
Appeal Decision

Inquiry commenced on 21 June 2016

Site visit made on 21 June 2016

by Karen L Ridge LLB (Hons) MTPL Solicitor

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

Decision date: 10 October 2016

Appeal Ref: APP/Y3940/W/15/3132915

Land to the west of A365 Shurnhold, Melksham, Wiltshire

- 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 Limited and Mr Nicholas Keen against the decision of Wiltshire Council.
 - The application Ref. 14/11919/OUT, dated 15 December 2014, was refused by notice dated 15 July 2015.
 - The development proposed is described as '*outline application with all matters reserved except for access, for demolition of existing structures and construction of up to 263 dwellings with access, open space, landscaping and associated works*'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Inquiry opened on 21 June 2016 and the Council made an application for a one week adjournment. An accompanied site visit took place on the opening day and a roundtable session on housing land supply matters took place the following day. The Inquiry therefore sat for 8 days on 21 and 22 June, 28 June to 1 July and 5 and 6 July 2016. I carried out further unaccompanied site visits whilst the Inquiry was ongoing.
3. The planning application which led to this appeal was made in outline form with all matters reserved for future consideration, with the exception of access. The proposed access¹ for vehicles and pedestrians would be via two new access points taken from Shurnhold, with a further single access for emergency purposes only. I shall consider these arrangements as part of my determination. Apart from the site location plan, all other plans are to be treated as illustrative only.
4. A neighbouring landowner, Mr T Guley, raised specific objections in relation to drainage matters. Mr Guley successfully applied for rule 6 party status and submitted a proof of evidence from his own drainage expert. Prior to the opening of the Inquiry Mr Guley's representative confirmed that he did not wish to appear at the Inquiry. I confirmed that I would treat the submitted proof of

¹ As depicted on drawing reference C14375-001-D.

evidence as a written representation and that I would have regard to it in my determination.

5. A general statement of common ground (SCG1) has been agreed between the Council and Appellant. A separate statement of common ground in relation to five year housing land supply issues (SCG2) has also been submitted.
6. A unilateral undertaking (UU) made pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) has been submitted. The agreement secures the payment of financial contributions towards public rights of way, travel monitoring, education, cemetery, cycle lane and highways as well as the on-site provision of affordable housing, public open space and a play area.
7. Before the close of the Inquiry I agreed to allow the Appellant a further period of time to submit the executed UU. This executed agreement was received before the imposed deadline. Following submission of this document the Appellant noted some minor drafting errors and requested the opportunity to submit a supplemental deed of variation. Given the minor and uncontroversial nature of the revisions I agreed to this request. The supplemental deed of variation has now been received and will be considered alongside the UU.

Main Issues

8. Having regard to all that I have heard and read, I consider that the main issues are as follows:
 - whether the proposed housing would be in an acceptable location having regard to development plan and national policies;
 - the effect of the proposed development on the character and appearance of the surrounding area and on the setting of heritage assets;
 - the effect of the proposal on flood risk outside the appeal site; and
 - whether or not the proposal makes adequate provision for educational requirements.
9. In addition there are a series of other material considerations to be taken into account, some of which include the extent of any shortfall in the Council's 5 year housing land supply (5 YHLS) and the loss of best and most versatile agricultural land.

Reasons

The development plan

10. Section 70(2) of the Town and Country Planning Act 1990 provides that, in dealing with proposals for planning permission, regard must be had to the provisions of the development plan, so far as material to the application, and to any other material considerations. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that if regard is to be had to the development plan for any determination then that determination must be made in accordance with the plan unless material considerations indicate otherwise.

11. For the purposes of this appeal the most relevant development plan policies are contained within the Wiltshire Core Strategy (CS), adopted in January 2015. It sets out the strategic planning objectives across the newly formed unitary authority area of Wiltshire for the period 2006 to 2026.
12. In terms of emerging policy, the Wiltshire Site Allocations Development Plan Document (the Site Allocations DPD) is currently being prepared and will allocate future housing sites. In addition a steering group has been formed to prepare a neighbourhood plan for the Melksham Town and Melksham Without parish.

The location of development

13. The appeal site comprises approximately 9.4 hectares of predominantly agricultural land, with some hard-standing and warehousing. It is located adjacent to the A365 road, which is known as Shurnhold, and it lies to the west of the market town of Melksham.
14. CS core policy 1 (CP1) sets out the settlement strategy for Wiltshire, identifying four tiers of settlements. It confirms that the settlement boundaries for market towns, as defined by the plans of the former district councils, will be carried forward and retained. The intention is for the settlement boundaries to be reviewed as part of the Site Allocations DPDs² or through a neighbourhood plan. As a market town, Melksham is a second tier settlement identified as having the potential for significant development. It is common ground that the appeal site is outside development limits and should be regarded as being within the open countryside in development plan terms.³
15. CS core policy 2 sets out a delivery strategy which seeks at least 42,000 homes in Wiltshire between 2006 and 2026. CP2 goes on to explain that outside the defined limits of development, only development falling within the exception policies will be permitted. The appeal proposal does not fall within any of the policies listed at paragraph 4.25. It follows therefore that the development is contrary to CP2.
16. CS core policy 15 is the spatial strategy for the Melksham Community Area and provides that development within this area should be in accordance with core policy 1 above. CP15 requires the provision of 2,370 new homes over the plan period, of which about 2,240 should occur at Melksham. The Council contend that when all of the recent resolutions to grant planning permission are taken into account the Council has now exceeded this figure⁴. Consequently it points out that allowing a further 263 dwellings on the site would result in the provision envisaged by the CS being considerably exceeded. To this extent I agree that allowing the appeal could cause some prejudice to the plan-led process within the Melksham Community Area even though it would not prejudice the broad spatial strategy of the adopted CS.
17. 'The Community Action: Whitely and Shaw' Group objected to the proposal on a number of grounds. One of the grounds relates to concerns about the impact on the preparation of the Melksham Neighbourhood Plan (MNP). The action group is concerned that allowing a large housing development on the appeal

² Being the aforementioned Wiltshire Housing Site Allocations DPD and the Chippenham Site Allocations DPD.

³ SCG1.

⁴ Ruairidh O'Donoghue Proof of evidence §2.32

site would undermine the efforts of those preparing the neighbourhood plan and the plan's emerging objectives.

18. It is clear that there is active community involvement in the preparation of the MNP; a housing working group has been set up and assessments have been undertaken in relation to the suitability of some 63 SHLAA⁵ sites. Local residents are well-organised and committed to the preparation of a plan.
19. A draft document setting out the MNP's strategic vision was put before the Inquiry and it sets out various principles in relation to development in the Shurnholds/Roundponds area. However this document is only in draft form and it is a precursor to the actual draft MNP which has not yet been produced. Whilst it may well feed into the draft MNP, it could be subject to change. The draft MNP is not ready and it, too, would have to undergo a process of consultation and examination before finally being made. In short, there is no draft neighbourhood plan before me against which the proposal can be tested and the draft strategic vision document is merely part of the evidence base underpinning the development of the proposed MNP.
20. Mr Ashkowski contends that if the preparatory work to the MNP is disregarded this will dent public confidence in the neighbourhood plan. I disagree. A neighbourhood plan is an important tool in spatial planning and, like all other development plans, it attracts weight as it progresses through the process. Paragraph 216 of the Framework advises that weight may be given to an emerging plan from the day of publication. At this moment in time a draft MNP has not been published and no material weight can be attached to what is essentially an emerging evidence base to the plan.

The Five Year Housing Land Supply

21. The National Planning Policy Framework (the Framework) is a material consideration of significant weight. It seeks to boost significantly the supply of housing and requires local authorities to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing (the 5YHLS). Paragraph 49 confirms that housing applications should be considered in the context of the presumption in favour of sustainable development. The Council concedes that it does not currently have a 5YHLS which means that relevant policies for the supply of housing will not be considered up-to-date.
22. The extent of the shortfall in the 5YHLS is in dispute. The parties are agreed that the relevant five year assessment period should be from 1 April 2015 to 31 March 2020 given that the latest available annual monitoring data is that from 2015. The CS Inspector concluded that the objectively assessed housing need for the administrative area was in the region of 44,000 homes. The CS divides the administrative district into three housing market areas. The appeal site is located within the North and West Housing Market Area (NWHMA) which has a minimum housing requirement of 24,740 new dwellings.
23. It is agreed that any assessment should relate to the NWHMA and that the CS housing requirements are the appropriate starting point. During the period 2006 to 2015 there has been a shortfall of some 312 dwellings against the total requirement in that period for 11,133 dwellings in this HMA.

⁵ Strategic Housing Land Availability Assessment.

24. The disputes in relation to HLS matters centre upon four main areas; a dispute about the treatment of committed sites in Wiltshire (The Swindon Allowance); a question as to whether a 5% or 20% buffer should be applied; a dispute as to the approach to be used in the distribution of the existing shortfall (Liverpool or Sedgefield) and finally there are a series of disputes about the deliverability of individual sites.

The Swindon Allowance

25. The 'Swindon Allowance' refers to the treatment of two large housing schemes totalling 900 homes which were allowed on appeal. Whilst these sites are within the administrative boundary of Wiltshire, their location makes it more likely that they will meet Swindon's housing needs. The CS examining Inspector considered either modifying the CS to specifically exclude the 900 homes from contributing towards the identified housing requirement or raising the minimum requirement above 42,000. For various reasons he concluded that neither approach should be taken and that these homes should not be assessed against the housing requirements for the Wiltshire HMAs.
26. The Appellant contends that, given the slippage in the preparation of a SHMA⁶, an early review of the CS is now delayed and some alteration should be made to the baseline housing requirement to take account of the Swindon Allowance. I note that the CS housing requirement figures were based on the ONS 2008 household projections and that the more recent 2014 household projections forecast a reduced need figure for Wiltshire.
27. The housing requirement figures in the CS were scrutinised and fully tested via the CS examination process. The CS is a relatively recently adopted document and in accordance with Planning Practice Guidance⁷ (PPG) considerable weight should be given to its housing requirement figures unless significant new evidence comes to light.
28. The Council jointly commissioned a SHMA in July 2015 to form the evidence base to an early review of the CS. The results from this exercise are expected in September or October 2016 which is a few months later than expected. The Council explained that the slippage was due to the later adoption of the CS. Once the SHMA is received decisions will be taken about the timetable for early review and options, such as a joint plan with Swindon, will need to be considered. This process is likely to be similar to that which would have been in the contemplation of the CS Inspector when he made reference to an early review of the CS in his report.
29. The CS Inspector rejected the notion of making adjustments in light of the situation regarding these West of Swindon sites, recognising that additional sites would have to be identified. He did so for a number of reasons, only one of which was the indication of an early review. He also recognised that over 200 of the west of Swindon homes would be delivered later in the plan period (post 2019/20) and that a small proportion of these homes would '*likely and practically contribute to the Wiltshire housing requirement*' and therefore that any necessary additional provision would be proportionately small. There is nothing to suggest these other reasons do not remain equally valid today. Whilst there has been some slippage in the preparation of the evidence base

⁶ Strategic Housing Market Assessment.

⁷ Paragraph 030

for a review, there is nothing to call into question the Council's commitment to an early review of the CS.

30. Having regard to the above I conclude that there is no significant new evidence to justify any adjustment to the use of the CS housing requirement as a baseline in my 5 YHLS assessment. I note that my findings in relation to this matter are broadly consistent with those of my colleague Inspectors in other appeals.⁸

The Appropriate Buffer

31. Paragraph 47 of the Framework sets out a requirement to identify and annually update a 5 YHLS with an additional allowance of 5% to enable choice and competition. In circumstances where there has been a record of persistent under delivery of housing the buffer should be increased to 20%. The PPG provides advice on the approach to identifying 'persistent under delivery' and acknowledges that the factors will be different in each case and there can be no standard test applicable.
32. The parties disagree as to the appropriate method of examining past performance. Both have used the same period of assessment, namely 2006 to date, which constitutes the longer term view advised by PPG and which would render any assessment sufficiently robust.
33. There are a number of different ways of analysing the annual housing delivery figures. On behalf of the Council, Mr Henderson's analysis looks at the rate of completions against the annualised requirements being applied by the Council at the time. His main assessment looks at figures against the adopted Structure Plan (SP) requirements which were in force in the 5 years up to 2010/11. Thereafter Mr Henderson has checked completions against the requirements in the emerging CS in the two years 2011/12 and 2012/13. In 2014 an uplift of 5000 homes was applied to the emerging CS housing requirement for the whole of Wiltshire and at that time the Council began to utilise this new figure as its annualised housing requirement figure. Therefore the Council measures completions against the (higher) adopted CS requirements in 2013/14 and 2014/15.
34. Ms Mulliner on behalf of the Appellant had analysed the data against the final adopted CS annual housing requirement for the NWHMA from 2006.⁹ A second analysis¹⁰ has been done against the SP requirements for the first 3 assessment years and then the adopted CS requirements for the years from 2009/10.
35. The later adopted CS housing requirement figures have increased over and above both the SP requirements and the figures in the early version of the CS. In these circumstances application of the adopted CS annual housing requirement retrospectively to the early years of the development plan may not represent the best method of evaluation. If delivery is being measured on an annualised basis as a means of assessing the Council's ability to meet its target then it may be more appropriate to measure that performance against the most appropriate target known at the time.

⁸ Land at Westbury Road, Great Cheverell, Wiltshire (reference APP/Y3940/A/14/2218437) and Land North of Bath Road, Corsham, Wiltshire SN13 0QL (reference APP/Y3940/A/14/2222641).

⁹ Table 6.3 Ms Mulliner, proof of evidence.

¹⁰ Table 6.3a Ms Mulliner, supplemental evidence.

36. Ms Mulliner points out that in October 2009 the Council postulated a requirement for 44,000 dwellings across Wiltshire and therefore it was evident at this stage that requirements were to be increased significantly. However this was in the early stages of plan preparation and until 2014 the housing requirement figure in the emerging CS was 37,000. In the monitoring years 2009/10 and 2010/11, even if there had been assessment of completions against the 37,000 figure it would have led to the same result as the assessment against the SP requirements.
37. Mr Henderson's table¹¹ demonstrates that, on his analysis, the average annualised requirement was met in four of the nine years assessed. This is not significantly different from the first assessment of Ms Mulliner which assessed the requirement as met in three of the nine years assessed.
38. To complete the picture it is also useful to examine the proportion of the housing requirement met for the period to date. It is easy to appreciate the benefits of this approach when one considers that it would be statistically possible for the total housing requirement over a 9 year period to be met, in circumstances where there had been a small shortfall against the annualised requirement in 8 of the 9 years but a large over-delivery in one of the years.
39. Using the adopted CS figures throughout the 9 year assessment period the Council calculates that some 97% of the total CS requirement has been delivered in the period to date. In other words the total requirement was for 11,133 dwellings to be delivered in 9 years and some 10,821 completions have taken place. This indicates a backlog of some 312 dwellings. The 312 dwellings represent a quarter of one year's annualised requirement or 3% of the total plan period requirement. Of course, this particular analysis involves a retrospective application of the higher, adopted CS figure across the 9 year period. If the figures in the SP are applied across the 9 year period, then 107% delivery against the SP requirement is achieved and similarly the figure of 112% completions is achieved against the earlier CS requirements.
40. Finally the findings of the CS Inspector are also material. He examined the issue of the Council's delivery record as it was known at 2013/14. He looked at completions measured against extant development plan requirements and at the CS plan requirements and concluded that there was not a record of persistent under-delivery. I have one additional year of data before me, in addition to the same 8 years of data which were before the CS Inspector. The data indicates an under-delivery of some 98 dwellings against the annualised requirement for the NWHMA of 1237. At the same time I note that in the previous monitoring year (2013/14) some 270 dwellings over and above the annualised requirement were completed.
41. When all of the information is looked at in the round, I conclude that the figures do not indicate a persistent under delivery but instead evidence the peaks and troughs to be expected in housing delivery. Since the CS Inspector's observations there has been one additional year of under-delivery and there must come a point at which such under-delivery starts to be viewed as persistent. I do not consider that that point has yet been reached.

¹¹ Table 1 of proof of evidence.

42. For these reasons I conclude that a buffer of 5% should be applied. In coming to this view I have had regard to the High Court decision¹² and various appeal decisions which have been brought to my attention. As these decisions demonstrate the judgment as to whether or not there has been a persistent under-delivery falls to be determined on the particular facts of each case having regard to the information available. Finally I note that the parties are agreed that the buffer should be applied to the outstanding requirement and the backlog of 312 dwellings.

Liverpool v Sedgfield

43. The generally accepted starting point is that any past undersupply should ideally be redistributed over the next immediate 5 years of the plan period (the Sedgfield method) as opposed to over the remainder of the plan period (the Liverpool method). The Sedgfield approach is generally considered preferable because it aims for a shorter period to remediate the backlog. However, advice in the PPG does not rule out the Liverpool approach, advocating that Local planning authorities should 'aim to deal with any undersupply within the first five years *where possible*'.¹³ [my emphasis] The following sentence in the PPG refers to the duty to co-operate which infers a plan making approach to the undersupply. Mr Justice Lindblom in the Bloor Homes case¹⁴ confirmed that there was not prescribed method. This is borne out by the different approaches in the various appeal and Secretary of State decisions which have been brought to my attention.
44. Delivery of housing in the NWHMA is dependent upon a number of Strategic Allocations which the Council anticipates will be delivered beyond the next five year time period. The CS Inspector accepted the redistribution of the shortfall over the remaining plan period on the basis that it was relatively small and there would be an early review of the CS. He preferred the measured delivery of housing over the plan period as opposed to 'undue frontloading'....'
45. In light of national guidance and having regard to all of the circumstances I see no reason, at this point in time, to depart from the CS Inspector's acceptance of the Liverpool approach. I have concluded that there should not be an allowance for the Swindon sites, that a 5% buffer remains appropriate and that the Liverpool method is still acceptable. Bringing all of the above findings together, the total 5 year housing land requirement is some 6822 homes across the NWHMA. I now turn to consider the available supply.

Supply

46. The Council's latest housing land supply statement included proposed allocations identified in the emerging Chippenham Site Allocations Plan. The suspension of the examination into this emerging plan caused the Council to remove the Chippenham allocations from the supply projections. The direct consequence of this was an acknowledgment by the Council of the lack of a 5 YHLS. The reduction in provision on the West Warminster Strategic Allocation has also resulted in the loss of a further 85 dwellings from the supply.

¹² Cotswold District Council v SSCG and Fay and Son [2013] EWHC 3719 (Admin)

¹³ Paragraph: 035 Reference ID: 3-035-20140306

¹⁴ Bloor Homes & Hinckley and Bosworth [2014] EWHC 754 (Admin)

47. To be considered deliverable, sites 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. Sites with planning permission should be considered deliverable until permission expires unless there is clear evidence that schemes will not be implemented within five years.¹⁵ Robust, up to date evidence is required to support the deliverability of sites and constraints such as the provision of infrastructure will also have to be considered. The size of sites and their respective build out rates, as well as the time needed to commence development, will also be important factors in assessing the deliverability of sites.¹⁶
48. The Council has taken a prudent approach to the sites included in the 5 year supply chain. Only 45% of the identified sites within the NWHMA are considered deliverable within the 5 year period. Lead-in times for the commencement of development following the grant of planning permission and completion rates are broadly agreed between the parties. Disputes in relation to the final supply figures relate to the rates of delivery on 6 allocated sites¹⁷ and on the treatment of windfalls. I examine these matters below.
49. West of Warminster: the HLS position statement anticipated 90 dwellings being completed on this site in 2017/18 and delivery increasing to 125 and 140 dwellings in the following 2 years. This is a strategic allocation for a mixed use development including up to 900 dwellings. A masterplan was endorsed by the Council's Strategic Planning Committee in June of this year. The Council has revised its trajectory estimates downwards in line with the indicative delivery trajectory appended to the masterplan.
50. Two applications are before the Council and are yet to be determined. A section 106 agreement will need to be agreed and executed and pre-commencement conditions discharged. The Council anticipates completions on site in the 2017/18 monitoring year from the Redrow Homes site but this application has been revised and received objections from a number of sources which call into question delivery in the 2017/18 year. I therefore accept the Appellant's trajectory in relation to this site and remove 60 houses from the supply.
51. Hunters Moon: This is a large mixed use site capable of providing up to 450 dwellings. A resolution to grant planning permission subject to the completion of a section 106 agreement was made in January 2014. The planning agent's response¹⁸ to the Council's annual review in July 2015 indicated that minor alterations were to be submitted to the Council 'shortly'. At that time the agent indicated that a viability exercise was underway.
52. The applicant has indicated¹⁹ that revised plans would be submitted 'imminently' but the section 106 still needs to be progressed. There appears to have been little progress in relation to this matter in the last 12 months. The lack of progress since the reference to a viability exercise and the higher rate of levy which the site would attract as a non-allocated site, as well as the lack of progress on the agreement, cast some doubt as to whether or not the site

¹⁵ Footnote 11 of §47.

¹⁶ PPG Reference ID: 3-031-20140306.

¹⁷ SCG on HLS. Table 3 identified 7 disputed sites but at the Inquiry agreement was reached regarding the SE Trowbridge (Ashton Park) site.

¹⁸ Ms Mulliner's appendix B3

¹⁹ Inquiry document 23.

will come forward. If it does come forward then due to the significant delays already and the work still to be done, I conclude that the site is unlikely to produce completions before the end of the monitoring year 2019/20 and 240 dwellings should be deducted from the supply.

53. Westbury North Junction: has the benefit of a planning permission for 102 houses and apartments dated 1 October 2013. The permission is due to expire on 1 October 2016 and the Appellant points out that it appears a number of pre-commencement conditions have yet to be satisfied. Persimmon Homes were due to develop the site but pulled out. It has been marketed since and there appears to have been some interest from house-builders who appear likely to wish to submit a revised, lower density scheme.
54. Whilst the site has planning permission, the original developers are not going to proceed and a different scheme is likely to be forthcoming. As such I consider that there is clear evidence that the current planning permission is unlikely to proceed and this scheme will not deliver housing within the 5 year period. However the site is being offered for sale and as such it is available. As a saved LP allocation it is suitable and there are no indications that housing is not achievable. It appears that another scheme may come forward at a lower density.
55. The trajectory in the monitoring statement assumed that 40 houses would be delivered in 2016/17 with the same amount the following year and a final tranche of 22 homes in 2018/19. For all of the above reasons I agree with the Appellant's suggestion that the trajectory should be pushed back by 2 years which would result in delivery of 40 homes in each of the last two years up to 2019/20. The housing supply figures should be reduced by 22 as a consequence.
56. Backbridge Farm: is a greenfield site allocated for 170 homes in the Malmesbury Neighbourhood Plan. Allocation of the site was at the heart of the plan and appears to have been examined thoroughly during the process. Matters such as access, including pedestrian and cycle access, were also looked at with potential access points and a new pedestrian bridge considered. The Appellant suggested that land ownership issues may cause a problem and that a planning application had not yet been submitted but the site is green field which is generally less problematic to develop and a more attractive proposition to developers.
57. I am satisfied that the site is available and offers a suitable location for development. The Council's trajectory estimates the delivery of 120 houses within the 5 year period being examined. On the evidence before me I am satisfied that there is a realistic prospect of this level of completions.
58. Foundry Lane: is a large brownfield site allocated for a mixed use, including up to 400 homes as well as a hotel, discount foodstore and commercial floorspace. A planning application for the first phase has been submitted. There is no substantive evidence to cause me to question that the site will not come forward. However development of the site appears to be relatively complicated due to a variety of factors. Current users will need to be re-accommodated²⁰, there are leasehold titles in different ownerships making up part of the site, a holding response has been received from Highways England requesting that the

²⁰ Although I note there is no suggestion that they do not support the application.

application is not determined for 3 months to enable works to the M4 junction to be considered. The education consultation response indicates further educational provision is needed.

59. Having regard to all of the above matters I consider that the Council's is too optimistic and delivery expectations should be moved back by twelve months in recognition of the site's complexities. This would remove 50 dwellings from the supply.
60. Burton Hill: is allocated in the Malmesbury Neighbourhood Plan for 50 houses. The site is in single ownership and is a greenfield site which makes it much easier to develop. I conclude that there is a realistic prospect of a planning application being submitted and determined and 50 units being completed on site before the end of the 5 year period ending 2019/20.

Windfalls

61. Both parties are agreed that, in principle, it is appropriate to make an allowance for windfalls contributing to the available supply figure. The Council's latest HLS Statement confirms that a windfall allowance for 2015-20 in the NWHMA is 939²¹ units based on historic delivery. The CS Inspector looked at three alternative methods for calculating windfalls set out in the 2014 HLS Statement and concluded that the Council's approach was conservative and the evidence was that the likely rate of delivery on such sites would be greater.
62. The Council had previously had two component parts to its windfall allowance. The use of historic data on small sites with a delivery rate applied remains unchanged. The approach to calculating windfalls from large sites has changed to the same method as that for small sites. The Council has previously calculated anticipated windfalls from large sites by looking at previously developed sites within settlement boundaries and in single ownership within the SHLAA. However this was felt to significantly underestimate potential future supply when compared against actual historic permissions.
63. The use of historic delivery rates broadly accords with advice in the Framework²² and appears reasonable given the evidence that such windfall sites have consistently come forward. The figure for units on forecast windfall sites from all sites for five years is calculated by applying a standard delivery rate and represents a realistic approach to forecasting likely completions.
64. The current method used was one of the three options considered by the CS Inspector to have some credibility. In the 2014 HLS Statement this method resulted in the largest allowance. The change in methodology results in a move away from the methodology before the CS Inspector but I am satisfied that it is sufficiently robust to enable reliance to be placed upon the 939 figure for the NWHMA. In coming to this view I further note that the windfall allowance is based purely on brownfield sites only and that the parties agree that green field permissions make a substantial contribution to windfall development in Wiltshire. This approach results in a more conservative estimate of future windfalls.

²¹ Table A5

²² §48

65. I am also satisfied that windfalls and small sites are not double counted on the basis that the position statement is a snapshot of the supply position at a fixed moment in time. It takes account of planning permissions granted on small sites whereas the windfall allowance is essentially an estimation of the permissions likely to be granted in the future based on historic data.

Conclusions on 5 YHLS issues

66. I have concluded that the requirement is for some 6822 homes within the relevant 5 year period. The figure is of course not a maximum or ceiling. In terms of supply I have examined the expected completions from the disputed sites and concluded that a figure of some 372²³ houses should be removed from the available supply but that the windfall allowance should remain unchanged. Deducting 372 from the Council's supply figure of 6022 takes the supply figure down to 5650. On this basis I would estimate that the Council has in the region of a 4.25²⁴ years supply of housing land.
67. For sensible reasons the parties agreed that the period of assessment should run from 1 April 2015 to 31 March 2020 given that the latest available annual monitoring data is that from 2015. I have made a finding of a 4.25 year supply based on that period of assessment. However this finding should also be viewed in the light of more recent evidence about the Council's performance and in particular the evidence of recent planning permissions of 700 units which have been granted in the Melksham area. Those permissions are likely to make a substantial contribution both to the current monitoring year's annualised requirement and the overall supply.
68. Given the lack of a 5 YHLS, relevant policies for the supply of housing should not be considered up-to-date. It is common ground that policies CP1, CP2 and CP15 are policies for the supply of housing. The judgment in Suffolk Coastal²⁵ places a broad interpretation on the type of policies which may be included and the concept extends to various policies intended to protect the local environment in one way or another by preventing or limiting development. Having regard to this judgment I am satisfied that policies CP 51 and CP58, concerned with heritage and landscape matters, are also policies for the supply of housing.

Effect on heritage assets and upon the character and appearance of the landscape

Introduction

69. The site extends to around 9.4 hectares and comprises four adjoining fields with some hardstanding and warehousing accommodation. For the most part the site fronts onto the A365, wrapping around a small complex of converted farm buildings operating as Shurnhold Farm Business Park. Shurnhold Farm House is a grade II listed building located adjacent to the road and between the business park and the appeal site on the road frontage. On the opposite side of the road is a wider residential area, comprising modern housing set behind older dwellings along the Shurnhold road frontage. A new housing development is under construction on the former George Ward school site

²³ Deductions as follows: West of Warminster site 60 units, Hunters Moon 240 units, Westbury North Junction 22 units, Foundry Lane 50 units.

²⁴ Requirement of 6822 over 5 years = 1328.6 pa. 5650 divided by 1328.6= 4.25 year supply.

²⁵ Suffolk Coastal & Richborough Estates [2016] EWCA Civ 168, CD 10.12

further along the A365. Two public rights of way traverse the site across its north eastern and south western corners.

Heritage Assets

70. The Planning (Listed Buildings and Conservation Areas) Act 1990 places a statutory duty on decision makers to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest when considering whether to grant planning permission for development which affects the setting of a listed building. This duty is reflected in the Framework which subsequently goes on to categorise any harm to the significance of a heritage asset as either '*substantial harm to or total loss of significance of an asset*' or '*less than substantial harm to the significance of an asset*'. CS core policy 58 confirms that designated heritage assets and their settings will be conserved and where, appropriate enhanced in a manner appropriate to their significance.
71. The three grade II listed buildings which are likely to be affected by the proposal are Shurnhold Farm (including its curtilage listed buildings), Shurnhold House and the cottages at 40-42 Bath Road. The main parties agree²⁶ that the harm to the setting of heritage assets arising from the proposal falls within the 'less than substantial' category as set out in the Framework.

Shurnhold Farmhouse

72. Shurnhold Farmhouse is located on the west side of the road and has outbuildings and a bothy which sit within a generous stone-walled garden. The farmhouse itself presents as a typical example of 18th century farmhouses found in North Wiltshire. Mr Lund confirmed that stone-built Cotswold farmhouses are generally only seen in the upper third of Wiltshire County and that farmhouses as a percentage of listed buildings are rare and that farmhouses sitting in an agricultural context are rarer still²⁷.
73. The farmhouse is in residential use and sits at the side of the main road and as such much of its setting is derived from the land surrounding it on this western side of the road. The larger appeal site field to the north-west provides an open, rural context befitting the farmhouse's long-standing functional and historic association with agricultural land. Irrespective of its current non-agricultural use, the building reads as a historic farmhouse with agricultural fields around it. The appeal fields provide the farmhouse with an agricultural setting and assist greatly in an understanding and appreciation of the significance of the farmhouse as a heritage asset.
74. Public views of the site are mainly from Shurnhold and from a public footpath within the site across the northern field. There are also views from a public footpath just outside the top north-western corner of the appeal site. There are also other glimpsed or partial public and private views of the farmhouse from further along the main road, from the business park and from residential properties opposite.
75. The north-western footpath outside the site sits on a ridge. A short detour from the footpath to the field gate affords a panoramic view of the landscape to

²⁶ SCG1.

²⁷ Examination in chief.

the east across the field gate opening in the site's top corner. This serves as a natural focal point, drawing the walker to the sweeping rural view across the northern appeal site field with the farmhouse seen in the middle distance. The pictorial story of a past use and association between the appeal site field and the farmhouse is told in this view. From the north-western corner the attractive view also takes in modern development, including a large care home which interposes itself between the farmhouse and nos. 40-42 Bath Road. However, this is a more minor element in the composition and it does not detract from the story evident to the viewer from this vantage point.

76. Travelling in from the north along Shurnhold the farmhouse is seen at the side of the road with the adjoining fields providing an expected and immediately understandable context. The lack of any present day functional connection between the farmhouse and the fields or the reduced activity around the farmhouse do not affect my assessment since these things are not apparent to the casual observer in either close range or longer distance views.
77. The appeal site is adjacent to a busy arterial road and as one gets closer to the road the noise is greater and becomes more of an acoustic disturbance. From the footpath within the site the hedgerow largely screens views of passing cars so there is little visual disturbance caused by passing traffic. On the public footpath outside the north-western corner of the site, traffic noise is of limited effect and the scene is more tranquil and bucolic.
78. At night, in views from Shurnhold road the darkness emanating from the appeal site also makes a small contribution to the sense of a roadside farmhouse. Lighting from the Business Park and street lighting along Bath Road are apparent in the same views but this lighting is relatively low key and is confined to a small area. Residential development on the appeal site would lead to an intensification and depth of external illumination not hitherto seen in the evening hours on this side of the road.
79. For the above reasons I conclude that the appeal site supports and makes an important contribution to the historic and evidential aspects of the heritage value of the farmhouse.
80. The illustrative Masterplan²⁸ depicts one way in which the site could be developed so as to reduce harm to the setting of the Farmhouse. In the overall assessment it must also be recognised that the proposal would result in the removal of the unsightly warehousing building. However functional and utilitarian buildings are a common feature of any agricultural landscape and these buildings do not have a close visual association with the asset. To that extent I conclude that their removal would represent a very modest improvement to the setting.
81. The Masterplan depicts two protected viewing corridors to the farmhouse; one from the north-western corner and the second along the northern half of the Shurnhold site frontage. A buffer would be retained around the farmhouse which would assist in retaining views of it from the key vantage points. Whilst these corridors would assist in preserving views of the asset, the development of houses upon the open field would significantly erode the agricultural context which contributes to its setting. Views, especially from the north-west would be significantly curtailed. From the north-west the asset would be seen in a

²⁸ Revised Design and Access Statement.

much busier composition with a modern housing estate visible on either side in the foreground and middle-ground.

82. Most importantly the historic and spatial association of the farmhouse with open agricultural land would be lost and would result in a serious degradation of the setting. Notwithstanding the set-back of development from the main road and the viewing corridors the asset would be seen against a backdrop of housing and would exist as an island, divorced from any meaningful agricultural context. For the above reasons I conclude that the harm to significance of the setting of this asset is within the 'less than substantial' range but towards the upper end of this range. The mitigation measures and landscaping would reduce the harm somewhat but not to any great extent.

40-42 Bath Road

83. The open field of the appeal site is seen opposite the linked pair of stone cottages on Bath Road. The cottages appear to be of the same material and period as the farmhouse but they are more substantial than humble farmworker's dwellings and as such they do not read as part of the agricultural farmstead. Their location appears to be as a result of historic ribbon development along the road frontage of the hamlet of Shurnhold.
84. Whilst there is nothing to indicate an association between the farmhouse and nos. 40-42, the two cottages form an attractive historic rural composition with the farmhouse and open field opposite. I consider that their significance is largely derived from their fabric and aesthetic quality. However their location opposite open fields and a farmhouse of a similar period also provides some indication as to the nature of the historic hamlet of Shurnhold.
85. To the extent that the open field would be lost and modern housing introduced I conclude that there would be some loss of rural setting to these two cottages. Given the erosion of the rural context which has already occurred on this side of Bath Road and will occur with the George Ward development, I would place the impact on the setting at the lower end of the 'less than substantial harm' spectrum.

Shurnhold House

86. Shurnhold House is an early eighteenth century stone built residence set within mature gardens on the eastern side of the road opposite the easternmost corner of the appeal site. Its setting is smaller and more self-contained given that it is a handsome residence set back from the road within generous gardens and surrounded by established planting. Its significance is derived from its materials and aesthetic qualities and for the above reasons I conclude that the appeal site makes a relatively small contribution to its setting.
87. The masterplan depicts housing set behind a retained hedge on the Bath Road frontage opposite Shurnhold House. This would have a small detrimental effect on the setting of this heritage asset since it would remove a rural element on the south side of the road. It would result in less than substantial harm at the lower end of the scale.
88. The Appellant has also made an offer to transfer some 1.2 hectares of the front part of the southern appeal for primary school purposes. This would potentially result in a primary school on that part of the site opposite Shurnhold House. Any such school would be subject to design approval and appropriate

landscaping. I conclude that it would have an effect of similar magnitude, in terms of harm, to housing.

89. In addition to the above three listed buildings there are a number of other heritage assets, including Shaw House to the north and The Church of St Michael in Melksham. Generally these are sufficiently removed from the appeal site such that their settings would not be adversely affected to any material degree.
90. I have set out above my preliminary findings upon the effect of the proposal on designated heritage assets. I shall carry out the balancing exercise required by paragraph 134 of the Framework within my overall conclusions.

Landscape considerations

91. The site is within the 'Limestone Lowland' character type as defined in the Wiltshire Landscape Character Assessment. The limestone lowland is identified as gently undulating lowland farmland in a peaceful and rural landscape, with a mixture of permanent pasture and arable farmland enclosed by a strong network of hedgerows and hedgerow trees. In the West Wiltshire Landscape Character Assessment the site falls within sub-category character area 'Broughton Gifford Limestone Lowland' which exhibits a strong rural character with a mixture of arable and pastureland in small sized irregular fields.
92. The appeal site fields forms part of the open countryside to the west of Melksham. The site's field boundaries are well-established and defined by mature hedgerows and occasional trees. The field system evident is a typical attribute of the landscape character types referred to above. The topography of the site is such that its highest point is in the far north-western corner and from here the site gently slopes in a south-easterly direction. The appeal site exhibits a number of the distinct features associated with the above character types and as such it makes a positive contribution as an integral part of this part of the landscape.
93. When travelling north along the A365 out of Melksham the site is one of the first indications of the open countryside beyond. After the care home, development is continuous along the north-eastern side of the A365 but it starts to appear more sporadic and rural on its south-western side behind mature hedgerow planting. The site is perceived in the foreground of the open countryside which is apparent from the A365. This is especially the case with the northern field which is seen as part of the rolling countryside beyond the small business complex. At this point the two sides of Shurnhold road exhibit markedly different characteristics and the road itself forms a robust demarcation between the two areas. The term urban fringe might properly be applied to the A365 road frontage as indicating the points at which the rural area and urban areas meet.
94. A similar impression of the site is gained when travelling in the opposite direction into Melksham along the A365. When the George Ward site is completed Melksham will introduce itself at this point and there will be continuous development on the left hand side of the road. On this approach there is a strong rural edge remaining on the right hand side of the road up to the point of the care home.

95. From views along the public footpaths within and outside the site, the site is perceived as an integral part of the rolling countryside. Whilst permission has been given for a solar farm on land to the west of the appeal site, it is on the other side of the ridge such that it would not be evident in views from the road. In any event it would be seen as a singular development in the countryside, as opposed to forming any association with the urban area. Similarly overhead power lines and pylons to the south and south-east are indicators of the site's location at the edge of the open countryside close to the edge of the settlement.
96. CS policy CP51 requires development proposals to protect, conserve and where possible enhance landscape character and confirms that any negative impacts must be mitigated as far as possible. It sets out nine criteria against which proposals should be assessed. At national level, the Framework seeks to ensure that the intrinsic character and beauty of the countryside is recognised and paragraph 109 seeks in particular to protect and enhance '*valued landscapes*'. I shall first of all deal with the dispute between the parties as to whether or not the appeal site forms part of a valued landscape within the ambit of paragraph 109.
97. The term valued landscape is not defined in the Framework but it has been the subject of a High Court judgment²⁹. Land does not have to form part of a designation to be valued in the terms of paragraph 109. On behalf of the Council Mr Burgess placed more value upon the appeal site forming part of the open countryside due to its juxtaposition with the urban side of Melksham on the other side of the road. In perceptual terms he concludes that a combination of elements lends the site a rarity which leads to it being a valued landscape. These elements include its position on the rural edge, the contribution to the setting of a listed building and the long site frontage as well as its recreational value by virtue of the views from local footpaths and the low ridgeline which forms part of the skyline to the east. In addition it is pointed out that the landscape will provide 'an important lung' for the residents of the former George Ward development.
98. I agree that the appeal site has value both in its own right and as part of a wider landscape. I have already considered the harm which would be caused to the setting of the listed building and this will be taken into account in the final balancing exercise. The area around the site is typical of the landscape character types it is associated with and contains a listed building on its edge. The physical attributes identified by the Council as contributing to the valued landscape are fairly commonplace in terms of the characteristics of green fields in the open countryside. I acknowledge that the presence of a listed building within the landscape contributes to its value when looking at the question of what constitutes a valued landscape. However, in this case I do not consider that the factors identified by the Council are sufficient, either individually or in combination, to qualify the landscape as a valued landscape within the meaning of paragraph 109.
99. I turn now to consider the effects upon the landscape. Development of the site would result in the loss of some 9 hectares of pastoral land in the open countryside and this, of itself, would cause some harm to the landscape. The difference in the effects identified by the Council and the Appellant³⁰ stems in

²⁹ CD10.10 Gladman & Stroud District Council [2015] WWHC 488 (admin)

³⁰ The evidence of Mr Burgess, Mr Berry and the LVIA

part from differences in the appreciation of the site's relationship with both the countryside and the urban area of Melksham.

100. The LVIA identified the presence of an established residential edge as being a factor in assisting in the degree to which the proposal would fit in with existing character³¹. On behalf of the Council Mr Burgess explained his view that the development would represent an isolated block of housing which would consolidate the urban character of the A365 and erode the countryside. For reasons I have already explained I consider that the A365 forms a strong barrier between the urban area of Melksham and the open countryside of which the site forms part. The introduction of houses on the site would breach this barrier and would constitute an erosion of the rural approach into Melksham.
101. The quantum of development, particularly on the larger field, rising up to the western boundary of the site would represent an incongruous and intrusive form of development. This would be evident in partial and glimpsed views from the road and from the network of footpaths within and surrounding the site. The maturity of the hedgerow boundaries around and within the site serves as a barrier to filter views of the site. However at times of hedgerow maintenance and during the winter months these views would open up. The upper parts of houses would be seen above the hedgerows in many of the views.
102. I conclude that the proposal would cause some erosion of this particular part of the locally distinctive landscape setting of Melksham when assessed against CP 51 criterion (ii). However the effect would be localised due to the site's location on one side of a single approach road into Melksham. In terms of criterion (iii) I have already confirmed that the appeal site forms part of the open countryside on the urban fringe and the transition between the urban area and open countryside would become more blurred with development spreading across the A365.
103. The western boundary of the site sits along a low ridge which provides the skyline to the west when viewed from the road. This skyline is not continuously visible and I do not consider it to be visually sensitive. I conclude that the development would not cause undue harm to the skyline or any other topographical features when assessed against criterion (iv) of SP 51. Criterion (v) requires an assessment against landscape features of cultural, historic or heritage value. The contribution which the site makes to the setting of the farmhouse has been considered elsewhere.
104. The LVIA indicates localised moderate adverse effects for adjoining residential occupiers and localised high to moderate adverse effects for recreational users of the public rights of way across the site. Whilst the footpaths on the site would be retained, walkers would experience a profound change walking within a housing estate along these footpaths. Outside the site and walking on footpaths towards the site and along the top of the western boundary of the site, the experience would also be significantly altered. The houses would introduce an urbanising feature visible above the hedgerow along this western boundary, in stark contrast to the surrounding rural landscape. On the approach from Shaw along MELW93 the two sides of the site would be visible as a protrusion into the green fields. This would be exacerbated by the rising landform albeit the top north-western corner would remain free from houses.

³¹ LVIA Permanent Impacts and Residual Effects.

105. The CPRE Tranquillity Mapping³² indicates that the site is within a less tranquil area but it is, mainly, of the same order of tranquillity as the green fields to the immediate north and west. It is of note that the Shurnhold Business Complex, the road and the housing development opposite are all within a lower level category of tranquillity. The scheme would introduce house and street lighting rising gently up to the ridge line which would reduce the sense of tranquillity within the immediate area (criterion vii).
106. In terms of mitigation, the appeal scheme provides for the retention of most of the existing hedgerows, with conservation and enhancement through supplementary planting, the creation of green corridors and tree planting. A historic field boundary hedgerow is to be reinstated with a length of the frontage hedgerow being translocated. Whilst this would result in the actual retention of field hedgerows, such hedgerows would be seen within the context of a housing estate development as opposed to framing pastoral fields. To this extent I conclude that the locally distinctive hedgerow pattern would be disrupted contrary to criterion (i) of CP51.
107. The Council advocate that the listed building and its setting should be considered as a landscape receptor. I have already assessed the proposal upon the setting of the listed building which includes an assessment of the contribution which the site makes in visual and landscape terms to the heritage asset. I do not consider it appropriate to incorporate these matters within my landscape assessment since to do so could lead to the possibility of double-counting any identified harm. I do however recognise that the inhabitants of the farmhouse are visual receptors as are other adjoining residential occupiers.
108. The first clause of the first sentence to CP 51 creates a presumption that development must not have a harmful impact upon landscape character. The second clause requires negative impacts to be mitigated as far as possible through sensitive design and landscape measures. The appeal site would have a harmful, albeit relatively localised, impact on landscape character for the reasons I have set out. The Masterplan and landscaping suggestions would go some way to mitigating some of this harm with the set back of the development into the site, location of public open space on the highest part of the land and hedgerow retention and other landscaping. To the extent that there would be harm which could not be mitigated I conclude that the proposal is contrary to policy CP51. Taking all of the above into consideration, including the localised nature of the harm to the landscape and the mitigation suggested, I attribute modest weight to this harm in the planning balance.

Drainage and flood risk considerations

109. The site is in flood zone 1 and was accompanied by a flood risk assessment (FRA). It is located a short distance away from South Brook which is a main river some 200 metres south east of the site, flowing into the River Avon. In September 2014 the South Brook overtopped causing the internal flooding of 36 properties in the catchment area, as well as flooding of the main road (Shurnhold). Following this event a full study of the whole catchment from Shaw/Whitley down to the River Avon was commissioned to identify potential works and recommend any measures to alleviate flood risk (the Atkins Report). This report was due in the summer of 2016 but has been delayed by a few weeks and was not available to the Inquiry.

³² Appendix 5, Mr Berry Proof of Evidence.

110. Wiltshire Council drainage team act as agents on behalf of the Council in its role as Local Lead Flood Authority (LLFA) and as such are the lead authority in relation to this matter. The position of the LLFA is that until such time as the Atkins Report is available, planning permission should not be granted. The Environment Agency (EA) initially objected to the scheme but following discussions with the Appellant, it withdrew this objection subject to a condition requiring a detailed surface water run-off management scheme, supported by a drainage strategy report and design calculations³³. The EA further acknowledge³⁴ that the LLFA may possibly have superior local knowledge regarding the matters put before it.
111. Whilst policy CP68 was cited in the reason for refusal, the Council now confirms that it is not relevant to the consideration of this matter. Both parties are agreed that paragraph 103 of the Framework applies. This requires decision makers to ensure that flood risk is not increased elsewhere when making a determination. The Council takes the position that until such time as the Atkins Report is available the Appellant has not demonstrated that the proposed development would not increase flood risk off-site.
112. The FRA initially put forward a stormwater drainage strategy involving the use of infiltration basins. This was later discounted as an option due to high ground water levels. The drainage strategy which evolved during the course of the application process is now for on-site attenuation via oversized pipework and surface storage in detention basins and a positive (controlled) outfall to South Brook.
113. A number of technical objections and queries have been raised both by the Council and on behalf of Mr Guley, all of which the Appellant's expert has sought to address. In terms of my determination I bear in mind that this is an outline proposal, that a condition has been suggested which would require details of a drainage strategy prior to development and that the Framework essentially requires me to be satisfied that the proposal would not increase flood risk elsewhere. It is not part of my remit to approve the details of any particular drainage strategy. Instead I have to be satisfied that, in principle, a strategy could be devised which would ensure that the development did not increase the flood risk elsewhere.
114. The technical solution proposed essentially relies on providing enough storage space on-site to deal with flooding events to enable the controlled discharge of surface water run-off from the site into adjacent watercourses. In principle the EA agreed to a proposal to restrict flows to a maximum of those generated by the Mean Annual Storm Event (Q_{bar} rate) which is equivalent to a storm of a 1 in 2.3 year frequency. I note that this flow rate would be about 50% of the flow generated by a 1 in 100 year event. The flow rates from any storm events greater than the Q_{bar} rate would be held back on the site until the storm abates and then discharged at the controlled rate.
115. Mr Lees confirmed that the strategy is not reliant on infiltration so the observations regarding the factor of safety are not relevant. Similarly the maximum developable area calculated by Mr Smith appears to be based upon the assumption that the infiltration method was to be used.

³³ Environment Agency letter dated 23 March 2015 CD3.33

³⁴ Appendix 4 to Mr Weston's proof of evidence.

116. The route of the proposed pipeline and its connection to South Brook is shown on Lees Roxburgh drawing 01-03 and it depicts a route along Shurnhold and down the slip road to a culvert between nos. 17 and 21. Mr Weston explained he was not satisfied that the discharge point depicted would not increase the risk of flooding at this location. His point is that surface water run-off from the site currently finds its way to South Brook via a variety of routes and percolates into the brook along a length further downstream than the proposed connection point³⁵. When the River Avon is in flood, water is liable to back up along the South Brook as it is unable to escape downstream and discharging water further upstream, in Mr Weston's view, could exacerbate the flood risk.
117. A key difference between the parties appears to be in relation to the assumptions about how water which falls onto the site behaves before it finds its way towards the South Brook. Mr Lees distinguishes between water which percolates into the ground (groundwater) and surface water which flows above the ground. He makes the point that the assessment of greenfield run-off rates relate solely to surface water flows which flow above ground. Mr Lees model is based on the treatment of surface water which travels across the site and out into Shurnhold into South Brook.
118. Currently rainwater landing on the field will either percolate into the ground or will run-off the site onto the main road or via other routes down to South Brook. If this green field site is developed then it appears to me that the amount of ground infiltration is likely to decrease due to hard-surfacing and the amount of above ground water (ie surface water run-off) from the site is likely to increase. I further note Mr Lees' professional view that groundwater behaviour will, to all intents and purposes, remain unchanged. I accept this proposition on the basis that the groundwater flows are likely to be governed by the permeability of the ground and the topography of the surrounding land down to South Brook both of which would remain largely unchanged.
119. Mr Weston made the point that even if the volume of surface water coming off the site was the same or even less, then the flood risk could still be increased at the point of discharge dependant on the dynamics and interaction of the two watercourses. However Mr Lees explained that a hydro-brake system could be utilised to not only control the rate of flow to the discharge point but also to control the periods of discharge. For example water could be released early so it makes its way downstream and is away before the problems associated with the flooding of the River Avon and water backing up arise. Alternatively stored water could be retained on site and released once watercourse levels were at a more appropriate level.
120. Questions were raised about the practical arrangements regarding storage of the water on site in terms of the infrastructure and amount of land which would be required. The current strategy relies upon water from the 1 in 30 year storm event being held in oversized underground pipes. Additional waters up to the 1 in 100 year storm event would be held in the detention basins in the south east corner of the site. Some 0.8 hectares would be required for a storage basin on site based on a basin some 300mm to 500mm in depth to hold up to 760m³ water. The scheme would not rely on ground infiltration to dissipate the water. Such a basin could be linear in shape around the school

³⁵ Between points A and B on plan at appendix 2B Mr Weston.

site and can usually be designed into and around a scheme. I reiterate that it is not for me to approve a detailed solution at that stage but rather I must be reasonably satisfied that one can be achieved. Having regard to the above I am satisfied that these are detailed design matters which could be resolved at reserved matters stage once a drainage solution had been approved.

121. The Council postulates that if a 1 in 100 year storm event were followed by a separate event then the first flood waters would still be in storage when the second rainwaters come. The definition of a 'storm event' appears unclear but on an ordinary meaning of those words I would take it to mean one event in time, possibly involving rainfall over a few days. The probability of a second 1 in 30 year event occurring before the waters from the first event had been discharged appears to me to be a very remote possibility. I say this because current standards are concerned with designing capability to deal with *single* events such as the 1 in 100 year storm event. Mr Lees confirmed that his modelling analysed a series of events of varying intensities and durations and for design purposes selected the event which would be most critical.
122. On the basis that the surface water flows from the site can be initially contained on site and then be released in a controlled manner into South Brook, in principle I conclude that there is a realistic prospect of a design solution to the drainage question such that flood risk at the point of connection would not be increased. The EA comment that the most sensible approach would be to formulate drainage proposals using the outcomes and modelling from the Atkins Report. It is material that the Atkins report will be available shortly and will provide information about how rainfall behaves in the catchment and about the inter-relationship between the River Avon and the South Brook. The practical effect of this is that any drainage strategy would have to be designed having regard to this information and would require the imposition of a Grampian condition. This brings me to the question of the connection itself.
123. Both Mr Weston and Mr Smith point out that ownership of the land at the point of connection is in question and that a connection cannot be achieved without the riparian owner's consent. Mr Lees believes that the Council, as Highways Authority, own the land at the point of connection and there is a further suggestion that Network Rail may be the landowner. Be that as it may there are other potential routes, albeit across third party land, which could also afford a connection to South Brook. Mr Guley maintains his opposition to the proposal and had confirmed that he would not consent to any solution involving the use of his land. Any legal difficulties or consents in relation to securing the connection would need to be resolved as part of the final strategy.
124. A true Grampian style condition provides that the approved development shall not be commenced until some event has taken place³⁶. I am satisfied that a Grampian condition requiring the submission and approval of a drainage scheme (to include such on-site and off-site measures as are appropriate) as well as the implementation of any off-site drainage works prior to commencement of development would be suitable in these circumstances. The requirement for implementation of any necessary off-site works prior to commencement of the residential development would mean that any necessary legal consent for connection would have to be in place.

³⁶ Grampian Regional Council v Aberdeen City District Council (1984) 47 P&CR 633.

125. The Planning Practice Guidance (PPG) confirms that such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission³⁷. In this case whilst there is some uncertainty about ownership of the land, the Council acknowledge that it is not possible to say that there are no prospects of a connection being achieved within the lifetime of the permission.
126. Finally the Council points out that a drainage solution may have implications for the remainder of the scheme in that it has not been demonstrated that an area of 1.2 hectares could accommodate a school and the detention basins. This may indeed prove to be the case and more land may have to be given over to the detention basins but the numbers and type of dwellings could be altered to accommodate this given that it is a scheme for up to 263 dwellings.
127. I conclude that a Grampian condition of the type referred to would satisfactorily address drainage concerns and ensure that a scheme only came forward which would not increase flood risk elsewhere.

Educational provision

128. The Council accept that the increased demand for secondary school provision would be satisfactorily met by financial contributions in accordance with CS policy CP3 and secured in the UU. This policy requires all new development to provide for necessary on-site and, where appropriate, off-site infrastructure requirements. At national level the Framework confirms that great importance is attached to ensure that a sufficient choice of school places is available to meet the needs of existing and new communities.
129. The site is also estimated to generate the need for an additional 74 primary school places. Essentially the Council's position is that there is no existing capacity to cater for the additional primary school pupil yield from the site and that the offer of land for a new primary school is unsatisfactory because it would not be economical and it would be in an inappropriate location.
130. The submitted UU contains promises in relation to primary school provision in the form of three alternative offers. I note that this is broadly in accordance with the Council's *School Places and Capital Costs Multipliers for Section 106 Agreements* which recognises that such agreements may need to contain a number of options in terms of land and financial contributions that the Council may need for school provision.
131. The first alternative is the payment of financial contributions towards primary provision in accordance with the Council's formula linked to the number of qualifying residential units. The second and third offers are a combination of the payment of a financial sum, together with an offer to transfer a piece of land of 1.2 hectares to the Council for the purpose of building a 1 FE (form of entry) primary school. The second and third offers vary only in terms of the arrangements for submission of a planning application.
132. Whilst the description of development does not include reference to the provision of primary school land I do not consider this to be a problem because the UU simply contains a promise to safeguard the land and transfer it, if requested, for those purposes. In essence it is intended to be a response to

³⁷ Paragraph: 010 Reference ID: 21a-010-20140306

the necessity of mitigating the impact of the development described. More importantly the provision of a primary school on the site would have to be the subject of a separate planning application. The question which I must ask is: would the offer of provision sufficiently mitigate the effects/demands of development in an appropriate manner having regard to the relevant policy and statutory tests?³⁸

133. The Appellant contends that the Council's position is contrary to the pre-application response which indicated that, in principle, the site size and location of the school land would be acceptable for the provision of a primary school. On behalf of the Council, Ms Medland explained that this was merely an in principle indication that the proffered site could accommodate a primary school, not that it was an acceptable solution to the increased pupil yield from the site. Ms Medland gave clear and convincing evidence and I find her explanation of the email response entirely plausible and consistent with a common-sense reading of it.
134. I turn now to the substantive issue. The Council has an approved methodology and policy regarding section 106 contributions centred upon the desirability of children attending local schools which are close to home. New primary schools are preferred in the format of 1FE or 210 places up to 3FE or 630 places. The approved Wiltshire School Places Strategy confirms that the Council will only seek to open schools of full or half full forms of entry. The School Places Strategy 2015-2020 sets out detailed assessments in relation to current and future forecast needs and provision.
135. The appeal site is within the catchment of Shaw Academy Primary School with three other primary schools within a 2 mile radius. Across all four schools there is currently (as at September 2016) a surplus of around 133 places but forecast increased demand means that by 2019 there will be a deficit in primary school places within 2 miles of the appeal site. There are difficulties associated with the expansion of these existing four schools both because of physical constraints and/or because of an unwillingness to expand.
136. The Council's draft updated Infrastructure Delivery Plan (IDP) contains further information about the Council's response to the 2,370 additional homes indicated for Melksham Community Area. The IDP sets out plans to create a new school or expand existing schools. A feasibility study looked at the possibility of expanding the four primary schools within the vicinity of the site. The Council appears to be largely dependent on school sites coming forward on an ad hoc basis with residential planning applications. The school at Pathfinder Way, Bowerhill, promoted in response to a new housing development off Spa Hill Road is a case in point. The Council also accepts that a new primary school for Melksham will be required in the coming years.
137. The Council's case is that there is currently no capacity for the additional 74 primary school places and no possible expansion opportunities. As a matter of logic it must be almost impossible to match exactly the demand for school places to school place provision and retain that exact match on a continuous basis. A deficit in provision would not result in the sufficient choice of school places promoted by national and local policy. A surplus would provide choice but ideally should not be too great a surplus as to be uneconomical. As Ms Medland recognised, as the surplus decreases the possibility of choice reduces.

³⁸ §204 The Framework and regulation 122 Community Infrastructure Levy Regulations 2010 (as amended).

138. It is relevant that the forecasts in primary school numbers take into account the pupil product of housing developments already registered/approved in the relevant designated area. A further 700 homes have been subject to a resolution to grant planning permission in the last 12 months which essentially means that the indicative requirement for Melksham has been or is close to being met. Future education provision has been planned around the total indicative target therefore. Any demand for school places generated as a result of any further additional housing (not registered/approved), such as windfalls, would still need to be catered for.
139. However the above must be seen in the context of the lack of a 5 year housing land supply across the district as a whole and a plan period which extends to 2026. In addition there is also the probability of an early review of the CS. The figures in CP15 are not maxima. Having regard to all of the above I consider that it would be unreasonable to treat the indicative figures as maxima by arguing that a lack of additional planned education provision or capacity should effectively act as a brake upon future windfall development in Melksham.
140. As at 2016 there is capacity for 1170 primary school pupils within a 2 mile radius of the site. The forecasts show 1037 pupils as at 2016, rising to 1190 in 2022. In 2016 there is a surplus of 133 pupils or some 11% of total capacity. At 2022 there would be a deficit of 20 places. With a 1FE school on the appeal site, the total capacity in permanent accommodation would rise to 1380³⁹ and overall pupil numbers would increase to 1111 in 2022⁴⁰. This would result in a forecast surplus of 116 places or around 8.4% of total accommodation capacity which would be less than the surplus which was projected to exist at 2016.
141. When all schools in the town are considered and planned expansions are taken into account the Council estimates that by 2022 the number of surplus places across the town would fall to 9 pupil places. In terms of the overall projections for Melksham Mr Powell calculated that a school on the appeal site would leave a surplus of 4% as at 2020 when the overspill from those pupils in temporary accommodation was factored in.
142. It is also useful to understand how the demand for primary school places arises. Mr Barnes anticipated that some 100-150 dwellings would be completed on the appeal site within a five year period and that houses would come forward at a rate of 50 to 100 dwellings per annum dependant on the number of outlets. The same is true of other large housing developments which tend to be built out over a number of years. This means that the demand for 74 primary school places would not occur suddenly at a given point in time but instead it would accumulate as houses are built out.
143. In numerical terms the offer of land for a 1FE primary school would enable the development to meet its own needs in terms of primary school provision and to contribute towards meeting other needs. In locational terms I note the Council's concern that the site is not in the best place in terms of serving future needs. However, the site is not so remote that it could only service the needs of the children on site. If developed, a 1FE primary school would draw about one third of its intake from the appeal site. It is also likely that there would be a reconfiguration of pupil allocations in that pupils from the George Ward site

³⁹ 1170 plus 210 from the appeal site school

⁴⁰ With the additional 74 pupils from the appeal site.

could utilise the school and other pupils from, for example, the west side of Melksham could be diverted from the more centrally located River Mead School and The Manor School. This in turn would release capacity in schools in the centre of Melksham to serve other developments. The catchment area analysis⁴¹ provided by the Council to the Appellant demonstrates that a significant number of pupils reside in a catchment area different to that of the primary school they actually attend.

144. Having regard to the above I conclude that the second and third alternatives in the UU would afford options to the Council providing them with the requisite flexibility to enable the additional demands of the residential development to be met either by on-site provision or by the pooling of contributions towards either expansion of an existing school or a new primary school elsewhere. As a result of this I have not found it necessary to come to a view on whether or not existing schools could be expanded. This would avoid the need to bus large numbers of primary school pupils to alternative schools.
145. Given the location of the appeal site on the edge of the town and the overlapping catchment areas of nearby primary schools the bussing out of pupils would appear unlikely given that in reality a reconfiguration of pupil allocations would be the most probable outcome for the reasons I have already outlined. Alternatively a school on-site could be provided which would help to meet the development's needs and, for the reasons given above, would not result in an unrealistic or uneconomical number of surplus places. In coming to this conclusion I have calculated that potential pupil numbers could be reduced if some houses are sacrificed to provide the school land.
146. Whilst there can be no guarantee about the outcome of any application for planning permission for a primary school, there is no substantive evidence to suggest that, in planning terms, an application would not be successful. I also bear in mind that primary school provision to date has been largely reliant on housing schemes providing land and financial contributions to meet the needs they generate.
147. For all of the above reasons I conclude that the second and third alternative options in the UU would satisfactorily address education needs arising from the proposal. In this regard the proposal is in accordance with policy CP3 and national policy regarding the promotion of choice. Reservation of part of the site for educational purposes would reduce the area available for residential use and may result in a reduction in the number of residential units. Given the indicative density⁴² it would appear that around 30 units could potentially be lost resulting in a reduced pupil yield of around 9 primary school pupils. This assumes that there would be no reconfiguration of units. I am satisfied that there is sufficient flexibility in the scheme such that it would not result in a significant loss of units such as to materially affect the number of pupils generated or the resultant surplus.
148. I conclude that the obligations in the UU in the form of the second and third alternatives are necessary to make the development acceptable in planning terms. They are directly related to needs which would arise as a result of the development. Finally the provision is fairly and reasonably related in scale and kind to the development.

⁴¹ John Powell appendix EPDS11

⁴² 32 dwellings per annum in the Design and Access Statement.

149. For all of the above reasons I further conclude that the UU, in this particular respect, would pass the statutory and policy tests in relation to obligations.

Other Material Considerations

150. The proposal would result in the loss of some 4 hectares of best and most versatile (BMV) agricultural land at grades 2 and 3a. The Framework requires the economic and other benefits of BMV land to be taken into account. Whilst the land is not currently in agricultural use there is no suggestion that it could not continue to be used for agricultural purposes. Consequently the loss of this land weighs against the grant of planning permission.
151. The Community Action Group also raised concerns about highways issues and the effect of the development on the local highway network. The access arrangements would conform to standards and I have seen no evidence to suggest that they would be unacceptable. Similarly the Transport Assessment⁴³ demonstrates that the level of traffic which would be generated could be accommodated on the local highway network. The Council agrees that the access proposal via two new priority junctions onto Shurnhold would be acceptable in terms of visibility splays and junction layout and would not compromise highway safety.⁴⁴ I conclude that the access arrangements would be satisfactory.

Benefits

152. In principle the provision of market housing, in the face of the lack of a 5 YHLS, would represent a significant benefit. Mr Barnes, on behalf of the Appellant, contended that the first homes would be delivered within 5 years of the grant of planning permission and estimated that, with two outlets on site, some 100 to 150 homes could be provided within the first five years. This was somewhat more optimistic than the projections in the Appellant's original planning statement which envisaged that on average around 40 market dwellings would be completed per annum and that completion of the site would take some 6 to 7 years to complete⁴⁵. Ms Mulliner herself accepted that there is not a standard approach to lead in times but that evidence supports the view that larger sites inevitably have longer lead in times than smaller sites.
153. The site is a green field site but the Appellant is not a house-builder and the site would have to be marketed following the grant of planning permission. The matter would be complicated by the UU offer in terms of a possible transfer of a portion of the site which may entail revisiting the Masterplan to reconfigure the housing and possibly the mix of housing. The pre-commencement conditions in relation to drainage and a drainage scheme would also need to be satisfied.
154. At the Inquiry conditions controlling the submission of reserved matters and the timing of commencement of development were discussed. In order to make a meaningful contribution towards the 5 YHLS development would have to be commenced as soon as possible. Various shorter timeframes were discussed at the conditions session. One of the options the Appellant advocated was a condition requiring submission of details of a first phase of 100 houses within 2 years and then development to commence either 3 years

⁴³ CD2.1

⁴⁴ 6(d) Statement of Common Ground.

⁴⁵ CD1.4, page 11 4.3.3

from the date of the grant of outline planning permission or within one year of approval of reserved matters. This would effectively ensure the commencement of a first phase of 100 houses no later than 3 years from the date of this decision. Having regard to the above complications I consider that imposition of this condition would represent a fairly tight timetable in terms of the work which would have to be done prior to commencement and the shortest timetable which could reasonably be imposed.

155. All things considered I conclude that it is likely that any houses delivered on the site would come forward towards the end of the 5 year period at the rate proposed in the original planning statement. This would effectively result in some 40 to 80 houses delivered before the end of year 5. This would make a reasonable contribution to the 5 year supply.
156. The UU guarantees the provision of affordable housing in accordance with a suggested condition and in line with policy requirements for 30% provision. The Council point out that the provision of a school site and drainage requirements may start to affect the viability of the site which may in turn affect the level of affordable housing to be provided. There are no viability appraisals before me and questions about viability remain an unknown quantity at this time.
157. The Council also point out that over the past 7 years some 605 affordable homes have been delivered each year with an average of 52 per annum delivered in Melksham. It confirms that 8.6% of the total CS affordable housing requirement⁴⁶ has now been delivered in Melksham which is estimated to require some 5.85% of the total need across the district⁴⁷. Put simply Melksham has fared better than other areas in terms of delivery of affordable housing. Be that as it may, given the lack of a 5 YHLS the provision of affordable housing has fallen behind the rate of provision envisaged by the CS. For the above reasons I conclude that the provision of market and affordable housing attracts significant weight in the planning balance.
158. The development would also result in increased economic activity in the form of local construction work to the tune of 125 FTE construction jobs throughout the build period and an increase in the local population likely to deliver some benefits to the local economy. The development would trigger payment of a New Homes Bonus but there is no evidence of a connection between the payments and the development to enable it to be taken into account in accordance with the advice in the PPG.
159. The site is of low biodiversity value and the proposal would present some opportunities to increase biodiversity but this is tempered somewhat by the loss of BMV agricultural land. Removal of the modern agricultural barns has been advanced as a benefit but I have already taken this into account in my assessment as to the impacts on heritage assets and it would represent only a very modest improvement in any event. The provision of on-site public open space is designed to meet the needs of site residents and make the development acceptable. I do not consider that it would confer any wider material benefit.
160. In terms of educational provision I am satisfied that this would be neutral in the planning balance in that it is designed to ensure that the development

⁴⁶ Of 13,000 affordable homes required by the CS.

⁴⁷ Inquiry document 31.

could meet its own needs and render it acceptable in planning terms. I have concluded that it would not result in any material harm to educational provision. Nor do I conclude that it would confer any material benefit over and above the need to ensure the development did not have any adverse effects upon educational provision. This is because the current and projected educational needs would be broadly met in the absence of the development.

Section 106 matters

161. The executed unilateral undertaking (UU)⁴⁸ made in accordance with section 106 of the Town and Country Planning Act 1990 secures the payment of financial sums in relation to both secondary and primary school provision, as well as an option for the provision of land for a school site.
162. The UU further provides for financial sums to be paid towards public rights of way, travel plan monitoring, cemetery contribution, cycle lane and highways contributions. It also secures the provision of affordable housing in accordance with any condition imposed on the grant of planning permission. It further secures off-site highway works and open space and a play area on the appeal site. The Appellant raises no objections to any of the contributions sought.
163. Inquiry Document 7 sets out the Council's justification for each of the contributions sought in accordance with the policy tests set out in the Framework and the statutory test in regulations 122 of the Community Infrastructure Levy (CIL) Regulations 2010.
164. Contributions towards public rights of way are in accordance with CS policy CP3 and the Wiltshire Countryside Rights of Way Improvement Plan. The Travel Plan Monitoring, cycle lane and highways contributions are supported by CS policy objectives seeking to promote sustainable modes of travel in CP3, CP60, CP61 and CP62. They are required to mitigate the impacts of development and related in scale and kind. The cemetery contribution is justified as a result of the additional demands placed upon Melksham cemetery for increased burial space where there is currently limited capacity.
165. The provision of affordable housing is in line with the adopted CS requirements. Whilst the Council point out that CP43 provides that all affordable housing will be subject to an appropriate legal agreement with the Council I am satisfied that this is a matter which could be secured by condition. In any event the UU contains a promise for the provision of affordable housing in accordance with a condition.
166. I have already made findings about the education contributions and offer to transfer land. They are necessary to make the development acceptable in planning terms and are directly related to it and reasonably related in scale and kind. A dispute arose about the timings of the payment of the education contributions. To enable the Council to optimise the contributions in meeting the needs of the development I conclude that it would be more appropriate to require payment of the first education contributions (both primary and secondary) prior to commencement of development and payment of the second contributions on commencement of construction of the one hundred and thirty second residential unit.

⁴⁸ To be read in conjunction with the deed of variation.

167. The UU also contains three options in relation to education provision. I have concluded that either of the options in Part III (b) or Part III (c) of Schedule 1 of the UU would be appropriate since it would afford the Council the flexibility of receiving a financial contribution and electing to receive a transfer of the primary school land. The Council expressed a preference for the provisions of Part III (c) which would place the onus on the Appellant to prepare and submit a Primary School planning application.
168. There was a further dispute between the parties regarding the requirement to enter into a bond for part of the education contribution⁴⁹. The necessity for a bond effectively requires an assessment as to the risk to the Council of the remaining 50% of the education contribution not being paid. I have concluded that the appropriate trigger for the balance of the education contributions would be before commencement of construction on the one hundred and thirty second dwelling. This is effectively the half-way point of development. If payment was not made there would be legal options open to the Council to prevent the remainder of the development being carried out until such time as the payment had been made. Having regard to the likely levels of profit tied up in one half of the development as well as the relevant trigger points I consider the risk of non-payment to be very small. Accordingly I strike out the requirements for payment of a bond from the relevant clauses.
169. Open space and play areas are required to meet the needs of residents on the site and are proportionate to the scale of development proposed. The requirements are in accordance with CS policy CP52 and the Council's Leisure and Recreation Development Plan Document. Overall I am satisfied that the obligations in the UU meet the tests in CIL regulation 122 and paragraph 204 of the Framework.
170. The Council also gave evidence to the Inquiry as to the number of pooled contributions in relation to cemetery provision, highways and education. The number of contributions do not exceed two in any of the instances and I am satisfied that none of the financial contributions fall foul of the pooling restrictions in regulation 123 CIL regulations. As such they can be taken into account.

Overall Conclusions

171. I have found that there would be less than substantial harm to the significance of designated heritage assets. In particular the proposal would result in a serious degradation of the setting of Shurnhold Farmhouse which places the impact at the upper end of the 'less than substantial harm' range. Mitigation measures including the retention of viewing corridors and a set-back of development from the road frontage would assist in preserving views but would not offer much compensation for the loss of agricultural land associated with the farmhouse which is a key element to its setting.
172. In addition I have found that there would be less than substantial harm to the setting of the listed buildings at 40-42 Bath Road and have placed this harm at the lower end of the spectrum. There would also be less than substantial harm caused to the setting of Shurnhold House, albeit it would represent a relatively small detrimental effect.

⁴⁹ Clauses 3 in each of Parts III(a), III(b) and III(c) to Schedule 1.

Paragraph 134 of the Framework

173. I now turn to consider the planning balance required by paragraph 134 of the Framework. It is accepted and well-established that any harm to the significance of a heritage asset should be given considerable importance and weight. Against this harm I must consider the public benefits of the proposal. The provision of market housing in the absence of a 5 YHLS would represent a significant benefit as would the provision of affordable housing. The substantial weight attributed to these matters is tempered by virtue of the likely delivery rates and the contribution which the site would make to reducing the shortfall. I attribute some weight to this matter. In addition the proposal would result in increased economic activity and construction work for the period of construction with an attendant boost to the local economy. Minor benefits would include the potential for increased biodiversity.
174. Taking all of the above into account I conclude that the combined harm to the heritage assets attracts considerable weight and it is not outweighed by the public benefits identified. In undertaking this exercise I have examined the cumulative harm to all heritage assets on one side of the balance and placed the identified benefits on the other side of the balance.
175. The Appellant's advocate put forward an alternative approach by suggesting that the paragraph 134 balancing exercise could be carried out individually in respect of each of the three heritage assets. I have not adopted this approach for three reasons. Firstly undertaking the exercise in this way would mean that the public benefits would be counted three times in each of the three balances and it could be argued this would run the risk of double counting of factors. Secondly if the outcomes of the balances were different it would cause undue complexity with a subsequent application of the tests in paragraph 14. Thirdly, in this case I am satisfied that the considerable weight to the harm to the setting of Shurnhold Farmhouse on its own is not outweighed by the public benefits and that would take me to the second limb of the second bullet point in paragraph 14 in any event.

Paragraph 14 of the Framework

176. The duty in section 38(6) of The Planning and Compulsory Purchase Act 2004 enshrines in statute the primacy of the development plan. As an essential component of the 'plan-led' system, it is also reiterated in the Framework⁵⁰. The Framework is of course a material consideration to which substantial weight should be attached.
177. Paragraph 14 recites the presumption in favour of sustainable development and sets out what it means for decision-taking. Paragraph 49 advises that housing applications should be considered in the context of the presumption in favour of sustainable development but that relevant policies for the supply of housing should not be considered up-to-date if the Council cannot demonstrate a 5 YHLS. I have concluded that relevant policies of the development are out-of-date by virtue of the lack of a 5 YHLS and the weight to be given to such policy conflict is reduced.
178. Paragraph 14 contains two alternative limbs in relation to decision-taking. The first limb requires a balance to be undertaken whereby permission should

⁵⁰ §§11, 12, 196

be granted unless the adverse impacts significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole. The second limb indicates that the presumption should not be applied if specific policies indicate development should be restricted. It is accepted by the parties that paragraph 134 constitutes a specific policy indicating that development should be restricted as indicated in footnote 9. In the circumstances the presumption does not apply and it is necessary to balance benefits and harms in an ordinary planning balance.

179. The proposal is outside the settlement boundaries identified in policy CP1 and to that extent it falls foul of CP15 which requires development in the Melksham Community Area to accord with policy CP1. In addition it does not fall within the exceptions in CP2. I have also concluded that there would be less than substantial harm to heritage assets and some harm to landscape character. There is therefore some degree of conflict with policies CP58 and CP51. I note that the objectives in policies CP58 and CP51 are broadly consistent with those in the Framework.
180. Having regard to the nature and content of the policies breached I conclude that the proposal is contrary to the development plan as a whole. However, given that I have already concluded that the aforementioned development plan policies are all policies for the supply of housing, they are to be treated as out-of-date and the weight given to any non-conformity with these policies somewhat reduced.
181. The proposal would result in the development of a greenfield site contrary to national objectives in relation to conserving and enhancing the natural environment. The proposal would also result in less than substantial harm to heritage assets and some localised harm to the landscape character of the area, as well as the loss of some 4 hectares of BMV land. I attribute considerable weight to the harm to heritage assets. The proposal would also result in market housing and affordable housing in an accessible location in circumstances where the Council does not have a 5 YHLS and in light of the imperative in paragraph 47 of the Framework to boost significantly the supply of housing. The provision of market and affordable housing is a significant consideration.
182. I have found that the Council has a 4.25 year supply of housing land. The weight to be given to the lack of a 5 year housing land supply and the consequent benefit attached to the proposal's ability to increase the supply of housing is dependent on a number of factors. I have examined the deliverability of the appeal site and concluded that it is likely the site would deliver some 40 to 80 houses within a five year period. As such it would make a reasonable contribution to the 5 year supply. Whilst it would not compromise the strategic spatial objectives of the CS, it would cause some prejudice to spatial planning in the Melksham Community Area. In addition the Council is intent on taking forward its review of the CS, as well as its Site Allocations DPD, which would help to address matters in the medium term.
183. For all these reasons I attribute some weight to the lack of a 5 YHLS and the ability of the proposal to contribute to and reduce the shortfall.
184. In addition there are the other public benefits which I have already referred to above. The proposal would result in construction jobs and other economic benefits over the lifetime of the development. It would contribute to growth in

the area and would generate Council Tax revenue. Whilst contributions are to be made under the UU these are intended to mitigate the effects of the development and render it acceptable in planning terms. Such payments do not constitute benefits in the planning balance.

185. In this case I consider that the matters are finely balanced but when all matters are taken into account I have come to the conclusion that the harm which I have identified outweighs the benefits which count in support of development. As such the proposal does not represent sustainable development. There are no material considerations which warrant a decision other than in accordance with the development plan and the appeal shall be dismissed.

Karen L Ridge

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Richard Humphreys	Of Queen's Counsel
He called	
Mr Mark Henderson	Planning Manager
BSc (Hons), MA, MRTPI	
Mr Peter Weston	Land Drainage Engineer
Ms Clare Medland	Head of School Place Commissioning
Prof. Cert Mgt Studies, Prince II and PRIME Project Mgt, NEBOSH	
Mr Ian Lund	Conservation Advisor
Dip. Urban and Regional Planning, Dip Arch. Conservation, IHBC	
Mr John Burgess	Landscape Architect, Swan Paul Partnership Ltd
BA (Hons), Dip. LA	
Mr Ruaridh O'Donoghue	Senior Planning Officer
BA (Hons), MA Town Planning	

FOR THE APPELLANT:

Mr Peter Goatley	Of Counsel
He called	
Ms Mulliner BA (Hons), BTP (Dist), MRTPI	Terence O'Rourke Limited
Mr John Lees BSc, MICE, MCIEWM	Lees Roxburgh Ltd
Mr John Powell BA (Hons)	EPDS Consultants
Mr Jonathan Berry BA (Hons), DipLA, CMLI, AIEMA, M.Arbor.A	Tyler Grange LLP
Ms Gail Stoten BA (Hons) MCIfA, FSA	Pegasus Group
Mr Robert Barnes MA, BA (Hons), MRTPI	Planning Prospects Ltd

INTERESTED PERSONS:

Mr Ashkowski	Local resident and member of Melksham Neighbourhood Plan Steering Group
Mr Charles Adams	Local resident

DOCUMENTS SUBMITTED DURING THE COURSE OF THE INQUIRY

1	Appearances on behalf of Gladman Developments Ltd, submitted by the Appellant.
2	Outline opening submissions on behalf of the Appellant.
3	Opening Statement on behalf of Wiltshire Council.
4	SSCLG v BDW Trading Ltd [2016] EWCA Civ 493, submitted by the Council.
5	St Modwen Developments Ltd v SSCLG and East Riding of Yorkshire Council [2016] EWHC 968 (Admin), submitted by the Council.
6	Cheshire East Borough Council v SSCLG and Renew Land Developments Ltd [2016] EWHC 571 (Admin), submitted by the Council.
7	Statement of Compliance with Community Infrastructure Levy Regulations and supporting documentation, submitted by the Council.
8	Letters from Mr Mark Ashkowski to the Planning Inspectorate dated 19 June 2016 and 1 December 2015 and supporting documents, submitted by Mr Ashkowski.
9	Appeal decision Land off Plantation Road, Boreham, Essex, CM3 3EA (reference APP/W1525/W/15/3049361), submitted by the Appellant.
10	Appeal decision Land off Prince Charles Drive, Calne, Wiltshire SN11 8NX (reference APP/Y3940/W/15/3129040), submitted by the Appellant.
11	Statement of Common Ground on Housing Land Supply matters submitted by the Council and the Appellant.
12	Office Copy Entries of title number WT203886, submitted by the Appellant.
13	Secretary of State decision letter and Inspector's Report on appeal relating to Land surrounding Sketchley House, Watling Street, Burbage, Leicestershire (appeal reference APP/K2420/A/13/2208318), submitted by the Council.
14	Report to Wiltshire Council on the Independent Examination of the draft Malmesbury Neighbourhood Plan dated September 2014, submitted by the Council.
15	Copy emailed pre-application response from Sarah Ashton to Alison Hall dated 9 December 2014, submitted by the Council.
16	Letter Environment Agency to Wiltshire Council dated 24 June 2016, submitted by the Council.
17	List of local residents represented by Mr Ashkowski.
18	Copy emails Robert Barnes to Ruaridh O'Donoghue 26 May 2016, submitted by the Appellant.
19	Email Clare Medland to Mike Wilmott dated 12 June 2015, submitted by the Council.
20	Council's Position Statement on the Unilateral Undertaking, submitted by the Council.
21	Rule 6 party response to Technical Note of Mr Lees dated 30 June 2016, submitted on behalf of Mr Guley.
22	Agreed Housing Land Scenarios submitted by the Council and Appellant.
23	Email Mark Henderson to Ruaridh O'Donoghue dated 1 July 2016, submitted by the Council.
24	Summary Review of Committed Development from Hydrock dated 23 June 2016, submitted by the Appellant.
25	Emails between legal advisors on 30 June 2016, submitted by the Council.
26	1948 Plan of Shaw House Estate and accompanying copy photographs, submitted by Mr Adams.
27	Supplementary Note following the Review of Additional Topographical Survey Information by Peter Weston, submitted by the Council.

28	Extracts from various drainage advisory publications, submitted by the Appellant.
29	Plans and Photoviewpoints in relation to LVIA, submitted by the Appellant.
30	Extract from Melksham News report 'Council prepares £30m bid for Melksham bypass', submitted by the Appellant.
31	Email Janet OBrien to Ruaridh O'Donoghue dated 15 June 2016, submitted by the Council.
32	Lees Roxburgh Response to Wiltshire Council Supplementary Note and Teignconsulting response, submitted by the Appellant.
33	Report to Strategic Planning Committee on Land East of Spa Road, Melksham, submitted by the Council.
34	Report to Strategic Area Planning Committee on Former George Ward School, Shurnhold, Melksham, submitted by the Council.
35	Appeal Decision relating to George Ward Secondary School, Shurnhold, Melksham SN12 8DQ, submitted by the Council.
36	Report to Cabinet regarding Wiltshire Local Development Scheme dated 20 January 2015, submitted by the Council.
37	Notice of Approval of Reserved Matters George Ward Site (reference 14/11295/REM), submitted by the Council.
38	Email Mike Wilmott to Ruaridh O'Donoghue dated 6 July 2016, submitted by the Council.
39	Notes of oral submissions made by Mr Adams, submitted by Mr Adams.
40	Extracts from Water Industry Act 1991, submitted by the Appellant.
41	Email Jonathan Berry to Tracey McCann dated 5 July 2016, submitted by the Appellant.
42	Further extracts from Water Industry Act 1991, submitted by the Council.
43	R v Rochdale Metropolitan Borough Council ex parte Milne (2001) 81P&CR 27, submitted by the Council.
44	Manchester Ship Canal Co. Ltd v United Utilities Water plc (Canal & River Trust and others) [2014] UKSC 40, submitted by the Council.
45	Closing Statement on behalf of Wiltshire Council.
46	Outline Closing Submissions on behalf of the Appellant.
47	British Railways Board v SS Environment and others HL 28 October 1993, submitted by the Appellant.
48	Extracts from the Water Industry Act 1991, submitted by the Appellant.
49	Extracts from the Highways Act 1980, submitted by the Appellant.
50	Note on the Appellant's position on Affordable Housing by Condition, submitted by the Appellant.

PLANS SUBMITTED DURING THE COURSE OF THE INQUIRY

- A Photo Viewpoint Locations, submitted by the Council.
- B School location plan in Melksham, submitted by the Council.
- C Topographical Land Survey, drawing number S14/207-1 revision A, submitted by the Appellant.
- D Topographical Land Survey, drawing number S14/207-2 revision A, submitted by the Appellant.
- E Land South of East Melksham- Horizontal Alignment of Eastern Relief Road (4 sheets), submitted by the Council.
- F George Ward School Landscape Masterplan, submitted by the Appellant.
- G Indicative Masterplan- Land South of Western Way, Bowerhill, submitted by the Appellant.

Richborough Estates