Department for Communities and Local Government

Mr Des Dunlop
D2 Planning Ltd
Westbury Court
Church Road
Westbury-on-Trym
Bristol
BS9 3EF

Our Ref: APP/Y3940/A/13/2200503
Your Ref: 019/13

8 September 2014

Dear Sir,

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY WHITE LION LAND LLP
LAND OFF PARK ROAD, MALMESBURY, WILTSHIRE

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, John Wilde CEng MICE, who held a public local inquiry between 1 and 3 April 2014 into your clients' appeal against the refusal by Wiltshire Council ("the Council") to grant outline planning permission for a residential development (77 dwellings), a community building, public open space, and associated works including construction of a new access, in accordance with application Ref N/12/03464/OUT, dated 18 June 2013.

2. The appeal was recovered for the Secretary of State's determination on 10 January 2014, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990 because the appeal involves proposals which raise important or novel issues of development control and/or legal difficulties.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed, and planning permission granted. For the reasons given below, the Secretary of State disagrees with the Inspector's recommendation. He dismisses the appeal and refuses planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

4. The application for costs (IR1.1) made by your clients at the Inquiry is the subject of a decision letter being issued separately by the Secretary of State.

Jean Nowak, Decision Officer
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Matters arising after the close of the inquiry

5. On 15 July 2014, the Council wrote to the Planning Inspectorate referring to the Court of Appeal decision in respect of an Inspector's determination of the planning appeal at Filands[1], Malmesbury, which had the effect of confirming the grant of planning permission for 180 dwellings on that site. The Secretary of State has taken account of this as a matter of fact, and so has not considered it necessary to refer back to the parties to this appeal on the matter. However, copies of the email from the Council may be obtained from the address at the bottom of the first page of this letter.

Policy considerations

6. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan consists of the saved policies of the North Wiltshire Local Plan, adopted in May 2006 (IR8).

7. Matters which the Secretary of State has taken into account as material considerations include the advanced state of the new Core Strategy (CS) (IR9) and, as it has passed the examination stage, he gives this significant weight (see paragraph 12 below). He has also given significant weight as a material consideration to the version of the Malmesbury Neighbourhood Plan (MNP) (IR10) which has now been submitted to the Council for examination and, in that context, the Written Ministerial Statement on Neighbourhood Planning published on 10 July 2014. The relative weights attributed to the CS and the MNP are considered further in paragraphs 10-18 below.

8. Other material considerations which the Secretary of State has taken into account include the *National Planning Policy Framework* (The Framework) and the subsequent planning guidance; as well as the *Community Infrastructure Levy (CIL) Regulations 2010* as amended.

Main issues

9. The Secretary of State agrees with the Inspector (IR103) that, following the submission of a satisfactory section 106 Agreement (see paragraph 20 below), the main issues to be considered are the location of the appeal site outside the settlement boundary and the prejudicial impact on the emerging MNP.

<u>Housing supply and settlement boundary</u>

10. The Secretary of State has carefully considered the Inspector's arguments and conclusions on the five year housing land supply (IR104-129) and, bearing in mind the uncertainties which the Inspector identifies, the Secretary of State agrees with his conclusion at IR129 that, on the basis of the evidence available to him at the time of the Inquiry, the Council have only a 4.1 year supply of housing so that their policies for the supply of housing cannot be considered to be up-to-date and therefore paragraph

[1]On 10 July 2014, the Court of Appeal found against the Secretary of State in the relation to the issuing of a decision on an appeal, where the Inspector's decision, granting planning permission for 180 homes at Filands, Malmesbury, had been issued due to an administrative error - just after the then Minister had decided to recover the case for Ministerial decision.

49 of the Framework is invoked. The Secretary of State considers that this is an important consideration to be taken into account in the overall planning balance.

11. With regard to settlement boundaries (IR130-132), the Secretary of State agrees with the Inspector (IR130) that, while the settlement boundary policy in the LP (Policy H4) seeks to protect the countryside, it is nonetheless a policy that relates to the supply of housing and so, in view of the shortfall identified paragraph 10 above, should not be regarded as being in accordance with paragraph 49 of the Framework.

12. However, since the appeal inquiry Inspector submitted his Report, further progress has been made towards adopting the emerging CS (IR133). In particular, the Council's published Schedule of Proposed Modifications in response to the 10th Procedural Letter from the CS Inspector has acknowledged their intention to review the settlement boundaries as part of the Wiltshire Housing Site Allocations and Chippenham Site Allocations Development Plan Documents (DPDs), as set out in the Council's Local Development Scheme, in order to ensure they are up to date and can adequately reflect changes which have happened since they were first established (IR134). The potential output from this in relation to future housing land supply is also an important material consideration to be taken into account in the overall balance.

13. The Secretary of State further considers it appropriate to take account of the impact of the recent Filands judgment (see paragraph 5 above) on the housing land supply position in Malmesbury. This provides for an additional 180 dwellings over and above those on which the CS calculations are based and so the Secretary of State considers that it provides some breathing space for the Council to complete the intended DPDs referred to in the previous paragraph.

Neighbourhood Plan

14. The Secretary of State has also taken account of the fact that, since the appeal Inspector wrote his Report, further progress has been made in respect of the emerging MNP, for which an independent examiner has now been appointed who will hold a hearing on 18 September 2014. Therefore, although the MNP has yet to complete its assessment by the independent examiner and, if approved, be put to public referendum, the terms of the Framework and the guidance mean that it can now be given significant weight. The appeal Inspector points out (IR135) that 25 potential housing sites were assessed in the MNP area during the consultation period and the appeal site came towards the bottom of the list. He also highlights (IR136) the reasoning behind the views of the promoters of the MNP on the numbers and location of future housing in Malmesbury.

15. Clearly, and as your clients have pointed out (IR137), it would be inappropriate for the Secretary of State to prejudge the outcome of the MNP examination or the eventual outcome of the CS/DPD process, with which the MNP will need to be in conformity. Nevertheless, the Secretary of State considers it appropriate (as stated in the Written Ministerial Statement of 10 July 2014 - referred to in paragraph 7 above) to give local people an opportunity to ensure they get the right types of development for their community while also planning positively to support strategic development needs. The Secretary of State has therefore given significant weight to the fact that the emerging MNP has identified housing allocations elsewhere within the MNP area and that the Council has yet to complete an up-to-date objectively assessed housing land supply analysis against which to measure the overall MNP proposals. In the light of these, he

considers it appropriate, as things currently stand, to tip the planning balance in favour of the emerging MNP proposals, while accepting that these may need to be revisited in due course.

Planning balance

16. Overall, therefore, the Secretary of State considers this to be a finely balanced case. On the one hand, as identified at paragraphs 10 and 12 above, the Council cannot at this stage demonstrate a 5 year housing land supply, so that the terms of the Framework require that planning permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefit. As the Inspector points out at IR143, no such site specific objections on sustainability grounds have been identified by the Council.

17. On the other hand, however, the Secretary of State also gives significant weight to the opportunity which the neighbourhood plan process gives local people to ensure they get the right types of development for their community (as described in paragraph 15 above) while also planning positively to support strategic development needs. He acknowledges that the Council have now accepted the need to do further work on identifying more housing land across their area, including through a review of the settlement boundaries in the CS (as described in paragraph 12 above), and that that needs time to go through the proper consultative and statutory processes; and he has also taken account of the fact that the release of land for 180 dwellings at Filands has reduced the urgency of the need to identify further additional housing land in Malmesbury.

18. Therefore, taking account of all these factors, the Secretary of State takes the view that releasing the appeal site for housing now could result in a significant and demonstrable adverse impact on the outcomes of both the CS and the MNP and that, when assessed against the policies in the Framework taken as a whole, that could run the risk of outweighing any immediate benefits provided by the appeal scheme.

Conditions

19. The Secretary of State has considered the proposed conditions set out at Annex 1 to the IR and the Inspector's comments on them at IR93-99. However, while he is satisfied that those conditions would be reasonable and necessary if he were intending to grant planning permission and that they would meet the tests of the Framework and the guidance, he does not consider that these provisions are sufficient to overcome his concerns with the proposed scheme as identified in this decision letter.

Obligation

20. The Secretary of State has considered the terms of the planning obligation submitted at the Inquiry and considered by the Inspector at IR100-102; and he agrees with the Inspector at IR102 that these meet the Framework tests and comply with the CIL Regulations. However, for the reasons set out above, he does not consider that these provisions are sufficient to overcome his wider concerns as identified in this decision letter.

Overall Conclusions

21. The Secretary of State has had regard, on the one hand, to the fact that the Council cannot at this stage demonstrate a 5 year housing land supply, so that the terms of the Framework require that planning permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefit; and on the other hand to the opportunity which the neighbourhood plan process gives local people to ensure they get the right types of development for their community while also planning positively to support strategic development needs. He regards these factors as being finely balanced in this case and, having regard to the particular context of this appeal (referred to in paragraphs 16-18 above), he concludes that the immediate benefits of releasing the appeal site as a contribution to meeting overall housing demand in the wider area are insufficient to justify the release of this site so soon before the examination of the NP proposals is complete and there has been an opportunity to test them by means of the referendum.

Formal Decision

22. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendations. He hereby dismisses your clients' appeal and refuses planning permission for a residential development (77 dwellings), a community building, public open space, and associated works including construction of a new access, in accordance with application Ref N/12/03464/OUT, dated 18 June 2013.

Right to challenge the decision

23. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

24. A copy of this letter has been sent to the Council. A notification e-mail / letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

JEAN NOWAK
Authorised by Secretary of State to sign in that behalf

The Planning Inspectorate

Report to the Secretary of State for Communities and Local Government

by John Wilde C.Eng M.I.C.E.

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

Date: 14 July 2014

Town and Country Planning Act 1990

Wiltshire Council

Appeal by White Lion Land LLP

Against the decision to refuse outline planning permission for residential development (77 dwellings); a community building (class D1); public open space; and associated works including construction of a new access.

at

Land off Park Road, Malmesbury, Wiltshire, SN16 0QW

Inquiry held on 1/2/3 April 2014

Land off Park Road Malmesbury

File Ref: APP/Y3940/A/13/2200503

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- 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 White Lion Land LLP against the decision of Wiltshire Council.
- The application Ref N/12/03464/OUT, dated 2 October 2012, was refused by notice dated 18 June 2013.
- The development proposed is residential development (77 dwellings); a community building (class D1); public open space; and associated works including construction of a new access.

Summary of Recommendation: That the appeal be allowed.

Procedural Matters

1. At the Inquiry an application for costs was made by White Lion Land LLP against Wiltshire Council. This application is the subject of a separate Report.

2. The Inquiry sat for three days on 1-3 April 2014 at the Wiltshire Council offices in Chippenham. I conducted an unaccompanied site visit on Monday 31 March and an accompanied site visit on 1 April.

3. The application that now forms the subject of the appeal was submitted in outline with details of access to be determined as part of the application. Details of layout, scale, appearance and landscaping are reserved for later determination.

4. The application was refused for three reasons[1]. In brief, these dealt with the following issues:

    1) Whether or not there are material considerations that outweigh the conflict with development plan policy in relation to the countryside location of the proposed development.
    2) Whether or not allowing the appeal would be prejudicial to the plan-led approach to development.
    3) Whether or not the proposed development should make provision for on site affordable housing and a range of financial contributions to mitigate the effects of the development, and if so, whether arrangements for these provisions have been made.

The Site and Surroundings

5. The appeal site is an agricultural field, generally enclosed by hedgerows and mature trees, and located about 1.2km from the centre of Malmesbury. The site is accessed from Park Road which forms the north-east boundary. Park Lane forms the north-west boundary. Houses of the White Lion Estate abut the south-west boundary/corner of the site. To the south-east of the site is a small undeveloped parcel of land that was formerly allotments, and beyond this are residential properties in Park Road. The site generally slopes down from the south-west to north-east.

6. Park road is about 5.5m-6m in width at the site access point. It benefits from street lighting and a footway in the direction of Malmesbury starts about 90m

[1] See paragraph 2.5 of the Statement of Common Ground (SoCG) for the reasons for refusal in full.

south-east of the site. The site is within reasonable walking distance of Malmesbury town centre and other facilities including schools, shops, a supermarket and leisure facilities.

7. To the north-east of the site, beyond Park Road, is a branch of the River Avon and open countryside. The area north and west of the Park Lane is also open countryside which is designated as an Area of Outstanding Natural Beauty. The site is located in Flood Zone 1 as determined by the Environment Agency, although the area to the north of, and partially including Park Road, is within Flood Zone 3.

Planning Policy

8. The North Wiltshire Local Plan (LP) was adopted in 2006 and had an end date of 2011. The policies referred to by the Council in their reasons for refusal have all been saved by direction of the Secretary of State.

9. In addition to the LP the Council are also in the process of preparing a new Core Strategy (CS). This CS is proposed to cover the period 2006-2026. It has been the subject of an Examination into outstanding objections, after which proposed modifications were consulted on between 27 August and 9 October 2013. These were submitted to the Examining Inspector during October 2013. Correspondence has subsequently been ongoing between the Inspector and the Council. This correspondence will be highlighted in the following sections.

10. A Neighbourhood Plan is also being prepared for Malmesbury. Following an initial informal consultation process it was submitted to Wiltshire Council in December 2013. Wiltshire Council commenced consultation on the draft plan on 20 January 2014.

Planning History

11. The appeal site was the subject of an appeal for a similar development which was dismissed on 15 March 2012[2].

The Proposals

12. The proposed development would be up to 77 dwellings with a community building, public open space and associated works with access derived from Park Road. Due to the possibility of flooding to Park Road there would also be a secondary/emergency access off Park Lane to the west of the site.

Other Agreed Facts

13. These are set out in detail in the SoCG at section six. In brief it is agreed between the main parties that the appeal proposals do not constitute EIA development, that the site (apart from the main access) lies in Flood Zone 1 where the principal of residential development is acceptable. It is also agreed that the development complies with all requirements for foul and surface water drainage and that it would not have an adverse visual impact on the surrounding landscape and Area of Outstanding Natural Beauty. It is also accepted that the appeal site is within easy walking distance of a range of public services, public

[2] APP/Y3940/A/11/2159115 App 7 Dunlop POE or Core Doc 30

transport and the cycle network, including both primary and secondary schools. Furthermore, it is accepted that the proposed development would not give rise to any adverse environmental conditions and that the proposed density of housing would be appropriate and in keeping with the development plan.

14. During the Inquiry further discussions were held between the main parties on the subject of housing land supply and a summary of these discussions is contained in the paper entitled *Clarification of 5 year housing land supply matters*[3]. The paper confirms that there is agreement between the two main parties that the Wiltshire housing requirement for 2006-2026 is 42,000 homes and that this, when disaggregated, gives a figure of 24,700 homes required for the Housing Market Area (HMA) that includes Malmesbury (the north and west HMA). This in turn gives an annual requirement of 1,237 homes in the north and west HMA.

15. It is further agreed between the parties that over the eight years of the plan to date 9,896 homes have been required and that, up until April 2013 8,189 have been completed. The parties also agree that using a base date of April 2013 the Council do not have a 5 year supply of housing, and that even when using their April 2014 base data the Council cannot demonstrate a 5 year supply of homes with a 20% buffer in relation to either the Sedgefield or Liverpool methods of distributing the backlog.

The Case for Wiltshire Council

The main points are:

16. The emerging Wiltshire CS is at an advanced stage of preparation with hearings to examine the plan following submission of the plan to the Secretary of State closing on 18 July 2013. Recent correspondence from the Inspector appointed to examine the plan suggests that his report will be available by summer 2014[4]. The emerging CS is highly consistent and in conformity with policies within the Framework which makes clear that the presumption in favour of sustainable development works through, not against plans[5]. Significant weight should therefore be afforded to the policies within the emerging CS[6].

17. Sustainable growth is not just about considering whether a development is sustainable in its own right. It is also about considering the proposal in the context of the wider area and in light of the objectives of the development plan to deliver an overall sustainable spatial vision and strategy[7].

18. The Councils approach to sustainable development within the core strategy responds positively to the Framework's requirements in paragraphs 18 to 219 which, when taken as a whole define sustainable development. Specifically the Framework encourages *succinct local and neighbourhood plans setting out a positive vision for the future of their area* and encourages local authorities to *take*

[3] Inquiry Document 13 known hereafter as the Clarification

[4] POE Gibson 2.4

[5] Poe Gibson 2.6

[6] POE Gibson 2.7

[7] POE Gibson 2.10

account of different roles and character of different areas. The sustainable strategy for Wiltshire embodied in core policies 1 and 2 does exactly this[8].

19. The vision for Wiltshire as a whole states that *Wiltshire will have stronger more resilient communities based on a sustainable pattern of development*, while the strategy for Malmesbury states that *given Malmesbury's rural location and the characteristics of the town, it is not realistic to plan for significant growth[9].*

20. Within this sustainable development strategy Malmesbury is identified as a market town, therefore some growth is acceptable. In line with this the Malmesbury Neighbourhood Plan (MNP) already seeks to bring forward 270 homes in a holistic rather than incremental way. Unplanned growth over and above that already identified would depart from the spatial vision and strategy for the area that has evolved in consultation with the local community[10].

21. The Inspector at the recent Widham Farm appeal[11] supported the Council's position stating *whether or not a proposal constitutes a "sustainable" form of development is not simply to do with matters of transportation, but includes an assessment of its impact upon existing infrastructure, and the extent to which it accords with the spatial vision for the area[12]*. Furthermore, the Inspector at the last Park Road appeal concluded that *the proposal would nevertheless conflict with the housing objectives and spatial vision for the area[13].*

22. It is the Council's position therefore that the sustainable strategy for Malmesbury is continuing the long term planning for the town consistent with the strategy and that development that is contrary to the policies of the plan is not consistent with the Framework.

23. The proposed development would be outside of the settlement boundary for Malmesbury. Settlement boundaries are necessary to provide a decision making tool to ensure encroachment into the countryside is actively managed: they are necessary to ensure that the Plan delivers growth sustainably in Wiltshire. The boundary for Malmesbury is identified in the LP by policy H3. Within this boundary appropriate housing development is permitted; outside this boundary is considered to be countryside where housing development is limited to that essential for rural businesses or as a replacement for an existing dwelling (policy H4). The proposed development is clearly contrary to these policies in terms of its location[14].

24. Policy H4 is a saved policy that will be retained in the CS. It will therefore continue to be part of the development plan once the CS is adopted, as there have been no objections to its retention, and the policy is consistent with the Framework objective of protecting the countryside for its own intrinsic value[15].

[8] POE Gibson 6.3
[9] POE Gibson 6.5
[10] POE Gibson 6.6
[11] APP/Y3940/A/11/2165449
[12] POE Gibson 6.4
[13] POE Gibson 6.7
[14] POE Gibson 6.9
[15] Council final submissions 1

25. It is acknowledged that the Inspector examining the emerging CS identifies in his tenth procedural letter[16] that it cannot be argued with great strength that the settlement boundaries proposed in the Core Strategy are up to date. However, he continues to support the approach to define where sustainable development is appropriate through settlement boundaries. In other words, the principle of Policy H4 is still very much supported[17], and nothing in his letter suggests that he considers the retention of policy H4 as inappropriate[18].

26. Paragraph 215 of the Framework requires that policies in older development plans should be given due weight – i.e. the closer they are to the policies in the Framework the greater weight they should have. A policy which seeks to restrict development in the countryside is consistent with the core planning principle in paragraph 17 of the Framework of recognising the intrinsic character of the countryside. Subject only to the position where there is no five year housing land supply, such a policy is not inconsistent with any part of the Framework, and therefore should be given significant weight[19].

27. The application of paragraph 49 of the Framework adds very little. If it means that the settlement boundary is out of date the question as to whether the shortfall has to be brought forward through a planning permission or through the Neighbourhood Development Plan Process falls under paragraph 14 of the Framework i.e. planning permission should be granted unless adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole. Planning Practice Guidance indicates that prejudice to the Neighbourhood Development Plan process can amount to such a significant and demonstrable adverse impact[20].

28. In the case of Malmesbury, the possibility of amending the settlement boundary has very recently been considered through the Neighbourhood Planning process. This has demonstrated that, with the allocations proposed through the MNP, the settlement boundary has been reviewed and is up to date and appropriate. In these circumstances the conclusions of previous Inspectors at Widham Farm, Purton and Fairdown Avenue[21], Westbury, that policy H4 carries considerable weight remain valid[22].

29. In considering the issue of settlement boundaries and the relevancy of policy H4 for the appeal into land at Widham Farm, Purton, the Inspector concluded: *The Local Plan presumption against development outside of settlement framework boundaries remains a relevant policy consideration* (paragraph 65). This confirms that the approach to define where sustainable development is appropriate though settlement boundaries as per policy H4 remains a relevant and up to date part of the statutory development plan[23].

[16] Core Doc 46
[17] POE Gibson 6.11
[18] Council final submissions 3
[19] Council final submissions 2
[20] Councils final submissions 7
[21] APP/Y3940/A/13/2196510 Core Doc 45
[22] POE Gibson 6.12
[23] POE Gibson 6.14/15

30. Core Policy 2 (as amended) makes clear that outside development limits development will only be permitted where it has been identified through the Wiltshire Housing Site Allocations DPD or a community-led planning policy document. This point was made in paragraph 49 of the previous appeal decision regarding this site[24]. The Inspector in this case also made the point that: *it is material to note that ensuring local communities have an increased ability to shape the development of their areas, through mechanisms such as Neighbourhood Plans, is a key plank of the government's Localism Agenda. (this consideration needs to be balanced with the importance the government attaches to the role of the planning system in promoting growth).*

31. The proposed development is premature in relation to the CS, particularly in relation to core policies 1 and 2. It would pre-judge the location of development in Malmesbury over the plan period and prejudice the proper planning of sustainable development in the town that takes into account the wider planning policy considerations being developed as set out in paragraph 5.70 of the emerging CS; in particular ensuring housing development provides for the delivery of new primary school places in the town. The CS is now at an advanced stage of development. It is the Council's position that this document should be given significant weight[25].

32. Significant progress has been made on the MNP. The plan allocates 'non-strategic' development sites and develops a locally specific policy framework to complement those set out in the CS. Consultation on the submitted plan is to take place on 12 March 2014. The Housing Site Assessment Task Group of the Malmesbuy Neighbourhood Steering Group has identified housing sites for the town. This task group has developed a robust and evidence based site selection methodology for the identification of housing sites that provides a full and transparent assessment of all potential sites for housing in and adjoining the framework boundary of the town. The methodology, scoring system and outcomes of the application for the methodology to all site options were all subject to public consultation in the full community engagement event held by the steering group in September 2012[26].

33. In total, 270 new dwellings are proposed in the Neighbourhood Plan. The Park Road site is not one of the proposed allocations in the neighbourhood plan but was considered as part of the site selection process. It is clear, therefore, that a great deal of work has gone into producing the present plan, including:

    1. Community Engagement (September/November 2012)
    2. Neighbourhood Survey of residents of the Town and the two Parishes
    3. Consultation with Planning Aid
    4. Workshops with the Prince's Foundation
    5. Consultation with the Design Council — CABE
    6. Extensive consultation with Wiltshire Council throughout

[24] APP/Y3940/A/11/2159115 Core Doc 30

[25] POE Gibson 6.22

[26] POE Gibson 6.24/25

7. Informal 6 week public consultation on a draft plan (March/April 2013)[27]

34. The above demonstrates the amount of hard work and commitment the Steering Group have undertaken in good faith to ensure the proper, sustainable and holistic planning of Malmesbury as advocated by the Government's Localism Agenda. The proposal of 77 dwellings represents a significant unplanned site in Malmesbury which would be in addition to the 270 homes proposed through the neighbourhood plan[28].

35. If required, any further adjustment of the settlement boundary to accommodate the new assessment of housing needs arising from the Examining Inspector's 10th procedural letter can be addressed through the plan led process without significant delay[29].

36. Allowing this development to come forward now would prejudice the location of development in the town and undermine the ability for the town to be planned for as part of a holistic plan led process. This achieves the core planning principles described in para 17 of the Framework. It also allows the local community to take the opportunity that has been given to them, and embraced through the MNP, to identify sites for development within their area[30].

37. This is precisely the situation referred to in General Principles which states it may be appropriate to refuse planning permission on the basis of prematurity *where the proposed development is so substantial .... That granting planning permission could prejudice the DPD by predetermining decisions about the scale, location and phasing of development.* Although the MNP is not a development plan document, it is part of the development plan and the same principles must apply[31].

38. In commenting on the issues of prematurity in relation to the emerging Core Strategy, it is noted that the Inspector for the previous Park Road appeal stated: *It nevertheless remains the case that by pre-determining the location of some 29% of the minimum housing requirement for Malmesbury Town for the plan period 2006/2026, granting permission for this development would seriously compromise the ability of the local community to determine where future housing growth should take place, and so would conflict with the evolving spatial vision and housing objectives for the area. This is a material consideration that weighs against the proposal*[32]. Since that time both the CS and the MNP have advanced significantly and can therefore be afforded more weight[33].

39. Growth needs to strike an appropriate balance between demand for housing and environmental and service capacity and this is reflected in the community area strategy for Malmesbury in the CS and the MNP.

[27] POE Gibson 6.27
[28] POE Gibson 6.28/29
[29] Council's final submissions 6
[30] POE Gibson 6.28
[31] POE Gibson 6.30
[32] POE Gibson 6.32
[33] POE Gibson 6.32/33

40. The MNP is already planning for some of this growth, taking account of local circumstances. This reflects the Framework at paragraph 10 which states that *plans and decisions need to take local circumstances into account so that they respond to the different opportunities for achieving sustainable development in different areas*. The growth catered for in the MNP will contribute towards stimulating the economy and providing much needed homes, whilst taking into account the local circumstances of Malmesbury. By allowing this growth to be planned through the MNP, it also means that it is *genuinely plan-led, empowering people to shape their surroundings, with succinct local and neighbourhood plans setting out a possible vision for the future of the area*[34].

41. Allowing the appeal would pre-empt and pre-judge the decisions of the promoters of the MNP. It would mean that the location of a substantial element of the outstanding housing provision for Malmesbury would have been determined through this appeal rather through the community led neighbourhood planning process. This would undermine the idea that the community are to be entrusted with shaping their own surroundings and would damage confidence in the neighbourhood planning process. This would be clear prejudice and the presumption in paragraph 14 of the Framework would be outweighed[35].

42. In respect of the five year housing supply the buffer should be 5% and not 20%. The purpose of the buffer is to allow for a past failure to deliver to be compensated for by allowing a larger amount of choice in housing land to be available. This implies that the failure to deliver has been caused by a persistent inadequacy in the available land supply. This is not the case in this part of Wiltshire. The delivery has been broadly in accordance with the planning requirement. It is only when compared against the CS requirement, back dated to 2006, that delivery has fallen below the requirement over a continuing period.

43. This under delivery has not been caused by any inadequacy in the land supply but through the backdating of the increased housing requirement figure that was only suggested last December. Delivery is responsive to the policy context at the time, and it would be unreasonable to assess historic delivery against development plan documents that were not adopted or published during this period. Delivery should be compared to the extant development plan at the time – the Wiltshire and Swindon Structure Plan[36]. No other Inspector has found that a 20% buffer is required and there is no reason to find such a requirement now[37].

44. Much the same argument applies to the use of the Sedgefield method. There is nothing in the circumstances in Wiltshire to suggest that it is required to meet needs not met in previous years. The Council consider the Liverpool approach to be the only sensible approach and note that it has been applied in recent appeal decisions including one in Barwell Leicestershire[38]. This is re-enforced by the Examining Inspectors 10th procedural letter which estimates the housing land supply arising from an increased housing requirement[39]. Furthermore, it would

[34] POE Gibson 6.40/41
[35] Councils closing submissions 20/21
[36] POE Henderson 3.2
[37] Council's closing submissions 8
[38] APP/K2420/A/12/2088915 (May 2013) App 15 POE Henderson
[39] POE Henderson 4.3/4.4

be wrong to use the Sedgefield method and a 20% buffer because this would be using the same alleged shortfall to justify two increases in the required supply[40].

45. There is nothing underhand in using an estimated April 2014 base date for the calculation of housing supply. It would be more artificial to use figures that, by the time the decision is issued, will be over a year old. The assessment relies on a robust yet conservative estimate of the number of completions achieved in 2013/14, based on information gained through consultation with site representatives in December 2013[41]. The Council contacted all developers of large sites and applied an assumption for small sites based on an assessment of historic completions of such sites[42].

46. In respect of the supply figures it should be borne in mind that footnote 11 to paragraph 49 of the Framework does not require certainty of delivery. It does not endorse the suggestion that every possible difficulty that might arise should rule a site out of the supply. The test is whether there is a realistic prospect of delivery and where there is a planning permission (or resolution to grant) the question is whether there is clear evidence that the scheme will not be implemented within the suggested timescale[43]. For a site to be discounted on achievability grounds there must be no realistic prospect of delivery[44].

47. The appellants have made several references to the Council's decision not to defend a recent appeal at Marden Farm. It should be made clear that the Council's silence on the issues brought up at that appeal in no way indicates agreement with the way in which the Marden Farm appellants have interpreted policy. The decision not to defend the appeal was taken because the Council had not completed its responses to the CS Examining Inspector's concerns and its re-assessment of the housing requirement and supply and was not, at that time, in a position to demonstrate that it had a five year supply. That is no longer the case[45].

48. With regard to the use of the April 2014 base date for calculating the housing land supply, this was confirmed by the Council to the appellant on 17 February 2014. The estimated completions for 2013/14 were provided to the appellant as part of the housing trajectory and a standard rate of loss through expiry of planning permissions for small sites and known expiry of permissions for large sites was fully considered for the updated housing land supply trajectory. The updated housing land supply statement submitted to the CS examining Inspector, and which forms the basis for the Council's evidence in this appeal differs from that presented in the Deddington appeal[46] in that it is comprehensive and takes into account all components of supply[47] (except for the 220 dwellings at Mead, Westbury that were given permission following the Council's assessment).

[40] Council's closing submissions 11/12
[41] Council's closing submissions 13
[42] POE Henderson 1.3
[43] Council's closing submissions 16
[44] POE Henderson 5.3
[45] Rebuttal, Henderson 2.1-2.3
[46] APP/C3105/A/13/2201339 (Dunlop original appendix 27 appendix 9)
[47] Rebuttal, Henderson 2.4-2.8

49. It is acknowledged that the National Planning Policy Guidance (NPPG) states that *local planning authorities should aim to deal with any undersupply within the first five years of the plan period where possible*. However, there is no shortfall when housing supply is measured against the requirements of the Wiltshire and Swindon Structure Plan 2016. The Council maintains therefore that the Liverpool approach is the most appropriate in relation to this appeal. To apply the housing requirement of the CS to the delivery of homes that precede examination of the CS would be perverse, as the Council could not respond to requirements that were either not known or could be attributed very little weight at the time. As there is no historic under delivery against housing requirements the buffer to be applied should be 5% and not 20%[48].

50. The remaining areas of disagreement between the parties can be summarised as follows.

- The appellant considers that a base date of April 2013 should be used to determine the housing land supply position whereas the Council consider that an April 2014 base date should be used.
- The parties disagree on whether there has been persistent under delivery against housing requirements.
- The appellant uses the LP requirements which are based on the Structure Plan 2011 housing requirements, whereas the Council refers to the most up to date housing requirements applicable at relevant times.
- The parties disagree on whether the Sedgefield or Liverpool approaches to address any shortfall should be applied and how the Sedgefield approach should be calculated.
- The parties disagree on the land supply trajectory on all of the contested sites and the allowance to be included for windfall development.

The Case for the appellants

The main points are:

51. The development plan consists solely of the LP. This was adopted in 2006 to deliver the development requirements in the Swindon & Wiltshire Structure Plan to 2011, now revoked. Policy H4 is a settlement boundary policy which restricts housing development outside the settlement boundary. It was drawn to reflect the needs for development as judged in 2006 for the period 2006-2011. The settlement boundaries on the 2006 Proposals Map do not purport to provide sufficient land for development needs post 2014, nor at the scale now judged to be necessary[49].

52. The emerging CS is under examination. Following adverse comment by the examining Inspector in his 10th Procedural Letter, the LPA is proposing Main Modifications, the most pertinent of which are:-

- An increase in overall housing requirement 2006-2026 to 42,000 dwellings;

[48] Rebuttal, Henderson 2.11-2.17
[49] Appellant's closing submissions 4

- A new disaggregated figure to the North and West Wiltshire HMA of 24,740 dwellings;
- An increased allocation to Malmesbury from 760 to 885 dwellings; and
- The de-allocation of the Chippenham sites with the emerging CS, these now to be considered in a separate Chippenham Allocations DPD. .

For the purposes of this appeal, it has been assumed that these Modifications will find favour with the examining Inspector[50].

53. Other than the Chippenham sites, allocations are to be determined through a separate Allocations DPD, or through Neighbourhood Plans. There is no draft emerging Chippenham DPD; there is no draft Allocations DPD; there is a draft Malmesbury Neighbourhood Plan, but one to which there is significant outstanding objections[51] and one which was formulated to deliver the previous CS allocation of 760, not the increased allocation of 885. Its weight falls to be considered against its conformity both with the Framework and the CS in the version currently before us[52].

54. Weight to be given to policies must be judged against the Framework. Policies relating to the delivery of housing, which it is accepted H4 is, are subject to the application of paragraph 49 of the Framework. All extant policies, including housing policies are subject to paragraph 215 of the Framework; all emerging policies are subject to paragraph 216. Where the development plan is 'absent, silent or relevant policies are out of date', the decision to grant or refuse permission turns on the tests in the second bullet of the second half of paragraph 14 of the Framework. It is agreed, here, that the second dagger point does not apply, so it is the test in the first dagger which is determinative: that permission should be granted unless the adverse impacts of doing so significantly and demonstrably outweigh the benefits. Here, as noted above, there are no adverse planning impacts alleged; all that is alleged is a prejudice to an emerging Neighbourhood Plan which (whatever the debatable merits of its current draft allocations) does not allocate the land it needs to allocate if it is to be in conformity with the CS[53].

55. Para 215 requires weight to be accorded to extant policies to the extent that they accord with the Framework. That embraces the soundness tests in paragraph 182, which include both (1st bullet) the meeting of development needs and (last bullet) conformity with the Framework; both therefore also embrace the requirement of paragraph 17 3rd bullet to meet development needs, reflected also in paragraph 14 first half and (specifically for housing) paragraph 47; but in addition, the injunction in paragraph 17 1st bullet of a plan-led system includes the requirement that plans be kept up to date. A plan, or a spatial policy within a plan, which does not provide for today's objectively judged development needs is not one which accords with the Framework and not one which is up to date[54].

[50] Appellant's closing submissions 5
[51] Dunlop POE App 2
[52] Appellant's closing submissions 6/7
[53] Appellant's closing submissions 8
[54] Appellant's closing submissions 9

56. While it is accepted that the principle of settlement boundaries does not conflict with the Framework, the line drawn on the 2006-2011 Proposals Map is out of date and fails to provide for the currently judged development needs 2006-2026. This was recognised by the CS examining Inspector in his 10th procedural letter. As such, the settlement boundary at Malmesbury underpinning H4 is out of date and we are therefore in paragraph 14 of the Framework[55].

57. Further, as is accepted, H4 is a policy relevant to the supply of housing. It is caught by paragraph 49 if the Council cannot demonstrate a 5 year housing supply and is therefore deemed out of date by the effect of that paragraph alone[56].

58. This is a case where the Council cannot demonstrate a 5 year supply. The Council accepts that if the base date is April 2013, it cannot demonstrate a 5 year supply. This was agreed to be the conventional base date as it is the date for which the Council has completion figures. It is the base date for the August 2013 HLS document. It remained the Council's chosen base date as recently as 30th January 2014, or perhaps, even, as recently as 11th February 2014[57].

59. By the middle of February, however, it had become apparent that the Council could not demonstrate a 5 year requirement if it continued to use an April 2013 base date and, so, in the HLS document dated 28th February 2014 it moved the base date a year forward to April 2014. This enabled it to 'capture' an extra year of delivery from certain large sites and so 'up' its apparent supply. But it also brought the conundrum of not having any completion figures for the year 2013/2014 - part of which had yet to run. The February 2014 HLS document accepts that there is no completion data and so the 1049 'completions' are an 'estimate'[58].

60. Three controversies are therefore encapsulated in Table 5 of the Clarification Note:

- whether it is permissible to artificially move the base date from a date of known completion data to one of unknown completions to be 'estimated':
- whether the approach to the shortfall developed within the plan is to roll it into the five years (Sedgefield) or spread it over the whole plan period (Liverpool); and
- whether the Framework para 47 requires a +5% or a +20% buffer[59].

61. There is a short answer to each of these: on the Council's 'best' case of an April 2014 base date, with +5% and Liverpool, it has a vaunted 443 surplus, if it can take account of supply from Chippenham sites subject to an as yet unwritten DPD. On Mr Henderson's admission, the most recent and best evidence before the inquiry on North Chippenham, Rawlings Green and SW Chippenham reduces the Council's estimated supply by 150+187+200 - i.e. more than the 443

[55] Appellant's closing submissions 10/11
[56] Appellant's closing submissions 12
[57] Appellant's closing submissions 13/14
[58] Appellant's closing submissions 15
[59] Appellant's closing submissions 16

'surplus' in Table 5. By that admission, the Council's case for a 5 year supply falls - even if it is allowed to get away with moving the base date to April 2014[60].

62. It is also worth observing the 'long' answers: namely that the 3 controversies are themselves resolved in the appellant's favour by Mr Henderson's own admissions: Sedgefield boosts housing supply more readily than Liverpool; the concept of requirement/delivery contained in the 2nd bullet of para 47 is the same as that arising from the exercise in the 1st bullet of para 47; and the ruse of extending the base date to a point in time beyond your completion figures is not only novel and unsupported by policy or guidance, it is dependent on a wholly unreliable set of completion estimates.

63. It is also worth noting that the Council did not challenge the evidence in the Marden Farm appeal where the appellant promoted both the Sedgefield method and a 20% buffer. Furthermore, analysis of sites that the Council considers deliverable show that they have been overtly optimistic in their assumptions of the number of houses that could be forthcoming[61].

64. The only conclusion on the evidence is that the Council cannot demonstrate the required 5 year supply and paragraph 49 is engaged. That alone renders H4 out of date, as admitted by the Council in its consideration of the Marden Farm case and as found by the Inspector in that case. Accordingly, whether by paragraph 215 or by paragraph 49, the development plan policy H4 is out of date, and paragraph 14 of the Framework becomes the source for the operative test. The benefits of the proposal are many, manifest and undisputed. There are no counterveiling disbenefits alleged and permission should be granted. The Inspector's first Main Issue is answered in the affirmative[62].

65. Against this, the Council allege a prematurity point in respect of the emerging MNP. The appellant points to the stage of preparation and the outstanding objections which will need to be examined and whose outcome cannot be pre-judged. As such, paragraph 216 would indicate that little weight can be accorded at present; moreover a decision now of where to place 77 dwellings cannot be taken as being `central' to a plan that seeks to accommodate 760 units. But there is an antecedent flaw in the Council's case. As framed in its evidence, its prematurely case overlooks two key circumstances[63].

66. First, even if newly adopted and otherwise to be accorded full weight, the allocation policies and settlement boundary proposed in the MNP are as much 'policies relevant to housing' as old policy H4. As such, they are as much caught by paragraph 49 of the Framework as is H4. If there is no demonstrable 5 year supply (as the evidence, here, shows) they are rendered 'out of date' and paragraph 14 applies[64].

67. Secondly, whatever the dubious merits of the current scoring system and the allocations that are (or are not) derived from it, the MNP was formulated (and consulted upon) when it was thought that Malmesbury's share of housing

[60] Appellant's closing submissions 17
[61] POE Dunlop 8.7/8.8/8.9
[62] Appellant's closing submissions 19/20
[63] Appellant's closing submissions 21
[64] Appellant's closing submissions 22

requirement was 760. It is now 885 and the difference - or 'headroom' thereby created is in excess of the 77 dwellings here proposed. The two consequences are that (1) the MNP must now be amended and go through further rounds of consultation and consideration before it can go to referendum and (2) the appeal site is no longer 'instead of' one of the Steering Group's preferred sites, it is 'as well as'. It does not prejudice them in any way. The only point identified by Mrs Powers (education) is agreed not to be prejudiced by the developer[65].

68. In the previous appeal on the site the Inspector stated that *the increased pressure the development would place on primary education infrastructure, and the possibility that it would be premature in relation to the adoption of the MNP, would not in themselves amount to reasons to refuse planning permission*. Furthermore the Filands appeal Inspector concluded that prematurity was not a reason to refuse planning permission of a scheme of up to 180 dwellings[66].

69. Limited weight can be attached to the MNP due to a number of factors. Firstly there are outstanding objections to the plan, secondly there are substantive issues still to be resolved in respect of the emerging CS which could impact upon the content of the MNP. Thirdly, the appeal proposals are not of a substantial nature and the cumulative effect would not be significant and lastly, the MNP has yet to be submitted for examination and this cannot take place before the adoption of the CS[67].

70. The appellant's approach has also been supported by both the Inspector and the Secretary of State in the October 2012 appeal at Stratford-upon-Avon[68] for 800 houses[69].

71. Consequently, whatever weight the draft MNP has at present, there is no case for suggesting that it would be prejudiced by releasing this site at this time. Add to that fact the fact that there is no site specific objection to this site (on any of the 'constraints' identified by Miss Gibson as limiting growth at Malmesbury, or at all), and there is no reason why development should not be permitted[70].

72. For all of the above reasons, this is a Framework compliant scheme of much needed housing, on a sustainably located site extending a sustainable settlement, suitable for additional housing and raising no site specific objections. The settlement boundary policy is out of date and the balance to be struck in paragraph 14 of the Framework conclusively indicates that permission should be granted. The prematurity issue is a hollow one given para 216 and/or 49 and/or the change in overall numbers required at Malmesbury since the MNP was formulated[71].

[65] Appellant's closing submissions 23
[66] POE Dunlop 9.4/9.5
[67] POE Dunlop 9.18/9.20
[68] APP/J3720/A/11/2163206 Dunlop POE App 30
[69] POE Dunlop 9.26
[70] Appellant's closing submissions 24
[71] Appellant's closing submissions 25

The case for Councillor Kim Power (Malmesbury Town Council)

The main points were:

73. The proposed development is premature to the MNP and is not one of the preferred sites in the MNP. This is a well conceived plan which three parish councils have worked together on for over two years. The MNP is sustainable and deliverable and has been widely researched and consulted on. The website gives details of the work and reports, such as the Sustainability Appraisal, Equalities Impact Assessment and Habitats Regulations Assessment that have gone into the process of preparing the plan.

74. The increased CS housing requirement will be taken into account prior to Examination, which it is intended will be at the end of summer/early autumn 2014. We have worked closely with Wiltshire Council and have revised the minimum number of dwellings required as we have been advised of them. The MNP is a material consideration that should be given substantial weight, and it would undermine the viability of the plan if the appeal was allowed.

75. At the start of the MNP process a set of criteria were devised with which to assess 25 potential housing sites in the town. The criteria were developed through consultation with a variety of ecological, urban design, archaeological and other experts. Advice was also received from the Design Council and PlanningAid and public workshops were held with the Prince's Foundation for the Building Environment. In addition to this local residents were consulted and their local knowledge was factored in. Locations for housing, business etc have all been looked at with local knowledge, referred for expert opinion and consulted on with local residents through a long process. The result is a list of housing sites in preferred order. Sites have been looked at as a whole rather than in terms of particular numbers. If more housing is required in Malmesbury then the next site on the list is looked at. To say that we have allocated insufficient numbers is therefore wrong. Throughout the process we have needed to revise the numbers for a variety of reasons and we see this as an ongoing process which will happen again as a result of the amended CS.

76. The appeal site is towards the bottom end of the list after other more preferable and sustainable sites. Based on our assessment process there are several opportunities to allocate land before the appeal site. This is because our allocation far exceeds the requirement for new housing.

77. The housing requirement for Malmesbury between 2006 and 2026 is 885. Of these 496 have already been completed and 291 are committed. This leaves an outstanding figure of 97. However, there is also an outstanding planning permission at Cowbridge with no specific housing number which has been counted as nil in our process. A specific planning application has now been submitted for 30 apartments with 17 more dwellings to follow. The shortfall in Malmesbury is therefore only 50, although this is not really a shortfall as the next site on the list can come forward.

78. Having said that it should be pointed out that we do not view the volume of housing relating to individual sites in this way. Our approach has always been holistic, looking at an area as a whole, not only in terms of environment, heritage etc, but being close to local businesses, providing smaller assisted living apartments for the elderly to downsize to in the town where friends and relatives

can support them, this in turn releasing larger and under occupied houses onto the market for family accommodation.

79. This approach allows us to bring along the right type of housing such as assisted living provision, affordable part buy-part rent housing to suit first time buyers, education provision, a new supermarket and business. In essence we have ensured that there is sufficient infrastructure to support growth and also the right amount of development growth to bring forward infrastructure. It should also be borne in mind that it is likely that all of the housing required in Malmesbury in the period 2006-2026 will have been provided by 2016, half way through the plan period.

80. The school provision solution is an important issue. By bringing together local head teachers, governors, education consultants and Wiltshire Council this issue has resulted in plans for a practical school extension. The delivery of this primary school extension depends on the cooperation of different landowners which is now only happening because of the neighbourhood planning process. In fact the school extension could not go ahead without the availability of the land in this location as part of the housing development in the MNP. Ironically this solution has meant that this issue is no longer cited as a reason for refusal by the Council.

81. The next site on our preferred list is at Cowbridge Farm and this is another example of our holistic approach. Children from any development on this site would be likely to attend a primary school in the neighbouring village of Lea. This already has extra capacity to accommodate more children. The appeal site, whilst available, would have a detrimental effect on the MNP and the policies within it, such as school provision which cannot come forward with only the financial contribution alone.

82. The Government's Localism Bill gained Royal Assent on 15 November 2011. at the time the Secretary of State commented that *today marks the beginning of an historic shift of power from Whitehall to every community to take back control of their lives…..residents have a real power over decisions like planning*. If the appeal is allowed then the fundamental principle of localism will be denied to the people of the Malmesbury area, that being the right for our community to have a say over the place where we live, especially as we have progressed so far over two years of work.

83. The neighbourhood planning process has been so successful in Malmesbury that plan development in the form of a new supermarket is coming forward even before the plan itself goes to referendum. Dyson are part of our steering group and plans for an extension to their business have also been submitted. This would include extra sports facilities which would be available to the public. Plans for 53 assisted living apartments are to be submitted shortly. In short, the Malmesbury Neighbourhood plan delivers.

The case for Councillor Simon Killane (Chair of the MNP steering group)

The main points are:

84. The steering group consists of 20 people who have produced an evidence based plan utilising local knowledge and expert advice following hundreds of submissions and open days. The MNP is community led, robust and sustainable.

It is the most advanced neighbour plan in Wiltshire – a test case. Allowing the appeal would completely undermine the neighbourhood plan process and this plan in particular.

The case for Mr William Allbrook (Trustee of Malmesbury School Academy Trust)

The main points are:

85. The MNP outlines how development will proceed in tandem with the expansion of the primary school, which is currently at capacity. The Park Road appeal is for 77 houses and will produce about 23 primary school pupils. The development will destabilise the current situation and introduce uncertainty. A willingness to enter into a Section 106 Agreement to provide financial contributions for education is unlikely to resolve this problem in the short or long term. Malmesbury has embraced Localism and is advanced with its own Neighbourhood Plan, which supports development in the right places. The proposed development has no local support.

86. Whilst it is very unlikely that any of the houses built on the site will ever flood Park Road floods on regular occasions, sometimes for several weeks. Furthermore, Park Road is a narrow road and is unsuitable for increased traffic. There are few passing places and the adjacent builder's merchant receives deliveries from large lorries early in the morning which would conflict with residents of the proposed estate going to work or doing the school run. This is likely to cause significant congestion.

The case for Councillor John Gundry

The main points are:

87. The Statement of Community Involvement published by the appellant's in March 2011 acknowledged that *the majority of respondents raised concerns about the proposals*. Malmesbury Town Council objected to this application after a meeting attended by 110 members of the public. The re-application made in autumn 2012 attracted over 100 letters of objection from residents. These figures demonstrate the level of local opposition to the development. It is clear that the Town Council and people of Malmesbury have repeatedly and thoroughly rejected development of this site.

The case for Mr Robert Tallon (Chairman of Brokenborough Parish Council)

The main points are:

88. The parish council joined with Malmesbury Town Council and Malmesbury St Paul's Without Parish to produce a robust local plan. The plan has allocated enough development sites to accommodate the recent increase demanded by the minister. The appeal site is not favoured to satisfy current demand. We are rapidly approaching the point where the plan will be put to a public referendum, which we are confident will show strong acceptance. It is difficult to over emphasise the importance of allowing the MNP to be the arbiter of where (and how many) houses should be built.

89. The road from the appeal site through Brokenborough will be used by vehicles to avoid congestion in Malmesbury. This mile and a half long road has few passing

places, a pinch point at the centre of the village and a dangerous access to the Tetbury Road. Park Road is also sensitive for many of the same reasons, including road heave and dangerous bends.

The case for Mr David Jarvis

The main points are:

90. The emerging CS will establish the level of development appropriate for Malmesbury and the MNP will determine the precise details. That is localism at its best, an approach wholly in line with government thinking, and the appeal site should be examined fairly through this process, not in isolation through this Inquiry. If the appeal is allowed almost 30% of the currently identified housing need will have been pre-determined in an unbalanced way and the whole neighbourhood plan process will have been seriously devalued if not fatally damaged. What would have been the point of all the work that has been undertaken and who is going to have the slightest interest in attending or contributing to future requests for local involvement.

91. The Transport evaluation prepared for the appellant reads like a desk study with a complete lack of understanding as to how traffic moves in, out and around Malmesbury. The route from Park Road to Filands is frequently slow or at a standstill for a number of reasons not least of which centres on the time of the school run and Dyson staff arriving and departing. Anyone leaving the appeal site wishing to go west is likely to use the single track road through Brokenborough. Flooding is also a major issue at the appeal site and particularly the access road.

Written Representations

92. Written representations were received from a great number of individuals. All objected to the proposed development. Rather than detail each individual objection I will outline the main points raised. These related to traffic congestion and safety, the capacity of the local infrastructure including schools and the regular flooding of Park Road. Other points concerned the ecological impact of the proposed development and the fact that the site abuts an Area of Outstanding Natural Beauty. Many objectors also commented on the fact that the proposed development would be prejudicial to the MNP. Two individuals also objected to the proposed development on the grounds of invasion of privacy and that light and warmth to their property would be compromised.

Conditions

93. In the event that planning permission is granted the appellants and the Council have agreed a list of conditions which they would wish to see imposed on the planning permission. This list is found in Inquiry document 11. I attach at Annex 1 of this report the conditions I recommend if permission is granted. My recommendation takes account of the agreement of the parties and the discussion at the Inquiry.

94. The first three conditions are standard and, as the application was in outline, relate to the submission of the reserved matters and the timing of these and the implementation of the permission.

95. In the interest of the final character and appearance of the proposed development I consider it would be necessary to impose conditions relating to the finished floor levels and height of dwellings (4 & 5), the materials to be used in the external surfaces of dwellings (6) and tree protection and landscaping (15, 16, & 17) For the same reason I have recommended a condition designed to ensure that the final scheme is in line with the submitted illustrative masterplan (23) and additional ones requiring further details of lighting and the provision for the storage of refuse and re-cycling materials (20 & 22).

96. To comply with the requirements of the statutory authorities and prevent the proposed development causing flooding problems it is necessary that works are carried out in line with the previously submitted Flood Risk Assessment (7) and that further details of the drainage scheme for the site are submitted (8). As the access road is liable to flooding it would also be necessary to impose a condition to ensure an emergency flood evacuation plan is in place (24).

97. I recommend that conditions are imposed relating to the submission of further details of the proposed road system (13) and of details for parking arrangements (12). As well as these it is necessary that improvements are carried out to the junction with Park Lane (11). These conditions are necessary in the interest of highway safety and the amenity of future residents. Further conditions are also necessary in the interests of the amenity of future residents in relation to a Crime Prevention Plan (21) and a contamination investigation (9).

98. To protect the environment and local ecology it is also necessary that conditions are imposed requiring the submission of a Construction Environmental Management Plan and an Ecological Management Plan (18 & 19). In the interest of the amenity of local residents I also consider it necessary that a Construction Method Statement is submitted (14). As the site in on the edge of Malmesbury, a medieval settlement, I also recommend that an archaeological investigation is carried out (10).

99. Lastly, otherwise than as set out in this decision and conditions, it is necessary that the development shall be carried out in accordance with the submitted and approved plans, for the avoidance of doubt and in the interests of proper planning. I have therefore recommended a condition to this effect (25).

Obligations

100. The Council's third reason for refusal related to the provision of affordable housing and contributions to mitigate the effect of the proposed development. During the Inquiry I was supplied with a signed and dated Section 106 Agreement[72] that would facilitate the provision of the affordable housing and also contributions towards the provision of cemeteries, highway improvements, indoor leisure, off site play area, waste containers and secondary and primary education to mitigate the effects of the proposed development. The Council confirmed that the Section 106 Agreement overcame the third reason for refusal.

101. Whilst the contributions have not been contested by the appellants it is nonetheless incumbent on me to assess them against the tests outlined in Community Infrastructure Levy (CIL) Regulation 122. These tests, which are

[72] Inquiry Doc 18

also set out in paragraph 204 of the Framework, are that the obligation is necessary to make the development acceptable in planning terms, is directly related to the development, and is fairly and reasonably related in scale and kind to the development.

102. For this purpose the Council have supplied me with a document[73] that gives the justification and relevance for each of the requested contributions. For each contribution the document gives the policy background, necessity and proposed use for the contributions. In light of this I consider that the required contributions meet the tests outlined in CIL Regulation 122.

The report continues on the next page

[73] Inquiry Doc 19

Conclusions

The numbers in square brackets in superscript [1] refer to previous paragraphs

103. The Council gave three reasons for refusal. One of these related to the submission of a Section 106 Agreement and this has been discussed earlier. Of the other two reasons, one related to the location of the appeal site outside of the settlement boundary and the second concerned the prejudicial impact on the emerging MNP. Whilst these two reasons were given separately and to an extent discussed separately at the Inquiry, it is nonetheless incumbent on me to bring them together when arriving at an overall planning balance in my final recommendation.

Five year housing land supply

104. Firstly however I will consider the question of the five year housing supply. Paragraph 49 of the Framework makes clear that *housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered to be up to date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites*. In light of this paragraph it is necessary to consider whether or not the Council can demonstrate a five year supply of deliverable housing sites.

105. The clarification note confirms the following agreed figures. An annualised requirement for the Malmesbury area (the North and West Housing Market Area) of 1,237 homes. This figure derives from correspondence between the Council and the draft CS Examining Inspector, and I have no better evidence of an objectively assessed need for the future. The parties also agree that total completions for the period 2006-2013 were 8,189 homes. The Council's estimated completions for 2013-2014 are 1,049 although this is not agreed by the appellant. Using this figure gives a total number of completions for the period 2006-2014 of 9,238 against the requirement of 9,896, giving a shortfall of 658 homes over the period. The differences between the parties were succinctly outlined in the Clarification note[56] and I will consider the matters in that order.

Base date

106. In their most up to date housing land supply assessment the Council have used a base date of April 2014[45]. Using this base date they can, in their view, demonstrate a five year housing land supply, although they accept that using an April 2013 base date they cannot demonstrate such a supply[15]. The figures used by the Council in assessing the housing supply for the April 2014 base date are based on information gained through consultation with site representatives in December 2013[45] for large sites and an assumption for small sites based on an assessment of historic completions The Council consider the figures to be robust, comprehensive yet conservative[45] and to take into account all components of supply[48].

107. Whilst such a methodology is unusual I am mindful that the Inquiry itself took place in April 2014 and that, consequently, if the April 2013 base date was used then the figures would be almost a year out of date. Furthermore, I also note that the figures presented by the Council do not include the permission for 220

dwellings at Mead, Westbury that was given following the Council's assessment[48].

108. On balance I consider that, from the information available to me, the information obtained by the Council can be considered to be a reasonable estimate of the likely number of completions. Therefore the use of the April 2014 base date, although unusual and not necessarily applicable in other circumstances, is appropriate and acceptable in this particular case. I note that this conclusion differs from that of the Inspector in the Deddington appeal[48], but I consider that in the case before me the Council have more fully taken into account all the components of supply.

Sedgefield or Liverpool method for dealing with any shortfall

109. The Sedgefield method incorporates the housing shortfall into the first (or next) five years of the plan period. In this case that would mean adding the shortfall of 658 homes to the base requirement of 6185 over the period 2014-2019. The Liverpool method distributes the shortfall over the whole (or remaining) plan period. Using this method only 274 homes would be added to the base requirement over the period 2014-2019.

110. As regards which approach is the most suitable, I note that the NPPG states that *local planning authorities should aim to deal with any undersupply within the first 5 years of the plan period where possible.* Furthermore, in the Planning Advisory Service document entitled *Ten Key Principles for owning your housing number*, it is made clear that *the Sedgefield approach is more closely aligned with the requirements of the NPPF and the need to boost significantly the supply of housing and remedy the unsatisfactory consequences of persistent under delivery*.

111. I note that in the Barwell appeal[44] the Inspector found the Liverpool method to be preferable. This was however based on the premise that applying the shortfall over the shorter time period would not be realistic based on the economic climate prevailing at that time. In the case before me I have been given no significant evidence to show that applying the shortfall over the shorter period would be unrealistic. For this reason, and taking into account the advice given in the NPPG, I consider that the Sedgefield method should be followed.

5% or 20% buffer

112. The Framework makes clear in paragraph 47 that local planning authorities should provide five years worth of housing against their housing requirements with an additional buffer of 5%. The paragraph goes on to indicate that where there has been a record of persistent under delivery then the buffer should be increased to 20%.

113. As outlined above the shortfall for the period 2006-2014 is 658 homes. The Council point to the fact that there is only a shortfall if the CS requirement is used, rather than the requirements of either the development plan at the time (the Wiltshire and Swindon Structure Plan - WSSP) or the draft Regional Spatial Strategy (dRSS). However, the fact is that the Council have accepted an annual requirement of 1237 homes and the CS covers a twenty year period starting in 2006. I also note that the annual requirements of the WSSP were considerably less than those required by the CS and would have dated from evidence gathered

prior to 2006, and considerably before the introduction of the Framework and the requirement that housing supply should be significantly boosted. I consider therefore that the figure of 1,237 should be the amount by which the supply of housing should be judged. There is therefore a shortfall of 658 homes over the period 2006-2014, and the Council themselves acknowledge that delivery has fallen below the requirement over a continuing period[42]. It follows that the buffer to be applied should be 20%.

114. Having arrived at an estimate of the housing requirement it is now necessary to estimate the housing supply likely to become available over the next five years. The two main parties differ on a number of sites as shown in table 3 of the Clarification, and these were discussed at length during the Inquiry. Footnote 11 to paragraph 47 of the Framework makes clear that *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 with five years and in particular that development of the site is viable*. The footnote goes on to state that *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, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans*. I will bear these factors in mind when considering the potential of the disputed sites below.

115. The NPPG also deals with this issue and states that a site is considered achievable for development where there is a reasonable prospect that the particular type of development will be developed on the site at a particular point in time. This is essentially a judgement about the economic viability of a site and the capacity of the developer to complete and let or sell the development over a certain period. I will deal with each site in turn.

Hunters Moon

116. This site has a recommendation to approve subject to a section 106 Agreement. The Council expect the site to deliver a total of 371 homes over the next five years. They have taken account of slippage that has already occurred by accepting that 51 homes will be delivered in the year 2014/15 instead of the 104 previously anticipated.

117. The appellant points to various factors that could delay the delivery of homes including the fact that there are cautions registered on the title of the land as well as restrictive covenants. They also point to the Council's CIL charging schedule which is currently in preparation, which in the eyes of the appellant could be a factor in delaying a start on the site by delaying the signing of the Section 106 Agreement.

118. I consider that several of the points made by the appellant could be common to many sites and do not necessarily constitute clear evidence that development will not be deliverable. Conversely, I also note that the site does not actually have planning permission and that the housing trajectory assumed, although reducing the number of homes completed in 2014/15 to 51 from 104, still indicates that these houses will be complete by *spring 2015* (see Henderson Rebuttal App 4). I find this to be unlikely given the constraints outlined above and also the slippage that has already occurred. However, I also consider the figures put forward by the appellant to have little substance or evidential basis.

On balance I think it unlikely that the site will produce homes in the year 2014/15 but that there is no reason to doubt that thereafter it could produce at the rate assumed by the Council. It follows that this site will be likely to produce 51 homes less than the Council predict and therefore only 320 in the next five years.

Foundry Lane

119. This is a LP allocation site. It is a brownfield employment site still in active use and remediation of contamination would be required prior to development. However, there is a resolution to grant planning permission for a mixed use scheme subject to a satisfactory Section 106 Agreement, which the Council confirmed is in the process of being finalised. I also note that the application has been submitted by the owners and not third party developers. Furthermore, the Council have assumed only 75 completions over the plan period with the first 25 completions not until 2017/18. Nothing in the appellant's evidence leads me to consider such an outcome to be unlikely. I consider therefore that this site could produce the 75 homes as assumed by the Council.

Landers Field

120. This site is a saved LP allocation owned by the Council but has not been marketed and has no planning permission or resolution to grant. The appellant considers that the site cannot be developed until it appears in the housing allocations development plan document (DPD) that has yet to be published. Conversely the Council point to the fact that the site is relatively small and that a two year lead in time has been allowed for such that no homes are predicted until 2016/17. On balance, given the small size of the site and the allowed lead in time I consider the Council's trajectory to be reasonable. The site will therefore in my view be capable of producing 150 homes over the next five years.

North Chippenham

121. This site has a resolution to grant planning permission and the Council consider that it will provide 510 homes over the next five years. However, an email from the developer dated 14 March 2014 (see Dunlop appendix 12 of updated appendix 27) provides a revised trajectory that would result in only 360 homes over the period. Whilst the Council consider this figure to be pessimistic it is nonetheless an up to date assessment from the actual developer and I have been given no significant reason to arrive at a different figure. I consider therefore that this site could deliver 360 homes over the next five years.

Rawlings Green

122. This site has the same developer as North Chippenham but has yet to be subject to a planning application. In the same email that gave a likely trajectory for the previous site the developer also gave a likely trajectory for this site. This figure was 100 homes and once again I have been given no significant evidence that would lead me to arrive at a different figure. The site is therefore likely to produce 100 homes in the next five years.

South-west Chippenham

123. This site is proposed as a strategic site within the CS. This means that it will be subject to the as yet unpublished DPD. Whilst on the negative side this could

mean a delay, on the positive side the housing requirement for Chippenham will increase due to the Examining Inspector's report. The appellant points to the fact that a new Transport Study for Chippenham will have to be carried out which will in turn have an impact on the publication of the DPD. At the Inquiry it was made clear that some preparatory works were being carried out in advance of the DPD and it was also pointed out by the Council that it would be in the developer's interest to demonstrate the readiness of the site in comparison to other sites in Chippenham.

124. This site was also considered by the Inspector in the Widham Farm appeal where he considered that a two year lead in period after the submission of a planning application was more real realistic than the Council's allowed for eighteen months. The Council have taken this point on board in their housing trajectory for the site and assumed that no homes will be built prior to 2016/17. I accept the need for the DPD and Transport Study but nonetheless consider that, with the lead in time of two years, the Council's trajectory is not overly optimistic. I consider therefore that this site could produce 275 homes over the next five years.

125. In arriving at my conclusions in relation to the Chippenham sites I have taken note of the appellant's suggestion that as they are to be the subject of a future DPD then they should be discounted completely. This would seem to be a somewhat draconian measure and I consider that the lead in times allowed for these sites allow sufficient time for the adoption of the DPD.

Ashton Park Trowbridge

126. This is a large site that has been the subject of a Statement of Common Ground between the Council and the developer (see Henderson appendix 13a). This indicates that an outline planning application would be submitted by September 2013 with a determination by April 2014. At the Inquiry it was made clear that no application had yet been received. It follows that slippage has already occurred. Whilst I note that the Council have included a year's slippage in their trajectory as against the trajectory given in the Statement of Common Ground, I nonetheless consider the prospect of this site delivering 600 homes within the next five years to be overtly optimistic. In light of this I conclude that this site could produce only 350 homes over the next five years.

Kingston Farm/Moulton Estate

127. This site has a resolution to grant planning permission subject to a Section 106 Agreement and the Council have estimated that 20 homes will be delivered in the year 2015/16, with 45 each year thereafter. The appellant's have pointed to a letter dated 19 February 2014 from Planningsphere (see Dunlop appendix 16 of appendix 27) that indicates that there is a viability problem with the required 30% affordable housing requirement when taken in combination with the Section 106 financial contributions. However, this letter also outlines a proposed viability resolution process that would culminate at the end of June 2014. Whilst some slippage may occur to this process it still seems to me that it would be perfectly possible for 20 homes to be delivered by the end of 2015/16. I consider therefore that this site could deliver the 138 homes over the next five years as indicated by the Council.

Marden Lane

128. This site received outline planning permission on 2 April and the Council anticipate that it will produce 25 homes in the year 2014/15. The appellant considers this to be optimistic and points to the 23 conditions attached to the permission. However, 23 conditions is not to my mind a particularly large amount and I have been given no significant evidence to show that the anticipated 25 homes cannot be achieved. Furthermore, even if 25 could not be produced in the year 2014/15 I have been given no evidence to show that any deficiency in this year could not be made up in subsequent years. I therefore consider that this site could produce 125 homes over the next five years.

129. The aggregate of the homes that would be produced on the above sites amounts to 1,993. This figure added to the undisputed supply of 4680 given in the Clarification gives a total 5 year housing supply of 6823. I have already found that the 5 year requirement is 8080 and it follows that the Council only have a 4.1 year supply of housing. The outcome of this is that the Council's relevant policies for the supply of housing cannot be considered to be up to date and therefore paragraph 49 of the Framework is invoked.

First main consideration – settlement boundary

130. The Council referred to policy H4 of the LP in their reason for refusal. Policy H4 prevents housing in the countryside and the justification for the policy in paragraph 9.9 of the LP makes clear that this reflects *the strict controls placed on new residential development within the countryside at all levels of planning guidance*. Whilst the policy seeks to protect the countryside it is nonetheless a policy that relates to the supply of housing and therefore, in line with paragraph 49, should not be considered to be up to date.

131. It follows that the second bullet point of paragraph 14 of the Framework comes in to force. This makes clear that *where the development plan is absent, silent or relevant policies are out of date permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole*.

132. In arriving at the conclusion relating to policy H4 I have taken into account the Council's comments that it is their intention to save it in the CS and that there have been no objections to this course of action. I also note that the possibility of amending the settlement boundaries around Malmesbury has been considered through the neighbourhood planning process, and it has been demonstrated that with the allocations proposed, the existing settlement boundary has been deemed to be satisfactory. These matters do not however lead me to different conclusion in respect of policy H4.

Second main consideration - prejudice to the plan-led approach

133. Paragraph 216 of the Framework advises on the weight that can be afforded to an emerging development plan. It makes clear that decision makers may give weight according to (1) the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given, (2) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given)

and (3) the degree of consistency of the relevant policies in the emerging plan to the policies in the Framework.

134. The Council point to the fact that the CS is at an advanced stage of preparation and is highly consistent with the Framework[16]. It was submitted for Examination in 2013 and the Examining Inspector suggests that a summer 2014 target would appear to be the earliest reasonable adoption date, although I consider this possibility to be unlikely. The appellant points to the modifications necessary to the CS as a result of the Examining Inspector's 10th procedural letter [52]. These include an increase in the housing requirement and the necessity for a separate Allocations DPD, as well as one specific to Chippenham. The increased housing requirement means that a total of 885 dwellings are allocated to Malmesbury rather than the previously catered for 760.

135. This brings me on to the question of the MNP. Considerable work has been undertaken on this including an informal six week consultation. Twenty five potential housing sites were assessed against a set of criteria that were developed through consultation with a variety of experts [75], and the appeal site came towards the bottom of the list, below more preferable and in the promoters of the MNPs view, sustainable sites. I am also aware that the MNP has been prepared in an holistic manner with considerable thought given to the provision of the right form of housing in the right place in relation to infrastructure and services[78].

136. In relation to this it was made clear at the Inquiry that an extension to the primary school in Malmesbury has been negotiated that would cater for the increased number of children arising from homes built adjacent to the school in line with the sites allocated in the MNP. The promoters of the MNP also considered that whilst an education contribution from the appellants would remove the Council's objection in respect of education, providing the contribution would not in itself result directly in a practical solution to the question of future education provision[80]. I also note that the promoters of the MNP consider that any further housing should be located on the other side of Malmesbury, such that the children arising from that housing could attend schools with capacity in neighbouring villages[80]. In terms of actual numbers it was pointed out that of the 885 homes required in Malmesbury between 2006 and 2026 only 50 are now outstanding[77], and it is likely that all will have been provided by only half way through the plan period[79].

137. Against this the appellant points to the fact that the MNP still has to undergo Examination, that there are outstanding objections[61], and that therefore in line with paragraph 216 of the Framework less weight should be afforded to it. This is an important point that carries significant weight. The objections are on the grounds that firstly, the proposals within the MNP are unsound as they predetermine the outcome of the CS Examination, secondly, that the site selection process is flawed and that thirdly, although somewhat similarly, there is insufficient evidence to support the preferred housing sites within policies 1 and 2 of the MNP as the most suitable and sustainable for development.

138. In respect of the first point, communication between the Council and the Examining Inspector for the CS has shown that the Council accept the recommended increased housing requirement. The Council have dealt with the Inspector's recommendations in an expeditious manner, he has indicated that the

CS could be adopted as soon as summer 2014, and has given no indication in any of his correspondence that the CS could be found unsound. The MNP is in line with the CS and its promoters consider that it could accommodate the required increase in housing without modification. Notwithstanding this however, the MNP still has to undergo examination and a referendum, and these processes are unlikely to happen until the CS is closer to adoption.

139. As regards the second point I accept that the site selection process has been undertaken with advice from a number of professional bodies[75]. Whether or not the process is sound is a matter for the Examiner, and it would be inappropriate to consider the matter in the context of this Inquiry. However, there is the possibility that the process could be found not to be sound and evidence is likely to be presented to justify that position. This considerably limits the weight that can be afforded to this argument by the Council.

Other decisions

140. I have been provided with many appeal decisions by both main parties which are produced to support their cases. However, it is rarely the case that appeal decisions on other sites will bring to light parallel situations and material considerations which are so similar as to provide justification for decisions one way or the other. That is certainly the case here. For that reason I do not accept that any of the appeal decisions brought to my attention can have a determinative influence on this case.

Other matters

141. Several interested parties mentioned the flooding in Park Road. There is no argument that this does occur and photographs and video evidence given at the Inquiry confirm this. However, the site itself would not flood and a secondary emergency access would be provided. These factors, combined with the fact that the statutory authorities have not objected to the scheme lead me to conclude that this is not an issue that can be cited as a reason to refuse planning permission. Similarly, several parties have expressed concern about the surrounding road network, particularly the road to and through Brokenborough. The highway authority has not objected however, and I have been given no substantive evidence to show that there would be highway safety and congestion ramifications of such a serious nature that permission should be refused.

142. The site does abut an Area of Outstanding Natural Beauty but little evidence has been presented that there will be harm occasioned to this and a condition has been suggested that would require the provision of an Ecological Management Plan for the development. One household also expressed concern about the impact of the proposed development on their property in terms of light, warmth and invasion of privacy. However, layout is not a matter in this Inquiry and is for consideration at a later date. It is at that time that such matters should be taken into account.

Overall balancing exercise

143. The Council cannot demonstrate a 5 year housing land supply. Therefore the second bullet point of the second section of paragraph 14 comes into play and the proposed development should be granted permission unless any adverse impacts would significantly and demonstrably outweigh the benefits. The

benefits would see a boost in housing supply with associated affordable housing on an acknowledged sustainable site where no site specific objections have been identified by the Council. The scheme would create jobs and have economic benefits, and in light of these factors would be in compliance with the definition of sustainable development contained within the Framework. Significant weight should be attributed to these matters.

144. Against this the Council pointed to the likely prejudicial impact on the development plan process. However, the CS is still in draft form and whilst I accept that considerable work has gone into the formulation of the MNP, it still has to undergo examination and a referendum. Furthermore, the quantum of housing proposed is very small in relation to the overall quantity required in the North and West Housing Market Area. I note that the promoters of the MNP consider that even this amount of houses would mean that Malmesbury would have received more houses by half way through the plan period than planned for the whole of the period. However, the assessed housing need is not a maximum figure, and the Framework makes clear that housing numbers should be boosted significantly.

145. Overall, given my above findings, I consider that there are no adverse impacts of such magnitude that they significantly and demonstrably outweigh the benefits. The planning practice guidance makes clear that *arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits*[74].

Recommendation

146. It follows that for the reasons given above and having regard to all other matters raised, I recommend that the appeal be allowed.

John Wilde

Inspector

[74] ID 21b-013-20140306

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Stephen Sauvain Q.C. Instructed by Mr I R Gibbons, Solicitor to the Council

He called

Miss Carolyn Gibson BA (Hons) MRTPI	Spatial Plans Team Leader, Wiltshire Council
Mr Mark Henderson BSc (Hons) MA MRTPI	Senior Planning Officer, Wiltshire Council

FOR THE APPELLANT:

Mr Christopher Boyle Q.C. Instructed by D2 Planning Limited

He called

Mr D S Dunlop BA (Hons) MRTPI	D2 Planning Limited

INTERESTED PERSONS:

Councillor Kim Power	Malmesbury Town Council
Councillor Simon Killane	Malmesbury Town Council
Mr William Allbrook	Trustee of Malmesbury School Academy Trust
Councillor John Gundy	Mayor of Malmesbury
Councillor Robert Tallon	Chairman of Brokenborough Parish Council
Mr David Jarvis	Local resident

Documents

Core documents:

1) Wiltshire and Swindon Structure Plan 2016
2) North Wiltshire District Local Plan 2011
3) RSS Secretary of State's Proposed Changes July 2008
4) The Regional Strategy for the South West (Revocation) Order – Secretary of State, May 2013
5) Wiltshire 2026 - Planning for Wiltshire's Future October 2009
6) Wiltshire Core Strategy Consultation Document, June 2011
7) Wiltshire Core Strategy Pre-Submission Document, February 2012
8) Wiltshire Core Strategy Schedule of Proposed Changes, June 2012
9) Correspondence between Core Strategy Inspector and Council (EXAM 75, EXAM76, EXAM77, EXAM78b, EXAM80, EXAM81, EXAM82)
10) Wiltshire Core Strategy Focused Consultation September 2012
11) Wiltshire Core Strategy Examination Document TOP/21 – Topic Paper 15 Housing Requirement Technical Paper
12) Wiltshire Council response to Inspector on the Consultation on 2011 Household Projections and revocation of the RSS – WC, May 2013
13) Waste Core Strategy July 2009
14) Affordable Housing Supplementary Planning Document (NWDC April 2008)
15) North Wiltshire Open Space Study (2004)
16) Ministerial Statement 'Planning for Growth' (March 2011)
17) Waste Storage and Collection – Guidance for New Developments
18) South Wiltshire Core Strategy Inspector's Report
19) Housing Land Availability Report April 2012 (dated April 2012 published August 2014 Doc Ref Exam 63)
20) Wiltshire Council Strategic Housing Market Assessment December 2011
21) Strategic Housing Land Availability Assessment Practice Guidance — DCLG, July 2007
22) Delegated Officer Report January 2012 for appeal application
23) Widham Farm Appeal decision APP/Y3940/A/09/2107373 dated 30th November 2009
24) Widham Farm Appeal Decision APP/Y3940/A/11/2165449 Dated 27th November 2013

25) Brynards Hill Appeal Decision 12thMay 2011 APP/Y3940/A/10/2141906

26) Filands, Malmesbury appeal decision APP/Y3940/A/12/2183526 March 2013

27) Filands, Malmesbury appeal decision withdrawal letter March 2013

28) Ridgeway Farm, Swindon appeal decision APP/Y3940/A/11/2166277 —PINS & Secretary of State, November 2012

29) Land off Silver Street & White Horse Way and Land off Oxford Road, Calne appeal decisions APP/Y3940/A/12/2169716 —PINS, September 2012

30) Park Road, Malmesbury appeal decision APP/Y3940/A/11/2159115 —PINS, March 2012

31) Land at Sellars Farm, Gloucestershire appeal decision APP/C1625/A/11/2165865 — PINS, May 2012

32) Land to the rear of Verrington Hospital, Wincanton appeal decision APP/R3325/A/12/2170082 —PINS, August 2012

33) NPPF

34) Core Strategy Hearing session tracked change version August 2013

35) Marsh Road, Hilperton (APP/Y3940/A/13/2192250, August 2013

36) PAS NPPF Toolkit

37) Wainhomes (south west) Holdings Limited and the Secretary of State [2013] EWHC 597 Admin

38) Open Space SPD

39) Wiltshire Council Sustainability Appraisal Report September 2012

40) Wiltshire Core Strategy Examination in Public SOCGs Rawlings Green Chippenham, North Chippenham, Ashton Park and West Warminster

41) 'Working Towards a Core Strategy - Report on the Conformity of the Wiltshire Core Strategy Pre-Submission Document to the National Planning Policy Framework' (WCS/04)

42) Application of the PAS Self Assessment Toolkit - comprising current soundness and Legal Compliance Test (WCS/05)

43) Planning Policy Statement 1: General Principles

44) EXAM/29

45) Fairdown Avenue, Westbury (APP/Y3940/A/13/219651, August 2013

46) The Wiltshire Core Strategy Inspectors 10th procedural letter, 2nd December 2013

47) Wiltshire Councils response to the 10th procedural letter, 19 December 2013

48) The Wiltshire Core Strategy Inspectors 11th procedural letter, 23rd

December 2013

49) Wiltshire Councils response to the 11th Procedural letter, 29 January 2014 and statement on methodology for disaggregation of increased housing requirement to community area and housing market area level.

50) Wiltshire Core Strategy Inspector's 12th Procedural letter, 4 February 2014

51) Draft Malmesbury Neighbourhood Plan Volumes 1 and 2

52) Malmesbury Neighbourhood Steering Group MNSG 'Basic Conditions' Statement

53) EXAM84, EXAM85, EXAM86, EXAM90 EXAM91

Documents handed in during the Inquiry:

1) Appearances – Council
2) Henderson POE – summary
3) Gibson POE – summary
4) Council opening submissions
5) Letter dated 24 February giving notice of the Inquiry
6) Statement by Mr William Allbrook
7) Statement by Councillor Gundy
8) Statement by Councillor Robert Tallon
9) Statement by Mr David Jarvis
10) Henderson rebuttal statement
11) List of conditions
12) MNSG housing and supermarket site selection score
13) Clarification note regarding 5 year housing land supply matters
14) Statement by Councillor Power
15) Sheet showing small windfall delivery 2009-12
16) Sheet showing Council's targeted survey of large sites
17) Bundle of correspondence relating to housing delivery
18) Section 106 Agreement
19) Evidence to justify the Section 106 Agreement
20) Appeal decision APP/Y3940/A/13/2206076
21) Extract from the NPPG

22) Extract from the NPPG

23) Statement from Councillor Power

24) Addendum to MNSG site selection criteria

25) Attendance sheets

26) Costs application by the appellant

Annex 1 - Schedule of conditions

1) The development hereby permitted shall begin either before the expiration of three years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is later.

2) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.

3) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.

4) No building on any part of the development hereby permitted shall exceed two and a half storeys in height.

5) No development shall commence on site until details of the proposed ground floor slab levels have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved levels details.

6) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

7) The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (dated September 2012), including the following mitigation measures detailed.

8) Development shall not begin until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

9) No development shall commence on site until an investigation of the history and current condition of the site to determine the likelihood of the existence of contamination arising from previous uses has been carried out and all of the following steps have been complied with to the satisfaction of the Local Planning Authority:

   i) A written report has been submitted to and approved by the Local Planning Authority which shall include details of the previous uses of the site for at least the last 100 years and a description of the current condition of the site with regard to any activities that may have caused contamination. The report shall confirm whether or not it is likely that contamination may be present on the site.

ii) If the above report indicates that contamination may be present on or under the site, or if evidence of contamination is found, a more detailed site investigation and risk assessment has been carried out in accordance with DEFRA and Environment Agency's 'Model Procedures for the Management of Land Contamination CLR11' and other authoritative guidance and a report detailing the site investigation and risk assessment shall be submitted to and approved in writing by the Local Planning Authority.

iii) If the report submitted pursuant to step (i) or (ii) indicates that remedial works are required, full details have been submitted to the Local Planning Authority and approved in writing and thereafter implemented prior to the commencement of the development or in accordance with a timetable that has been agreed in writing by the Local Planning Authority as part of the approved remediation scheme. On completion of any required remedial works the applicant shall provide written confirmation to the Local Planning Authority that the works have been completed in accordance with the agreed remediation strategy.

10) No development shall commence on site until: a) a written programme of archaeological investigation, which should include on-site work and off-site work such as the analysis, publishing and archiving of the results, has been submitted to and approved in writing by the Local Planning Authority; and b) The approved programme of archaeological work has been carried out in accordance with the approved details.

11) No works shall commence on site until the improvement of Park Lane has been completed in accordance with approved drawing number: BSP-MALMESBURY-1/01B. Full construction details of the highway improvement shall be submitted to, and approved in writing by, the Local Planning Authority prior to commencement. The works shall subsequently be implemented in accordance with the approved details.

12) Before occupation, each dwelling shall be provided with a properly consolidated and surfaced parking area at a ratio of 1 space for a 1 bedroom dwelling, 2 spaces for a 2 or 3 bedroom dwelling and 3 spaces for a 4+ bedroom dwelling.

13) No development shall commence on site until details of the estate roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car parking and street furniture, including the timetable for provision of such works, have been submitted to and approved by the Local Planning Authority. The development shall not be first occupied until the above approved details have been implemented in full, unless an alternative timetable is agreed in the approved details.

14) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

i) the parking of vehicles of site operatives and visitors

ii) loading and unloading of plant and materials
iii) storage of plant and materials used in constructing the development
iv) the erection and maintenance of security hoarding
v) wheel washing facilities
vi) measures to control the emission of dust and dirt during construction
vii) a scheme for recycling/disposing of waste resulting from demolition and construction works

15) No demolition, site clearance or development shall commence on site until an aboricultural statement and tree protection plan of all relevant details above and below ground have been submitted to and approved in writing by the Local Planning Authority. No retained tree/s shall be cut down, uprooted, or destroyed, nor shall any retained tree/s be topped or lopped other than in accordance with the approved plans and particulars without prior written approval of the Local Planning Authority. Any topping or lopping approval shall be carried out in accordance with BS 3998 2010 British Standard for Tree Work or arboricultural techniques where it can be demonstrated to be in the interest of good arboricultural practice.

If any tree is removed, uprooted, destroyed or dies, another tree shall be planted at the same place at a size and species planted at such time that must be agreed in writing with the Local Planning Authority.

No equipment, machinery or materials shall be brought onto the site for the purpose of development until a scheme showing the exact position of protective fencing to enclose all retained trees and hedgerows beyond the outer edge of overhang of their branches in accordance with British Standard 5837: 2005: Trees in Relation to Construction has been submitted to and approved in writing by the Local Planning Authority and protective fencing has been erected in accordance with the approved plans. The protective fencing shall remain in place for the entire development phase and until all equipment, machinery and surplus materials have been removed from the site. Such fencing shall not be removed or breached during construction operations without prior written approval by the Local Planning Authority.

In this condition "retained trees" means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs above shall have effect until the expiration of five years from the first occupation or the completion of the development whichever is later.

No fires shall be lit within 15 metres of the furthest extent of the canopy of any tree or group of trees to be retained on the site or adjoining land and no concrete, oil, cement, bitumen or other chemicals shall be mixed or stored within 10 metres of the trunk or any tree or group of trees to be retained on the site or adjoining land.

16) No demolition, site clearance or development shall commence on site until an Arboricultural Method Statement (ASM) prepared by an arboricultural consultant providing comprehensive details of construction in relation to trees shall be submitted to and approved in writing by the Local Planning Authority. All works shall subsequently be carried out in strict accordance

with the approved details. In particular, the method statement must provide the following:-

- A specification for protective fencing to trees during both demolition and construction phases which complies with BS5837:2005 and a plan indicating the alignment of the protective fencing;
- A specification for scaffolding and ground protection within tree protection zones in accordance with BS5837:2005
- A schedule of tree works conforming to BS3998:2010
- Details of general arboricultural matters such as the area for the storage of materials, concrete mixing and use of fires;
- Plans and particulars showing the siting of the service and piping infrastructure;
- A full specification for the construction of any arboriculturally sensitive structures and sections through them, including the installation of boundary treatment works, the method of construction of the access driveway including details of the no-dig specification and extent of the areas of the driveway to be constructed using a no-dig specification;
- Details of the works requiring arboricultural supervision to be carried out by the developer's arboricultural consultant, including details of the frequency of supervisory visits and procedure for notifying the Local Planning Authority of the findings of the supervisory visits; and
- Details of all other activities which have implications for trees on or adjacent to the site;
- Day and sunlight calculations must be submitted in accordance with
- Building Research Establishment guidance and British Standard 8206-2:
- 2008. Code of Practice for Daylighting.

The development shall be carried out as specified in the approved Arboricultural Method Statement (ASM) and shall be supervised by an arboricultural consultant.

17) A pre-commencement site meeting shall be held and attended by the developer's arboricultural consultant, the designated site foreman and a representative from the Local Authority to discuss details of the proposed work and working procedures prior to any demolition, site clearance and any development. Subsequently and until the completion of all site works, site visits should be carried out on a monthly basis by the developer's arboricultural consultant. A report detailing the results and any necessary remedial works undertaken or required shall be submitted to and approved in writing by the Local Planning Authority. Any approved remedial works shall subsequently be carried out under strict supervision by the arboricultural consultant following that approval.

18) Prior to commencement of development a Construction Environmental Management Plan shall be submitted to and approved in writing by the Local Planning Authority. As a minimum this shall include measures to:
- Protect and translocate any reptiles from working areas of the site;
- Protect hedgerows and trees in accordance with BS5837;
- Avoid the potential for polluted run-off water leaving the site.

All development shall be carried out in full accordance with the approved Construction Environmental Management Plan unless otherwise agreed in writing by the Local Planning Authority.

19) Prior to commencement of development an Ecological Management Plan shall be submitted to and approved in writing by the Local Planning Authority. As a minimum this shall include measures for:
- Management of all semi-natural habitats including grassland, hedgerow, woodland and wetland features;
- Restoration of the pond;
- Details of hibernacula to be created;
- Details of bird and bat boxes to be erected on trees.

20) Prior to commencement of development a lighting scheme including a lux plan for the development shall be submitted to and approved in writing by the Local Planning Authority. All development shall be carried out in full accordance with the approved lighting scheme and retained as such thereafter.

21) Prior to the commencement of development, a Crime Prevention Plan detailing security and crime prevention measures setting out how the development will achieve an appropriate standard of security shall be submitted to and approved in writing by the Local Planning Authority. All development shall be carried out in full accordance with the approved Crime Prevention Plan and retained as such thereafter.

22) No development shall commence on site until details of the storage of refuse, recycling and composting, including details of location, size, means of enclosure and materials, have been submitted to and approved in writing by the Local Planning Authority. The dwellings shall not be first occupied until the approved refuse, recycling and composting storage has been completed and made available for use in accordance with the approved details and it shall be subsequently maintained in accordance with the approved details thereafter.

23) No development shall take place until an urban design and framework plan for the development of the site has been submitted to and approved in writing by the local planning authority. The plan shall be substantially in accordance with G2650 – Illustrative Masterplan 18.10.12 and shall be submitted to the local planning authority no later than the first submission for approval of any of the reserved matters and shall include:
- the arrangement of street blocks;
- the overall level and location of car parking at the site;
- the density and mix of dwellings;
- the general location of affordable housing;
- building heights and massing;

The development shall be carried out in accordance with the approved framework masterplan.

24) No Development shall take place until a flood emergency evacuation plan has been submitted to and agreed in writing by the Local Planning Authority. The plan shall incorporate and reflect management arrangements for the gated emergency access route included within the Signe S106 Agreement dated …….

25) The development hereby permitted shall be implemented in accordance with the submitted plans and documents listed below. No variation from the approved plans should be made without the prior approval of the Local Planning Authority. Amendments may require the submission of a further application.

- BSPMALMESBURY.1/02– Proposed access arrangement
- Site Location Plan 18.10.12
- Site Plan and Section Plans 1,2 & 3 18.10.12
- Site Sections 18.10.12
- G2650 – Illustrative Masterplan 18.10.12
- BSPMALMESBURY.1

Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;
The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.