



Department for  
Communities and  
Local Government

Miss Camilla Fisher  
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Our Ref: APP/Y3940/A/13/2206963

Your Ref: OXF8221

27 October 2014

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY MACTAGGART & MICKEL LTD  
LAND OFF COATE ROAD AND WINDSOR DRIVE, DEVIZES, WILTSHIRE  
APPLICATION REF: E/2013/0083/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, John Felgate BA (Hons), MA, MRTPI, who held a public local inquiry from 8 to 11 April 2014 into your clients' appeal against the refusal of Wiltshire Council ("the Council") to grant planning permission for a residential development of up to 350 dwellings, local centre of up to 700 sq. m of Class A1 retail use, open space, access roads, cycleway, footpaths, landscaping and associated engineering works, in accordance with application ref: E/2013/0083/OUT, dated 23 January 2013.
2. On 13 November 2013 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves proposals for residential development of over 150 units or on sites of over 5 hectares.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be allowed and planning permission granted. For the reasons given below, the Secretary of State disagrees with the Inspector's conclusions and recommendation. He has decided to dismiss the appeal and refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

**Procedural Matters**

4. The Secretary of State is in receipt of post inquiry representations which were received by the Planning Inspectorate too late to be considered by the Inspector. The representations are from Mr Charles Jenkins dated 18 March 2014, Miss Philippa Gold dated 29 March 2014, Dr Don Rutherford dated 6 April and Tony Batchelor dated 8

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April 2014. The Secretary of State has given careful consideration to these representations but, as they do not raise new matters that would affect his decision, he has not considered it necessary to circulate them to all parties. However, copies may be obtained, on written request, from the address at the foot of the first page of this letter.

5. The application for costs made by your clients (IR7) is the subject of a decision letter which will be issued separately by the Secretary of State.

### **Policy considerations**

6. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the saved policies of the Kennet District Local Plan 2011 (KLP), adopted on 30 April 2004 for a plan period of 1991-2011 (IR18). The Secretary of State agrees with the Inspector that the elements of that Plan most relevant to this case are those referred to at IR19-21.
7. Material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework, March 2012) and the associated guidance issued in March 2014. He has also taken into account the Community Infrastructure Levy (CIL) Regulations 2010 as amended and the Written Ministerial Statement on Neighbourhood Planning of 10 July 2014.
8. Other material considerations include the emerging Wiltshire Core Strategy (WCS), which is nearing the end of its examination stage. A supplementary Hearing Session was held on Tuesday 30 September 2014 and the inspector is now completing his report to the Council with precise recommendations. Furthermore, the Secretary of State has also had regard to the draft Devizes Area Neighbourhood Plan (DANP) which has now been submitted to the Council for examination. The formal publicity period began on 29 September and concludes on Wednesday 12 November 2014, following which it will be considered by an Independent Examiner appointed by the Council and then, if approved by the Council, subjected to a referendum.

### **Main issues**

9. The Secretary of State agrees with the Inspector that the main issues are those listed at IR181.

### Housing need

10. For the reasons given at IR182-197, the Secretary of State agrees with the Inspector's conclusion at IR198-200 that the 5-year supply calculation should be based on the East Wiltshire HMA area and on the Council's requirement figure of 1,446 dwellings. He also agrees with the Inspector's view that there was only 4.1 years' worth of supply for the East Wiltshire HMA at the time of the appeal inquiry, so that the requirement in the Framework for a deliverable 5-year supply was not being met; but he accepts that this figure may alter as a result of the further work on the WCS referred to in paragraph 8 above. He also agrees (IR200) that the capacity of the appeal site to accommodate 350 dwellings is greater than needed to make good the 5-year supply. Nevertheless, while also agreeing with the Inspector that the appeal site would be of an appropriate size to help to meet the outstanding requirement for the Devizes area

for the plan period as a whole, the Secretary of State considers that, for the reasons set out at paragraphs 13-15 below, it would be inappropriate to permit release of this site at this time given the stage of preparation of the DANP.

#### Whether the location is acceptable in the light of the conflict with Policies NR6 and CP2

11. For the reasons given at IR201-218, the Secretary of State agrees with the Inspector's conclusions at IR 215 & 219-221 that, although the proposed development would conflict with KLP Policy NR6 and emerging WCS Policy CP2 because the appeal site is outside the 'limits of development' as originally defined in the KLP, the harm caused on the particular site would be limited to the principle of development beyond the urban boundary as currently defined. He agrees with the Inspector (IR215) that there would be little actual tangible harm to the countryside's visual character or other important qualities.
12. The Secretary of State agrees with the Inspector that the development limits in the KLP should now be considered as out of date (IR204 & 206) and that, due to the shortfall in the supply of housing land, greater weight should be given to housing needs than to upholding out-of-date development limits (IR219). He therefore also agrees with the Inspector that the proposed development should not be ruled out purely on the grounds of falling outside the settlement boundary (IR221), although (as dealt with in paragraph 25 below) he takes the view that, given the current uncertainties surrounding the housing requirement to be adopted in the WCS and the content of the emerging DANP, there are other factors to be weighed in the overall balance.

#### Community-led Planning

13. Having carefully considered the Inspector's reasoning at IR222-231, the Secretary of State disagrees with his conclusion at IR232 that the desirability of entrusting decisions to community-led planning and encouraging neighbourhood plans is outweighed in this instance by the need to rectify the shortfall of housing land in the East Wiltshire HMA. In coming to this conclusion, the Secretary of State has given significant weight to the opportunity which the neighbourhood plan process gives local people to ensure they get the right types of development for their community. Furthermore, while accepting the need to plan positively to support strategic development needs, he considers that, in view of the stage of preparation reached by the DANP, it would not be appropriate to conclude that its provisions are outweighed by the opportunity which this appeal scheme presents to contribute to meeting the overall housing land requirement.
14. Paragraph 216 of the Framework indicates relevant factors when considering the amount of weight to be given to emerging plans. The Secretary of State notes that the DANP has yet to get through the local authority publicity period, must then complete its assessment by an independent examiner and only then, if the local planning authority is satisfied that the DANP meets the relevant legal tests, be put to public referendum. However, the Written Ministerial Statement amending the recovery criteria for neighbourhood plans referred to in paragraph 7 above reinforced the terms of published planning guidance to make it clear that, once a neighbourhood plan has been submitted formally to the local authority for examination, it (and its policies) represent a material consideration to which weight can be given in considering the planning balance when determining any particular planning application or appeal. This means that the DANP can now be given more weight than at the time of the Inquiry.

15. The Secretary of State takes the view that, as the DANP would eventually form part of the development plan, it should not promote less development than set out in the Local Plan or undermine its strategic policies. Nevertheless, he considers it appropriate to give substantial weight to the proposal's non-conformity with the current draft DANP. In reaching this view, the Secretary of State has had regard to the stage of preparation of the DANP, the content of the consultation statement, the quality and effectiveness of the three consultations carried out prior to submission of the DANP to the local authority, the evidence of local support for the DANP and the fact that the appeal site came second to bottom in the site preference exercise. He has also had regard to the lack of any significant unresolved objections to relevant policies in the DANP at the pre-submission consultation stage and the fact that the non-allocation of the appeal site in the DANP is not in itself inconsistent with the Framework.

### Traffic and Air Quality

16. For the reasons given at IR233-238, the Secretary of State agrees with the Inspector's conclusion at IR239 that the effect of the proposed development on traffic conditions in Devizes would be limited and that a dismissal on this basis alone would not be justified. He also agrees with the Inspector at IR240 that the effects on existing pollutant levels would be negligible.

### **Other matters**

#### General suitability of Devizes

17. For the reasons given at IR241, the Secretary of State agrees with the Inspector at IR242 that, in the context of East Wiltshire and its planning requirements, there would be no reason why Devizes should not be considered a suitable and sustainable location for a development of the size proposed if such a need is demonstrated as being required.

#### Education

18. For the reasons given at IR243-244, the Secretary of State agrees with the Inspector's conclusion at IR244, based on the evidence provided, that a development of the size and type proposed should not put unacceptable pressure on the town's education facilities.

#### Other local services and infrastructure

19. The Secretary of State agrees with the Inspector's reasoning and conclusion at IR245 that the evidence on these matters would not amount to sufficient grounds for a refusal of planning permission.

#### Open Space

20. For the reasons given at IR246-248, the Secretary of State agrees with the Inspector's conclusion at IR249 that the provisions in the Section 106 Agreement (see paragraph 23 below) would meet the need for green space within the development.

#### Housing mix and integration

21. For the reasons given at IR250-251, including having regard to the provisions of the Section 106 Agreement (see paragraph 23 below), the Secretary of State agrees with

the Inspector's conclusion at IR251 that these matters do not give any justifiable grounds for refusal.

### Archaeology

22. The Secretary of State agrees with the Inspector's conclusions at IR252-254 regarding archaeology.

### Benefits of the development

23. The Secretary of State has given careful consideration to the Inspector's conclusions at IR257-259 regarding the benefits of the development and agrees that, in principle, there could be some significant economic and social benefits from it.

### Conditions and planning obligations

24. The Secretary of State has considered the Inspector's reasoning and conclusions at IR268-274 on the proposed planning conditions recommended for inclusion and those not recommended for inclusion. He is satisfied that those conditions set out at Annex 3 to the IR are reasonable and necessary and meet the tests of the Framework and the guidance. However, he does not consider that these overcome his reasons for refusing the appeals. The Secretary of State also agrees with the Inspector's reasoning and conclusions at IR255-56 that the terms of the Section 106 Agreement meet the Framework tests and comply with the CIL Regulations. However, he does not consider that these provisions are sufficient to overcome his concerns with the proposed scheme as identified in this decision letter.

### **Planning balance**

25. The Secretary of State agrees with the Inspector (IR260) that the proposed development would not accord with the most relevant policy in the KLP so that the terms of section 38(6) would justify refusal if there were no other material considerations. The Secretary of State accepts that there are material considerations to set against this including the lack of a 5 year supply of deliverable housing sites, meaning that the relevant KLP policy should not be considered up-to-date, the WCS is likely to require that the settlement boundaries be reviewed, the development is sustainable and the other potential benefits of the proposal set out above. However, because of the present uncertainties over the final outcome of both the WCS and the DANP, there is not yet clarity in relation to the extent to which the settlement boundaries in the KLP may need to be revised. Also, as set out above, the Secretary of State gives substantial weight to the conflict of the proposal with the terms of the emerging DANP. He takes the view that the adverse impacts of granting permission on the appeal site, especially the conflict with the DANP at this stage of its progress, would significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies in the Framework taken as a whole so as to outweigh the presumption in the Framework in favour of sustainable development.

### **Overall conclusions**

26. This is a finely balanced case. Overall, the Secretary of State considers that the proposed development would represent an extension of the built-up area beyond the current urban boundary. He recognises that it would represent a sustainable form of development and that, as the Council cannot demonstrate a 5 year housing land

supply, the key KLP policy is out-of-date. Nevertheless, in the particular circumstances of this case, he does not consider that the benefits of the scheme significantly or demonstrably outweigh its adverse impacts, particularly as a result of the conflicts with the emerging DANP strategy.

### **Formal Decision**

27. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for a residential development of up to 350 dwellings, local centre of up to 700 sq. m of Class A1 retail use, open space, access roads, cycleway, footpaths, landscaping and associated engineering works, in accordance with application ref: E/2013/0083/OUT, dated 23 January 2013.

### **Right to challenge the decision**

28. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

29. A copy of this letter has been sent to Wiltshire Council. A notification e-mail or letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

**Jean Nowak**

Authorised by Secretary of State to sign in that behalf

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# Report to the Secretary of State for Communities and Local Government

by John Felgate BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 3 June 2014

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**TOWN AND COUNTRY PLANNING ACT 1990**

**WILTSHIRE COUNCIL**

**APPEAL BY MACTAGGART & MICKEL LTD**

Inquiry held on 8 - 11 April 2014

Land off Coate Road and Windsor Drive, Devizes, Wiltshire

File Ref: APP/Y3940/A/13/2206963

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## **ABBREVIATIONS USED IN THIS REPORT**

AONB	Area of Outstanding Natural Beauty
AQMA	Air Quality Management Area
CP	Core Policy
DANP	Devizes Area Neighbourhood Plan
DCAP	Devizes Community Area Partnership
DCLG	The Department for Communities and Local Government
DPD	Development Plan Document
EIA	Environmental Impact Assessment
HMA	Housing Market Area
KLP	Kennet Local Plan
LDS	Local Development Scheme
NEQ	North East Quadrant (Tidworth)
NPPF	The National Planning Policy Framework
NPPG	Planning Practice Guidance
RC	Recommended Condition
RR	Refusal reason
RSS	Regional Spatial Strategy
SADPD	Site Allocations DPD
SoS	The Secretary of State (for Communities and Local Government)
WCS	Wiltshire Core Strategy

**File Ref: APP/Y3940/A/13/2206963**

**Land off Coate Road and Windsor Drive, Devizes, Wiltshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mactaggart & Mickel Ltd against the decision of Wiltshire Council.
- The application Ref E/2013/0083/OUT, dated 23 January 2013, was refused by notice dated 25 September 2013.
- The development proposed is: *“Residential development of up to 350 dwellings, local centre of up to 700 sq m of Class A1 retail use, open space, access roads, cycleway, footpaths, landscaping and associated engineering works”.*

**Summary of Recommendation: That the appeal be allowed, and planning permission be granted, subject to the conditions set out in Annex 3.**

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**PRELIMINARY MATTERS**

*The application*

1. The application under appeal seeks outline planning permission, with all matters reserved except for access. The submitted plans are listed at Annex 2. In so far as these include details relating to matters other than access, it was agreed at the inquiry that these are to be treated as illustrative.

*Environmental Impact Assessment screening*

2. Prior to the submission of the application, a request was made for a screening opinion with regard to the possible need for an Environmental Impact Assessment (EIA). In a letter dated 18 July 2012, the Council determined that no EIA was required. The reasons were that the proposal was not of more than local importance, nor was the location particularly sensitive, nor would it have any hazardous or unusually complex effects<sup>1</sup>. A further screening request was made when the appeal was lodged. In a letter dated 24 January 2014, the Secretary of State (SoS) directed that the proposed development was not EIA development<sup>2</sup>.

*Amended plans*

3. The appeal plans listed at Annex 2 incorporate two small amendments to the site boundary, to omit two small parcels of land, in the south-eastern and north-western corners of the site. One of these is a hut used by the Girl Guides, and the other is a small triangle of land adjacent to the highway. The amended plans do not materially affect the issues in the appeal, and the Council does not object to the changes. It was agreed at the inquiry that the new plans be accepted in substitution for those originally submitted. The amended versions are identified as 'Revision A'.

*Withdrawal of refusal reason*

4. The Council's refusal notice gave four reasons for refusal (RRs). RR4 related to archaeology. At the inquiry, the Council agreed that in the light of fieldwork carried out subsequently by the appellants<sup>3</sup>, RR4 could now be overcome by

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<sup>1</sup> Doc. J1/Appx 1 (Screening request July2012, and Council's decision)

<sup>2</sup> Docs. J1/Appxs 4 and 5 ((Screening request July2012, and SoS Direction)

<sup>3</sup> Doc. A5a (Archaeological Evaluation report)

means of a condition<sup>4</sup>. Matters relating to archaeology were also raised by other parties, and these are dealt with elsewhere in my report.

#### *Late submissions*

5. At the inquiry, written rebuttal evidence was produced by the appellants on the subject of air quality<sup>5</sup>, in response to matters raised at the inquiry. In order to ensure natural justice, further written submissions and counter-submissions on these matters were permitted, after the inquiry's close. All the comments thus received have been taken into account.

#### *The inquiry*

6. The inquiry sat for four days, on 8, 9, 10 and 11 April 2014. During this period, I carried out unaccompanied visits on a number of occasions, to view the appeal site itself, and to familiarise myself with the town of Devizes and the surrounding area, including all of the various existing or proposed housing sites in the East Wiltshire area that are referred to in the evidence.

#### *Costs*

7. An application for costs was made by the appellants against the Council. That application is the subject of a separate Report.

## **THE PROPOSED DEVELOPMENT**

#### *The site and surrounding area*

8. Devizes is an attractive market town in the eastern part of Wiltshire. Since the second world war, the town has expanded considerably, particularly to the east and south, and along two pronounced corridors extending to the north-east and north-west. Part of this expansion has been into the adjoining parish of Roundway (which surrounds the town on three sides), and in the north-east it also extends beyond this, into the parish of Bishops Cannings<sup>6</sup>. The north-eastern corridor contains the town's largest employment area, which includes the Hopton and Le Marchant industrial and trading estates.
9. The appeal site is located on the north-eastern side of Devizes, about a mile from the town centre. The site's western boundary runs along Windsor Drive, a modern distributor road which currently forms the outer edge of the town's eastward expansion. The northern boundary follows the Kennet and Avon Canal. Beyond this there is a mixture of housing, employment, retail and leisure, forming part of the north-eastern development corridor. The retail provision includes a Lidl supermarket, and the leisure includes Devizes Marina. On its other two sides, the appeal site adjoins open country.
10. The site is bisected by Coate Road (also referred to as Coate Lane), a rural lane leading to the small settlement of Coate, about one mile away, and designated as part of the National Cycle network. The southern part of the site is also crossed by a track known as Gypsy Patch, a byway open to all traffic. The White Horse

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<sup>4</sup> Doc. CD64 (County Archaeologist's letter dated 8 April 2014)

<sup>5</sup> Doc A7 (Appellants' written statement on air quality)

<sup>6</sup> Doc. CD68 (Parish boundaries map)

Trail footpath route runs along the canal towpath, and the Wessex Ridgeway footpath skirts the site's southern boundary.

11. The site itself comprises about 20 ha of agricultural land, which falls gently from south to north. In the north-western corner are some former farm buildings. The site's boundaries are marked, for the most part, by intermittent hedges and occasional trees, although the hedgerow along the southern boundary is more substantial. Within the site itself, there is little vegetation except for the hedgerows along the Gypsy Patch track, and a small area of scrub woodland in the south-western corner.
12. In its south-eastern corner, the site abuts the edge of the Wessex Downs Area of Outstanding Natural Beauty (AONB).
13. For vehicles, access to the town centre is by joining the A361 London Road at the Windsor Drive roundabout, just to the north of Coate Bridge. Pedestrian and cycle access is also available via the canalside path.

#### *The appeal proposals*

14. The appeal seeks outline permission for up to 350 dwellings, plus a local centre and related development. The indicative proposals in Site Plans 01 and 02 suggest that the local centre might be located adjacent to Windsor Drive, with a linear open space area running alongside the canal frontage, and another area of open space located centrally within the southern area. Coate Road is shown as being retained broadly on its existing alignment, and substantial planting belts are illustrated for the site's eastern and southern boundaries.
15. Detailed approval is sought for two road accesses onto Windsor Drive, as shown on drawings Nos. 2397.11 and Dwg No. 2397.12. The more northerly of these accesses would effectively be a remodelling of the existing Coate Road junction.

#### *The Section 106 agreement*

16. The appeal application is accompanied by an executed Section 106 agreement<sup>7</sup> between the developer, the landowners, and the Council. Clause 5 of the agreement binds the developer to perform the obligations in the various schedules.
17. Schedule 1 requires the developer to make financial contributions to primary and secondary education, public transport, off-site open space, and improvements to the canal bank and towpath<sup>8</sup>. Schedule 2 requires 30% of the proposed new dwellings to be provided as 'affordable housing'. Schedule 3 requires the developer to carry out certain highway works<sup>9</sup>, including off-site improvements to existing junctions on the A361 London Road. Schedule 4 secures the provision of on-site open space areas, to be agreed with the Council, including a 'NEAP' play area and trim trail, and sets out the arrangements for the management and maintenance of these areas.

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<sup>7</sup> Doc. J3 (S.106 agreement)

<sup>8</sup> The contribution to the canal bank and towpath works is referred to as a 'Highways' contribution

<sup>9</sup> Defined at pages 7-9 of the agreement

## PLANNING POLICY

### The Development Plan (the Kennet Local Plan)

18. For the purposes of this appeal<sup>10</sup>, the development plan for this part of Wiltshire currently comprises only the saved policies of the 'Kennet District Local Plan 2011', adopted on 30 April 2004 (the KLP)<sup>11</sup>. The plan was prepared following a consultation process that began in 1998, for a plan period of 1991-2011. It was designed to conform with the Wiltshire Structure Plan adopted in January 2001, and with the Regional Planning Guidance for the South West (RPG10), published in the same year.
19. The KLP's strategic objectives seek, amongst other things, to promote a settlement pattern based upon the three main settlements of Devizes, Marlborough and Tidworth<sup>12</sup>. To this end, Policy HC1 seeks to provide for 7,000 houses up to 2011, concentrating most development in these locations, including various new allocations identified in Policy HC2.
20. The proposals map defines 'development limits' (settlement boundaries) around the main settlements. In the vicinity of the appeal site, the boundary is drawn along Windsor Drive and the canal, so that the site is excluded. Development in the countryside around the towns is controlled by Policy NR6, which states that development will be restricted to sites within development limits, in the interests of sustainable development and the protection of the countryside<sup>13</sup>. Exceptions may be made where the development is of benefit to the rural economy, or to the social well-being of the community, or where other policies permit.
21. Where development outside settlement boundaries is accepted in principle, Policy NR7 seeks to protect the character and quality of the landscape, and its distinctive features, views and visual amenity<sup>14</sup>.

### The Draft Core Strategy

#### *The CS process so far*

22. The draft Wiltshire Core Strategy (WCS) was originally submitted for examination in July 2012. Hearing sessions took place between May to July 2013. Proposed modifications were published in August 2013<sup>15</sup>, and an updated version of the full draft plan, incorporating these modifications, was published in September 2013<sup>16</sup>.
23. Further modifications, in response to this consultation, were proposed by the Council in November 2013, together with a further updated version of the full plan<sup>17</sup>. There then followed a sequence of correspondence<sup>18</sup> between the Council and the examining Inspector, in which various further changes were suggested for consideration.

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<sup>10</sup> And for any other proposals in the former Kennet District, other than minerals and waste

<sup>11</sup> Doc. CD1 (the Kennet Local Plan)

<sup>12</sup> KLP paragraph 1.14

<sup>13</sup> Development in the countryside around the smaller settlements is also controlled by KLP Policy HC26, but it is not disputed that this policy does not apply here.

<sup>14</sup> The proposals map also defines an area as the 'landscape setting of Devizes', in which the appeal site was included, but the relevant policy NR10 was not saved, and this annotation therefore now has no effect.

<sup>15</sup> Doc. CD5a (WCS Proposed Mods August 2013)

<sup>16</sup> Doc. CD5b (Draft WCS updated Sept 2013)

<sup>17</sup> Doc. CD5c (Draft WCS updated Nov. 2013)

<sup>18</sup> Docs. CDS14-16, 21-23, 55, 56 and 66 (WCS Inspector's procedural letters and Council's replies)

24. Following from this exchange with the Inspector, the Council produced for public consultation a further set of proposed modifications in February 2014<sup>19</sup>, and two further sets in April 2014 (one of these being the modifications suggested by the Inspector<sup>20</sup>, and the other incorporating the Council's own latest proposals<sup>21</sup>). The latter two modifications documents are also accompanied by a further updated version of the full draft plan, as at April 2014<sup>22</sup>. At the close of the present appeal inquiry, consultation on these latest modifications was about to commence, and was planned to run until 27 May 2014<sup>23</sup>.

*The original draft plan and examining Inspector's comments*

25. The draft plan, as originally submitted and in the November 2013 modifications, proposed an overall housing provision of 37,000 dwellings for Wiltshire as a whole, broken down between three Housing Market Areas (HMAs). The figure for East Wiltshire, which includes Devizes, was 5,500 dwellings.
26. In his letter to the Council on 2 December 2013 (also referred to as the 10<sup>th</sup> procedural letter)<sup>24</sup>, the examining Inspector presented his preliminary conclusions on the housing numbers. Amongst other comments, his letter states:

*"...However, a housing figure as low as 37,000 homes over the plan period does not appear justified. My current interpretation of the evidence leads me to find that the objectively assessed housing need across the three Wiltshire HMAs would be in the region of 44,000 homes for the plan period.*

*...the Framework calls for a significant boost to housing supply. The preferred Option 1 within the Council's SA identifies the broad acceptability of between 35,800 and 42,100 new homes. With regard to the evidence, including past delivery rates, and to ensure consistency with national policy, I am minded currently to find that the CS housing requirement should be expressed as a minimum figure towards the upper end of this range."*

27. In the same letter, the Inspector also commented on the approach to settlement boundaries:

*"However, the Council has not reviewed the extent of the [settlement] boundaries to inform the CS; instead relying on the pre-existing development plan documents. Some of these were adopted some years ago, for example the Kennet Local Plan (2004), and it cannot be argued with great strength that the settlement boundaries contained therein are up-to-date for the purposes of the CS plan period...."*

28. The same paragraph of the Inspector's letter goes on to record that in Topic Paper 3, Settlement Strategy<sup>25</sup>, the Council itself concedes that the boundaries "... are out of date, do not reflect current urban form, and require review and updating".

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<sup>19</sup> Doc. CD30a (WCS Proposed Mods Feb 2014)

<sup>20</sup> Docs. CD75 (WCS Inspector's Proposed Mods, April 2014)

<sup>21</sup> Docs. CD30b (WCS Proposed Mods, April 2014)

<sup>22</sup> Doc. CD5d (Draft WCS updated April 2014)

<sup>23</sup> Doc. CD75 (Council's note summarising main stages of WCS process since submission)

<sup>24</sup> Docs. CD14 and C6/Appx 2 (WCS Inspector's letter 2 Dec 2013)

<sup>25</sup> Doc CD13 (Topic Paper 3 – Settlement Strategy)



29. In response, the Council proposed, in their letter dated 19 December 2013<sup>26</sup>, to increase the county's total housing provision by 5,000 dwellings, to 42,000 overall. They also proposed to distribute the additional growth between the HMAs mainly on a proportionate basis, although subject to detailed testing for constraints and potential in particular areas. In order to identify the necessary additional sites, the Council proposed to embark on preparing a Site Allocations DPD (the SADPD), to follow after the WCS. In the same letter, the Council accepted the need to review the settlement boundaries and proposed that this be carried out as part of the SADPD.
30. On 23 December 2013, the Inspector replied<sup>27</sup> that the Council's proposals with regard to the overall housing numbers, and the principles of their distribution between the HMAs, seemed reasonable and logical. He also considered that the proposal for a Site Allocations DPD would be likely to be an effective mechanism for resolving specific details within community areas. With regard to the settlement boundaries, the letter warns that *"undue delay in identifying robust boundaries and frontages may weaken the overall approach of the CS in the context of national policy."*
31. Following this letter, in January 2014, the Council approved an amendment to the Local Development Scheme (LDS)<sup>28</sup>, to include a Site Allocations DPD (the SADPD), to be adopted by June 2015. At around the same time, the Council devised a methodology for disaggregating the 5,000 dwelling increase proportionately between HMAs, whilst also taking account of the constraints (environmental, infrastructure, and marketing) in some areas<sup>29</sup>. These were conveyed to the CS Inspector in a letter dated 29 January 2014<sup>30</sup>.
32. On 4 February 2014<sup>31</sup>, the Inspector replied, noting that the programmed adoption dates for both the CS and the SADPD appeared to be the earliest realistic assumptions. With regard to the disaggregation methodology, the Inspector commented that this appeared logical, but given the need for flexibility at Community Area level, the distribution should not be overly prescriptive.
33. On 28 February 2014, the Council wrote further<sup>32</sup>, enclosing a number of new and revised CS documents. These included a schedule of proposed modifications<sup>33</sup>, an updated housing land supply statement<sup>34</sup>, and a proposed breakdown of the increased housing provisions between the HMAs and Community Areas<sup>35</sup>. The latter incorporated a modified distribution to reflect perceived environmental, infrastructure and marketing constraints in some areas.
34. Following these submissions, the Inspector wrote again on 20 March 2014<sup>36</sup> with regard to the need for further public consultation, and commented:

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<sup>26</sup> Docs. CD15 and C6/Appx 12 (Council's WCS letter 19 Dec 2013)

<sup>27</sup> Docs. CD16 and C6/Appx 3 (WCS Inspector's letter 23 Dec 2013)

<sup>28</sup> Docs. CD17 – CD20 (Local Development Scheme revision)

<sup>29</sup> Doc. C6/Appx 13 ('Methodology for Disaggregation of Increased Housing Requirement')

<sup>30</sup> Doc. CD21 (Council's WCS letter 29 Jan 2014)

<sup>31</sup> Docs. CD22 and C6/Appx 4 (WCS Inspector's letter 4 Feb 2014)

<sup>32</sup> Doc. CD23 (Council's WCS letter, 28 Feb 2014)

<sup>33</sup> Doc. Cd23 (WCS proposed Mods, 28 February 2014)

<sup>34</sup> Doc. CD31 (Housing Land Supply at April 2014 – published Feb 2014)

<sup>35</sup> Docs. CD24 and C6/Appx 15 (Topic Paper 15 Addendum – housing requirement technical paper, Feb 2014)

<sup>36</sup> Doc. CD55 (WCS Inspector's letter 20 March 2014)

*“At this stage, I anticipate that following the outcome of the consultation, I will need to determine the need for any further hearing sessions. Provided that I can rely on the written submissions, I will be in a position to finalise my report with any main modifications. Any such modifications will likely require public consultation and potentially update s to the SA/HRA. Following which, the final report will be issued, and the Council can determine whether or not it would wish to adopt the CS.”*

35. On 26 March 2014 the Council replied setting out the timetable for the consultation and the Council’s reporting of responses to the Inspector<sup>37</sup>.
36. The Inspector’s reply of 7 April 2014<sup>38</sup> encloses main modifications suggested by the Inspector himself. The letter notes that the CS examination is on-going, and that all details, including the advice given by the Inspector himself, may yet be subject to further change, in the light of the evidence available when he submits his report.

*The April 2014 draft WCS*<sup>39</sup>

37. Like the earlier versions of the emerging plan, the April 2014 draft aims, amongst other things, *“to provide everyone with access to a decent, affordable home”*, and also to build resilient communities, to protect the natural and built environment, and to ensure that adequate infrastructure is in place<sup>40</sup>.
38. Draft Core Policy (CP) 1 sets out the proposed settlement strategy for the county. The county’s three principal settlements are identified as Chippenham, Salisbury and Trowbridge. In the East Wiltshire HMA, which includes Devizes, there are no principal settlements; but Devizes, Marlborough and Tidworth/Ludgershall are defined as market towns, which are the second tier of the settlement hierarchy.
39. Draft policy CP2 sets out the delivery strategy. For the county as a whole, the proposed housing target for the period 2006-26 is ‘at least’ 42,000 new dwellings. Of this total, the allocation to the East Wilts HMA is a minimum of 5,940 dwellings. Some of the large sites needed are identified within the policy itself, and others are to be defined in subsequent Site Allocations DPDs (development plan documents) or neighbourhood plans. Within settlement boundaries, the draft policy states that there is to be a presumption in favour of sustainable development. Outside those boundaries, development is only to be permitted in exceptional circumstances.
40. The Devizes Area Strategy notes that Devizes is one of the county’s largest market towns, with a large and varied employment base, a relatively high proportion working locally, and a good record of attracting new firms. For these reasons, the town is seen as a strategic location for new employment growth<sup>41</sup>. Traffic congestion and air quality are identified as important local issues, and it is proposed that the pace of development in the town should reduce compared to recent trends, to allow these issues to be addressed through infrastructure improvements. Nevertheless, non-strategic growth should continue to be brought forward and phased throughout the plan period<sup>42</sup>. Development should

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<sup>37</sup> Doc. CD56 (Council’s WCS letter 26 March 2014)

<sup>38</sup> Doc. CD66 (WCS Inspector’s letter 7 April 2014)

<sup>39</sup> Document CD5d (Draft WCS April 2014)

<sup>40</sup> Doc. CD5d (Draft WCS April 2014 – para. 3.2)

<sup>41</sup> Doc. CD5d (Draft WCS April 2014: paras 5.62 – 5.63)

<sup>42</sup> Doc. CD5d (Draft WCS April 2014 : para 5.65)

also protect the landscape settings of the town, the Canal, and the AONB, and the identity of nearby villages.

41. Draft policy CP12 sets out the proposed spatial strategy for the Devizes Community Area, which includes the town of Devizes itself, plus the designated service centre of Market Lavington, and the 'large villages' of Bromham, Rowde, Potterne, Worton, Cheverall, Urchfont and West Lavington/Littleton Pannell. The proposed housing provision for the Community Area as a whole, for 2006-26, is 2,500 dwellings. Of this, about 2,010 is proposed to be at Devizes town, and 490 in the villages. New employment allocations totalling 9.9 ha are also proposed.
42. After taking account of completions and developments already permitted, the numbers still to be identified are said to be 437 dwellings at Devizes town, and 203 in the rest of the Community Area, making 640 dwellings in total<sup>43</sup>.
43. All of these figures for the Community Area and the settlements within it form part of the overall allocation for the East Wilts HMA. Paragraph 4.28 of the draft plan states that the housing figures at these levels are intended to be indicative, to allow some flexibility between areas; that neighbourhood plans should not be constrained to these numbers; and that land supply should be assessed at HMA level.
44. With regard to the 'development limits' around Devizes and other settlements, the draft plan proposes no changes to the boundaries defined in previous local plans, until a review is carried out in the context of a site Allocations DPD or neighbourhood plans<sup>44</sup>. Policy CP2 states that changes to these boundaries will be made only when sites are allocated for development.

#### *The next stages in the WCS process*

45. After the end of the present consultation period, the Council has undertaken to forward the representations received, together with the Council's own comments on these, to the Inspector by 27 May 2014. Then, depending on the nature of the representations received, the Inspector will determine whether any further hearing sessions are necessary. If not, he may proceed to complete and issue his full report. If the Inspector recommends making further modifications, these would then need to be subject to further consultation. The Council will then be in a position to consider adopting the plan.

### **The Draft Neighbourhood Plan**

#### *The neighbourhood planning process so far*

46. The designation of the Devizes Neighbourhood Area was approved on 27 September 2013<sup>45</sup>. The designated area comprises the Devizes Town Council area and the whole of the parishes of Roundway and Bishops Cannings.
47. An 'Initial Consultation Version' of the Devizes Area Neighbourhood Plan (DANP) was published for public consultation from January to March 2014<sup>46</sup>. The draft plan contained detailed policies and proposals relating to housing, education, transport and environmental matters.

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<sup>43</sup> Doc. CD5d (Draft WCS April 2014 : Table 5.6, page 74)

<sup>44</sup> Doc. CD5d (Draft WCS April 2014 : para 4.13)

<sup>45</sup> Document. Cd47 (Neighbourhood Area designation approval notice)

<sup>46</sup> Doc. CD48 (Neighbourhood Plan - Jan 2014)

48. On 4 April 2014, the 'Section 14 Formal Consultation Version' was published<sup>47</sup>. The public consultation period runs until 19 May 2014. The plan is accompanied by a Sustainability Appraisal<sup>48</sup>.

*The April 2014 draft Neighbourhood Plan*

49. The plan period addressed in the draft DANP is the same as that of the WCS, extending to 2026.
50. Unlike the initial draft version, the April 2014 DANP concentrates principally on housing, with the previously proposed content relating to education, transport and the environment having been substantially reduced. The Foreword explains that housing is seen as the most urgent issue because of current development pressures, and that other issues will be tackled in more detail in later iterations<sup>49</sup>. Nonetheless, the plan identifies a number of perceived problems, including: road congestion, limited public transport, limited spare capacity in schools, loss of open spaces, reduction in health services, overloading of GP surgeries, an imbalance between housing and employment, out-commuting, lack of infrastructure provision in past developments, poor air quality, and a need for more affordable housing<sup>50</sup>.
51. With regard to housing, the Neighbourhood Plan seeks to meet an assumed requirement figure of 412 dwellings. This compares broadly with the April 2014 WCS's residual requirement figure of 437. The strategy proposed in the DANP is to disperse this requirement around the plan area, giving preference to small and medium sized sites of up to a maximum of 65 units each. This is seen as having advantages in terms of spreading the load on existing roads, schools and other infrastructure (and especially steering development away from the A361 corridor), promoting integration and social cohesion, maximising the use of brownfield land, and supporting locally-based construction enterprises<sup>51</sup>.
52. In all, 20 sites are proposed as 'preferred sites' for housing development, said to have capacity for 474 dwellings. Of these, just over half are said to be developable within 5 years<sup>52</sup>. In some cases, the plan's assumptions as to deliverability and timing are supported by information supplied by the relevant landowners and developers<sup>53</sup>. The sites are also cross-referable to the Strategic Housing Land Availability Assessment (SHLAA)<sup>54</sup>, which contains the Council's assessments as to timing and capacities. The majority of the sites are previously developed land.
53. In addition, the draft plan proposes to extend the Devizes settlement boundary, to encompass all of the land within the plan area that lies within a 1600m radius from the Market Cross, as shown on DANP Plan 2. Within that area, any additional sites coming forward ahead of the preferred sites in the plan would be considered as replacements, subject to meeting sustainability criteria<sup>55</sup>.

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<sup>47</sup> Doc. CD60 (Neighbourhood Plan - April 2014)

<sup>48</sup> Doc. CD60/Appx 2 (DANP Sustainability Appraisal)

<sup>49</sup> Doc. CD60 (Neighbourhood Plan April 2014: p4)

<sup>50</sup> Doc. CD60 (Neighbourhood Plan April 2014: 2.1 – 3.7)

<sup>51</sup> Doc. CD60 (Neighbourhood Plan April 2014: 5.9 and Policy H2)

<sup>52</sup> Doc. CD60 (Neighbourhood Plan April 2014: Policy H3)

<sup>53</sup> Doc. CD60 (Neighbourhood Plan April 2014: Appx 7 – 'Developer Responses')

<sup>54</sup> Doc. CD10 (SHLAA)

<sup>55</sup> Doc. CD60 (Neighbourhood Plan April 2014: Policies H1 and H3)

However, it does not appear that this is intended to allow additional development over and above the WCS overall requirement of 2,010, which is described in the DANP as a '*limit*', beyond which further development would '*risk seriously overloading the infrastructure [of the town]*',<sup>56</sup>.

*The next stages in the Neighbourhood Plan process*

54. Following the end of the present consultation, the Regulations<sup>57</sup> require the plan to be submitted to the local planning authority for a 6-week period of statutory publicity and representations. The plan must then be subjected to an independent examination, and finally put to a local referendum.

## **National Policy and Guidance**

*The National Planning Policy Framework (NPPF)*

55. The NPPF seeks to encourage and facilitate sustainable development, and advocates a presumption in favour of such development. Paragraph 14 advises that where the development plan is absent, silent or out-of-date, permission for development should be granted, unless the adverse impacts would significantly and demonstrably outweigh the benefits; or unless specific policies in the NPPF indicate that development should be restricted.
56. The core planning principles, at paragraph 17, include: the need for planning to be plan-led, empowering local people; to meet identified housing needs; to recognise the character and beauty of the countryside; to encourage the reuse of brownfield land; and to manage patterns of growth so as to focus developments in locations which are sustainable.
57. Paragraph 47 seeks to boost the supply of housing significantly, and to ensure that local plans meet the full, objectively-assessed needs of each area for market and affordable housing. Paragraph 49 goes on to state that, where there is not a 5-year supply of deliverable housing sites, development plan policies for the supply of land should not be considered up to date. Paragraph 50 seeks to deliver a wide choice of homes, widen opportunities for home ownership, and create sustainable, inclusive and mixed communities.
58. Paragraph 215 advises that due weight should be given to development plan policies, according to their degree of consistency with the NPPF. In the case of emerging plans, weight may be given, depending on their stage of preparation, the extent of any unresolved objections, and their degree of consistency with national policies.

*National Planning Policy Guidance (NPPG)*

59. The national PPG was published shortly before the submission of proofs for the inquiry, and was taken into account in the evidence given. Of particular relevance are the sections of the guidance dealing with housing and economic land availability and needs assessments, and neighbourhood planning.

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<sup>56</sup> Doc. CD60 (Neighbourhood Plan April 2014: 2.3)

<sup>57</sup> The Neighbourhood Planning (General) Regulations 2012

## THE PARTIES' CASES

### The Case for the Council

#### *Submissions relating to RR1: development outside the settlement boundary*

60. The Council's RR1 is that the appeal site is outside the development limits established by the KLP, and that the development would therefore be contrary to Policy NR6.
61. The Council submits that Policy NR6 seeks, as a matter of principle, to restrict development to within the defined settlement boundaries. The proposed development would be outside the boundary for this part of Devizes, and therefore conflicts with the adopted development plan. In accordance with Section 38(6)<sup>58</sup>, permission should therefore be refused unless material considerations indicate otherwise.
62. The aims of Policy NR6 are to protect the countryside and promote sustainable development. These aims are consistent with the NPPF, including the core principles at paragraph 17. Nothing in the NPPF suggests that these aims may not be pursued by means of settlement boundary policies. The Council therefore argues that Policy NR6 is not out-of-date, and is due the full weight of the adopted development plan.
63. When the WCS is adopted, NR6 will be superseded by Policy CP2, but the proposed new policy maintains the same approach with regard to identifying settlement boundaries and confining development to within them. The Council points out that the WCS examination has reached an advanced stage, in that all of the programmed hearing sessions have been held, and the Inspector has given feedback on several important matters, including the principle of settlement boundaries. Although he has raised a concern about whether the boundaries are still up-to-date, he is evidently satisfied that this can be addressed in a review, and that in the meantime the existing boundaries can remain. Given the stage that the WCS has reached, and the Inspector's comments, the Council contends that Policy CP2's provisions relating to development outside settlement boundaries should carry significant weight.
64. Although settlement boundaries throughout the District are to be reviewed, the Council argues that this does not mean that all or most of them must change. The Inspector's comments are not specific to any particular area, and he has made no comment about the boundaries in the vicinity of the appeal site, or elsewhere in the Devizes area. The existing boundary, along Windsor Drive and the Canal, is well-defined and logical, and was supported by the previous local plan Inspector. In contrast, the outer edge of the appeal site would present a relatively weak boundary, and could act as a precedent for further urban sprawl, towards the AONB and the Vale of Pewsey. Development here would also harm the setting of Devizes, and thus its character. Unless the appeal site were found to be needed for development, the Council sees no reason why the existing boundary here should change<sup>59</sup>.

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<sup>58</sup> The Planning and Compulsory Purchase Act 2004

<sup>59</sup> Doc. C3 (Mr White's proof – paras 3.4 – 3.9, and 4.4)

65. The Council accepts that the boundary review is a matter of some urgency. However, it is now proposed that this should be carried out as part of the SADPD, which is programmed to be completed and adopted by the summer of 2015. The WCS Inspector is understood to be content with this timing.
66. By breaching the established settlement boundary, the proposed development would encroach into the open countryside. The relevant planning policies, identified above, seek to preserve the countryside for its own sake. Consequently, in the Council's view, even though the site has no special designation, the loss of open land from the countryside would amount to material harm.
67. In the context of the above matters, the Council draws particular attention to the appeal decisions relating to sites at Widham Farm, Purton<sup>60</sup>, Fairdown Avenue, Westbury<sup>61</sup>, and Marsh Road, Hilperton Marsh<sup>62</sup>, all of these being Wiltshire cases determined within the last few months. In all three, weight was given to the settlement policies in adopted local plans dating back to 2004 and 2006; and in the Widham Farm case, some weight was also afforded to the emerging WCS policy in this respect. In all of these cases, the Inspectors found that the encroachment of built development and resultant loss of open countryside amounted to material harm. In the Council's view, the same considerations apply in the present appeal.

*The Council's submissions relating to RR2: community-led planning*

68. RR2 is that draft Policy CP2 requires sites for development outside the existing boundaries to be identified through community-led planning policies, in neighbourhood plans or DPDs.
69. The Council argues that the proper vehicle for deciding where new development should be located is through the emerging WCS and DANP, or the future SADPD. Any decision to allow development on the appeal site ahead of those plans, or outside the areas allocated in them, would fly in the face of the Government's commitment to localism. It would also undermine the plan-led approach, which is central to the NPPF.
70. Furthermore, the Council contends that the development now proposed would be strategic in scale. As such, it would be more appropriate to one of the principal settlements<sup>63</sup>. Neither the WCS nor the DANP envisages a need for developments of this size in Devizes, and indeed the latter specifically seeks to limit new housing to smaller sites. Given its size and location, the development proposed here would not appear as an organic part of the town<sup>64</sup>. This underlines the need for Devizes' growth to be community-led.

*The Council's submissions relating to RR3: housing land supply*

71. RR3 is that there is no overriding need for the proposed development, because there is already an adequate 5-year land supply for housing.

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<sup>60</sup> Docs. CD37 and C6/Appx 7 (Widham Farm, Purton appeal)

<sup>61</sup> Docs. CD38 and C6/Appx 9 (Fairdown Avenue, Westbury appeal decision)

<sup>62</sup> Docs. CD39 and C6/Appx 8 (Hilperton Marsh appeal decision)

<sup>63</sup> Doc. C3 (Mr White's proof – para. 2.22)

<sup>64</sup> Doc. C3 (Mr White's proof – para. 4.4)

72. On the requirement side, the Council is content with the revised figure of 42,000 dwellings for the county as a whole, which has been endorsed by the WCS Inspector<sup>65</sup>. In the absence of an adopted policy, the Council argues that this is the most up-to-date figure available, and is one that can now be regarded as having been independently validated. In previous appeals over the last year or so, including Fairdown Avenue and Widham Farm<sup>66</sup>, inspectors had already shown a willingness to give weight to the emerging WCS figures. Now that the examining Inspector has expressed his own view, albeit not necessarily a final one, it is possible to look on this element of the draft plan with even greater confidence. This is further reflected in the most recent appeal decision, at Marden Farm, Calne<sup>67</sup>. Given the advanced stage that the WCS has now reached, the Council considers that the county-wide requirement of 42,000 carries substantial weight.
73. Although the examining Inspector indicated that the 'objectively assessed need' could be higher than this, the Council argues that he must have already taken this into account in coming to his view that the figure of 42,000 was reasonable. In any event, the Council points to new advice in the NPPG<sup>68</sup>, which encourages authorities to assess housing needs beyond 2021 by extrapolating from the DCLG's 2011 household projections. In the Council's view, this would justify a significantly lower figure of around 39,400<sup>69</sup>. On this basis, the Council suggests that the 42,000 now proposed should be seen as a highly robust figure.
74. At the HMA level, based on the Council's February 2014 revised CWS proposals<sup>70</sup>, the overall requirement for the East Wiltshire HMA is 5,940 dwellings. Although the Inspector has not yet commented specifically on this new figure, the method by which it was arrived at was accepted by the Inspector<sup>71</sup>. The East Wilts figure is slightly less than that which would result from a strictly pro-rata distribution of the increase between the HMAs, but in the Council's view, this is justified by the environmental constraints, including the AONB, which covers a large part of the area.
75. Based on the above, and taking account of actual and estimated completions up to April 2014<sup>72</sup>, the Council calculates that the 5-year requirement figure for East Wilts HMA for 2014-19 (before adding the buffer requirement under NPPF paragraph 47) is 1,377 dwellings<sup>73</sup>.
76. With regard to the buffer, the Council contends that the assessment of past performance should be based on the whole of the plan period to date, i.e. 2006-14, in order to even out the economic peaks and troughs<sup>74</sup>. This approach is said to be supported by the NPPG, which states that the local delivery record will be more robust if a longer term view is taken<sup>75</sup>. On this basis, the average annual completions have more than matched the annualised requirement, whether

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<sup>65</sup> Docs. CD16 and C6/Appx 3 (WCS Inspector's letter 23 Dec 2013)

<sup>66</sup> See footnotes 38 and 39

<sup>67</sup> Doc. CD61 (Marden Farm, Calne appeal decision)

<sup>68</sup> NPPG: ID 2a-016-20140306

<sup>69</sup> Doc. C7/Appx 3 ('Response to 2011 interim household projections..', para. 2.2 and Chart 1)

<sup>70</sup> Docs. CD24 and C6/Appx 15 (Topic Paper 15 Addendum – housing requirement technical paper, Feb 2014)

<sup>71</sup> Docs. CD22 and C6/Appx 4 (WCS Inspector's letter 4 Feb 2014)

<sup>72</sup> Doc. J1 (Statement of Common Ground: Table 2 - Completions)

<sup>73</sup> Doc. C7 (Mr Tiley's rebuttal proof – Table 3)

<sup>74</sup> Doc. C7 (Mr Tiley's rebuttal proof – paragraph 2.19)

<sup>75</sup> NPPG: ID 3-035-20140306



based on the present draft WCS requirement, or on the former Structure Plan or the former draft RSS<sup>76</sup>. This view is supported by the fact that no previous inspector has found there to be a record of under-delivery, persistent or otherwise, in any part of Wiltshire. Consequently, in the Council's view, the correct buffer to apply is 5%. Adding this to the basic requirement of 1,377 would increase the 5-year target for East Wilts HMA to 1,446 dwellings in total<sup>77</sup>.

77. As to the supply side of the calculation, the Council's estimated figures are set out in Mr Tiley's rebuttal evidence<sup>78</sup>. These figures are based on information about start dates and building rates supplied directly by the prospective developers of the sites in question, and also on the opinions of the relevant planning case officers who have detailed knowledge of these sites<sup>79</sup>.
78. With regard to the North East Quadrant (NEQ) site at Tidworth, the Council's previous expectations for the site have been exceeded, and the Council is therefore confident that the completions it now forecasts for 2014-19 are realistic. The Granby Gardens site in Ludgershall was previously held up by negotiations over a ransom strip, but this has now been resolved, as confirmed by the Council's solicitor<sup>80</sup>. The Drummond Park site, also at Ludgershall, has been subject to lengthy Section 106 negotiations, but these are now close to completion. The Council expects market demand in this part of the HMA to be boosted considerably by the MoD's plans to bring large numbers of military personnel back from Germany<sup>81</sup>. Out of about 4,000 servicemen and their families who will be re-based at Tidworth, some will opt to live off-base in civilian housing, and the Council estimates that this could account for around 500 units. The build rates estimated for the Tidworth and Ludgershall sites reflect this likely upsurge in demand.
79. The proposed site at Salisbury Road, Marlborough is allocated in the draft WCS, and there has been no indication from the Inspector that he has any concerns about it. The allocation and deliverability are supported by the landowner, the Crown Estate<sup>82</sup>. The Council therefore expects to be able to grant planning permission, and the site to be developed within the relevant 5-year period. With regard to the Lay Wood site, the Council's suggested lead time and build rates take account of the fact that this would be the only large site in the Devizes Community Area. As such, the Council believes its forecast to be realistic. On the site at Park Road, Pewsey, the Council understands that the developer is only waiting until he has completed another small scheme. The Pewsey development itself is small, and still has an extant permission due to a start made some time ago, and the Council suggests it is reasonable to include it in the 5-year supply.
80. The test for all the sites is whether there is a realistic prospect of delivery within the 5-year period. On that basis, the Council contends that its assumptions are reasonable, and indeed conservative. In total, the supply from the above sites,

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<sup>76</sup> Doc. C7 (Mr Tiley's rebuttal proof – para 2.20 and Table 1)

<sup>77</sup> Doc. J1 (Statement of Common Ground – p.14, para 8.6)

<sup>78</sup> Doc. C7 (Mr Tiley's rebuttal proof – paras 2.25 – 2.34, and Table 2); and Doc. CD67 (Council/appellants' comparative tables)

<sup>79</sup> Doc. C7/Appxs 2a – 2g (site delivery assessments)

<sup>80</sup> Doc. CD62 (Solicitor's email re Granby Gardens site and attached Land Registry details)

<sup>81</sup> Docs. CD72 (Press release re Army re-basing); and C7 (Mr Tiley's rebuttal, paragraph 2.23)

<sup>82</sup> Doc. CD50 (Joint submission to WCS Examination by the Council and Crown Estate re Salisbury Road site)

together with the undisputed figures relating to large and small permissions and estimated windfalls, is said to amount to 1,552 units<sup>83</sup>.

81. The Council therefore submits that the existing supply comfortably exceeds the 5-year requirement, with or without the buffer. Before taking account of the buffer, this equates to 5.64 years' worth<sup>84</sup>. With the buffer, the Council's supply figure is said to be 5.43 years<sup>85</sup>. [*Inspector's note: on my own calculations, using the same figures as the Council, this last figure should be 5.36 years. However, nothing turns on this small mathematical discrepancy.*]
82. Although there will still be a need to identify some additional sites to meet the requirement for the balance of the plan period, in the Council's view there is no immediate urgency for this. As long as a supply is in place for the next 5 years, the additional sites needed can be found through the SADPD or the Neighbourhood Plan, and through planning applications.
83. As a result, the Council contends that there is no overriding need for permission to be granted for reasons of maintaining the supply of land for housing.

## **The Case for the Appellants**

### *Submissions relating to RR1: the settlement boundary*

84. The appellants submit that the KLP has long outlived the end of its intended period. The settlement boundaries defined in it were set to allow for development needed up to 2011, but not for anything beyond that date. Now that we are into a new plan period, the continued reliance on these former boundaries represents an arbitrary and artificial constraint on the availability of land for development, making it unnecessarily difficult to bring forward sustainable development to meet the area's needs. The existing settlement boundaries are therefore now out of date.
85. The appellants further argue that this situation is clearly recognised by the WCS Inspector in his letter of 2 December 2013<sup>86</sup>, and in the Council's subsequent agreement that the boundaries will be reviewed in the SADPD<sup>87</sup>. This public correspondence makes continued reliance on the boundaries in the KLP untenable. For these reasons, Policy NR6 should now be given little weight.
86. Although the emerging WCS, in Policy CP2, seeks to renew the commitment to settlement boundaries, it does so without having reviewed the boundaries themselves. Whilst the Council has said that this will follow within a year or so, this does not alter the fact that in the meantime, the boundaries that exist are still out of date. In the appellants' view, the Inspector's letter of 23 December<sup>88</sup> makes it clear that there is a need for urgency, and this only confirms the fact that until then the retained boundaries are unsatisfactory. Little weight can therefore be given to the fact that the draft plan proposes no change at this stage.

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<sup>83</sup> Docs. C7 (Mr Tiley's rebuttal proof - Table 2); and CD67 (Council/appellants' comparative supply tables, as agreed at the inquiry)

<sup>84</sup> Doc. C7 (Mr Tiley's rebuttal - Table 3)

<sup>85</sup> Doc. J1 (Statement of Common Ground - para 8.6)

<sup>86</sup> Docs. CD14 and C6/Appx 2 (WCS Inspector's letter 2 Dec 2013)

<sup>87</sup> Docs. CD15 and C6/Appx 12 (Council's WCS letter 19 Dec 2013)

<sup>88</sup> Docs. CD16 and C6/Appx 3 (WCS Inspector's letter 23 Dec 2013)

87. And in any event, the WCS examination is still on-going, and the Inspector has yet to report his final conclusions regarding the settlement boundary issue, or any other aspects of the draft plan. This reinforces the appellants' contention that its policies should carry only limited weight.
88. Furthermore, the appellants argue that this assessment of the policy position relating to the settlement boundaries is almost identical to that contained in the officers' report on the appeal proposal, which was put to the Planning Committee on 12 February 2014<sup>89</sup>. That report stated: "...the Inspector has effectively stated that the [settlement boundary] policy is out of date...."; and: "It is therefore considered that...[Policy NR6] cannot be afforded any significant weight in relation to this site and this appeal, and that this ground for refusal [RR1] can no longer be substantiated".
89. Similar advice was also given by officers in relation to a number of other recent applications, at Marden Farm, Calne (22 January)<sup>90</sup>, Lay Wood, Devizes (12 February)<sup>91</sup>, High Street, Burbage (22 February)<sup>92</sup>, and The Mead, Westbury (12 March)<sup>93</sup>. All of these sites were outside settlement boundaries, and all were recommended for approval because the policy basis for those boundaries could no longer be relied on. In all these other cases, the officers' advice was accepted by the Committee. Similar conclusions regarding the status of the settlement boundaries were also reached by Inspectors in two appeals, relating to the Marden Farm site<sup>94, 95</sup> and another site at Filands, Malmesbury<sup>96, 97</sup>. The appellants therefore contend that the Council's position in the present appeal is inconsistent with all of these recent decisions.

#### *Appellants' submissions regarding RR2: community-led planning*

90. The appellants point out that RR2 does not allege prematurity, in relation to either the WCS or the DANP or any other future policies, and that at the inquiry the Council's policy witness agreed that prematurity was not the issue<sup>98</sup>. In the appellants' view, this means that the issue in RR2 is about the weight to give to any conflict with Policy CP2 in respect of its intention that sites should be identified through for community-led plans.
91. As far as the draft WCS is concerned, the appellants submit that it remains only a draft plan, and this element of CP2, like the housing provisions, still carries only limited weight. But even if some weight is given to it, the aim of community-led planning has to be balanced against the need to maintain an up-to-date 5-year supply of land for housing, as required by NPPF paragraph 47. Where there is not an adequate supply, the need to boost housing provision should take precedence.

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<sup>89</sup> Doc. CD8b (Officers' report re Coate Bridge scheme, 12 Feb 2014)

<sup>90</sup> Doc. CD32a (Officers' report re Marden Farm, Calne scheme, 22 Jan 2014)

<sup>91</sup> Doc. CD8a (Officers' report re Lay Wood scheme, 12 Feb 2014)

<sup>92</sup> Doc. CD34 (Officers' report re Burbage scheme, 20 Feb 2014)

<sup>93</sup> Doc. CD49 (Officers' report re The Mead, Westbury scheme, 12 March 2014)

<sup>94</sup> Doc. CD61 (Marden Farm, Calne – appeal decision)

<sup>95</sup> NB: in the Marden Farm case, the Council withdrew its refusal reasons after the appeal was lodged

<sup>96</sup> Docs. CD40 and C6/Appx 10 (Filands appeal)

<sup>97</sup> NB: The Filands 'decision' was withdrawn by PINS, and the appeal is awaiting determination by the SoS

<sup>98</sup> Oral evidence of Mr White, in response to cross-examination

92. With regard to the neighbourhood planning process, the appellants contend that the DANP is as yet still at a very early stage, having not yet completed its pre-submission consultation. It has therefore not reached the local authority publicity period, which according to the Planning Minister's recent statement<sup>99</sup> is the point at which plans might start to acquire some weight.
93. And even when the DANP does get to that stage, the appellants argue, it will still have a long way to go. The Council will have to consider whether the plan conforms with the WCS, even though the latter plan itself remains in flux. An independent examiner will have to consider objections, and there will have to be a referendum. That process will take time, and waiting for it to be completed will simply delay the delivery of necessary development.
94. Furthermore, there is no certainty that the DANP will remain in its present form. The appellants suggest that the current draft takes a somewhat unconventional approach, particularly with regard to the town's development boundary. The proposed housing sites and overall strategy will need to be assessed for their deliverability. It is by no means certain that the plan will stand up to scrutiny. Little weight should therefore be attached to any conflict between the draft DANP and the appeal proposals.
95. As far as the proposed SADPD is concerned, the appellants point out that that plan has not yet been started, and notwithstanding the Council's LDS, there is no guarantee as to its timescale.
96. The appellants therefore contend that the desirability of community-led planning, and draft Policy CP2's aims in that respect, should not stand in the way of the present proposal.

*Appellants' submissions relating to RR3: housing land supply*

97. The appellants submit that although the Council's proposed revised county-wide requirement of 42,000 dwellings has been provisionally accepted by the WCS Inspector as a basis for further consultation, that does not necessarily mean that this will be the figure that is eventually adopted. The Inspector will not be in a position to make any firm recommendation, or any finding as to the plan's soundness, until the examination process has been completed. That point may still be some way off. In the meantime, the Council's proposed figure must be viewed in the context of the Inspector's assessment, in the same letter, that the objectively assessed need is in the region of 44,000 units<sup>100</sup>.
98. The NPPF, at paragraph 47, requires that local plans should meet objectively assessed need in full, as far as is consistent with other NPPF policies. The appellants point to the *Hunston Properties* judgement<sup>101</sup>, in which the Court of Appeal ruled that an inspector erred in basing her appeal decision on a 'constrained' housing requirement figure, which was less than the objectively assessed need, when that figure had not been settled through the local plan process. This was also followed by the case of *South Northants V SoS and Barwood*<sup>102</sup>, in which the Court held that:

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<sup>99</sup> Doc. A3/Appx 8 (Nick Boles' statement re neighbourhood plans – House of Commons, January 2014)

<sup>100</sup> Docs. CD14 and C6/Appx 2 (WCS Inspector's letter 2 Dec 2013)

<sup>101</sup> [2013] EWCA Civ 1610 (City & District of St Albans v Hunston Properties Ltd)

<sup>102</sup> Doc. CD53: S. Northants DC v SoS and Barwood Land & Estates Ltd, [2014] EWHC 573 (Admin)

*“(32.) ...Until the full, objectively assessed needs are qualified by the policies of an up to date Local Plan, they are the needs that go into the balance against any NPPF policies. It is at that stage that constraints or otherwise may apply. It may be problematic in its application, but that is how paragraph 47 works.”*

99. The appellants also draw attention to the advice in the NPPG, under the heading *“Can planning authorities apply constraints to the assessment of development needs?”*<sup>103</sup>:

*“The assessment of development needs is an objective assessment of need based on facts and unbiased evidence. Plan makers should not apply constraints to the overall assessment of need, such as limitations imposed by the supply of land, historic under performance, viability, infrastructure or environmental constraints. However, these considerations will need to be addressed when bringing evidence bases together to identify specific policies....”*

100. On this basis, the appellants contend that in the absence of an up-to-date, adopted local plan for Wiltshire, the housing requirement for the purposes of the 5-year supply should be based on the Inspector’s objectively assessed need figure of 44,000 dwellings.
101. For the East Wiltshire HMA, the appellants calculate that the original figure of 5,500 dwellings represented 14.86% of the county’s overall provision<sup>104</sup>. When the county total was increased from 37,000 to 42,000, the increase was supposed to be shared between HMAs on a pro-rata basis, at least initially<sup>105</sup>. On that basis, the new figure for East Wiltshire would have been 6,241 dwellings<sup>106</sup>. But instead, the figure now proposed by the Council is about 300 units less than that<sup>107</sup>. The appellants contend that there is no evidence that this reduction is justified by environmental constraints; and especially so when the present appeal site is taken into account. The revised distribution at HMA level remains to be considered by the WCS Inspector, and in the meantime the Council’s proposed figure for East Wilts should be treated with some caution.
102. In any event, for the purposes of the present appeal, the appellants maintain that the housing requirement should be derived from a county total of 44,000 dwellings, for the reasons given above. On that basis, the East Wilts HMA figure would have to increase anyway. Applying the original percentage of 14.86%, East Wilts’ share would be 6,538 units<sup>108</sup>.
103. Based on the above, and taking account of the same completions figures as the Council<sup>109</sup>, the appellants calculate a basic 5-year requirement, before the addition of any buffer, of 1,626 dwellings<sup>110</sup>.
104. With regard to the buffer, the appellants argue that the past delivery record should be measured over the most recent 5 years, 2009-14. This method is said to be supported by a High Court judgement involving *Cotswold DC*<sup>111</sup>, and

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<sup>103</sup> NPPG: ID 2a-004-20140306

<sup>104</sup> Doc. A2 (Mr Simkins’ proof – para. 4.75); note: in some of the evidence this is rounded to 15%

<sup>105</sup> Doc. C6/Appx 13 (‘Methodology for Disaggregation of Increased Housing Requirement’)

<sup>106</sup> Doc. A2 (Mr Simkins’ proof – paras. 4.75 and 4.79 - 4.80)

<sup>107</sup> Docs. CD24 and C6/Appx 15 (Topic Paper 15 Addendum – housing requirement technical paper, Feb 2014)

<sup>108</sup> Doc. A2 (Mr Simkins’ proof – para. 4.93)

<sup>109</sup> Doc. J1 (Statement of Common Ground: Table 2 - Completions)

<sup>110</sup> Doc. A2 (Mr Simkins’ proof – para. 4.94)

<sup>111</sup> Doc. CD44 (*Cotswold DC v SoS, Fay & Son Ltd and Hannick Homes*: [2013] EWHC 3719 Admin)

by an appeal decision at Bourton-on-the-Water<sup>112</sup>. A similar method was also used in the Council's own land supply reports for May and August 2013 and February 2014<sup>113</sup>. On this basis, the appellants contend that, on an annualised basis, there has been under-delivery in the East Wilts HMA in four out of the last five years, whether based on the appellants' own calculated requirement<sup>114</sup>, or on any of the target figures in the draft WCS or the former Structure Plan or the former draft RSS<sup>115</sup>. And in addition, it is also shown that there was an overall shortfall against the residual requirement for the 5-year period, in both the HMA and the County, against any of the possible target figures derived from the WCS<sup>116</sup>. The appellants submit that this record indicates persistent under-delivery, justifying a buffer of 20%, in accordance with NPPF paragraph 47.

105. On this basis, the appellants suggest that the 5-year requirement for East Wilts HMA should be increased from 1,626, to become 1,951 dwellings<sup>117</sup>.
106. Turning to the supply side, 6 sites are disputed by the appellants, and three of these are at Tidworth and Ludgershall. These two settlements are said to have a history of low building rates and poor market take-up. Over the plan period, the draft WCS proposes a combined total of 1,750 dwellings in this part of the HMA, requiring an average building rate which is said to equate to more than three times that previously achieved there, and reaching a peak in 2017/18 of nearly 6 times the historic average<sup>118</sup>. The Council's own report describes the projected delivery from these settlements as 'aspirational'<sup>119</sup>. With regard to the planned military re-basing, the appellants say that no firm information has been presented. The Council's press release<sup>120</sup> suggests that the 4,000 incoming troops will be split between at least three locations in Wiltshire, with some regiments moving out of Tidworth, as well as new ones coming in; the timing of these moves appears to be between 2017 and 2020. In the event that the housing proposed for Tidworth and Ludgershall is not needed for military staff, the appellants argue that any excess provision in that area will not serve the needs of East Wiltshire, because it is remote from the other main centres of the HMA, and closer to Andover, which is in Hampshire.
107. With regard to the three specific Tidworth and Ludgershall sites, the appellants argue that Drummond Park has had a resolution to grant outline planning permission since December 2011, but since then the Section 106 negotiations appear to have become protracted, and the permission has never been issued. The Granby Gardens site is an active garden centre, which has been allocated for housing since 2004, but has no planning permission or any current applications. In the appellants' view, there is no evidence that either of these sites is deliverable within 5 years, and it is suggested that both should be omitted from the supply calculations<sup>121</sup>. The North East Quadrant (NEQ) site at Tidworth will face new competition from the recently-started Zouch Manor

<sup>112</sup> Doc. CD 41 (Bourton-in-the-Water appeal decision)

<sup>113</sup> Docs. CD11, CD12 and CD31 (Housing Land Supply reports – May/Aug 2013, and Feb 2014)

<sup>114</sup> Doc. A2 (Mr Simkins' proof – paras. 4.99 – 4.102 and Table 2)

<sup>115</sup> Doc. J1 (Statement of Common Ground: Table 3 – Completions against alternative annual average requirements)

<sup>116</sup> Document A3/Appx 9 (Mr Simkins' Appendices – 'Delivery Assessment' table)

<sup>117</sup> Doc. A2 (Mr Simkins' proof – para. 4.101)

<sup>118</sup> Doc. A2 (Mr Simkins' proof – paras. 4.112 and 4.123)

<sup>119</sup> Docs. CD24 and C6/Appx 15 (Housing Requirement technical paper, Feb 2014 addendum – paras 7.11 – 7.12)

<sup>120</sup> Doc. CD72 (Press release re 'Wiltshire Army Bases Investment')

<sup>121</sup> Doc. A2 (Mr Simkins' proof – Table 4); and Doc. CD67 (Comparative supply tables)

site, which is close by, and the appellants suggest this is likely to result in some reduction in the building rate there, reducing the deliverable supply over the 5 years, from 200 to 160.

108. With regard to the rest of the East Wilts HMA, the appellants point out that the proposed new allocation at Salisbury Road, Marlborough is within the AONB, and is subject to unresolved objections on landscape impact and other grounds<sup>122</sup>. Major developments in AONBs are subject to NPPF paragraph 116, which implies strict restraint in such areas, especially where there are alternatives outside the AONB, such as at the present appeal site. Although Marlborough and Devizes are in different Community Areas, they are in the same HMA, and the WCS Inspector's letter of 4 February 2014<sup>123</sup> makes it clear that there should be some flexibility in this respect. In any event, the appellants submit that the Marlborough site cannot be relied upon to survive the WCS examination, let alone to secure planning permission and be delivered in the 5 years, and thus should be omitted.
109. For the Lay Wood site, the appellants suggest that the delivery figure be reduced from 200 to 140, reflecting a more realistic build rate for the location<sup>124</sup>. In the case of the builder's yard site at Park Road, Pewsey, it is argued that the most recent permission expired in 2013, and that even if the previous very old permission remains extant, there has been no serious activity on the site for many years, and thus there is no evidence of an intention to develop<sup>125</sup>.
110. Based on the above, and taking account of the undisputed sites and windfalls allowance, the appellants submit that the supply deliverable within 5 years is 911 units<sup>126</sup>. Against their suggested requirement of 1,951 dwellings, this amounts to a supply of 2.3 years<sup>127</sup>.
111. In any event, even if a 5-year supply is found to exist, the appellants contend that this in itself is not sufficient reason to refuse planning permission. This point was accepted by the Council in the Marden Farm appeal<sup>128</sup>.

*The appellants' submissions on issues raised by other objectors*

112. With regard to traffic, the appellants draw attention to the Section 106 provisions for off-site highway works, and for contributions to public transport (£150,000) and improvements to the towpath (£105,000). They also argue that the appeal site is well located for the existing employment areas and a Lidl foodstore, which are in the opposite direction from the town centre. The proposed highway works include the signalisation and widening of the approaches to the A361/Windsor Road roundabout, and improvements to the A361/Hopton Road roundabout<sup>129</sup>. These junctions are amongst those

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<sup>122</sup> Doc. CD50 (Marlborough site submission by the Council and AMEC – Appendices 1-5); and Doc. A2 (Mr Simkins' proof, paras 4.127 – 4.128)

<sup>123</sup> Docs. CD22 and C6/Appx 4 (WCS Inspector's letter 4 Feb 2014)

<sup>124</sup> Doc. A2 (Mr Simkins' proof, paras 4.133 – 4.136)

<sup>125</sup> Doc. A2 (Mr Simkins' proof, paras 4.138)

<sup>126</sup> Doc. CD67 (Comparative supply tables)

<sup>127</sup> Doc. J1 (Statement of Common Ground – Table 1: 'Updated Mr Simkins Table 5')

<sup>128</sup> Doc. CD70 (Council's statement for the Marden Farm appeal)

<sup>129</sup> Doc. J3 (S.106 agreement – p 7-8 and Schedule 3))

previously identified as priorities in the Council's Devizes Transport Strategy<sup>130</sup>. The traffic modelling undertaken shows that these proposed works would free up existing bottlenecks and reduce queueing. With the benefit of these works, traffic conditions and journey times through the town would improve, even with the addition of the development now proposed at Coate Bridge<sup>131</sup>. Rat-running through Coate village could be discouraged or prevented by means of traffic management within the site layout<sup>132</sup>.

113. Although some of the Council's other traffic reports for Devizes suggested that with both the Coate Bridge and Lay Wood schemes, further mitigation would be needed, the appellants contend that those reports were testing a scenario that also included other potential sites which are no longer included in the WCS proposals<sup>133</sup>. The Lay Wood development is understood to be making a highway works contribution of over £800,000 to mitigate its own impact<sup>134</sup>. The works proposed for the present appeal scheme are over and above these. In any event, the appellants also point to NPPF paragraph 32, which states that development should only be refused on transport grounds where the residual impact would be severe. Here, it is argued that there is no evidence that such impacts would occur.
114. With regard to air quality, it is argued that if there is an existing problem, it should not be the responsibility of a single development. The appellants' atmospheric dispersion modelling predicts that the development's effect on pollutant concentrations would be imperceptible, and the significance of the predicted change would be negligible<sup>135</sup>. Although there would be an increase in vehicles, the effect would be cancelled out by the improvement to traffic flows, resulting from the proposed highway works, which would mean less queueing and slow-moving traffic. The Environmental Health Officer has not objected, and it is agreed in the common ground statement that the existing levels would not be exacerbated<sup>136</sup>.
115. Regarding visual impact, the appellants argue that there are no serious objections on landscape grounds, and the submitted landscape assessment report<sup>137</sup> concludes that any adverse effects would be minor and localised. The Design and Access Statement<sup>138</sup> shows how those effects could be minimised, and how the development could be well integrated with the town and its setting. Concerns about forming a separate community are seen as unfounded.
116. On education, the appellants submit that the demand for school places would be mitigated by the proposed contributions to secondary (£440,565) and primary (£1,258,587) education. These amounts are those requested by, and

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<sup>130</sup> Doc. A6 (Mr Kenyon's rebuttal statement – para 3.12)

<sup>131</sup> Doc. J2 (Highways Common Ground statement – para. 3.4.3); and Doc. A6 (Mr Kenyon's rebuttal - Attachment 2: S-Paramics traffic modelling report for Coate Bridge, para. 5.3)

<sup>132</sup> Doc. A6 (Mr Kenyon's rebuttal statement – paras 3.20 – 3.21)

<sup>133</sup> Doc. A6 (Mr Kenyon's rebuttal statement – paras 3.8 - 3.10)

<sup>134</sup> Doc. A6 (Mr Kenyon's rebuttal statement – para 3.13)

<sup>135</sup> Doc. A7 (Air Quality report, tabled at the inquiry)

<sup>136</sup> Doc. J2 (Highways Common Ground statement – para. 3.4.5)

<sup>137</sup> Doc. B3 (Landscape and Visual Impact Assessment report, Jan 2013)

<sup>138</sup> Doc. B3 (Design and Access Statement, Jan 2013)



agreed with, the Council<sup>139</sup>. The way in which the money is spent, and at which schools, are matters for the Council.

117. On archaeology, the appellants refer to the studies set out in full in the archaeological proof and evaluation report<sup>140</sup>. The Council has agreed that the need for further evaluation can be dealt with by condition. The wording suggested by the Council requires certain details to be agreed, and these include proposals for the archiving of the results of the investigations<sup>141</sup>. Such proposals could include provision for developer funding, or for on-site storage and public access<sup>142</sup>. Or alternatively, the view could be taken that this is a matter between Wiltshire Museum and the Council, in which case it is not relevant to the appeal<sup>143</sup>. Either way, the appellants contend that this should not prevent the grant of planning permission.
118. Consequently, the appellants submit that the proposed development would have no identified or significant adverse impacts.

*The appellants' submissions with regard to beneficial effects*

119. The appellants submit that, in the light of the NPPF's aim to boost housing supply significantly, the provision of up to 350 dwellings should be seen as a benefit of the development, irrespective of whether a shortfall exists in the area. The fact that 30% would be provided as 'affordable housing', in line with Policy CP43 in the draft WCS, would be an added benefit on top of this.
120. In addition, the appellants contend that the scheme's other beneficial impacts would include: the sustainability of the location; benefits to traffic flows; consequential reductions in air pollution; enhanced bus services; qualitative improvements to the towpath route; improved access to the towpath and canal bank area for leisure and other purposes; and helping to relieve development pressure on the AONB.

## **The Submissions by Other Interested Persons**

*The Trust for Devizes*

121. The Trust for Devizes was represented at the inquiry by Mr John Baumber, who is a Trustee and member of the Management Committee<sup>144</sup>. The Trust is a charitable body dedicated to working for the town and campaigning for its future. The Trust supports sustainable development but the appeal proposal is not seen as sustainable.
122. In the Trust's view, Devizes has taken too large a share of Wiltshire's growth over the years, causing the town's infrastructure to become overstretched. This includes the roads, sewers, water supply, schools, and medical facilities. Until these priorities are addressed, further development should now only be allowed for Devizes' own needs. These special local circumstances are fully recognised in the WCS.

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<sup>139</sup> Doc. CD69 (Email confirming amount of primary school contribution requested)

<sup>140</sup> Docs A5 and A5a (Archaeological proof of evidence and Evaluation Report)

<sup>141</sup> Doc. CD64 (County Archaeologist's letter 8 April 2014)

<sup>142</sup> Mr Simkins' oral evidence

<sup>143</sup> Doc. A9 (Mr Crean's closing submissions, para 16)

<sup>144</sup> The Trust For Devizes also made two written representations: dated 21 Dec 2013 (contained in the bundle at Doc. OP1); and dated 22 April 2014 (Doc. OP11 – post-inquiry submission re air quality)

123. Existing local roads suffer very badly from traffic congestion, and this is worst on the A361. Recent developments have been focused on this corridor and have made the situation even worse. The appeal site is in the worst possible location, as it would exacerbate the traffic situation even further. The appellants' traffic figures do not show this, but that is because, in the Trust's view, their figures fail to take account of all the other developments that have happened. Wiltshire Council's traffic model shows that traffic speeds would be further reduced, and journey times would lengthen. The road improvements proposed by the appellants would be inadequate and ineffective. As a result of the increased congestion, traffic would be forced onto alternative routes, such as Coate Road/Coate Lane, where there is poor visibility and other safety hazards, and adversely affecting conditions in nearby villages.
124. Air quality in Devizes, and in particular the level of nitrogen dioxide (NO<sub>2</sub>) already fails to meet legal requirements. The additional traffic and worsening congestion would add to the existing pollution, endangering local residents' health and well-being. In the Trust's view, the answer should be to locate development away from the A361 and closer to the town centre, and holding back new development until the later stages of the plan period, to give time for solutions to be put in place.
125. The nearest local primary school, Nursteed, is already full. Children from the development would be most likely to go to Trinity School, on the Quakers' Walk development, as there is spare capacity there. This would mean adding further to the traffic on the A361.
126. The town's medical facilities are limited, and existing GP surgeries are overloaded. The nearest A&E hospital is over 20 miles away, and the public transport services to it are inadequate.
127. Past developments have created a continuous urban sprawl away from the town's original core, with a lack of green spaces to break it up. Development at the appeal site would exacerbate this, and would narrow the gap between Devizes and the village of Coate.
128. In the Trust's view, the type of housing that Devizes needs is mainly low cost, affordable and sheltered accommodation. The development now proposed would not be likely to focus on meeting those needs. Most other speculative developments in the town have been too expensive for most local people, and have therefore attracted buyers from outside the town, resulting in unsustainable population growth. The appeal proposal is likely to have the same effect.
129. The draft WCS as originally submitted only required sites to be found for around 450 more houses in Devizes, up to 2026. Since then several more planning permissions have been granted. The remainder will follow naturally as more small sites come forward in future years, and the DANP identifies a number which are all deliverable. There is therefore no need for any excessively large sites such as this one, and no need to use up all of the town's allowance so early in the plan period. In any event, if any more sites are needed, they should be on previously developed land, not green fields like the appeal site.

130. The Planning Minister was reported recently as saying that housing proposals would not be forced onto local communities as long as councils are making good progress on their own plans. Here, the WCS and DANP are well advanced, and are not subject to any substantial unresolved objections. In the Trust's view, the location and amount of development at Devizes should be determined locally through these plans, and in the meantime their draft policies should be given weight.

*The Devizes Neighbourhood Plan Steering Group*

131. The DANP Steering Group was represented by Mr Simon Fisher, who is the Deputy Town Clerk of Devizes Town Council, and Secretary to the Steering Group<sup>145</sup>.
132. Mr Fisher stated that there is a strong feeling in the town that past developments have put too much strain on local health and education facilities, and have contributed to unacceptable levels of traffic congestion and atmospheric pollution. In preparing the DANP, the Steering Group's aim was to produce a plan which fully represents the local community and its aspirations for the town, to deliver the housing that is needed, whilst also protecting the town's character, avoiding sprawl, and minimising the impacts on infrastructure and air quality. The timing of the April 2014 draft of the DANP<sup>146</sup> had been brought forward ahead of its original programme, to coincide with the appeal inquiry.
133. In the Steering Group's view, the draft plan identifies sufficient housing sites to meet the requirement in the WCS. The owners of all these sites have been consulted as to their intentions with regard to development and timing, and consequently the sites are all seen as realistic and deliverable. The aim was to disperse the housing requirement as far as possible to small sites, to assist integration, reduce the impacts, and encourage local builders.
134. With regard to the town's settlement boundaries, the Group considers that, for the most part, the existing boundaries allow enough scope for the development that the town needs, but they contain anomalies. Some changes are therefore proposed, but that is to ensure that future growth is concentrated within a 10-15 minute walking radius from the town centre, not in more distant locations.
135. The appeal proposal is seen as conflicting fundamentally with the DANP's approach and policies. It would take greenfield land unnecessarily, it would be unsustainably located outside walking distance from the centre, it would add to congestion and air pollution, and place an additional burden on local services. It would not be integrated with the town, but would form a separate satellite community.

*Roundway Parish Council*

136. Mr Chris Callow<sup>147</sup> spoke as Chairman of Roundway Parish Council<sup>148</sup>. The Parish Council accepts the need for more housing in the area, and took the

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<sup>145</sup> The DANP Steering Group also made two written representations: dated 17 Dec 2013 (contained in the bundle at Doc. OP1); and dated 23 April 2014 (Doc. OP11 – post-inquiry submission re air quality)

<sup>146</sup> Document CD60 (The draft Neighbourhood Plan, April 2014)

<sup>147</sup> Document. OP9 (MR Callow's speaking notes)

lead in bringing together the neighbouring Town and Parish Councils to plan jointly for the area's needs. However, the appeal proposal is seen as the wrong solution.

137. By concentrating so much of the area's new housing on one site, the proposed scheme would cause maximum impact, especially on the heavily congested and polluted A361 route, but also in terms of its impacts on local schools and other services. And in going beyond the clearly established boundary of Windsor Drive, it would extend the town into open countryside unnecessarily. In the Parish Council's view therefore, the development now proposed would be poorly located, poorly integrated and unsustainable. It would also exceed the 5-year housing requirement for the Devizes area.
138. The DANP's alternative strategy of dispersed development is locally much preferred, and is capable of satisfying the area's housing requirements. To go against that approach when the DANP is now so far down the line, would be to negate the hard work put in by local people in their own time, and would discourage participation in the future. In the Parish's view therefore, the appeal decision should support local decision making.

#### *CPRE Wiltshire*

139. The Wiltshire Branch of the CPRE was represented by Mr John Kirkman<sup>149</sup>, who is chairman of the Kennet District Group. The Branch supports many of the concerns voiced by the preceding objectors, including those relating to traffic, air quality, local services, employment, integration and sustainability. They also endorse the merits of local decision-making, and the general approach of the DANP<sup>150</sup>.
140. In addition, the Branch has a particular concern about the proposed development's effect on the countryside and the landscape. In the group's view, there would be an adverse impact on the landscape's character and identity, which is acknowledged in the appellants' design and access statement. This would be seen particularly in the vicinity of Coate Bridge, where the existing rural appearance would be lost.
141. In the Branch's view, there would also be an adverse impact on the immediate surroundings to the existing canal towpath. At this location the path presently runs through open countryside. Although the proposed development would incorporate a linear open space, the result would still be to urbanise this section.
142. As well as policies NR6 and CP2, attention is drawn to KLP Policy PD1, which is headed 'Development and Design', and seeks amongst other things to ensure that development relates satisfactorily to its townscape and landscape context.

#### *The Devizes Area Community Partnership (DCAP)*

143. DCAP is a multi-agency partnership of local authorities, service providers, local organisations and residents from throughout the Devizes Community Area.

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<sup>148</sup> Roundway Parish Council also made a written representation, dated 19 Dec 2013 (contained in Doc. OP1)

<sup>149</sup> Docs. OP3 and OP4 (Mr Kirkman's speaking notes)

<sup>150</sup> The CPRE Branch also made a written representation, dated 23 Dec 2013 (contained in Doc. OP1)

The partnership was represented at the inquiry by Mr Rick Rowland, chairman of its housing and built environment group<sup>151</sup>.

144. DCAP echoes many of the points made by the preceding objectors, and supports the DANP. It sees the present appeal proposal as conflicting with the DANP approach, because of its use of a green field site, and because of its location more than a mile from the town centre, and on the most congested road corridor, where problems of movement and air quality would be compounded. DCAP also calculates that the development now proposed would take up 85% of the remaining housing requirement up to 2026, making the DANP process into little more than a paper exercise.
145. An additional point argued by DCAP is that developments which attract commuters have less social integration and less benefit to the local economy because consumer spending tends to go outside the area. The appeal scheme is considered especially likely to be taken up by people from outside the area, because its size makes it likely that it would be developed by one or more of the 'volume' house-builders.
146. In addition, DCAP draws attention to the traffic report prepared for the Council by Atkins in October 2013<sup>152</sup>. In DCAP's view, the report shows that the effect of the present appeal scheme at Coate Bridge, together with the WCS and DANP proposals and the Lay Wood scheme which is now approved, would be to significantly worsen traffic conditions on the A361. Although the off-site highway improvements proposed as part of the appeal scheme would provide some mitigation, the report shows that they would not prevent a net deterioration compared to the existing situation. And, in so far as those works relate to the A361, the report identifies that they are needed anyway, and DCAP's understanding is that they could be funded without the appeal scheme if necessary.
147. Following the close of the inquiry, DCAP made a further written submission in response to the appellants' late evidence on air quality<sup>153</sup>. In DCAP's view, air quality is a major local concern. The area along the A361, from the town centre to the Horton Road roundabout, is designated as an Air Quality Management Area (AQMA) because pollution breaches EU limits. This shows that there is an acknowledged problem. Although the designation has been in place for a few years now, the situation has not improved, and further development would be bound to make it worse. In this respect, the appeal proposal would be especially harmful, because its location would concentrate traffic in the worst affected area.

#### *Wiltshire Museum*

148. Mr David Dawson spoke on behalf of the Wiltshire Museum, an independent charity<sup>154</sup>. Mr Dawson is the Museum's Director. The Wiltshire Museum is one of two museums that are responsible for storing the county's archaeological archive, which includes archaeological remains recovered from development sites.

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<sup>151</sup> DCAP's pre-inquiry written representation, dated 4 April is contained in Doc. OP1

<sup>152</sup> Docs. OP5 (Atkins traffic report) and OP10 (Mr Rowlands' comments on the Atkins report)

<sup>153</sup> Document. OP12 (DCAP's post-inquiry letter re air quality, 23 April 2014)

<sup>154</sup> Wiltshire Museum also made a written representation, dated 24 Dec 2013 (contained in Doc. OP1)

149. The Museums' storage facilities reached capacity a year ago, and are now closed. Over 4,000 boxes of material are now held in temporary storage by developers, awaiting permanent facilities, and a further 2,000 – 3,000 boxes are expected over the next 12 years<sup>155</sup>. The Museums' public funding does not cover storage costs. Without further funding from other sources, the Wiltshire Museum cannot accept any more archive material.
150. Paragraph 141 of the NPPF states that developers should be required to record and advance understanding of the significance of heritage assets to be lost, and to make this evidence publicly accessible. In the present case there is no provision for the archaeological storage costs arising from the development to be met by the developer. The remains to be recovered from the appeal site are expected to be of some importance, being relatively unusual for the area. They will also include some human remains, which need to be dealt with in a dignified manner. Without some appropriate financial provision, it is suggested that the development should not be regarded as sustainable, because its impact on archaeology would be unacceptable.
151. Through Mr Dawson, the Museum's trustees ask that planning permission be refused until an obligation to this effect has been entered into.

*Councillor Laura Mayes*

152. Councillor Mayes spoke as one of the Wiltshire Council members for Roundway ward<sup>156</sup>. There is a high level of concern amongst her constituents about the proposed development.
153. Local residents believe that not only has Devizes taken more than its fair share of development, but Roundway in particular has taken the bulk of that expansion, with several large developments recently including Quakers' Walk and the Barracks site. The issues identified by other objectors, relating to traffic, air pollution, schools, health facilities, lack of open space, and loss of greenfield land, are endorsed.
154. The appeal proposal is seen as exacerbating these problems. The DANP is generally supported as a better way forward.

*Councillor Andrew Geddes*

155. Councillor Geddes spoke as a member of Roundway Parish Council, and also submitted a written submission with regard to air quality<sup>157</sup>. He endorsed many of the arguments made by other objectors, particularly with regard to the effects of previous developments, and the appeal proposal's potential adverse effects on traffic, air quality and local services.
156. In particular, Cllr Geddes argues that large new developments on the edge of the town, such as Quakers' walk, have had a tendency to be inward-looking, and consequently have made little contribution to the town's social life. In his view, smaller developments, closer to the centre, would be likely to be more inclusive and more beneficial.

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<sup>155</sup> Docs. OP7 and OP8 (Information tabled by Mr Dawson, re archaeological storage requirements)

<sup>156</sup> Cllr Mayes also made a written representation, dated 24 Dec 2013 (contained in Doc. OP1)

<sup>157</sup> Doc. OP13 (Cllr Geddes' letter re air quality dated 23 April 2014)

157. For all these reasons, and given its location outside the settlement boundary, Cllr Geddes considers that the proposed development should not be considered sustainable. The DANP is seen as offering a more sustainable alternative that would meet the town's needs in a more acceptable way.

*Councillor Anthony William Batchelor*

158. Councillor Batchelor spoke as a member of Roundway Parish Council, and as a governor of Nursteed Primary School, located to the south of the appeal site, on Windsor Drive.
159. To Cllr Batchelor's knowledge, Nursteed School has no spare places currently available, and there is no spare land within the site for any expansion. He is not aware of any discussions regarding any such expansion, or how the Section 106 education contribution might be used to increase capacity at the school.
160. In any event, in his view, any increase in pupil numbers would be likely to exacerbate existing traffic and safety problems which occur around the school entrance, when children are being dropped and collected amongst through traffic. Yellow lines have been considered but ruled out on the grounds of increasing traffic speed. Cllr Batchelor therefore would not want to see Nursteed School expanded to accommodate additional development.

*Mr Jeremy Pilgrim*

161. Mr Pilgrim spoke as a local resident<sup>158</sup>. He supports the DANP as the proper way for local people to shape their community. The process of preparing the plan had brought three local councils together in a spirit of co-operation not seen before. There was a sense of collective optimism about the benefits that the neighbourhood plan could bring. But the process is a lengthy one, and the late changes to the WCS housing figures have made it difficult, if not impossible, for the DANP team to keep their draft plan in line with the evolving requirements. In Mr Pilgrim's view, it would be unfair if that were seen as an opportunity for the appellants to gain an advantage.
162. The DANP is still moving forward and is on track to become adopted in the not too distant future. Granting permission for the appeal site would not only add to the existing traffic and air pollution problems, but it would undermine the aims of the plan as a whole, and of the principle of localism.

*Mr Robin Eccles*

163. Mr Eccles spoke as the Secretary of the Army Central Fund, a charity which seeks to improve the well-being of serving personnel and their dependants; and also as a local resident and CPRE member. He understood the appellants' case to include an argument that military personnel could be housed at Devizes as an alternative to providing housing in the Tidworth/Ludgershall area. This would have considerable disadvantages for the officers themselves, their families, and for the efficient operation of their military units. The Central Fund has taken a leading role in providing new sports and equestrian

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<sup>158</sup> Mr Pilgrim also made written representations, to PINS on 17 Dec 2013 (in Doc. OP1); and to the SoS on 21 March 2014 (in Doc. OP2)

facilities for service personnel at Tidworth. Billeting officers at a distance would put a strain on the Army's pastoral care resources. Development at the appeal site could not provide a satisfactory alternative for these families.

#### *Written representations*

164. The written representations<sup>159</sup> largely cover the same matters as the oral submissions reported above.
165. Devizes Town Council supports the DANP and argues that the appeal proposal would exceed the whole of the town's 5-year housing requirement. Attention is drawn to the Neighbourhood Plan for Thame, in Oxfordshire, which has been fully adopted, and embraces a dispersal strategy which is said to be similar to that promoted at Devizes. In a further representation submitted after the close of the inquiry<sup>160</sup>, the Town Council agrees with the views expressed by DCAP with regard to the development's adverse effects on air quality
166. Bishops Cannings Parish Council makes particular objection to the development's effects on the landscape setting of Devizes and the visual amenity of the Kennet and Avon Canal.
167. The original written representations include one letter of support, from Mrs J K Combe of Bishops Cannings<sup>161</sup>, which points out that the appeal site has derelict buildings on it, and argues that the location compares favourably with the Lay Wood site, where the Council granted planning permission for housing in January 2014.
168. In addition to those mentioned above, further post-inquiry submissions relating to air quality and air pollution were received from Councillor Judy Rose, Geoff & Chris Jerram, and Mr Ian Thomas<sup>162</sup>. Cllr Rose supports the views of DCAP. Mr & Mrs Jerram state that the main cause of the existing congestion and pollution is due to bottlenecks in the town centre, and easing the flow of traffic at the Windsor Drive junction would not alleviate this. They also suggest that introducing traffic light controls would only add to the problem, because of the stop-start pattern of movement that this would create. However, Mr Thomas believes that the proposed highway works would provide adequate mitigation.

### **Agreed Matters**

#### *Matters agreed in the Statements of Common Ground and joint submissions*

169. The Council agrees that the proposal complies with all relevant policies of the KLP and draft WCS except for NR6 and CP2<sup>163</sup>.
170. The mathematics of the housing figures in Tables 1 – 5 are agreed by the Council and the appellants, although there is disagreement as to which of the various alternative options within the tables are the most appropriate<sup>164</sup>.

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<sup>159</sup> Docs. OP1 (Bundle of written representations to PINS) and OP2 (Bundle of representations to the SoS)

<sup>160</sup> Doc. OPOP14 (Town Council letter re air quality, 23 April 2014)

<sup>161</sup> Mrs Combe's letter of support, dated 7 March 2014, is included in the bundle at Doc. OP2

<sup>162</sup> Docs. OP15, OP16 and OP18 (Letters re air quality - from Cllr Rose, Mr & Mrs Jerram and Ian Thomas)

<sup>163</sup> Doc. J1 (Statement of Common Ground, paras 7.2 – 7.3)

<sup>164</sup> Doc. J1 (Statement of Common Ground, pages 12 -16)



171. The Council's housing completion figures for the years 2006-2014<sup>165</sup> are not disputed by the appellants.
172. The Council's figures for 'small permitted sites' (141 units) and 'windfall allowance' (150)<sup>166</sup> are not disputed by the appellants. The figure of 245 for 'large permitted sites' excludes the disputed large sites that are dealt with in elsewhere the parties' evidence, and to that extent it is an agreed figure.
173. The Council and the appellants agree the details contained in the Highways Common Ground Statement<sup>167</sup>. These include details of the existing highway network, bus services, proposals as to site access, the main principles of the internal road layout, traffic generation and distribution, traffic impact, and required mitigation.

*Matters agreed in evidence and oral submissions*

174. The appellants agree that the scheme conflicts with Policies NR6 and CP2, in so far as these policies relate to development outside settlement boundaries. They also agree that these policies are not incompatible with the NPPF<sup>168</sup>.
175. The Council agrees that the KLP is out of date in terms of its housing provisions<sup>169</sup>. It also accepts that NR6 is a 'policy for the supply of housing' for the purposes of NPPF paragraph 49<sup>170</sup>.
176. The Council accepts that, apart from the harm due to encroachment into open countryside, the proposed development would not cause any other specific demonstrable harm<sup>171</sup>. The Council also accepts that the appeal site is not an unsustainable location for housing<sup>172</sup>.
177. The Council accepts that if there is found not to be a 5-year land supply, or if the development plan is judged to be absent, silent, or out-of-date for this or any other reason, permission should be granted, under NPPF paragraph 14<sup>173</sup>.
178. The Council accepts that: if it is judged that the housing requirement should be based on objectively assessed need; or that the buffer should be 20%; or that the disaggregation between HMAs should be on a pro-rata basis, without adjustment for environmental constraints; then, in any of those situations, a 5-year supply cannot be demonstrated<sup>174</sup>.
179. The Council accepts that the Marlborough depot site should not be counted in the 5-year supply<sup>175</sup>.
180. Irrespective of the 5-year supply, the Council accepts that, where the location is sustainable and no other harm arises, the delivery of additional housing, over and above the policy requirement, should be counted as a benefit<sup>176</sup>.

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<sup>165</sup> Doc. J1 (Statement of Common Ground, Table 2)

<sup>166</sup> Doc. CD67 (Comparative table of Council's and appellants' housing supply figures)

<sup>167</sup> Doc. J2 (Highways Common Ground Statement)

<sup>168</sup> Accepted by Mr Simkins in cross-examination

<sup>169</sup> Doc. C3 (Mr White's proof, para 2.4), and in his answers to cross-examination

<sup>170</sup> Volunteered by Mr Sauvain in opening (Document C9, para 13; and oral submissions)

<sup>171</sup> Agreed by Mr White in cross-examination

<sup>172</sup> Agreed by Mr White in cross-examination

<sup>173</sup> Agreed by Mr White in cross-examination

<sup>174</sup> Doc. C7 (Mr Tiley's rebuttal proof, para 3.2; and his answers to cross-examination)

<sup>175</sup> Doc. C7 (Mr Tiley's rebuttal proof, para. 2.29)

## INSPECTOR'S CONCLUSIONS<sup>177</sup>

### Main Issues

181. In the light of all of the evidence and submissions before me, including those made in writing, the main issues in this case appear to me to be as follows:
- (i) whether the proposed development would meet an established need for more housing in the area;
  - (ii) whether the appeal site is an acceptable location for development, having regard to the acknowledged conflict with Policies NR6 and CP2;
  - (iii) whether the development should be permitted ahead of the community-led planning process envisaged by draft WCS Policy CP2; and
  - (iv) the development's effects on traffic and air quality in Devizes.

### Issue (i): Housing Need

[71-83, 97-111]

182. The question of housing need revolves around the NPPF's requirement for a deliverable 5-year supply. The test for deliverability<sup>178</sup> includes that sites should be available now, in a suitable location, and should have a realistic prospect of delivery within 5 years.

*Housing supply: Salisbury Road, Marlborough [79, 108]*

183. I intend to start with the supply side. The supply figure claimed by the Council is 1,552 dwellings [80]. This figure includes 160 units at Salisbury Road, Marlborough. The site is at present greenfield land, in agricultural use, on the edge of the town, within the AONB. It has no planning permission, nor is it allocated in an adopted development plan. The proposed allocation in the draft WCS (for 200 dwellings in total), is objected to by Savernake Parish Council, the Wiltshire Wildlife Trust, Natural England, CPRE Wiltshire, and the North Wessex Downs AONB Unit<sup>179</sup>. The grounds cited in these objections include impacts on the landscape, ecology, air quality, groundwater, local infrastructure and sustainability issues.
184. The examining Inspector has not yet reported on these objections. When he does so, he will doubtless have to take in to account, amongst other things, paragraph 116 of the NPPF, which requires that consideration be given to whether there is scope for meeting the identified needs in other ways, including outside the AONB. I appreciate that the Council is confident that the allocation will be found to be justified, but that is not a matter for me to judge. The Inspector has not so far raised concerns about the Salisbury Road site, in the way that he has done in the case of Chippenham. But this cannot be taken as an indication that it will be accepted. The examination is still in progress, and its outcome will not be known until the Inspector's report is completed.

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<sup>176</sup> Agreed in cross examination by both of the Council's witnesses

<sup>177</sup> In this section, where numbers appear in square brackets [], these refer back to earlier paragraphs of this report.

<sup>178</sup> NPPF footnote 11

<sup>179</sup> Appendices to Doc. CD50 (Marlborough Road – objections)

185. I conclude that, at this stage, there is not yet any certainty as to whether the Salisbury Road site will be found acceptable in planning terms. It therefore cannot be counted as deliverable. The exclusion of this site, without any other adjustments, reduces the maximum supply, on the Council's own figures, to 1,392 dwellings<sup>180</sup>. This compares to the minimum requirement, again based on the Council's figures, of 1,446 [76], and equates to 4.8 years' supply. It follows that, whatever view is taken on any of the other sites and matters put to the inquiry, there cannot be at present a 5-year supply in the East Wiltshire area.

*Housing supply: Tidworth and Ludgershall [78, 106-107]*

186. Unless the Secretary of State disagrees with this initial conclusion, it may not be strictly necessary for me to consider in detail all of the other disputed sites, or indeed any of the other arguments put to the inquiry on this topic. However, there is one other matter which is potentially of equal or greater magnitude in terms of its influence on the 5-year supply calculation. This relates to the various sites at Tidworth and Ludgershall, where the appellants question the capacity of the local housing market.

187. Tidworth and Ludgershall are two smallish settlements, on Wiltshire's eastern border, adjacent to a large Army base. In the relevant 5-year period, the Council anticipates a total of 721 new dwellings, from the sites at Drummond Park (200), Granby Gardens (171), and the NEQ (250)<sup>181</sup>, and Zouch Manor (100)<sup>182</sup>. Two of these sites are already under construction, and despite the delays that have occurred, I see no reason why the other two should not also be developable. But the issue is whether these particular settlements can realistically be expected to support the scale and the rate of development planned, given their distance from major employment centres, the dominating military presence, and their perception (fairly or otherwise) as 'garrison towns'.

188. The Council acknowledges that their forecasts for this area are ambitious, and that achieving them depends on a major upturn in demand; the description of this as 'aspirational' is a telling one<sup>183</sup>. The Council also admit that what they are relying on to stimulate that extra demand is an influx of additional military personnel [78]. However, the only evidence produced to the inquiry is the press release from March 2013<sup>184</sup>. That document, couched in rather generalised terms, gives little or no clarity as to the numbers, locations, or timing of the planned moves, and crucially makes no reference to the issue of housing needs.

189. I do not doubt that a re-basing of troops from Germany is planned, and that some will come to Tidworth, but that alone is not enough to demonstrate that there is likely to be a demand for new, off-base housing on the scale that the Council suggest. I can appreciate that some aspects of the Army's plans might be confidential, but none of the evidence before me suggests that the Council has access to any further information beyond that which it has put in evidence.

<sup>180</sup> Inspector's arithmetic: 1,552 minus 160 = 1,392 dwellings

<sup>181</sup> Doc. CD67 (Comparative lists relating to the disputed sites)

<sup>182</sup> Doc. C6/Appx 1 ('Housing Land Supply Statement at April 2014', issued Feb 2014)

<sup>183</sup> Docs. CD24 and C6/Appx 15 (Housing Requirement technical paper, Feb 2014 addendum – paras 7.11 – 7.12)

<sup>184</sup> Doc. CD72 (Press release re 'Wiltshire Army Bases Investment')

In the light of the Council's own statements as to the importance of the military re-basing plan as the source of new demand, the 2013 press release does not amount to convincing evidence to support the Council's case on the 5-year supply.

190. The Council's figure of 721 dwellings from the four sites in Tidworth and Ludgershall is almost half of the 5-year target for the whole of the East Wiltshire HMA. Undoubtedly a proportion will be delivered, irrespective of any changes in military personnel. But the appellants' evidence as to the relatively modest rate of sales in the recent past [106], has not been challenged. If the Council's forecasts for the Tidworth and Ludgershall sites prove to be over-optimistic, even by even as little as say 25-30 per cent, this would reduce the sites' contribution by about 180 – 220 dwellings. If the Council are wrong by 50 percent, which seems to me by no means improbable, the difference could be as much as 360 units. On the evidence before me, none of these scenarios can be ruled out. For the purposes of giving some quantification to my concerns, I suggest that 200 dwellings should be deducted from the combined total for these sites. This seems to me the most conservative adjustment that can be justified.
191. To conclude, I consider that the Council's reliance on an unsubstantiated level of demand in this part of the East Wilts HMA undermines confidence in the level of housing that can be achieved, and detracts significantly from the robustness of the 5-year supply figures. This reinforces my conclusion arising from the Marlborough site, that a 5-year supply has not been demonstrated. Based on my tentative deduction of 200, this brings the deliverable supply down to about 1,192 dwellings, or 4.1 years' supply.

*Housing supply: other disputed sites [79, 109]*

192. With regard to the other disputed sites, including Lay Wood and Park Road, Pewsey, the issues relate mainly to detailed arguments about building rates and delays to commencement. I note that the Council has relied to some extent on the stated intentions of the owners or prospective developers, and I agree that such information is to be treated with some caution. However, there is little detailed evidence to counter the Council's assessments. In the light of the above matters relating to Marlborough and Tidworth/Ludgershall, it is not necessary for me to come to any view on these more detailed issues.

*Housing requirement [72-76, 97-105]*

193. On the requirement side, in the absence of an adopted, up-to-date development plan, the only figures 'on the table' at the present time, at county-wide level [72-73, 97-100], are the Council's revised WCS proposal of 42,000 dwellings, which the Inspector has described as seeming reasonable, and the Inspector's own preliminary figure for 'objectively assessed need', of 44,000 [26-30]. In so far as the Inspector has commented on these figures, or proposed them, he has made it clear in both cases that his comments at this stage are not his final conclusions<sup>185</sup>. To that extent, the objectively assessed need figure cannot be said to have progressed further through the examination

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<sup>185</sup> Docs. CD14 and C6/Appx 2 (WCS Inspector's letter 2 Dec 2013); and Docs. CD16 and C6/Appx 3 (WCS Inspector's letter 23 Dec 2013)

process than the Council's proposed policy figure. The judgements in the *Hunston* and *Barwood* cases are clearly of some relevance<sup>186</sup>. But those cases both involved situations where it was argued that the full objective need had not been assessed, and thus had not been taken into account at all. In the present case, even though the revised WCS policy figure remains unapproved, it has been arrived at in the full knowledge of the Inspector's view as to the objective need. In the circumstances of this case, it seems to me that I should give greater weight to the proposed policy requirement of 42,000 dwellings.

194. With regard to the disaggregation between the HMAs [74-75, 101-103], I accept that the Council has not justified the reasons for departing from a strictly pro-rata apportionment of the 5,000 extra units. But that alone does not make their proposed revised distribution unacceptable. As things stand now, the proposed modifications figure for East Wiltshire, at 5,940 dwellings, is the only one that has any standing in the WCS examination, and this is therefore the one to which the most weight should be given.
195. As for the buffer [76, 104-105], both parties are agreed that there is no single 'right' way of assessing whether there has been 'persistent under-delivery'. On the appellants' preferred method, based on performance over just the last 5 years, there has been under-delivery. On the Council's method, over the whole plan period from 2006, there has not. The judgement in the *Cotswold* case confirms that the length of the period is a matter for the decision-maker<sup>187</sup>. There is no question in my mind that 5 years is a long enough period on which to make an assessment. However, the advantage of the longer period advocated by the Council is that it does more fairly reflect the peaks and troughs that have occurred during an unusually turbulent time for the housing market. Bearing in mind the advice in the NPPG<sup>188</sup>, it seems to me that in the present case, the Council's assessment is robust and fair. I therefore see no reason to increase the buffer from 5%.

#### *Devizes area housing requirement [129, 132-133, 137, 144, 165]*

196. I note the proposition in the DANP, and in the submissions of the Steering Group and others, that the 5-year supply should be assessed at the level of Devizes Town, rather than for the wider Devizes Community Area<sup>189</sup> or the HMA as a whole. But that is contrary to the draft WCS, which makes it clear at paragraph 4.28 that the assessment of supply should be at HMA level. This approach is supported by NPPF paragraph 47, which requires that local plans meet the needs of housing market areas. Paragraph 4.29 of the WCS states that the Community Area figures may be a material consideration, but this does not appear to include the sub-areas below these. I consider the HMA-based approach to be the one that I should follow.
197. I note also the views of those who suggest that the housing provision figure for Devizes should be treated as a maximum. However, the WCS makes it clear, in Policy CP2 and elsewhere, that the HMA figures are minima. It also states

<sup>186</sup> [2013] EWCA Civ 1610 (*City & District of St Albans v Hunston Properties Ltd*); and Doc. CD53: *S. Northants DC v SoS and Barwood Land & Estates Ltd*, [2014] EWHC 573 (Admin)

<sup>187</sup> Doc. CD44 (*Cotswold DC v SoS, Fay & Son Ltd and Hannick Homes*: [2013] EWHC 3719 Admin)

<sup>188</sup> NPPG: ID 3-035-20140306

<sup>189</sup> Although the DANP refers at 2.3 to the Devizes Community Area, the housing requirement figure of 2,010 units corresponds to the WCS figure for Devizes Town

that those for the Community Areas are indicative, and the sub-area figures are approximate. Paragraph 4.28 states that neighbourhood plans should not be constrained by the specific housing requirements, and additional growth may be appropriate. I appreciate that the objectors have concerns about the consequences of growth above the WCS provisions, but it seems to me that these should be considered on a site-by-site basis as proposals come forward. I find no basis in the WCS or NPPF for imposing a ceiling in the way suggested.

*Conclusion on housing need*

198. To conclude, I consider that the 5-year supply calculation should be based on the East Wiltshire HMA area, and on the Council's requirement figure of 1,446 dwellings. However, for the reasons discussed above, the Salisbury Road, Marlborough site should not be counted as deliverable, reducing the supply by 160 units. And in addition, the Council has failed to demonstrate that there is a realistic prospect of delivering the numbers of dwellings that it relies on at Tidworth and Ludgershall, leading me to conclude that a further deduction of at least 200 units should be made to reflect the uncertain market demand.
199. These adjustments bring the supply down to around 1,192 dwellings, which is only 4.1 years' worth. In my view, this is the maximum figure that can be put on the identified supply for the East Wiltshire HMA at the present time. It is clear from this is that, even after adopting the most favourable assumptions on all the other points of disagreement, the NPPF requirement for a deliverable 5-year supply is not met.
200. As far as the appeal site is concerned, there is no reason to doubt that the proposed development could be begun during the 5-year period, and thus could make a significant contribution to making good the unmet need. The capacity of 350 dwellings is greater than needed to make good the 5-year supply, but is within the outstanding requirement for the Devizes area for the plan period as a whole. The site is therefore of an appropriate size to make good the gap in the land supply.

**Issue (ii): Whether the location is acceptable in the light of the conflict with Policies NR6 and CP2**

**[60-67,84-89]**

*Whether the settlement boundaries are out-of-date*

201. It is agreed by all parties that the appeal proposal conflicts with Policies NR6 and CP2, because the site is outside the 'limits of development', as defined originally in the KLP [61, 174]. However, the KLP was intended to meet the needs of the Kennet district up to 2011, and its housing and other development policies and proposals were geared to the needs of that period [18-21, 175]. The development limits were designed to protect the countryside for its own sake, and to promote sustainable development patterns, by restricting the scope for any further development beyond that required for those identified needs.
202. Now, the KLP period has expired, but the need for new development has not ceased. The boundaries defined for the needs of a previous era do not reflect the needs that must now be accommodated, and thus cannot logically be

regarded as up to date. This is expressly acknowledged in the comments of the WCS Inspector [27, 85].

203. In addition, it is evident from the conclusion reached above that there is less than a 5-year supply of housing in the East Wiltshire HMA [197-199]. The implication is that, even though some new windfall sites have continued to come forward since 2011, mainly from within the urban areas, these are not keeping pace with housing needs. In this situation, settlement boundaries which were designed to restrict the housing supply, as is the case here, will inevitably make it more difficult for future needs to be met.
204. Consequently, in my view, it follows that the development limits in the KLP should now be regarded as out of date.

#### *Consequences for Policy NR6*

205. I agree that Policy NR6's aims, in terms of countryside protection and sustainable development, remain consistent with the NPPF, and are therefore not out of date [62, 174]. But this does not necessarily mean that the same can be said of the policy itself. Policy NR6 is not just about abstract principles. Its main purpose is to give effect to the specific settlement boundaries defined on the Proposals Map. When those boundaries become no longer fit for purpose, it seems to me that it follows that the policy itself must also be out-of-date. That is now the case for Policy NR6.
206. And in addition, there is NPPF paragraph 49, which advocates that if there is not an adequate 5-year land supply, relevant policies for the supply of housing should not be considered up-to-date. The Council accepts that Policy NR6 is such a policy [175]. Whether that interpretation is right or not, I note that in the *South Northants v Barwood* case<sup>190</sup>, the Court held that paragraph 49 should not be interpreted narrowly. This reinforces my view that Policy NR6 must now be considered out of date.

#### *The effect of draft Policy CP2*

207. At first sight, there may appear some force in the argument that the carrying-forward of the existing settlement boundaries into the emerging WCS, through draft Policy CP2, serves to re-validate those boundaries and to bring them back up to date [44, 63]. Clearly the draft WCS is a more up-to-date plan. But that does not change the fact that the boundaries that Policy CP2 seeks to rely on, at least for the time being, are the same ones that were adopted in 2004. Nor does it overcome the housing land shortfall, since the allocations that the draft WCS proposes in the East Wiltshire HMA<sup>191</sup> are already taken into account in the Council's 5-year supply figures<sup>192</sup>.
208. Moreover, the draft plan itself acknowledges that the settlement boundaries need to be reviewed, in the subsequent SADPD or neighbourhood plans<sup>193</sup>. The Inspector's comments on this proposal make it clear that in his view this task is an urgent one<sup>194</sup> [86,65]. I appreciate that just because the boundaries

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<sup>190</sup> Doc. CD53: *S. Northants DC v SoS and Barwood Land & Estates Ltd*, [2014] EWHC 573 (Admin)

<sup>191</sup> Doc. CD5d (Draft WCS, April 2014 – Policy CP2: EWHMA allocations at Drummond Park and Salisbury Rd)

<sup>192</sup> Document. CD67 (Council's list of land supply sites)

<sup>193</sup> Doc. CD5d (Draft WCS, April 2014 – para 4.13)

<sup>194</sup> Docs. CD16 and C6/Appx 3 (WCS Inspector's letter 23 Dec 2013)

in general are to be reviewed, that does not mean that the particular boundary around the appeal site must change. But the point is that some changes are likely to be necessary, and this undermines the credibility of the existing boundaries as a whole.

209. And in any event, the WCS remains a draft plan. As such, the weight that can be given to it, including the provisions relating to the settlement boundaries, is still limited.
210. The provisions of draft Policy CP2 therefore do not change my view that the settlement boundaries in East Wiltshire are out of date. Nor do they add any significant weight to the case against the proposed development.

*The proposed development's effects on the countryside*

211. The protection of the countryside, which is one of Policy NR6's main purposes, is also supported by the NPPF, and therefore remains an important consideration, irrespective of the weight that is given to the adopted or emerging development plan policies [62]. In the present case, the appeal site forms part of the countryside in visual as well as policy terms. Its development for housing would result in a loss of 20 hectares of open green fields, and that loss would cause some harm. This harm is not to be taken lightly.
212. However, given the shortage of housing land, some loss of countryside is likely to be necessary in any event. At the appeal site, the land is open and agricultural in character, and forms part of a larger swathe of rolling countryside. But it has no particular qualities or features of interest, and is not designated as having any special landscape, ecological or other value [66]. The Council does not allege that development would cause any specific harm, over and above the in-principle objection to encroachment beyond the urban boundary [169, 176].
213. From my observations, the site is reasonably well contained from inward and outward views, with adjoining development on two sides, and a ridge of higher ground to the south and southeast. Development on the site would be seen at close range, from Windsor Drive, Coate Road, the Canal towpath, and the Gypsy Patch footpath, but these impacts would be localised. There would be no longer-distance or more extensive views of any significance, and no material impact on the nearby AONB. The setting of a section of the Canal would change [141, 166], but the section in question is short in relation to the whole, and not of any particular significance, especially in the context of the existing urban development here. The gap between Devizes and Coate would be narrowed, but only slightly. Overall, in my view, the development would not be visually intrusive, and would not materially harm the town's setting.
214. I agree that the new eastern boundary would be a less clear-cut line than that which exists at present along Windsor Drive. But with new planting to reinforce the existing hedge, it would be sufficiently robust. I appreciate the concern that further development would become more difficult to resist, but I see no reason why that should be so, once the present land supply problem is rectified.



215. I therefore conclude that, although the proposed development would cause some harm, that harm would be purely in terms of the principle of development beyond the urban boundary. There would be little actual tangible harm to the countryside's visual character or other important qualities.

*The effects on the pattern of development and sustainability*

216. Likewise, sustainable development is also a key aim of the NPPF, and this too remains an important consideration in the appeal, irrespective of development plan policies [62]. However, the appeal site is well-located in relation to the layout of the town. The town centre is within reasonable walking or cycling range for the more able, by a choice of routes, including the towpath. Bus services are available from Windsor Drive and London Road, and the proposed contribution would allow for some enhancement of these existing services. The town's main employment area, the Lidl foodstore, and the Nursteed primary school are also nearby. The Council accepts that in these respects the site is sustainably located [176], and I agree.
217. I note the concerns of some objectors that further development on the north-eastern side of Devizes would exacerbate the town's somewhat unbalanced growth in that direction [127]. I accept that this might have implications for traffic congestion, and I deal with that question later in this report. But on the other hand, concentrating development into corridors such as this may have other advantages: such as greater efficiency of infrastructure provision, and possible opportunities in the future for encouraging the transfer of more journeys to public transport. In any event, I am not persuaded that the site's location adjacent to this already highly-developed corridor has any significant disadvantages from a sustainability point of view.
218. Overall, it seems to me that housing development at the appeal site would relate well to the town and its facilities, and would contribute positively to the sustainability of the development pattern in this part of Wiltshire.

*Conclusion on the appeal site's acceptability for development*

219. I conclude on this issue that although the proposed development would conflict in principle with Policies NR6 and CP2, the harm caused on this particular site would be limited. In the light of the shortfall in the supply of housing land, it seems to me that in this case greater weight should be given to housing needs than to defending the out-of-date development limits.
220. This conclusion is different from those reached in the Purton, Westbury and Hilperton Marsh appeals [67], but in none of those cases did the Inspectors find a shortfall in the 5-year supply, based on the evidence put to them at the time<sup>195</sup>. Consequently, the balance of the housing and policy considerations in the present case is different.
221. I therefore find that sufficient justification exists for a decision contrary to development plan policies. Despite the conflict with the policies identified, in the current circumstances, the proposed development should not be ruled out purely on the grounds of falling outside the settlement boundary.

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<sup>195</sup> The Purton, Westbury and Hilperton appeals were all determined before the WCS housing provision for the county was raised from 37,000 to 42,000)

### **Issue (iii): Community-led Planning**

**[68-70, 90-96, 129-135, 138, 144, 157, 161-162, 165]**

#### *The policy requirement relating to community-led planning*

222. The policy requirement relating to community-led planning referred to in RR2 arises from the draft WCS's Policy CP2, which includes a statement of intent, that: "*Sites for development, in line with the area strategies<sup>196</sup>, will be identified through subsequent Site Allocations DPDs and by supporting communities to identify sites through neighbourhood planning*".
223. In addition, the Localism Act 2012 gives new powers to local communities, including the right to make neighbourhood plans. It is evident that the inclusion of the above wording in Policy CP2 is intended to reflect the spirit of this new legislation. I therefore give this element of Policy CP2 some weight, despite its draft status.
224. The present appeal site has not been identified in the emerging DANP, nor in an SADPD. Indeed, the appeal is being considered ahead of the outcome of these processes. In these respects therefore, the appeal proposal conflicts with draft policy CP2's aims with regard to the prioritisation of community-led planning, over ad-hoc proposals.

#### *Effect on wider planning objectives*

225. However, the aim of transferring plan-making to community level has to be balanced against wider planning considerations. As before, one of those considerations relates to the need to meet strategic and objectively assessed housing requirements. Where there is a shortfall in the 5-year supply, the need to release more capacity requires decisions to be made with some urgency. The DANP is not yet at the stage where its proposals can carry significant weight. Despite the best intentions of those involved, there are many potential obstacles to being able to progress rapidly through the remaining stages, not least the uncertainty over the final outcome of the WCS examination. Consequently, to wait for the DANP would be to risk a delay of unknown duration before that plan can deliver any of the additional housing that is needed.
226. Furthermore, and arguably more important, even if the DANP is able to complete its passage without any setbacks, it will not make good the housing land shortfall. The DANP addresses the indicative requirement for Devizes itself, but that is only a small part of the East Wiltshire HMA. As noted earlier, the WCS requires the 5-year supply assessment to be based on the HMA as a whole. Meeting the needs of one of its constituent parts in isolation will therefore still leave the HMA with a shortfall overall.
227. To remedy the shortfall entirely through community-led planning, site specific allocations would need to be made elsewhere in the HMA. These may be made through the SADPD, which has as yet barely started, or through other neighbourhood plans, which for the most part have not yet started at all. In either case, the timescale is as yet unknown. Again, leaving decisions on

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<sup>196</sup> The Area Strategies are contained in Policies CP4 – CP33; the strategy for the Devizes Community Area is CP12 (paras 41-43 above refer)

housing entirely to these future development plans, albeit that some might be community-led, would mean that the current shortfall in supply would continue, without any certainty of a solution.

*Conflict with the emerging DANP strategy*

228. Objectors point out that the strategy favoured in the draft DANP is one of dispersal of development to a large number of small sites. The development proposed in the present appeal is large enough to satisfy about 80% of the outstanding requirement for Devizes Town<sup>197</sup>, and meeting this on a single site would be quite the opposite of the DANP's preferred approach.
229. But the DANP strategy has yet to be tested for its robustness and compliance with other relevant policies, let alone whether it will be supported by the local community in a referendum. Limited weight can therefore be given to this conflict with the emerging plan.

*Effect on morale and future engagement*

230. Quite evidently, many local people and organisations in Devizes have engaged in the neighbourhood planning process with enthusiasm and commitment. Some have clearly invested a great deal of thought and creativity as well as hard work. A number have commented in their submissions that, if the appeal proposal goes ahead, they would regard their efforts as wasted. This brings into question whether allowing the appeal would deter future participation in neighbourhood planning, contrary to the aims of the new Act, as well as Policy CP2.
231. In this context however, it is worthwhile bearing in mind that the main aim of the NPPF is to facilitate sustainable development, not to prevent it. And by the same token, it seems to me that the DANP is about much more than just resisting development at the appeal site. Granting approval to the appeal scheme therefore need not stop the neighbourhood plan from promoting other sustainable developments as well, especially as the Devizes housing requirement is not meant to be a fixed ceiling.

*Conclusion on issues relating to community-led planning*

232. In all the circumstances, I conclude that in this case the desirability of entrusting decisions to community-led planning, and encouraging neighbourhood plans, is outweighed by the need to rectify the shortfall of housing land in the East Wiltshire HMA. Consequently the conflict with the emerging DANP, and with the aims of draft Policy CP2 in this respect, is not a sufficient reason to withhold permission.

**Issue (iv): Traffic and Air Quality**

**[112-113, 123-124, 132-135, 137, 139, 144-147, 153, 155, 162, 165, 168]**

*Traffic impact and congestion*

233. I saw on my various visits and tours of the area that the A361 London Road through Devizes serves the urbanised north-eastern corridor and carries a

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<sup>197</sup> Doc. CD5d (Draft WCS, April 2014 – Policy CP12, p74: 'remainder to be identified')

mixture of through and local traffic. The volume of traffic is fairly heavy at most times of day, and in peak periods there is congestion that reduces speeds to a crawl and causes stop-start movement. These conditions are frustrating and wasteful, and cause a great deal of concern amongst the local community. The proposed development would generate a significant amount of additional traffic, and a sizeable proportion of this would use London Road. I can therefore understand the anxiety that residents feel at this prospect.

234. However, the site's location would ensure that the traffic generated would not all be attracted towards the town centre or confined to a single choice of route. A substantial proportion would be likely to go to the north-east, where the employment areas and retail store are located, and some would go south along Windsor Drive. In the appellants' Transport Assessment<sup>198</sup>, the directional split between these routes is suggested as 39%:33%:28% (in rounded figures). This seems to me a fairly even 3-way split. From the Highways Common Ground Statement<sup>199</sup>, it appears that this distribution is broadly accepted. I accept that the numbers may be affected by parents' choice of schools. But it appears that the site will be in the catchment of Nursteed School<sup>200</sup>, and this accords with the assumptions made for traffic purposes. From the available information, I see no reason to doubt that the traffic flows would be reasonably well balanced between the three main directions, and from this point of view, the site is well located.
235. Although there would be more pressure on the London Road/Windsor Drive roundabout, this is one of the two existing junctions that would be improved, as provided for in the S.106 agreement [17,112]. The proposed works would also include an improvement to the London Road/Hopton Road roundabout, plus improvements to the towpath pedestrian/cycle route, and enhanced bus services. The Highway Authority evidently considers that these measures would not only mitigate the effects of the development, but would provide a net benefit to traffic conditions<sup>201</sup>. This seems quite possible, given that the two junctions were identified as needing improvement in the Devizes Transport Strategy, and there is no evidence that in the absence of development they would be publicly funded. None of these matters are challenged in terms of any technical evidence to the contrary. I appreciate the concerns expressed regarding the cumulative effects, with Lay Wood being developed as well. But from the evidence before me, I am satisfied that this has been taken into account in the Council's own traffic studies [113], and in any event, the Lay Wood permission was certainly known about when the Common Ground Statement for the present appeal was agreed.
236. I note the frequently-expressed view that a location close to the A361 would be the worst location for housing, because it would maximise the traffic generation onto that road. However, it seems to me that, wherever development is located at Devizes, much of the traffic will always be attracted to the A361, because it connects all of the town's main facilities. That being so, it may well be the case that if development is sited further away from the main road, the effect would simply be to increase the loading on the minor

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<sup>198</sup> Doc. B1 (Transport Assessment report – paragraph 3.5.6)

<sup>199</sup> Doc. J2 (Highways Common Ground statement – paragraph 3.2.3)

<sup>200</sup> Doc. CD69 (email re schools contribution)

<sup>201</sup> Doc. J2 (Highways Common Ground statement – paragraph 3.4.3)

roads that feed into it. As far as I am aware, the DANP dispersal strategy has not been tested for its highway impact. It is certainly true that development at the appeal site would add significantly to the traffic on a short section of Windsor Drive, leading to the main road, but there is no evidence that this would be any worse in overall terms than any other options that might be considered.

237. The proposed contribution to public transport would, as is common in residential developments, provide support for a period of five years<sup>202</sup>, and there is no guarantee that the enhanced services would continue beyond that time. And the proposed improvements to the towpath would be limited to the section which runs adjacent to the site itself<sup>203</sup>. However, these measures are accepted by the Highway Authority, and their adequacy is not seriously challenged in any of the submissions put to the inquiry.
238. With regard to the potential for rat-running via Coate Road, I accept that some increase in traffic on this rural lane would be likely, but I see no reason why this could not be controlled to manageable proportions by means of sensitively designed traffic calming within the development [112].
239. I conclude that the development's effect on traffic conditions in Devizes would be limited. In the light of the advice in paragraph 32 of the NPPF, a refusal of permission on this basis would not be justified.

#### *Effects on air quality*

240. I recognise the widespread concern of local residents resulting from the designation of the AQMA. However, if this were to be seen as a valid reason to resist new development, it seems to me it would effectively rule out almost any development anywhere in the town, since the affected area is integral to almost all cross-town movement routes. Such a response would be disproportionate to the likely impacts of development. Despite the undoubtedly genuine concerns expressed on this subject, I can find no reason to dispute the appellants' technical evidence<sup>204</sup>, which suggests that the effects on existing pollutant levels would be negligible.

### **Other matters**

#### *General suitability of Devizes*

241. I note the views of those who suggest that Devizes is not a suitable or sustainable location for major development [122, 153,]. But it is the largest town in the East Wiltshire area<sup>205</sup>, and one of the largest second-tier settlements in the County. Despite the concerns of some about employment and commuting, Devizes has one of the largest employment areas in the County, and is identified in the draft WCS as a strategic employment growth location. It has a good range of facilities, including an Academy secondary school [8, 40].

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<sup>202</sup> Doc. J2 (Highways Common Ground statement – paragraph 3.7.1)

<sup>203</sup> Mr Simkins' oral evidence, in reply to my questioning

<sup>204</sup> Doc. A7 (Air Quality report – foot of p.3)

<sup>205</sup> Doc. CD1 (Kennet Local Plan – sect. 1.15)

242. In the context of East Wiltshire and its planning requirements, I see no clear reason why Devizes should not be considered a suitable and sustainable location for a development of the size now proposed.

#### *Education*

243. Concerns are expressed from some quarters as to whether sufficient pupil places are available in existing primary schools, or can be made available [125, 137, 158-160]. However, the Council's current position as Education Authority is clear from the note tabled at the inquiry<sup>206</sup>. The designated school is Nursteed Primary. Although this is currently full, the primary education contribution has been increased to cover the costs of providing sufficient additional places there. A contribution is also proposed to secondary education [116].
244. There is concern from a Nursteed School governor as to a lack of physical capacity within the existing site, and potential traffic and road safety problems [159-160]. No evidence has been presented as to how these problems are to be resolved, but that is not necessary for the purposes of this appeal, because these are issues for the Education and Highway Authorities. I also note that other schools in the town are said to have spare places. On the evidence before me, I can see no reason why the proposed development should put unacceptable pressure on the town's education facilities.

#### *Other local services and infrastructure*

245. Concerns are noted from a number of those who gave their views, with regard to GP services, other health and medical facilities, and also with regard to sewerage and water infrastructure [122, 126, 135]. However, these submissions are somewhat generalised in nature. It is notable that there have been no objections to the scheme from any of the relevant service providers or statutory consultees<sup>207</sup>. I appreciate that there is no A&E service in the town, but that is not unusual these days, even in many larger towns. Overall, the evidence on these matters does not amount to sufficient grounds for a refusal of planning permission.

#### *Open space*

246. Some of the objectors raise issues relating to a lack of, and the loss of, open space and green space in the town, and especially in the north-eastern corridor [127, 153]. I appreciate this concern. However, although the appeal site is currently open land, it fulfils no open space function.
247. Within the proposed development, the Section 106 Agreement<sup>208</sup> secures the provision of 3,404 sq m of open space, including a play area and trim trail, and makes arrangements for the management and maintenance of these areas [14, 17]. Whilst the submitted layout plans are illustrative, they show that this could include a substantial linear open space alongside the Canal, a central activity space, several smaller incidental open areas, the retention of the wooded area in the south-western corner, and some areas of new planting

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<sup>206</sup> Doc. CD69 (Email 7 Feb 2014 re education)

<sup>207</sup> Docs. CD6, CD8b (Officers' reports on the appeal application, Sept 2013 and Feb 2014)

<sup>208</sup> Doc. J3 (S.106 Agreement - Schedules 4 and 7 and definitions)

around the boundaries. The details of all of these spaces would be matters for submission at a later stage.

248. In addition, the Agreement makes provision for a financial contribution of just over £187,000 to the off-site provision or improvement of formal sports pitches or facilities on an identified site at Green Lane, near the southern end of Windsor Drive.
249. Overall, it seems to me that these provisions would meet the need for green space within the development, and the needs of future residents, and would be likely to be of benefit to the general public, going some way to redress any deficiency that might exist at present.

#### *Housing mix and integration*

250. Various issues are raised by some participants with regard to whether the proposed development would be likely to provide the type of housing that is needed in Devizes [128], and whether the location and nature of the scheme would be likely to foster good social integration with the existing community [135, 137, 145, 156]. However, the S.106 Agreement provides for 30% of the new dwellings to be affordable housing, including a mix of 'affordable rented' and shared ownership tenures, and specifies the detailed breakdown of these units in terms of various specific combinations of type and size<sup>209</sup>. There seems no reason to doubt that the housing provided in accordance with these agreed details would meet local needs in terms of tenure and cost. As far as the rest of the development is concerned, the details are reserved for submission at a later stage, but will be subject to the Council's approval.
251. With regard to social integration, I note the views expressed, and I appreciate the genuine concerns behind them. However, whilst this might be an interesting area for future sociological research, no such empirical evidence is available to the inquiry. I accept that, initially, there is a possibility that integration may take longer in a large development than with smaller ones, but in my view that is not a good basis for speculation about the longer term prospects. These matters therefore do not give rise to any justifiable grounds for refusal.

#### *Archaeology*

252. With the Council having withdrawn RR4 [4], there is no substantive issue from any party as to the principle of dealing with the site's archaeological interest by condition. On the basis of the submitted reports<sup>210</sup>, I am satisfied that this is an appropriate solution, and that the suggested condition<sup>211</sup> would be effective in securing the necessary further evaluation, in a manner proportionate to the development and the site's archaeological significance.
253. As regards the storage of the archaeological archive [148-151], the financial arrangements between the Council and Wiltshire Museum are a matter for those parties. The S.106 agreement makes no provision for any contribution to the costs of archaeological storage, and as far as I can see, no such

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<sup>209</sup> Doc. J3 (S.106 Agreement – Schedules 2 and 5 and definitions)

<sup>210</sup> Docs. A5 and A5a ( Archaeological proof and evaluation report)

<sup>211</sup> Doc. CD64 (County Archaeologist's letter and draft condition)

contribution was ever requested. The SoS cannot impose any requirement for such a payment, and in the circumstances of this case, it seems to me that a refusal of permission on the grounds of the lack of such provision would not be justified.

254. Nevertheless, as the appellants fairly point out [117], the details required by the proposed condition include details of proposals for the archiving of the results of the investigations. It appears to me that this allows some scope for discussion of the issue of storage, and it appears that there is a reasonable prospect of the matter being resolved in this way.

*Compliance with policy and legal requirements for planning obligations*

255. The terms of the S.106 Agreement<sup>212</sup> are set out earlier in this report [16-17, 112, 116, 235, 247-248, 250]. The contributions to education, transport, highways (the Canal towpath) and off-site open space, total £2,141,171. The other obligations relate principally to the highway works, affordable housing, and on-site open space. The Council has submitted a statement setting out in summary form the basis for each of these items, in terms of the relevant planning policies and supplementary guidance, and how the amounts have been calculated<sup>213</sup>. The terms are agreed and their lawfulness is not contested by any party.
256. On the basis of this information, and the relevant considerations discussed in this report, I am satisfied that the obligations in the Agreement are necessary to make the development acceptable in planning terms, and are directly related to the development, and are fair and reasonable in scale and kind. The Agreement therefore complies with the policy tests at paragraph 204 of the NPPF, and with the relevant Regulations<sup>214</sup>.

*Benefits of the development*

257. Having regard to the appellants' list of beneficial effects resulting from the development [119-120], I agree that the provision of 350 dwellings would in itself be beneficial to the housing supply, irrespective of the land supply shortfall, and that the affordable element is an added benefit. There would also be likely to be some significant economic benefits to the local and national economy from a development on this scale.
258. The proposed improvements to the towpath, albeit for a limited length, and the provision of open space adjacent to it, would be significant benefits, notwithstanding the loss of rural character from a section of the canalside environment. The provision of other open spaces within the site would mainly serve the development itself rather than the wider community, but the off-site sports pitches or facilities at Green Lane would be likely to be used by the general public, and thus would be a significant benefit.
259. The off-site highway improvements would appear to achieve a net benefit to traffic flows, although there is no quantification of this, and I therefore treat it as relatively minor. The enhancement of bus services would be a benefit, but

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<sup>212</sup> Doc. J3 (S.106 agreement)

<sup>213</sup> Doc. C8 (Statement of compliance re S.106 agreement)

<sup>214</sup> The Community Infrastructure Levy Regulations 2010 (Note: a CIL Charging Schedule has not yet been adopted)



a minor one due to the lack of permanence. However, the evidence on air quality shows only a neutral effect rather than any benefit as suggested. The other matters raised under this heading are also neutral.

## **The Planning Balance**

### *Assessment against the development plan and other material considerations*

260. The proposed development would not accord with the most relevant policy in the development plan, Kennet Local Plan Policy NR6, because of its location outside the development limits of Devizes. Applying Section 38(6), if there were no other material considerations, this conflict with the development plan would justify refusal.
261. However, there are a number of other important planning considerations. In particular, these include: the out-datedness of the KLP's settlement boundaries; the lack of a 5-year supply of housing land; the sustainable location; the lack of any specific demonstrable harm (other than the in-principle objection to encroachment into the countryside); and the NPPF's presumption in favour of sustainable development.

### *Assessment in terms of NPPF paragraph 14*

262. Applying the approach in NPPF paragraph 14, the development plan is not only out of date, with regard to Policy NR6 and the settlement boundaries, but it is also absent, in terms of making any provision for housing since 2011. The presumption in the final bullet point of that paragraph is therefore engaged.
263. The loss of open land from the countryside would represent an adverse impact of the development. But no other significant harm would arise. With regard to the draft WCS's aims for community-led planning, as set out in Policy CP2, the only negative effect on the Devizes Neighbourhood Plan would be to take away its ability to block the development now proposed. But since the development itself would cause little actual harm, this consideration carries little weight.
264. On the other hand, the benefits would include the delivery of up to 350 new dwellings, including 30% affordable housing, the economic benefits to the construction industry, the improvement of the Canal towpath, the provision of open space adjacent to the Canal, and a contribution to new sports facilities at Green Lane. All together, these benefits are substantial.
265. Relevant policies in the NPPF place considerable emphasis on the need to boost housing supply, build a strong economy, and promote sustainable development. Although there is support for protecting the countryside, and maintaining a plan-led system, no specific policies indicate that development at the appeal site should be restricted. Overall it seems to me that in this case the balance of these relevant national policies clearly favours the proposed development.
266. I conclude that, assessed against the NPPF's policies as a whole, the benefits identified above would not be significantly nor demonstrably outweighed by the relatively minor adverse impacts. Indeed, in my judgement, the reverse would apply: the benefits would outweigh the harm. The application of NPPF paragraph 14 therefore leads me to the conclusion that planning permission should be granted.

### *Overall planning balance*

267. I conclude that the conflict with Policy NR6 is outweighed by the other material considerations. Although the site is outside the settlement boundary, and development here would conflict with the emerging Neighbourhood Plan, in the circumstances of this particular case it is right to give greater weight to the housing needs of the East Wiltshire HMA, and to the benefits of providing housing to make up the lack of a 5-year land supply in that area. Given also the sustainable location and the lack of tangible harm, the presumption in favour of sustainable development weighs in favour of granting permission.

### **Conditions**

#### *Recommended conditions*

268. The conditions that I propose to recommend are set out at Annex 3. These Recommended Conditions (RCs) are based on the draft list agreed between the Council and the appellants<sup>215</sup>, but with some editing and other changes, to ensure precision and enforceability, and to reflect the discussions at the inquiry.
269. RC1, RC2 and RC3 are the standard conditions for outline permissions. RC4 requires the approval of a phasing scheme. This is needed to enable the details required under other conditions to be submitted on a phased basis.
270. RC5 and RC6 secure the provision of necessary on-site highway works, including those required for access to the site, and they also allow the Council to control the details of those works and the timing of their provision. These conditions are necessary for highway safety, and to ensure a satisfactory standard of development. The off-site highway works are secured separately, by means of the Agreement.
271. Similarly, RC7 and RC8 secure the provision of surface water and foul drainage systems to serve the site, and enable the Council to control the details and timing, in order to ensure satisfactory living conditions on site, and to avoid any risks of flooding or pollution elsewhere.
272. RC9 provides for the carrying out of further archaeological investigations and mitigation works, including the publishing and archiving of the results, to ensure that the site's archaeological significance is properly recorded for future generations. RC10 secures a scheme of ecological mitigation and enhancement, to ensure that the site's existing habitats are protected and its biodiversity enhanced.
273. RC11 provides for the retention and protection of the existing trees and hedgerows during construction, and RC12 secures the phased provision of a landscaping scheme. In the latter case, the details required include, amongst other things, boundary treatments and earthworks, obviating the need for the separate conditions that were proposed for these matters. RC13 secures proper provision for the storage of household refuse. All of these conditions are necessary to ensure a high quality of development.

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<sup>215</sup> Doc. J1 (Statement of Common Ground – Appendix 11, draft conditions)

*Conditions not recommended for inclusion*

274. The condition on the draft list relating to details of materials, is unnecessary at outline stage, as such details can be controlled as part of the reserved matters. The suggested restriction on conversion of domestic garages is unreasonable in advance of any details of the proposed layout. The proposed requirement for a water efficiency scheme seems to me to be too vague to allow a prospective developer to judge what might be required. In this particular location, I can see no particular need to control the hours of construction work, since there are no directly adjoining properties. Issues relating to the control of pollution arising from the construction process can be controlled under other legislation. I therefore recommend that none of these other draft conditions be imposed in this case.

**Overall Conclusion and Recommendation**

275. For the reasons set out above, I find that the conflict with the development plan and emerging neighbourhood plan is outweighed by other material considerations, including the need for more deliverable housing land, to restore a 5-year supply.

276. I therefore recommend that the appeal be allowed, and planning permission be granted, subject to the conditions listed in Annex 3.

*John Felgate*

INSPECTOR

## **ANNEX 1: APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Stephen Sauvain QC	(Instructed by Mr I R Gibbons, Solicitor to the Council)
He called:	
Mr Neil Tiley BSc(Hons)	Monitoring and Evidence Manager
Mr Edgar White MA, DipTP(Dist), MRTPI	White Planning Services

### FOR THE APPELLANT:

Mr Anthony Crean QC	(Instructed by Mr Simkins)
He called:	
Mr Christopher Simkins BA(Hons), MRTPI	RPS Group
Mr Andrew Kenyon BEng(Hons), FCIHT	Peter Evans Partnership

### OTHER INTERESTED PERSONS WHO SPOKE AT THE INQUIRY:

Mr John Baumber CEng, FIMechE, BSc, CDipAF	The Trust for Devizes
Mr Simon Fisher	Devizes Neighbourhood Plan Steering Group
Cllr Chris Callow	Chairman, Roundway Parish Council
Mr John Kirkman	CPRE Wiltshire
Mr Rick Rowland	Devizes Community Area Partnership (DCAP)
Mr David Dawson	Director, Wiltshire Museum
Cllr Laura Mayes	Wiltshire Council member for Roundway Ward
Cllr Andrew Geddes	Roundway Parish Councillor
Cllr Anthony William Batchelor	Roundway Parish Councillor and Nursteed School Governor
Mr Jeremy Pilgrim	Local resident
Mr Robin Eccles	Local resident, CPRE member, and Secretary of The Army Central Fund Charity

## **ANNEX 2: APPLICATION PLANS**

Site Location Plan 01	Revision A
Site Location Plan 02	Revision A
Site Topographical Plan	Revision A
Site Plan 01 – Proposed Land Use Mix	Revision A
Site Plan 02 – Illustrative Layout	Revision A
Potential Northern Access and Foot/Cycleway	Dwg No. 2397.11
Potential Southern Access and Foot/Cycleway	Dwg No. 2397.12

### **ANNEX 3: INSPECTOR'S RECOMMENDED CONDITIONS**

- RC1 The development hereby permitted shall not be commenced until details of the appearance, landscaping, layout, and scale of the development, (hereinafter called "the reserved matters") have been submitted to the local planning authority and approved in writing. The development shall thereafter be carried out in accordance with the details thus approved.
- RC2 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.
- RC3 The development shall begin not later than two years from the date of the approval of the last of the reserved matters to be approved.
- RC4 No development shall take place until a phasing scheme has been submitted to the local planning authority and approved in writing.
- RC5 (a) The proposed road junctions giving access to the site from Windsor Drive shall be laid out shown on Drawings Nos. 2397.11 and 2397.12.
- (b) No dwelling shall be occupied until the road junction and site access serving that phase of the development has been constructed to at least base course level, and a timetable for the full completion of the road junctions and site access works has been submitted to the local planning authority and approved in writing. These works shall thereafter be completed in accordance with the timetable thus approved.
- RC6 (a) The layout details to be submitted for approval under condition 1, for each phase of the development, shall include details of all necessary on-site highway infrastructure, including access roads, turning and parking areas, footways, verges, retaining walls, street lighting and highway drainage, together with a timetable for the implementation of these works.
- (b) No dwelling shall be occupied until the highway infrastructure serving that unit has been provided, in accordance with the approved details, and the relevant roads and footways finished to at least base course level. These works shall thereafter be fully completed in accordance with the approved timetable.
- RC7 (a) No development shall take place until a detailed scheme of surface water drainage has been approved in writing by the local planning authority. The scheme shall accord generally with the proposals contained in the submitted Flood Risk Assessment, dated January 2013. The scheme shall also include details of the system's on-going management and maintenance requirements, and a management plan setting out how those requirements will be provided for.
- (b) The surface water drainage scheme shall be implemented as approved, and no dwelling shall be occupied until the necessary infrastructure to serve that unit has been installed and made operative. Thereafter, the surface water drainage system shall be maintained and managed in accordance with the approved details.
- RC8 No development shall take place until a foul drainage scheme has been approved in writing by the local planning authority. The foul drainage scheme shall be implemented as approved, and no dwelling shall be occupied until the necessary works serving that dwelling have been completed and made operative in accordance with the approved details.
- RC9 No development shall take place until a written scheme of archaeological investigation and mitigation has been submitted to the local planning authority and approved in writing. The scheme shall include a timetable for carrying out the necessary investigations and mitigation for each phase of the development, and proposals for the analysis, publishing and archiving of the results. The archaeological works shall thereafter be implemented in accordance with the details thus approved.

- RC10 No development shall take place until a detailed scheme of ecological mitigation and enhancement measures has been submitted to the local planning authority and approved in writing. The scheme shall include a timetable for the implementation of the necessary works, and those works shall be carried out in accordance with the scheme and timetable thus approved.
- RC11 (a) No development, or site preparation or clearance shall take place until a tree and hedgerow retention scheme has been submitted to and approved in writing by the local planning authority. The scheme should show all existing trees and hedgerows on or adjacent to the site, and should identify whether each is to be retained or removed, and any proposed works to those that are to be retained.
- (b) The tree and hedgerow retention scheme should also contain details of measures for the protection of the retained trees and hedgerows before and during the course of development. These measures shall include protective fencing, and such fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought on to the site, and shall remain in place until the latter have been removed from the site and the development has been completed. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made.
- (c) During construction, no fires shall be lit within 15m from the furthest extent of the canopy of any retained tree or hedgerow. Nor shall any storage or mixing of concrete, cement, oil, bitumen, or other chemicals take place within 10m from the nearest part of any retained tree or hedgerow.
- (d) No retained tree or hedgerow shall be cut down, uprooted or destroyed, nor be topped, lopped or pruned other than in accordance with the approved scheme. Any such works which may be thus approved shall be carried out in accordance with BS 5837. If any retained tree or hedgerow is removed, uprooted or destroyed or dies, within a period of 5 years from the date of completion of the development, replacement planting shall be carried out in accordance with details to be approved in writing by the local planning authority.
- RC12 (a) The landscaping details to be submitted for approval under Condition 1, for each phase of the development, shall include details of all new planting and seeding, all hard surfacing materials, all boundary treatments, any earth mounding, re-contouring or other earthworks, all finished ground levels, all proposed signage, street furniture, play equipment, lighting, and any other related structures or artefacts within the proposed public areas.
- (b) The landscaping works thus approved shall be carried out in accordance with these approved details, and in accordance with a phased programme to be submitted to and approved in writing by the local planning authority.
- (c) Any tree or plant forming part of the approved landscaping scheme which dies, or becomes seriously damaged or diseased, or is removed for any reason, within a period of 5 years after planting, shall be replaced during the next planting season with others of similar size and species.
- RC13 The layout details to be submitted for approval under Condition 1 shall include details of the provisions to be made for the storage of household refuse for each proposed dwelling. No dwelling shall be occupied until the approved provision has been made available for use by the occupiers of that dwelling. Thereafter, the approved refuse storage provisions shall be retained in accordance with the details thus approved.

## ANNEX 4: INQUIRY DOCUMENTS

### BACKGROUND DOCUMENTS (Blue folders Nos 1 & 2)

B1	Planning application supporting statement
B2	Design and Access Statement
B3	Landscape and Visual Impact Assessment
B4	Transport Assessment
B5	Residential Travel Plan
B6	Air Quality Assessment
B7	Heritage Desk-based Assessment
B8	Environmental Noise Assessment
B9	Ecological Surveys Report
B10	Utilities Assessment and Foul Water Strategy Options report
B11	Flood Risk Assessment
B12	Retail Report
B13	Site Waste Management Plan
B14	Statement of Community Involvement
B15	Sustainability Checklist
B16	Application covering letter, dated 23 January 2013
B17	RPS letter re air quality, 22 February 2013
B18	RPS letter re air quality, 13 March 2013
B19	Schedule of application documents

### JOINT DOCUMENTS (Blue folder No 3)

J1	Statement of Common Ground, dated 7 April 2014
J2	Highways Statement of Common Ground, dated April 2014
J3	Section 106 agreement, dated 7 April 2014

### COUNCIL DOCUMENTS (Blue folder No 4)

C1	<u>Rachel Foster</u> – proof of evidence (archaeology)
C2	<u>Edgar White</u> – summary
C3	Edgar White - proof of evidence (planning policy)
C4	<u>Neil Tiley</u> – summary
C5	Neil Tiley - proof of evidence (housing supply)
C6	Appendices to Mr Tiley's proof – bundle comprising:
Appx 1	Housing Land Supply Statement at April 2014 (Feb 2014)
Appx 2	WCS Inspector's 10 <sup>th</sup> procedural letter, 2 December 2013
Appx 3	WCS Inspector's 11 <sup>th</sup> procedural letter, 23 December 2013
Appx 4	WCS Inspector's 12 <sup>th</sup> procedural letter, 4 February 2014
Appx 5	Note on method used in estimating completions to March 2014
Appx 6	Housing Land Supply Statement at April 2013 (Aug 2013)
Appx 7	Appeal decision – Widham Farm, Purton (APP/Y3940/A/11/2165449)
Appx 8	Appeal decision – Hilperton Marsh (APP/Y3940/A/13/2192250)
Appx 9	Appeal decision – Fairdown Ave, Westbury (APP/Y3940/A/11/2196510)
Appx 10	Appeal decision – Filands, Malmesbury (APP/Y3940/A/12/2183526)
Appx 11	Appeal decision – Bureau West, Devizes (APP/Y3940/A/13/2192636)
Appx 12	Council's response to the 10 <sup>th</sup> procedural letter – 19 December 2013
Appx 13	Note on disaggregation of increased housing, January 2014
Appx 14	WCS Sustainability Appraisal Addendum, 28 Feb 2014
Appx 15	Topic paper 15 addendum – housing requirement technical paper, 28 Feb 2014

- Appx 16 Map of East Wiltshire Housing Market Area
- Appx 17 List of housing sites as at 17 Feb 2014
- Appx 18 Appeal decision – Wincanton Hospital (APP/R3325/A/12/2170082)
  
- C7 Neil Tiley - rebuttal proof; with appendices attached:
  - Appx 1 Timeline of key events
  - Appx 2a North East Quadrant - deliverability
  - Appx 2b Granby Gardens - deliverability
  - Appx 2c Drummond Park - deliverability
  - Appx 2d Salisbury Road – deliverability
  - Appx 2e Marlborough Depot – deliverability
  - Appx 2f Lay Wood – deliverability
  - Appx 2g Park Road - deliverability
  - Appx 3 WCS paper – response to 2011 household projections and RS revocation, 17 May 2013
  
- C8 Statement of compliance of S.106 obligation, in relation to Reg 122 of CIL Regulations
- C9 Opening statement by Mr Sauvain
- C10 Closing submissions by Mr Sauvain
  
- C11 Council’s response to costs application; with attachments:
  - Attach. 1 Asst County Archaeologist’s letter dated 19 Feb 2013
  - Attach. 2 Asst County Archaeologist’s letter dated 28 Feb 2014

#### **APPELLANTS’ DOCUMENTS (Blue folder No 5)**

- A1 Christopher Simkins - summary
- A2 Christopher Simkins - proof of evidence (planning)
- A3 Bound volume of appendices to Mr Simkins’ proof, comprising:
  - Appx 1 Plan showing location of Coate Bridge, Lay Wood and Bureau West sites
  - Appx 2 Email correspondence relating to Bureau Wood
  - Appx 3 Emails and telephone conversations relating to the appeal application
  - Appx 4 Kennet Local Plan extracts
  - Appx 5 WCS - Nov 2013 draft (extracts)
  - Appx 6 Emails between Mr Simkins and Mr Fisher re Devizes Neighbourhood Plan
  - Appx 7 The appellants’ representations on the Neighbourhood Plan
  - Appx 8 Hansard 8 Jan 2014 – Nick Boles MP
  - Appx 9 Housing delivery assessment in relation to persistent under-delivery (Table)
  - Appx 10 Cotswold District – Local Plan extract
  - Appx 11 North Wilts District – Local Plan extract
  
- A4 Christopher Simkins - rebuttal proof
  
- A5 Ian Barnes – proof of evidence (archaeology); with bound-in appendices comprising:
  - Appx 1 Personal CV
  - Appx 2 Trial trench evaluation figures
  - Appx 3 Desk-based assessment report, Jan 2013
  - Appx 4 Geophysical (magnetometer) survey report, Jan 2014
- A5a Archaeological Evaluation report, April 2014
  
- A6 Andrew Kenyon – rebuttal statement (traffic and highways)
  
- A7 Statement on air quality - Fiona Prissall



A8	Opening submissions by Mr Crean
A9	Closing submissions by Mr Crean
A10	Costs application
A11	Response to post-inquiry submissions on air quality, dated 1 May 2014

**DOCUMENTS SUBMITTED BY OTHER INTERESTED PERSONS (Blue folder No 6)**

OP1	Bundle of 31 written representations to the Planning Inspectorate
OP2	Bundle of 12 written representations to the Secretary of State
OP3	Statement tabled by Mr Kirkman, 8 April 2014
OP4	Statement tabled by Mr Kirkman, - 'Version Two', 9 April 2014
OP5	'Cumulative Development Assessment: S-Paramics Traffic Modelling report' - Atkins, October 2013 (tabled by Mr Rowland)
OP6	Statement by Mr Fisher
OP7	Paper entitled 'Solving the Crisis in Storage of Archaeological Archives', tabled by Mr Dawson
OP8	List of Wiltshire Museum's undeposited archaeological archives, tabled by Mr Dawson
OP9	Statement by Cllr Callow
OP10	Statement on traffic congestion and air quality – tabled at the inquiry by Mr Rowland
OP11	Post-inquiry letter re air quality - Mr Fisher, 23 April 2014
OP12	Post-inquiry letter re air quality - Mr Rowland, 23 April 2014
OP13	Post-inquiry letter re air quality – Cllr Geddes, 23 April 2014
OP14	Post-inquiry letter re air quality – Devizes Town Council, 23 April 2014
OP15	Post-inquiry letter re air quality – Cllr Judy Rose, 23 April 2014
OP16	Post-inquiry letter re air quality – Mr & Mrs Jerram, 20 April 2014
OP17	Post-inquiry letter re air quality – The Trust For Devizes, 22 April 2014
OP18	Post-inquiry letter re air quality - Mr Ian Thomas, 24 April 2014

**CORE DOCUMENTS (Set of three black ring-binders, and blue folder No 7)**

VOLUME 1

CD1	'Kennet Local Plan 2011', adopted 2004 (separate bound volume)
CD2	List of Local Plan saved policies
CD3	The NPPF
CD4	-- [not used] --
CD5(A)	Wiltshire Core Strategy – proposed modifications, August 2013 (separate bound document)
CD5(B)	Wiltshire Core Strategy – pre-submission document, Sept 2013 (separate bound document)
CD5(C)	Wiltshire Core Strategy – pre-submission document, Nov 2013
CD5(D)	Wiltshire Core Strategy – pre-submission document, April 2014 (separate bound document)
CD6	Coate Bridge – officers' report 25 Sept 2013
CD7	Refusal notice
CD8	(a) Lay Wood – officers' report 12 Feb 2014 (b) Coate Bridge - officers' report 12 Feb 2014
CD9	Lay Wood and Coate Bridge sites: Minutes of committee meeting on 12 Feb 2014
CD10	Strategic Housing Land Availability Assessment (SHLAA) 2012, dated Feb 2014
CD11	Housing Land Supply Statement, East Wilts HMA – 'update April 2013' (dated May 2013)
CD12	'Housing Land Supply Statement - April 2013' (dated Aug 2013)
CD13	Topic Paper 3: Settlement Strategy, January 2012

- CD14 WCS Inspector's 10<sup>th</sup> procedural letter, 2 December 2013
- CD15 Council's response to the 10<sup>th</sup> procedural letter – 19 December 2013
- CD16 WCS Inspector's 11<sup>th</sup> procedural letter, 23 December 2013
- CD17 Local Development Scheme – report to Cabinet 21 Jan 2014
- CD18 Local Development Scheme Jan 2014 – errata to above
- CD19 Local Development Scheme Jan 2014 - final
- CD20 Local Development Scheme Jan 2014 – review
- CD21 Council's response to the 11<sup>th</sup> procedural letter – 29 January 2014
- CD22 WCS Inspector's 12<sup>th</sup> procedural letter, 4 February 2014
- CD23 Council's response to the 12<sup>th</sup> procedural letter – 28 February 2014
- CD24 Topic Paper 15 – Housing requirement technical paper, 28 Feb 2014

## VOLUME 2

- CD25 Viability Study report, 28 Feb 2014
- CD26 Affordable Housing report, 28 Feb 2014
- CD27 Addendum to Topic Paper 16 (gypsies and travellers), 28 Feb 2014
- CD28 WCS Sustainability Appraisal Addendum, 28 Feb 2014
- CD29 WCS Habitats Regs Assessment, 28 Feb 2014
- CD30 Wilts Core Strategy Proposed Modifications:
  - (a) 28 Feb 2014
  - (b) April 2014 (separate bound document)
- CD31 Housing Land Supply Statement - April 2014, (dated February 2014)
- CD32 Marden Farm, Calne:
  - (a) officers' report 22 Jan 2014
  - (b) officers' report 30 July 2013
- CD33 Marden Farm, Calne: Minutes of committee meeting on 22 Jan 2014
- CD34 Burbage (land west of High St) – officers' report, 20 Feb 2014
- CD35 Burbage site – minutes of committee meeting on 20 Feb 2014
- CD36 Appeal decision – Bureau West, Devizes (APP/Y3940/A/13/2192636)
- CD37 Appeal decision – Widham Farm, Purton (APP/Y3940/A/11/2165449)
- CD38 Appeal decision – Fairdown Ave, Westbury (APP/Y3940/A/11/2196510)
- CD39 Appeal decision – Hilperton Marsh (APP/Y3940/A/13/2192250)
- CD40 Appeal decision – Filands, Malmesbury (APP/Y3940/A/12/2183526)
- CD41 Appeal decision – Bourton-on-the-Water (APP/F1610/A/13/2196383)
- CD42 Appeal decision – Highfield Fm, Tetbury (APP/F1610/A/11/2165778)
- CD43 Appeal decision – Berrells Rd, Tetbury (APP/F1610/A/12/2173305)
- CD44 High Court judgement – Cotswold DC: [2013] EWHC 3719(Admin)
- CD45 High Court judgement – Wainhomes: [2013] EWHC 597(Admin)
- CD46 Devizes Neighbourhood Plan: Application to designate a neighbourhood area
- CD47 Devizes Neighbourhood Plan: Approval of designation
- CD48 Devizes Neighbourhood Plan: Initial Consultation Version, January 2014
- CD49 Land at The Mead, Westbury – officers' report 12 March 2014
- CD50 Salisbury Road, Marlborough – Council submission to CS Examination, April 2014

## VOLUME 3

- CD51 Annual Monitoring Report 2010/11
- CD52 Appeal decision – Deddington (APP/C3105/A/13/2201339)
- CD53 High Court judgement – S Northants DC: [2014] EWHC 573 (Admin)
- CD54 High Court judgement – S Northants DC: [2014] EWHC 570 (Admin)
- CD55 WCS Inspector's 13<sup>th</sup> procedural letter, 20 March 2014
- CD56 Council's response to the 13<sup>th</sup> procedural letter – 26 March 2014
- CD57 Proposed amended WCS Policy CP2, March 2014
- CD58 (a) Land at Farnbank, Honeystreet, Pewsey – officers' report 3 April 2014  
(b) High St, Burbage – Minutes of committee meeting on 20 Feb 2014
- CD59 Topic Paper 15: housing requirement technical paper, Jan 2013

CD60	Devizes Neighbourhood Plan – S.14 Consultation Version, April 2014 (separate green binder)
CD61	Appeal decision – Marden Farm, Calne (APP/Y3940/A/13/2206076)
CD62	Granby Gardens – legal title
CD63	Map of sites for Inspector's visits
CD64	Assistant County Archaeologist's letter dated 8 April 2014
CD65	- (not used)
CD66	WCS Inspector's 14 <sup>th</sup> procedural letter, 7 April 2014
CD67	Deliverable housing supply – alternative assessments
CD68	Parish Council boundaries map
CD69	Note re education contribution, 7 February 2014
CD70	Marden Farm, Calne – Council's appeal statement
CD71	Housing completions – England (tabled by the Council)
CD72	Press release re Wiltshire army bases (tabled by the Council)
CD73	Wilts Core Strategy - Summary of main stages since submission
CD74	Map of N Wessex downs AONB
CD75	Wilts Core Strategy – Inspector's proposed modifications, April 2014



# Department for Communities and Local Government

## RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;**

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for permission to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.