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## Appeal Decision

Site visit made on 21 May 2024

by Tom Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 05 July 2024

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Appeal ref. APP/E3335/W/23/3324852

Land at South Street, Walton, Street BA16 9RY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended (the '1990 Act') against a refusal to grant outline planning permission.
  - The appeal is made by Walton LVA LLP against the decision of Somerset Council.
  - The application ref. is 2019/3004/OTS.
  - The development proposed is described on the application form as 'outline application including access from South Street with all other matters reserved for up to 37 no. dwellings (including 11 affordable dwellings), public open space and associated infrastructure.'
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### Decision

1. The appeal is allowed and planning permission is granted for up to 37 dwellings (including 11 affordable dwellings), public open space and associated infrastructure at land at South Street, Walton, Street BA16 9RY in accordance with the terms of application ref. 2019/3004/OTS subject to the conditions below and to the obligations contained in the unilateral undertaking under section 106 of the 1990 Act dated 21 February 2024 (the 'UU').

### Preliminary matters

2. Other than in respect of access, the proposal is in outline. Details of appearance, landscaping, layout and scale are reserved for future consideration (the 'reserved matters'). I have treated as illustrative any references to reserved matters in the evidence before me.
3. The appellant's appeal letter of 27 June 2023 lists the original drawings submitted to the Council, those in respect of which the Council reached a decision, and also additional plans, drawings and documents. In the latter category is an addendum to the Transport Statement, Nutrient Neutrality Statement, and plan no. '4390-120 Rev F' illustrating site access layout.
4. The proposal is also now supported by the UU. Amongst other things, the UU relates to an alternative approach intended to achieve nutrient (phosphate) neutrality than originally envisaged. Whilst an appeal should not be used to evolve a scheme, the UU and foregoing documents rationally respond to the Council's position. They entail only very limited change to the nature of the proposal, and there has been suitably opportunity for consideration of any associated implications at appeal. There is therefore no reason to discount any subsequent documentation from my assessment.<sup>1</sup>

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<sup>1</sup> With reference to *Bernard Wheatcroft Ltd. v Secretary of State for the Environment and Harborough District Council* [1982] JPL 37, and *Holborn Studios Ltd. v The London Borough of Hackney* [2017] EWHC 2823.

5. Section 38(6) of the Planning and Compulsory Purchase Act 2004 as amended (the '2004 Act') requires that planning proposals are determined in accordance with the development plan unless material considerations indicate otherwise. On 1 April 2023 Somerset Council was formed in place of the former Districts of Mendip, Somerset West and Taunton, Sedgemoor and South Somerset. Nonetheless development plan documents of the former authorities remain. In this instance the development plan includes policies of the Mendip Local Plan Part 1 2006-2029 (adopted December 2014, the 'LP1') and of the Mendip Local Plan Part 2 (adopted December 2021, the 'LP2'). The adoption of the LP2 was subject to judicial review, entailing the deletion of 5 allocations.
6. I have had regard to all other relevant material considerations, including the National Planning Policy Framework (20 December 2023, the 'NPPF') and the Planning Practice Guidance ('PPG'). Although the Parish of Walton was designated in 2016 as an area for the purposes of preparing a neighbourhood plan, no significant progress in that respect has since been made. The Council envisages that an emerging Somerset-wide plan will be adopted 'by 2028'. However that is at a nascent stage.
7. The Council accept that they cannot presently demonstrate a five year supply of deliverable housing sites relative to needs with reference to NPPF paragraph 77 (a '5YHLS'). Via Core Policy 2 ('CP2'), the LP1 set a minimum housing requirement of 9,635 dwellings over the plan period of 2006 to 2029. That equates to 420 dwellings per annum ('dpa'). The LP1 was adopted in December 2014 and has not been reviewed.
8. The housing requirement therefore now draws from the local housing needs methodology in the NPPF ('LHN'), following the standard method in the PPG. That, on the Council's evidence, points to needs of 569dpa, significantly higher than the LP1 annual requirement. Adding a 20% buffer in line with NPPF paragraph 79.b) on account of housing delivery data, the Council gives their 5YHLS requirement as 3,414 homes, 683dpa.
9. The officer report associated with application ref. 2019/3004/OTS sets out that, at that juncture, the Council's forward supply of deliverable housing sites stood at around 3.7 years. At appeal the Council indicate that forward supply had instead declined to about 3.24 years (as of November 2023). That is notwithstanding an appeal decision of 16 February 2023 in which the Inspector found forward supply to amount to around 2.87-2.94 years, which they characterised as 'a very significant shortfall'.<sup>2</sup> That is also a fair summary of forward supply of around 3.24 years' worth. The benefits of the scheme in respect of housing provision are material, as is the extent of any shortfall and its likelihood of persisting. Whilst I will return to those matters, by consequence NPPF paragraph 11.d) applies.

#### Main issues

10. The main issues are (i) whether the appeal site is an appropriate location for residential development, (ii) the effect of the proposal on the setting of

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<sup>2</sup> Ref. PP/Q3305/W/22/3306827.

heritage assets, and (iii) the effect of the proposal on the safe and efficient operation of the local highway network.

## Reasons

### *Location*

11. LP1 Core Policy 1 ('CP1') sets a spatial strategy for the proportionate distribution of development within the former District of Mendip, reflecting the scale and function of settlements. Policy CP1 seeks both to direct development to locations where there is greatest accessibility to services and facilities and to constrain development elsewhere. NPPF paragraphs 104 and 105 similarly set out how various transport objectives should be factored into managing patterns of growth, including promoting walking, cycling and public transport. Policy CP1 also shares the common objective with NPPF paragraph 180 of recognising the intrinsic character and beauty of the countryside (which itself connotes a degree of protection, regardless of whether a landscape is 'valued' or designated).
12. Criterion 3 to policy CP1 accords in-principle support to development within settlement limits. It also establishes that 'any proposed development outside the development limits, will be strictly controlled and will only be permitted where it benefits economic activity or extends the range of facilities available to the local communities.' The appeal site, a broadly flat and roughly rectangular pastoral field, is outside of the settlement limit for Walton defined via LP1 policy CP1. It is, however, adjacent to it. The settlement limit encompasses the plots of nos. 20 and 22 South Street opposite the appeal site. The plot of no. 21, on the same side of South Street as the appeal site, is within the settlement limit as is part of the plot of no. 17 South Street next to no. 21. The plots of nos. 17 and 21 abut the site, South Street forming the site's western boundary. Veal Lane is to the south at a slightly lower level.
13. Criterion 3 to policy CP1 also refers to 'maximising the re-use of appropriate previously developed sites and other land within existing settlement limits...', and to directing development to 'the most sustainable locations on the edge of the identified settlements'. With that in mind, LP1 Core Policy 2 ('CP2') sets out how a minimum overall requirement of 9,635 additional dwellings will be distributed. LP1 policy CP1 defines Walton as one of 13 'secondary villages'.<sup>3</sup> That is a third tier categorisation in the hierarchy beneath 5 'principal settlements' and 16 'primary villages'. Street, the settlement boundary for which comes close that of Walton along the A39 near Quarry Batch Farm,<sup>4</sup> is a principal settlement.
14. LP1 policy CP2 apportions 20% of the overall minimum requirement of 9,635 homes to the 16 primary villages and 13 secondary villages referenced above. That is further refined at LP1 table 9, where Walton is ascribed a requirement of 40 homes. At the juncture the LP1 was prepared, completions and permissions at Walton amounted to 29 homes. That left a residual level of development of 11 homes to be found over the plan period. As with policy CP1, policy CP2 prioritises development within settlement boundaries or

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<sup>3</sup> Defined as offering 'some services and the best available public transport services making them appropriate for development aimed at meeting more localised housing, business and service needs'.

<sup>4</sup> The appellant noting, in paragraph 6.18 of their statement of case, that at present Walton and Street are, at their closest, less than 150m apart (or less than 40m if account is taken of LP2 policy ST3).

outside thereof through allocations; both envisage that development outside of settlement limits is to be plan-led.

15. The Council's decision notice of 1 February 2023 in respect of application ref. 2019/3004/OTS also cites conflict with LP1 Core Policy 4 ('CP4'). Criterion 1 to policy CP4 sets out how rural settlements and the wider rural area will be sustained, amongst in other ways, by 'making planned provision for housing within the Primary and Secondary Villages having regard to identified constraints and at a scale commensurate with the existing housing stock in line with Core Policies 1 and 2'.
16. Whilst that is consistent with policies CP1 and CP2, criterion 1.b.iii. to policy CP1 states that 'in other villages and hamlets, development may be permitted in line with provisions set out in Core Policy 4 to meet specifically identified local needs within those communities.' On a plain reading, policy CP4 is therefore principally focussed on certain forms of rural development, rather than in respect of primary or secondary villages.
17. Returning to criterion 3 to policy CP1, the Council say that 'many benefits of the appeal proposal are no more than those typically associated with any residential development or those that could come forward with a policy compliant scheme on another more suitable site'. There is logic in that. The support given via policy CP1 to development that 'benefits economic activity or extends the range of facilities available to the local community' is set in the wider context of a plan-led approach to locating development. Whilst the benefits of the scheme are material, the development proposed does not benefit from support from LP1 policies CP1, CP2 or CP4.
18. A number of services and facilities at Walton are, however, nearby. Figure 2 to the appellant's Transport Statement (2 July 2020, 'TSV05'),<sup>5</sup> shows that the Church of the Holy Trinity, Village Hall, Walton Primary School and the Royal Oak are within 500m of the site. TSV05 also notes that there are bus stops approximately 200m away along the A39.<sup>6</sup> Several shops are also within 1.5km and Street town centre falls some 2km away. Many properties around the periphery of Walton appear to be a similar walking distance from certain services and facilities. Some, towards Bramble Hill to the west of Walton, and around Middle Brooks to the south of Street, appear further away.
19. Experientially there would also be little difference in terms of walking or cycling between the appeal site and nearby services and facilities compared to many peripheral locations around Walton or Street; there is a pavement running from next to no. 20 South Street towards the A39. The proposal is also for the creation of public open space of some 0.6ha. That would be significantly in excess of the requirement under LP1 Development Policy 16 (with reference to the National Playing Field Association's standard of 2.4ha of new space per 1,000 additional people).<sup>7</sup>
20. The availability of a good amount of managed public open space, as described in the appellant's Open Space Statement,<sup>8</sup> may limit the extent to which some

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<sup>5</sup> Trace Design, project ref. 4434.

<sup>6</sup> Served by several reasonably regular services to other settlements including Bridgewater, Taunton and Wells.

<sup>7</sup> The appellant citing a requirement of 0.28ha in that respect, the Council's figure being 0.19ha.

<sup>8</sup> Pegasus Group, ref. P-18-0521, November 2019.

would travel elsewhere for recreation. That is notwithstanding that there is a good quantity of public open space at Walton currently, that the surrounding countryside is criss-crossed with public rights of way, and that the scheme would also contribute to off-site provision. Although NPPF paragraph 15 sets out how the planning system should be 'genuinely plan-led', residential development here would not be inconsistent with the principles for locating development that the LP1 seeks to achieve.

21. The Council state that, within the LP1 plan period, 46 dwellings have been delivered at Walton and that a further 10 have extant planning permission. Numerically 56 dwellings is 40% greater than the apportionment of 40 dwellings via LP1 table 9. Underscoring the close relationship between Walton and Street, the Council also refer to LP2 policy ST3 'Land west of Brooks Road & Future Growth Area (FGA)'. That is an allocation of around 24ha off the A39 extending westwards of the existing built form of Street towards Walton. That allocation, largely within the Parish of Walton, is intended to provide for a minimum of 400 dwellings. Change is often disconcerting and there has been, and will continue to be, significant development in the wider area in time.
22. However the housing figure of 9,635 in LP1 policy CP2 is expressed as a minimum, rather than constraining suitable development in excess of that number. As above, albeit at a wider spatiality, the Council are unable to demonstrate a 5YHLS. Anticipated forward supply has recently worsened. Moreover the LP1, and the LP2 which seeks to fulfil a remit beneath the former,<sup>9</sup> have been somewhat overtaken by recent circumstances.
23. LHN indicates that housing needs now stand around 569dpa as opposed to 420dpa previously. Higher levels of development than have occurred historically, along with applications for schemes which do not accord with LP1 policies governing the distribution of development, are somewhat inevitable in that context. Whilst that does not affect the statutory basis for decision taking, it is nevertheless relevant to considering any benefits of the scheme. It is also relevant as there are evidently fewer 'more suitable' sites presently in play (the Council's turn of phrase).
24. Turning to Walton specifically, 37 homes in addition to 46 completed and 10 with extant permission over the plan-period to date would not represent an atypical level of growth of primary or secondary villages in the former District of Mendip. The appellant sets out how total delivery of 93 dwellings would, numerically, result in Walton being ranked in eighth place amongst the 29 LP1 villages in that respect.<sup>10</sup> That would be a comparable or lower level of development to two secondary villages.<sup>11</sup>
25. Relative to 370 homes at Walton at the start of the LP1 plan period, proportionately delivery of 93 dwellings would represent about a 25% increase. Again that is not atypical compared against levels of growth of other primary and secondary villages. Seen in that context, the scheme would neither unduly skew the strategic delivery of development towards secondary villages, nor meaningfully distort the overall spatial strategy set via the LP1.

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<sup>9</sup> LP2 paragraph 1.2, first bullet.

<sup>10</sup> Appellant statement of case, paragraph 6.47 and appendix 7.

<sup>11</sup> Coxley, Coxley Wick and Upper Coxley, and also Meare.



26. In terms of accessibility, summarising the foregoing, the site would be an acceptable location for the development proposed. Allowing the appeal would neither undermine the spatial objectives of the development plan, nor would it conflict with the approach in NPPF paragraphs 104 or 105. By virtue of the site's location alone, the proposal is not supported via LP1 policies CP1, CP2 or CP4. Given the emphasis in the NPPF on a genuinely plan-led system, that conflict entails some harm in and of itself. Nonetheless given the location and implications of the scheme, any harm in that respect would be limited.

### *Heritage*

27. Landscape history, character, and the evolution of Walton inter-relate with one another and with heritage assets. There is a clear historic structure to the landscape at and around the appeal site reflecting a complex overlay of land use and reapportionment. Historically Walton emerged along and around Main Street (the A39). Successively development has extended along roads spurring off the A39, including at South Street. As reflected in the appellant's Heritage Assessment,<sup>12</sup> there is evidence of prehistoric and Roman settlement in the surrounding area. Much of the land here was associated with Glastonbury Abbey until the dissolution, thereafter becoming elements of manorial estates.
28. The Somerset and Exmoor Historic Landscape Characterisation project aptly describes the site as falling within an area of anciently enclosed land modified in the seventeenth to nineteenth centuries. In all likelihood, the appeal site was historically associated with the manorial seat thought to previously exist around Walton Farm (on the opposite side of the A39 to the Church of the Holy Trinity). That would be consistent with the fields to the south of the village being part of the more fertile slopes of the Polden Ridge, as opposed to lower-lying ground towards the north. That is notwithstanding that the site is, on the appellant's evidence and without countervailing evidence, graded 3b in terms of agricultural land classification (therefore not best and most versatile).
29. The appeal site appears to have remained relatively open historically, rather than being given over to burgage plots or strip farming as occurred elsewhere. Mapping from 1784 indicates that the site was then two fields.<sup>13</sup> By 1880 the site had become one. It appears to have remained as farmland since. The medieval structure to Walton is somewhat discernible, albeit the village has experienced much subsequent change. As an example, and although the list entry for the Church makes no reference to its earlier origins,<sup>14</sup> the Heritage Statement indicates that a church was present from the twelfth century. That would be consistent with both the continuity embodied in many ecclesiastical buildings and of settlement here.
30. Of 159 National Landscape Character Areas, the site falls within the Mid Somerset Hills character area ('NCA 143'). NCA 143 is an extensive swathe of land characterised by a series of low hills and ridges set within the moors and levels given over principally to agricultural fields interspersed with woodland.

<sup>12</sup> Prepared by Cotswold Archaeology, November 2019, paragraphs 3.9 to 3.11 in particular.

<sup>13</sup> As also reflected in the appellant's Geophysical Survey Report, prepared by Sumo, ref.16922, February 2020, paragraph 5.3.1, which otherwise notes no 'identified anomalies of potential archaeological interest'.

<sup>14</sup> List entry no. 1176255.

At a local level, as referenced in the appellant's Landscape and Visual Impact Assessment ('LVIA'),<sup>15</sup> the site fell within the 'Polden Ridge' landscape character area as in the Mendip Landscape Character Assessment of 1997 ('CA1997').<sup>16</sup>

31. Amongst other features that area was aptly described in the CA1997 as characterised by generally moderate to large fields demarcated by substantial hedgerows, with narrower fields closer to settlements.<sup>17</sup> That succinctly reflects landscape history hereabouts. The CA1997 also accurately explained how Walton is a 'rather straggling, exposed settlement along the A39 with its older centre set back in a sheltered hollow.'<sup>18</sup>
32. Arguably any building or human intervention in the land has some value in reflecting the past in the present. Nevertheless, against the foregoing historical and landscape context, it is common ground between the main parties that no. 21 South Street, which by 1840 occupies the north-western corner of the field shown in the map of 1784,<sup>19</sup> may fairly be described as a non-designated heritage asset ('NDHA').
33. No. 21 likely originated as a rural worker's cottage or otherwise in connection with agriculture, although it has since been substantially altered and extended (particularly to the rear). Buildings at Manor Farm, to the south-west of the appeal site beyond the sole access to the site, are shown on the 1784 map. It is also common ground between the main parties that Manor Farmhouse should be treated as an NDHA.
34. Heading northwards from the appeal site to the A39, beyond no. 21 South Street and also no. 17, is grade II listed Mullions (no. 9 South Street),<sup>20</sup> its name likely reflecting a three-light mullioned window in a gabled elevation facing South Street. Consistent with its location closer to Main Street, Mullions represents an earlier element of the village. The list entry indicates that it traces its origins to the sixteenth or seventeenth century (albeit there are later alterations to it including 'colourwashed pebbledash').
35. Beyond Mullions, to the south-east of the Church, is grade II\* listed The Old Parsonage (nos. 67 and 67a).<sup>21</sup> The Parsonage is yet earlier, albeit with successive overlays of intervention. The list entry suggests that it was a monastic manor courthouse, fifteenth century in origin. By virtue of being nestled within a plot occupied by mature trees and bounded by stone walls, the Parsonage is barely perceptible in its wider surroundings.
36. The list entry describes the Church as constructed in 1866 to the design of west country architect John Norton. Albeit Gothic, consistent with Norton's approach to ecclesiastical architecture, the Church is relatively restrained in form and ornamentation. It was evidently designed to be accessed and appreciated principally from Main Street; the buttressed tower, which the list entry indicates was topped with a pyramidal slate roof and weathervane in

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<sup>15</sup> Prepared by Pegasus Group, 30 April 2020, to which there is an Addendum of 2 September 2020.

<sup>16</sup> As it does in the subsequent landscape character assessment of 2020.

<sup>17</sup> Paragraph 12.4.5, reproduced in Heritage Assessment paragraph 4.24.

<sup>18</sup> Ibid.

<sup>19</sup> Heritage Statement, figures 12 and 13.

<sup>20</sup> List entry no. 1176284.

<sup>21</sup> List entry no. 1058723.

1886, is located to the north of the nave with a clock face in that direction. Reinforcing that conscious orientation, the south of the Churchyard is demarcated by a substantial rubblestone wall and its grounds punctuated by mature trees. There is therefore limited outlook from the churchyard southwards towards the appeal site.

37. The intervening space between the churchyard and appeal site, some 100m or so,<sup>22</sup> is a complex amalgam of buildings and parcels of land. Some of that intervening space appears to be land associated with the Parsonage and nos. 7, 9, 17 and 21 South Street. Parcels of land there are variously demarcated or occupied by boundary features, planting and trees. A path from the churchyard leads behind several properties fronting the A39, through a graveyard, to what is shown on certain maps as the rectory (now, I understand, boarding facilities associated with Millfield School). Next to the former rectory there is other land owned by Millfield School.
38. The Churchyard, graveyard, rectory, and much of Millfield's grounds are an Open Area of Local Significance.<sup>23</sup> Between the grounds of Millfield School and the appeal site is a field which ultimately rounds the south-eastern corner of the site to connect with Veal Lane. On certain mapping there is a war memorial annotated in, or by, the north-eastern corner of the appeal site next to that neighbouring field. That appears to relate to trees planted at a juncture when the site was used historically as a cricket pitch.<sup>24</sup>
39. It is common ground between the main parties that the setting of the Parsonage and Mullions would be preserved, or that it would be capable of being preserved (given that the proposal is in outline). I agree. Although the surroundings in which heritage assets are experienced are not exclusively visual, there is no meaningful intervisibility between the appeal site and either on account of the intervening distance and features referenced above.
40. Whilst the appeal site contributes to the rural setting to Walton- and landscape history, character and settlement morphology are interconnected- there is no clear associative or historic connection between the appeal site and either Mullions or the Parsonage (as opposed to an essentially incidental relationship). The Parsonage and Mullions are, moreover, set amidst other residential development of differing eras.
41. As above, no. 21 is next to the site. Its significance derives in part from its built form reflecting an historic connection with the agrarian economy upon which Walton was founded. Although some 70m to the south-west, there is a stronger associative agricultural connection between Manor Farmhouse and the site. Whilst the Council's decision notice of 1 February 2023 in respect of application ref. 2019/3004/OTS only expressly refers to the implications of the scheme to the setting of the Church, they contend at appeal that the two NDHA 'would suffer partially from their loss of immediate rural context'.
42. As with the Parsonage and Mullions, however, no.21 is now in residential use and next to other residential development of different eras. That includes nos. 20 and 22 South Street, which appear early-to-mid twentieth century. No. 20

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<sup>22</sup> Given in the Council's officer report.

<sup>23</sup> Drawing no. 'P18-0521\_12'.

<sup>24</sup> Appellant statement of case, paragraph 8.45.



South Close is also opposite which, as with properties off Chancellors Road nearby, is characteristic of mid-twentieth century understated suburban development. As above no. 21 has been significantly altered and extended over time, particularly to the rear facing towards the appeal site. Its significance, in a physical sense, therefore lies predominantly in the proportions of its principal elevation facing South Street in alluding to former agricultural origins (and, potentially, in its embodied fabric).

43. Although physically the Farmhouse itself retains a stronger historic integrity than no. 21, in the intervening ground between it and the appeal site and no. 22 South Street are various utilitarian agricultural buildings. Judging by their construction and state of repair, they are likely mid-to-late twentieth century. Those buildings dilute a readily appreciable historic connection with the appeal site in contrast to other fields immediately around the Farmhouse. Moreover, irrespective of the outcome of this appeal, much of the surroundings to no. 21, Manor Farmhouse and Walton would remain agricultural and characteristic of the wider landscape. As above, the CA1997 accurately describes how Walton is linear, straggling and exposed.
44. Moreover, in landscape terms, a comfortable transition to the rural surroundings of Walton could readily be achieved through a sensitive approach to reserved matters, landscaping in particular.<sup>25</sup> The application form gives the appeal site area as 1.60ha. Were 37 dwellings to come forward, that would amount to a relatively low residential density of around 23 dwellings per hectare ('dph'). Leaving 0.6ha as open, landscaped space, the residential density proposed would be around 37dph, which appears broadly comparable with prevailing levels of density around South Street and elsewhere at Walton.
45. I acknowledge there is a strong continuity of landscape structure here, and that the site has formed part of the agricultural backdrop to the Church for centuries. Much of the formerly rural setting to the Church has given way to development over time, which arguably places some greater importance on maintaining elements of that setting which remain. There is also some intervisibility between the appeal site and Church. At the time of my site visit I was able to see the top of the Church tower from within the appeal site.
46. My site visit was also in early summer, and there would be greater visibility when intervening trees are not in leaf. As reflected in the LVIA and addendum to it, there are more distant vantage points from where there is a greater visual interrelationship. Those include vantage points along Veal Lane as the land rises towards the south, and along footpath WS12/20 heading south-eastwards away from the site. The proposal would inevitably result in change.
47. However the Church is located some 100m or so away across an amalgam of land subdivided by various boundary features and trees. There is little meaningful visual relationship between the appeal site and Church, and again a sensitive approach to layout and scale could provide opportunities for preserving vistas or corridors of view towards the Church tower. As with other

<sup>25</sup> As is illustrated on plan no. P18-0521\_01 REV: i., notwithstanding that the proposal would entail the removal of one tree, fairly graded 'C' with reference to BS5837:2012 'Trees in Relation to Design, Demolition and Construction' in the appellant's Tree Survey, prepared by Doug Pratt Tree Consultancy, ref. 19.093 TS, dated 5 November 2019.

heritage assets described above the Church is set within the context of successive eras of development reflecting the expansion of the village over centuries, principally appreciable from the A39, and consciously orientated in that direction.

48. The Church was thoroughly remodelled in the nineteenth century and therefore, physically, reflects a particular era in a much longer continuity of settlement. In its present form, consistent with growing wealth and Victorian architectural tastes, it is very much of that era rather than reflecting earlier history. Moreover, irrespective of the outcome of this appeal, much of the surroundings to Walton would remain staunchly rural. There is, summarising the foregoing, little importance to the site in terms of its contribution to the setting of the Church or to its significance.
49. Drawing together my reasoning, up to 37 dwellings could be delivered here in a way that would entail such little effect so as to be fairly described as neutral in respect of heritage implications. The proposal would be capable of preserving the significance of heritage assets in line with the expectations of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended, and in accordance with the relevant provisions of LP1 Development Policy 3 and of NPPF paragraphs 195 and 205. Consequently, NPPF paragraph 11.d)i) is not applicable.

#### *Highways*

50. On account of the historic evolution of Walton, the local road network was not designed to accommodate current traffic or parking demands. South Street provides access to many more properties than existed at the time Mullions, no. 21 or nos. 20 and 22 were built; TSV05 indicates that it presently serves around 90 properties.
51. In the absence of parking restrictions for much of its length, at the time of my site visit there were several vehicles parked along South Street, which served to practically restrict the available carriageway such that only one vehicle could pass at a time at certain points. Local representations indicate that is typical; TSV05 noting that South Street is only some 5m wide on occasion. There is no footway to the east of South Street.
52. South Street joins both Veal Lane and Long Lane by the south-western corner of the appeal site. The former heads away to the east, the latter to the west. The junction of South Street and Veal Lane is roughly right-angled (slightly acute). By consequence, and on account of the hedgerow bounding the appeal site, there is limited intervisibility between the two. Veal Lane is essentially an agricultural track. It is narrow with only occasional passing places, and changes direction abruptly around field boundaries. Parts were in poor condition at the time of my site visit.
53. Similarly visibility westwards when exiting South Street and turning onto the A39 falls below modern standards. There visibility is limited on account of the side elevation of no. 73 Main Street. Representations before me refer to safety concerns in respect of that junction and to near misses. Dean Titchener refers to an accident in Autumn 2019. Concerns have also been raised about the junction of Veal Lane and Cockrod to the south, which I used during my

site visit. The scheme would inherently add to the existing intensity of vehicular and pedestrian movements hereabouts.

54. In respect of the site specifically, initially vehicular access was proposed towards the middle of the site's western boundary as shown on plan no. '4390 C' and described in the appellant's Transport Statement of 2 December 2019. Somerset Highways objected to that approach via representation of 5 March 2020. That was principally on account of the proposed access falling, in their view, 'too close to the Veal Lane junction'. They raised several other concerns at that juncture. Via correspondence of 23 April 2020 Somerset Highways commented on a revised access arrangement, plan no. '4390-120 E', and an updated Transport Statement of 20 February 2020, requesting additional information in respect of traffic speeds and in respect of the junction of South Street and the A39.<sup>26</sup>
55. The current proposal is represented on plan no. '4390-120 F' and described in the Transport Statement of 2 July 2020 ('TSV05'). Plan no. '4390-120 F' is described in the Council's officer report as effectively moving the access 2.7m further north than initially proposed, away from Veal Lane. Other than the provision of a 2m wide footway either side of the access, its geometry is essentially the same as in respect of plan no. '4390-120 E'. Plan no. '4390-120 F', however, contains additional details as to how the scheme would relate to the existing highway and surrounding features (including the removal of a tree and telegraph pole next to South Street and the provision of dropped kerbs and tactile paving in several locations).
56. On the basis of plan no. '4390-120 F' and TSV05, notwithstanding recommending conditions and noting that suitable legal agreements would need to be secured to effect highways works, Somerset Highways raised no objection to the scheme in their representation of 7 August 2020. That, in turn, informed the Council's officer report recommending the scheme for approval at committee on 18 January 2023.
57. That recommendation was not supported by Members. Minutes of the committee meeting refer to highway safety, particularly at the junction of South Street and the A39, and the potential for greater conflict to arise between motorists and pedestrians. Those points, echoing the concerns of many nearby, are articulated in the Council's first reason for refusal.
58. In respect of site access itself, the geometry now proposed would comply with Somerset Council's Estate Roads Design Guidance (at the time of TSV05 dating from 1991). The alignment of the junction of South Street and Veal Lane would be improved 'to reduce excessive road space, traffic speeds and to provide additional junction spacing'.<sup>27</sup> Based on two hour-long speed surveys, the eighty-fifth percentile vehicle speed was recorded as 19.9mph southbound along South Street and 16.55mph northbound,<sup>28</sup> in line with the Government's Manual for Street (published 2007, 'MfS').<sup>29</sup> Correlating those observed speeds with standard stopping distances adjusted for bonnet length in line

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<sup>26</sup> Reiterated in correspondence of 22 July 2020.

<sup>27</sup> As annotated on plan no. '4390-120 F'.

<sup>28</sup> TSV05, table 2.

<sup>29</sup> Paragraph 7.5.2.

with MfS,<sup>30</sup> indicates that drivers would need around 24.7m visibility northwards of the site access and 19.7m to the south (in order for oncoming vehicles to come safely to a stop in relation to vehicles exiting the site).

59. The proposal is for visibility splays of 25m both northwards and southwards, which could be secured via appropriately worded conditions were the proposal acceptable as a whole. Furthermore, the Government's Manual for Streets 2 (published in 2010, 'MfS2') guides in any event that 'unless there is local evidence to the contrary, a reduction in visibility below recommended levels will not necessarily lead to a significant problem'.<sup>31</sup> Swept path analysis, moreover, shows that a Somerset County Council 11.7m refuse vehicle could safely access the site.<sup>32</sup>
60. Consistent with its origins, current state, and given that it does not represent an arterial route, TSV05 describes Veal Lane as 'very lightly trafficked'. That is alluded to at Appendix B to TSV05, where few vehicular movements are recorded at the times the speed surveys were undertaken. Consequently the site access proposed would be acceptable, as would any implications associated with Veal Lane.<sup>33</sup>
61. Turning to traffic generation more broadly, TSV05 indicates that South Street currently serves approximately 90 dwellings. Based on TRICS industry-standard traffic generation data, the proposal is estimated to result in an additional 200 vehicular movements a day (i.e. each dwelling generating 5.42 vehicular movements). If that metric were, hypothetically, to applied to 90 dwellings, the existing baseline level of vehicular movements along South Street amounts to some 488 daily.
62. Whilst a 40% uplift appears significant, applied to morning and afternoon peak hours that amounts to an additional 23 to 25 vehicular movements during those times, less than one every 2 minutes. Whilst that may result in some additional delay, that cannot rationally be described as 'severe' with reference to NPPF paragraph 115. Furthermore, in 2018 DfT undertook traffic counts of the A39 nearby.<sup>34</sup> That recorded 1,462 vehicular movements during the afternoon peak hour; the effects of the scheme would be fractional in that wider context.
63. With that in mind the proposal would not result in undue potential to exacerbate the conflict between different road users or pedestrians. Although there is no pavement to the east of South Street, there is nevertheless a pavement running from no. 20 South Street to the A39. Various improvements to that pavement are proposed as above. There is also occasionally some informal space where refuge may be taken from oncoming vehicles to the east of South Street (in the way of a verge or hardstanding of varying widths).

<sup>30</sup> Table 7.1, paragraph 7.6.4.

<sup>31</sup> Paragraph 10.5.9.

<sup>32</sup> TSV05, appendix E.

<sup>33</sup> Noting paragraph 3.6 of the appellant's final comments, which states that there is no evidence of accidents at the junction of Veal Lane and Cockrod 'for the past 10 years'.

<sup>34</sup> TSV05, paragraph 5.8, count point 16391.

64. Turning to safety, TSV05 sets out how between January 2016 to December 2018 there were no records of personal injury collisions along Veale Lane or South Street (the nearest being along Long Lane and at Main Street Close to Broughton Close).<sup>35</sup> That potentially reflects how in historic and rural locations, such as here, much of the road network does not comply with modern standards, and drivers instinctively adopt a cautious approach accordingly.
65. Neither incident above, moreover, appears to have related specifically to the nature of road infrastructure. As set out in the appellant's addendum to TSV05 there have been no personal injury collisions recorded in respect of the South Street A39 junction between January 2017 and December 2021.<sup>36</sup> There is also no evidence of collisions with pedestrians between 1999 and 2019 around the junction of South Street and the A39.<sup>37</sup>
66. All told, and taking account of the improvements proposed to the junction of South Street and Veal Lane and to the pedestrian route along South Street, the proposal would integrate appropriately with the local highway network, in compliance with the relevant provisions of LP1 Development Policy 9 and of NPPF section 9.

#### Other matters

67. I have taken careful account of all representations in respect of the proposal. Those representations reflect various concerns, including the potential implications of the proposal as regards living conditions, air quality, disruption during construction, flooding, drainage and utilities provision. I also address below implications in respect of biodiversity, ecology, phosphates, and various beneficial implications of the scheme.

#### *Living conditions, air quality and construction*

68. The proposal would alter the surroundings to various properties (notably nos. 17, 20, 21 and 22 South Street and no. 20 South Close). Notwithstanding that the dwellings proposed would not exceed two storeys,<sup>38</sup> their presence, and associated residential activity, would affect the outlook and privacy from which the occupants of the foregoing properties, in particular, benefit. As reasoned above the scheme would also add to the intensity of vehicular movements here, and thereby associated emissions.
69. Whilst living conditions are in large part dependent on perception, I have reasoned that the level of residential density proposed would not be incomparable with that which exists nearby (and that a suitable rural transition could be achieved). Similarly, as illustrated on indicative layout plan no. 'P-18-0521\_01 F', a comparable separation distance between the dwellings proposed and neighbouring properties as exists around South Close, Long Lane and Chancellor Close appears to be achievable.

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<sup>35</sup> That appears to remain the case as reflected in the appellant's appellant final comments, paragraph 2.13.

<sup>36</sup> Figure 1, albeit two 'slight' PICS are recorded approximately along the A39 near the junction of the A39 with Creeches Lane.

<sup>37</sup> TSV05, paragraph 4.35.

<sup>38</sup> Appellant final comments, paragraph 3.10, reflecting that there was an error in original submissions suggesting 3 storey properties (which would be inconsistent with the prevailing form and scale of properties hereabouts).



70. Subject to a sensitive approach to landscaping in particular, existing boundary features, aside from tree 'T9', would be capable of being preserved. New boundary features and planting could also serve to mitigate effects to neighbours' living conditions (for example by providing a stronger boundary between the plot of no. 21 and the appeal site). The scheme is also for 'up to' 37 dwellings. That provides some flexibility in numbers, in the eventuality that the detailed design would need to address particular implications for neighbouring living conditions.
71. I have also reasoned that the traffic implications of the scheme would be limited amidst the baseline circumstances at South Street and the A39, and that there are various services and facilities nearby. The site is not within, or near, an Air Quality Management Area. There is no indication that air quality hereabouts is approaching relevant limit values. The proposal would inevitably entail the potential for some noise, disturbance and disruption during construction. However any effects in those regards would be temporary and could be managed via associated conditions.
72. I acknowledge the particular concern of the occupants of no. 21 regarding the potential structural effects of construction to that property. Nonetheless there is nothing to indicate, for example on account of ground conditions or land stability, that the scheme could not be delivered in an appropriate manner (insofar as a relevant public, as opposed to private legal, matter). In short, the implications of the scheme in terms of living conditions, air quality and construction would not be unacceptable. The scheme would, subject to conditions and reserved matters details, accord with the relevant provisions of LP1 Development Policies 1 and 7 and of NPPF paragraphs 109, 135 and 192.

*Flooding, drainage and utilities provision*

73. A rural lane, sunken by the appeal site, Veal Lane has flooding previously. Local residents have drawn my attention to recent incidents which have led to some deterioration of the road surface. I am also told that water pressure here is low and has faltered. Nevertheless, as reflected in the appellant's Flood Risk Assessment ('FRA'),<sup>39</sup> the site is within flood zone 1 (i.e. at low probability of flooding).<sup>40</sup> A higher risk of flooding at Veal Lane results from the topography and overland flows.<sup>41</sup>
74. With reference to the existing nature of the ground and hydrology there is no indication that an approach to drainage- whether infiltration, attenuation or a combination thereof- which either reflects or improves upon current runoff rates would be unachievable or impractical. Improved site drainage, capable of being secured via appropriate conditions would, if anything, be to the benefit of Veal Lane (consistent with LP1 Development Policy 23 and NPPF paragraph 173).
75. As reflected in the correspondence on behalf of Wessex Water of 8 October 2019 at FRA appendix G, 'there is adequate current available spare capacity within the existing local foul sewer network for the predicted foul flows [that the proposal would entail]'. I will return to wastewater treatment and

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<sup>39</sup> Trace Design, ref. 19036, 4 December 2019.

<sup>40</sup> PPG Reference ID: 7-078-20220825.

<sup>41</sup> FRA, figure 3.

potential indirect ecological effects subsequently. By virtue of the Water Industries Act 1991 as amended, moreover, water providers are obliged to facilitate and maintain connections.

### *Infrastructure*

76. Various residents have observed that infrastructure at or around Walton is already stretched. I accept those pressures are keenly felt. I acknowledge that there may be a mismatch between the timing of development and associated infrastructure provision elsewhere (or that the latter may be less readily discernible). Nonetheless the UU commits all those with a legal interest in the land to the fulfilment of certain obligations in the eventuality that the appeal were to be allowed, conditional on my reasoning. NPPF paragraph 55 sets out how consideration should be given as to whether 'otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations'.<sup>42</sup>
77. The UU contains obligations in respect of provision of affordable housing, phosphate mitigation, education, open space,<sup>43</sup> monitoring and legal costs. Neither the appellant, nor Council dispute the necessity or appropriateness of the foregoing obligations. Albeit that I will return to the approach proposed in respect of phosphates, there is nothing in the evidence before me to indicate otherwise.
78. I note that the education contribution of £204,888.00 is directed towards 'the provision of additional or expansion/ improvement of existing early years education facilities within its administrative area'. It is not directed to Walton Primary School directly. However the governance of that contribution and how it relates to catchments and the nature of existing facilities is a matter for the Council (as local education authority). There is no indication before me that other or different contributions are necessary to make the development proposed acceptable, for example in respect of healthcare.
79. The UU also contains obligations which relate to practical arrangements, including in respect of First Homes, highways agreements,<sup>44</sup> a landscape and ecological management plan, site management, provision of public open space, a surface water drainage strategy, and in respect of obligation details, triggers, timing and monitoring. Again those provisions are reasonable and necessary to make the development acceptable (including in setting out arrangements for eventualities that may arise in time).
80. In summary, on account of my reasoning above and below as regards phosphates, the obligations contained within the UU are all necessary to make the development proposed acceptable, and accord with the relevant provisions of LP1 Development Policies 11, 16 and 19, NPPF paragraph 57 and CIL Regulation 122.

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<sup>42</sup> NPPF paragraph 57 and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 as amended (the 'CIL Regulations') set out the circumstances in which planning obligations may legitimately be sought.

<sup>43</sup> Including towards a Multi-use Games Area and Local Equipped Areas for Play offsite.

<sup>44</sup> Pursuant to the Highways Act 1980 as amended and, in respect of a Traffic Regulation Order, the Road Traffic Regulation Act 1984.

### *Biodiversity and ecology*

81. The appellant's Ecological Impact Assessment ('ECiA'),<sup>45</sup> describes the site as semi-improved grassland, insufficiently species-rich to constitute habitat of principal importance, largely bounded by broadleaved hedgerows. The site does not fall within an international, national or local environmental designation.<sup>46</sup> Nonetheless, and reflecting its function as part of the wider habitat around Walton, the ECiA rationally summarises that the site should be considered to be of 'moderate ecological importance'. It also falls within the risk impact zones of several protected areas.
82. The biodiversity or ecological value of the site is reflected within its flora and fauna, principally in respect of its hedgerows, trees and a small area of scrub in the north-eastern corner. The ECiA found the site and its surroundings to be used by various mammals, at least 11 species of bats, birds and invertebrates. The site theoretically provides suitable habitat for other animals (albeit highly limited potential in respect of amphibians and reptiles).<sup>47</sup> There appears to be no particular value to the site in terms of its ecological value relative to the features for which nearby designations were established.
83. As in the appellant's Tree Survey,<sup>48</sup> tree 'T9' would be removed to facilitate access. The ECiA refers to some 15-20m of hedgerow clearance to facilitate access, albeit that appears to relate to the Veal Lane boundary (which is unamended on indicative layout plan no. 'P18-0521\_01 F'). Unlike the other boundaries to the site, that at South Street is instead demarcated simply by utilitarian post and wire fencing. Nonetheless the proposal will inherently change the nature of the site, entail the loss of existing grassland, and thereby alter the value of it to certain species.
84. Tree 'T9', however, referred to in the ECiA as 'TN2', is a straggling wild cherry. Fairly, the Tree Survey notes, it has 'poor vitality and poor structural condition'. It is recorded as potentially having some value in the ECiA, by virtue of supporting populations of invertebrates, prey for bats and birds. However, consistent with its condition, and notwithstanding the observations of the Parish Council, the ECiA summarises that T9/TN2 does not possess potential for bat roosting features unlike other trees on site (notably Tree Survey 'T10', which corresponds with ECiA 'TN1', a more substantial ash with 'good vitality' proposed for retention).
85. Moreover, aside from T9/TN2, all existing hedgerows would be retained. That would preserve the most ecologically valuable elements of the site. Notwithstanding the protections in other regimes,<sup>49</sup> subject to managing construction sensitively the existing ecological value of the site could be suitably preserved. Furthermore the illustrative intention is that the boundaries of the site are augmented by ecological buffer zones, and that attenuation ponds are provided. Similarly, and subject to any necessary subsequent surveys, an appropriate approach to landscaping appears readily

<sup>45</sup> Clarkson & Woods, project no. #6684, 3 December 2019, supported by both an Extended Phase 1 Habitat Survey of April 2019 and detailed bat surveys of August and October 2019.

<sup>46</sup> Plan no. P18-0521\_12, the nearest being the Walton and Ivythorn Hills Site of Special Scientific interest around Cockrod by the junction with Veal Lane (Broadleaved, mixed and yew woodland).

<sup>47</sup> Notwithstanding that representors refer to observing slow worms previously.

<sup>48</sup> Doug Pratt Tree Consultancy, ref. 19.093 TS, dated 5 November 2019.

<sup>49</sup> Notably via the Wildlife and Countryside Act 1981 and the Badgers Act 1991.

capable of improving the biodiversity value of the site overall. In that respect the scheme is capable of adhering with the expectations of statute,<sup>50</sup> and according with the relevant provisions of LP1 Development Policies 5, 6 and 8 and NPPF paragraph 180.d).

### *Phosphates*

86. Turning to the broader, or indirect, ecological implications of the development proposed, on 17 August 2020 Natural England wrote to Somerset authorities regarding high levels of phosphates at the Somerset Levels and Moors Ramsar Site and Special Protection Area ('SPA'). Those designations, broadly coterminous, incorporate several Sites of Special Scientific Interest ('SSSIs'), as listed in the appellant's 'Shadow Habitat Regulations Assessment' ('SHRA').<sup>51</sup>
87. At its nearest the SPA boundary is some 3.4km away, notwithstanding that it has an extensive hydrological catchment. I note that the SHRA post-dates the Council's 'Somerset Levels and Moors Phosphate Mitigation Solutions report' of 14 March 2022, in respect of which Natural England were consulted. In short, the Ramsar Site was designated for its wetland features and rare aquatic biodiversity. The SPA, pursuant to the Birds Directive, was designated for supporting internationally important bird populations.
88. Natural England correspondence of 17 August 2020 followed European judgements, and explained that the SPA was in an unfavourable condition. Phosphates, generated from various sources including fertilisers and sewage, had detrimentally affected the ecological integrity of the SPA by virtue of altering the levels of nutrients present. That is an issue which persists. The foregoing correspondence explained how additional nutrients arising from development were unlikely, alone or in combination with others, to have a likely significant effect on the internationally important bird populations for which the SPA was designated to protect.
89. By virtue of NPPF paragraph 187, however, Ramsar sites are accorded the same protection as SPAs. That includes, by extension, via the provisions of Regulation 63 of the Conservation of Habitats and Species Regulations 2017 as amended. Regulation 63 requires that, before deciding to grant any permission or other authorisation for a project which is likely to have a significant effect on a European site, a competent authority must make an appropriate assessment of its implications. I now turn to undertake that appropriate assessment in a reasonable and proportionate manner relative to circumstances here.

### *Appropriate Assessment*

90. As described in the SHRA the site falls within the surface water catchment of the River Brue, which runs through the SPA, Ramsar Site and levels more broadly. Relatively nearby the Brue runs between the Tealham and Tadham Moors SSSI and the Catcott Edington and Chilton Moors SSSI. As set out in the appellant's initial Phosphate Mitigation Strategy of 14 October 2022,<sup>52</sup> the

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<sup>50</sup> Section 28(G) of the Wildlife and Countryside Act 1981 as amended, section 40 of the Natural Environment and Rural Communities Act 2006 as amended.

<sup>51</sup> GE Consulting, ref. 1753B-SHRA-NH, October 2022, paragraph 5.1.

<sup>52</sup> Prepared by Galion, reproduced at SHRA appendix A.

development proposed was estimated to result in additional phosphate loading of 8.64kg annually. That took account of Natural England's advice of 16 March 2022 and an iteration of the Council's Phosphate Budget Calculator ('PBC'). On 23 October 2023, that iteration of the PBC was endorsed by Natural England, the appropriate nature conservation body under Habitats Regulation 5.

91. Appendix 5 to the appellant's statement of case is a Nutrient Neutrality Assessment and Mitigation Strategy of 24 May 2023 ('NNAMS').<sup>53</sup> That explains how wastewater from the development proposed would be treated via the Glastonbury wastewater treatment works ('WwTW') before entering the River Brue catchment. Presently the WwTW operates such that treated effluent has 2.0 milligrams per litre ('mg/l') of phosphates.
92. The NNAMS explains however, by virtue of planned 'AMP7' upgrades taking effect by 2025, the WwTW would become more efficient. From 2025 treated effluent is intended to achieve instead 0.8mg/l phosphates. That increased processing efficiency, unaccounted for in the iteration of the PBC referenced above, means that the proposal would instead have a predicted total phosphate loading of 3.67kg annually, or 4.40kg with a 20% 'precautionary buffer'.<sup>54</sup> That figure remains consistent throughout the evidence before me, including in the 15 February 2024 version of the NNAMS at Appendix 2 to the appellant's final comments, and is agreed by Natural England.<sup>55</sup>
93. Nutrient neutrality is area of planning in which there has recently been significant change. Further to iterations of the PBC, the Council have also worked towards the establishment of phosphorus credits ('P Credits'). It is envisaged that developers will be able to purchase P Credits to offset the additional phosphate generation resulting from a given scheme. Although the Parish Council advocate that phosphate deposition should properly be addressed at source, practically addressing phosphate implications elsewhere within the relevant catchment would amount to the same outcome.
94. In that context, and given the duration since application ref. 2019/3004/OTS was submitted, the appellant has advanced 3 approaches to addressing the additional phosphate implications of the proposal. At the time of the SHRA the intention was to 'undertake the planting of new native deciduous woodland on arable land at Hill Farm, Glastonbury'.<sup>56</sup> At appeal the appellant's initial intention was to purchase P Credits resulting from the cessation of dairy and pig farming at Manor Farm near Prestleigh.<sup>57</sup> Presently, and as reflected in the UU, the proposal is to upgrade various septic tanks of properties at Pennard with more efficient package treatment plants intended to achieve 1.6mg/l phosphates in treated effluent.<sup>58</sup>
95. The scheme at Pennard is calculated to achieve a reduction in phosphates entering the River Brue catchment of 5.91kg annually, figures again which Natural England agree with as consistent with 'the Advice Note on package

<sup>53</sup> RMA Environmental, project number RMA-C2556a.

<sup>54</sup> NNAMS, paragraph 4.13.

<sup>55</sup> Natural England correspondence of 25 January 2024.

<sup>56</sup> Paragraph 5.3.2.

<sup>57</sup> With reference to Appendix 13a to the appellant's statement of case.

<sup>58</sup> As shown in the technical specification appended to the appellant's final comments, Otto Graf GmbH, report ref. PA12014-216B14.01.e.



treatment plants published by Somerset Council and developed in partnership with Natural England and the Environment Agency'.<sup>59</sup> Schedule 1, clauses 1.e. and f. to the UU set out that the development proposed here shall not commence until the septic tank upgrade monitoring fees have been paid to the Council.

96. Returning to my reasoning in respect of at source or off-site mitigation in paragraph 93 above, practically that would enable the Council to monitor compliance. Moreover schedule 7 to the UU relates to the foregoing approach to mitigation, preventing commencement until the septic tank upgrades have been completed. In that context, and given Natural England have informed both the evidential basis upon which the approach to phosphate mitigation is founded and the proposed mitigation in this instance specifically, the UU would secure a suitable approach to nutrient neutrality.
97. Accordingly, subject to suitably worded conditions, to the provisions of the UU, following my reasoning in respect of on-site implications and given the provisions of other regimes referenced above, the proposal would appropriately safeguard ecology and biodiversity both directly and indirectly in accordance with LP1 Development Policy 5 and NPPF paragraph 180.d). The proposal would not entail likely significant adverse effects.

#### *Housing provision*

98. As set out in above, there is a very significant shortfall in anticipated housing supply over the coming 5 years relative to needs. That is relative to the LHN-derived figure of 683dpa in respect of 5YHLS, substantially greater than the approach in the LP1. Forward supply appears also to have recently worsened. Work on an emerging plan, even if adopted by 2028, is quite some way off.
99. Amongst other constraints and challenges, achieving phosphate neutrality is significant; the Solutions Report refers to 3,120 projected new homes at Mendip being affected by that issue. Whilst this proposal has the potential to deliver over the coming five years, even if that does not occur, the scheme would serve to contribute towards provision beyond that timeframe (which, for the foregoing reasons, is likely to remain challenging).
100. Housing is occupied by people, which can sometimes be obscured by a discussion over numbers. The lack of a sufficient forward pipeline of deliverable housing sites will mean that the housing needs of many people will not be met. Seen through that lens, the proposal would be socially beneficial. There would also be associated economic benefits in supporting employment during construction, in the maintenance of dwellings, and as future residents would bring trade to nearby services and facilities.
101. The proposal would also provide for 11 affordable homes, some 30% (rounded) relative to LP1 Development Policy 11, as detailed in the appellant's Affordable Housing Statement ('AHS').<sup>60</sup> Housing affordability was a significant issue in the examination of the LP1. Then affordable housing needs stood at 743dpa. That is vastly in excess of the overall housing requirement of 420dpa. There is no indication that housing affordability has since improved.

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<sup>59</sup> Correspondence of 25 January 2024.

<sup>60</sup> Pegasus Group, ref. P18-0521, dated November 2019.

102. LHN has two principal inputs, 2014-based household projections (published 12 July 2016, 'HHP2014') and affordability. The latter is based on the median workplace-based affordability ratio, i.e. median house prices represented as a multiple of median earnings. As reflected in appendices 1 and 2 to the Council's statement of case, HHP2014 alone indicates that the number of households within the former District of Mendip will grow annually by 407.3 (2022 to 2032).<sup>61</sup> The difference between that figure and the LHN figure of 569dpa is a function of affordability, i.e. 162 additional dwellings a year. In 2022 the affordability ratio stood at 10.36, in that the average median house price was that multiple of median income.
103. There are in short, compelling needs for the provision of housing and affordable housing. As above the proposal would also entail economic benefits, improve the junction of South Street and Veal Lane, be to the benefit of pedestrian provision along South Street itself, provide for an above policy compliant level of public open space, and there is clear potential for biodiversity net gain to be achieved. Collectively the benefits of the scheme may therefore fairly be summarised as significant.

#### Planning balance

104. Drawing together my reasoning, there are no NPPF policies which protect areas of assets of particular importance which provide a 'clear reason' for refusing permission. Consequently NPPF paragraph 11.d)ii. applies, i.e. permission should be granted unless 'any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.'
105. The application of NPPF paragraph 11.d)ii. neither alters the statutory basis for decision taking as in section 38(6) of the 2004 Act, nor do relevant provisions of the development plan cease to exist. Nonetheless the proposal would be acceptable in terms of its location. I have also reasoned above that, on the one hand, the sole substantive harm arising from the scheme would be that it is not supported by LP1 policies CP1, CP2 and CP2. In all other respects, including as set out under other matters, the development proposed would be acceptable (or could be made so subject to conditions or obligations).
106. On the other hand the benefits of the scheme may fairly be accorded significant weight, chief amongst them the provision of housing and affordable housing. Therefore, with reference to NPPF paragraph 11.d)ii., the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits. They would not approach that threshold. Other material considerations therefore justify allowing the appeal.

#### Conclusion

107. For the reasons above, having taken account of the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be allowed subject to the conditions below and to the obligations contained in the UU.

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<sup>61</sup> Although that is not drawn from 2024 onwards.

## Conditions

108. In addition to requiring reserved matters applications and commencement in accordance with statute via condition 1, for clarity and so that the proposal is implemented as assessed above, I have imposed conditions 2 and 3. The former requires adherence to the relevant supporting plans, the latter is necessary to place limits on the development of the site within the terms of the application (consistent with WwTW AMP7 upgrades).
109. With reference to the statutory duties on me in respect of biodiversity, and to ensure compliance with LP1 Development Policies 5, 6 and 8, and NPPF paragraph 180.d), conditions 4, 5, 6 and 7 are also necessary. With reference to paragraph 99 of Government Circular 06/05: Biodiversity and Geological Conservation, there is sufficient and proportionate information before me to reach a judgement as regards the implications of the scheme to biodiversity and ecology. Nevertheless, conditions 4 and 6 should include provision for subsequent studies (for example those necessary to ensure that the findings of the ECiA and supporting work to it remain valid, or establish any change). Condition 5 is also necessary pursuant to section 197 of the 1990 Act in respect of preserving trees.
110. Condition 7 is necessary to minimise adverse effects resulting from construction to nearby residents in line with LP1 Development Policies 7 and 8 and NPPF paragraph 135.f). Similarly, and also with reference to LP1 Development Policies 8 and 9, I have imposed condition 8 requiring adherence to a construction traffic management plan. In framing that condition and others I have taken careful account of Somerset Highways' representation of 7 August 2020.
111. In that context also, and to ensure that the access and highways implications of the scheme are acceptable, conditions 9, 10 and 11 are necessary (including for compliance with LP1 Development Policy 9 and NPPF paragraph 114.b). The suggestion that visibility splays at the access proposed be maintained such that there is no impediment to visibility greater than 300mm above ground level is inconsistent with the 600mm recommended in both TSV05 and MfS (and without substantiation).<sup>62</sup>
112. Whilst development must comply with the relevant provisions of the Building Regulations 2010 as amended in any event, for consistency with LP1 Development Policy 7, and the associated Supplementary Planning Document (adopted March 2022), condition 12 is necessary. Similarly, including with reference to the Solutions Report, I have also imposed condition 13 related to water efficiency.
113. Likewise, and notwithstanding that there is a degree of overlap with reserved matters, to ensure that the development proposed is suitably served by cycle, recycling and waste storage, I have imposed condition 14. Following on from my reasoning in paragraphs 73 to 75 of this decision, appropriate drainage provision would be achieved via adherence to condition 15 (which would secure adherence with LP1 Development Policies 7 and 23).

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<sup>62</sup> Paragraph 4.15 of the former and 7.6.3 of the latter.

114. Paragraph 1.3 of the Government's Statutory Guidance related to Part 2A of the Environmental Protection Act 1990 as amended sets out that the starting point should be that land is not contaminated land unless there is a reason to consider otherwise. Given the agricultural history to the site the propensity for contamination to be present is likely relatively low, albeit not inherently absent.<sup>63</sup> Therefore as a precautionary approach to addressing contamination unexpectedly encountered, I have also imposed condition 16.
115. Conditions 4, 5, 6, 7, 8 and 15 must necessarily apply before any development is commenced. Those conditions relate to implications of the development which, if not managed suitably from the outset, may result in adverse effects (or relate to matters integral to the design of the scheme). I note the Council propose that external lighting, the subject of condition 6, be controlled 'prior to construction above damp-proof course level'. However design of lighting may affect layout, orientation and the design of dwellings and therefore should be considered in the scheme design.
116. Conditions advanced by the Council in respect of external materials and hard and soft landscaping relate squarely to reserved matters details. The sixteenth condition proposed by the Council relates to estate roads. That is also principally related to reserved matters details (albeit that some provision is made in that respect via condition 9 in any event). The fifteenth condition proposed by the Council is that the access proposed shall not be 'brought into use until it has been constructed...'. That could not logically occur in any event. Practically addressing that condition, as phrased in that manner, may impede delivery, and appropriate provision for access is made in conditions 8 and 9.
117. In imposing conditions I have had regard to the NPPF, the PPG, and relevant statute. Albeit that some conditions have an implication for reserved matters, none are of such a degree of specificity or overlap that they would be inappropriate to impose. In that context I have amended the wording of certain conditions put to me, and amalgamated some also, to ensure that all are appropriate without altering their fundamental aims.

*Tom Bristow*

INSPECTOR

## SCHEDULE OF CONDITIONS

- 1) Details of layout, scale, appearance and landscaping (the 'reserved matters') shall be submitted to, and approved in writing by, the local planning authority before any development hereby permitted takes place, and the development shall be carried out as approved. Application for approval of the reserved matters shall be made to the local planning authority not later than the expiration of 3 years from the date of this permission. The development hereby permitted shall begin not later than the expiration of 2 years from the approval of the reserved matters (or, in the case of approval on different dates, the date of approval of the last of the reserved matters to be approved).

<sup>63</sup> PPG Reference ID: 33-003-20190722.

- 2) The development hereby permitted shall be carried out in accordance with approved plan nos. 'P-18-0521-03 B' and '4390-120 F'.
- 3) The development hereby permitted shall comprise not more than 37 dwellings, and no dwelling shall be occupied before 2025.
- 4) No development hereby permitted shall take place until a Biodiversity Enhancement and Management Strategy ('BEMS') has been submitted to, and approved in writing by, the local planning authority. The BEMS shall align with the approach set out in sections 3 and 4 of the Ecological Impact Assessment (Clarkson & Woods, project no. #6684, 3 December 2019), as necessarily updated by subsequent studies, and shall include a timetable for any measures and their implementation. The development shall be carried out in accordance with the approved BEMS.
- 5) No development hereby permitted shall take place until an Arboricultural Method Statement ('AMS') in accordance with British Standard 5837:2012 'Trees in Relation to Design, Demolition and Construction' (or successor document) has been submitted to, and approved in writing by, the local planning authority. The AMS shall address any trees on or off site that may be affected by undertaking the development hereby permitted and shall include details of:
  - i. the timing and phasing of arboricultural works,
  - ii. construction exclusion zones,
  - iii. protective barrier fencing,
  - iv. ground protection,
  - v. details of any works within the root protection areas of trees to be retained and proposed arboricultural supervision,
  - vi. service positions, and
  - vii. details of any special engineering requirements and sensitive construction measures.

The development hereby permitted shall be undertaken in accordance with the approved AMS.

- 6) No development hereby permitted shall take place until a lighting strategy has been submitted to, and approved in writing by, the local planning authority. The lighting strategy shall include details of:
  - i. areas or features that are particularly sensitive in respect of ecology and where illumination is likely to result in disturbance (with reference to the Ecological Impact Assessment prepared by Clarkson & Woods, project no. #6684, 3 December 2019, as necessarily updated by subsequent studies),
  - ii. lighting design in respect of areas or features identified pursuant to criterion i. of this condition to achieve compliance with the Bat Conservation Trust's Guidance Note 08/18: 'Bats and artificial lighting in the UK' (or successor document) including in respect of shielding, baffling or other measures to manage illumination, and
  - iii. a timetable for the implementation of all measures.

The development hereby permitted shall be undertaken, and maintained, in accordance with the approved lighting strategy. Notwithstanding the provisions



of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (or any subsequent modification to that Order, or otherwise), no external lighting other than that approved via the lighting strategy shall be installed in relation to the development hereby permitted.

- 7) No development hereby permitted shall take place until a Construction and Environmental Management Plan ('CEMP') has been submitted to, and approved in writing by, the local planning authority. The CEMP shall include:
- i. a risk assessment of potentially damaging construction activities,
  - ii. the identification of biodiversity protection zones,
  - iii. measures to be taken during construction to minimise emissions of dust, fumes, odour, noise and vibration (including both physical measures and sensitive working practices),
  - iv. the location and timing of sensitive works to avoid harm to biodiversity,
  - v. the times during construction when specialist ecologists need to be present,
  - vi. responsible persons, lines of communication and procedures for written notification of operations to the local planning authority,
  - vii. the role and responsibility on site of an ecological clerk of works,
  - viii. protective fences, exclusion barriers and warning signs,
  - ix. the safe disposal of waste materials, and
  - x. ongoing monitoring and compliance.

The approved CEMP shall be adhered to throughout construction.

- 8) No development hereby permitted shall take place until a Construction Traffic Management Plan ('CTMP') has been submitted to, and approved in writing by, the local planning authority. The CTMP shall include details of:
- i. construction site access provision,
  - ii. the parking of vehicles of site operatives and visitors,
  - iii. arrangements for the loading and unloading of plant and materials,
  - iv. arrangements for the storage of plant and materials,
  - v. wheel washing facilities,
  - vi. delivery and construction working hours,
  - vii. construction vehicle routes to and from the site, and
  - viii. the expected number and type of construction vehicles per day.

The approved CMP shall be adhered to throughout construction.

- 9) No dwelling hereby permitted shall be occupied until vehicular access consistent with approved plan no. '4390-120 F', and any associated estate roads, footways, footpaths, tactile paving, cycleways, verges, junctions, street lighting, sewers, drainage, service routes, and vehicle parking and manoeuvring spaces have been provided and made available for use for their intended purposes (other than in respect of vehicular access, to at least base course level as relevant). Once provided and made available for their intended purposes, those elements of the development hereby permitted shall thereafter be retained.
- 10) No dwelling hereby permitted shall be occupied until i) vehicular access consistent with approved plan no. '4390-120 F' has been provided along with visibility splays of 25m in either direction as set out in the Transport Statement of 2 July 2020 (prepared by Trace Design, project ref. 4434), and ii) the existing site access has been permanently closed (which shall occur no later

than 1 month from the approved vehicular access shown on approved plan no. '4390-120 F' being constructed and made available for use). There shall be no obstruction to visibility greater than 600mm above ground level within the visibility splays as set out in the foregoing Transport Statement. Once constructed and made available, vehicular access shall thereafter be maintained as such.

- 11) No dwelling hereby permitted shall be occupied until the upgrading of the footways and realignment of the South Street/ Veale Lane junction, as detailed on approved plan no. '4390-120 F' and described in the Transport Statement of 2 July 2020 (prepared by Trace Design, project ref. 4434) have been provided in accordance with a design and specification previously submitted to, and approved in writing by, the local planning authority.
- 12) No dwelling hereby permitted shall be occupied until a Sustainability Strategy Statement ('SSS') has been submitted to, and approved in writing by, the local planning authority. The SSS shall demonstrate how the development will, in line with a timetable, incorporate reasonable and practical sustainability measures through i) the siting, layout and design of the dwellings hereby permitted, and ii) maximising appropriate opportunities for the use of sustainable constructions techniques, renewable energy on site and water efficiency measures (including rainwater harvesting or other methods of capturing rainwater). The development hereby permitted shall be undertaken in accordance with the approved SSS, which shall thereafter be maintained as such.
- 13) No dwelling hereby permitted shall be occupied until measures to restrict the potential consumption of wholesome water to 110 litres per person per day, under part G of Schedule 1 and Regulation 36 of the Building Regulations 2010 as amended, have been implemented in the design of the respective dwelling hereby permitted.
- 14) No dwelling hereby permitted shall be occupied until cycle storage and recycling and refuse storage has been installed, and made available for use, in line with details previously submitted to, and approved in writing by, the local planning authority. Once installed and made available for use those facilities shall thereafter be retained as approved.
- 15) No development hereby permitted shall take place until a Sustainable Surface Water Drainage Scheme ('SSWDS') has been submitted to, and approved in writing by the local planning authority. The SSWDS shall accord with the aims of the National Planning Policy Framework (published 20 December 2023 or successor document), and of the Flood Water Management Act 2010 as amended. The SSWDS shall be in general accordance with the Flood Risk Assessment prepared by Trace Design, ref. 19036, December 2019, and shall be informed by any necessary subsequent surveys and calculations. The SSWDS shall include details of:
  - i. measures to control and attenuate surface water,
  - ii. any interrelationship with sewers, manholes, attenuation features, pumping stations (if required) and discharge locations,
  - iii. calculations demonstrating the performance of the proposed design approach and assumptions,

- iv. the performance of the proposed design approach and network including in respect of water level, surcharged depth, flooded volume, pipe flow/ overflow capacity, outfall details and discharge rates (as relevant),
- v. cross sections of proposed features such as attenuation features, pumping stations and outfall structures,
- vi. any temporary drainage measures to be adopted during construction (including to prevent discharge onto the highway or third party land, pollution, and so as to safely store plant and material),
- vii. levels external to the site, surface water exceedance routes, and how exceedance routes will be directed to avoid exposing the dwellings hereby permitted to flood risk,
- viii. the discharge locations and receiving systems, including in respect of any permission necessary from third party landowners/ riparian owners,
- ix. a programme for implementation of all measures, and
- x. details of ongoing maintenance and management.

No dwelling hereby permitted shall be occupied until the SSWDS has been implemented as approved in accordance with the programme for implementation. Once implemented, the SSWDS shall thereafter be retained, maintained and managed as approved.

- 16) If, during the course of undertaking the development hereby permitted, any unforeseen contamination is encountered, measures for remediation shall be submitted to, and approved in writing by, the local planning authority before development affecting the relevant part of the site proceeds. Development shall be undertaken in accordance with any agreed remediation measures.