence construction in March 2025, with all completions in 2025/26, allows latitude for final resolution and the site should remain as part of the supply.

**Bagley Road, Rockwell Green**

75. This is another site with a long undetermined full application for 18 dwellings arising from the phosphates issue. Although the matter has not progressed beyond a P-Credit Survey, the site forms part of a natural progression to a larger development, by a national housebuilder, and it would be reasonable to anticipate delivery at some stage in the five-year period. No deduction is to be made.

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<sup>22</sup> ID14 – see also paragraph 45 above

**Land at Snedden Road, Taunton**

76. The proposal for 26 dwellings, with a net increase of 14 units following demolition of existing stock, is a local authority scheme within the Council's Housing Business Plan which is fully funded. Resolution of the phosphates issue, with Natural England's in principle acceptance, appears credible. The site therefore remains as part of the supply.

**Corfield Hall, Magdalene Street**

77. This is an 18-unit affordable housing scheme on a brownfield site with an approved phosphate mitigation scheme which is to be secured by a section 106 Agreement, said to be in preparation. Given the partnership with an affordable provider and a Homes England grant, I am satisfied that there is clear evidence of delivery.

**47 High Street, Taunton**

78. This is a further pending application, for ten units, affected by the phosphates issue. However, the matter has progressed to a shadow Habitats Regulation Assessment based on the accepted principle of upgrading a septic tank to a biological package treatment plant. This is evidence of a likely successful outcome, and the site should remain as part of the five-year supply.

**(vi) Large sites with outline planning permission**

**Comeytrowe**

79. The SHELAA identifies 625 dwellings and the Council's proof reduces this to 534 units following a review of the later part of the trajectory. A total of 521 dwellings have reserved matters approval, 157 have been completed and 364 dwellings remain to be delivered. This is not contested. The Appellant also accepts that an additional 38 dwellings equivalent will materialise from the 68-bed care home under construction<sup>23</sup>.
80. The balance in the Council's trajectory relies on two applications for the approval of reserved matters comprising 51 dwellings and 160 dwellings, respectively. The former is under consideration, constrained by phosphate mitigation with a potential solution awaiting submission for discussion, and the latter has been withdrawn.
81. Although the Council has recently secured funding from government to expand its P-Credit scheme alongside general third-party interest seeking to provide credits, other known mitigation solutions and new technology, there is nonetheless no specific pathway to providing mitigation for this site. Although it might materialise within a short period of time, I am not convinced that this is sufficient to endorse the deliverability of the additional units.
82. Moreover, recent evidence from one of the developers categorises the strength of sales demand as 'terrible'. Whilst this might reflect earlier financial uncertainties and rising mortgage rates, and recognising the now improving economic climate and the endeavours of the Council to secure delivery, I find insufficient evidence to support the inclusion of the additional 132 dwellings.

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<sup>23</sup> ID14 - See also paragraph 45 above

**Staplegrave West**

83. This site forms part of a wider allocation in conjunction with Staplegrave East. The projected position at 1 April 2023 has been revised from 200 dwellings to 112 homes.
84. The site has outline approval for 713 units; some pre-commencement conditions have been discharged; and selected reserved matters (non-residential) have been approved including wetlands to provide phosphate mitigation, subject to further approval relating it to the Staplegrave West site. The developer is under contract with National Grid for the undergrounding of overhead lines and highway details have been submitted for technical audit.
85. Although the timetable within the planning performance agreement has slipped, and reserved matters for the residential element are awaited, I consider that the reported information from the developer is a reasonable basis to adopt its anticipation of delivery from 2025/26.

**Land off Burges Lane, Wiveliscombe**

86. This allocated site benefits from outline planning permission and the SHELAA anticipates the delivery of 71 homes within the five-year period, based on a reserved matters application which has remained undetermined as a consequence of the phosphates moratorium.
87. A phosphate calculation and Habitats Regulation Assessment now have support in principle, awaiting sign off; and the developer is working with LiveWest based on time-limited funding to 2029. However, consideration by Planning Committee has not occurred as anticipated, and whilst there is optimism of approval and scope within the trajectory for flexibility, the evidential burden on the Council has not been discharged. Accordingly, 71 units are to be discounted.

**(vii) Other disputed sites**

**Jurston Farm Phase 3**

88. The Appellant accepts that there is clear evidence accounting for 44 dwellings remaining from phases one and two. The SHELAA anticipated some 190 dwellings and the Council's up-dated position is 234 units.
89. The focus is the 190 dwellings within phase three that are under construction, despite a failure to discharge pre-commencement conditions in the absence of an Appropriate Assessment<sup>24</sup> relating to nutrient neutrality. The Council failed to determine the related application; an appeal was dismissed; and a subsequent challenge in the High Court was unsuccessful. An appeal to the Court of Appeal is pending.
90. I acknowledge that progress has been made on the principle of potential nutrient neutrality solutions; the Council counts completions rather than occupation; and it has set out a cautious trajectory. Nonetheless, the circumstances are highly unusual and clouded with uncertainty, not least because of the outstanding litigation. There is no defined timescale for the proceedings; the outcome awaits due process; and if the developer is unsuccessful, the resolution of the nutrient neutrality issue would remain with time and cost implications. On balance, it would be prudent to discount the claimed contribution of 190 dwellings.

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<sup>24</sup> under the Conservation of Habitats and Species Regulations 2017 as amended



**North Taunton Woolaway Project**

91. The Council's position of 65 dwellings being delivered (44 in the SHELAA) is based on the progression of an application for 69 dwellings comprising part of a larger regeneration scheme, promoted by the Council, involving the demolition of existing housing stock and the erection of new dwellings. The project has an overall masterplan and business plan; and a phosphate mitigation strategy. It is included in the Housing Revenue Account Business Plan and scheduled completion is by late 2027. The project is said to be fully funded including a recently announced grant of £5 million from Homes England.
92. In my view, these factors amount to clear evidence to demonstrate deliverability and contribution to the five-year housing land supply.

**Lyngford House**

93. This is an assisted living project, with the SHELAA identifying 35 projected completions. Thirty units (phase one) have full planning permission and a further 21 units (phase two) await a planning obligation to secure phosphate mitigation. Build-out is anticipated by 2026/27 which, given the limited scale of the development, would accommodate any slippage in the conclusion of the section 106 Agreement. I am content that this meets the test of being deliverable.

**(vii) Conclusion on five-year housing land supply**

94. Based on the above, it is my judgement that the supply advocated by the Council should be reduced by 1,432 units<sup>25</sup>, leading to a total five-year supply of 2,228 dwellings. Based on the annual requirement of 594 dwellings, the supply, on the evidence before me, is around 3.75 years. This is a significant shortfall.
95. Whilst the Council anticipates future remedy arising from, amongst other things, the package of potential solutions for phosphate mitigation, it is to be noted that housing completions have fallen below the Core Strategy's annual stepped requirement in all but three years over the period 2008/09 – 2022/23 amounting to a deficit of some 2,462 dwellings. Moreover, the anticipated timescale for the preparation and adoption of a district wide Local Plan will not offer any short to medium term remedy to addressing the shortfall.

**Issue Three:**

**Whether, or to what extent, the proposed development complies with the development plan when read as a whole, having particular regard to its spatial strategy**

96. The Appellant accepts that the proposal would conflict with Core Strategy Policies CP8, SP1 and DM2, the Site Allocations<sup>26</sup> Policy SB1 and Neighbourhood Plan Policy CSM 10. In turn, there would be conflict with the Development Plan taken as a whole.
97. The acknowledged conflict with Policy CP8 is limited insofar as the proposal is an unallocated greenfield site, outside settlement boundaries, that would neither be protected nor enhanced (Policy CP8 paragraph 6). The appeal site is also in the open countryside for the purposes of Policy SP1. Further, the proposal would not be consistent with any of the types of development supported in the countryside by Policy DM2.

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<sup>25</sup> Annex C to this decision

<sup>26</sup> CD7.10 Taunton Deane Adopted Site Allocations and Development Management Plan December 2016

98. The Site Allocations Policy SB1 mimics Core Strategy Policy SP1 by confirming that proposals outside identified settlement boundaries will be treated as being within the open countryside and assessed against Core Strategy Policies CP1 (Climate Change), CP8 and DM2. The Policy admits two exceptions namely proposals that accord *'..... with a specific development plan policy or proposal; or is necessary to meet a requirement of environmental or other legislation; and in all cases, is designed and sited to minimise landscape and other impacts'*. Neither of the exceptions apply in this case.
99. In terms of the Neighbourhood Plan, my earlier consideration (in paragraphs 30 and 31 above) identifies conflict with bullets two and five of Policy CSM 10 (open character and visual amenity).
100. Turning to other policies drawn to my attention, Core Strategy Policy DM1 sets out general requirements to be read alongside any other Development Management policies which apply in a particular case. Criterion d. states: *'The appearance and character of any affected landscape ..... would not be unacceptably harmed by the development'*.
101. Whilst the Appellant claimed that the purpose of the policy was to direct the reader to other topic specific Development Management Policies, I consider that, irrespective of the potential element of replication, it should not be discounted. Nonetheless, from my consideration of the first main issue, it cannot be said that the affected landscape would be *'unacceptably harmed'*.
102. Next, the Inspector in the previous appeal decision found that the proposal before him conflicted with Core Strategy Policy CP4 (Housing): *'Policy CP4 of the CS indicates that housing should be delivered consistent with the settlement hierarchy established in Policy SP1'<sup>27</sup>.*
103. The settlement hierarchy in Core Strategy Policy SP1 identifies Creech St Michael as a Minor Rural Centre following sequentially the Taunton urban area, Wellington, and two identified Major Rural Centres.
104. In Minor Rural Centres development will comprise *'..... small scale allocations, sites within the development boundary ..... For these settlements a total allocation of at least 250 net new dwellings will be made through the Sites Allocations and Development Management DPD ..... Outside the settlements identified ..... proposals will be treated as being within the Open Countryside'*.
105. The previous Inspector opined that *'The development of up to 200 homes would distort the strategy ..... This would elevate the level of development in CSM above that anticipated in the Major Rural centres'<sup>28</sup>.* He went on to conclude that *'..... the development would not be acceptable having regard to the development plan's strategy, being contrary to Policies CP4, SP1 and SP4 of the CS'<sup>29</sup>.*
106. Policy SP4 relates to realising the vision for the Rural Areas and, in essence, is consequential to Policy SP1. Looking at these in combination, the Council's reason for refusal one, in identifying Policy SP4 (but not SP1 or CP4), relates in short to countryside, visual and landscape matters. It does not specifically allege any conflict with the spatial strategy. Moreover, the Council produced no evidence to elucidate how the spatial strategy might be infringed. Nor is there anything to suggest that the proposal would unbalance or overwhelm the community of Creech St Michael.

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<sup>27</sup> CD6.4 DL8

<sup>28</sup> CD6.4 DL11

<sup>29</sup> CD6.4 DL12

107. For my part, I recognise that Creech St Michael has a good range of services and amenities. In addition, the park and ride at Monkton Heathfield and other facilities will be accessible from the appeal site. Moreover, the allocation to Minor Rural Centres is expressed as a minimum in Policy SP1 and there is no implied upper limit.
108. Irrespective of the number of houses committed or constructed, or their percentage increase, I am not convinced that the appeal proposal would conflict with the spatial strategy or the vision for the Rural Areas to a material degree.
109. In conclusion, the fundamental policy conflict is that which relates to the appeal site being located outside a settlement framework and the consequential landscape and related implications.
110. Accordingly, the proposal would be in conflict with Core Strategy Policies CP8, SP1 (including CP4 and SP4 insofar as they are cross-referenced to Policy SP1), and DM2; the Site Allocations Policy SB1; and Neighbourhood Plan Policy CSM 10. These represent the most important policies in the consideration of this appeal and accordingly the proposal would be in conflict with the Development Plan taken as a whole.

**Issue Four:**

**Whether or not the tilted balance under paragraph 11 d) of the National Planning Policy Framework (the Framework) is engaged; and the determination of the resultant planning balance, in light of all material considerations**

**(i) Paragraph 11 d) of the Framework**

111. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the determination of the appeal to be made in accordance with the development plan unless material considerations indicate otherwise. The absence of a five-year housing land supply deems the most important policies to be out of date for the purpose of paragraph 11 d) of the Framework.
112. Paragraph 11 d) contains two limbs. The first relates to the application of policies in the Framework that protect areas or assets of particular importance and whether any of these provide a clear reason for refusing the development proposed. In this instance there are two elements of conservation interest.
113. First, the appeal site is within Bat Consultation Zone C of the Hestercombe House Special Area of Conservation. The designated area provides a large maternity roost for Lesser Horseshoe Bats. Ecological surveys found that the appeal site, in the outer zone, was used by low numbers irregularly for dispersal.
114. The potential for disturbance arising from increased artificial lighting could be avoided and mitigated by a combination of site layout and a sensitive lighting scheme designed to avoid significant light spill onto key habitats. Sensitive lighting schemes are a recognised measure, to be secured by condition, that would provide scientific certainty of avoiding any significant effect on the qualifying species of the designated area.

115. Second, the site is located some 2.5km west of the Somerset Levels and Moors Ramsar Site and Special Protection Area. The qualifying features of these designations are the wetland habitat and the internationally important assemblage of wetland birds which it supports. The key consideration is the impact of phosphates and the need to secure nutrient neutrality.
116. In this regard, an on-site mitigation strategy is proposed in the revised Fallow Land Management Plan (REVD), secured by planning obligation, which provides a commitment to fallow 5.9ha of land immediately west of the area proposed for development.
117. The land would be removed from agriculture prior to the occupation of any dwelling on the appeal site and remain fallowed with no development, public access or agricultural use until such time as equivalent phosphate offsetting measures are provided through a combination of the improvement to the waste water treatment works (in accordance with the legal requirements of the Levelling Up and Regeneration Act) and on-site phosphate mitigation measures with the SuDS (in accordance with the CIRIA Guidance C808), as recommended by Natural England on 19 December 2023.
118. This provides objective and credible evidence that the adverse effects on the integrity of the relevant designations can be ruled out beyond all reasonable scientific doubt.
119. Accordingly, the second limb of paragraph 11 d) of the Framework applies and planning permission should be granted for the proposal unless *'any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole'*.
120. It is to be noted that this is an important difference from the planning balance undertaken in the previous appeal decision. In that case, the Council had more than five-years supply of housing land and conflict would have arisen from development coming forward outside the plan-led approach to addressing housing needs.

**(ii) The planning benefits of the appeal proposal**

***Market and affordable housing***

121. In my analysis of the second main issue, I have calculated that, for the purposes of this appeal, the Council falls markedly short of the five-year housing land requirement with approximately 3.75 years deliverable supply. The proposal would yield up to 75 market dwellings to boost the supply of housing. The importance is enhanced by the cumulative shortfall against the development plan stepped requirement and the indication that the adoption of a new Local Plan will not occur before 2028.
122. In terms of affordable housing, the section 106 Agreement makes provision to secure 25% affordable housing (up to 25 affordable homes of mixed tenure) on site in accordance with the target in Core Strategy Policy CP4 and the Affordable Housing Supplementary Document 2014. There is a clear and significant need having particular regard to waiting lists and affordability ratios.
123. The Council questions the prospect of the deliverability of the scheme as the Appellant is a site promoter and not a developer and there is an issue relating to the ability to implement the footpath/cycleway as a result of uncertainty about land ownership.

124. On the first point, the Appellant acknowledges that deliverability in general, rather than the Framework glossary sense, can be a material consideration. In my view, the Appellant's business model clearly provides a substantial incentive in that the promoter would not make a return until the site is sold to a housebuilder who would buy it at full value and, in turn, would have a clear inducement to progress development.
125. In terms of the land ownership, the Appellant has secured an Option Agreement<sup>30</sup> for an alternative easement route, involving the same third-party land interest, should it prove not possible to construct the footpath/cycleway within the application site boundary red line. It is notable that any deviation would likely be of a very minor nature, and, despite the Council's reservations, there is nothing to suggest that it could not be a credible solution.
126. Although there can be no certainty that the appeal site would contribute to the five-year supply deficit, I consider that the balance of probability weighs heavily in the Appellant's favour.
127. Overall, securing the delivery of both market and affordable housing is an imperative and each aspect attracts substantial weight.

***Economic benefits***

128. It is well recognised that temporary employment and related local expenditure during the construction phase, and increased retail spending in the district by future residents are important considerations. I agree with the Appellant that such benefits merit moderate weight in this case.

***Social and environmental benefits***

129. The illustrative Development Framework Plan provides 2.73ha of formal and informal open space, amounting to over 45% of the gross site area. Whilst such facilities, including a Local Equipped Area for Play and allotments, are intended to meet the needs of the development, there would be a wider benefit to the community at large. This attracts limited weight.
130. The proposal includes extensive improvements in terms of the provision of raised footways, where there are none, and traffic calming along North End and St Michael Road which forms part of the route to services and facilities within the village. Although these measures are intended to mitigate the impacts of additional traffic, they would also represent an improvement to the safety of pedestrians in general.
131. The section 106 Agreement would secure a contribution to reinstate Public Right of Way 10/23, previously severed by the motorway, to provide connection between the village and Monkton Heathfield. There would also be a contribution as part of the wider strategic delivery of active travel routes as part of the *Connecting our Garden Communities Plan*. In combination with the highway improvements above, there would be a net benefit of moderate weight.

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<sup>30</sup> ID16

132. The on-site sustainable drainage system, whilst necessary for the development itself, would also moderate surface water run-off from the site through an attenuation basin and a network of swales. This would bring biodiversity benefits to the site and with other measures, including tree planting and the reinforcement of boundary hedgerows would have the potential to achieve a biodiversity net gain of some 17.6% for habitat units and 46.8% for hedgerow units.
133. The Framework, at paragraph 180 d) indicates that planning decisions should contribute to and enhance the natural and local environment by providing net gains for biodiversity. The drainage measures and biodiversity net gain, cumulatively, represent a benefit of moderate weight.

**(iii) The planning harms of the appeal proposal**

134. Flowing from my consideration of the first main issue, there would be adverse impacts arising from the loss of a greenfield site to housing development. The site does not form part of a valued landscape in the context of Framework paragraph 180 a). Nonetheless, paragraph 180 b) indicates that planning decisions should recognise the intrinsic character and beauty of the countryside.
135. The character of the area, and the site itself, is heavily influenced by the immediacy and form of the existing settlement edge, the proximity of the M5 motorway and, beyond that, the Monkton Heathfield urban extension. Within this context, the adverse effects of the development would be localised, and the proposed housing would be well contained by the backdrop of the existing settlement edge and intended landscaping.
136. Moreover, the limited loss of part of the Local Green Wedge would not materially diminish its purposes and, in particular, the separate identities of the respective settlements would not be undermined.
137. I have accepted that residents living near the site, and users of the public rights of way, would experience a change to their outlook and contiguity to the countryside which are factors to be borne in mind.
138. Overall, I attach limited weight to the overall harm and to the related conflict with the relevant development plan policies relating to settlement strategy, and the protection of the countryside in its widest sense.
139. The proposal would result in the loss of best and most versatile agricultural land. Taking account of the economic and other benefits of such land, and even though this was not a reason for refusal, I consider that the loss arising from the proposal draws moderate weight.

**(iv) Other material considerations**

140. Taking first the matters raised by those who spoke at the Inquiry, Mr Boggon's presentation amply illustrated the implications of the existing flooding problems in the area and the related concern that these would be exacerbated having particular regard to the domed form of the site.



141. However, the application was accompanied by a comprehensive flood risk assessment<sup>31</sup> that sets out a drainage strategy for the site, including attenuation, and concludes that the proposed development would not increase flood risk elsewhere and was compliant with the requirements of national policy and guidance. The Officer Report<sup>32</sup> confirms that the initial points raised by the Lead Local Flood Authority had been resolved and were no longer valid. Overall, on the basis of the technical evidence, I am satisfied that the proposal would not give increased risk of flooding in the locality.
142. Moving on to the concerns raised by Mrs Gates, on behalf of a group of local residents, the proposal includes measures to provide an opportunity for new occupants to integrate into the village by enhanced footpath/cycle routes and improved linkages to the amenities in the village. Inevitably, the site will also look towards the facilities associated with Monkton Heathfield and where additional school places will be provided.
143. Concerns about increased traffic, and the propensity of local people to cut through West View already, is understandable but not sufficient to count against the proposal in a material way. Whilst some local services have been lost in recent years, an increased village population is likely to offer some support to sustain those that remain. The pressure on GP surgeries is a national issue and, in this instance, the Clinical Commissioning Group has indicated that the GP surgeries within the catchment of the site had sufficient infrastructure capacity to absorb the likely population increase.
144. I have had regard to all of the representations submitted both at application stage and in connection with the appeal and the various points raised. Other than the matters that have been covered by my consideration of the main issues, I find nothing else which would add harm to the planning balance.

### **The Planning Balance**

145. As indicated earlier, the overall planning balance is to assess whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. In simple terms, based on my analysis above, the limited/moderate harms arising from the proposal, and the conflict with the development plan taken as a whole, would not outweigh the overall significant scale of benefits that would accrue from granting planning permission. I shall therefore allow the appeal.

### **Planning Conditions**

146. Conditions will be required to secure reserved details of the proposed development within three years; and commencement of development no later than two years following approval of the last of the reserved matters. The permission is to be tied to two approved plans, with a limitation of no more than 100 dwellings to define the permission. [Conditions 1, 2 and 3]
147. Details of lighting are to be secured, primarily to protect priority species; and details of foul and surface water drainage to ensure appropriate arrangements and to avoid increased flooding that currently occurs within the locality. [Conditions 4, 5 and 6]

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<sup>31</sup> CD1.11 NPPF: Flood Risk Assessment

<sup>32</sup> CD5.1 Officer Report section 10.9

148. Further details of assorted elements relating mainly to highways and drainage are required for highway safety and function; a survey of the local highway network and making good any damage arising from the construction of the development is also necessary; and visibility is to be provided and protected at the site entrance on to North End. A construction management plan or construction method statement is important for highway safety and local amenity; and a network of cycleway and footway connections is to be provided to encourage sustainable travel. [Conditions 7, 8, 9, 10 and 11]
149. The protection of ecological interests and landscape elements are necessary to comply with relevant legislation and in the interests of amenity. [Conditions 12, 13, 14 and 15]
150. Development Plan policy requires a scheme for public art; and a programme of archaeological work is to be agreed in order to determine and record any archaeological interest in the site. [Conditions 16 and 17]
151. A noise and vibration mitigation report is required to protect local interests. The new shared footpath/cycleway to be constructed requires detailed approval to encourage safe and sustainable travel and enhanced connectivity. It is not desirable to require the details to be '*in broad conformity*' with a named plan as such a term lacks precision. The package of highway works, including improvements within the village, are also essential to accommodate the proposal and to foster safe and sustainable travel. [Conditions 18, 19 and 20]
152. For the avoidance of doubt, a condition requiring charging infrastructure for electric vehicles is redundant as it would duplicate other recently introduced legislation.
153. I have made some minor amendments to the agreed draft conditions for clarity, consistency and precision.
154. Having considered these and all other matters raised, the appeal is to be allowed.

*David MH Rose*

Inspector

## **Schedule of Planning Conditions (1 -20)**

1. Details of the appearance, landscaping, layout, internal access roads 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(s) for approval of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission. The development hereby permitted shall be begun not later than two years from the date of approval of the last of the reserved matters to be approved.
3. The development hereby permitted shall be carried out in accordance with the following approved plans: 11161-FPCR-XX-XX-DR-L-0004 Site Location Plan and P22064-001A Proposed Access Arrangements. Reserved matters details shall comprise no more than 100 dwellings.
4. Details of any external lighting in public areas shall be submitted to and approved by the Local Planning Authority at each reserved matters stage. The external lighting shall be implemented in accordance with the approved scheme and retained thereafter.
5. No development shall commence until a foul drainage scheme has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall include arrangements for the agreed points of connection to serve the proposed development. The approved scheme shall be implemented such that each dwelling is served by the approved scheme prior to occupation of that dwelling and shall thereafter be retained as such.
6. No development shall commence until details of the surface water drainage scheme based on sustainable drainage principles together with a programme of implementation and maintenance for the lifetime of the development have been submitted to and approved in writing by the Local Planning Authority. The drainage strategy shall ensure that surface water runoff post development is attenuated on site and discharged at a rate and volume no greater than greenfield runoff rates and volumes. Such works shall be carried out in accordance with the approved details.
7. No development shall commence on the elements listed below until the following information has been submitted to and approved in writing by the Local Planning Authority. For this purpose, plans and sections, indicating as appropriate, the design, layout, levels, gradients, materials and method of construction, and a timetable for implementation, shall be submitted to the Local Planning Authority:
  - a) *estate roads*
  - b) *footways*
  - c) *tactile paving*
  - d) *cycleways*
  - e) *sewers*
  - f) *retaining walls*
  - g) *service routes*

- h) vehicle overhang margins*
- i) embankments*
- j) visibility splays*
- k) carriageway gradients*
- l) drive gradients*
- m) car, motorcycle and cycle parking*
- n) hard and soft structural landscape areas*
- o) pedestrian and cycle routes and associated vehicular accesses and crossings*
- p) means of enclosure and boundary treatment*
- q) street lighting and street furniture*
- r) all new roundabouts and junctions*
- s) proposed levels*
- t) highway drainage*
- u) swept path analysis for a vehicle of 10.4m (3-axle) length*
- v) central pedestrian reserves, bollards and lighting*
- w) service corridors*

No occupation shall thereafter commence until the development has been constructed in accordance with the approved details and timetable for implementation and retained in perpetuity thereafter.

8. No development shall commence (including investigation work, demolition, siting of site compound/welfare facilities) until a survey of the condition of the adopted highway has been submitted to and approved in writing by the Local Planning Authority. The extent of the area to be surveyed shall be agreed by the Local Planning Authority prior to the survey being undertaken. The survey shall consist of a plan to a scale of 1:1000 showing the location of all defects identified; and a written and photographic record of all defects with corresponding location references accompanied by a description of the extent of the assessed area and a record of the date, time and weather conditions at the time of the survey.

The development hereby permitted shall not be occupied or brought into use until a 'Scheme for Making Good' setting out a programme of works for repairing the adopted highway, including the continued monitoring and repair of damage throughout the construction period for the development, has been submitted to and agreed in writing by the Local Planning Authority. Once agreed, the development shall be carried out in accordance with the requirements of the 'Scheme for Making Good' for the duration of the construction period.

9. At the proposed vehicular access on to North End there shall be no obstruction to visibility greater than 600 millimetres above adjoining road level within the visibility splays shown on the approved Proposed Access Arrangement drawing P22064-001A. Such visibility splays shall be constructed prior to the commencement of the development hereby permitted and shall thereafter be maintained in perpetuity.

10. No development shall commence, including any demolition works, until a construction management plan or construction method statement has been submitted to and approved in writing by the Local Planning Authority. The approved plan/statement shall be adhered to throughout the demolition/construction period. The plan/statement shall provide for:
  - a) *A construction programme including phasing of works*
  - b) *24-hour emergency contact number*
  - c) *Hours of operation*
  - d) *Expected number and type of vehicles accessing the site:*
    - i. *Deliveries, waste, cranes, equipment, plant, works, visitors*
    - ii. *Size of construction vehicles*
    - iii. *The use of a consolidation operation or scheme for the delivery of materials and goods*
  - e) *Means by which a reduction in the number of movements by construction workers can be achieved through travel planning and encouraging the use of public transport, active travel, car sharing, and the provision of on-site parking and welfare facilities for staff and visitors*
  - f) *Routes for construction traffic, avoiding weight and size restrictions to reduce unsuitable traffic on the local highway network*
  - g) *Locations for loading/unloading, waiting/holding areas and means of communication for delivery vehicles if space is unavailable within or near the site*
  - h) *Locations for storage of plant/waste/construction materials*
  - i) *Arrangements for the turning of vehicles within the site*
  - j) *Arrangements to receive abnormal loads or unusually large vehicles*
  - k) *Swept paths showing access for the largest vehicles regularly accessing the site and measures to ensure adequate space is available*
  - l) *Any necessary temporary traffic management measures*
  - m) *Measures to protect vulnerable road users (cyclists and pedestrians)*
  - n) *Method of preventing mud being carried onto the highway*
  - o) *Methods of communicating the Construction Management Plan to staff, visitors and neighbouring residents and businesses*
11. No development shall commence until details of a network of cycleway and footway connections within the site and the timing of their delivery has been submitted to and agreed in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved scheme.
12. All ecological measures and/or works shall be carried out in accordance with the details contained in Chapter 5 & 6 Ecological Impact Assessment report undertaken by CSA Environmental (March 2023).
13. No development shall commence (including demolition, ground works, vegetation clearance) until a construction environmental management plan (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The CEMP: Biodiversity shall include the following:

- a) *Risk assessment of potentially damaging construction activities*
- b) *Identification of "biodiversity protection zones"*
- c) *Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements), including, but not limited to, nesting birds habitat clearance measures, badgers' buffer zones*
- d) *The location and timing of sensitive works to avoid harm to biodiversity features*
- e) *The times during construction when specialist ecologists need to be present on site to oversee works*
- f) *Responsible persons, lines of communication and written notifications of operations to the Local Planning Authority*
- g) *The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person [including regular compliance site meetings with the Council Biodiversity Officer and Landscape Officer (frequency to be agreed, for example, every 3 months during construction phases)]*
- h) *Use of protective fences, exclusion barriers and warning signs*
- i) *Ongoing monitoring, including compliance checks by a competent person(s) during construction and immediately post-completion of construction works*

The approved CEMP shall be adhered to and implemented throughout the construction period in accordance with the approved details.

14. A Landscape and Ecological Management Plan (LEMP) shall be submitted to, and be approved in writing by, the Local Planning Authority prior to the commencement of the development or specified phase of development. The content of the LEMP shall include the following:

- a) *Description and evaluation of features to be managed*
- b) *Ecological trends and constraints on site that might influence management*
- c) *Aims and objectives of management*
- d) *Appropriate management options for achieving aims and objectives*
- e) *Prescriptions for management actions*
- f) *Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period)*
- g) *Details of the body or organization responsible for implementation of the plan*
- h) *On-going monitoring and remedial measures*

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan shall be implemented in accordance with the approved details.



15. No development shall commence until a scheme for the protection of the retained trees and hedgerows and the appropriate working methods during the construction period in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction has been submitted to and approved in writing by the Local Planning Authority. The scheme for the protection of the retained trees and hedgerows shall be carried out as approved.
16. A scheme for public art and its delivery shall be submitted to and approved in writing by the Local Planning Authority prior to occupation of the first dwelling. The public art shall be provided in accordance with the approved details prior to occupation of more than 80% of the approved dwellings and thereafter retained.
17. No development shall commence until a scheme to secure the implementation of a programme of archaeological work in accordance with a Written Scheme of Investigation (WSI) has been submitted to and approved in writing by the Local Planning Authority. The WSI shall include details of the archaeological investigation, the recording of the heritage asset, the analysis of evidence recovered from the site and publication of the results. The development hereby permitted shall be carried out in accordance with the approved scheme.
18. No development shall commence until a written report setting out measures for mitigating noise and vibration impacts has been submitted to and approved in writing by the Local Planning Authority. The report shall detail all measurements taken and results obtained, together with any sound reduction scheme and the calculations and reasoning upon which any scheme is based. Reference shall be made to any relevant guidance and Codes of Practice including BS 8233:2014 and the Professional Practice Guidance (ProPG) Planning and Noise-New Residential Development. The development shall be implemented in accordance with the approved details. A Verification Report to demonstrate that the scheme has been implemented in full, shall be submitted to the Local Planning Authority for approval in accordance with a previously agreed timetable.
19. No development shall commence until a scheme has been submitted to and approved in writing by the Local Planning Authority detailing a shared footpath and cycleway connection between the application site and the existing residential area south west of the site. The shared cycleway shall be no less than 3 metres in width and shall be constructed to adoptable standard and include appropriate street lighting. No dwellings shall be occupied until the approved scheme has been implemented in full.
20. No development shall commence until a package of off-site highways works, the scope of which shall be based on drawings numbered P18119-100C, P18119-101B, P18119-102B, P18119-103B, P18119-104B, P18119-105B, P18119-106 included within Appendix E of the submitted Transport Assessment dated December 2022, has been submitted to and agreed in writing by the Local Planning Authority. The agreed package of works shall be implemented prior to occupation of the first dwelling.

**End of Schedule**

## **ANNEX A: APPEARANCES**

### **For Gladman Developments Ltd<sup>33</sup>**

Martin Carter, Barrister  
Counsel for the Appellant

Instructed by Christian Lee, Planning Director  
Gladman Developments Ltd

#### **He called**

Ben Pycroft  
BA(Hons) Dip TP MRTPI

Director  
Emery Planning

Kurt Goodman  
BSc(Hons) MSc MCIEEM

Senior Director of Ecology  
FPCR Environment and Design Ltd

Timothy Jackson  
BA(Hons) DipLA CMLI

Senior Director  
FPCR Environment and Design Ltd

Christien Lee  
BSc(Hons) MCD MRTPI

Planning Director  
Gladman Developments Ltd

### **For Somerset Council<sup>34</sup>**

Killian Garvey, Barrister  
Counsel for the Local Authority

Instructed by Martin Evans  
Somerset Council

#### **He called**

Ann Rhodes  
BA(Hons) PG Dip Arch Con

Principal Planning Policy Officer  
Somerset Council

Kate Murdoch  
MA MRTPI

Service Manager  
Planning Policy and Implementation  
Somerset Council

Omri Ben Chetrit  
B.Arch(Hons) MSc MRTPI

Green Infrastructure Officer  
Somerset Council

Jenny Clifford  
BSc(Hons) M.Phil PG Dip UD MRTPI

Taunton Garden Town Implementation Manager  
Somerset Council

Darren Roberts  
BSc(Hons) MRTPI

Principal Planning Officer  
Somerset Council

#### **Interested Persons**

David W M Boggon  
FRICS DMA

Local Resident

Lynn Gates

Local Resident

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<sup>33</sup> Nicola Baines Solicitor contributed to the discussion on the section 106 Agreement

<sup>34</sup> Amy Cater Solicitor contributed to the discussion on the section 106 Agreement

## **ANNEX B: INQUIRY DOCUMENTS**

- ID1 Nutrient Neutrality letter
- ID2 Notifications letter
- ID3 Consent Order
- ID4 New access plan
- ID5 Opening on behalf of the Appellant
- ID6 Opening on behalf of the Council
- ID7 David Boggon speaking note
- ID8 SHELAA reported figures
- ID9 Drawing No P22064-001A North End Footway Connection
- ID10 Technical Guidance Note 02/21
- ID11 PPG extract on available
- ID12 Shared footpath plan
- ID13 Killams Drive note
- ID14 Revised list of disputed sites
- ID15 Draft Community Infrastructure Compliance Statement
- ID16 Redacted Option Agreement
- ID17 Agreed Draft Conditions
- ID18 Draft S.106 Agreement (superseded by ID24)
- ID19 Council's Closing Submissions with notes on disputed sites (V3)
- ID20 Late comments via email from F A'Court
- ID21 Appellant's Closing Submissions and Appendix on five-year supply
- ID21 Council of the City of Newcastle Upon Tyne v Secretary of State for Levelling UP, Housing and Communities v East Quayside 12 LLP, St Ann's Quay Management Limited - Case No: CO/2116/2022
- ID22 Community Infrastructure Compliance Statement
- ID23 Education Statement
- ID24 Agreement under the Town and Country Planning Act 1990 section 106 dated 9 February 2024

**ANNEX C: FIVE-YEAR HOUSING LAND SUPPLY**

<b>Sites to be deducted from supply</b>	<b>Number of units</b>	<b>Paragraph Reference</b>
Small sites	4	DL50
Large sites which were not deliverable in the SHELAA at 1 April 2023	471	DL54
Land at Killams Drive	4	DL61
Michael Paul House	12	DL63
Former Livestock Market	90	DL65
Land at Staplegrove East	337	DL68
Land between Langaller and Walford Cross	120	DL71
Comeytrowe	132	DL82
Land off Burges Lane, Wiveliscombe	71	DL87
Jurston Farm Phase 3	190	DL90
<b>TOTAL</b>	<b>1432</b>	DL94