
Appeal Decision

Inquiry held on 8-11 and 15-16 March 2016

Site visit made on 16 March 2016

by Mike Fox BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 April 2016

Appeal Ref: APP/Q3305/W/15/3129620

Land North of the A371 and West of Wells, Wells, Somerset, BA5 2GA

- 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 Persimmon Homes and Taylor Wimpey Ltd against the decision of Mendip District Council.
 - The application Ref 2014/1522/OUT, dated 25 July 2014, was refused by notice dated 23 January 2015.
 - The development proposed is an outline application (all matters reserved except access) for the construction of up to 220 dwellings (C3), open space and drainage infrastructure, formation of new means of vehicular access on A371 and associated highway works, and associated infrastructure.
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Decision

1. The appeal is allowed and outline planning permission is granted for the construction of up to 220 dwellings (C3), open space and drainage infrastructure, formation of new means of vehicular access on A371 and associated highway works, and associated infrastructure, at land North of the A371 and West of Wells, Wells, Somerset, BA5 2GA in accordance with the terms of the application Ref 2014/1522/OUT, dated 25 July 2014, subject to the conditions set out in the schedule below.

Application for costs

2. At the Inquiry an application for costs was made by Persimmon Homes and Taylor Wimpey Ltd against Mendip District Council. This application is the subject of a separate decision.

Procedural matters

3. All matters of detail except access have been reserved for future approval. In addition to the site location plan and details of the proposed vehicular access, which are the two definitive plans accompanying the application, several illustrative parameter plans were submitted, covering land use, landscape character, density, building heights and access and movement, together with a concept master plan.
 4. In August 2015, an amended set of parameter plans covering land use, landscape, density, access and movement and building heights, together with a revised concept master plan, were submitted. These were subject to a public consultation exercise with local residents and statutory consultees which was carried out by the Appellants from 23 November to 21 December 2015. I
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therefore do not consider that the interests of any parties have been prejudiced by the amended illustrative plans. Furthermore, the Council indicated in writing and at the Inquiry that it did not object to the amended plans being used as the basis for considering the appeal proposal at the Inquiry.

5. The amended illustrative plans remove previously proposed development in the south-west of the site and increase the landscaping and open space around that edge of the proposed development. This would enlarge the gap between the proposed housing and the settlement at Haybridge, to the west in comparison with the earlier set of plans.
6. These illustrative plans, together with a Landscape and Visual Impact Appraisal and the Design and Access Statement, although not formally part of the planning application, nevertheless give a likely indication of the character of the proposed development and its impact.
7. A signed Unilateral Deed of Obligation (UDO) under Section 206 of the Town and Country Planning Act 1990, dated 15 March 2016, was signed and submitted to Mendip District Council and Somerset County Council. It secures affordable housing (AH), a Travel Plan, pedestrian and cycle access, including a new pedestrian crossing of the A371 in the vicinity of the junction with Charter Way, and public open space provision and an extension of the footpath in Wells along the A71 to serve the appeal site. The Council responded at the Inquiry that it is in agreement with the provisions of the UDO and that this takes away the Council's second and final reason for refusing the appeal application.
8. Several appeal decisions and High Court Judgments were brought to my attention. In the interests of conciseness, I have been selective in those that I have referred to in my decision, although I have taken all of them into account.
9. Although work has started on the Wells Neighbourhood Plan, it has not yet reached pre-submission stage, and I can therefore only give it limited weight.

Main Issues

10. The main issues are:
 - (i) Is the recently adopted Mendip District Local Plan (Local Plan) Part 1 up-to-date in relation to housing need and projected housing delivery, especially in relation to the Council's 5 year housing land supply?
 - (ii) If the answer to issue (i) is yes, would the proposed development conflict with and undermine the strategy of the Local Plan?
 - (iii) Taking all the issues as a whole, can the proposal be considered to amount to sustainable development when assessed in the light of national planning policy?
 - (iv) With reference to paragraph 204 of *the Framework*, is the UDO submitted by the Appellants necessary to make the proposed development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development?
11. I asked for views on these issues at the Inquiry and the parties agreed that they covered the relevant considerations.

Reasons

The appeal site, its surroundings and the proposed development

12. The appeal site comprises seven fields on the western edge of the built-up area of Wells. It is bounded by a dismantled railway to the north, which is now a footpath and cycleway, with housing beyond; by a leisure centre and housing to the east; by the A371 Cheddar to Wells main road to the south and south-west; and by an unclassified road to the west from Haybridge to Wookey Hole. Although the site is countryside, there is housing along the A371 to the south/south-west, and housing and an industrial estate along the unclassified road to the west. The proximity of the site to existing development influences its character, which I consider to be urban fringe countryside.
13. The illustrative concept master plan and parameter plans show primarily 2 and 2.5 storey housing, with the highest densities near the leisure centre car park to the north east of the site. The extensive western part of the site would change from farmland to public open space. Most of the existing hedgerows would be retained. There would be an extensive footpath system across the site and woodland planting along part of the south-west boundary by the A371.
14. The appeal site is allocated as the Southern Development Area in the adopted Local Plan; policy CP10 refers to the site as a Future Growth Area (FGA) for the development of 100-150 dwellings, which may be released for development during the Site Allocations process or under the provisions of policy CP2. Policy CP10 also designates a strategic allocation, known as the Northern Development Area, for 200 houses and a primary school immediately north of the appeal site, on the opposite side of the dismantled railway.
15. The proposed vehicular access is off the A371 to the south, with an emergency access at the end of Wheeler Grove to the east. Pedestrian access points are proposed to the north, east and south.

Issue 1 – Is the Local Plan up-to-date in relation to housing need and projected housing delivery, especially in relation to the Council's 5 year housing land supply?

16. The Local Plan Part 1: *Strategy and Policies* was adopted on 15 December 2014. The Examination Hearings (31 March - 14 April 2014) post-date the publication of *the Framework*¹ and the Local Plan Inspector's Report (IR) concluded that, subject to several main modifications, all of which have been included, the Local Plan is sound.

(a) Housing need

17. The Appellants contend that the IR does not identify the true extent of the objectively assessed housing need (OAN) for Mendip by a considerable margin, and in particular fails to factor in any uplift to take account of the acute affordable housing need in the District and the need to balance the number of new homes with new jobs. On this basis, they conclude that the adopted Local Plan is not up-to-date in relation to Mendip's housing requirement, its projected housing delivery, and its 5 year housing land supply (5YS).
18. The Appellants therefore maintain that, as an out-of-date Local Plan, it fails the test of paragraph 49 of *the Framework*, which states that in such

¹ The DCLG National Planning Policy Framework (*the Framework*) was issued in March 2012.

circumstances housing applications should be considered in the context of the presumption in favour of sustainable development. In which case, they argue, paragraph 14 of *the Framework* would apply, where permission should be granted, unless adverse impacts or specific policies in *the Framework* outweigh this consideration.

19. The Appellants further contend that new demographic information since the issuing of the IR shows that the OAN is now significantly greater than it was at the time of the Examination, which makes the Local Plan even more out-of-date. Instead of the Local Plan requirement of 420 dwellings per annum (dpa) for Mendip over the period 2011-2029, the Appellants state that a proper consideration of the most up-to-date information in relation to demography, economic activity and market signals results in an OAN of 733 dpa, i.e. a 74.5% increase over the OAN in the Local Plan.
20. The importance of the plan-led system is upheld both in planning law² and in *the Framework*, where paragraph 12 underlines the importance of the development plan being the starting point for decision-taking. It also makes it clear that development that accords with the development plan should be approved, and proposed development that conflicts with its policies should be refused, unless other material considerations indicate otherwise.
21. The overall tenor of *the Framework* discourages constant questioning of the soundness of the development plan in relation to adequacy of housing land supply; paragraph 47, which stresses the importance of boosting significantly the supply of housing, requires local planning authorities to: “*identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing requirements*” (My emphasis). National policy clearly emphasises regular monitoring on an annual basis in a plan-led way rather than through appeal-led challenges whose impact can potentially weaken or dismantle local plans and/or drain resources at a time when many local planning authorities face significant financial challenges, not to mention the diversion of depleted resources from the proactive work of plan making in the public interest.
22. Regarding the above considerations, it is clear to me that the burden of proof for overturning a recently examined and adopted Local Plan, such as the one before me, has to be compelling for significant weight to be attached to it.
23. My attention was drawn to a recent appeal decision in West Berkshire³ which endorsed a different housing requirement to that set out in a recently adopted Local Plan; this was subsequently confirmed in a High Court Judgment (HCJ)⁴. There are, however, significant differences between the two plans. Firstly, the West Berkshire Core Strategy Inspector considered that the planned housing provision was not justified by an assessment which met the requirements of *the Framework*; this was not the view the Mendip Inspector took.
24. Secondly, West Berkshire was given three years by the Core Strategy Inspector to have a *Framework* compliant SHMA in place, but after almost three years no

² Section 38 (6) of the Planning and Compulsory Purchase Act 2004 and section 70 (2) of the Town and Country Planning Act 1990.

³ Appeal Decision Ref. APP/W0340/A/14/2228089 Land at Firlands farm, Hollybush Lane, Burghfield Common, Reading, Berkshire.

⁴ High Court Judgment (HCJ) between West Berkshire District Council (Claimant) and secretary of State for Communities and Local Government and HDD Burghfield Common Ltd (defendants) [2016] EWHC 267 (Admin); Case No. CO/3830/2015; 16 February 2016.

report was in place and there was no clear timetable for the relevant authorities to consider the findings of the SHMA. Again, this is not akin to the situation before me. In view of these fundamental differences between the West Berkshire and Mendip situations, I can attach only limited weight to the HCJ in West Berkshire in relation to the appeal before me.

25. The Mendip IR states that, following the publication of *the Framework*, the Council commissioned a *Review of Housing Requirements*⁵ which led to an increased housing requirement of 500 dwellings above the previous figure over the plan period. The Review was based on a series of judgments to establish a reasonable housing projection for Mendip over the plan period, taking into account the most up-to-date demographic data available at the time. As the IR states: "*care has been taken to ensure that these judgments do not, cumulatively, drive down the projected number of houses.*"⁶
26. Shortly before the Examination, on 13 March 2014, the Local Plan Inspector instigated a Housing Technical Meeting, to identify points of agreement and disagreement on housing numbers and housing supply⁷. Some of the house builders and their representatives expressed support at this meeting for an OAN for Mendip in excess of the 733 dpa now being advocated by the Appellants. This higher level of provision was discussed at the meeting, and it is clear that the Inspector considered the arguments for and against this suggested increase in the OAN before writing the IR.
27. At the Examination, there were several points of contention between the Council and some of the participants in assessing Mendip's OAN. A key disagreement centred on how much of the 838 affordable housing (AH) dpa over the five year period identified in the Council's 2012 Housing Needs Assessment should be included within the OAN. It was agreed that the AH requirement of 30% in the Local Plan would not meet that need in full. The parties also disagreed over whether there was a role for the private rented sector (PRS) to meet part of this need.
28. I note the criticism levelled at the Local Plan Inspector for not including any uplift to the OAN to take account of the substantial AH need in Mendip. The IR, however, shows that this was carefully considered, including the Inspector's reasoning to explain why he did not consider that the problems of affordability in the District justified increasing the demographically derived figure for overall housing need⁸. These included his observation that there was no evidence of substantial levels of homelessness, or of people being 'exported' to other authorities in order to find housing.
29. Whilst the IR states that the PRS does not represent AH, nevertheless it recognises that in practice it makes a significant contribution to meeting the need for AH in the District. The Appellants' AH witness, in answer to my questioning of the role of the PRS, stated that: "*We take advantage of it where we can*". Seeing that the PRS is a substantial sector of the local housing market in Mendip, some of which is used by the Council for housing people in need, it seems unrealistic to omit this sector in assessing Mendip's OAN. The

⁵ JG Consulting: Report for Mendip DC: *Review of Housing Requirements*; November 2013 [Inquiry Document 10].

⁶ IR, paragraph 39 [Examination Document CD26].

⁷ Proof of Evidence of Justin Gardner for Mendip District Council, Appendix K.

⁸ IR, paragraph 58.

same witness accepted that viability also plays a role in limiting the amount of AH that local housing markets can deliver.

30. Far from turning its back on AH need in Mendip, the Local Plan includes a 30% AH requirement across the District, whilst in Wells the requirement is 40%. These provisions are based on viability considerations with the emphasis on being effective rather than aspirational. In addition, the AH threshold in Local Plan policy D11 starts with a single dwelling upwards, where a commuted sum in lieu of equivalent on-site provision applies, with on-site provision required for developments of 7 dwellings and above. These are ambitious provisions in the Local Plan which demonstrate that AH is taken seriously.
31. Another area of disagreement both at the Local Plan Examination and in this appeal concerns the link between jobs and homes. This includes the impact of economic activity rates on the housing requirement of the Local Plan, which of the economic forecast 'houses' should inform the Local Plan and whether there should be a significant uplift to Mendip's housing requirements to take account of job forecasts, taking into account factors such as commuting. The IR is not silent on the link between new homes and new jobs, although it states⁹ that it is fraught with uncertainty, not least because changes in commuting patterns and economic activity rates can have a significant effect on the available workforce.
32. I also note from the Council's housing needs evidence that the Local Plan Inspector opted for the Experian economic forecast, and concluded that the mismatch between the projected numbers of houses and jobs in Mendip is not so marked as to justify an increase in the housing provision above that proposed in the Local Plan¹⁰.
33. The Council's housing needs witness was directly involved in the Local Plan Examination and his explanation of the Inspector's reasoning seems to me to be both reasonable and confirmed by the IR. He states that the Local Plan Inspector had before him the Oxford Economics forecast, which was linked to an estimated need for 740 dpa, and he comments that it was clear that this level of growth was significantly out of kilter with past trends¹¹.
34. His Rebuttal Statement also states that the Appellants' vastly increased growth scenario (733 dpa) is based on an increase of 21,300 people (2011-2019), compared with the demographically derived (2012 DCLG) sub national population projections showing 11,400, and that: *"this is a difference of nearly 10,000 people and cannot be seen as plausible in the context of past trends"*¹². I also consider that this scale of growth is at odds with the PPG, which requires scenarios to only include those that could be reasonably expected to occur¹³.
35. Other points of disagreement concerned migration assumptions, headship rates and market signals. These were also considered in the IR, which concluded that the Council's demographically based figure of around 420 dpa had not been significantly challenged¹⁴.

⁹ IR, paragraph 46.

¹⁰ IR paragraph 47.

¹¹ Proof of Evidence of Justin Gardner for Mendip District Council, paragraph 2.55.

¹² Rebuttal Proof of Evidence of Justin Gardner, paragraph 4.24.

¹³ PPG Ref ID: 2a-003-20140306 *What is the definition of need?*

¹⁴ IR, paragraph 44.

36. I therefore conclude that the Local Plan is still up-to-date, including its housing requirement for Mendip. I am also unconvinced for the reasons set out above, that the Appellants' figures, especially in relation to AH need and the relationship between new homes and jobs, amount to a compelling case to re-write the OAN – and hence the Local Plan – for Mendip at this time.

(b) Projected housing delivery and 5 year housing land supply (5YS)

37. The Local Plan requires a minimum delivery of 9,635 homes over the plan period. Following my conclusion that the Local Plan remains up-to-date, I consider that this figure is the appropriate benchmark for both the overall housing delivery and the 5YS.

38. The Council's housing trajectory over the plan period based on the SHLAA (summer 2015) indicates that capacity in Mendip is 9,574, i.e. a slight shortfall of 61 dwellings (0.6%)¹⁵. However, the 220 dwellings of the appeal proposal forms part of the trajectory, with anticipated delivery dates in 2025/26 – 2028/29¹⁶. This appears to confirm that the only issue between the main parties is not whether the site could be developed, but when. If the appeal site were to be deleted from the trajectory, the Council's deficit would rise significantly from 0.6% to 2.9%, and this would certainly raise questions of soundness which would need to be addressed in a future Local Plan review.

39. Turning to the 5YS, the Council considers that it has sufficient land to meet the District's requirements. The Council's evidence¹⁷ points to a total of 2,358 deliverable dwellings over the five year period, i.e. 286 dwellings' supply above the amount required over the five year period 2015/16-2019/20, making a supply of 5.7 years against the five year supply requirement of 2,072 dwellings. The calculation assumes a 5% non-implementation allowance for all unstarted sites or those with only a 'technical' start, and I note that this is supported by the Council's consultations with developers.

40. Schedule 1 in the Council's evidence distinguishes between the overall number of dwellings proposed and the trajectory assumption of those sites that are considered likely to be implemented within the five year period. The calculation also provides a detailed assessment of each site of 10 units plus which contributes to the five year total for Mendip.

41. The Appellants' evidence indicates some support for the Council's position, including the appropriateness of applying a 5% buffer, and delivery rates for sites with planning permission of 40 dpa on urban sites and 25 dpa on rural sites. The principal differences between them centre on the assumed rate of delivery for sites with outline planning permission and sites which have a resolution to grant on an outline planning application, subject to securing a Section 106 Agreement. It is not my role to conduct a forensic examination of the 57 sites of 10 dwellings plus on the Council's list or the 33 sites¹⁸ which the Appellants are contending, and to be fair to both parties, there were no attempts to carry out a full exercise on these lines during the Inquiry.

¹⁵ Proof of Evidence of Anna Clark, Appendix F, page 5 of 28.

¹⁶ Ibid, Appendix F, page 16 of 28.

¹⁷ Mendip District Statement of Five Year Housing Land Supply – in particular see calculation on page 5; Summer 2015 [Document CD30].

¹⁸ Proof of Evidence of Jeffrey Richards, Appendix JR5.

42. Footnote 11 of *the Framework* states that sites with planning permission should be considered deliverable within 5 years until permission expires, unless there is clear evidence to the contrary. There is nothing in the footnote to treat outline permissions differently from full permissions. I am satisfied that the Council has provided a full explanation in its evidence on the prospects of implementation of schemes which currently have outline planning permission, and it states that its evidence is gathered from developers, land owners and agents from April to June 2015¹⁹.
43. In accepting the Council's comments (incorporating the views of local developers), the difference between the Council and the Appellants would be reduced from 691 dwellings to only 165. On this basis, the Council's 5YS evidence is reduced from 2,358 to 2,193 dwellings, which means that Mendip would have a housing land supply of 5.23 years.

Issue 1 - conclusion

44. I conclude on the first issue, based on the above considerations, that the Local Plan is up-to-date in relation to housing need, projected housing delivery and the Council's ability to demonstrate a five year housing land supply. It is also worthy of note that the only legal challenge to the Local Plan was withdrawn. Having all of the above in mind, paragraph 49 of *the Framework* is not engaged, which means that the provisions and policies of the Local Plan should be given substantial weight in determining the appeal.

Issue 2 - If the answer to issue (1) is yes, would the proposed development conflict with and undermine the strategy of the Local Plan?

45. In strategic terms, the IR accepts that it is sustainable for the Council to concentrate development in the principal towns, including the city of Wells²⁰. However, the potential for new housing development in Wells is constrained by a number of factors, including the AONB, which as the IR states, effectively rule out development of large parts of the city's periphery²¹. In landscape terms, the land to the west of Wells is considered by the Examination Inspector to have the greatest potential for development²². Within this area, the IR supports the development of two connected sites, both of which are referred to as allocations. The northern part is allocated as a strategic site, whilst the southern site – the appeal site – is allocated as a Future Growth Area (FGA) for Wells. The Inspector comments: "*To all intents and purposes, the principle of developing this land has been established*"²³.
46. Apart from timing, the arguments advanced by the Council against the proposed development are: (i) no development brief has been prepared for the proposal, as required by policy CP2; (ii) the proposed amount of housing at 220 units exceeds the Local Plan allocation of 100-150 units; (iii) vehicular access contravenes the Indicative Development Area Map in the Local Plan²⁴ in that the appeal proposal shows housing in the vicinity of the access, whereas the Map shows this area as Local Green Space; and (iv) planning permission for the proposed development would pre-empt the opportunity for the local

¹⁹ Mendip District Statement of Five Year Housing Land Supply –see Introduction on page 3; Summer 2015 [Document CD 30].

²⁰ IR paragraph 33.

²¹ Ibid, paragraph 83.

²² Ibid, paragraph 88.

²³ Ibid, paragraph 87.

²⁴ Local Plan, page 78 [Document CD 36]

community to determine which sites should be included in the forthcoming Site Allocations Development Plan Document (DPD).

47. In response to these arguments, the Appellants have submitted a considerable amount of detail in support of their proposal, including parameters plans and a Design and Access Statement. This provides sufficient information to indicate the principal characteristics of the development and its likely impact, which forms a useful basis for determining the reserved matters. Moreover, the size of the development would not be sufficient to require phasing provisions, which is a principal reason for requiring a development brief.
48. In response to the increased housing number, the 100-150 dwellings was an indicative range. The Appellants' more detailed work demonstrates that 220 dwellings can be accommodated with a satisfactory layout which removes new housing from the south-west part of the site, thus ensuring a sizeable buffer between the edge of the built development and the settlement at Haybridge. This amendment to the initial quantum is in line with paragraph 58 [3] of *the Framework*, to optimise the potential of the site to accommodate development. This also is a prudent strategy in a heavily constrained location such as Wells, where options for finding new housing allocations appear to be limited.
49. The proposed access off the A371, which is acceptable to the local highway authority, would not undermine the Local Plan in any way; any access to the proposed development off Wheeler Grove to the east (except for emergency traffic) would not be appropriate in view of the width of the carriageway of this residential estate road, which was characterised by on-street parking on the occasions when I observed this road.
50. Responding to the Council's final argument, the appeal site is already included within the Local Plan, so any future choice would be restricted to detailed site considerations. The Appellants have already carried out a public consultation exercise in relation to the parameters of the proposed development. Therefore the principle of development on the appeal site is now established. I can see little merit in further delay until the emerging Site Allocations DPD is completed, especially given the need for housing in Wells. The Council accepts that the preparation of its DPD has fallen behind the agreed schedule in the Local Development Scheme²⁵ for adoption in May 2016, and adoption is now programmed for autumn 2017²⁶.
51. I return to the issue of timing. Policy CP2 provides for a number of triggers for the release of FGAs. The normal route is expected to be through future site allocations. However, policy CP2 (2) (b) (i) states that if housing completions in the relevant town fall behind the expected rate of delivery implied by the annual target provision set out in policy CP2 (which is 65 dpa for Wells), the Council may resolve to release land in advance of the Site Allocations DPD²⁷.
52. Paragraph 4.25 of the Local Plan identifies a figure of 20% below the expected rate of delivery as the trigger for this to happen. The rate of delivery of dwellings in Wells has consistently fallen behind the annual target provision in the Local Plan. Although the completions in Wells during 2014/15 reached a 'high' of 152, the cumulative delivery rate was 389 by March 2015, compared

²⁵ Mendip DC Local Development Scheme; November 2013 [Inquiry Document 18].

²⁶ Anna Clark in XX.

²⁷ Local Plan, paragraph 4.25, page 34.

with the expected total of 585 dwellings in the period since 2006/07, i.e. a shortfall of 196²⁸, which amounts to a cumulative 33.5% deficit. As the Appellants point out in their closing submissions, the deficit is: “*nearly equivalent to the size of the entirety of the appeal scheme*”²⁹.

53. In addition to providing housing to meet Mendip’s requirement, the proposal would provide 40% AH, i.e. 88 units, of which 80% (70 units) would be social rented housing, in accordance with the balance of housing need in the District. This is an important material consideration, to which I attach substantial weight, especially in view of the relatively low levels of AH provision in Wells which have been delivered in recent years³⁰.

Issue 2 - conclusion

54. Taking these factors into account, I consider that the release of the appeal site for the development of 220 dwellings (including 88 AH units) would be acceptable both in principle and, based on the criteria in policy CP2, in its earlier timing before the Local Plan trajectory dates. I therefore conclude in relation to the second issue that the proposed development would not conflict with or undermine the strategy of the Local Plan. This is in line with paragraph 12 of *the Framework* which states that proposed development that accords with an up-to-date Local Plan should be approved.

Issue 3 - Taking all the issues as a whole, can the proposal be considered to amount to sustainable development when assessed in the light of national planning policy?

55. In addressing this issue I deal with the environmental, social and economic strands of sustainable development, which are embedded in *the Framework*, and summarised in paragraph 7. Paragraph 186 also states that local planning authorities should approach decision-taking in a positive way to foster the delivery of sustainable development.

56. Several concerns were raised by third parties which I seek to address below.

(i) Environmental aspects

57. Concerns over flood risk were raised by the Environment Agency (EA) and several local residents. The EA’s objections to the scheme were withdrawn following the Appellants’ submission of additional technical information, including a Flood Risk Assessment, dated July 2014. The EA’s acceptance is subject to planning conditions which require the submission of a satisfactory surface water drainage scheme. Although I have read and note residents’ concerns, I have no reason to come to a different view than the EA.
58. In terms of visual impact, Natural England considers it unlikely that the proposal would significantly affect the Mendip Hills AONB, which is approximately 1.3 kilometres away. The proposed development would be seen from the Mendip Hills within the overall urban context of West Wells. The appeal site is situated on low-lying ground which is well screened by maturely landscaped boundaries. It also adjoins housing on its eastern and western edges and it is loosely surrounded by development in most directions. The

²⁸ Proof of Evidence of Anna Clark, Appendix H.

²⁹ Appellants’ Closing Submissions, paragraph 13 [Inquiry Document 26].

³⁰ Proof of Evidence of Anna Clark, Appendix H, Table H1 – 79 AH units delivered in Wells over the period 2006/07-2014/15, averaging less than 9 units pa.

proposed strategic allocation for 200 dwellings to the north of the site, i.e. closer to the AONB, would also strengthen the urban context of the site.

59. Moreover, the IR states that there is no noticeable visual connection between the appeal site and the historic core of the city³¹, which is one of the reasons why the land to the west of Wells is considered to have the greatest potential for development.
60. Concerns were expressed that the proposed development would destroy or significantly reduce the open, green gap between the city of Wells and the settlement of Haybridge. The amended plans show that the initial impact on this gap would be significantly less than in the original set of parameter plans which were submitted with the appeal application. On this basis I consider that the settlements would not coalesce following implementation of the scheme, and that the encroachment would not be apparent, subject to the reinforcement of the landscaping and section of proposed woodland which the Council would be able to impose at the reserved matters stage.
61. Clearly, the loss of several fields on the edge of Wells would have some adverse effect on the character and appearance of the landscape due to the fact that there would be a change from a rural to an urban use. This, however, needs to be placed in the context that the Local Plan Inspector considered that residential development was acceptable in principle; that any impact on the AONB would be minimal; and that the development would be well screened and contained in the local landscape and would not result in the coalescence of Wells and Haybridge.
62. I also note that although the proposed development would be located near to Wookey Hole and Ebbor Gorge, and Wookey Station Sites of Special Scientific Interest, there is no objection from Natural England, and I see no reason to take a different view. There are also no archaeological concerns which would justify refusal of the proposed development.

(ii) Social aspects

63. The relevant social aspects of the appeal are that the scheme would deliver a significant quantum of AH, including 80% for social rent, as well as market housing, which is also needed in Wells and new areas of public open space. In addition, it would provide enhanced opportunities for pedestrian and cycle movement, including increased connectivity to the rest of Wells, new publicly available routes in the open, green parts of the appeal site (currently private land) and a new pedestrian crossing of the A371.
64. Several objectors express concern that schools and health facilities are already under pressure, and improvements would not be made available in time. However, a new primary school forms part of the provision for the Northern Development Area, just to the north of the appeal site, and the local education authority has not sought a Section 106 contribution from the Appellants for education facilities. The NHS, which was consulted on the appeal application, did not respond. The appeal site, however, is located next to a leisure centre with a wide range of recreational and community facilities.
65. Concerns are also raised concerning the impact on the living conditions of both existing neighbouring residential occupiers and future occupiers of the

³¹ IR, paragraph 88.

proposed development, and in particular, the proximity of the appeal site to a proposed incinerator at Haybridge, to the north-west of the appeal site. I note that this plant was approved by the county council, as waste authority, on the understanding that it meets set air quality limits, in which case there would be no adverse effects to the living conditions of existing and future residents. Any concerns relating to living conditions such as privacy, loss of light and outlook could be addressed at the reserved matters stage.

66. On balance I give significant weight in support of the proposed development in relation the social role of sustainable development.

(iii) Economic aspects

67. The proposal would contribute to increasing the working age population, in accordance with policy CP10, which states: "*the overarching aim is to deliver new housing development to meet the needs of the workforce*". There would also be short-term construction employment and an indirect, positive effect on shops and other facilities and services in Wells, which the Appellants estimate to be in the order of £6 million additional spend in local shops³².

68. On balance I give moderate weight in support of the proposed development in relation to the economic role of sustainable development.

(iv) Sustainability of location

69. The appeal site is located on the edge of a relatively small settlement, with good pedestrian and cycleway links to the rest of the city and an adequate bus service. It has relatively convenient bus access to the main facilities in Wells, including employment, shops, schools and health centres.
70. In overall terms I consider that the proposed development is in a sustainable location.

Issue 3 - Conclusion

71. Taking account of the above considerations, I conclude that the moderate harm to the landscape caused by the loss of countryside on the edge of the city of Wells would be outweighed by the positive outcomes including the avoidance of coalescence between Wells and Haybridge, the delivery of much needed housing and especially AH, and the other social and economic considerations of sustainable development, some of which could be secured at the reserved matters stage. I further conclude that its inclusion as a FGA within an adopted Local Plan and its good accessibility to urban facilities and services, underline my view that the proposal would be sustainable development.

Issue 4 - With reference to paragraph 204 of the Framework, is the unilateral planning obligation submitted by the Appellants necessary to make the proposed development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development?

72. The Appellants have signed a unilateral deed of obligation (UDO) under Section 106 and submitted it to both Mendip District Council as the local planning authority and Somerset County Council as the local highway authority. There is an undisputed need for AH and in particular for an emphasis on the social rented sector, which the UDO would deliver.

³² Proof of Evidence of Jeffrey Richards, Table JRT3; February 2016.

73. The UDO would also deliver public open space, which will serve the needs of the surrounding community and not just the future occupiers of the scheme. The Travel Plan is necessary to promote sustainable modes of travel, and a new pedestrian crossing of the A371 provided for by the UDO is justified on highway safety grounds.
74. The Council also submitted a Community Infrastructure Levy (CIL) Compliance Statement³³ which explains the justification for each of the requirements, and how they will be implemented.
75. I am therefore satisfied that the proposed UDO meets the statutory requirements of Regulation 122 of the CIL Regulations and can be taken into account. All the provisions are acceptable in planning terms; they are directly related to the proposed development; and they are reasonably related in scale and kind to the proposed development. Moreover, there was complete agreement between the main parties on all aspects of the UDO.

Other considerations

76. There are many letters objecting to the proposal. Some of the points raised are referred to earlier and I will confine my comments here to other matters. Highway safety concerns relate to additional traffic on the highway network, the proposed vehicular access on the A371 and pedestrian safety.
77. The local highway authority considers that the location and design of the proposed access junction to serve the proposed development does not cause a highway concern. It states that the scheme would be acceptable in terms of highway and pedestrian safety, subject to the UDO. This would secure extended footway provision from the city along the A371; a pedestrian crossing over this road to link to existing bus stops near Charter Way; and a Travel Plan. From considering the local highway authority's comments and from my own observations, I have no reason to come to a different view from the local highway authority.
78. Although agricultural land would be lost to development, it is grade 3b and 4, which falls short of being classified as best and most versatile agricultural land. As such I do not consider that the proposed development conflicts with the policy thrust of paragraph 112 of *the Framework*. The existing gap between Wells and Haybridge would be narrowed but coalescence between the two settlements would not result. Neither would the unique character of the City of Wells be compromised by the proposed development.
79. The decision on this appeal will not act as a precedent for future development spreading into the countryside; each application for development will be determined by the Council in the normal way with reference to the Local Plan and relevant material considerations.
80. Other concerns were expressed, but none was sufficient to outweigh the reasons that have led me to allow the appeal.

Conditions

81. I have considered the list of planning conditions put forward by the Council and the Appellants in the SCG in the light of the discussion session at the Inquiry

³³ Mendip DC: CIL Compliance Statement – Land to the North of A371, West Wells [Inquiry Document 24].

and the requirements of paragraph 206 of *the Framework*. I have also considered a number of late conditions, again emerging from the discussion session. This has resulted in a few changes to the suggested wording of some of the conditions.

82. Conditions (1) to (3) are required by Section 92 of the Town and Country Planning Act 1990. Condition (4) is for the avoidance of doubt and in the interest of proper planning. Condition (5) is in the interests of amenity, sustainable development and the character and appearance of the area. Condition (6) limits the number of dwellings to that stated in the application, recognising that a greater number would require further assessment in relation to highway safety and other considerations. Conditions (7) – (10) are in the interests of safeguarding the character and appearance of the area. Conditions (11)-(16) are in the interests of minimising and mitigating disturbance to wildlife and protected species on and around the site.
83. Conditions (16) to (19) are in the interests of pedestrian and highway safety. Conditions (20) and (21) are to safeguard the living conditions of future occupiers of the development hereby permitted and to minimise flood risk. Condition (22) is in the interests of public health. Condition (23) is in the interests of highway safety. Condition (24) is in the interests of biodiversity. Condition (25) is to protect the living conditions of neighbouring residential occupiers in relation to impacts such as noise, disturbance and pollution.

Overall planning balance and conclusion

84. I conclude in relation to issue 1 that the Local Plan is still up-to-date in relation to its housing provision for Mendip and the effectiveness of its housing delivery. Based on the Local Plan provision of 420 dpa, the District has 5.23 years' housing supply. Linked to this conclusion, I consider that the Local Plan is not now so far out of line with the most recent demographic, social and economic evidence to be demonstrably out-of-date.
85. I conclude on issue 2 that the proposed development, within an FGA, is acceptable in principle. Its early release for development would accord with the criteria in Local Plan policy CP2, and I see no harm to the Local Plan strategy with the proposed development brought forward before the start date of 2025/26 onwards. Also, none of the other points of contention between the parties relating to compliance to the Local Plan, such as lack of a development brief, vehicular access on the A371, and the increased dwelling yield of 220 above the Local Plan figure of 100-150, would individually or cumulatively, demonstrate that the proposal would be contrary to the Local Plan.
86. Regarding issue 3, I conclude that the proposed development would not harm any of the three strands of sustainable development. Environmentally, loss of countryside on the fringe of Wells would result in visual harm; the site, however, is low lying and screened, and for these reasons it was selected for inclusion in the Local Plan as a FGA. The revised parameter plans show that the integrity of the gap between Wells and Haybridge would be safeguarded. Its visual impact on the AONB and surrounding areas would be minimal and it would also not impact on the historic core of the city.
87. Regarding the social aspects, the proposed development would enjoy relatively easy access to the city's facilities and services. Furthermore, the quantum and type of its AH provision is a substantial material consideration in favour of the

proposed development. Positive economic aspects include increased homes for workers, benefits to the local economy from increased patronage of shops and facilities, and short term employment gain in construction.

88. At the Inquiry, the main parties accepted the provisions in the UDO as necessary for the proper planning of the scheme, and I see no reason to take a different view.

89. The proposed development, therefore, subject to the UDO and the conditions set out in the Schedule, would accord with national planning policy and with the Local Plan, which I consider to be up-to-date following its recent Examination. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Mike Fox

INSPECTOR

Richborough Estates

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 begins 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 three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby approved shall be carried out in accordance with drawing numbers 13.878/001 Rev D (Site Location Plan) and P546/1 Rev C (Proposed Access).
- 5) Plans and particulars of the reserved matters referred to above shall include details of:
 - a) all hard and soft landscaping within the site (including boundary treatments) and a programme of implementation;
 - b) the surface treatment of any roadways and other parts of the site which will not be covered by buildings;
 - c) all external materials to be used in the development;
 - d) details of surface water drainage and foul sewerage to serve the site;
 - e) details of the energy and water measures to be incorporated into the layout, design, siting and drainage of the scheme;
 - f) existing and proposed ground floor levels;
 - g) the provision and location of public recreational open space; and
 - h) provision for the protection of retained and proposed trees and landscaping to accord with BS5837:2012.
- 6) No more than 220 dwellings shall be constructed on the site.
- 7) No external facing materials shall be constructed or installed in respect of the development hereby approved until a sample panel of all external walling materials has been erected on site and approved in writing by the local planning authority. It shall thereafter be kept on site for reference until the development is completed. The development hereby approved shall be carried out in accordance with the approved details and shall not be occupied until the external facing materials have been installed in accordance with the approved sample panel.
- 8) No works shall be undertaken on site until a scheme for strategic landscaping has been first submitted to and approved in writing by the local planning authority. Such a scheme shall include details of all trees, hedgerows and other planting which are to be retained; details of all finished ground levels; a planting specification to include positions, species and sizes of all new trees and the location of grassed areas and areas for shrub planting; and a programme of implementation. The

- strategic landscaping shall be carried out in accordance with the approved scheme.
- 9) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with a programme agreed in writing with the local planning authority. Any trees or plants indicated on the approved scheme which, within a period of five years from the date of planting, die, are removed or become seriously damaged or diseased, shall be replaced during the next planting season with other trees or plants of a species and size to be first approved in writing by the local planning authority. All hard landscaping works shall be permanently retained in accordance with the approved details.
 - 10) The development hereby approved shall include the creation or enhancement of 6.7 hectares of species-rich meadow and hedgerow within the application site. No development shall take place until details of the habitat have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details which shall include that habitat retention, creation and enhancement areas will be protected by temporary fencing during the construction phase.
 - 11) No development shall take place until a Wildlife Management Plan has been submitted to and approved in writing by the local planning authority. This shall include management of the whole site in perpetuity. Development shall be carried out in accordance with the approved details.
 - 12) No development shall take place until a Lighting Strategy for the site has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved Strategy. The Strategy shall include contours showing Lux levels (0 to 0.1 Lux) and shall incorporate the following measures.
 - (i) There will be no routine night-time working during the construction stage of the development.
 - (ii) Street lighting will be directed so as to avoid light spillage and pollution on habitats used by light sensitive bats. All bat corridors and feeding habitat shall not exceed 0.1 Lux. Shields will be installed where necessary to achieve the required light levels.
 - (iii) Lighting will be of the LED type which is highly directional.
 - (iv) Properties adjacent to the bat corridor and feeding habitat area shall have their boundaries fixed with a 1.8m high close boarded fencing.
 - 13) No work shall be carried out in the bird nesting season, between 1 March and 31 August in any calendar year unless a survey of nesting birds and recommendations for mitigating any impact have been carried out and submitted to and approved in writing by the local planning authority prior to the works being carried out. Development shall be carried out in accordance with the approved recommendations.
 - 14) No development shall take place until a survey of badger setts on the site and recommendations for mitigating any impact on badger setts found

- have been submitted to and approved in writing by the local planning authority prior to the works being carried out. Development shall be carried out in accordance with the approved recommendations.
- 15) No development shall take place until a survey of areas where reptiles are potentially present on the site and recommendations for mitigating any impact on reptiles found have been carried out and submitted to and approved in writing by the local planning authority prior to the works being carried out. Development shall be carried out in accordance with the approved recommendations.
 - 16) No part of the development hereby permitted shall be occupied or brought into use until a footway along the entire site frontage as detailed in Drawing Number P546/1 Rev C (Proposed Access) is constructed in accordance with a design and specification to be approved in writing by the local planning authority and to be fully implemented in accordance with the approved details unless otherwise approved in writing with the local planning authority.
 - 17) Any vehicular access to the development hereby approved from Wheeler Grove shall not be implemented until a scheme for the access has been submitted to and approved in writing by the local planning authority. Such an access, which shall be for emergency use only, shall be implemented in accordance with the approved scheme.
 - 18) The proposed internal layout, including footpaths and turning spaces where applicable, shall be constructed in such a manner as to ensure that before each dwelling is occupied, it shall be served by a properly consolidated and surfaced footpath and carriageway to at least base course level between the dwelling and existing highway.
 - 19) No dwelling shall be occupied until the associated car parking in accordance with Somerset County Council's Parking Strategy and a properly consolidated and surfaced turning space for vehicles has been provided and constructed to serve that dwelling in accordance with details which shall have been submitted to and approved in writing by the local planning authority. Such parking and turning spaces shall be kept clear of obstruction at all times and shall not be used other than for the parking and turning of vehicles in connection with the development hereby permitted.
 - 20) The first reserved matters application submitted pursuant to Condition (5) shall be accompanied by details of the surface water drainage scheme for the whole development hereby approved, incorporating sustainable drainage principles and a management and maintenance plan (to include culvert maintenance). All subsequent reserved matters submitted pursuant to Condition (5) shall incorporate the approved surface water drainage scheme and the development shall be carried out only in accordance with the approved surface water drainage scheme. The details shall be based on the Callidus Flood Risk Assessment.
 - 21) The development hereby approved shall only be carried out in accordance with the Flood Risk Assessment (FRA) dated July 2014 and the addendum, including the mitigation measure identified within the submitted FRA. The mitigation measures shall be fully implemented prior to occupation of any dwellings and subsequently provided in accordance

- with the approved FRA. No development shall take place within Flood Zones 2 and 3.
- 22) Development shall not begin until a scheme to deal with contamination of the site has been submitted to and approved in writing by the local planning authority and implemented in accordance with the agreed scheme. The scheme shall include an investigation and assessment to identify the extent of contamination and the measures to be taken to avoid risk to the environment and/or public safety when the site is developed.
- 23) There shall be no obstruction to visibility greater than 900 millimetres above the adjoining road level within the visibility splay shown in Drawing Number P546/1 Rev C. The access to the development hereby approved shall not be brought into use until such visibility is available, and shall thereafter be permanently maintained.
- 24) No development shall take place until details of artificial bird nest boxes and artificial bat roost boxes, their locations and timescales for installation have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 25) Construction, including any demolition and groundworks, of the development hereby approved shall not commence until a Construction Management Plan and Method Statement has been submitted to and approved in writing by the local planning authority. The Plan shall include construction; vehicle movements; construction operation hours; expected number of construction vehicles per day and car parking for contractors; specific measures to be adopted to mitigate construction impacts in pursuance of the Environmental Code of Construction Practice, including working methods to be employed on site during construction to minimise emissions of dust, fumes, light, mud or dust on roads, noise and vibration; and a scheme to encourage the use of public transport amongst contractors. The development shall be carried out strictly in accordance with the approved Construction Management Plan and Method Statement.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Hashi Mohamed of Counsel	Instructed by Mendip District Council.
He called:	Mr Justin Gardner, GJ Consulting.
	Mrs Anna Clark, Principal Economic Growth Planner, Mendip District Council.

FOR THE APPELLANT:

Mr Christopher Young of Counsel	Instructed by Turley , on behalf of Persimmon Homes and Taylor Wimpey Ltd.
He called:	Mr James Donagh, Director, Barton Willmore.
	Mr David Parker, Chairman, Pioneer Property Services Ltd.
	Mr Jeffrey Richards, Director, Turley.

INTERESTED PERSONS:

Mr Neville Harvey	Local Resident.
Mr Martin Evans	Solicitor, Mendip District Council.
Mr Christopher Chorlton	Solicitor, Clarke Willmott, representing the Appellants.

DOCUMENTS

- 1 Draft Unilateral Deed of Obligation from Persimmon Homes Ltd and Taylor Wimpey Ltd to Mendip District Council and Somerset County Council.
- 2 Opening Statement on behalf of the Appellants, 8 March 2016.
- 3 Table: Job Growth in Mendip.
- 4 Council's Opening Remarks, 5 March 2016.
- 5 Photographs and Plans of 25A Wheeler Grove, Wells, submitted by Mr Neville Harvey.
- 6 Comparison between Experian and OBR Participation Rate Projections, February 2016.
- 7 Record of Attendance, Day 1.
- 8 JGC market signals in reports, 8 March 2016.
- 9 Map of Green Belt and AONB in Mendip DC and surrounding Districts, March 2015.
- 10 Report for Mendip District Council: Review of Housing Requirements; November 2013, submitted by the Council.
- 11 Record of Attendance, Day 2.
- 12 Report for Seddon Homes: Assessing Housing requirements in Cheshire East; December 2013.
- 13 Homefinder Somerset; the facts about getting social housing in Mendip; January 2016.
- 14 Extract from the Housing Register for Wells; 8 March 2016.
- 15 Erratum of Proof of Evidence of Jeffrey Richards; 8 March 2016.
- 16 Extract from Mendip District Local Plan Main Modifications Appellants.
- 17 Extract from Mendip Local Plan Annual Monitoring Report; December 2012.

- 18 Extract from Mendip District Council Local Development Scheme;
18 November 2013.
- 19 Record of Attendance, Day 3.
- 20 Appeal Decision: APP/C3240/W/15/3010085; Land off Muxton
Lane, Muxton, Telford, TF2 8G; 10 March 2016.
- 21 Appeal decision: APP/V0728/W/15/3018546; Longbank Farm,
Ormesby, Middlesbrough, TS7 9EF.
- 22 Record of Attendance, Day 4.
- 23 Draft Unilateral Deed of Obligation.
- 24 Mendip District Council CIL Compliance Statement.
- 25 The Council's Closing Remarks, 15 March 2016.
- 26 Closing Submissions on behalf of the Appellants, 15 March 2016.
- 27 Signed and dated Unilateral Deed of Obligation, 15 March 2016.
- 28 Record of Attendance, Day 5.
- 29 The Council's Response to Mr Donagh's Comments on 'Muxton',
16 March 2016.
- 30 The Council's Response to the Appellants' Costs Submissions, 16
March 2016.
- 31 Appellants' Application for Costs, 14 March 2016.
- 32 Appellants' Reply to the Council's Response to the Appellants'
Application for Costs, 22 March 2016.
- 33 Suggested additional conditions, 16 March 2016.

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