



Appeal Decision

Inquiry held on 15, 16, 17 and 18 October 2013

Site visits made on 24 and 29 October 2013

by Jessica Graham BA(Hons) PgDipl

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

Decision date: 2 December 2013

Appeal Ref: APP/F0114/A/13/2199783

Land at Monger Lane, Midsomer Norton, Somerset

- 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 Taylor Wimpey against the decision of Bath & North East Somerset Council.
 - The application Ref 12/04590/OUT, dated 16 October 2012, was refused by notice dated 15 May 2013.
 - The development proposed is up to 135 dwellings, vehicular access from Monger Lane, public open space and other associated infrastructure.
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Decision

1. The appeal is allowed and planning permission is granted for up to 135 dwellings, vehicular access from Monger Lane, public open space and other associated infrastructure on land at Monger Lane, Midsomer Norton, Somerset in accordance with the terms of the application, Ref 12/04590/OUT, dated 16 October 2013, subject to the 22 conditions set out in the attached schedule.

Procedural matters

2. The application now the subject of this appeal was made in outline, with details of access provided, but details of scale, layout, appearance and landscaping reserved for future determination. My consideration of the appeal proceeds on that basis.
3. A final draft of a proposed S.106 Agreement between the Council, the appellant and the owners of the appeal site was submitted at the inquiry (Document 31). Since there was insufficient time for this to be executed before the inquiry closed, I agreed a post-inquiry submission deadline of 1 November 2013. A duly executed Agreement was provided within that timescale (Document 32), and I consider its content and operation below.
4. The Council's decision notice of 15 May 2013 gave four reasons for refusal. In the course of the appeal the Council advised that it no longer wished to uphold the fourth reason, which alleged that the proposal would be likely to have an adverse effect on existing flooding in the area. At the inquiry the Council confirmed that a number of alterations agreed with the appellant had largely addressed its earlier concerns about increased traffic congestion and risk to highway safety, such that it no longer wished to uphold its second reason for refusal. Nevertheless these matters are of continuing concern to local residents, and remain material to the appeal. I consider them further below.

Main issues

5. The Council accepts that it cannot demonstrate a five-year supply of deliverable housing sites. Paragraph 49 of the government's National Planning Policy Framework (NPPF) states that in such cases, relevant policies for the supply of housing should not be considered up-to-date. Paragraph 14 advises that a presumption in favour of sustainable development lies "at the heart of" the NPPF. It explains that for decision-taking, where relevant policies are out-of-date, this means *granting permission... 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.*
6. I am therefore obliged to determine whether the adverse impacts of granting planning permission for the proposed development would significantly and demonstrably outweigh the benefits. The main issues in this regard are the effect the development would have on the character and appearance of the area, and the accessibility of its location.

Reasons

The character and appearance of the area

Policy background

7. The appeal site lies next to, but outside, the Housing Development Boundary (HDB) for Midsomer Norton as defined by the Bath and North East Somerset Local Plan (2007). By operation of the NPPF (as discussed at paragraph 5 above), Local Plan policies which seek to restrict housing development outside the defined HDB must be considered out-of-date. This means that the fact that the appeal site is located outside the HDB does not, in and of itself, act as a policy bar to its proposed development. However, the impact that any proposed development would have on the character and appearance of its surroundings remains an important consideration, and Development Plan policies concerned with the character of the local landscape remain applicable.
8. Those relevant to this particular case are Local Plan policies NE.1 and NE.3. The former provides that development will not be permitted unless it either conserves or enhances the character and local distinctiveness of the landscape, while the latter states that *Development that would adversely affect the contribution that hillsides make to the character and landscape setting of Bath and Norton-Radstock will not be permitted.* The explanatory text for this policy advises that Radstock is surrounded and penetrated by "prominent hillsides, including those around Midsomer Norton" which make a fundamental contribution to the town's character and adjoining areas. It goes on to state that where these hillsides make a contribution to local character, they are protected under Policy NE.3.
9. The Council and the appellant were unable to agree whether Policy NE.3 should apply to the appeal site. I heard evidence that the Council's original intention, when drafting the existing Local Plan, had been to designate on a map the specific areas covered by this policy. The Inspector appointed to assess the Local Plan prior to its adoption advised that Policy NE.3 be deleted, since it duplicated protection afforded by other policies. Instead of deleting it in its entirety, the Council decided to retain the text of the policy, but delete the designation from the map.

10. This means that the application of Policy NE.3, in my judgment, does not involve assessing whether or not the appeal site could rightly be described as part of a "prominent" or "important" hillside in order then to determine whether it is "protected". Rather, it involves assessing the contribution the hillside makes toward local character and landscape setting, and then assessing the extent to which the proposed development would (if at all) adversely affect that contribution. A similar approach is required in the application of Policy NE.1: the supporting text to that policy explains that the Council's Supplementary Planning Guidance (SPG) *Rural Landscapes of Bath and North East Somerset: A Landscape Character Assessment* will be used to assess the effect of proposals on landscape character and local distinctiveness.

Local character and landscape setting

11. The appeal site consists of around 5.5ha of land, currently in agricultural use, divided by hedgerows into three fields. It lies on a hillside on the northern side of the settlement of Midsomer Norton, which the Landscape Character Assessment SPG classifies as part of the "Paulton and Peasedown St John Ridge" landscape character area. Key characteristics of this area that are shared by the appeal site are a gently undulating landform; arable and grassland fields; open landscape with wide views to surrounding areas; low clipped hedges and taller unclipped hedges; and an adjoining narrow lane that is enclosed by hedges and, in part, bounded by embankments.
12. The appellant takes the view that the landscape character of the appeal site, situated below the ridge and located within a smaller-scale landscape enclosed by hedgerow trees within the context of the built edge of Midsomer Norton, can be clearly distinguished from that of the more open farmland of the ridge and plateau above it to the north.
13. However, the fields from which the appeal site is formed are not of a significantly smaller scale than others found on the ridge. While field boundary hedgerows and hedgerow trees give the appeal site a greater sense of enclosure than is present in the landscape of the flat ridge top, long views out from and over the site, toward the valley landscape and hills to the south, provide a degree of openness. Monger Lane curves around the eastern and northern boundaries of the appeal site, and while in this sense it provides some visual containment, I agree with the Council that since it is typical of the hedgerow-lined narrow rural lanes found in the wider rural landscape on the ridge it does not have the effect of separating the appeal site from the landscape to the north. Rather, the hillside as a whole is an integral part of the ridge landform which defines the valley landscape setting of Midsomer Norton.

The impact of the proposed development

14. The proposed residential development of the appeal site would involve building on the last area of farmland to the south of Monger Lane, effectively extending the built-up part of the settlement of Midsomer Norton up the hillside to Monger Lane. The change from open, agricultural land to residential development would clearly have an adverse impact on the rural landscape character of this part of the hillside, for which the proposed retention of areas of open grassland within the development would provide little compensation. The proposed changes to Monger Lane, including road widening, and the installation of modern highway improvements, would also detract from the traditional rural character of this narrow lane.

15. It is material to note that since the appeal site closely adjoins the existing built edge of the settlement, and is partially enclosed by earlier residential development, the provision of housing in this location would not introduce uncharacteristic features into the landscape. Restricting the height of the new dwellings to two storeys (which could be secured by condition) would respect the scale of neighbouring development, and limit the potential for encroachment on the skyline and perceived openness of the ridge to the north and northeast.
16. Hedgerow trees on the hillslope, and screening the existing settlement edge, are a feature of the landscape. The proposed landscape strategy for the development would involve retaining all the trees of a high or moderate quality on or bounding the site, planting new hedgerows and reinforcing and managing the existing planting on the southern boundary with the settlement edge.
17. However, I share the Council's concern that the proposed planting of a 10m wide "tree buffer" along the Monger Lane boundary of the appeal site would be out of keeping with the rural character of other existing boundary vegetation. High-density tree planting across the hillslope also has the potential to block the wide, distant views that are a feature of this landscape character area. I note that since full details of landscaping are reserved for future determination, the precise density, species-mix and height of the trees incorporated within the buffer could be further considered at the Reserved Matters stage, but it is important to bear in mind that while a smaller buffer would be less disruptive of public views out over the appeal site, from Monger Lane and footpaths to the north, it would also be less effective at providing screening, softening and visual containment of the appeal site itself. In these views, the built-up area of Midsomer Norton would be perceived as advancing further out into the countryside, although the harmful impact of this would be limited by the extent to which existing dwellings on Monger Lane and Somer Rise already appear in such views.
18. It is from viewpoints looking towards this south-facing hillside that the proposed development has the potential for the most wide-ranging visual impact. However, residential development off Blackberry Way and Bluebell Rise, built on the lower slopes of the hillside, has already had a significant visual effect; the Council notes that it dominates in views of the hillside, blocking views of the upper hillside and appeal site from all but high and distant viewpoints.
19. A wide range of viewpoints were photographed by the parties and discussed in detail at the inquiry, and I visited these in the course of my site visits. They included Hayes Park, the Welton Rovers Football Club, paths on the open land to the east of the leisure centre, the footpath along the former Somerset and Dorset railway line, footpath CL 16/53 and many others.
20. The proposed construction of up to 135 houses and associated infrastructure would clearly alter the existing visual appearance of the appeal site, replacing open fields with built development. This would be apparent, to varying degrees, from a number of viewpoints, despite the filtering effect of existing trees and other features, and would increase and extend the visible mass of urban development up the hillside toward the skyline of the ridge. However, from all of the viewpoints identified in the course of the appeal the new development would be seen in the context of, and against the backdrop of,

existing housing within Midsomer Norton. To the extent that the roofline of the new development would be visible on the skyline, it would be set among trees and existing development to the north.

21. The development would not have any impact on the character of, or existing views of, the hillsides of Welton Hill and Millards Hill to the east. Nor would it lead to any significant reduction in the physical separation between Midsomer Norton and Paulton.

Conclusions concerning the effect on the character and appearance of the area

22. I have found the hillside on which the appeal site is located to be an integral part of the ridge landform which defines the valley landscape setting of Midsomer Norton. I have also found that the change from open, agricultural land to residential development would have an adverse impact on the rural landscape character of this part of the hillside. It follows that the proposed development would conflict with the objectives of both Policy NE.1 and Policy NE.3 of the Local Plan.
23. In order to inform the overall planning balance of benefit and harm, to which I return below, it is necessary to apportion weight to the adverse impact that the proposed development would have on the character and appearance of the area. Drawing together all of the considerations that I have set out above, I find that while there are features of its content, location and context which serve to limit and ameliorate the harm the proposed development would cause, it would neither conserve nor enhance the character and local distinctiveness of the landscape. I attach appreciable weight to this adverse impact.

Accessibility

24. The Council's third reason for refusal concerned the lack of safe pedestrian routes to local schools, and the remoteness of the appeal site from local bus routes. The appellant subsequently amended the scheme to incorporate a range of measures aimed at improving pedestrian safety, including widening the footway on Monger Lane to the west of the western access, and providing financial contributions to fund controlled crossing facilities on Monger Lane and West Road, which the Council accepts would secure safe pedestrian access to schools and bus stops.
25. The Statement of Common Ground: Highways (SoCGH), agreed between the Council and the appellant, identifies the existing bus stops on West Road and Phillis Hill as providing connections to a number of regular bus services to and from the town centre on key commuter routes towards Bristol and Bath. The walk to these bus stops from the proposed housing would exceed IHT guidelines, at over 600m for approximately 50% of the potential occupiers.
26. However, there is evidence that Service 782, operated by Somerbus, could be diverted through the proposed housing estate, and the appellant has made provision for a financial contribution to fund this for a 5 year period. Timetable alterations could be made to accommodate the additional stops, and the Council now accepts that there is a realistic likelihood this service would be diverted, and afforded an opportunity to establish itself. I note that this would not address the concerns expressed by local residents about the inconvenience of existing services to Bath, but it would at least ensure that all future

- occupiers of the proposed development could have access to a bus stop within easy walking distance.
27. The proposed development is located adjacent to part of the existing Midsomer Norton cycle network. The Council and the appellant agree that the existing layout of local residential areas south of West Road provide good permeability for cyclists, enabling access to the town centre and other destinations primarily via a network of lightly trafficked residential streets that are well suited to cycling.
 28. The Council's remaining concerns about the accessibility of the proposed development are centred on its connectivity for pedestrians. The most direct route to the shops and facilities of the town centre would be to walk through the Thicket Mead development to the south of the site, but no right of way has been secured: instead, pedestrians would be obliged to walk a further distance, using the existing highway network. The Council considers that the gradient and quality of the route is unlikely to be attractive to some pedestrians.
 29. The SoCGH records that a full range of services and facilities can be reached from the appeal site. While walking distances to the nearest supermarket, primary schools, secondary school and GP surgery fall within the "preferred maximum" distances set out in the IHT Guidance on walking distances, the town centre and leisure centre are slightly beyond these, by 5 minutes and 3 minutes respectively.
 30. As part of my site visits, I walked from the appeal site to a number of local services and facilities. The return journey included some uphill sections, and I saw these being used by pedestrians from a wide variety of age groups, including some with pushchairs and others with mobility aids. In my judgment, the gradients involved are not so steep as to render them inaccessible, or even particularly unattractive, to all but the fittest of residents.
 31. The majority of the potential walking routes to and from the development would include some off-road sections, such as narrow footways or sets of steps. While these have benefits in terms of keeping pedestrians safe from vehicular traffic, I appreciate that the limited natural surveillance along such routes may be a deterrent for some potential users, particularly in hours of darkness. I note that the appellant has made provision for a financial contribution toward upgrading walking routes, which the Council could use to install additional lighting or improve surfaces.
 32. It is important to bear in mind that however close new houses may be built to shops and other facilities, there is no guaranteed method of predicting how their occupiers will choose to travel; some people like to walk, some do not, and some simply cannot. Similarly, the attractiveness or otherwise of public transport will depend to a large degree on matters, such as timetabling and frequency of service, which are outside the control of the planning system. The key consideration, and the thrust of the guidance contained in the NPPF, is that a choice be made available, so that those who are unwilling or unable to walk do not have to be reliant on the use of a private car but are instead able to access more sustainable methods of transport.
 33. In this case, I am satisfied that all the services and facilities necessary to meet the needs of future residents would be accessible from the appeal site either on foot, by bicycle or by bus. As a consequence, the location of the appeal site

could not reasonably be considered likely to be the cause of any over-reliance by future occupiers on the use of private motor vehicles. I therefore find that the proposed development would accord with the aims of Policies T.1, T.3 and T.24 of the Local Plan, which together require new development to encourage the use of sustainable modes of transport, and provide safe and convenient access for pedestrians.

34. In terms of the overall planning balance, I find that the location of the site, in terms of its accessibility and connectivity, is not a consideration that weighs against permitting the proposed development.

The housing shortage

35. The Council accepts that in the light of its current inability to demonstrate a five year supply of housing, the need for more housing carries considerable weight.
36. I heard evidence that the Council, and other interested persons, have invested a great deal of effort, expertise and expense in putting together a Core Strategy which is intended to guide the future location of housing. I have no reason to doubt that this is being progressed as speedily as possible. But it is important to be clear that the draft Core Strategy is not yet an adopted part of the Development Plan, and its proposed content has yet to be subjected to the rigorous testing of an Examination in Public (EiP).
37. The Council and the appellant agree, as is recorded at section 5.3.3 of the Statement of Common Ground, that only limited weight can thus be afforded to the emerging Core Strategy at the current time. I share that view. The housing need figures calculated in the draft Core Strategy (and indeed the method of their calculation) remain the subject of unresolved objections, as do the proposed policies concerning the supply and location of housing. With that in mind, it is not possible simply to conclude, as I understand some local residents would wish me to do, that recent and pending grants of planning permission for new dwellings in and around Midsomer Norton must already have gone a long way toward addressing housing need: the full extent of that need has not yet been established.
38. In my decision on an appeal concerning housing development in another part of the Bath & North East Somerset district¹, I made the point (and was reminded of it by both main parties to the current appeal) that it is not for the Inspector, in the context of determining a S.78 appeal, to attempt to assess the comparative merits of other possible sites for residential development. That remains equally true of the current appeal. A comprehensive consideration of all such sites will no doubt be undertaken as part of the Core Strategy EiP. In the meantime, I am obliged to consider this particular proposal on its merits, and in the context of a current and acknowledged housing shortfall.
39. Bearing all of this in mind, as well as the NPPF requirement "to boost significantly the supply of housing" (paragraph 47), I consider that the acknowledged need for both open-market and affordable housing carries considerable weight in favour of the proposed development.

¹ Appeal Ref: APP/FO114/A/13/2189953

Highway safety and congestion

40. At the time that the Council determined the planning application, it had a number of concerns about the effect the proposed development would have upon highway safety and traffic congestion in the local area, and these concerns informed its second reason for refusal. The appellant has subsequently been able to demonstrate that these concerns could be adequately addressed, either through provisions of the S.106 Agreement or appropriately worded conditions.
41. A wall that currently obstructs visibility at the junction of Monger Lane with West Road has now been acquired by the appellant, such that if planning permission were granted, a condition could reasonably be attached which would secure the provision of visibility splays to an appropriate standard. I am satisfied that this overcomes concerns about the safety risk that would otherwise have resulted from an increased number of vehicle movements, generated by the new housing, through a junction with sub-optimal visibility.
42. The Council also had concerns about traffic speeds and visibility on parts of Monger Lane, but now accepts that a Traffic Regulation Order, or failing that a suitable alternative Traffic Management Scheme, could be used to keep speeds calmed to 20mph within a 30mph speed limit.
43. Since submitted surveys indicated that "rat-running" already occurs along Monger Lane, the Council, and local residents, were understandably concerned that this might be increased by the proposed widening of, and other improvements to, Monger Lane. To prevent this, the S.106 Agreement now includes provision for improvements to the Thicket Lane roundabout, aimed at reducing delays caused by queuing, and for speed surveys and usage surveys to be carried out once the new estate road were in place, with a requirement then to implement additional traffic management measures if necessary. I share the Council's view that reduced queuing times at the roundabout, combined with the introduction of appropriate traffic calming measures for Monger Lane, should prevent any increase in the use of the latter as a "rat run" and may help to improve the existing situation. If the subsequent surveys were to identify a continuing problem, there is provision for it to be addressed.
44. The S.106 Agreement now secures an increased financial contribution to fund controlled pedestrian crossing facilities on both Phillis Hill and West Road; widening footways on Phillis Hill, Monger Lane and West Road; providing tactile paving at Welton Grove and on the crossing of Harts Paddock. It also secures funding for the construction of a footway and extension of the give-way line at the junction of Monger Lane and Greenhill Road, the provision of bus boarders and timetable displays at the two bus stops on West Road west of Monger Lane, and the provision of speed roundels and vehicle speed activation signs on West Road and Phillis Hill.
45. Paragraph 32 of the NPPF advises that account should be taken of whether improvements can be undertaken within the transport network that cost-effectively limit the significant impacts of the development. That seems to me to be demonstrably the case here. Paragraph 32 goes on to advise that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. I am satisfied that in the light of the various measures outlined above, the proposed development would meet the requirements of Local Plan Policy T.24 concerning highway

safety and the provision of safe and convenient access, and would not cause any harmful increase in traffic congestion.

46. The appellant contends that a number of the highway improvement works that have been secured to address the impact the proposed development would otherwise have on the safe functioning of the highway network – including the visibility improvements attendant on the removal of the wall at the junction of Monger Lane and West Road, the slowing of speeds on Phillis Hill and West Road, and improvements to pedestrian accessibility – would also benefit existing residents of Midsomer Norton. Whether or not any such perceptible additional benefit would arise, above and beyond the necessary mitigation to offset the effects of the proposed development, is difficult to ascertain; further, there is no indication that current levels of visibility, speed and accessibility are causing significant problems for existing residents.
47. In summary, I conclude that the proposed development would not give rise to any significant adverse impacts upon highway safety or traffic congestion such as would weigh against a grant of planning permission. But I also consider that any consequential improvements in highway safety, arising from the proposed mitigation measures, would not have such clear benefit as to carry any discernible weight in favour of approving the proposed new housing.

Other matters

48. A number of local residents, particularly those living in the Thicket Mead development below the appeal site, have raised concerns about current problems with flooding and drainage: they are understandably concerned that constructing houses on what are currently open fields could worsen the existing situation. The residential development of the appeal site would clearly increase the existing amount of surface water run-off because the impermeability of roofs, roads and other hard-standings would prevent water from soaking into the ground.
49. The evidence shows that run-off from the appeal site currently discharges into two piped outfalls. The eastern outfall also collects run-off from fields to the north and east, which travels down an existing channel through the appeal site. Since the upper soil layers of the appeal site are clay-like in nature, infiltration techniques – which allow water to percolate slowly into the ground – would not provide effective surface-water disposal and so attenuation ponds are proposed, to store the excess water and then release it in a controlled way.
50. The run-off from the fields to the north and east, and from the development, would be collected by a system of pipes and channels and transported to two attenuation ponds on the southern boundary of the site. The existing channel through the appeal site would be formalised and landscaped, with mini-weirs installed to slow the water down before it eventually discharged into the attenuation ponds. The S.106 Agreement also makes provision for drainage improvements to Monger Lane, to prevent the ponding that occurs at the highway's low point by passing water safely into the appeal site.
51. The appellant's drainage engineers have used the industry standard software to calculate the storage volumes that the attenuation ponds would be required to accommodate, allowing also for the necessary safety margins. Since the application has been made in outline, full details of the design and layout of the proposed houses, and the nature and total extent of impermeable surfaces, will

not be known until details of Reserved Matters are submitted and at that stage, further calculations would need to be provided (and approved) to demonstrate that the size of the attenuation ponds remained appropriate. For present purposes, the hydraulic modelling that has been undertaken has demonstrated that the proposed drainage scheme would ensure that peak surface water drainage discharge from the development would not exceed pre-development levels. I note that the Environment Agency has reviewed the surface water drainage strategy outlined in the appellant's Flood Risk Assessment, and had no objections, subject to conditions.

52. The overall effectiveness of the attenuation ponds would depend in large part upon establishing and continuing an appropriate maintenance regime, to ensure that their capacity and function was not compromised over the life of the development, for example through the build-up of silt or overgrowth of weed. I can understand local residents' concerns in this respect, but a condition requiring the implementation of a management and maintenance plan for the lifetime of the development would enable the Council to take action if the approved arrangements were not carried out. Some careful consideration would need to be given to the mechanics and logistics of the maintenance scheme, particularly in light of the appellant's stated Landscape Strategy that the attenuation ponds should incorporate "marshy grassland managed infrequently to maximise ecological value", but successful schemes have been implemented elsewhere and there is no reason to believe that appropriate arrangements could not be agreed for this site.
53. I therefore conclude that, subject to appropriately worded conditions, the proposed development would make adequate provision for surface-water drainage and foul water disposal, and would not worsen existing flooding in the area. The appellant contends that the proposed development would in fact result in betterment in drainage terms, since the scheme could achieve an 8.9% reduction in post-development run-off. However, whether or not that figure could be achieved would be dependent not only on the extent to which parking areas, driveways and courtyards would be constructed with permeable surfacing, but also the measures that could be put in place to ensure these remained permeable in the longer term. These points remain to be clarified in the course of Reserved Matters submissions, and may be affected by other design considerations and building requirements. I therefore consider, at this outline stage, that the prospect of betterment in drainage terms is not sufficiently certain as to carry any weight in favour of granting permission for the development.
54. Guidance set out at paragraph 19 of the NPPF advises that significant weight should be placed on the need to support economic growth through the planning system. The appellant has calculated that the economic benefits of the proposed development would include 24 full-time equivalent jobs for 10 years in the construction industry; £16 million in construction expenditure, equating to a £2.2 million uplift in productivity in the local economy; 160 additional working age, economically active residents; £1.77 million in household expenditure per year from the future occupiers, with consequent potential to sustain and enhance local businesses; £2 million additional Council tax revenue over 10 years; and £1.2 million in New Homes Bonus over 6 years.
55. However, some of these impacts of the development, for example the presence in Midsomer Norton of 160 additional residents of working age, would not

necessarily bring unalloyed benefits. There is evidence of an existing imbalance between jobs and housing, necessitating a considerable amount of out-commuting. In these circumstances, increasing the supply of housing without also addressing the need for local employment opportunities could have adverse environmental and social impacts that may offset the economic benefits. Thus, while I do not underestimate the importance the government places on housebuilding as a means of stimulating economic growth, I consider that in the context of determining the suitability of this particular development proposal for this particular appeal site, the economic benefits can carry only limited weight.

56. The appellant and the owners of the appeal site have entered into a legal agreement with the Council containing a number of planning obligations. In addition to securing measures to improve accessibility and maintain highway safety, as discussed above, the S.106 Agreement ensures that 35% of the total number of dwellings constructed would be provided as affordable housing. The Agreement also secures the payment of £310,258.98 towards local primary education, £18,009.00 towards local youth service provision, and a financial contribution toward the provision of off-site public open space.
57. On the basis of the written and oral evidence provided by the parties, I consider the obligations to provide highway improvement works, surveys, pedestrian access improvements, bus service and infrastructure improvements are necessary to make the development acceptable in planning terms, and are directly, fairly and reasonably related to it in scale and in kind. The provision of affordable housing is also needed, to meet the policy requirements of the Local Plan, and the Council has confirmed that the proposed mix of bedroom space, and tenures, accord with its current requirements.
58. The population increase resulting from the proposed development would be likely to place additional pressure upon local services and infrastructure. There is evidence that the primary schools and youth service provision would not have sufficient existing capacity to accommodate the likely numbers of additional users, and so financial contributions toward expanding these services have been calculated, in accordance with the Council's adopted Supplementary Planning Guidance, and on the basis of the number of dwellings approved at Reserved Matters stage.
59. There is also evidence that the existing provision of public open space (including formal green space, natural green space and allotments) may not be sufficient to meet the needs of future occupiers of the new development, but since the amount of any on-site provision of these facilities will not be determined until Reserved Matters stage, the extent of any deficiency in provision will also not be known until then. The S.106 Agreement therefore makes provision for an appropriate financial contribution to be calculated at that stage, using formulae which take account of the total number of dwellings, the number of bedrooms in each, and the extent to which on-site provision of suitable open space is made.
60. I am therefore satisfied that all of the planning obligations contained in the S.106 Agreement meet the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010, and can be taken into account in determining this appeal.

61. At the inquiry, interested parties expressed concern that the Council had not requested any further financial contributions from the appellant. While it is open to a Council to seek payments from a developer to offset any adverse impact that a proposed development would otherwise have on local services and infrastructure, the Council must be able to justify why it considers such financial contributions necessary, and show that they are directly, fairly and reasonably related to the proposed scheme. In this case, I have not been provided with any evidence that the proposed development would place such increased pressure on any other local services or infrastructure, beyond those I have discussed above, as to justify requiring any additional contributions.

Planning balance

62. I now turn to the application of the presumption in favour of sustainable development, set out at paragraph 14 of the NPPF, which in this case requires the adverse impacts of granting planning permission to be weighed against the benefits.

63. I have concluded that appreciable weight should attach to the adverse impact the proposal would have on the character and appearance of the area. However, I have found that to be the only adverse impact that carries any discernible weight. I have also concluded that the provision of both open-market and affordable housing, in the context of the acknowledged existing housing shortfall, must carry considerable weight in favour of the proposed development. Even without the additional (though limited) weight that attaches to the economic benefits of the development this weighty consideration would be, in my judgment, just about sufficient to overcome the harm to the character and appearance of the area.

64. However, that is not the test: paragraph 14 of the NPPF does not simply provide that the benefits must outweigh the adverse impacts. Rather, it states that planning permission should be granted unless any adverse impacts of doing so would "significantly and demonstrably" outweigh the benefits. That is not the case here, and so I conclude that planning permission should be granted.

Conditions

65. The Council and the appellant agreed a list of conditions that they would consider appropriate if I were minded to allow the appeal, and the Council subsequently suggested additional conditions (Document 27) in the light of amendments to the scheme made during the course of the appeal. The purpose and operation of all of these conditions was discussed at the inquiry, and I have amended some of them to better accord with the guidance set out in Circular 11/95 *The Use of Conditions in Planning Permissions*.

66. Since the application is made in outline, with all matters other than access reserved for future determination, it is necessary to attach the standard conditions setting out the timescale for submission of the reserved matters and commencement of development, and requiring compliance (so far as access is concerned) with the approved plans. I have also attached the agreed condition limiting the height of the proposed houses to two storeys and 9m, since that is the basis on which their visual impact and effect on the landscape has been considered and weighed.

67. The Council suggested separate conditions concerning the treatment of the proposed estate road and footpath CL24/29, but since these will be best addressed in the context of assessing the reserved matters, I have attached a single condition requiring provision of details at that stage. I have attached a condition to secure the protection of trees and hedgerows during the construction period, but as discussed at the inquiry, consider any additional landscaping condition unnecessary because full details will in any event need to be provided, and approved, at reserved matters stage.
68. Since the site is within an area of potential archaeological interest I have attached conditions requiring further investigation, and due to the risks posed by the legacy of past coal mining in the area and potential contamination, have attached a series of conditions governing the requirement for appropriate investigation and remediation. I note the concerns raised by local residents, but the use of appropriate modern techniques for investigative and remedial work, which will be subject to the approval of the local planning authority, should ensure disruption is kept to a minimum.
69. I have attached the agreed condition requiring a foul water drainage strategy to be approved before development begins and, as discussed above, a condition specifying the details required as part of the surface water drainage scheme that will also need to be approved before development can begin, and must include details of its management and maintenance for the lifetime of the development.
70. I consider the model condition requiring compliance with an agreed Construction Method Statement necessary, in order to ensure the living conditions of neighbouring residents are not unduly affected by construction works, and I have attached the agreed condition aimed at protecting wildlife and its habitat during, and after, the construction period. I have also attached conditions requiring the provision and maintenance of visibility splays at the site accesses and the junction of Monger Lane and West Road, and the agreed speed reduction for part of Monger Lane, as these will help preserve the safety of all highway users.
71. I have not attached the Council's suggested condition requiring provision of travel information to the residents of the new houses, since an obligation to the same effect has been included in the S.106 Agreement.

Conclusion

72. For the reasons set out above, I determine that the appeal should be allowed.

Jessica Graham

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Mr G Grant, of Counsel

Instructed by Ms M Horrill of the Council

He called:

Ms J Musset BSc DipLD

Associate, Arthur Amos Associates

Ms A Waites HNC MCIHT

Principal Transport Planner, Savell Bird & Axon

Ms S Hawkins BA(Hons) MRTPI

Director, WYG

FOR THE APPELLANT:

Mr A Tabachnik, of Counsel

Instructed by Mr A Macdonald of
Turley Associates

He called:

Mr N Brant MSc CMILT

Technical Director, WSP UK Ltd

Mr G Davies BEng(Hons) CEng CEnv FICE

Technical Director, WSP UK Ltd

Mr R Hughes BSc(Hons) DipLA CMLI

Associate, Tyler Grange LLP

Mr A Macdonald BSc(Hons) DipTP MRTPI

Associate Director, Turley Associates

INTERESTED PERSONS:

Cllr B Macrae

Cllr M Evans

Ms J Lewis

Mr R Millard

Ms S Ashman

Mr J Popkins

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 List of appearances for the appellant
- 2 Correction to Mr Hughes' bundle of A3 photomontages (replaces p.132)
- 3 Correction to Ms Musset's Appendix 5 (replaces p.37)
- 4 Copy of Council's opening submissions
- 5 List of plans, agreed by the appellant and the Council
- 6 Copy of an e-mail dated 7 October 2013 from the Council's Public Rights of Way Officer, submitted by Cllr Macrae
- 7 Updated table of agreed highway matters
- 8 Copy of the appellant's call option contract concerning the wall at Hillview, West Road
- 9 Copy of covering letter from the appellant's solicitor, dated 11 October 2013, concerning document 8

- 10 Draft s.106 Agreement
- 11 Extract from the BANES Local Plan Inspector's Report, concerning Policy NE.3, provided at the request of the Inspector
- 12 Copy of appeal decision ref. APP/D2510/A/13/2195415, submitted by the appellant
- 13 Copy of ID/41 dated 8 October 2013
- 14 Copy of letter dated 13 August 2013 from the Environment Agency to the Council, concerning land at Knobsbury Lane, Radstock
- 15 Extract from the BANES Local Plan Inspector's Report, concerning sites at Norton Radstock, submitted by the appellant
- 16 Missing pages from document 11
- 17 Press release concerning BANES regeneration projects, submitted by Cllr Macrae
- 18 Copy of e-mail dated 1 July 2012 from Cllr Macrae to the appellant, outlining concerns about the proposed development
- 19 Letter from Cllr Macrae to the Inspector
- 20 Extract (p.41) from *Guidelines for Landscape and Visual Impact Assessment* (Third Edition)
- 21 Written note of Cllr Evans' oral representations to the inquiry
- 22 Letter from Mr Millard to the Inspector
- 23 Data on comparative distances travelled to work by residents of Midsomer Norton North Ward, Keynsham and Clutton Ward, collated by the appellant
- 24 e-mail dated 17 October 2013 from the Council's Head of Housing, detailing the number of Homesearch applicants who identified Midsomer Norton as their area of preference
- 25 Extract (pp 38-56) from Council's Committee Report concerning "Locational options to boost housing land supply"
- 26 Plan provided by Cllr Macrae to assist Inspector with site visit
- 27 Proposed additional conditions, in the event that the inspector were minded to allow the appeal, submitted by the Council
- 28 Closing submissions made on behalf of the Council
- 29 Closing submissions made on behalf of the appellant
- 30 Written note dated 22 March 2013 setting out the Council's reasons for requesting financial contributions toward school places and youth provision
- 31 Final draft of S.106 Agreement

DOCUMENT SUBMITTED AFTER THE INQUIRY

- 32 Completed S.106 Agreement

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission. The development hereby permitted shall begin not later than three years from the date of this permission, or two years from the date of approval of the last of the reserved matters to be approved, whichever is the latest.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans, in so far as those plans relate to matters not reserved for future determination:

Site Location Plan	drg. no. 1001
Topographical Survey	drg. no. 1601
Landscape Strategy	drg. no. 1318_2011/P28
- 4) The details to be submitted pursuant to condition no. 1 above shall incorporate the design of the estate road, to include traffic management measures to ensure speeds are limited to 20mph; and a scheme for the treatment of footpath CL24/29 as part of the proposed widening of Monger Lane to the east of the eastern access to the site, to include a new kissing gate, signpost reinstatement and steps formed up from the road.
- 5) None of the dwellings hereby permitted shall have more than two storeys or a ridge height greater than 9m.
- 6) No development shall commence until a detailed Arboricultural Method Statement, including a Tree and Hedgerow Protection Plan, has been submitted to and approved in writing by the local planning authority and any approved pre-commencement provisions within that Method Statement have been implemented. The Tree and Hedgerow Protection Plan shall reflect the details contained on the Landscape Strategy drg. no. 1318_2011/R08. The Arboricultural Method Statement shall incorporate a provisional programme of works; details of supervision and monitoring by an Arboricultural Consultant, and provision of site visit records and certificates of completion; measures for the control of potentially harmful operations such as the storage, handling, mixing or burning of materials on site; details of the location of the site office, and the locations of service runs including soakaways, street lighting and movement of people and machinery. Development shall then take place only in accordance with the approved details.
- 7) No development shall commence until (a) a written scheme of investigation for a programme of archaeological work (which shall provide a field evaluation of the site to determine the date, extent and significance of any archaeological deposits or features) has been submitted to and approved in writing by the local planning authority, and

has been completed by a competent person in accordance with the approved details and (b) the results of the archaeological field evaluation have been presented to the local planning authority and a written scheme of investigation for any appropriate subsequent programme of archaeological work has been submitted to and approved in writing by the local planning authority, and completed by a competent person in accordance with the approved details.

- 8) None of the dwellings hereby permitted shall be occupied until a programme of post-excavation analysis, in accordance with a publication plan, has been submitted to and approved in writing by the local planning authority, and completed by a competent person in accordance with the approved details.
- 9) No development, other than works required to discharge this condition, shall commence until intrusive site investigation works have been undertaken in accordance with the recommendations of the submitted Mining Technical Summary Report, and the findings of those investigative works have been submitted to and approved in writing by the local planning authority. In the event that the site investigations confirm the need for remedial works to ensure the safety and stability of the proposed development, no development shall commence until the full details of those remedial works have been submitted to and approved in writing by the local planning authority. Development shall thereafter be carried out only in accordance with the approved details.
- 10) An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme will be subject to approval in writing by the local planning authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report will be subject to the approval in writing of the local planning authority. The report of the findings must include:
 - (i) a survey of the extent, scale and nature of contamination;
 - (ii) an assessment of the potential risks to:
 - human health,
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - adjoining land,
 - groundwaters and surface waters,
 - ecological systems,
 - archaeological sites and ancient monuments;
 - (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's *Model Procedures for the Management of Land Contamination, CLR 11* or any subsequent amendment or replacement thereof.

- 11) A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be approved in writing by the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
- 12) The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the local planning authority. The local planning authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and will be subject to the approval in writing of the local planning authority.
- 13) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 10, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 11, which will be subject to the approval in writing of the local planning authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which will be subject to the approval in writing of the local planning authority in accordance with condition 12.
- 14) A monitoring and maintenance scheme, providing for the submission of reports on the long-term effectiveness of the proposed remediation, shall be submitted to and approved in writing by the local planning authority. Reports demonstrating the effectiveness of the monitoring and maintenance scheme must be produced and submitted to the local planning authority in accordance with DEFRA and the Environment Agency's *Model Procedures for the Management of Land Contamination, CLR 11* or any subsequent amendment or replacement thereof.
- 15) No development shall commence until details of a foul water drainage strategy have been submitted to and approved in writing by the local planning authority. Development shall thereafter be carried out only in accordance with the approved details.
- 16) No development shall commence until a 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 be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:

- a clearly labelled drainage layout plan showing the pipe networks and any attenuation ponds, soakaways and drainage storage tanks. This plan should show any pipe node numbers referred to in the drainage calculations and the invert and cover levels of manholes;
 - a manhole schedule;
 - model runs to demonstrate that the critical storm duration is being used;
 - confirmation of the agreed discharge rate, with any flow control devices indicated on the plan and the rate of discharge stated;
 - calculations showing the volume of the attenuation provided, demonstrating how the system operates during a 1 in 100 critical duration storm event. If overland flooding occurs, a plan should also be submitted detailing the location of overland flow paths and the likely depths of flooding. A 30% allowance for climate change should be incorporated into the scheme in accordance with Table 5 of the Technical Guidance to the NPPF;
 - where infiltration forms part of the proposed storm water system, soakage test results and test locations are to be submitted in accordance with BRE digest 365;
 - an electronic copy of the Windes Calculations for audit;
 - a timetable for implementation; and
 - a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the drainage scheme throughout its lifetime.
- 17) No development shall commence 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 routing and management of construction traffic
 - ii) the timing of deliveries
 - iii) the parking of vehicles of site operatives and visitors
 - iv) loading and unloading of plant and materials
 - v) storage of plant and materials used in constructing the development
 - vi) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - vii) wheel washing facilities
 - viii) a Dust Management Plan, which shall comply with the BRE Code of Practice on the control of dust from construction activities
 - ix) a scheme for recycling/disposing of waste resulting from construction works
 - x) hours of work.
- 18) No development shall commence until full details of a Wildlife Protection, Management and Enhancement Plan (WPMEP) have been submitted to and approved in writing by the local planning authority. These details shall include:

- a Construction and Environmental Management Plan setting out details of specific wildlife protection and mitigation measures that shall be implemented during site preparation and construction, to include locations and specifications for exclusion zones and protective fencing around retained habitats including hedgerows and trees, and prevention of harm to badgers and their setts, reptiles and nesting birds
- details of sensitive lighting, including provision of lux level contour plans showing acceptable lighting levels and avoidance of light spill on to wildlife habitat, and provision of dark zones and corridors for use by wildlife
- a detailed Mitigation Strategy for habitats (trees, hedgerows, scrub and the ditch corridor) and species (amphibians, badgers, bats, birds, invertebrates and reptiles) based on the approved Ecological Assessment (Tyler Grange, 4 September 2012) to include details of long term management objectives and techniques that shall be applied to all habitats and in areas of public open space
- details of how all the other mitigation and enhancement measures set out in the approved Ecological Assessment (Tyler Grange, 4 September 2012) will be implemented.

The measures contained in the WPMEP shall be implemented in accordance with the approved details prior to occupation of any of the dwellings hereby permitted, and shall be retained thereafter.

- 19) No development shall commence until a 20mph speed limit is secured, or an alternative traffic management scheme to achieve the same result is submitted to and approved in writing by the local planning authority, along the length of Monger Lane to the west of the northern site access. The new speed limit shall be in place, or the approved alternative scheme implemented, prior to the first occupation of any of the dwellings hereby permitted.
- 20) No development shall commence until a scheme providing visibility splays of 2.4m x 45m to the east and west at the junction of Monger Lane and West Road has been submitted to and approved in writing by the local planning authority, and implemented in accordance with the approved details. The approved visibility splays shall thereafter be kept free of obstructions to visibility above a height of 0.6m.
- 21) Both vehicular accesses to the site shall incorporate visibility splays on both sides, to the rear of the footway, based on co-ordinates of 2.4m x 2.4m, which shall thereafter be kept free of obstructions to visibility above a height of 0.6m.