



Appeal Decision

Inquiry held on 15, 17 and 18 October 2024, 15 January and 10 February 2025

Site visit made on 16 October 2024

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th May 2025

Appeal Ref: APP/Y3940/W/24/3338217

Land west of Westbury Road, Warminster

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
 - The appeal is made by BDW Trading Limited against Wiltshire Council.
 - The application Ref is PL/2021/09013.
 - The development proposed is Erection of up to 205 no. dwellings, community hub, public open space, access, infrastructure and associated works, with all other matters reserved.
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Decision

1. The appeal is dismissed and outline planning permission is refused.

Preliminary Matters

2. The proposal is for outline planning permission with all matters reserved apart from Access to the site. The Council had been minded to approve the proposal in November 2023, subject to the completion of a s106 planning obligation and confirmation the proposal would not result in harmful ecological effects. This was due to the presumption in favour of sustainable development being engaged because the Council could not demonstrate a deliverable five year Housing Land Supply (HLS).
3. However, following the publication of the revised version of the National Planning Policy Framework (the Framework) in December 2023, the Council considered it only needed to demonstrate a four year HLS, which it considered it could. The appellant subsequently appealed the Council's failure to determine their proposal.
4. In March 2024, the Council resolved that it would have refused permission for the proposal, had an appeal for non-determination not been made. The Council's first indicative reason for refusal was that the location of the proposal meant it was contrary to the spatial strategy for new development in Wiltshire. The second indicative reason for refusal was because a s106 planning obligation to cover the provision of infrastructure necessary to make the proposal acceptable had not been provided.

5. A Statement of Common Ground (SoCG) between the Council and the appellant was produced on 4 April 2024¹ and includes a list of plans 'For Determination' and 'General Accordance'. An Illustrative Masterplan (Ref. 0736-1002 rev E) is amongst the general accordance documents, along with various parameters plans and a lighting strategy.
6. At the Case Management Conference (CMC) on 25 April 2024, I agreed to the request from the main parties for an adjournment to the CMC and a postponement to the Inquiry, due to the expected publication of updated HLS information at the time that Proofs of Evidence were due to be submitted.
7. The CMC was resumed on 8 July 2024, when the latest HLS information was available. However, following a subsequent appeal decision in August 2024² elsewhere in Wiltshire, the parties agreed that for the purposes of this appeal the Council's HLS was just 3.85 years and so Paragraph 11 d) of the Framework was engaged.
8. This is set out in an addendum to the SoCG dated 10 September 2024, and the Council confirmed that the first indicative reason for refusal would not be contested. A further addendum to the SoCG dated 11 October 2024 confirmed that the S106 was agreed and therefore, the parties agreed that the Council's second indicative reason for refusal should also fall away, leaving no substantive grounds for objection on the part of the Council.
9. Following the publication of the current version of the Framework in December 2024, and for the purposes of this Inquiry, the main parties agreed that the Council's HLS had fallen further to just 2.03 years. I have no reason to take an alternative view, and I will deal with the implications of this later.

Notifications / Publicity

10. The Inquiry was scheduled to open on Tuesday 1 October 2024. The Council is required to publicise the Inquiry, including date and location, under Rule 10 of the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 (as amended).
11. However, the Inquiry was postponed due to errors that were made with the notifications and publicity for the Inquiry. The Council subsequently and correctly notified and publicised the Inquiry, which opened on Tuesday 15 October 2024.

Appeal Validity

12. Whilst preparing for the Inquiry to open, I noted that the appellant listed on the appeal form was not the applicant listed on the application form. Under s78 of the Town and Country Planning Act 1990 (as amended) only the applicant has the right of appeal.
13. I advised the parties that after the Inquiry had opened, and after my introductory remarks, there would be a roundtable discussion on the validity of the appeal. Furthermore, I advised the parties that given the complexity of this issue it was very unlikely that I would rule on this matter during the Inquiry, and that following the roundtable discussion we would proceed with the previously circulated Inquiry Programme.

¹ Core Document reference CD.K.3

² Ref. APP/Y3940/W/24/3340811

14. On the afternoon of 14 October 2024, the appellant submitted eight pieces of caselaw and a written statement concerning validity and requested that a ruling on the validity of the proposal was made on the morning the Inquiry opened.
15. Once the Inquiry opened, I received a statement from the Council on the matter of validity. Both advocates then spoke to their submitted statements and the Inquiry was adjourned to allow interested parties time to consider this evidence before the roundtable discussion. On conclusion of this discussion, and to give myself time to consider the complex issues fully, I advised the parties that I would not be making a ruling on the matter that day and almost certainly not before the end of the Inquiry.
16. On the basis of the evidence submitted prior to the opening of the Inquiry, and in particular the comments of the company secretary of Barratt Developments PLC, I am now satisfied that the applicant and the appellant are part of the same legal entity, BDW Trading Limited, and that this is the entity that owns the appeal site. The appeal has been determined with BDW Trading Limited as the appellant.

Inquiry evidence and further adjournments

17. The Government published the current version of the Framework on 12 December 2024³ and so I sought the written views of the parties on its relevance to the appeal. Together with Planning Practice Guidance (PPG), the current Framework provides the national planning policy and guidance for the proposal which is capable of being a material consideration. I have considered the current versions of the Framework and PPG in determining this appeal.
18. The appeal site is in an area at risk of flooding, which is a matter acknowledged by the appellant on the application form. Whilst not a matter of dispute between the main parties, issues of flood risk and drainage and biological diversity had been raised by interested parties. Following a review of the evidence, I also identified these as likely main issues at the CMC of 8 July 2024 and confirmed this in the subsequent note of 12 July 2024.
19. However, during the roundtable discussions on flood risk / drainage and biological diversity, the main party witnesses were unable to satisfactorily respond to many of my questions, in part due to the unavailability of certain witnesses. Both main parties therefore requested written copies of my questions on flood risk / drainage and biological diversity, in order to be able to fully respond.
20. During the application process, the proposed development changed from one where the sewerage from the proposed dwellings would be pumped to an existing Waste Water Treatment Works (WWTW) in Warminster, to one where it would be treated on-site at a purpose-built Wastewater Recycling Centre (WRC) and a nutrient mitigation pond.
21. However, during discussions on suggested conditions, and on the final draft s106 planning obligation, it was apparent that there were inconsistencies between and sometimes within key documents in the evidence, which the main parties were relying upon, which had been agreed in the SoCG and which the parties were unable to explain at the time.

³ With very minor revisions in February 2025

22. The significant inconsistencies in key parts of the evidence included the proposed layout shown in the Flood Risk Assessment and Drainage Strategy revision A⁴ (FRA) dated February 2022; in the various Parameters Plans submitted in March 2022⁵; and, in the Nutrient Mitigation Pond Details (Ref. 502-P107 Rev B) against the proposed layout contained in the Phosphorous Neutrality Report revision 5 (PNR)⁶. The PNR also includes reference to the previous proposals for the treatment of wastewater at the existing WWTW in Warminster. Furthermore, there are two different versions of what is stated by the reference to be the same drawing, the Illustrative Masterplan (Ref. 0736-1002 rev E (15-3-2022)) in the submitted evidence⁷, showing different layouts.
23. Given the importance of these issues to the appeal, and the somewhat unusual procedural circumstances of the case, I agreed to the request for written copies of my questions entailing a further adjournment. During this adjournment, the main parties were instructed to address all outstanding issues, including as set out above and with regard to the errors, omissions and inconsistencies within the suggested conditions and the planning obligation.
24. The Inquiry resumed on 15 January 2025. However, following my questioning and in light of the changes to flood risk policy contained in the current version of the Framework published in December 2024, the appellant requested an adjournment of around two months. This was in order to, amongst other things, revise their drawings in the FRA and elsewhere, to show that no built development⁸ would be located within flood zones 2 / 3, and so avoid the requirement for the sequential test to be undertaken.
25. The Council and Interested Parties objected to this very strongly, and following an adjournment to consider this matter, I refused the appellant's request. The Planning Inspectorate's Procedural Guidance is clear that the appeal process should not be used to evolve a scheme⁹ and the appellant had not identified this matter in their response on the updated Framework. Furthermore, on the basis of the available evidence I was doubtful the scheme could be amended in the way proposed, to avoid the need for the sequential test, in which case an adjournment would serve no purpose.
26. When the Inquiry resumed again on 10 February 2025, the Council, the appellant and Natural England had submitted a considerable amount of new information, concerning nutrient neutrality as well as water usage, which interested parties had not had the opportunity to review or comment upon. This included a further update to the Drainage Strategy drawing (Ref. 502-P101 rev F (31-01-2025))¹⁰.
27. Following discussions at the Inquiry I therefore allowed further time for attending interested parties to make written comments on this late evidence, before accepting closing statements in writing from the main parties and the attending interested parties. There were no objections to this approach.

⁴ Core Document reference CD.A.40

⁵ Core Document references CD.A.58 – CD.A.62

⁶ Core Document reference CD.A.72

⁷ Core Document Reference CD.A.57 and Appendix 1 of CD.A.72

⁸ As defined by paragraph 175 of the Framework

⁹ Procedural Guide: Planning Appeals – England (section 16)

¹⁰ Inquiry Document ID.56

28. I have considered the latest versions of the submitted drawings and documents, and the responses made to these, as part of the evidence in determining this appeal. I closed the Inquiry in writing on 3 March 2025.

Main Issue

29. The main issue is whether the proposal would be acceptable in terms of flood risk.

Reasons

30. The appeal site comprises agricultural land to the north of Warminster, between Westbury Road and the embankment carrying the railway line that serves the town. The land generally slopes downwards from Westbury Road towards the railway embankment and includes an ordinary watercourse that flows from the site beneath the railway in a culvert. The eastern and southern part of the site is in flood zone 1, whilst the northwestern part is largely in flood zones 2 / 3.
31. The Framework states that within the context of the sequential approach to flood risk *the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding*¹¹.
32. Paragraph 175 of the Framework confirms that *the sequential test should be used in areas known to be at risk now or in the future from any form of flooding, except in situations where a site-specific flood risk assessment demonstrates that no built development within the site boundary, including access or escape routes, land raising or other potentially vulnerable elements, would be located on an area that would be at risk of flooding from any source, now and in the future (having regard to potential changes in flood risk).*
33. The appellant's FRA includes the Illustrative Masterplan drawing Ref. 0736-1002 rev A (3-3-2021) and the Drainage Strategy drawing Ref. 502-P101 rev C (5-2-2022). Amongst other things, the Drainage Strategy drawing shows the extent of fluvial flood zones 2 and 3 in the site relative to the proposed development layout at that time. However, these drawings have both been superseded by revised subsequent versions.
34. The appellant's PNR concerns the issue of nutrient neutrality with regard to the river Avon Special Area of Conservation (SAC), that I address below. The PNR includes significantly different versions of both the Illustrative Masterplan (Ref. 0736-1002 rev E (15-3-2022)) and the Drainage Strategy drawing (Ref. 502-P101 rev E (5-4-2023)) to those contained in the FRA, including with regard to the proposed development layout.
35. From my assessment of the most up-to-date Drainage Strategy drawings (Ref. 502-P101 rev E (5-4-2023) and rev F (31-01-2025)), and with reference to the site boundary, parts of the proposed access / escape routes, land raising areas and the WRC are shown to be in flood zone 2. Consequently, the exceptions to the sequential test listed at paragraph 175 of the Framework do not apply, and so the sequential test is required. At the Inquiry in January, the appellant

¹¹ Para 174 of the Framework

accepted that built development was shown within flood zone 2, hence their request for an adjournment to revise their proposal.

36. Furthermore, the proposed development includes nutrient mitigation ponds, which form part of the process through which it is intended to achieve nutrient neutrality, and I cover this in more detail in Other Matters below. I also sought the parties' views on whether the proposed nutrient mitigation ponds, which are shown to be located within flood zones 2 / 3 within the site boundary, should be considered 'built development' under paragraph 175 of the Framework.
37. The nutrient mitigation ponds may be considered engineering operations with reference to the definition of development (s55 of the Town and Country Planning Act 1990 (as amended)). However, the construction of access / escape routes or land raising could equally be considered to be engineering operations, and are specifically listed as 'built development' at paragraph 175.
38. The appellant's interpretation of this is that engineering works would need to entail some element of building works, such as foundations, to be considered 'built development'. However, I do not find this to be compelling. This is not stated in the Framework, and it is not clear that this is the Government's intention. Paragraph 175 simply lists examples of 'built development' for the purpose of this paragraph and I have considered these examples accordingly.
39. In any event, it has not been demonstrated in the FRA that the construction of the proposed mitigation ponds and the associated infrastructure, or the access / escape routes or land raising, would not include elements of building works.
40. With reference to the categories of development listed at Annex 3 of the Framework, the proposed nutrient mitigation ponds would involve the treatment of wastewater (to remove Phosphorous) rather than just transmission and so I do not consider they would be 'Water-Compatible Development', as the appellant stated at the Inquiry.
41. The executive summary of the appellant's FRA notes that 'Less vulnerable uses will be in Flood Zones 2 and 3'. However, with reference to the definitions at Annex 3 and the evidence before me, I do not consider the ponds would be 'Less Vulnerable' development.
42. The nutrient mitigation ponds would not be *sewage treatment works*. The WRC would treat the sewage, and any remaining effluent would then be diluted with surface water runoff before reaching nutrient mitigation Pond 2, whilst Pond 1 would be completely separate from the WRC. Even if Pond 2 were considered a 'Less Vulnerable' *sewage treatment works*, no substantive details for how it would operate during flood events are before me.
43. Furthermore, whilst the ponds would function as *water treatment works*, in order to avoid adversely affecting the integrity of the river Avon SAC, they would need to remain functional during times of flooding, and so would again not be 'Less Vulnerable' development under Annex 3.
44. Even if the ponds were considered to be 'Less Vulnerable' under Annex 3, this would seem to meet the requirements of the wording of paragraph 175 in terms of 'other potentially vulnerable elements' - 'Less Vulnerable' is still vulnerable.

45. I note the Council's (and interested parties') concerns about the efficacy of the nutrient mitigation ponds were they to repeatedly flood, including in the Council's response to Q29 of my written questions¹². I also note Natural England's contribution to and support for the Council's response to Q29¹³, whilst the appellant does not address the implications of the nutrient mitigation ponds flooding in any detail¹⁴.
46. With reference to the definitions under Annex 3 of the Framework, I am satisfied the proposed nutrient mitigation ponds would not be 'Water-Compatible Development', or 'Less Vulnerable', 'More Vulnerable' or 'Highly Vulnerable' uses. However, they would seem to fit with the definition of 'Essential Infrastructure' under Annex 3 of the Framework: *water treatment works that need to remain operational in times of flood*, in order to protect the integrity of the river Avon SAC. Consequently, I consider they would be a 'potentially vulnerable element' with reference to paragraph 175 of the Framework, and would be located within flood zones 2 / 3, thereby triggering the requirement for the sequential test.
47. The Council and the Environment Agency comment that within the appeal site, and within the parameters of the outline planning application, efforts have been made to position development to areas of low flood risk. This would be consistent with the sequential approach to flood risk on an individual site and with the second part of the exception test. However, before dealing with flood risk on an individual site, the sequential test must consider whether there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. This has not been done in this case.
48. The appellant notes in their closing submissions¹⁵, that the submitted details are purely illustrative in nature and that a reserved matters layout would not be bound to accord exactly with those details. This seems to conflict with the earlier statement in the appellant's closing that all the proposed housing would be within flood zone 1¹⁶.
49. However, if the drawings in the submitted FRA are purely illustrative then they do not 'demonstrate' that built development would be located in flood zone 1; if they are not indicative, then they show built development would be located in flood zones 2 / 3. In either case, the sequential test would be required.
50. Furthermore, PPG is clear that *Avoiding flood risk through the sequential test is the most effective way of addressing flood risk because it places the least reliance on measures like flood defences, flood warnings and property level resilience features. Even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied.*¹⁷
51. Suggested condition 16¹⁸, which was agreed by the main parties, states that reserved matters applications shall not be submitted until both the FRA and PNR have been revised to ensure that the relevant plans contained within

¹² Inquiry Document ID.24

¹³ Inquiry Document ID.43

¹⁴ Inquiry Document ID.29

¹⁵ Paragraph 23.2.23

¹⁶ Paragraph 23.1

¹⁷ PPG Flood Risk and Coastal Change Paragraph: 023 Reference ID: 7-023-20220825 Revision date: 25 08 2022

¹⁸ Inquiry Document ID.59

them are consistent with each other, and have been submitted to and approved in writing by the local planning authority.

52. In terms of the FRA, the condition also requires revisions to be made to demonstrate that no built development would be located on land outside the area identified as flood zone 1 and the development should be carried out in accordance with the revised FRA.
53. In order to comply with this condition, the WRC and parts of access / escape routes and land raising within the site would need to be moved to avoid flood zone 2. As explained above, I also consider that the nutrient mitigation ponds in flood zones 2 / 3 are 'other potentially vulnerable elements' as defined by paragraph 175 of the Framework. Given the sloping terrain of the site, which is drained by an ordinary watercourse, revisions to remove the ponds from flood zones 2 / 3 would require substantial changes to the proposal. It is not clear from the evidence that such revisions would be practical or even possible.
54. Furthermore, I do not consider that relying on a condition to deliver an acceptable FRA at reserved matters stage, to show, amongst other things, that the sequential test was not required at outline application stage, to be at all appropriate. An acceptable FRA (and PNR) are needed at outline application stage.
55. The use of a condition in such a way would be an attempt to remedy fundamental flaws with the evidence to support an outline application at reserved matters stage - once outline planning permission had already been granted. The approach now suggested by the parties in condition 16 would circumvent the sequential test, and the sequential approach to flood risk, and so would not be acceptable.
56. Furthermore, and as mentioned previously, the Planning Inspectorate's Procedural Guide to appeals is very clear that 'the appeal process should not be used to evolve a scheme...It is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the LPA and by interested parties at the application stage.'
57. Paragraph 174 of the Framework is clear that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The site is within an area known to be at risk of flooding and the submitted FRA has not demonstrated that all built development would be within flood zone 1. Consequently, the sequential test is required by paragraph 175 of the Framework but has not been undertaken. It is not, therefore, possible to conclude that there are not reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
58. For these reasons, the proposal would be at an unacceptable risk of flooding. It would, therefore, conflict with Core Policy 67 (Flood Risk) of the Wiltshire Core Strategy 2015 (WCS) and with the Framework in this regard.

Other Matters

59. Notwithstanding the outline nature of the proposal, after visiting the appeal site and the surrounding area, I am satisfied the site's location between the

railway line and Westbury Road and next to existing housing in Warminster, would not cause unacceptable harm to the landscape character of the area.

60. The proposal would entail the loss of agricultural land, some of which is classified as Grade 3a, and so amongst the best and most versatile (BMV) agricultural land. However, whilst the loss would be harmful, the limited extent of BMV agricultural land within the site means this would not cause unacceptable harm in this case.
61. Concerns were raised with regard to the effect of the proposal on local infrastructure capacity, including roads, education, healthcare and open space / recreational facilities. A s106 planning obligation dated 26 February 2025 has been submitted which, amongst other things, includes financial contributions for education, open space / recreation, and sustainable transport.
62. With reference to the requirements of Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended) (the CIL Regulations) and the Council's CIL Compliance Statement, I am satisfied that these obligations would be necessary to make the development acceptable in planning terms; would be directly related to the development; and, would be fairly and reasonably related in scale and kind to the development. I am also satisfied that the signatories for BDW Trading Limited are authorised to sign the s106 obligation, with reference to the General Power of Attorney document dated 27 July 2024.
63. I am, therefore, satisfied the proposed development would not adversely affect local education, recreation or highway safety / capacity in the area. Whilst local residents also raised concerns about the effect of the proposal on local health infrastructure, the Council stated that the NHS did not respond to its consultation on this matter.
64. A public footpath (WARM18) crosses the appeal site, and the nearby Warminster railway line, at ground level. With the construction of up to 205 new homes on the appeal site, many of which would be likely to be occupied by families with children, the public footpath, in its current form, would be an unacceptable risk to the safety of future occupiers.
65. Network Rail was consulted by the Council on the proposal. However, its response was somewhat unclear and contradictory. Nevertheless, after putting this matter to the parties at the Inquiry, were the development otherwise acceptable, I am satisfied that a suitably worded Grampian condition could be attached to any grant of planning permission, which would prevent the occupation of the proposed dwellings unless the existing crossing of the railway line by the WARM18 public footpath was stopped up or satisfactorily diverted.
66. The Council's Housing Department requested that affordable housing for the proposed development be constructed to at least 85% of the Nationally Described Space Standards (NDSS). This was subsequently said to be required so that Registered Providers could secure funding from Homes England.
67. Whilst there is currently no adopted development plan policy basis to require 100% of NDSS for new housing, I was concerned that requiring affordable housing at potentially less than the NDSS would disadvantage future occupiers of such homes. However, at the Inquiry, the appellant offered to change the

space standards for affordable housing to 100% of the NDSS and this is now contained in the s106 planning obligation.

68. The river Wylfe forms part of the catchment of the river Avon, which, as previously mentioned, is designated as an SAC. It is accepted that elevated levels of Phosphorous are preventing the achievement of the conservation objectives for the river Avon SAC.
69. As previously mentioned, the appellant's approach to the treatment of wastewater from future occupiers of the proposed development has evolved over time. An early proposal was for wastewater from the proposed development to be pumped to the existing Warminster WWTW for treatment and then to be discharged into the river Wylfe. This is the approach shown in the FRA and the parameters plans.
70. However, there were concerns that the capacity of the WWTW would not be sufficient to achieve nutrient neutrality and that Phosphorous from the proposed development would enter the river Avon SAC. Following discussions between the appellant, the Council and Natural England, a more novel approach was developed, which is shown in the PNR.
71. This would involve the construction of an onsite WRC¹⁹ where the effluent would be treated, before entering an attenuation pond, to which surface water runoff from the site would drain. From this attenuation pond, the combined treated effluent and surface water would enter nutrient mitigation Pond 2, where floating treatment wetland vegetation would treat any remaining Phosphorous. Water from Pond 2 would then enter the unnamed ordinary watercourse that flows across the site and then in a culvert beneath the railway line, before reaching the river Wylfe, and then the river Avon.
72. A further pond, nutrient mitigation Pond 1, was proposed to operate in a similar manner to Pond 2 to remove Phosphorous from the unnamed water course. This would be Phosphorous not connected to the proposed houses or WRC and would be in the north west corner of the appeal site.
73. There were extensive discussions and written submissions on this topic during the Inquiry, including with regard to the efficacy of this approach at this location, where the mitigation ponds would be located in medium / high risk flood zones and in a temperate climate, where drought and freezing temperatures may occur. Unfortunately, and as mentioned previously, some of the main evidence relied upon by the appellant, the Council and Natural England was inconsistent, including between the latest version of the PNR and the FRA; within the latest version of the PNR; and between the PNR and the stated views of Natural England on water usage at the proposed development.
74. The parties attempted to address past failings with the evidence in relation to nutrient neutrality during the Inquiry, including the additional evidence submitted in February 2025; the revised wording of suggested Condition 16; and, revisions to the planning obligation.
75. The appeal site is located within a Zone of Influence for a number of European Sites. The Salisbury Plain SAC / Special Protection Area (SPA); the Bath and Bradford upon Avon Bats SAC; and, the river Avon SAC.

¹⁹ With an interim solution proposed for the constructed dwellings whilst the WRC is constructed and is activated.

76. Under Regulation 7 (1) of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitat Regulations), I am the Competent Authority in this case.
77. Under Regulation 63 (1) of the Habitat Regulations, the Competent Authority, before deciding whether to give any consent, permission or other authorisation for a project which is likely to have a significant effect on a European site and is not directly connected with or necessary to the management of that site, must make an appropriate assessment of the implications of the project for that site in view of that site's conservation objectives.
78. However, as I am dismissing the appeal for other reasons, there is no need for any further action in this regard.

Planning Balance and Conclusion

79. The proposed development would be located in the countryside, outside the town of Warminster and would be at an unacceptable risk of flooding. It would, therefore, conflict with WCS Core Policy 1 (Settlement Strategy), Core Policy 2 (Delivery Strategy) Core Policy 31 (Spatial Strategy: Warminster Community Area) and Core Policy 67.
80. The Council accepts that for the purpose of this appeal it can only demonstrate a deliverable 2.03 years HLS. This is well below the minimum level required and with reference to paragraph 11 d) of the Framework, consideration of the presumption in favour of sustainable development is needed.
81. The precise number of homes to be delivered is to be determined at reserved matters stage. Nevertheless, a substantial number of new homes, up to a maximum of 205 units, would be provided, and the submitted s106 planning obligation dated 26 February 2025 would ensure that at least 30% of the new homes would be affordable homes, and that 10% of these homes would be Adapted Units, meeting the requirements of part M4(2) of the Building Regulations 2010 (as amended).
82. There have been extensive discussions between the main parties regarding the provision of a Community Centre serving the proposed residents as well as potentially existing residents nearby. This has culminated in Schedule 11 of the s106 planning obligation which concerns the provision of land within the appeal site and various mechanisms through which a Community Centre could be delivered.
83. The delivery of a substantial number of new homes on the edge of the town of Warminster, of which at least 30% would be affordable homes and 10% of the affordable homes would accord with the standards of Part M4(2) of the Building Regulations 2010 (as amended), would be a benefit of the scheme that attracts substantial weight.
84. The delivery of a Community Centre potentially serving the existing community would be a benefit of the scheme. There would also be short-term economic and social benefits of the proposal during its construction, with longer-term economic, social and some environmental benefits upon completion and occupation, including improvements to public safety by the diversion or closure of WARM18, to on-site biodiversity and to flood storage. These benefits also attract weight.

85. However, the considerable benefits of the scheme would be outweighed by the very substantial weight I give to the harm resulting from the location of the site within an area at risk of flooding, where the sequential test is required but has not been undertaken.
86. The WCS and the Warminster Neighbourhood Plan 2016 (WNP) form the development plan for the area containing the appeal site. The Council and appellant have referenced a number of development plan policies in their evidence that they consider relevant to the appeal proposal. I have considered these policies, and their consistency with the Framework.
87. The location of the proposed development in the countryside beyond the settlement limit for Warminster means that it would conflict with WCS Core Policy 1, Core Policy 2 and Core Policy 31. Whilst these policies are generally consistent with the Framework, the Council's HLS of only 2.03 years means that they are out of date²⁰ and so the conflict with these policies attracts only very limited weight.
88. However, the location of the site in an area at risk of flooding means that the proposal would also conflict with WCS Core Policy 67. The purpose of this policy is not to ensure the delivery of housing, but to ensure that any development in an area of flood risk is considered appropriately. The wording of this policy is broadly consistent with the wording of the Framework in terms of the sequential test and so this conflict carries weight.
89. Whilst the proposed development would accord with other policies in the development plan, I am satisfied that the conflicts with Core Policies 1, 2, 31 and 67 means there would be conflict with the development plan when taken as a whole.
90. Paragraph 174 of the Framework is very clear that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The appeal site is located within an area at risk of flooding, including a substantial area within fluvial flood zones 2 / 3.
91. The failure to undertake the sequential test where it is required, as it is in this case, provides a strong reason for refusing the development proposed²¹. Consequently the proposal is not sustainable development with reference to paragraph 11 d) i) of the Framework.
92. The proposal would conflict with the development plan as a whole and there are no material considerations that would cause me to determine this appeal otherwise than in accordance with the development plan.
93. For the reasons given above, I conclude the appeal is dismissed and outline planning permission is refused.

Andrew Parkin

INSPECTOR

²⁰ Footnote 8 of the Framework

²¹ Footnote 7 of the Framework

ANNEX 1 - APPEARANCES

FOR THE APPELLANT:

Sasha White KC	Counsel
Marianne Barker LLB	Solicitor (Clarke Willmott)
Annie Gingell BSc (Hons) MSc MRTPI	Affordable Housing (Tetlow King)
Neil Tiley Assoc RTPI BSc (Hons)	Housing Land Supply (Pegasus Group)
Jim Phillips BSc (Hons) MA MCIEEM	Ecology and Biodiversity (Ethos)
Jeremy Smith (BSc) (Hons) DipLA CMLI	Landscape (SLR)
Eurling Craig Rawlinson BEng (Hons) CEng MCIHT CMILT	Highways (Pegasus Group)
Peter Amies BSc (Hons)	Drainage (Phoenix Design Partnership)
Chris Marsh BA (Hons) MPLAN MRTPI	Planning (Pegasus Group)

FOR THE LOCAL PLANNING AUTHORITY:

Mr Hashi Mohamed	Counsel
Alwyn Thomas	Solicitor (Wiltshire Council)
David Cox BSc MSc MRTPI	Planning Officer (Wiltshire Council)
Chris Roe MSc MRTPI	Housing Land Supply Officer (Wiltshire Council)
Rob Rossiter BSc BSc Dip	Highways Officer (Wiltshire Council)
Ben Wilding MEng (Hons) Eurling CEng MICE	Drainage Officer (Wiltshire Council)
Rachel Jones BA MSc	Ecology Officer (Wiltshire Council)
Vicky Brown BSc BSc (Hons) MCIEH	Environmental Health Officer (Wiltshire Council)
Gemma Brinn	Environmental Health Officer (Wiltshire Council)

INTERESTED PARTIES:

Cllr Bill Parks (Wiltshire Council and Warminster Town Council)
Cllr and Mayor Stacie Allensby (Warminster Town Council)
Dr Tony Greig
Mr Andrew Lee
Dr Kim Porter

ANNEX 2 – DOCUMENTS SUBMITTED AT THE INQUIRY

- ID.01 Appellant's List of Appearances
- ID.02 LPA's List of Appearances
- ID.03 LPA's Opening Statement
- ID.04 Section 78 Right to appeal against planning decisions and failure to take such decisions
- ID.05 Section 79 Determination of appeals
- ID.06 Taytime Ltd EWHC admin 2024 1053
- ID.07 Appellant's Opening Statement
- ID.08 Cllr Bill Parks' Opening Statement
- ID.09 Dr Greig's Opening Statement
- ID.10 Mr Lee's Opening Statement
- ID.11 Dr Greig's reference document 18-10-24
- ID.12 Mr Lee's agricultural land document 18-10-24
- ID.13 Mr Lee's agricultural land photographs 18-10-24
- ID.14 Mr Lee's affordable housing document 18-10-24
- ID.15 Mr Lee's neighbourhood density document 18-10-24
- ID.16 Mr Lee's five year HLS document 18-10-24
- ID.17 Mr Lee's transport document 18-10-24
- ID.18 Mr Lee's transport slides 18-10-24
- ID.19 Inquiry Programme note 21-10-24
- ID.20 Flood Risk / Drainage and Biological Diversity Questions 25-10-24
- ID.21 Walking Routes for Site Visit 15-10-24
- ID.22 Flood Risk / Drainage and Biological Diversity Questions v2 28-10-24
- ID.23 Inspector's correction email for question numbering 28-10-24
- ID.24 Council response to Flood Risk / Drainage and Biological Diversity Questions 8-11-24
- ID.25 Salisbury Plan SPA HRA and Mitigation Strategy (June 2024 review)
- ID.26 Appeal Decision Ref. 3336518
- ID.27 Environment Agency response to Flood Risk / Drainage and Biological Diversity Questions 8-11-24
- ID.28 Appellant covering letter dated 8-11-24
- ID.29 Appellant response to Flood Risk / Drainage and Biological Diversity Questions 8-11-24
- ID.30 Revised list of agreed conditions 8-11-24

- ID.31 Revised Statement of Common Ground on Transport 8-11-24
- ID.32 Response of Dr Greig 14-11-24
- ID.33 Response of Mr Lee 14-11-24
- ID.34 Track-Change version of S106 Agreement
- ID.35 Appellant's comments on revised National Planning Policy Framework 24-12-2024
- ID.36 Comments on revised National Planning Policy Framework from Mr Lee and Dr Greig 24-12-2024
- ID.37 Inspector's Agenda for resumed Inquiry and accompanying procedural email
- ID.38 Final Draft version of S106 Agreement 7-1-25
- ID.39 Final version of CIL Compliance Statement 9-1-25
- ID.40 Art and design in the public realm in Wiltshire - 2024 Guidance
- ID.41 Council Briefing Note 24-20 on 5 Year HLS position in light of the revised National Planning Policy Framework 17-12-24
- ID.42 Appellant email confirming agreement with Council Briefing Note 24-20 for the purpose of this appeal 14-1-25
- ID.43 Email from Natural England confirming support for Council's responses to Inspector's questions 14-1-25
- ID.44 Email from appellant regarding water usage 14-1-25
- ID.45 Email from appellant regarding the validity of the appeal 15-1-25
- ID.46 Council's Appropriate Assessment of development sites with the Salisbury Plain SPA mitigation strategy area June 2024
- ID.47 Natural England's confirmation it is satisfied with the Council's Appropriate Assessment conclusions and the mitigation strategy 9-7-24
- ID.48 Council's confirmation of Salisbury Plain monitoring contract with the RSPB 16-1-25
- ID.49 Council's Infrastructure Funding Statement and covering email 17-1-25
- ID.50 Inspector's email and agenda for resumed Inquiry 17-1-25
- ID.51 Council's notification for the resumed Inquiry and joining instructions 17-1-25
- ID.52 Revised Draft s106 Obligation 7-2-25
- ID.53 Revised Conditions 7-2-25
- ID.54 Nutrient Neutrality Technical Note 6-2-25
- ID.55 Natural England Letter 6-2-25
- ID.56 Appellant Nutrient Neutrality letter 7-2-25

ID.57 Revised Nutrient Neutrality Calculator 7-2-25

ID.58 Inspector's email with document submission dates 10-2-25

ID.59 Revised Conditions 12-2-25

ID.60 Revised Draft s106 Obligation and annexes 14-2-25

ID.61 Closing statement of Dr Greig 23-2-25

ID.62 Comments on conditions from Mr Lee 24-2-25

ID.63 Closing Statement of Mr Lee 24-2-25

ID.64 Closing Statement of the Council 25-2-25

ID.65 S106 planning obligation dated 26-2-25

ID.66 Closing Statement of the appellant 3-3-25

ID.67 General Power of Attorney dated 27-7-24

Richborough