

Subject: RE: Rosemead/Fairmead

Hi Peter

Thank you for sending that through. The metric is now acceptable. Although it is HMWTs policy to seek a net gain of at least 10%, there has been a recent inspectors decision which states that, in the transition period before the Env Act becomes law and pertinently in the absence of explicit policy in the local plan or an SPD, any net gain should be considered policy compliant (see attached). This is a very damaging ruling for biodiversity but it underlines that BoB need a SPD on biodiversity accounting and planning which makes this clear.

I recommend that the following condition is employed to secure the biodiversity gains in the ecological report:

Development shall not commence until a landscape and ecological management plan (LEMP) has been submitted to, and approved in writing by, the local planning authority. The content of the LEMP shall ensure

the delivery of the agreed number of habitat and hedgerow units as a minimum (15.38 habitat units, 0.08 hedgerow units) to achieve a net gain in biodiversity and include the following.

- a) Description and evaluation of features to be managed.*
- b) Aims and objectives of management.*
- c) Appropriate management actions for achieving target condition for habitats as described in the approved metric.*
- d) Preparation of a work schedule (including a 30 year work plan capable of being rolled forward in perpetuity), clearly marked on plans.*
- e) Details of the body or organisation responsible for implementation of the plan.*
- f) Ongoing monitoring plan and remedial measures to ensure habitat condition targets are met.*
- g) Details of species selected to achieve target habitat conditions as identified in approved metric, definitively stated and marked on plans.*
- h) Details of make, model and location of 24 integrated bat boxes, 24 integrated swift boxes, and hedgehog highways between all garden barriers.*

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery.

The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.


The approved plan will be implemented in accordance with the approved details.

Best wishes

Matt

Matt Dodds
Planning & Biodiversity Manager



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Appeal Decisions

Inquiry held on 23 to 26 and 30 November, and 1 to 2 December 2021

Site visit made on 3 December 2021

by **O S Woodward BA(Hons.) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5 January 2022

Appeal A: APP/Y3940/W/21/3278256

Land at Filands Road/Jenner Lane, Malmesbury SN16 9HZ

- 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 (all matters reserved).
 - The appeal is made by Bloor Homes South West Ltd against Wiltshire Council.
 - The application Ref 21/01641/OUT, is dated 12 February 2021.
 - The development proposed comprises residential development, associated infrastructure and public open space.
-

Appeal B: APP/Y3940/Q/21/3278923

Whychurch Farm, Malmesbury, Wiltshire SN16 9HZ

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a failure to determine that a planning obligation should be discharged.
 - The appeal is made by Bloor Homes South West Ltd against Wiltshire Council.
 - The development to which the planning obligation relates is the discharge of Schedule 1, Part 1, Clause 4.5 of the planning obligation relating to N/11/04126/OUT.
 - The planning obligation, dated 15 February 2013, was made between Wiltshire Council and Michael Edward Weaver & Gleeson Developments Ltd.
 - The application Ref 20/05470/106, is dated 2 July 2020.
 - The application sought to have the following planning obligation discharged: "Not to Commence the Development Until the Owner has transferred the Primary School Land to the Council in accordance with the terms and conditions of transfer at Part 2 below."
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Appeal C: APP/Y3940/W/21/3282365

Land at Filands Road/Jenner Lane, Malmesbury SN16 9HZ

- 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 (all matters reserved).
 - The appeal is made by Bloor Homes South West Ltd against Wiltshire Council.
 - The application Ref 21/01363/OUT, is dated 5 February 2021.
 - The development proposed comprises residential development and land for a nursery, associated infrastructure and public open space.
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DECISIONS

1. Appeal A is dismissed and planning permission for residential development, associated infrastructure and public open space, on land at Filands Road/Jenner Lane, Malmesbury SN16 9HZ, is refused.
2. Appeal B is dismissed and the planning obligation, dated 15 February 2013, made between Wiltshire Council and Michael Edward Weaver & Gleeson Developments Ltd shall continue to have effect.
3. Appeal C is allowed, and planning permission is granted for residential development and land for a nursery, associated infrastructure and public open space on land at Filands Road/Jenner Lane, Malmesbury SN16 9HZ in accordance with the terms of the application Ref 21/01363/OUT, dated 5 February 2021, subject to the conditions set out in the attached schedule.

PRELIMINARY MATTERS

4. Malmesbury Town Council (MTC) and the Malmesbury Civic Trust (the Trust) were represented at the inquiry as independent parties, each with Rule 6 status.
5. Appeals A and C are for outline planning permission with all matters reserved. They both relate to the same site. It was a matter of agreement that only the site location plan forms part of the formal drawing set for each appeal, which only details the red line boundary of the site. However, the applications were accompanied by some illustrative details and drawings. In addition, in the lead up to the inquiry, the appellant submitted illustrative drawings regarding the proposed landscaping for Appeals A and C, and an illustrative layout for a proposed nursery with regard to Appeal C. Although these drawings were not consulted upon as part of the original applications, sufficient time was provided for the Council and the Rule 6 parties to review the documents. I therefore accepted these illustrative drawings to the inquiry, where they were explored in depth.
6. Precise residential dwelling numbers are not known at this stage, because of the outline nature of both Appeals A and C. However, based on reasonable density assumptions, themselves based on the illustrative landscape drawings, the appellant suggests predicted numbers at up to 70 dwellings for Appeal C and up to 78 dwellings for Appeal A. I view these dwelling numbers as useful indicators of the proposed scale of development, albeit acknowledging that they are not fixed, and have allowed for this as appropriate in my reasoning below.
7. The site for Appeals A and C lies immediately to the south of land which benefits from an extant outline planning permission¹ for residential development (the 'northern parcel'), which is also owned by the appellant, Bloor Homes Ltd. Although access is a reserved matter in relation to both appeals, access to the appeals site would be taken through the 'northern parcel', which I expand upon as relevant later on.
8. Appeal B relates to a wider that includes both the Appeals A and C land and land to the west, which has already been built out for a residential

¹ Permission Ref 19/11569/OUT, granted on 1 September 2020, for 71 dwellings

development² (the 2013 permission). The relevant section of that site corresponds, albeit not identically, to the land under consideration for Appeals A and C, and has not been developed. Again, I expand upon this as relevant later on.

MAIN ISSUES

9. The main issues are:
- whether or not the obligation still serves a useful purpose (Appeal B);
 - whether or not the proposals would adequately provide for early-years/nursery education facilities, including consideration of alternative sites and facilities (Appeals A and C);
 - the effect of the proposals on biodiversity, with particular regard to hedgerows (Appeals A and C);
 - whether or not the appeals site is an appropriate location for housing, having regard to local and national planning policy and guidance (Appeals A and C); and,
 - the effect of the proposed developments on the safe and efficient operation of the highway network in the vicinity of the appeals site (Appeals A and C).

REASONS

Planning Policy

10. The Development Plan includes the Wiltshire Core Strategy, adopted January 2015 (the CS), the Wiltshire Housing Site Allocations Plan, adopted February 2020, the Malmesbury Neighbourhood Plan, made in March 2015 (the MNP), and the 'saved' policies of the North Wiltshire Local Plan 2011, adopted June 2006 (the LP).
11. The Council is currently in the process of preparing a new Local Plan, but this is at the earliest stage of preparation and there are not yet any draft policies within the emerging Plan against which to consider the appeals.

Whether or not the obligation still serves a useful purpose? (Appeal B)

12. The Unilateral Undertaking the subject of Appeal B, dated 15 February 2013 (the 2013 UU), in relation to the 2013 permission, places covenants on the Appeals A and C land (called the Primary School Land in the 2013 UU). Schedule 1 Part 1 Paragraph 4.5 states "*Not to Commence the Development until the Owner has transferred the Primary School Land to the Council...*". The development to the west has not only commenced but is now completed and the land has not been transferred to the Council. However, I do not view the failure to transfer the land as a *de facto* breaking of the clause as necessarily rendering it irrelevant. Such an approach would mean that any 'prior to commencement' clause, or indeed condition, could be rendered null and void by an applicant/appellant simply commencing development. I also

² Permission Ref N/11/04126/OUT, granted 18 March 2013, for 180 dwellings and provision of land for a primary school

note that there is no specific end date in the 2013 UU for the safeguarding of the land.

13. The appellant attempted to transfer the land to the Council between October 2015 and January 2016. This was not taken up by the Council, which has since confirmed that it does not wish to take control of the land to provide a primary school. In light of that, it is now the appellant's contention that the land does not need to be transferred because the obligation no longer serves a useful purpose, hence the making of the application to discharge the obligation, resulting in the submission of Appeal B.
14. The key consideration in this case turns on the terms and conditions of the transfer of land and their remaining relevance, as set out in Schedule 1 Part 2 of the 2013 UU. The contentious consideration is set out in Paragraph 4.6.3.4, which covenants the land to be used for "*educational purposes by an educational institution which shall include play areas and pitches in connection with the use of the Primary School Land for such educational purpose*". Also of relevance is the definition of the Primary School Land, which is land "*to be transferred to the Council for the provision of primary school infrastructure*".
15. The clear intention for the use of the land, and therefore the appeals site, was for a primary school. The size of the land at 2 ha, the definition and title in the 2013 UU, and the reference to play areas and pitches in Paragraph 4.6.3.4 all point to this. However, the use of the land for alternative educational purposes by educational institutions is explicitly allowed for at Paragraph 4.6.3.4. This was purposefully and intentionally included, as is made clear at Paragraph 85 of the Decision letter for the planning permission granted at appeal³, where the Inspector makes it clear that the land should remain available for educational purposes, whether or not a primary school is provided.
16. I therefore conclude that the 2013 UU still serves a useful purpose. However, for what educational purpose and how much of the land should remain safeguarded, are important factors to which I now turn.

Adequacy of Provision for Early-years/Nursery Education Facilities (Appeals A and C)

Primary School

17. There are two existing primary schools in Malmesbury – Malmesbury Church of England Primary School (the CofE School) and St. Joseph's Roman Catholic School. Both are full. Lea & Garsdon Primary School (the L&G School) is also located nearby and has some, but limited, capacity for new pupils. Evidence has been provided that more primary school places are required in Malmesbury due to the pupil demand from committed developments, as well as the demand that would be created by either Appeal A or C. MTC also point to further potential pupil demand from current, but not permitted, planning applications. However, I do not take the latter into account because they are not yet firm commitments and each application

³ Appeal Ref APP/Y3940/A/12/2183526, AC12.1

will need to be responsible for its own effect on primary school infrastructure.

18. The increased demand is being met by an expansion to the L&G School⁴ that is currently being built. This school is located outside Malmesbury and some children need to use buses to attend the school. This is not a preferred form of transport for primary aged pupils but it is already in operation and I have been provided with no evidence that this is an insurmountable problem. I particularly note that the Education Authority raised no objection to the use of this school to meet the needs of Malmesbury children.
19. If further capacity is required, the CofE School recently secured the option to use 0.6 ha of land that lies between the school and the recently permitted Backridge Farm housing development⁵. The s106 Planning Obligation for this permission, dated 22 October 2021, secures the land as an option for the school for up to 10 years. It may take some time for this to be implemented and I am aware that the CofE School is an Academy and cannot be forced to expand. However, expansion of the CofE School is the preferred option for primary school expansion in Malmesbury, as set out in Policy 11 of the MNP. I also place weight on the fact that the Education Authority has confirmed that it does not wish to build a primary school on the appeal land and is content to rely on the expansion of existing facilities.
20. I am therefore satisfied that the currently anticipated demand for primary school places in Malmesbury can be accommodated either through the under-construction expansion to L&G School, or in the future through expansion to the CofE School. Consequently, I conclude that a primary school is not required at the appeal site at the present time. I therefore turn to the question of whether the appeals site, or part of it, should be safeguarded for alternative educational purposes by educational institutions.

Alternative Educational Purposes

21. The concrete proposal before me is for a nursery, for 0 to 5 year olds. This is as offered by the appellant through Appeal C. It is also what has been requested by the Council, which has requested that 0.3 ha of the appeal site land be safeguarded for nursery provision. Nurseries fall under the control of the Department of Education and are inspected by the Office for Standards in Education, Children's Services and Skills, more commonly known as Ofsted. The Childcare Act 2006, which relates to young children, defines the 'well-being' of young children as including education⁶. However, there is a clear difference between the unambiguous educational offer of a primary school and the blended responsibilities and provisions of a nursery. A nursery, particularly for the younger children/babies, is also a care provider. In my view, therefore, a nursery is partly an education institution and partly a care provider.
22. As such, a nursery falls into a grey area where it undeniably provides education, but only in part. In this context, the approach taken by the Council of only requesting that a small proportion of the safeguarded land remain safeguarded is reasonable, recognising the imperfect fit of a nursery

⁴ Planning permission Ref 18/08362/DP3

⁵ Permission Ref 16/06401/FUL, dated 22 October 2021

⁶ Part 1, Paragraph 2(c) of the Act

into the 2013 UU's definition whilst also retaining the intention of the development to the west providing educational accommodation.

23. The Trust also questions why the entire land, or part of it, could not be offered to other educational providers, such as colleges or Dyson's in-house education establishment. However, no concrete or detailed proposals from other educational institutions are before me. Although there is no time limit on the safeguarding of the land in the 2013 UU, I do not view it as reasonable, now that the clear original purpose of the land as a primary school will not be coming forward, to keep the land safeguarded in perpetuity on the off-chance that it may come into use in the future.

Need for a Nursery

24. It is difficult to gauge accurately the capacity of existing nurseries in Malmesbury because, amongst other factors, some children only attend for certain days of the week, and the demand in the summer term can be higher. For similar reasons, it is difficult to forecast demand for new nursery provision. Whilst acknowledging these difficulties, the appellant and the Council in its role as the Education Authority have agreed that there is demand for one new nursery in Malmesbury. It is also common ground that, if a new nursery is provided, it should be for 80-places irrespective of the precise demand, because anything smaller would be uneconomic to operate and would be unlikely to attract a provider.
25. One alternative site for a nursery was explored at the inquiry, on land at the CofE School. The CofE School is located more centrally in Malmesbury. Co-location of a nursery with a primary school has many benefits, including sharing drop-offs and pick-ups, staff training, transition from nursery to school for children, and shared resources. The school has set these out in its submission dated 17 March 2021. These remain valid points with which I agree. MTC has raised concerns regarding parking and access but I do not foresee these as insurmountable in the context of an existing and operational school with land to re-configure if necessary. In this context, provision of a nursery at the CofE School would appear to be preferable to one located on the appeal site.
26. However, deliverability also needs to be taken into account. A nursery at the school would likely be on land currently used for hard surfaced outdoor playspace. This would need to be re-provided and the school would need to secure additional land for this, which it has not yet achieved. There is no certainty or timetable regarding a nursery at the CofE School, whereas the appeal site would afford a blank canvas on land acquired for one pound. There is no operator on board at present, but there is no reason it could not be progressed quickly. I therefore see the appeal site as the preferable site in terms of deliverability. Moreover, if it were found that there is sufficient demand for two nurseries, then allowing a nursery at the appeal site would not prevent the provision of a further nursery at the CofE School. This would be a commercial decision at the time and one with which the CofE School have stated it is comfortable.

Area of Land Required

27. The allocated, safeguarded land for a primary school is 2 ha. The Council is requesting that only 0.3 ha of this land remain safeguarded for an 80-place nursery. The appellant contends that 0.2 ha is required, and the Trust and MTC request 0.4 ha.
28. I do not view comparison of the sizes of existing nurseries as particularly helpful here, because they are often in existing buildings and facilities and are likely to have evolved by accommodating and adapting to the existing nature of the building/site, and/or might be inefficiently using a larger building/site than they require, rather than being the optimum size or layout.
29. Government guidance⁷ sets the minimum internal space requirements for nurseries at 3.5 sq m per 0 or 1 year old child, 2.5 sq m per 2 year old, and 2.3 sq m per 3–5 year old. Without knowing the eventual breakdown of the children's ages, it is not possible to use these requirements to come to a definitive figure. However, the Council has set a likely configuration of 12x 0–2 year olds, 24x 2 year olds, and 44x 3–5 year olds. This would equate to 203 sq m. These are net areas, for classrooms, and do not include ancillary facilities. A reasonable expectation is that a nursery should also provide staff facilities, storage and buggy storage, a kitchen, and a utility area. A floorplan was provided at the inquiry for a proposed nursery at another site by an experienced provider, the YMCA. This is for up to 100 pupils, i.e. 20 more than that proposed at the appeal site, and also included a community offer. Its total internal floor area is 500 sq m, of which 107 sq m is allocated to community facilities.
30. The internal size of a nursery is not an exact science and related government guidance is only partial. There is no relevant planning policy. On the evidence before me, I consider a reasonable allowance for an 80-place nursery to be in the region of 400 sq m. That would accommodate sufficient classroom and ancillary space, based on the YMCA's proposal for a slightly higher pupil capacity nursery minus the space allocated for community facilities, and comfortably accommodating the only internal space figures available (i.e. 203 sq m as set out above), flexibility for alternate mixtures of child ages, and ancillary accommodation.
31. Government guidance also strongly encourages access to external areas. I consider that there should be access to high quality outside space on-site in a new build facility even with limited site constraints. In this regard, the Council has adopted the base area figure for a primary school from further government guidance⁸, which is 2,400 sq m, or 0.24 ha. However, a primary school has far greater outdoor space requirements than a nursery, for example for sports and leisure facilities amongst much else. I do not agree, therefore, that using a figure based on this provides a reasonable basis for calculating outside space for a nursery. The same government guidance sets the minimum gross outdoor site area for nurseries at 6 sq m per child. This equates to 480 sq m for an 80-place nursery, or 0.048 ha. The maximum is

⁷ Paragraph 3.58 of The Statutory framework for the early years foundation stage – Setting the standards for learning, development and care for children from birth to five, published 31 March 2011, by the DoE, ED05

⁸ Annex B, Area Guidelines for mainstream schools – Building Bulletin 103, dated June 2014, by the DoE, ED04

set at 7.5 sq m per child, which equates to 600 sq m (0.06 ha). It seems to me that the higher figure should be adopted for a new build provision on a site with minimal physical constraints and where seeking to allow for a high standard of development. The combined internal and external floorspace requirements would therefore be approximately 1,000 sq m, or 0.1 ha.

32. The allocated nursery land also needs to provide car parking for staff, and potentially parents, and drop-off facilities. There are no car parking standards for nurseries. Limited evidence was provided at the inquiry of what reasonable parking provision should be for a nursery at the appeal site, although the Council suggested 23 spaces, with MTC highlighting a potential nursery site in Yate with an alleged allocation of up to 34 spaces, albeit without any detailed information provided to confirm this. The proposed site layout and the relationship to internal roads and access points is also not yet known. Agency advice, from Jones Lang LaSalle, has been provided from the appellant that a total site area of 0.2 ha should be sufficient, but the advice lacks granular detail or empirical justification. The YMCA has stated that it would require a 500 sq m building and a total site area of 0.3 ha, including car parking and drop-off provision. It subsequently indicated a preference for a total site area of 0.4 ha, but this was based on potential future expansion, which is not being suggested is likely to be required at the appeal site, and extra parking so as not to negatively impact on local traffic flows, which, as set out later on, I consider not to be a particular issue at this site.
33. For the purposes of these appeals, the only reasonable approach I can adopt is to allow for sufficient land to accommodate a high quality 80-place nursery with associated outside space and car parking/drop-off, but without over-allocating land and thereby negatively affecting efficient use of the appeal site. Taking everything into account, and particularly taking note that the Education Authority and the YMCA both use this figure, I assess this to be 0.3 ha, comprising 0.1 ha for the building and outside play space and 0.2 ha for parking and drop-off etc. Some further flexibility within this space is also likely to be possible, because the nursery building could be two-storeys and therefore have a reduced footprint. A one-storey building would provide easier access to outside space but there are plenty of examples of nurseries successfully operating from two-storey buildings.
34. The location of the land to be allocated for the nursery is not set by Appeal C. At the inquiry, the presence of a small area of undevelopable land in the likely area where the nursery could be located was discussed. However, it was found that much of this land, if not all, could still be used for outside space and/or parking in any event because the 'undevelopable' label relates simply to a no foundations/no dig area around an underground electricity cable. Given the uncertainties of the eventual location and the minimal likely constraints provided by this area of undevelopable land, I do not consider this further.
35. Drawing all of the above together, I consider that there remains a need to safeguard land for nursery provision and that the amount of land required to be safeguarded for that purpose should be 0.3 ha. Subject to this, the land would adequately provide for early-years/nursery education facilities, as required by the 2013 UU.

Ecology (Appeals A and C)

36. Paragraph 180 of the National Planning Policy Framework (the Framework) sets out a clear hierarchy for proposals affecting biodiversity. The hierarchy is to: firstly, avoid harm; secondly, where this is not possible, to mitigate any harm on-site; thirdly, as a last resort, to compensate for any residual harm.
37. The appeals site is of relatively low ecological value. It mostly comprises grassland, with small areas of scrub, and hedgerows to some of the site boundaries. The primary feature of ecological value is a species-rich hedgerow that runs across the centre of the site from east to west. This not only provides habitat but also a transit route for wildlife. However, even this hedgerow is only of parish level importance in ecological terms.
38. Development of the site would inevitably lead to the loss of the majority of the existing grass and scrubland. It is also not possible to avoid the loss of the hedgerow and also develop the appeal site in an efficient manner for housing and/or a nursery. Or, for that matter, for a primary school, had the land been used as originally intended. This is because the hedgerow runs across the middle of the appeal site and any layout solutions that avoid it entirely would result in a proposal that did not make efficient use of the site, contrary to basic planning principles as set out in Paragraph 124 of the Framework. It is not possible to efficiently develop the appeal site and to avoid all harm to biodiversity.
39. The appellant has proposed mitigation in the form of native scrub and wildflower planting, sustainable urban drainage systems incorporating wet grassland, and replacement hedgerow planting. This has been illustrated on landscape masterplans for both Appeals A and C, and is cross-referenced to detailed data supporting a Natural England Biodiversity Metric 3.0 calculation. The assumptions made by the appellant regarding areas of landscaping and hedgerow provision appear reasonable, with significant proportions of the site set aside from built development, where both biodiversity and other infrastructure, such as drainage, could be provided. Importantly, the Council has accepted that the provision of hedgerows to the site boundaries would provide suitable replacement wildlife transit opportunities.
40. I acknowledge that the landscape masterplans are indicative and subject to change at reserved matters stage. However, there is no evidence before me that something in the order of the ecological mitigation the appellant has proposed could not be achieved on site, for either Appeal A or C. It should be remembered that the existing level of biodiversity to be mitigated is fairly low. It is common practice to set out a high level approach, subject to review at reserved matters and condition discharge stages. A condition could require the provision and agreement of a detailed Ecological Parameters Plan. The Council would remain in control of the level of on-site biodiversity mitigation to be provided through the approval of those submissions.
41. Full on-site mitigation is not achievable. Compensation for residual harm is therefore required. In this regard, although The Environment Act 2021 has now passed, secondary legislation is required for it to be implemented. Therefore, the 10% biodiversity net gain requirement set out in the Act is

not yet law and is not applicable to these appeals. Policy CP50 of the CS, and Paragraph 174 of the Framework, both seek a net gain in biodiversity without identifying a specific percentage. A net gain of just 1% would be policy compliant in these circumstances. This could be secured by a planning obligation.

42. The Trust has raised concerns regarding the effect of the proposals on Conygre Mead, a nearby nature reserve and County Wildlife Site. The specific concerns relate to use of the site as a transit for wildlife seeking access to the Mead, and the potential effect on the Mead from changes to surface water run-off caused by the proposals. However, no substantive evidence has been provided of harmful effects from the proposals on transit routes for wildlife. In any event, this could be considered as part of any future reserved matters and condition discharge submissions. Conditions could also control details of the proposed drainage measures to ensure that the effect from surface water run-off would be appropriately managed.
43. Overall, the proposals would meet the biodiversity hierarchy as set out in Policy CP50 of the CS and Paragraph 180 of the Framework, and, subject to further details that could be controlled at reserved matters and condition discharge submissions, and through an appropriately worded clause in the planning obligation, the proposals would not have an unacceptable effect on biodiversity, including hedgerows.

Location (Appeals A and C)

44. Malmesbury is an identified Market Town, the second highest category of settlement in the CS. Market Towns are considered to support sustainable patterns of living and to have the potential for significant development, as set out in Policy CP1 of the CS. However, Policy CP2 of the CS states that development will not be permitted outside the 'limits of development' as defined on the Proposals Map, other than for the exceptions set out in Paragraph 4.25 of the CS. It is common ground that the appeals site sits outside of the defined 'limits of development' and that none of the exceptions apply. Appeals A and C are therefore in conflict with Policies CP1 and CP2 as a matter of principle.
45. The CS makes it clear that the high-level development strategy set out in Policies CP1 and CP2 should be read in conjunction with the relevant Community Area policy. The appeals site sits in the Malmesbury Community Area, which is the subject of Policy CP13. This policy directs growth to reflect the constraints set out in Policies CP1 and CP2. Saved Policy H4 of the LP also restricts development in the countryside, other than in specified circumstances, none of which apply to the proposals. The proposals therefore also conflict with Policies CP13 and H4.
46. The appeals site falls within the Malmesbury Neighbourhood Plan area, within the 'Malmesbury Town' part of the MNP area. Five allocated housing sites are within this area, none of which cover the appeal site. There are no specific policies within the MNP which prohibit residential development coming forward outside of the allocations, but equally there are no policies which support it. The MNP is silent with regard to such development, although it is implicit that the allocated housing sites are deemed sufficient to meet the housing need for Malmesbury. There are also no policies with

regard to nursery provision. I consequently find no direct conflict with the MNP in these respects.

47. Therefore, having regard to the locational policies in the Development Plan, the appeals site represents an inappropriate location for housing or a nursery.

Highways (Appeals A and C)

48. As set out in the Statement of Common Ground, this is not a matter at issue between the Council and the appellant. It continues, however, to be a matter of considerable concern for the two Rule 6 parties, and local residents.
49. The appeals site is set to the south of Filands Road, with a further area of undeveloped land between the site and the road, i.e. the 'northern parcel'. Access to Filands Road would be through the 'northern parcel' land, the intention being to integrate the proposed development schemes with the future development on the 'northern parcel' site.
50. The applications for Appeals A and C were accompanied by detailed Transport Assessments, recording traffic levels, assessing highway safety and accident data, and using traffic modelling to predict the effects of the proposals and other commitments. The Transport Assessments conclude that Filands Road and nearby junctions are not particularly busy and do not suffer from unacceptable levels of congestion. The modelling for the proposals concludes that there would be relatively limited additional traffic generated by the proposals and that the surrounding road network would be comfortably able to accommodate the increased traffic flows. Safety data has been provided and there was only one recorded accident on Filands Road, with only a minor injury.
51. Anecdotal evidence was provided at the inquiry regarding the 'busyness' of the local roads and safety. However, no substantive evidence has been provided of safety issues or traffic congestion in the area, or of the likelihood of the proposals materially worsening the existing situation. There may well be incidents of speeding on Filands Road, but no evidence has been provided of any particular safety issue or high accident record along this road in comparison to the national highway network. I also note that the Highways Authority has assessed the proposals and raises no objection. Conditions and reserved matters submissions could control the detail and acceptability of visibility splays, highway layouts, and access points to Filands Road.
52. Consequently, the proposals would not have an unacceptable adverse effect on highway safety or the efficient operation of the highway network in the vicinity of the appeals site. There is no conflict, therefore, with Policies CP61 and CP62 of the CS, and Chapter 9 of the Framework.

OTHER MATTERS

Housing Land Supply

53. It is common ground that the Council cannot demonstrate a five-year supply of deliverable housing sites, thus engaging the so-called 'tilted balance' set out at paragraph 11d) of the Framework. However, the supply of housing, and therefore the degree of the shortfall, is contested. In this regard, the

housing land supply figure is calculated using the base date of April 2019. I have relied on evidence to the present day, but have only considered sites that were included as of April 2019. Therefore, recent sites such as Backridge Farm have not been taken into account. This is important for consistency and to ensure that the housing land supply situation is equally updated with regard to both demand and supply measures. The Framework is clear that for sites to be considered as 'deliverable', there must be a realistic prospect that housing will be delivered on them within five years, and for sites either without permission or with only outline permission this must be demonstrated through clear evidence.

54. I take the disputed sites in turn below⁹:

- Site 24, Land at Empress Way – there remain many unresolved objections to a current planning application, including from the Environment Agency with regard to nitrate pollution, which is a known problem for residential planning permissions and could be difficult and time consuming to resolve. There is therefore no clear evidence that these will be delivered. The homes should be removed from the supply;
- Site 64, Former Wiltshire College – the Council agreed to remove this site from the supply;
- Site 158, Land at Elm Grove Farm – an outline planning application was made in November 2019. There remain unresolved issues regarding access, layout and heritage and no convincing timetable or evidence has been provided that these could be overcome in a timely manner. There is therefore no clear evidence that these will be delivered. The homes should be removed from the supply;
- Site 163, Southwick Court – an outline planning application was made in January 2020, and is not yet determined. There remain outstanding objections, including from the Council's Design Officer and the Environment Agency. The timetable set out in the Statement of Common Ground¹⁰ relied on outline planning permission being granted in December 2019. There is no clear evidence that these homes can be delivered within five years, and the homes should be removed from the supply;
- Site 192, Land North of Hilltop Way – outline planning permission has been granted and the reserved matters application has been submitted. Although not yet determined, the reserved matters submissions have been made by a housebuilder, and the proposed development is relatively small at 10 homes and would be capable of being delivered relatively quickly following the granting of reserved matters consent. I am therefore satisfied that these dwellings are likely to be delivered within five years and should be retained within the supply;
- Site 215, Finch House – this is for extra-care, class C2 accommodation. Planning Practice Guidance (the PPG)¹¹ is clear that the contribution of such accommodation is based on the amount of accommodation released

⁹ Scott Schedule, dated 22 November 2021, ID07

¹⁰ See Appendix 44 to the Council's Housing Land Supply Proof of Evidence

¹¹ Paragraph: 035 Reference ID: 68-035-20190722

in the housing market, and does not distinguish or make allowance for self-contained class C2 accommodation. Therefore, the ratio of 1.8 should be applied to this permission to reflect the accommodation likely to be released onto the market. The permission is for 21 flats and applying the ratio reduces the contribution to housing supply to 12 homes;

- Site 227, Land at Netherhampton Road – outline planning permission was granted in June 2020 for approximately 600 units. Some pre-commencement conditions have already been discharged. The reserved matters application for the first 234 dwellings was submitted in October 2021 and is yet to be determined. There is no certainty of the timescale of the approval of this reserved matters application, but it is reasonable to assume that it could be approved in time to allow for delivery of the 60 homes from the reserved matters application that have been allowed for in the supply. These only constitute a relatively small proportion of the overall site, within five years. The homes should be retained within the supply;
 - Site 230, Land at Rowbarrow – an application for full permission was made in January 2020. In November 2021, revised information was submitted and negotiations are ongoing regarding resolving flood risk issues. The applicant is a developer, Bellway Homes, and they have entered into negotiations to finalise the relevant planning obligation, as well as agreeing to an extension of time to determine the application to try and secure a January 2022 committee date. These all point to momentum being behind the application. The Council has only included 70 of the proposed 95 homes in their supply. I view this as a reasonable assumption, and these homes should be retained;
 - Site 231, Clover Lane – this is an allocated site but there is no current planning application, no developer is on board, and no clear evidence has been provided that an application is forthcoming, nor of a reasonable or likely timescale for delivery of the allocated homes. The homes should be removed from the supply;
 - Site 232, Land off Larkhill Road – an outline planning application was made in May 2020. It is yet to be determined and there remain objections in relation to design and drainage. There is no certainty that these can be overcome, or what the timescales may be for resolving them. There is therefore no clear evidence that these homes can be delivered within five years, and the homes should be removed from the supply; and,
 - Site 233, The Yard – outline planning permission has already been granted. A current reserved matters application is due to be determined shortly and simultaneous condition discharge applications have been made. A developer is on board. The homes should be retained in the supply.
55. The agreed five-year housing need incorporating a 5% buffer is 10,533 dwellings. I calculate the housing supply to be 9,605 homes (the Council's deliverable supply number) minus the 316 homes that I have identified to be removed above. This equals 9,289 homes, which in turn provides a housing land supply figure of 4.41 years for the purposes of these appeals.

Letters of Objection

56. Letters of objection have been received regarding the three appeals. In addition to the matters covered above, they raise concerns with the lack of education capacity in Malmesbury, that the proposed homes would exacerbate this situation, overflow car parking, overall scale of the combined proposals along Filands Road, over-provision of housing in Malmesbury, surface water drainage, the capacity of local infrastructure to cope, requests that the entire land should be used for community use if not a primary school, and the potential effects on a right of way across the site.
57. I have taken all these factors into consideration. No substantiated evidence has been submitted to support these concerns. The technical information that accompanied the planning applications, such as the Transport Assessment and Flood Risk Assessment, have been considered by the Council and other relevant statutory authorities, and have been found to be acceptable. Other matters can be addressed by conditions or are dealt with by the planning obligations.

PLANNING OBLIGATIONS (APPEALS A AND C)

58. A s106 Planning Obligation, dated 16 December 2021, has been submitted in relation to Appeal C (the s106). A Unilateral Undertaking, dated 14 December 2021, has been submitted in relation to Appeal A (the 2021 UU).
59. The s106 secures the provision of at least 40% of the dwellings as affordable housing, of which 60% are to be affordable rented units with a rent at no more than 80% of open market rents, and 40% are to be shared ownership units. The mix is to be determined when the overall housing mix is known. This level of provision complies with Policy CP43 of the CS.
60. The s106 secures contributions towards early-years, primary school, and secondary school education. The precise contributions are to be calculated when the final housing mix is known, so that the contribution fairly relates to the demand for school places generated by the proposals. The early-years is necessary for Appeal C, despite the provision of land allocated for a nursery on-site, because the appeal only secures the land for a nursery, and providing new nursery provision, on the appeal site or elsewhere, still requires funding.
61. The s106 secures the land to be used to construct a nursery. For the reasons set out above, I set this at 0.3 ha of land. Construction of the nursery on this land is to commence within 10 years, otherwise the land is to revert back to the appellant.
62. The s106 secures open space and a play area to be provided on the site in perpetuity. The sizes of these areas are to be calculated when the final housing mix is known, so that they reflect the demand for open and play space created by the final housing mix. The provision accords with Policy CP52 of the CS and Saved Policy CF3 of the LP. The s106 secures various controls and commitments in relation to the provision of sustainable urban drainage infrastructure. It also sets out details of the management of the spaces and drainage infrastructure by a management company and the

- funding of such management in perpetuity, also in accordance with the requirements of Policy CP52.
63. The s106 secures a contribution towards public art. The precise contribution is to be calculated when the final housing numbers are known so that it remains reasonable in scale to the final housing mix. Public art is required to ensure a high quality design is achieved, and its provision complies with Policies CP3 and CP57 of the CS.
 64. The s106 secures £100,000 towards the improvement and conversion of a footpath, 'Malmesbury 8', to a shared foot and cycle path, including surface improvements and lighting. This path is located along the eastern boundary of the appeal site and its improvement would bring direct benefits to the future occupiers of the site, as well as improving links to the centre of Malmesbury. This would ensure that sustainable transport improvements are secured, in accordance with Policies CP52 and CP61 of the CS.
 65. The s106 secures a £6,000 payment for the advertisement and sealing of the related prohibition of driving order (except for busses) at Gilmore Road, and the related provision of a Bus Gate between the appeal site and the existing residential area to the west along the road link proposed between the two sites. The s106 also secures a contribution towards erecting a number plate recognition camera. These measures are required to enforce the controls of non-bus traffic between or through the site to the existing development to the west. These controls are necessary to control traffic flows and prevent rat-running, whilst simultaneously allowing a bus route through the site to service the development. This accords with the requirements for sustainable transport choices as set out in Policies CP60, CP61 and CP62 of the CS.
 66. The s106 secures a contribution towards the costs of upgrading the changing room and pavilion at Malmesbury Cricket Club. The precise contribution is to be calculated when the final housing numbers are known. On-site provision is not possible because of the requirement to provide biodiversity mitigation, drainage features, and landscaped open space. The proposed contribution to off-site provision is therefore reasonable and necessary, and accords with Policy CP3 of the CS.
 67. The s106 secures a contribution towards the provision of waste and recycling containers for each proposed residential unit, in accordance with Policy CP3 of the CS.
 68. The s106 secures a payment towards compensatory biodiversity measures, to secure a biodiversity net gain of 1%. This is the for the reasons set out in detail in the 'Ecology' section above, and ensures that the proposals comply with Policy CP50 of the CS.
 69. The s106 also makes amendments to the 2013 UU in the event that Appeal B is dismissed and Appeal C is allowed. The changes reflect the provision of 0.3 ha of land for a nursery as secured through Appeal C and remove the current Primary School Land obligations.
 70. The 2021 UU is substantively the same as the s106 save for not having any clauses in relation to the provision of nursery land, and not needing to link to the 2013 UU because no changes would be required to that document.

PLANNING BALANCE AND OVERALL CONCLUSION

71. In the section that follows, I have adopted the following ascending scale in terms of weighting – limited, moderate, significant, substantial.
72. The Council has instigated an action plan to remedy the lack of a five-year housing land supply. It is securing consultants to process applications and condition discharges on stalled sites, and provided examples of where this has yielded results, such as Backridge Farm. It has also begun to allow permissions outside of defined settlement boundaries, a matter I return to in detail below.
73. The lack of a five-year housing land supply was first identified in April 2020 when the Purton Road, Swindon decision was made¹², setting the housing land supply at 4.42 – 4.62 years. Since then, the trajectory of the shortfall has been largely flat, with the 4.41 years supply that I have identified above falling within the range set through Purton Road. Therefore, if the action plan is helping, the results have not yet been realised. Having said that, the lack of a five-year housing land supply was first identified relatively recently, in 2020. As such, I do not view the shortfall as persistent. The shortfall is relatively modest, at 0.59 years. The action plan may not yet have yielded concrete results in terms of the housing land supply calculation but it shows a genuine willingness to engage with the problem and to find a resolution.
74. Malmesbury, through a combination of permissions, completions and allocations in the MNP, is providing more housing than has been allocated to the area. However, this is mostly due to the provision of housing along the various Filands Road sites, none of which are allocated in the MNP. These sites have relieved the MNP of the need to formally allocate all of its true housing requirement. This is largely a distraction in any event. Wiltshire Council as a whole is failing to meet its housing land supply requirement. The marginal over-provision in Malmesbury, itself only a product of permissions being granted on unallocated sites, does not weigh heavily against this.
75. I acknowledge that the Housing Delivery Test 2020 shows that Wiltshire Council is currently over-providing housing, at 140% of their requirement. This is a promising figure and I have taken it into account.
76. All in all, due to the relatively modest shortfall, the clear steps being made to address the issue, the relatively high level of provision in Malmesbury, and the positive recent delivery results, I place moderate weight on the lack of a five year housing land supply. However, this conclusion is reliant on a key aspect of the action plan, which is to permit proposals outside of settlement boundaries where there are no other conflicts with the Development Plan. This is highly relevant to Appeals A and C.
77. Providing more housing is one of, if not the most important, aspiration of local and national planning policy. As set out above, the Council is failing to meet its requirement to provide a five-year housing land supply. In that context, the housing being proposed for Appeals A and C is being put forward by a housebuilder that is already active on adjacent sites and has

¹² Appeal Ref APP/Y3940/W/18/3202551, dated 6 April 2020

committed to the timely building of the proposed housing through the wording of the relevant conditions to submitting reserved matters application(s) within one year and to commence within one year of those application(s) being discharged. I therefore afford the proposed provision of housing for Appeals A and C substantial positive weight. The slightly reduced provision in Appeal C, after taking account of the nursery land, is of no material difference in this regard.

78. The proposed affordable housing would not be as cheap, either to rent or buy, as housing in some other parts of Wiltshire, because Malmesbury is a relatively high value area for housing. However, the housing would meet all policy requirements in terms of amount, mix, and type of provision. Both Appeals A and C would offer affordable housing products as defined by national and local planning policy. I do not diminish the weight to be provided to this provision because such housing might be even cheaper in a theoretical location elsewhere. In fact, that Malmesbury is a relatively high value area for housing adds more weight to the need for affordable housing products.
79. Evidence has been provided that there is more affordable housing either already provided or committed for Malmesbury than the identified need. However, that need is as identified in a Development Plan that is out-of-date in relation to housing, and there is an overall identified shortfall in Wiltshire as a whole. I therefore place substantial positive weight on the proposed provision of affordable housing in Appeals A and C. The slightly reduced provision in Appeal C, after taking account of the nursery land, is of no material difference in this regard.
80. A biodiversity net gain would be achieved for Appeals A and C, subject to control through reserved matters and condition discharge submissions, and through an appropriately worded clause in the planning obligation. There would, however, be a loss of on-site biodiversity and the likely net gain is modest. I place limited positive weight on this factor.
81. There would be economic benefits from both Appeals A and C, in the short term through construction employment, and in the longer term through expenditure by future occupants and/or workers in the area. I place significant positive weight on this.
82. For Appeal C, whilst the proposed nursery is required to meet the needs of future occupiers, it would also provide a benefit to the wider community because its capacity would be substantially greater than the likely demand to be generated from future occupiers. However, set against this, the provision of an educational establishment is a requirement of the previous 2013 UU. The amount of land to be safeguarded for educational purposes would actually be significantly reduced as part of the proposal. I therefore place only moderate positive weight on this.
83. Whilst the upgrading of the public right of way to the eastern boundary of the appeals site is intended to mitigate increased use by future occupiers of the proposals, there would be a mutual benefit to the wider community. I place limited positive weight on this.

84. No substantive evidence has been provided that local infrastructure could not cope with the demand created by the future occupiers of the proposed housing. Either the s106 or the 2021 UU would secure the relevant payments and measures to mitigate the effects of the proposals, as set out in detail above. The effect on local infrastructure therefore weighs neutrally in the planning balance.
85. The appeals site is outside the defined settlement boundary for Malmesbury. However, it is already bordered on two sides by residential development, and is likely to be bordered on a third side when the 'northern parcel' is built. Therefore, although there would be the loss of fields directly on the appeals site, the harm to the countryside setting of Malmesbury would be limited as a consequence of either proposal.
86. Malmesbury is an identified Market Town, the second highest category of settlement in the CS. Market Towns are considered to support sustainable patterns of living and to have the potential for significant development, as set out in Policy CP1 of the CS. The provision of housing in this location, and a nursery for Appeal C, is therefore broadly in accordance with the sustainable development principles set out in Paragraph 8 of the Framework. Nevertheless, development of either housing or a nursery outside of a defined Settlement Boundary conflicts with Policies CP1, CP2 and CP13 of the CS, and Saved Policy H4 of the LP. I place limited negative weight on this conflict. In addition, Saved Policy H4 of the LP, only carries limited weight because it is inconsistent with the Framework given the in-principle restrictions the policy places upon development in the countryside. I note that there is no direct conflict with any of the policies in the MNP, although there is implicit conflict with the MNP's aspirations because the appeal site is not one of the specifically identified sites for housing.
87. Safeguarding education provision on the appeals site is a key component of the 2013 permission. By not providing any educational facilities, there would be substantial harm to the community. I therefore place substantial negative weight on the lack of education provision in Appeal A.
88. However, for Appeal C, land is to be set aside for a nursery which I have concluded would meet the residual requirements for educational use of the land associated with the 2013 permission. The eventual nursery, when built, would provide places for children above and beyond the demand generated by the future occupiers of the proposal. However, the construction of the nursery is not part of the proposal, and therefore this weighs neutrally in the planning balance.
89. For Appeal C, the only conflict with the Development Plan I have found is with the locational policies as detailed above. Whilst these policies are the most important policies for determining the appeal, they are out-of-date which diminishes the weight that I apply to the conflict. In any event, the Council confirmed that parts of its action plan to respond to the lack of a five year housing land supply is to allow applications in situations where the only conflict is the location being outside of a defined settlement limit. Under cross-examination, the Council acknowledged that this would apply to both Appeals A and C if the education and ecology issues were overcome. I have found that in relation to Appeal C, these issues are addressed satisfactorily. In the overall planning balance, I consider that the adverse impacts that I

have identified are significantly and demonstrably outweighed by the benefits, when assessed against the policies in the Framework taken as a whole. For the reasons set out above, I conclude that Appeal C should succeed.

90. However, for Appeal A I have found harm with regard to education. I assess this level of harm to be substantial. The adverse impacts I have identified as a consequence of the lack of appropriate safeguarding of land for the future provision of educational facilities as required by the 2013 permission, significantly and demonstrably outweigh the benefits of the proposed housing and associated works, when assessed against the policies in the Framework taken as a whole. For the reasons set out above, I therefore conclude on balance that Appeal A should not succeed.
91. For the reasons above, I conclude that the Appeal B should not succeed.

CONDITIONS (APPEAL C)

92. A schedule of possible conditions was discussed at the inquiry. Given my conclusion in relation to Appeal C, I have considered those in relation to Appeal C in the light of that discussion and of government guidance on the use of conditions in planning permissions.
93. The two time limit conditions, for submission of the reserved matters and for commencement of development, have both been shortened to one year from the standard approach of two years. This is necessary because the provision of housing in a timely manner is a key benefit of the appeal and is reasonable because a developer is already on board and has committed to this timetable.
94. A condition specifying the relevant drawing provides certainty.
95. A condition to limit the number of proposed dwellings was put forward by the main parties. However, I do not see it as necessary or reasonable to arbitrarily limit the number of dwellings before the layout and design of the proposal has been finalised at reserved matters stage.
96. A condition setting a minimum size for the area of nursery land was put forward by the main parties. However, this is to be controlled by the s106 Planning Obligation, as set out in detail below. A condition would unnecessarily duplicate that.
97. A condition requiring a written archaeological report archiving the results of the already undertaken on-site archaeological investigations, and to publish the results in a journal, was put forward by the main parties. However, the appeal site has very limited archaeological potential and I do not view this as being necessary or reasonable.
98. Details of the estate roads, driveways, visibility splays and other similar measures are necessary in the joint interests of highway safety and protecting the character and appearance of the area. Details of the site levels are necessary to protect the character and appearance of the area and to ensure an appropriate relationship with existing and future development on adjoining land.

99. It is necessary to secure measures to protect existing ecology on the site and to mitigate construction effects on habitats and species on and adjacent to the site. Details of external lighting are necessary to mitigate disturbance to commuting and foraging bats.
100. Conditions in relation to protection of trees are necessary to protect the character and appearance of the area. However, whilst conditions were suggested regarding the detailing of landscaping and planting seasons, these matters would be addressed as part of the relevant reserved matters submission(s) and do not require separate control by condition.
101. Whilst conditions were suggested removing permitted development rights in relation to extensions to the proposed dwellings, that is not appropriate at this outline stage. Only when detailed plans are available can an informed assessment be made as to whether there is sufficient justification to warrant that level of control.
102. A contamination condition is necessary to control the effect of construction on contamination and to secure appropriate protection and remediation measures.
103. A Construction Method Statement is required to control the effects of construction on the living conditions of nearby occupiers, highway safety, traffic congestion, and the character and appearance of the site during construction.
104. In order to minimise the contribution of the proposal on air pollution, a condition regarding Ultra Low Energy Vehicle infrastructure is required to secure the provision of electric vehicle charging points, pursuant to Policy CP55 of the CS.
105. Conditions to control surface water and drainage, the culverting of existing ordinary watercourses, and sewerage, are necessary to implement mitigation measures identified as required to control surface water drainage and sewage in the Flood Risk Assessment & Drainage Strategy by Clarkebond, dated 4 May 2021, and to ensure there are no unacceptable impacts on biodiversity including to Conygre Mead.
106. A condition is necessary to secure the detail of the required ecological mitigation measures, and to ensure they are retained. This is required with the submission of the first reserved matters application because all reserved matters submissions have the potential to affect the proposed ecological mitigation measures. This is also reflected in the landscaping condition because of the overlap between some of the likely mitigation measures and landscaping.
107. The pre-commencement conditions are necessarily worded as such, because a later trigger for the submission and/or implementation would limit their effectiveness or the scope of measures which could be used.


INSPECTOR

ANNEX A: APPEARANCES

FOR THE APPELLANT:

Christopher Young, of Queen's Counsel. He called:

Jeff Richards MRTPI	Director, Turley
Jan Kinsman	Consultant, EFM Ltd
David Knight	Director, Clarkebond
Rosie Dinnen MRTPI	Consultant, Tetlow King Planning
Matthew Jones MCIEEM CEnv	Director, EAD Ecology
Richard Harding	Associate Director, Osborne Clarke

FOR THE LOCAL PLANNING AUTHORITY:

Hashi Mohammed, of Counsel. He called:

Lucy-Anne Bryant	Commissioning Manager for Families and Communities
Christopher Roe MRTPI	Spatial Planning Manager for Monitoring and Evidence
Steven Corbin	Senior Planning Officer
Fiona Elphick	Senior Ecology Officer
Dorcas Ephraim	Senior Solicitor
Lee Burman MRTPI	Area Team Leader, Development Management North Team

FOR MALMESBURY TOWN COUNCIL:

Councillor Kim Power	Town Councillor, Deputy Mayor of Malmesbury, and Chair of the Town Council's Joint Neighbourhood Plan Working Group
Thomas de Lange	Local resident and the Filands Speedwatch Team Leader
Andrew Kyte	Trustee of the Malmesbury River Valleys Trust

FOR MALMESBURY CIVIC TRUST:

Councillor Campbell Ritchie	Trustee of the Civic Trust and Town Councillor
Councillor Gavin Grant	Town Councillor

INTERESTED PERSONS:

Laurence Musett Chairman of the Governing Body, Malmesbury Primary School

ANNEX B: DOCUMENTS SUBMITTED DURING AND AFTER THE INQUIRY

- DOC 1 Appellant opening statement
- DOC 2 Wiltshire Council witness list and opening statement
- DOC 3 Malmesbury Town Council opening statement
- DOC 4 Malmesbury Civic Trust opening statement
- DOC 5 Malmesbury Primary School letter, dated 19 November 2021
- DOC 6 Housing land supply round-table session agenda
- DOC 7 Housing land supply Scott Schedule, dated 22 November 2021
- DOC 8 Revised housing land supply calculations
- DOC 9 What's the plan? An Analysis of local plan coverage across England, report by The Countryside Charity, dated May 2020
- DOC 10 Appellant witness list
- DOC 11 Backridge Farm, Malmesbury s106 Planning Obligation, dated 22 October 2021
- DOC 12 Appeal decision Ref APP/Y3940/W/21/3275477 – Chilvester Hill, Calne, dated 22 November 2021
- DOC 13 Site notice photographs
- DOC 14 Malmesbury Community Area Joint Strategic Needs Assessment 2020
- DOC 15 Correspondence between the Council and Malmesbury Primary School, dated 24, 27 and 28 September 2021
- DOC 16 Briefing Note Ref 20-37 - Housing Land Supply Update, dated December 2020
- DOC 17 Committee Report Ref 20/08341/OUT – Land South West of Park Road, Malmesbury, dated 1 December 2021

ANNEX C: SCHEDULE OF PLANNING CONDITIONS FOR APPEAL C

- 1) The development hereby permitted shall take place not later than one year from the date of approval of the last of the reserved matters to be approved.
- 2) Details of the access, 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 takes place and the development shall be carried out as approved.
- 3) Application(s) for approval of the reserved matters shall be made to the local planning authority not later than one year from the date of this permission.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plan: Site Location Plan Ref 32441 9001.
- 5) Prior to commencement of development, details of the estate roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car parking and locations of street trees and street furniture, including the timetable for provision of such works, shall have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details and timetable.
- 6) Prior to commencement of development, including any works of site clearance and preparation, full details of the proposed contours and site levels (above ordnance datum), together with the finished floor slab levels of the proposed buildings and structures (including roads and footpaths), in relation to existing ground levels, shall have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 7) Prior to commencement of development, including any works of site clearance and preparation, an Ecological Construction Method Statement (ECMS) shall be submitted to and approved in writing by the Local Planning Authority. The ECMS shall address the protection and detailed mitigation measures of all receptors within the site, or adjacent to it, likely to be affected by the development process as detailed in Section 4.1 of the Ecological Impact Assessment by EAD Ecology Ref 210205_P1088_EcIA_Final02, dated 5 February 2021. The ECMS shall also detail that no external lighting will be permitted during the construction phase other than in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved ECMS.
- 8) Prior to commencement of development, including any works of site clearance and preparation, an Arboricultural Method Statement prepared by an arboricultural consultant providing details of construction works in relation to retained trees and vegetation shall have been submitted to and approved in writing by the Local Planning Authority. All works shall

subsequently be carried out in strict accordance with the approved details. In particular, the method statement must provide the following:

- a) A specification for protective fencing to trees and vegetation during both demolition and construction phases which complies with BS5837:2012 and a plan indicating the alignment of the protective fencing;
- b) A specification for any scaffolding and ground protection within tree protection zones in accordance with British Standard 5837:2012;
- c) A schedule of tree works conforming to British Standard 3998:2010;
- d) Details of general arboricultural matters such as the area for storage of materials, concrete mixing and use of fires;
- e) Plans and particulars showing the siting of the service and piping infrastructure;
- f) A full specification on how the construction of the access road and parking spaces will be achieved within the RPA of T16 including details of any no-dig method;
- g) Details of the length of G1 to be removed to facilitate the pedestrian access along with clarification of the impacts on G17;
- h) Details of how the cycleway will be constructed within the RPA of T1;
- i) Details of the works requiring arboricultural supervision to be carried out by the developer's arboricultural consultant, including details of the frequency of supervisory visits and procedure for notifying the Local Planning Authority of the findings of the supervisory visits; and,
- j) Details of all other activities, which have implications for trees on or adjacent to the site.

Subsequently, and until the completion of all site works, site visits shall be carried out on a monthly basis by the developer's arboricultural consultant. A report detailing the results of site supervision and any necessary remedial works undertaken or required shall then be submitted to the Local Planning Authority. Any approved remedial works shall subsequently be carried out under strict supervision by the arboricultural consultant following that approval.

- 9) Prior to commencement of development, (other than as required to be carried out as part of a scheme of remediation approved by the Local Planning Authority under this condition), Steps (i) to (iii) below shall have been fully complied with.

Step (i) 'A survey of the extent, nature and scale of contamination on site': The collection and interpretation of relevant information to form a conceptual model of the site, and a preliminary risk assessment of all the likely pollutant linkages. If the preliminary risk assessment identifies any potentially significant pollutant linkages a ground investigation shall be carried out, to provide further information on the location, type and

concentration of contaminants in the soil and groundwater and other characteristics that can influence the behaviour of the contaminants. An assessment of the potential risks to: • human health; • property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes; • adjoining land; • groundwater and surface waters; • ecological systems; and, • archaeological sites and ancient monuments. This must be conducted in accordance with the Environment Agency's "Land Contamination Risk Management" document and other authoritative guidance.

Step (ii) 'Submission of Remediation Scheme': If any unacceptable risks are identified as a result of the investigation and assessment referred to in Step (i) above, a detailed remediation scheme to bring the site to a condition suitable for the intended use must be prepared. This should detail the works required to remove any unacceptable risks to human health, buildings and other property and the natural and historical environment, should be submitted to and approved in writing by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, a timetable of works and site management procedures.

Step (iii) 'Implementation of Approved Remediation Scheme': The approved remediation scheme under Step (ii) must be carried out in accordance with its requirements. The Local Planning Authority must be given at least two weeks written notification of commencement of the remediation scheme works.

If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until Step (iv) has been complied with in full.

Step (iv) 'Reporting of Unexpected Contamination': In the event that contamination is found at any time when carrying out the approved development that was not previously identified it should be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment should be undertaken in accordance with the requirements of Step (i) above and where remediation is necessary, a remediation scheme should be prepared in accordance with the requirements of Step (ii) and submitted to and approved in writing by the Local Planning Authority.

- 10) Prior to commencement of development, including any works of site clearance and preparation, a Construction Method Statement (CMS) shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved CMS, which shall include the following:
- a) the on-site parking of vehicles of site operatives and visitors;
 - b) loading and unloading of plant and materials;
 - c) storage of plant and materials used in constructing the development;

- d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - e) wheel washing facilities;
 - f) measures to control the emission of dust and dirt during construction and prohibition on burning of materials;
 - g) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - i) hours of construction to be restricted so that no construction or demolition work shall take place on Sundays or Public Holidays or outside the hours of 0800 to 18:00 Monday to Friday and 08:00 to 13:00 on Saturdays;
 - j) drainage arrangements during the construction works;
 - k) on-site vehicle routing for construction vehicles including site access management strategy to manage access during construction works; and,
 - l) where piling is required this must be 'continuous flight auger' piling wherever practicable to minimise impacts.
- 11) Prior to commencement of development, a scheme of Ultra Low Energy Vehicle infrastructure for the site shall be submitted to and approved in writing by the Local Planning Authority. All Ultra Low Energy Vehicle infrastructure must subsequently be implemented prior to the occupation of the relevant dwelling. The scheme must thereafter be permanently retained.
- 12) Prior to commencement of development, a scheme for the discharge of surface water from the site (including surface water from the access/driveways), incorporating sustainable drainage measures, management of overland flow routes and a maintenance schedule for those drainage systems for the lifetime of the development and arrangements for the adoption by any public or statutory undertaker and any other arrangements to secure operation of the scheme throughout its lifetime, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in accordance with the approved details prior to the occupation of the first dwelling on site, and shall be managed in accordance with the approved details thereafter.
- 13) Prior to commencement of development, a detailed assessment for the culverting of existing ordinary watercourses shall be submitted to and approved in writing by the Local Planning Authority. The assessment must demonstrate through hydraulic modelling that the culverting will not increase risk of flooding to the site/adjacent land and upstream catchments, and that the technical benefits of watercourse culverting outweigh any potential loss of amenity/biodiversity in the watercourse. The approved scheme shall be implemented in accordance with the approved details prior to the occupation of the first dwelling on the site. The scheme must thereafter be permanently retained.

- 14) Prior to commencement of development, details of the works for the disposal of sewage including the point of connection to the existing public sewer shall be submitted to and approved in writing by the Local Planning Authority. No dwelling shall be first occupied until the approved sewerage details in relation to that dwelling have been fully implemented in accordance with the approved details.
- 15) The first reserved matters applications to be submitted shall be accompanied by an Ecological Parameters Plan showing the locations and specifications of all measures labelled as ecological enhancements in Section 4.2 of the Ecological Impact Assessment by EAD Ecology Ref 210205_P1088_EcIA_Final02, dated 5 February 2021, and proposals for on-site replacement hedgerow(s), together with a schedule of works to ensure the measures are retained and maintained in the approved form. Development shall not commence, including any works of site clearance and preparation, until the Plan has been approved in writing by the Local Planning Authority. All reserved matters applications shall accord with the approved details and the development shall be undertaken in strict accordance with those details. The approved measures shall be retained and maintained in the approved form.
- 16) The roads, including footpaths and turning spaces approved pursuant to condition 2, shall be constructed so as to ensure that, before it is occupied, each dwelling has been provided with a properly consolidated and surfaced footpath and carriageway to at least base course level between the dwelling and existing highway.

-----END OF CONDITIONS SCHEDULE-----