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## Appeal Decision

Inquiry opened on 20 January 2015

Site visit made on 28 January 2015

**by David Prentis BA BPI MRTPI**

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

**Decision date: 27 May 2015**

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**Appeal Ref: APP/Y3940/A/14/2222641**

**Land North of Bath Road, Corsham, Wiltshire SN13 0QL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Gladman Developments Ltd against the decision of Wiltshire Council.
  - The application Ref 13/05188/OUT, dated 18 October 2013, was refused by notice dated 30 May 2014.
  - The development proposed is erection of up to 150 dwellings, up to 1,394 sqm B1 offices, access, parking, public open space with play facilities and landscaping.
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### Decision

1. The appeal is allowed and outline planning permission is granted for erection of up to 150 dwellings, up to 1,394 sqm B1 offices, access, parking, public open space with play facilities and landscaping at Land North of Bath Road, Corsham, Wiltshire SN13 0QL in accordance with the terms of the application, Ref 13/05188/OUT, dated 18 October 2013, and the plans submitted with it subject to the conditions set out in the attached schedule.

### Application for costs

2. At the Inquiry an application for costs was made by Wiltshire Council against Gladman Developments Ltd. This application is the subject of a separate decision.

### Preliminary matters

3. The Inquiry sat for 7 days from 20 to 23 January, on 27 January and on 12 and 13 March 2015. There was an accompanied site visit on 28 January 2015 and I carried out various unaccompanied visits to the locality of the appeal site prior to and during the course of the Inquiry.
4. The Wiltshire Core Strategy (CS) was adopted by the Council on 20 January 2015, the opening day of the Inquiry. As a result various policies of the North Wiltshire Local Plan referred to in the Council's decision notice have now been superseded by the policies of the CS.
5. On 27 January 2015 the Council and the appellant made a joint request for an adjournment to allow for additional work to be done in relation to the

requirements of the Habitats Regulations<sup>1</sup>. This included discussions between the Council and the appellant, the preparation of a further draft appropriate assessment and consultation with Natural England. Natural England responded to this additional work in a letter to the Council dated 2 March 2015<sup>2</sup>. I comment further on these matters below in the section dealing with ecology and designated sites.

6. The application was submitted in outline with all matters reserved except for access. Illustrative drawings were submitted with the application. These included a development framework, a landscape framework and a masterplan.
7. A revised version of the masterplan (5468-L-03 rev L) was submitted with the appellant's proofs of evidence. This revision introduced a landscape corridor along the eastern site boundary which was intended to mitigate ecological impacts of the proposed development. Proposed houses close to the boundary were shown facing a private drive alongside the buffer whereas before they were shown backing onto the boundary. The Council objected to this plan being considered on the basis that it would determine the orientation of dwellings in the vicinity of the boundary. It was suggested that this could be prejudicial to the interests of adjoining residents who may not have expected this form of layout to be promoted.
8. However, I did not regard this as an amendment to the appeal scheme because the application was made in outline. Revision L of the masterplan was accepted on the basis that it would be a further illustrative plan which would sit alongside any other illustrative plans before the Inquiry. I did not consider that any party would be prejudiced because, if outline planning permission were to be granted, the Council would have control over the layout at the reserved matters stage.
9. During the adjournment the appellant submitted an Ecological Parameters Plan and illustrative landscape cross sections. These plans showed proposed ecological mitigation measures and were relied on in relation to the draft appropriate assessment referred to above. The Council carried out some neighbour consultations on these plans. In closing, the Pickwick Association stated that a wider consultation should have been carried out. However, I do not think that these plans were an amendment to the outline application. Like revision L of the masterplan, they were submitted as illustrative plans during the course of a properly publicised Inquiry. There was no requirement for the Council to carry out consultation at all so there can be no criticism that the consultation it did was not wide enough. That said, the Council submitted copies of the consultation responses received and I have taken these into account.
10. The appellants sought a screening opinion from the Council in relation to the need for Environmental Impact Assessment (EIA). The proposed development fell within the category of 'urban development projects' where the area of works exceeds 0.5ha<sup>3</sup>. On 28 October 2013 the Council confirmed that EIA would not be required. At the Inquiry the Council asked to be provided with documents relating to the EIA screening carried out in relation to the appeal on

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<sup>1</sup> Regulation 61 of The Conservation of Habitats and Species Regulations 2010

<sup>2</sup> Document GLD/LPA/07

<sup>3</sup> Schedule 2, paragraph 10(b) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 as it then was. The threshold was increased by the Town and Country Planning (Environmental Impact) (Amendment) Regulations 2015 on 12 March 2015.

behalf of the Secretary of State. This information was duly provided<sup>4</sup>. In closing the Council confirmed that it was satisfied that there had been no error of law in this regard. I have kept this matter under review and have found no reason to differ from the Council's screening opinion.

11. An Agreement under s106 of the Town and Country Planning Act was submitted at the Inquiry. The Agreement would secure the delivery of 30% of the dwellings as affordable housing. It would also make provision for highway works, for approval by the Council of details of open spaces and play areas and for the subsequent management of these areas. In addition there would be financial contributions to sport and recreation, cemeteries and secondary education. This Agreement resolved the matters referred to in the Council's 5<sup>th</sup> reason for refusal.
12. The transitional period relating to Regulation 123 of the Community Infrastructure Levy Regulations ended after the close of the Inquiry. Accordingly, I sought further comments from the parties in relation to the five obligation limit referred to in Regulation 123. The Council and the appellant agree that the circumstances of this case are such that Regulation 123 is complied with. Moreover, the Agreement anticipates the adoption of the Council's Community Infrastructure Levy charging schedule and contains provisions which would avoid any double payment of infrastructure contributions.
13. I consider that the obligations contained in the Agreement would be necessary and reasonable. They would accord with the relevant statutory provisions<sup>5</sup> and with the National Planning Policy Framework (the Framework) and I have taken them into account accordingly. I comment further below on the individual obligations.
14. After the close of the Inquiry there was a revision to Planning Practice Guidance (the Guidance) relating to updating evidence on the supply of housing sites. In addition, my attention was drawn to recent appeal decisions at Cricklade and Oaksey dealing with housing land supply in Wiltshire<sup>6</sup> and to two planning permissions for housing which have been granted in or near Corsham<sup>7</sup>. The parties were invited to make further comments in the light of these matters and I have taken account of the responses received.

## Main issues

15. I consider that the main issues in this case are:
  - whether the Council can demonstrate that there is a 5 year housing land supply,
  - the effect of the proposal on ecology, including any effects on designated sites and protected species,
  - the effect of the proposal on the character and appearance of the area,
  - the effect of the proposal on heritage assets,
  - whether allowing the appeal would be prejudicial to a plan-led planning process, and
  - whether the proposal would amount to a sustainable form of development.

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<sup>4</sup> Document GLD/20

<sup>5</sup> Regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010

<sup>6</sup> Cricklade – APP/Y3940/A/14/2223354; Oaksey – APP/Y3940/A/14/2225214

<sup>7</sup> Email from Derek Burt of 8 April 2015

## Reasons

### ***The policy context***

16. The CS comprises the development plan for the purposes of the appeal. Core Policy 1 sets out the settlement strategy which identifies four tiers of settlements. Principal settlements are to be the primary focus for development with market towns also having the potential for significant development and local service centres seen as providing for more modest levels of growth. Corsham is identified as a market town. Core Policy 1 states:

*Market Towns have the potential for significant development that will increase the jobs and homes in each town in order to help sustain and where necessary enhance their services and facilities and promote better levels of self containment and viable sustainable communities.*

17. The delivery strategy for the CS is contained in Core Policy 2. It seeks to deliver at least 42,000 homes in Wiltshire between 2006 and 2026. Three housing market areas (HMA) are identified. Corsham is in the North and West Wiltshire HMA (NWWHMA) where the minimum housing requirement is 24,740. Table 1 in the CS sets out indicative housing requirements for settlements and community areas, the indicative requirement for Corsham Town being 1,220. However, this disaggregation to community areas is not intended to be so prescriptive as to be inflexible in terms of delivering the housing requirement for each HMA. Table 1 is intended to provide a strategic context for the preparation of a Housing Sites Allocation DPD and in order to plan for infrastructure provision. Core Policy 11 sets out the spatial strategy for the Corsham Community Area. Consistent with Table 1, it states that approximately 1,395 homes will be provided of which about 1,220 will be at Corsham. The CS notes that new growth at Corsham will be balanced, with housing delivery alongside employment.
18. Core Policy 2 also states that development outside the defined limits to development will not be permitted except in specific circumstances which do not apply to the housing element of the appeal scheme. As the appeal site is outside the defined limits the proposal is contrary to Core Policy 2.
19. Core Policy 34 is generally supportive of proposals for employment development within the principal settlements, market towns and local service centres. Where proposals are outside these settlements the policy sets out criteria which will be applied. Core Policy 50 states that development proposals must demonstrate how they protect features of nature conservation value as part of the design rationale. Measures to avoid and reduce disturbance of sensitive wildlife species are to be incorporated and all development should seek opportunities to enhance biodiversity.
20. Core Policy 51 seeks to protect, conserve and where possible enhance landscape character. The aspects of landscape character to be taken into account include landscape features of cultural, historic and heritage value. Core Policy 58 seeks to protect the historic environment, including the settings of designated heritage assets such as conservation areas. Core Policy 61 states that new development should be located and designed to reduce the need to travel particularly by private car and to encourage the use of sustainable transport alternatives.

### **Housing land supply**

21. The Council and the appellant agreed that the relevant assessment period for both the housing requirement and the supply is 1 April 2014 to 31 March 2019. It was also agreed that the CS provides the housing requirement against which supply should be assessed and that the area to be assessed should be the NWWHMA. The Council and the appellant did not agree about the housing requirement or about some elements of supply.
22. The Inspector who conducted the examination of the CS (the CS Inspector) concluded that the Council could demonstrate a 5 year housing land supply (HLS)<sup>8</sup>. Planning Practice Guidance (the Guidance) states that:

*The examination of Local Plans is intended to ensure that up-to-date housing requirements and the deliverability of sites to meet a 5 year supply will have been thoroughly considered and examined prior to adoption, in a way that cannot be replicated in the course of determining individual applications and appeals where only the applicant's/appellant's evidence is likely to be presented to contest an authority's position<sup>9</sup>.*

In this case I consider that the CS Inspector's report and the CS evidence base form an important part of the evidence before me on HLS. However, the Guidance does not preclude a decision maker considering a planning appeal such as this from taking account of evidence which emerges subsequent to the consideration of HLS in a development plan examination.

#### *The housing requirement and the supply needed*

23. The Council's figure for the housing requirement in the NWWHMA is 24,740 in accordance with Core Policy 2. Allowing for completions in the period 2006 – 2014, the 5 year supply needed would be 6,160. In accordance with paragraph 47 of the Framework, it was agreed that a buffer of 5% would be appropriate<sup>10</sup>. On this basis the supply needed to accord with the Framework would be 6,468. The appellant argued that the requirement should be increased to take account of an allowance for 900 dwellings west of Swindon (the Swindon allowance).
24. The Swindon allowance relates to an existing commitment for 900 dwellings to the west of Swindon. Although located within Wiltshire, these dwellings are regarded as meeting the needs of Swindon. At paragraph 4.29 the CS states that '*As part of the planned early review of the CS, the Council will clarify that its housing requirement will be met without relying upon the delivery of homes to the west of Swindon*'. These words were added by way of a modification recommended by the CS Inspector. He did not think that the housing requirement within Wiltshire should be partially met by relying on delivery west of Swindon. However, he concluded that '*This matter can be dealt with most expeditiously through the planned early review of the CS which will include the new joint SHMA, without prejudice to the overall soundness of the CS*'<sup>11</sup>.
25. The appellant argued that the CS Inspector's finding of soundness in relation to the CS as a whole was predicated on a commitment to a planned early review. However, the Council's Local Development Scheme 2015 (LDS), which was

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<sup>8</sup> See paragraph 96 of the report at CD11

<sup>9</sup> Reference ID: 3-033-20150327

<sup>10</sup> See Statement of Common Ground on housing supply matters – document GLD/LPA/08

<sup>11</sup> See paragraph 87 of the CS Inspector's report. The SHMA referred to is a joint Strategic Housing Market Assessment to be carried out by Wiltshire Council and Swindon Borough Council.

adopted on the same day as the CS, makes no such commitment. Furthermore, the LDS only states that the new joint SHMA will '*inform the need for a further review of Core Strategy policies*'<sup>12</sup>. The appellant considers that the Council has reneged on its commitment to a planned early review. In these circumstances, it was suggested that the full housing requirement for Wiltshire will not be delivered in a timely way unless the Swindon allowance is added to the requirements for the 3 HMAs. On this approach the 900 units would be distributed proportionately, adding 225 to the requirement for the NWWHMA.

26. I agree with the appellant to the extent that the LDS is not consistent with paragraph 4.29 of the CS or with paragraph 87 of the CS Inspector's report. Bearing in mind the statutory nature of the document<sup>13</sup> this is not a minor matter. On the other hand, the CS Inspector has recently considered how the Swindon allowance should be dealt with. In particular, he considered whether the Swindon allowance ought to be added to the requirements for the HMAs. That is not what he recommended. Instead, he concluded that this matter ought to be dealt with through a planned early review of the CS. His modification includes the commitment to an early review within the wording of the CS itself.
27. On balance, having regard to all the circumstances, I do not think that the lack of reference to the review in the LDS amounts to a sufficient change in circumstances to warrant adopting a housing requirement for the NWWHMA other than that set out in the CS. For the purposes of this appeal I agree with the Council's position which is that the supply needed in the NWWHMA to accord with the Framework is 6,468 dwellings.

#### *The supply of housing sites*

28. The respective positions of the Council and the appellant in relation to the supply of housing sites are summarised in the updated Statement of Common Ground (SoCG) on housing supply matters. The SoCG records changes made by the Council and the appellant during the course of the Inquiry. References to the Council's figures in the following sections of this report are references to the position as set out in the updated SoCG. I turn next to those sites where the contribution to HLS was in dispute at the end of the Inquiry. Some of these were discussed at an Inquiry which took place in April 2014 relating to proposed residential development at Park Road, Malmesbury<sup>14</sup>. I have taken account of the findings of the Inspector in that case<sup>15</sup> (the Park Road Inspector) together with the other evidence before me on HLS matters.

#### *Westinghouse Recreation Ground*

29. The site has planning permission for 74 houses. Based on a telephone conversation, the appellant argued that the developer is considering a change to the design which would result in a reduction of 10 units. The Framework states that sites with planning permission should be considered deliverable unless there is clear evidence that they will not be delivered within 5 years. There was no suggestion that this site is not deliverable. In my view there is

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<sup>12</sup> See paragraph 2.10 of the LDS

<sup>13</sup> Section 15, Planning and Compulsory Purchase Act 2004

<sup>14</sup> APP/Y3940/A/13/2200503

<sup>15</sup> This was a case where the Secretary of State did not agree with the Inspector's recommendation. However, the Secretary of State accepted the Inspector's findings in relation to HLS.

insufficient evidence to warrant adopting a figure lower than the extant permission. I accept the Council's figure for this site.

#### *Hunters Moon*

30. The Council resolved to grant outline planning permission for up to 450 dwellings in January 2014 subject to the completion of a s106 agreement. The developer's trajectory envisaged first delivery of dwellings 18 months after the grant of planning permission. The Council adopted the findings of the Park Road Inspector. He considered that delivery in 2014/15 was unlikely but that, thereafter, the site could produce at the rate assumed by the Council. This conclusion was based on the absence of a planning permission at the time of the Park Road Inquiry. The position at this Inquiry was that the outline planning permission had still not been issued. Consequently, it now seems unlikely that there will be delivery in 2015/16. I therefore agree with the appellant's position which is a reduction of the Council's figure by 56 units.

#### *Westbury North Junction*

31. The site has full permission for 102 dwellings granted in October 2013. It is a former quarry, in-filled with waste materials, subsequently used for HGV parking and now vacant. The appellant queried the delivery trajectory on the basis that there has been no discharge of pre-commencement conditions. In particular, it was suggested that a condition relating to contaminated land was onerous and would be time-consuming to deal with. However, whilst the wording of the condition in question is quite detailed, in substance it is little different to many such conditions. I consider that the Council's trajectory allows a reasonable period for the discharge of conditions and see no reason to make any adjustment for this site.

#### *Foundry Lane*

32. The site is an industrial estate which has been identified for regeneration for some time. A mixed use redevelopment is being promoted which would include up to 115 residential units. There was a resolution to grant outline planning permission in December 2013 subject to the completion of a s106 agreement although as yet no permission has been issued. The Park Road Inspector found that an allowance of 75 completions within the 5 year period was reasonable, having been informed that the agreement was in the process of being finalised. In August 2014 the Council indicated that 4 years should be allowed for site remediation prior to commencement<sup>16</sup>. Even if that figure is unduly cautious, given the complexity of the site and the continued absence of a planning permission, delivery within the 5 year period now seems unlikely. I agree with the appellant that 25 units should be deducted from the Council's figure.

#### *Burton Hill*

33. The site is allocated in the draft Malmesbury Neighbourhood Plan (MNP) for approximately 50 dwellings. The MNP was subject to examination in September 2014 and there was a referendum in December 2014. At the time of the Inquiry the Council was in the process of drafting the document which would complete the process of making the plan. The MNP is therefore at an advanced stage and significant weight may be given to it. The appellant argued that an earlier strategic housing land assessment suggested that delivery from this site

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<sup>16</sup> Email from Neil Tiley dated 26 August 2014 at Appendix 11 of Ms Mulliner's proof of evidence

would be outside the 5 year period because of the need to co-ordinate separate land ownerships. Moreover, it was said that there was no evidence of a forthcoming planning application and that any assessment by the MNP examiner of deliverability would not have needed to consider the 5 year period.

34. In my view matters have moved on since the strategic housing land assessment. It is important to note the site has been considered recently in the context of the MNP examination process. Had the examiner found that there were significant obstacles to delivery no doubt he would have said so. As to delivery within 5 years, I accept the Council's evidence that an application is being worked up by a delivery task group with the involvement of the landowners. The evidence supports the Council's delivery trajectory and no adjustment is required for this site.

#### *Backbridge Farm*

35. The site is allocated in the MNP for 170 dwellings. The appellant argued that the MNP requires the provision of pedestrian and cycle routes which would involve the use of 3<sup>rd</sup> party land. In the absence of a formal agreement with the owners concerned there was effectively a ransom strip. In response, the Council commented that the access problems had been overstated. One of the 3<sup>rd</sup> party owners concerned was the Council and one of the routes would be within an extension to a primary school site. A delivery task group had been established including representatives of the developer, the school and the education authority to bring forward proposals for the site.
36. As with the previous site, it is important to note that this site has recently been considered in the context of the examination of the MNP. The report of the MNP examiner emphasises the importance of the pedestrian and cycle links. It also records that representatives of the school attended the examination. The examiner concludes that *'From the evidence given on these matters I am satisfied that there is every possibility that the required pedestrian and cycle links would be secured through development'*<sup>17</sup>. The Guidance states that where potential ownership problems, such as ransom strips, are identified an assessment will have to be made as to how and when they can realistically be overcome<sup>18</sup>. In making that assessment I attach significant weight to the MNP examiner's report. I conclude that there is a realistic prospect that housing will be delivered at this site within the 5 year period. No adjustment to the Council's figure is needed.

#### *North Chippenham*

37. The Council resolved to grant outline planning permission for up to 750 dwellings together with employment uses and a local centre in April 2014, subject to a s106 Agreement. Permission has yet to be issued. The developer provided a revised trajectory in March 2014 indicating delivery of 360 units within the 5 year period. This figure was accepted by the Park Road Inspector and is relied on by the Council. The developer's trajectory assumed that the outline planning permission would be in place by April 2015. Consequently, the absence of such permission at the time of the Inquiry was not evidence of slippage and no adjustment to the Council's figure is needed.

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<sup>17</sup> Paragraph 3.34 of the examiner's report at Appendix 13 of Ms Mulliner's proof of evidence

<sup>18</sup> Reference ID: 3-020-20140306



*Patterdown and Rowden (South West Chippenham)*

38. The site had previously been identified in the draft CS as a strategic allocation for 800 dwellings plus employment uses. The adopted version of the CS does not include strategic allocations at Chippenham. Instead, the Council intends to bring forward a Chippenham Sites Development Plan Document<sup>19</sup>. The Council's trajectory for this site includes delivery in 2016/17. As an outline application for 1000 houses was only submitted in December 2014 the appellant suggested that it was unlikely that there would be delivery before 2017/18.
39. The Park Road Inspector accepted the Council's trajectory which assumed a two year period between submission of an outline application and delivery. On that basis, given that the application was only actually made in December 2014, the site would start to produce completed units in the 4<sup>th</sup> quarter of 2016/17. Making a proportionate allowance for that quarter, and assuming that delivery would thereafter follow the Council's trajectory (slipped by one year), it is reasonable to allow for 190 units within the 5 year period<sup>20</sup>. This is a reduction of 85 from the Council's figure.

*Ashton Park, Trowbridge*

40. The site is a strategic allocation in the CS for 2,600 homes together with employment land. Much of the site is controlled by Persimmon Homes, currently the developer of a nearby site at Castle Mead producing around 100 units per year. The Council and the appellant agreed that the site should produce completed dwellings from 2017/18. However, the appellant argued that Persimmon is unlikely to develop significant numbers of houses at Ashton Park until it has completed Castle Mead. Consequently the appellant suggested that only a few houses would be delivered in 2017/18 and that the build up in delivery thereafter would be slower than in the Council's trajectory.
41. A Statement of Common Ground between the Council and Persimmon Homes produced in May 2013 noted that there would be at least 4 outlets at Ashton Park, plus affordable housing. Although there would be limited overlap with Castle Mead competition between the two sites was not seen as a major issue. The Park Road Inspector noted that there had been some slippage in the submission of an outline application and reduced the projected delivery within the 5 year period from 600 to 350 accordingly. This is the figure now relied on by the Council. I consider that the scale of Ashton Park is such that it is likely there would be multiple outlets, as stated in the Statement of Common Ground. In my opinion there is insufficient evidence to support the appellant's suggestion that the build rates should be reduced. No adjustment to the Council's figure is therefore justified.

*West of Warminster*

42. The site is a strategic allocation in the CS for 900 dwellings together with employment land. The Council's trajectory assumes delivery from 2016/17. Given that no application has yet been submitted this now seems unlikely. The appellant suggests that the Council's trajectory should slip by one year. I agree. This results in a reduction of 140 from the Council's figure.

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<sup>19</sup> The Statement of Common Ground records that the CS Inspector found that the Sustainability Appraisal did not support the strategic allocations at Chippenham.

<sup>20</sup> The calculation is 15 units in the 4<sup>th</sup> quarter of 2016/17, 75 units in 2017/18 and 100 units in 2018/19.

*Station Road, Westbury*

43. The site was previously allocated in the West Wiltshire Local Plan and is now a strategic allocation for 250 dwellings in the CS. The Council adopts the developer's trajectory which shows 50 units in 2018/19. There would be a need for a link road to cross a railway line as part of the development. The appellant argued that no planning application has been submitted and questioned the viability of the site.
44. I understand that the site has been allocated for some time without development being brought forward. However, it has recently been reviewed in the context of the CS examination. The CS Inspector's report addressed the issue of viability, noting that the evidence presents '*a degree of ambivalence as to the viability of the site*'. Even so, the Inspector went on to say that the Council's revised viability evidence led to a reduction in affordable housing aspirations which will enhance the likelihood of viable delivery. He concluded that '*the Station Road site is justified as a strategic allocation*'. I attach significant weight to the CS Inspector's findings and conclude that there is a realistic prospect of delivery at this site. In terms of timing, the Council's trajectory indicates delivery in the final year of the 5 year period. This allows sufficient time for an application to be submitted and determined. No adjustment to the Council's figure is required.

*Victoria Road, Warminster*

45. The site has planning permission for 18 dwellings. However, a further planning application has been submitted for 8 dwellings and 3 retail units. On balance it seems more likely that this site will deliver 8 houses and it is therefore appropriate to make a reduction of 10 units from the Council's figure.

*Conclusions on housing land supply*

46. The supply needed in the NWWHMA, derived from the CS, is 6,468. This figure includes a 5% buffer in accordance with the Framework. The Council's figure for supply is 6,530. For the reasons given above I consider that this figure should be reduced by 316. The resulting figure is 6,214 which is below the supply needed to accord with the Framework. I acknowledge that the shortfall is not great. Indeed, the available supply exceeds the 6,160 that would be needed if it were not necessary to add a buffer. However, the Framework makes clear at paragraph 47 that a buffer should be added to ensure choice and competition in the housing market.
47. It follows that, in the NWWHMA, the Council cannot demonstrate a 5 year supply of deliverable housing sites with the buffer required by the Framework. In these circumstances the Framework states that relevant policies for the supply of housing should not be considered up-to-date.
48. The Council did not dispute that, insofar as Core Policy 2 seeks to restrict housing outside the limits of development, it is a relevant policy for the supply of housing which would be deemed to be out-of-date if there were found not to be a 5 year HLS. The appeal scheme also includes B1 office development. Core Policy 34 of the CS deals with employment land and is not a relevant policy for the supply of housing. I return to the application of development plan policy to the B1 element of the scheme later in this decision.

49. Paragraph 14 of the Framework states that where relevant policies are out-of-date planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits or where specific policies in the Framework indicate that development should be restricted. This is a case where paragraph 14 is not engaged, for reasons discussed in the concluding section of this decision.
50. I have referred above to two recent appeal decisions relating to sites at Oaksey and Cricklade which were drawn to my attention after the close of the Inquiry. Both sites are within the NWWHMA and in each case the Inspector accepted the conclusion of the CS Inspector in relation to the existence of a 5 year HLS. It can be seen from the Oaksey decision that the appellant in that case did not contest the CS Inspector's conclusion on HLS. Whilst there was some discussion of the allowance for windfall sites, it appears that the delivery trajectories for individual HLS sites were not discussed at the hearing.
51. It can be seen from the Cricklade decision that both the housing requirement and the HLS were disputed. I agree with the Cricklade Inspector that the CS requirement, disaggregated to the 3 HMA, provides the correct basis for establishing the requirement. The Inspector does not comment on individual supply sites and I do not know what detailed information was before him on this matter. It is clear that he attached very significant weight to the findings of the CS Inspector.
52. In common with the Cricklade Inspector I have afforded substantial weight to the report and conclusions of the CS Inspector. However, at the Inquiry evidence was put before me which demonstrates that, for some sites, the position now is materially different to the evidence that was before him. Neither the Framework nor PPG suggest that such evidence should be disregarded. Case law stresses the importance of an evidence based approach to the consideration of HLS<sup>21</sup>. On the basis of that evidence I have reached a different conclusion to the Oaksey and Cricklade Inspectors.
53. Finally, I note that since the Inquiry the Council has permitted housing development on two sites at or near Corsham, amounting to 152 dwellings. However, it would not be appropriate simply to add that figure to the supply – that would be tantamount to changing the base date of the HLS exercise. Moreover, some of these units are already accounted for in the HLS figures. The Council and the appellant have agreed that the correct base date for this appeal is 1 April 2014. If any later base date were used it would be necessary to review all the elements of the HLS exercise.

***Effect on ecology, including designated sites and protected species***

54. The appeal site comprises an arable field, within which there are some free-standing trees, and an area of grassland. There are corridors of trees and vegetation adjoining the northern and eastern site boundaries. These are associated with the grounds of Guyers House and open farmland to the north and with the back gardens of houses in Academy Drive to the east. The site is bounded by Bath Road to the south, beyond which is the urban area of Corsham. To the west it is bounded by Guyers Lane, beyond which there is a

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<sup>21</sup> *Wainhomes v Secretary of State for Communities and Local Government* [2013] EWHC 597 (Admin) – see for example paragraph 35 of the judgement

group of houses fronting Bath Road and open farmland. In the south west part of the site there is an airshaft leading to a disused underground quarry.

55. The site is not subject to any nature conservation designations. However, it is used by protected species, notably bats. All UK bats are protected species. An ecological appraisal and a bat survey were submitted with the application in 2013. This work identified several species of bats using the site. In response to matters raised by the Council and Natural England (NE) further bat surveys were undertaken during 2014.

#### *Designated sites*

56. The ecological appraisal identified one Special Area of Conservation (SAC) and 3 Sites of Special Scientific Interest (SSSI) in the area around the appeal site together with some non-statutory wildlife sites. The Box Mine SSSI is about 1.6km to the south west of the appeal site. This SSSI also forms part of the Bath and Bradford on Avon Bats SAC. The SAC is made up of various separate areas, the next nearest being respectively 7.5km and 9.6km from the site. The ecological appraisal did not identify any significant impacts on designated sites other than the Box Mine component of the SAC. This conclusion was not disputed by the Council and I see no reason to disagree.
57. The SAC is a European site and Regulation 61 of the Habitats Regulations therefore applies. The Council and the appellant agreed that the application is likely to have a significant effect on the SAC. Consequently, in accordance with Regulation 61, an appropriate assessment of the implications for that site must be made. To assist the Inquiry a draft appropriate assessment was prepared and agreed between the Council and the appellant<sup>22</sup>. The draft appropriate assessment concluded that the project was not likely to affect the integrity of the SAC, either alone or in combination with other plans and projects. NE was consulted and advised that it concurred with the assessment conclusions, provided that all mitigation measures are appropriately secured in any permission given<sup>23</sup>. I have taken account of the draft appropriate assessment, together with the views of NE and all other evidence before the Inquiry in order to make my own appropriate assessment.
58. The interest features of the SAC are greater horseshoe bat (GHB), Bechstein's bat (Bechstein's) and lesser horseshoe bat (LHB). There are relatively large populations of GHB and LHB and a small population of Bechstein's which is estimated to be just 20 individuals. Unless bats are trapped or identified in the hand Bechstein's cannot be distinguished from other bats of the *Myotis* family. Due to the rarity of Bechstein's considerable survey effort is needed to confirm their presence or absence in circumstances where *Myotis* bats are detected.
59. Box Mine is the most important roosting, hibernation and swarming site for the qualifying species in the locality although other underground sites are used. The conservation objectives for Box Mine include avoiding the disturbance of the qualifying species, ensuring that the integrity of the site is maintained and that the site makes a full contribution to achieving favourable conservation status for each of the qualifying features.
60. Box Mine is not understood to be physically connected with the underground quarry at the appeal site by any underground route. To confirm whether or not

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<sup>22</sup> GLD/LPA/06

<sup>23</sup> NE letter of 2 March 2015 – GLD/LPA/07

the qualifying species are hibernating below ground, bat trapping was undertaken at the airshaft in March/April 2014. Natterer's and Daubenton's bats were trapped but no Bechstein's, GHB or LHB. The airshaft is used by *Myotis* bats as a swarming site in late summer. The difficulty of confirming the presence or absence of Bechstein's had been an outstanding matter of concern to the Council. However, following the 2014 surveys both the Council and NE are now satisfied with the level of survey work and agree that the airshaft is not used significantly by Bechstein's or by the other qualifying species.

61. Bat activity surveys identified modest numbers of GHB and LHB using the northern boundary of the site as a commuting route. *Myotis* bats, which could include Bechstein's, were also recorded using the northern and eastern boundaries for much of the summer with large increases in activity during September. Foraging activity was also recorded.
62. The survey evidence shows that the 3 qualifying species are not using the underground quarry or the trees within the site as roosts. However, the commuting routes may well be used to reach foraging areas and roosts in the locality so the proposed development may have indirect effects. It is likely to require external lighting associated with roads, footpaths and buildings. As the qualifying species are known to be light sensitive, increased lighting close to the commuting routes is likely to disturb bats, potentially impacting on the conservation objectives for the SAC.
63. Mitigation measures have been proposed to avoid or reduce the potential impacts. The key features, as shown on the ecological parameters plan, would be landscape buffers of at least 15m width containing species-rich grassland and tree/shrub planting along the western, northern and eastern boundaries. These buffers would be designed and managed to protect the commuting routes. In addition there would be a 10m offset to the closest elevation of any buildings. To my mind the key issues to be addressed are whether this mitigation would be effective and whether it could be adequately secured, bearing in mind the outline nature of the appeal scheme.
64. The indicative design of the buffers is shown on the illustrative landscape cross sections. These show that the buffers would be of sufficient width to include hedgerow and tree planting on either side of a central grassland strip. A close boarded fence would be contained within the planting closest to the proposed development in order to cut down light spill into the buffer zone. A lighting report has been submitted which includes modelled lighting levels across the site. This shows that light levels within the buffers could be kept below 1.0 lux, the level which is generally regarded as the threshold for bat disturbance. The survey information has identified how the site is used by commuting and foraging bats and I consider that there is sufficient knowledge about the behaviour of the qualifying species to be confident that the mitigation measures would be effective in protecting the commuting routes.
65. The Council and the appellant suggested a condition which would require the submission of reserved matters to accord with the ecological parameters plan including the dimensions and lighting levels referred to above. Further conditions could be imposed requiring the approval of a Landscape and Ecological Management Plan, to ensure that the future maintenance of the buffers was appropriate to their mitigation function, and the approval of an external lighting scheme. I am satisfied that these conditions would secure the

implementation of the proposed mitigation measures without prejudicing the Council's ability to consider the planning merits of any reserved matters submissions.

66. In conclusion, my assessment is that the commuting routes could be adequately protected from the proposed development subject to the imposition of appropriate planning conditions. On this basis the project would not be likely to affect the integrity of the SAC either alone or in combination with other plans or projects. For the same reasons, the project would not be likely to harm the Box Mine SSSI.

*Protected species - bats*

67. The surveys have identified several bat species at the site, including the 3 referred to above. Insofar as these species are using the site for commuting and foraging the mitigation measures described above would be of value to all of the bat species. The Council's main concern was the effect of the proposal on the use of the airshaft and underground quarry by bats. The surveys show that it is likely that Natterer's bats and Daubenton's bats are using the quarry for hibernating. In addition, swarming activity has been observed at the airshaft in the late summer and autumn. The surveys indicated a maximum of 10 bats swarming at any one time. The ecological function of swarming is closely related to breeding which normally takes place underground. Studies have shown that individual bats travel from a wide area to reach swarming sites. Such sites are comparatively rare and the Council is aware of only 3 in Wiltshire.
68. Mitigation proposals are shown on the ecological parameters plan. A buffer zone would be formed around the airshaft with a minimum of 15m between the shaft and the office development to the south west and a minimum of 25m between the shaft and the residential development to the north east. The buffer zone would have trees towards the edge and an open area for swarming around the shaft. Wildlife corridors, similar to the landscape corridors described above, would link this area to the western and southern boundaries.
69. The Council's concern was that the introduction of urban development in proximity to the airshaft would result in the deterioration of a breeding site of a European protected species, potentially in breach of Article 12 of the Habitats Directive. The Council considers that there is an unacceptable degree of uncertainty with regard to both the significance of the swarming site and the nature and significance of the impacts of development on the swarming arena. Moreover, it was argued that the effectiveness of the proposed mitigation cannot be sufficiently understood because there is no precedent for developing close to a swarming site. For all these reasons the Council considered that it was unlikely that NE would be able to provide the necessary licence for the scheme and planning permission should therefore be refused.
70. The appellant agreed that that a licence from NE would be sought. However, it was argued that the existing habitat is sub-optimal for bats because it is open and exposed arable land. Natterer's and Daubenton's are woodland bats adapted to cluttered woodland environments. The mitigation would provide optimal habitat around the airshaft and connectivity with the wider area.
71. The EC Guidance on the application of Article 12 states that:

*'Breeding sites and resting places are to be strictly protected because they are crucial to the life cycle of animals and are vital parts of a species' entire habitat. Article 12(1)(d) should therefore be understood as aiming to safeguard the continued ecological functionality of such sites and places, ensuring that they continue to provide all the elements needed by a specific animal to rest or to breed successfully. The protection applies all year round if these sites are used on a regular basis.'*<sup>24</sup>

72. The emphasis in the EC Guidance is on the continued ecological functionality of the breeding or resting site. The evidence before me indicates that the key aspects of functionality here are the underground quarry, where breeding is thought to take place, the swarming arena and the connectivity to the wider area.
73. I accept the evidence of the appellant's bat expert that there has been sufficient survey work. The species using the airshaft have been identified, the maximum numbers using it for swarming at any one time have been established and there have been direct observations of swarming activity on a number of occasions. The Council argued that the total numbers of bats using the site over a season is not known. Whilst that may be so, I am satisfied that there is sufficient information to properly understand the significance of the swarming site and to inform the design of the mitigation measures.
74. It is important to bear in mind that the swarming site is not in a remote rural location. It is around 50m from the busy A4 which has tall lighting columns. It is also close to urban development to the south of the A4. No survey information has been provided regarding current light levels at the airshaft. However, the appellant's bat expert suggested that these are likely to be above the 1.0 lux level which is the threshold for affecting the behaviour of bats<sup>25</sup>. Having viewed the site at night I share that view. I agree with the appellant that the current conditions are sub-optimal for bats.
75. The appellant submitted information about other swarming sites in the Corsham area and also in Derbyshire and Yorkshire. This evidence shows that sheltered and relatively cluttered woodland environments provide suitable habitat for Natterer's and Daubenton's bats. Consequently there is no reason to think that planting trees around the perimeter of the buffer zone, leaving the area around the shaft clear, would create conditions unsuited to these species.
76. The numbers of bats observed swarming were relatively low, with a maximum of 10 on one occasion and generally fewer than 5. The majority of the swarming activity observed was above the airshaft. Whilst there was an instance of swarming behaviour to the south of the airshaft this was just 2 individuals on a single occasion. The lighting conditions which could be achieved in the buffer zone, and the corridors connecting it to the southern and western boundaries, have been modelled in some detail. The modelling showed that light levels could be maintained below the 1.0 lux threshold. For much of the buffer zone levels would be below 0.1 lux. This would certainly be no worse than existing conditions and may well be a material improvement.

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<sup>24</sup> Page 45 of the Guidance Document on the Strict Protection of Animal Species of Community Interest under the Habitats Directive 92/43/EEC, included at Appendix I to GLD/23.

<sup>25</sup> Mr Goodman, in answer to my questions

77. Taking the survey data together with the information about other swarming sites and the modelled lighting conditions, I consider that there can be a high degree of confidence that the ecological functionality of the airshaft breeding site would be adequately protected by the proposed mitigation.
78. It is also necessary to consider potential physical impacts on underground breeding sites by construction works and potential disturbance to hibernating bats from noise and vibration. The extent of the underground quarry linked to the airshaft has been surveyed. The appellant's engineering consultants have submitted a technical note which states that the likelihood of piled foundations being needed on this site is negligible. There remains a possibility of unmapped shallow workings which might potentially be used by bats. This potential risk could be addressed by way of a condition requiring a land stability risk assessment to be submitted for approval alongside the submission of reserved matters. The possible need for any seasonal restrictions on building works in parts of the site, to avoid disturbance during hibernation, could be addressed within a Construction Method Statement. Such statements are commonly secured by planning conditions to mitigate impacts during construction.
79. In conclusion, I consider that the impact of the proposal on bats is not a matter which weighs against the grant of planning permission. In these circumstances case law indicates that:
- If a proposed development is found acceptable when judged on its planning merits, planning permission for it should normally be granted unless in the planning authority's view the proposed development would be likely to offend article 12(1) and unlikely to be licensed under the derogation powers<sup>26</sup>.*
80. My conclusion is that, with the proposed mitigation, the proposed development would be unlikely to result in the deterioration of a breeding site of a European protected species. On that basis a licence may not be required. However, it is not for me to determine whether or not a licence would be required as that would be the duty of NE. Moreover, in this case it is common ground that a licence would be applied for<sup>27</sup>. Questioned on this point, the appellant's bat expert stated that a licence would be applied for to ensure that the developer would be protected against any potential offence<sup>28</sup>.
81. If such an application were made NE would have regard to the 3 licensing tests set out in Regulation 53 of the Habitats Regulations. The need for housing is capable of amounting to an imperative reason of overriding public importance, particularly in circumstances such as these where the supply of housing sites falls short of that required by the Framework. The shortfall in housing supply also indicates a lack of satisfactory alternative sites.
82. The Council suggested that there could be an alternative layout, perhaps omitting the proposed roundabout junction in the vicinity of the airshaft. There was little specific evidence before me on potential alternative layouts. However, I saw that opportunities for forming satisfactory vehicular accesses to the A4 Bath Road are constrained by existing buildings and the need to take account of the existing junction with the B3109 Bradford Road. From what I saw on site

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<sup>26</sup> Paragraph 96, R (on the application of Christopher Prideaux) and Buckinghamshire County Council and FCC Environment UK Ltd [2013] EWHC 1054 (Admin)

<sup>27</sup> Paragraph 3.7, Statement of Common Ground on Bats – GLD/LPA/11

<sup>28</sup> Mr Goodman, during cross-examination by Mr Richards



it seems unlikely that there would be a satisfactory alternative to forming a roundabout junction at this point.

83. For the reasons given above, I do not consider that the proposal would be detrimental to the maintenance of the population of the species in question at a favourable conservation status. Consequently, the evidence before me does not indicate that this is a case where NE would be unlikely to grant a licence.

*Other protected species*

84. There is no aquatic habitat for great crested newt or common toad on the site although there is some terrestrial habitat for both species. Any impacts on terrestrial habitat would be outweighed by habitat created within the scheme. The Council and appellant agreed that impacts on great crested newt, common toad, badger and birds would be low and could be mitigated by standard approaches secured through conditions<sup>29</sup>.

*Loss of parkland habitat*

85. The Council and the appellant did not agree on the value that should be attached to the existing habitat. The Council argued that, as parkland, the appeal site represents a priority habitat whereas the appellant characterised it as being dominated by arable land with low ecological value overall. These differences narrowed somewhat during the Inquiry with the parties agreeing that the site does not meet the criteria for a parkland County Wildlife Site because it has only 2 veteran trees rather than the required 3. On the other hand it was agreed that the site does meet the UKBAP criteria for parkland habitat<sup>30</sup>. It is therefore a site 'of value' in the terms of the CS.
86. Whilst the site meets the criteria for parkland habitat there are a number of factors which bear on my assessment of its ecological value. First, the Council accepted that arable farming over an extended period will have reduced the value of the habitat normally associated with parkland. There are only 2 veteran trees and one of these had collapsed at the time of my site visit. As it stands, the remaining veteran tree is not part of a mosaic of parkland habitats. The surveys of invertebrates, bryophytes and lichen which have been carried out identified the presence of common and widespread species. Consequently, whilst the site is a priority habitat in a technical sense, the evidence before me indicates that its actual ecological value is relatively low.
87. The Council suggested that there is potential for some restoration of the ecological value of the site. Whilst that may be so, there was little evidence before the Inquiry that this is a likely prospect.
88. The illustrative layouts and the ecological parameters plan show how the remaining veteran tree, and other free-standing mature trees, would be retained within the proposed development. Dry stone walls contribute to the range of habitats within the site. Although around half of the total length of such walls would be removed, this would be replaced by an equivalent length of new dry stone wall. The illustrative landscape proposals include features designed to enhance biodiversity, including new grassland, extensive tree and hedge planting, swales and ponds. There would be 2.8ha of terrestrial habitat suitable for great crested newt and common toad. Full details of all these

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<sup>29</sup> Ecology Statement of Common Ground – Parkland and veteran trees – GLD/LPA/03

<sup>30</sup> Ecology Statement of Common Ground – Parkland and veteran trees – GLD/LPA/03

measures could be secured at reserved matters stage and by the imposition of conditions.

### *Conclusions on ecology*

89. Core Policy 50 of the CS states that development proposals must demonstrate how they protect features of nature conservation value. Where such features cannot be retained, removal shall only be acceptable where the ecological impacts have been mitigated as far as possible and compensatory measures have been secured to ensure that there is no net loss of the local biodiversity resource. All proposals should avoid and reduce disturbance of sensitive wildlife species and seek opportunities to enhance biodiversity.
90. The most important features of the appeal site are the airshaft, which is a breeding site for bats, and the commuting routes used by several bat species including those associated with the SAC. These features would be retained and protected by the proposed mitigation measures. Other features, including mature trees and dry stone walls, would be retained as far as practicable and compensatory features would be provided. I have concluded that the project would not be likely to affect the integrity of the SAC and that it would not result in the deterioration of the breeding site.
91. There would be a loss of parkland habitat which is regarded as being 'of value' in the CS. However, the actual ecological value of the site is relatively low. Specific features associated with parkland would be retained and in my view any loss of value would be outweighed by the extensive biodiversity enhancement measures incorporated in the scheme. I consider that, overall, there would be no net loss of the local biodiversity resource and that the scheme as a whole would accord with Core Policy 50.

### ***Effect on the character and appearance of the area***

92. The relationship between the appeal site, the adjoining countryside and the urban area of Corsham has been described at the beginning of the preceding section. The Wiltshire Landscape Character Assessment identifies the site as being within the Marnesbury – Corsham Limestone Lowland character area. The characteristics of this area are said to include gently undulating lowland farmland, a pattern of large geometric fields and dry stone walls marking field boundaries. I consider that the appeal site shares these characteristics.
93. The site is crossed by a public footpath leading from Bath Road. The path passes through the grounds of Guyers House and then leads north towards the Cotswolds Area of Outstanding Natural Beauty (AONB). The edge of the AONB is around 650m from the appeal site.

### *Landscape and visual effects*

94. The application was accompanied by a Landscape and Visual Impact Assessment (LVIA). The LVIA assessed the landscape of the appeal site as having low/medium susceptibility to change. The effect on the landscape of the site and immediate context was assessed as minor adverse. The main visual impacts identified were moderate adverse effects on a relatively small number of residential receptors and on users of the public footpath and minor adverse effects on users of Bath Road and Guyers Lane.

95. The Council and the Pickwick Association argued that the LVIA had generally understated both the susceptibility of the site to change and the degree of the landscape impacts. It was suggested that the proposals would be harmful to the landscape setting of Corsham, in that the site forms a green gateway into the town, and that Bath Road has formed a distinct boundary to the northern extent of the town.
96. With regard to the susceptibility of the site to change, it is relevant to note that its existing character is subject to urban influences. The busy Bath Road bounds the southern side of the site and houses are visible to the east and south. Whilst the site is identified as parkland for the purposes of the ecological assessment, its visual character is essentially that of an agricultural field. It does have dry stone walls, which are a feature of parkland, and there are some free-standing trees. However, there is no sense of a coherent or consciously designed landscape structure.
97. The site is adjacent to part of the Pickwick Conservation Area. I will return to its contribution to the setting of the conservation area in the following section. The key point to note here is that there is limited inter-visibility between the appeal site and the conservation area. I do not consider that the proximity of the conservation area materially increases the landscape sensitivity of the appeal site. In summary, I agree with the findings of the LVIA that this is a site with low/medium susceptibility to change.
98. There would be an adverse change in the character of the site itself in that an open arable landscape, characteristic of the locality, would be replaced by urban development. I consider that this would be a harmful impact of the proposed development, although the degree of harm would be tempered by the low/medium susceptibility of the landscape. Layout and design is a reserved matter. However, the illustrative masterplan shows how mitigation could be embedded in the design and layout of the scheme. This could be achieved by creating a central public open space, related to the line of the footpath, and by setting new development within a strong landscape structure. These features of the illustrative layout could be secured at the reserved matters stage.
99. The Council and the Pickwick Association agreed with the appellant in relation to the general extent of visual effects. These would not be widespread due to the effects of landform and vegetation. They would be confined, in the main, to views from Bath Road, Guyers Lane, nearby houses and the public footpath.
100. Turning to the landscape setting of Corsham, I note that the open nature of the site is readily apparent from the approach to the town along Bath Road. However, I do not consider that the site has a gateway function. The approach to Corsham from the west is characterised by a mix of urban development and open countryside. The southern side of the road is fairly consistently developed. The northern side is less so but there is extensive development at the Copenacre site<sup>31</sup> and there are houses at Traveller's Rest, Guyers Cottages and Academy Drive. As seen on a map or aerial photograph Bath Road does indeed define the northern edge of part of the urban area of Corsham. However, as seen on the ground there is no strong visual edge at this point.
101. The greatest visual effects would be on nearby residential occupiers and on users of the footpath. In both cases the illustrative layout offers a degree of

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<sup>31</sup> A vacant MoD site which is to be redeveloped for housing

mitigation. Substantial landscape buffers are proposed around the site boundaries. At present the footpath passes through an open field, albeit with views of housing nearby. It would become part of an urban extension. However, the illustrative masterplan shows that it need not be closely confined by housing, passing instead through a broad public open space for about half its length and then along a green corridor. In conclusion, I accept the assessment of the LVIA that these would be moderate adverse visual effects.

#### *Effects on designated landscapes*

102. The Council and the Pickwick Association accepted that there is no inter-visibility between the site and the AONB. No party identified viewpoints within the AONB from which the proposed development would be seen. On my site visits I saw that the character of the footpath changes to the north of Guyers House. Urban influences are much reduced and there are views northwards to higher ground within the AONB. The nearest boundary of the AONB is on the other side of a low ridge and from this point there are no views southwards towards Corsham and the appeal site.
103. Nevertheless, it was argued by the Council that the experience of approaching the AONB via the footpath would be adversely affected by the appeal scheme. Whilst that may be so, as noted above any impact on users of the path would be no more than moderate adverse. Moreover, any such effect would be confined to that section of the path which is within the appeal site. In any event, this would not be an impact on the landscape of the AONB itself.
104. I conclude that the evidence before me does not identify any material impact on the landscape of the AONB. In relation to national policy<sup>32</sup>, the landscape and scenic beauty of the AONB would be conserved.
105. The Council's reasons for refusal include reference to the Corsham Special Landscape Area. This was a local landscape designation found in previous local plans. It was not carried forward into the CS. At the Inquiry, the Council did not seek to argue that it should be regarded as a significant factor in this appeal.

#### *Conclusions on character and appearance*

106. The loss of a greenfield site would result in some harm to the character and appearance of the area. There would be adverse visual effects, particularly for nearby residents and users of the public footpath. To this extent the appeal scheme would not accord with Core Policy 51 which seeks to protect and conserve landscape character. On the other hand the negative impacts would be mitigated as far as possible, as required by the policy, through the inclusion of structural landscape features which could be secured at the reserved matters stage. The extent of visual impacts would not be widespread and there would be only limited harm to the landscape setting of Corsham. There would be no harm to the landscape and scenic beauty of the AONB.

#### ***Effect on heritage assets***

107. There are no designated heritage assets within the appeal site. This section of my decision discusses effects on the settings of designated heritage assets, the adequacy of survey information in relation to archaeology and whether

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<sup>32</sup> Paragraph 115 of the Framework

there are any non-designated heritage assets which merit consideration in the context of this appeal. The Built Heritage Assessment submitted with the application identified a number of listed buildings in the locality. However, at the Inquiry the designated heritage assets of concern to the Council and the Pickwick Association were the Pickwick Conservation Area and Guyers House, a Grade II listed building. I agree that the other listed buildings identified in the assessment are either too far from the appeal site, or have an insufficiently direct relationship with it, for there to be any material impact on their settings or their significance.

*Effect on the setting of the Pickwick Conservation Area*

108. Pickwick developed as a separate village which became linked to Corsham by 20<sup>th</sup> century development. There was no conservation area appraisal or character statement before the Inquiry. There was however a brief description of the conservation area which notes that Pickwick was a staging post on the London coach route, referred to by Charles Dickens in *Pickwick Papers*. The village has developed in a linear fashion along Bath Road. The fabric is substantially stone, which results in a high degree of unity in the street scene. At the western end of the conservation area there are two large houses set in grounds, enclosed with high stone walls, at Pickwick Manor and Beechfield House. In my view all of these features contribute to the character and appearance of the conservation area and to its significance as a designated heritage asset.
109. The Framework defines setting as the surroundings in which a heritage asset is experienced. The Pickwick Conservation Area is primarily experienced from viewpoints within the designated area. No external viewpoints which are of importance to understanding or experiencing the conservation area have been identified in the evidence. There is limited inter-visibility between the conservation area and the appeal site although there is some, for example views to and from houses in Academy Drive.
110. The properties at Academy Drive, which are within the conservation area, back on to the appeal site. These houses are within the grounds of Beechfield House. They are part of a modern residential development which replaced previous development within the grounds. The Academy Drive development has been attractively designed and is sympathetic to its sensitive location within the landscaped grounds of Beechfield House. However, the relationship of these modern houses to the conservation area would not be materially affected by development behind them, at the appeal site. No doubt there would be views of new housing, partially screened by the proposed landscape buffer, from the back of the Academy Drive houses. That would not however have any material impact on the significance of the conservation area as a designated heritage asset.
111. There are views eastwards along Bath Road which encompass the appeal site together with elements of the conservation area. These views are dominated by highway infrastructure and predominantly modern development. There are also glimpses of buildings, such as No 51 Bath Road, which make a positive contribution to the conservation area. However, to my mind any such views cannot be characterised as important in the sense of contributing to an experience or understanding of the conservation area.

112. The appeal site forms part of the setting of the conservation area. However, setting is not a heritage designation in its own right. Whilst the proposed development would change the character of the appeal site it does not follow that this would harm the significance of the conservation area. Although there would be changes to views into and out of the conservation area, these changes would not affect important views. There would be no harm to the character and appearance of the conservation area. Nor would there be harm to its significance as a designated heritage asset.

*Effect on the setting of Guyers House*

113. Guyers House is a Grade II listed building set in landscaped grounds adjoining the northern boundary of the appeal site. The house is approached by a tree-lined drive from Guyers Lane which passes alongside the appeal site boundary. The list description notes that the house dates from the 17<sup>th</sup> century with 19<sup>th</sup> century additions. It has both historic and architectural interest due to its age and the quality of its architecture. The principal elevation faces south east onto a lawn, pond and landscaped grounds. There are substantial planting belts to the south and east of the grounds. From first floor windows it is possible to gain some filtered views, through the boundary planting, over parts of the appeal site to Bath Road.

114. Guyers House was formerly a farmhouse and is now a hotel. From 1921 the appeal site was farmed, together with other land, by the occupiers of Guyers House. The family planted two beech trees within the appeal site as a memorial to a son who was killed in World War II. The appeal site was sold away from the house in the 1950s. The present owners acquired the property in 1989. They restored the house and grounds and began planting trees and hedges on the boundary to screen the effects of street lighting along Bath Road<sup>33</sup>.

115. In assessing the importance of the appeal site to the significance of Guyers House as a designated heritage asset I take account of visual, functional and historic connections. The visual links are now very limited due to the planting along the drive and the southern and eastern edges of the grounds. The house is barely visible in winter views from the appeal site and Bath Road. Views out are restricted, as described above. Moreover there is no evidence that this is a recent or transient change – the ordnance survey map of 1886 shows planting belts to the south and east of the house. It appears that the planting that has taken place since 1989 has reinforced a landscape structure established in the 19<sup>th</sup> century.

116. Guyers House was a farmhouse and, whilst there is only direct evidence relating to the period from 1921, it seems likely that the appeal site was farmland associated with the house long before that time. Consequently there was a functional link which came to an end in the 1950s.

117. The issue of parkland has been discussed above in relation to ecology and landscape. In terms of the historic environment, the tithe map of 1838 shows Guyers House surrounded by fields. There is no evidence of parkland at this stage. The ordnance survey map of 1886 shows the drive to the house on an alignment to the north of the present drive. There are free-standing trees and clumps within the appeal site, suggestive of a parkland character. However,

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<sup>33</sup> Mr Hungerford, one of the owners of Guyers House, gave this information in his written statement and in answer to my questions

there is no evidence of any designed landscape linking the house to the appeal site. On the contrary, as noted above, planting belts to the south and east of the site were already in place.

118. Having regard to all the above factors, I consider that the appeal site should be regarded as part of the setting of Guyers House notwithstanding the limited visual connectivity between the two. The functional link has gone and there is no link resulting from a designed landscape. The continued presence of farmland does however contribute something to the understanding of Guyers House as a former farmhouse. In my view the contribution that the appeal site makes to the overall significance of Guyers House is a small one.
119. The effect of the appeal scheme would be to bring urban development much closer to the southern edge of the grounds of Guyers House. There would be little impact on views to and from the house because the existing planting at Guyers House would be supplemented by extensive new planting along the landscape corridors within the appeal site. Given the predominantly residential nature of the appeal scheme there is no reason to think that there would be significant harm from noise and disturbance. On the other hand there would be an erosion of the rural setting of the farmhouse which would result in some harm to the significance of the designated heritage asset.
120. In the terms of the Framework<sup>34</sup>, I consider that the degree of harm would be less than substantial. Moreover, for the reasons given above I would characterise it as minor. In these circumstances the Framework requires any harm to be balanced against the public benefits of the proposal. I return to that balance in the conclusions to my decision. Having regard to the relevant statutory duty,<sup>35</sup> I conclude that the setting of Guyers House would not be preserved.

#### *Archaeology*

121. The application was supported by an Archaeological Desk-Based Assessment. This concluded that there are no known archaeological heritage assets within the site and that there is a low potential for the presence of unknown buried heritage assets. The Pickwick Association argued that a field evaluation ought to be carried out before any planning permission is granted. However, the County Archaeologist was satisfied that appropriate site investigations, including trial trenching, could be secured by a condition. I share that view.

#### *Non-designated heritage assets*

122. The Pickwick Association suggested that Guyers Cottages, which front Bath Road and back onto the appeal site, should be regarded as non-designated heritage assets. However there is no evidence that these cottages have been identified by the local planning authority as heritage assets, whether in a local list or in any other document. In my view they do not fall within the definition of a heritage asset as set out in the Framework. The cottages should of course be taken into consideration as part of the existing townscape. That is something that the Council would no doubt take into account at the reserved matters stage.

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<sup>34</sup> Paragraph 134

<sup>35</sup> Section 66 – Planning (Listed Buildings and Conservation Areas) Act 1990

### *Conclusions on heritage assets*

123. In conclusion, I have not identified any harm in relation to the setting of the Pickwick Conservation Area, archaeology or non-designated heritage assets. In these respects the appeal proposals would accord with Core Policy 58. I have concluded that there would be minor harm to the significance of Guyers House, a matter I comment on further below.

### ***Whether there would be prejudice to a plan-led planning process***

124. The central role of development plans in the planning system is made clear in primary legislation and the Framework. The Framework states that local plans should as far as possible reflect a collective vision and a set of agreed priorities for the sustainable development of the area. However, both the legislation and the Framework require other material considerations to be taken into account. In relation to housing, the Framework states that relevant policies for the supply of housing should not be considered up-to-date in cases, such as this, where there is not a 5 year HLS with the required buffer. Even so, it is appropriate to consider the implications of allowing the appeal scheme for the planning process in Wiltshire as part of the overall balance of planning considerations.

125. The Core Strategy was adopted in January 2015. Whilst it includes some strategic allocations it is not intended to include all of the allocations that will be needed to deliver the housing requirement for Wiltshire. The CS is to be followed by site allocation Development Plan Documents (DPD) and Neighbourhood Plans (NP). Allocations in Corsham are expected to be made through the Corsham NP but could also be made through a site allocation DPD.

126. Work is in progress on the issues and options stage of the NP. The position at the close of the Inquiry was that the consultation period on the application to designate the area for the NP was due to end on 18 March 2015. The NP steering group anticipates that consultation on a draft plan would take place in January/March 2016. The Council's Local Development Scheme indicates that the examination of the Wiltshire Housing Site Allocations DPD will begin in late 2015 with adoption in 2016. Both plans are at an early stage of preparation and have yet to emerge even as draft documents.

127. It is important to recall that Core Policy 1 identifies Corsham as a Market Town with the potential for significant development. At the Inquiry the Council accepted<sup>36</sup> that the scale of development proposed in the appeal scheme would not be inconsistent with the settlement strategy set out in Core Policy 1. I therefore conclude that allowing the appeal would not prejudice the overall spatial strategy of the adopted CS. I turn next to the effect on the planning process at the level of the Corsham community area.

128. Core Policy 11 states that approximately 1,220 houses will be provided at the town of Corsham during the plan period. The CS Inspector agreed with the Council that it was not necessary to make a strategic allocation at Corsham. There have been significant numbers of completions and permitted sites, such that the CS states that sites for only another 330 houses are needed. Community representatives drew attention to further recent permissions and current applications which would do much to meet this total. The appellants did

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<sup>36</sup> Ms Gibson, in cross examination by Mr Tucker



not disagree that it seems likely that 330 will be exceeded, perhaps well before the end of the plan period.

129. If the appeal were dismissed the merits of the appeal site could then be considered alongside other candidate sites through either the NP or the DPD process. The Council argued that, having participated in the CS process, the expectation of the community is that is what should happen. Evidence was produced to show that there are a number of potential development sites, generally to the south west of Corsham. On the other hand, the figures set out in Core Policy 11 are not maxima so allowing the appeal would not prevent the merits of other sites being considered through those processes.
130. Turning to the employment element of the scheme, Core Policy 34 sets out 4 criteria for employment development outside the development limits of market towns. Criterion (i) is that the site is adjacent to the settlement and seeks to retain businesses currently within it and criterion (iv) is that the development is essential to the wider strategic interests of the economic development of Wiltshire<sup>37</sup>. Whilst the proposed B1 office units would be available to existing businesses in Corsham there is no evidence of any need or demand for the units from such businesses. Nor is there any evidence that the development is essential for wider strategic interests. Consequently, it has not been shown that the criteria have been met and the proposed B1 units would conflict with Core Policy 34.
131. In conclusion, allowing the appeal would not prejudice the broad spatial strategy of the adopted CS. Nevertheless, there would be some prejudice to a plan-led planning process within the Corsham community area. There would also be a conflict with the CS in relation to the employment element.

***Whether the proposal would amount to a sustainable form of development***

132. The settlement strategy of the CS, together with the delivery strategy, seeks to define where development will be most sustainable across Wiltshire's settlements. As noted above, Corsham is identified as a market town and the scale of development proposed is consistent with the settlement strategy.
133. Corsham contains community facilities including schools, primary healthcare, pharmacies, supermarkets and a range of shops and leisure facilities. The transport assessment submitted with the application states that these facilities are generally within both walking and cycling distance of the appeal site. There are bus services within Corsham and there are also services to Bath and Chippenham. The assessment concluded that the site is well located to allow for travel by sustainable modes. That conclusion was not disputed by the Council and I see no reason to take a different view. The s106 Agreement would secure the provision of bus stops and a pedestrian crossing island on Bath Road. I consider that the proposal would therefore accord with Core Policy 61 which states that new development should be located and designed to reduce the need to travel, particularly by private car, and to encourage the use of sustainable transport alternatives.
134. As noted above, the employment element of the scheme would not accord with Core Policy 34. However, the CS states that new growth in Corsham will be balanced with housing delivery alongside employment. This does not mean

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<sup>37</sup> Criteria (ii) and (iii) are not relevant to this case

that it will be appropriate for every housing site to include employment uses. However, to my mind the scale of the appeal scheme is such that the inclusion of an employment element in a housing-led development would be consistent with the aim of achieving balanced growth.

135. The Framework sets out three dimensions to sustainable development – the economic role, the social role and the environmental role. The definition of sustainable development includes all of the policies in paragraphs 18 to 219 of the Framework<sup>38</sup>. In this part of my appeal decision I describe the main factors that inform my judgement as to whether the proposal would be a sustainable form of development. In reaching that view I take account of all the matters referred to in this decision, including the ‘other matters’ referred to below.

#### *The economic role*

136. The appeal proposal would bring a number of economic benefits. The B1 element of the scheme could accommodate additional jobs. In addition, the scheme would generate employment during construction and spending by the new households would support jobs and services in the local economy.
137. The Framework states that the economic and other benefits of the best and most versatile (BMV) agricultural land are to be taken into account. In this case around 80% of the site is categorised as BMV land. However, the officer’s report noted that there was no probable economic disadvantage to any agricultural operation. The Council did not argue that loss of BMV land ought to be regarded as a key issue in this appeal. Even so it is a disadvantage of the scheme to which some weight should be attached.
138. A matter raised by the owner of Guyers House was a concern that the appeal scheme would undermine the economic viability of the hotel business, thereby threatening employment. In fact there was very little evidence in support of this suggestion. The hotel is, and would remain, an attractive historic building set in landscaped grounds close to the AONB. I attach little weight to this factor.

#### *The social role*

139. The Council and the appellant agreed that the appeal site would make a positive contribution to the supply and delivery of housing and that the scheme would be substantially completed within the current 5 year period. This is an important matter, having regard to the objective of the Framework to boost the supply of housing. Moreover, it is of particular importance given the HLS position referred to above.
140. In addition, 30% of the units would be delivered as affordable housing. Delivery would be secured through the s106 Agreement. This would help to meet housing needs in the locality and contribute to reducing the shortfall in affordable housing.

#### *The environmental role*

141. The site is well located to allow for travel by sustainable modes. The needs of walking, cycling and public transport have been taken into account through

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<sup>38</sup> Paragraph 6 of the Framework

the layout and the terms of the s106 Agreement. This contributes to the environmental role.

142. Whilst there would be some landscape harm, the extent of visual impacts would not be widespread and there would be only limited harm to the landscape setting of Corsham. There would be no harm to the AONB. Significant mitigation for landscape impacts would be embedded in the design of the scheme.
143. There would be no harm to any designated nature conservation site or to the conservation status of any protected species. Whilst there would be some loss of parkland, the ecological value of the appeal site is low. Significant biodiversity enhancement is proposed and there would be no net loss of the local biodiversity resource.
144. In relation to the historic environment, I have identified minor harm to the significance of Guyers House, as a result of development within its setting.

#### *Conclusion on sustainable development*

145. Taking all the above factors into account, I conclude that on balance the appeal scheme would be a sustainable form of development.

#### **Other matters**

146. The s106 Agreement would secure the highway works needed to provide vehicular access to the site and to take account of other transport modes. It would provide for approval by the Council of details of open spaces and play areas and for the subsequent management of these areas. These provisions would be needed to meet the requirements for open space generated by the scheme. In addition, there would be financial contributions to sport and recreation, cemeteries and secondary education. The Council provided evidence about how these sums had been calculated and how they would be used in ways which would be properly related to the appeal scheme. I consider that the obligations contained within the s106 Agreement would mitigate impacts resulting from the proposal. They are therefore neutral factors in the overall balance of planning considerations.
147. The Council's 4<sup>th</sup> reason for refusal related to potential harm to the living conditions of future occupiers from noise and vibration resulting from underground mineral workings beneath the site<sup>39</sup>. Additional technical information was produced during the Inquiry and it was ultimately agreed by the Council and the appellant that this matter could be addressed by conditions<sup>40</sup>. The conditions would require a foundation investigation plan to be submitted for the approval of the Council, having regard to the results of vibration tests. A further condition would establish criteria for noise and vibration. The Pickwick Association expressed doubts that these measures would be effective. However, the suggested conditions reflect technical advice about foundation isolation systems which has been accepted by the respective noise experts for the Council and the appellant. In my view the conditions would be effective in protecting the living conditions of future occupiers. In addition they would address a concern, expressed by some parties, that the scheme could have the effect of sterilising minerals under the site.

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<sup>39</sup> There are currently no active workings but there is an extant permission

<sup>40</sup> Statement of common ground on noise and vibration – GLD/LPA/09

148. Some local residents are concerned about traffic conditions in the locality, particularly in relation to Bath Road. The application was accompanied by a transport assessment which included modelling of the relevant junctions. The Council agreed that the proposed junctions would be acceptable in terms of layout and visibility and that there would be no detriment to the local road network or to highway safety. I agree.

149. I conclude that these other matters do not add significantly either to the case in favour of the appeal or to the case against it.

### **Conclusions**

150. The Council cannot demonstrate that it has the supply of housing sites needed to accord with the Framework. Consequently, the Framework states that relevant policies for the supply of housing should not be considered up-to-date. However, this is a case where it is common ground between the Council and the appellant that appropriate assessment under the Habitats Regulations is required. I agree and have carried out such an assessment. Paragraph 119 of the Framework states that the presumption in favour of sustainable development (paragraph 14) does not apply where development requiring appropriate assessment under the Habitats Regulations is being determined. Accordingly, I have considered the balance of issues without any such presumption.

151. With regard to effects on ecology, I have concluded that the proposal would not be likely to affect the integrity of the SAC and that it would not result in the deterioration of the breeding site for bats. Although there would be a loss of parkland habitat the actual ecological value of the site is relatively low. Any loss of value would be outweighed by the extensive biodiversity enhancement measures incorporated in the scheme. Overall, I consider that there would be no net loss of the local biodiversity resource. Consequently ecology is not a matter which weighs significantly in the planning balance.

152. I have concluded that there would be some harm to the significance of Guyers House, a designated heritage asset. The harm would be *'less than substantial'*, in the terms of the Framework, and I consider that it would be minor. Paragraph 134 requires this harm to be balanced against the public benefits of the proposal. In this case I have identified economic and social benefits which are described above. I consider that these benefits are sufficient to outweigh the harm to the significance of the heritage asset. I therefore find that the appeal scheme would not conflict with policies of the Framework relating to the historic environment.

153. Notwithstanding my conclusion that the harm to significance would be minor, I have found that the setting of Guyers House (a Grade II listed building) would not be preserved. Mindful of s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 that is a matter to which I must have special regard.

154. I turn to the factors weighing in favour of the appeal. It would make a significant contribution to the delivery of housing. This is an important factor given the general imperative to boost the supply of housing set out in the Framework. It is of particular importance here due to the HLS position in the NWWHMA. Moreover, the scheme would deliver a significant number of affordable houses. It would also bring economic benefits. All of these social and

economic benefits would be realised in the context of a sustainable form of development in a location which is consistent with the broad spatial strategy of the CS. I note that the amount of the shortfall in HLS is not great. Nevertheless, having regard to the overall objectives of the CS and the Framework to deliver housing in sustainable locations I attach substantial weight to these factors.

155. The factors weighing against are conflicts with the CS in relation to defined limits of development, effects on landscape and the historic environment, loss of BMV agricultural land and potential prejudice to a plan-led planning process. Core Policy 2, insofar as it restricts housing development outside settlement boundaries, is deemed to be not up-to-date due to the HLS position. I therefore attach limited weight to this conflict. The employment element of the scheme would not accord with Core Policy 34. That said, I have concluded that the scale of the proposal is such that the inclusion of an employment element in a housing-led development would be consistent with the CS aim of achieving balanced growth at Corsham. Given that the housing element is needed, I consider that the inclusion of some employment supports the general intentions of the CS as a whole.
156. There would be some harm to the character and appearance of the area. However, the impacts would be mitigated as far as possible through the inclusion of structural landscape features which could be secured at the reserved matters stage. The extent of visual impacts would not be widespread and there would be no harm to the landscape of the AONB.
157. I have not identified any harm in relation to the setting of the Pickwick Conservation Area, archaeology or non-designated heritage assets. I have concluded that there would be minor harm to the significance of Guyers House, the setting of which would not be preserved. Although the harm would be minor, this is nevertheless a matter to which I attach considerable importance and weight.
158. As discussed above, loss of BMV agricultural land is a disadvantage of the scheme to which some weight should be attached but is not a key issue in this case.
159. Allowing the appeal would result in some prejudice to a plan-led planning process within the Corsham community area because the merits of the site could not be considered alongside other candidates in the context of the NP or site allocation DPD. On the other hand, the housing figures for Corsham set out in Core Policy 11 are not maxima so allowing the appeal would not prevent the merits of other sites being considered through those processes. Moreover, it is important to note that both the NP and DPD processes are at a very early stage of preparation. This limits the amount of weight to be attached to this factor.
160. My overall assessment is that the factors weighing against the appeal are not sufficient to outweigh the factors weighing in favour. The appeal should therefore be allowed.

### **Conditions**

161. The Council and the appellant suggested conditions which were discussed at the Inquiry. There was no significant dispute between the Council and the appellant in relation to the substance of the conditions. I have considered the

- suggested conditions in the light of advice set out in the Guidance. In some cases I have combined conditions and/or adjusted detailed wording for clarity and to avoid duplication.
162. Conditions 1-3 are standard conditions for outline planning permissions setting timescales for the submission of reserved matters and commencement. However, I have reduced the standard time limits because the ability of the site to deliver housing within the 5 year period is an important consideration in this case.
163. Condition 4 requires the reserved matters to accord with the Ecological Parameters Plan and condition 5 requires the submission of a Landscape and Ecology Management Plan. Condition 7 requires a Land Stability Risk Assessment to be carried out to mitigate the risk of damage to underground workings which may be used by bats. These conditions are needed to secure the ecological mitigation relied on in the appropriate assessment and, more generally, to protect wildlife and secure enhancements to biodiversity.
164. Condition 6 deals with phasing and is needed to ensure that affordable housing and public open space are brought forward at appropriate stages of the development. Conditions 8, 10, 11 and 12 deal with implementation of the site access works, highway and footway works in the vicinity of the site and the stopping up of an existing access. These conditions are needed to ensure that there would be satisfactory pedestrian and vehicular access to the site, in the interests of highway safety and to avoid any detriment to the local highway network.
165. Condition 9 provides for a Travel Plan to encourage the use of sustainable modes of transport. Conditions 13 and 14 require details of foul and surface water drainage in the interests of managing risks of flooding and pollution.
166. Condition 15 is needed to protect the archaeological potential of the site. Condition 16 requires details of hard and soft landscaping and condition 17 deals with replanting of any trees which fail. These conditions are needed to protect the character and appearance of the area. I have not included details of play equipment in condition 16 because this matter is covered in the s106 Agreement.
167. Condition 18 provides for a Construction Method Statement in the interests of highway safety and the living conditions of nearby residents during the construction phase. Any restrictions on construction work to avoid disturbance to hibernating bats would also be covered by this condition.
168. Condition 19 requires investigation and, if necessary, remediation works in respect of potential contamination of land in the interests of managing risks of pollution. Condition 20 required a scheme of external lighting. This forms one element of the ecological mitigation measures and is also needed in the interests of the character and appearance of the area. Condition 21, which deals with public art, supports the design quality of the scheme.
169. Condition 22 requires the submission of a Foundation Investigation Plan and condition 23 sets the noise and vibration criteria that the design of foundations would have to achieve. These conditions are needed to protect the living conditions of future residents of the appeal site in the event that an extant

consent for underground mineral working were to be implemented in the future.

*David Prentis*

Inspector

Richborough Estates

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Hugh Richards	of Counsel, instructed by the Head of Legal Services for Wiltshire Council
He called	
Carolyn Gibson	Spatial Planning Team Leader, Wiltshire Council
BA(Hons)	
Mark Henderson	Interim Manager, Monitoring and Evidence Team, Wiltshire Council
BSc(Hons) MA MRTPI	
John Burgess	Director, Swan Paul Partnership Ltd
BA(Hons) DipLA CMLI	
Chris Marsh	Senior Planning Officer, Wiltshire Council
BA(Hons) MPlan MRTPI	
Jon Taylor	Landscape and Design Team Manager, Wiltshire Council
MCIEEM MSc PgDip BSc	

### FOR THE APPELLANT:

Paul Tucker	Queen's Counsel, instructed by Tim Dean of Gladman Developments Ltd
He called	
Jacqueline Mulliner	Director, Terence O'Rourke Ltd
BA(Hons) BTP(Dist)	
MRTPI	
Tim Dean	Planning Director, Gladman Developments Ltd
BA(Hons) DipTP MRTPI	
David Beardmore	Director, Beardmore Associates
MSc MA DipLD(Dist)	
DipLArch(Dist) DipUD	
Dip Bldg Cons FRTPI	
CMLI IHBC	
Timothy Jackson	Director, FPCR Environment and Design Ltd
BA(Hons) DipLA CMLI	
Robert Barnes	Director, Planning Prospects Ltd
MA BA(Hons) MRTPI	
Kate Hollins	Director, FPCR Environment and Design Ltd
BA MSc CMIEEM CEnv	
Kurt Goodman	Associate Director, FPCR Environment and Design Ltd
MSc BSc(Hons) MCIEEM	

### FOR THE PICKWICK ASSOCIATION:

Jane McDermott	Chairman of the Pickwick Association and member of Corsham Town Council's Neighbourhood Plan Steering Group
BArch PGDipUD	
Angela Bence-Wilkins	Landscape Architect
CMLI	
Peter Cox	Director, AC Archaeology Ltd
Cert Archaeology MCIA	



David Taylor

On behalf of the Pickwick Association

INTERESTED PERSONS:

Cllr Philip Whalley

Member of Wiltshire Council and Corsham Town Council

Cllr Peter Pearson

Vice Chairman of Corsham Town Council and Chairman of the Neighbourhood Plan Steering Group

Guy Hungerford

Guyers House Hotel

Tony Clark

Trustee of the Beechfield Trust

Derek Burt

Local resident

**DOCUMENTS SUBMITTED DURING THE INQUIRY**

	<i>Submitted by the appellant</i>
GLD/07	List of appearances
GLD/08	Extract from the Town and Country Planning (Environmental Impact Assessment) Regulations
GLD/09	Proof of evidence of Mr Goodman
GLD/10	Judgement in the <i>Gregory</i> case [2013] EWHC 63 (Admin)
GLD/11	Extract from Planning Policy Guidance ID ref 4-031-20140306
GLD/12	Opening submissions
GLD/13	Wiltshire Local Development Scheme January 2015
GLD/14	Appendices to proof of evidence of Mr Beardmore
GLD/15	Table submitted by Mr Jackson
GLD/16	Table submitted by Ms Mulliner
GLD/17	Exchange of emails between Natural England and the Planning Inspectorate
GLD/18	Document list
GLD/19	Draft s106 Agreement
GLD/20	Bundle relating to EIA screening on behalf of the Secretary of State
GLD/21	Tree Lower Plant Survey - FPCR
GLD/22	Ecological parameters plan and illustrative landscape cross sections
GLD/23	Additional inquiry documents from FPCR – February 2015
GLD/24	Letter from Stirling Maynard dated 17 February 2015 with associated highways plans
GLD/25	Corsham Community Plan
GLD/26	Contested HLS trajectory positions
GLD/27	Judgement in <i>Stroud District Council</i> case [2015] EWHC 488 (Admin)
GLD/28	Additional inquiry documents from FPCR – March 2015
GLD/29	Updated list of suggested conditions
GLD/30	Counsel's opinion on appeal decision at Ashflats Lane, Stafford
GLD/31	Closing submissions
GLD/32	Annex to closing submissions – housing land supply
GLD/33	Response to costs application
GLD/34	Closing submissions – clean copy <sup>41</sup>
GLD/35	Annex to closing submissions – housing land supply – clean copy

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<sup>41</sup> The versions of GLD/31 and GLD/32 handed in at the Inquiry had some missing text due to printing problems. Clean copies were provided shortly after the Inquiry – there was no change to the content.

*Submitted by the Council*

LPA/01	Plan of Special Area for Conservation
LPA/02	Opening submissions
LPA/03	Revised Plan of Special Area for Conservation
LPA/04	Invertebrates and ecological assessment – Colin Plant Associates
LPA/05	Surveying terrestrial and freshwater invertebrates for conservation evaluation – Natural England research report
LPA/06	Consultation responses to ecological parameters plan and illustrative landscape cross sections
LPA/07	Judgement in <i>Crane</i> case [2015] EWHC 425 (Admin)
LPA/08	Judgement in <i>Prideaux</i> case [2013] EWHC 1054 (Admin)
LPA/09	Note identifying superseded sections of Mr Taylor’s proof of evidence
LPA/10	Additional conditions suggested by Mr Marsh
LPA/11	Closing submissions
LPA/12	Costs application

*Agreed between the appellant and the Council*

GLD/LPA/01	Statement of Common Ground (SoCG) – Housing supply matters
GLD/LPA/02	Ecology – joint position statement
GLD/LPA/03	SoCG – Parkland and veteran trees
GLD/LPA/04	Suggested phasing condition
GLD/LPA/05	SoCG – Noise (unsigned)
GLD/LPA/06	Draft Appropriate Assessment regarding Bath and Bradford Bats SAC
GLD/LPA/07	Letter from Natural England to the Council dated 2 March 2015
GLD/LPA/08	Updated SoCG – Housing supply matters
GLD/LPA/09	SoCG – Amenity (noise and vibration)
GLD/LPA/10	Letter from TVS dated 4 February 2015
GLD/LPA/11	SoCG – Bats
GLD/LPA/12	S106 Agreement dated 12 March 2015

*Submitted by the Pickwick Association*

PA/01	Summary by Ms McDermott
PA/02	Summary by Mr Cox
PA/03	Summary by Ms Bence-Wilkins
PA/04	Closing submissions by Mr Taylor
PA/05	Judgement in <i>Gerber</i> case [2015] EWHC 524 (Admin)

*Statements submitted by other parties*

Cllr Whalley  
Cllr Pearson  
Tony Clark  
Guy Hungerford  
Derek Burt

*Inspector’s documents*

IN/01	Draft conditions relating to ecological mitigation
IN/02	Letter from Natural England of 27 January 2015

### **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 one year from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of this permission or one year from the date of approval of the last of the reserved matters to be approved, whichever is the later.
- 4) The reserved matters submitted pursuant to Condition 1 shall accord with the principles for the development of the site as shown on the Ecological Parameters Plan 5468-E-08 revision H. In particular the reserved matters shall include the provision of:
  - i) a landscape/ecological corridor at least 15m in width to the west, north and east boundaries of the site plus a further offset of at least 10m to the closest elevation of any buildings, in accordance with the principles shown on the Ecological Parameters Plan
  - ii) a buffer zone around the airshaft in the south west corner of the site in accordance with the principles shown on the Ecological Parameters Plan
  - iii) measures to provide dark areas within the landscape/ecological corridors to the west, north and east boundaries of the site which shall have an illuminance of no more than 1.0 lux measured at 2.5m above ground level within an area to be agreed in writing by the local planning authority
  - iv) measures to provide dark areas within the buffer zone around the airshaft in the south west corner of the site which shall have an illuminance of no more than 0.1 lux measured at 2.5m above ground level within an area to be agreed in writing by the local planning authority
- 5) No development shall take place until a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the local planning authority. The LEMP shall include long term design objectives, management arrangements and maintenance schedules for all landscape and open space areas. The LEMP shall include measures to provide and maintain a suitable habitat for bats and other wildlife species and shall be generally in accordance with the recommendations set out in section 4 of the Ecological Appraisal by FPCR dated 14 October 2013. Development shall be carried out in accordance with the approved LEMP and shall thereafter be permanently retained as such.
- 6) No development shall take place until details of the phasing of the development have been submitted to and approved in writing by the local planning authority. The details shall include the phasing of market and affordable housing units, public open spaces and equipped play areas. Development shall be carried out in accordance with the approved phasing details.

- 7) The reserved matters submitted pursuant to Condition 1 shall be accompanied by a Land Stability Risk Assessment which shall be submitted to and approved in writing by the local planning authority. The Land Stability Risk Assessment shall include details of intrusive site investigations, an assessment of land stability risks and mitigation measures to protect any underground workings from damage during the construction and operational phases of the development hereby approved.
- 8) No building hereby approved shall be occupied before the access arrangements shown on drawing No 4746/01/01 hereby approved have been implemented in accordance with that drawing and in accordance with further details of surface treatment, lighting and drainage which shall first have been submitted to and approved in writing by the local planning authority.
- 9) No building hereby approved shall be occupied before a travel plan has been submitted to and approved in writing by the local planning authority. The travel plan shall be generally in accordance with the framework travel plan (Stirling Maynard July 2013). The travel plan shall be implemented as approved and permanently maintained in operation thereafter.
- 10) No building hereby approved shall be occupied before a minor improvement scheme for the Hare and Hounds roundabout has been implemented in accordance with details which shall first have been submitted to and approved in writing by the local planning authority. The scheme shall include adjustments to road markings and traffic islands.
- 11) No building hereby approved shall be occupied before a scheme for the widening to 2m of the southern footway of the A4 Bath Road between No 5 Bath Road and the Bath Road/Academy Drive roundabout has been implemented in accordance with details which shall first have been submitted to and approved in writing by the local planning authority. The scheme shall make provision for the relocation of any lighting columns and electricity or telephone poles within the footway.
- 12) No building hereby approved shall be occupied before the field gate access to the site from Guyers Lane has been permanently stopped up in accordance with details which shall first have been submitted to and approved in writing by the local planning authority.
- 13) No building hereby approved shall be occupied before works for the disposal of sewage from the development have been carried out in accordance with details which shall first have been submitted to and approved in writing by the local planning authority.
- 14) No building hereby approved shall be occupied before surface water drainage works have been implemented in accordance with details which shall first have been submitted to and approved in writing by the local planning authority. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system and the results of the assessment shall be provided to the local planning authority. Where a sustainable drainage system is to be provided, the submitted details shall:

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of receiving groundwater and/or surface waters;
  - ii) include a timetable for implementation; and
  - iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 15) No development shall take place until a written programme of archaeological investigation has been submitted to and approved in writing by the local planning authority. The programme shall include on-site work and off-site work such as the analysis, publishing and archiving of the results. The programme shall be implemented as approved before the commencement of the development.
- 16) No development shall take place until full details of both hard and soft landscape works, including a programme for implementation, have been submitted to and approved in writing by the local planning authority. These details shall include proposed finished levels or contours, means of enclosure, car parking layouts, other vehicle and pedestrian access and circulation areas, hard surfacing materials and minor artefacts and structures such as street furniture, refuse or other storage units. The details shall also include the location, size and condition of existing trees and hedgerows, shall identify those to be retained together with measures for their protection during construction and shall show details of new planting areas, tree and plant species, numbers and planting sizes. The works shall be carried out as approved in accordance with the approved programme.
- 17) If within a period of 5 years from the date of the planting of any tree that tree, or any tree planted in replacement for it, is removed, dies, or becomes seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place within the next planting season unless the local planning authority gives its written approval to any variation.
- 18) 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 including decorative displays and facilities for public viewing, where appropriate
  - 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
  - viii) measures to avoid the risk of noise and vibration impacting upon bats roosting within underground workings
- 19) No development shall take place 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:
- i) A written report has been submitted to and approved in writing by the local planning authority which shall include details of the previous uses of the site and any adjacent sites 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 and the potential impact of any adjacent sites.
  - ii) If the above report indicates that contamination may be present on, under or potentially affecting the site from adjacent land a more detailed site investigation and risk assessment shall be carried out in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination CLR11'. A report detailing the site investigation 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 must be submitted to and approved in writing by the local planning authority. The remedial works shall be carried out as approved prior to the commencement of development or in accordance with a timetable that has been agreed in writing by the local planning authority. On completion of the remedial works the applicant shall provide written confirmation to the local planning authority that the works have been completed in accordance with the approved details.
- 20) No development shall take place until an external lighting scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include lighting columns, light fittings, measures to reduce light spill and illuminance plots. Development shall be carried out in accordance with the approved details and thereafter permanently retained as such.
- 21) No development shall take place until details of public art to be incorporated within the scheme have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 22) No development shall take place until a Foundation Investigation Plan has been submitted to and approved in writing by the local planning authority. The Foundation Investigation Plan shall include:

- i) A foundation zoning plan which will identify the type and depth of foundations across the site.
- ii) Vibration testing which shall take place during a trial mining test at appropriate locations to replicate both a typical case and a worst case of future mining both within the mine and at foundation level and bedrock level. The results of the test are then to be used by the foundation design engineer to ensure that noise and vibration levels of the foundations are at or below the criteria specified in condition 23. The vibration testing shall be carried out in accordance with a method statement which shall first have been submitted to and approved in writing by the local planning authority.
- iii) The results of the vibration testing shall be provided to the local planning authority and shall be used to design vibration and sound isolation measures (where required) at each dwelling and noise sensitive building. The foundation design for each dwelling and noise sensitive building shall be submitted to and approved in writing by the local planning authority.

Development shall be carried out in accordance with the approved Foundation Investigation Plan.

- 23) The foundations shall be designed to ensure that noise and vibration from underground mining activity shall not give rise to a noise level within any dwelling or noise sensitive building in excess of that equivalent to Noise Rating Curve 25 and vibration levels shall not exceed  $0.1$  to  $0.2 \text{ ms}^{-1.75}$  in accordance with the methodology in BS 6472-1-2008.

Richborough Estates