



Appeal Decisions

Inquiries opened on 20 May 2014

Site visits made on 1 October 2014

by Paul Griffiths BSc(Hons) BArch IHBC

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

Decision date: 03 June 2015

Appeal A: APP/R3325/A/13/2209680

Land East of Mount Hindrance Farm, Mount Hindrance Lane, Chard

- 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 MacTaggart & Mickel Homes Ltd and the S B Blackburn Discretionary Trust against the decision of South Somerset District Council.
 - The application Ref.12/04518/OUT, dated 20 November 2012, was refused by notice dated 6 September 2013.
 - The development proposed was described as 'mixed development comprising 450 (no.) new family homes, provision of a floodlit full size football pitch, unlit full size training pitch and mini pitches, with associated multi-use clubhouse, spectator facilities and vehicle parking area; hub for local neighbourhood facilities and other community uses; public open space; landscaping; drainage and other facilities; associated vehicular and pedestrian accesses; land regrading; associated infrastructure; and engineering works'.
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Appeal B: APP/R3325/A/13/2203867

Land East of Crimchard, Chard

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by David Wilson Homes South West Ltd against South Somerset District Council.
 - The application Ref 13/01535/OUT is dated 12 April 2013.
 - The development proposed is a residential development of up to 110 dwellings, open space, and SUDs basin, together with formation of new access and related works.
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Procedural Matters

1. Appeals A and B were originally intended to be run as separate Inquiries before the same Inspector. The Inquiry into Appeal A¹ opened on 20 May 2014, and sat on that day, and also on 21, 22, and 23 May 2014, when it was closed.
2. An unaccompanied site visit was programmed to take place shortly afterwards but it was postponed because before it could take place, the Council contacted PINS to assert that contrary to the case it had advanced at Inquiry 1, it could now demonstrate a five-year supply of deliverable housing sites.
3. Given the obvious importance of that change of tack, I decided that Inquiry 1 should be re-opened in order that the Council's revised position, and the implications, could be properly interrogated.

¹ Referred to hereafter as Inquiry 1

4. Obviously, the Council's changed position had important ramifications for Appeal B too. On that basis, it was considered expedient to conjoin the two Inquiries so that the Council's evidence on housing land supply, and the ramifications for that decision-making process, could be examined contemporaneously at the Inquiry into the scheme at issue in Appeal B².
5. Inquiry 2 opened on 28 August 2014 and also sat on 29 August, 2, 3 and 4 September 2014, when it was closed.
6. After Inquiry 2 closed, a number of major issues arose which gave rise to a need for further representations from the main parties. The first of these concerned an appeal decision on a housing development proposed for a site in Crewkerne³ which concerned itself with whether the Council could demonstrate a five-year supply of deliverable housing sites, amongst other things.
7. After that, there was a significant hiatus caused by a request from the Council, followed by the local Member of Parliament, that the appeals be called-in for determination by the Secretary of State. Eventually, the decision was made that the appeals should remain transferred to my jurisdiction.
8. Then, on 8 January 2015, the Inspector's Report on the Examination into the South Somerset Local Plan 2006-2028 was published. After comments were received from the main parties on the implications of that publication, I was advised that on 5 March 2015, the Council had formally voted to adopt the LP.
9. On 6 April 2015, the transitional period under CIL Regulation 123(3) (as amended) after which s.106 planning obligations designed to collect pooled contributions ('tariffs') may not lawfully be used to fund infrastructure which could be funded from CIL, ended nationally. I had to revert once again to the Council, and through them the County Council, for comments on how that might impact upon the submitted Obligations under Section 106, relating to both appeals. I also sought the views of the appellants on this matter, a process that was completed on 30 April 2015.
10. I undertook an unaccompanied site visit on 1 October 2014⁴, where I took in both appeal sites – the various walking and vehicular routes into and out of Chard, to and from them, and the various services and facilities in the town. I observed the traffic conditions around the appeal sites and the town centre, in the busy morning and afternoon periods.
11. Inevitably, I also gained experience of the town itself, and used and observed the operation of, the Convent junction at various times during the Inquiries, and subsequently, on 5 November 2014, and 23 March 2015, when I visited and passed through Chard, in connection with other PINS casework.
12. The application that resulted in Appeal A was made in outline with access to be determined and appearance, landscaping, layout and scale reserved. Originally, the appeal site included the area covered by the scheme in Appeal B. Once the application that resulted in Appeal B was lodged, the extent of the Appeal A scheme was reduced to take that into account. The Council considered it on the basis that it included 350 dwellings, as well as the associated elements set out in the original description of development.

² Referred to hereafter as Inquiry 2

³ APP/R3325/A/13/2210545 dated 4 November 2014

⁴ A Wednesday – the day when refuse and recycling collections are carried out in Chard

13. At the Inquiry, to take account of the Statement of Common Ground agreed with the Council on landscape matters, and Drawing No. 11-26-08 revision D: Landscape Masterplan, the scheme was further reduced to include 335 dwellings. Subject to the point I refer to below regarding the means of access, I have dealt with Appeal A on that basis.
14. The application that resulted in Appeal B was also made in outline with access to be determined and appearance, landscaping, layout and scale reserved. Again, subject to the point I refer to below regarding the means of access, I have dealt with Appeal B on that basis.
15. There was some discussion at Inquiry 2 about the nature of Appeal B. The Council produced a decision notice, dated 4 September 2013, setting out three reasons for refusal. However, an appeal against non-determination was lodged on 19 August 2013. I have therefore dealt with Appeal B on the basis that it is against a failure to give notice within the prescribed period of a decision on an application for outline planning permission. I have treated the reasons for refusal set out by the Council in its decision notice as putative.
16. Both sets of proposals were considered to be EIA development for the purposes of the relevant regulations and, as such, the original applications were accompanied by Environmental Statements. There has been no sustained suggestion that the Environmental Statements, in their final forms, fail to meet the requirements of the relevant regulations. I have no good reason to reach a different conclusion and have taken both fully into account.
17. At Inquiry 2, applications for partial awards of costs against the Council were made by both appellants. These are the subject of separate Decisions.
18. Given the nature of the evidence relating to housing land supply, and the Obligations under S.106, submitted by the main parties, and in particular the various financial contributions involved, these elements of Inquiry 2 were dealt with on a 'round table' basis. Some of those recorded as appearing for the main parties presented their evidence in that less formal manner, and were not subjected to cross-examination.
19. While they were originally intended to be dealt with separately, because of the way Appeals A and B were brought together in the manner outlined, the adjoining nature of the two sites, and the potential for cumulative impacts, I have dealt with them together, as linked appeals.

Decisions

Appeal A

20. The appeal is dismissed.

Appeal B

21. The appeal is dismissed.

Main Issue

22. The matters to be considered are multifarious but put very simply, the main issue before me is whether the Council can demonstrate a five-year supply of deliverable housing sites and the implications, in terms of the application of local and national policy, that flow from a conclusion on that matter.

Reasons

Planning Policy

23. Notwithstanding the importance that attaches to the question of whether the Council can demonstrate a five-year supply of deliverable housing sites as a consequence of the Framework⁵, the starting point for analysis of the proposal remains the development plan. Section 38(6) of the Act⁶ sets out that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.
24. The Council based its policy position in the lead up to, and at, the Inquiries on saved policies of the South Somerset Local Plan 1991-2011, adopted in April 2006, as well as draft policies in the South Somerset Local Plan 2006-2028.
25. Following examination and receipt of the Inspector's report dated 8 January 2015 which found the plan sound, subject to a number of agreed modifications, the South Somerset Local Plan 2006-2028⁷ was adopted by the Council on 5 March 2015. As set out above, the main parties were consulted on the implications of that adoption because I have to proceed on the basis of the development plan in place at the time of reaching my decisions. In their submissions, the Council relies principally upon Policies PMT1 and PMT2.
26. LP Policy PMT1 is titled Chard Strategic Growth Area. It sets out that land at Chard is allocated for strategic growth to provide the following within the plan period, and beyond: at least 2,716 dwellings; approximately 13 hectares of employment land; 2 new primary schools; 4 neighbourhood centres (Avishayes, Stop Line Slopes, Millfields and Holbear); highway infrastructure and improvements; and sports and open space provision.
27. LP Policy PMT2 deals with what it terms Chard Phasing. To ensure the timely delivery of highway and other infrastructure to support the proposed growth of Chard Eastern Development Area⁸, it sets out that a phased approach to delivery will be taken. Within the plan period, at least 1,220 dwellings; approximately 13 hectares of employment land; 1 new primary school; 2 neighbourhood centres; and sports and open space provision are projected and post 2028, at least 1,496 dwellings; 1 new primary school; and 2 neighbourhood centres. In order to ensure the timely delivery of the necessary infrastructure to support the growth, phasing sequences should be justified and it should be demonstrated that the proposal will not compromise the delivery of total growth.
28. The background to these policies is set out in the supporting text of the LP. Paragraph 7.21 tells us that the Chard Regeneration Plan of October 2009, prepared by LDA Design presented four options for the future growth of Chard. Option 3 (CEDA) has been chosen as the most appropriate location for strategic growth providing a scale of growth that will enable Chard to achieve and maximise its needs for employment, housing, retail, and associated amenities, as well as improved highway infrastructure.

⁵ The National Planning Policy Framework

⁶ The Planning and Compulsory Purchase Act 2004

⁷ Referred to hereafter as LP

⁸ Referred to hereafter as CEDA

29. In terms of implementation, paragraph 7.38 sets out that there will be a phased approach to growth on the basis of the Chard Regeneration Framework Implementation Plan of October 2010. According to paragraph 7.40, the key driver of the phasing sequence is the need to incrementally increase the capacity of the highways infrastructure to accommodate the traffic flows as the town grows.
30. This infrastructure includes improvements to the Convent junction traffic lights, some of which has already taken place, and the eventual provision of the Millfield Link Road. The latter may require the Council to exercise compulsory purchase powers and it is intended to fund the link road, at least in part through financial contributions from the development coming forward, furnished through CIL⁹, or planning obligations under S.106.
31. The LP Inspector noted that there is a robust commitment to securing the proposed growth in Chard and found there was insufficient evidence to justify the adoption of a different approach at this stage. On that basis, he found that Policies PMT1 and PMT2 are sufficiently flexible and provide the basis on which decisions about the future of the town can be taken.
32. It is argued on behalf of the appellants that the proposals do not fall foul of Policies PMT1 and PMT2. I cannot agree with that. These policies are predicated upon CEDA and the Chard Strategic Growth Area is clearly shown in figure 5. Apart from a part of the site covered by the Appeal A proposal, which is in any event intended for employment generating uses, the appeal sites are not identified for development. It is axiomatic, therefore, that the proposals at issue do not accord with LP Policies PMT1 and PMT2.
33. That is not the end of the matter, however. As Section 38(6) of the Act points out, decisions should be made in accordance with the development plan, unless material considerations indicate otherwise. The Framework is such a material consideration.

Housing Supply

34. To boost significantly the supply of housing, paragraph 47 of the Framework sets out a number of requirements for local planning authorities. These include using their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing.
35. Moreover, it is incumbent on them to illustrate the expected rate of housing delivery through a housing trajectory and set out a housing implementation strategy for the full range of housing describing how they will maintain delivery of a five-year supply of housing land to meet their housing target.
36. LP paragraph 5.60 sets out that the evidence base has established that the full objectively assessed need for housing growth in South Somerset is 15,950 homes to be built over the period April 2006 to March 2028. This is confirmed in LP Policy SS4. Broadly speaking, the main parties accepted this figure and I have no good reason to dispute it.
37. The Council contends that whether the base date is taken to be 31 March 2014, or 31 July 2014, it can demonstrate a five-year supply of deliverable housing sites. That is based on a calculation that runs as follows.

⁹ Community Infrastructure Levy

38. The sum of 15,950 homes over 22 years equates to 725 a year. That makes the base requirement for the first five years 3,625 homes. Given that there has been a record of persistent under delivery of housing, the Council accepts that the appropriate buffer is 20%. By their calculation, this makes the requirement for the first five years 4,350.
39. To that, says the Council, needs to be added 880 dwellings undelivered in the previous plan period, giving a total requirement of 5,230. It is suggested by the Council that as of 31 March 2014, it had a supply of 5,356 homes, or 5 years and 1 month, or on the basis of 31 July 2014, 5,789 dwellings, or 5 years and 5 months.
40. There is, however, a difficulty with that calculation. As the PPG tells us¹⁰, local planning authorities should aim to deal with any undersupply within the first 5 years of the plan period, where possible. No good reasons were advanced to suggest that dealing with the backlog from the previous plan period in the first 5 years is not possible in South Somerset.
41. On that basis, the requirement for the first five years is 3,625 homes plus the backlog of 880 giving a total requirement of 4,505. It is at that point that the buffer of 20% should be added meaning that the total requirement for the first 5 years is 5,406 homes.
42. The Council suggests that the 20% buffer should not be applied to the backlog as this would result in additional housing. That is incorrect. All it would do is bring forward housing provision from later in the plan period to allow the backlog to be dealt with effectively in the first five years. The buffer affects the supply side; it does not alter the requirement.
43. It is clear, therefore, on the basis of their own figures, that as of 31 March 2014, the Council could not demonstrate a five-year supply of deliverable housing sites. The 5,789 figure presented for 31 July 2014 is of doubtful provenance because it is not clear that the Council took 31 July 2009 as the start point for their calculation. In any event, as the appellants pointed out, there are other difficulties with that figure.
44. It is clear from the Council's ready acceptance that there has been persistent under-delivery that the South Somerset housing market is weak. Moreover, the longstanding failure of the regeneration plans for Chard shows that the market there too is difficult. Evidence was adduced by the Council to support other aspects of their case which referred to the housing market as 'soft', with plans and schemes vulnerable to being blown off-course.
45. A number of individual sites regarded as deliverable within five years were examined at the Inquiry and it is clear that an appreciable number have issues, including around viability, which means that they might not come forward in that period, or indeed, at all. There is a wider, linked, point. The Council's projections rely on housing being brought forward, year-on-year, between March or July 2014 and March or July 2019, well in advance of historic rates of completion. While there might be some pent up demand, the record of delivery, suggests that the Council's forecasts are rather optimistic in the face of the competition between different house-builders that would arise. In that light, I find it difficult to foresee with any confidence that the 5,356 figure,

¹⁰ Planning Practice Guidance Paragraph 035 Reference ID: 3-035-20140306

based on March 2014, or the 5,789 figure for July 2014, promulgated by the Council, will in fact be delivered.

46. On that overall basis, it is my conclusion, in the light of the evidence presented to me, that the Council cannot demonstrate a five-year supply of deliverable housing sites.
47. I recognise that this conclusion puts me at odds with the Inspector who dealt with the LP examination, and the Inspector who dealt with the recent appeal in Crewkerne. The former found that the Council could demonstrate a supply of 5 years and 1 month based on a requirement in the first five years of 5,230. While I am not party to the evidence before the LP Inspector, the figure of 5,230 suggests to me that the 20% buffer was not applied to the backlog. It is very clear from paragraph 52 of the decision letter that the Inspector who dealt with the Crewkerne appeal, on the basis of the evidence before him, followed that same path. For the reasons set out, I cannot agree with that approach.
48. There is a question too about whether it is proper for me to form a conclusion on this matter at odds with that of the LP Inspector. The PPG¹¹ says that the examination of Local Plans is intended to ensure that up-to-date housing requirements and the deliverability of sites to meet a five 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. Be that as it may, given the importance attached to it in the context of how I reach a decision as a consequence of the Framework, and paragraphs 49 and 14 in particular, I cannot avoid examining the evidence on housing land supply presented to me and forming my own conclusions on the matter.
49. Paragraph 49 of the Framework says that housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. In that they direct the provision of housing in Chard in terms of location and quantity, LP Policies PMT1 and PMT2 are obviously relevant policies for the supply of housing. In the light of my conclusion that the Council cannot demonstrate a five-year supply of deliverable housing sites, despite having been adopted only very recently, they cannot be considered up-to-date. In those circumstances, the decision-maker is directed to paragraph 14 of the Framework.

The Implications of the conclusion on housing supply

50. Paragraph 14 tells us that at the heart of the Framework is a **presumption in favour of sustainable development** which should be seen as a golden thread running through both plan-making and decision-taking. For decision-making, unless material considerations indicate otherwise, this means that where the development plan is absent, silent, or as is the case here, relevant policies are out-of-date, the decision-maker is directed to grant permission unless any adverse impacts of doing so would significantly and demonstrably

¹¹ Paragraph 033 Reference ID: 3-033-20150327

outweigh the benefits, when assessed against the policies in the Framework, taken as a whole¹².

51. I have been invited down the path of *Davis* and the suggestion therein that a preliminary assessment of whether a proposal is sustainable development, or not, is necessary before paragraph 14 can properly be applied¹³. In my view, that is not a correct reading of the Framework. Paragraph 14 directs those dealing with plan-making or decision-taking in how to decide whether a plan, or a proposal, benefits from the presumption in favour of sustainable development. Nowhere does it suggest that there is any need for a preliminary assessment of whether a proposal represents a sustainable form of development, and in the absence of any unambiguous definition of 'sustainable development' in the Framework, it is difficult to see how that assessment could properly be approached.
52. The Council suggests that I should analyse the proposal against the three dimensions outlined in paragraph 7 of the Framework, the economic role, the social role, and the environmental role, and perform a balance between all three in order to reach a preliminary conclusion on whether the proposal represents sustainable development. However, save for a balancing provision more favourable towards development, that is more or less the same process one carries out in asking the question whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
53. Further, if a simple preliminary balancing exercise of the sort proposed by the Council led to a finding that a proposal would represent a sustainable form of development, what then would be the point of the decision-maker posing the question of whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole? That question would already have been answered in the affirmative.
54. In that overall context, following the line of Patterson J¹⁴ in *Dartford*, I cannot accept the elevation of *Davis* to a formulaic sequential approach to paragraph 14, in the manner suggested by the Council. I accept that Patterson J says in *Dartford* that 'I agree with Lang J in her conclusion that it would be contrary to the fundamental principles of the Framework if the presumption in favour of development in paragraph 14 applied equally to sustainable and non-sustainable development' but do not believe that the application of paragraph 14, in the way I have set out, would lead to such an outcome. Whether a proposal benefits from the presumption in favour of sustainable development is an outcome of applying paragraph 14, not an input.
55. Put very simply, in cases like those at issue, if, when assessed against the policies in the Framework taken as a whole, the benefits of a proposal are not significantly and demonstrably outweighed by adverse impacts, then the proposal benefits from the presumption in favour of sustainable development. While my approach does not strictly accord with *Davis*, it is endorsed in the

¹² On the basis that the appeal sites are not ones where specific policies in the Framework indicate that development should be restricted.

¹³ *William Davis Limited, Jelson Limited v Secretary of State for Communities and Local Government, North West Leicestershire District Council* [2013] EWHC 3058 (Admin)

¹⁴ *Dartford BC v SoS for Communities and Local Government and Landhold Capital Ltd* [2014] EWHC 2636 (Admin)

Colman, Stratford, and Tewkesbury judgements¹⁵. It might be argued that the *Davis* judgement post-dates them but nowhere does *Davis* seek to distinguish itself from these decisions.

56. Bringing that all together, in order to decide whether the proposals benefit from the presumption in favour of sustainable development, it is necessary for me to address the question of whether any adverse impacts of granting permission would significantly and demonstrably outweigh any benefits, when assessed against the policies in the Framework taken as a whole.

Accessibility

57. This alleged adverse impact was referred to many times at the Inquiry as the 'sustainability' of the appeal sites. In my view, bearing in mind the way the term is used in the Framework, that is inaccurate. Rather, the question is one of accessibility. Paragraph 37 of the Framework says that planning policies should aim for a balance of land uses within their area so that people can be encouraged to minimise journey lengths for employment, shopping, leisure, education, and other activities. Part of the reason for that approach is set out in paragraph 93. This says that planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change. Paragraph 32 sets out that decisions should take account of whether, amongst other things, the opportunities for sustainable travel modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure.
58. The LP designates Chard as a Primary Market Town and the idea is that it will grow and continue to expand its identified role. There can be no question that Chard has the capacity to accommodate additional housing. However, put simply, the argument advanced by the Council and interested parties is that the location of the appeal sites, on the periphery of the town, is such that residents and other users of the proposals would be overly reliant on the private car, and that the measures put forward to secure modal shift would be insufficient to alleviate the adverse environmental impacts flowing from that.
59. The sites are located on the edge of the settlement. It is clear that walking distances from the appeal sites to facilities like schools, the town centre shops and other facilities, and places of employment would, in most cases, be well beyond the 800 metres seen as acceptable to walk in Manual for Streets, and other, similar measures. However, the analysis of accessibility cannot be so reliant on suggested distances because it is largely a behavioural matter. Some people will be motivated to walk much further than 800 metres to school, or work, or the shops. Others will prefer to use the car for even shorter distances. The essential question, it seems to me, is whether the proposals would offer residents a reasonable opportunity to use more environmentally-friendly modes of transport than the private car.
60. I walked the likely routes residents of the proposals would use to access education, retail and employment facilities and, despite refuse and recycling collections which restricted pavement widths in places, and some relatively

¹⁵ *Stratford on Avon DC v SoS for Communities and Local Government, J S Bloor (Tewkesbury) Ltd, Hallam Land Management Ltd, RASE* [2013] EWHC 2074 (Admin) and *Tewkesbury BC v SoS for Communities and Local Government, Comparo Ltd, Welbeck Strategic Land LLP* [2013] EWHC 286 (Admin)

gentle gradients, did not find any of them particularly onerous. Even if one factors in the need to carry schools bags, or shopping, escort children, or use pushchairs, I do not believe that anyone reasonably motivated, or able, would choose not to walk to access those facilities because of the length, or nature, of the routes involved. The improvements to pedestrian connectivity proposed as part of Appeal A would assist too. Similarly, there was nothing that I saw that would put off someone who wanted to cycle to work, or school, or to the shops.

61. It is also relevant to note that the Appeal A scheme includes provision for a Local Centre that would include a relatively small shop, secured by condition. This would allow residents of the schemes, and other residents in the vicinity, the option of a shop in closer proximity that could be accessed on foot or bicycle. I recognise that this would not replace a major supermarket trip, but it would certainly go a long way towards obviating the use of the car for convenience shopping trips.
62. Moreover, both schemes include Travel Plans. These drew some criticism in terms of lack of ambition, and their approach to bus services, in particular. However, it would be difficult to do a great deal in terms of bus services given the limited nature of the existing service. What is proposed in the Travel Plan associated with Appeal A seems proportionate in that context. Most importantly, given my conclusions about the location of the sites, and the capacity for walking and cycling to and from them, I do not regard either Travel Plan as inadequate. They would go a reasonable way towards assisting residents in choosing more environmentally acceptable modes of travel than they might otherwise. It is also relevant to note that the County Council has approved the Appeal B Travel Plan.
63. It must be borne in mind that a significant amount of housing development is planned for Chard, some of which is relatively remote from the town centre. Notwithstanding associated infrastructure improvements that might come about, that is inevitably going to lead to increased car use. In that context, I see nothing inherently difficult about the appeal sites in terms of accessibility by means of travel other than the private car, and both schemes include measures that would go some way to reduce dependence on that mode. All in all, there is no good reason why the developments proposed should be rejected on accessibility grounds.

Whether the proposals would prejudice the LP strategy for Chard

64. There are two main planks to this issue. The first revolves around the suggestion that the proposals would use up capacity at the traffic-light controlled Convent junction in an unplanned way and that this would provide a barrier to other, planned, schemes that rely on the existence of the available capacity of the Convent junction to work, in traffic generation terms.
65. Dealing with the Appeal B scheme first, the Council's witness accepted in cross-examination that the impact of the traffic generated by the scheme on the Convent junction would be negligible. It is difficult to see how, in that context, the Appeal B scheme would prejudice the delivery of planned schemes for Chard, in that respect at least.
66. The Appeal A scheme includes as a part of it proposed works to the arrangement of the Convent junction, involving the prohibition of certain turning manoeuvres, which would increase capacity. I recognise that the

Council has certain misgivings about the impact that prohibiting some turning manoeuvres would have, and I am sure that it would be inconvenient for some. However, on my analysis, the proposal as promulgated would undoubtedly increase capacity at the Convent junction, and more than offset any impact the proposal would have on its capacity. It would not prejudice the ability of other schemes to come forward, because of the capacity limitations of the Convent junction, as a consequence. Indeed, it would increase the capacity of the junction and thereby make it easier for other schemes to be accommodated.

67. I accept that the works to the Convent junction proposed would require a TRO¹⁶. However, the appellant is prepared to accept a Grampian condition restricting implementation of the development until the TRO is confirmed. The Council sees difficulties with that arrangement but to my mind, it is perfectly legitimate. It is correct to say that there is a risk that the TRO would not be confirmed but there is at least a prospect of it being. In that context, the Grampian condition put forward is reasonable and if for some reason the TRO was not confirmed, then the proposal could not take place in a way that would use up capacity at the Convent junction and prejudice other schemes that might come forward. On that basis, Appeal A is acceptable, in this regard.
68. The other plank of the Council's case relates to the housing market in South Somerset, and Chard in particular. As set out above, there can be no real doubt that it is a 'soft' market. The record, during, and coming out of, the recession, shows as much. While not the only reason, difficulties with the market have certainly contributed to the lack of delivery of development, and regeneration, in the town.
69. As set out, to allow for development and regeneration to come forward, LP Policy PMT2 envisages at least 1,220 dwellings coming forward in the plan period, on sites earmarked for that purpose. Paragraph 7.21 of the LP is clear that the number of homes expected to come forward in the plan period reflects market deliverability. Appeal A would bring forward 335 dwellings and Appeal B, 110 dwellings, on unplanned sites. Viewed separately, or together, the provision of this many dwellings, on sites seemingly unencumbered by the restraints of others envisaged by LP Policy PMT2, would be very likely, in my view, to blow the LP strategy off-course. I cannot see why, given the capacity of the market in Chard, developers would seek to provide housing on more difficult regeneration sites, when relatively significant numbers of dwellings might have already been delivered, or be in the process of coming forward simultaneously, on edge of settlement sites, much less constrained, and therefore more profitable, to develop.
70. On that basis, while I acknowledge the doubts expressed on behalf of the appellants about whether the regeneration of Chard will ever get off the ground, a matter I return to below, I agree with the Council that the proposals, viewed separately, or together, would prejudice the LP strategy for Chard.

Highway Safety

71. It is important, first of all, to set out the approach of paragraph 32 of the Framework. Decisions must take account of whether, of relevance under this particular issue, safe and suitable access to the site can be achieved for all people; and improvements can be undertaken within the transport network

¹⁶ Traffic Regulation Order

that cost-effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

72. Viewed individually, the schemes at issue in Appeals A and B, as promulgated (access being before me in each case) would not cause any impact that could reasonably be described as severe. If they are considered together, as they are put forward, with each having their own separate access on to Crimchard, the one for Appeal A signal controlled, then the result would be a rather contrived arrangement that would make for rather difficult traffic conditions on Crimchard, which, as I observed during my site visits, is relatively narrow, and can carry relatively significant volumes of traffic, at certain times of the day. Adding the additional traffic from the schemes on to Crimchard, in that way, would lead to some difficulties in highway safety terms, though it would be stretching credulity to describe those impacts as severe.
73. However, the appellants are quite prepared to consider the imposition of conditions that would, in effect, mean that the two separate developments would function with one access on to Crimchard. So long as that access was properly designed, with signals if deemed necessary, something that could be dealt with through the conditions, the additional traffic generated could be accommodated with no significant detrimental impact in highway safety terms. On that basis, there would be accord with paragraph 32 of the Framework.

Landscape

74. It is one of the core principles of the Framework that the intrinsic character and beauty of the countryside should be recognised. Both appeal sites are currently in use as pasture and are clearly perceived as part of the countryside, beyond the confines of the settlement. Following discussions with the appellant about the extent of housing in Appeal A, reflected in a Statement of Common Ground, the Council takes no issue with either scheme in landscape terms. Local residents take a rather different view.
75. Put simply, if the intrinsic character and beauty of the countryside is to be recognised, then extending the built form of the settlement into green fields at the edge of the town must be deemed harmful in character and appearance terms. The question is to what extent would it be harmful?
76. The scheme at issue in Appeal B would lead to a relatively limited northern extension of Chard. Given that there is already development to the west, on the opposite side of Crimchard, south, and east, it would represent a logical rounding off of the settlement. In that context, the degree of landscape harm inherent in the appeal B scheme would be very limited.
77. The scheme in Appeal A would be significantly greater in area and extend the built form of Chard much further northwards. Notwithstanding the potential for landscape buffers and the provision of open space, in effect, the scheme would fill the existing gap between Chard and the small settlement of Cuttifford's Door. Cuttifford's Door would, to all intents and purposes, lose its identity and become a part of the town. In that way, the scheme in Appeal A would cause much more harm, in character and appearance terms, than the scheme in Appeal B.

Benefits

78. Given the exhortation in the Framework to boost significantly the supply of housing, the provision of market housing, in a situation where there is a prevailing under-supply, must be seen as a significant benefit that weighs in favour of Appeals A and B.
79. I heard too that there is a significant shortfall of affordable housing in South Somerset. Both schemes provide for policy compliant levels of affordable housing. Normally, one would not attach any additional weight to that because it is what a development should bring forward in any event. However, it is clear that South Somerset has had difficulties with delivering policy compliant levels of affordable housing because of issues around viability. In that context, the ability of the proposals at issue to deliver a policy compliant amount of affordable housing counts as a significant benefit.
80. Appeal A has other characteristics that require consideration. As set out above, it includes provision for a local centre that might include facilities such as a shop. The appellant was quite content to accept a condition requiring their inclusion in the scheme that would come forward at reserved matters stage.
81. Even acknowledging that some of them would most likely be part-time, I find it difficult to accept that such a facility might generate 100-150 jobs, as the appellant claimed. However, it would generate some employment and, given the focus in the Framework on securing economic growth¹⁷, that must be seen as an advantage of the scheme. The same is true of the construction activity and the jobs that would be generated or secured as a result of that.
82. Of more import, the Appeal A scheme includes provision for the relocation of Chard Town Football Club. I heard clear and persuasive evidence of the importance of the football club to the town and acknowledge that its current facilities are a great drag on progress. Paragraph 7.10 of the LP notes that the relocation of the football club has been a longstanding issue.
83. I heard from representatives of the football club about the way in which new facilities could be funded and provided - the existing ground has a value and any funds generated from sale would be matched by the Football Association. Whatever might be said about public access to the facilities that would come forward, if one could be sure that the Appeal A scheme would provide for a relocated Chard FC then that would be a weighty matter indeed.
84. The difficulty is that one cannot be sure. While it is a part of the scheme, the necessary transfer of land to the football club cannot be required by condition. Neither has any Obligation under S.106 been provided to ensure that the transfer takes place.
85. All I have is a letter written on behalf of the S E Blackburn Discretionary Trust which says that if Appeal A is successful and outline planning permission is granted for the proposal, then they are prepared to transfer the land identified, to the football club, free of charge. I have no good reason to doubt the intention but the letter is not contractual, or enforceable, and no guarantee that the transfer will take place. That severely limits the weight I can attach to this matter.

¹⁷ Paragraphs 18 and 19 in particular

86. The appellants have put forward Obligations under S.106 to make various financial contributions. Those pooled contributions towards theatres and arts centres and a new indoor tennis centre are no longer pursued by the Council. The other contributions, that accord with CIL Regulation 122, and advice in paragraph 204 of the Framework, are all designed to mitigate impacts. As such, they are neutral, and carry no weight in favour of the proposals.
87. Similarly, while concern was raised at application stage about likely impacts on biodiversity, and dormice in particular, both schemes make provision for proper mitigation. However, that mitigation means the impact of the proposals will be neutral. It is neither a benefit, nor an adverse impact.

Conclusion

88. As set out above, in order to decide whether the proposals benefit from the presumption in favour of sustainable development set out in the Framework, it is necessary for me to address the question of whether any adverse impacts of granting permission would significantly and demonstrably outweigh any benefits, when assessed against the policies in the Framework taken as a whole. In terms of Appeal A, there are adverse impacts in terms of the effect on character and appearance, and in terms of prejudicing the delivery of the LP strategy for Chard. Appeal B would have a limited negative impact on the landscape, and, something of a prejudicial impact on the LP strategy.
89. On the other hand, the Appeal A scheme would bring forward market and policy compliant affordable housing, and a local centre, with attendant jobs, increase capacity at the Convent junction, subject to confirmation of a TRO, and hold out at least the potential for the relocation of Chard Town FC. Appeal B would bring forward market and policy compliant affordable housing. Both would bring forward economic benefits through construction activity.
90. There is a prevailing undersupply of housing and obvious and acknowledged hurdles, like the provision of the Millfield Link, and the potential necessity for CPOs, which call into question whether the LP strategy for Chard is realistic. In that context, viewed as separate schemes, or together, as one larger scheme, the adverse impacts of the proposals would not significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework considered as a whole. On that basis, the proposals, whether viewed separately, or together, benefit from the presumption in favour of sustainable development.
91. That is not the end of the matter, however. The proposals are contrary to LP Policies PMT1 and PMT2 and the approach of the LP to future development in Chard. As the Framework readily acknowledges¹⁸, it is but a material consideration. It does not change the statutory status of the development plan as the starting point for decision making. It is incumbent upon me to make decisions that accord with the development plan, unless material considerations indicate otherwise.
92. The LP, and the approach therein to development in Chard, has only very recently been found sound, and adopted. The Council, and local people, have clearly invested much time, and energy, in ensuring that outcome. It seems to me that the approach to development in Chard, enshrined in the recently

¹⁸ Paragraphs 2 and 12 in particular

adopted LP, needs to be given some time to succeed before it could reasonably be set aside. To do otherwise would undermine the primacy of the plan-led system. On that basis, the fact that the proposals benefit from the presumption in favour of sustainable development, as set out in the Framework, is not a material consideration of sufficient weight to justify setting aside the policies of the LP, at this stage.

93. As the LP Inspector points out, in paragraph 93 of his report, any failure to deliver will be picked up by the Council's monitoring and should that situation arise, then the Council could take appropriate remedial action at that time, as a matter of urgency. If the LP strategy for Chard does falter, or fail completely, then the conclusion on similar proposals to those at issue in these appeals in the future, might well be different.

94. For the reasons given above I conclude that the appeals should be dismissed.

Paul Griffiths

INSPECTOR

Richborough Estates

APPEARANCES

INQUIRY 1

FOR THE LOCAL PLANNING AUTHORITY:

John Pugh-Smith of Counsel	Instructed by Angela Watson, Legal Services Manager, SSDC
He called	
John Gallimore	Principal Planning Liaison Officer, Somerset County Council
MCInstCES	
Patrick Moss	Director, Moss Naylor Young Ltd
BSc(Hons) DipTP MRTPI	
Andrew Gunn	Team Leader, Area West Planning Team, SSDC
BA DipTP MRTPI	
Lynda Pincombe	Community Health and Leisure Manager, SSDC
BA(Hons) CMI	

FOR MacTAGGART & MICKEL HOMES LTD AND THE S E BLACKBURN DISCRETIONARY TRUST

Anthony Crean QC	Instructed by D2 Planning
He called	
Sean McIntyre	Director, Key Transport Consultants Ltd
BSc(Hons) CEng MICE	
MCIHT	
Des Dunlop	Managing Director, D2 Planning
BA(Hons) MRTPI	

INTERESTED PERSONS:

Mike Hone	Director, Chard Town FC
Tony Prior	Chard Town Councillor
Ros Roderigo	District Councillor, Blackdown Ward
Jenny Kenton	District Councillor, Crimchard Ward
Elizabeth Quantrell	Mount Hindrance Action Group
Martin Wale	District Councillor, Combe Ward
Alan Quantrell	Local Resident
Helen Lock	Secretary of Cuttiford's Door & District Residents' Association
Michael Lee	Local Resident
Brennie Halse	District Councillor, Chard Holyrood
Jenny Sayers	Combe St Nicholas parish Council
Sue Pargeter	Local Resident
Vicky Atoe	Local Resident
John Gallagher	Local Resident
Brian Beer	Chard Town FC
David Bulmer	District Councillor, Jocelyn Ward and Town Councillor
Marcus Fysh	County & District Councillor, Parliamentary Candidate

INQUIRY 1 DOCUMENTS (I1D)

- 1 Statements of Common Ground (Planning, Transport, Ecology and Landscape) and Landscape Masterplan (Figure PJR-2 Drawing No: 11-26-08 Revision D)
- 2 Residential Travel Plan Revision A dated March 2014
- 3 Opening Statement on behalf of the Council
- 4 Submission of Mr Sayers, Chair, Combe St Nicholas Parish Council
- 5 Comments of Somerset County Council Strategic Transport Planning on Residential Travel Plan Revision A dated March 2014 with attachments
- 6 Submission of Mike Hone, Director of Chard Town FC
- 7 Diagram of Chard Development Options (Development Option 3) as outlined by Patrick Moss (clean copy plus annotated copy)
- 8 Copies of 11128(L)0001 Revision C and 11128(L)100 revision B with red line boundaries
- 9 Submission of Jenny Kenton, District Councillor, Crimchard Ward
- 10 Submission of Liz Quantrell, Mount Hindrance Action Group
- 11 Submission of Martin Wale, District Councillor, Combe Ward
- 12 Submission of Alan Quantrell
- 13 Submission of Helen Lock, Secretary of Cuttiford's Door & District Residents' Association (including Traffic Survey)
- 14 Submission of Michael Lee
- 15 Submission of S M Pargeter
- 16 Draft Unilateral Undertaking with comments thereon
- 17 Map of Crimchard Ward
- 18 Copy of APP/D3315/A/12/2170249
- 19 Copy of APP/R3325/A/12/2170082
- 20 Submission of John Gallagher
- 21 Bundle of documents relating to Chard Town FC put in by Brian Beer
- 22 E-mail trail regarding the Millfield Link
- 23 Objection to Proposed Main Modifications to South Somerset Local Plan 2006-2028 on behalf of David Wilson Homes Ltd
- 24 Draft Conditions
- 25 Submission of Cuttiford's Door & District Residents' Association on proposed relocation of Chard Town FC
- 26 Lists of Possible Grampian Conditions
- 27 Response by Sean McIntyre to representations of Councillor Bulmer
- 28 Copy of Statutory Instrument 1996 No.2489: Road Traffic The Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996
- 29 Letter of Intent relating to the relocation of Chard Town FC put in on behalf of S E Blackburn Discretionary Trust dated 23 May 2014
- 30 Letter dated 22 May 2014 from AP Planning on behalf of David Wilson Homes South West Ltd relating to ecological matters
- 31 Letter dated 23 May 2014 from D2 Planning relating to ecological and highway matters and withdrawing their Rule 6 status at Inquiry 2
- 32 Copy of Judgement in *Barrow upon Soar Parish Council v SoS for Communities and Local Government and Charnwood BC and Jelson Ltd* [2014] EWHC 274 (Admin)
- 33 Copy of Judgement in *William Davis Ltd and Jelson Ltd v SoS for Communities and Local Government and NW Leicestershire DC* [2013] EWHC 3058 (Admin)
- 34 Closing Statement on behalf of Council
- 35 Closing Statement on behalf of Appellant

INQUIRY 2

FOR THE LOCAL PLANNING AUTHORITY:

John Pugh-Smith of Counsel	Instructed by Angela Watson, Legal Services Manager, SSDC
He called	
Patrick Moss	Director, Moss Naylor Young Ltd
BSc(Hons) DipTP MRTPI	
Andrew Gunn	Team Leader, Area West Planning Team, SSDC
BA DipTP MRTPI	
David Anthony Clews	Corporate Planning Officer, Somerset County Council
BSc(Hons) DipTP MRTPI	
Lynda Pincombe	Community Health and Leisure Manager, SSDC
BA(Hons) CMI	
David Norris	Development Manager, SSDC
Paul Wheatley	Principal Spatial Planner, SSDC
BA(Hons) DipTP MRTPI	

FOR DAVID WILSON HOMES SOUTH WEST LTD:

Paul Cairnes of Counsel	Instructed by AP Planning
He called	
Richard White	Managing Director, FMW Consultancy Ltd
BSc(Hons) MSc MCIT	
MIHT M.IPENZ (Civil)	
MITE FFB	
Jan Kinsman	Associate Director, EFM Ltd
CEng MICE BSc(Eng)	
ACGI	
Andrew Penna	AP Planning
BA(Hons) MA MRTPI	

FOR MacTAGGART & MICKEL HOMES LTD AND THE S E BLACKBURN DISCRETIONARY TRUST

Giles Cannock of Counsel	Instructed by D2 Planning
He called	
Des Dunlop	Managing Director, D2 Planning
BA(Hons) MRTPI	

INTERESTED PERSONS:

G Sayers	Chair, Combe St Nicholas Parish Council
Brennie Halse	District Councillor, Chard Holyrood
Martin Wale	District Councillor, Combe Ward
Jenny Kenton	District Councillor, Crimchard Ward
Michael Lee	Local Resident
Helen Lock	Secretary of Cuttiford's Door & District Residents' Association
Alan Quantrell	Local Resident
Elizabeth Quantrell	Mount Hindrance Action Group
John Gallagher	Local Resident
Richard Manley	Resident of Ilminster

INQUIRY 2 DOCUMENTS (I2D)

- 1 Unsigned Agreement under S.106 (1)
- 2 Unsigned Agreement under S.106 (2)
- 3 Summary Report on S.106 Agreements
- 4 Statement of Common Ground
- 5 Opening Statement on behalf of David Wilson Homes South West Ltd
- 6 Opening Statement on behalf of the Council
- 7 Draft Conditions
- 8 PoE of Mr Moss relating to Land at Mitchell Gardens, Chard
- 9 Copy of Judgement in *Dartford BC v SoS for Communities and Local Government and Landhold Capital Ltd* [2014] EWHC 2636 (Admin)
- 10 Submission of John Gallagher
- 11 Submission of Helen Lock (including Traffic Survey)
- 12 Extract from Report on the disposal of Council land in Chard to Henry Boot Plc
- 13 Comparison Table of Peter Brett Town Centre C Phase 1 and Henry Boot Plc Proposal
- 14 Letter from Stagecoach dated 13 February 2014 re Route 99/99A
- 15 Consultation Response from John Gallimore of SCC on highway and transportation aspects of the proposal dated 29 May 2013
- 16 Consultation Response from Keith Wheaton-Green on climate change mitigation dated 2 May 2013
- 17 Map of Walking Routes to Employment Sites prepared by FMW Consultancy (FMW1246-SK07)
- 18 Extract from PPG on prematurity
- 19 Copy of e-mail from David Norris of SSDC to Des Dunlop of D2 Planning dated 29 August 2014, about resumption of Inquiry
- 20 Extract from Executive Summary of CEDA Feasibility Report
- 21 Rebuttal PoE of P M Wheatley
- 22 Copy of e-mail from Andrew Gunn of SSDC to Andrew Penna of AP Planning dated 7 January 2014 about Travel Plan and reason for refusal No.3
- 23 Copy of e-mail trail about Travel Plan Revision B
- 24 Copy of letter from Andrew Penna of AP Planning to Angela Watson of SSDC about reasons for refusal, dated 14 August 2014
- 25 Response from Michael Jones of SSDC to Andrew Penna of AP Planning dated 20 August 2014
- 26 Copy of e-mail from Richard White of FMW Consultancy to Andrew Gunn of SSDC, dated 14 July 2014 dealing with SCC's acceptance of the Travel Plan (Revision E)
- 27 Note on Education Multipliers
- 28 Education Position Statement
- 29 Note on Education Issues by David Clews of SCC dated 27 August 2014
- 30 Response by David Clews of SCC to the Note by Stephen Clyne
- 31 Copy of e-mail from Jan Kinsman to David Clews about DfE Multipliers, dated 28 August 2014
- 32 Copy of LGA Media Release about school places, dated 27 August 2014
- 33 Copy of SSLP Policy ST3
- 34 Copy of Maps from SHLAA
- 35 Technical Note 6 by FMW Consultancy explaining LinSig assessment of the potential 4 arm traffic signals access arrangement for Crimchard
- 36 Note on Traffic Generation from Henry Boot Development by Patrick Moss, dated 1 September 2014
- 37 Copy of APP/R3325/A/12/2170082

- 38 Copy of APP/D3315/A/12/2170249
- 39 Copy of e-mail trail between David Norris of SSDC and David Lohfink of C G Fry & Son Ltd and others about the Chard housing market
- 40 Note from Inspector dealing with progress into Report into emerging Local Plan, dated 1 September 2014
- 41 Submission of Robert Trott
- 42 Technical Note 7 by FMW Consultancy dealing with Town Centre Regeneration, dated 3 September 2014
- 43 Memorandum of Disagreement dealing with UU submitted in relation to Appeal A
- 44 Costs application by Appellant on Appeal A
- 45 Response by Patrick Moss on behalf of SSDC to Technical Note 7, dated 4 September 2014
- 46 Technical Note 8 by FMW Consultancy dealing further with Town Centre Regeneration, dated 4 September 2014
- 47 Costs Application by Appellant on Appeal B
- 48 Copy of signed Agreement under S.106 dated 4 September 2014
- 49 Closing Statement on behalf of Council (Appeal B)
- 50 Closing Statement on behalf of Council (Appeal A)
- 51 Supplemental Closing Statement on behalf of Appellant on Appeal A
- 52 Closing Statement on behalf of Appellant on Appeal B
- 53 Costs Response by Council on Application relating to Appeal A
- 54 Costs Response by Council on Application relating to Appeal B

POST-INQUIRY DOCUMENTS

- 1 Agreement under S.106 relating to Appeal B Travel Plan
- 2 Copy of APP/R3325/A/13/2210545
- 3 Comments of SSDC on APP/R3325/A/13/2210545
- 4 Comments of AP Planning (on behalf of David Wilson Homes South West Ltd) on APP/R3325/A/13/2210545
- 5 Comments of D2 Planning (on behalf of MacTaggart & Mickel Homes Ltd and the S E Blackburn Discretionary Trust) on APP/R3325/A/13/2210545
- 6 Copy of the Inspector's Report on the Examination into the South Somerset Local Plan 2006-2028
- 7 Comments of SSDC on the Inspector's Report on the Examination into the South Somerset Local Plan 2006-2028
- 8 Comments of AP Planning (on behalf of David Wilson Homes South West Ltd) on the Inspector's Report on the Examination into the South Somerset Local Plan 2006-2028
- 9 Comments of D2 Planning (on behalf of MacTaggart & Mickel Homes Ltd and the S E Blackburn Discretionary Trust) on the Inspector's Report on the Examination into the South Somerset Local Plan 2006-2028
- 10 Copy of e-mail from SSDC dated 6 March 2015 regarding the adoption of the South Somerset Local Plan 2006-2028
- 11 Bundle of material relating to CIL Regulation 123(3)

PLANS: Appeal A

- A 11128(L)001 Revision D: Location Plan
- B 11128(L)100 Revision D: Site Block Plan
- C 0359-025: Access from Thorndun Park Drive
- D 0359-026 Revision A: Access from Crimchard
- E 11-26-08 revision D: Landscape Masterplan

PLANS: Appeal B

- A 003ii: Site Location
- B 012i Revision E: Illustrative Concept Masterplan
- C 013i: Parameter Plan
- D 013ii: Parameter Plan – Building Height
- E FMW1033-SK02: Proposed Site Access Arrangement

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