



Appeal Decision

Inquiry held on 8 November 2023 and 10-12 and 16-18 January 2024

Site visit made on 10 January 2024

by **M Hayden BSc (Hons), Dip TP, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 3rd July 2024

Appeal Ref: APP/Q3305/W/23/3314693

Former Greencore Factory, Prestleigh Road, Evercreech, BA4 6JZ

- 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 West Estates Development Limited against the decision of Mendip District Council.
- The application Ref 2021/2820/OTS, dated 10 December 2021, was refused by notice dated 20 July 2022.
- The development proposed is described as '*Application for Outline Planning Permission (with all matters reserved except access, appearance, layout and scale) for the demolition of all existing buildings and equipment other than Kemps Mill which will be retained as flexible Class E/F2 floorspace and erection of 118 no. residential dwellings and a shop (falling in use class E), together with open space, vehicular and pedestrian accesses, landscaping and related infrastructure and engineering works*'.

Decision

1. The appeal is dismissed.

Application for costs

2. At the Inquiry an application for costs was made by West Estates Development Limited against Somerset Council, which is the subject of a separate Decision.

Procedural Matters

3. On 1 April 2023 Mendip District Council became part of the unitary authority of Somerset Council. Consequently, although the planning application the subject of this appeal was determined by Mendip District Council, the case of the Local Planning Authority (LPA) in the appeal was assumed by Somerset Council, as the new LPA for the former Mendip District area. Therefore, all references to the Council and LPA in this appeal decision are to Somerset Council.
4. The date of the application in the banner heading above is taken from the application form. Although the appeal form records a later date, 15 December 2021, for procedural accuracy the date on which the declaration in the application form is signed should be used as the date of the application.
5. The planning application was made in outline, but details of access, appearance, layout and scale were submitted with the application and are before me for determination. Only details of landscaping were reserved for later determination. I have dealt with the appeal on this basis. A Landscape Masterplan¹ was submitted with the appeal, for illustrative purposes, which I have taken into account insofar as it indicates the broad extent of landscaping.

¹ Drawing No. NT16133-001

6. The appellant submitted an amended site layout and updated supporting information with the appeal. The changes to the proposed layout included a reduction in the number of residential units from 120 to 118, amendments to the surface water drainage scheme, and adjustments to the position of the retail and apartment building on Prestleigh Road, as well as to the provision of open space and parking on the appeal site. Revised technical evidence on highways, drainage and flood risk, and ecology and nutrient neutrality was also submitted. The changes to the appeal scheme sought to address a number of the reasons for refusal in the decision notice.
7. I discussed this matter at the case management conferences, which were held on 23 March and 24 August 2023 to consider the procedures and timetables for the appeal and Inquiry. Taking into account the views of the main parties, the relevant procedural guidance² and relevant case law³, I determined that the changes did not result in a substantially different development proposal, but to ensure procedural fairness, the amended plans and updated technical reports should be subject to consultation with all interested parties. Consultation was undertaken by the appellant in September 2023, in accordance with a methodology agreed with the Council. The outcome was summarised in a statement of common ground (SoCG) between the Council and appellant⁴, which was prepared alongside and submitted with proofs of evidence.
8. Consequently, I have determined the appeal on the basis of the amended plans, taking into account representations on them in reaching my decision. I am satisfied that the procedures followed have ensured interested parties have not been prejudiced by this. I have amended the description of development in the banner heading above to accord with the amended plans, in respect of the number of dwellings proposed.
9. The Council failed to notify a number of statutory consultees, who made representations on the application and the appeal, of the date, time and place of the Inquiry, as prescribed by Rule 10 of the Inquiries Procedure Rules⁵. Due to the potential for prejudice to the interests of the Royal United Hospitals National Health Service (NHS) Foundation Trust and their ability to participate in the Inquiry proceedings, I adjourned the Inquiry on 8 November 2023, to enable the Council to undertake the correct notification procedure. This was undertaken on 10 November 2023 and the Inquiry was able to resume on 10 January 2024. As such, I am satisfied that all interested parties were given the requisite notice of the resumption date, in accordance with the Rules, and had the opportunity to attend and participate in the Inquiry proceedings as a result.
10. A legal agreement under Section 106 of the 1990 Act was submitted by the appellant, containing planning obligations intended to secure the provision of financial contributions towards education, healthcare and open space facilities off-site, as well as affordable housing, public open space and a local area for play (LAP) on site, a travel plan and sustainable transport measures. The agreement was discussed at the Inquiry and amended to clarify certain clauses. The signed, sealed and executed Deed was submitted after the close of the Inquiry, and I have had regard to it in determining the appeal, as set out in my decision below.

² Procedural Guide: Planning Appeals – England (Section 16 and formerly Annex M)

³ In *Bernard Wheatcroft Ltd v SSE* [JPL 1982] and *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin)

⁴ Section 6 of the SoCG on Planning Matters & Design [CD7.20]

⁵ The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000

11. A revised National Planning Policy Framework (the Framework) was published in December 2023⁶, the policies of which are material considerations in determining this appeal. The Council and the appellant were invited to submit comments on the implications of the revised Framework for the appeal, as well as on the results of the 2022 Housing Delivery Test (HDT), which were published on the same date. This was done in the form of a SoCG between the Council and the appellant, which I have taken into account in reaching my decision.
12. All references to the Framework in this decision are to paragraph or footnote numbers in the December 2023 version. It is common ground that, under the transitional provisions set out in footnote 79 of the Framework, paragraph 76 of the Framework is not a material consideration in this appeal, and therefore that the Council is required to demonstrate a 5-year supply of deliverable housing sites in this case⁷.

Main Issues

13. The decision notice cites eight reasons for refusal. However, during the course of the appeal and the Inquiry, a number of these were resolved. As a result of the amendments to the layout and the revised technical evidence referred to above, the Council's closing submissions confirm that the fourth, fifth, sixth and seventh reasons for refusal relating to overlooking, drainage and flood risk, nutrient neutrality and ecology, and highway safety, are resolved, subject to the use of appropriate conditions⁸. The Council also stated that the submitted S106 agreement is expected to resolve the eighth reason for refusal, relating to the absence of a legal mechanism to mitigate the effects of the proposed development on local infrastructure⁸. Consequently, these no longer constitute main issues in this appeal. However, insofar as they remain of concern to local residents and other interested parties, I deal with them as Other Matters below.
14. The first three reasons for refusal contain the main issues in dispute in this case, which concern the consistency of the proposed development with the development plan policies for employment and housing, its design quality and its effects on heritage assets. However, it is common ground that the Council is unable to demonstrate a 5-year supply of deliverable housing sites⁹. In such circumstances, footnote 8 of the Framework establishes that the policies of the development plan which are most important for determining the appeal are out-of-date, and, therefore, that the 'tilted balance' in paragraph 11(d) of the Framework is engaged in this case.
15. Accordingly, the main issues in this appeal are whether the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed, or 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, having particular regard to:
 - whether the proposal is consistent with the policies of the adopted Mendip District Local Plan, in terms of the site's designation as an Existing Employment Area, the reuse and redevelopment of employment sites, the amount of housing and mix of uses proposed, and the housing and economic needs of Evercreech and the surrounding rural area;

⁶ Published on 19 December 2023, and republished on 20 December 2023 to remove erroneous text

⁷ Paragraph 2.4 of the Further Planning SoCG, dated 4 January 2024 [CD9.11]

⁸ Paragraph 2 of the Closing Submissions on Behalf of the Council [CD9.36]

⁹ Paragraph 2.5 of CD9.11

- whether the appeal proposal would be well-designed, with particular regard to its layout, appearance and scale in relation to the character of the surrounding area, the provision of open space and trees on site, the loss of non-designated heritage assets, and the national and local planning policies for design;
- the effect of the proposed development on the setting and significance of heritage assets on and off site, including the Evercreech Conservation Area, nearby Grade II listed buildings and the non-designated heritage assets of the Creamery Buildings and Kemps Mill; and
- the benefits which the proposed development may bring, including the provision of market and affordable housing, and any other economic, social and environmental contributions.

Reasons

Planning Policy and Employment Land

16. The Development Plan comprises the Mendip Local Plan Part 1: Strategy and Policies 2006-2029 (LPP1), which was adopted in December 2014, and the Mendip Local Plan Part 2: Sites and Policies 2006-2029 (LPP2), adopted in December 2021. The introduction to LPP2 explains that the two parts of the Local Plan are complementary and should be read together¹⁰. The LPP1 sets out the long-term strategic vision for the former Mendip District area, including the spatial strategy in Core Policy 1, and the requirements for housing, employment land and rural areas in Core Policies 2, 3 and 4. The LPP2 allocates sites for development and other purposes in line with the intentions of LPP1¹¹.
17. Evercreech is identified in Core Policy 1 as a Primary Village within the Rural Areas of the District, where development that is tailored to meet local needs is to be provided. The appeal site, which was in use by Greencore for food production until 2018, is designated as an Established Employment Site in Policy DP25 and Table 8 of LPP2. The supporting text explains that there is a need to retain these sites to support the economic development of the District, given the pressure for their redevelopment for other uses¹².
18. However, the Local Plan also recognises the changing nature of the local economy in Mendip, with the loss of manufacturing resulting in surplus land and derelict sites. It acknowledges the positive effects that the redevelopment of such sites for higher value uses, including housing, can bring, but seeks to balance this with the need to retain local employment sites that support the sustainability of settlements¹³.
19. To this end, Policy DP20 in LPP1 supports the redevelopment or re-use of sites previously in use or allocated for Class B1-B8 uses, provided that: (a) proposals for non-B Class employment uses or mixed-use schemes will deliver comparable employment generation (based on the number of jobs) or wider economic benefit; and b) the proposal would not prejudice the Council's wider employment land strategy set out in Core Policy 3. The supporting text to Policy DP25 makes clear that proposals for the redevelopment of Established Employment Sites will be assessed against the criteria in Policy DP20. It also references the Council's

¹⁰ Paragraph 1.3 of the LPP2 [CD4.2]

¹¹ Paragraph 1.4 of the LPP2

¹² Paragraph 7.3 of the LPP2

¹³ Paragraphs 6.170 to 6.173 of the LPP1 [CD4.1]

Marketing and Business Evidence Supplementary Planning Document (SPD)¹⁴, which details the evidence needed to demonstrate that sites proposed for redevelopment from employment to non-employment uses have been adequately marketed for other viable employment uses first.

20. Paragraph 11.13.3 of LPP2 sets out specific guidance for the appeal site. It explains that alternative, non-employment uses will only be considered acceptable once its re-use for employment has been fully explored. It also advises that alternative uses for the site should focus on mixed-use schemes, including provision for employment uses and community facilities. Whilst this is supporting text and not part of a policy, it is nevertheless consistent with Policies DP20 and DP25 of the Local Plan as they apply to the appeal site, and forms part of the adopted Development Plan. Therefore, it is a material consideration in this appeal.
21. The appeal proposal comprises a mixed-use scheme with an element of employment and community uses. In addition to 118 dwellings, the scheme includes 368 square metres (sqm) of Class E/F2 floorspace at Kemps Mill, for offices, retail, a café, leisure or community uses and 372 sqm of Class E retail space to the Prestleigh Road frontage. Although a residential-led mixed-use scheme, it would nevertheless provide for a range of uses that would be compatible with those specified in paragraph 11.13.3 of LPP2.
22. Whilst the proposal has not been brought forward through a development brief, as expected by paragraph 11.13.3, it is evident the appellant engaged with Evercreech Parish Council and the LPA prior to the submission of the planning application and that the proposed scheme includes elements sought by the Parish Council¹⁵. The absence of a development brief is not therefore a determinative issue in this appeal. Rather, in order to determine the consistency of the proposal with the policy framework for the appeal site, it needs to be considered against the tests contained in Policies DP20 and DP25 for alternative uses on an Established Employment Site.
23. Dealing firstly with Policy DP20, criterion a) requires the scheme to deliver 'comparable employment generation' to the existing/previous use or 'wider economic benefit'. The former Greencore factory employed around 400 people at one time¹⁶ and it is clear that, even if all of the non-residential floorspace in the appeal scheme was in employment generating use, it could not support anything close to this number of jobs. Therefore, the appeal proposal would not deliver a comparable level of employment generation to the previous use.
24. Whether the proposed development would deliver a 'wider economic benefit' is a matter of judgement, as confirmed by the Council's employment land witness at the Inquiry¹⁷. The phrase is not quantified or explained in the Local Plan, although the Council has suggested that it requires something 'more than just employment generation and the economic benefit derived from it'¹⁸.
25. The appellant quantified the economic benefits of the appeal scheme¹⁹. They include: approximately 310 full time equivalent (FTE) jobs per year and £26.2 million of gross value added (GVA) per year during the construction phase of the proposed development; an estimated 23 FTE jobs within the proposed

¹⁴ Core Document 4.3

¹⁵ Paragraphs 6.1-6.5 of Neil Westwick's Rebuttal Proof of Evidence [CD7.49]

¹⁶ Paragraph 6.25 of the Planning Statement, dated February 2022 [CD1.1]

¹⁷ Andre Sestini in response to cross-examination on 11 January 2024

¹⁸ Paragraph 20 of the Council's Closing Submissions [CD9.36]

¹⁹ At Appendix 4 to Neil Westwick's Proof of Evidence [CD7.30]

Class E floorspace; and around 40 FTE jobs within the local economy supported by approximately £4 million per year of gross expenditure from future residents of the site. In addition, the clean-up and redevelopment of a large and prominent, derelict site, which is currently an eyesore in the centre of the village, would be of benefit to the village economically, as well as environmentally. In my judgement the combination of jobs and investment that the appeal scheme would deliver, amounts to a wider economic benefit to Evercreech and the local area, which would satisfy the terms of criterion a) of Policy DP20.

26. Criterion b) of Policy DP20 also requires that the proposal would not prejudice the Council's wider employment land strategy set out in Core Policy 3. However, the focus of the employment land requirements in Core Policy 3 is on the five principal settlements in the District. It does not define an employment land target for the Rural Areas, but defers to the approach set out in Core Policy 4. In turn, Core Policy 4 supports economic development that will deliver modest clusters of flexible premises able to meet the needs of the rural economy in the Primary Villages, or enable the establishment and growth of business in a manner and at a scale appropriate to the rural location and constraints upon it.
27. The proposed development includes the conversion of Kemps Mill into flexible Class E/F2 floorspace capable of accommodating small businesses and people in self-employment, which the supporting text to Policy DP20 says are being created in Mendip to replace lost manufacturing. Whilst this would not be at the scale of the former employment operation on the appeal site, it would nevertheless be consistent with the approach to employment and business development set out in Core Policies 3 and 4 of LPP1.
28. In terms of the supply of employment land in the District, it is common ground that there is at least 49.98 hectares (ha) of employment land available in the District including the appeal site²⁰. At take-up rates of 3.06-3.15 ha per year²¹, this amounts to around 16 years' worth of supply. Further employment land supply is contained in the Future Employment Growth Areas identified in Policy DP25 of LPP2, and at the Bath and West Showground outside of the Enterprise Area, but within the Development Framework zones. Policy DP25 and the supporting text at paragraphs 7.5 and 7.6 of LPP2 make it clear that, whilst these are not allocated sites, they all have the potential for employment or employment-related development over the Plan period. Together these would increase the employment land provision to 80.25 ha or 25 years of supply. The loss of the appeal site from employment uses would reduce the supply by less than 1 year. Therefore, at a minimum, 15 years' worth of supply would remain, which would still extend well beyond the end of the Local Plan period.
29. With regard to the range and quality of employment sites available, the evidence at Appendix 1A of the Employment Land SoCG shows a wide variety of other sites across the District. This includes eleven employment sites ranging from 0.15 ha to 5.11 ha in size within the Bath and West Enterprise Area and at Evercreech Junction to the north and south of Evercreech, which have an equivalent or better level of access to the major or strategic road network compared with the appeal site, and are accessible from the village centre by bus. These sites and the businesses operating at the Leighton Lane Industrial Estate on the western edge of Evercreech, should ensure that existing and future residents of the village have access by sustainable modes of transport to

²⁰ Paragraph 3.1.4 of the Employment Land SoCG [CD7.22]

²¹ Paragraph 4.1.6 of CD7.22

- a wide range of local job opportunities. Overall, therefore, the evidence does not suggest that the proposed development would cause any significant harm to the quantity and quality of the employment land supply in the District or in the vicinity of Evercreech.
30. It follows that the appeal proposal would not prejudice the wider employment land strategy in the Local Plan, as defined in Core Policy 3, and would, therefore, comply with criterion b) of Policy DP20. Ultimately, this point was agreed by the Council during the course of the Inquiry²².
 31. Turning to Policy DP25, the Marketing and Business Evidence SPD explains in more detail the circumstances in which evidence of marketing and viability is required to support proposals for the reuse of employment sites. In paragraph 3.2 of the SPD, it is clear that the need to demonstrate that current and future employment uses on the site are not viable, only applies where the tests in Policy DP20 are not satisfied. Given I have found that the proposed development would comply with Policy DP20, whether or not the appeal site was adequately marketed for viable alternative employment uses is not a determinative matter in this appeal. However, for the sake of completeness, I have considered this below.
 32. The SPD requires evidence to demonstrate that the property has been fully exposed to the market at an appropriate valuation and that a range of similar uses have been considered. The expected marketing activity and evidence is defined in section 4 of the SPD. The marketing undertaken by the appellant is set out in the Planning Statement submitted with the application in December 2021²³ and in the appellant's evidence on Employment Land²⁴. This shows that the site was marketed by a suitably experienced and qualified firm of chartered surveyors, and as an industrial/production facility at a reasonable asking price. It was marketed by means of advertisements placed in national property and food sector publications and websites, direct mailing of brochures to food industry operators and local businesses, and a sign board placed on the Prestleigh Road frontage of the site. As such, I find that the marketing requirements of Policy DP25 and the SPD were met.
 33. The large number of enquiries received in response to the marketing activity suggests that it was effective and sufficient to establish whether the site could be viably re-used as an employment facility. The absence of offers received from businesses wishing to re-occupy or redevelop the site for employment purposes, together with the Viability Assessment submitted with the appeal²⁵ indicate that the re-use and/or redevelopment of the whole of the appeal site for an employment use would not be viable.
 34. With regard to consistency with the spatial strategy for housing in the Local Plan, Core Policy 2 of LPP1 sets out a proportionate approach to housing growth in the District, with the majority (80%) of housing development in the Towns and the remainder (20%) in the Villages. The village requirement for Evercreech as part of this is 70 dwellings, which has already been exceeded, with 163 dwellings built in the village since the beginning of the Plan period. The proposed development of an additional 118 dwellings would further exceed the village requirement for Evercreech. However, the figure of 70 dwellings is a minimum requirement, not a

²² Paragraph 18 of the Council's Closing Submissions

²³ Paragraphs 6.28-6.34 of Planning Statement, February 2022 [CD1.1]

²⁴ Section 11 of Alex Robert's Proof of Evidence [CD7.28a] and Appendices LSH8-10 [CD7.28b]

²⁵ Appendix 5 to Neil Westwick's Proof of Evidence [CD7.30]

formal disaggregation, and there is flexibility in the spatial strategy, with the supporting text of LPP1 acknowledging that a limited degree of overprovision in the Villages can be expected²⁶.

35. Evercreech is a Primary Village, with a range of local facilities, including a primary school and doctors' surgery, and the proposed development would provide space for new shopping and community facilities, and, through the S106 agreement, resources to expand the local education and health facilities. The village already has a reasonable level of employment provision, and I have established above that there are further opportunities for growth in businesses and jobs locally, which are accessible by sustainable modes of transport. Although the appeal proposal would further exceed the village housing requirement, I have been presented with very little evidence to show that this would upset the balance between housing and employment in Evercreech, or cause harm to the spatial strategy for the former Mendip District area.
36. On the above basis, I conclude that the appeal proposal would not conflict with the spatial strategy in the adopted Development Plan, as defined in Core Policies 1 and 2 of the LPP1, nor with the employment land strategy set out in Core Policies 3 and 4 of the LPP1, nor Policies DP20 of LPP1 and DP25 of LPP2 in respect of the reuse and redevelopment of existing employment sites. It would also be consistent with paragraph 88 of the Framework in enabling the sustainable growth of businesses in rural areas, through the conversion of Kemps Mill for Class E uses and the provision of new Class E retail floorspace.

Design

37. National policy establishes that good design is a key aspect of sustainable development. Paragraph 8 of the Framework makes fostering well-designed, beautiful and safe places one of the principal means by which the planning system should pursue its social objective, to support strong, vibrant and healthy communities. Chapter 12 of the Framework explains how the planning system should achieve well-designed and beautiful places, with reference to the National Design Guide (NDG), the National Model Design Code (NMDC) and local design guides to steer decisions on planning applications²⁷. Paragraph 139 of the Framework makes clear that development which is not well designed should be refused, especially where it fails to reflect local design policies, and Government guidance on design contained in the NDG and NMDC²⁸.
38. The Local Plan also seeks to create well designed places that are responsive to their surroundings²⁹. Policy DP1 of LPP1 expects all development proposals to contribute positively to the maintenance and enhancement of local identity and distinctiveness. Policy DP7 of LPP1 in supporting high quality design, requires new development to demonstrate it is of a scale, mass, form and layout appropriate to the local context, as well as to optimise the potential of the site and incorporate sustainable design.
39. Whilst Mendip does not have a District-wide Design Guide, the Council has adopted an SPD on the Design and Amenity of New Development³⁰, which provides guidance on the interpretation of Policy DP7. Sections 4 to 16 of the SPD

²⁶ Paragraph 4.35 of the LPP1 [CD4.1]

²⁷ Paragraphs 133 and 134 of the Framework

²⁸ Footnote 55 of the Framework

²⁹ Strategic Objective 20 of LPP1 [CD4.1, p25]

³⁰ Core document CD4.5

explain in more detail how each of the criteria in Policy DP7 should be applied to development proposals. Notably paragraph 4.3 of the SPD refers to the NDG for guidance on how good design can be achieved.

40. The Design and Access Statement (DAS)³¹ submitted with the appeal, and the evidence provided by the appellant's Design expert witness³², explain the context for the proposed scheme design and how it has evolved. I note the key constraints and opportunities that have shaped the proposed layout and design. These include the need to: integrate the scheme with the existing street frontages on three sides of the site; protect the privacy of surrounding residents; preserve or enhance the significance of the heritage assets within and adjacent to the site; provide a density and dwelling mix for a 100% affordable housing scheme; accommodate sustainable drainage within the site; meet car parking and public open space standards; and respect the wishes of Evercreech Parish Council to retain the existing boundary wall to the adjacent recreation ground to the east.
41. Inevitably these factors have presented competing design tensions, which I recognise the appellant has sought to resolve in the layout and design of the proposed development. However, there remain a number of issues with the design of the proposed scheme that are in dispute between the main parties, and which constitute the Council's second reason for refusal. They are: the quantum and density of development proposed; the layout and design of the development; the effect on and provision of trees and open space; the proposed materials; and the loss of The Creamery buildings. These issues were discussed at the Inquiry via a round table session. I consider each in turn below, with reference to national and local design policy, before reaching my overall conclusions on the design quality of the proposed development.

Quantum and Density

42. National and local policies adopt a flexible approach to densities in the design of new development, rather than imposing rigid housing density limits. The guidance in paragraph 66 of the NDG is clear that appropriate density will result from the context, proposed building types, form and character of the development. Likewise paragraph 4.43 of LPP1 states that the density of new housing development should primarily be established through consideration of the local context, character and site conditions. Although the LPP1 includes broad guideline figures for the net density of new housing development in towns and rural areas, it is clear these are minimum densities to ensure that land is used efficiently, rather than limits. The SPD confirms that higher densities (than the broad guidelines) will be considered, where the local context allows and any impacts can be satisfactorily mitigated³³.
43. In this case, the proposal for 118 dwellings on a site of 2.7 hectares (ha) results in a net density of 47.1 dwellings per hectare (dph)³⁴. Whilst this is significantly higher than the guideline for rural areas in LPP1 of 25-30 dph, in design and policy terms it would not be unacceptable if it were appropriate to the local context. However, the proposed density is also much greater than the net densities in the residential areas surrounding the appeal site, which are between 28.4 dph and 33.8 dph³⁵.

³¹ Core document CD1.2

³² Proof of Evidence of Craig Van Bedaf [CD7.29, including Appendices]

³³ Paragraph 6.2 of the SPD on the Design and Amenity of New Development [CD4.5]

³⁴ Paragraph 3.3 of the Rebuttal Evidence of Neil Westwick [CD7.49]

³⁵ Based on the Net Density Calculations at Appendix 2 of CD7.49

44. The appellant explained in oral evidence at the Inquiry³⁶ that the scheme density is a result of the desire to achieve a 100% affordable housing scheme with a mixture of two and three bedroom dwellings. However, the Section 106 agreement does not guarantee the provision of 100% affordable housing. But even if it did, this implies that the scheme density is a result of the appellant's preferred tenure and size mix, rather than being established through an analysis of the local context and character.
45. The appellant presented an Urban Grain Plan, to illustrate how the development has been informed by the context, with quantum and density secondary to achieving a layout and grain which is congruent with the locality³⁷. However, in my view, the Urban Grain Plan reveals a built form that does not reflect the local context and character of Evercreech. The principal building type used in the appeal scheme is a linear terraced block of 4 or 5 dwellings in length, formally laid out, which would create a very uniform street scene. Whilst this type of building form is seen on Neale's Way and Prestleigh Road to the north of the site, it is not common elsewhere in Evercreech, which is more typically characterised by informal groups of detached, semi-detached and terraced cottages.
46. Paragraph 67 of the NDG states that well-designed places use the right mix of building types, forms and scale of buildings and public spaces for the context and the proposed density. Although the building types and forms of the appeal scheme may be right for the quantum and mix of housing proposed, they are not appropriate for the context. I recognise the NDG allows that well-designed places do not need to copy their surroundings in every way³⁸, but the overarching design principle in which this statement is made is that well-designed places should understand and relate well to the site, and its local and wider context³⁹. Based on the evidence presented and my observations on site, I am not persuaded that the proposed density and the resulting built form would either understand or relate well to the local and wider context of the appeal site. In this regard, the proposal would be contrary to the local and national policies and guidance on design, as set out in the LPP1 and NPG.

Layout

47. The appellant's Design evidence explains that the proposed development has been configured to face outwards and continue the street scene, with a series of edge analysis diagrams illustrating the design intention to 'complete the street'⁴⁰. Principle C1 of the NDG establishes that well-designed development should relate well to its local and wider context, and be integrated into its surroundings, physically, socially and visually⁴¹. Principle I1 of the NDG also expects well-designed development to respond to existing local character and identity. I have assessed the proposed development frontages against these principles.
48. On the Prestleigh Road frontage, the buildings would be set back by some way from the road in order to accommodate drainage swales and an attenuation basin, and to avoid overlooking of the houses on the opposite side of the street. The existing boundary wall would also be retained to reflect the site's former

³⁶ By Craig Van Bedaf in response to questions at the Design Round Table session on 16 January 2024

³⁷ Paragraph 6.19 and Appendix 7 to Proof of Evidence of Craig Van Bedaf [CD7.29]

³⁸ Paragraph 44 of the National Design Guide [CD4.31]

³⁹ Principle C1 of the National Design Guide [CD4.31]

⁴⁰ Paragraphs 6.20-6.21 and Appendices 8-11 of Craig Van Bedaf's Proof of Evidence [CD7.29]

⁴¹ Paragraph 43 of the NDG

factory use. However, the combination of the swales, basin and wall would present a visual and physical barrier to the integration of the dwellings on this frontage with the street, where the existing character on the opposite side of Prestleigh Road is of dwellings set behind lower walls and short front gardens, with direct access to the street.

49. I acknowledge there is a need for adequate separation distances between dwellings to ensure acceptable living conditions for existing and future residents. However, the Council made clear in oral evidence at the Inquiry that the dwellings on the Prestleigh Road frontage would not need to be set back by such a large margin to maintain adequate privacy in this location⁴². With regard to the sustainable drainage system (SuDS), it is apparent from the Drainage Strategy submitted with the appeal, that the inclusion of the proposed attenuation basin and swales is a design preference, rather than the only option. The strategy considers alternative surface water drainage solutions, such as rainwater harvesting, attenuation tanks and bioretention systems, which, although considered to be less cost effective or sustainable, are not ruled out on grounds of practicality⁴³.
50. I have observed above that the character and appearance of Evercreech is not one of uniform street scenes. There is some variation in frontage treatments throughout the village, including instances of dwellings set further back from the street, such as the properties fronting Prestleigh Road to the north west of Neale's Way. However, the residential character along Prestleigh Road changes to the south east of Neale's Way, opposite the appeal site, where dwellings are positioned closer to the road, creating a more close knit and intimate character in the approach to the junction with Queen's Road and Leighton Lane. The large set back proposed and imposing boundary wall would fail to reflect this character, and, as such, relate poorly to its immediate context.
51. With respect to the boundary wall, although an existing feature of the site, its height and continuous form, punctuated only by the main access, suited the former industrial use and the need to screen it from the surrounding village. Whilst there are instances of high boundary walls around individual dwellings elsewhere in Evercreech, these are used to create exclusivity. Predominantly the village features lower walls at the front of properties, enabling dwellings to have a visual connection to the street. The effect of retaining the existing boundary wall in its current form would be to enclose the development rather than integrate it with the surrounding streets. Accordingly, I consider that retention of the wall in its current form would be an inappropriate design response for the appeal scheme.
52. The proposed retail unit on the Prestleigh Road frontage has also been designed and orientated so that its entrance and live edge face inwards to the development, with access from the car park, effectively turning its back on the main road through the village. Although the façade seen from Prestleigh Road would contain shop windows, the concern is that these would be taken up with internal shelving and advertising, and present dead frontage to the street. The swale and boundary wall would also act as a barrier to a more direct connection between the shop and the street. Consequently, the design, orientation and position of the proposed retail unit would fail to integrate with the street and surrounding area, and be contrary to paragraph 69 of the NPG, which defines successful streets as being characterised by buildings facing the street to provide interest, with active frontages at ground level.

⁴² Anna Clark at the Design Round Table session on 16 January 2024

⁴³ Paragraphs 3.2.1 to 3.2.3 of Drainage Strategy, dated 21 December 2022 [CD8.5]

53. On the south-east side of the site fronting Queen's Road, the appeal proposal would retain Kemp's Mill, the car parking spaces adjacent to it and the existing boundary wall, with new dwellings positioned behind them. However, the proposed dwellings would comprise two disconnected terraces of housing: one facing Queen's Road, set back to avoid overlooking of existing properties on the opposite side of the street; and the other turned 90 degrees facing towards Prestleigh Road, but turning its back on the other terrace and with its side gable end wall facing onto Queen's Road.
54. Whilst the retention of Kemp's Mill would be a benefit, the combination of the high boundary wall, the row of parking spaces, the blank gable end and the terrace set back behind the wall, would present a disjointed and illegible street elevation to Queen's Road. It would fail to integrate or connect with the street and is a missed opportunity to form a new street frontage that would respond positively to the character and identity of Queen's Road, with its traditional terraced cottages lining the opposite side of the street and the distinctive courtyard layout of the former Ward's Silk Mill.
55. Along its north-eastern boundary the appeal site adjoins the recreation ground between Queen's Road and Neale's Way. There is an existing stone and breeze block wall topped with a metal palisade fence along this boundary, which appears to have been built up to provide security to the former factory. The appellant stated that Evercreech Parish Council, which owns and manages the recreation ground and wall, has stipulated that the wall should be retained with no connection from the proposed development to the open space. As a response, the proposed layout shows a row of houses along this boundary, facing into the development and with their back gardens to the wall and open space.
56. Unfortunately, the result of the Parish Council's position and the design response is that the development would turn its back on the recreation ground, with no physical or visual connection to it, other than glimpsed views between the proposed dwellings and over the wall. The appellant indicated the potential for pedestrian access to be gained from the parking court in front of plots 46-50, if at a future point the Parish Council were to agree to a link to the recreation ground. However, this is not part of the plans before me, and, in any case, taking a pedestrian route through a car park does not present itself as an attractive or well-designed arrangement that would be accessible for all. Consequently, the appeal scheme would have a poor relationship with the adjoining recreation ground, and would fail to respond positively to the surrounding context beyond the site boundary on this side.
57. On the north-western frontage of the scheme along Neale's Way, the proposed layout would reflect the existing configuration of dwellings on the opposite side of the street, with a building line that follows the alignment of the road. However, the frontage would be dominated by car parking, which I deal with below. One of the proposed apartment blocks in the north east corner of the site would also be orientated with a side elevation facing the street. This would fail to accord with the clear advice in the NDG that successful streets have buildings facing and overlooking the street⁴⁴. Whilst I note these apartments would be difficult to orientate facing north-south, an alternative house type could have been used in this location.

⁴⁴ Paragraph 69 of the National Design Guide

58. Turning to the provision and layout of parking, paragraph 86 of the NDG states that well-designed parking is attractive, well-landscaped and sensitively integrated into the built form, so that it does not dominate the development or the street scene. However, the proposed layout shows a scheme that would be the opposite of this, with car parking spaces mainly positioned to front of dwellings and little opportunity for street trees and landscaping to soften this effect. Although the illustrative views provided by the appellant show very few parked cars, in reality parked cars would visually dominate the frontages to dwellings and the street scenes within the development and along Neale's Way.
59. Whilst frontage parking is a feature of the dwellings on the opposite side of Neale's Way, the predominant character here is of dwellings with front gardens and parking within them. However, large sections of the frontage to the proposed new dwellings in Neale's Way would be given over to car parking, substantially hardening the street scene.
60. The appellant has pointed to what they consider to be onerous parking standards sought by the Council as Highway Authority, and referred me to the previous layout shown on the front of the DAS, which proposed a lower level of car parking. However, even that layout shows a predominance of frontage parking, and in my view is little better than the appeal scheme in this regard. Rather the number of parking spaces required, and the resulting layout, is a consequence of the quantum and density of housing proposed. It has led to a parking arrangement that would be unattractive, poorly landscaped and detract from the quality of the proposed development. As such, it would be contrary to the clear advice in the NDG, and constitutes poor design.
61. The proposed layout also has poor permeability, with a lack of pleasant and convenient pedestrian routes through it connecting to surrounding local facilities. There is no pedestrian route to the entrance to the proposed retail unit from surrounding pavements and footpaths; rather pedestrians would need to walk through the car park to enter the shop. To access Evercreech Primary School on Neale's Way, pedestrians would need to walk through the parking courtyard to the apartments in the north east corner of the site, with no dedicated off-road footpath shown on the layout. The absence of a direct connection from the development to the recreation ground to the east would force pedestrians to use a section of Queen's Road where there is no pavement, or walk through the parking courtyard in the north east corner of the site, in order to access the playground and playing fields. Likewise, there is no footpath shown on the layout to the proposed local area for play (LAP) on the corner of Prestleigh Road and Neale's Way. I acknowledge that the access arrangements do not constitute a highway safety issue, but their configuration indicates a failure to positively design all modes of transport into the built form, which the NDG regards as a feature of well-designed places⁴⁵.
62. Overall, I consider the layout of the appeal scheme to be poorly designed, when assessed against the design principles in the NDG. Its frontages would not integrate effectively with the surrounding context or respond positively to the established character and identity of the surrounding settlement. The provision of so much frontage car parking would dominate the street scenes within and on the edges of the development, rather than being sensitively integrated into the built form. The lack of pleasant and convenient pedestrian routes through the

⁴⁵ Paragraph 79 of the NDG

development would also result in a poor level of permeability. As such, the proposal would also conflict with paragraph 135 of the Framework, which expects developments to add to the quality of the area, be visually attractive as a result of good layout, and be sympathetic to local character.

Trees

63. There are a few trees remaining on site, mainly located along the Prestleigh Road frontage, which the Arboricultural Impact Assessment⁴⁶ shows would be removed. The loss of trees could be compensated for by replacement planting. Landscaping is a reserved matter, but given the importance that national policy places on the contribution of trees to the character and quality of urban environments⁴⁷, it is necessary to consider the potential for landscaping and tree planting within the proposed development, based on the scheme layout.
64. The illustrative Landscape Masterplan submitted with the appeal, shows some tree planting along the Prestleigh Road frontage and around the proposed attenuation basin, with a few trees on small areas of green verge dotted around the internal streets. Overall, this shows very limited potential for the use of trees to soften the street frontages, mainly because the predominance of hard surface to accommodate the parking scheme results in very little space left over for landscaping.
65. Paragraph 136 of the Framework expects planning decisions to ensure that new streets are tree-lined, unless there are clear, justifiable and compelling reasons why this would be inappropriate. The appellant contends that street trees are not a strong characteristic within the settlement, and that the type of scheme proposed, for 100% affordable housing, has meant compromising on the provision of street trees, other than on Prestleigh Road.
66. However, national policy does not seek to distinguish between housing tenures in its expectation for tree-lined streets and high quality urban environments. Nor do I consider the delivery of an affordable housing scheme is a justifiable reason for accepting a lower level of landscaping. Although trees are not extensive throughout the village, their effect in helping to soften the streets and urban environment is evident.
67. It is clear that the excess density of the proposed development and the resultant need for parking space, has left little room for landscaping and street trees. Even if I were to impose a condition requiring a scheme of landscaping with tree-lined streets, due to the proposed layout this would not be capable of implementation. The limited opportunity for street trees and landscaping within the proposed layout would result in a poor quality urban environment, and would be contrary to national policy.

Open Space

68. It is common ground that the public open space requirement for the appeal scheme would be 0.6 ha, based on the Fields in Trust (FIT) (formerly the NPFA) standard referred to in the supporting text to Policy DP16 of LPP1. The appeal scheme would provide between 0.296 ha and 0.39 ha of open space on site, with the remainder to be met by way of a financial contribution to off-site provision, secured through the submitted S106 agreement. Whilst the main parties differ over the amount of the contribution, I am satisfied that the S106 agreement provides the mechanism to secure the higher of the two figures if necessary.

⁴⁶ Core document CD7.40

⁴⁷ In paragraph 136 of the Framework

69. However, in terms of the on-site open space, the NPG expects well-designed places to provide a network of high quality and useable, green and open spaces⁴⁸. The proposed on-site open space is concentrated on the south-western side of the site, adjacent to Prestleigh Road, designed primarily around the SuDS swales and attenuation basin, with the LAP on the corner of Neale's Way. The appellant's rebuttal evidence includes the attenuation basin as part of the open space calculation, albeit the extent to which it would be accessible for use as public open space is disputed.
70. The usability of the attenuation basin was discussed at the round table session and I was referred to the technical drainage evidence. However, the evidence on this point is somewhat contradictory. The Drainage Strategy states the basin will remain dry, only becoming active during storm flows⁴⁹, but also says its purpose is to provide storage for all surface water flows prior to discharge to the sewer⁵⁰, suggesting that it would be active at all times during rainfall, not just in storm events. The Technical Design Note on Drainage and Flood Risk⁵¹ then states that, based on rainfall statistics, the SuDS areas may be used as public open space for around 70% of the time. Although the FIT guidance and national policy encourages the multifunctional use of SuDS as part of open spaces, in this case the attenuation basin would only function as accessible open space for use by residents for part of the year, depending on rainfall. I acknowledge, however, that it could offer visual amenity and biodiversity value, in addition to its drainage purposes.
71. The permanently usable areas of open space on site would be the area adjacent to the attenuation basin and the LAP. The remaining areas included in the open space calculation consist of incidental strips of verge next to car parking areas or roads. Although these may provide for landscaping, they are not large enough to be usable as informal open space and would not meet any of the FIT definitions as such. The LAP itself is also located in a corner of the site, where it would be remote from, and not overlooked by, the proposed housing, and be partially hidden from roadside views by the boundary wall. As such, it would be poorly connected to the rest of the site and lack natural surveillance.
72. Overall, I find that the on-site open space proposals would not provide the network of high quality and useable, green and open spaces, expected by the NDG for well-designed places. Rather the spaces provided would be dominated by SuDS features, poorly connected or confined to a series of disconnected strips of land left over in the layout of buildings, roads and parking areas.

Materials

73. The appellant undertook a townscape and character analysis to inform the choice of external materials proposed for the appeal scheme⁵². This illustrates that the buildings and streets surrounding the site to the south, west and east, including Prestleigh Road, Queens Road, High Street and Shapway Road, are mostly built with traditional stone facades and terracotta clay tile or grey slate roofs, with occasional red brick or rendered wall finishes⁵³. To the north of the site along

⁴⁸ Principle N1 and paragraph 92 of the NPG [CD4.31]

⁴⁹ Page 6 of CD8.5

⁵⁰ Table 5 at paragraph 3.2.3 of the Drainage Strategy [CD8.5]

⁵¹ At paragraph 2.1.11 of Appendix 7 to Neil Westwick's Proof of Evidence [CD7.30]

⁵² Appendix 3 to Craig Van Bedaf's Proof of Evidence [CD7.29]

⁵³ Townscapes 05 and 06 of Appendix 3 to CD7.29

Neale's Way, Maesdown Road and the northern end of Prestleigh Road, the character changes, with houses finished in red brick and render. Elsewhere in the village, both within and outside of the Conservation Area, whilst there is some variation in materials, the use of stone predominates, and is a key element of the vernacular architecture, which contributes to the local distinctiveness, character and identity of Evercreech.

74. In contrast, the materials palette for the proposed development consists predominantly of red brick for external wall finishes, with red pantile or grey slate roof coverings. This is illustrated in Appendix 19 to the appellant's Design proof of evidence, which shows red brick to be used on three of the four house types, with only the Windsor house type designed with stone façades. This is despite the fact that the Townscaping Material Summary in the same document reveals a context of stone built properties.
75. I note the appellant's justification for the proposed mix of materials, using stone as an accent material at corners, entrances and terminating key vistas, and to avoid washing the scheme through with stone so as not to detract from the Conservation Area. However, based on the submitted layout⁵⁴, only 11 out of 118 dwellings would be the Windsor stone-built house type, with the remainder in red brick (except for the apartments in the north-east corner, which are shown in a buff brick material), in contrast to the predominant context of stone built properties. Although the 3-D visuals show a few of the Woodcroft and Hogarth units facing Prestleigh Road and Queens Road with stone facing materials, this is not consistent with the site layout and house type plans submitted for approval, which clearly show these house types in red brick.
76. I agree that the proposed use of red brick for dwellings along Neale's Way on the north western frontage of the scheme would be appropriate to the existing context of brick and render on this side of the site. However, the rest of the development either fronts onto, or would be seen from, Prestleigh Road and Queens Road, where stone buildings characterise the street scene. In this context, such a widespread use of red brick materials would be unsympathetic to the character and appearance of the surrounding area and the village as a whole, and fail to reflect its distinctive vernacular and identity. Whilst I commend the use of brick quoining to frame window openings and façades, which is a design feature of area, this would not compensate for the widespread use of brick throughout the proposed development.
77. National policy states that developments should be sympathetic to local character, while not preventing or discouraging appropriate innovation or change⁵⁵. Whilst the NDG allows that well-designed places do not need to copy their surroundings in every way and that change can be appropriate⁵⁶, it also emphasises that well-designed places should contribute to local distinctiveness by adopting typical materials, details and colours of the area⁵⁷. In this case, I consider that the predominant use of red brick materials in a context of mainly stone would not be an appropriate change. It would, therefore, fail to accord with national policy.

⁵⁴ P-10.01 Rev D

⁵⁵ Paragraph 135c) of the National Planning Policy Framework

⁵⁶ Paragraph 44 of the NDG [CD4.31]

⁵⁷ Paragraph 56 of CD4.31

Creamery Buildings

78. The Creamery comprises a series of five linked, single storey, barn-like buildings of rubble stone construction, which occupy the southern corner of the appeal site, and form part of its Prestleigh Road frontage. The appeal scheme proposes to demolish the buildings and replace them with the SuDS attenuation basin, retaining those sections of their stonework which form part of the boundary walling. The buildings are of historic importance, but I consider the effects of their loss on heritage significance below. Here I deal with the townscape effects of the proposals for the Creamery site, as part of the design considerations.
79. The Creamery buildings are a distinctive feature in the townscape of Evercreech. They present a staggered sequence of stone gables along Prestleigh Road, which are prominent in the street scene on the main route through the village. Their traditional stone and clay tile construction reflects the vernacular building style of Evercreech, and their position hard up against the back edge of the pavement helps to form the intimate, tightly grained character of the townscape in this part of the village. Although the buildings have been subject to more modern additions and alterations, and in recent years have fallen into some disrepair, nevertheless, as a group they make an important contribution to the townscape of Evercreech.
80. The visual effect of the loss of these buildings on the Prestleigh Road frontage is illustrated in the Prestleigh Road Boundary Detail submitted with the appellant's Design evidence⁵⁸. Although the lower sections of the stone gables would be retained as details within the boundary wall, this would not mitigate the loss of the distinctive line of gables and their contribution to the townscape, as described above.
81. The appellant's previous schemes sought to replace the Creamery buildings with housing and a commercial hub to provide a strong building line and frontage directly onto the road and retain the sense of enclosure created by the existing buildings⁵⁹. However, this is no longer part of the appeal scheme. The absence of any replacement buildings in this location on the site would fail to restore or respect the urban grain in this part of the village. As such, the loss of the Creamery buildings and their replacement with a SuDS attenuation basin would cause significant harm to the character and appearance of Evercreech.
82. The appellant's justification for not retaining the Creamery as part of the appeal scheme is to do with the condition of the buildings, the cost and viability of restoration, and the practical difficulties of access, servicing, subdivision and privacy due to the configuration and location of the buildings. I have reviewed the evidence related to these constraints, and draw the following conclusions.
83. With regard to the condition of the Creamery buildings, the Conditions Survey⁶⁰ records the level of dilapidation within the buildings and the range of unsympathetic alterations and interventions that have taken place. However, it does not suggest the condition of the buildings is such that they cannot be restored and reused. I saw little to suggest otherwise from the site inspection.
84. In terms of the viability of retaining and converting the Creamery buildings, the appellant's financial appraisal shows that the appeal scheme as proposed lacks

⁵⁸ Appendix 17A to Craig Van Bedaf's Proof of Evidence [CD7.29]

⁵⁹ Pages 24-26 of the Design and Access Statement [CD1.2]

⁶⁰ Appendix 6 to the Heritage Impact Assessment [CD1.16]

viability⁶¹. Nevertheless, it was confirmed at the Inquiry, that the scheme could still return a profit to the developer, albeit less than the 18% profit on cost in the appraisal⁶². On this basis, whilst I have not been provided with an estimate for the cost of converting the Creamery, it would appear there is scope within the scheme appraisal to vary the assumption for developer's profit, based on different development costs and values, but still achieve a viable development.

85. With respect to access, despite the level differences on the Prestleigh Road frontage of the buildings, there is level access at the rear. The earlier proposal to locate the proposed commercial and apartments building on the site of the Creamery illustrates how access could be achieved to commercial and/or residential uses in the Creamery buildings from a rear car park and service area, without compromising the site layout.
86. I recognise that the configuration and interconnected form of the Creamery buildings would make their subdivision and conversion challenging. However, that would not be unlike most barn conversions. The side and rear elevations to each of the buildings offer ample scope for additional window openings away from the Prestleigh Road frontage, particularly once the industrial plant and unsympathetic modern additions have been removed.
87. Overall, the evidence before me does not demonstrate that the preservation, conversion and reuse of the Creamery buildings for commercial or residential uses or a mix of these would be impractical or unviable. Therefore, I am not persuaded that the demolition of the Creamery is necessary.
88. The NDG regards well-designed places as being based on a sound understanding of the features of the site as a starting point for design and responsive to local history and heritage⁶³. Paragraph 135c) of the Framework expects developments to be sympathetic to local character and history. The demolition and replacement of the Creamery buildings with a large SuDS attenuation basin would fail to do this. Accordingly, the proposed development would be contrary to national policy on this point.

Conclusion on Design

89. I recognise that the appellant's architects have designed and evolved the appeal scheme working within a number of constraints. I also acknowledge that, in line with national policy, the proposed development would optimise the potential of the site to accommodate new housing and incorporate sustainable drainage and construction.
90. However, the resulting scheme design would be a dense, formally laid out, suburban-style estate, which would fail to respond positively to the existing character and identity of Evercreech, be poorly integrated into the adjoining street frontages in Prestleigh Road and Queen's Road, turn its back on the adjacent recreation ground, lack permeable connections to local facilities and provide an inadequate level of usable open space on site. Its street scenes would be dominated by car parking and lack trees and landscaping, and its building materials would depart from the local stone vernacular.

⁶¹ Pages 26-27 of Financial Viability Assessment, Appendix 5 to Neil Westwick PoE [CD7.30]

⁶² Neil Westwick in response to questions at the Planning round table session on 17 January 2024

⁶³ Paragraph 40 of the NDG [CD4.31]

91. I have detailed above where, as a result, the appeal scheme would fail to comply with key design principles in the NDG and policies in the Framework. The proposal would also be contrary to the requirements of Policies DP1 and DP7 of LPP1, that development proposals should contribute positively to maintaining and enhancing local identity and distinctiveness, and demonstrate they are of a scale, layout and form appropriate to the local context.
92. Overall, I conclude that the proposed development would be poorly designed and contrary to the local and national policies and guidance on design. Paragraph 139 of the Framework says that development that is not well designed should be refused, especially where it fails to reflect local design policies and Government guidance on design. I consider the weight to be given to this against the appeal scheme in the overall planning balance below.

Heritage

93. The appeal site is located on the edge of, and partly within, the Evercreech Conservation Area, which encompasses the historic core of the village and its buildings of greatest heritage significance. It is common ground⁶⁴ that the proposed development would materially affect the following heritage assets:
- The Creamery, which is a non-designated heritage asset;
 - Batt's House, a Grade II listed building, located next to The Creamery;
 - Kemp's Mill, as a non-designated heritage asset;
 - Evercreech Conservation Area, which is a designated heritage asset.
94. I consider the effects of the appeal proposal on the significance of each of these heritage assets below.

The Creamery

95. The buildings comprising the Creamery, as described above, date from the late 18th Century. Evidence shows that the building closest to Batt's House (range 1) was present in 1774⁶⁵, when Evercreech was a small agricultural hamlet, and that, together with range 2, it was part of Batt's Farm (formerly Batch Farm) until the buildings were converted for use as the Creamery, which was established in 1891⁶⁶. Historical mapping⁶⁷ shows that the other three buildings (ranges 3-5) were added between the late 1800s and 1920, as the Creamery expanded. Therefore, the Creamery buildings are of historic interest in recording the diversification in farming activities in Evercreech, and the origins of the appeal site's development as a food production facility.
96. Linked to their historic value, the Creamery buildings are also of architectural interest, as surviving examples of simple, stone-built, vernacular farm/industrial buildings, dating from the late 18th Century to the early 20th Century. Whilst the buildings have been altered and extended to suit their recent industrial use, externally they remain legible as former agricultural/dairy barns. Their largely intact, original rubble stone, gable-ended design and their visibility on Prestleigh Road, make an important contribution to the character and appearance of Evercreech, justifying their inclusion within the Evercreech Conservation Area.

⁶⁴ Bullet point 1 on 4th page (unnumbered) of the Heritage Statement of Common Ground [CD7.21]

⁶⁵ Estate Map dated 1774 provided by Gillian Lindsay, Evercreech Local History Society [CD9.15]

⁶⁶ Somerset Historic Environment Record [CD4.10]

⁶⁷ Figures 4.11 and 4.12 of Heather Marshall's PoE [CD7.27]

97. Although historically the Creamery buildings formed part of the farm holding of Batt's House, they were sold off into different ownerships in the 1930s. Therefore, whilst Batt's House is Grade II listed, the Creamery does not qualify as being curtilage listed. Nevertheless, it is identified in the Somerset Historic Environment Record (HER)⁶⁸, which notes its historic and architectural interest, describing it as significant because of the rarity of dairy/creamery buildings within the County. As such, it merits consideration as a non-designated heritage asset. Historic England, as the Government's statutory adviser on the historic environment, also attaches heritage importance to the Creamery buildings⁶⁹.
98. Paragraph 209 of the Framework expects the effect of development on the significance of a non-designated heritage asset to be taken into account in determining applications. In weighing such proposals, a balanced judgement is required having regard to the scale of harm and the significance of the asset.
99. In terms of the scale of harm, the appeal scheme proposes the demolition of the Creamery buildings, other than the sections forming part of the boundary wall. It is common ground that this would result in the total loss of the heritage asset, and that the total loss of the Creamery would amount to large scale heritage harm⁷⁰. I agree this would be the case.
100. However, the main parties differ in their assessments of the heritage significance of the Creamery. The appellant considers the Creamery buildings to be of low significance, based partly on the alterations to the original buildings, but also on a classification that ranks non-designated heritage assets as of low importance, and designated heritage assets as of medium to very high importance⁷¹. The Council, on the other hand, ascribes the Creamery buildings a medium level of heritage significance, based on their local importance.
101. In reaching a view on this, it is important to be clear that, whilst national policy establishes non-designated heritage assets as of lower heritage significance than designated assets⁷², it does not prescribe a particular level of significance for non-designated heritage assets. Rather paragraph 209 of the Framework leaves this to be determined as part of the balanced judgement. Therefore, assigning the Creamery buildings a low level of heritage significance, simply because of their non-designated status would not be justified. Indeed, the HIA acknowledges that the Lichfields' classification is a starting point and that there may be instances where the particular characteristics of a heritage asset merit a different category⁷³.
102. In this case, notwithstanding its non-designated status and the detracting alterations, it is clear to me that the Creamery buildings possess at least a medium level of heritage significance, due to their local historic interest in illustrating the origins and development of Evercreech, rarity at a county level, and architectural value. Consequently, I consider that the large scale harm resulting from the loss of the Creamery, as a non-designated heritage asset, should carry at least moderate weight against the appeal scheme in the overall planning balance.

⁶⁸ CD4.10

⁶⁹ Representations from Historic England, dated 4 October 2023 [CD6.43]

⁷⁰ 4th page (unnumbered) of the Heritage SoCG [CD7.21]

⁷¹ Classification of Importance of Heritage Assets, prepared by Lichfields - Table 4.1 of CD7.27

⁷² Except in the circumstances set out in Footnote 72 of the Framework

⁷³ Paragraph 1.7 of the HIA [CD1.16]

Batt's House

103. Batt's House is the former farmhouse to Batch Farm. Its heritage significance as a Grade II listed building derives primarily from its historic and architectural interest as a well-preserved example of an 18th Century stone-built farmhouse, retaining original features. It is located in a prominent position at the centre of Evercreech, where historical mapping shows it was one of the early buildings in the village and, therefore, an evidential part of the history of Evercreech as an agricultural community.
104. Although Batt's House does not form part of the appeal site, the setting to Batt's House includes the appeal site and the Creamery. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in considering this appeal I must have special regard to the desirability of preserving the setting of Batt's House, as a listed building, as well as the building itself.
105. Evidence shows that the earliest of the Creamery buildings (ranges 1, 2 and 3) and the rest of the appeal site were originally part of Batch Farm, when it was a working farm. Although they are now in separate ownerships and uses, the Creamery buildings make an important contribution to the setting of Batt's House, both to how the house is experienced in views along Prestleigh Road and as the last remaining evidential link with its history as a working farm.
106. Consequently, the loss of the Creamery buildings would cause harm to the setting of Batt's House. Their replacement with an attenuation basin would not compensate for their loss, as it would fail to respect the close physical and historic functional relationship between the Creamery buildings and Batt's House.
107. The remaining industrial structures and buildings on the appeal site form part of the setting to Batt's House, but make a negative contribution. Whilst their demolition would, therefore, be a benefit, their replacement with a dense residential estate, which I have concluded above fails to respond positively to the existing character and identity of Evercreech, would also have a negative impact on the setting of Batt's House.
108. On this basis, the proposed development would cause harm to the heritage significance of Batt's House, through change to its setting. Whilst the change would be large scale, because it would affect the setting of Batt's House rather than the building itself, the harm to its significance would be less than substantial.

Kemp's Mill

109. Located within the appeal site, on its south-eastern boundary to Queen's Road, Kemp's Mill is a former silk-weaving loom shop, built in the early 1860s. Although the building is not listed on either national or local lists, it is identified on the Somerset HER as of heritage significance, and therefore merits consideration as a non-designated heritage asset.
110. The significance of Kemp's Mill derives from its historic and architectural value. It provides primary historical evidence of the presence of a silk industry in Evercreech in the 19th Century, also being situated opposite the Grade II listed, former Ward's Silk Throwing Factory, which predates it. In terms of its architecture, Kemp's Mill is constructed over three storeys in local limestone rubble, revealing its industrial use and vernacular style. The HIA also describes the interior as comprising undivided floors with cast iron columns and a timber collar beam roof at second floor level, which is of interest as an example of 19th Century industrial architecture.

111. Externally, the building has been subject to a number of unsympathetic extensions during the middle part of the 20th Century, which detract from its architectural character. Nevertheless, the simple vernacular form of the original mill building is clearly distinguishable on its main façade to Queen's Road, and contributes to the character and appearance of Evercreech, justifying its inclusion within the Conservation Area. Overall, despite its status as a non-designated heritage asset, I consider that the local importance of Kemp's Mill carries a medium level of heritage significance.
112. The appeal scheme proposes to retain and convert Kemp's Mill, removing the detracting modern extensions. This would be a heritage benefit, to the building itself as well as to the character and appearance of this part of Evercreech Conservation Area, and the settings of the former Ward's Silk Mill and the adjacent Jasmine Cottage, as Grade II listed buildings. Whilst the enhancement to Kemp's Mill would not be of a scale comparable to the large scale harm caused by the total loss of the Creamery buildings, nevertheless it is a benefit which should be given moderate positive weight in favour of the appeal proposal.

Evercreech Conservation Area

113. The HIA confirms that the special interest of the Conservation Area is derived from the surviving buildings, street layout and townscape of the historic core of Evercreech, which reveal the history of its development from a small medieval farming village to a growing Georgian and Victorian settlement with local industries⁷⁴. It also notes that historic buildings in Evercreech include its silk mills and local dairy industry buildings⁷⁵.
114. The character and appearance of the Conservation Area is defined by its collection of mostly 18th and 19th Century buildings of architectural and historic interest, which the HIA describes as forming a coherent group, in part due to their consistent use of the local stone materials⁷⁵. The character and appearance of the Conservation Area is also distinct from other parts of Evercreech by virtue of its more informal layout and urban grain, created by the varied clustering of buildings along its historic street pattern.
115. The Creamery buildings and Kemp's Mill contribute to the heritage significance of the Conservation Area, as 19th Century buildings associated with the local textile and dairy industries in Evercreech, and as examples of its simple, vernacular of stone rubble construction. As such, both make a positive contribution to the character and appearance of the Conservation Area, despite the unsympathetic alterations and extensions to them, which would have existed at the time the Conservation Area was designated in 1992.
116. Consequently, the loss of the Creamery would cause harm to the heritage significance of the Conservation Area, by failing to preserve its character and appearance and an important group of buildings in its historical development. Although the lower sections of the gabled ends of each of the Creamery buildings would be retained as part of the boundary wall, this would do little to compensate for the loss of the Creamery or mitigate the heritage harm. The harm would be less than substantial, as it would be limited to only one part of the Conservation Area. But I do not agree with the appellant's view that this would be at the very low end of the spectrum of 'less than substantial harm', given the important and positive contribution made by the Creamery buildings to the heritage significance of the Conservation Area.

⁷⁴ Paragraph 4.6 of Core Document 1.16

⁷⁵ Bullet point 3 of paragraph 4.6 of CD1.16

117. I have noted above that the proposed conversion of Kemp's Mill, including the removal of its unsightly additions, would preserve and enhance the character and appearance of the Conservation Area in this part of Queen's Road.
118. The remainder of the appeal site sits outside of the Evercreech Conservation Area but forms part of its setting, being intervisible with parts of the Conservation Area along Prestleigh Road and Queen's Road. The existing industrial buildings and structures on the site, other than the Creamery and Kemp's Mill, are unsightly and detract from the character and appearance of the Conservation Area.
119. However, the replacement residential development, comprising a dense and formally laid out residential estate, would be unsympathetic to the character and appearance of the Conservation Area, as described above. The introduction of such a suburban form on the edge of the historic core of the village and within the immediate setting of the Conservation Area would cause harm to its heritage significance. As the harm in this respect would be through the setting of the Conservation Area, it would be less than substantial. The removal of the existing detracting industrial structures on site would not justify their replacement with a residential development that would harm the character and appearance of the Conservation Area.

Other Heritage Assets

120. Three other designated heritage assets are referred to in evidence – the former Ward's Silk Throwing Factory, Jasmine Cottage and Ferndale – all of which are Grade II listed buildings, located to the south-east of the appeal site. It is common ground between the main parties that the significance and special interest of these heritage assets would not be harmed by the proposed development⁷⁶. I concur with that view on the basis that the appeal site only forms a very limited part of the setting of Ferndale, and that the retention and conversion of Kemp's Mill would preserve and improve the settings of the former Ward's Silk Factory and Jasmine Cottage.

Conclusions on Heritage effects

121. I have concluded above that the appeal proposal would result in both heritage harms and benefits. The total loss of the Creamery buildings would result in large scale harm to a non-designated heritage asset of medium significance; this and the poor design of the proposed development would cause less than substantial harm to the heritage significance of the Evercreech Conservation Area and the Grade II listed Batt's House, as designated heritage assets; and the retention and conversion of Kemp's Mill would preserve and enhance a non-designated heritage asset of medium significance, the settings of the Grade II listed former Ward's Silk Mill and Jasmine Cottage, and the character and appearance of the Conservation Area in a section of Queen's Road.
122. Paragraph 208 of the Framework states that where a proposal will lead to less than substantial harm to the significance of a designated heritage asset, this should be weighed against the public benefits of the proposal. I deal with this and the balancing exercise required under paragraph 209 of the Framework in respect of non-designated heritage assets as part of the overall planning balance below, following my consideration of Other Matters.

⁷⁶ Bullet point 3 on 1st page (unnumbered) of the Heritage Statement of Common Ground [CD7.21]

Other Matters

Housing supply and affordable housing

123. It is common ground that there is a shortfall in the supply of housing land in the former Mendip District, against the requirement to identify a 5-year supply of deliverable housing sites. During the course of the Inquiry, the main parties agreed an update to the calculation of the 5-year housing supply⁷⁷, which confirmed the supply to be 3.29 years, amounting to a shortfall of 1,209 dwellings against a 5-year local housing need of 3,528 dwellings.
124. The proposed development would provide 118 additional dwellings. I have no reason to believe that the development could not be delivered within the next 5 years. Therefore, it would help to reduce the shortfall in the 5-year supply in Mendip by 9.8%. The appellant asserts this should be given either substantial or very significant weight in favour of the appeal scheme, whereas the Council attaches moderate positive weight. In my judgement, a reduction in the 5-year housing supply shortfall by almost 10% would be significant rather than substantial. Based on this and the Government's objective in paragraph 60 of the Framework to significantly boost the supply of homes, I consider that the provision of 118 new homes should attract significant positive weight.
125. At least 35 of the proposed dwellings would be in the form of affordable housing, secured through the S106 agreement. Whilst the appellant's desire is to deliver the scheme as 100% affordable housing, this is dependent on grant funding, and therefore is not guaranteed in the S106 agreement. Nevertheless, it is evident that there is a pressing need for affordable housing in the former Mendip District area, which the Housing Needs Assessment estimated at 838 dwellings per annum (dpa)⁷⁸, almost twice the annual housing requirement figure in LPP1. In the Rural Areas of the former Mendip District, which includes Evercreech, the share of this need is 287 dpa. Although the delivery of 35 affordable homes would be a modest contribution, given the overall scale of need, it should attract significant weight in favour of the appeal scheme.
126. Consequently, the delivery of market and affordable housing on the appeal site would be consistent with Core Policy 2 and Policy DP11 of LPP1, respectively, in addressing the quantum of housing need in Mendip. The proposed tenure split for the affordable housing of 80% social rented and 20% shared ownership would also accord with criterion 3 of Policy DP11.

Economic benefits

127. It is common ground that the proposed development would result in economic benefits, including the creation of additional jobs through the construction phase and from new business and retail floorspace on site, additional expenditure into the local economy, and the regeneration of a redundant and derelict site. I have summarised these above as part of the first main issue on planning policy and employment land.
128. The parties disagreed over the weight to be attributed to these economic benefits. In coming to a view on this, it is acknowledged that not all of the £26 million of GVA would be retained locally within Mendip, and the same would apply to resident expenditure, not all of which would be spent in local shops and

⁷⁷ Update Note on Five Year Housing Supply, 16 January 2024 [CD9.26]

⁷⁸ Based on Figure 7.17 of the Mendip 2011 Housing Needs Assessment, March 2012

services. Accordingly, in my judgement, whilst the economic benefits of the proposal should be welcomed, they would be modest in scale and impact on the local economy. Therefore, I attach no more than moderate weight to them in favour of the appeal scheme.

Previously Developed Land

129. Paragraph 124c) of the Framework states that decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs. As the appeal proposal would result in the use and redevelopment of 3 hectares of previously developed land, I give substantial positive weight to this in accordance with national policy.

Drainage and Flood Risk

130. The fifth reason for refusal cited that the application proposals had failed to demonstrate an adequate surface and foul water drainage strategy to serve the proposed development, and to ensure it would not lead to flood risk elsewhere. However, the appellant submitted a revised drainage strategy for the scheme, including an on-site SuDS and separate foul and surface water drainage systems, which was agreed with the Lead Local Flood Authority (LLFA) and the Local Sewerage Undertaker (LSU). Consequently, it is common ground between the appellant, the LSU and the Council as the LLFA that, subject to conditions, the proposed drainage scheme would be suitable and the development would have no detrimental offsite impact or increase flood risk elsewhere⁷⁹. I have no reason to disagree with this conclusion, based on the evidence I have seen.
131. Accordingly, I am satisfied that the proposal would comply with Policy DP23 of LPP1 and paragraphs 167 and 170 of the Framework, in managing flood risk and meeting the sequential and exception tests. As the effects of the proposed development on drainage and flood risk would be mitigated, this matter carries neutral weight in the planning balance.

Nutrient Neutrality

132. The appeal site is located within the fluvial catchment of the Somerset Levels and Moors Special Protection Area (SPA) and Ramsar site. These designated sites consist of wetland habitat within the floodplains of the Rivers Axe, Brue, Parrett and Tone, which support species of international importance. However, they are currently identified by Natural England to be in unfavourable condition or at risk due to high levels of phosphate. The proposed development would discharge wastewater into the catchment of the river Brue. Without mitigation, this would increase the level of nutrients within the catchment, which could lead to an adverse effect on the integrity of the designated sites.
133. As the Competent Authority under the Conservation of Habitats and Species Regulations 2017 (as amended) ('the Habitats Regulations'), I am required to undertake an Appropriate Assessment (AA) of the implications of the proposed development for the designated sites. In doing so I am required to have regard to the representations of Natural England, as the statutory nature conservation body, and to the manner in which it is proposed the development should be carried out, in terms of any conditions or restrictions, such as legal obligations, to which it is proposed a permission would be given.

⁷⁹ Paragraph 4.12 of the Flooding and Drainage SoCG [CD7.23]

134. The appellant submitted a shadow Habitats Regulations Assessment (sHRA)⁸⁰, as required by Policy DP8 of the LPP1. Natural England and Somerset Ecology Services, for the Council, have confirmed that they concur with the sHRA. Accordingly, I have taken the sHRA, together with the representations of Natural England and the Council on this matter, into account in carrying out my assessment of the proposal, which is set out in the following paragraphs.
135. The relevant qualifying features of the SPA and the reason for its designation are the overwintering bird populations that it supports, including Bewick's swan, the Eurasian teal, European golden plover, Northern lapwing, and water bird assemblages, such as gadwall, widgeon, shoveler, pintail, snipe and whimbrel. The screening assessment in the sHRA confirms that Natural England is satisfied that additional nutrients from new developments, either alone or in combination, is unlikely to have a likely significant effect on the bird assemblages for which the SPA is designated, and on this basis it can be 'screened out' of further assessment. Given that Natural England concurs with the sHRA, I am satisfied with this conclusion.
136. The qualifying criteria for Ramsar site designation are: the assemblage of vulnerable or endangered species or sub species, including vascular plants and rare invertebrates, particularly beetles, which are supported by the network of the ditches and rhynes in the wetland habitat (Criterion 2a); and the large waterfowl population of international importance it supports, including Mute swan and the species for which the SPA is designated (Criteria 5 and 6). The conservation objectives for the SPA, which are also relevant to the Ramsar site, are to ensure the integrity of the sites by maintaining or restoring the extent, distribution, structure and function of habitats of the qualifying species, and the processes on which they rely.
137. The sHRA identifies that the future wastewater discharging from the appeal site into the river catchment would increase nutrient loads, with a likely significant effect on its water quality. In turn this could cause eutrophication in the ditches and rhynes of the wetland habitat, adversely affecting the assemblages of rare, vulnerable or endangered species present in the water bodies. This would negatively impact on the qualifying features of the Ramsar site, under Criterion 2a, and its conservation objectives. Therefore, without mitigation, an adverse effect on the integrity of the Somerset Levels and Moors Ramsar site, either alone or in combination with other plans and projects, cannot be ruled out.
138. In order to achieve nutrient neutrality, the appellant proposes mitigation through the purchase of nutrient credits from the Manor Farm Mendip Phosphorus Offsetting Scheme, which is a Natural England approved scheme in the river Brue catchment. Sufficient nutrient credits would be required to offset the nutrient load or budget of the proposed dwellings when they are occupied and operational.
139. The nutrient budget for the development has been calculated using the Somerset Budget Calculator V3.1. This factors in the phosphorus discharge threshold for the Evercreech Wastewater Treatment Works (WwTW) to where wastewater from the appeal site would discharge before entering the river catchment system. The Evercreech WwTW is to be upgraded by April 2025, which will reduce the phosphate discharge threshold to 1.0 mg/litre, and consequently reduce the nutrient load from the proposed development.

⁸⁰ Shadow Habitats Regulations Assessment, prepared by HalpinRobbins, dated 18 Aug 2023 [CD7.18]

140. The Nutrient Mitigation Strategy estimates that first occupation of dwellings in the proposed development would be around 18 months from a grant of planning permission, so would occur well after April 2025. Therefore, the nutrient budget for the proposed development has been calculated at 11.52 kgP per year, based on the post April 2025 phosphate discharge threshold.
141. Natural England has advised that the Competent Authority should be satisfied the necessary improvements to the Evercreech WwTW would be delivered by April 2025. It is common ground between the main parties that the LSU, which operates the Evercreech WwTW, is required to meet nutrient reduction targets set by the Environment Agency and Natural England, and that the target for phosphate discharge of 1.0mg/litre for Evercreech forms part of its Asset Management Plan for period 7 (2020-25) and its operating permit⁸¹. Therefore, I am satisfied that it is reasonable to base the nutrient budget calculation for the proposed development on the post April 2025 phosphate discharge threshold.
142. Correspondence from Manor Farm Mendip⁸² confirms that credits are available to provide the required 11.52 kgP per year of phosphate reduction to offset the phosphate load from the proposed development, and that an agreement in principle has been made with the appellant for their purchase. Manor Farm Mendip was previously used as a dairy and pig farm, so nutrient credits are provided by the closure of the on-site livestock facilities. A condition has been agreed between the main parties that would ensure the required credits, to offset the annual phosphate load of the proposed development for its lifetime, would be purchased, and the mitigation implemented, prior to the occupation of the dwellings⁸³.
143. Consequently, taking account of the proposed mitigation, I am satisfied that the appeal proposal would not result in a net increase in phosphate levels within the river Brue catchment, and that nutrient neutrality would be assured. Therefore, it would not adversely affect the integrity of the Somerset Levels and Moors Ramsar site. The resulting absence of any likely significant effects on this designated site would also comply with paragraphs 185-187 of the Framework. A finding of nutrient neutrality carries neutral weight in the planning balance.

Other Ecology Matters

144. The sixth reason for refusal cited that insufficient information had been submitted to confirm that the other ecological impacts of the proposed development would be satisfactorily mitigated. This included the age of the Phase 1 Habitat Surveys undertaken in 2020, and the evidence for bat roosts on the appeal site.
145. The appellant submitted an updated Ecological Impact Assessment (EIA) in October 2023⁸⁴, which included the results of bat surveys undertaken in August 2023. These recorded Common Pipistrelle bats emerging from two of the Creamery buildings and from Kemp's Mill, and the likelihood of day roosts for both Common Pipistrelle and Brown Long-Eared bats in those buildings being lost or disturbed. In addition, it identified the potential for harm to protected bird species from the loss of long term nesting opportunities.

⁸¹ Note on Condition 15 [CD9.31]

⁸² Letter of intent from Manor Farm Mendip, dated 17 August 2023 [CD7.15]

⁸³ Condition 15 of the Updated Schedule of Agreed Conditions [CD9.32]

⁸⁴ Ecological Impact Assessment, HalpinRobbins, 24 October 2023 [Appendix 8 to CD7.49]

146. In order to mitigate the harm to protected bat and bird species, a series of ecological mitigation and compensatory measures are set out in the appellant's Biodiversity Mitigation and Enhancement Plan (BMEP) attached to the updated EIA. For bats these include: the works for the demolition of the Creamery buildings and the conversion of Kemps Mill to be carried out under licence; compensatory bat roosting opportunities in the form of bat boxes, a bat loft in the apartment building, and bat access tiles; and a sensitive lighting strategy. For nesting birds, the measures include undertaking clearance work outside of the nesting season or a check on site before work commences, and compensatory nesting opportunities in the form of bird boxes.
147. The Council confirmed that, subject to appropriate conditions to secure the proposed mitigation measures, the sixth reason for refusal would be resolved. Based on the evidence, I am satisfied that the potential harm to biodiversity would be adequately mitigated by the proposed measures, which would be secured by the suggested conditions in the Schedule of Agreed Conditions. Therefore, the appeal proposal would comply with Policies DP5 and DP6 on biodiversity and bat protection. It would also be consistent with the ecological mitigation hierarchy in paragraph 186 of the Framework.
148. The updated EIA also lists a series of biodiversity enhancement measures within the BMEP. These would include: a native hedgerow against the boundary to the recreation ground as a lighting buffer and flight corridor for bats; bee bricks; a range of bird boxes to increase the variety of bird species; integrated bat boxes in the roof apex of 25% of the dwellings; and garden fencing designed to allow hedgehogs to navigate through the site and forage within gardens.
149. The appellant maintains that the proposed enhancement measures would deliver an element of biodiversity net gain (BNG). I concur that the measures would help to support an increase in wildlife species overtime after the completion of development. However, the BNG is not quantified, so I attach only a small amount of weight to this as a benefit in the overall planning balance.

Highway Safety and Sustainable Transport

150. The application was refused in part on the grounds of highway safety, including concerns about site access, visibility on Prestleigh Road and Neale's Way, delivery and service vehicle turning space, and inadequate provision of car and cycle parking and electric vehicle (EV) charging points. However, these matters were addressed by the submission of revised plans and technical information. The Highways SoCG⁸⁵, agreed by the Council as the Highway Authority, confirms that, subject to the proposed conditions and the travel plan obligations in the S106 agreement, the highways and transport objections in the seventh reason for refusal would be overcome.
151. Local residents remain concerned about the impact of the proposed development on the safety and operation of the local highway network, in particular due to the width of Prestleigh Road and the presence of parked cars along the frontage of the appeal site, which make it difficult for cars to pass and pedestrians to cross the road. However, the results of the traffic modelling in the Transport Assessment⁸⁶ show that, once the development is complete, peak

⁸⁵ Highways SoCG, October 2023 [CD7.26]

⁸⁶ Transport Assessment, prepared by Miles White Transport, December 2021 [CD1.5]

hour traffic flows would be broadly similar to those associated with the former employment use of the appeal site, except that there would be a reduction in heavy goods vehicle movements. It also demonstrates that the surrounding road junctions, including where Prestleigh Road meets Queens Road and Leighton Lane adjacent to the appeal site, would continue to operate well within their capacity, and that the effects of traffic generated by the development would be minimal.

152. Paragraph 115 of the Framework states that development should only be refused on highway grounds if there would be an unacceptable impact on highway safety or a severe impact on the operation of the road network. The proposed development would not give rise to such levels of highway impact, and the Highway Authority no longer seeks to oppose it on these grounds. As such, it would also comply with requirements of Policy DP9(2) of LPP1. Consequently, the effects of the proposed development on the operation and safety of the local highway network carry neutral weight in the planning balance.
153. The appeal site is located within reasonable walking distance of a wide range of facilities in Evercreech, including a primary school, a GP surgery, employment, shops and services. There are also regular weekday bus services from the centre of the village to Shepton Mallett and other settlements. As such, there would be opportunities for residents of the proposed development to undertake day to day journeys by more sustainable modes of transport. The proposed Travel Plan measures contained in the S106 agreement would encourage residents to use sustainable modes of transport, rather than the car.
154. Therefore, the proposed development would be consistent with Paragraph 109 of the Framework, which expects significant development to be focused in locations which are or can be made sustainable, through limiting the need to travel and offering genuine choice of transport modes. It would also accord with part 1 of Policy DP9 of LPP1 in this regard. The location of the site, its access to services and its potential to enable journeys by sustainable modes of travel are a benefit which the main parties agreed should attract moderate weight in favour of the appeal in the planning balance. I concur with this.

Community Infrastructure

155. The creation of 118 new dwellings in Evercreech would place pressure on local community facilities by generating additional demand for school places and healthcare services, and increasing the use of recreation facilities. However, the S106 agreement includes obligations for the payment of financial contributions towards off-site provision at existing or new education, healthcare and recreation facilities. These have been agreed between the main parties and service providers, except for the healthcare contributions. Consequently, I am satisfied that the effects on education and recreation facilities would be mitigated and, therefore, carry neutral weight in the planning balance.
156. With regard to the proposed financial contributions towards healthcare services, the Council disputed the rationality and legality of these. I have considered the submissions made by the Council, the appellant and the NHS bodies on the concerns raised, and set out my conclusions below.
157. Firstly, the Council challenged whether it is rational for the healthcare contributions to be waived if the proposed development were delivered as a 100% affordable housing scheme. The justification given by the NHS bodies is

that the likely occupants of affordable housing would already be residents of the NHS Trust's catchment area and, therefore, registered with local GP practices. I note the Council's concerns that the S106 restriction on affordable housing units only being made available to people on the Homefinder Somerset Register would not apply to 70% of the dwellings, in the case of a 100% affordable housing scheme. However, it is unlikely that the chosen Registered Provider would not seek to offer units to Somerset residents in the first instance. Moreover, whether or not healthcare contributions are required for affordable housing units is a matter for the NHS service providers to decide. Therefore, I am satisfied that waiving healthcare contributions in this scenario would not result in harm to local healthcare facilities.

158. Secondly, the Council questioned whether the financial contribution of £29,583 towards acute hospital-based healthcare services, sought by the Royal United Hospital Bath NHS Foundation Trust, would meet the legal tests for planning obligations specified in Regulation 122(2) of the Community Infrastructure Levy (CIL) Regulations 2010. The contribution is requested to meet a funding gap which would arise during the first year of the development's occupation, due to the fact that the Trust's annual funding settlement is based on the previous year's GP patient population, which would not include residents of the development who register with local GPs and use acute healthcare services during the first year of occupation.
159. I have noted the Court judgements on this matter, the salient points of which were case specific. Whether the contribution to acute healthcare services is necessary, and fairly and reasonably related to the proposed development is a matter for my judgement, based on the evidence in this case. Whilst I had written submissions from the parties, unfortunately, it was not possible for me to interrogate or discuss at the Inquiry the evidence on the NHS Trust's annual funding settlement and the formula for the calculation of the financial contribution, as the Trust were not able to be represented. Therefore, I have been unable to reach a conclusion on whether this contribution would be compliant with the CIL Regulations. However, either way the effects on healthcare services would be neutral, as, if it were deemed to be necessary, the contribution would mitigate the effects on healthcare, and, if unnecessary, it would not be required to make the development acceptable in planning terms.

Planning Balance

160. Due to the absence of a 5-year supply of deliverable housing sites, the presumption in favour of sustainable development in paragraph 11(d) of the Framework applies in this appeal. This means granting permission for the proposed development unless:
 - (i). the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed; or
 - (ii). any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.
161. The policies of the Framework that protect SPAs, Ramsar sites and designated heritage assets are included in paragraph 11(d)(i) under Footnote 7 of the Framework. I have concluded above that there would be no adverse impacts on

- the integrity of the Somerset Levels and Moors SPA and Ramsar site, as a result of the appeal proposal, with the proposed nutrient mitigation scheme in place.
162. With regard to the policies of the Framework that protect designated heritage assets, paragraph 205 of the Framework expects great weight to be given to the conservation of such assets, when considering the impact of development on their significance, irrespective of whether the potential harm amounts to substantial or less than substantial harm. Consequently, the less than substantial harm to the significance of Evercreech Conservation Area and Batt's House, as designated heritage assets, attracts very considerable weight against the appeal proposal. However, when weighing this harm against the totality of the public benefits of the appeal scheme in the heritage balance in paragraph 208 of the Framework, I do not find that there is a clear reason for dismissing the appeal on heritage grounds alone, as would be required under paragraph 11(d)(i) of the Framework.
 163. Nevertheless, this does not constitute a finding of 'no heritage harm' and therefore a neutral factor in carrying out the so called 'tilted balance' under paragraph 11(d)(ii) of the Framework, which I turn to now.
 164. On the benefits side, I acknowledge the proposed development would be positive for Evercreech and the surrounding community in a number of ways. It would provide much needed market and affordable housing in an accessible location, clean up and redevelop a redundant and unsightly brownfield site, retain and convert a former silk mill of local heritage importance, and provide investment and jobs, new shops and community facilities, and a biodiversity net gain. All of these are benefits to which I have assigned appropriate weight in favour of the appeal scheme.
 165. However, I find that the adverse impacts of the proposal are determinative in this case. The national policy imperative in paragraph 139 of the Framework, that development which is not well designed should be refused, carries very substantial weight against the appeal scheme. In my view, this is sufficient on its own to outweigh the benefits of the proposed development, which do not justify allowing a scheme that fails, in so many aspects of its design, to reflect local and national design policies and to respect the distinctive character of Evercreech. But added to this is the harm arising from the loss of the Creamery buildings and the failure to preserve the setting of the Grade II listed Batt's House and the character and appearance of the Evercreech Conservation Area, to which I have assigned appropriate weight above.
 166. All other matters carry neutral weight, including the effects on flood risk and drainage, nutrient neutrality and ecology, highway safety, and community infrastructure. I have explained my reasoning for this above.
 167. The heritage harm, combined with the failure to comply with paragraph 139 of the Framework, in my judgement, significantly and demonstrably outweighs the benefits of the proposed development, when assessed against the policies of the Framework taken as a whole. It follows that the appeal proposal does not benefit from the presumption in favour of sustainable development under paragraph 11(d) of the Framework.
 168. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. Although,

under footnote 8 of the Framework, the most important policies of the development plan in this case are out of date, they still carry weight in the determination of the appeal. The proposed development would be consistent with Core Policies 1, 2, 3 and 4 and Policies DP5, DP6, DP9, DP11, DP20 and DP25 of the LPP1, but it would conflict with Policies DP1, DP3 and DP7 of LPP1 in respect of its poor design and harm to heritage assets. The conflict with these policies is determinative, such that the proposal would fail to accord with the development plan when considered as a whole. There are no material considerations that indicate the appeal should be decided otherwise.

Conclusion

169. For the reasons given above, and taking account of all other matters raised, I conclude that the appeal should be dismissed.

M Hayden

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Leanne Buckley-Thomson	Counsel for the LPA, instructed by Somerset Council (SC)
James Mansfield ACIEEM	Principal (County) Ecologist, Somerset Ecology Services, SC
Aimee Fletcher	Senior Risk Advisor – Flood and Water Management, SC
Emma Meecham	Principal Planning Liaison Officer, Traffic & Transport Development, SC
Andre Sestini BA MRTPI	Principal Planning Officer, SC
Jane Boldy BA(Hons) MSc ConsHistBuild IHBC	Conservation Officer, SC
Anna Clark BSc (Hons) PGCertTP MA MRTPI	Principal Economic Growth Planner, SC
Martin Evans	Solicitor for SC (<i>for S106 Round Table</i>)

FOR THE APPELLANT:

Stephanie Hall	Counsel for the Appellant, instructed by Lichfields
Adam Robbins MSc, BSc (Hons), MCIEEM	Director, Halpin Robbins
John Charlesworth BEng (Hons)	Senior Infrastructure Engineer, Hydrock
Darran Kitchener BEng (Hons) CMILT FCIHT	Director, Milestone Transport Planning Ltd
Alex Roberts MSc BSc (Hons) MCIEEM	Director, Lambert Smith Hampton
Craig Van Bedaf BA (Hons) BArch (Hons) RIBA	Director, Pod Newcastle Limited
Heather Marshall BA (Hons) MSc MRTPI IHBC	Director of Heritage, Lichfields
Neil Westwick BA (Hons) DipTP MRTPI	Director, Lichfields
Jonathan Combe	Solicitor for the Appellant (<i>for S106 Round Table</i>)

INTERESTED PARTIES:

Dr. Dee Henderson	Local Resident
Gillian Lindsay	Evercreech & District Local History Society (E&DLHS)
Gail Wakeford	Evercreech Parish Council
Barry O’Leary	Former Ward Councillor
Bethan Stanley	Local Resident

DOCUMENTS SUBMITTED AT THE INQUIRY & DURING ADJOURNMENT

- CD 9.1 Email response from Historic England re Inquiry notification (07/11/2023)
- CD 9.2 Email response from Sport England re Inquiry notification (07/11/23)
- CD 9.3 Application Consultee List (08/11/2023)
- CD 9.4 Email response from Environment Agency re Inquiry notification (07/11/23)
- CD 9.5 Revised Inquiry Programme (issued 13/11/23)
- CD 9.6 Revised Round Table Agenda Ecology & Nutrient Neutrality (13/11/23)
- CD 9.7 Revised Round Table Agenda Drainage and Flooding (13/11/23)
- CD 9.8 Revised Round Table Agenda Highways (13/11/23)
- CD 9.9 NHS Foundation Trust Letter & Spreadsheet (20/12/23)
- CD 9.10 Draft Schedule of Suggested Conditions (04/01/2024)
- CD 9.11 Further Planning Statement of Common Ground (04/01/2024)
- CD 9.12 Opening Submissions and Appearances for Appellant (05/01/2024)
- CD 9.13 Opening Submissions on behalf of Somerset Council (19/09/23)
- CD 9.14 Statement from Dr. Dee Henderson (dated January 2024)
- CD 9.15 Statement from Gillian Lindsay for E&DLHS (undated)
- CD 9.16 Statement from Evercreech Parish Council (dated 08/11/23)
- CD 9.17 Statement from Bethan Stanley (undated)
- CD 9.18 Final Draft S106 Agreement (submitted 10/01/2024)
- CD 9.19 Revised Boundary Treatment Plan P-10.02 Rev C (12/01/2024)
- CD 9.20 Revised Site Layout Plan P-10.01 Rev E (12/01/2024)
- CD 9.21 Revised Coloured Layout 200 Rev B (12/01/2024)
- CD 9.22 Revised Prestleigh Road Boundary Treatment P10-04 Rev A (12/01/2024)
- CD 9.23 Planning Weighting Table - amended version (12/01/2024)
- CD 9.24 Design Round Table Agenda (12/01/2024)
- CD 9.25 Planning Round Table Agenda (12/01/2024)
- CD 9.26 Agreed Update Note on 5 Year Housing Supply (submitted 16/01/2024)
- CD 9.27 Agreed Map of sites at Royal Bath & West Showground (16/01/2024)
- CD 9.28 Costs Application on behalf of Appellant (dated 12/01/2024)
- CD 9.29 Submissions by Council re S106 Healthcare Contributions (16/01/2024)
- CD 9.30 Appellant Position Statement re Healthcare Contributions (16/01/2024)
- CD 9.31 Note on Condition 15 (submitted 16/01/2024)
- CD 9.32 Updated Schedule of Agreed Conditions (submitted 17/01/2024)
- CD 9.33 RUH Bath NHS Foundation Trust Response - Email (dated 17/01/2024)
- CD 9.34 S106 Agreement - Updated Clean version (submitted 18/01/2024)
- CD 9.35 CIL Compliance Statement (submitted 18/01/2024)
- CD 9.36 Council's Closing Submissions (18/01/2024)
- CD 9.37 Appellant's Closing Submissions (18/01/2024)
- CD 9.38 Further Revised Inquiry Programme (published 12/01/2024)

DOCUMENTS SUBMITTED FOLLOWING THE CLOSE OF THE INQUIRY

CD 9.39 S106 Agreement – signed by West Estates (30/01/2024)

CD 9.40 S106 Agreement – signed and sealed by Somerset Council (30/01/2024)



Costs Decision

Inquiry held on 8 November 2023 and 10-12 and 16-18 January 2024

Site visit made on 10 January 2024

by **M Hayden BSc (Hons), Dip TP, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 3rd July 2024

Costs application in relation to Appeal Ref: APP/Q3305/W/23/3314693 Former Greencore Factory, Prestleigh Road, Evercreech, BA4 6JZ

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by West Estates Development Limited for a partial award of costs against Somerset Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for an application for outline planning permission (with all matters reserved except access, appearance, layout and scale) for the demolition of all existing buildings and equipment other than Kemps Mill which will be retained as flexible Class E/F2 floorspace and erection of 118 no. residential dwellings and a shop (falling in use class E), together with open space, vehicular and pedestrian accesses, landscaping and related infrastructure and engineering works'.
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Decision

1. The application for a partial award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (PPG) states that costs may be awarded against a party at appeal, where that party has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Claims can be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal.
3. The appellant's claim is procedural and, in summary, is made on the following basis:
 - (a). The Council failed to notify all statutory consultees of the Inquiry, which was due to open on 8 November 2023, and this resulted in the Inquiry being adjourned to enable the correct notifications to be issued.
 - (b). As a result the appellant incurred substantial costs, in the form of professional fees, travel and other expenses, for their team to attend the first day of the Inquiry on 8 November 2023, which proved abortive as no business was conducted on that day, other than to address the adjournment.
 - (c). The unnecessary and wasted expense is a direct result of the Council's failure to notify the relevant parties of the Inquiry, and those actions fall squarely within an example provided by the PPG of unreasonable behaviour warranting the award of costs against a local planning authority (LPA).
4. In reply, the Council has acknowledged that it failed to notify all statutory consultees of the arrangements for the Inquiry to open on 8 November 2023, and

confirmed that this was a result an administrative error. The Council does not dispute that its failure to notify was unreasonable behaviour warranting an award of costs against the LPA, nor that costs may have been incurred which might otherwise not have been, justifying a partial award of costs. The Council does not seek to comment on whether any costs incurred were abortive or substantial.

5. This principle of this claim is not in dispute between the parties. The Council did fail to notify all the statutory consultees of the date, time and place of the Inquiry due to open on 8 November 2023. Whilst several of the consultees who were not notified, confirmed in writing that their interests were not prejudiced, the Royal United Hospitals NHS Foundation Trust made clear that not being given the proper notice prejudiced their ability to participate in the Inquiry proceedings. The only fair and safe course of action open to me was to adjourn the Inquiry to enable the correct notification to take place.
6. The PPG lists a failure to notify the public of an inquiry, where this leads to a need for adjournment, as an example of unreasonable behaviour on the part of an LPA¹. The Council's failure to notify statutory bodies in this case, clearly amounts to the same type of unreasonable behaviour, and resulted in the need to adjourn the Inquiry.
7. As a result of the adjournment, none of the evidence scheduled to heard on the first day of the Inquiry could be heard on 8 November 2023. The opening day of the Inquiry had to be rearranged for 10 January 2024, and all of the matters intended to be heard on 8 November 2023, had to be rescheduled to be heard on 10 January 2024. Consequently, the time and cost incurred by the appellant's team in attending the opening day on 8 November 2023 was abortive, and amounts to unnecessary and wasted expense.
8. In terms of whether the costs incurred by the appellant were 'substantial', the PPG is clear that I may only address the principle of whether costs should be awarded, not the amount, which is to be settled between the parties². However, the Inquiry programme for 8 November 2023, which was published in advance, clearly sets out the matters which were scheduled to be heard on the opening day. This should provide a guide as to who needed to be in attendance on 8 November 2023 and a basis for settling the amount of the partial award.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

10. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Somerset Council shall pay to West Estates Development Limited, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in attending and resourcing the Inquiry on 8 November 2023; such costs to be assessed in the Senior Courts Costs Office if not agreed.

¹ PPG Paragraph: 047 Reference ID: 16-047-20140306

² PPG Paragraph: 044 Reference ID: 16-044-20140306

11. The applicant is now invited to submit to Somerset Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

M Hayden

INSPECTOR