
Appeal Decision

Site visit made on 30 September 2025

by **Alison Fish BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 October 2025

Appeal Ref: APP/E3335/W/25/3369557

Land South West of Westway Lane, Shepton Mallet, Somerset

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Shepton Mallet LVA LLP against the decision of Somerset Council.
 - The application Ref is 2023/1468/OUT.
 - The development proposed is Outline application including access from Westway Lane with all other matters reserved for demolition of existing buildings and erection of up to 18 no. dwellings, public open space and associated infrastructure.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal is for outline planning permission with access only to be determined at this stage and with appearance, landscaping, layout and scale reserved for future approval. Whilst not formally part of the scheme, I have treated the indicative details relating to these reserved matters as a guide as to how the site might be developed.
3. Shepton Mallet Neighbourhood Plan was 'made' on 13 August 2025 (NP) and now forms part of the development plan. Both parties have had an opportunity to comment on its relevance to the appeal in their submissions. My attention has been drawn to Policies 4 and 5 of the NP and I have considered these accordingly.
4. The Council refused planning permission for three reasons, including the absence of a suitable mechanism to secure affordable housing and necessary infrastructure (reason 2) and the effect of the development on Somerset Levels & Moors Ramsar (reason 3). A signed Unilateral Undertaking, dated 10 September 2025, made under s106 of the Town and Country Planning Act 1990 (the UU) was submitted during the appeal process. The Council have confirmed that they no longer wish to defend the second reason for refusal. I will consider this further below together with whether there is sufficient provision within the UU to overcome the Council's third reason for refusal relating to the Protected Site.

Main Issues

5. The main issues are therefore:
 - Whether the appeal site is a suitable location for the proposed development with reference to the development plan;

- The effect of the proposed development on the character and appearance of the area; and
- The effect of the proposed development on the integrity of the Somerset Levels & Moors Ramsar (Protected Site).

Reasons

Location

6. Core Policy 1 contained in Part 1 of the Mendip District Local Plan 2006-2029, adopted December 2014 (LP) directs the majority of growth towards the five principle settlements which includes Shepton Mallet. Given the appeal site's location close to Shepton Mallet, there is no dispute that the appeal site is in an accessible location. However, it is located outside the development limit for Shepton Mallet and is therefore in the open countryside where development is strictly controlled. The proposed development does not accord with any of the provisions set out in Core Policies 2 or 4 of the LP which permit housing outside development limits either on allocated sites or to meet a specifically identified local need.
7. The proposal would therefore introduce new housing into the countryside in a way which would conflict with Core Policies 1, 2 and 4 of the LP. This would harmfully undermine the objectives of the spatial strategy and the public interest in having a genuinely plan led system that provides consistency and direction.

Character and Appearance

8. The appeal site is a small, elongated and gently sloping field enclosed by mature trees and hedgerows, accessed via Westway Lane. Its undeveloped nature means that it is part of the rural setting of Shepton Mallet. Whilst no substantive evidence has been provided to indicate how the appeal site contributes positively to the local character and distinctiveness of the area, it clearly reflects the intrinsic beauty of the countryside which would be diminished by residential development.
9. The appeal site lies adjacent to existing development along Westway Lane, with housing to the north and east. Its position, combined with the surrounding topography, means that any new development would not be visually prominent in the wider landscape and would be viewed within the context of nearby built form.
10. Although the layout on the submitted drawings is indicative, it consists of detached, semi-detached and short rows of terraced housing in a linear layout. This would not be at odds with the rather regimented layout of the existing development to the east of Westway Lane. The retention of the existing grass verge, trees and hedgerows would mean that key features of the site are retained. In addition to the housing, the indicative layout indicates that the development could accommodate some on-site provision of public open space as well as a drainage attenuation feature. This level of provision does not indicate to me that the development would appear cramped.
11. Therefore, whilst there would be some harm to the rural character and appearance of the site by virtue of the erection of dwellings on an undeveloped field, the impact would be very localised and of a low order. For these reasons, I find that there would be conflict, albeit limited, with Development Policies 1, 4, and 7 of the LP and Policies 4 and 5 of the NP which seek to maintain local distinctiveness, protect important landscape features and respect the local context.

Habitats

12. The application site is within the fluvial catchment of the Somerset Levels & Moors Special Protection Area (SPA) and Ramsar (Protected Site).
13. Natural England has advised that the effects of additional nutrients from development on the SPA can be screened out of further assessment. However, the Protected Site, designated for its internationally important wetland features including the floristic and invertebrate diversity and species of its ditches, is considered to be in an unfavourable condition or at risk due to excessive levels of phosphorus largely derived from the discharge from wastewater treatment works.
14. The proposed development would generate waste water effluent which would result in increased phosphate loading within the hydrological catchment of the Protected Site leading to a likely significant effect upon the designated features of the Protected Site either on its own or cumulatively with other similar development, without avoidance measures. As the competent authority, I am required to carry out an Appropriate Assessment pursuant to the Habitat Regulations. I have consulted Natural England accordingly.
15. Currently there is no strategic approach to mitigation for phosphorus in the Protected Site. Therefore, the proposed development would result in an adverse effect upon the integrity of the site, unless the appellant can demonstrate phosphorus neutrality.
16. Calculations provided by the appellant indicate that the proposed development would increase phosphate loading in the area by 1.275kgP/yr after the completion of the Asset Management Plan 7 (AMP7) upgrades scheduled for the Shepton Mallet Wastewater Treatment Works. That calculation is premised on water usage being limited to 110 litres per person per day(l/person/day). To mitigate this, the UU secures the submission of a mitigation scheme to include the upgrading of septic tanks to package treatment plants elsewhere within the catchment and that the approved mitigation is completed before the development commences. It would also delay occupation of the proposed dwellings until the AMP7 works have been completed and limit water usage to 110l/person/day.
17. As the competent person I must be able to rule out beyond all reasonable scientific doubt that the proposal would not lead to an adverse effect on the Protected Site. As such, it is also necessary for me to be certain that any mitigation is sufficiently secured and likely to work in practice.
18. The intention is to secure mitigation by way of upgrading various septic tanks to package treatment plants at East Pennard, in the same catchment as the appeal site. I note that the appeal at Walton¹ did the same. However, in that appeal, the Inspector refers to this specific proposal being reflected in the unilateral undertaking accompanying that appeal.
19. The UU before me does refer to the scheme at East Pennard or any other specified scheme. Neither does it specify that the requisite phosphorus credits must be secured from an approved phosphorous credit provider. Instead, it requires that a further s106 planning obligation is entered into by an unspecified third party in

¹ Appeal Ref: APP/E3335/W/23/3324852 Land at South Street, Walton, Street BA16 9RY dated 5 July 2024

relation to an unspecified number of septic tanks in an unspecified location, other than being within the catchment area.

20. I note the letter from Green Agri Land Ltd² which confirms that a reservation fee has been paid by the appellant in relation to land at East Pennard. However, it is unclear what the duration of the 'reservation period' is and as this is not secured by way of the UU, I cannot be certain that this is the mitigation which would be undertaken in any event.
21. I note that the Inspector in a recent appeal³ took the view that a Grampian condition would be appropriate. Whilst only the appeal decision is before me, it is clear that the Inspector had a detailed mitigation scheme before them. They concluded that there was no robust reason that the mitigation could not be secured or delivered particularly as the appellant had a suitable interest in the off-site mitigation land. Those circumstances do not arise in this case. Given the uncertainty over the mitigation, I am not satisfied that the housing land supply and number of houses proposed in this appeal, would amount to exceptional circumstances to justify this approach.
22. Whilst Natural England have advised that sufficient phosphorus credits are now available in the catchment, I cannot be certain as the competent authority that unspecified and unsecured measures would be effective in mitigating the adverse effect on integrity of the Protected Site, thus complying with the expectations of the Habitats Regulations.
23. The proposal would also be contrary to Development Policy 5 of the LP which seeks to ensure the protection and conservation of Protected Sites, as the exceptions listed therein are not met.

Other considerations

24. The Council accept that it cannot demonstrate a 5 year housing land supply. Evidence provided by the Council estimates a 2.84 year supply and puts the shortfall at 2,284 dwellings. The appellant suggests that this figure could be lower, sitting at around 2.6 years. Even if I took the higher of these figures, this represents a considerable shortfall. In this context, the provision of 18 homes would make a moderate contribution towards boosting the supply of housing. The proposal also includes the policy-compliant provision of affordable housing which be a benefit of moderate weight in my consideration of the appeal.
25. As a small to medium site, the development could be brought forward quickly and moderate economic benefits would ensue from the construction and occupation of the dwellings.
26. The financial contributions in the UU seek to mitigate the effects of the development and are therefore neutral in the planning balance. The lack of harm arising in respect of matters such as residential amenity, drainage and parking is also neutral in my assessment.

² Dated 3 September 2025

³ Appeal Ref: APP/E3335/W/24/3357931 Land OS 8325 Off Queen Street, Keinton Mandeville TA11 6FF

Other Matters

27. The UU to secure Delivery of 30% affordable housing on site; delivery and ongoing management of on-site public open space; delivery of highway works to improve existing footway connections; financial contributions towards early years, infant and junior education provision; and financial contributions towards the provision of public open space off-site has been accepted by the Council as addressing their second reason for refusal. In respect of the latter and notwithstanding a drafting error in the UU, the Council have confirmed that the presence of a number of alternative facilities within walking distance of the site amounts to an exceptional circumstance which justifies an off-site contribution. I find no conflict with Development Policy 16 of the LP in this respect.
28. Had I been minded to allow the appeal, I would have needed to consider such obligations against the tests in the Community Infrastructure Levy Regulations 2010, as amended, and the Framework and whether the contribution requested by Royal United Hospitals Bath NHS Foundation Trust would meet those same tests. However, as the appeal is to be dismissed, I need not address this matter further.
29. Other matters were raised by an interested party including, but not limited to, access, increased traffic and the quality of the housing. The Council's third reason for refusal refers to Development Policy 6 of the LP which relates to Bat Protection. The Council's Officer report does not raise any objections to the proposal with regard to the impact on bats. As the appeal is to be dismissed, I need not address these matters further.

Planning Balance and Conclusion

30. I have found some harm, albeit limited, in terms of the effect on the character and appearance of the area. The location of the proposed development in the countryside means that it would conflict with Core Policies 1,2 and 4 of the LP and some. Whilst these policies are generally consistent with the Framework, a housing land supply of only 2.84 years at most, means that they are deemed out of date and as a result, conflict with these policies attracts limited weight.
31. Whilst the proposal would accord with other policies in the LP, increase the supply of housing at a time when there is significant under provision and there would be some moderate economic benefits arising from the proposal, I have found that the proposal would have a likely significant effect on the qualifying features of the Protected Site which in the absence of appropriate mitigation would have a harmful impact on its integrity.
32. With reference to footnote 7 to Paragraph 11 d) i of the Framework. this provides a strong reason for refusing the development proposed. Consequently, the proposal is not sustainable development with reference to Paragraph 11 d) of the Framework. The proposal would conflict with the development plan as a whole and there are no material considerations that would lead me to determine this appeal otherwise than in accordance with the development plan. For the reasons given above, I conclude the appeal should be dismissed.

Alison Fish INSPECTOR