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## Appeal Decision

Inquiry Held on 11 March 2025

Site visits made on 10 and 13 March 2025

**by Philip Major BA(Hons) DipTP MRTPI**

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

Decision date: 06/05/2025

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**Appeal Ref: APP/E3335/W/24/3354865**

**Land off Exeter Road, Rockwell Green, Wellington**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Gladman Developments Ltd against Somerset Council.
  - The application Ref: 43/23/0099, is dated 29 September 2023.
  - The development proposed is the erection of up to 315 dwellings with convenience store (class E) public open space, landscaping, sustainable drainage system (SuDS) and vehicular access point.
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### Preliminary Matters

1. As noted in the headings above this is an outline application. The single detailed matter for determination at this stage is the means of access to the site.
2. Following the submission of the appeal a number of circumstances have changed, notably the publication of the revised National Planning Policy Framework (NPPF). The main parties have reviewed their respective positions and have reached agreement on the principal issues pertaining to the proposal. In particular it is agreed that the Council is unable to demonstrate a 5 year supply of deliverable housing land. The current agreed supply is 3.12 years. As a result it is also agreed that the 'tilted' balance pursuant to paragraph 11d of the NPPF is engaged. I have no reason to disagree with that position.
3. In light of the agreements reached between the principal parties the inquiry was limited to a single day. Evidence from the Appellant was presented and witnesses were made available to answer questions. Other interested parties were also given the opportunity to make oral representations on that day.

### Decision

4. The appeal is allowed and planning permission is granted for the erection of up to 315 dwellings with convenience store (class E) public open space, landscaping, sustainable drainage system (SuDS) and vehicular access point at land off Exeter Road, Rockwell Green, Wellington in accordance with the terms of the application, Ref: 43/23/0099, dated 29 September 2023, and the plans submitted with it, subject to the condition set out in the schedule at the end of the decision.

## **Main Issues**

5. The main issues in the appeal are:

- (a) Whether the proposed development would create unacceptable flood risk on the site or elsewhere;
- (b) The effect of the proposed development on local highway conditions;
- (c) The effect of the proposal on the character and appearance of the locality;
- (d) Whether the proposal is capable of meeting nutrient neutrality objectives in order to avoid significant effects on the integrity of protected sites;
- (e) In light of the findings on the above issues and any other considerations, whether the planning balance justifies granting planning permission.

## **Reasons**

### ***Flood Risk***

- 6. There are many representations from local residents concerned about the potential of the development to create flood risk on the appeal site or to increase such risk downstream. Some of those appearing at the inquiry had personally suffered from their homes flooding and the representations made were naturally heartfelt. Some referred to the believed impact of a nearby development on surface water flows. However, that development appears to be in a different local catchment which would not be likely to be affected by the development in this case.
- 7. I have seen the site at close quarters and have noted that the minor watercourses which cross it show signs of erosion which is likely to have been caused by water flowing at a significant rate. It is also clear from observation that there is a point adjacent to the railway embankment where water has collected. This was referred to at the inquiry, and is an acknowledgement that in times of heavy rainfall the culvert(s) below the railway may not be able to cope with the flow of surface water.
- 8. That said the Appellant has provided a flood risk assessment and a draft (at this stage) strategy to accommodate surface water at the site. In essence the strategy has 2 main objectives. The first is to collect surface water in on site attenuation basins when it is necessary to do so. This would inhibit the flow of water. The second objective is to release the collected water at a rate which can be accommodated by the railway line culvert(s) and which would not cause flooding downstream.
- 9. It is important to note that the attenuation basins would be expected to be dry, or nearly dry, for the majority of the time. They would only be called into use at times of high rainfall. The draft strategy shows that the basins could cope with the storage of 1 in 100 year storm conditions including a 45% uplift for climate change. Although that cannot guarantee an even more extreme event would not occur in future, I am satisfied that the precautionary design of the draft drainage strategy is appropriate.
- 10. It is also important to understand that the strategy which would be finally adopted would be designed to release water stored in the attenuation basins at

a significantly slower rate than the current uncontrolled flow rate from open fields and watercourses. Hence there should be minimal risk of any water backing up and causing surface flooding at the railway line culvert(s).

11. Furthermore, the controlled release of stored water would avoid the potential for any negative impact on downstream locations. Put simply, there would be sufficient control of surface water release from the site such that neither locations on the site, nor locations downstream, would be subject to uncontrolled and excess ingress of surface water as a result of this development.
12. The controls recommended by the Environment Agency can be achieved using appropriate planning conditions on any planning permission.
13. I am therefore satisfied that there would be no unacceptable risk of flooding as a result of this proposal.

### ***Highway Conditions***

14. The site would benefit, if developed, from a single main vehicular access point located on Exeter Road, with a secondary emergency access. There is no objection from the Highway Authority to the proposed development. I am aware of the transport assessment (TA) which has been prepared and do not doubt that the local highway network has the capacity to accept the traffic which would be generated by the development. The ratio of flow to capacity (RFC) is well within acceptable limits.
15. There has been concern expressed in relation to congestion and traffic speeds. So far as congestion is concerned I accept that this will occur from time to time in busy periods. I realise that the site is relatively close to the M5 and that the motorway is heavily congested on certain days at particular times of year. I do not doubt that that can have an impact in the local area if motorists attempt to divert from the motorway. But I have no substantive evidence that any periods of congestion are, or would be, severe. Those relatively infrequent episodes are not sufficient reason to find that access to and from the appeal site would be an unacceptable burden on the highway network.
16. Excessive speed on any highway is not to be condoned, and I can understand that Exeter Road, with its relatively straight alignment may be attractive to those determined to speed. But close to the appeal site entrance are pedestrian refuges/lane splitting islands. These must surely preclude overtaking manoeuvres and reduce the propensity to exceed the speed limit. There are also no accident records which suggest that this location is unusually hazardous. Hence it is my judgement that the access proposed would be acceptable and would not lead to unacceptable highway conditions.

### ***Character and Appearance***

17. The site is located in the Blackdown Fringes sub-Character Area of the Taunton Deane Landscape Character Assessment. This is a relatively fine grain assessment which is appropriate for this scale of proposed development. Key characteristics include undulating terrain with shallow valleys; relatively low elevation; arable and pasture farming; varied field sizes; and some urban fringe features.

18. These characteristics are present on the appeal site. It is notably undulating with shallow valleys formed by small watercourses and presently exhibits arable cultivation with some fallow land. The land is for the most part low lying, with a noticeable rise in elevation around the centre of the site. It is bounded by development to the north-east in the form of Pitt Farm Park Homes and the Dobrée Park development. New development is being constructed to the south-east of Exeter Road, and the road itself is a significant feature influencing existing character. There are some hedgerows and trees on the site, but the fields are relatively large and cultivated and do not impart a sense of being deeply bucolic. In my judgement, therefore, the site is best appreciated as being unexcitingly agricultural in character but with strong urban fringe influences. The telecommunications mast located in the centre of the site, and the adjacent main line railway, also have some urbanising influence. It is agreed that the landscape cannot be defined as a valued landscape for NPPF purposes.
19. The development would, inevitably, bring change to the established character of the land. Built development on much of it would be quite different to that which exists now. Although details of a final scheme are not before me here, it is apparent from the submitted evidence that the intention would be to create a development of varied grain and texture. The final details would be for later consideration but I believe that a development which includes open space, extensive landscaping and distinct development blocks would bring the opportunity to enhance the green infrastructure and biodiversity of the land. That has been shown to be the case in the submitted evidence.
20. So whilst I agree that there would be short term harm to the overall character of the locality because of the introduction of built development, that harm would be mitigated over time. I agree with the assessment that in the medium term the harm to the character of the area would be limited.
21. Visually there would also be inevitable change. There are public rights of way (PROW) across and alongside the edge of the land and some houses look out over the site. The users of the PROWs and residents of the houses would have a different experience in the event of the development proceeding. The impact on users of the PROWs can only realistically be described as adverse since the largely agricultural setting of their use would be replaced, at least in part, by the experience of walking close to or within a housing area. Landscaping and careful design could assist in assimilating the proposal in order to reduce visual impact, but some residual impact would be bound to remain. Although the land is visible from Exeter Road the users of that highway, usually in motor vehicles, would be little affected by the change in the visual environment in light of the urban surroundings which already exist hereabouts.
22. Taking this matter in the round I find that there would be a degree of harm to the character and appearance of the locality, but that harm would be reduced over time with a well-designed scheme. In the medium to long term I assess such harm to be limited to moderate at worst.

### ***Nutrient Neutrality (and Appropriate Assessment)***

23. The appeal site lies within the catchment of the River Tone. The river is in turn within the operational catchment of the Somerset Levels and Moors Special Protection Area (SPA) and Ramsar Site which I collectively describe here as the protected sites. The protected sites have been assessed as being in an

unfavourable condition because of excess phosphates in the water ecosystem in relation to the Ramsar site. Any increase in phosphates entering the protected sites would be likely to have a significant impact on the integrity of the sites and must therefore be avoided. This is an agreed position between the Appellant and the Council.

24. It is therefore incumbent upon the Appellant to demonstrate that the development would not result in the integrity of the protected sites being degraded. As the decision maker and competent authority in this case I am required to carry out an appropriate assessment (AA) in light of the information provided and the advice of Natural England (NE).

#### *Appropriate Assessment*

25. The Appellant has provided a shadow AA during the course of the application proceedings. Although the AA here is my responsibility as the competent authority I can adopt the shadow AA for the most part. The starting point is the agreed position that a significant adverse impact which would affect the integrity of the protected sites cannot be ruled out.
26. In light of the phosphate loading entering the catchment the Appellant has commissioned reports and calculations into the impact of the development. The first thing of note is that a significant level of phosphate loading would be eliminated if the development proceeds because of the cessation of the use of the land for arable crop production.
27. Secondly the creation of open sustainable drainage basins (SuDS) will provide attenuation for phosphates which would otherwise enter the catchment. The attenuation rates are agreed based on the system which it would be intended to introduce. I have no reason to disagree with the expert evidence in relation to this point.
28. Thirdly, it is acknowledged that the building of homes would add phosphate loads to the catchment. I have 2 different calculations in relation to the likely output. The difference is explained by the assumption of average dwelling occupancy (2.3 or 2.4 persons). What the calculations demonstrate is that with the elimination of arable cultivation and with SuDS basins in operation the development would be nutrient neutral for either 147 or 150 homes prior to 2030.
29. Post 2030 the Levelling Up and Regeneration Act (LURA) requires that wastewater treatment plants are upgraded (by 1 April 2030) to meet licence limits. The calculations indicate that after that date, with the SuDS on site and upgraded treatment works the whole development (up to 315 dwellings and convenience store) would be nutrient neutral. In effect the mitigation process in this case would be phased into pre 2030 and post 2030 elements.
30. Therefore, subject to there being no more than 147 or 150 homes built prior to 1 April 2030 (the consensus is that 150 would be appropriate) it has been demonstrated with sufficient scientific certainty that the development would not have an adverse effect on the protected sites either individually or in combination with other development. I have sought the advice of Natural England and this is also the view of that body. As a result there is no reason to withhold planning permission in relation to nutrient neutrality, subject to appropriate conditions, with which I deal later in this decision.

## **Other Matters**

31. I deal here with some other matters which have been raised both at the inquiry and in written representations.

### *Location*

32. The appeal site is a short walk from the 'centre' of Rockwell Green where a limited number of services are available. The walk can be undertaken alongside Exeter Road or through the adjacent development to the north-east. That would enable access to facilities including a convenience store, village hall and primary school. The development would include the provision of a hard surfaced footpath along the frontage with Exeter Road which would link, via the layby outside Pitt Farm Park Homes, to the continuous footpath to the centre of the village. The links from the existing PROW in the north-east quadrant of the site would entail some sinuous routes through the existing estate or a largely unsurfaced direct link. In either case these links would be likely to attract some use.
33. Having recorded that I have little doubt that many residents of the proposed development would choose to travel further afield for services such as a major grocery shopping expedition. Inevitably many would use a private vehicle for that purpose. But Wellington itself has a range of shops and supermarkets to service that need and is a short distance away. In addition Wellington has a range of employment sites. It would also be possible to cycle from the appeal site to Wellington. The route is mostly flat and passes by Court Fields Secondary School which would enable easy access for students.
34. The housing development on the opposite side of Exeter Road to the appeal site is largely completed and it has been reported to me that the decision maker in that case found the location to be sustainable. That in part stems from the bus service along Exeter Road, which has a number of services at regular intervals. The current bus stops are a short walk from the site entrance and for many would provide an alternative to the use of the car for access to Wellington, Taunton or Tiverton. It would be helpful if bus stops were closer to the site entrance but that is not a proposal before me.
35. Taking all these factors into account I concur with the conclusion expressed in relation to the site to the south-east that this is a suitably sustainable location for development.

### *Ecology*

36. I heard concerns expressed at the inquiry in relation to the ecological impact of the development. The ecological impact assessment submitted indicates that the land has predominantly low value habitats. That is unsurprising given the intensive arable use which has taken place lately. But I accept that this does not mean that the site has no value, or that it is not 'used' by a number of species. The primary benefits of the site to wildlife relate to the existing trees and hedgerows, and these would, for the most part, be retained. But there is also clear scope for the improvement and extension of the features on site to mitigate any impact. Of particular note is the opportunity to mitigate any impact on the presence of the identified dormouse population habitat, as noted in the latest response from Natural England. A suitable condition has been agreed.

37. The extent of habitat which would be improved and capable of being of benefit in ecological terms is significant when compared with the current extent of low ecological value land. Mitigation which is likely includes the creation of dark bat corridors, improvement to hedgerows and buffers around them, together with enhanced species rich grassland. The increase in the area of land which would be ecologically enhanced would not be likely to lead to the wholesale displacement of any notable species. Impacts would be generally limited or negligible, with opportunities for longer term benefits. This runs alongside the fact that the development would be likely to provide in excess of 10% biodiversity net gain, as is required.
38. The evidence before me therefore clearly indicates that any impacts on ecology would not be likely to be such that it should preclude development. Mitigation and good design would enable some benefits to be achieved.

#### *Services/infrastructure*

39. There is understandable concern that the increase in population which would result from the proposal would place an unacceptable burden on existing facilities and infrastructure such as medical services and schools. I deal later in this decision with the S106 obligation and any necessary planning conditions. However, in short, the developer of the site would be required to make contributions to improve such services in order to mitigate the impact of the population increase.
40. It is appropriate to point out here that the provision of a foodstore close to the entrance to the site would be of benefit not just to new residents, but to existing residents nearby. This would be a beneficial addition to the sum of local services available and would meet an identified need.

#### *Previously Developed Land*

41. Some representations suggest that previously developed land (PDL) should be used in preference to locations such as this. It is the case that PDL is often preferable as it restricts the use of currently open land. But I must deal with the proposal before me. There is no counter proposal here which would utilise PDL. In any event, for the Council to provide the necessary quantum of homes it is more than likely that some greenfield land take would be necessary. This is not a matter which weighs against the proposal.

#### *Conclusion on other matters.*

42. Although the representations on these other matters are part of the balance which leads to my final conclusion, none is sufficient, either individually or cumulatively, to alter the balance of my considerations. With that in mind I turn to the overall balance in this case.

#### ***The Planning Balance***

43. The development plan for this area includes the Taunton Deane Adopted Core Strategy (CS) and the Taunton Deane Adopted Site Allocations and Development Management Plan (DMP). It is not in dispute that the appeal site falls outside the identified settlement boundary of the development plan and for planning purposes is within the open countryside. As such it is acknowledged that there is conflict with CS Policies SP1 and CP4 which taken together, seek to provide housing in locations consistent with the identified

- settlement hierarchy. There is also conflict with Policy DM 2 which is restrictive of development in the countryside, as are CS Policy CP8 and DMP Policy SB1.
44. The policies set out in the previous paragraph are agreed as being of relevance by the main parties and are identified by the Appellant as being the most important in this case. I concur with that assessment. Given that the Council is unable to demonstrate a 5 year supply of housing land, and that the tilted balance is engaged, the weight attached to the conflict with the above policies is reduced. The fact that these are the most important policies does not mean that other policies are of no relevance.
45. I mention here some of the other relevant policies identified in the Statement of Common Ground, and which are worthy of note. CS Policy CP6 deals with transport and accessibility. The development would accord with the thrust of that policy, which seeks to ensure that there is a robust evidence base for submitted proposals, as well as being in locations which can improve accessibility to services. In providing contributions for services improvement the proposal also accords with the aims of Policy CP8.
46. DMP Policy TC3 is restrictive of new convenience shops outside of settlement boundaries, but there is no suggestion that the proposed store here would affect the vitality or viability of existing centres. The extension of the settlement in the case of this proposal being permitted leads me to conclude that the store proposed would be of an appropriate scale, and serve a walk in community, in line with that policy. Other development management policies relate to matters such as open space, tree planting and car parking. This proposal, although details would be reserved for future deliberation, would be capable of meeting the objectives of these policies.
47. The Appellant and Council have agreed that the proposal would deliver a number of benefits. These include:
- The provision of market housing in a location where there is a shortage of supply and a current pressing need. This attracts significant weight;
  - The provision of affordable housing in accordance with the requirements of Policy CP4. This attracts substantial weight;
  - The provision of local retail facilities to meet a local identified need, with the provision of up to 24 jobs. This is a significant benefit;
  - A biodiversity net gain beyond the requirement of 10% is likely. This carries some limited weight as the 10% uplift would be required on any other development proposal.
48. Although there are agreed beneficial elements such as the provision of open space, a construction spend of about £37 million, the provision of construction jobs, and the provision of new allotments (amongst other things) these do not carry much weight as each would be applicable at alternative developments.
49. Taken overall there is acknowledged conflict with elements of the development plan. However there are other elements of the development plan with which the proposal would accord. Set against this are the real benefits which I outline above. The harm here is of limited to moderate weight and restricted to the impact on landscape. There would be no material harm in other

respects subject to the imposition of appropriate conditions and the S106 obligation with which I deal below.

50. It is therefore clear that the harm here does not clearly and demonstrably outweigh the benefits of the scheme.

### ***Conditions and S106 Agreement***

51. The main parties have provided a list of agreed conditions in the event of the appeal being allowed and planning permission being granted. Apart from the standard conditions setting out timing for the reserved matters applications, and identifying the approved plans, the following would be necessary and reasonable:

#### *Pre commencement conditions;*

- Identification and remediation of any on site contamination (in order to eliminate the possibility of harmful ground conditions);
- A scheme to manage surface water and provide sustainable drainage (in order to avoid on site or downstream flood risk);
- A scheme to demonstrate that the development would achieve nutrient neutrality both pre and post 1 April 2030 (in order to avoid harm to protected sites);
- A construction management plan (to ensure adequate control over construction activities);
- A construction environmental management plan (to avoid unacceptable harm to the environment during construction);
- A landscape and ecological management plan (to ensure landscape and ecological matters are not subject to unacceptable harm);
- A scheme to ensure mitigation for the dormouse population is introduced and implemented (in order to avoid harm to this protected species);
- The requirement for details of each phase to be submitted to a design review panel (in order to ensure good design);
- Details of cycleway and footway connections (to provide necessary alternatives to car use);

#### *Pre occupation conditions*

- Schemes of noise mitigation for the future occupants of dwellings (in order to ensure satisfactory living conditions);
- A scheme to ensure wholesome water consumption is achieved at appropriate levels (in order to limit consumption and excess wastage);

#### *Other conditions*

- The requirement to ensure visibility is not obstructed at the site entrance (in the interests of highway safety);
- A scheme to restrict surface water entering Exeter Road during development (in the interests of highway safety);

- The requirement to carry out a further survey for badger setts early in the development process (in order to avoid unacceptable harm to this species);
- The requirement for an external lighting scheme to be approved (in order to avoid harmful impacts on bats).

52. Where appropriate I have amended the wording of conditions to follow a standard format, or to improve precision.

#### *S106 Obligation*

53. An Agreement pursuant to S106 of the 1990 Act has been submitted (commonly referred to as a S106 obligation). This is dated and signed by all those with an interest in the land. It also binds successors in title. The Agreement has been certified as a true copy and deals with a number of matters setting out obligations which address the following:

- Schedule 1 – the agreement of a phasing plan between the developer and the Council;
- Schedule 2 – the provision of public open space, play areas and allotments, including details of future management;
- Schedule 3 – the provision of affordable housing of at least 25% of the dwellings on the site;
- Schedule 4 – contributions towards a study for cycling facilities provision and its delivery; healthcare provision improvements; and additional educational facilities;
- Schedule 5 – highway works associated with the development;
- Schedule 6 – a travel plan to assist in encouraging residents to use sustainable modes of transport;
- Schedule 7 – agreement to notify the Council of ‘trigger points’ before and during development;
- Schedule 8 – agreement to acknowledge receipt of the contributions and repay if not used. Provision of a completion notice relating to the travel plan;
- Monitoring fees.

54. For the most part these matters are uncontentious and I agree that they all meet the tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations in that they are:

- a. Necessary to make the development acceptable in planning terms;
- b. Directly related to the development; and
- c. Fairly and reasonable related in scale and kind to the development.

55. The single point of some discussion at the inquiry centred on whether paragraphs 11 to 15 of Schedule 3 (affordable housing) should take effect. These paragraphs, promoted by the Appellant, would require the owners to notify the Council if, after 6 months of endeavouring to dispose of the affordable housing in any phase, no disposal had been achieved. The intention

then would be to allow the owners to vary the terms of the affordable housing scheme with the approval of the Council.

56. The Council has reservations about this part of the agreement and indicated at the inquiry that there is, in its experience, no shortage of takers for affordable housing schemes in this area. For that reason the Council would not support the extra complexity brought by paragraphs 11 to 15. The experience of the Council contrasts with recent experience of the Appellant. So I am asked to rule on the necessity of the above paragraphs.
57. I am aware of the decision dated 14 February 2024 relating to land at Creech St Michael. There, a small number of affordable dwellings is being provided. This is of course good news, but it does not guarantee that the affordable homes on this appeal site would be provided too. In particular it may be that over time the demand for particular types of affordable housing tenure changes or, as the Appellant suggests, that affordable housing providers may be keen to concentrate on their existing stock before taking on new sites.
58. It seems to me, therefore, that a degree of flexibility is desirable in order that the best possible chance of affordable housing actually being provided within a reasonable timeframe is maximised. In those circumstances I agree with the Appellant that the flexibility brought by paragraphs 11 to 15 is appropriate. After all, as pointed out, the Council would still have the ability to approve a revised scheme or otherwise. Hence my ruling is that paragraphs 11 to 15 should remain as an operative part of the Agreement.

#### **Overall Conclusion on the proposed development**

59. In light of the foregoing it is my overall judgement that the limited harm identified here does not clearly and demonstrably outweigh the benefits of the proposal. The engagement of paragraph 11d) of the NPPF indicates that this is a case where the development should be permitted. For those reasons the appeal should be allowed and planning permission granted.

*Philip Major*

INSPECTOR

## SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 2 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans:  
No 9168-L-09 Rev P02 – Site Location Plan  
No P19125-00-03A – Layout Locations for Junctions
- 5) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
  - i) a survey of the extent, scale and nature of contamination;
  - ii) the potential risks to:
    - human health;
    - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
    - adjoining land;
    - ground waters and surface waters;
    - ecological systems; and
    - archaeological sites and ancient monuments.
- 6) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation

to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development or relevant phase of development is occupied.

- 7) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development or relevant phase of development is resumed or continued.
- 8) No development shall take place until a monitoring and maintenance scheme to demonstrate the effectiveness of the proposed remediation shall have been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented, and the reports produced as a result, shall be submitted to the local planning authority within 30 days of the report being completed and approved in writing within 30 days of receipt. If any of these reports identifies any discrepancy with the verification report then a protocol, including timescale, for the necessary remediation shall be submitted to the local planning authority within a further 30 days and approved in writing within 30 days of receipt. Thereafter, any necessary remediation and verification shall be carried out in accordance with the approved protocol.
- 9) Prior to the commencement of the development hereby permitted the applicant, or their agents or successors in title, shall have secured the implementation of a programme of archaeological work (POW) in accordance with a Written Scheme of Investigation (WSI) which shall be submitted to and approved in writing by the local planning authority. The WSI shall include details of the archaeological investigation, the recording of the heritage asset, the analysis of evidence recovered from the site and publication of the results.
- 10) No building shall be occupied until the site archaeological investigation has been completed and post-excavation analysis has been initiated in accordance with WSI approved under the POW and the financial provision made for analysis, dissemination of results and archive deposition has been secured.
- 11) No development shall take place until a scheme to manage surface water has been submitted to, and approved in writing by, the local planning authority. The scheme shall include discharge rate entering the Westford flood storage reservoir that does not exceed the current rate, for all return periods up to and including the design flood event including climate change. The scheme shall be fully implemented and subsequently maintained in accordance with the scheme's timing/phasing arrangements.
- 12) Prior to the commencement of development, a Sustainable Drainage Scheme (SuDS), including a plan for its phased delivery, shall be

submitted to, and approved in writing by, the local planning authority. The scheme shall be in general accordance with the principles of the submitted Flood Risk Assessment and proposed outline drainage strategy. The SuDS shall include full details of the measures to prevent, control, and attenuate surface water runoff as well as details of the management and maintenance of the system for the lifetime of the development. The scheme shall be implemented in accordance with the approved details.

- 13) No development hereby permitted shall take place until a Construction Management Plan ('CMP') has been submitted to and approved in writing by the local planning authority, which shall include details of the following:
- Anticipated construction vehicular movements and types;
  - Construction operation hours;
  - Construction vehicular routes to and from the site;
  - Expected number of construction vehicles per day;
  - Car parking for contractors;
  - Specific measures to be taken to mitigate construction impacts in line with an environmental code of construction practice;
  - A scheme to encourage the use of public transport amongst contractors;
  - Details of measures to avoid vehicles exiting the site emitting dust, mud, or other debris onto the highway including wheel washing facilities;
  - Highway condition survey; and
  - Details of measures to protect trees and hedgerows.

The approved CMP shall be adhered to throughout construction.

- 14) No development shall take place (including demolition, ground works, vegetation clearance) until a construction environmental management plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall include the following:
- Risk assessment of potentially damaging construction activities.
  - Identification of "biodiversity protection zones".
  - Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements), including nesting birds habitat clearance measures, badgers buffer zones.
  - The location and timing of sensitive works to avoid harm to biodiversity features.
  - The times during construction when specialist ecologists need to be present on site to oversee works.
  - Responsible persons, lines of communication and written notifications of operations to the local planning authority.
  - The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person [including regular compliance site meetings with the Council Biodiversity Officer and

Landscape Officer (frequency to be agreed, for example, every 3 months during construction phases)].

- Use of protective fences, exclusion barriers and warning signs.
- Ongoing monitoring, including compliance checks by a competent person(s) during construction and immediately post-completion of construction works.
- Evidence (written statement and or photos) of meetings, toolbox talks, protection measures etc will be required upon completion of works.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

- 15) A Landscape and Ecological Management Plan (LEMP) shall be submitted to, and be approved in writing by, the local planning authority prior to the commencement the development. The content of the LEMP shall include the following:

- Description and evaluation of features to be managed.
- Ecological trends and constraints on site that might influence management.
- Aims and objectives of management.
- Appropriate management options for achieving aims and objectives.
- Prescriptions for management actions.
- Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
- Details of the body or organization responsible for implementation of the plan.
- On-going monitoring and remedial measures.
- Evidence (written statement and or photos) of meetings, toolbox talks, protection measures etc will be required upon completion of works.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan shall be implemented in accordance with the details and timing outlined within the approved LEMP.

- 16) No development shall commence until either:
- a) A Nutrient Neutrality Scheme demonstrating the following in accordance with the CIRIA 808 guidance, the submitted Nutrient

Neutrality Assessment and Mitigation Strategy ref 23004-NUT-RP-01 CO3, Technical Note 23004-NUT-TN-01 CO1 and the submitted Shadow Habitats Regulation Assessment rev A dated March 2024:

- that no more than 150 units will be occupied on the site prior to 1<sup>st</sup> April 2030;
- that a minimum of 4.4ha of land will be temporarily fallowed (put to grass and not subject to grazing, the application of manures or artificial fertilisers) until 1 April 2030
- that at least 8.894 ha (pre 1 April 2030) and 4.23ha (post 1 April 2030) of greenspace and 0.14ha of allotments shall be provided as part of the final development;
- measures to ensure that the development achieves a water consumption rate of no more than 110 litres per person per day;
- that the detailed Sustainable Urban Drainage Scheme (SuDs) will deliver a reduction in surface water phosphorous load to no greater than 5.34kg/ year (pre- 1<sup>st</sup> April 2030) and 11.46kg/ year (post- 1<sup>st</sup> April 2030) including:
  - (i) layout and technical specification;
  - (ii) a timetable for implementation; and
  - (iii) arrangements for the ongoing management and maintenance of the SuDs at all times whilst the development is in use and occupation.

has been submitted to and agreed in writing by the local planning authority; OR

- b) a revised Nutrient Neutrality Assessment and Mitigation Strategy and Habitats Regulations Assessment showing alternative mitigation measures necessary to achieve nutrient neutrality has been submitted to and agreed in writing by the local planning authority.

The development shall thereafter be implemented in accordance with the approved Nutrient Neutrality Scheme or the measures in the approved revised Nutrient Neutrality Assessment and Mitigation Strategy and Shadow Habitats Regulations Assessment (as the case may be).

No residential occupation of any part or phase of the development shall be permitted until the approved Nutrient Neutrality Scheme or the mitigation measures in the approved revised Nutrient Neutrality Assessment and Mitigation Strategy and Shadow Habitats Regulations Assessment (as the case maybe) for that part or phase of the development have been implemented in full.

- 17) No development shall commence until a Dormouse Mitigation Strategy, including a timetable for the implementation of any mitigation, has been submitted to and approved in writing by the local planning authority. Any

mitigation shall be implemented in accordance with the approved strategy and retained in perpetuity thereafter.

- 18) Prior to the submission of each reserved matters application, the draft reserved matters submission shall be presented to a Design Review Panel. Each reserved matters submission shall include a Design Compliance Statement detailing how it has had regard to any Design Review Panel comments.
- 19) No development shall commence until details of a network of cycleway and footway connections within the site and the timing of their delivery has been submitted to and agreed in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved scheme.
- 20) No dwelling hereby permitted shall be occupied until a scheme for noise mitigation has been submitted to and approved in writing by the local planning authority. The scheme shall demonstrate how the internal and external living spaces will not exceed the following maximum noise criteria:

| Location                          | 07.00 – 23.00     |                 | 23.00 – 07.00                                                  |
|-----------------------------------|-------------------|-----------------|----------------------------------------------------------------|
|                                   | Preferred         | Upper Limit     |                                                                |
| Living Room                       | n/a               | 35 dB LAeq,16hr |                                                                |
| Dining Room/Area                  | n/a               | 40 dB LAeq,16hr | 30 dB LAeq,8hr<br>< 10 events<br>>45 dB<br>L <sub>Amax,F</sub> |
| Bedroom                           | n/a               | 35 dB LAeq,16hr |                                                                |
| Private Amenity Areas and Gardens | 50dB<br>LAeq,16hr | 55 dB LAeq,16hr |                                                                |

The scheme shall include calculations showing the source noise levels, the attenuation characteristics of the building element or barrier and the resultant noise levels in the relevant internal and external spaces. The approved scheme shall be implemented in full prior to the occupation of each dwelling.

- 21) Prior to the commencement of the use of each water pumping station a noise mitigation scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall mitigate the rating level of any sound arising from plant or equipment at the water pumping station (as defined within BS4142:2014 or subsequent amended versions), shall not exceed the background noise level at any time, when measured or calculated at any noise sensitive premises. The assessment method used shall be in accordance with BS4142:2014 - "Methods for rating and assessing industrial and commercial sound". (including any future amendments to the standards). The approved scheme shall be implemented in full prior to the first use of the pumping station(s).
- 22) Prior to the commencement of the use of the convenience store a noise mitigation scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall mitigate the rating level of any sound arising from plant or equipment at the convenience store (as defined within BS4142:2014 or subsequent amended versions), shall not

exceed the background noise level at any time, when measured or calculated at any noise sensitive premises. The assessment method used shall be in accordance with BS4142:2014 - "Methods for rating and assessing industrial and commercial sound". (including any future amendments to the standards). The approved scheme shall be implemented in full prior to the first use of the convenience store.

- 21) No individual dwelling hereby approved shall be occupied until:
- i. the optional requirement for potential consumption of wholesome water by persons occupying that dwelling in Part G of Schedule 1 and Regulation 36 of the Building Regulations 2010 of 110 litres per person per day has been complied with; and
  - ii. a notice specifying the calculated consumption of wholesome water per person per day relating to the dwelling as constructed has been given to the appropriate Building Control Body and a copy of the said notice provided to the local planning authority.
- 23) There shall be no obstruction to visibility greater than 600 millimetres above adjoining road level in advance of lines drawn 2.4 metres back from the carriageway edge on the centre line of the access and extending to points on the nearside carriageway edge 43 metres either side of the access. Such visibility shall be fully provided before the development hereby permitted is occupied and shall thereafter be maintained in perpetuity.
- 24) Provision shall be made within the site for the disposal of surface water so as to prevent its discharge onto Exeter Road, details of which shall have been submitted to and approved in writing by the local planning authority. Such provision shall be installed prior to development above damp-proof course level and thereafter maintained in perpetuity.
- 25) Prior to the installation of external lighting, a lighting design for bats, following Guidance Note 08/23 - bats and artificial lighting at night (ILP and BCT 2023), shall be submitted to and approved in writing by the local planning authority. The design shall show how and where external lighting will be installed and Lux levels. All external lighting shall be installed in accordance with the specifications and locations set out in the design, and these shall be maintained thereafter in accordance with the design.
- 26) Within six weeks prior to vegetative clearance or groundworks commencing, a survey for badger setts shall be carried out by an experienced ecologist. The results of these surveys shall be reported to local planning authority and subsequent actions or mitigation agreed in writing prior to the commencement of vegetative clearance or groundworks. Where a Natural England licence is required a copy shall be submitted to the Local Planning Authority prior to works affecting the badger resting place commencing.
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## **APPEARANCES**

### **FOR THE LOCAL PLANNING AUTHORITY:**

|                                                                                    |                                                                                                                                                   |
|------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| Mr G Grant - Counsel                                                               | Instructed by the legal department of Somerset Council                                                                                            |
| He called no witnesses but was assisted in the conditions and S106 discussions by: | Mrs K Humble, Head of Affordable Housing, Somerset Council<br>Mr G Collins, Area Manager, Somerset Council<br>Mr D Power, Senior Planning Officer |

### **FOR THE APPELLANT:**

|                                                       |                                                                                               |
|-------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| Mr R Kimblin – King’s Counsel                         | Instructed by Mr C Lee, Gladman Developments Ltd                                              |
| He called                                             |                                                                                               |
| Mr M Travis BSc(Hons)<br>MSc CWEM MCIWEM<br>CSci CEnv | Managing Director, Enzygo Ltd (flood risk issue)                                              |
| Mr N Weeks BSc FICE                                   | Consultant, Stirling Maynard Transportation (highway issue)                                   |
| Ms C Heeks BA(Hons)<br>DipLA CMLI                     | Director (Landscape), FPCR (character and appearance issue)                                   |
| Mr C Lee BSc(Hons)<br>MCD MRTPI                       | Planning Director, Gladman Developments Ltd (nutrient neutrality and planning balance issues) |

### **INTERESTED PERSONS:**

|               |                                               |
|---------------|-----------------------------------------------|
| Ms D Hilliard | Local Resident                                |
| Miss D Hunt   | Local Resident                                |
| Mrs S James   | Local Resident                                |
| Cllr J Lloyd  | Wellington Town Councillor and Local Resident |
| Mrs F Smart   | Local Resident                                |
| Mrs C Jackson | Local Resident                                |

### **DOCUMENTS SUBMITTED AT THE INQUIRY AND SUBSEQUENTLY BY AGREEMENT**

- 1 Submissions on behalf of the Appellant
- 2 Statement on behalf of the Council
- 3 Agreed list of conditions
- 4 Draft S106 Agreement
- 5 CIL compliance statement
- 6 Certified executed S106 Agreement dated 24 March 2025