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## Appeal Decision

Hearing Held on 17 January 2018

Site visit made on 17 January 2018

**by R J Jackson BA MPhil DMS MRTPI MCMi**

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

**Decision date: 06 February 2018**

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**Appeal Ref: APP/Y3940/W/17/3181886**

**Land at Empress Way, Ludgershall, 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 Mr S H Crook against the decision of Wiltshire Council.
  - The application Ref 16/10907/OUT, dated 8 November 2016, was refused by notice dated 15 February 2017.
  - The development proposed is outline application for residential development of up to 269 No dwellings (Use Class C3), a two form entry primary school, highways including extension to Empress Way, green infrastructure including open space and associated landscaping, infrastructure, drainage, utilities and other engineering works – external access from Empress Way not reserved.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. At the Hearing an application for costs was made by Wiltshire Council against Mr S H Crook. This application is the subject of a separate Decision.

### Procedural matters

3. The application was made in outline with all matters apart from access reserved for later consideration. The access would be from Empress Way. An illustrative layout was submitted showing a potential layout for the proposed development. I have considered the appeal and this drawing in these respective terms.
4. At the Hearing I was provided with a copy of a Planning Obligation by agreement pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) dated 15 January 2018. This deals with affordable housing and contributions towards public art, primary and secondary education, waste and recycling, highway works and off-site public open space, and also relating to a road link and on-site open space. The Council considered that this overcame the third reason for refusal on the decision notice relating to these matters. However, as there is a "blue pencil" clause, which requires me to consider each provision, I will discuss this in detail later in this decision.
5. Outline planning permission was granted in 2015 for residential development of up to 109 dwellings with an extension to Empress Way, car parking, public open

space and associated landscaping<sup>1</sup> on 4.8 ha on the part of the appeal site adjacent to Empress Way. No application for approval of reserved matters pursuant to that permission has yet been submitted.

## **Main Issues**

6. The main issues are:

- the relationship of the proposal to the development plan for the area;
- whether the proposal would result in an unacceptable loss of the best and most versatile agricultural land;
- whether the proposal makes adequate provision in respect of affordable housing and on-site and off-site infrastructure; and
- whether there are any other material considerations, including the benefits of the proposal, which would indicate that the proposals should be determined otherwise than in accordance with the terms of the development plan.

## **Reasons**

7. The appeal site consists of 15.9 ha of open arable agricultural land to the southeast of the town of Ludgershall. The appeal site is 'J' shaped. The top northern boundary joins a railway line, the western and lower northern boundary join the main built up area of Ludgershall. The southern and eastern boundaries are not defined on the ground. A public right of way passes through the appeal site. The land form is that it rises from the north to the centre of the site and then falls away to the south and east.
8. Residential development is taking place to the west of the appeal site at the bottom of the 'J'. This site is known as "Granby Gardens".
9. The Council indicated that it was able to demonstrate a five year supply of housing land and this was not disputed by the appellant.

### *Development plan*

10. The development plan for the area includes the Wiltshire Core Strategy (the CS) and the saved policies of the Kennet Local Plan. Core Policy (CP) 1 of the CS sets out the settlement strategy. This sets four tiers of settlements ranging from principal settlements, through Market Towns, including as a single entity "Tidworth and Ludgershall", to Local Service Centres, Large and Small Villages. CP1 indicates that Market Towns have the potential for significant development that will increase the jobs and homes in each town in order to help sustain and where necessary enhance their services and facilities and promote better levels of self containment and viable sustainable communities.
11. CP2 sets of the Delivery Strategy and includes the indicative housing requirements for both the Housing Market Areas (HMAs) and the Community Areas within those HMAs. Tidworth and Ludgershall fall within the East Wiltshire HMA with an indicative requirement of 1,750 dwellings for "Tidworth and Ludgershall" and 170 dwellings for "Tidworth remainder". The policy indicates that sites for development in line with the Area Strategies will be

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<sup>1</sup> Council Ref: E/2013/0234/OUT

- identified through subsequent Site Allocation Development Plan Documents (DPDs) and by supporting communities to identify sites through neighbourhood planning.
12. Under CP2 within the defined limits of settlements there is a presumption in favour of sustainable development at, *inter alia*, Market Towns, but outside these defined limits development will not be permitted except within circumstances set out in the plan. The appeal site lies outside the defined limit of Ludgershall as defined in the development plan and the proposal does not fall within any of the circumstances within the adopted development plan which would permit development outside those limits.
13. CP26 deals with the Tidworth Community Area. It states that development in the area should be in accordance with CP1. It provides that of the 1,750 dwellings in Tidworth and Ludgershall 475 would be delivered as part of a strategic allocation at Drummond Park (MSA Depot) which is provided for in the CS.
14. The appellant sought to argue that as Ludgershall was a defined Market Town and therefore suitable for significant development under the terms of CP1 that the proposal was in accordance with the development plan. However, it seems to me that the plan should be read as a whole with CP2 making clear that sites for development should be allocated through Site Allocation DPDs or Neighbourhood Plans. The National Planning Policy Framework (the Framework) makes clear in paragraph 196 that the planning system is planned. As the Council can show a five year supply of land for housing, the policies for the supply of housing remain up-to-date and consequently CP1, CP2 and CP26 should be given full weight. The proposal does not fall within those circumstances where development is permitted outside the limits of development of settlements. Consequently, taken as a whole, the proposal would be contrary to the terms of the development plan as to the location of development.

#### *Agricultural land*

15. The site has been subject to an Agricultural Land Classification Report which identified the site as Grade 3A. Consequently, it forms part of the best and most versatile agricultural land. Paragraph 112 of the Framework states that local planning authorities should take into account the economic and other benefits of this. It continues to state that where significant development of agricultural land is demonstrated to be necessary poorer quality land should be used in preference to that of high quality.
16. There is no definition in this context of "significant" in the Framework or other guidance so each case needs to be judged on its own individual merits. The appeal site is extensive but it would not affect the viability of the agricultural landholding of which it forms part. There would be the loss of agricultural production which would be economically harmful. The appellant suggested that any development on a greenfield site in the area around Ludgershall would involve the loss of best and most versatile agricultural land, but I do not have any evidence on this.
17. Even taking into account the area of land already agreed to be lost to agriculture under the previous outline planning permission, given the extensive area of the appeal site, I conclude that the loss of agricultural land would be

significant. This weighs against the development. I will consider the weight that should be given to that harm below.

#### *Affordable Housing and other infrastructure*

18. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (the CIL Regulations) states a planning obligation may only constitute a reason for granting planning permission if the obligation passes three requirements. This is reiterated in paragraph 204 of the Framework. These requirements are that the Obligation is necessary to make the development acceptable in planning terms, that it is directly related to the development and fairly and reasonably related in scale and kind to the development.
19. Regulation 123 of the CIL Regulations also states a planning obligation may not constitute a reason for granting planning permission for the development to the extent that the obligation provides for the funding or provision of relevant infrastructure where five or more separate planning obligations provide for the funding or provision of that project or provide for the funding or provision of that type of infrastructure.
20. CP3 of the CS indicates that all development will be required to provide the necessary on-site and, where appropriate, off-site infrastructure requirements arising from the proposal. The supporting text separates infrastructure into two hierarchical themes; theme 1 dealing with essential infrastructure and theme 2 dealing with place-shaping infrastructure. Both are subject to viability with priority being given to theme 1 infrastructure.

#### Affordable Housing

21. CP43 of the CS requires on sites of five or more dwellings affordable housing provision. This is either 30% or 40% depending on the zone in which those sites are located. Ludgershall falls in the 30% zone. Decisions should, of course, follow the development plan unless other material considerations indicate otherwise. It is not suggested that there is no need for affordable housing, and in light of the evidence considered below, I am satisfied that there would be a need for affordable housing, that it would be directly related to the development and fairly and reasonably related in scale and kind to the development. Affordable housing does not represent infrastructure within the terms of the CIL Regulations so that Regulation 123 is not engaged

#### Public Art

22. The provision of public art and streetscape features falls within the list of place shaping infrastructure. The Planning Obligation makes provision for a contribution towards the commissioning, installing and maintenance of works of art in accordance with the Council's 'Guidance note for art and design in the public realm'. I am satisfied on the evidence in front of me that such a contribution is necessary to allow the development to take place, that it would be directly related to the development and fairly and reasonably related in scale and kind to the development. As an on-site provision this would be the first such provision so Regulation 123 would be satisfied.

### Education contributions

23. Contributions towards the provision of education infrastructure fall within the lists of essential infrastructure with the Planning Obligation making contributions towards a new primary school at the former Corunna Barracks, and at secondary level towards the expansion, improvement and maintenance of Wellington (Secondary) Academy at Tidworth. These contributions are in line with the Council's 'Developers Contributions – Education Infrastructure' document. I am satisfied on the evidence in front of me that such a contribution is necessary to allow the development to take place, that it would be directly related to the development and fairly and reasonably related in scale and kind to the development. I was advised that neither contribution would exceed the limit of contributions set under Regulation 123.
24. When the application was originally submitted it was indicated that the school site forming part of the proposals would be secured for a period of 25 years. This is not included within the completed Planning Obligation and I will discuss this below.

### Waste and Recycling

25. Waste management services such as recycling and collection facilities falls within the theme 1 list of essential infrastructure, being set out in more detail in the Council's 'Waste Collection: Guidance for New Developments' Supplementary Planning Document. The Planning Obligation secures a contribution to deliver waste and recycling bins for each dwelling. I am satisfied on the evidence in front of me that such a contribution is necessary to allow the development to take place, that it would be directly related to the development and fairly and reasonably related in scale and kind to the development. As an on-site provision this would be the first such provision so Regulation 123 would be satisfied.

### Highways and Transport

26. The Obligation makes provision for contributions towards highways and sustainable transport improvements in the area. Local residents expressed their concerns that the additional traffic caused by the development, particularly at the Astor Crescent/Tidworth Road junction, would lead to issues in this area. In light this, and the other information provided by the main parties, I am satisfied that the requirement is necessary and directly related to the development and fairly and reasonably related in scale and kind to the development. I was also advised that the totting up provisions of Regulation 123 would not be breached.

### Road Link Land

27. Under the Planning Obligation there is a requirement to submit a scheme for the provision of a road link between Granby Gardens and the appeal site. This is necessary to ensure that there is an appropriate access between the appeal site and the adjoining land and that the overall capacity of the highway network is not exceeded. I am satisfied that the requirement is necessary and directly related to the development and fairly and reasonably related in scale and kind to the development. This would be the first provision of this infrastructure so Regulation 123 would be satisfied.

### Public Open Space

28. The Planning Obligation makes provision for on-site and contributions towards off-site open space. The provision of leisure and recreation, and open space and green infrastructure fall within theme 2 infrastructure. In relation to off-site provision this would be a contribution towards community use facilities at Wellington (Secondary) Academy at Tidworth. It would also make provision the on-site provision of open space at the appeal site. I am satisfied that the requirements are necessary and directly related to the development and fairly and reasonably related in scale and kind to the development. The on-site provision this would be the first provision of this infrastructure and I am advised that the off-site provision would not be restricted by the provisions of Regulation 123.

### *Benefits and other material considerations*

#### Emerging Plan

29. As foreseen in the CS the Council is producing the Wiltshire Site Allocations Development Plan Document (the WHSAP) to provide for site allocations in the Tidworth and Ludgershall area. The pre-submission draft was published for public consultation between July and September 2017, and the Council is currently considering the responses received.
30. Under Policy H1.1 an area of land substantially the same as the appeal site is allocated for 270 dwellings, 1.8 ha of land reserved for a two form entry primary school, landscaping and highway works. The main parties agreed that the differences between the proposed allocation site and the appeal site were not material for the purposes of this appeal and I agree with this.
31. The parties disputed the amount of weight that this plan should have with the appellant considering that it should have significant weight while the Council, notwithstanding that it considered it had prepared a sound plan, was of the view that this should not be the case. The Council took particular note of an appeal<sup>2</sup> decision relating to land in Semington from December 2017. Although the Inquiry was held in June, July and September 2017 the Inspector indicated that, due to the very early stage of plan preparation and the public consultation had only just commenced, she was unable to afford the WHSAP any significant weight.
32. Paragraph 216 of the Framework indicates that weight may be given to emerging plans according to the stage of preparation of the emerging plan, the extent that there are unresolved objections and the degree of consistency of the relevant policies with those in the Framework. Although the public consultation period for the pre-submission draft WHSAP has now finished, in reality the plan has not yet made further significant progress towards adoption. The Council still has to consider the representations made and decide whether to proceed or make modifications.
33. In addition, I was advised that objections had been made not only to the specific allocation but also more generally to the reasoning behind the WHSAP. While the objection specific to Policy H1.1 appears not to be objecting to the principle of the allocation the more generic objections are still unresolved and this may or may not affect the proposed allocation. While the plan has been

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<sup>2</sup> APP/Y3940/W/16/3162997



drawn up in light of the policies of the Framework, the three bullet points in paragraph 216 are conjunctive. I therefore believe that at this stage the WHSAP can only be given limited weight.

34. Furthermore, in light of the responses given by the Council at the Hearing to my questioning there must be considerable doubt as to whether the proposed allocation will continue in its current form.
35. As set out above, when the application was originally made it was stated that the school site forming part of the proposals would be retained so it would be available for up to 25 years and this was promoted as a benefit of the development to be secured through the Planning Obligation. However, no provisions were included within the Obligation to this effect, and I queried why this was the case.
36. I was advised that this was because the Council did not believe that an Obligation in these terms would meet the tests set out in the CIL Regulations, predominantly as such a provision was not necessary. This was because the Council's Education Department had taken the view, as I understand it, that rather than build and operate another new school on the appeal site, existing schools in the area would be expanded. Local residents attending the Hearing expressed the view the proposed school site allocation should continue in order to ensure that existing schools were not overdeveloped. It is therefore clear that this issue has yet to be resolved.
37. There are a number of other implications that flow from this. Firstly, and importantly, whether the area of the proposed allocation needs to be as large as currently proposed. If 1.8 ha of land is not needed for a school site, then to deliver the same number of dwellings less land will be needed and thus there could be less encroachment into the countryside. While the countryside in the area is not designated for any particular reason, this does not mean that its intrinsic character and beauty should not be recognised (paragraph 17 of the Framework). There are no existing physically defined boundaries to the south and east and the limits of development could be just as well be in a different location.
38. Secondly, the disposition of the remaining uses may not continue. Although only illustrative the layout submitted shows the school site within the centre of the appeal site.
39. It seems to me, therefore, that although the WHSAP allocates the appeal site for, essentially, the same development as here proposed this confirms my view that the WHSAP can only be given limited weight. I will come to look at this further in the Planning Balance section below.
40. Having said that the Council confirmed that it did not consider the proposal premature in the sense set out in the national Planning Practice Guidance (the PPG)<sup>3</sup>. However, it seems to me that this is more of a function that the WHSAP has not yet reached a stage where it could be given more than limited weight rather than a grant of permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan.

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<sup>3</sup> Reference ID: 21b-014-20140306

### Housing Land Supply

41. As set out above the appellant did not dispute that the Council could demonstrate a five year supply of deliverable housing sites. The point made was however, that because the CS has an end date of 2026 the Council was unable to comply with the third bullet point of paragraph 47 of the Framework, which indicates that local planning authorities should identify a supply of specific, developable sites or broad locations for growth for years 6-10 and, where possible, 11-15.
42. However, it seems to me that this bullet point is more to do with plan-making rather than decision-taking on individual planning applications. When the CS was adopted this was partially on the basis that the Council would be undertaking an early review of that plan. The Council explained that it had, jointly with Swindon Borough Council, published a revised Strategic Housing Market Assessment, as a precursor to delivering a new plan. While the timetable for the new plan has slipped from that originally envisaged when the CS was adopted, the current timetable is that the new plan would be adopted in 2021.
43. The overall aim is that the planning system should be plan-led. I am therefore satisfied there is sufficient time to ensure a strategic level replacement plan was in place to safeguard the continued delivery of land for housing and other matters.

### Benefits of affordable housing

44. It was agreed that the proposal would deliver 30% affordable housing in line with CP43 of the CS, but the appellant considered that this should be given additional weight in the planning balance due to, as he saw it, delays in the provision of affordable housing both in the Tidworth and Ludgershall area and Wiltshire more generally.
45. As set out above, CP43 of the CS deals with affordable housing in two zones. This is based on values rather than geographic need. The supporting text to this policy states that this strategy will deliver approximately 13,000 affordable homes over the plan period, which equates to around 31% of the total housing provision for Wiltshire during this time. The Council explained that this is not approached as an annual average as it seeks, where possible, to align affordable housing to need rather than geography. This means that looking at individual housing market areas to see the quantum of housing that they are providing is, the Council contended, not relevant. In any event, affordable housing is being delivered in Tidworth and Ludgershall.
46. Although the base date of the CS is 2006 it is clear that there will be a 'lag' in the delivery of affordable housing, and that there will be fluctuations in delivery. Looking at the figures provided for Wiltshire as a whole the overall proportion of affordable housing provided is 27.8% for the period 2009 to 2017 which is within a reasonable margin of the target. While clearly the provision of affordable housing is a benefit and should be given appropriate weight, which I will do in the planning balance, I do not believe that any additional weight should be given for this provision.



#### Other housing delivery in Ludgershall

47. Under CP2 and CP26 Drummond Park is allocated for 475 dwellings. However at this point of time no planning permission has been granted, although the Council has resolved to grant planning permission on two separate occasions, latterly in 2015 to take account of the adoption of the CS and introduction of the Community Infrastructure Levy. The Council explained that the delays were caused by the company failure of the original applicant and the recent taking over of the site by Homes England.
48. Although there have been delays in the delivery of the site, there remains no physical impediment to its development, and as a brownfield site within the limits of development of Ludgershall should be a priority for development. In light of the Council being able to demonstrate a five year supply of housing land I can see no need to release the appeal site at this time to make up any shortfall from the delay in the Drummond Park site, especially at planning permission exists for 109 dwellings on the appeal site.

#### Comprehensive development and fall-back

49. The appellant emphasised the benefits of a comprehensive approach for the appeal site considering that, if permitted, the proposal would be an improvement when compared with a phased approach of, initially, the permitted scheme and, later, the remaining development of the proposed allocation.
50. However, I am not necessarily sure that this is the case. As the appellant accepted at the Hearing, a grant of this appeal may, in fact, lead to a delay in the commencement of development on the appeal site. The existing planning permission requires the application for reserved matters to be submitted by this spring and commenced by 2020 (assuming a reasonable determination period). If this appeal were to be allowed then the reserved matters need not necessarily be submitted until 2021 and commencement until 2023, delaying development on site when compared with the existing permission.
51. Slightly perversely, not allowing this appeal may have the effect of ensuring that the existing outline planning permission is pursued encouraging earlier first delivery. If the proposed allocation is then confirmed, and the Council indicated that the adoption of the WHSAP was anticipated in late 2018, then the remainder of that allocation could follow on behind ensuring continuity of supply.
52. While the appellant indicated that the developer of the Granby Gardens hoped to construct on the appeal site when they completed that development, there was no evidence that this would be the case.
53. In addition, although the illustrative layout is just that, I am not satisfied that locating the open space to the east of Empress Way is the best approach for the development, separating the existing and proposed communities, particularly if a site for a school does not need to be provided.

#### Other benefits

54. The appellant emphasized the economic, social and environmental benefits of the development and it is appropriate to go through these in turn.

55. The delivery of 269 dwellings would have an economic benefit during construction and thereafter. The former, as a temporary benefit, should be given limited weight and the latter significant weight. Due to the uncertainties around the delivery of the school, which if operated would provide employment, I can only give this element very limited weight. The delivery of housing will provide local finance, but I only give this limited weight as the delivery elsewhere would provide similar benefits.
56. Similarly, from a social perspective, the delivery of housing, including affordable housing, would be a significant benefit of the scheme. However, for the reasons set out above I can give it no more weight than that. The Council emphasises in various location in the CS a desire to better balance military and civilian activities in the area, with the proposal acting positively in that regard. This would be a benefit and I give it limited weight as the same benefits would be delivered from any development in Tidworth and Ludgershall allocated through the CS or WHSAP.
57. Due to the uncertainties over the need for the school, I can give this social benefit only limited weight, even allowing for alternative provisioning of education which may lead to increase in education choice. The provision of additional open space would be a social benefit, but as this is required to deliver the open space needed by the development this is only neutral in the overall balance.
58. The public rights of way in the area would need to be upgraded. This may involve the rerouting from the current locations. Without in any way predetermining whether rerouting is appropriate, this is a consequence of the development and is therefore neutral in the overall balance.
59. From an environmental perspective, there would be the benefits of the additional open space and the potential increase in biodiversity from the arable monoculture currently on site and I give these benefits limited weight.

### **Other matters**

60. Local residents have expressed concerns about the additional traffic that would be generated by the proposed development particularly at the junction of Astor Crescent with Tidworth Road. I note that the Highways Authority has not objected to the proposal subject to appropriate contributions and conditions. In light of this I am satisfied that the traffic could be accommodated without creating severe residual impacts, which is the test set out in paragraph 32 of the Framework, if permission is to be refused.
61. Concerns were also expressed about noise and disturbance, particularly during the construction phase of development. As discussed at the Hearing, if permission were to be granted, this could be the subject of a condition requiring a Construction Management Plan to ensure proper controls to ensure that unacceptable effects did not occur.

### **Planning Balance**

62. The proposal is contrary to the adopted development plan taken as a whole lying as it does outside the limits of development for Ludgershall. This plan is up-to-date in terms of housing provision and recently adopted. As paragraph 12 of the Framework makes clear, proposed development that conflicts with an

up-to-date Local Plan should be refused unless other material considerations indicate otherwise.

63. In addition, the proposal would be harmful to the environment through the loss of countryside and loss of the best and most versatile agricultural land. For the reasons given above, this may be more than is actually required to deliver the necessary development for the area. This should be resolved through the WHSAP process, and for the reasons given I am only able to give the proposed allocation in this plan only limited weight at this time
64. There are a number of benefits promoted by the appellant which I have discussed above. Only those following from the delivery of housing of itself can be given more than limited weight. No additional weight beyond that flowing from the development of the site should be given for the provision of affordable housing.
65. The Framework emphasises that the planning system is to be plan-led. At this point in time the proposal is clearly contrary to that plan as adopted. Looking at the other material considerations, both individually and collectively, none of these are such to outweigh the presumption given through the development plan. As such the proposal would not, at this time, represent sustainable development and the appeal should be dismissed.

### **Conclusion**

66. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

*RJ Jackson*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Mr Aaron Smith BA (Hons) DipTP MRTPI	Lead Chartered Town Planner, Fowler Architecture and Planning
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### **FOR THE LOCAL PLANNING AUTHORITY:**

Mr Andrew Guest BA (Hons) DipTP MRTPI	Major Applications and Performance Manager, Wiltshire Council
Ms Georgina Clompitt-Dix BA (Hons) DipTP MRTPI	Head of Spatial Planning, Wiltshire Council

### **INTERESTED PERSONS:**

Cllr Christopher Williams	Councillor, Ludgershall and Perham Down, Wiltshire Council
Mr R Greenwood	Local Resident
Mrs A Greenwood	Local Resident
Ms Kate Little	Foreman Homes Ltd
Mr James Shelley BSc (Hons) MRICS	Land Consult LLP

## **HEARING DOCUMENTS**

HD1	Attendance Sheet
HD2	Planning Obligation dated 15 January 2018
HD3	Costs application on behalf of the Council

## **POST-HEARING DOCUMENTS**

PHD1	Costs response on behalf of the Appellant
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