



Appeal Decision

Inquiry held 6 to 9 and 13 to 14 December 2022

Site visit made on 14 December 2022

by Tom Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 9th February 2023

Appeal Ref: APP/W3330/W/22/3304839

Land at Dene Road, Cotford St. Luke

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended 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 Hallam Land Management against Somerset West and Taunton Council.
 - The application Ref 53/21/0010 is dated 20 September 2021.
 - The development proposed is described on the application form as 'outline planning application with all matters reserved other than the principal means of access for the construction of up to 80 dwellings, local centre (of up to 1,000m² of Class E and hot food takeaway (*Sui Generis*) use) and new access onto Dene Road, with associated road/footway/cycleway provision, open space, landscaping, surface water attenuation and ancillary works.'
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Decision

1. The appeal is allowed and planning permission is granted for the construction of up to 80 dwellings, local centre (of up to 1,000m² of Class E and hot food takeaway (*Sui Generis*) use) and new access onto Dene Road, with associated road/footway/cycleway provision, open space, landscaping, surface water attenuation and ancillary works, subject to the conditions in the first schedule to this decision and, subject to my reasoning below, the obligations contained within the planning agreement dated 21 December 2022 under section 106 of the Town and Country Planning Act 1990 as amended (the '1990 Act').

Preliminary matters

2. Whether a decision was reached in respect of application Ref 53/21/0010 within the relevant statutory period is in dispute. Nonetheless, the appeal was made on 9 August 2022 before the Council's decision notice of 19 August 2022. Whatever has occurred, however, there is an appeal.
3. Aside from in respect of access, the proposal is in outline. Appearance, landscaping, layout and scale are reserved for future consideration ('reserved matters'). Other than in terms of access, and also the parameter plan,¹ I have treated any plans or details of reserved matters as illustrative. The judgements in *Crystal* and *Chieveley* were referenced at the inquiry.² Both concern challenges to decisions on outline schemes and relate to the

¹ Plan No. 8786-L-14 rev M.

² *Crystal Property (London) Ltd. v Secretary of State for Communities and Local Government & Anor* [2016] EWCA Civ 1265, and *R v Newbury District Council ex parte Chieveley Parish Council* [1998] JPL 1137.

appropriateness of taking certain details into account at certain stages. I will return to both.

Policy context

4. Somerset West and Taunton Council ('SWTC') was formed on 1 April 2019 via the merger of Taunton Deane Borough Council ('TDBC') and West Somerset Council. However, development plans of former Councils remain. Each proposal must be determined in accordance with the development plan unless material considerations indicate otherwise.³ The development plan here includes the Taunton Deane Core Strategy 2011-2028 (adopted September 2012, the 'Core Strategy'), and the Taunton Deane Site Allocations and Development Management Plan (adopted December 2016, the 'SADMP').
5. Amongst other material considerations I have had regard to the National Planning Policy Framework ('NPPF'), to the Council's District Wide Design Guide Supplementary Planning Document (adopted December 2021, the 'SPD'), and to the Planning Practice Guidance ('PPG'). In April 2023 a new unitary Somerset Council will come into being which will incorporate SWTC and others. Somerset-wide plan preparation is, however, nascent.
6. The Written Ministerial Statement of 6 December 2022 (the 'WMS'), sets out potential forthcoming changes to the planning system alongside those in the Levelling Up and Regeneration Bill before Parliament. An NPPF prospectus was subsequently published on 22 December 2022. Insofar as relevant to the issues in hand in this appeal, the WMS, NPPF prospectus and Bill indicate potential future changes. Taking account of the prospective direction of travel they indicate would not disadvantage any party to these proceedings.
7. Neither the NPPF, nor the foregoing announcements, alter the statutory basis for decision-taking. However NPPF paragraph 11. d), commonly referred to, as at the inquiry, as the presumption in favour of sustainable development or the 'tilted balance' applies in certain circumstances.⁴ That may be contrasted with the 'flat' statutory balance as set out in paragraph 4 above.
8. In respect of SWTC's administrative area, 2021 Housing Delivery Test ('HDT') data shows housing delivery relative to requirements over the previous three years standing at 76%. NPPF paragraph 11. d) is therefore not engaged by virtue of HDT data.
9. NPPF paragraph 11. d) may though be engaged in other circumstances. One is where the most important policies for determining the application are deemed to be out-of-date.⁵ Another is where a Council is unable to demonstrate a five year supply of deliverable sites for housing ('5YHLS') with reference to NPPF paragraphs 68 and 74. In the absence of a 5YHLS the extent of any anticipated shortfall, and the likelihood of that persisting, may be material in the overall planning balance.

³ Section 38(6) of the Planning and Compulsory Purchase Act 2004 as amended.

⁴ The 'tilted balance' being referenced in the judgement handed down in *Suffolk Coastal District Council v Hopkins Homes Ltd. & Anor* [2017] UKSC 37, albeit in respect of an earlier iteration of the NPPF.

⁵ As referenced in *Wavendon Properties Ltd. v Secretary of State for Housing Communities And Local Government & Anor* [2019] EWHC 1524 (Admin).

10. There is some common ground between the main parties as to the appropriate methodology for establishing a 5YHLS requirement and in respect of certain components of anticipated supply. Furthermore neither main party argues, in whatever eventuality, that NPPF paragraph 11. d) i. is engaged. Nevertheless whether SWTC are able to demonstrate a 5YHLS is in dispute. I will also return to that matter.

Main issues

11. Against the context above the main issues are (i) whether the appeal site is a suitable location for the development proposed with particular regard to the accessibility of services and facilities, and (ii) the effect of the proposal on local and landscape character.

Reasons

Location

12. The appeal site is a loosely rectangular parcel of land of some 4.73ha. About 1.5ha is graded 3a in terms of agricultural land classification ('ALC'), a category of that which is defined as best and most versatile ('BMV'). The site forms part of a more extensive arable holding arcing north and north-westwards around Cotford St. Luke. A separate part of the latter is proposed as an offset to the additional phosphate loading that would result from the proposal, which is a mix of ALC grade 2 and 3 land.⁶
13. Footpath T4/23 tracks by the north-eastern boundary of the site, with an undulating rural landscape beyond in that direction towards the presently disused railway and A358 thereafter. That footpath passes a small cluster of properties as it nears Tithill Lane. Footpath T4/17 continues further northwards. I undertook an accompanied site visit in the afternoon of 14 December 2022, during which I walked along both footpaths (and also viewed land proposed for nutrient offsetting).
14. Presently a field access to the site is located off Dene Road next to footpath T4/23. Access there, albeit not for vehicular traffic, would remain. A new vehicular access is proposed onto Dene Road further south-westwards, closer to the roundabout junction of Dene Road, Bailey's Gate and Graham Way which is relatively central to the Village. The proposed access would face broadly towards properties comprising Park View opposite. SADMP allocation MIN1, now partially built out, falls close by to the east of the site, projecting southwards away from Dene Road.
15. The proposed vehicular access would puncture an existing band of trees and vegetation flanking Dene Road. That band of trees continues south-westwards alongside, albeit broken to allow pedestrian access to, the Memorial Field. It extends almost as far as the roundabout referenced above. The Memorial Field exists in remembrance of those treated at the former Asylum around which the Village was created, the remaining buildings of which fall towards the south of the settlement.
16. The Asylum was built around 1893, and subsequently became the Tone Vale Hospital. Following its closure in 1995, buildings and surrounding land of

⁶ ID13.

about 53ha was redeveloped into the planned village of Cotford St. Luke. The Tone Vale Approved Development Guide set out guidance in that respect, including in terms of landscaping (approved August 1995, the 'TVDG'). Use of stone salvaged from the demolition and redevelopment historic buildings is incorporated in modern properties throughout the Village, which are generally of understated and traditional design.

17. The appeal site slopes downwards away from Dene Road, more steeply at first, towards an existing drain and hedgerow to the north. The Quantock Hills Area of Outstanding Natural Beauty ('AONB') is visible in the distance in that broad direction. There has been extensive pre-emptive, or 'advance', planting undertaken around the site and wider land holding. That was undertaken initially in March 2019, and comprised a mix of native trees, some of which were planted to augment existing hedgerows. A further pedestrian and cycle access would be created by puncturing the band of trees and vegetation beside Manning Road.
18. The bands of trees around the site by Dene Road and buildings at Cotford St. Luke described above were established, or maintained, in line with the TVDG. That is reflected in their degree of maturity, and also in the angularity of bands of trees (the latter reflecting conscious design). In policy terms the settlement boundary for Cotford St Luke extends around them. Therefore, although adjacent to the settlement boundary, the site falls within the open countryside as defined via Core Strategy policy SP1.
19. The Council's initial position at appeal cited conflict with Core Strategy policies SP1, DM2, CP8 and DM4, and also with SADMP policy A5. The development plan must be considered as a whole; I therefore consider the relationship of the proposal to them in turn.
20. Core Strategy policy SP1 'Sustainable development locations' identifies Cotford St. Luke as one of five 'Minor Rural Centres' within the former administrative area of TDBC. Core Strategy paragraph 4.6 explains that such settlements 'display a broad range of services such as a primary school and shop...'. Cotford St. Luke has both. Policy SP1 also makes provision at Minor Rural Centres for 'at least 250 new net additional dwellings...'. Those are to be delivered via '...small scale allocations, sites within the development boundary (primarily on previously developed land) and sites fulfilling affordable housing exceptions criteria outside development boundaries'. Land outside of settlement boundaries is defined as open countryside.
21. Falling outside of the settlement boundary for Cotford St. Luke, and not being advanced as a rural exception site or affordable housing-led, the proposal is not supported by policy SP1. However, as houses a few metres away are either within the settlement boundary, or at SADMP allocation MIN1, that is characterised by the appellant as a 'technical conflict'.
22. Core Strategy policy DM2 accords in-principle support to certain types of development in the open countryside, of which market housing is not one. However market housing is not referenced in policy DM2, a point identified by the Inspector who determined an appeal at Land west of Bagley Road in

2018.⁷ Paragraph 15 of that decision sets out 'as agreed by the Council the fact that a proposal is not one of the uses specifically supported by the policy does not mean that there is conflict. Other uses should be determined against Policy CP8, which deals with all development.'

23. Conversely in this appeal, SWTC argue that policy DM2 at least implies that market housing in the open countryside is unacceptable. I heard that policy DM2 was a product of planning policy at that time, including the formulation of the Regional Spatial Strategy for the South West ('RSS'). I am told that the RSS formulation process advocated policies framed in enabling terms. Be that as it may, I disagree with the Council's current position.
24. Supporting text to a policy does not have the same force as the policy wording itself. Nevertheless the explanatory paragraphs to policy DM2 identify the tensions in both planning for a prosperous rural economy and recognising the intrinsic character and beauty of the countryside. In summary, policy DM2 seeks to support the former without unduly affecting the latter. The policy therefore supports various uses beneficial to the rural economy in principle, including tourism, agriculture and forestry.
25. Core Strategy policy DM2 does not, however, say that other uses would be harmful. Theoretically various other uses may be beneficial to the rural economy, and not all uses fall into neat descriptors. Therefore it is not that there is an implied opposition to market housing via policy DM2, but rather that market housing is simply not addressed by it. To identify any conflict with policy DM2 would, in my view, be to inappropriately apply it to circumstances for which it was not designed.
26. Conversely, Core Strategy policy CP8 'Environment' is not expressly limited in its application to certain types of development. It sets out initially how the Council 'will conserve and enhance the natural and historic environment, and will not permit development proposals that would harm these interests or the settings of the towns and rural centres unless other material factors are sufficient to override their importance.' Therefore, on a plain reading, there is an 'internal balance' within policy CP8 itself, i.e. some environmental harm may nonetheless be justified in the light of 'other material factors'.
27. Core Strategy policy CP8 further sets out that 'unallocated greenfield land outside of settlement boundaries will be protected and where possible enhanced. Development within such areas will be strictly controlled in order to conserve the environmental assets and open character of the area.' There is a tension between the first and second sentence. However the inclusion of 'strictly controlled' means that the policy does not categorically seek to prevent all development of greenfield sites outside of settlement boundaries.
28. Reinforcing that reasoning, policy CP8 sets out that 'development outside of settlement boundaries will be permitted where it will [meet 7 criteria]'. Different policies within development plans inevitably pull in different directions. With that in mind, it may therefore be that a scheme could comply with policy CP8, but would continue to conflict with policy CP1 by virtue of its location alone.

⁷ Ref. APP/D3315/W/17/3179264.

29. The 7 criteria to policy CP8 are linked by the conjunction 'and' and therefore all must apply for such development to be permissible (subject to the foregoing internal balance earlier within that policy). None of those criteria relate to accessibility in a strict sense. Compliance with criteria 2, 3 and 4 is in dispute between the main parties. However those criteria concern effects in terms of design, landscape and nature which I will address later alongside Core Strategy policy DM4 'Design'.
30. Returning to the policies referenced in paragraph 19 of this decision, SADMP policy A5 remains to be considered. However, in contrast to the Council's initial position at appeal, there is now no dispute between the main parties that the site would fall within the maximum acceptable travel times and walking distances to services and facilities as prescribed via policy A5.
31. I also saw how the walking or cycling route between the appeal site and Cotford St. Luke primary school, the Bailey's gate bus stop, and the Chapel pub and restaurant would be comparable to many other properties nearby (if not shorter than that which would need to be taken from properties at the fringes of the Village around Luscombe Road and MIN1). Subject to the access and pedestrian improvements proposed, it would also be similar in terms of quality or experience. The development proposed would also in itself make provision for community and retail uses, open space, and an electric car club. Those elements of the scheme would qualify the extent to which future residents would need to travel elsewhere for certain day to day needs.
32. Local residents have made representations reflecting pressures on medical and school facilities in the area, referencing that the Chapel is only viably open on weekends and identifying a relative paucity of bus services here (which points to Cotford St. Luke being less well connected than other locations in absolute terms). However infrastructure funding and accessibility are somewhat distinct, and the funding of both schools and medical facilities derives from multiple sources. Somerset County Council has set out that there is sufficient capacity to accommodate new pupils associated with the proposal without direct funding from it, and the section 106 agreement contains a financial obligation towards associated NHS provision.
33. As set out in the appellant's Retail Planning Policy Statement, Cotford St. Luke is sufficiently populous to enable complementary non-residential development, subject to associated floorspace limits, and new residents will inevitably bring additional trade to the local economy. Whilst promoting walking, cycling and public transport, the NPPF equally recognises at paragraph 105 how 'opportunities to maximise sustainable transport solutions will vary between urban and rural areas'.
34. In that context, and with reference to the categorisation of the village via Core Strategy SP1, the appeal site is suitably accessible for a rural context in terms of nearby services and facilities. However the 'technical' locational conflict with Core Strategy policy SP1 remains. With that in mind, the Council argue that allowing the appeal would undermine the integrity of genuinely plan-led system.

35. It is not for an appeal to go behind, or amount to some form of examination of, a development plan. I accept that the appeal site, part of a larger swathe of land, was not progressed as an allocation within the SADMP.⁸ However the Council's argument in that respect holds little water.
36. If there is no tangible harm in terms of the location of a given development in respect of accessibility, allowing a proposal would not undermine a plan-led spatial hierarchy in any meaningful way. Both the overall aim of delivering 17,000 new homes and 250 additional dwellings at Minor Rural Centres are expressed as minima in the Core Strategy. The proposal would not conflict with those provisions numerically.
37. Core Strategy policy CP8 envisages some scenarios in which greenfield unallocated sites may legitimately come forward. The proposal meets the accessibility requirements of SADMP policy A5, the SADMP being the latest element of the development plan to be adopted, and the PPG now guides that a wide range of settlements can play a role in delivering sustainable development in rural areas.⁹ Significant numbers of homes have also been allocated and permitted in comparably accessible locations, including at SADMP allocation MIN1.¹⁰
38. Existing policies should not be deemed out-of-date simply because they pre-date the NPPF. In headline terms a settlement hierarchy is consistent with the promotion of walking, cycling and public transport in the NPPF. I will return to matters of housing supply. However derived from the local housing needs methodology in NPPF paragraph 61 and the PPG ('LHN'), it is common ground between the main parties that the 5YHLS requirement should be based initially on 605 dwellings per annum ('dpa').¹¹ That relates to the former TDBC area and excludes a 20% buffer required via NPPF paragraph 74. c) given HDT figures.
39. 605dpa is significantly lower compared to the approach in the Core Strategy. As above, policy SP1 sought to deliver at least 17,000 homes. Core Strategy policy CP4 sets out a stepped trajectory for intended housing delivery. For the period 1 April 2021 to 31 March 2028 delivery of at least 7,500 new dwellings is sought via policy CP4. Averaged, that is some 1,071 dpa. In itself, the change between Core Strategy and LHN housing figures does not drive a cart and horses through the development plan; a spatial hierarchy with settlement boundaries may accommodate less development more readily than more.
40. However the change between the approach in the Core Strategy and LHN is relevant to the weight to ascribe to any harm resulting from conflict with Core Strategy policy SP1. The implications of LHN for the overall shape of the development plan are, in my view, of far greater significance than those associated with a scheme for up to 80 dwellings in what may fairly be described as a suitably accessible location. Consequently although the site is not an acceptable location for the development proposed by virtue of conflict

⁸ Noting that the site was also assessed as part of the Strategic Housing Land Availability Assessment of May 2022 intended to inform a plan review, now shelved in lieu of forthcoming local Government reorganisation.

⁹ Reference ID: 67-009-20190722.

¹⁰ Noting allocations at Minor Rural Centres set out in ID9.

¹¹ ID8.

with Core Strategy policy SP1, any harm resulting from that conflict carries only limited weight.

Local and landscape character, design

41. The design of a scheme and its landscape effects are intertwined. In that context SWTC states that 'there are certain principles that would be fixed by a grant at this [outline] stage, not least the quantum of housing. The evidence needs to demonstrate how that could occur, and the evidence needs to demonstrate that now. That is the meaning of *Crystal*.'¹²
42. I acknowledge that, with reference to the description of development and the parameter plan, allowing the appeal would 'fix' certain elements of the proposal. That would be the case where there are specified figures or areas, namely up to 80 dwellings, a local centre of up to 1,000m², and where elements of the scheme would come forward as shown on the parameter plan.
43. However circumstances here are markedly different from those which applied to the scheme that was the subject of *Crystal*. In *Crystal* the proposal was for a mixed use development of shops and offices at Morris House, a site adjoining 130 Kingsland High Street, London E8. Provision of a given amount of floorspace there would have been highly constrained by the urban location of the site, resulting in implications in terms of scale which could realistically vary little despite the scheme being in outline.
44. There is far greater flexibility here in terms of what may legitimately be advanced at reserved matters stage. Direct parallels from *Crystal* cannot therefore be drawn. That judgement does not suggest some form of blanket requirement to demonstrate illustratively at outline stage how reserved matters could achieve a satisfactory outcome. To do so would undermine the concept of outline permission itself.
45. The judgement in *Crystal* references the earlier judgement in *Chieveley*. *Chieveley* concerned a proposal for 5,644 square metres of floorspace. In that instance a condition was imposed on grant of outline permission to the effect that reserved matters applications should be made 'notwithstanding any indications as to the reserved matters which have been given in the submitted application'. That condition was found to be unlawful on the basis that it would appear to interfere with the terms in which the application had been made. Insofar as relevant to this decision, *Chieveley* reinforces my reasoning in paragraph 42 above. Certain aspects of the proposal would be fixed were I to allow the appeal, others would legitimately remain for future consideration (where they would not undermine those fixed elements).
46. The Council's design proof is initially structured around the detailed principles set out in the SPD, before considering Core Strategy policy DM4.¹³ Reference therein is also made to the National Design Guide (first published 1 October 2019, the 'NDG') and to the National Model Design Code (published 20 July 2021, the 'NMDC'). I acknowledge my reasoning in paragraph 44 over-simplifies SWTC's argumentation. Nonetheless various objections made by the

¹² ID25.

¹³ CD6.12.

Council to the design of the proposal verge on presupposing that illustrative plans are more definitive than they are intended, and stated, to be.¹⁴

47. That is particularly the case in respect of the arrangement or details of the site, the hierarchy of streets, how site access and streets would relate to one another, the density or scale of development in different locations (and also around the provision of such features as rain gardens, photovoltaic cells, and green walls or roofs). Those features of the scheme fall principally, and legitimately, to reserved matters' details. None would be fixed within the terms of the application, nor would various alternative approaches to such matters undermine any elements of the proposal that would be fixed in the event I were to allow the appeal.
48. I acknowledge that the scheme was not informed by the Quality Review Panel ('QRP') process as set out in section 6.5 of the SPD. References to topography in documents supporting the proposal are somewhat cursory. The area shown as for the local centre has a gradient of approximately 1 in 15, and the residential area about 1 in 18. Section 3.4 of the Inclusive mobility guide to best practice published in January 2022 by the Department for Transport (the 'DfT Guide') states 'if a level route is not feasible then gradients should not exceed 1 in 20'.
49. The proposal would draw vehicular access from Dene Road alone. Whilst there would be non-vehicular links to Manning Road, and a second to Dene Road, no direct connection would be made with footpath T4/23. The Council suggested at the inquiry that footpath T4/23 falls within the same land ownership as the appeal site, and therefore that an opportunity for greater connectivity had been missed. SWTC therefore characterised the scheme as representing development within a green box, comprising cul-de-sacs as opposed to 'perimeter blocks', the latter encouraged via the NDG and NMDC.
50. I acknowledge that NPPF paragraph 132 advocates the value of early engagement in terms of design.¹⁵ However a proposal may be acceptable in terms of design, or capable of being made so through conditions or reserved matters applications, even if it has not been subject to the QRP process during formative stages. I note that the SPD sets out that schemes of more than 50 homes should be 'informed by review', rather than prescribing when that must occur.
51. Outline schemes invariably evolve as details come into sharper focus. There is inherently flexibility in the proposal being for 'up to' 80 homes and for a local centre of 'up to' 1,000m². The parameter plan is also sufficiently broad brush to allow for various different arrangements and densities. Subject to adherence to conditions, there would be every opportunity to ensure that the QRP process effectively informs detailed matters of design.
52. The topography of the site is clearly a factor which will inform scheme design. However it is comparable with much of the surrounding area. That includes Manning Road, Stutt's End, Burge Crescent and Healy's Meadow. Properties there were established on similarly inclined north-facing hillsides as part of

¹⁴ For example plan No. 8786-L-15 rev S, as with previously iterations, is entitled 'illustrative layout'.

¹⁵ Noting also the Secretary of State's letter referenced in ID4.

the creation of the Village. The landform here also declines from Dene Road through SADMP allocation MIN1 towards the south-east.

53. Although the local centre would be broadly where there is the steepest level change at the appeal site, that gradient is not particularly steep in absolute terms. Paragraph 3.4 of the DfT Guide continues that gradients steeper than 1 in 20 can, over very short distances 'be managed by some wheelchair users', but that 1 in 12 should be the absolute maximum. In short the topography of the site is not such that it would impede a well-designed or inclusive scheme.
54. Evidence submitted at the inquiry indicates strongly that footpath T4/23 is not within the same ownership as the appeal site.¹⁶ However, regardless of land ownership, the proposal would nonetheless have three connections to its surroundings. That would, I saw, be a commensurate level of accessibility and permeability with that which prevails at Cotford St. Luke.
55. Although design philosophy evolves over time, the layout of the Village is intimate, with cul-de-sacs and no through roads being commonplace. For a planned settlement, Cotford St. Luke therefore has more of an organic character than might be expected. Properties are arranged in loose clusters or short streets at varying angles to one another. In my view that is an intrinsic part of its character.
56. Similarly the prevalence of hedgerows, bands of trees and shelter belts throughout and around Cotford St. Luke also contribute to a coherent feel. The TVDG advocated 'the retention of as many of the existing mature trees and hedge lines as possible and the provision of substantial new structure planting', and 'the creation of landscape corridors separating built areas of distinctive architectural character.' In my view in respect of design, subject to a sensitive approach to reserved matters applications, the proposal would be capable of being entirely consistent with local character.

Local and landscape character, landscape effects

57. Notwithstanding earlier assessment by officers, at appeal SWTC argued that the site is 'on the cusp' of being a valued landscape within the terms of NPPF paragraph 174. a).¹⁷ Formal protections, absent here, are not necessary for a landscape to fall within that descriptor. The Landscape Institute's Guidelines for Landscape and Visual Impact Assessment: Third edition (updated November 2021, 'GLVIA3') puts methodological rigour to assessing landscape quality and effects of development.
58. However such assessments are inherently reliant on a sequence of judgements. Amongst other things those judgements relate to perceptual and associative values, the uniqueness or conversely representativeness of a given site in its surrounding context, and also the scale at which that surrounding context is drawn. Different individuals applying the approach in GLVIA3 may therefore rationally come to different assessments of landscape value, and in respect of the effects of a particular scheme.

¹⁶ ID19.

¹⁷ CD6.11.

59. I acknowledge, particularly as seen and experienced from footpath T4/23 and viewpoints towards the north, the site contributes to the staunchly rural surroundings of Cotford St. Luke. Land broadly northwards of the Village tends to be more sensitive to change than land broadly southwards. The latter is closer to the surviving, and imposing, historic Asylum buildings and their former landscaped grounds. The southern arc of land around Cotford St. Luke tends also to be set lower in the landform. It is also generally less exposed on account of landscape features (including established hedgerows and mature trees around, and southwards of, the school).
60. As noted above, the appeal site is close to the Memorial Field. Along with the intrinsic beauty of the landscape here, and its perceptual value in terms of wellbeing, many local residents understandably appreciate the tranquillity currently afforded by the site in relation to the Memorial Field. Paragraph 4.9 of the TVDG further sets out the importance of safeguarding views from the Quantock Hills towards the north of Cotford St. Luke, advocating that new development be 'located primarily in the lea of hills...'. I also acknowledge, in spatial and visual terms, including in respect of illumination, the site currently forms part, albeit a small part, of a visual break between Cotford St. Luke and Bishop's Lydeard beyond the railway.
61. However, rather than possessing a particular distinctiveness, or representing a rare survival of a rural hinterland, the site is comparable with much of the surroundings to the Village and beyond. Nearby fields tend to be similarly sized and open. In being broadly rectangular the site also reflects the 'loosely geometric' field apportionment typifying the Quantock Fringes and West Vale (3A) character area as defined in the Landscape Character Assessment (published 2011, the 'LCA') in which the appeal site falls.
62. Similarly, as noted above the topography of the site is comparable with much of the surrounding landscape. Whilst in short order to the south-east beyond SADMP allocation MIN1 the landscape falls instead within the Farmed and Settled Low Clay Vale landscape character area as defined in the LCA, the distinction between that and character area 3A is blurred; there is transition rather than an abrupt change. In that context, the Village is not readily perceived as being constrained by a discernible or coherent topographic feature such as a valley or depression.
63. Whilst the nearest public right of way south-eastwards of the Village is some distance away, nonetheless from various vantage points along footpath T4/23, properties at MIN1, at Nos 30 to 33 North Villas, and also at Park View are partially visible. Similarly, proceeding northwards along footpath T4/23, South View, Sunnyvale, and Box Cottage by Tithill Lane become apparent. There is therefore contextual development which serves to qualify the rurality of the site. Little differentiation shows up between prevailing luminance levels at the appeal site compared to Cotford St. Luke,¹⁸ although that data is presented at limited resolution.
64. Furthermore there is little appreciable visibility of the site from the AONB, having visited various vantage points there. Where visibility exists, it is at a significant distance. The appellant's Landscape and Visual Appraisal ('LVA')

¹⁸ CD 6.11, Appendix C.

indicates a separation of about 5.3k between the site and vantage points within the Quantocks. Furthermore, given the elevated nature of those viewpoints, the site is inevitably seen in conjunction with existing buildings at Cotford St. Luke. Although that does not reduce landscape value in itself, it qualifies the sensitivity of the site to change from those perspectives. Reciprocally development of the site would have no meaningful effect on the landscape and scenic beauty of the AONB. Although advanced planting is extensive, it is yet of limited maturity. Many specimens are also deciduous. Advance planting did not therefore impede my understanding of the site in its surroundings.

65. Associative or cultural values are reliant on perception. I appreciate that the scheme would have some effect in terms of the relative tranquillity from which the Memorial Field benefits. However that is already qualified by the proximity of Dene Road, and by the presence of existing properties a short distance away. As illustrated on the parameter plan, the nearest element of the development proposed would be set behind an extensive green buffer, itself set behind the existing hedgerow bounding the Memorial Field. Undue effects would not therefore, in my view, result in that respect.
66. The wooded bands to the site demarcating the limits of the Village were created or tended to assume their current form. As such, whilst natural, they are also a recent human alteration to the landscape. The TVDG set out to deliver 600 homes. It did not clearly envisage the evolution of the village beyond that remit, current pressures being very different to those in 1995. Whilst there was a conscious thought process to the establishment of the northern boundary, it possesses no strong associative value with the former Asylum, its landscaped grounds, or particular resonance to understanding the historic evolution of the landscape. In my view the value and sensitivity of the site to change is therefore no more than moderate.
67. The proposal would entail a significant amount of built development on what is presently open natural land. That would inevitably affect the intrinsic character and beauty of the countryside. However, as noted above, the site has been subject to extensive advance planting. The purpose for which that was undertaken is incidental; there is nothing to prevent someone planting trees, and it is the natural tendency of almost any field to revert to secondary woodland if left to its own devices.
68. Insofar as relevant to this decision, and to the site, the retention of advanced planting could be secured via appropriately-worded conditions and obligations (were the scheme acceptable as a whole). The existing bands of trees around the site beside Dene Road and properties to the south-west visually attest to the significant screening that can be achieved within a relatively short time.
69. Just over half of the 4.73ha appeal site is shown on the parameter plan as intended to be occupied by development of some form. That leaves significant flexibility to arrive at a sensitive approach to landscaping, and otherwise to ensure that the appearance, layout and scale of the buildings and site are carefully thought through.

70. Moreover the illustrative layout plan shows the potential for planting an orchard towards the north-west of the site.¹⁹ Whilst I accept that orchard planting may be more formal than native planted or self-seeded woodland, that would nevertheless create a further landscape buffer (a 'soft edge' to the settlement as advocated by the TVDG). Orchards are not uncommon in Somerset.
71. In that context, and in the absence of countervailing evidence, photomontages appended to the appellant's landscape proof illustrate likely levels of screening of the development at years 0, 7 and 15 when trees are not in leaf.²⁰ Whilst the development represented within the appeal site is illustrative, those photomontages attest to the significant mitigation likely to be achieved by year 7, at which point in time views of buildings on site would be heavily filtered. By year 15, trees have matured and extend well above the skyline beyond the site by Dene Road. Whilst that is one of many viewpoints, the maturing of planting elsewhere, including beside footpath T4/23 would also result in significant screening over time.
72. As set out above, the northern boundary to Cotford St. Luke was created. It was not found or pre-existing, in contrast with other settlements which may be defined by a significant and longstanding landscape feature. The Village was established to a defined brief. Whilst I accept as a general rule there is lesser landscape sensitivity towards the south of Cotford St. Luke, the Village is not readily understood as formed within a discernible landscape or physical feature that represents a logical extent of further growth.²¹
73. Following my reasoning above, in terms of location, connectivity and potential design, the proposal would assimilate, or more accurately be capable of assimilating, appropriately with its surrounding context in line with criterion 2 to Core Strategy policy CP8. It would ensure a suitable 'sense of place' remains, as advocated via Core Strategy policy DM4, having had regard also to the SPD, NDG and NDMC.
74. By overwriting open and natural land the proposal would not 'protect, conserve or enhance' landscape character or the interests of natural assets as referenced in criteria 3 and 4 of Core Strategy policy CP8. However I have set out above that the value of the site and its sensitivity to change may fairly be said to be no more than moderate. For that reason, and by virtue of the nature of the scheme alongside the implications of advance planting and future landscaping, the proposal would result in only limited harm.

Other matters

Traffic

75. I have taken careful account of all representations before me, including in respect of traffic, ecology, and the implications of the proposal in terms of BMV land and food security, and also the potential for further development in

¹⁹ Plan No. 8786-L-15 rev S.

²⁰ Representing circumstances at LVA viewpoint 6, CD 6.6, Appendix 6.

²¹ Therefore circumstances here differ from those in respect of an appeal brought to my attention at Langford Budville for a single dwelling (Ref. APP/W3330/W/22/3292379). In that instance the Inspector reasoned that the proposal there would undermine the 'coherent transition' between village and countryside and that the scheme by virtue of design would have an 'uncomfortable relationship with the prevailing pattern of built form in the village.'

time. I accept that, being set within a rural context with rich history of land apportionment and reorganisation, the nearby highway network was not originally designed to accommodate the amount of traffic that it now does. There are also places in the surrounding highway network where queuing occurs at times.²²

76. However the effects of the scheme in terms of trip generation would be limited compared to existing levels of use,²³ the TVDG itself making provision for 600 homes at Cotford St. Luke. There is no substantive evidence that the nearby highway network is inadequate to suitably accommodate the uplift in use that would result from the scheme, nor unsafe to do so (in respect of site access arrangements or otherwise). I have moreover reasoned above that the site is appropriately accessible for a rural context, and would itself cater for a local centre. Both those factors, alongside adherence to a travel plan securable via condition, would reduce the reliance of future residents on private vehicular use. Neither SWTC nor Somerset Council object to the scheme on the basis of traffic implications.

Ecology

77. There is a duty on me to have regard to conserving biodiversity.²⁴ Biodiversity implications of the scheme are both direct in terms of the site itself, and indirect in terms of potential wider effects. The appellant's Ecological Appraisal indicates either that the site is, or may in certain parts be, suitable habitat for badgers, bats, birds, dormice, grass snakes, slow worms and hedgehogs.²⁵ Flora and fauna may support other species too.
78. However the site in this instance does not fall within an internationally, nationally or locally protected designated site of importance for biodiversity.²⁶ Being predominantly arable land, the majority of the site is of relatively low biodiversity value.²⁷ Of higher value are the hedgerows and trees bounding the site, which Cotford St. Luke Parish Council indicate are, in part, relatively rare examples.
79. Nevertheless the vast majority of the hedgerows and trees on site would be retained. Suitable mitigation in respect of disturbance to ecology could be secured via appropriately-worded conditions and obligations. Moreover, notwithstanding that such a requirement is not yet mandatory, the Ecological Appraisal sets out how the proposal could readily ensure a minimum of a 10% Biodiversity Net Gain ('BNG'), with reference to NPPF paragraph 174. d). Subject to appropriately worded conditions, obligations, and noting that there are also ecological protections via other regimes,²⁸ the direct effects of the proposal in terms of ecology would not be unacceptable (and, in terms of BNG, beneficial).

²² Notably at the signal controlled junction by the bridge over the disused railway bridge to the east, and the Cross Keys/ Silk Mill roundabout by Norton Fitzwarren.

²³ CD4.10, Appendix D.

²⁴ Section 40 of the Natural Environment and Rural Communities Act 2006 (as amended).

²⁵ CD4.15.

²⁶ Ibid. Albeit that four statutory and nine non-statutory sites fall within 10km of the site, noting the duty upon me under section 28(G) of the Wildlife and Countryside Act 1981 as amended to take reasonable steps to conserve and enhance the natural features of Sites of Special Scientific Interest.

²⁷ Ibid.

²⁸ Notably via the Wildlife and Countryside Act 1981 as amended.

Phosphates

80. Furthermore in respect of 'indirect' effects, on 17 August 2020 Natural England wrote to Somerset authorities regarding high levels of phosphates present at the Somerset Levels and Moors Ramsar Site and Special Protection Area ('SPA'). Those designations are broadly coterminous and incorporate several Sites of Special Scientific Interest. The Ramsar Site was designated for its wetland features and rare aquatic biodiversity. The SPA, pursuant to the Birds Directive, was designated for supporting internationally important bird populations.
81. The foregoing correspondence followed European judgements, and explained that the SPA was in an unfavourable condition. Phosphates, generated from various sources including fertilisers and sewage, had detrimentally altered the existing ecological balance (an issue which persists). Surface water and wastewater at the site drains, or would drain, towards the River Tone. The Tone flows into the River Parrett, the two rivers being the spine around which the Ramsar Site and SPA is located.
82. Natural England are the appropriate nature conservation body pursuant to Conservation of Habitats and Species Regulations 2017 as amended (the 'Habitats Regulations'). Notwithstanding that wetland features and the fauna reliant upon them are interconnected, albeit possessing different sensitivities, Natural England's correspondence of 17 August 2020 explained how additional nutrients from typical new developments were unlikely, alone or in combination with others, to have a likely significant effect on the internationally important bird communities for which the SPA was designated.²⁹ By virtue of NPPF paragraph 181. b) Ramsar Sites are accorded the same protection as Special Protection Areas (including, by extension, via the provisions of Regulation 63 of the Habitats Regulations).
83. Since Natural England correspondence of 17 August 2020 the Council have, commendably, worked to progress various measures which seek to reduce phosphates entering the ecosystem. In a similar vein to many authorities elsewhere, noting both updated Natural England advice of March 2022 and the Written Ministerial Statement of 20 July 2022,³⁰ SWTC has worked with other planning authorities and organisations to develop a phosphate calculator and 'Solutions Report'.³¹
84. That work has enabled the development of phosphorus credits ('P Credits'). In summary, it is envisaged that developers will be able to purchase the requisite P Credits to offset the additional phosphate generation resulting from a given scheme, where, for example, offsetting may be unfeasible directly. A central plank of that approach is to create a strategic phosphate offset by way of a fallow land management scheme at Orchard Portman.³² A chunk of the inquiry was given over to considering the reliance that could be placed upon the Orchard Portman site amidst a broader package of measures (in respect of 5YHLS implications in particular).

²⁹ ID18.

³⁰ Official Record HCWS258.

³¹ CD13.4.

³² ID11.

85. However the proposal before me is not reliant on P Credits, or other SWTC-led initiatives. Instead phosphate offsetting is proposed by way of 'fallowing' a total of 9ha of land within the wider land holding of which the site is part, as set out in the appellant's Fallow Land Management Plan.³³ I note that the management regime for both the fallowed land here, and that proposed at Orchard Portman, differs from that advanced elsewhere.³⁴

Appropriate Assessment

86. Regulation 63 of the Habitats Regulations requires that, before deciding to give any permission or other authorisation for a project which is likely to have a significant effect on a European site, a 'competent authority' must make an appropriate assessment of its implications. I have undertaken an appropriate assessment in a reasonable and proportionate manner relative to circumstances here.
87. I am told that 'the overall interim strategy has been the subject of an Appropriate Assessment pursuant to a HRA and approved by Natural England'.³⁵ Whilst the extent to which the overall interim strategy may be relied upon in respect of deliverability was in dispute at the inquiry, the evidential basis for establishing phosphate calculations and offsetting was not.
88. Those broad parameters have informed the appellant's Nutrient Assessment and Shadow HRA.³⁶ Informed by the those studies, the appellant's Fallow Land Management Plan summarises how nutrient neutrality can be achieved by taking 'an additional 9ha of land within the land holding out of agricultural production'. That would be in addition to the land that would be taken out of agricultural production by the proposed development itself.
89. The land proposed to be fallowed is shaded and edged blue on plan 2 to the section 106 agreement, and would be managed as set out at Appendix 1 to it. Principally that land would be seeded to create mixed grassland and cut several times a year, without the use of fertiliser. Fallowing may become a permanent solution, albeit that alternative means of phosphate offsetting may be achievable, preferential and undertaken in time.
90. The latter point is consistent with the Natural England's advice of 5 May 2022 in respect of the proposal. That correspondence also states that the 'mitigation proposed will be sufficient to achieve nutrient neutrality'.³⁷ Accordingly, subject to suitably worded conditions, to the provisions of the section 106 agreement, and given the provisions of other regimes referenced above, the proposal would suitably safeguard ecology both directly and indirectly; it would not adversely affect the integrity of the Ramsar Site.

Best and Most Versatile agricultural land ('BMV')

91. The appellant's Fallow Land Management Plan reinforces that alternative solutions may come forward, stating that at '...such time as strategic solutions become policy, the fallowed land proposed to ensure this scheme can deliver

³³ CD4.21.

³⁴ Including that advanced in the context of appeal Ref. APP/L3815/W/22/3299202.

³⁵ CD6.13.

³⁶ CD4.18, CD4.20.

³⁷ Notwithstanding that Natural England note at that juncture that the Shadow HRA had not been updated with reference to the latest figures in the Nutrient Assessment (a matter of consistency between documentation).

nutrient neutrality can be released for subsequent development.’ That does not, however, necessarily presage further development (as much as indicating the inverse of the preclusion of development inherent within the section 106 agreement). Anything that may be advanced in the future is hypothetical.

92. NPPF paragraph 174. b) sets out how account should be taken of the benefits of BMV, some of which would be taken out of active agricultural land by virtue of the following proposed here. However Orchard Portman is ALC grade 3,³⁸ potentially comprising BMV land. I heard during the inquiry that much of agricultural land in Somerset is also BMV. As set out above, following may be reversed in time as other solutions become available. Consequently, any harm resulting from the loss of BMV land would be limited.

Housing provision

93. The proposal would entail various benefits. Referencing my reasoning in paragraphs 7 to 10 of this decision, paragraph 11. d) ii. relates to the balance to be applied in terms of weighing any harm and any benefits of a proposal. The weight ascribed to material considerations is a matter of planning judgement. The following benefits of the proposal are material, setting aside the basis on which any overall balance should be taken.
94. In respect of housing provision generally, the absence of written evidence is not the absence of evidence. That said, SWTC’s position that they are able to demonstrate a 5YHLS was largely set out at the inquiry itself. That makes interrogating that evidence challenging. It also means that much of the evidence presented post-dates the latest comprehensive review compiled by the Council in this respect, namely the Council’s Strategic Housing Land Availability Assessment published in May 2022 (‘SHLAA’).³⁹ At that juncture a forward supply amounting only to about 4.04 years was forecast.
95. At appeal SWTC presented evidence indicating that 101 sites not considered deliverable as at May 2022 may now be described as such. They argued that would be the case principally on account of the Council’s work to address phosphate deposition. As noted in other appeal decisions elsewhere,⁴⁰ there is a risk that information ventured later than a comprehensive review is partial, skewed or otherwise lacks coherence. Although I note what the Council described as conservative assumptions in respect of unlocking sites held up by phosphate implications, SWTC’s position at the inquiry was that they could demonstrate a forward supply of deliverable sites amounting to 3,673 dwellings relative to a 5YHLS requirement of 3,630.
96. The Council’s position is therefore a forecast exceedance of the 5YHLS requirement by just 43 dwellings. That is a razor thin margin. It presupposes that the Council’s approach to phosphate mitigation will come online in short order, noting that P Credits were not available for purchase at the time of the inquiry. Whilst nutrient deposition is a complex and relatively recent issue, that position also pre-supposes that mitigation by way of P Credits will be

³⁸ CD13.

³⁹ CD9.1.

⁴⁰ Including in appeal Ref. APP/Y0435/W/17/3169314, referenced in CD6.21.

broadly accepted and will not unduly affect development viability, which may not be the case in all instances.⁴¹

97. However, irrespective of whether the Council are able to demonstrate a 5YHLS, the proposal would be beneficial in terms of housing provision. Even were I to accept the Council's position above, allowing the appeal would assist in maintaining a future pipeline of delivery. I set out earlier that both the overall housing requirement in the Core Strategy and the role of Minor Rural Centres in pursuit thereof are expressed as minima. The Council's current LHN-derived annual requirement is far lower than the requirement derived from Core Strategy policy SP1 and CP4 (1,071dpa). There is no robust evidence before me as to whether, as SWTC intimated, the differential between the two has been accounted for in other locations.
98. As the proposal would adequately address phosphate implications, its delivery is also more certain than many of the sites the Council has advanced as deliverable which are dependent on P Credits. With reference to NPPF paragraph 77, subject to an appropriately-worded condition and in line with the appellant's position, the site could also realistically come forward expediently. Expedient delivery is relevant in the context of what SWTC accepts has been a hiatus in housing delivery on account of nutrient deposition issues. Consequently I accord the housing delivery benefits of the proposal significant weight.

Housing affordability

99. Pressures for affordable housing are particularly acute here. Housing affordability ratios in SWTC's administrative area are rising, and are higher than the average ratio in England.⁴² On account of various factors, lower quartile house prices in the ward of Cotford St. Luke and Oake have recently risen more significantly still.⁴³ Notwithstanding measures advanced by the Council to increase affordable housing supply broadly, affordable housing provision at Cotford St. Luke since 1997 has fallen short of the 25% expected via policy CP4. As at March 2022 the number of households eligible for affordable housing on the Somerset Homefinder Register stood at 3,194. I understand that figure has since risen by some 560 to 3,754 by November.⁴⁴ Those figures reflect that there are a significant number of individuals in need of housing, and those needs exist now.
100. In TBDC's Strategic Housing Market Assessment of 2016 ('SHMA'), affordable housing needs were forecast to be 161dpa. However in SWTC's Local Housing Needs Assessment document of 2020 ('LHNA'), affordable housing needs were forecast, across a much wider geography following the local government reorganisation referenced in paragraph 4 of this decision, to be only 158dpa. Given evidence of the decreasing affordability of housing based on affordability ratios, and also rising numbers of individuals on the Somerset Homefinder Register, that is surprising.

⁴¹ Noting appeal Ref APP/W330/W/22/3296248, where the necessity of phosphate mitigation measures in respect of an existing outline permission was in dispute.

⁴² CD6.9, paragraph 6.12 onwards.

⁴³ Ibid. figure 6.4.

⁴⁴ ID26.

101. I understand that differential arises, in large part, as the SHMA was based on 29% of household spending being devoted to housing costs, whereas the LHNA is premised on up to 35% of household spending being used in that way. In itself that reflects the decreasing affordability of housing. Inputting into the calculation that households are necessarily devoting more of their income to meeting housing costs poses a real risk of circularity and underrepresentation of need.
102. The proposal is for 25% affordable housing in line with policy CP4, proposed to be secured via the section 106 agreement. Whilst I note the Council's argument that more affordable housing could have been proposed rather than a policy-compliant quota, against the background set out above that up to 20 additional affordable homes are intended to be provided in itself attracts substantial weight in favour of allowing the appeal.

Planning balance

103. Drawing together my reasoning above, on the one hand the proposal would result in limited harm by consequence of conflict with Core Strategy policy SP1, and similarly limited harm would result both in terms of landscape effects and also the intended strategy of following some BMV land. In other respects, including in respect of traffic, ecology and phosphates the proposal would be acceptable (which, other than in respect of BNG where benefits would result, are effectively neutral in the overall balance).
104. On the other hand I accord significant or substantial weight to the benefits of the scheme in terms of housing and affordable housing provision respectively. The proposal would furthermore bring additional trade to the area, make provision for a local centre, open space and play provision, and also entail economic benefits in supporting employment during construction and thereafter. All those factors attract weight in favour of the scheme.
105. To my mind the benefits of the scheme are more than sufficient to meet the internal balance within policy CP8 (as referenced in paragraph 26 of this decision). Irrespective of that, overall other material considerations in favour of allowing the appeal clearly outweigh the harm that would result by virtue of conflict with the development plan. That is applying the 'flat' statutory balance described in paragraph 7 of this decision. In the eventuality that the Council were unable to demonstrate a 5YHLS, that would merely further strengthen the case for allowing the appeal.

Obligations

106. The section 106 agreement commits all those with a legal interest in the land to the fulfilment of certain obligations in the eventuality that the appeal were to be allowed, albeit conditionally with reference to my reasoning. NPPF paragraph 55 directs that consideration should be given as to whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations (in that order of preference). Planning obligations must only be sought where they meet the tests set out in NPPF paragraph 57, also contained in Regulation 122 of the Community Infrastructure Levy Regulations 2010 as amended (the 'CIL Regulations').

107. There is common ground between the appellant and SWTC as to the necessity of appropriateness of all section 106 provisions barring in respect of a Neighbourhood Equipped Play Area ('NEAP'). Other than in respect of a NEAP, following my reasoning above, having had regard to all the information before me including the representations of consultees in respect of application Ref. 53/21/0010, and with reference to the relevant provisions of the development plan, NPPF and PPG, the obligations contained within the section 106 agreement would accord with NPPF paragraph 57 and CIL Regulation 122. Those obligations are necessary to make the development proposed acceptable, and to secure various benefits of the scheme referenced above.
108. The section 106 agreement, however, contains two potential, mutually-exclusive, contributions towards a NEAP. Both are, in line with SADMP policy C2 and associated Appendix D, related to the number of dwellings which would potentially have two or more beds. SADMP Appendix D sets out that a minimum of 20 square metres of 'equipped children's playing area' should be provided in connection with such dwellings. Appendix D further sets out how a NEAP, for younger and older children, should be a minimum of 1,000m², and should be within 1k of new dwellings.
109. Potential contribution (a) is £2,531.14 per two or more bed dwelling, (b) is £267.60 in that respect. Potential contribution (a) derives from the Council's calculation of the provision of a NEAP based on 70 two or more bed dwellings coming forward. It draws from data of tenders and construction costs between 2008 and 2010 (cast forward via indexation). In my view potential contribution (a) is not, however, justified for three principal reasons.
110. Firstly there is no express indication in SADMP policy C2 that a scheme for up to 80 dwellings, or an alternative number, would trigger the need for a NEAP in itself (the policy instead states that development should respond to the relevant standards). Secondly, there is no substantive evidence before me that existing NEAP provision, less than 600 metres away,⁴⁵ is inadequate in terms of the expectations set out in Appendix D to accommodate the uplift that would result from the development proposed in addition to existing usage. Thirdly, whilst there is a logic to the Council's suggested figure of £2,531.14, I cannot conclude that it is fairly and reasonably related in scale and kind. That figure is derived from ageing or theoretical figures, and there is no indication before me that it would be directed towards a particular scheme or schemes.
111. Conversely potential contribution (b) is justified. Supporting paragraph 1.4.9 to SADMP policy C2 explains how in some cases on site-provision may not be desirable or feasible. It is evidently designed to be flexible to account for different circumstances, and there is already a NEAP relatively nearby in this instance. Moreover the appellant has referenced a number of other schemes where a NEAP was not directly required.⁴⁶ Some of those schemes are comparable in location and scale to the proposal before me, and all post-date the tender or construction costs relied upon by the Council. Whilst there may be other examples of higher NEAP contributions achieved elsewhere, and additional documentation underlying those instances, in that context to

⁴⁵ ID26.

⁴⁶ ID20.

achieve compliance with SADMP policy C2 a contribution of £267.60 per qualifying dwelling is justified and meets the tests in NPPF paragraph 57 and CIL Regulation 122.

Conclusion

112. For the reasons given above, having taken account of the development plan as a whole, I conclude that other material considerations justify allowing the appeal subject to the conditions below and, subject to the foregoing reasoning, the obligations contained within the planning agreement dated 21 December 2022.

Conditions

113. Reflecting my reasoning in paragraph 98 of this decision, and consistent also with NPPF paragraph 77, condition 1 sets an expedited timescale for implementation relative to the statutory timescale. For clarity, and similarly so that the proposal is implemented as assessed above, I have imposed condition 2 requiring adherence to the relevant supporting plans.
114. For certainty, and noting the judgement in *I'm Your Man*,⁴⁷ condition 3 is necessary to emplace limits on the development of the site within the terms set out in the application. Condition 3 also sets floorspace limits for certain uses. The convenience store threshold is justified via the appellant's Retail Policy Statement, and the hot food takeaway threshold with reference to the prevailing size of such facilities. Subject to condition 3, the proposal would comply with SADMP policy TC3, notably criterion iii.
115. Condition 4 is necessary to ensure that the proposal, as it will evolve through reserved matters, represents appropriately sensitive design in accordance with Core Strategy policy DM4, NPPF paragraphs 130 and 134, and the approach in the NDG. That condition refers to adherence to the approach recommended via the SPD, specifically the Quality Review Panel process.⁴⁸
116. Given the scale of the proposal, likely to be delivered by a single developer, that it is in outline with quite some flexibility as to its ultimate form, it would be unnecessarily prescriptive to specify adherence to a Design Code as suggested by the Council. Whilst adherence to a Design Code might assist in establishing precision in respect of design at this juncture, it would nevertheless not be necessary to make the proposal acceptable with reference to NPPF paragraph 55 following my reasoning above. Similarly I have not imposed SWTC's proposed conditions 15 and 16.⁴⁹ Those conditions relate to site arrangement, footpaths and cycleways, and therefore squarely fall to reserved matters applications.
117. Notwithstanding the provisions of the Wildlife and Countryside Act 1981 as amended, for certainty and flexibility in terms of delivery, I have imposed condition 5. That condition prevents scrub or hedgerow removal taking place during the bird breeding season unless such activities during those times are suitably evaluated and effects mitigated. Condition 5 also makes specific provision in terms of protecting dormice. Furthermore, subject to adherence

⁴⁷ *I'm Your Man Ltd. v SSE & North Somerset DC* [1999] 4 PLR 107.

⁴⁸ ID22.

⁴⁹ ID15.

to conditions 5, 6, 7, 8 and 9, following on from my reasoning in paragraph 79 above, the proposal would suitably safeguard, and make provision for, biodiversity in line with NPPF paragraph 174. d).

118. To ensure that the proposal assimilates effectively with its landscape context, I have further imposed condition 10 requiring a planting scheme on land that would not be covered by reserved matters. I have additionally imposed conditions 11 and 12 to ensure that the proposal makes appropriate provision for surface water drainage, along with the future maintenance thereof to secure its effectiveness over time. Adherence to those conditions would secure compliance with the approach in NPPF paragraph 169.
119. Conditions 13, 14 and 15 are necessary to ensure that appropriate vehicular and non-vehicular connections to the site are implemented before any development on site is occupied or brought into use (to ensure appropriate integration and to avoid adverse highways effects). Those conditions also make provision for suitable visibility and maintenance of those features in perpetuity. In a similar vein, to avoid disruption and inconvenience to those nearby, consistent with the provisions of Core Strategy policy DM1 and NPPF paragraph 130. f), conditions 16 and 17 are necessary. Those conditions would secure adherence to a construction management plan and ensure that any adverse effects to the condition of the highway as a result of undertaking the development proposed are remedied.
120. Planning conditions need not address matters covered by separate regimes. Nevertheless, and notwithstanding the provisions of Building Regulations 2010 as amended, for clarity I have imposed condition 18 requiring that covered cycle storage, and also electric vehicle charging points, are installed to minimise reliance on private vehicular use. Similarly, and to secure compliance with the relevant provisions of SADMP policy A2 and NPPF paragraph 113, I have imposed condition 19 requiring adherence to an approved travel plan.
121. Conditions 6, 7, 9, 10, 11, 16, 17, and 5, dependent on the timing of intended operations, must necessarily apply before any development is undertaken. Any works on site have the potential to affect biodiversity, landscape character, site hydrology, and to result in localised disturbance and highways effects (the subject matter of those conditions). Notwithstanding the provisions of section 100ZA(8), the appellant nonetheless accepts the substance of those conditions.
122. In imposing conditions I have had regard to the tests in the NPPF, the PPG, and relevant statute. Albeit that some conditions have an implication for reserved matters, none are in my view of such a degree of specificity or overlap that they would be inappropriate. In that context I have amended the wording of certain conditions put to me to ensure that all are appropriate, without altering their fundamental aims.

Tom Bristow

INSPECTOR

SCHEDULE 1, CONDITIONS

- 1) Details of the layout, scale, appearance, landscaping (the 'reserved matters') shall be submitted to, and approved in writing by, the local planning authority before any development hereby permitted takes place, and the development shall be carried out as approved. Application for approval of the reserved matters shall be made to the local planning authority not later than the expiration of two years from the date of this permission. The development hereby permitted shall begin not later than the expiration of one year from the approval of the reserved matters (or, in the case of approval on different dates, the date of approval of the last of the reserved matters to be approved).
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 8786-L-13 rev E, 8786-L-16 rev B, 8786-L-14 rev M and 8786-L-01 rev B.
- 3) The development hereby permitted shall comprise not more than 80 dwellings, and the local centre as illustrated on approved plan 8786-L-14 rev M shall comprise not more than 1,000 square metres of floorspace. Any use within the local centre shall be either under Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended, or shall be a hot food takeaway comprising no more than 180 square metres of floorspace. A single convenience store is permitted which shall not exceed 349 square metres in net floorspace.
- 4) Application(s) for reserved matters shall be informed by feedback from a full and independent Design Quality Review ('DQR'), which shall be arranged by the developer and carried out in accordance with the Districtwide Design Guide Supplementary Planning Document (adopted 7 December 2021, the 'SPD') and the document entitled 'Somerset West & Taunton Quality Review Panel, Terms of Reference 2022'. Before application(s) for reserved matters are determined, a second DQR process shall be undertaken, to consider how the first DQR review has informed detailed design (and other factors that have emerged through DQR processes). The second DQR process shall also be arranged by the developer and carried out in accordance with the SPD and Terms of Reference 2022.
- 5) No removal of scrub, hedgerow or vegetation associated with the development hereby permitted shall take place between 1 March and 31 August inclusive in any year unless a competent ecologist has undertaken a careful, detailed check of vegetation for active birds' nests immediately before any scrub, hedgerow or vegetation clearance is undertaken and provided written confirmation to the local planning authority that no birds will be harmed or that there are appropriate measures in place to protect nesting birds. No removal of scrub, hedgerow or vegetation associated with the development hereby permitted shall take place unless the local planning authority has been provided with either of the following beforehand (a) a copy of the licence issued by Natural England pursuant to Regulation 55 of the Conservation of Habitats and Species Regulations 2017 as amended related to dormice, or (b) a statement from a licensed ecologist setting out that no such licence is required.

- 6) No development hereby permitted, including demolition, groundworks or vegetation clearance, shall take place until a Biodiversity Construction and Environment Management Plan ('BCEMP') has been submitted to, and approved in writing by, the local planning authority. The BCEMP shall accord with the approach set out in the associated Ecological Appraisal (prepared by FPCR Environment and Design Ltd., dated 25 January 2022) or relevant subsequent studies of the site, and shall include:
- a. A risk assessment of potentially damaging construction activities,
 - b. The identification of 'biodiversity protection zones',
 - c. Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (which may be provided as a set of method statements) to biodiversity on site, including habitats (trees, hedgerows and watercourses, including pollution prevention measures) and protected species (amphibians, badgers, bats, birds, dormice and reptiles), followed by appropriate mitigation as required,
 - d. The location and timing of sensitive works to avoid harm to biodiversity features,
 - e. The times during construction when specialist ecologists need to be present on site to oversee works,
 - f. Responsible persons, lines of communication and written notifications of operations to the local planning authority,
 - g. The role and responsibilities of an ecological clerk of works or similar competent person, and
 - h. Use of protective fences, exclusion barriers and warning signs.

The approved BCEMP shall be adhered to throughout the construction period.

- 7) No development hereby permitted, including demolition, groundworks or vegetation clearance, 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 accord with the approach set out in the associated Ecological Appraisal (prepared by FPCR Environment and Design Ltd., dated 25 January 2022) or relevant subsequent studies of the site, and shall include:
- a. A description and evaluation of features to be managed,
 - b. Ecological trends and constraints that may influence management,
 - c. Aims and objectives of management,
 - d. Appropriate management options for achieving aims and objectives,
 - e. Prescriptions for management actions,
 - f. Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period),
 - g. Details of the body or organisation responsible for implementation of the LEMP,
 - h. Ongoing monitoring arrangements along with remedial and contingency measures in the eventuality that the aims and objectives of the LEMP are not met (to be effected in that eventuality to ensure that the development hereby permitted delivers the fully functioning biodiversity objectives of the approved LEMP).

The approved LEMP shall be implemented, adhered to, and maintained in accordance with the approved details.

- 8) No development hereby permitted shall be occupied or brought into use until a strategy for lighting design related to bats has been implemented in line with details previously submitted to, and approved in writing by, the local planning authority. That strategy shall include details of:
- a. Areas/ features on site that are particularly sensitive for lesser horseshoe bats and that, if subject to excessive illumination, are likely to cause disturbance thereto (including in respect of resting places and commuting/ foraging routes),
 - b. All external light installation along with lighting contour plans illustrating Lux levels in accordance with the Bat Conservation Trust's Guidance Note 08/18: Bats and artificial lighting in the UK (or successor document). Where practicable illumination resulting from the development hereby permitted in respect of criterion a. of this condition should not exceed 0.5 Lux to avoid disturbance,
 - c. Any shielding, baffling or other measures to limit light spill.

Once implemented, the strategy shall thereafter be maintained as approved, and no other or additional external lighting shall be installed.

- 9) No development hereby permitted shall take place until a Biodiversity Enhancement Plan ('BEP') has been submitted to, and approved in writing by, the local planning authority. The BEP shall align with the recommendations in the Ecological Appraisal prepared by FPCR dated 25 January 2022, and shall include details of biodiversity enhancement measures and timing of implementation. The BEP thus approved shall be implemented in accordance with approved details of timing, and maintained thereafter.
- 10) No development hereby permitted shall take place until a planting scheme on the land edged blue on approved plan 8786-L-13 rev E 'Location Plan', in general accordance with supporting illustrative plan 8786-L-15 rev S has been submitted to, and approved in writing by, the local planning authority. The approved planting scheme shall be carried out in the first planting season following the commencement of development, and thereafter retained. For a period of five years from the carrying out of the approved planting scheme, the planting shall be protected and maintained, and any planting that should cease to grow during that period shall be replaced by planting of a similar size and species.
- 11) No development hereby permitted shall take place until a sustainable surface water drainage scheme ('SSWDS') has been submitted to, and approved in writing by, the local planning authority. The SSWDS shall be in general accordance with the principles of the associated Flood Risk Assessment (prepared by M.E.C. Consulting Development Engineers, Ref. 26523-01-FRA-01 REV I, dated March 2022), and shall be prepared with reference to the four pillars of Sustainable Drainage Systems ('SuDS'), namely water quantity, quality, biodiversity and amenity), paragraph 169 of the National Planning Policy Framework (published 20 July 2021, or any successor document) and to the Flood and Water Management Act 2010 as amended. The SSWDS shall include details of measures to prevent, control, and attenuate surface water runoff. The development hereby permitted shall accord, and be implemented

in line, with the approved SSWDS. Following its implementation the approved SSWDS shall thereafter be maintained.

- 12) No development hereby permitted shall be occupied or brought into use until measures for the future responsibility and maintenance of the SSWDS approved pursuant to condition 11 have been submitted to, and approved in writing by, the local planning authority. Those measures shall include details of gullies, connections, soakaways and other means of attenuation. The SSWDS shall be maintained in line with the approved measures.
- 13) Vehicular access, consistent with plan No. SK_T_003, Rev: P1, shall be implemented before any development hereby permitted is occupied or brought into use. Once implemented site access shall be maintained in a suitable condition, and for its intended purpose only, thereafter.
- 14) At the vehicular access implemented pursuant to condition 13, there shall be no obstruction to visibility greater than 300 millimetres above adjoining road level in advance of lines drawn 2.4 metres back from the running edge of the carriageway at Dene Road and extending to points on the nearside carriageway edge 43metres in either direction. Such visibility shall be ensured before any other development hereby permitted is undertaken, and shall thereafter been maintained.
- 15) No development hereby permitted shall be occupied or brought into use until pedestrian and cycle access to Manning Road has been implemented and made available for use in line with details previously submitted to, and approved in writing by, the local planning authority. Once implemented and made available for use access between the site and Manning Road shall be maintained in a suitable condition, and for its intended purpose only, thereafter.
- 16) No development hereby permitted shall take place until a Construction management Plan ('CMP') has been submitted to and approved in writing by the local planning authority, which shall include details of the following:
 - a. Anticipated construction vehicular movements and types,
 - b. Construction operation hours,
 - c. Construction vehicular routes to and from the site,
 - d. Construction delivery hours,
 - e. Expected number of construction vehicles per day,
 - f. Car parking for contractors,
 - g. Specific measures to be taken to mitigate construction impacts in line with an environmental code of construction practice,
 - h. A scheme to encourage the use of public transport amongst contractors,
 - i. Measures to avoid traffic congestion impacting upon the Strategic Road Network,
 - j. Details of measures to avoid vehicles exiting the site emitting dust, mud, or other debris onto the highway including wheel washing facilities.

The approved CMP shall be adhered to throughout construction.

- 17) No development hereby permitted shall take place until a condition survey of the existing public highway has been carried out and submitted to the local planning authority. Any damage to the public highway occurring as a result of

the development hereby permitted shall be remedied once construction has been completed.

- 18) Before any development hereby permitted is occupied or brought into use, covered cycle storage, and also electric vehicle charging points, will have been installed and made available for use in line with details previously submitted to, and approved in writing by, the local planning authority. Once installed and made available for use, covered cycle storage and electric vehicle charging points shall thereafter be retained as approved.
- 19) Before any development hereby permitted is occupied or brought into use, a Travel Plan shall have been submitted to, and approved in writing by, the local planning authority. No part of the development hereby permitted shall be occupied or brought into use before the implementation of those elements of the approved Travel Plan capable of being implemented beforehand. Subsequent elements of the approved Travel Plan shall be implemented in line with an approved timetable. The approved Travel Plan shall be maintained thereafter.

Richborough Estate

SCHEDULE 2, APPEARANCES**FOR THE APPELLANT:**

Christopher Young KC, with Odette Chalaby as junior, instructed by Hallam Land Management	No5 Barristers' Chambers
Matthew Grist BSc(Hons) BSc, Dip UD, MCIHT, MCILT	Director, Head of Transport Planning, Jubb
Gary Holliday BA(Hons) MPhil, FLI	Director, FPCR Environment and Design
Andrew Williams BA (Hons) DipLA DipUD CMLI	Director, Define
Kurt Goodman BSc (Hons), MSc, MCIEEM	Director of Ecology, FPCR Environment and Design
Ben Pycroft BA(Hons) DipTP MRTPI	Director, Emery Planning
Jamie Roberts MPlan MRTPI	Principal Planner, Tetlow King
Adam Ross BA(Hons) DipTP MRTPI	Executive Director, Nexus Planning
Andrew Somerville BA(Hons) DipTP MRTPI	Associate Director, Nexus Planning
Lawrence Dungworth MRICS	Associate Director, Hallam Land Management Limited

FOR THE LOCAL PLANNING AUTHORITY:

Sarah Clover of Counsel, instructed by Martin Evans, solicitor at Shape Partnership Services	Kings' Chambers
Kate Murdock, MA Town Planning, MRTPI	Service Manager, Planning Policy and Implementation, Somerset West and Taunton Council
Ann Rhodes, BA Hons, PG Dip Arch Con	Senior Planning Policy Officer, Somerset West and Taunton Council
Anne Priscott, BaHons CMLI	Anne Priscott Associates Ltd.

Fiona Webb, BSc(Hons) MA L.Con (AA), Dip UD, Dip.B Con (AA), MRTPI, IHBC	Placemaking Team Manager, Somerset West and Taunton Council
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INTERESTED PARTIES:

John Hassall	Councillor, Cotford St. Luke & Oake
Mr Berry	Local resident
Mrs Perry	Local resident

SCHEDULE 3, INQUIRY DOCUMENTS

ID1	Nutrient Neutrality/ Phosphates – Update Note as at 2 December 2022
ID2	Inclusive Mobility: a Guide to Best Practice on Access to Pedestrian and Transport Infrastructure (DfT, December 2021)
ID3	Appellant’s Opening Statement
ID4	Council’s Opening Statement
ID5	Crystal Property (London) Ltd v Secretary of State for Communities and Local Government & Anor [2016] EWCA Civ 1265 (09 December 2016)
ID6	Scott schedule on disputed housing sites
ID7	DLUHC Press Release of 5 December 2022 (related to the Written Ministerial Statement of 6 December 2022, Official Record HCWS415)
ID8	Statement of Common Ground between the main parties on Housing Land Supply (signed and dated 14 December 2022)
ID9	Table of residential developments identified in Matthew Grist’s proof
ID11	Management Agreement pursuant to Section 39 of the Wildlife and Countryside Act 1981 as amended
ID12	Parameter Plan annotated with topographic information
ID13	Agricultural land classification maps related to ID11 and the offset associated with the development proposed (drawn from DEFRA mapping)
ID14	Three maps related to land ownership (from Somerset rights of way mapping, Location Plan 878-L-13 Rev E, and a ‘MapSearch Snapshot’ drawn from HM Land Registry)

ID15	Schedule of draft conditions (9 December 2022)
ID16	Draft Agreement under Section 106 of the Town and Country Planning Act 1990 as amended (14 December 2022)
ID17	Community Infrastructure Levy (CIL) Compliance Statement
ID18	Statement of Common Ground between the main parties on the Status of Ramsar Sites, following earlier SWTC advice
ID19	Note on the position of public footpath T4/23 (prepared by Shoosmiths on behalf of the appellant, reference DVG/M-00773747)
ID20	Appellant's NEAP Note
ID21	Council suggested Design Code Condition (additional to ID15)
ID22	Somerset West & Taunton Quality Review Panel, Terms of reference 2022
ID23	Plan entitled 'Suggested Itinerary Inspector Site Visit'
ID24	Council's NEAP Calculation (responding to ID20)
ID25	Council's Closing Statement
ID26	Judgement in Suffolk Coastal District Council v Hopkins Homes Ltd. & Anor [2017] UKSC 37
ID27	R v Newbury District Council ex parte Chieveley Parish Council [1997] JPL 1137
ID26	Appellant's Closing Statement.