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## Appeal Decision

Hearing held on 17 January 2017

Site visit made on 18 January 2017

**by Paul Singleton BSc (Hons) MA MRTPI**

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

**Decision date: 22<sup>nd</sup> February 2017**

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**Appeal Ref: APP/Y3940/W/3158241**

**Land south of Castle Walk, Calne SN11 0EZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by GreenSquare Group Limited against the decision of Wiltshire Council.
  - The application Ref 16/04507/FUL, dated 4 May 2016, was refused by notice dated 2 September 2016.
  - The development proposed is erection of 36 dwellings and associated works.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. Following the submission of further information subsequent to the refusal of planning permission a drainage strategy has been agreed in principle and the appellant and the Council have agreed that the details of a drainage system for the site could satisfactorily be dealt with by means of a planning condition. That agreement led to the Council withdrawing the fourth reason for refusal but, as other interested persons maintained an objection on drainage grounds, this was dealt with as a main issue at the Hearing.
  3. The Council and appellant submitted a signed Statement of Common Ground (SoCG) and I have had regard to this in my determination of the appeal.
  4. A Legal Agreement, produced under Section 106 of the Town and Country Planning Act 1990 (S106 Agreement) and signed by the main parties, includes a number of planning obligations relating to affordable housing provision, the provision and management of on-site open space, the provision of waste collection and recycling facilities on the site, and financial contributions in respect of waste and recycling, off-site play space and air quality management in the local area. The appellant has also submitted a Unilateral Undertaking (UU), relating to a financial contribution toward works to increase capacity at a nearby primary school. This matter has been dealt with separately from the other planning obligations because the appellant challenges the need for the education contribution.
  5. The main parties submitted an agreed note on the housing land supply position in the North and West Wiltshire Housing Market Area within which the appeal
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site lies. The note confirms that sufficient land has been identified for the delivery of 6,684 dwellings in the period from 2016-2021 against the requirement for 6,519 new dwellings as identified in the Wiltshire Core Strategy (CS) adopted in January 2015. The identified supply equates to 5.13 years supply. This exceeds the basic 5 year requirement set out in paragraph 47 of the National Planning Policy Framework (Framework) but falls short of the 5.25 years supply needed to achieve a 5 years supply plus the 5% buffer which is also required under paragraph 47. The parties agree that the degree of shortfall is marginal.

6. Within the Calne Town Area, past completions and commitments together provide for the delivery of 1,555 dwellings against the identified requirement over the CS plan period (2016-2026) of 1,440 dwellings. The requirement identified in the CS for the Calne Town Area has, therefore, already been exceeded. However, the parties agree that the projected number of dwellings set out in CS Policy CP8 should not be treated as a maximum or ceiling figure.

### **Main Issues**

7. The main issues in the appeal are:
  - (a) The effect on the character and appearance of the site and the surrounding area and on the site's role as an element of green infrastructure;
  - (b) The effect on protected and priority species and habitats;
  - (c) Whether the proposed development would be of an appropriate quality of design having regard to the site's location and context;
  - (d) Whether the proposal makes adequate provision for surface water drainage and whether the proposed drainage strategy is likely to be capable of implementation; and
  - (e) Whether the proposal would provide and secure the necessary services and infrastructure to support the level of residential development proposed.

### **Reasons**

#### *Character and appearance*

8. The appeal site occupies a sensitive location at the edge of Calne and performs an important role in the transition between the built up area at the south western edge of the town and the tranquil, and distinctly rural, landscape character of the river valley to the west. In views from the public footpath along the valley floor to the west the site appears as a substantial block of mature woodland and helps to provide an attractive setting for the built area of the town. From here it can be seen that built development is limited, on both sides of the valley, to the upper slopes and that the lower slopes and valley floor extend as a green lung further into the town. An appreciation of the generous width of the valley can also be gained from the estate road, footpaths and from some of the houses within the Bowood View development which all provide for good views of the extent of mature vegetation on the site and the contribution that this makes to the rural character of the river valley.
9. The appeal proposal would result in a significant encroachment of built development on to the currently undeveloped, lower slopes on the north side of

the river and would have a significant adverse effect on the landscape character of this part of the river valley. Mature woodland would be retained in the south-western part of the site and the additional planting proposed in this part of the site and to the site boundaries would help to screen views of the development from the south west. However, the removal of most of the existing tree cover from the rest of the site would significantly reduce its landscape value as a woodland block. That significant change would be particularly evident in the elevated views available from Bowood View and from the valley floor to the south, from where the existing density and depth of vegetation on the site can readily be appreciated. It would also be apparent in views from the residential area to the north, for example from Oldbury Way, from where views of the trees within the heart of the site would be replaced by views of the roof ridges to the new dwellings appearing within a substantially reduced woodland setting.

10. The transitional role of the site is of particular importance when travelling west from the town centre. Having left the densely built up area around Castle Street and Castlefields, Castle Walk reduces to a single carriageway with no footways or street lighting. Along this section of the route the Silbury Road bungalows are largely screened by tall hedging and the houses to the south occupy extensive plots and are set back from the lane behind mature trees and hedges. These characteristics combine to create a clear sense that one is leaving the built area of the town. That sense is reinforced on joining the much narrower section of bridleway between number 27 Castle Walk and the footpath link to Sarum Way. From here one gains a strong awareness of the extensive block of woodland within the appeal site, and of the manner in which this extends down the valley slope, as well as of the middle distance views of the pastoral landscape of the river valley opening up ahead.
11. The appellant has resisted the Highway Authority's suggestion that this section of Castle Walk be widened and surfaced to provide a cycle path alongside the existing bridleway. A significant number of the trees which can currently be seen over the top of the boundary hedge would, however, be lost and this would result in an adverse change in the character, both of the site itself and of the corridor within which Castle Walk lies.
12. The proposed dwellings would be constructed some 10 or 12 metres (m) from the site boundary, would sit below the level of the bridleway, would be of two storey height, and would form an almost continuous line of buildings along the length of the northern boundary. Even with additional planting to fill the existing gaps, the retained hedge would not fully screen the new houses. Views of the upper storeys of the houses, of fences to their rear gardens and of any sheds or other outbuildings that the future occupiers might erect in those gardens would still be available. The illumination from internal and external lighting of the properties would also be evident from the bridleway. These adverse effects on the semi-rural character of Castle Walk would be increased by virtue of the high density of the proposed development compared to that immediately to the east and north and by its distinctly urban form.
13. Still clearer views of the houses, garden fences and general paraphernalia associated with the residential use would be available through the proposed pedestrian link from Castle Walk and the main site access. The construction of the new site access would result in a regular flow of vehicles crossing the bridleway and interrupting the views of the open pasture beyond the kissing

- gate. The proposed access, access table and associated vehicle movements would be alien elements in what is currently a tranquil and semi-rural route.
14. In my judgment the density and form of built development proposed, in combination with the landscape changes that would flow from this, would have a significant adverse effect on the character of the Castle Walk route and lead to a marked reduction in its role and value as a zone of transition between the urban area and the open, pastoral character of the river valley to the west. Given the clear importance of Castle Walk, both as link between the residential area to the north and the town centre and as a connection between the town and the open countryside, these adverse changes would be experienced by large numbers of people.
  15. The proposals would not be consistent with the Management Guidelines for the Hilmarton Rolling Lowland Landscape Character Area as set out in the North Wiltshire Landscape Character Appraisal (2004). These identify an overall objective of maintaining and enhancing the tranquil, rural character which prevails throughout much of the area and state that the integrity and maturity of hedgerows and hedgerow trees, woodland clumps and shelterbelts is important to shaping the character of the area. The guidelines do not preclude new development but state that development should be controlled and directed to where it is considered appropriate. I consider that the site is not an appropriate location for residential development having regard to the likely effects on landscape and landscape character.
  16. For these reasons I find that the proposal is contrary to CS Core Policy 51 which seeks to protect, conserve and enhance Wiltshire's distinctive landscape. The proposal would conflict with various clauses of the policy by virtue of its failure to conserve: locally distinctive features including woodland (i); the locally distinctive character of settlements and their settings (ii); the separate identify of settlements and the transition between man-made and natural landscapes at the urban fringe (iii); important views and visual amenity (vi); and landscape functions including places to live, work, relax and recreate (viii).
  17. I note the appellant's argument that any new development on the edge of Calne is likely to be within the river valley and that the appeal site is relatively well enclosed. However, given that the CS housing projection for the Calne Town area has already been exceeded and that the emerging Calne Neighbourhood Plan (CNP) proposes the allocation of a site to the north west of the town for 250 dwellings there would appear to be no need for further allocations to be identified at the present time.
  18. The appellant had previously questioned whether the appeal site should be regarded as an element of Green Infrastructure but conceded at the Hearing that it does have this status. Notwithstanding the additional planting and future management proposed, the development would result in a significant reduction in the extent of the woodland block in this part of the river valley. Given that the housing requirement in Calne Town area has already been met the development of more than 50% of the site area for housing and the resultant loss of or damage to Green Infrastructure cannot reasonably be said to be unavoidable. Accordingly, I find that the proposal would conflict with CS Core Policy 52 which requires that development should make provision for the retention and enhancement of Wiltshire's Green Infrastructure network.

19. The proposed allocation, within the draft CNP, of the site as Local Green Space provides some indication of the value which local people place on it as part of the Green Infrastructure network although I note that this allocation has been objected to by the appellant. The final version of the CNP is expected to be the subject of a referendum later this year. Although the emerging plan can, at present, be given only limited weight the proposal would also be contrary to draft Policy NE3, which states that development on the edge of Calne will only be permitted where it does not adversely affect views and linkages into and out of the town centre. To that extent, and by seeking development of a site proposed as Local Green Space, the proposal would not support the objectives of the Neighbourhood Plan.

*Protected and priority species and habitats*

20. The appeal site lies neither within nor in close proximity to any European, National or locally designated site of ecological or biodiversity value. However, CS paragraph 6.67 explains that the valuable natural environment which CS Core Policy 50 seeks to protect also includes other features of nature conservation, including priority species and habitats, areas of habitat with restoration potential and features providing an ecological function for wildlife including foraging, resting and breeding places. Based on the findings of the various ecological surveys there can be no doubt that Core Policy 50 is relevant to the appeal proposal.
21. There are different habitat types with the appeal site including broadleaved woodland in the south western part of the site; a former orchard in the north east corner; and a mosaic of scrub, tall ruderals and semi-improved grassland in the north eastern part where most of the built development would take place. The hedgerow to the northern boundary of the site is agreed to be species rich. There is some difference of opinion as to whether these habitats display all the relevant criteria such as to fall within the specific classifications of priority habitats listed under Section 41 of the Natural Environment and Rural Communities Act 2006. However, the appellant's Update Preliminary Ecological Appraisal of March 2016 found that botanical diversity at the site was relatively high owing to the diversity of habitats. The Council also contends that the range of different types of habitats within the site adds to the site's biodiversity. In light of all of the available evidence it seems to me that this is a key part of the site's value for nature conservation.
22. There is a significant variety of vegetation within the area of scrub/mixed mosaic habitat and, although the appellant argues that the scrub is becoming increasingly dense, my observations on the site visit were that much of this is of relatively limited height and that there are many open areas where light penetrates through to the lower lying vegetation and ground cover. The Update Preliminary Ecological Appraisal notes that the ground flora within the areas of tall herbaceous plants and ruderals remains relatively species rich despite the advancement of scrub, and that the species diversity within the areas of grassland was comparable to that found in the previous (2013) survey. The proposal would result in the wholesale loss of about 1 hectare (ha) of scrub/mixed mosaic habitat to built development, hard surfacing and domestic gardens. Although there would be some enhancement of patches of grassland within the retained woodland and new wildflower areas would be planted alongside the access road, the substantial reduction in the area of this

- mixed habitat would not be fully compensated for. A number of mature ash and other trees in this part of the site would also be lost.
23. The former orchard has not been subject to active management for many years but the Council's evidence is that this is typical of around 70% of the orchards within Wiltshire. The orchard retains a variety of fruit trees of ecological value and further adds to the biodiversity of the site. A significant part of this area would be lost for the construction of the site access and estate road. Again, although the planting of fruit trees is proposed within that part of the site to be kept free of built development, there would be a material reduction in the extent of this habitat.
24. The woodland area may not contain the species normally associated with a broadleaved woodland habitat and has not been managed as such. However, my observations on the site visit support the Council's view that, although Aspen dominated, it is a well-structured, mixed deciduous woodland with significant habitat value. The access road and pumping station would encroach on the northern edge of the woodland, resulting in the loss of a large number of mature aspen trees. Additional planting and future management would be likely to improve the overall health of the retained woodland over the long term. However, newly planted trees would take many years to mature and to achieve a similar ecological value as the mature trees which would need to be felled. The proposed access arrangements would require the removal of about 37 m of the species rich hedgerow to the northern boundary and the mitigation strategy for this is dependent upon new planting within gaps in the less species rich hedge to the western boundary.
25. Built development would be limited to that area which is predominantly of scrub and mixed mosaic habitat value but the proposal would lead to the wholesale loss of this habitat. It would also result in a material reduction in the extent of other habitats identified within the site. The proposed interventions and future management of that part of the site to be kept free of built development would improve its value over time. However, in my judgment, this area would be too small to provide adequate compensation for the harm that would result from the significant reduction in the current biodiversity value of the site as a whole.
26. I consider that the ecological mitigation strategy seeks to achieve too many different outcomes in a relatively small part of the site. The routing of footpaths through the retained woodland and orchard and its open access to residents of the proposed development, and others, for recreational use is also likely to threaten the success of that mitigation strategy. The absence of adequate buffer zones between the access road, houses, gardens, pumping station and other elements of infrastructure and the areas to be retained as woodland and orchard would leave the edges of these open to damage and harm to their habitat value.
27. The appeal site was used by the appellant company as a receptor site for the translocation of slow worms from another nearby site for which planning permission for development was granted on appeal in 2010. The letter from Applied Ecology Limited, dated June 2011, indicates that some 115 slow worms were successfully captured and moved to the appeal site. The peak count of slow worms recorded in the Reptile Survey undertaken in July 2015 indicates

that there may have been a decline in numbers since the translocation was completed.

28. The appellant acknowledged that the measures recommended by Applied Ecology Limited, to implement small scale habitat management at the receptor site and to undertake annual reptile surveys to monitor the success of the translocation, have not been implemented. The appellant argues that the diminishing areas of open grassland have led to a reduction in the value of the site as a habitat for slow worms but it seems that the absence of active management may have contributed to that reduction. Notwithstanding the apparent reduction in population since 2011, the 2015 survey findings suggest that a breeding population of slow worms has been sustained on the site.
29. The north eastern part of the site has predominantly been favoured by slow worms and by the grass snakes found on the site and the appeal proposal would result in the substantial loss of this more suitable habitat. The proposed mitigation strategy is to encourage reptiles to move within the site such that they would, in future, be contained within the woodland area in the south western half. Although works to enhance the areas of habitat within the retained woodland area are proposed, the appellant's Ecological Mitigation and Enhancement Strategy of May 2016 acknowledges that, due to the much greater shading within the woodland area, these currently provide a less optimal habitat than the mosaic habitats in the north eastern parts of the site. I also note that the appeal proposal does not provide for a 25m wide strip of open mosaic habitat on the eastern side of the site to be kept free of development as recommended in that strategy.
30. The mitigation strategy may not involve the translocation of reptiles to a different location. However, it does propose the concentration of existing populations within a much smaller and less suitable part of the site and the removal of a large proportion of the existing populations within an area which already provides some of the same function as the habitat which would be lost. I agree with the Council that the proposed strategy does not comply with Natural England's standing advice on the movement of reptiles or best practice guidelines.
31. For these reasons I find that there is insufficient certainty that the proposed mitigation strategy would be successful. I also find that there would be a significant residual risk, both that slow worms would be killed as a result of the development, and that the resultant habitat would not be suitable for the conservation of a sustainable population over the long term. The proposal would, therefore, be likely to cause substantial harm to a European Protected Species (ESP).
32. The Update Preliminary Ecological Appraisal assesses the site as being of regional importance for commuting and foraging bats and a small number of trees within the site have been identified as having features suitable for roosting. The survey work recorded a large number of passes by at least 10 different bat species including a number of the rarer species. The Council has evidence of a maternity colony of the rare Lesser Horseshoe bat which is known to roost at the eastern end of Castle Walk.
33. I accept that the main areas of bat activity were recorded in the southern and western parts of the site rather than in the area which would be developed for housing. However, this area would be encroached upon by the proposed

access road and pumping station and a good length of the hedgerow to the northern boundary would also be lost. Although the mitigation proposals would help to reduce the effects of the development some areas of foraging habitat in the north eastern part of the site that would be lost would not be replaced in the scheme.

34. It is of concern that the survey work was limited to the site itself and that no detectors were placed along Castle Walk. The recording of Lesser Horseshoe bats within the surveys confirms their presence in the area and, if a maternity roost is known to exist at the eastern end of Castle Walk, there would seem to be a probability that these bats use Castle Walk as a commuting route to the open land to the west. If that is the case, it is likely that the removal of 37m of hedgerow, the introduction of a large number of vehicle movements across this route, and illumination from street lighting within the development and from a combination of internal and external lighting to the houses themselves, would combine to produce a significant adverse effect on the use of Castle Walk as a commuting route. Given the Council's evidence that the Lesser Horseshoe bat is particularly sensitive to lighting this could pose a significant risk to the continued viability of the known maternity colony and, hence, to population numbers of this relatively rare species.
35. Paragraph 99 of Circular 6/2005 states that it is essential that the presence or otherwise of protected species and the extent to which they may be affected by the proposed development is established before planning permission is granted. In the absence of any evidence to demonstrate that Castle Walk is not used as a commuting route, in particular by Lesser Horseshoe bats which are known to breed locally, it is not possible fully to assess what the effects of the proposal would be or to conclude that no significant harm would be caused to bats which are another ESP. A precautionary approach is, therefore, appropriate.
36. The surveys undertaken by the appellant showed no evidence of Great Crested Newts (GCN) on the site or in the adjacent section of the canal. Evidence was found of fish within part of the canal which would be potential predators of the larvae of GCN. The need to abandon bottle trapping at an early stage in the survey was unfortunate but I accept that the other methods of survey adopted were appropriate. However, I do have concerns about the physical extent of the survey and the appellant's acknowledgement that no survey was undertaken in the section of former canal to the east of the footpath crossing or within the water bodies in the adjacent parts of the Bowood estate.
37. Although quite dated, the Council's records show evidence of a breeding colony of GCN within the former canal. The appellant's Updated Preliminary Ecological Appraisal identifies that the former canal provides suitable aquatic habitat and that suitable terrestrial habitat for amphibians is present throughout the appeal site. A photograph of a GCN in part of the site subject to temporary flooding in 2016 submitted by Mr Brabazon would also suggest that the presence of GCN in close proximity and their probable use of the site as terrestrial habitat.
38. I accept that it is difficult to prove the non-presence of GCN on the site but a wider survey of nearby water bodies would have provided a sounder basis on which to judge whether or not there is a reasonable likelihood of their presence. The appellant has discussed with Natural England what steps would need to be taken if any GCN were to be found during the construction process.



However, the absence of any clear information as to whether they are present and in what numbers means that it is not possible to assess what the effect of the proposals on this ESP might be. A grant of planning permission on this basis would not be consistent with the guidance in Paragraph 99 of Circular 6/2005.

#### Conclusions on habitats and species issue

39. For the reasons set out above I find that the appeal site should be regarded as an area of nature conservation value for the purposes of CS Core Policy 50 and that the proposal would result in a considerable loss of habitats and a significant reduction in the biodiversity value of the site as a whole. I also find that the proposal would be likely to cause substantial harm to the existing population of slow worms on the site and that there is insufficient evidence that no significant harm would be caused to bats and GCN and their habitats. A conflict with Core Policy 50, therefore, arises as it has not been demonstrated that the proposal would protect features of nature conservation value or provide measures that would adequately retain and buffer such features in order to maintain their ecological value over the long term.
40. The proposals would conflict with CNP Policy NE4 which requires that development must demonstrate how biodiversity will be conserved and enhanced in relation to habitats, species and the overall biodiversity value of the site. However, this is a draft policy in an emerging plan and can only be given limited weight. The proposal would also conflict with paragraph 109 of the Framework, which states that the planning system should contribute to and enhance the natural environment by minimising impacts on biodiversity, and with paragraph 118, which states that, when determining applications, local planning authorities should aim to conserve and enhance biodiversity.
41. Regulation 9(3) of The Conservation of Habitats and Species Regulations 2010 places a duty on me as the competent authority in determining the appeal to have regard to the requirements of the Habitats Directive in the exercise of my decision making function. Although the appellant advised that some discussions had been undertaken with Natural England (NE) no written evidence or comments have been submitted by NE in relation to the application or appeal.
42. Having regard to the three tests that NE would be required to apply before determining whether or not to grant a licence for the disturbance or removal of GCN from the site I am unable to conclude, on the basis of the available evidence, either that there is no satisfactory alternative to such an action or that such action would not be detrimental to maintaining the population of the species at a favourable conservation status. In these circumstances I have no grounds for finding that there would be a reasonable prospect of a licence being granted in this case. Accordingly, the requirements of the Habitats Directive have not been satisfied and permission should be refused.

#### *Design quality*

43. There is no evidence in the Design and Access Statement (DAS) of any meaningful assessment of the context of the site or of the form and nature of existing residential development in the surrounding area to identify any appropriate precedents or cues to inform the design process. The major inputs into the evolution of the scheme appear to have been the Landscape and Visual

Impact Assessment the tree survey and a desire to maximise yield in terms of the number of units that could be achieved within the identified landscape and arboricultural constraints. The resultant scheme adopts a fairly standard urban layout and density which is out of keeping with the relatively low density and bungalow form of the development in the Curzon estate to the north. The stark contrast between the development and the loose form and very low density of the 5 or 6 houses to the south of Castle Walk would also mark the scheme out as an incongruous and intrusive element in this important transitional corridor.

44. Notwithstanding the limited screening provided by the retained hedge, the almost continuous line of two storey houses and garden fences close to the site's northern boundary would present a hard and unattractive frontage to Castle Walk. Although screened to some extent by the proposed earth embankment the raised level of Units 35 and 36 would appear as a discordant and intrusive feature in views from the canal path and the public footpath on the north side of the river. Within the site itself, the new housing area would be dominated by hard surfaces and extensive rows of car parking spaces to the front of the dwellings. I agree with the Council that the resultant development would be somewhat placeless and would lack architectural distinctiveness.
45. I consider that the proposed access and access table crossing of Castle Walk could be designed and constructed to a satisfactory standard in terms of the safety of users of the access and the bridleway. However, as stated earlier, this aspect of the proposal would introduce an alien feature within this corridor and the large number of vehicles crossing the bridleway would have an adverse effect on the character of Castle Walk and on the experience of walkers and other users of this important route.
46. I therefore find that the proposal would conflict with CS Core Policy 57 which requires a high standard of design in all developments and that proposals should demonstrate how the development would enhance local distinctiveness by responding to the value of its natural environment and the existing pattern of development. The proposal would also fail to comply with the policies in section 7 of the Framework which seek to secure good design and, in particular, with paragraph 64 which states that permission should be refused for development of poor design that fails to take the opportunities for improving the character and quality of the area and the way that it functions.

#### *Surface water drainage*

47. The surface water drainage strategy demonstrates that the development can be carried out in a manner which ensures that the rate of discharge of surface water to the former canal is the same as that from existing greenfield flows. This has been accepted by the relevant consultees. However, the flow rates have been calculated on the basis of site area and take no account of the presence of an existing surface water pipe, or possibly two such pipes, under the site.
48. The appellant is aware that the surface water drain that runs under the eastern part of the site is blocked and has seen the photographic evidence submitted by Mr & Mrs Brabazon of past flooding of their garden and house which they believe to have resulted from this blockage. However, no survey of that drain has been carried out and the appellant has no information as to its exact route or condition. In addition, the assumption in both the Flood Risk Assessment

(FRA) (April 2016) and the subsequent Addendum report (December 2016), that this existing drain could be suitably protected during construction and be subject to a suitable easement, appears flawed since the best information as to its routing would place it directly underneath at least 3 of the proposed dwellings.

49. An outlet pipe with an obvious flow of water to the former canal can be seen further to the west of where the known drain discharges but the FRA includes no acknowledgement of the existence of this second drain. Accordingly, the possible presence of this pipe under the site has not been taken into account either in the drainage strategy or in the layout of the proposed development.
50. The appellant has suggested that the drain that is known to exist might be re-routed along the eastern boundary. However, that proposal appears not to be based on any sound information as to its size and what it serves, or to have regard to the practicalities of laying a new pipe in this location, in particular in respect of the presence of a well and extensive areas of Japanese Knotweed infestation in this part of the site. Because the possible presence of a second drain has not been acknowledged no contingency plans have been made with regard to the possible need to relocate this drain.
51. For these reasons some uncertainty remains as to whether or not the proposed drainage strategy would be both suitable and adequate in terms of meeting the run off needs of the site as a whole and of preventing an increased risk of flooding to neighbouring land. It may be possible to relocate existing drains to accommodate the proposed layout but there are apparent constraints with regard to site levels, an existing well, the extensive coverage of trees and their roots, and areas of Japanese Knotweed that are likely to limit the options for such diversion. At this stage there is no certainty that diversions could be achieved in a satisfactory manner and, hence, it has not been demonstrated that there would be no need for part or all of the flows carried by the existing pipe(s) under the site to be collected within the proposed new surface water drainage system.
52. For these reasons I conclude that the appellant has failed to demonstrate that adequate provision has been made for surface water disposal without a residual risk of flooding of neighbouring land. Accordingly, I find that the proposal conflicts with CS Core Policy 63 which requires that all new development should include measures to reduce the rate of rainwater run-off and to improve water infiltration to soil and ground.

#### *Services and infrastructure*

53. The SoCG sets out an agreed position that the site occupies a sustainable location in terms of the accessibility it provides to local shop, services and public transport. Although some of the interested persons question how accessible the development would be to local schools no objection has been raised on these grounds by the Council or the local education authority. The only area of dispute between the main parties relates to the educational contribution sought by the Council to provide increased capacity at Priestly Primary School.
54. The principle of making a contribution to the provision of additional primary school places to provide for the children who might reasonably be expected to reside in the proposed development has not been challenged. However, the

appellant considers that the request for a financial contribution is insufficiently justified in respect of an identifiable, costed project such that the contribution would not conflict with the pooling limitations set out in the Community Infrastructure Levy (CIL) Regulations 2010.

55. The evidence shows that the existing spare capacity at Priestly Primary school will be exceeded as a result of the projected increase in pupil numbers arising from existing and committed developments in the catchment area. The Council has undertaken sufficient feasibility work to confirm that the school site has adequate space for a two phase extension that would convert the school into a 2 form entry primary with capacity for 420 pupils. S106 contributions have been secured towards the cost of the proposed first phase of this expansion (providing 120 additional places) and the Council has recently appointed architects to take that phase forward.
56. The scope of the proposed second phase has been clearly defined and the potential for this to be accommodated on the school site has been confirmed. The Council has also confirmed that no S106 contributions towards the cost of Phase 2 have been secured. On this basis the absence of a detailed cost estimate for the Phase 2 expansion does not call into question its deliverability or suggest that the seeking of a contribution from the appellant to the Phase 2 scheme would fall foul of the pooling of contributions restrictions set out in the CIL Regulations. The contribution sought has been calculated on the basis of the Council's adopted capital cost multiplier for primary school provision which, it can be assumed, is based on its knowledge and recent experience of the costs of such provision. Accordingly, I find the appellant's concerns with regard to the request for an educational contribution to be unfounded.
57. As no other concerns on this issue have been raised I am satisfied that, subject to my findings with regard to surface water drainage as set out above, the proposal would make adequate provision in terms of the services and infrastructure required to support the quantum of residential development proposed.

### **Other Matters**

58. Some occupiers of nearby residential properties have raised concerns about a potential loss of privacy to their homes and gardens. However satisfactory separation distances would be achieved between proposed and existing dwellings and the raised level of the Silbury Road gardens would also help to ensure that privacy is maintained in those private amenity spaces. Privacy in respect of the rear windows and gardens to numbers 25 and 27 Castle Walk would be safeguarded by the combination of the separation distances proposed and the splayed orientation of the nearest dwellings within the proposed development. Although a number of people have objected to the proposal because of concerns with regard to the effects of the additional traffic that would be generated I have seen no evidence that would lead me to conclude that the proposal would cause any significant harm in that respect.
59. Paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Regulations require that planning obligations should only be sought, and that weight be attached to their provisions, where they are: necessary to make the development acceptable in planning terms; directly related to the development proposed; and are fairly and reasonably related in scale and kind to the development. I am satisfied that all of the obligations in

the S106 Agreement and the UU meet these tests and I have therefore afforded weight to them in reaching my decision.

60. The proposal would contribute 36 dwellings to the supply of new housing within Calne and would provide 11 affordable homes in the area. Whilst any contribution to the range and choice of new homes in the area would be of public benefit there is no pressing need for additional housing in the area as the forecast requirement for the Calne Town area has already been exceeded. The evidence as to the extent of Knotweed infestation within the site and the challenges likely to exist with regard to its eradication also call into question the appellant's estimate as to when the proposed new homes would be likely to be made available for occupation. I consider that the anticipated completion date of autumn of 2019 is over optimistic for these reasons.
61. The development would bring economic benefits in terms of the construction expenditure and employment, albeit for a relatively short duration, and the future spending by residents of the proposed new dwellings on local goods and services. The Council would also receive New Homes Bonus payments in respect of the new homes. However, the financial contributions that would be secured by means of the proposed planning obligations are required in order to mitigate the effects of the proposal and should not be counted as benefits of the scheme.

### **Conclusions**

62. For the reasons set out above I find that the proposal would result in significant harm with regard to the landscape and landscape character and the conservation of protected and priority habitats and species. I also find that the proposal would fail to achieve an appropriate quality of design that responds to the opportunities provided by the site and its context and that the appellant has not demonstrated that a satisfactory drainage system can be achieved and implemented without an increased risk of flooding of neighbouring land. The proposal gives rise to conflict with a number of policies within the development plan and with the development plan as a whole. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications must be determined in accordance with the development plan unless material considerations indicated otherwise.
63. Although moderate weight can be attributed to the contribution to housing provision in Calne and to the economic benefits that would flow from the proposal these would not outweigh the significant harm that I have identified or the resultant conflict with the development plan and the Framework. No material considerations have been demonstrated which would indicate a decision other than in accordance with the development plan.
64. I therefore conclude that the appeal should fail.

*Paul Singleton*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

John Owen MSc	Land Manager – GreenSquare Group Ltd
Jonathan Adams BA BTP MRTPI	Director - Tetlow King Planning
Meghan Rossiter BSc (Hons) MSc MRTPI	Principal Planner - Tetlow King Planning
Anthony Clarkson BA (Hons) Dip LA LMLA	Principal - ACLA
Graham Davsion BSc (Hons) MSC MCIEEM MRSB	- Focus Ecology
Wing Lee BEng (Hons) PgCert MCIHT MIHE	Traffic Engineer – MJA Consulting
Chris Pendle BSc (Hons) MCIWEM	Drainage and Flood Risk Engineer – MJA Consulting
Richard Stone B Arch Dip Arch PgDip RIBA	Project Architect – Quattro

### **FOR THE LOCAL PLANNING AUTHORITY:**

Chris Marsh BA (Hons) MPlan MRTPI	Senior Planning Officer
Brian Johnson DipArch RIBA	Urban Design Officer
Jon Taylor MCIEEM MSc PgDip BSc	Landscape and Design Manager
Mark Goodwin BA (Hons) CMLI	Landscape Officer

### **INTERESTED PERSONS:**

Councillor Alan Hill	Wiltshire Council and Calne Town Council
Anne Henshaw	Campaign to Protect Rural England
Mo Norrington	British Naturalists Association
Adrian Brabazon	Local Resident - Castle Walk
Fleur Brabazon	Local Resident – Castle Walk
Roger Appleby	Local Resident – Silbury Road
Patricia Appelby	Local Resident – Silbury Road
Janet Payne	Local Resident – Sarum Way
Richard Aldhous	Local Resident – Castle Walk

### **DOCUMENTS SUBMITTED AT THE HEARING:**

Signed Statement of Common Ground  
Signed S106 Agreement

Signed Unilateral Undertaking

Community Infrastructure Levy Compliance Statement

Appellant's list of participants

Appeal Decision Ref: APP/Y3840/W/15/3132915

Agreed Statement on Housing Land Supply Position

Councillor Hill written notes

Roger Appleby written notes

Patricia Appleby written notes with Ecology statement by Nick Adams

Mr & Mrs Brabazon supporting evidence

Core Strategy Policy CP3 and supporting text

Core Strategy Policy CP8 and supporting text

Local Plan Policy NE14

**DOCUMENTS SUBMITTED AFTER THE HEARING:**

Full Copy of Draft Calne Neighbourhood Plan (November 2016)

Core Strategy Policy CP41 and supporting text

Updated list of draft conditions

Richborough Estates