



Appeal Decision

Hearing held on 22 April 2026

Site visits made on 21 and 22 April 2026

by **H Nicholls MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 06 May 2026

Appeal Ref: 6002845

Land South of Drynham Lane, Trowbridge

- 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 Lee McGivern of Drynham Lane Limited against the decision of Wiltshire Council.
 - The application Ref is PL/2024/11554.
 - The development proposed is up to 40 new residential dwellings, with all matters reserved, save for access.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by the appellant against the Council. A separate application for costs was made by the Council against the appellant. These applications are subject of separate decisions.

Preliminary Matters

3. The appeal application was made in outline form with all matters save for the principal access (from the A363) reserved for future consideration. As such, I have treated any plans depicting a layout and details of scale as indicative in nature.
4. An agreed Statement of Common Ground (SoCG) dated March 2026 was submitted which clarifies that the site was allocated for development in the *Wiltshire Housing Site Allocations Plan* (WHSAP) (adopted 2020) as part of the Policy H2.1 'Elm Grove' allocation. The appeal site has become known as Plot 4 of the allocation. The allocation was for 'approximately 250 dwellings'. The allocation policy is also supported in the *North Bradley Neighbourhood Plan* (NBNP) (2021).
5. Through a combination of developments on other plots on the wider allocated site, 247 dwellings have either been constructed, or are under construction. The development on the adjoining site which received outline permission in 2022¹ and reserved matters consent in 2024 is making use of the appeal site as a temporary haul road for construction traffic² for this purpose. The outline permission did not extend to cover the appeal site, though some early site investigations and surveys covering various aspects did include it.

¹ Under planning reference 19/11459/OUT

² It has been clarified that this has been constructed utilising permitted development rights under the Town and Country Planning General Permitted Development Order 2015, as amended.

6. As the proposal is for up to 40 dwellings, the cumulative number of dwellings approved across the allocated site would exceed the 'approximately 250 dwellings' expected under the policy H2.1 and NBNP. However, in my view, an exceedance of around 15% would be at the upper end of an 'approximate' figure so as to not materially exceed it. In any event, the SoCG records that there is no in-principle objection to the scheme given that the site is allocated for housing purposes. I find no reason to disagree on this aspect.
7. However, the masterplan pertaining to the allocated site envisaged that the site would be accessed internally through the adjoining development. Due to land ownership and related viability constraints, this is no longer possible and a separate access to the site is proposed to the south, directly onto the A363. Notwithstanding the views of interested parties, there are no highway safety or capacity concerns relating to the provision of this alternative access from the Council's Highways Service, subject to planning conditions, and I do not conclude otherwise.
8. The SoCG also records that the Council is unable to demonstrate a five year housing land supply with a 5% buffer as required by the National Planning Policy Framework (the Framework). The current supply position is around 2.42 years³ supply which equates to a shortfall of over 9,000 dwellings. The parties agree that this is a substantial shortfall and I do not reach an alternative conclusion in this regard. I return to this aspect in the planning balance below.

Main Issues

9. The main issues in the appeal are:
 - whether the proposal would deliver the necessary affordable housing and other infrastructure requirements;
 - the effects of the proposal on the Bath and Bradford on Avon Bats Special area of Conservation (SAC);
 - the effects of the proposal on the ecological interests of the site and whether measures would adequately secure Biodiversity Net Gain (BNG);
 - whether adequate living conditions would be created for future occupiers, with particular regard to noise;
 - the effects of the proposal on any potential archaeological interests;
 - the effects of the proposal on the character and appearance of the area; and
 - whether the site would be at risk of flooding and if so, whether the development would be safe over its lifetime.

Reasons

Affordable Housing and Infrastructure

10. During the processing of the appeal application, various requests were made for affordable housing and financial contributions towards infrastructure or improvements. Aside the affordable housing, the provision of infrastructure or the increase in existing infrastructure capacity would help to mitigate the effects of new

³ From a base date of 1 April 2024

residents created by the development so as to accord with numerous policies of the development plan. The requests included:

- 30% affordable housing;
 - C. £47,999.66 for public open space;
 - C. £10,195.20 for equipped play, if not provided on site;
 - C. £9,440.00 for offsite provision of sport pitches and courts;
 - C. 4 early years education spaces at a cost of £17,522 each with a total cost of £70,088 (indexed linked);
 - C. 11 primary school spaces education places at a cost of £18,758 per place with a total cost of £206,338 (indexed linked);
 - C. 8 secondary school spaces - at a cost of £22,940 per place with a total cost of £183,520 (indexed linked);
 - C. £115 per dwelling towards waste infrastructure;
 - C. £61,354 towards pedestrian and cycle improvement schemes in accordance with the *Trowbridge Transport Strategy* (May 2018);
 - C. £69,143 towards *Trowbridge Transport Strategy Public Transport Improvements Scheme*;
 - C. £6842.00 towards traffic calming on Woodmarsh Road;
 - A contribution of c. £5,000 (index linked) towards improvements of the Public Right of Way network within 2km of the site, c. £5000 to Southwick Country Park Local Nature Reserve which is located within 1.5km of the site and c. £5,000 to go towards improvements at Biss Meadows Country Park which is located 1.3km from the site;
 - Contributions as required by the *Trowbridge Bat Mitigation Strategy SPD* (TBMS) (2020) which have been updated in accordance with the *Trowbridge and Westbury Bat Mitigation Scheme* (TWBMS) (2025) of c. £972.03 per dwelling and c. £925 per dwelling to respectively mitigate the residual effects from loss /degradation of bat habitat and to offset recreational pressures;
 - If not secured by way of planning conditions, provision of highway and access works to include, a right hand turn lane, traffic island, relocated/new bus stops, proposed foot/cycleway to bus stops, any necessary alterations to the proposed toucan crossing, highway drainage and street lighting;
 - In addition to the above, any deed would be required to secure management company contributions for any open space areas and for monitoring measures for the obligations therein.
11. Discussion on each of these contributions did not occur at the hearing and nor were their effects on the economic viability of the scheme disputed. Rather, the appellant conceded that the principle of these requirements was accepted and that once the number of dwellings were known at reserved matters stage, a deed (unilateral or bilateral made under S106 of the Town and Country Planning Act 1990) (the Act) ('a S106') could be submitted with the contribution amounts specific to the actual development that would be built on site. In essence, the appellant does not agree that the S106 should be offered at outline stage.

12. S92(1) of the Act sets out that 'outline planning permission' means planning permission granted, in accordance with the provisions of a development order, with the reservation for subsequent approval by the local planning authority or the Secretary of State of matters not particularised in the application ('the reserved matters').
13. As such, the planning permission is that granted at outline stage. A reserved matters application is not one for planning permission, which has already been granted subject to various conditions, and matters completely outside the scope of the original permission cannot be introduced at this stage. Consequently, planning obligations are generally sought prior to permission being granted at outline stage. Whilst it may be technically possible to secure a S106 at reserved matters stage, this would be treated similarly to the use of conditions at reserved matters stage which limits the application of conditions to only those which directly relate to those matters and related issues that could not have been reasonably foreseen at the outline stage.
14. The appellant has not suggested a planning condition to require a S106 to be entered into, but on the basis that it is suggested to defer it to a later stage, I have considered this as an alternative option. In this regard, the *Planning Practice Guidance* (PPG) sets out⁴ that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases and that ensuring that any planning obligation is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties. The PPG goes on to state that a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate in exceptional circumstances, such as where there is clear evidence that the delivery of the development would otherwise be at serious risk (this may apply in the case of particularly complex development schemes).
15. There is no such evidence that the development proposed, as an outline application for up to 40 dwellings, would be at serious risk or is otherwise so complex that it warrants such a condition to allow the S106 to be entered into at a later date. As one such example, the S106 for the adjoining development was engrossed on the 31 October 2022, prior to outline planning permission being granted on the same date. The approach to contributions within that S106 was largely to use multipliers of the contribution amounts to allow for an unknown quantity of dwellings. With negotiation, this approach could have been replicated for the appeal scheme before me. As such, I see no reason why a condition requiring a S106 to be entered into would be warranted in this case.
16. As a further comparison, the process surrounding the 'permission in principle' (PIP) process differs. The PPG explains⁵ that that planning obligations cannot be secured at the permission in principle stage (this is the first stage) but that local authorities may agree planning obligations at the technical details consent (TDC) stage where the statutory tests have been met. The TDC stage is the second stage. Local planning authorities can inform applicants that planning obligations may be needed at the TDC stage. Thus, if a key objective is to avoid entering into a S106 at the initial application stage, the PIP process may be more appropriate.

⁴ In paragraph: 010 Reference ID: 21a-010-20190723

⁵ In paragraph: 022 Reference ID: 58-022-20180615

17. Given the absence of a S106, the proposal would fail to provide affordable housing and the other aforementioned contributions and infrastructure, and therefore conflicts with the policies seeking to secure these various requirements, including core policies 3, 43, 45, 50, 51, 52, 61, 62 and 63 of the Wiltshire Core Strategy (adopted 2015) (Core Strategy), Policies LP4, GM2 and GM3 of the *West Wiltshire Leisure and Recreation Development Plan Document* (2009) and policy WCS6 of the *Wiltshire and Swindon Waste Core Strategy* (2009).

Effects on SAC

18. The SAC is afforded protection under the *Conservation of Habitats and Species Regulations 2017*, as amended (the 'Habitats Regulations'). The appeal site lies within an area known to support bats that form part of the populations for which the SAC is designated. These are:
 - 1304 Greater horseshoe bat (*Rhinolophus ferrumequinum*);
 - 1323 Bechstein's bat (*Myotis bechsteinii*); and
 - 1303 Lesser horseshoe bat (*Rhinolophus hipposideros*).
19. The conservation objectives for the SAC include the need to ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring;
 - The extent and distribution of the habitats of qualifying species;
 - The structure and function of the habitats of qualifying species;
 - The supporting processes on which the habitats of qualifying species rely;
 - The populations of qualifying species, and,
 - The distribution of qualifying species within the site.
20. The appeal scheme, for up to 40 dwellings, has the potential to affect the interest features of the SAC through direct effects on the relevant bat populations and reductions in quantity and quality of the habitats they use (i.e. for foraging). As such, at point 5.5 of the SoCG, it is agreed between the parties that the appeal site is located within a consultation zone associated with the SAC and is screened in to an appropriate assessment (under the Habitats Regulations). I do not disagree.
21. The appeal application was submitted with an *Ecological Impact Assessment* dated November 2024 (ECIA) incorporating the results of bat surveys undertaken at the site, along with an *Ecological Technical Note* (ETA) dated March 2025 and *Baseline Survey Report* (concerning existing levels of lighting). The submitted bat surveys reported in the ECIA demonstrate that bat SAC species are present and although occurring in low numbers it is nevertheless important to ensure the scheme maintains and enhances the ecological connectivity through the site for commuting bats. A further point made by the Council is that the number of recordings of bat SAC species may be greater, based on the absence of surveying of the open grassland and difficulties differentiating the particular calls of these bat species as distinct from more commonly occurring bat species. Notwithstanding the modest size of the site, the absence of survey effort on the open grassland does appear to be an area of weakness in the survey effort in respect of horseshoe bats for which the ECIA accepts would result in the loss of foraging resource.

22. The TBMS sets out a requirement for WSHAP allocated sites to be subject of parameters plans where involving largescale sites. The 'Elm Grove' allocation was subject of a parameters plan which indicates connected corridors to at least the east and north of the site. The TBMS also sets out a minimum standoff distance of 15m from the development to the outside edge of any part of the bat core habitat to be provided as a buffer zone. In this case, Drynham Lane which runs to the north of the site is considered to be core bat habitat. Whilst the TBMS has been superseded by the TWBMS, the principles for the appeal site were established within the TBMS as part of the Elm Grove scheme which require at least 15m insets from the bat core habitat.
23. Other than in the area of proposed open space, the submitted illustrative parameter plan (ref PP-01, June 2025) indicates a 15m buffer from the northern edge of Drynham Lane across its width, not to the closest outside edge. Similarly, the submitted illustrative parameter plan shows some areas of developable edges tight to the eastern boundary with reliance on a 22m buffer that has been provided within the adjoining development.
24. Though evidence has not been sought on this point, I assume that the reluctance on the appellant's part to agree to the fuller buffers established in the TBMS and Elm Grove masterplan is related to the reduction of the developable area of the modestly-sized appeal site in isolation. However, there is insufficient robust evidence, including across the ECIA, ETA and Baseline Survey Report, to confirm that an alternative approach to buffers could proceed without comprising connectivity through the site for commuting bats, including SAC bat species.
25. Furthermore, the TBMS required a financial contribution towards strategic habitat mitigation provision (on the basis of loss/degradation of greenfield habitats) and for funds to be collected through the Community Infrastructure Levy (CIL) receipts towards offsetting the additional recreational pressures from new residents on important bat woodland in the surrounding area. In the TWBMS, it is confirmed that the contribution amount per dwelling has increased for the strategic habitat mitigation provision and that S106 contributions for schemes of fewer than 50 dwellings are now also required instead of CIL receipts for the recreational mitigation measures. Neither of these contributions have been offered (at least until a delayed stage) and no site specific alternative solutions have been offered.
26. The requirement for further detailed lighting strategies and a construction environmental management plan (CEMP) may be capable of being secured by condition. The indicative parameter plan indicates a positive feature in the form of an open water pond forming part of the Sustainable Urban Drainage Scheme (SuDS). This would increase food sources for bats. However, this would not offset the need to maintain functional core habitats or offset the need to contribute to strategic mitigation schemes for habitat loss and recreational pressures.
27. Therefore, adopting the precautionary principle on the basis of the evidence before me, I can only conclude that the appeal scheme would conflict with the conservation objectives of the SAC and would instead give rise to likely significant effects on the same. Consequently, the scheme conflicts with core policy 50 of the Core Strategy and the Habitats Regulations. For similar reasons, it also fails to adhere to the TBMS and TWBMS.

Ecological Interests

28. The site is used by high numbers of bats, including by common species which are not qualifying species for the purposes of the SAC but which are still nonetheless protected by the Habitat Regulations. My concerns about the robustness of mitigation measures as outlined above would therefore have similar implications for non-SAC bat species.
29. The site has been surveyed and found to accommodate dormice, another species protected under the Habitats Regulations. As such, it is acknowledged that a European Protected Species Licence (EPS) will be required to develop the site. The mitigation measures outlined to ensure the favourable population of dormice include a method statement for construction works, buffers between retained hedgerows and domestic curtilages, sensitive lighting scheme and new planting. Based on the submitted information, there appear to be no obvious reasons to conclude that an EPS licence for dormice would not be granted.
30. Great Crested Newts (GCNs) are protected under the Habitats Regulations. Part of the Site lies within the Amber GCN Risk Zone under the Natural England District Level Licensing Scheme and from wider survey results, the area is also known to have a local population of GCNs. The survey effort previously undertaken on the adjacent site is now more than 5 years old (2020 or earlier) and there are pond features on both sides of the A363 in proximity of the site which could indicate a use of the terrestrial habitat on the appeal site. As such, the negligibility of the site for GCNs is not conclusive and in the absence of robust survey data, a precautionary approach should be taken and their presence assumed.
31. The site has been allowed to revegetate to form large areas of scrub and grassland between the hedgerows. As such, this is particularly attractive habitat for reptiles (such as common lizards and slowworms) which are protected under the Wildlife and Countryside Act 1981. The development would inevitably result in the loss of reptile habitat. Whilst surveys have not confirmed their presence on site or the size of the population, it is likely that the development on the site size proposed could proceed using reasonable avoidance measures and through securing sufficient retained habitat on site by way of planning condition.
32. Similarly, the same dense scrubland and hedgerows, noted as being species-rich by the Council's Ecologist, rather than species poor by the appellant's evidence, offer suitable habitat for breeding birds. The submitted ECIA and ETA draw the conclusion that no notable species are present on site without survey effort having confirmed the same. However, given the site size and its context, it would be possible to compensate for the extent of any habitat that may be lost and through provision of integrated swift bricks within new buildings.
33. In terms of the various mitigation measures proposed relative to various species outlined above, the evidence also recommends 5 bat boxes, 5 bird boxes and 10 dormouse nest boxes within retained trees and hedgerows. A detailed lighting strategy is also recommended with reference to the Baseline Survey Report. Due to the evolution of the appeal application over time, these measures have not been incorporated into an up-to-date or consolidated Ecological Parameters Plan to which adherence could be achieved by way of planning condition. However, despite that the proposal is made in outline form and, if approved, would be subject to future reserved matters applications, I find that in relation to bats and

GCNs in particular, it would not be appropriate to require further survey effort or robust evidence of avoidance of harm by way of additional planning conditions as was suggested by the appellant at the hearing. The presence or otherwise of protected species, and the extent that they may be affected by the proposed development, should be established before the planning permission is granted, otherwise all relevant material considerations may not be capable of being addressed in making the decision. As such, there would be harm to the ecological interests of the site, contrary to core policy 50 of the Core Strategy which seeks to ensure all development proposals shall incorporate appropriate measures to avoid and reduce disturbance of sensitive wildlife species and habitats throughout the lifetime of the development.

BNG

34. Under the statutory framework for BNG, subject to some exceptions, every grant of planning permission is deemed to have been granted subject to the condition that the biodiversity gain objective is met ("the biodiversity gain condition"). The appellant does not seek to claim an exception in this case. Where the statutory biodiversity gain condition will apply, the application must be accompanied by minimum information⁶, including:
- The pre-development biodiversity value(s), either on the date of application or earlier proposed date (as appropriate);
 - The completed metric calculation tool showing the calculations of the pre development biodiversity value of the onsite habitat on the date of application including the publication date of the biodiversity metric used to calculate that value; and
 - Plan(s), drawn to an identified scale and showing the direction of North, showing onsite habitat existing on the date of application including any irreplaceable habitat (if applicable).
35. The Council did not choose to invalidate the application because this information has not been provided. Rather, the Council considered the submitted Biodiversity Net Gain Statement and Assessment (dated December 2024) (BNGSA) and the baseline assessment is the matter in dispute, with the view of the Council being that it has been undervalued.
36. The PPG indicates that it would generally be inappropriate for decision makers, when determining a planning application for a development subject to BNG, to refuse an application on the grounds that the biodiversity gain objective would not be met, although consideration can be given to whether the biodiversity gain condition is capable of being successfully discharged. Planning permission cannot begin until a BGP has been approved in writing by the Council and the BGP should include the pre-development biodiversity value of the on-site habitat. As such, the quality and extent of minimum information, such as the quantification of the baseline, are matters to be resolved through the discharge of the biodiversity gain condition.
37. In light of the above, it is not so apparent that the biodiversity condition could not be discharged at all, but it is a matter for the Council and is not decisive of this appeal.

⁶ As set out in Article 7 of The Town and Country Planning (Development Management Procedure) (England) Order 2015

Noise

38. There are sources of noise surrounding the site in the form of the A363 to the south and the Spitfire Retail Park to the north. The Whitehorse Business Park is located more distantly to the east. The appellant does not dispute that there are some sources of noise that would affect the design, layout and design mitigation measures within the built fabric of homes within the scheme, but that all of these can be included at reserved matters stage with maximum noise limits conditioned at outline stage.
39. No noise assessments were submitted with the appeal or original application. The early noise assessments undertaken on the adjoining site (Elm Grove) were reviewed by the Public Protection Officers ahead of the hearing in the interests of comprehensiveness. The noise assessment area allegedly excludes the appeal site, but, had one noise monitoring location within the appeal site and close to the A363. This reading allegedly gave a 'high' noise reading. Whilst all of this was anecdotal evidence, there is nothing to the contrary in the appellant's evidence.
40. Paragraph 3.12 of the *Professional Practice Guidance on Planning & Noise (ProPG) for New Residential Development* (2017) confirms that outline planning permission should not be granted for new residential developments at sites considered to pose a medium or high noise risk without first being satisfied that acoustic design will be able to overcome the acoustic challenges. Furthermore, the *Wiltshire Council Noise and Planning Technical Guidance* (2023) confirms in paragraph 6.2 that it is important that sufficient evidence is provided at outline stage and noise assessments are submitted to demonstrate suitable noise levels are achievable across the site and incorporate the principles of good acoustic design where relevant. The combination of these two guidance documents indicates that there are valid reasons to know enough about the noise environment into which dwellings are to be built at outline planning stage.
41. The suggested noise conditions, separated relative to the distinct types of noise, i.e. traffic noise and industrial/commercial noise, set out maximum permissible limits for certain times of the day and certain locations, but there is a lack of baseline assessment to understand how achievable these limits would be or whether any other mitigation measures would need to be employed that may affect the overall 'up to' number of dwellings or present other challenges to overcome.
42. Therefore, in the absence of cogent evidence to the contrary, I can only conclude that the development would fail to provide adequate living conditions for future occupiers, with particular regard to noise, contrary to core policy 57 of the Core Strategy, which seeks to ensure that appropriate levels of amenity are achievable within the development itself, including the consideration of privacy, overshadowing; vibration; and pollution, such as light intrusion and noise.

Archaeological Interests

43. From surveys and finds from recent years, the wider area to the south of Trowbridge is known to be rich in later prehistoric and Romano British field systems and settlement remains. As such, a geophysical survey and trial trench evaluation was requested by the Council after the appeal application had been validated.

44. Whilst not specifically commissioned by the appellant and relied upon on the basis of the 'fair use principles', a geophysical survey and strip evaluation survey along the route of the temporary haul road have been undertaken more recently and the related '*Project Design for archaeological investigations*'⁷ (the Archaeology Report) has been submitted with the appeal. The Archaeology Report excludes a small portion of the far western extent of the site and there is some doubt from the Council's perspective about whether the ground conditions were suitable for meaningful investigation at the time of the geophysical survey.
45. A trial trench evaluation would be useful at an early stage to eliminate the possibility of significant archaeological deposits and what is known about the wider area suggests that such a request is not unreasonable. However, through a combination of the geophysical survey of the majority of the site and the soil strip investigations, it was agreed that nothing of particular archaeological significance has yet been identified on the appeal site that would pose a constraint to development of the site for 'up to 40 dwellings' in a layout to be determined at reserved matters stage. The appellant has indicated a willingness to accept a planning condition for archaeological investigations to be undertaken prior to commencement of the development. Furthermore, it was agreed between the parties that the archaeological potential of the site is not suspected to be of equivalent significance to scheduled monuments as per footnote 75 of the Framework which could affect the application of the planning balance.
46. In view of the above, in the circumstances of this case and subject to necessary planning conditions, the proposal would not harm the archaeological interests of the site and would therefore comply with core policy 58 of the Core Strategy which seeks to ensure development protects, conserves and where possible, enhances the historic environment.

Character and Appearance

47. The appeal site is bound to the south by the A363, to the north by the vegetated Drynham Lane, beyond which is Spitfire Retail Park. To the east, separated by a vegetated buffer, is the adjoining urban development of Elm Grove which appears to be of relatively modest density close to where it adjoins the appeal scheme.
48. The Council have indicated a requirement for a Landscape and Visual Appraisal (LVA) prepared in accordance with the *Guidelines for Landscape and Visual Impact Assessment* (GLVIA3) to support the development of a landscape-led parameters plan. The distinction between this and a full Landscape and Visual Impact Assessment (LVIA) was made as it is agreed the latter would be too onerous for a scheme of the scale proposed. The appellant does not dispute that an LVA is needed but indicates that this would be provided to inform the reserved matters applications at the time of submission.
49. The site is allocated under the WHSAP and strategic appraisals of landscape character and visibility were undertaken as part of the allocation process and accepted and discussed as part of the examination of the WHSAP. There is, therefore, an acceptance of some harm as part and parcel of the allocation being built out.

⁷ Dated February 2025

50. It is not uncommon for outline planning applications to be accompanied by LVAs or LVAs as appropriate to the scale of development. They can help to inform the measures by which landscape character and visual effects can be minimised and to inform the iterative design process. Illustrative parameter plans are often prepared through such a process, which along with other supporting reports, can help inform the capacity of the site for the 'up to' number of dwellings proposed. Such parameter plans, or so similarly named plans, can be referred to in planning conditions that require development to be 'substantially in accordance' therewith. The other parts of the Elm Grove allocation site were informed by such a process.
51. As most westerly and modestly-scaled remaining plot forming part of the allocated site and in view of its surrounding context, it would appear that the landscape character and visual effects of developing the site in a similar manner to the adjoining Elm Grove development would be likely to have no greater than modest adverse effects over a localised area. I reach that conclusion based only on my own planning judgement. That said, 40 dwellings would push the density of development to higher than that on the Elm Grove development which may be less appropriate than a lower density urban edge form of development. The submitted Illustrative Development Plan (dated Aug 2023) does not particularly evoke a sense of the development having been led by a landscape character based approach. However, if as the appellant suggests, there is scope through an LVA or at least landscape-led process to inform any future iterations of plans depicting a scale and layout then there is scope for the scheme to be refined and for potential harm to be minimised.
52. The Council's landscape officer offered a suggested condition to secure an LVA or similar approach to inform any reserved matters scheme. Given the context of the site, the allocation history and scale of this particular scheme, I consider that this would be an acceptably pragmatic way to overcome this issue to ensure compliance with core policies 51 and 57 of the Core Strategy which seek to ensure developments protect, conserve and where possible enhance landscape character and must not have a harmful impact upon landscape character, while any negative impacts must be mitigated as far as possible through sensitive design and landscape measures and secure a high standard of design is required in all new developments.

Flood Risks

53. The appeal application was submitted with a *Flood Risk Assessment* (dated October 2023) (FRA) which appends a *Flood Risk Assessment and Drainage Strategy* (FRADS) that related to the wider/adjoining 17.3 hectare site dating back to 2020. Turning to the latter first, the FRADS noted that the wider site was then within Flood Zone 1 but that the Drynham Brook was an additional fluvial source of flood risk that had not been adequately modelled. This issue was addressed through hydraulic modelling as detailed in the FRADS. The FRADS detailed extensive works to improve the channel, including some within the appeal site.
54. In relation to surface water flooding, the FRADS also noted some areas of the adjoining site that were in the medium and high risk categories. The appeal site is shown on the mapping to have areas of low surface water flood risk. Ultimately, the FRADS noted that as the site had been allocated for housing in the WHSAP that sequential testing had already been completed.

55. The FRA specific to the appeal site reiterates that on Environment Agency (EA) mapping, the appeal site is also shown to be within Flood Zone 1 in relation to fluvial sources but without the hydraulic modelling of the Drynham Brook. The FRA states that the site is shown to be at low risk of surface water flooding. The post-development fluvial model from the FRADS is incorporated within the FRA to reiterate that after proposed channel improvements, only small areas of the appeal site will be subject to flooding in a 1 in 1000 storm event.
56. It is unclear in the evidence before me whether the channel improvements shown within the FRADS have been undertaken along the full channel length to coordinate with the wider scheme or whether the detailed scheme has been developed for the adjoining site in isolation. Clarification on this is required to determine whether the flood risks have been minimised as envisaged.
57. Since the undertaking of the FRADS and FRA, the EA have further updated their mapping system. The current mapping system shows that the site is in Flood Zone 1 for fluvial sources but has some areas at a low risk of flooding, minimal areas at a medium risk of flooding and a smaller area again at high risk of flooding. On this basis, the SoCG records that the site is within Flood Zone 1 with part of the site (the eastern edge) being at risk of surface water flooding from the Drynham Lane Brook and existing culverts.
58. However, the Council's reason for refusal notes that the scheme would place more vulnerable development at risk of surface water flooding, being the access and some dwellings, and that the submission does not sufficiently demonstrate that there are no other reasonably available sites appropriate for the development with a lower risk of flooding or that these elements cannot be located in areas of lower risk of flooding within the site. These approaches are known as the sequential and exceptions tests.
59. At the hearing, it was explained that the rationale behind the reason for refusal was that the appeal scheme was to take a new access from the south off the A363 and because some dwellings are shown on areas of higher risk of surface water flooding. The position of the access from the A363 conflicts with that shown in the FRA (from 2023) as extending from the site to the east. The access point from the A363 would be within the low surface water flood risk area within the site boundary but would lead to a section of the A363 at a higher risk of surface water flooding.
60. Paragraph 180 of the Framework sets out that where planning applications come forward on sites allocated in the development plan through the sequential test, applicants need not apply the sequential test again. However, the exception test may need to be reapplied if relevant aspects of the proposal had not been considered when the test was applied at the plan-making stage, or if more recent information about existing or potential flood risk should be taken into account.
61. As before with the adjoining development of Elm Grove, the allocation has come through the plan making process and the elevated level of fluvial flood risks identified went beyond those identified in the EA flood risk mapping. A strategic channel improvement scheme had been devised to mitigate the identified risks. The eastern part of the site from where the access was originally intended to be taken via Elm Grove is subject to elevated surface water flood risks, but these risks have remained broadly similar since the time of production of the FRADS in 2020 to the present day. Essentially, what has been known about the flood risks

on site has not materially changed despite the passage of time and difference in the EA's mapping database. Therefore, irrespective of the fluvial flood risk categorisation of the site as Flood Zone 2 within the FRA and the relocation of the point of access, in the context of paragraph 180 of the Framework, I do not consider it necessary to reapply the sequential test or initial part of the exceptions test to ascertain whether the development could be located on alternative sites at a lower risk of flooding from all sources or whether wider sustainability benefits of developing the site would outweigh the flood risk.

62. However, as above and as per the comments of the Council's Drainage Engineer⁸, there are many flood and drainage related aspects that require further refinement to ensure that the most vulnerable development is located in areas of lowest flood risk on site, to ensure that the development is appropriately flood resistant and to avoid increased flood risk elsewhere. Whilst it has been suggested that these aspects could be resolved at reserved matters stage, the certainty around modelled flood extents linked to the channel improvements and a hydraulic connection between the site and Drynham Brook seem important to resolve at an earlier stage given that these will impact upon the drainage strategy for the site and thus, inform a more realistic, rather than theoretical capacity for development. In the absence of this information, I can only conclude that there would still be a degree of conflict with the core policy 67 of the Core Strategy insofar as it requires the means of ensuring the development will be safe for its lifetime without increasing flood risk elsewhere.

Planning Balance

63. The appeal scheme raises numerous conflicts with the development plan in respect of its lack of affordable housing and infrastructure contributions; the harms to GCNs and bats, and the harm to the integrity of the SAC; the failure to demonstrate adequate living conditions would be provided for future occupiers with particular regard to noise; and the residual flood risk issues. Therefore, notwithstanding the allocation and acceptability of the principle of development, the scheme conflicts with the development plan when taken as a whole.

Given that the Council cannot currently demonstrate a five year supply of housing, the provisions of paragraph 11 d) of the Framework are engaged. This requires that permission should be granted unless (i) the application of Framework policies that protect areas or assets of particular importance provide a strong reason for refusing the development proposed; or (ii) any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

64. In this case, the harms to the integrity of the SAC conflict with Framework policies and provide a strong reason for refusal. Therefore, the presumption in favour of sustainable development is not decisive of the appeal.
65. Returning to the ordinary planning balance, the benefits of the scheme would include the provision of 40 dwellings in the context of a substantial shortfall in housing. The appeal scheme would provide these dwellings in a sustainable location with access to the range of facilities and transport links available in Trowbridge. To the extent that reliance can be placed on the Illustrative Masterplan, there would be a benefit from the provision of public open space.

⁸ Dated 5 February 2025

Ecological enhancements in the form of landscape planting and bat and bird boxes, amongst other such items, have also been offered.

66. Where planning conditions could be used to offset harms from the scheme, these aspects would weigh neither for, nor against the proposal. However, even when taken cumulatively, the benefits and other points advanced in favour of the scheme do not outweigh the harms and conflict with the development plan when taken as a whole.

Conclusion

67. For the foregoing reasons, the appeal is dismissed.

H Nicholls

INSPECTOR

Richborough

APPEARANCES

FOR THE APPELLANT:

Robert Duff	Planning Agent - Earlsfield Town Planning
Lee Bryant	Planning Agent (original application)
Lee McGivern	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Jemma Foster	Planning
Elizabeth Burrows	Ecologist
Neil Adam	Archaeologist
Paul Robertson	Landscape Architecture
Susie Vowels	Public Protection
Vicky Brown	Public Protection

INTERESTED PARTIES:

Sam Kettle	Trowbridge Town Council
Roger Evans	North Bradley Parish Council

HEARING DOCUMENTS:

Document 1	Pre-application response from Council, Ref ENQ/2021/04005
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DOCUMENTS RECEIVED AFTER HEARING:

Document 2	Suggested additional planning conditions (without prejudice)
Document 3	Appellant response to Council's costs application
Document 4	Council final costs response
Document 5	Appellant final costs response