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## Appeal Decision

Inquiry Held on 3 to 6 September 2019

Site visit made on 5 September 2019

**by D M Young BSc (Hons) MA MRTPI MIHE**

**an Inspector appointed by the Secretary of State**

**Decision date: 1 November 2019**

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**Appeal Ref: APP/D0121/W/18/3212682**

**Land north of Youngwood Lane and east of Netherton Wood Lane, Nailsea.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Mactaggart and Mickel Homes Ltd against North Somerset Council.
  - The application Ref 16/P/1677/OT2, is dated 27 June 2016.
  - The development proposed is a residential and related development comprising approximately 450 dwellings, means of access thereto, access roads, footways/cycleways, infrastructure works and associated community infrastructure including open space and landscaping.
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### Decision

1. The appeal is allowed and planning permission is granted for a residential and related development comprising approximately 450 dwellings, means of access thereto, access roads, footways/cycleways, infrastructure works and associated community infrastructure including open space and landscaping at land north of Youngwood Lane and east of Netherton Wood Lane, Nailsea in accordance with the terms of the application, Ref 16/P/1677/OT2, dated 27 June 2016, subject to the conditions in the schedule to this decision.

### Preliminary Matters

2. The Inquiry sat for 4 days on 3, 4, 5 and 6 September 2019. As the full extent of the appeal site can be readily viewed from public footpaths and roads and with the agreement of the main parties, an accompanied site visit was not deemed necessary.
3. Although the application was submitted in outline with only access to be determined at this stage, it was accompanied by an illustrative masterplan<sup>1</sup> as well as a raft of supporting technical documentation contained in an Environmental Impact Assessment. This material is broadly accepted by technical consultees and demonstrates that most matters are capable of being satisfactorily dealt with either by condition or planning obligation.
4. Planning and highway Statements of Common Ground (SOCG) were submitted prior to the Inquiry and I have had regard to these, as well as the responses of interested parties to them, in reaching my decision.

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<sup>1</sup> Plan drawing: 150303\_L\_01\_02\_J

5. A signed and dated agreement under s106 of the Town and Country Planning Act was submitted after the close of the Inquiry. All the proposed obligations need to be assessed against the statutory Community Infrastructure Levy (CIL) tests, a matter I return to later in my report.
6. The appeal is made against the failure of the Council to determine the application within the prescribed period. The Council's Statement of Case confirms The Council's Statement of Case confirms that were it in a position to determine the application, it would refuse it for reasons relating to (1) conflict with Policy CS31 of the "*North Somerset Council Core Strategy 2017*" (the CS) and (2) the effect on the emerging "*West of England Joint Spatial Plan Publication Document 2017*" (the eJSP). The second issue encompasses related arguments pertaining to highways and ecology.
7. There is no dispute between the parties that the Council cannot demonstrate a 5-year supply of housing<sup>2</sup>. In such situations paragraph 11 d) of the National Planning Policy Framework (the Framework) is engaged. I will also return to this matter later in my decision.
8. Shortly after the Inquiry closed, the Inspectors examining the eJSP published their second and more detailed letter dated 11 September 2019. I wrote to the main parties offering them the opportunity to make submissions on the contents of the letter and I have taken those comments into account in reaching my decision.

## **Main Issues**

9. In light of the above and based on all the written and oral evidence, I consider the main issues are:
  - (a) whether the proposed development would accord with the development plan with particular regard to CS Policy CS31.
  - (b) whether the development would prejudice the emerging spatial strategy for the area contained in the eJSP;
    - i) the effect on any future link road;
    - ii) whether the development would adversely affect the integrity of a protected habitat site, and
  - (c) whether there are any other material considerations, including the benefits of the proposal, which would indicate that the proposals should be determined otherwise than in accordance with the terms of the development plan.

## **Reasons**

### *Policy context*

10. The appeal site is some 24 hectares in size and abuts the existing south-east edge of Nailsea. It is bounded by Netherton Wood Lane to the west and Youngwood Lane to the south. The northern site boundary is defined by a public bridleway that links Netherton Wood Lane to Sedgemoor Close. The eastern site boundary is demarked by hedgerows and trees. The site generally falls from north to south and is currently in agricultural use.

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<sup>2</sup> The SOCG reports the position at the time of the appeal as 4.4 years.

11. The development plan for North Somerset comprises the CS, the "*North Somerset Sites and Policies Plan Part 1: Development Management Policies 2016*" (the NSSPP) and the "*North Somerset Sites and Policies Plan Part 2: Site Allocations Plan 2018*" (the NSSAP).
12. In planning terms, the site is outside of the settlement boundary of Nailsea, as identified in the North Somerset Local Plan Review which covered the period up to 2011. As a matter of fact, the boundaries are now time-expired. Pursuant to Policy SA1 and Schedule 1 of the NSSAP, the northern part of the site is allocated for 170 residential units. The settlement boundaries across North Somerset have yet to be updated to reflect those allocations included in the NSSAP. That being the case, the Policies Map insofar as it relates to Nailsea cannot be seen as being up-to-date.
13. Whilst a long list of development plan policies has been provided in the SOCG, it was evident at the Inquiry that the Council's first putative reason for refusal relies on an alleged conflict with CS Policy CS31. It is important to note that this objection relates only to the 280 dwellings on the southern part of the site. Policy CS31 seeks to control new development outside of the main towns in order to protect the character of the area and prevent unsustainable development. The policy requires residential development in excess of about 50 dwellings to come forward as allocations through the development plan. The Council submit that appeal scheme is in clear breach of Policy CS31.
14. As 280 dwellings significantly exceeds 'about 50 dwellings', it must follow that there would be conflict with Policy CS31. That would be the case even if the settlement boundary was up-to-date.
15. Whilst I accept that the CS and NSSAP have both been examined and found sound in recent years, it is fair to say that the planning climate in North Somerset has been somewhat fluid in the intervening period. From a fair reading of the Examining Inspector's report<sup>3</sup> it is evident there was concern about housing delivery in North Somerset in 2018. The Inspector found that the NSSAP had failed to identify sufficient sites to meet the Council's CS housing requirements up to 2026. To remedy this, an additional 2,500 dwellings was sought by the Inspector. However, only sites for an additional 821 dwellings were identified as part of the NSSAP.
16. As paragraph 72 of the Inspector's report makes clear, this reduced figure was only considered acceptable to deliver housing during the interim period prior to the adoption of the eJSP and the new Local Plan. The NSSAP was hence found sound on the expectation that it would have a "*very short lifespan*". Irrespective of the Inspector's expectations, the key fact is that the NSSAP has failed to deliver a 5-year supply of deliverable housing land in North Somerset even in the short-term. There is no dispute that the NSSAP will now be in place for significantly longer than the period envisaged by the Inspector and this adds further weight to my concerns that the rigid adherence to the numerical limits in Policy CS31 would be likely to hinder rather than help the Council achieve its housing targets.
17. Even if Policy CS31 were up-to-date, in my view it is not sufficient simply for a development proposal to be in conflict with the wording of a development plan policy for it to be necessarily objectionable. For example, if there would be no

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<sup>3</sup> The Report on the Examination of the NSSAP February 2018

actual manifestation of harm then there would be no sensible purpose served by rejecting a development.

18. According to the Council, the objectives of Policy CS31 are to “*protect the character of the area and prevent unsustainable development*”<sup>4</sup>. However, the Council confirmed at the Inquiry that it does not oppose the development based on landscape impact. Moreover, aside from vague references to ecology and scale, the Council was unable to identify what tangible harm would arise from the development. It is common ground that the location of the site on the edge of Nailsea would be sustainable in transport terms subject to a package of off-site mitigation works. Concerns about scale have not been substantiated in any cogent way and it was pertinent that the balance of the development (280 dwellings) would be well below the strategic level of growth envisaged in the eJSP. The scale of the balance is also significantly less than the long-standing, but as yet, undelivered allocation to the north-west of Nailsea for 450 dwellings. No other convincing reasons have been advanced to support the view that the scale or location of the development would be inappropriate. Whether or not the proposed development represents sustainable development in the terms set out in the Framework is a matter addressed in the planning balance made later in my decision.
19. I have identified conflict with the wording of Policy CS31. In assessing what weight this should carry, it is germane that the Council cannot demonstrate a 5-year supply of deliverable housing sites. That immediately reduces the weight that can be attached to the conflict with Policy CS31 in line with Footnote 7 to paragraph 11 d) of the Framework. Moreover, the lack of any discord with the overriding policy objectives means that the conflict carries limited weight in the overall planning balance.

#### *Prematurity*

20. The appeal site is included in a general area for strategic growth in the eJSP. Policy 7 of the same states that to deliver the housing needs for the area Strategic Development Locations (SDL’s) will be delivered through the plan period. Policy 7.7 indicates that an area to the south-west of Nailsea is to accommodate a new extension to the town comprising 2,575 dwellings during the plan period up to 2036 with an additional 725 dwellings thereafter. Amongst other things it is anticipated that the Nailsea SDL would comprise a new local centre, new bus routes, footpaths, cycleways and a new multi-modal link road from the A370 Long Ashton Bypass to the M5. The Council’s case is that granting planning permission ahead of the eJSP and emerging local plan would pre-determine important elements for the site thus failing to engage with the strategic approach required to ensure the SDL is genuinely plan-led.
21. The first point to make is that the submission of the appeal scheme to the Council in June 2016 pre-dated the publication of the eJSP and the “*Local Plan 2036: Issues and Options Document 2018*” (the IOD). It is therefore not the case that the appellants have sought to circumvent the plan making process. Be that as it may, the emergence of the eJSP over the last 2 years has meant that the proposed development has to some extent been overtaken by events.
22. For a case of prematurity to succeed, paragraph 49 of the Framework states that the emerging plan has to be at an advanced stage and (my underlining)

<sup>4</sup> Council’s Statement of Case paragraph 18

- the development proposed has to be so substantial, or its cumulative effect so significant that to grant planning permission would be to undermine the plan making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan.
23. Although the appeal proposal is for 450 dwellings, 170 of these are already allocated such that in net terms only an additional 280 homes are proposed. This balance of 280 would represent just 1.1% of the housing requirement for North Somerset as identified in the eJSP and the IOD. This cannot reasonably be construed as being so significant as to harm the spatial strategy or indeed undermine the plan making process.
24. In terms of the second limb of paragraph 49, the eJSP has progressed to the Hearings stage and therefore it might be considered as being at a fairly advanced stage. However, in view of the examining Inspectors' post-Hearing letters dated 1 August and 11 September 2019 the matter is clearly not as simple as that. Those letters identified fundamental soundness problems with the eJSP particularly with the way in which SDL's had been selected against reasonable alternatives. Such were the gravity of the examining Inspectors' concerns that it has been strongly recommended that the most appropriate way forward would be to withdraw the plan from examination.
25. It is quite clear on any fair-minded reading of the letters that the eJSP has, for the time being, hit the proverbial buffers and will not proceed in its current form. Whilst the letter does not identify any problems with individual SDL's, the fact that they form a fundamental part of the eJSP's spatial strategy means they can carry little weight at this time.
26. Responding to the examining inspectors' second letter, the Council concede that the eJSP is not at an advanced stage. Nonetheless, it is argued that the '*general direction of travel*' is towards an area of strategic growth to the south-west of Nailsea and this should be afforded substantial weight. Whilst I accept the point that some growth will inevitably be required at Nailsea, the presumption that this will be on the same level and in the same location as the SDL, would appear to be a repetition of the issues of the eJSP identified by its examining inspectors as it seeks to impose a pre-determined spatial strategy that has not been subject to vigorous testing. Moreover, to contend that a development might impinge upon something that might happen in the future, seems to me to be a particularly weak basis for decision taking when there is so much uncertainty over those future considerations. For the above reasons, I am attaching very limited weight to the '*general direction of travel*' argument at this stage.
27. In conclusion on this matter, the Framework does not support a finding of prematurity in this case. I acknowledge that the Framework does not exclude the possibility that prematurity might sometimes justify refusal even where the two tests in paragraph 49 are unmet. Clearly such cases are likely to be rare and require the demonstration of exceptional circumstances. On the evidence before me, I am not persuaded that the circumstances of this case suggest any reason to take a different approach to prematurity from that advocated in the Framework. As the Council's link road and ecology objections rely heavily on the prematurity argument, these largely fall away given my findings above. Nonetheless for completeness I have addressed these matters below.

### *The link road*

28. The Council confirmed at the Inquiry that any future link road would take the form of a multi-modal, residential distributor road designed to the principles of Manual for Streets rather than the Design Manual for Roads and Bridges. Although the Council has yet to identify a preferred alignment, it was conceded that the primary purpose of the road would be to distribute residential traffic across any future SDL rather than a link road the purpose of which is to draw traffic away from the town centre and other existing routes. That being the case, I do not consider that the alignment of the route is of the same critical importance as if the road were a genuine link road where the primary purpose would be the free flow of traffic between two specified points. In reality, if the SDL were to come forward, I would expect there to be a broad range of options for the road's alignment.
29. Due to ecology and drainage constraints and bearing in mind there is no requirement for a link road across the allocated part of the appeal site, there is realistically only a relatively narrow corridor across the southern part of the site which could accommodate the road. The Council has not drawn my attention to any obvious off-site impediments which might frustrate a route between points A-B and C-D on the submitted plan<sup>5</sup>.
30. The Highways SOCG confirms that an appropriately worded condition could be imposed on any planning permission to safeguard the future route of a link road. In the event a route is still required but the preferred alignment has not been determined, the condition would allow the developer to set aside a corridor between points A-B and C-D. Therefore, I see no reason why the proposed development would result in the road having an unacceptable alignment.

### *Ecology*

31. The appeal site is some 2.6km north of the nearest component of the North Somerset and Mendip Bats Special Area of Conservation (the SAC), an area of acknowledged importance for Greater and Lesser Horseshoe Bats. The Council's supplementary planning document<sup>6</sup> (the SPD) identifies the site as being within consultation zones A and B, the former being identified as land with the highest potential to affect important features.
32. The EU directive on the conservation of natural habitats of wild fauna and flora (the Habitats Directive, as implemented into UK law by The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) requires decision makers to undertake an Appropriate Assessment (AA) where a proposed plan or project either alone or in-combination, would result in a likely significant effect on a European protected site. The appellants' assessment of the effect on the SAC is contained within what is referred to as a Shadow AA dated August 2019.
33. It is common ground that subject to appropriate mitigation, the appeal scheme itself could result in a net-gain for biodiversity including horseshoe bat habitats. However, since mitigation must be considered within the framework of an AA rather than at the screening stage, I cannot rule out the potential likely

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<sup>5</sup> Drawing no: 150303 SL 011

<sup>6</sup> Full Title: North Somerset and Mendip Bats Special Area of Conservation (SAC) Guidance on Development: Supplementary Planning Document Adopted January 2018.



significant effects on the SAC individually or in combination with other projects. An AA is therefore required and as part of my assessment I must also consider whether any potential effects could be mitigated.

34. The submitted Ecology Reports include a summary of the bat activity surveys conducted on the appeal site in 2015 and 2018-19. The results of these surveys have been used to inform the illustrative masterplan and the Habitats Evaluation Procedure (HEP). The Council's witness accepted that the development could achieve an overall positive HEP score in compliance the SPD. It was agreed at the Inquiry that it would be possible to bring the site forward in a way that safeguards those established commuting corridors that bisect the appeal site. Although there was some disagreement over the design of hop-overs, the evidence indicates this could be addressed at the detailed design stage. Therefore, when assessed on its own the appeal scheme, subject to mitigation, would lead to an overall positive outcome for bats and the integrity of the SAC.
35. A determination under the Habitat Regulations must be made not only based on the effect of the proposal alone but in combination with any other plans or projects (my emphasis). Paragraph 16 of Circular 6/2005 states that it will normally be appropriate to consider current planning applications as well as consents under other relevant regimes and 'relevant' plans. In my view this means plans or projects that have, or are likely to be, approved. Table 2 of the Shadow AA includes a list of development sites in the surrounding area which are either allocated for housing or the subject of a planning application/consent. Based on the information in its Section 3, I am satisfied there would be no adverse in-combination effect from these other plans or projects.
36. The Council's concerns regarding ecology appear to rest almost entirely on the advice of Natural England (NE), the government's scientific adviser on ecology matters. In their judgement, the AA must contain an in-combination assessment including Nailsea and Backwell SDL's. NE were not present at the Inquiry and therefore their evidence could not be tested. Nonetheless, the Council's own expert witness agreed with NE's assessment and pointed to the eight bullet point of Policy 7.7 of the eJSP which requires a strategic approach to the assessment, safeguarding and enhancement of greater and lesser horseshoe bat habitats. The determinative issue is therefore whether the in-combination assessment needs to cover the eJSP with particular regard to the SDL's therein.
37. The first point to make is that the scope of in-combination assessment is a matter of judgement for the Competent Authority taking into account the precautionary principle and what is reasonable and proportionate to the specifics of a particular case. In terms of what other "plans" should be considered in an in-combination assessment, regard needs to be had to adopted development plans. How far an emerging plan should be taken into account is a matter of judgement based on the extent to which there is a realistic prospect of it being implemented. In coming to a view, regard should be had to the precautionary principle and unless there is objective evidence to indicate that an emerging plan or project is unlikely to be adopted and/or implemented regard should normally be had to it.

38. With this in mind, the current status of the eJSP is clearly a significant consideration. As I have set out above, fundamental aspects of the plan including the overall spatial strategy have been deemed unsound and it has been recommended that the plan is withdrawn. Consequently, this must be viewed as evidence that it is unlikely to be adopted, such that the SDLs and the individual components of Policy 7.7 can be given very little weight at this stage. Whilst I note the contents of NE's e-mail dated 4 September 2019, it cannot be right to say that there should be an in-combination assessment against a draft plan that has been found unsound. Therefore, the eJSP should not be considered as part of the in-combination assessment.
39. If other sites were to come forward in the surrounding area, it is entirely reasonable to expect the Council to take a consistent approach to the issue of bat mitigation i.e. the maintenance of existing flight routes whilst increasing foraging habitat in line with the SPD. Indeed, this appears to be the approach that has been taken in respect of the Engine Lane development<sup>7</sup>. No cogent evidence has been presented as to why such an approach if applied across a wider area would harm the integrity of the SAC.
40. In summary, I am satisfied that the adverse effects of the appeal scheme can be effectively mitigated at the detailed design stage. Accordingly, as the Competent Authority, I am satisfied that the proposed development either alone or in-combination with other development would not adversely affect the integrity of the SAC. There would thus be no conflict with the requirements of paragraphs 175-177 of the Framework, CS Policy CS4 or Policy DM8 of the NSSPP.

### **Other Matters**

41. Local residents have expressed a wide range of concerns particularly in relation to highway safety. These concerns are addressed in some detail in the appellants' Addendum Transport Statement dated October 2016 and January 2019. In summary, it was found that there are no existing safety issues associated with the rural lanes to the south, east and west of the site. Moreover, despite some intensification of use these roads would continue to operate well within capacity. Improvements are proposed to those junctions where development traffic would result in unacceptable levels of queuing in the opening year assessment. The proposed site accesses would be delivered in accordance with established standards and the introduction of priority working and a new footway at the pinch point on St Mary's Grove would benefit existing highway users. In light of the above, I am satisfied that the additional traffic could be accommodated without creating severe residual impacts, which is the test set out in paragraph 109 of the Framework, if permission is to be refused.
42. Various appeal decisions have been referred to in the evidence. However, there was no suggestion that the facts of any one case were so aligned with the facts here that the previous decision indicated that this appeal should be either allowed or dismissed. I have therefore had regard to the various decisions insofar as they are relevant to my consideration of this appeal.

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<sup>7</sup> LPA Ref: 17/P/1250/F



## Conditions

43. The Council has suggested a number of planning conditions which I have considered against the advice in the "*Planning Practice Guidance*" (the PPG). In some instances, I have amended or combined the conditions provided by the Council in the interests of brevity and to ensure compliance with the PPG.
44. Conditions 1, 2 and 3 are standard conditions for outline planning permissions. Condition 4 is imposed for the avoidance of doubt and to ensure that the development is carried out in general accordance with the approved plans and details. Materials and landscaping conditions are necessary to ensure the appearance of the development is acceptable <sup>[5 & 9]</sup>. Drainage conditions are necessary to ensure satisfactory drainage of the site in the interests of flood prevention <sup>[6,7 & 8]</sup>. A Landscape Ecological Management Plan (LEMP) and lighting conditions are necessary to safeguard local ecology and habitats <sup>[10 & 12]</sup>. I have imposed a condition relating to tree protection measures to ensure trees are not damaged during the construction period <sup>[11]</sup>. A Construction Environmental Management Plan is necessary to protect the amenity of nearby residents <sup>[13]</sup>. Conditions regarding adaptable homes, housing mix, travel plans and renewable energy measures are necessary to ensure compliance with development plan policies in these areas <sup>[14-17]</sup>. An archaeology condition is necessary to protect any archaeological assets that may be present <sup>[18]</sup>. Highway conditions are necessary in the interests of highway safety and to ensure the development does not prejudice the delivery of any future link road through the site <sup>[19-21]</sup>.
45. Conditions 13, 18 and 19 are 'pre-commencement' form conditions and require certain actions before the commencement of development. In all cases the conditions were included in the SOCG and address matters that are of an importance or effect and need to be resolved before construction begins.

## Planning Obligations

46. The Framework sets out policy tests for planning obligations which must be necessary to make the development acceptable in planning terms; directly related to the development and fairly and reasonably related in scale and kind to the development. The same tests are enshrined in the statutory tests set out in the regulation 122 of the CIL regulations.
47. To promote non-car modes of travel, a financial contribution of £326,413 is sought towards the improvement of the existing public rights of way between St Mary's Grove-The Perrings, The Perrings-Backwell Lake and Youngwood Lane-Station Close. These improvements have been costed and agreed with the Highway Authority. A public rights of way contribution of £3,895 is required to improve a number of existing footpaths in the local area. A contribution of £650,000 would pay for the diversion of the nearest bus service into the site for a period of 5 years after which it is hoped that the route would be commercially viable. A contribution of £120 per dwelling is required to provide the occupants of each new dwelling with a travel pack containing sustainable travel information and inducements. All these contributions are supported by CS Policy CS10 and NSSPP Policy DM24 which collectively seek the integration of new development with public transport, cycleway and footpath links, and bridleways where appropriate. These aims are consistent with those of the Framework to reduce the need to travel by car and assist the move to a low

carbon future. I am thus satisfied that these contributions meet the statutory tests.

48. The off-site highway contribution of £95,000 is supported by the Transport Assessments submitted in support of the application which show that the North Street/Hanham Way/Queens Road and Station Road/Queens Road junctions would operate over capacity in a '2021 + NSSAP development' scenarios. The addition of traffic from the appeal scheme exacerbates queuing at these junctions and on that basis improvements schemes have been agreed<sup>8</sup>. However, as both junctions are also shown to operate over capacity in the '2021 base + allocated' scenarios, there is an element of incidental planning gain particularly at the Station Road/Queens Road junction which will be upgraded to a mini-roundabout. The junction improvements have been costed by the Highway Authority and I am satisfied they are necessary to mitigate the impact of the development upon the local road network. Accordingly, the off-site highway contribution meets the statutory tests.
49. CS Policy CS16 states that sites of 11 dwellings or more are required to provide a minimum of 30% affordable housing at nil public subsidy. I am therefore satisfied that the affordable housing obligation meets the statutory tests.
50. The provision of public open space and green infrastructure and contributions towards its maintenance over a 15-year period is necessary to support healthy lifestyles and have been calculated via standard formulas. I am therefore satisfied that the public open space obligation meets the statutory tests.

### **Planning Balance and Conclusion**

51. I am required to determine this proposal in accordance with the development plan, unless material considerations indicate otherwise. The starting point is therefore the development plan. There would be some conflict with CS Policy CS31. However, for the reasons set out under my first main issue, the weight which can be attributed to this is limited. Nonetheless, it weighs against the scheme in the overall planning balance. I have not found a prematurity case in relation to the eJSP nor identified any other matters which could not satisfactorily be addressed by conditions or at reserved matters stage.
52. As to whether material considerations indicate that the permission should be allowed, the Framework is one such consideration. Given the Council's housing land supply position, those policies that are most important for determining the application are to be considered out-of-date. Therefore, while the weight that I can attach to the conflict with CS Policy CS31 is reduced, the default position identified in paragraph 11 d) of the Framework is also engaged. The first limb of this paragraph relates to the situation where specific policies in the Framework indicate development should be restricted, such as where habitat sites are involved. Having addressed this matter above, I have found that the development would not adversely affect the integrity of a protected habitat site.
53. The second limb states that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The effect of this is that the planning balance shifts in favour of the

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<sup>8</sup> Drawings Drawing A099461-SK03 & A099461 – SK04

grant of consent. The framework establishes that the purpose of the planning system is to contribute to the achievement of sustainable development, which includes economic, social and environmental dimensions.

54. There would be social benefits arising from the provision of up to 450 new dwellings 30% of which would be affordable. This is the weightiest factor in the overall balance. Indeed, given that the Council is unable to demonstrate a 5-year supply of housing and in view of the Framework's aim to boost significantly the supply of housing, it must, in accordance with the Framework, carry significant weight. The appeal site is available, developable and the Appellants have demonstrated a willingness to bring the site forward in a timely fashion. Beyond the rights of way network, there is currently no public access to the appeal site and therefore the opportunity for the local community to use the extensive areas of open space created by the development, is also a benefit, albeit one that is primarily intended to address the needs of the occupants of the appeal scheme itself. Collectively, the social benefits attract substantial weight.
55. The purchase of materials and services in connection with the construction of the dwellings, employment during the construction period, an increase in local household expenditure and revenues to the Council from the New Homes Bonus are all economic benefits that weigh in favour of the scheme.
56. In environmental terms, there would inevitably be some dis-benefits. In the sense that the development of open countryside is such a disbenefit, it cannot carry significant weight because the undersupply of housing in North Somerset can only realistically be remedied by the release of at least some greenfield sites. There would inevitably be some moderate landscape harm arising from a loss of openness across the appeal site in addition to the loss of agricultural land. However, given that these would be the inevitable consequence of most greenfield developments, they are not factors that weigh heavily against the scheme.
57. The environmental benefits include small biodiversity gains. The appeal site is also located in an accessible and sustainable location on the edge of Nailsea, a town with a good range of shops and services. There would be a comprehensive package of footway, cycleway improvements which would facilitate car-free trips to the town centre and local train station.
58. Based on the foregoing, the adverse impacts of the proposal would not significantly and demonstrably outweigh the substantial benefits which would arise from this development. I am thus satisfied that the appeal scheme would constitute sustainable development. This is a significant material consideration sufficient to outweigh the development plan conflict.
59. Accordingly, I conclude that the proposal should be allowed, subject to the imposition of a number of conditions, as discussed at the Inquiry and set out in the schedule below.

*D. M. Young*

Inspector

## **SCHEDULE OF CONDITIONS**

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in general accordance with the details shown on the submitted plan numbers: 150303\_L\_01\_01\_B, 150303\_L\_SK\_008\_D, FMW1667\_SK12 and FMW1667\_SK13.
- 5) Prior to any development above ground level, details of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 6) No above ground development shall take place until details of surface water drainage works have first been submitted to and approved in writing by the Local Planning Authority. Before these details are submitted, an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in the National Planning Policy Framework, associated Planning Practice Guidance and the non-statutory technical standards for sustainable drainage systems, and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the system shall be designed such that there is no surcharging for a 1 in 30 year event and no internal property flooding for a 1 in 100 year event + 40% allowance for climate change. The submitted details shall:
  - i. Provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site to greenfield run off rates and volumes, taking into account long-term storage based on the natural downstream catchment, and urban creep and the measures taken to prevent pollution of the receiving groundwater and/or surface waters; and
  - ii. Include a timetable for implementation.
  - iii. Survey and confirm the route of any discharge to a maintained (viewed) rhine by the North Somerset Internal Drainage Board. Design the sustainable drainage scheme on site so there is no alteration to the downstream flooding regime up to 1 in 100 yr.
  - iv. Pollution control measures within the sustainable drainage systems to protect the downstream SSSI.

- v. demonstrate that no culverting of watercourses on the site shall take place except for access points and shall be designed with a soffit at the 100CC flood level/and a 300mm freeboard in accordance with Design Manual for Roads and Bridges (DMRB).

The development shall be carried out in complete accordance with the approved details.

- 7) No dwelling shall be occupied until details of the implementation, maintenance and management of the approved sustainable drainage scheme have been submitted to and approved, in writing, by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details.
  - a) a timetable for its implementation and maintenance during construction and handover; and
  - b) a management and maintenance plan for the lifetime of the development which shall include details of land ownership; maintenance responsibilities/arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable urban drainage scheme throughout its lifetime; together with a description of the system, the identification of individual assets, services and access requirements and details of routine and periodic maintenance activities.
- 8) Where a reserved matters application submitted under condition 3 of this consent includes one or more new or existing rhynes, pond, watercourse or spring it shall include details of a suitable access and maintenance margin on both sides of rhynes. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that order with or without modification) no development or infrastructure including cables, mains, pipes or other apparatus, shall be installed or laid within the rhyne management and maintenance corridors.
- 9) Trees, hedges and plants in any Reserved Matters Area shown in the landscaping scheme to be retained or planted, which during the development works or during a period of five years following implementation of the landscaping scheme in that Reserved Matters Area, which are removed without prior written approval from the Local Planning Authority or which die, become seriously diseased or damaged, shall be replaced in the first available planting season with other such species and size as are to be agreed with the Local Planning Authority.
- 10) Prior to commencement of any phase of development a Landscape Ecological Management Plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority. The plan shall detail management over a minimum 5-year period from the commencement of development of that phase. The plan shall reflect the mitigation principles set out in the Ecological Assessment / Environmental Impact Assessment accompanying the Outline application. The LEMP shall include a work schedule with objectives, management prescriptions and timings to maintain and enhance all wildlife habitats to maximise food resources for wildlife; to provide cover for dispersal, foraging, nesting and hibernation sites for the wildlife using the site; optimise hedgerow management to support biodiversity; provide details of the location and design of bat,

bird and other wildlife boxes; The approved plan shall be fully implemented and adhered to over the operational phase of the development.

- 11) The tree protection measures specified in the Arboricultural Assessment dated May 2016 shall be adhered to throughout the period of construction.
- 12) Prior to or accompanying the submission of any reserved matters consent application details of the site external lighting, including temporary/construction and permanent outdoor lighting, shall be submitted which shall include:
  - (i) details of the design, type and location of the proposed lighting;
  - (ii) the predicted light lux levels; and
  - (iii) lighting contour plans.

The scheme shall ensure that light levels do not exceed 0.5 lux in areas important to bats (to be first agreed in writing with the Local Planning Authority) and shall be submitted to and agreed in writing by the Local Planning Authority and implemented, installed and operated in perpetuity in accordance with the approved scheme.

- 13) Prior to the commencement of development, a Construction Environmental Management Plan shall be submitted to and approved in writing by the Local Planning Authority. Plan shall include details of:
  - i) site enabling works, including timings of vegetation clearance;
  - ii) siting and installation of services such as drainage; sensitive storage locations for materials and soils; measures for control of dust and disposal of waste; prevention of pollution measures to protect surface waters and ground waters, all in accordance with best practice;
  - iii) site security;
  - iv) fuel storage, bunding, delivery and use (if applicable) and proposals to address minor and major pollution incidents potentially resulting from the site development including the containment of silt or soil contaminated run-off;
  - v) disposal of contaminated drainage, including water pumped from excavations;
  - vi) vehicle routes to and from the site with distance details, construction delivery hours, car parking for contractors, specific measure to be adopted to mitigate construction impacts (including infrastructure improvements if appropriate), construction workers travel plan and a traffic management plan to control traffic during the construction phases, and
  - Vii) construction hours

The approved Plan and details shall be implemented and adhered to thereafter at all times.

- 14) Prior to or accompanying any reserved matters application for residential development an assessment a scheme shall be submitted to and approved in writing by the Local Planning Authority detailing how, subject



to viability and feasibility, a minimum of 15% of the future energy requirements will be delivered from renewable energy generation systems and how this will be monitored at specified stages of the development to ensure that the target is achieved at each stage. The development shall thereafter be operated in accordance with the approved scheme, unless otherwise agreed in writing with the Local Planning Authority.

- 15) Each application for reserved matters consent which includes residential units shall include a Statement demonstrating and explaining how it complies with Accessible and adaptable housing delivery requirements as required under policy DM42 of the adopted Development Management Sites and Policies Plan part 1, the adopted Accessible and adaptable housing needs assessment SPD and the approved scheme shall be fully implemented in association with the development.
- 16) Applications for reserved matters consent submitted under condition 2 of this consent shall include details to justify the range of house types which shall meet the needs of the local population which shall accord with the principles set out in policy DM35 of the North Somerset Sites and Policies Plan (Part 1 – Development Management Policies) including where practical and viable, contain some or all of the following categories:
  - One-bedroom properties
  - 2-3 bedroom properties aimed at young families
  - A range of 2-3 bedroom properties, including houses, apartments and bungalows, aimed at people downsizing from larger properties.
  - Age-restricted retirement properties
  - No more than 20% of new dwellings will be 4 bedrooms or more (after taking account of the allocation of affordable housing).
- 17) Each application for reserved matters consent which includes residential units shall not be occupied until a Sustainable Travel Plan is first submitted to and approved in writing by the Local Planning Authority. All the recommended measures, targets, monitoring programmes and mitigation measures within the approved Travel Plan shall be implemented in accordance with the approved details unless the Local Planning Authority gives written consent to any variation thereto.
- 18) No development shall take place until an archaeological Written Scheme of Investigation (WSI) has been submitted to and approved, in writing, by the local planning authority. For land that is included within the WSI, no demolition or development shall take place other than in accordance with the agreed WSI. The WSI shall include:
  - The statement of significance and research objectives; and
  - The programme and methodology of site investigation and recording; and
  - The nomination of a competent person or persons or organisation to undertake the agreed works; and
  - The programme for post-investigation assessment and subsequent analysis, publication & dissemination; and
  - The deposition of resulting material.

- The development shall not take place except in complete accordance with the details and programme set out in the approved WSI.
- 19) No development shall commence until a scheme for the provision of the site accesses, internal estate roads, parking spaces, garages, turning areas, internal footpaths and external pedestrian/cycle links have been submitted to and approved in writing by the Local Planning Authority. The vehicular accesses and pedestrian/cycle routes shall thereafter be delivered and constructed in accordance with the approved details.
- 20) Prior to occupation of the 50<sup>th</sup> dwelling, the new footway shall be constructed at St Mary's Grove in accordance with the details shown on plan no FMW1667, fig 4.4 of the Transport Statement accompanying the application.
- 21) Any reserved matters application made pursuant to this permission (except for a reserved matters application solely comprising land allocated under the adopted Sites and Policies Plan Part 2, Site Allocations Plan dated April 2018) shall:
- a) If the local planning authority has formally identified the alignment of a link road through the site, by including it in the initial stages of a local plan in compliance with Regulation 18 of the Town and Country Planning (Local Plan) (England) Regulations 2012 or under Regulation 19 of the aforementioned Regulations or an Adopted plan, make provision for that alignment.
  - b) If the local planning authority has not formally identified the alignment of a link road through the site, safeguard an alignment between points A-B and C-D on drawing no 150303 SL 011 entitled "Nailsea Reference Points" by Clifton Emery Design dated August 2019 (excluding the land allocated under the adopted Sites and Policies Plan Part 2 , Site Allocations Plan dated April 2018) of a maximum width of 20 m;
  - c) If the local planning authority confirms in writing that it is no longer pursuing a link road through the site, there shall be no provision made in any reserved matters application for a link road through the site.

## APPEARANCES

### FOR THE APPELLANT

Rupert Warren QC

Instructed by the Appellants

He called:

Dr Thomas Rocke BA (Hons) PhD BTP (Dist) MRTPI

Rocke Associates Ltd

Mr Kurt Goodman BSc (Hons) MSc MCIEEM

FPCR – Ecology Consultant

Mr David Bird BSc CEng MICE

Vectos Limited – Highway Consultant

### FOR THE LOCAL PLANNING AUTHORITY

Mr Timothy Leader of Counsel

Instructed by the Council

He called:

Mr Marcus Hewlett BA (Hons)

North Somerset Council

Ms Sarah Dale BSc (Hons)

Council's Ecology Consultant

Mr Paul Paton

North Somerset Council

### INTERESTED PERSONS

Mr Ian Morell

Nailsea Town Council

Mr Anthony Evans

Local Resident & Vice Chair of Nailsea Action Group

Cllr Sandra Hearne

Local resident and Town Councillor

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

- ID1 Appellant's opening statement
- ID2 Council's opening statement
- ID3 Extract from proof of evidence from Pegasus in appeal reference 3184845
- ID4 Billington Study and appendices
- ID5 Natural England letter dated 14 August 2019
- ID6 Letter from Clarke Willmott to Natural England dated 4 August 2019
- ID7 Email from Simon Stonehouse at Natural England dated 4 September 2019
- ID8 Statement of justification for S106 agreement
- ID9 Draft conditions
- ID10 Statements from Councillor Hearne
- ID11 Statement from Mr Evans of Nailsea Action Group
- ID12 Council's closing statement
- ID13 Appellant's closing statement