



Appeal Decision

Inquiry held on 10 to 13, 17, 18 and 20 January 2023

Site visit made on 11 January 2023

by O S Woodward BA(Hons.) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th February 2023

Appeal Ref: APP/Q3305/W/22/3306827

Land west of Marston Lane, Frome BA11 4DL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Gleeson Land Ltd against the decision of Mendip District Council.
 - The application Ref 2022/0616/OUT, dated 2 March 2022, was refused by notice dated 1 June 2022.
 - The development proposed is the demolition of existing outbuildings and erection of up to 150 residential dwellings including affordable housing with the provision of vehicular, cyclist and pedestrian access onto Marston Lane alongside public open spaces, community space, children's play, sustainable urban drainage systems, hard and soft landscaping, infrastructure, and earthworks.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal is for outline planning permission with access applied for in full and all other matters reserved. A Parameter Plan has been submitted for approval which sets out built footprint areas, an area for restricted building heights, proposed areas of open space and key tree planting areas, proposed access points, zones where outlook from Marston Lane would not be obscured, and the existing trees and hedgerows to be retained. An Illustrative Masterplan and Landscape Strategy Plan have also been submitted but are not for approval. I have had regard to these as appropriate throughout my Decision, whilst acknowledging their illustrative nature.
3. The application was the subject of six reasons for refusal. The third reason for refusal is in relation to insufficient information being submitted regarding archaeology. The fifth reason for refusal is in relation to highway safety concerns. The sixth is in relation to flood risk on the site and elsewhere. However, the appellant submitted further information to the Council in these regards in the lead up to the inquiry, including an archaeological field evaluation, a Revised Flood Risk Assessment & Drainage Scoping Strategy and a Technical Note. In light of the additional information, the Historic Environment Officer, Local Lead Flood Authority and the Highways Authority withdrew their objections and the Council did not pursue these reasons for refusal.

4. The fourth reason for refusal is in relation to the effect on local infrastructure in the absence of a completed s106 Planning Obligation. The final s106 Planning Obligation, dated 14 February 2023, (the s106) responds to these concerns. The s106 secures:
- affordable housing of not less than 30% of the overall dwellings and with an indicative mix of 30 social rented, 4 shared ownership and 11 First Homes;
 - allotments of at least 0.12 ha;
 - on-site bat habitat areas of at least 1.45 equivalent ha of optimal habitat, and the creation of a Management Company responsible for maintenance;
 - an off-site bat habitat area;
 - education contributions as follows:
 - £1,674.49 per dwelling for early years;
 - £4,186.23 per dwelling for First School expansion;
 - £3,344.05 per dwelling for middle school; and,
 - £1,564.48 per dwelling for Special Educational Needs;
 - highway contribution of £1,648 per dwelling for improvements to the A36 Beckington and A36 White Row roundabouts;
 - children's play space of at least 0.247 ha, including a local area of play of at least 0.01 ha and a local equipped area of play of at least 0.06 ha;
 - a Landscape and Environment Management Plan;
 - the provision of public open space of not less than 6.52 ha and a Management Plan for the open space, and the creation of a Management Company responsible for maintenance;
 - the provision of Sustainable Urban Drainage Systems (SUDS) and a Management Plan for the SUDS;
 - a Travel Plan including Green Travel Vouchers, travel information packs, measures to achieve modal share targets, payment (if required) towards safeguard measures to achieve modal share targets if not being met, and a Travel Plan monitoring fee of £2,000;
 - a self-build plots scheme to include at least 5% of the overall dwellings as self-build plots, and a self-build community hub room of at least 60 sq m; and,
 - a monitoring fee of £2,700.
5. The Council's and County Council's CIL Compliance Statements set out the detailed background and justification for each of the obligations. In particular, the highway contribution is based on a calculation provided by the Highway Authority based on the likely costs of provisional schemes to the relevant roundabouts and includes a contingency for final costings. However, with regard to the middle school contribution, it has been demonstrated that there is sufficient middle school education provision to meet confirmed and likely unconfirmed needs for at least the next 10 years. On this basis, the middle school contribution is not necessary to make the development acceptable in planning terms and therefore fails the tests set out at Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended) (the CIL Regulations). I therefore direct that clause would not therefore be enforceable, using the powers as provided to me through Clause 3.5 of the s106.
6. I am, though, satisfied that the other provisions of the submitted agreement would meet the tests set out in the CIL Regulations and the tests at paragraph 57 of the National Planning Policy Framework (the Framework), and I have taken them into account. The fourth reason for refusal is not therefore a main

issue for the appeal. I return to matters of weight and detail of the s106 throughout my Decision as appropriate.

7. The Mendip District Local Plan Part II: Sites and Policies December 2021 (the LPP2) was the subject of a legal challenge by Norton St. Philip Parish Council¹ and the High Court ordered that the statutory review be allowed on 16 December 2022 (the High Court decision²). As a result, five site allocations have been struck out of the LPP2. I deal with this as appropriate throughout my Decision.
8. A number of submissions were received during and after the inquiry, as set out in Annex B. I am satisfied that in all cases the material was directly relevant to, and necessary for, my Decision. All parties were given opportunities to comment as required and there would be no prejudice to any party from my consideration of these documents. The appeal is therefore determined on the basis of the revised and additional documents and drawings.

Main Issues

9. Reasons for refusal one and two remain in dispute. Therefore, the main issues are:
 - whether or not the appeal site is an appropriate location for development of this type, having regard to local and national planning policy and guidance; and,
 - the effect of the proposed development on the character and appearance of the area, with particular regard to landscape character.

Reasons

Location

10. The Mendip District Local Plan 2006-2029 Part I: Strategy and Policies (the LPP1) sets out the vision for the District including that it remain a multi-centred district of great diversity. Core Policy 1 builds on this vision by directing development towards the five principal settlements, including Frome. Core Policies 1 and 2 of the LPP1 set out a clear hierarchy for development, focussed on sites either within the development limits or on allocated sites. The appeal site is outside of the settlement boundary of Frome and is therefore within the open countryside as defined by policy. Development in the open countryside is to be strictly controlled, subject to various exceptions set out within Core Policy 4. The proposal does not meet any of these exceptions. Core Policy 2 directs new housing development either to within settlement limits or to allocated sites.
11. Core Policy 1 part 3 states that development outside development limits will be permitted where it benefits economic activity or extends the range of facilities available to local communities. However, this is limited to the *most* sustainable locations on the edge of identified settlements (emphasis mine). The appeal site is directly adjacent to Frome, which provides a wide range of services and facilities. The site is easily accessible to the nearby retail and business parks and a supermarket. Schools are further afield, at least 1.2 km, but are still walkable for older children. The town centre is also relatively distant, at 1.6 km, but there is a bus service and it is accessible by bike.

¹ *Norton St. Philip Parish Council v Mendip District Council* [2022] EWHC 3432 (Admin) – CD7.06

² *Norton St Philip Parish Council vs Mendip District Council*, Claim No: CO/323/2022 (CD7.07)

12. It is common ground that the appeal site is in an accessible location. However, in my assessment a significant proportion of journeys made by the future occupants of the proposal would likely be by car, particularly due to the long walking distance to the town centre and schools and the relatively limited and infrequent bus service provision which only operates hourly or on the half hour at peak. The appeal site is only moderately accessibly located. It is not isolated in the countryside but neither is it particularly well connected. I do not consider the site to be in a most sustainable location on the edge of Frome.
13. Consequently, the proposal fails to comply with the spatial strategy of the Development Plan and with Policies CP1, CP2 and CP4 of the LPP1. However, the LPP1 is based on a housing requirement of 420 dwellings per annum (dpa), substantially less than the current housing requirement. The LPP2 allocates sites based on this out-of-date requirement and acknowledges this through the inclusion of Policy LP1 which committed the Council to an immediate review of LPP1 and LPP2. Five of the allocated sites have also since been quashed³. The promised review has not taken place. The timetable for the review is uncertain and has been made more uncertain because of the upcoming creation of the Somerset Unitary Authority. It is likely to be at least five years, and perhaps longer, until a new Local Plan is adopted.
14. In addition, since the LPP1 was adopted, the constraint of 'nutrient neutrality' has arisen. Similar 'nutrient neutrality' restrictions are in place in many other parts of the country. National Government are investigating solutions to the issue⁴, in particular through obligating the upgrading of wastewater treatments works and a strategic mitigation scheme(s). The obligation to upgrade wastewater treatment works would come through the forthcoming Levelling Up and Regeneration Bill. The timetable for adoption of this bill, and whether or not this requirement will still be included in any final version that is adopted, are both uncertain. Natural England (NE) has confirmed⁵ that the strategic mitigation scheme(s) is not yet confirmed nor is it know what extent of mitigation it would provide or to which specific catchments it would apply.
15. The Council are also considering local level mitigation solutions and, in combination with the other Somerset local authorities, commissioned a report into phosphate mitigation solutions⁶. The report sets out the likely avenues for suitable mitigation, eg agricultural changes and bespoke mitigation schemes, but does not provide evidence of the agreement of any specific mitigation solutions. However, the Council are now progressing mitigation projects, in particular a project at Yew Tree Farm is agreed and will provide c.400 dwelling 'credits' that are already being used to mitigate housing planning applications. For example, 280 dwellings in Street⁷ were approved in principle by the Planning Board on 18 January 2023. In addition, it will sometimes be possible for individual schemes to provide site-specific mitigation measures, such as by planting woodland or an appropriate design of septic tanks. However, such solutions are likely to be difficult to deliver for many developments, both for financial and practical reasons.

³ *Norton St Philip Parish Council vs Mendip District Council*, Claim No: CO/323/2022

⁴ See Chief Planning Officer Letter, dated 21 July 2022 (CD16.5)

⁵ See Natural England Letter, dated 25 November 2022 (CD16.4)

⁶ Somerset Levels and Moors Phosphate Mitigation Solutions – Assessment of mitigation solution options, dated 14 March 2022, by Royal HaskoningDHV (CD5.36)

⁷ Planning permission Ref 2019/2946/OTS

16. Frome is the only Main Town in Mendip not affected by the phosphates issue. It is therefore the only sustainable location for significant housing growth in the District not affected by these constraints, for which there is as yet no clearly defined solution. This weighs in favour of Frome accommodating a significant proportion of the growth in the District, over and above the 25% of the District requirement already set out in Core Policy 2 of the LPP1. This cannot be realistically accommodated on allocated sites or windfall sites within the settlement boundary.
17. Overall, there is a technical conflict with the spatial strategy and the Development Plan because the appeal site is outside of a defined settlement boundary. However, due to the 'nutrient neutrality' issue and the restrictions this places on likely housing growth in other parts of the District in combination with the general increase in housing requirement allied to the long lead-in time until a new Development Plan is adopted, the expansion of Frome outwith the adopted spatial strategy is inevitable. Indeed, other sites are coming forward outside of the settlement boundary, including the Selwood Garden Community. The conflict with the spatial strategy is therefore a technical breach and the appeal site is in not in an inappropriate location for housing development in-principle.

Character and appearance

As existing

18. The appeal site lies on the south western edge of Frome. It is on a pronounced downwards slope away from the existing edge of Frome. There are some existing farm buildings to the southern part of the site. Marston Lane, the hedgerow along it, and the buildings on the opposite side of the Lane define the eastern boundary. These all sit at the top of the ridgeline. The ridgeline is particularly well defined where it runs along the edge of the appeal site and provides a strong, noticeable defensive line that defines the settlement edge. There is a clear delineation from the slope, which is open land, and the ridgeline. The ridgeline provides a defined containment edge to Frome and this is a key characteristic of the landscape character. I acknowledge that there is some development that protrudes over the ridgeline further to the north in Critchill but this is relatively limited and is not adjacent to the appeal site.
19. Although fairly open, the site is punctured by existing hedgerows and with further hedgerows to the northern and part of the southern borders. The hedgerows have limited screening effect and are only partially connected to the wider hedgerow network. However, they still have landscape value because they partially define historic field boundaries, albeit I acknowledge this is now incomplete. They help break up the open agricultural land and create smaller fields, which is a key characteristic of the landscape character.
20. The site is largely open countryside land. There are few trees, which is typical of the wider landscape character. The site overlooks a valley. Through a combination of its open nature and the slope of the site, it is highly prominent. It is visible, albeit sometimes restricted by intervening vegetation or ridges, from short, medium and long distances and from several footpaths, for example Public Right of Way (PRoW) FR14/37 and PRoW FR12/25, and roads, for example the B3090, Whitehall Lane and Frome Road. Conversely, Marston Lane provides expansive views from its raised position over the appeal site towards the largely unspoilt open countryside in the valley to the west of

Frome. This includes views to users of the Lane and also the residents living on the Lane. The appeal site can also be seen from several further residential properties in Critchill.

21. Overall, the appeal site has most of the key characteristics of the local landscape character as set out in four landscape character assessments for the area⁸. It provides a very high quality setting to Frome. The urban context provided by the combination of Marston Lane and the housing along the ridgeline is a beneficial feature that helps define the ridgeline and provides a very strong, defined edge to the town that responds positively to the natural feature of the ridgeline. This urban setting has limited effect on the open, tranquil and attractive countryside character of the site itself, because of the slope away from the ridgeline. That there are no local or national landscape or other designations does not lessen the attractiveness and quality of the landscape. It is also prominent and visible from a number of receptors, including sensitive receptors such as users of footpaths and residents.

The proposal

22. It is proposed to develop the site to provide up to 150 homes with associated infrastructure, in particular large areas of open space and SUDS features. Access would be provided from four points along Marston Lane, three of which would require punctures within the existing hedgerow along the Lane. The Parameter Plan confirms that the proposed residential development would be largely to the higher three quarters of the site, with linear areas of open space to be provided, as well as substantial open space to the northern and southern parts of the site, and a further relatively thin slither of open space along Marston Lane. The proposed residential development to the uppermost parts of the site would be controlled to be no taller than 6m to ridge above AOD. The other buildings would be controlled to be no more than 9.5m to ridge above AOD, ie up to two and three-storey development respectively.
23. Full details of the proposed landscape strategy are not yet confirmed but a Landscape Strategy Plan and an Illustrative Masterplan have been submitted. These show tree planting along Marston Lane, and further linear tree planting along the proposed areas of open space that run between the proposed built development. The open land to the north and west of the site would be a mixture of wildflower planting, further trees, and drainage features.

The effect of the proposal

24. In terms of methodology, I have assessed the significance of the effects of the proposal based on the sensitivity of receptors and the magnitude of change caused by the proposal. This is in accordance with the Guidelines for Landscape and Visual Impact Assessment, 3rd Edition⁹. I have concentrated on the 15-year period, when the proposed landscaping would be mature, because this would be the permanent, long-term effect of the proposal.
25. The existing hedgerows within the appeal site would also be lost. These help define smaller fields and contribute positively to the key characteristics of the existing site. I acknowledge that new hedgerows are proposed and that they

⁸ The Macgregor Smith Mendip Landscape Character Assessment 2021 (CD6.01), A Landscape Assessment of the Fringes of the Towns in Mendip District 1996 (CD6.06), the Landscape Assessment of Mendip District 1997 (CD6.07) and the Strategic Landscape Appraisal of the Main Towns 2006 (CD6.10)

⁹ CD6.02

would be longer in total. However, the new hedgerows would be linear features that would be lost within the proposed residential development. They would have no link to the existing character or the character of the wider landscape area. There would therefore be harm to this key characteristic of the landscape. The existing hedgerows along Marston Lane, in combination with the Lane and the housing behind, create the important and well defined character and appearance of the ridgeline. Approximately 110m of the existing hedgerows would be lost, to create the proposed entrances, thereby harming this important existing feature.

26. The proposal would also provide tree planting along the western boundary of the site softening the transition between the site and the ridgeline. Even though there would be a restriction on proposed building heights nearest the ridgeline the proposed housing would still be appreciated in the context of the existing housing along Marston Lane, further diminishing the existing strong boundary feature of the ridgeline. The further proposed development and landscaping lower on the slope would also be prominent. The ridgeline is the natural westwards limit of Frome. The overall effect of the proposal would be of a mixture of tree and other landscape planting with glimpsed views of new residential development spread across the appeal site. This would significantly negatively alter the current relationship of the open appeal site with the strong, defined edge of Frome.
27. The appeal site is largely open countryside on a prominent slope facing outwards over a largely unspoilt valley. Its elevation and slope make it particularly prominent. These factors exacerbate the harm caused, which would be visible from many vantage points and by sensitive receptors such as users of footpaths and local residents. In addition, existing views from along Marston Lane are a notable feature of the existing area and the proposal would cause significant harm to these views because the outlook would be narrowed significantly and would be through built form, rather than over an open slope.
28. The proposal to develop the site would conflict with its open and rural character, and the open and rural character of the surrounding area. As set out above, Frome, despite directly bordering the site, is not particularly prominent because it sits on the ridgeline but does not, in the location of the appeal site, spill out over the ridgeline. The proposed urbanisation of the currently unspoilt site on the unspoilt western edge of Frome would cause significant harm. This would remain even after the proposed landscaping has matured because although the proposed tree and other planting would help to visually break-up the massing and prominence of the proposed housing, it would also in itself be uncharacteristic of the appeal site and surrounding countryside. The proposed bands of trees and other trees to the open areas would be excessive and do not respond to the largely open nature of the site and surrounding countryside where there is limited existing trees and woodland.
29. Full details have not yet been provided because the proposal is submitted in outline, however it is clear that significant re-profiling of the steeply sloping site would be required in order to facilitate the proposed development. This could be partially screened by the proposed landscaping and planting and controlled by condition. However, the re-profiling would be permanent and would result in an over-engineered character and appearance when compared to the current natural sloping landform, typical of the wider countryside and

the valley to the west. The proposed landscaping could only partially mitigate this effect.

30. The proposed SUDS features would create water bodies that would have a positive effect. However, this would be limited because they would be clearly man-made features and would be performing a drainage function, rather than being natural features in the landscape.
31. I have given consideration as to whether or not a condition(s) could ensure that a suitable landscape and mitigation scheme could be provided. However, because of the slope of the appeal site, any landscaping that would be of sufficient scale so as to successfully mitigate the effect of the proposed housing would become too large and out of character with the surrounding largely open countryside character.
32. There are some similarities between the appeal site and the area of the proposed Selwood Garden Community, including the ridgeline, the presence of hedgerows and the largely countryside character and appearance. However, the Selwood Garden Community site is in a different part of Frome, is for a much larger scale of development, and is in a different context. It does not have the same extremely well-defined and important ridgeline and there is a defensible boundary through the ring road. It is in a different landscape character sub-area that was assessed in the most recent Landscape Character Assessment¹⁰ as being of 'low value' compared to the sub-area containing the appeal site being of 'very high value'. I do not have full details of the proposal before me but I do not see this as a precedent for development on the appeal site.

Overall

33. Overall, the appeal site demonstrates many of the key characteristics of the landscape character of the area. It is of high quality character and appearance. Perhaps most importantly, the ridgeline along Marston Lane defines the edge of Frome using a natural landscape feature. The proposal would harm this feature by bringing built form over the ridgeline and down a prominent and attractive slope. The proposed landscaping would only partially mitigate the effect of the proposed built form and would, in any event, intrinsically harm the character and appearance of the area because substantial and linear trees and hedgerows are not a feature of the site or wider landscape character area. The appeal site sits on a prominent slope and is clearly visible from many surrounding receptors, including sensitive receptors using footpaths and in houses.
34. The proposal would therefore cause significant harm to the character and appearance of the area, including to landscape character. The proposal therefore fails to comply with Policy DP1 of the LPP1, which seeks to maintain or enhance local identity and distinctiveness and for proposals to show an appreciation of their built and natural context. Policy DP4 of the LPP1 states that proposals should be compatible with their landscape character areas. There are five relevant assessments of landscape character¹¹ and, as set out

¹⁰ The Macgregor Smith Mendip Landscape Character Assessment 2021 (CD6.01)

¹¹ The Macgregor Smith Mendip Landscape Character Assessment 2021 (CD6.01), A Landscape Assessment of the Fringes of the Towns in Mendip District 1996 (CD6.06), the Landscape Assessment of Mendip District 1997 (CD6.07), the Strategic Landscape Appraisal of the Main Towns 2006 (CD6.10) and the Frome Town Design Statement SPD 2015 (CD8.02)

above, the proposal would harm the key characteristics of the landscape set out in all five documents, and therefore fails to comply with this policy. Policy DP7 part 1 requires high quality design and the proposal therefore fails to comply with this policy.

35. Policy D3 of the NP relates to skyline development. It identifies an area to the west of Frome as being a skyline area (Site B) and this area includes the appeal site. The policy requires that new buildings would have no unacceptably detrimental impact on the skyline. A precise definition of skyline is not provided in the NP, but the supporting text links the policy to where the urban edge of Frome is visible from the surrounding countryside. It is therefore clear that the policy, where relevant to the appeal site, is seeking to protect the current strongly defined skyline formed by the existing combination of hedgerow, Marston Lane and the houses along it, which together comprise the ridgeline. As set out above, although the proposal would not involve development on the ridgeline itself, it would negatively harm its perception and the clear character it currently provides by forming the defined, delineated edge of the built-up area of Frome. A single view point is mentioned in the policy and I acknowledge that the appeal site cannot be seen from that position. However, as set out above, the appeal site is highly prominent in the context of the ridgeline/skyline from several positions in the surrounding area. The proposal would therefore fail to comply with this policy.

Other Matters

Housing Land Supply

36. It is common ground that the Council can demonstrate a housing land supply of between 2.82 (the appellant's position) and 3.31 years (the Council's position). This is based on a local housing need of 617 dwellings per annum (dpa) including a 5% buffer, which is agreed. The difference derives from disputes regarding deliverable supply, as follows: (i) three specific sites and the effect of the High Court decision on the Land at White Post site; (ii) the amount of discount to delivery required to reflect the effect of 'nutrient neutrality' issues; and, (iii) whether or not there should be a non-implementation allowance and what percentage should be used if so.

Deliverable sites

37. The Framework defines 'deliverable' sites as those with a realistic prospect that housing will be delivered on site within five years. Below is my assessment of the four disputed sites and their deliverability:
- Land at Vallis Road – full planning permission has been granted for 64 units. However, it is not clear if the permission has been lawfully implemented because some of the pre-commencement conditions have not yet been discharged, including contamination factors which possibly go to the heart of the permission. No certificate(s) of lawfulness have been signed nor has any substantiated evidence been provided to the Inquiry regarding the projected build schedule. It is therefore not clear that the site still benefits from planning permission and there is no clear evidence that housing completions will begin on site within five years. I therefore discount the 64 dwellings from the supply;

- Saxonvale – outline planning permission for 290 dwellings has been granted, to a developer called Acorn. The permission is the subject of two judicial reviews, one regarding the s106 planning agreement which has not yet been given leave to be heard and the second regarding listed buildings and which has been granted leave to be heard but has not yet progressed. A local group called Mayday, backed by adjacent landowners, has also submitted an application for the site, which the Council state is likely to also be approved in due course. The site has some complexities such as ecology and listed buildings but no compelling evidence has been provided that these factors would unduly delay development. There is therefore some uncertainty over delivery of the site. However, it is a Council owned site, already in a development agreement with Acorn, and even the alternative group are also putting forward development proposals. Therefore, although there might be delays to the site being developed, the Council has only allowed for 94 dwellings to be delivered and these towards the back end of the five year period. This is a reasonable assumption and these units should be retained in the supply;
- North Parade Car Park – no planning application has yet been submitted and no evidence of pre-application negotiations has been provided. This does not constitute clear evidence that housing will be delivered in five years and the 18 dwellings should be discounted from the supply; and,
- Land at White Post - the site is no longer allocated in the LPP2 following the quashing of the site allocation Policy MN1 through the High Court decision. An outline planning application was deferred from the Planning Board on 18 January 2023 for further consultation. There is an outstanding objection from Bath and North East Somerset Council. The site is now in the open countryside in planning policy terms because it is no longer allocated and the eventual decision of the Council is difficult to predict, particularly given the ongoing opposition from Norton St. Philip Parish Council. There is therefore no clear evidence of delivery and the 75 dwellings should be removed from the supply.

Phosphates

38. As set out in the Location section above, 'nutrient neutrality' considerations are harming housing delivery. It is therefore common ground, and I agree, that a discount needs to be applied to deliverable supply. The dispute is the size of the discount. The Council's position is to apply a 21% discount rate to rural commitments and the removal of a number of larger sites from the supply. The appellant's position is to adopt a higher discount rate of 26% to commitments not yet started. It is difficult on the basis of the evidence before me to come to a precise conclusion on this issue. Helpfully, the numerical difference between the two positions is only 42 dwellings which does not make a material difference to the weighting I would apply to the housing land supply position. I therefore adopt this as a range in my calculation on housing land supply below.

Non-implementation

39. Evidence has been provided that over the past three years there has been an average discount from potential supply in the District of 10.46%. It is also common practice to apply a non-implementation discount and this is often approximately 10%. I have not been provided with any substantiated evidence as to why such a discount should not apply to the District, particularly given

the past results. The appellant's approach is to concentrate the 10% discount on small sites and other sites in rural areas and villages, which are more likely to not be implemented, on average, than larger sites and development in towns. This is a reasonable approach and I agree that the 74 dwellings this represents should be discounted from the supply.

Calculation

40. It is common ground that the starting point for the calculation is 2,233 deliverable dwellings, including allowances for minor permissions granted after 1 April 2022 and the 276 dwellings from specific sites as agreed between the main parties. As I have set out above, 64, 18 and 75 homes from specific sites should be removed. A further 74 dwellings should be discounted for likely non-implementation. Lastly, between 190 and 232 homes should be removed regarding phosphates. I therefore conclude that the total supply is in the range 1,770 to 1,812 homes. Based on the local housing need of 617 homes, this equates to a housing land supply in the range of 2.87 to 2.94 years.

Objections

41. Several letters of objection have been submitted and a number of interested parties spoke at the inquiry, including detailed submissions regarding highway safety. The accuracy of several elements of the appellant's documentation in relation to Marston Lane and accessibility to facilities and services was questioned. I have considered accessibility of the appeal site above. I have also considered the other points raised and there is nothing so material so as to raise a concern regarding highway safety. For example, although Marston Lane technically has a 60 mph speed limit along part of its length, the nature of the lane, its narrowness, that it is a no-through route, and that several properties access the road would naturally slow traffic in any event. I am also conscious that the Highways Authority do not object to the proposal.
42. The objections also raised various other concerns, particularly regarding the free-flow of traffic, flooding, biodiversity and the effect on local infrastructure. I have taken all of these factors into consideration. Most are not in dispute between the main parties. Most were addressed in the Officer's Report, with the Council concluding that there would be no material harm in these regards. No substantiated evidence has been submitted that leads me to any different view. Others are addressed in my reasoning above.

Planning Balance

43. In this section I adopt the following hierarchy of weighting: very substantial, substantial, significant, moderate, limited. The Council and the appellant used slightly different descriptive terms but their underlying hierarchy was explained at the inquiry and I have allowed for this as appropriate when deciding on the weighting I have attributed below.

Harms

44. The proposal would result in significant harm to the character and appearance of the area, in particular landscape character, and even at the 15+ year period. This takes account of the proposed increase in number of trees and lengths of hedgerows from a visual perspective because these would also cause harm to the character and appearance of the area, as set out above. Achieving good design is an intrinsic part of national and local planning policy. The design

policies in the Development Plan are consistent with the Framework in promoting high quality design which reflects the intrinsic character and beauty of the countryside and local character. I therefore place very substantial negative weight on this harm.

Neutral

45. The planning system should be genuinely plan-led, as set out at paragraph 15 of the Framework. The appeal site is undesignated land in the 'open countryside' for the purposes of the LPP1. The proposal to develop the site for housing conflicts with three of the key spatial policies for the Development Plan, namely Policies CP1, CP2 and CP4. However, as set out above, this is a technical breach given the inevitability that undesignated sites in and towards Frome must come forward to respond to the increased housing requirement coupled with a delayed new Development Plan and the 'nutrient neutrality' issue pushing new housing towards Frome. The location of the appeal site, in spatial planning terms, therefore weighs neutrally in the planning balance.
46. The final detailed design of the proposal is not yet known. The quality could be controlled by future reserved matters and condition discharge applications. However, with no further details in front of me, and given the in-principle character and appearance harms I have identified above, this weighs neutrally rather than positively in the planning balance.
47. That the technical matters regarding factors such as archaeology, flooding and highway safety have all been satisfactorily resolved, or could be adequately controlled by condition(s) and or the s106, weigh neutrally in the planning balance. For the purposes of the planning balance, I have assumed that the proposal would not be likely to have any significant effect on the integrity of the Mells Valley Special Area of Conservation (SAC). This also, therefore, weighs neutrally in the balance.

Benefits

Housing

48. Up to 150 homes are proposed. As set out above, the Council can only demonstrate a housing land supply in the range of 2.87 to 2.94 years, which is a very significant shortfall. This has fallen from 4.11 years as of the Council's April 2021 Housing Land Supply Statement. There is a very real danger that this will continue to get worse, particularly because of the 'nutrient neutrality' issue. The District has worsening affordability ratios for housing, which are at 11.22 times incomes, up from 9.5 in 2020. There will be other factors affecting this ratio, such as the attractiveness of Frome as a place to live, but the poor housing delivery rate is likely a significant contributing factor. It is therefore having real-life effects.
49. I acknowledge that the Council is progressing the Saxonvale scheme and Selwood Garden Village schemes, as well as Council-led affordable homes developments. However, it has not been able to point to any significant political or policy measures being undertaken to remedy this situation, such as through a Housing Delivery Action Plan. Indeed, the upcoming creating of the Somerset Unitary Authority has the potential to delay responses, for example a new Development Plan.

50. The appellant has provided evidence that the average time period from planning permission being granted on a site owned by the appellant, who are a strategic land company, to delivery of first housing on the site by a developer is 26 months. The appeal site does have some challenges for delivery, such as the engineering works required to flatten the land. However, it is a cleared site with no known significant contamination or access issues. I see no reason why it could not be delivered approximately along the average timescale. This would mean that approximately half of the proposed dwellings would be delivered within five years, therefore directly contributing to the District's five year supply of housing land.
51. The delivery of housing is one of the most important elements of national and local planning policy and the affordability of housing is the major issue for the District as set out at 2.25 of LPP1. There is no substantiated evidence that either will improve in the near future. The proposal, if approved, would likely deliver the up to 150 market homes relatively quickly. I therefore place substantial positive weight on the proposed housing and the reasonable likelihood that approximately half of it could realistically be delivered within the current five year period for calculating housing supply.

Affordable Housing

52. The s106 secures up to 45 of the proposed homes as affordable housing. The 2016 Somerset Strategic Housing Market Assessment (SHMA) identifies the net annual affordable housing need in Mendip to be 240 dpa for the SHMA period 2014-2039. There is a cumulative shortfall of 251 affordable dwellings delivered against this Local Plan requirement as of 2022. As a result of this, Mendip still need to deliver 1,680 affordable homes by the end of the plan period and it is common ground that affordable housing need is significant. The waiting list of people needing an affordable home has increased by 56% in four years, and the affordability ratio has increased by 40% in ten years and is the highest ratio in Somerset. These statistics sit in the middle of a much wider socio-economic conversation, but the under-delivery of affordable homes will have contributed to the worsening of these factors.
53. The affordable housing offer is policy compliant but does not go beyond the minimum policy level of 30% of homes, as set out in Policy DP11 of LPP1. However, in the light of the poor delivery and the significant need for affordable housing, I place substantial positive weight on the proposed affordable housing, in accordance with the same weight I have applied to housing in general.

Self-build housing

54. The s106 secures at least eight of the proposed homes as self-build plots and a related self-build community hub. The Self and Custom Build Register for the District has a significant number of people registered. No self-build plots have been granted permission in Frome and there is little prospect of any coming forward, as agreed under cross-examination by the Council. I therefore place substantial positive weight on the proposed self-build housing and hub.

Marketing

55. A Unilateral Undertaking, dated 14 February 2023 (the UU), has been submitted by the appellant. This secures that marketing of the proposed

market dwellings be restricted to the administrative boundary of the Council for the first six months for each dwelling and a restriction on marketing to institutional investors so that for the first six months following the sales launch of the development at least 50% of the dwellings be restricted to sales to individual purchasers.

56. The UU is in response to the issue of affordability of housing in Frome and, importantly, an affordability issue which particularly affects local people, because of Frome's popularity and inward migration. The clauses of the UU are therefore necessary, directly related to the development and fairly and reasonable related in scale and kind to the development, and pass the tests set out in the CIL Regulations. However, the UU for the appeal proposal only secures marketing and sales restrictions for a relatively short period of time. There are no measures to regulate or discount sale prices for local people. I therefore place very limited positive weight on these factors.
57. My attention has been drawn to an appeal decision¹² where an inspector stated the prioritisation of local people in the marketing of proposed housing weighed very heavily in favour of the proposal. However, I do not have the full details of the marketing secured or of the background to that specific proposal and the importance of marketing. The proposal was also in Essex, a completely different part of the Country. I do not, therefore, see this as a precedent for the weighting that I should apply to the marketing restrictions secured by the UU for the appeal proposal.

Public Open Space

58. A minimum of 6.52 ha of public open space is secured by the s106, to include two play areas, allotments, significant landscaping, and SUDS. This would largely be accessible to the public as well as the future occupants of the proposal. It is possible that at detailed design stage some of the areas, such as the SUDS, would not be fully accessible. However, these would be relatively small elements of significant areas of public open space and would still offer some visual amenity benefits even if fenced-off. The proposed POS would not link to PRoW around the site but it would be easily accessible from Marston Lane and the nearby existing residential areas. In addition, the area of Frome to the east and north of the appeal site suffers from a lack of existing public open space, as detailed on page 36 of the NP. The amount of proposed public open space far exceeds the minimum policy requirement of 0.85 ha. Overall, I place significant positive weight on the proposed public open space.

Ecology

59. The fields would be lost, although these are of low ecological value. New habitat would be created including for Greater Horseshoe Bats both on and off-site, broadleaved woodland, meadows, and significantly greater tree and hedgerow planting than that proposed to be lost. The loss of established hedgerows and trees would be adequately replaced in ecological terms because there would be a net gain of 605m of hedgerows and a significant increase in trees, even if they would likely be of lower value per tree or metre of hedgerow because they would not be as established. A condition could secure a biodiversity net gain of 10%. The full details of this are not yet known, because

¹² Ref APP/V1505/W/22/3298599, dated 9 December 2022 (ID23)

the proposal is in outline. However, 10% is beyond policy requirements, which are only for 'a' net gain. This is a significant positive benefit of the proposal.

Economic

60. There would be the creation of temporary jobs during construction of the proposal. There would also be increased expenditure in local businesses from the future residents of the proposed housing. The overall benefits to the economy would, though, be limited to these factors because no commercial floorspace is proposed. I acknowledge that in a recent appeal decision¹³, the Inspector did not mandate significant weight despite what is stated in paragraph 81 of the Framework. However, in this case, the benefits, although limited in scope, would still be relatively large in numerical terms, as confirmed by the appellant such as £4m per annum expenditure in local shops. I therefore place significant positive weight on the economic benefits of the proposal.

Overall

61. As set out at s38(6) of the Town and Country Planning Act 1990 (as amended) and paragraph 13 of the Framework, planning decisions should be taken in accordance with the Development Plan unless material considerations indicate otherwise. The Framework is a very important material consideration. Housing is proposed and the Council cannot demonstrate a five year supply of housing land. Therefore, the policies most important for determining the application are out-of-date¹⁴. None of the policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. The Neighbourhood Plan related caveats set out at paragraph 14 of the Framework do not apply because the NP is more than two years old. The 'tilted balance' is therefore engaged and permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
62. There is only a technical breach of the spatial strategy for the District but this does not mean that any speculative, unallocated site is suitable to accommodate new housing. In the case of the appeal proposal, the harm to the character and appearance of the area would significantly and demonstrably outweigh the benefits of the proposal. This is even though the benefits themselves are substantial, in particular the proposed housing in the context of a District with a less than three year supply of housing land. This is because good design is a key component of both national and local planning policy and the 'tilted balance' does not justify development that would cause significant harm to the character and appearance of the area.

Appropriate Assessment

63. The appeal site is in Band B of the Consultation Zone for the Mells Valley Bat SAC and the proposals would likely affect Greater Horseshoe bats. Had the proposal been acceptable in planning terms, it would have been necessary for me to have undertaken an Appropriate Assessment (AA) as the competent authority. However, the Conservation of Habitats and Species Regulations 2017 indicates the requirement for an AA is only necessary where the competent

¹³ Ref APP/V1505/W/22/3298599, dated 9 December 2022 (ID23)

¹⁴ See Footnote 8 and paragraph 11d of the Framework

authority is minded to approve planning permission, so I have therefore not undertaken an AA.

Conclusion

64. For the reasons above, I conclude that the appeal be dismissed.

O S Woodward
INSPECTOR

ANNEX A: APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Nina Pindham, of Counsel. She called:

Martin Evans	Solicitor, Mendip District Council (MDC)
Charles Potterton CMLI	Director, Potterton Associated Ltd
Andre Sestini	Principal Planning Policy Officer, MDC
Rachel Tadman MRTPI	Director, Tadman Planning Consultants Ltd
Louise Martin	Corporate Property Estates Planning Advisor, Somerset County Council
Emma Meecham	Principal Planning Liaison Officer, Highways Authority

FOR THE APPELLANT:

John Litton KC. He called:

David Williams CMLI	Owner, David Williams Landscape Consultancy Ltd
Jonathan Orton MRTPI	Managing Director, Origin3
Richard Grant MRTPI	Planning Director, Origin3
David Scholefield MSc MCIEEM	Director, ead Ecology
Graham Cridland	Director, Origin3
Dominick Veasey MRTPI	Planning Manager, Gleeson Land
Alex Wozniczko	Director, AWP

INTERESTED PERSONS:

Pip Utton	Local resident
Toby Bond	Local resident
David Peacock	Local resident
Paul Collins	Local resident
Councillor Damon Hooton	District Councillor, Frome Park Ward, MDC
Also representing: Councillor Shannon Brooke	District Councillor, Beckington and Selwood Ward, MDC
Councillor Richard Pinnock	District Councillor, Frome Park Ward, MDC
Kevin Barnes	Local resident
Peter Beard	Local resident
Christine Peacock representing Jeremy Smalley	Local resident
Jane Llewellyn	Planning and Development Manager, Frome Town Council

ANNEX B: DOCUMENTS SUBMITTED DURING AND AFTER THE INQUIRY

- 1 Appellant's Opening Statement by John Litton KC, dated 10 January 2023, and associated *Hallam Land Management Ltd v Secretary of State for Communities and Local Government [2017] EWHC 2865* Case Summary
- 2 Appearances and Opening Submissions on behalf of Mendip District Council by Nina Pindham, dated 10 January 2023
- 3 Site Notice Locations Plan
- 4 Natural England Letter, dated 9 January 2023
- 5 Pip Utton Statement (transcript) and associated Photos 1 to 8
- 6 Verbal Statement of Toby Bond (transcript)
- 7 Statement by David Peacock (transcript)
- 8.1 Statement by Paul Collins (transcript)
- 8.2 Paul Collins powerpoint slides
- 8.3 Paul Collins timelapse video of walking routes between the appeal site and Frome town centre
- 8.4 Paul Collins timelapse video of walking routes between the appeal site and Oakfield School
- 9 Statement by Kevin Barnes (transcript and appendices)
- 10 Peter Beard Statement (transcript) and aerial photograph
- 11 Qualitative Research from the Community, compiled by Christine Peacock
- 12 Verbal Statement of Jeremy Smalley at the Inquiry on 14th January 2023 (transcript)
- 13 Concentrating on Neighbouring Plan Policy D3 – Skyline Development Document, by Frome Town Council
- 14 Revised Site Visit Map
- 15 Grassroots Planning Email, dated 11 January 2023
- 16.1 Phosphates on the Somerset Levels and Moors Ramsar Site
- 16.2 Appendix 2: Phosphates Position Statement
- 16.3 Somerset Levels and Moors Ramsar: Surface Water Area of risk and Indicative Water Recycling Area catchments
- 16.4 Natural England Letter, dated 25 November 2022
- 16.5 Department for Levelling Up, Housing & Communities Letter, dated 21 July 2022
- 16.6 Nutrient Neutrality Assessment and Mitigation Strategy (NNAMS)
- 17 5 Year Housing Land Supply SPEAKING NOTE for Round Table Discussion, by Jonathan Orton, dated 13 January 2013
- 18 Planning Board 18 January 2023 Agenda
- 19 Case Officer Report Ref 2021/1480/OTS
- 20 Frome Education Contributions Middle School Capacity Note, by Gleeson Land, dated 13 January 2023 and associated appendices
- 21 Traffic Impact at A35(T) Technical Note, by awp, undated
- 22 Response to Third Party Representations – Highways Matters, by awp, undated
- 23 Appeal Decision Ref APP/V1505/W/22/3298599
- 24 Supporting statement: Yield of children from housing developments, by Louise Martin - Estates Planning Advisor, dated 17 January 2023
- 25 Statement by Somerset County Council

- 26 S106 Agreement and Unilateral Undertaking – Summary
- 27 Guidance for Outdoor Sport and Play – Beyond the Six Acre Standard, by Fields in Trust, November 2020
- 28 S106 Agreement between Mendip District Council and Hackworthy Limited relating to land at Yew Tree Farm, Hembridge, East Pennard, Shepton Mallet BA4 6TZ, dated 4 January 2023
- 29 Reply by Interested Parties to 'AWP Technical Note dated 31 January 2023', dated 18 January 2023 (excluding electronic links)
- 30 Appellant's Updated Position Statement, by Origin3, dated 19 January 2023
- 31 Planning Board Report 18 January 2023
- 32 Planning Board 18 January 2023 – Updating
- 33 Closing Statement from the Frome Interested parties Participants, dated 19 January 2023
- 34 Closing Submissions on behalf of Mendip District Council, dated 20 January 2023, by Nina Pindham
- 35 Closing Submissions on behalf of the Appellant, Gleeson Land, dated 20 January 2023, by John Litton KC and Harley Ronan